

## Issued Decision

# UK Anti-Doping and Michael Ellerton

### Disciplinary Proceedings under the Anti-Doping Rules of Cycling Time Trials

This is an Issued Decision made by UK Anti-Doping Limited ('UKAD') pursuant to the Cycling Time Trials (CTT) Anti-Doping Rules (the 'ADR'). It concerns an Anti-Doping Rule Violation committed by Mr Michael Ellerton contrary to the ADR, and records the consequences to be applied.

Capitalised terms used in this Decision shall have the meaning given to them in the ADR unless otherwise indicated.

### Background and Facts

1. The CTT is the National Governing Body for the sport of cycling time trials in England and Wales. On 23 July 2011, the Board of the CTT passed a resolution to adopt the UK Anti-Doping Rules as the Anti-Doping Rules of CTT. The CTT confirms the ADR as the UK Anti-Doping Rules, published by UK Anti-Doping on its website at <http://www.cyclingtimetrials.org.uk/Contents/view/16>.
2. UKAD, the National Anti-Doping Organisation for the UK, had responsibility for results management of this matter. (This is pursuant to ADR Article 7.1.3.) This means that UKAD had responsibility to investigate and prosecute this matter in accordance with the ADR.
3. Mr Michael Ellerton is a 55-year-old amateur cyclist who competes as a member of Team Swift Cycling Club in North Yorkshire.
4. CTT organises and authorises time trial events in which individuals can only compete if they are a member of a club affiliated to CTT. Mr Ellerton is a member of Team Swift which is an affiliated club, and participated as a competitor at the Port Talbot Wheelers Cycling Club's annual 25 Mile Time Trial on the 11 September 2016 ('the Event').
5. As a member of Team Swift, which is a member club of CTT and as a participant in competitions and other activities organised, convened, authorised or recognised by the CTT, at all relevant times Mr Ellerton was subject to and bound to comply with the ADR.
6. On 11 September 2016, a Doping Control Officer ('DCO') collected a urine Sample from Mr Ellerton In-Competition, pursuant to Mission Order M-495058852. Assisted by the DCO Mr Ellerton split the Sample into two separate bottles which were given reference numbers A1126702 (the 'A Sample') and B1126702 ('the B Sample').
7. Both Samples were 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 A Sample in accordance with the procedures set out in WADA's International Standard for Laboratories. This analysis returned an Adverse Analytical Finding for prednisolone and prednisone ('the AAF').

8. Prednisolone and prednisone are classified under section S9 of the WADA 2016 Prohibited List for Glucocorticoids. Glucocorticoids are Prohibited Substances and are Specified Substances prohibited In-Competition. They are prohibited when administered by oral, intravenous, intramuscular or rectal routes.
9. Mr Ellerton does not have a Therapeutic Use Exemption (TUE) to justify the Presence of prednisolone or prednisone in the A Sample.
10. On 13 October 2016, UKAD issued Mr Ellerton with a Notice of Charge ('the Charge'). The Charge related to the commission of an anti-doping rule violation pursuant to ADR Article 2.1 in respect of the Presence of prednisolone and prednisone in a Sample provided by him on 11 September 2016 numbered A1126702.
11. Mr Ellerton provided an explanation to the Charge by email on 16 October 2016, stating that the Presence of prednisolone and prednisone was the result of ingesting the medication of a friend to treat mouth ulcers. Mr Ellerton provided pictures of a blister pack of ten 5mg Prednisolone Tablets and stated he had taken two a day for five days leading up to the Event on the 11 September 2016.
12. Mr Ellerton has admitted the violation as set out in the Charge and this Decision records the Consequences to be applied.

### **Therapeutic Use Exemption Application**

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13. ADR Article 4.2 states:

- 4.2.1 The presence of a Prohibited Substance or its Metabolites or Markers, and/or the Use or Attempted Use, Possession or Administration or Attempted Administration of a Prohibited Substance or Prohibited Method shall not be considered an Anti-Doping Rule Violation if it is consistent with the provisions of a TUE validly granted to the Athlete in question in accordance with these Rules and the International Standard for Therapeutic Use Exemptions.
- 4.2.2 An Athlete who is not an International-Level Athlete should apply to UKAD for a TUE. Any TUE granted to an Athlete by or on behalf of a Signatory (including any TUE granted prior to the Effective Date) will be recognised under these Rules in accordance with the terms of the grant, provided that the grant is consistent with the Code and the criteria set out in the International Standard for Therapeutic Use Exemptions and is within that Signatory's authority. Otherwise, however, an Athlete required by Article 4.2.4 or Article 4.2.5, to obtain a TUE must obtain one from the UK TUE Committee in accordance with those articles, Article 4.2.6 and Article 4.3.

