NATIONAL ANTI-DOPING PANEL

Before:
Tim Kerr QC (Chairman)
Dr Kitrina Douglas (Specialist Member)
Professor Peter Sever (Specialist Member)

B E T W E E N:

UK Anti-Doping Limited — *Applicant*

- and -

Mr Kofi Danso — *Respondent*

AND B E T W E E N:

UK Anti-Doping Limited — *Applicant*

- and -

Mr Chiedozie Offiah — *Respondent*

IN THE MATER OF PROCEEDINGS BROUGHT UNDER THE 2009 ANTI-DOPING RULES OF ENGLAND BASKETBALL AGAINST MESSRS KOFI DANSO AND CHIEDOZIE OFFIAH

DECISION OF THE ANTI-DOPING TRIBUNAL

Date of hearing: 26 June 2012

Date of decision: 20 July 2012

1. INTRODUCTION

1.1 This is the decision of the Anti-Doping Tribunal convened under Article 8.1.1 of the UK Anti-Doping Rules of England Basketball ("the Anti-Doping Rules") to determine charges brought against Messrs Kofi Danso and Chiedozie Offiah for alleged commission of Anti-Doping Rule Violations in breach of Articles 2.1 and 2.5 of the Anti-Doping Rules.

1.2 Capitalised words below refer to those words as used in the Anti-Doping Rules and/or the 2010 Procedural Rules of the National Anti-Doping Panel ("the Procedural Rules"), and as there defined. Not all terms used below are capitalised, only those of particular relevance in this case.

1.3 The two cases were, by agreement and by order of the President of the National Anti-Doping Panel, made under Article 7.7.1 of the Procedural Rules, consolidated and listed to be heard together by the same tribunal. The hearing took place at the offices of Sport Resolutions (UK) in London on 26 June 2012, in accordance with the Chairman's procedural order dated 4 May 2012.

1.4 By Article 2.1 of the Anti-Doping Rules the presence of a prohibited substance or metabolites in an Athlete's sample is an offence unless consistent with a therapeutic use exemption. By Article 2.5, Tampering or Attempted Tampering with any part of Doping Control is an offence.

1.5 At the hearing on 26 June 2012, UK Anti-Doping Limited ("UK Anti-Doping") was represented by Mr Graham Arthur, its Director of Legal. Also present were Mr Richard Redman, Mr Jason Torrance and Mr David Hope, all of UK Anti-Doping. Mr Danso did not attend but sent a message to the Tribunal, further mentioned below. Mr Offiah attended and was represented by Mr Barnaby Hone of counsel. The Tribunal was grateful to all those attending for their helpful and constructive contributions.

1.6 This document constitutes the reasoned decision of the Tribunal, reached after due consideration of the evidence heard and the submissions made by the parties attending at the hearing and in writing.

2. THE FACTS

2.1 Both players are experienced basketball players. As at 1 June 2012, Mr Danso was aged 24 and Mr Offiah aged 29. Mr Offiah works at a school in north west London and is regarded as an excellent sportsman and role model. He is a qualified disability coach. He is a respected member of staff at his school and is seen as something of a hero in his local sporting community. He is a man of exemplary character. The Tribunal does not have knowledge of Mr Danso's background, save that he is an experienced basketball player.

2.2 As at the start of the 2011-12 season, Mr Danso was registered as a player with a club called Gintaras, which plays in the London League. Mr Offiah was registered as a player with the PAWS London Capitals ("London Capitals"), which plays in the England Basketball League ("EBL"). Each of the players is bound by the rules of England Basketball and, in particular, the Anti-Doping Rules (see Article 1.2 of the Anti-Doping Rules).

2.3 On the evening of Friday 6 January 2012 the London Capitals were scheduled to play an EBL Division One match against the BA London Leopards at the Brentwood Leisure

Centre, Essex. Matches were more usually played at weekends when there is more time to travel to the venue. The Friday evening fixture meant that players with day jobs had to get to the venue after their day's work. The match was due to start at 8pm.

2.4 The London Capitals' player coach and captain, Mr Malik Jivens, was running late and due to go straight to the venue. Mr Offiah had done his day's work before the match. He was given the task of driving the team minibus to the opponents' venue and taking care of the players' licences and kit. They arrived late, only minutes before the scheduled start time. They were informed that they would be subject to doping control and asked to hand in the team sheet. The team's young ball boy did so.

