

**IN THE MATTER OF PROCEEDINGS BROUGHT UNDER THE BRITISH
WEIGHTLIFTING ASSOCIATION ANTI-DOPING RULES**

Before:

Mr Matthew Lohn (Chair)
Dr Kitrina Douglas
Dr Barry O'Driscoll

B E T W E E N

UK ANTI-DOPING LIMITED

Anti-Doping Organisation

And

SONNY WEBSTER

Respondent

DECISION

Introduction

1. This is the decision of the Anti-Doping Tribunal ("the Tribunal") convened under Article 5.1 of the 2015 Procedural Rules of the National Anti-Doping Panel ("the Procedural Rules") and Article 8.1 of the UK Anti-Doping Rules dated 1

January 2015 ("ADR") adopted by the British Weightlifting Association ("BWLA") to determine a charge brought against Mr Sonny Webster ("Mr Webster").

2. A hearing was convened in London on 17 October 2017 to determine a charge arising from the alleged commission of an Anti-Doping Rule Violation in breach of Article 2.1 of the ADR (Presence of a Prohibited Substance in an Athlete's urine sample). The allegation was that ostarine was present in a urine sample provided by Mr Webster on 23 May 2017. Ostarine is an anabolic agent (a selective androgen receptor modulator) which is categorised as a Prohibited Substance under Section 1.2 of the World Anti-Doping Code 2017 Prohibited List.

3. At the hearing, the athlete was present and represented by Mr Jim Sturman QC, of counsel. UK Anti-Doping was represented by Mr Christopher Lavey, of Bird & Bird LLP.

4. This document is the reasoned decision of the Tribunal, reached after consideration of the written evidence and submissions made by the parties attending at the hearing. We indicate below our findings of fact, reasoning and conclusions.

Factual Background

5. Mr Webster is a 23 year old weight lifter and is licensed as a competitor by British Weightlifting. Since 2005, Mr Webster has competed in local, national and international competitions, including three British Championships and the 2016 Olympic Games.

6. On 23 May 2017, Mr Alan Davies, a Doping Control Officer ("DCO"), attended Mr Webster's home address in Bristol to notify him of his requirement to submit to an Out-of-Competition sample collection. Mr Webster provided a urine sample which was split into two separate bottles which were given reference numbers A1131350 ("the A Sample") and B1131350 ("the B Sample").

7. Both samples were transported to the World Anti-Doping Agency ("WADA") accredited laboratory in London, 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.

8. On 9 June 2017, the Laboratory reported that analysis of the A Sample returned an Adverse Analytical Finding ("AAF") for the Prohibited Substance ostarine.

9. UK Anti-Doping ("UKAD") charged Mr Webster with a violation of ADR Article 2.1 by letter dated 14 June 2017 ("the Notice of Charge"). The Notice of Charge also confirmed to Mr Webster that he had been provisionally suspended from all sporting activities in accordance with the provisions of ADR Article 7.9.

10. By email dated 20 June 2017, Mr Webster requested analysis of the B Sample. On 6 July 2017, the Laboratory reported that the B Sample had also tested positive for ostarine.

11. By email dated 7 September 2017, Mr Webster responded to the Notice of Charge through his legal representative. Whilst Mr Webster admitted the violation of ADR Article 2.1, he indicated that he had no idea how the Prohibited Substance came to be in [his] system and that he intended to argue that he bore No Fault or Negligence, and in the alternative, that he bore No Significant Fault or Negligence in relation to the violation.

12. During the period of his suspension and before the hearing Mr Webster organised a six session course at MYGYM in Bristol commencing on 16 September 2017. The sessions were cancelled following a request from a BWLA representative, Mr Metcalfe, due to the gym being affiliated with BWLA. By email dated 18 September 2017, Mr Webster's solicitor requested UKAD's views on whether the proposed activity would have breached the terms of the Provisional Suspension. On 25 September, UKAD responded that they would be minded to permit the activities, subject to Mr Webster complying with ADR Article 7.9.6 and ADR Article 2.10.

13. By letter dated 6 October 2017, UKAD alleged that Mr Webster had in fact failed to respect the terms of his Provisional Suspension and breached the requirements set out at ADR Article 7.9. The letter was accompanied by a report

dated 6 October 2017 setting out details of training sessions in August and September 2017 which involved Mr Webster.

Preliminary Issues

14. The preliminary issues relating to admissibility of documents were dealt with by consent before the Tribunal. UKAD agreed that the supplementary documentation provided by Mr Webster on 16 October 2017 in relation to the alleged breach of the terms of the Provisional Suspension could be put before the Tribunal. Further, UKAD had no objection to Mr Metcalfe attending the hearing as an observer.

