

## DISCIPLINARY DECISION



Match	South Africa v England		
Competition	RWC 2021		
Date of match	23 October 2022	Match venue	Waitakere Stadium, Auckland
Rules to apply	Regulation 17 World Rugby Handbook & RWC 2021 Tournament Disciplinary Programme		

### PARTICULARS OF OFFENCE

Player's surname	Makua	Date of birth	7 December 1999
Forename(s)	Lerato		
Player's Union	South Africa		
Referee Name	Lauren Jenner	Plea	<input checked="" type="checkbox"/> Admitted <input type="checkbox"/> Not admitted
Offence	9.12 A Player must not physically abuse anyone - biting	SELECT:	Red card <input type="checkbox"/> Citing <input checked="" type="checkbox"/> Other <input type="checkbox"/> If "Other" selected, please specify:
Summary of Sanction	6 weeks		

### HEARING DETAILS

Hearing date	3 November 2022	Hearing venue	RWC 2021 Main Operations Centre, Auckland and via Zoom
Chairman/JO	Helen Morgan (in person)		
Other Members of Disciplinary Committee	Ofisa Tonu'u – ex New Zealand and Samoa international rugby player (in person) David Croft – ex-Australia international rugby player (via Zoom)		
Appearance Player	YES <input checked="" type="checkbox"/> NO <input type="checkbox"/> Via Zoom	Appearance Union	YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>
Player's Representative(s)	Richard Browning – Player's counsel Christo Ferreira – Senior Manager, Legal South African Rugby Nomsebenzi Tsotsobe – team manager Isma-eel Dollie - National Player Relationship Manager Cath O'Donnell – England Number 5 Harriet Martin – England Team Manager (All via Zoom)	Disciplinary Officer and/or other attendees	Yvonne Nolan – DDO World Rugby
List of documents/materials provided to Player in advance of hearing	Citing Report together with citing evidence images Video footage of maul and also report to referee – full speed, 50% and 25% speed, manual recording Email statement from Lauren Jenner, referee Statement from England Player, Cath O'Donnell (England number 5) Player's Plea Explanation		

## PRELIMINARY MATTERS

The Player, through her Counsel, had dealt with most preliminary matters in her Plea Explanation. However, one matter was raised, being, as the Player's first language was not English, she had instructed that her Counsel speak, rather than her.

Counsel referred to Regulation 18 to confirm this. However, the Committee, in reliance in Regulation 20 (in particular 20.6.1(c)), confirmed the preference was to hear from the Player herself, especially in relation to the incident so as to have her first-hand account. It was confirmed Nomsebenzi Tsotsobe could act as interpreter for the Player.

Following a private discussion between the Player, her Counsel and other supporters, it was confirmed this would occur for which the Committee is grateful and express appreciation to Nomsebenzi Tsotsobe for acting as interpreter for communication between the Player and the Committee.

### SUMMARY OF ESSENTIAL ELEMENTS OF CITING/REFEREE'S REPORT/INCIDENT FOOTAGE

The Citing Commissioner's (CC) report stated the following account:

*At 44:18 on the match clock, the England Captain (E7) approached the referee and stated that one of her players had informed her that she had been bitten in the preceding maul on the far side of the pitch. Video evidence ("18\_53\_49\_ENG\_v\_RSA\_Bite reported to referee\_Citing") shows that England 5 (E5, Cath O'Donnell) looks at her hand, speaks to E7 (the captain) who then approaches the referee. E5 also approaches the referee and is seen showing her right hand to her. After the match, the referee confirmed verbally to me that she had seen clearly visible teeth marks on the hand of E5. A photograph (appended) of E5's hand also taken post-match (~90minutes after the incident) also shows minor bruising in two crescent shapes, consistent with bite marks, are present. A player statement taken from E5 after the match confirms that she believes she was bitten in a maul after the line-out immediately preceding the discussion with the referee. She stated that her hand was in the middle of the maul at the time, that she was shocked when she felt the bite occurring, and her response was to pull her right hand away and backwards when she felt the bite. She stated that significant pressure was applied, that she felt both the top and bottom rows of teeth, and that the pressure increased throughout the incident. Review of the video evidence shows that, after a South African line-out, a maul forms with E5 driving at the back of the maul with her right arm over the back of E4. As the maul progresses, it gets compressed and E4 becomes upright. E5's right hand then ends up around and in front of E5's body, close to her hip. At 43:28 on the match clock, E5 is seen to pull her right arm backwards. Review of all camera angles confirms that South Africa 7 (SA7, Lerato Makua) is the only player who's mouth is in proximity to E5's right hand at this time and throughout the full maul. Further, NL Corner footage shows that, as E5 pulls her arm backwards, SA7's head rotates slightly with E5's arm motion. Video evidence also confirms that no marks were present on E5's hand prior to the maul but were at the point of discussion with the referee (screenshots provided). Based on the above evidence I conclude that a bite occurred in the maul as alleged and that SA7 is the only player that could have committed this act of foul play. I cite SA7, Lerato Makua for biting accordingly.*

