

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

Before:

Robert Englehart QC (Chair)

Dr Kitrina Douglas

Carole Billington-Wood

B E T W E E N:

UK ANTI-DOPING

Anti-Doping Organisation

and

CHRISTOPHER PHILLIPS

Respondent

DECISION OF THE ANTI-DOPING TRIBUNAL

INTRODUCTION

1. We were appointed to determine these disciplinary proceedings brought by UK Anti-Doping Limited (“UKAD”) against the Respondent, Mr Phillips. Following directions issued by the Chairman, we held a hearing on 15 November 2018 at which UKAD was represented by Mr Phillip Law, and Mr Phillips was represented by Mr Jason Torrance. We are grateful for the measured and succinct presentation of the respective cases.

THE BACKGROUND

2. Mr Phillips at all material times played semi-professional rugby as a prop forward for Pontypridd RFC, a club competing in the Welsh Premiership. The Club is a member of the Welsh Rugby Union, and Mr Phillips is a registered player with that body. It is undisputed that Mr Phillips was at the relevant time subject to the jurisdiction and the regulations of the Welsh Rugby Union. These regulations include the Anti-Doping Rules (“ADR”) which the Welsh Rugby Union has expressly adopted as its own anti-doping regulations.
3. On 26 October 2017 Mr Phillips had taken part in a training session at Pontypridd RFC when he was required to provide a urine sample by a Doping Control Officer. The sample was analysed at the WADA accredited laboratory at King’s College, London, and it was found to contain stanozolol-N-glucuronide, a metabolite of stanozolol. Stanozolol is an anabolic androgenic steroid and is a non-specified substance prohibited at all times under the WADA Prohibited List.
4. Mr Phillips was charged by UKAD by letter dated 23 November 2017 with the commission of an Anti-Doping Rule Violation and became subject to an automatic provisional suspension with effect from the date of the letter. He waived his right to have his B sample analysed and does not dispute that he committed an Anti-Doping Rule Violation. The central issues in the present case concern sanction alone.
5. Upon receipt of the Charge Mr Phillips set about trying to find an explanation for a metabolite of stanozolol being found in his body. Through his solicitor, Mr Torrance, he submitted to UKAD for testing 11 different supplements which he had been taking. They

were forwarded by UKAD to the King's College WADA laboratory for analysis. 10 of these supplements revealed no trace of stanozolol. However, on analysis some of the tablets in a tube of O.R.S. Hydration tablets, which Mr. Phillips had been taking, were found by Dr Walker, a senior analyst at the Drug Control Centre of King's College, London, to contain varying small amounts of stanozolol. The amounts in question, if taken over a period, would have been sufficient in Dr Walker's view to have accounted for Mr Phillips' positive drug test result.

6. In the light of the scientific evidence, Mr Phillips decided to make application for his provisional suspension to be lifted on the basis that his Adverse Analytical Finding had been due to his unwitting ingestion of a Contaminated Product. There were most regrettable delays before this application in fact came to be made. Nevertheless, shortly after the application was made the provisional suspension was lifted by the Chairman on 25 July 2018; by this time Mr Phillips had already been provisionally suspended for some 8 months.
7. In lifting the provisional suspension, the Chairman did not, of course, make any definitive factual findings. We now have to come to a final decision on the merits after a full hearing of the case.

THE FACTUAL EVIDENCE

8. Evidence relating to the commission of the Anti-Doping Rule Violation was not challenged and was not in dispute. For UKAD the only contentious witness was Mr Charles Ebubedike, who was called to give oral evidence before us.
9. Mr Ebubedike is the Chief Executive Officer of Clinova Limited, a company founded by him which started up in 2006. O.R.S. Hydration Tablets are the principal product marketed by Clinova. Until fairly recently they were manufactured for Clinova by one manufacturer, a Bulgarian company, although they are now also manufactured by a UK based manufacturer. Clinova has been marketing O.R.S. Hydration Tablets since 2012. The product is designed to replenish fluids and electrolytes lost by the body in the course of exercise (or perhaps during a stomach upset). It does not currently carry an Informed

Sport certification, but Clinova is in the process of making application for Informed Sport approval.

