

**IN THE MATTER OF PROCEEDINGS BROUGHT UNDER THE ANTI-DOPING RULES  
OF THE BRITISH BOXING BOARD OF CONTROL**

BEFORE:

*Mark Hovell (Chairman)*  
*Professor Dorian Haskard*  
*Dr Michael Irani*

**BETWEEN:**

**UK ANTI-DOPING (UKAD)**

*Anti-Doping Organisation*

and

**ERIC MOLINA**

*Respondent*

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**DECISION OF THE ANTI-DOPING TRIBUNAL**

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**Introduction**

- 1 The Applicant ("UKAD") is the National Anti-Doping Organisation in the UK and has jurisdiction to prosecute this case.
- 2 The British Boxing Board of Control (the "BBBOC") has adopted the UK Anti-Doping Rules with supplemental provisions which are constituted as the Anti-

Doping Regulations (the "ADR"). Pursuant to the ADR, UKAD has the responsibility for bringing enforcement proceedings where an athlete provides a positive test.

3 The Respondent, Mr Eric Molina (the "Boxer/Respondent") is a 35-year-old Boxer from the United States. The BBBOC granted the Boxer a licence to participate in a bout under the auspices of the IBF Heavyweight Championship against Anthony Joshua which took place in Manchester at midnight on 11 December 2016 (the "Event"). As a condition of such licence, the Boxer was at all times subject to the ADR.

4 Pursuant to the ADR, a urine sample was provided by the Boxer after the Event. This sample returned an Adverse Analytical Finding ("AAF") for Dexamethasone. Dexamethasone is classified under s.9 of the World Anti-Doping Agency ("WADA") Prohibited List for Glucocorticoids. It is a Specified Substance prohibited In-Competition when administered by oral, intravenous, intramuscular or rectal routes.

5 The Presence of this Prohibited Substance in the Boxer's urine sample constitutes a violation of the ADR.

6 By letter dated 27 October 2017, UKAD charged the Boxer (the "Charge") with the following breach of the ADR: -

*"2.1 Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample...*

*2.1.1 It is each Athlete's personal duty to ensure that no Prohibited Substance enters his/her body. An Athlete is responsible for any Prohibited Substance or any of its Metabolites or Markers found to be present in his/her Sample. Accordingly, it is not necessary that intent, Fault, negligence or knowing Use on the Athlete's part be demonstrated in order to establish an Anti-Doping Rule Violation under Article 2.1; nor is the Athlete's lack of intent, Fault, negligence or knowledge a valid defence to a charge that an Anti-Doping Rule Violation has been committed under Article 2.1."*

7 The Boxer has been provisionally suspended since 27 October 2017. UKAD understand this to be the Boxer's first Anti-Doping Rule Violation ("ADRV").

- 8 The Boxer responded to the Charge on 30 November 2017 (1 December 2017 GMT) by email. The Boxer stated, *"I accept full responsibility that a violation was committed through my positive test, but would like to challenge the imposition of a 2-year period of ineligibility..."*
- 9 Recognising the rights of Athletes to have a doping allegation determined by an independent and suitably qualified body, pursuant to ADR Article 8.1, this case was referred to the National Anti-Doping Panel ("NADP") for resolution, on 14 December 2017.
- 10 On 19 December 2017, Mr Mark Hovell was appointed as the Chairman of the Tribunal to deal with the matter at hand.
- 11 This matter was determined without a hearing, further to the agreement of the parties.

## **Jurisdiction**

- 12 The BBBOC is the National Governing Body for the sport of professional boxing in the United Kingdom. The BBBOC sanctions bouts across the various weight classes ranging from flyweight to heavyweight. It provides licences to domestic and international boxers, which permits them to participate in those bouts in the UK. The BBBOC has adopted the UK Anti-Doping Rules with supplemental provisions which are constituted as the ADR. All boxers who are licenced by the BBBOC are subject to the ADR under the jurisdiction of the BBBOC.
- 13 If a bout takes place in the UK under the auspices of the BBBOC, then, regardless of the nationality of the competitors, the BBBOC will ensure those competitors are licenced to compete and by way of that licence the boxers are subject to the ADR.
- 14 As a result of the above the Boxer was therefore subject to the ADR on the following basis:
- 14.1 The Boxer's licence/approval by the BBBOC to participate in the Event. ADR Article 1.2.1(a) provides that the rules apply to (inter alia):

*"all Athletes... who are members of the NGB and/or of member or affiliate organisations or licensees of the NGB (including any clubs, teams, associations or leagues);"*

14.2 The Boxer's participation in the Event. ADR Article 1.2.1(b) provides that the rules apply to:

*"all Athletes... 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 The Boxer was therefore subject to and bound to comply with the ADR at all material times.

