



Case 6 - Decision

NATIONAL ANTI-DOPING PANEL

1. This is the decision of the Anti-Doping Tribunal convened under Article 5.1 of the 2015 Procedural Rules of the National Anti-Doping Panel ("the Procedural Rules") and Article 8.1 of the UK Anti-Doping Rules dated 1 January 2015 ("the Anti-Doping Rules") adopted by the Welsh Rugby Union ("the RU") to determine a charge brought against Player C ("Player C").
2. The hearing was convened to determine a charge arising from the alleged commission of an Anti-Doping Rule Violation in breach of Article 2.1 of the Anti-Doping Rules (Presence of a Prohibited Substance in an Athlete's urine sample). The Athlete was charged by UK Anti-Doping Ltd ("UK Anti-Doping") by a letter dated 24 June 2015. The hearing took place on 4 December 2015.
3. The allegation is that metabolites of dehydrochlormethyltestosterone ("DT") were present in a urine sample provided by Player C on 8 June 2015. DT and its metabolites are Prohibited Substances both in and out of competition, under Class S.1.1(a) in the World Anti-Doping Code 2015 Prohibited List (Exogenous Anabolic Androgenic Steroids).
4. At the hearing, the athlete was represented by Mr Daniel Saoul and Ms Pippa Manby of Counsel and Mishcon de Reya, Solicitors, acting pro bono. UK Anti-Doping was represented by Ms Claire Parry.
5. This document is the reasoned decision of the tribunal, reached after consideration of the evidence and submissions made by the parties attending at the hearing and in writing. We indicate below our findings of fact, reasoning and conclusions.

The Facts

6. Player C is 19 years of age and is a rugby union player employed by Rugby Club A in South Wales.
7. The WRU is the National Governing Body for rugby union in Wales. On 27 November 2008 the Board of WRU resolved to adopt the UK Anti-Doping Rules as the ADR. The ADR apply to all members of the WRU who, by virtue of that

membership, agree to be bound by and comply with them. As a licensed competitor of the WRU and a participant in competitions and other activities organised, convened authorised or recognised by WRU, Player C was subject to and bound to comply with the WRU Anti-Doping Rules, which follow the WADA 2015 Code.

8. The National Anti-Doping Policy makes provision for UKAD, as the UK National Anti-Doping Organisation, to adopt and implement a test distribution plan for sport in the UK, including Rugby Union. UKAD is empowered by the ADR to plan and conduct Testing pursuant to the ADR.
9. Player C was subject to an Out-of-Competition test on 8 June 2015 when a urine sample was taken from him. Player C split the sample into two separate bottles. Both bottles were transported to the World Anti-Doping Agency ("WADA") accredited laboratory in London, the Drug Control Centre, Kings College London (the "Laboratory"). The Laboratory analysed the A Sample in accordance with the procedures set out in WADA's International Standard for Laboratories. Analysis of the A Sample returned an Adverse Analytical Finding ("AAF").
10. Player C was charged by UKAD by a letter dated 24 June 2015. Player C responded to the charge letter by letter dated 9 July 2015 from his solicitors Mishcon de Reya, accepting the validity of the AAF and waiving his right to have the B Sample analysed.
11. On 14 July 2015, UKAD referred the matter to the NADP for determination.
12. Player C accepts the AAF. However his case is that his suspension should be limited because:
 - (a) the conduct which gave rise to the AAF was not "intentional" within the meaning of ADR Article 10.2, and in consequence his suspension should be reduced from four to two years;
 - (b) there was No Significant Fault or Negligence in the conduct which gave rise to the AAF and in consequence the suspension should be reduced by a further period of up to one year under Article 10.5.2;

(c) in the light of Player C's Prompt Admission within Article 10.6.3, the tribunal are invited to recommend to WADA and UKAD a further reduction in the suspension.

