

Issued Decision

UK Anti-Doping and Nathan Togun

Disciplinary Proceedings under the Anti-Doping Rules of the British Bobsleigh & Skeleton Association

This is an Issued Decision made by UK Anti-Doping Limited ('UKAD') pursuant to the Anti-Doping Rules ('ADR') of the British Bobsleigh & Skeleton Association ('BBSA'). It concerns an Anti-Doping Rule Violation ('ADRV') committed by Mr Nathan Togun contrary to Article 2.5 of the 2015 ADR and a separate violation of Article 10.12.1 of the 2019 ADR.

Capitalised terms used in this Decision shall have the same meaning given to them in the ADR unless otherwise indicated.

General background

1. The BBSA is the national governing body for the sports of bobsleigh and skeleton in the UK. UKAD is the National Anti-Doping Organisation for sport in the UK. The BBSA has adopted the UK Anti-Doping Rules as its own ADR. At the material times in this matter the governing ADR were the 2015 UK Anti-Doping Rules¹ (the '2015 ADR') and the 2019 UK Anti-Doping Rules² (the '2019 ADR'). Pursuant to Article 1.6.2(d) of the 2021 UK Anti-Doping Rules³ (the '2021 ADR') the procedural aspects of this case are governed by the 2021 ADR. The 2015 ADR and 2019 ADR still apply as the substantive ADR in this case.⁴
2. Mr Togun is a 27-year-old bobsledder. At all material times in this matter, Mr Togun was subject to the jurisdiction of the BBSA and bound to comply with the ADR.
3. On 6 October 2018, UKAD collected an Out-of-Competition urine Sample from Mr Togun. Analysis of the A Sample returned Adverse Analytical Findings ('AAFs') for three metabolites of stanozolol, namely 4 β -hydroxystanozolol, stanozolol-N-glucuronide and epistanozolol-N-glucuronide. Pursuant to a UKAD Issued Decision dated 5 August 2019, which confirmed that Mr Togun had committed an ADRV contrary to 2015 ADR Article 2.1 (the 'original ADRV') a four (4) year period of Ineligibility was imposed on him. Mr Togun's original period of Ineligibility

¹ Version 1.0, in effect as from 1 January 2015.

² Version 2.0, in effect as from 1 October 2019.

³ Version 1.0, in effect as from 1 January 2021.

⁴ Unless a *lex mitior* in the 2021 ADR in relation to Consequences should apply instead. UKAD does not consider that there is an applicable *lex mitior* in this case.

commenced on 13 November 2018 and expired at midnight on 12 November 2022. During his period of Ineligibility Mr Togun remained subject to the ADR.

Background and facts: Tampering ADRV

4. On 22 November 2018, after being charged with the original ADRV, Mr Togun produced to UKAD a copy of a '*Statement of fitness for work*' certificate. This purported to confirm that Mr Togun was not fit for work. The comments section of the certificate included the words '*Med stanzolol prescribed*'. In an email of the same date, Mr Togun explained that he had been given the "medication" from a medical professional.
5. On 24 December 2018 Mr Togun's then legal representative confirmed Mr Togun's intention to apply for a retroactive Therapeutic Use Exemption ('TUE') for stanozolol. On the same day, the legal representative sent UKAD two screenshots of the '*Statement of fitness for work*' certificate.
6. On 8 February 2019 Mr Togun's legal representative explained that Mr Togun would no longer be submitting a retroactive TUE application.
7. Thereafter UKAD made enquiries to establish the veracity of the '*Statement of fitness for work*' certificate, including enquiries with the GP Practice which the certificate was purported to have been issued by. These enquiries established that the GP Practice had no record of having issued the certificate and that the signature was not recognisable as belonging to any practitioners at the Practice. This is consistent with the fact that stanozolol is not licensed for use as a medication in the UK.
8. On 25 February 2020 Mr Togun was interviewed by UKAD investigators. During this interview Mr Togun explained that he believed the '*Statement of fitness for work*' certificate was genuine when he presented it to UKAD however only later began to realise the certificate was not genuine after consulting his then legal representative.
9. On 25 June 2021, UKAD sent Mr Togun a Notice Letter (the 'Notice'). The Notice formally notified Mr Togun that he may have committed an ADRV pursuant to 2015 ADR Article 2.5 (Tampering or Attempted Tampering with any part of the doping control process).
10. On 12 November 2021, Mr Togun responded to the Notice and reiterated the position he gave at interview with UKAD, that he believed the '*Statement of fitness for work*' certificate was genuine when he presented it to UKAD.

