

IN THE MATTER OF RUGBY FOOTBALL UNION DISCIPLINARY
PROCEEDINGS PURSUANT TO RFU REGULATION 20 AND
INTERNATIONAL RUGBY BOARD REGULATION 21 (ADOPTING THE
WORLD ANTI-DOPING CODE)

BETWEEN

THE RUGBY FOOTBALL UNION

-and-

JAMES COMBEN

Heard in the Bloomsbury Holiday Inn on 4 February 2013 and by telephone conference on 27 March 2013

The Panel

His Honour Judge Jeff Blackett (Chairman)
Mr Christopher Quinlan QC
Dr Julian Morris

Appearances and Attendances

For the Rugby Football Union

Kate Gallafent (Counsel)
Polly Handford (Deputy Head of Legal, RFU)*
Stephen Watkins (Anti-Doping & Illicit Drugs Programme Manager, RFU)
Richard Nunn (Anti-Doping & Illicit Drugs Programme Officer, RFU)
Charlotte Mitchell Dunn (Discipline Case Officer)

Secretary to the Panel

Rebecca Morgan (Judicial Secretary)**
Samantha Dimmock (Legal Secretary)*

For James Comben

Daniel Saoul (Counsel)
Chris Lloyd (London Wasps)
Mike Paulson (Henley Hawks RFC)

Observing

Tony Jackson (UK Anti-Doping Results Process Officer)

Daniel White (Citadel Chambers)

**Attended only oral hearing on 4 February

*Attended only telephone conference

The Panel has determined that: James Comben is ineligible to take part in any capacity in the game of Rugby Football Union for a period of six months from 21 December 2012 to 20 June 2013. He may participate again on 21 June 2013.

DECISION OF THE DISCIPLINARY PANEL

1. Introduction
2. The Player is 24 years old and is registered to play rugby for Henley Hawks RFC (his main club).
3. On 26 November 2012 the Player represented London Wasps 'A' against Exeter Braves. After the match he was selected for a doping test. He was informed by the RFU by letter dated 21 December 2012 that his urine from that test tested positive for Methylhexaneamine (MHA) a specified stimulant, and that he was provisionally suspended from all rugby on that date. He was asked whether he would like his B sample to be tested, but he subsequently indicated that he admitted a doping offence and stated that he did not wish that test to be carried out.
4. The Panel was convened on 4 February 2013 to determine the appropriate sanction to be applied to the Player. It was adjourned so that further evidence could be obtained and reconvened by telephone conference on 14 March 2013.

Regulatory Scheme

5. Use of a Prohibited Substance is prohibited by IRB Regulation 21.2.2
6. IRB Regulation 21.22.1 provides that the period of ineligibility to be imposed for a violation of Regulation 21.2.2 shall be two years for a first violation, unless one of the conditions for eliminating or reducing the period of ineligibility, including those set out in Regulation 21.22.3 are met.
7. IRB Regulation 21.22.3 states that:
 - i. *“Where a Player or other Person can establish how a Specified Substance entered his body or came into his Possession and that such Specified Substance was not intended to enhance the Player’s sport performance or mask the Use of a performance-enhancing substance, the period of Ineligibility found in Regulation 21.22.1 shall be replaced with the following:*
 - ii. *First violation: At a minimum, a reprimand and no period of Ineligibility; and at a maximum 2 years.*
 - iii. *To justify any elimination or reduction from the maximum period of Ineligibility set out above, the Player or other Person must produce corroborating evidence in addition to his word which establishes to the comfortable satisfaction of the Judicial Committee the absence of intent to enhance sport performance*

of mask the Use of a performance-enhancing substance. The Player's or other Person's degree of fault shall be the criterion considered in assessing any reduction of the period of Ineligibility.

