S R/NADP/511/2016

NATIONAL ANTI-DOPING PANEL

IN THE MATTER OF PROCEEDINGS BROUGHT
UNDER THE ANTI-DOPING RULES OF
THE RUGBY FOOTBALL LEAGUE

Before:

Mr Christopher Quinlan QC (Chairman)
Mr Colin Murdock
Professor Dorian Haskard

B E T W E E N:

UK ANTI-DOPING

National Anti-Doping Organisation

- and -

SAMUEL BARLOW

Respondent

FINAL DECISION OF THE NATIONAL ANTI-DOPING PANEL

A. INTRODUCTION

1. This is the final decision of the Anti-Doping Tribunal ('the Tribunal') convened pursuant to Article 5.1 of the National Anti-Doping Panel Procedural Rules to hear and determine a charge brought against Samuel Barlow ('the Respondent') for an alleged violation of Article 2.5 of the Rugby Football League's Anti-Doping Rules ('ADR').

2. Samuel Barlow was born on 7 March 1988 and is 28 years of age. He is a semi-professional rugby league player and has been so for 10 years. He plays for Leigh Centurions RLFC ('the club') and has represented Scotland. He is a registered competitor of the Rugby Football League (RFL) and at all relevant times was bound by the ADR.

3. The hearing in this matter took place in Manchester on 6 and 7 June 2016. It was attended by:

- The Respondent
- Austin Welch, Respondent's Counsel
- Imran Khan, Respondent's solicitor (day 1)
- Julie Statham, Respondent's solicitor's representative (day 2)
- Ashleigh Blackwell, witness (day 2)
- Derek Beaumont, witness (day 2)
- Kenny Ball, witness (day 2)
- Elizabeth Riley, Counsel for UKAD
- Graham Arthur, Legal Director, UKAD
- Mark Dean, witness (day 1)
- PC Beaumont, witness (day 1)
- PC McNamara, witness (day 1)

- Hamish Coffey, observing (day 1)
- Mario Theophanous (UKAD Head of Intelligence), observing (day 1)

4. This document constitutes our final reasoned decision, reached after due consideration of the evidence, submissions and the Arbitral Awards placed before us.

B. ANTI-DOPING RULE VIOLATION

5. By letter dated 23 November 2015, UKAD charged Mr Barlow with an anti-doping rule violation ('ADRV') under ADR Article 2.5. He was provisionally suspended with immediate effect and has remained so. The alleged ADRV arose out of the events of the evening of 31 July 2015.

6. ADR Article 2.5 makes the following an anti-doping rule violation:

Tampering or Attempted Tampering with any part of Doping Control

Conduct that subverts the Doping Control process but that would not otherwise be included in the definition of Prohibited Methods. Tampering shall include, without limitation, intentionally interfering or attempting to interfere with a Doping Control official, providing fraudulent information to an Anti-Doping Organisation or intimidating or attempting to intimidate a potential witness.

7. The parties were agreed on the correct interpretation of ADR Article 2.5. They submitted that it required proof by UKAD that the Respondent's conduct subverted the Doping Control Process and was intended to do so.

8. We heard a deal of live evidence and read further written evidence. What follows is necessarily a summary of that evidence, all of which we considered.

UKAD's case

9. The Respondent has been tested before. He was tested in September 2012, twice in 2013, on 2 April 2015 and at home during the evening of 6 May 2015. He has never returned an adverse analytical finding.

10. On 30 July 2015, UKAD ordered a further out-of-competition target test to be conducted on the Respondent to take place the following evening (31 July 2015) at his home. The testing was to be carried out by Mark Dean, who tested him (and other squad members) on 9 January 2013.

11. Mark Dean ('MD') is an experienced Doping Control Officer ('DCO'). He has been a member of UKAD's Doping Control Personnel scheme since its inception in December 2009. He has worked for UK Sport/UKAD for around 14 years, first as a chaperone and from 2007 as a DCO. He is a Lead DCO and has performed many "*missions*" (as he and UKAD described them).

12. We heard from MD. The Respondent's neighbour's CCTV cameras (Kenny Ball) caught something of the events. It was silent footage. MD parked his car a little distance from the Respondent's home. He approached the Respondent's front door at 20.56[1]. MD was wearing his white-coloured UKAD DCO identity card on a lanyard around his neck. He was also wearing a jacket and beneath that a dark coloured top with the words "*doping control*" (in white) on the breast pocket area. He was carrying a red bag containing his doping control equipment. He saw light from within the house, a television on and presumed the house was occupied.

