SPORT RESOLUTIONS (UK)

NATIONAL ANTI-DOPING PANEL

SR/NADP/112/2019

IN THE MATTER OF PROCEEDINGS BROUGHT UNDER THE ANTI-DOPING RULES OF THE RUGBY FOOTBALL UNION REGULATION 20 AND WORLD RUGBY REGULATION 21

Before:

William Norris QC (Chair)

Lorraine Johnson

Professor Dorian Haskard

BETWEEN:

Rugby Football Union ***Anti-Doping Organisation***

-and-

Greg Goodfellow ***Respondent***

DECISION OF THE ANTI-DOPING TRIBUNAL

INTRODUCTION

1. Mr Greg Goodfellow ("the Respondent") is a semi-professional Rugby Union player registered with Chinnor RFC. On 19 February 2019, he provided a urine Sample to UK Anti-Doping ("UKAD") officers at Chinnor RFC's training ground. The Sample was tested at the Drug Control Centre at King's College, London and found to contain Methasterone, a Prohibited Substance[1] (S1.1a Exogenous Anabolic Androgenic Steroids) as defined by the World Anti-Doping Agency Prohibited List 2019. At the time of that test, the Respondent was 33 years of age.

2. The Respondent requested that his B Sample be analysed. This confirmed the same finding. The Respondent was therefore charged with Presence of a Prohibited Substance under Regulation 21.2.1 of the World Rugby Regulations ("WRR").

3. In response to the charge, the Respondent has identified a supplement called SD Matrix as being responsible for the adverse finding. His case is that, following a recommendation from a friend, he purchased the product online on 29 December 2018 from a supplier called MFH Performance and that he thought it was something he could legitimately take.

4. The Respondent has provided photographs of the supplement's container (or bottle):

   (a) The label contains a "Description" which includes the following:

   > "*We have increased the strength to 12mg of Superdrol per capsule…the optimal amount needed by the body to grow in size and strength… Don't underestimate Superdrol this is the real deal make sure you stack with a Great OCS[2] and finish with a PCT[3] to combat unwanted side effects*".

   (b) The label also includes a separate section under the heading "Supplement Facts" which lists the ingredients (per capsule) in two parts. The first part reads:

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[1] Rather than a 'Specified' substance
[2] Short for On Cycle Support
[3] Post Cycle Therapy

"*2a, 17a-dimethyl-4-androstadeiene-3-one, 17b-ol 12mg*".

(c) Beneath this, under the heading "Other ingredients", it lists:

"*Brown Rice, Flour, Magnesium, Stearate, Gelatin and Water.*"

5. We say at the outset that we are satisfied that the Respondent has convincingly demonstrated that his use of this supplement explains the presence of a Prohibited Substance in his system. The issues between the parties, as will become apparent hereafter, are whether the Anti-Doping Rule Violation ("ADRV") was intentional (as that word is defined), alternatively whether he bears No Fault or Negligence (which argument was not pursued at the hearing) or whether he has acted without any Significant Fault or Negligence. A separate but related issue is whether the product should be regarded as "Contaminated" as that word is also defined.

JURISDICTION

6. The jurisdiction of the Panel is not in issue. In very simple terms, it is common ground that World Rugby has adopted the World Anti-Doping Code ("the Code") and has implemented the Code by compliant regulations – World Rugby Regulation 21. The RFU has adopted those regulations, subject to Regulation 20.

THE LETTER OF CHARGE

7. The Letter of Charge, dated 29 March 2019, advised the Respondent that the urine Sample that he had provided contained the Prohibited Substance (Methasterone), identified above, and notified him that he was charged with an ADRV under World Rugby Regulation ("WRR") 21.2.1. That provides as follows:

> "***21.2.1 Presence of a Prohibited Substance or its Metabolites or Markers in a Player's Sample***
>
> ***21.2.1.1*** *It is each Player's personal duty to ensure that no Prohibited Substance enters his or her 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 (Presence).*"

8. The Respondent's attention was also drawn to RFU Regulation 20 and WRR 21, and he was advised that, pursuant to WRR 21.7.9 and RFU Regulation 20.13.2, he was provisionally suspended from the date of the letter until the determination of the case. He was also warned that the "*standard sanction*" for such a breach was four years, pursuant to the WADA Code.

