

Issued Decision

UK Anti-Doping and Ben Murphy

Disciplinary Proceedings Under the Anti-Doping Rules of the Welsh Rugby Union

This is an Issued Decision made by UK Anti-Doping Limited ('UKAD') pursuant to the Welsh Rugby Union ('WRU') Anti-Doping Rules (the 'ADR'). It concerns an anti-doping rule violation committed by Mr Ben Murphy ('Mr Murphy') contrary to the ADR.

Capitalised terms used in this Decision shall have the meaning given to them in the ADR unless otherwise indicated.

Background

1. The WRU is the governing body for the sport of rugby union in Wales. UKAD is the National Anti-Doping Organisation for the United Kingdom.
2. Mr Murphy is a 19 year-old rugby union player who plays for Merthyr RFC ('Merthyr'). At all material times he was subject to the jurisdiction of the WRU and bound to comply with the ADR. Pursuant to the ADR, UKAD is empowered to conduct Doping Control and results management in respect of all players subject to the jurisdiction of the WRU.
3. On 7 March 2015, UKAD collected an In-Competition Sample from Mr Murphy pursuant to the ADR ('the Sample').
4. The Sample was submitted for analysis to the Drug Control Centre, King's College London, a World Anti-Doping Agency ('WADA') accredited laboratory ('the Laboratory'). On 31 March 2015, the Laboratory reported to UKAD an Adverse Analytical Finding for 1,3-dimethylbutylamine.
5. 1,3-dimethylbutylamine is a Prohibited Substance. It falls within section 6(b) of the WADA 2015 Prohibited List in that it is a substance 'with a similar chemical structure' to the substances expressly listed in section 6(b). It is classified as a Specified Substance and is prohibited In-Competition.
6. Mr Murphy does not have, nor has he ever held, a Therapeutic Use Exemption in respect of 1,3-dimethylbutylamine.
7. On 2 April 2015 UKAD issued Mr Murphy with a Notice of Charge ('the Charge'). The Charge alleged that Mr Murphy had committed an anti-doping rule violation in respect of ADR Article 2.1 (the Presence of a Prohibited Substance in the Sample). The Charge explained (amongst other things) the facts relied on in support of the allegation, the procedure for analysis of the B Sample and the Consequences specified in the ADR regarding the anti-doping rule violation.
8. Following receipt of the Charge, Mr Murphy admitted that he had committed an anti-doping rule violation in respect of the Presence of 1,3-dimethylbutylamine in the Sample. This decision records the Consequences to be applied in respect of that anti-doping rule violation.

The Relevant ADR

9. ADR Article 2 provides that:

The following constitutes an Anti-Doping Rule Violation:

- 2.1 Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample, unless the Athlete establishes that the presence is consistent with a TUE granted in accordance with Article 4.

10. ADR Article 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 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 the 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.

11. As regards the meaning of 'intentional', ADR Article 10.2.3 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.

12. ADR Article 10.5.1(b) explains how the period of Ineligibility may be reduced if the anti-doping rule violation involves a Contaminated Product. It provides:

10.5.1(b) Contaminated Products

In cases where the Athlete or other Person can establish No Significant Fault or Negligence and that the detected Prohibited Substance came from a Contaminated Product, then the period of Ineligibility shall be, at a minimum, a reprimand and no period of Ineligibility, and at a maximum, two years Ineligibility, depending on the Athlete's or other Person's degree of Fault.

13. The term 'No Significant Fault or Negligence' is defined in the ADR as:

The Athlete or other Person 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 relation to the Anti-Doping Rule Violation. Except in the case of a Minor, for any violation of Article 2.1 the Athlete must also establish how the Prohibited Substance entered his/her system.

