

[REDACTED]

Official

Sent via email only: [REDACTED]

Ref: FOI-292

13 April 2021

Dear [REDACTED]

We write in response to your request for information under the Freedom of Information Act 2000 (the 'Act'), reference FOI-292.

Request for Information

In an email dated 30 November 2020, you requested information relating to: (a) the decision to charge Mr Adam Carr; and (b) the delivery of anti-doping education.

In an email dated 10 January 2021, you requested additional information relating to the decision to charge Mr Carr.

For ease of reference, your questions are repeated below in italics. UKAD's response to each of your questions is in bold.

Please note, all references to the Rugby Football League ('RFL') Anti-Doping Rules ('ADR') in this response are to version 2.0 of the 2015 UK Anti-Doping Rules (in effect as from 1 October 2019 and therefore the applicable anti-doping rules in Mr Carr's case).¹

1. Who from the RFL agreed the decision for UKAD to seek sanction?

Response: We have taken this to refer to the issuance of a charge letter to Mr Carr. UKAD does not hold any information in relation to this part of your request. There is no requirement for the RFL to agree to a charge letter being issued by UKAD.

2. Who from UKAD agreed/confirmed that the charge letter should be sent?

3. Had the UKAD Officer the delegated power to make such a decision, and if so who or what policy provision afforded such delegation?

¹ A copy of version 2.0 of the 2015 UK Anti-Doping Rules is enclosed with this response (Enclosure 1).

4. *If 3 cannot be answered, who is responsible at UKAD for the decision?*

Response: **The decision that Mr Carr had a case to answer for a violation of the ADR was not made by an individual at UKAD but following an assessment by the Legal (Case Management) team collectively at UKAD.**

5. *What checks and balances were carried out at the time, other than the test details, to ensure that the RFL had carried out their responsibilities required through the UK ADP 2009? The evidence base other than just the test?*

Response: **We have taken this to refer to the RFL's general responsibilities as a National Governing Body ('NGB'). UKAD does not hold any information in relation to this part of your request.**

6. *How much public money has been spent on this particular case? A breakdown of expenditure will be helpful?*

Response: **As a matter of standard practice UKAD employees are not required to and do not record when and how much time they have spent on a particular case. UKAD does not, therefore, hold a record of the total number of hours spent by UKAD staff dealing with this case and is not able to calculate its total expenditure in this case.**

7. *Since I raised the issues regarding the RFL's failures to provide education and training (as confirmed by the first FOI), what have the RFL done to remedy the failures?*

Response: **UKAD has interpreted this as a request for information as to how the RFL has provided anti-doping education to Community-level rugby league players and/or clubs since your first FOI request to UKAD in August 2020 (reference FOI-286). Throughout 2020, the RFL delivered webinars covering introductory anti-doping topics to Community-level and academy rugby league players. This is continuing in 2021 in line with Professional-level registration windows.**

More specifically, on 24 February 2021, the RFL Community team hosted an anti-doping webinar attended by Club Welfare Officers, Head Coaches and Club Chairs at Community-level rugby league clubs. A recording of the webinar was also added to the Community Club Leaders Group in the RFL's 'Our Learning Zone'. The RFL is also continuing to promote UKAD's 'Clean Sport Advisor' and 'Coach Clean' education courses to its registered members.

8. *What have UKAD done to ensure that the RFL does what it needs to do in terms of education and training to the community game.*

Response: On 4 December 2020, individuals from the Education team at UKAD and individuals at the RFL met to discuss the development of the RFL's anti-doping education programme. This included how e-learning would be utilised to support Athlete Support Personnel in Community-level rugby league clubs. The Education Team at UKAD has agreed to meet monthly with the RFL to discuss progress with their education activities and target audiences and explore ongoing UKAD resource support opportunities.

9. *UKAD Strategic Objective 2, as set out in the 2018-2020 Strategic Plan, identifies that UKAD will help sports across the UK to deliver education programmes that will prevent and deter doping. Since the inception of the Plan, please provide full disclosure of how and when a UKAD delivered the above to the RFL, so as to prevent and deter doping in the community game?*

Response: In March and December 2019, the RFL nominated individual members of staff to attend a UKAD 'Educator Training' course. The RFL's Anti-Doping Educators also have access to quarterly anti-doping webinars, an online CPD Forum, and other development opportunities and updates. Furthermore, UKAD's 'Clean Sport Advisor' and 'Coach Clean' education courses have been available and free to access for individual members of staff at the RFL.

Please also refer to UKAD's response to question 8 above.

10. *The communications and information between UKAD and the RFL regarding the sanction process, including the exchange of evidence before the sanction letter was sent out (2.7.2).*

Response: We have taken your request to relate to communications and information exchanged before the charge letter was issued to Mr Carr. Please see enclosures 2 – 6 inclusive. Where redactions have been made to the enclosures, this is of personal details of the sender / recipient. That information is exempt from disclosure as personal data, pursuant to section 40 of the Act.

Section 40(2) of the Acts states:

Any information ... is also exempt information if–

(a) it constitutes personal data which does not fall within subsection (1) [personal data of which the applicant is the data subject], and

(b) the first, second or third condition below is satisfied.

Section 40(3)(a) of the Acts states:

The first condition is that the disclosure of the information to a member of the public otherwise than under this Act–

(a) would contravene any of the data protection principles.

Personal data is defined in section 3(2) of the Data Protection Act 2018 ('DPA') and Article 4(1) of the retained EU law version of the General Data Protection Regulation ('UK GDPR'), and includes information relating to an identified living individual.

