

**IN THE MATTER OF PROCEEDINGS BROUGHT UNDER THE ANTI-DOPING RULES OF
THE BRITISH BOXING BOARD OF CONTROL**

Before:

Charles Flint KC
Professor Dorian Haskard
Lorraine Johnson

BETWEEN

UK Anti-Doping Limited

Anti-Doping Organisation

and

Amir Khan

Respondent

DECISION OF THE NATIONAL ANTI-DOPING PANEL

Preliminary

1. On 20 July 2022 UKAD sent a charge letter to Amir Khan (the “Athlete”) notifying him that he was charged with two Anti-Doping Rule Violations (“ADRVs”) under the 2021 UK Anti-Doping Rules (“ADR”) adopted by the British Boxing Board of Control (“BBBoC”). The charge alleged violations of ADR Article 2.1 (Presence of a Prohibited Substance) and Article 2.2 (Use of a Prohibited Substance). On 25 August 2022 UK Anti-Doping (“UKAD”) made a request for arbitration under Article 4.1 of the National Anti-Doping Panel (“NADP”) Rules and this Tribunal was subsequently appointed. There is no dispute as to the jurisdiction of the Tribunal.

2. UKAD was represented by Richard Bush and Chris Lavey of Bird & Bird. Amir Khan was represented by Nick De Marco KC of Blackstone Chambers and Angelique Richardson of Freeths.

Background

3. Amir Khan is a retired professional boxer now aged 36 years. He began to box competitively at the age of 11, with early honours including three English school titles, one junior ABA title, and a Gold Medal at the 2003 Junior Olympics. He competed as a professional boxer from 2005 until 2022. He was the unified welterweight world champion between 2009 and 2012, held the Commonwealth lightweight title from 2007 to 2008 and the WBC Silver welterweight title from 2014 to 2016, as well as holding an Olympic silver medal. He retired as a professional boxer on 13 May 2022. In his boxing career he has been tested for doping over approximately 40 times and, prior to 19 February 2022, he has never tested positive for any Prohibited Substance.
4. On 19 February 2022 Amir Khan took part in a bout against Kell Brook, organised by the BBBoC in the Manchester Arena. Prior to the bout he was tested on three separate occasions, 20 and 21 January 2022, by USADA in the United States, and 12 February 2022 by UKAD in the UK. Each test returned negative results for doping. On 19 February 2022 a urine sample was taken by UKAD in the Manchester Arena following the fight. On 6 April 2022 Amir Khan was notified by UKAD that the urine sample taken on 19 February 2022 returned a positive finding for the presence of ostarine. Ostarine is listed in the WADA 2022 Prohibited List as an anabolic agent, a non-Specified Substance, prohibited at all times

Issue

5. UKAD brings two charges under the ADR:

- (1) a violation under Article 2.1 in that a Prohibited Substance, namely ostarine, was present in a urine sample provided by the athlete on 19 February 2022; and
 - (2) a violation under Article 2.2 in that the athlete used a Prohibited Substance, namely ostarine, on or before 19 February 2022.
6. In respect of each violation, it is the personal duty of the Athlete to ensure that no Prohibited Substance enters his body. It is not necessary to demonstrate intent, Fault, negligence or knowing Use on the Athlete's part in order to establish a violation of Article 2.1 or 2.2.
7. On 26 September 2022, under Article 7.9 of the NADP Rules, the Tribunal chairman required Amir Khan to state the nature of his defence to the charges. By email on 5 October 2022 it was stated that Amir Khan accepted the charges and asserted that he did not knowingly or deliberately ingest or otherwise use the Prohibited Substance. He intended to rely on expert evidence that the concentration found in the samples was inconsistent with any intention to breach the ADR. He argued that the breaches were not intentional under Article 10.2. He also reserved his right, subject to being in a position to demonstrate the source of the Prohibited Substance, to argue that he bore No Significant Fault or Negligence.
8. In the answer brief for Amir Khan the case put forward by way of defence was:
 - (1) he admitted the two violations under Articles 2.1 and 2.2;
 - (2) as he was unable to establish the source of the Prohibited Substance, he could not advance the argument that he bore no Significant Fault or Negligence under Article 10.6.1;

(3) he argued that the breaches were not intentional under Article 10.2 as he did not deliberately ingest or use the Prohibited Substance.

