

## **WORLD RUGBY INDEPENDENT JUDICIAL COMMITTEE**

IN THE MATTER OF THE REGULATIONS RELATING TO THE GAME

AND IN THE MATTER OF AN ALLEGED ANTI-DOPING RULE VIOLATIONS BY  
**ROCHANA HETTIARACHCHI** (SRI LANKA) CONTRARY TO REGULATION 21

BEFORE A JUDICIAL COMMITTEE APPOINTED PURSUANT TO REGULATION  
21.8.2 CONSISTING OF:

**Graeme Mew** (Canada - Chair)  
**Dr Ismail Jakoet** (South Africa)  
**Gregor Nicholson** (Scotland)

Representatives and Participants:

*Ben Rutherford* (Counsel for World Rugby)  
*Shanaka Amarasinghe* (Counsel for the Player)

Mike Earl (Anti-Doping General Manager, World Rugby)  
David Ho (Anti Doping Manager - Compliance and Results, World Rugby)  
Ross Blake (Anti-Doping Co-ordinator, World Rugby)

Rochana Hettiarachchi (the Player)

Rohan Gunaratne – (CEO, Sri Lanka Rugby Football Union)  
Rohan Chinthaka – (Sevens Team Manager, Sri Lanka Rugby Football Union)

*Hearing conducted by video/telephone conference on 27 October and 10  
November 2016; further written submissions received on 18 November, 2  
December and 6 December 2016.*

### **REASONS FOR DECISION**

#### Overview

[1] Tamoxifen is a hormone modulator used legally (on prescription) to treat some types of breast cancer as it inhibits the production of oestrogen (certain types of breast cancer require oestrogen to grow). But it has other, non-therapeutic uses. One such known use is towards the end or at the end of anabolic steroid cycles as part of a post-cycle treatment for preventing or reducing the side effects of anabolic steroids. It is listed as a Specified Substance in S4.2 of the World Anti-Doping Code Prohibited List 2016 and is prohibited both in-competition and out-of-competition.

[2] On 19 June 2016, Rochana Hettiarachchi (the "Player"), a member of the Sri Lanka national men's 7s rugby team, was tested at the Monaco Sevens as part of World Rugby's In-Competition Doping Control programme. The sample he provided yielded an Adverse Analytical Finding for the Presence of a Prohibited Substance, 3hydroxy4methoxytamoxifene, which is a metabolite of tamoxifen.

[3] Following a Preliminary Review, undertaken in accordance with Regulation 21.7.2 of the World Rugby *Regulations Relating to the Game*, the Player was notified, via the Sri Lankan Rugby Football Union (the "Union"), of the Adverse Analytical Finding and informed that he was Provisionally Suspended. The Union confirmed having passed this notification on to the Player on 21 July 2016.

[4] The Player accepts the Adverse Analytical Finding (AAF) for tamoxifen. But he claims to have had no knowledge of taking tamoxifen and denies any intention to cheat.

[5] As a result of the Player's acceptance of the AAF, World Rugby has met its burden of establishing that the Player has committed an Anti-Doping Rule Violation namely the presence in the player's sample of the Prohibited Substance tamoxifen.

[6] Because tamoxifen is a "Specified Substance", the applicable sanctioning range for the Player's Anti-Doping Rule Violation will be determined firstly by whether or not it is found that his use of tamoxifen was intentional: World Rugby bears the burden of proving that the anti-doping rule violation was intentional, in which case the presumptive sanction would be four years Ineligibility, failing which the maximum sanction would be two years but subject to any case for the Player to be deemed to have No Fault or No Significant Fault.

[7] The Player requested a hearing before an independent judicial committee.

#### Procedural History

[8] In accordance with World Rugby's Regulations Relating to the Game, this Judicial Committee ("JC") was appointed to consider the Player's case and, in particular, to determine the applicable sanction.

[9] Certain directions were given by the JC in relation to the disclosure of documents and witness statements, the testimony of witnesses at the hearing, the delivery of written submissions and the scheduling of the hearing itself.

