

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

Before:

Robert Englehart KC
Dr Tim Rogers
Colin Murdock

BETWEEN:

UK Anti-Doping Limited

Anti-Doping Organisation

and

An Amateur Player

Respondent

DECISION OF THE NATIONAL ANTI-DOPING PANEL

PRELIMINARY

1. We were appointed the Arbitral Tribunal to determine charges of breaches of the Welsh Rugby Union (“WRU”) anti-doping rules brought against [REDACTED]. This is our unanimous decision. [REDACTED] was, until August 2021, registered as an amateur player with [REDACTED] for whom he played for many years as a second row forward. [REDACTED] is a thriving amateur Rugby Union club which, we were told, has some hundreds of amateur players on its books. That club is affiliated to the WRU which has adopted

the UK Anti-Doping Rules (“ADR”) as its own anti-doping rules. UK Anti-Doping Limited (“UKAD”) brings the charges against [REDACTED] as the National Anti-Doping Organisation.

2. On 15 May 2023, UKAD made a request for arbitration under Article 4.1.1 of the National Anti-Doping Panel Rules and the Tribunal was subsequently appointed by the President of the National Anti-Doping Panel (“NADP”).
3. We held a remote hearing, via video conferencing, on 5 September 2023 when we heard evidence and the parties’ submissions. UKAD was represented by Ms Ailie McGowan, and [REDACTED] was represented *pro bono* by Mr Alastair Campbell of the firm Level. We are extremely grateful to both of them for their helpful written and oral arguments.

THE FACTUAL BACKGROUND

4. [REDACTED] is, as noted above, an amateur Rugby Union club in Wales. [REDACTED], although originally English by descent, has played for the club as a player registered with the WRU for many years as a second row forward. By 2019, the time with which we are concerned, he had reached 48 years of age and had had a long and successful playing record with the club. In January of that year he achieved the milestone, only ever reached by one other person, of 500 appearances for the first team. He had also played for the second team and was approaching 100 appearances for that team. In addition to playing rugby, [REDACTED] also coached a junior side as well as acting as the unpaid club secretary. In that latter role, he was responsible for looking after all the administrative requirements of running a club including the organisation of the facilities and liaison with the WRU.
5. It is not in dispute that on 15 May 2019, that is after the end of the 2018/19 season, [REDACTED] went out on an evening of heavy drinking with a friend. In the course of that evening, he made an online purchase of testosterone cypionate for £34.50. That is a non-Specified Substance listed under section 1 of the WADA Prohibited List as an Anabolic Androgenic Steroid. It is prohibited for an Athlete at all times.
6. The acquisition of testosterone by [REDACTED] came to the attention of UKAD from information supplied by the police. They were investigating the supply of potentially illicit

drugs and in the course of the investigation came across the customer records of a supplier. These revealed the name and address of [REDACTED] as a purchaser. The police provided the information to UKAD. It took the matter up with [REDACTED]. He was immediately open and co-operative with UKAD. He readily accepted that he had bought the testosterone and produced a bank statement entry showing his purchase. He did, however, maintain at his interview with UKAD that he had in fact retired as a rugby player and as a coach by the time he made the purchase. He also said that, when the testosterone arrived through the post at his home, he immediately threw it away. He had never in fact taken it.

THE CHARGES

7. On 15 September 2022 [REDACTED] was notified by UKAD that he may have committed Anti-Doping Rule Violations as a registered player with the WRU. With the notification he was also provisionally suspended.
8. On 5 April 2023 [REDACTED] was charged with having committed the following Anti-Doping Rule Violations on or after 15 May 2019:
 - (1) Attempted Use of a Prohibited Substance, namely testosterone, contrary to Article 2.2 of the ADR; and
 - (2) Possession of a Prohibited Substance, namely testosterone, contrary to Article 2.6 of the ADR.

We note that it is the 2015 version of the ADR which is applicable as the version in force in 2019.

THE ISSUES

9. As noted above, [REDACTED] does not dispute that he purchased the testosterone on 15 May 2019. But, in the course of the hearing the following issues arose for our determination:
 - (1) Was [REDACTED], on 15 May 2019 not subject to the ADR as an Athlete, either because he had retired or because he was no longer an Athlete within the ADR definition?

