SR/Adhocsport/812/2017

IN THE MATTER OF DISCIPLINARY PROCEEDINGS
BROUGHT BY THE INTERNATIONAL TENNIS FEDERATION
UNDER THE TENNIS ANTI-DOPING PROGRAMME

BETWEEN

INTERNATIONAL TENNIS FEDERATION

Anti-Doping Organisation

and

SARA ERRANI

Respondent

DECISION AND REASONS OF THE INDEPENDENT TRIBUNAL

Introduction

1. As an elite professional tennis player who has played at the highest levels of the sport for more than ten years, reaching a singles ranking of 5th in the world in 2013, Sara Errani ("the Player") accepts that she is bound by the 2017 Tennis Anti-Doping Programme ("the TADP") and is subject to the jurisdiction of the Independent Tribunal to hear and determine the issues in dispute in this case. The Player also admits the charge brought by the International Tennis Federation ("the ITF") against her in these proceedings, namely that she has committed an anti-

doping rule violation under TADP Article 2.1, in that a metabolite of a prohibited substance for which she did not have a Therapeutic Use Exemption ("TUE"), letrozole, was present in a urine sample collected from her out of competition on 16 February 2017. The Player and the ITF have filed submissions and called evidence addressing the issue of what sanction should be imposed in respect of the admitted charge.

2. The hearing before the Tribunal took place on 19 July 2017 at the offices of Sport Resolutions in London. The Tribunal was comprised of David Casement QC (Chairman), Dr Kitrina Douglas and Dr Terry Crystal. Also attending the hearing were the following:

Sara Errani	Player
Howard Jacobs	Legal Counsel for the Player
Ciro Pellegrino	Legal Counsel for the Player
Fulvia Errani	Player's mother – witness
Giorgio Errrani	Player's father – witness
Davide Errani	Player's brother – witness
Prof Donata Favretto	Expert witness
Ms Francesca Geddes	Translator
Stuart Miller	Senior Executive Director, Integrity and Development ITF
Jonathan Taylor QC	External Legal Counsel to the ITF, Bird & Bird
Lauren Pagé	External Legal Counsel to the ITF, Bird & Bird
Stefan Shaw	Trainee, Bird & Bird
Prof Christiane Ayotte	Expert witness (by video link)

3. Counsel for both parties provided the Tribunal with detailed written submissions and made opening and closing oral submissions. The hearing commenced at 10am and lasted until 6:30pm. The decision was then reserved to enable the Tribunal to continue its deliberations.

The Charge

4. Following her appearance at the Australian Open which commenced on 16 January 2017 the Player was forced to retire due to a leg injury and following her appearance at Week One of the Fed Cup on 11 to 12 February she returned to Italy to stay with her parents. The Player remained at her parents' house until 28 February.

5. On 16 February 2017 the Player provided a urine sample to a Doping Control Officer. The sample returned a positive test for letrozole and on 7 March Prof Christiane Ayotte reported the Adverse Analytical Finding to the ITF. A further aliquot was taken from the sample and analysed on 26 April for confirmation in accordance with the protocol of the ITF. On 2 May 2017, the laboratory prepared a Certificate of Analysis and reported the result of the test to the ITF confirming the presence of letrozole in the Player's sample. The concentration level for the Player's sample was 65 ng/mL.

6. On 18 April 2017 the Player was sent a Formal Notice of Disciplinary Charge by the ITF:

> "On 16 February 2017, a urine sample was collected from you on behalf of the ITF under Article 4.4 of the Programme (Out-of-Competition Testing), and assigned reference number 3085685. The sample was split into an A sample and a B sample, which were sealed in tamper-evident bottles and transported to the WADA-accredited laboratory in Montreal, Canada for analysis.
>
> The Montreal laboratory has now analysed your sample A3085685, and as reported that it contains letrozole. Letrozole is a Prohibited Substance under the Programme. It is in the category of aromatase inhibitors (category S4.1 of the 2017 Prohibited List: see page A3.5 of the Programme) and is prohibited at all times (i.e. In-Competition and Out-of-Competition).
>
> …….
>
> This matter has been considered by the independent Review Board, in accordance with TADP Article 7.3. The Review Board has not identified any TUE held by you for

letrozole. Nor has it identified any apparent departure from the sample collection procedures set out in the International Standard for Testing and Investigations or from the sample analysis procedures set out in the International Standard for Laboratories that caused this Adverse Analytical Finding for letrozole made in respect of your sample A3085685. It has therefore decided (in accordance with TADP Article 7.3.5) that you have a case to answer under TADP Article 2.1 (which states that it is an Anti-Doping Rule Violation for a Player's Sample to have present in it a Prohibited Substance for which the Player has no TUE).

