

BEFORE THE NATIONAL ANTI-DOPING PANEL

**William Norris QC
Carole Billington-Wood
Dr Terry Crystal**

**IN THE MATTER OF PROCEEDINGS BROUGHT UNDER
THE ANTI-DOPING RULES OF UK ATHLETICS**

BETWEEN:

UK ANTI-DOPING

-and-

BERNICE WILSON

FINAL DECISION OF THE ANTI-DOPING TRIBUNAL

Introduction

1. This is the Final Decision of the National Anti-Doping Panel (hereafter "the Panel") determining two charges brought by UK Anti-Doping¹. The charges relate to a urine sample given by the Respondent, Bernice Wilson (hereafter "Ms Wilson"), who is a 27 year old sprinter who has represented Great Britain at the European Indoor Championships in France, in March 2011, and aspires to do so at the 2012 Olympics in London.

¹ UK Anti-Doping is the National Anti-Doping Organisation for the UK, and is responsible for managing the results of drug tests conducted under the Anti-Doping Rules of UK Athletics ("UKA"), the governing body for the sport of athletics in the UK. The Panel is convened under Rule 9.3 of the Anti-Doping Rules

2. The charges arise out of her participation in the Bedford International Games ("BIG") on 12th June 2011. She provided a urine sample which, on later analysis, was found to contain two anabolic steroids, testosterone and clenbuterol, both of which are on the Prohibited List of the World Anti-Doping Agency ("WADA") 2011 List.
3. It is alleged that she had committed the following rule violations, namely:
 - (i) Having two Prohibited Substances (testosterone and clenbuterol) present in the sample collected, in violation of IAAF ADR 32.2(a) – presence of Prohibited Substance or its Metabolites or Markers in a sample; and
 - (ii) Using, ingesting or otherwise consuming clenbuterol and testosterone prior to the provision of the sample in violation of IAAF 32.2(b) (use or attempted use by an athlete of Prohibited Substance or a Prohibited Method).
4. The hearing of these charges took place on September 12th and 13th 2011. In advance of that hearing, the Chairman of the Panel (William Norris QC) dealt with certain matters of procedure² and also ruled (on 28th July 2011) that there were no grounds for lifting the suspension provisionally imposed³.

² Provision of documentation, hearing bundles, Skeleton Arguments and the like

³ UK Anti-Doping also deny that there was jurisdiction to entertain the application, but as is apparent from the short record of the Decision, the Chairman took the view that there were no good grounds for granting the application even were there to be jurisdiction to make such an Order

Parties and Procedure at the Hearing

5. UK Anti-Doping was represented by Mr Jonathan Taylor, a Solicitor and a Partner in Bird & Bird LLP.
6. The athlete, Ms Wilson, was represented by her coach, Dr George Skafidas. During the course of the hearing, we thought it appropriate to confirm with Ms Wilson that she was content to proceed with the hearing of the charges notwithstanding the fact that she was not legally represented.
7. We should make it clear that when we invited Ms Wilson to consider whether it was appropriate to take legal advice, such invitation was not intended to be a reflection on Dr Skafidas' competence as an advocate. Although, as he frankly acknowledged, English is not his first language, we felt that he presented his arguments and his client's case with moderation and competency.
8. A particular reason why we felt it appropriate to invite Dr Skafidas and Ms Wilson to consider whether it was right that he should represent her arose because of evidence that Ms Wilson herself had given to the Panel. It had not been foreshadowed in anything submitted in writing beforehand.
9. When she was asked what, if any, substances she might knowingly have consumed in the days and weeks before this competition, Ms Wilson explained that the only pills that she had taken were vitamins that she had obtained from places like *Boots* and *Holland & Barrett*. However, she also told us she had taken what she understood to be a multi-vitamin drink

provided to her by Dr Skafidas, which he had obtained (she understood) from a supplier in Germany⁴.

10. The Panel pointed out that a possible analysis of the facts might be that the illegal substances had entered the athlete's body as a consequence of whatever was in fact contained in that multi-vitamin drink supplied by Dr Skafidas. If so, she might have consumed such a contaminated drink in ignorance of its true contents.

11. If the athlete regarded it as possible that she drank a contaminated drink in ignorance of its true contents, she might wish to say that there was substantial mitigation to be advanced on the basis that she trusted her coach to provide her with something legitimate which turned out to be illegitimate. Had that been an argument she wished to advance, it would have created an obvious conflict of interest between her coach and herself. In that case, it would clearly have been inappropriate for Dr Skafidas to have continued as her representative.

