1.) Decision RFU Anti-Doping Panel: 13 April 2015 (12 pages)
2.) Decision RFU Anti-Doping Panel on sanction: 2 June 2015 (8 pages)
3.) Decision RFU Appeal Panel: 11 January 2016 (22 pages)

IN THE MATTER OF RUGBY FOOTBALL UNION DISCIPLINARY PROCEEDINGS CONCERNING REGULATION 20 OF THE RUGBY FOOTBALL UNION

AND

REGULATION 21 OF THE INTERNATIONAL RUGBY BOARD (now WORLD RUGBY)

B E T W E E N:

THE RUGBY FOOTBALL UNION

and

LUKE WILLMOTT

DECISION OF THE ANTI-DOPING PANEL

The Panel

Peter Fraser QC (Chairman)
Christine Bowyer-Jones
Matthew Lohn

Attendees at the hearing on 25 March 2015
For the RFU

James Segan — Counsel for the RFU
Stephen Watkins
Charlotte Mitchell-Dunn

For Luke Willmott

Rick Liddell — Counsel for Mr Willmott
Luke Willmott
Mike Morgan
Richard Martin
Dominic Willmott

Observing for UKAD
Tony Jackson

Observing with the agreement of the parties
Daniel Geey

Introduction

1. The Panel was empanelled to determine an allegation or allegations that Luke Willmott, a player at Derby Rugby Football Club, had committed an Anti-Doping Rule Violation or Violations. He was originally charged in a letter dated 23 July 2014 with an offence under World Rugby/IRB Regulation 21.2.2 of Attempted Use of Human Growth Hormone ("HGH"), a Prohibited Substance under section S2 of the WADA Prohibited List.

2. The circumstances leading to the hearing are more than a little protracted, and will therefore be dealt with in detail.

3. The Panel was appointed on 24 February 2015 and a hearing date was provided of 5 March 2015. In the event, the Player's Representatives were not available on that date and following e mails concerning this, the Chairman of the Panel issued directions and directed the hearing should take place on 24 March 2015. The day before that re-arranged hearing, one member of the Panel had to be replaced at short notice due to sudden unexpected non-availability caused by a medical emergency. This did not cause any disruption, and the hearing proceeded as planned.

4. As will become clear, however, the events in question relate to 2013, and the original charge was brought in July 2014. A second charge was then brought on 24 January 2015 based upon the same facts together with evidence from Mr Willmott himself.

Background Facts

5. On 27 June 2013, the International Crime Team (under Shadow Border Policing Command) seized a quantity of 180 vials of a substance labelled "Jintoprin" in a package addressed to Mr Luke Wilmott at an address in Carlton in Nottingham. This is a commercial name for a formulation of Human Growth Hormone. It should be noted that the surname of the addressee was spelled with one 'l'. Mr Willmott spells his surname with two letters 'l' – this is relied upon by Mr Willmott, as explained below.

6. The package was passed to the appropriate authorities and a letter was sent by UKAD to Mr Willmott at the address in Carlton. This address is not his address, but that of his girlfriend's parents. Following receipt of that letter, Mr Willmott was interviewed by UKAD on 3 July 2014, and on 18 July 2014 the RFU was notified by UKAD that there was a potential Anti-Doping Rule Violation ("ADRV") on the part of Mr Willmott, and that an independent review had concluded that he had a case to answer in respect of a charge of Use or Attempted Use of a Prohibited Substance under IRB Regulation 21.2.2. The independent review had the benefit, as did the Panel, of a transcript of the interview between Mr Willmott and UKAD on 3 July 2014.

7. Mr Willmott was notified of the alleged ADRV in a charge letter from the RFU dated 23 July 2014 ("the First Charge") which also informed him of his suspension. Mr Willmott was at all relevant times a registered player with Derby RFC. He was also the Club Captain and, when playing, was also Captain of the 1st XV. He was clearly under the jurisdiction of the RFU at all material times.

8. The First Charge was specified in the letter of 23 July 2014 as being one of Attempted Use of HGH.

9. Submissions were lodged on behalf of Mr Willmott dated 27 November 2014, denying the charge. Two witness statements were provided, one from Mr Willmott and the other from Mr Kieron Murphy. The submissions were drafted on his behalf by his legal representatives. The essence of that defence was set out in the Summary section of those submissions. Essentially he maintained the goods were ordered and paid for by someone else, and that:

   "he had nothing to do with the Seized Goods and….the RFU have no evidence to the contrary (not surprisingly, since no such evidence exists)."[1]

10. His explanation in his witness statement for the sending of the goods to the address in question was that he had provided that address to someone else, identified only as Mr

[1] Paragraph 1.3 of the Player's Submissions

X. In May 2013 Mr X had seen him at the gym they both used, and had asked him for an address to which Mr X could have a delivery addressed and sent. Mr X is not an athlete. Mr Willmott provided the address to Mr X for the purpose in question, and did so for two reasons. Firstly, he found Mr X intimidating. Secondly, he wanted to appear helpful. He also said that he wanted to impress Mr X. He said he did not give Mr X "permission to use [Mr Wilmott's] name or any payment card".

11. Later that month, on 17 May 2013, Mr Willmott said that he regretted providing the address to Mr X and confided in Mr Murphy, also a player at Derby RFC. This was corroborated by Mr Murphy in his witness statement.

12. Following these submissions, UKAD determined that Mr Willmott had a case to answer in respect of breach of Regulation 21.2.7, namely Trafficking or Attempted Trafficking in any Prohibited Substance or Prohibited Method. This was notified to Mr Willmott in a letter dated 15 January 2015 ("the Second Charge"), and the basis for the additional charge was stated as follows in that letter:

"…..Mr Willmott has, within his witness statement, admitted to conduct – specifically agreeing with the undisclosed Mr X that Mr X could have Human Growth Hormone sent to Mr Willmott's girlfriend's parents' house so that Mr Willmott could pass it on to Mr X – which involved:
(a) Trafficking, by transporting, delivering and/or distributing Human Growth Hormone (hGH); or
(b) Attempted Trafficking, by purposely engaging in conduct that constituted a substantial step in a course of conduct planned to culminate in the giving, transporting, delivering or distributing of hGH."

13. Mr Willmott denied this charge, and further written submissions were lodged on his behalf dated 4 February 2015. Those submissions were stated to be read in conjunction with the first written submissions to which we have referred in paragraph 9 above. The essence of his defence to the Second Charge is summarised in paragraph 1.3 of those submissions:

"…his conduct did not amount to Trafficking or Attempted Trafficking. Moreover, there is no evidence to support such an allegation."

14. In the RFU's written Skeleton Argument for the hearing, the RFU stated that it would not be pursuing "the distinct charges of actual Trafficking and Attempted Use" although it sought to reserve its position regarding Attempted Use depending upon how the oral evidence at the hearing might unfold.

15. Analysis of the substance in the vials, however, led to the discovery that they did not contain HGH. This was set out in a letter dated 27 March 2014 from the King's College London School of Biomedical Sciences to UKAD. It therefore appears that a purchase or order was placed for HGH (under a commercial name or otherwise) but the supplier of that product sent vials that did not contain that substance in purported satisfaction of that order. This has led to some legal arguments about impossibility, which are addressed below.

16. So far as the charges pursued by the RFU are concerned, in the Panel's view, it is important that any Player seeking to defend themselves from a charge (or charges) knows in advance exactly what charges are advanced. Such a reservation of position by the RFU for the hearing, to which we refer in paragraph 14, was in the Panel's view potentially unfair, and this approach should not be adopted. At the beginning of the hearing, therefore, the Panel invited the RFU to state its position unequivocally regarding the charge of Attempted Use and whether it was pursued. The RFU did so by its counsel, who stated that the RFU wished to proceed both with the First Charge and the Second Charge.

17. At the outset of the hearing Mr Willmott therefore faced two charges. However, at the conclusion of the evidence the RFU withdrew the First Charge and made submissions

solely directed to the Second Charge, namely that of Attempted Trafficking[2]. In our view, that withdrawal of the First Charge was the correct course of action and Mr Willmott is therefore not guilty of the ADRV under IRB Regulation 21.2.2 of Use or Attempted Use.

18. The sole charge which we have therefore considered against Mr Willmott is that of Attempted Trafficking

The Evidence

19. Mr Willmott was at the time of the alleged offence the Sales Manager of a company trading as NRG Fuel Sports Nutrition. By the time of the hearing he was no longer in that post (having ceased that employment in January 2015) and he now runs both a gym, and also a shop dealing in sports nutrition products. He was represented by Counsel before the Panel and gave evidence orally and was cross-examined by the RFU, and also answered questions from the Panel. Mr Murphy attended by telephone and also answered questions.

20. Mr Willmott maintained his account of Mr X asking him for an address for delivery, of what Mr Willmott (having asked the question) was told by Mr X was to be a consignment or order of HGH. It should be noted that neither Mr Willmott's girlfriend, nor her parents, knew of this arrangement, nor was their permission sought by Mr Willmott for providing their details to Mr X. Mr X was at no point identified to us, and a report into his mobile number (which was performed by an investigations agency) was inconclusive.

21. Mr Willmott sought to portray himself as vehemently anti-doping in sports generally. He also pointed out that he had been tested for drug violations in 2009 when he was a professional player at Nottingham RFC, and that he had passed that test. He explained that he "knew" Mr X, although his account of the length of time, and the depth, of that acquaintanceship was inconsistent. He had stated in his witness statement that they

[2] As set out in the Second Charge letter and recited by us in paragraph 12(b) of this Decision

had become acquainted "many years ago" but had lost touch after their teenage years[3]. Before the Panel, he stated he had known him "for a couple of years", then this became "a couple of years give or take" and he then said that Mr X was "well known at a local level" and that he had "known *of* him" rather than actually known him as a teenager, and that his witness statement was wrong in that respect.

22. Mr Willmott placed some weight on the fact that the package was addressed to Mr Wilmott, and that he spells his surname with two letters "l" rather than the one used by the addressor. He also placed weight, as did his counsel in closing submissions, on the fact that there had been no further contact with Mr X after the providing of the address – in other words, without actual delivery of the package to Mr X, or a finalised plan, he could not have committed the offence of Attempted Trafficking.

