

NATIONAL ANTI-DOPING PANEL
IN THE MATTER OF PROCEEDINGS BROUGHT UNDER
THE ANTI-DOPING RULES OF UK ATHLETICS
Hearing on 20 November 2012



The parties

1. UK Anti-Doping, the UK's National Anti-Doping Organisation, is responsible for pursuing violations of the Anti-Doping Rules of UK Athletics, the governing body for the sport of athletics in the UK. Those Anti-Doping Rules incorporate and implement in the UK the Anti-Doping Rules of the IAAF (the 'IAAF Rules', which in turn implement the 2009 World Anti-Doping Code (the 'Code')). Mr Jonathan Taylor, a solicitor in Bird & Bird solicitors, appeared as advocate on behalf of UK Anti-Doping.
2. The Respondent, Mr Ian Burns, is a 35-year-old javelin thrower who has competed for many years for Gateshead Harriers in competitions sanctioned by and staged under the rules of UK Athletics, including the national-level British Athletics League. Due to injury (and, since May 2012, provisional suspension), the

Respondent has not competed since August 2011. However, he is also a qualified javelin coach and has plans to coach in the future. He accepts that he is subject to and bound to comply at all times with the IAAF Rules. Indeed he says in his first witness statement that he has 'always been careful when taking any kind of substance to ensure that consuming them complies with the Rules'. Mr Alfred Weiss, a barrister of Exchange Chambers, and instructed by Ford and Warren Solicitors of Leeds appeared as advocate on behalf of the Respondent.

3. The National Anti-Doping Panel ("the Panel") is composed of David Casement Q.C., Chairman, Lorraine Johnson and Colin Murdock.

4. The following attended the hearing:

Jonathan Taylor	Advocate for UK Anti-Doping
Graham Arthur	UK Anti-Doping
Richard Redman	UK Anti-Doping
Jason Torrance	UK Anti-Doping
PC Chris Woollett	Durham Constabulary
David Herbert	UK Athletics
Ellen Butcher	UK Athletics
Alfred Weiss	Advocate for the Respondent
Nick Collins	Ford and Warren Solicitors
Michael Downes	Ford and Warren Solicitors
Ian Burns	Respondent
Mark Rookes	Witness
Aiysha Homer	Witness
Trevor Hopkins	Witness

5. References herein to "DB" are reference to the paginated document bundle used at the hearing. References to "A..." are references to answers recorded on the police interview transcript.

The charges

6. By letter dated 14 May 2012 UK Anti-Doping charged the Respondent with:

6.1. Possession (in violation of IAAF Rule 32.2(f)), of:

6.1.1. testosterone (Sustanon and/or Cidotestin) and/or nandrolone (Deca) between September 2010 and September 2011; and/or

6.1.2. testosterone (Sustanon), nandrolone (Deca), stanozolol, methandienone (aka Dianabol), human growth hormone, HCG and/or tamoxifen, on or around 22 September 2011; and/or

6.2. Use or Attempted Use (in violation of IAAF Rule 32.2(b)), of:

6.2.1. testosterone (Sustanon and/or Cidotestin) and/or nandrolone (Deca) between September 2010 and September 2011; and/or

6.2.2. stanozolol and/or methandienone (Dianabol) during or about August 2011; and/or

6.2.3. testosterone, nandrolone, stanozolol, methandienone, hGH, HCG and/or tamoxifen, on or around 22 September 2011.

7. The Respondent responded to the charges by letter dated 16 May 2012 by stating that: (a) he did not even know what was in the boxes in his utility room that were seized by the police, he was *'just looking after them for a friend'*; and (b) his admissions to the police that he had purchased and used steroids were fabricated in a panic after the police told him the boxes contained steroids, in order to persuade them that the steroids were his own and for his own personal use, so that he did not 'grass' on his friend but at the same time he did not implicate himself or his girlfriend in the supply of controlled drugs.

The Respondent's admissions to the police of possession and use of Prohibited Substances, and the evidence found at his house

8. Unusually the Panel has been provided with evidence from the police. The evidence relied on by UK Anti-Doping in this case is set out in the witness statements of PC Christopher Woollett, of the Durham Constabulary, and the exhibits attached thereto. UK Anti-Doping seek to rely upon these written statements and exhibits including police interview to establish the following facts and admissions:

8.1. On 21 September 2011, PC Woollett obtained a warrant from the North Durham Magistrates' Court pursuant to section 23 of the Misuse of Drugs Act 1971, to search for controlled drugs at
(the Respondent's home address). PC Woollett and seven other police officers went to execute that search warrant the next day, 22 September 2011. This is not disputed by the Respondent.

8.2. The Respondent was at home when the police arrived. When they explained they were looking for controlled drugs, according to PC Woollett he 'informed the officers present that he had a number of steroids present within the house that belonged to him. He then showed us a number of items which he indicated belonged to him'. [PC Woollett 1st w/s DB p57]. This is disputed by the Respondent.

8.2.1. 'From the shelf in the utility room shown to us by Burns and which he identified as belonging to him, the following was seized' [Ibid]:

8.2.1.1. Fifty-nine (59) plastic tubs, each containing 500 tablets of Biogenics Stanozolol (10mg) [DB pp.71-73] and accompanied by printed product information identifying the tablets as 'Stanozolol, Winstrol', and 'the anabolic steroid stanozolol', a 'derivative of dihydrotestosterone', manufactured by Biogenics Co. Ltd. in Thailand. [DB pp.60, 73-74]. These were in a cardboard box on a shelf in the utility room.

8.2.1.2. Sixty-two (62) plastic tubs, each containing 500 Biogenics Methandrostenolone tablets (10mg) [DB pp.78-79], and accompanied by printed product information identifying the tablets as 'Dianabol, Methanabol (Anabol) (Methandienone)', a 'mass steroid' with 'a very strong anabolic and androgenic effect', manufactured by Biogenics Co. Ltd. in Thailand. [DB pp.60, 80]. These were in a second cardboard box on the same shelf.

8.2.2. In the front bedroom, under some clothing, 'City link packaging containing Biogenics paperwork'. [Premises Searched Log, DB p.106, JMG 5].