…….

Please therefore take this letter as formal notice, sent in accordance with TADP Article 8.1.1, that you are hereby charged with the commission of an Anti-Doping Rule Violation under TADP Article 2.1, on the basis that a Prohibited Substance (letrozole) was found to be present in the urine sample A3085685 that you provided at the Event on 16 February 2017."

7. The Player admitted the charge namely that letrozole was present in her sample and therefore these proceedings are only concerned with the question of sanction.

The Rules

8. The following rules of the TADP are particularly relevant:

2.1 The presence of a Prohibited Substance or any of its Metabolites or Markers in a Player's Sample, unless the Player establishes that such presence is consistent with a TUE granted in accordance with Article 3.5.

2.1.1 It is each Player's personal duty to ensure that no Prohibited Substance enters his/her body. A Player 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 Player's part be demonstrated in order to establish an Anti-Doping Rule Violation under Article 2.1; nor is the Player's lack of intent, Fault, negligence or knowledge a defence to a charge that an Anti-Doping Rule Violation has been committed under Article 2.1.

…….

10.2.1 The period of Ineligibility shall be four years where …

(b) The Anti-Doping Rule Violation involves a Specified Substance and the ITF establishes 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'.

10.2.3 'the term "intentional" is meant to identify those Players or other Persons who cheat. The term, therefore, requires that the Player or other Person engaged in conduct that he/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'.

…….

10.4 Elimination of the Period of Ineligibility where there is No Fault or Negligence:

If a Participant establishes in an individual case that he/she bears No Fault or Negligence, then the otherwise applicable period of Ineligibility shall be eliminated.

10.5 Reduction of the Period of Ineligibility based on No Significant Fault or Negligence:

10.5.1 Reduction of Sanctions for Specified Substances or Contaminated Products for an Anti-Doping Rule Violation under Article 2.1, 2.2 or 2.6:

(a) Specified Substances.

Where the Anti-Doping Rule Violation involves a Specified Substance, and the Participant can establish No Significant Fault or Negligence, then the period of Ineligibility shall be, at a minimum, a reprimand and no period of Ineligibility, and at a maximum, two years of Ineligibility, depending on the degree of Fault of the Participant.

10.8 Disqualification of Results in Competitions Subsequent to Sample Collection or Commission of an Anti-Doping Rule Violation:

In addition to the automatic Disqualification, pursuant to Article 9, of the results in the Competition that produced the Adverse Analytical Finding (if any), all other competitive results of the Player obtained from the date the Sample in question was collected (whether In-Competition or Out-of- Competition) or other Anti-Doping Rule Violation occurred through to the start of any Provisional Suspension or

Ineligibility period shall be Disqualified (with all of the resulting consequences, including forfeiture of any medals, titles, ranking points and Prize Money), unless the Independent Tribunal determines that fairness requires otherwise.

Letrozole

9. Letrozole is a drug that does not exist in nature but is manufactured by the pharmaceutical industry to treat cancer. In particular, certain types of breast cancer grow faster based on estrogen, a natural hormone produced endogenously by women. In premenopausal women, estrogen is produced by the ovaries, whereas postmenopausal women (whose ovaries are no longer functional) produce androgens that are converted by the enzyme aromatase into estrogen. Letrozole is an aromatase inhibitor that blocks this process and so prevents the conversion of those androgens into estrogen. Specifically, it prevents the conversion of testosterone to estradiol and of androstenedione to estrone.

10. Testosterone and other androgens also increase lean body mass, and therefore using letrozole to inhibit the conversion of androgens such as endogenous testosterone into estrogen increases lean body mass, in the same way as administering exogenous testosterone would increase lean body mass according to van Londen *et al.*, *The impact of an aromatase inhibitor on body composition and gonadal hormone levels in women with breast cancer* Appendix 5, pp.69, 71. There has been concern on the part of WADA that some bodybuilders were abusing letrozole and there was some anecdotal evidence online that female bodybuilders used it for that purpose. The substance has been banned for men since 2001 and for everyone since 2005, both in competition and out of competition without a valid TUE. Letrozole is listed under section S4 (Hormone and metabolic modulators) of the Prohibited List – Appendix Three to the TADP. However there is no evidence that letrozole would enhance the performance of an elite level tennis player. There is no evidence of any significant usage of letrozole amongst athletes in general and none was identified in respect of tennis players.

