SR/243/2024

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

Before:

Jeremy Summers (Chair)
Carole Billington-Wood
Dr Paul Jackson

BETWEEN:

UK Anti-Doping

Anti-Doping Organisation

and

Joshua Lynch

Respondent

DECISION OF THE NATIONAL ANTI-DOPING PANEL

Introduction

1. This is the unanimous decision of an Anti-Doping Tribunal (the '**Tribunal**') convened under Article 5.1 of the 2021 Procedural Rules of the National Anti-Doping Panel (the **'Procedural Rules'**) and Article 8.1 of the UK Anti-Doping Rules dated 1 January 2021 (the '**ADR**') to determine an Anti-Doping Rule Violation ('**ADRV**') alleged against Mr Joshua Lynch (the '**Athlete**').

2. The alleged ADRVs were violations of ADR Article 2.1 (presence of a Prohibited Substance in the Athlete's Sample) and ADR Article 2.2 (Use or Attempted Use of a Prohibited Substance).

3. The Athlete was charged by letter issued by UK Anti-Doping ('**UKAD**') dated 30 May 2024. The Chair was appointed by Kate Gallafent KC, President of the National Anti-Doping Panel (the '**NADP**') on 22 July 2024, whilst Carole Billington-Wood and Dr Paul Jackson was appointed to the Tribunal on 28 October 2024.

4. The Athlete attended a remote hearing via video conference on 10 December 2024, and was represented by Mr Fergus McCombie, barrister. UKAD was represented by Mr Ciaran Cronin. The Tribunal records its gratitude to both advocates for their assistance in this matter.

5. Additionally, present at the hearing on 10 December 2024 were:

For UKAD

Stacey Cross, Deputy Director of Legal and Regulatory Affairs

Joseph Wightman, Legal Officer

For the Athlete

Joshua Lynch, Athlete

Tim Lynch, the Athlete's father

Anthony Bowe, Witness

NADP Secretariat

Eleanor Stocker, Case Manager

6. This is the reasoned decision of the Tribunal. Each member contributed to it, and it represents our conclusions. It is necessarily a summary. It is reached after appropriate consideration of all the evidence, submissions and other material placed before us. Nothing is to be read into the absence of specific reference to any aspect of the material

or submissions before us. We considered and gave appropriate weight to it all.

7. Words and expressions defined in the ADR, unless the context otherwise requires, have the same meaning in this decision.

Jurisdiction

8. Jurisdiction was not challenged, but for completeness the Athlete is a rugby league player, who at the material time was a player at Warrington Wolves and registered with the Rugby Football League (**'RFL'**) as a participant in Competitions and other activities organised, convened, authorised or recognised by the RFL. He was therefore bound to comply with the ADR.

9. UKAD accordingly has jurisdiction in this matter pursuant to ADR Article 1.2.1.

Background

10. On 14 December 2023, under Mission Order M-2662567074, a UKAD Doping Control Officer (‘**DCO**’) collected a urine Sample from the Athlete Out-of-Competition, at a training session held by Warrington Wolves.

11. With the assistance of the DCO, the Athlete split the urine Sample into two separate bottles which were given reference numbers A1192472 (the ‘**A Sample’**) and B1192472 (the ‘**B Sample**’).

12. Both samples were transported to the World Anti-Doping Agency (‘**WADA**’) accredited laboratory in London. The A Sample was analysed in accordance with the procedures set out in WADA’s International Standard for Laboratories. Analysis of the A Sample returned an Adverse Analytical Finding (‘**AAF**’) for ibutamoren at an estimated concentration of 0.01ng/mL.

13. Ibutamoren (also known as ‘**MK-677’**) is prohibited under section S2 of the WADA 2023 Prohibited List as a Growth Hormone. It is a non-Specified Substance which is prohibited at all times.

14. A Therapeutic Use Exemption ('**TUE**') would not have been granted for ibutamoren in any event, but for completeness the Athlete did not have one.

