

**IN THE MATTER OF RUGBY FOOTBALL UNION DISCIPLINARY
PROCEEDINGS CONCERNING REGULATION 20 OF THE RUGBY
FOOTBALL UNION AND REGULATION 21 OF THE INTERNATIONAL
RUGBY BOARD/WORLD RUGBY**

BETWEEN:

THE RUGBY FOOTBALL UNION

- and -

ANDREW QUARRY

Panel: Christopher Quinlan QC (Chairman)
Christine Bowyer-Jones
Dr Gary O'Driscoll

DECISION OF THE DISCIPLINARY PANEL

A. INTRODUCTION

1. This Disciplinary Panel ('the Panel') was appointed under the Rugby Football Union's ('RFU') Disciplinary Regulations to determine anti-doping rule violations ('ADRVs') alleged to have been committed by Andrew Quarry ('the Respondent').
2. Mr Quarry was first charged and provisionally suspended by the RFU by letter dated 21 June 2013. He was alleged to have contravened the International Rugby Board's Regulation 21.2.7 "*Trafficking or Attempted*

Trafficking in any Prohibited Substance or Prohibited Method” (‘charge letter 1’).

3. We were told by the RFU that at that time (2013) it was unable to make contact with the Respondent. Further it was unable to establish whether or not he had received the relevant papers. Accordingly the RFU agreed with UK Anti-Doping (‘UKAD’) to suspend the proceedings and did so in December 2013.
4. These anti-doping proceedings were resurrected in April 2015 after the Respondent contacted the RFU. On 21 May 2015, UKAD issued the RFU with a ‘case to answer decision’, recommending that the Respondent be charged with three Anti-Doping Rule Violations, namely
 - a. *“Trafficking or Attempted Trafficking in any Prohibited Substance or Prohibited Method”*;
 - b. *“Use or Attempted Use by an Athlete of a Prohibited Substance or a Prohibited Method”*;
 - c. *“Possession of a Prohibited Substance or a Prohibited Method”*.
5. Thereafter and by letter dated 28 May 2015 (‘charge letter 2’) the RFU charged the Respondent with *“Trafficking or Attempted Trafficking in any Prohibited Substance or Prohibited Method”* pursuant to World Rugby Regulation 21.2.7. Mr Quarry was also charged with two additional alleged Anti-Doping Rule Violations (‘ADRV’), namely *“Use or Attempted Use by an Athlete of a Prohibited Substance or a Prohibited Method”* pursuant to World Rugby Regulation 21.2.2 and *“Possession of*

a Prohibited Substance or a Prohibited Method” pursuant to World Rugby Regulation 21.2.6.

6. Following a Direction issued by the Panel Chairman those charges were subsequently amended and the Player was charged by letter dated 4 December 2015 (‘charge letter 3’). Thereby he was charged with the same three regulatory breaches but (in accordance with the Chairman’s direction) each charge pleaded the particular prohibited substances. He was charged as follows:

a. "21.2.6 Possession of Prohibited Substances and Methods.

This charge is based on:

i) The seizure of prohibited substances from your property by Cumbria Police on 16 April 2012, as referred to in recorded interview with Cumbria Police on the 16 April 2012 and a subsequent recorded interview on 17 September 2012.

ii) Your admission in recorded interview with Cumbria Police on 16 April 2012 and 17 September 2012 that the seized substances belonged to you.

Prohibited Substances: methandienone, stanozalol and testosterone.

b. 21.2.2 Use or Attempted Use by a Player of a Prohibited Substance or a Prohibited Method.

This charge is based on your admission in recorded interview with Cumbria Police on 16 April 2012 that at least some of the drugs seized in your property on 16 April 2012 were for your own personal use.

Prohibited Substances: stanozolol (Winstrol)

- c. 21.2.7 *Trafficking or Attempted Trafficking in any Prohibited Substance or Prohibited Method.*

This charge is based on:

i) Text message records obtained by Cumbria Police from two mobile telephones owned by you, as referred to in recorded interview with Cumbria Police on 17 September 2012.

ii) Other details of the recorded interview with Cumbria Police on 17 September 2012 that indicate the buying and selling of prohibited substances from/to third parties.

iii) A Certificate of Conviction from Carlisle Crown Court (dated 3 September 2013) recording that on 11 July 2013 you were convicted upon indictment of "Conspire to supply controlled drug of Class C – Anabolic Steroids".

Prohibited Substances: testosterone (various types), stanozalol (Winstrol), human growth hormone, clenbuterol, oxandrolone (Anavar), trenbolone (Parabolin), metenolone (Primobolan), boldenone, nandrolone, clomifene (Clomid) and metandienone (Dianabol)"

7. Those charges are commendably clear.

8. The Respondent has not engaged with these 2015 proceedings.

9. Ultimately this case was decided without an oral hearing. The RFU first requested us to proceed in that way on 29 September 2015. We declined to do so and instead issued Directions on 12 October 2015. We once more declined to do so in January 2016 and issued further Directions on 1 February 2016. We declined the RFU requests to proceed principally for two reasons:
 - a. We were not satisfied that sufficient steps had been taken to inform the Respondent of the proceedings and the potential consequences thereof; and
 - b. We were not satisfied with the way the case had been charged and with the provision of material upon which we were invited to make findings. In the event, our vigilance in those respects has ensured - we are satisfied - that due process has been followed and resulted in our being much better informed about the alleged ADRVs.

10. We treated the Respondent's disinclination to be involved as a denial of the charges and we put the RFU to proof thereof.

11. This document constitutes our final reasoned Decision, reached after due consideration of the written evidence and short Note submitted by the RFU. The Decision was drafted by the Chairman but is the decision of us all.

