

Issued Decision

UK Anti-Doping and Conner Duthie

Disciplinary Proceedings under the Anti-Doping Rules of the Scottish Football Association

This is an Issued Decision made by UK Anti-Doping Limited ('UKAD') pursuant to the Scottish Football Association's ('SFA') Anti-Doping Regulations (the 'ADR'). It concerns a violation of the ADR committed by Mr Conner Duthie and records the applicable Consequences.

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

Background and Facts

1. The SFA is the national governing body for the sport of football in Scotland. The SFA is a member of FIFA, the international governing body of football. UKAD is the National Anti-Doping Organisation for the United Kingdom. The SFA's ADR are compliant with FIFA's own anti-doping regulations and the World Anti-Doping Code.
2. Mr Duthie is a 22-year old footballer, who during the 2018/2019 season played for Stenhousemuir FC in Scottish Professional Football League One. At all material times in this matter Mr Duthie was subject to the jurisdiction of the SFA and bound to comply with the ADR. Pursuant to the ADR, UKAD has results management responsibility in respect of all football players subject to the jurisdiction of the SFA.
3. On 16 March 2019, UKAD collected two urine Samples In-Competition from Mr Duthie after a match between Stenhousemuir FC v Stranraer FC at Ochilview Park in Stenhousemuir. The first urine Sample collected from Mr Duthie did not meet the suitable volume for analysis (a minimum of 90mL) and was therefore sealed as a partial Sample. The second urine Sample did meet the suitable volume for analysis and was separated into two bottles which were given the reference numbers A1143660 (the 'A Sample') and B1143660 (the 'B Sample').
4. All Samples were transported to the World Anti-Doping Agency ('WADA') accredited laboratory, the Drug Control Centre, King's College London (the 'Laboratory'). The Laboratory analysed the A Sample in accordance with the procedures set out in WADA's International Standard for Laboratories. The analysis returned an Adverse Analytical Finding for carboxy-THC at an average concentration of 370ng/mL (the 'AAF').

5. Carboxy-THC is a metabolite of Δ 9-tetrahydrocannabinol ('THC'), the psychoactive compound found in cannabis. THC is classified as a Cannabinoid under section S8 of the WADA 2019 Prohibited List. It is a Specified Substance and is prohibited In-Competition only.
6. Mr Duthie did not have a Therapeutic Use Exemption.
7. On 10 May 2019 UKAD issued Mr Duthie with a Notice of Charge and a Provisional Suspension. The Notice of Charge alleged the commission of an Anti-Doping Rule Violation ('ADRV') pursuant to ADR Article 2.1 (Presence of a Prohibited Substance or its Metabolites or Markers in a Player's Sample).

Admission and Consequences

8. ADR Article 2.1 states as follows:

The following constitute Anti-Doping Rule Violations:

- 2.1 ***Presence of a Prohibited Substance or its Metabolites or Markers in a Player's Sample, unless the Player establishes that the presence is consistent with a TUE granted in accordance with Article 4***

9. Mr Duthie formally admitted committing an ADRV pursuant to ADR Article 2.1 in his response to the Notice of Charge dated 6 June 2019.

10. ADR Article 10.2 states as follows:

- 10.2 ***Imposition of a Period of Ineligibility for the Presence, Use or Attempted Use, or Possession of a Prohibited Substance and/or a Prohibited Method***

The period of Ineligibility for an Anti-Doping Rule Violation under Article 2.1, 2.2 or 2.6 that is the Player's or other Person's first anti-doping offence shall be as 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) ...
- (b) *The Anti-Doping Rule Violation involves a Specified Substance and UKAD can establish that the Anti-Doping Rule Violation was intentional.*

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

11. ADR Article 10.2.1(b) therefore provides that in relation to this matter (being a matter that concerns cannabis, a Specified Substance) the period of Ineligibility to be imposed shall be four years if UKAD can establish that the ADRV was

committed intentionally. If UKAD is not able to establish that the ADRV was committed intentionally, then pursuant to ADR Article 10.2.2 a period of Ineligibility of two years shall be imposed.

12. With regards to the meaning of 'intentional', ADR Article 10.2.3 states as follows:

10.2.3 As used in Articles 10.2 and 10.3, the term "intentional" is meant to identify those Players or other Persons who cheat. The term, therefore, requires that the Player or other Person engaged in conduct which he or she 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. An Anti-Doping Rule Violation 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 Player can establish that the Prohibited Substance was Used Out-of-Competition...