[10] The hearing commenced on 27 October 2016. The oral testimony of the Player and another witness, Shanaka Adhikari, was provided by way of videoconference. The other participants in the hearing did so by way of telephone conference.

[11] It was not possible to complete the hearing in one session. The hearing therefore continued on 10 November 2016, using the same media as before.

[12] As will be discussed further on in these reasons, in his witness statement and subsequent oral testimony, the Player reported, of his own volition, his use of what he said he believed to be a supplement called "Dianabol". As has been acknowledged on the Player's behalf, Dianabol is known to contain methandienone, which is an anabolic steroid and also a Prohibited Substance. In the absence of any laboratory analysis or adverse analytical finding indicating the presence of methandienone in the sample provided by the Player, following the second day of the hearing, the JC invited further submissions and indicated a willingness to consider any request for leave by a party to introduce further evidence, having regard to observations and concerns which the JC set out in a Minute dated 15 November 2016, the essence of which are captured in the following two paragraphs excerpted from that Minute:

*11. The absence of an adverse analytical finding for the Presence of methandienone is puzzling. The medical member of the Judicial Committee understands that if methandienone and tamoxifen were to be consumed concurrently, methandienone would be detectable for a longer period of time after consumption than tamoxifen would be. The Judicial Committee is concerned about this unexplained anomaly.*

*12. Without making any determination or ruling on the subject, the Judicial Committee is also concerned about the possibility of inconsistent findings of fact or of duplication of time, effort and resources on the part of the parties and this or another judicial committee in the event that World Rugby prefers a further charge or charges against the Player as a result of his admitted Use of Dianabol.*

[13] In response, further comprehensive submissions, with reference to jurisprudence and external sources (articles and news reports), were received from the parties. The submissions of World Rugby make reference to the Player not having sought leave to introduce fresh evidence. Given the nature of such "evidence" and what we feel might appropriately be described as a lack of vigour with which World Rugby's objection was expressed, we have considered the sources referred to.

[14] World Rugby did not amend or add to the formal charge against the Player for the original tamoxifen charge, but has reserved the right to bring a further charge.

[15] While the JC has read the entire record and paid careful attention to the comprehensive written and oral submissions and testimony, we refer only to those matters which we regard as necessary to convey our reasons for this decision.

## Issues

[16] An Anti-Doping Rule Violation on the part of the Player having been established, the following issues remain:

- a. Was the Player's anti-doping rule violation intentional?
- b. If not, should the presumptive sanction of two years Ineligibility be reduced because of a lack of fault or negligence, or significant fault or negligence, on the Player's part?

[17] World Rugby bears the onus of establishing, to the comfortable satisfaction of the JC, that the Player's anti-doping rule violation was intentional (see CAS 2016/A/4512 *WADA v Turkish Football Federation and Ahmet Kuru*).

[18] If the anti-doping rule violation was not intentional, the Player bears the onus of establishing, on the balance of probabilities, that there was no fault or negligence on his part (in which case the otherwise applicable period of Ineligibility would be eliminated), or no significant fault or negligence on his part (in which case the period of Ineligibility would, at a minimum, be a reprimand and no period of Ineligibility, and at a maximum, two years of Ineligibility, depending on the Player's degree of Fault).

## The Evidence

[19] Rochana Hettiarachchi was, at the time giving rise to this anti-doping rule violation, a 22-year-old professional rugby player. He was contracted to play club rugby for the Ceylonese Rugby and Football Club in Colombo, Sri Lanka ("CR&FC"). In addition to receiving a modest salary from his club, he was also provided with accommodation, two meals on training days and with protein and creatine supplementation and multi-vitamins.

[20] The Player's first language is Sinhalese. He describes his comprehension of English as "poor".

[21] On 2 January 2015, the Player suffered a serious hamstring injury. He was told it would take about six months to heal. As he was unable to train, he went to his parents' home in Kandy to recuperate.

[22] The journey between Kandy and Colombo takes approximately three hours by road.

