

GAA ANTI-DOPING HEARING COMMITTEE

RE: IS-4962

The Committee wish to place on record its thanks to the legal representatives in this case for their diligence in the preparation of written and oral submissions and for the expeditious manner in which the Hearing was conducted. Mr Paul Keane and Ms Laura Graham of Reddy Charlton, Solicitors, appeared on behalf of the Governing Body, the GAA and Mr Paul Derham of Daly Derham Donnelly, Solicitors, Cork appeared on behalf of the Athlete.

We also acknowledge the attendance of Siobhan Leonard from Sports Ireland and Mr Aidan Healy, Solicitor of DAC Beachcroft, Solicitors.

In particular, we thank our Secretary, Mr Ruairi Harvey, for all his assistance in the preparation and conduct of this Hearing.

We would also like to thank all the witnesses who gave evidence in this case.

1. Introduction

- 1.1 The Athlete in these proceedings is Mr **IS-4962**. He is a member of the Gaelic Athletic Association who plays Gaelic football for his Club – [...] who are [...] team in [...] Kerry. It appears that in 2015 he came to the attention of the Kerry County [...] because of his performances for [...] in the Kerry County Championship. He was selected to play in a [...] 2016. He made a sufficient impression that he remained in the squad throughout that competition and the ensuing National League. He played in all of the League games up to the Final (primarily as a substitute). He also gave evidence in the course of the Hearing that he played freshers football for [...] and played at [...] with [...] where he completed a Master's Degree in Marketing, having taken a Primary Degree in Business.
- 1.2 After playing as a substitute for Kerry in the National League Final on the [...] 2016, he was subject to in-competition testing by a Sports Ireland Doping Control Officer. The sample of urine collected from him at that time was subsequently analysed by a World Anti-doping Agency ('WADA') Accredited Laboratory in Cologne which identified the presence of a prohibited substance or its Metabolites or Markers in the A sample taken at that time.
- 1.3 The prohibited substance in question was Methylhexaneamine (hereinafter referred to as 'MHA'). MHA is listed as a specified stimulant under Section 6 (b) of the prohibited list.

- 1.4 The presence of the substance was confirmed in the 'B' sample also taken on [...] 2016.
- 1.5 Accordingly the Athlete was charged with the following Anti-doping Rule Violation ('ADRV') contrary to Article 2.1 of the Anti-doping Rules, namely: *'the presence of a prohibited substance or its Metabolites or Markers in your sample'*.
- 1.6 After he was informed of the violation the Athlete and his Solicitor engaged with Sports Ireland on the basis that he admitted the ADRV but sought to mitigate the consequences provided for in Article 10. 1. 1 of the Rules.
- 1.7 As a result of this consultation process, the Committee had the benefit of the transcript of an interview with Sports Ireland, a Statutory Declaration from the Athlete dated 2 December 2016 and various correspondence and reports which significantly narrowed or reduced the issues to be decided by this Committee.
- 1.8 Ultimately Sports Ireland determined that pursuant to Article 7.6.4 of the Rules the Athlete should receive a sanction of 7 months ineligibility. This decision was communicated to the Athlete on 21 December 2016. By letter of 22 December 2016, the Athlete's Solicitors responded by indicating he did not accept the 7 months sanction specified and the matter was then referred to this Committee to determine the appropriate sanction.

2. History of This Committee's Hearings:

- 2.1 Sports Ireland informed the GAA Anti-doping Hearing Committee of the alleged violation on the 5 January 2017.

The Chair convened a Directions Hearing in this matter on the 13 January, setting out directions for the exchange of written submissions. The earliest date which suited all the parties for a Hearing was Tuesday 14 February when the Committee sat in full to hear and determine the matter at 8.00 pm.

- 2.2 At the Hearing there was a large measure of agreement.
- 2.3 There is no dispute that the Committee had the jurisdiction to hear and determine this matter. Nor is there any dispute as to the applicable Rules, namely, the Irish Sports Council Anti-Doping Rules 2015.
- 2.4 It was accepted that the Athlete has committed an Anti-doping Rule Violation under Article 2.1 of the Rules by reason of the presence of a prohibited substance in a sample taken from him on [...] 2016. The issue for the Committee to determine was what consequence should follow from that violation.

