

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

William Norris QC
Dr Kitrina Douglas
Professor Peter Sever

B E T W E E N:

UK ANTI-DOPING ("UKAD")

Anti-Doping Organisation

- and -

CHINU SANDHU

Respondent

DECISION

Mr Joseph Paterson for UKAD

Mr Karamjit Singh, Counsel, for Mr Sandhu

Summary

1. Chinu Sandhu, born on 6 June 1987 (so now aged 29) is a distinguished and experienced wrestler who has represented Great Britain at many competitions since 2005. He has won eight British and five English championships, and he represented England at the 2014 Commonwealth Games, winning a bronze medal, and also competed for Team GB in Baku at the 2015 European Games.
2. On 20th September 2016, he was subject to an Out-of-Competition Test at a training venue in Hockley. This test was conducted pursuant to the Anti-Doping Rules (“ADR”) of the British Wrestling Association (“BWA”).
3. The urine sample which he provided returned an Adverse Analytical Finding (“AAF”) for stanozolol-N-glucuronide, which is a known metabolite of stanozolol and is a prohibited (but non-specified) substance under s.1.1a of the WADA 2016 Prohibited List for Exogenous Anabolic Androgenic Steroids.
4. UKAD issued a Notice of Charge on 14th October 2016 in respect of the alleged commission of an Anti-Doping Rule Violation (“ADRV”) pursuant to ADR Article 2.1 due to the presence of stanozolol-N-glucuronide in the Sample (the “Charge”).
5. There has never been any issue as to the accuracy of that finding nor as to the presence of the prohibited substance in Mr Sandhu’s system. Accordingly, as provided by ADR Article 2.1 / ADR Article 10.2, the period of ineligibility is four years unless the athlete can establish that the violation was not intentional. In the present case, therefore, if Mr Sandhu were able to show that he had not acted intentionally, the mandatory period of ineligibility would be reduced.
6. Mr Sandhu’s case is that he did not act ‘intentionally’ and certainly did not intend to cheat. We quote paragraph 8 of Mr Singh’s written submissions – page 155: he suggests that “it is more likely than not that the source of the prohibited substance were (sic) the supplements purchased from myprotein.com”. This is a refinement of the contention previously advanced in Mr Sandhu’s witness statement (page 160-2) which identified the supplements as a second possibility and medication taken as a first possibility. The contention that medication might have been the source of the

prohibited substance was, very properly, abandoned in the light of the evidence from Professor Cowan (page 68).

Jurisdiction

7. Jurisdiction is not an issue before us but, for completeness, we note that Mr Sandhu was registered with the BWA on 22nd October 2015 and, since such membership continues for 12 months, he was a member of the BWA at the time of the Out-of-Competition Test and hence bound to comply with the ADR at all times.
8. ADR Article 7.1 provides that responsibility for Results Management lies with UKAD which acts as the authority with the responsibility for prosecuting the case. Article 4 of the Rules of the National Anti-Doping Panel (“the NADP Rules”) provides for circumstances that shall trigger its jurisdiction. Article 4.1.1 of the NADP Rules confirms that the jurisdiction of the NADP shall be triggered by a written request for determination of one or more charges that the Anti-Doping Organisation has brought against the Respondent.
9. UKAD submitted a request for arbitration to the NADP by email of 31 October 2016. The NADP therefore has jurisdiction to determine the charge and decide any issues surrounding the penalty to be imposed for the violation.

Evidence before the Tribunal

10. The Tribunal was provided with a bundle (pages 1 – 295) to which we added, with the consent of both parties, two sets of documents at pages 296/1-13 and 297/1-13. These are notes which, we were told, were available to the lecturer who provided anti-doping education at various sessions including one which Mr Sandhu agrees he attended.
11. The details of the session (in May 2014) which Mr Sandhu attended were set out in a witness statement provided by Alexandra Newman, an Athlete Support Officer (pages 71-3). She explained how the ‘Clean Sport Education Programme’ sessions

are delivered. The one Mr Sandhu attended in May 2014 was a Clean Sport 2 session which, amongst other things, addressed the use of supplements (pages 297/1-13). We also had copies of the PowerPoint slides which were referred to in the course of the lectures (pages 75 – 96).

12. The Clean Sport 2 session (assuming it was delivered according to those notes/Power Point slides) made what are, in the context of this case, the following important points:

- Athletes have 'strict liability' for ensuring that they compete clean. The message is 'Your body, Your responsibility' (pages 77, 297/1, 2 and 11);
- Those taking medications (but not supplements) can check what is allowed on the 'Global DRO' site (pages 10, 297/3 and 5) with which Mr Sandhu acknowledged he was familiar (para 7, page 259);
- Supplements are taken at the athlete's risk (page 297/7) and athletes are told how they can be checked against the list on the Informed Sport site (pages 12, 297/7-8).