15. On 2 February 2024, UKAD sent the Athlete a letter (the '**Notice Letter'**) formally notifying him, in accordance with ADR Article 7.8, that he may have committed:

    i. An ADRV pursuant to ADR Article 2.1, in that the Prohibited Substance, ibutamoren, was present in the urine Sample provided by the Athlete on 14 December 2023; and

    ii. An ADRV pursuant to ADR Article 2.2, in that the Athlete had used a Prohibited Substance, namely ibutamoren, on or before 14 December 2023.

16. On 8 February 2024, UKAD was advised by the Athlete's representative that he wished to have his B Sample analysed. The B Sample analysis took place on 28 February 2024.

17. On 1 March 2024, the Athlete was informed by UKAD that analysis of the B Sample had also returned an AAF for ibutamoren, confirming the AAF reported in respect of the A Sample. The estimated concentration of ibutamoren detected in the B Sample was approximately 0.02ng/mL.

18. On 11 April 2024, through a letter sent by his previous legal advisors, the Athlete indicated that he accepted the ADRVs but wished to challenge the Consequences specified in the Notice Letter on the basis that he had never knowingly or intentionally used ibutamoren or any other Prohibited Substance.

19. At the request of the Athlete, the issue of the Charge Letter was delayed enabling him to continue investigations into the source of the ibutamoren.

The Charge

20. As above, the Athlete was charged by letter dated 30 May 2024, which stated:

    "3.4 UKAD therefore proceeds to charge you with the commission of:

    1. An ADRV pursuant to ADR Article 2.1, in that the Prohibited Substance, ibutamoren, was present in the urine Sample provided by you on 14 December 2023; and

2. An ADRV pursuant to ADR Article 2.2, in that you Used a Prohibited Substance, namely ibutamoren, on or before 14 December 2023."

21. ADR Articles 2.1 and 2.2 provide as follows:

> ***"2.1 Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample, unless the Athlete establishes that the presence is consistent with a TUE granted in accordance with Article 4***
>
> *2.1.1 It is each Athlete's personal duty to ensure that no Prohibited Substance enters their body. An Athlete is responsible for any Prohibited Substance or any of its Metabolites or Markers found to be present in their Sample. Accordingly, it is not necessary to demonstrate intent, Fault, negligence or knowing Use on the Athlete's part in order to establish an Article 2.1 Anti-Doping Rule Violation; nor is the Athlete's lack of intent, Fault, negligence or knowledge a valid defence to an assertion that an Article 2.1 Anti-Doping Rule Violation has been committed.*
>
> *[2.1.2-2.1.4]*
>
> *2.2 **Use or Attempted Use by an Athlete of a Prohibited Substance or a Prohibited Method, unless the Athlete establishes that the Use or Attempted Use is consistent with a TUE granted in accordance with Article 4***
>
> *2.2.1 It is each Athlete's personal duty to ensure that no Prohibited Substance enters their body and that no Prohibited Method is Used. Accordingly, it is not necessary to demonstrate intent, Fault, negligence or knowing Use on the Athlete's part in order to establish an Anti-Doping Rule Violation for Use of a Prohibited Substance or a Prohibited Method; nor is the Athlete's lack of intent, Fault, negligence or knowledge a valid defence to an assertion that an Article 2.2 Anti-Doping Rule Violation of Use has been committed.*
>
> *[2.2.2-2.2.4]"*

22. It was common ground that this was the Athlete's first ADRV. As such ADR Article 10.2 applied:

> ***"10.2 Imposition of a Period of Ineligibility for the Presence, Use or Attempted Use, or Possession of a Prohibited Substance and/or a Prohibited Method***

The period of Ineligibility for an Anti-Doping Rule Violation under Article 2.1, 2.2 or 2.6 that is the Athlete's or other Person's first anti-doping offence shall be as follows, subject to potential elimination, reduction or suspension pursuant to Article 10.5, 10.6 or 10.7:

10.2.1 Save where Article 10.2.4(a) applies, the period of Ineligibility shall be four (4) years where:

(a) The Anti-Doping Rule Violation does not involve a Specified Substance or a Specified Method, unless the Athlete or other Person can establish that the Anti-Doping Rule Violation was not intentional.

