

**IN THE MATTER OF PROCEEDINGS BROUGHT
UNDER THE WELSH RUGBY UNION ANTI-DOPING RULES**

Before:

Matthew Lohn (Chair)

B E T W E E N:

UK ANTI-DOPING

Anti-Doping Organisation

and

TODD JAMES

Respondent

DECISION OF THE ANTI-DOPING TRIBUNAL

Introduction

1. This is the decision of the Anti-Doping Tribunal ("the Tribunal") convened¹ to determine a charge brought against Mr Todd James ("Mr James").
2. On 22 January 2019 pursuant to Article 5.1 of the National Anti-Doping Panel ("NADP") 2015 Procedural Rules ("the Procedural Rules") I was appointed by the President as the Chairman of the Tribunal to hear and determine as a sole arbitrator, a charge brought against Mr Todd James ("the Respondent") for the alleged commission of an Anti-Doping Rule Violation contrary to the Welsh Rugby Union (WRU) Anti-Doping Rules.
3. The WRU is the National Governing Body for the sport of professional rugby in Wales and has adopted the UK Anti-Doping Rules ("ADR") in their entirety.
4. A hearing was convened in London on 4 June 2019 to determine a charge arising from the alleged commission of an Anti-Doping Rule Violation ("ADRV") in breach of Article 2.1² of the ADR. The allegation was that a Prohibited Substance, namely ostarine, was present in a urine sample provided by Mr James on 27 October 2018. Ostarine is classified as a Non-Specified Substance. It is listed under section S1.2 of the World Anti-Doping Agency ("WADA") 2018 Prohibited List³ as an "Other Anabolic Agent". It is prohibited at all times.
5. At the hearing, Mr James was present via conference call. He had no representative supporting him at the hearing. UK Anti-Doping ("UKAD") was represented by Ms Nisha Dutt and Mr Phillip Law of UKAD. The hearing was adjourned to allow for the submission of further evidence following issues raised in the oral submissions of Mr James. Following further written submissions in respect of this material by Mr James on 7 June 2019, to which UKAD responded on 12 June, and having given Mr James a further opportunity to reply by 21 June 2019 (which he did not avail himself of), the Tribunal retired to reach its substantive decision.
6. This document is the reasoned decision of the Tribunal, reached after consideration of the written evidence and submissions made by the parties

¹ Under Article 8.1 of the UK Anti-Doping Rules dated 1 January 2015 ("ADR") adopted by the Welsh Rugby Union (WRU) Anti-Doping Rules.

² Titled "Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's urine sample".

³ https://www.wada-ama.org/sites/default/files/resources/files/prohibited_list_2018_en.pdf

attending at the hearing. Set out below are the Tribunal's findings of fact, reasoning and conclusions.

Factual Background

7. Mr James is a semi-professional Welsh Rugby Union player. He signed to Cross Keys RFC on 29 August 2018.
8. On 27 October 2018, under Mission Order M-851941094, UKAD Doping Control Personnel attended Pontypridd Rugby Football Club⁴. Mr James was selected for In-Competition Testing after a match between Pontypridd RFC and Cross Keys RFC.
9. Mr James provided a Sample which was split into two separate bottles. These were given reference numbers A1145595 (the "A sample") and B1145595 (the "B sample") respectively. These were both sealed at 17:01.
10. On his doping control form, completed at the time the sample was collected, Mr James declared that he had consumed the following supplements and medications in the seven days prior to collection: i) Game Ready ii) Lemsip Max iii) Paracetamol, and iv) "Ibroyfen" [sic].
11. Both samples were transported to the WADA accredited laboratory, the Drug Control Centre, King's College London (the "Laboratory"). The laboratory analysed the A sample in accordance with the procedures set out in WADA's International Standard for Laboratories.⁵
12. This analysis of the A sample returned an Adverse Analytical Finding ("AAF") for the Prohibited Substance, ostarine. Mr James had no Therapeutic Use Exemption in place.

The Charge

13. The AAF was reviewed in accordance with ADR Article 7.2 and it was determined that Mr James had a case to answer for a violation of ADR Article 2.1 (Presence of

⁴ The Clubhouse, Sardis Road, Pontypridd, Rhondda Cynon Taf, Wales, CF37 1HA.

⁵ https://www.wada-ama.org/sites/default/files/resources/files/isl_june_2016.pdf

a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample).

14. UKAD charged Mr James with a violation of ADR Article 2.1 in that on 27 October 2018 a Prohibited Substance (namely ostarine) was present in his urine A Sample ("the Charge").
15. Mr James was notified of the Charge by a letter dated 14 December 2018 (the "Notice of Charge"). The Notice of Charge also provisionally suspended Mr James from participation in all Competitions, Events or other activities that are organised, convened, authorised or recognised by the WRU in accordance with provisions of ADR Article 7.9.1.
16. Mr James waived his right to analysis of his B sample.

