



SPORT  RESOLUTIONS^(UK)

SPECIALIST INDEPENDENT DISPUTE SERVICE

ANNUAL REPORT 2010/11





Chairman's foreword

I am pleased to report that Sport Resolutions continues to flourish in terms of increased business, more referrals and recognition by yet more governing bodies across the spectrum of sport. Ed Procter and the team under him continue to deliver the service which is required, to the very highest standards, and the tributes are as fulsome as ever.

It will come as no surprise that we have won the competitive tender bid process to run the National Anti Doping Panel for a second three year term, for the success of our management of the first contract – both administrative and financial – has been self evident. However, we do not take anything for granted, and with the help of the President, Peter Leaver QC and the expert panel members, we shall strive to ensure that the feedback in terms of fairness and efficiency remains as good as hitherto.

I am delighted that we have succeeded in finding permanent offices at 1 Salisbury Square and would wish to acknowledge the assistance of the City of London, our landlords, who share so many of our values. Not only do we have an iconic "home" with the most up to date facilities, but we have a building which is capable of handling nearly all of our arbitration and mediation cases comfortably and efficiently. Our seamless move into the building was largely down to the efforts and organisation of the permanent staff, Richard, Jenefer and Siobhan, who continue to administer the building, as all of the business, with their customary

flair, efficiency and good humour.

Over the last four years, the management structure – at board level – has successfully brought us from a relatively low position to one where we are, indisputably, the market leader and I am very grateful to all my colleagues for their very considerable contributions, both on the management and main boards, which have enabled us to succeed in so many areas. However, I am conscious that a developing business may need new focuses and after a successful strategy review, the boards will be invited to consider changes to the way we operate, so as to ensure that we continue to deliver the services which sport requires and deserves.

As ever, my thanks go to all staff at Sport Resolutions for their dedicated commitment and to my fellow Board members, all of whom have played a very real part in our success. The support of UK Sport has been unwavering – we value that immensely. Finally, I renew my thanks to all who use our services and end with a word of encouragement to everyone to ensure that, as London 2012 approaches, where disputes are anticipated, they are brought to our attention as early as possible – they will be expertly and efficiently handled at the lowest cost and with the least publicity. This has to be in the interests of all sport.

Gerard Elias QC
Chairman



Review of the Year

Executive Director, Ed Procter looks back at the highlights of an exciting year of transition and further development at Sport Resolutions. Highlights include a record number of 77 cases referred, a successful tender to continue the operation of the National Anti-Doping Panel until 2014 and the opening of a sport arbitration and mediation centre.

April, May and June 2010

A report on good governance in sport published by Birkbeck College, recommends that all National Governing Bodies should have Sport Resolutions written into their statutes as dispute resolution service provider, as a means of minimizing litigation risk. This recommendation is subsequently included in a new voluntary code of good governance for sports bodies published by the Sport and Recreation Alliance in 2011 and endorsed by the Minister for Sport and the Olympics, Hugh Robertson.

Sport Resolutions presents a paper on Dispute Resolution and the Olympics at an Olympic policy and law conference in London.

July, August and September 2010

Sports lawyer and former Chief Executive of the Welsh Rugby Players' Association, Richard Harry, joins Sport Resolutions as Dispute Resolution Manager. Richard replaces Susan Humble, who takes up the position of Chief Executive and Clerk

to the Solicitors Disciplinary Tribunal.

A Sport Resolutions Tribunal chaired by Ian Mill QC delivers its verdict on match fixing charges made against former Snooker World Champion John Higgins and snooker promoter Pat Mooney by the World Professional Billiards and Snooker Association (WPBSA).

October, November and December 2010

Shot putter Rachel Wallader is successful in reducing her anti-doping sanction to four months after testing positive for the banned stimulant methylhexanamine (MHA). This follows reclassification of MHA as a specified substance by the World Anti-Doping Agency (WADA). Wallader submits evidence to the panel which shows that she did not intend to enhance her performance and is found to not be significantly at fault because of careful checks she had undertaken. The panel also takes into account the fact that she had declared use of a supplement (which contained MHA) prior to testing.