- (2) Did [REDACTED] attempt to use the testosterone?
- (3) Was [REDACTED] in possession of the testosterone?
- (4) If there was an Anti-Doping Rule Violation, was it intentional within the meaning of the ADR?
- (5) If there was an Anti-Doping Rule Violation, was there No Significant Fault on the part of [REDACTED]?
- (6) If any period of Ineligibility is appropriate, should it be backdated to the date of [REDACTED] Provisional Suspension?

THE EVIDENCE FOR [REDACTED]

10. [REDACTED] himself was the principal witness for his case. He told us that in early 2019 he was still enjoying playing rugby, but he began to feel increasingly unwell. He was losing weight and suffering [REDACTED]. He was exhibiting symptoms of [REDACTED] and came to think that he must be suffering from [REDACTED]. He had various tests, although all in fact came back negative. Nevertheless, [REDACTED] fears that he was suffering from [REDACTED] were not allayed, and he was becoming increasingly anxious. In these circumstances he confided in two senior members of the club that because of his [REDACTED] worries, he would be retiring at the end of the 2018/19 season. [REDACTED] told us that he gave up both playing and coaching at the end of April 2019. His last game for the club was on 27 April 2019. He has not played since then. Apart from telling the two senior club members about his intention to retire, [REDACTED] told us that he had not publicised his retirement. However, his retirement was announced at the club annual dinner in June 2019 and he produced a [REDACTED] Facebook post of 25 August 2019 mentioning his retirement.
11. [REDACTED] told us how on 15 May 2019 he was out drinking with a friend whom he declined to name but whom he knew to be a regular taker of steroids. [REDACTED] was anxious to stress that this friend does not play competitive sport. He confided in the friend about his [REDACTED] worries. The friend suggested that he take some of what the friend himself was taking and showed him a website. In his intoxicated state, [REDACTED] then ordered some testosterone through the website for £34.50. He told us that he knew at the time that

what he was buying was a banned product but, as far as he was concerned, he was no longer playing rugby and so there was no sporting problem.

12. [REDACTED] gave no further thought to the matter until the testosterone was delivered to his home a few days later in an unmarked brown envelope. At that point he looked at what he described as a viscous urine coloured liquid and decided to have nothing to do with it. He immediately threw it away in the dustbin.
13. It was suggested to [REDACTED] that, whilst this was after the season had ended, he had not given up all hope of playing again in the future. [REDACTED] did not agree. Nevertheless, [REDACTED] did not de-register as a player with the WRU in 2019. Indeed, he actively registered himself with the WRU for both the subsequent 2019/20 and 2020/21 seasons. [REDACTED] was unable to explain why, if he had really retired in 2019, he had again registered as a player for the next two seasons, and he only came to de-register after being confronted by UKAD with doping. Similarly, [REDACTED] was unable to explain how it was that he had come to be listed as a second team substitute on a team sheet issued by [REDACTED] on 11 January 2020. This was a curious document in which 18 people, including [REDACTED], were listed as substitutes.
14. In evidence [REDACTED] told us how, after retiring as a player and coach, he had continued to act as the secretary of [REDACTED]. When he received the notice of Provisional Suspension, he had tried to contact UKAD about continuing in this role but his phone call had not been returned. When he had contacted the WRU, he had been told that they had not come across this problem previously and did not know whether Provisional Suspension meant that he could not act as club secretary.
15. Apart from [REDACTED] himself, his case was supported by the president of [REDACTED], who was very complimentary about [REDACTED]. He told us how [REDACTED] had expressed concern about his [REDACTED] in 2019 and told [REDACTED] that he would be retiring. Since the end of the 2018/19 season, [REDACTED] had not played for the club although several people had unsuccessfully tried to coax him into playing. [REDACTED] noted the great amount of work which [REDACTED] had performed as club secretary. In this role he had looked after the administration of the club, including liaison with the WRU.

