

**IN THE MATTER OF PROCEEDINGS BROUGHT UNDER THE ANTI-DOPING RULES OF
THE SCOTTISH RUGBY UNION**

Before:

Mark Hovell
Lorraine Johnson
Professor Brian Lunn

BETWEEN:

UK Anti-Doping

Anti-Doping Organisation

and

Darren Eales

Respondent

DECISION OF THE TRIBUNAL

I. Introduction & Procedural history

- 1 UK Anti-Doping (“UKAD”) is the National Anti-Doping Organisation in the UK and has jurisdiction to prosecute this case.

- 2 The Scottish Rugby Union (the “SRU”) is the National Governing Body for the sport of rugby union in Scotland and is a Member Union of World Rugby (the International Federation for the sport of rugby union). World Rugby has adopted the World Anti-Doping Code 2015 (“the Code”) and implemented Code compliant Anti-Doping Regulations, known as World Rugby Regulation 21 (the “WRR”).
- 3 The SRU has adopted the WRR (including the appendices and schedules) in its entirety as its own Anti-Doping Regulations (the “ADR”). Furthermore, the SRU has adopted the UK Anti-Doping Rules insofar as they contain additional provisions to those contained in the WRR.
- 4 The SRU confers results management authority to UKAD under paragraph 8 of the ADR.
- 5 The Respondent, Mr Eales, is a rugby union player in Scotland. At the material time in this case Mr Eales was a player for Preston Lodge RFC. Mr Eales was tested In-Competition at a Tennent’s National League Division 2 fixture between Dumfries Saints RFC and Preston Lodge RFC on 23 February 2019. Mr Eales’s A Sample returned an Adverse Analytical Finding (“AAF”) for stanozolol-N-glucoronide, a metabolite of stanozolol. Stanozolol is listed under section S.1 of the World Anti-Doping Agency (“WADA”) 2019 Prohibited List as an exogenous anabolic androgenic steroid. It is a non-Specified Substance that is prohibited at all times. Mr Eales was at all times subject to the ADR.
- 6 The Presence of this Prohibited Substance in Mr Eales urine Sample constitutes a violation of the ADR. On 21 June 2019, UKAD subsequently charged Mr Eales with violating WRR 21.2.1 in that a Prohibited Substance was present in his Sample. This represents the second occasion that Mr Eales has been charged with violating the ADR. On 19 June 2015, Mr Eales received a two-year period of Ineligibility for Anti-Doping Rule Violations (“ADRVs”) contrary to Articles 2.1 and 2.2 of the ADR.
- 7 UKAD understands that Mr Eales did not have a Therapeutic Use Exemption (“TUE”) to justify the presence of any of the Prohibited Substance in his Sample.
- 8 In a response to the Charge in this matter dated 18 July 2019, Mr Eales has intimated, via his representatives, that he did not intend to ingest stanozolol. Mr Eales has

speculated that he consumed a Contaminated Product, which did not refer to the Prohibited Substance on the product label, or in information available through a reasonable internet search. Mr Eales waived his right to have the B Sample tested.

9 Recognising the rights of players to have a doping allegation determined by an independent and suitably qualified body, pursuant to WRR 21.7.12.2, UKAD, pursuant to WRR 21.7.13 and Article 20.12.4 of the ADR, elected to refer the case at hand to the National Anti-Doping Panel (“NADP”) for resolution, on 23 July 2019. Mr Eales additionally requested a hearing before the NADP in his response.

10 On 13 August 2019, Mark Hovell was appointed as the Chair of the Panel to deal with the matter at hand.

11 Following directions issued by the Chair on 13 September 2019, Mr Eales was to serve on UKAD by 18 October 2019 medical evidence from his GP in relation to [REDACTED] [REDACTED] after his representatives had informed the Chair and UKAD about certain issues that were allegedly affecting Mr Eales.

