

**IN THE MATTER OF PROCEEDINGS BROUGHT UNDER THE ANTI-DOPING RULES OF
THE UNITED RUGBY CHAMPIONSHIP**

Before:

Mark Hovell (Chair)
Professor Kitrina Douglas
Dr Terry Crystal

BETWEEN:

UK ANTI-DOPING

Anti-Doping Organisation

and

MR JUNIOR LALOIFI

Respondent

DECISION OF THE NATIONAL ANTI-DOPING PANEL

I. Introduction

1. The Applicant, UK Anti-Doping Limited (“UKAD”) is the National Anti-Doping Organisation in the UK. In accordance with Article 7.2 of the UK Anti-Doping Rules (the “ADR”), UKAD acts as the Results Management Authority in this matter.
2. Junior Laloifi (the “Player” or the “Respondent”), is a professional rugby player. The Player had been registered with the United Rugby Championship (the “URC”) as a player for Zebre Parma. Zebre Parma is a professional rugby club in Italy that competes in the URC, a rugby union competition involving professional teams from Ireland, Italy, Scotland, South Africa and Wales.

3. The URC has adopted the URC ADR as its Anti-Doping Rules. Pursuant to the URC ADR, the National Anti-Doping Organisation of the country where the relevant match is hosted has the responsibility for bringing enforcement proceedings where an athlete subject to the URC ADR provides a positive test. In the present case, the sample that had a positive outcome was collected after a game played in Wales and consequently UKAD has jurisdiction to prosecute this case and the ADR shall apply.

II. Facts

4. On the night between 3 and 4 March 2022, the Player attended a nightclub called GioveDrink alongside Mr. Nivo Tuilagi, in Parma.
5. On the night between 4 and 5 March 2022, the Player attended another nightclub in Parma called Palapa and was joined by Mr. Marcello Violi. In the club, the Player was allegedly offered some Cocaine by an unknown Italian. The Player accepted this offer and took two or three lines of the substance from that man over the course of the evening/morning.
6. Later that morning (*i.e.*, still on 5 March 2022), the Player travelled to Wales with the rest of the squad that was taking part in the URC game between Zebre Parma and Ospreys RFC (the "Match") at Swansea next day.
7. The Player stayed at the team hotel in Wales the night of 5 March 2022 and shared the room with Mr. Taina Fox-Matamua. That evening, they ordered room service, however this was intercepted by the staff of Zebre Parma, as the players were forbidden from ordering room service.
8. On 6 March 2022, the Player was part of the squad that took part in the Match. He came on as a replacement player.
9. Pursuant to the ADR, the Player was tested In-Competition after the Match on 6 March 2022. His Sample returned an Adverse Analytical Finding (an "AAF") for Cocaine and its Metabolite benzoylecgonine, a Prohibited Substance.

III. Internal UKAD Proceedings

10. On 31 May 2022, UKAD formally notified the Player that he may have violated ADR Article 2.1, in that a Prohibited Substance or its Metabolites or Markers were present in his A Sample and ADR Article 2.2, in that he used a Prohibited Substance, namely Cocaine, on or before 6 March 2022 (the “Notice Letter”). The Notice Letter informed the Player that he was provisionally suspended from 31 May 2022. UKAD understands this to be the first occasion that he has been charged with any Anti-Doping Rule Violation (“ADRV”). The Player had no Therapeutic Use Exemption in place.
11. On 22 June 2022, UKAD received the Player’s response to the Notice Letter within which he accepts to have committed an ADRV under ADR Article 2.1 and Article 2.2. However, the Player also provided arguments and facts that would lead to a mitigation of the Ineligibility period. The main argument provided by him was that the ingestion of the Prohibited Substance occurred Out-of-Competition, during a night out between the evening of 3 March 2022 and the early morning of 4 March 2022. Consequently, he claimed that ADR Article 10.2.4(a) or alternatively, ADR Article 10.2.4(b) shall apply, rather than ADR Article 10.2.1.
12. On 1 July 2022, UKAD received a further response from the Player, following the request of UKAD for additional information that would satisfy UKAD that the ingestion or use of cocaine occurred Out-of-Competition. The Player provided a further explanation on the circumstances that led to the consumption, and that therefore would justify that the Prohibited Substance was consumed Out-of-Competition
13. On 19 July 2022, UKAD proceeded to charge the Player with violating ADR Articles 2.1 and 2.2 (the “Charge”). Annexed to the Charge was the initial report of Professor Cowan, dated 5 July 2022, which concluded that the Player’s explanation that he took the Prohibited Substance on the 3 and 4 March 2022 was not “*scientifically plausible.*”
14. On 29 July 2022, UKAD received the Player’s response to the Charge, within which he provided new factual information to UKAD and informed that the date of the ingestion was the night between 4 and 5 March 2022. Considering the abovementioned facts, the Player once again requested the Ineligibility period to be applied should be that pursuant ADR Article 10.2.4(a).

15. On 2 August 2022, the Player received a request from UKAD, in which he was invited to provide further evidence on the new facts presented in the response to the Charge.
16. On 16 August 2022, the Player provided the required evidence, including some photographs, screenshots and bank payment confirmations, which sought to support the last account of the facts the Player had provided to UKAD.
17. On 23 August 2022, UKAD acknowledged the receipt of the evidence provided by the Player. After having considered them, UKAD informed him that it was not satisfied that he had discharged his burden of proof, and that consequently they intended to refer the case to the National Anti-Doping Panel (the “NADP”).