13. MD said he tried ringing the doorbell several times, but could hear no sound. The CCTV footage provides a side-on view, from the left (facing the Respondent's house). It shows MD's hand stretch out to the door at 20.56.31. The action is not inconsistent with a pressing of a doorbell. The action is repeated at approximately 20.56.48. His hand went to the door for a third time at 20.57.16. This time he leant into the door, his hand appearing to remain in contact with some part of the door/door area. At 20.57.58 he stepped back from the door and appeared to look into the ground floor window. At 20.58.07 his right hand once more went towards the door and appeared to move.

14. At 20.58.13, having turned away from the door, he placed his hand on the bonnet of the car parked on the driveway (bonnet facing the house) to see if it was warm. He loitered at the front door until 20.58.43 when he appeared to lean into the front door.

[1] Unless indicated otherwise, timings are taken from the CCTV footage

At 20.58.52 his right hand again reached out to the front door. At 20.59.03 he turned away from the front door and walked back to his car, intending to wait.

15. The Respondent's case was that the bell was in working order but neither he nor his girlfriend heard it ring. They heard no knocking or sound from or caused by the letter box. MD said he moved the letterbox flap trying to alert the occupants to his presence. He denied trying the door handle.

16. At 21.06.36 Ashleigh Blackwell ('AB'), the Respondent's partner, is seen on the front doorstep. At 21.06.41 she stepped out of the house and walked away from the front door. She appears to be looking for someone or thing, though the footage does not show facial features. At approximately 21.06.58 she stepped from the driveway onto the pavement, arms folded across her chest, and looked to her right in the direction of MD's parked vehicle. At approximately 21.07.07 MD appears from the direction of his car and they appear to be talking. MD's evidence was that he told her he was there "*to do a drug test on Sam Barlow*" and showed her his UKAD identity card. He said she seemed "*fine"* and not distressed.

17. The footage showed AB return to the house, entering at 21.07.20. MD went to his car. AB emerged from the house at 21.07.43, but was back in by 21.07.47.

18. While MD was collecting his equipment, he heard shouting and turned to see the Respondent leaning out of an upstairs window in the house. He shouted repeatedly, "*you're getting nicked fella, you tried to burgle my house".*

19. By the time MD returned to the house carrying his equipment bag, the Respondent had appeared on the CCTV footage for the first time. He was wearing just a pair of shorts. He repeated the assertion that MD was going to be arrested. MD said he told him he was there to carry out a drug test and showed him his identification badge by lifting it from his chest. MD told us that the Respondent "*kept saying, 'I know why you are here'"* adding, *"I am sick of you lot harassing me".*

20. The CCTV footage showed the Respondent pointing at MD, return into his home, before coming out again. He then pointed in the direction of the CCTV cameras and went to his neighbour's house. He returned to his home, and they remained there for

a short time, before they walked off in the direction of MD's car. They then turned and entered the house, the Respondent first and MD after, at approximately 21.11.26.

21. Once inside the house, MD said the Respondent was aggressive. The Respondent made a 999 call to West Yorkshire Police (timed at 9:12pm) during which he told the operator, "*I've just had someone try to break into my house*" and "*my girlfriend caught them trying to break into my house*". He pulled back his fist as though to punch him. MD told him he was no longer prepared to carry out the test. The Respondent also initially blocked his path thereby preventing him from leaving. MD said the Respondent frightened him.

22. MD thought he was inside for 4/5 minutes before he was allowed to leave. The CCTV showed him leaving the house at 21.16.23, immediately after the Respondent. MD waited outside close to the house until the police arrived at 21.19.

23. MD was cross-examined and tested on inconsistences between his written statement and his oral testimony and also about matters he told us, which did not appear in that statement. His account was tested against portions of the footage. We had full regard to what came of that exercise.

24. We heard from the two police officers who attended the Respondent's home at approximately 21.19, namely PCs Beaumont and McNamara. A good deal of what they said did not relate to the central issues and it is unnecessary to repeat it. PC Beaumont noted MD's top and his lanyard with his identification card attached. MD appeared "*shaken and upset*". The Respondent complained that MD had tried to break into his home.

