WORLD RUGBY Decision

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| Match | England v New Zealand | | |
| Player’s Union | New Zealand | Competition | Women’s Rugby World Cup 2017 |
| Date of match | 26 August 2017 | Match venue | Kingspan Stadium, Belfast |
| Rules to apply | Tournament Disciplinary Programme (being section 12 of the terms of participation for Women’s Rugby World Cup 2017), hereinafter “TDP” | | |

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| **PARTICULARS OF OFFENCE** |

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| Player’s surname | Natua | Date of birth | 22 Nov 1991 |
| Forename(s) | Toka | | |
| Referee Name | Joy Neville | Plea | Admitted  Not admitted |
| Offence | Law 10.4(m) – acts contrary to good sportsmanship (biting) - *citing not upheld* | SELECT: Red card  Citing  Other  If “Other” selected, please specify: | |

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| **HEARING DETAILS** |

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| Hearing date | 30 August 2017 | Hearing venue | By video/telephone conference call |
| Chairman/JO | Pamela Woodman (Scotland) | | |
| Other Members of Judicial Committee | Beth Dickens (Scotland) – ex-Scotland Women  Justin Meagher (Ireland) – ex-Connacht | | |
| Appearance Player | YES  NO  By telephone | Appearance Union | YES  NO |
| Player’s representative | Aaron Lloyd | Designated Disciplinary Official | Yvonne Nolan |

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| **SUMMARY OF ESSENTIAL ELEMENTS OF CITING/REFEREE’S REPORT/DVD FOOTAGE** |

The citing complaint was made by the citing commissioner, Tim Lowry (Ireland), under law 10.4(m) *(acts contrary to good sportsmanship)* in respect of an alleged incident in the Match. The citing complaint was in the following terms:

“On Saturday the 26th August 2017 at approximately thirty three (33) minutes and thirty (30) seconds into the second half of the Women’s Rugby World Cup Final between England and New Zealand, the mouth of Toka Natua (New Zealand No1) came into contact with the right forearm of Justine Lucas (England No18). After the whistle Justine Lucas approached the referee Joy Neville and presented her right arm to the referee and stated to the referee that she had been bitten on the forearm by Black No1 (see witness statement from Joy Neville Referee). Justine Lucas gave a statement in the presence of her Team Manager, Annie Poole, stating the actions of Black No1 (see separate witness statement / listen to verbal statement on audio file / see photos of Justine Lucas forearm).”

Six mp4 video clips were provided as evidence (including “zoomed in” footage), in normal speed and slow motion. Key elements of the video evidence are noted in the “findings of fact” section below.

Three photographs were also provided as evidence, in which only a relatively feint red line could be seen. The Judicial Committee was not made aware of exactly when such photographs had been taken relative to when the alleged biting took place.

The Referee’s written statement was in the following terms:

“During England v New Zealand, 72nd minute, No 18 White stated she had been bitten by Black 1 and showed me her arm. There was evidence of a bite mark. (A line of teeth evident on her arm) There was no break of skin. I did not see the incident live in play.”

The Referee gave oral evidence by telephone during the Hearing which, in summary, provided the following supplementary information:

1. When shown the inside of White (i.e. England) 18’s forearm, the Referee could see an obvious line of teeth marks, with clear gaps and an obvious mark for each tooth in line.
2. No action was taken on the pitch as a result of the fact that the Referee had not observed the alleged biting. This was also why she did not speak to the Player about the alleged biting.
3. The Referee explained that she had an arrangement with the TMO, such that the TMO would come in with a “check check” call if there was potential foul play which the TMO considered that the Referee should review. The Referee did not explicitly refer the matter to the TMO for review but stated that the TMO would have heard what White 18 had said. There was no “check check” call from the TMO. The Referee spoke to the TMO after the Match, who confirmed that he had not found evidence of biting.

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| **ESSENTIAL ELEMENTS OF OTHER EVIDENCE (e.g. medical reports)** |

The substantive part of the written statement from Justine Lucas, England number 18 (“E18”) was in the following terms:

“In the 72nd minute of the game we were in a maul, I felt what I believed to be a bite on my right arm. After the whistle had gone I checked my arm and there was half a bite mark there. I then went to the ref and showed her the bite mark on my arm. I believe the player who bit my arm was New Zealand number 1.”

