

**IN THE MATTER OF PROCEEDINGS BROUGHT UNDER THE ANTI-DOPING RULES
OF THE RUGBY FOOTBALL UNION**

Before:

Mark Hovell (Chair)

Gordon McInnes

Carole Billington-Wood

BETWEEN:

RUGBY FOOTBALL UNION

Anti-Doping Organisation

-and-

CRAIG HOARE

Respondent

DECISION OF THE ANTI-DOPING TRIBUNAL

INTRODUCTION

1. The Rugby Football Union (the "RFU") is the National Governing Body for the sport of rugby union in England and has jurisdiction to prosecute this case. World Rugby is the International Governing Body for the sport of rugby union and the RFU is affiliated to World Rugby.
2. World Rugby has adopted the World Anti-Doping Code 2015 ("the Code") and implemented Code compliant Anti-Doping Regulations, known as World Rugby Regulation 21 (the "WRR").
3. The RFU has adopted the WRR (including the appendices and schedules) in its entirety as its own Anti-Doping Regulations (the "ADR").
4. The Respondent, Mr Craig Hoare (the "Player/Respondent") is a 20 year old player, registered to Spartans RFC who participated in the IC – RFU Junior Vase Semi-final match against Old Whitgiftians (the "Match") on 15 April 2017 under the auspices of the RFU. The Player was at all times subject to the ADR.
5. Pursuant to the ADR, a urine sample was provided by the Player after the Match. This sample returned an Adverse Analytical Finding ("AAF") for Drostanolone (and its metabolite 2a-methyl-5a-androstan-3a-ol-17-one) and Methylhexaneamine being present, all Prohibited Substances as defined by the World Anti-Doping *Prohibited List 2017*.
6. The Presence of these Prohibited Substances in the Player's urine sample constitutes a violation of the ADR. By letter dated 05 May 2017, the RFU charged the Player with the following offence:

"21.2.1 Presence of a Prohibited Substance or its Metabolites or Markers in a Player's Sample

21.2.1.1 It is each Player's personal duty to ensure that no Prohibited Substance enters his or her body. Players are responsible for any Prohibited Substance or its Metabolites or Markers found to be present in their Samples. Accordingly, it is not necessary that intent, Fault, negligence or knowing Use on the Player's part be demonstrated in order to establish an anti-doping rule violation under Regulation 21.2.1 (Presence)."

7. The Player has been provisionally suspended since this date. The RFU understand this to be the Player's first Anti-Doping Rule Violation ("ADRV").
8. The Player failed to respond to the Charge and barely communicated with the RFU or Sport Resolutions, on behalf of the National Anti-Doping Panel ("the NADP"), at all.
9. Recognising the rights of players to have a doping allegation determined by an independent and suitably qualified body, pursuant to Article 21.7.12.2 of the WRR, the RFU, pursuant to Article 21.7.13 of the WRR and Article 20.12.4 of the ADR, elected to refer the case at hand to the NADP for resolution, on 29 May 2017.
10. On 13 June 2017, Mr Mark Hovell was appointed as the Chairman of the NADP Tribunal to deal with the matter at hand.
11. Following directions issued by the Chairman, the RFU were encouraged to communicate with the Player and to secure his participation in the matter at hand.

JURISDICTION

12. The RFU is the National Governing Body for rugby union in England. Article 20.6 of the ADR sets out the RFU's "Authority to Regulate" and enables the RFU to act as the Results Management Authority with responsibility to prosecute doping case.
13. The RFU organises a number of cup competitions, including the IC – RFU Junior Vase. Individuals can only compete in such competitions if they are a registered member of a club affiliated to the RFU. The Player competed in the Match for Spartans RFC, who were affiliated to the RFU and the Player was registered with Spartans RFC under RFU ID number 01099825.
14. Article 20.7.1 of the ADR provides that:

"All Players under the jurisdiction of the RFU may be subject to In Competition...Doping Control by the RFU at any time, at any location and with No Advance Notice."

