

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

Before:

Charles Hollander KC
Lorraine Johnson
Dr Chinyere Ezewuzie

BETWEEN:

UK Anti-Doping

Anti-Doping Organisation

and

Finley Evans

Respondent

DECISION OF THE NATIONAL ANTI-DOPING PANEL

Introduction

1. Mr Finley Evans is a 19 year old Welsh rugby union player. At all material times, Mr Evans was registered with the Welsh Rugby Union ("WRU") as a player.

2. The Welsh Rugby Union (“WRU”) is the National Governing Body for the sport of rugby union in Wales. The WRU has adopted the UK Anti-Doping Rules as its anti-doping rules (the “ADR”).
3. UK Anti-Doping (“UKAD”) is the National Anti-Doping Organisation in the UK. In accordance with ADR Article 7.2, UKAD has responsibility for the Results Management of this matter.
4. On 12 December 2023 Mr Evans was tested Out-of-Competition at a Llandoverly RFC training session. Llandoverly RFC play in the Welsh Premiership Division, the top tier competition organised by the WRU. Mr Evans provided a urine Sample, results of the A Sample analysis returned an Adverse Analytical Finding (“AAF”) for ostarine. The estimated concentration of ostarine in the A Sample was approximately 4ng/mL.
5. On 16 February 2024 UKAD charged Mr Evans with violations of ADR Article 2.1, in that a Prohibited Substance, ostarine, was present in the A Sample he provided on 12 December 2023, and ADR Article 2.2, in that he used a Prohibited Substance, ostarine, on or before 12 December 2023.
6. Mr Evans does not dispute the Anti-Doping Rule Violations (“ADRVs”), but seeks to mitigate sanction on the basis that (1) his ADRV were not ‘intentional’ (as the term is defined in ADR Article 10.2.3); and (2) that he bore No Significant Fault or Negligence for the ADRV and is therefore entitled to a reduction under either ADR Articles 10.6.1(b) or 10.6.2.
7. The matter was referred to the National Anti-Doping Panel (“NADP”) for determination on 16 April 2024. The Chair was duly appointed on 9 May 2024 whilst Lorraine Johnson and Dr Chinyere Ezewuzie were subsequently appointed to the Panel on 24 July 2024.

Jurisdiction

8. Jurisdiction is not in dispute in this matter. Mr Evans was registered with the WRU as a player at all material times. He was also a participant in Competitions and other activities, organised, convened, authorised or recognised by the WRU at all relevant times.

The Hearing

9. A remote hearing was held on 27 August 2024. The parties were represented as follows:

UKAD

Ailie McGowan, Lawyer

James Laing, Lawyer

Yusuf Panah, Paralegal

Leah Thomas, WRU, Observer

Nick Wojek, Independent Expert Witness

The Respondent

Finley Evans, the Player

Spencer Turner, Counsel

Harry Joule, Paralegal

Jeremy Evans (the Player's Father)

Ian Jones, Witness

Euros Evans, Witness

10. The Panel heard oral evidence from Mr Evans himself and Mr Ian Jones, Head of Rugby Llangennech RFC, and Mr Euros Evans, Llandoverly Head Coach, and Mr Nick Wojek on behalf of UKAD. Other witnesses who did not give oral evidence were MRJ Phillips, President Llangennech RFC (for Mr Evans), Mr James Flanigan, Mr Adam Taylor, Mr Bryn Wheeler and Mr Gareth Walters for UKAD.

The Charges

11. On 16 February 2024, Mr Evans was charged pursuant to ADR Article 2.1 with the presence of a Prohibited Substance in his Sample. ADR Article 2.1 states:

“2.1 Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete’s Sample, unless the Athlete establishes that the presence is consistent with a TUE granted in accordance with Article 4

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

2.1.2 Proof of any of the following to the standard required by Article 8.4.1 is sufficient to establish an Article 2.1 Anti-Doping Rule Violation:

(a) An Adverse Analytical Finding of the presence of a Prohibited Substance or any of its Metabolites or Markers in the Athlete’s A Sample, where the Athlete waives analysis of the B Sample and so the B Sample is not analysed.

... 2.1.3 Excepting those substances for which a Decision Limit is specifically identified in the Prohibited List or a Technical Document, the presence of any reported quantity of a Prohibited Substance or its Metabolites or Markers in an Athlete’s Sample shall constitute an Article 2.1 Anti-Doping Rule Violation.”

12. UKAD also charged Mr Evans, on the same date, with an ADR Article 2.2 violation. ADR Article 2.2 states:

“2.2 Use or Attempted Use by an Athlete of a Prohibited Substance or a Prohibited Method, unless the Athlete establishes that the Use or Attempted Use is consistent with a TUE granted in accordance with Article 4

2.2.1 It is each Athlete's personal duty to ensure that no Prohibited Substance enters their body and that no Prohibited Method is Used. Accordingly, it is not necessary to demonstrate intent, Fault, negligence or knowing Use on the Athlete's part in order to establish an Anti-Doping Rule Violation for Use of a Prohibited Substance or a Prohibited Method; nor is the Athlete's lack of intent, Fault, negligence or knowledge a valid defence to an assertion that an Article 2.2 Anti-Doping Rule Violation of Use has been committed."

