

SR/NADP/476/2015

NATIONAL ANTI-DOPING PANEL

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

Before:

Kate Gallafent QC
Colin Murdock
Dr Terry Crystal

B E T W E E N:

UK Anti-Doping Limited

National Anti-Doping Organisation

- and -

Gavin Duffy

Respondent

DECISION

1. This is the decision of the Anti-Doping Tribunal appointed pursuant to Article 5.1 of the 2015 Rules of the National Anti-Doping Panel and Article 8.1 of the UK Anti-Doping Rules dated 1 January 2015 ("the ADR") adopted by the Rugby Football League ("the RFL") to determine a charge brought against Mr Gavin Duffy on 20 August 2015.
2. Mr Duffy has been charged with an Anti-Doping Rule Violation ("ADRIV") in breach of Article 2.1 of the ADR as a result of the presence of a Prohibited Substance (benzolecgonine, a metabolite of cocaine) in a urine sample provided by him on 30 July 2015.

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3. Mr Duffy does not dispute that he committed the ADRV and no issue of jurisdiction arises. However, he argues that the otherwise applicable four year period of ineligibility should be reduced to one year on the basis that the ADRV does not involve a Specified Substance and it was not intentional and furthermore that there was No Significant Fault or Negligence.
4. In accordance with directions made by the Chair of the Tribunal on 4 October 2015 and 18 December 2015 UK Anti-Doping and Mr Duffy have both served evidence and written representations. The hearing of the charge took place in London on 19th January 2016 at which Mr Duffy was cross-examined. Mr Duffy was represented by Mr Jamie Susskind of Counsel, and UK Anti-Doping was represented by Ms Stacey Cross. The Tribunal is grateful to both representatives for their assistance, and particularly to Mr Susskind who acted *pro bono* for Mr Duffy, as did his instructing solicitors Laurence Mill and Richard Berry from Lewis Silkin LLP.
5. The Rules of the National Anti-Doping Panel (NADP) provide that the hearing should generally take place no later than forty days after the NADP Secretariat receives the Request for Arbitration, which was on 6 October 2015. This case was initially listed for hearing on 10 November 2015. However, on 6 November 2015 Mr Duffy applied for an adjournment of the hearing as he had not been able to obtain relevant medical evidence from his General Practitioner by that time. This application was not opposed by UKAD and in any event fairness clearly required an adjournment, and accordingly the case was then relisted for 19 January 2016.

The Facts

6. We have set out the facts below based on the documentary and oral evidence provided to us at the hearing. Some of this evidence is sensitive personal data which for the purposes of the publication of this decision will be redacted, in accordance with the approach taken in similar cases.
7. Mr Duffy is a rugby league player registered with Keighley Cougars RLFC, which competes in the Kingstone Press League One. He has been a regular senior first

team player every season since 2005 at National League One level. Prior to the doping control test on 30 July 2015 he had been tested by UKAD three times, each of which was negative. It was Mr Duffy's evidence, which was not disputed, that he had never taken illegal or banned substances prior to the summer of 2015.

8. In January 2015 Mr Duffy's then fiancée, with whom he had been in a relationship for eight years, broke off their engagement. He describes himself as having been deeply saddened as a result and unable to cope. He lost his day job.
[REDACTED]
[REDACTED]
9. On 30 January 2015 Mr Duffy saw his GP, Dr Afzal, who diagnosed depression following formal testing (PHQ 9 showed moderate to severe depression), signed him off any further work for six weeks and prescribed him a six week course of anti-depressant medication. On 13 February 2015 Dr Afzal rang Mr Duffy to review his condition and asked him to come back for a review in person. Mr Duffy did not do so. He told the Panel that he had been feeling a little better and thought there was therefore no need to do so.
10. In March 2015 Mr Duffy suffered a shoulder ligament strain and was unable to play for eight weeks. He also told the Panel that he did not feel ready for contact sport and could not go down to the club and be friendly but instead was at home drinking excessively and not doing much.
11. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] Mr Duffy told the Panel that he was utterly devastated by [REDACTED] and immediately relapsed into a state of severe depression. He did not want to work and took sick leave which resulted in him losing his job. He did not want to interact with anyone and spent eight to ten hours a day alone in his room as he was unable to engage in any activity which required energy. He ignored phone calls from players and coaching staff at Keighley

Cougars. He stopped attending rugby training for the first time in his adult life, as well as stopping all forms of gym work and strength training. He ate poorly and drank alcohol every other day.

