



Arbitration CAS 2022/A/8727 United Kingdom Anti-Doping Limited (UKAD) v. Wayne Boardman, award of 20 December 2023 (operative part of 28 September 2022)

Panel: Mr Jeffrey Benz (USA), Sole Arbitrator

Wheelchair Rugby

Doping (oxandrolone)

Sanction in case of presence of a non-specified substance

Definition of the term “intentional”

No Significant Fault or Negligence

1. In accordance with article 10.2 of the United Kingdom Anti-Doping Rules (UK ADR), in case of presence of a non-specified substance, (1) a presumption arises that the athlete ingested it intentionally to enhance his performance; (2) it is the athlete’s burden to rebut that presumption by adducing evidence that satisfies the relevant CAS panel/sole arbitrator that it is more likely than not that his ingestion of the non-specified substance was not intentional; and (3) if the athlete cannot discharge that burden, a four-year ban must be imposed in accordance with Article 10.2.1(a) of the UK ADR.
2. In accordance with article 10.2.3 of the UK ADR, 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 (ADRV) or they know that there is a significant risk that the conduct might constitute or result in an ADRV and they manifestly disregard that risk. If an athlete is able to establish lack of intention, then he may benefit from further considerations to reduce the length of sanction imposed, on the basis of No Fault or Negligence or No Significant Fault or Negligence, as provided in UK ADR.
3. While the analysis of a case based on No Fault or Negligence is in many ways a search for any sign or indicia of Fault, the case based on No Significant Fault or Negligence accepts that there is some Fault but considers its severity, i.e., whether it is significant or not. This is a lower standard than that for determining the presence of any Fault at all; this No Significant Fault or Negligence standard accepts that there can be some fault, but it cannot be significant. In CAS 2013/A/3327 & 3335, the CAS Panel distinguished three categories of fault and established criteria to assess the objective and subjective levels of faults, namely, “significant degree of or considerable fault”, “normal degree of fault”, or “light degree of fault”.

I. INTRODUCTION

1. United Kingdom Anti-Doping Limited (“UKAD” or “Appellant”) is the independent anti-doping agency, recognized as such by the World Anti-Doping Agency (“WADA”), and other organisations, having its headquarters in England. Its aim is to promote and coordinate the fight against doping in sport in the United Kingdom and fulfil its obligations as the National Anti-Doping Agency for the United Kingdom. UKAD promulgated the UK Anti-Doping Rules (“UK ADR”) and is responsible for results management for cases arising under its jurisdiction.
2. The Respondent, Wayne Boardman (“Respondent”, “Athlete”, or “Mr Boardman”), is a wheelchair rugby league and basketball player who has represented Great Britain since first participating in international events in 2008. Mr Boardman had, before an unfortunate motorcycle accident that caused him to lose mobility and sensation below his chest, competed at a high level in rugby league competitions in the United Kingdom.
3. Individually, the Appellant and the Respondent will be referred to as “Party” and collectively as “Parties”.

II. FACTUAL BACKGROUND

A. Background Facts

4. Below is a summary of the relevant facts and allegations based on the Parties’ written submissions, pleadings and evidence adduced and at the hearing. Additional facts and allegations found in the Parties’ written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, he refers in his Award only to the submissions and evidence he considers necessary to explain his reasoning. The facts are generally not in dispute.
5. On 30 May 2021, Mr Boardman was at home with his teammate, Sebastien Bechara (“Mr Bechara”). Mr Bechara had come to live with Mr Boardman for a few months to prepare for the 2021 Wheelchair Rugby League World Cup. That evening Mr Bechara and Mr Boardman’s girlfriend at the time went to a pub, but Mr Boardman decided to stay home as he was not feeling well.
6. Mr Boardman had a urinary tract infection that night, which gave him symptoms of light headedness, fever, shakes, a headache, and joint ache. Because of his paralysis, Mr Boardman often gets urinary tract infections, at least several times a year, primarily because he is required to self-catheterise on a regular basis, which exposes him to more opportunities to obtain such an infection. He usually treats these infections with antibiotics and paracetamol. Mr Boardman took antibiotics that evening but did not have any paracetamol in the house [...].
7. On that evening, Duanne Hurst (“Mr Hurst”), a very old friend of Mr Boardman, stopped by to use the toilet. He regularly drops by Mr Boardman’s house because it is on his way home

from Sheffield and Barnsley where he does a lot of building work. He tends to see Mr Boardman 3 to 5 times per week.

