

**NATIONAL ANTI-DOPING PANEL**

***Before:***

**Robert Englehart QC  
Blondel Thompson  
Dr Terry Crystal**

**B E T W E E N:**

**UK Anti-Doping Limited**

***Anti-Doping Organisation***

**- and -**

**Nicky Watt**

***Respondent***

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**FINAL DECISION**

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**INTRODUCTION**

1. We were convened as the Arbitral Tribunal pursuant to the Rules of the National Anti-Doping Panel to determine charges brought against Nicky Watt for the commission of anti-doping rule violations. The charges, which were brought by UK Anti-Doping Limited ("UKAD"), alleged that (1) Mr Watt had refused to provide a urine sample when requested to do so on 27 May 2014, and (2) a metabolite of an anabolic steroid, stanozolol, had been found in a urine sample

provided by Mr Watt on 17 June 2014. Mr Watt has been a semi-professional ice hockey player who has for some 10 years played in the English Premier Ice Hockey League. This is a competition organised by the English Ice Hockey Association, an affiliate of Ice Hockey UK. Mr Watt also acts as a coach and runs hockey development camps for young players. His principal occupation is as a personal trainer.

2. There was no dispute before us that the UK Anti-Doping Rules (“the Rules”) are applicable in the present case. They were adopted by Ice Hockey UK Limited, the governing body of ice hockey in this country, on 1 January 2009. Mr Watt has been registered with the Guildford Flames ice hockey club since 2 January 2014, having previously been registered with the Peterborough Phantoms. The registration year at the time of the alleged anti-doping rule violations ran from 1 August 2013 to 31 July 2014. As a registered player, Mr Watt was subject to the Rules.
3. Before us UKAD was represented by Mr Jonathan Taylor of Bird and Bird. Mr Watt was represented by Mr Tim Meakin and Miss Patricia Leonard of Counsel.
4. The charges having been brought, the Chairman conducted a directions hearing by telephone on 12 August 2014. It is right to record that at that hearing Mr Watt by his Counsel indicated that the only live issues before us were likely to concern sanction rather than the fact of the commission of the anti-doping rule violations, which was not in dispute. We then held a hearing on 3 November 2014 at which the only oral evidence we received was that of Mr Watt. He was cross-examined upon his evidence, but the evidence of other

witnesses was made by witness statement and was admitted without objection.

## **THE RULES**

5. Under Article 2.3 of the Rules the list of anti-doping rule violations includes:

Refusing or failing without compelling justification to submit to sample collection after notification of Testing as authorised in these Rules or under the Code ....

Under Article 2.1 of the Rules an anti-doping rule violation may also (subject to an immaterial exception for present purposes) consist of:

The presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample  
.....

Prohibited Substances are those so categorised in the WADA Prohibited List, as issued from time to time. The List includes the anabolic steroid stanozolol. It is a metabolite of this anabolic steroid which is the subject of the second charge faced by Mr Watt. We also observe that oxandrolone, the ingredient of another anabolic steroid marketed under the name Anavar which featured in the evidence before us, is also included at S1 in the WADA Prohibited List.

6. Turning to the standard consequences of an anti-doping rule violation, it is necessary to have regard to Article 10.2 and 10.3 of the Rules. They provide that with regard to the anti-doping rule violations such as were in question before us there is to be a period

of ineligibility of two years for a first violation. This may be increased to a maximum period of 4 years where there are aggravating circumstances under Article 10.6. However, in the present circumstances the provisions of the Rules set out in the following two paragraphs are of particular materiality.

7. Article 10.5.2 provides:

Reduction of period of Ineligibility based on No Significant Fault or Negligence:

If a Participant establishes in an individual case that he or she bears No Significant Fault or Negligence for the Anti-Doping Rule Violation charged, then the period of Ineligibility may be reduced, but the reduced period of Ineligibility may not be less than one-half of the minimum period of Ineligibility otherwise applicable. ....

When the Anti-Doping Rule Violation is charged is an Article 2.1 violation (Presence of a Prohibited Substance or its Metabolites or Markers), the Athlete must also establish how the Prohibited Substance entered his/her system in order to have the period of Ineligibility reduced.