12. Mr Duffy's description of his state is consistent with that described by club officials. Two days after [REDACTED] charities attended the Keighley Cougars ground. According to the club's team doctor, Dr Richard Lawrence, it was very noticeable on that day that Mr Duffy could not bear to speak to anyone and was essentially on one side of the room with most of the rest of the squad sitting apart from him. Dr Lawrence said that Mr Duffy was clearly majorly affected and close to tears that day.
13. Barry Eaton, previously Head Coach of Keighley Cougars, said that he spoke to Mr Duffy [REDACTED], and it was evident that Mr Duffy was finding it difficult to cope. His behaviour very clearly rapidly changed to a worrying degree. Mr Eaton's evidence was that Mr Duffy was not thinking clearly and that his character clearly altered following [REDACTED].
14. Similarly, Mr March, the current Head Coach of Keighley Cougars, described Mr Duffy as immediately stopping attending training and not answering phone calls from Keighley Cougars players or staff. Several weeks after [REDACTED] Mr Duffy began to attend occasional training sessions but when he did so he was distant from the rest of the squad. According to Mr Duffy at this point he was not taking cocaine but he was drinking.
15. At one of these sessions the player welfare officer from Huddersfield Giants, Andy Jordon, was attending to support the players. He spoke to Mr Duffy and recommended that he needed to seek further help for his mental state. Mr Duffy then spoke to the Manager at Keighley Cougars, Jeremy Crowther, who set up an appointment for Mr Duffy to meet with a consultant from the mental health charity Sporting Chance. Mr Duffy did not attend this appointment as he was elsewhere on that date. He told the Panel that he was not sure why he did not reschedule the appointment, and that he had not spoken to Mr Crowther after that.

16. Mr Duffy's mother told the Panel that following [REDACTED] Mr Duffy was obviously in a very dark place, was either agitated or angry for most of the time and had very low moods for hours at a time. [REDACTED]
[REDACTED]. He refused to seek medical help despite her advice.
17. Mr Duffy told the Panel that as a result of his depression and increased alcohol consumption he eventually found himself associating with a different social circle. These 'friends of friends' openly took cocaine in front of him and offered him some. Mr Duffy says that he was extremely weak and his normal decision-making was impaired, and that in an attempt to come to terms with his grief, he accepted. For a six week period from late June Mr Duffy says that he consumed approximately one or two grams of cocaine each weekend.
18. Mr Duffy's evidence was that the incident which resulted in the Adverse Analytical Finding occurred late on the evening of Sunday 26 July 2015 or in the early hours of Monday 27 July 2015 at the K2 nightclub in Keighley. He told the Panel that he was on an "all day" session with the lads which had started between around 2pm and 4pm, and that he had drunk about eight pints of lager. He said that he could not recall how he was feeling at the time as he was rather drunk and that taking cocaine was a spur of the moment reaction. He initially said that he could not remember how taking cocaine had made him feel but subsequently said that it had made him feel calmer.
19. On Tuesday 28 July 2015 Mr Duffy was asked to play for the Keighley Cougars Reserves side on Thursday 30 July 2015. Although Mr Duffy had not played since February 2015, and was not in regular training, he said that he felt obliged to play as he was returning from a lengthy playing absence. It was of course on that date that his urine sample tested positive for a Prohibited Substance.
20. Since that date Mr Duffy has found new employment and he told the Tribunal that he is feeling more positive, and that being back at work has helped. He has not received any treatment for depression since March 2015 when he completed the course of anti-depressants prescribed by Dr Afzal.