DIRECTIONS

9. On 20 August 2019, pursuant to RFU Regulation 20.13.4, the Chairman of this Tribunal was appointed by the NADP President to hear and determine the charges pursuant to those Regulations and he conducted a Directions Hearing (by telephone) on 16 September 2019. That hearing was attended by Mr Max Baines of Red Lion Chambers on behalf of the RFU and by Mr Max Shephard, Counsel who was instructed on behalf of the Respondent under the *Pro Bono* scheme operated by Sport Resolutions.

10. This is an appropriate point at which to record the Panel's appreciation of Mr Shephard's services which have enabled the Respondent to put forward all submissions, factual and legal, that reasonably could be advanced on his behalf. Mr Shephard has, we consider, considerably assisted in ensuring a fair disciplinary process.

11. The Chairman made a number of Directions on that occasion for service of Witness Statements, other evidence (expert or otherwise) all of which were complied with, subject to one exception. That was a statement served recently on behalf of the RFU from Stephen Watkins, who is the RFU's Anti-Doping and Illicit Drugs Programme Manager.

12. In the event, there was no serious objection taken to the admission of Mr Watkins's evidence because Mr Shephard, on behalf of the Respondent, accepted that he was not prejudiced by the late admission of the evidence and, indeed, he had questions to ask in cross-examination.

THE RELEVANT REGULATIONS

13. Given that the Respondent has admitted the Presence of a Prohibited Substance in his urine, it is appropriate that we set out the relevant provisions of the WRR.

14. For convenience, we repeat that an ADRV is established by "*Presence of a Prohibited Substance or its Metabolites or Markers in a Player's Sample*".

15. WRR 21.2.1.1 further states:

> "*It is each Player's personal duty to ensure that no Prohibited Substance enters his or her body. Players are responsible for any Prohibited Substances 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 (Presence).*"

16. Given that the Respondent's B Sample confirmed the presence of Methasterone within the A Sample, that amounts to sufficient proof of the ADRV under WRR 21.2.1.2. It follows - as both parties accept - that the real issue is sanction. This in turn depends upon an analysis of the relevant provisions of WRR, which identify different sanctions depending upon the Player's intention (or lack of it) and Fault (or lack of it). It also requires us to address the issue of "*Contaminated Product*" to which we have already referred.

17. WRR 21.10.2 provides as follows:

> "***21.10.2 Ineligibility for Presence, Use or Attempted Use, or Possession of a Prohibited Substance or Prohibited Method***
>
> *The period of Ineligibility for a violation of Regulations 21.2.1 (Presence) … shall be as follows, subject to potential reduction or suspension pursuant to Regulations 21.10.4, 21.10.5 or 21.10.6:*
>
> ***21.10.2.1*** *The period of Ineligibility shall be four years where:*
>
> *21.10.2.1.1 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.*"

18. It follows, therefore, that there is no discretion other than to impose a period of Ineligibility of four years unless the Respondent has managed to establish that the ADRV was not intentional. In simple terms, if he did not act intentionally, the period of Ineligibility will be two years unless the Respondent is able to establish that he acted without any Fault or Negligence (which is not his case, but in which event the whole period of Ineligibility would be eliminated) or that he acted without **significant** fault or negligence.

19. In the event that the Respondent establishes that he acted without Significant Fault or Negligence, the two year period may further be reduced by up to one half (i.e. to one year but no less).

