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# How Effective are Anti-Doping Sport Measures in the UK?

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## HOW EFFECTIVE ARE ANTI-DOPING MEASURES IN SPORT IN THE UK?

*Louise Harris*

### **Abstract**

It is said that 'doping undermines the values of sports.'<sup>1</sup> Competitors, who cheat through the use of drugs, in particular performance enhancing drugs, are automatically presumed 'guilty' for failing or missing a test, subsequently being left to defend their name and innocence. In the United Kingdom there is no specific law targeting drugs in sport. Statutes that exist are concerned with the general possession, supply and trafficking of illegal substances in a wider sense. This article therefore examines how effective anti-doping measures are in sport in the UK.

**Keywords:** anti-doping, drugs in sport, World Anti-Doping Code

### **Introduction**

Athletes have been using performance enhancing substances in sports since the ancient Greeks and Egyptians. Substances from plants and animals were used to gain an advantage over opponents and combat injuries to continue competing. 'Considered cheating by purists and necessary by some athletes,'<sup>2</sup> drug use in sport has continued into the twenty-first century. After the cycling debacle of the Tour de France 1998,<sup>3</sup> the International Olympic Commission (IOC) reached a decision in Lausanne 1999 to create an independent anti-doping regulation body; the World Anti-Doping Agency (WADA). Supported by governments, public authorities and other bodies, WADA assumed control of the Prohibited List of drugs from the IOC in 2004. It created the World Anti-Doping Program and associated Code, a unique, non-

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<sup>1</sup> World Anti-Doping Agency, *Copenhagen Declaration on Anti-Doping in Sport* <http://www.wada-ama.org/en/dynamic.ch2?pageCategory.id=272> all website addresses checked 24 November 2008.

<sup>2</sup> Gregory, A., and Fitch, R., *Sports Medicine: Performance-Enhancing Drugs*,(2007) Paediatric Clinics of North America, 54(4) Abstract.

<sup>3</sup> The Festina Cycling Team was expelled from the 1998 Tour de France after a car belonging to the team was found to contain large quantities of various performance enhancing drugs. The team director also admitted that some of the cycling team were regularly given banned substances. The Dutch team TVM were also questioned about possession of banned substances. Some cyclists complained that night time raids and increased blood testing were making it impossible to race. Six teams withdrew from the Tour in protest and it was branded 'le Tour du Dopage', *Cycling Plus*, October 1998.

binding, regulatory framework for harmonising anti-doping regulations. WADA's stated aims for the Code include 'protect[ing] the Athletes' fundamental right to participate in doping-free sport' and to 'ensure harmonized, coordinated and effective anti-doping programs at the international and national level with regard to detection, deterrence and prevention of doping.'<sup>4</sup>

With no specific criminal law targeting doping in sports, there are limited powers for the police. If a similar situation occurred as in the 2006 Turin Winter Olympics,<sup>5</sup> the UK police would have restricted powers to search and seize evidence. If the drug was banned in sport but permitted in law, the UK police would be powerless. A criminal law focused upon doping in sport could govern the situation more suitably, although it is not without criticism. For the purpose of this article, 'athlete' will be defined as 'a person involved in sport either at 'international level...national level...or any additional person who participates in sport at a lower level...,'<sup>6</sup> concurrent with the Code.

The national governing bodies of sports must follow the International Federation Code compliant rules and the National Anti-Doping Organisation rules for the respective country. If there are conflicts between domestic and international bodies, or sporting bodies and the IOC, international regulations and measures will prevail. In addition to potential conflicts between bodies, there appears to be a difference in perception and punishment for doping between sports. Athletics has a much stricter approach to failing to attend drug tests; the punishment can involve the party being unable to represent their country, whereas the Football Association (FA) is less harsh, a footballer who misses drugs tests is currently still permitted to play for their country. Questions also arise as to the situation of parties who are involved in the doping of an athlete, as they may receive little or no punishment within current sporting regulations. Given the UK's successful bid to host the Olympic Games in 2012, the effectiveness of anti-doping bodies and current regulations need to be evaluated and improved in preparation for a successful and, hopefully, drug free Games.

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<sup>4</sup> World Anti-Doping Agency, *World Anti-Doping Code*, 2003, p.1 [http://www.wada-ama.org/rtecontent/document/code\\_v3.pdf](http://www.wada-ama.org/rtecontent/document/code_v3.pdf)

<sup>5</sup> The Austrian cross-country skiing and biathlon team had blood washing facilities in their accommodation in the Turin Winter Olympics 2006.

<sup>6</sup> *World Anti-Doping Code*, Appendix 1, p.72.

## 1 Regulatory Bodies: Current Measures, Practices and the Law

The World Anti-Doping Agency was established in 1999 as the international governing body against doping in sports. Established by Swiss private law, the Agency is funded through the Olympic Movement and Governments from around the world.<sup>7</sup> National Anti-Doping Organisations (NADO) which are signatories to the Code are required to implement the policy within their respective countries. One of WADA's main missions is 'to promote, coordinate, and monitor the fight against doping in sport in all its forms.'<sup>8</sup> The establishment of the Code was held to be a major breakthrough in the worldwide fight against doping in sport, 'to protect the Athletes' fundamental right to participate in doping-free sport and thus promote health, fairness and equality for Athletes worldwide.'<sup>9</sup>

The Code highlights the purpose of the World Anti-Doping Program and articulates International Standards as well as Models of Best Practice. Intending to uphold the 'the spirit of sport,'<sup>10</sup> the Code provides a clear definition as to what constitutes an anti-doping rule violation under Art. 2.<sup>11</sup> It also incorporates the Prohibited List and defines prohibited operations and activities which are updated annually. The List contains prohibited substances, specified quantities for stipulated drugs and prohibited methods. Substances may be permitted if they fall within Therapeutic Use Exemptions (TUE). WADA has two controls over TUEs; to review and monitor the TUEs and to act as an appeal body if the athlete fails to receive TUE. When

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<sup>7</sup> *Contributions To WADA's Budget 2007*, November 20 2007, Olympic Movement Contribution- 10,780,409 USD, Public Authorities Contribution- 11,020,250 USD

<sup>8</sup> WADA, Mission & Priorities, <http://www.wadaama.org/en/dynamic.ch2?pageCategory.id=255>

<sup>9</sup> *World Anti-Doping Code*, p.1

<sup>10</sup> *Ibid* p.3

<sup>11</sup> Art.2.1 The presence of a *Prohibited Substance* or its *Metabolites* or *Markers* in an *Athletes'* bodily *Specimen*

2.2 *Use or Attempted Use* of a *Prohibited Substance* or a *Prohibited Method*

2.3 Refusing, or failing without compelling justification, to submit to *Sample* collection after notification as authorized in applicable anti-doping rules or otherwise evading *Sample* collection

2.4 Violation of applicable requirements regarding *Athlete* availability for *Out-of-Competition Testing* including failure to provide required whereabouts information and missed tests which are declared based on reasonable rules

