SPORT RESOLUTIONS (UK)
SPECIALIST INDEPENDENT DISPUTE SERVICE

SR/Adhocsport/912/2017

IN THE MATTER OF DISCIPLINARY PROCEEDINGS
BROUGHT BY THE INTERNATIONAL TENNIS FEDERATION
UNDER THE TENNIS ANTI-DOPING PROGRAMME

Before:
Robert Englehart QC
Dr Neil Townshend
Colin Murdock

BETWEEN

INTERNATIONAL TENNIS FEDERATION

Anti-Doping Organisation

and

DYLAN SCOTT

Respondent

DECISION OF THE INDEPENDENT TRIBUNAL

INTRODUCTION

1. We were appointed as the Independent Tribunal to determine proceedings brought by the International Tennis Federation ("ITF") against Dylan Scott for an alleged infraction

of the Tennis Anti-Doping Programme 2017 ("TADP"). We held an oral hearing on 25 April 2017 at which we received evidence and heard oral submissions from the parties following the previous filing of written submissions. The ITF was represented by Jonathan Taylor QC and Lauren Pagé of Bird and Bird, and Mr Scott was represented by Howard Jacobs of the Law Offices of Howard L Jacobs. We are grateful to both Mr Taylor and Mr Jacobs for their thorough and expeditious presentation in what was far from being a straightforward case.

2. At the time of the alleged Anti-Doping Rule Violation on 8 July 2017 Mr Scott was a participating tennis player at a Futures tournament in the Czech Republic. The ITF is, of course, the governing body for professional tennis, and Mr Scott had inscribed into the ITF in December 2015. It is common ground that from that time he was, as a professional tennis player, subject to the TADP which is based on the WADA Code. No issues arise as to jurisdiction.

THE BACKGROUND

3. Mr Scott is a young professional tennis player who was born on 31 August 1992. He played tennis at High School but did not do so when studying business marketing at college in Miami. However, in the latter part of 2015 Mr Scott decided to embark on a new career in professional tennis. As mentioned, he joined the ITF in December 2015. It is fair to say that thus far Mr Scott has not had success as a tennis player. In 2016 he played in three Futures tournaments and lost in the first round of each. In 2017 he played in two Futures tournaments and one Challenger event, losing twice in the first round and once in the second round.

4. It was at the Czech Republic Futures tournament in Pardubice, Czech Republic, that Mr Scott was selected to provide a sample for drug testing purposes on 8 July 2017. This was the first occasion on which he had undergone a drug test. The test proved positive. On analysis the urine sample was found to contain 4-chloro-18-nor-17β-hydroxymethyl, 17α-methyl-5-androst-13-en-3-ol. This is known as the M4 (or sometimes M3) metabolite. Notably, it may be produced by the body metabolising the exogenous

anabolic steroid 4-chloro-17β-hydroxy-17α-methyl-androst-1,4-diene-3-ine, Dehydrochlormethyltestosterone ("DHCMT"). This is named specifically as a Prohibited Substance on the WADA Prohibited List, reproduced in Appendix 3 of the TADP, under category S1.

5. Following his positive test, Mr Scott was provisionally suspended by the ITF and ceased competitive tennis. Nevertheless, he very recently underwent another drug test which was effected by USADA in March 2018. This drug test was also positive for the same M4 metabolite. The evidence further suggested that the concentration levels of the M4 metabolite were approximately the same in both the July 2017 and the March 2018 test. Exactness is not possible, but the concentration was approximately 80 pg/ml on each occasion. A week before the hearing Mr Taylor on behalf of the ITF had applied for an adjournment so that both parties might fully assess the significance of this recent result which was capable of being regarded as consistent with either party's case. The application was opposed by Mr Scott. It was rejected by the Chairman on the ground of prejudice to Mr Scott in delay and the undesirability of holding a trial within a trial without any real prospect of any certain answer. Nevertheless, the March 2018 results were admitted in evidence before us by agreement of the parties.

