

NATIONAL ANTI-DOPING TRIBUNAL

Before:

Rod McKenzie (Chair)
Carole Billington-Wood
Colin Murdock

**IN THE MATTER OF PROCEEDINGS BROUGHT UNDER THE ANTI-DOPING REGULATIONS
OF THE WELSH RUGBY UNION LTD**

B E T W E E N:

UK Anti-Doping

("UKAD")

- And -

Mr Peter Davies

("Athlete")

DECISION OF THE ANTI-DOPING TRIBUNAL ("THE TRIBUNAL")

Introduction

1. This is the unanimous decision of the Tribunal in an arbitration of alleged Anti-Doping Rule Violations ("ADRVs") brought by UKAD under the Anti-Doping Regulations of The Welsh Rugby Union Ltd ("WRU") adopting the UK Anti-Doping Rules ("ADR"). Capitalised words and phrases not defined in this Decision have their respective meanings provided in the ADR and WADA Code 2009. References to Articles are to articles of the ADR.
2. The person against whom the charged ADRV ("Charges") are brought is Peter Davies ("the Athlete").

3. The Athlete's date of birth is 6 July 1994 and at the dates of the two Sample collection sessions with which this matter is concerned he was 19 years of age. At the date of the hearing on 27 August 2014 ("the Hearing"), he was 20 years of age. He competes in rugby union competitions sanctioned by and operated under the rules of the WRU. He is an amateur athlete and currently plays for Newport High School Old Boys, a member club of the WRU, in National 3 of the WRU League. His status as an amateur has no relevance to the interpretation and application of the WRU Anti-Doping Regulations or of the ADR.
4. The Charges against the Athlete were set out in a letter dated 13 June 2014 from UK Anti-Doping ("UKAD") which constituted a Notice of Charge for the purposes of ADR 7.5.1. That letter stated *inter alia*:-

"3.3 You are hereby formally charged with the commission of the following anti-doping rule violations ('ADRVs') in violation of ADR Article 2.3:

3.3.1 that on 14 May 2014 you failed, without compelling justification, [sic] to submit to Sample collection after notification of Testing; and

3.3.2 that on 20 May 2014 you refused, without compelling justification, [sic] to submit to sample [sic] collection after notification of Testing."
5. It should be noted that with respect to 14 May 2014 the Charge is one of failure to submit to Sample collection and that with respect to 20 May 2014 the Charge is one of refusal to submit to Sample collection.
6. All references to acceptances, acknowledgements and the like in this Decision and at the Hearing were in the case of the Athlete through counsel and in the case of UKAD through its solicitor.
7. At the Hearing the Athlete's position was that he accepted that on 14 May 2014 he had failed to submit to Sample collection but sought to argue that he did so in circumstances where there was compelling justification for him not so submitting. He further sought to argue that the circumstances of him so failing to submit were such that he bore No Fault or Negligence for the purposes of Article 10.5.1. He accepted that if he failed to satisfy the Tribunal that he had compelling justification for failing to submit to Sample collection then he could not logically establish that he had No Fault or Negligence with respect to such failure for the purposes of Article 10.5.1. However, he also sought to argue, in the alternative, that if he failed to make out compelling justification and No Fault or Negligence

with respect to the 14 May 2014 incident, that in the circumstances he bore No Significant Fault or Negligence for the failure for the purposes of Article 10.5.2.

8. The Athlete's final position at the Hearing as regards the Sample collection session on 20 May 2014 was that he accepted that he had refused to submit to Sample collection, that in the admitted circumstances he could neither satisfy the Tribunal that such refusal occurred in circumstances which constituted compelling justification for so refusing nor that he bore No Fault or Negligence for so refusing. However, with respect to the 20 May 2014 Sample collection session, the Athlete sought to argue that the circumstances were such that he bore No Significant Fault or Negligence.
9. Paragraph 3.1 of the letter of 13 June 2014 from UKAD to the Athlete was to the effect that there were two separate alleged violations on different dates which, if established, would constitute separate ADRVs. However, since the Athlete had not received notification of the alleged failure to submit to Sample collection on 14 May 2014 before the alleged refusal to so submit on 20 May 2014, the two alleged ADRVs fall to be considered together as a single violation in accordance with the provisions of Article 10.7.4(a).
10. At the Hearing UKAD advised that notwithstanding that the potential effect of Article 10.6 (aggravation of sanction) is expressly reserved to apply to circumstances where Article 10.7.4(a) applies that UKAD would not argue, in the circumstances of this case, for any aggravation of sanction pursuant to Article 10.6.
11. The Athlete acknowledged that, assuming the Athlete was permitted to advance the various argument referred to above in respect of the incidents on 14 and 20 May 2014, that in all of the circumstances the Tribunal would, as a minimum, require to find the alleged ADRV made out as concerned the Sample collection session on 20 May 2014. This was because the two ADRVs required to be considered together as a single violation and the Athlete admitted refusing to submit to Sample collection on 20 May and was not offering to prove that he had any compelling justification or that he had No Fault or Negligence for so refusing. Accordingly, even if the Athlete established that, as he claimed, he bore No Significant Fault or Negligence for refusing to submit to Sample collection on 20 May 2014 a minimum a period of Ineligibility of 12 months would require, having regard to the terms of Article 10.2.2, to be imposed by the Tribunal; i.e. half of the two year period of Ineligibility, absent any aggravation of sanction, which would otherwise require to be imposed.
12. Ms Shevill, the solicitor appearing for UKAD, the Athlete (who was unrepresented at that time) and the Chairman attended at a Hearing on Directions in this matter by telephone

conference call on 10 July 2014. The letter from UKAD of 13 June 2014 was discussed at that Directions Hearing; in particular section 2 setting out the factual background alleged by UKAD and section 3 setting out the ADRVs charged were expressly referred to and worked through with the Athlete.

