SPORT RESOLUTIONS (UK)

NATIONAL ANTI-DOPING PANEL

SR/285/2019

IN THE MATTER OF PROCEEDINGS BROUGHT UNDER THE ANTI-DOPING RULES OF THE WELSH RUGBY UNION

Before:

Mark Hovell (Chair)

Lorraine Johnson

Prof Isla Mackenzie

B E T W E E N:

UK ANTI-DOPING ***Anti-Doping Organisation***

and

MARK JONES ***Respondent***

DECISION OF THE ANTI-DOPING TRIBUNAL

I. Introduction

1. The Applicant, UK Anti-Doping ("UKAD") is the National Anti-Doping Organisation in the UK and has jurisdiction to prosecute this case.

2. The Respondent, Mr Jones (the "Player" or "Respondent"), is an amateur rugby union player, from Wales. Mr Jones has been playing rugby for 23 years and currently plays for Cambrian Welfare RFC ("Club"), in the Welsh National League Division 1 East Central. As a licensed competitor of the Welsh Rugby Union (the "WRU") and a participant in competitions and other activities organised, convened, authorised or recognised by the WRU, he was at all times bound by and required to comply with the Anti-Doping Rules of the WRU.

3. The WRU has adopted the UK Anti-Doping Rules in their entirety, which are constituted as the Anti-Doping Rules (the "ADR"). Pursuant to the ADR, UKAD has the responsibility for bringing enforcement proceedings where an athlete provides a positive test.

4. Pursuant to the ADR, urine samples were provided by the Player on 25 April 2019, Out-of-Competition, at one of the Club's training sessions. A Doping Control Officer ("DCO") collected two urine Samples from Mr Jones. The first urine Sample did not meet the suitable specific gravity (i.e. concentration) for analysis at a reading of 1.002, the requirement being at least 1.005 measured with a refractometer. Assisted by the DCO, Mr Jones split the first urine Sample into two separate bottles, which were given reference numbers A1151957 ("the First A Sample") and B1151957 ("the First B Sample"). The DCO therefore requested a second urine Sample in accordance with Annex G.4.2 of the WADA International Standard for Testing and Investigations (the "ISTI"). The second urine Sample did meet the suitable specific gravity for analysis at a reading of 1.011. Assisted by the DCO, Mr Jones split the second urine Sample into two separate bottles, which were given reference numbers A1151958 ("the Second A Sample") and B1151958 ("the Second B Sample"). Both the First A Sample and the Second A Sample returned Atypical Findings ("ATF's") for clenbuterol, with a concentration estimated below 5ng/mL.

5. Clenbuterol is classified as an anabolic agent under s.1.2 of the World Anti-Doping Agency ("WADA") Prohibited List 2019. It is a non-specified substance, prohibited at all times. Mr Jones had no Therapeutic Use Exemption in place.

6. As the concentration of clenbuterol in the Player's samples were below 5ng/mL, they were treated as ATF's, as opposed to Adverse Analytical Findings ("AAF's") in accordance with the 1 June 2019 amendment to Article 7.4 of the World Anti-Doping Code ("WADC"), and further to WADA's Stakeholder Notice regarding meat contamination ("the Stakeholder Notice") dated 30 May 2019.

7. On 30 August 2019, UKAD issued a Notice of Charge (the "Charge") in relation to the Player's alleged Anti-Doping Rule Violation ("ADRV"). Pursuant to ADR Article 10.7.4(a), the separate charges relating to the two ATF's are considered together as a single ADRV.

8. The Player has been provisionally suspended since 30 August 2019. UKAD understand this to be the Player's first ADRV.

9. On 12 September 2019, the Player responded to the Charge, explaining the circumstances surrounding the ATF's, arguing, among others that he *"unintentionally purchased meat from a cheap source",* that he had *"not been negligent, as the regulations offer no advice on buying contaminated meat in the UK",* that he *"was not a professional athlete…[did] not get support…never had any support from anyone regarding food or supplements"* and that this was a *"genuine and unintentional breach of Anti-Doping rules".*

10. In further correspondence between Ms Catherine Pitre on behalf of the Tribunal and the Player on the same date (12 September 2019), the Player confirmed that such correspondence was to be treated as his application to have his Provisional Suspension lifted.

