SPORT RESOLUTIONS (UK)

NATIONAL ANTI-DOPING PANEL

SR/NADP/829/2017

IN THE MATTER OF PROCEEDINGS BROUGHT UNDER THE ANTI-DOPING RULES OF BASKETBALL ENGLAND

Before:

Mr Jeremy Summers (Chair)

Dr Terry Crystal

Mr Graham Edmunds

BETWEEN:

UK Anti-Doping ***National Anti-Doping Organisation***

-and-

Anton Grady ***Respondent***

DECISION OF THE ANTI-DOPING TRIBUNAL

INTRODUCTION

1. This is the unanimous decision of an Anti-Doping Tribunal ("the Tribunal") convened under Article 5.1 of the 2015 Procedural Rules of the National Anti-Doping Panel ("the Procedural Rules") and Article 8.1 of the UK Anti-Doping Rules dated 1 January 2015 (“the ADR”) to determine an Anti-Doping Rule Violation ("ADRV") alleged against Mr Anton Grady ("the Athlete").

2. The alleged ADRV is a violation of ADR Article 2.1 (Presence of a Prohibited Substance in the Athlete's Sample).

3. The Athlete was charged by letter issued by UKAD on 21 April 2017. The Tribunal was appointed by the President of the National Anti-Doping Panel ("the NADP").

4. At a hearing on 11 October 2017, held at the offices of Sport Resolutions, the Athlete was represented pro bono by Stephen Akinsanya of counsel and UKAD appeared through Mr Paul Renteurs. The Tribunal records its gratitude to both advocates for their assistance in this matter.

5. At the time of the hearing the Athlete was in the United States having relocated back to his country of origin and he accordingly joined the hearing via a Skype video link.

6. Additionally, present at the hearing were:

   Ms Alisha Ellis – NADP Secretariat.

   Ms Natasha Power – observer.

   Ms Nicola Drewery – witness for UKAD (by telephone conference call).

7. This is the reasoned decision of the Tribunal.

PROCEDURAL HISTORY

8. The hearing of this matter had commenced on 31 August 2017 at the offices of Osborne Clarke LLP when the Athlete had again joined by Skype conference call.

9. The Athlete had however been at work at the time of the hearing and was unable to find a private facility from which to fully participate in the proceedings. This was a matter of concern to the Tribunal and, following an application made by Mr Akinsanya, the matter was accordingly adjourned.

10. No criticism of the Athlete follows, or should be inferred, the Tribunal having formed the view that the Athlete in fact wished to proceed and believed that he was assisting the Tribunal by moving the matter forward. However, in all the circumstances the Tribunal concluded that to have proceeded at that time risked prejudice to the Athlete.

JURISDICTION

11. Jurisdiction was not challenged but for completeness the Athlete is a basketball player, who at the material time was registered as a player with Plymouth Raiders.

12. Basketball England is the National Governing Body ("NGB") for basketball in England, and has adopted the UK Anti-Doping Rules as its anti-doping rules. The ADR apply to all members of Basketball England who, by virtue of that membership, agree to be bound by and to comply with them.

13. The Athlete was at all material times a registered member of Basketball England.

14. ADR Article 1.2.1 provides that:

> *1.2.1 These Rules shall apply to:*
>
> *(a) all Athletes and Athlete Support Personnel who are members of the NGB and/or of member of affiliate organisations or licensees of the NGB (including any clubs, teams, associations or leagues);*
>
> *(b) all Athletes and Athlete Support Personnel participating in such capacity in Events, Competitions and other activities organised, convened, authorised or recognised by the NGB or any of its member or affiliate organisations or licensees (including any clubs, teams, associations or leagues), wherever held;*

15. Pursuant to ADR Article 1.2.1(a) and ADR Article 1.2.1(b), the Athlete was subject to and bound to comply with the ADR at all material times.

16. UKAD submitted a request for arbitration to the NADP by letter dated 11 May 2017.

THE FACTS

17. On 12 March 2017, a Doping Control Officer ("DCO") collected a urine Sample from the Athlete at a match between Leeds Force and Plymouth Raiders. The Sample was split into two separate bottles which were given reference numbers A1132000 ("the A Sample") and B1132000 ("the B Sample").

18. Of note, at the time of the sample collection the Athlete had informed the DCO that he had been smoking "*weed*" that week.

