RUGBY FOOTBALL UNION DISCIPLINARY PROCEEDINGS
REGULATION 20 OF THE RUGBY FOOTBALL UNION AND REGULATION 21 OF THE INTERNATIONAL RUGBY BOARD

B E T W E E N:

THE RUGBY FOOTBALL UNION

-and-

CLIVE PETERS

Panel:	**Charles Flint QC**
	Matthew Lohn
	Dr. Barry O'Driscoll
Panel Secretary	**Rebecca Morgan**
Date of hearing	**11th April 2014**

Kate Gallafent, Counsel for RFU
Angus Bujalski, RFU Head of Legal
Charlotte Mitchell-Dunn, RFU Discipline Case Officer

Anthony Rimmer, Counsel for Mr. Peters

Observing
Pat Mayhill, UKAD
Jason Torrance, UKAD
Christine Murray, Blackstone Chambers
Hannah Saxena, Farrars Buildings

DECISION OF THE APPEAL PANEL

A. Introduction

1. This is the decision of the Appeal Panel on an appeal under RFU Regulation 19 against the decision of the Disciplinary Panel dated 3rd March 2014. The Disciplinary Panel by a majority dismissed the charges brought against Mr. Peters.

2. By letter dated 25th November 2013 the Respondent was charged under IRB Regulation 21 with possession of and trafficking in prohibited substances.

3. The Appeal Panel only has power to entertain an appeal if under RFU Regulation 19.12.2 the Disciplinary Panel:

   (a) Came to a decision to which no reasonable body could have come; or
   (b) Made an error of law in reaching its decision; or
   (c) Failed to act fairly in a procedural sense.

   In this case (c) is not in issue. The RFU, supported by the IRB and UK Anti-Doping, appeals on the basis of grounds (a) and (b).

4. So the first issue which has to be determined is whether the majority decision of the Disciplinary Panel was a decision to which no reasonable body could have come or is vitiated by error of law. The second issue, if it arises, is whether Mr. Peters did contravene IRB Regulation 21 as alleged in the letter of charge dated 25th November 2013. The third issue, if a contravention is found, is what sanction should be imposed. It is agreed between the parties that the issue of sanction should be postponed until after our decision on the first two issues, and will then, if necessary, be dealt with by written submissions.

5. The facts are set out in the decision of the Disciplinary Panel at paragraphs 12 to 29 and the evidence given by the Respondent at paragraphs 33 to 43. That summary of the facts and evidence is accepted by both parties. There is no dispute as to primary fact. The issue is as to the inferences that can properly

be drawn from those facts and whether on the basis of those facts and inferences the charges alleged are proved to the required standard.

The charge

6. IRB Regulation 21, which was set out in full in the letter of charge, reads:

21.2.6 Possession of Prohibited Substances and Methods
(a) Possession by a Player In Competition of any Prohibited Method or any Prohibited Substance, or Possession by a Player Out of Competition of any Prohibited Method or any Prohibited Substance which is prohibited Out of Competition unless the Player establishes that the Possession is pursuant to a therapeutic use exemption granted in accordance with Regulation 21.5 or other acceptable justification.

(b) Possession by Player Support Personnel In Competition of any Prohibited Method or any Prohibited Substance, or Possession by Player Support Personnel Out of Competition of any Prohibited Method or any Prohibited Substance which is prohibited Out of Competition, in connection with a Player, Match, Series of Matches and/or Tournament or training, unless the Player Support Personnel establishes that the Possession is pursuant to a therapeutic use exemption granted to a Player in accordance with Regulation 21.5 or other acceptable justification.

21.2.7 Trafficking or attempted trafficking in any prohibited substance or prohibited method.

7. The letter set out the provisions of Regulation 21 but did not explain which particular elements of the regulation were allegedly contravened, nor give details of the facts alleged to support the charge. The letter did however enclose documents supplied by Gwent Police and raised a number of questions which Mr. Peters was invited to answer. From those questions the thrust of a case against Mr. Peters was reasonably clear.

8. The decision of the Disciplinary Panel at paragraphs 48 to 50 noted the lack of specificity in the charge letter, but the panel was prepared to proceed on the basis that Mr. Peters was charged with two offences of possession and trafficking anabolic steroids. From the letter of charge it is reasonably clear that Mr. Peters is charged under 21.2.6 (b) for possession as Player Support Personnel out of competition in connection with players or training. Possession is defined as including the purchase of a prohibited substance. In the light of Mr. Peters' position as coach no issue was raised at the

disciplinary hearing, or on appeal, as to whether possession of prohibited substances, if proved, was in connection with players or training.