Sport Resolutions wins the bidding competition, overseen by the Department for Culture, Media and Sport, to operate the National Anti-Doping Panel and Tribunal Service until 2014.

January, February and March 2011

The High Court of Trinidad and Tobago upholds a Sport Resolutions arbitration award relating to a long standing contractual dispute between the Trinidad and Tobago Football Federation and players representing the national team at the 2006 World Cup in Germany. The court rules that an interim payment of US\$1.2 million be paid to the footballers.

The London 2012 Pro-Bono Advice and Representation Service is launched by Sport Resolutions in conjunction with the Bar Council, Law Society and British Association of Sport and Law. The Service is being formed at the request of the London Organising Committee of the Olympic Games and Paralympic Games Limited to assist with the smooth running of the Games.

The first decision of the National Anti-Doping Panel to be appealed to the Court of Arbitration for Sport (CAS) is upheld. Wheelchair basketball player Simon Gibbs is banned for two years after failing to show how the drug methadone entered his body.

Sport Resolutions moves into new self-contained office premises at 1 Salisbury Square, off Fleet Street in central London. Facilities include a hearing room and three purposefully designed and sound-proofed mediation/break out rooms and a wireless digital audio-recording system.

Sport Resolutions releases the names of the 20 arbitrators who have been appointed to the newly constituted National Anti-Doping Panel. New members include barristers David Casement QC, Tim Kerr QC and William Norris QC; former Northern Ireland international footballer Colin Murdock and former European Masters Golf Champion, Dr Kitrina Douglas.

Example Referrals

	Type	Panel	Outcome
A first instance hearing to answer match fixing charges under the disciplinary rules of a NGB	Administered Appointment	Sole Arbitrator	Ban and Fine
An appeal by a coach against a decision to withdraw a coach licence under a NGB child protection policy	Administered Appointment	Panel of Three	Appeal Dismissed
Appointment of an independent expert to investigate allegations of racial discrimination	Non-Administered Appointment	Sole Arbitrator	Report Completed
A dispute concerning the future governance of an Olympic sport	Mediation	Sole Mediator	Mediation Completed
A dispute within an Olympic sport over high performance working practices and protocols	Mediation	Sole Mediator	Mediation Completed
An appeal by an athlete against a decision of a NGB not to select him for the Commonwealth Games in Delhi	Non-Administered Appointment	Sole Arbitrator	Appeal Allowed
Appeal by a club against a governing body decision concerning the contractual status of a player	Appeal Arbitration	Sole Arbitrator	Appeal Dismissed
An appeal by an athlete against a decision of a NGB not to select her for a major championships	Non-Administered Appointment	Sole Arbitrator	Appeal Dismissed
Appeals by two athletes under Commonwealth Games England's anti-doping bye-law	Appeal Arbitration	Sole Arbitrator	Appeals Allowed
An appeal by two athletes against a decision of a NGB not to select them for a European championships	Appeal Arbitration	Panel of Three	Appeal Dismissed
A dispute between a club and a NGB over participation in a competition	Arbitration	Sole Arbitrator	NGB decision upheld



Sport Resolutions Case Study

European Championships – Athlete Selection Appeal

The Dispute:

The Appellant Athletes were not selected to represent GB at the European Championships (although they were selected as reserves) notwithstanding that they had won the British Championships. The Athletes argued that the NGB had not followed its selection procedure correctly so that either they were entitled to be selected, or their success at the British Championships should have been a very substantial consideration resulting in their selection.

Jurisdiction:

The International Selection Manual for the sport specifically refers any appeal to Sport Resolutions, who are required to provide a Panel consisting of a legally-qualified Chairman and two wing members.

Timescale and Process:

The hearing of the Appeal was held one week after receipt by Sport Resolutions of the Notice of Appeal.

Outcome:

The Panel rejected the Appeal concluding that the decision to select others was not irrational or unfair, nor was it in

breach of the contractual provisions of the Selection Manual.

