

Before:

Christopher Quinlan QC

Professor Peter Sever

Lorraine Johnson

BETWEEN:

UK Anti-Doping

National Anti-Doping Organisation

-and-

Thomas Edward Curry

Respondent

**IN THE MATTER OF PROCEEDINGS BROUGHT UNDER THE WELSH RUGBY UNION
ANTI-DOPING RULES**

FINAL DECISION OF THE ANTI-DOPING TRIBUNAL

A. INTRODUCTION

1. This is the final decision of the Anti-Doping Tribunal ('the Tribunal') convened pursuant to Article 5.1 of *the National Anti-Doping Panel Procedural Rules* to hear and determine

a charge brought against Thomas Edward Curry ('the Respondent') for a violation of Rule 2.1 of the *Welsh Rugby Union Anti-Doping Rules* ('ADR').

2. Thomas Edward Curry was born on 2 December 1996 and is twenty years of age. At the material time he was a rugby union player registered with the Welsh Rugby Union ('WRU') club Newcastle Emlyn. As he accepted, he was thereby bound by the ADR. By virtue of the ADR, UKAD has responsibility for results management of WRU anti-doping rule violations.

3. The Tribunal hearing was held on 19 September 2017 and was attended by:

- The Respondent;
- Jason Torrance, Respondent's representative;
- Martin Curry, Respondent's father (observing);
- Lewis Bansal witness (by telephone);
- Marc Lloyd, witness (by telephone);
- Shaun Leonard, witness (by telephone);
- James Laing, UKAD;
- Paul Renteurs, UKAD's Counsel;
- Jeremy Rogers, WRU Anti-Doping Manager (observing);
- Richard Harry, Sport Resolutions CEO.

4. This document constitutes our final reasoned decision, reached after due consideration of the evidence, submissions and the Arbitral Awards placed before us.

B. ANTI-DOPING RULE VIOLATION

5. Article 2.1 of the ADR makes it a doping offence to provide a sample that shows "the presence of a Prohibited Substance or its Metabolites or Markers" unless the athlete establishes that the presence is consistent with a Therapeutic Use Exemption ('TUE').

6. The Respondent is registered with the WRU as a rugby union player. He is a student and plays for Newcastle Emlyn RFC ('NERFC'). Last season was his first in senior rugby. On 8 April 2017, he played for NERFC against Glynneath RFC in a Swalec National

Championship match ('the match'). The Swalec National Championship is a Competition which is authorised by the WRU. The match started at 14.30.

7. Following the match, the Respondent provided four urine samples. Each was split into two separate bottles which were given individual reference numbers. Two did not have suitable specific gravity for analysis pursuant to clause D.4.16 of the WADA 2017 *International Standard for Testing and Investigations ('ISTI')*.
8. All samples were transported to the Drug Control Centre, Kings College, a World Anti-Doping Agency ('WADA') accredited laboratory ('the laboratory'). The laboratory analysed the First A Sample, Second A Sample and Fourth A Sample in accordance with the procedures set out in WADA's *International Standard for Laboratories*. The samples were timed and labelled as follows:
 - 8.1. A1135080 (1.002) sealed at 16:44 hours;
 - 8.2. A1126343 (1.003) sealed at 17:09 hours;
 - 8.3. A1133957 (1.000) sealed at 18:32 hours.
9. Each of the three A samples identified in the foregoing paragraph returned an Adverse Analytical Finding ('AAF') for benzoylecgonine. Benzoylecgonine is a metabolite of cocaine. Cocaine is classified as a Non-Specified Stimulant under section S6a of the 2017 WADA *Prohibited List*. It is prohibited In-Competition only.
10. The Respondent did not have a TUE to permit the use or presence of cocaine.
11. He was first notified and charged with the ADRV by letter dated 28 April 2017. The letter set out the details of the alleged ADRV with which he was charged. It also contained a summary of the facts and the evidence relied upon by UKAD. The letter also imposed a provisional suspension with immediate effect. The letter further informed the Respondent that he should reply to the letter indicating whether he wished to admit or deny the offence; whether he wished the B sample to be analysed; to apply to have the provisional suspension lifted; and to make submissions in relation to sanction. A further amended letter of charge was sent to him dated 15 May 2017.

12. By way of his formal response to the charge entitled 'Defence' dated 13 June 2017, the Respondent admitted the ADRV and indicated he did not want the B sample analysed.
13. He repeated that admission at the start of the Tribunal hearing. The central issue for the Tribunal was sanction.

