SPORT RESOLUTIONS (UK)
SPECIALIST INDEPENDENT DISPUTE SERVICE

Case 8 – Decision

NATIONAL ANTI-DOPING PANEL

Introduction

1. This is the final decision of the Anti-Doping Tribunal ('the Tribunal') convened pursuant to Article 5.1 of the National Anti-Doping Panel Procedural Rules to hear and determine three charges brought against Player A (the Respondent) for violations of Articles 2.6 and 2.7 of the Welsh Rugby Union ('WRU') Anti-Doping Rules ('ADR').

2. The Respondent was born on [redacted]. He was a registered member of the WRU and so, it was contended, bound by the ADR.

3. By Regulation 3 of the ADR, UKAD is the National Anti-Doping Organisation for the United Kingdom and is appointed by the WRU to enforce its ADR.

4. The Tribunal held a hearing on 21 January 2014. The hearing was attended (in addition to the Tribunal) by

    - The Respondent
    - Witness A, witness
    - Graham Arthur, Legal Director, UKAD
    - Jason Torrance, Legal Officer, UKAD and witness
    - Stacey Shevill, presenting case for UKAD
    - Jenefer Lincoln, Sport Resolutions (UK)

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

Procedural History

6. The Respondent was charged with a doping offence by letter dated 14 November 2013. The letter set out the details of the alleged violations and a summary of the facts and the evidence relied upon by UKAD. The letter also imposed a provisional suspension with "immediate effect".

7. On 10 December 2013 the Tribunal Chairman (Christopher Quinlan QC) conducted a Directions Hearing by telephone conference call. The Respondent represented himself

and confirmed that he had no objection to the composition of the Tribunal, including the Chairman who also chaired the International Rugby Board ('IRB') Judicial Committee that decided the related case of Player B. The Chairman issued procedural directions, which were promulgated in writing, dated 11 December 2013. Those directions were subsequently varied on application by UKAD.

The Issues

8. By ADR Article 2.6 it is an anti-doping rule violation to possess a Prohibited Substance or Prohibited Method.

9. By ADR Article 2.7 it is an anti-doping rule violation to traffic or attempt to traffic any Prohibited Substance or Prohibited Method.

10. By letter dated 14 November 2013 the Respondent was charged with three anti-doping rule violations:

a. Charge 1 - That since at least 11 July 2013, he possessed and attempted to traffic the following Prohibited Substances: androsta-1,4,6-triene-3,17-dione (androstatrienedione); 17a-dimethyl-17b-hydroxy-5a-etiocholan-3-one, a derivative of drostanolone; 6-bromo-androstane-3-17-dione, a metabolite of androstenedione (androst-4-ene-3,17-dione); methyldienolone(17β-hydroxy-17a-methylestra-4,9-dien-3-one);mestanolone; stanozolol; and 17a-methyl-3-oxo-19-norandrostene-4, 17-diol; 4-chloro-17a-methyl-andros-4-ene-3b, 17b-diol; 2a, 3a-epithio-17a-methyl- 5a-androstan-17b-0l; 4-chloro-17a-methyl-1,4,diene-3,17-diol; 3-beta-hydroxyetioallocholan-17-one; 17-methyl-1-androstene-17b-ol-3-one, being substances with identical or similar chemical structures or similar biological effects to those listed in S.1.1.a of the Prohibited List.

b. Charge 2- that on, or around, 6 May 2013 he trafficked the prohibited substances methandienone and stanozolol.

c. Charge 3 - that on 15 August 2013 he trafficked the prohibited substances methyldienone, mestanolone, stanozolol and androstenedione.

11. By email dated 16 November 2013 timed at 18.33 the Respondent replied thus:

"In response to your letter dated November 14

I would like to let you know that due to supply issues, [Company A], stopped trading on

4 November.

Our website has been offline since that date.

We are no longer producing any hormonal products, and our accountant is currently in the process of shutting us down as a limited company.

