SPORT RESOLUTIONS (UK)

SPECIALIST INDEPENDENT DISPUTE SERVICE

SR/0000120114

NATIONAL ANTI-DOPING PANEL

Before:

Christopher Quinlan QC

Lorraine Johnson

Dr Barry O'Driscoll

BETWEEN:

UK Anti-Doping

National Anti-Doping Organisation

-and-

Christopher Edwards

Respondent

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

FINAL DECISION OF THE ANTI-DOPING TRIBUNAL

Introduction

1. This is the final decision of the Anti-Doping Tribunal ('the Tribunal') convened pursuant to Article 5.1 of the National Anti-Doping Panel Procedural Rules to hear and determine three charges brought against Christopher Edwards (the Respondent) for violations of Articles 2.2 and 2.6.1 of the Welsh Rugby Union ('WRU') Anti-Doping Rules ('ADR').

2. The Respondent was born on 27 January 1985. He was a registered member of Tredegar RFC and the WRU and so bound by the ADR.

3. By Article 2.2 ADR it is an anti-doping rule violation ('ADRV") to "use a Prohibited Substance or Prohibited Method" unless such use is consistent with a therapeutic use exemption ('TUE'). The Respondent does not possess a TUE.

4. By ADR Article 2.6 it is an anti-doping rule violation to possess a Prohibited Substance or Prohibited Method.

5. By Regulation 3 of the ADR, UKAD is the National Anti-Doping Organisation for the United Kingdom and is appointed by the WRU to enforce its ADR.

6. This document constitutes our final reasoned decision, reached after due consideration of the evidence, submissions and Arbitral Awards placed before us.

Procedural History

7. The Respondent was charged with two ADRVs by letter dated 12 March 2014 ('charge letter'). The charge letter set out the details of the alleged violations and a summary of the facts and the evidence relied upon by UKAD. The letter also imposed a provisional suspension with "immediate effect".

8. On 21 March 2014 Mr Peter Leaver QC (NADP President) dismissed the Respondent's application to lift the suspension provisionally imposed.

9. On 3 and 11 April 2014 the Tribunal Chairman (Christopher Quinlan QC) conducted Directions Hearings by telephone conference call. The Respondent was represented by Counsel (on 3 April) and solicitors (on 3 and 11 April). On 3 April through his representatives he confirmed that he had no objection to the composition of the Tribunal and that the ADRVs were denied.

10. The Chairman issued procedural directions, which were promulgated in writing, dated 11 April 2014.

11. On 22 April the Respondent's solicitor sent an email to UKAD and NADP Case Officer Jenefer Lincoln, in which he stated

"I write to inform you that I have been instructed by Mr Edwards that he no longer wishes to contest the allegations he faces from UKAD.
He understands that he faces a two year ban from all competition as a result of this that will run from the date of his provisional suspension."

12. On 23 April 2014 the Chairman issued further procedural directions. In response to those directions on 25 April the Respondent's solicitor forwarded to UKAD and the NADP an email in which the Respondent admitted both ADRVs.

13. On 2 May 2014 the Chairman issued further procedural directions. Those directions were subsequently varied on application by UKAD. In response thereto the Respondent indicated that he did not want a hearing on sanction but both he and UKAD complied with directions ordering written submissions on sanction.

Determination of the Charges

14. The charge letter alleged two ADRVs:

    a. *"Possession of one or more Prohibited Substances namely trenbolone enanthate, testosterone cypionate, trenbolone, testosterone and androstenedione in violation of ADR 2.6.1; and*
    b. *Use or attempted use of a Prohibited Substance(s), namely trenbolone enanthate, testosterone cypionate, trenbolone, testosterone and androstenedione, in violation of ADR 2.2."*

15. Trenbolone enanthate, testosterone cypionate, trenbolone, testosterone and androstenedione are Prohibited Substances, listed in S1.a (Anabolic Agent) of the World Anti-Doping Code (WADC) Prohibited List. Each is an anabolic steroid.

16. In light of his admissions, we are comfortably satisfied that UKAD discharged its burden and established that the Respondent committed the ADRVs contrary to ADR Articles 2.2 and 2.6.1.