The Charge

15. Mr Webster admitted the violation of Article 2.1 both prior to and before the Tribunal. Whilst acknowledging Mr Webster's admission as evidence, the Tribunal also noted that both the A Sample and the B Sample had tested positive for ostarine. Given that the violation was admitted, the issues to be determined by the Tribunal related to any period of ineligibility to be imposed and the start date for any period to commence in the light of the issues raised concerning the alleged breach of the terms of the Provisional Suspension.

ADR Article 10.2

16. This was Mr Webster's first ADR violation. ADR Article 10.2 provides:

10.2 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.

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.

Intentional Use

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

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 [...]

18. UKAD submitted that the correct approach to the question of intention was as set out in the case of *UKAD v Buttifant* [see paragraphs 27-29] which determined that the burden is on the athlete to prove that the conduct which resulted in a violation was not intentional and, except in wholly exceptional circumstances, in order to establish that an ADR violation was not intentional, an athlete must establish how the prohibited substance entered their system.

19. In evidence Mr Webster submitted he had no idea how the Prohibited Substance came to be in [his] system. Mr Webster suggested that the positive test may have been caused by a contaminated supplement. The Tribunal noted that Mr Webster had attempted to investigate the issue of contamination by sending samples from six supplements for testing to DNA Legal. Reports from DNA Legal

dated 30 August 2017 and 28 September 2017 confirmed that none of the samples tested contained ostarine. In evidence before the Tribunal, Professor Cowan confirmed that the AAF of the A Sample at 4 nanograms / millilitre was a 'relatively small amount.' Further, Professor Cowan gave evidence that ostarine may have been ingested as a contaminant however there was no conclusive evidence to this effect.

20. Counsel for Mr Webster submitted that the case was a 'wholly exceptional case' as noted in paragraph 27 of Buttifant (see supra) and that evidence supporting the credibility of Mr Webster should be considered in assessing whether the violation was intentional. It was submitted on behalf of Mr Webster that he had used all the possible resources available to him in order to establish the source of the ostarine.

21. The Tribunal accepted and endorsed the approach set out in Buttifant. If an athlete wishes to establish that a violation is not intentional for the purposes of ADR Article 10.2.1(a), there is an evidential burden on the athlete to prove how the violation occurred. Without any objective evidential basis to explain the means of ingestion and therefore how the ostarine entered his system, the Tribunal was unable to conclude that the violation was not intentional. Mr Webster failed to discharge the burden upon him in this respect.

22. The Tribunal accepted that there may be a wholly exceptional case in which the method of ingestion cannot be established but there is objective evidence which would allow a conclusion that a violation was not intentional but in the circumstances of this case, the evidence did not allow the Tribunal to even begin to contemplate that Mr Webster's position was exceptional.

No Fault or Negligence and No Significant Fault or Negligence

23. Mr Webster further submitted that in the event he was unable to establish that his ADR violation was not intentional, he contended that pursuant to ADR Article 10.4 he bore No Fault or Negligence, and in the alternate, that he bore No Significant Fault or Negligence under ADR Article 10.5.

24. Given that Mr Webster did not satisfy the burden of proving how the ostarine entered his system to assert that the violation was not intentional, the Tribunal also found no basis for accepting Mr Webster's submissions under ADR Articles 10.4 and 10.5. As such, he would not be eligible for a reduction of the period of ineligibility on these grounds.

25. Mr Sturman invited the Tribunal to consider two further submissions on the basis of which he submitted the Tribunal was entitled to reduce the period of ineligibility.

Prompt Admission

26. Alternatively, Mr Webster relied on ADR Article 10.6.3. Mr Sturman submitted on behalf of Mr Webster that he admitted the charge as soon as he reasonably could on receiving confirmation from DNA Legal that the supplement samples did not contain ostarine.

27. The Tribunal acknowledged the difficulties faced by Mr Wester in finding a laboratory to conduct sample tests on the supplements resulting in a delay in admission. However, in the circumstances, the Tribunal concluded that the admission was not prompt given that it was made three months after the AAF on the A Sample and two months after the AAF on the B Sample.

Principle of Proportionality

28. Mr Sturman submitted on behalf of Mr Webster that to impose a four year period of ineligibility would be 'unjustifiably draconian' and that to do so would result in a disproportionate 'injustice' on the athlete.

29. UKAD submitted that both the WADA Code and ADR are drafted so as to incorporate the principle of proportionality in any penalty and there was no residual discretion to reduce the period of ineligibility on the grounds of proportionality.

30. Whilst the Tribunal acknowledged that there may be circumstances in which a sanction would not be proportionate, the Tribunal concluded that nothing in Mr Webster's particular circumstances caused it to consider that the principles of proportionality should require a lesser penalty to be considered.

