

NATIONAL ANTI-DOPING PANEL

Before:

Rod McKenzie (Sole Arbitrator)

**IN THE MATTER OF PROCEEDINGS BROUGHT UNDER THE ANTI-DOPING RULES
OF THE BRITISH BOXING BOARD OF CONTROL**

BETWEEN:

**UK Anti-Doping Limited
(*"Applicant"*)**

- and -

**Mr Jonathan Slowey
(*"Respondent"*)**

FINAL DECISION OF THE ARBITRAL TRIBUNAL ("THE TRIBUNAL")

Introduction

- 1 This is the decision of the Arbitral Tribunal ("the Tribunal") comprising a sole arbitrator convened pursuant to Article 5.1 of the National Anti-Doping Panel Procedural Rules 2015 (the Rules") to determine a charge brought against Mr Jonathan Slowey ("the Respondent") for a violation of Article 2.1 of the UK Anti-Doping Rules 2015 ("ADR") as adopted by British Boxing Board of Control ("BBBOC").

- 2 BBBOC is the national governing body for the sport of boxing. The BBBOC has adopted the Rules as the anti-doping rules of BBBOC. Article 8.1 ADR confers jurisdiction on the National Anti-Doping Panel ("NADP") to determine matters arising under the ADR. The parties raised no objection to the jurisdiction of the NADP or the composition of the Tribunal by a sole arbitrator.
- 3 BBBOC organises boxing competitions and bouts in the United Kingdom and authorises and has anti-doping authority over bouts in which the United Kingdom boxers participate both in the United Kingdom and overseas.
- 4 On 26 September 2015 the Respondent participated in a professional fight in Campania, Italy. This was a title fight for the EBU-EU Featherweight title. Following the fight, a Doping Control Officer collected a urine Sample from the Respondent. The Sample was split into two separate bottles labelled 'the A Sample' and 'the B Sample'.
- 5 The Samples were transported to a WADA Accredited Laboratory in Rome and the A Sample was there subject to Laboratory Analysis in accordance with the WADA International Standard for Laboratories. The A Sample returned an Adverse Analytical Finding 'AAF' for benzoylecgonine and ecgonine methylester (both metabolites of cocaine).
- 6 Cocaine is a Prohibited Non-Specified stimulant under S6(a) of the WADA 2015 Prohibited List. It is prohibited along with its metabolites In-Competition and the Sample was collected In-Competition. The Respondent did not have the benefit of a Therapeutic Use Exemption (TUE) justifying the presence of benzoylecgonine or ecgonine methylester in his system.
- 7 By letter from the Applicant dated 16 November 2015, the Respondent was Charged with a violation of Article 2.1 ADR, viz the Presence in the Sample provided by him on 26 September 2015 of the above-specified metabolites of cocaine as Prohibited Substances ("the ADRV").
- 8 In accordance with Article 7.9 ADR the Respondent was Provisionally Suspended with immediate effect i.e. on 16 November 2015, and the Charged ADRV was referred to the NADP for determination in accordance with Article 8.1.1 ADR.

- 9 There was some difficulty in the letter of 16 November 2015 reaching the Respondent because of a change of address and on 3 December 2015, the Respondent contacted Mr Jackson of the Applicant having learned of the Charged ADRV. Mr Jackson sent a copy of the 16 November 2015 to the Respondent by email on 3 December 2015, inviting him to respond within ten days of the email i.e. by Monday 14 December 2015.
- 10 On that same date, the Respondent telephoned Mr Jackson confirming that he had received the copy of the letter by email and provided an explanation of the claimed circumstances in which he had ingested the cocaine. He explained that around three to four weeks before the fight on 26 September, he had attended a party and consumed alcohol and cocaine. He had returned home and taken cocaine alone at home. He advised that he had been having a 'bad time' with his fiancée in the lead up to his consumption of cocaine. He had in addition been going through a court case having been charged with an attempted assault, breach of the peace and assault on a police officer. He described his condition as having his 'head up my arse'. He advised that he had been put under curfew as a result of the criminal proceedings which meant that he had required to be in his house from 7pm every evening and this combined with his personal circumstances, including his court case, had put significant strain on him and his fiancée. He advised that he had been going through a "really tough time and felt very down and depressed" although explained that he had not spoken to a doctor about these feelings.
- 11 He went on to advise Mr Jackson that he admitted the ADRV Charged and that he did not wish his B Sample to be analysed. He was advised by Mr Jackson that he needed to provide further detail by responding to the Charge. It was also explained to him that he might potentially expect a four year period of Ineligibility unless this could be reduced by application of one of the ADR provisions which might result in a reduction of the period of Ineligibility. It was explained to him that the matter would require to be referred to a Disciplinary Panel and the Respondent explained that he would want the opportunity to respond in person to the Panel.

12 On 12 September 2015, the Respondent sent an email to Mr Jackson in the following terms:

"To whom it may concern,

I regret in informing you of this, in the last six months my life hasn't been the best, I was and still am involved in a court case, this was extremely difficult to have in my life as the courts put a curfew in place, I had to be within my address between the hours of 8pm – 6am. Proof of this available on request. My training was affected by this and that put a strain on my relationship, my fiancée and I began to go through a really bad time. Ultimately from this I was indulging in alcohol and then began to indulge in cocaine, I said to Tony that the last time I thought I had taken cocaine was Saturday 12th September 2015 till the early hours of the Monday 14th September 2015, after that I was going to pull out of the fight as my training hadn't went great, I wasn't living life like a professional, but I'm a fighter and I needed the money, I totally accept punishment and I'm not looking for any sympathy as I know what I have done is wrong but I would still like, "my day in the court", as we will say, just to have a chance to speak my mind in person."