8. Mr Boardman asked Mr Hurst if he had any paracetamol. Mr Hurst told him that he had paracetamol in his van. As Mr Hurst explained, as a builder he must keep a first aid kit in his van. Mr Boardman went to the van, parked outside the house, while Mr Hurst used the toilet, and took two tablets out of a bottle labelled “paracetamol” in the driver’s side door. The tablets he took were small, white, round tablets which matched the picture on the label on the paracetamol bottle he removed them from.
9. Mr Boardman then went back to bed.
10. On 26 June 2021, UKAD collected a urine Sample from Mr Boardman during In-Competition testing at the Mid-Season Internationals match between England Wheelchairs and Wales Wheelchairs, which was held at the English Institute of Sport in Sheffield. In the presence of Mr Boardman, the sample was divided into an A-Sample and a B-Sample, which were given the reference numbers A1169780 and B1169780. The Doping Control Officer Form for the sample collection notes that: *“ALL ATHLETES & SUPPORT STAFF FROM ENGLAND FULLY COOPERATIVE WITH PROCEDURES THROUGHOUT”*.
11. The urine Samples were transported to the WADA-accredited laboratory at King’s College London (“Laboratory”). The Laboratory analysed the A-Sample in accordance with the procedures set out in WADA’s International Standard for Laboratories. This analysis returned Adverse Analytical Findings (“AAFs”) for the following metabolites of oxandrolone:
 - a. 17 α -hydroxymethyl-17 β -methyl-18-nor-2-oxa-5 α -androst-13-en-3-one; and
 - b. 17 β -hydroxymethyl-17 α -methyl-18-nor-2-oxa-5 α -androst-13-en-3-one.
12. Oxandrolone is an anabolic androgenic steroid listed under section S1.1 of the WADA Prohibited List 2021. It is classified as a non-Specified Substance and is prohibited at all times. The Athlete did not have a Therapeutic Use Exemption in place at the time of the In-Competition test.
13. UKAD formally notified the Athlete on 5 August 2021 of potential charges arising out of the AAFs. Though the Athlete initially indicated (by way of email dated 15 August 2021) that he intended to “plead not guilty”, this would appear to have been at a time when the Athlete was not legally represented. Mr Boardman stated as well that, *“I would not intentionally put banned substances into my body which would jeopardised [sic] my unblemished ruby [sic] league career I have worked so hard for. I would not willing [sic] and knowing [sic] do such thing [sic]”*.
14. On 31 August 2021, Mr Boardman saw Mr Hurst and mentioned that he had received a provisional suspension. Mr Hurst asked why and Mr Boardman explained that oxandrolone had been detected in his urine sample. Mr Hurst was *“visibly shocked”* and informed Mr Boardman he had been using oxandrolone for recreational purposes.

15. Mr Hurst then reminded Mr Boardman that he had taken paracetamol from his van and asked him from where exactly he had gotten the paracetamol. Mr Boardman explained that he had taken it from the bottle labelled “paracetamol” in the driver’s side door. Mr Hurst informed Mr Boardman that this bottle in fact contained oxandrolone, and Mr Hurst had put the tablets in a paracetamol bottle so his wife would not know he was taking steroids. The paracetamol was actually in the first aid kit in his van glove box.
16. Once the Athlete instructed legal representatives, he provided a further response to UKAD on 3 September 2021, in which he indicated that (1) he did not dispute the AAFs or the potential ADRVs arising from them; (2) he did dispute the Consequences; and (3) he did so on the basis that the AAFs were likely to have been caused by him having taken two oxandrolone tablets that he believed to be paracetamol, and therefore the ADRVs committed by him were not intentional and he bore No (or No Significant) Fault or Negligence for those ADRVs.
17. On 28 September 2021, UKAD charged Mr Boardman with violations of Articles 2.1 and 2.2 of the UK ADR.

B. The Proceedings in First Instance

18. On 20 October 2021, UKAD sent a Request for Arbitration to the National Anti-Doping Panel, which is the independent tribunal responsible for administering anti-doping proceedings brought under the UK ADR.
19. On 9 November 2021, the Chair held a directions hearing, and on 10 November 2021 the Chair issued case management directions. Pursuant to those directions, further evidence was provided by Mr Boardman in support of his case, including witness statements from Mr Boardman himself, Duanne Hurst (said to be the friend from whom Mr Boardman obtained oxandrolone) and Sebastien Bechera (another friend and teammate of Mr Boardman).
20. UKAD also obtained evidence, including witness statements from Nick Wojek (UKAD’s Head of Science and Medicine), Laura Fairbank (Head of Medical and Integrity at the Rugby Football League) and Professor David Cowan (Professor Emeritus in Pharmaceutical Toxicology, King’s College London). In his expert report, Professor Cowan indicated that the account given by the Athlete, namely that he ingested two oxandrolone tablets on 30 May 2021, and that this explained the detection of oxandrolone metabolites in his Sample, collected on 26 June 2021, was plausible.
21. The hearing before the NADP Tribunal took place on 2 February 2022. The NADP Tribunal issued the Decision on 23 February 2022. In summary, the NADP Tribunal confirmed the ADRVs but imposed no period of Ineligibility, on the following basis:
 - a. The NADP Tribunal accepted Mr Boardman’s evidence as to his inadvertent ingestion of oxandrolone tablets on 30 May 2021 and was satisfied on a balance of probabilities that this was the source of his AAFs.

