National Anti-Doping Panel

Before
Rod McKenzie
Lorraine Johnson
Professor Peter Sever

BETWEEN

The Anti-Doping Commission of the International Boxing Association (Appellant)

and

Jade Mellor (Respondent)

In the matter of an appeal brought by the Appellant under the UK Anti-Doping Rules of the Amateur Boxing Association of England and the Procedural Rules of the National Anti-Doping Panel 2009 against the decision of an Arbitrator in proceedings brought by the Amateur Boxing Association of England against the Respondent.

DECISION OF THE APPEAL TRIBUNAL

A. MEMBERS OF THE APPEAL TRIBUNAL ("the Appeal Tribunal"):

Rod McKenzie (Chairman)

Lorraine Johnson

Professor Peter Sever

B, REPRESENTATIVES:

Anthony Downes –Legal Manager for the Appellant

Fiona Banks – Barrister for the Respondent

Michael Morgan – Solicitor for the Respondent

Stephen Fitzpatrick – Barrister for the Respondent

Daniel Berry – Solicitor for the Respondent.

C. DECISION:

That the Appellant's appeal be allowed by substituting for the period of Ineligibility of six (6) months a period of Ineligibility of two (2) years to commence on 26 June 2009 and to end on 25 June 2011 (inclusive).

D. INTRODUCTION:

1. The Appeal Tribunal was appointed by the President of the National Anti-Doping Panel ("NADP") pursuant to Articles 5.3 and 12.6.1 of Procedural Rules of the National Anti-Doping Panel 2009 ("the NADP Rules") following receipt from the Appellant of a Notice of Appeal dated 24 August 2009 pursuant to Article 12.5 of the NADP Rules against a decision of a NADP Arbitrator dated 10 August 2009 ("the Decision"), finding that: -

   (a) an Anti-Doping Rule Violation had been committed by the Respondent contrary to Article 2.1 of the UK Anti-Doping Rules of the Amateur Boxing Association of England ("the ABAE") ("the UK Anti-Doping Rules");

   (b) applying Article 10.4 of the UK Anti-Doping Rules, the sanction imposed on the Respondent was a period of Ineligibility of six (6) months;

   (c) applying Article 10.9 of the UK Anti-Doping Rules, the period of Ineligibility commenced on 26 June 2009; and

   (d) the Respondent's individual results in the ABAE 2008/2009 senior female championship be Disqualified with all resulting consequences, including the forfeiture of any medals and titles.

2. Article 13.4.1 of the UK Anti-Doping Rules sets out the parties which may appeal against a decision imposing Consequences (or not imposing Consequences) for an Anti-Doping Rule Violation. In accordance with Article 13.4.1(e) the International Federation may so appeal. The Appellant is the International Federation as represented by the Anti-Doping Commission of the International Boxing Association. The ABAE did not lodge a Notice of

Appeal and did not take part at any stage in the appeal process.

3. On 1 September 2009 the Appeal Tribunal issued directions which required the Appellant to provide further specification of the determination or determinations of the Arbitrator that were sought to be brought under review in the appeal.

4. By letter dated 2 September 2009 the Appellant's specified that the following determinations of the Arbitrator made in the Decision were appealed: -

   (1) That the Respondent did not intend to enhance her sport performance by taking Bumetanide and that, consequently, the sanction imposed on her for commission of the established anti-doping violation ought not to have been governed by Article 10.4 of the UK Anti-Doping Rules.

   (2) In the alternative, that should the Appeal Tribunal determine the sanction imposed on the Respondent was governed by Article 10.4 of the UK Anti-Doping Rules that the period of Ineligibility of 6 (six) months imposed by the Arbitrator was inadequate given the conduct of the Respondent.

5. In its second supplementary directions dated 22 September 2009 the Appeal Tribunal directed that the Hearing would be conducted on the basis that each of the Appellant and the Respondent would have one hour at the Hearing in which to make oral submissions to the Appeal Tribunal. The Appellant was to make the first oral submission to be responded to on behalf of the Respondent. That direction was inconsistent with the appeal being conducted as a *de novo* hearing and was consistent only with the Hearing proceeding as a review of the Decision. Any applications for amendment to that direction were to be received by not later than 5pm on 24 September 2009. There was no application by either party for amendment of the direction.

6. Article 8.1.3 of the UK Anti-Doping Rules provides that appeals shall be determined by the NADP in accordance with Article 13 of the UK Anti-Doping Rules. Article 13.1 of the UK

Anti-Doping Rules provides that a decision made under the UK Anti-Doping Rules may be challenged only by appeal as exclusively provided for within Article 13.4.2(b) of the UK Anti-Doping Rules. Appeals are to be made to the NADP in accordance with Article 12 of the NADP Rules utilising the procedures in Article 13.7 of the UK Anti-Doping Rules. Article 13.7.1 of the UK Anti-Doping Rules provides that appeals are to be filed to the NADP. The only Notice of Appeal filed against the decision of the Arbitrator with the NADP in accordance with Article 12.5 of the NADP Rules was the Notice of Appeal dated 24 August 2009 filed by the Appellant.

E. FACTUAL BACKGROUND:

7. At the time of commission of the Anti-Doping Rule Violation the Respondent was 21 years old. She was a member of the First Class ABC Boxing Club and had recently graduated from the University of Liverpool with a Degree in Zoology. She had only started to box approximately 3 years ago and in 2008 she was the ABAE's Women's Champion in the 60kg weight category of Senior Class B.

8. The Respondent is coached by Mark Joseph. He is a qualified ABAE coach but describes himself as a "novice coach". In the earlier part of 2009 the Respondent was invited to an elite level sparring session and her ambition was to get into the England squad.

9. The Respondent claimed to have received no formal anti-doping education and prior to 7 June 2009 she had not previously been tested for doping control purposes. However, she was aware at the time of the commission of the Anti-Doping Rule Violation that the use of performance enhancing drugs was banned in boxing. She claimed not to know that diuretics are Prohibited Substances.

10. On 7 June 2009 the Respondent was due to compete in the final of the 57kg division in the 2008/2009 Senior Female Championship (Class B). The Respondent had therefore come down a weight category from the category in which she was the national champion the previous year.

11. On each of the previous two weekends the Respondent had successfully boxed in qualifying rounds of the 57kg division to reach the National Championship final. On each occasion she made the weight for her weight category.

