



Department for
Digital, Culture
Media & Sport

Review of Criminalisation of Doping in Sport

October 2017



Foreword

The UK has always taken a strong stance against doping; taking whatever steps are necessary to ensure that the framework we have in place to protect the integrity of sport is fully robust and meets the highest recognised international standards. This has included becoming a signatory to UNESCO's International Convention Against Doping in Sport; complying with the World Anti-Doping Code; and establishing UK Anti-Doping as our National Anti-Doping Organisation. However, given the fast-moving nature of this area, we can never be complacent in our approach.

The developments we have seen unfold in recent times have been highly concerning, not least with independent investigations commissioned by the World Anti-Doping Agency (WADA) revealing large scale state-sponsored doping in Russia. With this in mind, I tasked officials in my Department to undertake a Review to assess whether the existing UK framework remains sufficiently robust, or whether additional legislative measures are necessary to criminalise the act of doping in the UK.

This Review was subsequently conducted in two stages: (i) a comprehensive assessment of the effectiveness of the UK's existing anti-doping measures and compliance with WADA protocols, and (ii) targeted interviews with key expert stakeholders on the merits of strengthening UK anti-doping provisions, including the feasibility and practicalities of criminalising the act of doping.

As detailed in this report, the Review finds that, at this current time, there is no compelling case to criminalise the act of doping in the UK. This also reflects the very strong consensus of those interviewed, including WADA. I am content with this conclusion and do not believe that the Government should take steps to criminalise doping.

These findings do not mean that those doping in sport will be immune from prosecution, as this is already captured by existing legislation through the Misuse of Drugs Act and the Medicines Act 1968, where the trafficking and supply of banned substances carries up to 14 years imprisonment.

While I am confident that the UK has an appropriate legislative and regulatory framework in place to help mitigate and address instances of doping, the Government will continue to take a strong stance in responding to any new developments or emerging threats. As part of this, we are currently undertaking a Tailored Review of UK Anti-Doping (UKAD), which will be published later this year and which will help ensure UKAD is operating as effectively as it possibly can; and an update of the Government's National Anti-Doping Policy will also be undertaken. Furthermore, this Review makes a number of additional recommendations to help bolster the UK's approach to anti-doping, which we will continue to consider. The UK will also play a full and active role in any future review of the World Anti-Doping Code.

I would like to thank the individuals and organisations that contributed to this Review.

Tracey Crouch MP
Minister for Sport & Civil Society

Contents

Contents	3
Executive Summary.....	4
Issue.....	4
Conclusions	4
Background	4
Summary of Recommendations	6
Introduction	8
Purpose.....	8
The Problem.....	8
Methodology	8
Terms of Reference.....	9
Conclusions	10
Recommendations	12
Context.....	13
Sporting Future.....	13
Why Anti-Doping is Important	13
Methods & Scale of Doping	14
Methods.....	14
Scale of Doping.....	15
Legislation & Anti-Doping Rules.....	16
Legislation.....	16
WADA Protocols	17
UK Approach to Anti-Doping	19
Landscape & Organisations	19
Funding	20
Intelligence Led Testing.....	21
Prevention & Detection.....	23
Sanctions	25
Organisations Interviewed.....	28
Annexes	29
Annex A – Terms of Reference	29
Annex B - Written Sources & Interviews	30
Annex C – Adverse Health Effects of IPEDs	32
Annex D – UKAD Doping Control Processes	33
Annex E – ADRV Process	35

Executive Summary

Issue

1. Is there a case for the Government to introduce new legislation to tackle doping in sport, including a need to create a specific criminal offence for doping in sport in the UK?

Conclusions

2. Criminalising the act of doping in sport in the UK would be disproportionate in the battle to keep sport clean. However, the UK’s national approach to combating doping could be strengthened through better use of existing powers, improved data sharing and more effective liaison between sports governing bodies, UK Anti-Doping (UKAD) and the relevant law enforcement agencies.

3. In addition, a joined-up education campaign is likely to help dissuade young people from doping.

4. Some improvements in the support for doping control measures are possible; most of which can be achieved through funding agreements between DCMS relevant Arm’s Length Bodies (ALBs) and sport governing bodies (see para 16).

Background

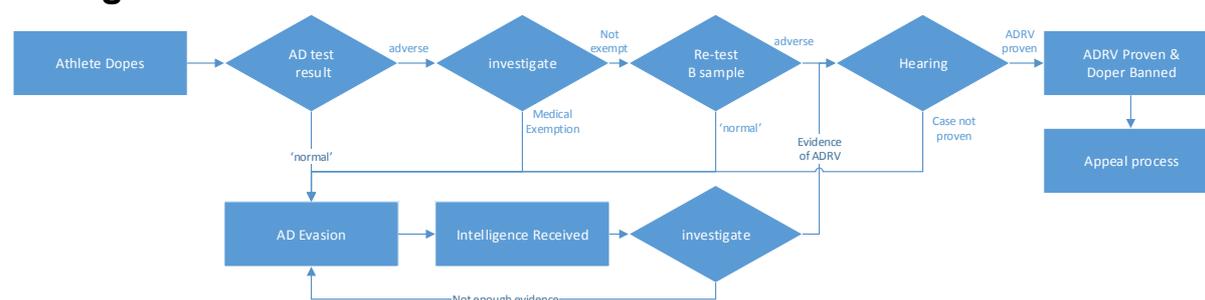


Fig 1: Overview of potential doping control where an athlete has used a prohibited substance

Scale of Doping

5. The scale of doping varies by sport. International testing data, published by the World Anti-Doping Agency (WADA), shows that 1.5-2% of drug tests have an adverse result. Academic research, echoed in several of the interviews conducted, suggests, “we only catch the dopey dopers”. This is borne out with non-analytic detections of dopers using intelligence, many cases of which show that dopers have cheated drug tests.

6. The effectiveness of the testing regime is determined by the quality of testing and how well targeted those tests are. It is possible to come to a judgement on how likely it is that someone attempting to cheat could do so, and the types and numbers of athletes most susceptible to doping. This forms the basis for a risk-based approach to testing, which increases the effectiveness and efficiency of anti-doping measures.

7. The testing conducted by UKAD is already using intelligence and risk-based assessments to determine those most susceptible to doping. In addition, it is using a broad spectrum of in-competition and out-of-competition testing.

Effective Testing

8. Given the known methods used to cheat drug tests, effective testing needs to have the following features:

- a) Random, no-notice testing out-of-competition;
- b) Use blood, urine and other physiological testing methods;
- c) Broad spectrum analysis (i.e. looking at the composition of the sample and comparing it with normal samples, rather than looking for specific drugs);
- d) Frequent tests for high risk individuals with longitudinal comparisons (i.e. the biological passport approach);
- e) Supervision of sample production (i.e. ensuring that the athlete cannot tamper or exchange the sample).

9. UKAD meets these criteria in its anti-doping approach. It is also important to recognise that the quality of the testing regime is more important than the sheer volume of tests; i.e. a qualitative rather than quantitative approach.

Sanctions

10. The sanctions for those caught committing Anti-Doping Rule Violations (ADRVs) are widely held to be effective. There was a view that the increase from a two-year ban to a four-year ban for a first offence (under the current 2015 World Anti-Doping Code) may have made it overly harsh in some circumstances. As the current penalties can end a sporting career, it was suggested that prison sentences or fines would not be stronger deterrents to athletes or support staff than a four-year ban and in some cases a lifetime ban.

Data-sharing

11. Where data-sharing agreements are not already in place, some of those involved in law enforcement and anti-doping investigations expressed frustration at the lack of an effective data-sharing framework. Access to clear data sharing provisions would allow sport governing bodies, and others involved in the anti-doping landscape, to verify intelligence and share information to prevent, detect or investigate allegations of doping.

12. In the main, the current data protection regime allows this, but often those with the relevant data do not always understand that they can share it with UKAD and/or law enforcement. This is particularly true of national sports governing bodies. UKAD needs to clearly establish who is covered by each of the bodies so as to ensure whether or not they fall within the remit for anti-doping tests.

Criminalisation of Doping

13. None of those interviewed were in favour of criminalising doping in sport. This was a unanimous view. The reasons given included:

- a) The standard of proof in a criminal court is ‘beyond reasonable doubt’. It may be quicker to deal with an incident using regulatory or disciplinary proceedings, which must be proved to the civil standard of the ‘balance of probabilities’.
- b) Where a charge is proved or admitted, the judicial bodies of the regulatory authorities may impose a financial penalty greater than the maximum financial penalty available to a criminal court.