23. The Panel harboured some residual doubts generally about the mysterious Mr X. However, the RFU did not put its case on the basis that the existence of Mr X, or the account of Mr X requesting an address from Mr Willmott, was a fiction. Rather, the RFU put its case that even on Mr Willmott's own evidence, the offence of Attempted Trafficking was comfortably established.

24. Mr Murphy plays for Derby Veterans. He gave evidence by phone to the Panel to the effect that he was told by Mr Willmott that Mr X had "put him on the spot" and asked him to provide an address for Mr X to use to have "something" delivered. Mr Murphy was not told that Mr X had told Mr Willmott that this was for HGH. Mr Willmott told Mr Murphy that he, Mr Willmott, felt uncomfortable about this arrangement, that he regretted providing the address, and that he felt very foolish. Mr Murphy provided

[3] Paragraph 12 of Witness Statement of 26 November 2014

some advice – namely, that Mr Willmott should stay away from Mr X and if necessary change gyms in order to achieve this.

25. It should be noted that Mr Murphy was *not* told that the "something" was HGH or any other Prohibited Substance. He was therefore completely unaware that Mr Willmott was involved in providing an address to an acquaintance, Mr X, in order that the acquaintance could have delivered to him via that address a Prohibited Substance. It should also be noted that HGH is a Class C drug and is therefore covered by the relevant provisions of the criminal anti-drug legislation of England as well as being a Prohibited Substance under the WADA Code.

The arguments

26. Some of the written submissions on behalf of Mr Willmott were abandoned either at the beginning of, or during, the hearing. Those that remain can be summarised in the following way.

1. Essentially the onus is on the RFU to establish to the comfortable satisfaction of the Panel that an ADRV had occurred.

2. The RFU could not surmount the hurdle of showing that Trafficking would have occurred. The vials contained no Prohibited Substance and this was an insurmountable obstacle to the case against Mr Willmott succeeding.

3. The definition of attempt in this field required a "substantial step" to be taken and Mr Willmott had not taken such a step.

4. Even if Mr Willmott *had* taken a substantial step, he had not purposely taken such a step and he had not planned any course of conduct that would have culminated in the giving, transporting, delivering or distributing HGH.

Analysis

27. Due to the dates of the various events and the two Charge letters, the Panel expressly confirmed with both parties at the beginning of the hearing that the relevant regulations that govern the potential offence or offences were those that were in force during the 2013/2014 season. It was agreed that the value of the consignment was approximately £5,000.

28. There is in any event no practical difference in the wording of the relevant regulations. RFU Regulation 20.5.1 incorporates IRB Regulation 21 which itself adopts the WADA Code. 'Attempt' is defined in the IRB Regulations in the definitions section at A following the Preamble. It provides an exemption for an offence of Attempt if the person "renunciates the attempt prior to it being discovered….."

29. The case put by the RFU was to the effect that a single piece of conduct could amount to a substantial step. The course of conduct in this case was planned to culminate in Mr X taking delivery of the HGH. The Panel concluded that there is no requirement that the whole course of conduct that was planned be undertaken by the same person. If an individual were to take a substantial step, that would be enough.

30. It was not, strictly speaking, part of Mr Willmott's case that the defence of duress, in the sense that the criminal law uses that term[4], entitled him to be found not guilty of the charge. The concept of duress is that fear, produced by threats, of death or other serious consequences, overpowers the free will of the person. This leads to a situation whereby their wish *not* to perform the act in question is overpowered, such that they are constrained to perform it. Mr Willmott's own account of the situation concerning Mr X would not, in our view, be sufficient in any event to entitle him to rely upon the defence of duress and therefore his representatives are correct in not advancing that as a defence.

31. Much was made on behalf of Mr Willmott that the vials did not contain HGH. The case of *IRB v Troy*[5] was cited to the Panel in this respect and both parties made submissions. In that case, an Australian player had ordered substances from both the UK and the USA, and two packages were intercepted by the Australian Customs Service. They were said to contain testosterone and a substance called DHEA[6]. The

[4] Although the term itself has been described as "an extremely vague and elusive juristic concept" *Lynch v DPP for Northern Ireland* [1975] AC 653 per Lord Simon
[5] CAS 2008/A/1664
[6] DeHydroEpiAndrosterone

Australian anti-drugs agency ASADA charged Mr Troy with attempted use and possession. These charges were dismissed and both the IRB and WADA appealed to the Court of Arbitration for Sport, CAS. The appeal on the charge in relation to possession (based on an analysis of exclusivity of control, and also constructive possession) failed, but the appeal on the charge in relation to attempted use succeeded. The judgment itself states[7] that it is not essential, for the purposes of proving an ADRV of an Attempt to Use a Prohibited Substance, that the substance must be proved to be a Prohibited Substance. The criminal law generally[8] recognises that there may be an attempt to do something, such as use Prohibited Substances, even though the actual substances which are intended to be used turn out not to be Prohibited Substances at all.

32. Certainly so far as the criminal law in the instant jurisdiction is concerned, this debate was conclusively resolved some years ago in the case of *R v Shivpuri [1987] AC 1*. In that case the House of Lords heard an appeal from a conviction (via a failed appeal in the Court of Appeal) of one count of importing heroin. The appellant had initially fully confessed, but it was then discovered that what he had thought to be heroin was in fact harmless material. His appeal failed. It was held that it was immaterial that the substance turned out not to be heroin. What was required – or what was sufficient for the conviction under the statute in question – was that the person knew that the goods concerned *were* prohibited goods. This might appear a distinction without a difference when first considered, but is important. If the legal arguments mounted for Mr Willmott on this point were correct, a person arranging to buy (for example) a bag of what he thought was cocaine from an undercover police officer, would not be guilty of the attempted offence if the bag turned out to be harmless talcum powder. One has only to state the proposition to realise how such a construction of "attempt" would be folly.

33. In the Panel's judgment the clear authority in the common law provides a firm basis for a finding that Mr Willmott is guilty of attempted trafficking a substance even

[7] At paragraphs 84 and 85
[8] In different jurisdictions such as Australia, New Zealand, England, Scotland, and Canada

though the contents of the vials did not in fact contain the substance that Mr Willmott believed or knew they were to contain. In other words, the fact that the supplier took the money for HGH, and provided vials labelled as though they contained HGH, yet filled those vials with something else, does not absolve those involved in trafficking a substance that they anticipated to be HGH. This conclusively disposes of the legal defence mounted for Mr Willmott, relying upon that the fact that the vials contained something other than HGH. This is not a defence to the charge. On his own evidence, Mr Willmott knew that Mr X wished to have HGH delivered to him. That is sufficient for that element of the offence to be established to our comfortable satisfaction.

34. Further, there was undoubtedly a plan in which Mr Willmott was involved and in which, in the Panel's view, he took a substantial step. Without providing Mr X with the address in question, Mr X could not have ordered HGH for delivery to that address. Indeed, the whole purpose of Mr X requesting an address from Mr Willmott was so that the supply of the HGH *could* be sent to an address where someone would be present during the day to take delivery of it. The address was an accurate one. The package was dispatched to that address. That could not have occurred had Mr Willmott not provided the address.

35. Despite what Mr Willmott maintained in evidence before the Panel about the uncertainty surrounding what remained to be done (the doubt about who would call whom when, either before or after the delivery was made to his girlfriend's parents' house, or whether a further phone call or text message to or from Mr X was expected), the fact that one piece of the jigsaw remained to be slotted into place does not cast doubt in the Panel's view that the course of conduct was planned to culminate in the commission of an ADRV. Mr X does not have to be a rugby player for the eventual offence to be an ADRV. As a single example only, the International Federation of Body Builders has subscribed to the WADA Code since the 1980s. It is not necessary, in our view, for the potential ADRV, had the plan been taken through to the commission, to be any more crystallised than the use of the HGH. The drug is both a Prohibited Substance under the WADA Code and also a Class C drug. HGH could be used in any one of numerous sports by athletes seeking to commit ADRVs contrary to the WADA Code.

36. There was no renunciation by Mr Willmott of the plan at any time. Indeed, and as put by the RFU, renunciation could have been very easily accomplished had Mr Willmott wished to have no further part in the plan. His vague concerns expressed to Mr Murphy do not come close to a renunciation. Mr Willmott did not inform Mr Murphy of the full background facts. Instead, he provided the address to Mr X for the express purpose of delivery of HGH and thereafter he did nothing further to stop the plan from unfolding.

37. The package, had it arrived, and given that it was addressed to Mr Wilmott/Mr Willmott, could have been provided to Mr X either by Mr Willmott himself, or depending upon the arrangements made with Mr X, even (in ignorance of its contents) by the parents of Mr Willmott's girlfriend, or by Mr Willmott's girlfriend. This plainly in our view would amount to the giving or delivering or distributing the HGH.

Decision

38. Mr Willmott is therefore guilty of the offence of Attempted Trafficking.

39. This decision deals solely with liability. This was necessary as we reserved our decision at the hearing in order to give full consideration to all the evidence and all of the arguments raised.

40. With the agreement of the parties we will deal with sanction, and any other matters, in writing. Alternatively a further short hearing can be convened to hear further submissions.

Peter Fraser QC
Christine Bowyer-Jones
Matthew Lohn

13 April 2015

IN THE MATTER OF RUGBY FOOTBALL UNION DISCIPLINARY PROCEEDINGS CONCERNING REGULATION 20 OF THE RUGBY FOOTBALL UNION

AND

REGULATION 21 OF THE INTERNATIONAL RUGBY BOARD (now WORLD RUGBY)

B E T W E E N:

THE RUGBY FOOTBALL UNION

and

LUKE WILLMOTT

DECISION OF THE ANTI-DOPING PANEL ON SANCTION

Introduction

1. The Panel was empanelled to determine an allegation or allegations that Luke Willmott, a player at Derby Rugby Football Club, had committed an Anti-Doping Rule Violation or Violations. He was originally charged by the RFU in a letter dated 23 July 2014 with an offence under World Rugby/IRB Regulation 21.2.2 of Attempted Use of Human Growth Hormone ("HGH") a Prohibited Substance under section S2 of the WADA Prohibited List. A second charge was then brought on 15 January 2015 based upon the same facts together with evidence from Mr Willmott himself.