The Charge

13. ADR Article 10.2, states:

10.2 Imposition of a Period of Ineligibility for the Presence, Use or Attempted Use, or Possession of a Prohibited Substance and/or a Prohibited Method

The period of Ineligibility for an Anti-Doping Rule Violation under Article 2.1, 2.2 or 2.6 that is the Athlete's or other Person's first anti-doping offence shall be as follows, subject to potential reduction or suspension pursuant to Article 10.4, 10.5 or 10.6:

10.2.1 The period of ineligibility shall be four years where:

(a) The Anti-Doping Rule Violation does not involve a Specified Substance, unless the Athlete or other Person can establish that the Anti-Doping Rule Violation was not intentional.

(b) The Anti-Doping Rule Violation involves a Specified Substance and UKAD can establish that the Anti-Doping Rule Violation was intentional.

10.2.2 If Article 10.2.1 does not apply, the period of Ineligibility shall be two years.

14. Player C's ADRV does not involve a Specified Substance. Pursuant to ADR Article 10.2.1(a), the mandatory sanction is therefore a period of Ineligibility of four years, unless Player C can establish that the ADRV was not intentional. The meaning of "intentional" has been set out in ADR Article 10.2.3. It states:

10.2.3 As used in Articles 10.2 and 10.3, the term "intentional" is meant to identify those Athletes or other Persons who cheat. The term, therefore, requires that the Athlete 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 Athlete 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 Athlete can establish that the Prohibited Substance was Used Out-of-Competition in a context unrelated to sport performance.

15. Article 10.5.2 deals with No Significant Fault:

"In an individual case where Article 10.5.1 is not applicable, if an Athlete or other Person establishes that he/she bears No Significant Fault or Negligence, then ... the otherwise applicable period of Ineligibility may be reduced based on the Athlete's 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."

No Significant Fault or Negligence is defined as follows:

"The Athlete or other Person establishing that he or she did not know or suspect, and could not reasonably have known or suspected, even with the exercise of utmost caution, that he or she had Used or been administered the Prohibited Substance or Prohibited Method or otherwise violated an anti- doping rule. Except in the case of a Minor, for any violation of article 2.1, the Athlete must also establish how the Prohibited Substance entered his/her system."

16. Also relevant is Article 10.6.3

10.6.3 Prompt Admission of an Anti-Doping Rule Violation after being Confronted with a Violation Sanctionable under Article 10.2.1 or Article 10.3.1:

An Athlete or other Person potentially subject to a four-year sanction under Article 10.2.1 or 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 an Anti-Doping Organization, and also upon the approval and at the discretion of both WADA and the Anti- Doping Organization with results management responsibility, 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 Athlete or other Person's degree of Fault.

17. Player C put in two witness statements and gave oral evidence. He suffers from

Sever's disease (a chronic inflammation of the heel) and in 2010 was diagnosed with dyslexia and dyspraxia. He is embarrassed about his consequent difficulties in reading and prefers not to reveal that he suffers from dyspraxia or dyslexia. He played rugby for the Rugby Club A's youth team in 2015 and in April 2015 received an offer to join the senior team. However he was told he needed to "bulk up" if he wanted to be in the senior team, notwithstanding that at that time he weighed 125kg.

18. He said that he has used supplements including Maximuscle Cyclone, SNEV2 All-In-One, Impact Whey Protein and creatine. In April 2015 he heard a fellow weight trainer in the gym speak of taking M-Sten. Player C made a Google search and saw a link on Amazon to Genetech Pharma Labs Methyl-Sten 200 sold by Amazon. He did not think Amazon would stock this product if it was not reputable, purchased it, and took it for about 21 days. He found that the supplement had side effects, including anxiety, insomnia, hair loss and bloating. He gained weight and began to notice breast development. He experienced low mood. By the end of April he stopped taking M-Sten.
19. The UKAD test was, he said, 40 days after he had stopped taking M-Sten so he did not declare it on the doping control form, although he declared another supplement, Shred-X, which he was then taking.
20. Some days after the test, he told his mother about M-Sten and asked her to help him research it. A Google search made by her revealed that the active ingredients listed an anabolic steroid. His evidence was that he had not intended to take a steroid and did not intend to cheat.
21. Player C also led evidence from the Head Coach at Rugby Club A, Coach A. Coach A says that the players at Rugby Club A do not receive nutritional advice, nor did the players receive any advice about drugs or banned substances. He states that before Player C's positive test they would give the players a short booklet on drugs and banned substances, but he is not sure if Player C received this as he may have been playing in the junior section of the club at the time. He confirms that he has never seen Player C cheat and says he can only think that Player C must have taken this banned substance by mistake.

