

**At the Headquarters of the Malta Sports Council, Cospicua**

**Decision of the National Anti-Doping Disciplinary Panel**

**Ref: 02/2012/NADDP**

**Anti- Doping Commission (Malta)**

**Vs**

**Clayton Failla (Footballer, with Identity Card Number 41886M)**

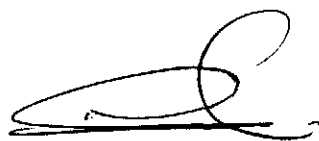
The National Anti-Doping Disciplinary Panel (hereinafter the 'Panel') consisting of Dr Carmel Cascun as Chairman, and Notary Dr Sue Mercieca, and Ms Joanna Vella as members,

Before the commencement of these procedures, Not Dr Sue Mercieca and Ms Joanna Vella declared to the Chairman they are not subject to any circumstance or conflict that could negatively effect their impartiality in the case under review. The same declaration is made by the Chairman of the 'Panel'.

Considered the Request by the National Anti Doping Commission (Ref no. 10312\_2/13) of the 21<sup>st</sup> July 2012 (Dok ADC1) to the Chairman of the 'Panel' to appoint a sitting for the hearing of a case concerning the alleged breach by Footballer Mr Clayton Failla of the Anti-Doping Regulations, 2011 ( Legal Notice 281/2011, Sports Act, Chapter 455, Laws of Malta).

Took note of and reviewed the documents that were forwarded to the 'Panel' at the initial stage by the Coordinator of the Anti-Doping Programme, namely:

- Request to the 'Panel' to schedule a hearing (Dok ADC1)
- Covering letter from Olympic Center of Athens 'Spyros Louis' dated 16/07/2012 (Dok ADC2)
- Analysis Report number 10312\_2 from Laboratory Director of Olympic Center of Athens 'Spyros Louis' (Dok ADC3)
- Initial Review by the NADO Regarding Adverse Analytical Finding Ref No. 10312\_2/1 (Dok ADC4)
- Notification of Adverse Analytical Finding dated 16<sup>th</sup> July 2012 Ref No. 10312\_2/3 (Dok ADC5)
- Report of Adverse Analytical Finding Ref No. 10312\_2/4 (Dok ADC6)
- Scheduling of 'B' Sample Analysis dated 16<sup>th</sup> July 2012 Ref No. 10312\_2/5 (Dok ADC7)
- Request of 'B' Sample Analysis Ref No. 10312\_2/6 (Dok ADC8)
- Action by the National Association/Federation following an Adverse Analytical Finding dated 16<sup>th</sup> July 2012 Ref No. 10312\_2/7 (Dok ADC9)
- Letter from the President of the Malta Football Association dated 20<sup>th</sup> July 2012 to Mr Clayton Failla (Dok ADC10)



- Letter from the President of the Malta Football Association dated 20<sup>th</sup> July 2012 to the Secretary, Hibernians Football Club (Dok ADC11)
- Letter of Acceptance for Provisional Suspension by Clayton Failla Ref No. 10312\_2/10 (Dok ADC12).

Took note of the Notice issued by the 'Panel' to Clayton Failla on the 16<sup>th</sup> August 2012 for him to appear before the 'Panel' on the 27<sup>th</sup> August 2012 (Dok NADDP1), copy of which was also forwarded to the Anti-Doping Commission, the Malta Football Association, the Malta Sports Council and the Hibernians Football Club.

Took note of and reviewed the Statement of Defence submitted by the lawyers appearing for Clayton Failla, including the various attachments filed therewith, namely Dok CF1 to Dok CF10.

Took note of and reviewed the documents tabled by Rodney Pisani, an official of the Malta Football Association (MFA), when giving evidence before the 'Panel', namely:

- Letter from the MFA to Clayton Failla dated 10<sup>th</sup> January 2012 (Dok RP1)
- Letter from the MFA to Clayton Failla dated 23<sup>rd</sup> September 2010 (Dok RP2)

Took note of and reviewed the documents tabled by Ignatius Zammit, the Coordinator of the Anti-Doping Programme, when giving evidence before the 'Panel', namely:


- Doping Control Form of Clayton Failla, including the Chain of Custody Form and the Doping Control Officer Report Form all dated 03/04/2012 (Dok IZ1)
- Test Report no. 12T0389 from the Institut für Dopinganalytik und Sportbiochemie Dresden dated 18/04/2012 (Dok IZ2)
- Doping Control Form of Clayton Failla, including the Chain of Custody Form both dated 25/06/2012 and the Doping Control Officer Report Form dated 27/06/2012 (Dok IZ3)
- List of Players, reserves and substitutes and officials of Valletta FC and Hibernians FC for the football match event of the 25<sup>th</sup> June 2012 (Dok IZ4)
- Analysis Report number 10312\_2 from Laboratory Director of Olympic Center of Athens 'Spyros Louis' (Dok IZ5)


Took note of and reviewed the document tabled by Clayton Failla whilst giving evidence, namely;

- Training attendance sheet of Hibernians FC for June 2012 (Dok CF1A).

