

NATIONAL ANTI-DOPING PANEL

Before:
Christopher Quinlan QC

BETWEEN:

UK Anti-Doping

National Anti-Doping Organisation

- and -

Darren Eales

Respondent

**IN THE MATER OF PROCEEDINGS BROUGHT UNDER THE ANTI-DOPING RULES
OF THE SCOTTISH RUGBY UNION AGAINST**

FINAL DECISION OF THE ANTI-DOPING TRIBUNAL

INTRODUCTION

1. This is the final decision of the Anti-Doping Tribunal ('the Tribunal'), comprising a Sole Arbitrator, appointed pursuant to Article 5.1 of the National Anti-Doping Panel ('NADP') Procedural Rules to hear and determine two charges brought against Darren Eales (the Respondent) for alleged violations of Regulations 2.1 and 2.2 of the Scottish Rugby Union ('SRU') Anti-Doping Regulations ('ADR').

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2. The Respondent was born on 11 October 1992. He was a registered member of Preston Lodge RFC and by virtue of Regulation 9.2 ADR a member of the SRU and so bound by the ADR.
3. By ADR Regulation 2.1 "presence of a Prohibited Substance or its Metabolites or Markers in a Player's Sample" shall constitute an anti-doping rule violation ('ADRV').
4. By ADR Regulation 2.2 it shall be an ADRV to "use or attempt to use a Prohibited Substance or Prohibited Method".
5. UKAD is the National Anti-Doping Organisation for the United Kingdom. By Regulation 13 ADR, the SRU delegates to UKAD responsibility for, *inter alia*, "results management, the conduct of investigations and disciplinary proceedings and the imposition of sanctions for anti-doping rule violations".
6. This document constitutes the Sole Arbitrator's final reasoned decision, reached after due consideration of the evidence and submissions.

Procedural History

7. The Respondent was charged with the alleged ADRVs by letter dated 11 December 2014 ('charge letter'). The charge letter sets 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 27 February 2015 the Sole Arbitrator conducted a Directions Hearing by telephone conference call. The Respondent did not attend. On the basis of material placed before him, the Sole Arbitrator was satisfied that the

Respondent had been notified of the fact, time and date of the telephone directions hearing and chosen deliberately not to attend.

9. The Sole Arbitrator issued procedural directions, which were promulgated in writing, dated 1 March 2015. Therein, on the topic of the Respondent's absence he expressed himself in these terms:

"3.1 During a telephone conversation between Jason Torrance and the Respondent on 23 December 2014, the Respondent admitted both the presence and use of the prohibited substances listed in violation of ADR Regulations 2.1 and 2.2 as set out in the 'charge letter' dated 11 December 2014.

3.2. During a further telephone conversation between Jason Torrance and the Respondent on 22 January 2015 the latter informed the former that he wished for there to be a hearing with respect to the potential consequences of the ADRV, which he did not accept.

3.3. From those matters, and in the absence of any material to the contrary, I was satisfied that:

3.3.1. He knew of these proceedings.

3.3.2. Prima facie admitted the ADRVs.

3.3.3. The substantive issue was sanction.

3.3.4. He had been given every reasonable opportunity to attend and had failed so to do or alternatively to request that the matter not proceed.

3.3.5. Accordingly, I decided to proceed in his absence pursuant to Regulation 7.9 of the Procedural Rules."

10. The Directions were sent to the Respondent by email and to his home address by Royal Mail's 'Special Delivery Guaranteed' service on 3 March 2015. No one was present to take delivery so the package was returned to a local

delivery office. The same package was sent again using the same service on 9 March 2015 and signed for by a person who gave the surname "Eales". The said Directions were also sent to the SRU.

11. UKAD complied with those directions. It filed its written submissions, dated 2 April 2015. On 7 April 2015 UKAD sent to the Respondent's home address a copy of its written submissions and a complete hearing bundle (containing all the relevant evidence and the ADR) using the Royal Mail's 'Signed For' service. No one was present to take delivery so the package was returned to the local delivery office. It was sent again and delivered to the Respondent's home address where it was signed for by a person with the surname "Eales" on 15 April 2015.

