

**IN THE MATTER OF PROCEEDINGS BROUGHT  
UNDER THE ANTI-DOPING RULES OF  
MOTORSPORT UK**

*Before:*

*Mr Jeremy Summers (Chair)*

*Dr Terry Crystal*

*Ms Michelle Duncan*

**BETWEEN:**

**UK ANTI-DOPING**

*Anti-Doping Organisation*

**and**

**PETER NEWMAN**

*Respondent*

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**DECISION OF THE ANTI-DOPING TRIBUNAL**

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## Introduction

1. This is the unanimous decision of an Anti-Doping Tribunal (the '**Tribunal**') convened under Article 5.1 of the 2019 Procedural Rules of the National Anti-Doping Panel (the '**Procedural Rules**') and Article 8.1 of the UK Anti-Doping Rules dated 1 January 2015 (the '**ADR**') to determine an Anti-Doping Rule Violation ('**ADRV**') alleged against Mr Peter Newman (the '**Athlete**').
2. The alleged ADRV is a violation of ADR Article 2.1 (Presence of a Prohibited Substance in the Athlete's Sample).
3. The Athlete was charged by letter issued by UKAD on 14 November 2018. The Tribunal was appointed by the President of the National Anti-Doping Panel (the '**NADP**').
4. At a hearing on 28 June 2019, held at the offices of Sport Resolutions, the Athlete was unrepresented and UKAD appeared through Mr Phillip Law. The Tribunal records its gratitude to the parties for their assistance in this matter.
5. Additionally, present at the hearing were:
  - Mr Paul Newman – Athlete's father.
  - Mr David Tyson – witness (by telephone)
  
  - Ms Anna Thomas – NADP Secretariat.
  - Mr Thomas Sables – Trainee Solicitor, Osborne Clarke LLP, observer.
  
  - Mr Phillip Law – UKAD, Solicitor.
  - Mr James Laing – UKAD, Paralegal.
  - Mr Daniel Cloke – UKAD, observer.
  - Mr Isabell Frith – UKAD, observer.
  
  - Mr Jamie Champkin - Motorsport UK, observer.
6. This is the reasoned decision of the Tribunal.

## Procedural History

7. A telephone directions hearing was held on 16 May 2019. At that time Mr Law again appeared for UKAD. The Athlete was not in attendance, but was represented by Ms Gemma White of counsel. With the agreement of the parties the following directions (amongst others) were issued:

*3.1. Any further evidence on behalf of the Athlete to be served upon UKAD, and copied to the NADP Secretariat, by 4 pm on Friday 31 May 2019.*

*3.2. Written submissions by way of a skeleton argument, to include citations for any principal authorities to be relied upon on behalf of the Athlete to be served upon UKAD, and copied to the NADP Secretariat, by 2 pm on Friday 7 June 2019.*

*3.3. Written submissions by way of skeleton argument, to include citations for any principle authorities to be relied upon on behalf of UKAD to be served upon the Athlete, and copied to the NADP Secretariat, by 2 pm on Friday 14 June 2019*

8. The Athlete failed to comply with direction 3.1 or 3.2 or to communicate further with the NADP. The Chair accordingly requested of the NADP Secretariat that further contact was made with Ms White.
9. By email dated 07 June 2019, Ms White provided the following update to the NADP:

*I have not heard anything from Mr Newman. As such I cannot comply with the direction made to prepare written submissions on his behalf. I am sorry to say I am going to have to withdraw from assisting any further; I simply cannot make written submissions or appear on an athlete's behalf in a hearing with no instructions or indeed confirmation from him that he in fact wishes me to represent him in the hearing.*

*I will advise Mr Newman of the same today using the email address that was provided to me. I am sorry I could not be of any further assistance.*

10. On 10 June 2019, the Chair received the following application submitted on behalf of UKAD:

*In the absence of any disclosure by Mr Newman of the material sought by UKAD, UKAD now wishes to make application pursuant to Article 7.5 of the NADP Rules 2019.*

*In particular, UKAD seek an order under NADP Rule 7.5.5 requiring Mr Newman to disclose documentation relating to his travel to Holland shortly before his Sample collection.*

*To assist, the Chair will note that:*

- 1. Mr Newman was charged on 14 November 2018 with an ADRV (ADR Article 2.1 – Presence of carboxy-THC, a metabolite of cannabis)*
- 2. As part of correspondence, on 13 February 2019, Mr Newman indicated that his case was put in the following way:*