B. CRIMINAL PROCEEDINGS

(1) Introduction

12. These anti-doping proceedings arise out of criminal proceedings brought against the Respondent. We say at the outset that initially we were provided with few of the documents, papers or materials from those criminal proceedings. We made repeated requests for them. It was only after such repeated requests that eventually we were provided with copies of some of the relevant papers. Recently, we were provided with copies of the following: indictment, MG5 (short police summary), a premises search record, typed records of the Respondent's (suspect) interviews and the Respondent's antecedent narrative. We have not had relevant witness statements or a statement from a forensic scientist.
13. The fact we went for a long time without copies of any evidence from the criminal proceedings has had a number of consequences, which it may help to summarise. We hope that by doing so those whose task it is to bring such proceedings may be better placed in the future to secure the release of such materials.
- a. We had been driven - in large measure - to consider hearsay and multiple hearsay material. That is not satisfactory, particularly so where, as here, a panel is required to consider and determine a serious matter.
 - b. Initially, the RFU sought to prove the detail of the alleged ADRVs by relying *inter alia*, on a witness statement from Graeme Simpson, who works in the "Intelligence Department of UKAD". In that statement, dated 21 May 2015, he purported to

summarise what he described as “*statements*” made by the Player to police. In fact it appears to be an attempt to summarise his reading of the police (Police and Criminal Evidence Act 1984) interviews of the Respondent conducted under caution. Plainly intended to be helpful, one does not gain a great deal of information because the statement comprises in large measure a summary of what the Player was asked, and not what he said in reply. That is not altogether surprising since he replied, “*no comment*” to many questions. The witness statement simply contains police assertions and summaries of (apparent) evidence/material. Without the source material we had no way of knowing whether what was asserted or asked was accurate and/or complete and so it had no real probative value to us.

- c. Our repeated requests for further information has lengthened these proceedings as we sought further and better particulars of the charges and evidence in those criminal proceedings. Such was absolutely necessary where the evidence in those proceedings was (and is) the foundation of the alleged ADRVs. The irony is that had the Respondent cooperated and engaged at an early stage he might have found himself in a better evidential position than ultimately proved to be the case. That he did not do so is his loss.
- d. We have also had to work through volumes of material trying to distil from it the relevant. That has been time-consuming.

14. We do understand that for a long time the RFU was not able to supply us with the material. The reason is set out in the witness statement of Graeme Simpson dated 21 May 2105. In para 7 thereof he states, “*the records themselves [of interview conducted by police] are restricted from disclosure to private bodies such as the Ruby Football Union*”. It meant that the body charged with the task of ‘prosecuting’ these serious alleged

ADRVs (the RFU) had to do so without sight of, still less copies of the fundamental source material. Like us, we suspect it still does not have it all.

15. Therefore our observations above are not a criticism of the RFU or of UKAD (nor of any other body or person). Indeed we express our thanks to UKAD for eventually securing release of the documents we have been given. We hope that in future UKAD might more readily be able to obtain the source materials for future panels. We wonder whether constabularies, once informed of the scope, nature and purpose of such further limited disclosure (to panels such as this, populated as it is by professionals experienced in dealing with confidential material) might more readily be prepared to sanction it. In the event Cumbria police did so in this case and we are grateful. It is a shame we have not had the witness statements, which, we suspect, would have made our task less difficult.

(2) Forensic history

16. The Respondent was charged on indictment as follows:

Count 1

STATEMENT OF OFFENCE

CONSPIRACY TO SUPPLY A CONTROLLED DRUG OF CLASS C, Contrary to section 1(1) of the Criminal Law Act 1977.

PARTICULARS OF OFFENCE

JACK MCINTOSH and ANDREW QUARRY between the 1st day of April 2011 and the 13th day of September 2012 conspired together to supply anabolic steroids, a controlled drug of class C.

17. The Certificate of Conviction from Carlisle Crown Court confirms as a matter of public record - and we accept as proof for the purpose of these anti-doping proceedings - that he pleaded guilty to that offence on 3 June 2013. He was sentenced on 11 July 2013 to a suspended sentence of 12 months imprisonment, suspended for 2 years. There were other elements to that sentence we need not set out.

18. The evidence of the criminal matters is set out in detail below (paragraphs 45-60). Accordingly we need not do so at this stage.

19. As a matter of narrative, the suspended sentence was activated (in part) on 25 April 2014 and the Respondent was sentenced to 6 months imprisonment in consequence.

C. RFU ANTI-DOPING PROCEEDINGS

(1) Introduction

20. The alleged ADRVs arise out of the Respondent's conduct in 2012. All references in this Decision are to the 2012 versions of the relevant RFU Regulations 19 and 20 and International Rugby Board ('IRB') Regulation 21, unless other indicated. In November 2014, the IRB became World Rugby ('WR'). Both names are used, as appropriate, in this Decision. All references to World Rugby Regulation 21 are to the 2016 version thereof.

21. At all material times the Respondent was registered with the RFU as a player at Kendal RUFC and had been since 8 September 2006. He was therefore subject to the jurisdiction of the RFU and bound, *inter alia*, by its Regulations.

22. By RFU Regulation 20.5.1 the Union adopts IRB Regulation 21 ('Regulation 21') "*as its own anti-doping regulations*".
23. By Regulation 21.2.1 the presence of a prohibited substance or its metabolites or markers in a player's sample constitutes an anti-doping rule violation ('ADRV').
24. By Regulation 21.2.2 it is an ADRV for a player to use or attempt to use a prohibited substance or a prohibited method.
25. By Regulation 21.2.6 it is an ADRV to possess a prohibited substance or prohibited method.
26. By Regulation 21.2.7 it is an ADRV to traffic or attempt to traffic a prohibited substance or prohibited method.
27. Possession and trafficking are defined in the Preamble to Regulation 21 in the following terms:
- "**Possession** The actual, physical possession, or the constructive possession (which shall be found only if the person has exclusive control over the Prohibited Substance/Method or the premises in which a Prohibited Substance/Method exists); provided, however, that if the person does not have exclusive control over the Prohibited Substance/Method or the premises in which a Prohibited Substance/Method exists, constructive possession shall only be found if the person knew about the presence of the Prohibited Substance/Method and intended to exercise control over it. Provided, however, there shall be no anti-doping rule violation committed based solely on possession if, prior to receiving notification of any kind that the Person has committed an anti-doping rule violation, the Person has taken concrete action demonstrating that the Person never intended to have possession and has renounced possession by explicitly declaring it to an Anti-Doping*

Organisation. Notwithstanding anything to the contrary in this definition, the purchase (including by any electronic or other means) of a Prohibited Substance or Prohibited Method constitutes possession by the Person who makes the purchase.”

