SPORT RESOLUTIONS (UK)

SPECIALIST INDEPENDENT DISPUTE SERVICE

SR/0000120226

NATIONAL ANTI-DOPING PANEL

IN THE MATTER OF PROCEEDINGS BROUGHT UNDER THE ANTI-DOPING RULES OF THE WELSH RUGBY UNION (WRU)

Before:

William Norris QC (Chairman)
Ms Carole Billington-Wood
Mr Mike Irani

B E T W E E N :

UK ANTI-DOPING LIMITED

Applicant

-and-

MR LEE EVANS

Respondent

FINAL DECISION OF THE ANTI-DOPING TRIBUNAL

Date of Hearing: **Tuesday 20th January 2015**
Date of Decision: **Thursday 29th January 2015**
Summary of Decision: **Anti-Doping Rule Violation Proved**

Sanction

(i) A period of ineligibility of 2 years pursuant to ADR Article 10.2.

(ii) Any individual results obtained by Mr Evans after 22nd August 2014 shall be invalidated.

(iii) The start date for such period of invalidity to begin on 28th July 2014 (ADR 10.9.2).

(iv) Mr Evans to be permitted to return to training 2 months before the end of such period of ineligibility[1]

1.0 INTRODUCTION AND SUMMARY

1.1 This is the unanimous decision of the Anti-Doping Tribunal which met on 20th January 2015.

1.2 The charge we considered was brought by UK Anti-Doping (UKAD) against Mr Evans and alleged that he committed a violation of the Anti-Doping Rules of the Welsh Rugby Union because of the presence of Prohibited Substances in an out-of-competition sample which was found to contain the Prohibited Substances drostanolone and 2α-methyl-5α-androstan-3α-ol-17-one (a metabolite of drostanolone).

2.0 JURISDICTION

2.1 Mr Evans is a 32 year old[2], semi-professional rugby player registered with the Welsh Rugby Union (WRU) and, as such, was at all material times, subject to the Rules of that National Governing Body

2.2 On 27th November 2008, the WRU resolved to adopt and apply the UK Anti-Doping Rules as the WRU Anti-Doping Rules (hereafter the 'ADR'). It is common ground between the parties, therefore, that Mr Evans was at all material times subject to those Rules pursuant to which UKAD acts as the Results Management Authority with responsibility to investigate and prosecute cases such as the present.

3.0 PROCEDURAL HISTORY

3.1 The bundle of papers for the present hearing includes the request for arbitration, dated 28th October 2014 [59-60] and Directions issued by the Chairman on 7th November 2014 [61-64].

3.2 The only relevant modification to those Directions was that time for serving skeleton arguments/written submissions was extended until Monday 19th January 2015.

[1] Applying a provision of the 2015 World Anti-Doping Code as opposed to the 2009 rules which otherwise govern this case – see Art 10.12.2.
[2] Date of birth 25th May 1982.

4.0 **THE HEARING**

4.1 At the hearing, Mr Evans was represented by Mr Nick Cotter of Counsel (instructed by Kevin Jones and Julian Springer of Clarke Willmott LLP) and UKAD was represented by Ms Stacey Shevill. We should say at the outset that we are indebted to both Mr Cotter and Ms Shevill and to those who instructed them for the clarity and moderation with which their submissions were expressed both in written arguments and orally during the course of the hearing.

4.2 The hearing bundle[3] was agreed and contained two witness statements. One was served on behalf of UKAD from Nick Wojek dated 27th November 2014 [65-66] and the other was a witness statement from Mr Evans himself, dated 25th November 2014 [67-73].

4.3 It was agreed that both statements should be taken as read. Whilst there is nothing controversial in the statement of Mr Wojek and taking his evidence in that way was obviously sensible (and he would have been available had Mr Evans's representatives wished to cross-examine him by telephone), we record that Mr Evans himself declined to give oral evidence. Accordingly, notwithstanding that he was present and able to contribute to the hearing by giving instructions to his counsel, he could not be cross-examined. We return to the significance (if any) of this later.