20. We shall set out the provisions relevant to that analysis. The first is in relation to intention.

21. As stated in WRR 21.10.2.1.1, it is for the Player (rather than the RFU) to establish on a balance of probabilities that the ADRV was not intentional. Guidance as to the meaning of the word "*intentional*" appears in WRR 21.10.2.3. We quote that in full:

> "***21.10.2.3*** *As used in Regulation 21.10.2… 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 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…*"

22. We were reminded that the question of the Player's obligation in relation to the burden of proof was considered by the CAS Panel in *Villanueva v FINA*[4]:

> "*The Panel emphasises that it does not need to be satisfied that the Athlete did cheat. The choice before it was not binary. As Lord Brandon, an English Law Lord, said in The Popi M [1985] 1 WLR 984* 'a judge (or arbitrator) can always say that 'the party on whom the burden of proof lies in relation to any averment made by him has failed to discharge that burden'.*'[p.955]*"

23. WRR 21.10.5 addresses the question of "*No Significant Fault / Negligence*" (it not being contended that this is a case of "*No Fault or Negligence*" to which WRR 21.10.4 would otherwise apply). WRR 21.10.5 provides as follows:

[4] CAS 2016/A/4534, award of 16 March 2017

"***21.10.5 Reduction of the Period of Ineligibility based on No Significant Fault or Negligence***

21.10.5.1 *Reduction of Sanctions for Specified Substances[5] or Contaminated Products for Violations of Regulations 21.2.1 (Presence), 21.2.2 (Use or Attempted Use) or 21.2.6 (Possession)*

…

21.10.5.1.2 Contaminated Products

In cases where the Player or other Person can establish No Significant Fault or Negligence and that the detected Prohibited Substance came from a Contaminated Product, then the period of Ineligibility shall be, at a minimum, a reprimand and no period of Ineligibility, and at a maximum, two years Ineligibility, depending on the Player's or other Person's degree of Fault.

21.10.5.2 *Application of No Significant Fault or Negligence beyond the Application of Regulation 21.10.5.1*

If a Player or other Person establishes in an individual case where Regulation 21.10.5.1 is not applicable that he or she bears No Significant Fault or Negligence, then… the otherwise applicable period of Ineligibility may be reduced based on the Player or other Person's degree of Fault, but the reduced period of Ineligibility may not be less than one-half of the period of Ineligibility otherwise applicable…"

THE HEARING ON 21 JANUARY 2020

24. We heard from Mr Goodfellow, the Athlete, who gave evidence in person. We heard additional evidence from his friend, Mr John Quinn, who gave evidence by phone. We record that the process was less than satisfactory since Mr Quinn was on a train and it was an imperfect signal (he had hoped he would be able to give evidence before he boarded the train at 12:30). Nevertheless, we had a copy of his Witness Statement and believe that we were able to understand most of that which he said.

25. Mr Quinn's role, as will become apparent from our Summary of the Facts which follows was important. He was identified by the Respondent as the person who first recommended a supplement called SD Matrix to him. They used the same 'high-performance' gym. Mr Quinn added in his Witness Statement and in what he said orally that he in turn had been recommended that supplement by "*some of the guys*" that he trained with. It was the case, he said, that they played competitive

[5] We repeat that Methasterone is not a Specified Substance. It is a "*Prohibited Substance*".

rugby, perhaps at a higher level than the Respondent here. He added that they (the "guys") had "*confirmed that it was legal*" – hence his recommendation to the Respondent.

26. Mr Quinn said in his Witness Statement that he was surprised to hear later that the Respondent had failed the test because others, who had taken the supplement, had, he "*knows*" been tested after taking it and had been fine. We were not entirely clear whether that knowledge of such tests post or pre-dated his recommendation of the product to the Respondent.

27. We are prepared to assume in the Respondent's favour that Mr Quinn's knowledge pre-dated his recommendation but, contrary to the Respondent's own recollection, Mr Quinn told us he thinks he did not pass on the information about those negative tests when telling him about SD Matrix. However, whatever he may have said would have represented a very flimsy basis for giving his friend (the Respondent) any assurances as to the legality of the product recommended. We also comment that it was not corroborated in any way by any details of those negative tests, let alone by any identification of the players in question.

28. We heard also from Mr Watkins, to whose evidence we have already referred. Mr Watkins was able to provide the Panel with the 'Guidance on Supplements' which would have been available to the Respondent had he gone on to the website maintained by English Rugby. In deciding whether the Respondent acted responsibly, recklessly or negligently, it is material to record that he did not in fact make such an enquiry. He would explain that by reason of his lack of anti-doping education.

