

## **IRISH SPORT ANTI-DOPING DISCIPLINARY PANEL**

### **IN THE MATTER OF MOTOR SPORT IRELAND**

**V**

**Atlete IS-1523**

### **DECISION**

#### **A Introduction**

1. This is the written decision of the Irish Sport Anti-Doping Disciplinary Panel (the "Panel") in proceedings brought by Motor Sport Ireland ("MSI") under the Irish Anti-Doping Rules (2009 Version) (the "Rules") against IS-1523, an athlete competing in the sport of motor sport.
2. The Panel commenced hearing the case on 2 November 2010. On that date having heard evidence and having given certain rulings, the Panel adjourned the hearing to a further date to be fixed. The hearing resumed on 23 November 2010. Having heard further evidence and submissions, the Panel reserved its decision.

3. The Panel communicated its decision to the parties on 4 December 2010.

## **B. Factual Background**

### **(a) The Allegation**

4. The allegation against Mr. IS-1523 was that he had committed an anti-doping rule violation under Article 2.1 of the Rules in that a "*Prohibited Substance*" or one of its metabolites or markers was found in a sample of urine collected from Mr. IS-1523 in in-competition testing on [...] while Mr. IS-1523 was competing in a motor racing competition organised by MSI.

### **(b) Analytical Results**

5. The analysis of Mr. IS-1523 "A" sample was conducted by the Deutsche Sporthochschule Köln Institut für Biochemie. The analytical report in respect of the analysis of Mr. IS-1523 "A" sample disclosed the presence of two Prohibited Substances, namely, "*boldenone and 5 B-androst-1-ene-17- $\beta$ -ol-3-one*". The analytical report stated that the detection of those substances was "*consistent with the administration of the prohibited exogenous anabolic androgenic steroids boldenone or boldenone prohormones ... or the administration of the prohibited aromatase inhibitor androstatrienedione ...*". In a further remark in the analytical report it was stated that the results were "*consistent with an exogenous origin of boldenone and boldenone metabolite*".
6. Boldenone is an anabolic androgenic steroid (AAS) falling within Class S1.1 of the list of Prohibited Substances contained in the 2010 Prohibited List of the World Anti-Doping Code (valid 1 January 2010) (the "Prohibited List").
7. The analytical report also described boldenone as potentially falling under Class S4.1 of the Prohibited List which covers hormone

antagonists and modulators. The other substance detected was also reported in the analytical report as falling within Class S1.1 or Class S4.1. The substances falling within Class S.1.1 are Prohibited Substances. Substances falling with S.4 are Prohibited but Specified Substances. The consequences of this distinction are explained later.

8. The analytical report was duly furnished to the Irish Sports Council which then conducted an initial review, pursuant to Article 7.2 of the Rules, to determine whether there existed any therapeutic use exemption granted to Mr. IS-1523 or whether there had been any apparent departure from the International Standards for Testing for Laboratories which might have caused the adverse analytical finding. In a Certificate dated 27 August 2010, the Irish Sports Council certified that its review did not reveal the applicability of a therapeutic use exemption or a departure from any of these Standards referred to.

### **(c) Communications with the Athlete**

9. The results of the adverse analytical finding were communicated to Mr. IS-1523 by the Irish Sports Council by letter dated 30 August 2010. Mr. IS-1523 was informed that, on the basis of the adverse analytical finding, it was alleged that he had committed an anti-doping rule violation by virtue of the presence of a Prohibited Substance or its Metabolites or Markers in his sample contrary to Article 2.1. of the Rules. Mr. IS-1523 was provided with detailed information and extensive documentation with that letter. He was informed of his right to have his "B" sample tested to determine whether it disclosed the same substances found in the "A" sample and that any such request had to be made by 13 September 2010 failing which his right to have the "B" sample analysed would be deemed to have been waived. Mr. IS-1523 was also informed that he had the right to admit or deny the alleged violation to the Panel by 20 September 2010 under Article 7.3.2.8 of the Rules. He was informed that if he admitted the alleged violation the consequences or sanctions

imposed in respect of that violation would have to be determined by the Panel before which Mr. IS-1523 had a right to a hearing. He was further informed that if he failed to admit or deny the alleged violation by 20 September 2010, he would be deemed under the Rules to have admitted that violation. The potential consequences or sanctions in respect of the alleged violation were also set out in the letter. He was informed of potential opportunities for the reduction or elimination of any otherwise applicable consequence or sanction.

10. On the same date, the Irish Sports Council wrote to the Secretary of the Panel informing it of the alleged violation and enclosing a copy of the correspondence and other documentation which it had furnished to Mr. IS-1523.
11. The Secretary of the Panel wrote to Mr. IS-1523 on 8 September 2010 setting out again the violation alleged against him and explaining the role and function of the Panel in that regard. It was noted that Mr. IS-1523 had the right to request that his "B" sample be analysed by 13 September 2010. Mr. IS-1523 was also reminded that he had to admit or deny the alleged violation to the Panel by 20 September 2010, failing which he would be deemed to have admitted that violation.
12. Mr. IS-1523 did not reply to the Panel's letter of 8 September 2010. It appears, however, that he did have an earlier telephone conversation with Dr. Una May of the Irish Sports Council on 2 September 2010. In that conversation (which is relevant for other purposes referred to later), Mr. IS-1523 admitted to having used anabolic steroids some months previously.
13. On 22 September 2010, MSI provisionally suspended Mr. IS-1523 and requested him to return his competition licence by 28 September 2010. MSI informed Mr. IS-1523 of this by letter dated 22 September 2010.