12. However, on waking on the morning of the final on 7 June 2009 the Respondent discovered that she was 2 pounds (approximately 1 kilogram) over the weight limit. She immediately attributed this to water retention as the result of her menstrual cycle. The Respondent claims that she panicked about the situation and consulted her father. Her father mentioned that the Respondent's grandmother had been prescribed tablets for use in reducing water retention.

13. Between 6.30am and 7am on 7 June 2009 the Respondent took one 1mg tablet of Bumetanide (a diuretic) which had been prescribed to her grandmother, Ms Doris Mellor. The Respondent claimed that this was the one and only occasion on which she had taken a diuretic.

14. On attending at the championship final venue she weighed in at slightly less than 57kg and won the final of the 57kg competition.

15. Had the Respondent not taken Bumetanide to eliminate fluid on the morning of 7 June 2009 or utilised some other means of eliminating the fluid such as a "sweat suit", she would likely not have made the weight to compete that day and consequently could not have taken part in the final of the 57kg competition on 7 June. The consequence would have been that the person who was the Respondent's opponent in the final would have been awarded the National Championship.

16. After competing on 7 June the Respondent was requested to participate in doping control. As part of that process she completed a Sample Collection Form which included a Declaration of Medication section. In that section she was required to provide details of any prescription/non-prescription medication, supplement or drug taken in the previous 7 days. She listed painkillers and anti-inflammatory drugs but made no mention of her use of

Bumetanide that morning.

17. On later being advised of the Adverse Analytical Finding for the presence of Bumetanide the Respondent initially asserted that she was innocent and denied having taken any type of drug.

18. However, subsequently and faced with the unchallenged analysis result she admitted to her use of a "water tablet". The Respondent did not require the "B" sample to be analysed.

19. Her explanation for not having disclosed the use of Bumetanide prior to being tested and following being advised of the Adverse Analytical Finding was that she did not realise that she was breaking any rules by taking the Bumetanide.

20. On at least one previous occasion the Respondent has used a "sweat suit" in order to help reduce weight. She claimed not to have previously heard of the use of diuretics to reduce weight.

21. Her coach Mr Joseph claimed to know little about anti-doping regulations and had not provided any doping education to the Respondent. The Respondent did not tell him about her use of the diuretic and he had not previously considered the implications for female boxers who might retain fluid during menstruation.

22. Statements from the Respondent's father and grandmother corroborated the account given by the Respondent as to the circumstances in which she used the Bumetanide on the morning of 7 July 2009.

23. On 26 June 2009 the Respondent was advised of the Adverse Analytical Finding *viz* the presence of Bumetanide. The presence of this Prohibited Substance had been reported from the testing of the urine sample provided by the Respondent following the final on 7 June 2009. As a consequence the Respondent was immediately subject to an Interim Sanction of "Exclusion from all activities within Amateur Belts". The Respondent has

remained suspended since that date.

F. THE HEARING AND DECISION:

24. The matter of the Anti-Doping Violation Rule by the Respondent came before a NADP Arbitrator at a hearing on 27 July 2009.

25. At the hearing on 27 July 2009 the Respondent was accompanied by Mr Mark Joseph, her Coach, but was not legally represented. At the hearing the Respondent did not advance a case of No Fault or Negligence or No Substantial Fault or Negligence on her part in the commission of the Anti-Doping Rule Violation. The matter not having been raised neither of these potential cases were considered by the Arbitrator.

26. The Arbitrator noted that certain Prohibited Substances, including Category S5: Diuretics and Other Masking Agents are deemed "Specified Substances". The Prohibited Substance Bumetanide falls within Category S5 and is a Specified Substance.

27. The Arbitrator identified that Article 10.2 of the UK Anti-Doping Rules provides that the sanction for the presence of a Prohibited Substance is a period of Ineligibility of two (2) years unless there exists a basis for eliminating or reducing such a period of Ineligibility. One of the provisions by which such elimination or reduction may be achieved is Article 10.4.

28. Article 10.4 provides: -

> "The Elimination or Reduction of the Period of Ineligibility for Specified Substances under Specified Circumstances.
>
> 10.4.1 Where the Participant can establish how a Specified Substance entered his/her body or came into his/her Possession and that such Specified Substance was not intended to enhance the Athlete's sport performance or mask the Use of a performance-enhancing substance, and it is the Participant's first violation, the

period of Ineligibility established in Article 10.2 shall be replaced with, at a minimum, a reprimand and no period of Ineligibility, and at a maximum a period of Ineligibility of two (2) years.

10.4.2 to qualify for any elimination or reduction under this Article 10.4 the Participant must produce corroborating evidence in addition to his/her word that establishes, to the comfortable satisfaction of the hearing panel, the absence of an intent to enhance the Athlete's sport performance or mask the Use of a performance-enhancing substance. The Participant's degree of fault shall be the criterion considered in assessing any reduction in the period of Ineligibility."

29. The Arbitrator considered that the central issue in the case was whether the Respondent's use of a Prohibited Substance, which was a Specified Substance, was intended to enhance her sport performance. If it was, the Respondent would be subject to the imposition of a period of Ineligibility of two (2) years. If it was not, the sanction would be, at a minimum a reprimand and no period of Ineligibility, and at a maximum, a period of Ineligibility of two (2) years.

30. The Arbitrator observed that some techniques for cutting weight in competition in sports where weight is an eligibility criterion can have serious implications for athletes' health and safety. However there are techniques which do not involve the use of drugs, whether those drugs be Prohibited Substances or otherwise.

31. The Arbitrator noted that the prefatory comments to the World Anti-Doping Code 2009 ("WADA Code") which describes the fundamental rationale for the Code and the Spirit of Sport.

32. The Arbitrator went on to find that the use of a diuretic to reduce weight in order to fulfil an eligibility criterion was contrary to the Spirit of Sport and that the Respondent used Bumetanide in order to enable her to compete in the 57 kilogram competition.

33. The Arbitrator further noted that the commentary to Article 10.4 of WADA 2009 provides as follows: -

> "Examples of the type of objective circumstances which in combination might lead to a Hearing Panel to be comfortably satisfied of no performance-enhancing intent would include: the fact that the nature of the Specified Substance or the timing of its ingestion would not have been beneficial to the Athlete; the Athlete's open Use or disclosure of his or her Use of the Specified Substance; and contemporaneous medical records file substantiating the non sport-related prescription for the Specified Substance. Generally, the greater the potential performance enhancing benefit, the higher the burden on the Athlete to prove lack of intent to enhance sport performance."

