

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

Before:

Robert Englehart QC (Chair)

Blondel Thompson

Professor Gordon McInnes

B E T W E E N:

UK Anti-Doping Limited

Anti-Doping Organisation

and

Miles Normandale

Respondent

DECISION OF THE ANTI-DOPING TRIBUNAL

INTRODUCTION

1. We were appointed as the Tribunal to determine a charge brought by UK Anti-Doping Limited ("UKAD") against Miles Normandale who was formerly a semi-professional Welsh Rugby Union player with Cardiff RFC. Mr Normandale admitted the commission of an Anti-Doping Rule Violation but contested the issue of sanction. Accordingly, we held a hearing on 19 June 2019 at which we received evidence and heard submissions on behalf of the parties. UKAD was represented by Phillip Law, and Mr Normandale was represented by Jo Moore. We are grateful to both Mr Law and Ms Moore for their lucid and helpful submissions. We are particularly grateful to Ms Moore for representing Mr Normandale *pro bono*.

THE BACKGROUND

2. Mr Normandale is a young man aged 27 who has played Rugby Union at lock forward as a professional and semi-professional player. Aside from his earnings from Rugby Union, he earns his living as a tattooist. He has had a successful career in Rugby Union, playing for well-known clubs such as Cardiff Blues, Rotherham Titans, and, latterly, Cardiff RFC. On 17 November 2017 during a match for Cardiff RFC against Cross Keys RFC Mr Normandale suffered an injury to an ankle. Initially it was thought that he had sprained the ankle, but by early January 2018 it had become apparent that the injury was much more serious. He required surgery, and on 29 January 2018 he underwent a right ankle arthroscopy and syndesmosis stabilisation. At around this time Mr Normandale's contract with Cardiff RFC was terminated since he had not been able to play for over six weeks; he received his final payment from Cardiff RFC on 31 January 2018.
3. Mr Normandale was assigned to Southmead University Hospital for post-operative physiotherapy. He made slow progress and remained in pain with his ankle still swollen. However, he made a gradual, if slow, recovery with the metalwork in his ankle being surgically removed on 4 July 2018. Despite some complication by way of infection, Mr Normandale continued to build up his strength with gym sessions some 3-4 times a week. It was in August 2018 that Mr Normandale told us he was contacted out of the

blue by Cardiff RFC who enquired if he would be willing to return to playing rugby. Mr Normandale's evidence was that he had for some months thought his rugby playing days were over, but by August 2018 he was attracted by the idea of returning to semi-professional rugby with Cardiff RFC and did so. He signed a new contract dated 15 August 2018 and returned to training. His first match was against Newport RFC on 15 September 2018.

4. On 20 September 2018 Mr Normandale was subject to a random urine and blood test by a UKAD Doping Control Officer during a Cardiff RFC training session. The urine test was found to be positive for Clomifene, a Prohibited Substance specified under S4 of the WADA Prohibited List as an anti-estrogenic substance. It is a Specified Substance, and it is prohibited at all times, both in and out of competition. Although the blood test gave no positive result, we were told by Professor Cowan in evidence that blood is not regularly tested for Clomifene. Following the positive result, Mr Normandale was sent a Notice of Charge by UKAD on 23 November 2018 and was provisionally suspended.

THE CHARGE

5. The Charge alleges an Anti-Doping Rule Violation under Article 2.1 of the Anti-Doping Rules ("ADR") by reason of the presence of Clomifene in the urine sample provided by Mr Normandale. As mentioned, Clomifene is a Prohibited Substance under the WADA Prohibited List. It has a medical use for the stimulation of ovulation in women, but it has no established clinical indication for men.

THE ANTI-DOPING RULE VIOLATION

6. On 20 September 2018 Mr Normandale was undoubtedly subject to the jurisdiction of the Welsh Rugby Union. That body had adopted the ADR and has appointed UKAD to investigate anti-doping cases. There is no dispute about this. Mr Normandale waived his right to have his B sample analysed and admits that he committed an Anti-Doping Rule Violation. We are only concerned with sanction. As the evidence and argument

proceeded, it became apparent that there were two questions for us to consider in fixing the appropriate period of ineligibility:

(1) Was the ingestion of Clomifene by Mr Normandale “intentional” within the meaning of that word under the ADR?

(2) Was there No Significant Fault or Negligence on the part of Mr Normandale?

THE WITNESSES

7. Mr Normandale was the principal witness on his own behalf. He explained the background summarised above. He then turned to how he came to ingest Clomifene. He said that he wanted to improve his physique on a trip to Australia during which he intended to propose to his girlfriend, and a friend recommended Clomifene as a way of boosting testosterone. The friend gave him a week’s supply of, he thinks, 50 mg tablets of a brand called Serpafar at the beginning of April. Mr Normandale’s evidence was that he took one 50mg tablet a day for seven days from 9 to 15 April, which was the week before he left for Australia. That was all the Clomifene he ever took.