She also provided an oral statement to the citing commissioner which was provided in support of the citing complaint. In addition, E18 gave oral evidence by telephone during the Hearing which, in summary, provided the following supplementary information (but without the benefit of having seen the video clips):

1. During the maul, E18 felt something on her arm, as if someone was biting her but she could not see what was happening at the time.
2. There was just one bite but it was not that painful and lasted for a couple of seconds (probably 2) as a maximum. She did not pull her arm away as it happened too quickly and the bite was not hard enough to do that.
3. When E18 looked at her arm after the maul had broken up, she could see teeth marks on her arm in the shape of a half bite mark – the bottom teeth line. It was a line of the biting edge of teeth, not the front face of teeth. She assumed that the Player was wearing a mouthguard but did not know. E18’s skin had not been punctured during the incident.
4. E18 thought that there had been intent and that it had not just been an accident. It was her immediate inclination/thought that she was being bitten as it happened and not just after she looked at her arm.
5. E18’s reaction was to speak to the Referee (after checking which player had been involved), rather than retaliate, but the Referee dismissed the alleged incident and carried on with the Match. E18 did not protest to the Referee about this, or ask her to refer it to the TMO, because she felt that England needed to get on with the Match for obvious reasons. *[Chairman’s note: The score at the time was England 25 – New Zealand 41.]*
6. E18 was intending to, and did, exert force and pressure into the maul to push the New Zealand players back. The Player was similarly exerting force and pressure into the maul. They were against each other.

The substantive part of the written statement from Dr Catherine Hornby, England Women’s Rugby Team Doctor, was in the following terms:

“I examined the player at 16.30 on 27th August. At this time there was no obvious bruising or mark to the players right forearm, however i understand post game there was a mark and a photo was taken. The examination of the forearm was normal and i have no concerns that the player sustained a long term injury from the alleged bite.”

In addition to the evidence provided to all relevant parties prior to the Hearing, the Player’s Representative provided the following by e-mail (a few minutes before the Hearing began) to which he referred at various points during the Hearing:

1. A document setting out submissions on behalf of the Player in respect of the alleged bite; and
2. A copy of the judicial officer’s decision in the case of the citing of CJ van der Linde which was heard on 29 and 30 May 2012 (“the van der Linde Decision”).

Various submissions were made by the Player herself and by the Player’s Representative during the Hearing, which were, in summary:

1. After a lineout, the Player was engaged in a maul behind other players, trying to go forward. Both the Player and E18 were pushing as hard as they could.

1. The Player felt an arm across her face which she felt was trying to force her head back. She felt constant pressure from the arm into her mouth. She was not able to move her head backwards because it was as far back as it would go.
2. The Player felt trapped. She felt force and pressure on her front (to her head) and her back (at her waist). However, after watching one of the video clips during the Hearing at the request of the Player’s Representative, it appeared that the arm of a fellow New Zealand player (probably number 5) was across the neck/shoulders of the Player and she was bound on to another English player. Accordingly, the pressure was at the neck/shoulder area, rather than the waist.
3. The Player was uncomfortable because she had hurt her neck three times earlier in the Match but had not received any treatment on the pitch for this.
4. The Player was aware of her mouth making contact with E18’s arm during the maul. It was admitted that contact had been made between her mouth and E18’s arm but not that there had been any bite. There could be no certainty that there was a bite, rather it was clear that it was likely not a bite.
5. The Player did not bite E18 and didn’t remember closing her mouth on the arm of E18. At first, the contact had been by the Player’s cheek. The Player then turned her head and made contact with her lips. She then opened her mouth and jaw and made contact with E18’s arm with her teeth.
6. The Player opened her mouth in the maul in order to breathe. Her muscles opened to breathe. She was fatigued and gasping for air and so used her mouth. The Player was grimacing as she tried to breathe.
7. The strained facial expressions of the Player (which could be seen on the video clips) were just as a result of effort in the maul.
8. The Player had played rugby union for around 15 years. This had included playing approximately 16 matches for the New Zealand Women’s team and approximately 10-20 matches in the New Zealand Women’s National Provincial Championship. She had not received any red cards or foul play yellow cards or had been cited before in respect of any of those matches. *[Chairman’s note: The Judicial Committee noted that it was not provided with the full disciplinary record (good or bad) of the Player across all competitions from the age of 18 onwards nor was it requested by the Judicial Committee at this time.]*
9. The Player was not aware of the allegation of the alleged biting until after the Match. She was surprised and annoyed when she heard the allegation.
10. There was no contact between the Player and E18 after the Match.
11. The Judicial Committee was referred to the van der Linde Decision, in particular paragraph 3.2 thereof which was in the following terms:

“Upon such a serious charge I am of the view that it is necessary for there to be a heightened level of consciousness to execute this manoeuvre and that it must be committed with some intent. I do not accept that one can recklessly bite a player. It is with this higher level of consciousness requirement in mind that this matter should be assessed.”