[23] While in Kandy, the Player was not receiving supplementation or multi-vitamins from his club. He says that he did not have sufficient financial resources to buy his own supplements.

[24] He took the opportunity, while recovering from his hamstring injury, to have a metal plate (which had been inserted earlier to help a compound fracture of his cheek heal) removed.

[25] The Player continued to receive his salary while injured. However he expected to lose the opportunity to play in the Asian Sevens Circuit and the Sri Lanka Super Sevens, both of which would have generated extra income for him.

[26] Once he was able to do so, the Player went to a local gym and started limited exercise. He was, however, frustrated at his slow rate of recovery from injury.

[27] The Player was told by his cousin Shanaka Adhikari that he had seen and spoken to bodybuilders and other athletes and that there were supplements available at affordable prices. In particular a product called Dianabol was available at around Rs.3000 for one hundred tablets.

[28] The Player claims that he did not know that Dianabol contained a banned substance. He and his cousin did an Internet search. In his witness statement, he says that he performed a Google search for the term 'Dianabol + safe' from which, he concluded, "[w]ith my limited understanding I saw the word safe many times, and also read that [Dianabol] was used by thousands of athletes".

[29] During the course of his oral testimony, however, the Player said that he had not, in fact, searched the phrase "Dianabol + Safe" on the internet.

[30] Through Mr. Adhikari, the Dianabol tablets were purchased from an individual named "Upal". They were blue and heart shaped. The Player claimed that they were exactly the same tablets that he had seen many school and club players taking during his playing career and were known as "Blue Hearts".

[31] The Player acknowledges that he did not consult a coach or a trainer and that his ability to do his own research online was limited by his lack of fluency in English. The bodybuilders he spoke to at the gym told him that the product was 'safe'. Indeed, the Player has steadfastly maintained that Dianabol is freely available from identifiable and seemingly legitimate publicly advertised sources. He only purchased it through Upal because it would have been more expensive for him to purchase Dianabol in a shop.

[32] During the course of his cross-examination on the second day of the hearing, the Player disclosed, for the first time, that he had also taken a product called "Liv52". He bought it from a pharmacy for Rs.550. He had been told it would counter the effects of Dianabol on his liver.

[33] The Player acknowledged that he took Liv52 as part of a combination with Dianabol because he had been told by his cousin that doing so would help him recover from injury. He took the substances for four weeks. He says that it never occurred to him that these were bad drugs because they were so readily available.

[34] The Player says he was unaware that he could have sought guidance on the use of supplements and other substances from the Union.

[35] Ajith Abeyratne, the Chairman of Rugby at CR&FC and a former rugby international, gave evidence that in 50 years' involvement in the Game in Sri Lanka, he had not seen players use "Blue Hearts".

[36] The Club thought that the Player's injuries would keep him out of the Game until the end of the 2015/16 season. He had gone back to Kandy to recuperate without any programme from the Club, although contact was maintained by telephone. Mr. Abeyratne acknowledged that the Player was not receiving supplements through the Club while he was recuperating and "had no access to the coaching staff in order to monitor the supplementation" (yet when cross-examined, Mr. Abeyratne said that if the Player had asked for supplements they would have been sent).

[37] Mr. Abeyratne described the Player as a "star". Nevertheless, it came as a surprise, both to him and to the Player when, in mid May 2016 the Player was called in for fitness trials by the national men's sevens team. He was subsequently selected as a member of the Sri Lanka squad for the Olympic repechage tournament in Monaco.

[38] The Player acknowledged that during the time that he was taking Dianabol and Liv52 he was not anticipating being selected to play for his country.

[39] When he joined the national squad, the Player did not mention his use of Dianabol or Liv52 to anyone associated with the Union or the team. He did, however, participate in a team programme of supervised supplementation, including the use of N.O. Xplode, described as a "widely used" supplement in Sri Lanka.

[40] A few days before departure, the Player says that the Union gave a 45 minute briefing on banned substances. The focus was on recreational drugs. During the briefing, players were given copies of a booklet. It was in English and was taken back at the end of the session.

