

IRISH SPORT ANTI-DOPING APPEAL PANEL

REASONED DECISION

IN RELATION TO

APPEAL BY MR IS-1501

DATED 15 MAY 2012

(A) INTRODUCTION

1. This is an appeal by [...] ("Mr IS-1501") against the decision of the Irish Sport Anti-Doping Disciplinary Panel (the "**Disciplinary Panel**") in the matter of *Irish Amateur Boxing Association v IS-1501*.
2. Mr IS-1501's case and a related case against his coach and brother IS-1502 were heard on 2 April 2012 (the "**Hearing**"). The Disciplinary Panel gave their decision and details of related sanctions and consequences in writing on 3 April 2012, and delivered a detailed reasoned written decision on 8 May 2012 (the "**Disciplinary Panel's Decision**").
3. The Disciplinary Panel decided that Mr IS-1501 admitted or was deemed to have admitted a violation of Article 2.1 of the Irish Anti Doping Rules (the "**Rules**")¹.
4. Article 10.1 of the Rules provides a sanction of two years Ineligibility for a first violation of Article 2.1 unless the conditions for eliminating or reducing the period of Ineligibility, as provided for in Articles 10.3 and 10.4, are met. The Disciplinary Panel held that Mr IS-1501 had satisfied the provisions of Article 10.3 of the Rules² and the period of Ineligibility for Mr IS-1501's violation should be reduced to nine (9) months³.
5. Taking into account the period of Mr IS-1501's provisional suspension the Disciplinary Panel decided the period of Ineligibility should run from 19 December 2011 to 18 September 2012⁴. In fact Mr IS-1501's provisional suspension commenced on 9 December 2011⁵.
6. Mr IS-1501's Rule violation arising from his In-Competition test on [...] 2011 led to an automatic disqualification of his results in the competition under Article 9.1. The Disciplinary Panel held that fairness required all results obtained by Mr IS-1501 in any competition taking place after the date of his sample up to the date of commencement of his provisional suspension should be disqualified under Article 9.3⁶.
7. [...] solicitors sent a Notice of Appeal on Mr IS-1501's behalf dated 17 April 2012 ("**Notice of Appeal**") to the Chair of the Irish Sport

¹ Disciplinary Panel's Decision, Paragraph 35.

² Disciplinary Panel's Decision, Paragraph 81.

³ Disciplinary Panel's Decision, Paragraph 93.

⁴ Disciplinary Panel's Decision, Paragraphs 94 and 95.

⁵ See letter dated 9 December 2011 from IABA to Mr IS-1501.

⁶ Disciplinary Panel's Decision, Paragraph 96.

Anti-Doping Disciplinary Panel (Mr Michael Collins SC)⁷. As required under the Rules, the Chair appointed three members of that panel to decide the appeal, being Ms Helen Kilroy, Mr Warren Deutrom and Dr Martin Walsh⁸.

8. The Appeal was heard on 10 May 2012. Mr IS-1501 had no legal representation but was accompanied by his two brothers, IS-1502 and , and his father [...]. The Irish Amateur Boxing Association (IABA) was represented by Mr Edward Farrelly BL, Ms Jessica Goldrick, McMahon Solicitors, Billy Walsh and Don Stewart of the IABA. Ms Siobhan Leonard of the Irish Sports Council attended in an observing capacity and the Secretary to the Appeal Panel Ms Nicola Carroll BL attended.

(B) FACTUAL BACKGROUND

9. The factual background to the case is set out in some detail in paragraphs 7 to 27 of the Disciplinary Panel's Decision and is not in dispute. In brief, for the purpose of this Appeal, it can be summarised as follows.
10. Mr IS-1501 is an eighteen year old boxer. On 9 December 2011 (when he was 17 years old) he was charged with an alleged anti-doping violation under Article 2.1 of the Rules due to the presence of a Prohibited Substance in a urine sample given by him on [...] 2011.
11. Mr IS-1501's sample contained Furosemide. Article 3.1.1 of the Rules adopts and incorporates the World Anti-Doping Agency International Standard for the Prohibited List (the "**Prohibited List**") as amended from time to time. Furosemide is listed on the Prohibited List 2011 and 2012 as being prohibited In-Competition under category S5: Diuretics. Furosemide is a Specified Substance for the purpose of the Rules as the World Anti-Doping Agency (WADA) considers it to be a substance which could be susceptible to a credible non-doping explanation.
12. Mr IS-1501 was informed of the results of the doping test by the Irish Sports Council on 18 November 2011. On that day his brother IS-1502 telephoned the Irish Sports Council and explained the circumstances in which Mr IS-1501 had taken Furosemide. IS-1502 gave him one 20mg tablet of medication, which had been prescribed for his mother [...] a year before, to reduce swelling in his leg caused by injury. Mr IS-1501 took it without realising what it contained and it reduced the swelling.
13. The circumstances in which Mr IS-1501 took the medication were confirmed by Dr [...] , of [...] , in a Therapeutic Use Exemption ("**TUE**") application form on 2 December 2011 and a handwritten letter of that date. Dr [...] also provided the Irish Sports Council with a copy of the prescription for [...] dated [...] 2010.
14. There followed an exchange between Mr IS-1501 , solicitors representing him and the Irish Sports Council about the Rule violation and his TUE application, which was unsuccessful. The IABA, as the relevant National Governing Body, then imposed a provisional suspension on Mr IS-1501 pursuant to Rule 7.6 of the Rules on 9 December 2011. Mr IS-1501 admitted taking the specified substance by solicitors' letter dated 21 December 2011 and appealed the provisional suspension on the basis of fairness, (his solicitors argued he bore little or no fault