21. Mr Duffy has not been assessed in relation to his mental health by a medical practitioner since January 2015. In preparation for this hearing, therefore, Mr Duffy's solicitors asked Dr Lawrance to provide a report, if he felt able to do so, setting out his opinion as to whether Mr Duffy was suffering from depression during the months of May to August 2015, and if so the causes of that depression, and the extent to which he believes that this could, and/or did, impair his judgement.
22. Dr Lawrance provided a report in the form of a letter dated 12 January 2016. He supplemented the views set out in that report orally at the hearing, and was cross-examined by Ms Cross on behalf of UKAD. He explained that as well as being a specialist cardiologist he was a general physician with experience of dealing with acutely unwell patients, a significant proportion of whose health issues reflected an exacerbation of depressive symptoms. He has also completed a diploma in Sports and Exercise Medicine, which included a component on sports psychology.
23. In reaching his opinions Dr Lawrance drew upon his personal knowledge of Mr Duffy through his role as team doctor for ten years as well as a telephone interview that he conducted with him in January 2016.
24. Prior to [REDACTED] Dr Lawrance had seen Mr Duffy only six times or so since the beginning of the year. Whenever he asked Mr Duffy how he was he received a very cursory answer, Mr Duffy's body language was slumped and he avoided eye contact. The coaching staff mentioned to him that there was an issue with Mr Duffy, who was not attending training sessions, making excuses for not doing so, and was more marginalised in the squad. Dr Lawrance had heard about the position with Mr Duffy's fiancée at the time, but was not aware that he had also lost his job.
25. He then saw Mr Duffy at the [REDACTED] shortly after [REDACTED], his recollection of which is set out above. After that he did not see Mr Duffy again that year as Mr Duffy did not play in the first team in the months leading up to his ADRV.
26. In Dr Lawrance's opinion the life events experienced by Mr Duffy (the break-up of his engagement, the loss of his job [REDACTED]) together with

his symptoms (including feeling physically sick, close to tears, irritable and socially isolating himself) were consistent with reactive clinical depression. He considered that Mr Duffy must have been very vulnerable at the time and not thinking clearly or how he usually would have done. He understood why Mr Duffy had tried to escape to another world in which people took drugs. As for Mr Duffy's failure to obtain any medical help subsequent to his assessment by his GP in January 2015, Dr Lawrence considered that as part of the desire to avoid social contact arising from depression it was understandable that a person in Mr Duffy's position might want to avoid any contact including medical treatment.

27. Dr Lawrence was firmly convinced that there were enough precipitants of depression and enough symptoms of depression to be fairly sure that Mr Duffy was depressed. As for Dr Afzal's diagnosis in January 2015, Dr Lawrence took the view that it was quite possible that Mr Duffy was even more depressed [REDACTED]

[REDACTED]. If Dr Lawrence had seen Mr Duffy at the time he was pretty certain that Mr Duffy would have needed some interventions, and considered that talking therapy would have been the most useful.

Sanction

28. Cocaine and its metabolites are classified as Non-Specified Stimulants under s.6(a) of the WADA 2015 Prohibited List. It is not a Specified Substance. Accordingly, the relevant starting point in terms of sanction for the ADRV is Article 10.2 ADR which provides that the period of Ineligibility for an Anti-Doping Rule Violation under Article 2.1 that is the Athlete's first anti-doping offence shall be, subject to potential reduction or suspension pursuant to Article 10.4, 10.5 or 10.6, four years where the ADRV does not involve a Specified Substance "*unless the Athlete ... can establish that the Anti-Doping Rule Violation was not intentional*".
29. Guidance on the meaning of the word "*intentional*" in this context is provided at Article 10.2.3:

"As used in Articles 10.2 and 10.3, the term "intentional" is meant to identify those Athletes or other Persons who cheat. The term, therefore, requires that the Athlete or other Person engaged in the conduct which he or she knew constituted an ADRV or knew that there was a significant risk that the conduct might constitute or result in an ADRV and manifestly disregarded that risk. An ADRV resulting from an Adverse Analytical Finding for a substance which is only prohibited In-Competition shall be rebuttably presumed to be not "intentional" if the substance is a Specified Substance and the Athlete can establish that the Prohibited Substance was Used Out of Competition. An ADRV resulting from an AAF for a substance which is only prohibited In-Competition shall not be considered "intentional" if the substance is not a Specified Substance and the Athlete can established that the Prohibited Substance was Used Out-of-Competition in a context unrelated to sport performance."

30. The term "In Competition" is defined under the ADR (unless provided for otherwise in the relevant Federation or event rules) as commencing 12 hours before the Competition. In this case, the match on 30 July 2015 kicked off at 7.45pm and accordingly Mr Duffy needs to show that he took the cocaine prior to 7.45am on that day.
31. The Panel accepts Mr Duffy's evidence that he took the cocaine which gave rise to the AAF on Sunday 26/Monday 27 July 2015, being earlier than 12 hours before the match on Thursday 30 July 2015. Accordingly, under Article 10.2.2 ADR the period of Ineligibility is two years.

No Significant Fault or Negligence

32. If Mr Duffy can establish that he bears No Significant Fault or Negligence the otherwise applicable period of Ineligibility (two years) may be reduced based on his degree of Fault, but may be not less than one half of the period of Ineligibility otherwise applicable (one year).

