

ANNUAL REPORT 2009 - 10



SPORT  RESOLUTIONSTM

SPECIALIST INDEPENDENT DISPUTE SERVICE

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"Sport Resolutions continues to provide cost effective and professional tribunal services to the BOA for its eligibility bye law appeals. Athletes have confidence in the fact that they receive a fair and independent hearing"

British Olympic Association





CHAIRMAN'S REPORT

Governments come and go and recessions take their toll, but I am very pleased to report that Sport Resolutions (UK) continues its progress towards the ultimate goal of being the dispute resolution body of choice for sports of all kind, amateur and professional, recreational and elite. We have again made giant strides this year and are recognised by more and more sports as the body to turn to whenever arbitration or mediation become necessary – look again at Ed Procter's Review to see in detail the advances that we have made.

That is not to say, however, that Sport Resolutions remains an unchanging and inflexible body - far from it. We regularly look at new ways of taking the concept and the business forward and are making new contacts and receiving referrals from partners and potential partners across the sporting landscape. We remain keen to promote the role of education as a means of reducing the risk of disputes arising.

Changes there have been - UKAD has evolved out of UK Sport, and I take this opportunity to pay tribute to the seamless way in which the new National Anti-Doping Organisation has slotted into the continuing war on drug cheats in sport, and now presents its cases to the NADP with consistency and professionalism. The NADP itself under Peter Leaver QC's Presidential direction has gone from strength to strength with expert panel members and the number of cases coming through now hitting the sort of figures originally planned for. I am pleased to report that our management of the NADP contract – now in its 3rd year – continues to attract very favourable comment and equally, the feedback from both athletes and Governing Bodies as to the fairness and efficiency of the Panel is almost universally complimentary.

We have had our own internal changes, too. Sue Humble has been an almost permanent fixture since SDRP days and typically, even as I write, is working to perfect her files in the last week of her employment with us. Sue has been at the "sharp end" of our work, the case management end, from before any of us can remember, and as the face of the business has been an outstanding ambassador and a first rate lawyer and administrator, as I know many of you can testify to. Everyone needs a new

challenge and Sue has taken up that in her new role as Chief Executive and Clerk to the Solicitors Disciplinary Tribunal. In leaving, Sue goes with our very grateful thanks for a huge part in putting Sport Resolutions (UK) where it is today and our very best wishes for the future.

As one door closes so another opens. I am delighted to report that to replace Sue we have appointed Richard Harry, a solicitor well versed in sport and sports law, who shows an enthusiasm and dynamism which I am sure will rub off on all those with whom he makes contact. He will start immediately and I know will want to pick up the reins and meet as many of our contacts as he can in his first few weeks. I am delighted that Richard has agreed to join us – I am sure he will play a significant role in the continuing development of the business.

As ever, I record our thanks for the ongoing support of UK Sport, to our dedicated panel of mediators and arbitrators and to all the growing band who in the past year have turned to Sport Resolutions to help with problems or assist with setting up arrangements for ongoing regulation of their sport. We very much appreciate the strong support being given to our company and we know from your feedback that we are meeting most of your expectations. As I said last year, we shall not rest on our laurels and aim for Rolls Royce perfection as London 2012 comes into view.

Finally will you permit me a word of thanks to the Board, Management Board and staff, all of whom put in a lot of dedicated work to ensure the success of our initiatives and the day to day running of the company. To Peter Crystal, my deputy, and Ed Procter, the CEO, my special thanks for their commitment and dedication, particularly at times when the limelight does not necessarily shine. Lastly, but sincerely, to you all for the increasing confidence you are showing in Sport Resolutions - we are an important and permanent feature on the landscape and this is very largely down to your support - many thanks.

Gerard Elias

Gerard Elias QC
Chairman

"The cost of the mediation was a fraction of the commercial value of our claim and saved us thousands in legal costs"



REVIEW OF THE YEAR

Executive Director Ed Procter reviews the highlights of another busy year for Sport Resolutions in which 159 enquiries were made, resulting in 75 referrals.

