SPORT RESOLUTIONS (UK)

NATIONAL ANTI-DOPING PANEL

SR/NADP/206/2019

IN THE MATTER OF PROCEEDINGS UNDER THE ANTI-DOPING RULES OF UNITED KINGDOM ATHLETICS

***Before*:**

Robert Englehart QC (Chairman)

Dr Terry Crystal

Lorraine Johnson

B E T W E E N:

UK Anti-Doping Limited **(*Anti-Doping Organisation*)**

-and-

Mark Dry **(*Respondent*)**

DECISION

INTRODUCTION

1. We were appointed as the Tribunal to determine a charge brought by UK Anti-Doping Limited ("UKAD") against Mark Dry. UKAD is the anti-doping organisation appointed by United Kingdom Athletics ("UKA") to carry out the results management process in respect of allegations of Anti-Doping Rule Violations under the UKA anti-doping rules. UKA has, subject to immaterial minor adjustment, adopted the anti-doping rules of the International Association of Athletics Federations ("ADR"). There is no dispute between the parties that at all material times Mr Dry was subject to the ADR. He is a distinguished athlete. He has had a long and highly successful career as a hammer thrower, having represented both Scotland and Great Britain on very many occasions at the highest levels, including the Olympics. Indeed, he is a double Commonwealth Games bronze medallist.

2. By letter of 8 May 2019 Mr Dry was charged by UKAD with the commission of an Anti-Doping Rule Violation and was provisionally suspended. The letter of charge recited:

> Therefore, UKAD hereby charges you with the commission of an ADRV under IAAF ADR Article 2.5, in that on 18 October 2018 you tampered with Doping Control by providing false information to UKAD about your whereabouts on 15 October 2018.

The charge was subsequently amended so as to read:

> Therefore, UKAD hereby charges you with the commission of an ADRV under IAAF ASR Article 2.5, in that on or around 18 October 2018 and/or 24 October 2018, you Tampered or Attempted to Tamper with a part of the Doping Control Process by providing, or allowing the provision of, false information to UKAD regarding your whereabouts on 15 October 2018.

3. We held a hearing on 18 September 2019 to determine this charge. We heard oral evidence, including some medical evidence by video link, and received the submissions of the parties. UKAD was represented by Mr Philip Law; Mr Dry was represented by Mr

Howard Jacobs and Dr Gregory Ioannidis. We are grateful to the parties for their most helpful oral and written submissions.

FACTUAL BACKGROUND

4. Before us there was no real dispute about any of the material background facts. We record them as follows.

5. Mr Dry has at all material times been a member of the UKAD Domestic Testing Pool. This constitutes a body of athletes who are required to provide UKAD with information about where they will be located so as to be available for spot testing on given days, so-called whereabouts information. Except in relation to Therapeutic Use Exemptions, the domestic testing pool system operates outside the ADR. The system requires participating athletes to maintain updated whereabouts information online and provides for what is described as "three strikes and you are out". This means that, if an athlete is not located at the place stated in his or her whereabouts information on three occasions, he or she will be placed by UKAD on the Registered Testing Pool maintained by UKAD in accordance with WADA's International Standard for Testing and Investigations. This is potentially a much more serious matter for an athlete. Article 2.4 of the ADR provides that three instances by an athlete in the Registered Testing Pool either failing to provide accurate whereabouts information or to missing a drug test at the location provided in whereabouts information constitutes an Anti-Doping Rule Violation under Article 2.4 of the ADR.

6. Because a significant amount of time at the hearing was devoted to medical evidence it is right to record that on 21 August 2018 Mr Dry underwent a major left hip resurfacing operation from which he was making a good recovery in the ensuing weeks. On 25 September 2018 Mr Dry provided his whereabouts information for the ensuing quarter. He indicated that he would be at his [redacted] home address - [redacted] – between Sunday 14 October 2018 and Saturday 20 October 2018.

7. Early in the morning of 15 October 2018 UKAD doping control personnel attended at Mr Dry's [redacted] address for testing purposes. There was no response to the doorbell and

no sign of anyone being present at the property. A neighbour said that Mr Dry was away in Scotland, and the UKAD personnel departed.

