

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

Before:

David Casement QC (Chairman)

Professor Peter Sever

Professor Dorian Haskard

Between:

UK ANTI-DOPING LIMITED

-and-

DALEY WILLIAMS

FINAL DECISION OF THE NATIONAL ANTI-DOPING PANEL

Introduction

1. Daley Williams ('Mr Williams') is a rugby league player registered with Keighley Cougars. Mr Williams was at all times subject to the The Rugby Football League Anti-Doping Rules ("ADR") by virtue of his registration as a player with Keighley Cougars. He provided a urine sample on 5 March 2015 which tested positive for drostanolone, a metabolite of drostanolone and a metabolite of stanozolol. Each of these substances is a Prohibited Substance, and classified as a Non-Specified Substance in the WADA Prohibited List 2015.

NATIONAL ANTI-DOPING PANEL

2. The Presence of these Prohibited Substances in Mr Williams' sample constitutes an Anti-Doping Rule Violation as provided for in the ADR. Mr Williams accepts that he has committed an Anti-Doping Rule Violation.
3. The mandatory sanction to be applied in respect of the Anti-Doping Rule Violation is a period of ineligibility of four years. This sanction is applied automatically in Presence cases involving Non-Specified Substances, unless the person charged with the Anti-Doping Rule Violation can show that he did not act 'intentionally'. Mr Williams has asserted that he did not act intentionally, and so a reduced period of Ineligibility should be imposed. The position of UKAD in these proceedings is that it does not agree. UKAD asserts that Mr Williams is unable to demonstrate that he did not act intentionally, and so the mandatory sanction must be imposed.

Jurisdiction

4. The Rugby Football League ('the RFL') is the National Governing Body for the sport of rugby league in the United Kingdom. It administers the England national rugby league team, the Challenge Cup, and the professional and semi-professional leagues which form the structure of the game in the United Kingdom. These leagues include the Super League and Championship divisions. Keighley Cougars, the team Mr Williams plays for, is a rugby league team that competed in the Kingstone Press League One in 2015, finishing second. The Kingstone Press League One is a league operating under the jurisdiction of the RFL. The RFL has adopted the UK Anti-Doping Rules (with a supplemental provision) which are constituted as the ADR.
5. The ADR are contained in Section D3 of the RFL Operational Rules. Article 1.2.1 states:
 - 1.2.1 These Rules shall apply to:
 - (a) all Athletes and Athlete Support Personnel who are members of the NGB and/or of member or affiliate organisations and licensees of the NGB (including any clubs, teams, associations or leagues);

(b) all Athletes and Athlete Support Personnel participating in such capacity in Events, Competitions and other activities organised, convened, authorised, or recognised by the NGB or any of its member or affiliate organisations or licensees (including any clubs, teams association or leagues), wherever held;

(c) any Athlete or Athlete Support Person who, by virtue of a contractual arrangement or otherwise, is subject to the jurisdiction of the NGB for purposes of anti-doping; and

(d) any other Person who is subject to the authority of the NGB;

whether or not such person is a citizen of or resident in the United Kingdom

6. On 6 November 2012, Mr Williams signed an RFL Professional Registration Form. This was also signed by a representative of Keighley Cougars on 8 November 2012. In signing the form, Mr Williams 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.

7. On 13 October 2014, Mr Williams signed a Rugby League Part Time Player's Contract of Employment, which was also signed and dated by a representative of Keighley Cougars on the same day. In signing the Registration Form, Mr Williams expressly agreed to the following:

SECTION SEVEN – GENERAL

26 Regulations relating to Registration with the Rugby Football League

26.1 When the Agreement has been signed the Club will seek to register you as a player or to register this Agreement with the League in accordance with the

Regulations, prescribed timeframes and you undertake to sign any documents required to facilitate this registration. The League may refuse or deregister any player in accordance with the Regulations.

Definitions

'Regulations' shall mean the Constitution and Operational Rules, the Laws of the Game of Rugby League and the Anti-Doping Regulations of the League, in each case in force for the time being.

8. The RFL has confirmed that Mr Williams was duly registered as a player by Keighley Cougars.
9. Pursuant to Article 1.2.1(a), Article 1.2.1(b) and Article 1.2(c) above Mr Williams was subject to and bound to comply with the ADR at all material times.

Background Facts

10. 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. On 5 March 2015, a Doping Control Officer ('DCO') collected a urine sample from Mr Williams Out-of-Competition. Assisted by the DCO, he split the sample into two separate bottles which were given reference numbers A1115720 (the 'A Sample') and B1115720 ('the B Sample'). Both samples were transported to the Drug Control Centre, Kings College London (the 'Laboratory'), which is a World Anti-Doping Agency ('WADA') accredited laboratory in London. The Laboratory analysed the A Sample in accordance with the procedures set out in WADA's International Standard for Laboratories.
11. Analysis of the A Sample returned an Adverse Analytical Finding ('AAF') for drostanolone, its metabolite 2 α -methyl-5 α -androstan-3 α -ol-17-one and 16 β -hydroxystanozolol, a metabolite of stanozolol ('the Prohibited Substances'). Both drostanolone and stanozolol and their metabolites are classified as Exogenous Anabolic Androgenic Steroids under S1.1 (a) of the WADA 2015 Prohibited List.