Many of the disputes resolved were private matters, the details of which we cannot disclose for reasons of confidentiality. Our main areas of activity were doping cases referred to the National Anti-Doping Panel, football cases referred by the Football Association in support of its disciplinary and arbitration procedures, and a diverse range of cases referred by sports including, amongst others, American football, bobsleigh, cricket, equestrian, gymnastics, rowing, swimming and wrestling.

We also received a small but welcome increase in mediation enquiries and referrals. These related to image rights disputes, player and manager contract disputes and disputes over

aspects of governance and funding.

We continued to increase our jurisdiction during the year with over 50 governing bodies recognising the National Anti-Doping Panel as their anti-doping hearing body. Sport Resolutions is now named as the dispute resolution provider in almost 150 rules, regulations and policies of sporting organisations as well as numerous confidential commercial agreements and contracts.

I have selected my highlights of the year and hope these give you a fuller flavour of the important and fascinating work we do, without compromising any of the necessary confidentiality that underlie our work.

APRIL & MAY

Sport Resolutions strengthens its panel of arbitrators by increasing the number of members with experience in child, family and education law.

West Ham United appeal to Sport Resolutions against the Football Association's decision not to grant the club a UEFA licence for the 2009-10 season. West Ham subsequently withdraw their appeal shortly before the hearing after narrowly missing out on a Europa League place, following a 3-1 defeat to Everton.

The National Anti-Doping Panel bans bobsleigh athlete Peter Howe for 10 years after he is found to have committed a second anti-doping violation in a two year period.

JUNE & JULY

Sport Resolutions meet with Sport Scotland and the Scottish Sports Association in Edinburgh to discuss the management of sports disputes and disciplinary matters north of the border.

Gerard Elias and Ed Procter meet with Shadow Minister for Sport, Hugh Robertson, to discuss the future role and positioning of Sport Resolutions.

AUGUST & SEPTEMBER

Sport Resolutions completes a review, in association with the NSPCC, of the challenges facing sports organisations in managing child protection concerns and subsequent disciplinary processes. This results in the creation of a Child Protection in Sport Case Strategy Group of which Sport Resolutions is invited to become a standing member.

OCTOBER

Sport Resolutions meet with Yoshihisa Hayakawa and Kazushige Ogawa of the Japan Sports Arbitration Agency to share knowledge and experiences of operating a national sports dispute service.

The British Showjumping Association releases the decision of a Sport Resolutions arbitration panel, chaired by William Norris QC, which dismisses an appeal by Gemma Plumley against the findings of the Disciplinary Stewards of the British Show Jumping Association.

NOVEMBER

Sport Resolutions' mediator, Neil Goodrum, leads a workshop entitled "When Communication Goes Wrong: Managing Conflict in Sport" at the CCPR Chief Officer Annual Convention in Grantham.

Susan Humble, Stephen Watkins and Sport Resolutions' mediator, Chris Newmark, lead a workshop on effective conflict management for Sports Council of Wales staff in Cardiff.

Sport Resolutions is re-accredited as a mediation provider by the Civil Mediation Council ("CMC").

DECEMBER

The Department of Culture, Media and Sport (DCMS) finalise a new UK Anti-Doping Policy which provides a central role for the Sport Resolutions managed National Anti-Doping Panel. The policy also launches United Kingdom Anti-Doping (UKAD) as the new standalone National Anti-Doping Organisation with responsibility for investigating anti-doping violations, charging individuals and for presenting cases before the National Anti-Doping Panel.

The Northern Ireland Sports Forum nominates Solicitor Advocate Keith McGarry to be their representative director on the Sport Resolutions Board, following the retirement of Belfast District Judge Ken Nixon.

JANUARY AND FEBRUARY

Sport Resolutions assists several governing bodies with disputes arising from the selection of athletes to compete at the Winter Olympic and Paralympic Games in Vancouver.

Sport Resolutions presents to over 100 governing bodies of sport and recreation on the management of sports disputes at CCPR divisional meetings.

Sport Resolutions convenes a workshop for National Anti-Doping Panel members focusing on test refusals and drug testing procedures.

Charles Flint QC and Stephen Watkins present on the work of the National Anti-Doping Panel at the World Sports Law Conference hosted by Hammonds Solicitors in London.