29. Mr Watkins was able to confirm, in addition, that there had been a previous testing of players involving the Respondent's club, Chinnor, on 24 November 2018, as the Respondent himself acknowledged[6].

[6] He said it was one reason why he tried to reassure himself that the supplement was 'legal' – see our discussion of the facts hereafter. But that visit should also have alerted the Respondent to the reality of doping and anti-doping measures within rugby, assuming he really was previously unaware of that.

30. In addition, Mr Watkins was able to speak to the exchange of emails and other discussions he had with the Respondent in which he confirmed that, at least in broad terms, the Respondent was cooperative throughout.

31. We also heard from two expert witnesses, Mr Humphries (for the Respondent) and Dr Walker (for the RFU). Both those witnesses gave broadly complementary opinions as to what might have been intended by the details of the formula given for the supplement which appeared on the container. They speculated as to whether the curious formula, which in essence identified a compound unknown to science, might have signified and whether it might have been deliberately misrepresented for any reason.

32. Without intending any disrespect to those scientists, we are bound to say that we found their evidence did nothing to illuminate the issues which we had to decide, namely the Respondent's intention (as defined) when he took the supplement and / or whether he acted without any Significant Fault or Negligence in so doing.

OUR ANALYSIS OF THE EVIDENCE

33. The previous paragraphs identify some of the evidence that we heard, but it is to the Respondent's account of events that we should turn and upon which we concentrate. In setting out the relevant history in chronological order, we shall make it clear what was in issue and, insofar as we need to indicate this, what we accept and what we do not accept as proven on a balance of probabilities.

34. We accept that in 2018 the Respondent was relatively uninformed about anti-doping matters, notwithstanding his age and long career as a sportsman. When he was challenged about this in cross-examination, he apparently struggled to remember any particular area of doping which had caught his attention other than Dwain Chambers and Rugby Player, John Jones. He professed ignorance about other areas of doping which many would regard as being well within the public eye. However, we do not find it necessary to decide whether he was telling the truth about that and, on balance, are prepared to give him the benefit of the doubt.

35. What is clear, however, is that he knew that doping control officers had tested some players at the Chinnor / Sale match on 24 November 2018. If nothing else, that alerted him to the reality that anti-doping is an issue in Rugby (as it is in many other sports).

36. We accept that he and Mr Quinn are truthful and accurate when they say that it was Mr Quinn who recommended SD Matrix to the Respondent and that this happened in early December 2018. We also accept that the Respondent was interested in taking a supplement because he considered that it would probably help with his training and fitness. But we note that Mr Quinn was not called to give evidence in person at the hearing (albeit there may be reasons of convenience or cost affecting that decision) and we have already noted that there was certainly no corroboration from any of the "*guys*" to whom Mr Quinn referred as having told him the supplement was "*legal*".

37. We bear in mind that the burden is on the Player – in this case, the Respondent – to prove his absence of intention. We go no further than to say that we accept that Mr Quinn told the Respondent that the supplement was one he could legally take. But we do not accept that Mr Quinn's assurance could reasonably have been relied on by the Respondent.

38. We accept that the product was purchased on 29 December 2018. The Respondent's evidence was that, before Christmas, he had looked on the SD Matrix and Cardiff Sports Nutrition's website. They read as follows

- The *SD Matrix* site reads:

> "*SD Matrix is a powerful supplement that is currently considered by many to be the best legal body-building supplement that you can buy in the United Kingdom and it has been designed to increase the testosterone levels similar to that caused the prohibited steroids!*
>
> *The SD Matrix sold on this website is the Original Formula & the Best on the Net.*"

- The Cardiff site read in the material parts that:

> "*There are many benefits to using pro-hormones like SD Matrix. The primary benefit is producing explosive gains in lean muscle mass. This is possible because SD Matrix boosts testosterone to the optimum levels required for maximum muscle growth.*"

39. Again, there is no internet search history that the Respondent has provided which confirms that he made those enquiries in advance of purchasing or in advance of taking the supplement, notwithstanding that he was asked in terms to provide such search history in an email of 20 June 2019 (by Mr Tennant of the RFU).

