

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

Before:

Michelle Duncan (Chair)

Kitrina Douglas

Dr Terry Crystal

BETWEEN

RUGBY FOOTBALL UNION (“RFU”)

National Governing Body

and

CHRISTOPHER MAYOR

Respondent

PART DECISION OF THE NATIONAL ANTI-DOPING PANEL

Introduction

1. The Applicant (“RFU”) is the National Governing Body of Rugby Union in England.
2. The Respondent, Mr Mayor (the “**Player**”) is an English rugby union player who was first registered with the RFU in 2002. He was a highly successful player, playing at the top of the English game for several years. The Player’s professional career ended in

NATIONAL ANTI-DOPING PANEL

2013, following which he has played at a semi-professional and subsequently amateur level, including since August 2019 at Rossendale RFC.

3. In September 2019, UK Anti-Doping (“**UKAD**”), the National Anti-Doping Organisation for the UK, received evidence from [REDACTED] Police who had been investigating a [REDACTED] regarding the supply of Prohibited Substances. The police inspection of [REDACTED] mobile phone revealed an exchange of private Facebook messages between [REDACTED] and the Player on 14 August 2018 and 13 September 2018 in which the Player asked [REDACTED] whether he had any 72iu Lilly pens.
4. 72iu Lilly pens contain the drug Humatrope, which is a Human Growth Hormone (“**hGH**”). hGH is prohibited at all times under section S2 of the World Anti-Doping Agency (“**WADA**”) 2018 Prohibited List and is a non-Specified Substance.
5. On 8 July 2021, the Player participated in a remote interview with UKAD in which he was questioned about the Facebook messages. During the interview, a pre-prepared statement was read on the Player’s behalf by his lawyer. In summary, the statement said that the Player was willing to cooperate with UKAD’s investigation but that he was not able to recall anything on the basis of the disclosure that had been provided prior to the interview. The Player did not provide a substantive response to any questions put to him by UKAD and instead answered all of UKAD’s questions by referring to his pre-prepared statement.
6. By letter dated 8 November 2021, UKAD notified the Player that following their review of the evidence provided to them they had concluded that the Player may have committed a number of Anti-Doping Rule Violations (“**ADRVs**”) and provisionally suspended him as from that date. Subsequently, by letter dated 2 December 2021, the RFU charged the Player with three ADRVs, namely “*Possession of a Prohibited Substance*”, “*Use or Attempted use of a Prohibited Substance*” and “*Trafficking or Attempted Trafficking of a Prohibited Substance*” pursuant to Regulations 21.2.6, 21.2.2 and 21.2.7 of World Rugby’s Anti-Doping Regulations. (the “**Charge Letter**”).
7. On 23 December 2021, the RFU referred the matter to the National Anti-Doping Panel (“**NADP**”), for an independent panel to be convened to determine the charges.

8. Michelle Duncan was appointed as Chair of the Panel on 6 January 2022. Directions were given at a remote directions hearing on 11 January 2022. Dr Terry Crystal and Professor Kitrina Douglas were appointed as Panel members on 7 March 2022.
9. The matter was determined following a remote oral hearing which took place on 6 May 2022 via video conference. The Player attended the hearing and was represented by Nicholas Cotter of Counsel and Jonathon Enston of JMW Solicitors and the RFU were represented by Pippa Manby of Counsel.

Jurisdiction

10. The RFU is the National Governing Body of rugby union in England. As a Member Union of World Rugby, the RFU, via part 20 of its Regulations (the “**RFU Regulations**”), has adopted World Rugby Regulation 21 as its own anti-doping rules.
11. As a licensed competitor who is registered with the RFU and a participant in competitions and other activities organised, convened, authorised or recognised by the RFU, the Player was at all times bound by and required to comply with the RFU Regulations, including the UK Anti-Doping Rules. Accordingly, the RFU has jurisdiction over the Player.

