SPORT RESOLUTIONS (UK)

SPECIALIST INDEPENDENT DISPUTE SERVICE

SR/0000120259

NATIONAL ANTI-DOPING PANEL

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

Before

Kate Gallafent QC (Chair)

Dr Terry Crystal

Carole Billington-Wood

BETWEEN

UK ANTI-DOPING LIMITED

Applicant

-and-

LEWIS GRAHAM

Respondent

DECISION OF THE ANTI-DOPING TRIBUNAL

---

1. This is the decision of the Anti-Doping Tribunal appointed pursuant to Article 5.1 of the 2015 Rules of the National Anti-Doping Panel and Article 8.1 of the UK Anti-Doping Rules dated 1 January 2015 ("the ADR") adopted by the Rugby Football League ("the RFL") to determine a charge brought against Mr Lewis Graham on 11 March 2015.

2. Mr Graham has been charged with an Anti-Doping Rule Violation ("ADRV") in breach of Article 2.1 of the ADR as a result of the presence of a Prohibited Substance (nandrolone) in a urine sample provided by him on 17 February 2015.

3. Mr Graham does not dispute that he committed the ADRV and no issue of jurisdiction arises. However, he argues that the otherwise applicable four year period of ineligibility should be reduced on the basis that there was no intent to commit the ADRV and furthermore that there was no significant fault or negligence.

4. In accordance with directions made by the Chair of the Tribunal on 21 April 2015 UK Anti-Doping and Mr Graham have both served evidence and written representations. The hearing of the charge took place in Leeds on 19 August 2015 at which Mr Graham was cross-examined. Mr Graham was represented by Mr Philip Clemo of Counsel and UK Anti-Doping was represented by Ms Claire Parry. The Tribunal is grateful to both representatives for their assistance, and particularly to Mr Clemo who has acted *pro bono* for Mr Graham.

5. Whilst the Rules of the National Anti-Doping Panel provide that the hearing should generally take place no later than forty days after the NADP Secretariat receives the Request for Arbitration, which was on 13 April 2015, in this case fairness required that, in order to accommodate Mr Clemo's availability, first that the hearing be listed for 26 June 2015 and thereafter that it be adjourned to 19 August 2015 for the same reason. UKAD agreed both to the initial listing and the adjournment.

The Facts

6. Mr Graham is a registered professional player with the RFL and plays for Keighley Cougars Rugby League squad, which competes in the Kingstone Press League 1. He was previously at the junior academy at Warrington Wolves (until July 2010) and then from February to September 2011 at Huddersfield Giants. Following a short trial at Huddersfield in January to February 2012 Mr Graham was registered as a part time player for Keighley.

7. On 17 February 2015 UKAD conducted an Out-of-Competition squad test on the Keighley Cougars squad. Mr Graham was one of the athletes selected at random to submit to testing.

8. Mr Graham signed the Doping Control Form to certify that, amongst other things, the information set out in that form was accurate and correct. Under the section "Declaration of Medication", by which Mr Graham was asked to provide "details of any prescription/non-prescription medication or supplements taken in the last seven days, including dosage where possible", Mr Graham responded "eythromicin", which is an antibiotic.

9. Following receipt of the Notice of Charge letter of 11 March 2015, Mr Graham wrote to UKAD on 20 March 2015 stating that he "*would like to admit … the 6.2.2 charge and dispute that I have acted intentionally in the taking of this banned substance*". The reference to 6.2.2 is to the paragraph of that number in the Notice of Charge letter which set out one of his options as being to admit the charge and dispute that he acted intentionally.

