

**NATIONAL ANTI-DOPING PANEL  
IN THE MATTER OF PROCEEDINGS BROUGHT UNDER THE ANTI-DOPING  
REGULATIONS OF THE WELSH RUGBY UNION**

**BEFORE:**

**DAVID CASEMENT QC (CHAIRMAN)**

**KITRINA DOUGLAS**

**TERRY CRYSTAL**

**BETWEEN:**

UK ANTI-DOPING

*National Anti-Doping Organisation*

-and-

OLIVER BILTON

*Respondent*

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**FINAL DECISION**

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1. On 17 February 2015 the Chairman held a telephone directions hearing for the case management of these proceedings through to a final hearing which was due to take place on 29 April 2015 in London. Following the directions hearing a request was made by the representative of the Athlete by email dated 13 March 2015 that the case be determined on the papers rather than at an oral hearing. The Tribunal acceded to that request by the Athlete and the Tribunal met by telephone conference on 29 April 2015 to consider the papers.

2. As well as the correspondence between the parties including the Notice of Charge and the response thereto, Doping Control Form, Test Report, the skeleton arguments and the authorities referred to the Tribunal also had before them the following witness statements:
  - 2.1 Oliver Bilton, the Athlete, dated 11 March 2015
  - 2.2 Ted Allsopp dated 11 March 2015
  - 2.3 Elliot Spencer dated 11 March 2015
  - 2.4 Nick Wojek of UKAD dated 2 April 2015
3. The Athlete is a Welsh Rugby Union player. On 13 December 2014 a Doping Control Officer collected a urine sample from the Athlete at a match between Cardiff Met RFC and Narbeth RFC pursuant to the WRU Anti-Doing Rules ("ADR").
4. The Analysis of the urine sample provided by the Athlete resulted in a positive test for oxandrolone and its Metabolite epioxandrolone ("the Prohibited Substances"). The Prohibited Substances are classified as Exogenous Anabolic Androgenic Steroids under S1.1(a) of the WADA 2014 Prohibited List.
5. The Notice of Charge dated 16 January 2015 notified the Athlete of the Adverse Analytical Finding and charged the Athlete with the following Anti-Doping Rule Violations ("ADRVs"):
  - 5.1 Presence of oxandrolone and its metabolite epioxandrolone in a sample provided by the Athlete on 13 December 2014 in violation of ADR 2.1;
  - 5.2 Use of oxandrolone on, or prior to, 13 December 2014 in violation of ADR 2.2.
6. The Athlete was also notified in the Notice of Charge that he was the subject of a Provisional Suspension in accordance with ADR 7.7.

7. By email dated 25 January 2015 the Athlete admitted the ADRVs and expressed his shock at the positive findings. He explained that he had regularly taken products which he purchased from My Protein including Hurricane xs. He checked the products that he purchased to ensure that they did not contain any Prohibited Substance. However the week prior to the test in question the Athlete had run out of his own supplements and was not in a financial position to purchase more for himself. Instead the Athlete used some of his housemates' protein supplements. The Athlete concluded by saying that he was not a cheat or someone who disregarded the rules and that he wished to pursue the matter through to a full hearing.
8. At the directions hearing the Athlete was represented by John Mehrzad of Counsel and was directed to file any evidence including witness statements that he relied upon by close of business on 10 March 2015.
9. The witness statements filed by and on behalf of the Athlete gave the following account. In late 2014 the supplements taken by the Athlete were: My Protein: Casein, Hurricane XS, and Creatine Monohydrate. These were purchased from [www.myprotein.com](http://www.myprotein.com). These were used since early November 2014 and typically taken 2-3 times daily. Therefore prior to the test in question the Athlete had consumed those supplements for approximately 1.5 months. He confirmed that the checks he would make of the contents of the supplements were to check the label against the most recent list of banned substances on the internet. The Athlete says he understood the risks involved but he maintained he was always careful.
10. In the week prior to the test on 13 December 2014 the Athlete took some of his housemates' supplements called Impact Whey Protein (My Protein) and Platinum 1005 Whey (Optimum Nutrition). He says he did this because he was low on money. His housemates Ted Allsopp and Elliot Spencer informed the Athlete, and provided witness statements to state, that they purchased those supplements from [www.myprotein.com](http://www.myprotein.com) and [www.dolphinfitness.com](http://www.dolphinfitness.com) . The Athlete had never used their supplements before. The Athlete states two very important matters in his witness statement:

- 10.1 the Athlete's housemates have never been tested for Prohibited Substances;
  - 10.2 the Athlete did not carry out any checks on his housemates' supplements before he used them.
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11. The Athlete however concludes that he has obtained copies of the labels of his housemates' supplements that he used and neither of them indicates that the supplements contain oxandrolone or epioxandrolone.
  12. The evidence of both Mr Allsopp and Mr Spencer was to the same effect. They checked their supplements against the Prohibited List online and there was no indication that the supplement contained oxandrolone or epioxandrolone.
  13. In the witness statement of Mr Wojek he stated that Oxandrolone is an appealing anabolic steroid to use in comparison to other anabolic steroids because it does not give rise to gynaecomastia (breast enlargement) or water retention (an effect of high oestrogen levels in the body). He opined that it is a derivative of dihydrotestosterone (a naturally occurring steroid hormone in the body) which has been structurally modified in order to:
    - 13.1 amplify the anabolic (tissue building) effects of dihydrotestosterone;
    - 13.2 minimise the androgenic side effects of dihydrotestosterone (side effects include the growth of facial/body hair, developing of acne, deepening of voice); and
    - 13.3 limit first-pass metabolism (this modification increases the amount of drug that reaches the systemic circulation unchanged and therefore active).