2.5 *Tampering*, or *attempting* to tamper, with any part of *Doping Control*

2.6 *Possession of Prohibited Substances* and *Methods*

2.7 *Trafficking* in any *Prohibited Substances* or *Prohibited Methods*

2.8 Administration or Attempted administration of a *Prohibited Substance* or *Prohibited Method* to any *Athlete*, or assisting, encouraging, aiding, abetting, covering up or any other type of complicity involving an anti-doping rule violation or any *Attempted* violation

prescribing medicines to an athlete doctors should familiarise themselves with the Code's prohibited substance list.<sup>12</sup> Athletes must also be extremely cautious in taking over-the-counter medicines, herbal remedies and vitamins as they can contain performance enhancing drugs. Over-the-counter medicines are generally prohibited and considered an extremely serious offence<sup>13</sup> by the IOC unless declared a TUE.<sup>14</sup>

WADA employs a three part approach of testing, research and education. It is a dedicated body which attempts to stay one step ahead of the doping athlete.<sup>15</sup> From January 2004, WADA assumed responsibility for accrediting the 33 worldwide anti-doping laboratories. By having one body responsible for the laboratories, it increases the validity of the results and avoids mistakes in testing,<sup>16</sup> also reinforced by a body of Independent Observers. From August 2007, 191 Governments were signatories to the Code. As they cannot be bound by non-governmental documents, an International Convention was drafted under the United Nations Educational, Scientific and Cultural Organisation to formalise their responsibilities. WADA does, however, appreciate that different countries operate under different laws.<sup>17</sup> The Agency collaborates with law enforcement bodies and government agencies to launch investigations in an attempt to be successful in stopping large scale drug rings within sport.<sup>18</sup>

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<sup>12</sup> It has also been suggested they follow a five question format based around is the drug really necessary or are there any alternatives? Henderson, J., 'Therapeutic Drugs: What to Avoid With Athletes,' (1998) *Clinical Journal of Sports Medicine* 17, 229-43.

<sup>13</sup> Linford Christie was eventually cleared in 1999 when it was established he drank ginseng tea instead of taking performance enhancing drugs, as with herbal drinks there is often no exhaustive contents list.

<sup>14</sup> British skier Alan Baxter was disqualified and stripped of his medal at the 2002 winter Olympics due to an innocent mistake with a Vicks vapour inhaler. The American version he brought at the games contained a banned substance, whereas the English version does not. Completely unaware in the variation of ingredients, his ban was eventually overturned.

<sup>15</sup> Although spending US \$25 million on research between 2001 and 2006, WADA Introduction <http://www.wada-ama.org/en/dynamic.ch2?pageCategory.id=249> WADA has however failed on many occasions. Recently, the American sprinter Marion Jones was jailed in January 2008 after admitting in late 2007 that she had been taking tetrahydrogestrinone (THG) for over 8 years. She has been stripped of her 5 medals from the 2000 Sydney Olympics. WADA described the case as 'a very sad example of an athlete who has cheated but denied it for years' [http://www.timesonline.co.uk/tol/sport/more\\_sport/athletics/article3174771.ece](http://www.timesonline.co.uk/tol/sport/more_sport/athletics/article3174771.ece)

<sup>16</sup> Diane Modhal tested positive after her sample was found to be degraded in a Portuguese laboratory in 1994 [http://news.bbc.co.uk/onthisday/hi/dates/stories/december/15/newsid\\_2559000/2559981.stm](http://news.bbc.co.uk/onthisday/hi/dates/stories/december/15/newsid_2559000/2559981.stm)

<sup>17</sup> For example in one country anabolic steroids may be illegal and in another country, legal.

<sup>18</sup> In 2006, WADA and Interpol announced that they were going to work together to combat the trafficking of performance enhancing drugs.

The Code established the first universal criteria that need to be considered in determining if the substance is banned. Two of the following three criteria must be satisfied: the substance enhances performance, poses a threat to the athlete's health and/or violates the spirit of sport.<sup>19</sup> Offences within the Code are essentially strict liability. The Code states the minimum and maximum sanctions for drug violations. The bans are 2 years for a first offence and a life ban for a second offence. It also formulates 'non-analytical' violations where the athlete will still be found guilty of a doping offence regardless of whether they have tested positive for a banned substance or missed a test.

UK Sport is currently the National Anti-Doping Organisation for the UK.<sup>20</sup> Established by Royal Charter in 1996 and funded through public investment and National Lottery funds, UK Sport works together with Home Country Sports Councils. It is accountable to Parliament through the Department of Culture, Media and Sport. UK Sport has two, albeit conflicting, roles: it not only sponsors and supports elite athletes but controls the doping processes for all athletes. The National Anti-Doping Policy confirms UK Sport's commitment to WADA's Code and designates roles and responsibilities to bodies involved in anti-doping within the UK. UK Sport conducts random and intelligence based testing in and out of competition. Following the Drug Free Sport Survey 2005, 100% ME, an educating body, was created by UK Sport to 'bridge the gap'<sup>21</sup> between athletes and anti-doping bodies. From the survey, on a scale of 1 to 5, with 1 being very well informed on knowledge of testing procedures, only 19% chose 1 and 32% selected 2. Two thirds of respondents indicated on a scale of 1 or 2 that they had confidence in the testing process.<sup>22</sup> In the year ending 31 March 2007, UK Sport had collected 7,257 blood and urine samples across 50 sports.<sup>23</sup> There are three possible outcomes following a drugs test: a negative test, positive test<sup>24</sup> and missed test.

In December 2007 the Government received recommendations from UK Sport to modernise the approach to anti-doping by creating a completely new and

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<sup>19</sup> *World Anti-Doping Code*, pp.15-16.

<sup>20</sup> Subject to recent announcements of a new NADO.

<sup>21</sup> UK Sport, 2005 *Drug Free Sport Survey*, p.7

[http://www.uk sport.gov.uk/assets/File/Generic\\_Template\\_Documents/Publications/Drug\\_Free\\_Sport/2005%20Drug-Free%20Sport%20Survey.pdf](http://www.uk sport.gov.uk/assets/File/Generic_Template_Documents/Publications/Drug_Free_Sport/2005%20Drug-Free%20Sport%20Survey.pdf)

<sup>22</sup> *Ibid*

<sup>23</sup> UK Sport, testing programme, [http://www.uk sport.gov.uk/pages/testing\\_programme/](http://www.uk sport.gov.uk/pages/testing_programme/)

<sup>24</sup> There are three stages following a positive test: review, hearing and appeal

independent NADO. The main rationale for this recommendation is the London 2012 Olympics. Tessa Jowell, the Minister for Sport, revealed that 'establishing a new, independent anti-doping organisation is a natural evolution in the fight against drugs in sport...2012 drug cheats will never have had it so bad.'<sup>25</sup> Key aspects for the new NADO include a closer relationship with law enforcement agencies to address the problem of supply and trafficking of prohibited substances and to generally have greater powers than existing UK Sport.