19. Both samples were transported to the World Anti-Doping Agency ("WADA") accredited laboratory in London, the Drug Control Centre, King's College ("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 Carboxy-THC, a metabolite of cannabis, at an average concentration of 332 nanograms per millilitre ('the AAF').

20. Cannabis is listed under section S8 of the *WADA 2017 Prohibited List* as a Cannabinoid. Cannabinoids are Specified Substances prohibited In-Competition.

21. The Athlete did not have a Therapeutic Use Exemption ("TUE").

THE CHARGE

22. The Athlete was accordingly charged with committing an Anti-Doping Rule Violation ("the ADRV") in respect of the presence of Carboxy-THC, a metabolite of Cannabis, in a Sample provided by the Athlete on 12 March 2017 numbered A1132000, in violation of ADR Article 2.1.

23. 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.*

24. The Athlete by way of a written statement and through counsel admitted the charge and thus the ADRV.

RELEVANT REGULATIONS

25. It was common ground that this was the Athlete's first ADRV. As such ADR 10.2 applied:

> *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 Player 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.*
>
> *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. An Anti-Doping Rule Violation resulting from an Adverse Analytical Finding for a substance which is only prohibited In-Competition shall not be considered "intentional" if the substance is not a Specified Substance and the Athlete can establish that the Prohibited Substance was Used Out-of-Competition in a context unrelated to sport performance.

26. The Athlete relied upon ADR 10.2 as applying in his favour and also sought to place reliance on ADR 10.5 which provides as follows:

> *10.5 Reduction of the period of Ineligibility based on No Significant Fault or Negligence*
>
> *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 Athletes s or other Person's degree of Fault.*
>
> *[(b) Contaminated Products]*
>
> *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 in 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 reduced 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.

EVIDENCE

27. In addition to the evidence set out in the hearing bundle, the Tribunal received and carefully considered oral evidence from Mrs Nicola Drewery, an Administrative Assistant at Plymouth Raiders and from the Athlete.

28. Mrs Drewery testified that the club provided anti-doping training to all players as part of an induction session which lasted an hour in all. This was unscripted and was given by different people on different occasions. No specific anti–doping material was given to players although there was a reference and the link to the UKAD website contained on a document headed *Plymouth Raiders BBL Information*[1].

29. This document (and another) contained sections that were highlighted. Mrs Drewery confirmed that she had included this highlighting, which would not appear on the versions given to players.

30. The Player, having arrived from the US with other players had a separate induction after the main induction had been delivered. Mrs Drewery had been at that induction and recalled that anti-doping had been covered, although she could not recall the specific detail.

31. She confirmed that the club was now under new ownership and that relevant records were now no longer available. She was now the only staff member still at the club who had been in post at the material time. Mrs Drewery did not believe that the takeover had been connected to the fallout surrounding the appointment of the former head coach. Other records, including apparently the Athlete's acknowledgement that he had attended the induction had been shredded.

32. The Athlete then gave evidence. He is 25 years old and has come from a

[1] Exhibit ND-01. Page 103 Hearing Bundle.

significantly troubling and disadvantaged background. His parents are both deceased and a number of family members have been or are in prison. He spoke candidly as to how basketball had saved him after he had been forced initially to drop out of school. The money he received from playing had all gone to support the family including younger members of the family who have no parental support of their own. He is now doing menial work, with the income still going to the family. His grandmother, who is seriously ill, has had to take up work again to provide further money for the family.

33. He disputed that Mrs Drewery had been at the induction. This had been led by the then club owner who had only been interested in making the play-offs. There had been no discussion about doping.

34. In late 2015 he had sustained a significant injury whilst playing for Wichita State. This had caused his paralysis for three days, and there had been serious doubt as to whether he would play again.

35. When the offer from Plymouth had come up he had not even known where that City was. He had simply wanted to show people that he could play professional basketball again and had not been concerned about the terms offered.

36. He had not read his contract which he confirmed he had signed. Whilst he recalled receiving some anti–doping training while playing college basketball in the US, his understanding was that the regime in the US was significantly different and that cannabis was not viewed seriously.

37. The Athlete confirmed he had taken cannabis, but had not appreciated it was a prohibited substance. He would not have taken it had he known.

38. He described receiving no support from the club, with the head coach being abusive towards him and others. Medical care was very limited and provided in the main by physiotherapists from a local college. This had to be booked along with other members of the public. There was no club Doctor.

39. Travel to games was often lengthy and was not planned. The team travelled in an old coach and often there were no stops during the journey. Even so the team

frequently arrived late and tip offs were delayed.