- c) It is unlikely that anti-doping cases will take priority for investigation by police as more serious offences will have precedence for the allocation of limited resources.
- d) Strict liability is not sufficient for criminal cases; it would be necessary to show a form of intent. This may lead to more appeals.
- e) Prosecutors make their decisions in accordance with the Code for Crown Prosecutors and the Director of Public Prosecution's Guidance on Charging. The Full Code Test of the Code for Crown Prosecutors¹ has two stages: (i) the evidential stage; followed by (ii) the public interest stage. If there is sufficient evidence of doping in sport, it may not be in the public interest to prosecute, (see paragraphs 4.7 to 4.12 of the Code for Crown Prosecutors).
- f) Sports governing bodies expect that their internal investigations will be negatively affected by the criminalisation of doping in sport. Experience with corruption cases shows that sports governing bodies need to wait as police have the evidence, or to avoid contempt of court. This slows down justice (and can prevent it completely where an investigation is not concluded properly because of police priorities).
- g) Criminalisation would not introduce significant additional deterrence.

14. It has been suggested that the legislative approach taken by other countries, such as Italy, which have criminalised doping, is beneficial because it makes the powers of investigation clearer and also helps influence athletes with ADRVs to co-operate with inquiries.

15. Police prioritisation will, rightly, focus on serious crimes at the expense of anti-doping offences. A specialist sports crime unit could give anti-doping offences an appropriate priority for investigation and have the appropriate powers to conduct investigations, however setting up such a unit only makes sense if additional criminal offences were created, or a compelling public interest justified diverting limited resources from other areas.

Summary of Recommendations

16. The report makes the following recommendations:
- a) There is no need to introduce new legislation to criminalise doping in sport;
 - b) Health harms associated with the abuse of Image & Performance Enhancing Drugs (IPEDs) should be integrated into drug information and education supported by Public Health England;
 - c) The Data Protection exemptions for criminal offences should be extended to also cover anti-doping offences;
 - d) Funding should be sought from a wider range of sources, beyond government, to enable more robust anti-doping activities;
 - e) Integrity units in sports governing bodies should be capable of conducting investigations to WADA standards and share this information with UKAD;
 - f) There should be a review of Therapeutic Use Exemptions (TUEs) and thresholds for personal use of substances on the WADA banned list;
 - g) UKAD doping control officers should be able to gain access to all sporting events without prior notice to enable testing at competitions to be random;
 - h) Research into the prevalence of doping in UK sports should be undertaken regularly using consistent methodology to show effectiveness of both education and deterrent from doping control measures.

¹ http://www.cps.gov.uk/Publications/code_for_crown_prosecutors/codetest.html

- i) All grants given using public funds to sports bodies or individual athletes should have explicit anti-doping provisions, including:
- Sharing of information with UKAD, including details of those competing, coaching or regulated by the governing body.
 - Admittance of UKAD doping control officers to all events run by the governing body (or its affiliated bodies) without prior notice.
 - Education of people involved in the sport on anti-doping.
 - Sign-up to the World Anti-Doping Code and associated policies.
 - Agreement that UKAD leads on all routine anti-doping activities in the UK.
 - Assurance of robust governance processes so that oversight to prevent doping is effective.

Introduction

Purpose

1. The UK's Sport Strategy, *Sporting Future*, published in December 2015 committed the UK government to take forward a series of actions to strengthen the integrity of sport and the effectiveness of measures to prevent doping. Speaking around its launch, the Minister for Sport, Tracey Crouch, said "We have to look at criminalisation to see whether or not that's something we can add to the toolbox of combating corruption in sport".
2. This report is the outcome of that commitment, to review whether or not criminalisation of doping in sport would add to the available methods for preventing doping in sport. In doing so, a number of other strategic recommendations have been made that could help to strengthen the UK approach towards anti-doping.

The Problem

3. Doping in elite sport is a global problem. The World Anti-Doping Code ("the Code") sets out the agreed harmonised global standards as to what constitutes doping, detection regimes and the punishment of those caught. In the UK, UK Anti-Doping (UKAD) collects intelligence and tests elite athletes in compliance with the Code.
4. Anti-doping is one of the most important aspects of integrity in sport. The UK has a reputation as having one of the strongest anti-doping regimes in the world, with UKAD at the forefront of testing, intelligence and education. This allows both UKAD and the UK Government to exert our influence internationally to support and strengthen the fight against doping, through the Council of Europe's Ad-Hoc European Committee for the World Anti-Doping Agency (CAHAMA), UNESCO (and its International Convention against Doping in Sport) and the World Anti-Doping Agency (WADA) itself.

Methodology

5. The review of anti-doping in the UK was undertaken in two stages.

Literature review

6. Stage 1 was a comprehensive desk study of current anti-doping provisions in the UK and also WADA protocols. This was combined with a literature search of academic papers dealing with anti-doping, the prevalence of doping, the drivers for athletes to misuse drugs and methods for preventing and detecting doping. In addition, current UK legislation that could be used to combat doping was also identified. Specific public written reports referred to are listed in **Annex A**.

Targeted Interviews

7. Stage 2 was a series of interviews with key stakeholders to establish views on how the UK could strengthen its anti-doping activities and also to test the feasibility and practicalities should full criminalisation of those involved in doping be introduced. The organisations that were approached are shown on page 28.

Terms of Reference

8. The full terms of reference are at **Annex A**. This review was tasked with looking at what strategic benefits there might be through introducing new or additional legislation to help combat doping in elite sport. As part of this review, the strategic landscape, and the effectiveness of UKAD's approach, were in scope.

9. The following aspects were specifically out of scope for this review:

- (a) Operational detail on how UKAD delivers the strategy;
- (b) Matters in scope for the Dr Bonar inquiry;
- (c) UK commitment to WADA and anti-doping.

Conclusions

Recommendation: There is no requirement to introduce new legislation to criminalise doping in sport in the UK

Prevention

10. A joined-up education campaign with Public Health England, the Department for Education (DfE), Sport England, UKAD and other relevant bodies is likely to help dissuade young people from doping.

Deterrence

11. Changing attitudes, along with a clear deterrent of effective monitoring and proportionate punishments will turn the tide in those sports where doping is a significant problem. The updated sanctions in the World Anti-Doping Code, in particular the introduction of four-year bans, which sees athletes miss an Olympics or Paralympics, together with strict liability, will also impact on those seeking to cheat.

12. A major component of deterrence is the likelihood of being caught. Continuing research to understand the scale of the problem is needed to ensure that the testing regime is effective enough to catch those that dope, and continues to remain effective over time.

Detection

13. The analytical aspects of testing are reasonable, however the social system that surrounds them needs to be bolstered. Most of this report's recommendations are around strengthening an already effective doping control regime (see **Annex D**).

14. Improvements in support for doping control measures are possible, most of which can be achieved through agreements between DCMS Arm's Length Bodies (ALBs) and sports governing bodies.

Punishment

15. Where elite athletes and/or support staff are shown to be involved in doping, current sanctions available appear to be effective². The World Anti-Doping Code, which is developed in response to stakeholders' concerns and evidence, increased the default sanction from two to four years for a first offence (with the possibility of a reduced two-year ban if the accused gives evidence to implicate the supply chain).

Criminalisation

16. Criminalising the act of doping in sport is unlikely to significantly add to combating doping in sport. However, improved use of existing powers, improved data sharing and more effective liaison between sports governing bodies, UK Anti-Doping (UKAD) and law enforcement agencies could strengthen the UK's national approach to combat doping.

17. If a criminal case is pending, it would not be appropriate for sports governing bodies or other anti-doping bodies to hold hearings. This would delay the conclusion of investigations and the start of effective sanctions, making competition less fair. It should also

² Of those athletes examined there are no cases of previously banned athletes winning international championships after returning from a ban. In the case of second offences the ban is for life.

be noted that the threshold upon which a finding of guilt can be made in criminal proceedings (beyond reasonable doubt) is higher than that currently applied in doping cases.

18. From a deterrence perspective, the strongest deterrent for athletes and their support staff is being banned from their involvement in sport along with the inevitable loss of earnings.

19. Most IPEDs are Class C drugs (many are not controlled). The penalties for Class C drug misuse and dealing are minor in comparison to the sanctions under the World Anti-Doping Code. Criminalisation would not therefore increase the deterrent effect.

Recommendations

The report makes the following recommendations:

- a. There is no need to introduce legislation to criminalise doping in sport in the UK;
- b. Health harms associated with the abuse of Image & Performance Enhancing Drugs (I PEDs) should be integrated into drug information and education supported by Public Health England;
- c. Data Protection legislation should provide a processing condition for special categories of data for the purposes of anti-doping; such processing should also be exempt from the notification requirements (to avoid ‘tipping off’ the person being investigated);
- d. Funding should be sought from a wider range of sources, beyond government, to enable more robust anti-doping activities;
- e. Integrity units in sports governing bodies should be capable of conducting investigations to WADA standards and share this information with UKAD;
- f. There should be a review of Therapeutic Use Exemptions (TUEs) and thresholds for personal use of substances on the WADA banned list;
- g. UKAD doping control officers should be able to gain access to all sporting events to enable random testing at competitions as required;
- h. Research into the prevalence of doping in UK sports should be undertaken regularly using consistent methodology to show effectiveness of both education and deterrent from doping control measures.
- i. All grants given using public funds to sports bodies or individual athletes should have explicit anti-doping provisions, including:
 - i. Sharing of information with UKAD, including details of those competing, coaching or regulated by the governing body
 - ii. Admittance of UKAD doping control officers to all events run by the governing body (or its affiliated bodies) without prior notice
 - iii. Education of people involved in the sport on anti-doping
 - iv. Sign-up to the World Anti-Doping Code and associated policies
 - v. Agreement that UKAD leads on all routine anti-doping activities in the UK
 - vi. Assurance of robust governance processes so that oversight to prevent doping is effective

Context

Sporting Future

20. The UK's Sport Strategy, *Sporting Future*, published in December 2015 committed the UK government to take forward a series of actions to strengthen the integrity of sport and the effectiveness of measures to prevent doping. In particular section 8.3 of *Sporting Future* made three specific commitments by the UK government in regard to anti-doping:

- Funding for UKAD to be protected in real terms throughout the current Parliament.
- An update to the UK National Anti-Doping Policy to ensure it is consistent with the 2015 World Anti-Doping Code.
- Government will continue to work with UKAD to widen its education work and ensure a strong anti-doping message is promoted at all levels of sport from school and grassroots sport through every tier of competitive sport right up to the elite level.

