

**NATIONAL ANTI-DOPING PANEL**

**IN THE MATTER OF PROCEEDINGS BROUGHT  
UNDER THE ANTI-DOPING RULES OF  
BRITISH ROWING**

***Before:***

**Mr Matthew Lohn (Chairman)**

**Dr Mike Irani**

**Dr Kitrina Douglas**

**B E T W E E N:**

**UK ANTI-DOPING**

**National Anti-Doping Organisation**

**- and -**

**TIMOTHY GRANT**

**Respondent**

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**FINAL DECISION OF THE ANTI-DOPING TRIBUNAL**

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## **Introduction**

1. This is the final decision of the Anti-Doping Tribunal ("the Tribunal") appointed pursuant to Article 5.1 of the 2015 Rules of the National Anti-Doping Panel and Article 8.1 of the UK Anti-Doping ("UKAD") Rules ("the ADR") adopted by British Rowing. The purpose of this decision is to determine the sanction in respect of a charge brought against Mr Timothy Grant ("Mr Grant") on 21 July 2015 by UKAD.
2. Mr Grant has been charged with an Anti-Doping Rule Violation ("ADRV") in breach of ADR Article 2.1. Article 2.1 provides that the presence of a Prohibited Substance or its metabolites or markers in an athlete's sample constitutes an ADRV, unless the athlete can establish that the presence is consistent with a Therapeutic Use Exemption ("TUE"). Mr Grant did not hold an applicable TUE permitting his use of the Prohibited Substance.
3. Mr Grant does not dispute that he committed the ADRV. It has been accepted by UKAD that he did not act intentionally. Accordingly, the *prima facie* period of Ineligibility is reduced from four years to two years under ADR Article 10.2.2. Mr Grant has also sought to argue that he acted with No Significant Fault or Negligence, and so the period of ineligibility should be reduced further (to a minimum of one year).
4. The hearing of this case took place in London on 12 October 2015 at which Mr Grant was present with his father, but unrepresented. UKAD was represented by Ms Stacey Cross ("Ms Cross").

## **Jurisdiction**

5. Mr Grant has been a regular competitor in domestic and international junior rowing events since he was 15 years old. On 9 May 2015, Mr Grant competed in the Ghent International Regatta in Belgium. By virtue of his participation in the event, Mr Grant was subject to the Anti-Doping Rules of Royal Belgian Rowing ('the Belgian ADR'). Pursuant to the Belgian ADR, on 9 May 2015, Mr Grant

provided an In-Competition urine sample to NADO Flanders, UKAD's Belgian counter-part organisation.

6. NADO Flanders advised UKAD that the Belgian ADR provides that sample results management may be passed to an athlete's National Federation, if the athlete can be classed as an 'elite level' athlete. After consultations with British Rowing, UKAD and NADO Flanders agreed that Mr Grant was an 'elite athlete' and accordingly results management was passed to British Rowing.
7. British Rowing is the National Governing Body for the sport of rowing in the United Kingdom. As of 1 January 2009, British Rowing adopted the UK Anti-Doping Rules (as amended from time to time) as its ADR. Under ADR Article 7.1.2, it follows that UKAD is the relevant results management authority to investigate Mr Grant as the conduct in question, as per ADR Article 7.1.1:
  - (b) was identified by Testing conducted pursuant to other applicable rules (e.g. at an International Event) or otherwise arose in relation to those other rules, and the Anti-Doping Organisation that issues such rules requests or it is otherwise appropriate in all the circumstances for UKAD to take jurisdiction over the matter.
8. It therefore fell to UKAD to investigate this matter and for this Tribunal to make an appropriate finding based on the evidence brought before it. Indeed the issue of UKAD's jurisdiction has not been in dispute between the parties.