2. That second charge was made after it had been determined that Mr Willmott had a case to answer in respect of breach of Regulation 21.2.7, namely Trafficking or Attempted Trafficking in any Prohibited Substance or Prohibited Method. This was based upon the facts and contents of Mr Willmott's own account of how Human Growth Hormone or what purported to be Human Growth Hormone came to be found in a package addressed to him from overseas. The second charge was notified to Mr Willmott in a letter dated 15 January 2015 ("the Second Charge") and the basis for the additional charge was stated as follows in that letter:

"…..Mr Willmott has, within his witness statement, admitted to conduct – specifically agreeing with the undisclosed Mr X that Mr X could have Human Growth Hormone sent to Mr Willmott's girlfriend's parents' house so that Mr Willmott could pass it on to Mr X –which involved:

(a) Trafficking, by transporting, delivering and/or distributing Human Growth Hormone (HGH); or
(b) Attempted Trafficking, by purposely engaging in conduct that constituted a substantial step in a course of conduct planned to culminate in the giving, transporting, delivering or distributing of HGH"

3. Written submissions were lodged by the parties and the essence of the Player's defence to the Second Charge was summarised in paragraph 1.3 of the submissions lodged on behalf of the Player[1]:

"…his conduct did not amount to Trafficking or Attempted Trafficking. Moreover, there is no evidence to support such an allegation."

4. Following a hearing held on 25 March 2015, the Panel in its decision dated 13 April 2015 found the Player guilty of the charge of Attempted Trafficking. Full reference should be made to the decision of 13 April 15 for all the facts and the analysis of the charge against him. However, and in summary only, these are as follows.

5. The International Crime Team (under Shadow Border Policing Command) had seized a quantity of 180 vials of a substance labeled "Jintropin" in a package addressed to Mr Luke Wilmott being sent to an address in Carlton in Nottingham. Jintroprin is a commercial name for a formulation of Human Growth Hormone. The address on the package was that of Mr Willmott's girlfriend's parents. The International Crime Team passed this information to UKAD. Mr Willmott in interview (and in his later witness statement) explained that he had provided this address to an acquaintance (whom he has refused to identify throughout, and who was therefore referred to throughout as

[1] 4 February 2015

"Mr X" for the specific purpose of facilitating receipt of a delivery to Mr X of Human Growth Hormone which was to be sent to Mr X via Mr Willmott at his girlfriend's parents' address.

6. Having found the Player guilty of this offence, the Panel directed that the Player should notify the Panel and the RFU whether a further hearing was required to deal with sanction, or whether this could be dealt with by way of written submissions. On 15 May 2015 the Player's Representative provided the following notification on the Players Behalf:

"The Player cannot afford to attend a second in-person hearing. The Panel will therefore have to determine the sanction based on the written submissions of the parties."

In the Panel's view therefore, the Player has waived his right to a hearing and agreed to sanction being considered in writing.

7. Accordingly, the Panel has determined the appropriate sanction on the basis of the written submissions that had already (as at 15 May 2015) been provided by both the RFU and the Player for this purpose. At the time of the offence committed by the Player, the sanction for an Attempted Trafficking violation was a period of ineligibility of a minimum of four years up to a lifetime, depending upon the seriousness of the violation, as specified within IRB Regulation 21.22.2(b) which states:

Ineligibility for Other Anti-Doping Rule Violations

21.22.2(b) For violations of Regulation 21.2.7 (Trafficking or Attempted Trafficking) or Regulation 21.2.8 (Administration or Attempted Administration of a Prohibited Substance or Prohibited Method), minimum of four years and up to a lifetime unless the conditions provided for in Regulations 21.22.3, 21.22.4, 21.22.5, 21.22.6, 21.22.7 and/or 21.22.8 are met. Anti-Doping Rule Violations involving a Minor shall be considered particularly serious and, if committed by Player Support Personnel for violations other than Specified Substances referenced in Regulation 21.4.5, shall

result in a lifetime Ineligibility for Player Support Personnel. In addition, significant violations of Regulations 21.2.7 or 21.2.8 which may also violate non-sporting laws and regulations shall be reported to the competent administrative, professional or judicial authorities.

8. The position of the RFU[2] is that the offence committed by the Player merits a four year period of ineligibility.

9. The arguments on behalf of the Player[3] are (in summary only) that his offence is "at the bottom of the scale of seriousness"; that he felt under pressure to be helpful to Mr X and felt "put on the spot"; that he regretted providing the address; and that he had hoped that Mr X had forgotten about the address and/or had no intention of using it.

10. It is also argued on behalf of the Player that Regulation 21.22.7 applies and that his honest and comprehensive account should be deemed to be an admission and that this admission was the only reliable evidence of the violation. It is said that given that this Regulation applies, the ban should be reduced below four years by one half.

11. Further, the Player relies upon the reasoning in the case of *UK Anti-Doping v Danso and Offiah* to demonstrate that even though Mr Willmott disputed the anti-doping violation, his admission related to the fact (or facts) constituting the offence, and that this was sufficient for Regulation 21.22.7 to apply. It is also said that the Second Charge, of which he was convicted, was based "entirely on his admission", and this is to be contrasted to the First Charge of Use or Attempted Use, which was abandoned by the RFU. It is also said on his behalf that he has co-operated "fully and promptly" with the investigations.

12. The Panel has carefully considered all the authorities relied upon by the parties, their written submissions, all the material that led to the substantive decision on the Second Charge, and the relevant circumstances concerning both the origin of the Second Charge and the analysis within the substantive decision. This decision deals firstly

[2] Written submissions 1 May 2015
[3] Written submissions 8 May 2015

with the applicability of Regulation 21.22.7, and then whether there are any aggravating or mitigating factors in relation to the period of ineligibility.

Regulation 21.22.7

13. The reasoning on behalf of the Player in respect of this Regulation is flawed and in the Panel's view the Regulation does not apply. There are three separate elements to the Regulation. They are:

1. A voluntary admission of a violation;
2. This is to be made before receiving first notice of the admitted violation;
3. The admission should be the only reliable evidence of the violation at the time of the admission.

14. The case of *Offiah* relates to only one of those elements. Essentially, the issue in that case was whether at one and the same time a person could "admit" a violation (in terms of providing the facts necessary) but still not strictly admit the offence itself. That case decided that a person could indeed do that. Whether that case is correct or not-and the Panel expresses no view, it does not does not relate to *all* of the three elements identified in the preceding paragraph of this decision.

15. In the instant case, the interception by the authorities of 180 vials of "Jintroprin" in a package addressed to the Player, and the notification of that by UKAD in its first letter to the Player at his girlfriend's parents' address, pre-dated his interview by UKAD when his admissions were made. Even if it could be argued that his admissions in interview pre-dated his "receiving first notice of the admitted violation" it cannot in the Panel's view seriously be contended that his admission was the only reliable evidence of the violation. Both the 180 vials themselves, and the envelope addressed to him (even though Willmott was spelled "Wilmot") constituted reliable evidence of the offence for which he was found guilty, namely Attempted Trafficking.

16. For these purposes, the Panel does not regard it as relevant that the vials proved not to contain that which they were supposed to contain, namely Human Growth Hormone, and the legal basis for this is explained in the substantive decision.

17. Accordingly, the Panel does not consider that Regulation 21.22.7 is available to the Player. Although any period of reduction does not arise as a result of the decision on that point, it cannot be said in the Panel's view that the Player has co-operated "fully" in any event. Although his evidence about Mr X was somewhat variable in terms of how long he had known him, and on what basis, and how well, his refusal to provide even the name of Mr X cannot on any view amount to "full" co-operation.

Mitigating or aggravating factors

18. The starting point for this offence is four years.

19. The Panel does not consider that there are any mitigating factors. Although these would not strictly lead to any reduction in what is essentially a minimum period of ineligibility, they could potentially counter or reduce the effect of any aggravating factors. The Panel has approached this as considering where, on the scale of potential seriousness, this particular offence of Attempted Trafficking falls. The Panel takes into account in his favour that this is the Player's first anti-doping violation.

20. The Panel has concluded that there are the following aggravating factors that serve to increase the seriousness of the offence. These are:

(i) The nature of the substance that was intended by Mr X to be delivered to the address provided by the Player. It should be noted that Human Growth Hormone is a Class C drug and is therefore covered by the relevant provisions of the criminal anti-drug legislation of England as well as being a Prohibited Substance under the WADA Code.

(ii) The quantity involved. 180 vials is a large amount of Human Growth Hormone (or a substance that was supposed to be Human Growth Hormone). In the Panel's view, the quantity of the substance found in the package is a relevant aggravating factor.

(iii) The involvement by the Player of innocent parties. The Player provided the address of his girlfriend's parents to Mr X without seeking their permission. He did this knowing that Mr X intended to have Human Growth Hormone, a Class C drug, delivered to this address.

(iv) The Player's actual or imputed knowledge of the seriousness and importance of the anti-doping provisions of the Regulations. Mr Willmott was at the time of the offence the Sales Manager of a company trading as NRG Fuel Sports Nutrition. By

the time of the hearing he was no longer in that post (having ceased that employment in January 2015) although he now runs both a gym, and also a shop dealing in sports nutrition products. He was experienced in sports nutrition products at the time of the offence. As he explained in his oral evidence, he was at all times aware of the importance of drug free sport. In these circumstances, he should have known more than most people the potential seriousness of the provision of an address for the delivery of a substance clearly stated to be "Human Growth Hormone".

(v) The Player's responsible position within Derby RFC. He was a registered player with Derby RFC, but was in addition to that both the Club Captain and, when playing, Captain of the 1st XV. He therefore occupied a position of responsibility within his club. He had also previously been a professional rugby player.

21. In the Panel's view the above factors take this offence out of the realm of the sanction at the very lowest end of the scale, namely four years. In those circumstances, the Panel are of the view that the appropriate period of ineligibility is to be increased in this case above that basic starting point, which should be applied to cases where there are either no, or very few, aggravating factors.