⁷ Pursuant to Article 13.4.1 of the Rules.

⁸ Pursuant to Article 13.4.3 of the Rules.

for the ingestion). His appeal was unsuccessful.

15. At the Disciplinary Hearing on 2 April 2012 Mr IS-1501 had no legal representation but was accompanied by his brother and coach, IS-1502 and his father [...]. The IABA was represented by Mr Edward Farrelly BL, Ms Jessica Goldrick, McMahon Goldrick Solicitors and Don Stewart of the IABA. The Irish Sports Council was represented by Gary Rice, Beauchamps Solicitors and Una May and the Secretary to the Disciplinary Panel Ms Nicola Carroll BL attended.
16. As already noted in Section (A) above, following delivery of the Disciplinary Panel's Decision the Appeal was initiated.

(C) GROUNDS OF APPEAL

17. The Notice of Appeal sets out grounds of appeal against the Disciplinary Panel's Decision imposing sanctions and consequences. While admitting the Rule violation by Mr IS-1501 the Notice submits that the Disciplinary Panel erred in reaching its decision for the following reasons:

- (a) Due process/fair procedures were not applied;
- (b) Very considerable weight should have been given to the fact that consumption of Furosemide by Mr IS-1501 could not have conferred any benefit on him (given his change to a higher boxing weight) in circumstances where his consumption of the substance was inadvertent and not connected with masking the consumption of any other substance;
- (c) The penalty imposed was not proportionate to the facts and circumstances of the case, which was not a grave infraction of the Rules and Mr IS-1501's fault should be regarded as negligible at most, as his brother and trainer, who had no training or education in the area of doping, administered the Specified Substance;
- (d) The penalty was too severe as it will prevent Mr IS-1501 from competing at a regional competition in May 2012, thus rendering him ineligible for selection for the Irish boxing team for the World Championships in October 2012, in circumstances where he has already lost the opportunity to compete at the 2012 Olympics as a result of the provisional suspension;
- (e) Insufficient weight was attached to the fact that Mr IS-1501 was a minor at the time of the Rule violation;
- (f) There was a failure to consider the dependency of Mr IS-1501 on his brother and trainer IS-1502 and IS-1502's influence over Mr IS-1501 ;
- (g) There was a failure to explain why the period of Ineligibility was not reduced to a reprimand and no period of Ineligibility as permitted by Article 10.3.1;
- (h) The period of Ineligibility should have taken into consideration the period between the date the sample was given on [...] 2011 and the date of provisional suspension as all intervening competition results are automatically disqualified;
- (i) Article 10.4.2 of the Rules does not necessarily apply in this case as there

is no minimum period of Ineligibility in circumstances where 10.2 and 10.3 apply. If the Disciplinary Panel purported to apply Article 10.4.2 in order to have an otherwise applicable period reduced, they erred in principle, because the sanction of nine months Ineligibility must then be read as being half of the period otherwise applicable, namely eighteen months. Eighteen months is a sanction clearly disproportionate in the circumstances of this case taking Article 10.2 and 10.3 to be applicable;

