



Issued Decision

UK Anti-Doping and Nigel Levine

Disciplinary Proceedings under United Kingdom Athletics' Anti-Doping Rules

This is an Issued Decision made by UK Anti-Doping Limited ('UKAD') pursuant to United Kingdom Athletics' Anti-Doping Rules (the 'UKA ADR'). It concerns a violation of the UKA ADR committed by Mr Nigel Levine and records the applicable Consequences.

Capitalised terms used in this Decision shall have the meaning given to them in the UKA ADR unless otherwise indicated.

Jurisdiction and Applicable Rules

1. The International Association of Athletics Federations ('IAAF') is the International Federation governing the sport of athletics.
2. Article 1.6 of the IAAF Anti-Doping Rules ('IAAF ADR'), effective 3 April 2017¹, states:
 - 1.6 *These Anti-Doping Rules shall apply to the IAAF and to each of its National Federations and Area Associations. All National Federations and Area Associations shall comply with the Anti-Doping Rules and Anti-Doping Regulations. The Anti-Doping Rules and Anti-Doping Regulations shall be incorporated either directly, or by reference, into the rules or regulations of each National Federation and Area Association, and each National Federation and Area Association shall include in its rules the procedural regulations necessary to implement the Anti-Doping Rules and Anti-Doping Regulations effectively (and any changes that may be made to them). The rules of each National Federation and Area Association shall specifically provide that all Athletes and other Persons under its jurisdiction shall be bound by the Anti-Doping Rules and Anti-Doping Regulations, including submitting to the results management authority set out in such rules.*
3. United Kingdom Athletics ('UKA') is the National Governing Body for the sport of athletics in the United Kingdom and a National Federation for the purposes of the IAAF ADR. In accordance with Article 1.6 of the IAAF ADR, UKA has adopted the IAAF ADR via Article 2.1 of the UKA ADR:
 - 2.1 *UKA hereby adopts the IAAF Anti-Doping Rules (as amended from time to time) as its anti-doping rules subject to UKA's specific amendments and supplemental rules as to management and enforcement set out below. The*

¹ The most recent IAAF ADR have effect as of 6 March 2018. Pursuant to Article 21.3 of the 2018 IAAF ADR, substantive matters in Mr Levine's case are governed by the 2017 IAAF ADR, as they were in force when he committed this Anti-Doping Rule Violation (ADRV). References in this Decision to the IAAF ADR are to the 2017 version.



IAAF Anti-Doping Rules currently in force are set out at <http://www.iaaf.org/about-iaaf/documents/anti-doping>. In the event that the IAAF adopts new Anti-Doping Rules which supersede these Rules, the new IAAF Anti-Doping Rules will prevail...

4. Article 4 of the UKA ADR sets out that:

4.1 These Rules shall apply to and shall bind all Athletes, Athlete Support Personnel and other persons under the jurisdiction of UKA (as derived from the IAAF) even if any such Athletes, Athlete Support Personnel or other persons have not signed and returned a form of acknowledgement and agreement as envisaged by Rule 30.3 of the IAAF Anti-Doping Rules. Those to whom these Rules apply include:

- a) all Athletes ... who are members of, or licensed by UKA and/or member or affiliate organisations of UKA (including any clubs, teams, associations or leagues);*
- b) all Athletes ... participating in such capacity in Events, Competitions and other Athletics activities organised, convened or authorised by UKA or any of its member or affiliate organisations (including any clubs, teams, associations or leagues), wherever held; and*
- c) any other Athlete ... who, by virtue of a contractual arrangement or otherwise, is subject to the jurisdiction of UKA for the purposes of anti-doping*

whether or not such person(s) is or are resident in the UK.

5. At all material times, Mr Levine was subject to the UKA and IAAF ADR by virtue of an 'Athlete Acknowledgement and Agreement' signed by him in February 2010, and also by virtue of a 'World Class Programme – Performance Athlete Agreement', signed by him in June 2017.

6. Article 7.1 of the IAAF ADR states:

7.1 Except as provided for in Article 7.2 below, results management and hearings shall be the responsibility of, and shall be governed by, the procedural rules of the National Federation or Anti-Doping Organisation that initiated and directed Sample collection (or, if no Sample collection is involved, the National Federation or Anti-Doping Organisation which first provides notice to an Athlete or other Person of an asserted Anti-Doping Rule Violation and then diligently pursues that Anti-Doping Rule Violation).