IV. Proceedings before the NADP

18. On 24 August 2022, UKAD requested that a NADP Tribunal be convened to determine the Charge in this case.
19. On 6 September 2022, Mr. Mark Hovell was appointed as the Chair of the Tribunal. Professor Kitrina Douglas and Dr Terry Crystal were appointed as Tribunal Members on 16 November 2022.
20. In accordance with Article 7.8 of the Procedural Rules of the NADP (2021 edition), the Chair of the Tribunal agreed various directions with the parties on 23 September 2022, with a view for the hearing of the matter to take place in London in December 2022. Additional directions were agreed by the parties on 10 November 2022, which were accepted by the Chair.
21. This matter was determined following the oral hearing that took place in person on 6 December 2022 (the “Hearing”). The Player attended the Hearing virtually and was represented by Mr. Kieran John McCarthy, Mr. James Cranston and Ms. Teninla Owolabi of Clifford Chance LLP. The Tribunal note that the Player’s representation was provided on a pro bono basis and would like to place its gratitude on record for this. UKAD was represented by Mr. Tom Middleton, UKAD Head of Case Management and Mr. Ciaran

Cronin, UKAD Lawyer. Ms. Ellie Purdy was also present on behalf of UKAD. Ms. Alisha Ellis, from Sport Resolutions, was also present to assist the Tribunal.

22. The Player and UKAD presented Doctor David Berry and Professor David Cowan respectively as their expert witnesses.
23. The Player presented Mr. Marcello Violi and Mr. Taina Fox-Matamua as witnesses of fact, both attended the Hearing remotely.

V. Jurisdiction

24. The URC has, pursuant to the Article 1 of the URC ADR (Schedule Five), adopted the ADR of the countries where relevant matches are hosted. All URC players playing for a member club of the URC are subject to the ADR of the countries where the games are hosted. The Player had signed a participation agreement confirming this.
25. Considering that the sample that returned an AAF was collected after the Match, which was hosted in Wales, the ADR of the UK shall apply.
26. ADR Article 1.2.1 sets out the scope of the application of the ADR. It states:

“1.2.1. These Rules shall apply to:

... (b) all Athletes (including International-Level Athletes) and Athlete Support Personnel who are members of the NGB and/or of the NGB’s members or affiliate organisations or licensees (including any clubs, teams, associations or leagues) or otherwise under the jurisdiction of the NGB (including Recreational Athletes) ...”
27. As a result of the above, the Player was therefore when he was registered by Zebre Parma and played the Match in the UK, subject to the ADR and bound to comply with the ADR.

28. Pursuant to ADR Article 7.2.3, UKAD has responsibility for results management of this case. This meant UKAD could deal with the Charge against the Player and prosecute this matter.
29. Further, pursuant to ADR Article 8.1, any charge against an Athlete playing under auspices of the URC – in games hosted in the UK – shall be determined by the NADP.
30. The jurisdiction of the Tribunal is not contested by the parties.

VI. Background

31. On 6 March 2022 under Mission Order M-1722306197, a UKAD Doping Control Officer (“DCO”) collected a urine Sample from the Player In-Competition at the Match at the Swansea.com Stadium, Plasmarl, Swansea, Wales, United Kingdom.
32. Assisted by the DCO, the Player split his urine Sample into two separate bottles which were given reference numbers, A1173548 (the “A Sample”) and B1173548 (the “B Sample”).
33. Both Samples were transported to the World Anti-Doping Agency (“WADA”) accredited laboratory in London, The Drug Control Centre, Kings College London (the “Laboratory”). The Laboratory analysed the A Sample in accordance with the procedures set out in WADA’s International Standard for Laboratories and Technical Document - TD2022MRPL.
34. Analysis of the A Sample returned an AAF for cocaine and its Metabolite benzoylecgonine at estimated concentrations of approximately 24 ng/mL and 3.75 µg/mL respectively.
35. Cocaine is listed under section S6A of the WADA 2022 Prohibited List as a Stimulant. It is a non-Specified substance that is prohibited In-Competition only. Pursuant to Article 4.2.3 of the 2022 World Anti-Doping Code, cocaine is also specifically identified as a Substance of Abuse in the 2022 WADA Prohibited List.

VII. UKAD’s Submissions

36. UKAD sought the following relief from the Tribunal:

- i. Confirm that the Player has committed an ADRV pursuant to ADR Article 2.1, in that a Prohibited Substance and its Metabolite were present in his A Sample;
- ii. Find that he has committed an ADRV pursuant to ADR Article 2.2, in that he Used a Prohibited Substance, namely cocaine, In-Competition;
- iii. Find that he has not discharged the burden on him under ADR Article 10.2.4(a) to establish that his ingestion or Use of cocaine occurred Out-of-Competition and was unrelated to sport performance;
- iv. Find that he has not discharged the burden on him under ADR Article 10.2.4(b) to establish his In-Competition ingestion or Use of cocaine was unrelated to sport performance;
- v. Beyond the application of ADR Article 10.2.4, find that he has not discharged the burden on him under ADR Article 10.2.1(a) to establish his ADRV(s) were not “intentional” within the meaning of ADR Article 10.2.3;
- vi. Impose a period of Ineligibility of four (4) years for a non-Specified Substance under ADR Article 10.2.1(a), such period to commence on 31 May 2022, the date the Player’s Provisional Suspension was imposed; and
- vii. Grant such other and further relief as it deems appropriate.

37. The following arguments were provided by UKAD in order to support these requests:

a. ADRV pursuant ADR Article 2.2 (Use)

38. ADR Article 8.4.1 stipulates that the burden rests upon UKAD to establish the commission of ADRVs charged to the comfortable satisfaction of the hearing panel and provides that this is to be interpreted as “greater than a mere balance of probability but less than proof beyond a reasonable doubt”.

39. UKAD considered the estimated concentrations detected in the Player's Sample (before taking into account the initial opinion of Professor Cowan) provide the first step towards a conclusion that he Used cocaine during the In-Competition period.
40. UKAD considered it to be significant that the estimated concentrations of cocaine parent compound (24 ng/mL) and benzoylecgonine (3,750 ng/mL) detected in the Sample well exceeded the levels identified by WADA which are most likely to correspond to In-Competition Use.

