

**IN THE MATTER OF PROCEEDINGS BROUGHT UNDER THE ANTI-DOPING RULES
OF THE RUGBY FOOTBALL UNION REGULATION 20 AND WORLD RUGBY
REGULATION 21**

Before:

Charles Hollander QC (Chair)

Blondel Thompson

Professor Gordon McInnes

BETWEEN:

Greg Goodfellow

Appellant

-and-

Rugby Football Union

Anti-Doping Organisation

**DECISION OF THE ANTI-DOPING
APPEAL TRIBUNAL**

INTRODUCTION

1. Mr Greg Goodfellow (“the Player”) is a semi-professional Rugby Union player registered with Chinnor RFC. On 19 February 2019, he provided a urine Sample to UK Anti-Doping (“UKAD”) Doping control officers at Chinnor RFC’s training ground. The Sample was tested at the Drug Control Centre at King’s College, London and found to contain Methasterone, a Prohibited Substance (S1.1a Exogenous Anabolic Androgenic Steroids) as defined by the World Anti-Doping Agency Prohibited List 2019. At the time of that test, the Respondent was 33 years of age.
2. The Player was charged with Presence of a Prohibited Substance under Regulation 21.2.1 of the World Rugby Regulations (“WRR”).
3. By a decision dated 11 February 2020, the Anti-Doping Tribunal (“the ADT”) found the Player guilty of a breach of Regulation 21.2.1 and imposed a mandatory sanction of four years Ineligibility. The Player appeals from that decision pursuant to Regulation 21.13.2.2.
4. Mr Max Baines appeared for the RFU and Mr Max Shephard for the Player acting pro bono. We are grateful to them for their helpful submissions.
5. The ADT accepted the Player’s evidence that a supplement called SD Matrix was responsible for the adverse finding. He said that, following a recommendation from a friend, he purchased the product online on 29 December 2018 from a supplier called MFH Performance and that he thought it was something he could legitimately take. The label contains a “Description” which included the following:

“We have increased the strength to 12mg of Superdrol per capsule...(the optimal amount needed by the body to grow in size and strength)... Don’t underestimate Superdrol this is the real deal make sure you stack with a Great OCS¹ and finish with a PCT² to combat unwanted side effects”.
6. The label also included a separate section under the heading “Supplement Facts” which lists the ingredients (per capsule) in two parts. The first part reads:

¹ Short for On Cycle Support

² Post Cycle Therapy

"2a, 17a-dimethyl-4-androstadiene-3-one, 17b-ol 12mg".

7. Beneath this, under the heading "Other ingredients", it lists:

"Brown Rice, Flour, Magnesium, Stearate, Gelatin and Water."

JURISDICTION

8. The jurisdiction of the ADT was not in issue. World Rugby has adopted the World Anti-Doping Code ("the Code") and has implemented the Code by compliant regulations – World Rugby Regulation 21. The RFU has adopted those regulations, subject to Regulation 20.

THE LETTER OF CHARGE

9. The Letter of Charge, dated 29 March 2019, advised the Respondent that the urine Sample that he had provided contained the Prohibited Substance (Methasterone), identified above, and notified him that he was charged with an Anti-Doping Rule Violation ("ADRV") under World Rugby Regulation ("WRR") 21.2.1. That provides as follows:

"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)."*

THE CODE

10. An ADRV is established by "*Presence of a Prohibited Substance or its Metabolites or Markers in a Player's Sample*". WRR 21.2.1.1 further states:

"It is each Player's personal duty to ensure that no Prohibited Substance enters his or her body. Players are responsible for any Prohibited Substances 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)."

11. WRR 21.10.2 provides as follows:

"21.10.2 Ineligibility for Presence, Use or Attempted Use, or Possession of a Prohibited Substance or Prohibited Method

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

21.10.2.1 *The period of Ineligibility shall be four years where:*

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

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

12. It follows, therefore, that there is no discretion other than to impose a period of Ineligibility of four years unless the Player has established that the ADRV was not intentional. If he did not act intentionally, the period of Ineligibility will be two years unless the Player is able to establish that he acted without any Fault or Negligence (which is not his case, but in which event the whole period of Ineligibility would be eliminated) or that he acted without Significant Fault or Negligence. In the event that the Player establishes that he acted without Significant Fault or Negligence, the two year period may further be reduced by up to one half (i.e. to one year but no less).