25. PC McNamara spoke to MD, while PC Beaumont spoke with the Respondent. They viewed the CCTV footage. At some point the Respondent's parents and brother also arrived at the house. The atmosphere was tense. The Respondent accepted that they were unhelpful and aggressive and exacerbated a difficult situation.

26. The officers concluded that MD had not committed any criminal offence and that they were not going to arrest him. They informed the Respondent, who accepted before us that he did not react well to that news. What he did thereafter and how he behaved towards PC McNamara is unnecessary to record here. He apologised before us for it.

It does him no credit, but does not relate to the central issue and we did not hold it against him.

27. During this stage the Respondent repeatedly said he was willing to take a drugs test. UKAD decided that the testing mission should be terminated. MD told the officers that his instructions were not to continue with the test.

28. Ms Riley insisted we watch CCTV footage, which recorded the Respondent and AB's visit to Halifax police station the following day. We did so. The Respondent wanted to speak with PC McNamara, who was not available. The Respondent was confrontational and aggressive towards the male behind the desk who appeared willing and able to stand his ground.

29. A feature of UKAD's case against the Respondent was what it called his "*uncooperative attitude*" to drug testing (§26 of Ms Riley's skeleton argument). On 15 April 2015 the club's owner and head of rugby, Derek Beaumont ('DB'), sent an email to the RFL expressing concerns raised by players about their families being disturbed by evening testing at their homes. He asked for clarification of the rules. The RFL informed him (in an email sent by Karen Moorhouse at 09.55 that day) that players would not be breaking rules by not being at home and that the 'whereabouts' provisions did not apply to them. In a later email (15 April 2015, 16.49), Dean Hardman (RFL) sent DB an email in which he stated, "*testing (at night at a player's house) …is not unusual within Rugby League…"* (see §47 hereof).

30. UKAD also pointed to emails sent by the Respondent's parents (before and after 31 July) and to post-31 July correspondence from DB and the club's CEO and legal adviser Matthew Chantler.

31. Our approach to this area of the evidence was as follows. Unless it came from the Respondent or could be shown to have been sent on his behalf, with his prior knowledge and approval, it was not relevant to the case against him. Into this group of the irrelevant went his parents' correspondence, the post-31 July materials and DB's communications. However, what was of relevance, subject to our evaluation of it, was (1) what the Respondent said (before 31 July 2015) to DB about testing and (2) what advice DB gave him, before MD's visit.

32. Some of the evidence revealed that the DCO's visit on 31 July (and before) was 'intelligence-led'. Ms Riley repeated this in her submissions, asserting that it was part of the "*relevant background*". We were told nothing of that intelligence. Insofar as that was said by UKAD to be (1) a fact and (2) relevant, we disagree. We ignored the reference to intelligence and speculation as what may lie behind it and such played no part in the resolution of the issues.

33. We also excluded from the hearing as irrelevant (1) unattributed opinion expressed about the Respondent's conduct and motivation, recorded in a computerised police log and (2) the CPS charging advice and decision.

34. Ms Riley's closing submissions followed the shape of her written skeleton argument. She made the point that the Respondent was not charged with evading, refusing or failing to provide a sample but the discrete ADRV of tampering or attempted tampering. She asserted that the Respondent's account was incredible for many reasons. She pointed to fourteen specific matters (in §29 of her skeleton argument) which she said supported that contention.

35. Further she submitted that a "*presumption of credibility*" should apply to MD's evidence since he was (and is) an experienced DCO. She relied upon *Dumbravean v RANAD* TAS 2010/A/2220.

Respondent's case

36. In a few sentences, the Respondent's case was that he believed the DCO was a burglar. As soon as he realised he had made a mistake, he cooperated and offered to provide a sample. He denied intentionally frustrating, obstructing or otherwise subverting the doping control process. His case was that the purpose of his actions was not to subvert the doping control process but to prevent a criminal offence occurring and to have the perpetrator arrested by the police. He said he made a mistake and accepted (as he was bound to) that MD was not a criminal and was not breaking into his home. However, the correctness or otherwise of the Respondent's belief was irrelevant; the issue was whether the Respondent genuinely held that belief at the relevant time. Or, put more accurately, whether UKAD had proved (to the requisite standard) that he did not.