Further, pursuant to Article 20.12.4 of the ADR, any Charge against a player by the RFU shall be determined by the NADP.

15. Accordingly, by virtue of (i) the Player's participation as a member of Spartans RFC; and (ii) his participation in the Match, the Player was bound by the ADR.
16. For all of the above reasons, it follows that the Panel therefore has jurisdiction to determine this matter.

BACKGROUND

17. On 15 April 2015, the Player took part in the Match.
18. Following the game, a Doping Control Officer (the "DCO") notified the Player that he had been selected to provide an In-Competition test and the Player provided a urine sample accordingly. Assisted by the DCO, the Player split the sample into two separate bottles which were given reference numbers A1130128 (the "A Sample") and B1130128 (the "B Sample") (together "the Samples"). The DCO and the Player completed and signed the Doping Control Form (the "DCF") and the Player wrote the details of his home address, his email address and his mobile phone number on the DCF. He also confirmed the identity of his coach at Spartans RFC, Mr Ryan Gwilliam.
19. The Panel noted that the DCO commented on the DCF that the Player had informed him that he was dyslexic and that Mr Gwilliam had helped him with some spelling on the DCF.
20. Following analysis at the Drug Control Centre, Kings College London which is a WADA accredited laboratory in London (the "Laboratory"), the A Sample returned the AAF detailed above.
21. UKAD conducted a review which confirmed that there had not been a departure from the applicable International Standards that could reasonably have caused the AAF. UKAD also confirmed that the Player did not have a Therapeutic Use Exemption ("TUE") to justify the presence of any of the Prohibited Substances in his Sample.
22. The Player failed to provide a Response to the Notice of Charge by 19 May 2017. As such, the RFU set a revised deadline of 29 May 2017 for the Player to respond. He failed to do so.

23. The matter was referred to the NADP for resolution on 29 May 2017.

24. Following the Chairman's Directions, discussed on 20 June 2017 and formally issued on 21 June, the RFU attempted to make the following contacts with the Player:

a. The RFU attempted to contact the Player by telephone (using the mobile details provided by the Player on the DCF) on the following occasions:

i. Tuesday 20 June at 1.30pm (voicemail left)

ii. Thursday 22 June at 10am

iii. Monday 26 June at 10am

iv. Tuesday 27 June at 1pm

The Player has not answered on any occasion or returned the voicemail left on 20 June 2017 by the RFU's Anti-Doping and Illicit Drugs Programme Manager, Stephen Watkins.

b. The RFU attempted to contact the Player's coach, Mr Ryan Gwilliam on the following occasions:

i. Tuesday 20 June at 1.35pm

ii. Monday 26 June at 10.05am

iii. Thursday 29 June at 1pm

The RFU's Anti-Doping and Illicit Drugs Programme Manager Stephen Watkins spoke to Mr Gwilliam on 29 June 2017 who informed him that he had now left Spartans RFC.

c. The RFU sent an email to the Player (using the email address he wrote on the DCF) and Mr Gwilliam on 21 June 2017 and received a read receipt from the Player's email address. No read receipt has been received in respect of Mr Gwilliam.

- d. The RFU sent a letter to the Player (to his home address, using the details provided by the Player on the DCF) by recorded delivery on 23 June 2017. From the Royal Mail Track and Trace website it is unclear whether the Player has received this letter.

25. The Panel were concerned that the Player, reported to have dyslexia, might not have fully understood what were the potential implications of the ADRV, or the process following an ADRV, as such, it asked Mr Watkins for some further information regarding the above attempts.