34. The Arbitrator went on to observe that there are many Participants in sports which classify Participants by weight, who need, on occasion, to drop weight rapidly and that there were other means by which the Respondent could have achieved the same outcome by methods that would not have involved her in taking a Prohibited Substance. He found that the Respondent had not taken Bumetanide with the intention of enhancing the action or process of her sport performance and that as a consequence he was comfortably satisfied that she did not intend to enhance her sport performance. Consequently, he found that the sanction for the admitted Anti-Doping Rule Violation was governed by Article 10.4.

35. Considering, in these circumstances, the Respondent's degree of fault, which is the criterion for reduction below the two (2) year period of Ineligibility, the Arbitrator found that two of the Athlete's core responsibilities were acquainting herself with the UK Anti-Doping Rules and taking responsibility for what she ingests and uses. The Arbitrator was concerned that an Athlete such as the Respondent who had held a national championship in her sport and who holds a university degree in zoology should not have given greater consideration to the doping consequences of using prescription medication on the day of a competition. The Arbitrator took into account that the Respondent had not received any formal anti-doping education.

36. The Arbitrator considered that the Respondent's actions and degree of fault warranted a meaningful period of Ineligibility and that, in his view, an appropriate term would be six (6) months.

37. Taking into account the period of provisional suspension from 26 June 2009 the Arbitrator imposed a period of Ineligibility up to and including 25 December 2009. In addition the Arbitrator disqualified the Respondent of her individual results at the ABAE 2008/2009 Senior Female Championships with all resulting consequences including the forfeiture of medals and titles.

38. Finally the Arbitrator advised the participants at the Hearing of their respective rights to appeal.

G. APPEAL PROCESS:

39. In her response to the Appellant's Statement of Appeal dated 25 September 2009 the Respondent for the first time sought to argue that, in terms of Article 10.5.1 of the UK Anti-Doping Rules, she bore No Fault or Negligence for the Anti-Doping Rule Violation or alternatively that she bore No Significant Fault or Negligence. These arguments were repeated in the Respondent's Skeleton Argument.

40. Further the Respondent lodged and sought to rely on a document dated 7 October 2009 which was described as "First Witness Statement of Jade Mellor". This document sets out in considerable detail material concerning the Respondent, her boxing background, claimed absence of instruction in relation to doping control matters and the events of 7 June 2009. There are factual matters dealt with in that statement which were, from the Decision, not disclosed to the Arbitrator.

41. In the Respondent's written submissions in response to the third supplementary directions of the Appeal Tribunal dated 28 October 2009 the Respondent advanced an argument that it was in the interests of justice that the appeal should take the form of a re-hearing *de*

novo and that as part of that re-hearing *de novo* the First Witness Statement of the Respondent should be taken into account.

42. Further, it was submitted on behalf of the Respondent that at such a *de novo* hearing it should be open to the Respondent to advance additional/different reasons from those advanced by the Respondent at the original hearing before the Arbitrator. It was submitted that the "no fault" arguments now being advanced by the Respondent were only being advanced in response to the appeal of the Appellant. It was argued that Article 12.5 of the NADP Rules allowed a Respondent to an appeal to raise any matter not dealt with below without the Respondent having filed his or her own Notice of Appeal.

43. With respect to the Respondent's First Witness Statement, it was argued that although the witness statement was not before the Arbitrator it covered the same general areas of fact as were the subject of evidence before the Arbitrator and on which the Arbitrator made findings. It was asserted that since the Respondent now had the benefit of legal advice she was in a better position to present the facts that were relevant to her case.

44. The Respondent argued that at a *de novo* hearing the Appeal Tribunal would be in a better position to do justice as between the parties and would avoid having to consider whether the Arbitrator had been entitled to reach its decision on the facts before him or should have reached a different decision on those facts in circumstances where the current Appellant was not present. It was suggested that to the extent that the Appellant takes issue with anything in the Respondent's First Witness Statement that the Respondent could be cross-examined at the hearing on 30 October 2009.

45. Finally, it was submitted on behalf of the Respondent that if the hearing before the Appeal Tribunal did not proceed on a *de novo* basis that the Respondent would submit on the facts found established by Arbitrator that the Arbitrator should have found that the Respondent bore No Fault or Negligence and that accordingly the Decision was an error.

46. The Appellant confirmed that it had no opposition to the Respondent being able to argue

that she bore No Fault or Negligence or No Substantial Fault or Negligence and did not object to the hearing proceeding as a *de novo* hearing.

47. At the hearing on 30 October 2009 the Appeal Tribunal heard oral submissions on behalf of the parties in relation to these issues.

48. The Appeal Tribunal reserves its position as to whether, in a case in which there is opposition from the Appellant, that it would be open to a Respondent to advance arguments such as No Fault or Negligence and/or No Substantial Fault or Negligence which were not canvassed before the Tribunal at first instance unless the Respondent had also filed a Notice of Appeal. However, in this case, since the Appellant took no objection to these arguments being advanced at the stage of the appeal without a Notice of Appeal from the Respondent the Appeal Tribunal decided to allow the Respondent to introduce these arguments at the appeal stage.

49. The standard of review in an appeal before an NADP Appeal Tribunal is set out in Article 12.4 of the NADP Rules. Article 12.4 provides as follows: -

> "12.4.1 Where required in order to do justice (for example to cure procedural errors in the Arbitral Tribunal proceedings), appeals to CAS or to an Appeal Tribunal pursuant to this Article 12 shall take the form of a re-hearing *de novo* of the issues raised in the proceedings, i.e. the CAS/Appeal Tribunal shall hear the matter over again, from the beginning, without being bound in any way by the decision being appealed.
>
> "12.4.2 in all other cases, the appeal shall not take the form of *de novo* hearing but instead shall be limited to a consideration of whether the decision being appealed was erroneous."

50. The Respondent was advised that as matters stood the Appeal Tribunal was not satisfied that it was required in order to do justice for there to be a re-hearing *de novo* of the issues

raised in the proceedings and invited the Respondent to make further submissions on this matter.

51. The Appeal Tribunal went on to advise the Respondent that if the Respondent was successful in persuading the Appeal Tribunal that a re-hearing *de novo* should be ordered that such a *de novo* hearing would not take place on 30 October.

52. As the Appeal Tribunal explained to the Respondent, a hearing *de novo* could not take place in the absence of the Anti Doping Organisation which was not a party to the appeal. The ABAE would have to be given the opportunity of taking part in any *de novo* hearing and the appeal papers would therefore require to be served on the ABAE and a new appeal hearing date fixed.

