

Issued Decision

UK Anti-Doping and Kyle Perry

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 Welsh Rugby Union ('WRU') Anti-Doping Rules (the 'ADR'). It concerns a violation of the ADR committed by Mr Kyle Perry 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 governing body for the sport of rugby union in Wales. UKAD is the National Anti-Doping Organisation for the United Kingdom. The WRU has adopted the UK Anti-Doping Rules as its own Anti-Doping Rules (the 'ADR').
2. Mr Perry is a 29-year-old rugby union player (28-years-old as at the date of his Anti-Doping Rule Violation) who played for Rhydyfelin RFC. At all material times in this matter Mr Perry was subject to the jurisdiction of the WRU and bound to comply with the ADR. Pursuant to the ADR, UKAD has results management responsibility in respect of all players subject to the jurisdiction of the WRU.
3. On 24 November 2018, UKAD collected an In-Competition urine Sample from Mr Perry following a Welsh Championship match between Rhydyfelin RFC and Beddau RFC in Pontypridd, Rhondda Cynon Taff. The Sample was separated into two bottles which were given the reference numbers A1145629 ('the A Sample') and B1145629 ('the B Sample').
4. Both Samples were transported to the World Anti-Doping Agency ('WADA') accredited laboratory, the Drug Control Centre, King's College London ('the Laboratory'). The A Sample was analysed in accordance with the procedures set out in WADA's International Standard for Laboratories. The A Sample was found to contain boldenone and 5 β -androst-1-en-17 β -ol-3-one (a metabolite of boldenone) at a concentration requiring Gas Chromatography/Combustion/Isotope-Ratio Mass Spectrometry ('GC/C/IRMS') analysis.
5. GC/C/IRMS analysis of the A Sample was conducted by the WADA accredited laboratory in Rome, Laboratorio Antidoping FMSI ('the Rome Laboratory') in accordance with the procedures set out in WADA's technical document for the detection of synthetic forms of endogenous anabolic androgenic steroids by GC/C/IRMS ('TD2016IRMS'). The results of the GC/C/IRMS analysis confirmed

the Adverse Analytical Findings ('AAFs') in respect of the A Sample (exogenous origin of boldenone and 5 β -androst-1-en-17 β -ol-3-one).

6. Boldenone (and its metabolites) is listed as a Prohibited Substance under section S1.1(b) of the WADA 2018 Prohibited List as an Endogenous Anabolic Androgenic Steroid when administered exogenously. Boldenone is a non-Specified Substance and is prohibited at all times.
7. Mr Perry did not have a Therapeutic Use Exemption in respect of boldenone.
8. On 15 February 2019, UKAD issued Mr Perry with a Notice of Charge ('the Charge') and a Provisional Suspension. The Charge alleged the commission of an Anti-Doping Rule Violation ('ADRV') pursuant to ADR Article 2.1 (Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample).

Admission and Consequences

9. On 22 February 2019 Mr Perry admitted committing an ADRV pursuant to ADR Article 2.1.
10. ADR Article 2.1 states as follows:

The following constitute Anti-Doping Rule Violations:

- 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***

11. ADR Article 10.2 states 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 reduction or suspension pursuant to Article 10.4, 10.5 or 10.6:

10.2.1 The period of Ineligibility shall be four years where:

- (a) *The Anti-Doping Rule Violation does not involve a Specified Substance, 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, the period of Ineligibility shall be two years.

12. With regards to the meaning of 'intentional', ADR Article 10.2.3. states as follows:

10.2.3 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...

13. ADR Article 10.2.1(a) therefore provides that in relation to this matter (being a matter that concerns a non-Specified Substance) the period of Ineligibility to be imposed shall be four years, unless Mr Perry can establish, on the balance of probability, that the commission of the ADRV was not intentional. Save in exceptional cases, such a finding will only be made by a tribunal if the Athlete can prove the source of their ingestion of the Prohibited Substance¹ to the required standard.
14. Mr Perry provided an explanation for his ADRV in his response to the Charge on 22 February 2019. Mr Perry asserts that whilst he accepts the finding of boldenone and its metabolite in his system, he cannot categorically say how the substance entered his body. Mr Perry states that he has not knowingly ingested a Prohibited Substance in order to enhance his sporting performance. Mr Perry explains he has used 'creatine, protein and 100% natural test boosters' and that he told the doping control personnel what he had taken at the time. Mr Perry's declaration on the doping control form records the use of 'ibrufen, co-drydomol, creatine' [sic] in the previous seven days.
15. UKAD considers that Mr Perry has not been able to demonstrate how he ingested boldenone. His bare assertion that he has never intentionally ingested a Prohibited Substance is not enough to establish that his ingestion was not intentional for the purposes of ADR Article 10.2.
16. In the circumstances, Mr Perry accepts that he is not able to demonstrate that he did not commit the ADRV intentionally, as defined in ADR Article 10.2.3. Mr Perry therefore accepts that the period of Ineligibility to be applied is four years.