37. He gave an account to us, accepting that his conduct amounted to common assault, for which he apologised. As to the incident, he said he was in bed watching television when at around 21:00 his girlfriend (AB) ran into the bedroom crying. She told him that a person was trying to break into the property. The Respondent had not heard the doorbell ring prior to this. They stayed in the bedroom for a period of time (5/10 minutes he thought) waiting to see if any noise was made by the person he said they believed was trying to burgle the property. During that time they listened and hugged. The Respondent said he looked out of the window, but said he did not see MD; a porch over his front door obscured his line of sight.

38. The Respondent's case was that he and AB had each experienced burglaries when living at their parents' homes. Further, a couple of months before the events of 31 July 2015, an unknown person had attempted to steal the alloy wheels from the Respondent's motor vehicle. He said he was "*anxious and concerned*" about being the victim of another burglary. His girlfriend was "*in a state of extreme upset and anxiety*" and he had no reason to doubt her belief that someone was trying to burgle their home.

39. They heard a sound from the back garden and so he went out there to check. While he was there, his girlfriend went out the front. He said she returned and told him there was a man outside asking "*Is Sam Barlow there?"*

40. The Respondent then went to the front of the property where he saw MD. He said he "*was in a state of considerable agitation and anxiety*". He said he believed the man was a would-be burglar and accused him of attempting to break into his house. He did not recognise him from the test he conducted in 2013: he was one of a number in the squad tested on that occasion, which was over 3 years ago. He said MD did not tell him who he was or that he was there to conduct a test. He did not think it odd that a would-be burglar was asking for him by name notwithstanding that he was well known in the area and popular and it was not unknown for school children to attend asking for his autograph.

41. Initially, he insisted that he did not believe that Mr Dean was a DCO or a representative of UKAD. He based that upon:

    41.1. What AB had told him about someone trying to get in;

41.2. MD's appearance – he said he did not see the words 'doping control' on his shirt nor the white coloured identification badge on his lanyard;

41.3. His manner;

41.4. The fact MD refused to show him his identification, as the Respondent said he did.

42. After viewing his neighbour's CCTV footage, he said he was "*even more convinced"* that MD was a burglar. Therefore, he returned to his home and invited him inside. To the Panel Chairman, he said he thought at the time (before he invited him in) it was "*50/50*" as to whether he was a would-be burglar or a DCO. Indeed in his witness statement he states that he invited him in "*on the basis of him saying he was a drug tester"* (§6 thereof)*.*

43. Once inside, he said he called the police and reported that MD had attempted to get into his home. He denied threatening to punch MD or stopping him from leaving. He said that MD eventually showed him his identification and said, "*look this is who I am"* (§10, p5 of his statement).

44. He waited outside with MD for a short time for the police to arrive. It was only when police arrived and started to question people that he realised that he had made a "*terrible mistake*". He said he immediately made it clear he was willing to submit to a doping control test. He said he was told that UKAD had spoken with another DCO who was going to attend. We saw mobile telephone footage captured by his brother on which he is heard asserting the same and that he was "*willing to take the test".*

45. He told the Panel that when AB reported matters to him, he went into "*defence mode".* He had recently lost a friend. He was on leave from the club because of depression and received medication in respect thereof. He said he had received help with his anger management. He insisted he was not a "*drugs cheat*".

46. In his written statement (§3, p3) he said Derek Beaumont ('DB') told him it was "*not appropriate for random tests to be carried out at* [his] *home".* Therefore, he said he did not expect there to be further home testing. In that respect, he accepted he might

have said to DB that he found the 6 May 2015 home test "*inappropriate and intrusive to his personal space and private life*" (*per* DB's witness statement, p1).

47. We heard from DB. He gave character testimony on the Respondent's behalf. He also confirmed that following that out-of-competition test on 6 May 2015, the Respondent complained to him, saying that the test was "*inappropriate and intrusive to his personal space and private life".* DB said he could not "*recall reading to any great extent"* Dean Hardman's email sent at 16.49 on 15 April 2015 (see §29 hereof).

48. Ashleigh Blackwell (AB) was called. They have lived together for nearly 3 years. She is a qualified physiotherapist. She was at home watching television in the living room when she heard the front door handle "*go*". She heard that through a closed inner door. The doorbell was working but she did not hear it. She was "*really scared"* and went to their bedroom and told the Respondent. She was crying; he was "*panicking"*. They waited in the bedroom listening; at one stage the Respondent shouted out of the window. Then he went out the back to investigate a noise. Despite her thinking the would-be burglar was outside, she went out the front. She said she did so because her boyfriend was "*with her*" by which she said she meant in the rear garden.