Expert evidence

41. In his initial report, Professor Cowan concluded:
 - i. The Player would have needed to ingest over 4.5 grams of cocaine at the times claimed in his initial explanation to account for the estimated concentration of benzoylecgonine. An even larger dose would be required to account for the estimated concentration of cocaine detected in the A Sample;
 - ii. A smaller dose of cocaine of the order of 10 to 50 mg taken during the In-Competition period is a plausible explanation for the Laboratory findings;
 - iii. It is also possible that a dose in excess of 60 mg was taken Out-of-Competition. However, as he claimed to have never consumed cocaine before 4 March 2022, a dose of 60 mg could have harmful toxic effects on a naïve user; and
 - iv. Overall, it is more likely than not that he administered cocaine In-Competition.
42. After the above, the Player revised his account as to when his last ingestion of cocaine took place and sought his own expert opinion by instructing Dr David Berry, which was updated on 6 November 2022. The conclusions of this report can be summarised as follows:
 - i. The time lapse between his last estimated ingestion of cocaine and Sample collection is 35.5 hours.
 - ii. The pH of The Player's urine was 6.0 which is acidic; a more acidic pH favours excretion of unmetabolised drug.

- iii. The study by Cone et al¹ administered single 25 – 42 mg doses of cocaine by different routes. In the study, cocaine parent drug concentrations ranged from 0 – 20 ng/mL between 24 – 30 hours post dose.
 - iv. The detection of cocaethylene in his Sample at 20 ng/mL confirms his statement of consuming alcohol with cocaine.
 - v. Given the large dose of cocaine ingested together with the acidity of his urine, it is likely that he would have a urinary cocaine concentration of 24 ng/mL “*some 35.3 [sic]*” hours after insufflating the 300 mg of drug as described.
 - vi. Detection of cocaine at 24 ng/mL supports the elevated level of benzoylecgonine and reinforces Dr Berry’s view that, “*on the balance of probabilities the analytical findings were the result of Mr Junior Laloifi using cocaine in the amount he described out of competition.*”
43. Professor Cowan then produced an additional expert report dated 9 November 2022:
- i. Because the Player revised his account regarding the date and time he ingested cocaine to around 35.5 hours prior to Sample collection, this reduced his certainty insofar as In-Competition Use was concerned.
 - ii. He did not agree with Dr Berry that the level of ethyl glucuronide detected in the Sample confirmed that substantial quantities of alcohol were ingested 1 to 2 days prior to the Sample being taken. His opinion was that level of ethyl glucuronide is merely evidence that alcohol had been ingested but not the amount.
 - iii. The detection of cocaethylene (20 ng/mL) confirms the concomitant consumption of alcohol (ethanol) together with cocaine.
 - iv. He agreed that the estimated concentration of benzoylecgonine (3.75 µg/mL) detected in the Sample is consistent with the administration of around 300 mg of cocaine approximately 35.5 hours before Sample collection. However, this does

¹ Cone, E. J., A. H. Sampson-Cone, W. D. Darwin, M. A. Huestis and J. M. Oyler (2003). "Urine testing for cocaine abuse: Metabolic and excretion patterns following different routes of administration and methods for detection of false-negative results." *Journal of Analytical Toxicology* 27(7): 386-401

not provide a satisfactory explanation for the presence of 24 ng/mL of cocaine parent compound and 20 ng/mL of cocaethylene detected in the Sample.

- v. The publication referred to by Dr Berry of Farre and colleagues² determined the half-lives of cocaine, benzoylecgonine and cocaethylene with and without alcohol administration and found no significant effect to the half-lives by the consumption of alcohol.
- vi. The half-life determined by Farre and colleagues for cocaine parent compound is 78 minutes (or 1.25 hours). Applying this to the Player's case required an impossibly large dose of cocaine to have been taken 35.5 hours prior to Sample collection (as claimed by the Player) to account for the estimated concentration of cocaine (24 ng/mL) detected in his A Sample.
- vii. Similarly, making the same calculation for cocaethylene using the applicable half-life determined by Farre and colleagues of 99 minutes (or 1.65 hours), this again requires an impossibly large dose of cocaine to have been taken 35.5 hours prior to Sample collection to account for the 20 ng/mL of cocaethylene detected in the A Sample.
- viii. He did not agree that the study cited by Dr Berry of Cone et al assists in this case. In that study, six volunteers (all of whom had a history of cocaine use, which the Player denies) were monitored after ingesting 25 – 42 mg of cocaine via single dose. Professor Cowan noted that all six volunteers had unmeasurably small concentrations of cocaine in their urine post dose close to 35.5 hours (unlike the Player's 24 ng/mL). Furthermore, the volunteers in this study are distinguishable from the Player because the excretion of cocaine is known to be extended in experienced cocaine users. Further, after careful review of this study, Professor Cowan could not find any reference to the volunteers having as much as 20 ng/mL of cocaine parent compound in their urine 24 -30 hours post dose, as stated by Dr Berry at paragraph 9 of his supplementary expert report.

² Farre, M., R. Delatorre, M. Llorente, X. Lamas, B. Ugena, J. Segura and J. Cami (1993). "Alcohol and Cocaine Interactions in Humans." *Journal of Pharmacology and Experimental Therapeutics* 266(3): 1364-1373

- ix. A dose of 100 mg of cocaine taken just 8 hours before Sample collection accounts for both the estimated concentration of cocaine (24 ng/mL) and cocaethylene (20 ng/mL).
 - x. In summary, Professor Cowan's opinion was that a second dose of cocaine administered during the In-Competition period best explains all of the analytical data reported by the Laboratory; the concentrations of cocaine (24 ng/mL) and cocaethylene (20 ng/mL) were not consistent with the administration of cocaine solely 35.5 hours prior to Sample collection.
44. In view of the conclusions outlined above, there is plainly a dichotomy of opinion between the experts regarding when the Player was likely to have last ingested cocaine. UKAD considered that the evidence of Professor Cowan is preferable.

