

Background

1. This is the Tribunal's fifth case arising from the Medsafe investigation. During 2015 Medsafe commenced an investigation into *NZ Clenbuterol*, a website operated by Joshua Townshend who was subsequently convicted and jailed for two years for selling steroids via the internet. Around September or October 2015 Medsafe contacted Drug Free Sport New Zealand (DFSNZ) advising they had a significant number of emails which might be of relevance for DFSNZ. Medsafe passed information from the website's database to DFSNZ relating to athletes who had purchased prohibited substances online.
2. DFSNZ reviewed the names provided by Medsafe and found approximately 107 athletes who were registered as members of New Zealand sports organisations. These athletes are subject to the Sports Anti-Doping Rules (SADR). In 2016 Medsafe provided DFSNZ with full details of athletes' internet purchases of clenbuterol and other anabolic steroids from *NZ Clenbuterol*.

Proceedings

3. Greg Strickland, the respondent, is an athlete identified in the Medsafe investigation. DFSNZ filed Anti-Doping Rule Violation proceedings on 20 March 2018. At the time of the alleged breaches Mr Strickland played rugby league. DFSNZ alleged Mr Strickland on or about 4 March 2015 purchased 30ml of clenbuterol from the *NZ Clenbuterol* website and used it at various times in breach of 2015 SADR 2.2 and 2.6.
4. Mr Strickland was provisionally suspended on 27 March 2018. On 24 April 2018 Mr Strickland filed his Form 2 admitting the violation so the Tribunal was only required to determine the penalty to be imposed.
5. Clenbuterol is a non-specified substance prohibited at all times under the Prohibited List 2015 as an *S1 Anabolic Agent*. Under SADR 10.2 the sanction is a four year period of ineligibility, but if the athlete can establish the violation was unintentional, the period of ineligibility can be reduced to two years. On the evidence Mr Strickland's violation was not intentional. SADR 10.11.1 and 10.11.2 enables the Tribunal to commence the period of suspension earlier than the hearing date where there have been substantial delays and/ or timely admission by the athlete.

6. On 14 May 2018 counsel filed a joint memorandum in relation to sanction which recorded the relevant facts and jointly proposed an appropriate sanction. A copy of the memorandum is annexed.
7. The Tribunal having considered all available material is satisfied it is able to accept the proposed sanction without the need for a hearing and make the orders proposed. The circumstances here are similar to those in other cases determined by the Tribunal.

Orders

8. Mr Strickland's suspension will be for a period of two years backdated to commence from 27 May 2017.

Dated: 18 May 2018



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Sir Bruce Robertson
Chairman

ANNEXURE

Sports Tribunal of New Zealand

ST03/18

between

DRUG FREE SPORT NEW ZEALAND
Applicant

and

MICHAEL GREGORY STRICKLAND
Respondent

**JOINT MEMORANDUM IN ADVANCE OF CASE
MANAGEMENT CONFERENCE 16 MAY 2018**

14 MAY 2018

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**JOINT MEMORANDUM IN ADVANCE OF CASE MANAGEMENT
CONFERENCE 16 MAY 2018**

1. This memorandum is filed by the parties in advance of the teleconference on 16 May 2018.
2. On Monday 30 April 2018 the Sports Tribunal adjourned the scheduled teleconference to allow the parties to consider whether they were able to present an agreed position on sanction to the Tribunal.
3. The parties have now had the opportunity to confer and have reached an agreed position to present to the Tribunal.
4. The parties have considered the statements filed in this matter in the light of facts in other recent Tribunal cases involving athletes who purchased substances from NZ Clenbuterol and the sanctions imposed in those matters. The parties jointly submit that the appropriate sanction for Mr Strickland for breach of Sports Anti-Doping Rules 2015 (**SADR**) 2.2 and 2.6 is a period of **two years ineligibility backdated by 10 months from the date of preliminary suspension**, being 27 March 2018.