3. The Relevant Rules Re Sanctions for Individuals:

- 3.1 The appropriate sanction is to be determined in a sequence of steps set out in Article 10 of the Rules.

Under 10.1 the starting period for a violation of Article 2.1 is a period of ineligibility of 4 years. If the Anti-doping Rule Violation involves a specified substance (as in this case), the 4 year period only applies if Sports Ireland can establish that the Anti-doping Rule Violation was intentional.

- 3.2 In this case it is accepted by the Governing Body and by this Committee that the Rule violation was not intentional.
- 3.3 In that event the period of ineligibility shall be 2 years.
- 3.4 In the circumstances of this case, the Athlete argued that the 2 year period should be reduced on the grounds of '*no significant fault or negligence*'. This is dealt with in 10.4 of the Rules.
- 3.5 In particular the Athlete relied on the provisions of 10.4.1.2 which provides as follows:

'Contaminated Products:

In cases where the Athlete ... can establish no significant fault or negligence and that the detected prohibited substance came from a contaminated product, then the period of ineligibility shall be, at a minimum, a reprimand and no period of ineligibility and at a maximum, 2 years ineligibility, depending on the Athlete's ... degree of fault. Except in the case of a minor, in order to establish no significant fault or negligence for any violation of Article 2.1, the Athlete must also establish how the prohibited substance entered his/her system'

3.6 Dealing with the required elements of 10.4.1.2, on the basis of the evidence provided by the Athlete including an expert report from the LGC Laboratory dated 18 July 2016, Sports Ireland and the Governing Body accept:-

- (a) the Athlete's explanation as to how the MHA entered his system;
- (b) that MHA was not disclosed on the label of the supplement which gave rise to the MHA entering the Athlete's system;
- (c) that a reasonable Internet search would not have disclosed that MHA was present in the supplement and that the Athlete established that he carried out a reasonable Internet search and that he bears no significant fault or negligence.

3.7 Whilst it was a matter for the Committee to come to its own conclusions on each of these issues, having heard the evidence and considered the papers in the matter, we also accept each of the above findings.

3.8 That being so, the issue for the Committee was to determine an appropriate sanction ranging from at a minimum, a reprimand and no period of ineligibility and at a maximum, 2 years ineligibility. The determination of this issue depends on our assessment of the Athlete's degree of fault.

4. Background Facts of the Case:

- 4.1 We have already set out the history of the Athlete's involvement with the Kerry [...].
- 4.2 He confirmed that on joining the team he was provided with a Supplement regime by the Kerry Nutritionist, Mr Kevin Beasley. He was told that all the products provided and supplied had been checked for contaminated products or prohibited substances.
- 4.3 One of the nutrients provided was a caffeine gel. He said that the gel did not agree with him because of the taste and he was rarely able to finish a full sachet.
- 4.4 In the run-up to the National League Final, a casual friend whom he knew from attending a gym suggested to him that he purchase a product known as Falcon Labs Oxy Burn Pro which was described to him as a caffeine tablet. In the week before the Final, he purchased a container of these tablets in a vitamin shop in Cork which sells a range of fitness supplements. After buying the product he conducted an Internet search. He went on Google, typed in the name of the company, typed in the product and typed in all of the ingredients. Nothing in the search flagged any concern about the contents so he presumed it was safe to take. As far as he was concerned, he said it was like substituting a caffeine tablet for caffeine gel.
- 4.5 On the day of the game, he confirmed that he took some caffeine gel and Pre-fuel before the start of the match. He also gave evidence that he took a caffeine tablet from the product he had purchased both before the game and at half time.

4.6 When he was asked to provide a sample after the game, he made a declaration of medication/supplements he had taken in the past 14 days. He listed one medication and eight supplements as follows:-

- Augmentine
- Whey Protein
- Pharmaton
- Pre-fuel
- Caffeine Tablets
- Caffeine Gel
- Vitamin C
- Krill Oil
- Magnesium

The caffeine tablet was in fact the Oxyburn Pro and it is accepted that this was the source of the MHA.

