

Issued Decision

UK Anti-Doping and Charley Bodman

Disciplinary Proceedings under the Anti-Doping Rules of the Rugby Football League

This is an Issued Decision made by UK Anti-Doping Limited ('UKAD') pursuant to the Anti-Doping Rules ('ADR') of the Rugby Football League ('RFL'). It concerns Anti-Doping Rule Violations ('ADRVs') committed by Mr Charley Bodman 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 RFL is the national governing body for rugby league in England. UKAD is the National Anti-Doping Organisation ('NADO') for sport in the United Kingdom. The RFL 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 Bodman is a 21-year-old rugby league player. As a player participating in activities with a club registered with the RFL, at all relevant times Mr Bodman was subject to the jurisdiction of the RFL 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 RFL.
3. On 25 April 2023, UKAD Doping Control Personnel collected a urine Sample from Mr Bodman Out-of-Competition at a Cornwall RLFC training session held at The Memorial Ground, Kernick Road, Penryn.
4. Assisted by the Doping Control Officer in attendance, Mr Bodman split the urine Sample into two separate bottles which were given reference numbers A1177881 (the 'A Sample') and B1177881 (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

¹ Version 1.0, in effect as from 1 January 2021

'Laboratory'). The Laboratory analysed the A Sample in accordance with the procedures set out in WADA's International Standard for Laboratories. Analysis of the A Sample returned an Adverse Analytical Finding ('AAF') for terbutaline.

6. Terbutaline is listed under Section 3 of the WADA's 2022 Prohibited List as a Beta-2-Agonist. It is a Specified Substance and it is prohibited at all times. Mr Bodman did not have a Therapeutic Use Exemption ('TUE') for terbutaline. As a result of his inclusion in UKAD's National TUE Pool due to his level of participation in rugby league, Mr Bodman was required to obtain a TUE prior to the Use, Possession or Administration of any Prohibited Substance for which he had a therapeutic need.
7. On 26 May 2023, UKAD sent Mr Bodman a notification letter (the 'Notice'). The Notice confirmed the imposition of a Provisional Suspension and formally notified Mr Bodman, 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 Bodman to provide an explanation for the alleged ADRVs.
8. On the same date, Mr Bodman responded to the Notice accepting the AAF. Within his response, Mr Bodman explained that he had been prescribed the Prohibited Substance, terbutaline, to treat his asthma. He said that the day before he had received the Notice, he had applied to UKAD for a TUE.
9. Mr Bodman engaged with UKAD in respect in his retroactive TUE application. However, the application was denied by UKAD's Fairness Review Panel. The Panel concluded that as a member of the National TUE Pool who had received anti-doping education, Mr Bodman 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.
10. As a result of this decision, Mr Bodman did not possess a valid and applicable TUE for terbutaline at the time of Sample collection. Therefore, the presence of the Prohibited Substance in his Sample, and his Use of the Prohibited Substance, constitutes a violation of ADR Article 2.1 and ADR Article 2.2, respectively.
11. On 08 September 2023, UKAD sent Mr Bodman a Charge Letter, which formally charged him with ADRVs pursuant to ADR Article 2.1 and ADR Article 2.2.
12. Mr Bodman's legal representatives responded to the Charge Letter on his behalf after the retroactive TUE application was denied. They explained that Mr Bodman had been diagnosed with asthma in childhood. In 2021, while playing for West Wales Raiders, he was advised by a medical professional on the day of a game that he needed a TUE for his terbutaline inhaler, but was not informed that he could not play

without a TUE in place. In late 2022, on joining Cornwall RLFC, he was similarly advised by a medical professional that he needed a TUE, but again was not informed that he could not play without one being in place. At this point, he began the process of getting the documentation to apply for a TUE. When he provided a Sample to UKAD on 25 April 2023, he outlined on the Doping Control Form ('DCF') that he was using an inhaler containing terbutaline.

13. Mr Bodman's legal representatives confirmed that he 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. This was on the basis that Mr Bodman did not appreciate, as a member of UKAD's National TUE Pool, that his TUE application needed to be made in advance of taking a Prohibited Substance.
14. Mr Bodman's legal representatives also asserted that a period of Ineligibility of 18 months should be imposed in the circumstances of this case as Mr Bodman had demonstrated No Significant Fault or Negligence in respect of the ADRVs.

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) [...]

(b) The Anti-Doping Rule Violation involves a Specified Substance or a Specified Method and UKAD can establish that the Anti-Doping Rule Violation was intentional.

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(b), since this matter concerns a Specified Substance, the period of Ineligibility to be imposed shall be four (4) years, if UKAD can demonstrate to the comfortable satisfaction of a Panel that the ADRVs were ‘intentional’ (within the meaning of ADR Article 10.2.3). If UKAD is not able to prove that the ADRVs were intentional, the period of Ineligibility to be imposed shall be two (2) years (ADR Article 10.2.2).

19. Having considered Mr Bodman’s evidence and submissions, UKAD does not assert that the ADRVs were ‘intentional’ (within the meaning of ADR Article 10.2.3).

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

- i. The jurisprudence is clear that what counts in respect of ‘intention’ is what Mr Bodman actually knew, not what he should have known²;
- ii. Mr Bodman has said that he was told on two occasions that he needed a TUE to cover his Use of terbutaline, but was never told that the TUE was needed in advance of him playing rugby league. This account is supported by the fact that Mr Bodman was not prevented from playing rugby league by either his previous or current clubs despite knowledge of his Use of terbutaline; and
- iii. Mr Bodman included his Use of terbutaline on the DCF, which strongly indicates that he did not recognise that there was an issue with him continuing to play rugby league without a TUE being in place.