12. The Respondent has not acknowledged any of the electronic and paper correspondence. He has not replied to and complied with the Directions or submitted evidence or written submissions. The Respondent has not made any contact with the NADP.

13. The hearing could not take place on 12 May 2015.

14. In light of the history, UKAD invited the Sole Arbitrator to proceed in the Respondent's absence without a hearing. Pursuant to his direction, on 26 May 2015 the NADP sent, again using Royal Mail's 'Special Delivery Guaranteed' service, a letter from the Sole Arbitrator in these terms:

"I write further to my previous correspondence confirming that the hearing will now take place on Wednesday 17 June 2015 in Bristol. You will also recall that UKAD has made an application to the Chairman of the Panel that the matter be determined on the papers only without the need for a full hearing.

We now need to convene a panel to hear this case on 17 June. The Chairman has directed me to inform you that he will allow UKAD's application to

determine the case on the papers without a full hearing, unless you notify me within 7 days of the date of this letter that you intend to attend the hearing.”

15. Safe delivery of that letter was proved. The Respondent did not acknowledge or reply to the letter.
16. In light of the history of these proceedings and all of the material placed before him, the Sole Arbitrator acceded to UKAD’s application and determined the case on the papers pursuant to Article 8.5, NADP’s Procedural Rules. He did so satisfied that the Respondent knew of the proceedings, had had every reasonable opportunity to participate in the same and had refused without good cause so to do.

The facts

17. The Respondent is twenty-two years of age. He was registered as a player with Preston Lodge RFC. He was thereby a member of the SRU and so is bound by and required to comply with the ADR.
18. He was named as the starting tight head prop in the team sheet for the SRU National League Division III first XV match played against East Kilbride RFC on 18 October 2014. A media report of the match records that he scored his fourth try in two matches during that game.
19. On 19 November 2014, a Doping Control Officer (‘DCO’) collected a urine sample from the Respondent. It was an out-of-competition sample, taken at his home address in Prestonpans, East Lothian. The same address was used for all written correspondence during these proceedings. In the usual way, the sample was split into two separate bottles, referenced A1121919 (‘the A Sample’) and B1121919 (‘the B Sample’).

20. Both samples were transported to the World Anti-Doping Agency ('WADA') accredited laboratory at Kings College, London ('the Laboratory'). The Laboratory analysed the A Sample in accordance with the procedures set out in WADA's International Standard for Laboratories.
21. Analysis of the Sample returned an Adverse Analytical Finding ('AAF') for the following: Boldenone, 5 β -androst-1-en-17 β -ol-3-one (a metabolite of boldenone), 17 α -trenbolone (a metabolite of trenbolone); 2-hydroxymethyl-17 α -methyl-5 α -androst-3-one,17 β -triol and 2-hydroxymethyl-17-methyl-5 α -androst-3,17-diol (both metabolites of oxymetholone).
22. Boldenone, trenbolone and oxymetholone and their metabolites are listed as Exogenous Anabolic Androgenic Steroids in section S1.1a of the WADA 2014 Prohibited List.
23. Following service of the charge letter, at 13.40 on 23 December 2014 Jason Torrance ('JT'), UKAD Legal Officer, spoke to the Respondent by telephone. A File Note of that conversation was provided to the Sole Arbitrator. During the course of that telephone call the Respondent admitted knowingly using the prohibited substances. He said he did so at a time when he was injured and not actively participating in rugby union. He said he had no plans to return to the sport. He said he last played rugby union in October or early November 2014. He used the prohibited substances to assist with his preparation for 'strong-man' competitions, where the use of such (prohibited) substances was not prohibited. He said that he injected boldenone and trenbolone once every two weeks. He was also taking oxymetholone as an oral tablet. He waived his right to have the B Sample analysed and said that he would not challenge the imposition of a period of Ineligibility of two years.
24. On 22 January 2015 JT spoke to the Respondent, again by telephone. The Respondent explained that he had lost his mobile phone on Christmas Eve and

consequently had not received any emails sent to him by UKAD. He also said that he was no longer prepared to accept a period of Ineligibility of two years, since he said when he took the prohibited substances he was not playing rugby union. Accordingly, the matter was referred to the NADP.