17. The sole issue for the Panel is sanction. UKAD submitted that the presence of aggravating circumstances warranted a period of ineligibility greater than two years (ADR 10.6.1). The Respondent argued that there are no aggravating circumstances and the period of ineligibility should not exceed two years.

The facts

18. The Respondent is twenty-nine years of age. He played rugby union for Tredegar RFC, which in the 2013/14 season played in the WRU League 2 East. At all material times he was a registered player and therefore a member of the WRU. Pursuant to his registration, he is bound by and required to comply with the ADR.

19. On 6 December 2013 a third party supplied UKAD with the following:
    a. Tesco plastic carrier bag containing a quantity of hypodermic syringes and needles and two empty bottles of Trentest 300. On closer inspection,
        a. Three needles had been removed from the packaging and there appeared to be liquid in the tip of each; and
        b. Three needles had been removed from the packaging; and
    b. Small grey plastic bag containing a quantity of hypodermic syringes and needles and a partially used bottle of Trentest 300; and
    c. Two boxes of hypodermic syringes.

20. Trentest 300 is an injectable anabolic steroid compound used for the rapid increase of strength and muscle mass. The partially used bottle had approximately one third of the original content. On 17 February 2014 UKAD sent the partially used bottle of Trentest 300 to HFL Sport Science laboratory for analysis.

21. On 18 February 2014 Patrick Myhill ('PM') UKAD Head of Intelligence and Investigations spoke with the Respondent by telephone. He told him that UKAD understood the items had been recovered from his home. PM explained that the purpose of the call was to give him an opportunity "*to make an early admission and get back to playing rugby at the earliest opportunity*". PM said he wanted to question the Respondent in London about his use of the substances and offered to pay his rail fare. They agreed to speak the following day.

22. On 19 February 2014, in his file note PM recorded the Respondent's position being that he "*could not commit to*" an interview and wanted to speak to his employer. The same day HFL Sport Science issued a Certificate of Analysis (number 87722) which confirmed that the Trentest 300 had been analysed and contained the following Prohibited Substances: trenbolone enanthate, testosterone cypionate, trenbolone, testosterone; and androstenedione.

23. On 24 February 2014, PM spoke again with the Respondent. During the telephone conversation, the Respondent said he would not travel to London and would wait to hear from UKAD.

24. The charge letter informed the Respondent that he was provisionally suspended until the matter had been resolved. The letter also informed him that UKAD "*considered his possession and use of a product that contained multiple Prohibited Substances over a sustained period of*

time constitutes aggravating circumstances". It informed him that if he denied the matter, UKAD would be "*seeking to impose a period of ineligibly of up to four years*" upon him.

25. By email to UKAD dated 17 March 2014, the Respondent denied both ADRVs. In a further email he sent to UKAD the same day, the Respondent stated: "*I strongly deny these charges*" and "*UKAD claim to have obtained banned substances from my property… a claim that I categorically deny as I know nothing of any banned substances at my home*."

26. In response to the charge letter, the Respondent sent a further email to UKAD on 20 March 2014, in which he denied responsibility in robust terms, asserted he was the innocent victim of that third party's lies and said:

> *"I would like to summarise by clarifying my position. The items are not mine and I fail to see you have any substantiated evidence to prove otherwise."*

27. In the same email he took issue with the chain of custody and described the bringing of the ADRV as "*preposterous*".

28. Subsequently, as is clear from paragraphs 11 and 12 he admitted the ADRVs.

Sanction

29. ADR Article 10.2 provides:

"*For an Anti-Doping Rule Violation under Article 2.1 (Presence of Prohibited Substance or its Metabolites or Markers), Article 2.2 (Use or Attempted Use of Prohibited Substance or Prohibited Method) or Article 2.6 (Possession of Prohibited Substances and/or Prohibited Method) that is the Participant's first violation, a period of Ineligibility of two years shall be imposed, unless the conditions for eliminating or reducing the period of ineligibility (as specified in Article 10.4 and/or Article 10.5) or the conditions for increasing the period of Ineligibility (as specified in Article 10.6) are met*."