At present, hearings and appeals for doping reviews and cases are heard by the relevant governing body's disciplinary panel. UK Sport said the current system 'has led to concerns about a lack of independence, consistency in the way cases are dealt with and potential conflicts of interest.'<sup>26</sup> After criticisms from MPs for lack of an effective system in catching doping athletes, UK Sport announced a new independent National Anti-Doping Panel (NADP), launched in April 2008.<sup>27</sup> This will reduce potential conflicts of interest. The Sports Dispute Resolution Panel won the bid and will offer to hear doping cases for free on behalf of National Governing Bodies (NGBs). The FA will not opt for the NADP, a spokesperson declared, 'We are happy with our own system so we will not be using the new panel'.<sup>28</sup> This could potentially mean the FA could still exploit their players and risk giving them an unfair hearing. Whilst an independent body will reduce possible conflicts of interest in supporting the athlete and enforcing doping regulations, UK Sport has stated that they will allow NGBs to continue governing doping in their sports if they wish. Full details concerning the NADP are yet to be confirmed, but it is understood the panel will also hear appeals. More specialist dispute resolution is available via the Court of Arbitration for Sport (CAS) at Lausanne, which was created with the support of the IOC and has been governed by the Code of Sports-Related Arbitration since November 1994. Sport disputes can be, and are, resolved in domestic courts, but an international court such as CAS, 'can offer specialist knowledge, low cost and rapid action, provides a means of resolving sports disputes adapted to the specific needs

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<sup>25</sup> Joint DCMS/ UK Sport Press Release, '*Plans for new National Anti-Doping Organisation announced- New Body set to lead 2012 doping crackdown*'.

[http://www.culture.gov.uk/reference\\_library/media\\_releases/2262.aspx](http://www.culture.gov.uk/reference_library/media_releases/2262.aspx)

<sup>26</sup> Zeigler, M., 'New Anti-Doping Body Revealed'

[http://www.sportinglife.com/others/news/story\\_get.cgi?STORY\\_NAME=others/07/10/16/manual\\_140855.html](http://www.sportinglife.com/others/news/story_get.cgi?STORY_NAME=others/07/10/16/manual_140855.html)

<sup>27</sup> see UK Sport website [www.uk-sport.gov.uk](http://www.uk-sport.gov.uk)

<sup>28</sup> 'New UK Body to Hear Doping Cases,' 16 October 2007, [http://news.bbc.co.uk/sport1/hi/front\\_page/7047168.stm](http://news.bbc.co.uk/sport1/hi/front_page/7047168.stm)



of the international sporting community.<sup>29</sup> In co-existence is the International Council of Arbitration for Sport. Its main aim is to maintain the independence of CAS and preserve the rights of the parties.

### **Current UK Law**

There is no single piece of legislation specifically regulating the use of drugs in sports. Existing law in the UK that offers ancillary governance includes: the Medicines Act 1968, Misuse of Drugs Act 1971 (MDA), Drug Trafficking Act 1994, Drugs Act 2005; and, in certain circumstances, other statutes such as the Offences Against the Persons Act 1861, Customs and Excise Management Act 1979 and Police and Criminal Evidence Act 1984. The MDA is the primary legislation governing controlled substances.<sup>30</sup> Offences under the Act include unlawful possession of a controlled substance;<sup>31</sup> possession of a controlled substance with intent to supply,<sup>32</sup> and supplying or offering to supply a controlled drug.<sup>33</sup> In addition it also provides conditions to restrict the import and export of controlled drugs.<sup>34</sup> Some drugs that athletes use to enhance their performance are governed under this Act and therefore they could be prosecuted. It must be remembered that not all performance enhancing drugs are 'controlled substances.' However, there has been debate as to the effect of drugs used socially on the performance of an athlete.<sup>35</sup> Other drugs are controlled by the Medicines Act 1968 which primarily focuses on the management of the manufacture and supply of medicines, but there are some drugs governed by this Act that are used illicitly in sport. Further, the Drugs Act 2005 was created to give more powers to designated bodies. The police now have, for example, the power to be able to test for class A drugs more easily,<sup>36</sup> and are permitted to give anti-social behaviour orders in situations where behaviour is affected by drug misuse.<sup>37</sup>

The Offences Against the Person Act 1861 governs non-fatal offences and could cover situations involving drugs in sport. Under the Act it is a crime to inject or

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<sup>29</sup> <http://www.tas-cas.org/>

<sup>30</sup> 'Controlled substances' or 'controlled drugs' are any substances or products listed under Parts I, II or III of Schedule 2 Misuse of Drugs Act 1971.

<sup>31</sup> s.5

<sup>32</sup> s.5(3)

<sup>33</sup> s.4

<sup>34</sup> s.3

<sup>35</sup> 'Sport 'social drugs' ban queried,' 12 December 2006, [http://news.bbc.co.uk/1/hi/uk\\_politics/6171777.stm](http://news.bbc.co.uk/1/hi/uk_politics/6171777.stm)

<sup>36</sup> s.7 Drugs Act 2005

<sup>37</sup> s.20



administer another person with a noxious thing<sup>38</sup> or maliciously administering poison, etc., so as to endanger life or inflict grievous bodily harm.<sup>39</sup> Also offences such as assault occasioning actual bodily harm and causing/inflicting grievous bodily harm could be utilised where people doping the unaware athlete could potentially be criminally prosecuted. Otherwise, in terms of laws with more ancillary application, the Customs and Excise Management Act 1979 controls the importation and exportation of goods, and creates offences such as importing and exporting controlled drugs.<sup>40</sup> The Drug Trafficking Act 1994 also regulates offences similar to this. Likewise, the Police and Criminal Evidence Act 1984 would be able to govern searches and seizures relating to illegal substances. Again, this would not include any performance enhancing substance that is not a controlled drug.

## **2 Testing, Procedures, Case Studies and Views of Athletes**

It is not only necessary to educate the athlete of the prohibited list and prohibited methods, but testing procedures also need to be clearly communicated. The whole anti-doping process has to be reliable and effective, with the athlete, coaches and other parties involved, having complete faith and trust in the procedures. Moreover, the general public must have belief that the sport is fair, unbiased and has a level playing field.

Considerable research has been conducted, primarily to establish athlete's views and opinions, and to investigate their knowledge on doping. The British Olympic Association (BOA) surveyed British athletes following the Sydney Olympic Games in 2000.<sup>41</sup> The general consensus was that athletes preferred a harsher punishment for their colleagues caught doping, including life-time bans and zero tolerance programmes. 26% of surveyed athletes informed BOA that they did not receive adequate information regarding banned substances and testing procedures.<sup>42</sup> A further survey conducted by UK Sport in 2005<sup>43</sup> aimed to gather data on athlete's knowledge of prohibited substances and their attitudes. 76% of participants regarded drug testing in their sport as 'very important'.<sup>44</sup> 40% of surveyed athletes considered

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<sup>38</sup> s.24

<sup>39</sup> s.23

<sup>40</sup> Parts IV, V and Schedule 1 Customs and Excise Management Act 1979

<sup>41</sup> British Olympic Association. *Athletes Commission Report: Sydney 2000 Olympic Games*. (2001, London: BOA).