THE CHARGE

6. In consequence of this positive test, Mr Scott was charged by the ITF with an Anti-Doping Rule Violation on account of the presence of a Prohibited Substance in his sample. The Prohibited Substance was said to be the M4 metabolite which was described as a metabolite of DHCMT. As will become apparent, Mr Scott does not dispute that the M4 metabolite was found in his sample. However, Mr Jacobs on his behalf says that this metabolite is not always the product of DHCMT. It may be produced by other substances, in particular 4-chloro-17α-methyl-androst-1,4-diene-3,17β-,diol which Mr Jacobs terms Halodrol. For convenience, we also refer to it as Halodrol, although Professor Ayotte in her evidence took issue with this terminology. She pointed out that the drug sometimes known as Halodrol is in fact a compound of several different

elements. But what matters for present purposes is that neither Halodrol nor 4-chloro-17α-methyl-androst-1,4-diene-3,17β-diol is specifically listed by name as a Prohibited Substance on the WADA List.

7. In light of the above, and following service of a report from Professor Dordick who had been retained by Mr Scott, Mr Taylor sought to amend the charge by insertion of the following:

> The ITF's primary case is that the parent of the "M4" metabolite found in Mr Scott's sample no. 3097704 was dehydrochlormethyltestosterone (DHCMT). Alternatively, the parent of the "M4" metabolite was a DHCMT variant, such as 4-chloro-17α-methylandrost-1,4-diene-3,17β-diol, which metabolised into the "M4" metabolite either directly or via an intermediate conversion into DHCMT.
>
> 4-chloro-17α-methyl-androst-1,4-diene-3,17β-diol falls within section S1 of the WADA Prohibited List, because it is an anabolic agent and because it has a similar chemical structure to and/or similar biological effects to one or more steroids listed by name in that section, being a derivative of testosterone and a prohormone/variant of DHCMT. Therefore, whether the "M4" metabolite found in Mr Scott's sample came from DHCMT or from 4-chloro-17α-methyl-androst-1,4-diene-3,17β-diol, it is a metabolite of a Prohibited Substance under the TADP.

Given that this amendment came as no surprise to Mr Jacobs, we formally granted permission to amend at the hearing.

SCOPE OF THE INQUIRY

8. Before us the principal factual area of inquiry concerned how the M4 metabolite came to be in Mr Scott's system on 9 July 2017. There was also a lively debate between the eminent Professors who gave evidence before us not only about how long the M4 metabolite could remain in a person's system after ingestion of the parent product but also about the justification of treating as Prohibited Substances some exogenous anabolic steroids not specifically named in the WADA List. Other issues were also ventilated, but the evidence and argument were principally concerned with the above points.

THE WITNESSES

9. We received oral evidence from only one witness of fact, namely Mr Scott himself. In addition, we also admitted written evidence from a number of other factual witnesses.

10. Mr Scott told us that, whilst he had played tennis at High School, he stopped playing between about May 2010 and September 2015. During this period he used to work out in the gym and exercise with weights. He was concerned to "get bigger" and, as he put it, to "look good". During this period he used to take many different supplements for the purpose of helping, as he saw it, to boost his physique. One of the products which he regularly took from the summer of 2014 was a supplement called Quad which was recommended to him by a Miami store called Total Nutrition. He told us that, according to the retailer, Quad was a very effective prohormone and was "a step below" steroids.

11. Mr Scott told us that, as it happened, he had stopped taking Quad around September 2015, that is before he had joined the ITF. The reason was that he developed a very small lump on his chest which he said a doctor described as a fatty tumour probably caused by Quad. In fact Mr Scott's medical records show that this was not some "fatty tumour" but possibly a "mild left gynecomastia". Mr Scott told us how he had in fact retained an empty bottle of Quad at his parents' house. He had kept this bottle because he wanted to retain a record of what he was taking, although he does not seem to have kept the bottles of any of the other supplements he was taking. In any event, Mr Scott has produced an empty Quad bottle for the purposes of these proceedings. The label lists ingredients which include 25 mg Halodrol; Quad also in fact carries a written warning that the product could produce a positive result on steroid testing.