30. The Respondent was notified of the charges at the same time. Accordingly they are to be treated as a single anti-doping rule violation (ADR Article 10.7.4.a).

31. This is the Respondent's first anti-doping rule violation. He does not suggest that Articles 10.4 or 10.5 apply. Therefore, the starting point is a period of ineligibility of two years subject to Article 10.6.

32. ADR Article 10.6.1, provides:

"If the NADO establishes in an individual case involving an Anti-Doping Rule Violation other than under Article 2.7 (Trafficking or Attempted Trafficking) or Article 2.8 (administration or Attempted administration) that aggravating circumstances are present that justify the imposition of a period of Ineligibility greater than the standard period, then the period of Ineligibility otherwise applicable shall be increased up to a maximum of four years, unless the Participant can prove to the comfortable satisfaction of the hearing panel that he/she did not knowingly commit the Anti-Doping Rule Violation."

33. However, that is subject to ADR Article 10.6.2 which states:

"A Participant can avoid the application of Article 10.6.1 by admitting his/her Anti-Doping Rule Violation promptly after being confronted with it by the NADO."

34. UKAD relied upon Article 10.6.1. The Respondent relies upon Article 10.6.2 and in any event contends that there are no aggravating circumstances.

35. The commentary to WADC Article 10.6 reads:

"*Examples of aggravating circumstances which may justify the imposition of a period of Ineligibility greater than the standard sanction are: the Athlete or other Person committed the anti-doping rule violation as part of a doping plan or scheme, either individually or involving a conspiracy or common enterprise to commit anti-doping rule violations; the Athlete or other Person Used or Possessed multiple Prohibited Substances or Prohibited Methods or Used or Possessed a Prohibited Substance or Prohibited Method on multiple occasions; a normal individual would be likely to enjoy the performance-enhancing effects of the anti-doping rule violation(s) beyond the otherwise applicable period of Ineligibility; the Athlete or Person engaged in deceptive or obstructing conduct to avoid the detection or adjudication of an anti-doping rule violation*."

36. The commentary stresses that those are examples and not intended to be exhaustive.

<u>Article 10.6.2</u>

37. It is appropriate to consider this first: if it applies, Article 10.6.1 cannot.

38. UKAD submits that the Respondent's admission was not made promptly. The Respondent contends to the fact it was made "*within 6 weeks of UKAD's charge letter*" which in the context of this case was "promptly" made. In summary, his Counsel (Daniel Saoul) made the following points:
    a. After his initial denials, on or about 2 April 2014 the Respondent "*had legal advice in which the consequences (including possible financial consequences) of the options available to him were explained for the first time". Privilege was "expressly preserved*". We were not told what was said. It was submitted that there must "*be some reasonable allowance for an individual to consider and reflect upon the position he finds himself in, with the benefit of expert advice*".
    b. "Promptly" in ADR 10.6.2 does not mean, it was argued, "immediately" or "initially". If it did, Mr Saoul made the bold submission that "*a legal adviser approached by an athlete two or three weeks after he had initially denied a charge would find himself duty bound to advise the athlete to continue to contest the allegations to the fullest extent possible regardless of whether the defence originally intimated, without advice, was meritorious*" since he would be treated identically whether he then admitted the ADRV or it was found proved by the tribunal. Of course, a legal advisor would (1) be bound by his instructions (including any admission) and (2) would not be involved in any way in misleading a tribunal.
    c. WADC provides no timeframe nor is the athlete bound by his first answer.
    d. He relied on the "issued decision" of UKAD v Kruk 11 July 2012.
    e. The Respondent's admission was "*entered within a matter of weeks and prior to any commitment by UKAD, in earnest, to a time consuming and expensive adversarial process*".

39. "Promptly" is not defined, either in the ADR or in WADC from which the ADR derive. No assistance is found in the WADC commentary. In ordinary language it means to act in a prompt manner, to act without delay. Whether an admission is promptly made is a question of fact. It depends on the circumstances of each individual case. It is not measured simply by time but also by context. For example, an admission at the start of a hearing in expedited proceedings may be timely by reference to the calendar but is late in the process.