5.0 **FACTUAL BACKGROUND**

5.1 As we have already noted, Mr Evans is a semi-professional rugby player who, at the time of the test on the 28th July 2014, was under contract to and represented Neath RFC. Outside rugby, from which we assume he earned only a modest income, he worked as a self-employed carpenter.

5.2 His witness statement records (and we quote) that he has

> *"3. … represented Welsh clubs including, Aberdare RFC, Neath RFC, Hirwaun RFC, Pontypridd RFC since 1999 as well as captaining invitational team Crawshays RFC … all at amateur or semi-professional level*.
>
> *4. I began my rugby career playing for Aberdare Youth and was a member for the mid-district team at under 20s age group level. I began*

[3] References to the pages of the bundle are shown [ ].

playing senior men's rugby for Hirwaun RFC but had a dual registration with a Club under 21s. Following that I enjoyed a 5 year spell at Pontypridd RFC, during which I was part of the Cardiff Blues development squad and was called up to the "Young Warriors" side. In addition, during this time I was named 'Clubman of the Year' and 'Players' Player of the Year' in 2006. Having joined the Club[4] in 2008, I was Player of the Year in 2012/13 and was appointed captain the following season. All of this to say that rugby has been my life for 15 years. I have been captain of Crawshays RFC and Neath RFC due to my character and conduct off the field as well as playing ability on it.

5. I have been involved with coaching and mentoring junior players throughout my playing career and even more so now as captain of the Club. I was captain of the Club at the time of the incident and always sought to be a positive example to the younger squad members. I would mentor them and provide advice on the pitch to develop their skills as well as providing wisdom as to how to look after themselves off the field. The rugby club is my second home and my coaches, teammates, support staff have been akin to my extended family. It has, and continues to bring me such joy and immense pride to play the game, train with my teammates and enjoy the camaraderie I have found in my rugby family. As an athlete who was always sought to do things the "right" way setting an example for younger players on and off the field, I am truly devastated to be facing a ban from the game I love.

…

7. I have passed all the previous drug tests[5] I have taken and was both shocked and devastated to discover that I failed the drug test on 28th July 2014. I have been a staunch advocate of drug free sport and have had no previous concerns whatsoever with any tests".

6.0 **THE FAILED TEST**

6.1 On 28th July 2014, a Doping Control Officer collected a urine sample from Mr Evans during an out-of-competition test that involved him and possibly other members of the Neath squad.

[4] That is, Neath RFC.
[5] At paragraph 6 of his witness statement he points out there were three tests whilst he was at Neath and one test that he would have taken when playing for Pontypridd RFC prior to 2008.

6.2 The A sample was analysed in accordance with the procedures set out in WADA's International Standard for Laboratories. The analysis returned an Adverse Analytical Finding for Drostanolone and its metabolite 2α-methyl-5α-androstan-3α-ol-17-one.

6.3 Drostanolone (and its metabolites) are classified as Exogenous Anabolic Androgenic Steroids under S1. 1(a) of the WADA 2014 Prohibited List.

6.4 Mr Evans was therefore charged with a violation of Articles 2.1 and 2.2.

6.5 In the usual way, a Doping Control Form [5] was filled in at the time of the test. Under paragraph 26, under the heading "Declaration of Medication", he was invited to "*… provide details of any prescription/non-prescription medication or supplements taken in the last 7 days (including dosage where possible) and any blood transfusions … received in the last 3 months.*"

6.6 The limited information provided by the athlete in that section did not include reference to any supplement now thought to be responsible for the presence of the prohibited substance in his system.

6.7 Nevertheless, once faced with that charge, Mr Evans has, we accept, always acknowledged his guilt of the Anti-Doping Rule Violation and has co-operated thoroughly in an attempt to establish how he could have given a positive sample. He clearly asserts that he must have taken a supplement that, unknown to him, was contaminated by or contained a prohibited substance. Attached to an email dated 28th August 2014 [9], he provided details of some 14 supplements that he has taken at one time or another.

