

**IN THE MATTER OF PROCEEDINGS BROUGHT UNDER THE ANTI-DOPING RULES OF  
THE RUGBY FOOTBALL LEAGUE**

Before:

Michelle Duncan  
Colin Murdock  
Dr Terry Crystal

**BETWEEN:**

**UK Anti-Doping**

**Anti-Doping Organisation**

and

**Tom Curwen**

**Respondent**

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**DECISION OF THE NATIONAL ANTI-DOPING PANEL**

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**Introduction and Background**

1. The Applicant, UK Anti-Doping (“**UKAD**”) is the National Anti-Doping Organisation in the UK and has jurisdiction to prosecute this case.
2. The Rugby Football League (“**RFL**”) is the national governing body for the sport of rugby league in England. The RFL has adopted the UK Anti-Doping Rules (“**ADR**”) as its anti-

doping rules.

3. Pursuant to the ADR on 18 February 2023, Mr Curwen was tested In-Competition at a League One match between London Skolars and Workington Town RLFC (“**Workington Town**”). Mr Curwen’s A Sample was analysed by the World Anti-Doping Agency (‘WADA’) accredited laboratory and analysed in accordance with the procedures set out in WADA’s International Standard for Laboratories. Analysis of Mr Curwen’s A Sample returned an Adverse Analytical Finding (“**AAF**”) for amphetamine.
4. Amphetamine is listed under s6A of the 2023 WADA Prohibited List as a Non-Specified Stimulant. It is a non-Specified Substance which is prohibited In-Competition only.
5. Mr Curwen was charged with committing Anti-Doping Rule Violations (“**ADRVs**”) pursuant to ADR Article 2.1 and Article 2.2 and has been provisionally suspended since 6 April 2023.
6. Mr Curwen does not dispute that he committed the ADRVs. However, he argues that the ADRVs were not intentional and that there was No Significant Fault or Negligence. UKAD does not dispute Mr Curwen’s position that the ADRVs were not intentional but does not accept that there has been No Significant Fault or Negligence. Accordingly, the only issue before the Panel is the period of Ineligibility.
7. On 6 September 2023 UKAD requested that an NADP Tribunal be convened to determine Mr Curwen’s period of Ineligibility.
8. The President of the NADP duly appointed the Chair on 14 September 2023, and the other members of the Tribunal were subsequently appointed on 13 December 2023.
9. Directions for the conduct of this matter were agreed and issued on 2 October 2023 and subsequently amended, by agreement, on 3 November 2023 and 16 November 2023. UKAD and Mr Curwen served evidence and written submissions pursuant to those directions. The hearing took place remotely on 11 January 2024. Present at the hearing were Ailie McGowan, Lawyer, UKAD, Brodie Edmead, Legal Officer, UKAD, Shaman Kapoor, pro bono Counsel for Mr Curwen, Mr Curwen and Alisha Ellis, NADP Secretariat. Mr Curwen gave evidence and was cross-examined at the hearing. Mr Curwen informed UKAD prior to the hearing that he did not intend to cross-examine any of the witnesses

who gave evidence on behalf of UKAD and therefore none of those witnesses attended the hearing.

## The Facts

10. The Respondent, Mr Tom Curwen, is a semi-professional rugby league player. At all material times, Mr Curwen was registered as a player for Workington Town.

11. Mr Curwen was born on 15 August 1989. [REDACTED]

[REDACTED] He played football at a semi-professional level but was forced to retire after several operations on his knee.

12. He started playing rugby league in his early twenties. He enjoyed the discipline of training through the week and playing matches at weekends. However, he continued to struggle with his behaviour and emotions, and found himself getting into trouble. [REDACTED]

[REDACTED] Mr Curwen describes himself as regimented and organised but as having struggled throughout his life behaviourally and emotionally and being impulsive, angry at times, forgetful and fidgety. However, until he was diagnosed with Attention Deficit Hyperactivity Disorder (“ADHD”) in 2022 he was unaware that he suffered from any medical or mental health condition.

13. Mr Curwen underwent in-person anti-doping training with Workington Town in August 2017. His evidence at the hearing was that although he had not been diagnosed with ADHD at that time, that he would not have paid attention during the training and that it would not have stuck with him.