40. We agree with the observations expressed by the Sole Arbitrator in *UKAD v Staite* 6 July 2010 (paragraph 17):

"*The rationale behind Article 10.6.2 of the Rules is no doubt to provide an incentive for the avoidance of unmeritorious disputes. Contested hearings may be long drawn out and costly. It is obviously in the general interest that they should only take place where justified*."

41. Those observations were not intended to be exhaustive. The requirement that any admission is made promptly (to avoid operation of Article 10.6.1) is no doubt also to encourage candour and responsibility by an athlete charged with an ADRV. Support is found in Article 10.5.4 WADC where an admission of an ADRV in the absence of other evidence may result in a reduced period of ineligibility.

42. On 22 April the Respondent's solicitor informed UKAD and the NADP that "he no longer wishes to contest" the ADRVs. That is a concession, drafted carefully by an experienced lawyer. His unequivocal admission came on 2 May in answer to a specific direction. It came after the following opportunities to admit the ADRVs:
    a. When PM spoke to him on 18, 19 or 24 February;
    b. In response to the letter charging him;
    c. Through his representatives at the start of the hearings on 3 April or on 11 April 2014 (by which time he had - we were told - received legal advice); and
    d. At any time before 22 April.

43. It is right that on 18, 19 and 24 February he appears to have been "confronted" with the finding of the "drugs" (as PM described them) together with an invitation or request to make admissions about his possession and use of the same. It is difficult for us as all we have are three file notes from PM purporting to record the conversations; he has not prepared a witness statement dealing with this aspect of the matter. What is clear is that no admission was forthcoming.

44. Once he received the charging letter and so was unequivocally "confronted" with the ADRVs, he denied them. He went further still, and asserted he was the innocent victim of another's malice. He tried (and failed) to have the provisional suspension lifted. Initially, he did not accept responsibility; he was not candid; and his eventual admission came only after legal advice and two direction hearings at which (1) he denied the ADVR's and (2) the contested hearing was fixed. As to legal advice (1) he did not need it to understand he possessed and used the Prohibited Substances and (2) the fact his admission came (only) after legal advice may speak volumes about his preparedness to accept responsibility.

45. Time is of the essence in anti-doping proceedings. Article 7.8.1 of the NADP Procedural Rules provides that "*the hearing should take place no later than forty (40) days after the NADP Secretariat receives the Request for Arbitration save where fairness requires or the parties otherwise agree*". The Request for Arbitration was made on 26 March 2014. Treating the 22 April correspondence as his admission, that was forty-one days after the date of the charge letter and twenty-seven days into the forty within which ordinarily the hearing would take place.

46. The "issued decision" in *Kruk* does not assist the Respondent. First, it is a decision issued by UKAD and is not the product of a contested hearing before, or a ruling by, an independent tribunal. In essence it records an agreement. Second, Kruk was charged on 25 May 2012 and admitted the ADRV on 28 May 2012. It is right that on 15 June 2012 he asked for a hearing, but he abandoned that request on 26 June. He made a prompt admission.

47. Therefore, and in the words of Mr Saoul, "*analysed correctly and fairly*" the Respondent's admission was not made promptly after he was confronted with the ADRVs..

Article 10.6.1 – aggravating circumstances

48. UKAD (as foreshowed in its charging letter) contend that the following aggravating circumstances were present:
    a. The Respondent undertook "*a deliberate course of cheating by injecting himself with a product that contained five different steroids*";
    b. He "*did this for an unknown period of time*"; and
    c. "*When confronted with the [ADRV] he, on multiple occasions, vehemently denied the charges*".

49. The Respondent submitted that the aggravating circumstances were "*not made out*", and that in all the circumstances of the case the appropriate sanction is the "*standard two year ban*".

50. The issues for us were:
    a. Has UKAD satisfied us that aggravating circumstances are present?
    b. If so, do the aggravating circumstances justify the imposition of a period of Ineligibility greater than two years; and
    c. If so, by how long, to a maximum of four years, should the period of ineligibility be increased.