12. UKAD reviewed the materials to confirm that there had been no departure from the applicable Code International Standards that could reasonably have caused the Adverse Analytical Finding. Mr Williams did not have a Therapeutic Use Exemption in place to justify the presence of the Prohibited Substances.
13. UKAD charged Mr Williams with a violation of Article 2.1 (Presence of a Prohibited Substance) by way of a letter dated 8 April 2015. Mr Williams responded to the charge by way of e-mail dated 19 June 2015, stating that he accepted the findings from his A Sample, but that he was not aware how the Prohibited Substances had entered his system. He requested that the matter be dealt with at a hearing. He did not ask for his B Sample to be analysed.
14. The charge was referred to the National Anti-Doping Panel ('the NADP') for resolution and a telephone directions hearing took place on 23 July 2015 but Mr Williams did not attend despite having been given ample notice. The matter was listed for a hearing before the Panel on 25 September 2015. In the event Mr Williams did not comply with any of the directions and did not make further contact with UKAD or the NADP Secretariat. On 15 September 2015 the Chairman of the Panel gave a direction that the matter would be determined on the papers unless Mr Williams expressly requested that a hearing take place. There was no response from Mr Williams.

The Charge

15. Mr Williams has been charged with a violation of Article 2.1. Whilst in disciplinary matters it is ordinarily for the body enforcing the relevant rules to prove that a breach of those rules has occurred, in Article 2.1 cases the presence itself of a Prohibited Substance in a sample is taken as being proof that the violation occurred, as per Article 2.1.3.
16. Given that the applicable International Standards have been complied with and Mr Williams does not dispute the AAF the only issue before the Panel is the sanction that should be imposed.

Mr Williams' Response to Charge

17. Mr Williams provided an explanation for the AAF during a telephone call on 27 May 2015 between himself and Mr Tony Jackson, Legal Officer at UKAD. In this account Mr Williams explained that after breaking his jaw in November 2014 he was concerned about losing weight because he had been advised not to undertake any exercise for eight weeks. After approximately three weeks he went to the Body Station gym in Halifax. Whilst at the gym an unnamed third party offered him a supplement to reduce his weight loss. The supplement was in tablet form in a blank packet. Mr Williams said that he did not know what it was, but claimed to have bought the supplement together with a protein product. He used the supplement as and when he went to the gym. It appears Mr Williams is attributing the AAF to this supplement, but claims that he did not know that it might have contained the Prohibited Substances.

18. Mr Williams has failed to serve any evidence in support of his case. He was directed to file a witness statement and any other evidence he wished to rely upon. In particular, he has not provided any evidence as to: –

- a. the supplement (or supplements) he was using;
- b. the ingredients of these supplements; or
- c. the inclusion of the Prohibited Substances in the supplements.

UKAD's Evidence

19. Mr Nick Wojek, Head of Science and Medicine at UKAD has provided a Witness Statement. Mr Wojek confirms that the human body does not produce either drostanolone or stanozolol. The only explanation for the presence of either in a urine sample is that they have been introduced by injection or consumption.

20. Mr Wojek explains the properties of both drostanolone and stanozolol and in particular that both would be of use to a rugby league player looking to improve power and strength.

Sanction

21. The only issue for the Panel to consider is the applicable sanction. The sanction to be applied in respect of an Article 2.1 Anti-Doping Rule Violation is set out in Article 10.2. This states:

10.2 The period of Ineligibility for an Anti-Doping Rule Violation under Article 2.1, or , 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.

22. The Anti-Doping Rule Violation committed by Mr Williams involves two Non-Specified Substances. Pursuant to Article 10.2.1(a), the mandatory sanction is a period of Ineligibility of four years, unless Mr Williams established that he did not act intentionally in committing the ADRV.

