

Sport Ireland and IS-4265

Reasoned Decision of Sport Ireland

The following is the reasoned decision of Sport Ireland pursuant to Article 7.6.4 of the Irish Anti-Doping Rules (the "Rules"). It concerns an anti-doping rule violation ("ADRV") committed by Mr IS-4265 and records the Consequences¹ to be applied.

1. Background and Facts

- 1.1 IS-4265 is a 52 year-old, partially sighted Paralympic athlete.
- 1.2 Mr IS-4265 is in Sport Ireland's Registered Testing Pool. He lives in the UK.
- 1.3 United Kingdom Anti-Doping ("UKAD") is the UK's national anti-doping organisation. It is authorised by Sport Ireland to conduct the Testing of Irish athletes who train or reside in the UK pursuant to Article 5.3 of the Rules.
- 1.4 On 2 February 2016 UKAD Sample Collection Personnel ("SCP") attended Mr IS-4265's home to request blood and urine Samples. Mr IS-4265 did not provide Samples on the basis that he had "resigned from the squad" on the previous day.
- 1.5 He was informed by the Doping Control Officer that his refusal or failure to provide a Sample could constitute an anti-doping rule violation ("ADRV"). Notwithstanding this, Mr IS-4265 again confirmed he did not wish to provide Samples and he completed the Doping Control Form accordingly.
- 1.6 As part of its investigation into the matter, Sport Ireland wrote to Mr IS-4265 on 12 February 2016 inviting him to address why he did not provide a Sample and whether he had a compelling justification for not providing a Sample.
- 1.7 Mr IS-4265 responded on 16 February 2016 setting out his reasons for not providing a Sample:

"I had given Cycling Ireland written notice that I was withdrawing from the National Squad with immediate effect. The reason for this is that Cycling Ireland have been unable to find a suitable tandem pilot for me. Despite the fact I'm in the best shape of my life I am not getting any younger and I believe that my withdrawal from the Irish Paracycling Squad is permanent since the likelihood of their finding a suitable pilot is extremely low under the current funding arrangements.

Furthermore, on the day the Anti-Doping officers visited I was unable to locate a suitable witness which I'm required to have because of my sight impairment. On that basis the test could not be conducted."

- 1.8 Having considered all of the relevant information, Sport Ireland formed the view that his email response of 16 February 2016 did not disclose any compelling justification and by letter dated 24

¹ Capitalised terms used throughout this decision shall have the meaning given to them in the Rules.

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February 2016 Sport Ireland alleged that Mr IS-4265 had committed a violation of the Article 2.3 of the Rules:

"Article 2.3 – Evading Sample collection, or without compelling justification, refusing or failing to submit to Sample collection after notification as authorised under these Rules or other anti-doping rules".

2. Admission and Consequences

2.1 By email dated 14 March 2016 to Sport Ireland, Mr IS-4265 admitted the ADRV and confirmed that he wished to engage in a consultation process with Sport Ireland pursuant to Article 7.6.4² of the Rules.

2.2 On 15 April 2016, Sport Ireland met with Mr IS-4265. Mr IS-4265 expanded upon and provided further insight into his reasons for not providing a Sample. On Thursday 9 June 2016 a conference call took place between Sport Ireland and Mr IS-4265.

2.3 Sport Ireland found Mr IS-4265 to be extremely frank, forthcoming and honest.

2.4 In terms of Consequences, Article 10.2 provides:

"The period of Ineligibility for anti-doping rule violations other than as provided in Article 10.1 shall be as follows, unless Articles 10.4 or 10.5 are applicable:

10.2.1 For violations of Article 2.3 or 2.5, the Ineligibility period shall be four (4) years unless, in the case of failing to submit to Sample collection, the Athlete can establish that the commission of the anti-doping rule violation was not intentional (as defined in Article 10.1.3), in which case the period of Ineligibility shall be two (2) years."

