

**IN THE MATTER OF PROCEEDINGS BROUGHT UNDER THE ANTI-DOPING RULES
OF THE BRITISH BOXING BOARD OF CONTROL (“BBBoC”)**

Before:

William Norris QC (Chair)

Blondel Thompson

Professor Dorian Haskard

B E T W E E N:

UK Anti-Doping

Anti-Doping Organisation

and

Ryan Martin

Respondent

DECISION OF THE ANTI-DOPING TRIBUNAL

INTRODUCTION

1. The Athlete, Mr Martin (who is 26 years old), is a professional boxer from the United States of America who has had at least 23 professional bouts. Mr Martin took part in a bout on 03 November 2018 under the auspices of the British Boxing Board of Control ("BBBoC") and so was, at all material times, subject to the BBBoC's Anti-Doping Rule ("ADR").
2. Pursuant to the ADR, Mr Martin was tested In-Competition at the bout with Mr Josh Taylor. Mr Martin's urine Sample returned an Adverse Analytical Finding ("AAF") for exogenous androsterone and etiocholanone (testosterone Metabolites but prohibited in their own right).
3. The presence of these metabolites of exogenous testosterone in Mr Martin's Sample constitutes a violation of ADR Article 2.1. Accordingly, UKAD, which is the National Anti-Doping Organisation in the UK, charged Mr Martin in these terms on 05 February 2019. UKAD accepts that this would be Mr Martin's first Anti-Doping Rule Violation ("ADRV").
4. On 05 September 2019 Mr Martin was charged with a breach of ADR Article 2.1. In a Response filed on his behalf on 18 March 2019, Mr Martin's then legal representative, Mr Barnaby Hone of Counsel, wrote as follows:

"3. The facts as set out in paragraph 2 are accepted. In particular, it is accepted at paragraph 2.4 that the metabolites of testosterone; androsterone; and etiocholanone, was found in his A sample. He does not wish for his B sample to be tested.

...

4. Therefore, the Athlete accepts the charge at paragraph 3.2. He does not accept that he intentionally ingested testosterone. He will maintain that he ingested a contaminated supplement or another body, that contained the metabolites which were found in his sample. It is also noted that there was only a very small trace which was not found in the initial sample."

JURISDICTION

5. There is no issue as to this Panel's jurisdiction. For completeness, nevertheless, we record that the BBBoC is the governing body for professional boxing in Great Britain. It has adopted the UK ADR, (hereafter the ADR) which gives UKAD responsibility for managing the results of any drug testing conducted under those rules and for bringing enforcement proceedings where such testing indicates the presence of a Prohibited Substance in a boxer's Sample.
6. Any bout that takes place within the UK under the auspices of the BBBoC, notwithstanding the nationality of the Athlete, is subject to a licence that requires the Athlete to be subject to the ADR. Therefore, all Athletes and Athlete Support Personnel who participate in BBBoC licensed bouts are subject to the ADR and it was the BBBoC which granted Mr Martin a licence to participate in the Bout.
7. ADR Article 1.2.1 states:

"These Rules shall apply to:

 - a. *all Athletes... who are members of the NGB and/or of member or affiliate organisations or licensees of the NGB (including any clubs, teams, associations or leagues);*
 - b. *all Athletes... participating in such capacity in Events, Competitions and other activities organised, convened, authorised or recognised by the NGB or any of its member or affiliate organisations or licensees (including any clubs, teams, associations or leagues), wherever held; ..."*
8. Accordingly, by virtue of Mr Martin's licence to compete and his participation in the Bout, Mr Martin was, at all material times, subject to the jurisdiction of BBBoC and therefore bound by the ADR.

THE ISSUE AT THIS HEARING IN SUMMARY

9. The real issue at this hearing, therefore, was that which was identified in Mr Martin's Response of 18 March 2019. We shall quote that in full:

"4. Therefore, the Athlete accepts the charge at paragraph 3.2. He does not accept that he intentionally ingested testosterone. He will maintain that he ingested a contaminated supplement or another body, that contained the metabolites which were found in his sample. It is also noted that there was only a very small trace which was not found in the initial sample.