[41] The Player signed a Team Member Consent Form in relation to his participation in the Monaco tournament. By doing so, he was taken to have acknowledged that he was bound by and would comply with the provisions of the Tournament anti-doping programme.

[42] The Player pointed out during his testimony that all of the tournament documentation was in English. Furthermore, the consent form had been pre-populated with the player's names. The players had no real option to do anything but sign where they were instructed to.

[43] When he was tested on 19 June 2016, the Player disclosed his use of N.O. Xplode and of Cataflam, the supplements supplied by the Union. He says that he was told by the doping control officer that he only had to write down what he had taken in the previous seven days. For that reason he did not disclose his use of Dianabol or Liv52.

[44] The Player cannot explain the presence of tamoxifen in his system. He is adamant that he had no knowledge of taking tamoxifen, and no intention to ingest it.

[45] Although the initial testing of the Sample provided by the Player identified only the presence of tamoxifen, a further screen submitted on 21 October 2016 identified the presence of two metabolites of methandienone, which is a prohibited substance. World Rugby has advised that it reserves the right to bring a further charge against the Player based on that adverse analytical finding. On behalf of the Player it is noted that this subsequent testing was conducted on a previously opened sample after the Player had admitted taking Dianabol. However, in the absence of "substantive evidence" the Player does not challenge the credibility of the testing process at this time.

[46] The Player says, in relation to his efforts to ensure that he did not ingest prohibited substances, that he did not have enough knowledge or education. He assumed that what he took to be freely available supplements would be safe. His cousin, Mr. Adhikari, who he relied on for advice, but who is not an athlete and who admitted he has "no knowledge of WADA", said that he believed that "we did as much research as we could according to our knowledge to test that the supplement was safe". He added:

Since many people in my gym used [Dianabol] and some were competitive bodybuilders I assumed there would be no problem with it.

[47] In 2014, the Sri Lanka NADO (national anti-doping organisation) tested 91 rugby players. 11 additional In-Competition samples were collected by World Rugby. There were three anti-doping rule violations originating from these tests, one for prednisone, one for furosemide and one for methandienone (Dianabol). In 2015, 24 tests were conducted by the NADO and an additional four In-Competition tests were conducted by World Rugby. There are no known anti-doping rule violations arising from the tests conducted in 2015.

#### Applicable Provisions

[48] The following provisions of World Rugby Regulation 21 are engaged:

#### Strict Liability

##### **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).

## Onus

### **21.3.1 Burdens and Standards of Proof**

World Rugby shall have the burden of establishing that an anti-doping rule violation has occurred. The standard of proof shall be whether World Rugby has established an anti-doping rule violation to the comfortable satisfaction of the hearing panel bearing in mind the seriousness of the allegation which is made. This standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt. Where these Anti-Doping Rules place the burden of proof upon the Player or other Person alleged to have committed an anti-doping rule violation to rebut a presumption or establish specified facts or circumstances, the standard of proof shall be by a balance of probability.

## Supplements

### **21.4.8 Nutritional Supplements and Medications**

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

**21.4.8.2** Many of the substances in the Prohibited List may appear either alone or as part of a mixture within medications or supplements which may be available with or without a doctor's prescription. Any Player who is concerned about the appropriateness of treatment being administered to him, or medications or supplements being ingested by him, should seek clarification from his doctor or other relevant authority as to whether such treatment is or such medications or supplements are prohibited prior to taking possession of or using such item. For the avoidance of doubt nothing herein shall displace the Player's responsibility to ensure he does not commit an anti-doping rule violation.

## Sanctions

### **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), 21.2.2 (Use or Attempted Use) or 21.2.6 (Possession) 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.

21.10.2.1.2 The anti-doping rule violation involves a Specified Substance and World Rugby (or the Association, Union or Tournament Organiser handling the case as applicable) can establish that the anti-doping rule violation was intentional.

