

**In the matter of a Regulatory Commission of The Football
Association**

**Mr Nicholas Stewart QC (chairman), Mr Matt Williams and Mr
Udo Onwere**

Between:

The Football Association

-and-

Joshua Yorwerth

**Reasons for Regulatory Commission decision made on 19
February 2019**

Introduction and charges

1. These are the reasons for the decision of this Regulatory Commission on charges of misconduct brought by The Football Association (“the FA”) against Mr Joshua Yorwerth (“the Player”) under FA Rule E25. Charge 1 is breach of the FA *Anti-Doping Regulations 2018-19* and Charge 2 is breach of the FA *Social Drugs Policy Regulations 2018-19*.¹ The Regulatory Commission are unanimous on both decision and reasons.

¹ Reasons given under paragraphs 66 and 67 of the FA *Disciplinary Regulations 2018/19* @ FA Handbook 2018/19 p. 136 ff

2. The Player is a professional footballer registered with Peterborough United Football Club, which plays in League One of the English Football League. At all material times the Player has been a Participant subject to the rules and regulations of the FA.
3. The two charges, made by a letter from the FA to the Player dated 21 December 2018 (“the Charge Letter”) were:

Charge 1: Breach of regulation 5 of the FA *Anti-Doping Programme Regulations 2018-19* (“the ADPR”).² It was alleged that on 25 September 2018 the Player evaded Sample collection or (without compelling justification) refused or failed to submit to Sample Collection after notification by a Competent Official.

Charge 2: Breach of regulation 4.2 of the FA *Social Drugs Policy Regulations 2018-19* (“the SDPR”)³ by the Player’s admitted use of cocaine on a non-match day on or around 23 September 2018.

in each case contrary to FA Rule E25.

4. The Player asked for a personal hearing, which took place before this Regulatory Commission at Wembley Stadium on Tuesday 19 February 2019. The Player attended and was represented by Mr Mark Knowles. The FA’s case was presented by Mr Yousif Elagab, FA Regulatory Legal Advocate. Mr Paddy McCormack, FA Regulatory Commissions & Appeals Manager, acted as Secretary to the Regulatory Commission.
5. Also in attendance at the hearing as observers only were: Ms Liz Elsom, representing Peterborough United FC, Mr Paul Allen of the Professional Footballers’ Association, Mr Phillip Law, solicitor of UK Anti-Doping, and Mr Robert Henderson, the FA Anti-Doping Manager.

² FA Handbook 2018/19 p. 256 ff

³ FA Handbook 2018/19 p. 311 ff

6. At the start of the hearing, the Regulatory Commission was informed that after discussion between Mr Elagab and Mr Knowles, the Player would not be contesting either charge. Submissions by Mr Knowles on his behalf would be confined to the question of penalty, in particular the length of suspension which might be ordered on Charge 1. That was a helpful and realistic approach by the Player and Mr Knowles on his behalf. It also meant that there was no need for any oral evidence, although the Player did make a very short personal statement to the Regulatory Commission to supplement a signed written statement already submitted. He offered a sincere apology for his actions and straightforwardly acknowledged that he had been wrong to react as he did when the anti-doping officers arrived at his house.

Charge 1: Evading Sample collection

7. We therefore go first to the issues which did arise at the hearing on Charge 1. The undisputed facts were that on Tuesday 25 September 2018 a Supervising Officer of the FA Anti-Doping Programme and a lead Doping Control Officer of UK Anti-Doping arrived at the Player's home to conduct an out of competition doping test on the Player. The Player was at home but he did not answer the door and he did not let them in, so no test could be conducted. At the hearing it was expressly admitted that this had been a breach of ADPR regulation 5, which is headed "Evading, Refusing or Failing to Submit to Sample Collection" and states:
 - (a) It is prohibited for a Player to evade Sample collection, or (without compelling justification) to refuse or fail to submit to Sample collection after notification by a Competent Official.
 - (b) The penalties set out in Regulation 52 apply to this violation.
8. Entirely realistically, there was no submission for the Player that there had been a compelling justification for refusal or failure to submit to the Sample collection. Accordingly, whether the Player's conduct is best described as evasion, refusal or failure makes no difference, though in any case the Regulatory Commission is satisfied that it was all three.
9. The Player now admits frankly that the reason he did not answer the door was that he had been using cocaine that weekend and believed that if tested he would face a two years suspension.

