

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

BEFORE:

Mr William Norris QC (Chair)

Ms Blondel Thompson

Professor Gordon McInnes

B E T W E E N :

RUGBY FOOTBALL UNION ("RFU")

Anti-Doping Organisation

and

MICHAEL LOWIS

Respondent

DECISION

Introduction

1. Michael Lewis is a 40-year-old¹ Rugby player with Clevedon RFC. On 15 March 2017, he played in a match between Clevedon RFC and Bridgewater & Albion RFC², following which he was required to provide a urine sample at the Doping Control Station.
2. The sample that Mr Lewis provided was analysed and tested positive for the presence of Prohibited Substances, namely Drostanolone and Trenbolone (metabolite 17-epitrenbolone).
3. On 10 April 2017, Mr Lewis was notified of the finding and informed that he was provisionally suspended, pursuant to the relevant RFU Regulation 20.12.2. He was also warned that the "*standard sanction for this violation is a suspension from sport of two years*" and it was suggested he should consider taking independent legal advice. The reference to two years was an error which the RFU corrected by a later email of the same day (10 April 2017).
4. There were evidently some difficulties with communication³ and on 09 May 2017, Mr Lewis said that he had already "*sent a response saying that [he] would be happy to except [sic] the two years*". The two / four year error was pointed out and nothing further turns upon it.

Jurisdiction

5. The RFU's Anti-Doping Rules are set out in RFU Regulation 20 which, in turn, adopts World Rugby's Anti-Doping Rules as set out in World Rugby Regulation 21. Mr Lewis (the "player") is registered with RFU (RFU I.D. No. 00245171). RFU Regulation 20.6 sets out the basis of the RFU's "*Authority to Regulate*" and it is not disputed that the

¹ Date of birth: 9 February 1977

² Somerset Cup Semi-final.

³ Mr Lewis's internet was apparently down at some stage.

player is bound by World Rugby Regulation 21 and RFU Regulation 20. In particular, RFU Regulation 20.12.4 provides that the RFU will instruct the National Anti-Doping Panel to appoint an independent Panel to hear the case.

6. It is upon the basis of those provisions that the present Panel has been convened.

The Charge

7. The charge is a breach of World Rugby Regulation 21.2.1. It provides that:

"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)."

Process

8. As we have already noted, the RFU wrote to Mr Lewis on 10 April 2017 notifying him of the findings in relation to the urine sample and telling him that he was provisionally suspended.
9. The anti-doping violation was drawn to his attention⁴ and it was suggested that he should consider taking independent legal advice. His attention was specifically drawn to the provision within World Rugby Regulation 21.10.6.1 for a Panel to grant a reduction in any sanction in the event that the person charged provides substantial assistance leading to the detection of other dopers. He was asked if he

⁴ We have already noted the mistaken reference to two year sanction.

wished to contest the charge and to provide any "*other pertinent information*" by 24 April 2017.

10. By an email of 05 May 2017, Mr Lewis was asked to confirm, by 08 May 2017, whether he accepted the four year sanction⁵ and whether, pursuant to World Rugby Regulation 21.7.12.2, he wished to have a hearing before an NADP Panel or was happy for the matter to be dealt with by that Panel on paper.
11. The Chair of the present Panel gave directions in an oral hearing by telephone on 31 May 2017 in which Mr Lewis participated. Those directions provided that Mr Lewis would respond to the Notice of Charge in formal terms by 21 June 2017, that the RFU would reply to that response by 5 July 2017 and that evidence would be served and exchanged by 12 July with the view to a hearing taking place on 18th July 2017.
12. Mr Lewis took the opportunity to obtain *pro bono* legal advice and a "*Statement in Response to the Charge*" was served on 16 June 2017⁶. It read as follows:
 3. *Mr Lewis no longer wishes to contest the charge but he does wish to draw to the Panel's attention two mistakes on the notification letter: (i) the date of the test was 25.03.17 and (ii) the letter stated that the standard sanction for the alleged violation was a suspension from any sport for a period of two years. These mistakes were corrected by the RFU in an email sent on 10.4.17 (16:21) [75] after the original letter had been sent (by email at 12:24) [75-76]*
 4. *Mr Lewis intends no discourtesy to the Panel but he does not wish to file any evidence in answer nor to make any representations at the hearing on 18/07/17. Mr Lewis therefore invites the Panel to dispose of the matter on paper.*
 5. *The writer is available to assist with the final disposal of the matter, as required by the Panel."*