4.7 When asked about the remaining items, he indicated that he had been prescribed Augmentine by his General Practitioner because of a cold he had prior to the Semi-final which was either one or two weeks prior to the Final. Because the cold had not fully abated, he took the Augmentine which is an antibiotic. He indicated that caffeine gel, the Pre-fuel and the Pharmaton had been nutrients provided by the Kerry Nutritionist but that he had been taking some of the vitamins, namely, Vitamin C, Krill Oil and Magnesium on his own account and had been familiar with these prior to joining the Kerry team. Indeed when pressed he seemed to indicate that he had been taking Krill Oil, Magnesium, Vitamin D and Pharmaton before he had joined the Kerry set up and the main new nutrient was in fact the caffeine.

5. The Athlete's Case:

5.1 The Athlete was absolutely adamant that he had no idea he was consuming a prohibited substance when he took the OxyBurn Pro tablets. He was adamant that had he known that the tablets contained a prohibited substance he most certainly would not have taken them. We had little difficulty in accepting this assertion. The main focus of his case was that he had not been properly educated by the GAA and the Kerry set up about Anti-doping Rules and obligations placed on athletes as a result of the Rules. He stressed the fact that he played for a [...] team which struggled to make up the numbers in Kerry and that he was a newcomer to the Kerry set up. He said that he got *'no indication of Anti-doping procedures, or anything like that, no information about it at all'*. He indicated that he was never provided with any wallet or information concerning Anti-doping Rules nor was he directed to any website where he could find information about such Rules. He was asked did he get any instruction from the Team Nutritionist with regard to standards to be applied in relation to the taking of supplements. His reply was *'no, just the only thing, the conversation that myself and Kevin Beasley had, I would be a very good friend, a conversation about my diet, what times I should be eating and when I should be – Whey Protein and stuff like that. That's it, that's the only type of conversation we've had'*. When the matter was opened before us, it was submitted that the only instruction that he received from the Nutritionist was that the supplements provided by the Kerry County Board had been tested. It was asserted that there was *'no other instruction'*.

5.2 Overall, he was critical about the lack of education provided to him. He contrasted the situation in his first season with the situation now where there is an official Anti-doping Officer appointed by the Kerry County Board who is in fact the Nutritionist, Mr Kevin Beasley.

5.3 In relation to his conduct, he also points out that having purchased the product he carried out the search described above and argued that this supported the contention that he was not guilty of any significant fault or negligence.

5.4 The issue of his knowledge of Anti-doping matters was challenged in evidence. The Athlete accepted that he was a mature, educated man well versed in social media. He conceded that in addition to playing for his Club in Kerry, he had also played at university level including

[...] . We refer to the following passage in his evidence:

'Q. Would you have understood what the phrase 'anti-doping' meant?

A. I would have, yes, I would have.

Q. Have you heard of doping in sport?

A. Yes, I would have, yes.

Q. Have you ever heard of athletes being banned?

A. Yes, I would have, yes'

5.5 In his Statutory Declaration made to Sports Ireland on 2 December 2016, he averred the following:-

'I say that prior to the [...] 2016 I had received little or no instructions from the Kerry County Board in their capacity as agents on behalf of Sports Ireland in relation to the level or degree of search required pursuant to the Sport Ireland Regulations and Anti-doping Rules for such a product. I say that while I was a member of Kerry [...] I have not received any literature, instruction or detail with regard to the Anti-doping Regulations and the searches required in respect of product required thereunder other than instructions from one of the Kerry background staff advising us that all the products they supply have been checked for contaminated products/prohibited substances and if they were taking any product not supplied by the Kerry County Board I should 'check it out' before taking it'. (My underlining). This in effect confirmed the evidence he gave to Sports Ireland when he was interviewed on 21 July 2016.

- 5.6 In the course of his evidence, the Athlete was asked about what he was told by Mr Beasley. It was put to him that someone in Mr Beasley's position would be likely to say that an athlete should check with him first before taking a nutrient, not provided by the Kerry County Board. He was asked –

'Q. Now what have you got to say about that?

