

**IRISH SPORT ANTI-DOPING DISCIPLINARY PANEL**

**IN THE MATTER OF THE IRISH RUGBY FOOTBALL UNION  
AND  
IS-1519**

**DECISION**

**A. INTRODUCTION AND SUMMARY OF DECISION**

1. This is the decision of the Irish Sport Anti-Doping Disciplinary Panel (the "Panel") following a hearing into an allegation that IS-1519, an athlete engaged in the sport of rugby, was guilty of an anti-doping rule violation.
2. The alleged violation committed by Mr. IS-1519 was a breach of Article 2.1 of the Irish Anti-Doping Rules (the "Rules"). In particular, it was alleged that a prohibited substance, namely, terbutaline (a beta-2 agonist), was found in a sample of urine collected from Mr. IS-1519 in in-competition testing on 2008. It was alleged that the presence of this prohibited substance or its metabolites or markers in Mr. IS-1519's bodily specimen constituted an anti-doping rule violation pursuant to Article 2.1 of the Rules. The prohibited substance, namely, terbutaline, is a "*specified substance*" on the World Anti-Doping Code, 2008 Prohibited List. It is a substance which is "*particularly susceptible to unintentional anti-doping rules violations because of [its] general availability in*

*medicinal products or which [is] less likely to be successfully abused as [a] doping agent*" under Article 10.3 of the Rules. Mr. IS-1519 declared that he had taken a Bricanyl inhaler that day on the Irish Sports Council Form signed by him on 2008 (the day of his test).

3. At the request of the parties the Panel conducted an expedited hearing into the alleged violation of the Rules on 20 March, 2008. At the outset of the hearing, the violation was admitted on behalf of Mr. IS-1519. In the circumstances, therefore, the function of the Panel was to determine the appropriate consequences (or penalties) to be imposed in respect of the violation. It was contended on behalf of Mr. IS-1519 that the case fell within Article 10.3 of the Rules. In those circumstances, the onus shifted to Mr. IS-1519 to establish that the substance in question was a "*specified substance*" and that it was not intended to enhance sport performance. Mr. IS-1519 gave evidence on his own behalf. In addition, Dr. [...], a general practitioner, who is also the anti-doping officer of [...]

(the "Club"), gave evidence on his behalf. Submissions were also advanced on Mr. IS-1519 behalf by Mr. Eoin Ward. No evidence was called on behalf of the national governing body concerned, the IRFU. However, Gary Rice, solicitor of Beauchamps solicitors who represented the IRFU at the hearing, provided a detailed written submission at the outset of the hearing and also made oral submissions during the course of the hearing.

4. Having heard the evidence and submissions, the Panel retired briefly to consider its decision which it then delivered orally.
5. The Panel was satisfied on the evidence that the case fell within Article 10.3 of the Rules, that the substance in question was a "*specified substance*", that it had been taken by Mr. IS-1519 in the form of a Bricanyl inhaler, that Mr. IS-1519 previously had the

benefit of an Abbreviated Therapeutic Use Exemption Form ("ATUE") for the two year period from [...] 2005, that shortly prior to the expiry of that period [...] 2007, a new ATUE form was completed by Mr. IS-1519 with Dr. [...] but that, for whatever reason, the ATUE did not reach the Irish Sports Council ("ISC") and that, therefore, there was no valid ATUE in place at the time of the in-competition testing on [...] 2008. The Panel was satisfied that this arose due to an administrative oversight. The Panel was further satisfied that the inhaler containing the "*specified substance*" was not intended to enhance and did not enhance Mr. IS-1519 sport performance.

6. Under Article 10.3 of the Rules the range of consequences available to the Panel in the case of a first violation (and this was a first violation) was from, at a minimum, a warning and reprimand and no period of ineligibility up to, at a maximum, one year's ineligibility. The Panel was satisfied that no period of ineligibility was appropriate having regard to the evidence. However, under Article 10.3 of the Rules, the Panel was obliged to issue and did issue a warning and reprimand to Mr. IS-1519 . The Panel further urged that the utmost care be taken in the future to ensure that, for so long as the ISC requires that a stamped addressed envelope be enclosed with the ATUE form in order to secure written approval.

