

**RUGBY FOOTBALL UNION DISCIPLINARY  
PROCEEDINGS CONCERNING REGULATION 20 OF THE RUGBY FOOTBALL UNION  
AND REGULATION 21 OF WORLD RUGBY**

**B E T W E E N:**

**THE RUGBY FOOTBALL UNION**

**The Regulator**

**- and -**

**THOMAS PRICE**

**The Player**

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**DECISION OF THE  
INDEPENDENT PANEL**

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*Introduction*

1. This is the decision of the Independent Panel appointed under RFU Regulations and World Rugby Regulation 21 to deal with the charge against Thomas Price (“The Player”).

**BACKGROUND TO THE CHARGE**

2. In light of Mr Price’s failure to give a sample for testing, on the 14<sup>th</sup> November 2015 the RFU commenced an investigation into the matter and provisionally suspended Mr Price from participating in rugby union, or any other WADA Code sport, with effect from 20<sup>th</sup> November 2015. A Decision was made to charge Mr Price as per the letter sent to him on the 3<sup>rd</sup> December 2015.
3. Mr Price is charged with a violation of World Rugby Regulation 21.2.3 namely, “Evading, refusing or failing to submit to sample collection”.
4. He denied the charge on numerous grounds (set out below) and a full hearing took place at the Bristol Filton, Holiday Inn on the 9<sup>th</sup> February 2016.
5. The panel consisted of Daniel White (Chairman), Barry O’Driscoll and Gareth Graham. No objection was raised as to the composition of the panel.

6. In attendance were: Thomas Price, Bill Davis (The Whitehall Chairman), Alexander West (counsel for the player), Stephen Watkins (Anti-Doping & Illicit Drugs programme Manager for the RFU), Stuart Tennant (RFU Discipline Case Manager), Tony Jackson (Legal Officer for UKAD), Gerard McEvilly (Head of Discipline for the RFU) and Daniel Saoul (counsel for the RFU).

#### **EVIDENCE ADDUCED IN SUPPORT OF THE CHARGE**

7. On the 14<sup>th</sup> November 2015 UK Anti-Doping DCO's attended Whitehall RFC, who were hosting Keynsham RFC in a competitive match. The Player was listed as a substitute for Whitehall RFC and played for part of the second half.
8. Prior to the game the UKAD testing officers were unclear as to whether "T Price", who was named on the team sheet was indeed the Thomas Price whom they had been sent to target test at the conclusion of that game.
9. For that reason, and in accordance with their usual practice, they approached managers from both teams and informed them that they would be conducting testing after the game. Rather than saying that it was targeted and random testing of up to four individuals they said that the four players to be chosen would be selected at random by writing the names of both teams onto a series of draw cards and the manager being asked to select two from each team for the tests.
10. After this process had gone ahead, and with the managers from both sides believing that only random testing was to occur, the UKAD officers were later able to confirm that Thomas Price was indeed the man selected on the bench for Whitehall.
11. Mr Price was not one of the randomly selected individuals for testing. As such one of the cards randomly selected was withdrawn and it was replaced with the one for Thomas Price, meaning that he and three randomly selected players were now to be tested at the conclusion of the game.
12. At no stage did any of the players know that drug testing was to be carried out at the conclusion of the game, only the members of their management were privy to this.
13. At the conclusion of the game Mr Price and the other three selected were approached by UKAD personnel, taken to the Doping Control Station ("DCS")

(which had been set up on site in a nearby changing room and shower block) and they were asked to provide a urine sample.