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

10.2.2 If Article 10.2.1 does not apply, then (subject to Article 10.2.4(a)) the period of Ineligibility shall be two (2) years.

10.2.3 As used in Article 10.2, the term "intentional" is meant to identify those Athletes or other Persons who engage in conduct which they know constitutes an Anti-Doping Rule Violation or they know that there is a significant risk that the conduct might constitute or result in an Anti-Doping Rule Violation and they manifestly disregard that risk.

[(a) and (b) 10.2.4]"

23. The substances found in the Athlete's AAF were not specified substances for the purposes of the ADR. Accordingly, the burden rested on the Athlete to establish, on the balance of probabilities, that the ADRV was not intentional pursuant to ADR Article10.2.1(a) above. For the purposes of meeting that test "intentional" being as defined in ADR Article10.2.3 above.

24. The Athlete asserted that the ADRV should not be held as being intentional. He additionally sought to place reliance on ADR Article 10.6, and specifically, ADR Article 10.6.2 to further reduce any period of Ineligibility to be imposed:

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

10.6.2 Application of No Significant Fault or Negligence beyond Article 10.6.1:

In an individual case where Article 10.6.1 is not applicable, if an Athlete or other Person establishes that they bear No Significant Fault or Negligence for the Anti-Doping Rule Violation asserted against them, then (subject to further reduction or elimination as provided in Article 10.7) the otherwise applicable period of Ineligibility may be reduced based on the Athlete's or other Person's degree of Fault, but the reduced period of Ineligibility may not be less than one-half of the period of Ineligibility otherwise applicable. If the otherwise applicable period of Ineligibility is a lifetime, the reduced period may be no less than eight (8) years."

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

"No Significant Fault or Negligence:

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

26. The Athlete did not advance an argument that he had acted with No Fault or Negligence.

27. UKAD noted that the Athlete had accepted the commission of the ADRVs and that thereafter the burden was on the Athlete to establish, on the balance of probabilities, that he had not acted intentionally and, if so, whether he could further establish, to the same standard, that he had acted with No Significant Fault or Negligence.

28. UKAD did not advance a positive position on either point, but submitted that the Tribunal would need to consider the evidence advanced on behalf of the Athlete with great care, before being able to be satisfied that he had discharged the burden of proof which rested upon him.

The Evidence

<u>UKAD</u>

29. UKAD provided written witness statements from Mr Nick Wojeck, Head of Science and

Medicine at UKAD and Professor David Cowan. The Athlete did not require either witness to be available for cross-examination.

30. Mr Wojeck stated that that ibutamoren is not approved for human use anywhere in the world and is illegal to sell (although is available on the black market). He also outlined the anabolic and/or lipolytic effect ibutamoren can have on the human body, and explained why it may appeal to a rugby league player attempting to enhance their lean body mass, physique, power, strength, or recovery from injury.

31. Professor Cowan submitted an opinion addressing the case advanced by the Athlete that the source of the AAF lay in a drink that had been prepared for him by his friend Mr Bowe. In Professor Cowan's opinion this was a plausible explanation for the concentration estimate of the Athlete's AAF. Professor Cowan further stated that a pharmacologically effective dose of ibutamoren of between 20 to 40mg taken between three to five days before Sample collection would also be a plausible explanation for the AAF. He was unable to offer an opinion as to which scenario was more likely.