12. At around the time that he stopped taking Quad, Mr Scott told us how he decided to become a professional tennis player and then did so in December 2015. He agreed that he knew that for a professional tennis player steroids are banned. After turning professional, he engaged a coach although he parted company with him fairly soon thereafter. He then engaged the well-known former player Dominik Hrbaty as coach in early 2017. Mr Hrbaty put Mr Scott on a rigorous training programme; this caused him

to lose a considerable amount of weight fairly rapidly. However, after failing the drug test in July 2017 and being provisionally suspended, his tennis playing career has been put on hold. Nevertheless, leaving aside Quad, Mr Scott has continued both before and since his suspension to take numerous different supplements with a view to aiding his physical well-being.

13. In addition to Mr Scott's oral evidence, we received the following written evidence. We bear in mind that it was not subject to cross-examination and may be of limited weight but in summary:

- *Franco Santinato* stated that when he worked at the Total Nutrition store in Miami the store had sold a supplement called Quad manufactured by a business called "WK Supps"
- *Zachary Belokopitsky* confirmed that whilst he had been a roommate of Mr Scott one of the supplements taken by the latter was Quad.
- *Mariela Parnock*, a private investigator, had tracked down Mr Santinato who confirmed the selling of Quad in 2015
- *Dominik Hrbaty* confirmed that he had put Mr Scott on endurance training which had resulted in weight loss but he had never seen Mr Scott take Quad or any banned product.

14. Aside from the factual evidence, we heard from both Professor Dordick, instructed by Mr Scott, and Professor Ayotte, instructed by the ITF, under the witness procedure sometimes known as "hot tubbing". They are both extremely eminent professors although we have to say that we found Professor Ayotte rather more persuasive. Professor Dordick's evidence was more on the speculative side, although it is fair to say that his instructions seem to have been to put forward theories which might possibly fit with his client's case.

15. Professor Ayotte had carried out analysis of a residue in the Quad bottle produced by Mr Scott and which was labelled as containing Halodrol. She found no trace of any of the ingredients listed on the label, including Halodrol, although she noted that they would in

fact all be Prohibited Substances under the WADA Code. However, she did find traces of other steroids in the bottle including, in particular, DHCMT itself, methasterone, promagnon and methylclostebol. Methasterone is listed by name as a Prohibited Substance under the WADA Code, whilst the latter two designer steroids are testosterone based and structurally similar compounds to DHCMT. Professor Ayotte illustrated her evidence with diagrammatic representations of the molecular structures of promagnon, methylclostebol (and Halodrol) which vividly showed the extremely close structural similarity to DHCMT. Professor Ayotte noted that any of these, like DHCMT itself, could metabolise into the M4 metabolite. Professor Dordick opined that the DHCMT found in the bottle might possibly be the result of oxidisation of Halodrol and, whilst the structure of the other designer steroids might appear visually similar to DHCMT, even the smallest differences might produce different effects on the body in practice.

16. As is well known, steroids metabolise after ingestion. They remain in the body and are excreted over time. Normally the time frame is short before all trace disappears. However, the M4 metabolite has been identified as longer lasting. In his original evidence Professor Dordick had noted that Mr Scott had undergone significant and rapid weight loss in 2017 and had been diagnosed with a fatty tumour. The M4 metabolite is sequestered in body fat. Thus, Professor Dordick expressed the view that the concentration of the M4 metabolite found in Mr Scott's sample in July 2017 "would likely not be inconsistent with his 2014-2015 use of a supplement containing Halodrol when considered in conjunction with his significant weight loss in the months preceding his 8 July 2017 urine sample". This original opinion was rather undermined given that:

    (a) there was no "fatty tumour" but, rather, a possible mild gynecomastia; and

    (b) Mr Scott's 2018 positive test result had not come about after rigorous endurance training and consequential rapid weight loss.

Nevertheless, Professor Dordick maintained his view that the 80 pg/ml M4 metabolite found on 7 July 2017 could have resulted from the slow release of a substance in Quad regularly consumed over some 12 months up to September 2015. There was a lack of

data or literature to support this hypothesis, but Professor Dordick maintained that it could theoretically be possible.