8.2.3. In the drawer in the main bedroom, 'paperwork in relation to clenbuterol hydrochloride tablets'. [Premises Searched Log, DB p.107, JMG 8].

8.2.4. In a drawer in the utility room, a number of full and empty syringes, which the Respondent says were for injecting vitamin B12. [Burns w/s, para 32, DB p.90].

8.3. PC Woollett cautioned and arrested the Respondent on suspicion of possessing controlled drugs (anabolic steroids) with intent to supply. He took the Respondent to Peterlee Police Station, and later interviewed him. The interview was recorded and a transcript of the recording was subsequently produced. The Respondent has exhibited the transcript to his witness statement [DB pp.112-132] and

does not dispute its accuracy. [Burns w/s, para 44, DB p.94]. During the interview, the Respondent made the following statements:

8.3.1. He works as a self-employed personal trainer/fitness instructor at four different gyms. [A11-12]. On the side, he sells supplements to clients and 'other guys' at the gyms, as well as on the Internet. [A28-30, A37-38].

8.3.2. He competes as a javelin thrower, which he regards as a 'power event'. [A72]. He was 'pretty injured for the past two years' [A66], but had competed last in August 2011, was about to have some further treatment, and was hoping to start training again in October 2011. [A70].

8.3.3. He had four different types of steroid in the house as of 22 September 2011:

Q83 ... we'll go through the house what you've got, what's drugs and what isn't, that's what I'm interested in.

A83 Right, if you're talking about steroids themselves, at the moment there are four types in there.

8.3.4. Specifically, he said he had 'six boxes of Sustanon' and 'six boxes of Deca' [A85-86], as well as 'round about 60 tubs of Dianabol and the same of, it's called Stanozolol. ... About [60 tubs], yes, might be more, might be less' [A86-87], with each tub containing 500 tablets. [A102]. He explained that 'it is a bit of a bulk order to get them cheap enough and I actually bought them to last a few years until I feel that the time is right to come off them'. [A103].

8.3.5. At some point in the previous 12 months (i.e., at some point between September 2010 and September 2011), he had gone on a 5-day trip to Egypt, 'to do some diving and actually bring a supply of steroids back for my own use'. [A136]. '[T]here was some Sustanon, there was round about, I think I brought round about ten boxes of ten. There was ten boxes of something called Cidotestin C-I-D-O-T-E-S-T-I-N and I brought, I think I brought 300, sorry, it would have been 30 boxes of the Deca because it's a smaller, it's not as strong, it's round about a quarter of the strength'. [A139]. He said: 'it's not the first time that I've been out to Egypt to buy them. I've been a couple of times over the years ... [if] they are for my personal use, then I am allowed to buy them from abroad. Along with some stuff, like the Testovirin I brought, sorry, the anti-oestrogen, things like that I bring back as well'. [A141]. He explained his understanding of the drugs laws was that as

long as these are 'the products what you are actually going to use for yourself', then 'it's legal [to buy them and bring them into the country], as far as I'm concerned'. [A143-44].

8.3.6. He said he was using the steroids not to bulk up, but 'for strength' and 'for speed'. [A104]. In particular, he used the Dianabol and Stanozolol tablets for 'injury rehabilitation and also strength gains'. [A104; A109]. He had been injecting the Deca and Sustanon together into his 'glute' [A89]. He explained: 'basically you draw one up with a syringe, ... you draw the other one up and that goes in as well'. [A100]. He said he also took the Dianabol and Stanozolol tablets together: 'One helps strengthen you and, well they both help strengthen you, the Stanozolol [*sic*] helps lower your blood pressure as well so that's what you do'. [A110]. He said he had last used them in August 2011 (the month he had last competed) for 'injury prevention and to basically keep ticking over'. [A107-108].

8.3.7. In addition, he said he was currently (i.e., as of 22 September 2011) injecting 'growth hormone' subcutaneously in his stomach. [A88-89; 93].

8.3.8. He also said he was injecting a 'peptide' subcutaneously into his stomach. [A88-89]. This was HCG (human chorionic gonadotrophin), 'which was in the drawer in the fridge in the bottom'. [A97].

8.3.9. He said he also had Tamoxifen in the house: 'you will have found one or two boxes of Tamoxifen'. [A94]. He explained that he was taking the HCG and the Tamoxifen as part of his 'post-cycle therapy' [A97]:

8.3.9.1. 'I'm also taking ... Tamoxifen, which is an anti-oestrogen, that's not a steroid, that basically lowers the oestrogen when I'm out of competition. It's a lot of science, mate, I've got a lot of knowledge about it.' [A94]. 'When I actually have the time off, which is the end of the season which is the beginning of September, what will happen is the testosterone level will drop. Now the oestrogen level peaks and that can create problems such as gynaecomastia, it can make you emotional, it's the female hormone, and what you do when you take the Tamoxifen as a man is to actually drop them'. [A95].

8.3.9.2. 'I also take ... what you do is once you've finished with that is you take HCG which was in the drawer in the fridge in the bottom and that's what actually, when you come off the steroids that actually kicks your own testosterone level in so what will happen is, say you are taking the

growth hormone, when you stop, if you are taking it artificially you are taking more than what the body can produce but at the same time your own body will stop its own production, so what you do is when you come off things, it's post cycle therapy, that's what you call it, so the HCG's there, the Tamoxifens'. [A96-97].

Based on the Respondent's insistence that all of the substances were for his personal use, on 20 October 2011 the police determined to take no further action against the Respondent for possession of controlled drugs with intent to supply. In April 2012, they shared the evidence they had obtained with UK Anti-Doping, in accordance with agreed information-sharing protocols. No argument was advanced before the Panel by way of objection to such sharing of information.

9. The Respondent does not dispute that the substances he said he purchased and used are prohibited at all times under the IAAF Rules. Stanozolol (aka Winstrol), Methandrostenolone (aka Dianabol, Methanabol, Methandienone) are both anabolic androgenic steroids, mentioned by name in category S.1.1 of the 2011 Prohibited List [AB tab 4]. "Sustanon" and "Cidotestin" are blends of testosterone esters, while "Deca" is nandrolone decanoate; and testosterone and nandrolone are also category S.1.1 anabolic androgenic steroids. Tamoxifen is a hormone antagonist and modulator, mentioned by name in category S.4.2 of the Prohibited List. 'Growth hormone' (aka human Growth Hormone, or hGH) is a growth factor mentioned by name in category S.2.5 of the Prohibited List. HCG (human chorionic gonadatopin) is a peptide hormone, mentioned by name in category S.2.2 of the Prohibited List.