32. In response to a written question from the Tribunal issued in advance of the hearing, Professor Cowan also provided the following evidence:

> *"Thank you for sending me the WADA ADAMS Lab Results for the urine Sample collected on 22 January 2024, which I have now had the opportunity to review.*
>
> *Having considered the question from the Panel Chair, Mr Jeremy Summers, I can advise that in my opinion the negative finding of ibutamoren in the urine Sample collected on 22 January 2024 is supportive of a single use of the substance as described by Mr Lynch and recorded in my expert report of 10 October 2024 rather than repeated use.*
>
> *Daily dosing of ibutamoren is the dosing interval recommended on the websites of organisations selling this drug via the internet and, should Mr Lynch have been using the drug regularly, I would expect such use to be apparent by way of an Adverse Analytical Finding on the urine Sample collected on 22 January 2024 rather than the negative result reported.*
>
> *I hope this opinion is of assistance to the Panel."*

33. The Tribunal also considered evidence relating to the Athlete's anti-doping training

education.[1]

Evidence from the Athlete

34. The Tribunal heard live testimony from the Athlete who confirmed that he wished to adopt his written statement dated 29 September 2024.

35. He spoke, in candid terms, which clearly caused him some distress, about the traumatic bereavement of a close family member on 26 September 2023 and the subsequent funeral on 17 October 2023. He explained the guilt he felt surrounding that death, and how it had affected him.

36. In cross examination, he confirmed that the test on 14 December 2023 had occurred in the pre-season and gave details of his training regime during that time. He noted that his pre-season had been shortened by the fact that he had played an international match for Wales in the off-season window.

37. He had been tested quite regularly, both as a rugby player and previously as a weightlifter, and had experience of completing Doping Control forms ('**DCF**').

38. He was referred to the DCFs he had completed in respect of the tests he had taken on 17 September 2023 and 22 January 2024.[2] In contrast to the detail he provided on these DCFs, he had not listed the supplements he was taking on the DCF completed on 14 December 2023, which related to the AAF now under consideration.

39. The Athlete explained that (because of the recent bereavement), his head had not been in the right space, there had been a lot of emotion and that his normal routine had therefore not been there.

40. He could not recall when he had started using the whey supplement which he had given to Mr Bowe to make (on 12 December 2023), but thought this might have been around November 2023, and that it had possibly been recommended by his club nutritionist. He was not taking it every day, just when he felt like it.

[1] Statement from Brodie Edmead dated 22 October 2024.
[2] Hering bundle pages 160 and 161

41. He had known Mr Bowe since they had been at school together and felt that they met up every week/ two weeks. They had been to gyms together before, although Mr Bowe had no sporting background.

42. He confirmed that he had spoken by phone with Mr Bowe twice on 11 December 2023 (the day before they went to the gym). He could not recall the detail of the conversation but suspected the first might have been to arrange to go to the gym the following day and the second would have been discussing the online game they both play.

43. He could not recall which gym that had gone to on 12 December 2023, because they went to a number at the time. He had probably done a whole body session, and Mr Bowe would have done what he felt like.

44. He did not think that Mr Bowe had appeared physically bigger at the time.

45. He could not recall who had suggested going back to Mr Bowe's house.

46. He had his whey with him, because this was always kept in his car. He did not have his shaker with him at the time and could not explain why.

47. He had told Mr Bowe to just add water to his whey and had not asked Mr Bowe what drink he was making for himself. He could not remember if he had asked whether separate cups would be used.

48. He confirmed that he had not asked Mr Bowe:

- What he was going to put in his drink;
- Which drink he would make first;
- Whether the blades (in the shaker) had been cleaned; or
- Whether other people used the shaker.

49. He had not spoken to Mr Bowe about his anti-doping obligations. He accepted that he should have watched Mr Bowe make the shake, but he had not done so because he had been in his own world following the recent family bereavement.

50. When he received the Notice Letter in February 2024, he had been upset and had spoken to his agent, head coach and mother.

51. He thought he had not spoken to Mr Bowe about the AAF until about a month later but could not now recall the actual date. He was pretty sure Mr Bowe had talked about his use of ibutamoren during that call. He had been shocked and angry and had then consulted solicitors.

52. He again confirmed that he had not previously noted any change in Mr Bowe's appearance.

53. The Tribunal next received oral evidence from Mr Bowe who confirmed his statement dated 26 September 2023. This was shared with him on the screen, as he appeared not to have a copy available to him at the time.

54. He confirmed that he had no sporting background, was not subject to the ADR and had no knowledge of the anti-doping regime.