Decision

22. Mr Willmott is guilty of the offence of Attempted Trafficking. A period of ineligibility in excess of the "base sanction" (to use the phrase adopted in submissions) is appropriate.

23. Taking into account all the relevant factors, in the Panel's view the appropriate period of ineligibility in this case is five years.

Starting date

24. The Player argues that the commencement date for any period of ineligibility should be 15 May 2013 (approximately the date he provided the address to Mr X) rather than any other later date. He was suspended by letter dated 23 July 2014, which would mean that (if this argument by the Player were correct) throughout seven months of 2013 and seven months of 2014 he would have been serving an *ex post facto* period of ineligibility, even though at the time he was free to play. Such a submission has no

basis and in the Panel's view is unarguable. A variety of other arguments are used for other dates, all of which in the Panel's view are also flawed.

25. The Player was suspended provisionally by a letter dated 23 July 2014. From that date he became ineligible to participate in the sport of Rugby Union, albeit on a provisional suspension.

26. Although that provisional suspension was for the First Charge, that charge arose out of broadly the same facts as the Second Charge, and although that Second Charge was added in early 2015 the Player is still entitled to credit for the period of the provisional suspension.

27. The correct starting date is therefore 23 July 2014 and that is the date from which the period of ineligibility of five years is to be calculated.

28. Accordingly, it is the unanimous decision of the Panel that the Player is to be subject to a period of ineligibility of five years commencing on 23 July 2014, and this period will therefore expire at midnight on 22 July 2019.

Peter Fraser QC
Christine Bowyer-Jones
Matthew Lohn

2 June 2015

BEFORE THE APPEAL PANEL OF THE RUGBY FOOTBALL UNION

IN THE MATTER BETWEEN:

THE RUGBY FOOTBALL UNION, Governing Body

- and -

MR LUKE WILLMOTT, Player

FINAL REASONED AWARD AND DECISION OF PANEL

Pursuant to the Rugby Football Union's ("RFU") rules, an evidentiary hearing was held in London on 28th September, 2015, before the duly appointed Appeals Panel, consisting of Jeffrey Benz, Esq. (Chair), Dr. Julian Morris, Esq., and Dr. Barry O'Driscoll (collectively, "the Panel" or "this Panel").

The Panel, having been duly sworn, and having duly heard the proofs, arguments, witness testimony, and allegations of the parties, does hereby render its full reasoned decision as follows:

I. Introduction

1. The Panel was empanelled to determine an allegation or allegations that Luke Willmott ("Mr. Willmott"), a player at Derby Rugby Football Club, had committed an Anti-Doping Rule Violation or Violations. He was originally charged in a letter dated 23 July 2014 with an offence under World Rugby/IRB Regulation 21.2.2 of Attempted Use of Human Growth Hormone ("HGH"), a Prohibited Substance under section S2 of the World Anti-Doping Agency ("WADA") Prohibited List.

II. Factual and Procedural Background

2.1. The facts that were presented, though capable of different characterizations, are largely undisputed. How the law applies to those facts is the subject of considerable difference of opinion in this case and will be discussed in detail later in this award. Below is a summary of the relevant facts and allegations based on the parties' written and oral submissions, pleadings and evidence adduced during the pendency of this arbitration proceeding.

Additional facts and allegations found in the parties' submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the parties in the present proceedings, the Award only refers to the submissions and evidence necessary to explain the Panel's reasoning. This section is intended only to give a brief overview of the basic facts underlying this case and is without prejudice to the facts stated in the Analysis section below.

2.2. As will be seen below, the events in question relate to 2013, and the original charge was brought in July 2014. A second charge was then brought on 24 January 2015 based upon the same facts together with evidence from Mr. Willmott himself.

2.3. On 27 June 2013, the UK's International Crime Team (under Shadow Border Policing Command) seized a quantity of 180 vials of a substance labelled "Jintoprin" in a package addressed to "Mr. Luke Wilmott" at an address in Carlton in Nottingham. Jintoprin is a commercial name for a formulation of Human Growth Hormone. The surname of the addressee was spelled with one 'L'. Mr. Willmott spells his surname with two letters 'l' – this is relied upon by Mr. Willmott, as explained below.

2.4. The package was passed to the appropriate authorities and a letter was sent by UK Anti-Doping ("UKAD") to Mr. Willmott at the address in Carlton. This address is not his address, but that of his girlfriend's parents. Following receipt of that letter, Mr. Willmott was interviewed by UKAD on 3 July 2014, and on 18 July 2014 the RFU was notified by UKAD that there was a potential Anti-Doping Rule Violation ("ADRV") on the part of Mr. Willmott, and that an independent reviewer had concluded that he had a case to answer in respect of a charge of Use or Attempted Use of a Prohibited Substance under IRB Regulation 21.2.2. The independent reviewer had the benefit, as did the Panel, of a transcript of the interview between Mr. Willmott and UKAD on 3 July 2014.

2.5. Mr. Willmott was notified of the alleged ADRV in a charge letter from the RFU dated 23 July 2014 ("the First Charge") which also informed him of his suspension. Mr. Willmott was at all relevant times a registered player with Derby RFC. He was also the Club Captain and, when playing, was also Captain of the 1st XV. He was clearly under the jurisdiction of the RFU at all material times.

2.6. The First Charge was specified in the letter of 23 July 2014 as being one of Attempted Use of HGH.

2.7. Submissions were lodged on behalf of Mr. Willmott dated 27 November 2014, denying the charge. Two witness statements were provided, one from Mr Willmott and the other from Mr. Kieron Murphy. The essence of that defence was set out in the Summary section of those submissions. Essentially he maintained the goods were ordered and paid for by someone else, and that: "he had nothing to do with the Seized Goods and … the RFU have no evidence to the contrary (not surprisingly, since no such evidence exists)."

2.8. His explanation in his witness statement for the sending of the goods to the address in

question was that he had provided that address to someone else, identified only as "Mr. X". In May 2013 Mr. X had seen him at the gym they both used, and had asked him for an address to which Mr. X could have a delivery addressed and sent. Mr. X is not an athlete. Mr. Willmott provided the address to Mr. X for the purpose in question, and did so for two reasons. Firstly, he found Mr. X intimidating. Secondly, he wanted to appear helpful. He also said that he wanted to impress Mr. X. He said he did not give Mr. X "permission to use [Mr. Wilmott's] name or any payment card".

2.9. Later that month, on 17 May 2013, Mr. Willmott said that he regretted providing the address to Mr. X and confided in Mr Murphy, also a player at Derby RFC. This was corroborated by Mr. Murphy in his witness statement.

2.10. Following these submissions, UKAD determined that Mr Willmott had a case to answer in respect of breach of Regulation 21.2.7, namely Trafficking or Attempted Trafficking in any Prohibited Substance or Prohibited Method. This was notified to Mr. Willmott in a letter dated 15 January 2015 ("the Second Charge"), and the basis for the additional charge was stated as follows in that letter:

> *".....Mr Willmott has, within his witness statement, admitted to conduct – specifically agreeing with the undisclosed Mr X that Mr X could have Human Growth Hormone sent to Mr Willmott's girlfriend's parents' house so that Mr Willmott could pass it on to Mr X – which involved:*
>
> *(a) Trafficking, by transporting, delivering and/or distributing Human Growth Hormone (hGH); or*
>
> *(b) Attempted Trafficking, by purposely engaging in conduct that constituted a substantial step in a course of conduct planned to culminate in the giving, transporting, delivering or distributing of hGH."*

2.11. Mr. Willmott denied this charge, and further written submissions were lodged on his behalf dated 4 February 2015. The essence of his defence to the Second Charge is summarised in paragraph 1.3 of those submissions:

> *"...his conduct did not amount to Trafficking or Attempted Trafficking. Moreover, there is no evidence to support such an allegation."*

2.12. In the RFU's written Skeleton Argument for the hearing, the RFU stated that it would not be pursuing "the distinct charges of actual Trafficking and Attempted Use" although it sought to reserve its position regarding Attempted Use depending upon how the oral evidence at the hearing might unfold.

2.13. Analysis of the substance in the vials, however, led to the discovery that they did not contain HGH. This was set out in a letter dated 27 March 2014 from the King's College London School of Biomedical Sciences to UKAD.

2.14. It therefore appears that a purchase or order was placed for HGH (under a commercial name or otherwise) but the supplier of that product sent vials that did not contain that substance in purported satisfaction of that order.

2.15. At the outset of the hearing below Mr. Willmott faced two charges. However, at the conclusion of the evidence in that proceeding the RFU withdrew the First Charge and made submissions solely directed to the Second Charge, namely that of Attempted Trafficking, and this appeal has proceeded on that basis.

2.16. The sole charge which we have therefore considered against Mr. Willmott is that of Attempted Trafficking.

2.17. On 13 April 2015, the RFU Anti-Doping Panel issued its decision on liability, determining that Mr. Willmott committed the anti-doping rule violation of Attempted Trafficking. On 2 June 2015, the RFU Anti-Doping Panel issued its decision on sanction, and determined that Mr. Willmott should serve a five years period of ineligibility commencing on 23 June 2014. This appeal followed in timely manner thereafter.

2.18. The Chairman was appointed on the 22nd June 2015 and issued directions to the parties on the 3rd July 2015 and the Panel was appointed on 18th August 2015.

2.19. The Panel was requested by the parties to rule on whether the *de novo* standard of review applied to this proceeding on appeal, and the Panel ruled on 21st September 2015 that the *de novo* standard of review was the appropriate standard of review in this case, with no deference to be given to the proceedings below.

2.20. The hearing was held on 28th September 2015 in the chambers of 4 New Square commencing at 1pm and ending at approximately 5.30pm. At the conclusion, both parties were requested to and did confirm that they felt they had been given and full and fair opportunity to present their cases. The evidence was closed at the close of the hearing and the Panel deliberated thereafter in person and by telephone.