*“Mr Newman's instructions are that he had been at a stag party in Amsterdam and attended cafes where he consumed cannabis (joints and cake). As I am sure you are aware cannabis whilst appearing on the WADA list is not illegal in that country. He cannot be exact as to how much he consumed but the cakes and joints were purchased in these cafes. The test which gave rise to the ADRV occurred 3 days after his return from this trip.”*

- 3. By email on the same day, UKAD requested further information, in particular, to confirm, with documentation, his travel arrangements.*

- 4. On 20 February 2019, Mr Newman's response was:*

*“Explanation below. I hope this is sufficient information for you:*

*Travelled on 18th sept return 27th. Driven by uncle and therefore not in possession of travel documents.*

*Consumed cannabis (approx 3 joints) each day there and a few cakes. Last consumed on last day there - 27th. Did not have any once back. Test was 30th.”*

5. *On the same date, UKAD requested that further effort be made to obtain the travel documentation or any other documentation that could prove that Mr Newman was in Amsterdam at the time he suggested.*
6. *On 21 February 2019, UKAD received a call from Mr Newman Snr indicating that all travel documentation was retained by his brother-in-law, who would not disclose it because he feared a 'back lash'.*

*To date, no travel documentation has been served. Mr Newman was ordered to serve any evidence by 31 May 2019. He has not served any additional material at the time of drafting.*

*NADP Rule 7.5 states that:*

*7.5 The Tribunal shall have all powers necessary for, and incidental to, the discharge of its responsibilities under the NADP Rules, including (without limitation) the power, whether on the application of the party or of its own motion:*

*7.5.4 to conduct such enquiries as appear necessary or expedient in order to ascertain the facts;*

*7.5.5 to order any party to make any property, document or other thing in its possession or under its control available for inspection by the Tribunal any other party;*

*UKAD seek that an order for disclosure to be made in relation to the travel documentation that must exist (or existed) in relation to the purported trip to Amsterdam. It is simply inconceivable that an individual could travel (legitimately) between nation states without a documentary trail being made. The documents were, at last report, in the possession of a close relative who appears to be involved in sport.*

*The documentation requested goes to the heart of Mr Newman's defence, which is in essence, that he was in Amsterdam consuming cannabis lawfully for an extended period of time prior to competition. The documents are also easily obtained if they are not already in the possession of Mr Newman.*

*In the alternative, UKAD seek the disclosure of the name and contact details of the relative in possession of the travel documentation. This information will allow UKAD to approach the individual directly for the documentation, and, if necessary, to ascertain whether an ADRV pursuant to ADR Article 2.5 (Tampering) has been committed by that individual or anybody else involved in this case.*

11. By email dated 11 June 2019, the Chair issued the following further direction:

*Further to an application submitted by UKAD dated 3 June 2019 (sent to the Chairman on 10 June 2019) the following order is made:*

- 1. The Athlete is to make available documentation (whether in hard or electronic form, evidencing his travel to Amsterdam between 18-27 September 2018. Such evidence is to be served upon UKAD, and copied to the NADP Secretariat, by not later than 4 pm on Tuesday 18 June 2019.*
- 2. The Athlete is specifically advised that a failure to comply with this order, may be taken account of by the Tribunal when considering sanction, and may adversely affect the Athlete's position.*

12. By email dated 14 June 2019, UKAD served written submissions in compliance with direction 3.3 above.

13. On 19 June 2019, the Athlete sent the following email to the NADP:

*I can't supply any hard evidence that I was in Amsterdam on the dates requested as it was a last minute decision to go and was not on any advance passenger list I just got a lift in the race truck and got on the ferry with them as nobody ever checks who's inside and that was also my base for my short stay in Amsterdam. I would also like to submit The 2018 msa year book The 2018 msa kart race year book and the 2018 race license application form ,as I will refer to them at arbitration. [sic] I would like to say I do not dispute any of ukad,s facts and findings and I would also like to say that I have no legal points either. I am looking for some leniency from the arbitration council as I feel our sport is deferent In many ways and is more about the level of the equipment used than the person using it and we deliberately cheat the maximum penalty is exclusion from that meeting. if you need anymore*

*information on the points I would like to refer to or the statement I would like to read out please get in touch. [sic]*

14. Having considered that information, by email dated 19 June 2019, the Chair asked that the Athlete be written to by the NADP Secretariat in the following terms:

*In light of the position advanced by UKAD in its written submissions, in the first instance I believe that Mr Newman should be advised that it [sic] his interests are likely to be best served by urgently contacting Ms White to provide necessary instructions and receive advice accordingly.*

*If that necessitates a request for the postponement of the hearing, any such application can be considered in due course.*