13. It was not entirely clear whether this particular presentation (rather than the Clean Sport 1 version – see page 296/7) also dealt directly with how one can check that a supplement has been batch tested, something which would provide a further level of reassurance as to the product. Nevertheless, Mr Sandhu acknowledged that he knew about batch testing although he explained that he had not realised the option was available for MYPROTEIN products which, as we have noted already, were the supplements that he now regards as the probable source of the prohibited substance.

14. We find that he could have checked about batch testing had he chosen to do so and note that the copy of the MYPROTEIN home page in our papers at page 116 suggests batch testing was an available option. We appreciate this only shows what would have been on the home page at the date of printing but we consider it likely that this would also have appeared on the home page when Mr Sandhu accessed it.

15. Ms Newman's Statement, together with that of UKAD's Head of Science and Medicine, Nick Wojek (pages 97 to 100), were unchallenged and were read with the agreement of Mr Singh. We also had written statements from the Director of the Drug Control Centre at King's College, London, Professor David Cowan (pages 68 – 70) and from a member of UKAD's Legal Directorate, Mr Louis Muncey (pages 101 – 104). We heard additional evidence by telephone from Professor Cowan and Mr Muncey gave evidence in person.
16. Mr Sandhu himself had provided a witness statement (pages 158 – 163) and gave oral evidence to us.
17. We wish to record our thanks to everyone who appeared before the Tribunal whether as witness or as advocate. We are particularly grateful to Mr Singh who acted pro bono for Mr Sandhu and presented his case with economy, courtesy and conspicuous skill.

The relevant Rules

18. For convenience, we shall set out the relevant provisions in full. The starting point is to recognise that the applicable sanction for violations of ADR Article 2.1 is governed by ADR Article 10.2. It provides that:

"10.2 The period of Ineligibility for Anti-Doping Rule Violation under Article 2.1, 2.2 or 2.6 is that 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 Specific 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."*

19. It is common ground that the burden of proof is, as the above provisions make clear, upon the athlete who seeks to establish that he did not intentionally commit the ADRV. The standard of proof is that of a "*balance of probabilities*" but, as the Rules provide, this requires us to apply a test of "*comfortable satisfaction*" in relation to establishing that balance.

20. The meaning of "*intentional*" is set out in ADR Article 10.2.3 which states:

"As used in ADR 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. An Anti-Doping Rule Violation resulting from an Adverse Analytical Finding for a substance which is only prohibited In-Competition shall be rebuttably presumed to be not 'intentional' if the substance is a Specified Substance and the Athlete can establish that the Prohibited Substance was Used Out-of-Competition. An Anti-Doping Rule Violation resulting from an Adverse Analytical Finding for a substance which is only prohibited In-Competition shall not be considered 'intentional' if the substance is not a Specified Substance and the Athlete can establish that the Prohibited Substance was Used Out-of-Competition in a context unrelated to the sport performance."

What must the Respondent Establish?

21. In context, it is clear to this Tribunal that there are two things that the Athlete will have to establish in a case such as this.

22. First, without repeating the lengthy analysis conducted in the case of *UKAD v Adam Buttifant* [SR/NADP/508/2016], which we adopt as a comprehensive and accurate statement of the relevant principles, it will almost always be the case that the Athlete will have to establish how the Prohibited Substance got into his or her system. We shall refer to this as Stage 1.

23. In the present case, the Athlete has tried to discharge that burden by saying that it was most probably through taking the supplement or supplements that he purchased over the internet (from MYPROTEIN).
24. If we were to accept that Mr Sandhu had discharged the burden with regard to that first stage, we would necessarily go on to consider whether, in purchasing that product from that source and using it as he did, he acted "*intentionally*" within the meaning of ADR Article 10.2.3. This is a subjective test (see UKAD v Buttifant at paragraph 41). Accordingly, at that second stage we would necessarily have to consider whether, in using the product, he either knew that he was taking something which was illegitimate (not a situation that arises here) or whether he knew that there was a significant risk that it might be so and "*manifestly disregarded that risk*".

The explanation given by Mr Sandhu

25. Mr Sandhu declared the following on his Doping Control Form (page 27):

"Ibuprofen, Creatine Monohydrate, Whey Protien [sic]."