9. Under Article 10.2.1 (a) if *“the Athlete ... can establish that the Anti-Doping Rule Violation was not intentional”* then the period of ineligibility shall be 2 years under Article 10.2.2 instead of the period of 4 years prescribed by Article 10.2.1. The issue to be decided is whether the Athlete can satisfy the burden of proving that the violation was not intentional.

Legal Framework

10. Where an ADRV is established, the period of Ineligibility to be applied is set out at ADR Article 10.2:

“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 10.5, 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 Articles 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 Violation or they know that there was a significant risk that the conduct might constitute or result in an Anti-Doping Rule Violation and manifestly disregarded that risk...”

11. In a paper by Rigozzi, Haas, Wisnosky, Viret on the 2015 World Anti-Doping Code the authors stated:

“The 2015 Code does not explicitly require an Athlete to show the origin of the substance to establish that the violation was not intentional. While the origin of the substance can be expected to represent an important, or even critical, element of the factual basis of the consideration of an Athlete’s level of Fault, in the context of Article 10.2.3, panels are offered flexibility to examine all the objective and subjective circumstances of the case and decide if a finding that the violation was not intentional is warranted.”

12. There is a very clear distinction between Article 10.2.1, which governs this case, and Articles 10.5 and 10.6 which permit the elimination or reduction of the period of Ineligibility on grounds of No Fault or No Significant Fault or Negligence. Those provisions are subject to an express requirement that *“the Athlete must also establish how the Prohibited Substance entered the Athlete’s system”*, whereas Article 10.2.2 contains no such requirement. The Rigozzi article refers to *WADA & UCI v Contador CAS 2011/A/2384* where a miniscule quantity of clenbuterol could not have been deliberately ingested or intended to enhance performance, and was thus inconsistent with intentional use under the equivalent of Article 10.2.2. But in order for the Athlete to establish No (or No Significant) Fault or Negligence for presence of the substance the athlete had to prove its source¹.
13. In this case the obligation imposed on the Athlete is to prove (a) that he did not know that the relevant conduct would constitute an ADRV, and (b) that he did not know that there was a significant risk that the conduct might constitute or result in an ADRV, and manifestly disregarded that risk. The special meaning of intentional in this context requires direct intent or, if recklessness is in question, indirect intent.² The test is subjective, based on the Athlete’s knowledge, and under Article 8.4.2 the required standard of proof is on the balance of probabilities. The 2021 World Anti-Doping Code (“2021 Code”) had

¹ Sport: Law and Practice (Adam Lewis & Jonathan Taylor) at C17.5 & C18.10

² Sport: Law and Practice (Adam Lewis & Jonathan Taylor) at C17.3

removed from Article 10.2.3 the words “Athletes who cheat”, thus removing any need to consider whether the athlete had any intent to enhance performance ³.

14. The revision to the 2021 Code introduced a comment to Article 10.2.1.1 in these terms:

“While it is theoretically possible for an Athlete or other Person to establish that the anti-doping rule violation was not intentional without showing how the Prohibited Substance entered one’s system, it is highly unlikely that in a doping case under Article 2.1 an Athlete will be successful in proving that the Athlete acted unintentionally without establishing the source of the Prohibited Substance.”

Under Article 1.5.2 of the 2021 UK ADR such comments are to be incorporated by reference into the rules and used to interpret the Code.

15. The jurisprudence is clear that proof of the source of the Prohibited Substance is not an essential threshold question which necessarily has to be proved in every case before the Athlete can satisfy Article 10.2.3. In ***Villanueva v FINA*** (CAS 2016/A/4534) at [37] the panel observed:

“Furthermore, the Panel can envisage the theoretical possibility that it might be persuaded by an athlete’s simple assertion of his innocence of intent when considering not only his demeanour, but also his character and history..... That said, such a situation would inevitably be extremely rare. Even on the persuasive analysis of Rigozzi, Haas et al., proof of source would be “an important, even critical” first step in any exculpation of intent. Where an athlete cannot prove source it leaves the narrowest of corridors through which such athlete must pass to discharge the burden which lies upon him.”