17. Professor Ayotte was adamant that it was quite impossible for the approximately 80 pg/ml M4 metabolite found in July 2017 to be derived from consumption of the parent substance some 22 months earlier. She agreed that the M4 metabolite was longer lasting than other metabolites of DHCMT. But she said that some 22 months was out of the question. She referred to a study of the excretion profile of the DHCMT long term metabolite which had only demonstrated minuscule amounts (2-3 pg/ml) some 6 to 8 months after ingestion of DHCMT. It is fair to say that this was the result of a single dose of 20 mg DHCMT and so was distinguishable from the facts of Mr Scott's case. But, because the present case is concerned with designer steroids manufactured on the black market, hard data is very limited. However, as a practical matter a retention period of some 22 months was unheard of. It had never been found in any other athlete who had taken DHCMT or a related synthetic steroid. In Professor Ayotte's opinion a retention period of a few months, say 7-8 months at the outside, was the maximum possible.

CONTENTIONS OF THE ITF

18. For the ITF Mr Taylor submitted that that there was here a clear Anti-Doping Rule Violation on 9 July 2017. Any of the possible parent substances of the M4 metabolite were Prohibited Substances under the WADA Code and hence the TADP. DHCMT itself is, of course, specifically named. The other two possible sources of the M4 metabolite found on analysis of the Quad bottle by Professor Ayotte were promagnon and methylclostebol. Both of these are designer steroids derived from testosterone and with a similar chemical structure to DHCMT. Moreover, even if the parent substance was what Professor Dordick called Halodrol, that is 4-chloro-17α-methyl-androst-1,4-diene-3,17b,diol, as identified on the Quad bottle label, this was also a DHCMT variant with a similar chemical structure to DHCMT. Mr Taylor relied on the evidence of Professor Ayotte. He also referred to a letter from WADA dated 26 January 2018 and addressed to himself. Although included in the bundle, its evidential status is perhaps unclear. In addition, Mr Taylor referred us to

a confidential decision of the Judicial Committee of World Rugby dated 16 July 2017, although he very fairly did say that it is currently subject to appeal to CAS.

19. Assuming an Anti-Doping Rule Violation for, as here, a substance which is not a Specified Substance, the starting point is a period of Ineligibility of four years unless Mr Scott can establish that the violation was not "intentional". The onus of establishing lack of intention is on Mr Scott. In this regard Mr Taylor reminded us that there is much authority from CAS (and indeed domestic authority such as *Buttifant* SR/NADP/508/2016) that it will only be in a most exceptional case that an athlete will be able to discharge the onus of showing lack of intention if the evidence does not establish the source of a Prohibited Substance within his system. Specifically, Mr Taylor referred us to the recent CAS decision of *Abdelrahman v WADA Canada and WADA Egypt* CAS 2017/A/5016, 5036 reaffirming the long line of CAS authority that "specific, objective and persuasive evidence" of a particular source is requisite.

20. Mr Taylor submitted that Mr Scott's theory about the ingestion of Quad some 22 months earlier as the source was wholly speculative and unjustified by the evidence. It is unheard of for metabolites of an exogenous anabolic steroid to remain within an athlete's system for such a length of time. We were invited to accept the evidence of Professor Ayotte on this point. The scientific evidence suggests that whatever the Product which Mr Scott consumed and which produced the M4 metabolite in Mr Scott's system on 9 July 2017, whether Quad or some other supplement, such consumption would have been in the course of 2017. This was, of course, after Mr Scott had joined the ITF. In any event, it was the existence of the metabolite on 9 July 2017 rather than the prior ingestion of the parent product which was the Anti-Doping Rule Violation.

21. Because Mr Scott had not on the balance of probability proved the source of the Prohibited Substance within his system on 9 July 2017, a four year period of Ineligibility was mandatory. For the same reason, any reduction on account of Mr Scott bearing No Fault or Negligence or No Significant Fault or Negligence was not available to him. But even if this were a theoretical possibility for Mr Scott, he had undoubtedly been at fault.

He had deliberately taken a prohormone product in order to "bulk up"; if the product in question was Quad it bore an explicit warning on its label. Even if this had only been prior to joining the ITF, he had taken no steps at all after joining to check whether it remained in his system. Mr Taylor cited four cases where Tribunals had rejected pleas of No Fault or Negligence or No Significant Fault or Negligence where athletes had taken no steps at all to check that a potentially banned substance had cleared the body.