11. By way of a formal response to the Charge dated 8 October 2019, the Player, represented by Adam Taylor and instructed by Mark Lloyd withdrew his challenge to the Provisional Suspension and sought such period of suspension to be credited towards any period of Ineligibility ("PofI") imposed upon the Player.

12. Recognising the rights of Players to have a doping allegation determined by an independent and suitably qualified body, pursuant to the ADR Article 8.1, this case was referred to the National Anti-Doping Panel ("NADP") for resolution on 12 September 2019, on receipt of the Player's application for the Provisional Suspension to be lifted.

13. On 13 September 2019, Mark Hovell was appointed as the Chairman of the Tribunal. Lorraine Johnson and Prof Isla Mackenzie were appointed as Tribunal Members on 11 December 2019.

14. In accordance with Article 7.8 of the Rules of the NADP (2019 edition), the Chairman of the Tribunal agreed various directions with the parties on 4 November 2019, with a view for the hearing of the matter to take place at the premises of Sport Resolutions at 1 Salisbury Square, London, EC4Y 8AE.

15. This matter was determined following the oral hearing that took place on 20 January 2020 (the "Hearing"). The Player attended the Hearing in person and was represented by Messrs Taylor and Lloyd. The Tribunal would like to place on record its gratitude for them representing the Player on a *pro bono* basis. UKAD were represented by Ms Nisha Dutt, Peter Rogers and Justin Humphries. Ms Anna Thomas, from Sport Resolutions was also present to assist the Tribunal.

II. Jurisdiction

16. The WRU is the National Governing Body of rugby union in Wales. The WRU has adopted the UK Anti-Doping Rules in their entirety, which are constituted as the ADR. All rugby players in Wales playing for a member club of the WRU are subject to the ADR under the jurisdiction of the WRU. The Club is a member of the WRU and the Player plays for the Club.

17. As a result of the above, the Player was therefore subject to the ADR and bound to comply with the ADR at all material times.

18. Pursuant to ADR Article 7.1.3, UKAD has responsibility for results management of this case. This meant UKAD could deal with this Charge and prosecute this matter.

19. Further, pursuant to ADR Article 8.1, any charge against an Athlete playing under the auspices of the WRU shall be determined by the NADP.

20. Finally, the Player did not challenge the jurisdiction of the NADP, nor the applicability of the ADR.

21. For all of the above reasons, it follows that the Tribunal therefore has jurisdiction to determine this matter.

III. Background

22. On 25 April 2019, the DCO operating under Mission Order M-950293670 collected the urine samples from the Player Out-of-Competition, at a training session of the Club, at Lakeside Building, Cambrian Country State Park, Clydach Vale, Tonypandy CF40 2XX. It was undisputed that the Player volunteered to be tested.

23. As set out in Annex G.4.10 of the ISTI, all of the Player's urine samples were transported to the WADA-accredited laboratory, the Drug Control Centre, King's College London (the "Laboratory"). The Laboratory analysed the A Samples in accordance with the procedures set out in WADA's International Standard for Laboratories.

24. The analysis of both, the First A Sample and the Second A Sample returned ATF's for clenbuterol with a concentration estimated below 5ng/mL.

25. Pursuant to the 1 June 2019 amendment of Article 7.4 of the WADC, WADA-accredited laboratories are allowed to report findings of clenbuterol at a concentration below 5mg/mL as an ATF, as opposed to an AAF. This is to allow for an investigation when potential meat contamination scenarios arise when athletes have travelled to and consumed meat, specifically, in Mexico, China or Guatemala, in accordance with the Stakeholder Notice.

26. On 12 July 2019, the Player responded to the Charge, stating that he bought *"cheap meet (sic) at Splott market Cardiff, [where] they were selling Australian corn fed steak and Chinese wagyu steak, which appealed to [him] based on cost reasons*

only…" However, the Player did not confirm any recent travel to Mexico, China or Guatemala.

27. UKAD confirmed that the Player did not have a Therapeutic Use Exemption to justify the presence of the Prohibited Substance in his Sample.

