

**IN THE MATTER OF PROCEEDINGS BROUGHT UNDER THE ANTI-DOPING RULES OF  
ICE HOCKEY UK**

Before:

Christopher Quinlan KC  
Professor Kitrina Douglas  
Colin Murdock

**BETWEEN:**

**UK ANTI-DOPING**

**Anti-Doping Organisation**

and

**NICKY WATT**

**Respondent**

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**DECISION OF THE NATIONAL ANTI-DOPING PANEL**

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**A. INTRODUCTION**

1. Pursuant to Article 5.3 of the National Anti-Doping Panel ('NADP') 2021 Procedural Rules ('the Procedural Rules') the Panel was appointed by the President to hear and determine anti-doping proceedings brought by UK Anti-Doping ('UKAD') against Nicky Watt ('the Respondent').

2. Ice Hockey UK ('IHUK') is the National Governing Body for the sport of ice hockey in the UK. IHUK has adopted as its anti-doping rules ('ADR') UK Anti-Doping Rules.
3. Pursuant to a decision of the National Anti-Doping Panel ('NADP') dated 6 November 2014, and in respect of two Anti-Doping Rule Violations ('ADRVs') contrary to Articles 2.1 and 2.3 of the UK Anti-Doping Rules (Version 2.0, dated 14 December 2009) ('2009 ADR') an eight-year period of Ineligibility was imposed against the Respondent. That decision was upheld on appeal by an NADP Appeal Tribunal. The said eight-year period of Ineligibility commenced on 17 June 2014 and expired at midnight on 16 June 2022.
4. During the said period of Ineligibility, the Respondent remained subject to the provisions of the ADRs. One of the Consequences of that period of Ineligibility was that Mr Watt was prohibited from participating in any capacity (or assisting any Athlete participating in any capacity) in any Competition, Event or other activity organised, convened, authorised or recognised by (a) the NGB or by any body that is a member of, or affiliated to, or licensed by the NGB; (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.
5. By way of a Charge Letter dated on 22 July 2022, UKAD alleged that the Respondent had violated the said prohibition on participation contrary to 2015 and 2019 ADR Article 10.12.1 and proposed a further period of Ineligibility of 18 months.
6. The Respondent denied the alleged violation.
7. The in-person hearing was held on 27 March 2023 and was attended by:

*UKAD*

- Ailie McGowan (Lawyer, Advocate on behalf of UKAD)
- Tom Middleton (Head of Case Management, UKAD, observer)
- Brodie Edmead (Paralegal, UKAD, observer)

- Emily Harris (Witness who was scheduled to appear remotely)

*The Respondent*

- Rupert Beloff (Counsel)
- Nicky Watt

*NADP Secretariat*

- Alisha Ellis

8. The Panel is grateful to Mr Beloff for his *pro bono* assistance.
9. This document constitutes our final reasoned decision, reached after due consideration of the evidence, submissions and the Arbitral Awards placed before us.

**B. BACKGROUND**

10. By decision of the NADP dated 6 November 2014, which was upheld on appeal by a decision of the NADP Appeal Tribunal dated 10 March 2015, a period of Ineligibility of 8 years was imposed on the Respondent. This period of Ineligibility commenced on 17 June 2014 and expired at midnight on 16 June 2022.
11. Pursuant to 2009 ADR Article 10.10.4, the Respondent remained subject to the ADR throughout the duration of his period of Ineligibility.
12. A further consequence of the Ineligibility was a prohibition on participation as provided by in Article 10.12.1 of the 2015 ADR and 2019 ADR. The continuing nature of the alleged violation means both the 2015 and 2019 ADR apply. The terms of Article 10.12.1 did not change. It provides:

*“An Athlete or other Person who has been declared Ineligible may not, during the period of Ineligibility, participate in any capacity (or, in the case of an Athlete Support Person, 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 NGB or by any body that is a member of, or affiliated to, or licensed by the NGB; (b) any Signatory; (c) any club or other body that is a member of, or affiliated to, or licenced by, a Signatory of 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 ...”*

