Management and Governance plus Athletes’ Performance

**Should Banned Drugs Cheats be Given a Second Chance? Examining the moral and legal arguments.**

Elite sport remains controversial in terms of the ongoing problem of the use of prohibited substances. All Olympic and Paralympic sports and the federations under which they exist, are subject to the WADA Code of Practice. WADA, the World Anti-Doping Federation, stipulates which substances are prohibited in sports competition.

Different federations and sports organisations have the power to exert different penalties on drug cheats. This has raised a number of controversies in the run up to the London 2012 Games. Notably, the British Olympic Association’s bylaws stipulate that any athlete that has received a ban in excess of 6 months for a prohibited substance-related offence is banned from selection from Team GB for life. WADA endorsed the actions of the BOA stipulating, in 2009, that the BOA’s bylaw was consistent with the 2009 WADA code.

The International Olympic Committee (IOC) have adopted an approach similar to that of the BOA, stipulating that any athlete who has received a ban of over 6 months duration for a banned substance related offence be barred from competing in the next Olympic Games following expiration of the original ban.

However, a recent ruling in favour of the banned American athlete LaShawn Merritt might undermine the sanctity of this bylaw. Merritt was originally banned by the IOC from competing in the London 2012 Games following a 21 month ban for Dehydroepiandrosterone, a substance found in 'male enhancement product' EtenZe.

Following the case, the Court of Arbitration for Sport stated that the IOC’s stance was invalid and unenforceable. The reason for the invalidity of the ban stems from the fact that the IOC conforms fully to the WADA regulations, and extending a WADA ban after the original terms have been exceeded itself violates the IOC’s commitment to WADA and in effect breaches its own codes.

Specifically, the Court for Arbitration for Sport stated that the IOC’s rule was *"not in compliance with Article 23.2.2 of the World Anti-Doping Code (WADAC) which provides the signatories of the code may not introduce provisions that change the effects of periods of doping sanction after that sanction has been served."* As a result, it appears that the IOC will have to revise this ruling so that athletes who have previously experienced a ban exceeding 6 months will, after all, be able to compete in the Olympic Games that follow it.

Following his successful appeal to CAS, Merritt stated his happiness at the decision: *"I am thrilled to have this uncertainty removed for the 2012 season. I look forward to representing my country and defending my title in the 400 meters next summer in London at the Olympic Games and will prepare with even more determination than before."* Similarly, USOC, the United States Olympic Committee, expressed their happiness at the ruling, despite admitting that Merritt had made an error of judgement previously.

The response of the IOC to the CAS ruling was one of compliance; however, they also stated their intention to campaign for far stiffer penalties for drug cheats, enforceable as WADA statutes. A statement by the IOC voiced the feelings of the organisation clearly:

*“The IOC fully respects the Court of Arbitration for Sport and will of course abide by its judgement. The IOC has a zero-tolerance against doping and has shown and continues to show its determination to catch cheats. “We are therefore naturally disappointed since the measure was originally adopted to support the values that underpin the Olympic Movement and to protect the huge majority of athletes who compete fairly. The rule was in our view an efficient means to advance the fight against doping, and we were somewhat surprised by the judgement since we had taken an advisory opinion from CAS on the rule and been given a positive response. “When the moment comes for the revision of the World Anti-Doping Code we will ensure that tougher sanctions, including such a rule, will be seriously considered. We are therefore naturally disappointed since the measure was originally adopted to support the values that underpin the Olympic Movement and to protect the huge majority of athletes who compete fairly.”*

The next official opportunity that the IOC will have to change WADA rules is 2013. However, WADA have voiced their willingness to undertake a review, beginning at the end of 2011, whereupon it might be possible to include an addition to Article 10 of the WADA Code ‘subject to such change being compatible with the principle of proportionality and athletes' fundamental rights’.