21. The applicable period of Ineligibility is therefore two (2) years.

² ITF v Sharapova, Independent Tribunal decision dated 6 June 2016, para 77 ('It is clear from the wording of article 10.2.3 that whether conduct is intentional is to be judged on the actual knowledge of the player, not on the basis of what she ought to have known or understood')

22. ADR Article 10.6 provides as follows:

10.6.1 Reduction of the period of Ineligibility based on No Significant Fault or Negligence

All reductions under Article 10.6.1 are mutually exclusive and not cumulative.

(a) Specified Substances or Specified Methods

Where the Anti-Doping Rule Violation involves a Specified Substance (other than a Substance of Abuse) or Specified Method, and the Athlete or other Person can establish that they bear No Significant Fault or Negligence for the violation, the period of Ineligibility shall be, at a minimum, a reprimand and no period of Ineligibility, and at a maximum, two (2) years of Ineligibility, depending on the Athlete's or other Person's degree of Fault.

(b) [...]

23. The term Fault is defined within the ADR as follows:

Fault:

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 Protected Person, 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 a career, or the timing of the sporting calendar, would not be relevant factors to be considered in reducing the period of Ineligibility under Article 10.6.1 or 10.6.2.

24. The term No Fault or Negligence is defined within the ADR as follows:

No Fault or Negligence:

The Athlete or other Person establishing that they did not know or suspect, and could not reasonably have known or suspected, even with the exercise of

utmost caution, that they had Used or been administered the Prohibited Substance or Prohibited Method or otherwise violated an anti-doping rule. Except in the case of a Protected Person or Recreational Athlete, for any violation of Article 2.1, the Athlete must also establish how the Prohibited Substance entered the Athlete's system.

25. The term No Significant Fault or Negligence is defined within the ADR as follows:

No Significant Fault or Negligence:

The Athlete or other Person's establishing that any Fault or negligence, when viewed in the totality of the circumstances and taking into account the criteria for No Fault or Negligence, was not significant in relation to the Anti-Doping Rule Violation. Except in the case of a Protected Person or Recreational Athlete, for any violation of Article 2.1, the Athlete must also establish how the Prohibited Substance entered Athlete's system.

26. UKAD has also considered the submissions made on Mr Bodman's behalf in respect of ADR Article 10.6 (Reduction of the period of Ineligibility based on No Significant Fault or Negligence), and considers that Mr Bodman has established that he bore No Significant Fault or Negligence, such that he is entitled to a reduction to the otherwise applicable two (2) year period of Ineligibility pursuant to ADR Article 10.6.1(b). In assessing the degree of Fault attributable to Mr Bodman, UKAD has had particular regard to the following factors relating to the circumstances of the case:

- i. Mr Bodman has demonstrated that the Prohibited Substance (a Specified Substance) came to be in his system following the use of an inhaler in connection with an asthma diagnosis;
- ii. Mr Bodman declared terbutaline on the DCF and made no attempt to conceal his Use of the Prohibited Substance;
- iii. Mr Bodman has suffered asthma since childhood, and was diagnosed and prescribed terbutaline before he became part of the National TUE Pool³;
- iv. Mr Bodman is a semi-professional Athlete who operates in a semi-professional environment, without the benefit of full-time doctors or physiotherapists to advise on the TUE process. Moreover, Mr Bodman was previously informed from those within his clubs that whilst he required a TUE for his inhaler, he was not prohibited from participating in sport without one. He therefore had a

³ As explained at paragraph 6 above, it was only after his inclusion in the National TUE Pool that Mr Bodman was required to apply for a TUE in advance of his Use of any Prohibited Substance for which he had a therapeutic need.

reduced perception of risk pertaining to Using the Prohibited Substance in the absence of a TUE;

- v. Mr Bodman received relatively limited anti-doping education;
- vi. Mr Bodman is 21 years old and can be considered relatively inexperienced in a sporting context.

27. Taking into account the period of Ineligibility imposed in other similar cases, and the specific facts of this case, UKAD considers that the reduction to be applied to Mr Bodman's period of Ineligibility is six (6) months.

28. 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...*

29. The applicable period of Ineligibility is therefore 18 months.

Commencement of period of Ineligibility

30. 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.

31. 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.

32. Mr Bodman has been subject to a Provisional Suspension since the date of the Notice, i.e., since 26 May 2023 and as far as UKAD is aware he has respected the terms of that Provisional Suspension. Therefore, affording Mr Bodman credit for the time he has spent provisionally suspended, his period of Ineligibility is deemed to have commenced on 26 May 2023 and will end at midnight on 25 November 2024.

Status during Ineligibility

33. During the period of Ineligibility, in accordance with ADR Article 10.14.1, Mr Bodman 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 RFL;
 - 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.
34. Mr Bodman may return to train with a team or to use the facilities of a RFL club or a Signatory's member organisation during the last two months of his period of Ineligibility (i.e. from midnight on 25 September 2024) pursuant to ADR Article 10.14.4(b).

Summary

35. For the reasons given above, UKAD has issued this Decision in accordance with ADR Article 7.12.2, and records that:
- a) Mr Bodman 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 18 months is therefore imposed;
 - d) Acknowledging Mr Bodman's Provisional Suspension, the period of Ineligibility is deemed to have commenced on 26 May 2023 and will expire at midnight on 25 November 2024; and
 - e) Mr Bodman's status during the period of Ineligibility shall be as detailed in ADR Article 10.14.
36. Mr Bodman, the RFL, International Rugby League and WADA have a right to appeal against this Decision or any part of it in accordance with ADR Article 13.4.

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

6 November 2023