10. On 23 March 2015 Mr Graham was asked to provide a full and detailed explanation for exactly how nandrolone came to be found in his urine sample, including how he would demonstrate that he had not knowingly taken the substance and acted unintentionally. He responded on 27 March 2015 stating that "*the truth of the matter is I have no idea at this moment in time how nandrolone has got into my body. All I can do is provide you with what I think could potentially have resulted in the positive test for this. After failing my drugs test I have done everything I can in terms of research to try to bring light as to how this has got into my body.*"

11. He said that after failing the drug test he had been doing research on different ingredients and products that he frequently ingested to try to find out how the nandrolone had got into his body. He then advanced three reasons:

    11.1. Contaminated supplements that he had taken along with a high quantity of coconut oil;

    11.2. The fact that he had been tested directly after High Intensity Interval Training; and

    11.3. His use of pure coconut oil on his skin, on his food and as an additive.

12. Mr Graham identified the supplements that he was taking in the last 3-4 months as being:
    12.1. Muscle King Protein Power Shake Chocolate flavour;
    12.2. Peak Body Nutrition Peak Whey;
    12.3. MyProtein BCAA'S;
    12.4. Maximuscle Size and Strength Cyclone Strawberry flavour;
    12.5. USN Creatine Anabolic Hyper-Anabolic Instant Mass Inducing Creatine System;
    12.6. Muscle King Body Fuel Carbohydrate Power;
    12.7. EAS Advance Growth Phosphagen Elite Orange flavour;
    12.8. Muscle King BCAA's pure branch chain Amino Acid Capsules;
    12.9. USN Multiplex Sport mega potency formula complete daily multi-vitamins / mineral;
    12.10. Muscle King HMB strength endurance caps;
    12.11. Kinetica Oatgain High Calorie Gainer Chocolate Caramel Nut flavour; and
    12.12. Muscle King Whey Protein Isolate.

13. In his witness statement Mr Graham stated that he started taking supplements five years ago aged 16 when he was encouraged by his strength and conditioning coach to take protein supplements. When he first started to do so he consulted the strength and conditioning coach as to which brands to take, and whilst he was at both Warrington and Huddersfield academies they had a regular supplier where they got their protein from and he was told that the products were fine to take.

14. Once he left Huddersfield he said that the interest in player welfare dropped and he was frequently told to just go and do his own research on supplements. He said that he did this for every single supplement that he bought that was not advised to him by the back room staff. He also went back to the protein supplier of Huddersfield as he had friends at the club who had been tested while taking their supplements and had no issues. The only time that he did not do his research while at Keighley was when the strength and conditioning coach had bulk bought some protein from a friend which he told him would be fine.

15. The list of supplements which Mr Graham said that he had taken recently was as follows:

    15.1. USN Creatine Anabolic;
    15.2. Muscle King Protein Power Shake;
    15.3. Muscle King Body Fuel;
    15.4. Peak Body Nutrition Peak Whey;
    15.5. Maximuscle Size and Strength Cyclone;
    15.6. Muscle King BCAA's Pure Branch Amino Acid Capsules;
    15.7. Muscle King HMB Strength and Endurance Capsules; and
    15.8. Kinetica Oat Gain.

16. Mr Graham no longer referred to taking four of the supplements listed in his letter of 27 March 2015.

17. Mr Graham expanded upon his evidence orally. He said that whilst at Huddersfield he had purchased supplements from the store "Active Sports" which was owned by the owner of Muscle King, a company manufacturing supplements which sponsored Huddersfield. That store reserved certain batches of Muscle King supplements for the Huddersfield players which had been tested in order to ensure non-contamination, which stocks were identified with a sticker to that effect. Mr Graham was permitted to buy from this stock even after he ceased to be a Huddersfield player when the owner was at the store. Mr Graham also bought supplements from other manufacturers from this shop.

18. In addition to purchasing supplements from Active Sports Mr Graham said that he purchased several other products from other sources, including over the internet.

19. He told the Tribunal that he would do as much research as possible on the internet by searching for product reviews, searching for terms such as "doping" and "contamination" and going to a website where certain brands paid to have their supplements tested and uploaded the results on the website. He said that when he went into a shop he would take a copy of the RFL anti-doping booklet with him and look through the ingredients list to see if any banned substances were in there.