*“**Trafficking** selling, giving, transporting, sending, delivering or distributing a Prohibited Substance or Prohibited Method (either physically or by any electronic or other means) by a Player, Player Support Personnel or any other Person subject to the jurisdiction of an Anti-Doping Organisation to any third party...”*

28. The 2012 version of the RFU Regulation 20.11.2 provided:

“The RFU Legal Officer (or their designee, being the RFU Anti-Doping Officer) shall decide if there is a case to answer. The decision will be communicated to the Player and the Disciplinary Officer.”

29. By 2013 RFU Regulation 20 had been amended such that Regulation 20.11.3 provided:

“UKAD shall separately review any potential anti-doping rule violation and confirm whether the Player, Player Support Personnel or other person has a case to answer. The decision of UKAD shall be communicated to the person alleged to have committed the offence.”

30. The 2013 RFU Regulation 20.11.4 provided:

“The RFU shall (if UKAD has determined that there is a case to answer), bring a charge in relation to any suspected or alleged breach of this Regulation 20. Where a charge is brought, an independent panel shall be appointed by the RFU Judicial Secretary to hear the case...”

31. The 2015 version of Regulation 20 is in identical terms.

32. We were told, and accept, that UKAD investigated this matter. Having done so, on 21 May 2015 it informed the RFU that the Respondent had a case to answer. We note therefore that the RFU acted in accordance with the 2013/2015 regime. In other words, it acted on the basis of an assessment by UKAD that there was a case to answer, rather by its own Legal Officer (as was required in 2012). Given that these proceedings were resurrected in 2015 we can see why it did so. We detect no error, material or otherwise, in its doing so.

(2) Proceeding in the Respondent's absence

33. The RFU's efforts to inform the Respondent of these (2015) proceedings have been long and, until recently, largely unsatisfactory. To that end on 1 February 2016 we directed the RFU in these terms:

"The Tribunal met as planned this morning. Each of us remains concerned that the RFU has not taken all reasonably practicable steps to ensure service of the relevant papers upon the Respondent. The relatively simple and inexpensive option of an enquiry agent will, we strongly suspect, address that. We therefore direct that the RFU instruct such an agent to trace the Respondent and ensure service of the papers."

34. The RFU complied with our Direction and accordingly it is now unnecessary to take a lengthy trek through its earlier efforts.

35. The RFU engaged the services of one Malcolm Henderson, a process server, who has provided a witness statement signed and dated 26

February 2016. Therein he states that at 12.15 on 26 February 2016 he met with a man who described himself as Andrew Quarry. In paragraph 5 of that statement he states:

5. That I handed the said Respondent, Andrew Quarry a copy of the documents listed below, which are now produced and shown to me in a bundle marked 'A'
 - RFU Player Register – Andrew Quarry
 - Certificate of conviction – dated 3rd June 2013
 - Case Summary (MG5)
 - Indictment
 - Summary of Andrew Quarry Convictions
 - Letter from RFU – Dated 14th June 2013
 - Letter from RFU – Dated 21st June 2013
 - Email from Andrew Quarry – Dated 18th April 2015
 - Letter from UKAD – Dated 21st May 2015
 - Witness Statement from Graham Simpson (UKAD) – Dated 21st May 2015
 - Email chain between RFU and Robert Quarry
 - Letter from RFU to Robert Quarry – Dated 10th July 2015
 - Letter from RFU to Andrew Quarry – Dated 10th July 2015
 - Witness Statement from Stephen Watkins (RFU) – Dated 14th September 2015 (Including exhibits 1-8)
 - Panel directions dated 13th October 2015 and RFU response to Panel Directions (Full Bundle)

36. Surprisingly given his occupation he does not state he was satisfied that the man was telling the truth as to his identity. However, from that exchange and other materials the agent provided to us we are satisfied that it was the Respondent.

37. If his statement is accurate and complete (and we were invited by the RFU to proceed on the basis thereof) then it seems the process server inexplicably was not asked to, or if asked, did not serve upon the Respondent the RFU letter's dated 16 February 2016. That letter starts by informing the Respondent:

“As the RFU has not received a response from you to any of its communications in this matter, the case has been put before a Disciplinary

Panel based on the paper documentation available. The Panel in your case has reviewed the initial documentation provided to it and requested that you are given an additional opportunity to respond.

Please note that this will be your last opportunity to make representations in this case. If you wish to make representations you should contact me by Friday 26 February 2016 using the contact details provided below.

If we do not receive a communication from you by this date the Panel will determine the case based solely on the documentary evidence before it, without any further input from yourself. This may be to your disadvantage in what is a serious matter."

38. By cross-referencing our copy of the bundle of document prepared in response to our first set of Directions (issued on 12 October 2015) we are satisfied that the same bundle served on the Respondent did contain charge letter 3. That charge letter contains the same three paragraphs cited in the preceding paragraph in identical terms, save that the date therein is 4 January 2016, not 26 February 2016. Those paragraphs were drafted in response to and the content closely followed specific directions given by us on 12 October 2015.

39. We are told by the RFU and accept that it has received no communication or contact from the Respondent.

40. On the basis of the material before us, we are comfortably satisfied that the Respondent

- a. Knows of the fact of these proceedings;
- b. Is aware of the nature of the charges and the gravity thereof;

- c. Appreciates that those charges are likely to be resolved in his absence (should he elect not to engage); and
- d. Has declined to engage in the proceedings.

41. There is a strong and legitimate public interest in anti-doping proceedings being brought and resolved. Rightly the RFU and World Rugby condemn doping. It is harmful to the health of players, totally contrary to the spirit of rugby and both are committed to protecting players' fundamental right to participate in doping free rugby. An athlete's decision not to engage in the process cannot be permitted to thwart or frustrate such proceedings, where they are properly brought in accordance with due process. In light of our factual findings we are satisfied it is appropriate to proceed to determine them in his absence.