13 On 14 December 2015 the Respondent sent a further email to Mr Jackson in the following terms:

"To whom it may concern,

I was going through a pretty bad time in my life recently, I was going through a court case which is still ongoing this resulted in me being put on a curfew by the courts, basically I had to stay in the house between the hours of 8pm and 6pm. This brought stress onto my relationship with my fiancée and we were going through some problems, this brought on the use of alcohol and ultimately cocaine, Tony asked me through last time I had cocaine and I thought it was 3 – 4 weeks before the contest in Italy but that was incorrect, the last time I had taken cocaine was Saturday 12th September 2015 into the early hours of Monday 14th September 2015. I completely accept punishment for this and am not looking for sympathy as I

know what I have done was wrong, but I would ask to have, "my day in court" as we will say. Just to be able to speak my mind in person.

- 14 The President of the NADP appointed me as Chairman to the Tribunal and I convened a directions hearing, which took place by conference call on 21 January 2016.
- 15 The Respondent was represented at the hearing on directions by Mr Akinsanya, barrister, and the Applicant was represented by Mr Arthur, solicitor.
- 16 Parties agreed that the relevant Procedural Rules for the Arbitration were the Rules, that the relevant Anti-Doping Rules were the UK Anti-Doping Rules Version 1.0, dated 1 January 2015, adopted by the British Boxing Board of Control ("BBBOC") as its Anti-Doping Rules, i.e. the ADR, and that the relevant edition of the WADA Code was the 2014 Code.
- 17 Parties also agreed:
- 17.1.1 that the BBBOC had jurisdiction in Anti-Doping matters relating to the Respondent since the Respondent was a licensed competitor of the BBBOC;
 - 17.1.2 that the Applicant has responsibility for results management in relation to licensed competitions of the BBBOC, wherever they fight, pursuant to ADR Article 7.1.3;
 - 17.1.3 that the NADP has jurisdiction to determine the Charge made against the Respondent, as set out below; and
 - 17.1.4 that there was no objection to the appointment of the Chairman to the NADP Arbitral Tribunal which will determine the Charge brought against the Respondent and to the Chairman conducting the hearing on directions and making these and other directions for the purpose of the Arbitration.
- 18 Mr Akinsanya, on behalf of the Respondent, acknowledged that the Respondent had committed the Charged ADRV set out in paragraph 3.2 of the letter from the Applicant to the Respondent of 16 November 2015 viz. the Presence of

benzoylecgonine and ecgonine methylester in a Sample provided by the Respondent on 27 September 2015, numbered A3570511, in violation of ADR Article 2.1. Mr Akinsanya went on to advise that at the Hearing the Respondent would seek to establish that the ADRV, which was admitted by the Respondent, and which involved a Non-Specified Substance, was not intentional for the purposes of ADR Article 10.2.1(a). Mr Akinsanya acknowledged that this was the Respondent's second ADRV and that, unless the Respondent could establish such an absence of intention, the period of Ineligibility liable to be imposed on the Respondent in terms of ADR Article 10.7.1 was eight years. Mr Akinsanya and the Mr Arthur agreed that if the Respondent was able to satisfy the Arbitral Tribunal that the admitted ADRV was not intentional then the period of Ineligibility to be imposed on the Respondent by the Arbitral Tribunal would be four years.

19 Mr Akinsanya also advised that the Respondent did not intend at the Hearing to seek to argue for an elimination of the Period of Ineligibility on the basis that there was No Fault or Negligence or for a reduction of the otherwise mandatory Period of Ineligibility based on No Significant Fault or Negligence, for the purposes of ADR Articles 10.4 and 10.5 respectively.

20 The Hearing was assigned, by agreement with those representing the parties, to take place on 8 March 2016 within the offices of Harper Macleod LLP, Solicitors, The Ca'd'oro, 45 Gordon Street, Glasgow, G1 3PE commencing at 12 noon. Parties are given leave to make application not later than 5pm on 23 February 2016 for a change to the time of commencement of the hearing in light of travel arrangements.

21 Parties were ordered to seek to agree a joint bundle of documents and a joint bundle of any authorities by not later than 5pm on 23 February 2016 together with witness statements, if any witnesses were proposed to be called, these to be lodged by not later than 5pm on 23 February 2016.

22 The first directions were issued to parties dated 26 January 2016.

23 For certain reasons, the Hearing date assigned for 8 March 2016 became inconvenient and a new date for the Hearing was assigned for 22 April 2016.

The adjusted date, time and place of the Hearing were fully notified to parties. At the Hearing on 22 April 2016, the Respondent was represented by Mr Akinsanya and the Applicant was presented by Mr Arthur. The Respondent was not present.

24 Mr Akinsanya advised that earlier that day he had received a telephone call from a member of the family of the Respondent advising that the Respondent had had some form of "breakdown" and that he had been "struggling with cocaine and alcohol". As a result of the family's intervention, it was advised that the Respondent had been referred to the "Oasis Rehabilitation Centre" in Morecambe, Lanarkshire. Further detail of the breakdown and the medical treatment which would be sought there by the Respondent was not available. Mr Akinsanya advised that during the course of the telephone call he had been told that the Respondent had become increasingly anxious regarding the impending Hearing and that the family believed this had some connection with the "breakdown" suffered by the Respondent.

25 Mr Akinsanya went on to advise that he had also had a later opportunity of a telephone conversation with the Respondent who had confirmed to him that he wished to continue to respond to the charges and to attend at a Hearing but that he was unable to do so on 22 April 2016 as he was *en route* to the aforesaid Oasis Rehabilitation Centre.

26 Mr Akinsanya went on to say that, as he saw it, there were essentially two alternatives. Either the hearing could be adjourned to a later date or a period of Ineligibility of four years could be imposed, the Applicant having already accepted that the cocaine taken by the Respondent had not been taken in a competition context with the intent to enhance the sport performance of the Respondent, this being a second ADRV for the Respondent, and the matter could then be considered on appeal with any new evidence being available to the Appeal Tribunal.