We were informed by our main supplier that a batch of material had been subject to cross contamination with items not listed in the ingredients, We therefore delisted the product and have decided to stop trading incase this could happen again.

May I state, we took this action before any correspondence from yourselfs [sic].

I will not be appealing your decision and will accept the consequences.

[Company A] has never willingly imported or supplied any product for use in drug tested competition."

12. In a further email sent two minutes later the Respondent added:

"I also feel it necessary to point out that in December 2007 I retired with a neck injury.

I have not played since that date and have no plans to ever play again.

I registered with my local club [Rugby Club A] [sic] *shortly after but in view of the injury decided against playing.*

I was not aware I was still a registered player with the WRU.

If I had known I was, I would of de registered [sic] *before ever starting the business, [Company A] [sic].*

I would like to add that in 16 years as a rugby union player, I was completely clean from using any form of banned product.

I actually was tested by uk sport in 2007 whilst playing for [Rugby Club B] [sic] I passed.

I do not condone doping in sport and the products we sell are aimed at those wanting to build up their muscle mass and improve the look of their physique.

We have a warning both on our site with the product description and on the label itself that's states they should not be used by athletes in drug tested competitions.

The ingredients are also clearly listed to be referenced against those banned by wada. [sic] *There is no reason any athlete can claim they feel they can take a [Company A] product, and pass a drug test.*

I have even stated this publicly on our twitter page."

13. In an email sent to Ms Lincoln at 18.50 on 10 December 2013 he said:

"In the matter of ukad vs myself, [sic] *i* [sic] *would like simply to say, I admit selling through my business, [Company A], multiple products of which the contents are banned for use in sport by the wda, and the wru* [sic]

However in my opinion, no anti doping violation has occurred due to me [sic] *retiring from rugby union in 2007.*

I can confirm this is correct and a truely [sic] *honest statement.*

Me [sic] *still being registered in 2013 when the ukad* [sic] *started their investigation is due simply to an oversight on the part of [Rugby Club A]* [sic] *who did not de register* [sic] *me as a player*.

I have not played any competitive sport including rugby union since December the 30th 2007".

14. Before the Tribunal the Respondent's position was as follows:

a. Charge 1 - Initially he admitted the charge then clarified that his case was that he believed he was not registered, had retired and so was not subject to the WRU's jurisdiction. If that was right, he argued, he was outwith the ADR.

b. Charge 2 - He denied this charge. His position, in summary, was that he had not trafficked the Prohibited Substances alleged in that charge and in any event the product Player B said he used (Pro SD) did not contain either substance.

c. Charge 3 - He denied trafficking those Prohibited Substances.

UKAD's case

15. The Respondent is [redacted] years of age. He played rugby union for WRU Premiership league club Rugby Club B. Latterly he was registered as a player with his first club,

Rugby Club A. UKAD's case was that at all material times he was a registered member of the WRU. Pursuant to his registration, he was said to be bound by and required to comply with the ADR.

16. The Respondent owns and operates a company called Company A. Company A is a producer and distributor of designer supplements, some of which contain Prohibited Substances included in the WADA 2013 Prohibited List. Company A's registered office is the Respondent's parents' home address. Company A supplies its products through its website and by way of online suppliers including Supplier A and Supplier B . Company A also has Facebook and Twitter pages on which its products are advertised and through which Company A communicates publicly with its customers.

17. On 10 July 2013, the UK Border Force notified UKAD that a package addressed to the Respondent had been intercepted; it was suspected to contain illegal substances. UKAD conducted further investigations and discovered the nature of the Respondent's business.