12 As of 18 October 2019, UKAD had received no medical evidence from Mr Eales, but on 19 October 2019, Mr Eales’s representatives ask for an extension to serve the medical evidence until 23 October 2019. The Chair granted this extension.

13 On 23 October 2019, Mr Eales’s representatives asked for a postponement of the Second Directions Hearing listed for 28 October 2019, having been unable to procure any medical evidence. The Chair granted a second extension to provide the medical evidence and postponed the Second Directions Hearing until 13 November 2019.

14 On 13 November 2019, the Second Directions Hearing took place and the Chair directed Mr Eales to serve on UKAD his medical evidence and/or a report concerning his [REDACTED] [REDACTED] by 31 December 2019.

15 On 19 December 2019, Mr Eales’s representatives provided a written update to UKAD regarding the medical evidence sought and indicated that they would not be in a position to serve it by 31 December 2019. On 27 December 2019, the representatives asked for

a further extension and the Chair agreed to allow Mr Eales until 31 January 2020 to serve his medical evidence and/or report.

16 Despite this, by 31 January 2020, UKAD had not received any medical evidence.

17 On 7 February 2020, the Third Directions Hearing took place and the Chair directed Mr Eales to serve on UKAD the medical evidence setting out (a) the condition Mr Eales is suffering from; (b) whether he can safely participate in these proceedings and if not, why not; and (c) whether he is likely in the future to be able to participate in these proceedings, and if so, when that might be; all by 2 April 2020.

18 On 18 March 2020, Mr Eales's representatives indicated that a further extension to serve medical evidence may be required by Mr Eales's GP in view of the COVID-19 pandemic. In light of this, the Chair extended the deadline to provide medical evidence to 30 April 2020.

19 On 29 April 2020, Mr Eales's representatives served some medical evidence on UKAD consisting of:

- A letter from Dr [REDACTED] (his GP) dated 30 March 2020 confirming Mr Eales was last seen on 12 September 2019;
- A letter from [REDACTED], [REDACTED] dated 11 September 2019, which provided an Emergency Discharge Summary for an attendance on 10 September 2019.

20 Upon agreement of the Parties, the Chair subsequently stayed the proceedings, so the Parties could discuss the matter at hand. Whilst Mr Eales's representatives requested a stay of proceedings until 29 November 2020, the Chair allowed four weeks, until 26 June 2020.

21 On 16 July 2020, the Fourth Directions Hearing took place and the Chair gave standard directions, culminating in a hearing to take place on 28 October 2020 by video conferencing.

- 22 Despite the directions, by 21 August 2020 Mr Eales failed to provide a response to the Charge or position on the AAF as directed.
- 23 Nor by 28 August 2020, did UKAD receive any evidence from Mr Eales.
- 24 On 10 September 2020, the NADP President appointed two specialist members, Lorraine Johnson and Professor Brian Lunn, to the Panel.
- 25 On 23 September 2020, having received the evidence UKAD intended to rely upon, Mr Eales's representatives indicated that they had not been able to obtain instructions regarding the appointment of two specialist members to the Panel.
- 26 The Chair asked Mr Eales's representatives to encourage him to procure medical evidence that supported his '*position that he is not fit to participate in proceedings*'.
- 27 On 1 October 2020, Mr Eales's representatives indicated that they had not received instructions from Mr Eales to be in a position to serve a skeleton argument as directed. Mr Eales's representatives applied for a one-month extension to seek instructions and a postponement of the hearing listed on 28 October 2020. UKAD opposed the application. With no additional medical evidence from Mr Eales, the Panel provided Mr Eales with a short extension to 9 October 2020 to serve upon UKAD his skeleton argument, including copies of any previous arbitral awards or decisions upon which he wished to rely.
- 28 On 9 October 2020, Mr Eales's representatives requested a second extension to serve a skeleton argument. On 11 October 2020, UKAD opposed the application for a second extension to serve a skeleton argument. On 12 October 2020, the Panel, through the Chair, denied Mr Eales's request, but again stated that he could make a further application, but should do so with medical evidence for both UKAD and the Panel to consider. As such, the hearing date of 28 October 2020 was to be maintained.
- 29 On 20 October 2020, UKAD served its skeleton argument and copies of arbitral awards relied upon. It applied for this matter to be dealt with on the papers.
- 30 On 23 October 2020, the Panel, through the Chair, agreed to vacate the scheduled hearing and determined to consider the matter at hand on the papers.