C. SANCTION

(1) The Respondent's Case

14. In support of his case the Respondent filed a detailed witness statement. He expanded upon and explained aspects of that account before us.
15. The Respondent said the only formal anti-doping education he received was at a WRU-run seminar on 20 September 2016. The education session comprised a PowerPoint presentation during which he said drugs in sports were divided into two categories, performance-enhancing or recreational. The presentation was delivered by one Ben Thomas and its focus was performance-enhancing drugs. At the end of the presentation, a question was asked (not by the Respondent) about recreational drugs. The question was whether 'recreational drugs' were allowed to be used during the week, in advance of a weekend match. He recalled the phrase "*party drugs*" and/or cocaine may have been mentioned. In his witness statement, he said the answer was that "*as long as we did not take any of these drugs within 24 hours of a game then we would be fine, we would not test positive*".
16. He spent Wednesday 5 April 2017 playing sport in Newport. He returned to Swansea, and went out drinking with friends. At between 04.00 and 04.30 the following morning (6 April) he ended up at Lewis Bansal's flat on the Trinity campus. There he had 3-5 separate 'lines of cocaine' on different occasions. It was one line each time, over a 2 to 3 hour period. It was not the first time he ingested cocaine; it was the first time he had done so during the week before a rugby match at the weekend.
17. As to why he did so, he said (in his statement) it was "*partly because it was a bit of a celebratory night after the day of sports against the other university*". The information

he said he received at the anti-doping seminar "*also played a part*", he said. He knew he had a game on the Saturday and no training, so I "*thought that it would be safe for me to ingest cocaine as it was more than 48 hours until I was next playing, if I was selected*". In his witness statement, he asserted: "*This definitely played a part in my decision to take cocaine that evening – it was the only anti-doping education I have ever received and I was therefore reliant upon it*". Before the Tribunal he repeatedly said it "*would have*" played a part in his thinking. Questioned closely on this by Mr Renteurs, he said he was extremely drunk that Wednesday night/Thursday morning but was adamant that what he was told at the seminar played a part in his deciding to take cocaine.

18. He said he had taken cocaine only once before, on holiday with friends in July 2016. He was not a regular or frequent user of cocaine. He said he would not know what 100mg or 500mg (of cocaine) looked like. He did not take as much as ten lines. He said the cocaine he took was part of a "*round robin purchase*". He said he could not recall how much he contributed and had no recollection of buying it. He was adamant, both in answer to questions from Mr Torrance and Mr Renteurs, that he did not take cocaine later that Thursday, the next day (Friday) or Saturday, before (or after) the match.
19. He received the anti-doping education after he had taken cocaine. He understood that cocaine was prohibited In-Competition. He did not know at the time he took the cocaine, In-Competition meant up to 12 hours before the match. Based on what he said he was told by Ben Thomas (at the seminar), he believed that cocaine would be out of his system 24 hours after ingestion.
20. The Tribunal heard from Lewis Bansal, who confirmed the content of his signed statement. He saw the Respondent snort "*a line*" of what he understood to be cocaine at approximately 04.45 on 6 April 2017. It was the first time he saw him do it. He did it three or four times. Questioned before the Tribunal he said he had never seen him take cocaine before. His recollection was that he was out with the Respondent on the Friday night, 7 April, whereas the Respondent recalled being at home that evening.
21. The Respondent also relied upon Marc Lloyd, who provided a signed statement dated 7 August 2017. He is the head coach of NERFC and has known the Respondent for two

years. The only anti-doping education he knew the Respondent had received was the WRU seminar on 20 September 2016, which he also attended. His recollection was that in answer to a specific question, the person taking the seminar informed the delegates that cocaine and cannabis would be out of a player's system twenty-four hours after taken.