The CC report was supported by an additional document "Citing Evidence Images" which included a photograph and clips from the video evidence with time stamps of the incident and the report to the referee as set out in the citing report.

## Referee

We were provided a copy of an email from the referee in which she stated:

*The captain and an English player (lock) came up to me at scrum time at 44 mins complaining that in the last maul a South African player had bitten her. I could see purple tooth marks (no blood) on the England players arm and asked my TMO to check to see if she could see anything. My TMO could not see any bite on the footage so we played on.*

The referee was not required to and did not attend the hearing.

## England number 5

The CC took a verbal statement from the England number 5, Cath O'Donnell (E5), on 23 October 2022 after the match in response to questions by the CC which the CC transcribed as follows on 24 October 2022:

*Please can you confirm that you were the player that indicated to the referee that you had been bitten at the beginning of the second half in the above match.*

*Yes*

*Where specifically on your body do you believe you were bitten?*

*On the back of my right hand (thumb side)*

*What was occurring when the incident occurred (e.g. ruck, maul) and what specifically were you doing at the time? Where was the area of the body that was bitten?*

*I was in a maul. My hand was in the centre of the maul between player's bodies.*

*What pressure was applied and how long for? Did the pressure increase or decrease over the course of the incident?*

*Significant pressure was applied for a few seconds. The pressure increased over the duration of the incident.*

*When you felt the bite, what was your response? Did you do anything physically with your arm or body when you felt the bite?*

*I was shocked at what was happening. I pulled my right arm backwards when I felt the bite happen.*

*Can you identify the player responsible?*

*No*

*Were teeth marks visible immediately after the incident? Did you show them to any of your teammates or the referee?*

*Yes. I showed them to my captain and the referee.*

*Do you believe the player was wearing a gumshield?*

*No, I felt both top and bottom teeth on my hand.*

The CC confirmed the following in the statement:

*Responses sent back to victim player to confirm they are a true reflection of the responses given. Confirmation of agreement with answers by player received on 24/10/2022 @15:24. Confirmation also received that a version of this document signed by the player will be made available as soon as possible when the team is able to access a laptop for signature.*

E5 was present and provided the additional oral evidence:

1. She was bound into a maul following a line out.
2. She was bound on to her own players, she did not have contact with the ball.
3. She felt pressure on her hand, she realised the pressure was a bite, the pressure continued until she pulled her hand away.
4. The pressure on her hand through the bite was continuous and continued for about 3 seconds.
5. She was able to continue playing in the game and to fully participate in all team commitments.
6. The injury from the bite took approximately 2 days to clear.

### **Video Evidence**

The video evidence provided was in two parts, one part relating to the incident itself and the second relating to the reporting of the incident to the referee at the next breakdown.

Given the Player's admission of the foul Play, detailed analysis of the video was not required as the statements from the Player, CC and E5 provide an accurate summary of the video evidence.