6.8 We comment that some of the names of those supplements do not exactly give one confidence that they are legitimate products which one might take without the risk that they included a prohibited substance. For example, one is called "Anabolic Mass" [12], another "Anabolic Beast" [15] a third glories in the title of "Raging Beast" [21].

6.9 It is not suggested that any of those supplements just named is in fact the source of the prohibited substance. Instead, Mr Evans's contention, which appears at paragraph 21 of the skeleton argument submitted on his behalf, is that the most likely source is another supplement called "Fusion Supplements Xtreme Mass 60 Caps" [22].

6.10 The ingredients listed on the extract that we have quoted include a complicated formula/description which, according to UKAD, would, on a standard Google search, have provided some sort of warning of the possibility that the contents included Prohibited Substances.

6.11 We accept that information provides some support for establishing that this supplement was the route by which the prohibited substance got into Mr Evans's system.

6.12 However, we also wish to make it clear that we are not prepared to make any findings as to what a detailed Google search in relation to the information contained on the fact sheet [22] might have revealed had Mr Evans conducted that search in June or July 2014[6]. The fact is that he apparently conducted no internet search of any kind and so it is, to be blunt, immaterial for us to decide whether a careful search then would have given cause for concern or not. Instead, Mr Evans must face the consequences of making no sufficient enquiry into the true nature of supplement that he took. That is a key consideration when we come to decide whether and to what extent he can be said to have been "at fault" or "negligent".

6.13 Nevertheless, we do accept that as a matter of probability it was that particular substance, "Fusion Supplements Xtreme Mass 60 Caps" which gave rise to the presence of the Prohibited Substance in his system. UKAD does not suggest otherwise and, indeed, Ms Shevill said in opening that this is 'plausible' and comments that it is sufficient for us to find that this is established on a balance of probabilities, as we do. In making that finding, we would also find (were it necessary to do so and on that same balance of probability) that the Prohibited Substance forms part of the standard ingredients of this supplement as opposed (for example) to being the result of inadvertent cross-contamination in the manufacturing process of an otherwise legitimate product.

7.0 MR EVANS'S USE OF SUPPLEMENTS

7.1 In the absence of any oral evidence, the Panel has taken account not only of Mr Cotter's oral submissions (based on instructions, obviously) and Mr Evans' skeleton argument, but various other records of the explanations that he has given since he was notified of the positive test. These include a handwritten file note of a telephone conversation with him on the 28th August 2014 [7-8] and an email exchange to which we already referred also on

[6] Ms Shevill very fairly recognised that information that she was able to discover (or any of us might have discovered) in the days or weeks immediately before this hearing do not necessarily reflect what Mr Evans might have found had he conducted a similar search in June/July 2014.

28th August 2014 [9-26]. There is also Mr Evans's first written response to the Notice of Charge [37-46] and a second written response sent by Clarke Willmott LLP on his behalf [47-56]. Clarke Willmott also wrote on 26th November 2014 [57] providing written confirmation of the acceptance of the adverse findings.

7.2 The other important document is Mr Evans's witness statement [67-73] to which we have also already referred.

7.3 Mr Evans's written case[7] is that he has always supplemented his diet with what he says has been a "*wide range of legitimate sports supplements*". He says that the supplements he took (of which there are 14 that have been drawn to our attention[8]) were either purchased over the counter from his gym (Breezes) or purchased online or purchased from a man named Nick McFadden who apparently trades in sports nutrition supplements under the trading name "V-C Supplements Sports Nutrition" and at one time had a retail outlet in Aberdare though he later operated out of his own home.

7.4 Mr Evans's case, essentially, is that he thought he was using legitimate supplements because he bought them from what he believed were reliable suppliers. In the case of Mr McFadden, Mr Evans says he was a reliable and trusted supplier of supplements with whom he dealt for over 5 years. He says he "*relied upon his judgment as an experienced provider of sports supplements to provide suitable legitimate sports supplements*"[9]

7.5 Mr Evans explains in his witness statement that he dealt regularly with Mr McFadden over that period and that the Fusion Supplements Xtreme Mass 60 Caps were a product he began to purchase in June 2014, having received a promotional text. He says he bought this particular supplement from Mr McFadden's home address and says he began to take it for a brief period shortly thereafter believing[10] "*that they were a natural health booster … However I left the supplements in my car and took them intermittently. I did not take the supplements as instructed and as a result they did not enhance my sporting performance*".

