

RUGBY FOOTBALL UNION

**IN THE MATTER OF RUGBY FOOTBALL UNION REGULATION 20 AND INTERNATIONAL
RUGBY BOARD REGULATION 21**

BETWEEN :

THE RUGBY FOOTBALL UNION

AND

JACK WARRINGTON

DECISION OF THE SINGLE JUDICIAL OFFICER

Judicial Officer : Antony M. Davies

Player: **JACK WARRINGTON** Club: Sedgley Park RFC

**Appearances and
Attendances :** Jack Warrington ("the Player")
Geoff Roberts (Sedgley Park Team Manager assisting the Player)

Rugby Football Union

Brian Treadwell (RFU Counsel)
Richard Nunn (RFU Anti-Doping and Illicit Drugs Programme Officer)
Charlotte Mitchell-Dunn (RFU Discipline Case Officer)

Graham Arthur (UK AD) (observing)

Hearing : 8th May 2013 – Haydock

Decision

1. The sanction imposed for this anti-doping rule violation is a period of ineligibility of **TWO YEARS** for the Player commencing 23rd November 2012 (the date upon which the Player was notified of the adverse analytical finding and provisionally suspended) and concluding on (but inclusive of) 23rd November 2014. In the meantime, the Player's status is that governed by IRB Regulation 21.22.13.

The Factual Background

2. On 10th November 2012, Jack Warrington ("the Player") provided a urine sample number 108640616 following a doping control test conducted at the RFU National League 1 match between Loughborough Students RFC and Sedgley Park RFC. The sample returned an adverse analytical finding which highlighted the presence of Methylhexanamine ("MHA") which is classified as a

specified stimulant (S6.b) under the 2012 Prohibited List of the World Anti-Doping Code. The Player accepted he had not applied for a therapeutic exemption allowing him to use the substance.

3. The Player was informed of the results of the doping control test by e-mail and telephone on 23rd November 2012 by the RFU Anti-Doping Programme Manager. The Player was informed by written letter of 26th November 2012 that in accordance with RFU Regulation 20.11.2 and 20.11.3 the RFU Director of Legal and Governance had decided there was a case to answer and the Player should be provisionally suspended from 23rd November 2012 until determination of his case. The Player was informed of his right to have his "B sample" analysed and his written response stating how he believed the substance came into his system was requested from him.

4. On 12th December 2012, the Player responded, stating as follows:

"The adverse analytical findings from the doping control test that I took after playing against Loughborough Students have come as a huge shock to me, having never knowingly taken anything that I believed would enhance my performance ..."

"I have quite a demanding job that requires me often to work long hours. I therefore take some sports supplements to help me recover from playing and training so that I can go to work and get through the day. I have also taken a USN supplement to aid fat loss ..."

5. The Player then set out a list of supplements that he had taken, as follows:

- (i) USN Protein IGF
- (ii) USN Xedra Cut Lava Sticks – weight loss sachets
- (iii) CNP BCAA Tablets
- (iv) USN BCAA Tablets
- (v) USN X4 Creatine Tablets
- (vi) BSN NO-Xplode – pre game
- (vii) Vyomax Tribulus Terrestris Tablets – pre game

6. The Player also stated that he was "looking into the possibility that an inhaler that I bought whilst on holiday in Portugal and have been using regularly contains the substance and we will hopefully have more news on this before my hearing".

7. The doping control form requires the Player to "provide details of any prescription/non-prescription medication or supplements taken in the last seven days (including dosage where possible). The Player's response was simply:

"Ventolin inhaler, Symbicort inhaler".

None of the above named supplements was disclosed by him on the form at the time.

8. The Player declined the opportunity of having his "B" sample analysed. None of the above named supplements were known to contain MHA or have MHA listed within their ingredients. On 21st December 2012, the Player informed the RFU of his intention to test some of the above listed supplements, but due to his limited resources it was only feasible to test one supplement. The Player felt that the supplement BSN NO-Xplode was most likely to be the source of the MHA. The RFU subsequently offered to assist the Player by testing his Vyomax Tribulus Terrestris tablets in addition to the BSN NO-Xplode.

9. On 8th March 2013, the RFU was informed that the BSN No-explode sample sent by the Player for analysis was in poor condition and that there was insufficient quantity of the product to conduct the analysis. Attempts to contact the manufacturer to request a sample from the same batch proved unsuccessful. On 4th April 2013, following the test of the Vyomax Tribulus Terrestris tablets, HFL Sports Science issued a certificate of analysis confirming that according to their analysis no MHA was present in those tablets.

10. The Player made no further representations as to the inhaler he bought on holiday in Portugal being the source of the MHA.

