SPORT RESOLUTIONS (UK)

SPECIALIST INDEPENDENT DISPUTE SERVICE

CASE 21 – Decision

NATIONAL ANTI-DOPING PANEL

INTRODUCTION AND SUMMARY

1. Athlete Q[1] was at all material times a licensed member of the Welsh Amateur Boxing Association ("WABA") which is the National Governing Body for the sport of amateur boxing in Wales.

2. WABA has adopted the UK Anti-Doping Rules (hereafter referred to as the "ADR") and all boxers licensed by the WABA are subject to these Rules[2].

3. It is accepted [3] by Athlete Q that she is subject to the ADR by virtue of her registration with WABA on 20th September 2011.

4. Police in Wales conducted an investigation into the alleged importation and supply of controlled substances (steroids) and money laundering between October 2011 and 12th July 2012[4]. Three members of the Athlete Q's family were the subject of that investigation: they were the Appellant; her mother, J and her father L[5].

5. When the case came to court[6], L pleaded guilty to the supply of anabolic steroids. Another defendant, Person A, also pleaded guilty to supplying steroids and a further defendant, Person B, admitted those offences but was found medically unfit to participate in the process. The case against Athlete Q, the Appellant in the present matter, was essentially withdrawn and she is therefore entitled to be treated as a person of good character against whom no finding of guilt has been made by a criminal court.

6. UK Anti-Doping (UKAD) investigated the matter and charged both L and his daughter, the Appellant, with anti-doping violations.

7. In the case of L, the Anti-Doping Tribunal found as follows:

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[1] Date of birth 7th December 1993.
[2] The minor differences between the WABA Rules and the ADR from which they are derived are insignificant.
[3] See "ACCEPTED" on page 2 of the submission of Dr Graham of Llantarnam Advocacy Services who represented Athlete Q on this appeal.
[4] See the Police report contained in our papers and before the Anti-Doping Tribunal – C108 in our papers.
[5] His date of birth was 26th February 1970.
[6] 2nd December 2013 – Cardiff Crown Court.

> *"9.7 On the Tribunal's findings, the First Respondent[7] involved the Second Respondent in the sending of packages containing Prohibited Substances on three occasions before her 18th birthday, namely an unspecified date in October 2011, 10th November 2011 and 30th November 2011 (see paragraphs 7.10 above). On the basis (a) the First Respondent therefore involved the Second Respondent in an Anti-Doping Rule Violation of Trafficking within the meaning of Article 2.7 of the UKAD Rules at a time when she was a minor, (b) that the substances being trafficked were substances other than specified substances, and (c) that at the material time the First Respondent's status with the UKAD Rules was as an "Athlete Support Personnel", the sanction which the Tribunal imposes on the First Respondent is one of lifetime ineligibility."*

8. That decision in relation to L is not challenged in the present appeal. What is in issue is the Anti-Doping Tribunal's finding as regards the Appellant, Athlete Q. The details of Tribunal's findings are in paragraphs 7 to 8 of the decision under appeal.

9. At paragraph 9.8, the Tribunal found as follows:

> *"As far as the Second Respondent is concerned, this is her first violation. She was very young at the relevant time. The Tribunal takes the view that she will inevitably have been subjected to the considerable influence of her father in becoming involved in the matters which are the subject of these proceedings. The sanction imposed upon the Second Respondent by the Tribunal is one of four (4) years ineligibility".*

THE APPEAL PROCESS

10. The Appellant filed a Notice of Appeal by way of her appointed representatives, Llantarnam Advocacy Services. Dr Michael Graham is, as we understand matters, the representative of that organisation who has acted for the Appellant and who

[7] That is, L .

has prepared the papers on appeal and who attended by telephone at the directions hearing which the Chairman conducted. He also represented both L and the Appellant at the hearing on 6th May 2014.

11. Dr Graham has submitted the following documents (other than those provided by UKAD) for us to consider on the appeal.

- Notice of Appeal dated 16th June 2014
- A further submission dated 18th July 2014.
- Statements from Coaches A, B and C[8] (WABA coaches)
- Minutes of a WABA Meeting on 4th March 2014 (item 12 is relevant)

12. We should note that there were a number of exchanges between Sport Resolutions (who had administered the appeal) and Dr Graham in advance of the agreed hearing date. During the course of those exchanges (which we need not repeat in this decision) Dr Graham made it clear that neither he nor the Appellant intended to attend in person and wished to submit no more written material other than we have listed above.

13. We checked in the days before the hearing to make sure that there was nothing further that Dr Graham wished us to see and that it remained his preference not to attend in person and that the Appellant did not wish to attend either. That confirmation was received and UKAD, likewise, were content that we should deal with the appeal on paper.