16 Pursuant to ADR Article 7.1.3 UKAD has responsibility for results management of this case. This means UKAD will be dealing with this Charge and prosecuting this matter.

17 Further, pursuant to ADR Article 8.1, any charge against a boxer by the BBBOC shall be determined by the NADP.

18 Finally, the Boxer did not challenge the jurisdiction of the NADP nor the applicability of the ADR.

19 For all of the above reasons, it follows that the Tribunal therefore has jurisdiction to determine this matter.

## **Background**

20 On 10 December 2016 at approximately 21:42 hours, a Doping Control Officer ("DCO") notified the Boxer of the requirement to submit to Doping Control. The Event was scheduled to, and did, commence later that evening at approximately 00:00 hours (midnight). On 11 December 2016 at approximately 01:27 hours, the DCO collected a urine sample from the Boxer In-Competition, following the Event. Assisted by the DCO the Boxer split the sample into two separate bottles which

were given reference numbers A1130052 (the "A Sample") and B1130052 (the "B Sample").

- 21 Both samples were transported to the WADA accredited laboratory, the Drug Control Centre, King's College London (the "Laboratory"). The Laboratory analysed the A Sample in accordance with the procedures set out in WADA's International Standard for Laboratories. This analysis returned an AAF for Dexamethasone.
- 22 The Boxer did not request a test of the B Sample and as a result the B Sample has never been tested.
- 23 Dexamethasone is classified under Section 9 of the WADA 2016 Prohibited List for Glucocorticoids. It is a Specified Substance prohibited In-Competition when administered by oral, intravenous, intramuscular or rectal routes.
- 24 In an interview dated 5 September 2017, the Boxer stated that Dexamethasone contained within a product "Tribedoce DX" was administered to him by way of intramuscular injection by one of his team on the day of the Event.
- 25 UKAD conducted a review which confirmed that there had not been a departure from the applicable International Standards that could reasonably have caused the AAF. UKAD also confirmed that the Boxer did not have a Therapeutic Use Exemption ("TUE") to justify the presence of the Prohibited Substance in his Sample.

### **UKAD's Submissions**

- 26 UKAD stated that as far as UKAD is aware, if proven, this would be the Boxer's first ADRV, accordingly, the period of Ineligibility to be applied is set out at ADR Article 10.2:

*"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...that is the Athlete'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 establishes that the Anti-Doping Rule Violation was not intentional.*

*(b) The ADRV involves a Specified Substance and UKAD can establish that the ADRV was intentional.*

*10.2.2 If Article 10.2.1 does not apply, the period of Ineligibility shall be two years."*

27 UKAD noted in its submissions that:

- a) Dexamethasone is a Specified Substance prohibited In-Competition only, and only by certain methods of entry to the Athlete's system.
- b) The burden falls upon UKAD to prove that the ADRV was "intentional" (pursuant to UK ADR Article 10.2.1(b)).
- c) The term "intentional" is defined at UK ADR Article 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.”*

28 UKAD submitted that it did not positively assert that the Boxer’s actions were intentional and further that the Boxer did not look to cheat. UKAD also submitted that in the light of the definition of “intentional” provided for by ADR Article 10.2.3 and the evidence available it does not appear that the Boxer knew that his conduct either constituted an ADRV, or that he knew there was a significant risk that it might (and so he cannot be said to have manifestly disregarded risk).<sup>1</sup>

29 UKAD concluded in this regard that assuming intention is not established, the starting point for sanction is ADR Article 10.2.2, which provides for a period of ineligibility of two years. However, UKAD finally left this issue for the Tribunal to determine.

