

Ref: FOI-328

[REDACTED]

Sent via email only: [REDACTED]

12 April 2022

Dear [REDACTED]

1. Thank you for your email dated 18 January 2022 in which you requested information from UK Anti-Doping ('UKAD') under the Freedom of Information Act 2000 ('the Act').
2. Your request referenced 88 'Adverse Analytical Findings' ('AAFs') referred to in World Anti-Doping Agency ('WADA') annual statistics in relation to (in your words) *"doping samples... belonging to footballers"*. You requested that certain information (substance, ADRV, outcome, etc) relating to these 88 results be provided in the following 'hypothetical' form:

	Prohibited substance ?	Year ?	Player belong to Premier League footballer club at time of AAF? [sic]	Charged with ADRV?	Conclusion of case	Length of sanction
AAF 1	nandrolone	2013	Yes	Yes	Sanction	6 months
AAF 2	Ephedrine	2014	no	No	--	--
AAF 3	salbutamol	2015	Yes	Yes	No Sanction	--

3. On 11 February 2022, UKAD informed you that the figures included within WADA's annual statistics were an amalgamation of (1) AAFs as defined in the World Anti-Doping Code, and (2) findings reported in accordance with other provisions, such as the Social Drugs Regulations of The Football Association (the 'FA'), (which despite their inclusion within WADA's data set, do not constitute AAFs, as that term

is defined). UKAD also informed you that the figures contained within WADA's annual statistics included samples collected from footballers registered with the Scottish Football Association ('SFA') and the Football Association of Wales ('FAW'), in addition to The FA. UKAD therefore sought further clarification from you regarding your request for information.

4. In response you confirmed that your request for information concerned "...both WADA prohibited substances and the FA social drug regulation substances..." and "From all footballers samples listed in WADA's annual testing figures please, whether that be from wales, scotland or the UK [sic]".

### **Summary of response**

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5. UKAD confirms that, subject to the clarifications explained below, it holds material relevant to your request. Accordingly, it has completed a table in the Annex to this letter.
6. As more particularly explained below, certain information is not being disclosed in accordance with the breakdown in the table in the Annex. The information not disclosed falls into two categories: (1) because the information relates to Out-of-Competition testing reported in accordance with The FA's Social Drugs Regulations, or (2) there is some other exceptional reason why the results (and information relating to them) is not public domain.

### **The FA Social Drugs Regulations**

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7. It should be noted that within versions of the Prohibited List between 2013 and 2020, certain substances are only prohibited 'In-Competition' (as defined within the applicable anti-doping rules). However, The FA also prohibits some of these substances Out-of-Competition under its Social Drugs Regulations. Where those substances are found in samples provided Out-of-Competition they are not AAFs for the purposes of The FA's Anti-Doping Regulations (or the World Anti-Doping Code).
8. The FA publishes statistics on breaches connected to its Social Drugs Regulations on a seasonal basis. It does not publish any details regarding relevant samples or

results. The FA has informed us that it would not be acceptable for UKAD to disclose underlying data. This information is therefore withheld pursuant to Section 41 of the Act.

**Section 41 Information provided in confidence**

*(1) Information is exempt information if–*

- (a) it was obtained by the public authority from any other person (including another public authority), and*
- (b) the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person.*

9. The information was provided to UKAD by the Drug Control Centre at King's College London which, together with the FA, is a/are third party/ies for the purposes of section 41(1)(a) of the Act. The information has the quality of confidence and was shared with UKAD in circumstances which imported an obligation of confidence.
10. Disclosure would be an unauthorised use of the information and would constitute a breach of confidence. This breach of confidence would be actionable by The FA and potentially also the footballers involved. Any such action would be likely to succeed, with the public interest in disclosure not outweighing UKAD's duty of confidence; therefore, the information is exempt from disclosure pursuant to section 41 of the Act. This exemption is an absolute exemption, and as such UKAD is not required to consider the public interest test any further in this context.
11. Due to the way The FA's Social Drugs programme operated between 2013 and 2020, samples collected from footballers Out-of-Competition would be screened for substances prohibited both In- and Out-of-Competition, in order to detect relevant breaches of The FA's Social Drugs Regulations. This meant that the laboratory detected and reported substances (as AAFs) in these Out-of-Competition samples that were not prohibited under The FA's Anti-Doping Regulations or Social Drugs Regulations. For the same reasons as set out directly above, the relevant