1. Biting was a serious allegation which had an exceedingly serious and significant outcome, with the low end entry point being 12 weeks. Someone could not be found guilty of an accidental bite. Any strong player who had bitten someone would make a significant mark.
2. E18’s evidence was that there was one pressure, which was not that painful and there was one line visible. It was also relevant that E18 barely reacted and the Referee did not refer the matter to the TMO, the Referee almost dismissed it. E18 also did not remonstrate with the Referee when she did not take it further.
3. This was a case of the accidental pushing of the Player’s teeth onto the arm of E18 in the maul. There was no evidence of a deliberate bite.
4. When all things were added together, the evidence was consistent with there being no bite and to find otherwise would be unfair and wrong, albeit it was not wrong of the citing commissioner to bring the citing complaint.

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| **FINDINGS OF FACT** |

The Player had accepted that her teeth came into contact with the arm of E18 but denied biting E18. The Judicial Committee preferred the evidence of the Referee and of E18 to that of the Player in relation to the part of the Player’s teeth which had made contact with the arm of E18. The Judicial Committee was satisfied, on the balance of probabilities, that the biting edge of the Player’s teeth, rather than the front face of her teeth, came into contact with the arm of E18.

The Judicial Committee did not consider that the photographic evidence was particularly persuasive but noted that the mark shown in the photographic evidence, being a thin line, rather than a mark a few millimetres wide, was more consistent with the contact having been by the biting edge rather than the front face of the teeth. The Judicial Committee noted that the skin on E18’s arm had not been broken during the contact.

The Judicial Committee was not convinced by the submission on behalf of the Player that, where a person perpetrating a bite was wearing a mouthguard, a mark reflecting a single line of teeth was consistent with accidental contact. Such a mark, in the Judicial Committee’s view, could equally be consistent with deliberate or intentional contact. The extent of injury, mark and/or bruising would depend on the particular “victim” player’s own physiological response to the contact. Furthermore, the Judicial Committee considered that it was entirely possible that there could be a bite without significant force behind it (one example being a “nip” using the teeth), which was still a deliberate or intentional act of foul play.

The Judicial Committee did not accept the submissions made on behalf of the Player that E18’s failure to react whilst in the maul or to remonstrate with the Player after the maul were evidence that the Player had not bitten E18. Players react to or otherwise deal with (potential) acts of foul play in a multitude of different ways, depending upon a variety of factors which are personal to each player at the particular time, some examples of such factors might include training, experience, general temperament, state of mind at the particular stage of the match and awareness of the implications of reacting in one way or another, amongst others.

The Judicial Committee had viewed the video clips on a number of occasions and discussed them. The Judicial Committee accepted that the Player did not appear to be able to move her head backwards as a result of her teammate’s arm across her neck/shoulder area in order to move it away from the arm of E18 and so may have felt trapped.

However, the Judicial Committee did not accept the Player’s submissions that her mouth was open in order to breathe through her mouth. The following picture was a “still” taken from one of the video clips in which the Player’s mouth and jaw appeared to be wide open (in the view of the Judicial Committee, more widely than would be usual in order to breathe, even if gasping).



The “still” appeared to show the Player’s upper jaw (and mouthguard) on the outer/front part of the right forearm of E18. Based on the position of the upper jaw, the Judicial Committee considered that, on the balance of probabilities, it was probable that the lower jaw was in contact with the inner/back part of the right forearm of E18, and that such contact would be in the region of where the mark on the right forearm of E18 could be seen in the photographic evidence. The Judicial Committee considered that the positioning of the mouth and jaw (as shown in the “still”) would not be inconsistent with a bite.

The Judicial Committee noted that the maul was a dynamic situation with both teams driving against each other, resulting in there being much movement. Neither the Player nor E18 was static. Having checked the video clips, the Judicial Committee was not able to find clear evidence of how the Player’s mouth and jaw came to be in the position shown in the “still” above, nor of a movement of the mouth and/or jaw of the Player which was a closing or clamping of the mouth and/or jaw of the Player on E18, resulting in a bite.

The Judicial Committee noted that the citing commissioner had described the incident in question as involving “the mouth of Toka Natua (New Zealand No1) [coming] into contact with the right forearm of Justine Lucas (England No18)”. He then went on to describe, in the citing complaint, that E18 had approached the Referee claiming that she had been bitten and referring to the statements later provided by E18. Contact with the mouth would not, of itself, be an act of foul play. However, where contact by/with the mouth took the form of biting, this would constitute an act of foul play under law 10.4(m).