14. In those circumstances, the Appeal Panel met to discuss the case on the morning of 30th July 2014. The material we had to consider included a Bundle with the following sections:

- A – Charge Response, Statements of Case.
- B – NADP Orders.
- C – UKAD's evidence (including various statements).

[8] Effectively, testifying to the witnesses' acceptance that, to their knowledge, the Appellant had "*never discussed the use of, possessed, disseminated or trafficked … performance enhancing products or drugs*" whilst in the gyms where they operated or in their vicinity.

- D – Rules, Regulations and Authorities.
- E – Appeal documents (including UKAD's chronology and a transcript of the hearing on 6th May 2014 and the decision of 28th May 2014).

THE GROUNDS OF APPEAL

15. We will set out the Grounds of Appeal (E128) in full

> **"REFERENCE: SR.0000180201**
>
> Dear Sirs
>
> We represent [Mr L & Athlete Q] .
> We are appealing against the decision of the Anti-Doping Tribunal dated 28 May 2014, by the National Anti-Doping Panel (NADP), against [Athlete Q].
>
> We are not concerned with the ruling against [Mr L].
> The NADP/UKAD had no jurisdiction over [Mr L]. They can neither police nor enforce their ruling. This was a complete waste of public funds.
>
> We believe the ruling against[Athlete Q] is unjust and unfair.
>
> The grounds for our appeal are the following.
> Abuse of process.
> Misrepresentation of the facts.
> Misdirection of the facts by the Chairman to unqualified and untrained panel members.
>
> - Carole Billington-Wood has no training or qualifications to interpret anti-doping laws or legal facts in the index case.

- Dr Neil Townshend is a general practitioner, without training or qualifications to interpret anti-doping laws or legal facts in the index case.

  Neither should be specialist panel members.

No evidence was adduced at the hearing by any of the witnesses that linked [Athlete Q] of any and all knowledge and complicity in [Mr L 's] activity.

She had no mens rea of [Mr L 's] activity and no actus reus in [Mr L 's] activity.

She had been proven to have a negative drug test, complying with the NAPD/UKAD specifications for sport.

The Chairman Mr Paul Gilroy QC, who was legally qualified to interpret the facts, misdirected the unqualified and untrained panel members to a level that confused their memories as to what was stated on examination and cross-examination.

They did not all sign the ruling.

On the balance of probabilities there was NO EVIDENCE linking [Athlete Q] to wrong doing, nor complicity in [Mr L 's] activity.

The cases that were referred to in the disclosure prior to this tribunal and the subsequent judgement had no bearing on this case and were totally irrelevant. They referred to individuals who had pleaded guilt to unlawful dealings in WADA banned substances and who had tested positive to WADA banned substances.

We expect remedy in this case. Failure to provide remedy will result in notification of local and national press of such a perverse decision.

Yours sincerely

Llantarnam Advocacy Services

(Trustee)".

16. The Supplementary Submissions of the Appellant dated 18th July 2014 are at E134-148.

THE GROUNDS OF APPEAL

17. We believe it is best if we summarise what we understand to be the Grounds of Appeal in the following terms.

18. What we will call **Ground 1** is the allegation that the anti-doping violations were not properly substantiated. In that context (and we paraphrase), Dr Graham asks us to note that

(1) The prosecution was withdrawn by the Crown Prosecution Service;

(2) The Appellant has a "clear enhanced CRB check";

(3) There was no - or at least no adequate – evidence adduced at the Tribunal on 6th May by any relevant witness to substantiate the allegation that the Appellant had "*trafficked or attempted to traffic in any prohibited substance*".

(4) Essentially, all the evidence on which UKAD relied was indirect, hearsay, unsubstantiated and not properly proved.

19. In relation to what we should call **Ground 2,** an alleged failure to respect the principles of natural justice (which overlaps with Ground 1) the submission as to the evidence before the Anti-Doping Tribunal and in written argument to this Appeal Panel, was developed on the basis that

(1) Witness A (Gwent Police)[9] presented "an unsigned witness statement to the Anti-Doping Tribunal"[10];

(2) The information that Witness A and Witness B2, Assistant Money Laundering Reporting Officer (MLRO) provided was based on hearsay and was otherwise unsatisfactory and incomplete;

(3) There was no forensic evidence to support the alleged involvement of the Appellant;

(4) The material on which UKAD relied was (in Dr Graham's words) "*merely an unsubstantiated biased opinion as a consequence of a frustrated criminal prosecution against the Appellant*". It is said that this constituted a "*vexatious attempt to violate the principles of natural justice*";

(5) Essentially, as we noted under Ground 1 above, the complaint is that there was no adequate evidence to support the finding that the Appellant was aiding and abetting or complicit in the dissemination of prohibited substances.