The burden and standard of proof to be discharged by UK Anti-Doping

10. Mr Taylor on behalf of UK Anti-Doping prepared very full written submissions on the law which we found very helpful. Mr Weiss confirmed on behalf of the Respondent that he did not take issue with any of the legal submissions made in the UK Anti-Doping written submissions save in respect of the requirement of knowledge in the context of exclusive possession, which we address below.
11. It is clear common ground that to sustain the charges, UK Anti-Doping must prove to the Panel's comfortable satisfaction [see IAAF Rule 33.1] that the Respondent (1) '*Possessed*'; and/or (2) '*Used or Attempted to Use*'; (3) one or more '*Prohibited Substances*'.

Possession

12. According to the definition of “*Possession*” in the IAAF Rules, for purposes of IAAF Rule 32.2(f) “*Possession*” can be established in any one of four different ways:

12.1. There is *‘[a]ctual, physical possession’*; or

12.2. *‘Constructive possession’*, for which proof is required that:

12.2.1. *‘the Person has exclusive control over the Prohibited Substance ... or the premises in which a Prohibited Substance ... exists’*; or

12.2.2. the person charged did not have exclusive control over the prohibited substance, or of the premises where the prohibited substance was stored, but he *‘knew about the presence of the Prohibited Substance [at that location] ... and intended to exercise control over it’*; or

12.3. Finally, there is *‘the purchase (including by any electronic or other means) of a Prohibited Substance’*, which in and of itself constitutes “*Possession*” by *‘the person who makes the purchase’*. This fourth option was added as a new last sentence to the Code definition of “*Possession*” when the Code was revised in 2009, in apparent response to a ruling from an Australian case that (under the 2003 Code) proof of purchase, without delivery, did not establish control sufficient to support a finding of constructive possession.¹ Therefore, with that change to the 2009 Code (which was incorporated into the IAAF Rules), “*Possession*” of an item for purposes of IAAF Rule 32.2(f) may now be established simply by proof that the item was ordered and paid for; proof is not required that the items purchased were ever actually delivered to the athlete.

¹ See ASADA v. Wyper, CAS first instance panel, CAS A4/2007, award dated 21 August 2008, paras 24-30. This ruling in Wyper was subsequently followed by the CAS in another case arising under the 2003 Code, International Rugby Board v. Troy & ARU, CAS 2008/A/1664, award dated June 2009, para 56 (no ‘exclusive control’ over a substance, and therefore no constructive possession over it, while it is in transit from overseas supplier).

13. In this case:

13.1. It is not in dispute that 59 tubs of stanozolol tablets and 62 tubs of methandrostenolone (also known as Dianabol) tablets were found in two cardboard boxes on a shelf in the utility room of the house that the Respondent rented as a home for himself and his family. It is submitted on behalf of UK Anti-Doping that the evidence the Respondent has submitted shows that he had exclusive control over those tablets while they were in his house. It is submitted that

(1) the Respondent's girlfriend, Ms Homer, has disavowed any control over the boxes: '[i]t did not even occur to me to look inside the boxes as they belonged to somebody else and it was none of my business'. [Homer w/s, para 8, DB p.169]. That means that only the Respondent was exercising control of the boxes, which is enough, without more, to establish constructive Possession.

(2) The Respondent's claim that he was just holding the steroids for Mr Rookes does not change that fact: Comment to Code Article 2.6 (*'Acceptable justification would not include, for example, buying or Possessing a Prohibited Substance for purposes of giving it to a friend or relative, except under justifiable medical circumstances ...'*)

UK Anti-Doping say that is enough, without more, to establish constructive Possession of those tablets for purposes of IAAF Rule 32.2(f).

13.2. It is further submitted by UK Anti-Doping that even if (which is not the case) the Respondent did not have exclusive control over the boxes while they were in his house, the fact is that, notwithstanding his claim to the contrary, the Respondent knew that the boxes in his utility room contained stanozolol and methandrostenolone tablets and intended to exercise control over them. That is enough to establish the second type of constructive Possession of those tablets for the purposes of IAAF Rule 32.2(f).

13.3. Further, UK Anti-Doping submit that apart from admitting that he had not only the Dianabol and the stanozolol tablets in the house, but also the Deca (nandrolone) and the Sustanon (testosterone), the Respondent also admitted that he had both Tamoxifen and HCG in the house, and growth hormone. Since his partner says in her evidence that she would not countenance Prohibited Substances in the house [Homer w/s, para 20, DB p.172], she clearly had no knowledge of (and therefore no control over) those substances. Therefore, the Respondent had exclusive control over the Sustanon (testosterone), the Deca (nandrolone), growth hormone, HCG and Tamoxifen as well, and therefore had constructive Possession of them for the purposes of IAAF Rule 32.2(f). The fact that the police did not seize any of those substances does not undermine his clear and detailed admissions of their presence.

13.4. Furthermore, during the police interview, the Respondent admitted that he purchased the steroids on-line ('Basically they are ordered online from a company and they get sent out from within the UK. ... The actual website itself actually states it's from Pakistan but it's not, it's within the UK and they supply different steroids from all over the world really') [A112-113] and they were delivered to his house [A119]. He also admits that he bought the Cidotestin, the Deca, the Sustanon and the Tamoxifen in person in Egypt and brought them back to England with him. [A139]. Those admissions are corroborated by the physical evidence found in his house (the 121 tubs of steroid tablets, and the CityLink packaging containing Biogenics paperwork) and are sufficient to establish Possession via purchase for purposes of IAAF Rule 32.2(f), irrespective of the fact that the police only seized two of the substances (the stanozolol tablets and the methandrostenolone tablets) that he says he purchased.