7.6 He goes on to say that the capsules look very similar to previous supplements that he had taken without any adverse effects or failing any drugs tests and that, so far as he was concerned, there was no reason to believe that these supplements contained anabolic steroids or had anything wrong with them.

[7] See, for example, para.11 of the Response to the charge [52] and paragraph 11 of his witness statement [68-69].
[8] See [40] to [44]. The Fusion Supplements Xtreme Mass is listed at (j) [43]
[9] Paragraph 13 of his witness statement [69].
[10] Paragraph 16 of his witness statement [69].

7.7 The adequacy or otherwise of the steps that Mr Evans took to ensure that any supplement he took was free of any prohibited substance so that he completed clean is the key issue we have to decide.

8.0 THE APPLICABLE RULES

8.1 In earlier cases[11], this Panel has had reason to consider Article 10.4 of the 2009 WADA Code and the issue as to whether there should be a narrow or broad interpretation of the words "*intention to enhance performance*"[12]. Both parties to the present case agree that that issue and that provision do not concern us here, given that Art. 10.4 of the 2009 Code is concerned with specified substances (and so is inapplicable in the present case[13]).

8.2 It follows that we are concerned only with Article 10.5. This, in the 2009 Code, is headed "Elimination or Reduction of Period of *Ineligibility* Based on Exceptional Circumstances".

8.3 Paragraph 10.5.1 is concerned with cases in which there is "*No Fault or Negligence*". That provision does not arise because Mr Evans, through his legal representatives and in what he has himself submitted acknowledges a degree of fault.

8.4 The issue for us, therefore, is the application of Art.10.5.2 – *No Significant Fault or Negligence*. We shall quote the full text of that provision which reads as follows:

> "If an *Athlete* or other *Person* establishes in an individual case that he or she bears *No Significant Fault or Negligence*, then the otherwise applicable period of *Ineligibility* may be reduced, but the reduced period of *Ineligibility* may not be less than one half of the period of *Ineligibility* otherwise applicable … The *Athlete* must establish how the *Prohibited Substance* entered his or her system in order to have the period of *Ineligibility* reduced."

[11] Such as *UKAD v Croall* SR/0000120110:

[12] That is, whether the intent here is intent to enhance performance by the use of that prohibited substance or whether all that was required was such intent in relation to the supplement – see the discussion in *UKAD v Croall* at paragraphs 7-10.

[13] The question of an 'intention to cheat' is directly addressed in the 2015 Code – see Art 10.2.3. Obviously, that provision was not in issue in the present case but had it been argued (by analogy or otherwise) that we should take account of the language of Art. 10.2.3 of the 2015 Code we would have found that Mr Evans's action in taking this supplement amounted to a 'manifest' disregard of the risks inherent in doing so.

8.5 We have already found that, on the balance of probabilities, Mr Evans has discharged the burden of showing how the Prohibited Substance got into his system. The key question for us, therefore, is a relatively simple one: has the Athlete[14] established that he has acted without "*significant fault*" or "*negligence*".

8.6 One might well take the view that the concepts of "*No Significance Fault*" or "*Negligence*" do not actually require any definition or further explanation but the 2009 Code [276] provides the following under the heading "*No Significant Fault or Negligence*".