MARCH

Equestrian athlete Michael Whitaker's lifetime ban from competing at the Olympic Games is lifted by a Sport Resolutions panel following a successful appeal under the BOA's Eligibility Byelaw. Under the Byelaw, Sport Resolutions appoints the chairman to the appeals panel and administers the appeal in accordance with the BOA's rules.

The National Anti-Doping Panel completes its second year of operation having dealt with 21 referrals during 2009-10.

"The independence and expertise offered by Sport Resolutions helps to considerably strengthen our disciplinary process"





SPORT RESOLUTIONS' SCOREBOARD

159

THE NUMBER OF DISPUTE ENQUIRIES RECEIVED BY SPORT RESOLUTIONS IN THE PAST 12 MONTHS

Sport Resolutions provides a free of charge telephone enquiry service about the procedural aspects of dispute resolution. We helped over 30 different sports in the past year. 75 enquires went on to become referrals, a 15% increase on 2008-9.

25

THE NUMBER OF DIFFERENT SPORTS WHOSE DISPUTES WERE RESOLVED BY SPORT RESOLUTIONS DURING THE PAST YEAR

This included referrals from bobsleigh, cricket, football, gymnastics, rugby league, rugby union, tennis and wrestling.

120

THE TOTAL NUMBER OF ARBITRATORS AND MEDIATORS ON THE SPORT RESOLUTIONS PANEL

Gaps in panel coverage were filled to increase expertise in child protection and football finance, to improve coverage in the North of England and Scotland and to increase the number of female members. Current appointments run until 31 March 2011.

£4.8M

THE ESTIMATED COMBINED COMMERCIAL VALUE OF DISPUTES MEDIATED BY SPORT RESOLUTIONS DURING THE PAST 12 MONTHS

A small increase in mediation enquiries and referrals was recorded this year. The cost of mediation represented a fraction of the commercial values of the claims that were settled.

148

THE NUMBER OF RULES, REGULATIONS AND POLICIES OF SPORTING ORGANISATIONS WHICH REFER TO SPORT RESOLUTIONS AS THE DISPUTE RESOLUTION PROVIDER OF CHOICE

Sport Resolutions is commonly afforded jurisdiction to become involved in disputes concerning athlete agreements, athlete selection and eligibility, child protection, club and coach licensing, doping, financial regulation, general discipline, manager and player contracts and other commercial matters. Where Sport Resolutions is not written into relevant rules or contracts, jurisdiction can also be secured through ad hoc written agreement.

94%

THE PERCENTAGE OF SERVICE USERS WHO SAID THEY WERE EITHER "SATISFIED" OR "VERY SATISFIED" WITH THE OVERALL QUALITY OF SERVICE PROVIDED BY SPORT RESOLUTIONS

Sport Resolutions provides a professional case management service which prevents unnecessary delay and minimises costs for all parties. 100% of service users were also satisfied or very satisfied with the quality of communication with the Sport Resolutions Secretariat.

"The service is always administered by Sport Resolutions to a high standard"



"Compared to my experience of court, the process was extraordinarily fast and good value"



CASE STUDIES

VANCOUVER WINTER OLYMPICS 2010 - ATHLETE SELECTION APPEAL

Sport Resolutions is named as the final appeal body in numerous sports' selection procedures. This included many that were concerned with the selection of athletes to compete at the Vancouver Winter Olympic and Paralympic Games, which took place in February and March 2010.

The Dispute:

Three athletes were in dispute with their national governing body (NGB) over their non-selection for the Winter Olympics in Vancouver. The athletes argued that the NGB had not followed its selection policy correctly and in doing so had wrongly selected other athletes in their place.

Jurisdiction:

The selection policy of the governing body provided for an appeal to a panel chaired by an independent arbitrator appointed by Sport Resolutions, with the appeal case managed by Sport Resolutions.

Timescales and process:

Three such appeals were notified on a Friday morning, proceeding to a full day hearing and decision only 72 hours later. This required the athletes to file their appeal with Sport Resolutions

and for the NGB to file its response over a single weekend. The selected athletes were also present at the hearing as interested parties.