- b. Accordingly, Mr Boardman was found to have shown that the ADRV was not intentional and, therefore, the starting point for his period of Ineligibility was two years, rather than four.
- c. The NADP Tribunal determined 'by a small margin' and on a majority decision that, due to its (or at least the majority's) understanding of how the UTI would have impacted upon him, Mr Boardman bore No Fault or Negligence for the ADRVs.
- d. As a consequence, the otherwise applicable two-year period of Ineligibility, and any other period of Ineligibility, was eliminated.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

- 22. On 16 March 2022, UKAD filed its Statement of Appeal with the Court of Arbitration for Sport (the "CAS") against the Appealed Decision, in accordance with Articles R47 and R48 of the 2021 edition of the CAS Code of Sports-related Arbitration (the "Code"). In this submission, the Appellant requested the appointment of a sole arbitrator.
- 23. On 28 March 2022, the Appellant filed its Appeal Brief, in accordance with Article R51 of the Code.
- 24. On the same date, the Parties agreed with the appointment of a sole arbitrator.
- 25. On 25 May 2022, in accordance with Article R54 CAS Code, and on behalf of the President of the CAS Appeals Arbitration Division, the CAS Court Office informed the Parties that the arbitral tribunal appointed to decide the present matter was constituted as follows:

Sole Arbitrator: Mr Jeffrey G. Benz, Attorney-at-law and Barrister in London, United Kingdom
- 26. On 19 April 2022, in accordance with Article R55 of the Code, Respondent filed his Answer.
- 27. On 28 June 2022, the CAS Court Office informed the Parties that the Sole Arbitrator had decided to hold a hearing virtually.
- 28. On 26 September 2022, the CAS Court Office provided the Parties with an Order of Procedure, which was duly signed and returned by the Appellant on 7 July 2022 and by the Respondent on 8 July 2022.
- 29. On 13 July 2022, a hearing was held by video-conference. At the outset of the hearing, the Parties confirmed that they had no objection as to the constitution and composition of the arbitral tribunal.
- 30. In addition to the Sole Arbitrator and Ms Andrea Sherpa-Zimmermann, Counsel to the CAS, the following persons attended the hearing:

a) For UKAD:

Mr Richard Bush, Counsel, Bird & Bird

Ms Nisha Dutt, Director of Legal and Regulatory Affairs, UKAD

Mr Thomas Middleton, Head of Case Management, UKAD

Mr Scott Smith, Barrister, UKAD

Ms Nia Lewis, Trainee solicitor, Bird & Bird

b) For Mr Boardman:

Mr Boardman

Mr Luke Pearce, Barrister, Twenty Essex

Ms Courtney Grafton, Barrister, Twenty Essex

Mr Mark Lloyd, Solicitor, LloydLaw LLP

31. The Sole Arbitrator heard evidence from the Parties.
32. All Parties were given full opportunity to present their cases, submit their arguments and to answer the questions posed by the Sole Arbitrator.
33. Before the hearing was concluded, all Parties expressly stated that they had no objection to the procedure adopted by the Sole Arbitrator and that their right to be heard had been respected.
34. The Sole Arbitrator confirms that he carefully heard and took into account in his decision all of the submissions, evidence, and arguments presented by the Parties, even if they have not been specifically summarised or referred to in the present arbitral Award.

IV. SUBMISSIONS OF THE PARTIES

35. This section of the Award does not contain an exhaustive list of the Parties' contentions, its aim being to provide a summary of the substance of the Parties' main arguments. In considering and deciding upon the Parties' claims in this Award, the Sole Arbitrator has accounted for and carefully considered all of the submissions made and evidence adduced by the Parties, including allegations and arguments not mentioned in this section of the Award or in the discussion of the claims below.