14. The Secretary of the Panel wrote to Mr. IS-1523 by letter dated 23 September 2010 noting that as Mr. IS-1523 had failed to admit or deny the alleged anti-doping rule violation by 20 September 2010, he was deemed to have admitted the violation having regard to the provisions of Article 7.3.2.9 of the Rules. It was also noted that Mr. IS-1523 had failed to exercise his right to have his "B" sample analysed by 13 September 2010. Mr. IS-1523 was informed that in those circumstances the role of the Panel was confined to determining the consequences or sanctions which should be imposed on him in respect of the deemed admitted anti-doping rule violation and that he was entitled to a hearing before the Panel on that issue. Mr. IS-1523 was also informed of his right to appeal the imposition of the provisional suspension imposed by MSI, the appeal being to the Chair of the Disciplinary Panel or to a Vice-Chair appointed by the Chair for that purpose. In addition, Mr. IS-1523 was informed that he could seek an expedited hearing of the entire matter before the Panel. The Panel's letter of 23 September 2010 requested Mr. IS-1523 to reply by 7 October 2010.
15. No response was received from Mr. IS-1523 to the Panel's letter of 23 September 2010 by the stipulated date. In the absence of a response to any of its letters the Panel was concerned that Mr. IS-1523 may not have received the earlier correspondence and requested its Secretary to telephone him. In a telephone conversation on 8 October 2010, Mr. IS-1523 confirmed that had received the Panel's earlier letters but had not read them. He stated that he would reply to the correspondence by Monday, 11 October 2010 setting out his position.
16. Mr. IS-1523 did write to the Secretary of the Panel by letter dated 9 October 2010. That letter was sent by post and reached the Panel on 13 October 2010. In the meantime, the Secretary of the Panel sent a further letter to Mr. IS-1523 on 12 October 2010 setting out the position and noting that the Panel had decided, notwithstanding the absence of any response, to hold a hearing to determine the appropriate

consequences and sanctions to be imposed in respect of the violation. Mr. IS-1523 was again advised to take advice (whether legal or otherwise) on receipt of the letter. He was similarly advised in the earlier letter from the Panel's Secretary dated 23 September 2010.

17. In his letter of 9 October 2010 Mr. IS-1523 apologised for the delay in responding to the previous letters and explained that this was due to work commitments. He also stated that he had "*only glanced over*" the letters but that even if he had read them he would have been unable to understand their contents. He explained that he had spoken by telephone to Dr. Una May (of the Irish Sports Council) (whom he identified as Dr. Una Healy). This was in fact Dr. Una May. Mr. IS-1523 then sought to explain the circumstances in which the Prohibited Substances were found in his sample. He stated that he had provided all of the information requested in the Doping Control Form concerning the medicines which he had taken within the previous fourteen days.
18. Mr. IS-1523 also explained that he received his competition licence from MSI on [...] 2010 and had his first competitive race on [...] 2010. After that race he was asked to provide a urine sample which he provided. He stated that he was asked (on the Doping Control Form) whether he had taken any medications or supplements (whether prescription or non-prescription) over the previous fourteen days and that he replied that he had taken Solpedine (2 tablets) in [...] 2010. He explained that that was the only medicine which he had taken in the two weeks leading up to the race on [...] 2010. However, he states that he subsequently spoke with Dr. Una May and that he "*openly admitted to Dr. [May] that several months prior to [him] obtaining [his] licence [he] had stupidly taken steroids when [he] was an active member of a gym*". He explained that that was "*long before*" he had "*even considered trying to obtain a racing licence*". He stated that if he had been asked by the tester whether he had ever taken prohibited substances, he "*would have answered with 100% honesty*". However, he stated that he had

only held his licence for two days by the time he was tested and was only asked about medications and supplements taken within the previous two weeks. He also contended that his provisional suspension was unfair.

#### **(d) Communications re Hearing**

19. Having considered the contents of Mr. IS-1523 letter of 9 October 2010, the Panel confirmed its decision to hold a hearing in order to determine the appropriate consequences or sanctions to be imposed in respect of the deemed admitted anti-doping rule violation.
20. The hearing was fixed by the Panel for 2 November 2010. Notice of the hearing was furnished to Mr. IS-1523, the MSI and the Irish Sports Council. Notice was also provided to the World Anti Doping Agency (WADA) and to the relevant international federation, Federation Internationale de l'Automobile (FIA).
21. The Irish Sports Council gave notice of its intention to appear at the hearing as an observer. WADA informed the Panel's Secretary that it would not be attending the hearing. No response was received from the FIA. The MSI gave notice that it would attend and be represented at the hearing.

#### **C. The Hearing on 2 November 2010**

22. The hearing was held on 2 November 2010. Mr. IS-1523 attended and was unrepresented. MSI attended and was represented by Dermott Quigley, Alex Sinclair and Dr. Frank O'Donoghue (MSI's Anti-Doping Officer). Ms. Siobhan Leonard attended on behalf of the Irish Sports Council as an observer only.

#### **(a) Ruling of Panel**

23. The first issue which required to be determined at the hearing was the effect of Mr. IS-1523 apparent failure to admit or deny the anti-doping

rule violation alleged against him within the time period required under the Rules which was communicated to him by the Irish Sports Council in its letter of 30 August 2010. It was clear to the Panel that Mr. IS-1523 was deemed to have admitted an anti-doping rule violation by virtue of his failure to admit or deny the allegation within the required time period. However, the Panel required argument as to the significance or otherwise of the fact that the analytical report which formed the basis of the allegation disclosed the presence of two substances including boldenone, one of which was consistent with the administration of a Prohibited but non-Specified Substance and the other being a Prohibited but Specified Substance. The significance of that issue was as follows. If Mr. IS-1523 was deemed to have admitted an anti-doping rule violation in respect of a substance which was a Prohibited Substance but was not a Specified Substance on the Prohibited List, then it would not have been open to Mr. IS-1523 to seek to eliminate or reduce the period of ineligibility which might otherwise be open to him under Article 10.3 of the Rules. On the other hand, if Mr. IS-1523 was deemed to have admitted a violation in respect of a Prohibited but Specified Substance, it would at least theoretically have been open to Mr. IS-1523 to seek to make a case for the elimination or reduction of the period of ineligibility under Article 10.3.

24. Having heard submissions on this issue from the representatives of MSI and from Mr. IS-1523, the Panel ruled that Mr. IS-1523 was deemed to have admitted an anti-doping rule violation which arose from the presence of the Prohibited Substance, boldenone, in his urine sample. Boldenone, an anabolic steroid, is a Prohibited Substance under Class S1 of the Prohibited List. Prohibited Substances in Class S1 cannot be considered as Specified Substances under the Prohibited List. Therefore, boldenone is a Prohibited Substance which is not a Specified Substance.
25. The Panel, therefore, ruled that Mr. IS-1523 was deemed to have admitted a violation involving the presence of boldenone, a Prohibited but non Specified Substance. In those circumstances, the Panel ruled that it was



not open to Mr. IS-1523 to seek to make a case, and the Panel did not have the power to consider any such case, for the elimination or reduction of the period of ineligibility under Article 10.3 of the Rules as that provision is only available in the case of a Specified Substance.