15. The NADP had no further contact from the Athlete until a telephone call was received from the Athlete's father on 24 June 2019, asking for confirmation of the hearing venue.
16. The Tribunal remained concerned that the Athlete might not fully understand the case being advanced against him, and the potential consequences that might follow. At the Tribunal's request, the Athlete was therefore written to by email dated 24 June 2019 as follows:

*The Tribunal asks that the Athlete confirms the following points by email to be sent [sic] the NADP by 4pm on Tuesday, 25 June 2019:*

- 1. That he is aware that UKAD submit that a 4 year period of prohibition should be imposed.*
- 2. That he has had the opportunity to submit evidence in advance of the hearing to establish that he was in Holland at the time he claims to have been there.*
- 3. That he does not want to be legally represented at the hearing on 28 June 2019.*
- 4. That he does not want to seek an adjournment of the hearing.*

17. By email dated 25 June 2019, the Athlete replied to the NADP as follows:

*Yes I am aware ukad now seek a 4 year ban. And I don't have any hard evidence of my trip to Amsterdam. I do not want to be legal represented and yes I still want the hearing to proceed this Friday*

18. Given that the Athlete intended to appear unrepresented, the Chair asked that the following email was sent to the Athlete on 26 June 2019:

*Dear Mr Newman,*

*I write as the Chair to the NADP Tribunal that will hear your case on Friday.*

*As you know, the hearing will commence at 10.30 am.*

*If you would like to raise any preliminary issues, for example a question about the procedure, before the hearing formally starts you will have the opportunity to do so.*

*As to the hearing itself, although these are just estimates which may be shorter or longer on the day, the following broad timings might be likely:*

- *10.30-11: UKAD will the make a short opening statement explaining the issues for the Tribunal to consider. You are also able to make a similar opening address if you want.*
- *11.30-12.30: this time can be used for you, if you want to:*
  - 1) *to give evidence yourself and be asked questions by UKAD and/or the Tribunal; and/or*
  - 2) *to ask other witnesses to give evidence on your behalf; and/or*
  - 3) *to submit any documents that you wish the Tribunal to consider.*

*You do not have to give evidence yourself or ask anyone to give evidence for you unless you want to, but it would help the Tribunal to know what the position is in this regard. Perhaps you could please send an email to Ms Thomas at NADP to let the parties know whether you intend to call any oral evidence – whether from yourself or anyone else.*

- *12.30-12.45: Closing submissions from UKAD*



- 12.45 -1: Closing submissions from you.

*You can make submissions even if you do not give evidence, but the submissions may carry less weight as UKAD will not have been able to cross-examine you about the matters you want to put forward, and similarly the Tribunal will have had a limited opportunity to ask any questions it thinks necessary to fully understand your position.*

*As I understand that you will not be legally represented at the hearing, the Tribunal will endeavour to assist you as to the process if it can, but it is not able to advise you about your case.*

## **Jurisdiction**

19. Jurisdiction was not challenged, but for completeness the Athlete is a competitive kart driver.
20. Motorsport UK ('**MUK**') (formerly the Royal Automobile Club Motor Sports Association ('**MSA**')) is the National Governing Body ('**NGB**') for motorsport in England, and has adopted the ADR as its anti-doping rules. The ADR apply to all members of MUK who, by virtue of that membership, agree to be bound by and to comply with them.
21. The Athlete was at all material times a registered member of MUK.
22. ADR Article 1.2.1 provides that:
  - 1.2.1 These Rules shall apply to:
    - (a) *all Athletes and Athlete Support Personnel who are members of the NGB and/or of member of affiliate organisations or licensees of the NGB (including any clubs, teams, associations or leagues);*
    - (b) *all Athletes and Athlete Support Personnel participating in such capacity in Events, Competitions and other activities organised, convened, authorised or recognised by the NGB or any of its member or affiliate organisations or licensees (including any clubs, teams, associations or leagues), wherever held;*

23. Pursuant to ADR Article 1.2.1(a) and ADR Article 1.2.1(b), the Athlete was subject to and bound to comply with the ADR at all material times.
24. UKAD submitted a request for arbitration to the NADP by letter dated 3 May 2019.