14. Fault is defined in the ADR as follows:

Fault is any breach of duty or any lack of care appropriate to a particular situation. Factors to be taken into consideration in assessing an Athlete or other Person's degree of Fault include, for example, the Athlete's or other Person's experience, whether the Athlete or other Person is a Minor, special considerations such as impairment, the degree of risk that should have been perceived by the Athlete and the level of care and investigation exercised by the Athlete in relation to what should have been the perceived level of risk. In assessing the Athlete's or other Person's degree of Fault, the circumstances considered must be specific and relevant to explain the Athlete's or other Person's departure from the expected standard of behaviour. Thus, for example, the fact that an Athlete would lose the opportunity to earn large sums of money during a period of Ineligibility, or the fact that the Athlete only has a short time left in his or her career, or the timing of the sporting calendar, would not be relevant factors to be considered in reducing the period of Ineligibility under Article 10.5.1 or 10.5.2.

15. The term 'Contaminated Product' is defined in the ADR as:

A product that contains a Prohibited Substance that is not disclosed on the product label or in information available in a reasonable internet search.

The Facts and Evidence

16. Following the issuing of the Charge, UKAD conducted an investigation into this matter, which included an interview with Mr Murphy. This interview took place on 16 May 2015. In the course of that interview Mr Murphy explained how his ingestion of 1,3-dimethylbutylamine came about. Pursuant to that interview and its investigation UKAD is satisfied as the following:

16.1 Mr Murphy's use of 1,3-dimethylbutylamine arose by way of his use of a supplement called 'Dedicated Unstoppable' ('the Supplement').

16.2 In or around November 2014, shortly after joining Merthyr RFC, Mr Murphy purchased a tub of the Supplement.

16.3 Before purchasing the Supplement, Mr Murphy visited the Supplement manufacturer's website on which the Supplement was advertised for sale. The website stated that the Supplement was "banned ingredient free".

16.4 Mr Murphy reviewed the listed ingredients of the Supplement on the website. This review led Mr Murphy to conclude that the Supplement did not contain any Prohibited Substances.

16.5 Mr Murphy then used an internet search engine and searched the terms "Dedicated Unstoppable banned" and "Dedicated Unstoppable contaminated". Neither of these searches produced any results that gave Mr Murphy cause for concern in relation to his use of the Supplement.

16.6 Mr Murphy started to take the Supplement, openly, once a week before a game.

16.7 Mr Murphy declared 'Dedicated' on his Doping Control Form when he was tested on 7 March 2015.

16.8 The Supplement contains 1,3-dimethylbutylamine and was the source of the Mr Murphy's Adverse Analytical Finding.

Analysis of Fault

17. UKAD has considered whether Mr Murphy acted intentionally, whether Mr Murphy acted with No Significant Fault or Negligence, and the potential applicability of ADR Article 10.5.1(b).

Intent

18. Because this matter concerns a Specified Substance, UKAD has the burden of proving to the comfortable satisfaction of a hearing panel that Mr Murphy acted intentionally, that is, that he intended to cheat (either by design or omission). There are two 'components' to ADR Article 10.2.3, which require Mr Murphy to have either:

- a) engaged in conduct which he knew constituted an Anti-Doping Rule Violation or
- b) known that there was a significant risk that the conduct might constitute or result in an Anti-Doping Rule Violation and manifestly disregarded that risk

19. UKAD does not assert that Mr Murphy engaged in conduct which he knew constituted an Anti-Doping Rule Violation. For this to be established UKAD would need evidence that showed that Mr Murphy used the Supplement to cheat, because he knew that it contained a Prohibited Substance. For the reasons detailed in this decision, UKAD does not believe that Mr Murphy knew that the Supplement contained a Prohibited Substance. He did not use the Supplement to cheat.

20. Similarly, UKAD does not assert that Mr Murphy knew that there was a significant risk that his conduct might constitute or result in an Anti-Doping Rule Violation but manifestly disregarded that risk. The conduct is the use of the Supplement. Mr Murphy was aware there were risks associated with using supplements, and so took some steps to reassure himself that the use of the Supplement was 'safe'. Those steps were inadequate. But there is no evidence that he was reckless to the point to which he could be described as having manifestly disregarded the risk.