The Facts

8. On 26 November 2012 the Player represented London Wasps 'A' against Exeter Braves. He said that he ingested a dose of Oxylean 1-3d at about 8am on the morning of the match, but at the time he did not know he was to play that evening. He was not asked to play until about midday. After the match he was selected to provide a sample of urine for testing. He declared that during the previous 7 days he had taken 100 ml of Mercaptopurine per day. He did not disclose that he had taken Oxylean 1-3d nor any other product containing MHA, a prohibited stimulant which was subsequently identified in his urine. On 30 November 2012 he sent an email to Christopher Lloyd (London Wasps) in which he said: *"I'm writing to make you aware that after my drugs test following Monday night's 'A' league match, I failed to disclose that I had previously taken the product Oxylean 1-3d. I had disclosed the medication I was on for my colitis, however, was unaware due to this being my first drugs tests as I am usually a National 2 (tier 4) player and am not accustomed to the procedures, that I should have disclosed any other substance I had taken within the 7-day period."* He apologised for his lack of knowledge and wanted to declare that substance. The test sample was subsequently analysed and disclosed the presence of MHA.
9. The Player was informed of the discovery by letter from the RFU dated 21 December 2012. On 8 January 2013 he responded to the RFU by letter in which he admitted that he had used a product called Oxylean 1-3d which he described as a fat burner. He said that he had taken it intermittently for about three weeks before the doping test. He took some at about 8 am on 26 November before he knew he was playing rugby that evening. He received a telephone call from Chris Lloyd at about midday that he was needed to play that evening.
10. He said that he used Oxylean 1-3d to control weight gain because he is an aspiring model for the clothing chain Jack Wills.. He spoke with a friend who had modelled in the past and who recommend Oxylean as a good fat burning supplement. He then ordered Oxylean 1-3d on line. He said he took it out of vanity but subsequently realised that he was naïve and stupid. He asserted that there was never any intention to improve his performance on the rugby field and it was taken in total ignorance as to the ingredients. He said that following the test he carried out some research on the internet into supplements he had been taking (including creatine and whey protein – neither of which he has recorded on the doping control form). He discovered that Oxylean 1-3d may have contained a banned stimulant. He asserted that this was not indicated on the packaging or the container in which the pills had been sent. As a precaution he contacted his club coach to make him aware that he had taken that product.

11. The Player said that he plays rugby at National Division 2 (Tier 4) where all the coaching and administrative staff are volunteers. He said as a result he has never received any drug awareness education and was therefore unaware of the procedures and protocols associated with prohibited substances and subsequent testing.
12. At the hearing the Player produced the container which included the tablets he had been taking. It did not list any ingredient which may have included MHA. The Player had not tested the contents of the tablets but asserted that could be the only source of the MHA discovered in his urine. At this stage the panel adjourned and directed the RFU to test the tablets. On 8 March the RFU received a report from HFL Sport Science in the following terms:

“On 26 February 2013, a sample of an encapsulated product was received at HFL Sport Science Ltd on behalf of the RFU for analysis of the compound methylhexanamine (also known as 1,3-dimethylamylamine and DMAA). The sample was received in a metal container (clearly detailing the product name Oxylean 1-3D), with no visible seals. No batch number or expiry date was evident on the container. The sample consisted of a number of black and red capsules. Upon arrival at the laboratory the sample was registered under the laboratory reference number 602805.

Due to the possible presence of methylhexanamine within the sample, a pre-screen was performed at an increased dilution in order to minimise the risk of laboratory wide contamination. This was performed by dissolving one of the capsules of the Oxylean 1-3D product into 100ml of solvent from which an aliquot was taken and analysed using LC-MS/MS.

Result: *The above procedure indicated the presence of methylhexanamine.”*

13. Chris Lloyd of London Wasps wrote an email to the Panel in which he said that the Player had turned down an opportunity to join the Wasps Academy and he only played for the A team when the club needed him – effectively to make up numbers. He had also advised him that he needed to increase his weight (not reduce it) if he wanted to play at a higher level. Finally he said that one of the Player’s strengths is his mental ability and he would not need this type of stimulant to make him play better.

Submissions on behalf of the RFU

14. Miss Gallafent said that in light of the report from HFL the RFU accepts that it is more likely than not that the tablets produced by the Player, which he says he ingested at 8 am on the morning of the match, were the source of the MHA which entered his body. She reminded the panel that for the sanction to be reduced from the mandatory period of ineligibility of two years the Player must provide corroborating evidence in addition to his word to establish to the

panel's comfortable satisfaction that the use of the MHA was not intended to enhance the Player's sport performance.