10. Mr Ebubedike was adamant that the O.R.S. Hydration Tablets consumed by Mr Phillips could not possibly have been contaminated during the manufacturing process. He advanced four reasons for this. First, many millions of these tablets have been taken over the last six years by thousands of professional and amateur athletes, including top flight performers, but Mr Ebubedike is unaware of any other occasion when the tablets were said to have been contaminated. Second, every batch of tablets undergoes strict quality assurance analysis at the point of manufacture, and the Bulgarian manufacturer carries full EU certification. Third, Mr Ebubedike asserted that no company involved with the production of the tablets has any contact at all with any anabolic steroids such as stanozolol. Fourth, the batch to which the tablets consumed by Mr Phillips belonged had in fact been successfully batch tested, including for stanozolol, in June 2015.
11. It is right to say that Clinova had been less than co-operative when initially approached by Mr Phillips' solicitors. The latter's letter had been simply ignored. Mr Ebubedike told us that this letter might have been a "hoax" – an explanation which we found less than impressive. However, Clinova did subsequently co-operate with UKAD and has traced Mr Phillips' tablets as probably having come from batch 14062401. This is what the faded numbers at the base of the container appear to show; and in fact tablets from this batch had been sold to Boots from which Mr Phillips said he had purchased his tablets. Whilst samples from batch testing are usually retained, in this instance it appears that no samples are now available so that further analysis is no longer possible. However, according to records the batch had been successfully tested without anything untoward being found at the time.
12. As noted, the tablets in question were in fact manufactured for Clinova by a Bulgarian company. This is an EU accredited manufacturer, and an authorised representative of the company has given written confirmation that the company does not produce any products which contain anabolic steroids, including stanozolol, and never has done so since it started manufacturing operations in 1992. Whilst there was some uncertainty about whether the company might prior to 2014 have manufactured products containing stanozolol, this uncertainty was said to have arisen from nuances in what was a foreign language. In any event, we had before us a certificate that the manufacturer had never

produced any products containing anabolic steroids. Thus, it was said that contamination of Mr Phillips' tablets during the manufacturing process, after which they would have been in sealed containers until any subsequent retail sale, would not have been possible.

13. Mr Phillips gave oral evidence before us. He told us that, although he does play semi-professional rugby, his primary occupation is that of a railway maintenance worker. He is familiar with drug testing; he is randomly tested for drugs and alcohol in the course of his work due to the hazardous environment in which he works. He had also undergone a previous drug test in connection with rugby. He has never previously failed a drug test. Furthermore, he has received some limited anti-doping education whilst playing rugby. At Pontypridd RFC he was provided with a copy of the WADA Prohibited List and directed towards the Informed Sport website. In addition, he attended a presentation by the Welsh Rugby Union with specific reference amongst other matters to a well-known contaminated supplement case.
14. In the period before he was tested in the present instance Mr Phillips had been accustomed to taking quite a large number of different types of supplement. In particular, he had been advised by a physiotherapist to take hydration tablets in order to help with cramp in his legs from which he suffers. In consequence, he would take a number of different types of hydration tablets without concerning himself as to any particular brand. He has been doing so for about six years. Because he is aware of potential problems with supplements his usual practice is to check a brand both on the particular website of a brand and against the Informed Sport website.
15. Despite his usual practice as outlined above, Mr Phillips did not in fact carry out any checks when buying the O.R.S Hydration tablets or afterwards. He had simply gone into Boots in Talbot Green and purchased the tablets for cash. This purchase was confirmed by Mr Phillips' partner, Melissa Bevan, who gave very short evidence before us over the telephone. To Mr Phillips, they seemed from their label like ordinary hydration tablets much like other ones he had purchased over the years and which he had checked. He noted that they were said on the packaging to be suitable for both adults and children. Nothing caused him any concern.
16. As noted above, Mr Phillips was selected for testing on 26 October 2018. We note that on the doping control form Mr Phillips only declared 5 supplements and medicaments

which he had taken within the previous seven days. He did not declare O.R.S. Hydration Tablets. When pressed about this in cross-examination, he said that with the stress of taking the test it had slipped his mind.