12. We gave Dr Skafidas and Ms Wilson the opportunity to consider this potential problem over a short adjournment at the end of the evidence. They returned and both told us that they were happy to proceed on the basis that they saw no such potential conflict as we had identified. They made it clear that it was no part of Ms Wilson's defence or mitigation to suggest the multi-vitamin drink supplied by Dr Skafidas as a possible source of the illegal substances.

13. Accordingly, we continued the hearing and listened to submissions.

⁴ Indeed, she noted on the form DB/1, under the invitation to declare medication, that she used a "multi-vitamin drink"

14. As will be apparent from our summary and discussion of the evidence, we heard a number of witnesses called by UKAD. Ms Wilson gave evidence on her own behalf but Dr Skafidas called no other evidence nor did he give evidence himself.
15. We had two bundles of documents (a main bundle (DB) and a supplementary bundle) and a bundle of authorities/rules (AB).
16. At the conclusion of the case, Mr Taylor gave us a written submission which supplemented his skeleton argument. He also made brief oral submissions. Dr Skafidas addressed us in oral submissions and said he would reduce his submissions to writing. We made it clear we would look at the written version assuming it was, in effect, a written expression of that which he had said orally.
17. That 'skeleton closing argument' was supplied to the Panel on 16th September 2011. It constituted a clear and helpful summary of the case Dr Skafidas had advanced and the arguments he had addressed to us.

The Relevant Rules

18. It was not in dispute that the substances identified on analysis by Professor Cowan's laboratory⁵ were illegal in the sense that they are both prohibited by WADA and appear in the 2011 Prohibited List.

⁵ Professor Cowan's Statement is to be found at DB/5

19. The rules that govern the conduct of drug testing are known as the Anti-Doping Rules of UK Athletics (UKA), the governing body for the sport of athletics in the United Kingdom (see Schedule 3 of the UKA Anti-Doping Rules), which incorporate and implement at national level the Anti-Doping Rules of the IAAF, the sport's international federation, of which UKA is a member⁶.
20. A copy of those rules (also referred to as 'IAAF Rules') can be found at AB/1. The second set of IAAF Rules found at AB/1 is the current version, and is deemed to have replaced the previous version set out in the UKA Rules: see UKA Rule 2.1, AB/1 p.96.
21. Rule 30.1 of the IAAF Rules⁷ states that:

"The Anti-Doping Rules shall apply to the IAAF, its Members and Area Associations and to Athletes, Athlete Support Personnel and other Persons who participate in the IAAF, its Members and Area Associations by virtue of their agreement, membership, affiliation, authorisation, accreditation or participation in their activities or competitions."

See also UKA Anti-Doping Rule 1.4 (AB/1, internal p. 96).

⁶ Dr Skafidas draws our attention to and relies on the WADA Code (and the procedures for the collection of samples which was described in a film shown at the beginning of the hearing). He quotes Article 3 in his written closing submission as he had in oral argument. We find no inconsistency between those provisions and the UKA Anti-Doping Rules or the IAAF Rules the material provisions of which we set out in more detail in this decision.

⁷ See AB/1, p16/40.

"These Rules shall apply to and shall bind all athletes, support personnel for athletes and other persons under the jurisdiction of UKA (as derived from the IAAF). All Athletes, Athletes' Support Personnel and other persons under the jurisdiction of the UKA, accept that they will comply with these Rules and agree to be subject to any testing carried out by UKA, the NADO, the IAAF or any other body with competent authority to test under these Rules."

The burden and standard of proof

22. Under IAAF Rule 33.1, the burden is on UK Anti-Doping to prove that Ms Wilson has committed the violations charged *"to the comfortable satisfaction of the relevant 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"*⁸.

Discharging the burden of proof

23. In relation to the Rule 32.2(a) charge (Presence), UK Anti-Doping submitted that its burden of proof was discharged by the evidence: IAAF Rule 32.2(a)(ii) provides: *"sufficient proof of an anti-doping rule violation under Rule 32.2(a) is established by either of the following: presence of a Prohibited Substance or its Metabolites or Markers in the Athlete's A Sample where the Athlete waives analysis of the B Sample and the B Sample is not analysed; or,*

⁸ See also WADA Article 3.1 as quoted by Dr Skafidas

where the Athlete's B Sample is analysed and the analysis of the Athlete's B Sample confirms the presence of the Prohibited Substance or its Metabolites".