⁵ Reference being made to Article 15.1 of the WADA Code.

⁶ Prepared and signed on his behalf by Tom Shepherd of Counsel.

13. The RFU's submissions were contained in a submission by Mr Stuart Tennant of its Legal & Governance Department, dated 29 June 2017.
14. Given that there was no contest to the charge, no submissions on sanction from the Player and no request for a personal hearing by either side, the Panel discussed this matter by telephone on 11th July 2017⁷. This is the Panel's unanimous decision.

Provisions as to Sanction

15. The provisions as to sanction are set out in World Rugby Regulation 21.10. For violations of World Rugby Regulation 21.2.1, World Rugby Regulation 21.10.2.1 provides that:

"The period of ineligibility shall be four years where:

'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."

16. Given that Drostanolone and Trenbolone are not Specified Substances, the starting point for ineligibility here is four years, which period of ineligibility could be reduced to two years under World Rugby Regulation 21.10.2.2 if the Player can establish that the violation was not intentional.
17. There is no need for the present Panel to revisit the analysis of the meaning of the term "*intentional*", an issue which has arisen in several previous cases. Suffice it to say that it is perfectly clear from World Rugby Regulation 21.10.2.1.1 that it is for the "*Player or other Person*" to establish such absence of intention.

⁷ Each member of the Panel had a bundle of all the relevant material in advance of our telephone discussion

18. A remarkable feature of the present case is that the Player has offered absolutely no explanation for how the Prohibited Substances came to be in his system. In those circumstances, Mr Lewis has made no attempt to demonstrate that his conduct was not "*intentional*" and to discharge the burden of establishing any basis upon which the period of ineligibility shall be reduced below four years.
19. The Panel has also considered whether there may be any other basis for reducing that period, a matter which the RFU addressed in its submissions at paragraphs 12 to 20. For example, World Rugby Regulation 21.10.6.3 provides that the Player "*may receive a reduction in the period of Ineligibility down to a minimum of two years*" if he has made a "*prompt admission*", but that is not the only factor to be considered: it is also contingent upon the "*approval and at the discretion of both WADA and World Rugby (or the Association, Union or Tournament Organiser handling the case as applicable)*". The Player then "*may receive a reduction in the period of Ineligibility down to a minimum of two years, depending on the seriousness of the violation and the Player or other Person's degree of Fault*".
20. The RFU do not consider that Mr Lewis has made a "*prompt*" admission and, whilst that may be a moot point, none of the other factors considered in World Rugby Regulation 21.10.6.3 arise, nor is there any basis upon which it could be asserted that there was an absence of "*significant fault or negligence*" under World Rugby Regulation 21.10.5.2.
21. We therefore find no reason for reducing the sanction provided by World Rugby Regulation 21.10.2.1.

Decision

22. For all the reasons given above, this Panel considers it appropriate to impose a period of ineligibility of four years.

23. Pursuant to World Rugby Regulation 21.10.11.3, Mr Lewis should receive credit for the period of his provisional suspension which took place on 10th April 2017. That will be the start date for the Period of Ineligibility of four years from any sport.
24. The relevant parties may appeal against this decision by lodging an appeal in accordance with World Rugby Regulation 21.13.



A handwritten signature in black ink, appearing to read 'W. Norris', is positioned above the typed name.

WILLIAM NORRIS Q.C.

For and on behalf of the Panel

20 July 2017



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