D. THE DOPING CHARGES

42. Under Regulation 21.3.1 the RFU has the burden of establishing that an anti-doping rule violation has occurred to our comfortable satisfaction bearing in mind the seriousness of the allegation. This standard of proof is greater than a mere balance of probability but less than proof beyond a reasonable doubt.

43. As set out in paragraph 10 above, but repeated here for emphasis, we treated the Respondent as having denied the charges and required the RFU to prove each. Further, we did not treat his absence from the proceedings as evidence supporting the RFU's case nor draw any inference adverse to him from that absence or from his disinclination to participate. The RFU did not invite us to and did not seek to rely upon Regulation 21.3.2(d) which provides:

“The hearing panel in the hearing on an anti doping rule violation may draw inference adverse to the Player or other Person who is asserted to have committed an anti doping rule violation based on a Player or other Persons refusal, after requests are made in a reasonable time and in advance of the hearing, to appear at the hearing (either in person or telephonically as directed by the hearing panel) and to answer questions from the hearing panel or the Anti-Doping Organisation asserting the anti-doping rule violation.”

44. We understand that a Disciplinary Panel is not obliged to follow strict rules of evidence. We may admit such evidence as we think fit and accord it such weight, as we consider appropriate. That is the approach we have adopted. As we hope is (at least) tolerably clear from what follows, we have nonetheless not adopted a *laissez faire* attitude to assessing the quality and probative value of the material before us.

(1) The facts

45. The facts as set out come from the police material provided to us, namely indictment, case summary, interview records and a brief search record. We received the bulk of that material on 14 March 2016. We have not been provided with copies of any witness statements, including the following referred to in Tony Jackson’s email 26 February 2016 (10.39): Stephen Usher dated 189 [sic] February 2013, Iain Scales dated 19 March 2013, Donal McCutcheon dated 16 April 2012 and Adam Booker dated 24 August 2012. That is (prima facie) surprising given that the one David Cherry, the Cumbria Police Manager, (helpfully) replied to that email the same day (at 12.30) in these terms:

I can confirm that Cumbria Constabulary has no objection to the disclosure of the information specified below, in so far as that information was supplied by the Constabulary to UKAD.

This is on the understanding that the information is disclosed only to Mr Quinlan QC and any other panel members Mr Quinlan deems it necessary to make aware of the information. The information should be treated as confidential and it should only be used in connection with the proceedings which are on-going in relation to Mr Quarry."

46. Therefore permission for disclosure of those statements appears to have been provided, but we have not had them.

47. The RFU has also sought to rely on press cuttings and press reports but we consider such unreliable sources of information and a long way from being evidence of suitable dependability in proceedings such as these.

48. During the morning of 16 April 2012 Cumbria police executed a search warrant at the Respondent's home address. During the course of the search police found and seized what is recorded in the search record as "*quantity of anabolic steroids and other unidentified drugs*". The Respondent was arrested and interviewed under caution that day and later on 17 September 2012. He was later charged and pleaded guilty to conspiring to supply controlled drugs of class C, namely anabolic steroids.

49. During the course of the interviews on 16 April 2012

a. The Respondent admitted:

- i. Using cocaine, the last time about “*two weekends ago*”.
- ii. Using anabolic steroids, namely winstrol.
- iii. All of the anabolic steroids recovered by police belonged to him.

b. He denied being involved in the supply of such drugs.

50. He was released on bail and interviewed again on 17 September 2012.

He replied “no comment” to questions asked of him during the course of two interviews conducted that day. Having read the interview records for that date we have seen the nature of the text messages said to be been found on the telephones in the Respondent’s possession. Even to the uninitiated they are consistent with involvement in the supply of drugs. Needless to say we have not seen the telephone download reports but have been helped on that topic by other evidence (see paragraph 56 and Appendix 1).

51. On the basis of the interview records provided to us we cannot see the basis for the assertion in paragraph 13 of the RFU Note 14 September 2015 that “*he admitted in interview to a charge of conspiracy to supply anabolic steroids*”. Our reading of the (lengthy) interview records accords with that of Tony Jackson from UKAD (see paragraph 7 of his statement 2 December 2015).

52. We have also read the police summary MG5. However, our experience is that such documents should be approached with caution: they are

not intended to be any more than summaries and no police officer would ever suggest they are a substitute for the evidence. While the document is a useful overview of the criminal case, it is no more and we did not consider it right to rely on it as 'evidence'.

53. That is as much as we learn from what we shall call the primary or source police material. We turn to the next source, namely statements from witnesses who have read the police material (or some of it). In this category we have been much assisted by the statement from Tony Jackson dated 2 December 2015 ('the Jackson statement'). It is clear and addresses the very matters we directed in our Directions of 12 October 2015 should be addressed. We record our gratitude for his help.

54. The Jackson statement addresses two particular aspects of the criminal evidence: (1) the physical evidence recovered from the Respondent's home and (2) text messages retrieved by way of telephone downloads. We take each in turn.

55. First, the physical evidence recovered from the Respondent's home. Paragraph 6 of the Jackson statement records as follows:

"The Seized Items were submitted for examination to determine the presence of any substances controlled under the Misuse of Drugs Act 1971. According to the records of analysis, the Seized Items consisted of the following:

6.1. a white plastic bottle with a screw top lid which held:

6.1.1. 38 blue heart shaped tablets. A portion of one tablet was analysed and found to contain methandienone; and

6.1.2. 42 unmarked circular brown mottled tablets and associated fragments (0.07 grams). A portion of one tablet was analysed and found to contain stanozolol.