13. The period of Ineligibility to be applied is set out as follows in ADR Article 10.2:

"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 [...] that is the Athlete's [...] first anti-doping offence shall be as follows, subject to potential elimination, reduction or suspension pursuant to Article 10.5, 10.6 or 10.7:

10.2.1 [...] shall be four (4) years where:

(a) The Anti-Doping Rule Violation does not involve a Specified Substance or a Specified Method, unless the Athlete [...] can establish that the Anti-Doping Rule Violation was not intentional. ...

10.2.2 If Article 10.2.1 does not apply, then [...] the period of Ineligibility shall be two (2) years."

14. The meaning of 'intentional' can be found at ADR Article 10.2.3:

"As used in Article 10.2, the term "intentional" is meant to identify those Athletes or other Persons who engage in conduct which they know constitutes an Anti-Doping Rule Violation or they know that there is a significant risk that the conduct might constitute or result in an Anti-Doping Rule Violation and they manifestly disregard that risk..."

15. In 2021 a new 'Comment to Article 10.2.1.1' was introduced to codify the post-2015 Code jurisprudence. That comment states:

"While it is theoretically possible for an Athlete or other Person to establish that the anti-doping rule violation was not intentional without showing how the Prohibited Substance entered one's system, it is highly unlikely that in a doping case under Article 2.1 an Athlete

will be successful in proving that the Athlete acted unintentionally without establishing the source of the Prohibited Substance.”

16. There is considerable UKAD and CAS jurisprudence on how this test is to be met by an athlete in discharging their burden to show that the ADRV was not intentional. In *UKAD v Songhurst SR/0000120248 (2015)* the Panel stated at paragraph 29:

“In any normal case knowledge concerning how the substance came to be in the body is uniquely within the knowledge of the athlete and UKAD can only go on the scientific evidence of what was found in the body. The scientific evidence of a prohibited substance in the body is itself powerful evidence, and requires explanation. It is easy for an athlete to deny knowledge and impossible for UKAD to counter that other than with reference to the scientific evidence. Hence the structure of the rule.”

17. In March 2017, a CAS Panel (Michael Beloff KC; Jacques Radoux, Ken Lalo) heard detailed argument in *Villanueva v FINA CAS 2016/A/4534* on whether the new 2015 Code Article 10.2.1 (and its equivalent in FINA’s anti-doping rules) required an athlete to show the origin of the Prohibited Substance to establish that the violation was not intentional. The CAS Panel found it did not, but that:

“...such a situation would inevitably be extremely rare.... Where an athlete cannot prove source it leaves the narrowest of corridors through which such athlete must pass to discharge the burden which lies upon him.”

18. In June 2019, an American Arbitration Association Panel in *USADA v Jones Case No. 01-18-0004-6622*, said that:

“there is a doorway through which an athlete might pass on the issue of establishing lack of intention for purposes of a reduction from four years to two years, but that doorway is a very narrow passage, and one that opens only where there is sufficient proof of lack of intention, of which proof of source can be one, albeit strong, indicator. Athlete protestations and character evidence, without more, simply do not suffice under the rule and the cases”.

19. It follows that the jurisprudence shows that in order to demonstrate that the ADRV was not intentional, the Athlete must normally show the cause of the ADRV, and the cases

in which he will satisfy his burden of proof without satisfying the Tribunal as to the cause will be highly exceptional.

The facts in the present case

20. In July 2023, Mr Evans progressed from youth rugby to senior rugby and signed for Llandoverly RFC (“Llandoverly”) who compete in the Welsh Premier Division and are a semi-professional club. Paperwork was completed for registration with the WRU, however, he has not played in any games for Llandoverly. Llandoverly operate a 30-man squad for matchdays and at no point has he been included in any of the matchday squads.
21. In October 2023, he signed for Llangennech RFC (“Llangennech”) from Llandoverly, who compete in the WRU Division One West, the third tier of Welsh rugby and are an amateur club. He was effectively on a “dual registration”, with his primary club being Llandoverly and the dual registration club Llangennech. Training was verbally agreed between the two clubs. He was permitted to train with Llandoverly on Tuesdays and with Llangennech on Thursdays, with a match for Llangennech at the weekend.
22. On 7 October 2023, anti-doping training was carried out by the WRU at Llandoverly but he was training that night with Llangennech and did not attend. In the event, he has not attended any anti-doping training and said he had very limited knowledge of doping.
23. Earlier in 2023, Mr Evans had been suffering from health issues affecting his throat, chest and breathing. He was admitted to Morriston Hospital Swansea three times over the course of the next two months. He attended an Ear, Nose and Throat Clinic on 6 September 2023 and was seen by a GP on 22 September 2023 in relation to a continuous cough. Over a 6 month period, he had numerous infections related to glandular fever which left him run down. His fitness deteriorated in consequence and it was taking a substantial amount of time to recover and to get match fit for competitive rugby. He was particularly fatigued and said he needed to increase his energy levels to maximise performance at training. To aid recovery and return to match fitness, he said he took a variety of supplements.