8. The next day, 16 October 2018, Mr Dry in fact updated his whereabouts information to show his address from 16 October 2018 to 20 October as his parents' address in Scotland. Nevertheless, on 18 October 2018 UKAD sent Mr Dry a formal letter advising him of an "apparent Domestic Testing Pool filing failure" on 15 October 2018 when he had seemingly not been at his [redacted] address. The letter asked for an explanation within 14 days and stated that if Mr Dry did not reply or was unable to establish that there had not been a filing failure, a Domestic Testing Pool filing failure would be recorded against his name. The letter went on expressly to say:

> **Consequences if Domestic Testing Pool Filing Failure Recorded**
>
> One Domestic Testing Pool Filing Failure does not have any consequences. However, if three (3) Domestic Testing Pool Filing Failures are committed within a 12-month period, then you will be moved to the National Registered Testing Pool of UK Anti-Doping.

9. Mr Dry responded by email on 18 October 2018. Because the email is the foundation of the charge, it is fully set out as follows:

> To whom it may concern
>
> Thank you for my recent letter, my neighbour has misinformed the DCO as she knew we were coming home to Scotland this week which I have done so, from Tuesday the 16th as per my whereabouts, she was unaware of our departure date just the fact we were coming up this week.
>
> I am an avid fisherman and have just recovered from a hip replacement 8 weeks ago and got the all clear from the surgeon on Friday morning to full wieghtbare [*sic*] and proceed with rehab and get out and about and carry on normal life so took advantage of this and went fishing as I regularly do but haven't done for some time due to serious injury.

> Let me know if you've recieved [*sic*] this so I know im not beyond the 14 day limit and any further questions just let me know
>
> Thanks
>
> Mark

10. UKAD asked if Mr Dry could provide any supporting evidence, e.g. a witness statement from a partner or family member. A response came from Mr Dry's partner, [redacted] on 24 October as follows:

> Dear Pat,
>
> I am emailing as Mark Dry's partner to provide a witness statement for his whereabouts on Monday 15th October 2018.
>
> I can confirm that Mark was out fishing on the morning of the Monday 15th October and we travelled to Scotland to visit his family the following day (Tuesday 16th October). I did mention to a neighbour that we would be away for a few days but I did not specify dates as this was a conversation that happened in passing.
>
> Kind regards,
>
> [redacted]

This email from [redacted] is addressed in the amended charge.

11. UKAD made further investigation and, being dissatisfied with the explanation of Mr Dry and his partner, invited Mr Dry on 3 December 2018 to a formal interview "regarding a possible Anti-Doping Rule Violation(s) (ADRV) that you may have committed on Monday 15 October by providing information which may be considered fraudulent contrary to Anti-Doping Rules." On receipt of this letter Mr Dry decided to, and did, tell the truth. He forwarded to UKAD a written statement in which he said:

> On Monday 15th October, I was in Scotland visiting my family and I forgot to update my whereabouts. My girlfriend is a teacher and was on her half term break and so we took the opportunity to visit my family who still live up in the Highlands where I grew up. I thought

> this would not be serious as it was not an hour slot test; it was an out of hour's general whereabouts test. When I received the email informing me of a missed test I panicked and said I was out fishing. I did not want to have a strike against my fully clean record and so opted for what I now know was completely the wrong decision.

Mr Dry's statement went on to explain that he had been suffering from anxiety and depression following withdrawal from painkillers after his hip surgery and believed that this was the cause of his "uncharacteristic behaviour".

12. In short, Mr Dry admitted that what he had told UKAD about where he had been on 15 October was a lie. He confirmed this at a formal interview on 23 January 2019. At this interview he was entirely frank. He acknowledged that he had intentionally told an untruth and had also procured his partner to lie on his behalf. He had told the lie because he had not wanted to "get in trouble and get a strike". His hope had been that with his explanation, supported by his girlfriend, the matter would then simply be dropped. Notably, he very properly accepted at this interview that what he did was deliberate and at the time he did indeed mean to say what he said.

13. The basic facts, as described above, fall within a narrow compass and are not in dispute. However, much of the evidence before us revolved around medical matters, and we now turn to that.

THE MEDICAL EVIDENCE

14. Medical evidence was adduced in order to lay a foundation for an argument that Mr Dry had not truly intended to deceive UKAD but had been unable to form a genuine intent because the balance of his mind was disturbed. In support of this case, Mr Jacobs for Mr Dry called both Professor Griffin, the surgeon who had performed Mr Dry's hip surgery, and a Dr Twumasi, an academic psychology lecturer. Mr Law for UKAD called Dr Hopley, a consultant psychiatrist, in response.