55. He stated, with candor, that he had purchased the ibutamoren on 9 October 2023[3]. He had done so because he had always been smaller, had struggled to gain weight and wanted to be like the other people around him. In his perception, so many other people were so much further advanced than him.

56. He had only spoken to people at the gym about what he could do, but he had a limited connection with them.

57. He had started taking the substance shortly after it had arrived. He was taken by Mr Cronin to the details in his statement and stated that he had begun by taking 10 mg two or three times a week and then went up to the recommended dose of 20/25mg. He forgot some days, but if so, would double up the dosage.

58. When it was put to him that, based on those consumption figures, he would only have had a month's supply, he stated he could not be sure of the measures he was taking and that he could not be certain of the figures in his statement. He however stated that he never

[3] Page182 of the hearing bundle provided corroboration for that purchase.

completely filled the pipette, and this would only ever be a maximum of half full.

59. He confirmed that he had also purchased other products from the same source but had stopped using these after about two weeks as they had produced bad side effects.

60. He had known the Athlete since their school days. They contacted each other daily online about gaming but did not see other much in person, perhaps meeting up every two weeks.

61. When they did meet up, they would either just hang out or go to the gym. He thought they went to the gym once a month. The Athlete did not really help with his training but gave some general recommendations.

62. Mr Bowe was also referred to the phone calls with the Athlete on 11 December 2023 but could not recall the detail of what they might have discussed.

63. He did not remember which gym they had gone to on 12 December 2023, as they went to a number of different gyms. He thought he had done a muscle hyper session, but did not know what the Athlete had done.

64. He and the Athlete did go back to his house sometimes or go somewhere to eat.

65. Mr Bowe was then taken to the circumstances relating to his making of the two shakes. He had used a typical screw on blender with blades. This was kept in the kitchen and might have held 700ml. He had two blender cups at the time.

66. He made his drink using milk, his protein powder to which he had then added the ibutamoren. He had drunk the liquid on the spot. He thought it had been about 300/400 ml and had taken less than a minute to drink.

67. He did not wash the cup and had used it again for the Athlete. He had also used the same blender to make the Athlete's drink.

68. When asked why he had only used one cup, he replied that the other had been dirty and would have had to have been washed.

69. The Athlete had given him his whey container, which had a scoop. The Athlete had asked him to make a standard dose and said that it had to be his powder. He just added milk or

water but could not recall which. The volume made had been about the same as his drink, so around 300/400ml.

70. He had taken the drink to the Athlete and said again that he had not rinsed the equipment.

71. He was aware that as a professional, the Athlete had anti-doping obligations.

72. He had not found out about the AAF until late December 2023 or early January 2024 in either a phone call or by text. He said that he had kind of panicked and had been quite upset. He had to admit it was something he had been taking. He said that he had never previously discussed taking it before with the Athlete, because he was embarrassed to be taking it.

73. After he had told the Athlete about the position, the Athlete said he would call his father or coach.

74. He had stopped taking the ibutamoren around the middle of December 2023 when he went on holiday. He had kept the same bottle in his room and confirmed that this was the bottle that had been sent to Professor Kintz[4] for analysis.

75. Mr Bowe was reading for a degree in Business with International Management.

76. The Athlete was subsequently asked some follow up questions by the Tribunal. He assessed that he had been tested quarterly each year during his rugby career and had also been tested after weightlifting competitions. He thought that he had in fact volunteered to be tested on 14 December 2023 because most of the squad had been at another premises when the DCO's attended. UKAD however noted its view that it was unlikely the DCOs would have tested on the basis of volunteers.

Submissions

77. The Tribunal was assisted in advance by the provision of detailed written submissions from both parties which are found in the Hearing Bundle. The oral submissions which

[4] Report from Professor Kintz dated 22 August 2024 at pages 169-170 hearing bundle, confirming the presence of ibutamoren at 16.75mg/ml.

summarised those documents are not therefore set out in full. No discourtesy is intended to either advocate, but all arguments advanced before the Tribunal were duly considered.