11. On 11 November 2022, UKAD proceeded to issue Mr Togun with a Charge Letter in accordance with 2021 ADR Article 7.11.2. The Charge Letter asserted the commission of an ADRV pursuant to 2015 ADR Article 2.5.
12. On 14 February 2023, Mr Togun admitted to committing an Article 2.5 ADRV in that he confirmed that he allowed the 'Statement of fitness for work' certificate to be provided to UKAD on or around 13 November 2018 until 8 February 2019 which was false.

Consequences: Tampering ADRV

13. 2015 ADR Article 2.5 provides that the following is an ADRV:

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.

14. 2015 ADR Article 10.3.1 provides:

For an Anti-Doping Rule Violation under Article 2.3 or Article 2.5 that is the Athlete's or other Person's first anti-doping offence, the period of Ineligibility shall be four years unless, in a case of failing to submit to Sample collection, the Athlete can establish that the commission of the Anti-Doping Rule Violation was not intentional (as defined in Article 10.2.3), in which case the period of Ineligibility shall be two years.

15. In respect of multiple violations 2015 ADR Article 10.7.1 provides:

For an Athlete's or other Person's second Anti-Doping Rule Violation, the period of Ineligibility shall be the greater of:

(a) six months

(b) one-half of the period of Ineligibility imposed for the first Anti-Doping Rule Violation without taking into account any reduction under Article 10.6; or

(c) twice the period of Ineligibility otherwise applicable to the second Anti-Doping Rule Violation treated as if it were a first violation, without taking into account any reduction under Article 10.6.

The period of Ineligibility established above may then be further reduced by the application of Article 10.6.

16. Since this matter concerns Mr Togun's second ADRV, the period of Ineligibility to be applied is twice the period of Ineligibility applicable to the second ADRV treated as if it were the first violation. If this was Mr Togun's first ADRV, in accordance with 2015 ADR Article 10.3.1, the period of Ineligibility to be applied would be four (4) years. At no stage has Mr Togun sought to adduce evidence that he qualifies for a reduction in sanction in accordance with 2015 ADR Article 10.6. Accordingly, the applicable period of Ineligibility to be imposed in respect of Mr Togun's Article 2.5 ADRV is eight (8) years, being twice the period of Ineligibility applicable to the second ADRV treated as if it were the first violation.

Background and facts: Breach of original period of Ineligibility

17. Separately, Mr Togun committed a violation of 2019 ADR Article 10.12.1 in that he breached his original period of Ineligibility which commenced on 13 November 2018 and expired at midnight on 12 November 2022.

18. An Athlete's status during a period of Ineligibility is set out at 2019 ADR Article 10.12.1 as follows:

An Athlete or other Person who has been declared Ineligible may not, during the period of Ineligibility, participate in any capacity (or, in the case of an Athlete Support Person, assist any Athlete participating in any capacity) in a Competition, Event or other activity (other than authorised anti-doping education or rehabilitation programmes) organised, convened, authorised or recognised by (a) the NGB or by any body that is a member of, or affiliated to, or licensed by the NGB; (b) any Signatory; (c) any club or other body that is a member of, or affiliated to, or licensed by, a Signatory or a Signatory's member organisation; (d) any professional league or any international- or national-level Event organisation; or (e) any elite or national-level sporting activity funded by a governmental agency...

19. The term "assist" is not specifically defined in the 2019 ADR.⁵ However, the comment to Article 2.10 of the 2015 World Anti-Doping Code (which addresses Prohibited Association on the part of Athletes) states:

⁵ Or any of the subsequent versions of the UK ADR.

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

20. In late 2019 UKAD became aware of an allegation that Mr Togun had violated the prohibition against participation during his period of Ineligibility. Specifically, the allegation was founded on the suggestion that Mr Togun assisted a professional boxer licensed by the British Boxing Board of Control ('BBBoC') in preparation for a bout.

21. On 25 February 2020, Mr Togun attended an interview with UKAD. During the interview Mr Togun admitted that, while serving his original period of Ineligibility, he partook in sparring sessions with said boxer and assisted him with strength and conditioning sessions. This assistance began in late 2019 and ended in February 2020 when UKAD notified Mr Togun that this was in breach of the terms of his ban. Mr Togun asserted that he believed he could provide this assistance to the boxer, despite serving a ban from sport. Mr Togun stated that he believed his ban prohibited him from assisting Athletes in bobsleigh and athletics only, since these were the two sports which he competed in prior to being banned.