40. His pay was on often received late and all was sent home to his family. He had no money to spend in the UK and felt isolated. He was living in a modest hotel room and spent most of the day there when not training. He described hating playing for the club and being very down and lonely.

41. Shortly before the day in question he had been told that his grandmother needed cancer-related surgery for a second time. His evidence in this regard was as follows:

> *"Before the game I spoke to my gran and she said she had to have brain surgery and it broke me down. I couldn't focus on basketball with thinking that I couldn't help my family. I'm in UK and they are in US. It was hard to think when she is calling me crying."*

42. Having returned his AAF, the Athlete had quickly been sent back to the US by his club, without first being paid the wages that he was owed. That pay was subsequently sent to his agent who retained the vast majority of it, ultimately only passing on a few hundred dollars to the Athlete.

43. He felt he had been very badly treated by his agent in general. In relation to the ADRV his agent had told him that he would receive a slap on the wrist, or perhaps a suspension of up to 6 months at worst. He described his agent as an "aggressive talker". He had initially followed his advice in relation to the ADRV and now regretted doing so.

44. There was some confusion in the Athlete's case as to whether the cannabis had been taken to cope with the long journey to Leeds for the match, which he thought had lasted around 7 hours or to help cope with his mental state resulting from his personal circumstances. In oral evidence he though stated that he intended the cannabis to take his mind off his back whilst travelling. If he did not think about things *they were not there*.

SUBMISSIONS

45. The Tribunal had the benefit of detailed written submissions from both advocates, which were of great assistance and which were rehearsed in part in oral submissions at the hearing. No discourtesy is intended in not setting these out in full.

46. In summary UKAD submitted that the Athlete had acted intentionally within the definition prescribed under the ADR, and rejected the Athlete's case, which it in its view was not credible, that he had not cheated.

47. In this regard UKAD pointed to what the Athlete had said at various times during the ADRV process and to the information he received from the club

48. In the view of UKAD, there was however no requirement to establish (under ADR 10.2) that, in addition to proving that an athlete knew that he was committing an ADRV or that there was a significant risk that his/her conduct would give rise to an ADRV, there was also a need to establish an intention to cheat. However, Mr Renteurs accepted that the wording of ADR 10.2.3 was perhaps equivocal in that regard.

49. UKAD placed weight on the fact that the Athlete had apparently taken the cannabis to provide pain relief for his back. As such, it asserted, this had enabled the Athlete to participate in the match on 12 March 2017, and thus was an intention to enhance sporting performance. In this regard it placed reliance *on AIBA v. Jade Mellor*[2].

50. In UKAD's submission the Athlete had acted intentionally and accordingly should be made subject to a period of Ineligibility of four years.

51. If that submission was rejected, the Athlete had acted with significant fault or negligence such that no further reduction in the period of ineligibility should be allowed. In particular it noted that the Athlete had not provided any medical evidence to show any cognitive impairment or to the link with such impairment to the ADRV. In so doing he submitted that the reasoning in *UKAD v Duffy*[3] should be applied.

[2] NADP Appeal Decision dated 16 November 2009
[3] SR/NADP/476/2015.

52. UKAD accepted that any period of suspension should commence on the date of the sample collection to reflect the Athlete's prompt admission of the ADRV.

53. On behalf of the Athlete it was accepted that the cannabis had been ingested within the in-competition window. This represented the Athlete's first ADRV.

54. Mr Akinsanya submitted that the Athlete had taken cannabis to block out depression and the pain of long journeys. He knew the back pain was there. He had not taken the cannabis to make him play but to block out the pain. He had played regardless over some 36 or 37 games, and in all those games bar one, he had played with or without pain, for the team.

55. The evidence of Mrs Drewery was disputed. She had not been at the induction which had not, in any event, covered anti-doping.

56. The Athlete had been let down badly by both his club and his agent. He signed his contract on 15 July 2016 but had not read it. He just wanted to play again. He wasn't even concerned with where he would live or what he was to be paid. He left it with the agent.

57. He did not know the detail of what was meant by taking prohibited substances and had not known that cannabis was illegal in the context of the ADR. The evidence had not been conclusive on what the club's players were told or when. There was no Doctor or team physician. The best the club could offer was a college student offering sports therapy massages.

58. The Athlete had not sought to cheat, nor had he acted intentionally. Similarly he had not taken cannabis to enhance sporting performance.