The Outcome:

It was agreed that the outcome would remain confidential. A written decision was sent to the parties within 24 hours of the hearing which allowed the process to be completed before the start of the Games.

Costs and Benefits:

The arbitrator's assured handling of the case left the parties feeling that they had received a fair and cost-effective hearing. The speed with which the dispute was resolved compared favourably with what could have been achieved by using the court system. Costs incurred were at a significantly lower level than if the appellants had proceeded to court. The total cost of the appeal was £1500.

MEDIATING A DISPUTE ABOUT THE FUTURE GOVERNANCE OF A SPORT

Sport Resolutions provides a speedy and cost effective mediation service which helps parties in dispute to settle their differences in a flexible and confidential way. The main benefit of mediation for sport is that it is a non-adversarial process, facilitated by a neutral mediator, which helps to resolve disputes in ways which enable sporting relationships to continue.

The Dispute:

A complex and heated dispute had arisen between a national governing body and a league/member association. Disagreement had arisen between the organisations in relation to the future governance of their fledgling sport. All parties were committed to finding a solution which would secure the sport's long term funding, and therefore survival, but were being distracted by their disagreements. The majority of those involved were volunteers, with limited time available outside of their day jobs for dealing with arguments relating to what was, after all, their hobby.

Jurisdiction:

The parties both consented to mediate through Sport Resolutions and signed a mediation agreement which named the chosen mediator, identified the key issues to be resolved and the timescale for completing the mediation process. In signing up for mediation, the

parties agreed to keep their discussions confidential and retained their right to walk away from negotiations at any stage in the process.

Timescale and Process:

The mediator made contact with both parties to understand their concerns and to explain the process prior to mediation which took place over a single day. The mediator worked hard to keep all parties on track, facilitating lively discussions, and fostering greater understanding and empathy.

The Outcome:

The end result was that an acceptable settlement was concluded on mediation day.

Costs and Benefits:

The total fee for mediation, divided equally between the two parties, was approximately £1600.

INSIDE THE PANEL

Two of Sport Resolutions' 120 strong panel of arbitrators and mediators discuss their experiences inside the panel



PHILLIP HOWELL-RICHARDSON
Member of Panel of Mediators

Why did you join the Sport Resolutions Panel?

I often see individuals who have become damaged by litigation or organisations that are trapped in arguments or situations that they do not know how to resolve. I was determined to ensure that all those who donate their time, energy and resources to enable sport to flourish and develop should have easy access to resolving their problems quickly through mediation and I recognised that the Sport Resolutions Panel was an excellent way to make that happen.

How do sports disputes affect the industry?

Disputes divert people and organisations from what they do best. Individuals often give their time free and organisations make the best of their limited resources. Disputes absorb costs in time and money which should be used for the development of access to sport for all and development of the highest skills. Some sports disputes involve the power of the media, commercialisation and sponsorship and they have the potential to cause significant disruption.

How do you think using Sport Resolutions' services helps to minimise problems?

Sport Resolutions' services enables sports problems to be resolved by sports people crafting sports solutions. Mediation enables those directly involved in a dispute to re-examine the dispute and to reach a solution in a cost effective and private process. The mediation can be arranged within days to take place at a time that suits the

needs of the parties and very early in a dispute so that there is minimal damage and maximum cost saving. The mediator, once appointed, works with the parties and often finds settlement in a day's meeting. The Sport Resolutions service enables all those involved in sport to access mediation quickly and effectively so that these advantages can be obtained.

What's your favourite sporting memory?

One of the sports that I have always been interested in is sailing. I have sailed all my life, and I particularly remember one Sunday morning in December a few years ago, arriving at a marina whilst it was still dark. We were due to race that day in an Icicle Series. Icicle it was as there was ice all over the boat and a freezing wind was blowing. When we turned up at the start we found just four boats out of the usual twelve present. The race was shortened to two laps of the course and by the end of the first lap we were the only boat present as the other three had had enough. That was our only win that winter in the Icicle Series.

What would you have done if you hadn't become a full time mediator?

I have always had a strong interest in motorsport. The British motor racing industry is a world leader and it would have been great to have taken a leading part in creating a world beating Formula 1 car. Today the challenges are as great as ever in using Formula 1 as a test bed for the technology challenges of the 21st Century.



