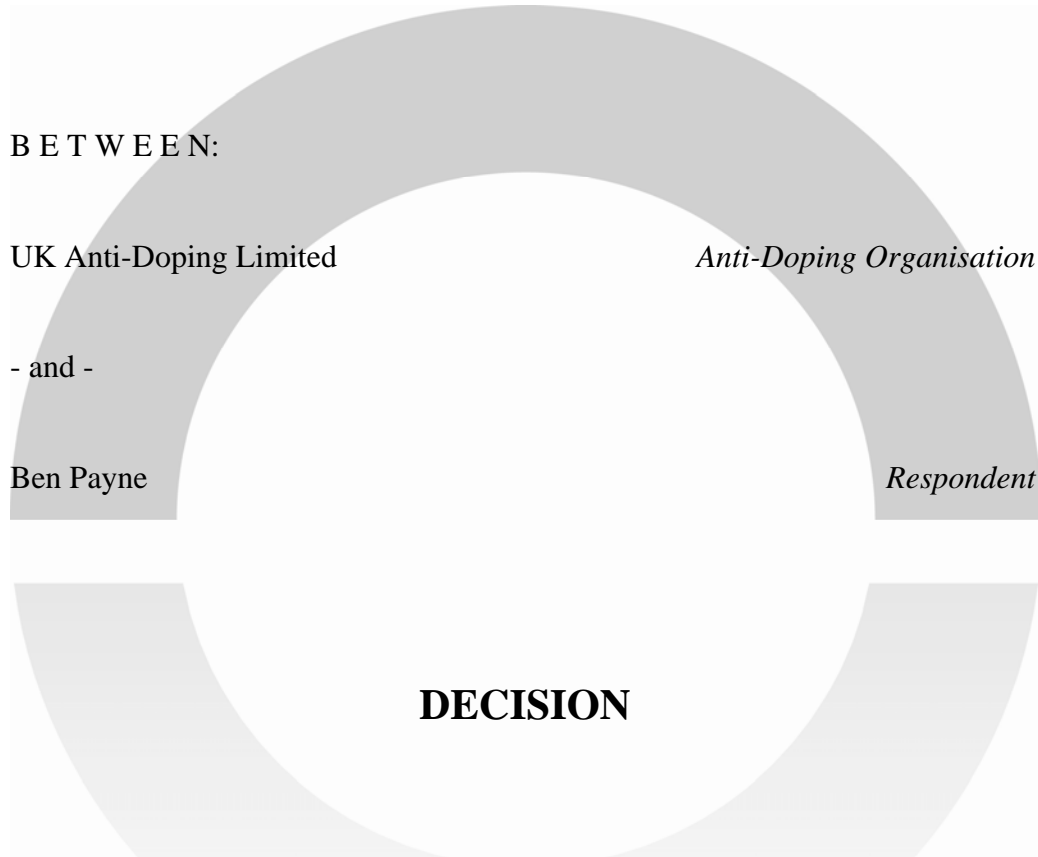


NATIONAL ANTI-DOPING PANEL

*Before:*

Robert Englehart QC  
(Sole Arbitrator)



**INTRODUCTION**

1. I was appointed as Sole Arbitrator pursuant to Rule 5.1 of the 2010 Rules of the National Anti-Doping Panel (“the Procedural Rules”) to determine a charge brought against Ben Payne for the commission of an anti-doping rule violation. The charge, which was brought by UK Anti-Doping Limited (“UKAD”), alleged that metabolites of Prohibited Substances (as defined), 19-norandrosterone and 19-noretiocholanolone, had been found in a urine sample provided by Mr Payne on 13 March 2010. Mr Payne plays hockey for a leading

hockey club, East Grinstead Hockey Club, and is bound by the Anti-Doping Rules adopted by the English Hockey Board (“the Rules”).

2. 19-norandrosterone and 19-noretiocholanolone are included as anabolic androgenic steroids in the World Anti-Doping Association’s 2010 list at S1. As such, they are classified as Prohibited Substances under the Rules. In these circumstances, UKAD brought the charge of his having committed an anti-doping rule violation against Mr Payne.
3. Having been appointed as sole arbitrator to determine the charge, I issued procedural directions on 8 June 2010. Mr Payne indicated that he did not dispute the fact of the anti-doping rule violation but that he wished to put forward reasons why he should not be subject to the usual 2 year suspension for such a violation. Unfortunately, Mr Payne did no more than say that he would explain to me at the hearing why this should be so.
4. Pursuant to my directions, UKAD served on Mr Payne a detailed statement with submissions to the effect that Mr Payne was not entitled under the Rules to the elimination or reduction of the 2 year period of suspension. This statement made reference to several CAS cases. Then, on the Friday before the scheduled hearing Mr Payne informed the Case Officer of the National Anti-Doping Panel on the telephone that he now did not propose to attend the hearing. This was followed by an e-mail from him to the following effect:

After reading the various Anti-Doping cases which were sent and the amount of evidence that I would have to produce for a reduction in my ban and work commitments that are ahead of me, I have resigned myself to the fact that there is no point in taking this further. So with this in mind I will not be attending the Hearing on the 28th June.

5. This change of stance by Mr Payne came too late to alter the scheduled arrangements. Accordingly, I duly held a hearing to determine the charge and consequences on 28 June 2010.

