BEFORE THE UK ATHLETICS DISCIPLINARY APPEALS TRIBUNAL

B E T W E E N:

ANDREW YOUNG

Appellant

and

UK ATHLETICS LIMITED

Respondent

JUDGEMENT on APPEAL

Introduction

1. This is the Judgement on Appeal of an independently appointed Appeals Panel, commissioned to hear the Appellant Andrew Young's ("AY") Appeal against findings of a United Kingdom Athletics ("UKA") Disciplinary Panel. Those findings date from proceedings at first instance during a hearing over four days in September 2024. We heard AY's Appeal in full on 15 May 2025, deliberating on several later convenient dates when all members of the Panel were available.

2. The specific findings AY sought to Appeal were:

   a) the decision at first instance to find 9 (nine) charges proved, 2 of which were proved in part; [1]

   b) the subsequent sanction of the Panel, namely revocation of AY's Coaching Licence for a period of Five (5) Years; plus mandatory attendance upon, and completion of, certain identified and approved

[1] Charges 7, 9, 12, 17, 24, 25, 28, 29, & 36

rehabilitative courses.

Proceedings

3. We note that UKA originally brought a total of 39 (thirty-nine) charges against AY. Prior to the start of the substantive hearing, five charges (numbered 30 to 34) were withdrawn. Further, the Panel dismissed charge number 5 at the outset. This left a residue of 33 charges for consideration by the Panel, of which 9 (nine) were proved to the requisite standard after evidence.

4. We pause to observe at the outset that, as an Appeal Panel, we have the benefit of a highly detailed and considered Judgement given at first instance by the original Panel, dated 8 October 2024. This runs to some 31 pages, 216 paragraphs, and several thousand words. It is replete with a measured assessment of the evidence for and against each charge. All of the applicable and relevant general principles are set out. It follows a 4-day Hearing, at which all the evidence was heard and considered. We do not ignore the significant investment of time and resources that the evidence in this case has already had.

5. As we have observed above, following this Hearing the Panel dismissed most of the charges brought by UKA against AY.

6. We are also indebted to the Appellant Mr. Young, and his representatives, whom have put together an Appeal bundle of considerable breadth and volume, drawing together submissions on the evidence, submissions on procedure and substantive jurisprudence, and enclosing further Witness Statements, correspondence, and other written materials. We have read and considered all of these materials.

Grounds of Appeal

7. We hope we do AY and his representatives no disservice by shortening, and summarising, the grounds of Appeal they sought to put before us in the following way :

   a) Irregularities as to the size, competence, provenance, and experience of the Panel at first instance;
   b) Prevention / inability to call Witnesses;
   c) Lack of / absence of, Skeleton Argument / Statement of its Case by UKA;
   d) Improper application of, and shifting definition of, "*the Injury Test*;"
   e) General bias;
   f) Perverse decisions reached;
   g) Errors of Law made (e.g. failure to Order severance, etc.)

8. As was observed in the Panel's document headed '*Directions for Appeal Hearing*,' dated 15 May 2025, most of the Grounds relied upon by the Appellant were 'cross-admissible,' i.e. they were of broad application across AY's case generally, and were not confined to one or other of the specific charges.

'Preliminary Hearing'

9. To this end, some consideration had been given to holding a 'Preliminary Hearing' before the Appeal-proper. It was initially felt by the Appellant that there was scope for a Preliminary Hearing in the case, to determine a jurisdictional issue resolution of which, it was then thought by AY, could be determinative as to whether the original proceedings were lawful in the first place. There had, for example, been a Preliminary Hearing in which Judgement was given on 7 February 2024, well before the first substantive hearing.

10. To this end, this Appeals Panel commissioned an administrative hearing in December 2024 on this precise question. AY was present at that Hearing and represented, as was UKA. By further Written Order of the Appeals Panel, dated 21 February 2025, both sides were given Liberty to Apply for a Preliminary Hearing to be fixed.

11. The Parties took time for reflection. In the event, neither side pushed ultimately for a Preliminary Hearing. This proved to be a satisfactory decision and we were able to dispose of all matters in the one Appeal heard on 15 May 2025.

Our Approach

12. As an Appeal Panel, we remind ourselves of the correct judicial approach, as stated at Paragraph 27.1 *et seq* of the UKA Disciplinary Rules & Procedures ("the Rules"). 'The approach to be taken on Appeal shall involve a general review of the Decision in question, followed by the making of an overall decision.' This approach is distinct from a 'micro' dissection, and re-examination, of each and every particular evidential point 'for and against' the Appellant, on an individual charge-by-charge basis.

13. We look to whether the decision at first instance was within the bounds of reasonableness, and fairly open to an independent, impartial tribunal, properly directing itself in accordance with the evidence; not to whether we (or indeed a differently constituted Panel) might have reached different factual conclusions on a different day. Where perverse, or unreasonable steps, decisions or procedures were taken, we would look to reverse / amend those on Appeal; but we would not seek to interfere with logically reasoned conclusions, properly arrived at, purely on the basis that we might have taken a different view.

14. Indeed by combination of Rules #27.1 and #27.2, a fresh re-hearing of the

matter *de novo* (i.e. 'anew') is an exceptional course, to be taken only sparingly, and only where in the opinion of the Panel it is required in order to do justice to the parties. The Rules give as an example a situation where there were substantial procedural failures in the original proceedings. We note that such failures are required to be '*substantial;'* it is insufficient that they amount to mere procedural failures first time round.

15. We were mindful also of Rule 8.6.3 within the Rules, which states that the evidence shall be heard only once.

16. Finally, and we return to this Rule later in the Judgement, we note the strict conditions stipulated by paragraphs 27.3 of the Rules pertaining to the circumstances in which the Panel is permitted to receive fresh evidence. This is relevant in this Appeal.

17. An Appeal Hearing may take place by way of Oral Hearing, or upon a Review of the Papers. Such was the gravity of this case that it was decided in Mr. Young's interests to afford him the benefit of an oral hearing. He was represented - if we may say most capably - by Mr. Jenkins. Equally, we were indebted to Mr. Baines of counsel for his clear, and economical presentation of the Respondent's case.