20. He also took advice from Paul Royston, the Strength and Conditioning Coach at Keighley, in around Christmas 2014 when he was running out of the protein that he had purchased from Active Sports. Mr Royston told Mr Graham to leave it with him and brought some protein down to training the following week (Peak Body Condition Peak Whey) for which Mr Graham paid him. Mr Graham said that there was nothing unusual about the tub and he had a quick look through the ingredients list to see if anything stood out but nothing did. He said that he believed that he went onto the website to see if the supplement had been batch tested but that it was not there.

21. So far as the RFL anti-doping awareness booklet was concerned, Mr Graham said that he received it at an anti-doping talk delivered by the RFL and that he had stuck to it. He initially told the Tribunal that he had compared the list of drugs that shouldn't be taken with the ingredients in his various supplements. After a copy of the booklet was provided by the RFL, which showed that the booklet did not contain a list of prohibited drugs, Mr Graham said that he must have looked at a list given to him by his previous club, rather than the RFL.

22. Mr Graham did not produce a copy of this list or any other evidence, other than his own written and oral testimony, in relation to the circumstances in which he obtained the supplements used by him or his attempts to check that they did not contain Prohibited Substances. He said that it did not cross his mind to have asked Mr Royston or the owner of Muscle King for a witness statement explaining their role and interactions with him.

23. When asked why he had not declared on the Doping Control Form any of the twelve supplements that he subsequently stated that he had been taking in the period running up to the testing date Mr Graham said that he had not read the question in the box as fully as he might have done and that he was not aware that he had to provide information in relation to supplements as opposed to prescription or non-prescription medication.

The proper approach to sanction under the ADR

24. Nandrolone is classified as a Exogenous Anabolic Steroid under s.1.1(a) of the WADA 2015 Prohibited List. It is not a Specified Substance. Accordingly, the relevant starting point in terms of sanction for the ADRV is Article 10.2 ADR which provides that the period of Ineligibility for an Anti-Doping Rule Violation under Article 2.1 that is the Athlete's first anti-doping offence shall be, subject to potential reduction or suspension pursuant to Article 10.4, 10.5 or 10.6, four years where the ADRV does not involve a Specified Substance *"unless the Athlete … can establish that the Anti-Doping Rule Violation was not intentional"*.

25. Guidance on the meaning of the word *"intentional"* in this context is provided at Article 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 the conduct which he or she knew constituted an ADRV or knew that there was a significant risk that the conduct might constitute or result in an ADRV and manifestly disregarded that risk. An ADRV 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 ADRV resulting from an AAF 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 established that the Prohibited Substance was Used Out-of-Competition in a context unrelated to sport performance."*

26. In its written submissions UKAD initially suggested that under the ADR, where there is an AAF, there is a presumption that an ADRV took place with the knowledge and intent of the relevant athlete. This suggestion was based on the fact that ADR Article 2.1 specifies that *"it is not necessary that intent, Fault, negligence or knowing use on the Athlete's part be demonstrated to establish an Anti-Doping Rule Violation under Article 2.1"*.

27. In our view Article 2.1 does no more than make it clear that it is not necessary for a prosecuting authority to demonstrate that there was knowledge or intent (or fault or negligence) on the part of the athlete in order for an ADRV to be established. In other words, an Adverse Analytical Finding is sufficient without more.

28. UKAD then suggested that Article 10.2.1 creates a presumption that (a) where the ADRV does not involve a Specified Substance, the ADRV was intentional and (b) where the ADRV involves a Specified Substance, the ADRV was not intentional. We do not consider that it is necessary or helpful to characterise Article 10.2.1 as creating any such "presumptions". Rather, in our view Article 10.2.1 simply identifies two circumstances in which the period of Ineligibility will be four years unless the specified party establishes the requisite intent or lack of it. We are reinforced in this view by Article 10.2.3 which expressly provides for a rebuttable presumption that conduct is not intentional in certain circumstances involving Specified Substances which are only prohibited In-Competition, which militates against the implication of any other presumptions.