### **THE BACKGROUND**

6. Mr Payne is aged 29. He is evidently a talented hockey player. On 13 March 2010 he played a hockey match for East Grinstead, after which he underwent a drug test. The urine sample which he had provided was forwarded to the WADA accredited laboratory at the Drug Control Centre, King's College London. In the usual way the sample was divided into an A sample and a B sample. The A sample was found to contain 19-norandrosterone and 19-noretiocholanolone, and this result was confirmed in an analytical report from the laboratory.
7. Given the adverse analytical finding, the present charge was brought. A provisional suspension from participation in competition or any other English Hockey Board or club activity was also imposed on Mr Payne with effect from 8 a.m. on 16 April 2010.
8. When he was informed about the adverse analytical finding Mr Payne's reaction was frank acceptance. He dispensed with his entitlement to have the B sample analysed. He explained that he had suffered severe facial injury during a game of hockey and, at the suggestion of a friend, had taken two substances called "Deca" and "Sustanon" in order to aid his recovery. Mr Payne did, as I have stated, originally propose to put forward points by way of mitigation, but he then changed his mind.

### **PROVISIONS OF THE RULES**

9. Article 2.1 of the Rules provides that the presence in a urine sample of an Athlete (including a hockey player such as Mr Payne) of a Prohibited Substance

or its metabolites constitutes an anti-doping rule violation. Prohibited Substances are those so categorised in the WADA Prohibited List, as issued from time to time, and include the anabolic androgenic steroids 19-norandrosterone and 19-noretiocholanolone. Article 2.1.2 goes on to stipulate:

Proof of either of the following to the standard required by Article 8.3.1 is sufficient to establish an Anti-Doping Rule Violation under Article 2.1:

- a. Presence of a Prohibited Substance or any of its Metabolites or Markers in the Athlete's A Sample, where the Athlete waives analysis of his/her B Sample and the B Sample is not analysed; or
- b. ....

Thus, for the purposes of establishing an anti-doping rule violation it may be necessary to do no more than point to the result of a urine test.

10. Turning to the consequences of an anti-doping rule violation, it is necessary to have regard to Article 10.2 of the Rules:

For an Anti-Doping Rule Violation under Article 2.1 (presence of a Prohibited Substance or its Metabolites or Markers) .... that is the Participant's first violation, a period of ineligibility of two years shall be imposed, unless the conditions for eliminating or reducing the period of Ineligibility (as specified in Article ... 10.5) or for increasing the period of Ineligibility (as specified in Article 10.6) are met.

In this instance there is no suggestion of reason for increasing the period of ineligibility. Accordingly, the consequence is a period of ineligibility of two years unless the conditions for elimination or reduction of the period under Article 10.5 are met. The relevant parts of Article 5 are as follows:

10.5.1 Elimination of period of Ineligibility based on No Fault or Negligence:

If a Participant establishes in an individual case that he/she bears No Fault or Negligence for the Anti-Doping Rule Violation charged, the otherwise applicable period of Ineligibility shall be eliminated. When the Anti-Doping Rule Violation charged is an Article 2.1 violation (Presence of a Prohibited Substance or its Markers or Metabolites), the Athlete must also establish how the Prohibited Substance entered his/her system in order to have the period of Ineligibility eliminated. ....

10.5.2 Reduction of period of Ineligibility based on No

**Significant Fault or Negligence:**

If a Participant establishes in an individual case that he/she bears No Significant Fault or Negligence for the Anti-Doping Rule Violation charged, then the period of Ineligibility may be reduced, but the reduced period of Ineligibility may not be less than one-half of the minimum period of Ineligibility otherwise applicable. ... When the Ant-Doping Rule Violation charged is an Article 2.1 violation (Presence of a Prohibited Substance or its Metabolites or Markers), the Athlete must also establish how the Prohibited Substance entered his/her system in order to have the period of Ineligibility reduced.

**THE ANTI-DOPING RULE VIOLATION**

11. In this case there is no doubt that an anti-doping rule violation was committed. The analytical report from the Drug Control Centre demonstrated the presence of Prohibited Substances in the urine sample, and it was undisputed by Mr Payne. I am entirely satisfied that there was an anti-doping rule violation.

**THE CONSEQUENCES**

12. As is apparent from the Articles in the Rules to which I have referred, the ordinary consequence in the present circumstances is a period of ineligibility of two years. As is made clear by Article 1.3 of the Rules, a hockey player such as Mr Payne is fully responsible for what he ingests and uses. It is, of course, to be noted that there are certain limited circumstances in the light of which the two year period of ineligibility may be reduced or even eliminated. However, it would be for Mr Payne to satisfy me of the existence of these limited circumstances. Mr Payne decided in the event not to adduce evidence or make representations, and he decided not to attend the hearing. There is accordingly no basis for me to do other than impose a period of ineligibility of two years. UKAD submitted, and I agree, that this period of ineligibility should in accordance with Rule 10.9.3 run from 8 a.m. on 16 April 2010 which was the commencement of the provisional suspension in Mr Payne's case. In

accordance with Article 13 of the Rules either UKAD or Mr Payne may file a Notice of Appeal against this decision within 21 days of receipt of the decision.

### CONCLUSION

13. In summary, for the reasons given above, I make the following decision:

- an anti-doping rule violation was committed by Mr Payne;
- the period of ineligibility in his case is to be two years; and
- the period of ineligibility is to run from 8 a.m. on 16 April 2010 to 8 a.m. on 16 April 2012.

Either UKAD or Mr Payne (or any of the organisations specified in Article 13.4.1 of the Rules) may appeal against this decision as set out in the preceding paragraph.

5 July 2010

ROBERT ENGLEHART QC



.....  
Robert Englehart QC

Sole Arbitrator