13. Section 2 of the 13 June 2014 letter provides as follows:-

"Facts

14 May attempt

- 2.1 *On 14 May 2014 UKAD attempted to test you at your home address. You were properly notified by a UKAD Doping Control Officer ('DCO') that you had been selected to provide a Sample for doping control purposes.*
- 2.2 *After notification, you told the DCO that you did not understand why you were being tested as you had not played rugby for a year due to injury and were not likely to play in the future. You also stated that you had an examination to attend at Cardiff University and that you had, in any event, passed urine recently.*
- 2.3 *You agreed to provide a Sample and attempted to do so on two separate occasions, consuming a pint of water between both attempts. However, you were unable to provide any Sample.*
- 2.4 *Whilst the DCO was with you, your mother entered the room to remind you that you had an examination to attend. The DCO advised you of the potential consequences of failing to provide a Sample. You confirmed that you understood those consequences but terminated the test in order to leave for an examination at 9.30am at Cardiff University.*
- 2.5 *The attempted test was concluded at 7:30am.*

20 May attempt

- 2.6 *On 20 May 2014, UKAD again attempted to test you at your home address. The DCO arrived at 9.00pm and notified you that you had been selected to provide a*

Sample for doping control purposes. Your response to the DCO was "No, I won't this is stupid" and you turned to go back into your house.

2.7 The DCO called after you and asked if you would sign the DCF to indicate that you were refusing to provide a Sample, but you said "No" and returned inside the house.

2.8 Your mother then informed the DCO that you were unwell with flu-like symptoms and that you had not wanted to see the DCO but had been convinced to do so by her. Your mother also stated that you were under stress due to your examinations, which were due to end on 22 May 2012.

2.9 The DCO left the address at 9:20pm."

14. Having been taken through the above alleged factual narrative at the Hearing on Directions by the Chairman, the Athlete expressly accepted the accuracy of what was alleged and he admitted that those were the events which had occurred and the things that were said at the two Sample collection sessions.
15. The Chairman then went on to explain at the Hearing on Directions the terms of paragraph 3 of the UKAD letter of 13 June 2014 and the Athlete admitted to having committed the ADRVs set out in paragraphs 3.3.1 and 3.3.2 of the same letter. The Athlete said nothing at the Hearing on Directions which might have suggested that he intended to assert that he had had compelling justification for failing/refusing to provide a Sample at either Sample collection session.
16. On 15 July 2014 the Chairman issued the First Directions of the Tribunal recording the material events at the Directions Hearing, the agreement by the Athlete of the accuracy of the factual narrative as set out at paragraphs 2.1 to 2.9 (inclusive) of the letter of 13 June 2014 and the Athlete's admission of commission of the ADRVs set out in paragraphs 3.3.1 and 3.3.2 of the same letter.
17. At the Hearing on Directions there was a discussion regarding the appropriate procedure which would follow and it was agreed by Ms Shevill, the Athlete and the Chairman that it was appropriate to convene a hearing which would be restricted only to whether there should be a sanction for the admitted ADRVs and what level of sanction, if any, should be imposed for the commission of the ADRVs admitted by the Athlete. This agreement and procedure was also recorded in the Note of Directions of 15 July 2014 at paragraphs 2 and

3. Leave was also given to the parties to apply for further Directions or amendment to the Directions to be made in writing by not later than 12 noon on Tuesday 22 July 2014 in terms of paragraph 8 of the Note of Directions. No application for further Directions or amendment to the Directions was made until the Hearing when such applications were first made by Mr Goodfellow.

18. On 20 August 2014 Ms Shevill on behalf of UKAD submitted a comprehensive written submission in support of the UKAD case which was copied to the Athlete.
19. The Athlete had not been legally represented at the time of the Hearing on Directions on 10 July 2014 but had taken steps to secure legal representation for the Hearing scheduled to take place on 27 August 2014. The precise date on which contact with Mr Goodfellow of counsel, was first made could not be identified with full accuracy at the Hearing but in any event, nothing turns on the issue. Mr Goodfellow had agreed to undertake the representation of the Athlete on a *pro bono* basis and the Tribunal records its thanks to Mr Goodfellow for agreeing so to do. He had been on holiday in the period leading up to the Hearing and through the fault of no person or party only came into possession of a full set of papers relating to the matter on 26 August 2014, i.e. the day before the Hearing. Amongst those papers was the Note of Directions of 15 July 2014 and the detailed note of the UKAD Submissions of 20 August 2014.
20. At the commencement of the Hearing the Chairman raised with Ms Shevill why there was included at pages 7, 8, 9 and 10 of the UKAD written submissions a comprehensive discussion on the issue of "compelling justification" in the context of Article 2.3 since an absence of compelling justification is a component part of an alleged ADRV in terms of Article 2.3. The admission by the Athlete of commission of the ADRVs on 14 May 2014 and 20 May 2014 was essentially inconsistent with any suggestion that the Athlete had acted as he did because of some compelling justification(s). Ms Shevill acknowledged that the matter of compelling justification was, as matters stood, not an issue before the Tribunal and that in those circumstances it had not been necessary for a discussion on compelling justification to have been included in the UKAD Written Submissions. She advised that she had, as it turns out correctly, anticipated that at some stage it was likely that the Athlete would seek to argue compelling justification in respect of one or both of the Sample collection sessions.
21. Mr Goodfellow advised that the Athlete now wished to seek to argue compelling justification in respect of each of the Sample collection sessions i.e. on 14 May 2014 and 20 May 2014, and, in these circumstances, sought leave of the Tribunal to withdraw the

admissions of commission of the ADRVs set out in paragraphs 3.3.1 and 3.3.2 of the letter of 13 June 2014. He requested that the Hearing become a hearing on the merits and, if any, on sanction so far as the events at the Sample collection sessions on 14 and 20 May 2014 were concerned. Mr Goodfellow advised that he had taken from the discussion of compelling justification in the UKAD written submission that it was a live issue before the Tribunal but acknowledged that having regard to the terms of Article 2.3, on a correct appreciation of the terms of the Note of Directions and the admissions made by the Athlete at the Hearing on Directions it was not.