SUBMISSIONS FOR MR SCOTT

22. For Mr Scott, Mr Jacobs reminded us that before we could find an Anti-Doping Rule Violation it would need to be established to our "comfortable satisfaction"; this requires more than "a mere balance of probability": TADP, Article 8.6.1.

23. DHCMT is identified on the WADA list as a Prohibited Substance, but we certainly could not be comfortably satisfied that the M4 metabolite found in Mr Scott's system derived from DHCMT. Only a tiny residue of DHCMT had been found on Professor Ayotte's analysis, and even this might have derived from Halodrol. Halodrol was not named on the WADA list, nor were the other two possible parent substances put forward by Professor Ayotte, namely promagnon and methylclostebol. These were substances known to WADA for a considerable time, and if they were to be treated as Prohibited Substances WADA should identify them as such on its list. It was unfair to expect athletes to guess what might be banned. Moreover, as the evidence of Professor Dordick made plain, there was at the least uncertainty whether they had a "similar chemical structure" to DHCMT. This was no basis for "comfortable satisfaction".

24. It was also notable that the ITF was seeking to sanction Mr Scott for what occurred well before he joined the ITF. When he did join, he undertook not to take steroids in the future. But, when Mr Scott had taken Quad he had no allegiance to the ITF and no reason to think that there could be any objection to what he was doing.

25. Mr Jacobs referred us to the CAS decision in *Calle Williams v IOC* CAS 2005/A/726. There the CAS Panel by a majority concluded that it could not be comfortably satisfied that a substance, Isometheptene, which was not expressly named on the WADA Prohibited List should be treated as such because of its similarity to substances on the List. The Panel went on to observe that before a substance could be named on the List WADA has to be satisfied that that two out of three criteria are met: (1) potential performance enhancement (2) health risk and (3) violation of the spirit of sport. The majority view was that for a substance to be categorised as "similar" to a named substance the same criteria would be applicable.

26. In Mr Jacobs's submission the principal issue in the present case was whether the source of the M4 metabolite which had been detected in July 2017 had been established on the balance of probability. He did not dissent from Mr Taylor's analysis of the CAS approach to the need, unless exceptionally, to establish the source of a Prohibited Product as summarised in the *Abdelrahman* decision. But he submitted that on the evidence before us it had been clearly established that the source of the M4 metabolite was the Quad product which Mr Scott had been taking for about a year up to September 2015. The evidence was unequivocal, not only from Mr Scott himself but also from the corroborative witnesses.

27. Professor Dordick's evidence was also clear that Halodrol or other anabolic steroids could metabolise over a lengthy time. There was a shortage of hard data, but there was no theoretical reason why the process of metabolising could not take very many months. The likelihood was that Halodrol had metabolised into the M4 metabolite, been sequestered in Mr Scott's body fat and then excreted in a steady state over a lengthy period. The March 2018 test was highly significant. It demonstrated that Mr Scott was still excreting the M4 metabolite in steady amounts. It was fanciful to suppose that Mr Scott had recently taken exactly the amount of anabolic steroid to reproduce exactly the same level as before.

28. If there were an Anti-Doping Rule Violation, then this was certainly a case of No Fault or Negligence or, at a minimum, No Significant Fault or Negligence. Mr Jacobs accepted that under the TADP Mr Scott "must first establish how the Prohibited Substance entered his/her system": see the definition of "No Fault or Negligence". But Mr Scott had done this, as discussed above. When Mr Scott was taking Quad, he was not a member of the ITF and not even contemplating a career in professional tennis. He could not possibly have appreciated that his conduct might give rise to future unknown problems. This case was similar to those involving Meldonium where athletes were not sanctioned for positive tests due to having taken Meldonium before it was banned.

