

Issued Decision

UK Anti-Doping and James Duerden

Disciplinary Proceedings under the Rugby Football League's Anti-Doping Rules

This is an Issued Decision made by UK Anti-Doping Limited ('UKAD') pursuant to the Rugby Football League's Anti-Doping Rules (the 'ADR'). It concerns a violation of the ADR committed by Mr James Duerden 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 Rugby Football League ('RFL') is the governing body for the sport of rugby league in the United Kingdom. UKAD is the National Anti-Doping Organisation for the United Kingdom.
2. Mr Duerden is a 27-year-old (26-years-old as at the date of his Anti-Doping Rule Violations) rugby league player who on 14 December 2017 was playing for Barrow Raiders RLFC, a team in the Championship (the second tier) of English Rugby League. He had played for the British Amateur Rugby League Association Great Britain team at under-19 level, joined Workington Town RLFC (also in the Championship) in 2013, and Barrow Raiders in 2015.
3. At all material times Mr Duerden was subject to the jurisdiction of the RFL and bound to comply with the ADR. Pursuant to the ADR, UKAD has results management responsibility in respect of all players subject to the jurisdiction of the RFL.
4. On 14 December 2017, a UKAD Doping Control Officer ('DCO') collected a urine Sample from Mr Duerden Out-of-Competition, at a Barrow Raiders training session at Craven Park, Duke Street, Barrow-in-Furness, Cumbria LA14 1XP. Assisted by the DCO, Mr Duerden split the Sample into two bottles which were given reference numbers A1140755 ('the A Sample') and B1140755 ('the B Sample').
5. 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.
6. The analysis returned an Adverse Analytical Finding ('AAF') for 2 α -methyl-5 α -androstan-3 α -ol-17-one (a metabolite of drostanolone).

7. The analysis also determined the presence of 19-norandrosterone, commonly referred to as '19-NA' (a metabolite of nandrolone) in a concentration of less than 15ng/mL. In accordance with WADA Technical Document TD2017NA, it was necessary to further analyse the A-Sample by way of Isotope-Ratio Mass Spectrometry ('IRMS') to establish if the 19-norandrosterone found was exogenous in origin. The Sample was sent to the WADA accredited laboratory in Rome, the Laboratorio Antidoping FMSI (the 'Rome Laboratory'), for this purpose.
8. The Rome Laboratory conducted IRMS analysis on the A Sample in accordance with WADA's International Standard for Laboratories. The IRMS results indicated that the 19-norandrosterone detected in the A Sample was consistent with an exogenous administration of nandrolone and therefore also amounted to an AAF.
9. Under section S1(1)(a) of the WADA 2017 Prohibited List, drostanolone is listed as an Exogenous Anabolic Androgenic Steroid. It is a non-Specified Substance and is prohibited at all times.
10. Under section S1(1)(b) of the WADA 2017 Prohibited List, 19-norandrosterone is listed as a metabolite of an Endogenous Anabolic Androgenic Steroid (nandrolone). It is a non-Specified Substance and is prohibited at all times, as is nandrolone.
11. Mr Duerden did not have a relevant Therapeutic Use Exemption.
12. On 2 February 2018, UKAD issued Mr Duerden with a Notice of Charge ('the First Charge') and provisionally suspended him. The First 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 an Athlete's Sample) in relation to the presence of 2 α -methyl-5 α -androstan-3 α -ol-17-one in the A Sample.
13. On 15 March 2018, following IRMS analysis of the A Sample, Mr Duerden was issued with a second Notice of Charge ('the Second Charge') in relation to the presence of exogenous 19-norandrosterone in the A Sample. The Second Charge also alleged the commission of an ADRV pursuant to ADR Article 2.1 (Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample).

Admissions and Consequences

14. On 19 February 2018, Mr Duerden disputed the First Charge. On 29 March 2018, in response to the Second Charge, Mr Duerden admitted both Charges.
15. Both ADRVs resulted from the same Sample and as such are considered together as a single ADRV for the purposes of imposing a sanction, in accordance with ADR Article 10.7.4(a). The sanction to be imposed is based on the ADRV that

carries the most severe sanction. In this instance, both ADRVs are subject to the same sanction.

16. ADR Article 2.1 states:

The following constitute Anti-Doping Rule Violations:

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

17. ADR Article 10.2 provides 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 Athlete'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) The Anti-Doping Rule Violation does not involve a Specified Substance, unless the Athlete or other Person can establish 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.

18. The meaning of 'intentional' for these purposes is set out in ADR Article 10.2.3 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...

19. The ADRVs committed by Mr Duerden both concerned non-Specified Substances, and so the applicable period of Ineligibility is four (4) years, unless Mr Duerden can establish, on the balance of probability, that the commission of the ADRVs 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 Substance¹ to the required standard.