24. In this case, as noted above (see para 2) the Laboratory found both clenbuterol and exogenous testosterone in Ms Wilson's A sample and in her B sample, which she had asked to be analysed. Under the IAAF Rules, the Laboratory, being WADA-accredited, is presumed to have conducted its analysis in accordance with the International Standards on Testing (IST⁹), and such compliance is deemed sufficient to conclude that the procedures addressed by the IST were conducted properly¹⁰. In any event, Ms Wilson has not disputed the accuracy or reliability of those findings. But she does challenge the procedures followed in relation to the collection of her sample.

25. Testosterone and clenbuterol are both Prohibited Substances within the meaning of IAAF Rule 32.2(a). This is a strict liability offence, meaning that *"it is not necessary that intent, fault, negligence or knowing Use on the Athlete's part be demonstrated in order to establish an anti-doping rule violation under Rule 32.2(a)"*.

26. The Use charge under Rule 32.2(b) is another strict liability offence: that is, proof of use is sufficient on its own to sustain the charge because *"it is not necessary that intent, fault, negligence or knowing Use on the Athlete's part be demonstrated in order to establish an anti-doping rule violation for Use of a Prohibited Substance or a Prohibited Method"*¹¹.

⁹ See the copy at AB/3

¹⁰ See IAAF Rule 33.3(a) and definition of "International Standard" (at DB/1).

¹¹ "Use" is defined in the IAAF Rules as *"the utilisation, application, ingestion, injection or consumption by any means whatsoever of any Prohibited Substance or Prohibited Method"*.

The Panel's findings on the procedure and the sample

27. In short summary, the Panel is entirely satisfied that the sample tested by the Laboratory was the sample collected from Ms Wilson on 12th June 2011 and we have no doubt as to the integrity of the process of analysis or the validity of the findings which were explained by Professor Cowan.
28. We also find that the DCOs complied with the requirements of the IST, the stated purpose of which is to ensure the identity and integrity of drug-test samples, and IAAF Rules p.8: definition of "International Standard", states: "*Compliance with an International Standard (as opposed to another alternative standard, practice or procedure) shall be sufficient to conclude that the procedures addressed in the Standard were performed properly*".
29. However, in view of the various challenges made to the procedure for the collection of the sample, we should expand on the evidence we took into account.
30. Witnesses were called to establish how the process of testing was conducted in this particular case. It is fair to observe¹² that they acknowledged that they had little or no **direct** recollection of the sequence of events. But we do not accept that that weakens the case that UK Anti-Doping present: on the contrary, our view is that some of the alleged departures from established procedure would have been so substantial that the witnesses spoke compellingly when they denied that it could have happened. Their answer, shortly

¹² Dr Skafidas specifically drew this to our attention in his Closing Submissions.

summarised, was that, if that had happened, such a departure would have been an entirely exceptional event which they would have remembered.

31. Those from whom we heard oral evidence were the lead Doping Control Officer, Tom Anderson¹³; and Sara Kelman, the Doping Control Officer¹⁴. We do not regard it as necessary to recite their oral evidence which was consistent with that which they had written in their statements (DB/2, 3). It is, however, also material to record that Sara Kelman was (together with Ms Wilson) the author of the Doping Control Form ("DCF") which we have at DB/1.

32. The first urine sample that Ms Wilson provided was less than the required 90 ml. She was therefore asked to provide and did provide a second sample. It is certainly correct that the DCF contains only the number of the blue lid in respect of the first (and partial) sample that Ms Wilson provided. However, the document also records the total volume of the sample that was combined for division into the A and B samples, and it records (in Ms Wilson's own writing) a declaration of her "*multi-vitamin drink*" and¹⁵ her words that she had "*no comments. Everything fine*" and her signature towards the bottom of the page against a formal declaration that she was "*satisfied with the urine sample collection procedure and that the information set out in this form (was) accurate and correct. I confirm that my urine sample collected has been sealed and numbered above...*".

¹³ Witness Statement at DB/2

¹⁴ DB/3

¹⁵ Significantly, in our judgement

Collection Procedures and Suggested Departures.

33. Ms Wilson and / or Dr Skafidas suggested that there were a number of departures from recognised procedures. In this context, we should say that the procedures governing the collection, transmission and (ultimately) analysis of the sample are those of the IAAF as prescribed in the Competition Rules for 2010 – 2011.

34. As we have noted, the burden and standards of proof are set out in paragraphs 1 and 2 of Rule 33¹⁶ and the methods of establishing facts and presumptions are set out in Rule 33.3.