<sup>42</sup> *Ibid*

<sup>43</sup> UK Sport, *2005 Drug-Free Sport Survey*

<sup>44</sup> Emphasis added

the extent of doping in their sport to be 'an issue'<sup>45</sup>. UK Sport concluded that 'the survey has significantly increased our understanding of doping issues in sport and the way in which athletes in the UK experience and perceive them.'<sup>46</sup> It is important for UK Sport to receive feedback from athletes to improve their service.

UK Sport must have an effective system and procedure in place for drug testing to uphold anti-doping measures. Athlete understanding of the process is vital, as is a fool-proof and problem-free system, especially when the athlete's career is in jeopardy. In October 2006, Tim Don a triathlete, was suspended for three months, the WADA minimum sanction, and automatically received a life ban from competing in the Olympics, a BOA by-law.<sup>47</sup> He missed three drugs tests. The British Triathlon Association, and an independent disciplinary tribunal attributed Don's 'unintentional' anti-doping violation to 'a combination of forgetfulness on the athlete's behalf and his lack of understanding of the new testing system.'<sup>48</sup> Eventually the ban was overturned accompanied by a BOA statement: 'some regard needed to be given to the fact that the system was a new one and there has been some initial teething problems.'<sup>49</sup> Peter Cousins, a judo athlete, was suspended in the same year for missing three drugs tests. His appeal was similarly overturned due to what the appeal panel said was 'technological teething problems and some understandable confusion.'<sup>50</sup>

Athletes must state to the NADO their whereabouts for one hour a day, five days a week for random out-of-competition testing. Missing three of these tests is considered an offence resulting in a suspension and ultimately a lifetime Olympic ban from BOA. There are variations in punishments between sports which are sometimes extreme. This should be reviewed and consistency found to create fairness. For example, the difference can clearly be seen between athletics and football.<sup>51</sup>

Christine Ohuruogu's appeal when banned for missing three out-of-competition drugs tests in October 2006 generated significant media attention. On completion of her 12

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<sup>45</sup> 40% of athletes selected 1, 2 or 3 on a scale of 5: 1 being a major problem

<sup>46</sup> UK Sport, *2005 Drug-Free Sport Survey*, p.44

<sup>47</sup> The life time Olympic ban imposed by BOA is unique to the UK

<sup>48</sup> 'Tim Don banned for missing three tests' *The Independent* 14 October 2006

<sup>49</sup> 'Don wins appeal against life ban'

[http://www.timesonline.co.uk/tol/sport/more\\_sport/athletics/article1842816.ece](http://www.timesonline.co.uk/tol/sport/more_sport/athletics/article1842816.ece)

<sup>50</sup> Peter Cousins [http://www.timesonline.co.uk/tol/sport/more\\_sport/athletics/article647141.ece](http://www.timesonline.co.uk/tol/sport/more_sport/athletics/article647141.ece)

<sup>51</sup> Although the FA is currently considering adopting the code: see <http://www.timesonline.co.uk/tol/sport/football/article5134616.ece>

month suspension from UK Athletics, she won a gold medal for the 400m and personal best at the world championships.<sup>52</sup> On appealing to the BOA her lifetime ban was overturned. She continued to the 2008 Beijing Olympic Games and won a gold medal.<sup>53</sup> One of UK Sport's aims in their policy statement is 'to protect Athletes and other Participants in sport in the UK.'<sup>54</sup> They are clearly failing this where the media intervenes. This can be contrasted with the case of Rio Ferdinand, a footballer, who, in 2003 failed to attend a drugs test and received an eight month suspension and £50,000 fine. FIFA, the governing body of football does not have a by-law similar to that of the BOA. He was allowed, on return from his ban, to represent England and in March 2008 was announced to be the Captain of the national team.<sup>55</sup> Such large differences in attitudes of punishment from sport governing bodies can be perceived as unfair. Ultimately, doping in sports is cheating and cheats should receive the same ban, regardless of the sport they partake in.

Lord Coe led a review of the FA's Doping Procedures with the Select Committee in 2004, he found 'The FA has in place a robust and effective system, appropriate to the needs of football.'<sup>56</sup> This result was found regardless of the fact that at the time of the report, footballers were not obliged to give urine samples when asked.<sup>57</sup> In one case, the footballer who was being tested jumped out of a toilet window to avoid giving a sample, but could not be held accountable.<sup>58</sup> This practice is in stark contrast to rugby, in which 17 players of the Penygraig Rugby Football Club were disqualified and received bans of 15 months, for failing to supply a sample for UK Sport.<sup>59</sup> It must be highlighted that these bans compared to those such as Rio Ferdinand's, are twice as long for the same offence.

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<sup>52</sup> Ohuruogu won Great Britain's only gold medal at the IAAF World Championships in Osaka 2007

<sup>53</sup> 'Questions run and run for Christine Ohuruogu'

<http://www.timesonline.co.uk/tol/sport/olympics/article4569410.ece>

<sup>54</sup> UK Sport, *UK National Anti-Doping Policy*, UK Sport, 2005

<sup>55</sup> 'Ferdinand delight at captain role'

<http://news.bbc.co.uk/sport1/hi/football/internationals/7312855.stm>

<sup>56</sup> 'Doping Control Review'

<http://www.thefa.com/TheFA/NewsFromTheFA/Postings/2004/07/DopingControlReview.htm>

<sup>57</sup> This has since been rectified. Under article 10.2 of The Football Association Doping Control Programme; Doping Control Regulation & Procedural Guidelines 1<sup>st</sup> July 2007, it is a doping offence is the player fails or refuses to provide a urine sample.

<sup>58</sup> The Football Association, *letter to the Committee*, 12 July 2004

<sup>59</sup> Samples were failed to be provided for UK Sport following the Silver Ball final in May 2003. In addition there were suspicions of Class A drugs being used and supplied on the Pengraig Rugby Football Club premises. The club secretary also received a ban of 3 years reduced to 2 years.

One major loophole of current anti-doping measures has recently been identified by British athlete Dwain Chambers. Chambers received a two year ban and a lifetime BOA ban from representing Great Britain in the Olympics in 2003, after testing positive for the steroid THG. On being suspended, he pursued a career in American Football in the USA leading UK Athletics to remove him from UK Sport's out-of-competition drug testing register. Chambers made his comeback in February 2008 after winning the 60m trials for the World Indoor Championships. Although he had been taken off the drug testing list, at the decision of the sport governing body, they could reinstate him regardless of the fact he had not had a drugs test for athletics nor with UK standards in over a year. In addition, his lifetime ban for representing Great Britain extends only to the Olympics and not to other international competitions, arguably a major flaw in UK anti-doping measures. Chamber's legal team challenged the validity of the BOA lifetime ban but with no success.<sup>60</sup>

Anti-doping problems do not merely exist in the UK or with British athletes. The Tour de France has a reoccurring problem. After the 1998 debacle<sup>61</sup> the organisers attempted to improve the anti-doping measures. However, the 2007 Tour discovered more drugs cheats, with many suspected as undetected despite a newly introduced policy.<sup>62</sup> In late 2007 the Union Cycliste Internationale (UCI) announced the introduction of biological passports to come into action in 2008. They will contain urine and blood test results, a steroid profile and a haematological profile including parameters of the individual cyclist. Cyclists that will require one include competitors in the Tour de France. This is a sophisticated method in catching the doping cheats, and ensures consistent checks on athletes are carried out. According to UCI,

Once a rider is included in the biological passport program, it will become impossible for him to escape detection if he uses blood or steroid manipulations to enhance performance. We are closing the gap on cheaters. Those who dope will be caught.<sup>63</sup>

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<sup>60</sup> 'Dwain Chambers fails in bid to compete at Olympics'

[http://www.timesonline.co.uk/tol/sport/more\\_sport/athletics/article4356384.ece](http://www.timesonline.co.uk/tol/sport/more_sport/athletics/article4356384.ece)

<sup>61</sup> World Anti-Doping Agency, *World Anti-Doping Code*, 2003, p.1

<sup>62</sup> Farrand, S., and Fotheringham, A., 'Tour limps on with its future bleak and reputation reduced to ruins', *The Independent*, 27 July 2007.