UKAD's conclusion on breach of ban and Consequences

22. Following a full investigation, UKAD concluded that Mr Togun breached 2019 ADR Article 10.12.1 by acting as an Athlete Support Person during his period of Ineligibility and assisting an Athlete to participate in Competitions or Events organised, convened, authorised or recognised by the BBBoC.

23. 2019 ADR Article 10.12.5 sets out the consequences of breaching the terms of a period of Ineligibility:

If an Athlete or other Person who is Ineligible violates the prohibition against participation during Ineligibility set out in Article 10.12.1, any results he/she obtained during such participation shall be Disqualified, with all resulting Consequences, including forfeiture of all medals, titles, points and

prizes, and a new period of Ineligibility equal in length to the original period of Ineligibility shall be added to the end of the original period of Ineligibility. The new period of Ineligibility may be adjusted based on the Athlete's or other Person's degree of Fault and other circumstances of the case. The determination of whether an Athlete or other Person has violated the prohibition against participation, and whether an adjustment is appropriate, shall be made by the Anti-Doping Organisation which brought the charge that led to the initial period of Ineligibility. This decision may be appealed under Article 13.

24. Pursuant to Article 11.1 (and its associated comment) of the World Anti-Doping Agency's International Standard for Results Management 2021, the Results Management relating to this matter shall be *mutatis mutandis* in accordance with Article 7 and Article 8 of the 2021 ADR.

25. In accordance with 2019 ADR Article 10.12.5, the starting point for Mr Togun's new period of Ineligibility is four (4) years, i.e. being a period equal in length to his original period of Ineligibility. The new period of Ineligibility can be adjusted based on Mr Togun's degree of Fault and other circumstances of the case.

Fault

26. In assessing Mr Togun's level of Fault UKAD has had regard to the definition of Fault within the ADR:

Fault is any breach of duty or any lack of care appropriate to a particular situation. Factors to be taken into consideration in assessing an Athlete or other Person's degree of Fault include, for example, the Athlete's or other Person's experience, whether the Athlete or other Person is a Minor, special considerations such as impairment, the degree of risk that should have been perceived by the Athlete and the level of care and investigation exercised by the Athlete in relation to what should have been the perceived level of risk. In assessing the Athlete's or other Person's degree of Fault, the circumstances considered must be specific and relevant to explain the Athlete's or other Person's departure from the expected standard of behaviour. Thus, for example, the fact that an Athlete would lose the opportunity to earn large sums of money during a period of Ineligibility, or the fact that the Athlete only has a short time left in his or her career, or the timing of the

sporting calendar, would not be relevant factors to be considered in reducing the period of Ineligibility under Article 10.5.1 or 10.5.2.

27. UKAD has accordingly taken account of the following factors in assessing the degree of Mr Togun's Fault:

Factors Increasing the Level of Fault

28. The factors which UKAD considers increase Mr Togun's level of Fault are as follows:

- (a) Experience: Mr Togun was an experienced Athlete who was a member of Great Britain's Bobsleigh and Skeleton squad. He should therefore have been acutely aware of his obligations under the ADR.
- (b) Knowledge of terms of Ineligibility: Mr Togun's status as an ineligible Athlete was explained to him by UKAD in a letter dated 26 September 2019. This letter included the following statement:

'Article 10.12.1 of the UK Anti-Doping Rules applies to your situation and states that you may not:

'participate in any capacity (or, in the case of an Athlete Support Person, assist any Athlete participating in any capacity) in a Competition, Event or other activity (other than authorised anti-doping education or rehabilitation programmes) organised, convened, authorised or recognised by (a) the NGB or by any body that is a member of, or affiliated to, or licensed by the NGB; (b) any Signatory; (c) any club or other body that is a member of, or affiliated to, or licensed by, a Signatory or a Signatory's member organisation; (d) any professional league or any international- or national-level Event organisation; or (e) any elite or national-level sporting activity funded by a governmental agency.'

...

some of the activities you are prohibited from include:

...

- *Coaching, mentoring, instructing, or assisting a club/team or other athletes in any other way ...'*

- (c) Level of Care: Mr Togun exercised little if any care or investigation in relation to the risk of providing strength and conditioning assistance and partaking in sparring sessions with the Athlete. He did not make any enquiries with UKAD, in spite of the letter sent to him on 26 September 2019 outlining the extent of his Ineligibility from sport and noting that if he was in any doubt, he should contact UKAD before participating in that activity.