The Regulatory Regime/The Doping Offence

11. The IRB Anti-Doping Regulations which are adopted by the RFU in RFU Regulation 20 set out the framework under which all players can be subjected to doping control. The Regulations adopt the mandatory provisions of the World Anti-Doping Code ("the Code").

12. Both the IRB Anti-Doping Regulations and the Code are based on the principles of personal responsibility and strict liability for the presence of Prohibited Substances or the use of prohibited methods.

13. Pursuant to Regulation 21.2.1 (Clause 2.1 of the Programme) the "presence of a Prohibited Substance or its metabolites or markers in a player's sample" constitutes an Anti-Doping Rule violation.

14. Regulation 21.2.1(a) provides:

"It is each player's personal duty to ensure that no Prohibited Substance enters his 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".

15. In relation to the principle of personal responsibility Regulation 21.6 (Clause 6 of the Programme) provides:

"6.1 It is each Player's responsibility to ensure that:

- (a) No Prohibited Substance is found to be present in his body and that Prohibited Methods are not used;*
- (b) He does not commit any other Anti-Doping Rule violation;*
- (c) ...*
- (d) He informs Player Support Personnel, including, but not limited to, their doctors of their obligation not to use Prohibited Substances and Prohibited Methods and to take responsibility to ensure that any medical treatment received by them does not violate any of the provisions of the Regulations.*

6.3 It is the sole responsibility of each Player, Player Support Personnel and Person to acquaint themselves and comply with all of the provisions of these Anti-Doping Regulations including the Guidelines".

16. Pursuant to Regulation 21.3.1, the RFU has the burden of establishing an Anti-Doping Rule violation to the comfortable satisfaction of the Single Judicial Officer. The Player accepts and does not challenge the analytical findings of the laboratory. Accordingly, I find that the RFU has established to the required standard the Anti-Doping Rule violation; that is the presence of the Prohibited Substance Methylhexanamine in the Player's bodily sample.

Sanction

17. The IRB's regulatory framework stipulates that in imposing the appropriate sanction I am required to apply the relevant provisions of Regulation 21 (which are based on World Anti-Doping Code). The period of ineligibility for a Prohibited Substance for a first time offence is **TWO YEARS**.

18. Because MHA is a Specified Substance pursuant to Regulation 21.22.3, there is potential for a reduction in sanction as that Regulation provides;

“Elimination or reduction of the period of ineligibility for Specified Substances under specific circumstances.

21.22.3 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:

First violation: at a minimum a reprimand and no period of ineligibility and at a maximum two years.

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 or 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.

19. It follows in order to satisfy Regulation 21.22.3 that the Player is required:

- Firstly on the balance of probabilities to establish how the MHA entered his body; and
- Secondly to establish to my comfortable satisfaction that his use of MHA was not intended to enhance his sport performance or mask the use of a performance enhancing substance. The Player must produce corroborating evidence in addition to his word of the absence of intent to enhance or mask.

20. It follows, and if the foregoing pre-conditions are satisfied, I must then consider the Player’s degree of fault as the criterion in assessing any reduction of the period of ineligibility.

The Primary Issue – Route of Ingestion

21. The Player told me that he is first and foremost a Club man – happy to play in any Club side and indeed has played for all, as was confirmed by Mr. Roberts. He is normally a second team player but will play wherever needed and, due to injuries, he was called up to play for the Club first team. This team competes in RFU National 1 (RFU Level 3). Although the League is characterised by the RFU as part of the community game, it is a hard and competitive League and step up for a second team player as it comprises a high percentage of full and part time professionals, particularly in the front row where the Player plays. The Player had realised that his base level of strength and fitness needed to improve and the demands of the step up were compromising his ability to carry out his full time day job. He therefore trained and played with the assistance of the seven supplements previously listed, which he believed mainly to be aimed at fat burning and weight loss.

22. I asked the Player about his level of anti-doping education. He told me it was very limited. On his behalf, Mr. Roberts confirmed that the documentation aimed at players received from the RFU Anti-Doping Officer was made available to players, but there is no formal education and the Club was not aware that RFU Anti-Doping will actively engage in specific Club related education. The consensus between players and Club seemed to be that there was very little risk of testing and some doubt as to whether RFU Level 3 was subject to testing at all.

23. Upon notification of the adverse analytical finding, the Player sought to engage with the RFU Anti-Doping process in an appropriate manner. He sought advice as to which of the supplements was most likely to have been contaminated, but because of financial constraints was

only able to afford to have one of the seven tested himself and another tested by the RFU. One sample could not be tested due to insufficiency and the other produced a negative result. It is unfortunate that the Player could not have all samples tested.