Why Anti-Doping is Important

Fair Play

21. Use of performance enhancing drugs is fundamentally opposed to sporting values. Using them gives doping cheats an unfair advantage, which is unethical and potentially harmful to health, **Annex C**. It also damages the integrity of sport while creating a false sense of pressure on athletes to dope so that they can compete at a high level.

Role Models

22. There is huge public interest in sport, not just in the UK but also internationally. In addition, the Government puts a strong emphasis on active and healthy lifestyles to improve public health, enrich citizen's lives and to boost the economy, investing significant sums of public money to achieve this. High profile athletes, especially Olympians and Paralympians, have an impact on the public as role models and this is used to good effect to improve the UK's standing in international events by encouraging new champions to emerge from grassroots sport.

23. Doping in sport attracts headlines and there has been a sustained interest in this in recent years. That doping occurs is not disputed, and when those doing it are caught it is correct to report on their transgressions and sanctions. However, perceptions of drug use amongst rivals can negatively affect the morale of elite athletes preparing for competition. Often the marginal gain from doping can make the difference between winning a medal and the rewards that come with it or an athlete being unplaced. This in turn can discourage aspiring young athletes, and crucially their parents, from wanting to progress to the elite stage.

Public Health

24. Over the last few decades, the use of Image and Performance Enhancing Drugs (IPEDs) has become more widespread. Alongside this increase, there has been an associated rise in the number of reported infections and complications associated with IPED use. More details on the adverse health effects can be found in **Annex C**.

Methods & Scale of Doping

Methods

Common Drugs

25. The drugs used for performance enhancement will vary, depending on the sort of enhancement that is useful for a particular sport. For example, shooting requires a slow and steady heartbeat, so beta-blockers can be useful, whereas steroids may give an advantage to more strength-based sports. The more commonly used performance enhancing drugs³ are shown below;

Drug/Group	Primary Purpose
Synthetic anabolic steroids	Building muscle bulk, most useful for general strength and anaerobic exercise, relatively easy to detect.
Erythropoietin (EPO) and blood doping	EPO is a hormone that stimulates red blood cell production, which improves aerobic exercise performance by increasing oxygen take up and transport.
Testosterone & precursors	Builds muscle bulk, natural hormone in both men and women, so harder to detect
Human Growth Hormone (HGH)	Promotes healing and also building of muscle during training, may also help athletes avoid downtime from illness as well as injuries.
Beta blockers	Helps counter the effects of adrenaline (epinephrine) which helps athletes to stay calm and concentrate better

Cheating on Doping Tests

26. Given the significant sanctions for dopers when caught, can result in further cheating on drugs tests. Those methods already in the public domain (so well known to both doping control officials and potential dopers) include:

- (b) Avoiding tests by missing events where it is known or expected that doping control officers will be present;
- (c) Taking advantage of the three strikes rules on whereabouts for out of competition to give a time lag for drugs to leave the athlete's body before a test;
- (d) Substituting or watering down urine;
- (e) Using masking agents, typically diuretics, to reduce the chance of an adverse test result at competitions;
- (f) Micro-dosing, i.e. taking small frequent doses so that the blood volume of the performance enhancing drug is kept low enough to be missed by a test;
- (g) Adding substances to urine samples, e.g. biological washing powder, to interfere with test results.

³ Drug Test Analysis. 2013 Jan;5(1):1-19. Annual banned-substance review: analytical approaches in human sports drug testing. Thevis M, Kuuranne T, Geyer H, Schänzer W.

Scale of Doping

Recommendation: Research into the prevalence of doping in UK sports should be undertaken regularly using consistent methodology to show the effectiveness of both education and deterrent from doping control measures.

27. At the elite level of sport, most of those engaged in doping are doing so in a very sophisticated way. According to WADA published data, under 2% of anti-doping tests show an adverse result. Testing data, published internationally by WADA⁴, shows that about 1.5-2% of drug tests have an adverse result.

28. Academic research, which was echoed in several of the interviews conducted, suggests, “we only catch the dopey dopers”. This is borne out with non-analytic detections of dopers using intelligence, many cases of which show that dopers have managed to pass several rounds of drug screening before they are caught⁵.

29. IAAF sponsored research, by Pope et al in 2011, estimated that 30-50% of elite athletes surveyed had been involved in doping. The comparable testing regime caught 1-2% of those involved. This suggested that some doping in elite sport was not being detected by the testing regime.

30. The level of doping varies by sport, and over time. Cycling shows how attitudes towards that sport can change from widespread doping amongst competitors to being a small minority. Equally, there is no single agreed methodology for establishing the scale of doping, each of the methods attempted have limitations, including the ability to reliably extrapolate.

31. There have been several attempts to develop appropriate methodologies but there is no single study that shows the actual prevalence of doping amongst athletes, even for a single sport.

32. Given an unknown level of doping in elite sport it is difficult to accurately assess the effectiveness of the testing regime. However, it is possible to come to a judgement on how likely it is that someone attempting to cheat could do so successfully, and the types and numbers of athletes most susceptible to doping.

⁴ <https://www.wada-ama.org/en/resources/laboratories/anti-doping-testing-figures>

⁵ E.g. Lance Armstrong and many of the Tour de France cyclists from that period

Legislation & Anti-Doping Rules

Legislation

33. There is no specific legislation that makes doping in sport an illegal activity in the UK.

34. However, there are a number of pieces of legislation that cover related activities and make many of them offences. Most notably the Misuse of Drugs Act 1971⁶ deals with many of the items on the WADA banned list, that are not either licensed as prescription medicines (where the Medicines Act 1968⁷ applies) or recognised as food additives or over-the-counter medicines (like ephedrine). For example, synthetic anabolic steroids are controlled as Class C substances under the Misuse of Drugs Act 1971.

35. There is no possession offence but it is illegal to manufacture, supply or possess/import/export steroids with the intent to supply, without a licence to do so. The maximum penalty is 14 years in prison and/or a heavy fine.

36. Other relevant legislation includes

- Customs & Excise Management Act 1979: which gives UK Border Force (UKBF) powers to search and seize imported goods.
- Proceeds of Crime Act 2002: allowing seizure of assets from unlawful activities.
- Data Protection Act 1998: covering the capture and use of personal information that could potentially be used for anti-doping, N.B. the National Crime Agency (NCA) & UKBF have specific provisions in their legislation that allows them to share information with UKAD.

Misuse of Drugs Act

37. The Misuse of Drugs Act classifies drugs, largely according to harm, and on the advice of the Advisory Committee on the Misuse of Drugs (ACMD). This is a statutory committee that provides advice to Ministers and has a secretariat supplied by the Home Office. There are three classes of prohibited drugs:

Examples of each Class

Class A includes cocaine, heroin, ecstasy, lysergic acid diethylamide (LSD), and methamphetamine (crystal meth).

Class B includes amphetamine, barbiturates, cannabis, codeine and methylphenidate.

Class C includes benzodiazepines, buprenorphine, anabolic steroids, ketamine and gamma-hydroxybutyrate (GHB).

Penalties for Possession and Supply

38. The current maximum penalties for possession and supply are shown below. Note that 'supply' can cover sharing or giving drugs to someone else, there is no need to have sold them. Also possession of a large quantity can be deemed as intent to supply.