It determined that the selectors should ordinarily select the athletes with the highest score (obtained by winning the British Championships) unless there are very good or exceptional reasons which lead them to depart from that approach.

The athletes who were selected were not able to compete at the British Championships due to injury. The Selection Manual specifically provided for the use of discretion and listed "injury" as an instance where that discretion could be used.

Costs and Benefits:

Given that the European Championships, the selection to which the Appeal related, took place soon after the team selection, it was imperative for all parties that the dispute was resolved in good time prior to the commencement of those Championships.

The hearing was held one week after the Notice of Appeal was received and the matter was concluded for a total cost of £1600.



Sport Resolutions Case Study

Mediation

The Dispute:

In an elite level sport, senior officers of an NGB were operating different systems for the intervention and treatment of injuries to their elite level athletes. Two schools of thought had developed resulting in a divisive approach which was damaging internal relationships and presented mixed messages to the athletes themselves.

Jurisdiction:

The parties consented to mediate through Sport Resolutions and signed a Mediation Agreement which named the chosen mediator, identified the dispute and set out the objective of the mediation. In signing up for the mediation the parties agreed to keep their discussions confidential and retained their right to remove themselves from the process at any time.

Timescale and Process:

Sport Resolutions made contact with each party in advance of the mediation to ascertain their particular views of the dispute, and the mediator was provided with a full briefing of those views before the mediation itself. This enabled the mediator to have prior knowledge of the views of the participants which maximised the time available at the mediation for resolving the acknowledged impasse.

The Outcome:

Resolution was reached once it was accepted that the parties had common goals, namely providing the optimum environment for the athletes. At the conclusion of the mediation the parties signed a Memorandum of Agreement which set out agreed principles for future conduct covering practical matters such as communication, service delivery and mutual respect.







NADP President's Message

I am very pleased to continue as President of the National Anti-Doping Panel (NADP) for a fourth year and would like to express my thanks to Sport Resolutions for re-appointing me.

The Department for Culture, Media and Sport once more awarded the contract to operate the NADP to Sport Resolutions for a further three year period up to March 2014. The previous contract awarded to Sport Resolutions expired on the 31 March 2011.

I have worked with my Vice President Charles Flint QC and the NADP Secretariat to perform a review of the composition and terms of engagement of the Panel. This has resulted in changes to the membership of the NADP.

Of the legal members, Graeme Mew elected not to re-apply as his practice is now based primarily in North America. New members of the legal Panel included William Norris QC, David Casement QC and Tim Kerr QC.

Relocation and work commitments meant that Judy Vernon and Abi Ekoku did not seek re-appointment as specialist members, and they were replaced by Dr Barry O'Driscoll, Dr Kitrina Douglas and Colin Murdock.

I welcome the newly appointed members, and at the same time I would also like to express my thanks to Graeme, Judy and Abi for their work and support of the

NADP in its first three years.

The caseload has seen a large number of matters involving a substance recently added to the Prohibited List by WADA, namely, methylhexanamine or MHA. This stimulant is present in a number of readily available supplements and can be listed under a variety of different names. The NADP has seen many athletes who consume this substance after failing to make proper checks and who, as a result of that failure, have been found to be in breach of the rules and have had to serve periods of suspension as a consequence.

The NADP has also seen its first case referred to the Court of Arbitration for Sport. A decision of the NADP was upheld on appeal and was then subsequently appealed on to CAS, which itself upheld the previous NADP decisions.

In this year of change, a new Head of Secretariat of the NADP, Richard Harry, was appointed to replace the out-going Sue Humble, and Jenefer Lincoln replaced Stephen Watkins. My thanks and best wishes for the future go to Sue and Stephen, and I also extend a welcome to Richard and Jenefer and my thanks to Ed Procter and to the entire Secretariat team for their continued excellence and support of the NADP.