Issues on Appeal

18. We considered on the Appellant's behalf an Appeal Bundle, running to some 553 pages. Despite the Panel's indication that it would have been assisted by a more concise, slim, Appeal bundle, we were nonetheless still prepared to consider what AY and his representatives had compiled to this considerable documentary extent, and we did so.

19. The Appellant's Bundle was made up of the following materials, all of which we considered :-

a) very full Notice of Appeal;

b) Email correspondence as to the Panel's composition;

c) Copy of the UKA Disciplinary Regulations;

d) An initial ruling re 'Preliminary Issue' / Jurisdiction, dated 7 February 2024;

e) Witness Statements supportive of Mr. Young, including by potential witnesses Michael Townley, [redacted];

f) Statement of the Appellant;

g) Hearing Notes;

h) *WhatsApp* messages;

i) Further Regulations, including the *Coach Licence Scheme,* and *Managing Club Disputes*;

j) Interviews with athletes [redacted] conducted by [redacted];

k) Highlighted notes of conversation re physiotherapy, etc;

l) Appellant's Skeleton Argument for the original Hearing;

m) Further emails;

n) High Court authorities.

20. We also had the benefit of UKA's fairly concise submissions in reply, by way of its resistance to the Appeal.

Composition & Size of the Original Panel

21. The original Panel whom found the nine charges proved consisted of two members: a Mr. Jamie Johnston (Chair), sitting with a Mr. Denzel Johnson. The Appellant makes two principle complaints about the Panel composition:

a) that it was wrong to proceed with a Panel of 2 and not 3 members;

b) that the credentials / qualifications of the two panelists were insufficient;

22. On Appeal, we reject both contentions. By email dated 13 September 2024 timed at 1412hrs, the Appellant's representatives indicated that they were willing to proceed with a 2-person Panel. This was an undertaking provided in writing.

23. The Appeal bundle includes a chain of correspondence flowing in both directions about efforts to appoint a 3-person Panel. Whilst reference is made within those emails to the desirability of a 3-person Panel over 2 panelists, it is plain from correspondence sent on AY's behalf that time was of the essence, and that he wished the matter to be heard as soon as was practically possible, even if that meant proceeding with 2 and not 3 panelists.

24. In their correspondence with the Appellant dated 21 May 2024, it might have been expressed with rather injudicious haste by Sports Resolutions - and possibly beyond the scope of their remit - that '*the Panel would be unwilling to have only two panelists for an issue of this magnitude.'* But in any event three matters override this :

a) Circumstances changed, a sequential number of panelists were objected to by those acting for AY as time moved on, and it became increasingly difficult to find three members to sit on the first hearing;

b) The Panel would not consider itself bound by an expression of a clerical / administrative nature, used in correspondence only;

c) In any event, the full written consent from those acting for AY to proceed with a Panel of 2 is determinative.

25. The Appellant referred to the matter having been hanging over him since April 2023, and to the effect upon his livelihood and well-being. We understood this. It is unfortunate that one of the panelists ([redacted]) had to withdraw from proceedings for personal reasons late in the day in mid-September. AY would have had the option to wait a short while longer for a 3rd panelist to be appointed, but in the event he expressed his consent to proceed with 2 panelists.

26. By virtue of regulation 9.1 of the Rules, the Panel "*shall determine its own procedure*," and "*may determine any question as to its own jurisdiction."* In this case, it is plain from the email traffic that the Panel had ventilated a number of different names as potential panelists in the run up to the first hearing. Objections to several proposed Panel Members had in fact already been filed on the Appellant's behalf, and acted upon. This may have had the effect of further delaying proceedings.

27. The fact that UKA honoured AY's objections over time, making substitute Panel appointments, is a factor we do think is relevant to the determination of this particular Ground of Appeal. In the event, when time was pressing, a clear written indication of assent was given upon AY's behalf for a 2-person Panel, and we feel that this is determinative.

Arbitration Act 1996

28. We also note the terms of Section 15(1) & (2) *Arbitration Act 1996 :*

'15 The arbitral tribunal.

(1) The parties are free to agree on the number of arbitrators to form the tribunal and whether there is to be a chairman or umpire.

(2) Unless otherwise agreed by the parties, an agreement that the number of arbitrators shall be two or any other even number shall be understood as requiring the appointment of an additional arbitrator as chairman of the tribunal.'

29. Whilst there may be a presumption in favour of there being two panellists plus an additional Chair, it is quite plain that the 1996 Act – which is primary legislation - allows the parties to agree otherwise – as happened here.

30. We also note the contents of Sections 19 and 30 of the Act, as to the Panel's competence to decide and to Rule upon its own qualifications and jurisdiction.

Consequences of a Ruling Otherwise

31. Indeed, we pause to note that were we to rule otherwise, it would be tantamount to 'opening the door' to any litigant simply consenting to a 2-person Panel for the sake of speed or expedience, and then seeking to overturn any adverse finding on Appeal, on the automatic basis that "there should have been 3 panelists;" but equally, to settle for a finding in her or his favour if s/he won at the first instance, having settled for 2 panelists. This cannot have been the intention of the Regulatory scheme.

32. It seems to us that, given the professional courtesy afforded to AY in checking whether two panelists would suffice, and his express agreement to the same - following sustained and time-consuming efforts to secure 3 panelists, it would go contrary to the spirit of the Rules, including Rule 9.1, to allow his appeal on this technical basis.

Panel Qualification & Credentials

33. At paragraph 19 of the Notice of Appeal, objection is taken to each individual

member of the Panel, whom heard this matter at first instance.

34. We have seen email correspondence in which the Appellant expressly agreed to the appointment of Mr. Denzel Johnson ('DJ'), in writing. Accordingly, the Appellant's objections 'after the event' rather suggest dissatisfaction at the result of the Appeal, as opposed to an innate and genuine objection to this Panel member on the merits of his actual appointment and his own credentials.