13. His status as an ineligible Athlete was also explained in a letter from UKAD to him dated 27 August 2015. He was told that *“up to and including 16 June 2022 you are banned from... coaching, mentoring, instructing or assisting your club/team or other Athletes in any other way”*.
14. In 2019, UKAD was informed that the Respondent was allegedly breaching the prohibition on participation. It commenced an investigation. On 11 August 2020 UKAD informed the Respondent in writing that he was under investigation and he was subsequently provided with information in respect thereof.
15. On 20 October 2020 through his legal representative the Respondent provided his written response to the allegation. He admitted that ice hockey players had come to him for personal fitness work and had become clients. He also said that the training he provided was generic fitness training and not focused on any specific sport. He stated that his focus was on helping clients improve their general fitness and accepted that in consequence of this there may be improved sporting performance.
16. In light of that response, UKAD undertook further enquiries and obtained witness statements from Emily Harris, James Hounsome and Thomas Banner. At the material time, by virtue of their registration with the English Ice Hockey Association both Thomas Banner and Emily Harris were Athletes, as defined in the ADR. Copies of those witness statements were disclosed to the Respondent on 22 February 2021.
17. On 13 April 2021 the Respondent was interviewed by an UKAD investigator and legal officer. During the said interview the Respondent admitted to providing personal training to

Jack Peacock, Thomas Banner, Emily Harris, Josh Richards and Jack Standing. He knew that some of his clients were ice hockey players. His position was that the personal training provided to his clients was not focused on ice hockey training or coaching. He also admitted to using the My Systems Pro Hockey slide board with some of his clients.

18. Save to enquire about his participation in a charity event, at no point during his period of Ineligibility did the Respondent contact UKAD to seek confirmation on the activities he could or could not undertake.

19. By way of a letter dated 27 January 2022 ('the Notice Letter'), UKAD notified the Respondent of an alleged ADRV in that on one or more occasions between 17 June 2014 and 28 July 2020 he violated the prohibition on participation during his period of Ineligibility in that he assisted one or more named Athletes to participate in any capacity in a Competition, Event or other activity contrary to 2015 ADR and 2019 ADR Article 10.12.1. On 30 January 2022, in an email to UKAD, the Respondent's legal representative acknowledged receipt of the Notice and stated that the Respondent was not aware that working as a personal trainer could amount to a breach of the ADR.

20. By letter dated 21 July 2022, UKAD charged the Respondent with a violation of the prohibition on participation during his period of Ineligibility in accordance with 2015 and 2019 ADR Article 10.12.1. It is to be noted that 2015 and 2019 Article 10.12.5 provided:

*"...The determination of whether an Athlete or other Person has violated the prohibition against participation, and whether an adjustment is appropriate, shall be made by the Anti-Doping Organisation which brought the charge that led to the initial period of Ineligibility. This decision may be appealed under Article 13."*

21. Pursuant thereto, UKAD proposed a further period of Ineligibility of 18 months to commence on 17 June 2022, the date of the expiry of the 8-year term. He was informed that if he did not accept that period in writing by 29 July 2022 the matter would proceed to a hearing in accordance with 2021 ADR Article 10.14.6.

*“...If the Athlete or other Person does not accept the new period of Ineligibility (or, if applicable, reprimand) proposed by the Anti-Doping Organisation, the matter shall proceed to a hearing in accordance with ISRM Article 11.1. The hearing panel’s decision may be appealed pursuant to Article 13.”*

22. It was not until 21 November 2022 that the Respondent denied breaching the prohibition on participation during his period of Ineligibility.

23. On 23 November 2022, in accordance with 2021 ADR Article 10.14.6 and ISRM Article 11.1, UKAD referred this matter for arbitration.