A. Submissions of the Appellant

36. UKAD submits in summary as follows:

- On establishing intention, UKAD offers that the Athlete must establish how and when the substance entered his system, that those circumstances show inadvertent use, and that CAS panels have applied that requirement strictly. There is no obligation on UKAD to present any competing or other scenarios; the burden of proof lies with the Athlete. A hypothesis as to source that is not verified by clear and competent evidence is insufficient to meet this stringent standard. The cases also make clear that where the substance in question has clear performance-enhancing effects and a third party has volunteered culpability are to be subject to particularly rigorous scrutiny because of the obvious danger of collusion between the athlete and the third party, and this where there are no possible consequences to the third party for making his admission. UKAD submits, however, that it *“cannot gainsay Mr Boardman’s account”*.
- On No Fault or Negligence, UKAD submits that the Athlete must establish that he exercised utmost caution to avoid ingesting the prohibited substance, which is a very high standard. Cognitive impairment is typically a matter relevant to the degree to which an Athlete has failed to meet their duty of utmost caution, not whether it has been met in the first place. Notably, the definition of Fault specifically includes reference to impairment as a “special consideration”, so the existence of impairment alone cannot automatically result in a No Fault or Negligence finding—the impairment would have to be so extreme as to absolve the athlete of any Fault. The urinary tract infection, and the impairment it would cause, was heavily, and wrongfully, relied upon by the tribunal in first instance as the basis for finding No Fault or Negligence. The evidence showed that Mr Boardman was in pain and discomfort at the time of ingesting the substance, but at no point did Mr Boardman suggest he was in any way incapable of rational thought or anything approaching such a state. Mr Boardman failed to take any steps to satisfy himself that the two tablets he ingested were indeed paracetamol, and they came from an unsealed tub belonging to a friend who Mr Boardman knew to have been an occasional steroid user in the past. In addition, Mr Boardman was an experienced international athlete who had been tested before and had received anti-doping education. Despite knowing that he was subject to relatively frequent urinary tract infections, and the treatment depended on having paracetamol nearby, he had not replenished his paracetamol on the night in question. Accordingly, Fault or Negligence was present, not absent, on the part of the Athlete.
- On No Significant Fault or Negligence, the Sole Arbitrator must assess Mr Boardman’s degree of non-Significant Fault, and apply a commensurate reduction, if any, within the permitted 12 to 24 month range. The Sole Arbitrator must assess both objective and subjective levels of fault under relevant CAS jurisprudence. In other words, the Sole Arbitrator must consider 1) the extent to which, objectively, Mr Boardman departed from the duty of utmost caution expected of him, and 2) any legitimate excuses he may have for that failure as a result of his own personal circumstances. Objectively, Mr Boardman

bears significant fault because i) he failed to ensure that he had sufficient quantities of paracetamol tablets on hand, despite knowing he needed them, ii) he took no steps to satisfy himself that the two tablets he ingested were indeed paracetamol, iii) the tablets he took came from an unsealed container, and iv) the tablets were provided by someone Mr Boardman knew to have been an occasional steroid user. Subjectively, i) Mr Boardman had received anti-doping training, was aware of the need to protect the integrity of sport and of the responsibilities that fell upon him as an elite athlete to ensure full compliance with the anti-doping rules, and ii) in his favour, he suffered some degree of impairment, but if medical evidence is not presented to support degree of impairment then little weight should be accorded to this factor. UKAD does not make a specific request for a period of Ineligibility based on No Significant Fault or Negligence.

37. UKAD seeks the following relief:

“6.1 UKAD respectfully requests that the CAS Panel rule as follows:

6.1.1 UKAD’s appeal is admissible.

6.1.2 The finding in the Decision that Mr Boardman has committed Anti-Doping Rule Violations is affirmed.

6.1.3 The rest of the Decision is set aside.

6.1.4 Mr Boardman is sanctioned with a period of Ineligibility determined in accordance with Article 10.2 of the 2021 UK ADR and the applicable jurisprudence.

6.1.5 Mr Boardman’s period of Ineligibility to start on the date on which the CAS award is issued, with credit given for any period of Provisional Suspension effectively served by Mr Boardman.

6.1.6 UKAD is not ordered to pay any contribution towards Mr Boardman’s costs. (In the event this appeal is successful, UKAD does not seek recovery of any costs from Mr Boardman)”.

B. Submissions of the Respondent

38. Respondent submits in summary as follows:

- The ADRV was not intentional. The source of the positive test was clear and not seriously challenged by UKAD. The source was the two tablets contained in what had purported to be a tub of paracetamol that Mr Boardman took from Mr Hurst’s van on 30 May 2021. This evidence is supported not only by Mr Boardman, but also by evidence submitted by Messrs Hurst and Bechara. In addition, this evidence is supported by the expert report of Professor Cowan who concludes that *“it is my opinion that the finding of the oxandrolone metabolites...in the Athlete’s Sample may be explained by the account of the ingestion by the Athlete on Sunday 30 May 2021”* and that Mr Boardman’s account is *“plausible”*. Professor Cowan also notes that the lab results for the sample *“shows no evidence of repeated use of oxandrolone or of any other androgenic anabolic steroid”*. This statement supports the conclusion that the AAF

was the result of the one-off ingestion of two tablets of oxandrolone on 30 May 2021 as reported by Mr Boardman. Mr Boardman has never before tested positive for a prohibited substance. No alternative source or other evidence has been presented or established, and Mr Boardman has established his accidental ingestion on the one occasion as the source, using more than his own statement but also that of other witnesses and an expert.