## **B. THE ALLEGED VIOLATION**

7. The allegation was that Mr. IS-1519 was guilty of an anti-doping rule violation under Article 2.1 of the Rules by the presence of a prohibited substance or its metabolites or markers in his bodily specimen. The substance, terbutaline (a beta-2 agonist) was detected in an analysis of a sample of urine taken from Mr. IS-1519 during in-competition testing on .

## **C. THE PROCEDURE ADOPTED**

8. Mr. IS-1519 was notified of the alleged violation by the ISC by a registered letter dated 12 March 2008. Pursuant to Article 7.3 of the Rules, the ISC notified Mr. IS-1519 of the adverse analytical finding and of the alleged anti-doping rule violation. Mr. IS-1519 was informed that he was entitled to request that his "B" sample be analysed. Mr. IS-1519 was also informed that in accordance with Article 8.3.1 of the Rules, the ISC was referring the alleged anti-doping rule violation to the Panel to determine whether a violation of the Rules had occurred and, if so, what consequences should be imposed. Mr. IS-1519 was informed that he was entitled to a hearing before the Panel at which the IRFU would present the case against him. He was also informed that he was entitled to be represented at the hearing pursuant to Article 8.4.5 of the Rules and that under Article 8.3.5 of the Rules he was entitled to forego his right to a hearing under the Rules by acknowledging the violation and accepting consequences consistent with Article 10 of the Rules as determined by the Panel. He was also informed of his right to appeal any decision of the Panel to the Appeal Panel pursuant to Article 13.2.1 of the Rules and, thereafter, to the Court of Arbitration for Sport. The ISC's letter also informed Mr. IS-1519 of the potential consequences of a finding that he had committed an anti-doping rule violation. He was informed that as the prohibited substance in question was a "*specified substance*", in the event that he could establish that the use of the "*specified substance*" was not intended to enhance sport performance, the period of ineligibility found in Article 10.2 would be replaced with, at minimum, a warning and reprimand and no period of ineligibility and, at a maximum, one year's ineligibility for a first violation. The letter from the ISC also enclosed a set of documentation which was listed in a schedule to the letter.
9. On the same date, the ISC wrote to the IRFU and also referred the matter to the Panel.



10. On 18 March 2008, the IRFU wrote to Mr.IS-1519 informing him that he was provisionally suspended as and from 18 March 2008 pursuant to International Rugby Board ("IRB") Regulation 21.19.1 and pursuant to Article 7.8.2 of the Rules as adopted by the IRFU by resolution of its Committee on 7 May 2004. In that letter, the IRFU stated that it had no discretion in relation to the matter having regard to the terms of Regulation 21.19 of the IRB's Anti-Doping Rules. The IRFU wrote to the Secretary of the Panel on the same date informing the Panel that Mr.IS-1519 had been provisionally suspended.
11. Later on 19 March 2008, the Panel received a letter from Beauchamps, Solicitors acting for the IRFU requesting an expedited hearing of the matter by the Panel. The letter stated that the IRFU had received representations from Mr.IS-1519 's club seeking an expedited hearing by the Panel in order that the player might be able to play an important upcoming match over the forthcoming weekend. It was noted that the Club was facing relegation and that Mr.IS-1519 was a regular first team player for the Club.
12. The Beauchamps letter set out in some detail the circumstances of the alleged violation and the response on the part of Mr.IS-1519 and his Club to the allegation made. In particular, it was stated as follows in the letter:

*"The case turns on the failure by the player to have a valid Abbreviated Therapeutic Use Exemption ("ATUE") as of the date he was tested by the Irish Sports Council (the "Council") on behalf of the Union. As the Panel will be aware, ATUEs are granted automatically to athletes upon application for beta-2 agonists (of which Terbutaline, the substance detected in this is one) by inhalation and glucocorticosteroids by non- systemic routes by virtue of*

*Article 4.10 of the Rules. The Panel will note in the schedule of documents enclosed with the letter to it from the Council that the player had a valid ATUE which lapsed on the [...] 2007.*

*The player's team doctor asserts that he did send an appropriate ATUE application for this player for the current period to the Council by post. The Council has reviewed its records and is satisfied that it did not receive the said ATUE application. The Council did receive whereabouts information from the athlete's club by email on the 17<sup>th</sup> August 2007, but the ATUE application was not attached to that email. The team doctor who asserts he posted the ATUE application recalls that there were some problems with the post at the time at which he asserts he posted the ATUE.*

*This matter seems to be an administrative failure by the player, the team doctor or the postal service. That said, in the submission of the Union, it remains a matter for the player to satisfy the Panel that he took the beta-2 agonist by inhalation and that the specified substance was not intended to enhance sport performance in order to benefit from the provisions of Article 10.3."*

Various facilities were offered by Beauchamps in their letter of 19 March 2008 to enable an expedited hearing to take place.