33. The definition of No Significant Fault or Negligence requires that, except in the case of a Minor, for any violation of Article 2.1 the Athlete must first establish how the Prohibited Substance entered his system. We have accepted Mr Duffy's explanation for this in the context of considering the issue of intention and therefore find this requirement satisfied.
34. Accordingly, it is necessary to consider whether Mr Duffy has established that his 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. In assessing Fault, the factors to be taken into consideration include special considerations such as impairment.
35. We accept UKAD's submission that, based on the approach in cases such as *FEI v Millar* (28 March 2013, FEI ID 10001794) and *USADA v Jelks* (AAA No. 77 190 00074) in order for an Athlete to demonstrate that he acted with No Significant Fault or Negligence in the current circumstances he would need to show:
- 35.1. A medical diagnosis of a depressive illness; and
- 35.2. Cognitive impairment linked to the circumstances surrounding the commission of the ADRV.
36. This approach was accepted by the NADP in *UKAD v Richard Burnett* (0000120233) and not doubted by the Appeal Panel in that case (0000120253).
37. So far as a medical diagnosis of a depressive illness is concerned, whilst there may be cases in which contemporaneous medical records exist containing such a diagnosis we suspect that in many cases such evidence may not be available given not least the difficulty which many individuals have with engaging with medical professionals in order to seek help whilst depressed, as Dr Lawrence explained. Accordingly, we do not consider that the absence of medical records or a contemporaneous diagnosis covering the period of June / July 2015 is of itself a bar to Mr Duffy satisfying the requirement for a medical diagnosis of a depressive illness.

38. The evidence that Mr Duffy did put before the Panel consisted of (a) a contemporaneous medical diagnosis of moderate / severe depression made on 30 January 2015 by his GP and (b) the opinion of Dr Lawrance based on his interview with Mr Duffy, and first-hand knowledge of him in the preceding 10 years, made in January 2016. UKAD accept that Dr Lawrance's report and evidence was extremely helpful to Mr Duffy on this point. We agree. It seems to us that Dr Lawrance was both qualified to provide his professional opinion on Mr Duffy's mental state in the summer of 2015 and clear in his diagnosis of depressive illness during this period, which we accept.
39. In relation to the issue of cognitive impairment, we accept the evidence of Mr Eaton, Mr March, Mrs Duffy and Dr Lawrance that Mr Duffy's behaviour changed markedly from January 2015 and became even more extreme in the period after [REDACTED]
[REDACTED].
40. We also accept Dr Lawrance's evidence of the link between depressive illness and cognitive functioning, and in particular that in Mr Duffy's case there was "cause and effect" for him not to be thinking clearly. Accordingly, on a balance of probabilities we are satisfied that Mr Duffy has demonstrated that his depressive illness led to cognitive impairment.
41. We are also satisfied that Mr Duffy's cognitive impairment was linked to the circumstances surrounding the commission of the ADRV. We accept that he previously took his obligations as an Athlete seriously and did not use recreational drugs or drink to excess when in training. We find that his increased drinking, and then his consumption of cocaine over a period of around six weeks, was linked to his cognitive impairment.
42. It is therefore necessary for us to consider the level of Mr Duffy's Fault in order to assess what reduction is appropriate from the otherwise applicable period of Ineligibility of two years. We do not consider, nor was it suggested on behalf of Mr Duffy, that his case was analogous to that of Mr Livermore in which The FA's

Regulatory Commission found that concepts such as fault and appropriateness of sanction were inappropriate (§14).

