

**NATIONAL ANTI-DOPING PANEL
IN THE MATTER OF PROCEEDINGS BROUGHT UNDER THE ANTI-DOPING RULES
OF THE RUGBY FOOTBALL LEAGUE**

Before

Charles Hollander QC (Chair)

Dr Kitrina Douglas

Blondel Thompson

BETWEEN

UK ANTI-DOPING LIMITED

Applicant

-and-

PAUL SONGHURST

Respondent

DECISION OF THE ANTI-DOPING TRIBUNAL

1. This is the decision of the Anti-Doping Tribunal convened under Article 5.1 of the 2015 Procedural rules of the National Anti-Doping Panel ("the Procedural Rules") and Article 8.1 of the UK Anti-Doping Rules dated 1 January 2015 ("the Anti-Doping Rules") adopted by the Rugby Football League ("the RFL") to determine a charge brought against Mr Paul Songhurst ("Mr Songhurst").
2. The hearing was convened to determine a charge arising from the alleged commission of an Anti-Doping Rule Violation in breach of Article 2.1 of the Anti-

Doping Rules (Presence of a Prohibited Substance in an Athlete's urine sample). The Athlete was charged by UK Anti-Doping Ltd ("UK Anti-Doping"), by a letter dated 17 February 2015. The hearing took place in Bristol (at the request of the athlete) on 29 June 2015.

3. The allegation is that drostanolone and a metabolite thereof were present in a urine sample provided by Mr Songhurst on 23 February 2015. Drostanolone and its metabolites are Prohibited Substances both in and out of competition, under class S.1 in the World Anti-Doping Code 2015 Prohibited List (Exogenous Anabolic Androgenic Steroids).
4. At the hearing, the athlete was represented by Mr Timothy Meakin of counsel, acting pro bono. UK Anti-Doping was represented by Ms Stacey Shevill. The tribunal is grateful to the representatives for their contributions, and especially to Mr Meakin for agreeing to act for Mr Songhurst pro bono.
5. This document is the reasoned decision of the tribunal, reached after consideration of the evidence and submissions made by the parties attending at the hearing and in writing. We indicate below our findings of fact, reasoning, and conclusions.

The facts

6. Paul Songhurst (D.O.B. 26.1.91) is 24 years of age and is a semi-professional rugby league player employed by South Wales Scorpions RFLC. The RFL has provided documentation relating to Mr. Songhurst's registration with South Wales Scorpions.
7. On 3 January 2015, Mr. Songhurst signed an RFL Professional Registration Form ("the Registration Form"). The Registration Form was also signed and dated by a representative of South Wales Scorpions on the same date. In signing the Registration Form, Mr. Songhurst expressly agreed to the following:

"DECLARATION BY PLAYER

I apply to be registered as a professional player with the RFL. I have completed the form and it is accurate. I have read the contract and

registration guidance notes and I understand that by signing this form I will be registering as a professional player. I understand that I will be subject to the RFL Operational Rules including the Rules covering drug testing and misconduct. I have received a copy of the RFL Anti-Doping booklet and Professional Players Guide."

8. The National Anti-Doping Policy makes provision for UKAD, as the UK National Anti-Doping Organisation, to adopt and implement a test distribution plan for sport in the UK, including Rugby League. UKAD is empowered by the ADR to plan and conduct Testing pursuant to the ADR.
9. In this regard, UKAD conducted Testing at training of the South Wales Scorpions squad on 23 February 2015. South Wales Scorpions is an RFL Club, competing in the Kingstone Press League. The squad training was organised, convened, authorised and recognised by the Club. Mr. Songhurst was one of the athletes selected to submit to Testing pursuant to ADR Article 1.2.1(b).
10. On 23 February 2015, a Doping Control Officer ("DCO") collected a urine sample from Mr. Songhurst. Assisted by the DCO, Mr. Songhurst split the sample into two separate bottles which were given reference numbers A1117154 ("the A Sample") and B1117154 ("the B Sample").
11. Both samples were transported to the World Anti-Doping Agency ("WADA") accredited laboratory in London, the Drug Control Centre, Kings College London (the "Laboratory"). The Laboratory analysed the A Sample in accordance with the procedures set out in WADA's International Standard for Laboratories.
12. Analysis of the A Sample returned an Adverse Analytical Finding ("AAF") for the Prohibited Substance drostanolone and its metabolite 2 α -methyl-5 α -androstan-3 α -ol-17-one⁷ ("the Prohibited Substances").
13. UKAD charged Mr. Songhurst with a violation of ADR Article 2.1 by way of a letter dated 17 March 2015 ("the Charge Letter"). He has been subject to a Provisional Suspension since that date.