Mr James' Admission

17. Mr James' initial response to the Notice of Charge was via email on 18 December 2018 stating that the only thing he had taken prior to playing the game was Naproxen and Zapain. This was for a bad back and his Dad had these drugs on repeat prescription. Mr James continued to explain "*[I]f I'm in the wrong I accept that I'm in the wrong but [I] didn't really have [any] background knowledge of the anti-doping before signing*".
18. After obtaining legal representation, Mr Simon Perhar⁶ (who was acting pro-bono on behalf of Mr James) confirmed to UKAD by email on 15 January 2019 that Mr James "*accepts the charge however invites the panel to consider the case on the papers in terms of mitigation and seeks a lesser sanction*".

Period of Ineligibility under the ADR

19. This was Mr James' first ADR violation. ADR Article 10.2 provides:

10.2 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 as follows, subject to potential reduction or suspension pursuant to Article 10.4, 10.5 or 10.6:

⁶ Mr Perhar withdrew from representing Mr James prior to the hearing.

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 [...] can establish that the Anti-Doping Rule Violation was not intentional.

(b) [...]

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

20. The starting point for the Tribunal was therefore to adopt the sanction set out at ADR Article 10.2.1(a), namely four years subject to any consideration of the issue of intention. If Mr James could prove that his ADRV was not intentional, the starting point would be two years as per ADR Article 10.2.2.

"Intention" under the ADR

21. In order for the Tribunal to accept that the ingestion of ostarine was not intentional the route of ingestion needed to be proved by Mr James, on the balance of probabilities⁷.

22. The term intentional is defined in ADR Article 10.2.3 as follows:

10.2.3 [...] the term "intentional" is meant to identify those Athletes [...] who cheat. The term, therefore, requires that the Athlete [...] 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 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.

⁷ Per UKAD v Buttifant

Evidence of Intention/Ingestion prior to the Hearing

23. Within an email dated 15 January 2019 from Mr Perhar was also another email written by Mr James stating "*I had no meetings or talks about anti-doping before playing for Crosskeys so was not aware of any substances that you could or couldn't take. Due to my job being very active I sustained a bad back at the start of that week leading up to that game, so whilst at my Dads house he said that he had some painkillers for a bad back*".
24. On 15 March 2019, Mr James sent two photographs of packaging for Naproxen and Zapain, prescribed to his father. He also explained in this email that he would "*provide photographic evidence of fat burners that [he] took prior to signing*". This is the first time fat burners were mentioned.
25. On the same date, UKAD submitted that they had reviewed these photographs and could "*confirm that none of the list ingredients of Naproxen and Zapain appear on the 2019 World Anti-Doping Agency (WADA) Prohibited List*".
26. The Tribunal was also provided with a witness statement from UKAD's Expert, Mr Nick Wojek, Head of Science and Medicine. In relation to Naproxen and Zapain, Mr Wojek explained their chemical composition and concluded that "*it is highly unlikely that the presence of ostarine in the Athlete's urine sample was caused by the ingestion of either of these medications*"⁸.
27. Mr Wojek continued to explain that "[t]here are dietary supplements that illegally contain ostarine. However it is not possible to comment further on this explanation without i. knowing the details of the product(s) consumed so that the ingredients label of each product can be reviewed; and ii. undertaking laboratory analysis to determine if the product(s) contained ostarine without being declared on the ingredients label of each product"⁹.

Evidence of Intention/Ingestion at the Hearing

28. On 4 June 2019, in his oral submissions at the hearing, Mr James made reference for the first time to T5 fat burners which he said he had purchased on-line. He

⁸ Paragraph 11.

⁹ Paragraph 12.

explained that he only came to know that T5 fat burners may contain ostarine after looking online. He claimed to have taken the fat burners to get into better shape for the summer but did not know that the fat burners would affect his rugby playing. Mr James did not check the ingredients at the time. He confirmed that he would be able to provide a photo of the T5 container, which he still had.

29. Mr James was asked for proof of purchase but confirmed that he had already looked on his eBay account and at his bank statements and could not provide any further evidence. (He said that his eBay account did not go back that far and he had changed his bank account so was unable to find the fat burner transaction on a statement.) Mr James explained that he had not provided this photographic evidence of the T5 fat burners previously, when required, because he had been busy at work and with family commitments. Furthermore, he was under the impression that he had already mentioned the fat burners.
30. When asked whether he had made any attempts to find out the ingredients of T5 fat burners, Mr James stated that he had not considered purchasing another packet of T5s, in order to test the ingredients, because it would have been a waste of money (as he no longer took them). Mr James added that he was certain fat burners were the only thing he had taken, which could have contained ostarine, so he knew it was the source of ingestion without testing the ingredients.
31. UKAD submitted, in response, that the account given at the hearing was even less clear than Mr James' accounts in previous written evidence. Whilst it was a matter for the Chair whether to adjourn the hearing for further evidence, UKAD relied on two principal pieces of evidence:
 - (i) Mr James had not sought to challenge the test in the first place; and
 - (ii) It took until 15 March 2019 to mention fat burners and even longer to mention T5 fat burners.
32. Mr Law, on behalf of UKAD, submitted that the above points could have been an oversight, but it was more than likely an attempt to conceal the fat burners, which Mr James knew were the likely source of ostarine. Notwithstanding that, Mr Law reminded the Tribunal that the anti-doping rules clearly state it is Mr James'

responsibility to know what he ingests and to have an awareness of the anti-doping rules. Even if the T5 fat burners were the source of ingestion, there was nothing provided to the Tribunal in the form of scientific evidence that the fat burners did indeed contain ostarine.