14. The above facts were, in broad terms, accepted by both sides. Evidence was heard concerning the events that passed thereafter.
15. The Player failed to provide a urine sample. All others selected did.
16. In support of their case the RFU called evidence from Paul French, the Lead Doping Control Officer (“DCO”) that day. He confirmed the contents of the DCO report form, his statement dated the 11<sup>th</sup> January 2016 and his second statement dated the 4<sup>th</sup> February 2016. In examination in chief he only went beyond confirming those documents to say that he was not aware of any of the DCO’s telling the Player that he could have a shower and he emphasised that such a decision would need to be made by him and not a member of his team in any event.
17. Mr French’s report and statements confirmed that at 16.10 hrs, 16.20 hrs and 16.25 hrs he offered all players present in the DCS the opportunity to change into warm dry clothes. Mr Price declined this offer on all occasions. At 16.25 hrs he was noted to have removed his wet top, but still declined to retrieve any replacement dry clothing. At 16.15 hrs he states the Whitehall team manager, Mark Peggram, requested to see the draw cards. As the DCS was noisy the two went outside and Mr French explained that it was not a random selection as against Mr Thomas Price and that they had only been able to confirm his identity after the random draw earlier that day. By that stage, and upon being asked, he deemed it appropriate to inform Mr Peggram that this was a targeted test in as far as Mr Price was concerned.
18. Mr French recalled that at 16.30 hrs the Player asked if he could take a shower and this was refused as it was only permitted in “exceptional circumstances” and because they needed to collect his first urine sample.
19. Later on, as Mr French completed testing one of the other athletes he overheard Mr Price saying he was, *“Not staying to provide a sample and would be leaving”*. Mr French recalled both chaperone Tony Davies and DCO Mike Norton separately informing him that he would need to speak to “the Lead” about this. When Mr French spoke to Mr Price it was re-iterated to him that a refusal or failure to comply may be regarded as an Anti-Doping Rule Violation. He asked

him why he wanted to leave without supplying a urine sample. To that he is said to have offered no verbal reason except that he was, *"Not waiting around"*.

20. Mr French states that he told Mr Price that a refusal and failure to comply may result in a ban from all sport, subject to a Tribunal. He offered Mr Price the opportunity to record his reasons on the Doping Control Form ("DCF") which he did and then signed the declaration. Mr Price was offered a final chance to change his mind and provide a sample and again asked if he understood the consequences of not doing so, to which he replied, *"Yes"*. This conversation was said to have been observed and / or overheard by DCO Tony Davies, Lynne Stockham, DCO Mike Norton and Mark Peggram of Whitehall RFC.
21. Produced within the papers was a copy of the UKAD "Entry / Exit Log" for that date. It showed that "Tom Price" entered the DCS at 16.02 hrs and left at 16.51 hrs. The other Whitehall RFC player selected for testing left at 16.50 hrs and the Whitehall manager at 16.51 hrs. The last person to leave was another athlete from Keynsham RFC who is noted to have changed into warm clothing at 16.10 hrs and left at 16.55 hrs.
22. It is clear from that record that Mr Price was not the last to leave and that others present had availed themselves of the opportunity to change into or at least put on warm clothing.
23. When questioned on behalf of Mr Price he agreed that the "Mission Order" stated they were to test "Tom Price", he said they had to be sure it was that person and the team sheet referred to simply "T Price", hence the need for the random draw until they had confirmed T Price to be Tom Price on their Mission order. Mr French confirmed there were no specific instructions given to him to notify anyone that this was a pre-selected test. He said that the chaperone Tony Davies eventually confirmed that the Tom Price they were looking for was on the bench for Whitehall RFC. Mr Davies had spoken with supporters from Whitehall RFC who had volunteered that they had a 'British Strongman' on their bench.
24. Mr French confirmed that the conditions for the game were poor, with the players being wet and cold at the end of the game. He confirmed that no-one was offered the opportunity to shower prior to giving a sample, but that all were offered the chance to put on warm clothes prior to giving the sample. Mr French recalled that Mr Price wore a full-length body suit to warm up in prior to the game, which he could have worn had he wished to. He said that the refusal to

shower was for a number of reasons: they were offered the chance to put on warm clothes, the Player had not even tried to give a partial sample, other people might have been showering at the same time and the chaperone would need to keep them under constant observation. He said that he has experience of many sports with UKAD and he has only known of athletes being given the opportunity to shower in circumstances where it was a water sport and there was the possibility of water born diseases being present and they needed to wash to reduce the risk of infection prior to providing a urine sample.