Facts

12. In December 2018, [REDACTED] from the [REDACTED] Police (the “**Police**”) uncovered an exchange of Facebook messages between the Player and [REDACTED]
[REDACTED]
[REDACTED] The messages were uncovered by the Police during an investigation into an alleged offence under the Misuse of Drugs Act 1971. The suspect in that investigation was [REDACTED]
13. The Police provided the messages to UKAD in September 2019. The messages which were exchanged on 14 August 2018 and 13 September 2018 read as follows:

His lawyers also attended the interview. At the interview the Player's solicitor read a prepared statement on behalf of the Player which said:

- "1. I wish to express my eagerness to fully cooperate and comply with UKAD's investigation.*
- 2. I note that there has been extremely limited disclosure provided at this stage.*
- 3. On the basis of the extremely limited disclosure and having to cast my mind back so many years I cannot recall anything without assistance from the evidence that is being relied upon; it is just impossible for me to do so.*
- 4. Whilst remaining fully cooperative, I will consider any further information and disclosure before providing a fuller, more detailed response that will assist with any investigation."*

16. Having read the prepared statement, the Player then answered all questions that were put to him by reference to his statement.

17. On 18 November 2021, the Player sent a response to UKAD's 8 November 2021 letter which:

- a. Accepted that the Facebook messages were sent from the Player's account and were sent by him;
- b. Said that the Player had a limited memory of the messages, particularly given the passage of time;
- c. Accepted that the Player had sought to acquire the 72iu Lilly Pens from [REDACTED] but said that he had done so during a difficult period in his life and had made a speculative request of [REDACTED];
- d. Claimed that the Player had never acquired the pens and that any commentary to acquire items for others was immature bravado in order to ingratiate himself with [REDACTED]

- e. Claimed that the Player never acquired pens from [REDACTED] and that clarity of thought and good common sense came to his aid after the 13 September 2018 message and he no longer sought the items;
- f. Submitted that the Player did not go beyond making speculative requests to [REDACTED] and that after 13 September 2018, he no longer sought any items and renounced and walked away from any furtherance in the attempt;
- g. Referred to the Player's previously clean testing record and the absence of any refusal to take a drugs test;
- h. Denied that the Player had ever possessed, used or trafficked any Prohibited Substances including hGH or ever possessed, used or trafficked an article linked to a Prohibited Substance including 72iu Lilly Pens; and
- i. Stated that the Player no longer has an active role in rugby and is utterly devastated, embarrassed and remorseful for the position he now finds himself in.

18. The Charge Letter was issued on 2 December 2021. The Player was charged with committing the following ADRVs:

- a. Use or Attempted Use of a Prohibited Substance or Prohibited Method, namely hGH on or after 14 August 2018 and/or 13 September 2018;
- b. Possession of a Prohibited Substance or Prohibited Method, namely hGH, on or after 14 August 2018 and/or 13 September 2018; and
- c. Trafficking or Attempted Trafficking of a Prohibited Substance, namely hGH, on or after 14 August 2018 and/or 13 September 2018.

19. By email from his solicitors dated 22 December 2021, the Player denied the charges and said that his position remained unchanged from 18 November 2021 letter.

20. On 25 February 2022, the Player provided his Response to the Charge which stated:

"I refute any suggestion that I ever possessed, used, or trafficked any prohibited substance including the human growth hormone 'Humatrope' (hGH)"

I also refute that I ever possessed, used or trafficked any article linked to a prohibited substance including '72iu Lilly Pens'.

I deny that my actions were 'substantial' steps in a course of conduct planned to culminate in the commission of an anti-doping offence and I positively submit that through my actions and conduct that I renounced the attempt (and this was done significantly before the intervention of other parties notably the [REDACTED] police in September 2019)."

Evidence

21. The Player served his written evidence on 28 March 2022. In his witness statement, consistent with his previous position, the Player did not deny that he had sent the messages to [REDACTED]. He explained that he had done so in an effort to help his father who was suffering from severe knee pain and needed knee replacement surgery. He said that he had spoken to his father about using CBD oil for pain relief but that his father is "old school" so anything outside of what a doctor would prescribe him he has no interest in. He also said that "*as soon as I asked him about whether he considered using CBD oil he said no and told me he was not interested*". Nevertheless, the Player said he thought CBD oil was not enough as it would not help with bone repair. He then stated that out of desperation he sent a text to someone he knew, asking about something he believed to be a growth hormone which he thought could help his father. He continued:

"In that first message it refers to a specific substance because I was aware of it, I knew it was a growth hormone but did not know they were a type of steroid, I was aware that the person I messaged was selling it and I thought it was a growth hormone, I was unfamiliar with this type of situation, it was not something I had ever involved myself in. All I knew was that this person had a substance which was a growth hormone and there was a chance it could help my father with some pain relief.

I sent that message and got no response, that's when I sent a follow up message, Again this was purely bravado"...