35. In order not to overly burden the Decision, the full terms of Rules 33.1, 33.2 and 33.3 should be taken to be incorporated **verbatim** into this Decision.

36. The supposed departures from procedure that were put to Mr Anderson and / or Ms Kelman and / or to us included, first, the fact that Ms Wilson was given gloves to wear which had a "*powdery substance all over them*". This supposed departure was not developed and, as far as we are concerned, was probably consistent with the standard practice as described by Ms Kelman at paragraph 38 of her Witness Statement (DB/3). Dr Skafidas makes no mention of it in his closing argument.

37. A more significant allegation¹⁷ was that Ms Wilson alleged that it was Mr Anderson who placed the partial sample in the shower room behind his desk and then gave it back to her when she needed to collect it. We unreservedly accept Mr Anderson's evidence that he did

¹⁶ See AB/1, IAAF Competition Rules – internal page 48

¹⁷ Numbered separately as departures 2, 3 and 4 in the written closing argument.

not do as Ms Wilson contends. We find that she placed the sample behind him, and collected it when she needed to retrieve it.

38. Next, she suggests that the seal on the blue lid was broken after it had been sealed but before she was given a second blue lid in order to provide a second sample because her original sample (of 75ml rather than the required 90ml minimum) was insufficient.

39. She says¹⁸ that this was because Ms Kelman asked her to break the seal by removing the strip from that blue lid. Further, she claims that it was into that same container that she urinated for a second time before (as she acknowledged in evidence) that single, now more substantial, sample was taken back and divided by her into the A and B samples in the usual way.

40. We find that Ms Wilson is wrong about that alleged – and potentially very important – departure from procedure. We prefer the evidence of Ms Kelman to the effect that she is sure that she followed standard practice¹⁹ and the procedure that she has described at paragraphs 11 to 45 of her Witness Statement (DB/4).

41. Dr Skafidas made the point that if, as Ms Kelman asserted, Ms Wilson was provided, in accordance with the usual practice, with a second blue lid for the purpose of providing a second / supplementary sample that would go into a separate container, then it is odd and /

¹⁸ See paragraphs 16 and 17 of her Witness Statement at DB/11 and departure 1 on the written closing.

¹⁹ Sure in the sense that she would be certain had she departed from it: and there was absolutely no reason whatsoever for her to do so

or a departure from standard or appropriate practice that there was no record made of the number on that second lid.

42. It is a fact that no record was made of the number of that second lid, but we do not find that was a departure from any prescribed procedure. It is true that a different procedure happened at a test conducted on Ms Wilson in Glasgow on the 30th January 2010. We have documents²⁰ which show that on that occasion there was indeed a record made of the number of the lid in respect of the second sample that Ms Wilson then provided. We also heard evidence (by telephone) from one of the Doping Control Team, Alison McFarlane, at that event.

43. In our judgement, if one of the two testing processes (Glasgow and Bedford) was contrary to standard practice, it was the test at Glasgow rather than the one at Bedford, as is (we find) indicated by the written comments on the DCO's report for Glasgow.

44. Quite simply, we find that the procedure at Bedford was conducted in accordance with the normal and unremarkable processes described by Mr Anderson and Ms Kelman. We accept the evidence of Mr Anderson and Ms Kelman and reject the evidence of Ms Wilson in so far as it conflicts with it. We attach significance to the fact that Ms Wilson expressed herself to be satisfied with the testing process at the time, notwithstanding that (if she is to be believed) the procedures were very substantially different from those which she had experienced at Glasgow.

²⁰ In a Supplementary Bundle – hereafter SB

45. We also attach significance to the fact that when she met representatives of UKAD on the evening of 8th July 2011 she was asked whether she had any concerns about the testing process and replied "*It was kind of the same. It was fine*"²¹.
46. A further suggested departure²² from good/standard practice was the suggestion that the tightness of the A and B bottles *was not checked by the DCO*²³. We reject this criticism: we note that Ms Wilson herself said that she secured the bottles carefully and there was absolutely no indication that that was not done properly. Further, we also had Professor Cowan's evidence (which we accept) that there was nothing amiss when the bottles were delivered to his laboratory. We also accept that the delivery of those bottles from Bedford to the laboratory was made properly and in accordance with standard (and well documented) procedures.
47. In conclusion, therefore, we reject all criticisms of the procedure. We should note that we also heard oral evidence from Mr Josiah of UK Anti-Doping, whose job it was to review the findings and whose Statement is at DB/6. That evidence was not challenged to any effect and we accept it.
48. Since we find that there were no departures from standard procedures, it is unnecessary for us to address the issue of materiality – that is, whether notwithstanding any departure from recognised standards, the Anti-Doping Organisation had discharged the burden of

²¹ See the Statement of Richard Redman at DB/8

²² In evidence though not in closing.