25. Mr French said that in his opinion he would not have been able to guarantee that a chaperone could have observed him properly in the shower given the restricted view, the fact that others might have needed to use it and because the chaperone had to remain clothed; it simply wasn't practical. He emphasised the risk of someone urinating in the shower thus preventing the DCO's from being able to retain the first urine passed, which is what they are expected to retain.
26. A series of suggestions were put to Mr French which he disputed; namely that Mr Price said he had difficulty sitting down, that he said he was cold and wet and that he said he was on pain killers and had a bad back. Mr French said that he mostly recalled Mr Price being sat down. When the question was asked of him whether he could have done more to make Mr Price comfortable he said, "*No, at that stage he was adamant he wanted to leave.*"
27. The panel next heard from Mike Norton who confirmed the contents of his report at page 27 of the bundle. He completed this report the day after the incident and emailed it to his colleagues.
28. Mr Norton's evidence accorded with that of Mr French. He was able to assist the panel with when the Doping Control Form was completed and who by, and the medication that was referred to by Mr Price. He agreed that Mr Price was polite throughout the process. That took them about ten minutes he recalled and it was only later on that Mr Price told him he had a bad back and a hernia. He agreed that Mr Price was muddy and had asked to take a shower. Knowing that this was not usually allowed he explained that that would be a decision for the Lead, Mr French.
29. Mr Norton confirmed the offer of warm clothing to the players and that by that stage Mr Price had made no mention of being in pain and had not said he was wet or cold. In his view there was nothing about Mr Price's demeanour to

suggest that he was in any way in discomfort. He agreed that Mr Price told him it would take him *"Some time to wee"*. On two occasions in total he asked to take a shower and Mr Norton could not recall him offering at any stage to give a sample of blood instead.

30. Prior to Mr Price leaving he heard part of the conversation between him and the Lead whereupon he was told of the consequences of not providing a sample.
31. The final live evidence for the RFU came from Tony Davies who confirmed the contents of his statement dated the 4<sup>th</sup> February 2016. His account was consistent with those of Mr French and Mr Norton. He did not recall any physical signs of Mr Price being in pain and he *"Certainly did not mention to me that he was in pain. Mr Price informed me that he needed to go home to take painkillers. He did not mention his injuries or that he had difficulties urinating."*
32. Upon being questioned Mr Davies confirmed that he had sat with Mr Price and Mr Church in the DCS and had engaged them in conversation. He recalled Mr Price saying he *"Wasn't waiting any longer"* and said that he wanted to go. His recollection was of him saying, *"I'm going home, I've got my painkillers to take."*
33. This was not said until the very end, it was, *"Virtually the last comment he made"*. When asked if Mr Price said anything about finding it difficult to urinate, he replied, *"Not at all"*.
34. When asked whether Mr Price had brought to his attention a slipped disk or hernia he again said, *"Not at all"* then volunteered that he had watched the game in question and seen Mr Price coming on as a replacement. He saw Mr Price running down the wing showing no signs of a slipped disk, *"He looked fit as a fiddle"*. He did remember Mr Price asking him what it was that they were testing for.
35. He remembered Mr Price being offered the opportunity to put on warm clothing, something which one of the players did do. He said that Mr Price removed his shirt and sat on the bench in his under layer. He, like Mr Norton, also confirmed that Mr Price was told they could remain *"As long as it took"* for him to provide a sample of urine.
36. The RFU then brought to the panel's attention the statement of Hamish Coffey, Head of Testing at UK Anti Doping, dated the 8<sup>th</sup> January 2016. This was uncontested and it had been agreed in advance that this evidence need not be called live. Within that statement he helpfully sets out the fact that Article 2.5.1

of the UK National Anti-Doping Policy provides that it is UKAD's responsibility to develop a Test Distribution Plan for sport in the UK that is consistent with the principles set out in the Code and the International Standard for Testing [and investigations] ("ISTI"). He emphasised that an Intelligent Test Distribution Plan uses Target Testing to focus resources where they are most needed.