The Evidence

11. The Player's case as advanced in the "Pre-hearing Brief" of Mr Jacobs was that the most likely way in which the Player came to ingest letrozole was by accidentally consuming her mother's anti-cancer medication "Femara." There was some discussion during the hearing about the standard of proof in respect of this, as to which more is said below, but Mr Jacobs on behalf of the Player also asserted in his written submissions that the evidence showed this means of ingestion was also more likely than not.

12. The Tribunal heard from the Player's mother, Fulvia Errani. She gave her evidence in Italian with the assistance of the independent translator. Her evidence, supported by documentation, was that she has been battling cancer since 2005 and has undergone surgery on two occasions. She has had two relapses the most recent being in 2012. Mrs Errani has been on medication known as Femara since 2012 and it is common ground that this is a brand name for letrozole. The Player does not normally stay with her parents at the home in Italy because she has preferred to live near her coach and therefore has been training abroad in the United States and Spain for many years and has also been on tours. She is now aged 30 but moved to the United States at the age of 12 and then to Spain when she was 16.

13. The Femara (letrozole) is kept on the side of the worktop in the kitchen along with documents, household bills and other household items. Mrs Errani explained that she kept the Femara there because she had to take one pill every day and at times she forgot to take it. She explained how it was essential that she did take it because it was necessary to prevent the cancer returning. In this way when she was preparing the family meals it was a reminder for her to take it.

14. Mrs Errani explained that she has a part-time job as a pharmacist and works several days a week, on certain days she works in the morning and on others in the afternoon. She answered questions about how she prepared food and in particular how she prepared the tortellini and broth which she prepared on 14 or 15 February 2017. She explained how in the past she had accidentally dropped

pills from the blister pack from which Femara was discharged by hand onto the worktop or onto the floor. She explained how she had on occasions accidentally pushed two pills out rather than the one required. That such pills should be dispensed in close proximity to where food would be and was in fact being prepared created an obvious risk of contamination.

15. What is clear from her evidence, which we found to be entirely truthful, was that Mrs Errani has had to deal with serious health issues over the last number of years. It has clearly taken its effect upon Mrs Errani and her family. At the same time it was clear that she did not want to talk about it with her family and certainly not with her daughter. One example of that is that she did not tell the Player she was still taking medication to prevent her cancer returning. Whilst dealing with serious personal health issues she was at the same time devoting her time to caring for her family and holding down a part-time job.

16. In her evidence Mrs Errani recognised the risk that she created by keeping and dispensing Femara on the worktop and even when preparing food. Her evidence, and that of the Player, when taken together the Tribunal finds compelling. It was clear that accidentally dropping a second pill onto the worktop had happened on a number of previous occasions previously and that, depending on what was on the top, would not be immediately detected or detected at all.

17. The Player gave evidence of what medication and supplements she took around this period. The medications including homeopathic products were to address her Mononucleosis which had been diagnosed and also to stave off further illnesses. Those products were listed by the Player and it was confirmed that, following the positive finding, they were sent to a local laboratory for testing by Prof Favretto and it further confirmed that those products did not contain letrozole. Given the confirmatory evidence from Prof Favretto we accept, on the balance of probabilities, that those products which the Player was taking did not contain letrozole and were not the source of the Prohibited Substance.

18. Some of the evidence given by Mr and Mrs Errani was to the effect that, after the positive finding, they carried out their own experiment to test if a pill of Femara

would dissolve in food and be undetectable. They found that not only did it dissolve in the broth, which is unsurprising, but it also dissolved in the meat mixture used for tortellini even when that mixture was at room temperature. Clearly this was not a test under laboratory conditions and no weight can be given to it. Equally neither can it be dismissed.