Peter Leaver QC
President
National Anti-Doping Panel



National Anti-Doping Panel

Sport Resolutions is the independent service provider contracted by the Department for Culture, Media and Sport to operate the National Anti-Doping Panel and supporting tribunal administration service. The NADP is recognised as the anti-doping tribunal by the majority of national governing bodies.

The main aim for the NADP is to improve the quality, consistency and independence of tribunal decision making in anti-doping cases.

The NADP is an independent body. It is governed by a board (the NADP Board) which operates as a sub-committee of the Management Board of Sport Resolutions. The NADP Board appointed Peter Leaver QC as the first President of the NADP. Peter is supported by the Sport Resolutions Secretariat, who are responsible for administering cases and organising hearings.

The NADP is made up of 12 legal members (including the President) and 8 specialist members.

From April 2011, the members of the NADP are:

PRESIDENT

Peter Leaver QC – Barrister

LEGAL MEMBERS

David Casement QC – Barrister

Robert Englehart QC – Barrister

Charles Flint QC – Barrister
(Vice President)

Paul Gilroy QC – Barrister

Patrick Harrington QC – Barrister

Tim Kerr QC – Barrister

Matthew Lohn – Solicitor

Rod McKenzie – Solicitor

William Norris QC – Barrister

David Phillips QC – Barrister

Christopher Quinlan QC – Barrister

SPECIALIST MEMBERS

Carole Billington-Wood – sports administrator/former elite athlete

Dr Terry Crystal – General Practitioner/team doctor

Dr Kitrina Douglas – sports consultant & researcher/former elite athlete

Lorraine Johnson – Lay Magistrate/former Doping Control Officer

Colin Murdock – Solicitor/former elite athlete

Dr Barry O’Driscoll – General Practitioner/former elite athlete

Professor Peter Sever – Consultant Clinical Pharmacologist

Dr Neil Townshend – General Practitioner/former elite athlete/team doctor

SECRETARIAT

Richard Harry – Head of Secretariat

Jenefer Lincoln – Case Officer

The National Anti-Doping Panel started to accept referrals on an ad hoc basis from April 2009 by securing the written agreement of the parties. Since UK Anti-Doping assumed responsibility from NGBs for investigating, charging and presenting anti-doping cases before disciplinary tribunals, requests for arbitration are made by UKAD to the NADP in accordance with the UK Anti-Doping Rules, which have been adopted by the majority of governing bodies.



NADP Referrals

NGB	Substance	Sanction	Arbitrator
British Wheelchair Basketball	Methadrone	2 Years	Rod McKenzie Lorraine Johnson Carole Billington-Wood
Welsh Rugby Union (Appeal)	Refusal/ Failure	2 Years	Graeme Mew Prof Peter Sever Lorraine Johnson
England Hockey	Steroids	2 Years	Robert Englehart QC
British Cycling Federation	Steroids,EPO	2 Years	Robert Englehart QC
British Wheelchair Basketball (Appeal)	Methadrone	2 Years	Robert Englehart QC Judy Vernon Patrick Harrington QC
UK Athletics	Methylhexamine	1 Year	Robert Englehart QC Matthew Lohn Lorraine Johnson
Rugby Football League	Methylhexamine	2 Years	Paul Gilroy QC Dr Terry Crystal Prof Peter Sever
UK Athletics (Appeal)	Methylhexamine	4 months	Charles Flint QC Abi Ekoku Dr Terry Crystal
Rugby Football League	Methylhexamine	4 months	Rod McKenzie Carole Billington-Wood Dr Neil Townshend
British Weightlifting Association	Metenolone	2 Years	Rod McKenzie Robert Englehart QC Lorraine Johnson
Rugby Football League (Appeal)	Methylhexamine	6 months	David Phillips QC Chris Quinlan Judy Vernon
UK Athletics	Clostebol, Testosterone	3 Years	Matthew Lohn Dr Neil Townshend Prof Peter Sever
British Cycling Federation	Ephedrine	3 months Case referred back to UKAD for agreed decision	Chris Quinlan Prof Peter Sever Lorraine Johnson (appointed but not required to sit)
Rugby Football League	Drostanolone, 19-norandrosterone	2 Years	Paul Gilroy QC Dr Kitrina Douglas Dr Terry Crystal



