

IN THE MATTER OF PROCEEDINGS BROUGHT UNDER THE RUGBY FOOTBALL UNION REGULATION 20 AND WORLD RUGBY REGULATION 21

Before:

Michelle Duncan (Chair)
Lorraine Johnson
Professor Dorian Haskard

BETWEEN:

RUGBY FOOTBALL UNION

Anti-Doping Organisation

and

RALPH RAINBOW

Respondent

DECISION OF THE NATIONAL ANTI-DOPING PANEL

INTRODUCTION

1. The Applicant, the Rugby Football Union (“**RFU**”) is the National Governing Body of Rugby Union in England.
2. The Respondent, Mr Rainbow (the “**Player**”) is an amateur rugby union player from England registered with the RFU. As a licensed member of the RFU and a participant in competitions and other activities organised, convened, or authorised by the RFU he was

at all times bound by, and required to comply with, the Anti-Doping Regulations of the RFU (“**ADR**”).

3. On the 12 July 2018, a package addressed to the Player and containing a variety of paraphernalia linked to Human Growth Hormone was seized by the UK Border Force.
4. Human Growth Hormone is a Prohibited Substance in accordance with the World Anti-Doping Agency (“**WADA**”) Prohibited List 2018.
5. On 16 January 2020, in an interview with UK Anti-Doping (“**UKAD**”) investigators, the Player admitted to attempting to purchase Human Growth Hormone.
6. By letter dated 21 September 2020, UKAD informed the RFU that, following their review of the evidence provided to them, they had concluded that the Player had a case to answer for breach of World Rugby Regulations Anti-Doping Rule Violations 21.2.2 and 21.2.6 (the “**ADRV**”). Subsequently, by letter dated 30 September 2020, the RFU charged the Player with the ADRV and provisionally suspended him as from that date (the “**Charge Letter**”).
7. On 18 November 2020 the RFU contacted Sport Resolutions requesting that the National Anti-Doping Panel (“**NADP**”) convene an independent Panel to determine the charges in this matter.
8. Michelle Duncan was appointed as Chair of the Panel on 24 November 2020. On 14 December 2020, the Chair agreed that the matter would be determined by the Panel without a hearing. On 08 January 2021, Professor Dorian Haskard and Ms Lorraine Johnson were appointed as Panel members.

JURISDICTION

9. The RFU is the National Governing Body of rugby union in England. As a Member Union of World Rugby (the International Federation for the sport of rugby union), the RFU, via part 20 of its Regulations (the “**RFU Regulations**”), has adopted World Rugby Regulation 21 (“**WR Regulation 21**”) as its own Anti-Doping Regulations.

10. As a licensed competitor who is registered with the RFU and a participant in competitions and other activities organised, convened, authorised or recognised by the RFU, the Player was at all times bound by and required to comply with the RFU Regulations, including the ADR.
11. UKAD are responsible for reviewing any potential ADRV and confirming whether a player has a case to answer (Regulation 20.13.3 of the RFU Regulations). UKAD notified the RFU on 30 September 2020 that the Player had a case to answer following which the RFU were responsible for bringing the charges, prosecuting this matter and instructing the NADP to appoint an independent Panel to hear this case (Regulation 20.13.4).
12. A player against whom an ADRV is asserted is deemed to have admitted the violation and to have waived his right to an oral hearing if he does not dispute the assertion within 14 days of having received notice (WR Regulation 21.7.10.2) of the charges against him. Further, in circumstances where a player against whom an ADRV is asserted has waived his right to a hearing, the independent panel may be authorised to review the matter on the papers and impose consequences as appropriate (WR Regulation 21.7.10).
13. The Player did not respond to the Charge Letter within the specified 14 day period. The RFU therefore sent further letters to the Player on 16 October and 10 November 2020 in which it made clear that if the Player did not engage in the process, the ADRV would be progressed in his absence. In addition to these letters, Stephen Watkins, the RFU Anti-Doping & Illicit Drugs Programme Manager, attempted to contact the Player on a number of occasions. When the Player did communicate with the RFU on 18 November 2020 and again on 23 November 2020 he stated he did not wish to contest the charges.
14. For the above reasons, it follows that the Panel has jurisdiction to determine this matter and to do so without a hearing.

BACKGROUND

15. On 12 July 2018, the UK Border Force seized a parcel addressed to the Player at his home address containing 11x flat cardboard box packaging labelled “Glotropin-8IU recombinant Human Growth Hormone for Injection,” 11x sheets of decals/stickers

labelled as Human Growth Hormone for Injection and 20 glass vials of a clear liquid substance labelled “global anabolic.org.”

16. On 05 September 2018, the package was handed to UKAD by the UK Border Force.
17. On 20 November 2019, the contents of the package were forensically analysed for illegal substances and found to contain none.
18. On 28 November 2019, UKAD wrote to the Player requesting that he attend an interview with UKAD investigators.
19. On 16 January 2020, the Player was interviewed by UKAD investigators. During that interview, the Player admitted to attempting to purchase Human Growth Hormone via a friend. He stated that he had given his friend, whose name he would not disclose, £200 to purchase Human Growth Hormone on his behalf. He also stated that he had provided his home address to his friend and that he had only intended to purchase Human Growth Hormone for his own use.
20. On 21 September 2020, UKAD informed the RFU that, following their review of the evidence provided to them they had concluded that the Player had a case to answer as regards the ADRV.
21. The Charge Letter was sent to the Player on 30 September 2020.
22. The Player did not respond to the Charge Letter within the specified 14 day period and therefore on 16 October 2020 and 10 November 2020, chasing letters were sent by the RFU to the Player.
23. On 18 November 2020, Mr Watkins of the RFU spoke with the Player to discuss the matter. During that conversation, the Player informed Mr Watkins that he did not wish to contest the charges against him.
24. On 23 November 2020, the Player responded to the charges by email, writing, “*i do not wish to contest the charges...*”