37. It is plain from his account and a matter of Judicial Notice that UKAD has the scope to identify specific athletes to be made the subject of Target Testing based upon a multitude of different factors and circumstances. His doping control team would not have been provided with the details as to why certain individuals are selected for testing, but are simply given a "Mission Order" naming the athlete to be tested; in this case it stipulated that "Tom Price – Whitehall player" should be selected for testing along with three others at random.
38. Mr Coffey quoted Article 4.6.2 of the ISTI as saying, "*Save in exceptional and justifiable circumstances, all testing shall be on No Advance Notice*". He states that from the notes provided dealing with the 14<sup>th</sup> November 2015 tests, Lead DCO French followed their procedure of maintaining confidentiality surrounding the targeted nature of testing until an appropriate time when asked to do so and when appropriate to do so.

#### **EVIDENCE ADDUCED IN SUPPORT OF THE PLAYER**

39. Mr Price gave evidence confirming the contents of his undated letter sent to Stephen Watkins and Karena Vleck at the RFU. He also referred the panel to the handwritten letter from his GP who confirmed that Mr Price takes codeine and / or tramadol for chronic back pain. He has those drugs on repeat prescription. He adds, "*Mr Price has also informed me that he often finds it difficult to pass urine shortly after taking the above named drugs.*"
40. Mr Price provided the panel with a radiology report from Southmead Hospital which set out the details of his disc herniation, disc bulge and sciatica. That is dated the 8<sup>th</sup> October 2014 and confirms his injury related to "lifting"; Mr Price confirming he had damaged his back in the gym lifting weights as part of his other training for Strongman competitions.
41. Mr Price had previously served what purported to be a statement from Mark Peggram which dealt with his recollection of the selection for testing process and

his recollection that the players were not allowed showers. His evidence was not agreed and his attendance was expected. He did not attend and the consequential reduction in the weight that might otherwise have applied to it was reduced. This was fully explained to Mr Price in the course of the hearing and he was given the opportunity to address us through his counsel; he did not seek an adjournment so that Mr Peggram could be called.

42. Finally the panel's attention was drawn to a printout from the Gloucestershire Hospitals NHS Foundation Trust referring to the effects of opioids and one of the side effects of use being "urinary retention".
43. In answering questions from his counsel, Mr West, he conceded that he had not provided a sample of urine. He said that he was in "*Chronic*" back pain and that being cold had made it worse. When it became "*Unbearable*" he says that he told the DCO. He recalled stretching his back and being unable to sit down anymore because it "*Causes more pain*".
44. He said that taking painkillers for his back would have made his inability to urinate worse. He had taken painkillers at half time and before the game. He said that the showers were empty and he was prevented from using them so he "*Decided to clean off, go home and take more painkillers*".
45. When cross examined by Mr Saoul (counsel instructed for the RFU) he said that he played rugby, but also competed in Strongman competitions between 2012 and 2014. He agreed that in both activities the athlete would need to participate "*Clean*" and he was aware of the need for athletes to be "*Doping free*". He said he hadn't expected to be tested playing rugby at his level and had not read the rules relating to anti doping.
46. He said that after the game he was approached by Mr Norton and escorted to the next changing room along from his team which had been set up as the DCS. He said that when offered the opportunity to put on warm clothes he removed his top and kicked his boots off. He only had his "*Number ones*" to put on after the game and as such none of his dry kit was appropriate without having first had a shower. He said he didn't think of asking a teammate for any of their clothes to wear and hadn't thought to wear one of their "*Sub suits*".
47. He said that he injured his back weightlifting and it had caused him to lose feeling in one leg at the time. Since then he's done a lot of rehab and had started