I then had another conversation with my father where I asked him if he had done anything about getting some CBD oil, This is when my father told me not to be so stupid, he said as a rugby player I should not be bothering with this stuff and I

should avoid it. And that's how the conversation ended, There were no follow up conversations about alternative medicines and specifically CBD oil, and I not chase up the texts or ever go and acquire any."

22. The Player was cross-examined at some length during the hearing. During his cross-examination he:

- a. Acknowledged that he knew (i) there is a Prohibited List, (ii) growth hormone is a banned substance; and (iii) as a rugby player he could not use any Prohibited Substance or have in his possession, sell, transport or give a Prohibited Substance to anyone else.
- b. Claimed that in 2019 he knew little about hGH other than that it was known as a recovery aid and that he learned about 72iu Lilly Pens through some brief internet research.
- c. Stated that he would not have wanted to give his father anything that might cause harm to his health and that he had no idea whether the 72iu Lilly pens would be compatible with the other medication his father was taking.
- d. Acknowledged that his father would not have let him inject him with something that he had bought on Facebook and that he had no proper reason to think that hGH might help his father.
- e. Claimed that [REDACTED] was an acquaintance who he bumped into from time to time rather than a friend; [REDACTED]
[REDACTED]
and that he could not recall how he knew that [REDACTED] would be able to obtain hGH but just thought that he might be able to.

23. The Player also served a witness statement from his father, which confirmed that he had had severe knee pain for several years and had knee replacement surgery in January 2019. Mr Mayor Senior said that he had had a conversation with his son about using cannabis oil to relieve his pain and that he told him not to be stupid and not to associate himself with anything of that sort or any other kind of alternative medicine. The Player also served character references from Mark Nelson and Steve Hanley.

24. The Player's father, Mr Mayor senior, was also cross-examined during the hearing. On cross-examination he said that his knee replacement operation had not been booked in August 2018. He also said that he would not have taken hGH unless his doctor had signed off on it and he would have been surprised and alarmed if his son had given him hGH because as a rugby player that is not something he should have had in his possession. He also said that he did not know whether his son was friends with [REDACTED]

25. The RFU served evidence from Mr Nick Wojek, Head of Science and Medicine at UKAD and Mr Stephen Watkins, the RFU Anti-Doping and Illicit Drugs Programme Manager. Mr Wojek explained that hGH is sold under various trade names including Humatrope; that it is prescription-only in the UK and is a Class C drug covered by English criminal law and banned by WADA due to its purported effects on the body which in a sporting context may appeal to an athlete seeking to, amongst other things, speed up recovery from training or injury. Mr Watkins gave evidence regarding the Player's anti-doping training and testing record from 2010 onwards. The Player questioned whether the RFU's records were accurate as regards to the number of times he had been tested but ultimately nothing turned on this as both parties acknowledged that the Player had never refused to take an anti-doping test and had never failed a test. Mr Watkins also gave evidence regarding internet research he had carried out on growth hormones, human growth hormones and 72iu Lilly Pens. The gist of his evidence was that he found no reference to 72iu Lilly Pens on any of the first 10 returned pages on any of these searches.

The arguments

26. The parties agreed that the RFU had the burden of establishing to the comfortable satisfaction of the Panel that one or more ADRV's had occurred.

Possession of a Prohibited Substance

27. WRR 21.2.6 provides as follows:

“Possession by a Player In-Competition of any Prohibited Substances or any Prohibited Method, or Possession by a Player Out-of-Competition of any Prohibited Substance or any Prohibited Method which is prohibited Out-of-Competition unless the Player establishes that the Possession is consistent with a therapeutic use exemption (“TUE”) granted in accordance with Regulation 21.4.4 or other acceptable definition.”

28. Appendix 1 to WRR 21 defines Possession as:

“The actual, physical Possession, or the constructive Possession (which shall be found only if the Person has exclusive control or intends to exercise control over the Prohibited Substance or Prohibited Method or the premises in which a Prohibited Substance or Prohibited Method exists); provided, however, that if a person does not have exclusive control over the Prohibited Substance or Prohibited Method or the premises in which a Prohibited Substance or Prohibited Method exists, constructive possession shall only be found if the Person knew about the presence of the Prohibited Substance or Prohibited Method and intended to exercise control over it. Provided, however, there shall be no anti-doping rule violation based solely on Possession if, prior to receiving notification of any kind that the Person has committed an anti-doping violation, the Person has taken concrete action demonstrating that the Person never intended to have Possession and has renounced Possession by explicitly declaring it to an Anti-Doping Organisation. Notwithstanding anything to the contrary in this definition, the purchase (including by electronic or other means) of a Prohibited Substance or Prohibited Method constitutes possession by the Person who makes the purchase [See Comment 57].”

