

IN THE MATTER OF PROCEEDINGS BROUGHT UNDER THE ANTI-DOPING REGULATIONS OF WORLD RUGBY AND THE RUGBY FOOTBALL UNION

Before:

Matthew Lohn (Chair)
Dr Barry O'Driscoll
Dr Neil Townshend

BETWEEN:

RUGBY FOOTBALL UNION

Anti-Doping Organisation

-and-

PATRICK HILLIER

Respondent

NATIONAL ANTI-DOPING PANEL DECISION

Factual Background

1. Mr Patrick Hillier ("**the Player**") is a rugby football union player registered with Cheltenham Tigers RFC (RFU ID 00306044).
2. The Player was selected for Doping Control after the match between Cheltenham Tigers RFC v Old Richians RFC on 28 October 2017. Upon arriving in the Doping Control Station, the Player requested that a supplementary report be completed to state that on 26 October 2017 he believed he had been "spiked" on a night out.

The Player provided a urine sample which was sealed and labelled sample number 1138938 ("**the Sample**").

3. The A Sample from this collection was tested at the Drug Control Centre, King's College London ("**KCL**"). The A Sample was found to contain benzoylecgonine, a metabolite of cocaine. The Player did not request analysis of a B Sample.
4. The concentration of benzoylecgonine found in the Player's Sample was approximately 3 ug/mL.
5. The Player was suspended from participation in the sport of rugby union in any capacity by a letter dated 17 November 2017 from the Rugby Football Union ("**RFU**") which informed him that his urine sample had contained a prohibited substance.

World Rugby Regulation 21

6. RFU Regulations 20.5.1 and 20.5.2 adopt World Rugby Regulation 21 and the World Anti-Doping Agency Prohibited List ("**the Prohibited List**").
7. World Rugby Regulation 21.2.1 provides that the following is an anti-doping rule violation ("**ADRV**"): *"Presence of a Prohibited Substance or its Metabolites or Markers in a Player's Sample"*.
8. World Rugby Regulation 21.2.1.2 provides:

"Sufficient proof of an anti-doping rule violation under Regulation 21.2.1 is established by any of the following: presence of a Prohibited Substance or its Metabolites or Markers in the Player's A Sample where the Player waives analysis of the B Sample and the B Sample is not analysed; ..."
9. World Rugby Regulation 21.2.1.3 provides:

"Excepting those substances for which a quantitative threshold is specifically identified in the Prohibited List, the presence of any quantity of a Prohibited Substance or its Metabolites or Markers in a Player's Sample shall constitute an anti-doping rule violation."

10. Cocaine is and was at all material times listed as a Prohibited Substance in Section 6 of the Prohibited List (Non-Specified Stimulants). Cocaine is accordingly prohibited In-Competition only and any presence of any quantity of metabolites of cocaine In-Competition is an ADRV.

Admission

11. The Player accepted that his Sample contained benzoylecgonine and accordingly he accepted committing an ADRV under World Rugby Regulation 21.2.1.

Sanction

12. World Rugby Regulations 21.10.2 to 21.10.2.2 provide:

“21.10.2 Ineligibility for Presence...of a Prohibited Substance...

The period of Ineligibility for a violation of Regulations 21.2.1 (Presence)...shall be as follows, subject to potential reduction or suspension pursuant to Regulations 21.10.4, 21.10.5 or 21.10.6:

21.10.2.1 The period of Ineligibility shall be four years where:

21.10.2.1.1 The anti-doping rule violation does not involve a Specified Substance, unless the Player...can establish that the anti-doping rule violation was not intentional.

21.10.2.2 If Regulation 21.10.2.1 does not apply, the period of Ineligibility shall be two years.”

13. The starting point for determining the appropriate period of Ineligibility is accordingly four years. This can be reduced if a player can establish that the ADRV was not intentional. In that regard, World Rugby Regulation 21.10.2.3 provides as follows:

“As used in Regulations 21.10.2 and 21.10.3, the term “intentional” is meant to identify those Players who cheat. The term therefore requires that the Player or other Person engaged in conduct which he or she knew constituted an anti-doping rule violation or knew that there was a significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk.... An anti-doping rule violation resulting from an Adverse Analytical Finding

for a substance which is only prohibited In-Competition shall not be considered intentional if the substance is not a Specified Substance and the Player can establish that the Prohibited Substance was Used Out-of-Competition in a context unrelated to sport performance.”

