

BEFORE THE INDEPENDENT REGULATORY COMMISSION

THE FOOTBALL ASSOCIATION

-and-

MR DUANE HOLMES

WRITTEN REASONS OF THE INDEPENDENT REGULATORY COMMISSION

David Casement KC (Chairperson) – Independent Specialist Panel Member

Dr David Gould – Independent Panel Member

Udo Onwere – Independent Football Panel Member

Michael O'Connor – Judicial Services Assistant Manager – Secretary

Introduction

1. Since July 2023 Mr Duane Holmes, aged 30, has played for Preston North End having played for several other clubs since his first professional contract with Huddersfield Town aged 18. By charge letter dated 18 December 2024 Mr Holmes (“the Player”) was charged by The Football Association (“the FA”) with breaches of The Football Association’s Anti-Doping Regulations (“the Regulations”). In particular the Player was charged with breach of Regulation 3 of the Regulations namely the presence of a Prohibited Substance or any of its Metabolites or Markers in his Sample. Further the Player was charged with breach of Regulation 4 of the Regulations namely Use or Attempted Use of a Prohibited Substance or a Prohibited Method.
2. On 15 July 2024 the Player provided a urine Sample Out-of-Competition to UK Anti-Doping Control Officials which tested positive for salbutamol which is a Prohibited Substance under the 2024 World Anti-Doping Agency Prohibited List valid 1 January 2024. Salbutamol is also a Specified Substance classified under section S3 Beta-2 Agonists and is prohibited at all times. As an exception under the 2024 Wada Prohibited List salbutamol is not prohibited if inhaled up to a maximum dose of 1600 micrograms over 24 hours in divided doses not to exceed 600 micrograms over 8 hours starting from any dose. The Sample was found to contain salbutamol at a concentration measured to be 1,550 ng/ml. Under the WADA Prohibited List 2024 the presence in urine of salbutamol in excess of 1000 ng/ml is not consistent with its therapeutic use.
3. After receiving the Notice letter of 27 August 2024 in accordance with Article 5.1.2.2 of the WADA International Standards for Results Management the Player requested and undertook a controlled pharmacokinetic study to prove that the Adverse Analytical Finding (“AAF”) was the consequence of a therapeutic dose by inhalation up to the maximum dose indicated. The study did not support the Player’s position that the AAF was caused by a therapeutic dose by inhalation up to the maximum dose. On 18 December 2024 the FA issued the Charge Letter.

4. The Player admits the charges. He accepts the Use of salbutamol and its Presence in his Sample therefore the only issue is sanction. On his Doping Control Form that was completed at the time he provided the Sample the Player declared that he used a “Ventolin inhaler.” It is common ground that the Player has suffered from Asthma since he was a child. The Player contends that he did not intend to obtain any sporting advantage and the FA accepts that. The FA accepts it cannot prove on the balance of probabilities and therefore does not allege that the Player’s conduct was intentional in that the Player engaged in conduct he knew constituted an Anti-Doping Rule Violation (“ADRV”) or knew that there was a significant risk that the conduct might constitute or result in an ADRV and manifestly disregarded the risk.
5. Given that salbutamol is a Specified Substance and the burden of proving the breach was intentional is on the FA to prove such on the balance of probabilities, in the absence of such proof or even allegation, the starting point for a sanction is a two-year period of Ineligibility as opposed to four years. The Player contends that the sanction should be eliminated or reduced because, in the circumstances of this case, he had No Fault or Negligence, or he had No Significant Fault or Negligence. If the Commission finds that the Player had No Fault or Negligence any sanction otherwise to be imposed would be eliminated. If the Commission finds that the Player had No Significant Fault or Negligence the sanction available ranges from a two-year period of Ineligibility to a reprimand.

Procedure

6. This case came on for hearing on 7 February 2025. The hearing was conducted by way of video-link with the consent of the parties and, apart from the Regulatory Commission, those in attendance were:

Duane Holmes

Player

Pippa Manby

Counsel for the Player

Deirdre McCarthy	Centrefield LLP
Ben Rhodes	Club Secretary
Dominic Lakeland	Club Doctor
Max Baines	Counsel for The FA
Rebecca Turner	The FA's Head of Regulatory Legal
Rob Henderson	The FA's Anti-Doping Senior Manager
Ailie McGowan	UKAD Senior Lawyer

7. The Notice letter of 27 August 2024 notified the Player of the AAF. Following the controlled pharmacokinetic study result dated 13 October 2024 the Player submitted a formal response on 15 November 2024 together with the following documents:
 - 7.1 a statement from the Player;
 - 7.2 a statement from the Club Doctor, Dr Dominic Lakeland, dated 15 November 2024;
 - 7.3 a letter from Dr Aayish Vyas, a Consultant in Respiratory Medicine, dated 10 September 2024;
 - 7.4 an undated letter from Pauline Betts, a Registered General Nurse with expertise in asthma and respiratory care;
 - 7.5 an expert report by Prof John Dickinson, Professor in Sport and Exercise Sciences dated 13 November 2024;
 - 7.6 two video clips showing the Player's inhaler technique filmed on 2 November 2024.