2.21. On 6th October 2015, the Panel issued its operative award, determining as follows:

> "*1.1 The appeal of Luke Willmott is partially granted and partially denied.*
>
> *1.1.1 The Panel has determined that Mr. Willmott has committed an anti-doping rules violation pursuant to IRB Regulation 21.2.7;*
>
> *1.1.2 The Panel has determined to impose a two-year period of ineligibility on Mr. Willmott pursuant to IRB Regulation 21.22.7;*
>
> *1.1.3 The start date for Mr. Willmott's period of ineligibility shall commence at 12:01AM on 1 April 2014, and expires at midnight on 31 March 2016;*
>
> *1.1.4 Mr. Willmott's period of ineligibility shall be credited for the time he has served his provisional suspension since 23 July 2014 to the present in accordance with IRB 21.22.12(c); and*

1.1.5 Mr. Willmott's status during the period of ineligibility is as provided by IRB Regulation 21.22.13."

2.22. This reasoned decision followed on the date indicated below.

III. Analysis

A. Standard of Review

3.1. Mr. Willmott argued that the scope of review of this Panel should be unbounded and that the standard of review should be *de novo,* with no deference being given by this Panel to the findings, decisions, and proceedings below aside from considering evidence that may have been introduced in those proceedings.

3.2. The RFU argued in pertinent part as follows:

> *"-As is there set out, RFU Regulation 19.12.5 provides that: "A de novo hearing (hearing a case afresh) against the decision of a Disciplinary Panel shall only be permitted by an Appeal Panel if it is demonstrated to the requisite standard by the appellant that the circumstances are exceptional and there are compelling reasons why the Appeal Panel should hear the case de novo."*
> *-There is nothing in IRB ADR 21.13.1.1 which requires any modification to this test, indeed it provides: "The scope of* ***review*** *on appeal includes all issues relevant to the matter and is expressly not limited to the issues or scope of review before the initial decision maker." This wording makes expressly clear (a) that an appeal should proceed by way of a "review" of the earlier Panel's decision rather than a re-hearing; but also (b) that if there are issues which a party wishes to raise which are relevant and were not raised before the earlier Panel then there is no prohibition on those issues being raised. On Mr Willmott's case, i.e. that this provision of itself creates a right to a de novo hearing, there would be nothing to "review".*
> *-Furthermore, Mr Willmott's argument would render disciplinary proceedings in relation to an anti-doping charge no more than a dress rehearsal for a full de novo hearing in front of an Appeal Panel. If that had been the intention of the authors of IRB ADR 21.13.1.1 then they would have said so in clear terms: they did not do so."*

3.3. The Panel finds that Mr. Willmott had the better of these arguments and determined that the standard of review would be *de novo* and the scope of review would not be bounded by deference to the decision or findings of the panel below.

3.4. Regulation 21.13.1.1 of the 2015 IRB ADR (which is based on Article 13.1.1 of the 2015 version of the WADA Code) provides as follows:

> ***"Scope of Review Not Limited***

The scope of review on appeal includes all issues relevant to the matter and is expressly not limited to the issues or scope of review before the initial decision maker."

3.5. The RFU submitted that Regulation 21.13.1.1 does not stand for the proposition that appeal hearings should be heard *de novo* on the basis that the provision would have expressly used the words "*de novo*" if that had been the intention. In response to that assertion, Mr Willmott argued that Article R57 of the CAS Code of Sports-related Arbitration ("**CAS Code**") which provides as follows:

"R57 Scope of Panel's Review – Hearing
The Panel has full power to review the facts and the law. [….]"

That first line of Article R57 has always been understood to mean that CAS appeal hearings are to be heard *de novo*, despite the fact that R57 does not contain any express reference to the term "*de novo*". See for instance paragraph 6 of CAS 2008/A/1545 *Andrea Anderson et al. v. IOC*:

"6. Under article R57 of the CAS Code, the Panel has the full power to review the facts and the law and, thus, to hear the case de novo."

Accord, *e.g.*, Paragraphs 130 to 133 of *CAS 2014/A/3487 Veronica Campbell-Brown v. JAAA & IAAF,* Paragraph 64 of CAS 2013/A/3274 *Mr Mads Glasner v. FINA, and* Paragraph 9.1 of CAS 2010/A/2107 *Oliveira v. USADA.*

3.6. Regulation 21.13.1.1 of the IRB ADR is arguably even more emphatic than R57 since it provides that the issues to be considered by an Appeal Panel are "***expressly*** *not limited to the issues or scope of review before the initial decision maker*" and "*includes all issues relevant to the matter*".

3.7. In light of all the above, it is difficult to understand how Regulation 21.13.1.1 could be understood to stand for anything other than the proposition that appeal hearings in doping cases should be heard *de novo*.

3.8. The Panel also asked the parties to comment on what degree of deference – if any – it should give to the decision of the first instance panel. The answer also lies within Regulation 21.13.1.1 of the IRB ADR.

3.9. On its face, Regulation 21.13.1.1 gives the Appeal Panel the power to come to its own, unrestricted decision.

3.10. RFU Regulation 20.5.3 mandates that – to the extent there are any inconsistencies between the IRB ADR and the RFU Regulations - the IRB ADR prevails:

"20.5.3 In the event that the IRB adopts new Anti -Doping Regulations which conflict with these additional regulations, the new IRB Anti-Doping Regulations will prevail."

Regulation 21.13.1.1 of the 2015 IRB ADR must therefore prevail over any RFU Regulation (including RFU Regulation 19.12.5) which purports to limit Mr. Willmott's right to a *de novo* appeal.

3.11. Accordingly, the Panel finds that it owes no deference to the decision of the panel below.

B. Liability

3.12. The offence of "Trafficking" is defined in IRB Regulation 21, in relevant part, as follows:

> *"Selling, giving, transporting, sending, delivering or distributing a Prohibited Substance ... (either physically or by any electronic or other means) by a Player, Player Support Personnel or any other Person subject to the jurisdiction of an Anti-Doping Organization to any third party..."*

The definition of an "Attempt" is set out in IRB Regulation 21 as follows:

> *"Purposely engaging in conduct that constitutes a substantial step in a course of conduct planned to culminate in the commission of an anti-doping rule violation. Provided, however, there shall be no anti-doping rule violation based solely on an Attempt to commit a violation if the Person renounces the Attempt prior to it being discovered by a third party not involved in the Attempt."*

3.13. The admitted facts of the present case fall squarely within these definitions. On Mr. Willmott's own account:

(i) he was asked by Mr. X to provide an address for "…a property in which someone would generally be present during daytimes, where that someone would be prepared to sign for a delivery" of Human Growth Hormone (Willmott §14);

(ii) he agreed to provide an address for that delivery, and did so, giving Mr. X the address of his girlfriend's parents' house for that purpose, which Mr. X wrote down in Mr. Willmott's presence (Willmott §15); and

(iii) he then did nothing to retract this permission (Willmott §16).

3.14. Mr. Willmott's own assumption was that Mr. X would "…have the parcel addressed to/for the attention of Mr X himself" (Willmott §17). There is no suggestion that Mr. X had independent access to Mr. Willmott's girlfriend's parents' house; Mr. Willmott sought to present Mr. X as essentially no more than a casual acquaintance (Willmott §§12-13). The planned course of conduct can only therefore have included Mr. Willmott subsequently arranging, to give, transport, send, deliver or distribute the Prohibited Substance to Mr. X, apparently for Mr. X's own use (Willmott §§14, 16) despite the large quantities involved.

3.15. In short, Mr. Willmott by his own admission purposefully engaged in conduct constituting a substantial step in a course of conduct planned to culminate in the giving, transporting, sending, delivering or distribution of a Prohibited Substance by Mr. Willmott to Mr. X.

3.16. Mr. Willmott disputed this analysis, and argued to the Panel that it "must" dismiss the charge (Second Written Submissions §4.35).

3.17. First, Mr. Willmott makes numerous and repeated references to the burden and standard of proof, and the alleged lack of evidence sufficient to discharge that burden (Second Written Submissions §§1.3, 3.4, 4.1, 4.7, 4.28- 4.29, 4.36). But the Attempted Trafficking charge is based upon facts asserted in Mr. Willmott's own witness statement which is supported by a statement of truth (Willmott §50). Insofar as Mr. Willmott intends to submit that the standard of "comfortable satisfaction" applies to questions of law as well as fact, that submission is clearly misguided: the law must be applied correctly regardless of the burden or standard proof. On questions of law, "…no burden lies on either side": Scott v Martin [1987] 1 WLR 841 at 846 per Nourse LJ.

3.18. Second, Mr. Willmott argues that he carried out only one act, and therefore there was no "course of conduct" (Second Written Submissions §§4.10-4.13). There are two problems with this submission:

(i) It is based on a simple misreading of the requirements of an "Attempt", i.e. "…conduct that constitutes a substantial step in a course of conduct planned to culminate in the commission of an anti-doping rule violation". It is quite clear from these words that a single "substantial step" suffices, so long as that step is part of a "course of conduct planned to culminate in the commission of an anti-doping rule violation". There is no requirement that the "course of conduct planned" should all be undertaken by one person. The planned course of conduct in the present case must, on any view, also have included (a) Mr. X ordering the Human Growth Hormone; and (b) Mr. Willmott arranging for Mr. X to take possession of the Human Growth Hormone if and when it arrived.

(ii) Even if that were wrong, and two pieces of actual (rather than planned) conduct were required on the part of the same person, Mr. Willmott engaged in (1) a positive act (giving Mr. X. the address for the Human Growth Hormone to be delivered to), followed by (2) a continuing omission (failing to withdraw his permission for the Human Growth Hormone to be delivered there, despite repeatedly turning his mind to this issue). He accordingly engaged, in a "course of conduct" even if that were a requirement, which it is not. The provisions of the Protection from Harassment Act 1997 that were offered do not offer any useful illustration given the very different statutory context.

