

**IN THE MATTER OF PROCEEDINGS BROUGHT UNDER THE ANTI-DOPING RULES OF
BRITISH CYCLING**

Before:

Charles Flint KC
David Casement KC
Professor Dorian Haskard

BETWEEN:

UK Anti-Doping Limited

Anti-Doping Organisation

and

Dr Richard Freeman

Respondent

DECISION OF THE NATIONAL ANTI-DOPING PANEL

Preliminary

1. British Cycling is the National Governing Body for the sport of cycling in Great Britain. British Cycling has adopted the UK Anti-Doping Rules as its own anti-doping rules.
2. On 22 December 2020 UK Anti-Doping (“UKAD”) sent a charge letter to Dr Richard Freeman notifying him that he was charged with two Anti-Doping Rule Violations (“ADRVs”):

- a) committing an ADRV contrary to Article 2.6 of the 2009 Anti-Doping Rules (“ADR”) in that on 16 May 2011 and/or on or after 18 May 2011, he was in Possession of a substance that was prohibited in Out-of-Competition Testing, namely testosterone, in connection with an Athlete, Event or training;
 - b) committing an ADRV as to Tampering contrary to Article 2.5 of the 2015 ADR, in that:
 - (i) on 17 February 2017, he told UKAD investigators that (a) Ms Meats had confirmed to him that the Testogel should be returned to her for destruction, and/or (b) the Testogel had been returned to Fit 4 Sport, in each case knowing the information he provided to UKAD’s investigators to be false: and/or
 - (ii) he instructed his solicitors to inform UKAD (and in March 2017 the solicitors did so inform UKAD in writing) that (a) he had written to the “non-rider” member of staff, requesting that the individual waive confidentiality, and/or (b) that that individual had responded unequivocally advising him that confidentiality would not be waived, in each case knowing that information to be false.
3. On 19 March 2021 UKAD made a request for arbitration under Article 4.1.1 of the National Anti-Doping Panel Rules and the tribunal was subsequently appointed. On 21 May 2021 in a summary response, counsel for Dr Freeman denied the charge as to possession of testosterone, admitted the first charge of Tampering, and denied the second charge of Tampering.
 4. UKAD was represented by Mr Richard Bush and Mr Chris Lavey of Bird & Bird. Dr Freeman was represented by LK Law LLP, on a pro bono basis, until he ceased to be represented by that firm on 25 June 2023. It was Dr Freeman’s decision not to attend the hearing, so this case was decided on the papers, without the need for a hearing in person.
 5. There is no dispute as to jurisdiction. As team doctor for British Cycling and Team Sky Dr Freeman fell within the definition of “Athlete Support Person” under the ADR. As the conduct alleged against Dr Freeman in respect of the Possession charge occurred in

May 2011, the 2009 version of the ADR (and the 2011 Prohibited List) applies to that conduct. As the conduct alleged against Dr Freeman in respect of the Tampering charges occurred in February 2017, the 2015 version of the ADR applies.

Background

6. Dr Freeman practised as a team doctor for British Cycling, with a secondment from Team Sky, from 2010, and then from October 2016 to October 2017 as the British Cycling Head of Medicine. Concerns about Dr Freeman were brought to the attention of the General Medical Council (“GMC”) around October 2016. On 7 April 2017 UKAD made a formal referral to the GMC.
7. After a prolonged hearing which commenced on 29 October 2019 the Medical Practitioners Tribunal (“MPT”) made a determination on 12 March 2021 on the facts of the case. The significant facts as found by the Tribunal included:
 - (i) Dr Freeman admitted that on 16 May 2011 he had ordered for delivery from Fit 4 Sport 30 sachets of Testogel, and that his statement that the order had been sent in error was, untrue¹.
 - (ii) Dr Freeman then sought to make a case that Testogel had been ordered for Mr Shane Sutton, the former Technical Director of British Cycling. That argument was rejected by the MPT which considered it to be “an elaborate falsehood”.²
8. On 19 March 2021, the GMC directed that Dr Freeman’s name be erased from the medical register. Dr Freeman brought an appeal to the High Court which was rejected on 16 January 2023. The proceedings before the NADP had been stayed until the MPT proceedings had concluded.