A. Yes, he's probably right.

Q. Hmmm?

A. He's probably right that you should check with him first.

Q. *It's probably right that you should check?*

A. *Yes.*

Q. *Would you think that it's probably right that he would have said that?*

A. *Yes.*

Q. *So do you accept that Mr Beasley would have told the group that if you were taking something other than that which is given out recommended by Kerry that you should check with him first?*

A. *Yes.*

Q. *Do you accept that?*

A. *Yes.*

Q. *Why did you do it?*

A. *But I presumed, like I was told it was my first season inside there that I was taking caffeine anyway that caffeine was provided by Kerry. So I was just substituting the caffeine gel for the caffeine tablets.*

Q. *I know, but you accept that he told you, told the group that if you were taking something other than which is recommended by Kerry you would check with me first?*

A. *Yes.*

Q. *Did you do that?*

A. *No.*

Q. *What's the reason you didn't do that?*

A. *Like I said already, that I was just substituting the caffeine because I thought in my mind that caffeine was already, is already cleared and that's what I was taking in the tablet, just caffeine'*

He was then asked about why it would be necessary to check as appears from the following passage from the Hearing –

'Q. *Why did you think that that was? Why did you think, why was Kevin Beasley saying to you, "come back and check with me if you take something other than that which we recommend" ?*

A. *To be careful I presume.*

Q. *About what?*

A. *About anything that we're taking, any supplements we are taking.*

Q. *For what reason would he have been saying that?*

A. *I presume in case that something was bad in it, something contaminated in whatever we were taking.*

Q. *Contaminated in what sense?*

A. *That anti-doping.*

Q. *Anti-doping? So isn't it the case that you were warned by Kevin Beasley to check with him so that you would not inadvertently take something that put you in violation of the Anti-doping Rules?*

A. *Yes, not warned, just a brief conversation.*

Q. *I know, but you knew that? Didn't you?*

A. *Yes, yes'*

5.7 In summary the Athlete accepted that on the basis of the advice of a casual friend he purchased Falcon Labs Oxy Burn Pro from a vitamin shop in Cork. This supplement was not provided nor recommended by the Kerry County Board. Apart from the checks he made on Google, he did not raise the issue with Kevin Beasley. Kevin Beasley was someone he was friendly with, met on a regular basis at training and whom he communicated regularly with by way of a team's What's App. On the weekend of the match, the team travelled overnight before the game and he would have had an opportunity to speak to Mr Beasley before taking the tablet. The Athlete accepted that he had '*loads of opportunities*' to talk to Mr Beasley and also that he could have easily contacted him by way of What App to confirm whether or not the tablets he took were OK. He also accepted that he did not raise this matter with his General Practitioner when he was prescribed Augmentine nor with his pharmacist when he obtained the Augmentine.

5.8 The Athlete also accepted that the label on the container he purchased contained the following endorsement –

'It is mandatory that the product should not be taken without consulting a physician'.

When asked about this warning he indicated that he did not consult a physician because he thought that caffeine was already cleared and that he was taking a caffeine tablet.

5.9 In the course of his evidence the Athlete was pressed on the extent of the search he carried out (although this has to be seen in the context of an acceptance by Sports Ireland and the Governing Body that he had carried out a *'reasonable search'*. It was argued on behalf of the Governing Body that this was the minimum level of research he should have carried out. He could, for example, search the material available on the GAA Players Anti-doping website and also on websites provided by Sports Ireland.

5.10 Mr Beasley did give evidence about instructions given to the Athlete and the Kerry team in 2016. He accepted that he was aware that Anti-doping Rules applied to the players of the Kerry squad and was aware that the consequences of any violation could be very serious. He indicated that he did not meet the players as a group in 2016 but met with them individually. When asked about the issue of supplements he indicated that *'so basically what would have happened, IS-4962 would have, I would have met IS-4962 at the start of January last year when he came into the squad, so generally the procedure would be body composition. So we would measure their*

body fat and we would get them to keep a food diary and, and kind of based on the results from both of those then obviously gave IS-4962 specific advice on his diet and also on any supplements he should be using. So the supplements would be, he would have got Pharmaton and Rubexin which are just a multivitamin, Vitamin C. We then would have kind of formed like a questionnaire for the whole squad with regard the supplements we got from maximum nutrition last year. These are supplements they would take after a session and you know depending on the results of their body composition, I might prescribe different supplements for different players'. When asked about specific conversations with Mr IS-4962 , he said that he could not remember. However, he went on to say – 'we would supply all the needs for the players so they wouldn't need to buy any additional supplement. If somebody was taking supplements I would ask them to run it by me first so I could do some checks on it and make sure it was safe for them to take.