16. In ***Arijan Ademi v. UEFA*** (CAS 2016/A/4676), the Panel found (at [75]) that despite the Player’s “*inability to identify the source of the Prohibited Substance,*” he established, “*on*

³ Sport: Law and Practice (Adam Lewis & Jonathan Taylor) at C17.3

a balance of probability, that he did not engage in conduct which he knew constituted or might constitute or result in an ADRV, in that he did not knowingly ingest stanozolol or otherwise intended to cheat.” In **Abdelrahman** (CAS 2017/A/5016 & 5036) at para 122 the panel, after endorsing the approach in **Villanueva** (2016/A/4534) and **Ademi** (CAS 2016/A/4676) stated:

“the establishment of the source of the prohibited substance in an athlete’s sample is not mandated in order to prove an absence of intent. In particular, this Panel is impressed by the fact that the provisions of the EADR concerning "intent" do not refer to any need to establish source, in direct contrast to Article 10.5, combined with the definitions of "No Fault or Negligence" and "No Significant Fault or Negligence", which expressly and specifically require to establish source.”

17. The argument for the Athlete places considerable weight on the decision in **WADA v Shayna Jack** (CAS 2020/A/7579). The panel considered, at paragraphs 157 & 158, that scientific evidence was important, albeit not decisive. At paragraph 171 The panel decided that:

“What must be shown is that on the balance of probability there was no intent or recklessness, and this can be proved by any means. Identification of the source is often important (but not in and of itself sufficient), but it is not indispensable.”

It is not necessary to express any view on whether, as the majority decided at para 180, the competitive achievements and prospects of the swimmer constituted sufficient objective evidence which could justify the conclusion that the conduct in question was not intentional.

18. In **UKAD v Buttifant** (7 March 2016) the NADP appeal panel made these points

“(28) In summary, in a case to which article 10.2.1.1 applies the burden is on the athlete to prove that the conduct which resulted in a violation was not intentional. Without evidence

about the means of ingestion the tribunal has no evidence on which to judge whether the conduct of the athlete which resulted in the violation was intentional or not intentional. There is no express requirement for an athlete to prove the means of ingestion but there is an evidential burden to explain how the violation occurred. If the athlete puts forward a credible explanation then the tribunal will focus on that conduct and determine on the balance of probabilities whether the athlete has proved the cause of the violation and that he did not act intentionally.

(29) There may be wholly exceptional cases in which the precise cause of the violation is not established but there is objective evidence which allows the tribunal to conclude that, however it occurred, the violation was neither committed knowingly nor in manifest disregard of the risk of violation. In such a case the conduct under examination is all the conduct which might have caused or permitted the violation to occur. These rare cases must be judged on the facts when they arise.”

19. In ***Dylan Scott v ITF*** CAS 2018/A/5768 the panel stated:

131. It clearly follows from TADP Article 10.2.1 that the burden of proof is on the Athlete to convince the Panel that he did not act intentionally because the provision presumes intention on the part of the Athlete. Since there is no direct evidence available to conclude whether or not the Appellant acted intentionally, the Athlete must submit and substantiate objective facts from which - taken together - the Panel can deduce (based on the applicable standard of proof) what was the Athlete's state of mind at the relevant time.

It follows that the Athlete must in this case produce objective evidence which is sufficient on the balance of probability to prove that he did not intentionally engage in conduct which he knew constituted the violation or knew there was a serious risk of constituting or resulting in the violation and manifestly disregarded that risk.

Factual evidence

20. For UKAD a statement was filed from Nick Wojek, UKAD's Head of Science and Medicine. He gave evidence as to the illegal marketing of ostarine as a dietary supplement, that ostarine has also been found as a contaminant within dietary supplements, and as to the benefits that a professional boxer might obtain from ingesting ostarine in amounts that would have a pharmacological effect. Those benefits included improving an individual's power to weight ratio, and:

"An anabolic agent with the properties of ostarine could be used concurrently with restricted calorie intake to lessen the detrimental effect on power by minimising the unavoidable losses in lean body mass that occur when employing weight making strategies."

Mr Wojek's evidence was not disputed.

21. Amir Khan filed two witness statements. In his statement dated 2 November 2022 he stated:

- (1) that prior to 19 February 2022 he had never tested positive for doping; each of the samples taken by UKAD on 20 and 21 January and 12 February 2022 tested negative;
- (2) he had insisted that he and his opponent be subject to additional doping tests by the Voluntary Anti-Doping Association ("VADA") in the period leading up to the bout on 19 February 2022;
- (3) UKAD did not notify him of the positive A Sample analysis until 6 April 2022, and that delay prejudiced his ability to establish the source of ostarine in the Sample; he had never previously heard of ostarine;

(4) he has pursued every avenue to try to establish the source of the ostarine by commissioning expert evidence; based on his own knowledge of his behaviour in the run up to the bout, the very low traces of ostarine, the scientific evidence as to the amount of ostarine to which he was exposed, and the results of the various tests conducted by his expert, he believes that the most probable explanation was through contamination of a supplement or incidental contact with another person;

(5) his ability to identify the source of ostarine in supplements was prejudiced by the delay in being notified by UKAD of the A sample analysis and the failure of his nutritionist, to maintain proper records of the supplements provided.

