

**IN THE MATTER OF PROCEEDINGS BROUGHT UNDER THE ANTI-DOPING RULES OF
ICE HOCKEY UK**

Before:

Michelle Duncan
Lorraine Johnson
Dr Neil Townshend

BETWEEN:

UK Anti-Doping

Anti-Doping Organisation

and

Ashley Calvert

Respondent

DECISION OF THE NATIONAL ANTI-DOPING PANEL

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 Respondent, Mr Ashley Calvert, is a National Level ice hockey player. At all material times, Mr Calvert was registered as a player for Solihull Barons, an ice hockey team that plays in the National Ice Hockey League (“**NIHL**”) Division 1 North. The NIHL Division 1

North is the second tier of the NIHL structure alongside the NIHL Division 1 South.

3. Pursuant to the ADR, on 5 December 2021 Mr Calvert was tested In-Competition at the match between Blackburn Hawks and Solihull Barons at Blackburn Ice Arena, Lower Audley Industrial Estate, Blackburn, BB2 3DY. Mr Calvert's Sample returned Adverse Analytical Findings ('**AAFs**') for three substances: morphine, oxycodone, and oxymorphone.
4. Morphine, oxycodone, and oxymorphone are classified under section S7 of the 2021 WADA Prohibited List as Narcotics. They are Specified Substances that are Prohibited In-Competition only.
5. By letter dated 17 March 2022, UKAD informed Mr Calvert that his Sample had returned AAFs for morphine, oxycodone, and oxymorphone. UKAD invited Mr Calvert to apply for a retroactive Therapeutic Use Exemption ("**TUE**") on the basis that he was an Athlete who was not defined to be within the National TUE Pool for his sport and therefore did not need to be in possession of a valid TUE prior to commencing treatment with a Prohibited Substance.
6. On 10 August 2022, UKAD sent Mr Calvert a Notice Letter, formally notifying him in accordance with ADR Article 7.8, that he may have committed Anti-Doping Rule Violations ("**ADRV**") pursuant to ADR Article 2.1 and Article 2.2 and provisionally suspended Mr Calvert as from that date.
7. On 14 September 2022, Mr Calvert obtained legal representation. On 22 September 2022 Mr Calvert, via his legal representative, submitted a partially completed retroactive TUE application. However, notwithstanding that UKAD extended the deadline for him to do so several times, Mr Calvert failed to submit a complete retroactive TUE application and therefore on 7 October 2022 UKAD informed Mr Calvert and his representative that Mr Calvert's retroactive TUE application had been cancelled due to it being incomplete.
8. On 18 November 2022, UKAD charged Mr Calvert with violations of ADR Article 2.1, in that a Prohibited Substance or its Metabolites or Markers were present in his A Sample, and ADR Article 2.2, in that he Used a Prohibited Substance namely: morphine; and/or oxycodone; and/or oxymorphone on or before 5 December 2021 (the "**Charge Letter**").

Mr Calvert has not previously been charged with an ADRV.

9. Mr Calvert's legal representative ceased to act for Mr Calvert on 28 November 2022, having informed UKAD that he had been unable to obtain final instructions from Mr Calvert in response to the Charge Letter. Mr Calvert did not provide a formal response to the Charge Letter.
10. A directions hearing took place on 22 February 2023, at which directions for the conduct of this matter were issued on 22 February 2023 and subsequently amended on 21 March 2023. Mr Calvert did not attend the directions hearing. Pursuant to the directions, Mr Calvert was required to file the evidence upon which he seeks to rely by 1600 on 8 March 2023 and to serve his written submissions by 16:00 on 5 April 2023. Mr Calvert did not comply with these directions although on 25 April 2023 he did provide UKAD with one page of a GP Out of Hours OOH Call Incident Report dated 16 July 2021.
11. The directions also provided that the hearing of this matter would take place at 10:00 on 3 May 2023 but that if there was no engagement from Mr Calvert the matter would be determined on the papers. By letter dated 17 April 2023, the NADP Secretariat notified Mr Calvert regarding the appointment of the Panel and the directions issued on 22 February 2023, as amended on 21 March 2023. On 21 April 2023, the NADP Secretariat spoke to Mr Calvert. During that conversation Mr Calvert informed the NADP Secretariat that he wished to submit evidence regarding his use of morphine. As noted at paragraph 10 above, that evidence was provided by Mr Calvert on 25 April 2023. On 26 April 2023, Mr Calvert was copied on UKAD's email to the Panel seeking clarification whether the matter would be determined on the papers or whether he wishes to have a hearing in person in light of Mr Calvert having submitted evidence on 25 April 2023. Mr Calvert did not respond to UKAD's email of 26 April 2023. The Chair, issued the direction for Mr Calvert to confirm his attendance for the hearing on 3 May 2023 by 17:00 on 27 April 2023. Mr Calvert did not respond. Accordingly, the Chair determined, in accordance with the directions, that this matter would be determined on the papers.