### ***The Rules***

14. ADR 10.2 provides –

10.2 *Imposition of a Period of Ineligibility for the Presence, Use or Attempted Use, or Possession of Prohibited Substances and/or Prohibited Methods*

*For an Anti-Doping Rule Violation under Article 2.1 (presence of a Prohibited Substance or its Metabolites or Markers), Article 2.2 (Use or Attempted Use of a Prohibited Substance or Prohibited Method) or Article 2.6 (Possession of Prohibited Substances or Prohibited methods) that is the Participant's first violation, a period of Ineligibility of two years shall be imposed, unless the conditions for eliminating or reducing the period of Ineligibility (as specified in Article 10.4 and/or Article 10.5), or for increasing the period of Ineligibility (as specified in Article 10.6) are met. (underlining added)*

15. To mitigate the standard sanction in this case, which is a two year period of Ineligibility, the Athlete has advanced evidence and submissions under both ADR 10.5.1 and 10.5.2. There was no significant dispute regarding the principles to be applied. The provisions of the Rules provide as follows (underlining added):

ADR 10.5.1

10.5.1 *Elimination of period of Ineligibility based on No Fault or Negligence*

*If a Participant establishes in an individual case that he/she bears No Fault or Negligence for the Anti-Doping Rule Violation charged, the otherwise applicable period of Ineligibility shall be eliminated. When the Anti-Doping Rule Violation charged is an Article 2.1 violation (Presence of a Prohibited Substance or its Markers or Metabolites), the Athlete must also establish how the Prohibited Substance entered his/her system in order to have the period of Ineligibility eliminated. In the event this Article is applied and the period of Ineligibility otherwise applicable is eliminated, the Anti-Doping Rule Violation shall not be considered a violation for the limited purpose of determining the period of Ineligibility for multiple violations under Article 10.7.*

## ADR 10.5.2

### *10.5.2 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. If the otherwise applicable period of Ineligibility is a lifetime, the reduced period under this Article may be no less than 8 years. When the Anti-Doping Rule Violation 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.*

16. The fundamental condition or threshold criterion for establishing the applicability of either ADR 10.5.1 or 10.5.2 is for the Athlete to establish on the balance of probabilities how it was that the Prohibited Substance entered his body. If the Athlete fails to discharge that burden of proof it is unnecessary to go on to consider whether the Athlete has demonstrated on the balance of probabilities that he bears either No Fault or Negligence for the ADRV or no Significant Fault or Negligence for the ADRV.
17. Had it been a live issue we would have found that the threshold criterion has not been established in the present case:
  - 17.1 there is no independent corroboration of the Athlete's assertion that he ingested the Prohibited Substances though his consumption of his housemates' supplements. Those supplements have not been tested to ascertain if they contain the Prohibited Substances. The account given by the Athlete amounts to no more than speculation as to how he ingested the Prohibited Substances;

17.2 the evidence which the Athlete has adduced and exhibited to his witness statement, namely the ingredients of the supplements he says he took, including the statements of his housemates are evidence that the supplements did not contain the Prohibited Substances.

18. Further, even if the Athlete had established the threshold criterion and proved on the balance of probabilities that his housemates' supplements contained the Prohibited Substances we would have found that the Athlete cannot be said to bear No Significant Fault or Negligence and certainly cannot be said to bear No Fault or Negligence to enable ARD 10.5.1 and 10.5.2 to apply:

18.1 he was aware of the risks associated with supplements;

18.2 he admits he failed to carry out any checks whatsoever (including those that he would typically carry out with regard to his own supplements) in relation to this use of his housemates supplements;

18.3 according to the Athlete's witness statement and those of his housemates the latter have never been the subject of an Anti-Doping Test.

#### Athlete's Submissions

19. In his skeleton argument on behalf of the Athlete Mr Mehrzad of Counsel realistically submitted "Mr Bilton has no evidence to contend for an Elimination or Reduction of the Period of Ineligibility on Exceptional Circumstances pursuant to art. 10.5 ADR or as now more recently set out at 10.5 WADA Code 2015. He does not pursue that matter."

20. In his succinct but realistic written submissions Mr Mehrzad submitted:

20.1 although the Athlete has tested positive for two Prohibited Substances they should be considered as one ADRV and therefore the Athlete's first ADRV;

20.2 the Athlete made a prompt admission in respect of the ADRV by accepting the offences in his email dated 25 January 2015, that is within nine days of being in receipt of the Notice of Charge;

20.3 the Athlete's two year period of suspension should be backdated to the date of the sample collection namely 13 December 2014, pursuant to ADR 10.9.2;

20.4 the Athlete should receive the benefit of the lex mitior principle as the WADA Code 2015 provides pursuant to 10.12.2 that the Athlete may return to training no longer than 2 months before the expiry of his period of ineligibility: UKAD v Warburton & Williams SR/0000120227 (para 117) and UKAD v Evans SR/0000120226 (para 14.4).

21. The Tribunal accepts Mr Mehrzad's submissions and for the reasons as set out above.
22. The sanction imposed by this Tribunal for the ADRV's is a period of Ineligibility of two years commencing on 13 December 2014. The Athlete shall be permitted to return to training no earlier than two months prior to the expiry of the period of Ineligibility, namely 13 October 2016.
23. The Tribunal wishes to record its thanks to Mr Mehrzad of Counsel who acted throughout on this matter, on behalf of the Athlete, on a pro bono basis. The Tribunal was greatly assisted by his submissions.



**Signed by David Casement QC (Chairman)**

**On behalf of the Tribunal**

**13 May 2015**





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