13. As stated in WRR 21.10.2.1.1, it is for the Player (rather than the RFU) to establish on a balance of probabilities that the ADRV was not intentional. The meaning of the word “*intentional*” is explained in WRR 21.10.2.3:

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

14. WRR 21.10.5 addresses the question of “*No Significant Fault / Negligence*” (it’s not being contended that this is a case of “*No Fault or Negligence*” to which WRR 21.10.4 would otherwise apply). WRR 21.10.5 provides as follows:

“21.10.5 Reduction of the Period of Ineligibility based on No Significant Fault or Negligence

21.10.5.2 *Application of No Significant Fault or Negligence beyond the Application of Regulation 21.10.5.1*

If a Player or other Person establishes in an individual case where Regulation 21.10.5.1 is not applicable that he or she bears No Significant Fault or Negligence, then... the otherwise applicable period of Ineligibility may be reduced based on the Player or other Person’s degree of Fault, but the reduced period of Ineligibility may not be less than one-half of the period of Ineligibility otherwise applicable...”

THE DECISION OF THE ADT

15. The ADT found that the Player had established that he did not take a substance which he actually knew was a Prohibited Substance: [63]. They gave the Player the benefit of the doubt in accepting his evidence as to his professed ignorance about other areas of doping: [34]. However, they found that he had taken a supplement knowing that there was “*a significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk*” in contravention of WR 21.10.2.3: [62]. As they put it “*in short, he acted recklessly.*” Thus he fell within the

second part of the definition of intentional conduct for which there was a mandatory four year ban.

16. Mr Shephard, for the Player, sought to challenge the decision of the ADT on three grounds:
 - a. The ADT erred in their finding as to whether the Player looked at the WADA list of Prohibited Substances;
 - b. The ADT erred in finding that the Player had the requisite intention for a breach of 21.10.2.3;
 - c. The ADT should have found there was No Significant Fault or Negligence.

DISCUSSION

17. We can dismiss two of these three grounds without difficulty.

18. We quote from the findings of the ADT at [57]-[58]:

"...there were two express references on the wording of the bottle to "Superdrol". Those references should, in the view of the Panel, have raised a very large and very bright red flag because even the most cursory internet search in relation to that word would have revealed it to be a Prohibited Steroid, namely Methasterone.

What the Respondent accepts he did not do was either to conduct an internet search in relation to "Superdrol" or one in relation to the formula by putting it into one of the search engines in an ordinary way until after the positive test was returned. If he had done so before he started to take SM Matrix, the word "Superdrol" would straight away have come up as being the equivalent of Methasterone. If he had put the ingredients into (for example) Google, it would probably also have been obvious (or at least easily established) that the chemical formula itself flagged up a connection to Methasterone."

19. Thus the information on the face of the bottle made clear that the ingredients contained Superdrol, and the most straightforward internet search would have indicated that this was Methasterone.

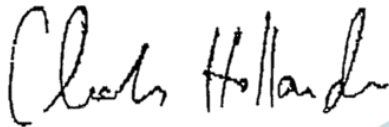
20. Where the information on the bottle itself makes clear that the supplement contains a Prohibited Substance, a case of "No Significant Fault or Negligence" seems unlikely to have any prospect at all of success. This represents a blatant infringement of the requirement of personal responsibility for the substances ingested by the player. In addition the ADT set out various things which could and should have been done by the Player in [61] [64] and [65]. The case was plainly one of a very high degree of Fault.
21. The complaint as to the finding as to whether the Player reviewed the WADA list of Prohibited Substances seems to us equally without merit. Mr Shephard submits that it was inappropriate for the ADT to take refuge in the burden of proof on a key matter on which the Player had given positive evidence. We think it might have been better for the ADT simply to say that they were not satisfied the Player had done this. Of course, the ADT were not obliged to make a finding on every point raised, but we think that excessive reliance on the burden of proof on matters where specific evidence was led before the ADT might be better avoided. But in any event, as we read the decision, we consider that the effect of what they are saying at [42] is that they were not so satisfied. And as the ADT make it clear, even if they had accepted his evidence on this point, it would not have affected their conclusions. Nor can we see how it could have done.
22. That leaves the more difficult issue of intention. The ADT thought, not surprisingly, that there were red flags everywhere in this case. Nor were they willing to accept at face value the Player's evidence as to the searches he claimed to have made. It is apparent from their findings that they had significant reservations about parts of his evidence. They were particularly unhappy as to the Player's refusal to explain the second product that it was apparent he purchased at the same time as the product in issue and regarded that as a failure to give an honest and frank answer to a legitimate question: [52]. There are not many cases before this Tribunal where the warning signs are so strong as here, and it would not have been a surprise if, on the materials before it, the ADT had reached the conclusion that the Player took a Prohibited Substance intentionally.
23. However, the problem facing us is that the ADT found the contrary. They expressly concluded at [63] that he had established that he did not take a substance which he

knew was a Prohibited Substance. So the question for us is whether there was material on which they were entitled to find that he had taken a supplement knowing that there was “*a significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk*” in contravention of WRR 21.10.2.3.