27 The intended approach which the Respondent might advance at an adjourned hearing was discussed with Mr Akinsanya. It was pointed out to him that at the hearing on directions on 21 January 2016 it had been expressly conceded by him on behalf of the Respondent that no argument based on No Significant Fault or

Negligence for the purpose of ADR Article 10.5 would be advanced by the Respondent. In these circumstances, Mr Akinsanya was asked on what basis the result of the proceedings could be anything other than a period of Ineligibility of four years. Mr Akinsanya advised that he had reconsidered the Respondent's position and now recognised on behalf of the Respondent that it would be necessary for the Respondent to advance a case based on ADR Article 10.5.2 if a period of Ineligibility of less than four years was to be considered.

28 I did not consider that the imposition of a period of four years Ineligibility without a hearing was an attractive proposition if the result would inevitably be an appeal at which "new" evidence would be sought to be presented.

29 Mr Arthur for the Applicant advised that, in the circumstances, the Applicant did not oppose a discharge of the hearing assigned for 22 April 2016 and an order for further procedure at first instance in the matter.

30 In the circumstances the following orders were made:

- (i) the Hearing assigned for 22 April 2016 was discharged;
- (ii) the Respondent shall by not later than 17:00 hours on 29 April 2016 provide the Secretariat of the NADP with written confirmation of the attendance of the Respondent at the Oasis Rehabilitation Centre, Morecambe, Lanarkshire on 22 April 2016, such written confirmation to be from an officer of that Centre;
- (iii) that by not later than 17:00 hours on 6 May 2016 the Athlete shall provide the Secretariat of the NADP with written details of any medical treatment being received by the Athlete relevant to these proceedings and/or the admitted ADRV and an indication, if available, of when the Athlete expects to be able to attend at a Hearing; and
- (iv) when the medical position of the Respondent is clarified by (iii), the Arbitrator will assign a further hearing on directions.

31 I issued a second directions document to parties confirming the above on 28 April 2016.

- 32 The relevant confirmations required by 30(i), (ii) and (iii) were received by the due dates. In accordance with the second directions a further hearing on directions was assigned by me to take place on 27 May 2016.
- 33 The second hearing on directions on 27 May 2016 took place by telephone conference call. At the hearing the Respondent was again represented by Mr Akinsanya, barrister and the Applicant was again represented by Mr Arthur, solicitor.
- 34 Mr Akinsanya provided certain further oral details regarding the medical treatment being received by the Respondent, including that he was due to see a psychologist with a report being available approximately six weeks after the hearing on directions on 27 May 2016.
- 35 Mr Akinsanya went on to advise that he had now reconsidered, on behalf of the Respondent, the position adopted by the Respondent as set out in the first directions and now wished to advance an argument at a further Hearing that the otherwise mandatory Period of Ineligibility should be reduced based on No Significant Fault or Negligence for the purposes of Article 10.5.2. ADR. Mr Arthur confirmed that the Applicant had no objection to this argument being advanced, although he reserved the position of the Applicant on the merits of the argument and, in consequence, I directed that the Respondent be permitted to lead evidence and argue at the Hearing assigned below that the otherwise mandatory period of Ineligibility should be reduced in accordance with the terms of Article 10.5.2. ADR.
- 36 In respect that the Respondent did not seek to withdraw the acknowledgement that he had committed the Charged ADRV and that the onus was on the Respondent to establish that he bore No Significant Fault or Negligence in the commission of that ADRV I directed that the Respondent should lead evidence first at the Hearing assigned below.
- 37 A Hearing was assigned, by agreement with those representing the parties, to take place on 16 August 2016 within the offices of Harper Macleod LLP, Solicitors, The Ca'd'oro, 45 Gordon Street, Glasgow G1 3PE commencing at 1pm. Parties

were required to lodge any additional documents and skeleton arguments by specified dates.

38 A third directions document was issued to parties on 15 July 2016. The time period before issuing the third directions document was because I was waiting for receipt of a copy of the psychologist's report referred to in paragraph 34 but by 15 July a copy had not been received. In the circumstances the Hearing assigned for 16 August 2016 was expected to proceed and the third directions confirming dates for compliance with procedural requirements was issued. There was no indication that the Respondent would be too unwell to attend the hearing.

The Hearing

39 The hearing duly proceeded on 16 August 2016. The Respondent was present along with Mr Akinsanya. Representing the Applicant was a Mr Tony Jackson accompanied by a Mr Lewis Muncey, a paralegal. Also in attendance was a Mr Justin Turner QC, a member of the board of the Applicant (in an observer capacity). Ms Jenefer Lincoln, a member of the Secretariat of the NADP, was present as clerk. I was accompanied by a Mr Mark Smith, trainee solicitor, who assisted me by taking notes.

40 Oral evidence was led by the Respondent from the Respondent himself and from a psychologist, a Dr Richard J. Golsworthy, who gave his oral evidence by conference call.

41 Prior to the hearing I had received a copy of a signed witness statement from Professor David A Cowan, the director of the Drug Control Centre, Kings College, London, submitted on behalf of the Applicant. The content of Professor Cowan's written statement was not challenged by the Respondent.

42 On behalf of the Respondent I was provided with a copy of the letter from Bridge Litigation, solicitors in Glasgow, addressed to the Respondent dated 25 June 2015, some information about appointments for psychological therapy, a 'graduation form' from Oasis who are an organisation providing drug and alcohol rehabilitation care and treatment, a letter from a Mr Alex Morrison, the manager of the Respondent dated 25 May 2016 and a psychological report dated 31 July

2016 prepared by Dr Golsworthy. I had also been provided with written skeleton arguments prepared by Mr Jackson on behalf of the Applicant and by Mr Akinsanya on behalf of the Respondent.