### **MULTIPLE VIOLATIONS**

8. We were concerned with two alleged anti-doping rule violations. Rule 10.7.1 sets out a table for a Tribunal to consider in the case of a second Anti-Doping Rule Violation. In summary, this sub-Rule in its application to the present facts would lead to a period of Ineligibility for Mr Watt of between 8 years and life. This much was not in dispute. However, this common ground was subject to the impact of

paragraph a. of Rule 10.7.4. The greater part of the submissions before us ranged around this provision. It provides:

A second Anti-Doping Rule Violation may only be considered for the purposes of imposing sanctions under Article 10.7 if [UKAD] can establish that the Participant committed the second Anti-Doping Rule Violation after he/she received notice, or after [UKAD] or its designee made a reasonable attempt to give notice of the first Anti-Doping Rule Violation. Otherwise, the Anti-Doping Rule Violations shall be considered as one single first Anti-Doping Rule Violation, and the sanction imposed shall be based on the Anti-Doping Rule Violation that carries the more severe sanction. However, the occurrence of multiple Anti-Doping Rule Violations may be considered as a factor in determining aggravated circumstances under Article 10.6.

## **THE BACKGROUND**

9. Mr Watt is, as noted, a semi-professional ice hockey player who mainly earns his living as a personal trainer. He is aged 28 and apparently approaching the latter part of his playing career. He has enjoyed some success as a player, notably as a player for the England U19 team although he did not represent England at senior level. He told us that as at 27 May 2014, when the first anti-doping rule violation occurred, he was not contracted to any club and was unsure if he would be playing in the 2014-15 season. His main aim in the short term is to build up his business as a personal trainer.

10. On 27 May 2014 an experienced Doping Control Officer, Mr Edwards, attended at Mr Watt's house at around 7 a.m. for the purposes of collecting an out of competition urine sample from Mr Watt. The door was answered by Mr Watt's then partner, Sarah Smith, who woke up Mr Watt and then discussed with him what his approach to this request for a sample should be. Mr Watt decided to refuse to provide a sample. He claimed at the time that he was unwilling to provide a sample because it was out of season and he was not then under contract with any club. He seems to have tried to contact the English Ice Hockey Association by telephone to ascertain if he was obliged to provide a sample but, unsurprisingly at that time of the morning, was unable to do so.
11. When Mr Watt was declining to provide a sample he was warned by Mr Edwards that a refusal would be likely to constitute an anti-doping rule violation and lead to a two year suspension. The precise words used by Mr Edwards were disputed by Mr Watt but the Doping Control Form signed by Mr Watt contains this acknowledgment adjacent to his signature:

I understand that a refusal or failure to comply with this [urine sample] request may constitute an anti-doping rule violation.

Nevertheless, Mr Watt persisted in his refusal to provide a sample to Mr Edwards. The reason he gave on the Form was "not currently signed for 14-15 season" and on a Supplementary Report Form "I need to know if it [testing] applies to players who haven't signed contracts. If it does then I'll happily take a test".

12. Whilst the above was the ostensible reason for Mr Watt's refusal to supply a urine sample, he later claimed that another important

reason was the fact that he had smoked cannabis the previous evening. He was not unduly concerned about an ice hockey ban, since he might well not be playing the following season, but he was concerned about the effect on his business if he were to fail a drug test. He was unaware that cannabis is not an out of competition prohibited drug.

13. Following the refusal, Mr Watt received a Notice of Charge of an anti-doping rule violation and a Provisional Suspension from UKAD dated 13 June 2014. Mr Watt accepted in evidence that he would have received this Notice on 14 June 2014. The precise chronology may be of some relevance.
14. On 17 June 2014 Mr Watt was again visited by a Doping Control Officer. It is common ground that on this occasion Mr Watt did provide a urine sample. The sample was submitted to a WADA accredited laboratory. It was found to contain 17-epistanozolol-N-glucourinide, a metabolite of Stanozolol as noted above. Mr Watt did not seek to have the B Sample tested on account, he says, of the cost, and he does not dispute the finding. His suggestion is that the Stanozolol must have come from a product called Anavar which he had previously taken. It is notable that on 17 June 2014 Mr Watt declared on the Doping Control Form that within the last 7 days he had taken a whole range of products:

L-Carnitine, CLA, FATBURNER, Omega 3,  
Glutamine, Protein BCAA's. Beta Alanine.

