

Issued Decision

UK Anti-Doping and Andrew Acton

Disciplinary Proceedings under the Anti-Doping Rules of the Scottish Rugby Union

This is an Issued Decision made by UK Anti-Doping Limited ('UKAD') pursuant to the Scottish Rugby Union's Anti-Doping Rules. As a Member Union of World Rugby (the International Federation for the sport of Rugby Union) the Scottish Rugby Union ('SRU'), via Part 21 of its Domestic Regulations, has adopted World Rugby Regulation 21 as its own anti-doping rules ('ADR'). These are supplemented by certain parts of the UK Anti-Doping Rules ('UK ADR') which have been adopted by the SRU. Where references are made to a Regulation, they refer to the ADR. Where references are made to an Article, they refer to the UK ADR.

This decision concerns a violation of the ADR committed by Mr Andrew Acton 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 SRU is the governing body for the sport of rugby union in Scotland. UKAD is the National Anti-Doping Organisation for the United Kingdom.
2. Mr Acton is a 22-year-old rugby union player. At all material times Mr Acton was subject to the jurisdiction of the SRU 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 SRU.
3. On 10 August 2017, a UKAD Doping Control Officer ('DCO') collected a urine Sample from Mr Acton Out-of-Competition during a team training session at Marr Rugby Football Club. Assisted by the DCO, Mr Acton split the Sample into two separate bottles, the A Sample and the B Sample.
4. The Sample was submitted for analysis to the Drug Control Centre, King's College London, a World Anti-Doping Agency ('WADA') accredited laboratory ('the Laboratory'). The Laboratory analysed the A Sample in accordance with the procedures set out in WADA's International Standard for Laboratories.
5. Analysis of the A Sample returned an Adverse Analytical Finding ('AAF') for Stanozolol-N-Glucuronide (a metabolite of Stanozolol).
6. Under s.1.1(a) of the WADA Prohibited List 2017, Stanozolol is classed as an Exogenous Anabolic Androgenic Steroid. It is a non-Specified Substance that is prohibited at all times.
7. Mr Acton does not have, nor has he ever held, a Therapeutic Use Exemption to justify the presence of Stanozolol (or its metabolites) in his Sample.
8. On 8 September 2017, UKAD issued Mr Acton 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 Regulation 21.2.1 (Presence of a Prohibited Substance or its Metabolites or Markers in a Player's Sample).

Admission and Consequences

9. Mr Acton has admitted committing an ADRV pursuant to ADR Regulation 21.2.1.

10. ADR Regulation 21.2.1 provides that the following constitutes an anti-doping rule violation:

21.2.1 Presence of a Prohibited Substance or its Metabolites or Markers in a Player's Sample.

11. ADR Regulation 21.10.2 provides as follows:

21.10.2 Ineligibility for Presence, Use or Attempted Use, or Possession of a Prohibited Substance or Prohibited Method

The period of Ineligibility for a violation of Regulations 21.2.1 (Presence), 21.2.2 (Use or Attempted Use) or 21.2.6 (Possession) shall be as follows, subject to potential reduction or suspension pursuant to Regulations 21.10.4, 21.10.5 or 21.10.6:

21.10.2.1 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 World Rugby (or the Association, Union or Tournament Organiser handling the case as applicable) can establish that the anti-doping rule violation was intentional.

21.10.2.2 If Regulation 21.10.2.1 does not apply, the period of Ineligibility shall be two years.

12. ADR Regulation 21.10.2.1(a) therefore provides that in relation to this matter (being a matter that concerns a non-Specified Substance) the period of Ineligibility to be imposed shall be four (4) years, unless Mr Acton can establish that the commission of the ADRV was not intentional. The meaning of 'intentional' for these purposes is set out in ADR Regulation 21.10.2.3 as follows:

21.10.2.3 As used in Regulations 21.10.2 and 21.10.3, the term "intentional" is meant to identify those Players who cheat. The term therefore requires that the Player 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. Mr Acton has admitted the ADRV. In his response to the Charge, Mr Acton explained that the only reason he could provide for the presence of the Prohibited Substance in his Sample was his use of a product called 'TestoSuspensa 100', manufactured by 'Excel Pharma Greece' ('the Product'). The Product lists 'Testosterone suspension' as its primary ingredient. The Prohibited Substance identified in Mr Acton's A Sample was a metabolite of a Stanozolol, not Testosterone. Mr Acton has been unable to provide UKAD with a sample of the Product and as such UKAD has been unable to analyse the Product

to confirm whether or not it contained Stanozolol. Consequently, Mr Acton has not proven how the Prohibited Substance came to be in his system.

14. Mr Acton indicated that he did not wish to make submissions in respect of ADR Article 21.10.2.3 and that he acceded to the Consequences set out in the Charge, including a period of Ineligibility of four (4) years.

Application of ADR Regulation 21.10.6.3

15. ADR Regulation 21.10.6.3 provides a way in which a four (4) year period of Ineligibility may be reduced as follows:

21.10.6.3 Prompt admission of an Anti-Doping Rule Violation after being Confronted with a Violation Sanctionable under Regulation 21.10.2.1 or Regulation 21.10.3.1:

A Player or other Person potentially subject to a four-year sanction under Regulation 21.10.2.1 or 21.10.3.1 (for evading or refusing Sample Collection or Tampering with Sample Collection), by promptly admitting the asserted anti-doping rule violation after being confronted by World Rugby (or the Association, Union or Tournament Organiser handling the case as applicable), and also upon the approval and at the discretion of both WADA and World Rugby (or the Association, Union or Tournament Organiser handling the case as applicable), 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 Player or other Person's degree of Fault.