43 This decision records what is considered to be the particularly relevant elements of (i) the evidence provided to me both in written and oral form at and prior to the Hearing; and (ii) the written and oral submissions made to me on behalf of parties. Not all of the evidence and submissions are set out in this decision but I have taken into account all of the evidence, both written and oral and all of the submissions in making my determinations.

44 I was not requested by either party to consider redacting any parts of my decision so far as concerned, sensitive and personal matters relating to the Respondent. I would, in any event, have been reluctant to do so other than the redactions in paragraph 65, which are necessary to protect the rights of the Respondent and a third party, since it is necessary to know such particular personal and sensitive matters relied on by the Respondent in order to understand the arguments advanced and determinations made as regards his medical condition and the cognitive effects of that condition on his failures in reasoning which he alleges resulted in the ADRV with which this case is concerned.

45 It was not in dispute that this was the second ADRV committed by the Respondent. In 2010 he had been subject to a period of Ineligibility of four months extending from 8 July 2010 to 8 November 2010 arising from the commission of ADR Article 2.1 and an ADRV resulting from the presence of cannabis in a Sample provided by him on 26 March 2010. It was also not in dispute that the Respondent therefore fell to be sanctioned in accordance with the provisions of ADR Article 10.7 relating to multiple violations. If the Respondent's period of Ineligibility falls to be determined in accordance with ADR Article 10.7.1(c), then the greatest potential sanction that may be imposed is eight years' Ineligibility. In the event that the Respondent can show that the ADRV with which this matter is concerned was not 'committed with the intention of enhancing sport performance', then the period of Ineligibility to be imposed in respect of the Charged ADRV alone would be two years and accordingly but

applying ADR Article 10.7.1(c), the aggregate period of Ineligibility to be imposed will be four years.

46 In 2010, cannabinoids were prohibited In-Competition and were categorised as a Specified Substance. The circumstances of the Respondent's then offence meant that the period of Ineligibility fell to be determined in accordance with the provisions of what was then Article 10.4 of the 2009 ADR. It was brought to the attention of the Hearing that since 2010 there had been a change in the level of cannabinoids which required to be present in a Sample for a Presence ADVR to be committed and if the later revised level had applied in 2010, then the Respondent would not have committed an ADVR. However, Mr Akinsanya accepted that this later change in the level of concentration required for an ADVR to be established made no difference as to whether the now Charged and admitted ADVR was a second ADVR or not. He accepted, on behalf of the Respondent, that it was necessary for ADR Article 10.7.1, as presently stated, to be applied. There was a suggestion at one point that there would be an argument advanced based on *lex mitior* but such an argument was expressly eschewed by Mr Akinsanya and no submissions were advanced in support of it.

47 Whilst the Respondent led his evidence first at the Hearing, in accordance with a previous direction, it is convenient to record the material part of the evidence of Professor Cowan in his statement in order to understand the context of some of the evidence for the Respondent. Professor Cowan states in the material paragraphs:

"8. *Considering the time between 14 September and 26 September as 12 days, in my opinion, I do not think it reasonable that such concentrations as found by the Rome Laboratory would have been obtained 12 days after the last administration of cocaine.*

9. *I have taken into consideration the times and concentration most favourable to the athlete's claim about administration of cocaine when considering these data.*

10. *I have also considered whether the estimated concentrations of prohibited substances detected as [sic] consistent with In-*

Competition administration of cocaine based on the competition beginning at or around 11:20pm on 26 September 2015. This means that the In Competition period under the WADA Code would have begun at 11:20am on 26 September 2015.

11. In my opinion, the concentrations found in Mr Slowey's sample are too small to be consistent with a normal dose of cocaine having been taken during the In-Competition period."

48 The Applicant accepted that, on the basis of Professor Cowan's evidence, whilst it did not accept the last date of ingestion of cocaine advanced by the Respondent in his written materials and in his telephone call to UKAD after receiving the letter containing the Charge, the Respondent's assertion that he had not used cocaine in a context related to enhancement of sport performance and that he did not commit the ADRV intentionally were correct. Accordingly, the Applicant accepted that, from the definition of the term "Intentional" in ADR Article 10.2.3, the cocaine ingested by the Respondent had not been taken for the purpose of enhancing the sport performance of the Respondent for the purposes of ADR Article 10.2.1(a) and that the applicable period of Ineligibility, having regard to the terms of ADR Article 10.7.1 and before any consideration of ADR Article 10.5.2 (No Significant Fault or Negligence) was four years.

49 It is also convenient to note here that the Applicant accepted that the admissions made by the Respondent constituted prompt admission and that for the purposes of ADR Article 10.5 that the Respondent had established how the cocaine had entered his system and how its metabolites came to be present in his Sample taken on 26 September 2015 i.e. by self-application as a narcotic Out of Competition.

Written Evidence for the Respondent other than Psychologist Report

50 Bridge Litigation was the solicitors acting for the Respondent in the criminal matter pending in Hamilton Sheriff Court in 2015. The Respondent had appeared from custody on 24 June 2015 following his arrest and detention the previous day and had been granted bail on the standard conditions with certain additional special conditions. Such appearances from custody generally arise in the more

serious criminal cases where 'police bail' or release for a summons to be sent by post are not considered appropriate. After a plea of not guilty was entered by the Respondent he was granted bail with special conditions that the Respondent was not to approach a specified individual who had been allegedly involved in the incident to which the prosecution related and, in addition, the Respondent was required to remain in his home address between the hours of 8pm and 6am. This second special bail condition is colloquially known as 'a curfew'.

51 The graduation form from Oasis Recovery Communities confirmed that the Respondent's last date of review was 29 April 2016. He had completed the treatment and was now considered "drug/alcohol free".

52 He was recognised as having certain continuing difficulties involving grieving for the past and people in comparing himself to others and not being his true to self or becoming frustrated and being not sure as to how to express emotion and being uncomfortable when others are emotional. He is recorded as having presented with "Depression, anxiety/self harm". On arrival he had tested positive for THC/cocaine but on subsequent tests had been negative for narcotics.