17. Mr Phillips told us that towards the end of November 2017 he received a telephone call from the Welsh Rugby Union to say that the test which he had taken on 26 October 2017 was positive. He then received the letter of charge. He had no idea how he could have taken stanozolol. He took legal advice and, acting on that advice, he provided for testing eleven different supplements which he had been taking and which he had recovered from his parents' house where he kept his rugby kit and supplements.
18. Apart from hearing the oral evidence of Mr Phillips and Ms Bevan, we were provided with written statements from both of Mr Phillips' parents who confirmed that he stores his medicaments and supplements at their house along with his rugby kit. Only he has access to the cupboard where these items are kept. This evidence was not disputed. Moreover, we had an unchallenged witness statement from the Medical Co-ordinator at Pontypridd RFC. He confirmed that Mr Phillips did suffer from cramp; he also confirmed that the club does provide anti-doping education for its players, and Mr Phillips had to his knowledge attended at least one anti-doping session.

THE SCIENTIFIC EVIDENCE

19. As previously noted, the eleven supplements produced by Mr Phillips for analysis were provided to Dr Walker of the Drug Control Centre at King's College, London. The items in question were named by Dr Walker as (1) Omega 369 (2) Micronized Creatine (3) Beta Alanine (4) Caffeine Pro (5) Fat Binder (6) Caffeine Hydro Tabs (7) O.R.S Hydration Tablets (8) K (9) Micronized Glutamine (10) Micronized Creatine and (11) Whey Protein.
20. All the items were analysed by gas chromatography coupled to a mass spectrometer for the presence of anabolic steroids, particularly stanozolol. The O.R.S Hydration tablets were found to contain stanozolol in varying amounts ranging from none to several micrograms per tablet. On the basis of Mr Phillips' account of his use of the tablets Dr Walker was of the view that microgram amounts of the steroid in question could, with regular use of the product, have caused the Adverse Analytical Finding on this occasion.

He noted that the metabolite of stanozolol detected was a metabolite that can be detected a long time after ingestion of stanozolol. He also noted that the quantity of stanozolol ingested would have been unlikely to have had any pharmaceutical or physiological effect.

21. Dr Walker was of the view that contamination of the tablets probably occurred during the production of the tablets or of one of their ingredients. He carried out tests to ascertain whether the stanozolol might have been added to the tablets after production. However, the testing demonstrated that stanozolol was present inside the tablets but not on their surface. The tablets could not have been immersed in some solution containing stanozolol which would have affected the exterior. Introduction of stanozolol inside a tablet, particularly one designed to break up and dissolve in water, would be extremely unlikely.
22. UKAD concerned to inquire whether or not Mr Phillips' tablets were genuine O.R.S. Hydration Tablets rather than some illicit counterfeit, also instructed Reading Scientific Services Limited to compare Mr Phillips' tablets with a recently acquired batch. Some differences were discerned between the two. However, such differences could well have been accounted for by changes in the manufacturing process over a four-year period. The conclusion of Reading Scientific Services was that the two samples, despite visual differences, showed significant similarities in chemical composition. It should be said that Mr Ebubedike queried the finding of sucralose in both samples since he said that sucralose was not used in the manufacturing process in 2014.
23. For completeness, we also mention a report by Dr Geyer of the German Sport University in Cologne. He doubted whether the concentration of the stanozolol metabolite detected in Mr Phillips' urine sample was consistent with the amount of stanozolol found in the tablets by Dr Walker. However, Mr Law for UKAD very fairly said that UKAD was not relying on the conclusions of this report for two reasons: (1) the report was based on the results of a single ingestion of stanozolol rather than, as in Mr Phillips' case, multiple ingestion of lesser amounts over a longer period and (2) the quantity of stanozolol in the O.R.S. Hydration tablets was so variable that one cannot know precisely what was in fact in the actual tablets consumed by Mr Phillips.