21. UKAD does not assert therefore that Mr Murphy acted intentionally. The applicable sanction is as provided in ADR Article 10.2.2, being a period of Ineligibility of two years.

No Significant Fault or Negligence

22. For the reasons explained below in relation to the Supplement being a 'Contaminated Product', UKAD has had regard to whether or not Mr Murphy acted with No Significant Fault or Negligence as regards his use of the Supplement. UKAD has not considered the applicability of the 'No Fault' provisions in the ADR: Mr Murphy has not sought to argue that he was at No Fault, and, had he done so, UKAD's position would have been that the use of a supplement and a claim of No Fault are mutually exclusive.

23. As regards Fault, UKAD has identified the following matters as being relevant:

23.1 Mr Murphy was inexperienced as far as anti-doping matters are concerned (he was just over 19 years old when he was tested). The test conducted on 7 March 2015 was his first anti-doping test. He declared the use of the Supplement on his Doping Control Form.

23.2 At the time he used the Supplement, Mr Murphy had not received any formal anti-doping education concerning anti-doping or the risk of using dietary supplements. His awareness of the risks associated with dietary supplements stems from his being aware of other anti-doping matters having arisen concerning supplements.

23.3 Mr Murphy became aware of the Supplement not long after joining Merthyr. In particular he became aware that a number of his team mates were using the Supplement. Mr Murphy purchased a tub of the Supplement from one of his team mates and relied on the fact that they were using it as being evidence that it was not problematic as far as being a doping risk was concerned.

23.4 Based on the investigations that he felt were appropriate given his level of awareness of doping matters, Mr Murphy concluded that the Supplement was 'safe' to use. Neither the labelling nor the checks he performed raised any concerns for him, and the Supplement was being used openly by a number of his team mates. He did not, however, seek any express advice from any support staff at Merthyr.

23.5 Mr Murphy did not take any steps to satisfy himself as to the need for, or utility of, the Supplement. He is a fit, healthy young player and his primary reason for choosing to use the Supplement was that other members of the team were doing the same thing. He did not make any meaningful assessment of whether the perceived benefit of using the Supplement could have been achieved through alteration to his regular diet, without the need for supplementation.

24. UKAD has identified the three primary reasons why Mr Murphy committed an anti-doping rule violation after using the Supplement to be that he failed to assess the need, risk or consequences of using the Supplement. In particular:

24.1 He did not seek any advice from any qualified person as to whether or not he needed to use the Supplement, whether there was any utility to it, and generally whether the benefits that he perceived to be achievable through the use of a supplement could as readily be achieved through a balanced diet.

24.2 The checks that he undertook himself regarding the Supplement were inadequate. For example, he did not refer to the WRU's website, which advises players to use the Informed Sport service when contemplating the use of a supplement. (An Informed Sport check would have shown that the Supplement was not one that had been batch tested for the presence of Prohibited Substances).

24.3 He succumbed to peer pressure and a team 'supplement culture' in which the use of supplements was commonplace. The fact that the Supplement was (a) used by other players and (b) Merthyr was a club subject to drug testing gave him a false sense of security as regards the use of the Supplement. At no stage did he appear to consider the repercussions of such use.