Heard and took note of the evidence given under oath during the sitting held on the 27<sup>th</sup> August 2012 at the National Swimming Pool Complex, Msida by the following persons:

- Mr Clayton Failla
- Mrs Noella Failla (spouse of Clayton Failla)
- Mr Joseph Attard and Gordon Buhagiar representatives of Delta (Malta) Limited, (Employers of Clayton Failla)
- Mr Rodney Pisani, representative of Malta Football Association
- Mr Daniel Borg (brother-in-law of Clayton Failla)
- Mr Ignatius Zammit, Coordinator of the Anti-Doping Programme, KMS Malta
- Mr Michael Woods, Coach of Hibernians FC.


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Heard and took note of the submissions and comments made by Dr Andrew Borg Cardona the lawyer retained by the Anti-Doping Commission and by Ms Maria Mifsud Bonnici, the Chairperson of the Anti-Doping Commission,

Heard and took note of the submissions and comments made by Dr Sarah Galea and Dr Lena Sammut, the lawyers retained by Mr Clayton Failla,

During the sitting held at the National Swimming Complex, Msida on the 27<sup>th</sup> August 2012 at 18.00 hrs.

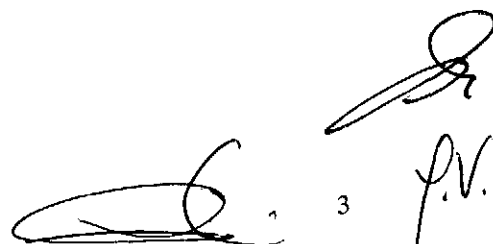
The parties agreed that the Panel's decision is to be written in English.

## 1. Preliminaries

- 1.1 In the case under review on the 25<sup>th</sup> June 2012 Clayton Failla, who is registered as a football player with Hibernians FC (and who is regularly chosen to play for the Malta National Team and also is registered in the KMS 20/20 Schem) was asked to provide a urine sample immediately after the Euro Cup Competition match between Hibernians FC and Valletta FC on the 25<sup>th</sup> June 2012 at 20.25 hrs at the Centenary Stadium, Ta' Qali, Malta. In the Doping Control Form (Dok IZ3 and Dok CF5) Mr Failla declared that he was taking "cold and full till 3.30 25-06-2012"<sup>1</sup> and "visk spray"<sup>2</sup> and that he had donated blood about six months before.
- 1.2 In the evidence given by Mr Failla during the hearing proceedings he clarified that whilst he did disclose that he had taken some medicine against cold and flu, yet then he could not remember the name of the medicine which resulted to be Dolvan Tablets.
- 1.3 According to the procedures the "Doping Control Officer Report Form" and the "Chain of Custody Form" (part of Dok IZ3) were also completed. On the 25<sup>th</sup> June 2012 two urine samples marked 'A' and 'B' were taken from Mr Clayton Failla which were duly sealed in the appropriate containers.
- 1.4 The urine samples were forwarded to the Doping Control laboratory at the Olympic Athletic Center of Athens "Spyros Louis", a laboratory that is accredited by the World Anti-Doping Agency (WADA).
- 1.5 On the 16<sup>th</sup> July 2012 the above-mentioned laboratory in Athens issued its analysis report number 10312\_2 under the signature of Laboratory Director Dr Manolis Lyriss PhD. In this report, *inter alia* it was declared that:
  - Event/Status of Control : In Competition
  - Sport: Football
  - Type of Sample: Urine
  - Chain of Custody Status: According to WADA specifications
  - Sex: Male

<sup>1</sup> Should have been more correctly spelt "cold and flu".

<sup>2</sup> Should have been more correctly spelt "Vicks Spray".