5 The Athlete will submit that his ineligibility should be reduced from 4 years on the following basis (in the alternatives):

a) That the period should be eliminated entirely on the basis that he bears on¹ [sic] fault or Negligence for the ADRV (ADR 10.4); or

b) That the period should be reduced to 0 to 2 years on the basis that the Athlete bears no significant fault or negligence as it was the result of ingesting a 'Contaminated Product' (ADR Article 10.5.2); or

c) The man² [sic] should be reduced to 1 to 2 years, on the basis that the Athlete bears No Significant Fault or Negligence for the ADRV (ADR Article 10.5.2). or

d) That the ban should be reduced to a minimum of 2 years on the basis that the Athlete was at minimal fault for the ADRV and that it should be treated at the lower end of seriousness in the context of these cases (ADR Article 10.6.3).

6. This is the current position of the Athlete and his case will be developed when further evidence is gained as to the origin of the metabolites. The athlete's representatives are currently undertaking an investigation into the possible origin. To do this the Athlete needs more time.

7. Therefore, at this stage it is requested that the matter is listed for a case management hearing, but not for a final hearing. It is submitted that a final hearing should only be listed when the further expert evidence is gathered, so as not to waste the time of the Tribunal or any of the other relevant parties."

10. For convenience, and in order to explain the circumstances in which the foregoing Response to Allegations was drafted, we should note some correspondence (in the form of email exchanges) which was produced in the course of our hearing.

¹ This must be a typographical error. The word intended must be 'no'.

² A further error: the word intended must be 'ban'

11. As a result of a suggestion by Mr Martin that he might have provided UKAD with details of the supplements which he blamed for the ADRV, UKAD disclosed some exchanges between Phillip Law and a member of Mr Martin's management team, Tom Loeffler.
12. The first of those was sent on 18 February 2019 at 17.13 and was an exchange between Mr Law and a colleague, Mr Laing, recording that Mr Law had, with Mr Martin's permission, spoken to Mr Loeffler, reminding him of the benefits of Mr Martin receiving legal advice. The email also noted that Mr Martin was going to be preparing a written Statement, including a list of supplements, it being a "*likely contamination case*". In the course of that same conversation, Mr Law apparently referred to the services of Sport Resolutions' Pro-Bono Legal Advice and Representation Service (the "*Pro Bono Service*"), which Mr Loeffler had said they were "*likely to take...up*". Mr Law also explained that Mr Martin might consider the possibility of testing his supplements, albeit that would be at his own expense.
13. At this point it is perhaps convenient to record that when Mr Martin had completed the Doping Control Form following his bout on 03 November 2018, he declared (in response to the request that he "*provide details of any prescription / non-prescription medication or supplements taken in the last seven days*") that he had taken four types of multivitamins. He made a similar (though not identical) declaration on a Doping Control Form he signed in relation to a further test under the auspices of the Voluntary Anti-Doping Agency ("*VADA*").
14. The involvement of VADA is also relevant because the initial analysis of the test carried out by UKAD returned a negative result (on 13 December 2018). Five days later, on 18 December 2018, UKAD became aware of the fact that the VADA test had returned an AAF for "*IRMS results consistent with exogenous origin of testosterone metabolites (5 α -androstenediol, 5 β -androstenediol, androsterone and etiocholanolone)*". As a result, UKAD instructed the Laboratory to conduct Isotope-ratio mass spectrometry ('GC/C/IRMS') on the A Sample.
15. It was following that further analysis that GC/C/IRMS results returned AAFs for the exogenous administration of the metabolites of testosterone, androsterone and etiocholanolone.

16. To return to the exchanges between Mr Loeffler and Mr Law, we note that there was a follow-up email from Mr Loeffler to Mr Law, dated 22 February 2019 at 16.11, recorded that they were "*content with Mr Hone representing Ryan Martin in this case*". Mr Hone was the barrister instructed on Mr Martin's behalf to provide pro bono representation and it was Mr Hone who was the author of the "*Response to Allegations*" of 18 March 2019, to which we have already referred.