None of the provisions of Article 7.2 of the IAAF ADR apply in this case. UKAD, as the relevant National Anti-Doping Organisation ('NADO'), initiated and directed that the Sample be collected from Mr Levine.

7. Furthermore, Article 5.1 of the UKA ADR states:

5.1 Without prejudice to its rights under Rule 5.2 below, UKA appoints the NADO to undertake Testing on Athletes in the UK. UKA may at any time



appoint the NADO to carry out the results management process (including the presentation of the case at any hearing) ... A copy of the existing notice of delegation to the NADO of 14th December 2009, which is currently in force, is at Schedule 3 of these Rules.

8. Schedule 3 of the UKA ADR states:

With effect from today (Monday 14 December 2009) UKA appoints UK Anti-Doping (UKAD), which is the successor National Anti-Doping Organisation to the Drug-Free Directorate of UK Sport, to carry out the results management process in respect of any adverse analytical finding, atypical finding or other alleged anti-doping rule violation on behalf of UKA. For the avoidance of doubt, the results management process includes the presentation of the case at any hearing on behalf of UKA ...

9. UKAD has authority to conduct results management in relation to this violation of the UKA ADR.

Facts

10. Mr Levine is a 29-year-old sprinter (28-years-old as at the date of his Anti-Doping Rule Violation). He has competed at the highest level and has won European and World Championship medals as both a junior and a senior Athlete. In 2013 he won an individual European Indoor Championship silver medal in the 400 metres and was part of the gold medal winning 4 x 400m relay team at the same Event. He also represented Great Britain at the 2012 Olympic Games.
11. On 24 November 2017, a UKAD Doping Control Officer ('DCO') collected a urine Sample from Mr Levine Out-of-Competition, at Brunel University, Kingston Lane, Uxbridge, Middlesex UB8 3PH. Assisted by the DCO, Mr Levine split the Sample into two bottles which were given reference numbers A1133833 ('the A Sample') and B1133833 ('the B Sample') respectively.
12. The Sample was submitted for analysis at the Drug Control Centre, King's College London, a World Anti-Doping Agency ('WADA') accredited laboratory ('the Laboratory'). The Laboratory analysed the A Sample in accordance with the procedures set out in WADA's International Standard for Laboratories.
13. Analysis of the A Sample returned an Adverse Analytical Finding ('AAF') for clenbuterol.
14. Under section S1.2 of the WADA 2017 Prohibited List, clenbuterol is classed as an Anabolic Agent. It is a non-Specified Substance and is prohibited at all times.
15. Mr Levine did not have a relevant Therapeutic Use Exemption.
16. On 13 December 2017, UKAD issued Mr Levine with a Notice of Charge ('the Charge') and provisionally suspended him. The Charge alleged the commission of an Anti-Doping Rule Violation ('ADRV') pursuant to Article 2.1 of the IAAF ADR



(Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample) in relation to the presence of clenbuterol in Sample A1133833.

Admission and Consequences

17. Article 2.1 of the IAAF ADR provides that the following amounts to an ADRV:

Doping is defined as the occurrence of one or more of the following (each an "Anti-Doping Rule Violation"):

2.1 Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample

2.1.1 It is each Athlete's duty to ensure that no Prohibited Substance enters his body. Athletes are responsible for any Prohibited Substance or its Metabolites or Markers found to be present in their Samples. Accordingly, it is not necessary that intent, Fault, negligence or knowing Use on the Athlete's part be demonstrated in order to establish an Anti-Doping Rule Violation under Article 2.1.

18. On 31 January 2018 Mr Levine accepted the presence of clenbuterol in his Sample. On 10 April 2018 Mr Levine admitted that he was subject to the UKA ADR and in so doing accepted the ADRV. On 29 August 2018, Mr Levine accepted the applicable Consequences in writing, principally a four-year period of Ineligibility.