22. Witness A, Player C's mother, says that in around mid-April 2015 she noticed that Player C was not looking healthy. Approximately a week after the test in June, Player C told her that he had used a supplement called M- Sten, which he had bought from Amazon. He said that he had not been able to read the bottle that the supplement came in because the writing was too small. She searched the ingredients of M-Sten on Google and found that the substance Player C had been taking was a derivative of a steroid called methylstenbolone. She checked the WADA Banned Substances List on the internet and found that this included Stenbolone. On or around 16 June 2015 she flushed the remaining capsules down the toilet and a few days later threw the packaging in the bin.
23. Evidence was also led from a character witness, Witness B, and also Witness C, who had diagnosed Player C's dyslexia and dyspraxia and explained the extent of those disabilities and the further difficulties faced as a result of Player C's decision not to reveal those disabilities.
24. Dr Edward Carder, Player C's solicitor, has a PhD in environmental geochemistry and has studied inorganic chemistry. He conducted a review of scientific literature on the subject of mislabelling and contamination of steroid supplements. In the course of this research he has found four papers which strongly suggest that mislabelling and contamination of steroid supplements is common. He further notes that two of the supplements mentioned in one of the studies are manufactured by Pharma Labs, but has not been able to establish whether this is the same Genetech Pharma Labs who manufactured the supplement Player C took. He also refers to the efforts that he has made to contact the manufacturer as Player C's mother destroyed the remaining supplement and packaging, meaning that no scientific analysis of the actual product could be performed. Despite extensive efforts to contact the manufacturer this has not been possible.

UKAD's Evidence

25. UKAD served a statement from Mr Nick Wojek, Head of Science and Medicine at UKAD. Mr Wojek confirms that metabolites of DT cannot naturally be produced by the body. He explained why DT has desirable qualities for a rugby player.
26. Mr Wojek attended for cross-examination by telephone. He was asked whether DT could have caused the side effects which Player C described after he took M- Sten. His evidence was that it was not likely but not impossible. He said that DT had passed safety trials as a steroid for therapeutic use and was used to treat muscle wasting conditions, and had a solid safety record. He said that athletes taking steroids did not want to carry retained water and with DT water retention was rare, thus it had been used in previous days by East German athletes.
27. UKAD also served a statement from Professor David Cowan, Director of the Drug Control Centre at Kings College London. He confirms that Methyl-Sten 200 contains methylstenbolone. He compared the chemical structure of DT to methylstenbolone and states that they are very different. On that basis he concludes that it is not conceivable that the AAF could have occurred as a result of the administration of methylstenbolone.

Intentional Use

28. Article 10.2 provides for a mandatory four year ban unless the athlete is able to show that the ADRV was not intentional. The burden of proof is on the athlete, which Article 8.3.2 provides must be satisfied on a balance of probabilities. We have set out Article 10.2.3 above, which defines "intentional".
29. In *UKAD v Lewis Graham*, a tribunal decision dated 27 August 2015 under the 2015 WADA Code, the panel held that where the ADRV arises under Article 2.1 the athlete cannot be held to satisfy the burden of proof to show that the ADRV was not "intentional" without establishing the likely method of ingestion of the Prohibited Substance. Before us, it was submitted on behalf of the athlete that this formulation was incorrect, and that the decision construed Article 10.2 in a way which was not justified.