20. What we shall call Grounds 3 and 4 attracted rather more attention in the original Notice of Appeal of 16th June 2014 than they did in the submission of 18th July.

21. **Ground 3** concerns the training or qualifications of the two members of the Panel apart from Mr Gilroy QC who is the Chairman. It is alleged that Carole Billington-Wood has no training or qualifications to interpret anti-doping laws or legal facts in the index case and that Dr Neil Townshend, the third member of the Tribunal and

[9] The officer in the case – Witness A.
[10] Which we had at C1ff.

general practitioner is likewise similarly untrained and unqualified so that "*neither should be specialist panel members*".

22. **Ground 4,** as we understand it, is concerned with the conduct of the Chairman of the Tribunal, Mr Paul Gilroy QC who, it is said, was "*legally qualified to interpret the facts*" but "*misdirected the unqualified and untrained panel members to a level that confused their memories as to what was stated on examination and cross-examination*".

GROUND 1 – THE APPEAL PANEL'S DECISION

23. The real issue here is the adequacy or otherwise of the evidence before the National Anti-Doping Panel on the basis of which it declared itself "*comfortably satisfied*"[11] that the Appellant had committed Anti-Doping Rule violations contrary to Article 2.6.7 of the UKAD Rules[12], and of Article 2.7[13] and of Article 2.8[14]. We shall take the issues raised in order.

24. First, it is, with respect to Dr Graham, not important and certainly not decisive that the Crown Prosecution Service offered no evidence against the Appellant or did not press the criminal case for whatever reason. She is, of course, viewed as innocent in the context of the criminal process but that does not mean that her guilt of (effectively) the same or related offences cannot be established to a different[15] standard in a different (i.e civil) legal context. In the present case, that standard is "*comfortable satisfaction*"[16]. In other civil cases it would be proof on a 'balance of probabilities'.

25. It is also true that she had a clear CRB check. This, with respect, neither adds nor subtracts anything.

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[11] This being the familiar standard of proof for the present disciplinary process.
[12] See paragraph 8 of the Tribunal's decision.
[13] See paragraph 7.11 of the Tribunal's decision.
[14] See paragraph 8.4 of the Tribunal's decision.
[15] i.e. civil.
[16] See ADR 8.3.1.

26. As we have said, the main complaint about the quality of the evidence that the Tribunal had was that much of it was indirect and/or hearsay.

27. It is, to be frank, neither here nor there that Witness A, the Officer in the case (whose statement is at C1ff) did not sign the copy in our (or any other) papers. The short point is that Witness A actually gave oral evidence to the Tribunal – see E47ff.

28. We regard it as wholly appropriate in this jurisdiction for Witness A to give his evidence by reference to material gathered for the purposes of the Prosecution. That some or all of it may have been hearsay might have mattered (and required strict proof) in a criminal case. But the rules of evidence in front of a domestic tribunal such as the Anti-Doping Tribunal (or this Appeal Panel) are not so constrained.

29. The next complaint is that the evidence of Mr Thomas, Performance Director of the WABA was similarly unsigned and/or insubstantial (see C607ff). Likewise, it is submitted that in relying upon the hearsay (perhaps double hearsay) evidence provided by Witness B2 (the MRO) which is at C80ff, the material before the Tribunal was inadequate and insufficient and constituted no evidence of any forensic value[17]. Dr Graham also complains that the various schedules that Witness B2 produced contain nothing more than unsubstantiated biased opinion.

30. The fundamental misconception that underlies all those arguments is the assumption that all evidence must be given only by those with first hand and direct knowledge. The Appellant (and her advisers) are simply wrong about that. We repeat that in a civil/tribunal process such as the present, it is commonplace to rely upon hearsay/indirect evidence. Of course, the weight to be attached to that evidence may be a matter of debate and such evidence, like direct evidence, may be capable of rebuttal or answer or explanation by the person accused. In this case, for example, that evidence might have been capable of explanation by the Appellant.

[17] We attach no importance whatsoever to suggest that Witness B2's full address was not provided and/or to the point made that he is based "outside Wales".

31. Putting it in legal terms, the evidence submitted by Witness B2 and by Witness A and otherwise contained within the material which was before the Tribunal and is before this Appeal Panel constituted a *prima facie* – and probably a strong *prima facie* – case that the Appellant was directly involved or complicit in the matters with which she was charged. To take but one example, Witness B2 was able to produce[18] a schedule showing that the Appellant's name was marked as the sender on a number of relevant packages. Of course, his information was second or perhaps third hand, but that does not make the evidence any less admissible. There might have been an innocent explanation, or there might not.