2.5 Mr Danso was not then registered with the London Capitals. He was registered with the Gintaras which play in a different league. There was a player registered with the London Capitals called Oladapo Fagbenle, but he was not present that evening. Despite that, his name appeared on the team sheet. Mr Offiah knew that Mr Fagbenle was not there that evening and knew that a player he knew as "Kofi" was there. Unusually, Mr Offiah acted as representative of the London Capitals as Mr Jivens had been delayed. He found the build up to the match quite stressful. Mr Offiah did not read the team sheet but he signed it when asked to do so.

2.6 As it happened, the player listed on the team sheet as Mr Fagbenle was one of two London Capitals players randomly selected (by number) for doping control. Mr Danso was, in effect, impersonating Mr Fagbenle and playing for the London Capitals as a "ringer". Mr Offiah had known Mr Fagbenle, through playing basketball, for many years. He knew Mr Danso as "Kofi", a fellow team player, but not well. He did not know Mr Danso had recently used cannabis and was at risk of testing positive, should he be selected for doping control.

2.7 The BA London Leopards won the match. Mr Danso was required to submit to doping control. He did so, assuming the identity of Mr Fagbenle. He told the Doping Control Officer, Mr David Hope, that he did not have any photo ID with him. Mr Hope therefore asked Mr Offiah, as the team's representative, to confirm the identity of Mr Fagbenle. Mr Offiah did so, knowing that the player selected was not Mr Fagbenle. He felt bad about being untruthful, but wanted to leave and go home.

2.8 Mr Danso, under the guise of Mr Fagbenle, gave a urine sample and signed the doping control form, forging the signature of Mr Fagbenle in two places on the doping control form. Mr Offiah signed his own name beneath the words "ID by name Chiedozie Offiah pos captain", thus confirming the identity of Mr Fagbenle which he knew to be false.

2.9 Mr Hope recorded Mr Fegbenle's date of birth as 12 February 1986 on the doping control form. This is Mr Fagbenle's true date of birth. It is not clear what source Mr Hope used to ascertain the date of birth. We accept Mr Offiah's denial that he supplied Mr Fagbenle's date of birth to Mr Hope.

2.10 Mr Hope also recorded Mr Fagbenle's telephone number on the doping control form. We think it likely on the balance of probabilities that Mr Danso was the source of the telephone number. It is not Mr Fagbenle's true telephone number.

2.11 On 13 January 2012, one week after the match, Mr Danso became a registered player with the London Capitals. He had not yet become aware of the outcome of his test on 6 January 2012.

2.12 On 25 January 2012, the Drug Control Centre at King's College London provided an analytical report on the A sample, which showed the presence of cannabis (or constituents thereof) in the A sample, in a sufficient concentration to constitute an adverse analytical finding.

2.13 On 27 January 2012, UK Anti-Doping wrote to Mr Fagbenle charging him with a doping offence and provisionally suspending him from playing. The same day, Mr Redman of UK Anti-Doping spoke to Mr Fagbenle and suggested that the latter had provided a sample that had tested positive for cannabis. Mr Fagbenle was not happy. He denied having been tested on 6 January 2012, denied having played in the match that evening and said he would "sue ... for defamation and privacy".

2.14 From 27 January 2012 UK Anti-Doping conducted investigations and carried out interviews in order to establish the true position. Among those Mr Redman interviewed was Mr Offiah, on 12 February 2012. He was cooperative and readily admitted to signing the team sheet and the doping control form, confirming Mr Fagbenle's identity. He also informed Mr Redman that the first name of the person who was in fact tested was Kofi, but that he did not know his last name.

2.15 Mr Redman soon established from internet research that the most likely candidate was Mr Kofi Danso. However, as at 14 February 2012, Mr Redman was having no success in obtaining any response from Mr Danso to his enquiries, after trying various telephone numbers and writing by mail to various addresses and by email. Indeed Mr Danso did not contact UK Anti-Doping until 2 April 2012, 12 days after the date of the charge letter referred to below.

