

National Anti-Doping Panel

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

David Casement QC (Chairman)
Lorraine Johnson
Professor Gordon McInnes

Between:

UK ANTI-DOPING

and

ADAM SCANLON

DECISION PURSUANT TO AGREEMENT BY PARTIES

BACKGROUND

- A. Mr Scanlon is a Welsh Rugby Union ('WRU') player, who is currently registered with Pontypool RFC. He was at all times subject to the jurisdiction of the WRU and bound by the WRU Anti-Doping Rules ('the ADR').
- B. On 24 October 2015, Mr Scanlon was subject to In-Competition Testing pursuant to the ADR, at a match between his team, Pontypool RFC, and Bridgend Athletic RFC. Both teams compete in the WRU Welsh Championship.
- C. Mr Scanlon provided a urine sample ('the Sample'). The Sample was transported to the World Anti-Doping Agency ('WADA') accredited laboratory in London, the Drug Control Centre, Kings College London (the 'Laboratory'). The Laboratory analysed the Sample in accordance with the procedures set out in WADA's International Standard for Laboratories. Analysis of the Sample returned an Adverse Analytical Finding ('AAF') for clomiphene.
- D. Clomiphene is classified as a Hormone Modulator under S4 of the WADA 2015 Prohibited List. It is a Prohibited Substance, classified as a Specified Substance and is prohibited at all times (both In-Competition and Out-of-Competition).
- E. Pursuant to ADR Article 7.1.1(a) UK Anti-Doping ('UKAD') acts as the Results Management Authority in this matter. By way of a letter dated 13 November 2015 ('the Charge') UKAD charged Mr Scanlon with the commission of an anti-doping rule violation contrary to ADR Article 2.1.
- F. Mr Scanlon responded to the Charge by e-mail dated 24 November 2015. He stated that he was uncertain as to the source of the clomiphene detected in the Sample, but believed that the source may have been some 'T Booster' tablets ingested sometime in August 2015 when he was recovering from two successive injuries.
- G. On 4 January 2016, UKAD remitted the matter to the National Anti-Doping Panel ('the NADP'). On 19 January 2016, counsel for Mr Scanlon confirmed that Mr Scanlon admitted the anti-

doping rule violation but wished to rely on ADR Article 10.5.1(a) (No Significant Fault or Negligence). The NADP listed the matter for hearing, the hearing being scheduled to take place on 31 March 2016.

- H. At the hearing, Mr Scanlon advised the NADP that he no longer wished to rely on ADR Article 10.5.1(a). He accepted that the mandatory sanction of a two year period of Ineligibility must be imposed. He explained that he could not explain the finding of clomiphene in his system (but continued to investigate this). He accepted that his inability to explain the finding precluded the application of ADR Article 10.5.1(a).
- I. UKAD confirmed that it did not seek to establish, as per Article 10.2.1(b) of the ADR that the Presence violation committed in respect of clomiphene was intentional, and agreed to the imposition of a two year period of Ineligibility, subject to the NADP agreeing that this was the appropriate sanction pursuant to the ADR.
- J. The parties have therefore proposed resolution of the matter on the terms set out below, subject to the approval of the NADP.

DECISION

- 1. The NADP heard from both UKAD and Mr Scanlon at the hearing. In addition, it read and considered the following:
 - 1.1 UKAD's Written Submissions;
 - 1.2 Witness Statement of Mr Paul Ouseley dated 17 February 2016 and PO Exhibit Bundle
 - 1.3 Witness Statement of Mr Nick Wojek dated 16 February 2016;
 - 1.4 Witness Statement of Professor David A Cowan dated 8 February 2016;
 - 1.5 Mr Scanlon's Written Submissions;
 - 1.6 Witness Statement of Mr Adam Scanlon dated 1 February 2016;
 - 1.7 Witness Statement of Mr Michael Simmons dated 1 February 2016;
 - 1.8 Witness Statement of Mr Simon Scanlon dated 1 February 2016;
 - 1.9 Character Reference for Mr Adam Scanlon from Ms Emily Buckley (undated).
- 2. ADR Article 2.1 provides as follows:
 - 2.1 **Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample, unless the Athlete establishes that the presence is consistent with a TUE granted in accordance with Article 4**
 - 2.1.1 It is each Athlete's personal duty to ensure that no Prohibited Substance enters his/her body. An Athlete is responsible for any Prohibited Substance or any of its Metabolites or Markers found to be present in his/her Sample. Accordingly, it is not necessary that intent, Fault, negligence or knowing Use on the Athlete's part be demonstrated in order to establish an Anti-Doping Rule Violation under Article 2.1; nor is the Athlete's lack of intent, Fault, negligence or knowledge a valid defence to a charge that an Anti-Doping Rule Violation has been committed under Article 2.1.
- 3. ADR Article 2.1.3 states:

- 2.1.3 Except in the case of those substances for which a quantitative threshold is specifically identified in the Prohibited List or other International Standard, the presence of any quantity of Prohibited Substance or any of its Metabolites or Markers in an Athlete's Sample shall constitute an Anti-Doping Rule Violation, unless the Athlete establishes that such presence is consistent with a TUE granted in accordance with Article 4.
4. Mr. Scanlon admits to the Presence of clomiphene in the Sample in violation of ADR Article 2.1. The NADP finds that Mr Scanlon has committed an anti-doping rule violation contrary to ADR Article 2.1.
5. ADR Article 10.2 states:
- 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 involves 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.
6. ADR Article 10.5.1(a) provides as follows:
- 10.5.1 (a) Specified Substances
- Where the anti-doping rule violation involves a Specified Substance, and the Athlete or other Person can establish No Significant Fault or Negligence, then the period of Ineligibility shall be, at a minimum, a reprimand and no period of Ineligibility, and at a maximum, two years or Ineligibility depending on the Athlete's or other Person's degree of Fault.
7. No Significant Fault of Negligence is defined in the ADR in the following terms:
- 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 relationship to the anti-doping rule violation. Except in the case of a Minor, for any violation of Article 2.1, the Athlete must also establish how the Prohibited Substance entered his or her system.
8. Mr Scanlon is not able to establish how clomiphene entered his system. The NADP finds therefore that, a period of Ineligibility two years must be imposed as specified in ADR Article 10.2.2.
9. The following Consequences are hereby imposed:
- 9.1 Mr. Scanlon is ruled Ineligible for a period of two (2) years in accordance with ADR Article 10.2.2.
- 9.2 Mr Scanlon confirmed on the record that he did not participate in rugby between the date of sample collection (24 October 2015) and the date the Provisional Suspension was imposed upon him in the Notice of Charge on 13 November 2015.
- 9.3 The period of Ineligibility is therefore deemed to have commenced on 24 October 2015 (in accordance with ADR Article 10.11.2) and will expire at midnight on 23 October 2017.
- 9.4 During the period of Ineligibility:

9.4.1 In accordance with ADR Article 10.12.1, Mr. Scanlon may not participate in any capacity in a Competition, Event or other activity (other than authorised anti-doping education or rehabilitation programmes) organised, convened, authorised or recognised by the WRU or any body that is a member of or affiliated to or licensed by the WRU; (b) any Signatory of the World Anti-Doping Code or any club or other body that is a member of or affiliated to or licensed by a Signatory or a Signatory's member organisation; or (c) any professional league or any international or national-level Event organisation; and

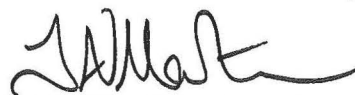
9.4.2 Mr. Scanlon will remain subject to and bound to comply with the ADR, including the obligation to submit to Testing under ADR Article 10.12.3. If required, he will provide information as to his whereabouts to facilitate such Testing.

10. Mr. Scanlon and each of the WRU, World Rugby and WADA has a right of appeal against this Order or any part of it in accordance with ADR Article 13.

11. There shall be no order as to the costs of these proceedings. The disposition of these proceedings on the terms set out above will be publicly announced (including via the NADP and UK Anti-Doping websites).

12. The NADP thanks both Mr Paul Fisher and Ms Josephine Martin of 4 New Square for providing *pro bono* assistance to Mr Scanlon.

ACKNOWLEDGED by the Parties:



Graham Arthur
For and on behalf of UK Anti-Doping Limited

Josephine Martin
For and on behalf of Adam Scanlon

Date: _____ 4 April
2016

Date: 5 April 2016

SO ORDERED by the National Anti-Doping Panel:



David Casement QC
Chairperson
on behalf of the Panel

Date: 4th April 2016