Charge 1

18. This reflected the alleged holding of stock and offering for sale twelve specific products advertised as available for purchase on Company A's website. The ingredients for each product were listed on the website. The products contained substances on the World Anti-Doping Agency ('WADA') Prohibited List 2013 as set out in the following table:

Company A Product	**Listed Ingredients**	**2013 Prohibited List Category**
PRO-TREN	Methyldienolone and mestanolone	S1. Anabolic Agents
PRO-ATD	1,4,6,androstatrien,3,17-dione	S4. Hormone and Metabolic Modulators
PRO-SD	17a-dimethyl-17bhydroxy-5aetiocholan-3-one (Superdrol and Methasterone)	S1. Anabolic Agents
6-BROMO	6-Bromo-androstane-3-17-Dione (Androstenedione)	S1. Anabolic Agents
M4OHN	17a-methyl-3-oxo-19-	A substance with similar

Company A Product	Listed Ingredients	2013 Prohibited List Category
	norandrostene-4, 17-diol (Oxavar)	chemical structures or similar biological effects to those listed in S.1.1.a of the 2013 Prohibited List
M-DIEN	Methyldienolone and stanozolol	S1. Anabolic Agents
PRO-MAG35	4-chloro-17a-methylandros-4-ene-3b,17b-diol (Promagnon)	A substance with similar chemical structures or similar biological effects to those listed in S.1.1.a of the 2013 Prohibited List
PRO-EPI	2a, 3a-Epithio-17a-Methyl- 5a-Androstan-17b-Ol (Epistone)	S1. Anabolic Agents
PRO-HALO	4-chloro-17a-methyl-1,4,diene-3,17-diol (Halodrol)	S1. Anabolic Agents
PRO-STANO	3-betahydroxyetioallocholan-17-one (Stanadrol)	A substance with similar chemical structures or similar biological effects to those listed in S.1.1.a of the 2013 Prohibited List
11-KETO	Adrenosterone	A substance with similar chemical structures or similar biological effects to those listed in S.1.1.a of the 2013 Prohibited List
M1T	17-methyl-1-androstene-17b-ol-3-one (Methyl-1-testosterone)	A substance with similar chemical structures or similar biological effects to those listed in S.1.1.a of the 2013 Prohibited List

19. The above table was proved by Jason Torrance's ('JT') witness statement in which he explained that on 17 September 2013 he captured screenshots of the said products from Company A's website. He exhibited copies of the said screenshots (JT-03).

Charge 2

20. Charge two is an alleged specific example of the Respondent trafficking Prohibited Substances. Thereby it is alleged that he sold a product, Pro-SD, to one Player B. Player B allegedly took it, which in consequence led to an out-of- competition adverse analytical finding on 13 May 2013. Subsequently an IRB Judicial Committee chaired by the chairman of this Tribunal declared him ineligible for two years.

21. The facts of Player B can be stated shortly. He was aged [redacted] years and a playing member of Scotland Rugby Union ("SRU"). He was tested out-of-competition on 13 May 2013 while in camp with the SRU Under 20s squad preparing for the IRB Junior World Championships 2013. The Player's urine sample contained metabolites of methandienone and stanozolol, both listed in Section S1.1a Anabolic Androgenic Steroids in WADA's 2013 List of Prohibited Substances.

22. The IRB notified the Player of this adverse analytical finding by letter dated 11 June 2013. In an email response on 13 June the Player admitted the anti-doping rule violation and said it was the result of his taking a "pill called Pro SD". He said he had been taking it for about two weeks before he was tested. That was his account before the Judicial Committee. He purchased the Pro SD from a company called Supplier A. Appended to the decision is a screenshot from that company's website advertising Pro SD for sale.

23. In light of the Player's admission and the other relevant evidence, the Judicial Committee was comfortably satisfied that the IRB discharged its burden and established that the Player committed an anti-doping violation contrary to IRB Regulation 21.2.1(a).

24. UKAD relied upon the IRB Judicial Committee's decision and its factual findings. It called no other evidence to prove the charge.

Charge 3

25. This charge concerns the 'test purchase' of three Company A products. On 15 August 2013, Company B, acting on instructions from UKAD, purchased online three [Company A] products (6-Bromo, M-Dien and Pro-Tren) from one of Company A's official stockists, Supplier B . The products were not purchased directly from the [Company A] website because at the time of purchase it was closed for "website maintenance".