30 UKAD does not however agree with the Boxer’s response to the Charge on 30 November 2017 where he stated:

*“I accept full responsibility that a violation was committed through my positive test, but would like to challenge the imposition of a 2-year period of ineligibility because I feel a less severe penalty (or no penalty) is justifiable.”*

31 UKAD although accepting the two-year starting point for lack of intent submitted that it was opposed to any further reduction from a two-year suspension arguing against the indirect invocation of UK ADR Article 10.4 and 10.5.1(a) by the Boxer as set out above.

*Relevant ADR Provisions and commentary in the World Anti-Doping Code (the “Code”)*

32 The relevant provisions of the UK ADR are set out below:

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<sup>1</sup> 24 See ITF v Sharapova, Independent Tribunal decision dated 6 June 2016, paras 68-69 (‘It is clear from the wording of article 10.2.3 that whether conduct is intentional is to be judged on the actual knowledge of the player, not on the basis of what she ought to have known or understood. [...] The first element is based on knowledge, the second on manifest disregard of the known risk. The second element may involve considering what steps the player took or ought to have taken, but the first element depends on the actual knowledge of the player. [...] The classic case for application of the second limb of article 10.2.3 is where an athlete uses a contaminated supplement. In some such cases an athlete may be found to have knowingly taken a risk of committing an actual violation and acted regardless of that risk. In such cases the known risk is that the substance ingested might contain an ingredient which is prohibited’), which ruling was not challenged or disturbed on appeal in Sharapova v ITF, CAS 2016/A/4643.

*"10.4 Elimination of the Period of Ineligibility where there is No Fault or Negligence*

*If an Athlete or other Person establishes in an individual case that he/she bears No Fault or Negligence for the Anti-Doping Rule Violation charged, then the otherwise applicable period of Ineligibility shall be eliminated.*

*10.5 Reduction of the period of Ineligibility based on No Significant Fault or Negligence*

*10.5.1 Reduction of Sanctions for Specified Substances ...for ADRVs under Article 2.1...*

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

33 UKAD submitted that insofar as Fault is concerned, the relevant definitions are set out in the Appendix to the ADR. UKAD also cited commentary in the Code in relation to ADR Articles 10.4 and 10.5 as well as ADR Article 1.3.1 in support of its submissions.

*The Athlete's duty of 'utmost caution'*

34 UKAD submitted that for the Boxer to avail himself of the No Fault or Negligence or No Significant Fault or Negligence provisions he has a duty under the ADR to use 'utmost caution' to ensure that he does not ingest any Prohibited Substances or otherwise do anything that might constitute or result in the commission of an ADRV.<sup>2</sup> The test is how far the Boxer departed from that duty.

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<sup>2</sup> See, e.g., *Kutrovsky v ITF*, CAS 2012/A/2804, para 9.49 ('the athlete's fault is measured against the fundamental duty that he or she owes under the Programme and the WADC to do everything in his or her power to avoid ingesting any prohibited substance'); *FIFA & WADA*, CAS 2005/C/976 & 986, paras 73-75 ('The WADC imposes on the athlete a duty of utmost caution to avoid that a prohibited substance enters his or her body. [...] It is this standard of utmost care against which the behaviour of an athlete is measured if an anti-doping violation has been identified').



35 UKAD argued that to establish No Fault or Negligence, the Boxer must show that he took every step available to him to avoid the violation and could not have done any more; whereas to establish No Significant Fault or Negligence, he must show that, to the extent he failed to take certain steps that were available to him to avoid the violation, the circumstances were exceptional and therefore that failure was not significant.

*Mr Molina's clear failure to exercise 'utmost caution'*

36 UKAD submitted that in applying the 'utmost caution' test to the facts of this case, the Boxer was very significantly at fault and that the applicable period of ineligibility of two years should not therefore be reduced under ADR 10.4 or ADR 10.5.1(a):

*"(a) Mr Molina is an experienced Athlete competing at the top level of his sport. Indeed, the Bout was for the IBF Heavyweight Championship i.e. a major world title. It is reasonable to infer that, whilst he may not have had any formal anti-doping education, he is aware of anti-doping rules and the associated risks (he has been tested a number of times in the past);*