PROCEDURAL HISTORY

17. As will be apparent from the foregoing, the position in February / March 2019 appeared to be that Mr Martin did not challenge the AAF, but was intending to assert that this must have resulted from him having taken supplements, perhaps contaminated by an unknown substance.

18. On 08 April 2019, UKAD submitted its standard Request for Arbitration in accordance with Rule 4.1.1 of the 2015 Rules of the National Anti-Doping Panel. Not long thereafter, the Chairman of this Panel was appointed and, on 18 April 2019, conducted a Directions Hearing attended by a representative of UKAD and by Mr Hone on behalf of Mr Martin. The record of that hearing includes a note that "*a further Directions call would be scheduled in eight weeks' time, to allow further investigation and testing of supplements*".

19. Such further hearing was held on 21 June 2019, at which point, to put it simply, matters were no further advanced and, although Mr Hone continued to act for Mr Martin, he was not able to indicate when, if at all, any supporting evidence would be provided in response to the charge.

20. A second Directions Hearing took place on 22 July 2019. Matters were still as they had been previously and the Order made on that occasion required (amongst other things) that Mr Martin "*serve on UKAD all of [the] evidence upon which he will seek to rely at the hearing*" by 29 July 2019.

21. No such material was served and on 06 September 2019, there was yet a further hearing, attended by Ms Dutt of UKAD and Mr Martin in person. At that stage, Mr Martin was evidently assisted by a member of his coaching / management team.
22. The Order made on that occasion included the following Direction at paragraph 2.1:

"By 16.00 (BST) on 20 September 2019, Mr Martin (the Respondent) shall have one final opportunity to serve on UKAD and file with the NADP all evidence upon which he will seek to rely at the hearing, together with providing his written submissions."

HEARING ON 17 OCTOBER 2019

23. In the event, no further written material was submitted by or on behalf of Mr Martin, who represented himself.
24. The hearing was held at Sport Resolutions' offices in London and was attended by Mr Phillip Law, representing UKAD, assisted by Ms Dutt. Mr Martin was able to join us promptly (by video link) at 3:30pm BST when the hearing started. Mr Martin told us he was, at that time, in Las Vegas, Nevada, USA and so it was 7:30am for him.
25. There was no objection to the constitution of the Panel and we are satisfied that Mr Martin was able to participate fully and to understand the proceedings.
26. We began the hearing by taking Mr Martin through paragraphs 1 to 7 of UKAD's Opening Submissions and, after some matters of clarification, and following our reminding Mr Martin of the formal Response which had been provided on his behalf in March 2019 (and to which we have referred above), it became apparent that his case, in a nutshell, was that:
 - (i) He admitted the ADRV;
 - (ii) The only explanation that he could advance for that finding was that its source must have been one or more of a variety of supplements that he had taken during the period before the bout and giving the Sample;

- (iii) He expressed surprise that one Sample (the one taken by UKAD) originally tested negative, whereas the VADA Sample, and UKAD's re-testing, returned a positive result.
 - (iv) He reminded us of the fact that he had cooperated with the World Boxing Council's investigation and, as he explained, told them as much as he knew about what supplements he had taken.
27. We shall return to the WBC ruling in due course. The note of that body's decision (which arose out of the VADA testing) is contained in a 'Final Ruling' of 25 March 2019.
28. The only evidence heard was therefore the written material supplied by UKAD, of which Mr Martin had a copy and to which he was able to refer, together with UKAD's Written Submissions (again, Mr Martin had copies of this). UKAD called no oral evidence and the only evidence that Mr Martin gave was his own account, which was tested by some questioning both from the Panel and from Mr Law.
29. In the course of his evidence, Mr Martin did suggest at one point that he had in fact sent a list of supplements that he had taken to UKAD. This was, of course, an assertion that came as a surprise to UKAD and to the Panel, since all the written material that had been produced suggested that nothing at all had been provided by Mr Martin over and above the Response to Allegations, to which we have already referred.
30. On closer inquiry, it became clear that what Mr Martin was referring to was not an exchange or conversation with UKAD in which any kind of list was provided, but, rather, to an email sent by a member of his management team, the same Mr Loeffler, to whom we have referred already, to the WBC in the course of their investigation. That email, we accept, had neither been sent directly nor had it been copied to UKAD until the day of this hearing.
31. We asked Mr Martin if he was willing to disclose the email (of which he had a copy) to which he was referring and he did so. It was therefore included as an additional document in the papers for our hearing. The email in question was dated 12 January 2019 and it reads as follows:

"Dear Alberto,

These are two of the supplements that Ryan took. He was sent this from Newlivescience from the UK and you can see his post on his instagram thanking this company for sending these sponsored supplements to him and posting their note that came with the supplements. Bucked Up and Blackmarket. They assured him that there would be no issues with testing with these supplements. The fact that they came from a company in the UK raised my suspicions when Ryan first went through everything that he took with us.

As Ryan mentioned in his letter to the WBC, he understands now that he cannot simply take supplements that are being suggested to him, even with the company's representations and best intentions, without having them checked by his team or a professional testing lab if there is something that looks suspicious.

This is the first time he was ever approached by this company and taken these particular supplements, so this could definitely be a cause if there was a difference in his test results from taking a new supplement.

I will forward further supplements from GNC that he had ordered and also taken during training camp in a separate email

Thank you,

Tom Loeffler"

32. For completeness, we should record that this email was not copied or sent to UKAD previously. And, except for this email which we first saw only on the day of the hearing, neither UKAD nor this Panel has ever been provided with any details of the supplements that Mr Martin blames as responsible for the AAF. On the contrary: the only previous reference to supplements that he might have taken was on the Doping Control Forms (to 'Multivitamins') which Mr Martin told us was incomplete because he did not appreciate that the form gave him the opportunity and required him to provide a full list. The only other evidence we had was in the general reference to supplements in the WBC ruling to which we now turn.

THE WBC RULING

33. This Panel had a brief summary of the WBC's final ruling. Whilst that ruling, issued on 25 March 2019, is not a comprehensive record of the WBC's investigation, we will nevertheless record the material parts. Under the heading "*Background and Findings*", the WBC recorded the following:

"As part of the Investigation, the WBC requested any and all information, materials, statements and any other evidence related to the Finding. Mr. Martin attributed the Finding to supplements he took during his training camp. Mr. Martin and his team provided to the WBC ample information about the specific supplements Mr. Martin took and their contents. Mr. Martin also indicated that his camp was unaware of his supplement regime. He also stated that if any supplement(s) that he took might have contained traces of any WBC CBP banned substance, such ingestion would have been accidental and unintentional.

The WBC recommended to Mr. Martin's representatives to make sure any supplements Mr. Martin takes in the future be screened using AXIS, which is a screening service available through VADA. Mr. Martin never requested, nor he received, a Therapeutic Use Exception for any substance including, but not limited, any substance which may be found in any of the supplements he admitted taking.

Mr. Martin and his representatives were extremely candid, cooperative and forthcoming with the WBC Investigation. Mr. Martin offered his sincerest apologies to the WBC, his opponent and all those affected by the Finding. He took responsibility for everything he puts into his body and displayed a sincere willingness to remain an exemplary clean athlete, to take affirmative steps to ensure that there are no future findings, and to comply with the WBC CBP mandates.

At the conclusion of the WBC investigation detailed below, Mr. Martin: (a) waived his right to witness the opening of the "B" Sample; (b) requested that the "B" sample not be tested; and (c) accepted the Finding of the presence of metabolites in his "A" Sample consistent with exogenous testosterone."