DISCUSSION

29. We consider first the question whether the positive finding of the M4 metabolite in Mr Scott's sample on 7 July 2017 constituted an Anti-Doping Rule Violation. Article 2 of the TADP provides in material part as follows:

> 2. **Anti-Doping Rule Violations**
>
> Doping is defined as the occurrence of one or more of the following (each, an "**Anti-Doping Rule Violation**"):
>
> 2.1 The presence of a Prohibited Substance or any of its Metabolites or Markers in a Player's Sample, unless the Player establishes that such presence is consistent with a TUE granted in accordance with Article 3.5.
>
> 2.1.1 It is each Player's personal duty to ensure that no Prohibited Substance enters his/her body. A Player is responsible for any Prohibited Substance or any of its Metabolites or Markers found to be present in his/her Sample. Accordingly, it is not necessary that intent, Fault, negligence or knowing Use on the Player's part be demonstrated in order to establish an Anti-Doping Rule Violation under Article 2.1; nor is the Player's lack of intent, Fault, negligence or knowledge a defence to a charge that an Anti-Doping Rule Violation has been committed under Article 2.1
>
> ---
>
> A Prohibited Substance is any substance described in the Prohibited List as set out in Appendix 3 of the TADP. This is the WADA Prohibited List. Given

the arguments in the present case, it is material to note Article 3.3 of the TADP. This provides:

3.3 Players and other Persons are reminded that:

……..

3.3.2 There are often synonyms for substances that are mentioned by name on the Prohibited List, but not all of those synonyms are necessarily included on the Prohibited List. In addition, the Prohibited List is not a 'closed list' of Prohibited Substances but instead also encompasses substances that are not mentioned by name on the Prohibited List but instead are incorporated onto the Prohibited List by category and/or by reference to 'substances with a similar chemical structure or similar biological effect(s)'. As a result, the fact that a particular substance does not appear by name on the Prohibited List does not mean that the substance is not a Prohibited Substance…

30. As already noted, category S1 of the Prohibited List specifically names DHCMT (sometimes known as Turinabol) as an exogenous anabolic steroid which is a Prohibited Substance. Thus, any substance with a "similar chemical structure or similar biological effect" is also a Prohibited Substance. It is right to note that the original and the amended charge only refer explicitly to DHCMT and Halodrol. Nevertheless, the evidence and inquiry before us proceeded without any objection to consider other substances which might have a similar chemical structure.

31. It is clear from the evidence that, contrary to an initial assumption, the M4 metabolite is not exclusively and necessarily a metabolite of DHCMT. It may be produced in the body from the ingestion of other exogenous anabolic steroids. These include Halodrol, as relied upon by Mr Scott. They also include the steroids known as Promagnon and Methylclostebol. Professor Ayotte noted that Methasterone, a steroid specifically named on the Prohibited List, might also produce the M4 metabolite. However, no-one suggested before us that there could be any substance other than DHCMT, Halodrol, Methasterone, Promagnon or Methylclostebol which could be the "parent" of the M4 metabolite.

32. The critical question ventilated before for us was whether Halodrol, Promagnon and Methylclostebol are all substances with a similar chemical structure to DHCMT. We accept the evidence of Professor Ayotte and her illuminating diagrammes of the chemical structures and are entirely satisfied that they are. It is fair to say that Professor Dordick did not really disagree as a matter of simple chemical analysis. He may be right in saying that the smallest differences between drugs may potentially give rise to different effects in practice. But, this is not what we have to decide. Given our finding that they all have a similar chemical structure to DHCMT, we conclude that they all constitute Prohibited Substances for the purpose of the TADP.

33. It remains for us to consider the CAS decision cited to us by Mr Jacobs, that is *Calle Williams*, cited above. On the facts as there found, the majority concluded that a substance might not be sufficiently related to an identified substance; thus they could not be comfortably satisfied that it constituted a Prohibited Substance. However, more relevantly for our purposes, the majority went on to express the view *obiter* that before a substance could be treated as a Prohibited Substance because of a similar chemical structure to a named substance a Panel would have to go through exactly the same exercise as would WADA before naming a substance on the Prohibited List. Thus, a Panel would have to find two out of the following: (1) potential performance enhancement (2) health risk and (3) violation of the spirit of sport. We have difficulty with this majority view. We consider that it is not the function of a Panel to do what WADA decides; rather, it is its function to apply what WADA has decided. WADA has decided that substances with a similar chemical structure to DHCMT are Prohibited Substances, and we cannot accept that it would be our function to decide in effect whether WADA had done so correctly. Having said that, we should add that, if it were necessary for us to do so, we would have accepted the submissions of Mr Taylor on the three factual points in question.

