

Issued Decision

UK Anti-Doping and Joseph Lewis

Disciplinary Proceedings under the Anti-Doping Rules of the Welsh Rugby Union

This is an Issued Decision made by UK Anti-Doping Limited ('UKAD') pursuant to the Anti-Doping Rules ('ADR') of the Welsh Rugby Union ('WRU'). It concerns Anti-Doping Rule Violations ('ADRVs') committed by Mr Joseph Lewis and records the applicable Consequences.

Capitalised terms used in this Decision shall have the meaning given to them in the ADR unless otherwise indicated.

Background and Facts

1. The WRU is the national governing body for rugby union in Wales. UKAD is the National Anti-Doping Organisation ('NADO') for sport in the United Kingdom. The WRU has adopted, as its own ADR, the UK Anti-Doping Rules¹, which are issued by UKAD and are subject to updates made by UKAD, as necessary and in accordance with the World Anti-Doping Code.
2. Mr Lewis is a 37-year-old rugby union player. As a player participating in activities with a club registered with the WRU, at all relevant times Mr Lewis was subject to the jurisdiction of the WRU and bound to comply with the ADR. Pursuant to ADR Article 7.2, UKAD has Results Management responsibility in respect of all players that are subject to the jurisdiction of the WRU.
3. On 19 February 2022, UKAD Doping Control Personnel collected a urine Sample from Mr Lewis In-Competition at a game between Bridgend Ravens RFC and Cardiff RFC at Brewery Field, Tondu Road, Bridgend, Wales.
4. Assisted by the Doping Control Officer in attendance, Mr Lewis split the urine Sample into two separate bottles which were given reference numbers A1176357 (the 'A Sample') and B1176357 (the 'B Sample').
5. Both Samples were transported to the World Anti-Doping Agency ('WADA') accredited laboratory, the Drug Control Centre, King's College, London (the 'Laboratory'). The Laboratory analysed the A Sample in accordance with the

¹ Version 1.0, in effect as from 1 January 2021

procedures set out in WADA's International Standard for Laboratories. Analysis of the A Sample returned an Adverse Analytical Finding ('AAF') for amfetamine and its Metabolite, para-hydroxy-amphetamine.

6. Amfetamine is listed under Section 6A of the 2022 WADA Prohibited List as a stimulant. It is a non-Specified substance and it is prohibited In-Competition only. Mr Lewis did not have a Therapeutic Use Exemption ('TUE') for amfetamine.
7. On 14 June 2022, UKAD sent Mr Lewis a notification letter (the 'Notice'). The Notice confirmed the imposition of a Provisional Suspension and formally notified Mr Lewis, in accordance with ADR Article 7.8, that he may have committed ADRVs pursuant to ADR Article 2.1 (Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample) and/or ADR Article 2.2 (Use or Attempted Use by an Athlete of a Prohibited Substance or a Prohibited Method). In the Notice, UKAD invited Mr Lewis to provide an explanation for the alleged ADRVs.
8. On 23 June 2022, Mr Lewis responded to the Notice explaining that he had been diagnosed with attention deficit hyperactivity disorder ('ADHD') and prescribed medication, Elvanse-Adult, which contained the Prohibited Substance amfetamine. Between then and 25 August 2022, Mr Lewis engaged with UKAD and set about applying for a retroactive TUE in respect of his medication. Mr Lewis' application for a retroactive TUE was denied by UKAD's Fairness Review Panel. The Panel concluded that as a member of the National TUE Pool who had received in-person anti-doping education, Mr Lewis had neglected his anti-doping duties in not applying for a TUE in advance of taking his prescribed medication. In such circumstances, it was not manifestly unfair to reject his request for a retroactive TUE.
9. As a result of this decision, Mr Lewis did not possess a valid and applicable TUE for amfetamine at the time his Sample was taken. Therefore, the presence of the Prohibited Substance and its Metabolite in his Sample, and his Use of the Prohibited Substance, constitutes a violation of ADR Article 2.1 and ADR Article 2.2 respectively.
10. On 25 October 2022, UKAD sent Mr Lewis a Charge Letter, which formally charged Mr Lewis with ADRVs pursuant to ADR Article 2.1 and ADR Article 2.2.
11. On 28 November 2022, Mr Lewis' legal representatives provided a response to the Charge Letter. The response admitted the violations of ADR Articles 2.1 and 2.2, but submitted that the violations were not 'intentional' within the meaning attributed to that term by ADR Article 10.2.3. It requested that the matter be referred to the National Anti-Doping Tribunal ('NADP') for the Consequences to be determined.
12. Mr Lewis subsequently outlined in his written evidence and submissions that on initially being prescribed Elvanse-Adult to treat his ADHD, he checked to see if the