19. The approach adopted on behalf of the Player in these proceedings was two-fold. First, on behalf of the Player there were identified a number of theoretical means of ingestion including deliberate taking of the medication, mistakenly taking the medication, deliberate spiking, contamination of other products and the contamination of the food. Having set out these possibilities, submissions and evidence were advanced as to how the contamination of the food possibility was more likely than the other possibilities therefore the threshold test, as to how the substance entered the body, was made out. We reject the validity of that approach for the reasons set out below. Secondly, it was asserted that the expert scientific evidence showed that the quantity of letrozole detected was inconsistent with an intention to cheat or to take letrozole on a regular basis.

20. The Tribunal found the expert evidence wholly inconclusive and preferred the evidence of Prof Ayotte to that of Professor Favretto. Professor Ayotte was clear and measured in her evidence. The positive finding of letrozole was clear from the analysis undertaken but in respect of the quantity of the substance detected it was not possible to say it was indicative or not indicative of deliberate use. Professor Ayotte was also clear that she could not rule out the possibility that the means of ingestion was through food being contaminated by the Femara in the way suggested on the Player's behalf.

21. Professor Ayotte was challenged by Mr Jacobs as to whether there was any significant reported usage of letrozole by athletes. Prof Ayotte had referred to certain extracts from online blogs and adverts suggesting it may be of benefit to persons who wish to increase lean muscle mass, in particular bodybuilders. The Tribunal's view of that evidence was that Professor Ayotte was highlighting the possible concerns that exist in respect of letrozole. She was not advancing any

positive case that this was intended by the Player and no such case was advanced by the ITF.

22. Professor Favretto carried out a hair test analysis in respect of samples of hair from the Player compared with samples of hair from Mrs Errani. The conclusion that was advanced was that there was clear evidence of regular use over a long period by Mrs Errani, entirely consistent with her treatment as prescribed by her doctor. With the Player there was however no trace. Professor Favretto asserted there was scientific support for the use of hair testing in this area and it appeared that she herself had carried out tests. However given this was not disclosed in advance of the hearing, permission to adduce further expert evidence was refused. There was no good reason why the evidence had not been previously adduced, there was clear prejudice to the ITF and Mr Jacobs confirmed he did not wish for there to be an adjournment.

23. It was further asserted by Professor Favretto that the level of concentration in the Player's urine sample was inconsistent with the regular use of letrozole and also that the lack of change to the Player's steroid (hormonal) profile further pointed against the regular use of letrozole. The Tribunal was unable to accept these assertions. On the concentration point, as Professor Ayotte noted, the level of concentration was as consistent with someone coming down from a period of regular use as it is with a single accidental ingestion. There was a distinct lack of clear scientific published research to support the assertions made in respect of the steroid (hormonal) profile point. After hearing the expert evidence the Tribunal concludes that the scientific evidence is inconclusive in respect of the frequency, quantity and circumstances of the ingestion of letrozole by the Player.

The Starting Point – 2 years or 4 years?

24. The ITF did not advance any positive case that the Anti-Doping Rule Violation was intentional. Because letrozole is a Specified Substance the burden was upon the ITF to establish that it was intentional otherwise a two year Period of Ineligibility would be the starting point, as provided by Article 10.2.2. No such burden was discharged therefore the starting point for the suspension is a period of two years.

Threshold Condition: How Did Letrozole Enter the Player's Body?

25. Before the sanction can be reduced further on the basis of No Fault or Negligence alternatively No Significant Fault or Negligence the burden of proof is upon the Player to establish on the balance of probabilities how the Prohibited Substance came to be present in her body:

Article 10.4 provides: *'If a Player or other Person establishes in an individual case that he/she bears No Fault or Negligence, then the otherwise applicable period of Ineligibility shall be eliminated'.*

For these purposes, *'No Fault or Negligence' means '[t]he Player or other Person establishing that he/she did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that he/she had Used or been administered the Prohibited Substance or Prohibited Method or otherwise violated an anti-doping rule. Except in the case of a Minor, for any violation of Article 2.1 the Player must also establish how the Prohibited Substance entered his/her system'.* (underlining added) (TADP Appendix One (Definitions) page A1.6)

The same threshold criterion is set out in respect of the definition of No Significant Fault or Negligence.

26. The importance of this appears in many CAS authorities:

Karatancheva v ITF, CAS 2006/A/1032, para 117; IAAF v AFI, Ashwini et al, CAS 2012/A/2763, para 9.2 : *'In order for the Athletes to be able to argue that exceptional circumstances apply in their case, they must first … satisfy the threshold test of establishing how the prohibited substance(s) entered their systems'*);

Puerta v ITF, CAS 2006/A/1025, para 11.2.5 (to rely on Art 10.5, the athlete *'must first establish how the Prohibited Substance entered his body'*.)