⁶ <http://www.legislation.gov.uk/ukpga/1971/38/contents>

⁷ <http://www.legislation.gov.uk/ukpga/1968/67/contents>

<p>Class A drugs For possession – up to 7 years' imprisonment and/or an unlimited fine; for supply – up to life imprisonment and/or fine.</p>
<p>Class B Drugs For possession – up to 5 years' imprisonment and/or an unlimited fine; for supply – up to 14 years' imprisonment and/or fine.</p>
<p>Class C Drugs For possession – up to 2 years' imprisonment and/or an unlimited fine; for supply – up to 14 years' imprisonment and/or fine. (The possession offence does not apply to IPEDs).</p>

WADA Protocols

Anti-Doping Rule Violations (ADRVs)

39. There are 10 ADRV's that can result in a sanction. These are:

1. The presence of a prohibited substance or its metabolites or markers in an athlete's sample
2. Use or attempted use by an athlete of a prohibited substance or a prohibited method
3. Evading, refusing, or failing to submit to sample collection
4. Whereabouts failures: any combination of three missed tests and/or filing failures within a 12-month period by an athlete in a registered testing pool
5. Tampering or attempted tampering with any part of doping control
6. Possession of a prohibited substance or prohibited method
7. Trafficking or attempted trafficking in any prohibited substance or prohibited method
8. Administration or attempted administration to any athlete in-competition of any prohibited method or prohibited substance, or administration or attempted administration to any athlete out-of-competition of any prohibited method or any prohibited substance that is prohibited out-of-competition
9. Complicity: assisting, encouraging, aiding, abetting, conspiring, covering up or any other type of intentional complicity involving an ADRV or any attempted ADRV
10. Prohibited Association: associating with a person such as a coach, doctor or physio who has been found guilty of a criminal or disciplinary offence equivalent to a doping violation

Therapeutic Use Exemptions

Recommendation: There should be a review of Therapeutic Use Exemptions and thresholds for personal use of substances on the WADA banned list.

40. The WADA rules provide exemptions for medical use of otherwise banned substances to treat recognised medical conditions⁸. These allow athletes to be treated appropriately by their doctors for illnesses. Therapeutic Use Exemptions (TUE) have to be agreed by the relevant National Anti-Doping Organisation (UKAD for UK athletes). They are intended to last only as long as the medical condition does, and are issued on the basis of evidence and review of the athlete's medical history. WADA can review any TUE certificate at any time.

41. TUEs do not give an athlete carte blanche to use what is ordinarily classed as a doping substance, rather they modify the acceptable level of specific banned substances. For example, an athlete with exercise-induced asthma may be allowed a level of salbutamol consistent with two to four puffs per day of an inhaler. This adjusted level would be based on the medical need to use the reliever as prescribed by the athlete's doctor, and taking into account the options available that used non-banned substances.

42. There are strict criteria for a TUE to be granted:

- (a) The athlete would suffer significant health problems without taking the substance;
- (b) It would not be significantly performance-enhancing;
- (c) There is no reasonable therapeutic alternative to its use;
- (d) The need to use it is not due to prior use without a TUE.

43. UKAD have robust controls in place to make it as difficult as possible for UK athletes to misuse the TUE system.

44. There is still public concern that the TUE system is open to abuse, the recent Fancy Bears hack⁹ which leaked details of extant TUEs from Olympic and Paralympic athletes, only added to the debate. This is particularly an issue when in establishing consistency in the use of TUEs internationally.

⁸ <https://www.wada-ama.org/en/what-we-do/science-medical/therapeutic-use-exemptions>

⁹ <http://www.bbc.co.uk/sport/37454046>

UK Approach to Anti-Doping

Landscape & Organisations

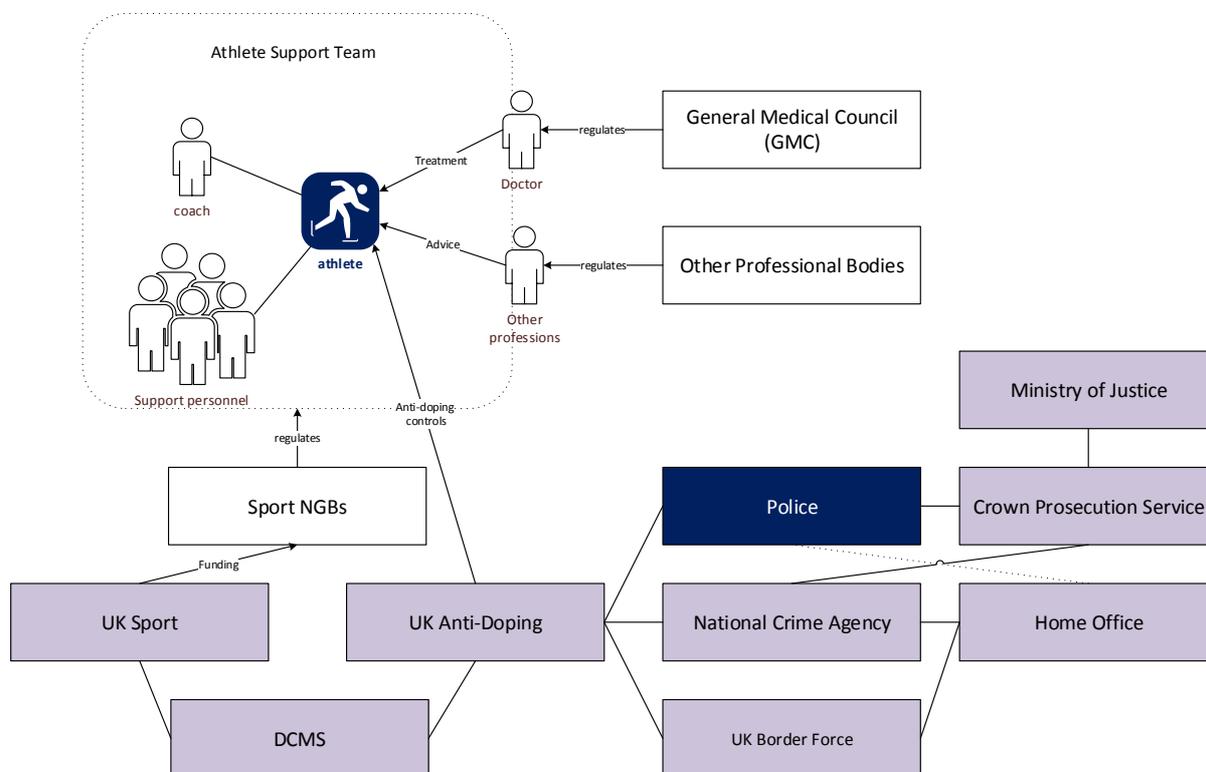


Fig 2: The purple boxes represent official organisations, either Government Departments or their Arm's Length Bodies (ALBs). The white boxes are semi-independent organisations that regulate either professions (doctors, pharmacists, etc) or sports. See below for more details where appropriate.

UK Anti-Doping (UKAD)

45. UK Anti-Doping's lineage can be traced back to the 1987 report on Misuse of Drugs in Sport by Sebastian Coe & Colin Moynihan¹⁰. The outcome of that report was to establish a national drug-testing regime. This work sat with UK Sport until December 2009, when UKAD was established as an independent National Anti-Doping Organisation (NADO) to lead in the fight against doping in the build-up to the London 2012 Olympic and Paralympic Games.

46. Once established, UKAD took over responsibility for testing and education together with case management responsibilities previously carried out by National Governing Bodies of Sports. It delivers testing programmes across more than 40 sports, and sponsors research to identify and detect new methods of performance enhancement. UKAD is also responsible for the delivery of the UK's Anti-Doping Policy and ensuring that sports bodies in the UK comply with the World Anti-Doping Code.

¹⁰ Now both Lords, in 1987 Sebastian Coe was vice-chair of the Sports Council & Colin Moynihan was Minister for Sport

47. Informing and educating athletes about their role and responsibilities towards anti-doping is a major part of UKAD's remit, and educational programmes aim to inform athletes performing at every level. In 2010, UKAD launched Report Doping in Sport, a 24-hour confidential phone line and online information form to support the fight against doping in sport. In 2016, in advance of the Rio Olympic and Paralympic Games, UKAD educated 700 UK athletes and support personnel.

48. As the methods of doping become increasingly sophisticated, so too is the need for advanced methods of detection. During its first year of operation, UKAD established its Intelligence Unit to capture in-depth knowledge of doping activities and manage information from a wide range of sources. This enables effective and efficient collection, recording, analysis, dissemination and retention of information. UKAD is then able to prioritise issues and allocate resources to deal with them.

49. UKAD is an active participant in the global fight against doping and recognises the need to take an international approach. Partnerships with the World Anti-Doping Agency, UNESCO, the Institute of National Anti-Doping Organisations (iNADO), the Council of Europe and the International Anti-Doping Agreement (IADA) are integral to UKAD's international activities.

50. UKAD is a leading National Anti-Doping Organisation (NADO) and has been involved in helping other countries to improve their own practices. This contributes to there being a level playing field internationally.

Other Anti-Doping Bodies

51. UKAD is the National Anti-Doping Organisation for the UK. However, some sports, including football, rugby and cricket undertake their own anti-doping activities independently of, but approved by, UKAD. These sports governing bodies tend to be larger and better funded than the majority. However, multiple anti-doping bodies risks variations in the application of WADA anti-doping standards across sports.