26. The said products were received by Company B on 20 August 2013 and forwarded to UKAD. They were submitted for analysis at HFL Sport Science laboratory. Each product was analysed and certificates from the laboratory (produced by JT, exhibit reference JT-06 - JT08) prove each contained the following Prohibited Substances in s1.1. (Anabolic Androgenic Steroids) in the WADA Prohibited List.

    a. 6-Bromo 6-bromo-androstenedione and androstenedione

    b. M-Dien methyldienolone and stanozolol

    c. Pro-Tren methyldienolone and mestanolone

Respondent's case

27. He told us he deplores doping in sport. He accepted being registered as a player through his membership of and playing for Rugby Club B. He played at that high level until, he said, a neck injury forced him to retire from the game in December 2007. He said he had not played rugby union since 30 December 2007 and had no plans to play again. He subsequently registered with his local (and first) rugby union club, Rugby Club A in the hope that he might be fit to play. As required, Rugby Club A registered him with the WRU. He was informed that his neck injury was such that he should not play, and informed Rugby Club A accordingly.

28. He founded Company A in 2012. In answer to the Tribunal's questions he said he was one of only two shareholders, holding equal shares with his "partner" (as he described him). They are the only two directors of the company, he said. That accords with the company records obtained by UKAD. He told us it had no employees. The Respondent said he is involved in the day to day running of the company, taking orders, ordering stock, sending products, dealing with suppliers, making up the actual capsules at their premises in South Wales and using the company Facebook and Twitter accounts. He "shares the workload" with his partner.

Charge 1

29. As for the first charge, he admitted possessing the named substances. He further agreed that that Company A offered them for sale. But he said he was outwith the ADR as

(1) he asked Rugby Club A to deregister him and believed the club had done so and (2) at all material times he was retired from the Game.

30. He relied on Witness A, Secretary of Rugby Club A. Witness A confirmed in writing and before us that the club did not ask the WRU to remove him from the register in 2010 or at all until January 2014. He also relied upon an email from [redacted], a member of the senior playing squad at Rugby Club A since 1998. He said the Respondent has "never played a game for Rugby Club A in the time [he] had been a senior player".

31. The Respondent attempted to produce teamsheets to show he had not played for Rugby Club A. The WRU informed him that they are kept for only one season after the one to which they relate. He produced an email from Manager A, WRU Fixture and Competitions Manager dated 20 January at 13.41 which read: "*De-registration* [sic] *is a matter for a club so the responsibility lay with [Rugby Club A]. If a player contacts the Union directly regarding de-registration* [sic] *we refer him/her back to the Club".* Based on that, he said he could never have removed himself from the register.

Charge 2

32. He denied trafficking the named substances to Player B. He relied *inter alia* on the following. First, he said Player B did not buy the Pro-SD until June, namely after his positive sample on 13 May 2013. He said he had documents to prove that assertion but did not produce them. In any event, he disputed that Pro-SD contained either named Prohibited Substance. He produced a piece of paper which purported to be a report from one Professor Hong of Food, Supplement and Pharmaceutical Analysis dated 1 November 2012 apparently showing that Pro-SD contained 17a-dimethyl-17bhydroxy-5aetiocholan-3-one (which does accord with the label). He said the capsules tested by Professor Hong were from the same batch he said Player B purchased in June. The report was supplied to UKAD on 9 January. UKAD did not object to it.

Charge 3

33. He denied trafficking the named substances to UKAD; Supplier B supplied them. He produced (for the first time) a document purporting to be an email from "Lily Cena" dated 18 January, timed 14.08. She is a supplier of the chemicals used to make the

capsules. Therein she spoke of the "construction" of methyldienolone and the presence of "impurities" in the finished products. That was to address the fact that the supplied Pro-Tren contained methyldienolone and mestanolone, which did not accord with the ingredients.