29. Article 10.2.1 ADR places the burden of proof upon the Athlete to establish that an ADRV was not intentional, the applicable standard of proof for which is by a balance of probability (see Article 8.3.2).

30. UKAD submitted that in order to demonstrate that the ADRV was not intentional an Athlete must first establish, on a balance of probabilities, how nandrolone entered his system. The reason for this was said to be that Article 2.1 presumes that an Athlete acted intentionally. For the reasons set out above, we do not agree that this is a proper construction of Article 2.1.

31. However, UKAD also argued that it was necessary for an Athlete to establish how the Prohibited Substance entered his system in order to establish that the ADRV was not intentional under Article 10.2.1(a) as a matter of principle, and consistently with previous decisions under the 2009 WADA Code. In response Mr Clemo submitted that there was a striking absence of an explicit and plain threshold requirement relating to proof of how the substance entered the Athlete's body by

comparison with Articles 10.4 and 10.5 of the 2009 WADA Code and in the absence of such a requirement being clearly stated it would be wholly wrong to insert such a provision by interpretation.

32. So far as Article 10.5 in the 2009 WADA Code is concerned, the Article provided that in order to establish that an Athlete bore no significant fault or negligence he must also establish how the Prohibited Substance entered his system in order to have the period of Ineligibility reduced. Although Article 10.5 of the 2015 WADA Code (on which Article 10.5 ADR is based) does not itself provide that the Athlete must establish how the Prohibited Substance entered his system in order to establish no significant fault or negligence, the definition of no significant fault or negligence in the Appendix to the 2015 WADA Code expressly provides that "*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*". Accordingly, subject to the exception for Minors, the position is the same under the 2009 and 2015 WADA Codes and thus the ADR.

33. It follows that the effect of Mr Clemo's submissions is that an athlete would not have to establish how the Prohibited Substance entered his system in order to establish that the ADRV was not intentional, but he nevertheless would have to do so in order to establish that he bore no significant fault or negligence. Mr Clemo suggested that this difference could be justified because of the increase in the starting point of the period of Ineligibility from two to four years from the 2009 to 2015 WADA Code. However, we consider it very unlikely that WADA intended that, as a result of increasing the starting point of the period of Ineligibility it should in fact become easier than under other previous provisions for Athletes to achieve a reduction of that period.

34. As for Article 10.4 in the 2009 WADA Code, this previously provided for the potential elimination or reduction in the period of Ineligibility for Specified Substances where an Athlete could establish (a) how a Specified Substance entered his body and (b) that such Specified Substance was not intended to enhance the Athlete's sport performance or mask the use of a performance-enhancing substance. That provision has now effectively been subsumed into Article 10.2 by

virtue of Article 10.2.3 which provides, amongst other matters, that "*an ADRV resulting from an AAF 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*." Whilst this provision does not expressly provide that the Athlete must establish how the Specified Substance entered his body it seems to us quite clear that he must do so in order to establish that the Prohibited Substance was Used out of Competition. Accordingly, we do not consider that there has been any substantive change from Article 10.4 in this respect (although, of course, the vexed question of what was meant by "intent to enhance sport performance" no longer arises) despite the absence of similar express wording.

35. Accordingly, we do not consider that the difference in wording between the 2009 and 2015 WADA Codes is quite as marked or significant as Mr Clemo suggested.

36. As for the wording of Article 10.2 itself, as set out above, Article 10.2.3 ADR provides that the term "intentional" requires that either (i) the Athlete engaged in conduct which he knew constituted an ADRV or (ii) he knew that there was a significant risk that the conduct might constitute an ADRV and manifestly disregarded that risk. Mr Clemo emphasises the word "conduct" and submits that it is not necessary for an Athlete to identify a particular act which lead to the ADRV (and he points out that an ADRV under Article 2.1 arises because of the presence of a Prohibited Substance or its metabolites or Markers in an Athlete's sample, rather than because of any act by the Athlete), but instead the Athlete may establish that the ADRV was not intentional having regard to his general conduct.