Period of Ineligibility

31. Pursuant to ADR Article 10.2.1(a), the Tribunal concluded that the sanction is a period of ineligibility of four years.

32. In reaching this final conclusion the Tribunal determined that:

32.1. Mr Webster had not satisfied the evidential burden of proving that the violation was not intentional. As such, he was not eligible for any reduction of the period of ineligibility under ADR Article 10.2.1(a);

32.2. Mr Webster had not established that he bore No Fault or Negligence for the violation. As such, he was not eligible for elimination of the period of ineligibility under ADR Article 10.4;

32.3. Mr Webster had not established that he bore no Significant Fault or Negligence for the violation. As such, he was not eligible for any reduction of the period of ineligibility under ADR Article 10.5;

32.4. Given the delay in admission, Mr Webster was not eligible for any reduction of the period of ineligibility under ADR Article 10.6.3; and

32.5. There were no grounds for any reduction of the period of ineligibility on the basis that a four year sanction would contravene any principle of proportionality in Mr Webster's case.

Breach of Provisional Suspension

33. The final issue which fell to be decided by the Tribunal was whether Mr Webster was acting in the capacity of an 'Athlete Support Person' during training sessions in August and September 2017 and therefore had breached the restrictions set out in ADR 7.9.6 and was unable to have any period of ineligibility backdated to the point of his provisional suspension.

34. ADR Article 7.9.6 provides that:

An Athlete or other Person who is subject to a Provisional Suspension may not, during the period of Provisional Suspension, participate in any capacity (or, in the case of an Athlete Support Person, assist an Athlete who is participating in any capacity in any Competition, Event, or other activity organised, convened, authorised or recognised by the NGB or by anybody that is a member of, or affiliated to, or licensed by the NGB [...])

35. 'Athlete Support Person' is defined in the Appendix to the ADR as follows:

Any coach, trainer, manager, team, staff, official, nutritionist, medical, paramedical personnel, parent or other Person working with, treating or assisting an Athlete participating in or preparing for sports competition.

36. UKAD maintained that they had received information that, during the Provisional Suspension, Mr Webster had assisted an athlete or athletes participating in or preparing for sports competitions. Photographic evidence and details of the allegations were set out in UKAD's letter and accompanying report dated 6 October 2017. On 31 August 2017, Mr Webster trained in a gym at the same time as Mr Evans who competed at the Commonwealth Championships in Australia in early September 2017. On 3 September 2017, Mr Webster held a training day at The Studio in Cardiff which was attended by BWLA affiliated athletes.

37. UKAD submitted that the issue for the Tribunal to consider was whether training was a form of 'assistance' for the purposes of ADR Article 7.9.6. UKAD accepted that although the training sessions themselves were not BWLA affiliated,

Mr Evans and the attendees of the event on 3 September were affiliated to BWLA and that Mr Webster had breached the terms of his provisional suspension.

38. In evidence before the Tribunal, Mr Webster stated that he and Mr Evans were training at the same time at MYGYM in Bristol however he did not assist Mr Evans to prepare for the Commonwealth Championships. Mr Sturman submitted on behalf of Mr Webster that UKAD's interpretation of 'training' was outside the scope of the prohibition in ADR Article 7.9.6. Further, Mr Webster described the training day on 3 September. The day involved periods of training, demonstrations and a short lecture to the attendees. The day was organised by a business, Webstar Performance Limited, which is not affiliated to the BWLA. There was no evidence before the Tribunal that the athletes at the training session went on to compete in any affiliated competition or other activity or that Mr Webster had assisted the attendees in preparing for such competitions.

39. The Tribunal concluded that training in a gym at the same time as another BWLA registered athlete would not cause Mr Webster to be considered an 'Athlete Support Person' as defined in the Rules. Further, in the absence of evidence adduced by UKAD as to any prospective competition in which the affiliated athletes who attended on 3 September were to participate, Mr Webster was also not deemed to have contravened ADR Article 7.9.6 in respect of the training day.

Decision

40. The Tribunal determined that Mr Webster's doping offence under ADR Article 2.1 had been admitted and that it had been established that both the A Sample and the B Sample tested positive for the Prohibited Substance ostarine.

41. Further, the Tribunal determined that Mr Webster did not contravene ADR Article 7.9.6 and did not breach his Provisional Suspension.

42. The Tribunal concluded that Mr Webster will be subject to a period of ineligibility of four years commencing on 14 June 2017 and concluding at midnight on 13 June 2021. The Tribunal exercised the discretion under ADR Article 10.11.3

to backdate the start date of the period of ineligibility to the date of Provisional Suspension.

43. 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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