¹ MPT – Determination on the Facts – para 26 (1) to (4)

² MPT – Determination on the Facts – paras 234, 235

Issues

9. Dr Freeman denies the Possession charge under the 2009 ADR Article 2.6.3 on the grounds that he was not in Possession of any Prohibited Substance “in connection with an Athlete, Event or training”. He submitted that UKAD was unable to produce any evidence that Dr Freeman ordered Testogel for an athlete, in training or in competition.
10. As set out above Dr Freeman has admitted the first Tampering charge under the 2015 ADR at Article 2.5. By his own admission, Dr Freeman made untrue and dishonest statements to UKAD investigators (both orally and in writing), specifically by asserting that (1) Ms Meats of Fit 4 Sport had said to him that the Testogel should be returned to her for destruction, when he knew full well that she had not done so, and (2) that the Testogel had been returned to Fit 4 Sport, when he knew full well that it had not been. That conduct constituted Tampering which subverted the Doping Control process, including by providing fraudulent information to UKAD investigators.
11. Dr Freeman denies the second Tampering charge under the 2015 ADR at Article 2.5. His case is that Testogel was ordered by him for use by a “non-rider member of staff”, later identified as Shane Sutton, the Head Coach at British Cycling. He says he wrote to Mr Sutton asking him to waive patient confidentiality, but no such consent was given. If untrue that conduct would constitute Tampering subverting the Doping Control process, knowing his information to be false.
12. In respect of the charges which Dr Freeman denies it is necessary for the Tribunal to establish that the ADRV are charged to its comfortable satisfaction, bearing in mind the seriousness of the allegations made.³ The facts established by the MPT, a professional disciplinary tribunal of competent jurisdiction, are irrebuttable evidence against the Athlete, unless the principles of natural justice have been violated.⁴

³ UK ADR 2015 at Article 8.3.1

⁴ UK ADR 2009 at Article 8.3.7 ; UK ADR 2015 at Article 8.3.8

Evidence

13. On 17 February 2017 Dr Freeman was interviewed by the UKAD investigators who wished to ascertain his account of events in relation to his possible possession of a Prohibited Substance. In the course of the interview he admitted that he had ordered the Testogel, in the form of testosterone patches, from Fit 4 Sport but maintained that the Testogel had been returned, without undue delay. He had produced a pre-prepared witness statement ⁵ which included these paragraphs:

“.....Testosterone, in any form, has never been ordered by me whether through Fit 4 Sport or any other pharmacy, for any rider patient [emphasis added] of British Cycling or Team Sky. I was aware then that it was a Prohibited Substance in the context of anti-doping, and was very concerned that we had been sent it.”

“At that time, a (non-rider) staff member [emphasis added] at the Velodrome had sought my assistance relating to a medical problem. As a result I placed an order for testosterone patches with Fit 4 Sport. I presume it was in response to that order that the delivery arrived at the Velodrome. When the delivery arrived, the potential difficulty i.e. having a Prohibited Substance in my possession in the Velodrome which I would never administer to a rider, struck me and so I discussed with Phil Burt, leading to the return,”

“ ...The product was not used for any patient.”

14. There are inconsistencies in these statements but they appeared to be preparing the ground for a suggestion that the motive for ordering Testogel could be excused if the Prohibited Substance was never intended to be provided to a rider. At that stage Dr Freeman had not developed his position to assert that the Testogel had been ordered for Mr Sutton. It was not until correspondence to the GMC dated 8 December 2017 that Dr Freeman's solicitor stated:

“I now have instructions to identify that the name of the relevant patient is Mr Shane Sutton [...]”.