24. We have searched the decision in vain for material to justify this finding, despite the excellent submissions of Mr Baines for RFU in seeking to uphold the ADT’s finding on this point. A person who does no searches at all may be grossly negligent but it does not follow that he knew there was a significant risk that the conduct might constitute or result in an ADRV. A person who is aware that one of two tablets in a bottle contains a steroid knows that if he takes one of the tablets there is a significant risk that his conduct will result in an ADRV. No doubt less vivid examples can be put forward. But it is not correct to treat the second limb of this provision as equating to gross negligence. It is important to have in mind the opening words of 21.10.2.3 “*the term “intentional” is meant to identify those Players who cheat.*” The second limb of the provision is concerned, as with the first, with players who cheat, and is concerned with a different form of cheating.
25. With respect to the ADT, we think the reference to recklessness in [63] may have been confusing. We were told by counsel that during the hearing before the ADT the second limb of 21.10.2.3 was referred to for convenience as recklessness. But recklessness is a term that is often misused, and further means different things in civil and criminal matters. It is preferable in our view to focus on the words of 21.10.2.3 which require *knowledge* that there was a significant risk that the conduct would constitute or result in an ADRV. We do not consider that was made out on the findings of the ADT.
26. In consequence we allow the appeal to that extent and substitute a two year ban for the four year ban imposed by the ADT.

DISPOSITION

27. The Player's period of Ineligibility, which started on 29 March 2019, shall be reduced to a two year period, thus ending on 28 March 2021.

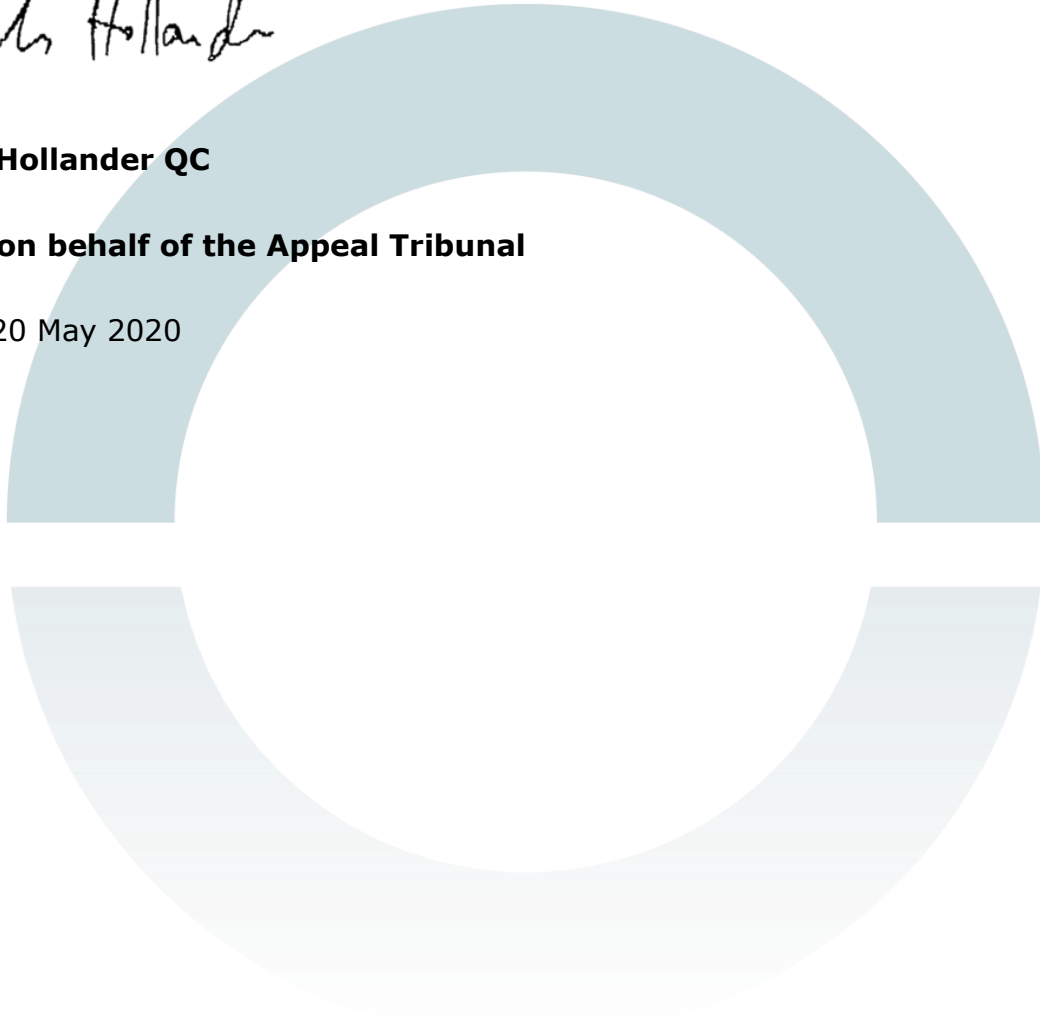


Charles Hollander

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For and on behalf of the Appeal Tribunal

London, 20 May 2020





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