37. Before addressing that submission we would note that the word "conduct" rather than, for example, the word "use" which is used in Article 10.2.3 in relation to ADRVs arising from an AAF, is clearly because Article 10.2.1 applies to ADRVs under not only Article 2.1 (presence of a Prohibited Substance), but Article 2.2 (Use or Attempted Use of a Prohibited Substance or Method) and Article 2.6 (Possession of a Prohibited Substance or Method). Thus, we do not consider that of itself that term connotes some broader approach to the issue.

38. In any event, the fundamental difficulty with this submission is that where the ADRV arises under Article 2.1 without establishing the likely method of ingestion of the Prohibited Substance it is difficult to see how this Tribunal could properly and fairly consider the question of intent in relation to the conduct which led to that ingestion.

39. To take a hypothetical example, an Athlete might assert that the ADRV was not intentional because his drink was spiked in a nightclub despite him taking all proportionate measures to avoid such an incident. In order to advance that positive case he might choose not to reveal to UKAD or the Tribunal that in fact he was a regular user of supplements, and took little or no care over how he purchased and consumed them. On Mr Clemo's approach it would nevertheless be enough for the Athlete to succeed in establishing that he was suitably careful over his conduct whilst in public places where spiking might occur for him to establish a lack of intentionality under Article 10.2.1(a).

40. In reality Mr Clemo's suggested approach would give rise to exactly the sort of conjectural arguments consistently deprecated by the Court of Arbitration for Sport and other Anti-Doping Tribunals, a list of which decisions were helpfully set out by Michael Beloff QC sitting as a sole arbitrator in *International Wheelchair Federation v UKAD and Gibbs* (CAS 2010/A/2230, 22 February 2011) at paragraph 11.34 of that decision. The approach of these Tribunals emphasise that the rationale for requiring an Athlete to establish the method of ingestion in order to obtain a reduction in the period of Ineligibility otherwise applicable is both logical and principled having regard to the fundamental tenets of the WADA Code. See in particular,

40.1. "*if the manner in which a substance entered an athlete's system is unknown or unclear it is logically difficult to determine whether the athlete has taken precautions in attempting to prevent any such occurrence" (Karantantcheva v ITF* Case 2006/A/1032, 3 July 2005 para 17);

40.2. "[the provision that the Athlete must establish how the Prohibited Substance entered his body] *is necessary to ensure that the fundamental principle that the player is responsible for ensuring that no prohibited substance enters his*

body is not undermined by an application of the mitigating provisions in the normal run of events" (ITF v Beck, Anti-Doping Tribunal Decision 13 February 2006); and

40.3. "*Obviously this pre-condition is important and necessary otherwise an athlete's degree of diligence or absence of fault would be examined in relation to circumstances that are speculative and that could be partly or entirely made up*" (*WADA v Stanic and Swiss Olympic Association,* CAS 2006/A/1130, 4 January 2007 para 39).

41. These decisions also emphasise, as did UKAD, the need for there to be some evidential basis for the Athlete's assertions, both in relation to the source of the ingestion and the steps taken to mitigate the risk of an ADRV.