The Player's Explanations

45. UKAD noted several troublesome features that existed in relation to the Player's evidence which served to undermine his explanation regarding when his last claimed ingestion of cocaine took place.
46. By way of his response via his legal representative dated 29 July 2022 to UKAD's Charge, and a witness statement dated 10 October 2022, he has fundamentally revised his initial account as to the circumstances of his cocaine Use, including the date and time he purports to have last ingested cocaine prior to providing the Sample. The revised account was provided to UKAD after he had been afforded two previous opportunities to provide instructions to clarify the circumstances of his cocaine ingestion, which resulted in his initial responses dated 22 June 2022 and 1 July 2022. Moreover, his revised account was only proffered after he had been provided with Professor Cowan's initial expert report.
47. It is submitted that several troublesome contradictions exist between his initial and revised accounts which undermine the veracity of his claims as to when he last ingested cocaine. Specifically, UKAD drew the Tribunal's attention to the following:
- i. He initially claimed to have ingested two lines of cocaine during the early hours of 4 March 2022. In an email provided by his legal representative dated 1 July 2022, it was stated that he believed the first line to have been ingested as late as 03:00

and the second line as late as 05:00 on 4 March 2022. This was later revised, with him later claiming that his cocaine ingestion in fact took place between 03:00 and 05:00 on 5 March 2022;

- ii. He initially claimed to have ingested cocaine at the GioveDrink event. He later asserted that cocaine ingestion took place in the Palapa nightclub;
- iii. He was able to recollect, with precision, the amount of alcohol he consumed on his night out during the evening and early hours of 3/4 March 2022. He has since sought to resile from this, and through correspondence sent via his legal representatives, claims to have consumed “*a significant, but impossible to precisely quantify, quantity of alcohol*” during the evening and early hours of 4/5 March 2022.
- iv. His initial account was that he ingested a “*small quantity of the substance in the form of about two ‘lines’ inhaled through the nose*”. He later provided further information that he and Mr. Tuilagi consumed approximately three lines of cocaine between them during the early hours of 4 March 2022, of which he ingested two and Mr. Tuilagi one. On that basis, he estimated that he consumed as much as “*80mg of cocaine*”. However, when revising his account, he later stated that he consumed two to three lines of cocaine with several Italian men during the early hours of 5 March 2022 “*recalling the quantity as quite large*”.

48. Bluntly, it is difficult to conceive how he could have twice provided inaccurate information regarding the date and time his ingestion of cocaine purportedly occurred when formally responding to UKAD. This casts considerable doubt on the extent to which his revised account can be safely relied on as a true and accurate version of events.

49. UKAD submitted that the evidence in this case, when properly assessed, is sufficient for the Panel to be comfortably satisfied that his Use of cocaine took place In-Competition, such that an ADRV pursuant to ADR Article 2.2 (Use) is established.

b. Applicable sanction pursuant ADRV of Article 2.1 and 2.2

50. The wording of ADR Article 10.2.4 makes plain the burden is on the Player to establish to the Tribunal, on a balance of probability, that either:
- i. His Use of cocaine occurred Out-of-Competition and was unrelated to sport performance (in which case, the applicable period of Ineligibility shall be three months); or
 - ii. That his In-Competition Use of cocaine was unrelated to sport performance (in which case, his ADRVs will not be considered “intentional” for the purposes of ADR Article 10.2.1 and the applicable period of Ineligibility shall be two years).

Out-of-competition and unrelated to sport use

51. UKAD submitted that the Player has failed to establish, to the requisite standard, that his ingestion or Use of cocaine occurred Out-of-Competition, or that any In-Competition Use was unrelated to sport performance. Beyond this, the Player has not sought to establish his ADRVs were not “intentional” within the meaning of ADR Article 10.2.3. UKAD therefore submits that the applicable period of Ineligibility to be imposed on him will be as provided for under ADR Article 10.2.1(a), i.e. four years.
52. Even if the Tribunal determines that it is not comfortably satisfied by UKAD that his Use of cocaine took place In-Competition (such that an ADRV under ADR Article 2.2 is not established), it must still ask itself whether he has provided sufficient evidence to demonstrate, on a balance of probability, that his ingestion of cocaine (with regards to his ADR Article 2.1 violation) took place Out-of-Competition and unrelated to sport in order to avail himself of a reduced sanction under ADR Article 10.2.4(a), as is pursued on his behalf. These are distinct considerations, involving separate standards of proof, and even if the Tribunal arrives at a conclusion whereby it is minded to dismiss the ADRV charged under ADR Article 2.2, it should still subject his evidence to rigorous scrutiny for the purposes of determining the applicable sanction under the ADR for an Article 2.1 violation.
53. UKAD submits that in order to find he has discharged the burden to avail himself of a reduced sanction under ADR Article 10.2.4(a), the Tribunal would have to accept his

revised account as being more likely than not correct. UKAD submitted that to do so would be problematic, for the following reasons:

- i. His revised account is wholly contradicted by and inconsistent with his initial responses to UKAD's Notice Letter and request for further information;
- ii. He twice maintained his cocaine Use occurred during the early hours of 4 March 2022, and his revised account was only provided after he received UKAD's Charge and enclosures dated 19 July 2022 (which included Professor Cowan's conclusion that his initial account was not scientifically plausible);
- iii. The evidence he relied on to corroborate his revised account only serves to confirm his attendance at the Palapa nightclub on 4/5 March 2022, and does not substantiate the alleged circumstances of his ingestion of cocaine; moreover
- iv. Professor Cowan has carefully examined the analytical data arising from his AAF and concluded that he would have needed to ingest an "*impossibly large*" amount of cocaine at the time claimed on 5 March 2022 to account for the estimated concentrations of cocaine parent compound and cocaethylene detected in his Sample.

54. Accordingly, UKAD submits that he has failed to discharge his burden under ADR Article 10.2.4(a) and demonstrate to the requisite standard his ingestion of cocaine occurred Out-of-Competition and was unrelated to sport. He is therefore not entitled to the three-month period of Ineligibility that is pursued on his behalf.

In-competition but unrelated to sport use

55. As to ADR Article 10.2.4(b), the Player has not sought to assert that he Used cocaine In-Competition in a context unrelated to sport performance. To that end, he cannot be said to have discharged his burden under this second limb in order for his ADRVs not to be regarded as "intentional" for the purposes of ADR Article 10.2.4(b) (which would reduce the applicable period of Ineligibility to two years pursuant to ADR Article 10.2.2).