10. Regulation 52 sets out the penalties applicable for a breach of regulation 5:

“Subject to the relevant provisions of Part Eight of these Regulations, for a violation committed by a Player under Regulation 5 (evading, refusing or failing to submit to Sample collection) . . . 4 years’ suspension must be imposed, unless the Player establishes that an Anti-Doping Rule Violation contrary to Regulation 5 was not intentional, in which case 2 years’ suspension must be imposed.”

Again realistically, there was no submission that Part Eight applied or that the Anti-Doping Violation committed by his breach of regulation 5 had not been intentional. That meant that, on the face of it, there would have to be a 4 years’ suspension.

11. It is on that last point that Mr Knowles took issue on behalf of the Player. He submitted that the 4 years’ suspension was not mandatory, that the Regulatory Commission did have a discretion to impose a shorter suspension and that we should do so in this case.

12. That submission rested on either or both of two paragraphs in the Preamble to the ADPR:

2. AIMS OF ANTI-DOPING

Doping has become a constant concern of international sports organisations and national governments.

The fundamental aims of anti-doping are threefold:

- to uphold and preserve the ethics of sport;
- to safeguard the physical health and mental integrity of Players; and
- to ensure that all Players have an equal chance.

The above fundamental aims are laid down by FIFA, WADA and The Association.

7. MANDATORY PENALTIES

Participants should note that there are a number of mandatory penalties set out in the Anti-Doping Regulations, which are based on the penalties stipulated by WADA.⁴ It is only in exceptional circumstances that these penalties may be reduced.

13. Mr Knowles’s submission based on paragraph 2 was that:

- on the evidence (including reports from Sporting Chance and from a recent consultation with a psychologist) a 4 years’ suspension would actually damage the physical health and mental integrity of the Player;
- it was therefore in conflict with those express fundamental aims; and

⁴ World Anti-Doping Agency

- as a matter of principle, a Regulatory Commission could not and should not impose a period of suspension which was in conflict with those aims.

14. We do not need to make any finding on the first point of whether in fact a 4 years' suspension would be damaging to the physical health or mental integrity of the Player. This Regulatory Commission can see that the deprivation of the opportunity of playing and making his living (and quite a good living) as a professional footballer is going to be a stressful and depressing prospect for the Player. In particular, there is a risk that it will make it more difficult for him to overcome his acknowledged difficulties with alcohol.

15. However, it is clear to us that paragraph 2 of the Preamble cannot be understood as giving a Regulatory Commission a power to dispense with, or mitigate, the application of regulations 1 to 82 (with schedules) which immediately follow the Preamble. Those regulations 1 to 82 (with schedules) are what is called in conventional legal terminology "the Operative Part" and that is a convenient term to use here. The Operative Part contains detailed provisions defining what constitute Anti-Doping Rule Violations, what the penalties should be and what circumstances may reduce the penalties either to a specified lower level or to a level decided in the exercise of a Regulatory Commission's discretion. The ADPR are expressly stated in regulation 1 to be intended to implement the mandatory provisions of the World Anti-Doping Code ("the Code"). The essential structure of the Football Association's ADPR is that the Operative Part is designed by the makers of the regulations to achieve the fundamental aims as stated in paragraph 2 of the Preamble, in line with the Code. The idea is that the rigorous application of the regulations in the Operative Part is the way to achieve those aims. That is the intention of the makers of the ADPR (and the Code from which the ADPR are derived), however imperfectly those aims can be achieved in the real world.