8. On 18 December 2024 the FA issued a Charge Letter which was accompanied by an expert report from Prof David Cowan dated 5 December 2024 along with documents including those referred to above.

9. Under cover of a response letter dated 15 January 2025 the Player provided the following:
 - 9.1 a further statement from the Player dated 15 January 2025 developing further the matters set out in his first statement;
 - 9.2 a further statement from Dr Lakeland, the Club Doctor, dated 15 January 2025;
 - 9.3 a further report by Prof Dickinson, dated 8 January 2025, to address the report of Prof Cowan;
 - 9.4 written submissions prepared by Centrefield LLP dated 15 January 2025.
10. In response from the FA together with their written submissions dated 30 January 2025 and legal authorities relied upon the FA also served a second report from Prof Cowan dated 24 January 2025.

Relevant Regulations

11. Reg 77 of the Regulations provides a starting point of a four-year period of Ineligibility where the Anti-Doping Rule Violation involves a Specified Substance and the FA can prove that the Anti-Doping Rule Violation was intentional.
“Intentional” is “meant to identify those Participants or other Persons who engage in conduct which they 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.”
12. No Fault or Negligence under the Regulations means:

the Participant or other Person is able to establish that he did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that he or she had Used or been administered the Prohibited Substance or Prohibited Method or otherwise violated an Anti-Doping Rule. Except in the case of a Protected Person or Recreational Player, for any violation of

Regulation 3, the Player must also establish how the Prohibited Substance entered his system

13. No Significant Fault or Negligence under the Regulations means:

the Participant or other Person is able to establish that his 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 Protected Person or Recreational Player, for any violation of Regulation 3, the Player must also establish how the Prohibited Substance entered his system

14. The Regulations provide a definition of Fault which includes an indicative, but not exhaustive, list of factors to be taken into account:

“Fault” means any breach of duty or any lack of care appropriate to a particular situation. Factors to be taken into consideration in assessing a Participant’s or other Person’s degree of Fault include, for example, the Participant’s or other Person’s experience, whether they are a Protected Person, 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 Participant’s or other Person’s degree of Fault, the circumstances considered must be specific and relevant to explain the Participant’s or other Person’s departure from the expected standard of behaviour...

15. Under Regulation 84(a) in respect of Specified Substances, such as salbutamol, the Regulations place the burden of proving No Significant Fault or Negligence upon the player and if proven the following applies:

Where the Anti-Doping Rule Violation involves a Specified Substance (other than a Substance of Abuse) or Specified Method, and the Participant or other Person can establish No Significant Fault or Negligence, 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 Participant's or other Person's degree of Fault.

Issues in the Proceedings

16. The FA does not contend that the breaches of the Regulations were Intentional.

Given that, in the context of a Specified Substance, the burden of proving a breach was Intentional rests upon the FA this is therefore not an issue between the parties. The starting point for sanction in this case is therefore a two-year period of Ineligibility. Any elimination or reduction of that sanction depends upon the Player establishing on the balance of probabilities No Fault or Negligence or No Significant Fault or Negligence.

17. The issues between the parties in respect of sanction are therefore as follows:

- 17.1 Has the Player proved, on the balance of probabilities, how salbutamol entered his system;
- 17.2 If the Player has proved how salbutamol entered his system, has he proved on the balance of probabilities that he had No Fault or Negligence;
- 17.3 Alternatively, if the Player has proved how salbutamol entered his system, has he proved on the balance of probabilities that he had No Significant Fault or Negligence;
- 17.4 What is the appropriate sanction in all the circumstances.

Evidence and Submissions

18. By way of report dated 10 September 2024 Mr Aashish Vyas, consultant in respiratory medicine recorded that he met the Player in consultation and noted

“Duane has a history of long term breathlessness since childhood. He has really struggled with bronchospasm and his current symptoms are so severe that he is taking his salbutamol inhaler 10 times a day just to have baseline control.” He recommended a change in inhaler and to take certain medication.

19. Upon examination by a registered nurse, Pauline Betts, it was found that the Player had poor inhaler technique. It was said that the consequences of that poor technique included, in summary, the overuse of the prescribed inhaler by the Player, poor control of asthma symptoms, disease progression, side effects such as leaving drug deposits in the mouth and oropharynx which could potentially lead to a positive urine test for salbutamol. Poor technique may lead patients to perceive their treatment is not working and in turn this can lead to an escalation in treatment.