### **C. HISTORY OF PROCEEDINGS**

24. Pursuant to Articles 7.8 of the Procedural Rules, the Panel Chair conducted a Directions Hearing by telephone conference call on 03 January 2023. He made directions for the pre-hearing management and preparation of this matter. One such direction was:

*“Any witness upon whom the parties propose to rely must be available to give evidence at the substantive hearing unless the other party has indicated (by 21 February 2023) that their attendance is not required.”*

25. The in-person Tribunal hearing was held on 27 March 2023. UKAD relied upon the statement of three witnesses:

25.1 James Hounsome

25.2 Emily Harris

25.3 Thomas Banner

26. The Respondent required each to attend. UKAD was able to secure the attendance only of Emily Harris: James Hounsome said he was not able to attend, and Thomas Banner did not reply to UKAD.

27. Mr Beloff took no issue with Thomas Banner's evidence but would have wished to ask him questions. Significant issue was taken with the aspects of James Hounsome's evidence. In the event, this decision was reached without reliance on any part of it.

28. Pursuant to the hearing timetable agreed by the parties, Emily Harris was scheduled to be called at 12.30. That was based principally upon it being agreed by the parties that the Respondent's evidence would occupy only 40 minutes, however, he was asked questions by UKAD for much longer. At about 12.45 the Panel and Respondent were informed (for the first time) that Ms Harris was not available after 13.15 (UK time). It was simply not possible to interpose and complete her evidence. She was then not available until 16.00.

29. Mr Beloff was content for the statement to be admitted, did not seek an adjournment to 16.00 and indicted that:

29.1 the issues with her statement were restricted to paragraph 15 thereof; and

29.2 that he would have wished to ask her questions about the limited extent to which she used a hockey stick.

30. The Panel interpreted the said paragraph in a way consistent with the Respondent's case. We had appropriate regard to the fact that the Respondent could not ask the question he wished to. As we said at the time, and Mr Beloff agreed, that matter was far from determinative of the issues to be decided.

31. Pursuant to Article 8.6 of the Procedural Rules, the intention was for the hearing to be audio recorded. During the hearing, it became known to all that contrary to what all understood, the recording machine was not working. Therefore, part of the hearing was not recorded, as it should have been. When disclosed to the parties, neither wished to abort and restart the hearing.

#### **D. VIOLATION**

##### **(1) UKAD's case**

32. UKAD alleges that on one or more occasion between 17 June 2014 and 28 July 2020, the Respondent violated the prohibition on participation during his period of Ineligibility. Its case is that he assisted one or more Athletes named in the Charge Letter to participate in any capacity in a Competition, Event or other activity, contrary to Article 10.12.1 of the 2015 ADR and 2019 ADR.

33. UKAD's case was that the provision of any fitness training, regardless of whether that training is specific or generic is sufficient to amount to a violation of the prohibition on participation provided the training is in respect of an Athlete. It submitted that there is no requirement to establish the precise nature of the training being provided in order to determine that a violation has occurred. UKAD relied on his admission that he provided fitness training to Athletes during his period of Ineligibility which it said was an admission to breaching the prohibition against assisting Athletes.

34. The key parts of the witness statements of Emily Harris and Thomas Banner were:

34.1. At the material time they were both ice hockey players registered with the English Ice Hockey Association.

34.2. The Respondent provided them with personal (and group) training sessions over the course of a number of years while he was serving his period of Ineligibility.

34.3. Those training sessions took place 'off ice'.

34.4. Ms Harris said she undertook weight training and running and also recognised herself in the Facebook posts including in a video posted on 16 August 2019 ('the August video'). She used an ice hockey stick during the session captured in the video, but in no other.

34.5. Mr Banner's training included sprints, squats and "*leg movement*". He did "stick handling session on "*approximately two different occasions*" during one-to-one sessions. One of those is shown in an exhibited Facebook post.