14. The Player’s Response to Charge dated 19 February 2018 sought a reduction in the appropriate period of Ineligibility from four years to two years on the basis that his ADRV was not intentional. The Player’s explanation for the positive test was that he must have ingested it during the course of a friend’s wedding on 26 October 2017. The Player submitted that he did not knowingly take cocaine but believed the drug came to be in his system as a result of consuming a drink that was “spiked with Cocaine”.
15. The Panel was assisted by the opinion of Professor David Cowan of KCL which provided that *“in my opinion, it is more likely than not that the administration occurred more than 12 hours before the sample was collected.”* In light of this opinion, the Panel accepted that the ingestion of the cocaine was not immediately prior to the match the Player was participating in and, therefore, not for the purpose of enhancing the Player’s sporting performance. In accepting the opinion of Professor Cowan the Panel made no finding as to the account given by the Player.
16. The Panel, applying the provision in World Rugby Regulation 21.10.2.3, determined that the ADRV should be treated as not intentional.

No Significant Fault or Negligence

17. In reaching its decision the Panel also considered the submissions from the Player who requested that consideration be given to a reduction based upon No Significant Fault or Negligence.
18. World Rugby Regulation 21.10.5.2 provides:

“If a Player or other Person establishes in an individual case where Regulation 21.10.5.1 is not applicable that he or she bears No Significant Fault or Negligence, then, subject to further reduction or elimination as provided in Regulation 21.10.6, the otherwise applicable period of Ineligibility may be

reduced based on the Player or other Person's degree of Fault, but the reduced period of Ineligibility may not be less than one-half of the period of Ineligibility otherwise applicable. If the otherwise applicable period of Ineligibility is a lifetime, the reduced period under this Regulation may be no less than eight years."

19. The Panel concluded that the mere assertion from the Player of the alleged "spiking" in the absence of any evidence to support the application of this provision did not provide the Panel with any basis to reduce the appropriate penalty.

Prompt Admission

20. The Player also sought a reduction in the period of Ineligibility on the basis that he promptly admitted liability.

21. The relevant provision is World Rugby Regulation 21.10.6.3, which provides:

"A Player or other Person potentially subject to a four-year sanction under Regulation 21.10.2.1 or 21.10.3.1 (for evading or refusing Sample Collection or Tampering with Sample Collection), by promptly admitting the asserted anti-doping rule violation after being confronted by World Rugby (or the Association, Union or Tournament Organiser handling the case as applicable), and also upon the approval and at the discretion of both WADA and World Rugby (or the Association, Union or Tournament Organiser handling the case as applicable), may receive a reduction in the period of Ineligibility down to a minimum of two years, depending on the seriousness of the violation and the Player or other Person's degree of Fault."

22. World Rugby Regulation 21.10.6.3 provides that any reduction in sanction may only be granted "*upon the approval and at the discretion of both WADA and [the RFU]*". The Tribunal decision in *UKAD v Buttifant* (SR/NADP/409/2015) which found that "*Art 10.6.3 is a matter for WADA and UKAD and outside the jurisdiction of this tribunal*" was noted and approved. The Panel therefore found no basis to reduce the penalty on this ground.

23. Whilst acknowledging the correct application of the provision as noted in *Buttifant*, the Panel in any event considered that a significant period of time had elapsed before the Player made an admission. The Player was charged on 17 November

2017 and, despite numerous attempts to contact the Player directly and through his club, the RFU received a partial response to the charge on 31 December 2017 and only received an acceptance of the charge at the NADP Directions hearing on 25 January 2018. On any analysis this was not acting promptly.