Determination of charges

34. Article 8.3.1 of the ADR provides that UKAD shall have the burden of establishing "to the comfortable satisfaction of the hearing panel" that the Respondent has committed the anti-doping rule violation specified in the charge.

Jurisdiction

35. Central to all charges is proof that at the material time the Respondent was a registered member of the WRU and was subject to and bound by the ADR. UKAD accepted that he had had not played professional rugby union since 2007; it had no positive position on whether he has played any rugby since that time.

36. By Regulation 6 the ADR apply to "Players and Player Support Personnel under the jurisdiction of the WRU at all levels of the Game. References in the UK Anti-Doping Rules to 'Athlete' and 'NGB' should be read and construed as references to 'Player'…and 'WRU' respectively…".

37. Article 1.2.1 of the ADR states that the rules apply to "all Athletes and Athlete Support Personnel who are members of the NGB and/or of member of affiliate organisations… (including any clubs, teams, associations or leagues)". For NGB read WRU, and for athlete read player.

38. UKAD elected not to obtain witness evidence from the WRU. Instead it relied upon screenshots of WRU registration documents, exhibited by JT. On their face they show the Respondent was registered with the WRU as follows:

Detail	From	To
a. 1st team [Rugby Club A]	20 January 2010	Present day
b. 1st Team WRU	10 January 2008	20 January 2010

c. 1st Team [Rugby Club B] 28 June 2006 10 January 2008

(ref. exhibit JT-05).

39. JT told us, and we accept, that "1st Team WRU" means he remained registered with the WRU but Rugby Club B had (from 10 January 2008) de-registered him as one its players. "Present day" refers to the day of the screenshot, which is undated but which JT sought "on or about 17 September 2013".

40. The Respondent accepted that he was registered as the documents show. However, he believed Rugby Club A had instructed the WRU to remove him from the register and that he had been so removed. In fact, as Witness A established, Rugby Club A made so no such request until January 2014. Rugby Club A is an affiliated club of the WRU. Therefore it follows that at all material times he was registered with the WRU.

41. Next, the question of his claimed retirement. Whether or not he had in fact ceased playing rugby union is nothing to the point. The issue is whether he had made an 'effective' retirement for the purposes of the ADR. In order to do so any purported retirement must comply with Article 4.1.1, which provides:

Each Participant shall continue to be bound by and required to comply with these Rules unless and until he/she has given written notice to the NGB that he/she has retired from his/her sport. Where the Participant is an Athlete who is in the National Registered Testing Pool or Domestic Pool at the time of such retirement, he/she must also send such notice to the NADO. The NGB, the NADO, the NADP and CAS (as applicable) shall continue to have jurisdiction over him/her under these Rules after such retirement in respect of matters taking place prior to retirement.

42. The Respondent did not suggest that he ever wrote to the WRU informing it that he had retired. His case was that he informed his club, Rugby Club A. That was not sufficient for the purposes of the ADR. Therefore he did not comply with ADR 4.1.1.

43. We find that by virtue of his registration and the absence of written notice to the WRU of his retirement, he was at all material times bound by the ADR.

Charge 1

44. This single charge alleges violations contrary to ADR Article 2.6 (possession) and ADR Article 2.7 (attempted trafficking).

45. In the same Appendix 1 'possession' is defined thus:

"The actual, physical Possession, or the constructive Possession (which shall be found only if the Participant has exclusive control over the Prohibited Substance or Prohibited Method or the premises in which a Prohibited Substance or Prohibited Method exists or if the Participant knew about the presence of the Prohibited Substance or Prohibited Method and intended to exercise control over it)."

46. The Respondent expressly admitted before us possessing the Prohibited Substances set out in the charge. He told us he played an integral part in manufacturing the capsules. That follows his earlier admissions, including the email he sent to Ms Lincoln on 10 December 2013.

47. In light of the Player's admissions and the other relevant evidence, we are comfortably satisfied that UKAD discharged its burden and established that the Player was in possession of Prohibited Substances as set out in the charge. He thereby committed an anti-doping violation contrary to ADR Article 2.6.