40. In any event, whilst both those sites apparently offered the assurance that the supplement was 'legal' the information was in terms (including a reference to boosting testosterone) which we consider would not have offered reassurance to any reasonable and careful purchaser.

41. At some time between then and 7 January 2019, the Respondent told us that he watched a YouTube clip in which Jeff Novitzky gave a "*talk*"[7] about anti-doping. It matters not what Mr Novitzky did or did not say in that talk: the Respondent accepts that he was alerted by that "*talk*" to potential risk and that, he says, led him to check the list of prohibited products on the WADA website[8]. He also told us that he did read the side of the bottle with the 'Superdrol' section on it albeit he thought that was just a 'description' as opposed to material information, an assertion we found unconvincing and which he relies on to explain why he made no search of Superdrol which he did not regard as an ingredient.

42. We were provided with a copy of that WADA list and, if the Respondent is correct, he says that he saw nothing on it which either identified Superdrol, nor did he see any chemical formula which closely resembled that which he had seen on the bottle. We make no finding either way as to whether or not the Respondent did in fact carry out such a search of the WADA list. Again, he has not corroborated that assertion by any reference to his internet search history.[9] We think it unlikely that he made any effective search by reference to the formula only, at least on the WADA list. He has certainly not established that he did and, as we have said more than once, the burden of proof in relation to intention is his.

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[7] See paragraph 9 of the Respondent's Witness Statement
[8] He said he looked only on his IPhone which might not have provided him with all the information accessible
[9] Although it is accepted that it is possible he might have deleted it

43. The other step that the Respondent says he took on 7 January 2019, before he started taking the substance on 9 January, was to telephone the supplier who gave him the assurance, he says, that the product was fine to take and was not illegal.

44. The evidence about this phone call is also unsatisfactory. We have nothing more than a call record, produced in the name of the Respondent's partner, which shows that on 7 January 2019, the Respondent made an outgoing call (lasting six seconds) to the supplier, MFH. The Respondent says that he left a message asking them to ring him back, which is just about plausible in view of the time shown of six seconds and we accept that it is not necessarily mysterious that the phone record is in the name of the Respondent's partner. On the other hand, there is once again absolutely no corroborative evidence in this or any other phone record of the Respondent having received the incoming call that he says took place.

45. What there is, is an exchange on Instagram in April 2019 in which the Respondent asked MFH whether there was any risk of him testing positive as a result of using SD Matrix. That Instagram exchange undoubtedly records the response from MFH to the effect that they had "*never heard of anybody testing for SD*" and that they "*couldn't see an issue with urine*".

46. The RFU suggests that it is extraordinary that, if there had been an earlier conversation on the 7 January 2019, there was no reference to that previous conversation in the Instagram exchange. We prefer to think this is a point that is neutral. We accept – as incidentally Mr Watkins accepted – that this Instagram exchange might have been an attempt by the Respondent to ask what appeared to be a neutral question to see if he received the same assurance as he had back on 7 January. But, again, it is yet another piece of corroborative evidence which the Respondent has failed to provide (in the sense that there is no record of the earlier call). Whatever one makes of the exchange in April or however one answers the question about whether the conversation on 7 January took place, we do not consider that this would provide any reliable kind of reassurance from MFH. After all, MFH[10] would be unlikely to say that it was an illegal product.

[10] In the same way as SD Matrix and Cardiff Sports Nutrition

47. To draw these threads together, we do not accept that, on a balance of probability, the Respondent has established that he made those internet searches or made those enquiries of the supplier, MFH, before he started taking SD Matrix. We are simply neutral as to those issues which he has not proved on a balance of probability. However, even had we been so satisfied, we consider it would not have advanced his case to any material extent. We find that he could have drawn absolutely no comfort from the fact that the manufacturer / distributor assured him that it was a "*legal bodybuilding supplement*". As we have said, and to be blunt, it is fundamentally unlikely that they would market it as an illegal product.

48. The next point of possible significance is that the product was purchased on 29 December 2018 and the bank details show that a payment was made to "*Muscle Fitness*" (otherwise known as MFH) in the sum of £44 on that day. Unsurprisingly, the RFU (through Mr Tennant) emailed the Respondent on 12 July 2019, pointing out that the MFH website stated that the *SD Matrix* product cost only £26 and asking him to explain the balance (as against the total of £44).