22. Shaun Leonard is a player at NERFC. He knows the Respondent. He saw him on the day of the match and he did not seem hungover and appeared normal. He did not play any differently from anyone else in the match. In his signed witness statement, he said he was at the same seminar on 20 September 2016. He recalled a question about recreational drugs. His recollection was that the person leading the seminar, *"told us not to use recreational drugs on the day of a game or on the evening before, but that otherwise using recreational drugs should not be a problem"*. He understood this meant he would not test positive, for example for cocaine, so long as it was taken *"earlier than on the night before a game"*.
23. He confirmed that before us. He could not recall if anyone asked about cocaine specifically, but they did ask about *"recreational drugs"*. He also said that the person giving the talk did not give any specific time for how long it would remain in the system, just not to take it on the day of the game or the night before. There was no mention of *"24 hours"*. He also said that he did not know the Respondent outside NERFC, but he *"had no knowledge of Thomas having ever used any kind of drugs before"*.
24. In advance of the hearing, Mr Torrance informed the Tribunal Chairman that one potential witness for the Respondent ('X') wished to have his identity anonymised. UKAD opposed that application. The Chairman informed the parties that the Tribunal would determine that application as part of its deliberations.
25. In advance of the hearing X 'withdrew' from the proceedings, in the sense he indicated to Mr Torrance that he was not prepared to give evidence. Mr Torrance invited us to admit his witness statement as hearsay and to give it such weight as we considered appropriate. We decided not to do so. In short, we did so for these reasons:
 - 25.1. His statement was not signed.
 - 25.2. We were not told why he sought anonymity.

25.3. We were not told why he had 'withdrawn' other than it appeared to be on the basis of advice from an unknown source(s).

The core of 'X's evidence went to the Respondent's taking of cocaine on 6 April. In light of our findings in that respect (see paragraph 51, 53), this aspect of our decision had no material effect on our overall conclusion.

26. The submissions advanced on his behalf were to this effect. The Tribunal should find that he:

26.1. Had demonstrated the route of ingestion of the cocaine, namely he took it in the early hours of 6 April 2017;

26.2. The ADRV was not intentional; and

26.3. That he had not been significantly at fault or negligent.

On that basis, Mr Torrance invited the Tribunal to impose a sanction shorter than two years, proportionate in all the circumstances of the case, in the region of 12 to 18 months.

(2) UKAD's Case

27. UKAD relied on Professor Cowan, Director of Drug Control Centre, King's College London who prepared a report dated 30 August 2017. Professor Cowan holds a personal Chair in Pharmaceutical Toxicology awarded in 1996 and is very experienced in the analysis of drugs in body fluids. He was asked by UKAD to address several specific issues and questions, which he did in his report.

28. Following service of the said report, Mr Torrance made application to the Chairman for the Tribunal to appoint its own expert, at the cost thereof to be met by UKAD. In response, the Chairman invited him (if he wished) to prepare written questions for Professor Cowan to answer in advance of the hearing. That would enable all to see the extent of issue between them. Mr Torrance did so. Professor Cowan responded in writing to those questions on 13 September. Asked in terms in advance of the hearing whether Mr Torrance wished to pursue his application (for the Tribunal to appoint an expert) he said that he did not. At the start of the hearing he confirmed that he did not wish to pursue that application.

29. Professor Cowan opined as follows:

29.1. From the data contained in the Documentation Package and other laboratory data, he estimated the concentration of benzoylecgonine in each sample to be as follows:

29.1.1. sample A1135080 - approximately 12,000 nanograms per millilitre

29.1.2. sample A1126343 - approximately 7,700 nanograms per millilitre, and

29.1.3. sample A1133957 - approximately 3,300 nanograms per millilitre.

29.2. The specific gravity, measured by his laboratory, of sample A1135080 was 1.004, of sample A1126343 was 1.003 and of sample A1133957 was 1.002. The laboratory measurements are more accurate than those measured with the portable equipment used by DCOs especially for very dilute samples.

29.3. In this case, the specific gravity of each sample was very dilute compared with the accepted normal average concentration of 1.020. The specific gravity is one of the factors that needs to be taken into account when comparing concentrations in urine. The Respondent said he drank a lot of water after the match to rehydrate.

29.4. He was asked by UKAD to estimate the amount of cocaine, which the Respondent would have to ingest in the period stated, to return such concentrations in his urine. Cocaine is rapidly converted to benzoylecgonine in the body. That metabolite leaves the body with a first order half-life of approximately 8 hours. He also assumed that seventy per cent of the dose is eliminated in that manner; it breaks down into other metabolites.

29.5. He made several assumptions, which he said were most favourable to the Respondent:

29.5.1. He considered an average urine production rate is 1 litre per day.

29.5.2. Urine metabolite excretion is a measure of what was in the body and is not an exact science.

29.5.3. He worked on the basis that an 'average line of cocaine' (insofar as there is such a thing) was about 100mg.

29.5.4. He assumed for the purposes of his calculations the powder was 100% cocaine, an extremely unlikely assumption, but one in the Respondent's favour.