RFU'S SUBMISSIONS

25. The RFU alleges Possession by Purchase, as defined by WR Regulation 21, "*The Act of purchasing a Prohibited Substance alone constitutes Possession, even where, for example, the product does not arrive, is received by someone else, or is sent to a third-party address.*"

- i. In accordance with the aforementioned Regulation, the RFU submits that the Player intended to exercise control over a Prohibited Substance by (i) paying a third party to order the substance on his behalf, and (ii) directing that it be delivered to an address over which he had control.
- ii. The RFU asserts that paying a third party to order a Prohibited Substance on his behalf constitutes Possession by Purchase by the Player.
- iii. The RFU further submits that the Player's admission in interview that he paid his friend to acquire the Human Growth Hormone, a Prohibited Substance, constitutes sufficient evidence of purchase to make out the offence, irrespective of whether the Player ever physically took possession of the substance.

26. The RFU further alleges Use or Attempted Use by a Player of a Prohibited Substance or a Prohibited Method.

- i. The RFU submits that the Player admitted, in interview, that he attempted to purchase a Prohibited Substance to enable himself to continue playing rugby, and that this constitutes sufficient evidence to make out the offence.

27. The RFU submits that the Player has not disputed the charges, and consequently pursuant to WR Regulation 21.7.10.1, the Player can be considered to have "*admitted the violations.*"

- i. The RFU submits that there is no evidential basis that the violation was not intentional, and as such the starting point for sanctioning is a period of Ineligibility of four years.

- ii. The RFU submits that there is no basis for a reduction of the period of Ineligibility pursuant to WR Regulation 21.10.5.2 due to the Player offering no such evidence.

28. WR Regulation 21.10.11 provides that the standard position regarding the starting period for a period of Ineligibility is that *“the period of Ineligibility shall start on the date of the final hearing decision providing for Ineligibility or, if the hearing is waived or there is no hearing, on the date Ineligibility is accepted or otherwise imposed.”* However, WR Regulation 21.10.11.3 provides that a Player shall receive credit for the period of any Provisional Suspension. As such, the RFU submits that the Player’s period of Ineligibility should start from the date of his Provisional Suspension, namely 30 September 2020.

RESPONDENT’S SUBMISSIONS

29. No submissions were received from the Player who, as noted above, has indicated that he does not wish to contest the charges.

The PANEL’S FINDINGS

30. The Panel is satisfied that the Player committed an ADRV. As the Player has not disputed the charges, he is deemed, in pursuant of WR Regulation 21.7.10.1, to have admitted the ADRV and to have waived his right to an oral hearing.

31. The Panel finds that whilst the Player never physically came into possession of a Prohibited Substance, the evidence submitted by the RFU is sufficient to conclude that, by asking a third party to order the Prohibited Substance on his behalf to an address over which he maintained control, the Player intended to exercise control over a Prohibited Substance thus constituting effective Possession by Purchase as regards WR Regulation 21.2.6. Furthermore, the evidence submitted confirms the Player made the purchase intending to use the Prohibited Substance to enable him to continue playing rugby, thereby constituting a further ADRV in pursuant of WR Regulation 21.2.2.

32. The Panel also finds that the violation of WR Regulation 21.2.6 was intentional. In this regard, the Panel notes, it is the Player who has the burden of proving that the ADRV was not intentional or was justified as defined by WR Regulation 21.2.6.2. As the Player has made no submissions to this effect and has not contested the charges against him, the Player has failed to discharge this burden. Accordingly, the Panel finds that the period of Ineligibility as regards the Possession by Purchase of a Prohibited Substance is four years.

33. As regards the violation of WR Regulation 21.2.2, it is again the Player who has the burden of proving the ADRV was not intentional. As the Player has made no submissions to this effect and has not contested the charges against him, the Player has failed to discharge this burden and therefore the period of Ineligibility for Use of a Prohibited Substance is four years.

34. There is no basis for any reduction of the period of Ineligibility for No Fault or Negligence or No Significant Fault or Negligence.

THE DECISION

35. For the reasons set out above, the Panel makes the following decision:

- i. An ADRV contrary to WR Regulations 21.2.2 and 21.6.2 has been established;
- ii. As the Player has failed to satisfy his burden to establish that the ADRV as regards to the Prohibited Substance – Human Growth Hormone- was not intentional pursuant to WR Regulation 21.10.2.1.2 the sanction of four years Ineligibility shall apply to Mr Rainbow;
- iii. As the Letter of Charge for both sanctions was issued on 30 September 2020, the sanctions will be imposed simultaneously.
- iv. The period of Ineligibility will start on 30 September 2020, the date on which Mr Rainbow was provisionally suspended, and shall therefore end at midnight on 29 September 2024.

- v. As such, Mr Rainbow shall not be permitted to participate in any capacity in a competition or other activity (other than Authorised Anti-Doping Education or Rehabilitation programmes) organised, convened, or authorised by the RFU or anybody that is a member of, affiliated to, or licenced by the RFU;
- vi. In accordance with RFU Regulation 20.14.1, the Parties have a right of appeal to the NADP Appeal Panel, located at Sport Resolutions, 1 Salisbury Square, London, EC4Y 8AE (resolve@sportresolutions.co.uk).
- vii. Pursuant Article 13.5 of the NADP Procedural Rules, any party who wishes to appeal must lodge a Notice of Appeal with the NADP Secretariat within 21 days of receipt of this decision.



Michelle Duncan, Chair

For and on behalf of the Panel

London, UK

11 February 2021

1 Salisbury Square London EC4Y 8AE resolve@sportresolutions.co.uk 020 7036 1966

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