²³ See paragraph 23 of her Witness Statement – DB/10

demonstrating that the departure did not cause the adverse analytical finding²⁴. However, we do say this: if, for example, we had held that Mr Anderson and/or Ms Kelman had acted as Dr Skafidas says they did in Departures 1 to 4 of his written closing, we might well have been persuaded that they were material departures and had the potential (at least) to invalidate the finding. We would, on the other hand, have regarded the failure to write down the number of the second lid (assuming that was the prescribed procedure) as immaterial, satisfied as we are that the sample analysed was the uncontaminated sample provided by the athlete in question.

Investigation by UKAD

49. We have already noted and need not recite the process for the transmission of the samples to the Drug Control Centre. It is described by Professor Cowan in his Witness Statement at DB/5 whose evidence on this (and all other issues) we accept.
50. Some significance is attached by UKAD to the reaction of Ms Wilson when they confronted her with the news that she had tested positive. We rejected a submission at the beginning of the case that the evidence from Mr Redman on this issue (and / or indirectly from Mr Herbert and Ms Re who accompanied him) should be excluded as more prejudicial than probative. In our judgment, it is of importance and relevant to consider this part of the history.
51. After they had failed to serve the relevant documentation²⁵ on Ms Wilson at home, they located her in the public car park of her place of work at East Lindsey District Council. Mr

²⁴ See, for example, Art 3.2.2 of the WADA Code as quoted by Dr Skafidas.

²⁵ Including a Notice of Charge, dated 8th July - DB/7

Redman described the exchange in his Witness Statement at DB/8 and he gave evidence to the same effect.

52. We accept his evidence and reject Ms Wilson's account insofar as it conflicts with it. We do find it very curious that if, as the athlete asserts, she had no reason to expect a positive test and every reason to be horrified if the test that she knew she had taken had proved positive and / or had the slightest reservations about the quality of the testing procedures, that she showed so little interest in the attempts that Mr Redman / Mr Herbert / Ms Re made to engage her in conversation and tell her about results

53. Even if it is possible to explain the way she behaved that morning on the basis that not everyone behaves as one might expect, we do find the account of the conversation that evening between those representatives, Ms Wilson and Dr Skafidas to be very strange indeed.

54. The evidence about that evening from Mr Redman – which we prefer to the recollection of events given by Ms Wilson – establishes that, apart from a veiled reference to people who might have been motivated to contaminate Ms Wilson's food and / or drink, there was no challenge to the procedures. Nor did Ms Wilson seek to engage in discussion about what could possibly have gone wrong to anything like the same extent that might have been expected of someone who was genuinely innocent.

Ms Wilson's Evidence

55. Ms Wilson's evidence was presented both in writing (DB/10 and DB/12) and by her oral evidence. In a nutshell, she insists that she deprecates drug taking and regards it as bad, and she sees herself as a role model, particularly for the younger athletes with whom she trains. Indeed, she works as a Sports Development Officer and, she told us, is involved with children, vulnerable adults, volunteers, clubs and sports partnerships. She vehemently denied that she had ever knowingly taken a Prohibited Substance and, as we have already noted, asserted that the only (this is our word, not hers) unusual substance that she had consumed was a drink provided by her coach (and imported from Germany) which she understood to contain legitimate minerals and vitamins.

56. She did not, however, enlighten us as to exactly what enquiries she made about the substances in that drink, nor did Dr Skafidas give evidence on his own account or seek to place before us any details as to the nature of those particular substances. We specifically asked him before submissions whether there was any other evidence he wished to introduce and it was only in the course of submissions, in response to a point made by the Chairman, that he suggested he might be able to find the minerals box and / or provide details of the substance in question.

57. Whilst one must obviously make certain allowances for the fact that someone is not legally represented, our firm view was that Dr Skafidas and Ms Wilson had had plenty of time and opportunity to provide us with chapter and verse about whatever "minerals drink" or other substance she might have taken.