22. In his second witness statement, dated 12 January 2023, Amir Khan gave further evidence as to the instruction of his nutritionist, WhatsApp messages with the nutritionist, and a list of supplements taken during training and the lead up to the bout.

23. Amir Khan was cross-examined on a number of issues arising from his witness statements. The main points made in cross-examination were:

(a) On 18 January 2022 he was invoiced by VADA for \$8,250 for testing both boxers prior to the bout on 19 February 2022. However, he could not recall whether VADA actually carried out any tests, and this may not have been necessary as he was tested twice in the United States by USADA, at the request of UKAD, on 20th and 21st January.

(b) His evidence as to the assistance provided by his nutritionist and how various supplements were purchased was unclear. There was a lack of a reliable record of supplements used.

- (c) On 19 February 2022 his doping control form appeared to list about 8 or 10 substances, but it was suggested in cross-examination that he had failed to declare three supplements.

The Tribunal accepts that the evidence of Amir Khan was truthful but his recollection on certain matters was unclear.

24. A statement was produced from Kenneth Brady, who was Amir Khan's former strength and conditioning coach for 10 years. He stated that he could not envisage Amir Khan engaging in doping, which would be completely out of character.

Expert Evidence

25. Professor Pascal Kintz, who has considerable experience in pharmacy and toxicology, produced a composite report for the Athlete on 26 October 2022. His conclusions on the sample taken on 19th February 2022 were:

- (1) the concentration of ostarine in the sample was 0.5 ng/ml (nanograms per millilitre);
- (2) as the Athlete tested negative on 12 February the exposure to ostarine would have been between 12 and 19 February;
- (3) daily doses of ostarine intended to enhance performance would be 10 mg (milligrams) or more (ie. over 1000 times higher than would produce a urine concentration 0.5 ng/ml within 7 days);
- (4) based on the paper of Walpurgis (Walpurgis et al [2020] Drug Test Anal 12:1570-80) and others, the following doses were scientifically credible (as being consistent with the micro-dose detected in the sample taken on 19 February):

- about 20 to 30 µg (between 4 to 7 days before 19 February)
- about 10 µg (between 3 to 4 days before 19 February)
- about 2 to 5 µg (between 1 to 3 days before 19 February)

(5) the urine concentration was very low; the dose that entered the system was incidental, in the range of some µg, compared to a daily use for performance enhancement of 10 mg or more.

(6) he noted that a daily oral dosage of ostarine ranging from 10 to 25 mg would be necessary to enhance performance;

(7) the estimated dose which had entered the Athlete's body (a minute amount of some µg) was so low that it would not produce any physiological effect.

26. The evidence from Professor Cowan of Kings College, in his report dated 1 December 2022 was:

(1) (at para 7) the sample analysis conducted by the WADA accredited laboratory was sufficient to ensure the detection of any ostarine, so that it was highly unlikely that the ostarine found in the sample collected on 19 February 2022 was administered before the sample collection on 12 February; it was possible that a pharmacologically effective dose of 3 mg (milligrams) could have been administered on 12 February, although this drug would be typically administered by dopers repeatedly, rather than on a single occasion.

(2) (at para 8a) it was not possible to conclude whether a pharmacologically effective dose of 3 mg could have been taken immediately after the sample taken on 12 February or a smaller dose taken from an unknown source of contamination had occurred at some time between 12 and 19 February.

- (3) (at para 8b) the laboratory finding would not support the ingestion of a “typical” doping dose of the order of 10 – 20 mg; it was unlikely that a regular doper had administered a pharmacologically effective dose; the laboratory finding would support micro-doses of ostarine taken within seven days of 12 February;
- (4) (at para 8c) it is possible that the finding of ostarine is consistent with ingestion of a contaminated product, and with respect to human contact, absorption of ostarine through the skin is possible;
- (5) (at para 12) it is possible for a 10 µg dose of ostarine to give rise to 0.5 ng/ml if administered three or four days earlier;
- (6) (at para 14) it is possible that a very small micro-dose could have been inadvertently administered by the athlete, but it is also feasible that a larger pharmacologically effective dose had been administered seven days before the sample was collected;
- (7) (at para 15) however, *“the scenario involving a small dose of ostarine is the more likely given that it is unlikely that an athlete would deliberately take only a single dose of ostarine unless experimenting with the drug (or) deliberately take a very small dose”*.