59. Mr Akinsanya further submitted that the Athlete bore no significant fault or negligence and accordingly his period of ineligibility should be a maximum of 2 years.

60. In relation to the degree of fault on the part of the Athlete, it was noted that he was an overseas player with no support from his club and had been facing extreme home circumstances.

61. The Athlete now regretted not seeking help but had been unable to seek medical help

from the club. It was conceded that there was no evidence of a proper diagnosis, but the particular circumstances of this case should be considered in the round.

62. The Athlete had been playing for his family, and had not thought about himself. The Tribunal should have regard to the serious accident he sustained whilst playing that could have ended his career. The Athlete had given evidence as to his state of mind. There was a link between his depression and the ADRV.

DECISION ON THE ADRV

63. The Tribunal reminded itself of the relevant ADR applying in this matter and of the burden placed on both parties. It gave the most careful consideration and scrutiny to all the evidence adduced and the submissions from both parties.

64. The ADRV itself was not in issue, the Athlete having accepted the same. The Tribunal was accordingly required only to determine the question of sanction.

INTENTIONALITY

65. The Tribunal first considered the issue of intentionality as prescribed by ADR 10.2. In urging the Tribunal to find that the Athlete had acted intentionally, UKAD relied on two primary sources of evidence. Firstly, the Athlete's purported admission and, secondly, the testimony of Mrs Drewery as to the anti-doping training provided by Plymouth Raiders.

66. As to the Athlete's admission, UKAD placed reliance in part on a note of a telephone conversation held on 2 May 2017[4] ("the Note"). The participants in that conversation were Mr Louis Muncey, a paralegal at UKAD, the Athlete's former agent, Mr Andy Bountogianis and then, slightly later, the Athlete himself.

67. It was accepted that the Note was neither contemporaneous nor verbatim. It was similarly accepted that the Note had not been sent to the Athlete for him to check.

[4] Page 98 Hearing Bundle.

68. In such circumstances the Tribunal was somewhat troubled that UKAD sought to utilise the Note as an admission. UKAD brings proceedings in the role of a quasi-prosecutor and, using a colloquial term from criminal jurisprudence, the admission might be viewed as the Athlete having been "verballed" in circumstances where he was not legally represented, had not been warned as to the status of the conversation or the potential uses to which it might be put.

69. In the view of the Tribunal, UKAD might sensibly consider putting in place a protocol for such conversations with athletes going forward to avoid any difficulties arising.

70. The Tribunal also carefully considered the content of an email sent to UKAD by the Athlete on the day following this conversation, 3 May 2017[5] and of the DCO Report Form compiled at the time the Athlete was tested on 12 March 2017[6].

71. The Tribunal did not agree with UKAD's submission that significance should be attached to the fact that at no point had the Athlete indicated that he had not appreciated that cannabis was a prohibited substance. In the view of the Tribunal it was, at least, equally significant that at no point had the Athlete been asked if he was aware that it was a prohibited substance. To therefore seek to criticise the Athlete for any perceived failing in this regard risked potential unfairness.

72. In this respect, the Tribunal noted that the Athlete had told the DCO that he had been "*smoking weed that week"* and that "*He decided to take the test and see the outcome".* In the view of the Tribunal, it was significant that the Athlete had not tried to hide the fact that he had taken cannabis. His candour further suggested that at the very least he was unclear as to the status of cannabis as a prohibited substance.

73. The Tribunal next turned to consider the evidence of Mrs Drewery. It noted that this evidence had only been sought in August 2017, almost one year after the meeting in relation to which she was asked to speak, and at a time when no records of that meeting were available to her.

[5] Page 156 Hearing Bundle.
[6] Page 29 Hearing Bundle.

74. Given the lack of contemporaneous records, it was a matter of some surprise that UKAD had included in the hearing bundle a copy of a document headed "*Plymouth Raiders BBL Information*"[7] which had been highlighted by Mrs Drewery. Similarly, a copy of the Plymouth Raiders *Club Rules*[8] had also been highlighted by Mrs Drewery.

75. Whilst this point was rightly clarified by Mr Renteurs before the Tribunal, the risk that Mrs Drewery's evidence might have been coloured by her having gone back to and highlighted the areas that she thought were of relevance could not be discounted.

76. Of note, the club's administrative systems appeared to have been sufficiently flawed at the relevant time as to have allowed a head coach to have been hired who was not apparently qualified to have taken that role. Mrs Drewery was the only relevant member of staff to have remained at the club following its takeover that may have resulted from that issue, which was itself the subject of high profile adverse press coverage[9].