> "The *Athlete's* establishing that his or her fault or negligence when viewed in the totality of the circumstances and taking into account the criteria for *No Fault or Negligence*, was not significant in relationship to the Anti-Doping Rule violation."[15]

9.0 MR EVANS'S CASE ON NO SIGNIFICANT FAULT

9.1 We shall quote from paragraphs 18 to 20 of the Skeleton Argument submitted on Mr Evans's behalf:

> "18. Furthermore the Athlete accepts that he must bear some fault given the strict liability requirements placed upon him. However he asserts that his fault arises from a genuine mistake and not from any intention to cheat or any act of deliberate risk taking.
>
> 19. The Athlete submits and relies upon the broad mitigating assertions detailed in Paragraph 22 with particular emphasis on the Athletes lack of anti-doping education.
>
> 20. The Athlete does seek to rely on ADR 10.5.2 "No significant fault or negligence"."

9.2 It was Mr Evans's lack of education and general absence of awareness of the dangers of Prohibited Substances in supplements that formed the focus of Mr Cotter's submissions before us. Equally, they were emphasised in his Witness Statement at paragraphs 21 to 27 [70-71].

[14] The burden being upon Mr Evans.
[15] The 2015 Code at Appendix 1 contains slightly different definitions of "*Fault*" and "*No Significant Fault or Negligence*".

9.3 We summarise Mr Evans's arguments as follows:

(i) He bought the supplement in question from Mr McFadden who he had known and trusted for some years and he had never tested positive before.

(ii) The capsules looked very similar to previous supplements with which he had had no trouble in the sense that on the three occasions when he had previously undertaken a drugs test, there had been no positive test.

(iii) He received no educational training whatsoever on the Anti-Doping Rules either from the WRU, the Players Association, from his Club or from UK Anti-Doping.

(iv) His Club (Neath) had very limited resources[16] and the Club doctor is present only at home matches to discharge the obligations of the Club's insurance policy.

(v) There was no Club nutritionist or other medical staff in a position to provide him (or other players) with guidance and educational training.[17]

10.0 **NO ORAL EVIDENCE**

10.1 Because Mr Evans chose not to give oral evidence, UKAD (and the Panel) were deprived of the opportunity of probing the explanations that Mr Evans has put forward so as to test his intentions and his professed ignorance of matters of drug education.

10.2 At least to our eyes, his assertion of innocent intention and ignorance sits rather uncomfortably with his role as a senior player, Club captain and coach and mentor of younger players. It is even more difficult to reconcile with paragraph 7 of his Witness Statement [68] which says in terms "*I have been a staunch advocate of drug free sport and have had no previous concerns whatsoever with any tests*".

10.3 Of course, it is true that Mr Evans had never previously failed a drug test but, by the same token, we do not know exactly what supplements he had taken at any particular time, nor how close to any test he might have taken them. Nor has he explained what, if any,

[16] And we are told financial constraints are very considerable.

[17] At paragraph 24 of his witness statement [70] he says he has "*never attended or received any talks or education sessions from the Club or the WRU … was not made aware by the WRU of any online resources available or the World Anti-Doping Code Prohibited List 2014. No-one is educating me on the danger of sports supplements. I believe I have been badly let down by the Club and the WRU having never received a single guidance session in a 15 year playing career*."

investigation he made or other steps he took to establish that each and every one of the 14 supplements taken over the years was truly drug free and legitimate.

10.4 We are left with the strong suspicion that when he took this supplement he hoped for the best with the reassurance of having tested negative when taking other – as he saw matters, similar - supplements. We certainly do not accept that he thought there could be no risk that an apparently legitimate supplement might nevertheless contain illegitimate substances. Such risks are far too well known in sport for anyone – let alone a 'staunch advocate of drug free sport' – to be plausible in claiming to be so naïve.

10.5 The 2009 Code[18] at Art.3.2.4 [173] provides that a hearing panel on a hearing on an anti-doping rule violation "*may draw an inference adverse*" to the person who is alleged to have committed that violation if they do not "*appear at the hearing*" either in person or telephonically to answer questions from the hearing panel or the anti-doping organisation.