26. In those circumstances, the Panel ruled that the only potential case which Mr. IS-1523 could seek to make in order to argue for an elimination of or reduction to the otherwise applicable period of ineligibility was under Article 10.4 which provides for the circumstances in which the period of ineligibility may be eliminated or reduced based on "*exceptional circumstances*". Therefore, the function of the Panel was to determine whether the period of ineligibility to be imposed on Mr. IS-1523 in respect of a first violation of Article 2.1 was the period of two years' ineligibility referred to in Article 10.1 or a reduced period or no period of ineligibility under Article 10.4.2 or Article 10.4.1, respectively.

#### **(b) Evidence of Mr. IS-1523**

27. Mr. IS-1523 then gave evidence under oath on his own behalf. Mr. IS-1523 admitted taking two steroid products for a period of 2/3 weeks approximately six months prior to the hearing. The products identified by Mr. IS-1523 were "*Sustanon*" and "*Deca*". He explained that he injected himself with those steroids which he had obtained from a person in his gym. He said that he did not do so for the purposes of any competition but for his own personal weight training, strength training and general fitness. He stated that the drugs did not agree with him and made him aggressive as a result of which he stopped taking them. He explained that he learned about how to self-inject the drugs on the internet. Mr. IS-1523 evidence was that he had taken the steroids before he became involved in the sport of motor racing. He obtained his competition licence from MSI on [...] 2010, two days before his first race in [...] at which he was randomly selected for drug testing. He stated that he never thought that the steroids which he had taken

months previously would “*show up*” in his test. He reiterated what he had said in his letter of 9 October 2010 that he was asked (in the Doping Control Form) to identify the medications and/or supplements (prescribed and non prescribed) taken within the past 14 days and that he had answered that information correctly. He also stated that had he been asked what other drugs he had taken prior to the 14 day period, he would have told the truth and would have stated that he had taken steroids approximately six months previously. He also argued that he should have been tested before obtaining the competition licence from MSI.

28. On the issue of awareness, Mr. IS-1523 stated that he had received an information pack from MSI prior to applying for his licence and that he had completed various forms and had attended a course at [...]. He stated that at the course he was informed that it was unacceptable to take drugs or alcohol prior to competition. This course took place a couple of days before the first race in which Mr. IS-1523 competed. Mr. IS-1523 contended that no penalty should be imposed upon him in respect of the adverse analytical result. While he did not have any familiarity with the detail of the Rules, it appeared to the Panel that Mr. IS-1523 was seeking to make a case under Article 10.4 of the Rules that there should be no period of ineligibility on the grounds that he bore “*no fault or negligence*” in connection with the violation (Article 10.4.1) or, alternatively, that the period of ineligibility which would otherwise be applicable should be reduced on the grounds that he bore “*no significant fault or negligence*” (under Article 10.4.2).
29. Mr. IS-1523 was cross-examined by Mr. Quigley on behalf of MSI. It was put to him that as part of the starter pack furnished to him by the MSI prior to applying for his competition licence he should have received a wallet card prepared by the Irish Sports Council entitled “Brief Guide to Medicines in Sport” as well as the yearbook of MSI which in turn incorporated the Rules as amended from time to time. Mr. IS-1523 stated

that he had not received the wallet card. It was accepted on behalf of MSI that it was possible that the wallet card may not have been included in what was sent to Mr. IS-1523 at that time. It was also put to Mr. IS-1523 that the general approach of MSI to doping matters was covered in outline during the introductory course attended by Mr. IS-1523 before he obtained his licence. Mr. IS-1523 did not dispute this.

### **(c) Submission on 2 November 2010**

30. In submissions following Mr. IS-1523 evidence, Mr. Quigley described the case as being a "*slightly unfortunate case*" in light of the fact that Mr. IS-1523 was a new licence-holder. He drew attention to the fact that Mr. IS-1523 did honestly answer the questions asked of him on the Doping Control Form. It was also submitted that the Prohibited Substance found in his sample (boldenone) would not have given Mr. IS-1523 any competitive advantage in motor sport and that, if anything, it would have had the opposite effect as it would tend to increase his weight which would be a disadvantage in that sport. He further stated that MSI had "*some sympathy*" with the submission that Mr. IS-1523 did not bear "*significant fault or negligence*" as he had taken the drugs some months before he had obtained his licence. It was submitted that that was a factor which should be taken into account by the Panel. In those circumstances, it was submitted that the period of ineligibility should be less than the full two year period provided for in Article 10.1. However, the MSI was not arguing for anything less than one year.

### **(d) The Panel's Concerns**

31. Having considered the evidence and the submissions made on behalf of Mr. IS-1523 and on behalf of MSI, the Panel formed the view that it was not in a position to conclude the hearing and give its decision on the basis of the evidence adduced at that point. The Panel was concerned that it did not have available to it all relevant information. Furthermore, the Panel felt that it would be appropriate to receive further assistance

from the Irish Sports Council. It formed this view as, to the best of its knowledge, this was the first rule violation to come before it involving an exogenous anabolic steroid. The Panel formed the view that the violation involved was particularly serious and wished to be as fully informed as possible before reaching its decision.

32. The Panel did not have available to it all the relevant documentation and material from MSI. In particular, the Panel did not have a copy of the starter pack and other relevant documentation concerning the application for and the granting of the competition licence to Mr. IS-1523. A copy of Mr. IS-1523 application form was produced during the hearing. However, the information provided was incomplete and did not include, for example, the starter pack and the further material sent to Mr. IS-1523 when his competition licence was granted.
33. In addition, while the Irish Sports Council attended the hearing as an observer, it was not in a position to assist the Panel or contribute to issues arising at the hearing. Having regard to the anabolic steroids involved and to the reliance by Mr. IS-1523 on the provisions of Article 10.4 of the Rules to eliminate or reduce the period of ineligibility which would otherwise be applicable, the Panel was anxious to ascertain the position of the Irish Sports Council and to obtain guidance and assistance on the relevant case law from the Court of Arbitration for Sport (CAS) and other comparable anti-doping tribunals around the world. The Panel was concerned to ensure that it was as fully informed as possible in relation to the correct interpretation and application of Article 10.4 of the Rules.