19. Article 7.7.4 of the UK Anti-Doping Rules 2015 states:

7.7.4 In the event that UKAD withdraws the Notice of Charge, or the Athlete or other Person admits the Anti-Doping Rule Violation(s) charged and accedes to the Consequences specified by UKAD (or is deemed to have done so in accordance with Article 7.7.1), neither B Sample analysis nor a hearing is required. Instead, UKAD shall promptly issue a reasoned decision confirming the commission of the Anti-Doping Rule Violation(s) and the imposition of the specified Consequences, shall send notice of the decision to the Athlete or other Person and to each Interested Party, and shall Publicly Disclose the decision in accordance with Article 8.4.²

20. This Decision is issued pursuant to Article 7.7.4 of the UK Anti-Doping Rules 2015 without a hearing on the basis of the admission to the Charge and the acceptance of the Consequences by Mr Levine.

21. Article 10.2 of the IAAF ADR provides as follows for the Consequences to be imposed in these circumstances:

10.2 Ineligibility for Presence, Use or Attempted Use, or Possession of a Prohibited Substance or Prohibited Method

The period of Ineligibility imposed for an Anti-Doping Rule Violation under Article 2.1 ... that is the Athlete[s] ... first anti-doping offence shall be as

² Note that the equivalent rule in the IAAF ADR can be found at Article 8.10.6.



follows, subject to potential reduction or suspension pursuant to Article 10.4, 10.5 or 10.6:

10.2.1 The period of Ineligibility shall be four years where:

(a) The Anti-Doping Rule Violation does not involve a Specified Substance, unless the Athlete ... establishes that the Anti-Doping Rule Violation was not intentional.

(b) ...

10.2.2 If Article 10.2.1 does not apply, the period of Ineligibility shall be two years.

22. The meaning of 'intentional' for these purposes is set out in Article 10.2.3 of the IAAF ADR as follows:

10.2.3 As used in Articles 10.2 and 10.3, the term "intentional" is meant to identify those Athletes ... who cheat. The term, therefore, requires that the Athlete ... engaged in conduct that he knew constituted an Anti-Doping Rule Violation or knew that there was a significant risk that the conduct might constitute or result in an Anti-Doping Rule Violation and manifestly disregarded that risk...

23. The ADRV committed by Mr Levine concerned a non-Specified Substance, and so the applicable period of Ineligibility is four (4) years, unless Mr Levine can establish, on the balance of probability, that the commission of the ADRV was not intentional. Save in exceptional cases, such a finding will only be made by a tribunal if the Athlete can prove the source of their ingestion of the Prohibited Substance³ to the required standard.
24. In his response to the Charge, Mr Levine has accepted that clenbuterol was present in his Sample. Mr Levine has suggested that its presence was due to his use of supplements that must have been contaminated with clenbuterol. In particular, Mr Levine referred to two supplements that he claims he was using at the time he was tested. He states that there are instances of other supplements made by the same manufacturer being contaminated with Prohibited Substances and contends that one of the supplements was contaminated and therefore the likely source of clenbuterol in his Sample.
25. Whilst the manufacturer of the supplements has been linked to contaminated supplements involving Prohibited Substances, the two relevant supplements that Mr Levine claims to have taken, have not (as far as UKAD is aware) been

³ The National Anti-Doping Panel appeal tribunal in *UKAD v Buttifant SR/NADP/508/2016* stated at paragraph 31 that, "*The cases decided by the NADP panels under article 10.2.1.1 are unanimous and correct as to the practical effect of article 10.2.3. It is only in a rare case that the athlete will be able to satisfy the burden of proof that the violation of article 2.1 was not intentional without establishing, on the balance of probabilities, the means of ingestion.*"



implicated. Nevertheless, UKAD agreed to analyse, at its own cost, samples of those two supplements, these to be provided by Mr Levine.