## **The Facts**

25. On 30 September 2018, UKAD Doping Control Personnel attended the final round of the 2018 Tuto Money Super One British Karting Championship at the PF International Kart Circuit in Grantham, Lincolnshire. A Doping Control Officer ('**DCO**') collected a urine Sample from the Athlete (In-Competition). Assisted by the DCO, the Athlete split the urine Sample into two separate bottles which were given reference numbers A1146528 (the '**A Sample**') and B1146528 (the '**B Sample**'). Both Samples were sealed.
26. The Samples were transported to the World Anti-Doping Agency ('**WADA**') accredited laboratory in London, 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 ('**ISL**'). The analysis returned an Adverse Analytical Finding ('**AAF**') for carboxy-THC.
27. Cannabis (and its metabolites) is listed under section S8 (Cannabinoids) of the WADA 2018 Prohibited List. It is a Specified Substance that is prohibited In-Competition only.
28. The Athlete had no Therapeutic Use Exemption in place. UKAD therefore charged the Athlete with an ADRV pursuant to ADR Article 2.1 by letter dated 14 November 2018.
29. On 18 January 2019, the Athlete formally accepted the ADRV and indicated that sanction was in dispute.

## **The Charge**

30. The Athlete was charged with committing an ADRV in respect of the presence of carboxy-THC, a metabolite of cannabis, in a Sample provided by the Athlete on 30 September numbered A1146528, in violation of ADR Article 2.1.

31. ADR Article 2.1 provides as follows:

*2.1 Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample unless the Athlete establishes that the presence is consistent with a TUE granted in accordance with Article 4.*

32. The Athlete confirmed to the Tribunal that he admitted the charge and thus the ADRV.

## **Relevant Regulations**

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

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

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

*10.2.1 The period of Ineligibility shall be four years where:*

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

*(b) The Anti-Doping Rule Violation involves a Specified Substance and UKAD can establish that the Anti-Doping Rule Violation was intentional.*

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

*10.2.3 As used in Articles 10.2 and 10.3, the term "intentional" is meant to identify those Athletes or other Persons who cheat. The term, therefore, requires that the Athlete or other Person engaged in conduct which he or she knew constituted an Anti-Doping Rule Violation or knew*

*that there was a significant risk that the conduct might constitute or result in an Anti-Doping Rule Violation and manifestly disregarded that risk. An Anti-Doping Rule Violation resulting from an Adverse Analytical Finding for a substance which is only prohibited In-Competition shall be rebuttably presumed to be not "intentional" if the substance is a Specified Substance and the Athlete can establish that the Prohibited Substance was Used Out-of-Competition. An Anti-Doping Rule Violation resulting from an Adverse Analytical Finding for a substance which is only prohibited In-Competition shall not be considered "intentional" if the substance is not a Specified Substance and the Athlete can establish that the Prohibited Substance was Used Out-of-Competition in a context unrelated to sport performance.*

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

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

*10.5.1 Reduction of Sanctions for Specified Substances or Contaminated Products for Anti-Doping Rule Violations under Article 2.1, 2.2 or 2.6:*

*(a) Specified Substances*

*Where the Anti-Doping Rule Violation involves a Specified Substance, and the Athlete or other Person can establish No Significant Fault or Negligence, then the period of Ineligibility shall be, at a minimum, a reprimand and no period of Ineligibility, and at a maximum, two years of Ineligibility, depending on the Athlete's or other Person's degree of Fault.*

*[(b) Contaminated Products]*

*10.5.2 Application of No Significant Fault or Negligence beyond the Application of Article 10.5.1:*

*In an individual case where Article 10.5.1 is not applicable, if an Athlete or other Person establishes that he/she bears No Significant Fault or Negligence, then (subject to further reduction or elimination as*

*provided in Article 10.6) the otherwise applicable period of Ineligibility may be reduced based on the Athlete's or other Person's degree of Fault, but the reduced period of Ineligibility may not be less than one-half of the period of Ineligibility otherwise applicable. If the otherwise applicable period of Ineligibility is a lifetime, the reduced period under this Article may be no less than eight years.*

## **Evidence**

35. Although the facts were not materially in issue, Mr Law was requested to review the evidence for the benefit of the record and to further ensure that the Athlete understood what was being said against him.
36. Mr Law rehearsed the facts as set out above and referred the Tribunal to a number of specific documents. He drew attention to the Doping Control Form<sup>1</sup> and the declaration made by the Athlete, at box 25, indicating that he had taken paracetamol and cannabis within the last 7 days.
37. The sample provided by the Athlete had revealed the presence of carboxy-THC above the permitted threshold<sup>2</sup>.
38. Mr Law then drew attention to a number of emails<sup>3</sup>, that it was believed had been sent by the Athlete, and which sought to explain the AAF by reference to the consumption of recreational cannabis whilst on a trip to Amsterdam. Mr Law nevertheless noted inconsistencies in the detail set out in those emails.
39. Mr Law lastly took the Tribunal to scientific evidence from Kim Wolff MBE of King's College London<sup>4</sup>, which confirmed that the carboxy-THC concentration found in the Athlete's urine could have resulted from the activity described by the Athlete in his emails, but that ultimately it was not possible to establish conclusively whether or not the Athlete had consumed cannabis within the prescribed 12 hour competition window.