25. The ADR create high standards for rugby players, albeit that these standards are not intended to create artificial expectations on the part of players or impose excessive and unrealistic obligations. The ADR provisions make it clear that 'Fault' should be assessed in a manner that is 'appropriate to a particular situation'. This means that each case is subtly different from other cases.
26. UKAD is required, when assessing Mr Murphy's degree of Fault, to give full consideration to the circumstances of the matter and determine whether they explain Mr Murphy's departure from the expected standard of behaviour, as well as considering what it considers to be the 'expected standard of behaviour'. The ADR detail a number of factors to be assessed in relation to Mr Murphy and his specific circumstances. These include:
- a) **the Athlete's or other Person's experience:** Mr Murphy is inexperienced and in particular had not received any dedicated anti-doping training. His failings were attributable to his lack of awareness which in turn stemmed from his inexperience in doping matters. He was not careless in that he failed to do something that he knew he should have done, but, rather, did what he perceived as being appropriate.
 - b) **the degree of risk that should have been perceived by the Athlete:** Mr Murphy appreciated that there was a degree of risk associated with supplement use and took a number of steps in that regard. His appreciation of the risk was affected by the fact that his team mates were also using the same supplement.
 - c) **the level of care and investigation exercised by the Athlete in relation to what should have been the perceived level of risk:** Mr Murphy took some steps to investigate the 'safety' of the Supplement, albeit that these were inadequate when compared to the standards that would be expected of a more experienced player.
27. The matters referred to above are significant in that had Mr Murphy done what he is supposed to have done in terms of properly managing the risk of using the Supplement, he may not have used the Supplement - and so in turn would not have committed an ADRV. The ADR do not, however, counsel perfection. They require Mr Murphy to live up to the standard of behaviour expected of him. He must be judged by his compliance with the rules to which he is subject and the standards to which he must adhere. In that latter regard the standards against which must be measured are not the same as those that would apply to a more experienced player well versed in anti-doping matters.
28. Mr Murphy should have researched the utility and value of supplement use and properly assessed the risk of using the Supplement. That was the 'expected standard of behaviour'. The issue is not whether he fell short of the standard (he did), but why. In this case, Mr Murphy's callowness and susceptibility to peer pressure were the root cause of his departure from the standards expected from him. Having regard to all the circumstances and after a careful consideration of the facts identified as a result of its investigation, UKAD has concluded that Mr Murphy has acted with No Significant Fault or Negligence.

Contaminated Product

29. ADR Article 10.5.1(b) makes provision for the Consequences to be applied if an ADR Article 2.1 violation results from the use of a Contaminated Product. The application of ADR Article 10.5.1(b) is conditional on the relevant Athlete being able to demonstrate that there was an absence of Significant Fault or Negligence. UKAD accepts that there was an absence of Significant Fault or Negligence.

30. The Supplement does not list 1,3-dimethylbutylamine (or a synonym of 1,3-dimethylbutylamine) as an ingredient on its label. UKAD has established that at the time of use of the Supplement by Mr Murphy, 1,3-dimethylbutylamine was not listed as an ingredient on the Supplement manufacturer's website or the Supplement supplier's website.
31. Pursuant to UKAD's investigation, Mr Murphy provided UKAD with the tub of the Supplement that he had been using, which contained some of the Supplement. UKAD commissioned an analysis of the Supplement at the Laboratory. On 23 July 2015, the Laboratory reported to UKAD the presence of 1,3-dimethylbutylamine in the Supplement.
32. The Supplement contained 1,3-dimethylbutylamine without this being disclosed on the product label. The ADR provide that the Supplement will not be regarded as being a 'Contaminated Product' if the fact that it contained 1,3-dimethylbutylamine could have identified by way of 'a reasonable internet search'. UKAD does not assert that Mr Murphy could have found out that the Supplement contained 1,3-dimethylbutylamine by carrying out 'a reasonable internet search' (indeed the only way that UKAD was able to identify that the Supplement contained 1,3-dimethylbutylamine was by way of the analysis referred to above.)
33. The Consequences to be imposed in respect of the ADRV are therefore those specified in ADR Article 10.5.1(b).