⁵ DB tab 19

15. Mr Sutton produced two witness statements for the MPT proceedings. The first was dated 19 April 2018 in response to the request of the GMC. Mr Sutton gave evidence about the treatments he had received from Dr Freeman. In December 2017 he was sent medical records from British Cycling which had been returned by Dr Freeman. British Cycling also sent a series of prescriptions in 2014 and 2015 which had been completed by Dr Freeman. Mr Sutton considered the medical records were an accurate representation of his medical treatment, although the amount of the prescriptions seemed to be more than he was actually given and some appeared to be incomplete. When he was interviewed by UKAD on 20 October 2016, he had stated that he had never heard of Testogel. It was only later that he learned from the press that Testogel had been delivered to British Cycling.

16. Mr Sutton subsequently made a supplemental statement dated 13 July 2018 stating:

“On 12 July 2018 I was informed by the GMC that Dr Freeman, via his legal representatives, has identified me as the intended recipient of the Testogel which Dr Freeman ordered for delivery to the Manchester Velodrome in May 2011. This is totally untrue. I have no idea why Dr Freeman would suggest this substance was intended for me ... I have learned that Testogel is a testosterone supplement used to treat someone who lacks testosterone. I can confirm that at no point during the time I received treatment from Dr Freeman did he mention to me that I had testosterone deficiency and he and I never discussed Testogel or testosterone supplements or anything similar to this kind of treatment.”

17. Dr Freeman produced a witness statement dated 24 September 2019⁶ for the MPT proceedings in which he stated:

“The testogel was specifically ordered by me in the context of a specific request by Shane Sutton, then Head Coach at British Cycling. In 2010 I began treating Mr Sutton for erectile dysfunction.”

⁶ DB tab 34 para 45

18. On 12 March 2021 the MPT made its determination on the facts. The main findings relevant to this case were:

- (1) Dr Freeman ordered Testogel from Fit 4 Sport, and told a lie when he said that the delivery was a mistake;⁷
- (2) In his interviews and statements Dr Freeman had dishonestly described Testogel as a patch, knowing that it was a gel which could readily have been used for doping purposes;⁸
- (3) Dr Freeman's account of having ordered Testogel for Mr Sutton was implausible and required overlooking a number of falsehoods; in particular:
 - a) it was inexplicable that Dr Freeman did not inform Mr Phil Burt or Dr Steve Peters that the Testogel was for a patient and subject to patient confidentiality;
 - b) there were no medical notes to suggest that in 2011 Mr Sutton had any need for Testogel or testosterone;⁹
 - c) there is no evidence that Dr Freeman wrote to any "non-rider" member of staff seeking a waiver of confidentiality and no such correspondence has been produced.¹⁰
- (4) The MPT was satisfied that the Testogel was not obtained for Mr Sutton and Dr Freeman's statement that it had been ordered for a non-athlete member of staff was untrue;¹¹
- (5) The MPT found Mr Sutton to be a credible and consistent witness, and there was no evidential basis for calling into question his account or his probity.¹²

19. It is relevant to the issues in this case to consider the evidence as to whether Dr Freeman had been intimidated or bullied by Mr Sutton. The MPT decided that up to May 2011 nobody had witnessed Mr Sutton threatening or bullying Dr Freeman, and Dr Freeman did not say that Mr Sutton had done so. The MPT was not persuaded that

⁷ Determination paras 108 – 110

⁸ Determination paras 170 - 181

⁹ Determination paras 123, 193, 198

¹⁰ Determination para 200

¹¹ Determination para 182 – 203 and para 9a

¹² Determination para 100

bullying or threats had taken place in April or May 2011 so as to form the context of Dr Freeman's actions¹³. In his witness statement at paragraphs 37 and 38 Dr Freeman stated that his relationship with Mr Sutton had deteriorated in about 2015, and the most serious breakdown in the relationship came in early 2016, evidence which would support the MPT finding that there had been no bullying or threats made against Dr Freeman in 2011.¹⁴ Dr Freeman did not take the opportunity to provide oral evidence in these proceedings which could then have been tested in cross-examination.

20. At paragraph 241 the MPT made this determination:

“Overall, then, taking all those factors into account, and bearing in mind the breadth of Dr Freeman’s dishonesty and the number of people he had pulled into it (Ms Meats, Dr Peters and Mr Sutton), the Tribunal found his conduct incapable of innocent explanation. It was clear that, on the balance of probabilities, the inference could properly be drawn that when Dr Freeman placed the order and obtained the Testogel, he knew or believed it was to be administered to an athlete to improve their athletic performance.”