29.6. Based on the Respondent's account of when he took the cocaine (and that he took none thereafter) he estimated, based on the assumptions (in the Respondent's favour) that he would had to have administered very approximately the following:

29.6.1. 12,000 milligrams based on the sample A1135080,

29.6.2. 11,000 milligrams based on the sample A1126343 and

29.6.3. 8,000 milligrams based on the sample A1133957.

29.6.4. Thus, he opined he would have needed to administer more than 2,000 milligrams (2 grams) of cocaine between 04.30-07.30 on 6 April 2017 to provide the concentrations of benzoylecgonine he returned. Even that was, he said, a very conservative estimate.

29.7. Further, and (1) assuming that a 'line' of cocaine is approximately 100 milligrams, (2) that the Respondent therefore administered approximately 300-500 milligrams of cocaine over the course of a two-three hour period and (3) considering the estimated concentrations determined for the three samples A1135080, A1126343 and A1133957, and (4) their specific gravities and the time at which each was sealed, he (5) opined that if a dose of 500 milligrams of cocaine had been administered, it would have to have been ingested 16-24 hours earlier, that is between the hours of around 16:00 and midnight on 7 April 2017. Once more that assumes, 100% pure cocaine.

30. In advance of the hearing Mr Torrance posed five specific questions of Professor Cowan, He answered each in a document he signed and dated 13 September 2017. It was provided to the parties and the Tribunal. Therein he said:

30.1. Individuals metabolise cocaine into benzoylecgonine at different rates.

30.2. It is possible for benzoylecgonine to be detectable in urine ingested "*up to 61 hours*" prior to the sample being taken.

30.3. The larger the dose of cocaine taken, the more likely benzoylecgonine will remain detectable.

30.4. The FRANK information regarding the finding of cocaine between 12 hours and 3 days after taking is, he believes a reference to the finding of benzoylecgonine, not cocaine.

30.5. Asked about the Respondent's case, he repeated that for him to have returned the concentrations of benzoylecgonine in the samples, he would have to have taken more than 2000mg (2 grams) of cocaine that Thursday morning. That is likely to be a fatal dose, if taken over a short period of time.

31. He was also questioned by Mr Torrance. Alcohol can cause different metabolites to be present but none was found in this case. Cocaine is a stimulant and has performance enhancing potential.

32. He was also questioned by the Tribunal. He thought the differences in specific gravity were very modest and not significant. He agreed regular users of cocaine developed a tolerance. The person becomes less able to clear the cocaine from their body. However, given the Respondent's evidence, that was not relevant here.

33. UKAD's primary submission was that based on Professor Cowan's evidence, the Respondent had failed to discharge the burden upon him to establish that the ARDV was not intentional. Alternatively, if he had, his fault or negligence was significant.

(3) Determination

(a) Discussion

34. ADR Article 10.2 provides:

10.2 The period of Ineligibility for an Anti-Doping Rule Violation under Article 2.1, 2.2, or 2.6 is 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.

35. It is the Respondent's first ADRV.

36. Cocaine is a Non-Specified Stimulant under section S6a of the 2017 WADA *Prohibited List*. The starting point for sanction is a period of Ineligibility of four years, unless the Respondent can establish that the ADRV was not intentional pursuant to ADR 10.2.1(a).

37. "Intentional" is defined in ADR Article 10.2.3 thus:

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.

38. Cocaine is prohibited only In-Competition. Therefore, the Respondent may establish (on the balance of probabilities) that his ADRV was not intentional by

38.1. establishing that the cocaine was

38.1.1. Used Out-of-Competition

38.1.2. in a context unrelated to sport performance; or

38.2. by establishing that he did not engage in conduct which

38.2.1. (i) he knew constituted an ADRV; or

38.2.2. (ii) he did not know there was a significant risk that his conduct might constitute an ADRV but nonetheless manifestly disregarded that risk.

39. As for Out-of-Competition, pursuant to the ADR it means "*any period which is not In-Competition*". In turn, In-Competition is defined thus:

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.

40. World Rugby (the International Federation for rugby union) does not provide otherwise. Therefore, the relevant period is one of 12 hours before the match he played Saturday afternoon.