34. We are, therefore, entirely satisfied that the M4 metabolite found in Mr Scott's system on 7 July 2017 was a metabolite of a Prohibited Substance. It follows that there was an Anti-Doping Rule Violation. We note Mr Jacobs's submission that it is unfair for Mr Scott to be found to have committed an Anti-Doping Rule Violation for having ingested a

product prior to joining the ITF. Even accepting the factual premise, we are unable to accept the plea. Under the TADP what matters for an Anti-Doping Rule Violation to be established is the presence of the metabolite of a Prohibited Substance. How and when the Prohibited Substance came to be ingested are immaterial for this purpose, although they are very relevant questions in the consideration of the consequences which follow from the Anti-Doping Rule Violation.

35. Article 10.2.1 of the TADP provides:

> The period of Ineligibility shall be four years where:
>
> (a) The Anti-Doping Rule Violation involves a Prohibited Substance that is not a Specified Substance, unless the Participant establishes that the Anti-Doping Rule Violation was not intentional
>
> ……..

36. The Athlete bears the burden of establishing that the violation was not intentional within the above meaning, and it naturally follows that the athlete must also establish how the substance entered her body. The Athlete is required to prove her allegations on the "balance of probability". This standard, long established in the CAS jurisprudence, requires the Athlete to convince the Panel that the occurrence of the circumstances on which the Athlete relies is more probable than their non-occurrence. E.g., CAS 2008/A/1515 WADA v. Swiss Olympic & Daubney, at para. 116.

37. Thus, it is for Mr Scott to establish (on the balance of probability) that the Anti-Doping Rule Violation was not "intentional", which is a defined term of art. It is not an express requirement of "intentional" that a Player prove the source of a Prohibited Substance. Nevertheless, there is a long line of domestic and CAS jurisprudence which establishes that it would only be in a wholly exceptional case that a lack of intention could be shown where the source of a Prohibited Product in an athlete's system cannot be shown. Thus, for example, reference may be made to *WADA v IWF* CAS 2016/A4377:

> To establish the origin of the prohibited substance, CAS and other cases make clear that it is not sufficient for an athlete merely to protest their innocence and suggest that the substance must have entered his or her body inadvertently from some supplement, medicine or other product which the athlete was taking at the relevant time. Rather, an athlete must adduce concrete evidence to demonstrate that a particular supplement, medication or other product that the athlete took contained the substance in question.

38. As noted, Mr Taylor also referred us to the most recent CAS statement on the topic in *Abdelrahman*, cited above, at paragraph 125 where the Panel said:

> ….. There is, in fact, a wealth of CAS jurisprudence stating that a protestation of innocence, the lack of sporting incentive to dope, or mere speculation by an athlete as to what may have happened does not satisfy the required standard of proof (balance of probability) and that the mere allegation of a possible occurrence of a fact cannot amount to a demonstration that that fact did actually occur (CAS 2010/A/2268, I v FIA; CAS 2014/A/3820, WADA v Robinson and JADCO); unverified hypotheses are not sufficient (CAS 99/A/234-235, Mecca-Medina v FINA). Instead, the CAS has been clear that an athlete has a stringent requirement to offer persuasive evidence that the explanation he offers is more likely than not to be correct, by providing specific, objective and persuasive evidence of his submissions. ……

39. Mr Jacobs did not dissent from the outlined approach. We must, therefore, ask ourselves whether Mr Scott has demonstrated that it is more likely than not that the source of the M4 metabolite was, as claimed, the Quad product consumed by him prior to September 2015.