20. In his report of 8 January 2025 Prof Dickinson addressed Prof Cowan’s first report. Prof Dickinson has worked for 20 years with elite athletes to support the diagnosis and management of respiratory disorders. He has worked with the British Olympic Association and the English Institute of Sport. At paragraph 6 of Prof Dickinson’s report he states:

In my opinion the pharmacokinetic study that Mr Holmes took part in was insufficient as it did not adequately replicate the circumstances in which Mr Holmes provided his urine sample. Specifically the pharmacokinetic study did not account for Mr Holmes’ training status, respiratory health or hydration status which is in contrast to the circumstances in which he undertook the anti-doping test on 15 July 2024 (i.e. at no point during the pharmacokinetic study undertaken by Mr Holmes was he asked to do any exercise whereas he undertook the anti-doping test on a warm day in July when he was dehydrated straight after a training session shortly after he had returned from an intensive pre-season training camp in Spain the previous week where he had experienced asthma symptoms and needed to use his inhaler daily).

21. Prof Dickinson went on to conclude: “Based on the scientific evidence provided above and in my previous statement, I believe the pharmacokinetic study Mr Holmes undertook was not sufficient to conclude that the abnormal result was not the consequence of a therapeutic dose (by inhalation) of salbutamol.”
22. Dr Lakeland in his report dated 15 January 2025 at paragraph 6 notes what is common ground that the exercise has an effect on increasing the concentration of salbutamol in urine and recognising that it is not possible to replicate fully the extent of exercise that might occur during an arduous sporting activity. Dr Lakeland also, at paragraph 7, opined that “regular more frequent doses of salbutamol in the days/the week prior to the anti-doping test would have led to a higher urine concentration of salbutamol on the morning of the test even before Duane used his inhaler on the morning of the test (i.e. which he did after he got up that morning and before and during the training session that morning as confirmed in his witness statement). “
23. In respect of the threshold requirement of proving how the salbutamol entered the Player’s system the FA contends that his account is not categorical. The FA relies upon the reports of Prof Cowan dated 5 December 2024 and 24 January 2025. Prof Cowan The FA make the following points:
- 23.1 Prof Cowan’s first report concludes that the Pharmacokinetic study does not assist the Player in showing why the level of salbutamol detected in his Sample was elevated;
- 23.2 The conclusion of Prof Cowan’s first report is that it is more likely that administering greater than the WADA limit of salbutamol best explains the AAF;

- 23.3 In Prof Cowan's second report he opines that there is no evidence to support dehydration on the part of the Player at the time of the Sample. This was one of the explanations provided by the Player;
- 23.4 In respect of increased usage of his inhaler by the Player in the week leading up to the test he stated: "Thus I do not consider that even using "a lot of his inhaler in the week" can explain the adverse analytical finding assuming that the WADA maximum permitted dosing was followed."
24. At the hearing the Commission heard oral evidence from the Player and from Dr Lakeland both of whom were cross-examined by Mr Baines for the FA. Both witnesses were credible and the Commission found their evidence to be reliable. The Commission took into account all of the written statements and reports as well as the oral testimony.
25. It is clear from the evidence that at the time of the test at which the Sample was provided the Player was really struggling to manage his asthma. He had returned to England on 13 July 2024 following pre-season training in Spain. The Player's asthma was aggravated by the high temperatures that prevailed during his intense training programme as well as the polluted air from the local area where there had been a series of well-publicised wildfires. It is notable that after arriving back in the UK the Player notified Dr Lakeland on 16 July 2024 of his asthma problems and on 1 August 2024 Dr Lakeland referred the Player to a specialist consultant in respiratory medicine. That was after the Test but that was almost one month before he was notified of the AAF which was 27 August. An initial consultation was arranged for 20 August 2024 but that was cancelled because the consultant was unavailable although it was ultimately rearranged for 10 September 2024.
26. As an indication of how bad the Player's asthma was at the time around the test Dr Lakeland arranged for the Player to have a FENO test on 27 July of 64 ppb. Well controlled asthmatics have a reading of less than 20 ppb and poorly controlled asthmatics have a reading of 30 ppb. Despite having such a high reading the Player said he was feeling better than he did in Spain. This indicates how severe his

condition was around the time of the test. When the Player met with Mr Vyas he undertook a FENO test and a reading of 169 ppb was recorded. Dr Lakeland has given evidence that this was the highest reading he has ever heard of.