16. There were no other live witnesses for [REDACTED], although his case was also supported by a letter from [REDACTED] who had formerly been the first team manager and had also been the club President. There was, of course, no cross-examination on this letter. However, the letter also sought to confirm how [REDACTED] had mentioned to [REDACTED] in 2019, without going into any detail, how for [REDACTED] reasons he would be stepping down from playing and coaching at the end of the 2018/19 season. This was confirmed at the club dinner and in the Facebook post of 25 August 2019, which [REDACTED] himself had written.

THE EVIDENCE FOR UKAD

17. Given that the purchase of the Prohibited Substance was undisputed, UKAD called no witnesses before us about that. There were only two witnesses called by UKAD, one of whom, Mr Flanigan, was an intelligence analyst employed by UKAD. He did no more than explain how he had located various documents relating to [REDACTED], including publicity of January 2019 about his hope to reach a 100 game milestone for the second team after playing 500 times for the first team. Mr Flanigan was also the person who had located the January 2020 twitter post giving [REDACTED] name as a second team substitute.

18. The other witness called by UKAD was Mr Adam Taylor, the competitions and regulatory manager of the WRU. He explained how the WRU had an online system of registration. Amateur players register with the WRU for a club for a season, and their registration is confirmed by club secretaries through a system called MyWRU. As part of the registration process, a Player will confirm that he/she will abide by the WRU Regulations and the UK Anti-Doping Rules.

19. There is no formal process for retirees, but there is a system of de-registration which is operated for clubs by club secretaries. Mr Taylor would expect anyone who retired from rugby to be de-registered; he/she would not then be eligible to play for any club. A WRU manual emphasises the importance of clubs de-registering all individuals who are no longer playing rugby. Mr Taylor explained how the registration of someone who had been de-registered “reverted to the WRU”; by this he simply meant that the data relating to an

individual remained on the WRU's records although a de-registered individual could not play for any club.

20. Mr Taylor also produced from the WRU records entries which showed how [REDACTED], as the [REDACTED] secretary, had de-registered a number of individuals in batches in 2019 at the end of the season and again before commencement of the 2019/20 season. But he had not de-registered himself until 10 June 2021.

SUBMISSIONS FOR [REDACTED]

21. On behalf of [REDACTED] the submission at the forefront of Mr Campbell's argument was that on 15 May 2019 [REDACTED] was no longer subject to the ADR because he had retired as a player and coach as from the end of the season. Mr Campbell put his case on this point in two alternative ways. First, he submitted that [REDACTED] had actually retired from the game. He had done all he could do to implement his retirement. He had told the club President and the first team manager about his decision to retire, and it had been announced publicly at the club dinner in June 2019. His last game for the club was in fact 27 April 2019. Mr Campbell drew our attention to the absence of any WRU Rules specifically addressing any procedure to be followed for a player's retirement such that in his submission informing the club, as [REDACTED] did, was sufficient. De-registration was in Mr Campbell's submission not the same as retirement; it meant no more than that a de-registered player's registration reverted to the WRU from a club.

22. The alternative way of putting the case by Mr Campbell was to draw attention to the wording of ADR Articles 2.2 and 2.6.1 under which [REDACTED] was charged. Both of these Articles apply only to "Athletes" as defined. And, for the purposes of these Articles the ADR defines an "Athlete" as:

Any person who competes at any level in the sport under the jurisdiction of the NGB [the WRU] ...

[REDACTED] was not, on 15 May 2019, a "person who competes". By then he had ceased all competitive rugby.

23. On the charge of Attempted Use of a Prohibited Substance, Mr Campbell drew our attention to ADR Article 2.2.2 which provides:

It is necessary to demonstrate intent on the Athlete's part to establish an Anti-Doping Rule Violation of Attempted Use under Article 2.2.

The relevant intent is, as Mr Campbell submitted, an intent to commit an Anti-Doping Rule Violation. In support of this contention Mr Campbell relied upon the wording of the definition of Attempt. He also relied upon the decision in *RYA v Johnston*, 30 May 2007, as explained in Taylor and Lewis, *Sport and the Law* (4th ed). There cannot have been any attempt to commit an Anti-Doping Rule Violation when ██████ believed, whether rightly or wrongly, by 15 May 2019 that he was not subject to the ADR because he had retired.