21. Dr Freeman appealed the decision of the MPT to the High Court. On 16 January 2023 that appeal was dismissed. Amongst other issues the judge concluded that the determination of the MPT at paragraph 241 was the expression of a clear inference, properly drawn on the balance of probabilities, that Dr Freeman knew or believed that the Testogel was to be administered to an athlete to improve athletic performance, taking into account all the factors which had been described.

22. Mr Sutton made a further short statement dated 26 March 2023¹⁵ stating:

- (1) Dr Freeman had told a lie when he said that the Testogel had been ordered for Mr Sutton;
- (2) Dr Freeman had told a lie when he said that he had requested his patient, Mr Sutton, to waive confidentiality; Mr Sutton had received no such correspondence.

¹³ Determination para 146, 155

¹⁴ DB 34 – WS 24 September 2019

¹⁵ Mr Sutton's statement was provided to UKAD on 26 June 2023, which would appear to be the correct date.

Dr Freeman's submissions

23. The submissions made by LK Law LLP for Dr Freeman raise these issues:
- (1) The Possession charge and the Tampering charge must be proved by establishing that Dr Freeman ordered Testogel, a substance that was prohibited, in connection with an Athlete, Event or training;
 - (2) Dr Freeman maintains that Testogel was ordered for use by Mr Sutton and its use was clinically indicated for Mr Sutton's condition;
 - (3) Mr Sutton had refused to waive his confidentiality as a patient, he did not wish to confirm his evidence on oath and his evidence should be re-assessed; and
 - (4) Dr Freeman's case is that he was bullied by Mr Sutton.
24. The assertion made by Dr Freeman that Testogel was ordered for use by Mr Sutton and was clinically indicated for his condition cannot be maintained in the light of the determinations made by the MPT. The MPT was clear in accepting that the evidence of Mr Sutton was truthful and could be accepted.
25. The allegation, at paragraphs 13 and 15, that Dr Freeman was bullied by Mr Sutton has no validity or relevance in relation to the steps taken by Dr Freeman to order Testogel and to lie about the circumstances in which he eventually alleged that Mr Sutton was the intended recipient. The MPT determined that there was no evidence that bullying or threats had taken place in April or May 2011 so as to form the context of Dr Freeman's actions.¹⁶
26. The submission at paragraph 32 producing a number of articles relating to testosterone is irrelevant. Dr Freeman has made further written submissions on 15 and 25 June 2023 which do not carry the issues any further.

¹⁶ Determination para 155

2009 ADR Article 2.6.3 - “in connection with an Athlete, Event or training”

27. The submission advanced for Dr Freeman is that there is no evidence that he ordered Testogel for an athlete, for training or for competition.

28. The inference drawn by the MPT was that “when Dr Freeman placed the order and obtained the Testogel, he knew or believed it was to be administered to an athlete to improve their athletic performance”. This determination was found by the High Court to be:

“an expression of a clear inference, properly drawn on the balance of probabilities, taking into account all of the factors which had earlier been described. It was both supported and evidenced, as explained in the clear and cogent reasons which preceded it”.¹⁷

It is those clear and cogent reasons that require consideration whether sufficient inferences can be drawn to reach the conclusion that Dr Freeman took possession of Testogel, a Prohibited Substance, “in connection with an Athlete, Event or training”.

29. In USADA v Salazar,¹⁸ the American Arbitration Association (“AAA”) tribunal considered the application of Article 2.6.2 of the 2015 Code. At paragraph 426 the Panel found that only non-athletes, two of the respondents’ own sons, were involved in the “testosterone experiment”. On that basis the Panel found, at paragraph 429, that USADA had not met its burden of proof in connection with “*an Athlete, Competition or Training*.” However, at paragraph 427 the Panel stated:

“in order for Possession to be “in connection with an Athlete, Competition or training” as required by Article 2.6.2 there would necessarily need to be an Athlete involved. The definition of “in connection with” according to Meriam-Webster is “in relation to (something)” and according to lexico.com, it means with reference to “concerning”... A strict reading of the elements required for Possession does not allow the Panel to stray from its actual wording;

¹⁷ Freeman v General Medical Council [2023] EWHC 45, DB tab 3, para 81.