42. We consider that our conclusion in this respect is also consistent with that adopted by the Tribunal in *UKAD v Songhurst* (8 July 2015, SR/0000120248). In that case the athlete's case was that he simply did not know what had given rise to the positive finding and he was unable to point to any likely cause (§26). It was submitted on his behalf that the Tribunal were entitled to assess his credibility in the round, and in the light of the oral evidence, and decide whether they believed his firm denial that he had taken the prohibited substance deliberately and, if they did, hold that he had satisfied the burden of proof. The Tribunal noted:

> "*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 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.*" (§29)

43. The Tribunal concluded that Mr Songhurst had *"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."* (§31)

44. Mr Clemo sought to distinguish the decision in *Songhurst* on the basis that in that case the Prohibited Substance (Drostanolone) only appeared in the body if administrated by intramuscular injection, and therefore the athlete's suggestion that its presence might have been as a result of a contaminated supplement was unsustainable. However, we do not regard the Tribunal's reasoning as being limited to the facts of that case. On the contrary, paragraph 29 of the Decision makes it clear that it is the rationale for the rule itself that requires the athlete to explain how the prohibited substance came to be found in his body, rather than the facts of the particular case. Moreover, it is quite clear from paragraph 31 that the Tribunal considered that in principle Article 10.2 required an explanation as to how the prohibited substance came to be found in the athlete's body, which on the facts of the case the athlete had been unable to provide.

45. Finally, we note that were Mr Clemo's approach to be adopted by this Tribunal then our decision would effectively be an invitation to unscrupulous athletes in the future simply to deny all knowledge of the source of a prohibited substance with the aim of reducing what would otherwise be a four year ban to two years. In the majority of cases, particularly where ingestion could have resulted from a number of different methods, it would be difficult if not impossible for UKAD to go behind such protestations of innocence. In short, the new scheme established by the 2015 WADA Code and adopted in the ADR would be fundamentally undermined at the outset.

Intentional Use

46. For the reasons set out above, we consider that it is incumbent upon an Athlete who wishes to establish that the ADRV was not intentional to satisfy the Tribunal on a balance of probabilities as to (a) the nature of the conduct which led to the ADRV, which in the case of an AAF will be how the Prohibited Substance came to be found

in his body and (b) he did not know that such conduct constituted an ADRV or knowing that there was a significant risk that such conduct might constitute or result in an ADRV, he did not manifestly disregard that risk.

47. At the outset of the hearing Mr Clemo confirmed that he did not seek to rely upon either high intensity training or Mr Graham's use of coconut oil as being potential sources of the presence of nandrolone in his sample. He was clearly right to do so in the light of the witness statements of Mr Wojek, Head of Science and Medicine for UKAD, in which he explained that neither of these matters could have resulted in the presence of nandrolone (as opposed to nandrolone metabolites) in Mr Graham's sample.

48. That leaves the issue of contaminated supplements.

49. On the facts of this case we cannot be satisfied on a balance of probabilities that the presence of nandrolone in Mr Graham's sample was the result of the ingestion by him of contaminated supplements. The only evidence to that effect was Mr Graham's assertion that one or more of the twelve supplements that he had been taking on a regular basis prior to the test on 17 February 2015 may have been contaminated because he could not otherwise explain how the Prohibited Substances came to be in his body.

50. However, in the absence of analytical evidence of any of the supplements, or even reports of the same supplements or supplements from the same manufacturers having been found to be contaminated in other cases, we cannot accept that Mr Graham has explained how the nandrolone came to be in his body, or, to put it in the terms of Article 10.2, what was the conduct that led to the ADRV. Rather, he has speculated as to what it might be. For the reasons set out above, that cannot be sufficient to discharge the burden of proof on him.

51. We note Mr Clemo's concerns that a non-professional Athlete of limited means might find it more difficult to establish the conduct that led to an ADRV than a professional Athlete. Although we have some sympathy with this submission we do not consider that it alters either the proper approach to the test under Article 10.2

or our decision on the facts of this case. The ADR apply to all Athletes within the jurisdiction of an NGB which has adopted them. Its application cannot depend upon the individual financial resources of a particular Athlete. We also note that it did not appear that Mr Graham had in fact sought to ascertain what the cost of any analysis might actually be.