15. Miss Gallafent submitted that the test results by themselves do not provide corroboration because there is no indication of the level of MHA found. She submitted that the email from Mr Lloyd did not take the case any further. She also referred the Panel to the case of UKAD and Ryan Llewellyn (14 February 2013) which determined that lack of knowledge of a specified substance in a product taken by an athlete is not a relevant consideration.
16. The RFU made no positive submission on sanction. They accept that the Player is young and inexperienced and that the absence of any induction into anti-doping were relevant considerations. However, they highlighted the Player's own admission that he failed to undertake any or any sufficient research into the tablets before he took them.

Submissions on behalf of the Player

17. Mr Saoul said that the Player had not taken the Oxylean 1-3d for any rugby purpose at all but to reduce his weight for modelling purposes. In fact the loss of weight was not beneficial to rugby performance, indeed quite the reverse. Additionally, if Oxylean 1 – 3d was a stimulant, the Player did not need the stimulant effect of the product because, as Mr Lloyd said, he is sharp and skilful. However, it is not clear that the product was a stimulant because all of its marketing related to weight loss. If the Player had wanted the benefits of a stimulant he would have used a product advertised as a stimulant. Finally, in opening submissions, Mr Saoul said that the Player volunteered he had taken the substance before the test results were known and this provides extrinsic evidence to support the view that the Player neither intended to enhance sport performance nor obtain any stimulant effect.
18. Mr Saoul submitted two journal articles¹ which discussed the effect of MHA and levels in urine during specified periods from time of ingestion. He suggested that this provided some assistance in that it was possible to extrapolate that the level of MHA contained in the Player's urine was consistent with his account about timing of ingestion.
19. Mr Saoul submitted that the decision in Llewellyn is wrong because although lack of knowledge cannot be a defence it must be relevant to sanction. He urged the Panel to disregard the case.
20. In terms of sanction, Mr Saoul submitted that since the Player had not known that he ingested a prohibited substance, and had not sought to gain any advantage, the Panel should sanction on the basis only that he should have known better. He said any criticism is therefore minimal. When he first took the product he looked at the ingredients and satisfied himself that none were illegal. The fact that MHA was not listed on the packaging must be a

¹ "Studies of methylhexaneamine in supplements and geranium oil" (Lasi, Hasich, Kaylauskas, Goebel) – Wiley Online Library 6 Dec 11; and "Detection in urine of 4-methyl-2-hexaneamine, a doping agent" (Perrenoud, Saugy, Saudan) – Journal of Chromatography B.877 (2009)

mitigating factor. He referred to a series of cases² involving MHA where sanctions were periods of ineligibility between 6 weeks and 6 months and sought to draw parallels in the various factual circumstances. He suggested that this Player would be at the lower end of those cases and suggested that an appropriate period of ineligibility would be in the order of 3 months.

Decision

21. The Player is guilty of a doping violation for which the period of ineligibility may be reduced from two years if he can prove how the substance got into his body and that he did not intend it to enhance his sporting performance. The fact that when he took the product he did not know it contained MHA does not provide him with any defence but it clearly is a factor which should be taken into account when considering sanction.
22. The Panel is comfortably satisfied that Oxylean 1-3d tablets which the Player bought on line contain MHA and that this was the source of the MHA present in his urine at the doping test. The Panel accept the player's evidence that he ingested that substance a number of times in the three weeks before the doping test, that being corroborated by a statement from his mother, and at about 8 am on 26 November when he played for Wasps 'A' and was subsequently tested. His assertion that the tablets he exhibited at his hearing contained MHA was independently corroborated by the report from HFL Sport Science. We assessed the Player as honest and open and we believed his account of the amount and timing of Oxylean 1-3d he used.
23. The Panel is also comfortably satisfied that the Player did not intend to enhance his sporting performance. We accept his own word on this matter but before we can reduce the minimum sanction the Player must produce corroborating evidence. We find that evidence in the following:
 - a) Mr Lloyd's evidence was that the Player was not seeking a professional contract with Wasps Academy and that he had advised him that if he wanted to play at a higher level he would have to put on weight not lose it; and
 - b) The fact that he ingested the tablets at a time when he did not expect to play rugby and could not, therefore, have taken them to gain benefit from their stimulant effect.
24. The Panel is, therefore, satisfied that the period of Ineligibility can be reduced from two years under the provisions of Regulation 21.22.3. That Regulation specifies that the Player's degree of fault shall be the criterion considered in assessing any reduction of the period of Ineligibility. The Panel considered that the Player had made three errors which demonstrate his fault:

² Dooler (4 months), Wallader (4), Mercer (3), Steinkamp (3), Berti (6 weeks), Goosen (3 months), Touret (6 months), Brightwater Wharf (6)

- a) He failed to undertake sufficient research about the ingredients of Oxylean 1-3d. Had he done so he would have noted that the supplement contains geranium which is a source of MHA. Indeed he discovered this when he undertook research immediately after the doping test;
 - b) He failed to check whether he should use Oxylean 1-3d with the medical staff at either his own club or Wasps;
 - c) He failed to tell the doping control officer when he provided a sample of urine that he had taken Oxylean 1-3d during the weeks preceding, and on the day of, the match. We were not entirely convinced about his reasons for leaving this supplement off the list of substances taken because he was subsequently sufficiently concerned that he researched the product and made a late declaration before his sample was tested.
25. The Panel's attention was drawn to two UKAD cases in which the period of ineligibility was reduced in similar circumstances to these where a substance called Jack 3D which also contains MHA was used (*Matthew Duckworth – 12 October 2010*; *Anthony Dodson – 30 May 2012*). *Duckworth* also involved the use of Jack 3D by an athlete wishing to aid his training regime. That case cited a further decision of *Wallader* in which the Tribunal stated:
- “Any athlete who takes a supplement without first taking advice from a qualified medical practitioner with expertise in doping control places herself at real risk of committing a rule violation. Only in the most exceptional cases could such an athlete expect to escape a substantial sanction if a Prohibited Substance is then detected.”*
26. The Panel adopted this principle. While we were impressed by the honesty of the Player, for which he deserves credit, we do not give him any credit for his purported naivety and lack of drug awareness. There has been an enormous amount of publicity about doping in recent years and a player who plays in the RFU National Leagues or in the 'A' team of a professional Premiership side must know that he is responsible for all substances ingested. We must also be concerned about the wider responsibility to deter drug taking in sport which requires consistent and substantial sanctions. We have balanced the individual circumstances of the Player with those wider concerns, and noted the lengths of sanctions in the similar cases of *Duckworth* and *Dodson* as well as those referred to by Mr Saoul³. Each case is fact specific and other similar decisions may be distinguished on their particular facts. In this case we determine that the appropriate sanction is a period of ineligibility of 6 months, that sanction reflecting the need for deterrence and to reflect the seriousness of the Player's three failures.
27. The Player is, therefore, suspended from 21 December 2012, the date of the provisional suspension, until 20 June 2013. He may participate again on 21 June 2013.

³ See Footnote 2

Status during Ineligibility

28. The meaning of Ineligibility is set out in IRB Regulation 21.22.13A(i) which provides:

“No Player or Person who has been declared Ineligible may, during the period of Ineligibility, participate in any capacity in a Match and/or Tournament (international or otherwise) or activity (other than authorised anti-doping education or rehabilitation programmes) authorised or organised by the Board of any member Union or Tournament Organiser. Such participation includes but is not limited to coaching, officiating, selection, team management, administration or promotion of the Game, playing, training as part of a team or squad, or involvement in the Game in any other capacity in any Union in membership of the IRB.”

Appeal

29. The parties are reminded of their right of appeal under RFU Regulation 20.11

Costs

30. There were no applications for costs and we make no order.

HHJ Jeff Blackett
9 April 2013