22. Mr Goodfellow sought and was granted a short adjournment to take further instructions from the Athlete and on reconvening he advised that the Athlete no longer wished leave to withdraw his admission of having committed a violation of Article 2.3 in respect of the Sample collection session on 20 May 2014 because the Athlete accepted that in the admitted circumstances he could not establish compelling justification and further that the Athlete could not, in relation to sanction, establish that he bore No Fault or Negligence with respect to the events on 20 May 2014. Ms Shevill advised that UKAD had no objection to the Athlete's application to, in effect, "change his plea" with respect to the Sample collection session on 14 May 2014 and argue that he, the Athlete, had compelling justification to fail to submit to Sample collection on 14 May 2014.
23. After a further adjournment the Tribunal allowed the Athlete to make the change of position in relation to the Sample collection session on 14 May 2014 as applied for and agreed that the Hearing would now proceed on the basis that compelling justification and the commission of a violation of Article 2.3 were live issues with respect to the Sample collection session on 14 May 2014.
24. During the course of the evidence, further applications were made on behalf of the Athlete by Mr Goodfellow that the Athlete be allowed to modify the position agreed by the Athlete at the Hearing on Directions with respect to the facts of what had occurred on 14 May 2014 and 20 May 2014 as set out in paragraphs 2.1 to 2.9 (inclusive) of the UKAD letter of 13 June 2014. It is convenient to deal with these matters at this stage so that what was finally "agreed" on the facts can be understood before setting out the relevant portions of the evidence.
25. The paragraph numbers which follow refer to the relevant paragraph numbers in the UKAD letter of 13 June 2014:-
 - 2.4 The Athlete sought leave to withdraw the admission that he had advised the DCO that his university examination on 14 May 2014 was scheduled for

9.30am. He further sought leave to adduce evidence that he had told the DCO on that morning that the examination was at 12.30pm and that in fact the examination was at 12.30pm. Ms Shevill advised that UKAD did not oppose the Athlete being allowed to adduce such evidence and to withdraw the admission previously made although UKAD maintained that the DCO had been advised on 14 May 2014 that the examination had been scheduled at 9.30am but UKAD now accepted that in fact the examination was scheduled for 12.30pm.

2.6 and 2.7 The Athlete sought leave to withdraw his agreement that he had said, as set out in 2.6 *"No, I won't this is stupid"* and further that he had said only *"No"* in response to the question from the DCO set out in paragraph 2.7 regarding signing the doping control form. Ms Shevill advised that UKAD had no objection to the admission of evidence from the Athlete that he had not said the specific words quoted in paragraphs 2.6 and 2.7 but that UKAD maintained that, in fact, those specific words had been used by the Athlete on the specified occasions.

26. The Tribunal agreed to allow the Athlete to withdraw his admissions regarding the time of 9.30am he is said to have stated when his examination was scheduled on 14 May 2014 and to substitute that the examination was in fact scheduled for 12.30pm on that date. The Tribunal further agreed to allow the Athlete to withdraw his admission that he had used the specific words quoted in paragraphs 2.6 and 2.7 on 20 May 2014.
27. The Tribunal agreed to the various applications made by the Athlete having regard to the absence of any prejudice to UKAD and the interests of justice, in that the Athlete had been unrepresented at the Hearing on Directions and had now had the benefit of the advice of counsel, and the applications were not opposed by UKAD.
28. Mr Goodfellow confirmed that the Athlete was not seeking to argue that he had not, in fact, agreed the accuracy of paragraphs 2.1 to 2.9 (inclusive) of the letter of 13 June 2014 at the Hearing on Directions but sought to explain the matter as an error by the Athlete occasioned by his lack of legal representation and his relative youth and inexperience. Mr Goodfellow acknowledged that the fact of the Athlete's previous agreement as to what he had said on 14 and 20 May 2014 and his now withdrawal of that agreement were matters which could be taken into account by the Tribunal when assessing the reliability and credibility of the Athlete with respect to those matters.

29. The events and agreements at the Hearing on Directions and the permitted limited withdrawal of those agreements at the Hearing resulted in paragraphs 2.1 to 2.9 of the letter of 13 June 2014 being agreed facts subject to the modifications set out above with respect to paragraphs 2.4, 2.6 and 2.7.