26. Mr Watkins confirmed the following:

- a. He was aware that on the day the Charge was due to be sent to the Player (05 May 2017), Spartans would be playing the final of the IC – RFU Junior Vase at Twickenham and the Player would likely be travelling down with the team for the match. Mr Watkins wanted to give the Player the option not to travel down, as he would not be playing. As such, he called Mr Gwilliam (who was actually on the bus with all the players, including the Player at that time) and asked if he could speak with the Player.
- b. Mr Gwilliam requested that he could tell the Player what had happened directly, as he was concerned about the Player's welfare. Mr Watkins and Mr Gwilliam did discuss whether the Player could still play. He was informed that he could still travel and watch the match, but not play or take any part, even in the pre-match preparations. He could not take any official role as he was now provisionally suspended. Mr Gwilliam asked if the Player could receive a medal at the end. The answer was again no.
- c. Mr Watkins, by chance, saw the Player later that day when he was off the bus and walking around Twickenham. He had a can of lager with him. He did not play and did not go up to receive a medal. Mr Watkins felt that he was aware at that stage that he was provisionally banned.

27. Mr Watkins also agreed to attempt to reach the Player again through Spartans.

28. On 27 October 2017, Mr Watkins spoke with Mr Ryan Barnett from Spartans who informed him that the Player would now respond to the Charge within the next seven days. Apparently, he had been going through a difficult time of late in his personal life.
29. Unfortunately, the Player did not respond to the Charge within those seven days, nor has he to date.

THE RFU'S SUBMISSIONS

30. The provisions on sanction are set out in World Rugby Regulation 21.10. World Rugby Regulation 21.10.2 sets out the position regarding the relevant period of ineligibility in cases involving a violation of World Rugby Regulation 21.2.1. World Rugby Regulation 21.10.2.1 provides:

"The period of ineligibility shall be four years where: "The anti-doping rule violation does not involve a Specified Substance, unless the Player or other Person can establish that the anti-doping rule violation was not intentional."

31. Given that Drostanolone (pursuant to section 1.1a of the World Anti-Doping Agency ("WADA") Prohibited List and World Rugby Regulation 21.4.2.2) and Methylhexanamine (pursuant to section 6b of the WADA Prohibited List and World Rugby Regulation 21.4.2.2) are not Specified Substances, the starting point for the period of Ineligibility in this case is four years. It is submitted that World Rugby Regulation 21.10.7.4 (in relation to multiple violations) does not apply in this case and the Panel should treat this case as one single first violation. The period of Ineligibility can only be reduced to two years (World Rugby Regulation 21.10.2.2) if the Player can establish that the violation was not intentional.
32. The position in Buttifant¹ was reaffirmed in the more recent case of Shila Panjavi² which stated that: *"the burden of proof lies on the Athlete to show that her conduct was not "intentional". It is only if the Athlete can satisfy that burden can the Tribunal reduce the period of ineligibility below four years"* (paragraph 33).

¹ SR/NADP/508/2016 UK Anti-Doping v Adam Buttifant

² SR/NADP/676/2016 UK Anti-Doping v Shila Panjavi

33. In this case, the Player has not provided an explanation as to how the Prohibited Substances entered his body. Taking into account the guidance from previous NADP cases, and given the circumstances of this case, it is respectfully submitted that the Player cannot meet the burden of providing that his conduct was not intentional. Under World Rugby Regulation 21.10.2.1, the Player's period of Ineligibility should be four years.

THE RESPONDENT'S SUBMISSIONS

34. The Respondent has failed to make any submissions or engage in the process at all.

ISSUES FOR THE TRIBUNAL

35. The Tribunal notes that pursuant to World Rugby Regulation 21.7.10.2, it was able to deal with the matter at hand without a hearing and it determines to deal with this on the papers.

36. From the evidence and submissions of the RFU, the Tribunal is satisfied that the ADRV has been proved and so notes that it must address the following issues:

- a) Is it satisfied that the Player has been made aware of the Charge and the potential consequences thereof?
- b) Has the Player satisfied his burden of proof to establish that the ADRV was not intentional?
- c) Is there any other reason to reduce the standard period of Ineligibility?