56. Beyond the application of ADR Articles 10.2.4(a) or (b), the Player has not sought to submit that his ingestion of cocaine was not “intentional” within the meaning of ADR Article 10.2.3.
57. Consequently, if the Tribunal determines that he has failed to discharge his burden under ADR Article 10.2.1(a), as well as under ADR Articles 10.2.4(a) or (b), the applicable period of Ineligibility that must then be applied for a non-Specified Substance is four years, in accordance with ADR Article 10.2.1(a).

c. Mitigation

58. UKAD again rejects the suggestion made by the Player that “*the Panel may, at its discretion, reduce the period of Ineligibility further, pursuant to Article 10.6.2.*”
59. UKAD contends that as he has failed to discharge his burden to show his ADRVs should not be regarded as “intentional” for the purposes of ADR Article 10.2.1(a), he is not eligible for a reduction to sanction thereafter on the basis of No Fault or Negligence (ADR Article 10.5), or No Significant Fault or Negligence (ADR Article 10.6).
60. The Tribunal should be cognisant that the sanctioning regime analysed in the cases cited on behalf of the Player, UKAD v Hardaker³ and FIFA v Conmebol⁴, derived from the 2015 Code, which afforded no exceptions to cases involving a Substance of Abuse, since no such identification existed within the 2015 Code.
61. In summary, UKAD’s position was that if the Tribunal determines that the Player has failed to establish, on a balance of probability, that either ADR Articles 10.2.4(a) or (b) apply in his case, or that beyond this he has failed to demonstrate his ADRVs were not “intentional” within the meaning of ADR Article 10.2.3, then the applicable period of Ineligibility to be applied is four years for a non-Specified Substance, in accordance with ADR Article 10.2.1(a).

VIII. The Player’s Submissions

³ SR/NADP/988/2017

⁴ CAS 2016/A/4416

62. The Player's submissions were:

a. Relevant Background

63. As cocaine is a Prohibited Substance as a non-Specified Stimulant, the starting point, under ADR Article 10.2.1(a), is that the period of Ineligibility for the Player will be four years unless he could establish that the ADRV occurred Out-of-Competition and was unrelated to sport performance, pursuant to ADR Article 10.2.4(a), whereby it shall be three months.

64. ADR Article 10.2.4(a) states:

"If the Athlete can establish that any ingestion or Use occurred Out-of-Competition and was unrelated to sport performance, the period of Ineligibility shall be three (3) months; provided that it may be further reduced to one (1) month if the Athlete satisfactorily completes a Substance of Abuse treatment program approved by UKAD. The period of Ineligibility established in this Article 10.2.4(a) is not subject to any reduction pursuant to Article 10.6."

65. Alternatively, where the Player cannot show that the ingestion of the Prohibited Substance occurred Out-of-Competition, but can show it was unrelated to sport performance, ADR Article 10.2.1 shall not apply and the period of Ineligibility will be no more than two years, pursuant to ADR Article 10.2.4(b).

66. ADR Article 10.2.4(b) states:

"If the ingestion, Use or Possession occurred In-Competition, and the Athlete can establish that the context of the ingestion, Use or Possession was unrelated to sport performance, the ingestion, Use or Possession shall not be considered intentional for purposes of Article 10.2.1 and shall not provide a basis for a finding of Aggravating Circumstances under Article 10.4."

67. In the Charge, UKAD alleged that the Player committed "an ADRV pursuant to ADR Article 2.2 in that you Used a Prohibited Substance, namely, cocaine, on or before 06 March 2022".

68. Ingestion of cocaine Out-of-Competition does not amount to an ADR Article 2.2 ADRV. ADR Article 2.2.4 confirms that Out-of-Competition Use may only amount to an ADR Article 2.1 ADRV:

"Out-of-Competition Use of a substance that is only prohibited In-Competition is not an Article 2.2 Anti-Doping Rule Violation. If, however, an Adverse Analytical Finding is reported for the presence of such substance or any of its Metabolites or Markers in a Sample collected In-Competition, that may amount to an Article 2.1 Anti-Doping Rule Violation."

69. The Player denied that he used cocaine on 6 March 2022 (but accepted he used it prior to this date), as such all of the necessary elements of UKAD's Charge under Article 2.2 ADRV were not met, namely that he used cocaine on 6 March 2022. UKAD should be put to proof of that to the required standard under Article 8.4.1 ADR, which is *"more than a mere balance of probability"*.

70. The questions for the Tribunal are therefore:

- a. Under ADR Articles 2.1 and 10.2.4(a), has the Player shown that any ingestion of cocaine occurred Out-of-Competition, on the balance of probabilities;
- b. Under ADR Article 2.2, has UKAD shown that ingestion occurred after 11:59pm on 5 March 2022 and during 6 March 2022 In-Competition, to the comfortable satisfaction of the Panel; and
- c. Under ADR Articles 2.1, 2.2, 10.2.4(a) and 10.2.4(b), has the Player shown that the ingestion was unrelated to sport performance, on the balance of probabilities.

b. Ingestion was Out-of-Competition

71. As the Match was on Sunday 6 March 2022, In-Competition time commenced after 11:59pm on 5 March 2022 and all periods prior to that were Out-of-Competition.

72. The Player relied upon his own explanation and the evidence of Mr. Violi and Mr. Fox-Matamua to prove:

- a. The circumstances by which the Prohibited Substance entered his system (by ingesting several lines of cocaine at a nightclub on 5 March 2022);
 - b. The approximate quantities of Prohibited Substance that entered his system (2-3 large lines of cocaine amounting to an estimated 300mg);
 - c. The method of ingestion of the Prohibited Substance (nasal inhalation);
 - d. The date and time when the Prohibited Substance was ingested (early hours of 5 March 2022); and
 - e. The purpose of ingestion of the Prohibited Substance (for recreational/ social purposes only and not related to sport performance).
73. It is irrelevant as to when prior to 11:59pm on 5 March 2022 he ingested cocaine; all that matters is whether the admitted ingestion occurred In-Competition or Out-of-Competition.⁵

c. Ingestion was not In-Competition

74. UKAD has not sufficiently demonstrated that the Player ingested cocaine after 11:59pm on 5 March, effectively during 6 March 2022. UKAD has offered no evidence of this beyond Professor Cowan's statement of opinion that:

"A second dose of cocaine close to the Sample collection time, in my opinion, better accounts for the analytical results".