**21.10.2.2** If Regulation 21.10.2.1 does not apply, the period of Ineligibility shall be two years.

**21.10.2.3** 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.

### **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 or Contaminated Products for Violations of Regulations 21.2.1 (Presence), 21.2.2 (Use or Attempted Use) or 21.2.6 (Possession).

21.10.5.1.1 Specified Substances

Where the anti-doping rule violation involves a Specified Substance, and the Player or other Person can establish No Significant Fault or Negligence, then the period of Ineligibility shall be, at a minimum, a reprimand and no period of Ineligibility, and at a maximum, two years of Ineligibility, depending on the Player’s or other Person’s degree of Fault.

**21.10.6.3 Prompt Admission of an Anti-Doping Rule Violation after being Confronted with a Violation Sanctionable under Regulation 21.10.2.1 or Regulation 21.10.3.1**

A Player or other Person potentially subject to a four-year sanction under Regulation 21.10.2.1 or 21.10.3.1 (for evading or refusing Sample Collection or Tampering with Sample Collection), by promptly admitting the asserted anti-doping rule violation after being confronted by World Rugby (or the Association, Union or Tournament Organiser handling the case as applicable), and also 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), 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.

The Player's Position

[49] The Player emphasises that the adverse analytical finding under consideration by this JC relates only to the presence of a metabolite of tamoxifen, which the Player maintains he did not use, and the presence of which in his system he cannot explain.

[50] While the Player did, in his witness statement, admit the use of Dianabol, he did so because of the possibility that it would explain the adverse analytical finding for tamoxifen. The JC should regard this as a mark of the Player's sincerity, as it would clearly not be in his best overall interests to admit the use of a different prohibited substance to that which he has been charged with using.

[51] The Player promptly admitted his anti-doping rule violation, and should receive a reduced sanction for having done so: Regulation 21.10.6.3. Furthermore, the JC should accept that the Player had no intention of enhancing his performance or cheating. Consideration should be given in particular to the evidence that the Player:

- a. was looking for a cheaper alternative to a normally expensive protein supplement;
- b. was told by someone – who within his own limited experience had relevant knowledge – that there was a supplement available that was good for injury rehabilitation and recovery and was used 'without a problem' by many rugby players;
- c. had no expectation that he would play competitively at any period prior to the commencement of the current season at the end of 2016 and, therefore, would have had no need for performance enhancing assistance at the material time;

- d. was surprised to be called up to the national side as he had not played competitive rugby (he attended training to assess his recovery but was not expecting to be named in the team);
- e. saw nothing unusual about the suggestion from 'Upal' that he should take a supplement called Liv52 to flush his liver during the course of Dianabol because Liv52 was a medication available over the counter from any pharmacy.

[52] The Player had received minimal doping education. He had not, as was suggested to him during cross-examination, performed an online e-learning course because his English skills were not sufficient for him to do so. He had seen a handbook in English which he was not capable of reading or understanding. While he did sign the Tournament participation agreement, he literally signed in the box beside which his name had already been written, as did all of his teammates, but without having read or have the opportunity to read the 22 page document it related to (which, again, was in English).

[53] Counsel for the Player asked the JC to take into account particular challenges which exist in Sri Lanka with respect to anti-doping issues, and tendered media reports about supplement use being "out of control".

[54] Although bound by strict liability for his actions, the evidence that the Player did not, in fact, have any reason to be concerned that he was doping is relevant to the question of whether his actions were deliberately intentioned towards cheating. Furthermore, it would make no sense for the Player to have jeopardised his entire career in order to go on one national tour. If he had had any reason to believe that he might have been doping, he would not have responded to the call up to his national team.

[55] The non-delegable responsibility of every athlete to inform and educate himself or herself out doping must be viewed within the social, cultural and practical aspects of each player's circumstances. Counsel pointed in particular to what he suggested was a lack of evidence to substantiate the efficacy or adequacy of compliance or regulation of doping in Sri Lanka generally and in Sri Lankan rugby, in particular. He submitted that uneducated players "should be the last in the chain of those suffering the consequences of these omissions".