medication brand name, rather than its ingredients, was present on the WADA Prohibited List. The brand name did not appear on the Prohibited List. When he realised his error a few months later, and completed the same search using the ingredient lisdexamfetamine, Mr Lewis realised he had been using a Prohibited Substance.

13. Mr Lewis then made an appointment with his Consultant Psychiatrist where he was informed that UKAD required a different ADHD assessment to that which had been used in his initial diagnosis. The required ADHD assessment had a waiting list of almost six-months. While waiting for his assessment, Mr Lewis continued to take his medication and to play rugby for Bridgend Ravens. He was tested and returned his AAF on 19 February 2022, during this period.
14. Mr Lewis made clear in his submitted evidence that he did not appreciate that, as a member of UKAD's National TUE Pool, his TUE application should have been made in advance of taking any Prohibited Substance.

Consequences

15. ADR Article 2.1 provides that the following is an ADRV:

2.1 Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample, unless the Athlete establishes that the presence is consistent with a TUE granted in accordance with Article 4.

16. ADR Article 2.2 provides that the following is an ADRV:

2.2 Use or Attempted Use by an Athlete of a Prohibited Substance or a Prohibited Method, unless the Athlete establishes that the Use or Attempted Use is consistent with a TUE granted in accordance with Article 4.

17. ADR Article 10.2 provides as follows:

10.2 Imposition of a Period of Ineligibility for the Presence, Use or Attempted Use, or Possession of a Prohibited Substance and/or a Prohibited Method.

The period of Ineligibility for an Anti-Doping Rule Violation under Article 2.1, 2.2 or 2.6 that is the Athlete's or other Person's first anti-doping offence shall be as follows, subject to potential elimination, reduction or suspension pursuant to Article 10.5, 10.6 or 10.7:

10.2.1 Save where Article 10.2.4(a) applies, the period of Ineligibility shall be four (4) years where:

(a) The Anti-Doping Rule Violation does not involve a Specified Substance or a Specified Method, unless the Athlete or other Person can establish that the Anti-Doping Rule Violation was not intentional.

(b) [...]

10.2.2 If Article 10.2.1 does not apply, then (subject to Article 10.2.4(a)) the period of Ineligibility shall be two (2) years.

10.2.3 As used in Article 10.2, the term “intentional” is meant to identify those Athletes or other Persons who engage in conduct which they know constitutes an Anti-Doping Rule Violation or they know that there is a significant risk that the conduct might constitute or result in an Anti-Doping Rule Violation and they manifestly disregard that risk.

(a) [...]

18. In accordance with ADR Article 10.2.1(a), since this matter concerns a non-Specified substance, the period of Ineligibility to be imposed shall be four (4) years, unless Mr Lewis can establish on the balance of probabilities, that the ADRVs were not ‘intentional’ (within the meaning of ADR Article 10.2.3).

19. Having considered Mr Lewis’ evidence and submissions, UKAD agrees that he has discharged the burden conferred on him by ADR Article 10.2.1 to establish his ADRVs were not ‘intentional’.