9. Mr. Peters is also charged with trafficking prohibited substances under Rule 21.2.7. Trafficking is defined by the preamble to Rule 21 as including the selling, sending, delivering or distributing prohibited substances to any third party. The focus of the definition is on distribution, not purchase. So it is not sufficient on this charge to find that Mr. Peters purchased prohibited substances. It must also be proved that he distributed prohibited substances to a third party. The RFU submissions were to the effect that the purchase of a prohibited substance to be delivered by post to an address given by the purchaser leads to the conclusion that the purchase constitutes the sending or delivering on the part of the purchaser. That proposition was not disputed by the Respondent in argument.

Error of Law

10. The reasoning of the majority is set out at paragraphs 60 to 69 of the decision of the Disciplinary Tribunal. The RFU submits that the majority made an error of law as to the standard of proof to be applied.

11. At paragraph 60 the majority opinion correctly sets out the standard of proof required under Rule 21.3 stating "The standard of proof is to the comfortable satisfaction of the hearing panel bearing in mind the seriousness of the allegation which is made". The majority then correctly states at paragraph 63 that a case could be proved on the basis of inference, and that "at each stage of progression any decision must be reached with paragraph 60 (above) in mind.".

12. The critical paragraph is paragraph 68 in which the majority stated:

> "We refer to paragraph 47 and address the fact that no prosecution ensued following the various interviews with the Police. It seems to us that in such a case, where the allegations and charges are so serious, that the interpretation and conclusions reached by the Panel must be nearer to the level of beyond reasonable doubt rather than the balance of probabilities. We are unable to

conclude, to that level, that the Respondent is guilty of the charges presented by the RFU."

13. Paragraph 68 must be interpreted in the context that the standard of proof had already been set out correctly at paragraph 60 and that at paragraph 63 the majority was purporting to apply that standard at each stage of its analysis of the facts.

14. However paragraph 68 starts in the first sentence by addressing paragraph 47, which was the paragraph in which the chairman had set out the standard of proof required by Rule 21.3.1. The second sentence then adjusts that standard to be "nearer to the level of beyond reasonable doubt". The conclusion in the third sentence is made by reference to "that level" which must mean the level defined in the second sentence. The overall effect of the paragraph is that the majority is directing itself by reference to a heightened standard of proof, rather than assessing the weight of the evidence necessary to satisfy the required standard of comfortable satisfaction. The stated justification for doing so is by reference to the factor that a criminal charge had not been brought against Mr. Peters. That factor could not logically affect the standard of proof to be applied.

15. Our conclusion is that paragraph 68 does contain a material error of law. The standard of proof to be applied is critical to the reasoning and the third sentence of paragraph 68 explicitly forms the basis of the majority decision on both charges. The application of a standard of proof nearer to the criminal standard of proof is applied to all of the relevant evidence which has been reviewed in paragraph 65, on the unsustainable basis that Mr. Peters had not been prosecuted.

16. The majority thus departed from the standard set out by Rule 21.3.1. In *Valjavec v Slovenia* CAS 2010/A/2235 at paragraph 77 the CAS panel made clear that the standard is uniform and may not be departed from. In *P v ISU* CAS 2009/A/1912 at paragraph 55 the CAS panel rejected a submission that in particularly serious cases the standard of proof must be very close to proof beyond reasonable doubt, a criminal standard inapplicable to doping cases.

17. For those reasons we decide that the majority made an error of law in reaching its decision. This panel has jurisdiction under RFU regulation 19.12.22 to review the decision on the documents under regulation 19.12.4. In those circumstances it is not necessary to decide whether the decision of the majority was a decision to which no reasonable body could have come.

Review of the decision on the documents

18. In conducting a review this panel must bear in mind that the conflicting decisions of the majority and minority were based upon differing views as to the credibility of Mr. Peters. The Disciplinary Panel had the advantage of hearing the evidence of Mr. Peters and forming an assessment of his credibility. This panel must be very careful before accepting assertions, which all go to findings of fact, to the effect that the majority must have reached an incorrect conclusion. On the other hand as pointed out above there are no disputes of primary fact and the case against Mr. Peters relies substantially on inference from documented transactions.