29. The RFU submitted that the elements of constructive possession or possession by purchase were met in this case in that (i) hGH is a Prohibited Substance; (ii) the 72iu Lilly Pens that the Player was seeking to obtain and that ██████ was offering for sale were hGH or another Prohibited Substance; (iii) the Player knew that the 72iu Lilly Pens contained hGH and (iv) the Player sought to exercise control over the 72iu Lilly Pens. Alternatively, the RFU argued that the Player had purchased one or more 72iu Lilly Pens from ██████.

30. Although the RFU acknowledged that it had no evidence that the Player had come into possession of one or more pens, it asked the panel to infer on the basis of the evidence before it that the Player had acquired one or more pens from ██████.

31. On behalf of the Player it was submitted that the only evidence relied upon to allege possession was circumstantial in nature and predicated on the two Facebook conversations between the Player and [REDACTED].

Use or Attempted Use of a Prohibited Substance

32. WRR 21.2.1 and 21.2.2 provide:

“21.2.2.1 It is each Player’s personal duty to ensure that no Prohibited Substance enters his or her body and that no Prohibited Method is Used. 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 for Use of a Prohibited Substance or a Prohibited Method.

21.2.2.2 The success or failure of the Use or Attempted Use of a Prohibited Substance or Prohibited Method is not material. It is sufficient that the Prohibited Substance or Prohibited Method was Used or Attempted to be Used for an anti-doping rule violation to be committed. [See Comment 4].”

33. “Use” is defined at Appendix 1 of WRR 21 as:

“The utilisation, application, ingestion, injection or consumption by any means whatsoever of any Prohibited Substance or Method.”

34. “Attempt” is defined at Appendix 1 of WRR 21 as:

“Purposely engaging in conduct that constitutes a substantial step in a course of conduct planned to culminate in the commission of an anti-doping rule violation. Provided, however, there shall be no anti-doping rule violation based solely on an Attempt to commit a violation if the Person renounces the Attempt prior to it being discovered by a third party not involved in the Attempt.”

35. As regards to Use, the RFU relied upon the facts that hGH is a Prohibited Substance, the Player sought to obtain hGH from [REDACTED] shortly after commencing training and at a time when he was switching clubs, and that he referred to hGH by a specific brand name. Much was made of the fact that the Player asked for a specific product – 72iu

Lilly Pens, which as was clear from Mr Watkins evidence, is not readily identifiable from a google search. The RFU also submitted that the tone and content of the messages between [REDACTED] and the Player suggested that they had a longstanding relationship and were more than mere acquaintances.

36. For the Player, it was submitted that the Facebook messages amount to only speculative requests, that there was no evidence of Use by the Player and that a speculative request regarding the availability of pens was not conduct that constitutes a substantial step in a course of conduct that the Player planned to personally use a Prohibited Substance. The Player also relied upon the fact that there was no evidence of communication about pricing, delivery or usage or that [REDACTED] ever confirmed that he would supply 72iu Lilly Pens.

Trafficking or Attempted Trafficking

37. Trafficking is defined at Appendix 1 of WRR 21 as:

“Selling, giving, transporting, sending, delivering or distributing (or Possessing for any such purpose) a Prohibited Substance or Prohibited Method (either physically or by any electronic or other means) by a Player, Player Support Person or any other Person subject to the jurisdiction of an Anti-Doping Organisation to any third party; provided, however, this definition shall not include the actions of "bona fide" medical personnel involving a Prohibited Substance used for genuine and legal therapeutic purposes or other acceptable justification, and shall not include actions involving Prohibited Substances which are not prohibited in Out-of-Competition Testing unless the circumstances as a whole demonstrate such Prohibited Substances are not intended for genuine and legal therapeutic purposes or are intended to enhance sport performance.”

38. The RFU submitted that even on the Player's own evidence he had effectively accepted that he was guilty of Attempted Trafficking of hGH to his father and/or Attempted Possession. In support of this the RFU referred to the facts that the Player had acknowledged that he had sent Facebook messages to [REDACTED], that he had sought to acquire hGH from [REDACTED] that he knew HGh was a banned substance; that he chased

██████████ regarding the acquisition of the hGH and that the purpose of the purchase was to assist his father.