15. In his witness statement Professor Griffin explained how he had performed the hip resurfacing operation for Mr Dry. He explained how he had seen Mr Dry on 12 October

2018 when he said that Mr Dry's hip was still very stiff and painful and Mr Dry was "extremely anxious, depressed and preoccupied about his future". He was still taking a painkiller Gabapentin and also drinking alcohol to manage his pain. Professor Griffin referred to known side effects of Gabapentin and expressed the conclusion:

> Combined with alcohol use, anxiety and depression, I think it very likely that these effects of *Gabapentin* would have severely affected Mr Dry's ability to make informed decisions and would have rendered him unable to recognise the significance or consequences of his actions or inactions.

16. In evidence Professor Griffin stoutly maintained that there was nothing inconsistent with his witness statement in letters he had written to Dr Elliott of Sport Scotland, Mr Dry's referring doctor, on 12 September 2018 and 12 October 2018. In both those letters Professor Griffin painted a rosy picture about Mr Dry's post-operative recovery. He was making a "tremendous recovery" on 12 September 2018 and on 12 October 2018 was doing "extremely well". Professor Griffin was also shown medical records for Mr Dry which state for 4 October 2018:

> Pain has improved significantly and is no longer using any analgesia at night time or during the day. No night pain. Certain movements induce some discomfort but overall better.

Professor Griffin explained that what he had said in his witness statement about Gabapentin came from Mr Dry himself. Moreover, the bleak picture painted in his witness statement came purely from his memory of the consultation some 9 months previously since he had made no notes other than what appeared in his positive letters to Dr Elliott.

17. Dr Twumasi is not a medical practitioner. He has a PhD and is a psychology lecturer at King's College, London. He is in fact a longstanding friend of Mr Dry and used to train with him. He referred to Mr Dry's "high doses" of several drugs which would have caused various side effects. In Dr Twumasi's view "Gabapentin would have caused the most cognitive impairment". Moreover, if Mr Dry had also, as he said, been drinking alcohol,

the drugs taken by Mr Dry in combination with alcohol "would also cause further cognitive impairment, impaired decision making, impaired judgement and memory loss."

18. Apart from Gabapentin, the drugs to which Dr Twumasi referred were standard post-operative drugs only taken by Mr Dry in the immediate aftermath of his operation. Moreover, it is not easy to reconcile Dr Twumasi's view that Mr Dry was on a "high dose" of Gabapentin with the British National Formulary description of the dose in fact prescribed to Mr Dry, i.e. 300 mg three times a day as the minimum dose. Dr Hopley confirmed that what had been prescribed to Mr Dry was a low dose.

19. Mr Hopley is an eminent forensic psychiatrist with very considerable medico-legal experience. He noted that Gabapentin was recognised to cause side effects. However:

> Garbapentin [sic] would only rarely cause such severe confusion or memory loss that it would prevent an individual from forming an intention to provide false information/mislead. Under these circumstances the individual would be severely mentally disturbed with acute psychosis or a similar level of mental disorder.

Whilst Dr Hopley had not been able to assess Mr Dry in person, he was able to express a view as follows:

> Having taken into consideration all the information supplied to me, especially medical reports and records and videos posted on Facebook by Mr Dry, on the balance of probabilities, Mr Dry's provision of information regarding his whereabouts was not significantly affected by the medication he was taking at the time and the impact of the medication on his cognitive functioning.

20. Dr Hopley's reference to Facebook videos is in fact a reference to videos posted on Instagram by Mr Dry around the material time. We were shown these videos of Mr Dry jogging and hammer throwing uploaded on 12 and 17 October 2018 respectively, a video of him pulling a light aircraft and flying the aircraft uploaded on 19 October 2018 and videos of him training uploaded on 22 and 26 October 2018. Doubtless Mr Dry was anxious to portray himself in the most favourable light on social media but it is hard to

reconcile these videos, all recorded around the material time, with a picture of someone whose cognitive functioning was so impaired as to cause him to lie.

RELEVANT ADR PROVISIONS

21. As previously noted, the charge as amended against Mr Dry alleges an (actual or attempted) Anti-Doping Rule Violation under Article 2.5 of the ADR. This provides:

> **Tampering or Attempted Tampering with any part of Doping Control**
>
> Conduct that subverts the Doping Control process but that would not otherwise be included in the definition of Prohibited Methods. Tampering shall include, without limitation, intentionally interfering or attempting to interfere with a Doping Control official, providing fraudulent information to an Anti-Doping Organisation or intimidating or attempting to intimidate a potential witness.