53. In any event, the documentary and witness evidence which had been before the Arbitrator was not available at the Hearing and it would have to be made available at a *de novo* hearing so as to enable the Appeal Tribunal to hear the case from the beginning

54. Further, if the Appeal Tribunal was to hear the matter *de novo* the Appeal Tribunal would require to have disclosure made to it of all forms, documents, materials and filings etc. by or in relation to the Respondent made to the ABAE in relation to the Respondent's membership of that organisation, her club, all activities in which the Respondent had taken part including all competitions and in particular National Championships. The Appeal Tribunal would require to be provided with all documentation relating to such competitions including all entrance documentation, brochures and information in relation to doping control etc.

55. Those representing the Respondent requested a brief adjournment whilst they took instructions from the Respondent.

56. On reconvening those representing the Respondent advised that she wished to withdraw her application for a re-hearing *de novo* and that she was content to proceed on the basis

that the appeal would take place with a standard of review pursuant to Article 12.4.2 of the NADP Rules. It would be for the Appellant to establish that the decision was erroneous in relation to the grounds of appeal relied upon by the Appellant and it would be for the Respondent to establish that the Arbitrator had been in error when he had not found that the Respondent bore No Fault or Negligence or at least No Substantial Fault or Negligence in relation to the commission of the Anti-Doping Rule Violation by the Respondent. In respect of both the Appeal by the Appellant and the "no fault" case now advanced on behalf of the Respondent the appeal should proceed on the basis of the factual findings of the Arbitrator as disclosed in the Decision.

57. There was no objection on behalf of the Appellant's to matters proceeding on this basis.

H. CASE FOR THE APPELLANT

58. This section of the decision sets out the arguments advanced on behalf of the Appellant in support of its appeal. The Appellant's arguments in response to the No Fault arguments advanced by the Respondent are set out in Section J below

59. The Appellant submitted that the use of diuretics in boxing in order to comply with a weight restriction can and objectively should be considered to be performance enhancing and that accordingly the Respondent ought to be regarded as having failed to establish that there was no subjective intention to enhance her performance with the use of a diuretic. The Appellant argued that the use of diuretics must be objectively regarded as performance enhancing by allowing a boxer to compete in a lower weight class the diuretic allows a boxer to compete against lighter, weaker and smaller individuals. A boxer, the Appellant claimed, will always have a competitive advantage where he or she utilises diuretics to achieve weight loss..

60. Furthermore, the Appellant contended that if a boxer was able to use a diuretic to reduce weight before a weigh in and then to rehydrate before the bout the boxer would not suffer the ill-effects of dehydration process by other means which would result in a reduction in a

boxer's performance.

61. The Appellant also contended, that if a boxer was unable to make the required weight then the boxer would not be able to compete at all and that this should objectively be regarded as an enhancement of sport performance through ability to compete.

62. The Appellant also argued that the use of a diuretic to lose weight by shedding excess fluid allowed a boxer to avoid the otherwise rigorous exercise that the boxer would have to undergo in order to shed the weight by "natural" means. By this means the boxer who used a diuretic would be "fresher" than one who required to undergo the sustained exercise to lose the weight required to be lost to meet the eligibility criteria for the relevant weight category.

63. In support of the Appellant's position it relied on the decisions in *USADA v Frankie Carusso III (AAA case number 30 190 00475 03) and WADA v Fila & Stadnyk (CAS 2007/ A/–1399)*.

64. The Appellant contended that the Respondent had made a deliberate decision to use the diuretic to achieve a rapid weight loss, that she used the diuretic knowing that by losing the weight she would be able to compete in the final, that the Respondent was aware of other methods for losing the weight but chose not to utilise those methods as she considered the best way to lose the weight and to wage a fight at her highest standard was to use a diuretic and finally that the use of the diuretic placed her opponent at a competitive disadvantage as she was fighting the Respondent who was not fighting in the correct weight category because she would not have qualified for the weight category in which she was fighting had she not used the diuretic.

65. As a consequence, so the Appellant argued, the Respondent must be considered to have failed to establish that she had not intended to enhance her sport performance and that accordingly she should be penalised with the minimum period of Ineligibility of two (2) years.

66. In the alternative the Appellant argued that the period of Ineligibility imposed by the Arbitrator was insufficient and that having regard to the criteria of fault on the part of the Respondent a much longer period of Ineligibility was appropriate.

67. The Appellant argued that the Respondent had tried to gain an advantage over her opponents by using the diuretic and had disregarded the principles of fair play and that her assertions of ignorance of the rules were not relevant and were not grounds to constitute leniency since athletes were responsible for the drugs which they took into their body. The Appellant went on to argue that the natural consequences of an athlete's menstrual cycle causing an increase in retained fluids was not and could not be regarded as justification for taking diuretics to overcome the effects of same. The Respondent's decision to take the diuretic was deliberate and should be regarded as a reckless disregard for the rules governing the control of substances in athletic competitions. The Appellant was critical that the Respondent did not disclose that she had taken the Bumetanide in the Sample Collection Form and that she had compounded this "deception" by maintaining that she had not taken a Prohibited Substance in later representations following the identification of an Anti-Doping Rule Violation as having been committed.

68. The appropriate period of ineligibility, in these circumstances, it was argued on behalf of the Appellant, was eighteen (18) months.

I. CASE FOR THE RESPONDENT

69. This section of the decision sets out the arguments advanced on behalf of the Respondent in the Respondent's Written Submissions, Skeleton Argument and in oral submissions at the hearing.

70. At the hearing before the Appeal Tribunal it was made clear that the Respondent's primary ground of argument was that she bore No Fault or Negligence for the purposes of Article 10.5.1 of the UK Anti-Doping Rules for the Anti-Doping Rule Violation which she had

admitted.

71. It was argued that the ABAE had failed to adequately notify the Respondent that she was subject to anti-doping regulations and doping control tests, that they had failed to communicate the UK Anti-Doping Rules to her, that they had failed to make available the Prohibited List to her and that they had failed to conduct any form of adequate doping awareness or education programme which might have informed the Respondent of her anti-doping obligations.

72. The Respondent contended that an athlete who is subject to anti-doping regulations must first be informed of the nature of the regulations to which she is subject and the potential consequences of them if she fails to comply with those regulations.