- (j) The enhanced duty placed on a trainer when dealing with a minor under Article 10.2.3.1 must have as its corollary that a minor will, as a consequence of his minority, be treated more leniently than an adult;
 - (k) The worth and educative value of a sanction is lesser for a minor than for an adult and the Disciplinary Panel should have taken account of this. The mere fact of being sanctioned, including by a reprimand, can have a disproportionately significant effect on a minor. A minor may be more likely to learn their lesson as a result of a reprimand than an adult. At the time of the submission of the Notice of Appeal Mr IS-1501 had served four months of the period of Ineligibility already and this had a significant impact on him in terms of illustrating the consequences of consumption of prescribed substances;
 - (l) Alternatively this an exceptional case in which the Disciplinary Panel should have allowed a full mitigation of the available period of Ineligibility.
18. The Notice of Appeal also reserves Mr IS-1501's right to raise any further appeal grounds upon reviewing the reasoned decision of the Disciplinary Panel, which was not available when the grounds of appeal were submitted.
19. In summary, while the Notice of Appeal refers to an absence of intent by Mr IS-1501 to enhance his performance by ingesting a Specified Substance or mask the Use of a performance enhancing substance, it focuses primarily on the circumstances to be considered in deciding Mr IS-1501's degree of fault under Article 10.3.2 and the level of reduced sanction that should be imposed on him. The central theme running through the grounds of appeal is that the sanction was too severe and lacked proportionality considering the fact that Mr IS-1501 was a minor, who ingested the Specified Substance inadvertently and under the direction of his adult trainer.

(D) NATURE & SCOPE OF APPEAL

20. Under Article 13.4.6 of the Rules the Appeal Panel must decide the case *de novo*. So the Appeal Panel must decide on an appropriate sanction in the circumstances looking at the matter afresh, and not merely based on whether the Disciplinary Panel failed to apply fair procedures and/or erred in how it arrived at its decision.
21. As Mr IS-1501 admits the Rule violation and is appealing only the severity of the sanction and consequences imposed, the Appeal Panel must determine whether or not the 2 year period of Ineligibility provided for in Article 10.1 (for a first violation of Article 2.1) should be reduced and if so on what basis and by how much.
22. While noting its jurisdiction to decide the case afresh, in reaching its decision the Appeal Panel has carefully considered the Disciplinary Panel's Decision and all related documentation including the Transcript of the Evidence of the Disciplinary Hearing, correspondence exchanged between the parties in relation to Mr

IS-1501's doping violation and corroborating materials provided on Mr IS-1501's behalf by Dr. [...]. The Appeal Panel has also carefully considered the Grounds of Appeal set out in Mr IS-1501's Notice of Appeal and the central theme running through the grounds of appeal (as noted in paragraph 17 above). Finally the Appeal Panel has also had regard to the Transcript of the Appeal Hearing, which records the further evidence given by Mr IS-1501 and his brother IS-1502 and the submissions made on behalf of Mr IS-1501 and the IABA.

23. In the Disciplinary Panel's Decision there is a very detailed summary of the Disciplinary Hearing and the evidence adduced by Mr IS-1501 and on his behalf and the submissions made on behalf of Mr IS-1501, the IABA and the Irish Sports Council, including reference to relevant authorities. Given the urgency, from Mr IS-1501's perspective, of the Appeal Panel delivering its decision as quickly as possible, the Appeal Panel has not re-summarised that material in this decision. However to the extent that new arguments were raised or new evidence adduced on appeal the Appeal Panel has had regard to that material and refers to it below.

(E) BASIS TO REDUCE PERIOD OF INELIGIBILITY ESTABLISHED

24. As already noted in paragraph 4 above Article 10.1 of the Rules provides a sanction of two years Ineligibility (for a first violation of Article 2.1) unless the conditions for eliminating or reducing the period of Ineligibility, as provided for in Articles 10.3 and 10.4, are met.

Article 10.3 – Burden of Proof

25. Article 10.3 of the Rules provides that the sanction of two years Ineligibility applicable under Article 10.1 (for a first violation of Article 2.1) can be reduced or eliminated in full if the Athlete can discharge specific proofs. First Mr IS-1501 must explain, on the balance of probabilities, how Furosemide entered his body⁹. Second Mr IS-1501 must establish to the comfortable satisfaction of the Appeal Panel, (which is a higher burden of proof than on the balance of probabilities)¹⁰, that his ingestion of Furosemide was not intended to enhance his sport performance or mask the Use of a performance-enhancing substance. In doing so he must produce corroborating evidence, in addition to his own word, which establishes to the comfortable satisfaction of the Appeal Panel the absence of intent to enhance sport performance or mask the Use of a performance-enhancing substance.
26. If the Appeal Panel is satisfied that Mr IS-1501 meets these requirements the Appeal Panel must assess what degree of fault should be attributed to Mr IS-1501 and whether this merits any reduction in the two years Ineligibility¹¹.