*(b) There is a close nexus between Mr Molina's use of Tribedoce DX and his sporting performance. Mr Molina is clear that he regularly used vitamin B12 supplements before fights - Tribedoce DX is such a supplement and it was used shortly before the fight; and*

*(c) Mr Molina did absolutely nothing to check whether Tribedoce DX contained any Prohibited Substances. Indeed, he appears to have given no consideration to the matter whatsoever:*

*(i) Mr Molina did not carry out any sort of research to check whether Tribedoce DX contained any Prohibited Substances;*

*(ii) Mr Molina did not even carry out a basic internet search in relation to Tribedoce DX or any of its listed ingredients (cf. UK ADR Art 1.3.1(d)). Had he done so, it is reasonable to suppose that he would have realised that the supplement contained Dexamethasone;*

(iii) Mr Molina did not even check any of the listed ingredients of Tribedoce DX (whether against the Prohibited List or otherwise). Had he done so, it is reasonable to suppose that he would have realised that the supplement contained Dexamethasone, being one of Tribedoce DX's listed ingredients; and

(iv) Mr Molina did not contact a doctor in respect of his use of Tribedoce DX, nor did he seek advice from USADA, UKAD, the BBBoc, or any other body that might have been able to provide appropriate anti-doping advice or guidance.

37 In consequence of this UKAD submitted that a plea by the Boxer of No Fault or Negligence is not sustainable given that he failed to perform the most basic of checks citing the cases of *Johaug*<sup>3</sup>, *CAS 2005/A/830*<sup>4</sup> and *Kang Soo II*<sup>5</sup>.

38 In respect of No Significant Fault or Negligence, UKAD acknowledged in its submissions that it is not as strict as No Fault or Negligence but nevertheless concluded that the Boxer's actions again prevented him from being able to avail himself of this provision. UKAD referred to *Depress v CCES*<sup>6</sup>, and *Turley*<sup>7</sup> in relation to checking substances and *Hipperdinger v ATP, CAS 2004/A/690*<sup>8</sup> and *Sharapova v ITF, CAS 2016/A/4643*<sup>9</sup> as to the fault of third parties. The Boxer

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<sup>3</sup> FIS vs Therese Johaug & NIF, CAS 2017/A/5015

<sup>4</sup> S v FINA, CAS 2005/A/830

<sup>5</sup> Fédération Internationale de Football Association (FIFA) v. Korea Football Association (KFA) & Kang Soo II, CAS 2015/A/4215

<sup>6</sup> CAS 2008/A/1489

<sup>7</sup> SR/NADP/909/2017

<sup>8</sup> See, e.g., *Hipperdinger v ATP, CAS 2004/A/690*, paras 65 and 74 (intentional acts of sabotage by associates in Athlete's inner circle, as well as their mistakes, are attributable to the athlete for purposes of Article 10.5); *ITF v Koubek*, Independent Tribunal decision dated 18 January 2005, para 75 ('Mr Taylor submitted on the basis of those authorities that, at any rate other than in the most exceptional cases, for the purpose of determining whether a no-fault defence succeeds, the fault of an adviser such as a physician must be attributed to the player even if the player is not personally at fault; otherwise the fight against doping in sport would be seriously undermined. We unhesitatingly accept that submission'), affirmed on appeal, *CAS 2005/A/828*, paras 53-61.

<sup>9</sup> *Sharapova v ITF, CAS 2016/A/4643*, para 85 ('Second, the parties agreed before this Panel to follow the approach indicated by *Al Nahyan* (§ 177), i.e. that athletes are permitted to delegate elements of their anti-doping obligations. If, however, an anti-doping rule violation is committed, the objective fact of the third party's misdeed is imputed to the athlete, but the sanction remains commensurate with the athlete's personal fault or negligence in his/her selection and oversight of such third party or, alternatively, for his/her own negligence in not having checked or controlled the ingestion of the prohibited substance. In other words, the fault to be assessed is not that which is made by the delegate, but the fault made by the athlete in his/her choice'). See also *ICC v Smartt*, ICC Anti-Doping Tribunal decision dated 14 December 2011, para 68 ('Under Article 10.4.2 of the ICC Code, the degree of the player's fault is the criterion we must consider in assessing any reduction in the period of ineligibility below two years. The fault must be that of the player personally, not her advisers or entourage, but a player will normally be personally at fault if she fails to obtain advice or if she takes and

explained as follows the procurement of the Prohibited Substance, *"I sent my brother to Mexico to get B12 for this past fight and he ended up bringing me a different brand of B12 and I had no idea that this B12 had dexamethasone in it"* in support of his submissions.