48. In the said Appendix 'trafficking' is defined -

"Selling, giving, transporting, sending, delivering or distributing a Prohibited Substance or Prohibited Method (either physically or by any electronic or other means) by a Participant to any third party; provided, however, that this definition shall not include…[the exceptions do not apply in this case]"

49. The Respondent expressly admitted before us attempting to traffic the Prohibited Substances set out in the charge. That follows his earlier admission in his email sent to Ms Lincoln on 10 December 2013 that he sold such products. Each of the Prohibited Substances was within products offered for sale on the Company A website. We are comfortably satisfied that advertising such products for sale amounts to an attempt to sell them. We are comfortably satisfied that given the size of the company

and his integral role in the management and operations of its business, his actions and that of Company A were one and the same.

50. In light of the Player's admissions and the other relevant evidence, we are comfortably satisfied that UKAD has discharged its burden and established that the Respondent attempted to traffic the Prohibited Substances set out in the charge. Thereby he committed an anti-doping violation contrary to ADR Article 2.7.

51. It is unfortunate that the single charge alleges two separate anti-doping rule violations, not least because they carry different sanctions[1]. However, we are satisfied the Respondent suffered no prejudice or was otherwise disadvantaged in his defence to the charge. First, he did not claim to be. Second, the violations arose out of and were founded upon the same facts. Third, there was no dispute as to the facts upon which the charge was founded. Fourth, his case was the same on both elements, namely that he was outwith the jurisdiction of the ADR.

Charge 2

52. This charge was put on an express basis and in a particular way. In paragraph 2.15 (b) of its written submissions UKAD stated that this charge reflected the following alleged conduct: "*For selling Pro-SD to [Player B] which led to his In-Competition Adverse Analytical Finding on 13 May 2013 and subsequent two year ban.".* It is for that reason that the Prohibited Substances are pleaded as methandienone and stanozolol, the two found in Player B's sample. The chemical formula for methandieone is 17β-hydroxy-17a-methylandrosta-1, 4-dien-3-one.

53. Despite UKAD's assertion to the contrary, it is clear from the IRB Judicial Committee's decision that when Player B's sample was taken it was an out-of-competition and not in-competition sample.

54. UKAD relied upon ADR Article 8.3.7 to prove the violation against the Respondent. ADR 8.3.7 provides:

"*The facts established by a decision of a court or professional disciplinary tribunal of*

[1] Further, had the matter involved a Specified Substance there would have been the potential additional complication of ADR Article 10.4 applying to the possession element but not the attempted trafficking.

competent jurisdiction that is not the subject of a pending appeal shall be irrebuttable evidence against the Participant to whom the decision pertained of those facts, unless the Participant establishes that the decision violated principles of natural justice."

55. Therefore, the facts proved by that decision are irrebuttable evidence against Player B. He is the "participant to whom the decision pertained". We do not accept UKAD's submission that the decision proves irrebuttably those facts against this Respondent. That is not what the article says.

56. UKAD called or relied upon no other evidence. UKAD did not submit a sample of Pro-SD for chemical analysis. The Respondent told us he has a laboratory report or material which proves that Pro-SD contains neither methandienone nor stanozolol but he did not produce it. It is not for him to prove that it does not but rather for UKAD to prove that it does or that in some other way he supplied Player B with those Prohibited Substances.

57. It is correct to observe that in paragraph 32 of its written decision the IRB Judicial Committee stated:

"*We considered carefully whether Reg. 21.22.5 applies. We are prepared to accept his account of the circumstances in which he took Pro-SD and that this was the source of the methandienone and stanozolol..."*

However, that was (1) in the context of it considering whether *on the basis of Player B's case,* there was any basis for reducing the otherwise mandatory period of two years; (2) not a positive conclusion that Pro-SD did contain methandienone and stanozolol, especially where (3) there was no evidence before it of the chemical composition of Pro SD. Further it is to be noted that the Pro-SD advertisement states that it contains 17a-dimethyl-17b-hydroxy-5a-etiocholan-3-one (superdrol and methasterone); so does the label on the Pro-SD container.