IV. UKAD's Submissions

<u>The Charge</u>

28. UKAD submitted that the Player, on 25 April 2019 pursuant to ADR Article 2.1 had the presence of a Prohibited Substance or its Metabolites or Markers in his Sample. ADR Regulation 2.1 states:

> ***"2.1 Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample, unless the Athlete establishes that the presence is consistent with a TUE granted in accordance with Article 4***
>
> *2.1.1 It is each Athlete's personal duty to ensure that no Prohibited Substance enters his/her body. An Athlete is responsible for any Prohibited Substance or any of its Metabolites or Markers found to be present in his/her Sample. Accordingly, it is not necessary that intent, Fault, negligence or knowing Use on the Athlete's part be demonstrated in order to establish an Anti-Doping Rule Violation under Article 2.1; nor is the Athlete's lack of intent, Fault, negligence or knowledge a valid defence to a charge that an Anti-Doping Rule Violation has been committed under Article 2.1."*

29. UKAD submitted that the presence of a Prohibited Substance, namely clenbuterol, in the Player's First A Sample and Second A Sample constitutes a violation of the ADR.

30. Further, an ADRV under ADR Regulation 2.1 is committed without regard to a Player's Fault and is a 'Strict Liability' offence.

31. The Player accepted the 'Presence' Charge in his response dated 8 October 2019. Therefore, the Player's liability for commission of the ADRV is not in dispute and the main issue to be resolved is that of sanction.

Sanction

ADR Article 10.2.1(a) and whether or not the ADRV was "Intentional"

32. UKAD submitted that its records indicate that this is the Player's first ADRV. Accordingly, the PofI to be applied is set out at ADR Article 10.2.1(a):

> "***10.2 Imposition of a Period of Ineligibility for the Presence, Use or Attempted Use, or Possession of a Prohibited Substance and/or a Prohibited Method***
>
> *The period of Ineligibility for an Anti-Doping Rule Violation under Article 2.1, 2.2 or 2.6 that is the Athlete's or other Person's first anti-doping offence shall be as follows, subject to potential reduction or suspension pursuant to Article 10.4, 10.5 or 10.6:*
>
> *10.2.1 The period of Ineligibility shall be four years where:*
>
> *(a) The anti-doping rule violation does not involve a Specified Substance, unless the Player or other Person can establish that the anti-doping rule violation was not Intentional."*

33. Further, the definition of "Intentional" can be found at ADR Article 10.2.3:

> *"As used in Regulations 10.2 and 10.3, the term "Intentional" is meant to identify those Players who cheat. The term therefore requires that the Athlete…engaged in conduct which he…knew constituted an anti-doping rule violation or knew that there was a significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk. An Anti-Doping Rule Violation resulting from an Adverse Analytical Finding for a substance which is only prohibited In-Competition shall be rebuttably presumed to be not Intentional if the substance is a Specified Substance and the Player can establish that the Prohibited*

Substance was Used Out-of-Competition. An Anti-Doping Rule Violation resulting from an Adverse Analytical Finding for a substance which is only prohibited In-Competition shall not be considered Intentional if the substance is not a Specified Substance and the Player can establish that the Prohibited Substance was Used Out-of-Competition in a context unrelated to sport performance."

34. Therefore, the PofI is four-years unless Mr Jones can demonstrate, on the balance of probabilities, that his actions were not intentional.

35. Whilst not expressly set out in the ADR, it has now been accepted by a number of hearing panels (in matters such as *UKAD v Buttifant, UKAD v Songhurst, UKAD v Graham* and *UKAD v Williams)* that, save in wholly exceptional and rare cases, in order to establish that the ADRV was not intentional for the purposes of ADR Article 10.2.1(a), an athlete must also establish how the prohibited substance entered their system. According to UKAD, such a requirement is entirely logical, as without proof of the means of ingestion it is impossible for a hearing panel to properly assess whether an athlete's conduct was intentional or not.

36. UKAD noted that the Player had provided multiple responses to the Charge as well as the formal response and a signed witness statement. Mr Jones' case is entirely predicated upon the suggestion that he ingested meat contaminated with clenbuterol, which he purchased at a market in Splott and that as a consequence his ingestion was inadvertent. UKAD had produced evidence of Mr Nick Wojek, Head of Science and Medicine at UKAD to support its position.