41. Article 10.2.3 of the World Anti-Doping Code ('WADC') does not expressly require the athlete to establish how the Prohibited Substance entered their system. However, the issue has been considered in a number of cases. We agree with the approach of the NADP Appeal Panel in *UKAD v Buttifant* SR/NADP/508/2016. On this issue, it said this:

28. In summary, in a case to which article 10.2.1.1 applies the burden is on the athlete to prove that the conduct which resulted in a violation was not intentional. Without evidence about the means of ingestion the tribunal has no evidence on which to judge whether the conduct of the athlete which resulted in the violation was intentional or not intentional. There is no express requirement for an athlete to prove the means of ingestion but there is an evidential burden to explain how the violation occurred. If the athlete puts forward a credible explanation then the tribunal will focus on that conduct and determine on the balance of probabilities whether the athlete has proved the cause of the violation and that he did not act intentionally.

29. There may be wholly exceptional cases in which the precise cause of the violation is not established but there is objective evidence which allows the tribunal to conclude that, however it occurred, the violation was neither committed knowingly nor in manifest disregard of the risk of violation. In such a case the conduct under examination is all the conduct which might have

caused or permitted the violation to occur. These rare cases must be judged on the facts when they arise.

30. In this case the tribunal correctly stated the effect of article 10.2.3 at paragraphs 33 and 34 of the decision. However we do not consider that the tribunal in UKAD v Lewis Graham either misinterpreted the rule or drew a bright line or, if it did, drew it in the wrong place. At paragraph 34 of that decision the statement that the athlete must establish how a substance entered his body was made in relation to substances prohibited in competition only, which is a point expressly covered in article 10.2.3. At paragraph 38 the essence of the reasoning was 'without establishing the likely means of ingestion of the Prohibited Substance it is difficult to see how this Tribunal could properly and fairly consider the question of intent in relation to the conduct which led to that ingestion.' We share that difficulty, but do not preclude such a finding in an exceptional case.

31. The cases decided by the NADP panels under article 10.2.1.1 are unanimous and correct as to the practical effect of article 10.2.3. It is only in a rare case that the athlete will be able to satisfy the burden of proof that the violation of article 2.1 was not intentional without establishing, on the balance of probabilities, the means of ingestion."

42. The burden is upon the Respondent to establish that the ADRV was not intentional. Save in rare cases, he has the evidential burden of explaining how the ADRV occurred.
43. We need to comment on one further matter. The Respondent placed reliance on several Arbitral Awards (all of which we considered). One in particular was *UKAD v Cleary SR/NADP/5470/2015*. The case concerned another rugby union player subject to the jurisdiction of the WRU who tested positive for cocaine. It is right to observe that at paragraph 30 that Tribunal observed:

"[...] It is notorious that cocaine is a so-called "recreational drug". It would be quite unreal to consider that Mr Cleary was taking cocaine with an eye to improving his performance as a hooker for Maesteg Harlequins RFC".

44. However, it important to note that in *Cleary* the Player's account as to the timing of the ingestion of cocaine was not challenged. Further, there was no evidence, including scientific to undermine his case that he took it Out-of-Competition. The Panel accepted

that to be the case. It was in that context that it made those observations in paragraph 30. That is not this case here.

45. As Mr Torrance put it in his submissions the "key issue" is the time he ingested cocaine. It is necessary therefore in considering the question of Intentional to look at the evidence regarding that issue.

(b) Intentional

46. UKAD's position on the advice he was given at anti-doping education session, as set out in paragraph 21 of its written submissions:

UKAD is not in a position to gainsay Mr. Curry's evidence as regards the advice (however erroneous) he and his club received from Mr. Ben Thomas, then of the WRU, at an anti-doping education presentation on 20 September 2016 in respect of the time it would take for a "recreational drug" to be eliminated from an athlete's body. However, UKAD reserves the right to test Mr. Curry's account in this regard.

47. Mr Renteurs questioned the Respondent and witnesses on this issue. We recognise there may be a difference between what Ben Thomas said and what the Respondent understood him to say and to mean. We recognise also (1) that there are (or should be) nuances of languages and advice in such an educational session and (2) we did not hear from Ben Thomas. Further, the evidence of the witnesses was not entirely consistent on what was said. However, for the purposes of our determination, we accepted the Respondent's understanding as he explained it to be.

48. As for its stance on taking of cocaine Thursday morning in paragraph 33 of its written submissions, UKAD stated this:

[...] Whilst it may be the case (which is not admitted by UKAD) that Mr. Curry ingested three to five lines of cocaine in the period between 04:00 hours and 07:30 hours on 6 April, [...]