16. Regulation 52 illustrates and follows that intention. A clear purpose of regulation 52 is to impose strong penalties to deter Players from avoiding the doping tests which are regarded as essential to the effective operation of the whole anti-doping policy and regime; and therefore essential towards the achievement of the fundamental aims. Those fundamental aims in paragraph 2 of the Preamble are stated in broad terms.

One of the three aims is the safeguarding of the physical health and mental integrity of “Players”, i.e. all those Players involved in football. Even if it were shown in an individual case that the strict application of the regulations in the Operative Part was likely to harm the physical health or mental integrity of the Player in question, that would still be consistent with the three fundamental aims in paragraph 2 of the Preamble, as we have explained in paragraph 15 above.

17. Turning now to Mr Knowles’s submissions on paragraph 7 of the Preamble: We see no force in that argument. That paragraph is doing no more than drawing attention to the detailed provisions which follow in the Operative Part. In saying “It is only in exceptional circumstances that these penalties may be reduced”, paragraph 7 is simply noting that the Operative Part itself allows reduction only in exceptional circumstances. It clearly does not provide a separate power or discretion to reduce a penalty where there is no provision for reduction in the Operative Part. The Operative Part contains detailed mechanisms for reduction of penalties in a number of specified circumstances; and those mechanisms are plainly designed to be strictly and rigorously applied. It would make no sense to interpret the Preamble as offering, alongside those special mechanisms, a general discretion to make an unspecified reduction to any penalty otherwise prescribed in the Operative Part.
18. We do note that the Preamble opens with the words: “This Preamble is a binding part of these Regulations.” However, that does not affect any of our conclusions. The Preamble is a mixture of provisions which in terms impose an obligation on Participants (Paragraph 3: Participants’ Responsibilities), a provision which does no more than give an address for enquiries (Paragraph 8) and provisions which are intended to be helpful and informative. We see paragraphs 2 and 7 as being in that last category. Any provision of the Preamble may be used to aid interpretation of the Operative Part but it is only the Operative Part which spells out the penalties and the possible reductions of penalty for Anti-Doping Rule Violations.
19. Our conclusions on the effect of the Preamble mean that there are no exceptional circumstances which can affect the penalty for the Player’s admitted breach of the ADPR. Neither paragraph 2 nor paragraph 7 of the Preamble enable reliance on any exceptional circumstances beyond those specified in the Operative Part of the ADPR. Mr Knowles expressly accepted that if he failed on his arguments based on the

Preamble, there was no let-out for the Player under Regulation 5 and no escape from a 4 years' suspension. He was also clearly accepting that there were no other provisions in the Operative Part which could have offered such an escape. That was a correct view and the result is that there must be a 4 years' suspension.

20. The starting date for the suspension is 3 October 2018, because the Player has been provisionally suspended from that date and there is no suggestion that he has not adhered to that suspension: see ADPR, regulation 40(b). His 4 years' suspension will therefore expire on 2 October 2022.
21. We also order Target testing of the Player for the whole remaining period of his suspension. When we gave Mr Knowles the opportunity of addressing us on that order, he indicated that the Player was not particularly happy about it. Nevertheless, we consider it a potentially helpful order to make and do not see any significant downside. It will involve no more than a minor inconvenience for the Player and one which is fair in the circumstances.

Charge 2: Use of cocaine

22. The Player's use of cocaine at the weekend on or about Sunday 23 September 2018 was admitted by him when he was interviewed by an FA Integrity Investigator and an FA Anti-Doping Officer on 12 October 2018. That use of cocaine is his explanation for not answering the door when the doping officials arrived to test him on 25 September 2018. He believed that if tested he would face a two years' suspension and apparently did not appreciate that the consequence of evading the test would almost inevitably be a 4 years' ban (as it has turned out to be).
23. The Player has never withdrawn that admission and has accepted Charge 2.
24. This is the Player's first breach of the SDPR. Under Regulation 8.1, for a first breach the Regulatory Commission must issue a warning and/or require the Player to undergo a course of assessment/evaluation, education, counselling and/or treatment. It may also impose a period of suspension within the range 0 to 3 months.