5.11 He accepted that caffeine gel was provided by way of supplement to the Kerry players.

5.12 Mr Derham on behalf of the Athlete also presented two expert reports from Dr Andrew Kickman. Prior to his retirement in September 2014, he was employed in the capacity of Head of Research and Development within the Drug Control Centre, Department of Forensic Science and Drug Monitoring, Kings College, London.

We have read and considered both his reports. In relation to his first report provided on 22 July 2016, he confirmed that MHA – *'is likely to benefit sporting performance if it is taken shortly before or during a football competition (half time)*. Overall, his view was that MHA is a short acting

weak stimulant. This was further developed in his second report in which he suggested that it may be considered a weak stimulant with its pharmacological effects generally being similar to that of caffeine.

5.13 The conclusion is somewhat undermined by his acknowledgement that there is a lack of peer review research reports on the issue but in any event this is not a matter for this Committee. The substance is a prohibited substance and the classification by WADA is final and shall not be subject to challenge by an Athlete.

5.14 The Governing Body called evidence from Mr Kevin Beasley, the Kerry Nutritionist to whom we have already referred, the Kerry County Secretary, Mr Peter Twiss and Mr Gearoid Devitt, GAA Player Welfare Administrator. It also submitted a letter from the Kerry Team doctor, Dr Finnerty, who was unable to attend and give evidence. Mr Devitt gave impressive evidence about steps taken in 2015 and 2016 in terms of providing information to County Boards in relation to anti-doping information. Mr Devitt is the Player Welfare Administrator employed by the GAA nationally since March 2015.

In general terms he confirmed that the GAA Rules first referred to the prohibition on taking drugs as far back as 1988 and that since 2001 senior county players have been subject to a testing regime. He indicated that approximately 100 players are tested per year.

He referred to the publicity that arose from the case of Mr [...] in 2015 who was the first GAA player to receive a period of ineligibility as the result of an adverse anti-doping finding. As a result of that case in late 2015 in conjunction with Sports Ireland the GAA

implemented an anti-doping education strategy. This was particularly important as the option of blood testing was to begin in September of that year. In November 2015, information was circulated to County Secretaries and Chairpersons and team doctors containing a vast amount of information on anti-doping. In or around that time, team doctors, County Secretaries, Chairpersons, staff and Committee Members including members of the Gaelic Players Association received training as anti-doping tutors from Sport Ireland. All County Boards were notified of the availability of these tutors to give seminars to panels. Notice was given on the 14 January 2016 of welfare provincial seminars for senior inter-county players with the Munster seminar being held in Mallow on 25 January 2016. There was also County Officer training day for County Secretaries in January 2016 which also dealt with Anti-doping Rules. In relation to the provincial seminar, Mr Beasley was unable to attend but he got in touch the day after the seminar and was sent information that was distributed to the attendees. He also referred to wallet cards which are provided to the County Boards for distribution to senior county players which provide relevant information concerning the Anti-doping Rules and the Anti-doping Regime. Following the player welfare seminars in February, the GAA also produced an information sheet to complement the wallet cards that was GAA specific. He also confirmed that the GAA had two websites, GAA.ie and learningGAA.ie which both contain information in relation to anti-doping and are readily searchable.