<sup>63</sup> Union Cycliste Internationale, Information on biological passports

<http://www.uci.ch/Modules/ENews/ENewsDetails.asp?id=NTQzOA&MenuId=Mjl0NQ&BackLink=%2Ftemplates%2FUCI%2FUCI15%2Flayout%2Easp%3FMenuId%3DMjl0NQ>

### **Liability and Burden of Proof**

Failing to attend a drugs test attracts the same sanction as having a blood or urine sample test positive for prohibited substances. It is debatable whether this is fair. Theoretically, missing a drugs test is not as 'guilty' as testing positive for banned performance enhancing drugs. Doping in sports is, however, a strict liability offence, and one could draw a parallel between a failed breath test and a failure to give a specimen in relation to a drink driving charge. Having to establish the 'intention' of an athlete to administer prohibited substances would be difficult and reduce the ability to govern doping in sports. Furthermore, having the same punishment increases caution and creates deterrence. A lesser approach would not be effective: 'for if in each case the sports bodies had to prove the nature of an act in order for it to be deemed an offence, the fight against doping would become virtually impossible'.<sup>64</sup>

If mens rea had to be established, a question of credibility would arise, as in the case of *Gasser v Stinson* where it was submitted that it is 'not justifiable that the morally innocent may have to suffer in order to ensure that the guilty do not escape'.<sup>65</sup> It would be impossible to discover whether the athlete was telling the truth or attempting to escape punishment. In addition, the sporting body would have difficulty in relying on an admission of a third party, as they may have administered the drug to the athlete without their knowledge. However, the rationale for a strict liability offence in anti-doping continued to be well argued in *Quigley v UIT*.<sup>66</sup> As confirmed by the 100% ME campaign, 'ignorance is no excuse'.<sup>67</sup> Of course, the burden of proof ultimately lies with the NADO to establish if a doping offence has been committed. The standard of proof in all cases is 'greater than a mere balance of probability but less than proof beyond reasonable doubt'<sup>68</sup> which is problematic in that it lies somewhere between the criminal and civil standard.

### **No Knowledge?**

In the 1970s and 80s a doping scandal occurred in the German Democratic Republic. It emerged coaches were secretly injecting athletes, including children, with

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<sup>64</sup> Ibid

<sup>65</sup> *Gasser v Stinson* (1988) unreported, 15 June 1988

<sup>66</sup> *Quigley v UIT* CAS 94/129, 'The prohibition of banned substances will not be lifted in recognition of its accidental absorption... Moreover, it is likely that even intentional abuse would in many cases escape sanction for lack of proof of guilty intent. And it is certain that a requirement of intent would invite costly litigation that may well cripple federations - particularly those run on modest budgets - in their fight against doping.'

<sup>67</sup> 100% ME <http://www.100percentme.co.uk/1162486312.582/>

<sup>68</sup> World Anti-Doping Agency, *The Code*, Art 3 (1)

steroids.<sup>69</sup> The former chief doctor of East Germany's swimming team was convicted of giving the athletes performance enhancing drugs without their knowledge, receiving a fine and a suspended sentence. Other coaches have been suspected of being involved in doping their athletes, including China's head coach for the World Championships in Athletics in 2001. There had always been suspicion and in 2001 Championships, three of his athletes tested positive. But it took 12 months for the Chinese to inform the International Association of Athletics Federations (IAAF). Following this, 'China promised to make greater efforts to combat doping before it was awarded the 2008 games, a hollow pledge in light of the events of the past two days.'<sup>70</sup>

Under the Code, penalties for persons assisting the athlete or administering performance enhancing drugs without their knowledge, are robust. For violations of Art.2.5 Tampering with Doping Control, the person will receive on first violation a two year ban, and on second violation a lifetime ban. For violations of Art.2.7 Trafficking, or Art.2.8 Administering a Prohibited Substance or Prohibited Method, the person will have imposed on them a minimum four year ban to a maximum of a lifetime ban. If this occurred in the London 2012 Olympics parties doping the athlete could potentially be prosecuted under the Offences Against the Person Act 1861. The Code considers doping of athletes by other people a severe offence. Comment 10.4.2 reads: 'Those who are involved in doping Athletes or covering up doping should be subject to sanctions which are more severe than the Athletes who test positive.' The athlete, even though doped without their knowledge, can essentially still be found guilty due to the nature of the strict liability offence. They could plead a mitigating factor of lack of knowledge and lack of permission but it would ultimately be the decision of the appropriate NGB or panel.

### ***Possession***

In relation to possession of performance enhancing drugs, UK police search and seizure powers under Police and Criminal Evidence Act 1984 (PACE) extend only to illegal substances, which do not include all performance enhancing drugs. This could be perceived as a major problem in combating doping in sport in the UK. In addition, athletes cannot be prosecuted for possession or use of performance enhancing

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<sup>69</sup> 'GDR athletes sue over steroid damage'  
<http://news.bbc.co.uk/1/hi/world/europe/4341045.stm>

<sup>70</sup> Ibid

drugs unless they are, again, an illegal substance. In contrast, the Austrian cross country skiing and biathlon team was found to have a blood washing laboratory on their site uncovered through a police search at the Turin Winter Olympics, 2006. The reason the police could search the premises is because Italy has a strict doping policy, in which all performance enhancing drugs are illegal. Professor Arne Ljungqvist, chairman of the medical commission of the IOC, is worried that 'Unless UK legislation is changed, it is unlikely that such an operation at London 2012 could be uncovered.'<sup>71</sup>

Athletes are nonetheless able to enhance their performance without the use of banned substances, and without breaking the Code. Sophisticated training practices, such as altitude training which increases the oxygen carrying capacity of the athlete, could be deemed as 'cheating' in its own right, although it does not flaunt any sporting regulations. With the advancement in materials for clothing in sports, such as swimming and cycling, this could be seen again to improve the performance of the athlete in a more artificial manner. Increasing their performance in this way is not seen as 'guilty' as doping. On the other hand, it is not promoting the 'level playing field' of sport anti-doping measures are attempting to create.