3.19. Third, Mr. Willmott argues that there was no "plan" to give, transport, send, deliver or distribute the Human Growth Hormone to Mr. X, because the conversation he had with Mr. X was "casual" and thoughtless and therefore there was no "detailed proposal" (Second Written Submissions §§4.14-4.19). Mr. Willmott admits that he assumed that if and when Mr. X placed the order, it would be sent to his girlfriend's parents' house

addressed to Mr. X (Willmott §17). Mr. Willmott knew that Mr. X did not live at his girlfriend's parents' house. The plan can only therefore have been for Mr. Willmott to arrange for Mr. X to take possession of the Human Growth Hormone if and when it arrived. Even if this did not occur to Mr. Willmott at the time of the conversation – which seems highly unlikely in itself – it must have occurred to him shortly thereafter, and yet he did nothing to revoke the permission he granted to Mr. X. It is clear that Mr. Willmott had the means of contacting Mr. X if he wished to (Willmott §29); and in any event Mr. X had Mr. Willmott's telephone number (Willmott §25). The fact that Mr X ordered £5,000 of Human Growth Hormone to be delivered to Mr. Willmott's girlfriend's parents' house suggests very strongly that Mr. X was confident of being able to contact Mr. Willmott so as to make arrangements for taking possession thereof.

3.20. Fourth, Mr. Willmott argues that there was no "substantial step" because the vials of Jintropin seized by the Home Office turned out not to be Human Growth Hormone (Second Written Submissions §§4.20-4.27). But the legal premise for that argument – i.e. "…for there to be a "substantial step" in the context of Attempted Trafficking, the substance which is the subject of the Attempted Trafficking must in fact be a Prohibited Substance" (Second Written Submissions §4.26) – is wrong:

(i) The Court of Arbitration for Sport ("CAS") has held that the definition of "Attempt" in the WADC can be satisfied even if the substance which is the subject of the attempt does not ultimately transpire to have been a Prohibited Substance: IRB v Luke Troy (CAS 2008/A/1664) at §§84-87. This position is in accord with the position in the criminal law of many countries including England (R v Shivpuri [1987] AC 1), as the CAS panel in the Troy case pointed out. Mr. Willmott's argument would thus require the words "substantial step" to bear a fundamentally different meaning in the context of Attempted Trafficking than they do in the context of Attempted Use. There is no basis for that argument.

(ii) Mr. Willmott's argument derives no support whatsoever from the case of UKAD v Tinklin (SR/0000180201), to which he refers in written submissions. In the Tinklin case, possession of an actual Prohibited Substance was found to constitute a "substantial step". There is no suggestion in the Tinklin case, however, that a "substantial step" could consist only of such possession.

3.21. Fifth, Mr. Willmott argues that "…the Respondent renounced the Attempt" (Second Written Submissions §§4.28-4.33). With respect, that is exactly what he did not do. There is no evidence that Mr. Willmott took any steps to contact Mr. X and withdraw the permission at all. It is clear that Mr. Willmott had the means of contacting Mr. X if he wished to (Willmott §29). The notion that having "…avoided speaking with, seeing or meeting Mr. X in the hope that Mr. X would not be tempted to use the Address after all" could amount to a renunciation (Second Written Submissions §4.32) is clearly wrong.

3.22. Sixth, Mr. Willmott argues that if he was not guilty of Attempted Use then "…it would be perverse for the Panel to conclude instead, that the same evidence is sufficient to make

out the far more serious Trafficking and Attempted Trafficking charges" (Second Written Submissions §4.36). No basis is stated for this assertion. The Panel is of the view that the question whether Mr. Willmott is guilty of Attempted Trafficking cannot turn on whether he is also guilty of Attempted Use – the two offences have different requirements.

3.23. Accordingly, the Panel concludes that the facts admitted to by Mr. Willmott amount to Attempted Trafficking.

C. Sanction

3.24. The Panel notes that in the proceeding below the RFU sought a 4 year period of ineligibility for Mr. Willmott and Mr. Willmott sought a period of ineligibility substantially less. Despite the parties framing the relevant range in this manner, the RFU Anti-Doping Panel below determined to go beyond the maximum requested sanction and issue a sanction of 5 years ineligibility. This Panel finds this untenable as a legal matter; it is black letter law that a tribunal can only issue the relief requested by the parties and not some independently arrived at relief. To do otherwise, creates a serious risk of challenge to the underlying decision on the basis of a party not having a fair opportunity to have its position and evidence heard, as well as other possible grounds. The maximum penalty that could have been issued in the proceeding below was 4 years, which was the maximum requested.

3.25. In this proceeding, the RFU sought no more than a 4 years period of ineligibility. Accordingly, this Panel starts from the premise that it can issue no more than a 4 years period of ineligibility for this offense.

3.26. IRB ADR 21.22.2 provides that the Panel has the power to impose a ban of less than four years for Attempted Trafficking in the event that the conditions set out in IRB ADR 21.22.7 are met. IRB ADR 21.22.7 provides that:

Admission of an Anti-Doping Rule Violation in the Absence of Other Evidence

21.22.7 Where a Player or other Person voluntarily admits the commission of an anti-doping rule violation before having received notice of a Sample collection which could establish an anti-doping rule violation (or, in the case of an anti-doping rule violation other than under Regulation 21.2.1, before receiving first notice of the admitted violation pursuant to Regulation 21.20 ***and that admission is the only reliable evidence of the violation at the time of admission****, then the otherwise-applicable period of Ineligibility may be reduced, but not below one-half of the period of Ineligibility otherwise applicable.*
(Emphasis added)

The key element of that paragraph is that an athlete must provide the evidence required to establish the commission of an anti-doping rule violation.

3.27. Mr Willmott submitted that his ban should be reduced by one half (i.e. to two years), because his honest and comprehensive account of events, which is the basis upon which the Decision was reached, must be deemed to be an "admission" under the sanctioning provisions of the IRB ADR.

3.28. Mr Willmott submits that:

(a) IRB ADR 21.22.7 applies upon admission of the facts that constitute the violation; and

(b) An admission does not need to be the "only" piece of evidence for the purposes of IRB ADR 21.22.7.

3.29. In the RFU Skeleton, the RFU did not contend that IRB ADR 21.22.7 was inapplicable in the circumstances of Mr Willmott's case. Rather, the RFU submitted that it was "*unclear*" that the requirement of a voluntary admission was met:

> *"There is force in Mr Willmott's point that, if his account is accurate, then he has offered frank co-operation from the outset…However, it is unclear that the requirement in IRB Regulation 21.22.7 – i.e. that the player "…voluntarily admits the commission of an anti-doping rule violation…before receiving first notice of the admitted violation…and that admission is the only reliable evidence of the violation at the time of admission" – is met…It is true that Mr Willmott has admitted facts which, on the RFU's case, amount to an anti-doping violation, but he has consistently and indeed vehemently denied that those facts amount to a "violation"."*
> (Emphasis added)

3.30. That notwithstanding, the RFU changed its position in its Sanction Submissions as it positively submitted that IRB ADR 21.22.7 did not apply in the present case and that it could only apply in circumstances in which an athlete concedes that the conduct under scrutiny constitutes an anti-doping rule violation:

> *6. Although Mr Willmott provided an early account of his actions, which have been found to amount to an anti-doping violation by the panel, he has consistently and indeed vehemently denied throughout proceedings and at the hearing that his actions constitute a "violation".*
>
> *7. The rationale behind regulation 21.22.7 is to act as an incentive to Players to come forward in good faith and to admit to the commission of anti-doping rule violations for the benefit of clean sport.*

3.31. In reliance on its new position, the RFU cited the commentary to Article 10.5.4 of the World Anti-Doping Code (the "**WADC**") (from which IRB ADR 21.22.7 is derived):

"Comment to Article 10.5.4: This Article is intended to apply when an Athlete or other Person comes forward and admits to an anti-doping rule violation in circumstances where no Anti- Doping Organisation is aware that an anti-doping rule violation might have been committed. It is not intended to apply to circumstances where the admission occurs after the Athlete or other Person believes he or she is about to be caught."

3.32. The RFU interprets the provision and the commentary as follows:

8. Mr Willmott's account was not an "admission" in terms of liability for an Anti-Doping Rule Violation but a reflection of the facts that formed the basis for his defence. Mr Willmott maintained the position that his conduct did not amount to an anti-doping rule violation and required the RFU to positively prove its case before a hearing panel. Therefore he cannot be said to have voluntarily admitted to the commission of an anti-doping rule violation for the purposes of regulation 21.22.7

3.33. The point taken by the RFU was addressed and dismissed by the National Anti-Doping Panel (the "**NADP**") in 2012 in the case of *UK Anti-Doping v Danso and Offiah*. In that case, the athlete in question had been interviewed by UK Anti-Doping ("**UKAD**"). During the interview, the athlete admitted to conduct which amounted to an anti-doping violation. The athlete was subsequently charged with a tampering offence on the basis of his admission. The NADP was thus required to consider the following question:

"4.33. […] Thus, here, the question is whether Mr Offiah voluntarily admitted the commission of his own offence of tampering when interviewed on 12 February 2012, i.e. before being charged with that offence on 21 March 2012; and whether at the time of his interview, his admission was the only reliable evidence of his own offence of tampering."

3.34. The NADP concluded as follows:

"4.3 We are clearly of the view that both those requirements are met by what Mr Offiah said during his interview on 12 February 2012. He had not yet been charged. He admitted mis-identifying the player tested. He thereby admitted to the facts constituting the offence. It is not necessary for him to have knowledge of whether the facts admitted constituted a doping offence on the true construction of the rules. It is only necessary for him to admit the fact or facts constituting the offence." (Emphasis added)

3.35. On that basis, the NADP went on to cut the athlete's ban by half, from two years to twelve months. The Panel will note that neither UKAD nor England Basketball appealed the NADP's decision in *Offiah*, which they presumably would have done if they had not been satisfied with the NADP's findings.

3.36. The NADP's finding in *Offiah* thus disposes of the RFU's argument that Mr. Willmott is not entitled to the application of IRB ADR 21.22.7 merely on the basis that he disputed that the conduct to which he admitted constituted a doping rule violation. What matters is whether Mr. Willmott admitted to "*the fact or facts constituting the offence*", which he did here.