27. The medical evidence as to the very poor condition of the Player due to his asthma is clear and consistent across the evidence of the various medical witnesses and the Player himself. It is also uncontradicted by the FA. The evidence is also clear that the Player had poor inhaler technique and was not managing his asthma at all well. Mr Vyas made various recommendations to change the medication for the Player and the interventions have helped to bring it under control.
28. One of the points of discussion in the case was the Pharmacokinetic study undertaken by the Player on 19 September 2024 which resulted in a reading for salbutamol of 423 ng/ml. The study is said to replicate, to the extent possible, the circumstances of the Test. It is accepted that the study cannot replicate the circumstances entirely whether in terms of the effect of the exercise the Player undertook in Spain or his dehydration prior to providing the Sample. Nonetheless the Pharmacokinetic Study showed a reading about one third of that of the Sample.
29. The most likely reason for the AAF of salbutamol is that indicated by Prof Cowan that the Player exceeded the permitted dose. That was his conclusion in his report of 5 December 2024.
30. It is also consistent with Prof Dickinson who opined: “The above data demonstrates that poor inhaler technique may lead to increased deposition of inhalant in the upper airway and reduction in the delivered dose to the lower airway. This will increase the amount of inhalant that may be swallowed and enter the system via the digestive tract rather than via the lungs. In addition, less inhalant reaching the lower airways will result in each inhalation of salbutamol being less effective at relieving the bronchoconstriction and respiratory symptoms. Thus resulting in a greater number of salbutamol inhalations being required to deliver an effective dose to reverse airway bronchoconstriction.”

31. To this scientific evidence must be added the important point that the Player himself was unaware, because he had never been told, that there was a limitation of 600 µg /ml that could he inhaled in an eight-hour period. If an Athlete does not know of a limitation it may provide a ready explanation as to why he exceeded it. This limitation was introduced in January 2022. The Player was aware of the twenty-four-hour limitation of 1600 µg/ml but not the eight-hour limitation. When the Player asked his physio for advice during his training sessions in Spain as to how to treat his acute Asthma. The physio spoke to Dr Lakeland who said that he could increase the use of his Ventolin inhaler. Dr Lakeland did not inform the Physio there was a limitation on how much he could inhale in an eight-hour period. Dr Lakeland accepted that was an oversight on his part. Upon questioning of the Player he accepted that although in his witness statements he maintained he only inhaled six or seven puffs of his inhaler in the twenty-four hours before he gave his Sample he accepted that he did not record his usage and could not be sure this was correct. He based his evidence on his normal routine but as is clear from all the evidence, the condition of his Asthma at that time was anything but normal. It is clear to the Commission that he used his inhaler substantially more that he would normally do to deal with his exceptionally poor condition and to overcome his poor inhaler technique.
32. The unanimous conclusion of the Regulatory Commission is that it is satisfied on the balance of probabilities that the salbutamol found in the Sample was ingested by the Player by means of his use of inhaler which he used to treat his Asthma and possibly those provided by the physios during training. The Player has therefore satisfied the threshold requirement of showing how the salbutamol entered his body.
33. The issue then arises as to whether the Player has established No Fault or Negligence. This is a high hurdle which the Player is unable to clear. The Player ingested more than the permitted amount of salbutamol using inhalers to treat his condition. Had he used the “utmost caution” as required to establish No Fault or Negligence this would not have occurred. With the utmost caution the Player would

have been aware of and not exceeded the eight-hour limit under the Regulations and he would have had good inhaler technique. The Player has failed to establish No Fault or Negligence.

34. The Commission is satisfied that the Player has established on the balance of probabilities that he had No Significant Fault or Negligence. This is a fact sensitive assessment. In the present case the following factors are relevant. The Player has been subjected to Testing throughout his career and estimates that he has been tested up to about 20 times. He is tested once or twice every year, and the previous occasion was in April 2024. He has never been charged with an ADRV before in his career. The circumstances surrounding the Sample were exceptional in that the circumstances of his training including the heat, intensity and poor air quality combined with his poor inhaler technique meant he was in a very poor respiratory condition in the run up to the Test. He sought advice from the Club Doctor through his Physio and was told he should increase his use of his inhaler. He was not told there was an eight-hour limit on the amount that could be inhaled. That limitation of 600 µg /ml was introduced at the beginning of 2022, approximately 18 months earlier. Without knowledge of that limitation, it is likely that he consumed more than was permitted under the Regulations to treat his very poor respiratory condition. He has now taken substantial steps to address his Asthma, and his condition is much improved.

Conclusion on Sanction

35. The Regulatory Commission concludes that the Player has admitted acting in breach of Reg 3 and 4 of the Regulations as alleged in the Charge Letter but has established on the balance of probabilities that he bears No Significant Fault or Negligence. Taking all the circumstances into account the degree of Fault on the part of the Player is at the lowest end of the scale. The appropriate sanction is a reprimand combined with an order that the Player shall be subject to targeted testing for a period of two years until 12:01am 8 February 2027. The Player shall pay

the costs of the Commission in the amount notified to the Player in due course. The £100 personal hearing fee shall be retained.

A handwritten signature in black ink, appearing to read 'David Casement', with a long horizontal stroke extending to the right.

David Casement KC (Chairman)

Signed on behalf of the Regulatory Commission

10 February 2025