No Significant Fault or Negligence

52. Mr Clemo very fairly accepted on behalf of Mr Graham that he faced considerable difficulties in establishing that Mr Graham bore no significant fault or negligence given the definition of that term in the ADR, but nevertheless submitted that it was open to us to find that he bore no significant fault or negligence having regard to the checks that he did make in relation to the supplements that he took.

53. In the light of our conclusion that Mr Graham has failed to establish how the nandrolone entered his system we cannot accept that it is open to us to find that he bore no significant fault or negligence. In any event, even if we had in principle been able to do so, on the facts of this case we would not have concluded that he did so.

54. It was clear from Mr Graham's evidence that he had received some anti-doping education and he was familiar with the RFL anti-doping booklet (which aims to support Players and their support personnel in finding relevant and up to date information relating to anti-doping, and in our view is an excellent example of anti-doping literature produced by a National Governing Body). However, we do not consider that the steps that he actually took met the necessarily high standard required to establish no significant fault or negligence. Although Mr Graham said that he had conducted internet searches for terms such as "doping" and "contamination", he did not suggest that he had searched for the particular ingredients in any of the large number of supplements that he was taking. We also note that unlike many athletes in a similar position he did not provide copies of his internet search history in order to substantiate his evidence in this respect.

55. His initial evidence that he had compared the ingredient list to a list of Prohibited Substances in the RFL booklet was shown to be incorrect when the booklet was produced and, in the absence of a copy of the list which he suggested that he had been given by a previous club, we find it difficult to accept that he undertook any such specific checks.

56. That conduct must be viewed against the advice in the RFL booklet itself in relation to supplements, which is very clear:

> *"Some Players take supplements in the belief that it will help maintain their health and improve their performance. However, it is now generally accepted that any Player who is liable to be tested in or out of competition, may be at risk of a positive drug test from the use of supplements that are contaminated.*
>
> *Studies of supplements have shown that up to 25% of dietary supplements on sale to Players may contain small amounts of prohibited substances, commonly including anabolic androgenic steroids and stimulants. These quantities would cause, and have been found to cause, positive drug tests which have led to players and athletes being banned from sport."*

57. Mr Graham also stated that he had checked some but not all of his supplements against a website on which manufacturers paid to get their supplements tested and the results uploaded. This would appear to be the website www.informed-sport.com which is referred to in the RFL booklet, but, as that booklet makes clear, *"sites of this nature do not give any guarantees regarding the status of a particular supplement and players are responsible for any supplements they decide to use."*

58. We also note that Mr Graham had failed to disclose any of the supplements that he was taking on the Doping Control Form. This is potentially relevant as the comment to Article 10.5.1.2 of the 2015 WADA Code notes that in assessing the Athlete's degree of Fault it would, for example, be favourable if the Athlete had declared the

product which was subsequently determined to be contaminated on his or her Doping Control form.

59. Mr Graham told the Tribunal that he had not read the box as fully as he might have done. However, we note that the RFL booklet helpfully emphasises the importance of keeping records of the medication or substances that an athlete has taken and the dates on which they took them in order to ensure that they record them accurately on the Sample Collection Form at the time of testing.

60. In all the circumstances we would not have been satisfied that Mr Graham satisfied the high hurdle of establishing that he bore no significant fault or negligence.

Conclusion

61. For the reasons set out above, the tribunal unanimously makes the following decision:

61.1. The Anti-Doping Rule Violation under Article 2.1 of the ADR has been established;

61.2. Mr Graham not having established that the Anti-Doping Rule Violation was not intentional, the period of Ineligibility is four years;

61.3. Pursuant to ADR Article 10.11.3 credit must be given against the total period of Ineligibility for Mr Graham's Provisional Suspension which commenced on 11 March 2015. Accordingly, the period of Ineligibility will run until 10 March 2019.