6.2. a card box (labelled in a foreign language) which contained 17 intact blister packs each with a capacity to hold ten tablets, totalling 170 tablets. A portion of one tablet was removed and analysed and found to contain methandienone;

6.3. a card box which contained ten clear ampoules each containing one millilitre of clear liquid. A sample of liquid was analysed and found to contain testosterone;

6.4. two card boxes which contained one clear glass vial, both of which were labelled as '2ml -vial Nadrolone' [sic]. The vial contained two millilitres of pale yellow liquid. A sample of liquid was analysed and found to contain testosterone;

6.5. five intact card boxes labelled as '1ml' of 'Stanozolol' (and further foreign writings). One box contained three ampoules which held a milky coloured liquid. A sample of the liquid was analysed and found to contain stanozolol;

6.6. four white plastic intact containers labelled as 'methandrosterone 100 tabs 5mg'. One container held 100 circular unmarked white tablets. A portion of one tablet was removed and analysed and found to contain methandienone;

6.7. ten intact clear glass vials labelled as 'growth hormone' containing a very fine white powder. A sample of one vial was analysed and found to contain no controlled substances."

56. Second, the text messages. Cumbria Police provided UKAD with message data downloaded from mobile telephones known as 'extraction reports' relating to two mobile telephones seized from Mr Quarry's home address (one HTC and one iPhone). In interview he said they both belonged to him. The Jackson statement (paragraph 9)

recorded that 5,127 text messages were contained in the extraction reports. UKAD was provided summary detail of the text messages contained within these reports.

57. The extraction report for the HTC mobile telephone revealed a total of 3338 text messages, some of which were marked as deleted. We have reproduced the salient texts and paragraphs from the Jackson statement in Appendix 1.

58. The Apple iPhone extraction report contains 1789 SMS messages, which comprised drafts, sent messages and inbox messages. They are dated between 3 October 2011 and 15 April 2012. None of the (9) draft messages mentioned any prohibited substances. We have reproduced the salient texts in Appendix 1.

59. In summary, the text messages speak tellingly of a person engaged in the business of dealing drugs. The content is consistent with those drugs including anabolic steroids.

60. It is not necessary to refer at this stage to any of the other material before us. It is appropriate to consider the individual charges.

(2) Charge 1 - Regulation 21.2.6 Possession of Prohibited Substances and Methods.

61. The Respondent is charged with a breach of Regulation 21.2.6 in that he is alleged to have been in possession of prohibited substances, namely methandienone, stanozalol and testosterone.

62. Methandienone, stanozalol and testosterone are (in 2016) and were (in 2012) listed as Class C Drugs in Schedule 2 to the Misuse of Drugs Act 1971.

63. Regulation 21.3.2 provides that facts of an ADRV may be established by any reliable means, including admissions. We accept the evidence of Tony Jackson that methandienone, stanozalol and testosterone were found in the Respondent's home on 16 April 2012. We further accept as true the Respondent's admission in police interview on 16 April that the said items belonged to him. That amounts to an admission of possession of each of those prohibited substances.

64. Methandienone (or metandienone), stanozalol and testosterone were (and still are) listed in category S1.1 Anabolic Agents of WADA's 2012 List of Prohibited Substances (which appears in Schedule 2 to Regulation 21).

65. Therefore, on the basis of the evidence before us, summarised herein, we are comfortably satisfied that the RFU has established this ADRV against the Respondent and find the charge proved. We are satisfied he

was in possession of each of the three prohibited substances named in the charge.

(3) Charge 2- Regulation 21.2.2 - use or attempted use of prohibited substances

66. We accept the evidence of Tony Jackson that methandienone, stanozalol and testosterone were found in the Respondent's home on 16 April 2012. We further accept as true the Respondent's admission in the second police interview on 16 April that he was using and had used winstrol. Winstrol is a well-known brand name of stanozolol, a prohibited anabolic steroid.

67. Therefore on the basis of the evidence before us, summarised herein, we are comfortably satisfied that the RFU has established this ADRV against the Respondent and find this charge proved. it is proved on the basis that he had used the prohibited substance stanozolol.

(4) Charge 3- Regulation 21.2.7 - trafficking or attempted trafficking in any prohibited substance

68. The starting point is the Respondent's conviction at Carlisle Crown Court. By pleading guilty he admitted being involved in a conspiracy to supply class C drugs namely anabolic steroids between 1 April 2011 and the 13 September 2012.

69. The RFU has not made specific reference to Regulation 21.3.2, but 21.3.2(c) provides:

“the facts established by a decision of a court or professional disciplinary tribunal of competent jurisdiction which is not the subject of a pending appeal shall be irrebuttable evidence against the player or other persons to whom the decision pertained in those facts unless the Player or other Person establishes that the decision violated principles of natural justice”.

70. We are therefore comfortably satisfied that the Respondent has trafficked prohibited substances namely anabolic steroids. The indictment does not particularise them any more than “anabolic steroids”.

71. However, the charge alleges he did so in relation to the following named prohibited substances: testosterone, stanozalol (winstrol), human growth hormone, clenbuterol, oxandrolone (anavar), trenbolone (parabolin), metenolone (primobolan), boldenone, nandrolone, clomifene (clomid) and methandienone (dianabol).

72. We are comfortably satisfied that he trafficked the following seven (7) prohibited substances: testosterone (sustanon), stanozalol (winstrol), methandienone (dianabol), human growth hormone, boldenone, oxandrolone (anavar) and clomifene (clomid). We are so satisfied, given (1) each substance was found at the Respondent’s home and/or (2) features in text messages and (3) his guilty plea to conspiracy (which of itself covers the anabolic steroids).

73. Boldenone and oxandrolone (anavar), were both listed in category S1.1 Anabolic Agents of WADA's 2012 List of Prohibited Substances (which appears in Schedule 2 to Regulation 21). They remain listed in the 2016 WADA Prohibited List. They are also class C for the purposes of the Misuse of Drugs Act 1971.

74. Human growth hormone is listed in category S2 Peptide Hormones, Growth Factors and Related Substances of WADA's 2012 List of Prohibited Substances (which appears in Schedule 2 to Regulation 21). It remains listed in the 2016 WADA Prohibited List.

75. Clomifene (clomid) is listed in category S4.3 Hormone and Metabolic Modulators of WADA's 2012 List of Prohibited Substances (which appears in Schedule 2 to Regulation 21). It remains listed in the 2016 WADA Prohibited List.