UKAD'S SUBMISSIONS

24. Mr Law put the case for UKAD in a moderate way. There is no dispute over the commission of an Anti-Doping Rule Violation. The critical issue for us is whether we are satisfied on the balance of probability that this violation was caused by Mr Phillips inadvertently taking a Contaminated Product (as defined in the ADR). Mr Law reminded us, quite correctly, that in the case of an Anti-Doping Rule Violation for an anabolic steroid such as stanozolol the onus of proving that the violation was not "intentional" rests on the player. He also reminded us that in all but an exceptional case the starting point for proving an unintentional violation would be for the player to establish how the steroid entered his system.
25. In Mr Law's submission the present was a finely balanced case. He did not urge us to reject out of hand the case for Mr Phillips. But it was a case which cried out for scrutiny by a Panel, particularly in light of the evidence of Mr Ebubedike. Mr Law acknowledged that there was a credible case that the tablets in question were genuine O.R.S. Hydration Tablets which had become contaminated at some point in the manufacture. Mr Law pointed to Dr Walker's evidence, the analysis carried out by Reading Scientific Services Limited which did not suggest that the tablets were not authentic and the fact that there was found to be a variable degree of contamination within the tablet tube ranging from none to several micrograms.
26. On the other hand, there was also a credible case for saying that the queries were such that Mr Phillips had not proved that the source of the metabolite of stanozolol found in his system was a genuine tube of contaminated O.R.S. Hydration Tablets. Mr Law drew attention to the lack of disclosure on Mr Phillips' doping control form, the negative batch test results, the nature of the tablets which are not designed for body building purposes and the widespread use of the tablets by many different kinds of athletes without any problem.
27. On the basis that we were satisfied as to the source of the stanozolol and Mr Phillips' lack of intention, we would have to consider what would be the appropriate sanction. It was not suggested that this was a case of No Fault or Negligence. Nevertheless, Mr Law realistically accepted that if we were to conclude that Mr Phillips was the victim of

genuine contamination we would be likely to find that there was No Significant Fault or Negligence.

28. Mr Law referred us to the case of *Cilic v ITF* (CAS/2013/A/3327) where the CAS Tribunal laid down guidelines for the determination of the level of fault in any given case. In cases of a light degree of fault the range was from a reprimand up to 8 months suspension. Here, Mr Law accepted that, assuming this was a case of genuine contamination, the degree of fault was likely to be assessed as light. He drew our attention to a number of cases involving genuine contamination and suggested that suspension in the region of four to eight months would be appropriate. Of course, Mr Phillips has already been provisionally suspended for some eight months. Accordingly, any suspension of eight months or less would mean that Mr Phillips is free to resume his rugby playing career.
29. In conclusion, Mr Law also drew our attention to a request by solicitors for Clinova that our decision should omit all mention of Clinova or Mr Ebubedike by name. There was also an application for costs by Mr Phillips which Mr Law opposed. Even if we were to find that this was a case of genuine contamination and No Significant Fault or Negligence, it was a proper case for UKAD to have put before the Tribunal for it to decide.

SUBMISSIONS FOR MR PHILLIPS

30. Mr Torrance for Mr Phillips accepted that there was an Adverse Analytical Finding but invited us to find that this was a clear case of a Contaminated Product (as defined in the ADR). The evidence was that Mr Phillips purchased the O.R.S. Hydration Tablets at a Boots store and paid in cash. Hydration tablets are a well-known and harmless product sold in well-known pharmacies such as Boots, and there was nothing to raise any suspicion on this occasion. Mr Torrance submitted that the evidence of Dr Walker was clear. Contamination most likely occurred during the manufacturing process for the tablets or one of their ingredients. It would be fanciful to suggest that Mr Phillips could himself have made the tablets. And for the reasons advanced by Dr Walker the subsequent addition of stanozolol to the tablets after manufacture was extremely unlikely.