II. Jurisdiction

31 Jurisdiction is not in dispute in this case. The SRU is the National Governing Body for the sport of rugby union in Scotland and is a Member Union of World Rugby. The SRU has adopted WRR 21 as its anti-doping rules, supplemented by certain parts of the UK ADR. By the ADR, all SRU registered players are bound by those anti-doping provisions. Mr Eales was registered as a player with the SRU and therefore bound by WRR 21 and the ADR.

32 Pursuant to Article 21.10 of the ADR, any Charge against a player by the SRU shall be heard and determined by the NADP as a first instance tribunal.

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

III. The Parties' positions

34 Mr Eales admitted to the ADRV under WRR 21.2.1 and sought to request that a hearing be convened before the NADP for submissions to be made on the question of sanction. Within the letter from his representatives dated 18 July 2019, it was averred on behalf of Mr Eales that the ADRV was not intentional and was the result of him having consumed a Contaminated Product. This position was repeated by the representatives in their letter of 29 April 2020, and they submitted that Mr Eales bore No Significant Fault or Negligence for the commission of the ADRV.

35 Despite being given numerous chances, as set out above, Mr Eales failed to truly engage with this process and failed to provide any submissions and/or evidence to substantiate those claims relating to a lack of intention and the consumption of a Contaminated Product.

36 UKAD acknowledged that pursuant to Article 8.3.1 of the ADR, the burden rests upon UKAD to establish the commission of the ADRV charged to the comfortable satisfaction of the Panel. WRR 21.2.1 stipulates that Presence of a Prohibited Substance or its Metabolites or Markers in a Player's Sample will constitute an ADRV.

37 WRR 21.2.1.1 expressly states that it is not necessary to prove intent, Fault, negligence or knowing use of the Prohibited Substance by Mr Eales in order to sustain a charge for Presence. Nor is it the case that an alleged lack of intent, Fault, negligence or knowledge is a valid defence to such a charge.

38 UKAD noted that the issue before the Panel appeared to be sanction, in view of Mr Eales's admission on 18 July 2019 of the Presence of stanozolol in his Sample. The period of Ineligibility to be applied is set out at WRR 21.10. WRR 21.10.2 stipulates:

"The period of Ineligibility for a violation of Regulations 21.2.1 (Presence), 21.2.2 (Use or Attempted Use) or 21.2.6 (Possession) shall be as follows, subject to potential reduction or suspension pursuant to Regulations 21.10.4, 21.10.5 or 21.10.6:

21.10.2.1 The period of Ineligibility shall be four years where:

21.10.2.1.1 The anti-doping rule violation does not involve a Specified Substance, unless the Player or other Person can establish that the anti-doping rule violation was not intentional."

39 By virtue of Article 8.3.2 of the ADR, Mr Eales must establish that his ADRV was not intentional to the applicable standard of proof, namely the balance of probabilities.

40 In cases where a player is facing a second ADRV, WRR 21.10.7 says as follows:

"21.10.7.1 For a Player or other Person's second anti-doping rule violation, the period of Ineligibility shall be the greater of:

(a) six months;

(b) one-half of the period of Ineligibility imposed for the first anti-doping rule violation without taking into account any reduction under Regulation 21.10.6; or

(c) twice the period of Ineligibility otherwise applicable to the second anti-doping rule violation treated as if it were a first violation, without taking into account any reduction under Regulation 21.10.6."