Background

5. DFSNZ filed Anti-Doping Rule Violation proceedings against Mr Strickland on 20 March 2018 alleging that Mr Strickland had breached rr 2.2 (use or attempted use of a prohibited substance) and 2.6 (possession of a prohibited substance) of the SADR2015 by purchasing 30 ml of clenbuterol on or about 4 March 2015 from the website trading as NZ Clenbuterol and using or attempting to use it at various times from that date.
6. Mr Strickland was provisionally suspended on 27 March 2018. On 24 April 2018 Mr Strickland admitted the violations.
7. Clenbuterol is prohibited at all times as a S1 anabolic agent under the Prohibited List 2015. It is a non-specified substance, prohibited both in-competition and out-of-competition.
8. Under r 10.2 of the SADR, the period of ineligibility for breach of rr 10.2 and 2.6 for a violation involving a non-specified substance is four years. Where the Athlete can establish that the Anti-Doping Rule Violation was unintentional, the period of ineligibility shall be two years.

Two or four years sanction

9. It is for the athlete to satisfy the Tribunal, on the balance of probabilities, that the violation was not intentional. The parties agree that there is evidence from which the Tribunal could be satisfied that **Mr** Strickland's violation was unintentional:
 - (a) The term "intentional" is defined in SADR 10.2.3 as "meant to identify those Athletes who cheat."
 - (b) The definition has two limbs requiring either knowledge by the athlete that he or she engaged in conduct they knew constituted

an anti-doping rule violation or knowledge by the athlete that there was a significant risk that the conduct might constitute or result in a rule violation and manifestly disregarded that risk.

- (c) In its decision in *DFSNZ v Lach/an Frear* and *DFSNZ v Ware* the Tribunal considered that where an athlete purchased clenbuterol because of a belief that it was a weight-loss product and out of a desire to lose weight for reasons other than sport, and did not turn their mind to their obligations under the SADRs the violation would be unintentional. There is evidence suggesting Mr Strickland was in a similar position.
- (i) Mr Strickland has filed a statement in which he states that he had just begun to get involved in bodybuilding and purchased clenbuterol to lose weight.
 - (ii) Mr Strickland states that he was not aware that clenbuterol was prohibited.
 - (iii) He also states that once he received the clenbuterol his wife told him that it looked "dodgy" and he did not to use it. His wife has filed a statement supporting his position.
 - (iv) The email evidence only shows one purchase of clenbuterol.

Backdating

10. The starting point under the SADRs 2015 is that the period of ineligibility should start from the date of the final hearing. Any period of provisional suspension shall be credited against the total period of ineligibility served.
11. Rule 10.11.1 gives the Tribunal a discretion to start the period of ineligibility at an earlier date where there have been "substantial delays in the hearing process not attributable to the athlete". In decisions involving the Medsafe Clenbuterol investigation, including *DFSNZ v Lach/an Frear* and *DFSNZ v Ware*, the Tribunal has considered that the time it had taken DFSNZ to advance the investigation has resulted in substantial delay for which the athletes were entitled to some allowance.
12. Rule 10.11.2 also allows the period of ineligibility to be started earlier where the athlete promptly admits the violation after being confronted by DFSNZ. The day after being contacted by DFSNZ Mr Strickland sent a letter accepting that he had purchased clenbuterol. After instructing counsel he also admitted the attempted use violation. The parties agree that the Tribunal could properly find that this amounts to a timely admission by Mr Strickland
13. A combination of delay and a timely admission have led the Sports Tribunal in cases involving NZ Clenbuterol to backdate the period of ineligibility by six to ten months.
14. For these reasons the parties respectfully submit that it would be open to, and appropriate for, the Tribunal to impose upon Mr Strickland a period of two years ineligibility backdated by 10 months from the date of preliminary

suspension, being 27 March 2018 for his breaches of rr 2.2 and 2.6 of the SADR.

15. If the Tribunal considers that the agreed position is appropriate, the parties respectfully submit that the matter can be deal with on the papers. Counsel are available to attend a teleconference should the Tribunal wish to hear from Counsel on sanction.

Dated 14 May 2018



Harriet Bush Counsel for
the Applicant



Sam Fellows Counsel for
the Respondent