53 In his letter of 25 May 2016, Mr Morrison, the Respondent's boxing manager, describes the Respondent as "suffering badly from depression last July/August time [2015]", that he had told him about St John's Wort and had provided that to him. St John's Wort is an openly available homeopathic treatment which is said to alleviate symptoms of anxiety and depression. The manger went on to describe the Respondent as "suffered from anxiety and depression ... although he did attempt to hide it." The Respondent was said to be "at heart is a kind and good person".

Oral Evidence by the Respondent

54 The Respondent explained that he had been involved in boxing for many years and that his employment was now as a professional boxer. He described himself as an outgoing social individual historically. He had necessarily been in male company a great deal as a consequence of his involvement in boxing and he came from a community where the male sense of pride and assertiveness was important. His boxing was an extension of this and he had not recognised in

himself any psychological issues until the summer of 2015. He acknowledged the ADRV from 2010. He had been involved in smoking cannabis recreationally. It had nothing to do with supporting him in any kind of psychological issues. At the time he had been an amateur boxer. The cannabis had been taken recreationally 'for fun' with no thought to any sporting consequences.

55 He went on to advise that 2015 was the worst year of his life. His problems had begun with the incident in which he had been charged with a number of alleged offences. He had been arrested and had appeared in court from custody where he had pled not guilty through his solicitor and an intermediate diet had been fixed for the 14th of September 2015, with a trial diet for 12 October 2015. The charges were serious and he was concerned about what the outcome of the trial might be. He was aware imprisonment was a possibility given the nature of the charges. The bail condition that he must be resident within his home address between the hours of 8pm and 6am had been the biggest initial difficulty. The consequence of this was that he was cut off, effectively, from his social life and his 'support group' of friends and boxing acquaintances. He had a long term girlfriend with whom he had had an 18-month relationship. She had ceased to come round and see him and he could not go out in the evening to see her because of the curfew. His friends all worked and he could not visit them in the evenings. He became very lonely and cut off from those around him. He could not understand why, particularly his girlfriend, had isolated herself from him. He had no one to talk to or share his worries about the upcoming fight and his concerns about what might happen at the forthcoming trial. He felt he was facing these things alone and for the first time in his life without support. He felt completely isolated and abandoned. The 'final blow', as he saw it, came in July 2015 when he learned that his girlfriend had been involved in a sexual relationship with his best friend. This made him feel very low. He did not want to get out of bed. He did not want to take part in training although he had a professional fight coming up in September in Italy for which he required to train. It was a very important fight but his mood was such that he could not concentrate on getting himself fit for the fight.

56 He advised that in his community it was not the "done thing" for men to talk about their feelings with other men and he had nobody to talk to because his girlfriend was cut off from him as was his best friend. It did not occur to him to see his doctor and no one advised it. He had lost all confidence in himself, saw no way out of his isolation and considered his position hopeless. His mood became worse and he turned to narcotics as a form of self-medication and escape. In particular, he began to use cocaine. It never occurred to him that the cocaine would in any way enhance his performance as a boxer. He used the cocaine to "self-medicate" to overcome his negative feelings about himself, his lack of self-worth and his increasing isolation from those around him. He spoke briefly about his problems to his manager who did not suggest that he go and see a doctor but did give him a homeopathic remedy called St John's Wort. That did not seem to be of any assistance to him. He felt more and more depressed and anxious. Eventually he was so low that he attempted suicide by consuming Amitriptyline (a prescription anti-depressant) tablets. He sourced these tablets by buying them from someone to whom they were prescribed. He consumed them with alcohol intending to kill himself. He told me he thought this was the only way to escape from his isolation and unhappiness; he saw no other choice.

57 He had no professional help at this time and did not seek any form of medical advice. He also consumed significant quantities of alcohol, again as a way of escaping his negative feelings towards himself and those around him. He was not thinking about boxing or training, although he was aware that he had the fight coming up on 26 September.

58 He recalls during the weekend of 12 to 14 September, consuming a significant quantity of cocaine. He thinks it was between 3 and 5 grams at a street price of around £300 to £500. He cannot remember the precise quantity but he consumed all of it himself.

59 He knew that he needed to stop taking the cocaine before the Italy fight because otherwise there was a risk of a positive test if he was required to provide a Sample of urine for Testing. He knew about the principles of this from his previous ADRV in 2010. In his mind, if he stopped taking the cocaine around 12 days before the fight, then there was no possibility of a positive test result if he

had to provide a Sample for Testing. He had no real basis for this calculation of time; it was just what he believed. His thoughts were very disordered. He accepts that he might have got the dates wrong and that he might have consumed cocaine closer to 26 September. In any event, it was, he asserted, definitely not taken to improve his performance. In his mind cocaine would not in any way improve his sporting performance since it would make it more difficult for him to concentrate during the fight, which was essential during a fight, if he was still subject to the narcotic effects of cocaine.

60 He took part in the fight in Italy and lost on points. That further depressed him. Thereafter his life descended into more and deeper isolation. He consumed more alcohol and drugs. He was unable to concentrate on carrying on with his boxing training. The worse he felt, the more drugs and alcohol he consumed as a means of escape. His family became more and more concerned about his condition and ultimately they persuaded him to enter the Oasis Recovery Community in order to be rehabilitated from the drugs and alcohol.

61 He considers that he spent his time there fruitfully and that since his period as an in-patient he has been largely drug and alcohol free.

Evidence of Dr Golsworthy

62 Dr Golsworthy is a registered practitioner psychologist. His psychological report on Mr Slowey is dated 31 July 2016. The report is detailed and presents a full analysis of the developmental history and psychological assessment of the Respondent both at the date of the report and in September 2015. The Respondent has had six sessions of psychological therapy.