3. PROCEDURAL HISTORY

3.1 Both the Players were charged with doping offences by letter dated 21 March 2012. Mr Danso was charged with having a prohibited substance in his body, namely cannabis, and with Tampering or Attempted Tampering in connection with the collection of his sample. Mr Offiah was charged with Tampering or Attempted Tampering in connection with the collection of the sample collected from Mr Danso.

3.2 On 22 March 2012 UK Anti-Doping wrote to Mr Fagbenle apologising to him and informing him that he had no case to answer since it was clear he had not been the player whose sample had tested positive for cannabis, despite the use of his name on the team sheet and doping control form.

3.3 On 2 April 2012 Mr Danso telephoned Mr Redman, saying he had only just received the charge letter, having been away from home. He stated that he admitted the presence of cannabis but denied the offence of tampering, arguing that he had been induced by the London Capitals to play the role he played, was not properly registered and not bound by the rules, and that it was the London Capitals that should be punished, not he.

3.4 On 11 April 2012 Mr Danso emailed Mr Redman, in response to a reminder email, saying he would like to request a hearing "to voice out my opinion and little or no involvement in my defense to this case".

3.5 Mr Offiah admitted the charge and entered a written plea in mitigation, in an email of 11 April 2012. The same day, in a further email, he confirmed that he did not seek an oral hearing. He was content for the case against him to be dealt with on the basis of his written plea in mitigation.

3.6 On 12 April 2012 a disciplinary panel of England Basketball met to consider a case against the London Capitals for fielding ineligible players on at least eight occasions. Neither player was present or, so far as this Tribunal understands the position, aware of the proceedings. Yet, among other punishments meted out to the London Capitals and its coach, both players were individually banned for "serious misconduct and bringing the game into disrepute"; Mr Danso until 30 April 2014, Mr Offiah until 30 April 2013.

3.7 The same day, 12 April 2012, UK Anti-Doping submitted a request for arbitration to the National Anti-Doping Panel in the case of Mr Danso.

3.8 Mr Redman emailed Mr Offiah on 17 April 2012 saying that UK Anti-Doping was requesting an oral hearing of the charge against Mr Offiah, mainly because it wished the two linked cases to be heard together and there was to be a hearing of the charges against Mr Danso in any event. Mr Offiah reflected further and decided that he would like his case to go to a hearing and would attend and take part.

3.9 On 23 April 2012 Mr Danso emailed Mr Redman stating that he wished to appeal against the ban imposed on him by the disciplinary tribunal of England Basketball. The Tribunal understands that the disciplinary matter considered by the England Basketball disciplinary tribunal is not yet or may not yet be closed, but we have not been told in detail the current status of that matter, which is of course outside our jurisdiction.

3.10 On 4 May 2012 the chairman held a telephone conference pursuant to Article 7.8 of the Procedural Rules. It was attended by Mr Redman for UK Anti-Doping, and Mr Offiah on his own behalf. Mr Danso did not attend but sent a message to Mr Redman during the conference saying he was unable to attend due to work commitments.

3.11 With the consent of all parties and pursuant to a direction from the President of the National Anti-Doping Panel, the procedural order included a direction that the cases were ordered to be consolidated and heard together. The hearing date was fixed for 26

June 2012. A timetable was set for delivery of written materials in preparation for the hearing. Mr Danso was given permission to reopen the conference and ask for varied directions, but did not do so.

3.12 UK Anti-Doping, through Mr Arthur, submitted its detailed written submissions on 1 June 2012. Mr Offiah sent a shorter document, an email dated 18 June 2012, reiterating and developing his points in mitigation of his conduct. Mr Danso did not provide any further written response to the charges against him.

3.13 On 12 June 2012 Mr Redman texted Mr Danso to remind him of the need to submit his documents and inviting him to call or email if he had any questions. Mr Danso texted back seven minutes later, saying he had been very busy, was not sure what to do, and did not think he had the "energy to fight a case with my personal issues at hand". Just over an hour later he texted further: "I do not have a permanent place of accommodation and have been banned without being heard by the ebba [England Basketball] without my knowledge ... if i could afford to be represented i would have done". Mr Redman responded 12 minutes later offering to put Mr Danso in touch with a lawyer who might act for free. Mr Danso did not respond further.