75. UKAD has not offered any factual support for Professor Cowan's opinion, although it had every opportunity to speak to Mr. Nivo Tuilagi, and to examine Mr. Violi and Mr. Fox-Matamua at the Hearing.
76. Even where there is no positive case from UKAD on the necessary factual allegations of ingestion of cocaine after 11:59pm on 5 March 2022, Professor Cowan's Additional Expert Report of 9 November 2022 is also unreliable:
- a. He addressed the likelihood of In-Competition use on the basis of ingestion c. 35.5 hours prior to the Sample and accepts that the benzoylecgonine concentration "*could*

⁵ UKAD v Anthony De Luca (SR/047/2022), para 16

be the result of Out-of-Competition use of cocaine [...] especially if a very large dose for a naïve user of 300 mg had been administered." In this, he agrees with Dr Berry's First Expert Report (as amended) of 13 October 2022.

- b. He accepts from the level of ethyl glucuronide detected in the Sample that alcohol was ingested by the Player 1-2 days prior to the Sample as the Player has stated. However, Professor Cowan disputed that this infers a substantial quantity of alcohol was consumed on the Friday night and Saturday morning. This is despite documentary evidence of purchases at Palapa and the high-positive test result of ethyl glucuronide in the Sample of greater than 1.0 µg/ml, which is generally accepted as evidence of heavy drinking in the previous day or more. The tested amount was 1.7 µg/ml, again entirely consistent with the Player's evidence.
- c. Dr Berry's Supplemental Expert Report of 7 November 2022 confirms, by reference to the tables cited in the Cone et al paper, that there was a significant degree of parent-compound cocaine still evidenced in clinical tests of test subjects some 30+ hours after ingestion of less than 60mg of cocaine.⁶ In the present case, the Player is likely to have consumed approximately 300mg or more. Professor Cowan's First Expert Report of 5 July 2022 confirmed that "*there is a big range in documented drug elimination values for cocaine and its metabolites.*" A residual cocaine parent compound detection of 24 ng/ml is entirely reasonable and consistent with his evidence.
- d. He focused on the cocaethylene result he obtained of 20 ng/ml. Not only does it confirm concomitant consumption of alcohol with cocaine (consistent with the Player's evidence) but any confusion arising from it is nonsensical: why would Professor Cowan not expect a concentration of 20 ng/ml of cocaethylene in urine, 35.5hrs after ingestion of approximately 300mg cocaine, together with a substantial quantity of alcohol, particularly since the elimination half-life of cocaethylene is substantially slower than that of cocaine?

⁶ Cone, E. J., A. H. Sampson-Cone, W. D. Darwin, M. A. Huestis and J. M. Oyler (2003). "Urine testing for cocaine abuse: Metabolic and excretion patterns following different routes of administration and methods for detection of false-negative results." *Journal of Analytical Toxicology* 27(7): 386-401.

77. Dr Berry's opinion is also consistent with those of experts in several CAS cases concerning use of cocaine. In FIFA v Conmebol and Fernandez (CAS 2016/4416), FIFA's appointed expert, Professor Saugy, accepted that *"the excretion time for a single use of cocaine would usually be up to 30hrs"*.⁷ The Player consumed several doses of cocaine in a large quantity only 35.5 hours before the Sample.

78. It is clear from the witness statements of the Player himself and Mr Fox-Matamua that the Player did not, and had almost no conceivable opportunity to, ingest cocaine between 11:59pm on 5 March 2022 and the Sample.

d. Ingestion was unrelated to sport performance

79. CAS case law and recent NADP decisions support the Player's contention that cocaine ingested in a recreational/ social context should be deemed use unrelated to sport performance.⁸

80. There was no performance enhancing benefits as a result of his ingestion of the cocaine, and none has been alleged by UKAD. This is analogous to the situation of Mr. Zak Hardaker, who admitted a UKAD charge for use of cocaine in 2017. Like the Player he had attended a bar and consumed a large volume of alcohol, later accepting the offer of several lines of cocaine. The panel in that case accepted that use of cocaine was likely to have no performance enhancing benefits and reduced Mr. Hardaker's ban accordingly.⁹

81. The Player's life at the time of the ADRV was disordered, absent support structures and involved heavy consumption of alcohol. His ingestion of cocaine was clearly related to his irresponsible conduct and mental state rather than preparation for the Match.

e. Mitigation

82. In the event the Tribunal does not accept that ADR Article 10.2.4(a) applies, there are several mitigating circumstances that it should consider: a prompt admission pursuant to ADR Article 10.8.2; a finding of No Significant Fault in respect of the ADRV, for which the Tribunal may, at its discretion, reduce the period of Ineligibility further, pursuant to ADR

⁷ FIFA v Conmebol and Fernandez (CAS 2016/4416), para. 75

⁸ FIFA v Conmebol and Fernandez, para. 76

⁹ UKAD v Hardaker (SR/NADP/988/2017)

Article 10.6.2; his lack of knowledge of relevant anti-dopping rules and failure to understand the prohibitions in respect of cocaine, or whether there may still be some cocaine in his system by the time of the Match; his personal circumstances, having not seen his family, in particular his young daughter, since 2019 due to the global COVID-19 pandemic; and the attendant mental difficulties caused the Player to drink irresponsibly during the course of the 2021/22 season once local COVID-19-related restrictions in Parma were lifted.

IX. The Tribunal's Findings

83. The issues before the Tribunal, and that consequently it has to decide upon are:
- 83.1. In order to establish the ADRV pursuant to ADR Article 2.2 (Use), and considering that the relevant substance is only prohibited In-Competition could UKAD prove to the comfortable satisfaction of the Tribunal that there was ingestion of cocaine within the In-Competition period (*i.e.* after 23:59 of 5 March 2022)?
 - 83.2. Considering the Player has accepted the commission of an ADRV pursuant ADR Article 2.1 (Presence) and in order to benefit from a reduced sanction pursuant Article 10.2.4, has he proved to the Tribunal, on a balance of probabilities, that the ingestion of the relevant substance was (i) Out-of-Competition and; (ii) not related to sport performance?
 - 83.3. Considering any mitigating factors that could lead to a reduction of the sanction, what sanction should the Player face?
84. The Tribunal does note that this entails looking at largely the same events from two different perspectives and with different burdens of proof. UKAD has to prove that the ingestion was In-Competition and to the higher standard of proof; the Player that the ingestion was Out-of-Competition, to the lower standard. It is, of course, possible that cocaine was taken both In- and Out-of-Competition.