Jurisdiction / the Hearing / Evidence

30. Present at Hearing on 27 August 2014 were the Athlete, who gave oral evidence, and Mr Nicholas Goodfellow of counsel. UKAD was represented by Ms Stacey Shevill, solicitor, who was accompanied by Mr Graham Arthur, Mr Jason Torrance and Mr Allan Davies, all of UKAD. Mr Allan Davies was the Doping Control Officer ("the DCO") at the two Sample collection sessions and gave oral evidence. Also present was Mr Steven Jenkins of the WRU.
31. A Hearing bundle in four sections was prepared by UKAD. The bundle included the UKAD letter of 13 June 2014 and the Directions Order of the Tribunal dated 15 July 2014. The bundle also included all of the documentary evidence put in by the Athlete. An e-mail document dated 12 August 2014 was added to the bundle during the Hearing. The bundle included the WRU Anti-Doping Regulations and the ADR. There was also a witness statement of the DCO dated 20 August 2014 and a witness summary from the Athlete dated 7 August 2014 in the bundle. These documents were accepted by the parties as constituting the evidence of the DCO and the Athlete respectively without the necessity of the DCO and the Athlete orally speaking to the events set out in the statement and summary respectively.
32. Oral evidence was given during the Hearing by the Athlete and the DCO in that order. Relevant parts of their respective evidence which have a bearing on the Tribunal's decision are referred to below.
33. At the beginning of the evidence each party confirmed that he/it had copies of all of the items of documentation in the bundle and the additional email referred to above. Mr Goodfellow provided an extract comprising a number of pages from the third edition of *Sport Law and Practice* by Lewis and Taylor. Copies of the relevant pages were provided to the members of the Tribunal and to Ms Shevill. There were no written skeleton arguments produced but the UK Anti-Doping written submission of 20 August 2014 sets out in detail the legal and factual submissions made at the Hearing by Ms Shevill for UKAD.

34. The Tribunal fully took into account all of the documentary evidence provided, the written statement of Mr Allan Davis, the witness summary of the Athlete dated 7 August 2014, the oral evidence of the Athlete and of Mr Allan Davies, the submissions made by Mr Goodfellow and Ms Shevill, the case decisions, commentaries and legal texts referred to as well as the provisions of the WADA Code and ADR to which it was referred in making its decision. The Tribunal refers in this decision only to the evidence, submissions and materials which are considered to be necessary in order to explain the Tribunal's reasoning and conclusions.
35. At the commencement of the Hearing each of Mr Goodfellow and Ms Shevill confirmed they had no preliminary issues with respect to the jurisdiction of the NADP Arbitral Tribunal appointed to determine these matters or, to the application of the UK Anti-Doping Rules or to the composition of the Tribunal.
36. During the discussion regarding the Athlete's withdrawal of his admission of having committed an ADRV in the context of the Sample collection procedure on 14 May 2014 it was identified that the agreed position of the Athlete and UKAD was that the onus lay on the Athlete to establish 'compelling justification' for the purposes of ADR Article 2.3. It was noted by the Tribunal that there is some dispute on this issue in some of the earlier cases but that the consensus of judicial view is that the onus lies on the Athlete who wishes to advance an argument of compelling justification. Having regard to the agreed position of the parties, the Tribunal proceeded on this basis.
37. Further, the parties agreed that when it came to considering the matter of sanction, the onus was on the Athlete to establish that either of ADR 10.5.1 or 10.5.2 applied. Whilst the issue is not without some controversy, each of the Athlete and UKAD were in agreement that either or both of ADR 10.5.1 and/or 10.5.2 could apply in the case of an ADRV under Article 2.3 and in these circumstances the Tribunal agreed to proceed on the same basis as had the Arbitral Tribunal in *UK Anti-Doping and Mr Marcel Six*, an NADP decision of 25 October 2012. Paragraphs 39 to 47 (inclusive) where a 'purposive interpretation' was given by the Arbitral Tribunal to 10.5.2 in the context of an ADRV under Article 2.3 were adopted by the Tribunal in this matter as setting out the correct approach.
38. It was apparent that much of the evidence which would fall to be considered by the Tribunal, both documentary and oral, would be relevant to the issues of both compelling justification and fault and negligence and that since the onus lay on the Athlete in both respects, it appeared to the Tribunal that it would be most convenient for the Athlete to

lead his evidence first. The Tribunal proposed that the Athlete lead his evidence first and then that evidence be led by UKAD, with Mr Goodfellow giving his composite submissions on all matters first responded to by Ms Shevill and with Mr Goodfellow having an opportunity for the final submission. This was agreed to by each of Mr Goodfellow for the Athlete and Ms Shevill for UKAD.

39. Mr Goodfellow conceded that if the Athlete failed to establish compelling justification for the purposes of ADR 2.3 in connection with the Sample collection session on 14 May 2014, then the Athlete could not succeed in separately establishing the application of Article 10.5.1. Therefore whilst the Tribunal should consider the relevant evidence in the context of both compelling justification and Article 10.5.1, he would not be seeking to lead separate evidence in relation to each of these matters, nor would he be seeking to make separate submissions. He advised that the evidence to be produced for the Athlete should also be regarded as being relevant to Article 10.5.2 in the context of the Sample collection session on 14 May 2014 and so far as the Sample collection session on 20 May 2014 was concerned, the evidence adduced by the Athlete was relevant only to Article 10.5.2.

Relevant Facts Found Established or Admitted

40. The DCO has some eight years' experience as a Doping Control Officer and has been accredited as a lead Doping Control Officer responsible for doping control teams since 2008. He has been involved in some 100 Sample collection sessions both in and out of competition. Prior to the events with which this matter is concerned, he had only encountered one previous occasion on which an Athlete had refused or failed to comply with a request to provide a Sample.

14 May 2014

41. The DCO attended at the Athlete's home address in Newport, Wales for the purposes of carrying out urine Sample collection on an out of competition basis in accordance with the WADA International Standard for Testing at 7am on 14 May 2014. By 7.05am he had identified himself to the Athlete who had only recently woken from sleep. Upon waking and prior to the arrival of the DCO the Athlete had urinated. Initially the Athlete questioned why he had been selected for Testing but was encouraged by his girlfriend who was present to provide a Sample. The DCO read certain text from the Doping Control Form ("DCF") to the Athlete and the Athlete was invited to read other text on the DCF. These texts and the oral explanation by the DCO together provided the Athlete with a complete

explanation of what he required to do as regards Sample collection and the possible consequences of his refusing/failing to provide a Sample. At about this time the Athlete's girlfriend left to go to work. The DCO then completed the relevant parts of the DCF and at about this time the Athlete's mother advised the DCO that the Athlete had an examination at Cardiff University that day. During the course of the attempted Sample collection session, the Athlete advised the DCO that the examination was at 9.30am. The DCO recorded this information in writing on the DCF at section I. This was completed at approximately 8am i.e. 30 minutes after conclusion of the attempted Sample collection when the DCO returned to his home which was relatively close to that of the Athlete.