26. After he had received the Notice of Charge on 14th October 2016 (pages 1 – 5), Mr Sandhu suggested possible sources of his adverse sample and explained this and his use of supplements in his witness statement. At paragraph 7 (page 159), he said that he had "*regularly used supplements to aid [his] training*" and had checked on 'Globaldo.com' (we take it he meant Global DRO) so as to ensure that the supplements he took contained no Prohibited Substances.
27. As we noted above, at paragraph 15 of that Statement (pages 160 – 161) he said that it was possible that the source of the Prohibited Substance was medical treatment that he had undergone in India, otherwise it was the supplements that he had acquired from MYPROTEIN.
28. His evidence in his witness statement and orally was that he had changed from purchasing supplements from his regular supplier (GNC: a shop but also an internet supplier) to MYPROTEIN for reasons of cost after an expensive trip to India where

he underwent surgery for troublesome pain under his belly button. He said that the recommendation to use MYPROTEIN as his supplier came from someone he met in the gym. His evidence was that he thought this was, effectively, the same product as he had been using without any difficulty previously. Hence he expected that he would have no problems if he just changed to a new supplier and bought what appeared to be the same product.

29. Mr Sandhu also told us that by the summer of 2016 he was no longer interested in active competition and had last competed in October 2015. Notwithstanding the impression gained by the doctor who wrote the letter of 25th January 2016 (page 172) to the effect that he was hoping to qualify for Rio 2016, Mr Sandhu said this was not the case and instead he was looking forward to a career in coaching and so was on the verge of retiring from competitive sport. Hence, he argued, there would be absolutely no reason for him to have tried to cheat.
30. By the time of the present hearing, Mr Sandhu had seen the evidence of Professor Cowan which, for practical purposes, eliminated the medication provided in and after the Indian trip as a potential source. It followed that Mr Sandhu's case as to the possible sources of the Prohibited Substance came down to an assertion that the likelihood – he would say the overwhelming likelihood – was that there must have been inadvertent contamination of either the Whey Protein and/or the Creatine Monohydrate that he purchased from MYPROTEIN.
31. It was not entirely clear whether Mr Sandhu's evidence to us was that he did or did not retain any of the relevant supplements. If he had then he could have offered them to UKAD for testing or, alternatively, could have them tested himself and that would have been valuable evidence which might have been helpful to his case. At one point he seemed to suggest he had retained some of the supplement but at another he suggested he had used all or most of it. In so far as he may have been saying he had used it all up, he was slightly vague about why that was so, there being some confusion in his mind as to when he purchased the relevant supplements. Initially, he suggested it would have been in early September 2016 (see the date of manufacture on page 182) and that they had nearly run out by the time of his testing. When it was pointed out that a supply usually lasted a month and something bought in September would therefore be unlikely to have run out by

20th September, he suggested that he might not have used up the supplements until after he received the results of the AAF of which he was notified in the letter of 14th October 2016 (page 1).

32. In relation to the issue of what checks he made as regards the legitimacy of the products he was purchasing, Mr Sandhu provided various screen shots of bar codes he had retained (pages 179 – 184). Mr Muncey (page 102) establishes that none of these bar codes come up as tested under the Informed Sport programme nor had they been batch-tested.
33. Mr Sandhu acknowledged that he had not checked those bar codes on the Informed Sport website (had he done so, he could have been reassured as to the legitimacy of the products he was purchasing).
34. He also acknowledged that he had not pursued the option of checking whether the products had been batch tested as we find he could have done via the MYPROTEIN site (see the screen shot at page 116). As we have already said, we take the point that this document is not necessarily identical to what Mr Sandhu would have been able to see when he first went on the site. Nevertheless, we think it overwhelmingly likely that the home page had some reference to batch testing and that Mr Sandhu simply did not pursue it, perhaps because he did not see it. But, if that is correct, it is also true that he could have looked for that option and did not, notwithstanding he candidly acknowledged that he knew about batch testing in general.

Discussion

35. In considering the first issue – that is, the first thing the Athlete needs to establish (Stage 1) - it is clear that Mr Sandhu has identified his use of MYPROTEIN supplements as the only possible route whereby this Prohibited Substance could have entered his system. The question we have, therefore, to answer is whether he has established this, to our comfortable satisfaction, on a balance of probabilities.

36. The short answer is that the Tribunal is not satisfied. We heard evidence that MYPROTEIN is an apparently respectable supplier, of which nothing adverse is within the recent knowledge either of Mr Muncey or of Professor Cowan.
37. That evidence does not, of course, mean that each and every product it produces (or supplies) is bound to be uncontaminated. However, when one is deciding what is likely and what is not, this is certainly a factor to be taken into account. We were told of one occasion of known contamination involving a MYPROTEIN product (or at least one distributed to it but produced by a third party). But that was in 2012 and, we heard, was one that the company itself had recognised and, having done so, had informed UKAD accordingly.
38. It follows that, as matters stand, the Tribunal is faced with what would, if Mr Sandhu is right, appear to be an isolated example of contamination. As we recognise, that is not impossible but it is inherently unlikely.
39. An athlete in the position of Mr Sandhu has a relatively straightforward way in which he could overcome this first hurdle under Stage 1 and establish that the supplements he purchased were contaminated (and thus the source of the Prohibited Substance). That would be by retaining some of the supplement in question and submitting it for testing.
40. In this case, Mr Sandhu could, of course, have carried out such tests himself or, alternatively, he could at least have offered it to UKAD for them to test if he had retained enough of the supplement(s) to be tested. We recognise that there could have been a cost involved and that Mr Sandhu is not a wealthy man. We were told by Professor Cowan that a provisional test might have been possible for £250 and more extensive tests might have cost up to £1,000 and it may be that an athlete would be expected to pay some or all of that cost.
41. Since Mr Sandhu is a man of limited means, it may be understandable that he did not want to spend his own money. Understandable though that may be, however, it means that he has not taken a clear opportunity to discharge the evidential burden on him to prove a positive – that is that it was this supplement which was the source of the Prohibited Substance. Equally, he did not even retain the supplement