49. Before making her written statement, she told us she had not seen that part of the CCTV where she is shown leaving the house, talking to MD and then returning into her house. That may explain why her statement mentions nothing of her returning to the house at this point. She said that she was "*panicking"* when she went out, and disputed that the CCTV showed her calm; she agreed she was not crying. She agreed MD walked towards her but she said he did not say he was a drug tester or show her his identification badge, which she said she did not see. She said she thought it strange he asked for the Respondent by name. She said she walked into the house to get the Respondent, believing he was the would-be burglar.

50. Once he was inside, she said he did not say who he was. He said a few words but otherwise he "*refused*" (as she put it) to speak. She said the Respondent never went to hit MD nor block his path. Once outside she said he waited there until the police arrived.

51. We heard finally from the neighbour Kenny Ball. He saw MD arrive, wait around outside the Respondent's house and thought his conduct (without knowing who he

was or why he as there), generally, "*suspicious"*. He said from looking at the CCTV it appeared to him as though MD tried the Respondent's door handle. He said AB was upset.

52. Mr Welch characterised the Respondent's conduct as a "*terrible misjudgement of the situation that existed on 31 July 2015"*. The Respondent insisted that he "*genuinely believed*" that MD was trying to burgle his home. He did not intend to subvert the doping control procedures or to avoid providing a sample.

53. In (if we may say) his extremely able and cogent closing written and oral submissions, Mr Welch addressed each of UKAD's fourteen points. He will understand that we mean no discourtesy by not repeating them in this document. The submissions were helpful and we had regard to them.

Criminal Proceedings

54. The Respondent was charged with criminal offences arising out of the events of 31 July 2015. We were told that on 23 May 2016 at Bradford Crown Court he pleaded guilty to common assault upon MD. We were told that he did so upon the basis that the assault was not perpetrated with the intent of avoiding the doping control test. Allegations of perverting the course of justice and false imprisonment were not proceeded with. Sentence was adjourned until the completion of these proceedings.

55. In respect of the criminal proceedings, ADR Article 8.3.8:

The facts established by a decision of a court or professional disciplinary tribunal of competent jurisdiction that is not the subject of a pending appeal shall be irrebuttable evidence against the Athlete or other Person to whom the decision pertained of those facts, unless the Athlete or other Person establishes that the decision violated principles of natural justice.

56. Given the basis of plea, but more significantly the fact that the Respondent did not dispute that his conduct amounted to a common assault, Article 8.3.8 and the outcome of the criminal proceedings did not assist us on the central issues.

Determination

57. Elsewhere in this Decision we have explained our approach to certain discrete pieces of evidence. We were not assisted by and ignored events alleged to have occurred on 5 August 2015 nor by what UKAD characterised as a 'failure' to attend for interview with the police. There was nothing in either point.

58. If there are situations where an official's evidence might appropriately be cloaked with a 'presumption of credibility', this was not one of them. While the fact he was a DCO explained why MD attended the property, there is no feature of that occupation or his experience which in our judgment warranted his evidence being afforded some (unspecified but) elevated status. We judged his evidence by exactly the same (fair) standards we applied to (for example) the Respondent's evidence.

59. We heard and read a lot of evidence. In a case such as this it is, in our judgment, important to focus on the issues. The 'law' being settled, we identified the central issues were whether UKAD had proven (namely made us comfortably satisfied) that the Respondent:

    59.1. By his conduct 'tampered' with the doping control process; and

    59.2. Did so with the intention of subverting the doping control process.

60. The Respondent was charged with an ADRV contrary to ADR Article 2.5. The Appendix to the ADR provides the relevant definitions:

    Tampering: *Altering for an improper purpose or in an improper way; bringing improper influence to bear; interfering improperly; obstructing, misleading or engaging in any fraudulent conduct to alter results or prevent normal procedures from occurring.*

    Attempt*: Purposely engaging in conduct that constitutes a substantial step in a course of conduct planned to culminate in the commission of an Anti-Doping Rule Violation. Provided, however, there shall be no Anti-Doping Rule Violation based solely on an Attempt to commit a violation if the Athlete or other Person renounces the Attempt prior to it being discovered by a third party not involved in the Attempt.*