### **3 Effectiveness of Anti-Doping Measures, Views of Key Stakeholders and Ability to Govern London 2012**

The extensive problem with doping in sport really came to light in the late 1980s and early 1990s. With more sophisticated technology and testing techniques, came more advanced and harder to detect substances. This obviously puts the UK's approach in the run up to 2012 in the spotlight. In 2003, Project Management Professional (PMP) was appointed by UK Sport to undertake an independent review of the UK Sport Drug Free Sports Directorate. The review examined the current situation through surveys with athletes and organisations. It found the quality and effectiveness of education was high, but there were concerns about the target audience.<sup>72</sup> This can be seen to have since improved through the introduction of the 100% ME programme in 2005. Testing was regarded as 'one of the major strengths of the anti-doping programme within the UK.'<sup>73</sup> On the other hand, one particular negative comment

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<sup>71</sup> 'Coe urged to make criminals of drugs users at 2012 Games'  
[http://www.timesonline.co.uk/tol/sport/london\\_2012/article2127567.ece](http://www.timesonline.co.uk/tol/sport/london_2012/article2127567.ece)

<sup>72</sup> *PMP Review of Anti-Doping* 2003, para. 3.13

<sup>73</sup> *Ibid*, para. 3.15



sparked concern with the PMP; 'I have confidence in the testing procedures however it is the enforcement that concerns me. Many athletes still believe cover-ups are taking place to protect the sport instead of cleaning it up properly.'<sup>74</sup> A major problem identified by the PMP was the conflict of interest debate with UK Sport and its responsibilities.<sup>75</sup> The review found 'If conflict of interest proves to be real and cannot be managed internally, the natural solution would be to create a separate agency to deal with drug free sport.'<sup>76</sup>

The review explored whether in fact there should be an independent body responsible for anti-doping in sport. Opinions of Governing Bodies/sports organisations held that over 45% felt that the NADO should be independent of UK Sport, and 46% of athletes held the same opinion.<sup>77</sup> The PMP however found there to be no explicit evidence of conflict of interest of UK Sport:

UK Sport is together with the Home Countries Sport Councils, an important policy making body for sport in the UK, and as such should retain the lead for anti doping policies and programmes.<sup>78</sup>

The review did nonetheless stress that UK Sport must keep their roles independent of each other and suggested separating them into different functions. It also established a relatively even argument for creating an independent NADO and for keeping the existing potentially biased body.<sup>79</sup> The PMP highlighted the 'practical burden of creating a wholly new agency'<sup>80</sup> and created criteria as to what it felt an 'independent' body should possess.<sup>81</sup> The Government undertook their own review into *Drugs and role models in sport: making and setting examples*' in 2004. The Committee held that there was no clear evidence to show conflict of interest, but it

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<sup>74</sup> Ibid, para.3.19

<sup>75</sup> There were four areas in which PMP perceived there to be areas of conflict; International policy vs National programmes; Athlete support vs preparation of case; Inconsistencies in communicating results - administrative function vs policy function and Funding function vs identifying positive cases *PMP Review of Anti-Doping 2003*, para 3.33

<sup>76</sup> Ibid, para.3.30

<sup>77</sup> Ibid, para.5.22, see fig 5.2 also

<sup>78</sup> Ibid, para.6.8

<sup>79</sup> It must be remembered that this report was commissioned before London won the bid to hold the 2012 Games and perceptions and objectives were perhaps less urgent in 2004

<sup>80</sup> Culture, Media and Sport Committee, *Drugs and role models in sport: making and setting examples*, seventh report of Session 2003-04, vol.1, para.78

<sup>81</sup> Fairness and equality; Free from specific interest, whether they be sports specific, political, funding, or performance; Upholding of standards; An emphasis on the single objective of creating drug free sport, with a strong determination to succeed (zero tolerance towards cheats or and no sympathy with doping violations) and Credibility, trust and expertise *PMP Review of Anti-Doping 2003*, para 6.7

would still recommend UK Sport clarifying the separate roles and maintaining them individually. In 2007, the *Human Enhancement Technologies in Sport*<sup>82</sup> report was commissioned, concluding that there were concerns with the lack of resources given by the Department for Culture Media and Sport for anti-doping in sports.<sup>83</sup> There also remained concerns with the dual role of UK Sport and its effectiveness<sup>84</sup> resulting in a view to separate the roles of UK Sport and establish a new independent body<sup>85</sup>.

The Committee also recommended a drug passport should be piloted.<sup>86</sup> This will assist in ensuring that the UK is 'Keeping ahead of the game.'<sup>87</sup> Included in the review was opinion on whether there should be a criminalisation of doping in sports in the UK. John Scott from UK Sport explained 'that the Government has taken the position that doping 'is an issue that should be owned by sport.'<sup>88</sup> Professor Arne Ljungqvist is of the contrary opinion that the UK should adopt the criminal liability in drugs in sport. He claims that making doping a criminal offence has proved extremely helpful within the Swedish sports organisations and with the police in searching for drugs.<sup>89</sup> Dr Richard Budgett from BOA agrees with Professor Ljungqvist, claiming that it would 'send a very strong message'<sup>90</sup> to the athletes by criminalising performing enhancing drugs. This was not the response of the Minister of Sport in preparation for London 2012.<sup>91</sup> Suggestions given by the Science and Technology Committee for the preparation of the London Olympic Games include; to increase number of drugs tests given, further money being found and given for the whole doping issue in sports in general and better technology for testing the athletes.<sup>92</sup> Again, they urgently forced the review of UK Sport due to its conflicting dual roles and potential for bias decisions,<sup>93</sup> ultimately affecting the effectiveness of the body.

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<sup>82</sup> Science and Technology Committee, *Human Enhancement Technologies in Sport*, Second Report of Session 2006-07

<sup>83</sup> *Ibid*, para.77

<sup>84</sup> *Ibid*, paras.86- 88

<sup>85</sup> It did highlight that there was no 'substantial evidence to support allegation of contamination or unethical behaviour' with the conflict in interest, but nevertheless urged the Government to launch a review with UK Sport into the best way to regulate doping in sports, paras.86- 88

<sup>86</sup> currently in 2008 it is being introduced in cycling

<sup>87</sup> Science and Technology Committee, Second Report of Session 2006-07, para.25

<sup>88</sup> *Ibid*, para.89

<sup>89</sup> *Ibid*, Appendix

<sup>90</sup> *Ibid*, para.90

<sup>91</sup> *Ibid*, para.91 'We will not go down that route...WADA is there to root out cheats in sport...it is the Government's aim to keep the "policing and the development of WADA very much within sport'

<sup>92</sup> *Ibid*, paras.26-29

<sup>93</sup> *Ibid*, para.88

### **Alternative Views of Doping**

Within the report were views *for* doping in sports that are against the opinion of the majority. Professor Julian Savulescu from the University of Oxford claims that doping is not against the 'spirit of sport'<sup>94</sup> and 'there is no reason sport must remain purely a test of natural ability.'<sup>95</sup> He also felt that there *should not be* criminalisation of doping or any other legislation 'to permit safe performance enhancement.'<sup>96</sup> This would open a floodgate including problems such as what substances could be used, when and in what amount. This would not create the fairness, equality or level playing field envisaged by both WADA and UK Sport. As well as socially allowing and in some cases encouraging or pressurising the athlete to abuse their health, the new athletic role model would be one based on drugs, jeopardising future generations both in society and sport ultimately leaving the whole situation spiralling out of control. This can be illustrated through current statistics and figures, which would unquestionably increase with the permission to use PEDs in sport.<sup>97</sup>