35. By virtue of paragraphs 20 and 21 of AY's own Witness Statement dated 21 April 2025, he states that no objections were raised at the time to the appointment of Mr. Jamie Johnston ('JJ') as an ordinary member of the Panel. A reservation is expressed that JJ was elevated to the position of 'Chair' of the Panel. Paragraph 21 of AY's own Witness Statement dated 21 April 2025 is to the effect that AY states he believed that he could only challenge the composition of the two 'ordinary' panel members, and not the Chair.

36. By virtue of paragraph 19(c) of the Notice of Appeal, taken together with the Appellant's several other objections to various proposed Panel members, it is implied that he knew it was open to him to object to the selection of *any* Panel member, including the Chair. In fact, by letter dated 19 October 2023, the Appellant Mr. Young (through solicitors) expressly objected to the proposed panel member [redacted] was the then proposed Chair of the Panel.

37. We accordingly reject any claim that the Appellant "did not know" that he was able to object to the nomination of the Panel Chair. He did.

38. The position is thus that there remained, ostensibly, no objections to the Panel members as at the stage of their Appointment. This carries significant weight in our view.

39. Even accepting that the breadth and quality of the Panelists' written Judgement amply justifies their credentials (as is evident), we look nonetheless to the Appellant's other observations on Panel composition, for the reason that justice not only has to be done, but must also be seen to be done.

40. We look at the position of the Chair, JJ. Objection is taken to the fact that JJ was not at the time,

"…*legally qualified, being either a barrister of at least 12 years Call or a solicitor of at least 10 years post-qualification experience."*

The Appellant claims that this goes contrary paragraph 8.6. of the Rules, presumably the version of the Rules which he states were operable at the time. This Appeal Panel notes that the version of the UKA Rules & Disciplinary procedures relied upon for this submission is out of date, being dated 8 March 2022. [2]

41. By the time the Appellant's case was heard in September 2024, the set of UKA Rules & Disciplinary procedures then operable had been in place since November 2023. The requirement that the Panel Chair is a person

"…*legally qualified, being either a barrister of at least 12 years Call or a solicitor of at least 10 years post-qualification experience."*

specifically applies *only* to proceedings on Appeal. There is no such restrictive Clause in the 2023 Rules (which were the Rules in force when the Hearing took place), nor in any of the sub-paragraphs, which applies to the Chair at first instance.

Preliminary Hearing February 2024

[2] Reproduced in 'red' font at p145 of the Appellant's Bundle, and "*adopted 8 March 2022*"

42. As noted above, a Preliminary Hearing took place in this case in February 2024. The issue then at stake was a claim by AY that an investigative Report commissioned by UKA, and produced by the Sport Integrity Service to be relied upon in these proceedings ("the SIS Report") was, (it was said), inadmissible because it was obtained in breach of a Limitation Period. The Panel ruled upon the Preliminary Issue that there was no breach, because *as at the date that the SIS Report was commissioned* (2 August 2022) UKA had not adopted the SIS procedure, and was still operating under the 2022 Rules, which did not contain any limitation period.

43. The short point is that it is possible to "technically construe" this finding as a finding that AY's case engaged the 2022 Rules, and *only* the 2022 Rules, for all time and "*for all purposes*." Accordingly, that the position of JJ as Chair fell foul of those Rules because the 2022 Rules then in force required the Chair to have been

> "…*legally qualified, being either a barrister of at least 12 years Call or a solicitor of at least 10 years post-qualification experience."*

which JJ was not.

44. This is a highly technical argument. We reject it. It is unrealistic. We do not find that the fact that the 2022 Rules were operable at the stage of one, early, investigative procedure in this case means that UKA were tied to that version of the Rules (and to only that version) *for all purposes, and for all time*. This is especially true when practice and procedure can change over time, and when the practical realities and pressures of finding a competent Panel can change over time, and become more difficult to achieve. We note, for example, that slight relaxation of credentials is to any Coach's advantage, as it widens the Pool of available Chairs and Panel members. This happened in AY's case, and most of the charges he faced were dismissed.

45. Questions such as Panel Composition are of a wholly different species to

questions of admissibility of evidence, and whether investigative work was caught by a limitation period. The former are pre-eminently practical, and procedural administrative matters, whereas the latter concern the basis for investigation and admissibility. This is especially so when the question as to Panel Composition arose more than two years later, by which time the Rules had been updated.

46. At the date the decision was taken to commission the SIS Report, there was only a single set of UKA Regulations in force (the 2022 Rules). By the time – some two years later – AY's case was heard at first instance (and this is the material date) UKA had adopted a set of Rules dated November 2023. We note – significantly – that the Rules are expressly given the adoptive title "*Update*" within the text body of the Rules. The presumption to any ordinary reader is that the newer version of the Rules "updates" the older version. By the time the original 2-person Panel was composed and agreed upon for this case (September 2024), the Rules then applicable for that process were followed (the November 2023 Rules).

47. This is doubtless the reason why the Panel at first instance in its Preliminary Ruling dated 7 February 2024, which AY relies upon for this argument, said what it did at paragraph #11

"*The Panel has determined this applying the civil test of 'on the balance of probabilities,' as required by the November 2023 Rules, the March 2023 Rules, and the 2022 Rules (**together, "the UKA Disciplinary Rules**")"*

[***our emphasis***]

48. The simple answer is that the relevant set of Rules operable at the time is the set of Rules in force as at the date of the specific Disciplinary Mechanism then being operated. Accordingly, when admissibility of the SIS Report was being considered, it was relevant for the Panel to look at the set of Rules in force when the SIS Report was commissioned – those being the 2022 Rules. When composition of the Panel Members was being considered, it

was relevant for the Panel to look at the set of Rules in force when the Panel was being composed – those being the November 2023 Rules. As stated in Irwin Mitchell's latter to Moore-Law dated 13 October 2023, it would be the 2023 Rules which would apply to the future conduct of the matter, as time moved on.[3] This is because it is self-evidently plain that such Rules become subject to Updates.