***Doping Control**: All steps and processes from test distribution planning through to ultimate disposition of any appeal, including all steps and processes in between, such as provision of whereabouts information, Sample collection and handling, laboratory analysis, TUEs, results management, hearings and appeals.*

61. The ADRV and definitions are derived from Article 2.5 of the WADC 2015 and the appendix thereto. The WADC commentary to Article 2.5 states:

Comment to Article 2.5: For example, this Article would prohibit altering identification numbers on a Doping Control form during Testing, breaking the B bottle at the time of B Sample analysis, or altering a Sample by the addition of a foreign substance. Offensive conduct towards a Doping Control official or other Person involved in Doping Control which does not otherwise constitute Tampering shall be addressed in the disciplinary rules of sport organizations.

62. The 'tampering' ADRV is more apt to cover and perhaps designed principally to address conduct (for example) relating to interference with sample/s or sample bottle/s. However, the Respondent did not suggest that, subject to the question of his state of mind (namely knowledge and intent) his conduct could or did not amount to 'tampering' within the meaning of the Article 2.5. He did not, for example, suggest this was 'merely' offensive conduct as described in the commentary.

63. With that approach we agree. His conduct (subject to the issues of knowledge and intent) plainly was capable of amounting to tampering. We are comfortably satisfied that the Respondent's conduct obstructed MD in the course of the doping control test he was there to perform. It also prevented him from carrying out the normal procedures in respect thereof.

64. That leads to the next question. Has UKAD proven (to the requisite standard) that the Respondent acted as he did intending to subvert the doping control process? The key to that question is his state of mind at the material time. UKAD must prove that he knew (when he was obstructing him – as we are comfortably satisfied that he was) MD was a DCO. We agree with Mr Welch that it is not the correctness of the (claimed) 'mistake' but the genuineness of it that we must assess.

65. On the issue of his state of mind, we are comfortably satisfied that the Respondent knew MD was a DCO. We are comfortably satisfied that he knew that during the time he confronted him for the first time outside his house. We are so satisfied for the following reasons:

65.1. We saw and heard from MD. On a number of important issues the Respondent (and AB) said he was lying. We reject that. We accept as true and accurate his evidence that outside the house, he told the Respondent he was there to carry out a drug test and showed him his identification badge by lifting it from his chest. He would have every reason to tell the Respondent who he was and why he was there. We cannot see why he would not. Further, to do so would be in keeping with standard practice, which would be expected of a very experienced DCO (like MD). Indeed in his witness statement, the Respondent said MD told him (before he invited him) that he was drug tester (§6, p5)

65.2. Further, and for the same reasons, we accept MD's evidence that when they first met outside the house the Respondent admitted, "*I know you are here to do a test"* and added (importantly in the context of the relevant background) "*I am sick of you lot harassing me".*

65.3. Further, we find it inconceivable that the Respondent did not notice MD's identification badge hanging from the lanyard around his neck. The badge, white in colour, was against his dark clothing. On the CCTV footage it stands out like a ship's beacon on a dark night.

65.4. On the issue of knowledge we also have regard to the Respondent's concession that at this point it was "*50/50*" as to whether MD was a DCO. He must have formed that view *at the time* and based on what he saw and heard. Therefore *at the time* and before he invited him in, on his own case, it was at least equally possible in his own mind that MD may very well have been a DCO (and not a would-be intruder).

65.5. Further, there are, in our judgment, other pieces of evidence which undermine the Respondent's claim that he genuinely believed MD was a burglar:

65.5.1. We find it implausible that if AB told him there was a would-be intruder outside he would hunker down in the bedroom. We saw and heard how he behaved when he went outside and also in the CCTV footage at the police station the next day. That conduct demonstrated, to us, a man more likely to 'fight' than 'flight'.

65.5.2. Further, we find it utterly improbable he would invite a would-be burglar into his home, even for the purpose of having him arrested.

65.5.3. Further, it is a curious burglar who asks for his intended victim by name. That fact must have been obvious to the Respondent (and to AB) at the time.

65.5.4. Further, the fact he knew the man asked for him by name obviously means (and must have been appreciated by the Respondent at the time) that MD was there to see him. He was not an autograph hunter. That fact has to be looked at in the context of his having been drug tested at home (in the recent past). DB's evidence was that he told him it was inappropriate for him to be tested at home, not, for example, that it would never happen. That should and we find must have alerted him to the reality that MD was not a would-be burglar.