25. We issue a warning. However, we do not impose a requirement for any course as mentioned in Regulation 8.1 of the SDPR. Although we believe that a suitable course or courses would be likely to help the Player, he has already been counselled and assessed by Sporting Chance and has recently consulted a psychologist. He accepts that he has a problem with alcohol, which seems a probable contributing or triggering factor for his use of drugs. He assured us that he was willing to cooperate in doing whatever he could to get back into football. He will have to work very seriously on himself and his life to have any real chance of achieving that target. He understands that he is at a critical point in his life. Rather than impose such steps upon him, we have decided to leave it to the Player, with the support of those already advising him, to do whatever he can to help himself. We do not see a suspension on Charge 2 as helpful or fair in all the circumstances.

Regulatory Commission observations

26. The task of a Regulatory Commission is to conduct a fair hearing and make a correct and fair decision in accordance with the applicable rules and regulations. The responsibility of making the rules and regulations and for the education of Players on anti-doping policies, rules and regulations lies with others.

27. We simply observe that Mr Yorwerth clearly had no proper understanding of the seriousness of evading a doping test and the severe consequences for him. If he had been tested on 25 September 2018 and cocaine but no other substance had been detected, he would have faced a maximum suspension of 3 months: see paragraph 25 above. Instead he now has a potentially career-wrecking suspension of 4 years.

28. We recognise that it is a Player's personal responsibility to be aware of all applicable anti-doping policies and rules and regulations adopted by the FA: see paragraph 3 of the ADPR Preamble. Our concern is that Mr Yorwerth's flimsy understanding of this important area may well be typical among young footballers. Based on the experience of the members of this Regulatory Commission, we strongly suspect that it is.

29. We make no finding either way that the Player did or did not have any other illicit substance in his system on 25 September 2018. Precisely because he evaded the test, no one but the Player will ever know for sure. But if he did not, then the severity of

this 4 years' suspension, while entirely in accordance with the anti-doping policy and rules and regulations, has been largely a result of serious gaps in the Player's knowledge and understanding of the anti-doping regime.

Regulatory Commission decisions on penalties and costs

30. There will be a 4 years' suspension and Target testing.

31. The effect of the suspension is in regulation 42 of the ADPR: During the period of suspension the Player cannot participate in any capacity in any Match (as defined in Schedule Two) or any other football-related activity or in any other activities under the jurisdiction of another signatory to the World Anti-Doping Code or member of a signatory to the Code, other than anti-doping education or rehabilitation programmes.

32. Target testing is defined in Schedule Two to the ADPR and in paragraph 9 of Schedule One, Part Two.

33. The Player will also forfeit his personal hearing fee of £100.

34. Under paragraph 54 of the FA *Disciplinary Regulations*, the Chairman of the Regulatory Commission may order the Player to pay all or part of the costs incurred by the Regulatory Commission. He is ordered to pay £2,500 towards those costs.

35. The Player has a right of appeal in accordance with paragraph 68 of the FA *Disciplinary Regulations*.

The Regulatory Commission's order & Player's right of appeal

36. The Regulatory Commission's order is:

(A) On Charge 1 (admitted by the Player)

(1) The Player Mr Joshua Yorwerth is suspended for 4 years from 3 October 2018 pursuant to The Football Association *Anti-Doping Programme Regulations*.

(2) The Player will be subject to Target testing for the remainder of that 4 years' suspension.

(B) On Charge 2 (admitted by the Player)

(3) The Player is given a warning as to his future conduct.

(C) On both charges together:

(4) The Player shall forfeit his £100 personal hearing fee, which will be retained by the Football Association.

(5) The Player shall pay £2,500 towards the costs incurred by the Regulatory Commission.

37. The Player has a right of appeal in accordance with paragraph 68 of the FA *Disciplinary Regulations*.

A handwritten signature in black ink, appearing to read 'Nicholas Stewart', with a stylized, cursive script.

Nicholas Stewart QC

Chairman

Matt Williams

Udo Onwere

22 February 2019