34. We also note the WBC's findings which were as follows:

"Based on the information available to the WBC, the WBC finds as follows:

- 1. At the time of the Finding, Ryan Martin, was enrolled in the WBC CBP.*

2. The anti-doping test of the "A" sample collected from Martin on December 3, 2018, yielded Isotopic Ratio Mass Spectrometry ("IRMS") results consistent with the external origin of testosterone metabolites (5 α -androstenediol and 5 β -androstenediol).

3. Androstenediol is a banned substance under the WBC Clean Boxing Program in which Mr. Martin is enrolled by virtue of its inclusion in VADA's List of Banned Substances.

4. The presence of performance enhancing substances like Androstenediol not only aim to provide the athlete who uses them with an unfair advantage, but can also have grave and adverse health consequences.

5. Mr. Martin has never tested positive for any banned substance in any tests he has undergone during his boxing career. So, the WBC considers the positive test result in question to be a first offense.

6. The WBC considers the fact that the Finding is a first offense and the cooperative, candid, forthcoming and contrite attitude Mr. Martin displayed through this process to be extenuating circumstances with respect to the penalties to be imposed in this case.

7. As the CBP's Results Manager, the WBC has complete discretion as to whether to impose any penalty to Martin and as to the nature and scope of the penalty.

8. As part of the WBC investigation, the WBC afforded Mr. Martin the opportunity to offer his position in the form of declarations, scientific literature and any other information and materials in support of his position. Besides denying having taken any banned substance, Mr. Martin did not actively participate in the investigation, did not provide an exculpatory evidence or information and failed to make appropriate and timely arrangements to witness the opening of the "B" Sample container.

9. Consistent with the WBC Rules & Regulations and WBC CBP Protocol, and in light of Mr. Martin's agreement to accept the Finding, the WBC considers the adverse finding the "A" Sample disclosed as a final positive test result."

35. In the light of those matters, the WBC ruled:

"1. The WBC hereby rules that Mr. Martin is being suspended from participating in any WBC-sanctioned bout, and shall be precluded from receiving any rights through the WBC or any of its affiliated federations or championship committees for a period of six (6) months after the collection of the sample that yielded the adverse finding (November 3, 2018) or until May 3, 2019;

2. VADA, pursuant to the WBC CBP, shall design a specific random testing protocol for Mr. Martin at his own cost and expense. The VADA-designed protocol shall commence as soon as feasible after this ruling and shall continue for 12-months thereafter. Mr. Martin or his camp shall contact the WBC (CBP@wbcboxing.com) and VADA (margaret@vada-testing.org) immediately upon issuance of this ruling to make all payment and logistic arrangements for the testing program to be implemented;

3. Mr. Martin shall remain on "probation status" with the WBC during a period of one (1) year after the date of this ruling. Any adverse finding reported in connection with Mr. Martin during that period by VADA or any other authority shall result in additional measures including, but not limited to, an immediate, indefinite suspension from any WBC activity while the WBC investigates the facts related to such finding; and

4. Mr. Martin shall pay the WBC CBP a fine of \$5,000 within ten (10) days of the date of this ruling."

36. It is implicit in the WBC's findings that Mr Martin's AAF was caused by supplements he took but it is unclear that any particular supplement was identified as the source (still less on what basis). The "*findings*" include no record of what investigations, if any, Mr Martin took to establish the integrity or legitimacy of any supplements he chose to take. Indeed, it is noteworthy that the only information about the "*specific supplements*" appears to have been given only after the adverse finding and Mr Martin "*indicated that his camp was unaware of his supplement regime*". To that extent, his defence before the WBC (other than to assert contrition and that he had been cooperative) are summarised in an assertion in paragraph 4 of the 'Background and Findings' that "*if any supplement(s) ... contained traces of any... banned substance, such ingestion would have been accidental and unintentional*".
37. We note the findings of fact, such as they were, made by the WBC, but nevertheless have no hesitation in saying that our role is to apply the UK Anti-Doping Rules as we interpret them and in the light of the evidence presented to us. We do not regard

ourselves as bound by any findings of fact made by the WBC although we do, of course, take account of and accord respect to their analysis.