Funding

Recommendation:

All grants given using public funds to sports bodies or individual athletes should have explicit anti-doping provisions, including:

- i. Sharing of information with UKAD, including details of those competing, coaching or regulated by the governing body*
- ii. Admittance of UKAD doping control officers to all events run by the governing body (or its affiliated bodies) without prior notice*
- iii. Education of people involved in the sport on anti-doping*
- iv. Sign-up to the World Anti-Doping Code and associated policies*
- v. Agreement that UKAD leads on all anti-doping in the UK*
- vi. Assurance of robust governance processes so that oversight to prevent doping is effective.*

Recommendation: *Funding should be sought from a wider range of sources, beyond government, to enable more robust anti-doping activities.*

52. There is a direct relationship between the level of funding and the effectiveness of doping control arrangements. Newer equipment is more sensitive and can detect substances at a lower level than older equipment. Similarly, more resources deployed on intelligence and conducting testing and analysis will result in a greater likelihood of dopers being caught.

Official Funding for UK Anti-Doping

53. The Government committed to protecting the funding for core anti-doping activities that it gives to UKAD and that it will rise in line with inflation over the course of this Spending Review period to support its role in delivering world-class anti-doping services in the UK. In 2016-17 the UKAD grant in aid was £5.3m¹¹. In addition, UKAD makes commercial charges for services outside of its statutory functions. This is worth around £2m annually.

Money in Sport

54. Most sporting bodies have relatively modest financial turnover, with many struggling to break even as support for elite athletes and running national competitions is prioritised. There are over 20 major sporting bodies¹² in the UK receiving Olympic and Paralympic funding. In the Rio funding cycle, spending on anti-doping (via UKAD) was about 10% of the funding committed through UK Sport.

55. That said, there are notable exceptions to the scarcity of funding available in sport. Some of the more popular sports can have turnover measured in hundreds of millions. If some of the financially stronger sporting organisations were to contribute more to anti-doping, this would have a direct impact on improve effectiveness of those activities.

56. Sir Craig Reedie, the chairman of WADA, has called for more funding for anti-doping, especially from non-government sources¹³. The effort available to catch and prevent doping directly correlates with the funding available.

Intelligence Led Testing

Data Protection legislation should provide a processing condition for special categories of data for the purposes of anti doping, such processing should also be exempt from the notification requirements (to avoid 'tipping off' the person being investigated).

Recommendation: Integrity units in sports governing bodies should be capable of conducting investigations to WADA standards and share this information with UKAD.

Recommendation: Data Protection legislation should provide a processing condition for special categories of data for the purposes of anti-doping; such processing should also be exempt from the notification requirements (to avoid 'tipping off' the person being investigated).

57. The reality is there are not sufficient resources to test every athlete frequently. Even if there were, this would not be proportionate or efficient. What UKAD tries to do is focus on quality testing, rather than quantity. This involves undertaking risk assessments of athletes,

¹¹ https://www.parliament.uk/documents/commons-committees/culture-media-and-sport/Estimates-memoranda/Department_for_Culture_Media_and_Sport_Main_Estimate_Memorandum_2016-17.pdf

¹² UK Sport current funding <http://www.uk sport.gov.uk/our-work/investing-in-sport/current-funding-figures>

¹³ <https://www.wada-ama.org/en/media/news/2016-03/wada-president-calls-on-broadcasters-and-sponsors-to-help-fund-clean-sport>

taking into account their particular environment, and testing where appropriate. Information received from law enforcement and other sources supports this process.

58. Law enforcement has an important role to play in the fight against doping in sport and UKAD collaborates where it can with the police, the National Crime Agency, UK Border Force and others to build an intelligence picture.

Types of information gathered

59. To tackle the broader threats of supply and trafficking of prohibited substances, UKAD's Intelligence and Investigations Team gathers information such as:

- The use or possession of prohibited substances by athletes or athlete support personnel
- Sales and purchasers of prohibited substances
- Transport routes identified for imported prohibited substances
- Distribution networks for prohibited substances
- Information regarding the commission of an Anti-Doping Rule Violation

60. There are ten anti-doping rule violations, seven of which are categorised as 'non-analytical'. These are based on evidence other than a positive drugs test, and include trafficking, possession and the use of a banned substance. Those cases often rely on law enforcement and regulatory bodies, who share information with UKAD. That information helps to establish cases against athletes and their support personnel, such as coaches.

Working in partnership

61. The focus on information sharing, as a way to tackle doping, reflects an international move towards more intelligence-led methods of detection. To have an effective intelligence-led anti-doping programme, UKAD has built relationships and works closely with:

- The sports community
- The general public
- Pharmaceutical companies and health regulators
- Law enforcement partners, such as the National Crime Agency (NCA), UK Border Force (UKBF) and other police partners
- Other National Anti-Doping Organisations (NADOs) and WADA

62. In 2010, a data-sharing agreement was signed with what was then the Serious Organised Crime Agency (SOCA), enabling UKAD to share information with UK police forces and the UK Border Agency. This agreement continues to exist through the National Crime Agency (NCA), where information can be submitted easily through the NCA portal. This makes it harder for individuals bound by anti-doping rules to escape punishment for doping activities. For example, UKAD worked in partnership with UK Border Force to bring a case against a former rugby union player who received an eight-year ban from all sport for the possession and trafficking of steroids.

63. Information sharing is a two-way process. Law enforcement agencies can help UKAD by uncovering reliable evidence for use in disciplinary proceedings against athletes and coaches under investigation. Evidence could include details of previous drugs convictions or information from any police investigation with a link to sports or athletes. UKAD, in turn, supports law enforcement by providing information and expertise to assist in understanding and developing evidence. For example, UKAD supplied intelligence on performance-

enhancing drug use in the East Midlands area, which resulted in a joint ‘Problem Profile’ being completed with the East Midlands Police Regional Intelligence Unit.

64. Information received by UKAD from any external source is processed using the ‘National Intelligence Model’¹⁴. It is cross referenced with existing data and may be subject to further research and analysis before being acted on by UKAD or shared using information-sharing agreements.

65. The information UKAD receives from law enforcement is usually highly developed. However, less-developed intelligence is also important. Something that appears insignificant could be the missing piece of a puzzle. For example, UK Border Force sent UKAD a seizure form where an athlete was the recipient, which instigated an investigation.

66. A key focus of UKAD’s intelligence work is to promote and engage in inter-agency information sharing about doping in sport. UKAD offers a service for members of the public and the sporting community to contribute towards the intelligence process. In partnership with Crimestoppers, Report Doping in Sport is a 24-hour confidential phone line for anyone to anonymously report information or suspicions about doping in sport.

67. While there are well-developed links with other official bodies, and mechanisms for the public to provide information, many sports governing bodies do not readily share information with UKAD. Some of this is down to capability, as noted earlier many sport governing bodies are very small. However others have worries around data protection and other legal consequences of sharing information outside their organisation. This would be improved by giving better guidance to sports governing bodies on data sharing.

68. The Code requires every NADO to have the resources to obtain, assess and handle anti-doping intelligence and information from a variety of sources, including law enforcement. In this respect, the UK has led the way, by having this practice in place before it become a requirement. However, we should look to extend this to every sport national governing body.

69. The intelligence work undertaken by UKAD supports the development and evolution of effective testing and investigation, and informs UKAD’s education programmes.

Prevention & Detection

Recommendation: *UKAD doping control officers should be able to gain access to all sporting events to enable random testing at competitions as required;*

Recommendation: *Health harms associated with the abuse of Image & Performance Enhancing Drugs (IPEDs) should be integrated into drug information and education supported by Public Health England.*

Effective Testing

70. One of the issues is that many of the commonly used drugs have effects that last longer than the drugs can be detected in the athlete’s system. For example EPO promotes red

¹⁴ <https://ict.police.uk/national-standards/intel/>

blood cell count, those red blood cells typically last 100 days, yet the EPO will leave the athlete's system within a couple of weeks¹⁵.

71. Another issue is that there are strong incentives on those misusing drugs to avoid being caught. There are many methods for cheating on drug tests and making them less effective than they need to be to ensure that dopers are caught.

72. None of this is especially new. The 1987 report *Misuse of Drugs in Sport* highlighted a similar set of issues and suggested methods for testing which formed the basis for what became UK Anti-Doping (UKAD). Given the known methods used to cheat on drug tests, effective testing needs to be intelligence led and to have the following features:

- a) Random, no notice testing;
- b) Use blood, urine and other physiological testing methods;
- c) Broad spectrum analysis (i.e. looking at the composition of the sample and comparing it with normal samples, rather than looking for specific drugs);
- d) Frequent tests for high risk individuals with longitudinal comparisons (i.e. the biological passport approach);
- e) Supervision of sample production (i.e. ensuring that the athlete cannot tamper or exchange the sample).

Testing regimes

73. UKAD coordinates the UK's testing programme across more than 40 sports in accordance with the International Standard for Testing and Investigations. In operating the UK's national anti-doping programme, UKAD is responsible for the collection and transportation of samples to a WADA accredited laboratory. UKAD is also responsible for reporting test results to the appropriate NGB-or International Federation (IF). Details of the process are in **Annex D**.