14. Mr Curwen met his partner in 2016. In October 2020, during the Covid-19 pandemic, Mr Curwen’s partner gave birth, prematurely, to twin-girls. [REDACTED]

[REDACTED] After the twins went home from hospital, Mr Curwen’s routine broke down and he became increasingly unable to cope with daily life – the twins required feeding every 90 minutes, the family did not receive any childcare assistance and he was getting very

little sleep. He could not cope with the pressures at home alongside his job [REDACTED] [REDACTED] and his commitment to RFL. He lost a lot of weight in a short period of time, his mental health deteriorated [REDACTED]

15. Mr Curwen completed on-line anti-doping training in January 2021. His evidence at the hearing was that when he undertook this training he was tired, run-down and depressed and with his as-yet undiagnosed ADHD, forgetful and not paying attention. As a consequence the on-line training would not have meant anything to him.

16. Mr Curwen stopped playing rugby league in May 2021 – he had been unable to train properly and was not being picked to play on match day which triggered his recognition that he was not able to cope either at home or on the field and needed help. This led to him seeking therapy and counselling. [REDACTED]  
[REDACTED]

17. Mr Curwen was diagnosed with ADHD and dyslexia in July 2022 and his treatment began in August 2022 when he started a period of titration.

18. The titration process for Mr Curwen began on 26 August 2022. The period between August and October 2022 was very difficult for Mr Curwen. He experienced severe side effects from the medication that he had been prescribed, including depression, [REDACTED] and a lack of energy, which led to his medication being changed to Elvanse Concerta XL on 10 October 2022. On 15 October 2022 he signed a new contract with Workington Town.

19. Mr Curwen returned to playing rugby league at Workington Town in December 2022. Mr Curwen did not discuss or disclose his ADHD diagnosis or his medication to Workington Town Club when he returned as a player. Further, at no time prior to 18 February 2023 when he was tested, did he take any steps to investigate whether Elvanse contains a Prohibited Substance and whether he required a Therapeutic Use Exemption (“TUE”). He sought to explain his failure to disclose his ADHD diagnosis and medication to the club on the basis that when he completed his medical form, he could not remember the name of the medication, or the dosage he was taking and further did not know whether his medication would change again during the titration process.

20. The titration process for Mr Curwen finally concluded on 17 January 2023 when he was

prescribed with Elvanse 50mg – Methylphenidate.

21. On 21 January 2023, Dr Leszek Rudzki of Psychiatry-UK produced a report on Mr Curwen's condition which notes Mr Curwen's complaints, in particular: "...he has a long history of difficulties with attention, concentration, [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

22. As noted above, Mr Curwen was tested on 18 February 2023 at the match between London Skolars and Workington Town and his Sample returned an AAF for amphetamine. Mr Curwen disclosed his Elvanse medication on his 18 February 2023 Doping Control Form.

23. On 13 April 2023, Mr Curwen applied for a retroactive TUE. On 11 May 2023, Mr Curwen was informed that the TUE Fairness Review Panel had refused his application for a retroactive TUE. The TUE Fairness Review Panel found:

*"The Panel were unanimously in favour of rejecting the player's request for the TUE application to be considered retroactively given that the player had received the relevant anti-doping education prior to being subject to Doping Control and thus had to be aware of the fact that it was his responsibility to accurately ascertain the anti-doping status of his medication and to understand the implications of taking a prohibited substance without a valid TUE in place. These steps should have been taken as soon as the player re-signed for the club in October 2022 and certainly before the season commenced in February 2023. The Panel were of the view that it would not be manifestly unfair to reject the player's request when considering the facts of this case."*

24. On 16 May 2023, Mr Curwen referred the TUE Fairness Review Panel's decision to WADA. On 25 May 2023, WADA confirmed to Mr Curwen that WADA's review for this type of request was not mandatory and WADA had decided not to conduct a review.

25. On 7 June 2023, Mr Curwen emailed UKAD seeking to appeal the decision of the TUE

Fairness Review Panel. UKAD informed Mr Curwen that it was not possible to challenge the decision in accordance with International Standard for Therapeutic Use Exemptions Article 4.3.