The Judicial Committee had to consider the case based on the available evidence in order to determine whether or not it was satisfied, on the balance of probabilities, that the Player had committed the act of foul play of biting. The Judicial Committee found that the evidence available to it did not support either conclusion being more probable than the other, and so each was equally (or 50%) probable. Therefore, the Judicial Committee was not satisfied, on the balance of probabilities (which would require in excess of 50% probability), that the Player had committed the act of foul play of biting and, accordingly, the citing was not upheld.

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| **DECISION** |

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| Breach admitted | Proven  Not proven  Other disposal (please state) |

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| **SANCTIONING PROCESS** |

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| **ASSESSMENT OF SERIOUSNESS** |

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| Assessment of Intent – TDP 12.10.1(a)(i)-(ii) | |
| Intentional/deliberate  Reckless | |
| State Reasons | |
| N/A | |
| Gravity of player’s actions – TDP 12.10.1(a)(iii) | Nature of actions – TDP 12.10.1(a)(iv) |
| N/A | N/A |
| Existence of provocation – TDP 12.10.1(a)(v) | Whether player retaliated – TDP 12.10.1(a)(vi) |
| N/A | N/A |
| Self-defence – TDP 12.10.1(a)(vii) | Effect on victim – TDP 12.10.1(a)(viii) |
| N/A | N/A |
| Effect on match – TDP 12.10.1(a)(ix) | Vulnerability of victim – TDP 12.10.1(a)(x) |
| N/A | N/A |
| Level of participation/premeditation – TDP 12.10.1(a)(xi) | Conduct completed/attempted – TDP 12.10.1(a)(xii) |
| N/A | N/A |
| Other features of player’s conduct – TDP 12.10.1(a)(xiii) | |
| N/A | |

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| **ASSESSMENT OF SERIOUSNESS CONTINUED** |

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| Entry point | | |
| Top end**\*** Weeks | Mid-range Weeks | Low-end Weeks |

**\***If Top End, the JO or Panel should identify, if appropriate, an entry point between the Top End and the maximum sanction and provide the reasons for selecting this entry point, below.

In making this assessment, the JO/Committee should consider the provisions within the TDP at 12.10.1(a)(i), 12.10.1(a)(viii), and 12.10.1(a)(ix).

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| Reasons for selecting Entry Point above Top End |
| N/A |

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| **ADDITIONAL RELEVANT OFF-FIELD AGGRAVATING FACTORS** |

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| Player’s status as an offender of the Laws of the Game – TDP 12.10.2(a)(i) |
| N/A |
| Need for deterrence – TDP 12.10.2(a)(ii) |
| N/A |
| Any other off-field aggravating factors – TDP 12.10.2(a)(iii) |
| N/A |

N/A

Number of additional weeks:

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| **RELEVANT OFF-FIELD MITIGATING FACTORS** |

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| Acknowledgement of guilt and timing – TDP 12.10.3(a)(i) | Player’s disciplinary record/good character – TDP 12.10.3(a)(ii) |
| N/A | N/A |
| Youth and inexperience of player – TDP 12.10.3(a)(iii) | Conduct prior to and at hearing – – TDP 12.10.3(a)(iv) |
| N/A | N/A |
| Remorse and timing of remorse – TDP 12.10.3(a)(v) | Other off-field mitigation – TDP 12.10.3(a)(vi) |
| N/A | N/A |

N/A

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| Number of weeks deducted: |  |

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| **SANCTION** | | | | |
| ***NOTE***: PLAYERS ORDERED OFF ARE PROVISIONALLY SUSPENDED PENDING THE HEARING OF THEIR CASE, SUCH SUSPENSION SHOULD BE TAKEN INTO CONSIDERATION WHEN SANCTIONING – TDP 12.4(e)(vi) | | | |
| Total sanction | N/A | Sending off sufficient |
| Sanction commences | N/A |
| Sanction concludes | N/A |
| Matches/tournaments included in sanction | N/A |

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| Costs | NIL |

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| Signature  (JO or Chairman) | *Pamela Woodman* | Date | 6 September 2017 |

***NOTE***: YOU HAVE 48 HOURS FROM NOTIFICATION OF THE DECISION OF THE CHAIRMAN/JO TO LODGE AN APPEAL WITH THE RELEVANT BODY – TDP 12.13(a)