49. The Respondent replied on 29 July 2019, declining to identify that other substance which he characterised as "*irrelevant for the purposes of these proceedings*", an assertion which the Panel found frankly inexplicable if he acted entirely innocently as he claims. The RFU attached importance to this response from the Respondent and suggested that his only plausible reason for declining to give any information about the other material or materials purchased was that an honest answer would have been indicative of a substance purchased to be used in conjunction with steroid use.

50. The RFU's case was that the references to OCS / PCT on the bottle should have been recognised by the Respondent as a reference to substances to be taken to complement or perhaps to counteract use of a steroid. However, whether the other product that he purchased was in fact *M-One-T* and / or was an OCS or PCT and must therefore have been a substance which one would take only with a steroid, is

something we are unable to decide[11], not least because of the absence of sufficient explanatory evidence from either side.

51. Nor is it necessary, in our view, to reach any decision about the second (or other) product which the Respondent purchased from MFH and / or about the significance, if any, of OCS / PCT. We consider that the very fact of such references appearing on the side of the bottle should at least have raised what we called during the course of the hearing a "*red flag*" to an innocent person about the possible dangers associated with the supplement.

52. We certainly accept that the Respondent's failure to cooperate in giving Mr Tennant an immediate and frank answer to his question is suspicious and is a relevant consideration when we have to decide if he has established the burden of establishing that he did not act intentionally.

53. In our view, the most substantial consideration is what the Respondent must have seen and could (or should) have read on the bottle of SD Matrix as it was delivered and which he acknowledges he saw. We shall therefore set out again what there was that was written on the bottle itself[12].

54. One face of the bottle contained nothing unremarkable. It read simply:

> "*Generation*
>
> *SD Matrix.*
>
> *Dietary Supplement*
>
> *90 Capsules – 12mg*"

55. Another face contained what was said to be "*Supplement Facts*". The relevant materials, as described on that face, are:

> "*SUPPLEMENT FACTS*
>
> *Per 1 capsule*

[11] The Respondent told us it was *M-One-T*. But we had no expert or other evidence as to the effect or significance of that.
[12] See also paragraph 4 above

2a, 17 a-dimethyl-4-androstadeiene-3-one, 17b-ol 12 mg

Other ingredients:

Brown Rice, Flour, Magnesium, Stearate, Gelatin and Water."

56. On a further face, there is a "*Description*" which, again, we set out in full:

> "*DESCRIPTION:*
>
> *SD Matrix the UK's longest and best selling pro hormone has just got BIGGER and BETTER!! We have increased the strength to 12mg of Superdrol per capsule (the optimal amount needed by the body to grow in size and strength) PLUS we have increased the capsules to 90 per pot!! Don't underestimate Superdrol this is the real deal make sure you stack with a Great OCS and finish with a PCT to help combat unwanted side effects.*
>
> *LOT# SDM001315*
>
> *EXP 09/2022*"

57. Quite apart from the references to OCS and PCT, there were two express references on the wording of the bottle to "*Superdrol*". Those references should, in the view of the Panel, have raised a very large and very bright red flag because even the most cursory internet search in relation to that word would have revealed it to be a Prohibited Steroid, namely Methasterone.

58. What the Respondent accepts he did not do was either to conduct an internet search in relation to "*Superdrol*" or one in relation to the formula by putting it into one of the search engines in an ordinary way until after the positive test was returned[13]. If he had done so before he started to take SM Matrix, the word "*Superdrol*" would straight away have come up as being the equivalent of Methasterone. If he had put the ingredients into (for example) Google, it would probably also have been obvious (or at least easily established) that the chemical formula itself flagged up a connection to Methasterone[14].

59. To conclude this chronological sequence, we accept that the Respondent started to take the supplement on or about 9 January 2019. We have no reason to doubt him when he says that he stopped taking it, partly because he was otherwise occupied

[13] He also later says that he looked on Global DRO but, unsurprisingly, that would not have shown up Methasterone and we attach no significance to it because this was after his positive test.
[14] Evidence provided by Mr Tennant in an email of 12th July 2019.

and partly because he felt it was not helping very much, and that he did so more than a fortnight before he provided the Sample which subsequently tested positive. To that extent, we attach no significance to the absence of any reference to SD Matrix as a supplement on the Doping Control Form which asked him to provide details of any supplements taken in the last seven days.