20. In arriving at this decision, UKAD has had regard to the following factors:

- i. Mr Lewis was prescribed the medication that triggered the AAF in order to treat a diagnosed medical condition, namely ADHD, the effects of which may predispose him to difficulties adhering to this anti-doping obligations.
- ii. On realising that the medication he had been prescribed contained an ingredient on WADA’s Prohibited List, Mr Lewis recognised the need to apply for a TUE, and made an appointment with his Consultant Psychiatrist to begin that process.
- iii. While that application could not be completed at the time, for reasons outside of his control, UKAD accepts that Mr Lewis did not appreciate the significance of someone in his position, ie, a member of the National TUE Pool, continuing to take his medication and play rugby in advance of his application being submitted and considered by UKAD.

21. For the purposes of imposing a sanction, the ADRVs will be considered together as a single first violation, pursuant to ADR Article 10.9.4 which states as follows:

10.9.4 Additional rules for certain potential multiple offences:

- (a) For the purposes of imposing sanctions under Article 10.9, except as provided in Articles 10.9.4(b) and 10.9.4(c) an Anti-Doping Rule Violation will only be considered a second (or third, as applicable) Anti-Doping Rule Violation if UKAD can establish that the Athlete or other Person committed the additional Anti-Doping Rule Violation after they received notice, or after UKAD or its designee made a reasonable attempt to give notice, of the first (or the second, as applicable) Anti-Doping Rule Violation. Otherwise, the first and second Anti-Doping Rule Violations (or the second and third Anti-Doping Rule Violations as applicable) shall 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 most severe sanction...*

22. The applicable period of Ineligibility is therefore two (2) years.
23. UKAD's position in respect of ADR Article 10.6 (Reduction of the period of Ineligibility based on No Significant Fault or Negligence) is that Mr Lewis has not established that he bore No Significant Fault or Negligence. Therefore no reduction is to be applied to Mr Lewis' period of Ineligibility.

Commencement of period of Ineligibility

24. ADR Article 10.13 requires that the period of Ineligibility starts on the date Ineligibility is accepted or otherwise imposed where there is no hearing.
25. However, ADR Article 10.13.2 allows for credit to be given against the total period of Ineligibility to be served where an Athlete has been provisionally suspended and has respected the terms of that Provisional Suspension.
26. Mr Lewis has been subject to a Provisional Suspension since the date of the Notice Letter, i.e., since 14 June 2022 and as far as UKAD is aware he has respected the terms of that Provisional Suspension. Therefore, affording Mr Lewis credit for the time he has spent provisionally suspended, his period of Ineligibility is deemed to have commenced on 14 June 2022 and will end at midnight on 13 June 2024.

Status during Ineligibility

27. During the period of Ineligibility, in accordance with ADR Article 10.14.1, Mr Lewis shall not be permitted to participate in any capacity (or assist any Athlete

participating in any capacity) in a Competition, Event or other activity (other than authorised anti-doping education or rehabilitation programmes) organised, convened, authorised or recognised by:

- a) The WRU;
- b) Any Signatory;
- 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;
- d) Any professional league or any international or national-level Event organisation; or
- e) Any elite or national-level sporting activity funded by a governmental agency.

28. Mr Lewis may return to train with a team or to use the facilities of a WRU club or a Signatory's member organisation during the last two months of his period of Ineligibility (i.e. from midnight on 13 April 2024) pursuant to ADR Article 10.14.4(b).

Summary

29. For the reasons given above, UKAD has issued this Decision in accordance with ADR Article 7.12.2, and records that:

- a) Mr Lewis has committed ADRVs pursuant to ADR Articles 2.1 and 2.2;
- b) In accordance with ADR Article 10.9.4(a) the ADRVs are considered as one single ADRV for the purposes of imposing a sanction;
- c) A period of Ineligibility of two (2) years is therefore imposed;
- d) Acknowledging Mr Lewis' Provisional Suspension, the period of Ineligibility is deemed to have commenced on 14 June 2022 and will expire at midnight on 13 June 2024; and
- e) Mr Lewis' status during the period of Ineligibility shall be as detailed in ADR Article 10.14.

30. Mr Lewis, the WRU, World Rugby, and WADA have a right to appeal against this Decision or any part of it in accordance with ADR Article 13.4.

31. This Decision will be publicly announced via UKAD's website in accordance with ADR Article 8.5.3 and ADR Article 10.15.

17 August 2023