42. The Athlete now contends that on 14 May he advised the DCO that the examination at Cardiff University was at 12.30pm that day. The Tribunal believed the DCO on this point in preference to the Athlete. The DCO was clear and unequivocal on his evidence on this matter. He had recorded what he had been told shortly after the conclusion of the attempted Sample collection procedure. The DCO was convincing when he explained that if the Athlete had said that his examination had been at 12.30pm, then this would have come as a surprise to him, the DCO, because the 9.30am time had been represented to him by the Athlete as an explanation as to why the Sample collection process had to be completed quickly and then drawn to a close at 7.30am so that the Athlete could go to his examination. The DCO said it would have been immediately apparent to the DCO that an examination at 12.30pm would not have presented an obvious impediment to the continuation of the Sample collection procedure beyond 7.30am when it was terminated by the Athlete. Further, the Athlete did not question the 9.30am time when paragraph 2.4 of the UKAD letter of 13 June 2014 was discussed at the Hearing on Directions. Under reference to an examination time of 9.30am, it was suggested to the Athlete by the Chairman at the Hearing on Directions that the Athlete might consider bringing to the Hearing evidence regarding his travel arrangements from his home to the university so that he could attend at a 9.30am examination by whatever time he was required to register for the examination. The Athlete did not suggest at the Hearing on Directions that in fact the examination had been scheduled at 12.30pm. In his email of 23 June 2014 in response to the UKAD letter of 13 June 2014, the Athlete did not suggest that the time of the examination had in fact been 12.30pm. In that email, he referred to the time of the examination drawing "closer" and there being some possibility of failure to attend at the examination if he had continued the Sample collection procedure. The possibility of failure to attend at his examination if Sample collection continued beyond 7.30am on 14 May was considered by the Tribunal as inconsistent with an examination at 12.30pm. An examination time of 12.30pm was also considered by the Tribunal as inconsistent with

what the Athlete wrote on the DCF on 14 May. The Athlete completed and signed the Certification of Refusal to Submit for Sample Collection or Failure to Submit for Sample Collection part of the DCF on 14 May 2014 writing "*pressure [sic] timing, have a university exam to attend. Cardiff met – Sports Coaching exam*" to which he exhibited his signature. It was countersigned by the DCO at 07:30 hours. There would have been no "pressure timing" as regards an examination at 12.30pm at 7.30am on 14 May. The Tribunal did not consider the Athlete's evidence that he had told the DCO on 14 May that his examination that day was scheduled for 12.30pm to be reliable and credible. The Tribunal concluded that the Athlete was not being truthful on this matter and that he had in fact told the DCO that the examination was at 9.30am in order to provide some form of apparent justification for him not continuing to submit to Sample Collection beyond 7.30am.

43. The Tribunal was not required to consider whether the Athlete would have had compelling justification in failing to submit to Sample collection beyond 7.30am if the examination had been at 9.30am that day. This was because by the stage the Tribunal had to consider whether compelling justification/ No Fault or Negligence had been established by the Athlete as at 7.30am, the examination time had been agreed by the parties to in fact have been at 12.30pm. The relevant part of the factual context against which the Tribunal required to determine whether the Athlete had established compelling justification/ No Fault or Negligence in failing to submit to Sample collection at 7.30am on 14 May was that the Athlete had a University Examination at 12.30pm that day.
44. The Athlete's initial position on his state of knowledge as regards Anti-Doping in sport was that prior to the events of 14 May 2014, he had known very little concerning sport Anti-Doping and Doping Control procedures. However, he advised during his oral evidence that the principles of Anti-Doping in sport had been covered to some degree as part of his university degree course on Coaching Science and that he knew the reasons why there were Anti-Doping policies and procedures in sport, although he did not know anything of the detail of Sample collection procedures. He explained that none of his fellow players at his rugby club had been subject to a Sample collection procedure and he had received no education or briefing on Anti-Doping during his time as an amateur rugby player.
45. He acknowledged that the DCO had advised him in detail on 14 May 2014 of what he was required to do to provide a Sample and comply with the Sample collection procedures, that what was required of him was not onerous and could, providing he could produce urine in sufficient quantities to constitute a Sample, be completed in a few minutes. He also acknowledged that the possible consequences of a refusal/failure to submit to Sample

collection on 14 May 2014 was a “ban” which had been explained to him by the DCO. The Athlete confirmed that he had known the potential consequence when he, the Athlete, insisted on a halt to the Sample collection session at 7.30am on 14 May.