76. It follows that we are comfortably satisfied that the RFU has established this ADRV against the Respondent and find this charge proved in respect of the seven (7) prohibited substances identified in paragraph 72 hereof.

E. SANCTION

(1) The relevant statutory regime

77. The ADRVs were committed in 2012. Subject to *lex mitior* the relevant sanctioning provisions are as follows.

78. Regulation 21.22.1 provides:

*The period of Ineligibility imposed for a violation of Regulation 21.2.1 (Presence of Prohibited Substance or its Metabolites or Markers), Regulation 21.2.2 (Use or Attempted Use of a Prohibited Substance or Prohibited Method) and Regulation 21.2.6 (Possession of Prohibited Substances and Methods) shall be as follows, unless the conditions for eliminating or reducing the period of Ineligibility, as provided for in Regulations 21.22.3, 21.22.4, 21.22.5, 21.22.6, 21.22.7 and/or 21.22.8 or the conditions for increasing the period of Ineligibility, as provided in Regulation 21.22.9, are met:
First violation: Two years.*

79. In absence of an indication to the contrary we shall treat this as the Respondent's first ADRV.

80. Therefore the starting point for charges 1 and 2 is a period of Ineligibility of two years.

81. Regulation 21.22.(b) provides that in the case of a trafficking ADRV the appropriate sanction is *"minimum of four years up to lifetime unless the conditions provided for in Regulations 21.22.3, 21.22.4, 21.22.5, 21.22.6, 21.22.7 and/or 21.22.8 are met"*.

82. Regulation 21.22.9 provides:

"If the Judicial Committee (or the judicial body of the Unions or Tournament Organisers) establishes in an individual case involving an anti-doping rule violation other than violations under Regulation 21.2.7 (Trafficking or

Attempted Trafficking) and 21.2.8 (Administration or Attempted Administration) that aggravating circumstances are present which justify the imposition of a period of Ineligibility greater than the standard sanction, then the period of Ineligibility otherwise applicable shall be increased up to a maximum of four years unless the Player or other Person can prove to the comfortable satisfaction of the Judicial Committee that he did not knowingly commit the anti-doping rule violation.

A Player or other Person can avoid the application of this Regulation by admitting the anti-doping rule violation as asserted promptly after being confronted with the anti-doping rule violation by an Anti-Doping Organisation.”

83. Rightly, in paragraph 18 of its Note (14 September 2015) the RFU reminded us of the principle of *lex mitior*, namely that if since the commission of the ADRV the relevant law has been amended the less severe law should be applied. In this respect the position as between the 2012 Regulation 21 and the 2016 version is as follows (so far as sanction is concerned):

- a. 21.2.2, use – 2 years in 2012, 4 years Ineligibility is starting point in 2016 for non-specified substance (as in this case), unless ADRV can be proved not be intentional.
- b. 21.2.6 possession – 2 years in 2012, 4 years Ineligibility starting point in 2016 for non-specified substance (as in this case), unless ADRV can be proved not be intentional.
- c. 21.2.7, trafficking – the sanction is the same, 4 years to life.

84. Therefore in relation to charges 1 and 2 the Respondent is in a better position under 2012 regime. In relation to charge 3, the sanctioning

powers are unaltered. *Lex mitior* does not apply.

(2) The RFU's submissions

85. We note that in her letter dated 28 May 2015 Ms Fleck, RFU Director Legal stated, “...if you admit the violation and do not require a hearing the RFU would support you only receiving a four year ban”. That recognises, of course, that sanction is a matter for an independent panel and is predicated on an admission. If he read that, given the overwhelming evidence, he was unwise to spurn that generous overture.

86. In paragraph 28 of its Note (14 September 2015) the RFU submitted that the “*following factors are relevant*”:

“I) The nature of the offence and the quantity of substances seized. Mr Quarry was convicted in the criminal courts for supplying Class C Drugs, namely anabolic steroids. A significant number of anabolic steroids were seized at his home address.

II) Mr Quarry was dealing steroids at a rugby club. This is serious and presents an obvious risk to the image, integrity and health of the game at large. “

(3) Factual basis for sanction

87. We have considered with care the RFU submission that the Respondent “*was dealing steroids at a rugby club*”. It would be wrong to

accept that assertion at face value, especially given the egregious error in paragraph 13 of the same Note, namely that the Respondent “admitted in interview to a charge of conspiracy to supply anabolic steroids”.

88. Nothing in the police materials helps us with this issue.

89. On this topic a summary of the relevant material available to us is as follows:

- a. An undated newspaper article that appears to report the occasion when the Respondent entered his guilty plea. It reports that he “admitted running an illegal supply of anabolic steroids at gym based at Kendal Rugby Union Football Club”. We know not the derivation of that assertion and ignore it.
- b. An email from Stephen Green, Kendall RUFC Chairman, to Stephen Watkins at the RFU dated 10 June 2013 (12.20). In that email Stephen Green states *inter alia*:
 - i. The Respondent was a peripheral and occasional player at the Club.
 - ii. He looked after the Club gym for a period before being removed from that job.
 - iii. The Respondent told the Club that “squad members were not involved in his steroid selling” and he supplied a “small number of non-rugby gym members”.
- c. In a further email from Stephen Green dated 20 June 2015 to, we think (it is not altogether clear on the copies provided to us), David Morton, Secretary of Cumbrian RFU Discipline Panel, he states that the Respondent asserted that he “never did supply

steroids to any Kendal rugby player...we have no evidence to doubt this assertion".

90. We hope this analysis of the material before us suffices to demonstrate that we have not accepted at face value the RFU's assertion that the Respondent was "*was dealing steroids at a rugby club*". We note the material is hearsay (possibly multiple hearsay). However, it does (1) record an admission from the Respondent and (2) an admission that is also part exculpatory for it excludes supply to Kendal RUFC players. In the circumstances we are comfortably satisfied that the RFU has established that the Respondent was 'dealing' prohibited substances from or through the Kendal RUFC gym, though not Club players. In reaching that conclusion we are also not blind to the realities of life: it would be odd indeed if he were engaged in commercial supply of steroids, (as we find he was) yet ignored a potentially lucrative and bountiful market (gym users).