10.6 Of course, Mr Evans has appeared and he has been represented and when we directed questions to Mr Cotter, Mr Cotter was able to answer them on instructions. Nevertheless, as we have already said, Mr Evans did not give evidence or expose himself to cross-examination. Whilst we do not infer therefrom that he necessarily bears significant fault or has been negligent in the way he has conducted himself, the fact remains that he has not given us the opportunity of evaluating what might have been his responses to the various points on which Ms Shevill relies in seeking to demonstrate that he has not discharged the burden upon him under Art.10.5.2.

11.0 OUR FINDINGS ON "NO SIGNIFICANT FAULT" AND "NEGLIGENCE"

11.1 We are not going to rehearse all the arguments that Ms Shevill has put forward in addition to setting out our own findings since, broadly speaking, they coincide. We intend no disrespect to her if we simply set out our own conclusions.

11.2 First, whilst we accept (and lament) the apparent absence of drug education either by the rugby clubs for whom Mr Evans has played or by the WRU, we simply do not accept that any mature and experienced rugby player, especially one with Mr Evans's background, can claim to be ignorant of the evils of drugs in sport generally and the potential for drugs to be present even in professional (or amateur) rugby. Any claim that Mr Evans might advance that he is simply naïve in this respect is, as we have already said, fatally undermined by

[18] And the 2015 Code at para.3.2.5 [320]

own assertion in his witness statement at paragraph 7 that he has always been "*a staunch advocate of drug free sport*" [68].

11.3 We take it as no more and no less than common sense that any "*staunch advocate of drug free sport*" would know that drugs are a menace in every branch of sport and that supplements, especially supplements supplied other than through recognised or regulated sources, have the obvious potential to contain illegitimate ingredients. It is simply beyond belief that any adult athlete these days could say with a straight face[19] that he does not recognise that he is responsible for whatever substance he deliberately allows to enter his own body. We repeat that Mr Evans is not an inexperienced amateur. He himself emphasises his responsibilities as captain of the Club and the role (which he values) of "coaching and mentoring youngsters"[20].

11.4 Second, we do not think that Mr Evans was entitled to draw any great comfort from the fact that he had tested negative on previous occasions. As we said before, so much will depend upon what supplement was being taken and when relative to the particular test and what was declared on the relevant doping control forms. We accept that these negative tests may have provided some reassurance generally that Mr McFadden was in the business of supplying legitimate products but he was not a chemist or the actual producer of the products he sold. In any case, previous negative tests cannot possibly have provided Mr Evans with any reassurance in relation to Fusion Supplements Xtreme Mass 60 Caps since this was the first test he had taken since using that particular product.

11.5 Third, and related to that issue, we do not think that the fact that he had a long relationship with Mr McFadden goes very far towards demonstrating that Mr Evans had taken every reasonable step to establish that all of these supplements were legitimate. There is no indication that Mr McFadden had any particular qualifications or experience as a nutritionist or dietician, nor was he apparently licensed by any regulatory body. He was simply a supplier of supplements of whom there are great many, often operating from their homes and/or over the internet. To be blunt, anybody purchasing supplements from such sources does so at his (or her) peril.

11.6 Fourth, Mr Evans appears to have made absolutely no investigation of his own in relation to these products. He made no internet search (though we know not what it might have revealed). He made no enquiries of any medical or other body, either to establish whether

[19] And, to be fair, Mr Evans does not so contend.
[20] To quote paragraph 5 of his Witness Statement [68].

anything was known about any of the particular supplements in question or, indeed, the bona fides of the particular suppliers he was using. Nor did he take any medical or other specialist advice, even informally, such as from the Club doctor or from a recognised dietician or from any regulatory body such as the WRU, World Rugby or UKAD.

12.0 IS THERE ANY PARALLEL WITH THE WARBURTON/WILLIAMS CASES?

12.1 Although as at the date of this hearing the NADP had not published its decision in the case of *UK Anti-Doping v. Gareth Warburton and Rhys Williams* (SR/0000120227), that decision had been the subject of extensive public comment over the few days immediately before the hearing in this case. Accordingly, we thought it appropriate to invite the parties to consider what, if any, parallels there are to be drawn with that case and the sanctions there imposed.