- Mr Boardman could not have known he was facing risk given that he was seeking to simply take paracetamol, which is a common and widely available medicine that he takes regularly. Where he had run out paracetamol himself, his good friend told him that he had paracetamol in his van. The bottle that Mr Boardman found in the van was labelled paracetamol and the tablets resembled paracetamol tablets, being small, round, and white, matching the photo of the tablets on the bottle label. For all intents and purposes, for Mr Boardman they appeared to be paracetamol. Given that Mr Boardman had no reason to suppose that the bottle of paracetamol was anything other than it appeared and claimed to be, it is unrealistic to suppose that Mr Boardman should have done more in the circumstances to establish that the tablets he was taking were what they appeared to be. In addition, at the time of ingestion, Mr Boardman was suffering from a urinary tract infection that caused him to have symptoms of light headedness, a fever, shakes, a headache and joint ache. He was feeling so unwell that he immediately went back to bed after Mr Hurst left his house. Medical evidence was presented that the impacts of a urinary tract infection are much more severe on him as a person with lower body paralysis than in an able-bodied person, both by Mr Boardman and by the Parties' jointly agreed expert. The Sole Arbitrator must simply apply the definition of "Fault" as contained in the UK ADR and ask itself whether there was any breach of duty or lack of care appropriate to a particular situation. This does not require complete impairment of Mr Boardman, as any impairment could suffice. While Mr Boardman has received anti-doping education this could not have prepared to do anything given the bottle contained a substance that was different than was on the label.
- If the Sole Arbitrator is not inclined to find No Fault or Negligence, then for the same reasons set above the Sole Arbitrator should find No Significant Fault or Negligence and reduce the period of Ineligibility, which Mr Boardman submits, if any existed, was very low and he should get the benefit of the fully available reduction to one year.

39. The Respondent seeks the following relief:

"58. For the reasons set out above, it is submitted that:

- (1) The ADRVs were not intentional, and so it follows that the starting point is a period of ineligibility of two years under Article 10.2.1(a) of the ADR.*
- (2) Mr Boardman bears No Fault or Negligence for the ADRVs, such that the period of ineligibility should be eliminated under Article 10.5 of the ADR.*

- (3) *In the alternative, Mr Boardman bears No Significant Fault or Negligence, and his degree of fault was low, such that the period of ineligibility should be reduced to one year under Article 10.6 of the ADR”.*

V. JURISDICTION

40. Article R47 of the Code provides in pertinent part as follows:

“An appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of that body”.

41. Article 13.4.1 of the UK ADR provides that certain decisions, including *“decisions imposing (or not imposing) Consequences for an Anti-Doping Rule Violation”* may be appealed. Article 13.4.2 of the UK ADR further provides that, in cases involving International-level Athletes, appeals *“shall be made exclusively to CAS”* by the parties listed in Article 13.4.1, which list includes UKAD.
42. The Sole Arbitrator notes that the Appealed Decision involving the Athlete, as appealed by UKAD, meets the requirements of the UK ADR for appeal.
43. Moreover, the Sole Arbitrator notes that jurisdiction of the CAS is not disputed by any Party, all Parties signed the Order of Procedure, and all Parties participated fully in the proceedings, providing further evidence of acceptance and appropriateness of CAS jurisdiction.
44. The Sole Arbitrator therefore finds that CAS holds jurisdiction to decide on the present matter.

VI. ADMISSIBILITY

45. Article R49 of the Code provides as follows:

“In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. The Division President shall not initiate a procedure if the statement of appeal is, on its face, late and shall so notify the person who filed the document. [...]”.

46. The deadline for appeal found in Article 13.7.1 of the UK ADR corresponds to Article R49 of the Code, setting forth the same time limit.
47. In the case of an appeal by UKAD, the time limit starts running from the date when UKAD received the Appealed Decision, which was communicated to UKAD on 23 February 2022 when it issued.
48. On 15 March 2022, UKAD filed its Statement of Appeal against the Appealed Decision with

the CAS Court Office. Consequently, the Appellant complied with the time limits prescribed by the Code and the UK ADR.

49. No Party has objected to the admissibility of this appeal and in fact all Parties have participated in this proceeding fully without objection on this basis.
50. The Sole Arbitrator finds that the Appeal was therefore filed in time and is admissible.