41 The Charge in this case represents Mr Eales's second ADRV. On 19 June 2015, Mr Eales received a two-year period of Ineligibility for ADRVs contrary to ADR Articles 2.1 and 2.2. On that occasion, the ADRVs found proved were as follows:

41.1 Presence of Boldenone and its metabolite 5 β -androst-1-en-17 β -ol-3-one, and two metabolites of trenbolone in a Sample provided on 19 November 2014, in violation of ADR Article 2.1; and

41.2 Use by a player of a Prohibited Substance or Prohibited Method, specifically the use of boldenone, trenbolone and oxymetholone, on or before 19 November 2014, in violation of ADR Article 2.2.

42 UKAD submitted that the applicable period of Ineligibility is eight years, unless Mr Eales can demonstrate, on the balance of probabilities, that his actions were not intentional. The definition of 'intentional' can be found at WRR 21.10.2.3:

"As used in Regulations 21.10.2 and 21.10.3, the term "intentional" is meant to identify those Players who cheat. The term, therefore, requires that the Player ... engaged in conduct which he ... knew constituted an anti-doping rule violation or knew that there was a significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk..."

43 UKAD referred the Panel to a number of authorities (*UKAD v Buttifant (Appeal)*, SR/NADP/508/2016; *UKAD v Songhurst*, SR/0000120248; *UKAD v Graham*, SR/0000120259; and *UKAD v Williams*, SR/0000120251) to support its position that in order to establish that the ADRV was not 'intentional' to the applicable standard for the purposes of WRR 21.10.2.1.1, a player must ordinarily establish how the Prohibited Substance entered their system.

44 UKAD submitted that without proof of the means of ingestion, it is impossible for the Panel to properly assess whether Mr Eales's conduct was intentional or not. UKAD noted that Mr Eales's representatives had submitted that his ADRV was not intentional on the basis that he consumed a Contaminated Product. However, Mr Eales has not provided any evidence whatsoever in support of this mere assertion, nor has he provided any information pertaining to the Contaminated Product he purports to have consumed.

Accordingly, there is a complete absence of evidence from Mr Eales as to how the Prohibited Substance entered his system.

45 On the other hand, UKAD relied upon the evidence of Mr Nick Wojek, Head of Science and Medicine at UKAD. Mr Wojek provided background information on the Prohibited Substance and its potential application in the sport of rugby union. The key points of his evidence can be summarised as follows:

45.1 Stanozolol-N-glucuronide is a metabolite of stanozolol. The presence of this metabolite in the urine is an indication that stanozolol has been administered from a synthetic source as the human body does not naturally produce it;

45.2 Stanozolol is used illicitly in sport for its anabolic effects;

45.3 Stanozolol may appeal as a doping substance in this regard to enhance a player's physique, power and/or strength, or to hasten recovery; and

45.4 It may also appeal as a drug of choice over other anabolic agents since stanozolol has a shorter window of detection in the body (typically weeks rather than months) compared to many other anabolic androgenic steroids.

46 UKAD submitted that the period of Ineligibility to be imposed on Mr Eales under WRR 21.10.2.1.1 must be eight years, as he has not discharged his burden of establishing that the ADRV was not intentional. Against this background, it was submitted that the applicable period of Ineligibility must be eight years for what is Mr Eales's second ADRV, by virtue of WRR 21.10.2.1.1 and WRR 21.10.7.1(c).

47 UKAD additionally made submissions concerning No Significant Fault or Negligence in case the Panel considered that Mr Eales established that he acted without intent in committing his ADRV.

48 WRR 21.10.5.1 allows for a reduction to be made to the period of Ineligibility on the grounds of No Significant Fault or Negligence in circumstances involving Contaminated Products. However, except in the case of a Minor, for any violation of WRR 21.2.1, the player must also establish how the Prohibited Substance entered his or her system in circumstances where they wish to argue No Significant Fault or Negligence.