[56] In the Player's case the effect of a lengthy suspension would be particularly hard. Not only the Player but, also his family, rely on the income he was bringing in as a professional rugby player. He has learned a very hard lesson. The risk of reoffending is very low.

#### World Rugby's Position

[57] World Rugby invites the JC to reject much of the Player's evidence and to find that the Player consumed tamoxifen intentionally to suppress oestrogen production, due to his consumption of Dianabol. He did so in order to avoid gynecomastia or otherwise to increase his testosterone levels for doping

purposes, thereby aiding his recovery from severe injury and his return to playing (and claiming a wage as a professional player).

[58] The Player did little or no research. He retracted his original statement that he had searched “Dianabol + safe” on Google. It strains credibility that he failed to apprehend the difference between the powder supplements he was familiar with, and the Dianabol tablets that he purchased through a body building gym.

[59] The Player’s credibility is further undermined by his revelation, for the first time, during the course of his cross-examination, that he had also used another product called Liv52, to counteract the effects of Dianabol. When asked why he had not disclosed this before, his response was that he had not been asked. Yet by then, if not the time he underwent doping control procedures, he understood the importance of disclosing what he had taken.

[60] The JC does not have before it the issue of whether the Player’s admitted use of Dianabol gives rise to a separate anti-doping rule violation. Nevertheless, the cumulative effect of the Player’s evidence concerning his use of Dianabol and Liv52 should allow the JC to be comfortably satisfied that the Player intentionally consumed tamoxifen (either within Liv52 or through another means which has not been disclosed) as part of a steroid cycle that he intentionally engaged in. He would have known that this consumption, forming part of the steroid cycle, did, or might, constitute an anti-doping rule violation.

[61] Although the efficacy of the Union and its anti-doping testing programme is not on trial, the evidence does not support the Player’s assertion of widespread use of Dianabol.

[62] Despite the Player’s claimed lack of knowledge concerning anti-doping matters, he did acknowledge during the course of cross-examination that he knew that steroids and some other substances were banned and, further, that he was aware of the need to check the contents of substances before consuming them.

[63] The same rules and Code apply to all players.

#### Discussion and Analysis

[64] There is no obligation on the part of World Rugby to prove the route of ingestion of tamoxifen in order to establish intentional Use. In order to prove that an anti-doping rule violation was intentional, it is sufficient for World Rugby to establish that the Player knew his conduct would constitute an anti-doping rule violation, or disregarded the significant risk that it would.

[65] There must be a rational connection between a course of conduct and the subsequent anti-doping rule violation. In the present case there is. In the months immediately preceding the adverse analytical finding for tamoxifen, the Player, putting his case in the best possible light, was taking what he thought

was a supplement called Dianabol which he obtained through a contact of his cousin's at a body-building gym and in respect of which he undertook minimal steps to check what it was he was consuming. Any reasonable person similarly situated would or should have realised that there was a significant risk that such conduct might constitute or result in an anti-doping rule violation.

[66] Furthermore, we do not accept the Player's evidence that he thought Dianabol was a "safe" supplement. Even if he did, he failed to exercise any meaningful caution before using it (see Regulation 21.4.8).

[67] The Player's acceptance of an anti-doping rule violation resulting from the presence of tamoxifen, together with the evidence and manner of his purchase of and use of at least one other prohibited substance (Dianabol), forms a sufficient basis for the JC to conclude that the Player was engaged in a course of conduct which he knew or should have known violated or might violate anti-doping rules that he was bound by, and that he manifestly disregarded the risks inherent in such conduct.

[68] We would add that World Rugby is not required to establish intent to enhance performance on the field of play. See generally CAS 2016/A/4512 *WADA v Turkish Football Federation and Ahmet Kuru*.

[69] The BJC is therefore comfortably satisfied that the Player engaged in conduct which he 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. He may have thought that he would be not be playing or competing until long after he had completed his course of pills. That does not, however, amount to a mitigating factor when evaluating whether his conduct falls within the parameters of Regulation 21.10.2.3.