#### *Determining the level of Mr Molina's fault*

39 UKAD submitted that even if the door to No Significant Fault or Negligence is opened by application of 10.5.1(a) that does not trigger an automatic reduction in sanction. Any reduction is based on the Boxer's objective and subjective level of fault. UKAD cited the case of *Cilic v ITF* where different gradations of fault were categorised as follows:

*"70. Applying these three categories to the possible sanction range of 0 - 24 months, the Panel arrive at the following sanction ranges:*

*i) Significant degree of or considerable fault: 16 - 24 months, with a "standard" significant fault leading to a suspension of 20 months.*

*ii) Normal degree of fault: 8 - 16 months, with a "standard" normal degree of fault leading to a suspension of 12 months.*

*iii) Light degree of fault: 0 - 8 months, with a "standard" light degree of fault leading to a suspension of 4 months.*

*71. In order to determine into which category of fault a particular case might fall, it is helpful to consider both the objective and the subjective level of fault. The objective element describes what standard of care could have been expected from a reasonable person in the athlete's situation. The subjective element describes what could have been expected from that particular athlete, in light of his personal capacities.*

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follows advice from inappropriate sources'); *ITF v Bogomolov*, Independent Tribunal decision dated 26 September 2005, para 70 (same, but again accepting that the athlete is likely to be personally at fault if he does not check and enquire into the actions and omissions of his entourage); *USADA v Klineman*, AAA arbitration award dated 12 December 2013, para 10.17 ('While her mother made a mistake that was clearly completely unintentional and could have been rectified by using a little more care in reading the bottles as she was filling the vitamin organizer, it simply is not the requirement that members of an athlete's entourage must completely free of mistakes for an athlete to qualify for a reduction in penalty. The WADA Code would be without meaning if the Panel was not required to assess the fault of the athlete primarily in managing the delegation of her obligations to a third party, and here the Panel has done that. In retrospect, Respondent could have done more, because, as shown by the facts here, her system was not completely foolproof. Nevertheless, perfection or invulnerability of procedure is not the applicable standard—the test for obtaining a reduction in penalty is whether the athlete acted without significant fault or negligence')

72. *The Panel suggests that the objective element should be foremost in determining into which of the three relevant categories a particular case falls.*

73. *The subjective element can then be used to move a particular athlete up or down within that category."*

40 UKAD submitted that for the same reasons as set out at paragraph 35 above the Boxer must carry a very significant degree of objective fault. As to the Boxer's subjective level of fault, a lack of formal anti-doping education might be relevant but otherwise he has provided no evidence of any impairment or mitigating circumstances that assists the Tribunal in considering his Fault to be light or normal level. Consequently UKAD submitted that the Boxer's subjective degree of fault is also very significant.

41 UKAD concluded with *"put simply Mr Molina failed to perform any checks in relation to his use of Tribedoce DX. In the absence of any checks or efforts to ensure that he fought clean, UKAD submits that (even if the door to No Significant Fault or Negligence is opened), Mr Molina's culpability remains at the top of the range"*.

42 UKAD therefore submitted that taking all of the above into account that the degree of fault is very significant and therefore ADR 10.4 and 10.5.1(a) should not assist the Boxer in reducing the level of sanction in this case.

### **Respondent's Submissions**

43 There were no formal submissions received from the Respondent. However, the Tribunal did take note of the various emails that he and his representative, Mr Clark, exchanged with UKAD and Sport Resolutions, as well as the contents of the interview the Boxer gave to UKAD on 5 September 2017.

## The Tribunal's findings

44 The Tribunal notes that certain matters are not in dispute. There seems no doubt that the Boxer gave a positive test on 11 December 2016, after his heavy weight title bout against Anthony Joshua. The Prohibited Substance was Dexamethasone, a Specified Substance which is prohibited In-Competition, depending on how it was administered. The presence of such a Prohibited Substance, by such a route, constitutes an ADRV. There have been no issues raised regarding the testing procedure and there was no TUE.