35. UKAD also relied upon a number of the Respondent's Facebook posts, and a video, which showed him providing training to a number of named Athletes. In addition to Emily Harris and Thomas Banner those showed him training as follows:

- 35.1. Jack Standing, who is said to be *“focusing on gaining that extra step of speed ready for the step up from the Barracudas to Solent Junior Devils Ice Hockey Club.”*
- 35.2. Oscar Evans, Basingstoke Bison ice hockey player with accompanying text claiming an *“emphasis on footwork, speed, power, balance core strength and coordination.”*

36. Other Facebook posts claimed, clients as follows:

- 36.1. Jack Peacock with a photograph of him playing ice hockey.
- 36.2. Josh Richards with a photograph of him in ice hockey kit *“pushing him to the next level once again ready for the new season”*.

## **(2) Respondent’s case**

37. The Respondent ran a personal training business at the time of the imposition of the period of Ineligibility. He still does. He accepted providing general personal fitness training to the athletes set out in the Charge Letter as part of his business. He denied that any training provided was more than general fitness training or was ice hockey or sports specific. He said he took steps to ensure that he was cooperating with the terms of his ban, including cancelling a training camp when he considered, on advice, that there might be a risk that it would violate ADR Article 10.12.1. He contended that provision of such training did not amount to him assisting athletes to participate in regulated activity and was not a violation on the prohibition on participation.

38. In the alternative, he submitted that if it is held that a violation occurred, such violation was inadvertent and based on a genuine misunderstanding of the terms of his suspension, which should be reflected in any sanction imposed.

39. He gave evidence to the Panel and was questioned at length by Ms McGowan.

40. In his written submissions Mr Beloff correctly observed that “assist” is not defined within the ADR. He submitted that there must be a limitation on what amounts to assisting with

participation. For example, giving an athlete the telephone number of a taxi firm, so that they can get to an event, might be considered assisting with participation in the broadest sense but it would not under any rational analysis amount to a violation of Article 10.12.1. On the other hand, coaching an athlete in a specific sport with a view to an upcoming game would also be assistance and would be a clear violation of the provision.

41. He submitted that he was careful not to provide sports specific coaching to any athlete. Further, that the personal fitness training he provided was not to assist anyone in competing in a regulated activity, or in the alternative, was not to such extent that it would be a violation of Article 10.12.1.

42. Mr Beloff relied on *UKAD v Sonny Webster*<sup>1</sup> as illustrative of the type of assistance which amounts to a violation of the prohibition on participation. In that case the athlete provided specific feedback on weightlifting technique to athletes who were about to participate in regulated activity. It is important to note that the decision is described as a “*UKAD Issued Decision*” and is not a decision of an independent panel or tribunal.

43. He insisted that he provided no ice hockey specific or technique training. Nor, he said, was the fitness training provided aimed at participation in a regulated activity. It was submitted that it falls outwith the appropriate construction and meaning of the word “assist” in the ADR.

44. Personal fitness training was and is the Respondent’s main form of income. Mr Beloff submitted that potential clients for a personal fitness trainer are those who want to improve or maintain aspects of their personal fitness. He submitted that it is “*overwhelmingly likely*” that the majority of such people also participate in sports which would fall within the scope of regulated activity within Article 10.12.1. Were the provisions to be construed so widely as to prohibit the Respondent from accepting such clients then, he argued, his business would be unviable. That, in turn, would amount to an unreasonable restraint of trade whether considered (*Nordenfelt v Maxim Nordenfelt*<sup>2</sup>) test or the public interest test suggested by Carnwarth J. in *Stevenage Borough Football Club v Football League Limited*<sup>3</sup>.

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<sup>1</sup> 29 February 2019.

<sup>2</sup> [1893] AC 535 HL.

<sup>3</sup> *Times*, 1 August 1996.

45. Alternatively, he argued that he genuinely believed that he was complying with the terms of his suspension and the ADR. In support, he pointed to his openness in:

45.1. admitting to providing personal training to athletes, and

45.2. in advertising his business and the steps that he took to cancel a training camp when he became concerned that it would amount to a violation.