24. If the argument about intent were not accepted, it was in any case submitted by Mr Campbell that there could have been no Attempted Use of a Prohibited Substance because ██████ threw the testosterone away on receipt, whatever he may have previously intended. In this regard, our attention was drawn to the ADR definition of Attempt which expressly includes the following proviso:

Provided, however, there shall be no Anti-Doping Rule Violation based solely on an Attempt to commit a violation if the Athlete or other Person renounces the Attempt prior to it being discovered by a third party not involved in the Attempt.

25. As for the charge of Possession, Mr Campbell accepted that ██████ had had possession of the testosterone for the purposes of the ADR albeit he had retained actual possession only briefly. But, in any case the ADR definition of Possession includes the following:

Notwithstanding anything to the contrary in this definition, the purchase (including by any electronic or other means) of a Prohibited Substance ... constitutes Possession by the Person who makes the purchase.

26. If we did not accept the jurisdiction argument and were of the view that there had been an Anti-Doping Rule Violation by ██████, then Mr Campbell submitted that it was not intentional within the meaning of the ADR. This matters because the ADR reduce ineligibility to two years for the Anti-Doping Rule Violations under consideration where

the violation was not intentional. For material purposes an Anti-Doping Rule Violation is only intentional if someone actually knows that he or she would be committing an Anti-Doping Rule Violation or knows that there is a significant risk to that effect. Actual knowledge is what matters: see *ITF v Sharapova*, 6 June 2016 and *UKAD v Normandale* (SR/NADP/86/2019). ██████ cannot have known that he would be, or that there was a significant risk that he would be, committing an Anti-Doping Rule Violation when he thought that as a retiree, he was no longer subject to the ADR.

27. On the hypothesis that we found that there had been an unintentional Anti-Doping Rule Violation, we were urged to find that there had been No Significant Fault on ██████'s part. In this context we were urged to bear in mind that on account of his ██████ worries ██████ had at the time been in what he described as "a dark place" mentally. He was not thinking straight. He was ██████, and his judgment was severely impaired by alcohol.

28. We were particularly invited to bear the following in mind:

- (1) ██████ was a recreational player who has never had any anti-doping training at all.
- (2) ██████ was in a very poor state of mind with significant ██████ impairment.
- (3) There was no risk which ██████ should have appreciated when, as far as he was concerned, he was retired.
- (4) As soon as ██████ came to appreciate what he had done under the influence of alcohol, he immediately threw away the testosterone.

29. Lastly, Mr Campbell addressed us on the significance of ██████ having continued to act as secretary of ██████ even after his Provisional Suspension. Mr Campbell acknowledged that acting as club secretary was not consistent with Provisional Suspension. However, he drew our attention to two features of the present case. First, UKAD had been aware since at least ██████ interview that ██████ was acting as unpaid club secretary but had not told him that this was forbidden. Second, ██████ had attempted to obtain clarification from UKAD, but his phone call had been neither answered nor returned.

30. In these circumstances, it was submitted that UKAD had waived the prohibition on acting as club secretary. Accordingly, any period of Ineligibility which we were to impose should be backdated to [REDACTED] Provisional Suspension.

SUBMISSIONS FOR UKAD

31. Ms McGowan for UKAD noted that there was no doubt that [REDACTED] had bought online a quantity of a Prohibited Substance, testosterone. Put shortly, [REDACTED] had committed at least one Anti-Doping Rule Violation. This attracted a four year period of Ineligibility under the ADR. She addressed us on the issues raised by [REDACTED] as follows.

32. Jurisdiction was the principal issue. Even if [REDACTED] thought that he had retired at the end of the 2018/19 season, which was not accepted by UKAD, he remained subject to the ADR as a registered member of the WRU. Ms McGowan referred us to ADR Article 1.4.1. [REDACTED] had done nothing at all to communicate, or have communicated, to the WRU his claimed retirement. Simply having a couple of conversations with two other club members about stopping playing was quite inadequate to remove a player from being subject to the ADR. Ms McGowan referred us to a number of authorities where Tribunals had rejected claims of retirement from Athletes who had given no notice of retirement to their governing bodies, although it is fair to say that the facts of each case are not the same as those in [REDACTED] case.