- 5.15 In his evidence Mr Twiss, who is the Secretary of the County Board in Kerry, accepted that the Board had received the wallet cards which he understood would be distributed to the players by the team doctor. He accepted that he had received the material referred to in Mr Devitt's

evidence and he said that *'in fairness it would be very proactive I'd say in [...] about the importance of anti-doping'*

However the evidence of Mr Twiss and that of Mr Beasley presented a confusing picture in relation to how individual players are informed about anti-doping matters. No one could say unequivocally whether Mr IS-4962 had definitely been informed about the Anti-doping Rules. There was an issue about Dr Finnerty's availability in early 2016 because of a family illness and it could not be stated definitively whether or not the individual wallets had been given to the players. It was confirmed that an Anti-doping Officer is now in place. Mr Twiss confirmed that on hearing of the anti-doping violation he and the County Board had provided full support for the Athlete in terms of ensuring that he was dealing OK with the matter. He also confirmed that they had indemnified him in respect of all the costs associated with the investigation and hearing including legal costs and the cost of the expert reports obtained.

6. **The Athlete's Submission:**

- 6.1 The Athlete relied on the definition of 'fault' in the Rules themselves. In assessing fault, the Committee should have regard to the Athlete's experience, 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 and the extent of the Athlete's departure from the expected standard of behaviour.

6.2 Mr Derham referred to the fact that the Athlete had admitted the violation at the earliest opportunity. The thrust of his submission was that in order to assess what his expected standard of behaviour was, one had to have regard to his experience. It was stressed that he had only recently joined the Kerry [...] and that he had not received any instruction with regard to Anti-doping Regulations. He was critical of the Governing Body for failing to comply with what he says were its obligations under the Rules to educate the Athlete and establish a standard of behaviour. He referred to the roles and responsibilities of the National Governing Bodies which are set out in 1.2 of the Rules and in particular to 1.2.6 which describes one such role and responsibility to be *'to promote anti-doping education including conducting anti-doping education in coordination with the Irish Sports Council'*.

In terms of the evidence in this case, he focused on the clear confusion at Kerry County Board level about what players were told and the level of instruction and education provided to the players. He stressed that he did complete a search of the internet which did not disclose the presence of prohibited substance and in fact pointed out that the Governing Body accepted that he had carried out a reasonable search and that it did not disclose the presence of MHA. He placed particular emphasis on the fact that the Athlete was an amateur Athlete and that the degree of risk that should have been perceived by him is very different from what one would expect from a professional athlete who would be part of a professional management team. Having taking all these matters into account he says that the fault in this case is at the lower end of the spectrum.

7. **Ruling:**

7.1 In addition to the parts of the Rules to which we have already referred, it seems to us useful to set out the definitions of 'fault' contained in the Appendix to the Rules.

Fault is defined as follows:-

'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 circumstances 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 standards 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, the fact that the athlete only has a short time left in his/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'

No fault or negligence is defined as follows:

'The athlete or other person establishing that he/she did not know or suspect and could not reasonably have known or suspected even with the exercise of utmost caution, that he/she had used or been administered the prohibited substance or

prohibited method, or otherwise violated an Anti-doping Rule. Except in the case of a minor, in order to establish no fault or negligence for any violation of Article 2.1 the athlete must also establish how the prohibited substance entered his/her system.'

Finally *no significant fault or negligence* is defined as follows:-

'The athlete or other person establishing that his/her 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 relationship to the Anti-doping Rule violation. Except in the case of a minor in order to establish no significant fault or negligence for any violation of Article 2.1 the athlete must establish how the prohibited substance entered his/her system'.

- 7.2 Before focusing on the individual factors that are relevant in this case, we wish to make the following general observations.

The starting point is that there is an onus on any athlete who participates in a sport to accept the Rules of that sport and to make himself/herself familiar with the Rules.

- 7.3 The Anti-doping Rules are part of the Rules of the GAA.

Article 1.15 of the GAA Official Guide provides as follows:-

'The Association forbids the use of prohibited substances or methods, a practice generally known as 'Doping in Sport'. The Rules of the Association regarding doping are the Irish Anti-doping Rules as adopted by the Irish Sports Council and as amended from time to time. The Rules

contained in the said Irish Anti-doping Rules have effect and be construed as Rules of the Association.'