58. We appreciate the Respondent admitted that Company A supplied Supplier A with Pro-SD which Player B eventually purchased. He said that purchase was made in June 2013. However, that is not how this charge was put and not how the Respondent met it. He was alleged to have supplied the methandienone and stanozolol to Player B. It is a specific charge, which he met with a specific defence.

59. On the evidence before us we are not comfortably satisfied that Pro-SD contains methandienone and stanozolol. It follows that we are not comfortably satisfied that the Respondent trafficked methandienone and stanozolol to Player B. It follows we are not comfortably satisfied that he committed *the* anti-doping rule violation *alleged in this charge*.

Charge 3

60. The products containing the named Prohibited Substances were purchased on 15 August 2013. Those were Company A products supplied by Company A to Supplier B. Given the Respondent's integral role in the management and operations of this small company, his actions and that of Company A were one and the same. Therefore we are comfortably satisfied that the Respondent trafficked the Prohibited Substances set out in the charge. That they were purchased from Supplier B on 15 August is nothing to the point. He supplied the products which contained the Prohibited Substances which were purchased by Company B. It is not necessary for UKAD to prove precise date on which he did so or the route of supply.

61. It follows that we are comfortably satisfied that UKAD discharged its burden and established that he committed an anti-doping violation contrary to ADR Article 2.7.

Sanction

62. Article 10.2 of the ADR provides-

"For an Anti-Doping Rule Violation under Article 2.1 (Presence of Prohibited Substance or its Metabolites or Markers), Article 2.2 (Use or Attempted Use of Prohibited Substance or Prohibited Method) or Article 2.6 (Possession of Prohibited Substances and/or Prohibited Method) that is the Participant's first violation, a period of Ineligibility of two years shall be imposed, unless the conditions for eliminating or reducing the period of ineligibility (as specified in Article 10.4 and/or Article 10.5) or the conditions for increasing the period of Ineligibility (as specified in Article 10.6) are met."

63. So far as is material ADR Article 10.3.3 provides –

For an Anti-Doping Rule Violation under Article 2.7 (Trafficking or Attempted

Trafficking) or Article 2.8 (administration or Attempted administration of a Prohibited Substance or Prohibited Method, etc.) that is the Participant's first violation, a period of Ineligibility of at least four (4) years but up to a lifetime shall be imposed, unless the conditions for eliminating or reducing the period of Ineligibility set out in Article 10.5 are met…"

64. The Respondent was notified of the charges at the same time. Accordingly they are to be treated as a single anti-doping rule violation. Further, the sanction to be imposed "*shall be based on the Anti-Doping Rule Violation that carries the more severe sanction*" (ADR Article 10.7.4), namely those contrary to ADR Article 2.7.

65. This is the Respondent's first anti-doping rule violation.

66. For obvious reasons, Article 10.6 of the ADR, (aggravating circumstances that may increase the period of ineligibility) does not apply to violations contrary to ADR 2.7.

67. The ADR provides no assistance in assessing the appropriate sanction between four years and life. There are no guidelines. The commentary to Article 10.3.2 of the WADA Code observes, "*those who are involved in doping Athletes or covering up doping should be subject to sanctions which are more severe than the Athletes who test positive…".*

68. The only Arbitral Award UKAD brought to our attention was *IRB v Evile Telea* (decision of the majority dated 18 August 2010), in which an athlete was declared ineligible for four years for trafficking by way of supplying salbutamol to two teammates. The facts are a long way from the instant case.

69. Determining the appropriate period of ineligibility necessitates an assessment of the circumstances of the trafficking and his degree of fault. He is caught by the ADR because he was registered and had not given the necessary written notice of his retirement.