38. Nor do we consider ourselves bound by, or even to take account of, the sanction of six months suspension imposed by the WBC, noting only that the WBC's view, at least as recorded in its findings, was that it had a "*complete discretion as to whether to impose any penalty*" and "*as to the nature and scope of the penalty*". The rules governing the sanctions we must consider are not so wide ranging and unconstrained.

DISCUSSION AND CONCLUSIONS

39. There can be no doubt that the presence of the Metabolites of exogenous testosterone in Mr Martin's Sample constitutes a violation of ADR Article 2.1. That is admitted by Mr Martin and, even if it had not been admitted, we would find the ADRV proved.

40. ADR Article 2.1 is a strict liability offence. For convenience, we shall record ADR Article 2.1.1 in full:

"It is each Athlete's personal duty to ensure that no Prohibited Substance enters his/her body. An Athlete is responsible for any Prohibited Substance or any of its Metabolites or Markers found to be present in his/her Sample. Accordingly, it is not necessary that intent, Fault, negligence or knowing Use on the Athlete's part be demonstrated in order to establish an Anti-Doping Rule Violation under Article 2.1; nor is the Athlete's lack of intent, Fault, negligence or knowledge a valid defence to a charge that an Anti-Doping Rule Violation has been committed under Article 2.1."

41. On that basis, the real issue for us to decide is that of the appropriate sanction. The starting point for our consideration (which was also the focus of the hearing) is ADR Article 10.2. That provides:

"10.2 Imposition of a Period of Ineligibility for the Presence, Use or Attempted Use, or Possession of a Prohibited Substance and/or a Prohibited Method

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) [not applicable] ...

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

42. Thus, as UKAD submitted in paragraph 34 of its Opening Submissions, the period of Ineligibility imposed must be four years unless Mr Martin is able to demonstrate, on the balance of probabilities, that his action were not intentional.

43. What is meant by "intentional" in context is addressed directly in ADR Article 10.2.3:

10.2.3 As used in Articles 10.2 and 10.3, the term "intentional" is meant to identify those Athletes ... who cheat. The term, therefore, requires that the Athlete ... engaged in conduct which he ... 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..."

44. As has been made crystal clear in a number of cases, including UKAD v Buttifant, NADP Appeal Tribunal decision dated 07 March 2015; UKAD v Songhurst, NADP decision dated 09 July 2015; UKAD v Williams, NADP decision dated 07 October 2015; and in Guerrero v FIFA / Wada v FIFA and Guerrero CAS 2018/A/5546, 5571, an Athlete who wishes to establish that he acted unintentionally bears the burden of showing, in the first place, how the Prohibited Substance entered his system. He has to discharge such burden on a balance of probabilities, but, save in exceptional cases, a bare protestation of innocence or assertion that it must have been something to do with some supplement he had taken is unlikely to be sufficient.

45. Bearing in mind how little information Mr Martin has provided to UKAD or submitted to us as to the possible source of the Prohibited Substance, notwithstanding the

many opportunities he has been given to supply information and evidence, we find that Mr Martin has not satisfied us that it is more likely than not that one or more supplements were indeed the means of ingestion.