so that, if something did turn out to have gone wrong, he could at least have offered it to UKAD in the hope that UKAD itself chose to bear the expense of testing.

42. All of this arises in the context of it being the athlete's strict responsibility to control what goes into his or her own body. As in UKAD v Buttifant, the burden is on the athlete to provide an innocent explanation for the presence of that substance in his system.
43. It is the unanimous conclusion of the Tribunal that Mr Sandhu has not proved to our 'comfortable satisfaction' that his ADRV was unintentional because we are not satisfied to the required standard that it was through use of the MYPROTEIN supplements. Given what we know of the product and of that supplier, our starting point is that it was inherently improbable (albeit possible) that was the source. Of course, it *might* have been the source but, by retaining none of the relevant product and by not submitting it for testing, Mr Sandhu has deprived himself of the opportunity of proving that.
44. Given our finding in relation to Stage 1, it is unnecessary for us to express any concluded view on what our findings would be in relation to Stage 2 on the assumption that Mr Sandhu had established that the Prohibited Substance came into his body through taking a supplement from an apparently reputable supplier which turned out to be contaminated.
45. Had we needed to address the point, we would have needed to look carefully at the meaning of "*intentional*" as analysed in ADR Article 10.2.3. Here the real issue, so far as we would have been concerned, would relate partly to his failure to check the barcodes against the Informed Sport website (assuming his drug education went so far as to explain how that could be done) but, more particularly, to buying a product that had not been batch-tested.
46. Strictly speaking, these precautions are most obviously relevant to what we have called Stage 2. Whether it would also assist an athlete at Stage 1 to show that he has carried out and recorded those checks is not something we need to decide in this case.

47. Mr Sandhu acknowledges he could, at least, have made sure he bought only batch tested products and did not do so. However, we do not need to decide whether he has proved that he did not act *intentionally* which is the burden imposed on him (this being a non-specified substance) if he wishes to rely on ADR 10.2.1 (a). Rather, we prefer to express no positive or negative view either way in that regard since it is unnecessary to do so.
48. We are also conscious that the facts will vary enormously from one case to another and, since this is a subjective test, one has always to consider the particular circumstances of the particular athlete some of whom will have had substantial drugs education and some of whom will have had none, some will be young and others will be very experienced.

The lesson for athletes

49. Athletes who engage in competitive sport must remember that the general goal of ensuring that all compete clean has, as its starting point, the athlete's strict responsibility for what goes into his or her body. It may well be true that many athletes take supplements in one form or another. But, if so, they must realise that the use of supplements brings an obvious risk: according to the Clean Sport 2 lecture notes (page 297/7), 40% of adverse findings by UKAD since 2010 were blamed on supplement use.
50. It follows that if athletes wish to ensure that they compete clean and do not fall foul of the ADR they should:
- Know exactly what they are using
 - Buy their supplements from a reputable supplier
 - Carry out sensible checks such as with their particular sport's governing body and/or UKAD.
 - Check that any supplement has been batch tested and use the Informed Sport website (or Global DRO in the case of medication). They should bear in mind,

however, as the lecture notes (page 297/7) make clear, that the fact that a product has been entered into the Informed Sport programme does not “offer a 100% guarantee that the supplements listed are free from banned substances”.

- Retain a quantity of any supplement they take so that it can be tested in the event of a positive analytical finding.

Conclusion

51. Our conclusion is that Mr Sandhu has committed an ADRV contrary to ADR Article 2.1 and that he has failed to satisfy us that he did not act intentionally. In those circumstances, pursuant to ADR Article 10.2.1(a), a period of ineligibility of four years must be imposed and that is deemed to have commenced on the date when he was made subject to Provisional Suspension – namely, 14th October 2016.
52. In accordance with ADR Article 13, the parties may appeal against this decision by lodging a Notice of Appeal in accordance with the applicable time limits.



WILLIAM NORRIS Q.C. (Chair)

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