Determination of the Charges

25. The charge letter alleged two ADRVs:

- 25.1. Presence of Boldenone and its metabolite 5 β -androsta-1-en-17 β -ol-3-one, and two metabolites of trenbolone in a sample provided on 19 November 2014, numbered A1121919 in violation of ADR Regulation 2.1.
- 25.2. Use by a player of a Prohibited Substance or Prohibited Method, specifically the use of boldenone, trenbolone and oxymetholone, on or before 19 November 2014, in violation of ADR Regulation 2.2.

26. Boldenone, trenbolone and oxymetholone and their metabolites are listed as Exogenous Anabolic Androgenic Steroids in section S1.1a of the WADA 2014 Prohibited List.

27. The burden of proving the ADRVs contrary to Article 2.1 and 2.2 is upon UKAD. It must prove them to the Sole Arbitrator's comfortable satisfaction (ADR Regulation 3.1).

28. In light of the following evidence he was so satisfied:

- 28.1. The witness statement and exhibits from Paul Ouseley, UKAD Results Manager, which prove the circumstances of the taking of the sample, the safe transmission and continuity thereof.
- 28.2. The laboratory report and supporting documentation in relation to

the analysis of the A sample.

- 28.3. The Respondent's admissions on 23 December, which he implicitly (if not expressly) repeated on 22 January 2015.
- 28.4. That at the material time the Player did not have a Therapeutic Use Exemption for these prohibited substances (§9, Paul Ouseley's statement).

Sanction

29. ADR Regulation 22.1 provides:

"The period of Ineligibility imposed for a violation of Regulation 2.1 (Presence of Prohibited Substance or its Metabolites or Markers), Regulation.2.2 (Use or Attempted Use of Prohibited Substance or Prohibited Method) and Regulation 21.2.6 (Possession of Prohibited Substances and Methods) shall be as follows, unless the conditions for eliminating or reducing the period of Ineligibility, as provided for in Regulation 22.3, 22.4, 22.5, 22.6, 22.7 and 22.8 or the conditions for increasing the period of Ineligibility, as provided in Regulation 22.9, are met:

First violation: Two (2) years."

30. This is the Respondent's first anti-doping rule violation.
31. The Respondent was notified of the charges at the same time. Accordingly they are to be treated as a single ADRV (Regulation 22.10.D(i)).
32. There is nothing to suggest the conditions for eliminating or reducing the period of Ineligibility, as provided for in Regulations 22.3, 22.4, 22.5, 22.6, 22.7 and 22.8 apply.
33. UKAD did not submit that Regulation 22.9 be applied.

34. The ADRV was committed on 19 November 2014. The 2015 World Anti-Doping Code came into force on 1 January 2015. No issue of *lex mitior* arises.
35. Accordingly the appropriate period of Ineligibility is one of two years.
36. The charge letter provisionally suspended the Respondent. There is nothing to suggest the Player has not complied with the terms of that provisional suspension. Therefore, the period of Ineligibility will commence from the date of his provisional suspension, namely 11 December 2014 (ADR Regulation 22.12(c)).
37. The Respondent's status during the period of ineligibility is as provided in ADR Regulation 22.13.

Summary

38. For the reasons set out above, the Sole Arbitrator finds:
- 38.1. The anti-doping rule violations contrary to ADR Regulations 2.1 and 2.2 have been established.
- 38.2. The period of ineligibility imposed is two years from 11 December 2014.

Right of Appeal

39. The Respondent's right to appeal is as provided by Article 12 of the NADP Procedural Rules.



Christopher Quinlan QC

Sole Arbitrator

19 June 2015

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