As a word, "tampering" may not in ordinary language readily fit with telling untruths. Nevertheless, Article 2.5 does expressly include "providing fraudulent information to an Anti-Doping Organisation" as illustrating one form of the Anti-Doping Rule Violation of tampering. It is also to be noted that the ADR definition of tampering is:

> Altering for an improper purpose or in an improper way; bringing improper influence to bear; interfering improperly; obstructing misleading or engaging in any fraudulent conduct to alter results or prevent normal procedures from occurring.

22. If there is tampering, the applicable sanction under the ADR is a four year period of Ineligibility. This is expressly provided by Article 10.3.1. There is no room for any lessening of the sanction except possibly under Article 10.5.2. Even then, the period of Ineligibility could not be less than two years. Moreover, as Mr Law pointed out in argument, there are considerable difficulties in the application of this Article where there is, as here, a deliberate act such as telling a lie. It follows that under the ADR any form

of tampering is treated most harshly. We were told that there are currently proposals to introduce a more flexible approach for tampering in the ADR. However, as the ADR currently stand, if Mr Dry's lie was tampering, even though he came clean and told the truth shortly afterwards, he would be facing four years' Ineligibility.

SUBMISSIONS FOR UKAD

23. For UKAD Mr Law acknowledges that for us to find that there was an Anti-Doping Rule Violation we would have to be comfortably satisfied that this is so. But, he submits that there is no doubt on the express wording of Article 2.5 that there was tampering. Mr Dry told a deliberate untruth to UKAD on 18 October 2018 in an attempt to avoid a "strike" being recorded against his name. And indeed it is an aggravating feature that he also procured his partner on 24 October 2018 to tell an untruth to UKAD in order to bolster his case. In short, this was the provision of fraudulent information to UKAD, a case expressly covered by ADR Article 2.5.

24. Mr Law points to the following features of the case as demonstrating a fraudulent intent for the purposes of ADR Article 2.5. Mr Dry knew his obligations about the provision of whereabouts information and knew that a breach of the requirements would lead to a "strike" being recorded against his name. He deliberately told an untruth and procured his partner to tell an untruth in order to avoid getting into trouble.

25. Mr Law accepts that tampering must be intentional. But, he submits that there can be no room for doubt that Mr Dry intended to say what he did say in the email of 18 October 2018. The medical evidence does not come near to showing that Mr Dry lacked intent because he was suffering from cognitive impairment following his operation and the consequential medicaments. He invites us to consider in particular the medical notes, Professor Griffin's letters of 12 September and 12 October 2018 and the videos posted by Mr Dry on Instagram. And it is fair to say that Mr Dry himself frankly does accept that he meant to say what he said. He also got his partner to say what she did in her email of 24 October 2018. We were invited to reject any suggestion from the medical opinions that Mr Dry lacked intent. Professor Griffin is a surgeon, not a psychiatrist. Dr Twumasi is not only not independent as a friend of Mr Dry but, as an academic psychology lecturer, lacks any relevant expertise. The underlying medical history and medical facts

are entirely consistent with Dr Hopley's view that there is no reason to doubt that Mr Dry knew what he was saying.

26. In summary, Mr Law invited us to find that this was a clear case of tampering and to impose what the ADR provides, that is a four year period of Ineligibility.

SUBMISSIONS FOR MR DRY

27. It was Mr Jacobs's case for Mr Dry that there could be no case of tampering under Article 2.5. The Domestic Pool arrangements operated by UKAD are a system outside the ADR; they are to be contrasted with the Registered Testing Pool arrangements which may fall within the potential scope of the ADR. The words "providing fraudulent information to an Anti-Doping Organisation" in ADR Article 2.5 have to be interpreted in the light of the opening sentence of Article 2.5.

28. There can be no tampering in the absence of conduct which subverts the Doping Control Process. One must have regard to the definition of Doping Control Process under the ADR, and nothing said by Mr Dry subverted that process as defined. The consequences of a finding of tampering are so inflexibly harsh under the ADR that tampering as a violation has to be strictly construed. Not only would we need to be comfortably satisfied before finding a violation but also any uncertainty over the precise scope of tampering as a violation should be resolved in Mr Dry's favour. What Mr Dry had done was stupid. But, it was scarcely grave by comparison with other conduct which constituted an Anti-Doping Rule Violation. And he had owned up and told the full truth shortly afterwards. The imposition of a four year period of Ineligibility would be harsh in the extreme.

29. In Mr Jacobs's submission there was no fraudulent provision of information by Mr Dry. Simply telling a lie was not fraudulent. In support of this submission Mr Jacobs referred us to the CAS decision in *Drug Free Sport New Zealand v Murray* (CAS 2017/A/4937) where the Panel specifically noted this at paragraph 143. It could not be fraudulent unless there was also a deliberate intent to subvert doping control.