58. Even so, had they suggested even at that very late stage that the minerals drink was even a possible source of inadvertent contamination, we would probably have adjourned the hearing in order to enable that further information to be provided. But we did not do so, because it was made clear that it was no part of Ms Wilson's Defence or Dr Skafidas's argument that the drink that he provided might have been responsible for the Prohibited Substance – nor had that been suggested in either her Witness Statement or the summary of her case. Nor is it referred to in the written closing submission.
59. Essentially, therefore, Ms Wilson's case was one of asserting that, since she knew herself to be innocent, somebody else must be responsible for the contamination of the sample.
60. She suggested as possible culprits some other (unidentified) jealous competitors, possibly gaining access to her belongings at the stadium that day.
61. Alternatively, with no great precision as to when this might have occurred, she also suggested that, because of the departures from procedure that she alleged had taken place, there might have been wilful or careless contamination of the sample that in fact she had provided, possibly after she had first provided the partial sample and / or at some indefinite later time before it was transmitted to (or analysed at) the laboratory.
62. There is not a shred of evidence to support any allegation that another person – such as a jealous competitor – spiked her drink. We accept there is no CCTV which assists us in our determinations but have no hesitation in saying that this is just another unsubstantiated attempt to excuse herself by blaming someone else. We note that no-one was identified as

having any particular motive other than a generalised suggestion that people were jealous of her recent success and progress.

63. Were she right about the departures from procedure which might have created the opportunity for the contamination of her sample during the collection of it; that would reflect very badly on Mr Anderson and / or Ms Kelman, and / or would cast suspicion on some other member of the team who sought to incriminate Ms Wilson.

64. We find this is another unsubstantiated allegation she advances and reject it. We should make it clear that our finding is that Ms Wilson's sample was not contaminated, accidentally or otherwise. We noted – and accept – Professor Cowan's evidence that it would in fact

have been very difficult for a non-scientist intent on adulterating such a sample to have achieved the relative concentrations found on analysis. But the short answer to Ms Wilson's suggestion that someone else must have been responsible for contaminating her sample is that we simply did not believe her evidence. We find that the presence of Prohibited Substances within her body arose as a consequence of something that she either ingested (or, possibly) injected and that she took such prohibited substance(s) voluntarily.

The Evidence of Professor Cowan

65. Professor Cowan's evidence is at DB/5. It should be taken that we accept entirely the evidence contained within that Statement, subject to the qualification (on paragraph 24) that he conceded it to be **possible** that one could achieve the kind of levels of testosterone

present in this sample by a "one off" administration through injection, even if (as he explained) it would be impossible or at least overwhelmingly unlikely that one could achieve such levels and / or such concentrations simply through ingesting the substances on a single occasion.

66. We do not regard it as necessary to embark on an analysis of the various challenges that Dr Skafidas made to Professor Cowan's analysis. As regards the concession previously identified in relation to paragraph 24 of his witness statement, we cannot see that this begins to assist the athlete: indeed, it is no part of her case that she has had any kind of one-off injection.

67. In that case, it must follow that the overwhelming likelihood is that she had absorbed the Prohibited Substances orally and (in the case of testosterone at least) must have done so on repeated occasions – see paragraph 24 of DB/5. Clearly, this is an aggravating factor of considerable significance.

Conclusions

68. Our conclusions can be summarised as follows:

- (i) The urine sample provided by Ms Wilson on 12th June 2011 was later analysed and found to contain significant²⁶ quantities of anabolic steroids (clenbuterol and testosterone). These are Prohibited Substances.

²⁶ The Laboratory first analysed Ms Wilson's A sample, following the procedures set out in WADA's International Standard for Laboratories (the "ISL"). The Laboratory found the following substances in

(ii) The collection of Ms Wilson's urine sample on 12th June 2011 was in accordance with recognised procedures. We find that there were no departures from established procedure, still less do we find that any departure was material to the integrity of the testing process²⁷.

(iii) We find that Ms Wilson must, on repeated occasions, have taken substances (probably orally) which in fact contained one or both of those steroids. We cannot say that she took them knowing exactly what it was that she was taking, but even if she did not know, it is very clear to us (and we find) that she failed to take any steps whatsoever to satisfy herself that whatever she took was legitimate.

69. It follows that we are satisfied that Ms Wilson's sample was collected in accordance with the procedures set out in the IST and so its identity and integrity are assured. Ms Wilson has not met her burden of showing that there were departures from those procedures and that such departure could have caused the adverse analytical findings made in respect of that sample (see IAAF 33.2).