31. As for the evidence of Mr Ebubedike, the fact that so many tablets have been sold without causing a negative drug test does not prove anything. Cases of product contamination may be extremely rare; but they can happen. The evidence from the actual manufacturer is very sparse and does, despite Mr Dimitrov's later certificate, suggest that it may have been involved with steroids at some stage prior to 2014.
32. In Mr Torrance's submission the evidence was overwhelming that Mr Phillips had inadvertently consumed contaminated tablets. It was not suggested that this could be a case of No Fault at all given the inevitable and well-known risk of taking any supplement. Nevertheless, Mr Phillips could scarcely be criticised for buying an established product from a chemist such as Boots. Any period of ineligibility should certainly be less than the eight months for which Mr Phillips had been provisionally suspended.
33. Finally, in relation to the anonymity application from Clinova Mr Torrance objected. The fact that any supplement can be contaminated should be known to athletes, and it is not our function to protect the reputation of manufacturers. Nor is there any warrant for giving a third party notice of intended publication of a decision when the National Anti-Doping Panel Rules about publication are clear.
34. On the basis that we do not impose a period of ineligibility longer than the period of provisional suspension, Mr Torrance also asked that we make an award of costs against UKAD from the date when proceedings were temporarily stayed by consent with a view to a possible agreed outcome for the case. It is true that UKAD expressly made it clear that they could make no promise in this regard. However, in Mr Torrance's submission this is such an obvious case that there should never have been a hearing with its consequential expense.

DISCUSSION

The Anti-Doping Rule Violation

35. Under Article 2.1.2 of the ADR:

Proof of any of the following to the standard required by Article 8.3.1 is sufficient to establish an Anti-Doping Rule Violation under Article 2.1:

- (a) Presence of a Prohibited Substance or any of its Metabolites or Markers in the Athlete's A Sample, where the Athlete waives his/her right to have his/her B Sample analysed and so the B Sample is not analysed

In the present case it is common ground that on 26 October 2017 Mr Phillips' A sample did contain a metabolite of stanozolol, a Non-Specified Prohibited Substance. Moreover, Mr Phillips waived his right to have his B sample analysed. Accordingly, it is agreed that there was an Anti-Doping Rule Violation.

Intention

36. Given the Anti-Doping Rule Violation, the question arises whether it was "intentional". The question is of critical importance since, with a Non-Specified Substance such as stanozolol, the period of ineligibility is four years if Mr Phillips cannot establish that the violation was not intentional. Thus, under ADR Article 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.

The word "intentional" is a term of art under the ADR. Thus, by Article 10.2.3:

As used in Articles 10.2 and 10.3, the term "intentional" is meant to identify those Athletes or other Persons who cheat. The term, therefore, requires that the Athlete or other Person engaged in 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...

It is agreed that the onus of proving that his Anti-Doping Rule Violation was not intentional rests on Mr Phillips in the present case.

37. The case for Mr Phillips is clear. He purchased an apparently quite inoffensive product from an entirely respectable chemist, Boots, and the product turned out to have been contaminated with stanozolol at some stage prior to his purchase, probably during the manufacturing process. If this is established, then certainly the Anti-Doping Rule Violation was unintentional.
38. UKAD, on the other hand, invite us to consider certain features which may, and we stress may, give pause for thought. It is certainly correct, as Mr Law reminds us, that there is a long line of jurisprudence to the effect that, if a Tribunal is not satisfied on the evidence how a Prohibited Substance entered an athlete's body, then an athlete will be unlikely to have discharged a burden of proof that an Anti-Doping Rule Violation was not intentional: see the seminal decision in *UKAD v Buttifant* (SR/NADP/508/2016) or, most recently in the rugby context, *Rugby Football Union v Wells* (SR/NADP/96/2018). We are, therefore, concerned to see if we should reject the evidence of Mr Phillips coupled with the scientific evidence, particularly that of Dr Walker.
39. The principal reason for any doubt of the case for Mr Phillips would be based on the evidence of Mr Ebubedike. He is understandably very proud of the O.R.S. Hydration Tablets and quite unable to accept that there could be any possibility of contamination due to some trace of foreign matter in the manufacturing process. We acknowledge the evidence that these tablets have been taken by a very large number of sports men and women over the years without any suggestion of a drug test failure in the past. Nevertheless, this cannot mean that contamination can necessarily never occur. It is in the nature of any inadvertent contamination case that it is likely to be highly unusual. As for the batch testing, it is unfortunate that no sample has been retained of what was said to have been the successful test for batch 14062401. Nevertheless, we cannot say that a batch test is necessarily definitive for the entire production. Indeed, a successful batch test could be consistent with Dr Walker's finding that some of the tablets in the tube of O.R.S. Hydration Tablets revealed no trace of stanozolol.
40. Mr Ebubedike was not, of course, himself involved in the production of the O.R.S. Hydration Tablets and cannot speak from direct personal knowledge of the manufacture