39. The RFU further submitted that the Player's actions in contacting ██████████, seeking to acquire the 72iu Lilly Pens and indicating that he intended to sell pens to others constituted substantial steps in a course of conduct planned to culminate in the offence of trafficking.

40. On behalf of the Player it was submitted that the only evidence the RFU had produced regarding an allegation of trafficking was the Player's message on 13 August 2018 in which he said he only wanted one pen for himself at that time but that he would get the word out and order more to sell and that this request did not amount to conduct that constitutes a substantial steps in a course of conduct that he Player planned to attempt to traffic a Prohibited Substance.

41. In the alternative, it was submitted that in any event, the Player renounced through his actions any attempt to traffic in any form.

Analysis

42. The Player knew that hGH is a Prohibited Substance and that as a player he could not Use, have in his possession or sell a Prohibited Substance. Nevertheless, he acknowledged that he messaged ██████████ in August 2018 with the intention of acquiring hGH. There is however no evidence that the Player acquired any 72iu Lilly Pens or any other Prohibited Substance from ██████████ in August or September 2018 – there is no evidence that he agreed a price and/or paid ██████████ for one or more 72iu Lilly Pens or that he made arrangements for the delivery of, let alone collected, one or more pens.

43. The RFU acknowledged that there was no such evidence but asked the Panel to infer that a purchase must have occurred and that rather than this being a single approach to a casual acquaintance in a desperate attempt to help his father, there was in fact a longstanding relationship between the Player and ██████████ going back several years. In support of this submission the RFU relied upon the Facebook messages between the Player and ██████████, the fact that the Player had recently joined a new club, was starting

pre-season training and did not have the same level of fitness he had had during his days as a professional rugby player, that he had known ██████████ for 20 years and the fact that he asked for a specific product that was not readily identifiable from the brief internet research he claimed to have undertaken. The RFU submitted that far from this being an out of the blue approach by a son desperate to help his father who had substantial knee pain, it was part of a series of transactions that had been previously conducted.

44. Although the Panel does not accept the Player's evidence that ██████████ was a mere acquaintance who he bumped into from time to time and who he decided to approach in an ill-thought out, desperate attempt to help his father, it is not satisfied to the requisite standard that on this occasion the Player acquired any 72iu Lilly pens or any other Prohibited Substance from ██████████ and nor is it willing to infer on the basis of the limited evidence that was before it that a purchase was made.
45. Similarly, and for the same reasons, the panel is not satisfied, on the evidence before it, that the ADRV of Trafficking has been established and nor is it willing to infer on the basis of the evidence before it that Trafficking took place. Again, there is no evidence that the Player acquired any 72iu Lilly Pens or that he sold one or more of 72iu Lilly Pens to a third party. The evidence is in fact to the contrary – both the Player and his father confirmed that the Player had not given his father a 72iu Lilly Pen or any Prohibited Substance. Although the Player demonstrated an intention to sell pens to others in his final message to ██████████ on 14 August 2018, evidence of intention to sell is not by itself sufficient to constitute the offence of Trafficking.
46. The panel is however satisfied that the Player attempted to use a Prohibited Substance and that he attempted to traffick a Prohibited Substance. As to this:
 - a. The Player took a substantial step in a course of conduct that was intended to culminate in the Use of a Prohibited Substance – he contacted ██████████ and asked him about the availability of 72iu Lilly Pens, he asked for information about delivery and said that although he initially only wanted 1 pen for his personal Use, he intended to acquire some more for sale to others. He then followed up this initial exchange one month later. Although the Player consistently denied that he

had intended to sell the pens to others, that denial did not ring true given the clear words in his message to [REDACTED] and his follow up message on 13 September 2018. Although the Player may well have changed his mind about acquiring the pens after he sent his 13 September 2018 message, that does not alter the fact that prior to 13 September 2018 he had taken substantial steps in his attempt to purchase 72iu Lilly pens from [REDACTED] and to traffick those pens to others.