Article 10.3 - How Furosemide entered Mr IS-1501's body and Mr IS-1501's intention

27. Like the Disciplinary Panel, the Appeal Panel heard evidence from Mr IS-1501 and IS-1502 as to how Furosemide entered Mr IS-1501's body and his lack of intention to enhance his performance through ingestion of the Specified Substance or thereby mask the Use of a performance enhancing substance. The *bone fides* of their evidence was accepted by the IABA and neither witness was cross examined. The Appeal Panel is satisfied that the conditions for reducing the

⁹ Pursuant to Article 8.4.3 of the Rules.

¹⁰ See Articles 8.4.1 and 8.4.3 and 10.3.2 of the Rules.

¹¹ Pursuant to Article 10.3.2 of the Rules.

period of Ineligibility as provided for in Article 10.3 have been met for the following reasons.

28. The Appeal Panel is satisfied on the balance of probabilities that Mr IS-1501 has established the Specified Substance, Furosemide, entered his body when he ingested a 20mg tablet containing the Specified Substance. The tablet, which had been prescribed for his mother by Dr [...], was given to him by IS-1502 [...].
29. Mr IS-1501 has also established to the Appeal Panel's comfortable satisfaction, and on the basis of corroborating evidence including the objective circumstances of the case in addition to his own word¹², that he did not take the Specified Substance with the intention of enhancing his sport performance or of masking the Use of a performance-enhancing substance. Mr IS-1501 did not know the tablet contained Furosemide when he took it and that supports a finding he had no intention of enhancing his sporting performance or masking the Use of a performance-enhancing substance by ingesting Furosemide¹³.
30. Mr IS-1501's evidence about lack of intent to enhance his sporting performance or mask the Use of a performance-enhancing substance has been corroborated to the Appeal Panel's comfortable satisfaction by IS-1502's evidence, a note from Dr. [...] of 2 December 2011, the record of the prescription given by Dr. [...] to Mrs [...] in [...] 2011 and the TUE Application form completed in respect of Mr IS-1501 by Dr [...] on 2 December 2011. In addition the nature of the Specified Substance and the timing of its ingestion would not in fact have been beneficial to Mr IS-1501. Furosemide can act as a diuretic and cause weight loss but Mr IS-1501 had moved up a weight category from 81 kilograms to 91 kilograms, so he had no need to lose weight¹⁴.

(F) MR IS-1501'S DEGREE OF FAULT & APPROPRIATE SANCTION

31. As Mr IS-1501 has satisfied the Appeal Panel that he meets the requirements of Article 10.3 of the Rules, the Appeal Panel must now determine his "*degree of fault*" in deciding whether, and if so to what extent, the two years Ineligibility should be reduced¹⁵.

Mr IS-1501's evidence and submissions

32. Consistent with what was said at the Disciplinary Hearing, in both the Notice of Appeal and at the Appeal Hearing Mr IS-1501 and his family submitted that he bore little or no fault for the ingestion of Furosemide. In effect the Appeal Panel was asked to give the following '*appeal*' points¹⁶ more weight than the Disciplinary Panel apparently did. He was a minor at the time of the violation. His coach, IS-1502, administered the substance to him and has taken full responsibility for doing so. Mr IS-1501 did not know what he was taking (he had little or no knowledge about anti doping issues) and did not take a Specified Substance intentionally. He was dependent on his coach to guide him on such matters and was influenced by his coach. Mr IS-1501 had a '*lesser*' responsibility than his coach (who had a heightened one) and should be entitled

¹² Irish Rugby Football Union v. Carroll, Decision of the Irish Sports Anti-Doping Disciplinary Panel dated 19 December 2011, paragraph 45.

¹³ Oliviera CAS/A2/2011, paragraph 9.14

¹⁴ Appeal Hearing Transcript, page 18, line 9.

¹⁵ Pursuant to Article 10.3.2 of the Rules.

¹⁶ See summary at paragraph 17 above in particular points (c), (e), (f) and (j).

to a significant reduction, if not full elimination, of the period of Ineligibility.

33. Consistent with what was said at the Disciplinary Hearing, in both the Notice of Appeal and at the Appeal Hearing Mr IS-1501 and his family submitted that he should receive little or no sanction for the Rule violation given his lack of fault and young age. In effect the Appeal Panel was asked to give the following additional 'appeal' points¹⁷ more weight than the Disciplinary Panel apparently did. The basis for any sanction should be properly explained. The sanction was too severe and disproportionate to the circumstances, as it would cause him to miss further major championships and he has already lost the chance to qualify for the 2012 Olympics. The Appeal Panel should take account of this when deciding on the appropriate sanction. He should be given credit for the period between the date his sample was given and the date of his provisional suspension as his competition results in that period have been disqualified. Given his young age a lower sanction should have been imposed as sanctions are less educative for minors than they are for adults¹⁸.
34. Mr IS-1501 made no submission about fair procedures.