#### **(e) The Panel's Directions**

34. In those circumstances, the Panel gave directions to MSI to produce the further materials referred to and to the Irish Sports Council to provide a submission on the correct interpretation of Article 10.4 and how it saw that provision applying to the facts of this case. The Panel directed that

this outstanding material and the submissions be furnished within a tight time limit and indicated that, if possible, it would review and consider the material and provide its decision without the need for a further hearing. Alternatively, if a further hearing was required, the Panel indicated that it would seek to convene that hearing as soon as possible.

#### **F. Further Material Furnished At The Hearing on 2 November 2010**

35. The MSI provided all of the information requested within the time limit directed. It will be necessary to comment on some of this material later in this Decision. The Irish Sports Council submitted an extremely detailed and helpful submission by letter dated 12 November 2010. In that letter, the Council further indicated that it wished to exercise its right to become a party to the case pursuant to Article 8.3.6 of the Rules.
36. Having considered the additional materials provided, the Panel formed the view that it would not be possible to decide the case without re-convening the hearing and hearing further evidence and submissions. Accordingly, the hearing was re-convened for 23 November 2010.

#### **G. Reconvened Hearing on 23 November 2010**

##### **(a) Ruling on Procedural Issues**

37. At the resumed hearing on 23 November 2010, Gary Rice of Beauchamps Solicitors appeared on behalf of the Irish Sports Council which was by then a party to the proceedings (having exercised its right in that regard under Article 8.3.6 of the Rules). The Panel ruled that Mr. IS-1523 should be permitted to resume his evidence and to comment upon the additional materials furnished by the MSI and by the Irish Sports Council. The Panel further ruled that Mr. Rice should then be given an opportunity of cross-examining Mr. IS-1523 in relation to the evidence which he gave at the previous hearing on 2 November 2010 and in relation to any further evidence being given at the hearing on 23

November 2010. Mr. Quigley on behalf of the MSI was then to be given an opportunity to further cross-examine Mr. IS-1523 in relation to Mr. IS-1523 additional evidence. The Irish Sports Council was then to be afforded an opportunity to make its submissions followed by any further submissions which Mr. Quigley wished to make on behalf of MSI. Mr. IS-1523 was then to be afforded an opportunity of making any further submissions in response.

**(b) Further Evidence of Mr. IS-1523**

38. Mr. IS-1523 resumed his evidence. He indicated that he did not wish to add anything to what he had said on the previous occasion. He was then cross-examined by Mr. Rice on behalf of the Irish Sports Council. It was put to Mr. IS-1523 that his evidence was that he had injected himself with the anabolic steroids identified on the previous occasion as Sustanon and Deca. However, it was noted that the Prohibited Substance found in his sample was boldenone and that neither Sustanon nor Deca contains boldenone. Sustanon contained testosterone and Deca contains nandrolone, both exogenous anabolic androgenic steroids also falling within Class S1.1 of the Prohibited List. It was put to him that neither of those products contains boldenone. Mr. IS-1523 did not dispute that contention but reiterated that the two drugs he had taken were Sustanon and Deca, both anabolic steroids, and having admitted taking those steroids, there was no reason why he would not admit using any other substance, if he had in fact done so. Mr. IS-1523 evidence was that if boldenone was not present in Sustanon or Deca, then he was not in a position to explain how the boldenone came to be in his system. He confirmed that he did not have and had not retained any of the packages or other material in respect of the drugs he had taken. Nor could he recall precisely when he had injected the products apart from the fact that it was "*about seven months*" before the resumed hearing before the Panel. Mr. IS-1523 stated that apart from Sustanon and Deca he had not taken any other substances apart from protein shakes

comprising wheat protein which he had purchased "*over the counter*". When asked by Mr. Rice where he had sourced the steroids which he had taken, he stated that he had informed the Panel at the previous hearing that he had obtained them in his gym. However, he refused to identify the person from whom he had obtained the drugs. When asked to identify that person he stated:

*"Well the guy I got that from I haven't seen in a long time".*

39. Mr. IS-1523 was then asked whether he was in a position to provide assistance to the Irish Sports Council which might amount to "*substantial assistance*" for the purpose of the Rules which might enable the Irish Sports Council, Gardai or a professional disciplinary body to pursue others in relation to anti-doping rule violations, criminal offences or breach of professional rules, Mr. IS-1523 declined to provide any further information or assistance. While he was under no obligation to do so, the provision of "*substantial assistance*" may have provided a basis for the suspension of part of any period of ineligibility imposed upon him. However, Mr. IS-1523 stated that he had "*no information at all*" and that he had "*no further information to give*". In those circumstances, Mr. IS-1523 did not identify the gym, the person from whom he purchased the drugs, the precise date or dates on which the drugs were purchased or any other information in relation to their purchase and use. Mr. IS-1523 was also unable to explain how boldenone came to be found in his sample in circumstances where the two drugs which he stated he had taken, Sustanon and Deca, do not contain boldenone but do contain other prohibited exogenous anabolic steroids, testosterone and nandrolone.
40. The Panel also explored with Mr. IS-1523 the content of the material which he had received from MSI in the process leading up to the granting of his competition licence. The Panel felt this material was important to assess the extent of anti-doping awareness on the part of those applying

for and obtaining a competition licence from MSI. Mr. IS-1523 completed an application form for a competition licence which he signed on [...] 2010. Section 2 of the form contained an undertaking on Mr. IS-1523 part, if registered, *"to submit to and be bound by ... the Irish Anti-Doping Rules and any regulations supplementary thereto as may be imposed from time to time by Motor Sport Ireland"*. As part of his application, Mr. IS-1523 was also required to sign a Medical Declaration. At paragraph 2(g) of the Medical Declaration, Mr. IS-1523 was asked *"Do you take, or have you ever taken such drugs as opium, morphia, cocaine, heroin, cannabis etc ?"* Mr. IS-1523 answered that question *"No"*. Also as part of the application form Mr. IS-1523 was required to provide a Doctor's Certificate. This Certificate was provided by Mr. IS-1523 general practitioner, Dr. [...]. The Certificate was essentially directed to issues relevant to the overall health of the applicant for the licence and does not address the issue of any drugs which the applicant may be taking or may have taken.