33. So far from notifying the WRU of retirement, [REDACTED] had actually re-registered with the WRU for the 2019/20 and 2020/21 seasons. We should therefore find that [REDACTED] as a registered WRU player was in May 2019 subject to the ADR.

34. As for Mr Campbell's alternative argument about [REDACTED] not being an Athlete for ADR purposes on 15 May 2019, Ms McGowan drew our attention to the extraordinary consequences of Mr Campbell's argument. It is common for Athletes to be subject to periods when they are not actually competing, for example during the off season or when injured, but it would be absurd to suggest that they thereby avoid the ADR. The ADR definition of Athlete should be given a common sense interpretation.

35. On the question of Attempted Use of the Prohibited Substance, Ms McGowan distinguished on its facts the *RYA* case on which Mr Campbell relied. ██████ had known that the substance he ordered was a Prohibited Substance and that he was at the time a registered WRU player. That was sufficient for the Anti-Doping Rule Violation of Attempted Use to be made out. And we were invited to reject on the facts ██████ evidence of renunciation. As for Possession, Ms McGowan referred us to several authorities confirming that merely ordering a Prohibited Substance was sufficient under the ADR; it does not even have to be shown that the substance was actually delivered.
36. The onus of showing that his Anti-Doping Rule Violations were not intentional lies upon ██████. We were invited to reject ██████ case on the facts. He must have known that he was still subject to the ADR as a registered player, and he accepted that he did in fact know that the testosterone was a banned product. ██████ claims of impairment of his cognitive function were to be rejected. Possibly, he was anxious about ██████. However, there were no medical records, and there was no other medical evidence, to support a contention that ██████ cognitive function was so impaired that he did not realise what he was doing.
37. Again, the onus of showing that there was No Significant Fault lies upon ██████. As appears from the CAS decision in *WADA v IIFH and F (CAS 2017/A/5282)*, the plea must fail if he cannot establish that the Anti-Doping Rule Violations were not intentional. However, even were he to do so, he cannot show that he exercised the “utmost caution” or indeed that he took any steps at all to verify that he was not at risk of infringing the ADR.
38. Finally, we were invited to impose a four year period of Ineligibility commencing with the date of our decision. No credit should be given for the Provisional Suspension since ██████ had not observed its requirements; he had continued to act as secretary of ██████. The current version of the ADR, the version relevant for procedural purposes here, makes it plain by Article 10.14.1 that participation in any activity for a WRU affiliated club is incompatible with Provisional Suspension. The term “activity” would include acting as an unpaid secretary performing an administrative role: see Comment 77 to the WADA Code.

DISCUSSION

39. The first, and indeed central, question which we have to consider is whether on 15 May 2019 [REDACTED] was still subject to the ADR. As a player registered with the WRU, he had agreed amongst other matters, to abide by the ADR. The critical provision is ADR Article 1.4.1 which provides:

Each Athlete or other Person shall continue to be bound by and required to comply with these Rules unless and until he/she is deemed under the NGB's rules to have retired from the sport so that he/she is no longer subject to the NGB's authority.

The question for us is, therefore, whether on 15 May 2019 [REDACTED] was deemed under the rules of the WRU to have retired so that he was no longer subject to the authority of the WRU.

40. We are prepared to accept that at the end of the 2018/19 season [REDACTED] had decided that he would no longer be playing rugby for the club – at least not on a regular basis. However, he remained registered with the WRU as a player and indeed re-registered as such for the following two seasons. There is nothing to suggest that he was now deemed, under the rules of the WRU, to have retired.

