

**BETWEEN**            **DRUG FREE SPORT NEW ZEALAND**  
                                 **Applicant**

**AND**                    **KARL MURRAY**  
                                 **Respondent**

**AND**                    **CYCLING NEW ZEALAND**  
                                 **Interested Party**

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**DECISION OF SPORTS TRIBUNAL AS TO JURISDICTION**  
**14 MARCH 2018**

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**Tribunal**            Alan Galbraith QC (Deputy Chairperson)  
                                 Georgina Earl  
                                 Ruth Aitken

**Parties**            Isaac Hikaka and Adam McDonald, counsel for Applicant  
                                 Jude Ellis, Drug Free Sport New Zealand  
                                 Aaron Lloyd, counsel for Respondent  
                                 Karl Murray, Respondent  
                                 Andrew Matheson and Hughie Castle, Cycling New Zealand

**Registrar**            Neela Clinton

1. As the Tribunal's Minute of 9 February 2017 records, an issue potentially affecting the Tribunal's jurisdiction was raised by Mr Murray's counsel prior to the scheduled sanction hearing.
2. The basis was that the Adult Licence issued to Mr Murray by Cycling New Zealand was dated 11 April 2017, some weeks after the 18 March 2017 event at which Mr Murray registered a positive test result.
3. On its face the Licence suggested that the Tribunal lacked jurisdiction over Mr Murray in respect to that result. It was not possible for the facts to be fully ascertained at the scheduled hearing which necessitated an adjournment followed by an exchange of memoranda.
4. Those memoranda and a statement by Kate Collins, Membership Manager for Cycling NZ, now allows the Tribunal to rule on jurisdiction.
5. For the reasons which follow the Tribunal has concluded that Mr Murray was subject to the Cycling NZ anti-doping rules and the WADA Code as at 18 March 2017.
6. However, we make it clear that Mr Lloyd, counsel for Mr Murray, was entirely justified in raising the issue before the Tribunal. Counsel has an absolute responsibility both to the client and to the Tribunal to put before the Tribunal any such matters potentially relevant to the existence and exercise of the Tribunal's jurisdiction.
7. The Tribunal is surprised at the contrary submission by DFSNZ. The Tribunal remains functus in respect to the process involving Mr Murray. The proposition that the Tribunal should proceed to penalise Mr Murray despite its jurisdiction being in issue is not accepted. If Mr Murray was not in fact and law subject to the anti-doping rules obligations as at 18 March 2017 his acknowledgment in Form 2 could not and would not confer jurisdiction.
8. As it is, and with the benefit of further assistance from counsels' memoranda, the Tribunal is satisfied that the Licence date of 11 April 2017 is not determinative of Mr Murray's obligations, which the Tribunal finds arose on 24 February 2017.
9. The first and primary reason is that the UCI regulations and Cycling NZ Terms and Conditions of Membership impose obligations, including compliance with the anti-

doping rules and the WADA Code, on a person who applies for membership and from the date of that application:

8. This is clear from UCI Regulation 1.1.004, which provides:<sup>1</sup>

Anyone requesting a licence thereby undertakes to respect the constitution and regulations of the UCI, the UCI continental confederations and the UCI member Federations, as well as to participate in cycling events in a sporting and fair manner. He shall undertake, in particular, to respect the obligations referred to in article 1.1.023.

As from the time of application for a licence and provided that the licence is issued, the applicant is responsible for any breach of the regulations that he commits and is subject to the jurisdiction of the disciplinary bodies.

Licence holders remain subject to the jurisdiction of the relevant disciplinary bodies for acts committed while applying for or while holding a licence, even if proceedings are started or continue after they cease to hold a licence.

9. The Cycling New Zealand Terms and Conditions of Membership are consistent with this position, with applicants declaring:<sup>2</sup>

I, the person who has applied ... for a Membership and to become a member of my Member Organisation:

1. Declare that: ...

3. I agree to abide and be bound by Cycling New Zealand, my Member Organisation and the UCI Anti-Doping Rules, as well as all documents adopted by Cycling New Zealand, my Member Organisation and the UCI in connection with its Anti-Doping Rules and in connection with the World Anti-Doping Code.

10. Mr Murray applied for membership of the Manukau Club and Cycling NZ on 24 February 2017. That was an application satisfying the terms of the UCI regulation and Cycling NZ terms and so Mr Murray was bound by the anti-doping rules and WADA Code from that date.
11. The second reason leading to the same conclusion is that issue of the Licence was not determinative of Mr Murray's membership of the Manukau Club and Cycling NZ.
12. Mr Murray's application for membership of 24 February 2017, accompanied by payment of the membership subscription, was acknowledged by email on the same day:
- (a) headed "Confirmation of Cycling New Zealand Licence"
  - (b) and expressed that it was "confirmation of your transaction for your annual Cycling New Zealand licence and club membership".

<sup>1</sup> UCI Cycling Regulations, Part 1, Chapter 1, section 1, at 1.1.004.

<sup>2</sup> <https://www.cyclingnewzealand.nz/terms-and-conditions>

As well, Mr Murray from that date had access to his MyPage membership portal to access his receipt and transaction details, licence number and membership information.

13. It is also relevant to note that Cycling NZ's email stated:

"...please allow up to 3 weeks for your card to arrive. Keep this with you to enter club races."

Accordingly, the email accorded member status, without the need to wait three weeks for the issue and receipt of the Licence itself.

14. It would seem that the insertion of 11 April 2017 in the Licence document was itself an error and that the inserted date, consistent with the UCI regulations and Cycling NZ terms, should have been 24 February 2017. However, that error cannot affect Mr Murray's status as at 18 March 2017 before his receipt of the mis-dated Licence.
15. It will now be necessary to reschedule the sanction hearing. The Registrar will confer with counsel about a suitable date.

**DATED** 14 March 2018



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**A R Galbraith QC**  
**Deputy Chairperson**