32. What is fatal to the appeal - just as it was fatal to the Appellant's approach in front of the Tribunal - is that she exercised her right to say nothing and said nothing. She had taken a similar approach during the course of a police interview on 12th July 2013[19]. She will have been warned then (by way of the standard caution) that adverse inferences might be drawn even in the criminal process. But staying silent gives rise to exactly the same risk in a civil process, such as during an investigation by a body like UKAD and/or in the course of a tribunal/appeal hearing.

33. We note the following provisions from the World Anti-Doping Code and from the ADR themselves.

34. The World Anti-Doping Code says:

> *"These sport-specific rules and procedures aimed at enforcing anti-doping rules in a global and harmonized way are distinct in nature from and are, therefore, not intended to be subject to or limited by any national requirements and legal standards applicable to criminal proceedings or employment matters. When reviewing the facts and the law of a given case, all courts, arbitral hearing panels and other adjudicating bodies should be aware and respect the distinct nature of the anti-doping rules in the Code*

[18] See C81-83.
[19] See C220ff.

and the fact that those rules represent the consensus of a broad spectrum of stakeholders around the world with an interest in fair sport."

35. The ADR provide at ADR 8.3.3 and 8.3.8;

> *"8.3.3 The hearing panel shall have the power to decide on the admissibility, relevance and weight of any evidence (including the testimony of any fact or expert witness) and shall not be bound by any legal rules in relation to such matters Fact may be established by any reliable means, including admissions.*
>
> *8.3.8 The hearing panel may draw an inference that is adverse to a Participant charged with commission of an Anti-Doping Rule Violation based on the Participant's refusal, after a request made in a reasonable time in advance of the hearing, to appear at the hearing (either in person or by telephone, as directed by the hearing panel) and to answer questions put by the hearing panel or the NADO."*

36. In our judgment, the Tribunal was fully entitled to find that UKAD had made out a strong *prima facie* case. In the absence of any answer or plausible explanation offered by the Appellant, it amounted to good and credible evidence that she had indeed committed the offences with which she was charged. Accordingly, the Tribunal was entitled to find the charges proved.

37. In those circumstances, we approve the following submission at paragraph 42 of UK Anti-Doping's submission on this appeal, namely,

> *"42.1 The anti-doping disciplinary proceedings brought against [Athlete Q] are not dependent upon the success or otherwise of any criminal prosecution (as explained in more detail below). The fact that the criminal charges levied against [Athlete Q] were ultimately not pursued has no bearing on her liability under the ADR. The fact that [Athlete Q] has a clear enhanced CRB check is irrelevant to these proceedings.*

42.2 It is not correct to recite that no evidence was adduced at the hearing or at any other time to suggest that [Athlete Q] in possessed or trafficked Prohibited Substances, nor that she was complicit in aiding and abetting anti-doping rule violations by another. UKAD furnished the Panel, and [Athlete Q], with a 1077-page bundle of documents that comprised various pieces of evidence including copies of documents gathered and/or prepared by the Welsh Law Enforcement officers in connection with their investigation, as well as detailed witness statements from the officers and individuals directly involved."

GROUND 2 – BREACH OF NATURAL JUSTICE

38. Our conclusion on this Ground of Appeal follows from the foregoing. The Tribunal was perfectly entitled to take account of hearsay evidence. She and her representative, Dr Graham, were provided in advance with all the evidence upon which UKAD relied. She had the opportunity, by giving evidence personally as well through the questions put by her representative, to challenge the evidence of any witness upon whom UKAD relied. In the event, she did not give evidence herself. We have a full record of the cross-examination carried out on her behalf.

39. In short, we find absolutely no breach of any principle of natural justice. The hearing process was, in our judgment, entirely fair and appropriate.

GROUND 3 – THE ROLE OF THE TWO PANEL MEMBERS WHO WERE NOT LAWYERS

40. This contention is, with respect, entirely misguided.

41. The ADR provide as follows:

"8.1 Jurisdiction of the NADP

The following matters arising under these Rules shall be submitted for determination by the National Anti-Doping Panel (NADP), in accordance with the NADP Rules, as amended from time to time:

8.1.1 A charge that one or more Anti-Doping Rule Violations has been committed: see Article 7.5. Where such charge is upheld, the NADP first instance tribunal will determine what Consequences (if any) should be imposed, in accordance with and pursuant to Article 9 and 10."