2.5 During the meeting on 15 April 2016, Mr IS-4265 accepted that he had refused to provide a Sample in violation of Article 2.3. It was clear that he would not be able to establish that the violation was not 'intentional' (as defined in Article 10.1.3³) in circumstances where he was told it would be an ADRV not to provide a Sample, but refused to do so anyway. Similarly, No Significant Fault or Negligence pursuant to Article 10.4.2 was not applicable.

2.6 The only possibility for reducing or ameliorating the potentially applicable Consequences was 'prompt admission' pursuant to Article 10.5.3 of the Rules, which provides:

"An Athlete or other Person potentially subject to a four (4) year sanction under Article

² Article 7.6.4 of the Rules provides that *"In the event that the Irish Sports Council withdraws the Notification, or the Athlete or other Person admits the alleged anti-doping rule violation(s) and accedes to the Consequences specified by the Irish Sports Council (or is deemed to have done so in accordance with Article 7.6.1), neither B Sample analysis nor a hearing is required. Instead, the Irish Sports Council shall promptly issue a reasoned decision confirming the commission of the anti-doping rule violation(s) and the imposition of the specified Consequences, shall send notice of the decision to the Athlete or other Person and to the Athlete's or other Person's National Governing Body and International Federation, WADA and the Irish Sport Anti- Doping Disciplinary Panel, and shall publish the decision in accordance with Article 15."*

³ Article 10.1.3 provides that *"The term "intentional" is used to identify those Athletes who cheat. The term, therefore, requires that the Athlete or other Person engaged in conduct which he or she 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."*

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10.1.1 or 10.2.1 (for evading or refusing Sample collection or Tampering with Sample collection), by promptly admitting the asserted anti-doping rule violation after being confronted by an Anti-Doping Organisation, and also upon the approval and at the discretion of both WADA and the Irish Sports Council, may receive a reduction in the period of Ineligibility down to a minimum of two (2) years, depending on the seriousness of the violation and the Athlete's or other Person's degree of Fault."

3. Prompt Admission and WADA

- 3.1 Mr IS-4265 was potentially subject to a four (4) year sanction under Article 10.2.1 for refusing to submit to Sample collection. Sport Ireland considers that by admitting the ADRV on 14 March 2016 (after being notified of the alleged ADRV on 24 February 2016), Mr IS-4265 has promptly admitted the ADRV.
- 3.2 During the conference call on 9 June 2016, Mr IS-4265 confirmed that he would like Sport Ireland to consider prompt admission and to engage with WADA as appropriate.
- 3.3 Sport Ireland considered whether the sanction to be applied to Mr IS-4265 should be reduced under Article 10.5.3 of the Rules, by reference to the seriousness of the violation and his degree of Fault.
- 3.4 Sport Ireland considered that Mr IS-4265's ADRV was not a particularly egregious ADRV⁴. It did not involve a Prohibited Substance, let alone one a serious Prohibited Substance such as an anabolic steroid.
- 3.5 As regards his degree of Fault⁵, it seems that his refusal to provide a Sample was a rash judgment which he now regrets:
- 3.5.1 UKAD procedures require an athlete with an impairment to have a witness. Mr IS-4265 feels he does not need a witness and is perfectly capable of completing the paperwork and undergoing the test himself. He grew increasingly frustrated when his partner (and on another occasion his son) was repeatedly required to interrupt her day and act as a witness.
- 3.5.2 On 2 February 2016, the SCPs arrived at approximately 8am and if he had provided the blood and urine Samples, Mr IS-4265 expressed the view that his partner would have been late for work and her children late for school. In addition, Mr IS-4265 was due to begin a new job on this morning.

⁴ The violations to which prompt admission may be applicable are 'intentional presence' cases (Article 2.1), Tampering (Article 2.5) and Evading, Refusing or Failing to Submit to Sample Collection (Article 2.3).