3.14 On 22 June 2012 Ms Jenefer Lincoln of Sport Resolution (UK) emailed Mr Danso, again reminding him of the hearing, giving details of the time and venue, and asking who would be attending with him and whether any of his party had specific requirements relating to diet or access to the building.

3.15 On 25 June 2012 Ms Lincoln sent a follow up text message to Mr Danso. He responded saying he would not be able to come the next day as he did not have a day off work and had only read the emails sent to him the previous day.

3.16 At 01.26 hours on 26 June 2012 Mr Danso emailed the chairman asking for a postponement of the hearing on the ground that he had had problems finding work and permanent accommodation and would lose pay if he attended – which he could not afford - as he had just started a job through an agency, for which he was paid only for time worked.

3.17 The hearing on 26 June 2012 was held at the London offices of Sport Resolution (UK). It started shortly after 10am and ended at about 1pm. Those who attended are mentioned above. Mr Danso did not attend. The Tribunal considered his written application for a postponement as a preliminary issue and refused it for the reasons given below.

3.18 At the hearing, we had a bundle of documents prepared by UK Anti-Doping, divided into 42 sections in accordance with its index. We heard oral evidence from Mr Redman and Mr Offiah. The documents included two written witness statements from Mr Redman and one from Mr David Hope, who was one of the doping control officers at the match on 6 January 2012. Mr Offiah produced two written letters of support dated 25 June

2012, one from the Deputy Head Teacher of the school where he works, and the other from the Director of the London Capitals.

4. THE TRIBUNAL'S CONCLUSIONS, WITH REASONS

4.1 The Tribunal decided not to allow Mr Danso's application for an adjournment. We were satisfied that he had been made aware of the hearing date on or very shortly after 4 May 2012 when the chairman made his procedural order. Mr Danso was provided with a copy of the order setting the hearing date of 26 June 2012, as well as the following day, 27 June, as a reserve day.

4.2 Mr Danso did not make his application to adjourn the matter until the early hours of the hearing date itself. He did not suggest he would attend the following day if the case were put off for one day. He sought an open ended postponement. He gave no indication of how long he was asking for, nor any assurance that he would attend on the next occasion if the matter were postponed. He did not suggest that the difficulties in attending on which he relied (loss of work and pay, and personal problems) would be absent on the next occasion if the case were re-fixed for another date.

4.3 The other parties and the Tribunal had expended resources in complying with the Tribunal's direction to attend on 26 June. It would have been wasteful of resources to delay the case further. Mr Danso could have prepared his case during the period from 4 May to 26 June 2012, as envisaged under the relevant rules and the chairman's procedural order. Mr Offiah was able to do so. He did not support Mr Danso's application to adjourn the matter.

4.4 We considered whether we should proceed with Mr Offiah's case and postpone Mr Danso's to another date. We rejected this idea because the two matters had been consolidated with the consent of both players and of UK Anti-Doping, in order to ensure efficient disposal of the cases, economic use of resources and consistent decision making. Those advantages would have been lost if we had decided to decouple the two cases.

4.5 There are two charges against Mr Danso: the presence of cannabis in his body on 6 January 2012, and the charge of tampering or attempted tampering with doping control. Of these, the first is straightforward. Mr Danso admitted that charge in correspondence. There is no challenge to the adverse analytical finding made the Drug Control Centre at King's College London, following analysis of Mr Danso's A sample.

4.6 We are therefore comfortably satisfied that UK Anti-Doping has discharged its burden of establishing the commission by Mr Danso of a doping offence under Article 2.1 of the Anti-Doping Rules, namely the presence of cannabis in the urine sample he provided on 6 January 2012 when he was tested at Brentwood Leisure Centre.

4.7 The second charge against Mr Danso is that he tampered or attempted to tamper with any part of doping control. In Appendix One to the Anti-Doping Rules, an attempt is

defined as (so far as relevant for present purposes) "[p]urposely 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 ....".

4.8 Tampering is defined in Appendix One as "[a]ltering 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; or providing fraudulent information to an Anti-Doping Organisation." The definition of an Anti-Doping Organisation plainly includes both England Basketball and UK Anti-Doping.

4.9 "Doping Control" is defined in Appendix One as "[a]ll 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."