77. This issue had significance when resolving the conflict of evidence as between Mrs Drewery and the Athlete as to who was at his induction meeting following his arrival from the US, and what was said. The Tribunal found the Athlete to be a credible and honest witness. Although through no fault on the part of Mrs Drewery, she was ultimately unable to refer to records that ought reasonably to have still been available, and which might have assisted the Tribunal. This was a factor that the Tribunal considered ought to be weighed in favour of the Athlete.

78. On Mrs Drewery's evidence, at its highest, there had only been a short, unscripted, section on doping at the induction, and at no stage had players been provided with any material beyond a web link to UKAD. This was not however a prominent part of the document in which it was set out.

79. As noted there was nothing to now verify what had been said, much less by whom. Mrs Drewery's evidence on this was:

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[7] Exhibit ND -01. Page 103 Hearing Bundle.
[8] Exhibit ND-02. Page 104 Hearing Bundle.
[9] http://www.bbc.co.uk/news/uk-england-devon-39883404.

"We covered their responsibility to us as a club and Plymouth as a city; the level of expectation of the club; the rules of accommodation…. We discussed the laws of the road and how this is different from the US, we provided a driving assessment. We talked about the UKAD website; how to be careful if going to the doctor; how they can take lemsip blackcurrant but not lemsip lemon; [drugs that are] illegal in the UK; mobile phones etc."

80. Doping would not therefore appear to have been a priority at this meeting. To the extent that it might be asserted that this was the club's anti-doping training given to the Athlete, it appeared to fall well below the standard the Tribunal considered ought reasonably to be expected. In any event there was no evidence of any other anti-doping training having been provided to the Athlete.

81. Taking all the relevant evidence into consideration, the Tribunal was not able to feel satisfied, that the Club had given any, or sufficient, guidance or training to the Athlete as to the anti-doping regime.

82. The Tribunal also made the following findings:

- The Athlete came from the most challenging of home backgrounds and was a US based sportsperson where a different approach can sometimes be taken to anti-doping issues.
- The standard of care offered to the Athlete both in terms of medical treatment and general pastoral support fell well below that reasonably to be expected of a professional sports club.
- The approach of the head coach towards the Athlete fell to be considered as abusive thus adding to the overall deficiencies in the club's processes already referred to.

83. As to the taking of the Prohibited substance itself, the Tribunal also found, on the evidence, that the cannabis was most likely to have been ingested between 06:00 and 07:00 on the morning of 12 March 2017. The match *tipped off* at or after 16:00 that day (thus almost at the end of the 12 hour *in competition* window).

84. Although no evidence was available in this regard, the Tribunal considered that it

was reasonable to conclude that any benefit that may have been obtained from having ingested the cannabis would not have persisted beyond 12:00 at the latest, and so well before the match.

85. As to the absence of evidence in relation to the effects of cannabis, as a matter of general applicability, it will always be of assistance if UKAD can make available all relevant information, whether inculpatory or exculpatory. This will be particularly so where an athlete accused of an ADRV may be of limited resources.

86. Having analysed all the evidence with great care, for the reasons given above the Tribunal did not consider that UKAD had discharged the burden upon it and had not enabled the Tribunal to feel satisfied on the balance of probabilities that the Athlete had engaged in conduct that he knew constituted an ADRV or had manifestly disregarded the risk that he might have committed an ADRV.

87. In all the circumstances the Tribunal held that the period of ineligibility should be two years (unless further reduced) pursuant to ADR 10.5.

88. Although not necessary given the Tribunal's findings above, it may be helpful briefly to address UKAD's submissions in relation to the decision in *AIBA v Mellor (above).*

89. That case involved a boxer who (under the previous ADR) was made the subject of a two year period of ineligibility having committed an ADRV resulting from the taking of diuretics with the intention of losing weight to be able to compete in a particular weight category. The athlete in that instance argued that conduct aimed at allowing one to simply compete should not be taken as an intention to *enhance sports performance* (being the relevant test under the previous ADR). That argument was rejected (on appeal) with the tribunal finding that the phrase "*enhance the Athlete's sports performance"* had a wider meaning which included "*the ability to perform at all".*

90. UKAD sought to place reliance on that reasoning, although Mr Renteurs fairly conceded that the facts in the present instance were not wholly analogous.