26. Mr Curwen was charged with the ADRVs on 28 July 2023.

27. On 3 October 2023, UKAD invited Mr Curwen to apply for a prospective TUE. As at the date of the hearing, Mr Curwen had not applied for a prospective TUE. His evidence at the hearing was that this was due to the fact that he has been unable to obtain the required psychiatric report, that the earliest appointment he can get with his psychiatrist is in February 2024 and that he intends to apply for a prospective TUE as soon as possible after he has met with his psychiatrist.

## **Sanction**

28. As noted above, UKAD have not challenged Mr Curwen's position that his ADRVs were not intentional. Accordingly, the starting point for Mr Curwen's period of Ineligibility is two years.

29. Pursuant to ADR Article 10.6, the period of Ineligibility may be reduced from the maximum of two years if Mr Curwen is able to establish that he bears No Significant Fault or Negligence for the ADRVs he has committed.

30. **No Significant Fault or Negligence** is defined under the ADR as follows:

*"The Athlete or other Person's establishing that any 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 Athlete, for any violation of Article 2.1, the Athlete must also establish how the Prohibited Substance entered Athlete's system."*

31. **No Fault or Negligence** is defined under the ADR as follows:

*"The Athlete or other Person establishing that they did not know or suspect, and could not reasonably have known or suspected, even with the exercise of utmost caution, that they had*

*Used or been administered the Prohibited Substance or Prohibited Method or otherwise violated any anti-doping rule. Except in the case of a Protected Person or Recreational Athlete, for any violation of Article 2.1, the Athlete must also establish how the Prohibited Substance entered the Athlete's system."*

32. No issue arose as to how the amphetamine entered Mr Curwen's system, it being accepted by both parties that Mr Curwen's Elvanse medication contains amphetamine.
33. Mr Curwen accepts that he was at fault in that he failed to investigate whether Elvanse contains a Prohibited Substance and failed to obtain a TUE at any time prior to 18 February 2023 when he was tested. However, he submitted that due to his particular circumstances, specifically his mental health issues, the lengthy period over which they remained undiagnosed and the difficulties he has experienced throughout his life, in particular during the Covid-19 pandemic and, importantly during his titration process which coincided with his return to rugby league in late 2022, his case should be treated as exceptional and the period of Ineligibility reduced pursuant to ADR Article 10.6.2.
34. UKAD's position is that for a plea of No Significant Fault or Negligence, Mr Curwen must establish that his Fault was not significant in relation to the violation when viewed in the totality of the circumstances and taking into account the criteria for No Fault or Negligence. UKAD submits that he has failed to establish this because (i) as he has acknowledged, Mr Curwen failed to use the "utmost caution" and (ii) he does not have an acceptable explanation for that failure.
35. UKAD submit that ADR Article 10.6.2 is only applicable in exceptional circumstances and that the circumstances of this case are far from exceptional. In support of their position, UKAD rely on the case of *UKAD v Duffy SR/NADP/476/2105* in which the panel found that, in order for an Athlete to demonstrate No Significant Fault or Negligence he would need to show (i) a medical diagnosis of a depressive illness; and (b) cognitive impairment linked to the circumstances surrounding the commission of the ADRV. UKAD submit that Mr Curwen's evidence as to how his mental health and/or ADHD have impaired his ability to comply with his anti-doping responsibilities is insufficient and that Dr Rudzki's report and the screenshot of Mr Curwen's prescription Elvanse and Sertraline, provide insufficient evidence as to Mr Curwen's mental health and the existence of a cognitive impairment at the relevant time. UKAD further submit, based on the decision in *UKAD v Duffy*, that in

order for an Athlete to reduce his level of Fault based on cognitive impairment not only is a diagnosis required but there must also be an explanation as to how that diagnosis impacted the Athlete at the time of the ADRV.

36. In answer to this, Mr Curwen points to Dr Rudzki's report, which indicates a diagnosis of ADHD, alongside his own evidence regarding his mental state before and after his diagnosis, including during the titration period. Mr Curwen further submits that there is no requirement for evidence of cognitive impairment to have come from a medical expert and that his own evidence, including his oral evidence at the hearing, is sufficient to demonstrate cognitive impairment.