27. The experts agree that it makes no difference to these issues if the sample were adjusted for specific gravity to raise the concentration of 0.5 to 1.4 ng/ml. Professor Kintz does not agree that there is any basis for calculating a dose of 3 mg, which is the only basis on which Professor Cowan could support a pharmacologically effective dose, provided that the dose was administered in a period of 7 days before 19 February, ie. no later than 12th February. Professor Kintz made clear that the Walpurgis study dealt only with micro-doses of ostarine because it was investigating the contamination of supplements at doses of 1, 10 or 50 micro-grams. The Coss paper (Coss et al [2016] Invest New Drugs 34: 458-67) does not contain any evidence to show the expected concentrations in urine with a dose

of 3 mg. In cross-examination Professor Cowan clarified that he was not trying to prove that it was definitely a dose of 3 mg that was taken; it was a possibility but more likely that there was an incidental inadvertent contamination involving a small dose.

The determination

28. The main arguments UKAD put forward in its Reply brief are:

- (1) In the case of a non-Specified Substance Article 10.2.1(a) must give rise to a presumption that the Athlete intentionally ingested the substance ostarine to enhance his performance;
- (2) In all but the most exceptional circumstances the presumption of intent can only be rebutted by first proving how the substance was ingested;
- (3) On the expert evidence deliberate use of ostarine in either micro-doses or a pharmacologically effective dose is entirely possible and would be consistent with the analytical results for the 19 February 2022 sample;
- (4) There is no evidence to suggest that any of the 14 supplements could have been the source of contamination from ostarine which was present in the athlete's sample;
- (5) the athlete's evidence as to his use of supplements is vague and the entries as to substances ingested as shown in the Doping Control Forms were not consistent;
- (6) There is no evidence to suggest that ostarine is generally present in the environment or would be present in the gyms which the athlete used.

It had been accepted for the Athlete that it was not necessary to consider whether the nail and hair analyses conducted by Professor Kintz had any probative value.

29. There is no clear evidence that any of the 14 supplements taken by the Athlete were the source of ostarine contamination. UKAD has carried out a careful analysis of those supplements and has found no evidence supporting contamination. UKAD accepts Professor Cowan's evidence that the laboratory finding of ostarine is consistent with the ingestion of a contaminated product, but this raises only a theoretical possibility. The case that the Athlete might have been exposed to ostarine through human contact must also remain speculative in the absence of any direct evidence. It is not necessary to consider the value of the nail and hair samples examined by Professor Kintz as they do not provide any evidence going to the source of any contamination.
30. So, the case for the Athlete remains as it was set out in the Answer Brief, namely that it was not possible to establish the source of the Prohibited Substance but that he did not intentionally ingest or use ostarine in the period between 12 and 19 February 2022. On this issue the scientific evidence is critical. The Tribunal accepts that evidence which leads to these conclusions:
 - (1) Professor Cowan's evidence was clear at paragraphs 14 and 15 of his report that the most likely cause of the positive sample was the inadvertent administration of a micro-dose of ostarine, which the athlete was unlikely to take deliberately as a single dose.
 - (2) Professor Kintz's evidence stated that the dose of ostarine in the Athlete's system did not correlate with an intention to use ostarine for performance enhancement, as the use of a dosage of 10 to 25 mg for doping purposes would result in a urine concentration in the order of 1000 times more concentrated than the positive sample of 0.5 – 1.4 ng/ml.

- (3) There is no rational explanation as to why the Athlete, who had tested negative on three occasions between 20 January and 12 February, should have contemplated before the fight taking a very small dose, which would give no performance enhancing advantage or any other pharmacological effect which a professional boxer might hope to obtain from such a small dose. Nor could there be any rational motive to experiment with a micro dose in the period leading up to the fight.
- (4) On the balance of probability the evidence of Professor Kintz and Professor Cowan establishes that the very small dose must have been inadvertently administered.
- (5) Professor Cowan was referred in cross-examination to the UKAD statement at paragraph 6.21.3 of the Reply brief:

“Therefore contrary to what the athlete asserts, based on the scientific evidence, deliberate use of ostarine in either micro-doses or a pharmacologically effective dose is entirely possible.”