49. A good, common sense example set out in paragraph 51 below demonstrates the importance of this observation. It deals also with correspondence from AY dated 16 May 2025, which the Panel received after the Appeal hearing (following UKA having sent to the parties a copy of the 2023 Rules).

AY stated in writing on 16 May 2025 -

"*we thank* [redacted] *for sending on the '1 November 2023' Rules as requested by the Appeal Panel. We note that as the Appellant was already suspended at the time such rules were adopted, from our perspective, they do not form part of the arbitration agreement between the parties. We leave it to the Appeal Panel to determine which are the applicable Rules."*

50. We note that revocation of the Appellant's Coaching Licence in this case was backdated to 26 April 2023. Again, this is a date prior to the update in the Rules on 1 November 2023.

51. Take, for example, the common law power to remand someone in custody pending their trial for a criminal offence. If there is a slight change in substantive procedure for trying such offences after the remand in custody, but before the accused's trial, it would be a nonsense to suggest that the trial must take place according to the outdated procedure, simply because the remand in custody had occurred under an earlier regime.

[3] Appeal bundle PDF p175 of 553

52. We think this analysis settles the debate, and we see no breaches – technical or otherwise – in the appointment of JJ as Chair. We observe that JJ has ample (indeed considerable) experience both as a legal professional, and in Sports Regulation. Accordingly, there is no reason either according to the 'letter' of the Rules, or their spirit, to regard JJ as unqualified and/or lacking in credentials to Chair the Panel at first instance.

53. Finally, and as regards to DJ, we have noted the express approval for his Appointment in writing, at the time. We further note the contents of DJ's Profile; his extensive experience in Arbitration work, Regulatory work, his legal qualifications, and his experience in promoting Health and Human Rights. In these circumstances we see no reason on Appeal to think that DJ was anything less than well qualified to sit on this panel at first instance.

54. The Panel was Competent.

Witnesses not Called

55. Within the Appellant's 553-page Appeal Bundle are Witness Statements from such people as include the following:

a) Michael Townley

[redacted]

We have read these Witness Statements.

56. More importantly, as is plain at paragraph 20 of the original Decision, the Panel had also read them. The Panel took full cognisance of the Witness Statements which had been put before it within AY's bundle.[4] Indeed the Panel comment upon the usefulness of these Statements especially, for example, the evidence from [redacted]

57. It is important to note that as at the date of the substantive Hearing which is appealed, the bulk of the evidence contained within the Statements of these Witnesses amounted to evidence of AY's general character. See for example the original Witness Statement of [redacted] at Appeal Bundle p315/553.

58. As the original Panel made clear in their Judgement at paragraph 20, such witnesses were not generally witnesses to the specific events in question. Importantly, the Panel noted that where they were 'factual' witnesses this was taken into account. In view of this, the Judgement notes that AY's witnesses were not required live for cross-examination by UKA.

59. It would appear to be this feature which has been a source of concern for AY. It was clear from the Appeal we heard that AY *at least contemplated* the prospect of one or more of his own witnesses being called to give live evidence, and that consideration had been given to their attendance with this in mind, and to the accompanying arrangements for attendance.

60. In the event – and we accept that this procedure will not necessarily be familiar territory for AY – UKA were able to agree that the Witnesses' Statements could simply be read-out without more. This appears to have happened at the Hearing.

[4] Of necessity, these would have excluded the Witness Statement of Michael Townley, seeing as he was then AY's legal representative whom conducted the Hearing.

61. Complaint is now made – doubtless in view of the negative findings of the first Tribunal, and perhaps also due to some of the live evidence that was given – that these potential Defence Witnesses in fact had relevant evidence to give.

62. It is of some concern to the Appeal Panel to observe what has happened here. Certainly in the case of two of AY's potential witnesses from the above list – [redacted] – they provided Witness Statements for the Appellant both before and subsequent to the first main Hearing in September 2024. The dates of their original Witness Statements are, respectively, 15 May 2024 (Pollard; see bundle p322/553) and 10 May 2024 ([redacted]; see bundle p315/553).

63. Two further witnesses for AY also provided Witness Statements for him - [redacted]. Unlike the witnesses [redacted], the Appellant has not included the original Witness Statements of [redacted] in his 553-page Appeal bundle (at least as far as we can see). We know of their existence by virtue of the paragraph numbered 178 on p44 of 553 in the Appellant's bundle.

64. It is a concern that what this Appeal Panel has been provided with are Witness Statements from [redacted] *all dated 16 April 2025*, and from [redacted] dated the day before (15.4.25) - i.e. all of which post-date the substantive hearing. These versions of their Witness Statements bear heavy editing and amendment in blue-coloured font. The inference is irresistible that these versions of the Witness Statements have been tailored to 'meet,' or 'follow' evidence which was given at the original Hearing.

65. The appearance is respectfully given, on Appeal, that there was a realisation upon the Appellant's part, somewhat 'after the event,' that his witnesses did in fact have material evidence to give, and could well have given it first time round; therefore additions have been made to their Statements in blue-typescript.

66. As an Appeal panel, we are driven to ask ourselves why this evidence was not given first time around, but also - and more importantly – whether this evidence was available at the time of the original Hearing.

67. We append Regulation 27.3 from the UKA Disciplinary Rules

'#27.3 *No new evidence shall be submitted in respect of an appeal unless the Appeal panel determines that*

#27.3.1 – the evidence was not available at the time of the original hearing, notwithstanding the existence of reasonable diligence by the person seeking to introduce it;

#27.3.2 – the evidence is credible, and

#27.3.3 – the evidence is relevant'

68. It is plain from the amendments added in blue to the Witness Statements of [redacted] that these are all matters *which do amount to evidence that was available at the time of the original hearing*. Accordingly, the material fails at the first hurdle from persuading us on Appeal that the original decision should be disturbed because such evidence was not given.