UKAD has assessed that the correspondence you have requested contains personal data, that is personal information that relates to identified living individuals. Therefore, UKAD has gone on to consider whether disclosure of the personal data would contravene any of the data protection principles as set out in Chapter 2, Article 5(1)(a) of the UK GDPR. The first data protection principle states that personal data shall be processed lawfully, fairly and in a transparent manner.

The lawful basis on which UKAD processes personal data is contained in Chapter 1, Article 6(1)(e) of the UK GDPR and section 8 of the DPA, being that it is necessary for the performance of a task carried out in the public interest (i.e. eliminating doping in sport). However, pursuant to the Information Commissioner's ('ICO') Guidance Note on section 40 of the Act², UKAD's lawful processing of personal data for this purpose does not extend to disclosure to the general public under the Act.

Accordingly, UKAD may only lawfully disclose the personal data contained in the correspondence you have requested on a different basis. The only two bases that may apply are consent (being consent to disclose that personal data under the Act) or if disclosure would be necessary for the purposes of legitimate interests. The individuals have not provided consent to this disclosure. Therefore, UKAD may only disclose this personal data to you if it is necessary for the purposes of legitimate interests. To establish this lawful basis, all three of the following criteria must be met:

- a. the purpose of disclosure is a legitimate interest;
- b. disclosure must be necessary for that purpose; and
- c. the legitimate interests outweigh the interests and rights of the individuals.

² <https://ico.org.uk/media/for-organisations/documents/1213/personal-information-section-40-regulation-13.pdf>

UKAD acknowledges the legitimate public interest in transparency and accountability regarding the performance of its functions. However, it is UKAD's view that disclosing the personal data in the correspondence you have requested would not be necessary to achieve those functions. Therefore, UKAD does not have a lawful basis to disclose this personal data to you and we are withholding it pursuant to the exemption in section 40 of the Act.

Attached to enclosure 4 were copies of: (a) Mr Carr's contract with Rochdale Hornets; and (b) Mr Carr's professional registration form with the RFL. UKAD is withholding these documents from disclosure under the exemption in section 41 of the Act.

Section 41(1) of the Acts states:

Information is exempt information if–

(a) it was obtained by the public authority from any other person (including another public authority), and

(b) the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person.

The documents attached to enclosure 4 were provided to UKAD by the RFL, a third party for the purposes of section 41(1)(a) of the Act. The documents have the quality of confidence and were shared with UKAD in circumstances which imported an obligation of confidence.

Disclosure would be an unauthorised use of the documents and would constitute a breach of confidence. This breach of confidence would be actionable by the RFL (as the third party who provided the information) and Mr Carr.

Any such action would be likely to succeed, with the public interest in disclosure not outweighing UKAD's duty of confidence; therefore, the documents are exempt from disclosure pursuant to section 41 of the Act. This exemption is an absolute exemption, and as such UKAD is not required to consider the public interest test any further in this context.

11. The evidence that was provided to UKAD by the RFL, for UKAD and then the independent reviewer to consider.

12. Who from the RFL provided the evidence for UKAD and the independent reviewer (2.7.2)?

Response: **UKAD does not hold any information in relation to these parts of your request. There is no requirement for the RFL to provide any evidence to UKAD.**

13. Who from UKAD advised the RFL on the likelihood of a charge of violation being upheld (including considering the strength of the evidence relied upon, as well as what the defence case may be, and how the defence case is likely to affect the case being answered)?

14. Please provide the dated evidence of that advice from UKAD to the RFL?

Response: **UKAD does not hold any information in relation to these parts of your request. There is no requirement for UKAD to provide such advice to the RFL.**

15. Who at UKAD was responsible for checking, commenting and considering the evidence relied on?

Response: **Please refer to UKAD's response to questions 2 – 4 above, i.e. the decision that Mr Carr had a case to answer for a violation of the ADR was not made by an individual at UKAD but following an assessment by the Legal (Case Management) team collectively at UKAD.**

16. Who from UKAD provided the same information for independent reviewer and when, as required by 2.7.4?

17. How and by whom, independently reviewed the evidence and proposed sanction process before issue?

Response: **Pursuant to ADR Article 7.2.3(b), the independent review as to whether there was an apparent departure from the International Standard for Laboratories that caused the Adverse Analytical Finding in Mr Carr's case was completed by a member of UKAD's independent Scientific Expert Group. The material to review was provided by the Legal (Results) team.**

18. Please provide full disclosure and details of all comments made by the NGB, the UKAD during the sanction consultation process.

Response: **We have taken this question to relate to the period before the charge letter was issued to Mr Carr. Please see enclosures 3 – 6 inclusive. Where redactions have been made to the enclosures, this is of personal details of the sender / recipient. That information is exempt from disclosure as personal data, pursuant to section 40 of the Act. The documents attached to enclosure 4 are being withheld from disclosure pursuant to section 41 of the Act (Information provided in Confidence). Please refer to UKAD's response to question 10 above.**

Conclusion

If you are dissatisfied with the handling of your request, you have the right to ask for an internal review. Internal review requests should be submitted within two months of the date of receipt of the response to your request and should be addressed via email to: foi@ukad.org.uk. Please remember to quote the reference number above in any further communications.

If you are not content with the outcome of the internal review, you have the right to apply directly to the Information Commissioner for a decision. The Information Commissioner can be contacted at: Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF.

Yours sincerely,

A handwritten signature in blue ink that reads "UK Anti-Doping".

UK Anti-Doping