

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

Before:

Mark Hovell (Chairman)
Blondel Thompson
Terry Crystal

BETWEEN:

RUGBY FOOTBALL UNION (RFU)

Anti-Doping Organisation

and

ARRAN LEE PERRY

Respondent

DECISION OF THE NATIONAL ANTI-DOPING PANEL

I. Introduction

- 1 The Appellant (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 Arran Perry (the “Player” or the “Respondent”) is registered as a player with Leighton Buzzard RFC (the “Club”) who participated in the RFU Midlands 2 East (South) League in the 2019 / 2020 season under the auspices of the RFU. The Player was at all times subject to the ADR.

5 On 28 October 2019, pursuant to the ADR the Player provided a sample of urine, at home, which was subsequently analysed for the purpose of checking for any Prohibited Substances which would constitute an Anti-Doping Rule Violation (“ADRV”).

6 On 20 December 2019, the RFU sent Mr Perry a letter informing him that the Sample had returned an Adverse Analytical Finding (“AAF”) for Oxandrolone and 3 of its metabolites. Oxandrolone is a non-specified substance on the World Anti-Doping Agency (“WADA”) Prohibited List 2019.

7 The Presence of these Prohibited Substances in the Player’s urine sample constitutes a violation of the ADR. The RFU letter dated 20 December 2019 informed Mr Perry that: (i) he was being charged with a breach of Article 21.2.1 of the WRR “Presence of a Prohibited Substance or its Metabolites or Markers in a Player’s Sample”; and (ii) he was provisionally suspended pursuant to Article 20.13.2 of the ADR and Article 21.7.9 of the WRR from the date of the letter.

8 The RFU understand this to be the Player’s first ADRV and that the Player did not have a Therapeutic Use Exemption (“TUE”) to justify the presence of any of the Prohibited Substances in his Sample.

9 The Player responded to the Charge on 3 and 7 March 2020, acknowledging the AAF, but wishing to contest the period of Ineligibility. The Player waived his right to have the B Sample tested.

- 10 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 20.13.4 of the ADR, elected to refer the case at hand to the National Anti-Doping Panel (“NADP”) for resolution, on 13 March 2020.
- 11 On 20 March 2020, Mark Hovell was appointed as the Chairman of the Panel to deal with the matter at hand.
- 12 Following directions issued by the Chairman on 16 June 2020, the matter was due to be heard on 28 August 2020 by video conferencing.
- 13 In accordance with the directions, on 13 July 2020 the Player submitted his position statement on the ADRV along with his witness statement, dated 15 July 2020. Further, on 20 and 21 August 2020, the Player and the RFU, respectfully, submitted their skeleton arguments and authorities in advance of the hearing.
- 14 On 3 August 2020, the Panel was duly completed with the appointments of Blondel Thompson and Terry Crystal.
- 15 On 26 August 2020, the Player withdrew his challenge to the RFU’s Charge acknowledging the four year sanction sought by the RFU, but submitting that in accordance with Article 21.10.11.3.1 of the WRR, he is entitled to credit for the period of Provisional Suspension, and so any period of Ineligibility should be deemed to have commenced on 20 December 2019.
- 16 On 27 August 2020, the RFU agreed that the hearing should be cancelled and that the Panel should consider the matter on the papers.

II. Jurisdiction

- 17 Jurisdiction is not in dispute in this case. 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 cases. By Article 20.6 of the ADR, all RFU registered players are bound by those anti-doping provisions. Mr Perry is registered with the Club as a player and is therefore under the jurisdiction of the RFU.

18 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 20.13.4 of the ADR, any Charge against a player by the RFU shall be determined by the NADP.

19 Accordingly, and it is not denied by him, by virtue of the above, the Player was bound by the ADR.

20 For all of the above reasons, it follows that the Panel therefore has jurisdiction to determine this matter.

III. The Parties' positions

21 The Player stated that he did not think that he would be tested at his level of rugby and that he did not know he was taking a Prohibited Substance. He admitted that he had bought supplements from a nutrition shop called “Body Expert” in Northampton. These supplements were called “RAD 140” and “MK-677”. He took the supplements for 8 weeks and was tested at the end of that period.

22 Despite stating that he had been struggling with injuries, his position was that there was no intention to cheat or gain a sporting advantage and that the starting point for any sanction should be two years in accordance with Article 21.10.2.2 of the WRR. He should then be able to rely upon Article 21.10.5.2 of the WRR and have the Panel consider his position relating No Significant Fault or Negligence. Further, he submitted that he had made a prompt admission for the purposes of Article 21.10.6.3 of the WRR.

23 The RFU disputed the above. Before the Panel could find that Mr Perry had not intentionally cheated, as defined by Article 21 of the WRR, he would have to discharge the burden on him of proving how the Prohibited Substances entered his system. Concrete evidence is required to establish a cause of ingestion. Mere hypothesis is

insufficient. The RFU submitted that Mr Perry had failed to discharge that burden, so the period of Ineligibility ought to be four years.