15. By written Notice dated 22 July 2014 Mr Watt was charged with

... the commission of a second anti-doping rule  
violation for the presence of 17-epistanozolol-

N-glucourinide in a sample provided by you on  
17 June 2014 ... in violation of ADR Rule 2.1

## **THE EVIDENCE OF MR WATT**

16. Mr Watt gave evidence relevant to the events of both 27 May 2014 and 17 June 2014. His account was to an extent supported by a witness statement from his former partner.
17. As we have already noted, Mr Watt's refusal to provide a sample on 17 May 2014 was overtly on the ground that he did not think that he was required to submit to testing out of season. Before us Mr Watt also ascribed his decision to not wanting to fail a test due to his having consumed cannabis. Whatever his reason or reasons for refusal, Mr Watt told us that he thought that in consequence he was there and then banned. Mr Edwards's witness statement explains that he did not say anything to suggest that he personally had the power of suspension. He did no more than warn Mr Watt that a test refusal might be treated as an anti-doping rule violation. The Doping Control Form is to similar effect. Nevertheless, a letter written by Mr Watt shortly after receipt of the Notice of Charge dated 13 June 2014 does lend some support to the notion that Mr Watt might have thought he was already banned and wanted to appeal the ban. We are confident that Mr Watt was not in fact told that he was already subject to a ban. Our view on balance is that Mr Watt's state of mind was that he thought he was bound to receive a ban rather than believing that he had already been banned. As we have already noted, Mr Watt was not too concerned about this. His evidence to us was: "I knew I was screwed".
18. It was Mr Watt's evidence that he was due to go on holiday in Ibiza from 24 June 2014. He decided that he would take so-called "fat



burners” in order to improve his physique for a beach holiday. He had heard of a steroid called Anavar which acts as a “fat burner” and asked someone at his local gym called James McCallion if he could get any Anavar. He did so from a friend and sold some to Mr Watt. We were shown a confirmatory email of 30 September 2014 from Mr Mccallion.

19. Mr Watt told us that he had had bought one bottle of Anavar for £65. Anavar in fact contains the steroid Oxandrolone which is a WADA prohibited substance, and Mr Watt admitted that he knew it was a prohibited steroid. But he was not concerned, for he was using it for a beach holiday rather than competition. Mr Watt said that the Anavar made him feel unwell so that he stopped taking it. According to Mr Watt’s evidence, he started taking two tablets of Anavar a day on Monday 2 June 2014 and then stopped 10 days later, i.e. on 12 June 2014. As it happens, this was the day before UKAD sent him the Notice of Charge for his refusal to provide a sample.

20. Mr Watt believes that the Anavar which he was taking must have been contaminated with Stanozolol. His view is that there could be no other possibility. This was the reason for the residual presence of a metabolite of Stanozolol when he provided a urine sample on 17 June 2014. He had been content to provide this sample on 17 June 2014 since he believed that there would by this time be no remaining effects of the Anavar (which he knew to be a prohibited steroid) in his system.

### **THE ANTI-DOPING RULE VIOLATIONS**

21. We can deal with this aspect of the case very briefly. There is no doubt that two anti-doping rule violations were committed. There

was a refusal to provide a urine sample on 27 May 2014, and it is not suggested that there was any compelling reason for the refusal. There was a metabolite of Stanozolol in Mr Watt's urine sample on 17 June 2014, and Stanozolol is on the WADA prohibited list. The fact of the anti-doping rule violations was not challenged by Mr Watt, and we are entirely satisfied that they occurred.