Factors Reducing the Level of Fault

29. As to factors which may reduce Mr Togun's level of Fault UKAD has taken the following into account:

- (a) Admissions: Mr Togun has not sought to deny that he provided assistance to the Athlete, as demonstrated by the admissions he made during his interview with UKAD.
- (b) Termination of assistance once notified: Once notified of the breach, Mr Togun terminated his assistance to the Athlete.
- (c) Breach involved a single Athlete: The breach involved a single Athlete in a sport unrelated to that which Mr Togun had previously competed in.
- (d) Period of breach: The breach was committed over a period of approximately 3 months.

Other circumstances of the case

30. UKAD accepts that Mr Togun's breach of ban was not intentional. There is no suggestion that he knowingly breached his ban or that he knew there was a significant risk that he was breaching his ban and manifestly disregarded that risk. Mr Togun's intent has been considered when determining the further period of Ineligibility to be served in respect of his breach of ban.

Breach of ban: period of Ineligibility

31. In light of all of the matters set out above, UKAD applied a reduction of three years to the new period of Ineligibility in respect of Mr Togun's breach of his original ban, resulting in a further period of Ineligibility of one (1) year pursuant to 2019 ADR Article 10.12.

32. The new period of Ineligibility of one (1) year, in respect of Mr Togun's breach of his original period of Ineligibility, was proposed to him in the Charge Letter dated

25 October 2022.⁶ Mr Togun accepted this new period of Ineligibility in respect of the breach of his original ban on 11 November 2022.

Commencement of the period of Ineligibility

33. 2021 ADR Article 10.13 requires that, ordinarily, a period of Ineligibility will start on the date Ineligibility is accepted or otherwise imposed where there is no hearing.
34. However, 2021 ADR Article 10.13.2 allows for credit to be given against the total period of Ineligibility to be served where an Athlete has been provisionally suspended and has respected the terms of the Provisional Suspension.
35. Mr Togun was provisionally suspended on 13 November 2022 and as far as UKAD is aware, he has respected the terms of that Provisional Suspension.
36. The period of Ineligibility, which totals nine (9) years,⁷ is therefore deemed to have commenced on 13 November 2022 and will expire at 11:59pm on 12 November 2031.

Status during Ineligibility

37. During the period of Ineligibility, in accordance with 2021 ADR Article 10.14.1, Mr Togun shall not be permitted to participate in any capacity (or assist any Athlete participating in any capacity) in a Competition, Event or other activity (other than authorised anti-doping education or rehabilitation programmes) organised, convened, authorised or recognised by:
- a. BBSA;
 - b. Any Signatory;
 - c. Any club or other body that is a member of, or affiliated to, or licensed by, a Signatory or a Signatory's member organisation;
 - d. Any professional league or any international or national-level Event organisation; or
 - e. Any elite or national-level sporting activity funded by a governmental agency.
38. Mr Togun may return to train with a team or to use the facilities of a BBSA club or Signatory's member organisation during the last two months of his period of Ineligibility (i.e. from midnight on 12 September 2031).

⁶ In accordance with 2021 ADR Article 10.14.6.

⁷ Being eight (8) years for the 2015 ADR Article 2.5 violation and one (1) year for the 2019 ADR Article 10.12.1 violation. The period of Ineligibility is to be served consecutively in accordance with 2019 ADR Article 10.12.5.

Summary

39. For the reasons given above, UKAD has issued this decision in accordance with 2021 ADR Article 7.12.2 and records that:
- a. Mr Togun has committed an ADRV pursuant to 2015 ADR Article 2.5;
 - b. This constitutes Mr Togun's second ADRV. In accordance with 2015 ADR Article 10.7.1 the applicable period of Ineligibility is eight (8) years;
 - c. Separately, Mr Togun has committed a violation of the prohibition against assisting Athletes pursuant to 2019 ADR Article 10.12.1;
 - d. A further period of Ineligibility of one (1) year shall be imposed pursuant to 2019 ADR Article 10.12.5;
 - e. The total further period of Ineligibility to be applied in respect of Mr Togun's 2015 ADR Article 2.5 violation and 2019 ADR Article 10.12.1 violation is therefore nine (9) years;
 - f. Acknowledging Mr Togun's Provisional Suspension, the period of Ineligibility is deemed to have commenced on 13 November 2022 and will expire at 11:59pm on 12 November 2031; and
 - g. Mr Togun's status during the period of Ineligibility shall be as detailed in 2021 ADR Article 10.14.
40. Mr Togun, BBSA, the International Bobsleigh and Skeleton Federation and WADA have a right to appeal against this decision or any part of it in accordance with ADR Article 13.4.
41. This decision will be publicly announced via UKAD's website in accordance with 2021 ADR Article 8.5.3 and 2021 ADR Article 10.15.

2 August 2023