37. As the Player confirmed at the Hearing that he was unable to discharge his burden of proof and was not therefore able to challenge "intention", the Tribunal has not summarised UKAD's submissions or evidence any further.

38. In summary, UKAD submitted that the PofI to be imposed on the Player under ADR Article 10.2.1(a) should be four years, as he had not met his burden of establishing that the ADRV was not intentional.

ADR Article 10.5.2 and whether or not there was No Significant Fault or Negligence

39. UKAD noted that the Player was not seeking to put forward submissions in respect of No Significant Fault or Negligence, however, out of caution, it did make submissions in this respect. As the Player confirmed this position at the Hearing, the Tribunal has not summarised UKAD's submissions on Fault and negligence.

ADR Article 10.11.1 and whether or not any PofI should be backdated due to any UKAD delay.

40. At the hearing, UKAD stated that there had not been any substantial delay. The samples had gone to the laboratory on 30 April 2019 and the analytical report and findings were received back on 24 June 2019. The pre-charge correspondence with the Player was dated 4 July 2019.

41. Additionally, this was a matter where the Stakeholder Notice applied (and its very application was a potential benefit to the Player). This added an additional investigatory phase. As such, there was no delay that could be blamed on UKAD.

ADR Article 10.11.2 and whether or not any PofI should be backdated for a prompt admission.

42. UKAD simply submitted that was a matter for the Tribunal as to whether ADR Article 10.11.2 might apply.

ADR Article 10.11.3 and whether or not any PofI should be backdated to take account of the Provisional Suspension.

43. UKAD noted that the Player was suspended on 30 August 2019, however it could not confirm whether he had respected the terms of the Provisional Suspension to date. UKAD did ask him some questions around this at the Hearing.

44. However, the main contention on this point was in relation to whether the accepted 143 days of Provisional Suspension by the date of the Hearing should be credited against any sanction should the Player be successful in having the PofI backdated to the Sample Date.

45. The position of UKAD here was that the whole of ADR Article 10.11 was "either/or" rather than "and" – meaning that if the PofI started on the Sample Date, that was the best any athlete could get and ADR Article 10.11.3 was of no relevance (as a Provisional Suspension must follow a Sample date).

<u>ADR Article 10.6.3 and whether or not any sanction should be reduced for a prompt admission.</u>

46. At the Hearing, UKAD stated that it had considered whether it should offer any reduction in sanction pursuant to ADR Article 10.6.3 to the Player. It determined not to exercise its discretion in favour of the Player, as it did not accept his version of the events as full. Further, there was no evidence to corroborate his statement.

47. UKAD referred the Tribunal to the Appeal Panel's decision in *UKAD and the RFU v Lancaster.* The Appeal Panel in that matter noted that it was not able to exercise the discretion on behalf of UKAD and/or WADA. Their "*approval would be required as to whether a reduction were permitted*". The "*independent panel would fix the level of reduction*", up to a maximum of two years.

48. In this matter, UKAD had not given its approval. It had not therefore asked WADA.

49. UKAD also submitted that this Tribunal lacked the authority to consider whether or not UKAD's discretion had been properly exercised. This would be for the Court of Arbitration for Sport ("CAS") or for an NADP Appeal Panel.

V. Respondent's Submissions

50. On 12 September 2019, the Player responded to the Charge in the form of an email addressed to Ms Catherine Pitre of Sport Resolutions, as secretariat to the Tribunal.

51. In this email, the Player considered himself a *"victim of social deprivation",* citing his unintentional purchase of meat from a *"cheap source"* as the reason for the ADRV. In this regard, the Player sought to argue that contaminated meat was a *"real worry in [the UK]"* and that he expected a *"warning as an absolute minimum about the risk (sic) purchasing imported meat in the UK".*

52. The Player highlighted that as an amateur athlete, neither did he have, nor has he had any support regarding food or supplements; *"this experience has educated me, I am a better person from it, however, I am no drugs cheat",* further emphasising that he was *"sincere, and innocent of any deliberate wrongdoing"*

53. On 8 October 2019, the Player, once represented by Messrs Taylor and Lloyd, provided a formal response to the Charge ("Response to Charge").