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- Substance Identified: Ephedrine (at a concentration > 20ug/mL, which is greater than the decision limit of 11 ug/mL).
  - Result: Adverse Analytical Finding
- 1.6 According to the 2012 Prohibited List as published by WADA<sup>3</sup> ephedrine is a prohibited 'In-Competition' substance when its concentration in urine is greater than 10 micrograms per millilitre.
  - 1.7 On the 16<sup>th</sup> July 2012 the footballer Clayton Failla was notified that a prohibited substance was detected in the urine sample that was collected from him on the 25<sup>th</sup> June 2012 (Dok ADC5). Mr Failla was also given a Report of the Adverse Analytical Finding (Dok ADC6) in which it was mentioned that 'Ephedrine' was the prohibited 'In- Competition' substance that was found in his urine sample, and that the presence of such substance was in violation of the WADA Code (Art 2.1) and LN 281/2011 of the Laws of Malta (Art 3.3). Furthermore Mr Failla was informed of the possible consequences which such breach may attract in terms of the WADA Code (Art 10.1 and Art 10.2) and LN 281/2011 (Art 11.1 and Art 11.2).
  - 1.8 Although Mr Failla was given the opportunity to ask for the analysis of the 'B' Sample by the 20<sup>th</sup> July 2012, Mr Failla did not exercise such a right.
  - 1.9 On the 20<sup>th</sup> July 2012, Mr Clayton Failla and the Hibernians FC were informed in writing by the President of the Malta Football Association that with immediate effect Mr Failla was being suspended provisionally from all football activities until such time that a decision is taken by the 'Panel' in terms of LN281.2011 and Art 36(v) of the Statute of the Malta Football Association.

## 2. Merits

- 2.1 *The Anti Doping Commission and Clayton Failla in substance agreed with the facts as to how and when the athlete was asked to submit for the anti-doping control test after the Euro Cup Competition football match between Hibernians FC and Valletta FC. Also the result of the urine analysis as issued by the WADA accredited laboratory in Athens on the 16<sup>th</sup> July 2012 was not disputed by any of the parties.*
- 2.2 Mr Failla and his defence lawyers argued that the urine sample collected from Mr Failla after the Euro Cup Competition match on the 25<sup>th</sup> June 2012 was an 'Out of Competition' sample as according to them this match is only a preparatory one of no competitive importance, it attracted no sponsorships too and the rules applicable to this competition were more liberal when compared with other competitions. This line of defence was being pursued by Mr Clayton's defence team because the use of ephedrine substance is prohibited only when 'In-Competition'. Without any hesitation the Panel disagreed with the defence team's submission on this point. From the evidence tendered, even by the representative of the Malta Football Association, the Euro Cup Competition is a

<sup>3</sup> The World Anti-Doping Code, The 2012 Prohibited List (published on 24<sup>th</sup> August 2011 effective as from 1<sup>st</sup> January 2012).




competitive event in its own right in which those Maltese Football Clubs that qualify to participate in the European Football Competitions are under obligation to compete.

- 2.3 Mr Failla said that he had commenced taking the Dolvan Tablets (2 pills 3 times daily) as from the 23<sup>rd</sup> June 2012 as he was feeling the symptoms of a cold developing, however without consulting his doctor. According to him this medicine, which he found at his fiancée's home where at the time was residing, was not purchased by him, but by his fiancée's brother Daniel Borg. He also declared that the last time he had taken Dolvan Tablets was at about 15.30 hrs of the 25<sup>th</sup>, that is a couple of hours before the match started. Mr Failla stated that usually before taking any medicine he would always consult his doctor, but in this instance he did not. Although Mr Failla did not provide any specific reason as to why in this instance he did not inform his doctor as was his usual practice, he said that at that point he had given more importance mainly to the following:
- the fact that he was going to get married on the 7th July 2012;
  - he did not consider the Euro Cup Competition match as important;
  - he had already informed the Hibernians FC that he would not be playing in the football matches on the 5<sup>th</sup> and 12<sup>th</sup> July 2012 against FK Sarajevo, since by then he would be on his honeymoon.
- 2.4 The 'Panel' appreciates Mr Failla's concern or fear about being sick some 14 days before the wedding day, apart from the athlete's personal duty to ensure that no prohibited substance enters his body. However in such circumstances the 'Panel' would have expected Mr Failla to have consulted his doctor and/or the Therapeutic Use Exemption Committee to avoid taking unnecessary risks both *vis a vis* the sport practised by him and to minimise the risk of being ill at the time of wedding. The Panel noted that Mr Failla apart from being an athlete registered under the KMS 20/20 Scheme and the A.D.A.M.S.<sup>4</sup>, should have been fully aware of these responsibilities having been subjected to at least two previous anti-doping control tests (Dok RP1 and Dok RP2) which however resulted to be 'negative'. Furthermore Mr Failla had attended a seminar on anti-doping organised by the National Anti-doping Commission.
- 2.5 It is interesting to note that immediately after Mr Failla had been asked to submit himself to the anti-doping control test on the 25<sup>th</sup> June 2012, at that point there was a discussion as to whether the sample being requested was 'in-competition' or 'out-of-competition'. This discussion could have been prompted when Mr Failla informed his doctor that he was being asked to submit to an anti-doping test and that he was taking Dolvan Tablets. This logically ties in with the fact that Mr Failla only wrote "cold & flu" on the Doping Control Form (Dok IZ3), and then subsequently continued on Nurofen Cold & Flu Tablets.
- 2.6 Although Mr Failla did not intend to play in the football matches against FK Sarajevo, he still attended with the rest of the team at the Centenary Stadium prior to the match against Hibernians FC, as apart from being obliged to attend it is the coach's prerogative to decide on the line-up. Then Mr Failla was chosen to play, and in fact he played the full 90 minutes. In his evidence the Hibernians FC