of the tablets in question or their ingredients. In any event, we should make it clear that we are not making any findings as to how and when these tablets may have been contaminated. In particular, we make no finding that contamination definitely occurred in the manufacturing process. The issue for us is whether we have good reason to doubt the evidence of Mr Phillips and, notably, Dr Walker. We have concluded that there is no good reason for doing so. For completeness we should also add that, having heard Mr Phillips give evidence, we consider that any notion that he might have somehow been personally responsible for the creation of contaminated tablets struck us as quite fanciful. We therefore conclude that on the balance of probability it has been shown (a) how Mr Phillips came to ingest stanozolol and (b) that his Anti-Doping Rule Violation was not intentional for the purposes of ADR Article 10.2. Subject to potential reduction as we shall now consider, the starting point is, therefore, a period of two years' ineligibility.

No Significant Fault or Negligence

41. As mentioned, Mr Torrance does not suggest that Mr Phillips cannot be criticised at all such that any period of ineligibility should be entirely eliminated. However, ADR Article 10.5.1(b) addresses a potential reduction in two years' ineligibility:

In cases where the Athlete or other Person can establish No Significant Fault or Negligence and that the detected Prohibited Substance came from a Contaminated Product, then the period of Ineligibility shall be, at a minimum, a reprimand and no period of Ineligibility, and at a maximum, two years Ineligibility, depending on the Athlete's or other Person's degree of Fault.

This provision has to be read in the light of various definitions within the ADR as follows:

No Significant Fault or Negligence:

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.

No Fault or Negligence:

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.

Contaminated Product:

A product that contains a Prohibited Substance that is not disclosed on the product label or in information available in a reasonable internet search.

42. As mentioned, Mr Torrance does not suggest that there was here No Fault or Negligence. For his part, Mr Law realistically accepts that, if Mr Phillips unwittingly took contaminated tablets, we would be likely to find that there was No Significant Fault or Negligence and that his level of fault was on the facts small. We agree. Whilst doubtless one could always point to more which could be done by way of checking a product, it is entirely understandable how the purchase of a reputable product for a purpose unconnected with body building from a reputable chemist such as Boots would scarcely excite suspicion. In our view this is a clear case of No Significant Fault or Negligence.

Period of Ineligibility

43. Both parties relied upon the decision in *Cilic*, cited above, although it has to be said that the reasoning in that decision is not always easy to follow. Notably, it is difficult to see how the standard of care can vary according to the nature of a Prohibited Substance when ex hypothesi the athlete does not know that he is ingesting it: see paragraph 75 of the decision. However, we certainly agree that it is helpful to consider both a general standard of care and the care appropriate for a specific individual.
44. Both parties before us agreed (assuming this were a genuine contamination case) that any appropriate period of suspension for Mr Phillips would be likely to be less than the

eight months of provisional suspension to which Mr Phillips has already been subject. We have already found that this is a genuine contamination case. On that basis Mr Phillips' fault is very much at the bottom of the range. We would impose a period of ineligibility of four months which would have run from 26 October 2017: see ADR Article 10.11.2. This is, however, academic in view of the provisional suspension for which Mr Phillips is entitled to credit: ADR Article 10.11.3(a). Accordingly, Mr Phillips is now entitled to resume his participation in rugby.