73. Respondent submitted that notwithstanding the strict nature of the doping control regime in WADA 2009 there must be a minimum standard of procedural protection for individuals who are affected by the anti-doping regime. In this respect the Respondent relied on the Decision in *Bradley v Jockey Club [2004] EWHC 2164.*

74. The Respondent argued that the rules of a governing body impose a contractual relationship between the parties and that in the application of those rules the principle of natural justice must be applied. In this regard the Respondent relied on the Decision in *Enderdby Town Football Club v The Football Association [1970] Ch 591.* As a consequence, the UK Anti-Doping Rules must be interpreted and applied in accordance with the rules of natural justice. In these circumstances, it was argued, that an athlete cannot be deemed to be at fault or negligence where she had not been adequately notified of the existence of rules and that she is subject to them since two procedural lies would be contrary to the principles of natural justice and/or fairness and would render at issue the legitimacy of the UK Anti-Doping Rules.

75. In support of these arguments the Respondent relied on the CAS award in the case of *Mannini v Possanzina v WADA CAS 2008/A/1557*.

76. The Respondent went on to assert that the ABAE's failure to notify the Respondent of the UK Anti-Doping Rules and further to educate her was contrary to the principles established in *AC v FINA CAS award 96/149*.

77. The Respondent drew attention to the first footnote on page 58 of WADA 2009 immediately after Article 10.5.3. That footnote states: -

> "While Minors are not given special treatment *per se* in determining the applicable sanction, certainly youth and lack of experience are relevant factors to be assessed in determining the Athlete's or other Person's fault under Article 10.5.2 as well as Articles 10.3.3, 10.4 and 10.5.1.

78. If the Respondent was not successful in satisfying the Appeal Tribunal that the Respondent bore No Fault or Negligence in relation to the commission of the Anti-Doping Rule Violation then it was argued that the Arbitrator had been correct to find that the Respondent had satisfied him to the relevant standard (comfortable satisfaction) that she had not intended to enhance her sport performance by the use of the diuretic on the morning of 7 June 2009.

79. It was contended that the factual background in this case was unique and there was no evidential basis to suggest that the Respondent had been other than properly assiduous in her diet. The excess fluids and resultant excess weight that she was discovered to be carrying on 7 June 2009 was an "accident of physiology" consequent on her menstrual cycle.

80. It was argued on behalf of the Respondent that it could only be established that she had intended to enhance her sport performance if the Arbitrator had found that she had actively applied her mind to undertaking an enterprise which she, the Respondent, believed would result in an enhancement of her performance.

81. The Respondent submitted that the correct approach to the relevant part of Article 10.4.1 of the UK Anti-Doping Rules was to apply a subjective approach. "Enhance Athlete's Sport Performance" should be regarded as synonymous with securing an unfair competitive advantage over her opponent in the sporting competition. Accordingly, if an Athlete, such as the Respondent, satisfied the decision maker that in taking the Specified Substance the Athlete had not intended to unfairly enhance her sporting performance against her competitor(s) in the relevant sporting event then Article 10.4.1 was engaged and it was at large for the decision maker to impose a period of Ineligibility of less than two (2) years; with the exact period of Ineligibility being determined on the basis of the degree of fault of the Athlete as provided for in Article 10.4.2.

82. It was asserted on behalf of the Respondent that it was not enough that a particular Specified Substance might enhance performance. What mattered was the intention of the Athlete as regards taking the Prohibited Substance and whether that intention, viewed subjectively, involved enhancement of the Athlete's sport performance in the way described above. The concept of "unfair competition" was, it was argued on behalf of the Respondent, central to considering whether Article 10.4.1 was engaged.

83. On behalf of the Respondent the Appeal Tribunal's attention was drawn to the absence of any words such as "or enable the Athlete to compete" after the words enhance sport performance in Article 10.4.1. It was suggested that it would have been straightforward for the drafter to have included those words or equivalent words in 10.4.1 if it had been intended that Article 10.4.1 would not be engaged when an Athlete took a Specified Substance in order to be able to participate as opposed to unfairly improving the prospects of the performance of the Athlete in the sporting competition concerned.

84. The Respondent argued that it was not appropriate for the language of Article 10.4.1 to be strained in order to include the concept of eligibility to compete along with the enhancement of sporting performance. As authority for this proposition the Respondent relied on the decision in *B v International Triathlon Union (ITU) CAS 98/222B, which states at paragraph 31:-*

"Applying the interpretation *argumentum a contrario*, the ITU Rule quoted above could also be interpreted in the sense that the "ingestion" itself must nevertheless be established. In this respect the Panel shares the opinion expressed in the case of *F. v FINA 96/156 (consideration 13.3*) that the rules attempting to impose strict liability and to allow no defences at all should be *"absolutely crystal clear and unambiguous"* and that any ambiguity in such rules should be construed in favour of the accused athlete."

85. It was acknowledged on behalf of the Respondent when it was pointed out to her counsel that the rule under consideration in this matter, Article 1.4.1 was precisely the opposite of a rule imposing strict liability and allowing no defences. Rather Article 10.4.1 is itself a defence allowing mitigation of sanction where previous to WADA 2009 there had been strict liability subject to the "No Fault" provisions.

86. The Respondent reiterated that in taking the diuretic the Respondent did not intend to gain an unfair advantage over her opponents.

87. In fact the Respondent's only intention, it was argued, had been to offset the unanticipated physiological effects of her menstrual cycle and that it was no part of her intention or plan to gain an unfair advantage over her opponent. It was argued that the Respondent's subjective understanding of what constituted performance was also important.

88. If there was any ambiguity in the meaning of the word performance then that should be resolved in favour of the Respondent further to the principal of *contra proferentem*. In this respect the Respondent relied upon the decision in B *v ITU, CAS 98/222B*, paragraph 31.

89. The Respondent argued that the cases of *USADA v Frankie Carusso III and WADA v Fila & Stadnyk* were obsolete and in any event not in point. In the USADA case this concerned pre WADA code provisions which did not provide a mechanism by which the two year mandatory sanction of ineligibility could be reduced and in *WADA v Fila & Stadnyk* the

issue was the failure of the athlete to establish how the Prohibited Substance entered her system and that she was therefore not eligible for any reduction in the mandatory two year sanction. Further, in that case the Prohibited Substance was not a Specified Substance so the intention or otherwise of the athlete was not relevant.

90. In response to the Appellant's second ground of appeal the Respondent submitted that not only was there no basis for an increase in the period of Ineligibility awarded but rather the Appeal Tribunal should reduce the period of Ineligibility from six months to a lesser period.