VII. APPLICABLE LAW AND SCOPE OF REVIEW

51. Pursuant to Article 58 of the Code, “[t]he Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law the Panel deems appropriate”.
52. For these purposes the “applicable regulations” are the 2021 UK ADR (being the edition in force at the time of the Athlete’s sample collection), with the law of England and Wales applying “subsidiarily”. According to well-established CAS jurisprudence, that means that English law is applied where necessary to resolve any “issues that cannot be resolved solely on the basis of the rules invoked by the parties”, i.e., to fill any *lacunae*, or gap, left by the UK ADR. CAS 2002/O/373, at para. 15; see also CAS 2006/A/1180, at para. 14. Fortunately, there is no dispute as to applicable law and no *lacunae* appeared in this case, so there is not need to refer to the law of England and Wales to resolve this appeal.
53. The Code provides in Article R57 of the Code, in pertinent part, that,

“The Panel has full power to review the facts and the law. It may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance...”
54. Accordingly, the task of the Sole Arbitrator is to decide the matter *de novo*, anew, without reference or deference, or being constrained, in any manner to the decision below.
55. No Party disputed these fundamental legal principles.
56. Given that the Athlete has accepted that an anti-doping violation has been established and that the only issue for the Sole Arbitrator is the task of establishing the applicable sanction resulting therefrom, the relevant UK ADR rules (and hence the applicable law) that apply are as follows:
57. Article 10.2 of the UK ADR states in pertinent part:

“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. . .*

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”.

58. Oxandrolone is not a Specified Substance.
59. As a result, under the applicable rules, (1) a presumption arises that the Athlete ingested oxandrolone intentionally to enhance his performance; (2) it is the Athlete’s burden to rebut that presumption by adducing evidence that satisfies the Sole Arbitrator that it is more likely than not that his ingestion of oxandrolone was not intentional; and (3) if the Athlete cannot discharge that burden, a four-year ban must be imposed in accordance with Article 10.2.1(a) of the UK ADR.
60. The definition of “intentional” can be found at Article 10.2.3 of the UK ADR:
- “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”.*
61. If the Athlete is able to establish lack of intention, then the Athlete may benefit from further considerations to reduce the length of sanction imposed, on the basis of No Fault or Negligence or No Significant Fault or Negligence, as provided in UK ADR Definitions, respectively, which provide in pertinent part as follows:

“Fault: 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 Protected Person, 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 a career, or the timing of the sporting calendar, would not be relevant factors to be considered in reducing the period of Ineligibility under Article 10.6.1 or 10.6.2.

No Fault or Negligence: The Athlete or other Person establishing that they did not know or suspect, and could not reasonably have known or suspected, even with the exercise of utmost caution, that they had Used or been

administered the Prohibited Substance or Prohibited Method or otherwise violated an anti-doping rule. 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 the Athlete's system.

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".

62. If No Fault or Negligence is established, then any sanction must be eliminated entirely pursuant to Article 10.5 of the UK ADR.
63. If No Significant Fault or Negligence is established then the Athlete may benefit from a reduction based on the Athlete's degree of fault up to a maximum of a 50% reduction from the 2 years that would otherwise apply, pursuant to Article 10.6.2 of the UK ADR.

VIII. THE MERITS

64. The legal analysis here, as rightfully put to the Sole Arbitrator by both Parties, is in three contingent parts. The Sole Arbitrator must focus first on the presence or absence of Intention on the part of Mr Boardman, and then, depending on the outcome of that analysis, there may be a need to analyse the presence or absence of Fault or Negligence, and then, depending on the outcome of that analysis, there may be a need to analyse whether No Significant Fault or Negligence was present.
65. The Sole Arbitrator to note at the outset that he found Mr Boardman to be a cogent, candid, and credible witness. At no time was the truth of what he stated in jeopardy from challenge.

A. Intention

66. In the first instance, the Sole Arbitrator accepts that Mr Boardman lacked Intention. Based on the evidence recounted above, Mr Boardman was able to establish the source of his ingestion of the prohibited substance as his accidental taking of the oxandrolone from an open container labeled paracetamol, after being directed to find paracetamol in his friend's van. There was no contrary evidence presented (the Sole Arbitrator accepts that UKAD did not have an obligation to make such a presentation), and the Sole Arbitrator determines that the Athlete met his burden of proving source and lack of Intention.

B. No Fault or Negligence

67. With respect to the case of No Fault or Negligence put forward by the Athlete, the Arbitrator is not persuaded that Fault or Negligence were absent here. There can be no doubt that there was fault present on the facts presented here. A number of factors lead to this inexorable

conclusion:

- As an elite and long-time, experienced international athlete in his sports, having been tested many times before and having received anti-doping education, and having expressed a desire to be a professional coach or manager in his sport after retiring, Mr Boardman knew of his obligation to remain free from ingesting prohibited substances;
 - Mr Boardman knew that he had run out of paracetamol in his home and had not replaced it, this despite testimony that he would suffer urinary tract infections several times a year and needed both paracetamol and antibiotics on hand to combat it. In contrast, he had on hand a sufficient supply of antibiotics, which are more difficult to obtain, requiring a prescription;
 - Mr Boardman knew that his friend whom he had asked for a supply of paracetamol in this instance, Mr Hurst (the source of the prohibited substance), had used steroids in the past and Mr Boardman testified he was unaware of whether Mr Hurst was taking steroids currently even though he spent time several days a week with Mr Hurst; and
 - Mr Boardman was hardly precise in asking Mr Hurst where the paracetamol was located in his van, simply opening the door and taking the first tub marked paracetamol he could locate. While it is accepted that Mr Hurst told Mr Boardman to locate the paracetamol in Mr Hurst's van, Mr Boardman took no steps to confirm that the tablets he took from Mr Hurst's van was the paracetamol that Mr Hurst was referencing when he told Mr Boardman to look for the paracetamol in his van (the Sole Arbitrator accepts that the tablets in the open container Mr Boardman found and ingested were similar in appearance, shape, color, and size to those depicted on the label of the open container labeled paracetamol).
68. Mr Boardman testified that as a result of the urinary tract infection he was suffering from light headedness, a fever, shakes, a headache, and joint ache. As he testified in the first instance proceeding, *"I was dying from... my urine infection"*.
69. While it is accepted that Mr Boardman was ill and the undisputed (and agreed) medical expert evidence given was that urinary tract infections affect individuals with lower body paralysis greater and differently than they affect non-paralysed individuals, there is no evidence that Mr Boardman was so overcome with the effects of the infection that he could not think sufficiently to perform basic tasks that require higher level reasoning and activity. He was able to hear Mr Hurst come to the door of his home, get out of bed, go to the front door, let his friend into his home, ask whether his friend had paracetamol available, go outside to Mr Hurst's car to search and find the tub marked paracetamol, compare the tablets he found inside the tub with those on the label on the tub marked "paracetamol" where he found them, and then return inside and take the tablets (this was all made more complicated for Mr Boardman because of his lower body paralysis and his ability to function with that independently). Earlier in the evening he had been with his friends, including his girlfriend, before they set off for the pub, and, according to their testimony, while to them he appeared to be ill he did not appear to be unable to function

mentally. In short, the evidence established that Mr Boardman was able to exercise his duty of care, and unfortunately failed to do so on this occasion as he had done consistently on prior occasions.

70. All of these factors taken together demonstrate that not only was Mr Boardman not without fault but that he engaged in behaviour that under the circumstances he knew or should have known would expose him to danger from ingesting a prohibited substance.
71. Accordingly, the Sole Arbitrator must reject Mr Boardman's claimed lack of any fault or negligence, so his defense based on No Fault or Negligence fails.

C. No Significant Fault or Negligence

72. Now the Sole Arbitrator must turn to whether Mr Boardman exhibited Significant Fault or Negligence under the relevant standards, as stated above. Because the substance in question is not a Specified Substance, the lowest sanction Mr Boardman can receive is 12 months under the UK ADR.
73. The Sole Arbitrator accepts that Mr Boardman's thinking was impaired by his urinary tract infection symptoms as recounted above, and by his single-minded determination to obtain paracetamol to relieve the intense symptoms of his infection.
74. The Sole Arbitrator accepts the medical evidence and Mr Boardman's own evidence that this impairment caused Mr Boardman to not exercise the utmost caution he might otherwise exercise in his life to avoid ingesting prohibited substances.
75. The Sole Arbitrator has listed the elements of Mr Boardman's fault or negligence above in the analysis of Mr Boardman's claimed lack of any fault or negligence, and those same factors apply here in determining relative fault.
76. While the analysis of a case based on No Fault or Negligence is in many ways a search for any sign or indicia of Fault, the case based on No Significant Fault or Negligence accepts that there is some Fault but considers its severity, i.e., whether it is significant or not. This is a lower standard than that for determining the presence of any Fault at all; this No Significant Fault or Negligence standard accepts that there can be some fault but it cannot be significant.
77. In CAS 2013/A/3327 & 3335, the CAS Panel distinguished three categories of fault and established criteria to assess the objective and subjective levels of faults, namely, "*significant degree of or considerable fault*", "*normal degree of fault*", or "*light degree of fault*". The possible sanction range of 0 to 24 months was divided into each category of fault, i.e., 16 to 24 months for a significant degree of or considerable fault, 8 to 16 months for a normal degree of fault, and 0 to 8 months for a light degree of fault (CAS 2013/A/3327 & 3335, para. 96 *et seq.*). These ranges obviously have to be adjusted for cases like here where the minimum sanction starts at one year.
78. The fault factors identified for Mr Boardman's fault listed above might well be considered

significant if taken out of context. But here, you cannot ignore the context against which Mr Boardman engaged in this conduct when analysing whether his Fault is significant. He was suffering from a significant medical condition (a urinary tract infection), that affects individuals with lower body paralysis like he has differently than it affects non-paralysed individuals (the medical evidence was essentially that because he was paralysed in the lower body, the infection takes hold and its symptoms are felt in later stages, when it is more fully developed, than in non-paralysed individuals who feel the symptoms earlier, such that individuals like Mr Boardman only notice the symptoms when the symptoms are far more intense). The symptoms included light headedness, fever, shakes, headache, and joint ache. The relief of these symptoms with paracetamol, in addition to using antibiotics, was almost exclusively guiding his thoughts and focus when he inquired of Mr Hurst about the paracetamol and commenced his quest to obtain it.