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<sup>1</sup> Page 41 Bundle.

<sup>2</sup> Page 96 Bundle. The concentration found was 488ng/mL as against the threshold of 150 ng/mL.

<sup>3</sup> Pages 8, 13 and 18 Bundle.

<sup>4</sup> Pages 98 and 103 Bundle.

40. The Athlete was then asked if he wished to submit any evidence, and the Tribunal discussed with him the possibility that he might be able to establish his presence in Amsterdam from a number of sources, including receipts and telephone records. The Athlete initially indicated he did not have any evidence that he could adduce, but instead wished to read out a pre-prepared statement, which he then did.
41. This asserted that he was not a frequent user (of cannabis), explained why he had been uneasy with the testing process, asserted that he had not appreciated how long cannabis would have remained in his system but accepted that he had been "*well over the acceptable level for any sport*". He realised that he would have to accept a ban, but asked for leniency.
42. Mr Paul Newman, the Athlete's father then appeared to take over the case on behalf of his son.
43. In response to Mr Law having noted inconsistencies in the emails sent to UKAD explaining the circumstances behind the AAF, he stated that the first email, dated 18 January 2019 (page 8 of the Bundle), had in fact been sent by him without any involvement from the Athlete. Mr Law fairly noted that the email had come from Mr Newman's email address.
44. The Tribunal asked Mr Newman if he would like to give evidence, stressing that this was entirely his decision but indicating that greater weight might be likely to be attached to the matters he wished to put forward if he were to permit himself to be cross-examined.
45. Mr Newman was willing to give evidence and moved to the witness table.
46. He described the content of an email of 18 January 2019 as a "flippant remark" through which he had hoped to engender a conversation with UKAD. He had now properly appreciated the seriousness of the position, which he had not at the time the email was sent.
47. He rejected a suggestion put to him in cross-examination, that he had been formally responding to the Notice of Charge dated 14 November 2018, and that the detail he had given suggested that the Athlete's subsequent account that he had been in Amsterdam was false.
48. Mr Newman gave evidence for quite some time and not all his evidence was of direct relevance to the case. However, during the course of his testimony he said that the Athlete

had photographs from his trip in Amsterdam. He further stated he was willing to try and contact his brother-in-law, eventually named as Mr David Tyson, who had organised the trip, to give evidence by telephone.

49. Mr Newman also indicated during his evidence that the Athlete had only joined the trip to Amsterdam at the very last minute because someone else had dropped out.
50. At the suggestion of the Tribunal, and with the consent of Mr Law, arrangements were made for the Athlete to email the photographs to Ms Thomas at the NADP and for an attempt to be made to contact Mr Tyson. It was agreed that Ms Thomas would try to contact Mr Tyson, so that there could be no suggestion of his having been spoken to by the Athlete or Mr Newman prior to his giving evidence.
51. An attempt was also made, again at the suggestion of the Tribunal, to contact an individual called "Ben" who it was said had taken the photographs.
52. Four photographs were subsequently admitted in evidence and marked 'PN1-4'. These were date stamped between 24 and 26 September 2019, being the period during which the Athlete claimed to have been in Amsterdam.
53. PN1 showed the Athlete although it could not be conclusively determined that the picture had been taken in Amsterdam. Two other pictures, although not showing the Athlete, had clearly been taken in Amsterdam. These showed individuals the Athlete identified as "Trevor" and "Wesley" who he had not known prior to the trip.
54. It was not possible to contact "Ben" but Mr Tyson was able to give evidence by phone.
55. Mr Tyson confirmed that he had helped organise the trip to Amsterdam, which he described as a boys only journey, although not a stag trip in the full sense. The Athlete had joined at the very last minute due to a drop out, and had not had to pay for travel or accommodation. The Athlete had been there throughout the trip, and Mr Tyson had been aware that the Athlete had been taking cannabis whilst there.
56. He could not now recall the precise dates, but the trip had been at the end of September,

and he remembered that it was shortly before or after a particular race meeting.<sup>5</sup>

57. Mr Tyson confirmed that Trevor and Wesley had been in the party.

## **Submissions**

58. The Tribunal had the benefit of detailed written submissions from UKAD in advance of the hearing.

59. Mr Law noted that the position had shifted in consequence of the evidence adduced during the course of the hearing. He was, however, not in a position to concede intentionality, although noted that he anticipated that the Tribunal might wish to focus more closely on the issue of Fault.