41. The rules of the WRU prescribe no procedure for retirement by a player. The WRU does nevertheless operate a procedure for registration and de-registration. There is an online system called the MyWRU Player Registration and Transfer System. It is operated by club secretaries like [REDACTED]. The manual for the system notes in Article 6.1: “it is essential that clubs de-register all individuals who are no longer playing rugby”. Whilst the system and the WRU Rules do not expressly provide for “retirement”, in evidence Mr Taylor of the WRU confirmed that it would be expected for players to be de-registered on retirement. We are satisfied that de-registration is how retirement is “deemed” by the WRU to take place.

42. We note that [REDACTED] himself as club secretary operated the de-registration system for [REDACTED]. Indeed, he de-registered a number of players in 2019. They did not include himself.

43. We are quite unable to accept that on 15 May 2019, when ██████ ordered the testosterone, he was deemed under the rules of the WRU to have retired. He was still registered with the WRU as a player, and simply telling a couple of colleagues of an intention to give up playing is certainly not deemed retirement under the WRU rules.
44. We now turn to Mr Campbell's alternative argument that on 15 May 2019 ██████ was no longer an "Athlete" for ADR purposes. Given that ██████ was not at the time playing rugby, we can understand the argument. It does nevertheless have some extraordinary ramifications. If correct, it would mean that whenever an individual happens not to be competing, for example in the off season, he avoids having to comply with many of the ADR requirements. Indeed, it calls into question the ADR requirements for Out-of-Competition testing of Athletes.
45. We are quite satisfied that Mr Campbell's argument is not correct. It seems to us that the proper analysis is as follows. There is no doubt that ██████ was during the 2018/19 season a registered Athlete under the ADR. As such, he agreed to be bound by the provisions of the ADR including Article 4.1.1. The consequence of that provision is that he remained bound by the ADR, including Articles 2.2 and 2.6, until he was deemed by the WRU to have retired. The definition of Athlete cannot just be read in isolation. It has to be read in its context of the ADR as a whole.
46. Accordingly, we dismiss the argument on jurisdiction. We are satisfied that ██████ was subject to the ADR on 15 May 2019.
47. Of the two Anti-Doping Rule Violations alleged, we firstly address the charge of Attempted Use. We do not need to go into the question of intention, and what it is that must be intended under Article 2.2.2. With great respect to the Tribunal in the *RYA* case, it is not wholly clear to us that it is an intention to commit an Anti-Doping Rule Violation which must be intended, rather than an intention to perform the fact alleged. However, we do not need to go into this since we are entirely satisfied that ██████ did renounce any attempt to take the testosterone when it was delivered to his home. We thought that ██████ evidence rang true about his throwing away this urine-coloured viscous liquid when it arrived. We therefore hold that the proviso to the ADR definition of "Attempt" is

engaged. The charge of Attempted Use of a Prohibited Substance is accordingly dismissed.

48. The charge of Possession is, however, different. Not only was ██████ in actual physical possession of the testosterone, albeit for a relatively brief period, but on his own admission he made the online purchase. The concluding sentence of the ADR definition of "Possession" is clearly applicable. To be fair, it is right to say that Mr Campbell did not suggest otherwise. We therefore uphold the charge of Possession of a Prohibited Substance.

49. Turning to the issue as to whether the Possession of the testosterone was intentional, we note that Possession of a non-Specified Prohibited Substance, as here, attracts a four year period of Ineligibility unless ██████ establishes that the Anti-Doping Rule Violation was not intentional. In the latter case, the period of Ineligibility is two years. The word "intentional" does not simply bear its ordinary meaning. It is a term of art under the ADR. Article 10.2.3 provides:

As used in Articles 10.2 and 10.3 the term "intentional" is meant to identify those Athletes or other Persons who cheat. The term, therefore, requires that the Athlete or other Person engaged in conduct which he or she 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.

50. We do not consider ██████ to be a cheat. But for the purposes of assessing whether or not the Anti-Doping Rule Violation was intentional we have to consider what ██████ knew at the time. We agree with Mr Campbell that the question is what he actually knew rather than what he should have known.