12.2 A key difference between the present case and the *Warburton/Williams* cases is that those were dealt with on the basis that it was accepted that both Athletes consumed contaminated supplements and that the provisions of the 2015 Code should be applied (which, for example, allowed a different range of sanctions to that arising under Art. 10.5.2 of the 2009 Code[21]). More significantly still, perhaps, consideration of the facts of those two cases demonstrates that there were very considerable differences between the circumstances of Mr Warburton and Mr Williams and those of Mr Evans. On the facts found, the Panel decided that both of them had established that their fault/negligence was not significant.

12.3 The factual bases for those conclusions are set out in paragraph 113 of the Decision (in Mr Warburton's case) and at paragraph 115 (in the case of Mr Williams).

12.4 As we say, in our view, the cases are very different. The steps that Mr Warburton took to check on the legitimacy of his supplements are set out at paragraphs 43 to 50 of the Judgment. The steps that Mr Williams took are set out at paragraphs 55 to 60.

12.5 Those facts enabled the Panel to conclude that, (in Mr Warburton's case) he had undergone a "*single negative test while using the same supplement*" and had "*carried out research into and investigation of the supplement in question.*" In the case of Mr Williams, he had a "*background of a number of negative tests while using the same supplement*" and had "*carried out a deal of research into and investigation of the supplement in question*".

[21] See paragraph 117 of the decision.

12.6 Whilst we are not necessarily bound by the approach the Panel took in the *Warburton/Williams'* cases[22], we do recognise the importance of consistency between similar panels dealing with cases with similar facts and principles.

12.7 But that is the point: whilst the principles in both cases are indeed the same or very similar, whether one is applying the 2009 or 2015 Codes, the facts in Mr Evans's case are very different from those found in the cases of Mr Warburton and Mr Williams. Essentially, those athletes had made (in Mr Warburton's case) considerable or (in Mr Williams's case) very considerable investigations into the nature and legitimacy of the supplements they were taking. Mr Evans, by contrast, did no such thing.

13.0 SANCTION AND THE PRINCIPLE OF "LEX MITIOR"

13.1 If, but only if, we had found in Mr Evans's favour on the approach to Art.10.5.2 of the 2009 WADA Code, an argument might have arisen about the applicability of the principle of *lex mitior* and the 2015 Code and the appropriate sanction to be applied. That principle, simply described, might require this Tribunal to apply the more lenient provisions of the current (post-January 2015) Code than those which prevailed in 2014.

13.2 Discussion of this principle and its practical application is to be found at paragraph 117ff of the *Warburton/Williams* decision. Had we reached a similar conclusion on the issue of significant fault/negligence under Art.10.5.2, we would have followed the same course as did the Panel in the *Warburton/Williams* case. However, for reasons we have already given, the issue does not arise.

14.0 CONCLUSION

14.1 Pursuant to ADR Art.10.2, and given that this is Mr Evans's first violation, we must necessarily impose a period of ineligibility of 2 years unless we can eliminate the period of ineligibility under Art.10.5.1 (which we do not) or can reduce it because we find that there was "*no significant fault or negligence"*.

14.2 As we have already found, Mr Evans was significantly at fault and negligent. Accordingly, we cannot reduce the sanction below 2 years.

[22] We should note that a number of other cases were referred to in submissions and/or included in our bundle. However, we do not find any of them to assist to a greater extent than the cases which we have cited directly and to which we have referred in greater detail above.

14.3 Under Art.10.9.2, we are empowered to and decide that we should order that the period of ineligibility shall start on the date of the sample collection which was 28th July 2014. The basis for that finding, as the heading of the provision acknowledges, is that the athlete has made a timely admission and co-operated at all times subsequently.

14.4 We also intend to apply the provision of the new 2015 Code in relation to return to training. Art.10.12.2 of the 2015 Code, which we shall apply to the present case, enables us to allow the athlete's return to training no longer than 2 months before the expiry of his period of ineligibility.

14.5 Accordingly, we make that Order.

WILLIAM NORRIS Q.C
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29th January 2015

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