45 As such, the issues for the Tribunal are:

45.1 Is ADR Article 2.1 proven by UKAD?

45.2 If so, was the ADRV "intentional"? And, in any event, what is the starting sanction?

45.3 Should any reduction from that be made in accordance with ADR Articles 10.4 or 10.5?

### *ADR Article 2.1*

46 The Tribunal notes that UKAD submitted that it must prove in accordance with ADR Article 2.1, that:

46.1 a Prohibited Substance,

46.2 without a TUE,

46.3 was present in the Sample,

46.4 obtained from the Boxer,

46.5 that was administered by a Prohibited route.

47 The Tribunal notes that the first four limbs of the above were not in dispute and further notes the evidence produced by UKAD in relation to the fifth limb, namely the Boxer's own testimony. During his interview, he admitted that one of his team

injected him with "Tribedoce DX", a vitamin B12 supplement, in his "rear". Whilst there was no witness evidence from his colleague, nor the pack of "Tribedoce DX" from where the vile allegedly came etc, nor was it mentioned on his Doping Control Form that he took "Tribedoce DX", the Tribunal does have a photo of that pack and can see the list of ingredients (which, whilst in Spanish, include "Dexametasona" as an ingredient) and can see that this supplement was designed to be injected, the Tribunal are comfortably satisfied that an intramuscular injection of the supplement by his colleague was the likely route of entry of the Prohibited Substance and therefore this was by a Prohibited route.

48 As such, the Tribunal are satisfied that ADR Article 2.1 has been made out by UKAD and that the Boxer committed this ADRV.

#### *Starting Sanction*

49 The Tribunal notes that, pursuant to ADR Article 10.2, the starting point is a period of Ineligibility of two years, unless, as the Prohibited Substance in the matter at hand is a Specified Substance, UKAD can (in accordance with Article 10.2.1(b)) establish that the ADRV was "intentional", then the starting sanction would be a four year period of Ineligibility.

50 Here UKAD have decided not to advance a positive case (i.e. to try to produce evidence of cheating) and have provided the Tribunal with its submissions that it did not believe that the Boxer had intentionally cheated. However, UKAD then submitted that it is for the Tribunal to decide if it is satisfied that the Boxer did not act intentionally in ingesting Dexamethasone.

51 The Tribunal finds this a curious approach for UKAD to take. It is clear from the ADR that it is two years unless "UKAD can establish that the ADRV was intentional." The role of the Tribunal should be to determine if UKAD has or has not met their burden of proof in this regard. If it does not attempt to do this, then is it the Tribunal's role to *ex officio* stand in UKAD's shoes and look to establish intention?

52 The Tribunal noted that the NADP faced a similar approach in *UKAD v Cleary*<sup>10</sup> where UKAD did not challenge Mr Cleary's submissions that he did not take cocaine intentionally. However, in that case, the burden was upon the athlete to convince the NADP that he had not taken this Non-Specified Substance intentionally, so that panel had the normal role of making a determination on what submissions and evidence were before it. In the case at hand, UKAD have determined not to take issue with the intention of the Boxer and the Tribunal does not see how it has the ability to do so itself, so it determines that the starting sanction is a two-year period of Ineligibility.

*ADR Articles 10.4 or 10.5*

53 As set out above, the Boxer has not filed any legal submissions in the matter at hand, but he has stated that he feels a two-year ban is harsh and should be reduced. Whilst he hasn't expressly referred to ADR Articles 10.4 or 10.5, these would be the only routes available to him for any reduction (as he has not offered any appropriate assistance). The Tribunal notes that UKAD have made submissions and provided a number of relevant authorities in relation to ADR Articles 10.4 or 10.5, and, accordingly, the Tribunal has determined to consider these provisions too.

54 The Tribunal determines that ADR Article 10.4, relating to No Fault or Negligence, is not applicable to the case at hand. From the commentary to the WADA Code it is clear that this Article is applicable when there's been some type of spiking or sabotage. There is no evidence of this here, indeed, it appears that the Prohibited Substance was in the "Tribedoce DX" as a listed ingredient. As UKAD submitted, the Boxer would have to show that he took every step available to him to avoid the violation. He appears to have taken no steps at all.