41. Enclosed with the starter pack furnished to Mr. IS-1523 prior to applying for his competition licence was a CD containing the current MSI Yearbook. This included reference (at Part XX) to anti-doping and alcohol testing. Paragraph 1 of Part XX expressly states that the anti-doping rules of MSI for national events are the Irish Anti-Doping Rules as amended from time to time. The MSI normally include a wallet card provided by the Irish Sports Council entitled *"Brief Guide to Medicines in Sport"* in its starter pack. However, Mr. IS-1523 stated that he did not receive the wallet card. The MSI was not in a position to establish that the wallet card was included in the material sent to Mr. IS-1523. It would normally be included but it appears that there was a shortage of wallet cards during 2010 and MSI accepted that a copy may not have been included in the starter pack provided to Mr. IS-1523. The wallet card makes specific reference to the Prohibited List and to Prohibited Substances including anabolic agents such as nandrolone and



testosterone as well as hormone antagonists and modulators. As indicated earlier, Mr. IS-1523 gave evidence of attending a course at [...] at which there was a discussion about anti-doping matters.

42. When he received his licence on [...] 2010, Mr. IS-1523 was provided with further material which included a document dated 18 February 2008 entitled "*Notes on Anti-Doping for Competitors*" which was prepared by Dr. Frank O'Donoghue, MSI's Anti-Doping Officer. The document sought to provide an "*overview*" of the relevant anti-doping rules and noted that the full text of the Rules could be obtained from the Irish Sports Council. The Panel's view is that this is an extremely useful document which addresses in simple and straightforward language the requirement on the part of MSI and its members and competitors to comply with the Rules, to avoid the accidental taking of banned substances and the use of recreational drugs as well as the risks associated with the taking of alcohol prior to competitions. The Notes draw attention to the fact that the Irish Sports Council strongly advises all competitors to avoid taking food supplements, complementary medicines or herbal remedies on the basis that "*up to 20% of such substances contain steroids*". In the context of recreational drugs, the document points out that the list of banned substances includes illegal drugs such as cannabis, amphetamines and heroin and also draws attention to the fact that some of those substances could be detected in the body for a long time after they are taken. The document further notes that competitors have a responsibility to familiarise themselves with the relevant anti-doping rules and if they are in any doubt they should contact Dr. O'Donoghue, MSI's Anti-Doping Officer. While reference is made in the document to the fact that many food supplements, complementary medicines and herbal remedies contain steroids and it also refers to banned substances including cannabis and heroin, the Panel feels that it might be helpful if express reference was

made to other Prohibited Substances such as the anabolic steroids at issue in the present case. However, as we indicate at the end of our Decision, we feel that it is a matter for the Irish Sports Council and MSI to consult in relation to the content of the applicant's declaration and the notes on anti-doping for competitors both of which might be improved to make express reference to anabolic steroids. However, on the facts of this case, there seems little doubt but that Mr. IS-1523 was aware, at least in general terms, that the taking of drugs was not permitted. He accepted that he was told this at the course which he undertook in [...] prior to obtaining his licence.

### **(c) Submissions by Irish Sports Council**

43. Mr. Rice then made submissions on behalf of the Irish Sports Council. Detailed written submissions had already been furnished on behalf of the Council. Mr. Rice summarised those submissions and highlighted the essential parts of them. He submitted that, in light of the ruling made earlier by the Panel, the only possible means by which Mr. IS-1523 could avoid the imposition of a two year period of ineligibility was if he could satisfy the provisions of Article 10.4.2 of the Rules and establish that he bore "*no significant fault or negligence*" in connection with the violation. However, Mr. Rice submitted that Mr. IS-1523 could not bring himself within that provision.
44. Mr. Rice first submitted that in order to bring himself within Article 10.4.2, Mr. IS-1523 was required to discharge the threshold obligation of establishing how the Prohibited Substance, boldenone, entered his system. He submitted that Mr. IS-1523 had failed to establish this threshold requirement and that neither substance which Mr. IS-1523 admitted self-injecting, namely, Deca and Sustanon, contains boldenone. Therefore, he argued that there was no evidence before the Panel to establish how the boldenone entered Mr. IS-1523 system. In the circumstances, Mr. Rice submitted that Mr. IS-1523 had failed to bring

himself within Article 10.4.2 and there was no basis on which the Panel could or should reduce the otherwise applicable period of ineligibility.

45. Without prejudice to that fundamental submission, Mr. Rice went on to argue forcefully that even if Mr. IS-1523 could establish how the boldenone entered his system, nonetheless, he could not establish that he bore "*no significant fault or negligence*" in connection with the violation. He submitted that the violation in question was having the Prohibited Substance (an exogenous anabolic steroid) which he described as a "*hard core prohibited substance*" in his body at the time of testing and that the date on which he self-injected and the knowledge of Mr. IS-1523 at the time he self-injected and at the time he was tested some months later were irrelevant. Mr. Rice stressed that the Irish Sports Council could find no case in which an athlete who injected himself with an anabolic steroid was able to persuade CAS or any other anti-doping tribunal that he bore "*no significant fault or negligence*" in connection with the violation. He stressed that in order for an athlete to bring himself or herself within Article 10.4.2, it had to be established that the circumstances were "*truly exceptional*" and that such circumstances were not present in this case.
46. In the written submissions furnished on its behalf, the Irish Sports Council drew attention to a series of cases in which the "*no significant fault or negligence*" test was found by CAS and other anti-doping tribunals to have been satisfied and to a further series of cases in which the test was found not to have been satisfied. None of those cases involved the injection or use of exogenous anabolic steroids. Mr. Rice concluded his submission by contending that it would be a "*travesty of the 'no significant fault and negligence' provisions to find that test satisfied in the present case*". In those circumstances, Mr. Rice submitted that there was no basis on which the Panel could or should reduce the period of ineligibility for two years which would otherwise be applicable.