- b. The Player also submitted that the steps taken by the Player did not constitute substantial steps in a course of conduct that was intended to culminate in the Use of a Prohibited Substance. The Panel disagrees – the Player asked [REDACTED] about the availability of a specific product, a product that he would only have known about if he had either purchased the product previously or had conducted substantial internet research into hGH rather than the single, brief google session he claimed to have undertaken. Further, he told [REDACTED] that there would be further transactions after the initial transaction was concluded and he followed up with [REDACTED] one month later. Irrespective of whether the transaction was ultimately completed, the panel is satisfied that the Player took substantial steps towards buying a 72iu Lilly pen for his personal Use. That is clear from the face of the messages he sent to [REDACTED] and from his written and oral evidence.
- c. The Player also submitted that he had in any event renounced his intention to acquire one or more 72iu Lilly pens after 13 September 2018 on the basis that he did not follow up any further with [REDACTED] or take any other steps towards acquiring the pens and that accordingly the charges of Attempted Use and Attempted Trafficking could not stand. However, as is clear from the decision of the Anti-Doping Panel in *RFU v Luke Willmott* dated 25 March 2015, simply remaining quiet and taking no further action is not sufficient to constitute renunciation for the purpose of WRR 21. Instead, an express step or action evincing a change of position on the part of the individual who had previously attempted to use or traffick a Prohibited Substance. No such step was taken by the Player.

The Tribunal's findings

47. Both parties agree that the RFU has the burden of proving to the comfortable satisfaction of the panel that an ADRV has been committed by the Player.

48. In this case, the Panel finds that the Player attempted to Use a Prohibited Substance and that he attempted to traffick a Prohibited Substance. The Panel does not find that the Player used a Prohibited Substance or that he Trafficked a Prohibited Substance and accordingly those charges are dismissed.

The Decision

49. For the reasons set out above, the Tribunal makes the following decision:

50. ADRVs contrary to WR Regulations 21.2.2 and 21.2.7 have been established;

51. This decision deals solely with liability. We will deal with sanction and any other matters in writing or at a further short hearing to hear further oral submissions.



Michelle Duncan (Chair)

on behalf of the Panel

London, UK

20 May 2022

1 Paternoster Lane, St Paul's London EC4M 7BQ resolve@sportresolutions.com 020 7036 1966

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www.sportresolutions.com



ENABLING FAIR PLAY

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Before:

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Professor Kitrina Douglas

Dr Terry Crystal

BETWEEN

RUGBY FOOTBALL UNION (“RFU”)

National Governing Body

and

CHRISTOPHER MAYOR

Respondent

DECISION OF THE NATIONAL ANTI-DOPING PANEL ON SANCTION

Introduction

1. The Panel was appointed to determine whether the Respondent, Mr Mayor (the “**Player**”), committed three Anti-Doping Rule Violations (“**ADRVs**”), namely “*Possession of a Prohibited Substance*”, “*Use or Attempted use of a Prohibited Substance*” and “*Trafficking or Attempted Trafficking of a Prohibited Substance*” pursuant to Regulations 21.2.6, 21.2.2 and 21.2.7 of World Rugby’s Anti-Doping Regulations. The Applicant (“**RFU**”) is the National Governing Body of Rugby Union in England.

NATIONAL ANTI-DOPING PANEL

Background

2. The Player is an English rugby union player who was first registered with the RFU in 2002. He was a highly successful player, playing at the top of the English game for several years. The Player's professional career ended in 2013, following which he played at a semi-professional and subsequently amateur level until 2020.
3. In September 2019, UK Anti-Doping ("UKAD"), the National Anti-Doping Organisation for the UK, received evidence from [REDACTED] Police of certain private Facebook messages between the Player and [REDACTED] in which the Player asked whether [REDACTED] had any 72iu Lilly pens.
4. 72iu Lilly pens contain the drug Humatrope, which is a Human Growth Hormone ("hGH"). hGH is prohibited at all times under section S2 of the World Anti-Doping Agency ("WADA") 2018 Prohibited List and is a non-Specified Substance.
5. On 8 July 2021, the Player participated in a remote interview with UKAD in which he was questioned about the Facebook messages. Thereafter, by letter dated 8 November 2021, UKAD provisionally suspended the Player and put him on notice that he may have committed a number of ADRVs.
6. The Player's lawyers produced a Response to the Notice letter dated 23 November 2021 denying that any ADRVs had been committed.
7. UKAD provided the RFU with notification of a case to answer on 23 November 2021. The Player was charged by the RFU by letter dated 2 December 2021.
8. The Player denied the Charges by letter dated 22 December 2021 stating that his position remained unchanged from his letter dated 23 November 2021.
9. A hearing took place on 6 May 2022 to determine the Charges. The Player attended the hearing and was represented by Nicholas Cotter of Counsel and Jonathon Enston of JMW Solicitors. The RFU were represented by Pippa Manby of Counsel.
10. On 20 May 2022, by decision of the National Anti-Doping Panel, the Player was found to have committed the following two ADRVs – (1) Attempted Use of a Prohibited

Substance and (2) Attempted Trafficking of a Prohibited Substance pursuant to World Rugby Regulation 21 (“**WRR 21**”).