Consequences

34. ADR Article 7.7.4 provides:

7.7.4 In the event that (...)the Athlete or other Person admits the Anti-Doping Rule Violation(s) charged and accedes to the Consequences specified by UKAD (or is deemed to have done so in accordance with Article 7.7.1), neither B Sample analysis nor a hearing is required. Instead, the NADO shall promptly issue reasoned decision confirming the commission of the Anti-Doping Rule Violation(s) and the imposition of the specified Consequences, shall send notice of the decision to the Athlete or other Person and to each Interested Party, and shall publish the decision in accordance with Article 8.4.
35. UKAD has had careful regard to the reasoning and approach adopted by the NADP in the consolidated case of UKAD vs Gareth Warburton and Rhys Williams, contained in the relevant decision dated 12 January 2015. Like this case, that case involved the unwitting use of a Contaminated Product. The NADP found in that case that even in cases involving the use of contaminated supplements, a degree of Fault exists in terms of the standards that Athletes are expected to adhere to and how they comply with those standards.
36. In this case, UKAD considers that Mr Murphy was at Fault in at least two key areas: firstly, his checking of the Supplement was deficient in that he failed to seek advice from any person who would have been in a position to properly advise him as to the nature of the Supplement. Secondly, he did not take any steps to satisfy himself as to the need for, or utility of, the Supplement. He did not make any meaningful assessment of whether any need for the Supplement could have been met through alteration to his regular diet, without the need for supplementation.
37. UKAD has specified the Consequences in respect of the anti-doping rule violation committed by Mr Murphy to be a period of 6 months' Ineligibility pursuant to ADR 10.5.1(b).

38. Mr Murphy accepts the Consequences specified by UKAD. A period of Ineligibility of six months is hereby imposed and this Decision issued pursuant to ADR Article 7.7.4.

Disqualification of Results and Ineligibility

39. Mr Murphy has been subject to a Provisional Suspension since the date of the Charge. ADR Article 10.11.3 provides:
- Any period of Provisional Suspension (whether imposed or voluntarily accepted) that has been respected by the Athlete or other Person shall be credited against the total period of Ineligibility to be served. If a period of Ineligibility is served pursuant to a decision that is subsequently appealed, then the Athlete or other Person shall receive credit for such period of ineligibility served against any period of Ineligibility which may ultimately be imposed on appeal. To get credit for any period of voluntary Provisional Suspension, however, the Athlete or other Person must have given written notice at the beginning of such period to UKAD (and UKAD shall copy that notice to each Interested Party). No credit under this Article shall be given for any time period before the effective date of the Provisional Suspension.
40. Mr Murphy admitted the anti-doping rule violation promptly for the purposes of ADR Article 10.11.2. The period of Ineligibility is therefore deemed to have commenced on 7 March 2015 and will expire at midnight on 6 September 2015.
41. During the period of Ineligibility, in accordance with ADR Article 10.12.1, Mr Murphy shall not be permitted to participate in any capacity in a Competition, Event or other activity (other than authorised anti-doping education or rehabilitation programmes) organised, convened, authorised or recognised by:
- the WRU or by any body that is a member of, or affiliated to, or licensed by the WRU
 - any Signatory (as that term is defined in the ADR)
 - any club or other body that is a member of, or affiliated to, or licensed by, a Signatory or a Signatory's member organisation
 - any professional league or any international- or national-level Event organisation
 - any elite or national-level sporting activity funded by a government agency
42. Mr Murphy, the WRU, World Rugby and WADA have a right of appeal against this decision or any part of it in accordance with ADR Article 13.4.
43. The disposition of these proceedings on the terms set out above will be publicly announced via UKAD's website.

Summary

44. For the reasons given above, UKAD has issued this decision, which records that:
- Mr Murphy has committed an anti-doping rule violation pursuant to ADR Article 2.1
 - A period of Ineligibility of six (6) months is imposed pursuant to ADR Article 10.5.1(b)
 - the period of Ineligibility is deemed to have commenced from 7 March 2015 and will end at midnight on 6 September 2015
 - Mr Murphy's status during the period of Ineligibility shall be as detailed in ADR Article 10.12

Dated this 13th day of August 2015.