47.

Mr. Rice did accept that it may be open to Mr. IS-1523 to rely on the provisions of Article 10.7.2 of the Rules and for the Panel to conclude that Mr. IS-1523 had made a "*timely admission*" of his violation so that the Panel could then commence the period of ineligibility at a date earlier than the date of its decision. It was accepted that Mr. IS-1523 first admitted the violation, in the sense of having taken anabolic steroids, in a telephone conversation with Dr. Una May in early September 2010. The date of that conversation was subsequently confirmed as 2 September 2010. It was accepted, therefore, by the Irish Sports Council that the period of ineligibility could start on that date.

48.

**(d) Further Submissions by MSI**

Having heard the additional evidence and submissions, a further submission was made by Mr. Quigley on behalf of MSI. MSI accepted that Mr. IS-1523 had failed to produce evidence as to how the boldenone entered his system. Furthermore, while making the point that there would have been no obvious competitive advantage for Mr. IS-1523 taking anabolic steroids in motor racing, he accepted that the common effects of the use of steroids, such as aggression, would undoubtedly be a negative factor in motor racing.

**(e) Mr. IS-1523 Response**

49. Mr. IS-1523 was given an opportunity of responding to the submissions made on behalf of the Irish Sports Council and on behalf of MSI. However, he had nothing further to add.

**(f) Conclusion**

50. The Panel reserved its decision for further consideration. Having considered all of the evidence and the submissions made on behalf of the parties, the Panel was in a position to communicate its decision to the parties on 4 December 2010. The Panel now gives its reasons for its Decision.

## **H. THE DECISION**

### **(a) Anti-Doping Rule Violation**

51. At the hearing on 2 November 2010, the Panel ruled that Mr. IS-1523 was deemed to have admitted an anti-doping rule violation contrary to Article 2.1 of the Rules by virtue of the presence of a Prohibited Substance, boldenone, in the sample of urine taken from him during the competition at [...] on [...] 2010. In light of the deemed admitted violation, the function of the Panel is limited. Its function is to determine the appropriate consequences or sanctions in respect of the violation.
  
52. Article 2.1 of the Rules specifies as a violation the presence of a Prohibited Substance or its Metabolites or Markers in an athlete's sample. As stated in Article 2.1.1 of the Rules, it is each athlete's personal duty to ensure that no Prohibited Substance enters his body and that an athlete is responsible for any Prohibited Substance or any of its Metabolites or Markers found to be present in his sample. Furthermore, Article 2.1.1 makes it clear that it is not necessary to demonstrate any intent, fault, negligence or knowing use on the athlete's part in order to establish an anti-doping rule violation under Article 2.1. Nor is the intent, fault, negligence or knowledge on the part of an athlete a valid defence to an allegation that an anti-doping rule violation has been committed under Article 2.1.1. The detected presence of boldenone in Mr. IS-1523 sample and the failure by Mr. IS-1523 to respond to the correspondence sent to him by the Irish Sports Council on 30 August 2010 (notwithstanding his telephone conversation with Dr. May on 2 September 2010) clearly establishes that an anti-doping rule violation has been committed by Mr. IS-1523 under Article 2.1.

## **(b) Consequences / Sanctions**

53. Article 10.1 of the Rules provides for the period of ineligibility which must be imposed in respect of a first violation of Article 2.1. Article 10.1 provides that the period of ineligibility to be imposed for such a first violation of Article 2 shall be *"two years' ineligibility unless the conditions for eliminating or reducing the period of ineligibility as provided for in Articles 10.3 and 10.4 of the Rules, or the conditions for increasing the period of ineligibility, as provided for in Article 10.5, are met"*.
54. The Panel ruled on 2 November 2010 that since Mr. IS-1523 was deemed to have admitted a violation in respect of a Prohibited Substance which was not a Specified Substance in the Prohibited List, it was not open to him to seek to eliminate or reduce the period of ineligibility under Article 10.3. The Panel was further of the view that it was not open to Mr. IS-1523 to establish that the period of ineligibility should be eliminated under Article 10.4.1 as, on the facts, it could not be said that Mr. IS-1523 bore *"no fault or negligence"* of the violation as that term is defined in Appendix 1 of the Rules. The term *"no fault or negligence"* is defined as follows:
- "The Athlete's establishing that he or she did not know or suspect, and could not reasonably have known or suspected, even with the exercise of utmost caution, that he or she had Used or been administered the Prohibited Substance or Prohibited Method."*
55. The Panel was quite satisfied on the basis of the evidence given by Mr. IS-1523 on 2 November 2010 that he had no prospect of establishing that he did not know or suspect or could not reasonably have known or suspected that he had used the Prohibited Substance in circumstances where he admitted that he had injected himself with anabolic steroids some months previously.

56. The Panel considered that the only possible case which Mr. IS-1523 could seek to make was under Article 10.4.2 which, if successful, could have led to a reduction in the period of ineligibility which the Panel was otherwise obliged to impose in respect of his violation. The Panel was anxious to afford Mr. IS-1523 the opportunity of making that case, if he so wished, and the Irish Sports Council the opportunity to put before the Panel the relevant decisions of CAS and other anti-doping tribunals on this issue.
57. The Panel had the opportunity of considering the further evidence of Mr. IS-1523 and the detailed submissions of the Irish Sports Council at its resumed hearing on 23 November 2010. The Panel is quite satisfied and so rules that Mr. IS-1523 has failed to establish the conditions necessary to bring himself within Article 10.4.2 for the reasons set out below.
58. Article 10.4.2 provides as follows:

**"10.4.2. No significant fault or negligence**

*If a Participant establishes in an individual case that he or she bears No Significant Fault or Negligence, then the otherwise applicable period of Ineligibility may be reduced, but the reduced period of ineligibility may not be less than one-half of the period of Ineligibility otherwise applicable. If the otherwise applicable period of Ineligibility is a lifetime, the reduced period under this Article may be no less than eight (8) years. When a Prohibited Substance or its Markers or Metabolites is detected in an Athlete's Sample in violation of Article 2.1, the Athlete must also establish how the Prohibited Substance entered his or her system in order to have the period of Ineligibility reduced."*