(4) Sanction

91. The effect of Regulation 21.22.10.D(i) is that since the multiple violations were charged and determined at the same time, they are to be treated as a single violation for the purpose of sanction. The said Regulation also provides:

"...and the sanction imposed shall be based on the violation that carries the more severe sanction; however, the occurrence of multiple violations may be considered as a factor in determining aggravating circumstances (Regulation 21.22.9)".

92. In addition to the evidence and other written materials, we had regard to the following Arbitral Awards:

- a. *UKAD v Colclough*, NADP decision dated 30 January 2014
- b. *RFU v Clive Peters*, RFU decision 11 April 2014
- c. *UKAD v Tinklin and Tinklin*, NADP decision dated 28 May 2014

93. We appreciate that Regulation 21.22.9 does not apply to trafficking ADRVs. Nonetheless we see no reason why the principles identified therein cannot be treated as circumstances.

94. We consider there to be the following aggravating circumstances:

- a. The fact he committed three separate ADRVs.
- b. That each ADRV involved more than one prohibited substance.
- c. The trafficking ADRV involved seven (7) different prohibited substances.
- d. The nature of those prohibited substances, in large measure anabolic steroids.
- e. The period of time over which he committed the trafficking ADRV (as reflected by the dates of the conspiracy).
- f. His trafficking ADRV involved the commission of a criminal offence.
- g. He was engaged in a relatively large-scale operation involving the supply (traffic) of prohibited substances on a commercial basis.

h. The Respondent was 'dealing' prohibited substances from or through the Kendal RUFC gym.

95. We note also that he has a criminal caution for possessing cocaine, which is no great surprise given his admitted use of it.

96. The Respondent offered no mitigation. We could find none in the material before us.

97. We consider the grave circumstances of this case merit an exceptional sanction. On the facts as we have found them to be we gave serious thought to a life ban. Those who peddle prohibited substances from premises associated with rugby clubs have no place in the Game. However, he is now twenty-nine years of age and a substantial ban takes from him many of his remaining playing days. It will also impact on his ability to be involved in other sports. Also, a life ban does not cater for his rehabilitation. In the circumstances we drew back from that. However, a substantial ban is merited and we assess the appropriate period of Ineligibility to be a period of twelve (12) years. That is the sanction we impose.

(5) Commencement

98. As for the starting point of that period of ineligibility, the Respondent was provisionally suspended by the RFU on 21 June 2013. The RFU advised us that it has no knowledge of the Respondent being involved with or in WADA Code regulated sporting activity since this date. It

therefore invited us to direct that any sanction should start on the date of provisional suspension, with the time served to date credited against the period of Ineligibility.

99. On the basis of the RFU submissions, and in accordance with World Rugby ('WR') Regulation 21.10.11.3 we direct that the period of ineligibility imposed on the Respondent will commence on 21 June 2013.

(6) Status during ineligibility

100. The Respondent's status during the period of Ineligibility is as provided by WR Regulation 21.10.12.1.

(7) Right of 'appeal'

101. The Respondent and/or RFU may 'appeal' or review any aspect of this Decision as provided for in WR Regulation 21.13.2 and 21.13.8.

F. SUMMARY

102. For the reasons set out above, we determine:

- a. The three anti-doping rule violations have been established.
- b. The period of Ineligibility is one of twelve (12) years commencing on 21 June 2013.

103. We direct the RFU within 14 days hereof to serve upon the Respondent (by process server) a paper copy of this Decision and inform the Chairman in writing when such has been done.

A handwritten signature in black ink, appearing to read 'Christopher Quinlan', written in a cursive style.

Christopher Quinlan QC
Chairman

28 March 2016

Signed by the Chairman on behalf of the Disciplinary Panel

APPENDIX 1

Relevant text messages recovered from the Respondent's telephones

The following is taken verbatim from the Jackson Statement¹

11. Of the 19 outbox messages, which were unsent, 12 were blank messages and 1 message referred to a substance called anavar. The 107 draft messages were all unsent but do contain references to a number of substances. Table 1 below provides an example of these draft (unsent) messages and the substances referred to therein:

Table 1 substances extract from draft messages (HTC mobile phone)

To/From	Date/Time	Status	Message
Outgoing	15/04/2011 18:16:22 (UTC +0)	Unsent	1 bottle of test 100 4 bottles of test cyp 5 bottles of winstrol 1 box of growth 1 bottle of clen 2 bottles of Anavar 4 bottles of sus 4 bottles of deca
Outgoing	28/07/2011 17:41:29 (UTC +0)	Unsent	1 cyp alpha pharma 1 cyp lixus 2 deca lixus 1 box hgh 2 t5s
Outgoing	25/08/2011 20:32:07 (UTC +0)	Unsent	Il send price list when I get it pal Protein order 4x Gaspri - superpump max 4x Hemopump 4x Gaspri - myofusion 20x syntha - 6 BSN 4x Reflex ZMA 72x CNP Bars 10x hyper strength mass gainer 4x reflex casin 10x XL Nutrition

¹ The paragraph numbering is reproduced from the Jackson statement

bags
 4x SciMx Omni
 Hardcore
 4x SciMx Grow
 Hardcore

<i>To/From</i>	<i>Date/Time</i>	<i>Status</i>	<i>Message</i>
			4x HyperStrength multi vits
Outgoing	27/09/2011 19:48:15 (UTC +0)	Unsent	Alpha sus250 £40 Parabolin £40 T.prop £35 Primo £35 Boldenone £36 Test enan £40 Deca £43 Alpha pharma prices

12. The 1249 sent and 1929 inbox messages from the HTC mobile phone have been examined together. Key words have been searched for within all of the messages to see how many times they feature. Note that throughout the messages there were spelling mistakes and both slang and abbreviated words used. See Tables 2 through Table 5 for examples related to various substances.