37. The Panel accepts Mr Curwen's submissions on this issue. Although Mr Curwen has not produced a medical report diagnosing his ADHD, it is clear from Dr Rudzki's 21 January 2023 report that Mr Curwen has been diagnosed with ADHD, as it discusses his symptoms as well as the treatment he has received following that diagnosis. As regards cognitive impairment, the Panel accepts Mr Curwen's evidence regarding his mental health and the effect his medication had on him during the titration process, including when he entered into a new contract with Workington Town. On this basis, the Panel finds that Mr Curwen has demonstrated that his ADHD led to cognitive impairment and that this was linked to the circumstances surrounding the commission of the ADRVs.

38. In the alternative, UKAD submit that, if the Panel finds there was No Significant Fault or Negligence on the part of Mr Curwen, the principles set out in the CAS decision in *Cilic v ITF CAS 2013/A/3327* should be applied to assist in determining the level of reduction to be applied to the period of Ineligibility.

39. In *Cilic*, the panel considered what principles should govern the exercise of its discretion to reduce to period of Ineligibility for a Specified Substance. Three levels of Fault were introduced – Considerable Fault, a normal degree of Fault and a light degree of Fault.

40. In *Cilic* the panel stated:

*"71. In order to determine into which category of fault a particular case might fall, it is helpful to consider both the objective and the subjective level of fault. The objective element describes what standard of care could have been expected from a reasonable person in the athlete's*



*situation. The subjective element describes what could have been expected from that particular athlete, in light of his personal capabilities.*

*72. The Panel suggests that the objective element should be foremost in determining into which of the three relevant categories a particular case falls.*

*73. The subjective element can then be used to move a particular athlete up or down within that category.”*

41. With reference to the findings in *Cilic*, UKAD submitted that Mr Curwen's Fault or negligence when viewed in the totality of the evidence in particular his failure to take any steps to ensure he was not taking a Prohibited Substance or to obtain a TUE is significant and that his Fault is therefore considerable. UKAD further submit that subjective factors to be taken into account, including that Mr Curwen had received anti-doping training on at least two occasions also weigh in favour of there being no reduction.

42. Mr Curwen submits that his degree of Fault should be either normal or light, by reference to factors such as the technical nature of the breach and his lack of intent.

43. Based on the principles identified by the panel in *Cilic*, the Tribunal finds that Mr Curwen's Fault fell within the normal level. In this regard we note that Mr Curwen has accepted that his conduct, as described above, fell below acceptable standards. Nevertheless, we accept that the particular circumstances of Mr Curwen's case, in particular, the adverse symptoms, including lack of energy and depression he suffered in the period leading up to him returning to his rugby league career, his inability to focus and pay attention and the lifelong difficulties and challenges he has experienced, both prior and subsequent to his ADHD diagnosis, merit some reduction from the standard two year period of Ineligibility.

### **The Tribunal's Findings**

44. Mr Curwen has admitted that he committed ADRVs pursuant to ADR Article 2.1 and ADR Article 2.2.

45. Mr Curwen took no steps to investigate whether his medication for ADHD included a Prohibited Substance or to obtain a TUE prior to taking that medication. As regards these

failings, Mr Curwen is at Fault and acted negligently. However, on this occasion, given the particular circumstances that Mr Curwen was in at the relevant time, including his mental health issues, the difficulties and challenges he faced through the Covid-19 pandemic and during the titration process, his failure to take these steps can be partially excused. On this basis, the Tribunal reduces the period of Ineligibility to 18 months.

## **The Decision**

46. For the reasons set out above, the Tribunal makes the following decision:

- ADRVs contrary to ADR Articles 2.1 and 2.2 have been established;
- As the ADRVs were not intentional, and Mr Curwen bears No Significant Fault or Negligence, Mr Curwen's period of Ineligibility shall be 18 months;
- The period of Ineligibility will start on 6 April 2023, the date on which Mr Curwen was provisionally suspended and shall therefore end at 23:59 on 5 October 2024.