30. We were also invited to have regard to the medical evidence. The submission was that Mr Dry was "under physical, emotional and cognitive duress as a result of the medication

that he was taking". This was a feature which should lead us to find that there was No Significant Fault or Negligence even if we were to find that there was an Anti-Doping Rule Violation.

31. If, contrary to Mr Jacobs's submission, we were to find tampering then Mr Jacobs accepted that under the ADR there had to be Ineligibility for at least two, and probably four, years. This raised serious questions of proportionality for what was on any showing at the lower end of the scale of Anti-Doping Rule Violations. Mr Jacobs referred in his skeleton argument to a number of CAS decisions which, he submitted, established that even though the ADR might on their face prescribe a minimum period of Ineligibility of four or possibly two years we might impose a lesser sanction if we are satisfied that such a period would be disproportionate for what was in reality a minor peccadillo on the facts of the present case.

DISCUSSION

32. It is abundantly clear that Mr Dry personally told a lie to UKAD and also procured his partner to lie. In our view there can be no doubt that the lies were told in an attempt to conceal the fact that on the morning of 15 October 2018 Mr Dry was not in fact at the address stated on his whereabouts information for that day. Mr Dry was trying to deflect UKAD's inquiries and hoped that, by concealing the truth, UKAD would not pursue the matter any further.

33. It is fair to say that Mr Dry does not dispute what happened. Following the initial untruths, Mr Dry has been open and straightforward about what occurred. Indeed, he retracted the untruth fairly shortly after the event and before his interview with UKAD took place. Both at his UKAD interview and before us Mr Dry did not challenge the fact that he had told a deliberate untruth. He knew what he was doing and had intended to act as he did.

34. We have carefully considered the medical evidence put before us on behalf of Mr Dry but have unhesitatingly concluded that it is of no real assistance. We are unable to find that Mr Dry's medical history and any medicaments he had been taking contributed in any way to his not telling the truth.

35. Professor Griffin is undoubtedly a surgeon of the highest standing but, as he readily agreed in evidence, the effect of drugs is not within his special expertise. His witness statement before us is also in marked contrast to the rosy picture painted in his contemporary letters to Dr Elliott and the medical records put before us. Yet, Professor Griffin's letters to Dr Elliott were the only record he had maintained of his consultations with Mr Dry. He said that his evidence about Mr Dry's condition when they met came from his unaided recollection, but it is not easy to accept that some 9 months later his unaided memory of Mr Dry's demeanour on 12 October 2018 is very reliable.

36. Moreover, we did not find the evidence of Dr Twumasi helpful. He is a longstanding friend of Mr Dry; he can scarcely rank as an independent expert. Understandably, he was doing his best to assist his friend but we did not find his opinion as an academic psychologist of much assistance. Furthermore, his view about what he called the high dosage of Gabapentin taken by Mr Dry was wholly at odds with the British National Formulary. Dr Twumasi's evidence was well-intentioned but in our opinion unpersuasive.

37. We accept that one potential unwelcome side effect of Gabapentin can in an extreme case be an impact on cognitive function. However, there is no reliable evidence at all that Mr Dry's cognitive functions were in fact impaired in October 2018. On the contrary, the Instagram videos shown to us, whilst no doubt recorded with a view to impressing the viewer, are quite inconsistent with the submission about Mr Dry being in October 2018 under "physical, emotional and cognitive duress".

38. We must proceed on the basis that Mr Dry told a deliberate untruth to UKAD as well as procuring his partner to do so. If this amounts to tampering under the ADR, even though Mr Dry voluntarily retracted the untruth shortly afterwards, we are driven to conclude that a four year period of Ineligibility would be mandatory under the ADR. This is explicit under Article 10.3.1. Initially, Mr Jacobs did submit that we might find that the Anti-Doping Rule Violation was not intentional, although he then accepted that tampering was not within ADR Article 10.2. Article 10.5.2 is perhaps on its face capable of application to tampering; that would mean a two year period of Ineligibility in the present case. However, there would be formidable difficulties over a factual finding of No Significant Fault or Negligence where there is a deliberate act such as tampering. Mr Law referred us to the Comment to Article 10.5.2 of the WADA Code which supports that conclusion. Realistically, Mr Dry is here facing a potential four year period of Ineligibility.