91. It was argued on behalf of the Respondent that the Appellant's arguments in relation to this matter were over-stated and were in some respects unreasonable and inaccurate.

92. The Respondent contended that the Appellant had failed to make a distinction between athletes who had received adequate notice and briefing on anti-doping matters and yet who chose to bury their head in the sand or to cheat the system by commission of an Anti-Doping Rule Violation. The position of the Respondent was, it was contended, wholly different. The Respondent claimed that the Appellant's approach was insensitive and ill considered and that the Appellant was obtuse in its treatment of the physiological process of menstruation in women. It was argued that the approach taken by the Appellant's would penalise women by reason of the side effects of their menstrual cycle.

93. The Respondent went on to argue that there was no basis for the contention on the part of the Appellant that the Respondent had taken a deliberate decision to ingest the diuretic to obtain a performance advantage. The Respondent argued on the findings in the Decision that it was clear that the sole purpose of the Respondent in taking the diuretic was to overcome the unexpected effects of her menstrual cycle and not to gain any competitive advantage over her opponent.

94. There was, it was argued for the Respondent, no evidential basis for the suggestion that a performance advantage over competitors would be obtained by taking a diuretic and that the Respondent would have gained a competitive advantage by not taking rigorous

exercise to reduce her weight, which might have been required of others, and/or that the supplements would have allowed her to rehydrate to an extent where she would have been fighting above her weight category thereby obtaining an unfair competitive advantage over her lighter opponent who had met the weight category by legitimate means.

95. The Respondent invited the Appeal Tribunal to take into account the mitigating factors of the Respondent's young age, that she was an amateur athlete in full-time education, that she had a lack of experience and that she should get the benefit of the WADA Code commentary in relation to the account to be taken of youth and lack of experience, that the Respondent had waived her right to have her B sample analysed and that the doping control organisation's failure to adequately notify the Respondent that she was subject to anti-doping regulations and doping control, the failure to properly communicate the UK Anti-Doping Rules to her, the failure to communicate to her the Prohibited List and the failure on the part of the ABAE to conduct any form of doping awareness or education should all be mitigating factors which should be taken into account.

96. The Respondents also argued that the case had already brought considerable anguish and embarrassment to the Respondent and that should also be taken into account.

97. The Respondents argued that viewed overall if the Respondent was to be sanctioned then the circumstances of the violation were such that the lowest possible level of sanction should be imposed, which in this case would be the period of Ineligibility already spent.

98. Finally, the Respondents submitted that if none of the other arguments advanced on behalf of the Respondents was accepted that the Respondents should be regarded as bearing No Significant Fault or Negligence for the same reasons as were set out in relation to No Fault or Negligence and/or in these circumstances Article 10.5.2 of the UK Anti-Doping Rules applied. If the Appeal Tribunal accepted that the Respondent bore No Significant Fault or Negligence then the otherwise applicable period of Ineligibility must not exceed the minimum of one year.

J. RESPONSE FOR THE APPELLANT TO "NO FAULT" CASES ADVANCED ON BEHALF OF THE RESPONDENT

99. The Appellant rejected the Respondent's "No Fault" cases. The Appellant's position was that the principle of No Fault or Negligence requires an Athlete to establish that he or she did not know or suspect and could not reasonably have known or suspected, even with the exercise of upmost caution, that the Athlete had used or been administered the Prohibited Substance or prohibited method. According to the Appellant it was self-evident that had the Respondent exercised utmost caution she would have suspected or even discovered that Bumetanide was a Prohibited Substance.

100. The Appellant drew attention to the terms of the relevant provisions in the Anti-Doping Rules. These state that Athletes are responsible for knowing what constitutes an Anti-Doping Rule Violation and which substances and methods are included in the Prohibited List. No Athlete, including the Respondent, could be excused from compliance with the Anti-Doping Rules whatever might be the level of information and education provided to him or her.

101. With regards to the submission of No Significant Fault or Negligence the Appellant contended that since No Significant Fault or Negligence required an Athlete to establish that his or her fault or negligence, when viewed in the totality of the circumstances and having taken into account the criteria for No Fault or Negligence was not significant in relation to the Anti-Doping Rule Violation. It was clear that the Respondent's submission could not be upheld.

102. The Appellant argued that the fault in this case lay solely with the Respondent. She had intentionally ingested a substance immediately prior to a competition without thought for the Anti-Doping Rules. There was no mistake or sabotage and no unintentional ingestion of a Prohibited Substance, whether or not a Specified Substance. It was argued in these circumstances the Respondent's conduct was plainly negligent and as such it was not open to the Appeal Tribunal to find that she bore No Significant Fault or Negligence.

K. DISCUSSION

103. In this case the Anti-Doping Rule Violation committed by the Respondent was a contravention of Article 2.1 of the UK Anti-Doping Rules. This is the core Anti-Doping Violation involving the presence of a Prohibited Substance in the Athlete's body as identified by doping control testing immediately after 7 June competition.

104. Article 2.1.1 of the UK Anti-Doping Rules provides that it is each Athlete's personal duty to ensure that no Prohibited Substance enters his or her body. It is not necessary that there be any intent, fault, negligence or knowing Use on an Athlete's part in order that an Anti-Doping Rule Violation be committed for the purposes of Article 2.1. Lack of intent, fault, negligence or knowledge is not a defence to a charge of an Anti-Doping Rule Violation.

105. Article 1.3.1(a) of the UK Anti-Doping Rules requires Persons such as the Respondent to acquaint herself with all the requirements of the UK Anti-Doping Rules and to be aware of what Substances and Methods are on the Prohibited List.

106. The Appeal Tribunal agreed with the Respondent that the decision in the case of *Carusso* is of limited relevance in this case. Whilst *Carusso* was a case in which a boxer took a diuretic in order to secure that he met a weight limit so that he could box in a particular category the principal issue in the case was whether there were exceptional circumstances which justified a lesser sanction than the prescribed sanction of two (2) years Ineligibility. Mr Carusso advanced an argument that he had not intended to enhance his performance with the ingestion of the diuretic. However that argument was rejected on the basis that by the use of the diuretic Mr Carusso gained a competitive edge over his competition in a sport where size and weight is a distinct advantage. The Tribunal in that case observed that if Mr Carusso had been eliminated from his weight class because of failing to make the weight he would not have been able to compete at any weight class because he had qualified only for the one class. The primary issue in the *Carusso* case was therefore whether the circumstances were exceptional, which it was held they were not. In order for

the Respondent to secure the application of article 10.4 she need only establish, by the requisite standard of proof, and that she did not intend performance enhancement in using the Specified Substance. It was not necessary for her to establish that the circumstances were exceptional.