One matter needing to be addressed, is whether the Player was wearing a gum guard at the time of the incident. Analysis of one video, being the Manual Recording Full Maul 18\_53\_08 ENG v RSA Possible Bite at time stamp 1.39, shows the Player shortly after the maul ended with a gum guard clearly visible. A zoomed in clip of this still is included below, with the Player being the one to the rear:



## SUMMARY OF PLAYER'S EVIDENCE

The Player provided both written and oral evidence.

In her written plea explanation, she:

1. accepts that the Citing Report is a true and accurate account of the incident save where it conflicts with her version of events as detailed below.
2. accepts that she bit the hand of the E5 and that her actions were contrary to World Rugby Rules Law 9(12).
3. accepts she committed an act of Foul Play as set out in the Citing Report.
4. confirmed the incident occurred during or about the 43rd minute of the game.
5. was in the maul, driving with her head down. At no stage did she have any sight of E5. She was always wearing a mouth guard and felt a hand in her face while driving. Annoyed by this and unable to move it away with her arms which were tied up in the maul, she bit down on E5's hand. Her actions were reactionary and instantaneous and never with any intent to injure E5.
6. accepts that she bit E5 and is incredibly remorseful and embarrassed for doing so. She respectfully submits that the incident happened in an instant. She reacted instinctively by biting down on E5 hand whilst it was in her face. It was unintentional and certainly not a deliberate attempt to hurt E5 particularly in that she was wearing a mouth guard and her sole aim was to move E5's hand away from her face. She submits that had E5's hand been fractionally lower she would not have bit down on the hand. The hand was irritating her and in a moment of madness bit down on it. Although the bite is considered foul play such incident was, with respect, neither intentional nor deliberate as the Player did not even know whose hand she was biting.

In her oral evidence, she:

1. confirmed her written statement.
2. Entered the maul from the line out and had her head and arms fully engaged in the maul.
3. could not see anything in the maul but felt the pressure of a hand to her head within the maul.
4. Could not see who was applying the pressure to her.
5. Confirmed her sole aim was to release the pressure that was on her, she could not use her hands so she used her mouth and bite the hand that was applying the pressure.
6. Did not know what else to do, she was irritated by the pressure that was being applied.
7. Expressed remorse for the incident and also for not being able to communicate to the Committee in English.

Through her Counsel, she confirmed:

1. She understood there was an option not to bite and she understood that there was no place for biting on the rugby field.
2. Her actions were unacceptable.
3. She conceded the bite was intentional but the outcome, being the injury to E5, was unintentional, that is the Player gave no consideration to the outcome.
4. Rugby is her life and there will be fall out for her following the hearing both in relation economic and personal as she will not be able to play rugby during the sanction period and the embarrassment and humiliation of being known as a player who bit another player.
5. It will be hard for her to manage the personal fall-out from her actions.
6. The outcome of her actions is plainly obvious to her now.

## FINDINGS OF FACT

The Committee was greatly assisted by the Player's admission of the act of foul play and as such the limited findings of fact are:

1. The Player was wearing a gum shield.
2. The Player intended to bite.
3. The action of the bite was one continuous action.

## DECISION

Breach admitted <input checked="" type="checkbox"/>	Proven <input type="checkbox"/>	Not proven <input type="checkbox"/>	Other disposal (please state) <input type="checkbox"/>
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## SANCTIONING PROCESS

### ASSESSMENT OF SERIOUSNESS

Assessment of Intent – R 17.18.1(a)-(b) (or equivalent Tournament rule)
Intentional <input checked="" type="checkbox"/> Reckless <input type="checkbox"/>
State Reasons
An action of a single continuous bite with pressure to remove E5's hand from the Player's head
Nature of actions – R 17.18.1(c) (or equivalent Tournament rule)
As set out above
Existence of provocation – R 17.18.1(d) (or equivalent Tournament rule)
No provocation, E5 was bound into the maul as was the Player, as such pressure should be expected to be felt
Whether player retaliated – R 17.18.1(e) (or equivalent Tournament rule)
No retaliation
Self-defence – R 17.18.1(f) (or equivalent Tournament rule)
No self defence
Effect on victim – R 17.18.1(g) (or equivalent Tournament rule)
E5 had a bite mark on her right hand around the lower thumb area which lasted for 2 days and included some bruising. She was able to continue playing in the match and other training.
Effect on match – R 17.18.1(h) (or equivalent Tournament rule)
No effect
Vulnerability of victim – R 17.18.1(i) (or equivalent Tournament rule)