Views of stakeholders are essential in this area, as they are leading influences in the UK's policy of anti-doping in sports. Already stated above is UK Sport's clear view that doping will not be made a criminal offence and should remain within the control of WADA. After conducting a questionnaire with a Police Officer from the Devon and Cornwall Constabulary on doping in sport, their opinion was that it is generally difficult to identify any substance. When asked whether doping in sports, although 'criminal' in sport, should be a crime in law they responded 'I strongly believe we should not 'criminalise' any section of society unnecessarily.' When asked for reasons the response was, 'For 'legal' substances the relevant sporting bodies need

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<sup>94</sup> World Anti-Doping Agency, *World Anti-Doping Code*, 2003

<sup>95</sup> Science and Technology Committee, Second Report, para.44

<sup>96</sup> *Ibid*

<sup>97</sup> It is currently estimated that just over 11¼ million people aged 16-59 in England and Wales have used illicit drugs in their lifetime and just under 3¼ million people in the same group have used illicit drugs in the last year, 2 million in the last month (Home Office, Home Office Statistical Bulletin; *Drug Misuse Declared: Findings from the 2006/07 British Crime Survey* (October 2007) p.2). Drug offences increased by 21% in 2007 (In the quarter of July-September 2007) compared to the same period in the previous year 2006, Home Office, Home Office Statistical Bulletin: *Crime in England and Wales: Quarterly Update to September 2007* (January 2008) p.3) and according to one needle exchange clinic in the North East of England, 40% of people who seek help there are using drugs in sport (Figures taken from BBC One's *Inside Sport*, Beijing Special, broadcasted 20 February 2008 available through <http://search.bbc.co.uk/cgibin/search/results.pl?tab=av&q=inside+sport&recipe=all&start=2&scope=all&link=next> . These figures unequivocally portray the increasing drug problem, both in society and sport.

to enforce testing regimes/appropriate penalties for 'cheating'. This does not need to be criminalised'.

Others, such as Jason Lowther, hold similar views<sup>98</sup> and when interviewed was of the opinion that current doping measures in sport are not effective 'on many levels'; 'There is too much inconsistency, and probably even duplication between the systems that operate within the constitutions'. He also indicated his lack of faith in the current system governing London 2012 for the reasons above. In addition, he does not believe there should be a criminalisation of doping in sports, with the exception of coaches doping their athletes. Lowther possesses strong feelings on criminalisation of doping in sports, and believes that in making 'doping a criminal offence would mean society interfering in what sports bodies should be doing themselves'. He continued to express 'It would also involve criminal law and policy being dictated by an unelected, unrepresentative bully-boy organisation with no accountability.' Gregory Ioannidis, a lecturer and barrister specialising in sports law, is of the contrary opinion that doping should be made criminal. He believes this would be able to protect the athlete's health and society more effectively, while deterring other athletes from taking performance enhancing drug.<sup>99</sup>

#### **4 Recent Developments**

The recent changes and announcement of the new National Anti-Doping Organisation, independent of UK Sport, are said to be able to govern doping in sports more vigorously. The new NADO will have 'control over the distribution of tests across all sports, and the power to decide whether or not an athlete has a case to answer when accused of an anti-doping rule violation will continue to ensure a robust system is in place for the future.'<sup>100</sup> Lord Coe, chairman of the London Organising Committee and perhaps more importantly a former Olympiad has reiterated his 'zero tolerance on doping in sports: '[it is] Better to have the short term embarrassment, even a positive test within my own federation, than have a drug scandal and let down a whole generation of athletes.'<sup>101</sup> When asked about the new NADO, Ed Coode, also on the London 2012 organising team, answered that the new National Anti-

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<sup>98</sup> See Lowther, J., chapter in O'Leary (Ed.), *Drugs and Doping in Sport, Socio-Legal Perspectives*, (2001, London, Cavendish)

<sup>99</sup> Legal Regulation of Doping in Sport: The Case For The Prosecution, Gregory Ioannidis, <http://www.buck.ac.uk/publicity/academics/articles/ioannidis-lrodis.pdf>

<sup>100</sup> Ibid

<sup>101</sup> Notes taken from London 2012: Ask the Team session Plymouth, 13 March 2008

Doping Organisation is good for two reasons; it is a unified voice, redirecting its aims through education; and secondly the unified testing should be able to keep up to date with improved programming and testing more easily. Sharron Davies, a former Olympic swimmer, also on the panel, stated that the UK is one of the most regular testers with one of the best testing systems in the world; but is frustrated when there are more effective tests that have been researched, but are not used.<sup>102</sup> The 2007 World Conference on Doping in Sport discussed the current effectiveness of anti-doping measures alongside the performance of the Code. It was suggested samples gathered from athletes should be stored for eight years for retesting at anytime. This would occur at every major international event. This in theory is a good idea; it would provide a drug passport of samples. In practice, it could compromise the athlete's human rights and much consideration, planning and money would have to go into establishing a program like this. Also proposed was further support for athletes who test positive, a sharing of information on the athlete's drug testing between agencies and more uniformity in consequences for missed and positive tests between sports and federations.<sup>103</sup> One welcome suggestion was to introduce retrospective punishment and bring cases against retired athletes. This would facilitate 'justice' and also allow other athletes who may have missed out on medals due to an athlete taking drugs to rightfully receive it. More importantly, it would increase the fear in an athlete of being caught and would therefore deter more athletes.

## **Conclusion**

Doping in sport not only appears to affect the public's opinion of the athlete, but also alters their attitudes towards the sport and event. The media often contribute to this by frequently and repeatedly scrutinising the athlete for having a positive or missed test. In preparation for the London 2012 Games, there cannot be any overshadowing stories of doping in sports to threaten the success of the Games.

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<sup>102</sup> An example is the extensive million dollar research into detecting human growth hormones. Dr Peter Sönksen led a team of scientists in 1999 to find a test which could discover HGH in the system up to 2 weeks after administering the banned substance instead of the current 24 hours. They believed they had succeeded in creating a much improved test but were extremely disappointed when the IOC, who jointly funded the research with the European Union, refused to implement their test. In a press statement the IOC said it 'has full confidence in the test currently in use to detect HGH at the Olympic Games.' *GH-2000 A Methodology for the Detection of Doping with Growth Hormone and Related Substance*, [http://news.bbc.co.uk/sport1/hi/front\\_page/7096221.stm](http://news.bbc.co.uk/sport1/hi/front_page/7096221.stm)

<sup>103</sup> Athletes presentation [http://www.wadamadrid2007.com/docs/interventions/15nov07/3B\\_Athletes\\_Key\\_Messages.pdf](http://www.wadamadrid2007.com/docs/interventions/15nov07/3B_Athletes_Key_Messages.pdf)

Fundamentally for an effective anti-doping system, there has to be a workable definition of 'doping'. WADA aimed to harmonise worldwide anti-doping bodies and have extensively improved the previous standards. The Code has created one condition for the bodies to work from, diminishing potential differences and biases between countries. This allows athletes and the bodies themselves to understand their position in all situations and govern it effectively. The Code is constantly under examination with regular meetings of all National Governing Bodies, Federations and WADA. Any flaws or adaptations that need to be made to the Code are identified and voted on by signatory bodies, allowing a democracy to be maintained ensuring the Code remains relevant and practical.