## **The Facts**

9. Mr Grant (D.O.B 2 July 1993) is a 22 year old man and a British Rowing member. Mr Grant has until recently been rowing for Great Britain's U23 squad and Oxford Brookes University. Mr Grant is also a full-time second year student at Oxford Brookes University studying Business, Economics and Finance.
10. On 9 May 2015, having been selected for In-Competition testing at the Ghent International Regatta, Mr Grant provided a urine sample that was split into two separate bottles. These bottles were given the reference numbers A2939411 and B2939411. Mr Grant was given the opportunity to disclose on the Doping Control

Form ("DCF") any prescription or non-prescription medications or supplements that he had taken in the preceding 7 days, but he only indicated that he had taken PRO PLUS tablets, containing caffeine.

11. The samples were taken to the DoCo Lab ('the Laboratory'), part of the University of Ghent and a World Anti-Doping Agency accredited laboratory. Mr Grant's samples were analysed in accordance with the procedures prescribed by the World Anti-Doping Agency's International Standard for Laboratories. On 20 May 2015, the Laboratory reported an Adverse Analytical Finding ("AFF") in sample A2939411 to NADO Flanders. The urine sample provided by Mr Grant tested positive for modafinil, a Non-Specified Substance. This is a substance prohibited In-Competition under the World Anti-Doping Agency 2015 Prohibited List ("the Prohibited List"). The substance can be found under s. 6(a) in the list of Stimulants.
12. Mr Grant responded to the charge against him by emailing UKAD on 30 July 2015. Mr Grant accepted the charge but indicated that he had acted with No Significant Fault or Negligence. On 31 July 2015, UKAD referred the matter to the National Anti-Doping Panel ("NADP") for determination. In accordance with directions made by the Chair of the Tribunal on 25 August 2015, UKAD and Mr Grant both served evidence and written representations to assist the Panel.
13. In his witness statement and in evidence before the Tribunal, Mr Grant explained the circumstances surrounding his ingestion of modafinil as follows: on 8 May 2015, Mr Grant had a deadline to submit coursework at 11:59pm. The coursework related to a Macroeconomics module forming part of his degree. Mr Grant stated that at the time, he was *"under a massive amount of pressure"* due to a number of coursework deliverables and exam deadlines that he felt were *"piling up"*. He noted that this was made more difficult due to the *"pressures of training as an international rower"* alongside the completion of his degree course.
14. On 7 May 2015, Mr Grant was in the library working towards his Macroeconomics coursework deadline. By late afternoon, he became concerned that he would not complete the necessary work on time without having to work through the night.

This would have caused Mr Grant some difficulty, as he had already worked through parts of the two previous nights in respect of prior deadlines and exams.

15. With this in mind, Mr Grant stood up to walk around the library in the hope that this would wake him up. Whilst he was away from his desk, Mr Grant engaged in a conversation with a colleague about the pressure he felt he was under. This colleague suggested Mr Grant take two Modalert pills to keep him awake and alert through the night. The pills were provided in sealed packages which bore the name Modalert. Mr Grant returned to his desk where he swallowed the two tablets at approximately 6:00pm. He subsequently submitted his coursework in the early hours of the following morning.
16. In a report obtained by UKAD, Professor Nick Wojek ('Professor Wojek') explained that Modalert is the brand name under which modafinil is marketed and sold in India. He confirmed that it is a prescription only drug but had recently become popular with students as a 'smart drug' due to its ability to *"increase concentration/focus, enhance productivity and ultimately help students study more effectively"*. Medically, Professor Wojek explained that Modafinil is a central nervous stimulant that *"improves cognitive functioning, wakefulness and energy levels"*.
17. At 5:00am on 8 May 2015, Mr Grant's coach collected him for onward travel to the Ghent International Regatta in Belgium. At the hearing, Mr Grant confirmed that his time between being collected and competing was spent travelling and sleeping. On 9 May 2015, Mr Grant competed in the coxless four event, finishing his race at 4:10pm. Mr Grant's team won the race. At 5:00pm, Mr Grant was asked to provide a urine sample by a Doping Control Officer ('DCO').
18. In respect of Mr Grant's failure to disclose his use of Modalert on his DCF, in his written submissions, Mr Grant stated that he had *"completely forgotten about taking them"*. Mr Grant explained that he had seen the Modafinil pills as a study aid only and thereby completely unconnected to his rowing.