- to "*Compete again*". He said he was doing squats, dead lifts, but not Olympic lifts. To do this he was having "*Pain management*".
48. He said that on the day in question he had a pocket sewn into his shorts which was used to contain his painkillers; these he took ten minutes into the second half (around 15.50 hrs) when he was told to warm up. He agreed his previous account of taking them at half time was incorrect.
49. He agreed that the Lead DCO had told him that if he wished he could take pain killers while he waited to provide a sample of urine but he said that that would be a catch 22 as he would take even longer to urinate.
50. He agreed that the Lead DCO and chaperone had told him they would wait as long as it takes for him to provide a sample of urine.
51. He was asked about what he did after he left the DCS. He said he did not go to hospital as he was on a repeat prescription of painkillers. He was later to say that he showered and went out in the clubhouse and then "*Probably out in town*" after leaving the DCS.
52. He did not accept being warned that if he left he would probably get a ban, but did accept one of the team told him there might be consequences. He accepted that at the point when he left he knew that a violation could result in him being banned. He accepted that it was him who signed the declaration in box 9 which read, "*I acknowledge that I have been notified to provide a urine and / or blood sample and must report to the Doping Control Station immediately. I understand that a refusal or failure to comply with this request may constitute an anti doping rule violation.*"
53. When asked to write upon the form why it was that he was leaving the DCS without providing a sample he put, "*2 slipped discs plus hernia causing too much pain to wait around in wet clothes*". Mr Price said that he told the people at the DCS he had a bad back more than once and that he was in pain.
54. Mr Price agreed he had remained in the DCS for 49 minutes in total and left one minute after his teammate and at the same time as his manager Mr Peggram. He had thought he was the last to leave the DCS, but accepted what was set out on the exit / entry log. He agreed that in his letter he had painted the picture of being the last person within the DCS.
55. Mr Price agreed that at no stage did he try to urinate. He said he had drunk the water provided in bottles, but "*didn't feel the need to go*".

## SUBMISSIONS

56. On behalf of the Player Mr West argued that:

- a) "UKAD's failure to follow procedure should render the testing on 14 November 2015 void";
- b) "Mr Price's medical condition, coupled with the circumstances of the testing, provided a compelling justification for failing to submit to sample collection";
- c) "Should the above arguments fail, Mr Price will seek to establish No Significant Fault or Negligence, reliant on Regulation 21.10.5.2".

57. I shall deal with each of those submissions in turn;

### POINT A

58. It was submitted on behalf of the Player that the DCO's refusal to allow Mr Price to take a shower was such a material failure to follow procedure that the panel ought to dismiss the case against him.

59. In hearing this point the panel were referred to Schedule 1 of the World Rugby Regulation 21; the "Doping Control Procedural Guidelines". There, in section 6 entitled "Players Rights and Responsibilities", is a list of rights the player has as part of a doping control test. It is not said to be exhaustive, but within 6(b)(x) the following is set out:

*"Any other exceptional circumstances which may be justified, and which shall be documented. These may include but are not limited to the following:*

- *A player shall be permitted to take a shower for health and welfare reasons, for example due to the player bleeding or having sustained any type of injury in which a shower would assist in the treatment of the injury or where due to the playing or training conditions the player is cold and wet."*

60. The RFU argued that the decision to refuse Mr Price a shower was not in the circumstances Wednesday unreasonable and was well within the discretion that Mr French retained. He is an experienced Lead DCO having spent 3.5 years

- as a chaperone prior to qualifying as a Lead in 2011. He had considered his discretion to permit a shower and in all the circumstances refused such a course.
61. They further argued that section 6(b)(x) did not create an absolute right for all players to be permitted to shower just because they were cold or wet, it gave an example of some circumstances in which a player “may” be permitted to do so.
  62. As part of their overall argument the RFU submitted that Mr Price did not exhibit any obvious signs of pain, he was given the opportunity to change into dry warm clothes, he was offered the opportunity to take painkillers and told that they would wait as long as it took for him to provide the sample.
  63. In considering this point the panel reminded ourselves of what is said at the very start of Schedule 1 of Regulation 21; *“These Guidelines are in compliance with the WADA international Standard for Testing and Investigations (sic) should be followed as far as is reasonable practicable. However, any departure from the procedures set out in these guidelines shall not invalidate a finding of an anti-doping rule violation unless such a departure undermines the validity of such finding.”*
  64. We are of the view that whilst Mr Price may well have wanted to go and have a shower, to do so would not, even on the facts as he was describing them, have cured the issue and as such it could not possibly be said to undermine the validity of the anti doping procedure.
  65. We do not agree that section 6(b)(x) provides an absolute right to a player to shower simply because they are wet and cold. Whilst it may well be appropriate to offer a shower to a rugby player in the circumstances set out in that text, we do not find that this case merited it.
  66. In our opinion the decision made by Lead DCO French to refuse Mr Price a shower was well within the bounds of his discretion and, in the circumstances as we find them to be, a perfectly proper one. We do not accept that Mr Price was demonstrating any signs of being in pain, nor did he even mention such until the few moments before he got up and left the DCS. He was given every opportunity to address any pain he might have through taking medication and could have changed into dry clothes if this were somehow affecting his ability to provide a sample.