51. The "*deliberate course of cheating by injecting himself with a product that contained five different steroids*" is in fact two points: (1) it was deliberate cheating which (2) involved multiple Prohibited Substances.

52. As to that Mr Saoul submitted that it was inappropriate for UKAD to make or rely upon factual allegations for which there was no evidential basis. There had been – he asserted - no factual finding to the effect that Mr Edwards has engaged in a "*deliberate course of cheating*", nor that "*he did so for an unknown period of time*". The Respondent's admissions related only to possession and use or attempted use. It would, he submitted "*be unsafe for the Tribunal to make assumptions about these matters or to proceed on the basis of any factual allegations not clearly evidenced by the information before it*". To do otherwise would, he argued "*be procedurally and substantively unjust and would set a dangerous precedent, whereby a Tribunal is entitled to make a range of unproven assumptions, at UKAD's suggestion, notwithstanding the lack of documentary or other evidence to support them and ignoring the fact that the burden of proof in this regard rests on UKAD*".

53. By directions issued on 2 May 2014 the Respondent was given the opportunity to request an oral hearing on the issue of sanction. On or about the 8 May 2014 he informed Ms Lincoln that he did not "require" an oral hearing. He elected to proceed on the papers. He has not supplied us – as he could have done - with any factual account of his admitted possession and use/attempted use of Prohibited Substances.

54. It is necessary for us to make certain factual findings in order to consider the issue of aggravating circumstances. That is obvious and would be, we are satisfied, to his experienced lawyers. We must do so on the basis of the material before us in respect of which no challenge has been made. There is a difference between making assumptions and drawing inferences, that is to say coming to common sense conclusions based on the evidence which we accept.

55. The ADRV alleged "use or attempted use". In so doing, it adopts the language of ADR Article 2.3. It could (and we think should) have been pleaded to allege 'use' since that was UKAD's case. It would then have been clear by reference to the 'charge' what UKAD was alleging. The fact of

    a. An injectable product;
    b. Two empty bottles;
    c. A partially empty bottle;
    d. Three unpackaged syringes with liquid in the tip of each; and
    e. Three unpackaged needles

lead to the overwhelming inference or conclusion that the Trentest 300 had been used. It was a user's kit. The Respondent admits possessing the Prohibited Substances. He admits at least attempting to use the same. On the basis of the material before us, we are comfortably satisfied he used – rather than attempted to use - the Prohibited Substances. We are also satisfied, from those facts alone, he used the Trentest 300 more than once. We also add that the product is clearly the type which would, ordinarily, be used repeatedly.

56. The admitted possession and use was deliberate. It involved multiple Prohibited Substances but it is of note that they were contained in the same product. Mr Saoul relied upon and cited this sentence from paragraph 16 of *UKAD v Staite*

"*All would doubtless depend on the precise circumstances, but as a generality it does not seem to me that a mixture of substances is so much more reprehensible than a single substance*."

57. In the very next sentence the Sole Arbitrator commented, "*Nevertheless, I do not need to come to a conclusion on this point*" and clearly he was not purporting to do so. ADR 10.6.1 (and WADC 10.6) refer to Prohibited Substances, not products. We can conceive of circumstances were the use of a single product containing Prohibited Substances, each having its own purpose would be more "reprehensible" than the taking of a single Prohibited Substance. Further, is there any true difference in culpability between the athlete who takes one substance containing (for example) two anabolic steroids and the athlete who takes at the same time two products each containing an anabolic steroid? We think not. As the Sole Arbitrator (correctly) observed it depends on the precise circumstances.

58. Of the previous decisions to which we have been invited, *UKAD v Wilson* 19 January 2012[1] involved two different anabolic steroids. That was also the case in *UKAD v Windsor* 30 April 2013 and *UKAD v Mark Edwards* 7 June 2011. In each case the Tribunal considered the presence or use of more than one Prohibited Substance to be an aggravating circumstance (*Wilson,* para. 83[2]; *Edwards,* para. 3.5.5; *Windsor* para. 33.1).

59. We note also that Article 10.7.4.a provides that multiple violations which cannot be charged separately – as in this instance - "*may be considered as a factor in determining aggravated circumstances under Article 10.6*"[3].

