

**THE WADA CODE AND STRICT LIABILITY:
AN INTRODUCTION INTO WHAT IT MEANS
FOR COACHES AND PLAYERS
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After the Tour de France scandal in 1998, with half the Festina team in police custody for suspected doping, cycling in disarray, the IOC under suspicion as soft on drug use and other sports perceived as equally uncommitted to the fight against doping in sport, a new dynamic was required. Nobody believed anybody anymore. And with good reason.¹

Many rugby coaches are not aware of what the World Anti-Doping Code (the Code) actually is and the significant role it plays in sport worldwide. This paper aims to help prompt coaches to gain a better understanding of the role of the Code, particularly an awareness of the principle of strict liability.

The impetus for the Code

The shocking event that was the 1998 Tour de France, also dubbed the Tour de Dopage (Tour of Doping), was the catalyst for long-lasting change in the world of anti-doping. The controversial event, eventually won by Marco Pantani, who died from a heart attack six years later, aged 34, was marred by doping scandals throughout, with industrial size quantities of doping substances found in the possession of several teams.

The event prompted unprecedented action by the IOC and collective agreement amongst governments and sporting organisations to end the passive acceptance of an issue that was quickly spiralling out of control. The result would be the convening of two World Conferences on Doping in Sport in Lausanne (1999) and Copenhagen (2003).

These two conferences created an independent international anti-doping organisation known as World Anti-Doping Agency (WADA) and what would become the greatest tool in the fight against doping in sport, the World Anti-Doping Code (the Code).

¹ Pound, Dick W *Inside Dope: How drugs are the biggest threat to sports, why you should care and what can be done about them.* Wiley 2006

The World Anti-Doping Code

Undoubtedly the most significant advancement in the history of the fight against doping in sport has been the drafting, acceptance and implementation of the Code.

The Code is the first document to harmonise anti-doping regulations and provide a uniform set of anti-doping policies across all sports, all athletes and all countries.

Prior to the Code, anti-doping rules were a complete mess. Each sport and country had its own rules or didn't have any at all and there was a perception that most efforts to eliminate doping were nothing more than lip service.

After extensive consultation, but in an extraordinary quick period of time, WADA created the World Anti-Doping Code that came into force on the 1st January 2004 with the purpose of:

-  Protecting the athletes' fundamental right to participate in doping-free sport and thus promote health, fairness and equality for athletes worldwide.
-  Ensuring harmonized, coordinated and effective anti-doping programmes at the international and national level with regard to detection, deterrence and prevention of doping.

The Code aims to advance the anti-doping effort through universal harmonisation of core anti-doping elements and best practice in the international and national anti-doping programme.

It specifies the responsibilities of those that sign onto the Code and is supported by four (4) International Standards, outlining mandatory systems and processes for key areas such as:

1. Testing.
2. The therapeutic use of a prohibited substance or method.
3. The Prohibited List.
4. WADA accredited laboratories.

The key figures: Widespread adoption and implementation of the Code

In 2003 at the 2nd World Conference on Doping in Sport in Copenhagen, some 1200 delegates, representing 80 governments, Olympic Committees, athletes, sports, national anti-doping organisations and international agencies, unanimously agreed to adopt the Code as the basis for the fight against doping in sport.

To date, some 191 countries have signed the Copenhagen Declaration on Anti-Doping in Sport, the political document signed by governments to show their

intention to implement the Code. Further, 41 governments have already formally ratified the UNESCO Convention Against Doping in Sport, which enables them to bring their domestic legislation in line with the Code.

The collective agreement and support by government gave enormous leverage for widespread adoption of the Code, so much so that the Olympic charter was amended to state that adoption of the Code by the Olympic movement is mandatory and only sports that adopt and implement the Code can be included and remain in the programme of the Olympic Games.

More than 570 sports organizations, including the International Rugby Board (IRB) and Rugby Football Union (RFU) as a member union of the IRB, have already adopted the Code.

The IRB's anti-doping regulations and thus the Rugby Football Union's regulations, Regulation 21, became Code compliant on 1st June 2004. As such, all the provisions contained in Regulation 21 are now consistent with the Code, from what is on the prohibited list, to sanctions and the status of a player during a period of ineligibility.

Thus, without over-simplifying things, rugby players and coaches can have confidence that all their competitors are subject to the same rules, the same prohibited list of substances and the same sanctions should those rules be breached.

Across all levels of the game and under each member union of the IRB, players can have confidence that, when they travel abroad to play an international or compete in a World Cup or Commonwealth Games, the same best practice procedures for sample collection and analysis will be conducted.

As elite sportspeople, they can also have confidence that, apart from a few professional leagues in the United States, elite sportsmen and women from other sports and other countries are not being given free rides by their sports' organisations or governments, that all sportsmen have the same rights, the same responsibilities.

The principle of strict liability

The Code contains what are called Anti-Doping Rule Violations (ADRVs). These are essentially the ways in which a player or support personnel can be deemed to have broken the rules and thus be subject to sanction.

There are eight (8) different ADRVs under the Code, ranging from the presence of a prohibited substance in a player's sample, to refusing to submit to sample collection and to the trafficking of a prohibited substance.

Players and support personnel ('support personnel' defined as any coach, trainer, manager, agent, team staff, official, medical or para-medical personnel or parent) are subject to mandatory sanctions for committing an ADRV, with minimum sanctions of two (2) and four (4) years to life.

The most common form of ADRV is, of course, the presence of a prohibited substance in a player's sample, i.e. a positive test. What players and the range of rugby support personnel often don't know is that, with respect to this particular ADRV, the Code adopts a principle of strict liability.

Under the strict liability principle, an anti-doping rule violation occurs whenever a prohibited substance is found in an athlete's sample. The violation occurs whether or not the athlete intentionally or unintentionally used a prohibited substance or was otherwise negligent or otherwise at fault.

While the handing down of a fixed two (2) year sanction in the case of this type of ADRV is not automatic, with the possibility of sanctions being modified based on a set criteria, the reality is that the determination of whether an ADRV has occurred or not is indeed automatic. It is as simple as, if it is in the sample, it's an ADRV.

The rationale for the strict liability principle was set forth in the Court of Arbitration for Sport case of *Quigley v UIT* where it was stated that:

"It is true that a strict liability test is likely in some sense to be unfair in an individual case...where the athlete may have taken a medication as the result of mislabelling or faulty advice for which he or she is not responsible...but it is also in some sense unfair for an athlete to get food poisoning on the eve of an important competition. Yet in neither case will the rules of the competition be altered due to the unfairness. Just as the competition will not be postponed to await an athlete's recovery, so the prohibition of banned substances will not be lifted in recognition of its accidental absorption..."

This highlights the tremendous importance of comprehensive education for players and coaches and the need to be aware that a player is solely responsible for any prohibited substance found in his body.

The strict liability principle does not cater for the careless or ill-informed player, it does not cater for the unwitting consumption of contaminated supplements or the use of a banned substance not intended to enhance performance.

Further information

As stated at the beginning of this document, this paper aims to simply raise awareness of the importance of the Code and strict liability principle; it is by no means an exhaustive or complete discussion or analysis of these two areas, but hopefully prompts coaches to further educate themselves on what are important, extremely important, issues.

Further information can be found at the following websites:

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|  Rugby Football Union | - | www.rfu.com/antidoping |
|  100% ME | - | www.100percentme.co.uk/home.php |
|  UK Sport | - | http://www.uk sport.gov.uk/ |
|  IRB | - | www.irb.com |
|  World Anti-Doping Agency | - | http://www.wada-ama.org/en/ |