information is withheld from disclosure in response to this request. For completeness, these ‘findings’ are not considered true ‘AAFs’ for this purpose, despite their record on the WADA data set, nor are they breaches of The FA’s Social Drugs Regulations.

## Other items

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12. There are also a small number of other results not disclosed because the relevant information is not already in the public domain for good (albeit exceptional) reasons. See for example the exceptions to the public disclosure of decisions per The FA’s Anti-Doping Regulations, Regulation 138.
13. UKAD considers section 31 of the Act to be engaged in this context because it (and/or any delegated third party on its behalf) must be in a position to make determinations about the applicability of these relevant rules in each case (without disclosures or prospective disclosures under the Act or otherwise potentially compromising this function or the considerations behind the exercise of it):

### **Section 31 Law enforcement**

*(1) Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely, to prejudice –*

...

*(g) the exercise by any public authority of its functions for any of the purposes specified in subsection (2),*

...

*(2) The purposes referred to in subsection 1(g) to (i) are –*

...

*(b) the purpose of ascertaining whether any person is responsible for any conduct which is improper ...*

14. One of UKAD's core functions is the investigation and prosecution of Anti-Doping Rule Violations ('ADRVs'). This function falls within section 31(1)(g) of the Act, as it is exercised for the purpose set out in section 31(2)(b) of the Act.
15. The considerations behind UKAD's decisions of the kind discussed here are a crucial part of UKAD's regulatory functions. Releasing information which has been protected from disclosure for appropriate and important reasons in this context may prejudice these functions.
16. Having determined that there is a risk of prejudice on this basis, UKAD has considered the public interest arguments in favour of disclosure. UKAD recognises the importance of transparency and accountability in general and specifically in relation to the progress of matters from AAF to ADRV and relevant substances. However, UKAD considers the more important public interest lies in the maintenance of effective investigation and prosecution processes, engagement with stakeholders, and maintenance of UKAD's position of non-disclosure. All of these factors are vital in connection with UKAD's public policy objective of eliminating doping in sport. Disclosing the relevant information here would likely harm or undermine the relevant processes connected to this objective.

### **AAFs and ADRVs**

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17. It is worth underlining in the context of your request that there may be various reasons why the detection of an AAF in a sample does not automatically lead to an ADRV. For example, a Player who returns an AAF may have a Therapeutic Use Exemption ('TUE') which permits them to use a Prohibited Substance or Prohibited Method contained in the Prohibited List when such use or administration is necessary to address a legitimate medical requirement<sup>1</sup>. Alternatively, a Player may be able to show that a Prohibited Substance was ingested via a permitted route (as outlined in the Prohibited List) or that it was derived from the ingestion of a substance that is itself permitted (for example, morphine derived from the ingestion of codeine). The application of relevant Technical Documents and Technical Letters issued by

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<sup>1</sup> Further information about the TUE system is available on the UKAD website [here](#).

WADA may also mean that an AAF in a sample does not necessarily lead to an ADRV.

## Conclusion

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18. If you are dissatisfied with the handling of your request, you have the right to ask for an internal review. Internal review requests should be submitted within two months of the date of receipt of the response to your request and should be addressed via email to: [foi@ukad.org.uk](mailto:foi@ukad.org.uk). Please remember to quote the reference number above in any future communications.
19. If you are not content with the outcome of the internal review, you have the right to apply directly to the Information Commission for a decision. The Information Commissioner can be contacted at: Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF.

Yours sincerely

A handwritten signature in blue ink that reads "UK Anti-Doping".

**UK Anti-Doping**