NADP Case Study

British Boxing Board of Control (BBBOC) vs MB (athlete)

The Anti-Doping Charge:

A sample provided by the athlete in January 2011 was analysed and found to contain metabolites of exogenous testosterone or a related substance. This resulted in the athlete being charged under the anti-doping rules of the BBBOC with a violation of Rule 2.1, "The presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample"

The Athlete's Position:

The Athlete admitted to the use of the exogenous testosterone. He explained that he had been successful in his bouts which resulted in him being offered better and more prestigious fights. Unfortunately, the Athlete suffered damage to his right hand which would have resulted in him pulling out of the next scheduled contest.

Rather than pull out of the competition, the Athlete agreed to receive an injection of an unknown substance from an acquaintance from the gym that he understood would ease the pain of his injury and allow him to take part in the up-coming fight. The Athlete made no checks as to the nature of the substance.

Decision of the Tribunal:

The Tribunal found that the breaches alleged by the BBBOC were made out.

Under Rule 10.5.1 and 10.5.2, the Athlete is able to seek a reduction in the mandatory sanction if he is able to demonstrate no fault or negligence or no significant fault or negligence.

In order to come within this Rule, the Athlete needed to prove, on the

balance of probabilities, how the substance got into his body. The Panel was not satisfied how the substance got in to the Athlete's body for the following reasons:

He was unable to provide the name, description or any other information about the substance that he claimed to have used such that it could not be identified or analysed. No corroboration from the acquaintance was provided, nor was the use of the substance declared on the doping control form.

Similarly, the Athlete was not able to provide any information in relation to other supplements that he admitted taking at the same time.

As the Athlete did not satisfy the Tribunal as to how the substance got in to his system it was not strictly necessary for the Tribunal to consider the Athlete's level of fault. Notwithstanding, the Tribunal stated that he would be unable to demonstrate that he bore no fault or any significant fault as the taking of the exogenous substance was admitted, he accepted an injection from a person he hardly knew, he did not know the nature of the substance, he did not take any steps to discover its nature or whether it was a Prohibited Substance, nor was the injection declared on the doping control form or to his own coach.

The conclusion of the Tribunal was to declare a period of ineligibility of two years and to order that the monies secured by the Athlete in the event at which he was tested should be forfeited.



NADP Case Study

UK Athletics (UKA) v ME (Athlete)

The Anti-Doping Charge:

The Athlete was subjected to a “no notice” test on the 15 September 2010. The A sample was tested at King’s College, London and was found to contain exogenous testosterone and a metabolite of clostebol.

The Athlete was subsequently charged under IAAF Rules, namely that he had the Presence of Prohibited Substances or their Metabolites in his Sample.

The Athlete’s Position:

The Athlete denied the charges and contended that:

- 1) There was no jurisdiction to conduct the sample collection as he had retired,
- 2) There were failures in the testing procedure, and
- 3) That (if it was accepted that he had retired prior to the test) there is no evidence of use prior to the date of the test

Decision of the Tribunal:

The Tribunal rejected the contentions of the Athlete. It was found that the Athlete was properly registered with a Club, and as such was subject to the Rules of UKA which included being subject to anti-doping testing.

The Athlete asserted that he retired on the 14 September, the day before the test. Whilst it was accepted that the Athlete telephoned UKA on the 14th September, the finding of the Panel was that he merely withdrew from a particular competition and did not give effect to his immediate retirement.

Notwithstanding this finding, the Panel in any event considered that retirement from competition would not, of itself, remove the Athlete from the testing jurisdiction of UKA.

Further, effective retirement can only be achieved in writing to UKA and there was no evidence of this.

In relation to the sample collection procedure, the Athlete failed to establish that there was a departure from the International Standard and that this alleged departure could reasonably have caused the Adverse Analytical Finding.