60. In response to the Athlete's concern in this regard, he made it clear that UKAD was not asserting that the Athlete was a frequent user of cannabis.

61. Mr Law fairly referred the Tribunal to an extract from a NADP decision handed down recently in which the tribunal in that instance had questioned whether UKAD was required to prove its case to the comfortable satisfaction of the Tribunal, and had suggested that the correct standard of proof to be met was in fact the balance of probabilities, being a lower threshold than comfortable satisfaction. Notwithstanding that decision, which was still to be published, Mr Law was content to seek to prove his case to the comfortable satisfaction of the Tribunal, which would be of benefit to the Athlete.

62. He submitted that the Tribunal might find that the evidence of Mr Newman was not the most helpful, although he accepted that Mr Tyson had been a helpful witness who had not been contradicted. Ultimately however, there was still no documentary evidence to show that the Athlete had been in Amsterdam as claimed.

63. Turning to Fault, Mr Law noted that burden of proof now lay on the Athlete.

64. He referred to the comment in the WADA Code, with respect to cannabinoids. In his

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<sup>5</sup> Mr Law later advised the Tribunal Mr Champkin of MUK had verified the race referred to by Mr Tyson, which corroborated the time period given by Mr Tyson.



submission the fact that use of the prohibited substance did not arise in relation to sporting performance, did not automatically correlate to a reduction in the period of prohibition from the two year period prescribed by the ADR.

65. UKAD was concerned that the Athlete had been driving a motor vehicle, with a significant amount of cannabis in his system. In this respect he noted that the MSA licence application form (which the Athlete would have signed) makes reference to the World Anti-Doping Agency regulations and contains a specific undertaking not use drugs or to compete whilst under the influence of alcohol or drugs.
66. In Mr Law's submission, there could not be any doubt that the Athlete knew this, and knew that he should not have been competing.
67. UKAD did not criticise the Athlete for not wanting to take the test. He clearly knew that he would have had cannabis in his system.
68. The declaration on the Doping Control Form relates to supplements or prescriptions drugs, not illicit substances. The fact that the Athlete had declared cannabis, in Mr Law's submission, showed that the Athlete was aware that, if cannabis was found in his system, an ADRV would result.
69. Mr Law contended that the Athlete's declaration, of having taken cannabis, was unnecessary. The Athlete knew he was under an obligation, which he had appeared to accept, to have absented himself from the competition.
70. The Athlete's pre-prepared statement acknowledged that there was a risk. If he had been aware of that risk and taken it anyway, it was, in Mr Law's view, hard to see how the Athlete's Fault could in any way be reduced.
71. Whilst the Athlete might not have had anti-doping training, he was aware of the rules. There was no reason to assume he wasn't responsible for his actions, and no reason to think that he wasn't aware of the rules. However, the Athlete had continued to drive, and drive in a racing capacity.
72. Mr Law noted the possibility that cannabis could reduce fear, and so potentially be performance enhancing. However the anti-doping regime was not just about performance enhancement, but also served to protect athletes and drivers.

73. This, in Mr Law's submission, was an aggravating feature. The Athlete had been willing to drive at high speeds, with other competitors, whilst having cannabis in his system. His level of Fault should therefore be aggravated quite substantially.
74. In Mr Law's view, the level of Fault did not suggest that any reduction from the period of ineligibility of two years was warranted.
75. If the Athlete had appreciated the risk and disregarded it, that may independently amount to a Fault.
76. Regardless of Amsterdam issue, Mr Law submitted that a further aspect arose in relation to intention. The second limb of the test prescribed by ADR 10.2, stipulates that an ADRV will be committed where an athlete knew that there was a significant risk that the conduct might constitute or result in an ADRV and had manifestly disregarded that risk.
77. In Mr Law's view, this could potentially apply to the Athlete, and the point provided justification for UKAD not having abandoned its submission in relation to intentionality.
78. In this respect, Mr Law referred the Tribunal to case of *Prestney*<sup>6</sup> and the obligation (referred to at paragraph 31) on any athlete, even if not elite, to remove themselves from competition if there is any doubt as to the possibility of committing an ADRV.
79. Mr Law also drew the Tribunal's attention to the CAS decision in *Zujikerbuijk*<sup>7</sup>. In that case the athlete had forgotten he had consumed cocaine (which the Athlete had not). However, the athlete had known he had consumed the drug days before, and continued competing without thinking. Under those circumstances, he willingly and actively disregarded the risk and was found to have committed an ADRV.
80. Before making his closing submissions the Athlete was helpfully referred by Mr Law to the definitions of *Fault* and *No Significant Fault or Negligence* found in the ADR.
81. Having considered the position in private, the Athlete confirmed that he had understood he had consumed "*quite a fair bit*" (of cannabis) but had thought the position was the same as it was for alcohol, and that therefore his system would have been clear after 3

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<sup>6</sup> Sports Tribunal of New Zealand: ST 09/11

<sup>7</sup> CAS 2009/A/2012

days.

