

**IN THE MATTER OF THE REGULATORY COMMISSION
OF THE FOOTBALL ASSOCIATION**

PRE/18/0003

BETWEEN:

THE FOOTBALL ASSOCIATION

-and-

MR MICHAEL PHENIX

Regulatory Commission:

David Casement QC (Chairman)

Stuart Ripley

Matt Williams

Paddy McCormack Regulatory Commission & Appeals Manager - Secretary

Michael Phenix

Simon Barker PFA - Representative

Rebecca Turner Regulatory Advocate, Football Association

Rob Henderson Anti-Doping Manager, Football Association, Observer

Peter Rogers Legal Officer, UKAD, Observer

Jonathan Bray Intelligence Researcher, UKAD, Observer

WRITTEN DECISION OF THE REGULATORY COMMISSION

Introduction

1. On 17 September 2018 Michael Phenix, who is aged 29 and was signed to Southport FC, provided an out of competition urine sample. Upon analysis the sample disclosed the presence of the Prohibited Substance Oxandrolone and its metabolite 17-epioxandrolone which is classified

under S1.1a Exogenous Anabolic Androgenic Steroids of the Prohibited List of the World Anti-Doping Code. Further the sample also disclosed the presence of Benzoyllecgonine, a metabolite of cocaine, which is a Prohibited Substance in competition.

2. By charge letter dated 3 January 2019 Mr Phenix was charged by The Football Association in respect of two charges:
 - 2.1 breach of Regulation 3(a) of the FA's Anti-Doping Regulations 2018-19 in respect of the presence of Oxandrolone and its metabolite 17-epioxandrolone ;
 - 2.2 breach of FA Regulation 4.1.2 of the Social Drugs Policy Regulations 2018-2019 in respect of the presence of the presence of Benzoyllecgonine.
3. It is recorded in the DCO Report Form that, whilst being chaperoned by the Doping Control Officer and just prior to providing the sample, Mr Phenix commented to the Officer "I am going to get banned now and this is the end of my career." Again according to what is recorded in the Report Form Mr Phenix was visibly upset prior to providing the sample.
4. On 16 October Mr Phenix confirmed that he did not require the B sample to be tested. On 18 October Mr Phenix sent a letter to The FA informing it that he had suffered from Crohn's disease for many years. This is debilitating bowel condition which had caused him to suffer substantial weight loss in the weeks before giving the sample and whereby he lost one and a half stone. A friend provided him with steroids to help him to regain weight but he ceased taking the steroids because of unpleasant side effects and in any event they did not increase his weight. He confirms that this was the source of the Oxandrolone. On Saturday 15 September 2018 Mr Phenix was feeling despondent as a result of this and whilst he

was out he took cocaine to try to lift his mood. He recorded in the letter that he was seeing a psychologist.

5. On 12 November Mr Phenix was interviewed by Neil Pugh and Rob Henderson of The Football Association. He confirmed that he had full knowledge that steroids and cocaine were Prohibited Substances. He explained the effects of his condition and how he sought to manage his weight loss with steroids. It was discussed in the interview that he had in fact recorded on the Doping Report Form that he had used testosterone and he explained that by this he meant the steroids he had used. He also set out his account of how the taking of cocaine on 15 September was the first time he had taken cocaine since he was 19 and that he took it in circumstances where he was despondent and also having had fifteen pints of beer that evening.
6. In his Reply Form dated 12 November 2018 Mr Phenix admitted the charges and requested a personal hearing.

Evidence and Submissions

7. The initial hearing on 8 February 2019 was adjourned as a result of Mr Phenix not attending. An email was presented to the Commission to show that on 8 February at 7:45am he presented himself at Bolton Hospital as a result of a flare up of his inflammatory bowel disease. We accept that explanation for his non-attendance.
8. At the hearing on 8 February 2019 directions were given for the exchange of written submissions to ensure that the next hearing would be effective. Accordingly written submissions and evidence were lodged by Mr Barker on behalf of Mr Phenix. The FA also filed written submissions.
9. A report has been provided by Billie Andrews of Sporting Chance Clinic dated 30 November 2018. In the report it is recorded that Mr Phenix has

had a long-running problem with cocaine use which he has tried to stop using a number of times. It is also recorded that he is reconnecting with his values of being honest, trustworthy, loyal, caring and happy.

10. A further report has been provided from Colin Bland of Sporting Chance. This addresses his relationship with alcohol and other social substances and the support that he has sought and received. It sets out the difficulty Mr Phenix has had in engaging with rehabilitation due to the chaos in his life.
11. It is submitted on behalf of Mr Phenix that whereas the starting point for the first charge, namely the presence of Oxandrolone and its metabolite 17-epioxandrolone, is four years unless Mr Phenix can discharge the burden of proving on the balance of probabilities that the presence was not intentional within the meaning of the regulations.
12. Mr Phenix gave evidence and was asked questions by the Commission and also by Ms Turner on behalf of The Football Association. In his evidence he explained that he was not in his right mind at the time that he took the steroids. He explained that he only took them only because he was very concerned about his appearance as a result of losing excessive amounts of weight as a result of Crohn's disease with which he has suffered most of his life. He was also concerned that he felt weak although he rejected any suggestion this feeling of weakness was an issue when he played football. He candidly admitted that he has used cocaine for many years. All of this took place against a backdrop of personal problems including personal tragedy from an early age.
13. In his evidence Mr Phenix alleged he believed the tablets that he obtained from someone down the gym was testosterone but said he did not know that testosterone was a Prohibited Substance. His explanation, given at the hearing, as to why he was so visibly worried when he came to give a sample was not clear. He suggested that he became aware he might be