14. The foregoing is enough, UK Anti-Doping say, to establish "*Possession*" of the Prohibited Substances mentioned in the charge letter for the purposes of IAAF Rule 32.2(f). It does not have to be shown that the Respondent actually used the Prohibited Substances in question,² or indeed that he intended to use them.³ As it happens, however, UK Anti-Doping submitted there is more than enough evidence to make such findings hence it has also charged the Respondent with Use/Attempted Use.

Use/Attempted Use

15. The IAAF Rules define '*Use*' as '*utilisation, application, ingestion, injection or consumption by any means whatsoever*'; while '*Attempt*' is defined as '*[p]urposely engaging in conduct that constitutes a substantial step in a course of conduct planned to culminate in the commission of an anti-doping rule violation ...*'.

16. The Code/IAAF Rules/NADP procedural rules are clear, and so are the cases construing the Code, that you do not need an adverse analytical finding that a substance is present in an athlete's sample to prove that the athlete '*Used*' that substance for purposes of IAAF Rule 32.2(b). To the contrary, such '*Use*' can be

² *IOC & WADA v Pinter & FIS*, CAS 2007/A/1434, award dated 20 November 2008, para 118 ('*as Mr Pinter is found guilty of constructive possession of a Prohibited Method, the fact that DNA-profile found on the evidence seized by the Italian Police could not be assigned to him, is irrelevant. If his blood would have been identified on the items seized, Mr Pinter would have been hit with the additional charge of "Use or Attempted Use of a Prohibited Substance or a Prohibited Method", as defined under article 2.2 of the FIS ADR*').

³ See *Eder v IOC*, CAS 2007/A/1286, award dated 4 January 2008, para 9.43 ('*First, this anti-doping violation is proved simply by possession. Secondly, the necessity of proving intent would render Art 2.6 nugatory*').

established by *'any reliable means'*, including the athlete's own admissions,⁴ even if the athlete now denies making those admissions.⁵

17. In this case, UK Anti-Doping say there are both repeated and detailed admissions of Use by the Respondent to the police, as well as physical evidence corroborating those admissions. UK Anti-Doping submit that the Respondent's claim that he was making it up in an effort to mislead the police is belied by the evidence and should be rejected.

Of one or more Prohibited Substances

18. The Respondent does not dispute that the substances he said he purchased and used are prohibited at all times from use in sport. Indeed, he was well aware of that fact, which appears to be why he tried to get the police not to mention his use of them in interview, for fear of wrecking his athletics career. We note the police interview transcript [DB p.123]: [A114] "I didn't want this about the athletics but you still asked us about it, that's what I asked you."
19. In our judgment there is no further requirement of analytical evidence confirming that the substances are indeed what the Respondent says they are. In USADA v Leogrande, the athlete cited the CAS's decision in French for the proposition that his admission of use of EPO was not sufficient to uphold a 'Use' charge without analytical evidence that what he had used really was EPO. The AAA hearing panel rejected that submission, distinguishing French on the basis that (*inter alia*) the *'Respondent here actually admitted the use of a Prohibited Substance to Sonye, namely EPO, testosterone and Ventalin. French admitted to taking a drug named "Testicomp", not the taking of a Prohibited Substance'*. It therefore ruled that it could uphold USADA's 'Use' charge on the basis of the athlete's repeated admissions of use of EPO alone, notwithstanding the absence of analytical evidence that the substance the athlete had admitted using was in fact EPO.

⁴ IAAF Rule 33.3 states that '[f]acts relating to anti-doping rule violations may be established by any reliable means, including but not limited to admissions, evidence of third Persons, witness statements, experts reports, documentary evidence, conclusions drawn from longitudinal profiling and other analytical information'. See also comment to Code Article 2.2 (same); NADP Rule 9.2 ('Facts may be established by any reliable means, including admissions').

⁵ In Leogrande, the athlete disputed his alleged admissions of use of EPO and argued that therefore they could not on their own sustain a Use charge. The AAA hearing panel rejected that submission, holding instead that *'clear and repeated admissions of doping ... in and of themselves may be sufficient to establish an anti-doping rule violation'*. USADA v Leogrande, AAA No. 77 190 00111 08, award dated 1 December 2008, para 71.

20. The distinction drawn by the Leogrande panel was endorsed by another AAA panel in USADA v O'Bee,⁶ which therefore also upheld a charge of 'Use' of EPO based solely on emails written by the athlete, admitting using EPO, notwithstanding the absence of any analytical evidence confirming that what he had used was EPO.⁷
21. Here the Respondent has specifically admitted using actual Prohibited Substances which he has named, rather than medications that might or might not contain Prohibited Substances. Therefore, the absence of analytical evidence confirming that the substances he has admitted using were the Prohibited Substances he thought they were is irrelevant.
22. Similarly, it is not necessary, in order to sustain a Possession charge, to present analytical evidence confirming that the substances possessed were indeed the Prohibited Substances that the athlete thought they were. In Troy, the products that the athlete had ordered over the Internet never reached him (they were intercepted and destroyed by Australian Customs) and the only evidence before the hearing panel of their nature was two Customs seizure reports, one reporting the seizure of *'one sealed container said to contain 21 packages Testosterone-1, a mixture of Androstenes'* and one reporting the seizure of *'one bottle of 100 capsules of "DHEA 200" containing 200 mg DeHydroEpiAndrosterone per capsule'*. Relying on an Australian court ruling, in the context of Australian national controlled drugs laws, that the mere description in a Customs seizure notice of the contents of packages seized is not sufficient proof of what the packages contained,⁸ the CAS Panel (Oceania Division) held that it was not comfortably satisfied based solely on the Customs seizure reports that the packages seized by Customs did in fact contain Prohibited Substances (and therefore it could not find that the athlete knew that they contained steroids, and therefore it could not find that the packages were in his constructive possession). Since Attempted Possession is not a breach of Anti-Doping Rules, the case against the athlete had to be dismissed.
23. In the present case there is physical evidence of the nature of the substances in issue, as well as the Respondent's own clear admissions of their prohibited nature. And as a result, this case is clearly distinguishable from Troy on the facts. More fundamentally, however, Troy was decided under the previous (2003) version of the Code, not the current (2009) version of the Code. And the 2003 version of the Code was

⁶ USADA v O'Bee, AAA No. 77 190 00515 09 JENF, award dated 1 October 2010, para 10.6 and fn 26.