42. The Rules for the "Composition of a Tribunal" are set out in Section 5 of the 2010 Rules of the NADP. But the relevant provisions are as follows:

"5. Composition of a Tribunal

*5.1 Where a Request for Arbitration is received, the President shall appoint a "T**ribunal**" made up of three NADP arbitrators, one acting as chairman, to hear and determine the charge(s) in accordance with the NADP Rules, unless it appears to the President that the matter is suitable for determination by a sole arbitrator. The President's appointee(s) pursuant to this Article shall be referred to as the "**Arbitral Tribunal**".*

5.2 Where a ruling is required in relation to a Provisional Suspension or any other urgent matter before an Arbitral Tribunal has been convened, the President himself shall determine that matter or shall refer that matter to the Vice-President for determination.

*5.3 Where a Notice of Appeal is received, the President shall appoint a tribunal made up of three NADP arbitrators, one acting as chairman, to hear and determine the appeal in accordance with Article 12 (the "**Appeal Tribunal**").*

5.4 All NADP arbitrators sitting on Tribunals convened under the NADP Rules must remain impartial and independent at all times and must have had no prior involvement with the dispute at hand. Prior to this appointment to a Tribunal, each NADP arbitrator must sign a declaration that there are no facts or circumstances known to him which might call into question his impartiality or independence in the eyes of any of the parties, other than any circumstances disclosed in the declaration. Each NADP arbitrator shall have a continuing duty to disclose to the President without delay any such circumstances arising following his appointment. The President shall determine whether such NADP arbitrator should be appointed (or should continue to serve) as a Tribunal member in light of such disclosure(s).

5.5 The NADP Secretariat shall advise the parties of the identity of the NADP arbitrators appointed to the Tribunal that will hear and determine the matter, and shall furnish them with a copy of each member's written declaration of independence. Any party having any legitimate objection to such appointment(s) must communicate its objections to the President via the NADP Secretariat within 14 days of receipt of such declarations. The President shall rule on the legitimacy of any such objection and his decision shall be final.

5.6 An arbitrator may also be challenged by any party where, following the formation of the Tribunal, circumstances arise that create legitimate doubts as to his impartiality or independence. Such a challenge must be made within 14 days of that party becoming aware of such circumstances. The President shall decide on the challenge, unless the challenged arbitrator withdraws or all parties agree to the challenge, and the President's decision shall be final.

5.7 If an arbitrator gives notice of his desire to resign from a Tribunal, or becomes unwilling, unable or unfit to sit on such Tribunal for any reason, the President shall revoke that member's appointment and may in his discretion either appoint another NADP arbitrator to

the Tribunal or, with the agreement of the remaining arbitrators and having regard to the circumstances of the case and the stage of the proceedings, authorise the remaining arbitrators to continue to hear and determine the matter alone."

43. We also note that the Appellant was notified of the intention to appoint Ms Billington-Wood and Dr Townshend as specialist members of the Panel and that no objection to their appointment was made before or at the first hearing on 6th May 2014. That, if we may say so, was for very good reason: there is no conceivably good ground upon which such an objection could have been (or may still be) advanced on the Appellant's behalf[20].

GROUND 4 – MISDIRECTION OF THE PANEL BY MR GILROY Q.C.

44. The Notice of Appeal claims that:

"Mr Paul Gilroy QC, who was legally qualified to interpret the facts, misdirected the unqualified and untrained panel members to a level that confused their memories as to what was stated on examination and cross-examination. They did not all sign the ruling."

45. In our judgment, there was no such misdirection. Insofar as this complaint means anything additional to matters considered already, we take it to focus on the previous complaint about the quality and nature of the evidence presented.

46. We do not intend to repeat ourselves. We have accepted that the Tribunal's approach to the evidence was a proper one and, for that reason, there can be no question of any "misdirection". Nor does it matter one iota that all three members of the Panel did not sign the ruling. No such formal requirement has been identified to us and, in any case, this would (at its highest) be a minor deviation that we could remedy under ADR 8.3.6.

CONCLUSION

[20] Whilst it was a point taken in the Notice of Appeal, it has not been developed in the subsequent written submission.

47. For the foregoing reasons, we dismiss this appeal.

COSTS

48. We note that UKAD has[21] stated that it does not seek any Order that the Appellant should pay the costs of this appeal. We respect that decision and, accordingly, make no such Order.

WILLIAM NORRIS QC

ROBERT ENGLEHART QC

DR BARRY O'DRISCOLL

31 July 2014

[21] For reasons explained in paragraph 49 of its submission to this Appeal Panel.

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