Jurisdiction

12. Ice Hockey UK ('**IHUK**') is the National Governing Body for the sport of ice hockey in the UK. IHUK has adopted the UK Anti-Doping Rules as its Anti-Doping Rules ("**ADR**").
13. The English Ice Hockey Association ("**EIHA**") is a regional governing body for ice hockey in England and is affiliated with IHUK.
14. ADR Article 1.2.1 prescribes the categories of persons who are bound by and subject to the ADR. ADR Article 1.2.1 states:

"These Rules shall apply to: ..

[(a)-(b)]

(c) all Athletes (including International-Level Athletes) and Athlete Support Personnel participating in such capacity in Events, Competitions, and other activities organised, convened, authorised or recognised by the NGB or any of its members or affiliate organisations or licensees (including any clubs, teams, associations or leagues), wherever held;"

15. At the time the Sample was collected Mr Calvert was participating in a competition recognised by the EIHA. Mr Calvert, as a result of his participation as an Athlete in an EIHA recognised competition, was bound by the ADR at the material time. Accordingly, the Panel has jurisdiction to determine this matter.

The Charges

16. Mr Calvert was charged pursuant to ADR Articles 2.1 and 2.2.
17. ADR Article 2.1 states:

"2.1 Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample, unless the Athlete establishes that the presence is consistent with a TUE granted in accordance with Article 4

2.1.1 It is each Athlete's personal duty to ensure that no Prohibited Substance enters their body. An Athlete is responsible for any Prohibited Substance or any of its Metabolites or Markers found to be present in their Sample. Accordingly, it is not necessary to

demonstrate intent, Fault, negligence or knowing Use on the Athlete's part in order to establish an Article 2.1 Anti-Doping Rule Violation; nor is the Athlete's lack of intent, Fault, negligence or knowledge a valid defence to an assertion that an Article 2.1 Anti-Doping Rule Violation has been committed.

2.1.2 Proof of any of the following to the standard required by Article 8.4.1 is sufficient to establish an Article 2.1 Anti-Doping Rule Violation:

(a) An Adverse Analytical Finding of the presence of a Prohibited Substance or any of its Metabolites or Markers in the Athlete's A Sample, where the Athlete waives analysis of the B Sample and so the B Sample is not analysed... .. “

18. ADR Article 2.2 states:

“2.2 Use or Attempted Use by an Athlete of a Prohibited Substance or a Prohibited Method, unless the Athlete establishes that the Use or Attempted Use is consistent with a TUE granted in accordance with Article 4

2.2.1 It is each Athlete's personal duty to ensure that no Prohibited Substance enters their body and that no Prohibited Method is Used. Accordingly, it is not necessary to demonstrate intent, Fault, negligence or knowing Use on the Athlete's part in order to establish an Anti-Doping Rule Violation for Use of a Prohibited Substance or a Prohibited Method; nor is the Athlete's lack of intent, Fault, negligence or knowledge a valid defence to an assertion that an Article 2.2 Anti-Doping Rule Violation of Use has been committed.

...

2.2.4 Out-of-Competition Use of a substance that is only prohibited In-Competition is not an Article 2.2 Anti-Doping Rule Violation. If, however, an Adverse Analytical Finding is reported for the presence of such substance or any of its Metabolites or Markers in a Sample collected In-Competition, that may amount to an Article 2.1 Anti-Doping Rule Violation.”

UKAD Submissions

Charges

19. Mr Calvert has no valid or applicable TUE in place to justify the presence of morphine, oxycodone and / or oxymorphone in his Sample.
20. Under ADR Article 8.4.1, UKAD has the burden of establishing to the comfortable satisfaction of the Tribunal that Mr Calvert has committed the ADRVs with which he has been charged in the Charge Letter.
21. That burden has been discharged in this case. As to this:
 - ADR Articles 2.1 and 2.2 are strict liability offences. Proof of an AAF in an Athlete's A Sample is, in and of itself, sufficient to establish an ADR Article 2.1 ADRV.
 - Further, ADR Articles 2.1.1 and 2.2.1 respectively state that it is not necessary to establish intent, Fault, Negligence or knowing Use on the part of an Athlete in order for UKAD to establish that an ADRV has been committed.
 - Mr Calvert has not denied that he used a Prohibited Substance. To the contrary, Mr Calvert provided UKAD with one page of a GP Out of Hours OOH Call Incident Report dated 16 July 2021 which indicates that he was prescribed oramorph (a brand which contains the active ingredient morphine sulphate) by his GP on that date. Mr Calvert claimed that a few days before providing the Sample on 5 December 2021 he had a flare up of sciatica and admitted that he took oramorph to relieve his pain but provided no evidence to support his claim that he took oramorph in the days prior to the match, rather than on the day of the match itself.
 - The only active ingredient in oramorph is morphine. The use of oramorph alone would not result in an AAF for oxycodone and oxymorphone and Mr Calvert did not provide any information or documents that would explain how these substances were present in the Sample.