45. Despite our conclusion, we should record that one of our number did have reservations about the degree of fault which could be attributed to Mr Phillips. It was her view that Mr Phillips was open to serious criticism for not having conducted any checks at all on the O.R.S. Hydration Tablets before consuming them. This was despite his having recently undergone Welsh Rugby Union anti-doping training at which the dangers of consuming supplements had been highlighted. Furthermore, she was very troubled by Mr Phillips' failure to mention his taking of O.R.S. Hydration Tablets on the doping control form. Nevertheless, she acknowledged that it would not be right to undermine the common ground between the parties as to the level of fault and did not therefore wish to dissent as to the result. However, it is right that her reservations should be recorded.

THE CLINOVA APPLICATIONS

46. In a letter from its solicitors, Messrs Taylor Wessing, dated 18 September 2018 Clinova invites us not to include any reference to Clinova or Mr Ebubedike in our decision. The basis for this is that we should not say anything which might adversely affect the commercial reputation of Clinova. We should make it clear that we make no affirmative finding against Clinova. Whilst we have found that the O.R.S. Hydration Tablets ingested by Mr Phillips were more likely than not to have been contaminated with stanozolol, we do not need to, and do not, make any finding as to how and when the contamination occurred. It seems to us that it would not be possible to render any sensible decision in this case without reference to Clinova or Mr Ebubedike. If there is by agreement to be any redaction of our decision prior to publication, this is not for us to determine. We do not accede to this application.

47. An alternative Clinova application, if the first application does not succeed, is that Taylor Wessing be given 28 days prior notice of the publication of any decision in which there is any reference to Clinova, Mr Ebubedike or O.R.S. Hydration Tablets. Publication of decisions is dealt with by Article 11.4.1 of the NADP Procedural Rules. This reflects the WADA Code. It is not for us to make any rulings about publication. Doubtless, Clinova may, if it sees fit, direct some request to the NADP President. However, again, we for our part do not accede to Clinova's application.

COSTS

48. UKAD makes no application for costs. However, as mentioned, there is an application by Mr Phillips that he should be awarded his costs from the time when the proceedings were resumed following the consensual stay. It is rare for an NADP Tribunal to make an award of costs. The circumstances in which it would have power to do so are extremely limited. Under Article 11.2 of the NADP Procedural Rules:

Where the Tribunal finds that an argument advanced by a party was frivolous or otherwise entirely without merit, the Tribunal may award costs as it deems appropriate against that party. Otherwise, however, each of the parties shall bear its own costs, legal, expert or otherwise, and the Tribunal shall not have the power to order any other party to pay such costs, or the costs of convening the Tribunal.

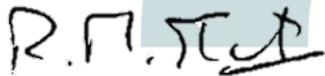
49. We do not accept that any argument advanced by UKAD was frivolous or entirely without merit. Mr Law presented the case in an extremely moderate fashion. In our view, given an undoubted Anti-Doping Rule Violation, it cannot be regarded as frivolous or entirely without merit for UKAD to have left the decision as to sanction for a Tribunal to decide.

CONCLUSION

50. For the reasons set out above, we conclude that:

(1) There was an Anti-Doping Rule Violation but it was not intentional;

- (2) There was No Significant Fault or Negligence on the part of Mr Phillips;
 - (3) The appropriate period of ineligibility for Mr Phillips would be four months from 26 October 2017;
 - (4) Mr Phillips is entitled to credit for the period of provisional suspension to which he was subject such that he is now free of any restriction on his rugby playing;
 - (5) We do not think fit to make any order on the applications of Clinova put forward by Taylor Wessing;
 - (6) There should be no order as to costs.
51. Either party has the right of appeal against this decision in accordance with the NADP Procedural Rules.



R. Englehart

Robert Englehart QC

For and on behalf of the Tribunal

30 November 2018

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