65.5.5. Further, it must have been apparent that MD waited outside the premises for an appreciable period, a further fact obviously inconsistent with his being an intended intruder.

66. It follows that we rejected AB's evidence that she believed MD was a would-be intruder.

66.1. We have dealt with her alleged disclosure in the bedroom (see §65.5.5 hereof).

66.2. On her own account she went outside fearing the would-be intruder may still be there. We find that odd, to say the least. The explanation that she had the Respondent with her does not hold water when he was said to be in the rear garden at the time.

66.3. She said she was "*panicking"* when she went out. The CCTV has its limitations, which we recognise. However, she is walking and clearly looking for someone; she folds her arms across her chest and rolls up her trouser legs as MD appears in shot. It does not show any sign of distress or panic. If she was panicking, it is more probable that she would not have gone out at all.

66.4. On her own account the would-be intruder then came back to speak to her. She must have found that odd; presumably if he tried the handle with a view to gaining entry, was frustrated because it was locked, he would have left rather than hang around and then engage in conversation with his intended victim. Obvious to us and to her, at the time, we conclude.

66.5. On her account, he asked for her boyfriend by name. She said that was "*strange*". That is something of an understatement if he was intent on committing burglary (of her home).

66.6. Like her boyfriend we find it implausible that she too missed his identification badge and lanyard. It is clear as can be; the police saw it, as could we on the CCTV and on a photograph taken of him days later. While the full words "*doping control" on his shirt* cannot be seen (on that black and white photograph) the multi-coloured lanyard and identification badge are apparent 'front and centre'.

66.7. We also accept MD's evidence on the content of the conversation he had with her at this point. His account to us was consistent with his statement, made shortly after the incident. Further, there is every good reason why he would tell her who he was and why he was there, namely "*to conduct a test*".

67. As to some of the further specific arguments raised by Mr Welch:

67.1. The "*inescapable fact*" that he was prepared to take the test: he was but that was something he said only after the police had arrived. That is entirely consistent with the realisation on his part that his conduct had failed and he was in trouble. Further, he is not charged with evading or refusing.

67.2. If he wished to avoid taking a test, he need not have answered the door or gone out: that is true but that argument is also the product of rational thought after the event and presumes the Respondent thought about that at the time. Further, we have to assess what he did, not what he might have done.

68. We are comfortably satisfied that he knew MD was a DCO when he confronted him for the first time outside his house. Once satisfied as to that, the next issue is whether we are comfortably satisfied he acted as he did intending to subvert the doping control process. Having rejected his 'burglar' explanation, and he advanced no other, we can see no other reasonable or sensible explanation for his conduct but that it was intended to subvert that process. We do not have to conclude why he did it. It is wholly plausible that he did so because he was infuriated that once more a DCO had attended to test him at home, which he considered an unnecessary and unwarranted intrusion into his private life. Further or alternatively it is also credible that it was because he believed he was being unfairly targeted. Both explanations fit with what he had said to DB before and said to MD at the scene: "*I am sick of you lot harassing me".*

69. It follows that we are comfortably satisfied that UKAD established the ADRV contrary to ADR Article 2.5.

C. SANCTION

70. Pursuant to ADR Article 10.3.1, the applicable period of ineligibility is four years, unless the Respondent can establish that the commission of the ADRV was not intentional.

71. There was no issue that the applicable period of ineligibility was four years if the ADRV was established. None of the potential grounds for reducing that period apply nor did the Respondent suggest they did. That is the sanction we are enjoined to impose and do so.

72. Pursuant to ADR 10.11.3 the period of ineligibility of four years will commence on 23 November 2015.

73. The Respondent's status during the period of Ineligibility is as provided in ADR Article 10.12.

D. SUMMARY

74. For the reasons set out above, the Tribunal finds:

(a) The ADRV contrary to Article 2.5 has been established.

(b) The period of ineligibility imposed is four years commencing on 23 November 2015.

E. RIGHT OF APPEAL

75. In accordance with ADR Article 13 the parties may appeal against this decision by lodging a Notice of Appeal according to the applicable time limits.

Christopher Quinlan QC, Chairman

On behalf of the Tribunal

27 June 2016

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