70. As for registration, he was at fault. He relied solely upon his club. However, on the evidence before us he made no effort to follow up the question of his registration, either with his club or with the WRU. He made no enquires of the WRU, as he should have done, before he started this business.

71. The email from Manager A does not assist him because (1) it was not advice he was acting on at the time (he only received it this month) and (2) it demonstrates that had he made such enquiry at the relevant time he would have been told he was registered and could have taken the necessary steps to ensure Rugby Club A took action to remove from the register.

72. As for his retirement, he was also at fault. ADR Article 1.3.1 provides that it was his "*personal responsibility… to acquaint him/herself, and to ensure that each person (including medical personnel) from whom he takes advice is acquainted, with all the requirements of these Rules…*". He did not nor did he, at the time, make any enquires in that regard. He was at fault.

73. In 2012 the Respondent began supplying products which he knew contained Prohibited Substances. He was knowledgeable about the existence and operation of anti-doping regimes. He should have ensured he was outwith the jurisdiction of any such regime before he stated trafficking such products. He did not and was at fault for that failure.

74. Further we consider these factors relevant in assessing the seriousness of the circumstances of the violations:

    a. The anti-doping rule violation contrary to Article 2.7 involved multiple Prohibited Substances.

    b. The said anti-doping rule violation involved, on the basis of the proven charges, conduct over a not insignificant period of time.

    c. The Respondent committed multiple anti-doping rule violations.

75. We identify the following factors which mitigate the seriousness of his behaviour:

    a. His website and products contain express warnings, in clear terms that they should not be used

        i. by those under 21 years of age, and

        ii. "athletes subject to drug testing". We note the presence of these warnings but are bound to observe that they only go so far. Their efficacy is wholly

dependent on the honesty of the purchaser and there is no effective way for him to police them.

b. There was no evidence he was targeting or selling to or otherwise supplying any particular individuals, particularly rugby union players or other athletes.

c. Similarly, there is no evidence he was taking advantage of, relying upon or otherwise using his connections with Rugby Club A or any other rugby club to traffic or attempt to traffic his products.

76. We are satisfied to the requisite standard that the circumstances are such as to merit a period of Ineligibility longer than the starting point of four years. The issue is what additional period we impose. In light of the factors identified herein and the circumstances of this matter, we consider it appropriate to impose a period of ineligibility of eight years.

77. The Respondent did not seek to establish an entitlement to a reduction or elimination of the sanction under the provisions of ADR Article 10.5.1 (No fault or negligence) or 10.5.2 (No significant fault or negligence). On the facts of this case we are satisfied neither provision applies.

78. In accordance with ADR Article 10.9.3 the period of ineligibility shall start on 14 November 2013, the date upon which the provisional suspension took effect.

79. The Respondent's status during the period of ineligibility is as provided in ADR Article 10.10.

Summary

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

i. The anti-doping rule violations contrary to ADR Articles 2.6 and 2.7 have been established.

ii. The period of ineligibility imposed is eight years from 14 November 2013.

Right of Appeal

81. In accordance with ADR Article 13.4.1 the Respondent may appeal against this decision by lodging a Notice of Appeal within 21 days of receipt hereof.

Postscript

82. We did not hear from Manager A or any other person from the WRU. There are obvious good reasons why registration is principally a matter for clubs rather than individuals. However, if an individual contacted the Union wishing to deregister we would hope his/her attention would be directed in ADR Article 1.4. lest it be that they wished to deregister due to retirement. If there is not already, we see merit in there being a specific provision in the WRU Player Registration and Transfer Regulations addressing the procedural requirements concerning to retirement.

Christopher Quinlan QC, Chairman
On behalf of the Tribunal
30 January 2014

Sport Resolutions (UK)
1 Salisbury Square
London EC4Y 8AE

T: +44 (0)20 7036 1966
F: +44 (0)20 7936 2602

Email: resolve@sportresolutions.co.uk
Website: www.sportresolutions.co.uk