

## Legal Corner - Focus on Anti-Doping

More sports are now getting to grips with the **whereabouts testing procedure** which involves sportsmen and women making themselves available for random drug tests 365 days a year, 1 hour a day, between 600 and 2300 at a place of their choice. Any failure to be where you said you would be can result in a “strike” if the testers come calling. 3 strikes in an 18 month period and you are “out”.

Strikes can be appealed against, as members of the England **Rugby League** team successfully did, when the testers turned up at their homes and they were on World Cup duty in Australia! But a bigger challenge to the whole concept is looming as 65 athletes (cyclists, footballers, volleyball players, etc) have launched a legal challenge in Belgium stating that this system breaches the European Convention on Human Rights and in particular an individual’s right to privacy.

**FIFPro** (the international umbrella group of footballer players’ associations including the PFA and PFA Scotland) is also alleging that the system breaches data protection laws and the working time directive.

The Belgian case may be heard later this year - so watch this space.

Hitting the headlines recently has been **Rugby** where **Matthew Stevens** has tested positively for what is believed to be cocaine – this will result in a 2 year ban. Of particular concern was **Scott Macleod**’s failed test for elevated testosterone levels.

There may well be an appeal here as following a re-test for **Macleod** it was found there were very high traces of alcohol. Both WADA and UK Sport have confirmed there are links between high alcohol consumption and elevated testosterone levels. Alcohol itself is not on the list of prohibited substances.

The science behind alcohol and testosterone seems a little vague. If there is more potential to be tested out of competition, using the whereabouts system, then there is a greater risk on players in all codes.

**Michael Phelps** has also hit the headlines recently. Cannabis, out of competition, is unlikely to attract any ban for him.

Also of interest during the last quarter was the fact that **Adrian Mutu** now lodged his appeal to the Court of Arbitration for Sport against the €17m damages he is currently facing having to pay to Chelsea following their decision to dismiss him for drug abuse and then to sue him for the damages they suffered (loss of transfer fee, etc). It would be interesting to see how the appeal goes, but it does show that it is not always just a ban that an athlete can face.

Indeed, **UK Athletics** have just commissioned Dame Tanni Grey Thompson to review anti-doping within athletics.

Whilst there are some positives to be taken out of the review (such as in the 9 month period of the review there was not one single missed test in athletics in the UK under the whereabouts system and that the 3 missed test in 5 year rule was brought into line with other sports down to 18 months), there were some suggestions which are likely to be adopted by UK Athletics and may then come into other sports.

The first is a **fine** for each strike - £1,000 has been suggested. The other is a **quarantine period** for

athletes after they have served a ban, to see whether or not they were then able to return to international duty.

Finally, in certain circumstances is a recommendation to increase the ban to 4 years.

This is a constantly changing area of sport and the law and whilst it is quite right that drug cheats are dealt with properly, there is the worry that those who innocently miss tests or drink excessively immediately prior to a test, could face lengthy bans and now fines and damages too.

**Next month** we will look at Tax risks with Testimonials and Image Rights.

Please speak to Mark Hovell, Managing Partner, George Davies Solicitors LLP on 07814 384723 with any issues.