<sup>4</sup> Anti-Doping Administration & Management System



coach Michael Woods stated that before that match he was aware that Mr Failla was sick. He added that Mr Failla had a running nose, which as Mr Woods considered it as not being a serious condition, he even didn't bother to ask Mr Failla whether he was taking any medicine. The 'Panel' certainly expects a better conduct from any sport coach in such circumstances since a coach has also a responsibility towards his players' welfare prior to sending them on the field even if he reckons that he is short of players he may utilise due to injuries, absentees etc. It is also worrying that Mr Woods was not aware whether Hibernians FC had a system whereby players are kept abreast of important information. However he added that he had been appointed a coach just a week before without having time to have a hand-over from the previous coach. The 'Panel' feels that Sports Clubs should be more pro-active to pass on more information to their athletes also on matters concerning the taking of medicines and substances that could have an impact on anti-doping control tests and the adverse consequences that may result therefrom.

### 3. Considerations

3.1 The 'Panel' is of the opinion that Mr Failla has been negligent when he decided to take the Dolvan Tablets without consulting his doctor and/or the Therapeutic Use Exemption Committee. Nevertheless the 'Panel', on the basis of evidence brought before it, does not harbour any doubts that in the days before the football match of the 25<sup>th</sup> June 2012 Mr Failla was not feeling well. Looking at the Hibernians FC Training Attendance for June 2012 (Dok CF1A) Mr Failla was absent from training on the 23<sup>rd</sup> June 2012 when he was marked as 'excused'. The coach Mr Michael Woods also said that before the match of the 25<sup>th</sup> June 2012 he noticed that Mr Failla was sick and with a running nose. His fiancée' Noella Failla, who was also sick some 10 days before the match, also said that on the day of the match Mr Failla was suffering from a cold. Two days after the match Mr Failla reported 'sick' at work as also certified by his employer's medical practitioner. This led the Panel to be satisfied that Mr Failla's health condition and his circumstances at the material time excluded Mr Failla's intention to enhance his performance in the sport he practises or to mask the use of a performance enhancing substance when he took the Dolvan Tablets as a remedy against his cold.

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3.2 Having said this, the 'Panel' is of the opinion that Mr Failla had fallen short in two basic items, namely when:

- He took medicine without checking with his doctor and/or the TUE Committee when as an athlete he had to be vigilant as to what substances enter his body not to run foul of the Anti-Doping Regulations, and
- He did not to disclose the name of the medicine he took on the Doping Control Form when the episode of the pre-test discussion on the subject of 'in-competition'/'out of competition' indicates that then most likely there was talk on the type of the medicine being taken and the prohibited substance it contained.

The Panel also took into account the fact that Mr Failla should have been even more diligent, him being a National Team player, a KMS 20/20 Scheme athlete and an MFA Footballer of the Year for 2011/12.



  
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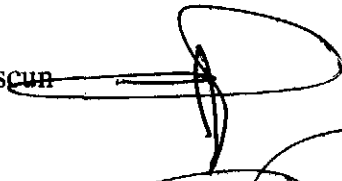
#### 4. The Decision

Therefore on the basis of the foregoing, the National Anti-Doping Disciplinary Panel decides this anti-doping case brought by the National Anti-Doping Commission against the athlete Mr Clayton Failla by finding :

- That Mr Clayton Failla has breached the Anti-Doping Regulations, 2011 (Art 3(3)) and the WADA Code (Art 2.1) having used medicine with contained the prohibited substance 'ephedrine' (at a concentration greater than 20ug/mL) 'in-competition' prior to the Euro Cup Competition football match between Hibernians FC and Valletta FC on the 25<sup>th</sup> June 2012;
- That Mr Clayton Failla's intention when taking the Dolvan Tablets medicine was not intended to enhance his performance in the sport he practices.

And therefore the Panel in terms of what is provided in the Anti-Doping Regulations, 2011 (Art 11(4)(b)) and the WADA Code (Art 10.4), is imposing on Mr Clayton Failla a suspension of ineligibility from any sports activities for a period of four (4) months commencing from the date of his provisional suspension on the 20<sup>th</sup> July 2012.

Carmel Cascun



Sue Mercieca



Joanna Vella



This 27<sup>th</sup> day of September 2012

Cospicua, Malta