78. In summary, UKAD submitted that the Tribunal should be sceptical of the Athlete's case, and give it very careful consideration having regard to the burden of proof that rested upon the Athlete. Mr Cronin reminded the Tribunal that, if it could not be satisfied that the Athlete had established the source of the AAF, realistically it was left with no option but to impose a four-year period of Ineligibility.

79. If the Tribunal could be satisfied as to the source of the AAF, it should again give very careful consideration as to whether any reduction in the period of Ineligibility could be allowed having regard to the relevant provisions in the ADR and the relevant authorities.

80. On behalf of the Athlete, Mr McCombie submitted that the source of the AAF had been established, that the Athlete had not acted intentionally and that his degree of Fault or Negligence was such that the period of Ineligibility should be reduced to 12 months.

Decision on the ADRV

81. The Tribunal reminded itself that the burden in this instance lay on the Athlete to establish that, on the balance of probabilities, he had not acted intentionally as defined in the ADR and, if so, that he had further acted with No Significant Fault or Negligence.

82. The Tribunal carefully considered all the written and oral evidence, and having done so, made the following findings.

<u>Source of the AAF</u>

83. The Tribunal gave very careful consideration to the evidence given by the Athlete and Mr Bowe.

84. Both were found to be credible witnesses, and it was noted that Mr Bowe had appeared before the Tribunal notwithstanding that the nature of his evidence had the potential to have exposed him to liability.

85. There were inconsistencies in the evidence given between the Athlete and Mr Bowe, and also in relation to the detail in Mr Bowes's written statement and that given during his oral evidence.

86. The inconsistencies were scrutinised with care by the Tribunal, but having done so, the Tribunal concluded that the position was not indicative of an attempt to manipulate a defence but rather was consistent, in particular in the case of Mr Bowe, with young men not used to litigation and the pressures of giving evidence.

87. The Tribunal therefore found the accounts given by both witnesses to be believable.

88. They were reinforced in that view by the independent evidence, which pointed towards a single ingestion of the Prohibited Substance as claimed by the Athlete.

89. Scientific evidence helpfully adduced by UKAD had, from the outset, indicated that the Athlete's account was plausible. Professor Cowan's response to the additional question raised by the Tribunal then further increased the likelihood that the ingestion had been on a single occasion:

> "….*should Mr Lynch have been using the drug regularly, I would expect such use to be apparent by way of an Adverse Analytical Finding on the urine Sample collected on 22 January 2024 rather than the negative result reported*."

90. The sequence of tests to which the Athlete was subject to between September 2023 and January 2024, was in the finding of the Tribunal, a factor that, of itself, was of assistance to the Athlete. In this respect, it was noted that the Athlete had played international rugby league for Wales in the close season and so would have known he could have been tested after such a match. As such, the possibility that he had " let his guard down" in the close season not expecting to be tested was, in the finding of the Tribunal, unlikely.

91. On the basis of the documentary evidence appended to Mr Bowe's statement and the report submitted from Professor Kintz, the Tribunal was also able to find that it was satisfied to the standard required that the product purchased by Mr Bowe had contained ibutamoren.

92. Having regard to the above findings, the Tribunal was satisfied, on the balance of

probabilities (at the least), that the Athlete had established the source of the AAF.

Had the Athlete acted with intention pursuant to ADR Article 10.2.3

93. In light again of the findings made above, the Tribunal had no hesitation in finding that the Athlete had not acted intentionally in the literal meaning of that word.

94. The Tribunal then went on to consider, with great care, whether the Athlete had acted recklessly for the purposes of the ADR. Specifically, had the Athlete known that there was a significant risk that his conduct might have constituted or resulted in an ADRV and had he then manifestly disregarded that risk.

95. In its written submissions, UKAD suggested that, when determining that question, it should have regard to the following considerations, which in its view were important:

    (a) "The closeness (or otherwise) of Mr Lynch and Mr Bowe's friendship.

    (b) Mr Bowe's knowledge of Mr Lynch's anti-doping obligations as a professional rugby league player (and the efforts made by Mr Lynch to inform him of such).