46. The DCO considered that the Athlete had genuinely attempted to provide two Samples of urine between 7.00am and 7.30am on 14 May but had been unable to do so, presumably because he had urinated shortly before the arrival of the DCO. Whilst the Athlete consumed a significant volume of liquid during this period, there was insufficient time for that to have the effect of enabling the Athlete to provide the required quantity of urine for Testing by 7.30am. The Athlete did not suggest that if he had continued to submit to Sample collection that he would not have been able to provide the requisite Sample.
47. The question for the Tribunal was whether in the circumstances the Athlete had established on the balance of probabilities that he had had compelling justification/ bore No Fault or Negligence in failing to submit to Sample collection from 7.30am on 14 May 2014. Ms Shevill accepted that if, in fact, the Athlete had required to draw a halt to Sample collection at 7.30am in order to be able to attend at a university examination then that could, depending on the circumstances, constitute such compelling justification/ mean that the Athlete bore No Fault or Negligence in failing to so submit. However, that was not, she argued and the Tribunal agreed, part of the relevant circumstances in this case.
48. From the evidence of the Athlete and the DCO, the Tribunal concluded that a reasonable time to allow for Athlete to travel in the “rush hour” from his home to the university in Cardiff by car, the Athlete’s intended mode of travel, was 45 minutes. This time period was not disputed as being a reasonable estimate by the Athlete or by UKAD.
49. With an examination at 12.30pm that day, the Athlete explained that his intention had been to shower, eat his breakfast and then get dressed, all of which he estimated would take about 1 hour, then travel to Cardiff (45 minutes approximately), spend a period of some 2 hours revising in the library and then getting something to eat before registering for his examination at the latest by 12 noon. He explained that he was required to register not less than 30 minutes prior to the examination.
50. The Athlete was asked why he had not continued to get ready from 7.30am by showering, getting dressed and having his breakfast, i.e. taking the hour which he anticipated, and at the same time drinking further fluids so that he could provide the requisite Sample. The Athlete had no credible answer to this question, suggesting that he did not know that he

was able to do these things whilst the DCO waited and that he was uncomfortable at having the DCO in his home. The Athlete acknowledged that he made no enquiry of the DCO whether matters could have proceeded in that way whilst he was getting ready to leave. It was not put to the DCO by Mr Goodfellow that there would have been any impediment in the Athlete undertaking these domestic tasks whilst the DCO waited until the Athlete was able to provide sufficient urine to comply with his Sample collection duties.

51. There was no evidence which suggested that the DCO had in any way hurried the Athlete on 14 May 2014 or that the Athlete had asked if the DCO could wait whilst he, the Athlete, got ready and drank fluids so that he, the Athlete, could urinate. The Tribunal found that the Athlete simply terminated his cooperation with the process at 7.30am requiring, in effect, the DCO to leave his house, on the deliberately falsely expressed premise that the Athlete had to bring the Sample collection session to an end so that he could get to his examination in Cardiff which he told the DCO was at 9.30am that day.
52. The Athlete explained at the Hearing that he was by nature someone who became very stressed and pressured at exam time and that the examination he needed to sit that day was critical to his whole degree. He stated that he had felt a high degree of stress and pressure from being required to submit to Sample collection the same day as his examination and that with his relative youth and inexperience this had, in effect, compromised his judgement and caused him to decide to terminate the Sample collection process at 7.30am and to fail to provide a Sample. He asserted that he had felt, in the circumstances, that he had to bring the session to an end so that he could get ready to travel to Cardiff, undertake the journey, revise in the library, and get something to eat before registering at 12.00 with the examination beginning at 12.30pm. When asked why he could not have revised at home if the Sample collection session had required to be extended beyond 8.30am he advised that he preferred to revise in the library.
53. Full details of the evidence of the DCO with regard to both 14 May 2014 and 20 May 2014 is contained in the DCO's written statement of 20 August 2014 and in the accompanying exhibits, in particular the DCF for that session. That evidence is referred to and is not repeated in full here. The Athlete's evidence as regards the events of 14 May 2014 is set out in his witness summary of 7 August 2014. In addition, the Athlete has provided details of his examination timetable for 2014 and information regarding the composition of the modules in his degree. Initially the Athlete provided no information regarding the events of 20 May 2014 other than his agreement at the Hearing on Directions to the accuracy of paragraphs 2.6 to 2.9 (inclusive) of the UKAD letter of 13 June 2014.

20 May 2014

54. On 12 August 2014 the Athlete sent an email to the Secretariat of the NADP referring to the events of 20 May 2014. In that email the Athlete stated:

"With relation to the evidence on the second attempt by ukad [sic] it can be identified on my exam timetable and modules of choice which was [sic] submitted in the previous evidence of how close the exams were together causing high stress especially with an early morning exam the following day of 'sport pedagogy' which can all be seen on previous timetables and exam results as has [sic] been submitted to you."

55. This email was sent in response to a request communicated by email by UKAD to the NADP Secretariat that the Athlete be requested to provide an explanation in relation to his actions on 20 May 2014.
56. The DCO's evidence as regards the events of 20 May 2014 are set out in full in his written statement and are recorded in the relevant DCF which had been completed by the DCO on 20 May 2014.
57. On 20 May 2014 the DCO attended at the Athlete's home address in Newport to carry out a Sample collection procedure involving the collection of a Sample of urine on the same basis as on 14 May 2014. The DCO arrived at 9:00pm and after knocking on the front door of the Athlete's home, he spoke to the Athlete's mother. She advised that the Athlete was in bed but that she would "go and get him". At approximately 9:05pm, the Athlete came out of the side door of his house and approached the DCO who had waited outside of the house. The DCO identified himself although he was known to the Athlete from the previously attempted Sample collection session on 14 May. The DCO advised the Athlete that he had been selected to provide a Sample, that he, the DCO, had been there on the previous occasion and that he was looking for the Athlete to provide a urine Sample. The Athlete appeared agitated and unhappy and responded by saying "No I won't this is stupid". Without further comment, the Athlete turned round and walked away. The DCO called after the Athlete and the Athlete turned back. By the Athlete's demeanour and words, he communicated to the DCO that he was refusing to comply with the DCO's request to submit to Sample collection after notification. The DCO asked the Athlete if he would complete the Sample collection form, as he had done on 14 May 2014, to the effect

that a Sample would not be provided by the Athlete and the Athlete responded in peremptory terms "No". The Athlete then turned around and went back into his house. The DCO then had a conversation with the Athlete's mother who advised that the Athlete had been unwell with flu-like symptoms and had been taking 'Lemsip'. She advised the DCO that it had taken 5 minutes for her to get the Athlete out of his bed and that he had not wanted to speak to the DCO at all but that she, the Athlete's mother, had insisted that the Athlete speak to the DCO. She went on to advise the DCO that the Athlete was suffering from stress and that his last exam was on 22 May 2014.