69. We note particularly the contents of paragraph 43 of Michael Townley's Witness Statement ("MT") dated 17 April 2025. Of course, MT represented the Appellant over four days during September 2024. MT records there that Counsel for UKA indicated that there was no cross-examination for AY's witnesses, on the face of their Witness Statements as they then stood (because they went largely to character), and so the decision was made that AY's witnesses would not be called live. This is a common and

unremarkable procedure in litigation of most sorts.

70. MT is plainly a competent and able solicitor of some considerable experience (Admitted to the Roll almost 40 years ago in 1988). He achieved much for AY over the four days, principally in the dismissal of most of the charges AY faced. As an experienced solicitor, we do not think it conceivable that MT would have permitted to be stood down as live witnesses a number of apparently credible witnesses *whom could comment in a material way upon the specific charges in question.* We think that both he, and counsel for UKA, would have insisted that those witnesses be called – not least to assist the Tribunal - one way or the other. Each advocate had a duty to the Tribunal which over-rode their own individual duty to their client.

71. If the 'extra' matters (in blue) particular to the individual charges had not been included in the original versions of these Witness Statements, then that is the fault of the person taking those Witness Statements. Any competent legal employee, charged with the important task of taking a Witness Statement form a potentially important witness of fact, is duty-bound to cover all material matters of which that witness might reasonably be able to speak.

72. AY had lawyers throughout. The charge sheet he faced contained very full particulars of each charge, and – helpfully – it also named the relevant UKA witness(es) whom spoke of that charge. There was ample 'direction' given to those conducting AY's defence for them to obtain witness evidence accordingly, and *before the event*.

73. It is too late to complain, on Appeal, that 'my witnesses could have said this, had they been called,' because of Rule 27. Reading again paragraph 43 of Michael Townley's Witness Statement dated 17 April 2025, whether or not the Panel 'consulted' him in the moment on the decision to dispense with live witness evidence, he ought to have known as the solicitor representing AY, and charged with presenting AY's defence, that he had available

important witnesses of fact who could speak of material events (had their Statements said as much).

74. It would have been up to MT, as Defence Representative, to indicate to the Panel that he proposed to call the witnesses live, whatever the view of UKA or the Panel. If he did not know that the witnesses had important evidence to provide on the material facts in question then that is down to a combination of the witness not having said as much when their Statement was first taken, or the taker of the Statement having not asked them, or both.

75. In the premises, this aspect of the proposed Appeal must fail Rule 27. We cannot speculate further about it.

‘Injury Test’

76. Here, AY complains that there was a ‘shift’ in the way that UKA and/or the Panel articulated and applied what is referred to as ‘the Injury Test.’ The ‘Injury Test’ is helpfully set out by the Panel at Paragraph 16 of its Judgement. For this reason, and because it is a full and fair test, we do not set it out again *verbatim* in this Appeal Ruling. Reference can easily be made to paragraph 16 of the Judgement.

77. The essence of the test is that there has to be some sort of fair and measurable ‘yardstick’ against which an athlete’s ailment may be judged and, accordingly, any instruction or adaptation of training or diet, etc - notwithstanding the ailment – assessed.

78. Between paragraphs 16(a) and 16(e) of its Judgement, the Panel very helpfully, and clearly, set out the five-stage test to be applied in the cases where any of the charges faced by AY engaged such issues (essentially summarised colloquially as “*training through injury*”).

79. That the Panel were clearly able to apply the test rigorously, and in AY's favour, is evident from the many charges it dismissed. Take Charge 1 for example – not least because it is the first on the charge sheet. AY was alleged to have ignored medical advice and to have required Athlete A to train whilst injured. The Panel noted that the evidence of injury was wholly inadequate, and dismissed the charge outright. Charge 8 is another example. Charge 11 is an especially good example specifically *vis a vis* the Injury Test – where UKA failed to discharge the high burden and the stages of the Injury Test. Each of these 3 charges was dismissed against AY, upon the Application of the Test.

80. This in itself is evidence that the Panel were able and willing to apply the Injury Test rigorously and impartially.

Suggested change in the Injury Test

81. Despite the fulness of the Panel's Judgment, it is not made clear where (if at all) the Panel altered the constituent elements of the test it had sought to faithfully apply. It would appear from the Judgement that they did not.

82. We accordingly turn for assistance to the Witness Statement of AY's representative at the Hearing, Michael Townley (bundle p217). MT appears to be saying at paragraph 6 that the Panel initially adopted one version of the Injury test, but in the event applied another. We note that the italicized extract is faithful to the handwritten note of proceedings MDT/2.

83. The essence of the Injury Test is that there must have been a discernible and specific injury, secondly of which AY was aware, and thirdly in respect of which AY unreasonably disregarded advice to either limit training or not train. We observe that the Test is essentially the same whether abbreviated to the 3 steps as in Mr. Townley's Witness Statement, or the 5 more

expanded stages at the Panel's Judgement Paragraph 16.

84. We have read Mr. Townley's Statement carefully. He states that he would have pressed the witnesses on the 3 italicised questions in his Paragraph 11 had he been aware that the more expanded version of the Injury test was going to be applied by the Panel. However, these 3 italicised questions are precisely the sort of questions that any competent representative of AY would have put whether one was confined to the Injury Stage as expressed in the 3 basic steps as in Mr. Townley's paragraph 6, or the more expanded 5-step version as in the Panel's Paragraph 16.

85. Much complaint is made by Mr. Townley on the basis that he was confident the Panel could not find against AY "*in the absence of a diagnosis*," presumably because the 3-stage test at MT's paragraph 6 expressly included the word "*diagnosis*." This mirrors the very strict and 'high bar' for the test contended for by MT in his original submissions to the Panel, which they had rejected at Paragraph 15 of their Judgement. The Panel were correct to reject the strict iteration of the test contended for by MT. The reason is that it could permit a dangerous scenario where a Coach required an athlete to train through any injury *irrespective* of their risk to health, *unless* he (AY) had direct evidence of a diagnosis.