46. In the circumstances if a violation is held to have occurred the length of any further period imposed should be *de minimis* in all of the circumstances and added to the end of the original period of Ineligibility in accordance with Article 10.12.5 of the ADR.

### **(3) Decision**

47. Jurisdiction is not disputed.

48. 2015 and 2019 ADR Article 10.12.1 states:

*“An Athlete or other Person who has been declared Ineligible may not, during the period of Ineligibility, participate in any capacity (or, in the case of an Athlete Support Person, 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 NGB or by any body that is a member of, or affiliated to, or licensed by the NGB; (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 ...”*

49. The burden rests upon UKAD to establish the Respondent has violated the prohibition on participation during his period of Ineligibility.

50. To find a violation occurred, the Panel must be comfortably satisfied that:

- 50.1. The Respondent was an Athlete Support Person ('ASP'), who
- 50.2. While he was subject to a period of Ineligibility,
- 50.3. Assisted an Athlete, in
- 50.4. Participating in a Competition, Event or other activity organised, convened, authorised or recognised by an NGB etc.

51. It is not necessary to prove that the Respondent knew that he was assisting such an athlete or that he was violating the terms of his Ineligibility.

52. The 2015 and 2019 ADR define the following terms thus:

52.1. Athlete Support Person:

*"Any coach, trainer, manager, agent, team staff, official, nutritionist, medical, paramedical personnel, parent or any other Person working with, treating or assisting an Athlete participating in or preparing for sports competition."*

52.2. Athlete:

*"Any Person who competes at any level in the sport under the jurisdiction of the NGB; save that for purposes of Article 2.8 and Article 2.9, an Athlete is any Person who participates at any level in any sport under the authority of any Signatory, government or other sports organisation accepting the Code."*

52.3. Competition:

*"A single race, match, game or other sport contest."*

52.4. Event:

*"A series of individual Competitions conducted together under one ruling body (e.g., the Olympic Games)."*

53. The terms 'Assist' and 'Participating' are not defined in the ADR. In *Russell v CCES & Swim Natation Canada*<sup>4</sup> the Panel observed:

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<sup>4</sup> SDRCC DT 12-0177.

*[59] As a matter of strict interpretation, I find that someone subject to this expression of what is prohibited in the ban is barred **from participation in any role whatsoever** in relation to either **a competition** or **an activity** of the Referenced Organizations. There are essentially therefore two separate prohibitions here [...]*

*[61] The second prohibition relates to participating in any role in an activity. Activity is defined in the Concise Oxford English Dictionary in various ways. The most applicable definition therein is “spheres of action” which on the facts of this case would mean a specified pursuit in which a person engages with respect to the Referenced Organisations. As such, any role of participation in the spheres of action under the aegis of the Referenced Organizations is another part of the expression of what is prohibited by the ban.*

54. That approach was endorsed by CAS in *DFSNZ v Karl Murray*<sup>5</sup> and stated that the said assistance does not have to be at the actual Competition or Event or even in the immediate build up to the Competition or Event to be prohibited. That CAS Panel also opined that the prohibition on participation does not require a temporal or physical connection to a particular Competition or Event. The provision has a broader reach. Rightly that Panel also recognised the realities of training that athletes acquire skills over weeks, months and sometimes years in advance of a competition.

55. This wide approach or interpretation is supported by the WADA Code. The comment to Article 2.10 of the (applicable) 2015 WADA Code states:

*“Athletes and other Persons must not work with coaches, trainers, physicians or other Athlete Support Personnel who are Ineligible on account of an anti-doping rule violation or who have been criminally convicted or professionally disciplined in relation to doping. Some examples of the types of association which are prohibited include: obtaining training, strategy, technique, nutrition or medical advice; obtaining therapy, treatment or prescriptions; providing any bodily products for analysis; or allowing the Athlete Support Person to serve as an agent or representative. Prohibited association need not involve any form of compensation.”*

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<sup>5</sup> CAS 2017/A/4927.