107. The Appeal Tribunal also agreed with the Respondent that the decision in the case of *Stadnyk* is also of, at best, limited relevance. In that case the critical issue was whether the wrestler in question was able to establish how the Prohibited Substance entered her bloodstream without her knowledge. Another athlete claimed that she had deliberately placed the substance in a drink, which she knew Ms Stadnyk would consume, without Ms Stadnyk's knowledge. Those claims were not believed and as a consequence the Panel at Paragraph 112 held that it had not been proven how the diuretic entered Ms Stadnyk's system and that she could not therefore invoke the "No Fault or No Significant Fault" provisions in the relevant Anti-Doping Regulations.

108. In the present case the Arbitrator found as a matter of fact, that the Prohibited Substance entered the system of the Respondent by ingestion initiated by the Respondent.

109. The issue in the case of *USOC v IOC & IAAF CAS 2004/A/725* was whether the relevant rules of the IAAF allowed for the disqualification of all members of a relay team where one of its members was found to have committed an Anti-Doping Rule Violation. In that case the CAS quoted with approval what it described as the "oft-cited passage" from CAS 94/129. The quote is at paragraph 21 of that decision: -

> "The fight against doping is arduous, and it may require strict rules. But, the rule-makers and the rule-appliers must begin by being strict with themselves. Regulations that may affect the careers of dedicated Athletes must be predictable. They must emanate from duly authorised bodies. They must be adopted in constitutionally proper ways. They should not be the product of an obscure process of accretion. Athletes and officials should not be confronted with a thicket of mutually qualifying or even contradictory rules that can be understood only on

the basis of the *de facto* practice over the course of many years by a small group of insiders."

110. At paragraph 22 of the *USOC* case there is quoted a section from the decision of *A. v FINA CAS 96/149* as follows: -

> "It is important that the fight against doping in sport, national and international, be waged unremittingly. The reasons are well known ... it is equally important that athletes in any sport ... know clearly where they stand. It is unfair if they are to be found guilty of offences in circumstances where they neither knew nor reasonably could have known that what they were doing was wrong (to avoid any doubt we are not to be taken as saying that doping offences should not be offences of strict liability, but rather that the nature of the offence [as one of strict liability] should be known and understood).
>
> For this purpose it is incumbent both upon the international and the national federation to keep those within their jurisdiction aware of the precepts of the relevant codes".

111. The circumstances of the *FINA* case were that a New Zealand water polo player tested positive for Salbutamol at the Junior Men's Water Polo World Championships and as a consequence he was suspended for a period of two (2) years in accordance with the relevant *FINA* rule.

112. The athlete appealed through the *FINA* internal processes and his appeal was rejected. He subsequently appealed to CAS.

113. The athlete had been an asthmatic for many years and had been regularly and repeatedly prescribed a Ventolin inhaler. His National Association had supplied him with a plastic card which, in effect, stated that he had asthma and that he was allowed the use of Ventolin by inhaler only. The plastic card was the only information provided to the athlete

by his National Federation. There was no TUE in force in relation to the athlete nor had the athlete been advised that such was necessary.

114. On appeal to CAS the athlete argued that on a literal construction of the relevant Anti-Doping Rules the use of Salbutamol by inhalation was a permitted and not a banned substance and therefore no doping offence had been committed.

115. Those representing his National Association argued that there should be a purposive construction of the relevant rules which would lead to the rules meaning that they prohibited Salbutamol by inhalation without the relevant prior notification to a relevant authority.

116. At paragraph 20 of the decision CAS decided that it was appropriate to adopt a purposive construction to the relevant rules and guidelines and went on to find that applying such an approach, the use of Salbutamol by inhalation was a Prohibited Substance which gave rise to the commission of an Anti-Doping Violation in the absence of the required prior notification.

117. CAS went on to determine that the appropriate sanction to be applied was no more than the finding of liability by the relevant ABAE of the commission of an Anti-Doping Violation and that no period of suspension was appropriate.

118. The criticism was that the rules of the governing body were not clear and were not understood. In these circumstances the athlete's responsibility for the commission of the anti-doping offence was reduced.

119. The *Mannini* case concerned two young Italian footballers who were alleged to have committed an anti-doping offence when they failed, so it was argued, to comply with certain detailed requirements of the drug testing arrangements then in force after a match in an Italian domestic football competition. For present purposes the details of the alleged violation are unimportant. It is sufficient to note that the rules were unclear, were not

communicated and, in effect, were only known to a select few. At paragraph 6.19 of the decision it was stated: -

> "Thus, even if they do not quite represent *"a thicket of mutually qualifying or even contradictory rules"*, the applicable doping-control procedure and the exact scope of the athletes' duties could certainly not be readily understood by the Players without them being informed and educated as to the rules by the FICG and/or by the Players' Union. Otherwise, the Players would not "see the wood for the trees"."

120. In the circumstances CAS determined that the Players could not be deemed to have refused or failed to submit a sample for collection under the relevant Anti-Doping Rules and accordingly no Anti-Doping Violation had been committed.

121. No valid comparison can be made between the circumstances of the present case and those pertaining in cases such as the *USOC*, *FINA* and *Mannini* cases. In the present case, unlike these cases, there is no ambiguity or lack of clarity in the relevant rules. The present case concerns an Anti-Doping Violation falling under Article 2.1 of the UK Anti-Doping Rules. Article 2.1 is directly taken from the same numbered article in WADA 2009. That article is it at the core of all Anti-Doping Rules. Its scope and application are universally known and understood. The Arbitrator records at paragraph 9 of the Decision that the Respondent was aware that the use of performance enhancing drugs was banned in boxing. This is not a case, in which the relevant rules of the ABAE are in any way ambiguous, unclear or known only to a select few.