    (c) Mr Lynch's knowledge of Mr Bowe's relationship with Prohibited Substances.

    (d) Mr Lynch's knowledge of Mr Bowe's housemates and their relationship with Prohibited Substances."

96. Whilst Mr Bowe and the Athlete had been friends since school and Mr Bowe had agreed in his evidence that he was aware that the Athlete was subject to anti-doping obligations, the Tribunal did not find that these factors, in isolation, took the Athlete into the sphere of having acted recklessly for the purposes of the ADR.

97. Significantly, in the finding of the Tribunal, the Athlete was unaware that Mr Bowe was taking ibutamoren. The Tribunal found Mr Bowe's evidence that he had not told the Athlete that he was taking the product because of his embarrassment to be credible and indeed compelling. The Tribunal was accordingly willing to accept, and so found, that the Athlete was unaware that Mr Bowe was taking ibutamoren. In this respect he was asked twice whether he had noticed any change in Mr Bowe's appearance and was clear that he had not.

98. The question of the Athlete's knowledge of Mr Bowe's housemates and/or any Use by them of Prohibited Substances was not explored (at least in any material detail) in cross-examination with either witness. Accordingly, the Tribunal did not make any findings on these points.

99. The Tribunal was therefore not persuaded by the objective factors suggested by UKAD. Further, it readily accepted that the Athlete would have been experiencing significant trauma at that time following the family bereavement. In the view of the Tribunal, that trauma would have impacted the Athlete's wellbeing to such an extent that he would not have appreciated that, by asking Mr Bowe, who was an old friend to make his shake, there was a significant risk of committing an ADRV, or that he had then proceeded to manifestly disregard that risk.

100. In all the circumstances, the Tribunal was satisfied to the standard required that the Athlete had not acted with intention as defined by the ADR.

101. Accordingly, the period of Ineligibility to be imposed was one of two years, absent the Athlete being able to satisfy the Tribunal that any further reduction to that period was warranted.

Had the Athlete acted with No Significant Fault or Negligence

102. For the reasons set out above, the Tribunal was satisfied that the Athlete had established the source of the AAF, and that finding was formally made again for the purposes of a consideration of ADR Article 10.6.2.

103. In relation to that provision, UKAD asked the Tribunal to consider the following factors which, in its submission should result in a finding that the Athlete had acted with significant Fault or negligence:

    (a) He did not make any enquiries of Mr Bowe as to what ingredients Mr Bowe was going to put in his own drink.

    (b) He did not make any enquiries of Mr Bowe as to what vessel he was going to use to prepare the drinks (and who else it might be used by in the house).

(c) He did not make any enquiries of Mr Bowe of which drink would be prepared first.

(d) He did not make any enquiries of Mr Bowe as to whether he planned to clean the preparation vessel in between making the drinks.

(e) He allowed Mr Bowe to make his drink without observing the process.

104. However, it fairly noted that on the other side of the equation, subjectively the Athlete's state of mind following his bereavement could have caused him to be distracted or not mindful nor careful enough.

105. The position on No Significant Fault or Negligence is subject to the persuasive, and frequently cited, decision of the Court of Arbitration for Sport ('**CAS**') in *Cilic v ITF* [5], and the Tribunal approached its determination having regard to the following section of that decision:

"69. The breadth of sanction is from 0 – 24 months. As Article 10.4 says, the decisive criterion based on which the period of ineligibility shall be determined within the applicable range of sanctions is fault. The Panel recognises the following degrees of fault:

a. Significant degree of or considerable fault.

b. Normal degree of fault.

c. Light degree of fault.

70. Applying these three categories to the possible sanction range of 0 – 24 months, the Panel arrive at the following sanction ranges:

a. Significant degree of or considerable fault: 16 – 24 months, with a "standard" significant fault leading to a suspension of 20 months.

b. Normal degree of fault: 8 – 16 months, with a "standard" normal degree of fault leading to a suspension of 12 months.

c. Light degree of fault: 0 – 8 months, with a "standard" light degree of fault leading to a suspension of 4 months.