NICK RANDALL
Member of Panel of Arbitrators

Why did you join the Sport Resolutions Panel?

I had worked with the SDRP on a number of mediations over the years when I acted for George Graham, David O'Leary and Kevin Keegan. I was impressed by the service that was provided by the organisation. I had also sat as an arbitrator on a number of FA Premier League and FA disputes and I had always enjoyed this side of my work. As such I was delighted when I was approached to see if I would be interested in being appointed to the Sport Resolutions Panel.

How do sport disputes affect the industry?

I normally detest people that say 'sport is a business' because it is so obviously far more than that, but when it comes to disputes I think the analogy with business is an appropriate one. Disputes are sometimes inevitable, but never welcome. They sap the energy of individuals and organisations and prevent people from getting on with what they are good at. As such it is of vital importance that they are resolved as speedily as possible.

How do you think using Sport Resolutions' services helps to minimise problems?

It is crucial that the dispute is handled sensitively and speedily by individuals who understand the wider framework. I think that Sport Resolutions offers this option which is difficult if not impossible to achieve with certainty elsewhere.

What's your favourite sporting memory?

My two main loves are cricket and football. My favourite cricketing memory was as a 9 year old seeing John Snow take 4 wickets in a session against the Australians at Lords in 1975.

What would you have done if you hadn't become a lawyer?

I would have tried to work in sport. I was a decent cricketer playing under 19s county standard but never good enough to make it in the professional game. As for football, I was always pretty useless, so I would have looked to work in sports administration.



"The Sport Resolutions Panel of Mediators and Arbitrators has tremendous strength in depth. There is nothing quite like it"



NADP PRESIDENT'S MESSAGE

I am delighted to report on my second year as President of the National Anti-Doping Panel. Our workload has increased significantly over the past year with the advent of a new national anti-doping policy and rules, and the creation in December 2009 of a standalone National Anti-Doping Organisation - UKAD.

UKAD has assumed responsibility from individual governing bodies for investigating anti-doping violations, for deciding whether there is a case to answer, and for presenting cases before the NADP. This has led to much improved timeliness and consistency of approach, with cases now being brought before the NADP and concluded in a matter of weeks. Another important change has been the move by the Department of Culture, Media and Sport to fund the NADP directly. This gives a clear message to all that the NADP is independent and can be trusted to adjudicate fairly and impartially, in accordance with the applicable anti-doping rules.

Of the 21 cases decided by the NADP this year, one of the most challenging was that of a female boxer. This concerned a detailed examination of the meaning of the term "enhancing performance" in the anti-doping rules and led to an appeal being lodged by the International Amateur Boxing Association against the decision of the NADP first instance tribunal, resulting in an increase in the period of ineligibility from 6 months to 2 years (see Case Study).

We held two Panel training sessions during the year. These sessions help the NADP to realise its aim of producing well reasoned and consistent decisions. Topics covered included refusing or

failing to submit to sample collection, and the vexed issue of corroborating evidence to establish the absence of intent to enhance sport performance.

I was delighted to welcome Charles Flint QC of Blackstone Chambers to the position of NADP Vice-President following the retirement of Patrick Harrington QC. I would like to place on record my thanks to Patrick for his contribution and am pleased that he will continue to sit as a legal member of the Panel. We also advertised for an additional legal member of the Panel and appointed Paul Gilroy QC of Nine St John's Street Chambers in Manchester to assist us with our growing caseload.

I would like to thank all members of the NADP for their ongoing support and commitment, and last but not means least, the Sport Resolutions Secretariat for the excellent administrative support provided to the Panel during the year.

The NADP is now firmly established as a central part of the government's policy to tackle anti-doping in sport. I take great pride in the part it is playing in helping to lead the way in the fight against doping as we enter an exciting new decade for British sport.