### **CONTENTIONS OF THE PARTIES**

22. For UKAD, Mr Taylor invited us to find that Mr Watt had not been frank in his evidence. He thought he was "looking at a ban" rather than being actually banned on 17 May 2014, and his initial reaction had been to contest the anti-doping rule violation. It was only later that he had mentioned smoking cannabis, and he had not mentioned taking Anavar on the Doping Control Form.
23. We should reject the plea based on Article 10.5.2 for a reduction in sanction. It lacked any factual foundation. Prima facie these were two anti-doping rule violations which attracted a period of ineligibility in accordance with the table at Article 10.7.1. This resulted on the present facts of a period of ineligibility of between 8 years and life.
24. On the critical question of the application of Article 10.7.4 a., Mr Taylor acknowledged that there was no authority on what was an undecided question. We had to decide whether Mr Watt's second anti-doping rule violation occurred after he had been given notice of the first anti-doping rule violation on 14 June 2014. In Mr Taylor's submission this was so even if we were to accept all of Mr Watt's factual case.
25. On the true construction of the Rules the second anti-doping rule violation did not occur when Mr Watt was suggesting, that is on

ingestion of the prohibited substance. The second violation occurred on 17 June 2014 when the metabolite of Stanozolol was present in Mr Watt's system. It is the presence of the prohibited substance rather than the ingestion which constitutes the violation. In support of this point of construction Mr Taylor referred us to:

- (a) the clear wording of Article 2.1 itself;
- (b) the contrast between "presence" in Article 2.1 and "use" in Article 2.2;
- (c) various passages from the commentary to the WADA code admissible by virtue of Article 1.5.4.

In the result there should be a period of ineligibility for Mr Watt of at least 8 years, although Mr Taylor did not press for a period longer than 8 years in the present case.

26. In the alternative, if (contrary to his primary case) these two violations were to be considered as a single violation by reason of Article 10.7.4 a. then Mr Taylor submitted that 4 years' ineligibility would be appropriate. The standard period of 2 years was to be increased to the maximum period of 4 years because of aggravating circumstances in relation to the second violation. Even on Mr Watt's own case he had been knowingly taking a prohibited steroid. This was a particularly serious violation by someone who ought to be acting as a role model for the young ice hockey players whom he coached.
27. For Mr Watt, Mr Meakin did not resile from his reliance on Article 10.5.2 and a claimed absence of any significant fault or negligence.

However, he realistically did not elaborate upon the plea and simply left it open for us on the present facts.

28. Mr Meakin's principal submission was that we should approach these two anti-doping rule violations as a single violation without any aggravating circumstances under Article 10.7.4 a. The overarching criterion was, Mr Meakin said, one of fairness. In what was a unique case we should interpret the Rules liberally with this in mind rather than in a technical way concentrating upon the words.
29. Mr Meakin invited us to consider Mr Watt as an honest witness, if something of "a rough diamond". He had been caught up in a cascade of events and was guilty of injudicious rather than wicked behaviour. He had simply taken Anavar in an attempt to improve his appearance rather than any sporting performance.
30. We should accept the truthfulness of what Mr Watt was saying and find that he had stopped taking Anavar two days before he received the Notice of Charge for the first anti-doping rule violation. On this basis, the second anti-doping rule violation was committed before he had received notice of the first violation. Thus, these two violations fell to be treated as one and together attracted the standard sanction of a period of ineligibility of two years.
31. On the critical question of interpretation of the Rules, Mr Meakin submitted that:
  - (a) The anti-doping rule violation occurs when a prohibited substance enters an athlete's body; it is triggered by the entry not by the results of a sample.

(b) The duty is to ensure that no prohibited substance enters the body and it is upon entry that it is "present".

(c) The results obtained from a sample are no more than one method of proving a violation rather than constituting the violation itself.

This approach achieves a just result. The purpose of the multiple violation rule is to provide an opportunity for an athlete to cease taking drugs after knowledge of the consequences of the first violation. The construction put forward by UKAD has the potential for great injustice with repeated sampling of an athlete.

32. On the present facts Mr Meakin submitted that a period of ineligibility for Mr Watt of 8 years is wholly disproportionate. For example in the NADP case of *Burns*, 10 December 2012, the possession and use of a vast array of prohibited steroids only attracted 4 years' ineligibility. We should approach this case with a view to achieving a just result in the same way as had the CAS Panel in *Puerta v ITF*, CAS 2006/A/1025

## **DISCUSSION**

33. We address firstly the submission that this is a case for the application of Article 10.5.2. We have no hesitation in rejecting the suggestion. First, it is a pre-condition for the application of the Article that an athlete establishes how a prohibited substance entered his or her body. Here, we are invited to assume that, unknown to Mr Watt, it was contaminated Anavar which contained Stanozolol. However, this is pure speculation. It may be the case. But, similarly, it may be the case that any of the other substances Mr Watt was, as he told us, taking regularly might be a contaminated

source of the Stanazolol. We have in mind the substantial list of substances which Mr Watt declared on the Doping Control Form he had been taking within the previous 7 days. Or there might be some other source. But in any event, this is all speculation. Mr Watt has come nowhere near establishing before us how the Stanazolol entered his body.