POINT B

67. It was argued on Mr Price's behalf that the offence is not made out because Mr Price had (with reference to World Rugby Regulation 21.2.3) "compelling justification" for refusing or failing to submit to sample collection after notification as authorised. In short, it was said that he suffered from slipped discs so had taken codeine and tramadol, a side effect of which, for him, being urinary retention. As per Mr West's helpful skeleton argument he argued, "*By 16.51 Mr Price was cold, wet and in pain. There was no prospect of him being offered a shower, and he was unable to pass urine. Taking further medication was likely to exacerbate his urinary retention.*"
68. On behalf of the RFU Mr Saoul highlighted that the burden is on Mr Price to establish a "compelling justification" (authority from UKAD v Six) on a balance of probabilities.
69. He submitted, and we agree, that the case law on this topic has created a very high threshold, in law, for establishing a "compelling justification". The use of the word 'compelling' in the rule "*underscores the strictness with which the justification needs to be examined*" (CAS 2008/A/1557).
70. In CCES v BOYLE, SDRCC, 31 May 2007, it was said that the reason for refusing or failing to provide a sample must be "*unavoidable*". This being cited with approval since in ITF v TROICKI, 25 July 2013, and FEI v BRAM 2013 / BS03 and UKD v SIX.
71. The test is an objective one. We were taken to and helpfully provided with numerous authorities on this point. We found the witnesses for the RFU to be credible and honest. Where their accounts did not accord with that of Mr Price it is theirs that we preferred and by some margin.
72. In short, we find to a standard beyond that of mere comfortable satisfaction, that Mr Price simply refused to provide a sample of urine. This was not a case of "could not", but "would not". In the circumstances we do not need to take this point further and reject the submissions eloquently made on Mr Price's behalf.

### POINT C

73. In the course of submissions it was conceded by Mr West that if the panel found this was a deliberate refusal to provide a sample rather than one in which he had

tried to and failed, then the panel would not have available to it, as a matter of law, the discretion under Regulation 21.10.5.2; it having been found to be an intentional refusal as defined in World Rugby Regulation 21.10.2<sup>1</sup>.

74. In light of our findings above we are at least comfortably satisfied that Mr Price's actions were intentional and as such he cannot and should not qualify for any reduction from the standard four year period of ineligibility.

#### OUR DECISION

75. We find the charge proved and impose a period of Ineligibility upon the Player of four years, that period commencing upon the date of his provisional suspension, namely the 20<sup>th</sup> November 2015.

76. In accordance with World Rugby regulation 21.10.12 that ineligibility extends to playing, training, coaching, officiating or engaging in any formal activity in rugby union and any other WADA Code sport.

77. We make no order as to costs.

#### RIGHT OF APPEAL

78. We draw the parties' attention to RFU Regulation 20.13. A request for a post-hearing review must be lodged with the RFU Head of Discipline within 7 days from the date of notification of the Panel's decision and must be in the prescribed form as set out in World Rugby Regulation 21.13.8.

10<sup>th</sup> March 2016

Daniel White (Chairman)

Barry O'Driscoll

Gareth Graham

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<sup>1</sup> In accordance with Comment 31 to the World Rugby Regulation 21.10.5.2 (Appendix 2) where intent is an element of the sanction, as it would be if an athlete's refusal or failure to submit is deemed intentional, then there can be no application of the No Significant Fault or Negligence provisions.