14. By e-mail dated 18 March 2015 Mr. Songhurst provided a response to the Charge Letter. In that response, Mr. Songhurst requested that a Provisional Suspension hearing be convened to determine whether his Provisional Suspension could be lifted.
15. On 20 March 2015, a telephone hearing was convened before Mr. David Casement QC of the NADP to determine Mr. Songhurst's application to have the Provisional Suspension lifted. That application was rejected.
16. By e-mail dated 27 March 2015, Mr. Songhurst provided a detailed response to the Charge Letter. In this response, Mr. Songhurst admitted the ADRV and accepted the AAF, but noted that he disputed the consequences that UKAD said should be imposed.
17. On 8 April 2015, UKAD referred the matter to the NADP for determination.
18. By e-mail dated 22 April 2015, Mr Songhurst confirmed that he would not be pursuing a defence in relation to ADR Article 10.4, ADR Article 10.5.1(b) or ADR Article 10.5.2. He confirmed that the only issue to be determined is whether he acted intentionally in relation to the ADRV and the appropriate sanction to be applied.

The Charge

19. Given that liability has been admitted, the only issue in this matter is sanction. That issue concerns the application of ADR Article 10.2, which states:

10.2 Imposition of a Period of Ineligibility for the Presence, Use or Attempted Use, or Possession of a Prohibited Substance and/or a Prohibited Method

The period of Ineligibility for an Anti-Doping Rule Violation under Article 2.1, 2.2 or 2.6 that is the Athlete's or other Person's first anti-doping offence shall be as follows, subject to potential reduction or suspension pursuant to Article 10.4, 10.5 or 10.6:

10.2.1 The period of ineligibility shall be four years where:

(a) The Anti-Doping Rule Violation does not involve a Specified Substance, unless the Athlete or other Person can establish that the Anti-Doping Rule Violation was not intentional.

(b) The Anti-Doping Rule Violation involves a Specified Substance and UKAD can establish that the Anti-Doping Rule Violation was intentional.

10.2.2 If Article 10.2.1 does not apply, the period of Ineligibility shall be two years.

20. Mr. Songhurst's ADRV does not involve a Specified Substance. Pursuant to ADR Article 10.2.1(a), the mandatory sanction is therefore a period of Ineligibility of four years, unless Mr. Songhurst can establish that the ADRV was not intentional.

21. The meaning of intentional has been set out in ADR Article 10.2.3. It states:

10.2.3 As used in Articles 10.2 and 10.3, the term "intentional" is meant to identify those Athletes or other Persons who cheat. The term, therefore, requires that the Athlete or other Person engaged in conduct which he or she knew constituted an Anti-Doping Rule Violation or knew that there was a significant risk that the conduct might constitute or result in an Anti-Doping Rule Violation and manifestly disregarded that risk. An Anti-Doping Rule Violation resulting from an Adverse Analytical Finding for a substance which is only prohibited In-Competition shall be rebuttably presumed to be not "intentional" if the substance is a Specified Substance and the Athlete can establish that the Prohibited Substance was Used Out-of-Competition. An Anti-Doping Rule Violation resulting from an Adverse Analytical Finding for a substance which is only prohibited In-Competition shall not be considered "intentional" if the substance is not a Specified Substance and the Athlete can establish that the Prohibited Substance was Used Out-of-Competition in a context unrelated to sport performance.

Also relevant is Article 10.6.3

"10.6.3 Prompt Admission of an Anti-Doping Rule Violation after being Confronted with a Violation Sanctionable under Article 10.2.1 or Article 10.3.1:

An Athlete or other Person potentially subject to a four-year sanction under Article 10.2.1 or 10.3.1 (for evading or refusing Sample Collection or Tampering with Sample Collection), by promptly admitting the asserted anti-doping rule violation after being confronted by an Anti-Doping Organization, and also upon the approval and at the discretion of both WADA and the Anti-Doping Organization with results management responsibility, may receive a reduction in the period of Ineligibility down to a minimum of two years, depending on the seriousness of the violation and the Athlete or other Person's degree of Fault."

22. Mr. Songhurst's evidence is set out in his Witness Statement dated 26 May 2015. He gave oral evidence before us and was cross-examined by UKAD. Mr. Songhurst has always been a keen rugby player and played rugby union since the age of eight. He switched from playing rugby union to rugby league in November 2014 when he signed as a semi-professional for South Wales Scorpions. Prior to that date, he was "very aware of the need to avoid even the risk of ingesting prohibited substances" and had always known generally about the dangers of steroids. He says that he is not a cheat and has never intentionally taken prohibited substances. Throughout his rugby-playing career, Mr. Songhurst has taken a number of supplements to complement his diet. In particular, he used a supplement called "Monster Mix", manufactured by a company called Team ANR. This supplement was purchased for Mr. Songhurst by his father, Paul Songhurst, during a trip to the United States in March 2013. When he provided a sample for the purpose of doping control in February 2015, Mr. Songhurst says he was using two different supplements, namely "Effective" whey protein powder and creatine monohydrate.
23. UKAD led evidence from Nick Wojek, Head of Science and Medicine for UK Anti-Doping and Professor David A Cowan, director of the Drug Control Centre, King's College London. Both witnesses were made available for cross-examination by UKAD, but neither was required by Mr Songhurst.
24. Mr Wojek's evidence was that the human body does not naturally produce drostanolone. It only appears in the body if administered by intra-muscular injection. Drostanolone is an appealing anabolic steroid to use to develop leanness and power since it does not convert into oestrogen. He also stated, as confirmed by Professor

Cowan, that there are no ingredients listed in "Monster Mix" which would suggest that the supplement contains drostanolone. Professor Cowan said that if drostanolone is taken by mouth it is rapidly de-activated by the liver in a process known as first-pass metabolism.