40. We accept that the Quad product did contain ingredients which could metabolise into the M4 metabolite. Given what the analysis conducted by Professor Ayotte revealed, it is doubtful whether Quad ever contained Halodrol despite the label; the label of a black market prohormone supplement is perhaps not the most reliable indication of actual content. Nevertheless, we consider that this may not matter in the light of Professor Ayotte's analysis of the bottle residue. She found other steroids which could have

metabolised into the M4 metabolite, namely DHCMT, Promagnon and Methylclostebol. Accordingly, we accept that the Quad product could have been what caused the Anti-Doping Rule Violation. The difficulty with this hypothesis, however, is that Mr Scott was adamant that he stopped taking Quad in about September 2015, that is some 22 months before the Adverse Analytical Finding occurred.

41. It is generally acknowledged that a steroid metabolises after ingestion and is then excreted from the body over a period. The accepted view is that there is initially a high excretion rate followed by gradual decrease in the quantity remaining in the body. The conventional view is that the detection period for DHCMT and similar steroids is relatively short. There is a shortage of hard data available which is hardly surprising given that we are not concerned with ordinary pharmaceutical products but black market designer steroids. Nevertheless, such relevant data as is available supports the conventional view. We have already noted Professor Ayotte's reference to a DHCMT retention study. Whilst the base data is certainly not the same as in the present case, the study is consistent with the conventional view.

42. Professor Ayotte was forceful in her rejection of any possible detection period approaching 22 months after ingestion of DHCMT or its variants. In her view a maximum detection period of a few months after ingestion, at the outside some 7-8 months, was the only realistic possibility. She based this on both such limited data as was available and empirical results. 22 months was unheard of in practice in the case of any athlete who had been discovered taking DHCMT. Professor Dordick was not prepared to reject the possibility that there could be a slow and steady state excretion period which could last for two years or more. His view was largely based on what happens with pollutants. He said that a concentration level of 80 pg/ml M4 metabolite in July 2017 "would likely not be inconsistent" with usage of Quad in 2014-5, although his reliance on substantial weight loss and a fatty tumour could no longer be supported in the light of the evidence as it emerged.

43. We have no hesitation in preferring the evidence of Professor Ayotte. Even without going as far as Professor Ayotte and saying that it would be impossible, it would at the lowest be highly unlikely that the consumption of Quad in 2014 and 2015 could have produced an 80pg/ml concentration of M4 metabolite in July 2017. As for the 2018 positive test producing a similar concentration, we make no finding as to how that came about. We do, however, regard it as making the theory advanced on Mr Scott's behalf as even more unlikely.

44. Mr Scott has not established that it is more likely than not that the source of the Adverse Analytical Finding in July 2017 was his consumption of Quad prior to about September 2015. We cannot, of course, say how the M4 metabolite did in fact come to be in Mr Scott's system in July 2017. Possibly, he would have taken Quad on other occasions. Possibly, the Prohibited Substance came from one or more of the numerous supplements which Mr Scott was taking up to July 2017 and has subsequently continued to take. We cannot, however, speculate. It suffices to say that Mr Scott has not discharged the burden of showing that on the balance of probability the July 2017 Adverse Analytical Finding was caused by the ingestion of Quad in 2014-5.

45. Given our conclusion, it is not necessary to consider the submissions about No Fault or Negligence or No Significant Fault or Negligence. Mr Jacobs quite properly agreed that it would be an express pre-requisite under the TADP to establish how the Prohibited Substance entered Mr Scott's system. This has not been done. Accordingly, there can be no reduction in the mandatory sanction provided by Article 10.2 of the TADP.

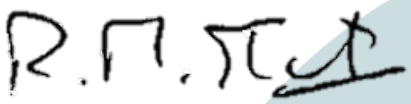
CONCLUSION

46. For the reasons given above, our conclusions are as follows:

(1) There was an Anti-Doping Rule Violation by Mr Scott on 7 July 2017; and

(2) It has not been established that the Anti-Doping Rule Violation was not intentional within the meaning of the TADP.

47. It follows that the Period of Ineligibility for Mr Scott is four years. This will run from the date of his Provisional Suspension, that is 19 August 2017. In addition, whilst it is perhaps academic, we direct disqualification of Mr Scott's results pursuant to Article 9.1 of the TADP. No party made an application for costs. Either party may appeal by filing a Notice of Appeal against this decision to CAS within 21 days of receipt of the decision by the appealing party.



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09 May 2018, London

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