Use - ADR Article 2.2

85. The Tribunal notes that it is uncontested between the parties that the burden of proof is on UKAD to make out this part of the Charge, to the comfortable satisfaction of the Tribunal.
86. UKAD case was advanced largely on two fronts, being the expert evidence of Professor Cowan and the changing position of the Player, when he was asked on a number of occasions to explain the AAF.
87. Taking these in reverse, the Tribunal fully noted UKAD's position on the changing stories that the Player advanced. Ultimately, the Tribunal were left with the impression that the Player was far from acting like a professional athlete at that period of his life, something he acknowledged himself. His drinking (whether that be at the 80 units a night he initially claimed for 3 and 4 March 2022, or the significant amount he claimed to have drunk again on 4 and 5 March 2022, which he then again claimed was 80 units at the Hearing) was clearly out of control. The Tribunal's job is to consider whether he took cocaine on the early hours of 5 March and/or 6 March 2022, but the Tribunal was left with the impression that he might well have taken cocaine too in the early hours of 4 March 2022, as he initially claimed.
88. The Player may well have thought that by selecting 4 March 2022 as the ingestion date, he was putting as much time between himself and the testing date that resulted in the Sample, however, it is obvious to the Tribunal that once he had sight of Professor Cowan's initial opinion, he had to change his explanation and pinpointed 5 March 2022 instead. The Tribunal considers this claim in light of his burden of proof below. However, the relevance of mentioning this here, is that the Tribunal concurs with UKAD and finds the evidence of the Player himself as unsatisfactory and not credible. It has chosen to ignore anything he says that stands alone, preferring only to consider uncontested facts or evidence from other sources.
89. What was accepted at the Hearing was that the Player had been out on both 3 and 4 March and 4 and 5 March 2022 in Parma. He had produced screenshots of his bank account showing he bought drinks at the Palapa nightclub, he was there with Mr Violi and he was still partying at 7.00 back at his apartment with other people.

90. Professor Cowan had to amend his expert opinion once he had been appraised of these new submissions and evidence and that the Player had effectively moved the timeline forward by 24 hours. Professor Cowan's evidence was not that this was no longer scientifically possible, rather that there were some inconsistencies that lead him to state that the Player would have needed to ingest an "*impossibly large*" amount of cocaine at the time claimed on 5 March 2022 to account for the estimated concentrations of cocaine parent compound and cocaethylene detected in his Sample. Put simply, considering their half-lives, these findings were more consistent with a more recent ingestion of cocaine than the Player was relying upon. As such, it was his expert opinion that ingestion In-Competition was "*more likely than not*".
91. The Tribunal were directed by UKAD during the Hearing to the WADA Guidance document relating to Substances of Abuse. This was for Anti-Doping Organisations. It suggested that a finding of greater than 10ng/ml of parent cocaine in a sample was "most likely" an indication of In-Competition Use.
92. The Player relied upon Doctor Berry to challenge both the Guidance and Professor Cowan's opinion. As regards the Guidance, it was exactly that, simply guidance. There was no explanation where this level had come from, what research this was based on or the like. The Tribunal duly noted the Guidance, but without some answers to these points raised by Doctor Berry, it was unable to place much weight on it.
93. The Tribunal noted that the experts, by the time of the Hearing, agreed on most aspects and differed on a few.
94. They seemed to accept that 2 or 3 lines of cocaine could contain 300 mg. They also seemed to agree that if 300 mg of cocaine had been taken 35.5 hours before the Sample was taken, the level of benzoylecgonine that was present in the Sample would be consistent to what was found by the Laboratory. It was agreed that ethyl glucuronide present in the Sample was a sign of alcohol having been taken with the cocaine, however, Doctor Berry went further and was of the opinion it demonstrated significant alcohol intake.
95. The main difference between the two, was the levels of parent cocaine (24 ng/ml) and cocaethylene (20 ng/ml) found in the Sample. Professor Cowan was of the opinion that these were indicative of In-Competition ingestion before the hearing. He had stated that

he could not find in the Cone et al. paper any example of the parent cocaine being in any test subject's sample at a concentration of up to 20 ng/ml, for 24 to 30 hours after ingestion, as Doctor Berry had referred to.

96. During the Hearing, Professor Cowan was led to the appropriate section of the Cone et al. paper and there were indeed examples of test subjects close to 20 ng/ml of cocaine in their samples between 24 and 30 hours after ingestion. Further, Doctor Berry pointed out that, whilst these test subjects were habitual users, they were given roughly 60 mg of cocaine and he was basing his opinion on the Player having taken 300 mg in 2 or 3 lines of cocaine, 35.5 hours before the Sample collection.
97. Ultimately, the Tribunal were left with the impression that the experts largely agreed with each other and that each agreed that the other's position was possible. There seemed to be a number of variables that could influence the levels of parent cocaine, benzoylecgonine, ethyl glucuronide and cocaethylene in a sample. In addition to the concentration of cocaine ingested and the time when this was done, these ranged from whether the person ingesting the cocaine had done so before and, if so, how often; how much alcohol they had consumed; the acidity of their urine; and their body size/ BMI.
98. The Tribunal felt that Professor Cowan's opinion could be possible, but even Professor Cowan wrote that it was "*more likely than not*" to have been In-Competition. That is not the standard of proof for UKAD, as it has to be proven when the ingestion happened to the comfortable satisfaction of the Tribunal.
99. Further, his opinion must then be put into context with how the Player could have therefore taken cocaine in Wales on 6 March 2022. There appear to be only a couple of ways this could have been done. He (or perhaps one of his teammates) either smuggled the cocaine from Italy into Wales, clearing airport security and customs, or he managed to buy it in Wales, whilst in a team environment pre-game.
100. At the Hearing, the Tribunal heard from Mr. Fox-Matamua. Unlike the Player, his evidence was credible. He was with the Player from when he was picked up along with the entire squad on 5 March, until the time they returned to Italy. He was assigned as the Player's roommate, so he was with him practically all the time (he put it at approximately 95% of the time). He was with him as they checked their bags in and as they went through the

security/customs checks. He didn't notice anything unusual about the Player. He was not showing any signs of nerves or the like. He went with the Player to eat and was with him as they went to bed. They even tried to order room service, but the food was intercepted by the club's staff. The team all stayed in the hotel and then went to the Match the next day.