27. The authorities are also clear that the Athlete must positively prove how the Prohibited Substance entered their body and not merely speculate as to which of a number of possible means exist and then further speculate as to which appears the most likely of those possibilities. Mr Taylor made very forceful arguments and we cite directly from his detailed written submissions:

> *"3.7 To meet this burden, the Player must prove how the letrozole got into her system on the balance of probabilities. English law (which governs the TADP and these proceedings) is clear what this means: 'The balance of probability standard means that a court is satisfied an event occurred if the court considers that, on the evidence, the occurrence of an event was more likely than not'. CAS panels construing anti-doping rules implementing the World Anti-Doping Code have followed this approach exactly.*
>
> *3.8 In percentage terms, this means that the Player only meets her burden if, based on the evidence she submits, the Tribunal is 'satisfied that there is a 51% chance' that the scenario advanced by the Player occurred, i.e., she 'needs to show that one specific way of ingestion is marginally more likely than not to have occurred'.*
>
> *3.9 'The CAS has constantly repeated that the requirement of showing how the prohibited substance got into the Athlete's system must be enforced quite strictly'. (La Barbera v IWAS, CAS 2010/A/2277 para 4.26).In particular, 'there is plenty of CAS jurisprudence stating that mere speculation [by the athlete] as to what may have happened does not satisfy the requisite standard of proof and that the mere allegation of a possible occurrence of a fact cannot amount to a demonstration that that fact did actually occur' (I. v FIA, CAS 2010/A/2268 para 129N)or are unverified hypotheses sufficient (Meca-Medina v FINA, CAS 99/A/234, 99/A/235). Instead, the CAS has been clear that the Player 'has a stringent requirement to offer persuasive evidence' that the explanation she offers for the presence of the prohibited substance in her system is more likely than not to be correct, by providing specific, objective and persuasive evidence not only of 'the route of administration' of the substance (e.g., oral ingestion) but also of the 'factual circumstances in which administration occurred' (IRB v Keyter, CAS 2006/A/1067) para 6.11."*

28. The Tribunal agrees with those submissions and considers the position was clearly set out in IWBF v UKAD & Gibbs CAS 2010/A/2230 in which the sole arbitrator Michael Beloff QC ruled that:

> *"[a]n athlete cannot by asserting, even with what purports to be corroborative testimony to the same effect, that he did not intend to enhance performance thereby alone establishing how the substance entered his body. Seeking to eliminate by such an approach all alternative hypotheses as to how the substance entered his body and thus to proffer the conclusion that what remains must be the truth reflects the reasoning attributed to the legendary fictional detective Sherlock Holmes by Sir Arthur Conan Doyle in "The Sign of Four" but is reasoning impermissible for a judicial officer or body. As Lord Brandon said disapproving of such approach in The Popi M 1985 1 WLR 948, a judge (or arbitrator) can always say that "the party on whom the burden of proof lies in relation to any averment made by him has failed to discharge that burden"*

29. The argument advanced by Mr Jacobs, namely that on the basis of UCI v Contador (CAS 2011/A/2384) one merely has to identify which of a number of possibilities was most likely, is something we expressly reject. This Tribunal is not prepared to follow the analysis set out in the case of Contador which would have the effect of greatly diluting the threshold test and would leave the Tribunal placing speculation upon speculation.

30. The issue is therefore whether given all of the evidence which has been presented to the Tribunal it is satisfied, so that it is more likely than not, that letrozole entered the Player's body by means of her mother's medication, Femara, accidentally contaminating the Player's food. The Tribunal has come to the conclusion that the threshold test has been satisfied albeit only just. Mrs Errani dispensed her medication containing letrozole on the same worktop on which she prepared her family meals. She described her daily routine and how it might change depending upon whether she was working in the morning or afternoon, the process of dispensing her pills and how they were in proximity to the food and preparation area. The risk of contamination was obvious. It is likely that because of Mrs Errani's battle with illness, her preoccupation with other matters including matters at home as well as working part-time that her attention and level of care

fell below that which it would otherwise have been. Added to that the fact that the Player was not usually at home it is more likely than not that Mrs Errani did not have at the forefront of her mind the danger this posed to her daughter who is an elite athlete.