82. He had felt normal before the race, and had not perceived any reduction in his ability to react. Had he done so, he would not have raced.
83. There was no facility to test for drugs or alcohol at the race track that would have enabled him to have checked the position.
84. He had never previously consumed cannabis prior to the trip to Amsterdam.

### **Decision on the ADRV**

85. The Tribunal reminded itself of the relevant ADR applying in this matter and of the burden placed on both parties. It gave careful consideration and scrutiny to all the evidence adduced and the submissions from both parties.
86. The ADRV itself was not in issue, the Athlete having accepted the same. The Tribunal was accordingly required only to determine the question of sanction.

### Intentionality

87. The Tribunal first considered the issue of intentionality as prescribed by ADR 10.2.
88. Whilst there was no documentary evidence showing the Athlete's presence in Amsterdam in the period prior to his having been tested, there was (ultimately) evidence available as to this fact. The photographs at PN1-4 established that there had been a trip to Amsterdam, and on their face made it more likely than not that the athlete had been on that trip.
89. The photographs were in any event corroborated by the oral testimony from Mr Tyson, who the Tribunal found to have been a credible witness and, as Mr Law had agreed, had not been contradicted.
90. By an email dated 20 March 2019<sup>8</sup>, UKAD had advised the Athlete that it was willing to accept that the Athlete had not acted intentionally and that therefore the correct period of

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<sup>8</sup> Page 19 Bundle.

Ineligibility to be imposed was two years.

91. That position had understandably and fairly been reversed when the Athlete indicated he wished to challenge the period of Ineligibility and then failed to comply with the Directions issued by the Tribunal requiring him to produce evidence establishing his presence on the trip to Amsterdam.
92. It was a matter of some surprise to the Tribunal that the evidence adduced during the course of the hearing had not been made available previously. Plainly it could and should have been. It appeared to the Tribunal that those assisting the Athlete, with the specific exception of Ms White, had in fact not helped the Athlete's position, but rather had put him in potentially a far worse position than would otherwise have been the case.
93. However, having regard to the evidence that became available during the hearing, together with the evidence of Ms Wolff, the Tribunal made the following findings:
- 1) The Athlete had been in Amsterdam for a number of days prior to his having been tested on 30 September 2018;
  - 2) Whilst in Amsterdam he had consumed cannabis on a daily basis;
  - 3) It was likely that the consumption of cannabis whilst in Amsterdam had led to the AAF, and thus the ADRV.
94. In light of those findings, the Tribunal was not able to conclude that UKAD had been able to discharge the required burden of proof. Specifically, UKAD had not established, to the comfortable satisfaction of the Tribunal that the Athlete had acted intentionally for the purposes of ADR 10.2.

#### No Significant Fault or Negligence

95. The Tribunal then proceeded to consider the submissions made on behalf of the Athlete that the period of Ineligibility should be further reduced by reason of the Athlete having acted with No Significant Fault or Negligence<sup>9</sup>.

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<sup>9</sup> There was no formal submission in this regard, the Athlete not being legally represented. The Tribunal therefore implied that submission. On the facts, there could have been no sensible submission that the Athlete had acted with No Fault or Negligence.

96. In so doing it noted that the burden of proof now rested with the Athlete to satisfy the Tribunal that any further reduction was justified. In that respect the Tribunal noted the relevant definition provided by the ADR as follows:

*'No Significant Fault or Negligence: The Athlete [...] establishing that his or her Fault or Negligence, when viewed in the totality of the circumstances and taking into account the criteria for No Fault or Negligence, was not significant in relation to the Anti-Doping Rule Violation.'*

97. Whilst the Athlete's conduct during the trip to Amsterdam was sufficient to avoid a finding of intentionally being made against him, it was also highly relevant to the determination of his level of Fault.

