

Issued Decision

UK Anti-Doping and Donald Kudangirana

Disciplinary Proceedings under the Anti-Doping Rules of the Rugby Football League

This is an Issued Decision made by UK Anti-Doping Limited ('UKAD') pursuant to the Rugby Football League's Anti-Doping Rules (the 'ADR'). It concerns a violation of the ADR committed by Mr Donald Kudangirana 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 Rugby Football League ('RFL') is the governing body for the sport of rugby league in the UK. UKAD is the National Anti-Doping Organisation for the United Kingdom.
2. Mr Kudangirana is a 22-year-old rugby league player (21 years old as at the date of his Anti-Doping Rule Violation). At all material times Mr Kudangirana was subject to the jurisdiction of the RFL and bound to comply with the ADR. Pursuant to the ADR, UKAD has results management responsibility in respect of all athletes subject to the jurisdiction of the RFL.
3. On 14 December 2016, a UKAD Doping Control Officer ('DCO') collected a urine Sample from Mr Kudangirana Out-of-Competition during a team training session of the Dewsbury Rams, at the Tetley's Stadium in Dewsbury.
4. The Sample was submitted for analysis to the Drug Control Centre, Kings College London, a World Anti-Doping Agency ('WADA') accredited laboratory ('the Laboratory'). The Laboratory analysed the Sample in accordance with the procedures set out in WADA's International Standard for Laboratories.
5. This analysis returned an Adverse Analytical Finding for drostanolone and its metabolite 2a-methyl-5a-androstan-3a-ol-17-one, and a GC/C/IRMS result for testosterone and its metabolites androsterone; etiocholanolone; 5 β -androstane-3a, 17 β -diol; and 11-ketoetiocholanolone.
6. Under s.1.1(a) of the WADA Prohibited List 2016, drostanolone is classed as an exogenous anabolic androgenic steroid, and under s.1.1(b) of the WADA Prohibited List 2016, testosterone is classed as an endogenous anabolic androgenic steroid. Both drostanolone and testosterone are non-specified substances, and they are prohibited at all times.
7. Mr Kudangirana does not have, nor has he ever held, a Therapeutic Use Exemption to justify the presence of drostanolone or testosterone (or their metabolites) in his Sample.
8. On 30 January 2017, UKAD issued Mr Kudangirana with a Notice of Charge ('the Charge') and a Provisional Suspension. The Charge alleged the commission of an Anti-Doping Rule Violation ('ADRV') pursuant to ADR Article 2.1 (Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample).

Admission and Consequences

9. Mr Kudangirana has admitted committing an ADRV in violation of ADR Article 2.1.

10. ADR Article 2.1 provides as follows:

The following constitutes an Anti-Doping Rule Violation:

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

11. ADR Article 10.2 provides as follows:

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

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

10.2.1 The period of Ineligibility shall be four years where:

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

12. The period of Ineligibility to be imposed shall therefor be four (4) years, unless Mr Kudangirana can establish that the commission of the ADRV was not intentional. The meaning of 'intentional' for these purposes is set out in ADR Article 10.2.3 as follows:

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. [...]

13. In his response to the Charge, Mr Kudangirana explained that the only reason he could provide for the presence of Prohibited Substances in his Sample was his use of protein supplement drinks. In particular, Mr Kudangirana pointed to a supplement by the name 'Mutant Mass'. Mr Kudangirana explained that he had purchased a bag of this supplement from an online supplier and another bag from someone he knew through his gym.

14. Mr Kudangirana subsequently sent an opened bag of a supplement branded 'Mutant Mass Muscle Gain' to UKAD. This was sent to the Laboratory for analysis. That analysis confirmed the presence of the following substances in the Mutant Mass Muscle Gain supplement:
 - a. testosterone propionate, testosterone enanthate, testosterone deconoate and testosterone cypionate;
 - b. nandrolone deconoate and nandrolone phenylpropionate; and
 - c. drostanolone proprionate.
15. Mr Kudangirana was notified of the results of the analysis of the Mutant Mass Muscle Gain supplement. Mr Kudangirana indicated that he did not wish to make submissions in respect of ADR Article 10.2.3 and that he acceded to the Consequences set out in the Charge, including a period of Ineligibility of four (4) years.

Application of ADR Article 10.6.3

16. Pursuant to ADR Article 10.2.1(a), a period of Ineligibility of four (4) years is to be imposed for this ADRV.
17. ADR Article 10.6.3 provides a way in which a four (4) year period of Ineligibility may be reduced as follows:
 - 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 Article 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.
18. Mr Kudangirana admitted the Anti-Doping Rule Violation after being confronted with it by UKAD. UKAD considers that Mr Kudangirana has made a 'prompt admission' for the purposes of ADR Article 10.6.3 and therefore that ADR Article 10.6.3 is capable of application in this case.
19. UKAD has considered whether Mr Kudangirana's sanction should be reduced pursuant to ADR Article 10.6.3 by reference to the seriousness of the violation and his degree of Fault in the circumstances.
 - A. Seriousness of the ADRV
20. As regards the first criterion, UKAD has taken the view that testing positive for two Prohibited Substances (and their metabolites), both of which are powerful anabolic steroids, is a serious violation. UKAD has therefore not exercised its discretion to reduce the period of Ineligibility on the basis of the seriousness of the violation.
 - B. Fault