- 24 To support its position, the RFU filed a statement, dated 29 July 2020, of Stephen Watkins, the RFU's Anti-Doping and Illicit Drugs Programme Manager. Mr Watkins set out the results of straightforward internet enquiries into both these products. It is clear that the website of The Warrior Project, who manufacture both, markets them specifically as Selective Androgen Receptor Modulators ("SARM") which appear on the WADA Prohibited List at S1.2. A simple check against that list would have shown that this was a product to be avoided and that the risk of an ADRV was very real. Mr Watkins also googled the product and the first website advertising RAD 140 for sale clearly stated that it was unsuitable for competitive athletes who are "subject to testing for performance enhancing substances". In relation to MK-477, the first website that came up after that product was googled showed that it was being marketed as a SARM. At the very least, the Player ought to have known "*that there was a significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk*".
- 25 Mr Perry subsequently acknowledged the contents of Mr Watkins statement and acknowledged that those two supplements were unlikely to be the source of the Prohibited Substance which was detected in his system, so he advanced an alternative explanation. During early summer 2019 he took another supplement called "Anavar". He bought this from a friend with whom he trained at the gym. He understood that the supplement would assist him with improving his physique. He bought it in anticipation of going on holiday. Having researched Anavar and its constituents, Mr Perry accepts that it was the most likely source of the prohibited substance.
- 26 Before the proposed hearing, he withdrew his challenge under Article 21.10.2.1 of the WRR and no longer sought to convince the Panel that the ADRV was unintentional.
- 27 With regard to any prompt admission, the RFU took the position that the provision in the ADR merely provides the mechanism for such a reduction by agreement between the parties referred to. In the case at hand, there was no such agreement from the RFU or WADA and there was no admission – the Player had chosen to challenge the matter

before the Panel. For the same reason, he cannot benefit from Article 10.8.1 of the 2021 Code, even if it were in force.

28 As regards No Significant Fault or Negligence, the RFU argued that in order to benefit from a reduction in any period of Ineligibility, the Player must first establish how the Prohibited Substance entered his system. Mr Perry has not advanced any objective evidence to support his account. He could have requested information from the Warrior Project or had the supplements tested for contamination: he did neither. The RFU's primary position, therefore, was that Mr Perry cannot have met the evidential burden of establishing how the Prohibited Substances came to be in his system and therefore a reduction for No Significant Fault or Negligence is not available.

29 In conclusion, the RFU submitted that the appropriate sanction should be a four year period of Ineligibility, however, it had no issue that the period of Provisional Suspension ought to count towards the total period of suspension.

IV. The Decision

30 The Panel note that Article 21.10.2 of the WRR provides:

"The period of Ineligibility shall be four years where:

21.10.2.1 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."

31 Article 21.10.2.3 of the WRR contains the following regarding the meaning of intentional:

"As used in Regulations 21.10.2 and 21.10.3, 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 rule 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...”

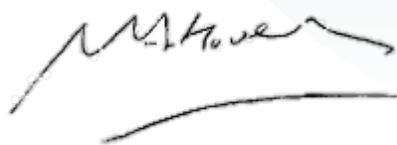
- 32 The Panel noted the position taken in the various authorities provided by the RFU (such as UKAD v Buttifant (SR/NADP/508/2016), WADA v IWF (CAS 2016/A/4377) and CAS 99/A/234 & 235) that the source of ingestion must in the vast majority of cases be shown. In the case at hand, the Panel understand the player’s change of tact prior to hearing, as it is clear to them that he was a long way short of meeting his burden to establish how the Prohibited Substances had entered his system; and even then, if it had of been one or more of the three products he mentioned, he clearly did no research into those products at all (had he done the most basic searches he would have seen the risks involved with some of them). He manifestly disregarded the risks he faced.
- 33 As such, the Panel notes that pursuant to Article 21.10.2.1 of the WRR, the period of Ineligibility shall be four years.
- 34 The Panel also noted the submissions of the RFU around No Significant Fault or Negligence, prompt admission and the availability of the 2021 Code. With the Player being unable to meet his burden of proof regarding the method of ingestion, yet still looking, until the very last minute to challenge the Charge, but without any agreement from the RFU or WADA in relation to a prompt admission, all three potential claims under the ADR or the 2021 Code must fail too.
- 35 The Panel understands why the Player eventually conceded to the full four year period of Ineligibility. Finally, the Panel noted the agreement between the parties concerning the start date for such period of Ineligibility.
- 36 For the reasons set out above, the Panel makes the following decision:
- 36.1 An ADRV contrary to Article 21.10. 2 of the WRR has been established;
 - 36.2 The standard sanction of four years Ineligibility shall apply to Mr Perry;
 - 36.3 In accordance with Article 21.10.11.3.1 of the WRR, Mr Perry is entitled to credit for the period of Provisional Suspension, and so the period of Ineligibility

shall be deemed to have commenced on 20 December 2019 and shall therefore end at midnight on 19 December 2023;

36.4 As such, Mr Perry 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 any body that is a member of, affiliated to, or licenced by the RFU;

36.5 Pursuant to Article 21.10.8 of the WRR, any result obtained Mr Perry in any 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

36.6 In accordance with Article 20.14 of the ADR, Mr Perry has a right of appeal to the NADP Appeal Tribunal. In accordance with Article 13.5 of the 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.



Mark Hovell, Chairman

For and on behalf of the Panel

10 September 2020

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