13. The Panel agreed to conduct an expedited hearing on 20 March 2008 and wrote to Mr.IS-1519 and Beauchamps on behalf of the IRFU later on 19 March 2008 informing them of that fact. The Panel also notified the ISC as well as the IRB and the World Anti-Doping Agency (WADA) of the fact of the hearing and of their entitlement to attend as observers pursuant to Article 8.3.8 of the Rules.

#### **D. THE HEARING ON 20 MARCH 2008**

14. The hearing took place on 20 March 2008 in accordance with the arrangements communicated to the parties in the Panel's letter of 19 March 2008. The composition of the Panel at the hearing was David Barniville SC (who chaired the Panel), Mr. Paddy Boyd (sports administrator) and Mr. Martin G. Walsh (medical practitioner). Mr. Gary Rice of Beauchamps appeared on behalf of the IRFU accompanied by Mr. Gordon Black of the IRFU. Mr. Eoin Ward represented Mr. IS-1519. Mr. IS-1519 himself was present as were Dr. [...] and Mr. [...] ( [...] Team Manager). Dr. Una May of the ISC attended as an observer.
15. At the outset of the hearing a detailed written submission was provided by Mr. Rice on behalf of the IRFU.
16. It was confirmed at the outset by Mr. Ward on behalf of Mr. IS-1519 that it was accepted that the alleged anti-doping violation had occurred and that it was for the Panel to determine the appropriate consequences. Mr. Rice submitted on behalf of the IRFU that it appeared that it would be contended on behalf of Mr. IS-1519 that the case fell within Article 10.3 of the Rules. Mr. Rice submitted that in those circumstances Mr. IS-1519 would have to establish in the balance of probabilities (1) the circumstances in which the substance came to be used and administered and (2) that the use was not for the purpose of enhancing Mr. IS-1519's sport performance. In those circumstances, Mr. Rice submitted that it was a matter for Mr. Ward to call such evidence as he wished and for submissions to be made thereafter.
17. Mr. Ward then made a brief opening submission on behalf of Mr. IS-1519. He explained that there had been an administrative error which was more the responsibility of the Club rather than the player himself. He explained that Mr. IS-1519 had been diagnosed some

years ago with an asthmatic condition and that he had taken appropriate treatment through an inhaler over a number of years. He explained that Dr. [...] had been his GP for a number of years and that his GP before Dr [...] had also diagnosed the same condition and had prescribed substantially the same treatment. Mr. Ward explained that the appropriate ATUE forms existed for previous years, that the form had been completed for the relevant year but that it had not been received by the ISC. Mr. Ward stated that the substance which was detected in the test on [...] 2008 was the substance which would have been expected to be present and that it was an "*oversight*" that the ATUE form had not been submitted. He further stated that it was common case that when an ATUE form for this substance is submitted, it is accepted as a matter of course and that Mr.IS-1519 would have been exempted had the form been submitted and received by the ISC.

18. Mr.IS-1519 was then called to give evidence. He explained in evidence that he was a player with [...] Club. He outlined that he was first diagnosed with an asthmatic condition requiring an inhaler when he was about 13 years of age. The diagnosis was initially made by his previous GP, Dr. [...]. She was his GP for about six or seven years. Mr. IS-1519 showed the Panel his inhaler (a Bricanyl inhaler) and demonstrated its use by inhalation. He explained the principal benefits of using the inhaler which were that when he was out of breath it helped him to recover and when he had a cold and was short of breath it helped him to recover normal breathing.
19. Mr.IS-1519 indicated that he was seen by Dr. [...] in his surgery some time in February 2007. Dr. [...] is also the Club doctor. Dr. [...] made the same diagnosis as had previously been made and had done some tests. Mr.IS-1519 explained that he uses the inhaler on a regular and frequent basis.