37. The Tribunal is satisfied that the Player has received the Charge. It was sent to his home address, it has been emailed to him at the email address he provided on the DCF (and the Panel note that the DCO confirmed that Mr Gwilliam helped him with that form), he has been called numerous times on his mobile (again on the number he provided on the DCF) by the RFU, Mr Gwilliam must have spoken to the Player once Mr Watkins had contacted him on 05 May 2017 (as he did not then play in the

final nor go up for his medal) and Mr Barnett from Spartans told the RFU that the Player was going to respond to the Charge (which presupposes that he was aware of it). Further, the Tribunal understands from the RFU that he has not played rugby since being provisionally suspended.

38. The Tribunal are sympathetic to the Player and in relation to his reported dyslexia have sought to ensure that the RFU did everything that is reasonable to be as certain as possible that he would be fully aware of the process relating to the ADRV, and aware that he would be facing the potential of a four year ban. There is nothing in the ADR that obliges it to do more than it has (indeed, the Tribunal notes that the RFU were prepared to try on many occasions by the normal direct methods (phone, email and mail) and via his club and his (now former) coach.
39. It appears to the Tribunal that the Player has simply buried his head to this issue. Having now learnt that he has been experiencing personal issues, this ADRV may have been dwarfed by those. However, the Tribunal cannot wait indefinitely. The Tribunal determined that Mr Barnett's message that he would respond within seven days is sufficient to assume that he knew what he had to respond to. Unfortunately, he has not responded.
40. He has known not to play any more rugby. He knew not to receive his medal. He is complying with his provisional suspension. The Tribunal has the impression that he is aware of the Charge, he knows he is provisionally suspended and is abiding by that, so will more likely than not be aware of the potential implications of the Charge and the risk of not defending himself against the Charge. Finally, the Charge letter is itself extremely clear, he faces the risk of a four year ban.
41. In summary the Tribunal are satisfied that the Player has been made aware of the Charge and the potential consequences thereof, and has been offered support to understand these.
42. Turning now to those consequences, the Tribunal notes Article 10.2.1 (a) of the ADR stipulates that starting point for the period of Ineligibility for the Presence of non-Specified Substances is four years, *"unless the Athlete...can establish that the ADRV was not intentional."*

43. The consequence of not responding to the Charge is that the Player cannot satisfy this burden, resulting in the inevitable outcome.

THE DECISION

44. For the reasons set out above, the Tribunal makes the following decision:

44.1 An ADRV contrary to Article 21.10. 2 of the WRR has been established;

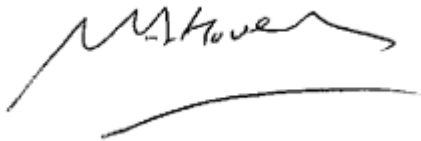
44.2 As Mr Hoare failed to satisfy his burden to establish that the ADRV was unintentional pursuant to Article 21.10.2.1.1 of the WRR, the standard sanction of four years Ineligibility shall apply to Mr Hoare;

44.3 In accordance with Article 21.10.11.3.1, Mr Hoare is entitled to credit for the period of Provisional Suspension, and so the period of Ineligibility shall be deemed to have commenced on 05 May 2017 and shall therefore end at midnight on 04 May 2021;

44.4 As such, Mr Hoare shall not be permitted to participate in any capacity in a competition or other activity (other than Authorised Anti-Doping Education or Rehabilitation programmes) authorised or organised by World Rugby or any Member Union, Association or a Club, Rugby Body or other member organisation of World Rugby or any Association or Member Union, or in Competitions authorised or organised by any professional league or any international- or national-level Event organisation or any elite or national-level sporting activity funded by a governmental agency;