30. The *Lewis Graham* decision referred to a number of previous decisions to the effect that if the manner in which a substance entered an athlete's system is unknown or unclear it is logically difficult to consider the question of intent. The tribunal held that whilst the Article does not expressly provide that the Athlete must establish how the Prohibited Substance entered his body he must do so in order to show negative intention.
31. The case law cited by the *Lewis Graham* panel was under a previous WADA rule where there was a specific requirement that the athlete establish how the prohibited substance has entered his system. A similar wording is applicable under the 2015 WADA Code in relation to No Fault and No Significant Fault or Negligence, but not in relation to the definition of Intentional. Thus the draftsman made a conscious decision not to provide for such a requirement in relation to intentional use but to include it in relation to the separate provisions in relation to No Significant Fault or Negligence.
32. We therefore accept the submission that the tribunal in *Lewis Graham* expressed themselves in terms that appear to impose a bright line rule where none is provided for in the rule, and to that extent we do not consider that their interpretation of the rule is correct.
33. That said, we consider it will be a rare, possibly very rare, case where the athlete will be able to satisfy the burden of proof as to intent without establishing the likely means by which the Prohibited Substance entered his system. It will not normally be good enough for the athlete simply to assert that he did not take any prohibited substance deliberately and ask the tribunal to believe him (as did the athlete in *UKAD v Songhurst*). We refer to what the tribunal (two members of whom were part of the present panel) said in *Songhurst*:

"in the normal course it is not to be expected that prohibited steroids are found in the body of an athlete. In any normal case knowledge concerning how the substance came to be in the body is uniquely within the knowledge of the athlete and UKAD can only go on the scientific evidence of what was found in the body. The scientific evidence of a prohibited substance in the body is itself powerful evidence, and requires explanation. It is easy for an athlete to deny knowledge and impossible for UKAD to counter that other

than with reference to the scientific evidence. Hence the structure of the rule."

34. Whilst we would not wish to define the type of case where the athlete might be able to satisfy the tribunal that he or she had satisfied the burden of proof to show the ingestion was not intentional without proving how the substance had entered the body, one example might be the case of a low intelligence athlete whom a tribunal found did not have sufficient knowledge or intelligence to form the necessary intention. However, that is not this case.

Intentional Use: the Present Case

35. The present case was unusual for the following reason. Player C accepted that M-Sten contained a Prohibited Substance, although his case was that he was not aware of that when he ingested it. But the Prohibited Substance which was found in his body was not the same Prohibited Substance as that which M-Sten is said to contain. So how did DT get into his body?

36. The following evidential points were significant:

- (a) a number of articles were produced showing that mislabelling of products sold on the internet containing anabolic steroids was rife: in one 2014 survey for which Professor Cowan was an author, of 24 products tested, 16 contained different steroids from those referred to on the label and one contained no steroid at all;
- (b) that same article listed the 24 purchased steroids, two of the mislabelled products were manufactured or supplied by Pharma Labs. Pharma Labs are the manufacturers of M-Sten, although it is possible that there are more than one Pharma Labs;
- (c) Dr Carder sought to make enquiries of the Pharma Labs who manufactured M-Sten. This appeared to be an untraceable Chinese-based website which was plainly seeking to hide its location and contact details. The distributor was a Michigan based entity which equally appeared to have taken steps to conceal its true owner and was uncontactable;

(d) Given that M-Sten was labelled as containing a different steroid, it is striking that the expected steroid, stenbolone, did not show up on Player C's test;

(e) Player C's account was strongly supported by that of his mother, whose immediate reaction once she discovered from internet research that M-Sten contained a steroid, was to flush it down the toilet, an action whilst in many respects laudable had the unfortunate consequence of preventing testing of the product.

37. The one piece of evidence which caused us concern was that of Mr Wojek, who gave his evidence very fairly and impartially, when he told us that the symptoms encountered by Player C after he took M-Sten would not be expected to be attributable to DT. We recognise this is an important point which would suggest that mislabelled M-Sten might not have given rise to the finding of DT in Player C's system, and this point has caused us some disquiet. However, Mr Wojek's view was not an unequivocal one: he fairly said when asked whether DT could have caused the side effects which Player C described after he took M- Sten was that it was "not likely but not impossible."

38. Having considered this point in the light of the other evidence before us, on the balance of probabilities, and notwithstanding what Mr Wojek said, we are satisfied that the ingestion of DT was probably caused by taking M-Sten.