8. Mr Normandale told us that by this time he thought his rugby playing days were over. He had not played for many months following his ankle injury, his contract with Cardiff RFC had been terminated, and he had decided in consultation with his family no longer to undergo the physical risk of returning to rugby. Rather, he hoped to concentrate his attention on building up what he described as his main occupation, that of a tattooist. In these circumstances he thought that there was no problem over taking what he accepted in cross-examination he did “have an idea” was a drug banned in sport; although he used to talk with his girlfriend about the various supplements he would take, he never mentioned Clomifene to her because he did not want to disclose that he had taken a banned product.

9. When Mr Normandale was contacted by Cardiff RFC in August 2018 about the possibility of returning to rugby, he was sufficiently concerned about having taken Clomifene that he conducted an internet search on the drug. Having typed Clomifene in a Google search, Mr Normandale consulted Wikipedia and some other web sites. He told us that more than one of these sites mentioned that the retention time for Clomifene in a human body was about 11 weeks. He was reassured by this since he had taken the drug several months before. He therefore assumed that there was no problem over his returning to rugby.
10. In addition to Mr Normandale's own evidence, we heard briefly from a friend, Matt Williams, and from Hayley Dugdale, Mr Normandale's fiancée. Mr Williams explained how he had met Mr Normandale in a gym in about March 2018. Mr Williams is a qualified strength and conditioning coach employed by a business called The Physio Clinic. Mr Williams devised an exercise programme for Mr Normandale although he was soon due to travel to Australia. Shortly before doing so, Mr Normandale told him that he had taken Clomifene to improve his physique for the holiday. Mr Williams told him that he was "a prat"; he knew that it was a forbidden product. Mr Normandale said he would stop, and indeed on his return was asked by Mr Williams if he was still taking Clomifene to which he said he was not. As for Ms Dugdale, she confirmed that she openly discussed supplements with her fiancé but he had never told her about taking Clomifene. Ms Dugdale also confirmed that around February or March 2018 she had discussed with Mr Normandale about his retiring from rugby.
11. For UKAD there was evidence from two witnesses. Professor Cowan gave thoughtful and balanced oral evidence. In his witness statement Mr Cowan had expressed the opinion that Mr Normandale would have taken Clomifene more recently than he admitted. This opinion was based on calculations founded on a half life of 5 days for the drug. However, bearing in mind the very limited data available for Clomifene and the fact that Mr Normandale had also taken a variety of medicaments for his ankle injury, Professor Cowan went on to say: "I cannot exclude the possibility that the administration occurred as stated by the Athlete". In cross-examination, Professor Cowan was shown literature

discussing a half life of five to seven days; and he fairly noted that any false premise in an exponential calculation could have profound results for the ultimate conclusion. He very fairly said that in his view Mr Normandale's explanation about when he took the Clomifene was close to a 50/50 possibility of being correct. Nevertheless, he confirmed that he stood by what he had said in his witness statement, and in answer to a question from one of us he expressed the view that he would have expected the drug to have remained in Mr Normandale's body for about one month after ingestion.

12. The only other witness relied upon by UKAD was Mr Wojek whose evidence was not challenged and was read. He explained how Clomifene had no well-established clinical indications for men. However, it could be misused by athletes to increase testosterone in an attempt to enhance physique, power and strength.

THE PARTIES' SUBMISSIONS

13. Before us most of the parties' submissions were concerned with the question whether Mr Normandale's Anti-Doping Rule Violation should be classified as "intentional" within the particular meaning accorded to that word for the purposes of the ADR. Mr Law invited us to find that the Anti-Doping Rule Violation was intentional such that a four year period of ineligibility would be appropriate. Ms Moore on the other hand submitted that Mr Normandale had ingested Clomifene at a time when following serious injury he had given up rugby and had no intention of resuming playing. She invited us to find that the starting point for a period of Ineligibility was two years, but the period should be further reduced in Mr Normandale's case because there was No Significant Fault or Negligence on his part.

Submissions for UKAD

14. Mr Law submitted that we should reject Mr Normandale's evidence that he had ingested the Clomifene as long ago as April 2018. We should accept Professor Cowan's opinion

that he took Clomifene much more recently before the urine test on 20 September 2018. There was simply no reliable evidence as to when Mr Normandale in fact took Clomifene.