¹⁸ AAA Panel decision dated 30 September 2019, AB tab 12,

there is nothing to suggest that the term “in connection with” does not require the actual involvement of a specific Athlete or Athletes either in training or in competition”.

That reasoning appears to suggest that the test is limited to whether an Athlete is involved in training or in competition. With respect to the AAA Panel the proper interpretation of Article 2.6.3 is that it requires conduct that may be either in connection with an Athlete or Athletes, or in connection with a competition or training by an Athlete. An Athlete may be involved if, for example, an Athlete Support Personnel has ordered or supplied a Prohibited Substance for an Athlete in his home. Article 2.6.3 would be rendered nugatory if the Athlete Support Personnel could evade possession by making sure that his athlete took delivery of a Prohibited Substance outside the competition or training in which he intended to participate. It is clear that Article 2.6.3 would apply if the possession of the Prohibited Substance was connected with an Athlete or Athletes.

30. In May 2011 Dr Freeman was the Team Doctor for British Cycling and Team Sky and thus very well acquainted with his riders. The determination of the MPT was that Dr Freeman ordered the delivery of Testogel, which was a Prohibited Substance in a gel form, that would be preferable for doping purposes, and he lied about the delivery. It was not until 2017 that Dr Freeman for the first time suggested that the Testogel had been ordered for a “non-rider” as a patient, an assertion that was clearly designed to reduce the risk that a rider might be subject to investigation. The obvious inference is that Dr Freeman must have intended to make the Testogel available to one or more of his riders, but was thwarted in that attempt when the delivery was discovered by Mr Burt and Dr Peters. That was the conclusion of the MPT at paragraph 241 of the Determination:

“ ... bearing in mind the breadth of Dr Freeman’s dishonesty, and the number of people he had pulled into it (Ms Meats, Dr Peters and Mr Sutton), the Tribunal found his conduct incapable of innocent explanation. It was clear that, on the balance of probabilities, the inference could properly be drawn when Dr Freeman placed the order and obtained the Testogel, he knew or believed it was to be administered to an athlete to improve their athletic performance”

A finding that was accepted by the judge on the appeal. As there was, in the judgement of the MPT, no basis for believing that any “non-rider” sought to obtain Testogel from Dr Freeman, then the intention must have been to supply one or more of his team of riders.

31. The test applied by the MPT in its determinations is based on the balance of probabilities. UKAD must establish that the commission of the violation was charged to the comfortable satisfaction of the Tribunal, bearing in mind the seriousness of the allegations that are made. The standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt. On that basis the Tribunal is comfortably satisfied, bearing in mind the seriousness of the allegations made against Dr Freeman and the improbability of the case he advanced that the evidence establishes that he intended to make available to one or more of his athletes the Prohibited Substance delivered to the Manchester Velodrome.

2015 ADR Article 2.5 – Tampering with any part of Doping Control

32. In his Summary Response dated 21 May 2021 at paragraph 7 Dr Freeman admitted the first Tampering charge under 2015 ADR Article 2.5 as follows:

“on 17 February 2017, he told UKAD investigators that (a) Ms Meats had confirmed to him that Testogel (that had been addressed and delivered to him at the Manchester Velodrome on 16 May 2011) should be returned to her for destruction, and/or (b) the Testogel had been returned to Fit 4 Sport, in each case knowing the information he provided to UKAD’s investigators to be false.”

33. Dr Freeman denies the second Tampering charge brought under 2015 ADR Article 2.5 as follows:

“he instructed his solicitors to inform UKAD (and in March 2017 they did so inform UKAD in writing) that (a) he had written to a ‘non-rider’ member of staff (for whom he claimed to order the Testogel), requesting that that individual waive confidentiality, and/or (b) that that individual had responded unequivocally advising him that they would not waive confidentiality, in each case knowing that to be false.”