31. The timing of the test is also relevant, namely 16 February 2017. The Player had returned home to Italy shortly before the test took place. She had moved back to Italy on a permanent basis in November 2016 although was travelling thereafter for tournaments. She had returned home from a tournament on 13 February. The Player had 23 negative urine tests since January 2014 and 21 negative tests for blood since 2012. The positive test on 16 February 2017 was the only positive test of the Player's career.

No Fault or Negligence

32. Establishing the threshold test of how the Prohibited Substance entered the body is essential but it is not sufficient to make out No Fault or Negligence so as to eliminate the Period of Ineligibility.

33. For the purposes of assessing whether there is fault CAS decisions have found that athletes are fixed not only with their own acts and omissions but also with the acts and omissions of their friends, relatives and other members of her entourage: Hipperdinger v ATP CAS 2004/A/690, ITF v Bogomolov, Independent Tribunal Decision dated 26 September 2005, IAAF v AFI & Ashwini *et al.* CAS 2012/A/2763. In AFI & Ashwini it was said:

> *'CAS jurisprudence is clear that athletes cannot shift their responsibility onto third parties simply by claiming that they were acting under instruction or they were doing what they were told. … that would be all too simple and would completely frustrate all the efforts being made in the fight against doping'*

34. Those authorities are not limited to cases involving coaches. They include close circles of family and friends. The point is made clear in the World Anti-Doping Code at Article 10.4:

'No Fault or Negligence would not apply in the following circumstances: … sabotage of the Athlete's food or drink by a spouse, coach or other Person within the Athlete's circle of associates (Athletes are responsible for what they ingest and for the conduct of those Persons to whom they entrust access to their food and drink)'

TADP Article 1.7 provides that that "the comments annotating various provisions of the Code, the International Standards and the Programme shall be used to interpret the Programme."

35. The test for No Fault or Negligence is a high one. The Player must prove that she used "utmost caution" to avoid ingesting a Prohibited Substance either intentionally or inadvertently. In other words she "*made every conceivable effort to avoid a prohibited substance*": Knauss v FIS CAS 2005/A/847. "*This is a very high standard which will only be met in the most exceptional circumstances*": ITF v Koubek Independent Anti-Doping Tribunal decision dated 18 January 2005.

36. In the present case it cannot be said this very high standard was reached. The presence of the medication in close proximity to the food preparation area was something which should have been identified and addressed by the Player herself. The medication was in plain sight even though, as we find, Mrs Errani did not tell the Player what the medication was or what it was for. The Player was living in the house and should have addressed this matter. The Player is also to have imputed to her the fault and negligence of Mrs Errani who especially given her background as a pharmacist should have realised the dangers involved.

37. For these reasons the plea of No Fault or Negligence is rejected.

No Significant Fault or Negligence

38. Having found the threshold test to be made out and having identified the means by which the Prohibited Substance came to enter the Player's body the Tribunal has come to the conclusion that the plea of No Significant Fault or Negligence is made out. In respect of the degree of fault or negligence and how it relates to the

Period of Ineligibility the Tribunal is assisted by the decision in Cilic v ITF (CAS 2013/A/2237):

> *"69. The breadth of sanction is from 0-24 months. As Article 10.4 says, the decisive criterion based on which the period of ineligibility shall be determined within the applicable range of sanctions is fault. The Panel recognizes the following degrees of fault:*
>
> *a. Significant degree of fault or considerable fault.*
>
> *b. Normal degree of fault.*
>
> *c. Light degree of fault.*
>
> *70. Applying these three categories to the possible sanction range of 0-24 months, the Panel arrived at the following sanction ranges:*
>
> *a. Significant degree of or considerable fault: 16-24 months, with a "standard" significant fault leading to a suspension of 20 months.*
>
> *b. Normal degree of fault: 8-16 months, with a "standard" normal degree of fault leading to a suspension of 12 months.*
>
> *c. Light degree of fault: 0-8 months, with a "standard" light degree of fault leading to a suspension of 4 months.*
>
> *71. In order to determine into which category of fault a particular case might fall, it is helpful to consider both the objective and the subjective level of fault. The objective element describes what standard of care could have been expected from a reasonable person in the athlete's situation. The subjective element describes what could have been expected from that particular athlete, in light of his personal capacities.*
>
> *72. The Panel suggests that the objective element should be foremost in determining into which of the three relevant categories a particular case falls.*
>
> *73. The subjective element can then be used to move a particular athlete up or down within that category.*
>
> *74. Of course, in exceptional cases, it may be that the subjective elements are so significant that they move a particular athlete not only to the extremity of a particular category, but also into a different category altogether. That would be the exception to the rule, however."*