The BOA also voiced disappointment at the ruling, citing it as a ‘sorry day’ for the IOC. The BOA do not feel

that their own bylaw is in jeopardy, however, as WADA had previously stipulated that the BOA bylaw regarding a Team GB life ban for all athletes with a ban exceeding 6 months was in line with WADA policy. Furthermore, a critical difference between the law of the IOC and BOA is that the BOA bylaw concerns eligibility, whereas the IOC ruling is effectively a sanction.

Interestingly, the ruling in favour of Merritt might carry implications for British athletes who are currently the subject of lifetime GB bans. The ignominy of such a ban in the context of an Olympic Games in GB itself must prove hard to bear, particularly when athletes of other nationalities are allowed to compete for their national teams in the Olympic Games regardless of the fact that they might have served similar, or even longer, drugs-related bans. A number of banned GB athletes are considered below:

**Dwain Chambers**

Dwain Chambers, a well-known British athlete might watch the Merritt outcome with interest, as he has fallen foul of the BOA’s life ban. The ban means that Chambers can never compete for Team GB again. Chambers was banned for two years in 2003 for his use of the anabolic steroid THG (Tetrahydrogestrinone). Chambers previously - unsuccessfully – attempted to obtain a High Court injunction against the BOA’s bylaw in 2008. Chambers has won many medals at international level.

**David Millar**

David Millar, a British cyclist also in receipt of a BOA ban exceeding 6 months, has been vocal in the social media about the positivity of the Merritt ruling for future international sport. **The cycling (**road race & time-trial) athlete achieved four Tour de France stage wins, and is a two-time world time-trial silver medallist and Commonwealth time-trial champion.
**He was banned** for two years in 2004 and stripped of his 2003 world time-trial title after admitting taking the blood-booster EPO (erythropoietin). Unlike Chambers, Millar has never sought to appeal against the ruling.

**Carl Myerscough**

**Myerscough competes in the disciplines of** shot put & discus, and has represented GB at four World Championships.. An accomplished athlete, Myerscough is a British record-holder in shot put and a former world junior bronze medallist. He received a two year ban for his use of a cocktail of performance-enhancing substances in 1999. Similarly to Chambers, he attempted to appeal against the BOA bylaw in 2004, but – like Chambers – was unsuccessful.

**Athletes as Role Models**

Many believe in the sanctity of the Olympic ideals, in the assurance of morality and fair play. The presence of drug cheats at the Games brings such concepts into doubt – or – at least, discussion. Many also believe that athletes are role models to future generations of young people and young athletes, and believe that it is the responsibility of today’s athletes to act in a way that set s a positive example. One might argue that the success of Merritt at the Court of Arbitration for Sport metes out two blows to such noble beliefs; firstly, that the athlete is condoning the use of drugs (and is, to an extent, supported legally in his right to do so and continue to compete) – and – crucially – that (in Merritt’s case), in appealing and being supported by USOC, the need to take personal responsibility and accept a punishment is ignored.

Finally, one might question the defence of Merritt by USOC. Did the governing body really believe that Merritt was ethically in the right? Or were they ready to place the potential for national pride and a higher Gold medal count above the importance of setting a truly ethical and moral example to future generations of American athletes?

**FURTHER INFORMATION**

**BOA chairman Moynihan attacks 'toothless' anti-doping regime**

<http://news.bbc.co.uk/sport1/hi/olympics/15743767.stm>

**British Olympic Association Website**

http://www.olympics.org.uk/role/

**DISCUSSION**

* Does allowing cheats a second chance align with Olympic values of redemption, or conflict with Olympic values of fair play?
* Do the Olympic Games really allow a level playing field if drugs cheats who have served a ban over 6 months can compete in the Olympics if they are American, but not if they are British?
* If drug cheats have previously taken testosterone and other performance enhancers, might they possess a long term advantage as a result, that might exist far beyond the time span of a ban?
* Do drugs cheats offered redemption (i.e. to compete in the Games after 6 months bans) have a moral responsibility to engage in anti-drugs campaigns to alert young athletes to their dangers? Or do you feel that athletes do not have to be role models?