14. An International Level Athlete is defined in the ADR as:

Athletes who compete in sport at the international level, as defined by each International Federation, consistent with the International Standard for Testing and Investigations.

15. A National-Level Athlete is defined in the ADR as:

Any person who competes at any level in the sport under the jurisdiction of the NGB and who is not an International-Level Athlete shall be deemed a 'National-Level Athlete' for purposes of the Code and the International Standards.

16. ADR Article 4.2 also states:

4.2.5 A TUE may be granted retroactively in the following limited circumstances:

- (a) Where an Athlete who is not in the National Registered Testing Pool or the Domestic Pool is tested pursuant to these Rules, and that Athlete has been Using a Prohibited Substance or Prohibited Method for which he/she is entitled to a TUE;
- (b) Where emergency treatment or treatment of an acute medical condition was necessary;
- (c) Where, due to other exceptional circumstances, there was insufficient time or opportunity for the Athlete to submit, or for the TUE Committee to consider, an application for the TUE prior to Sample collection; or
- (d) Where it is agreed by UKAD and by WADA that fairness requires the grant of a retroactive TUE.

17. According to the definitions of the ADR, Mr Ellerton is a National-Level Athlete. However, he is not an Athlete in the National Registered Testing Pool (as defined by ADR Article 5.4.1).

18. On 24 October, UKAD wrote to Mr Ellerton and invited him to apply for a retroactive Therapeutic Use Exemption ('TUE') in accordance with ADR Article 4.2.5(a), based on his response to the Charge and his status as a National-Level Athlete who was not in the National Registered Testing Pool.

19. On 9 November 2016, Mr Ellerton submitted a retroactive TUE application to the TUE Committee for review.

20. Article 4.1 of the International Standard for Therapeutic Use Exemptions ('ISTUE') states:

ISTUE 4.1 An Athlete may be granted a TUE if (and only if) he/she can show, by a balance of probability, that each of the following conditions is met:

- (a) The *Prohibited Substance* or *Prohibited Method* in question is needed to treat an acute or chronic medical condition, such that the *Athlete* would experience a significant impairment to health if the *Prohibited Substance* or *Prohibited Method* were to be withheld.
- (b) The Therapeutic Use of the *Prohibited Substance* or *Prohibited Method* is highly unlikely to produce any additional enhancement of performance beyond what might be anticipated by a return to the *Athlete's* normal state of health following the treatment of the acute or chronic medical condition.
- (c) There is no reasonable Therapeutic alternative to the *Use* of the *Prohibited Substance* or *Prohibited Method*.

- (d) The necessity for the *Use of the Prohibited Substance or Prohibited Method* is not a consequence, wholly or in part, of the prior *Use* (without a TUE) of a substance or method which was prohibited at the time of such *Use*.

21. On 14 November 2016, the TUE Committee rejected the retroactive TUE Application.
22. The TUE Committee decision indicated that the criterion stated at ISTUE Article 4.1 were not met. The TUE Committee noted in their decision that:
- (a) *The TUE Committee are unable to approve TUEs for Athletes who have self-medicated using another person's prescription medication,*
  - (b) *the Athlete did not seek medical advice prior to using the drugs.*
  - (c) *There is no evidence to show that the athlete would experience a significant impairment to health if the Prohibited Substance been withheld.*
  - (d) *There are permitted therapeutic alternatives*
  - (e) *Glucocorticoids have the potential to performance enhance*
23. The decision of the TUE Committee was communicated to Mr Ellerton by email of 25 November 2016 and indicated that he could appeal or accept the decision.
24. By reply email of 5 December 2016, Mr Ellerton confirmed he would not be seeking to appeal the refusal to grant a retrospective TUE.

### **Admission and Consequences**

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25. ADR Article 2.1 provides that:

The following constitutes Anti-Doping Rule Violations:

- 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.

26. On 5 December 2016, Mr Ellerton confirmed he would not appeal the decision of the TUE Committee of 14 November 2016 in rejecting his retroactive TUE application.
27. Mr Ellerton therefore does not have a valid TUE for the presence of prednisolone or prednisone in the A Sample provided on 11 September 2016.
28. On 9 December 2016, Mr Ellerton spoke with UKAD representatives via telephone to discuss the next steps regarding the Charge. Mr Ellerton was informed that he could accept the Consequences to be applied as set out originally in the Charge or could refer the matter for adjudication by the National Anti-Doping Panel to determine the applicable Consequences.
29. On 5 January 2017, UKAD wrote to Mr Ellerton outlining the potential Consequences to be applied and indicating the available provisions in the ADR through which he could reduce the period of Ineligibility to be imposed.