39. Mr Dry's conduct in telling an untruth to UKAD was undoubtedly foolish. Indeed, it was reprehensible, as indeed was his conduct in procuring his partner also to lie. But, it is necessary to examine whether Article 2.5 of the ADR is really intended to treat what Mr Dry did as tampering and lead to a four year period of Ineligibility.

40. In isolation, the words in Article 2.5 "providing fraudulent information to an Anti-Doping Organisation" might seem to cover the telling of a deliberate lie to UKAD. However, we agree with Mr Jacobs that telling a lie, albeit a deliberate act, is not without more "fraudulent" in the context of Article 2.5. He helpfully referred us to the CAS decision in the *Murray* case cited above. There, the Panel noted at paragraph 143:

> A lie, in itself, does not amount to fraud or to providing "fraudulent information". Are lies such as those told by Mr Murray sufficient to establish the serious accusation of tampering? The majority of the Panel is of the view that there must be some consideration of the extent of the behaviour made to conceal the truth in order to be satisfied that there was an intent to subvert.

41. In our view, there are two matters of context which we should take into account when interpreting the words "providing fraudulent information" in Article 2.5. First, the Article is within the ADR and is concerned with the protection of the integrity of the ADR. It cannot be that every lie told to UKAD is always within Article 2.5. In our view, the words in question cover the deliberate provision of false information with the intention of evading the operation of the ADR. Second, the words in question must be interpreted in the light of the overall purpose and opening words of Article 2.5 which provide the general framework for a tampering violation. They are given as an illustration of tampering. It can only be if Mr Dry's conduct constituted Tampering as defined that it could have contravened Article 2.5.

42. There are two notable features of the present case:

    (a) Mr Dry was a member of the Domestic Testing Pool and his purpose was to avoid the noting of a filing failure. However, this pool and the recording of filing failures operate independently of the ADR. They are different from the Registered Testing Pool and filing failures by those within that pool. The ADR address filing failures

within the latter context: see Article 2.4. However, the ADR provide no sanction at all for filing failures by those in the Domestic Testing Pool. Mr Dry was in no respect evading the operation of the ADR.

(b) The untruth told by Mr Dry, as well as that of his partner, came in response to the UKAD letter of 18 October 2018. That letter expressly states that one Domestic Testing Pool Filing Failure (i.e. what Mr Dry sought to avoid) "does not have any consequences". The concept of fraudulently avoiding no consequences is indeed difficult to follow.

In the circumstances, we cannot be comfortably satisfied that the information which Mr Dry provided, whilst certainly false, was fraudulent for the purposes of the ADR.

43. Furthermore, we do not accept that Mr Dry's lie counts as Tampering for the purposes of Article 2.5. It was not "conduct that subverts the Doping Control process" (as defined). Doping Control is defined as:

> All steps and processes from test distribution planning through to ultimate disposition of any appeal, including all steps and processes in between, such as provision of whereabouts information, Sample collection and handling, laboratory analysis, TUEs, results management, hearings and appeals

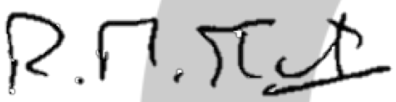
The above are all steps within the implementation of the ADR, not the implementation of a system outside the scope of the ADR. We accept the submission of Mr Jacobs that there was no subversion of the Doping Control Process (as defined): see paragraph 6a. of the skeleton argument furnished by him and Dr Ioannadis.

44. For the above reasons, we cannot be comfortably satisfied that there was an Anti-Doping Rule Violation. In the circumstances, we do not need to address Mr Jacobs's interesting argument based on proportionality. We acknowledge that we had some sympathy with the argument since we were indeed of the view that a period of Ineligibility of four years for Mr Dry's foolish behaviour would indeed be extremely harsh. Nevertheless, we also had considerable reservations. There is no lacuna properly so-called in the ADR. If this was tampering, the ADR are clear as to the consequences. We very much query whether it would be open to a Panel simply to override consequences prescribed by the ADR and

substitute whatever sanction it feels appropriate. In the event, however, we do not need to come to a conclusion on the point.

CONCLUSION

45. We summarise our conclusion by saying that for the reasons set out above we are not comfortably satisfied that there was an Anti-Doping Rule Violation. We must accordingly dismiss the charge against Mr Dry. Finally, we should draw attention to the right of either party to lodge an appeal against this decision by filing a Notice of Appeal with the National Anti-Doping Panel within 21 days of receipt of the decision.



Robert Englehart QC

Chairman on behalf of the Panel

London

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

T: +44 (0)20 7036 1966

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

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