74. UKAD has a programme of intelligence lead testing both in-competition and out-of-competition. With most in-competition testing there is a need to tell the competition organisers in advance that there will be testing, this is a relative weakness in the system as athletes can get advance warning of whether or not they might be tested. Where known, UKAD uses information on event attendance in their risk assessments.

75. Several of those interviewed suggested that the funding mechanisms for elite sport could be used to mandate doping control facilities at all sporting events. This could also be combined with blanket accreditation for all doping control officers, thereby ensuring that athletes would not know whether or not doping control would happen at an event until the UKAD officials appeared.

Prevention

76. One reason why UKAD is so successful is that it educates athletes to resist the temptation to use performance enhancing drugs as well as testing and gathering intelligence to catch drug cheats. This is especially important as doping technology is developing very quickly, making keeping up to date through testing alone more difficult and expensive. Early intervention is vital, ideally in childhood, and education on the importance of clean sport will be even more important in the future and is something we look to UKAD to prioritise.

¹⁵ Daly, 2015, <http://www.bbc.co.uk/news/uk-scotland-32983932>

77. The Government is committed to working with UKAD to widen its education work and ensure a strong anti-doping message is promoted at all levels of sport from school and grassroots sport through every tier of competitive sport right up to the elite level.

78. UKAD's education programme – 100% me – has identified ways in which UKAD can create a deeper level of engagement with aspiring athletes. UKAD's education and prevention programmes include an anti-doping curriculum, education strategies with National Governing Bodies of Sport (NGBs) and the development of education resources, are all designed to ensure that athletes are supported in understanding anti-doping throughout their careers.

Sanctions

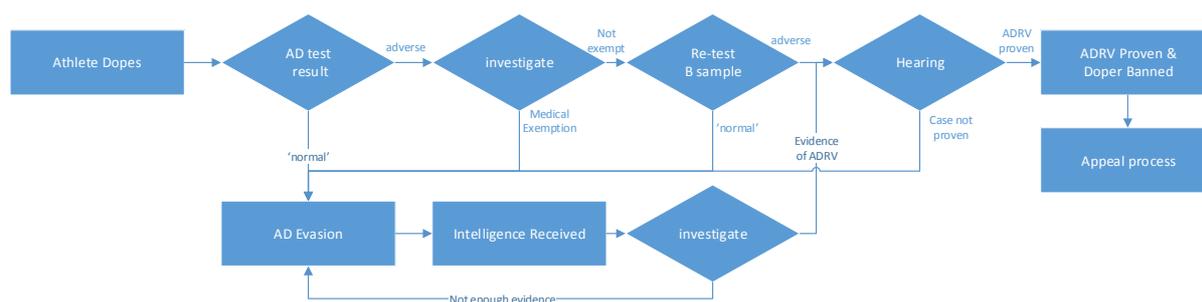


Fig 1: Overview of potential doping control where an athlete has used a prohibited substance

79. The process for dealing with an A-Sample Atypical Finding is detailed in **Annex E**. In most cases athletes are not notified of the atypical result until it has been determined whether or not there has been a process error, a therapeutic use exemption or an adverse result. In the case of an adverse result most athletes will be provisionally suspended pending a hearing.

80. Under the World-Anti Doping Code, there is a consistency of sanctions issued globally. It is important to remember that, as an athlete, contravening these rules may result in a sanction ranging from a formal warning and reprimand (with no period of ineligibility) to a lifetime ban.

81. ADRVs do not only apply to individual athletes. Athlete Support Personnel, such as coaches and doctors, are also subject to the rules of the World Anti-Doping Code. In the event that Athlete Support Personnel are found to be in breach of the anti-doping rules, the stages relating to the Notice of Charge, hearing and appeal will apply.

82. If an athlete is involved in a team sport and is found to have committed an ADRV, there could be implications for the entire team. If two or more team members during an event are found to have committed an ADRV, UKAD can impose an appropriate sanction on the whole team.

Extended Testing Liability

83. Although samples are taken and tested immediately at events, that is not the end of the liability for testing. Samples are stored to prevent degradation and can be re-tested at any point for up to eleven years after they were taken. This is often used when new testing methods become available, or existing tests improve in sensitivity.

84. When an athlete is re-tested and there is an atypical finding the sanction process is started. In addition to the normal sanctions, any medals won or world records set are annulled. For Olympic & Paralympic medals, the rankings are adjusted and medals can be awarded to the top three clean athletes in the event. Dopers are expected to return their medals and also any prize money they have won. While this cannot make up for the lost moment of podium glory for the clean athletes that would otherwise have had a medal, it does at least give them the medal, and the records show that.

85. Increasingly sponsorship agreements with athletes are also including clauses to allow the commercial sponsor to recover the money paid to the athlete should they subsequently be shown to have doped.

Strict Liability

86. The key principle upon which anti-doping policy is hinged is "strict liability" and this is regarded as a key element of an effective anti-doping regime. Under this regime an athlete is regarded as being absolutely and ultimately responsible for the substances found in their samples. The doping violation, or offence, is committed when the evidence of a banned substance, or method, is identified in the athlete's urine and/or blood. Once the integrity of that sample and the result is established, the rest of the process is simply argument over whether mitigating circumstances exist that should reduce the applicable sanction.

87. The reduction, or even elimination, of punishment is provided for under the Code (depending on exceptional circumstances); but the violation stands as a matter of record.

88. Several interviewees suggested that a clearer distinction could be drawn between cases of deliberate cheating and those of inadvertent violations. It is unfair if they are found guilty of offences in circumstances where they neither knew nor reasonably could have known that what they were doing was wrong.

Impact of Criminalisation

89. None of those interviewed were in favour of criminalisation of doping in sport. This was a unanimous position.

90. Sports governing bodies anticipate that their internal investigations will be negatively affected by the criminalisation of doping in sport. Experience with corruption cases shows that sports governing bodies need to wait as police have the evidence, or to avoid contempt of court. This slows down justice (and can prevent it completely where an investigation is not concluded properly because of police priorities).

91. Strict liability would be a barrier to effective criminalisation. Some practical considerations behind the principle of "strict liability" are set out in the World Anti-Doping Code (quoting the Court of Arbitration for Sport) as follows: "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".

92. For criminal offences under the laws of England and Wales there is a requirement for some kind of intentional or negligent behaviour on the part of the defendant. However, under the current doping rules there exists a notion of strict liability – if an individual is caught with the substance in their system they will automatically be liable to a ban regardless of any intention or knowledge on their part. Putting doping into the criminal law would, therefore, complicate the current system of fault.

93. There is an argument that if an athlete is liable to be imprisoned for the use of a performance enhancing substance this would act as more of a deterrent than simply being handed a two year ban for a first offence and a lifetime ban for a subsequent offence. However, the view of those involved with athletes is that the key deterrent effect is how long they are prevented from competing. Unless legislation made sentences longer than they are for comparable offences under the Misuse of Drugs Act this is unlikely to be the case.

94. It is unlikely that anti-doping cases will be given a high priority for investigation by police, as more serious offences will have precedence for the allocation of resources. This was acknowledged by all of those involved in enforcement.

95. Prosecutors make their decisions in accordance with the Code for Crown Prosecutors and the Director of Public Prosecution's Guidance on Charging. The Full Code Test of the Code for Crown Prosecutors has two stages: (i) the evidential stage; followed by (ii) the public interest stage. If there is sufficient evidence of doping in sport, it may not be in the public interest to prosecute, (see paragraphs 4.7 to 4.12 of the Code for Crown Prosecutors).

Fraud

96. There is a point of view that athletes that dope are engaging in fraud. They are preventing others from gaining a reputation and potentially having a negative impact on their clean competitors' ability to earn income from sponsorship, prize money and official support for their training. In practice it is very hard to enforce this, as discussed above there is the need to prove beyond reasonable doubt that the doping took place intentionally. Also there would be a further need to show that there was intent for financial gain. It would be easy for a competent defence to defeat these cases. The review did not see any evidence of a successful prosecution for fraud as a result of an athlete abusing performance-enhancing drugs.

Organisations Interviewed

The following organisations were contacted as part of the review and responded in some way, either in person or a written reply to questions.

ORGANISATION
Bird & Bird – International Law Firm
Crown Prosecution Service
Department of Health
Home Office
King’s College London – UK’s World Anti-Doping Agency Accredited Laboratory
Mishcon de Reya – International Law Firm
National Crime Agency
Public Health England
Serious Fraud Office
Sport England
Sport Resolutions – Independent Dispute Resolution Service for Sport
UK Anti-Doping
World Anti-Doping Agency

ANNEXES

Annex A – Terms of Reference

Context

DCMS have a commitment to review options on criminalisation of those involved in doping in elite sport, the previous review was prior to the London 2012 Olympic and Paralympic Games. There has been considerable media interest in doping and this has led to Parliamentary interest, notably in the House of Lords.

A key strand in the government strategy on sport “Sporting Future” is improving the integrity of sport. This covers both anti-corruption and anti-doping. This review is a key part of identifying how the UK government delivers on clean sport.