11. Having found that the Player had committed the two offences, the Panel issued directions for the service of submissions in relation to sanctions. Pursuant to those directions, the RFU served its submissions on sanction on 27 May 2022. The Player served his submissions on sanctions on 7 June 2022. The parties agreed that the issue of sanction could be determined on the papers without a hearing.

Regulations

12. The period of Ineligibility for a violation of Use or Attempted Use of a Prohibited Substance is four years, unless the Player can demonstrate that the Anti-Doping Rule Violation was not “intentional” or where the Prohibited Substance is a Specified Substance (WRR 21.10.2.1). The Player bears the burden of proof in this regard on the balance of probabilities.

For the purposes of WRR 21.10.2.1 above, “intentional” is defined within WRR 21.10.2.3 as follows:

“As used in Regulations 21.10.2 and 21.10.3, the term “intentional” is meant to identify those Players who cheat. The term therefore requires that the Player or other Person engaged in conduct which he or she knew constituted an anti-doping rule violation or knew that there was a significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk. An anti-doping rule violation resulting from an Adverse Analytical Finding for a substance which is only prohibited In-Competition shall be rebuttably presumed to be not intentional if the substance is a Specified Substance and the Player can establish that the Prohibited Substance was Used Out-of-Competition. An anti-doping rule violation resulting from an Adverse Analytical Finding for a substance which is only prohibited In-Competition shall not be considered intentional if the substance is not a Specified Substance and the Player can establish that the Prohibited Substance was Used Out-of-Competition in a context unrelated to sport performance.”

13. The period of Ineligibility for a violation of Trafficking or Attempted Trafficking is a minimum of four years up to a lifetime depending upon the seriousness of the violation

(WRR 21.10.3.3).

The arguments

14. In light of the Panel's findings in its 20 May 2022 decision on liability, the Player did not seek to argue that his ADRVs were not intentional or that he is entitled to any Fault-based reduction. Therefore, the only issue between the parties was whether the Panel should impose a period of Ineligibility of more than four years.

15. As to this:

- a. The RFU accepts that there is no direct evidence that the Player was attempting to target or sell or otherwise supply any particular individuals within sport. The RFU also accepts that the Player's actions did not involve multiple substances or that he was operating over a significant period of time or that his conduct was an organized business or distribution network. The RFU therefore accepts that an eight year ban as was applied in *UKAD v Dean Colclough* (30 June 2014) would be unduly harsh.
- b. The RFU submits however that a five year ban would be appropriate in this case relying on the following:
 - i. The Player was well educated on his anti-doping responsibilities.
 - ii. hGH is a Class C drug, the supply and possession of which is prohibited by criminal law. The Player's attempt to obtain hGH has already been subject to police investigation.
 - iii. The Player is an ex-professional player who was no doubt held in high regard by his teammates. He would have been expected to set high standards on and off the pitch for less experienced players to follow.

16. The Player submits that the period of Ineligibility for Attempted Use should be limited to four years for the following reasons:

- a. The Attempted Use was limited in nature in terms of duration and requests;

- b. The Attempted Use did not involve multiple substances
- c. The Attempted Use was not close to actual completion;
- d. The Attempt was not made while the Player was a professional payer at the highest levels of the game and the breach arose at a time when the Player was not involved in elite rugby.

17. As regards the attempted trafficking, the Player submitted that the period of ineligibility should be limited to four years for the following reasons:

- a. The Attempted Trafficking was limited in nature in terms of duration and requests;
- b. The Attempted Trafficking did not involve multiple substances
- c. The Attempted Trafficking was not directed at players or other sports

[REDACTED]

- e. The Player's attempt, unlike the case of *RFU v Wilmott* (2 June 2015)– did not involve the seizure of any banned substances and clearly involved an Attempt to procure far less amounts
- f. Unlike the *Wilmott* case, the Player's conduct did not involve the use of innocent third parties. Further the Attempted Trafficking in the *Wilmott* case was far more advanced and involved a large number of items.
- g. The Player has an unblemished anti-doping record.