Peter Leaver QC
President
National Anti-Doping Panel

"The NADP Secretariat provides a professional and responsive service"



NATIONAL ANTI-DOPING PANEL

Sport Resolutions (UK) is the independent service provider, contracted by the Department of 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 of the NADP is to improve the quality, consistency and independence of the 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 members of the NADP are:

PRESIDENT

Peter Leaver QC - Barrister

LEGAL MEMBERS

Robert Englehart QC - Barrister

Charles Flint QC - Barrister (Vice President)

Paul Gilroy QC - Barrister (from 1 January 2010)

Patrick Harrington QC - Barrister

Matthew Lohn - Solicitor

Rod McKenzie - Solicitor

Graeme Mew - Barrister

David Phillips QC - Barrister

Christopher Quinlan - Barrister

SPECIALIST MEMBERS

Carole Billington-Wood - former athlete/sports administrator

Abi Ekoku - former athlete/team manager

Dr Terry Crystal - General Practitioner/team doctor

Lorraine Johnson - Lay Magistrate/former Doping Control Officer

Dr Neil Townshend - General Practitioner/former elite athlete and team doctor

Professor Peter Sever - Consultant Clinical Pharmacologist

Judy Vernon - elite coach/former athlete

SECRETARIAT

Susan Humble - Head of Secretariat (to 6 August 2010)

Richard Harry - Head of Secretariat (from 1 September 2010)

Stephen Watkins - Case Officer

The National Anti-Doping Panel started to accept referrals on an ad hoc basis from April 2008 by securing the written agreement of the parties. Since UKAD 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.



"The professional services offered by Sport Resolutions provides a reliable, high-quality, independent system that is vital to the harmonisation of anti-doping across all sports in the UK"



NADP REFERRALS

APRIL 2009 - MARCH 2010

NGB of Athlete	Substance	Sanction	Arbitrator(s)
England Basketball	Cannabis	4 Months	Graeme Mew
British Canoe Union	Nandrolone	2 Years	Matthew Lohn
Rugby Football League	Cocaine	2 Years	Charles Flint QC, Carole Billington-Wood, Lorraine Johnson
Welsh Rugby Union	Nandrolone	2 Years	Patrick Harrington QC, Abi Ekoku, Judy Vernon
Great Britain Wheelchair Basketball Association	Cannabis	4 Months	Robert Englehart QC
Great Britain Wheelchair Basketball Association	Cannabis	3 Months	Robert Englehart QC
Amateur Boxing Association of England	Diuretic	6 Months (Appealed)	Graeme Mew
Rugby Football League	Stimulants	2 Years	Patrick Harrington QC
Rugby Football League	Beta 2 Agonists	3 Months	Matthew Lohn, Terry Crystal, Neil Townshend
Amateur International Boxing Association (Appeal)	Diuretic	2 Years	Rod Mckenzie, Lorraine Johnson, Peter Sever
Rugby Football League	Cocaine & Ephedrine	2 Years	David Phillips QC
Welsh Rugby Union	Ephedrine	Case Dismissed	Paul Gilroy QC, Carole Billington-Wood, Neil Townshend
Welsh Rugby Union	Ephedrine	Case Dismissed	Paul Gilroy QC, Carole Billington-Wood, Neil Townshend
Rugby Football League	Steroids	2 Years	Chris Quinlan, Judy Vernon, Dr Terry Crystal
Rugby Football League	Steroids	2 Years	Chris Quinlan, Judy Vernon, Dr Terry Crystal
Welsh Rugby Union	Refusal/Failure	2 Years	Paul Gilroy QC, Abi Ekoku, Judy Vernon
Rugby Football League	Steroids	2 Years	David Phillips QC, Judy Vernon, Lorraine Johnson
UK Athletics	Refusal	2 Years	Paul Gilroy QC, Neil Townshend, Lorraine Johnson
UK Athletics	Refusal	2 Years	Paul Gilroy QC, Neil Townshend, Lorraine Johnson
UK Athletics	Steroids	2 Years	Charles Flint QC, Carole Billington-Wood, Dr Terry Crystal
England Basketball	Cannabis	4 Months	Patrick Harrington QC

"The quality of the reasoned decision was very high and undoubtedly prevented an appeal being made"



NADP CASE STUDIES

During 2009-10, Sport Resolutions received 21 referrals to the National Anti-Doping Panel, the majority of which were referred by national governing bodies. As of 14 December 2009, referrals were received from UKAD who took over responsibility for the investigation, charging and presenting of cases before the NADP from governing bodies.