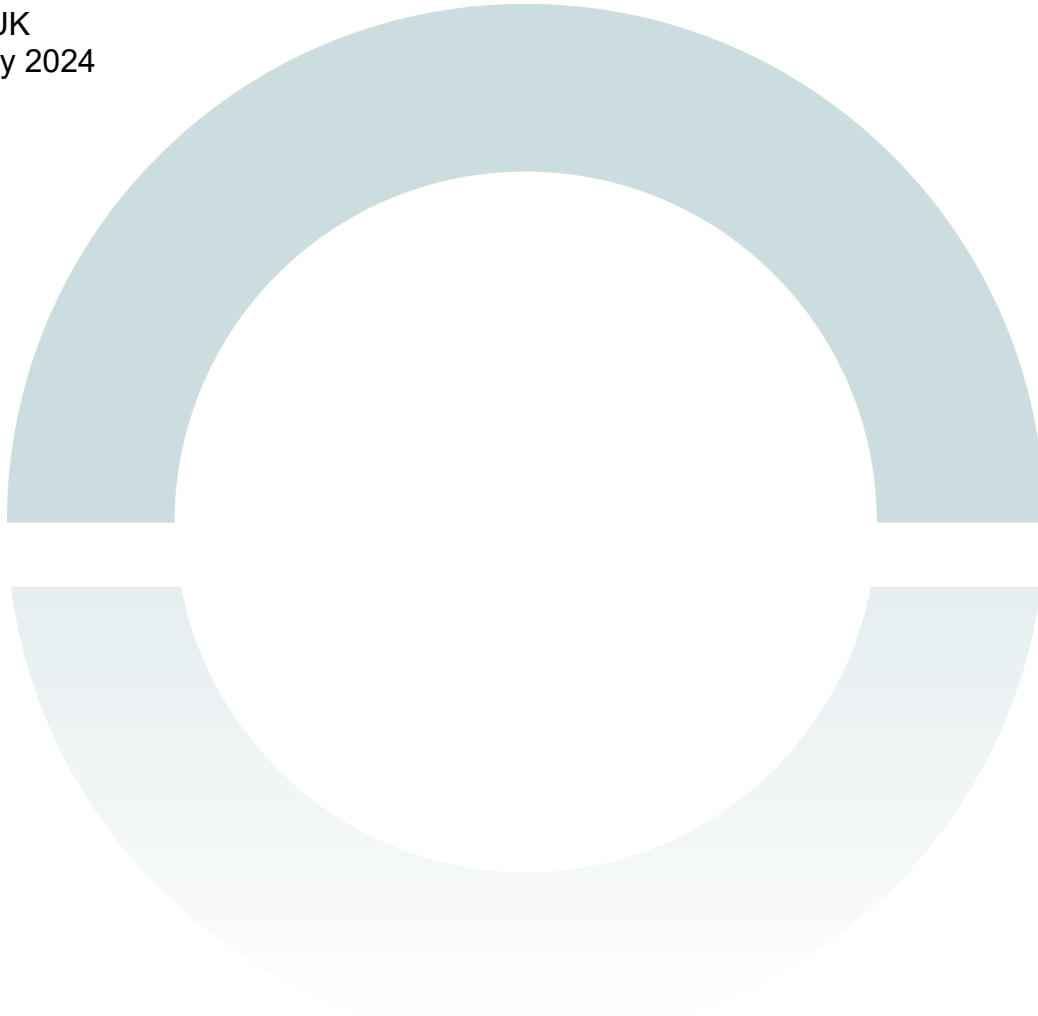
## **Right of Appeal**

47. In accordance with Article 13.5 of the NADP Procedural Rules any party who wishes to appeal must lodge a Notice of Appeal with the NADP Secretariat within 21 days of receipt of this decision.

48. Pursuant to ADR Article 13.4.2(b), the Appeal should be filed to the National Anti-Doping Panel, located at Sport Resolutions, 1 Paternoster Lane, London, EC4M 7BQ ([resolve@sportresolutions.com](mailto:resolve@sportresolutions.com)).



Michelle Duncan  
Chair, on behalf of the Panel  
London, UK  
2 February 2024



1 Paternoster Lane, St Paul's London EC4M 7BQ [resolve@sportresolutions.com](mailto:resolve@sportresolutions.com) 020 7036 1966

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