Intentional use

25. Article 10.2 provides for a mandatory four year ban unless the athlete is able to show that the ADRV was not intentional. The burden of proof is on the athlete, which Article 8.3.2 provides must be satisfied on a balance of probabilities. We have set out Article 10.2.3 above, which defines "intentional".
26. In evidence, Mr Songhurst fairly accepted that in the light of UKAD's evidence, it was apparent that the "Monster Mix" could not have given rise to the ADRV. He said that he simply did not know what had given rise to the positive finding and he was unable to point to any likely cause.
27. UKAD not surprisingly submitted that in such circumstances, Mr Songhurst had failed to satisfy the burden of proof which was on him.
28. In response, it was submitted for Mr Songhurst that the tribunal were entitled to assess his credibility in the round, and in the light of his oral evidence, and decide whether they believed his firm denial that he had taken the prohibited substance deliberately, and, if they did, to hold that he had satisfied the burden of proof. Otherwise the rule would have the draconian effect of ruining the career of someone who was innocent of intentional wrongdoing but did not know how the prohibited substance came to be found in his body. The practical effect of Art 10.2 is that the athlete has to prove a negative.
29. The problem with this submission is that in the normal course it is not to be expected that prohibited steroids are found in the body of an athlete. In any normal case knowledge concerning how the substance came to be in the body is uniquely within the knowledge of the athlete and UKAD can only go on the scientific evidence of what was found in the body. The scientific evidence of a prohibited substance in the body is itself powerful evidence, and requires explanation. It is easy for an athlete to deny knowledge and impossible for UKAD to counter that other than with

reference to the scientific evidence. Hence the structure of the rule.

30. We note that drostanolone is a steroid that is potentially of use to sportsmen and that it normally enters the body by intra-muscular injection, that it is not normally digested orally, and that if it was so ingested, it would rapidly be de-activated by the liver and would then cease to appear in a urine sample.
31. Mr Songhurst has failed to provide any real explanation as to how this prohibited substance came to be found in his body. In such circumstances, we find that he has failed to discharge his burden of proof under Art 10.2.

Prompt admission of an ADRV: 10.6.3

32. As an alternative, Mr Songhurst relied on Art 10.6.3. The ADRV was the breach of Art 2.1, the presence of the prohibited substance. He had admitted that promptly, and thus should be entitled, it was contended, to consideration of a reduction in his period of ineligibility.
33. In circumstances where all that was admitted was the presence of the prohibited substance (which was in reality indisputable), but the crucial issue of intention was disputed, we would have found it difficult to treat this as a prompt admission justifying a reduction in period of ineligibility.
34. However, we do not think 10.6.3 has any relevance in any event. 10.6.3 contains the words "upon the approval and at the discretion of WADA and UKAD." We consider that this only applies where UKAD comes before the tribunal having agreed what might be referred to as a "plea bargain" and ask the tribunal to agree the reduction they have approved.

Summary: The Tribunal's Decision

35. In the circumstances:
 - (a) The doping offence under Article 2.1 of the Anti-Doping Rules has been established;
 - (b) Mr Songhurst must serve a four year period of ineligibility with effect from 23

February 2015 to expire on 22 February 2019.

Rights of Appeal

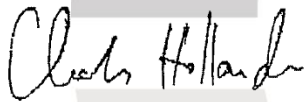
In accordance with Article 13.4 of the Anti-Doping Rules and Article 13 of the Procedural Rules, Mr Songhurst and the other parties named in Article 13.4 of the Anti-Doping Rules have a right of appeal to an Appeal Tribunal of the National Anti-Doping Panel Appeal. In accordance with Article 13.7 of the Anti-Doping Rules and Article 13.5 of the Procedural Rules, any party who wishes to appeal must lodge a Notice of Appeal with the NADP Secretariat within 21 days of receipt of this decision.

Charles Hollander QC

Dr Kitrina Douglas

Blondel Thompson

Signed on behalf of the Tribunal



Chairman

Dated 08 July 2015



Sport Resolutions (UK)
1 Salisbury Square
London EC4Y 8AE

T: +44 (0)20 7036 1966
F: +44 (0)20 7936 2602

Email: resolve@sportresolutions.co.uk
Website: www.sportresolutions.co.uk

Sport Resolutions (UK) is the trading name of The Sports Dispute Resolution Panel Limited