What Outcomes need to be achieved?

Understand policy objective around criminalisation of those involved in sports doping, and to review existing legislation and enforcement activities to determine whether they are effective in achieving current policy objectives, and if not what the options are to improve how policy objectives can be met.

Which DCMS Objective?

Objective 6: Ensuring Social Responsibility

Work programme F.i. “*A Productive, Sustainable and Responsive sporting sector*”

Scope of the Review

This review is tasked with looking at what strategic benefits there might be through introducing new or additional legislation to help combat doping in elite sport. As part of this review, the strategic landscape, and the effectiveness of UKAD’s approach, are in scope. Specific deliverables to be addressed in the report include:

- Policy agreement (DCMS Ministers & OGDs) on outcomes sought for those involved in doping (e.g. is it prevention, public confidence or better investigations?)
- Identification of relevant legislation, numbers of prosecutions (and reasons why allegations/investigations do not lead to successful prosecutions)
- Review of the practical impact of bans on support staff (i.e. does it remove them from elite sport, or can they sidestep the impact?)
- What could be done to bolster the achievement of the desired policy objectives?
- Ensuring that recommendations are realistically enforceable.

Out of Scope

Anything not explicitly mentioned as in scope is out of scope. Specific exclusions are:

- Operational detail on how UKAD delivers the strategy;
- Matters in scope for the Dr Bonar inquiry;
- UK commitment to WADA and anti-doping.

Annex B - Written Sources & Interviews

Written Sources

These are publicly available papers, most of which can be found online, that were read or referred to in the production of this report.

Alexander, 2014, *Substance Use & Misuse* vol.49 p.1190-1193, “War on Drugs Redux: Welcome to the War on Doping in Sports”. Available online <http://www.brianralexander.com/Images/WarOnDrugs.pdf>

Breivik, G. 1987, *Sportwissenschaft* 17 p.83-94, “The Doping Dilemma: some game theoretical and philosophical considerations”. Available online https://www.researchgate.net/publication/262566171_The_doping_dilemma_Some_game_theoretical_and_philosophical_considerations

Cashmore, 2014, *Substance Use & Misuse* vol.49 p.1194-1197, “Sport’s Doping Problem: A Rational Solution—Allow Drugs”. Available online <http://www.tandfonline.com/doi/full/10.3109/10826084.2014.904120>

Cox T.W., 2014, *Vanderbilt Journal of Transnational Law* Vol.47 No.1 p.295-329, “The International War Against Doping: Limiting the Collateral Damage from Strict Liability”. Available online <https://wp0.its.vanderbilt.edu/wp-content/uploads/sites/78/CoxFinalReviewComplete.pdf>

Culture, Media and Sport Committee, 2004. *Drugs and Role Models in Sport: making and setting examples*, House of Commons, available online <https://www.publications.parliament.uk/pa/cm200304/cmselect/cmcomeds/499/499.pdf>

Daly, 4 June 2015, *How I became a drug cheat athlete to test the system*, BBC, available online <http://www.bbc.co.uk/news/uk-scotland-32983932> [accessed 15th June 2016]

Deloitte, January 2016, *Deloitte Football Money League 2016*, available online <http://www2.deloitte.com/uk/en/pages/sports-business-group/articles/deloitte-football-money-league.html>

Dimeo & Taylor, February 2013, *Drugs: education, prevention and policy*, “Monitoring drug use in sport: the contrast between official statistics and other evidence”

Harris, 2008, *Plymouth Law Review* vol.1 p.56-78, “How Effective Are Anti-Doping Measures In Sport In The UK?”. Available online <http://www6.plymouth.ac.uk/files/extranet/docs/SSB/Harris%20final%20draft.pdf>

Hon, Kuipers, & Bottenburg, 2014, *Sports Medicine* vol.45 no.1, “Prevalence of Doping Use in Elite Sports: A Review of Numbers and Methods”. Available online https://www.researchgate.net/publication/265175366_Prevalence_of_Doping_Use_in_Elite_Sports_A_Review_of_Numbers_and_Methods

Houlihan & Garcia, 2012, *The use of legislation in relation to controlling the production, movement, importation, distribution and supply of performance-enhancing drugs in sport (PEDS)*. Loughborough University, August 2012. Available online <http://www.unesco.org/shs/sport/addbase/media/docs/doc-506aac23e2af9.pdf>

Hughes D., 2015, *Australian Prescriber* Vol.38 No.5 October 2015 p.167-170, “The World Anti-doping Code in sport”. Available online. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4657305/>

Jurith & Koenig, 2002, *Fordham Intellectual Property, Media and Entertainment Law Journal* vol.12 no.2, p.461-488. “The United States’ and International Response to the Problem of Doping in Sports”. Available online <http://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=1244&context=iplj>

Kayser & Smith A.C.T, 2008, *British Medical Journal* BMJ 2008;337:a584, “Globalisation of anti-doping: the reverse side of the medal”. Available online <http://www.bmj.com/content/337/bmj.a584>

Klein M.A., 2014, *Substance Use & Misuse* vol.49 p.1198-1200, “Protecting Athletes and Ensuring Sports Free of Doping”;

Available online;

http://www.abcd.gov.br/arquivos/MAK_article_Substance_UseMisuse_2014.pdf

Mifsud, Attard & Attard, 2011, *Malta Medical Journal* vol.23 no.1 p.16-21, “Drug Doping in sports: an overview and recommendations for the Maltese context”. Available online <http://www.um.edu.mt/umms/mmj/PDF/312.pdf>

Morente-Sanchez, Zabala, 27th March 2013, *Sports Medicine* vol.43 no.6 p.395-411, “Doping in Sport: A Review of Elite Athletes’ Attitudes, Beliefs, and Knowledge”. Available online <https://www.ncbi.nlm.nih.gov/pubmed/23532595>

Moynihan & Coe, 1987, *Misuse of Drugs in Sport*, Department of the Environment

NHS Wales, 2016, *Image & Performance Enhancing Drugs (IPED)*, website <http://ipedinfo.co.uk/>

Pope et al, 2013, *Doping in elite sports assessed by randomized-response surveys*. Available online <https://www.parliament.uk/documents/commons-committees/culture-media-and-sport/WADA's-athlete-doping-prevalence-survey.pdf> [accessed 3rd June 2016]

Schroeter et al, 2016, *PLOS ONE* vol.11 no.5, “A Comparison of the Cheater Detection and the Unrelated Question Models: A Randomized Response Survey on Physical and Cognitive Doping in Recreational Triathletes”. Available online <http://journals.plos.org/plosone/article?id=10.1371%2Fjournal.pone.0155765>

Smith A.C.T, Stewart, 2015, *Harm Reduction Journal*, “Why the war on drugs in sport will never be won”;

Available online <https://harmreductionjournal.biomedcentral.com/articles/10.1186/s12954-015-0087-5>

Strulik, 2012, *The Scandinavian Journal of Economics*, “Riding High: Success in Sports and the Rise of Doping Cultures”. Available online

WADA, May 2011, *Co-ordinating Investigations and Sharing Anti-doping Information and Evidence*

WADA, 2015, *World Anti-doping Code*. Available online <https://www.wada-ama.org/en/what-we-do/the-code>

Annex C – Adverse Health Effects of Image and Performance Enhancing Drugs

1. The use of anabolic steroids (and associated drugs such as human growth hormone) is associated with adverse effects on both physical and psychological health, including fatalities. However, this remains poorly researched, evidence is mainly drawn from case studies/reports and self-reported effects from the users. Many adverse effects of anabolic steroid use are dose dependent, with higher dosages more likely to result in adverse effects.

2. The length of time drugs are used for also influences the likelihood of adverse effects. Longer regimes are more likely to produce side effects. Another key factor in relation to the adverse effects of anabolic steroid use is the underlying health of the drug user. Some individuals will have a much higher genetic propensity to adverse effects. These may be either the less dramatic side effects that many users will consider as being manageable, to potentially life threatening conditions affecting the cardiovascular or hepatic systems. Furthermore, responses to drugs can be idiosyncratic, characterised by an unpredictable hyper-response to a stimuli, in this case the self-directed administration of anabolic steroids.

3. The most commonly reported adverse effects are not life threatening but can still have a negative impact on the anabolic steroid user. Some of the most common of these effects can be termed cosmetic. According to the NHS, some of the more severe side effects¹⁶ from long term use of anabolic steroids include:

- Heart attack or strokes;
- Liver or kidney tumours;
- Blood clots.

4. EPO, another commonly abused IPED, thickens the blood¹⁷. This leads to a range of side effects that include blood clots, strokes, thrombosis and heart attacks. On a more minor level it can also include:

- Rapid increases in blood pressure
- Convulsions
- Liver and kidney damage

5. The majority of anabolic steroids are injected. Individuals who inject are potentially at risk of a number of potential issues that include:

- a. Damage to the injection site as a result of poor injecting technique.
- b. Bacterial and fungal infections as a result of poor injecting technique, contaminated drug products, and sharing vials and/or reusing injecting equipment.
- c. Blood-borne viruses (BBV) such as HIV, hepatitis B and hepatitis C as a result of sharing used injecting equipment (direct sharing) or reusing injecting equipment and, subsequently, sharing vials with others (indirect sharing).

