

Issued Decision

UK Anti-Doping and Thomas Minns

Disciplinary Proceedings under the Anti-Doping Rules of the Rugby Football League

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 Thomas Minns 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 UK. UKAD is the National Anti-Doping Organisation for the United Kingdom.
2. Mr Minns is a 24-year-old rugby league player (23-years-old at the date of his Anti-Doping Rule Violation). He has competed at the highest level of domestic rugby league for both Leeds Rhinos and Hull Kingston Rovers. At all material times Mr Minns 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 Athletes subject to the jurisdiction of the RFL.
3. On 15 March 2018, UKAD collected a urine Sample from Mr Minns In-Competition, following a match between Huddersfield Giants and Hull Kingston Rovers. The Sample was separated into two bottles which were given reference numbers A1141684 ('the A Sample') and B1141684 ('the B Sample').
4. 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.
5. This analysis returned an Adverse Analytical Finding for benzoylecgonine (a metabolite of cocaine).
6. Under section S6(a) of the WADA Prohibited List 2018, cocaine is classed as a non-Specified stimulant that is prohibited In-Competition only.

7. Mr Minns does not have a relevant Therapeutic Use Exemption.
8. On 13 April 2018 UKAD issued Mr Minns with a Notice of Charge ('the Charge') and provisionally suspended him from rugby league. The 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).

Admission and Consequences

9. Mr Minns has admitted committing an ADRV in violation of ADR Article 2.1, which provides as follows:

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

10. 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 Prohibited Method

The period of Ineligibility for an Anti-Doping Rule Violation under Article 2.1... that is the Athlete'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...can establish that the Anti-Doping Rule Violation was not intentional.

...

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

11. 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 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 Athlete can establish that the Prohibited Substance was Used Out-of-Competition. An Anti-Doping Rule Violation resulting from an Adverse Analytical Finding for a substance which is only prohibited In-Competition shall not be considered "intentional" if the substance is not a Specified Substance and the Athlete can establish that the Prohibited Substance was Used Out-of-Competition in a context unrelated to sport performance.

(Emphasis added)

12. In admitting the ADRV, Mr Minns explained that his ingestion of cocaine was Out-of-Competition in a context unrelated to sport performance. He stated that he consumed cocaine some four days prior to the relevant match, on his own, whilst at home, in an attempt to alleviate a state of distress.
13. UKAD instructed the Laboratory to review the account provided by Mr Minns. The Laboratory confirmed that this account is consistent with the concentration of the cocaine metabolite present in Mr Minns' A Sample, and that Mr Minns' use of cocaine was more likely than not to have occurred more than 12 hours before the match, i.e. Out-of-Competition.
14. UKAD accepts the explanation provided by Mr Minns and considers that Mr Minns has therefore proven, on a balance of probabilities, that he did not act intentionally, as that term is defined in ADR Article 10.2.3. The period of Ineligibility to be applied in these circumstances is therefore reduced from four (4) to two (2) years.

No Fault or Negligence

15. Mr Minns accepts that his case does not warrant a finding under ADR Article 10.4 (No Fault or Negligence).

No Significant Fault or Negligence

16. Mr Minns has sought to reduce the period of Ineligibility further in this case on the basis of ADR Article 10.5.2 (No Significant Fault or Negligence).

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

...

10.5.2 Application of No Significant Fault or Negligence beyond the Application of Article 10.5.1:¹

In an individual case where Article 10.5.1 is not applicable, if an Athlete...establishes that he/she bears No Significant Fault or Negligence, then (subject to further reduction or elimination as provided in Article 10.6) the otherwise applicable period of Ineligibility may be reduced based on the Athlete's...degree of Fault, but the reduced period of Ineligibility may not be less than one-half of the period of Ineligibility otherwise applicable...

17. The definitions of Fault and No Significant Fault or Negligence are:

Fault:

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.

No Significant Fault or Negligence:

The Athlete...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 Athlete must also establish how the Prohibited Substance entered his/her system.

18. Mr Minns states that he had consumed cocaine because of complex personal difficulties and grief, which had led to a cognitive impairment. In *UKAD v Duffy*², a National Anti-Doping Panel tribunal set out what an Athlete needs to show for No Significant Fault or Negligence to be applied due to such an impairment, as follows

-

¹ ADR Article 10.5.1 relates to Specified Substances and Contaminated Products, so is not relevant to Mr Minns' case.

² *UKAD v Gavin Duffy* (2015).