56. The Comment to Article 2.10 of the 2021 WADA Code also illustrates that the provision of training to an Athlete by an Athlete Support Person who is serving a period of Ineligibility is clearly not permitted:

*“Athletes and other Persons must not work with coaches, trainers, physicians or other Athlete Support Personnel who are Ineligible on account of an anti-doping rule violation or who have been criminally convicted or professionally disciplined in relation to doping. This also prohibits association with any other Athlete who is acting as a coach or Athlete Support Person while serving a period of Ineligibility. **Some examples of the types of association which are prohibited include: obtaining training, strategy, technique, nutrition or medical advice; obtaining therapy, treatment or prescriptions; providing any bodily products for analysis; or allowing the Athlete Support Person to serve as an agent or representative. Prohibited association need not involve any form of compensation.**” (emphasis added)*

57. The broad interpretation of these terms is consistent with the rationale of anti-doping provisions and the policy of preventing banned individuals from having any involvement in sport and with ‘clean’ Athletes. The Panel agreed with the approach.

58. The Respondent accepted providing personal training to athletes during his period of Ineligibility. At all material times the Respondent was a fitness trainer. Thereby he was an ASP for the purposes of the ADR.

59. As he admitted in his statement in evidence and his Facebook posts demonstrated, the Respondent was providing personal or group fitness training to the following:

59.1. Emily Harris.

59.2. Thomas Banner.

59.3. Oscar Evans.

59.4. Jack Standing.

59.5. Josh Richards.

59.6. Jack Peacock.

60. Each was an ice hockey player. The central question is whether one or more is an Athlete for the purposes of the ADR namely under the jurisdiction of the NGB. We are comfortably satisfied that at least the following two are:

60.1. Emily Harris – “*So far as I am aware, as long as I have been playing Ice Hockey in the UK, I have always been registered with the English Ice Hockey Association*” – that was not disputed.

60.2. Thomas Banner – “*I have always been registered with the English Ice Hockey Association*” – that was also not disputed.

61. The Panel is comfortably satisfied that the Respondent was providing personal fitness training to both Emily Harris and Thomas Banner (and others). Focusing on those two Athletes, he was providing each with speed and strength training. Simply helping to improve their fitness would amount to assisting them to participate in an ice hockey competition for the purposes of Article 10.12.1. Fitness training is an integral part of preparing to compete. Helping an athlete get fit is, by definition, assisting them to partake. There need be no temporal or link to a particular event or competition.

62. However, the Respondent’s assistance goes further in this case. The Respondent’s training of both Emily Harris and Thomas Banner was designed *inter alia*, to improve their speed and power. While both have wider benefits beyond ice hockey, both attributes have direct and obvious significance to ice hockey players. Further, both of them undertook at least one session using an ice hockey stick. The Respondent told us using the training board helps improve speed and coordination, as well as the stick handling skills. That exercise has obvious and direct links to ice hockey. Taken with the fact both were ice hockey players, the Panel was comfortably satisfied that this went above and beyond general fitness and was sport (ice hockey) specific training.

63. Therefore, the Panel was comfortably satisfied that the provision of personal fitness and other training both amounted to assisting an Athlete, in participating within the meaning of 2015 and 2019 ADR Article 10.12.1.

64. Both Emily Harris and Thomas Banner played ice hockey in Competition or an Event organised, convened, authorised, or recognised by an NGB etc within the meaning of Article 10.12.1 ADR.

65. The said assistance was provided by the Respondent during the period of Ineligibility.

66. Therefore, the Panel was comfortably satisfied that each ingredient of 2015 and 2019 ADR Article 10.12.1 is established and the Respondent violated the prohibition on participation during his period of Ineligibility.