20. He was asked about completing the ATUE form. He recalled being with Dr. [...] for a different injury again in 2007 and was asked to sign a declaration form in Dr. [...] 's surgery. Mr. IS-1519 did not keep a copy of that form. He explained that he had filled out forms in the past at the start of the season and identified the ATUE form which he had signed on 2005.
21. Dr. [...] then gave evidence. He is a general practitioner in [...]. Mr. IS-1519 had been a patient of his since he was in Fifth Year in school. He had been diagnosed with an asthmatic condition and was using an inhaler before he came to see Dr. [...]. He had no doubt that Mr. [...] suffered from an asthmatic condition and required the inhaler mainly for exercise. He explained that Mr. IS-1519 came in to see him in February 2007 with a sore throat and a cough. On examination he found a significant degree of bronchial spasm. He had to nebulise him and to remind him to use his Bricanyl inhaler more regularly until the infection had settled down. He explained that there were similar occasions going back over the years when Mr. IS-1519 needed to use his Bricanyl inhaler on a more regular basis but that his condition was not serious enough to put him on a preventative inhaler. He was satisfied that Mr. IS-1519 clinically showed the hallmarks of a mild asthmatic whose condition was worse with exercise and that he needed his inhaler for that. He stated that Mr. IS-1519 had the inhaler for his medical condition and not for the purpose of enhancing his performance in a sporting capacity. He had no doubt about that.
22. Under cross-examination by Mr. Rice for the IRFU, Dr. [...] explained that he had not done a pulmonary function test but had done a peak flow test on Mr. IS-1519. This showed a significant improvement after Mr. IS-1519 had taken his inhaler. He explained that Mr. IS-1519 would not be able to play if he didn't take his inhaler and that he would have "*great difficulty*" in exercising.

23. Dr. [...] then gave more detailed evidence in relation to the circumstances in which the ATUE form was completed in [...] 2007. He explained that Mr.IS-1519 came in to see him on [...] 2007 for a hamstring injury. While he was there, he got Mr.IS-1519 to sign the ATUE form. Dr. [...] explained that it was left up to him (Dr. [...]) to make sure that the ISC got the ATUE. He was shocked when he had heard recently that the ISC did not receive a copy. He noted that while he was not making any excuse about the matter, he did not receive any reminder as he would have done in the case of reports required by insurance companies. He explained that he thought that he had sent the form and had done so in previous years. He further confirmed that he took upon himself the responsibility of sending in the form. He also stated that he was not aware that a stamped addressed envelope was required by the ISC in order to provide written approval of the exemption. Dr. [...] produced a copy of the ATUE form which was signed by Mr.IS-1519 on [...] 2007. It disclosed the terbutaline and specified the reason being for the "*treatment of asthma*".
24. In response to a question from the Panel, Dr. May of the ISC confirmed that notification of receipt of an ATUE form would only be sent where a stamped addressed envelope was included with the form. It was also confirmed that no reminder was sent with regard to the expiry of a previous ATUE. However, Dr. [...] explained that he was aware that Mr.[...] was to send in a further ATUE as the previous form was valid for two years. Mr. Black of the IRFU intervened to state that in each season the IRFU would send out a reminder to the anti-doping officers of the clubs reminding them that ATUEs needed to be renewed after two years. This was a general reminder rather than in respect of any particular players. Mr. IS-1519, the Team Manager, explained that it was part of his function to check with all the players at the commencement of the

season to see if they had anything to declare and that he believes he would have spoken to Mr.IS-1519 in [...] 2007 and that Mr. IS-1519 would have informed him that he had made a declaration and signed and submitted his form. However, no further check was undertaken.

25. Dr. [...] explained that Mr.IS-1519 was the only player at the present time requiring an ATUE although more players in previous years did. Finally, while Dr. [...] stated that he was able to locate a copy of the ATUE form in Mr.IS-1519 's records in his surgery he had not located the original form. That concluded the evidence.
26. Submissions were then made on behalf of the parties. Mr. Ward first made submissions on behalf of Mr.IS-1519 . He submitted that the evidence demonstrated that this was an appropriate case in which to apply the provisions of Article 10.3. He contended that the evidence demonstrated that the substance detected was a "*specified substance*", that it had been taken by Mr.IS-1519 by inhalation and that it was not for the purpose of enhancing Mr.IS-1519 's sport performance. He contended that, on the contrary, the evidence established that the use of the inhaler merely put Mr. IS-1519 in a neutral position, that is, in a position he would have been in if he had not suffered from the medical condition disclosed in evidence. He further submitted that the failure to ensure that a valid subsisting ATUE was in existence was due to a mistake or a "*bureaucratic oversight*" on the part of the Club. He stated that the Club wished to apologise for that.
27. Mr. Rice then made submissions on behalf of the IRFU. He first stated that, on the evidence, the Panel could safely reach the conclusion that the case fell within Article 10.3 of the Rules. He noted that Mr.IS-1519 confirmed in his sworn testimony to the Panel

that the substance in question (namely, the terbutaline) was administered by inhalation. He further stated that Dr. [...] 's testimony should be sufficient to establish that the use of the specified substance was not intended to enhance sport performance.