23. The meaning of intentional is set out in 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.

24. In order for Mr Williams to seek to reduce the mandatory sanction of four years to two years he must establish that he did not act intentionally. He must establish this on the balance of probabilities, as per Article 8.3.2.
25. Mr Williams must establish how the Prohibited Substances came to be present in his system. Although there is no explicit requirement in the wording of Article 10.2.3 in this regard, the Panel agrees with UKAD's submission that without being satisfied as to the method of ingestion, the Panel is not able to make a proper assessment of intention.
26. This is because Mr Williams must satisfy the Panel that he did not either:
 - 26.1. engage in conduct which he knew constituted an Anti-Doping Rule Violation; or
 - 26.2. 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
27. UKAD has submitted that the words 'the conduct' must mean the facts, matters and circumstances that led to the Anti-Doping Rule Violation arising. An Athlete who wants to show that he did not commit an Article 2.1 Anti-Doping Rule Violation intentionally has to explain how it happened – this is 'the conduct'. On the basis of that explanation, the Athlete then has to satisfy a hearing panel that he or she did not know that 'the conduct' would result in an Anti-Doping Rule Violation. Alternatively, he or she has to satisfy a panel that he or she did not think that there was a significant risk that 'the conduct' might end up causing or being an Anti-Doping Rule

Violation, or if he or she did think that might be the case, that he or she did not manifestly disregard that risk.

28. The burden is on the Athlete to explain what 'the conduct' was that led to the positive test and show that it falls outside the definition of 'intentional' in Article 10.2.3. This means, at a minimum, that an Athlete has to show how the relevant Non-Specified Substance got into his or her system, because that is (or is a crucial part of) 'the conduct'. If an Athlete cannot explain what 'the conduct' was that led to the positive test then he or she cannot show that the violation was not intentional.
29. There is little to assist the Panel in the way of decided cases or CAS decisions on this point, although UKAD submits that the remarks made by the Sole Arbitrator in *International Wheelchair Basketball Federation v UKAD and Gibbs (CAS 2010/A/2230, 22 February 2011)* are of some assistance. That case concerned Article 10.4 of the 2009 Code, which provided that an Athlete who tested positive for a Specified Substance could avoid a two year ban if he or she could show (a) how the substance entered his or her system and (b) that he or she did not intend to enhance her performance.
30. At paragraph 11.5 of his decision, the Sole Arbitrator noted that in an Article 10.4 case, an Athlete who could show how a substance got into his or her system could by doing so show that he or she did not intend to enhance performance. But the Sole Arbitrator also noted that 'the reverse, however, is not the case'. Under Article 10.4 an Athlete could not assert an absence of intent to enhance performance and have that assertion stand as evidence of means of entry. Article 10.4 was different to Article 10.2.3 in that it required an Athlete to show how a substance got into his or her system: but the logic of the *Gibbs* decision follows even if that had not been the case. An assertion of absence of intent cannot be enough to prove absence of intent because there is no proof as to what actually happened – that is, how the substance got into an Athlete's system.
31. UKAD submits that the explanation put forward by Mr Williams is not sufficient for him to demonstrate, on the balance of probabilities, how the Prohibited Substances came to be present in his system. He has failed to provide basic details about the nature of the supplement, details about who he obtained the tablets from, or any

details about the conversation that took place surrounding the tablets and what he actually thought these tablets were. Fundamentally Mr Williams has failed to provide a witness statement setting out his evidence and to submit himself to cross-examination as to the veracity of his factual account.

32. In any event, even if these tablets were responsible for the AAF, then it is submitted that Mr Williams has failed to establish that he did not know there was a significant risk that taking those supplements would result in an Anti-Doping Rule Violation and that he did not manifestly disregard that risk.

33. In the judgment of the Panel Mr Williams is not able to establish that he did not act intentionally, and the mandatory period of ineligibility of four years under Article 10.2.1(a) therefore applies.

Articles 10.4 and 10.5

34. The Panel has considered Articles 10.4 (No Fault or Negligence) or Article 10.5.2 (No Significant Fault or Negligence). For either to be engaged the Panel would have had to have accepted that Mr Williams did not act intentionally. The Panel has not accepted that and therefore Articles 10.4 and 10.5.2 do not apply.

35. In any event there is an express requirement in the ADR that for Articles 10.4 and Article 10.5.2 to apply an Athlete must establish how a Prohibited Substance entered his system (save if the Athlete is a Minor). This is provided in the Definitions of No Fault or Negligence and No Significant Fault or Negligence. Mr Williams has not established how the Prohibited Substances entered his system. Neither Article 10.4 nor 10.5.2 can therefore be applied in this case.

36. Even if the threshold requirement had been established by Mr Williams, given the absence of evidence from him he would have failed to discharge his burden of proof to establish No Fault or Negligence and No Significant Fault or Negligence.

Conclusion

37. The Panel concludes that:

37.1. Mr Williams has committed an Anti-Doping Rule Violation contrary to Article 2.1;

37.2. Pursuant to Article 10.2, a period of Ineligibility of four years should be imposed; and

37.3. Pursuant to Article 10.11.3 (a) Mr Williams is entitled for credit for the period of Provisional Suspension and so the period of Ineligibility should commence on 8 April 2015.



**DAVID CASEMENT QC
(CHAIRMAN)**

Signed on behalf of the Panel

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