67. Insofar as it is necessary to address the restraint of trade argument, the answer is as follows. The prohibition in participation is not an absolute restraint of his trade as a fitness instructor. The Respondent is free to train and provide fitness instruction to anyone who is not an Athlete within the meaning of the ADR. Further, the extent to which his trade as a fitness instructor is restrained or limited is consistent with the rationale of anti-doping regime and a proportionate punishment for his commission of ADRVs.

## **E. SANCTION**

68. The violation of the prohibition against participation during a period of Ineligibility is not an ADRV. The starting point is 2015 and 2019 ADR Article 10.12.5 which provides:

*“If an Athlete or other Person who is Ineligible violates the prohibition against participation during Ineligibility set out in Article 10.12.1, any results he/she obtained during such participation shall be Disqualified, with all resulting Consequences, including forfeiture of all medals, titles, points and prizes, and a new period of Ineligibility equal in length to the original period of Ineligibility shall be added to the end of the original period of Ineligibility. The new period of Ineligibility may be adjusted based on the Athlete's or other Person's degree of Fault and other circumstances of the case. The determination of whether an Athlete or other Person has violated the prohibition against participation, and whether an adjustment is appropriate, shall be made by the Anti-Doping Organisation which brought the charge that led to the initial period of Ineligibility. This decision may be appealed under Article 13.”*

69. Therefore, the starting point for the new period of Ineligibility is 8 years, i.e. being a period equal in length to the Respondent's original period of Ineligibility. The new period of Ineligibility may however be adjusted based on the Respondent's degree of Fault and other circumstances of the case. There are good reasons of policy and deterrent why the further period of Ineligibly should at least start as being equal in length to the original period of Ineligibility.

70. UKAD characterised the Respondent's Fault as high yet submitted that a further period of Ineligibility of 18 months was appropriate.

71. The Respondent's position that the length of the new period of Ineligibility should be *de minimis* on the basis that he genuinely believed he was complying with the terms of his ban and the ADR.

72. It is to be noted that there is a difference between the 2015 and 2019 ADR and the 2021 ADR. The former provides that determination of whether an Athlete or other Person has violated the prohibition against participation, and whether an adjustment is appropriate, shall be made by the Anti-Doping Organisation. That decision may then be appealed under Article 13. However, 2021 ADR Article 10.14.6 provides:

*"... The determination of whether an Athlete or other Person has violated the prohibition against participation, and whether the new period of Ineligibility should be adjusted, shall be made by the Anti-Doping Organisation which brought the case that led to the initial period of Ineligibility. If the Athlete or other Person does not accept the new period of Ineligibility (or, if applicable, reprimand) proposed by the Anti-Doping Organisation, the matter shall proceed to a hearing in accordance with ISRM Article 11.1. The hearing panel's decision may be appealed pursuant to Article 13."*

73. UKAD expressly referred to 2021 ADR in bringing these proceedings. It did not impose a period of 18 months Ineligibility pursuant to 2015 and 2019 ADR, which (of course) the Respondent could have accepted. Mr Beloff did not suggest to the contrary. This is not an appeal. Sanction is at large.

74. The starting point is assessing the Respondent's Fault. The 2015 and 2019 ADR define 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. In assessing the Athlete's or other Person's degree of Fault, the circumstances considered must be specific and relevant to explain the Athlete's or other Person's departure from the expected standard of behaviour. Thus, for example, the fact that an Athlete would lose the opportunity to earn large sums of money during a period of Ineligibility, or the fact that the Athlete only has a short time left in his or her career, or the timing of the sporting calendar, would not be relevant factors to be considered in reducing the period of Ineligibility under Article 10.5.1 or 10.5.2."*

75. The UKAD letter dated 27 August 2015 informed the Respondent:

*"...you are banned from –*

- competing in any Ice Hockey events or competitions at any level;*
- competing in the events or competitions of all other sports that have World Anti-Doping Code compliant rules;*
- training with your club/team; and*
- coaching mentoring instructing or assisting your club/team or other Athletes in any other way."*