86. MT also seeks to labour what he sees as a clear and tangible difference between a medical professional (e.g. a physiotherapist) setting out the formal symptoms of an Athlete's condition, and actually settling upon the label of *a fixed diagnosis.*

87. We think it prudent to remind all parties that we are dealing here with <u>adult Elite Athletes.</u> They know their own bodies. They know their own capacity. They know their own performance levels. They know how to train, when to train, and when not to train. They know when they are not up to training at full capacity. They know when they are 'below par,' especially if backed up by advice or an email, or message from a medical professional. We are not

dealing with the nuanced, clinical world of Medical School, and the fine semantic difference between a “formal diagnosis” and a “set of symptoms operating together.” We ask rhetorically, in the world of Elite Sport: what is the meaningful difference ?

88. In charge 7, for example (proved), a formal description by a qualified physiotherapist of a set of symptoms, set out on writing (here in an email) which was operable upon the athlete, and which might reasonably have affected performance, should carry significant weight under the Injury Test, providing the same was communicated to AY. This applies as a matter of common sense, and of ‘athlete welfare,’ whether or not the Physiotherapist feels able to ascribe a fixed diagnosis to the problem. Indeed, we can well understand why medical professionals seek often to shy away from fixing labelled diagnoses to conditions - perhaps not least in the world of elite sport, for fear of collateral implications, labels, stigma, media attention, etc.

89. We note the importance of the provision at Paragraph 16(c) of the Panel’s Judgement:

“c. The quality of the evidence required to prove a relevant injury depends on the circumstances, and whether such proof is adequate is a matter for the Panel”

This was a sensible provision. It gave AY the considerable advantage of an assurance that the Panel would not simply act upon ‘any old complaint,’ unsupported, in assessing whether the continuation of training was proper.

90. When read together, the individual elements of the Injury Test set out at paragraph 16(a) to (e) of the Panel’s Judgement placed a reasonably high burden upon UKA. They had to establish that an athlete’s reported injury was indeed something genuine, specific, and discernible; that it was ideally supported by some form of medical advice; that AY knew about it; and - not merely - that AY ignored any advice to either limit or not train / run, but also

that such ignorance by AY was *unreasonable*.

91. On several occasions within the charges brought by UKA they failed to establish that test. On occasion they did. Whether expressed in 3 steps or in 5 steps, we do not find on Appeal any difference to the Injury Test of sufficient substance so as to have materially affected the outcome of those charges where UKA did find that the test had been discharged.

92. Whilst we accept that it may be possible, retrospectively, for MT to conceive of questions in cross-examination which he might perhaps have expressed slightly differently, or which might have seen more or less emphasis placed on certain elements, in the end it is the 3 core stages of the test which were crucial, and we are satisfied that MT addressed these three core stages well and faithfully during the hearing, as revealed in the charges which were dismissed.

93. We do not agree with the assertions in MT's Witness Statement that the Test when expressed in 5-steps '*greatly increased the scope for potential liability for Mr.Young*,' and that the Panel 'ignored' the first iteration of the Injury Test. They were essentially one and the same test.

94. Whether expressed in 3 steps or expanded upon in 5, the essence of the test was the same; and the Panel regulated the standard of proof required carefully by way of the provision at paragraph 16(c).

Other General Complaints upon Appeal

95. The Appeals Panel has considered a number of other complaints brought by AY.

'Lack of UKA Skeleton Argument / Statement of Case'

96. We glean from the various materials placed before us in the Appeal that there was an expectation that each side would serve a Skeleton Argument five (5) days before the Final Hearing. It would appear that AY complied with this, and that UKA may not have done.

97. Whilst administrative failings and a failure to meet expectations of the Panel are disappointing, it seems to us that we have to look behind the mere 'non-compliance' element of this, and at the nature of any harm / prejudice *actually caused* – if any. When pressed, the true essence of AY's complaint here is that there was no, or no sufficient, 'statement of its case' tendered on behalf of UKA, so it is said, until closing submissions.

98. Even if this were right, it was within the gift of the representatives for AY to respond to such a Statement at the stage of Closing Submissions – especially if there were any perceived change in how the case was being put by UKA.

99. Of greater importance, however, is what was provided to AY in advance of the Hearing. During the Appeal we pressed the parties for details of how the allegations were brought to AY's attention, and in what format; whether the charges were set out, and whether there was any sort of summary of the evidence in support, in order that AY knew the case he had to meet.

100. We have been provided with a comprehensive letter, and Enclosures, which were sent to Mr. Young dated 30 August 2023. We observe that this was over one year before the Hearing. The letter contains comprehensive information about the Charges, the Investigation, the Procedure, the establishment of a Disciplinary Panel, Sanctioning, and any Interim Measures.

101. Of direct and considerable assistance to Mr. Young, however, was the accompanying Charge Sheet. The first iteration of this, dated 29 August 2023 and enclosed with the letter, runs to some 9 (nine) pages. All 39 (thirty-nine) charges are specifically set out in writing. Furthermore, the *particulars* of each charge are set out in full – right down to the fine detail of alleged individual acts and omissions; place names are given; specific occasions are listed; specific Athletics Meetings and Events are listed; the matters are dated.

102. Of critical significance, the allegations are related in writing to the relevant witness or complainant whom has evidence to give about the matter. Considerable detail is provided.

103. We are quite unable to accept that Mr. Young never had a sufficient 'Statement of UKA's case,' whether described as a Skeleton Argument, a Case Summary, or Submissions.

104. It is right to observe that some amendments were made to the charges. When this occurred, again, the amendments were clear and AY was made aware. Given the extensive level of detail contained within the papers which were made available to AY, along with the charges, and over one year before the Hearing in this matter – affording AY and his representatives ample time to marshal their defence – we do not find any grounds to disturb the Panel's Judgement on the basis of a "lack of Skeleton Argument" or "failure to adequately state its case."

"Lack of Severance"

105. We can take this point shortly. AY complains on appeal that consideration ought to have been given to severing the individual charges, for the reasons that hearing them all together would engender an undue and

exponential degree of prejudice; further, that the risk of cross-admissibility would have a disproportionate effect on fairness.