Right of Appeal

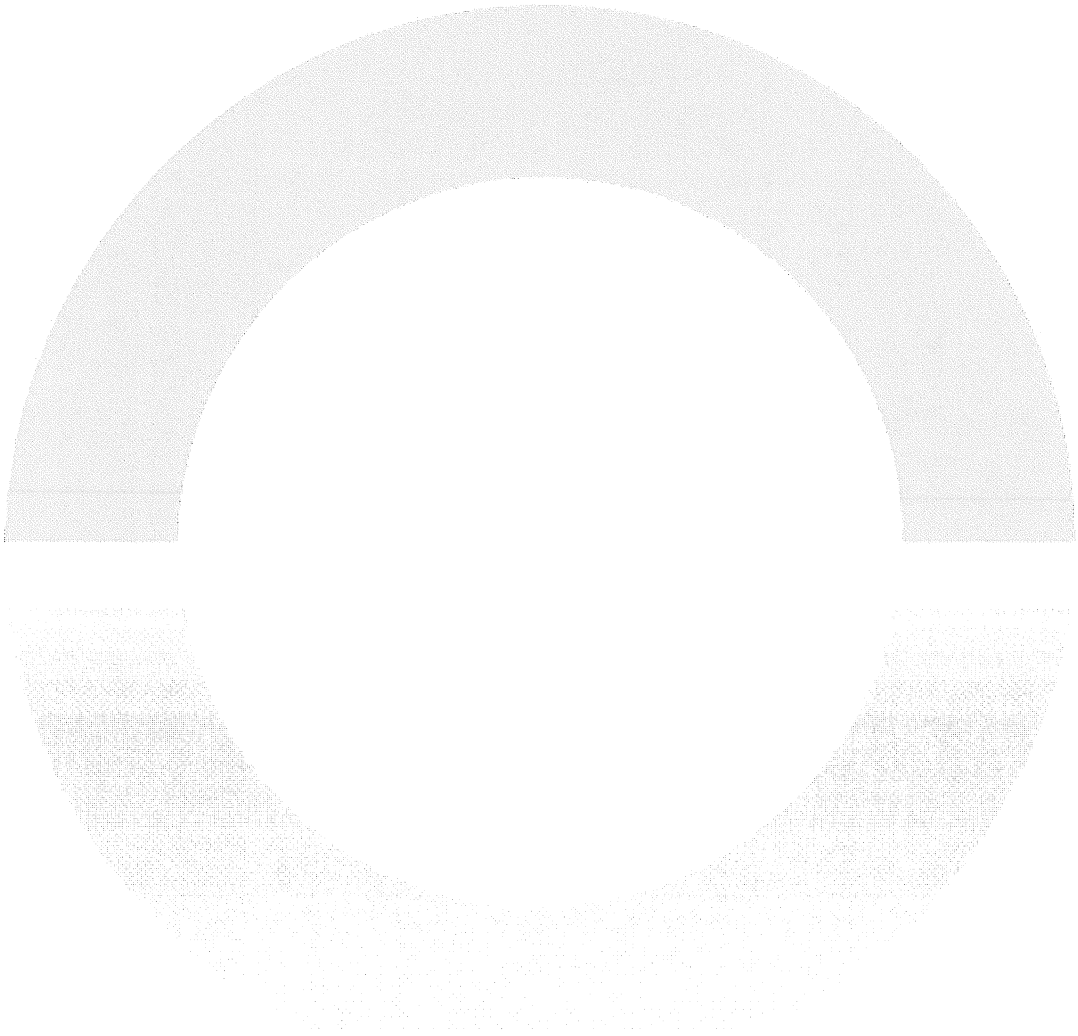
62. In accordance with Article 13.4 of the ADR and Article 13 of the Procedural Rules, Mr Graham and the other parties named in Article 13.4 of the ADR have a right of appeal to an Appeal Tribunal of the National Anti-Doping Panel. In accordance with Article 13.7 of the ADR and Article 13.5 of the Procedural 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.

Kate Gallafent QC
Dr Terry Crystal
Carole Billington-Wood

Signed on behalf of the Tribunal

Dated 27 August 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