46. In reaching that conclusion, we have taken account of the potential cost of investigating matters from a scientific perspective, albeit the Pro Bono Service would have provided him with legal representation at no cost at all. The reality is that Mr Martin has in fact done nothing to assist UKAD's investigation or to support the case that he presents to this Panel. Indeed, until the hearing itself and his disclosure of Mr Loeffler's email to the WBC (of 12 January 2019) Mr Martin had not even provided the name of any of those supplements, let alone explained how, where and in what circumstances he had obtained them.
47. Even if we were satisfied that one or more supplements were the probable source of the Prohibited Substance, we would nevertheless find that Mr Martin's actions in taking them come within the definition of "*intentional*" in ADR Article 10.2.3 in that, when taking them, he either knew or ought to have known that doing so involved a "*significant risk that the conduct might constitute or result in an Anti-Doping Rule Violation*" and manifestly disregarded the risk.
48. We say that in part because of the WBC's note that Mr Martin had "*indicated that his camp was unaware of his supplement regime*" and in part because the email by Mr Tom Loeffler gives no comfort whatsoever that Mr Martin thought he was taking a substance that he had a good reason to believe was legitimate. The fact that the suppliers may have "*assured him*" there would be "*no issues with testing*" amounts to no reliable assurance at all. Moreover, the very names of the supplements "*Bucked Up*" and "*Blackmarket*" might themselves have rung alarm bells.
49. In any case, however, we know nothing whatsoever about what attempts, if any, Mr Martin took to establish the legitimacy of these products. As a bare minimum, he could and should have shared the details with those responsible for his management or training, but apparently he did neither.
50. The Panel's finding, therefore, is that in taking those supplements (if indeed the supplements were the source of the ADRV) Mr Martin took what he knew or ought to have known was a risk and manifestly disregarded the consequences of it. On

that basis, he has not demonstrated that he acted unintentionally. Similarly, had it been argued (as per his 'Response to the Allegations') that this was a case where the period of Ineligibility should be eliminated because there was "*No Fault or Negligence*" (ADR Article 10.4), we would say that, far from acting without Fault or Negligence, Mr Martin's Fault and Negligence was of a high order.

51. In that context, it is probably helpful to record that ADR Articles 10.4 and 10.5.2 – No Fault or Negligence / No Significant Fault or Negligence – are intended to apply only in "*exceptional circumstances*" and where the Athlete has first established how the Prohibited Substance entered his system. Any question of Fault or Negligence must also be considered against the background of the strict personal duty which is imposed by the ADR to "*ensure that no Prohibited Substance enters his/her body*" so that an athlete must "*take full responsibility for what he/she ingests and uses*" – see ADR Article 1.3(c). It is a duty which, as several cases have emphasised, can be discharged only with the exercise of utmost caution and is likely to arise only in exceptional circumstances.

52. The concept of utmost caution is, of course, set out in ADR Article 1.3.1:

"It is the personal responsibility of each Athlete:...

(d) to carry out research regarding any products or substances which he/she intends to ingest or Use (prior to such ingestion or Use) to ensure compliance with these Rules; such research shall, at a minimum, include a reasonable internet search of (1) the name of the product or substance, (2) the ingredients / substances listed on the product or substance label, and (3) other related information revealed through research of points (1) and (2);

(e) to ensure that any medical treatment he/she receives does not infringe these Rules"

53. There is one final issue that we should mention, if only to dispose of it shortly. The correspondence in advance of the hearing, referring as it did to supplements, also raised, perhaps by implication, the possibility that Mr Martin might have taken what he regarded as a legitimate supplement, but nevertheless constituted a "*Contaminated Product*" under Article 10.5.1(b).

54. Suffice it to say that no evidential support exists for any such contention and, accordingly, we reject it.

SANCTION

55. It follows from the foregoing that, pursuant to ADR Article 10.2.1, the period of Ineligibility that must be imposed on Mr Martin is four years. ADR Article 10.11 provides that, usually, the imposition of a sanction starts on the day of the decision. However, ADR Article 10.11.3 gives credit for any period of Provisional Suspension that has been respected to date.

56. We note that Mr Martin was originally suspended on 05 February 2019 and, so far as UKAD is aware, has respected the terms of that Provisional Suspension.

57. We also note that in relation to ADR Article 10.11.2, Mr Martin has made what we regard as a "*timely submission*" in that he accepted the charge when providing (via Mr Hone) the formal written Response on 18 March 2019. We are therefore prepared to rule that the four year suspension should begin on the date when the Sample was collected, that is on 03 November 2018.

RIGHT OF APPEAL

58. In accordance with ADR 13.4 there is a right of appeal against this decision. Notice of any such Appeal must be lodged in accordance with ADR 13.7.



WILLIAM NORRIS Q.C. (Chair)

On behalf of the Tribunal

28 October 2019



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