Article 1.4 sets out the roles and responsibilities of athletes to include, inter alia –

- 1.4.1 to know what constitutes an Anti-doping Rule violation*
- 1.4.2 to know what substances and methods are on the prohibited list*
- 1.4.3 to know the requirements of these Rules*
- 1.4.4 to comply with these Rules in all respects*
- 1.4.5 to take full responsibility for what they ingest and use*
- 1.4.6 to carry out research regarding any product which they intend to ingest or use, prior to such ingestion or use to ensure compliance with these Rules. The research shall, at a minimum, include a reasonable internet search of:-*
 - (i) the name of the product or substance*
 - (ii) the ingredients/substances listed on the product or substances label*
 - and*
 - (iii) other related information revealed through research of Points (i) and (ii) ...'*

7.4 The fundamental principle remains that the primary obligation to ensure that an athlete complies with Anti-doping Rules rests with the athlete himself. It is each athlete's personal duty and responsibility to ensure that he/she does not permit a prohibited substance to enter his/her body.

- 7.5 The Committee emphasises the underlying fundamental purpose of the Anti-doping Rules. The Rules are there to protect the good name both of sport and of a clean athlete, to ensure a level playing field for all competitors including team mates, the interests of the clean athletes and for protecting the ethic of sport.
- 7.6 We consider it regrettable that so much time in this case focused on the question of alleged inadequacies in education bearing in mind these fundamental principles. The National Governing Body does have a responsibility to promote anti-doping education including conducting anti-doping education coordination with the Irish Sports Council and we are satisfied that the GAA does exactly this.
- 7.7 We consider that there is a tendency at local or county level to provide full support for an athlete who finds himself in this predicament. Nonetheless it seems to us that County Boards and County Team Management must understand that a failure to ensure a proper scheme of education for athletes will not only damage individual athletes but damage the county team itself. In the modern era where so much emphasis is placed on the preparation of senior county teams there can be no excuse for any county team or any county player being unaware of the obligations imposed under the Anti-doping Rules. We do not understand why it is not possible for County Boards to have a simple record confirming that all panel members have received the relevant anti-doping material and are familiar with its contents.
- 7.8 Nor are we impressed by the argument that the athlete in this case is an amateur player. The Anti-doping Rules apply to all athletes in Ireland. Inter-county GAA players enjoy a very high profile within the sporting

arena in Ireland and few more than those representing Kerry Gaelic Football team. It seems to us unarguable that in 2017 Anti-doping Rules are part and parcel of the life of inter-county players in the GAA. As has been pointed out the use of drugs has been expressly prohibited in GAA Rules since 1988 and players have been subject to testing since 2001. We take comfort from the fact that since that time there have only been three positive findings (including this case) in the context of 100 tests per year.

7.9 All that being said we accept that there is considerable mitigation in the circumstances of the Athlete's case. In coming to a final conclusion, we bear in mind the very high threshold that is set by the Rules in terms of establishing no significant fault or negligence. This is clearly not a case of 'no fault or negligence' given the requirement on the Athlete to establish the '*utmost caution*'. In this regard we must bear in mind that an offence under Article 2.1 is in effect an offence of strict liability. Thus Article 2.1 of the Rules provides as follows:-

'An athlete is responsible for any prohibitive substance or any of its Metabolites or Markers found to be present in his/her sample. Accordingly it is not necessary that intent, fault, negligence or knowing use on the athlete's part be demonstrated in order to establish an Anti-doping Rule violation under Article 2.1'

7.10 In the course of the hearing we were referred to extensive jurisprudence from CAS in relation to the hurdle to be met by an athlete to establish a finding of no significant fault or negligence. We do not propose to rehearse all these cases which are useful guidelines but it is clear that they demonstrate the lengths to which athletes must go to be regarded

as having exercised the high threshold of care in ensuring that no prohibited substances enter their bodies.

7.11 Specifically in terms of the product MHA we noted three Irish cases involving this substance – a tug of war team (2012); a soccer player (2012) and a rugby player (2011) in which ineligibility periods of 18 months, 8 months and 12 months respectively were imposed. Mr Derham referred us to a newspaper report of a case in 2011 in which a soccer player in Scotland received a three month period of ineligibility, in respect of the presence of MHA, although we could not find the actual report of this case. Obviously all cases are fact specific but this does perhaps provide an indication of the range of periods of ineligibility imposed in respect of this specific substance.