Analysis

18. Both parties have acknowledged that while the Panel may wish to consider the sanctions imposed by other UKAD OFFICIAL hearing panels in comparable cases, the decision in a particular case necessarily depends on the specific facts and circumstances of that case.

19. The RFU has accepted that the Player should be given credit for the period of Provisional Suspension served since 8 November 2021.
20. The Player was notified of the charges at the same time. Accordingly, they are to be treated as a single Anti-Doping Rule Violation.
21. The Panel does not consider there are grounds for imposing a period of Ineligibility of more than four years. The Panel accepts and agrees with the Player's submissions that (i) the Attempted Use and Attempted Trafficking were limited in nature and did not involve multiple substances; (ii) the Attempted Use was not close to actual completion and did not, on the evidence before the Panel, extend beyond the private messages exchanged between the Player and ██████████; (iii) in contrast to the *Wilmott* case, the Attempted Trafficking did not involve the seizure of any banned substances or large quantities of banned substances; (iv) also in contrast to the *Wilmott* case, the present case did not involve the use of innocent third parties and was far less advanced than the scheme in *Wilmott*; and (v) the Attempted Trafficking was not directed at other players or other sports and nor did either the Attempted Use or Attempted Trafficking take place during a period in which the Player was involved in elite or professional rugby.

The Decision

22. For the reasons set out above, the Panel decides that the Player is to be subject to a period of Ineligibility of 4 years commencing on 8 November 2021 and ending at midnight on 7 November 2025.

Right of Appeal

23. In accordance with Article 13.5 of the NADP Procedural Rules any party who wishes to appeal must lodge a Notice of Appeal with the NADP Secretariat, located at Sport Resolutions, 1 Paternoster Lane, London, EC4M 7BQ (resolve@sportresolutions.com), within 21 days of receipt of this decision.

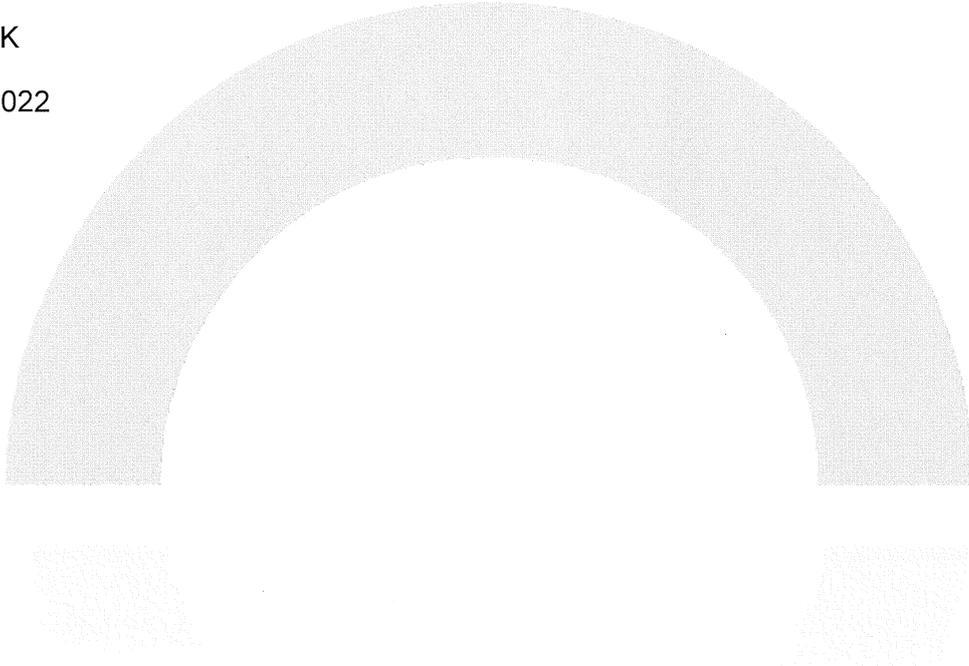


Michelle Duncan

On behalf of the Panel

London UK

22 June 2022



1 Paternoster Lane, St Paul's London EC4M 7BQ resolve@sportresolutions.com 020 7036 1966

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