⁷ *Ibid.* at paras 10.3, 10.7.

⁸ *Ibid.* at para 66.

amended in the 2009 version (by adding a fourth way of establishing "Possession", i.e., by proving 'purchase') specifically to deal with the Wyper ruling that an item that an athlete had ordered and that was in transit to him was not within his constructive possession as defined under the 2003 Code. As a result of that change, a Possession charge can be sustained merely on proof that the athlete ordered and paid for Prohibited Substances. No evidence is required that he actually took possession of such substances. *A fortiori*, analytical evidence is not required that the products the Respondent ordered were in fact Prohibited Substances.

24. Based on the foregoing, UK Anti-Doping submits that there is more than enough evidence to establish to the Panel's comfortable satisfaction: (a) that the Respondent Possessed and/or Used or Attempted to Use testosterone ("Sustanon" and/or "Cidotestin") and nandrolone ("Deca") between September 2010 and September 2011; (b) that the Respondent Used or Attempted to Use menthandienone (Dianabol) and/or stanozolol during or about August 2011; and/or (c) that the Respondent Possessed and/or Used or Attempted to Use stanozolol, methandienone (Dianabol), testosterone ("Sustanon" and/or "Cidotestin"), nandrolone ("Deca"), growth hormone, HCG and/or Tamoxifen on or around 22 September 2011.
25. It was contended by UK Anti-Doping and the Respondent did not dispute that the only way that charges could be dismissed would be if the Panel accepted the Respondent's present evidence that he did not know what was in the cardboard boxes, he was *'just looking after them for a friend'*, and that his admissions of possession and personal use of seven different Prohibited Substances were a complete fabrication, made up in a panic once he learned that the boxes contained steroids, as a way of avoiding *'grassing'* on his friend without implicating himself or his girlfriend in possession of controlled substances with intent to supply. As noted below, to make that finding, the Panel would necessarily also have to find that PC Woollett lied or was at least mistaken in the police interview when he said that the Respondent told the police he had steroids in the house and took them to the cardboard boxes in the utility room.

The Respondent's defence

26. The Respondent's case was put succinctly in Mr Weiss's skeleton when he said at paragraph 8 thereof:

"The Respondent's case provides a complete defence. Without prejudice to the totality of his evidence, his case is that he learnt during the course of a police raid that two boxes containing steroids had been placed in his house by an associate. He foolishly told the police that the substances were his because he wanted to get

the matter over and done with and he was frightened as to what his associate would do if the Respondent implicated him with the police. In order to substantiate the lie that he told to the police, namely that the boxes were his, he made up further lies about the use and purchase of Prohibited Substances. However, the truth is that the Respondent is an athlete who has never used, never would use, has never purchased and has never knowingly been connected Prohibited Substances."

27. Mr Weiss, on behalf of the Respondent, describes UK Anti-Doping's case as "illusory" and identifies four factors which point towards the veracity of the Respondent's account:

(a) His account as to the absence of knowledge is supported by Aiysha Homer (DB pp.168-173) and Mark Rookes (DB pp.174-175).

(b) The Respondent in interview admitted to the possession and purchase of substances that were not in fact present in the property. This supports his case that he embellished his story to the police by trying to fabricate a credible account of steroid use and purchase, but is being truthful to the Panel now, as it is incredible that the police would have carried out a drugs search yet not found further substances.

(c) The Respondent gave evidence as to the use of steroids in incredibly large quantities, inconsistent with a history of genuine use.

(d) The Respondent has gone to great lengths and personal expense to clear his name.

The Panel's findings on the facts and the law

The law

28. The principles of law that are applicable to this case, by which we mean the meaning and effect of rules and the cases decided in respect thereof, were not disputed before us save with one exception. The principles of law that we apply are those which are set out above.

29. The one dispute on the law before us was the question of whether, for the purposes of constructive possession, it is necessary to establish that the Respondent knew that the boxes contained Prohibited Substances. It was contended by Mr Weiss that for the purposes of IAAF Rule 32.2(f) "*Constructive Possession*" can be established by proving that '*the Person has exclusive control over the Prohibited Substance ... or the premises in which a Prohibited Substance ... exists*' but that we should imply into this provision of the IAAF Rules that UK Anti-Doping must also prove knowledge of the existence of the Prohibited Substances in the boxes even if exclusive possession is established.

30. Mr Weiss argued that in the absence of such a requirement of knowledge a person could be liable even if an item was slipped into his pocket or left in his house without that person knowing because he would be taken to have constructive possession of the item. That he says must be wrong in principle.
31. We are told by both advocates that there is no case law of which they are aware on the question of the requirement of knowledge for the purposes of constructive possession where it is established there was exclusive control of the Prohibited Substances. We note that this legal question does not arise given the factual findings set out below. We therefore do not consider it appropriate to determine this question in circumstances where we have heard limited argument and it is unnecessary for the determination of this case.

Factual findings

32. Ultimately this case involves the Panel assessing the credibility of the witnesses and in particular the Respondent and PC Woollett. We have had the benefit of observing the witnesses giving their evidence over the course of a full day's hearing and observing their demeanour during cross-examination. We form the unanimous view that the Respondent's account given to the police in interview where he admitted to possession and use of the Prohibited Substances referred to in the charges letter was truthful and the evidence he has given to the Panel to be untrue. In fact we find the account he has given to the Panel to be totally incredible. The Panel's conclusion regarding the facts is based upon the following:

32.1. If the Respondent's account to the Panel was truthful it would mean that he had not only lied to the police but he had provided the police with an elaborate and very detailed series of dishonest answers covering his use of a number of Prohibited Substances over an extended period of time, some of which were acquired from abroad;

32.2. During his police interview, when asked if he had records of the clients that he trained, the Respondent admitted to PC Woollett that he trains clients at gyms while pretending that they are simply working out together (in order to avoid having to share what he earns with the gym owner): "to be honest, mate, this is how it works, some of these places and gyms don't actually know, they think I train just in there, you know. I go along with clients and I train with them but I really am teaching them what to do so there is little records kept as far as like in the gym and things that are wrote down ..." [A157, A163]. This does nothing to support the credibility of the Respondent;