⁵ Fault is any breach of duty or any lack of care appropriate to a particular situation. Factors to be taken into consideration in assessing an Athlete or other Person's degree of Fault include, for example, the Athlete's or other Person's experience, whether the Athlete or other Person is a Minor, special considerations such as impairment, the degree of risk that should have been perceived by the Athlete and the level of care and investigation exercised by the Athlete in relation to what should have been the perceived level of risk. In assessing the Athlete's or other Person's degree of Fault, the circumstances considered must be specific and relevant to explain the Athlete's or other Person's departure from the expected standard of behaviour. Thus, for example, the fact that an Athlete would lose the opportunity to earn large sums of money during a period of Ineligibility, or the fact that the Athlete only has a short time left in his or her career, or the timing of the sporting calendar, would not be relevant factors to be considered in reducing the period of Ineligibility under Article 10.4.1 or 10.4.2.

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3.5.3 Mr IS-4265 says that the above factors together with the fact that a day earlier he had resigned from the squad, resulted in his making a decision which he says he now very much regrets.

3.6 While Mr IS-4265 is clearly at Fault to some extent, an athlete's state of mind is relevant when assessing his or her degree of Fault. The maximum reduction available is two (2) years. In comparison to other prompt admission reductions approved by WADA and other Anti-Doping Organisations, this case warranted a reduction at the higher end of the scale.

3.7 Sport Ireland has exercised its discretion to make a reduction in the period of Ineligibility to two (2) years and six (6) months (i.e. a reduction of eighteen (18) months) based on the seriousness of the ADRV and Mr IS-4265's degree of Fault.

3.8 Sport Ireland contacted WADA and by email of 29 June 2016 WADA approved the reduction in the period of Ineligibility to two (2) years and six (6) months.

3.9 On 27 July 2016, DAC Beachcroft wrote to Mr IS-4265 on behalf of Sport Ireland specifying a period of Ineligibility of two (2) years and six (6) months. Mr IS-4265 replied on 3 August 2016 accepting the period of Ineligibility.

4. Period of Ineligibility

4.1 Mr IS-4265 was Provisionally Suspended as of 25 February 2016 pursuant to Article 7.8.2 of the Rules. Under Article 10.7.3.1 *"If a Provisional Suspension is imposed and respected by the Athlete or other Person, then the Athlete or other Person shall receive a credit for such period of Provisional Suspension against any period of Ineligibility which may ultimately be imposed."*

4.2 Article 10.7.2 allows the period of Ineligibility to commence from the date of the anti-doping rule violation if there is a timely admission by the Athlete. However, Article 10.7.2 does not apply where the period of Ineligibility has already been reduced under Article 10.5.3, which it has in this case.

4.3 Therefore, the period of ineligibility will expire at midnight on 24 August 2018.

4.4 Pursuant to Article 10.8 of the Rules, during the period of Ineligibility, Mr IS-4265 remains subject to Testing. He may not participate in any capacity in a Competition or activity (other than authorised anti-doping education or rehabilitation programs):

4.4.1 authorised or organised by any Signatory, Signatory's member organisation, or a club or other member organisation of a Signatory's member organisation,

4.4.2 by any National Governing Body or by a member or affiliate organisation or licensee of a National Governing Body; or

4.4.3 authorised or organised by any professional league or any international or national-level Event organisation or any elite or national-level sporting activity funded by a governmental agency.



5. Summary

5.1 Sport Ireland issues this decision pursuant to Article 7.6.4 of the Rules.

5.2 For the reasons given above, Sport Ireland has issued this decision, which records that:

- IS-4265 has committed a violation of Article 2.3 of the Irish Anti-Doping Rules.
- Based on Mr IS-4265's prompt admission of the violation, Sport Ireland and WADA exercised their discretion and approved a reduction in the period of Ineligibility from four (4) years to two (2) years and six (6) months pursuant to Article 10.5.3 of the Rules. This reduction was based on the seriousness of the violation and Mr IS-4265's degree of Fault.
- Mr IS-4265's period of Ineligibility shall expire at midnight on 24 August 2018.

Dated the 20th of September 2016

Sport Ireland