3.37. The RFU argued (and such argument was accepted by the First Instance Panel) as follows in the alternative (i.e. as an alternative to its submission that IRB ADR 21.22.7 only applies where the athlete concedes that his conduct under scrutiny constitutes an anti-doping rule violation):

> *"Further, or in the alternative, Mr Willmott's admission was not the only reliable evidence of a violation at the time of admission. Mr Willmott's account was first made in an interview with UKAD during the investigation of a possible anti-doping rule violation committed by him. UKAD and the RFU were at the time of the interview in possession of the Home Office International Crime Team seizure documentation and suspected an anti-doping rule violation might have been committed by Mr Willmott."*

3.38. The substance of the RFU's alternative argument has also been addressed and dismissed by another panel of the NADP in the appeal case of *Sebastian Kolasa v UK Anti-Doping*. In that case, the athlete in question was seen apparently evading sample collection. The athlete was later interviewed by UKAD. During the interview, the athlete admitted that he had intended to evade doping control. The athlete was subsequently charged with "evading Sample collection" on the basis of his admission. One of the questions that arose was whether the athlete's admission was, in fact, the "only reliable evidence" given that UKAD had actually watched him evade the test. The NADP held as follows:

> *4.16 […] The violation of "otherwise evading Sample collection", like that of tampering, is an offence of specific intent, in that there must [be] a deliberate intention to avoid being tested. That is inherent in the verb "evading". The Tribunal described this requirement as one of "bad faith", which we regard as another way of saying the same thing.*
> *4.17 A very strict and narrow interpretation would be that Article 10.5.4 cannot apply where some "evidence of the violation", however slight, exists at the time of the admission, and that evidence is "reliable", even if taken alone it is manifestly insufficient comfortably to satisfy a tribunal of the guilt of the person making the subsequent admission. On such an interpretation, the word "reliable" would be understood to refer only to the quality of whatever evidence exists, and not to its sufficiency to support a conviction.*
> *4.18 Neither party contended for such a narrow interpretation. If it were correct, Article 10.5.4 would have little application in practice. It would mean that a weak case which was unlikely to be charged unless the accused made an admission, would not allow the application of Article*

10.5.4 where the accused's subsequent admission cured the weaknesses in the case against him. That interpretation would also undermine the policy underlying Article 10.5.4 which, it was common ground (and we agree) is to reward candour, save resources and make charging decisions easier, by encouraging pre-charge admissions, particularly in borderline cases.

4.19 At the other end of the spectrum, the requirement of "reliable evidence" might be considered to refer to the sufficiency of the evidence to support a conviction, rather than only to the quality of the evidence. On that interpretation, a case founded on circumstantial evidence, even if quite strong, could still permit the application of Article 10.5.4 where the accused's subsequent pre-charge admission makes the difference between a case where conviction is merely likely to one where conviction is inevitable.

4.20 We are inclined to adopt the second interpretation rather than the first. The interpretation of Article 10.5.4 should not be too strict; a measure of generosity towards the person making the admission is appropriate. Such an approach promotes the policy mentioned above. It seems to us that where a person is confronted with a circumstantial case for conviction, even if strong, and is then interviewed before charge, Article 10.5.4 ought to apply if the contents of the interview are such that they may well decisively affect the chances of a conviction.

4.21 In short, we think the appropriate interpretation of Article 10.5.4 is that the requirement that the admission must be "the only reliable evidence of the violation at the time of the admission", should be read, in their context and in light of the policy underlying the Article, as bearing the meaning that the admission must be "the evidence which ensures the outcome will be conviction not acquittal." We recognise that this is a purposive interpretation not a literal one, and that it is relatively broad and generous to the athlete who makes the admission; but we think that is appropriate for the reasons just given.

(Emphasis added)

"*Evading Sample collection*" requires an *actus reus* and *a mens rea*. The NADP considered that while UKAD possessed "overwhelming" evidence of the *actus reus*, its case on the *mens rea* was less convincing until it interviewed the athlete. The athlete's admission that he had *intended* to evade testing thus "*transformed a reasonably strong circumstantial case into an unanswerable one*" (paragraphs 4.22 to 4.32). On that basis, the NADP granted the athlete access to Article 10.5.4 and cut his ban from two years to 15 months.

3.39. In summary, therefore, even if Mr Willmott's admission were not the only piece of evidence in the RFU's hands, Mr Willmott would be entitled to the application of IRB ADR 21.22.7 if his admission were "*the evidence which ensures the outcome will be conviction not acquittal*".

3.40. Following Mr Willmott's interview with UKAD, the RFU charged him with "*Use or Attempted Use*". The RFU did not, at that time, charge Mr Willmott with "*Trafficking or Attempted Trafficking*".

3.41. Six months later – after Mr Willmott had filed his defence - the RFU charged him with *"Trafficking or Attempted Trafficking"*, claiming that the basis for the charge was Mr Willmott's admission:

> The basis for this additional charge is that Mr Willmott has, within his witness statement, admitted to conduct – specifically agreeing with the undisclosed Mr X that Mr X could have Human Growth Hormone sent to Mr Willmott's girlfriends' parents' house so that Mr Willmott could pass it on to Mr X – which involved:
>
> (a) Trafficking, by transporting, delivering and/or distributing Human Growth Hormone (hGH); or
>
> (b) Attempted Trafficking, by purposely engaging in conduct that constituted a substantial step in a course of conduct planned to culminate in the giving, transporting, delivering or distributing of hGH.

3.42. The Second Charge is thus based entirely upon Mr Willmott's voluntary and candid "admission" of the fact that he provided the Address to Mr. X (the "**Admission**"). While Mr. Willmott admits to those facts, he maintained that he was not aware such facts could be deemed to constitute a violation of the IRB ADR, whether attempted or actual. This does not, however, detract from the fact that Mr. Willmott made a full "admission" for the purposes of Regulation 21.22.7, on which the RFU relied to secure a conviction against him.

3.43.1. The Admission:

(a) was provided on 3 July 2014 in Mr. Willmott's interview with UKAD, and accordingly pre-dated the Second Charge Letter (and, for that matter, the First Charge Letter);

(b) was the only evidence upon which the RFU sought to rely in relation to the Second Charge;

(c) was the only evidence upon which the First Instance Panel relied in concluding that Mr. Willmott was guilty of Attempted Trafficking (contrary to paragraph 15 of the Sanction Decision, which is discussed further below).

3.44. In accordance with the NADP's interpretation in *Offiah*, the Admission made by Mr. Willmott thus constitutes an "admission" for the purposes of IRB ADR 21.22.7. Thus, IRB ADR 21.22.7 applies and, accordingly, the Panel may reduce the otherwise applicable ban by up to one half. Mr. Willmott should not be prejudiced by the fact that he sought to argue before the Panel that his admitted conduct did not amount to Attempted Trafficking under the IRB ADR. Mr. Willmott is not a lawyer and the question of whether or not his conduct amounted to Attempted Trafficking was a legal as opposed to a factual question – even if Mr. Willmott was a lawyer, the position is far from clear, for the various reasons described above.

3.45. The RFU argues that, in any event, Mr. Willmott's Admission was not the "only reliable evidence", emphasising in particular that:

> *"[…] Mr Willmott's account was first made in an interview with UKAD during the investigation of a possible anti-doping rule violation committed by him. UKAD and the RFU were at the time of the interview in possession of the Home Office International Crime Team seizure documentation and suspected an anti-doping rule violation might have been committed by Mr Willmott."*

3.46. This Panel notes that the seizure alone was not sufficient for the RFU to charge Mr Willmott with any violation. Indeed, it only charged him after the UKAD interview and, even then, it was in relation to an anti-doping rule violation that the RFU no longer pursues (i.e. "Use or Attempted Use"). It was only after the RFU received a witness statement from Mr Willmott reaffirming what he had already said in his UKAD interview that it decided to charge him with "Attempted Trafficking". The RFU could not have charged Mr Willmott, less still secured a conviction against him, but for Mr Willmott's candid Admission.

3.47. Following the NADP's rationale in *Kolasa* (see paragraphs 4.22 to 4.33 of *Kolasa*), Mr. Willmott could have denied that he had anything to do with the package or with Mr. X, including by producing his bank statements (as per his first Witness Statement) in support of that denial. Alternatively, he could have admitted to providing the Address to Mr X, but denied that Mr X had suggested having some HGH sent there. Neither UKAD nor the RFU had any evidence to the contrary. Since "Attempted Trafficking" requires evidence of intent, Mr Willmott could not have been charged or convicted but for his Admission.

3.48. According to the NADP in *Kolasa*, the purpose of Article 10.5.4 is to "*reward candour*" and to "*make charging decisions easier, by encouraging pre-charge admissions*" (see paragraph 4.18 of *Kolasa*). That being so, denying Mr Wilmott access to Article 10.5.4. would defeat the very purpose of the provision.

3.49. Accordingly, the Panel considers and determines that Mr. Willmott is entitled to a reduction.

3.50. If the Panel agrees that IRB ADR 21.22.7 applies, it must then consider the extent to which it should reduce the otherwise applicable sanction.

3.51. In *Offiah*, the NADP reduced the athlete's sanction by half on the following basis:

> *4.37 We take into account that Mr Offiah's conduct was thoughtless and foolish rather than malicious. He did not set out to conceal a doping offence. He did not know that Mr Danso had taken cannabis, nor that Mr Danso was not registered with the London Capitals. He was put in the unusual and stressful position of having to act as the team representative in place of the coach who*

arrived late. He had driven the team minibus and looked after the team in stressful conditions on a Friday evening after a full day's work. He wanted to leave after the match and did not stop to think that any harm would come from the mis-identification.
(Emphasis added)

3.52. Mr Willmott's violation has, likewise, arisen from conduct that was "*thoughtless and foolish rather than malicious*".

3.53. Moreover, the Panel notes that the RFU itself writes that "*Mr Willmott has fully complied with all requests from UK Anti-Doping and the RFU throughout the proceedings*" (see paragraph 3 of the RFU's Sanction Submissions) and, "*There is force in Mr Willmott's point that, if his account is accurate, then he has offered frank co-operation from the outset*" (see paragraph 21(i) of the RFU Skeleton).