32.3. In the initial response he filed to the charge, the Respondent alleged that the police threatened and/or coerced him into admitting what he did at the police interview:

*I was told if I did not co-operate with questioning I could be detained for up to 24 hours and if there was no admission of possession I could be charged with supplying. After an hour or so of been [sic] held at the police station I was informed by P.C. Wollet [sic] I would be out in the next hour if I made a statement that the steroids were mine, the charges would be dropped as the amount of steroids recovered was only enough for personal supply. I was told if I wanted legal representation I would be held a lot longer as I would have to wait for a solicitor to be appointed. ... I made the admission because the officer had already told me that charges would be dropped and the interview was only taking place because of the arrest protocol. ... I do realise the severity of the charges made by the UKAD and UKA. I feel these have resulted from **a stupid mistake that I made that I made [sic] under pressure from the police and without any legal representation. Any admission I made was because of my fear for the safety of my whole family and [because I was] bullied into the answers I had to give.** [DB pp.6-8, emphasis added.]*

However, the Respondent sought to go back on that assertion. In the email from Respondent's solicitor dated 24.08.12 [DB p.83] ('it will not be our client's case that he was coerced or induced to say anything by the police'); Burns w/s, para 66 [DB p.99] ('I appreciate that some comments that I made in that letter might suggest that I was induced into admitting possession of the steroids. For the avoidance of any doubt, I can confirm that [the] decision to make up a story that I was a steroid user was mine alone and I was not put under any undue pressure from the police or coerced into saying that I was steroid user.').

However in cross-examination the Respondent sought to say again that he was put under pressure by the police. The Respondent's position regarding undue pressure has been, at best, inconsistent. The Panel had the opportunity to listen to significant parts of the police interview. The Respondent was a man who was calm and thoughtful. He was very fluent in his answers and gave no impression of being a man under pressure.

32.4. The Respondent does not dispute that the transcript is an accurate record of what was said during the interview. He does however dispute PC Woollett's account of what was said and done at the house during the search. PC Woollett's clear evidence is that when the police got to the Respondent's house, and told him they were looking for controlled drugs, the Respondent 'informed the officers present that he had a number of steroids present within the house that belonged to him. He then showed us a number of items which he indicated belonged to him'. [PC Woollett w/s, DB p.57]. The Respondent

disputes this, saying: 'I was asked if there was any drugs on the property to which I replied "no".' [Burns w/s, para 29, DB p.90]. We are entirely satisfied that PC Woollett's account was accurate. He explained in testimony before the Panel that he had never encountered steroids in the course of the hundreds of searches he had undertaken in his career and this stuck in his mind. He remembered the javelins in the hall and the team GB top on display. It was clear that the Respondent's comments regarding steroids being in the house had stuck in his mind and PC Woollett was adamant about what the Respondent had said to him.

32.5. Furthermore at the interview, the Respondent did not contradict PC Woollett. Instead, he agreed with PC Woollett as follows:

Q78 ... you showed us straight away to where items which you informed us were steroids were located, is that correct?

A78 Yes, that's right.

Q79 And where were those steroids at?

A79 They were above the cupboard with the cups in. They were in the back room in boxes. ...

...

Q98 Right, okay, so talking about all this that we've got, we've got six boxes of Sustanon, six boxes of Deca, were they the ones that you've initially showed me when I've first gone in?

A98 When you come in, yeah, yes.

Q99 That's what you initially showed me, right. ...

We listened to the actual interview at this point and it was clear that the Respondent was not hesitant in his answer. On the contrary the Respondent was interrupting PC Woollett to agree with these questions that were put.

32.6. The Respondent said in his witness statement: 'At the time of the interview I did not know which steroids were contained in Mr Rookes' boxes'. [Burns w/s, para 46, DB p.95]. Indeed this assertion was also made in paragraph 8 of Mr Weiss's skeleton argument (see above). However, if so this raised a number of questions:

(a) How was it during interview that he correctly identified the steroids in the boxes as Dianabol and Stanozolol tablets? [A86].

(b) How was it that he correctly said that each of the two boxes contained '[a]bout [60 tubs of tablets], might be more, might be less'? [A.86-87]. In fact, when the police subsequently counted them, they found that there were 62 tubs of Dianabol tablets and 59 tubs of Stanozolol tablets. [PC Woollet 2nd w/s, DB p.59].

(c) How was it that he knew that each tub contained 500 tablets? [A102].

(d) He also correctly noted that one set of tubs had 'a blue sticker on' [A90; see DB p.79] (although he said the colour of the sticker on the other set of tubs was red, when in fact it is yellow: DB p.72).

These questions were raised by Mr Taylor in his skeleton argument in advance of the hearing. During his cross-examination the Respondent gave an account different to that in his witness statement and that which was set out in Mr Weiss's skeleton argument. The Respondent contended that he had in fact been allowed by the police to look into the boxes, one he could clearly look into and the other one he could not. He was also allowed to read the documentation inside one of the boxes. In very effective cross-examination Mr Taylor tested these matters and we find the Respondent was changing his story to try to explain away the very precise knowledge of the Prohibited Substances in the two boxes that he demonstrated during interview. The Respondent had clearly manufactured another explanation to deal with the points highlighted by Mr Taylor in his skeleton, served in advance of the hearing.

32.7. It is clear that, during their search of the Respondent's home, the police officers found 'City link packaging containing Biogenics paperwork' in the Respondent's house. City Link is a UK courier company, and the Respondent told the police that he ordered the steroids online from a UK company, 'they get sent out from within the UK', and they were delivered to his house. [A112 and A119]. Biogenics is the name of the manufacturer of the steroid tablets found in the cardboard boxes. [DB pp.72, 79]. The Respondent disputed in evidence where the packaging or Biogenics paperwork was found. We accept the police record that both were found in the bedroom. In short, the objective evidence is that the Respondent's denial that he knew that the boxes contained steroids is an obvious lie.