49 In the circumstances of this case, Mr Eales has offered no credible explanation for the Presence of stanozolol in his Sample beyond the speculative assertion that he ingested a Contaminated Product. UKAD noted that he has not provided any evidence in support of this assertion and has failed to provide any specific detail of the Contaminated Product that he purported to have consumed. He has not offered any account as to the steps he took to ensure that he exercised 'utmost caution' and complied with his responsibilities as a player bound by WRR 21.

50 UKAD concluded that Mr Eales cannot establish, on the balance of probabilities, how stanozolol entered into his system and therefore it is not possible to make an assessment of Mr Eales's Fault in respect of his ADRV. For a player to obtain a reduction in sanction without demonstrating how the Prohibited Substance entered his body would go behind the rationale of the WRR 21. UKAD submitted that this cannot be a case where WRR 21.10.5.1.2 can be applied.

51 UKAD noted that WRR 21.10.11 requires that, usually, sanction starts on the day of a decision. WRR 21.10.11 enables a player to receive credit for any period of (respected) Provisional Suspension and Mr Eales was provisionally suspended on 21 June 2019. There is no evidence to suggest to UKAD that he has breached the terms of the Provisional Suspension and, as such, UKAD suggested that the Panel may wish to direct that any period of Ineligibility should commence retrospectively on 21 June 2019.

52 Finally, UKAD noted that it is a matter for the Panel as to whether WRR 21.10.11.2 might apply. The WRR states:

"Where the Player ... promptly (which means, in all events, before the Player competes again) admits the Anti-Doping Rule Violation after being confronted with it by World Rugby (or the Association, Union or Tournament Organiser handling the case as applicable), the period of Ineligibility may start as early as the date of Sample collection or the date on which another Anti-Doping Rule Violation last occurred. In each case, however, where this Regulation is applied, the Player ... shall serve at least one-half of the period of Ineligibility going forward from the date the Player ... accepted the imposition of a sanction, the date of a hearing decision imposing a sanction, or the date the sanction is otherwise imposed. This Article shall not apply where the period of Ineligibility has already been reduced under Regulation 21.10.6.3."

53 UKAD submitted that Mr Eales was charged on 21 June 2019. He appeared to first accept the Charge through correspondence from his representatives dated 18 July 2019. This was reaffirmed in correspondence dated 29 April 2020. As such, UKAD felt it is a matter for the Panel as to whether Mr Eales’s sanction should commence on the date of Sample collection, namely 23 February 2019.

IV. The Decision

54 The Panel were concerned by Mr Eales’s lack of engagement in this process. As can be seen from the procedural history in the matter at hand, his representatives were only able to make generic submissions on his behalf and there was no evidence produced to support any of these.

55 The Panel was most concerned whether Mr Eales’s health impacted on his ability to participate in the matter at hand. As recently as 23 September 2020, his representatives submitted:

“At this juncture, we take this opportunity to reiterate our continued concerns as to the well-being of our client, as set out in previous correspondence, and to reiterate our client’s position that he is not fit to participate in the proceedings.”

56 Ultimately, the Panel determined to press on and to consider the matter at hand and to issue this Award. The decision was not taken lightly, as the Panel did note the medical evidence produced by Mr Eales in this regard.

57 On 29 April 2020, Mr Eales provided medical evidence indicating that [REDACTED]
[REDACTED]
[REDACTED]:

57.1 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED];

57.2 [REDACTED];

57.3 [REDACTED];

57.4 [REDACTED].

58 [REDACTED].

59 [REDACTED].

60 The Panel had between May and October 2020 encouraged Mr Eales, through his representatives, to provide an updated medical report. Unfortunately, he failed to do so. As such, the medical evidence to hand was over a year old.

61 Additionally, the Panel noted the following:

61.1 [REDACTED];

61.2 [REDACTED];

61.3 he appears to have returned to work;

61.4 [REDACTED];

61.5 [REDACTED];

61.6

[REDACTED]
[REDACTED]; and

61.7

[REDACTED]
[REDACTED]
[REDACTED].