54. In the Response to Charge, the Player admitted the ADRV, although he believed that *"the presence of clenbuterol in his system is attributable to his consumption of contaminated meat purchased from a Cardiff market"* but that *"he has been unable to obtain the necessary evidence to substantiate a mitigation argument under the ADR of 'non-intentional use', 'no fault' or 'no significant fault'".*

55. Therefore, the Player withdrew any submissions in relation to intention and/or Fault. The Player presented the following submissions in mitigation to sanction.

<u>ADR Article 10.6.3 and whether or not any sanction should be reduced for a prompt admission.</u>

56. The Player submitted that application of Article 10.6.3 was considered at length by the CAS in the case of CAS 2017/A/5282 World Anti-Doping Agency (WADA) v. International Ice Hockey Federation (IIHF) & F. In summary:

    56.1. The reduction is intended to give a benefit to an athlete who 'simplifies' the disciplinary proceedings by a prompt admission, and to allow for responsible plea bargaining.

56.2. The Tribunal can consider the applicability of the rule to the case before it of its own motion.

56.3. A meaningful application of Article 10.6.3 requires that: "*an athlete must describe the factual background of the anti-doping rule violation both fully and truthfully and not merely, accept the accuracy(s), of the adverse analytical finding*".

56.4. The exercise of a discretion pursuant to Article 10.6.3 of the WADC by WADA and the anti-doping organization having the case management responsibility is subject to CAS scrutiny and control, and, must be subject to review to ensure that it is not exercised in an arbitrary or otherwise unlawful manner.

56.5. The Player in making his prompt admission fulfilled the criteria for the application of ADR Article 10.6.3, in that he has simplified these disciplinary proceedings by admitting the ADRV at the point he first appointed legal representatives, and he has given a detailed explanation of the circumstances leading up to the ADRV. Therefore, the proceedings have only proceeded on the basis of ADR Article 10.6.3 itself and mitigation submissions as to the backdating of the PofI. There was no dispute on the ADRV, there was no arguments around "intention" and there was no dispute on the Player's ability to establish No Fault or No Significant Fault under ADR Article 10.4 or 10.5.

57. The 'simplification' of the disciplinary proceedings has only been inhibited by UKAD's failure to properly engage with and formally respond to the Athlete's mitigation submissions.

58. As such, the Player sought a reduction of his PofI down to two years due to a Prompt Admission, pursuant to Article 10.6.3 of the ADR, particularly in light of the limited seriousness of the ADRV, the Player's degree of Fault, his age (being 35 years old) and the impact of any PofI on the Player's family.

59. At the Hearing, Counsel for the Player submitted that this Tribunal did have jurisdiction to review the manner in which UKAD had exercised its discretion under

ADR Article 10.6.3. In particular, Mr Taylor cited ADR Article 8.1.1 and ADR Article 17.3.1.

<u>ADR Article 10.11.1 and whether or not any PofI should be backdated due to any UKAD delay.</u>

60. The Player had noted that it took over four months from the sample collection date until the receipt of the Charge. There had been no explanation whatsoever provided by UKAD.

61. Section 3.1 of WADA's guidance document entitled '*Results Management, Hearings and Decisions Guidelines*' (October 2014) states that: "*In the interest of fair, effective sport justice, any asserted ADRV should be prosecuted in a timely manner. Irrespective of the type of ADRV involved, <u>any ADO should be able to conclude Results Management and the hearing process within a maximum of 6 months of the date of commission</u> or of discovery of the ADRV. […] For an ADRV resulting from an AAF, the date of commission is the date of the Sample Collection Session*." [emphasis added]

62. UKAD has therefore not kept to WADA's own guidelines on timeliness. The Player's sample collection was in April 2019 and so the hearing process should have been conducted at the latest by October 2019. UKAD did not provide the Player with the Charge until 30 August 2019, over four months after the sample collection. In the context of WADA requiring that the entire process should be completed in six months, taking more than two-thirds of the allotted duration before charging the Player clearly represents 'substantial delays'.

63. The Player relied upon CAS 2015/A/4215 *Fédération Internationale de Football Association (FIFA) v. Korea Football Association (KFA) & Kang Soo Il.*

ADR Article 10.11.3 and whether or not any PofI should be backdated to take account of the Provisional Suspension.