¹⁶ <http://www.nhs.uk/conditions/anabolic-steroid-abuse/Pages/Introduction.aspx>

¹⁷ <http://www.nationaldrugstrategy.gov.au/internet/drugstrategy/publishing.nsf/content/fs-epo>

Annex D – UKAD Doping Control Processes

This material is drawn from the UKAD website and is included for completeness in understanding the current processes.

1. In operating a national anti-doping programme, UKAD is responsible for the collection and transportation of samples to a World Anti-Doping Agency (WADA) accredited laboratory. UKAD is also responsible for reporting test results to the appropriate National Governing Body (NGB) or International Federation (IF).

UKAD Doping Control Personnel

2. Doping Control Personnel are authorised by UKAD to conduct testing in the UK. A pool of approximately 200 Blood Collection Officer (BCOs), Doping Control Officers (DCOs) and Chaperones are trained to comply with the International Standards for Testing and Investigations (ISTI). DCOs in the UK are trained to notify and chaperone athletes, observe sample collection and process samples. UKAD's team of trained chaperones are authorised by the organisation to assist the DCOs in notifying and chaperoning athletes until they report to the doping control station. Chaperones in the UK do not witness sample provision.

3. UKAD also has a team of Blood Collection Officers (BCOs). They are all trained phlebotomists (people trained to draw blood) and collect samples for blood testing.

4. The doping control scheme has been in existence in the UK since 1990, when Doping Control Personnel conducted tests, firstly on behalf of National Governing Bodies (NGBs), and then under the GB Sports Council prior to UK Sport being formed in 1996. In 2009, UKAD formed as the UK's first independent National Anti-Doping Organisation (NADO) and manages Doping Control Personnel as part of the organisation's operations.

5. All Doping Control Personnel are trained in accordance with the WADA International Standard for Testing and Investigations and the UK Doping Control Handbook. DCOs, BCOs and Chaperones are all required to undergo continual assessment. New trainees go through a rigorous equality recruitment process and are required to submit a Criminal Records Bureau (CRB) enhanced disclosure.

In-Competition Testing

6. In-Competition testing is conducted in connection with a sporting event. WADA define in-competition as "the period commencing 12 hours before competition... through to the end of such competition and the sample-collection process related to such competition", unless stated otherwise by the rules of an IF or other relevant anti-doping organisation.

7. Every sporting event may be subject to testing, and athletes should familiarise themselves with the rules of each competition as defined by their IF or NGB.

Who can be tested?

8. Any UK and non-UK athlete staying, training, residing, entering a competition, or named as a member of a team participating in a competition, at any level within the UK, is eligible for testing as part of UKAD's national anti-doping programme.

Selection process for testing in-competition

9. The selection of athletes for testing is determined by UKAD in conjunction with the relevant NGB or IF. Selection is based on the following criteria:

- Placing in the event (e.g. 1st, 2nd or 10th) or lane draw
- Discipline, category or round
- A set number of players from each team (usually using random selection)
- Pre-selected (target) testing
- Qualifying for national representation.

10. Most sports will not recognise a world or national record until an athlete has been tested and a negative result has been returned.

Out-of-Competition Testing

11. Athletes subject to the anti-doping rules of their sport are eligible for testing at any time. Athletes may also be selected for the Registered Testing Pool (NRTP/IRTP).

12. Athletes nominated for inclusion in the NRTP will be notified by UKAD and will be required to supply details of their whereabouts on ADAMS. This is called Whereabouts Filing.

Sample Collection

13. UKAD follows the International Standard for Testing and Investigations (ISTI) which is applicable to testing in and out-of-competition.

14. Procedures for testing abroad may vary slightly from country to country but should always meet the ISTI. Athletes are advised to read and understand their sport's anti-doping rules and sample collection procedures.

Annex E – Anti-Doping Rule Violation Process

This material is drawn from the UKAD website and is included for completeness in understanding the current processes.

Atypical Testing Results

1. Upon receipt of an A-Sample Atypical Finding, UKAD will determine whether either:
 - a Therapeutic Use Exemption (TUE) has been granted,
 - there has been a departure from the International Standard for Testing and Investigations or International Standard for Laboratories that may have caused the Atypical Finding.
2. If the review does not reveal a TUE or departure that caused the Atypical Finding, further investigation will take place.
3. UKAD will not notify the athlete of an Atypical Finding until it has completed its investigation and decided whether it will bring the Atypical Finding forward as an adverse Analytical Finding.
4. On conclusion of the further investigation, UKAD will advise the athlete as to whether or not there is evidence of the administration of a prohibited substance or prohibited method. If there is no evidence, then no further action will be taken. If there is evidence of administration, UKAD will report the Atypical Finding as an Adverse Analytical Finding.

Notice of Charge

5. If it is decided that the athlete has a case to answer in relation to a possible ADRV then a "Notice of Charge" will be issued to the athlete detailing:
 - the Adverse Analytical Finding (if applicable)
 - the ADRV the athlete is charged with committing
 - a summary of the facts and evidence relied upon in support of such charge
 - notice of provisional suspension to be imposed on the athlete (if applicable)
 - the consequences if it is established that the athlete has committed the ADRV charged
 - the athlete's right to promptly request the analysis of the B-sample (if applicable)
6. The athlete can choose to accept the charges and the consequences specified in the Notice of Charge. In these circumstances, an agreed Issued Decision will be published on the UKAD website. Alternatively, if the athlete wishes to dispute the charges, he or she can elect to have the B-sample analysed (if applicable) and request a hearing to determine the charges and the appropriate consequences.

B-Sample

7. Where the Notice of Charge is based on an Adverse Analytical Finding, the athlete has the right to request analysis of the B-Sample.
8. If the B-Sample does not confirm the result of the A-Sample then the entire test is considered as negative and the Notice of Charge withdrawn. No further action will be taken against the athlete.

9. If the B-Sample analysis confirmed the Adverse Analytical Finding in respect of the A-Sample, then the athlete can either accept the finding and consequences specified in the Notice of Charge or request that the matter proceed to a hearing.

Provisional Suspension

10. If the A-sample Adverse Analytical Finding is for a prohibited substance, other than a specified substance, a mandatory provisional suspension will be imposed. If the Adverse Analytical Finding is for a specified substance, the provisional suspension will be imposed at the discretion of UKAD.

11. A provisional suspension can only be imposed if the athlete is given an opportunity for either:

- a provisional hearing
- an expedited hearing.

Hearing

12. An athlete charged with an ADRV has the right to a fair hearing. The hearing process will determine whether an ADRV has been committed and, if so, the appropriate consequences. Depending on the applicable anti-doping rules, it is likely that the hearing will be held before the National Anti-Doping Panel (NADP). The NADP is a national tribunal and appellate body for the UK, entirely independent of sporting governing bodies and UKAD. Further information on the NADP is available [here](#).

Elimination or reduction of the period of ineligibility

13. There are prescribed periods of ineligibility that apply if an ADRV is found to have been committed. However, in a hearing, an athlete has the opportunity to eliminate or reduce the period of ineligibility in exceptional circumstances.

14. For ADRVs involving the Presence of a Prohibited Substance an Athlete's sample, if the Athlete can establish that he or she did not act intentionally and that he or she was not significantly at fault or negligent in committing the ADRV, the period of Ineligibility may be reduced to anything between 0 and 4 years, depending on whether the Prohibited Substance is a Specified or non-Specified Substance. For other ADRVs, including the presence of a non-specified substance in an athlete's sample, the period of ineligibility may be reduced by up to half, if the athlete can demonstrate that they were not significantly at fault or negligent in committing the ADRV.

15. An athlete may also reduce the period of ineligibility by providing substantial assistance to UKAD. If the athlete provides information or assistance, which results in discovering or establishing an ADRV by another or more people, WADA has the power to agree a complete suspension of ban.

Appeal

16. Decisions made by the NADP or alternative hearing body may be appealed. Depending on the status of the athlete, the appeal may be heard by the Court of Arbitration for Sport (CAS) or the NADP (or applicable National Appeals body).

Sanctions

17. Under the World-Anti Doping Code, there is a consistency of sanctions issued globally. It is important to remember that, as an athlete, contravening these rules may result in a sanction ranging from a formal warning and reprimand (with no period of ineligibility) to a lifetime ban.

18. ADRVs do not only apply to individual athletes. Athlete Support Personnel, such as coaches and doctors, are also subject to the rules of the World Anti-Doping Code. In the event that Athlete Support Personnel are found to be in breach of the anti-doping rules, the stages relating to the Notice of Charge, hearing and appeal will apply.

19. If an athlete is involved in a team sport and is found to have committed an ADRV, there could be implications for the entire team. If two or more team members during an event are found to have committed an ADRV, UKAD can impose an appropriate sanction on the whole team.