26. Accordingly, Mr Levine sent to UKAD:
 - a. an empty container of Supplement 1, that he stated he was using prior to providing his Sample;
 - b. an unmarked/ unlabelled sachet of tablets, said to be a sample of Supplement 2 from a batch not used by Mr Levine.
27. UKAD was unable to test the empty container of Supplement 1 as it did not contain any material to analyse. UKAD did not test the sachet of Supplement 2 that was provided, as it was unlabelled and did not, according to Mr Levine, come from the same batch that he had been using. Mr Levine states that he tried to obtain samples from the correct batches of the supplements but was unable to do so, and also that he could not himself have any supplements analysed by a laboratory as he does not have the money to do so.
28. Mr Levine has not been able to demonstrate that either of Supplement 1 or 2 was contaminated with clenbuterol. His bare assertion that they may have been is not enough to demonstrate the source of his ingestion of clenbuterol. He has not otherwise established how clenbuterol came to be in his Sample.
29. Mr Levine also maintains that his behaviour at the time of Sample collection supports his position that he did not ingest clenbuterol intentionally. Mr Levine was not part of a Registered Testing Pool at the time that he provided a Sample. He states that he could have decided not to open the door to testers but chose to co-operate, as he believed that he had nothing to hide (on the basis that he had not knowingly ingested any Prohibited Substances). In UKAD's view, this is not enough to demonstrate a lack of intention on Mr Levine's part.
30. UKAD also notes that on his Doping Control Form, when asked to identify what supplements he had consumed in the seven days prior to Sample collection, Mr Levine answered "None".
31. Mr Levine accepts that he is not able to demonstrate that he did not commit the ADRV intentionally, as defined in the IAAF ADR, and that as such the period of Ineligibility to be applied is four (4) years.

Application of Article 10.6.3 of the IAAF ADR - Prompt Admission

32. UKAD has considered whether Mr Levine's period of Ineligibility can be reduced by application of Article 10.6.3 of the IAAF ADR, which states:

10.6.3 *Prompt Admission of an Anti-Doping Rule Violation after being confronted with a Violation sanctionable under Article 10.2.1 or Article 10.3.1*



An Athlete ... potentially subject to a four-year sanction under Article 10.2.1... may receive a reduction in the period of Ineligibility down to a minimum of two years, depending on the seriousness of the violation and the Athlete[s] ... degree of Fault by promptly admitting the asserted Anti-Doping Rule Violation after being confronted with it, upon the approval and at the discretion of WADA and [UKAD].

33. UKAD considers that this ADRV was not admitted promptly by Mr Levine. He did not accept the presence of clenbuterol in his Sample until 31 January 2018 and did not accept that he was subject to UKAD's jurisdiction in respect of this matter (and therefore commission of the ADRV) until 10 April 2018.
34. However, for completeness, UKAD has considered whether the criteria for the application of a reduction in the period of Ineligibility for a Prompt Admission have otherwise been met.

Seriousness of the ADRV

35. As regards the first criterion, this case involves the presence of clenbuterol in circumstances where the Athlete cannot demonstrate that the ADRV was not intentional. It is too serious for a reduction to be applied.

Level of Fault

36. As regards the second criterion, Fault is defined within the IAAF ADR in the following terms:

Fault is any breach of duty or any lack of care appropriate to a particular situation. Factors to be taken into consideration in assessing an Athlete[s] ... degree of Fault include, for example, the Athlete's ... experience, whether the Athlete ... is a Minor, special considerations such as impairment, the degree of risk that should have been perceived by the Athlete and the level of care and investigation exercised by the Athlete in relation to what should have been the perceived level of risk. In assessing the Athlete's ... degree of Fault, the circumstances considered must be specific and relevant to explain the Athlete's ... departure from the expected standard of behaviour. Thus, for example, the fact that an Athlete would lose the opportunity to earn large sums of money during a period of Ineligibility, or the fact that the Athlete only has a short time left in his or her career, or the timing of the sporting calendar, would not be relevant factors to be considered in reducing the period of Ineligibility under Article 10.5.1 or 10.5.2.

37. Having considered all relevant facts, UKAD has concluded that there are no specific or relevant circumstances that render Mr Levine's degree of Fault as anything other than high.



38. UKAD notes in particular that Mr Levine is a highly experienced Athlete who has been unable to establish that the presence of clenbuterol in his Sample was not intentional. Mr Levine has had the benefit of significant anti-doping education and is very familiar with the anti-doping regime.
39. Therefore, UKAD and WADA both consider that it would not be appropriate to reduce the applicable period of Ineligibility pursuant to this Article.