91. The Tribunal however could readily distinguish circumstances where an athlete took a substance with the clear intention to lose weight absent which the competition

would not have been possible and the circumstances pertaining in this matter.

92. Further as set out above it was significant that to the extent the Athlete took the prohibited substance in part to secure pain relief, such pain relief was not related to the match itself, but to the lengthy coach trip which preceded it. On that basis, had it been necessary, the Tribunal would not have found that the Athlete had acted intentionally within the findings of *Mellor.*[10]

NO FAULT OR NEGLIGENCE

93. The Tribunal then proceeded to consider the submission made on behalf of the Athlete that the period of ineligibility should be further reduced by reason of the Athlete having acted with no significant fault or negligence. In so doing it noted that the burden of proof now rested with the Athlete to satisfy the Tribunal that any further reduction was justified. In that respect the Tribunal noted relevant definitions provided by the ADR as follows:

> ***No significant Fault or Negligence:*** *The Athlete […] 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.'*
>
> ***No Fault of Negligence:*** *The Athlete […] establishing that he or she did not know or suspect, and could not reasonably have known or suspected, even with the exercise of the utmost caution, that he or she had Used or been administered the Prohibited Substance or Prohibited Method or otherwise violated an anti-doping rule.'*

94. Much of the factual analysis and findings set out above are also relevant to this issue and are not therefore repeated.

95. The Tribunal concluded (having not found that the Athlete had acted intentionally as defined) that the gravamen in the Athlete's fault or negligence lay principally in his lack of knowledge and/or understanding of the ADR.

96. The onus is always on a sportsperson to be aware of, and to comply with, the ADR

[10] For the avoidance of doubt it is not suggested that Mellor was wrongly decided.

and in that regard there is a requirement to demonstrate having acted with the utmost caution. When dealing with a professional athlete, that duty is rightly rigorously applied.

97. In considering this issue the Tribunal was referred to a number of previous decisions, in respect of which a range of decisions were reached. The most recent of the decisions cited was *FA v Lacey*[11], which contained the following reasoning:

> *The degree of fault will depend upon the circumstances of each case and precedents, in this area, are of very limited assistance. The question for the Commission is this: taking into account all of the circumstances of the case and the evidence before the Commission what level of sanction properly reflects the culpability of the player. That involves consideration of all factors including the core responsibility of the player for what he ingests and his obligation to comply with the ADRs as well as the degree of cognitive impairment suffered by the player.*

98. The Tribunal respectfully adopted that analysis, and undertook a consideration of whether any of the specific factors relevant in this particular case, or all of them when viewed cumulatively, could rightly assist in discharging the burden on the Athlete such as to reduce his level of fault or negligence. The issue was one that gave the Tribunal great cause for thought and for which resolution was not easy to achieve.

99. Plainly, *the core responsibility of the* [Athlete] *for what he ingests and his obligation to comply with the ADRs* gave rise to a clear and high degree of culpability on his part.

100. The Tribunal noted that it had no medical evidence as to any diagnosed cognitive impairment to which the Athlete had been subject at the time he had ingested cannabis. Such evidence had been available to the Commission in Lacey and has similarly been considered in earlier cases notably *FA v Livermore*[12] and *UKAD v Burnett*[13]. In each instance the tribunal concerned appeared to have found the medical evidence of significance when determining that it was appropriate to impose a reduced period of ineligibility.

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[11] FA Regulatory Commission Decision dated 10 May 2017.
[12] FA regulatory Commission Decision dated 8 September 2015
[13] SR/0000120253 dated 7 October 2015.

101. The Tribunal carefully considered the decision in *UKAD v Duffy* which again referred to the need to adduce medical diagnosis of a depressive illness, although even at that instance the lack of a contemporaneous diagnosis was not held as an absolute bar to establishing a depressive illness.

102. Whilst, as indicated, no probative evidence was available in this matter, the Tribunal however considered it necessary to have regard to the fact that the Athlete plainly did not have the financial resource with which to obtain medical evidence.

103. The Athlete's evidence, which was accepted without reservation, was that in effect he had been the main provider for an extended family that had previously suffered extreme economic and social hardship. His wages whilst at the club had all gone to his family. Having lost his contract in consequence of the ADRV he had been required to return to America and was currently working as a delivery driver, again with his earnings going to support his family. However, the loss of income he had suffered had necessitated his grandmother, who was herself very ill, needing to take work to help provide for young family members whose own parents were unable or unwilling to provide for them.