24. The hearing focused on two supplements in particular:

- a. On or around 16 November 2023, Mr Evans purchased online, the supplement, 'Black Mamba -Myostat'.
- b. On 12 December 2023, he attended 'Kicks Gym' in Swansea for a workout to undertake a fitness session for the purposes of attending training with Llandoverly the same evening. He felt unwell at the start of the gym session and purchased a 'pre-workout' called "Epicatalean" from 'Kicks Gym'. This was Cellucor C4 Original Pre-Workout Shot. He paid in cash.

25. It was Mr Evans' case that one of these two supplements must have given rise to the AAF and it was likely that the "Black Mamba" had done so.

26. When he received the Notice of Charge, Mr Evans destroyed all the supplements in his possession. This was particularly unfortunate as it has made it impossible for any of these supplements to be subjected to laboratory analysis.

27. Mr Wojek, UKAD's expert, gave evidence that ostarine may appeal as a doping substance in rugby union for the below reasons:

- a. To increase skeletal muscle mass, which in conjunction with training, may enhance strength and/or power. As a result, an individual may be more successful in performing the key tasks.
- b. To enhance lean body mass – ostarine is reputed to maintain (or slightly increase) skeletal muscle mass whilst excess fat mass is lost when administered in conjunction with training and a controlled diet. Enhancing lean body mass in this way is likely to improve work rate (as fat mass is less), thus enabling key tasks to be repeatedly performed more successfully and for longer during a match.

- c. To enhance recovery between training sessions – faster recovery allows an individual to train harder (as the body can better tolerate the demands of training) enabling the individual to achieve their training goals more quickly.

28. Mr Wojek said that it was not possible to determine, in the absence of scientific tests, whether the AAF was derived from either or which of the two supplements referred to above. None of the ingredients listed within Cellucor C4 Original Pre-Workout Shot or Black Mamba Nutrition Myostat are prohibited in sport. Black Mamba Nutrition lists the presence of ostarine within two products that they manufacture. It is therefore possible that ostarine may be present in Black Mamba Nutrition Myostat as an adulterant or contaminant without necessarily being listed on the ingredients label of the product. Cellucor C4 Original Pre-Workout Shot has not been screened for prohibited substances from an adulteration or contamination perspective. It is not certified by Informed Sport or a similar certification programme.

29. Mr Wojek said that the amount of ostarine in the AAF was consistent either with the tail end of a course of ostarine, or with contamination. It was not possible to draw conclusions from the quantity found in the Sample.

Discussion

30. We are very much cognisant of the burden on the Athlete in any normal case to prove the source of the contamination in order to satisfy the Tribunal that the reason for the AAF was not intentional doping. We recognise that the caselaw also makes clear that protestations of innocence and character references, as we received in this case, in relation to the Athlete are insufficient and that it is not permissible for us to indulge in speculation. We also recognise that in some circumstances this may work unfairly to an “innocent” athlete who is unable to prove the source.

31. The problem we have in this case is that there is simply no material on which we can be satisfied as to the cause of the AAF. The supplements were destroyed (which was very

unfortunate) so could not be tested. There has been no testing of further samples of the same supplements. The quantity of ostarine found gives no indication as to its provenance. There is simply no scientific evidence before us (other than the helpful evidence of Mr Wojek, which of course did not examine the supplements). Any conclusion as to the source of the AAF would be mere speculation.

32. In these circumstances, we cannot regard this as any sort of exceptional case and are obliged to reach the conclusion that Mr Evans has not discharged his burden of proof to satisfy us that the cause of the ADRV was not intentional. In those circumstances the question of No Significant Fault or Negligence does not arise.

33. Not for the first time, we are faced with a young athlete who has received no anti-doping training and expresses complete ignorance of anti-doping issues and risks. It is not appropriate for us to pass comment on the particular circumstances in which this has happened in the present case, but we should conclude this decision with a reiteration of the importance of clubs and sporting bodies ensuring that all those who play sport receive proper anti-doping training from the outset.

Summary: The Tribunal's Decision

34. In the circumstances:

- (a) The ADRVs under ADR Article 2.1 and 2.2 have been established;
- (b) ADR Article 10.3.2 requires that an athlete should receive credit for the period of Provisional Suspension. Mr Evans must serve a four year period of Ineligibility with effect from 19 January 2024, the date Mr Evans was provisionally suspended and shall expire at 23:59 on 18 January 2028.

Right of Appeal

35. In accordance with Article 13.5 of the NADP Procedural Rules any party who wishes to appeal must lodge a Notice of Appeal with the NADP Secretariat within 21 days of receipt of this decision.

36. Pursuant to ADR Article 13.4.2(b), the Appeal should be filed to the National Anti-Doping Panel, located at Sport Resolutions, 1 Paternoster Lane, London, EC4M 7BQ (resolve@sportresolutions.com).



Charles Hollander KC
Chair, on behalf of the Panel
London, UK
16 September 2024

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