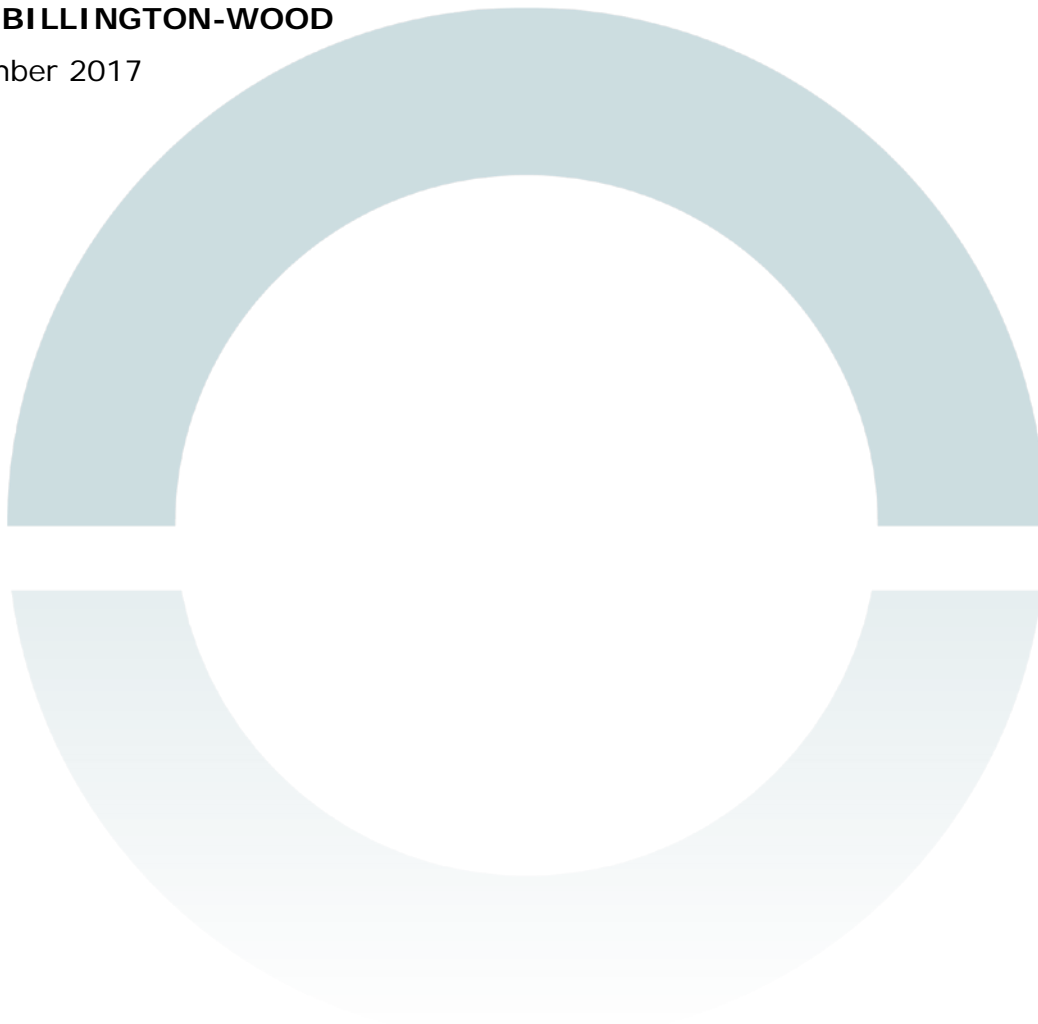
44.5 Pursuant to Article 21.10.8 of the WRR, any result obtained Mr Hoare in the Match and any other results obtained by him in Competitions taking place between the date of Sample Collection and commencement of his Provisional Suspension shall be Disqualified with all resulting Consequences, including forfeiture of any medal, title, points and prizes; and

44.6 In accordance with ADR Article 20.13, the parties may refer this case to Post-Hearing Review within seven days of notification of the written decision.

A handwritten signature in black ink, appearing to read 'M. Howell', with a long horizontal flourish underneath.

MARK HOVELL (CHAIRMAN)
GORDON MCINNES
CAROLE BILLINGTON-WOOD

15 December 2017





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