34. Article 2.5 has a wide meaning:

“Conduct that subverts the Doping Control process Tampering shall include, without limitation, intentionally interfering or attempting to interfere with a Doping Control official, providing fraudulent information to an Anti-Doping Organisation...”

35. In his submission Dr Freeman states, at paragraphs 13 and 14, that his case is that he ordered Testogel for Shane Sutton and “covered up” who the order was for when it arrived at the Manchester Velodrome. He feared retribution from Mr Sutton if it became widely known that it was ordered for his erectile dysfunction. He said he did not lie when he had written to the “non-rider” asking him to waive patient confidentiality, so that he could then provide this explanation to the authorities.

36. The first occasion on which Dr Freeman raised the suggestion that a “non-rider” staff member had any involvement in the order for testosterone was in his interview with UKAD on 17 February 2017. If Dr Freeman had actually believed that the Testogel was supplied for Mr Sutton in May 2011 then, as determined by the MPT, it was inexplicable that Dr Freeman did not inform Mr Burt or Dr Peters that the Testogel was for a patient and subject to patient confidentiality. There are no medical notes which suggest in 2011 that Mr Sutton had any need for Testogel or testosterone. The medical notes made available to Mr Sutton from Dr Freeman and British Cycling do not provide any evidence that Testogel was clinically indicated for Mr Sutton’s condition or prescription. There is no evidence that Dr Freeman wrote to any “non-rider” member of staff seeking a waiver of confidentiality and no such correspondence has been produced or any proper explanation given as to why it could not be produced.

37. The determination of the MPT was clear in accepting that the evidence of Mr Sutton was truthful. Mr Sutton has since produced his statement dated 26 March 2023 in which he states that Dr Freeman had lied in stating that the Testogel was for Mr Sutton, and lied in stating that he wrote to a non-rider member of staff requesting that confidentiality be waived. That statement is entirely consistent with the determination of the MPT.

38. For the reasons given above the Tribunal is comfortably satisfied that, bearing in mind the seriousness of the allegations and the improbability of the case advanced by Dr Freeman, the evidence establishes that Dr Freeman committed the second Tampering charge by conduct that subverted Doping Control.

Consequences

39. In accordance with 2015 ADR Article 10.7.4(a), for the purposes of sanctioning the two ADRVs, namely Possession in 2011 and Tampering in 2017, will be 'considered as one single first Anti-Doping Rule Violation', and 'the sanction imposed shall be based on the Anti-Doping Rule Violation that carries the more severe sanction'.

40. Pursuant to 2009 ADR Article 10.2, *'[f]or an Anti-Doping Rule Violation under [...] Article 2.6 (Possession of a Prohibited Substance and/or a Prohibited Method) that is the Participant's first violation, a period of Ineligibility of two years shall be imposed ...'*. The relevant conditions referred to in 2009 ADR Article 10.2 do not apply.

41. Pursuant to 2015 ADR Article 10.3.1, *'[f]or an Anti-Doping Rule Violation under [...] Article 2.5 that is the [...] Person's first anti-doping offence, the period of Ineligibility shall be four years', 'unless Articles 10.5 [No Significant Fault or Negligence] or 10.6 [reduction for other reasons] are applicable',* which do not apply.

Conclusion

42. For the reasons set out above:

- (1) Dr Freeman committed the charge of Possession of a Prohibited Substance contrary to 2009 ADR Article 2.6.3 and the first and second Tampering charge contrary to 2015 ADR Article 2.5;
- (2) applying 2015 ADR Article 10.7.4(a), the ADRV that 'carries the more severe sanction' is the Tampering ADRV, which carries a four-year period of Ineligibility;

(3) the four-year period of Ineligibility should be deemed to have commenced on 22 December 2020, giving credit to Dr Freeman for the period of Provisional Suspension that he has served to date in accordance with 2015 ADR Article 10.11.3, and will end at 23:59 on 21 December 2024.

Right of Appeal

43. 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.
44. 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).



Charles Flint KC

Chairman, on behalf of the Tribunal

20 July 2023

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