tested a couple of hours before the test took place from talking to other players during training. The reason why Mr Phenix and other players thought he might be tested, is because they were aware of the presence of the drug testing officials at the venue. Some of the other players told him what he had taken was likely to be a banned substance. We did not regard that explanation as credible.

Regulations

14. The charges are admitted. The only issue before the Regulatory Commission is that of sanction. In particular there are two issues in respect of the first charge namely whether the offence was intentional under the Regulations and whether there was No Significant Fault or Negligence as set out in Regulation 69.
15. The starting point for this Anti-Doping Rule Violation (ADRV) is four years. The burden rests upon Mr Phenix to show that the taking of steroids was not intentional. If he discharges that burden the starting point is two years. Alternatively a reduction or any further reduction would depend upon Mr Phenix establishing again on the balance of probabilities that he carried no Significant Fault of Negligence in respect of the presence of the Prohibited Substance. That much is common ground.
16. The meaning of intentional within the Regulations is to be found at Regulation 50 of the Anti-Doping Regulations:

“The term “intentional” as used in this Part Six is meant to identify those Participants who cheat. The term therefore requires that the Participant engaged in conduct which 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. 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 Participant 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 Participant can establish that the Prohibited Substance was Used Out-of-Competition in a context unrelated to sport performance.”

17. Oxandrolone is an anabolic androgenic steroid within category S1 of the Prohibited List January 2018. It is therefore not a Specified Substance.
18. The charge in respect of the presence of cocaine falls into a different category because presence of cocaine is a breach of the Anti-Doping Regulations In Competition only. Presence of cocaine Out of Competition is a breach of The Football Association’s Social Drugs Policy Regulations. That is a separate regime with a range of sanctions from a warning to a 3 month suspension for a first time offence.

Findings

19. The version of events put forward by Mr Phenix that he did not believe the tablets he took were a Prohibited Substance or that they were steroids is not at all credible. We find that Mr Phenix knew that he had consumed steroids or some other Prohibited Substance. Our reasons for so finding are as follows:

- 19.1 he has provided to the Commission a photograph of the bottle of tablets that were given to him by a friend in the gym. The bottle is clearly labeled Oxandrolone. This is clearly identified on the Prohibited List;

- 19.2 his own account in interview was that his friend had refused to provide him with the tablets several times out of concern for the fact that he was a footballer. Clearly the friend knew and Mr Phenix knew by this he should not have been taking them. We do not accept the evidence he gave at the hearing that the friend was merely concerned the tablets might cause side-effects;
- 19.3 when asked why he did not go to his doctor for medication to assist with his weight loss his explanation was vague and unconvincing;
- 19.4 when asked whether he knew at the time he took them there was a risk that the tablets might contain a Prohibited Substance he accepted that he did know;
- 19.5 at the time of giving the sample Mr Phenix told the Doping Control Officer "I am going to get banned now and this is the end of my career." It is recorded on the Supplementary Report Form "He also looked visibly upset and had his head in his hands prior to providing his sample".
20. The definition of "intentional" is set out above. That definition is clearly made out in this case in that "the Participant engaged in conduct 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." That is made out even on Mr Phenix's own evidence before the Commission.
21. As to whether it can be said that Mr Phenix has established that there No Significant Fault or Negligence we find he has not. The bottle for the tablets was clearly labeled Oxandrolone. It is clear that he knew what the substance was but did not care.

22. We have considered whether we are satisfied on the evidence that he suffered a mental impairment to such an extent as to cause him to take the substance or to interfere with his decision-making processes. On the present evidence there is no expert evidence. It is likely that Mr Phenix has issues that need to be addressed to deal with the decisions he has made and is still making. However in order to establish mental impairment to justify a reduction in sanction would require clear expert evidence which was not available in the present case.

Conclusion

23. The Regulatory Commission therefore imposes the following sanctions:
- 23.1 in respect of the first charge there is a period of suspension of four years from the date of the test being 17 September 2018 up to and including 16 September 2022;
 - 23.2 in respect of the second charge, namely breach of the Social Drugs Policy, there is a period of suspension of 3 months from the date of the test being 17 September 2018 up to and including 16 December 2018;
 - 23.3 the player is hereby ordered to pay the sum of £750 as a contribution towards the costs of the Regulatory Commission;
 - 23.4 the hearing fee is forfeited;
 - 23.5 a warning is given to the player as to future conduct.

David Casement QC (Chairman)

Stuart Ripley

Matt Williams

26 April 2019