20. In his responses to the Charges, Mr Duerden has accepted that the two metabolites were present in his Sample. Mr Duerden states that he does not know how they entered his body and effectively asserts that he did not take nandrolone or drostanolone (the parent substances) intentionally or knowingly. He has suggested that the presence of the metabolites in his Sample might be due to his use of a liquid in November 2017, supplied by a friend, that was administered to Mr Duerden via an injection. At the time, he believed the liquid to be a non-steroidal anti-inflammatory. He now suspects that this liquid may have been contaminated with or otherwise contained nandrolone and drostanolone. However, he has presented no evidence to this effect.
21. Mr Duerden's bare assertion that he had not deliberately consumed nandrolone or drostanolone is not enough to demonstrate the source of ingestion for either of those substances. He has not otherwise established how either of the metabolites came to be in his Sample.
22. Mr Duerden accepts that he is not able to demonstrate that he did not commit the ADRVs intentionally, as defined in the ADR, and that as such the period of Ineligibility to be applied is four (4) years.
23. UKAD issues this Decision pursuant to ADR Article 7.7.4, which states:

7.7.4 In the event that UKAD withdraws the Notice of Charge, or the Athlete...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...and to each Interested Party, and shall Publicly Disclose the decision in accordance with Article 8.4.

Period of Ineligibility

Prompt Admission

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

¹ 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."

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 or 10.3.1 (for evading or refusing Sample Collection or Tampering with Sample Collection), 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.

25. The first Charge was not admitted promptly by Mr Duerden in that he initially denied it. He did not accept the presence of 2 α -methyl-5 α -androstan-3 α -ol-17-one in his Sample until 29 March 2018. However, Mr Duerden admitted both Charges soon after receiving the second Charge. UKAD considers that, in the particular circumstances of this case, noting that no time was lost due to Mr Duerden's initial stance, Mr Duerden admitted the Charges promptly for the purposes of ADR Article 10.6.3.
26. UKAD then 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

27. As regards the first criterion, this case involves the presence of the metabolites of two potent steroids. It is too serious for a reduction to be applied.

Level of Fault

28. As regards the second criterion, Fault is defined within the 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.

29. UKAD notes that Mr Duerden had no previous Anti-Doping education. However, UKAD also notes that Mr Duerden is an otherwise experienced rugby league

player who has not claimed that he did not know that steroids were prohibited pursuant to the ADR. He has been unable to establish how the ADRVs occurred.

30. Having considered all relevant evidence, including submissions made on behalf of Mr Duerden, UKAD has concluded that there are no specific or relevant circumstances that render Mr Duerden's degree of Fault anything other than high.
31. As a result, UKAD and WADA both consider that it would not be appropriate to reduce the applicable period of Ineligibility pursuant to this Article.

Timely Admission

32. UKAD has also considered whether ADR Article 10.11.2 might be applied to this case:

10.11.2 *Timely Admission:*

Where the Athlete ... promptly (which means, in any event, before he/she competes again) admits the Anti-Doping Rule Violation after being confronted with it by UKAD, the period of Ineligibility may start as early as the date of Sample collection or the date on which another Anti-Doping Rule Violation last occurred. In each case, however, where this Article is applied, the Athlete ... shall serve at least one-half of the period of Ineligibility going forward from the date the Athlete or other Person accepted the imposition of a sanction, the date of a hearing decision imposing a sanction, or the date the sanction is otherwise imposed. This Article shall not apply where the period of Ineligibility has already been reduced under Article 10.6.3.

33. UKAD considers that Mr Duerden has made a timely admission to the Charges for the purposes of ADR Article 10.11.2. He has agreed to accept a period of Ineligibility of four (4) years without a hearing. In these circumstances, the period of Ineligibility imposed on Mr Duerden shall be deemed to have started on the date of Sample collection.
34. Consequently, Mr Duerden's period of Ineligibility will have effect from 14 December 2017 and will expire at midnight on 13 December 2021.

Status During Period of Ineligibility

35. Mr Duerden's status during his period of Ineligibility is set out in ADR Article 10.12.1. In accordance with this Article, Mr Duerden shall not be permitted to participate in any capacity in a Competition, Event or other activity (other than authorised anti-doping education or rehabilitation programmes) organised, convened or authorised by:

- the RFL or any body that is a member of, or affiliated to, or licensed by the RFL;

- any Signatory;
 - any club or other body that is a member of, or affiliated to, or licensed by, a Signatory or a Signatory's member organisation;
 - any professional league or any international or national-level Event organisation;
or
 - any elite or national-level sporting activity funded by a governmental agency.
36. Mr Duerden may return to train with a team or use the facilities of a club (or other member organisation of the RFL) or a Signatory's member organisation during the last two months of his period of Ineligibility (i.e. from midnight on 13 October 2021) pursuant to ADR Article 10.12.4(b).
37. Mr Duerden, the RFL, the Rugby League International Federation and WADA each has a right of appeal against this decision or any part of it in accordance with ADR Article 13.4.
38. The disposition of these proceedings on the terms set out above will be publicly announced via UKAD's website in accordance with ADR Article 8.4.

Commencement of period of Ineligibility

39. For the reasons given above, UKAD has issued this Decision, which records that:
- a. Mr Duerden has committed two ADRVs pursuant to Article 2.1 of the ADR;
 - b. for the purposes of sanction, the two ADRVs are treated as one ADRV, in accordance with ADR Article 10.7.4(a);
 - c. this constitutes Mr Duerden'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 ADR;
 - d. acknowledging the provisional suspension and by application of ADR Article 10.11.2, the period of Ineligibility is deemed to have commenced on 14 December 2017 and will expire at midnight on 13 December 2021;
 - e. Mr Duerden's status during the period of Ineligibility shall be as detailed in Article 10.12 of the ADR.

24 December 2018