59. Some guidance as to the circumstances in which Article 10.4.2 might be satisfied in a particular case was provided by WADA in its comments concerning Article 10.5 of the WADA Code (which is identical to Article 10.4.2 of the Rules). WADA made it clear in those comments that Article 10.5 *"is meant to have an impact only in cases where the circumstances are truly exceptional and not in the vast majority of cases"*.<sup>1</sup>
60. WADA's comments on the Code then set out some examples of where an athlete might be able to establish *"no fault or negligence"* or *"no significant fault or negligence"*. None of the examples given is remotely similar to the circumstances which arose in this case where Mr. IS-1523 injected himself with anabolic steroids as part of a weight training programme. On no basis could it be said that the circumstances of this case are *"truly exceptional"* so as to merit an elimination or reduction in the period of ineligibility otherwise applicable. The Panel accepts the submission made by the Irish Sports Council that in order for an athlete to be in a position to avail of the provisions of Article 10.4.2 and to seek to reduce the period of ineligibility which would otherwise be applicable in the case of a violation, the athlete must establish how the Prohibited Substance entered his or her system. If the athlete cannot establish that he or she will not be in a position to have the period of ineligibility reduced.
61. In this case Mr. IS-1523 admitted (as early as his telephone conversation with Dr. May on 2 September 2010) that he took anabolic steroids some months prior to the competition at [...] on [...] 2010. In his letter to the Panel of 9 October 2010, Mr. IS-1523 again explained that he had taken steroids while he was an active member of a gym. In his evidence to the Panel on 2 November 2010, Mr. IS-1523 identified the steroids which he self injected as Deca and Sustanon. Deca is the compound nandrolone decanoate, an anabolic steroid. It is synonymous with nandrolone, one of the anabolic androgenic steroids contained in

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<sup>1</sup> WADA Code Comments to Articles 10.5.1 and 10.5.2, page 56.



Class S1 (Anabolic Agents) of the Prohibited List. Sustanon is an exogenous testosterone injectable steroid which also falls within Class S1 (Anabolic Agents) of the Prohibited List. The case made by the Irish Sports Council was that neither Deca nor Sustanon contains boldenone so the taking of these steroids could not explain the presence of that drug in his system. Mr. IS-1523 did not dispute the fact that neither steroid contains boldenone but asserts that the only steroids he had taken were Deca and Sustanon.

62. The Panel accepts that neither Deca nor Sustanon contains boldenone. Therefore, it must either be the case that Mr. IS-1523 took what he believed to be Deca and Sustanon one or both of which was adulterated with a further anabolic steroid, boldenone, or, alternatively, that he took another anabolic steroid apart from Deca and Sustanon which contained boldenone. The Panel is not in a position to resolve that issue. However, it matters not. Article 10.4.2 places the burden on the athlete to establish how the Prohibited Substance entered his system. Having regard to the provisions of Article 8.4.3 of the Rules, the standard by which Mr. IS-1523 was required to establish how the boldenone entered his system was on the balance of probability. Since neither Deca nor Sustanon contains boldenone, Mr. IS-1523 has adduced no evidence to establish how the boldenone entered his system. The Panel finds, therefore, that Mr. IS-1523 has failed to discharge the burden of the balance of probabilities of establishing how the boldenone entered his system. In those circumstances, Mr. IS-1523 has failed to satisfy, what the Panel believes to be the necessary pre-condition for the application of Article 10.4.2, namely, the establishment of how the Prohibited Substance came to enter his system. In those circumstances, the Panel finds that Mr. IS-1523 was not entitled to rely on the provisions of Article 10.4.2.
63. While that would be sufficient to dispose of the issue, in deference to the detailed submissions advanced on the issue by the Irish Sports

Council and having regard to the seriousness of the issue, the Panel believes that it would be appropriate to comment further on the attempted reliance by Mr. IS-1523 on the provisions of Article 10.4.2 on the facts of this case.

64. It was pointed out by the Irish Sports Council in its written and oral submissions to the Panel that despite an extensive trawl of the case law of CAS and other anti-doping tribunals around the world, no case law could be found which deals with the potential application of the "*no significant fault or negligence*" defence in Article 10.4.2 of the Rules in the case of an athlete who deliberately injects himself with anabolic steroids. Still less, a case in which an athlete does so prior to the date on which he becomes a participant in a sport subject to the anti-doping rules of a sporting organisation.
65. It is not surprising that no such case law exists. It is difficult to see how an athlete could ever bring himself or herself within the "*no significant fault or negligence*" defence having regard to the limited availability of that defence to circumstances which are "*truly exceptional*". It is difficult to see how an athlete could ever establish that the facts of his or her case were so "*truly exceptional*" that the deliberate injection of an anabolic steroid could be said to satisfy the test of "*no significant fault or negligence*".
66. That phrase is defined in Appendix 1 of the Rules as:

***"No significant fault or negligence***

*The Athlete's establishing that his or 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 relation to the anti-doping rule violation."*

67. Again, the burden of proof rests on the athlete to establish the evidence necessary to satisfy this definition. The athlete must establish that his or

her fault or negligence "*when viewed in the totality of the circumstances and taking into account the criteria for No Fault or Negligence*" (defined earlier) was "*not significant in relation to the anti-doping rule violation*".

68. It is necessary to take each of these elements in sequence. First of all it is clear that in this case Mr. IS-1523 was at fault and was negligent in deliberately self-injecting himself with anabolic steroids. He was also at fault and negligent in failing to disclose the fact that he had done so when applying for his competition licence to MSI, notwithstanding the fact that there was no express question or query to that effect in the application form for the competition licence. The Panel stresses again the personal duty on the athlete to ensure that no Prohibited Substance enters his or her body and personal responsibility of the athlete for any such substance that does. This duty and responsibility is not diminished by the absence of an express question or query directed to this issue.
69. Moreover, the Panel believes that Mr. IS-1523 was also at fault and negligent in failing to disclose that he had taken anabolic steroids when providing the information requested in the Doping Control Form when he was tested on [...] 2010. Despite the fact that the specific question was directed to medications taken within the previous fourteen days, Mr. IS-1523 must have known that he had taken anabolic steroids some two to three months previously and ought to have disclosed that fact to the Doping Control Officers despite the fact that the question was not specifically asked on the Doping Control Form.
70. The Panel is further of the view that whether looking at the fault or negligence of Mr. IS-1523 on any of those occasions in isolation or looked at "*in the totality of the circumstances*" his fault and/or negligence was significant. It is hard to imagine how that fault or negligence could have been more significant than it was in this case. Mr. IS-1523 well knew that he had injected himself with anabolic steroids and this fact was particularly significant in relation to and in the context of the anti-doping