55 The Tribunal turns to ADR Article 10.5, to consider No Significant Fault or Negligence. The Tribunal notes that for this to be engaged, it need to be satisfied with the route of entry of the Prohibited Substance. The Tribunal has already

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<sup>10</sup> UKAD v Shaun Cleary SR/NADP/470/2015

accepted above that it was administered by intramuscular injection and is satisfied that it has come from the "Tribedoce DX".

56 Considering his level of Fault, UKAD has helpfully referred the Tribunal to the Cilic case at CAS, which sets out the range of sanctions for when a panel may be considering a reduction for No Significant fault or Negligence, and if so, how far.

57 The Tribunal notes that the Boxer said that he had no formal anti-doping education, other than from his gym, where he had been given a PowerPoint or two; however, the Tribunal notes UKAD's position that he is not a minor, rather an experienced boxer, who has been tested before and who was fighting in a world title match. He has a duty under ADR Article 1.3.1, yet he allowed his brother (and the Tribunal accepts that he is responsible for his brother's actions) to buy a new type of B12 from what he normally uses, he did not read the packaging, he does not compare any of the listed ingredients with any website or the WADA Prohibited List, he just seemed happy to let his team inject him with the supplement. Finally, there would have been doctors at the Event, but he did not consult with any.

58 The Tribunal determines that the Boxer simply ignored all risks, failed to act with the utmost caution and shows "a significant degree of or considerable fault" – which would put him in the 16 to 24 month Cilic bracket. Whilst the standard sanction would be 20 months, in keeping with the Cilic case, the Tribunal does not classify this as a standard case in that category. An experienced athlete wanting to take vitamin B12 could take it in a number of ways. He chose to take it through an intermuscular injection, from a new source bought in Mexico and made absolutely no checks whatsoever as to what was in that supplement. A basic check would have revealed the Prohibited Substance.

59 Unfortunately, the Boxer has chosen not to actively participate in this procedure. Apart from the odd email, after his interview, he has failed to provide the Tribunal with any legal submissions, evidence or relevant case law. The Tribunal has no material before it in order to consider dropping him below the standard two years.

60 As such, in accordance with the ADR, the Tribunal must issue the standard sanction of a two-year period of Ineligibility on the Boxer.



## Conclusion

61 For the reasons set out above, the Tribunal makes the following decision:

61.1 an ADRV contrary to ADR Article 2.1 has been established;

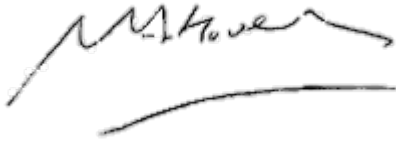
61.2 the standard sanction of two years Ineligibility shall apply to Mr Molina;

61.3 in accordance with ADR Article 10.11.3, Mr Molina is entitled to credit for the period of Provisional Suspension, and so the period of Ineligibility shall be deemed to have commenced on 28 October 2017 and shall therefore end at midnight on 27 October 2019;

62 Mr Molina's status during Ineligibility is outlined in ADR Article 10.12. For the avoidance of doubt, this Ineligibility applies and extends to Competitions or Events organised, convened, authorised or recognised by WADA Code Signatories, any professional league or any international or national-level Event organisation and any club or other body that is a member of, or affiliated to, or licenced by, a Signatory or a Signatory's member organisation throughout the World.

63 Pursuant to ADR Article 10.8, any result obtained by Mr Molina in any competitions taking place between the date of Sample Collection and commencement of his Provisional Suspension shall be Disqualified with all resulting Consequences, including forfeiture of any medal, title, points and prizes; and

64 In accordance with ADR Article 13.4, Mr Molina has a right of appeal to the NADP Appeal Tribunal. In accordance with Article 13.5 of the Procedural Rules any party who wishes to appeal must lodge a Notice of Appeal with the NADP Secretariat within 21 days of receipt of this decision.

A handwritten signature in black ink, appearing to read 'Mark Hovell', with a long horizontal flourish underneath.

**Mark Hovell, Chairman**

On behalf of the Tribunal

27 April 2018