122. In the view of the Appeal Tribunal the Respondent bore a substantial degree of fault for the commission of the Anti-Doping Violation. The Respondent was not at the time an inexperienced competitor. She had for a year been the national champion at a higher weight category. She was a zoology graduate. She voluntarily and deliberately chose to adopt a pharmacological solution on 7 June 2009 to what was a physiological problem. Her purpose in taking the diuretic was to reduce her weight so that she would be eligible

to compete in the weight category for which she had previously qualified. She chose to take no advice before taking the medication, which had not been prescribed for her, but which had been prescribed for her grandmother. She could have contacted her coach and sought his advice. She could have gone to the competition venue and sought advice as to whether it would be permissible to take the diuretic. She did none of these things. She failed to disclose that she had taken the diuretic on the Sample Collection Form notwithstanding the form clearly required her to disclose all forms of medication taken during the relevant period, which included the time that she took a diuretic in the circumstances. When the Adverse Analytical Finding was disclosed to her she initially denied having taken a diuretic notwithstanding that she must have known by that stage that she had been wrong to do so. The physiological incident of fluids retention is not in any way particular to the Respondent. Set against these considerations the finding of the failure of the ABAE to provide formal guidance on anti-doping to the Respondent must be regarded as comparatively minor.

123. The Appeal Tribunal for these reasons rejects the arguments advanced on behalf of the Respondent that she bore No Fault or Negligence or No Significant Fault or Negligence for the commission of the Anti-Doping Rule Violation.

124. With respect to Article 10.4.1 the Respondent has clearly established how the Specified Substance entered her body. The remaining issue is whether the Arbitrator was in error in holding it established to his comfortable satisfaction that there was an absence of intent to enhance the Respondent's sport performance.

125. The intent referred to in Article 10.4.2 is intent related to the Specified Substance as provided in Article 10.4.1. In this case the issue is not the intent generally of the Respondent but rather the intent with respect to the diuretic. The question for the Arbitrator was therefore whether it was established to his comfortable satisfaction that the diuretic taken by the Respondent, which is a Specified Substance, was not intended to enhance her sport performance. Contrary to the submission made on behalf of the respondent it is no answer to that question that the Respondent took the diuretic to

alleviate the consequences of her menstrual cycle by securing that she excreted retained fluids and/or that she took the diuretic in order to reduce her weight and that those were the Appellant's subjective reasons for the ingestion of the Specified Substance. Article 10.4.1 is concerned with whether an Athlete has established to the requisite standard that the intent of the Specified Substance was not to enhance sport performance. The answer to that question requires an objective analysis of the whole circumstances of the consumption of the Specified Substance.

126. In taking the diuretic the physiological effect hoped for was the alleviation of the fluids unexpectedly retained by the Respondent so that by excreting those fluids her weight would be reduced and she would be eligible to compete in the weight category for which she had qualified to compete in the national finals. If she did not lose the unexpectedly retained fluids and by extension the weight which went with that retention, she would not be eligible to compete, she could not win the national final and the championship would instead go to her opponent by default. If she did lose the retained fluids by excreting them and thereby lost the weight associated with those fluids, she would "make the weight" for her weight category, would be able to compete and would have at least the potential of winning the National Championship. Were it not for the fact that she was scheduled to compete that day and that she had to "make the weight" to be eligible to compete she would not have taken the diuretic. The Appellant intended by taking the Specified Substance to be able to perform in the national final in circumstances where she was concerned that if she did not utilise the chemical assistance of the diuretic to excrete the retained fluids and lose the associated weight that she would not be eligible to perform at all.

127. As matters transpired the hoped for excretion of the retained fluids were secured by the use of the diuretic, the weight was lost, the Respondent "made the weight", competed in the national final, won that national final and became the national champion in the relevant weight category.

128. On the findings of the Arbitrator, if the Respondent had not taken the Specified

Substance she would not have been able to perform at all and as a consequence of taking the Specified Substance she was, as a result, able to perform. However, what advantage, if any, is in fact secured by an Athlete by the use of a Specified Substance is not a determining issue for the purposes of Article 10.4.1. The central issues, once the method of consumption is established, are what was the athlete intending to achieve in taking the Specified Substance and did that intention comprise enhancement of sport performance?

129. In the opinion of the Appeal Tribunal, when viewed objectively, the Respondent intended by ingesting the Specified Substance to enhance her sport performance. She intended to ensure she was able to perform. The intention to ensure her performance must be regarded as an intention to enhance sports performance. The Appeal Tribunal concluded that the Arbitrator was in error when he restricted the extent of sport performance to the action or process of performing in the relevant athletic pursuit. The phrase "enhance the Athlete's sport performance" in Article 10.4.1 has a wider meaning which includes the ability to perform at all.

130. Whilst it was not necessary for a purposive construction to be given to the relevant provision in order for the Appeal Tribunal to be satisfied that the Respondent had not discharged the burden of establishing that there was no intention by taking the Specified Substance to enhance her sport performance. Had such an approach to construction been required the Appeal Tribunal would have been satisfied that the Respondent had failed to establish such an absence of intention in this case.

131. With reference to the commentary to Article 10.4 of WADA 2009 the nature of the Specified Substance and the timing of its ingestion were beneficial to the athlete, the athlete did not Use the Specified Substance openly and she failed to disclose her use of it despite being given an opportunity so to do. Furthermore there was no contemporaneous medical record substantiating a non sport related prescription of the Specified Substance for use by the Respondent. There was a plain and clear potential for performance enhancing benefit to the Respondent in the use of a diuretic in these

circumstances and she intended to secure that enhancement. Having regard to that commentary it must have been the intention of the drafters of Article 10.4 that ability to compete at all would be encompassed within enhancement of sport performance.

L. DECISION

132. For these reasons the Appeal Tribunal unanimously finds for the purposes of Article 12.4.2 of the NADP Rules, that the Decision appealed against was erroneous and that since Article 10.4.1 of the UK Anti-Doping Rules does not apply in this case, the Respondent not having established that the Specified Substance was not intended to enhance her sport performance, a period of Ineligibility of two (2) years must be substituted for the period of Ineligibility of six (6) months.

132. As a consequence of our finding in relation to the "intention to enhance" issue it is not necessary to deal with the Respondent's second ground of appeal. However, had we been required to make a decision in relation to the matter of the length of the discretionary period of Ineligibility imposed by the Arbitrator we would have decided that a period of six (6) months Ineligibility had been selected in error and that a significantly longer period of Ineligibility was required having regard to the degree of fault on the part of the Respondent. In this regard reference is made to the last sentence of Article 10.4.2 of the UK Anti-Doping Rules. For the reasons already given we consider that the Respondent was at significant fault in the circumstances of this matter in taking the Specified Substance and we would have substituted a period of Ineligibility of eighteen (18) months for the period of six (6) months imposed by the Arbitrator.

Rod McKenzie (Chairman of the Appeal Tribunal)

16 November 2009