4.10 In correspondence, Mr Danso has not disputed the primary fact that he posed as Mr Fagbenle when subjected to doping control on 6 January 2012. The only defence he has offered is that he was not registered with the London Capitals at the time; that therefore he was not bound by the rules; that he was made to play the role he did by the London Capitals; and that the club, not he, should be punished for his impersonation of Mr Fagbenle.

4.11 These points are without merit and we reject them. Mr Danso was bound by the Anti-Doping Rules because he was registered with England Basketball as a player on 6 January 2012. It does not matter that his registration was then with another club in a different league, namely the Gintaras. Mr Danso was personally responsible for complying with doping control procedures. If he was induced by the London Capitals to impersonate Mr Fagbenle, that does not absolve him from his personal responsibility to comply with those procedures.

4.12 We have no doubt that Mr Danso's conduct amounted to tampering with doping control procedures. He forged Mr Fagbenle's signature on the doping control form. He pretended to be Mr Fagbenle, misleading the doping control officer about his identity. He thereby engaged in fraudulent conduct intended to prevent normal doping control procedures from occurring. He provided fraudulent information to UK Anti-Doping. He does not deny doing any of these things.

4.13 We are therefore comfortably satisfied on the evidence that UK Anti-Doping has discharged its burden of proving that Mr Danso committed the offence of tampering. It was not merely an attempt to tamper with doping control procedures. Mr Danso actually tampered with them in the manner stated above. The attempt succeeded in that Mr Fagbenle was wrongly charged with the doping offence (the presence of cannabis in his body) which Mr Danso, not Mr Fagbenle, had committed.

4.14 We turn next to the charge against Mr Offiah. This is a single charge of tampering or attempted tampering with any part of doping control. Mr Offiah admits the charge but submits that there are mitigating circumstances which should lead to a reduction in the penalty to be imposed upon him. We will consider the question of penalties shortly.

4.15 We are satisfied that Mr Offiah committed the offence of tampering. Again, his conduct was not merely an attempt to tamper with doping control procedures. He provided fraudulent information to Mr Hope, the doping control officer, on 6 January 2012. He misled Mr Hope by telling him that Mr Danso was Mr Fagbenle. He signed the doping control form by way of confirming that false identification. He knew that the player tested was the player he knew by his first name as "Kofi". He knew that the player tested was not the player he identified as Mr Fagbenle.

4.16 We are therefore comfortably satisfied that UK Anti-Doping has discharged the burden of proving the commission by Mr Offiah of a doping offence under Article 2.5, namely the offence of tampering with the doping control procedures operated by UK Anti-Doping on 6 January 2012 at the Brentwood Leisure Centre.

4.17 We turn next to the question of sanctions. This is not a case where there is any automatic disqualification of results. Article 11.2 of the Anti-Doping Rules provides for a team to be treated as having committed misconduct in the event that more than two members of the team are found to have committed a doping offence. That is not the position here. In relation to the two individual players, UK Anti-Doping did not advance any case under Articles 9 and 10 of the Anti-Doping Rules to the effect that the players had received any medals, prizes or individual results that would be the subject of automatic disqualification or forfeiture.

4.18 We consider first the sanctions to be imposed upon Mr Danso. The structure of the Anti-Doping Rules is such that we have to consider Mr Danso's two offences together, since they are inter-related for the purpose of sanctions. The starting point is that by Article 10.2 of the Anti-Doping Rules, the mandatory period of ineligibility for the cannabis offence is two years, unless the conditions for eliminating or reducing the period, or for increasing it, are met.

4.19 Cannabis is a specified substance that is prohibited in competition only. Mr Danso has not attempted to make any case under Article10.5 of the Anti-Doping Rules that the offence was committed without fault or negligence, or without significant fault or negligence. Nor has he made any case under Article 10.4 that he consumed cannabis without intent to enhance his performance or mask the use of a performance enhancing substance. In either case, he would have to show, with corroborating evidence, how the cannabis entered his system. We have no evidence of this.

4.20 This is not a case where Mr Danso is considered, for the purpose of penalty, to have committed multiple violations for the purposes of Article 10.7 of the Anti-Doping Rules. As UK Anti-Doping accepts, the offence of tampering was committed before Mr Danso

had received notice of, and before any attempt was made to give him notice of, the cannabis related charge.