19. At paragraph 52 the Disciplinary Panel unanimously decided that that it was comfortably satisfied that the son, Jordan Peters, had purchased anabolic steroids, on the basis of evidence which it considered to be overwhelming. That conclusion was based on admissions by Jordan Peters, text messages sent to a supplier in the UK and the fact that he transferred substantial amounts of money to suppliers in China. It is not disputed that Mr. Peters also transferred substantial amounts of money to suppliers in China and to the supplier in the UK. The same text messages refer to cash being sent both by Mr. Peters and by his son.

20. Against this background the case that Mr. Peters was a knowing party to the purchase and importation of anabolic steroids on a substantial scale calls out for some credible explanation of the role which he admits he played in the transactions. Mr. Peters sent a total of £19,369.17 over a period of less than two years to suppliers in China, the United States and Greece. His case is that

he did not know that his son was importing anabolic steroids and in any event he only ever sent money to suppliers on behalf of his son.

21. The explanations given by Mr. Peters are those recorded at paragraphs 37 to 43 of the Disciplinary Panel decision. That evidence was subject to a careful analysis by the chairman in his dissenting opinion. We find that analysis compelling, in contrast to the reasoning of the majority which consists substantially of assertion that as Mr. Peters had been consistent in his evidence disputing the charges made against him it was not open to the panel to find the charges proved to the standard of proof which was put forward in paragraph 68.

22. The main points on the reasons put forward in the majority opinion at paragraph 65 are as follows:

(1) Money transfers

At paragraph 65 a. the reasoning does not address the asserted reason why it was necessary for Mr. Peters to make money transfers on his son's behalf if all the transactions were the son's business. The suggestion that Mr. Peters needed to make those transfers through Western Union because his son was unable to use that service for transactions over £2,000 is contradicted by the evidence from Western Union and the record of transactions which shows both that Mr. Peters made some transfers for less than £2,000, and that his son made some transfers for more than £2,000. Nor does the majority advance any other reason why the son should have needed to use his father as a conduit for money transfers totalling £19,369.17. In any event even if Mr. Peters' role had been limited to sending money on his son's behalf that course of conduct would still have amounted to trafficking, and thus possession.

(2) Posting money to Mr. Warren

As the majority accepted at paragraph 65 b the evidence that Mr. Peters gave as to why his son should post to him money which he then posted on to Mr. Warren was indeed "incredulous", by which they must have meant incredible. Confronted with an incredible

explanation of the evidence it is impossible to rebut the obvious inference that money was posted by Mr. Peters for the purchase, on his own behalf, of anabolic steroids from Mr. Warren.

(3) Text messages

The obvious reading of the text messages is that they recorded purchase orders placed by father and son, in amounts which corresponded with orders reflected in Mr. Warren's records. The text messages do not evidence any special arrangement under which the father's despatch of money sent through the post should be treated as paid on his son's behalf, still less that it would help Mr. Warren to receive the money in separate tranches and envelopes. The suggestion that the separate despatch of envelopes from father and son might assist the dealer to distinguish the transactions is difficult to follow. It is inconsistent with the general defence that all moneys were sent by Mr. Peters on his son's behalf. If none of these transactions were for Mr. Peters then the cash could have been sent in one envelope. This evidence is only consistent with the conclusion that Mr. Peters was himself purchasing anabolic steroids from Mr. Warren.

(4) Cash of £2,100

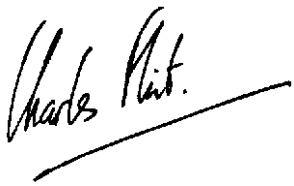
The fact that Mr. Peters whose earnings amounted to about £6,000 per year gross was in possession of £2,100 in cash calls for some credible explanation. There was an explanation but it was not supported by any documents showing that Mr. Peters ever owned or sold the assets which were alleged to be the source of some of the funds which he held. The majority was entitled to express the point that absence of documentation does not by itself establish that the explanation is false, but nor does it provide any support for the explanation. So there is nothing to controvert the point that the substantial holding of cash is entirely consistent with the obvious conclusion from the facts set out above that Mr. Peters was trafficking, along with his son, in anabolic steroids.

23. In combination those points lead us to the conclusion that we are comfortably satisfied that Mr. Peters contravened IRB Regulations 21.2.6 (b) and 21.2.7 in

being in possession of and trafficking in prohibited substances as alleged in the letter of charge. The Disciplinary Panel unanimously concluded that the evidence was overwhelming that Jordan Peters was in possession of and trafficking in anabolic steroids, and in our view the evidence was equally overwhelming in implicating the father.

