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'Tougher bans needed to clean up sport'

Jonathan Ames

Sanctions for athletes and sportspeople taking banned drugs should be beefed up because a zero tolerance approach is the only way to clean up international competitions, lawyers say.

Their call comes after recent allegations in a German academic report that as many as a third of the world's leading athletes have admitted doping during top competitions.

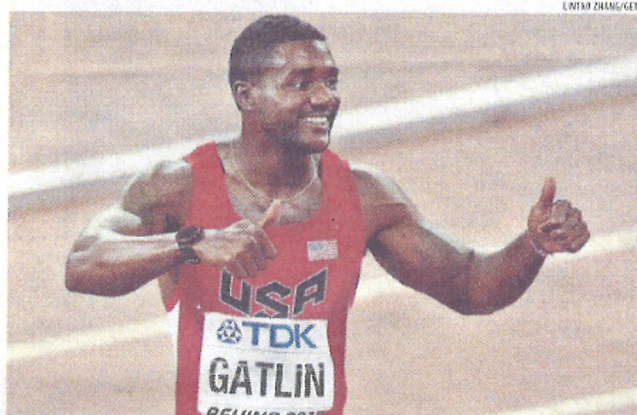
After publication of the report in *The Sunday Times*, Britain's world record-holding marathon runner, Paula Radcliffe, strongly denied that she had used blood-doping techniques after her name was alluded to in a parliamentary committee hearing several days ago. And there was the controversial appearance on the track at the Beijing World Athletics Championships of American sprinter Justin Gatlin, who has served two bans for doping offences.

At the start of the year, the Montreal-based World Anti-doping Agency (Wada) announced that the latest iteration of its code would increase standard bans from two to four years.

Now some UK expert sport lawyers suggest that even tougher sanctions should be considered. They point out that Gatlin initially received lifetime and eight-year bans, both of which were reduced. With road cycling still shadowed by rumours, is the only solution for international sport a one-strike-and-you're-out approach?

"Wada sanctions need to be stiffer in practical terms," says Mark Gay, a sport law partner at London solicitors' firm Hamlins, who earlier in his career advised the International Athletics Foundation. "Sanctions should be more automatic and more uniform. I would reduce the scope for arguments made around 'no fault' and in particular 'no significant fault'."

Others see shades of grey around banning periods. "It's one thing to say



American sprinter Justin Gatlin has served two bans for doping offences

someone should be banned for a long time if the evidence is very clear," says Edward Carder, a sports law specialist solicitor at Mishcon de Reya. "But my experience after seeing these cases litigated is that the evidence is often not as clear as the public might think. People generally have an explanation as to why these things have happened."

"However, there are those that might argue that cheating is so much against the spirit of sport that those found to have cheated should get very long bans."

Modern concerns about doping began with the Canadian Ben Johnson. Having won the 100-metre gold medal at the Seoul Olympics in 1988, he was disqualified three days later when the anabolic steroid stanozolol was found in his blood. In subsequent decades, global sporting bodies have struggled to devise a unified approach to testing and sanctioning athletes and sportspeople.

Jamie Singer, the founding partner of sports specialist law firm Onside Law, says that Wada has "spent a great deal of time and effort on a new code and the

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consensus is that in a very tricky area they've done pretty well".

Singer, though, notes that rumblings will persist that Wada's code is unfair. "If an athlete has intentionally doped to give an unfair advantage — and such advantage can last for many years, perhaps even beyond the ban — many will argue they should not be allowed back in the sport and bans should be longer."

"On the other hand, there are many instances where bans or penalties are imposed on people who have made mistakes or been misled and their plight

does generate sympathy." Alain Baxter — who made history at the 2002 Salt Lake City Winter Olympics by winning Britain's first alpine skiing medal — is one example. The Scotsman subsequently failed a test and was forced to hand back the gold. But the substance involved turned out to be a type of amphetamine with minimal performance-enhancing properties found in a Vicks nasal inhaler he bought in the US. UK versions of the inhaler did not include the banned amphetamine.

Losing medals is not the only ramification: even more important, arguably, is loss of sponsorship income. Luca Ferrari, a partner and head of the sports practice at Withers, explains that sponsors are increasingly alert: if not confident that a potential brand ambassador is not only clean but above suspicion, then the deal will not be signed.

"Once the contract is in place," Ferrari says, "it will invariably include morality clauses. But doping allegations per se would not constitute a breach. It then varies from contract to contract whether interim suspension, first-degree sentence or final adjudication will trigger a sponsor's right of termination."

And what of that rumour mill? Specialist lawyers say that they are increasingly being instructed by sport agents for clients worried they might be in the frame. "The reality is that there is not a lot athletes can do if there is a whispering campaign," says Christopher Stoner, QC, specialist in sports law disciplinary cases at Serle Court chambers. "It can be difficult to prove a negative."

Some athletes have gone on the front foot by publishing their own blood data records, but UK anti-doping authorities are understood to not recommend this as they do not want publication of highly personal data to become the default response. The problem ultimately is, Stoner says, once a name is linked with the possibility of doping, it's inevitable "a certain amount of mud will stick".