51. When ██████ purchased the testosterone in his inebriated state, we do not think that he gave any thought to whether he would be committing an Anti-Doping Rule Violation. He did agree in evidence that at the time he knew that testosterone was banned. However, as far as he was concerned, he had given up playing rugby, and the rules about what could and could not be taken no longer applied to him. He was not correct about that for the reasons we have given. But it is still the case that this was his state of mind. ██████ has satisfied us that his Anti-Doping Rule Violation was not intentional.

52. Finally, we turn to the question whether ██████ was not significantly at fault. We must have regard to all the circumstances. The ADR defines fault as follows:

Fault is any breach of duty or any lack of care appropriate to a particular situation. Factors to be taken into consideration in assessing an Athlete or other Person's degree of fault include, for example, the Athlete's or other Person's experience, whether the Athlete or other Person is a Minor, special considerations such as impairment, the degree of risk that should have been perceived by the Athlete and the level of care and investigation exercised by the Athlete in relation to what should have been the perceived level of risk

53. ██████ had had no anti-doping training, although it has also to be said that as club secretary he did occupy a position of responsibility. Furthermore, we have given due weight to the evidence we heard about ██████ at the time. Nevertheless, the fact remains that ██████ ordered the testosterone without giving any thought to the consequences. He may have been of the view at the time that he had retired and was therefore no longer bound by the rules. But he took no steps at all to verify whether this was so. And he honestly acknowledged in evidence that he did know at the time that testosterone was banned. In these circumstances, we are quite unable to say that ██████ had No Significant Fault for the Anti-Doping Rule Violation.

54. In light of the above, a two year period of Ineligibility is applicable in the present case.

CONCLUSION

55. In summary, we have concluded as follows:

- (1) ██████ was on 15 May 2019 subject to the ADR;
- (2) He committed the Anti-Doping Rule Violation of Possession of a Prohibited Substance, although another Anti-Doping Rule Violation of Attempted Use of a Prohibited Substance was not established;
- (3) The Anti-Doping Rule Violation was not intentional;
- (4) ██████ has not established that he bore No Significant Fault;

(5) ██████ is to be subject to a two year period of Ineligibility.

56. It remains for us to consider the date when the Ineligibility should commence. Commonly, credit is given for any period of Provisional Suspension. However, this assumes that the requirements of the Provisional Suspension have been complied with. In the present case ██████ has continued to act as secretary of ██████ even while provisionally suspended. This is incompatible with Article 10.14.1 of the 2021 ADR (applicable to procedural matters in the present case). This provides in material part:

While serving a period of ...Provisional Suspension, an Athlete ...may not participate in any capacity ...in a ...activity...authorised or recognised by (c) any club or other body that is a member of, or affiliated to, or licensed by, a Signatory or a Signatory's member organisation.

Comment 77 to the WADA Code explains that:

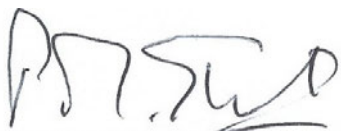
The term "activity" includes, for example, administrative activities, such as serving as an official, director, officer, employee, or volunteer of the organization described in this Article...

57. Where a period of Ineligibility is imposed by a Tribunal, credit for any period of Provisional Suspension may only be given if it has been respected: ADR, Article 10.13.2(a). Otherwise, the Ineligibility commences on the date of the decision. Mr Campbell accepts that this is so, subject to his argument of waiver mentioned above. Even if UKAD had the power to waive a provision of the ADR, which we doubt, there is simply no evidence that UKAD ever told ██████ that he could continue as club secretary or otherwise purported in some way to waive an ADR provision. We cannot accept the waiver argument. ██████ two year period of Ineligibility must commence upon the date of our Decision.

RIGHT OF APPEAL

58. In accordance with Article 13.5 of the NADP 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.

59. [REDACTED] is not an international level athlete, and pursuant to ADR Article 13.4.2(b), the Appeal should be filed to the National Anti-Doping Panel, located at Sport Resolutions, 1 Paternoster Lane, London, EC4M 7BQ (resolve@sportresolutions.com).

A handwritten signature in black ink, appearing to read 'R. Englehart', written over a dotted horizontal line.

Robert Englehart KC,
Chairman for the Tribunal
26 September 2023

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