24. This panel will decide on the appropriate sanctions on the basis of written submissions from the parties. The RFU should file its submission on sanctions by 2nd May, and Mr. Peters should have until 12th May to respond.

Signed on behalf of the Appeal Panel



Charles Flint QC

12th April 2014

RUGBY FOOTBALL UNION DISCIPLINARY PROCEEDINGS

REGULATION 20 OF THE RUGBY FOOTBALL UNION AND REGULATION 21 OF THE INTERNATIONAL RUGBY BOARD

B E T W E E N:

THE RUGBY FOOTBALL UNION

-and-

CLIVE PETERS

Panel: **Charles Flint QC**
Matthew Lohn
Dr. Barry O'Driscoll

DECISION OF THE APPEAL PANEL ON SANCTION

---

1. In its decision dated 12th April 2014 the Appeal Panel allowed the appeal of the RFU against the decision of the Disciplinary Panel dated 3rd March 2014. The Appeal Panel determined that Mr. Peters had contravened IRB Regulations 21.2.6 (b) and 21.2.7 in being in possession of and trafficking in prohibited substances as alleged in the letter of charge dated 25th November 2013.

2. A direction was made for submissions in writing from the parties. The Appeal Panel has received submissions in writing from the RFU, UKAD and solicitors acting for Mr. Peters. The RFU made a supplementary submission on the question whether this panel has jurisdiction to impose any sanction.

3. In his submissions dated 11th May counsel for the Respondent argued that the Appeal Panel does not have any power to impose a sanction, where none has been imposed by the Disciplinary Panel, but is required to remit the matter to a Disciplinary Panel.

4. The powers of the Appeal Panel are set out in RFU Regulation 19.12.12:

> *19.12.12 An Appeal Panel has the power to:*
> *(a) Dismiss the appeal;*
> *(b) Quash a finding and any sanction imposed by the original Disciplinary Panel;*
> *(c) Remit the matter for a re-hearing;*

(d) Substitute an alternative finding;
(e) Reduce or increase the original sanction; and/or
(f) Make such further order as it considers appropriate.

It is submitted that under that rule the Appeal Panel has no power to impose a sanction but must remit the sanction decision to a Disciplinary Panel, appointed in accordance with Regulation 19.2.4. It is argued in effect that if an Appeal Panel imposed a sanction the Respondent would be deprived of one layer of appeal, as there could be no further appeal to another panel, and it would be unfair to require the Respondent to exercise his right of appeal to CAS.

5. Regulation 19.12.12 must be interpreted in the light of its purpose. The general purpose of the regulation is clearly to give an Appeal Panel power to deal both with contravention and with sanction, as (b) and (e) make very clear. That contradicts any suggestion that all issues relating to sanction must be determined in the first instance by a Disciplinary Tribunal. The general purpose of the regulation is reinforced by a consideration of the applicable IRB regulations. RFU Regulation 20.12.3 states that in doping matters an Appeal Panel shall be appointed in accordance with Regulation 19, and "In addition the Appeals Panel shall have all the powers and obligations as set out in IRB Regulation 21.25". IRB Regulation 21.25 requires the appointment of a "Post-Hearing Review Body" which at 21.25.13 "shall have power to quash, suspend, vary or increase the decisions and/or sanction reviewed …" So that provision also makes clear the general intent that the Appeal Panel shall be a tribunal with full jurisdiction to decide both whether there has been a contravention and the appropriate sanction. As a matter of policy there can be no sensible distinction between the power to increase a sanction imposed by a Disciplinary Panel, and the power to impose a sanction for the first time on appeal from a Disciplinary Panel which has decided that there was no contravention.

6. RFU Regulation 19, and IRB 21.24.1, contemplate that there may be an appeal by the RFU in a case in which the Disciplinary Panel has determined that there has been no contravention. In such a case there will have been no sanction imposed by the Disciplinary Panel so the power contained at Regulation 19.12.12 to increase "the original sanction" cannot be applicable. Given that the regulation deals expressly with sanction it would not be permissible to read sub-rule (f), which allows the panel

to make "such further order as it considers appropriate", as giving power to take the important step of imposing a sanction.