Further Evidence

33. In the light of the new evidence raised by Mr James at the hearing regarding fat burners, it was determined to adjourn the hearing to allow Mr James an opportunity to provide further evidence to supplement his account that he had purchased a substance that had contained ostarine and that he had in fact taken that substance. Directions were given by the Tribunal as to the timescales for the further submissions. In deciding that it was fair and proper to adjourn the hearing, the Tribunal reminded itself that Mr James was unrepresented and although he had obtained some pro-bono assistance in advance of the hearing he had not prepared for the hearing with the advantage of legal assistance.
34. Prior to the adjournment the Tribunal emphasised to Mr James that unless he could prove how the ostarine came to be ingested, it was highly unlikely to be able to challenge the period of ineligibility provided by the ADR, namely 4 years.
35. On 7 June 2019, under cover of an email, Mr James provided a photograph to the NADP secretariat of T5 fat burner packaging. His email also stated "*I tried to look through my eBay files and tried to get in contact with my previous bank to get a [sic] statement but they no longer have it. I just want to [reiterate] that I had no understanding what I was allowed and not allowed to take, until undergoing the test after the Pontypridd match. I did not question at the time of test whether I should of [sic] undertaken the test or questioning the examiner because he basically explained everything at the time and there was nothing else I could do.*"
36. On 12 June 2019, UKAD responded to this evidence explaining that it had consulted with UKAD's Expert, Mr Wojek, who made the following observation:

"The below screenshot does not help us to review the listed contents of the product as the ingredient label is missing. From a quick internet search, the product appears to contain ephedrine (prohibited in-competition only), aspirin (permitted), and caffeine (permitted) - <https://www.fatburners.at/en/produkt/t5->

[zion-labs/](#) . I suggest that we ask the player to send a screenshot of the ingredients label of the product to verify that we have reviewed the correct formulation. However, this is unlikely to assist the player (in the absence of laboratory analysis results that confirm the presence of ostarine) as the product does not list ostarine as an ingredient."

37. Additionally, UKAD submitted that "[t]he suggestion that Mr James is unable to obtain records from eBay seems unlikely to be correct. A perusal of a functioning eBay account suggest that 'purchase history' can be viewed going back several years" and "[i]t is equally unlikely that a bank will not have access to bank records from last 'summer' when these T5s were purported to be purchased".
38. Mr James provided no further evidence in response to UKAD submissions by the deadline set by the Tribunal of 21 June 2019.
39. The Tribunal then retired to consider the case.

Tribunal's Findings as to Intention and period of Ineligibility

40. The Tribunal determines that the period of Ineligibility will be four years pursuant to ADR Article 10.2.1.
41. The Tribunal concluded that Mr James' account as to the ingestion of ostarine was purely speculative. The Tribunal did not find his evidence about the alleged purchase of a fat burner credible. And in any event there was no objective probative evidence that the Tribunal could rely upon; there was no proof of purchase, no list of ingredients and no substance produced which was able to be subjected to independent laboratory testing.
42. The Tribunal therefore concluded that Mr James did not provide the necessary granular evidence that would have enabled the Tribunal to begin to believe his account. The Tribunal therefore concluded that Mr James had not proven, on the balance of probabilities, that he ingested the ostarine in the way he so submitted. In addition, there were no exceptional or other circumstances in this case which would entitle the Tribunal to nevertheless conclude that ingestion had not been intentional.

43. It follows that the Tribunal in the light of Mr James' admissions and in the absence of any ameliorating factors must conclude that Mr James' ingestion of ostarine was intentional and therefore, pursuant to ADR Article 2.1, the Ineligibility period is four years. In the light of this finding there was no scope for the Tribunal to consider any further elimination or reduction pursuant to ADR Articles 10.4 or 10.5.

Decision

44. The Tribunal determined that Mr James' violation under ADR Article 2.1 was admitted and that it has been established that the A Sample tested positive for a Prohibited Substance, namely ostarine.
45. The Tribunal conclude that Mr James will be subject to a period of Ineligibility of four years commencing on 14 December 2018 and concluding at midnight on 13 December 2022.
46. There is a right to appeal against this decision as provided for in ADR Article 13.4 and Article 13 of the Procedural Rules.



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