43. The decision in Livermore is nevertheless helpful in that it suggests that the degree of impairment is a relevant factor in considering sanction: see §§23-27.
44. In the absence of a contemporaneous diagnosis of depression as at 30 July 2015 we must base our view on the likely degree of impairment on the information available to us. Dr Lawrence suggested that Mr Duffy's depression could have been more severe than in January 2016, [REDACTED] [REDACTED], but he also recognised that by January 2016 Mr Duffy's state was improved from when he previously saw him [REDACTED].
45. In the circumstances, whilst we accept that it is likely that Mr Duffy was suffering from a severe depressive illness [REDACTED], by the time of the ADRV, nearly three months later, we find that it is likely that his illness was back at similar levels to that in January 2015. In reaching that view we have taken into account the fact that Mr Duffy had restarted some training a few weeks [REDACTED], albeit on an intermittent basis, and that he was working "odd days" again in July / August.
46. We have also taken into account the fact that by the time of the ADRV Mr Duffy had been taking cocaine every weekend for about six weeks. Given that, based on Mr Duffy's own account, it is likely that there was at least some improvement in his mental state during that period we cannot rule out the possibility that by the end of July Mr Duffy's consumption of cocaine was at least in part the result of habit (in that he had got into the habit of taking it every weekend with his new friends) rather than wholly because of his cognitive impairment at that point.
47. Taking these factors into account, and looking at the facts of this case in the round, we consider that the appropriate reduction to the period of Ineligibility of two years that would otherwise apply is nine months, as a result of which the period of Ineligibility is reduced to 15 months.

48. We would emphasise that we have not approached the issue of reduction as a mathematical exercise, nor have we sought to compare the facts of Mr Duffy's case directly with the facts of other cases involving impairment and the use of recreational drugs. Rather, we have sought to find a reduction that fairly reflects all the circumstances of Mr Duffy's case.

49. [REDACTED]

Conclusion

50. For the reasons set out above, the Panel unanimously makes the following decision:

- 50.1. The Anti-Doping Rule Violation under Article 2.1 of the ADR has been established;
- 50.2. Having established that the Anti-Doping Rule Violation was not intentional, and that he bears No Significant Fault or Negligence, Mr Duffy's period of Ineligibility is fifteen months;
- 50.3. Pursuant to ADR Article 10.11.3 credit must be given against the total period of Ineligibility for Mr Duffy's Provisional Suspension which commenced on 20 August 2015. Accordingly, the period of Ineligibility will run until 19 November 2016.

Right of Appeal

51. In accordance with Article 13.4 of the ADR and Article 13 of the Procedural Rules, Mr Duffy and the other parties named in Article 13.4 of the ADR have a right of appeal to an Appeal Tribunal of the National Anti-Doping Panel. In accordance with Article 13.7 of the ADR and Article 13.5 of the Procedural Rules, any party who wishes to appeal must lodge a Notice of Appeal with the NADP Secretariat within 21 days of receipt of this decision.

Kate Gallafent QC

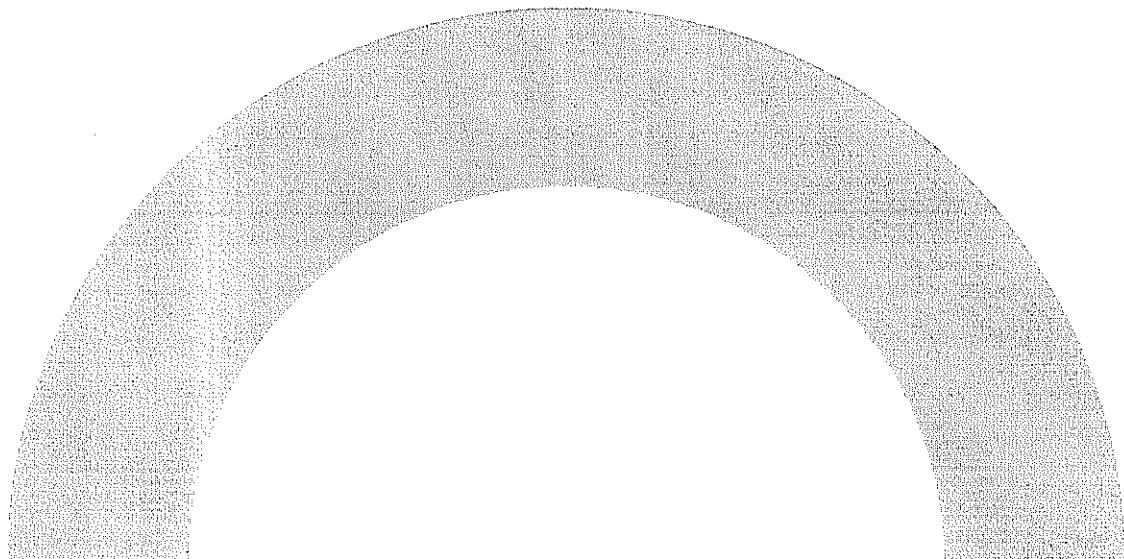
Dr Terry Crystal

Colin Murdock



Signed on behalf of the Tribunal

Dated 09 February 2016



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