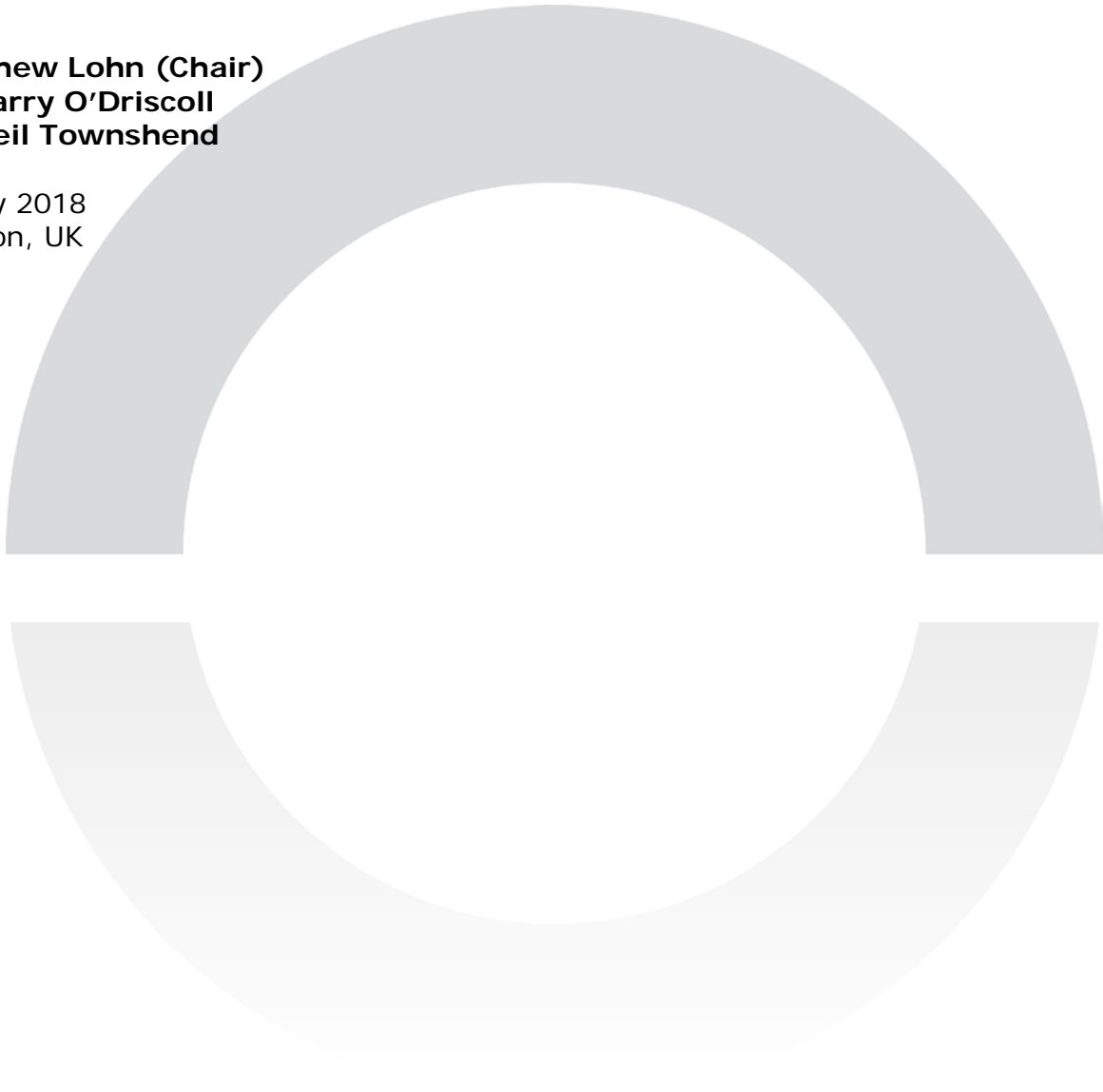
Decision

24. The Player has committed an ADRV under World Rugby Regulation 21.2.1. He tested positive for a metabolite of Cocaine which is and was at all material times listed as a Prohibited Substance in Section 6 of the Prohibited List (Non-Specified Stimulants). Cocaine is prohibited In-Competition only.
25. Expert evidence confirmed that administration occurred more than 12 hours before the Sample was collected. There was no evidence that the substance had been taken just prior to the match in order to enhance performance. The Player established to the satisfaction of the Panel that the Prohibited Substance was used Out-of-Competition in a context unrelated to sports performance.
26. The Panel, applying the World Rugby Regulation provision at 21.10.2.3 namely that: *"An anti-doping rule violation resulting from an Adverse Analytical Finding for a substance which is only prohibited In-Competition shall not be considered intentional if the substance is not a Specified Substance and the player can establish that the Prohibited Substance was Used Out-of-Competition in a context unrelated to sport performance"*, determined the ADRV was not intentional.
27. The other potentially ameliorating provisions relating to No Significant Fault or Negligence were not applicable on the facts of the case. There was no basis on which to reduce the penalty due to the 'Prompt Admission' provisions.
28. The Panel determined the Player will be subject to a period of Ineligibility for two years commencing on 17 November 2017 and concluding on (but inclusive of) 16 November 2019. During the period of Ineligibility the Player will be governed by World Rugby Regulation 21.10.12.1.
29. There is a right of appeal against this decision as provided for in RFU Regulations 20.14 and 20.15.



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