AMATEUR BOXING ASSOCIATION OF ENGLAND (ABAE) VS JM (ATHLETE)

AND

AMATEUR INTERNATIONAL BOXING ASSOCIATION (AIBA) VS JM (ATHLETE)

The Anti-Doping Charge

An in-competition anti-doping test completed on the athlete at the 2009 National Boxing Championships revealed the presence of a Prohibited Substance called butanamide. This resulted in the athlete being charged under the Anti-Doping Rules of the ABAE 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 Argument

The athlete admitted to consuming the substance but said that it was not done to enhance her sport performance. She argued that the day before the fight she was a couple of pounds over the weight limit due to water retention. She consumed a relative's prescribed medication to alleviate the symptoms. She therefore sought to reduce the sanction by taking advantage of WADA Code provision 10.4 which says that "where an Athlete or other Person can establish how a Specified Substance entered his or her body or came into his or her Possession and that such Specified Substance was not intended to enhance the Athlete's sport performance or mask the use of a performance-enhancing substance, the period of ineligibility found in Article 10.2 shall be replaced withat a minimum, a reprimand and no period of Ineligibility from future Events, and at a maximum, two (2) years of Ineligibility".

First Instance Panel Decision and Reasons

The Arbitrator considered that the central issue in the case was whether the Respondent's use of a

Prohibited Substance, which was a Specified Substance, was intended to enhance her sport performance. If it was, the Respondent would be subject to the imposition of a period of Ineligibility of two (2) years. If it was not, the sanction would be, at a minimum, a reprimand and no period of Ineligibility, and at a maximum, a period of Ineligibility of two (2) years. He found that the Respondent had not taken butanamide with the intention of enhancing the action or process of her sport performance and that as a consequence he was comfortably satisfied that she did not intend to enhance her sport performance. Consequently, he found that the sanction for the admitted Anti-Doping Rule Violation was governed by Article 10.4 and imposed a suspension of six months.

Appeal Panel Decision and Reasons

The AIBA appealed the decision on the grounds that use of a diuretic to make the weight was tantamount to enhancing performance. If the athlete had not taken the substance she may not have made the weight and would therefore not be eligible to perform.

The NADP Appeal Tribunal ruled that the athlete had intended to enhance her performance and increased the sanction to 2 years. The Panel reasoned that "when viewed objectively, the Respondent intended by ingesting the Specified Substance to enhance her sport performance. She intended to ensure she was able to perform. The intention to ensure her performance must be regarded as an intention to enhance sports performance."

RUGBY FOOTBALL LEAGUE (RFL) VS DG (ATHLETE)

The Anti-Doping Charge

The player submitted to a drugs test having played in a rugby league match in June 2009. The test yielded a positive result for salbutamol at a level of 2620ng/ml. The player was in possession of a Therapeutic Use Exemption ("TUE") for the Beta-2 Agonist salbutamol at the time. However, WADA Rules provide that "Despite the granting of a Therapeutic Use Exemption, the presence of salbutamol in urine in excess of 1000 ng/mL will be considered as an Adverse Analytical Finding unless the Athlete proves, through a controlled pharmacokinetic study, that the abnormal result was the consequence of the use of a therapeutic dose of inhaled salbutamol". The player was therefore charged with an anti-doping violation under 2.1 of the anti-doping rules of the Rugby Football League.

The Athlete's Argument

The athlete argued that he had consumed the substance solely as treatment for asthma under the supervision of the club doctor in the clear view of his fellow players. He had correctly applied for and was in possession of a valid TUE for treatment of his condition. He further argued that his TUE did not specify an upper limit of salbutamol, only that he was to take it "as required". The athlete admitted a breach of Article 2.1 of the Rules. He submitted that since this was his first violation, the Tribunal should exercise their discretion pursuant

to Article 10.4 of the Rules to eliminate any period of Ineligibility. The athlete acknowledged that, in order for the Tribunal to exercise their discretion, he would need to persuade the Tribunal of the circumstances in which the Specified Substance came to enter his body and that the Specified Substance was not intended to enhance his sports performance.