63 The report does not present a detailed analysis of the Respondent's psychiatric condition at the time of the commission of the ADRV. It is primarily a psychological assessment which evaluates the Respondent's psychological disorder, as assessed by Dr Golsworthy which, in Dr Golsworthy's opinion, resulted in the abuse by the Respondent of narcotics, including cocaine, in a form of self-medication and the resulting ADRV described above.

64 In July 2015 and thereafter Dr Golsworthy describes the Respondent's psychological symptoms as:

"Worsening at this time: He felt worthless; he had strong feelings of paranoia and anxiety; he believed he was being watched; he felt unable to trust others and had ongoing insecurity about the relationship with his girlfriend. This period culminated in an attempted overdose of prescription drugs and alcohol in August 2015, although he did not seek professional help or tell anyone about it at that time."

65 To Dr Golsworthy the Respondent disclosed [REDACTED]
[REDACTED]
[REDACTED] this [REDACTED] had a significant impact on elements of his development and his ability to form close relationships. Further detail on this is provided in Dr Golsworthy's report and it is unnecessary to give further details in this decision. In Dr Golsworthy's opinion the degree of difficulty described by the Respondent is "unusual in terms of normal developmental variation". Further the Respondent's mentor and boxing trainer died when the Respondent was 16 years of age. The Respondent had found this particularly upsetting and hard to cope with and he resorted to the use of cannabis and alcohol in order to manage his feelings. This managing of feelings and difficulties by the use of alcohol and narcotics was reflected in the response of the Respondent to the difficulties experienced by him in 2015.

66 The Respondent had grown up in a "hyper male" environment. That environment prized attitudes involving male identity which resolved problems through physicality. This made the Respondent considerably concerned to protect his reputation "as a man" and he felt the need to suppress a normal range of emotional experiences so as not to show weakness. He tried to seek approval through impressing others with much reliance on and need to impress older male figures. This meant that he had few resources to manage the impact of the sexual abuse and the death of his boxing trainer.

67 Dr Golsworthy wrote a detailed analysis of the various features of the Respondent's life and environment which resulted in the slide into the

Respondent's psychological disorder. The consequence was that in 2015 when the Respondent had the series of issues from July onwards, he had few emotional or psychological resources to cope. He could not show weakness and had no one to share his emotional difficulties with. He had a very poor view of his own self-worth and he must have felt intense pressure. The Respondent became overwhelmed by his deeper feelings and he turned to cocaine as a means by which he believed he would be able to temporarily escape his internal conflicts by being boosted by a flawed sense of identity and confidence. This enabled him to avoid having to address his issues and feelings.

68 In his oral evidence Dr Golsworthy described this as a psychological disorder which compromised the ability of the Respondent to reason. The severing of the Respondent's usual social connections by the curfew posed on him and the break-up of his relationship with his girlfriend as a consequence of her infidelity meant that the limited supports which the Respondent had were removed from him.

69 Although Dr Golsworthy had not been asked specifically to carry out a psychiatric assessment of the Respondent he considered it "highly likely" that in 2015 the Respondent had suffered from a depressive disorder and that it was also likely that the Respondent was at the time suffering from an anxiety disorder. There were therefore three separate features which, in Dr Golsworthy's opinion, contributed to a significant impairment of the Respondent's cognitive functioning and which would have severely compromised the ability of the Respondent to reach reasoned and appropriate decisions about the use of cocaine, its relationship with his boxing and whether it was helping him or contributing to his various disorders. Dr Golsworthy was satisfied that in July and in the months following in 2015 that the Respondent had been suffering from clinical depression. The Respondent's condition had not been so severe that the Respondent was not aware of the difference between the rights and the wrongs of the use of narcotics such as cocaine whether from a criminal law or sporting perspective. However the Respondent's thinking and reasoning was so disordered that the Respondent was not able to take proper and responsible decisions. The pressures of his various disorders was such that it was more important for him to use the cocaine to deal with how he felt and to enable him to cope than it was to

not use the cocaine so as not to break the law or commit anti-doping rule violations.

70 Dr Golsworthy was of the opinion that the extent of the disorder thinking on the part of the Respondent in the period of July 2015 through to September 2015 was such that his cognitive functioning was severely impaired and his responsibility was significantly diminished. His psychological disorder alone constituted an identified mental/medical disorder with a DSM classification and the depression and anxiety disorders which he could identify the Respondent was suffering from at the time were psychiatric illnesses. The three disorders were intimately linked.

Submissions

71 Initial and supplementary skeleton arguments were provided. Mr Jackson provided a detailed analysis of the relevant ADR articles and in particular ADR articles 10.5.2 and the definition of No Significant Fault of Negligence. He reminded me that, per the definition, I have to look at the totality of the circumstances taking account of the criteria for No Fault or Negligence and that I must consider those circumstances in relation to the ADRV committed. He also reminded me that I should have regard to the definition of Fault, particularly that Fault in this context is any breach of duty or lack of care appropriate to particular situation and that in assessing the degree of Fault the circumstances which are considered must be specific and relevant to explain the Athlete's departure from the expected standard of behaviour. Further Mr Jackson drew my attention to a series of relevant authorities of different anti-doping panels and appeal panels and the CAS in relation to the circumstances in which No Significant Fault or Negligence might be established where there is a suggestion of a medically explained disorder of thinking or reasoning leading to a cognitive deficit. The second skeleton argument at paragraph 63 states that the Applicant "accepts that a proven, contemporaneous medical diagnosis is not necessary to satisfy" the demonstration of a medical diagnosis of a depressive illness and cognitive impairment. At paragraph 64 the Applicant submits that it is open to me to find the Respondent to be at No Significant Fault or Negligence for the admitted ADRV provided that I am satisfied as to:

- "How the metabolites of cocaine came to be present in the A sample; and
- That [the Respondent's] circumstances, viewed in their totality are exceptional; and
- That [the Respondent's] Fault was not significant based on: a medical diagnosis of depressive illness; and cognitive impairment linked to the circumstances surrounding the commission of the ADRV."