E5 was vulnerable being bound into a maul and unable to move or defend herself
Level of participation/premeditation – R 17.18.1(j) (or equivalent Tournament rule)
No premeditation, it was a spur of the moment act with the Player fully participating
Conduct completed/attempted – R 17.18.1(k) (or equivalent Tournament rule)
Conduct was completed
Other features of player’s conduct – R 17.18.1(l) (or equivalent Tournament rule)
No other features

**ASSESSMENT OF SERIOUSNESS CONTINUED**

Entry point					
<u>Top end*</u>	<u>Weeks/Matches</u>	<u>Mid-range</u>	<u>Weeks/Matches</u>	<u>Low-end</u>	<u>Weeks/Matches</u>
<input type="checkbox"/>		<input type="checkbox"/>		<input checked="" type="checkbox"/>	12

\*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 World Rugby Regulations 17.18.1(a), 17.18.1(g), and 17.18.1(h) or the equivalent provisions within the Tournament Rules referred to above.

Reasons for selecting Entry Point
The entry point does not set any precedent, it is our conclusion based on the specific facts to this matter and the Player

**RELEVANT OFF-FIELD MITIGATING FACTORS**

Acknowledgement of commission of foul play – R 17.19.1(a) (or equivalent Tournament rule)	Player’s disciplinary record – R 17.19.1(b) (or equivalent Tournament rule)
Player admitted the foul play	Clean other than a yellow card for a technical offence
Youth and/or inexperience of player – R 17.19.1(c) (or equivalent Tournament rule)	Conduct prior to and at hearing – R 17.19.1(d) (or equivalent Tournament rule)
Player is young and inexperienced	Player’s conduct was respectful and appropriate
Remorse and timing of remorse – R 17.19.1(e) (or equivalent Tournament rule)	Other off-field mitigation – R 17.19.1(f) (or equivalent Tournament rule)

Player was remorseful for the act for foul play	Nothing further
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Number of weeks/matches deducted:

Summary of reason for number of weeks/matches deducted:  
 The Player was entitled to a full 50% deduction for all of the factors set out above

**ADDITIONAL RELEVANT OFF-FIELD AGGRAVATING FACTORS**

Player's status as an offender of the Laws of the Game – R 17.20.1(a) (or equivalent Tournament rule)	Not applicable
Need for deterrence – R 17.20.1(b) (or equivalent Tournament rule)	Not applicable
Any other off-field aggravating factors – R 17.20.1(c) (or equivalent Tournament rule)	Not applicable

Number of additional weeks/matches:

**SANCTION**

**NOTE:** PLAYERS ORDERED OFF OR CITED BY A CITING COMMISSIONER ARE PROVISIONALLY SUSPENDED PENDING THE HEARING OF THEIR CASE, SUCH SUSPENSION SHOULD BE TAKEN INTO CONSIDERATION WHEN SANCTIONING – R 17.12.5(f) / 17.13.7 (or equivalent Tournament rule)

Total sanction	6 Weeks
Sanction commences	23 October 2022
Sanction concludes	The Player's playing schedule is currently unknown. She hopes to play for her club, Blue Bulls, in 2023 but the fixtures are yet to be confirmed and there is an international tour to Europe in May 2023. The Committee ordered that the Player, through her manager, must notify us within 14 days of her playing commitments to enable us to determine which matches are captured by the sanction. In the meantime, she is suspended.

Matches/tournaments included in sanction	Any subsequent match from 23 October 2022 until the sanction has been served by the Player
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Costs	Not applicable
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Signature (JO or Chairman)		Date	4 November 2022
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**NOTE:** YOU HAVE 48 HOURS FROM NOTIFICATION OF THE DECISION OF THE CHAIRMAN/JO TO LODGE AN APPEAL WITH THE TOURNAMENT DIRECTOR – R 17.24.2(a) (or equivalent Tournament rule)