49. Mr Renteurs cross-examined the Respondent and Lewis Bansal. Quite properly (since it was UKAD's case) he asked Lewis Bansal whether he was making up his account of

seeing the Respondent taking cocaine Thursday morning to help him. He rejected that suggestion.

50. On the basis of the Respondent's evidence and that of Lewis Bansal, we are satisfied that he probably took cocaine in the early hours of Thursday morning. Their evidence was materially consistent on the fact of the ingestion and withstood proper testing by way of cross-examination. Such ingestion – Thursday morning before the match on Saturday - was more than 12 hours before the match on Saturday afternoon and so Out-of-Competition. The next issue is whether – applying the burden and standard of proof - that ingestion probably explains the ADRV. It is necessary to return to Professor Cowan's evidence.
51. The inevitable conclusion is that ingestion of cocaine on Thursday morning *alone* is not consistent with the scientific evidence from Professor Cowan. The effect of Professor Cowan's evidence is such that the ADRV cannot have occurred as a consequence of the Respondent taking cocaine *only* in the early hours of Thursday morning unless he took over 2g of pure cocaine, an amount which very likely, would have been fatal. The Respondent did not suggest that he took that much and said he did not take as much as 10 lines of cocaine.
52. It therefore follows from Professor Cowan's evidence that ingestion on Thursday morning alone cannot explain the AAF and so the ADRV. Therefore, the only sensible conclusion is that he must have taken more cocaine and closer in time to the match. As for the timing of that further taking of cocaine, two further matters:
- 52.1. First, Professor Cowan considered that the concentration of benzoylecgonine found in the Respondent's samples is consistent with his having administered a dose of 100 milligrams of cocaine 4 hours before the sample collection and so In-Competition. The Respondent said he did not take cocaine on the day of the match.
- 52.2. Second, Professor Cowan did opine that a dose of 500 milligrams of cocaine (5 x 100mg lines) ingested some 16-24 hours earlier, namely between around 16:00 and midnight on 7 April 2017 would account for the AAF findings of cocaine (albeit it with 100% pure power). No part of that period is In-Competition for the purposes of the ADR. Therefore, such taking – had it occurred - would have been

Out-of-Competition. But, that is, and was, not the Respondent's case. In fact, he was empathic that he had not taken cocaine after the early hours of the Thursday.

53. It follows that we are satisfied (on the balance of probabilities):

53.1. He took cocaine in the early hours of Thursday 6 April 2017; and

53.2. He also took it after that time and before the match on Saturday 8 April; but

53.3. There are a number of possibilities as to when he took that additional cocaine, all of which he denied.

54. Accordingly, we are not satisfied that the Respondent has established how the ADRV occurred. Therefore, on the evidence before us we are bound to conclude that he has not discharged the burden upon him to establish that the ADRV was not intentional.

(c) No Significant Fault or Negligence

55. The Respondent also relied upon ADR Article 10.5.2. He submitted that the otherwise applicable period of Ineligibility should therefore be reduced by the maximum amount to a period of one year. There are two fundamental issues with that.

56. First, a prerequisite is that he established the ADRV was not Intentional. As is plain from the foregoing, he has not.

57. Second, it is an express precondition of No Significant Fault or Negligence, that he must establish how the Prohibited Substances entered his system¹. For the reasons set out, he did not discharge the burden upon him in that respect.

(d) Period of Ineligibility

58. Accordingly, pursuant to Article 10.2.1(a) a period of Ineligibility of four years must be imposed.

¹ Appendix to ADR, definition of No Significant Fault or Negligence: *"Except in the case of a Minor, for any violation of Article 2.1, the Athlete must also establish how the Prohibited Substance entered his/her system"*.

(e) Commencement of Ineligibility

59. Pursuant to Article 10.2.1(a) a period of Ineligibility of four years must be imposed.

60. The Respondent was provisionally suspended with immediate effect by letter dated 28 April 2017. The Respondent said he had not participated since 18 April 2017 and UKAD did not suggest otherwise. Accordingly, the period of Ineligibility shall start on that date, (ADR Article 10.11.3(a)).

61. The Respondent's status during the period of Ineligibility is as provided in ADR Article 10.12.

D. SUMMARY

62. For the reasons set out above, the Tribunal finds:

- (a) The anti-doping rule violation has been established.
- (b) The period of ineligibility imposed is four years commencing on 28 April 2017.

E. RIGHT OF APPEAL

63. 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.



Christopher Quinlan QC, Chairman

On behalf of the Tribunal

26 September 2017



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