62 The Panel had to weigh up the need to deal with the matter at hand, whilst being sympathetic and mindful of Mr Eales's health. With no clear evidence that Mr Eales "*is not fit to participate in the proceedings*" at the present time, the Panel determined that, even though he was provisionally suspended, the Charge needed dealing with now, having been issued some 16 months earlier. Mr Eales had been given a considerable amount of time to convince the Panel that his fitness to participate was an issue, but he failed to use that time at all.

63 As such, the Panel determined to consider the matter at hand.

64 The Panel noted the position taken in the various authorities provided by UKAD that the source of ingestion must, in the vast majority of cases, be shown for a player to be able to satisfy his or her burden of proof of a lack of intention. In the case at hand, the Panel noted that Mr Eales produced no evidence whatsoever. There was the assertion that the Prohibited Substance was in a Contaminated Product, but that is as far as Mr Eales took matters. He didn't even provide the name of such Product, let alone look to demonstrate that he took such a Product, when he took it, in what quantities, or provide the remainder of the Product to be tested to see if it contained the Prohibited Substance. Mr Eales was a long way short of meeting his burden to establish how the Prohibited Substances had entered his system and to convince the Panel that WRR 21.10.2.2 should apply to him. As such, the Panel notes that pursuant to WRR 21.10.2.1, the starting point for the sanction is a period of Ineligibility of four years.

65 The Panel took note that this was Mr Eales's second ADRV. On 19 June 2015, Mr Eales received a two-year period of Ineligibility for ADRVs contrary to the ADR. Pursuant to WRR 21.10.7.1 (c) this sanction should then be doubled to eight years of Ineligibility, as this represents the greatest of the three limbs in that Article.

66 The Panel also noted the submissions of UKAD around No Significant Fault and Negligence and the evidence of Mr Nick Wojek. Again, the method of ingestion would be required to enable Mr Eales to look to move the sanction down from that eight year period of Ineligibility. The Panel notes this requirement for WRR 21.10.5.1 to apply and having determined that Mr Eales failed to satisfy the burden of proof in relation to the issue of intention, it finds that he failed in regard to No Significant Fault or Negligence too.

67 That then leaves the final issue of a Timely Admission. The Panel were satisfied that WRR 21.10.11.2 had been met. Mr Eales was charged by UKAD on 21 June 2019. He first accepted the charge through the correspondence from his representatives dated 18 July 2019, less than a month later. The Panel have determined to take the sanction back to the Sample collection date.

68 As such, whilst WRR 21.10.11 enables a player to receive credit for any period of Provisional Suspension, as Mr Eales was provisionally suspended on 21 June 2019 and that date is after the Sample collection date, there is no need to back date in the case at hand.

69 For the reasons set out above, the Panel makes the following decision:

69.1 An ADRV contrary to WRR 21.2.1 has been established;

69.2 The sanction of eight years Ineligibility shall apply to Mr Eales;

69.3 In accordance with WRR 21.10.11.2, Mr Eales is entitled to an earlier start date for the sanction, and so the period of Ineligibility shall be deemed to have commenced on 23 February 2019 and shall therefore end at midnight on 22 February 2027;

69.4 As such, Mr Eales shall not be permitted to participate in any capacity in a competition or other activity (other than Authorised Anti-Doping Education or Rehabilitation programmes) organised, convened or authorised by the SRU or any Body that is a member of, affiliated to, or licenced by the SRU; and

69.5 In accordance with WRR 21.13, Mr Eales has a right of appeal to the NADP Appeal Tribunal. In accordance with Article 13.5 of the Procedural Rules any party who wishes to appeal must lodge a Notice of Appeal with the NADP Secretariat within 21 days of receipt of this decision.



Mark Hovell, Chair

For and on behalf of the Panel

London

11 November 2020

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