32.8. We found the Respondent's new account of events to be contrived and incredible. The Respondent stated: 'The whole story I gave to PC Woollett regarding my use of steroids was a complete fabrication'. [Burns w/s, para 46, DB p.95]. He stated that when the police opened the boxes and asked him if the steroids they contained were his, 'I was completely shocked and began gathering my thoughts. I did not want to implicate anybody at that stage and repeated that they did not belong to me'. [Ibid. at para 35, DB p.91]. He stated that, in order to avoid 'grassing' on Mr Rookes and to avoid himself and his

girlfriend being charged with possessing controlled drugs with intent to supply, he told the police that the steroids 'were for my own personal use'. [Ibid at paras 37, 42-43, DB p.91, 93]. He also stated 'Using my limited knowledge of how steroids are taken from information I had picked up from steroid users in the gym, I mentioned the four most common steroids and explained how they were taken'. [Ibid. at para 46]. The detail that the Respondent was able to provide of his acquisition of steroids including during holidays to Egypt, his acquisition of other Prohibited Substances and his knowledge of the names of substances and how to use those substances was remarkable for someone who now claims never to have used them. Contrary to what his statement says, the Respondent did not simply admit to the police that he had purchased and used 'the four most common steroids'. [Ibid. at para 46]. Rather, he also admitted using a fifth steroid (Cidotestin), as well as growth hormone, HCG, and Tamoxifen. Indeed, he even said that there was HCG and Tamoxifen in the house along with the steroids: 'you will have found one or two boxes of Tamoxifen' [A94]; 'you take HCG, which was in the drawer in the fridge in the bottom' [A97]. We agree with the UK Anti-Doping submission that just because the police did not find these items during the search does not mean they were not present.

32.9. The Respondent said 'It's a lot of science, mate, I've got a lot of knowledge about it'. [Ibid.] To demonstrate that knowledge, he volunteered a detailed description of what he called 'post-cycle therapy' [A97], i.e., taking HCG and Tamoxifen to counter the effects of the steroid/growth hormone cycle:

'When I actually have the time off, which is the end of the season which is the beginning of September, what will happen is the testosterone level will drop. Now the oestrogen level peaks and that can create problems such as gynaecomastia, it can make you emotional, it's the female hormone, and what you do when you take the Tamoxifen as a man is to actually drop them'. [A95].

'I also take ... what you do is once you've finished with that [ie the steroids and the growth hormone] is you take HCG which was in the drawer in the fridge in the bottom and that's what actually, when you come off the steroids that actually kicks your own testosterone level in so what will happen is, say you are taking the growth hormone, when you stop, if you are taking it artificially you are taking more than what the body can produce but at the same time your own body will stop its own production, so what you do is when you come off things, it's post cycle therapy, that's what you call it, so the HCG's there, the Tamoxifens'. [A96-97].

We cannot accept that an innocent person who has had two boxes left at his home, who does not know the contents and has never used Prohibited Substances would, as he alleges, fabricate such a story to the police. Whilst the Respondent tried to say he was only protecting his family it is clear that this course involved more danger to his family because (a) it involved lying to the police to protect someone else

which is potentially attempting to pervert the course of justice and (b) a further search of the house would have revealed (according to the Respondent) none of these substances were present and therefore his entire story could have easily unravelled.

33. The admissions made by the Respondent in police interview are corroborated by physical evidence regarding purchasing and using Prohibited Substances:

(1) The fact that 62 tubs of Stanozolol tablets and 59 tubs of Methandrostenolone tablets were found in the Respondent's house.

(2) The fact that 'City Link packaging containing Biogenics paperwork' was found in the front bedroom of his house.

34. The Respondent sought to rely upon Hair Steroid Testing carried out by Trimega Laboratories to prove there was no trace of steroids in his body [DB pp 152-158]. The report from Trimega was supplemented by a further short report. In the event and following cross-examination of Christian Zuniga, Director of Technical Services UK for Trimega Laboratories Limited, by Mr Taylor, the Respondent through his Counsel informed the Panel that he no longer wished to rely upon the expert evidence he had placed before the Panel. We agree that this was a proper concession for the Respondent to make. The expert evidence, following cross-examination, was plainly unreliable.

35. The Respondent also relies upon the uncontested evidence of Trevor Hopkins [DB p 174]. Mr Hopkins is an athletics coach with considerable experience. His evidence consisted partly of opinion and partly of submission. It was certainly not a statement that amounted to independent expert testimony. He said in his statement "I am willing to state unequivocally, in my professional judgment, that Ian has never used any banned performance enhancing drugs." Not only are his opinions contrary to the detailed admissions made by the Respondent in police interview but his opinions (which are potentially relevant only to use and not to the possession charges) are not those of an independent expert. We therefore do not attach any weight to the clearly partisan views that he expresses.

36. Although Mr Rookes was the person who has, according to the Respondent, caused this situation by leaving two boxes at the Respondent's house, he provided a witness statement and attended the hearing. At the hearing before the Panel Mr Rookes confirmed his statement. Mr Taylor put it to Mr Rookes that his entire story about leaving two boxes at the house and the Respondent not knowing what was in them was a

fabrication. We agree. The Respondent's own explanation and admissions to the police were such that we find Mr Rookes account wholly unreliable.

Conclusion

37. The Panel unanimously finds that the answers given to the police by the Respondent in his interview were truthful in respect of his possession and use of the Prohibited Substances that he has referred to. We reject the account given to the Panel at this hearing by the Respondent as an elaborate fabrication that is designed to explain away the clear, detailed and repeated admissions he made to the police and which is corroborated by the physical evidence found by the police at his home.
38. The Respondent was in exclusive control of the two boxes containing steroids that were discovered by the police during the search of his house. It was the clear understanding between the Respondent and his partner that these boxes and indeed the other Prohibited Substances which he admitted were present in the house were the Respondent's and his partner was not to move them or exercise any control over them. The possibility of Ms Homer moving the boxes to clean underneath them is not inconsistent with the Respondent's exclusive control of the boxes. Further we agree that since Ms Homer did not know of the existence of the other Prohibited Substances in the house and which are the subject of the Possession charges that the Respondent was in exclusive control of those also. In any event we find that the Respondent knew that the two boxes contained steroids for the reasons set out above.
39. The Respondent was therefore in actual Possession of each of the Prohibited Substances as set out in the charges.
40. We find that the charges in respect of Use/Attempted Use are established for the reasons set out above. In short we accept the answers given in respect of this by the Respondent to the police to be truthful and we reject the allegation of fabrication.
41. It is the unanimous judgment of the Panel that each of the charges set out in the charges letter has been proved by UK Anti-Doping to our comfortable satisfaction.