Sanction

22. Under ADR Article 10.9.4(a), the Charges are to be treated as a single ADRV for the purpose of imposing sanction.

23. The period in Ineligibility to be applied is set out at ADR Article 10.2 which states:

“10.2.1 Save where Article 10.2.4(a) applies, the period of Ineligibility shall be four (4) years where:

(a) The Anti-Doping Rule Violation does not involve a Specified Substance or a Specified Method, unless the Athlete or other Person can establish that the Anti-Doping Rule Violation was not intentional.

(b) The Anti-Doping Rule Violation involves a Specified Substance or a Specified Method and UKAD can establish that the Anti-Doping Rule Violation was intentional.

10.2.2 If Article 10.2.1 does not apply, then (subject to Article 10.2.4(a)) the period of Ineligibility shall be two (2) years.”

24. In this case the prohibited substances that are the subject of the ADRVs are all Specified Substances. UKAD does not seek to establish that the ADRVs were “intentional”. On that basis and in accordance with ADR Article 10.2.2 the period of Ineligibility should be two years.

25. Mr Calvert is not eligible for a reduction to the two year period of Ineligibility on the basis of No Fault or Negligence or No Significant Fault or Negligence. The definitions of No Fault or Negligence or No Significant Fault or Negligence in the 2021 ADR make clear that the Athlete (i.e. Mr Calvert) bears the burden of establishing, on the balance of probabilities, that he bears No Fault or Negligence or No Significant Fault or Negligence. Mr Calvert has failed to discharge that burden – he provided no evidence that would enable a proper assessment of Fault to be undertaken. Further, he was given numerous opportunities to obtain a retroactive TUE in respect of his use of the Prohibited Substances and failed to do so.

26. ADR Article 10.13.2 requires that an Athlete receives credit for any period of Provisional Suspension. On this basis, and given that so far as UKAD is aware, the Player has

respected the terms of the Provisional Suspension, which was imposed on 10 August 2022, UKAD considers that Mr Calvert should be given credit for the period he has been subject to the Provisional Suspension.

Mr Calvert's Submissions

27. No submissions were received from Mr Calvert who, as noted above, has had only limited engagement with UKAD and no engagement with the Panel in connection with this matter.

The Tribunal's findings

28. The Tribunal is satisfied that Mr Calvert committed ADRVs pursuant to ADR Article 2.1 and ADR Article 2.2.

29. As the prohibited substances are Specified Substances and in circumstances where UKAD has not sought to establish that the ADRVs were intentional, the Tribunal finds that the period of Ineligibility is two years.

30. There is no basis for any period of reduction of the period of Ineligibility for No Fault or Negligence or No Significant Fault or Negligence.

The Decision

31. 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 prohibited substances that are the subject matter of the ADRVs are all Specified Substances and as UKAD has not sought to establish that the ADRVs were intentional, pursuant to ADR Article 10.2.2, the standard sanction of two (2) years Ineligibility shall apply to Mr Calvert;
- The period of Ineligibility will start on 10 August 2022, the date on which Mr Calvert was provisionally suspended and shall therefore end at 23:59 on 9 August 2024.
- As such, Mr Calvert shall not be permitted to participate in any capacity in a competition or other activity (other than authorised Anti-Doping Education or

Rehabilitation programmes) organised, convened or authorised by IHUK or any body that is a member of, affiliated to, or licensed by the IHUK, including but not limited to EIHA;

- Pursuant to ADR Articles 9.1 and 10.10 all competitive results Mr Calvert obtained between the date of Sample collection and commencement of his Provisional Suspension shall be Disqualified with all resulting Consequences, including forfeiture of any medal, title, points and prizes.

Right of Appeal

32. 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.

33. 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).



Michelle Duncan
Chair, on behalf of the Panel
London, UK
18 May 2023

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