64. The Player submitted that the wording of Article 10.11.3 is imperative, not conditional: "*the period of provisional suspension, if respected by the Athlete, shall be credited against the total PofI to be served*".

65. The Player's Provisional Suspension was imposed on 30 August 2019. The duration of the Provisional Suspension from its imposition until the Hearing was therefore: 143 days (or 4 months, 21 days).

66. Further, the Player withdrew his challenge against the imposition of the Provisional Suspension and instead requested for such suspension already served to be credited against any PofI eventually imposed.

67. The wording of this Article is mandatory and there is reference to a specific credit that it "shall" be credited. As such, if this Tribunal was prepared to start the PofI from the Sample Date (for the other reasons given), then it shall additionally give the 143 days credit to the Player.

ADR Article 10.11.2 and whether or not any PofI should be backdated for a timely admission.

68. The Player submitted that there was no dispute from UKAD that this Tribunal should backdate the start date of any PofI to the Sample date as a result of the Player's timely admission.

ADR Article 10.6.1 and whether or not any PofI should be reduced due to the provision of Substantial Assistance.

69. The Player expressed his intent to provide Substantial Assistance to UKAD, therefore resulting in a suspension of part of the PofI. However, this was dropped shortly before the Hearing.

VI. The Tribunal's findings

70. The Tribunal noted that matters such as challenging the Provisional Suspension, intention, Fault and, latterly Substantial Assistance, were all uncontested by the Player.

71. The Tribunal therefore agreed with UKAD's assessment that the starting sanction for the Player's ADRV, in accordance with ADR Article 10.2.1(a) should be a PofI of four years.

72. The issues before the Tribunal were:

    72.1. could the Player benefit from ADR Article 10.6.3 by virtue of a prompt admission?

    72.2. in any event, should the start date for the PofI be from the Sample Date, either due to ADR Article 10.11.1 (substantial delay) or ADR Article 10.11.2 (timely admission)?

    72.3. and, if so, should the Player still get a credit for the 143 days of provisional suspension to effectively shorten his PofI by that period?

73. In short, the Tribunal noted that a crucial ingredient required for ADR Article 10.6.3 was missing – the approval of WADA. The Tribunal noted that in the CAS 2017/A/5282 matter, the Panel there had its approval (along with that of the IIHF), so was able to consider the equivalent Article. However, as with the *Lancaster* decision, this approval was lacking and the Appeal Panel determined that it was unable to stand in the shoes of WADA and exercise a discretion on its behalf.

74. The Tribunal notes the wording of ADR Article 10.6.3:

> *"An Athlete…potentially subject to a four-year sanction under Article 10.2.1…may receive a reduction in the period of Ineligibility down to a minimum of two years, depending on the seriousness of the violation and the Athlete's…degree of Fault by promptly admitting the asserted*

Anti-Doping Rule Violation after being confronted with it, upon the approval and at the discretion of WADA and UKAD."

75. The Tribunal further notes some (not all) of the comments by CAS in this regard, namely that there is no requirement for the Athlete to admit intent; however, the athlete must do more than simply acknowledge the presence of the Prohibited Substance in his or her body; that the athlete should provide the factual background of the ADRV, both fully and factually; needless to say, the admission must be prompt; and it should simplify the disciplinary process.

76. The Tribunal were interested to hear from UKAD as to the process it followed and whether the Tribunal would have a power of review over the same.

77. It appears that the process was simply whether or not the person charged with the case at UKAD felt that the explanation given by the athlete (here the Player) was full and truthful. UKAD were insistent that this Tribunal would have no right to review that decision, but seemed to accept that an Appeal Panel would.

78. The Tribunal notes that pursuant to the ADR (Article 13.4) there are a long list of other decisions that can be appealed and these go to CAS or to an NADP Appeal Tribunal, but we could find no reference to an appeal against Article 10.6.3 in that part of the ADR.