104. In those circumstances the Tribunal considered that it was all but fanciful to have contemplated the Athlete having been able to obtain a medical report in the US, and that accordingly it risked unfairness not to have regard to the possible mental state of the Athlete at the material time simply because he had been unable financially to obtain medical evidence.

105. The facts that the Tribunal took into account when coming to this view, are on any view exceptional and indeed are likely to be unique. Nothing in this decision should therefore be taken as departing from or minimising the general principle that a medical diagnosis should ordinarily be in evidence when seeking relief under ADR 10.5 as set out in the cases referenced above.

106. In reviewing the matters that were potentially germane to the Athlete's state of mind at the time of the ADRV, the Tribunal considered that the following factors were relevant when assessing his culpability and determining his level of fault or negligence.

107. The Athlete is a US national who has come from a significantly disadvantaged background that saw him drop out of school at 15, although he later completed his schooling.

108. To the extent that he had any anti-doping training in the US, the approach to anti-doping in the US can differ significantly to the UK. Such training, as can be said to have been provided by the club, appeared to have been at best cursory.

109. He was living in the UK in circumstances where, due to the need to support his family, he had no or little income to spend on himself. He described being almost confined to a poorly appointed hotel room for most of the day when he was not training. He had little interaction with teammates who, being young, wanted to go out and enjoy life.

110. There appeared to have been no, or no effective support from the club, whether medically, pastorally or generally in circumstances where it appeared clear that the Athlete still needed help in fully recovering from a potentially career ending and life changing injury not many months previously.

111. The regularity of the playing schedule, combined with long coach trips, which appeared not to have been planned with player welfare in mind would in the view of the Tribunal have accentuated the difficulties faced by the Athlete.

112. Further, the approach of the club appeared deficient to the point of being abusive with the head coach (who had not in any event been qualified to take such a role) apparently being aggressively rude towards the Athlete as a matter of routine. If the Athlete complained, the head coach's standard response was "*Man up, sh*t c*nt*".

113. Although not alone in this regard at the club, the Athlete was often paid late. This resulted in funds not being sent home. This had in turn meant that, in order to pay rent, utility bills went unpaid, leading to power being disconnected in a home where young children were staying. There was then a reconnection charge to be paid, leading to further financial pressure.

114. Shortly before the Athlete was tested he had been called by his grandmother and

told that she required cancer-related surgery for a second time. Beyond the obvious normal upset he had felt despondent at being away from his family and unable to be there for them.

115. None of this obviates from the clear duty to have known and followed the ADR, and the Athlete bears a high degree of responsibility in having failed to do so. However, to the extent that the Tribunal is required under ADR 10.5.2 to consider the degree of fault attributable to the Athlete, these factors in the view of the Tribunal were of significance, and allowed the Tribunal to accept that the Athlete would have been subject to extreme mental stress leading to likely depression.

116. Weighing up all relevant evidence, the Tribunal noted that, on the Athlete's own evidence, he had taken cannabis at home prior to being tested on 12 March 2017. Whilst he averred that any previous cannabis taking had not preceded a game or a long bus journey it is not possible to speculate as to whether that earlier ingestion would have led to an AAF in the event of testing.

117. However, having very carefully considered the unique and specific facts of this case, and with regard to its assessment of the Athlete as a witness, the Tribunal concluded that it was satisfied that the Athlete should be viewed as having acted with no significant fault or negligence.

118. Accordingly in the view of the Tribunal, the period of ineligibility to be imposed on the Athlete in this instance should be a period of 15 months.

119. The Tribunal noted that UKAD accepted that the Athlete's prompt admission of the ADRV, merited the period of ineligibility commencing on the date of the sample collection pursuant to ADR 10.11.2.

CONCLUSION

120. The Panel imposes a period of Ineligibility of fifteen (15) months on the Athlete.

121. The period of ineligibility is ordered to run from 12 March 2017, being the date of the sample collection.

RIGHT OF APPEAL

122. In accordance with ADR Article 13 the parties may appeal against this decision by lodging a Notice of Appeal according to the applicable time limits.

Jeremy Summers (Chairman)

Dr Terry Crystal

Graham Edmunds

1 November 2017

Sport Resolutions (UK)
1 Salisbury Square
London EC4Y 8AE

T: +44 (0)20 7036 1966

Email: resolve@sportresolutions.co.uk
Website: www.sportresolutions.co.uk