3.54. The First Instance Panel acknowledged that there are three separate elements to IRB ADR 21.22.7:

"13. The reasoning on behalf of the Player in respect of this Regulation is flawed and in the Panel's view the Regulation does not apply. There are three separate elements to the Regulation. They are:

1. *A voluntary admission of a violation;*

2. *This is to be made before receiving first notice of the admitted violation;*

3. *The admission should be the only reliable evidence of the violation at the time of the admission."*

3.55. But the Sanction Decision does not address whether elements 1 and 2 are present. The Sanction Decision only addresses element 3 at paragraph 15:

"Even if it could be argued that his admissions in interview pre-dated his "receiving first notice of the admitted violation" it cannot in the Panel's view seriously be contended that his admission was the only reliable evidence of the violation. Both the 180 vials themselves, and the envelope addressed to him (even though Willmott was spelled "Wilmot") constituted reliable evidence of the offence for which he was found guilty, namely Attempted Trafficking."
(Emphasis added)

3.56. The entirety of the RFU's case rests on Mr. Willmott's own evidence and admissions. Mr. Willmott could not have been charged and convicted of "Attempted Trafficking" but for his admissions. The vials and the envelope could not have secured any conviction against Mr. Willmott. In that regard, the First Instance Panel did not address the proposition that arose from *Sebastian Kolasa v UK Anti-Doping* that Mr.

Willmott ought to be entitled to the application of IRB ADR 21.22.7 if his admission were "*the evidence which ensures the outcome will be conviction not acquittal*".

3.57. The RFU has admitted that Mr. Willmott has complied with fully with the proceedings:

-paragraph 8 of its own Sanction Submissions states that:

"The RFU does not suggest that the present case warrants more than a four year suspension. Mr Willmott ***has fully complied*** *with all requests from UK Anti-Doping and the RFU throughout the proceedings."* (Emphasis added)

-Paragraph 21(i) of the RFU's Skeleton Argument:

"There is force in Mr Willmott's point that, if his account is accurate, then he has offered frank co-operation from the outset." (Emphasis added)

3.58. In relation to Mr. Willmott's reluctance to disclose Mr. X's name, such a reluctance is irrelevant to the application of IRB ADR 21.22.7. It does not affect the assessment as to whether or not Mr. Willmott committed an anti-doping rule violation. Mr. Willmott admitted to his own conduct, and for such admission to allow him the benefit of IRB ADR 21.22.7, he does not need to provide the names of others involved.

3.59. As a result, the Panel is of the view and determines that Mr. Willmott is entitled to a reduction of the sanction to two years from four years given all the facts and circumstances in this case as stated above.

D. Start Date

3.60. IRB ADR 21.22.12 provides as follows:

*"**Commencement of Ineligibility Period***
21.22.12 Except as provided below, the period of Ineligibility shall start on the date of the hearing decision providing for Ineligibility or, if the hearing is waived, on the date Ineligibility is accepted or otherwise imposed. Any period of Provisional Suspension (whether imposed or voluntarily accepted) shall be credited against the total period of Ineligibility to be served.

(a) Delays Not Attributable to the Player or other Person
Where there have been substantial delays in the hearing process or other aspects of Doping Control not attributable to the Player or other Person, then the Board or Union or Tournament Organiser imposing the sanction may start the period of Ineligibility at an earlier date commencing as early as the date of Sample collection or the date on which another anti- doping rule violation last occurred.

(b) Timely Admission

Where the Player or other Person promptly (which, in all events, for a Player means before the Player competes again) admits the anti-doping rule violation after being confronted with the anti-doping rule violation by the Board or Union or Tournament Organiser, the period of Ineligibility may start as early as the date of Sample collection or the date on which another anti-doping rule violation last occurred. In each case, however, where this Regulation 21.22.12(b) is applied, the Player or other Person shall serve at least one-half of the period of Ineligibility going forward from the date the Player or other Person accepted the imposition of a sanction, the date of the hearing decision imposing the sanction, or the date the sanction was otherwise imposed.

(c) If a Provisional Suspension is imposed and respected by the Player then the Player shall receive a credit for such period of Provisional Suspension against any period of Ineligibility which may ultimately be imposed."
(Emphasis added)

3.61. The RFU succeeded under the Liability Decision in its case of Attempted Trafficking solely on the basis of Mr. Willmott's evidence that he provided the address in question to Mr. X "*during the first couple of weeks in May 2013*". The date of that single act would therefore be deemed to be the date of the alleged violation for the purposes of IRB ADR 21.22.12.

3.62. Mr. Willmott submitted that any ban imposed on him should commence no later than 15 May 2013 (i.e. the date of the alleged violation). That is because, in his view, pursuant to IRB ADR 21.22.12(a), there were "*substantial delays in the hearing process or other aspects of Doping Control not attributable to [Mr Willmott]…*".

3.63. At paragraph 11 of the RFU's Sanction Submissions, the RFU expressly agreed that "*…there have been substantial delays in the hearing process or other aspects of Doping Control not attributable to the Player or other Person*". But the RFU did not agree that this should lead to the sanction commencing on 15 May 2013 on the following basis:

"12. Although UKAD was notified of the seizure in late June 2013 the evidence bag was not delivered to Kings College London's testing centre until 15 January 2014, and the results were only available to UKAD on 27 March 2014. It is important to note however that Mr Willmott was not aware of any investigation until contacted by UKAD shortly before the 3 July 2014 interview with Graeme Simpson (UKAD Investigator). Mr Willmott enjoyed full entitlement to participate in rugby and other sports throughout this period of the investigation and until 23 July 2014, the date on which he was first charged and provisionally suspended by the RFU."

3.64. The Seized Goods were seized on 27 June 2013 and UKAD was notified in late June 2013. However, Mr. Willmott was not interviewed by UKAD until 3 July 2014 and the RFU made no reference to the Trafficking or Attempted Trafficking charges until the

Second Charge Letter dated 15 January 2015. This is despite the fact that the sole evidence upon which the Second Charge was founded was openly and willingly provided by Mr. Willmott to UKAD on 3 July 2014. This lapse of time of over eighteen months between the seizure of the Seized Goods and the Second Charge constitutes "*a substantial delay in the hearing process or other aspects of doping control not attributable to Mr Willmott*". It does not matter how long it took for the International Crime Team to notify UKAD and/or the RFU of the seizure or how long it took for the case to be handed over to the RFU – the point is that there were substantial delays not attributable to Mr. Willmott. Mr. Willmott requests the Appeals Panel to commence the date of his sanction no later than 15 May 2013.

3.65. Mr. Willmott submitted that if the Appeals Panel determines for some reason that IRB ADR 21.22.12(a) does not apply, then IRB ADR 21.22.12(b) should apply on the basis that he:

(a) provided the Admission many months prior to being confronted with allegations of Trafficking or Attempted Trafficking (and in fact prior to both the First Charge Letter and the Second Charge Letter); and

(b) did not compete after his Admission (in fact, Mr Willmott has not played rugby since 9 November 2013).

3.66. The RFU argues that:

"12 Regulation 21.22.12(b) – Timely Admission is only applicable "Where the Player or other Person promptly…..admits the anti-doping rule violation….". As outlined in paragraphs 6 and 7 above, the RFU does not consider that Mr Willmott has admitted to an anti-doping rule violation. It is therefore the RFU's position that Mr Willmott is not entitled to the benefits of the application of this regulation."

3.67. However, if the Panel agrees with the NADP as regards the interpretation of what constitutes an "*admission*" for the purposes of IRB ADR 21.22.7, then it must also agree that Mr Willmott is entitled to the application of IRB ADR 21.22.12(b).

3.68. The Panel notes the following caveat to IRB ADR 21.22.12(b):

"In each case, however, where this Regulation 21.22.12(b) is applied, the Player or other Person shall serve at least one-half of the period of Ineligibility going forward from the date the Player or other Person accepted the imposition of a sanction, the date of the hearing decision imposing the sanction, or the date the sanction was otherwise imposed."

It is well established that "sanction" - in this context - includes the imposition of a provisional suspension.

3.69. For the avoidance of any doubt, IRB ADR 21.22.12(b) clearly contemplates that, while one half of the sanction must be served *from* the date of the provisional suspension (i.e. the date that the player *"accepted the imposition of a sanction*" or "*the date the sanction was otherwise imposed"*), the other half may be deemed served *before* the date of that provisional suspension - i.e. when the player was free to compete.

3.70. The above notwithstanding - and further to IRB ADR 21.22.12(c) – Mr. Willmott is, in any event, entitled to credit against the period of provisional suspension that he has been serving since 23 July 2014. Mr. Willmott has thus already served a provisional suspension of almost 12 months.

3.71. The Panel is of the view that Mr. Willmott has satisfied the conditions necessary for application of IRB ADR 21.22.12 (a). As a result, he is entitled to an earlier start date that the date of his provisional suspension. Here there are a variety of start dates that might apply. The Panel determines that the appropriate start date should be 1 April 2014, a date reasonably soon after UKAD was informed of the testing done by the King's College London testing centre. In the end, there is no evidence that Mr. Willmott was responsible for any aspect of any delay here, and that the fault in the delay rests solely with the relevant anti-doping and other organizations.

IV. Decision and Award

4.1. The appeal of Luke Willmott is partially granted and partially denied as follows:

4.1.1. The Panel has determined that Mr. Willmott has committed an anti-doping rules violation pursuant to IRB Regulation 21.2.7;

4.1.2. The Panel has determined to impose a two-year period of ineligibility on Mr. Willmott pursuant to IRB Regulation 21.22.7;

4.1.3. The start date for Mr. Willmott's period of ineligibility shall commence at 12:01AM on 1 April 2014, and expires at midnight on 31 March 2016;

4.1.4. Mr. Willmott's period of ineligibility shall be credited for the time he has served his provisional suspension since 23 July 2014 to the present in accordance with IRB 21.22.12(c); and

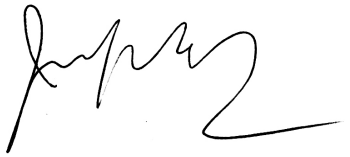
4.1.5. Mr. Willmott's status during the period of ineligibility is as provided by IRB Regulation 21.22.13.

4.2. The parties shall bear their own legal fees and costs associated with this proceeding.

4.3. This Award is in full and final settlement of all claims and counterclaims submitted to the Panel. All claims not expressly granted herein are hereby denied.

IT IS SO DECIDED, ORDERED AND AWARDED.

Dated: 11 January 2016



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Jeffrey Benz
Chair/On behalf of the Panel