UK Sport, being the current NADO, is responsible for driving the UK's National Anti-Doping Policy, as well as upholding the Code. One of UK Sport's objectives is to protect the athlete, yet many are constantly at the end of the media's harsh and discrediting words. On the surface, it appears that UK Sport is failing in their moral duty to protect their athletes. UK Sport is able to control this in two ways. Firstly they must improve their system, particularly as regards punishments and perhaps even create a 'reform list' allowing society to follow the athletes in their rehabilitation, and consequently understand the logic and reasons behind the situation. Secondly, UK Sport can educate the media and readers as to general doping in sports,<sup>104</sup> particularly through schools and colleges, in a sport context as well as a social one. This will discourage the use of drugs in sport from a young age. The 100% ME scheme is creating a good impression. By using 'famous' sports personalities as role models it will influence younger minds more easily and effectively.

The media were extremely critical when Tim Don was initially banned due to missed tests. This could have easily been avoided if the system was correctly operational and available to athletes. It is unacceptable to have an unworkable system when an athlete's career is in jeopardy. Don was not the only person penalised for this error, but fortunately all parties have had their bans overturned. UK Sport have since appreciated this and created the new advanced improved system, ADAMS, allowing athletes to change their whereabouts up to a minute before their declared location. Such systems require ongoing updating to keep in line with advancements in technology.

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<sup>104</sup> Although, it must be noted that the media may still continue to project their own views, they would be able to express a more informed opinion.

With regards to the punishments given to athletes, should there be the same penalty between missed tests as a positive test? In keeping the same sanction deterrence is arguably created, and it is easier for the doping and 'guilty' athlete to be caught: but for those who have fallen victim to poor systems it can be deemed as unfair. A solution for UK Sport is to ensure their systems are flawless: any missed or positive tests this become the fault of the athlete, and not the NADO or NGB. The athlete maintains responsibility for their test results, supporting the argument to maintain the same sanctions. It has been suggested the strict liability test is unfair to innocent athletes. With an effective system in place, it can be argued that the athlete should not be so reckless as to put themselves in a position where the potential outcome could be a strike, or a ban from sport: 'ignorance is not an excuse'. This could be seen as a harsh stance when the athlete is innocent due to being doped without their knowledge by another party. As a strict liability offence the athlete would still be guilty. This maybe should be reviewed to avoid unjust convictions and sanctions, but in altering this stance, will allow a defence to guilty athletes.

A recent review commissioned into bans imposed for doping in sport, is the UK Athletics investigation into the legality of their lifetime ban for 'positive' test, including 3 missed tests. This was sparked by the threat of legal action by Dwain Chambers. The sanction exceeds those stated by the Code but to many, including the High Court, it is seen as a reasonable punishment. With Chamber's failed legal challenge of the lifetime ban, BOA has had legal reinforcement of their punishment allowing their strict stance to be maintained. But between the lifetime ban imposed by BOA and the continual media scrutiny, it can be difficult for the athlete to redeem themselves back in to society.

Inconsistencies in sanctions imposed between sports must also be addressed. WADA is aiming to achieve a global partnership in the fight of doping in sports, but if sports in the same country cannot impose the same penalties, there is a gap that needs to be rectified. There are also concerns amongst athletes, in particular cycling, that other NGBs are not doing their best to combat doping in sports. The UK cannot lead the fight on its own. The effectiveness of anti-doping measures relies on the complete compliance and dedication of all signatories to the Code.



As we approach the London 2012 Olympics, there remain concerns as to whether the current UK law is able to effectively govern drugs in sport. With no criminalisation specifically for doping within the UK, and many performance enhancing drugs not regulated as controlled substances, police powers are limited. In addition, the purpose of WADA was to govern the problem worldwide and provide a consistency between sports and nations. If each country manages doping in sports individually, there will be no centralising force needed to regulate events effectively. It is far better for WADA to oversee doping in sports and to administer punishments they have established. In WADA's Strategic Plan for 2004- 2009, their third objective is 'to lead, coordinate and support effective Anti-Doping Scientific Laboratory and Research Programmes of the highest quality.'<sup>105</sup> For example there have been criticisms of WADA's approach to testing for human growth hormones. It seems extremely discouraging that the regulatory body is aware of a more effective test but refuses to implement it. WADA also seeks to establish accredited laboratories which can issue a certificate of competence ensuring higher effectiveness of testing and standards. The Science and Technology Committee's recommendation to introduce a biological passport is already being enforced in cycling and is an excellent method to show any changes within the athlete's system over a period of time acting as a constant check to dissuade athletes from taking any performance enhancing drugs.

There is no guarantee that taking banned substances will enhance performance and methods such as oxygen tents, altitude training and enhanced textiles could also be perceived as unfair. There should be some consistency as to the training athletes are allowed or techniques they can pursue though environmental differences between athletes might make this impractical. The view that doping in sports *should* be allowed is a highly dangerous one encouraging a 'cheating' athlete to risk their health. Athletes are funded by public money and are public role models, and thus doping in sports should, in the author's view, never be authorised.

Athletes must have absolute confidence in their National Anti-Doping Organisation. Surveys need to be conducted regularly to ensure opinions are current and relevant. One general view of athletes is their unhappiness at the current dual roles of UK Sport in supporting the athletes yet regulating the drugs testing and imposing relevant sanctions. This conflict of interest has recently been addressed with the

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<sup>105</sup> World Anti- Doping Agency *Strategic Plan 2004- 2009*, p.7

creation of a new independent National Anti-Doping Organisation to regulate doping in sports. The new NADO is coinciding with a new independent National Anti-Doping Panel which will hear cases if the National Governing Bodies wish. This is a good move to create consistency and an unbiased body which will implement the same punishments through all sports. However, there is one major setback; it is the decision of the sport governing body if they want to use the NADP. It should be made obligatory to secure fairness and equality in punishments.

To govern the London 2012 Olympics effectively, the current UK system needs to be under constant scrutiny. The current anti-doping measures are effective in general, but with some parts needing further improvement. Sport has a central role globally: after all it was the IOC that brought North and South Korea together in the same stadium to compete. We underestimate the impact of doping on sport, the athlete and society at our peril: 'Doping is cheating, and there should be no glory in gaining an edge over rivals this way. Victories gained by doping are not only empty and meaningless but should really be considered as acts of fraud. Doping destroys individuals and has the power to destroy our sport.'<sup>106</sup>

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<sup>106</sup>IAAF website, cited in *PMP Review of Anti-Doping* 2003