70. As we have already held, it is therefore unnecessary to address the question of whether a potentially important departure (such as those which were put to Mr Anderson and Ms

Ms Wilson's A sample. Exogenous (i.e. externally-sourced) testosterone, at a concentration of approximately 196 ng/ml. The exogenous nature of the testosterone found was indicated by the ratio of testosterone to epitestosterone in the sample (more than 7:1) and was confirmed by IRMS analysis; and clenbuterol (at a concentration of more than 30ng/ml)

²⁷ We repeat that for a departure to be significant it would need to be a material departure – see IAAF Rule 33.3(b). However, nothing in the present case casts the slightest doubt on the integrity and validity of the Adverse Analytical Finding or even begins to undermine the factual basis for the anti-doping rule violation.

Kelman) did or did not, on the facts on the case, invalidate the finding (IAAF 33.3(b))²⁸. In short, we find that there were no departures from good and standard practice in the collection, transmission and analysis of the sample which Ms Wilson provided. It was that sample which she provided which we are entirely satisfied, contained the prohibited substances which resulted in the present process.

Sanction

71. IAAF Rule 40.5 allows an athlete to plead in mitigation of sanction that the presence of prohibited substances in her sample was due to No (or No Significant) Fault or Negligence of her own. To make use of IAAF Rule 40.5, however, an athlete must first show how the substance got into her system, and must then show that it got there through No (or No Significant) Fault or Negligence of her own.

72. She must also show that the substance got into her system by specific and competent evidence, e.g. by proof of spiking / contamination, not by mere denials and conjecture.

73. Ms Wilson has not sought to adduce any such evidence in this case: indeed, she does not attempt to explain how the clenbuterol and testosterone came to be in her system, and her 'spiking' allegations are very vague and non-specific, and supported by no evidence whatsoever. She specifically declined to blame anyone else (such as her coach) or to identify any substance with which someone supplied her and of which she is now suspicious. Accordingly, IAAF Rule 40.5 cannot be applied in this case.

²⁸ At which point the burden would transfer to the Prosecuting Authority

74. We turn then to the consequences of the Anti-Doping Rule Violations.

75. First, in relation to disqualification of results (resulting in forfeiture of all titles, awards, medals, prize money etc); (a) Ms Wilson's results in the 100m at the 2011 Bedford International Games fall to be disqualified automatically, by operation of IAAF Rule 39; (b) and other results obtained by Ms Wilson at the 2011 Bedford International Games should also be disqualified, in accordance with IAAF Rule 40.1; and (c) any results obtained by Ms Wilson at any subsequent events (up to the date she was provisionally suspended and so stopped competing) should also be disqualified, in accordance with IAAF Rule 40.8.

76. The next and most serious question is to decide on the period of ineligibility in respect of future competition. Although two separate prohibited anabolic steroids were found, they are treated as only one Anti-Doping Rule Violation and the same is true of the two separate charges, Presence and Use.

77. We also bear in mind that Ms Wilson has no prior Anti-Doping Rule Violations.

78. IAAF Rule 40.2 provides:

"The period of ineligibility imposed for a violation of Rules 32.2(a) (Presence of a Prohibited Substance or its Metabolites or Markers), 32.2(b) (Use or Attempted Use of a Prohibited Substance or Prohibited Method) and 32.2(f) (Possession of Prohibited Substances and Prohibited Methods), unless the conditions for

eliminating or reducing the period of ineligibility as provided in Rules 40.4 and 40.5, or the conditions for increasing the period of Ineligibility as provided in Rule 40.6 are met, shall be as follows:

First Violation: Two (2) years' Ineligibility ...

79. IAAF Rule 40.4 relates to cases involving "Specified Substances". Neither clenbuterol nor testosterone is a Specified Substance (as defined in the IAAF Rules and the Prohibited List) and therefore IAAF Rule 40.4 cannot apply in this case.
80. IAAF Rule 40.6 provides that where it is established that "aggravating circumstances" are present "which justify the imposition of a period of ineligibility greater than the standard sanction", the standard two-year sanction applicable under IAAF 40.2 "shall be increased up to a maximum of four (4) years unless the Athlete or other Person can prove to the comfortable satisfaction of the hearing panel that he did not knowingly commit the anti-doping rule violation".
81. IAAF Rule 40.6(a) states: "Examples of aggravating circumstances which may justify the imposition of a period of Ineligibility greater than the standard sanction are: ... the Athlete or other Person used or possessed multiple Prohibited Substances or Prohibited Methods..."
82. In the judgement of the Panel, there are a number of aggravating factors.