98. Mr Law's submission that the ADRV involved the Athlete driving at high speed whilst having cannabis in his system was well made and significant. The Athlete plainly knew that he had consumed cannabis; he declared that fact to the DCO. He had however proceeded to race, putting both his competitors and himself at potentially significant risk.

99. Whilst there was no suggestion that the Athlete had driven on a road at any relevant time, the Tribunal noted that had a driver on a public road returned a test showing the concentration of carboxy-THC found in the Athlete's system, a criminal prosecution might well have been likely.

100. Given that the ADRV had involved the Athlete allowing himself to drive competitively at high speed with cannabis in his system, the Tribunal found that a high degree of Fault was involved. Accordingly, the Athlete had failed to establish that he was entitled to any reduction in the initial period of Ineligibility as prescribed by ADR 10.2.

## **Conclusion**

101. The Panel imposed a period of Ineligibility of two (2) years upon the Athlete.

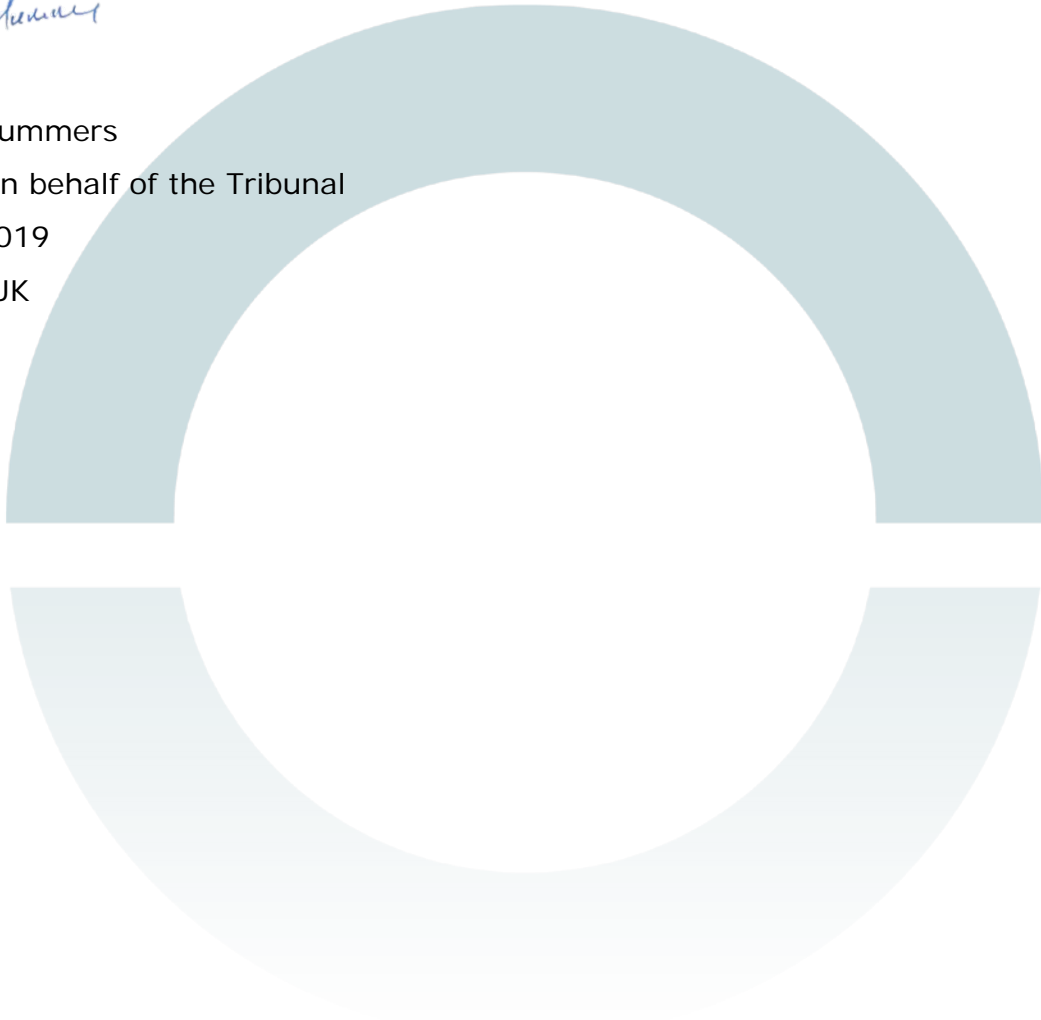
102. That period of ineligibility is ordered to run from 30 September 2018, being the date of the sample collection.

## Right of Appeal

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



Jeremy Summers  
For and on behalf of the Tribunal  
19 July 2019  
London, UK





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