

IN THE MATTER OF THE FOOTBALL ASSOCIATION ANTI-DOPING REGULATIONS
BETWEEN:

THE FOOTBALL ASSOCIATION

-and-

MR PATRICK LACEY

Before:

David Casement QC (Chairman)

Gareth Farrelly

Marvin Robinson

WRITTEN REASONS

1. On 3 February 2017 Mr Patrick Lacey ("PL"), a 24 year old Player for Accrington Stanley Football Club, was charged with a breach of Regulation 3 of The FA Anti-Doping Regulations 2016/17 (ADRs). The charge was the result of PL providing an in-competition urine sample to FA Anti-Doping officials on 22 November 2016, which tested positive for the presence of Benzoyllecgonine. That is a metabolite of cocaine which is a Prohibited Substance listed in S6 Stimulants of Schedule 3 of the ADR.
2. By Reply Form dated 20 February 2017 PL admitted the charge and requested a personal hearing. PL provided written submissions with his Reply Form which, in essence, argue:
 - 2.1 PL's Use of the Prohibited Substance was not "intentional"; the relevant starting point for sanction should therefore be 2 years and not 4 years, and
 - 2.2 There was "no significant fault" on the part of the Player in committing the violation, such that the sanction should be further reduced from 2 years.

3. On 15 December 2016 The FA sent a letter to PL notifying him of his provisional suspension in respect of all First Team Competitive Matches and Non-First Team matches until further notice. By the same letter PL was informed of his entitlement to have the 'B' sample tested. On 19 December 2016 PL informed The FA he did not require the 'B' sample to be tested.

4. The final hearing of these disciplinary proceedings took place at Wembley on 3 May 2017. Those attending the hearing other than the Commission were as follows:

Patrick Lacey

Mark Hovell of Mills & Reeve LLP (advocate for PL)

Simon Barker of the PFA

Dr Tim Rogers (expert consultant psychiatrist)

David Kirk (expert psychotherapist), by phone

Christopher Ware of counsel (advocate for The FA)

Joseph Paterson (observer, UKAD)

Myles Blenkinsop (observer, Anti-Doping Administrator, The FA)

Mark Ives, Head of Judicial Services

5. PL admitted the Anti-Doping Rule Violation and therefore the only issue to be addressed by the Commission was sanction.

Evidence

6. By a letter which is undated but which the Commission is informed was sent on 16 December 2016 PL informed The FA of how the Prohibited Substance entered his body. He stated that after a match on 19 November 2016 he was in a “bad mood.” The match referred to was against Stevenage in which he was not selected to play. PL stated he went out that evening with a group of friends and was drinking from around 8pm until 5am the next day. During the course of the evening PL was offered and took cocaine from one of his friends. He denied seeking to gain any sporting advantage. It was then on 22 November 2016 that he was tested following the match between against Hartlepool and it was that test which was positive for the Prohibited Substance.
7. PL was interviewed on 12 January 2017 by Jenni Kennedy, Head of the Integrity Team at The FA. Mr Barker of the PFA attended the interview with PL. During the interview PL explained that over the previous four years he had been suffering from depression but had not sought help. Instead he had used alcohol and cocaine to address his problems. He explained that since the positive test result he had been undertaking therapy to address his problems and was making progress.
8. The assertion that PL was suffering from depression over a period of four years was supported by Mr Kirk who explained the treatment PL was receiving. Mr Kirk gave evidence that PL was genuine in the symptoms that he presented and that Mr Kirk was confident he could distinguish between real symptoms and situations where someone may be merely trying to avoid the consequences of social drug use. His conclusion was firmly supported by Dr Rogers who, in his report and oral testimony, gave evidence that PL had been suffering from moderate depression, as opposed to mild or severe depression, which he had assessed using standard clinical criteria used by psychiatrists. PL’s moderate depression would fluctuate from time to time and he used the analogy of climate and weather. There was an underlying

condition, the moderate depression, which might be compared with climate. From time to time depending upon the circumstances [REDACTED] a person would suffer more acutely certain symptoms. Dr Rogers concluded that at the time when PL took the prohibited substance he was suffering from cognitive impairment as a result of the underlying moderate depression made worse as a result of [REDACTED]

9. Dr Rogers explained the [REDACTED] affecting PL and its impact. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] It is clear that PL has been drinking excessively and self-medicating with alcohol and cocaine for a number of years to deal with his underlying condition. When asked why it was that PL did not seek help during that period Dr Rogers explained that in PL's case this was mainly due to fear. It was a fear to admit that he needed help and a fear to discuss matters [REDACTED]. That fear presented a real obstacle to PL discussing his issues or asking for help.