76. He was also told that he was "not prohibited from:

- "Undertaking general health and fitness training (e.g. going to the gym [sic])*
- Participating in charity/fundraising sports event; and*
- Taking authorised anti-doping education or rehabilitation programmes"*

77. He was also advised in the said letter that he could and should seek assistance from UKAD if unsure. It states:

*“If you are unsure whether an activity falls within either of the above categories, you should contact UK Anti-Doping (‘UKAD’) to confirm whether you are permitted to participate before doing so. **If you participate in an activity which is prohibited, you will violate the terms of the ban and there is a risk that your ban will start again from the date on which the violation took place.**”*

78. We have some limited sympathy with his case that the letter does not appear to have been drafted to address his specific circumstances, namely that he was a personal trainer. His case was that he did not appreciate from the said letter or otherwise that he was prohibited from carrying on his personal training business. As to that we observe:

- 78.1. First, he was not prohibited from carrying out his fitness business.
- 78.2. Second, the letter states that he is banned from “*coaching...or assisting any Athletes in any other way*”.
- 78.3. Although it continues that he is not prohibited from undertaking fitness training, that must be seen in the context of the general prohibition and may mean no more than he was permitted to train himself rather than train others.
- 78.4. In any event, he was told in clear terms he should seek clarification if in doubt; his answer that he did not check as he was not in doubt, is not an answer to that point.

79. The Panel was not satisfied that he intentionally violated the prohibition on participation. It would be foolish indeed to advertise his services if he knew he was breaching the prohibition. However, for the reasons set out in the preceding paragraph, the Panel was comfortably satisfied that the Respondent was reckless in that he knew or ought to have known the ambit of his ban and there was risk he was acting in breach thereof. Further, he could and should have sought clarification. It was his responsibility to do so. Indeed, he did just that in respect of the charity match, in which he was cleared to play.

80. As for the other circumstances of the case relevant to assessing the appropriate sanction, the Panel has regard to:

80.1. He was providing training which had some direct or indirect benefits to ice hockey players. That he was training ice hockey players is no surprise: that is the sport in which he made his reputation and is known.

80.2. It was a continuous breach, namely, a repeated course of conduct.

81. However,

81.1. The training was not conducted on ice.

81.2. The specific ice hockey training was very limited.

81.3. He cancelled the training camp.

81.4. The Panel was told and accepted that the Respondent stopped providing such training in 2020 when he was alerted that it might of a breach of the prohibition on participation.

81.5. The Respondent cooperated with the investigation.

81.6. The Panel accepts he did not know and did not intend to breach the violation.

81.7. The Panel also has regard to the level at which the Athletes were competing. They were not international or Olympic athletes training for prestigious competitions or winning medals.

82. A further period of Ineligibility of 8 years would be wholly disproportionate to his violation. So, in our judgement would be a period of 4 years.

83. Having regard to the facts identified, the Panel concluded that a further period of Ineligibility of 18 months was both appropriate and proportionate.

84. Commencement:

84.1. The Panel was told that the Respondent has not participated in sport since his original period of Ineligibility expired on 16 June 2022. UKAD did not suggest the contrary.

84.2. Accordingly, it is appropriate for the further period of Ineligibility to commence on 17 June 2022.

## **F. SUMMARY**

85. For the reasons set out the Panel finds:

- 85.1. The Respondent violated the prohibition on participation during his period of Ineligibility.
- 85.2. Imposes a further period of Ineligibility of 18 months.
- 85.3. Which period of Ineligibility shall commence on 17 June 2022 and end at 23:59 on 16 December 2023.

## **G. RIGHT OF APPEAL**

86. 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.

87. 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](mailto:resolve@sportresolutions.com))



Christopher Quinlan KC  
Chair, on behalf of the Panel  
London, UK  
19 April 2023

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