72 At 89 of the second skeleton the Applicant acknowledges that the Respondent has been subject to a Provisional Suspension since the date of the Charge (16 November 2015) and that in terms of ADR article 10.11.3 the Respondent is entitled to credit for the time served during his provisional suspension against any period of Ineligibility imposed. Further at paragraph 90 the Applicant confirms that if the Respondent did not participate in boxing between 26 September and the date of the Hearing that the Respondent's admission is a timely admission for the purposes of ADR article 10.11.2 and that it is open therefore for me to commence any period of Ineligibility as at the date of Sample Collection, i.e. from 26 September 2015.

73 Mr Akinsanya for the Respondent submits that it is clear from the evidence of the Respondent and the evidence of Dr Golsworthy that the Respondent suffered from a severe cognitive impairment in the period from July 2015 through to sample collection on 26 September 2015 and that the cognitive impairment resulted from a combination of a psychological disorder, a depressive illness amounting to clinical depression and an anxiety disorder. There having been no contrary psychological or psychiatric evidence presented on behalf of UKAD and the evidence of Dr Golsworthy not having been challenged on cross examination by UKAD I should accept the opinion evidence given by Dr Golsworthy and should be satisfied that in the circumstances the extent of the Respondent's disorder thinking was such as to impair his cognitive reasoning such that he had No Significant Fault or Negligence for the admitted ADRV. Whilst Mr Akinsanya's skeleton does not directly address an analysis of the degree of Fault that I am required to carry out assuming a finding established that the Respondent bears No Significant Fault or Negligence I take it, by implication, that the Respondent submits that the degree of Fault should be at the low end of the scale potentially

enabling me to restrict the period of Ineligibility to a minimum of two years from the date of sample collection i.e. from 26 September 2015.

Discussion

74 I have read and taken account of the following authorities in reaching my determinations:

- *UKAD -v- Burnett*; NADP decision 10 June 2015
- *Burnett -v- UKAD*; NADP appeal panel decision 7 October 2015
- *UKAD -v- Cleary*; NADP decision 5 January 2016
- *UKAD -v- Duffy*; NADP decision 9 February 2016
- *UKAD -v- Hastings*; NADP decision 18 November 2015
- *Evans -v- UKAD*; NADP appeal panel decision 5 July 2016
- *FA -v Livermore*; FA Regulatory Commission 8 September 2015
- *UKAD & RFU -v- Lancaster*; RFU Anti-Doping Appeal Panel judgement 9 February 2016
- *Mariano -v- Puerta -v- RTF, CAS/2006/A/1025*, 12 July 2006
- *Vlasof -v- ATP, CAS/2005/A/873*, award dated 23 August 2005
- *USADA -v- Cosby*, AAA panel decision dated 5 May 2010

75 Of these the most immediately relevant and helpful in assisting me in making my determinations are the NADP Panel decision and Appeal Panel decision in the *Burnett* case and the NADP Panel decision in *Duffy*.

76 Much of the precise factual circumstances relating to Mr Burnett are redacted from the decisions, particularly the appeal panel decision. In the first instance panel decision at paragraph 29 the panel recorded an acknowledgment by UKAD that the decisions of CAS and other anti-doping tribunals had recognised that personal disabilities, such as those relating to mental health, may justify departure from the standard sentencing provisions within ADR. Where it can be demonstrated that an Athlete has been suffering from a depressive illness which interferes with his cognitive functioning then an Athlete may submit that they

should bear No Significant Fault or Negligence for the purposes of ADR Article 10.5.

77 In the *Burnett* case much of the appeal panels' decision is taken up with a consideration of the decision of the Commission in *Livermore*. However, I am not required to consider the particular circumstances of the *Livermore* case and the issue of whether or not the period of Ineligibility can be reduced below the minimum threshold of 50% provided in ADR article 10.5.2. In this case Mr Akinsanya accepted that there were no circumstances such as those which presented themselves to the Commission in the *Livermore* case that the circumstances here were not of the sort of rare and exceptional kind that had been present in *Livermore* and that the Respondent was not seeking to argue that the period of Ineligibility should be reduced, in this case, below the minimum period of two years. That minimum period of two years takes account of the effect of ADR article 10.7.1 since this is a second ADRV for the Respondent.

78 *Duffy* was another case in which a Presence ADRV was committed involving a metabolite of cocaine. Again there is some redaction in the decision of the panel but it is clear that Mr Duffy had suffered a number of unfortunate incidents in his life and that a retrospective diagnosis of depression involving a degree of cognitive impairment had been made by a psychiatrist notwithstanding that the diagnosis was made some considerable period after the ingestion of the cocaine which led to the ADRV. At paragraph 37 the panel recognised that there may be cases where there are contemporaneous medical records containing a diagnosis of a depressive illness but that in many cases such evidence will not be available since individuals suffering from depression often have difficulty in engaging with medical professionals to seek help whilst depressed. The absence of a contemporaneous diagnosis is not in and of itself a bar to an athlete satisfying the requirement for a medical diagnosis of a depressive illness.

79 In most of the cases in which a reduction in the period of Ineligibility is contemplated in similar contexts there is a diagnosis of a depressive illness. However, I do not consider that it is necessary that the diagnosis be specifically of a depressive illness for there to be requisite cognitive impairment. Depression or clinical depression is not the only psychiatric condition which may result in

cognitive impairment. In this case Dr Golsworthy provides a detailed analysis and establishes the existence of a psychological disorder resulting in cognitive impairment. Whilst he goes on to express the opinion that there was also a depressive illness amounting to clinical depression and probably an anxiety disorder it is the conclusion of a disorder of thinking and reasoning resulting in requisite cognitive impairment secondary to a diagnosis of a clinically recognised psychiatric illness and/or a psychological disorder which is important, not the title of the particular psychiatric illness and/or psychological disorder, constituting a mental disorder, which is diagnosed. In short, what matters is the results of the diagnosed condition on the cognitive reasoning of the individual Athlete and the extent, if at all, having regard to the totality of the circumstances and taking into account the criteria for no Fault or negligence, that the Fault or negligence of the Athlete was not significant in relation to the Anti-Doping Rule Violation. That necessarily involves an analysis of the extent to which the illness and/or disorder, which has been medically or psychologically diagnosed, is considered to have reduced the level of the Fault or negligence of the Athlete so that the degree of that Fault or negligence is not significant in relation to the ADRV established or admitted.