10. The degree of impairment which resulted in the commission of the ADRV was addressed in Mr Roger's report at paragraph 23: "His mental state was so altered that all he had come to care about was seeking to escape from his depression, which he sought (as he had got into a pattern of doing) to find through cocaine and alcohol. It would appear that such disregard is out of character for him."

11. At paragraph 24 Dr Rogers opined: "it is more credible to formulate Patrick's drug and alcohol use as dysfunctional coping strategies for mental illness in the absence of professional treatment (also in the context of barriers to accessing this arising from [REDACTED]). As above, his depression meant that his ability to fully consider the potentially serious consequences of his actions was impaired at

the time. He would use substances when his depression was of such a level that he found it otherwise difficult to cope, irrespective of the time or proximity to a football match or training.”

12. The Commission was impressed with the evidence of Dr Rogers and Mr Kirk. Their evidence was persuasive and detailed. In the event The FA itself, after testing the evidence of PL and the experts, accepted the evidence of those expert witnesses and therefore the Commission proceeds on the basis of the expert findings.
13. The Commission have also read and considered the various character references provided on behalf of PL.
14. In summary The FA accepted:
 - 14.1 PL has proved how the Prohibited Substance entered his body. He deliberately consumed cocaine on the night of 19 and 20 November 2016;
 - 14.2 PL did not intend to enhance his sporting performance;
 - 14.3 PL has suffered from moderate depression for a period of four years for which, prior to the positive test in this case, he received no help;
 - 14.4 on the night of 19 November 2016 PL’s cognitive function was impaired such, as Dr Rogers opined, he had an inability to properly weigh up risks and the consequences of those risks;
 - 14.5 the provisions in respect of No Significant Fault or Negligence were engaged.

15. The Commission considers the concessions made by The FA, after carefully testing the evidence in cross-examination, to be well made and realistic in this case.

Submissions on behalf of the Player

16. Mr Hovell on behalf of PI set out in detailed written and oral submissions the relevant principles and authorities. He was realistic not to submit that this was a case of No Fault given the very high hurdle to be overcome in respect of such a basis of mitigation under the Rules. PL knew that he was ingesting cocaine and was aware that such substances were a breach of the rules. Likewise Mr Hovell was realistic in not submitting that this case was analogous to the wholly exceptional case of Jake Livermore or to otherwise seek to rely on the proportionality principle. Rather the submissions made were rightly focussed on the line of authorities that address cognitive impairment in the context of No Significant Fault or Negligence. It was submitted that the Commission should have regard to five cases in particular although other authorities were also addressed:

UKAD v Richard Burnett SR 0000120253 NADP,
The FA v Mr Jake Livermore, FA Commission, 8 September 2015,
UKAD v Jonathan Slowey, NADP, 9 September 2016,
UKAD v Duffy, SR/NADP/476/2015 and
Sport Ireland v Craig Walsh, Irish Sport Anti-Doping Appeal Panel 11 July 2016

17. Each of these cases is concerned with cognitive impairment. The Livermore decision was referred to, not to suggest that the proportionality principle was engaged so as to avoid any sanction, but to draw attention to paragraph 27 of that decision where the commission found that if the only basis available for reduction of sanction was No Significant Fault or Negligence then it would have imposed no more than 12 months.

18. It was submitted by Mr Hovell that the facts of the present case with a young player who has battled moderate depression for four years without help the level of sanction should be at the lower end of the range of sanctions.

Conclusion

19. The Commission is satisfied, as was conceded by The FA after testing the evidence in cross-examination, that this is a case of No Significant Fault or Negligence. The authorities cited provide an appropriate basis for reducing the level of sanction, to not less than 50% of that which would otherwise be applicable, in cases where the player has suffered cognitive impairment and as a result of that cognitive impairment the player has committed the Anti-Doping Rule Violation. The degree of fault will depend upon the circumstances of each case and precedents, in this area, are of very limited assistance. The question for the Commission is this: taking into account all of the circumstances of the case and the evidence before the Commission what level of sanction properly reflects the culpability of the player. That involves consideration of all factors including the core responsibility of the player for what he ingests and his obligation to comply with the ADRs as well as the degree of cognitive impairment suffered by the player.
20. In the present case the Commission's decision is that the appropriate level of sanction is 14 months suspension. That suspension shall commence on the date of the provisional suspension which was 15 December 2016. PL will be the subject of targeted testing.
21. Given PL's financial circumstances the Commission has decided to exercise its discretion not to order a fine or to order the payment of costs.

David Casement QC (Chairman)

Gareth Farrelly

Marvin Robinson

10 May 2017