The Panel accepted that the Doping Control Officer took the sample in the normal manner and also referred to the fact that the Athlete signed the Doping Control Form at the time of the test to confirm that he was happy with the way that the test had been conducted.

The finding of the Panel was that “... the Athlete was properly registered and under the testing jurisdiction of the UKA when the sample was collected ... and that there were no departures from standard collection procedure. Accordingly, the Tribunal is comfortably satisfied that the adverse findings of exogenous Testosterone and Clostebol metabolites in Sample A have been substantiated.”

Consequences for the Athlete:

Under IAAF Rules, a first violation carries a period of ineligibility of two years. The Tribunal has discretion to increase that period where there are “Aggravating Circumstances”, which include where the Athlete used or possessed multiple prohibited substances.

The Tribunal considered that there were aggravating factors in that there were multiple prohibited substances and as a consequence, the Panel determined that the appropriate sanction to impose was a period of ineligibility of three years.



Sport Resolutions' Board Members

Management Board



Chairman: Gerard Elias QC

Gerard was appointed Chairman of Sport Resolutions in April 2007. He is a Barrister, ECB Chairman of Discipline and a former Chairman of Glamorgan Cricket. Gerard is also Chairman of the NADP Board



Deputy Chairman: Peter Crystal

Peter is one of four Independent Non-Executive Directors appointed to the Sport Resolutions Board. He is a solicitor and expert in corporate finance and sports law. He is also Deputy Chairman of Sport Resolutions and a member of the NADP Board.



Di Ellis CBE

Di represents the Sport and Recreation Alliance on the Sport Resolutions Board. She is Chairman of the Amateur Rowing Association.



Sara Sutcliffe

Sara is Legal Director for the British Olympic Association (BOA) and is its representative on the Sport Resolutions Board. Sara is also Chair of the Panel Appointments and Review Board.

Member Association Directors

Stephen Askins - British Paralympic Association
Simon Barker - Professional Players Federation
Matthew Barnes - British Athletes Commission
Di Ellis – Sport and Recreation Alliance
Sara Sutcliffe – British Olympic Association
John Kerr - Scottish Sports Association
Richard Hendicott - Welsh Sports Association
Keith McGarry - Northern Ireland Sports Forum
Warren Phelops - European Sponsorship Association

Secretariat

Edward Procter - Executive Director
Richard Harry - Dispute Resolution Manager
Jenefer Lincoln - Case Officer
Siobhan Adeusi - Office Manager
Erika O'Leary – Solicitor Intern



Edward Procter

Ed is the Executive Director of Sport Resolutions. Appointed in September 2006, he is a former Regional Director of the Legal Services Commission and Head of Monitoring and Evaluation of Sport England.



Rosalind Reston

Ros is a solicitor, accredited mediator and Non-Executive Director of the Financial Services Compensation Scheme. Ros is an Independent Non-Executive Director of Sport Resolutions. She is also a member of the NADP Board.



Andrew Tapley

Andy is an accountant, hockey coach and sports administrator who brings over 30 years worth of commercial experience to the Board. Andy is an Independent Non-Executive Director of Sport Resolutions and is also a member of the NADP Board. He retired from the Board in March to focus on his new role as Hockey & Wheelchair Rugby Services Manager for London 2012.



Trevor Watkins

Trevor is a leading sports lawyer and former Chairman of Bournemouth Football Club. He is also a founder Director of Supporters Direct. Trevor is an Independent Non-Executive Director of Sport Resolutions and a member of the NADP Board.

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Vision, Aim, Mission

VISION

Sport Resolutions' vision is to be the dispute resolution service of choice for all sports in the United Kingdom

AIM

Sport Resolutions' aim is to make available to all sports throughout the United Kingdom:

- independent, expert, timely and cost effective resolution of all disputes;
 - information, education & training to prevent disputes arising and to handle effectively and lower the profile of those that do.
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MISSION

Sport Resolutions' mission is to be:

- the centre of excellence for all sports dispute management & training;
- the nominated referral body when disputes in sport arise;
- a non profit making body, reinvesting in sport.



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