28. Mr. Rice then advanced submissions in relation to the appropriate consequences which it was contended on behalf of the IRFU should be imposed on Mr. IS-1519 . He noted that the Panel faced a choice between (at a minimum) issuing a reprimand and warning with no period of ineligibility and (at a maximum) imposing a period of ineligibility of up to one year. He referred to a particular issue in relation to the proper interpretation of Article 10.3. That issue was whether it was necessary for the Panel to consider whether there had been "*fault or negligence*" or "*substantial fault or negligence*" on the part of Mr. IS-1519 in the meaning of those terms in Rules 10.5.1 and 10.5.2. This issue was also addressed in some detail in the very helpful written submissions furnished by Mr. Rice on behalf of the IRFU.
29. It was submitted on behalf of the IRFU that the Panel could apply Article 10.3 in one of two ways. It could either decide, having heard all the evidence and having been satisfied that the matter falls within Article 10.3, to sanction Mr. IS-1519 by a warning and a reprimand with no period of ineligibility. Paragraph 18 of the IRFU's written submissions refers to a number of authorities which would support that approach on the part of the Panel. They include the 2005 case of ***Bike NZ and Amy Diana Mosen*** (Sports dispute Tribunal of New Zealand STD/06/05) and the case of ***Scott McLeod***.
30. In the ***Bike NZ*** case, the athlete's sample was found to contain terbutaline. She was not a carded athlete and asserted that she had not been advised by her national governing body of the procedure for applying for a TUE. She asserted that she had no idea what a



TUE was. The Tribunal in that case found it was surprising that the athlete did not have a greater knowledge of what was required but nonetheless accepted her evidence. The Tribunal decided that the use of terbutaline was not with the intention of enhancing the athlete's sport performance and that the failure to obtain a TUE was due to inadvertence. The Tribunal felt that the minimum sanction was appropriate in that case and the athlete was, therefore, warned and reprimanded but was not subjected to any period of ineligibility.

31. In the recent case of **McLeod**, the athlete (a rugby player) tested positive for terbutaline in an out of competition test in January 2008. The source of the terbutaline was (as in the present case) a Bricanyl inhaler. Like Mr. IS-1519 in the present case, Mr. McLeod in that case had disclosed that he had taken the inhaler in his doping control form. However, that did not alleviate Mr. McLeod from his responsibility to ensure that a valid ATUE was in existence. The Disciplinary Panel in that case noted that (like the present case) the player had previously obtained an ATUE for terbutaline but the ATUE in existence at the time of the positive test was for an alternative substance, namely, salbutamol. The Disciplinary Panel in that case accepted the player's evidence and the fact that the substance was not intended to enhance sport performance. The Panel issued a warning and reprimand but again did not impose any period of ineligibility.
32. It was submitted on behalf of the IRFU that there was an alternative course potentially open to the Panel in this case. The Panel could determine that Mr. IS-1519 should serve a period of ineligibility of up to a maximum of one year's ineligibility under Article 10.3 of the Rules. Reference was made in the IRFU's written submissions to a number of decisions of the Judicial Committee of the IRB in December 2004. The relevant cases were those of **Robert Dedig** and **Gary James Hewitt**. Both cases involved the use of salbutamol

and not terbutaline (although it is noted that salbutamol is also a beta-2 agonist which also requires an ATUE). In neither case was an ATUE form ever submitted on behalf of the player.