[5] CAS 2013/A/3327

71. In order to determine into which category of fault a particular case might fall, it is helpful to consider both the objective and the subjective level of fault. The objective element describes what standard of care could have been expected from a reasonable person in the athlete's situation. The subjective element describes what could have been expected from that particular athlete, in light of his personal capacities.

72. The Panel suggests that the objective element should be foremost in determining into which of the three relevant categories a particular case falls.

73. The subjective element can then be used to move a particular athlete up or down within that category.

74. Of course, in exceptional cases, it may be that the subjective elements are so significant that they move a particular athlete not only to the extremity of a particular category, but also into a different category altogether. That would be the exception to the rule, however."

106. Whilst the above principles were broadly confirmed, in a subsequent CAS decision, *FIS v Johaug*[6] the Cilic bandings (above) were amended as follows:

"a greater degree of fault may lead to a sanction of 20 – 24 months,

a normal degree of fault may lead to 16 – 20 months,

and a light degree of fault may lead to 12 –16 months."

107. The Tribunal had significant sympathy for the Athlete given the tragic circumstances of his loss. However, as he had accepted in his evidence, he should have watched Mr Bowe make the shake, but he had not done so. He had also not asked Mr Bowe what he was going to put in his drink, which drink he would make first, whether the shaker had been cleaned and whether other people used the shaker.

108. In those circumstances, the Tribunal did not consider that the Athlete had exercised the utmost caution as required and therefore, as was accepted by the Athlete, some Fault or negligence was attributable to him.

109. Applying the rationale and bandings in *Cilic* and *Johaug* (supra) to all the objective and subjective factors present in the case, the Tribunal found that the Athlete had acted with

[6] CAS/2017/1/5015 &5110

a light degree of Fault.

110. It was then proceeded to determine were, within the band of 12-16 months for a light degree of Fault, the Athlete's conduct should be placed. In the view of the Tribunal, there was sufficient Fault in the Athlete's action, not least in the fact he had taken no steps to check how Mr Bowe was making his shake, that his Fault should be assessed as being at the highest end of the light degree of Fault banding.

111. The Tribunal would stress the specific subjective elements present in this case relating to the fact, and impact, of the bereavement suffered by the Athlete. Absent that factor, a different finding on the degree of Fault present would have been likely.

Conclusion

112. On his own admission, the Athlete had committed the ADRVs as alleged, contrary to ADR Articles 2.1 and 2.2.

113. The Tribunal was satisfied, on the balance of probabilities, that the Athlete had established the source of the Prohibited Substance that had resulted in his AAF leading to the ADRVs.

114. The Tribunal was satisfied, on the balance probabilities, that the Athlete had proved that the ADRVs had not been 'intentional' as defined by ADR Article 10.2.3.

115. The Tribunal was satisfied, on the balance probabilities, that the Athlete had proved that he had acted with No Significant Fault or Negligence as provided for pursuant to ADR Article 10.6.2.

116. Having regard to the principles established in Cilic *and Johaug,* the Tribunal found that the Athlete had acted with a light degree of Fault.

117. The period of Ineligibility to be imposed having regard to all relevant facts, was one of sixteen (16) months, being the top end of the range for a light degree of Fault as identified in *Johaug.*

Commencement

118. The period of Ineligibility is to run from 2 February 2024, being the date the Athlete was provisionally suspended, and will accordingly end at midnight on 1 June 2025.

Appeal

119. In accordance with Article 13.5 of the NADP Procedural Rules any party who wishes to appeal must lodge a Notice of Appeal with the NADP Secretariat within 21 days of receipt of this decision.

120. Pursuant to ADR Article 13.4.2(b), the Appeal should be filed to the National Anti-Doping Panel, located at Sport Resolutions, 1 Paternoster Lane, London, EC4M 7BQ (resolve@sportresolutions.com).

Jeremy Summers
Chair, on behalf of the Panel
London, UK
16 January 2025