[70] Indeed, there are very few mitigating factors in this case. While World Rugby and the Union may well want to reflect on whether there are more effective means of conveying anti-doping education and participation documentation in the languages that players speak and write, this case has little if anything to do with a lack of education.

[71] Attempts by players to shift the blame for their breach of anti-doping rules to their clubs, unions or World Rugby, are a regular feature of the cases heard by rugby doping tribunals. But in a world of multi-lingual, multi-media forms of communication, it will rarely if ever be an excuse in an anti-doping case to plead substantial ignorance of anti-doping rules.

[72] Indeed, whatever criticisms can be made of the Union's anti-doping programme (in which regard, although the evidence of Mr. Abeyratne was that improvements continue to be made, we do not accept the Player's allegations), it is hard to accept that while he sat through a 45 minute presentation on doping from the Union's team doctor, that it did not occur to the Player that

perhaps he should speak to someone about the products he had been using just a few weeks before.

[73] The question of whether Regulation 21.10.6.3 (Prompt Admission) provides a basis for reducing the otherwise applicable sanction was not fully argued. Suffice it to say that having made the findings that we have concerning the Player's intentional use, and having regard to the lack of prompt disclosure of his consumption of Dianabol and Liv52, his degree of fault is such that we see no realistic basis upon which this provision could be employed.

[74] For similar reasons, the provisions relating to no fault or negligence, or no significant fault or negligence, cannot be engaged.

### Findings and Conclusions

[75] The Player committed an anti-doping rule violation as a result of the presence of tamoxifen, a Specified Substance, in the sample which he provided.

[76] Further, the JC finds that the Player engaged in conduct which he 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.

[77] The Player's degree of fault is such that there is no valid basis for reducing the presumptive sanction of four years' Ineligibility.

[78] As a result, the applicable sanction is a period of Ineligibility for four years, commencing on 21 July 2016 and ending at midnight on 20 July 2020.

[79] The Player's attention is drawn to Regulation 21.10.12 which provides, *inter alia*, that:

#### **21.10.12.1 Prohibition Against Participation During Ineligibility**

No Player or other Person who has been declared Ineligible may, during the period of Ineligibility, participate in any capacity in a Competition or activity (other than authorized anti-doping education or rehabilitation programmes) authorised or organised by World Rugby or any Member Union, Association or a Club, Rugby Body or other member organisation of World Rugby or any Association or Member Union, or in Competitions authorised or organised by any professional league or any international- or national-level Event organisation or any elite or national-level sporting activity funded by a governmental agency".

...

A Player or other Person subject to a period of Ineligibility shall remain subject to Testing.

### **21.10.12.2 Return to Training**

As an exception to Regulation 21.10.12.1, a Player may return to train with a team or to use the facilities of a Union, Club, Rugby Body or other member organisation of World Rugby, an Association or a Union during the shorter of: (1) the last two months of the Player's period of Ineligibility, or (2) the last one-quarter of the period of Ineligibility imposed".

[80] The full text of Regulation 21.10.12 and the related commentaries should be consulted. In the case of the Player, he would be able to return to training at the start of month 46 of the four year period of Ineligibility, so on 21 May 2020.

#### Right of Appeal

[81] This decision is final, subject to referral to a Post Hearing Review Body (Regulation 21.13.8) or an appeal, where the circumstances permit, to the Court of Arbitration for Sport (Regulation 21.13.2). The regulation sets out the timelines within which any referral or appeal must be commenced.

#### Costs

[82] Should World Rugby wish us to exercise our discretion in relation to costs under Regulation 21.8.2.10 or 21.8.2.11, written submissions should be provided to the JC via Mr. Ho within 10 business days of the receipt by World Rugby of this decision. The Player will then have 10 business days to respond.

20 February 2017

A handwritten signature in black ink, appearing to read 'Graeme Mew', with a stylized flourish at the end.

Graeme Mew, Chairman