83. First, we accept that Ms Wilson must have allowed herself to take or use prohibited substances containing two anabolic agents, namely testosterone and clenbuterol. In the case of at least one of them, administration must have been repeated (or injected, if not taken orally).
84. Next, she is, as she acknowledges, an experienced and senior athlete (and one who works as a Sports Development Officer). Other (younger) athletes, as well as the general public within and beyond the world of athletics, are entitled to expect her to set a good example. She has done exactly the opposite.
85. Further, when confronted with the result of the analysis, far from admitting her guilt and (perhaps) explaining how she fell prey to temptation (or even how she came to make so serious a mistake), she has consistently denied any kind of guilt. Instead, she has sought to blame other people, unidentified and identified, for her predicament.
86. The unidentified people are the unnamed athletes or competitors who she has suggested were so jealous of her that they might want to spike her drinks. The identified personnel are the Doping Control Officers who (she alleges) deliberately or carelessly departed so seriously from procedures that the opportunity arose for her sample to become contaminated – that is, if they did not deliberately contaminate it themselves.
87. These are very serious allegations to make and when, as we find to be the case here, they are found to be untrue, such conduct constitutes an aggravating factor of substantial importance.

88. So far as we are concerned, the only real question is by how much the two year minimum should be extended towards the four year maximum. We note that in the case of UKAD v Edwards²⁹, the NADP Tribunal increased the sanction to three years to reflect the "aggravating feature of multiple use"

89. In our view, the present case whilst having many obvious similarities to Edwards can be regarded as more serious. We say that because in Edwards³⁰ the athlete did no more than 'raise the possibility' that the sample was interfered with during the process of transportation.

90. In the present case, the athlete went very much further, positively blaming other competitors for spiking her food/drink before she was tested and implying and / or suggesting directly that Mr Anderson and/or Ms Kelman were so neglectful of their duties in departing from clearly established procedure that they allowed a situation to arise in which there must have been contamination of the samples during the testing process (assuming they were not directly responsible for such contamination).

91. To that extent, we regard this as a worse case than Edwards. Nevertheless, we should add that we would not feel compelled to impose the same sanction as in that case even were we satisfied that the present was no more or less serious.

92. That is because we do not necessarily find it compelling to compare individual features of individual cases with one another and, whilst consistency in decision making is important, one tribunal may (within reason) legitimately take a different view from another.

²⁹ Tribunal Decision 7th June 2001 – AB/9

³⁰ See paragraph 3.4.30 of the decision – AB/9

93. Suffice it to say that we regard this as a very bad case of doping. Particularly given the way in which the defence was advanced, we find that there is no mitigation but considerable aggravation.

94. In our judgment, Ms Wilson is a senior athlete who should face the consequences of what she has done in an attempt to cheat the public and her fellow competitors. We consider that it is appropriate to impose a period of ineligibility at the maximum of four years.

95. There is one further matter and that concerns the cost of the analysis of the B sample. Ms Wilson was advised of her right to request an analysis of the B sample on 8th July 2011 and, having requested it, and it having confirmed the A sample analysis, she is liable to pay for its costs³¹. In those circumstances, we:

- (i) Declare that Ms Wilson has committed the following anti-doping rule violations; (1) the presence of prohibited substances (testosterone and clenbuterol) in the urine sample provided by Ms Wilson on 12 June 2011, in violation of IAAF Rule 32.2(a); and (2) use of those two prohibited substances prior to that sample provision, in violation of IAAF Rule 32.2(b);
- (ii) Disqualify (1) Ms Wilson's results in the 100m at the 2011 Bedford International Games, by operation of IAAF Rule 39; (2) any other results obtained by Ms Wilson at the 2011 Bedford International Games, in accordance with IAAF Rule 40.1; and (3)

³¹ £848 plus VAT

any results obtained by Ms Wilson at any subsequent events up to the date she was provisionally suspended, in accordance with IAAF Rule 40.8;

(iii) Find that there were aggravating circumstances within the meaning of IAAF Rule 40.6 so that, in accordance with our discretion under that provision, Ms Wilson shall be ineligible to compete for a period of four years from 9th July 2011.

(iv) Order that she shall pay the costs of the B sample: £848 plus VAT.



William Norris QC

September 2011

**BEFORE THE NATIONAL ANTI-
DOPING PANEL**

William Norris QC
Carole Billington-Wood
Dr Terry Crystal

**IN THE MATTER OF
PROCEEDINGS BROUGHT UNDER
THE ANTI-DOPING RULES OF UK
ATHLETICS**

BETWEEN:

UK ANTI-DOPING

-and-

BERNICE WILSON

**FINAL DECISION OF THE ANTI-
DOPING TRIBUNAL**