21. As regards the second criterion, 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.

[emphasis added]

22. ADR Article 1.3.1 provides that the following comprise an Athlete's core responsibilities:

1.3.1 It is the personal responsibility of each Athlete:

- (a) to acquaint him/herself, and to ensure that each person (including medical personnel) from whom he/she takes advice is acquainted, with all of the requirements of these Rules [...];
- (b) to comply with these rules in all respects;
- (c) to take full responsibility for what he/she ingests and uses;
- (d) to carry out research regarding any products or substances which he/she intends to ingest or Use (prior to such ingestion or Use) to ensure compliance with these Rules; such research shall, at a minimum, include a reasonable internet search of (1) the name of the product or substance, (2) the ingredients/substances listed on the product or substance label, and (3) other related information revealed through research of points (1) and (2).

[...]

23. It is an Athlete's core responsibility to monitor and control what substances enter their bodies and as such, athletes are required to actively take steps to minimise their risks of ingesting a Prohibited Substance. Mr Kudangirana has provided an explanation as to how the ADRV occurred. However, it is not clear from that explanation what steps, if any, Mr Kudangirana has taken in an attempt to comply with his core responsibilities under ADR Article 1.3.1. Nor is it clear what level of care he exercised, or what investigation he carried out, if any, prior to ingesting supplements, some of which had been purchased online, and others provided (and already opened and used) by a fellow gym member.

24. UKAD considers Mr Kudangirana's level of Fault to be high in light of his obligations under ADR Article 1.3.1. However, UKAD considers this is mitigated by the specific facts of this case, in particular Mr Kudangirana's age and limited anti-doping knowledge and education.

25. UKAD has therefore exercised its discretion to make a reduction in the period of Ineligibility based on Mr Kudangirana's Fault.

26. The proposed reduction was subject to the discretion and approval of WADA. UKAD sought WADA's views by way of an email dated 28 November 2017. WADA confirmed that it agreed with the proposed reduction.
27. Pursuant to ADR Article 10.6.3, the period of Ineligibility imposed is therefore three (3) years and seven (7) months.
28. UKAD issues this Decision pursuant to ADR Article 7.7.4.
29. ADR Article 7.7.4 provides as follows:
- 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 the last sentence of 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.

Disqualification of Results and Period of Ineligibility

30. ADR Article 10.11.3 provides the following:
- 10.11.3 Credit for Provisional Suspension or Period of Ineligibility Served
- (a) Any period of Provisional Suspension (whether imposed or voluntarily accepted) that has been respected by the Athlete or other Person shall be credited against the total period of Ineligibility to be served. If a period of Ineligibility is served pursuant to a decision that is subsequently appealed, then the Athlete or other Person shall receive credit for such period of Ineligibility served against any period of Ineligibility which may ultimately be imposed on appeal. To get credit for any period of voluntary Provisional Suspension, however, the Athlete or other Person must have given written notice at the beginning of such period to UKAD (and UKAD shall copy that notice to each Interested Party) and have respected the Provisional Suspension.
- (emphasis added)
31. Mr Kudangirana has been subject to a Provisional Suspension since the date of the Charge (30 January 2017).
32. Pursuant to ADR Article 10.11.3, the period of Ineligibility to be imposed on Mr Kudangirana is therefore deemed to have commenced on 30 January 2017 and will expire at midnight on 29 August 2020.
33. During the period of Ineligibility, in accordance with ADR Article 10.12.1, Mr Kudangirana 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 or authorised by:
- the RFL or any body that is a member of, or affiliated to, or licensed by the RFL;
 - 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 governmental agency.
34. Mr Kudangirana may return to train with a team or to use the facilities of a club or other member organisation of the RFL or a Signatory's member organisation during the last two months of his period of Ineligibility (i.e. from midnight on 29 June 2020) pursuant to ADR Article 10.12.4(b).
35. Mr Kudangirana, the RFL, the Rugby League International Federation and WADA have a right of appeal against this decision or any part of it in accordance with ADR Article 13.4.
36. The disposition of these proceedings on the terms set out above will be publicly announced via UKAD's website.

Summary

37. For the reasons given above, UKAD has issued this decision, which records that:
- Mr Kudangirana has committed an ADRV pursuant to ADR Article 2.1;
 - a period of Ineligibility of three (3) years and seven (7) months is imposed pursuant to ADR Article 10.2.1 and ADR Article 10.6.3;
 - the period of Ineligibility is deemed to have commenced from 30 January 2017 and will expire at midnight on 29 August 2020; and
 - Mr Kudangirana's status during the period of Ineligibility shall be as detailed in ADR Article 10.12.

5 December 2017