106. We reject this argument, for a host of reasons – summarised below.

a) The best advertisement that the Panel was not prejudiced by all the allegations being tried together is that most of the charges were dismissed;

b) The Panel was quite obviously well able to discriminate between the charges;

c) We were told on Appeal that there was no Application for Severance before the Hearing – by either side, but especially not by AY; the fact that it is only raised now may be indicative of the true strength of any Application to Sever, had one been contemplated;

d) The allegations were of broadly the same, or a similar, nature;

e) The cost, practicalities and logistics of trying all of these matters separately would have been wholly disproportionate and cumbersome, compared to the convenience of trying them all together in just 4 days; it would have amounted to much-lengthened, drawn-out, and extended and adjourned proceedings for Mr. Young to bear – and the witnesses - over many months;

f) The essential nature of the allegations, and the essential nature of AY's defence to each allegation, did not differ so wildly as to necessitate them each being tried on their own and in a vacuum;

We reject any claims towards Severance.

'General Bias, & Perverse Nature of the Decisions'

107. As an Appeal Panel, we struggle to find across 215 paragraphs of

reasoned Judgement a single example of the original Panel reaching a decision which might properly be categorised as "*Perverse*."

108. We are fortified in our view by noting that the Panel took almost 7 (seven) pages, and some 25 paragraphs, to set out with meticulous care the approach it would take to the Hearing, *before ever* it even embarked upon consideration of a single piece of evidence in respect of any of the charges. This was an approach which can only be described as thorough and fair in the extreme.

109. The Panel set out in advance very careful and fair reasoning about how it would approach the following principles :

a) Burden of proof;

b) Powers;

c) Failure to refer to any piece of evidence;

d) Natural Justice;

e) The '*reasonable man*' test;

f) The '*reasonable Coach*' test;

g) The nature of Elite Athletes;

h) Training through Injury;

i) Weight;

j) Witness Statements tendered by the Appellant.

110. At paragraph 25 of the Judgement, we cannot help but note the Panel's reluctance to state its broad, general finding that, on occasion, "**Mr. Young's conduct exerted pressure upon an athlete sufficient to vitiate the athlete's free will**." The Panel was scrupulously careful to reach this unfortunate view. On the evidence the Panel heard it cannot be described as 'perverse.' It was a view reasonably open to the Panel to take.

111. We do observe the nuanced issue of the 'Athlete/Coach' relationship. We have given AY the benefit of the doubt over this. It is a very particular relationship. In this case, we do not find on Appeal that the nature of the relationship carried an imbalance necessarily akin to all Coach / Athlete relationships. The reason is that these were adult Elite athletes, whom had sought the services of AY as *their Coach.* The athletes had a substantial say in the relationship. We have carefully read the terms of AY's Appeal and we understand what he is saying here.

112. Given the elite nature of the athletes, we also recognise that something of a 'strident' and 'rigorous' approach to coaching might be taken by a coach operating at this level. It may be that *both* the Athletes, and the Coach, had a significant say in this particular coaching relationship. We have taken this into account and have sought to allow for it. We note that the Panel also did so – see for example paragraphs 66 and 67 of the Panel's Judgement, where they questioned the terms in which AY might communicate with an athlete, but were <u>not</u> prepared to say that it amounted to a breach on those occasions. Another example appears in the Panel's Judgement at paragraph 81.

113. Contrary to what was submitted to us in argument during the Appeal Hearing, we do not think that the illuminating passages at paragraphs 24(a) to (h) of the Panel's Judgement show a "*misunderstanding of the balance of the power*" within the athlete / coach relationship. There is a clear distinction between a Coach taking a firm, disciplined and rigorous line with an Athlete whom has retained him, whilst recognising athlete welfare in the furtherance of elite level training, and the examples cited here by the Panel of rudeness, threats of sanctions, lack of athlete autonomy, and coercion. Whether retained on an equal footing to an elite athlete – or even subservient to that athlete; *or* whether coaching in the more traditional sense of carrying the dominant influence over the athlete, that sort of behaviour by a Coach is inexcusable. It constitutes a breach

of athlete welfare.

114. We add the observation that even if there was in existence a commercial relationship between any athlete and AY, that does not vitiate the overriding duties set out within the UKA Code of Conduct and the Coach Licence Scheme. This is relevant in Charge 36, for example, where there was clearly a commercial element to the conduct involved.

115. It is very important for us as an Appeal Panel to remind ourselves of the fact that the Panel at first instance were able to read and consider full message-threads, i.e. the whole of a text / *WhatsApp* communication, and to listen to a number of athletes as live witnesses, including listening to those athletes being challenged under cross-examination. The Panel always had context at the heart of its judgement. They were entitled to find certain forms of messaging by the Appellant as "manipulative."

Other suggested possible forms of Bias

"High Profile"

116. We cannot detect anywhere within the Judgement evidence that the Panel may have been influenced to any degree by what is suggested to be a high profile of some of the athletes in question. We cannot honestly determine any difference in approach – no matter whom the athlete was whose evidence was being considered. We say no more about this.

UKA List of Disciplinary Panelists

117. Similarly, there is a blanket claim made by the Appellant that the Panel *generally* was, or might have been, biased – simply by virtue of the fact

that the Panel members were derived from a list presumably kept, for good operative reasons, by the UKA Disciplinary Case Management Group.

118. There is no merit in this claim. In the first place, we have observed time and again in this Appeal that the Panel in question dismissed the majority of the claims AY faced. Secondly, however – and far more fundamentally – the list of potential Disciplinary Panel members retained by UKA self-evidently exists precisely because those people are wholly independent of UKA. Taken to its logical conclusion, no UKA Disciplinary case would ever be able to proceed if this particular claim of the Appellant's were right.

The Individual Charges

119. Despite the terms of paragraph 12 above of this Judgement, we have gone on in this Appeal, nonetheless, to consider the decision of the Panel across each of the individual charges. The Panel took time and care to weigh up and set out the evidence - for and against each side - upon each Charge. We note that two charges were proven only in part (charges 9 & 17). We cannot find any example where we have reason to seriously question the findings the Panel made across the charges. This is when taking them on a charge-by-charge basis.