24. In the absence of any analytical proof, the Player submitted that the source of contamination must have been either one of the six supplements for which there was no analytical result, or “something I may have drunk from a mate’s bottle whilst at the gym” (sic).

25. Finally, I took details of the mitigating features submitted for and on behalf of the Player and clarified with him his understanding of, and access to, the explanatory material distributed by the RFU in relation to the use of nutritional supplements and his personal responsibility to ensure that he did not commit an Anti-Doping violation. It is pertinent to set out the IRB warnings here.

Nutritional Supplements

IRB Reg. 21.6.4 – the use of nutritional supplements by players is a risk as in many countries regulations either do not exist or are limited in nature in relation to the manufacturing and labelling of supplements. This may lead to a supplement containing an undeclared substance that is prohibited under the Programme. Nutritional supplements may not be regulated or could be contaminated or suffer from cross-contamination or may not have all the ingredients listed on the product label. Players are advised to exercise extreme caution regarding the use of nutritional supplements.

IRB Reg. 21.6.5 Many of the substances in the Prohibited List may appear either alone or as part of a mixture within medications or supplements which may be available with or without a doctor’s prescription. Any player who is concerned about the appropriateness of treatment being administered to him or medications or supplements being ingested by him should seek clarification from his doctor or other relevant authority as to whether such treatment is, or such medications or supplements are, prohibited. For the avoidance of doubt, nothing herein shall displace the Player’s responsibility to ensure he does not commit an Anti-Doping Rule violation.”

26. The Player confirmed that he was not aware, other than in general terms, that there was a risk with supplements.

Reasons for Decision

27. The Anti-Doping regime is predicated on the basis that where a player is subject to an adverse analytical finding, and by virtue of the fact that the player is 100% responsible for what is in his or her system, the burden of proof shifts to the player who then has to prove how the substance came to be in their system, and then if appropriate whether it was performance enhancing and then again the degree of fault that he bears if it was not performance enhancing. In this case, we are dealing with an amateur Clubman who plays for pleasure and very little, if anything, by way of financial reward. Representing his Club is enough, and he does not have the financial resources – nor do his Club – to mount the most comprehensive of defence in this circumstance. To that end, I have considerable sympathy for him and his Club.

28. However, the Regulations are to be followed and cases such as this must be a wakeup call to players, whether professional or amateur, particularly with regard to the use of supplements. I am concerned that under the “Declaration of Medication” section of the Doping-Control form, the Player is asked to provide details of supplements taken and the Player did not do so, though he had ample opportunity. Having heard from the Player about his personal circumstances and the level at which he plays, it is not difficult to conclude that he may well not be a player who deliberately uses performance enhancing substances. I note his protestations of innocence and disavowal of motive as they have been equally persuasively asserted by the Player and Mr. Roberts. However, they are not sufficient to discharge the burden of proof in this case and I simply cannot be satisfied as to how MHA came to be in the Player’s system.

29. Rarely, if ever, will the following surmount the hurdle in the way of the Player:

"It must have been one of the (untested) supplements I was taking" or

"It must have been a mate's bottle I drank from in the gym".

30. The totality of the Player's evidence and case amounts to no more than mere suspicion, speculation, supposition, conjecture and uncorroborated assertion.

31. I note the pleas for leniency, but remind myself that I cannot overlook the regulatory framework which mandates the fundamental principle that a player is personally responsible for ensuring no Prohibited Substance enters his body. The underlying rationale for the requirement that the route of ingestion of a Prohibited Substance is established to the required standard is for the purpose of evaluating the degree of caution the Player must exercise at the time of ingestion. The Regulation operates to prevent unsubstantiated tales of apparently inadvertent consumption from potentially triggering reductions in sanction.

32. The Player has been unable to establish how the Prohibited Substance entered his system. I therefore cannot impose a sanction which is less than the mandatory minimum sanction of a period of two years ineligibility.

Decision

33. For the reasons outlined, the sanction imposed for this Anti-Doping Rule violation is a period of ineligibility of two years, commencing 23rd November 2012 (the date upon which the Player's provision suspension commenced) and concluding (but inclusive of) 23rd November 2014.

34. The Player's attention is drawn to IRB Regulation 21.22.13 which provides, inter alia, that

"No player 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) ... such participation includes, but is 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 with the IRB."

35. The full text of Regulation 21.22.13 concerning status during ineligibility should be consulted.

Costs

36. The RFU recognises the Player's amateur status and his position within the game and, quite rightly in my view, does not seek any award of costs against him. Consequently, no such order is made.

Appeal/Review

37. This Decision may be appealed by the Player (or others) in accordance with RFU Anti-Doping Regulation 20.12 and 20.13.

Date: 24th May 2013

A.M. Davies,
Single Judicial Officer