He was then asked:

“That’s not what you meant in your report is it, as you have just explained? You were not talking about deliberate use of ostarine in micro-doses?”

to which he fairly and properly replied: *“No, I was not”*. He had previously said:

“One would not use a micro-dose of ostarine deliberately. It makes no sense ...”

31. On the Tribunal’s understanding of the cross-examination of Professor Cowan it was that he had given a figure of 3 mg derived from the Coss paper as a possible dose for the

ingestion of ostarine, the dose being applied "*immediately after the earlier sample*", ie. 7 days before 19 February 2022. If there is a conflict between the evidence of Professor Cowan and Professor Kintz on this point, then the Tribunal accepts the evidence of Professor Kintz which explains very clearly (at paragraphs 6 and 14 of his report dated 26 October 2022) the levels of dosage (up to 30 µg) which could have been consistent with the levels found in the sample. Professor Cowan accepted that it was feasible that a dose of 10 µg could, within 4 days, explain the concentration in the sample, but did not explain why the greater dosage level (up to 30 µg in 7 days) should not also be taken as a reliable measure. He also made clear at paragraph 7 of his report that a dose of 3mg would typically be administered by dopers repeatedly, rather than on a single occasion as he maintained was theoretically possible. However no published data were presented on the urine concentrations over time following ingestion of 3mg ostarine. In any event the very fair acceptance by Professor Cowan of his conclusion at paragraph 15 that the very small (micro) dose was more likely is sufficient to provide a clear conclusion.

32. In the judgment of the Tribunal the objective scientific evidence rules out any deliberate or reckless conduct by the Athlete. It is inconceivable that he would have sought to ingest a micro-dose which would have been a fraction, at least a 1,000 times less, of a dose intended to provide any performance enhancement or any other competitive advantage in the bout to be held on 19 February 2022. This is a rare case in which the Athlete was fortunate to have been required to take a doping test 7 days before the fight providing a clear marker that any subsequent sample could only have been ingested 7 days or less before the bout, thus excluding any possible argument that the residual sample could have been derived from the ingestion of a pharmacologically effective dose administered before 12 February 2022.
33. The Tribunal accepts that under Article 10.2.1 there is a presumption of intentional use of a Prohibited Substance which requires the Athlete to establish that the Anti-Doping Rule Violation was not intentional. The ADRV is constituted by the ingestion or Use of the substance present in the sample taken on 19 February 2022. In its Reply brief at paragraphs 6.23.13 to 6.23.14 UKAD makes the point that the Athlete had failed to comply

with his personal responsibility under ADR Article 1.3 in respect of supplements. That matter does not have any application to the violation charged which is entirely focused on any conduct which the Athlete knew constituted the violation, or knew of the significant risk of a violation which was not to be manifestly disregarded.

34. For the reasons given above the Tribunal determines that Amir Khan has established that the Anti-Doping Rule Violation was not intentional, so that the period of Ineligibility shall be two (2) years, not four (4).

Conclusion

35. For the above reasons, our conclusion is as follows:

- (1) The charged ADRVs under Articles 2.1 and 2.2 are proved;
- (2) The sanction under Article 10.2.2 shall be a period of Ineligibility of two (2) years;
- (3) The period of Ineligibility shall commence from 6 April 2022, the date on which the provisional suspension is deemed to have started;
- (4) The Athlete's results in the Competition held on 19 February 2022 are automatically disqualified under Article 9.1 (with all resulting consequences) but no other results are to be disqualified.

Right of Appeal

36. In accordance with Article 13.4 of the 2021 ADR and Article 13 of the 2019 NADP Procedural Rules, Amir Khan and other parties named in Article 13.4 have a right of appeal to an Appeal Tribunal of the National Anti-Doping Panel. In accordance with Article 13.7 of the 2021 ADR and Article 13.5 of the 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. The Appeal should be filed to the National Anti-Doping Panel, located at Sport Resolutions, 1 Paternoster Lane, St. Paul's, London, EC4M, 7BQ, (resolve@sportresolutions.com).



Charles Flint KC
Chairman, on behalf of the Tribunal
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21 February 2023

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