7. So the issue is whether there the words in Regulation 19.12.12 (d), "substitute an alternative finding", give power both to determine that there has been a contravention and to decide the appropriate sanction. In the abstract the words "alternative finding" are clearly wide enough to encompass the imposition of a sanction. However sub-rule (b) appears to draw a decision between a finding and sanction, so the question arises whether the word "finding" must in this context be restrictively interpreted so as not to include the imposition of a sanction. Against that it should be noted that the proposition that sub-rule (c), which gives power to "Remit the matter for a re-hearing", allows the Appeal Panel to remit sanction only to the Disciplinary Panel is itself questionable. On any basis the matter would not be remitted for re-hearing, because the Appeal Panel has determined that there has been a contravention. So the upshot is that Regulation 19.12.12 does not deal expressly with the circumstance in which the RFU successfully appeals a determination by a Disciplinary Panel.

8. It is correct that (b) does appear to distinguish between finding and sanction, but that drafting is explicable as making clear the width of the power vested in the Appeal Panel. In its natural and ordinary meaning the word "finding" includes a determination as to sanction. It would be inconsistent with the general purpose of the regulation to hold that although an Appeal Panel had power to quash, reduce or increase a sanction, it has no power to impose a sanction where none had been imposed by the Disciplinary Panel. The regulation is clearly intended to give full jurisdiction to the Appeal Panel to substitute an alternative finding, both as to contravention and as to sanction. It would serve no useful purpose to remit sanction to the Disciplinary Panel in a case in which the Appeal Panel has fully considered the facts. For those reasons the jurisdiction argument is dismissed.

9. The sanction to be imposed in this case must be determined by reference to the contravention which carries the most severe sanction. That is the contravention of Regulation 21.2.7 for trafficking, for which the sanction required is a minimum of 4

years up to a lifetime ban. None of the conditions provided for in Regulations 21.22.3 - 21.22.8 apply.

10. As set out in the submissions from the RFU the decision in a particular case necessarily depends on the specific facts and circumstances of that case. But as a matter of general principle a sanction should be assessed by reference to any comparable cases so as to avoid unfairness in unequal treatment[1], but there have been very few reported cases involving a trafficking charge (see *Sport: Law and Practice* Lewis & Taylor 3rd edn §C2.156). The recent decision in *UKAD v Dean Colclough* (SR/0000120105) in which an 8 year period of ineligibility was imposed for trafficking is the most closely comparable case, whilst noting that the circumstances of that case are different from this.

11. The Appeal Panel accepts the submissions of the RFU as to the seriousness of this case. There were proved multiple violations over a period over 16 months, and the money transfers of nearly £20,000 to China demonstrate that the trafficking was of on a substantial scale. During the relevant period Mr Peters was in a position of responsibility for minors as Team Manager of Surrey U15-U18s.

12. The Respondent has made submissions, and submitted a witness statement, testifying to his considerable contribution to the sport of rugby in Surrey. This is the first offence and it is submitted that a suspension for 4 years would be adequate to reflect the gravity of the charge.

13. It is submitted on behalf of the Respondent that there is no evidence that he supplied prohibited substances to any rugby player, or any young player for whom he was responsible. The submission is that the persons to whom such substances were supplied by the Respondent were "highly likely" to have been bodybuilders as that was the activity in which his son, Jordan Peters, was involved. It should be noted that there is no witness statement to support those submissions and the Respondent

[1] See *WADA v FIBV v Berrios* CASE 2010/2229, award dated 28 April 2011: "*in determining as an international appellate body, the correct and proportionate sanctions, CAS panels must also seek to preserve some coherence between the decisions of the different federations in comparable cases in order to preserve the principle of equal treatment of athletes in different sports*" (§90).

has refrained from giving any evidence as to the scale of his activities or explaining the use to which the steroids he purchased were put. In his police interview on 11th October 2012 (at page 9) the Respondent is recorded as saying that he did buy power drinks from his son for one of the rugby boys.

14. This is a very serious case. Taking into account all the relevant circumstances including the scale of the trafficking proved and the Respondent's position of trust being responsible for young players the Appeal Panel decides that a period of ineligibility of 8 years should be imposed.

15. The period of ineligibility should, in accordance with IRB Regulation 21.22.12(c), commence from the date of provisional suspension by letter dated 30th November 2012. The Appeal Panel in deciding the total period of ineligibility has taken into account the fact that the suspension was lifted from 4th March 2014 following the decision of the Disciplinary Tribunal.

16. For the reasons set out above the Appeal Panel determines that the sanction to be imposed in accordance with IRB Regulation 21.22.2 (a) is a period of ineligibility of 8 years commencing on 30th November 2012.

17. This decision may be appealed to CAS as allowed for under Regulation 20.13.1.

Charles Flint QC
Chairman of the Appeal Panel

27th May 2014