80 In this case, the ADRV committed was a Presence ADRV for the purposes of ADR Article 2.1. On the evidence of the Respondent, as confirmed by the evidence of Professor Cowan, the metabolites which were present in the Respondent's Sample were there because the Respondent had consumed cocaine at some point prior to the fight on 26 September 2015, during an Out of Competition period, when the consumption was, on the evidence of the Respondent, not intended to enhance sport performance and, on the evidence of Professor Cowan, inconsistent with an intention to enhance sport performance. The relevant duty is stated in ADR Article 2.1.1 as being an "*athlete's personal duty to ensure that no prohibited substance enters his-her body*". The essential question therefore, in the particular circumstances of this case and for the purposes of ADR Article 10.5.2, is whether the Fault or negligence of the athlete in failing to discharge the personal duties set out in ADR 2.1.1, was not significant, having regard to the extent of the psychological disorder, clinical depression and anxiety disorder from which he was suffering at the time when he consumed the cocaine which resulted

in the Presence ADRV and which led, on the medical evidence, to an impairment of his cognitive abilities and disordered thinking.

81 I have decided that, in the particular circumstances of this case, that the Respondent's cognitive ability was significantly compromised by the mental disorders and illness from which he was suffering and that his responsibility was sufficiently diminished that he bore No Significant Fault or Negligence for the ADRV committed by him. Accordingly, I find that in terms of ADR Article 10.5.2 it is open to me to reduce the otherwise mandatory period of Ineligibility to a point between four years and two years (the former being the otherwise applicable period of Ineligibility). The extent of the reduction of the period of Ineligibility as between four years and two years is to be based on the Respondent's "degree of Fault".

82 The judgement as to that degree of Fault is not a straightforward matter. For ADR Article 10.5.2 to be held established in principle I have already had to make a finding that the level of the Respondent's Fault for the commission of the ADRV was "not significant". In determining the level of significance for the purposes of Article 10.5.2 I have been required to take into account of the concepts of both Fault and negligence. In doing so I have given careful consideration to the definitions of "No Fault or Negligence" and "No Significant Fault or Negligence" in the Appendix to the ADR.

83 The definition of No Significant Fault or Negligence requires the decision maker to take into account the criteria for No Fault or Negligence. The Respondent recognised that he bore a degree of Fault or negligence for the commission of the ADRV in respect that he did not seek to argue that ADR Article 10.4 applied. It was appropriate that the Respondent did not seek to make an argument under ADR Article 10.4 since it is clear that there was a degree of Fault or negligence on his part notwithstanding that it was not significant.

84 The effect of his mental illness and disorders on his cognitive abilities was not such as to deprive him of any ability to reason. In this context, it is particularly noteworthy that the Respondent was consciously aware that in advance of the fight on 26 September 2015 that he would require to cease taking cocaine

sufficiently in advance of that fight in order that he would avoid a positive test in the event that a Sample was taken from him at the fight. It matters not that he miscalculated and that there remained small levels of metabolites of cocaine in his system on 26 September. What is significant is that he was able to understand, in an Anti-Doping context, that consumption of cocaine might lead to an ADRV, that such should be avoided and to make a conscious decision to cease consumption in order to, he anticipated, avoid an ADRV if a Sample was collected and Tested.

85 There are other features of the Respondent's actions at or around this time that demonstrate a degree of continuing ability to reason and apply effective cognitive thinking. The Respondent was able to continue training, albeit to a limited extent, in the run up to the fight. He was able to source the amitriptyline for the attempted suicide. He was able to instruct his solicitor in connection with his defence to the pending prosecution and indeed, in due course, instructed a plea of guilty to a modified charge,

86 All of this taken together, with the most significant being the conscious decision to cease the consumption of cocaine in advance of the 26 September fight, leads to my concluding that his degree of Fault for the commission of the ADRV is such that it would not be appropriate to reduce the period of Ineligibility to two years. Having given careful consideration to all the relevant factors I have concluded that a reduction of 50% of the period between two years and four years is appropriate in this case such that the period of Ineligibility imposed on the Respondent in this case is three years.

87 I have approached this matter in the same way as the Tribunal in *Duffy* with particular reference to paragraph 48 of their decision. It is not appropriate to approach such a decision on the degree of Fault on a mathematical basis. Even more so is it inappropriate to seek to compare the case of the Respondent with other cases. The circumstances of, for example, *Burnett*, *Duffy* and the present case are all very different.

Disposal

88 The Respondent confirmed that he had not been involved in any competitive boxing from 26 September 2015. The Applicant accepts that there was a timely admission of the commission of the ADRV. I have concluded that it would be equitable in the circumstances to begin the period of Ineligibility from the date of Sample collection i.e. 26 September 2015. The Respondent has already been Provisionally Suspended for an extended period. Accordingly, his period of Ineligibility extends from 26 September 2015 until Midnight on 25 September 2018 (inclusive).

Appeal

89 In accordance with the National Anti-Doping Rules, either the Respondent or the Applicant may file a Notice of Appeal against this decision with the Secretariat of the National Anti-Doping Panel within 21 days of receipt of this decision

Rod McKenzie (Sole Arbitrator)
9 September 2016



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