120. We note that Charge 17 stands somewhat distinctly, in that it was founded upon the evidence of Athlete F, whom did not attend the Hearing and, accordingly, could not be cross-examined. This was as distinct from the other athletes against whom charges were proved, and whom did attend the Hearing.

121. Between paragraphs 96 and 100 of its Judgement the Panel were careful to set out how it approached the evidence of Athlete F, in the absence of the witness attending. It was acknowledged that some prejudice might be

caused to AY by this, and that there were some contradictions within the evidence of Athlete F. The Panel therefore proceeded cautiously.

122. They looked for matters such as corroboration. They considered it difficult for UKA to sustain any charge involving Athlete F where there was no obvious reason to disbelieve AY on a particular point, *and* where there was no other evidence in support. The Panel guided itself properly upon Hearsay, and in accordance with the correct approach. The situation was not as stark by any means as the factual scenario was in *Ogbonna v Nursing & Midwifery Council* [2010] EWHC 272 (Admin), where the Court found that no real efforts had been made to try and secure the witness's attendance in the first place, and where that Panel had accordingly misdirected itself at first instance in finding that "*the witness was unable to attend*." In AY's case, the Panel accepted that there was good and sufficient evidence explaining Athlete F's non-attendance.

123. By their dismissal of Charges 16, 18, 19, 20, 21 & 22, as well as important aspects of charge 17 (which was proven only in part) – all of which depended upon the evidence of Athlete F - it is obvious that the Panel gave effect to its stated wish to proceed with caution over Athlete F's allegations.

124. In the premises, our conclusion on Appeal insofar as liability is concerned is that **the Appeal is Dismissed.**

Sanction

125. Between paragraphs 201 and 215 of its Judgement the Panel set out the Sanctions it decided upon. The Panel felt that a significant sanction was appropriate, firstly because the majority of the charges it found proven

were “serious;” secondly, because “*they demonstrate that AY’s coaching posed a risk of significant and varied harm to athletes….therefore a significant Suspension is proportionate.”*

126. The Panel accordingly revoked AY’s Coaching License for a period of Five Years. The Panel also ordered him to complete some Courses which would address the shortcomings in his Coaching which they had observed.

127. We agree that some examples of the charges which the Panel found proved were serious. However, we cannot help but note the following features from within the Judgement (e.g. at paragraph 204)

a) UKA had originally contended for revocation of AY’s Coaching Licence for a period of “between 3-5 years;” this was on the basis that AY faced some 39 charges. In the event, only nine (9) were proven. Some three quarters of the misconduct alleged was not proved;

b) The period imposed by the Panel was at the very upper ceiling of this bracket, even though only 9 charges were proven (and some proven in part only);

c) In his submissions to us on Appeal, Counsel for UKA described the period chosen by the panel as “*towards the upper end;”*

d) No mitigation was properly heard, if heard at all;

e) AY remains young, clearly with potentially a lot to offer the sport.

128. We also note the positive terms in which witnesses for Mr. Young spoke of him in their Witness Statements. Whilst the original Judgement did contain observations to the effect that AY showed ‘little insight’ into what he had done, that he was unlikely to accept responsibility, and that he did not display significant remorse, in fairness to AY there is some overlap on the particular facts of this case between those observations and AY simply maintaining his stance to contest the allegations in full. We think it would

be wrong to 'add' to the sanction merely on the strength that AY contested the charges;

129. We have already remarked, notably, that no mitigation was entered. Mr. Townley explains at paragraph 23 of his Witness Statement the somewhat unusual, and arguably procedurally wrong, approach taken by the Panel. He reports that he was invited to enter any Mitigation *before* any findings had been pronounced by the Panel as to liability on any of the charges. If this is correct, then we can well understand Mr.Townley's restraint. How could he mitigate any alleged breach, if he did not know where, nor even whether, any breaches had been found?

130. This is the only area where we feel that the Panel's judgement was properly susceptible to review; firstly if they did indeed invite mitigation *before* announcing whether any matters were proved; and secondly in the length of time the Panel suspended AY's Coaching Licence for.

131. In contrast, on Appeal, we were able to ask AY directly (and did so) as to the effects of the continuing loss of his Coaching Licence. We were concerned for his relative youth (he is still only 48yrs old). Further, he told us he had endured some bad publicity; further, that he was unable to get interviews for work, or take on any form of coaching roles whatsoever. We were much more affected by matters such as this, i.e. the direct impact of a long Licence-Revocation upon the Appellant, than we were by comparison with the length of sanctions in other cases, which carries little assistance because the facts are always different.

132. In the final analysis, we are not sure that what the original Panel described as the "*risk of significant and varied harm to athletes*" was *quite* as grave as they chose to express in the above chosen words. There was here no physical element to any of the Appellant's proven coercive behaviour, for example. We of course pay due heed to the effect that the Panel saw and heard the evidence firsthand, and we do agree that there was a need for

a marked revocation of AY's Licence.

133. In the premises, recognising that the Appellant remains a young man (48), and presumably with much time and energy to still offer the sport of Athletics, we reduce the Term under which his Coaching Licence shall be revoked **from 5 Years to 3 years**. We sustain the observation that this should be backdated to the period from which the interim revocation was imposed (April 2023).

134. We do not disturb the original Panel's requirements that AY be required to undergo the Courses identified, and to complete them to the required standard. If AY does not undertake these Courses accordingly his Licence will not be returned to him, notwithstanding that he may by then have Served the full period of the Licence revocation.

135. If we are correct, it is our understanding that this Order, so amended on Appeal, will permit AY's return to Coaching well within one year of today, subject to completion of the Courses. It is our intention that Mr. Young be allowed to return to Coaching within that time frame.

136. The Panel so Orders.

Andrew Ford KC

Rodney Beer JP

Jeremy Pearson

31 August 2025