101. The Tribunal struggles to see how he could have got hold of any cocaine on 6 March 2022.

102. In summary, after considering the evidence of the experts and Mr. Fox-Matamua, the Tribunal cannot be comfortably satisfied that the ingestion occurred after 23:59 of 5 March 2022 and this part of the Charge is not made out by UKAD.

Presence – ADR Article 2.1

103. The Tribunal notes that if the Charge for Presence pursuant ADR Article 2.1 is not in dispute, the applicable sanction will, however, be different depending on if the Prohibited Substance was taken In-Competition or Out-of-Competition.

104. The burden of proof is on the Player to convince the Tribunal on a balance of probabilities that the ingestion happened Out-of-Competition. The Player has submitted that the ingestions (2 or 3 lines) took place between 3.00 and 5.00 on 5 March 2022.

105. The Tribunal has already stated above that it has sufficient doubts about the credibility of his own evidence and therefore chose to weigh up the other evidence produced by UKAD (Professor Cowan's evidence, as discussed above) and the Player's evidence, which consisted of some screenshots, photographs etc along with the testimony of Doctor Berry, Mr. Violi and Mr. Fox-Matamua.

106. Much as UKAD submitted that the Player had changed his story from saying he had been out on 3 and 4 March, to then saying it was 4 and 5 March, the Player seemed to change it again by saying it was both occasions. However, the burden is on the Player to show it was the 4 and 5 March 2022, as it is from that explanation that the experts have been working.

107. As stated above, the experts agreed that 2 or 3 lines could contain 300 mg of cocaine and that they agreed that the level of benzoylecgonine in the Sample, taken some 35.5 hours after an ingestion at 5.00 on 5 March 2022, would be consistent with an ingestion of that amount at that time. Whilst before the Hearing there was doubt cast on this by Professor Cowan, who felt that the levels of parent cocaine and cocaethylene were more in keeping with a later ingestion, the discussion around the Cone et al. findings seemed to defuse any differences and the Player's submission was "possible".
108. The Tribunal agreed with UKAD when considering the screenshots and photos. They demonstrated that the Player was out that night and that he had bought some drinks, but they alone did not prove he was drinking, let alone that he ingested cocaine that evening/morning.
109. What the Tribunal was left weighing up was firstly the evidence of Mr. Violi. He didn't see the Player take cocaine, but he recalled seeing him behaving differently around 3.00 on 5 March 2022 – *"he was very excited and acting in a way that led me to believe he had taken drugs."* This was unchallenged by UKAD at the Hearing. Then there was the statement of Mr. Fox-Matamua, who said that *"immediately"* after the test, the Player confided in him that he had taken cocaine the night before they travelled out for the Match i.e on 4 and 5 March 2022. Again, this was unchallenged by UKAD.
110. Whilst the Tribunal has determined to ignore direct testimony from the Player and whilst it can see that Professor Cowan's concerns are possible, Doctor Berry's position is equally possible and what (just) tips the balance in favour of the Player, is the evidence of Mr. Violi and Mr. Fox-Matamua, that supports the submission that the Player took cocaine at 5.00 on 5 March 2022 and that ingestion resulted in the AAF.
111. Finally, the Tribunal must address whether this ingestion related to the Player's sporting performance. It does not seem to be in dispute that the Player was in Italy for the Covid period and that he was away from his young family. The Tribunal can understand that this would therefore be a difficult time for the Player.
112. The Tribunal has already stated that it regards his behaviour at that time as far from that of a professional. Drinking excessively whether it was one or both nights before he was due to travel to play the Match, taking drugs, staying out until 7.00 and still partying with

whomever, is hardly the actions of someone that is thinking about his profession. Mr. Violi, who wasn't travelling to Wales, went to see if the Player wanted to leave the nightclub around 3.00 with him, but he noted that he was keener to stay in the nightclub.

113. It is evident to the Tribunal that the Player was drinking and took the cocaine for recreational and social purposes only and not related to his sporting performance. The Tribunal took note of the various jurisprudence cited by the Player. As UKAD submitted, none were based on the 2021 WADA Code, however, these could still provide comfort to the Tribunal, that many other panels did not regard cocaine as likely to enhance sporting performance when taken in such circumstances.

Sanction

114. With this finding, the Tribunal notes that it is uncontested that the sanction the Player should receive, pursuant to ADR Article 10.2.4(a), is a three (3) -month ban.

115. Considering the findings above and that the applicable suspension period has already been served the Tribunal does not deem necessary to address the existence of any mitigation factors or other points raised by the parties.

X. The Decision

116. For these reasons:

116.1. An ADRV for ADR Article 2.1 has been admitted;

116.2. The application of ADR Article 10.2.4(a) has been established; and

116.3. The sanction of three (3)-months Ineligibility is to apply to the Player.

117. The Tribunal notes that ADR Article 10.13.2 requires that an Athlete receives credit for any period of (respected) Provisional Suspension. The Player was Provisionally Suspended on 31 May 2022. UKAD have confirmed that there is no evidence to suggest that he has breached the terms of his Provisional Suspension to date and accordingly the Tribunal direct that this three (3)-month period of Ineligibility should be backdated to have commenced on 31 May 2022 and ended at 23:59 on 31 August 2022.

118. As such, the Player's sanction has been served.

119. In accordance with ADR Article 13, the parties have 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 within 21 days of receipt of this decision with the NADP, located at Sport Resolutions, 1 Paternoster Lane, London EC4M 7BQ (resolve@sportresolutions.co.uk).



Mark Hovell

For and on behalf of the Tribunal

06 January 2023

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