4.21 Article 10.7.4 is therefore engaged, and provides that the offence of tampering and the cannabis charge shall be considered as one single doping offence, and the sanction to be imposed is the sanction applicable to whichever of the two offences carries the more severe sanction. However, by Article 10.7.4, in such a case, the commission of a second doping offence before being notified of the first one, "may be considered as a factor in determining aggravating circumstances under Article 10.6".

4.22 Article 10.6.1 provides that in a case such as this, the two year period of ineligibility may be increased to a maximum of four years where "aggravating circumstances are present that justify the imposition of a period of Ineligibility greater than the standard period". Article 10.6.2 enables a player to avoid that provision "by admitting his/her Anti-Doping Rule Violation promptly after being confronted with it by the NADO [National Anti-Doping Organisation]".

4.23 The standard period of ineligibility for the offence of tampering or attempted tampering is two years, unless the conditions for reducing it or increasing it are met; see Article 10.3.1. Again, no case for reduction or elimination of the two year period is advanced under Article 10.5 based on exceptional circumstances. Mr Danso did submit in correspondence that the London Capitals made him play the role he played, but we confidently reject any suggestion that he was without fault, or without significant fault, in committing the tampering offence.

4.24 The only question, therefore, is whether the two year period of ineligibility, which is the standard period for both offences, should be increased under Article 10.6 by reason of aggravating circumstances. In the present case, Mr Danso proved difficult to contact both before and after being charged by letter of 21 March 2012 and only made contact with UK Anti-Doping by telephone on 2 April 2012. In his conversation with Mr Redman, he admitted the cannabis offence but not the tampering offence.

4.25 It is questionable whether he can rely on Article 10.6.2 in respect of the cannabis offence; he could only do so if his admission of it was prompt. We do not consider that he can rely on Article 10.6.2 in respect of the tampering charge because he did not admit it promptly; indeed, he has not admitted it at all.

4.26 Nevertheless, we have decided not to exercise our discretion to increase Mr Danso's period of ineligibility beyond two years by reason of aggravating circumstances. The offence of tampering was serious, in particular because it led to the charging of an innocent man with a doping offence. However, Mr Danso is a young man and is not a sophisticated or wealthy man engaged in professional sport. We consider that, in all the circumstances, a period of ineligibility of two years is sufficient punishment for the two offences.

4.27 Article 10.9 requires that period to start on the date of this decision unless the conditions for starting it earlier (set out in Article 10.9.1, 10.9.2 and 10.9.3) are met. We do not consider that any of them are met in this case and we therefore decide that Mr Danso's period of ineligibility should start on the date of this decision.

4.28 We turn to the question of penalty in the case of Mr Offiah. Again, the offence of tampering was serious because it led to an innocent man being wrongly charged. However, we accept that Mr Offiah did not know Mr Danso had taken cannabis and had no specific reason to think that Mr Danso might test positive.

4.29 Mr Offiah did not think through the consequences of mis-identifying the player tested. He did not stop to worry that if the player should test positive, a case of mistaken identity could arise and could lead to an innocent man being charged and penalised. Mr Offiah thoughtlessly mis-identified Mr Danso. He did so on the spur of the moment, wanting to leave and get home after a long day. He did so foolishly, not maliciously.

4.30 Before being charged, when interviewed on 12 February 2012, Mr Offiah readily admitted to having mis-identified the player tested, and informed Mr Redman that the player's real name was Kofi and not Oladapo Fagbenle. When charged, Mr Offiah continued with his cooperative stance and indeed did not ask for an oral hearing of the charge. He submitted written mitigation and admitted the offence.

4.31 The standard period of ineligibility for Mr Offiah's tampering offence is two years; see Article 10.3 of the Anti-Doping Rules. Mr Offiah did not rely on Article 10.5.1 or 10.5.2 (respectively, no fault or negligence, or no significant fault or negligence). A question arose as to whether Mr Offiah could rely on Article 10.5.4, which provides (so far as material here) for the two year period to be reduced by up to half where a person "voluntarily admits the commission of an Anti-Doping Rule Violation before having received .... a Notice of Charge ... and that admission is the only reliable evidence of the violation at the time of the admission ...".