Consideration of ADR Article 10.6.3 – Prompt Admission

17. UKAD has considered whether pursuant to ADR Article 10.6.3, a reduction to the period of Ineligibility should be applied following Mr Perry's admission of the ADRV.

¹ The National Anti-Doping Panel appeal tribunal in *UKAD v Buttifant SR/NADP/508/2016* stated at paragraph 31 that "The cases decided by the NADP panels under article 10.2.1.1 are unanimous and correct as to the practical effect of article 10.2.3. It is only in a rare case that the athlete will be able to satisfy the burden of proof that the violation of article 2.1 was not intentional without establishing, on the balance of probabilities, the means of ingestion."

18. ADR Article 10.6.3 states:

10.6.3 Prompt Admission of an Anti-Doping Rule Violation after being Confronted with a Violation Sanctionable under 10.2.1 or Article 10.3.1:

An Athlete or other Person potentially subject to a four-year sanction under Article 10.2.1 or 10.3.1 (for evading or refusing Sample Collection or Tampering with Sample Collection), may receive a reduction in the period of Ineligibility down to a minimum of two years, depending on the seriousness of the violation and the Athlete's or other Person's degree of Fault by promptly admitting the asserted Anti-Doping Rule Violation after being confronted with it, upon the approval and at the discretion of WADA and UKAD.

19. UKAD considers Mr Perry's admission of the ADRV in his response to the Charge on 22 February 2019 was prompt.
20. UKAD is not however, able to properly determine Mr Perry's Fault in respect of his ADRV in the absence of any accepted explanation as to how the AAFs for boldenone and its metabolite came about.
21. In any event, UKAD considers this ADRV to be serious. UKAD takes the view that ingesting a powerful anabolic androgenic steroid, which has the effect of promoting an increase in strength and power is a serious violation.
22. In the circumstances, UKAD has not exercised its discretion to reduce the period of Ineligibility pursuant to ADR Article 10.6.3. The period of Ineligibility to be imposed is therefore four years, pursuant to ADR Article 10.2.1(a).

Commencement of period of Ineligibility

23. ADR Article 10.11 requires that the period of Ineligibility starts on the date Ineligibility is accepted or otherwise imposed where there is no hearing.
24. ADR Article 10.11.2 allows for the period of Ineligibility to start as early as the date of Sample Collection (in Mr Perry's case, 24 November 2018) where there is a timely admission of the ADRV. Mr Perry was charged on 15 February 2019 and accepted the ADRV in his response dated 22 February 2019. UKAD considers this a timely admission and therefore ADR Article 10.11.2 is to be applied.
25. The period of Ineligibility is therefore deemed to have commenced on 24 November 2018 and will expire at midnight on 23 November 2022.

Status during Ineligibility

26. During the period of Ineligibility, in accordance with ADR Article 10.12.1 Mr Perry shall not be permitted to participate in any capacity in any Competition, Event or other activity (other than authorised anti-doping education or rehabilitation programmes) organised, convened, authorised or recognised by:

- a. The WRU or any body that is a member of, or affiliated to, or licensed by 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-level or national-level Event organisation; or
 - e. Any elite or national-level sporting activity funded by a government agency.
27. Mr Perry may return to train with a team or to use the facilities of a club or other member organisation of the WRU or a Signatory's member organisation during the last two months of his period of Ineligibility (i.e. from midnight on 23 September 2022) pursuant to ADR Article 10.12.4(b).

Summary

28. For the reasons given above, UKAD has issued this Decision in accordance with ADR Article 7.7.4 and records that:
- a. Mr Perry has committed an ADRV pursuant to ADR Article 2.1;
 - b. This constitutes Mr Perry's first ADRV and, as such, a period of Ineligibility of four years is imposed pursuant to ADR Article 10.2.1(a);
 - c. Acknowledging the timely admission pursuant to ADR Article 10.11.2, the period of Ineligibility is deemed to have commenced on 24 November 2018 and will expire at midnight on 23 November 2022; and
 - d. Mr Perry's status during the period of Ineligibility shall be as detailed in ADR Article 10.12.
29. Mr Perry, 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.
30. This Issued Decision will be publicly announced via UKAD's website in accordance with ADR Articles 8.4.3 and 14.1.2.

6 August 2019