33. In the ***Dedig*** case, both the player and his doctor stated that they were unaware that the substance in question was a prohibited substance or of the conditions under which its use could be permitted under an ATUE. The IRB's Judicial Committee decided on the evidence of that case that the provisional suspension should be lifted (it had been in place for some two days) following an expedited hearing. The Judicial Committee was satisfied that the player's use of salbutamol was for therapeutic purposes and was not intended to enhance sport performance. The Judicial Committee decided that the appropriate sanction was that the player be reprimanded and warned of the serious consequences in the event of any further anti-doping rule violation. The Committee's detailed reasons were then set out in a subsequent written Decision dated 8 December 2004. In that written Decision the Judicial Committee found the objectives of the IRB's Regulations and of its anti-doping programme did not require that the player serve any additional period of suspension and that they would be adequately served by reprimanding the player but emphasising to him that he had been found guilty of an anti-doping violation which would be a matter of formal record and warning him of the severe consequences for him of any further anti-doping rule violation.
34. A different conclusion was reached by the IRB's Judicial Committee in the case of ***Gary Hewitt***. In its Decision of 22 December 2004, the Judicial Committee found that it was simply not credible for the player to say that he had no awareness that his salbutamol use might offend anti-doping regulations. The Committee found that while it had no other reason to doubt the player's veracity, the player would appear to have "*ignored what was going on around him*" and

that he had been *"very lax in his attitude regarding his responsibilities as an international player"* (he was a member of the Zimbabwe national men's rugby team). In those circumstances, the Judicial Committee decided that the appropriate sanction was a three month period of ineligibility and noted that the player should also should be aware that there would likely be severe consequences for him in the event of any further anti-doping rule violation.

35. It was submitted on behalf of the IRFU that should the Panel be considering the imposition of a period of ineligibility on Mr. IS-1519 in this case, the Panel would have to consider whether Mr. IS-1519 could bring himself within Article 10.5 of the Rules in order to eliminate such a sanction of ineligibility. However, the IRFU submitted that Mr. IS-1519 would probably not be in a position to adduce necessary proofs required by Article 10.5.1 so as to establish that there was no *"fault or negligence"* on his part. It was conceded on behalf of the IRFU that there might be a possibility that Mr. IS-1519 could satisfy the Panel the provisions of Article 10.5.2 applied in that he might be in a position to establish that there was no *"significant fault or negligence"*. Various authorities were relied upon by the IRFU in its written submissions on that issue.
36. In his oral submissions to the Panel, Mr. Rice observed and emphasised that while the application for the ATUE had been taken care of by Mr. IS-1519 's doctor, at the end of the day, it is the responsibility of each athlete as to what he or she ingests to ensure compliance with the Rules.
37. The Panel then retired for a short time after hearing the evidence and submissions and was in a position to give its oral decision after a short period of consideration.

## **E. THE DECISION**

38. In its Decision (which has been summarised earlier), the Panel thanked the representatives of both the IRFU and Mr.IS-1519 for their helpful submissions. It was noted that the anti-doping rule violation was admitted by Mr.IS-1519 and that the function of the Panel, therefore, was to determine the appropriate consequences to be imposed in respect of that admitted violation.
39. The Panel referred to the evidence provided by Mr.IS-1519 and by Dr. [...] . That evidence has been summarised earlier in this written Decision and it is not proposed to repeat it here.
40. The Panel was satisfied that the evidence established that this was a case to which the provisions of Article 10.3 of the Rules applied. The Panel was satisfied on the evidence that the substance found in Mr. 's sample, although on the prohibited list, was a "*specified substance*". The Panel was also satisfied that Mr.IS-1519 established on the evidence that he had used the substance (thereby explaining its presence in the sample taken on [...] 2008), for good medical reasons to treat his asthmatic condition, that he had taken the substance by inhalation (by means of the Bricanyl inhaler) and that the substance was not intended to and did not enhance Mr. IS-1519 's sport performance. The use of the substance had also been disclosed on the Doping Control form on [...] 2008. In those circumstances, on the evidence the Panel was satisfied that this was a case to which the provisions of Article 10.3 applied and that Mr. IS-1519 had established the requirements of that Article.
41. The range of possible consequences was from (at a minimum) a warning and reprimand with no period of ineligibility to (at a maximum) one year's ineligibility.