[1] Appeal decision
[2] First instance decision in September 2011. and upheld on appeal.
[3] See also *UKAD V Burns* (NADP) dated 10 December 2012

60. Second, he did this for an "*unknown period of time*". As a statement of fact that is correct. However, there is no reliable evidence from which we can conclude over what period he used the Trentest 300. On the evidence of what was found, we are satisfied he used it more than once.

61. Third, the Respondent repeatedly denied the ADRVs. He did so in robust terms. The denials were deceptive in that they were untrue and so misleading. However, we do not think what he did is "*deceptive or obstructing conduct to avoid the detection or adjudication"* of an ADRV" as described in the WADC commentary. That, in our view, is more apt to cover conduct that goes beyond a denial. Otherwise, Article 10.6.1 would be engaged in any case where the ADR was not admitted. Such conduct would include, for example, destroying or hiding evidence; being party to or creating and/or relying upon evidence that the athlete knew to be false; and falsely blaming others (see for example *UKAD v Wilson).* By way of example in *UKAD v Windsor* the athlete swore an untrue affidavit and was complicit in the compilation of what he knew was an untrue affidavit sworn by another (see paragraph 33(iv)).

62. We appreciate that the commentary is just that; it is not part of the WADC still less the ADR. However, it is helpful in explaining the purpose and application of ADR 10.6.1. We are not satisfied that the Respondent's denials amount to an aggravating circumstance.

63. Therefore we are satisfied (to the requisite standard) that in this instance the following aggravating circumstances are present. –
    a. The possession of multiple Prohibited Substances, namely two.
    b. The use of multiple Prohibited Substances, namely two.
    c. The use of the multiple Prohibited Substances on more than one occasion.

64. As this Panel remarked in *Windsor* we agree with the observations of the
    a. CAS Panel CAS 2012/A/2773 *IAAF v SEGAS & Kokkinariou.* CAS 2012/A/2773 namely that the imposition of an increased ineligibility period is at the direction of the relevant body and that a single aggravating circumstance might justify the maximum period while multiple examples might justify a lesser period; and of the
    b. First instance panel in *Wilson*, "*we do not necessarily find it compelling to compare individual features of individual cases with one another, and whilst consistency in decision making is important, one tribunal may (within reason) legitimately take a different view from another*"[4] .

[4] paragraph 92

65. We are satisfied to the requisite standard that such aggravating factors "justify" a period of Ineligibility greater than the standard period of two years. It was deliberate doping by the repeated use of anabolic steroids. However, unlike others ultimately he did not persist with his initial dishonest stance. In the circumstances it is appropriate to impose a period of ineligibility of three years.

66. The charge letter provisionally suspended the Respondent. UKAD informed us, and the Respondent accepted, that he ignored the provisional suspension and continued to play rugby union up to and including 26 April 2014. We note that he thereafter competed after his solicitor (on his instructions) informed UKAD and the NADP that he did not contest the ADRVs.

67. ADR Article 10.9.1 does not apply. Article 10.9.2 does not apply: he did not promptly admit the ADRVs and in any event not before he "participated" again. As for crediting the period of provisional suspension pursuant to Article 10.9.3, he did not "respect" it before 27 April. We note his club had a league fixture on 3 May and so he appears to have (eventually) respected it, rather than simply (as it first appeared) finish his season.

68. In accordance with ADR Article 10.9.3 the period of ineligibility shall start on 27 April 2014, the date upon which he appeared first to respect the provisional suspension.

69. The Respondent's status during the period of ineligibility is as provided in ADR Article 10.10.

Summary

70. For the reasons set out above, the Tribunal finds:
    i. The anti-doping rule violations contrary to ADR Articles 2.2 and 2.6 have been established.
    ii. The period of ineligibility imposed is three years from 27 April 2014.

Right of Appeal

71. In accordance with ADR Article 13.4 any appeal against this decision must be lodged within 21 days of receipt hereof.

Christopher Quinlan QC, Chairman

On behalf of the Tribunal

10 June 2014

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

T: +44 (0)20 7036 1966
F: +44 (0)20 7936 2602

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