- i. A medical diagnosis of a depressive illness; and
 - ii. Cognitive impairment linked to the circumstances surrounding the commission of the ADRV.
19. Mr Minns produced medical evidence from a psychiatrist to the effect that he was suffering from three conditions at the relevant time, including a depressive illness, leading to cognitive impairment. A different psychiatrist, instructed by UKAD, assessed this medical evidence and confirmed the diagnoses as accurate.
20. Both psychiatrists agreed that the cognitive impairment was linked to the circumstances surrounding the commission of the ADRV.
21. Based on the approach taken in *Duffy*, UKAD is satisfied that No Significant Fault or Negligence should apply to this case. As such, in accordance with ADR Article 10.5.2, a period of Ineligibility of between 12 and 24 months applies, depending upon an assessment of Mr Minns' degree of Fault (as defined within the ADR).
22. In applying ADR Article 10.5.2, UKAD followed the approach used in the cases of *Cilic*³ and *Johaug*⁴. This involves, firstly, an assessment of Mr Minns' objective Fault in order to place his case within one of three ranges. Low Fault means that a period of Ineligibility within the range of 12 to 16 months is appropriate; moderate Fault, 16 to 20 months; and high Fault, 20 to 24 months. Mr Minns' subjective Fault is then assessed to establish where in the applicable range his case sits. *Cilic* also recognises that an Athlete's level of subjective Fault may mean that a lower range than the one initially indicated by the level of objective fault should apply. So, for example, an Athlete may move from the 20 to 24-month range to the 16 to 20-month range.
23. Mr Minns accepts that he willingly and deliberately consumed cocaine four days before a match, and that he knew that cocaine was a Prohibited Substance. UKAD also finds that Mr Minns consumed the cocaine without turning his mind to how long it might remain in his system. As such, UKAD considers that Mr Minns' objective Fault is high and places him in the range of a period of Ineligibility of 20 to 24 months.

³ CAS 2013/A/3327 & 3335 *Marin Cilic v International Tennis Federation*, see para 75 et seq.

⁴ CAS 2017/A/5015 *International Ski Federation (FIS) v. Therese Johaug & The Norwegian Olympic and Paralympic Committee and Confederation of Sports (NIF)*

24. As for subjective Fault, Mr Minns has engaged with UKAD throughout proceedings. He made early admissions to the ADRV and provided an account of his background and relevant personal circumstances.
25. Of more importance is the medical evidence provided by Mr Minns. Based primarily on this, UKAD is satisfied that the subjective aspects of Mr Minns' case are such that his level of Fault is reduced from high to moderate, with an applicable range of a 16 to 20-month period of Ineligibility.
26. Taking into account the degree of Mr Minns' impairment at the relevant time, UKAD considers that the appropriate period of Ineligibility is sixteen (16) months.
27. Pursuant to ADR Articles 10.2.2 and 10.5.2, a period of Ineligibility of sixteen (16) months is therefore imposed.
28. 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.

Commencement of Period of Ineligibility

29. ADR Article 10.11.1 provides as follows:

10.11.1 Delays not attributable to the Athlete...:

Where there have been substantial delays in the hearing process or other aspects of Doping Control that are not attributable to the Athlete...charged, the period of Ineligibility may be deemed to have started at an earlier date, commencing as far back as the date of Sample collection...

30. UKAD accepts that there were delays that affected Mr Minns' case preparation that were not his fault (nor the fault of UKAD). During the course of proceedings, Mr Minns sought the assistance of a medical expert, beginning his efforts to instruct one in May 2018. Mr Minns had difficulty arranging appointments with, and obtaining the final report from, his instructed expert. This was not Mr Minns' fault but rather due to the other professional commitments of the expert. Mr Minns' was not able to provide medical evidence to UKAD until 15 October 2018.

31. Therefore, by application of ADR Article 10.11.1, Mr Minns' period of Ineligibility will start on the date of his Sample collection. The period of Ineligibility to be imposed on Mr Minns shall be deemed to have started on 15 March 2018 and will expire at midnight on 14 July 2019. Mr Minns will be eligible to compete again on 15 July 2019.
32. ADR Article 10.12.1 sets out Mr Minns' status during his period of Ineligibility. In accordance with this Article, during this period Mr Minns 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.
33. Mr Minns 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 14 May 2019) pursuant to ADR Article 10.12.4(b).
34. Mr Minns, 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.
35. 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.

Conclusion and Summary

36. For the reasons given above, UKAD has issued this Decision, which records that:
- 36.1 Mr Minns has committed an ADRV pursuant to ADR Article 2.1;
- 36.2 a period of Ineligibility of sixteen (16) months is imposed pursuant to ADR Articles 10.2.2 and 10.5.2;

- 36.3 the period of Ineligibility is deemed to have commenced from 15 March 2018 and will expire at midnight on 14 July 2019; and
- 36.4 Mr Minns' status during the period of Ineligibility shall be as detailed in ADR Article 10.12.

18 December 2018