Panel Decision and Reasons

The Panel determined that the athlete had successfully shown how the substance had entered his body. The Panel were also satisfied that the athlete had not intended to enhance his performance. They reasoned that his sole aim when using the inhaler was to gain respite from his respiratory symptoms of breathlessness. The medication that the player used was provided to him and self-administered on the pitch in front of his team and the opposing side. The inhaler was provided to him on each occasion by the club physio. There was no suggestion of any concealment in the administration of the Specified Substance. The Panel also determined that the player had not received appropriate monitoring and care by the club medical staff, which had contributed to the anti-doping violation. The Panel used the discretion open to it to impose a suspension of three months. They determined that a short suspension was required to reflect the athlete's responsibility for the substance entering his body.

"Above all, the Hearing was very sensitively handled, which everyone concerned appreciated"



NADP SCOREBOARD

16+1

THE TOTAL NUMBER OF NADP PANEL MEMBERS

The National Anti-Doping Panel consists of nine legal members, who must be Solicitors or Barristers of seven years standing, and seven specialist members who have experience of sports medicine and science, elite performance, coaching and management. The Panel is overseen by a President who appoints members to specific tribunals, scrutinises decisions and approves changes to the Procedural Rules of the NADP.

21

THE NUMBER OF CASES REFERRED TO THE NADP DURING THE YEAR

Referrals arose from seven different sports with most cases coming from rugby league (7), rugby union (4) and athletics (3). 18 cases were a result of adverse analytical findings and 3 cases were a result of athletes refusing/failing to submit to a sample.

1

THE NUMBER OF APPEALS LODGED WITH THE NADP DURING THE PAST YEAR

Appeals can be made by the athlete Respondent, UKAD, World Anti-Doping Agency or the National or International Federation. Under the Procedural Rules of the NADP, appeals must be made in writing to the NADP Secretariat within 21 days of receipt of the first instance decision.

29%

THE PERCENTAGE OF CASES INVOLVING THE USE OF STEROIDS

During the past year athletes tested positive for a range of substances. The most frequent were steroids and so-called "recreational drugs", such as cannabis and cocaine.

**16
MONTHS**

THE AVERAGE LENGTH OF SUSPENSION GIVEN BY NADP TRIBUNALS

The World Anti-Doping Code establishes a suspension of two years as the starting point for consideration. Tribunals have powers to use their discretion to increase the sanction where aggravating factors are present or to decrease the sanction where the athlete is able to prove no (or no significant) fault or negligence and that the substance did not enhance their sport performance.

32

THE NUMBER OF DECISIONS PUBLISHED BY THE NADP SO FAR

All decisions must be in writing with reasons given and released within 15 working days of the end of the hearing. Decisions are published on www.sportresolutions.co.uk once the appeal period has expired. Where the Tribunal dismisses the charges the decision is only published with the consent of the Respondent.



"Sport Resolutions' case management is excellent, you always get an immediate response"

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 in 2007. 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 Central Council of Physical Recreation (CCPR) on the Sport Resolutions Board. She is Chairman of the Amateur Rowing Association.



SARA SUTCLIFFE

Sara is the 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.



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 and the Panel Appointments and Review Board.



ANDREW TAPLEY

Andy is an accountant, hockey coach and sports administrator who brings over 30 years worth of commercial experience to the Board. He is Chair of England Hockey's Regional Consultative Committee and a non-voting member of the England Hockey Board. Andy is an Independent Non-Executive Director of Sport Resolutions and is also a member of the NADP Board.



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.

MEMBER ASSOCIATION DIRECTORS

Stephen Askins - British Paralympic Association
Simon Barker - Professional Players Federation
Matthew Barnes - British Athletes Commission
Di Ellis - Central Council of Physical Recreation
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
Susan Humble - Dispute Resolution Manager (to 6 August 2010)
Richard Harry - Dispute Resolution Manager (from 1 September 2010)
Stephen Watkins - NADP Case Officer
Siobhan Adeusi - Office Manager

OUR CONTACT DETAILS

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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.
-

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.



"The mediator brought the parties much closer together and it was his tenacity after mediation day that helped us to settle our differences"

REINVESTING IN SPORT



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