79. Given this backdrop against which Mr Boardman engaged in his conduct of obtaining the tablets from the wrongly (and as we found out intentionally so) marked tub of “paracetamol” from Mr Hurst’s vehicle, his fault can only be characterized as a “light degree of fault” under the CAS 2013/A/3327 & 3335 analysis.
80. Accordingly, the Sole Arbitrator finds that Mr Boardman should suffer a thirteen (13) month period of Ineligibility, which is nearly as low as is permitted to be given for No Significant Fault or Negligence cases, accepting that there was some fault (the most significant factor of which was his failure to have proper paracetamol on hand given his knowledge that he was prone to urinary tract infections that required its use in addition to the antibiotics he had on hand, but we all know that in daily life we occasionally run out of supplies and in this case it appears from his testimony that his girlfriend may have used the last tablets he mistakenly thought he had on hand before the infection symptoms asserted their ferocity).
81. The issue of start date for any period of Ineligibility was raised at the hearing. Mr Boardman had the offending Sample collected in June 2021 but the NADP hearing did not occur until early February 2022, with the decision issuing later that month, exonerating Mr Boardman and permitting Mr Boardman to compete. UKAD waiting under the last moment to file its CAS appeal of the outcome of the NADP proceeding. The fundamental rule, as set forth in Article 10.13.1 of the UK ADR, in paraphrase, is that the start date for suspensions can be set for earlier than after the issuance of any decision by CAS where there have been delays in the proceedings that are not the fault of the athlete. CAS panels also consider other circumstances as well in determining whether to backdate start dates. In this situation, Mr Boardman resumed competing in the intervening days, having been told he was exonerated by the NADP, and he stated that he did not realise the effect of his going back and competing, which he was free to do, on any issue of sanction length or start or end date should be found to have committed an ADRV in the CAS proceeding. In the meanwhile, Mr Boardman had to live, and train, and perform as an athlete with uncertainty with this proverbial cloud over his head during the entire time, and the fact that the NADP panel made a decision that could not be sustained on appeal should not be held against Mr Boardman. The Sole Arbitrator determines that the delay, which is not a pejorative term and just a descriptor, was substantial here in both bringing the underlying proceedings and in bringing the CAS appeal at the end of the time for doing so

(there was nothing late about that, just that in the circumstances it was a delay that had an effect on Mr Boardman's ability to compete), and not attributable to the Athlete. Accordingly, the start date shall be the date of Sample collection.

82. Mr Boardman cannot have it both ways however. Though he has received the earlier start date he sought, during the time he competed, he must forfeit the product of his winnings, including prize money, finishes, medals, trophies, and the like. To find otherwise would, in the view of the Sole Arbitrator, be inconsistent, and unfair.
83. Nothing in this decision should be construed as determining that Mr Boardman was in any way a cheater. He simply momentarily lost his focus on his anti-doping obligations while suffering from a medical condition which by itself, and the relief of which, clouded his decision making. This kind of mishap could easily happen to anyone, but unfortunately for Mr Boardman it happened to him within range of his anti-doping sample collection and testing. Athletes in similar position to Mr Boardman will likely learn more about their expected standard of care from his case and about their need to remain vigilant with respect to their anti-doping obligations, even by preparing in advance for known medical issues that repeatedly affect them.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 15 March 2022 by United Kingdom Anti-Doping Limited against Wayne Boardman with respect to the decision taken by the National Anti-Doping Panel on 23 February 2022 is partially upheld.
2. The decision rendered by the National Anti-Doping Panel on 23 February 2022 is set aside.
3. Mr Wayne Boardman is found to have committed an anti-doping rule violation under Articles 2.1 and/or 2.2 of the UK Anti-Doping Rules.
4. Mr Wayne Boardman is sanctioned with a 13-month period of ineligibility starting from 26 June 2021, with credit for any suspension already served by Mr Wayne Boardman.

5. All competitive results achieved by Mr Wayne Boardman from 26 June 2021 through to and including 28 September 2021 are disqualified with all of the resulting consequences, including the forfeiture of any titles, awards, medals, points and prize and appearance money.
6. (...).
7. (...).
8. All other or further prayers for relief are hereby dismissed.