Consequences

Disqualification of results

42. The Panel upholds the charge of Use of testosterone (Sustanon, Cidotestin) and/or nandrolone (Deca) from September 2010 to September 2011. The Panel therefore orders the disqualification of all results obtained by the Respondent from 1 September 2010 until 31 August 2011 (his last competition before injury and then provisional suspension), in accordance with IAAF Rule 40.8.

Imposition of a period of ineligibility

43. There are two separate charges, involving seven different Prohibited Substances, but because they were discovered together IAAF Rule 40.7(d)(i) provides that they are to be treated as only one anti-doping rule violation (the Respondent's first), not as two or more separate violations, and so he is not to be treated as having committed multiple violations for purposes of IAAF Rule 40.7.

44. However, the fact that several Prohibited Substances were involved may still impact on sanction. IAAF Rule 40.2 provides that the period of ineligibility for a first offence of Use or Possession *'shall be' two years, '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'*. There is no possible mitigation plea here and none was suggested by Mr Weiss.

45. However, IAAF Rule 40.6 provides: *'If it is established in an individual case involving an anti-doping rule violation other than violations under Rule 32.2(g) (Trafficking or Attempted Trafficking) and Rule 32.2(h) (Administration or Attempted Administration) that aggravating circumstances are present which justify the imposition of a period of Ineligibility greater than the standard sanction, then the period of Ineligibility otherwise applicable 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'*.

46. In our judgment there are *'aggravating circumstances'* that are present in this case that justify increasing the ban to four years, pursuant to IAAF Rule 40.6:

(1) IAAF Rule 40.7(d)(i) states that multiple violations that cannot be charged separately (because one is committed before notice of the other is received) *'may be considered as a factor in determining aggravated circumstances (Rule 40.6)'*.

(2) IAAF Rule 40.6(a) lists several other *'[e]xamples of aggravating circumstances which may justify the imposition of a period of Ineligibility greater than the standard sanction'*, including that:

(a) 'the Athlete or other Person used or possessed multiple Prohibited Substances or prohibited methods or used or possessed a prohibited substance or prohibited method on multiple occasions'. We find that the Respondent purchased significant quantities of at least seven different Prohibited Substances, and used them repeatedly over an extended period.

(b) 'the Athlete ... committed the anti-doping rule violation as part of a doping plan or scheme, either individually or involving a conspiracy ...'. We find that the Respondent used the Prohibited Substances pursuant to a sophisticated doping cycle (including 'post-cycle therapy'), 'for strength' and 'for speed'.

(c) 'the Athlete ... engaged in deceptive or obstructing conduct to avoid the detection or adjudication of an anti-doping rule violation'. We find that the Respondent has submitted false testimony to deliberately mislead the Panel (that he was only looking after the cardboard boxes for a friend, and did not know that they contained steroids; that PC Woollett was lying or mistaken when he said the Respondent had taken the police to the cardboard boxes and told them they contained steroids; and that his numerous admissions of use of Prohibited Substances to the police were a fabrication) in an effort to avoid being found guilty of the anti-doping rule violations charged.

47. In accordance with IAAF Rule 40.10(b), Mr Burns will receive credit against whatever ban is imposed for the period for which he has been provisionally suspended (i.e., from 18 May 2012: DB p.10).

Summary

48. The Panel hereby finds that:

48.1. the Respondent has committed the following anti-doping rule violations:

48.1.1. Possession, in violation of IAAF Rule 32.2(f), of:

8.1.1.1 testosterone and/or nandrolone between September 2010 and September 2011; and/or
8.1.1.2 methandienone, stanozolol, testosterone, nandrolone, hGH, HCG and/or tamoxifen on or around 22 September 2011; and/or

48.1.2. Use or Attempted Use, in violation of IAAF Rule 32.2(b), of:

8.1.2.1 testosterone and/or nandrolone between September 2010 and September 2011; and/or

8.1.2.2 methandienone (aka Dianabol) and/or stanozolol during or about August 2011; and/or

8.1.2.3 methandienone, stanozolol, testosterone, nandrolone, hGH, HCG and/or tamoxifen on or around 22 September 2011;

48.2. the Respondent's results obtained by the Respondent from 1 September 2010 to 31 August 2011 are hereby disqualified, in accordance with IAAF Rule 40.8;

48.3. the Respondent is hereby made the subject of a period of Ineligibility of four years deemed to have started to run on 19 May 2012. This extended period is imposed by the Panel in the exercise of its discretion under IAAF Rule 40.6. The period of Ineligibility shall run from 00:01 am 19 May 2012 being the time and date of the Athlete's provisional suspension and so shall end at 00:01 am 19 May 2016. During the period of Ineligibility the Respondent must not participate in any Competition or activity, including coaching, other than in authorized anti-doping education or rehabilitation programmes, which are authorised or organised by the IAAF or any Area Association or Member or Signatory or in competitions authorised or organised by any professional league or any international or national level organization. The Respondent will remain subject to Testing during the period of Ineligibility.

Rights of Appeal

49. In accordance with IAAF Rule 42 the following shall have the right to appeal against this decision to the National Anti-Doping Appeal Tribunal: the Athlete, UK Anti-Doping, UK Athletics and WADA.

50. Any party that wishes to exercise such rights must file a Notice of Appeal with the National Anti-Doping Panel Secretariat no later than 21 days from the date of receipt of this decision, in accordance with the NADP Procedural Rules.

A handwritten signature in black ink, appearing to read "David Casement", is centered at the top of the page. The signature is fluid and cursive.

Signed by the Chairman on behalf of the Tribunal:

David Casement QC (Chairman),
Lorraine Johnson (Specialist Member)
Colin Murdock (Specialist Member)

Dated: 10 December 2012



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