42. The Panel noted that while there was no valid ATUE in existence at the time of the positive test in [...] 2008, a valid ATUE was in existence for the very same substance in respect of the two year period to [...] 2007. The Panel accepted the evidence of Mr. IS-1519 and Dr. [...] that an ATUE form had been completed and signed by Mr. IS-1519 during a visit to Dr. [...] 's surgery on [...] 2007. However, for whatever reason (and the Panel was not in a position to make any finding on the evidence in that regard) the ATUE form did not reach the ISC. It was noted by the Panel that if (as advised in the ATUE form) a stamped addressed envelope had been enclosed with the ATUE form, then the failure by the ISC to respond by means of the stamped addressed envelope would have alerted Mr. IS-1519 and Dr. [...] to the fact that the form may not have reached the ISC. This highlighted to the Panel that for so long as the ISC insisted on a stamped addressed envelope in order to provide approval or acknowledgement of an ATUE application, it is extremely important to ensure that such a requirement is complied with.
43. The Panel also ruled on the issue as to whether it was necessary to consider the question of "*fault or negligence*" or indeed "*significant fault or negligence*" under Article 10.5.1 and Article 10.5.2 of the Rules. It was the view of the Panel that it would only be necessary to consider the question of "*fault or negligence*" or "*significant fault or negligence*" in the event that the Panel was considering the imposition of a period of ineligibility. The Panel formed the view, on the basis of the evidence and with the assistance of the authorities referred to it by the IRFU, that this was not an appropriate case in which a period of ineligibility should be imposed. In those circumstances it was not necessary to consider the provisions of Article 10.5 which, having regard to the provisions of Article 10.3, are only relevant where it is sought to establish a basis for eliminating (in the case of a first violation) or reducing (in the case of

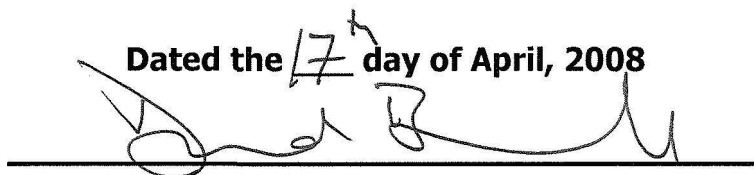
a second or third violation) a sanction of a period of ineligibility. Since that sanction was not considered to be appropriate by the Panel in this case, it was not necessary to consider the provisions of Article 10.5.1 or Article 10.5.2.

44. On the evidence, the Panel felt that the appropriate sanction to impose was the minimum sanction provided in Article 10.3, in the case of a first violation, namely, a warning and reprimand. In giving a warning to Mr. IS-1519, the Panel noted (in its oral decision and repeats in this written Decision), that it is ultimately the responsibility of the athlete to ensure that if reliance is sought to be placed on the existence of a therapeutic use exemption, a valid application for such an exemption is made and that the exemption is valid and subsisting for the relevant period. The failure in the present case was ultimately that of Mr. IS-1519 albeit that others took responsibility to ensure that the ATUE was sent to the ISC. For that failure the Panel is obliged under Article 10.3 to reprimand Mr. IS-1519.
45. The Panel is also obliged under Article 10.3 to give a warning to Mr. IS-1519. The warning is that having admitted an anti-doping rule violation in the circumstances outlined earlier, any further violation is likely to have very serious consequences under the Rules. In the case of a second violation (involving a "*specified substance*"), Article 10.3 of the Rules provides for a period of ineligibility of two years and in the case of a third violation, the period of ineligibility is a lifetime one. The consequences of any further violation are, therefore, extremely serious.
46. The Panel concludes this Decision by urging Mr. IS-1519 and those advising and assisting him that extreme care should be taken in ensuring for future periods that an ATUE is completed, sent in and received by the ISC. For so long as the ISC requires the inclusion of a stamped addressed envelope with the form, the utmost care

should be taken by and on behalf of Mr. IS-1519 to ensure that such an envelope is enclosed. Indeed, the Panel strongly urges Mr. IS-1519 and those advising him proactively to follow up with the ISC whether it has received his ATUE form.

47. While not a binding ruling of the Panel, it might be advisable for the ISC to review its procedures to determine whether it might be appropriate to issue a formal acknowledgment or receipt of a complete notification of an ATUE application under Article 4.10.4 of the Rules. The Panel is conscious that, although it was an observer at the hearing, the ISC was not a party to the hearing and was not in a position to and did not adduce evidence as to why it has adopted the procedure it has in relation to the use of stamped addressed envelopes. There may be good reasons why it has chosen to do so and for that reason the Panel does not make any binding ruling in that regard. The position should, however, be reviewed.

**Dated the 17<sup>th</sup> day of April, 2008**

A handwritten signature in black ink, appearing to read 'David Barniville', is written over a solid horizontal line.

**Signed on behalf of the Panel by**

**David Barniville SC**

**Chairman**