rule violation committed by him. The Panel accepts the submission by the Irish Sports Council that it matters not whether anabolic steroids could be said to enhance the sporting performance of an athlete in the context of motor racing. They are harmful substances and clearly adversely affected Mr. IS-1523 on his own evidence. Furthermore, anabolic steroids are placed on the Prohibited List by WADA because their use represents an actual or potential health risk to the athlete and violates the spirit of sport. The Panel fully accepts that the use of anabolic steroids qualifies as a health risk to an athlete and violates the spirit of sport. The fact that they may not have been performance enhancing is, in the view of the Panel, irrelevant. Indeed, their effect on an athlete participating in motor sport could be detrimental to the performance of the athlete in causing him or her to be unduly or excessively aggressive (a fact accepted by Mr. Quigley on behalf of MSI).

71. The Panel has had the opportunity of considering all of the cases helpfully set out by the Irish Sports Council in its detailed written submission where CAS and other anti-doping disciplinary tribunals found that the defence of "*no significant fault or negligence*" was satisfied and those cases in which the relevant tribunals found the test not to be satisfied. The cases in which the test was satisfied are radically different from the present case. They all involve accidental ingestion or use of a Prohibited Substance notwithstanding the exercise of utmost caution by the athlete concerned. They are all "*truly exceptional*" cases. Similarly, the cases in which the defence "*no significant fault or negligence*" was argued unsuccessfully are also very different from the present case. None involve the self injection of anabolic steroids. The Panel finds it very difficult to see how the defence of "*no significant fault or negligence*" could be satisfied in any case involving the self injection of anabolic steroids. However, that is not an issue which the Panel has to decide in any hypothetical sense. It has to decide the present case on the facts before it. The Panel is satisfied in the present case that Mr.

IS-1523 has failed to establish that there was "*no significant fault or negligence*" on his part in injecting himself with the anabolic steroids, in applying for the competition licence without disclosing that fact and in failing to disclose the fact at the time of testing. In those circumstances, even if Mr. IS-1523 had been in a position to establish to the satisfaction of the Panel how the boldenone came to enter his system, he would not have persuaded the Panel that the defence of "*no significant fault or negligence*" applied in this case.

72. In those circumstances, since Mr. IS-1523 has failed to persuade the Panel that the defence of "*no significant fault or negligence*" in Article 10.4.2 applies and since no other provision for the elimination or reduction of the period of ineligibility is open to him, the Panel is compelled to impose a mandatory period of two years of ineligibility for his first violation of Article 2.1 of the Rules.

### **(c) Date Ineligibility Commences**

73. The next issue is to determine the date from which the period of ineligibility should run. Under Article 10.7.3 of the Rules, Mr. IS-1523 is entitled to receive credit for any period of provisional suspension imposed upon him. Mr. IS-1523 was provisionally suspended by the MSI on 22 September 2010. He would be entitled to receive a credit in respect of that period of provisional suspension if the period of ineligibility were found to commence after that date. However, under Article 10.7.2 of the Rules, it is open to the Panel to direct that the period of ineligibility should commence on a date earlier than the decision providing for ineligibility. In fact, Article 10.7.2 provides that the Panel can direct that the period of ineligibility should commence "*as early as the date on which the anti-doping rule violation last occurred*" where the athlete "*promptly*" admits the violation.
74. It was accepted by the Irish Sports Council at the hearing on 23 November 2010 that it would be open to the Panel to direct the period

of ineligibility to commence on the date on which Mr. IS-1523 informed Dr. May by telephone that he had used anabolic steroids some months previously. The Panel was subsequently notified that the date of that conversation was 2 September 2010. The Irish Sports Council accepts that in those circumstances Mr. IS-1523 is entitled to avail of the "*timely admission*" provisions in Article 10.7.2 and that it would be open to the Panel to direct that his period of ineligibility should commence as of that date. In light of that concession, and notwithstanding the fact that the evidence as to how the Prohibited Substance, boldenone, came to be in Mr. IS-1523 system is unsatisfactory, the Panel agrees that the period of ineligibility should commence on 2 September 2010 having regard to the provisions of Article 10.7.2 of the Rules. Mr. IS-1523 will, therefore, be ineligible and barred for a period of 2 years from 2 September 2010 from participating in any competition or other activity or funding as provided for in Article 10.8 of the Rules.

#### **(d) Disqualification of Results**

75. Under Article 10.9 of the Rules, an anti-doping rule violation committed in connection with or arising out of an in-competition test automatically leads to disqualification of the individual results obtained by the athlete in that competition with all resulting consequences including the forfeiture of any medals, titles, points and prizes. Therefore, all or any individual results obtained by Mr. IS-1523 in the competition on [...] 2010 are automatically disqualified and all or any medals, titles, points and prizes won by him are automatically forfeited.

#### **(e) Concluding Remarks**

76. Finally, the Panel did give some consideration as to whether the application form for a competition licence and the other literature furnished to licence holders and applicants for such licences by MSI should be amended so as to make specific reference to anabolic steroids. Although the Panel sees considerable merit in this, it is of the

view that it is more appropriate for the Irish Sports Council to liaise with MSI to see how best the documentation can be amended and improved so as to make clear the use and presence of anabolic steroids in motor sport (irrespective of when they were used or taken) is totally unacceptable and prohibited.

77. Finally, the Panel again wishes to thank its Secretary, Ms. June Menton, for her hard work and assistance in relation to these proceedings.
78. The Panel would also like to thank the parties and participants in the proceedings for their assistance.

Dated the 8<sup>th</sup> day of December 2010

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SIGNED ON BEHALF OF THE PANEL BY

DAVID BARNIVILLE S.C.

CHAIRMAN