76. Whilst each case will turn on its own facts, the following examples of matters which can be taken into account in determining the level of subjective fault can be found in CAS jurisprudence (cf. also LA ROCHEFOUCAULD, CAS Jurisprudence related to the elimination or reduction of the period of ineligibility for specific substances, CAS Bulletin 2/2013, p. 18, 24 et seq.):

a. An athlete's youth and/or inexperience (see CAS 2011/A/2493, para 42 et seq; CAS 2010/A/2107, para. 9.35 et seq.).

b. Language or environmental problems encountered by the athlete (see CAS 2012/A/2924, para 62).

c. The extent of anti-doping education received by the athlete (or the extent of anti- doping education which was reasonably accessible by the athlete) (see CAS 2012/A/2822, paras 8.21, 8.23).

d. Any other "personal impairments" such as those suffered by:

i. an athlete who has taken a certain product over a long period of time without incident. That person may not apply the objective standard of care which would be required or that he would apply if taking the product for the first time (see CAS 2011/A/2515, para 73).

ii. an athlete who has previously checked the product's ingredients.

iii. an athlete is suffering from a high degree of stress (CAS 2012/A/2756, para. 8.45 seq.).

iv. an athlete whose level of awareness has been reduced by a careless but understandable mistake (CAS 2012/A/2756, para. 8.37).

39. The Tribunal takes into account the circumstances involved in this case and that the Player has not only an unblemished record but has demonstrated, through her evidence which we accept, having been otherwise meticulous in taking precautions to ensure that she acted in compliance with the TADP. As a result of the findings that the Tribunal has made it concludes that the degree of fault is at the lowest end of the scale. The Period of Ineligibility in this case will be 2 months.

Disqualification of Results

40. The Player was at fault albeit at the lower degree. Mr Jacobs submitted there should be no Disqualification of results as any fault is at the lowest end of the scale. TADP Article 10.8 provides that unless the Player is able to show that "*fairness requires otherwise*" the results that she has obtained in tournaments subsequent to her provision of a positive sample shall be disqualified. The Tribunal considers in line with the previous decisions of ITF v Koubek and ITF v Bogomolov that the matters should be looked at in the round so as to arrive at a result that meets the overall justice of the case. The Tribunal has come to the conclusion that fairness does not require a departure from the normal principle that the results should be disqualified for the period between 16 February 2017 and 7 June 2017. The ITF submitted this was the appropriate cut off point because on the 7 June 2017 the Player was again tested and the sample was returned negative. The Tribunal agrees this is the correct period for which the results shall be Disqualified in accordance with Article 10.8 of the TADP.

Conclusions

41. The Tribunal is concerned solely with sanction as the Player has already admitted the Anti-Doping Rule Violation in this case. The decision of the Tribunal is unanimous. Taking into account all of the evidence and submissions made, the Tribunal is satisfied on the balance of probabilities, such that it is more likely than not, how the Prohibited Substance entered the Player's body. The degree of fault, whilst at the lower end of the scale, still constitutes fault which is reflected in the Period of Ineligibility of 2 months. This shall come into effect on 3 August 2017.

42. The results of the Player shall be Disqualified in accordance with Article 10.8 for the period from 16 February 2017 to 7 June 2017.

43. There shall be no order as to costs.

44. The Player, the ITF, NADO Italia and WADA have a right of appeal in accordance with Article 12 of TADP. The timescale for filing an appeal is 21 days from the date

of receipt of the decision by the appealing party save in respect of WADA where the timescale is as set out in Article 12.5.2 of TADP.

Signed on behalf of the Tribunal by the Chairman

DAVID CASEMENT QC (CHAIRMAN)

DR KITRINA DOUGLAS

DR TERRY CRYSTAL

3 August 2017

Sport Resolutions (UK)
1 Salisbury Square
London EC4Y 8AE

T: +44 (0)20 7036 1966

Email: resolve@sportresolutions.co.uk
Website: www.sportresolutions.co.uk