DISCUSSION AND CONCLUSIONS

60. We begin by saying that we do not consider that there is any merit whatsoever in the argument that this was a "*contaminated*" supplement. Even though the word "*Methasterone*" may not have appeared in terms on the description of the contents on the bottle, nevertheless the word "*Superdrol*" did appear (twice) and, quite apart from the chemical formula, to identify a product as "*Superdrol*" is the equivalent of identifying it as containing Methasterone. It is simply the same product by a different name in circumstances where the real nature of the product was readily ascertainable by the most basic form of internet search[15].

61. In the end, the issue for us was, we consider, a relatively narrow one. If we had been considering whether or not there was "*Significant Fault or Negligence*", we would have had no hesitation in answering that question (had it stood alone) in the affirmative. The various red flags that the Respondent ignored, and the various enquiries that he did not make, would at the very least constitute a high degree of Fault and serious negligence.

62. Here, however, our focus is on whether the Respondent acted intentionally, either in the sense of deliberate cheating or in taking a supplement knowing that there was "*a significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk*", in a language of WRR 21.10.2.3. As we have said repeatedly, the burden of establishing that he did not act intentionally is on the Respondent. We accept the submission that there are some significant similarities to the case of *WADA v IIHF & Lestan*[16].

[15] This is a very different case on its facts from *Marin Cilic v ITF* (CAS 2013/A/3335) albeit similar questions arose there as to the extent to which a player should carry out an internet search.
[16] CAS 2017/A/5282

63. We consider that the Respondent has established, on a balance of probability, that he did not deliberately take a substance which he actually knew was a Prohibited Substance (such as a steroid). Nevertheless, we consider that the conduct that we have examined above can only fairly be described as the Respondent having taken a very significant risk that the product might contain something illegal. By making so few enquiries as he did (even if we accept that the Respondent did as much as he claims), he was "*manifestly disregard(ing) that risk*". In short, he acted recklessly.

64. To summarise what the Respondent failed to do and what he could and should have done if deciding to take a supplement, we find as follows.

(a) First, he should not have relied upon the inexpert advice of his friend, Mr Quinn, or of people that Mr Quinn knew from the gym.

(b) Second, he could and should have sought some outside and rather more expert advice. He could have asked the Club Doctor, even though such doctor did not regularly attend.

(c) Third, he could and should have spoken to the Club's Fitness & Conditioning Coach, but he did not.

(d) Fourth, alerted as he was to the risks of doping by the Novitzky interview and / or by the fact that other Chinnor players had been previously tested, he could have looked on English Rugby's website. If he had, he would have seen their guidance on supplements which expressly identify the risks.

(e) Fifth, he could have asked his own GP or a properly qualified nutritionist.

(f) Sixth, and perhaps most obvious of all, he could and should have done a proper internet search of the very words (regardless of the formula) appearing on the bottle. As we have explained, that would have straight away thrown up the reference to Superdrol as being the same as or the equivalent of Methasterone.

65. Instead, the Respondent did none of those things and, accordingly, we find that he took a risk and manifestly disregarded the danger of doing so.

DECISION ON SANCTION

66. It necessarily follows that the appropriate sanction in this case, according to WRR 21.10.2.1, is one of four years Ineligibility. Although it was submitted by Mr Shephard that we could and should back date that to the date of the Sample collection, we see no reason to do so.

67. Hence we follow the standard practice of declaring that the period of Ineligibility shall run from 29 March 2019, which is the date upon which he was provisionally suspended.

68. In accordance with World Rugby Regulation 21.13, the relevant parties may appeal this decision by lodging an appeal within the applicable timelines.

WILLIAM NORRIS Q.C. (Chairman)

LORRAINE JOHNSON

PROFESSOR DORIAN HASKARD

London, 11 February 2020

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