Table 2 'Growth' and 'hGH' (Human Growth Hormone) feature on 30 occasions

<i>To/From</i>	<i>Date/Time</i>	<i>Status</i>	<i>Message</i>
Outgoing	10/07/2011 20:21:39 (UTC+0)	Sent	1 hgh 1 test cyp lixus Insulin pins 1 box Clomid 1 box

<i>Outgoing</i>	<i>24/10/2011 12:01:40 (UTC+0)</i>	<i>Sent</i>	<i>Cud u pop them round tonight and that box of growth please x</i>
<i>Incoming</i>	<i>12/07/2011 11:12:53 (UTC+0)</i>	<i>Read</i>	<i>1x hgh £160 1xtest £35 1x insulin pins £20 1x clomid £25 £240 please :)</i>
<i>Incoming</i>	<i>01/09/2011 10:27:42 (UTC+0)</i>	<i>Read</i>	<i>Tell the guy your seeing it's these prices for hgh and I ll pay you a £5 for each one he has ok so don't add money on them</i>

Table 3 'Test' (Testosterone) features on 28 occasions

<i>To/From</i>	<i>Date/Time</i>	<i>Status</i>	<i>Message</i>
<i>Outgoing</i>	<i>04/04/2011 20:04:03 (UTC+0)</i>	<i>Sent</i>	<i>3 bottles of test enanthate 1 bottle of deca 2 bottles of test cyp 1 bottle of winstrol the beta winstrol please</i>
<i>Outgoing</i>	<i>04/04/2011 21:00:40 (UTC+0)</i>	<i>Sent</i>	<i>3 bottles of test enanthate 1 bottle of deca 2 bottles of test cyp 1 bottle of winstrol 2 bottle of sus</i>

<i>To/From</i>	<i>Date/Time</i>	<i>Status</i>	<i>Message</i>
<i>Incoming</i>	<i>06/12/2011 18:15:12 (UTC+0)</i>	<i>Read</i>	<i>Alryt its BLANK mate. Am bk for a while nw. Was afta sum deca n test byBLANK said u gr sum beta stuff</i>

that's a bit cheaper.

Table 4 'Sus' (Sustanon) features on 24 occasions

To/From	Date/Time	Status	Message
<i>Outgoing</i>	<i>27/09/2011 19:32:53 (UTC+0)</i>	<i>Sent</i>	<i>That's fine m8 and 1 sus please Cud u send me how much please x</i>
<i>Outgoing</i>	<i>27/09/2011 19:46:58 (UTC+0)</i>	<i>Sent</i>	<i>Alpha sus250 £40 Parabolin £40 T.prop £35 Primo £35 Boldenone £36 Test enan £40 Deca £43 Alpha pharma prices</i>
<i>Incoming</i>	<i>21/10/2011 16:23:09 (UTC+0)</i>	<i>Read</i>	<i>Organon sus250 - £3.50 each</i>

Table 5 'Win' (Winstrol) features on 8 occasions

To/From	Date/Time	Status	Message
<i>Outgoing</i>	<i>29/08/2011 17:05:17 (UTC+0)</i>	<i>Sent</i>	<i>No I had two guys that did want 9 bottles of test and 9 bottles of deca and 6 of winstrol and pct but they have decided to leave it for now wankers eh</i>

<i>Incoming</i>	<i>05/09/2011 17:18:08 (UTC+0)</i>	<i>Read</i>	<i>A bell ? Or meet me and give mr some money ?? Lol also do u want Euro pharma 3x winstol 50mg 4x t.prop / viromone 125mg 2x boldenone 200mg 1x tren acetate 100mg All £25 each and 3x 5mg winstorl 100x tabs £30 each</i>
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13. The Apple iPhone extraction report contains 1789 SMS messages which were broken down into 9 drafts, 854 sent messages and 926 inbox messages between 3 October 2011 and 15 April 2012. None of the 9 draft messages mention any substances. The sent and inbox messages also contain those that were deleted.

14. Key words have been searched for within all of the iPhone messages to see how many times they feature. Note that throughout the messages there were spelling mistakes and both slang and abbreviated words used. See Tables 6 through 8 for examples related to various substances. (excluding drafts).

Table 6 'Sus' (Sustanon) features on 16 occasions

<i>To/From</i>	<i>Date/Time</i>	<i>Status</i>	<i>Message</i>
<i>Incoming</i>	<i>02/02/2012 10:50:11 (UTC+0)</i>	<i>Read</i>	<i>Just need the clem n sus please pal no trem</i>
<i>Outgoing</i>	<i>04/02/2012 17:06:58 (UTC+0)</i>	<i>Sent</i>	<i>I just want x2 alpha sus. x4 anavar the good anavar please il want a lot more next week let me know when it arrives cheers</i>

Table 7 'Test' (Testosterone) features on 10 occasions

<i>To/From</i>	<i>Date/Time</i>	<i>Status</i>	<i>Message</i>
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<i>Incoming</i>	<i>04/01/2012 17:08:42 (UTC+0)</i>	<i>Read</i>	<i>Could you get me of test mix mate and 8 Viagra, I will get a deca next week if that's ok just not a lot of money this week</i>
<i>Outgoing</i>	<i>09/02/2012 12:52:06 (UTC+0)</i>	<i>Sent</i>	<i>Hi m8 I wud like, 40ml of sus 400 tabs of dbol 100ml of that test u said u were on please, let me know how much it is pal and send me ya account details and il sort it today or tomoz. Cheers</i>

Table 8 'Growth' and 'hGH' (Human Growth Hormone) feature on eight occasions

To/From	Date/Time	Status	Message
<i>Incoming</i>	<i>02/01/2012 21:00:06 (UTC+0)</i>	<i>Read</i>	<i>Can you get me some growth mate, will you supply some pins with it cheers...</i>
<i>Outgoing</i>	<i>08/01/2012 17:56:42 (UTC+0)</i>	<i>Sent</i>	<i>Hi m8 were did u get ya hgh from?</i>