30. On 12 January 2017, Mr Ellerton acceded to the Consequences to be applied, as outlined in correspondence from UKAD of 5 January 2017, in respect of the anti-doping rule violation.

31. ADR Article 10.2.1 states:

10.2 Imposition of a Period of Ineligibility for the Presence, Use or Attempted Use, or Possession or Prohibited Substances and/or Prohibited Methods.

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 and 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 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.

32. ADR Article 10.2.1(b) therefore provides that in relation to this matter (being a matter that concerns prednisolone and prednisone, both Specified Substances) the period of Ineligibility to be imposed shall be four years if UKAD can establish that the anti-doping rule violation was committed intentionally. If UKAD is not able to establish that the anti-doping rule violation was committed intentionally, then pursuant to ADR Article 10.2.2 a period of Ineligibility of two years shall be imposed.

33. The meaning of 'intentionally' is stated at ADR Article 10.2.3:

10.2.3 As used in Articles 10.2 and 10.3, the term 'intentional' is meant to identify those Athletes or other Persons who cheat. The term, therefore, requires that the Athlete or other Person engaged in conduct which he or she knew constituted an Anti-Doping Rule Violation or knew that there was a significant risk that the conduct might constitute or result in an Anti-Doping Rule Violation and manifestly disregarded that risk. An Anti-Doping Rule Violation resulting from an Adverse Analytical Finding for a substance which is only prohibited In-Competition shall be rebuttably presumed to be not 'intentional' if the substance is a Specified Substance and the Athlete can establish that the Prohibited Substance was Used Out-of-Competition.

34. In-Competition is defined in the ADR:

Unless provided otherwise in the rules of the International Federation for the sport in question or the ruling body of the Event in question, the period commencing 12 hours before a Competition in which the Athlete is scheduled to participate through to the end of such Competition and the Sample collection process related to such Competition.

35. Mr Ellerton attributes the presence of prednisolone and prednisone to his oral ingestion of the medication of a friend in order to treat mouth ulcers. He used the medication without undertaking any research into its ingredients or any further checks. He explained that he had ingested the medication around five days before the Event and provided details of his dosage. UKAD obtained scientific evidence that corroborated the timing and dosage of Mr Ellerton's ingestion of his friend's medication.

36. UKAD is not in a position to advance a positive case that Mr Ellerton committed the anti-doping rule violation intentionally. UKAD accepts Mr Ellerton's explanation that the AAF was caused by Use of a Prohibited Substance Out-Of-Competition in a context unrelated to sport performance. Pursuant to ADR Article 10.2.3, UKAD therefore accepts that Mr Ellerton has not acted intentionally.

37. As Mr Ellerton has not acted intentionally, ADR Article 10.2.1 is not applicable. Therefore, pursuant to ADR Article 10.2.2, the mandatory period of Ineligibility in respect of the anti-doping rule violation is two years.

38. The period of Ineligibility can be reduced if Mr Ellerton can establish that he acted with No Significant Fault or Negligence according to ADR Article 10.5.1(a).

39. ADR Article 10.5.1(a) provides:

10.5.1 Reduction of Sanctions for Specified Substances or Contaminated Products for Anti-Doping Rule Violations under Article 2.1, 2.2 or 2.6:

(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 of Ineligibility, depending on the Athlete's or other Person's degree of Fault.

40. Fault is defined in 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 in 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 under Article 10.5.1 or 10.5.2.

41. Mr Ellerton admitted that he did not undertake any enquiries to satisfy himself that his use of his friend's medication was consistent with his responsibilities as a cyclist subject to the ADR. He also failed to conduct any rudimentary internet research into the medication.

42. UKAD has reviewed Mr Ellerton's evidence. UKAD's position as regards ADR Article 10.5.1(a) is that the evidence shows that Mr Ellerton was significantly at Fault, pursuant to the above definition. Mr Ellerton agrees that ADR Article 10.5.1(a) is not capable of application.

43. ADR Article 7.7.4 provides:

7.7.4 In the event that UKAD withdraws the Notice of Charge, or the Athlete or other Person admits the Anti-Doping Rule Violation(s) charged and accedes to the Consequences specified by UKAD (or is deemed to have done so in accordance with Article 7.7.1), neither B Sample analysis nor a hearing is required. Instead, UKAD shall promptly issue a reasoned decision confirming the commission of the Anti-Doping Rule Violation(s) and the imposition of the specified Consequences, shall send notice of the decision to the Athlete or other Person and to each Interested Party, and shall Publicly Disclose the decision in accordance with Article 8.4.

44. UKAD therefore issues this Decision on the basis of the admission made by Mr Ellerton and pursuant to ADR Article 7.7.4 above.