13. Mr Duthie provided an explanation for his ADRV by way of responses dated 6 and 14 June 2019. In his responses Mr Duthie explained that he smoked cannabis twice on 15 March 2019 in order to cope with his personal circumstances at the time. On the basis of the account provided by Mr Duthie, UKAD sought an opinion from Professor Kim Wolff, Head of the Drug Control Centre, King's College London. Professor Wolff considered that Mr Duthie's account, in relation to the Sample analysed, was in accord with Out-of-Competition use.
14. In light of the opinion provided by Professor Wolff, UKAD does not advance a positive case that Mr Duthie committed the ADRV intentionally and the presumption contained within ADR Article 10.2.3 applies. Accordingly, as set out in ADR Article 10.2.2, the period of Ineligibility is two years.
15. The period of Ineligibility can be reduced if Mr Duthie can establish that he acted with No Significant Fault or Negligence. ADR Article 10.5.1(a) states as follows:

10.5 Reduction of the period of Ineligibility based on No Significant Fault or Negligence

10.5.1 Reduction of Sanctions for Specified Substances or Contaminated Products for Anti-Doping Rule Violations under Article 2.1, 2.2 or 2.6:

(a) Specified Substances

Where the Anti-Doping Rule Violation involves a Specified Substance, and the Player or other Person can establish No Significant Fault or Negligence, then the period of Ineligibility shall be, at a minimum, a reprimand and no period of Ineligibility, and at a maximum, two years of

Ineligibility, depending on the Player's or other Person's degree of Fault.

16. Fault is defined in the ADR as follows:

Fault is any breach of duty or any lack of care appropriate to a particular situation. Factors to be taken into consideration in assessing a Player or other Person's degree of Fault include, for example, the Player's or other Person's experience, whether the Player or other Person is a Minor, special considerations such as impairment, the degree of risk that should have been perceived by the Player and the level of care and investigation exercised by the Player in relation to what should have been the perceived level of risk. In assessing the Player's or other Person's degree of Fault, the circumstances considered must be specific and relevant to explain the Player's or other Person's departure from the expected standard of behaviour. Thus, for example, the fact that a Player would lose the opportunity to earn large sums of money during a period of Ineligibility, or the fact that the Player 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.

17. No Significant Fault or Negligence is defined in the ADR as follows:

The Player or other Person establishing that his or her 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. Except in the case of a Minor, for any violation of Article 2.1, the Player must also establish how the Prohibited Substance entered his/her system.

18. UKAD has considered Mr Duthie's response in full. UKAD's position in respect of ADR Article 10.5.1(a) is that Mr Duthie has not established that he bore No Significant Fault or Negligence, pursuant to the definition in the ADR. Mr Duthie accepts this and agrees that the period of Ineligibility remains two years.

Commencement of period of Ineligibility

19. ADR Article 10.11 requires that the period of Ineligibility starts on the date Ineligibility is accepted or otherwise imposed where there is no hearing.
20. ADR Article 10.11.2 allows for the period of Ineligibility to start as early as the date of Sample Collection (in Mr Duthie's case, 16 March 2019) where there is a timely admission of the ADRV. Mr Duthie was charged on 10 May 2019 and accepted the ADRV in his response dated 6 June 2019. UKAD considers this to be a timely admission, therefore ADR Article 10.11.2 applies.
21. The period of Ineligibility is therefore deemed to have commenced on the date of Sample Collection, 16 March 2019 and will expire at midnight on 15 March 2021.

Status during Ineligibility

22. During the period of Ineligibility, in accordance with ADR Article 10.12.1 Mr Duthie shall not be permitted to participate in any capacity in a Match, Competition or other activity (other than authorised anti-doping education or rehabilitation programmes) organised, convened, authorised or recognised by:
- a. The SFA or any body that is a member of, or affiliated to, or licensed by the SFA;
 - b. Any Signatory;
 - c. Any club or other body that is a member of, or affiliated to, or licensed by, a Signatory or a Signatory's member organisation;
 - d. Any professional league or any international-level or national-level Competition organisation; or
 - e. Any elite or national-level sporting activity funded by a governmental agency.
23. Mr Duthie may return to train with a team or to use the facilities of a club or other member organisation of the SFA or a Signatory's member organisation during the last two months of his period of Ineligibility (i.e. from midnight on 15 January 2021) pursuant to ADR Article 10.12.4(b).

Summary

24. For the reasons given above, UKAD has issued this Decision in accordance with ADR Article 7.7.4 and records that:
- a. Mr Duthie has committed an ADRV pursuant to ADR Article 2.1;
 - b. This constitutes Mr Duthie's first ADRV and, as such, a period of Ineligibility of two years is imposed pursuant to ADR Article 10.2.2;
 - c. Acknowledging Mr Duthie's timely admission, the period of Ineligibility is deemed to have commenced on 16 March 2019 and will expire at midnight on 15 March 2021; and
 - d. Mr Duthie's status during the period of Ineligibility shall be as detailed in ADR Article 10.12.
25. Mr Duthie, the SFA, FIFA and WADA have a right to appeal against this decision or any part of it in accordance with ADR Article 13.4.
26. This Issued Decision will be publicly announced via UKAD's website in accordance with ADR Articles 8.4.3 and 14.1.2.



16 January 2020