Period of Ineligibility

40. During the period of Ineligibility, Mr Levine's status is governed by Article 10.11.1 of the IAAF ADR:

10.11 Status During Ineligibility

10.11.1 Prohibition Against Participation During Ineligibility:

(a) No Athlete or other Person who has been declared Ineligible may, during the period of Ineligibility, compete or otherwise participate in any capacity in (or, if the Athlete is an Athlete Support Person, assist any Athlete competing or otherwise participating in any capacity in):

(i) any International Competition;

(ii) any other Competition or Event or activity (other than authorised antidoping education or rehabilitation programmes) authorised, organised or sanctioned by the IAAF, any National Association or member of a National Association, or any Area Association, or any Signatory, Signatory's member organisation, or club or member organisation of that Signatory's member organisation;

(iii) any Event or Competition authorised or organised by any professional league or any international or national-level Event or Competition organisation; or

(iv) any elite or national-level sporting activity funded by a governmental agency.

41. Article 10.12 of the IAAF ADR deals with conditions that must be met prior to reinstatement:

10.12 Conditions of Reinstatement:

10.12.1 As a condition of reinstatement, an Athlete who is subject to a period of Ineligibility must respect the conditions of Article 10.11.5, failing which the Athlete shall not be eligible for reinstatement until he has made himself available for Testing (by notifying the IAAF in writing) for a period of time equal to the period of Ineligibility remaining as at the date he first stopped making himself available for Testing, except that in the event that an Athlete



retires while subject to a period of Ineligibility, the conditions set out in Article 5.8.2 shall apply.

10.12.2 Once the period of an Athlete's Ineligibility has expired, and the Athlete has fulfilled the foregoing conditions of reinstatement, then provided that (subject to Article 10.10.1) the Athlete has paid in full all amounts forfeited, and has satisfied in full any award of costs made against the Athlete by the Disciplinary Tribunal and/or by the CAS following any appeal made pursuant to Article 13.2, the Athlete will become automatically re-eligible and no application by the Athlete for reinstatement will be necessary. If, however, further amounts become due after an Athlete's period of Ineligibility has expired (as a result of an instalment plan established pursuant to Article 10.10.1), then any failure by the Athlete to pay all outstanding amounts on or before their respective due dates shall render the Athlete automatically Ineligible to participate in further International Competitions until all amounts due are paid in full.

42. Article 9.3 of the UKA ADR requires that all Athletes are required to meet the IAAF ADR requirements in relation to reinstatement.
43. Mr Levine commenced his Provisional Suspension on 13 December 2017 and is entitled for that time to be taken into account by virtue of Article 10.10.2(a) of the IAAF ADR. Therefore, the period of Ineligibility to be imposed shall be deemed to have started on 13 December 2017 and will expire at midnight on 12 December 2021. Mr Levine will be eligible to compete again on 13 December 2021, subject to fulfilling all reinstatement criteria.
44. Mr Levine may return to train with a team or to use the facilities of a club or other member organisation of the IAAF or a Signatory's member organisation during the last two months of his period of Ineligibility (i.e. from midnight on 12 October 2021) pursuant to Article 10.11.1(b)(ii) of the IAAF ADR.
45. Mr Levine, UKA, the IAAF and WADA have a right of appeal against this decision or any part of it in accordance with Article 13 of the IAAF ADR.
46. The disposition of these proceedings on the terms set out above will be publicly announced via UKAD's website in accordance with Articles 7.7.4 and 8.4 of the UK Anti-Doping Rules 2015.⁴

Commencement of period of Ineligibility

47. For the reasons given above, UKAD has issued this Decision, which records that:
 - a. Mr Levine has committed an ADRV pursuant to Article 2.1 of the IAAF ADR;

⁴ Note that the equivalent rule in the IAAF ADR can be found at Article 14.3.2.



- b. this constitutes Mr Levine's first ADRV and, as such, a period of Ineligibility of four (4) years is imposed pursuant to Article 10.2.1(a) of the IAAF ADR;
- c. acknowledging the provisional suspension, the period of Ineligibility is deemed to have commenced on 13 December 2017 and will expire at midnight on 12 December 2021;
- d. Mr Levine's status during the period of Ineligibility shall be as detailed in Article 10.11 of the IAAF ADR; and
- e. pursuant to Article 9.3 of the UKA ADR, in order to regain eligibility, Mr Levine must comply with the requirements set out at Article 10.12 of the IAAF ADR.

23 October 2018