### **Application of ADR Article 10.6.3**

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45. ADR Article 10.6.3 provides:

10.6.3 Prompt Admission of an Anti-Doping Rule Violation after being confronted with a Violation Sanctionable under Article 10.2.1 or Article 10.3.1:

An Athlete or other Person potentially subject to a four-year sanction under Article 10.2.1 or 10.3.1 (for evading or refusing Sample Collection or Tampering with Sample Collection), may receive a reduction in the period of Ineligibility down to a minimum of two years, depending on the seriousness of the violation and the Athlete's or other Person's degree of Fault by promptly admitting the asserted Anti-Doping Rule Violation after being confronted with it, upon the approval and at the discretion of WADA and UKAD.

(emphasis added)

46. Mr Ellerton enquired with UKAD as to the possibility of a reduction of sanction based on the Prompt Admission provisions contained in ADR Article 10.6.3.

47. ADR Article 10.6.3 applies to an Athlete potentially subject to a four-year sanction pursuant to ADR Article 10.2.1 or ADR Article 10.3.1.

48. As set out above, the Presence of prednisone and prednisolone in Mr Ellerton's Sample did not fall to be sanctioned according to either of those Articles. It fell to be sanctioned by ADR Article 10.2.2. This means that he was not potentially subject to a four-year sanction and therefore unable to benefit from a reduction in the period of Ineligibility of two years on account of a Prompt Admission pursuant to ADR Article 10.6.3.

### **Application of ADR Article 10.11.2**

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49. ADR Article 10.11.2 provides that the two-year period of Ineligibility may start as early as the date of Sample collection in circumstances where an Athlete promptly admits the Anti-Doping Rule Violation. ADR Article 10.11.2 states:

10.11.2 Timely admission:

Where the Athlete or other Person promptly (which means, in any event, before he/she competes again) admits the Anti-Doping Rule Violation after being confronted with it by UKAD, the period of Ineligibility may start as early as the date of Sample collection or the date on which another Anti-Doping Rule Violation last occurred. In each case, however, where this Article is applied, the Athlete or other Person shall serve at least one-half of the period of Ineligibility going forward from the date the Athlete or other Person accepted the imposition of a sanction, the date of a hearing decision imposing a sanction, or the date the sanction is otherwise imposed. This Article shall not apply where the period of Ineligibility has already been reduced under Article 10.6.3.



50. In the circumstances of this case, UKAD accepts that the Timely Admission provision of ADR Article 10.11.2 is applicable.

51. The period of Ineligibility of two years is therefore deemed to have commenced on the date of Sample collection, being 11 September 2016 and will expire at midnight on 10 September 2018.

### **Disqualification of Results and Ineligibility**

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52. During the period of Ineligibility, in accordance with ADR Article 10.12.1, Mr Ellerton shall not be permitted to 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 CTT or by any body that is a member of, or affiliated to, or licensed by the CTT;
- any Signatory (as that term is defined in the ADR);
- any club or other body that is a member of, or affiliated to, or licensed by, a Signatory or a Signatory's member organisation;
- any professional league or any international- or national-level Event organisation; or
- any elite or national-level sporting activity funded by a government agency

53. Mr Ellerton may return to train with a team or to use the facilities of a club or other member organisation of the CTT or a Signatory's member organisation during the last two months of his period of Ineligibility (i.e. from midnight on 10 July 2018) pursuant to ADR Article 10.12.4(b).

54. Mr Ellerton, the CTT, the UCI and WADA each have a right of appeal against this Decision or any part of it in accordance with ADR Article 13.4.

55. The disposition of these proceedings on the terms set out above will be publicly announced via UKAD's website media release after any appeal period has expired and no appeal has been filed, or any appeal has been finalised.

## Summary

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56. For the reasons given above, UKAD has issued this Decision, which records that:

- Mr Ellerton has committed an Anti-Doping Rule Violation pursuant to ADR Article 2.1, specifically the presence of prednisolone and prednisone, both specified prohibited substances in a sample provided by Mr Ellerton in competition on the 11 September 2016;
- This is Mr Ellerton's first Anti-Doping Rule Violation;
- Mr Ellerton has made a timely admission for the purposes of ADR Article 10.11.2;
- A period of Ineligibility of **two years** shall therefore be the consequences imposed pursuant to ADR Article 10.2.2 from 11 September 2016 until midnight on 10 September 2018.
- Mr Ellerton's status during the period of Ineligibility shall be as detailed in ADR Article 10.12, including that he may only return to train with a team or to use the facilities of a club or other member organisation of the CTT or a Signatory's member organisation during the last two months of his period of Ineligibility (i.e. from midnight on 10 July 2018) pursuant to ADR Article 10.12.4(b).

24 February 2017