34. Even if we were to assume that contaminated Anavar was the source of the Stanazolol, we also consider that it would be impossible to say that this is a case of no significant fault or negligence. Mr Watt's case is that he deliberately took a prohibited steroid knowing that it was prohibited but that this was a different steroid to the one which appeared in his sample. It is not an attractive argument, and we reject it. Both the WADA Code Commentary and numerous cases are unanimous in emphasising the exceptional nature of a finding of no significant fault or negligence. If we had been satisfied as to the first limb of the argument under Article 10.5.2 we would have firmly rejected the second limb.
35. We turn to the point of construction of the Rules. We agree with UKAD's primary case that it is the presence of a prohibited substance which constitutes an anti-doping rule violation. This is what the language of Article 2.1 clearly states. It would be a violence of language to find otherwise. We also accept the submissions of Mr Taylor as to the pointers to be found in other parts of the Rules and in the WADA Code Commentary. Moreover, we note that Mr Meakin's argument, if correct, leads to a very odd conclusion in the case of metabolites of a prohibited substance. They are comprised within Article 2.1 but, of course, are not ingested. The scheme of the Rules is clear. A single violation may result in a standard sanction, but repeated anti-doping rule violations are a serious matter.

36. As for Mr Meakin's submission that 8 years is unfair, it is our view that it is not for us to take a view on the fairness of a result clearly dictated by the Rules. The case of *Puerta* is worthy of considerable respect, not least because we note that the NADP President was a member of the CAS Panel. Nevertheless, the essential reasoning of that case was that the Panel discerned a lacuna in the applicable rules which it felt able to fill. Here, there is no such lacuna.
37. The false premise underlying Mr Meakin's argument is that there is a single moment when an anti-doping rule violation occurs. In truth, the presence of a prohibited substance or its metabolites or markers is a continuing violation. The violation takes place for the duration of the time during which the substance (or its metabolites or markers) remains in the athlete's body.
38. Finally, we note that under the 2015 WADA Code not yet in force Mr Watt's case would attract an 8 year sanction: see Article 10.7.1(c). There is no room for some anticipatory *lex mitior* here. But if the Rules are amended in line with the prospective 2015 WADA Code, there may be some possibility for Mr Watt to apply for a reduction in the period of ineligibility: see Article 25.3.
39. In the result, it is our view that these two violations attract a period of ineligibility of 8 years in accordance with Article 10.7.1. We recognise that this is a severe sanction, but there is no tenable alternative under the Rules. However, whilst the Rules would give us discretion to impose a lengthier period of ineligibility, we do not regard it as necessary to do so. We think that 8 years is sufficient in this case. We are prepared to treat Mr Watt as having promptly admitted the anti-doping rule violations despite an initial degree of uncertainty in relation to the first violation. Accordingly, we direct

that the 8 years ineligibility should run from 17 June 2014 with Mr Watt being given credit for the time of his provisional suspension.

40. In accordance with the Rules, UKAD, Mr Watt, Ice Hockey UK, the International Ice Hockey Federation or WADA may file a Notice of Appeal against this decision within 21 days of receipt of the decision.

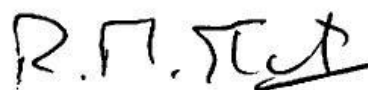
### **CONCLUSION**

41. In summary, for the reasons given above, we make the following decision:

- two anti-doping rule violations were committed by Mr Watt;
- the period of ineligibility in his case is to be 8 years.; and
- the period of ineligibility is to run from 17 June 2014 to 16 June 2022 inclusive.

UKAD, Mr Watt, Ice Hockey UK, the International Ice Hockey Federation or WADA may appeal this decision as set out in the preceding paragraph.

Dated: 6 November 2014



Robert Englehart QC

Chairman on behalf of the Tribunal





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