79. Mr Taylor suggested that ADR Article 8.1.1 and ADR Article 17.3.1 would provide this Tribunal with jurisdiction to review the (non)exercising of its discretion by UKAD. The former does allow us to consider the Consequences, but the Tribunal was not convinced that was wide enough to review UKAD's actions; whereas the latter Article is widely drafted as a "catch all", so long as it wouldn't cause a "*material injustice"* to the Player. It appears to the Tribunal that UKAD's decision making with how it deals with ADR Article 10.6.3 should be subject to a review. Perhaps it would fit better into the list at ADR Article 13.4, but as it is absent from that list, then ADR Article 17.3.1 would come into play.

80. Unfortunately for the Player, this does not assist him. There is no approval from WADA. This Tribunal has therefore not gone so far as to consider whether UKAD were wrong to withhold their approval on the basis of the explanation of the Player

not being "full" and as there was no corroborating evidence. The Tribunal does note that in reality many athletes do not know how a Prohibited Substance entered their body, so there is often no corroborating evidence and many still ultimately try to convince a panel that there was no intention etc. We would say however that the process in the matter at hand was far simpler to prosecute and for this Tribunal to consider as a result of the Player's admission.

81. As the Appeal Panel in *Lancaster* noted:

> *"We do not consider that the question of whether any appeal lies from a decision by WADA not to approve the proposed course of action…is one for us. Firstly, it is academic and is not necessary to dispose of this appeal. Secondly, we have not heard in any detail from WADA on the subject; the point was dealt with in passing. It has potentially important procedural consequences, not only for the World Rugby Regulations but also the WADA Code. Thirdly, we would not wish the judgement in this appeal to be misinterpreted as our ruling in any way on the extent of WADA's rights in any respect."*

82. As such, whilst this Tribunal may have been able to consider UKAD's decision, it is clear that there was no decision made by WADA and even if there had been one, then without their presence in these proceedings, we could not consider an appeal against it. As such, no reduction can be made in this case for a prompt admission.

83. The second issue before us is far simpler to deal with. The admission was timely. This did not seem to be in dispute between the Parties and the Tribunal therefore applies Article 10.11.2 and determines that the PofI starts as from the Sample Date.

84. For completeness, the Tribunal did not find any substantial delays on the part of UKAD and rejected the Player's submissions as to ADR Article 10.11.1.

85. Finally, the Tribunal certainly noted the Player's position as regards 10.11.3. As is not uncommon, the wording of the regulations could be better, but the Tribunal's view was that the different limbs of ADR Article 10.11 were not cumulative, rather alternative methods of bringing the start date of the PofI back. Certainly, if more than one applied, the athlete should have the benefit of the most advantageous limb to him or her.

VII. The Decision

86. For the reasons set out above, the Tribunal makes the following decision:

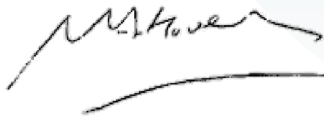
    86.1. an ADRV contrary to ADR Article 10.2 has been established;

    86.2. the standard sanction of 4 years Ineligibility shall apply to the Player;

87. In accordance with ADR Article 10.11.2, the Player is entitled to credit for his timely admission, and so the period of Ineligibility shall be deemed to have commenced on 25 April 2019 and shall therefore end at midnight on 24 April 2023;

88. The Player's status during Ineligibility is outlined in ADR Article 10.12. For the avoidance of doubt, this Ineligibility applies and extends to Competitions or Events organised, convened, authorised or recognised by WADA Code Signatories, any professional league or any international or national-level Event organisation and any club or other body that is a member of, or affiliated to, or licenced by, a Signatory or a Signatory's member organisation throughout the World.

89. In accordance with ADR Article 20.14, the Player has a right of appeal to the NADP Appeal Tribunal. In accordance with Article 13.5 of the Procedural Rules any party who wishes to appeal must lodge a Notice of Appeal with the NADP Secretariat within 21 days of receipt of this decision.



Mark Hovell
For and on behalf of the Tribunal
07 February 2020
London, UK

Sport Resolutions (UK)
1 Salisbury Square
London EC4Y 8AE

T: +44 (0)20 7036 1966

Email: resolve@sportresolutions.co.uk
Website: www.sportresolutions.co.uk

Sport Resolutions (UK) is the trading name of The Sports Dispute Resolution Panel Limited