7.12 In coming to a final conclusion, we took the following matters into account in favour of the Athlete:-

- He did not intend to take a prohibited substance
- There clearly was an element of confusion about the extent to which the Kerry County Board provided education to the Athlete
- This was only his first year as a [...] We do not pay significant weight to this factor but we consider it relevant having regard to the confusion to which we referred above which may have contributed to the Athlete's lack of care.
- After purchasing the relevant tablets, the Athlete carried out a reasonable internet search which did not disclose any prohibited substance thereby complying with his minimum obligation under 1.4.6
- The Athlete admitted his offence and engaged with Sport Ireland

- He has satisfied us as to how the prohibited substance came to be ingested.

7.13 These positive factors have to be balanced against the following negative factors:-

- The Athlete is a highly educated, intelligent and mature man. Even if not aware of the details of Anti-doping Rules, he was aware of their existence.
- He was also aware of an obligation to check nutrients that had not been provided or cleared by the Kerry County Board
- He was obviously someone very familiar and accustomed with the use of nutrients as evidenced by the fact that he used them before joining the Kerry panel and by the number of nutrients disclosed in his Anti-doping Form. The range of nutrients taken by the Athlete could only be described as an example of poly-pharmacy.
- He chose to act on the recommendation of a casual friend with no purported expertise and accept her recommendation to purchase Oxy Burn Pro.
- He did not heed the warning on the container that it was mandatory to consult a physician before using the product.
- He did not consult with or check with the Kerry Team Nutritionist before ingesting the tablet
- He did not seek the advice of his own General Practitioner whom he had seen within 2 weeks of the test, the pharmacist who provided him with Augmentine or with his Kerry Team doctor.

7.14 In all of these circumstances, we consider that the minimum appropriate period of ineligibility is one of six months (which we round off to 26 weeks) which on the relevant scale is a quarter of the maximum penalty when no significant fault or negligence has been established.

7.15 Accordingly the athlete shall be suspended for a period of 26 weeks. He was provisionally suspended on the 13th of May 2016. That suspension was lifted on the 28th of July 2016 by a Chair of the Disciplinary Panel on the application of the athlete on the grounds that the violation was "likely to have involved a Contaminated Product". He has therefore served in effect 11 weeks of the sanction. He must now serve a further period of ineligibility of 15 weeks which we direct should commence from the date of his last participation in the Kerry panel. Pursuant to Article 10.8.2 the athlete can return to training 6 and 1/2 weeks prior to the expiry of the period of ineligibility.

8. **Decision:**

8.1 The Committee determines that there has been a violation of Article 2.1 of the Anti-doping Rules by reason of the presence of a prohibited substance, namely, Methylhexaneamine, in a sample provided by the Athlete on [...] 2016.

The Committee further determines that the Anti-doping Rule violation was not intentional.

The Committee further determines that the Athlete has established that there was no significant fault or negligence pursuant to Rule 10.4.2.

The Committee accordingly determines that the appropriate period of ineligibility shall be one of six months (26 weeks). The Athlete having already served 11 weeks of his suspension (see 7.15) shall serve a further period of 15 weeks commencing from the date of his last participation in the Kerry [...] .

The Committee makes no Order in relation to costs.

The parties have a right of appeal in respect of this decision under the Agreement between the GAA and Sport Ireland. Such an appeal lies with the Irish Sport Anti-Doping Disciplinary Panel.

Any person who wishes to appeal this decision must lodge a Notice of Appeal with the Chair of the Irish Sporting Anti-doping Disciplinary Panel within 21 days. Notice of Appeal shall:-

- Specify the decision being appealed
- Provide a statement of the grounds on which the appeal is being made
- State whether interim relief is sought and/or whether expedited proceedings are required
- and
- confirm that a copy of the Notice of Appeal has been served simultaneously on any person entitled to notification pursuant to Article 13 of the Irish Sport Anti-doping Rules

Dated this 21st day of February 2017

Signed



Mr Justice Adrian Colton

Signed _____

Nickey Brennan

Signed _____

Dr Pat O'Neill