15. Furthermore, we were invited to reject Mr Normandale's case that when he took the Clomifene he had given up rugby. He was still a registered player with the Welsh Rugby Union, not having given notice to terminate his registration, and had never finally given up rugby. We should find that he always intended to return to playing rugby after recovering from his ankle injury. Mr Law relied in particular on entries in Mr Normandale's nursing notes. On 29 January 2018 it is noted: "Plays rugby for Cardiff RFC". As late as 4 July 2018 he was referred to as a "professional rugby player", information which must have come from Mr Normandale himself; on the same day there is reference to a copy of his notes to be given to Mr Normandale for him to give to the Cardiff RFC physiotherapist in the event of rehabilitation at the club.
16. In summary, Mr Law submitted that on the evidence Mr Normandale clearly knew that, when taking Clomifene, there was at least a risk that there would be an Anti-Doping Rule Violation. Thus, the Period of Ineligibility should be four years, and there is no scope for any reduction based on No Significant Fault or Negligence. In any event, a mere Google search on Clomifene as described by Mr Normandale was hopelessly inadequate as a precaution.

Submissions for Mr Normandale

17. For Mr Normandale, Ms Moore invited us to accept the evidence of her client as to when and the circumstances in which he took Clomifene. The evidence of Professor Cowan was not inconsistent with Mr Normandale's case on timing. Moreover, Mr Normandale's evidence is corroborated by that of Mr Williams and is also consistent with Ms Dugdale's evidence.

18. We were invited to pay particular regard to Mr Normandale's medical notes. These demonstrated a serious injury with a slow and painful recovery. Cardiff RFC had terminated its contract with Mr Normandale, and it is hardly surprising that he had decided to give up rugby and concentrate upon his main occupation of tattooist. The fact that he had decided to do so was consistent with the medical evidence and also the evidence of both Mr Williams and his fiancée. The nursing entries upon which Mr Law relied were fully explicable as stemming from Mr Normandale relating to the nurses how his injury had come about.
19. In the circumstances, it was hardly surprising that Mr Normandale had given no thought to the possibility that he might be committing an Anti-Doping Rule Violation. The question of intention had to be judged subjectively under the ADR: see the *Rubén Ricco* World Rugby decision of 30 March 2017 at [58].
20. Ms Moore also invited us to hold that not only had Mr Normandale not intentionally committed an Anti-Doping Rule Violation but there was No Significant Fault or Negligence on his part such that we should further reduce the period of Ineligibility below the two year threshold. Realistically, she did not suggest that there was no fault or negligence at all but such as existed was not significant. Mr Normandale had retired from the sport but when he unexpectedly returned to competitive rugby he was justified in thinking from his internet research that the Clomifene would have long since left his body.

DISCUSSION

21. The fact of an Anti-Doping Rule Violation by reason of the presence of Clomifene in Mr Normandale's urine sample on 20 September 2018 is indisputable: ADR Article 2.1. It is provided by ADR Article 10.2 as follows:

The period of Ineligibility for an Anti-Doping Rule Violation under Article 2.1, 2.2 or 2.6 that is the Athlete's or other Person's first anti-

doping offence shall be as follows, subject to 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.

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.....

22. Thus, we firstly have to decide whether or not in Mr Normandale's case the Anti-Doping Rule Violation was "intentional", for upon this will depend whether the starting point is ineligibility for four years or two years. The onus of proving "intentional" lies upon UKAD since Clomifene is a Specified Substance. Both Mr Law and Ms Moore submitted that the standard of proof requires "comfortable satisfaction". We have our doubts about this since, although the existence of an Anti-Doping Rule Violation requires "comfortable satisfaction", nowhere do the ADR spell out that this is required for the proof of intention under ADR Article 10.2. We incline to the view that in the absence of some express provision an ordinary standard of the balance of probability should be applied. However, we should make it clear that our conclusion on the matter in this particular case has not depended on any fine distinctions on the standard of proof.

23. The term “intentional” is, of course, a term of art under the ADR. If the inquiry were simply whether or not Mr Normandale deliberately took Clomifene, there could only be one answer. However, we have to consider whether or not Mr Normandale engaged in conduct which he knew constituted an Anti-Doping Rule Violation or knew that there was a significant risk of his conduct doing so and manifestly disregarded the risk. We agree with Ms Moore that the question is what Mr Normandale knew, not what he might reasonably have known.
24. We do have some doubt whether Mr Normandale’s consumption of Clomifene occurred as long ago as April 2018 as he maintains. We agree with the opinion expressed by Professor Cowan on this point. However, we do not think that it is in fact necessary for us to make a finding as to the precise time when Mr Normandale took the drug. We are quite satisfied that when Mr Normandale took the Clomifene he was suffering from the effects of a serious injury without any prospect of a return to competitive sport in the foreseeable future and indeed with his contract with Cardiff RFC having been terminated. We do not need to find that Mr Normandale had indeed made a final decision to retire from rugby come what may. Quite possibly, he cherished the thought that he might one day be able to return to the game. Nevertheless, that was certainly not likely to happen in the foreseeable future.
25. Against the above factual background, we have to ask ourselves whether Mr Normandale, in taking what he realised might well be a prohibited drug for a sportsman, knew that he was committing an Anti-Doping Rule Violation or that there was a risk of his doing so. Whether under ADR Article 2.1 (as charged here) or Article 2.2 (use or attempted use) an Anti-Doping Rule Violation can only be committed by an Athlete. The term “Athlete” is defined in the Appendix to the ADR as:

Any Person who competes at any level in the sport under the jurisdiction of the [National Governing Body]

We are satisfied that at the time Mr Normandale ingested Clomifene he was not an Athlete, as defined by the ADR. He was not competing and there was no prospect of his

competing in the foreseeable future. It follows that UKAD has not established an intentional Anti-Doping Rule Violation. Therefore, the starting point for Mr Normandale is ineligibility for two years.

26. Mr Law drew our attention to the fact that Mr Normandale never resigned his registration with the Welsh Rugby Union and envisaged floodgates opening if an athlete were able to avoid the consequences of the anti-doping regime by simply saying that he had retired. We would, however, wish to make it plain that we are not saying that Mr Normandale avoids liability for an Anti-Doping Rule Violation. The issue is only whether the ineligibility (subject to possible reduction) is four years or two years. Moreover, we have been provided with detailed medical evidence; without such objective factual evidence the mere assertion of retirement by an athlete might not be very persuasive.
27. We now turn to consider whether there can be said to have been No Significant Fault or Negligence on the part of Mr Normandale such as would justify a reduction below two years ineligibility: see ADR Article 10.5.1(a). Under the Appendix to the ADR "No Fault or Negligence" is:

The Athlete or other Person establishing that he or she did not know or suspect, and could not reasonably have known or suspected, even with the exercise of utmost caution, that he or she had Used or been administered the Prohibited Substance or Prohibited Method or otherwise violated an anti-doping rule. 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.

Whilst No Fault or Negligence is not suggested here, the definition also has some relevance for the purposes of the definition of No Significant Fault or Negligence which is as follows:

The Athlete or other Person establishing that his or her Fault or negligence, when viewed in the totality of the circumstances and taking into account the criteria for No Fault or Negligence, was not

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

28. There is much authority to the effect that caution is appropriate before a finding of No Significant Fault or Negligence. Nevertheless, it has been said that the bar must not be set so high that the standard is in practice never achievable. We note that we have to consider the significance of any failure by Mr Normandale "in relation to the Anti-Doping Rule Violation", that is in the present case the presence of the Prohibited Substance in his urine sample.
29. Mr Normandale was well aware that he had taken a drug which would not have been permissible for a sportsman. He told us that, with this in mind and before resuming his rugby career, he conducted a Google search in order to ascertain what the effect of Clomifene might be. More than one website suggested a retention time of 11 weeks, and accordingly he felt reassured that there was no obstacle to his return to competitive rugby.
30. It is in our view most unfortunate that Mr Normandale took no precautions at all other than conducting a Google search. He took no advice from anyone who might be expected to have some knowledge about drugs. In particular, he took no medical advice or the advice of any qualified person. He did not inform Cardiff RFC about what he had taken before he re-joined the club. He underwent no physical test of any sort. In our view, what he did falls a long way short of meeting the requirements for demonstrating No Significant Fault or Negligence in relation to the presence of Clomifene in his urine. A simple Google search by someone with no pharmaceutical knowledge at all was wholly inadequate. We consider that there are no grounds for reducing the sanction below the standard two year period of Ineligibility.

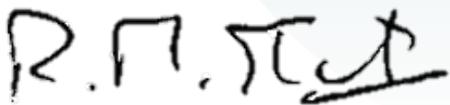
31. Finally, we should say that we were helpfully referred by both parties to a number of authorities. However, our decision has not turned on any of them. In the interests of concision we do not refer to them in this decision.

CONCLUSION

32. In conclusion, we summarise our findings as follows:

- (a) the Anti-Doping Rule Violation is established;
- (b) it was not an intentional Anti-Doping Rule Violation for the purposes of the ADR;
- (c) the period of Ineligibility under the ADR is two years; and
- (d) there are no grounds for reducing the period of Ineligibility below two years.

Mr Normandale promptly admitted the Anti-Doping Rule Violation when it was put to him. Accordingly, Mr Law drew our attention to ADR Article 10.11.2 under which ineligibility may start from the date Mr Normandale provided his sample. We do so direct. Therefore, Mr Normandale's ineligibility will run for two years from 20 September 2018. Either party may file an appeal against this decision by filing a Notice of Appeal with the National Anti-Doping Panel within 21 days of receipt of the decision.



Robert Englehart QC

Chairman on behalf of the Panel

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