39. In the light of this conclusion, did Player C engage in conduct which he knew constituted an ADRV or knew that there was a significant risk that the conduct might constitute or result in an ADRV? We find that the answer to this is "no":

(a) We note Coach A's evidence that no drugs training or nutritional advice was given to players at Rugby Club A at the time.

(b) Player C is 19. He has been described as naïve and young for his age. His dyslexia has made it difficult for him to read. Further, his embarrassment about his dyslexia and dyspraxia has made him reluctant to ask questions which might appear to show ignorance, and thus reveal his disabilities to others. It was for this reason, we were told, that he failed his first year studies at university. He presented to us as having little real understanding of drugs in

sport, and we suspect he had even less before the AAF. The reference to what was in fact a steroid on the M-Sten label would, we accept, have meant nothing to him, and we also accept he would have been reluctant to discuss the supplements he was taking with others. He had had no nutritional or drugs advice. His evidence that he did not think Amazon would sell anything dodgy rang true. When taken together with the powerful evidence of his mother, we accept his explanation of events.

40. In these circumstances we find Player C has satisfied the burden of proof on him to show that his conduct was not intentional.

No Significant Fault or Negligence

41. We take into account Player C's age, inexperience, dyslexia and the lack of drugs training. But we regard this point as a non-starter. Player C ordered a product on the internet which in fact stated on the label that it contained a steroid. It was manufactured by a very dubious untraceable Chinese website and was distributed by another very dubious website. When he mentioned it to his mother she readily discovered that it contained a steroid. He did not seek advice but apparently chose it in reliance on overhearing a conversation at the gym with persons who were not his friends or colleagues. We reject this submission.

Prompt Admission of an ADRV: 10.6.3

42. Art 10.6.3 is a matter for WADA and UKAD and outside the jurisdiction of this tribunal. However, in the light of our conclusion the point does not arise in any event.

Concluding Remarks

43. We should make three concluding comments.
44. Firstly, we were somewhat shocked by Coach A's evidence, as Head Coach, to the effect that there was, at least until Player C's AAF, no nutritional or drugs training or education at Rugby Club A. Whilst these are matters which go beyond the jurisdiction of this tribunal, we hope that those responsible for drug education

in UK Sport will take note. That Coach A was willing to state this without evident embarrassment suggests that other clubs are probably in the same position.

45. Secondly, prior to the commencement of the oral hearing, the initial view of the tribunal was that this looked an open-and-shut case for a four year ban. By the end of the day, all members of the tribunal were satisfied that the correct view was that stated in this decision. We pay tribute to the outstanding job done by Player C's legal team, both counsel and solicitors, particularly Mr Saoul and Dr Carder, all operating on a pro bono basis. Player C may consider himself very fortunate in his legal team.
46. Finally, Player C might reflect that things might have taken a different course had he been less reluctant to ask questions that could reveal what he regarded as his ignorance or his disabilities. No doubt his attitude is shared by others in a similar position. But dyslexia and dyspraxia are well-known, well-recognised conditions nowadays and it does not in any way reflect badly on him that he suffers from them. He might perhaps find if he was more open about suffering from these conditions that he would elicit more sympathy and understanding than he would expect.

Summary: The Tribunal's Decision

47. In the circumstances:
 - (a) The doping offence under Article 2.1 of the Anti-Doping Rules has been established.
 - (b) Player C must serve a two year period of ineligibility with effect from 24 June 2015 to expire on 23 June 2017.

Rights of Appeal

48. In accordance with Article 13.4 of the Anti-Doping Rules and Article 13 of the Procedural Rules, Player C has a right of appeal to an Appeal Tribunal of the National Anti-Doping Panel Appeal. In accordance with Article 13.7 of the Anti-Doping Rules and Article 13.5 of the Procedural Rules, any party who wishes to

appeal must lodge a Notice of Appeal with the NADP Secretariat within 21 days of receipt of this decision.

Charles Hollander QC

Dr Barry O'Driscoll

Blondel Thompson

Signed on behalf of the Tribunal

A handwritten signature in black ink that reads "Charles Hollander". The signature is written in a cursive style with a large initial 'C'.

Chairman

Dated 14 December 2015



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