58. The Athlete explained during oral evidence at the Hearing that he had continued to feel under stress on 20 May because it was still in his examination period and that he had a further important exam to sit, albeit in two days' time. He had been tired that evening and was feeling unwell, hence why he had gone to bed. He ascribed his failure to cooperate with the Sample collection procedures on 20 May 2014 as being due to a combination of examination stress and his feeling unwell. He said nothing at the Hearing to indicate that there would have been any physical impediment to his providing the requisite urine Sample on 20 May 2014 at 9:05pm, had he wished so to do, and he did not say that there was any other engagement which he was required to attend to such as would mean that he was compelled not to submit to the Sample collection process on 20 May 2014. He advised that he had not consulted a doctor regarding his feeling unwell either before or after the visit by the DCO on 20 May 2014. He explained that he had not wanted to trouble his GP unnecessarily.
59. The Tribunal preferred the evidence of the DCO with regard to the words which had been used by the Athlete on 20 May 2014. The words were consistent with the demeanour and apparent disposition of the Athlete as spoken to by the DCO. The words are reported on the 20 May 2014 DCF which once again was completed at the DCO's home some 30 minutes after conclusion of the attempted Sample collection process at around 9.30pm on that date. Nothing was said by the Athlete at the Hearing on Directions when he was taken through the relevant paragraphs of the UKAD letter of 13 June 2014 to indicate that he had not used the words quoted in paragraphs 2.6 and 2.7 of that letter and there is nothing in the Athlete's emails of 23 June 2014 and 12 August 2014, both of which post-date the UKAD letter of 13 June 2014, to indicate that the Athlete was denying having used the words quoted in those paragraphs. The Tribunal did not regard the evidence of the Athlete on the use by him of the challenged words as being credible or reliable and the evidence of the DCO was preferred.

Discussion

60. With respect to the Sample collection session on 14 May 2014, the Tribunal concluded that the Athlete had failed to establish that at 7.30am he, the Athlete, had a compelling justification for failing to submit to Sample collection after notification of Testing. The Athlete was told by the DCO in unambiguous terms the very simple steps the Athlete was required to take in the provision of a Sample and what the consequences could be if he failed to submit to Sample collection. It was suggested by Mr Goodfellow that the Athlete's actions should be seen in the context of his being a young and inexperienced Athlete who was suffering from significant stress as a consequence of his being involved in important university examinations. It was not clear to the Tribunal what, by 7.30am, there was in terms of the consequences of youth and inexperience which could plausibly explain let alone compellingly justify the Athlete's admitted failure. Even if the Athlete had been unaware of Sample collection procedures at 7am because he had not received any previous Anti-Doping training from his club or the WRU and was not at that time cognisant of the potential consequences of not submitting to such procedures and providing a Sample, he well knew the position by 7.30am having regard to what he had been told by the DCO. There was no particular time pressure on the Athlete at 7.30am. He could have spent an unhurried hour preparing himself to leave to travel to Cardiff and at some point during that hour, have provided the requisite Sample. He could have continued to drink volumes of liquid so as to facilitate the provision of a Sample. He was placed under no pressure by the DCO to provide a Sample by any specific time. He could have left home at any time up to 9am, travelled to Cardiff and still had a significant period of time to spend in the library revising for his exam. In any event the Tribunal did not consider that preferring to revise at the library as opposed to at home would have constituted compelling justification in the context of an examination at 12.30pm if the Sample collection process had still been continuing at 8.30am when the Athlete said he would ordinarily have intended to leave to travel to Cardiff.
61. The Tribunal was not persuaded that the stress suffered by the Athlete during examination periods was any more substantial than would be experienced by any other candidate without a specific identified psychological or medical condition which resulted in particular susceptibility to the symptoms of stress in an examination context. There was no medical evidence or the like or even suggestion of psychological or medical consultation by the Athlete due to examination related or other stress. Further, the Athlete led no evidence from any teacher, lecturer or the like which might have described the respects and/or extent in and to which the Athlete was particularly affected by examination stress beyond

the effects on a student of ordinary susceptibility. The members of the Tribunal all have experience of the stresses and pressures of examinations in higher education from their own examinations and those of persons known to them such as their family, friends and colleagues. What the Athlete described as the effects of examination stress and pressure on him appeared to be in no way extreme or unusual for candidates for such examinations. Nothing the Athlete advanced in this regard was considered by the Tribunal to amount to justification for his failure to submit to Sample Collection at 7.30am on 14 May 2014 or to exclude his fault and negligence in failing to submit to Sample collection on that date and at that time.