## **Article 10 of the Anti-Doping Rules**

19. Given that liability was admitted, the only issue for the Tribunal to consider was sanction. The sanction to be applied in respect of an ADR Article 2.1 ADRV is set out in ADR Article 10.2. This states:

***10.2 Imposition of a Period of Ineligibility for the Presence, Use or Attempted Use, or possession of a Prohibited Substance and/ or a Prohibited Method***

*The period of ineligibility for an Anti-Doping Rule Violation under Article 2.1, 2.2 or 2.6 that is the Athlete's or other Person's first anti-doping offence shall be as follows, subject to potential reduction or suspension pursuant to Article 10.4, 10.5 or 10.6:*

*10.2.1 The period of ineligibility shall be four years where:*

*(a) The Anti-Doping Rule Violation does not involve a Specified Substance, unless the Athlete or other Person can establish that the Anti-Doping Rule Violation was not intentional.*

*(b) The Anti-Doping Rule Violation involved a Specified Substance and UKAD can establish that the Anti-Doping Rule Violation was intentional.*

*10.2.2 If Article 10.2.1 does not apply, the period of Ineligibility shall be two years.*

20. Under ADR Article 3.3.1, stimulants are not classed as a Specified Substance. Pursuant to ADR Article 10.2.1(a), the mandatory sanction is therefore a period of Ineligibility of four years, unless Mr Grant could establish that the ADRV was not intentional.
21. UKAD accepted that Mr Grant had ingested modafinil for reasons unrelated to rowing. They believed his explanation that he had taken Modalert to assist with his studies. UKAD's position on this issue was supported by Professor Wojek's evidence. The Tribunal agreed with this analysis and concluded that Mr Grant's actions had not been intentional.

22. Mr Grant further sought to argue that this period of Ineligibility should be reduced on the basis that he bears No Significant Fault or Negligence for his ADRV under ADR Article 10.5.2, which provides as follows:

*10.5.2 Application of No Significant Fault or Negligence beyond the Application of Article 10.5.1:*

*In an individual case where Article 10.5.1 is not applicable, if an Athlete or other Person establishes that he/she bears No Significant Fault or Negligence then (subject to further reduction or elimination as provided by Article 10.6) the otherwise applicable period of Ineligibility may be reduced based on the Athlete's or other Person's degree of Fault, but the period of Ineligibility may not be less than one-half of the period of Ineligibility otherwise applicable. If the otherwise applicable period of Ineligibility is a lifetime, the reduced period under this Article may be no less than eight years.*

23. No Significant Fault or Negligence is defined by the ADR as follows:

*The Athlete or other Person establishing that his or her Fault or Negligence, when viewed in the totality of the circumstances and taking into account the criteria for No Fault or Negligence, was not significant in relation to the Anti-Doping Rule Violation. Except in the case of a Minor ... the Athlete must also establish how the Prohibited Substance entered his or her system.*

24. For ADR Article 10.5.2 to apply, the athlete must therefore:

- (i) Establish how the prohibited substance entered his body; and
- (ii) Demonstrate that he bears No Significant Fault or Negligence for the ADRV.

25. Accordingly, Mr Grant sought to convince the Tribunal that he met the requirements imposed.

## **The Athlete's Degree of Fault**

26. For the reasons explained above, the manner in which modafinil entered Mr Grant's body is not in dispute. As such, the Tribunal went straight on to consider the potential to reduce the period of Ineligibility and in this respect made an assessment of Mr Grant's degree of fault. In line with the ADR, the Tribunal then needed to establish whether Mr Grant's fault or negligence was significant in relation to the ADRV.