4.32 We were referred to two cases arising in the sport of rugby, in which the scope of the equivalent provision in the relevant rules governing rugby was considered. Both were cases about ingestion of prohibited substances. Neither case involved the unusual position here, which is that Mr Offiah's evidence in interview helped to correct a case of mistaken identity and expose the commission of tampering offences by himself and Mr Danso. For that reason, we did not find the two cases helpful.

4.33 We accept Mr Hone's submission, on behalf of Mr Offiah, that Mr Offiah is able to bring himself within the concluding words of Article 10.5.4. That provision requires the admission by the person in question of the offence he has himself committed. It does not apply where what is admitted is a different offence by the same person or by a different person. 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.

4.34 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.

4.35 Furthermore, as at 12 February 2012 UK Anti-Doping had no reliable evidence that Mr Offiah had committed the offence of tampering. They had evidence that Mr Fagbenle may have been impersonated and they had the doping control form which included evidence that Mr Offiah had identified Mr Fagbenle. But they had no reliable evidence that Mr Offiah had acted fraudulently and improperly within the definition of tampering in the Anti-Doping Rules. Until Mr Offiah's admissions on 12 February, for all UK Anti-Doping knew, he might have been under a misapprehension about the identity of the player tested, and guilty of nothing except innocent mistake.

4.36 We therefore have discretion to reduce the two year period of ineligibility for Mr Offiah's tampering offence by up to half. In the unusual circumstances here, we have decided to exercise our discretion to the full extent and to reduce the period of ineligibility to one year.

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.

4.38 We also take into account that Mr Offiah cooperated fully in the disciplinary process and did not seek an oral hearing. He was, until this matter, a man of exemplary character. His evidence to the Tribunal was frank and truthful. We consider that he has learned his lesson and that a one year period of ineligibility is sufficient punishment for his tampering offence.

4.39 We consider finally the date on which that period should start. By Article 10.9.2, this may (subject to Article 10.9.3, which is not applicable here) in the present case be as far back as the date of the offence, i.e. 6 January 2012. Article 10.9.2 enables the Tribunal to backdate the period of ineligibility as far back as the date of the offence where the player promptly admits the offence when confronted with it, before playing again.

4.40 In this case, Mr Offiah promptly admitted the facts constituting the offence when he was confronted with it in interview on 12 February 2012. He did so before being charged and before playing again. However, after making that admission and after being charged on

21 March 2012, Mr Offiah played competitive basketball up to 12 April 2012, when he was banned by the disciplinary panel of England Basketball. In those circumstances, we think it right that his period of ineligibility should commence on 12 April 2012. We therefore decide that Mr Offiah should be ineligible for a period of one year from 12 April 2012.

5. SUMMARY: THE TRIBUNAL'S DECISION

5.1 Accordingly, for the reasons given above, the Tribunal makes the following decision:

(1) In the case of Mr Danso, the doping offences under Article 2.1 and 2.5 of the Anti-Doping Rules have been established.

(2) In the case of Mr Danso the period of ineligibility is two years from the date of this decision.

(3) In the case of Mr Offiah the doping offence under Article 2.5 of the Anti-Doping Rules has been established.

(4) In the case of Mr Offiah the period of ineligibility is one year from 12 April 2012.

6. RIGHTS OF APPEAL

6.1 In accordance with Article 13.4 of the Anti-Doping Rules and Article 12 of the Procedural Rules, Mr Danso, Mr Offiah, England Basketball and UK Anti-Doping have a right of appeal to the NADP appeal tribunal.

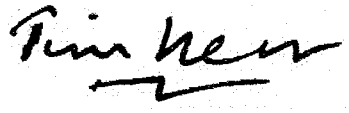
6.2 In accordance with Article 13.7.1 of the Anti-Doping Rules and Article 12.5 of the Procedural Rules, any party who wishes to appeal must lodge a Notice of Appeal with the NADP Secretariat within 21 days of receipt of this decision.

Tim Kerr QC

Dr Kitrina Douglas

Professor Peter Sever

Signed on behalf of the Tribunal:



Chairman

Dated: 20 July 2012