16. Mr Acton admitted the Anti-Doping Rule Violation after being confronted with it by UKAD. UKAD considers that Mr Acton has made a 'prompt admission' for the purposes of ADR Regulation 21.10.6.3, and therefore that ADR Regulation 21.10.6.3 is capable of application in this case.
17. UKAD has considered whether Mr Acton's sanction should be reduced pursuant to ADR Regulation 21.10.6.3, by reference to the seriousness of the violation and his degree of Fault in the circumstances.

A. Seriousness of the ADRV

18. As regards the first criterion, UKAD has taken the view that testing positive for a powerful anabolic steroid 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

19. 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 a Player or other Person's degree of Fault include, for example, the Player's or other Person's experience, whether the Player or other Person is a Minor, special considerations such as impairment, the degree of risk that should have been perceived by the Player and the level of care and investigation exercised by the Player in relation to what should have been the perceived level of risk. In assessing the Player's or other Person's degree of Fault, the circumstances considered must be specific and relevant to explain the Player's or other Person's departure from the expected standard of behaviour. Thus, for example, the fact that a Player would lose the opportunity to earn large sums of money during a period of Ineligibility, or the fact that the Player 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 Regulation 21.10.5.1 or 21.10.5.2.

[emphasis added]

20. UK 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).

[...]

21. Mr Acton has admitted to injecting himself with a product called 'testosuspensa', the primary ingredient of which is advertised as being testosterone suspension. While Mr Acton's explanation is that he injected himself with the steroid for a period of only two weeks for a "quick boost", he has nonetheless admitted to knowingly taking a steroid to improve his performance. His degree of Fault is therefore high in light of his obligations under Article 1.3.1 of the UK ADR. However, UKAD considers that Mr Acton's degree of Fault is mitigated very slightly by the specific facts of this case, namely Mr Acton's age and apparent lack of anti-doping education. It is not clear what education, if any, Mr Acton received while competing as a youth player in South Africa. However, UKAD has established that Mr Acton has received no anti-doping education since he commenced playing in the United Kingdom.
22. Having considered the specific circumstances of this case, UKAD has exercised its discretion to make a reduction in the period of Ineligibility based on Mr Acton's degree of Fault.
23. The proposed reduction was subject to the discretion and approval of WADA. UKAD sought WADA's views by way of an email dated 20 December 2017. WADA confirmed that it agreed with the proposed reduction.
24. Pursuant to ADR Regulation 21.10.6.3, the period of Ineligibility imposed is therefore three (3) years and nine (9) months.
25. UKAD issues this Decision pursuant to UK ADR Article 7.7.4.
26. UK 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

27. ADR Regulation 21.10.11.3 provides the following:

21.10.11.3 Credit for Provisional Suspension or Period of Ineligibility Served

- (a) If a Provisional Suspension is imposed and respected by the Player or other Person, then the Player or other Person shall receive a credit for such period of Provisional Suspension against any period of Ineligibility which may ultimately be imposed. If a period of Ineligibility is served pursuant to a decision that is subsequently appealed, then the Player or other Person shall receive a credit for such period of Ineligibility served against any period of Ineligibility which may ultimately be imposed on appeal.

28. Mr Acton has been subject to a Provisional Suspension since the date of the Charge (08 September 2017).
29. Pursuant to ADR Regulation 21.10.11.3, the period of Ineligibility to be imposed on Mr Acton is therefore deemed to have commenced on 08 September 2017 and will expire at midnight on 07 June 2021.
30. During the period of Ineligibility, in accordance with ADR Regulation 21.10.12.1, Mr Acton 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:
- World Rugby or any body that is a member of, or affiliated to, or licensed by World Rugby or any Member Union, Association or a Club, Rugby Body or other member organisation of World Rugby or any Association or Member Union (this includes the SRU);
 - 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.
31. Mr Acton may return to train with a team or to use the facilities of a club or other member organisation of the SRU or a Signatory's member organisation during the last two months of his period of Ineligibility (i.e. from midnight on 07 April 2021) pursuant to ADR Regulation 21.10.12.2.
32. Mr Acton, the SRU, World Rugby and WADA have a right of appeal against this decision or any part of it in accordance with UK ADR Article 13.4 and ADR Regulations 21.13.2.2 and 21.13.7.2.
33. The disposition of these proceedings on the terms set out above will be publicly announced via UKAD's website.

Summary

34. For the reasons given above, UKAD has issued this decision, which records that:

- Mr Acton has committed an ADRV pursuant to ADR Regulation 21.2.1;
- a period of Ineligibility of three (3) years and nine (9) months is imposed pursuant to ADR Regulation 21.10.2.1 and ADR Regulation 21.10.6.3;
- the period of Ineligibility is deemed to have commenced from 08 September 2017 and will expire at midnight on 07 June 2021; and
- Mr Acton's status during the period of Ineligibility shall be as detailed in ADR Regulation 21.10.12.

19 January 2018