27. Fault is defined by the ADR as follows:

*Fault is any breach of duty or any lack of care appropriate to a particular situation. Factors to be taken into consideration in assessing an Athlete or other Person's degree of Fault include, for example, the Athlete's or other Person's experience, whether the Athlete or other Person is a minor, special considerations such as impairment, the degree of risk that should have been perceived by the Athlete and the level of care and investigation exercised by the Athlete in relation to what should have been the perceived level of risk.*

*In assessing the Athlete's or other Person's degree of Fault, the circumstances considered must be specific and relevant to explain the Athlete's or other Person's departure from the expected standard of behaviour. Thus, for example, the fact that an Athlete would lose the opportunity to earn large sums of money during a period of Ineligibility, or the fact that the Athlete only has a short time left on his or her career, or the timing of the sporting calendar, would not be relevant factors to be considered in reducing the period of Ineligibility.*

28. UKAD submitted that in order to determine Mr Grant's culpability, it was first necessary to consider his duties under ADR Article 1.3.1, which include:

### **1.3 Core Responsibilities**

*1.3.1 It is the personal responsibility of each Athlete:*

*(a) to acquaint him/herself, and to ensure that each Person (including medical personnel) from whom he/she takes advice is acquainted,*



*with all of the requirements of these Rules, including (without limitation) being aware of what constitutes an Anti-Doping Rule Violation and of what substances and methods are on the Prohibited List;*

- (b) to comply with these Rules in all respects;*
- (c) to take full responsibility for what he/she ingests and uses;*
- (d) to carry out research regarding any products or substances which he/she intends to ingest or Use (prior to such ingestion or Use) to ensure compliance with these Rules; such research shall, at a minimum, include a reasonable internet search of (1) the name of the product or substance (2) the ingredients / substances listed on the product or substance label; and (3) other related information revealed through research of points (1) and (2);*
- (e) to ensure that any medical treatment he/she receives does not infringe these Rules; (...)*

29. At the hearing, Mr Grant confirmed that he was aware of his duties under the ADR and that he was aware of the Prohibited List. In respect of Mr Grant's anti-doping education, UKAD produced a witness statement prepared on behalf of James Fuller ('Mr Fuller'), Interim Head of Education and Athlete Support at UKAD. Following inquiries with British Rowing, Mr Fuller was able to confirm that Mr Grant had attended an anti-doping education session on 17 April 2015. At the hearing, Mr Grant confirmed that he had attended such sessions regularly since turning 17 years old.
30. UKAD in particular drew the Tribunal's attention to the slides used at the session on 17 April 2015. These slides highlighted the risks of doping to athletes and also advised athletes to use a website called Global Drug Reference Online ('Global DRO') if they were unsure whether a substance was banned. Global DRO is designed to provide athletes with information about the prohibited status of specific medications based on the Prohibited List. Mr Grant confirmed at the hearing that he was aware of Global DRO and had previously used the service.

31. In his witness statement, Professor Wojek confirmed that a search of Modalert on Global DRO would not have returned an exact match due to it not being a licensed medicine in the UK. However, he did confirm that Global DRO would produce alternative matches, including an entry for modafinil, which it identified as being prohibited In-Competition.
32. Mr Grant confirmed that he did not use the Global DRO website to search for Modalert before swallowing the tablets, nor did he contact or seek advice of any official member of his rowing support (for example his team coach, doctor or performance director). He attributed this to his state of mind at the time of ingestion. Mr Grant stated that he was stressed, anxious and tired which prevented him from thinking clearly and rationally. Mr Grant further advised the Tribunal that despite having attended anti-doping training, he was unclear on the meaning of 'In-Competition'. Mr Grant had thought this meant taking supplements or medication on the date he was competing. In response, UKAD submitted that Mr Grant should have sought the answer to this query as it was his responsibility to understand his duties as an athlete subject to the ADR.
33. It is also clear from Mr Grant's witness statement that he had previously discussed Modalert in the context of it being a Prohibited Substance with a friend. Mr Grant notes that *"the friend in question was an athlete himself and he said that there was no problem using it outside of competition; it was only prohibited in competition"*. On this basis, UKAD submitted that Mr Grant was fully aware he was using a prohibited substance when he swallowed the two Modalert tablets on 7 May 2015. In response, Mr Grant stated that he did not *"weigh up the risks"* and was just focussed on staying awake to ensure his coursework was finished. Mr Grant confirmed that his mind was not on rowing at the time. Similarly, he stated that his mind was not on studying when he failed to declare his use of Modalert on the DCF.
34. In concluding their submissions, UKAD drew the Tribunal's attention to the ADR's definition of fault, outlined above. In particular, UKAD advised that the Tribunal should have regard to:

(i) Any breach of duty or lack of care demonstrated by Mr Grant, as would be appropriate to a particular situation; and

(ii) The degree of risk that should have been perceived by Mr Grant.

35. UKAD submitted that by his own admission, Mr Grant was aware that Modalert contained a Prohibited Substance and that he took an obvious risk in ingesting it two days prior to competing. In particular, UKAD submitted that Mr Grant had failed to exercise the level of care and investigation in relation to what should have been a perceived level of risk. UKAD concluded that Mr Grant's actions fell short of the expected standard of behaviour for an athlete in that he did not take adequate steps to ensure he was not competing with a Prohibited Substance in his system.

### **The Tribunal's decision**

36. In reaching its decision, the Tribunal focused on the test set out in the ADR and applied it to the instant facts of the case. As noted above the Tribunal agreed with UKAD's position on lack of intention. The Tribunal concluded that Mr Grant had demonstrated on the balance of probabilities (pursuant to ADR 8.3.2) a lack of intention pursuant to Article 10.2 and 10.2.3, and therefore the starting point for any further reduction in penalty was from two rather than four years.
37. The Tribunal went on to consider if there were circumstances that could justify the application of ADR Article 10.5.2, and in this instance whether Mr Grant had shown appropriate levels of care and adequately perceived risk.
38. The Tribunal accepted submissions from Mr Grant that the ADRV took place at a stressful time, whilst Mr Grant was trying to balance his studying and rowing commitments. In closing submissions, UKAD observed that Mr Grant's was an unfortunate case, but not an exceptional case. The Tribunal adopted and endorsed this analysis, noting that many athletes manage competing responsibilities alongside their training. Furthermore, it is part of an athlete's skill to compete in highly pressured circumstances and Mr Grant himself stated during the hearing that he has competed in a number of international rowing events. As such, the Tribunal considered that he should have been able to manage the stress

surrounding his exams in a manner that did not cause him to depart from his obligations under the ADR.

39. In reaching this conclusion the Tribunal was mindful of Mr Grant's prior knowledge of Modalert. Mr Grant described Modalert at the hearing as having an effect *"similar to caffeine"*. On the DCF Mr Grant had recorded his use of Pro-Plus to include a specific reference to caffeine. As such, the Tribunal was unable to accept Mr Grant's submission that he did not connect his use of Modalert with rowing on the day he was tested.
40. The 2015 World Anti-Doping Code contains some commentary in relation to ADR Article 10.5 and makes it clear that ADR Article 10.5.2 *"will only apply in exceptional circumstances, for example, when an Athlete could prove that, despite all due care, he or she was sabotaged by a competitor"*. In the circumstances of this case the Tribunal was unable to conclude that Mr Grant had acted with due care or that the circumstances surrounding his ADRV were exceptional. Mr Grant had received regular and comprehensive training on doping issues. The Tribunal concluded that Mr Grant's Fault or Negligence, when viewed in the totality of the circumstances, was significant in relation to the ADRV and that there should be no reduction in the deemed period of Ineligibility of two years.