62. The Tribunal concluded that not only had the Athlete failed to establish that there was no compelling justification, there was in short no justification for the Athlete's failure to submit to Sample collection on 14 May 2014 and that the Athlete had been at fault and had been negligent in failing to so submit. Rather than so submitting, the Tribunal found that the Athlete had deliberately attempted to mislead the DCO by falsely stating that he, the Athlete, had an examination at 9.30am when, in fact, the Athlete well knew his examination was not until 12.30pm. The Athlete's purpose in so doing was to give the impression to the DCO that there was an examination which compelled Sample collection to come to an end at 7.30am on 14 May 2014 when the Athlete well knew that, in fact, he could have continued to submit to Sample collection for a much longer period without materially compromising his examination preparations or his sitting the examination itself.
63. The Tribunal was referred to previous cases and texts in which it has been suggested that for there to be *compelling justification* the reason established by the Athlete for the failure to submit for Sample collection must be truly exceptional or unavoidable; see the discussion in *Six supra*. In this case it is not necessary to enter into a review of previous cases and to consider different ways in which the words compelling justification might be understood and/or met. In this case the Athlete has not established a justification for his failing to so submit at 7.30am on 14 May 2014, far less a justification which was compelling.
64. The Tribunal concluded that on the balance of probabilities and in the totality of the circumstances taking into account the criteria for No Fault or Negligence the Athlete had failed to establish that he bore No Significant Fault or Negligence in failing to submit for Sample collection at 7.30am on 14 May 2014 when the Athlete brought the Sample collection session to an end. By 7.30am the Athlete knew precisely what was expected of him and the potential consequences of failing to submit to Sample collection because both

had been explained to him by the DCO. He acknowledged that the procedures that he was required to undergo were simple and had been explained to and understood by him as had what might result from failure to so submit. Nothing which he was being required to do involved any great thought or burdensome actions on his part and they would not have materially interfered with his examination preparations. He had, in fact, genuinely, if unsuccessfully in terms of producing a Sample, submitted to Sample collection during the period from 7.00am until 7.30am and the fact of him having so submitted is relevant to and was taken into account by the Tribunal in considering whether the Athlete had established that he was not significantly at fault and/or negligent in failing to so submit at 7.30am when he failed so to do. The Tribunal was not satisfied that the Athletes relative youth and inexperience taken together with the effects of examination stress on him, as discussed in paragraph 61 above, were such as diminished the degree of fault and negligence he bore in failing to submit to Sample collection at 7.30am on 14 May 2014 so that neither was significant.

65. With regard to the Sample collection session on 20 May 2014, it is not in dispute that the Athlete refused to participate in that Sample collection session and he does not seek to argue that he had a compelling justification for so refusing or that he bore No Fault or Negligence in so refusing. Whatever disadvantages the Athlete might have suffered from by reason of youth and inexperience at 7am on 14 May 2014 had been overcome by the explanation of the procedures and the warnings given by the DCO of the consequences of failing/refusing to submit to Sample collection on 14 May 2014.
66. By 20 May 2014, the Athlete well knew precisely what was expected of him and what the possible consequences would be if he refused to submit to Sample collection. It would appear, for whatever reason, that the Athlete's disposition as regards submitting to Sample collection on 20 May 2014 was not positive but a negative disposition cannot provide a basis for there being no substantial fault or negligence on the part of the Athlete in his refusal to submit to Sample collection.
67. If disposition could constitute a basis for there being no substantial fault and/or negligence in refusing to participate in Sample collection, then the whole essentially compulsive element in an Athlete's participation in the provision of a Sample when required so to do would be undermined.
68. The Athlete was under no immediate examination pressure on 20 May because his next examination was not for two days. If anything the pressures and stresses associated with

the taking of examinations were less on 20 May than was the case on 14 May when the Athlete had been scheduled to take an examination that day. In these circumstances and for the reasons set out in paragraph 61 above, the Tribunal was not persuaded that the effects of examination stress on the Athlete were such as to diminish the fault and negligence on the part of the Athlete in refusing to submit to Sample collection at 9.05 pm on 20 May 2014 so that neither was substantial.

69. There was also the assertion that he had been feeling unwell that day, but there was no indication or suggestion that he was so unwell that he could not physically participate in Sample collection and in any event, he had been sufficiently well to get up and leave his bed and his home so that he could speak to the DCO who was outside. Whatever may have been the nature of the claimed "unwellness" it was not sufficiently material for the Athlete to seek medical assistance. He did not attempt to provide any explanation to the DCO on 20 May 2014 for his refusal to submit to Sample collection and in a peremptory manner simply refused to do so. He also refused, without explanation, to complete the section of the form where he could have offered whatever explanation he thought appropriate for his refusal.
70. On the balance of probabilities and in the totality of the circumstances taking into account the criteria for No Fault or Negligence the Athlete had failed to establish that he bore No Significant Fault or Negligence in refusing to submit for Sample collection at 9.05pm on 20 May 2014.

Sanction

71. The period of Ineligibility which is prescribed in these circumstances, absent any argument being advanced by UKAD for aggravation of sanction in terms of ADR 10.6, is two years in accordance with Article 10.3.1. That two year period begins on the date of commencement of the Athlete's period of provisional suspension which was on receipt by the Athlete of the UKAD letter of 13 June 2014, i.e. on 14 June 2014. Accordingly, the Athlete's period of Ineligibility runs from and including 14 June 2014 until midnight on 13 June 2016.

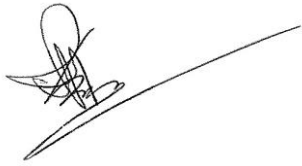
Costs

72. No application was made in relation to costs. If either party wishes to make an application for costs, he/it should notify the NADP Secretariat in writing within five working days of

receipt of this Decision of such application giving reasons why costs should be awarded in his/its favour. Any such application will then be considered by the Tribunal.

Appeal

73. The attention of parties is drawn to Article 13.4 concerning appeal rights.

A handwritten signature in black ink, appearing to read 'Rod McKenzie', is written over a light gray circular background element.

Rod McKenzie
Carole Billington-Wood
Colin Murdock

16 September 2014



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