## **Conclusion**

41. For the reasons set out above, the Tribunal makes the following decision:
  - (a) The Anti-Doping Rule Violation under Article 2.1 of the ADR has been established;
  - (b) Mr Grant has established that the Anti-Doping Rule Violation was not intentional but has failed to establish that he acted with No Significant Fault or Negligence. The Tribunal has therefore determined to impose a period of Ineligibility of two years;
  - (c) Pursuant to ADR Article 10.11.3 credit must be given against the total period of Ineligibility for Mr Grant's Provisional Suspension which

commenced on 21 July 2015. Accordingly, the period of Ineligibility will run until 20 July 2017.

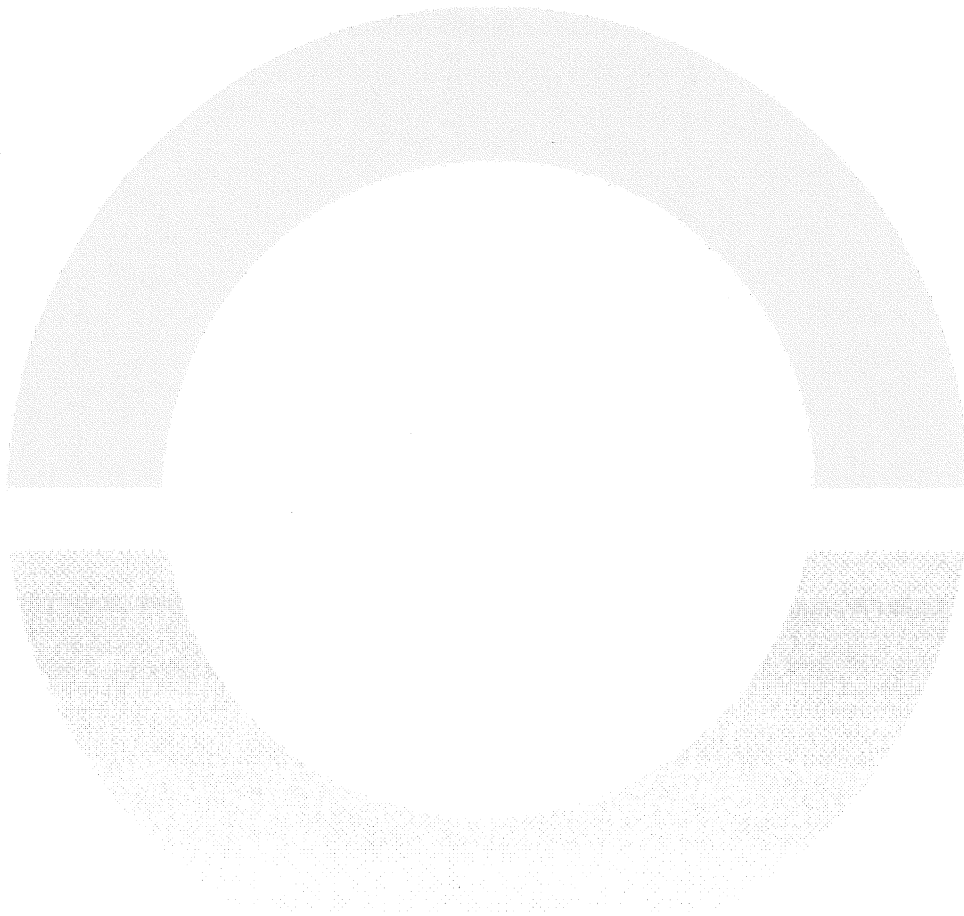
### **Right of Appeal**

42. In accordance with ADR Article 13.4 of the Procedural Rules, Mr Grant and the other parties identified at Article 13.4 have a right to appeal against this decision. In accordance with ADR Article 13.7 any party who wishes to appeal must lodge a Notice of Appeal with the NADP Secretariat within 21 days of receipt of this decision.

A handwritten signature in black ink, appearing to be 'M. Grant', is located to the left of the large circular watermark.

Signed on behalf of the Tribunal

Dated 29 October 2015



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