IABA's evidence and submissions

35. At the Appeal Hearing the IABA's submissions differed slightly to those it made before the Disciplinary Panel and the IABA adduced evidence on its education programme. Mr Farrelly contended that in deciding Mr IS-1501's degree of fault in taking the Specified Substance the Appeal Panel must first have regard to Article 2.1.1 of the Rules, which sets out the expected standard of behaviour for an athlete. It makes each athlete personally responsible for what is in his or her body:

"It is each Athlete's personal duty to ensure that no Prohibited Substance enters his or her body. An Athlete is responsible for any Prohibited Substance or any of its Metabolites or Markers found to be present in his or her Sample. Accordingly, it is not necessary that intent, fault, negligence or knowing Use of an Athlete on the Athlete's part be demonstrated in order to establish an anti-doping rule violation under Article 2.1; nor is an Athlete's lack of intent, fault, negligence or knowledge a valid defence to an allegation that an anti-doping rule violation has been committed under Article 2.1".

36. At the Appeal Hearing Mr Billy Walsh on behalf of the IABA gave evidence in relation to the education programme which the IABA runs on a continuous basis for members of its High Performance Groups. Boxers are guided at least annually at talks on the issue of anti-doping and receive literature provided by the Irish Sports Council. He specifically confirmed that both Mr IS-1501 and IS-1502 [...] attended at least one such session¹⁹. Neither Mr IS-1501 nor IS-1502 [...] could recall the detail of the talks but accepted they had attended them²⁰. As a simple message at these sessions the boxers were encouraged to put a call through to Billy Walsh or Billy McClean in the High Performance Unit before taking medication or supplements if they were in any doubt as to whether

¹⁷ See summary at paragraph 17 above, in particular points (b), (d), (g), (h), (i), (k) and (l).

¹⁸ I v Fédération Internationale de l'Automobile (FIA) CAS 2010/A/2268.

¹⁹ Appeal Hearing Transcript page 33 line 10.

²⁰ Appeal Hearing Transcript, page 11 line 14, page 14 line 2, page 36 line 21.

or not they were on the Prohibited List²¹.

37. Mr Don Stewart, the CEO of the IABA gave evidence that prior to tournaments boxers are advised about what is appropriate behaviour when they are representing Ireland abroad²². He pointed out that prior to Mr IS-1501's doping violation he had represented Ireland at two international tournaments and won a silver medal at the Europeans. In that context boxers are asked to confirm if they are on any medication so that appropriate TUE applications can be made on their behalf. He gave evidence the IABA promote anti-doping awareness on a year round basis so this emphasises to boxers the importance of taking responsibility for what they ingest²³.
38. Despite his obligations under Article 2.1.1 to take personal responsibility for what he ingests and having had the benefit of guidance on anti doping issues from the IABA, Mr Farrelly noted that Mr IS-1501 failed to take any steps to find out about the tablet before taking it.
39. Mr Farrelly referred to two cases (*I v Internationale de l'Automobile (FIA)*²⁴, and the *WADA v Federation Internationale de Gymnastique (FIG) and Anastasiya Melnychenko*²⁵) that have established the principle there is no distinction to be made between a minor and an adult when determining if a Rules violation has occurred. However, when dealing with the issue of sanctions, the fact that an athlete is a minor and therefore lacks experience, should be taken into account in determining the athlete's degree of fault. Mr Farrelly sought to clarify the differing relevance of the cases as precedents in this case.
40. In the **I case**, where a twelve year old tested positive at a carting event, the two year period was reduced to 18 months. On its face this was a high sanction for such a young athlete. Mr Farrelly submitted the case is distinguishable as it was decided on an exceptional circumstance basis, as the athlete could not demonstrate to the panel's satisfaction how the Specified Substance had been ingested.
41. Mr Farrelly placed greater reliance on the **Melnychenko case**, involving a 15 year old gymnast who tested positive for Furosemide. She had ingested prescribed medication, Lasix, which contains the substance in a medical emergency, having first asked the prescribing doctor if the medication was prohibited, and he incorrectly assured her it was not. In its decision, CAS held that her youth and lack of experience were relevant factors to be considered in assessing the athlete's degree of fault. CAS imposed a period of ineligibility of four months from the date of its award, which issued in August 2011 in circumstances where the athlete had been provisionally suspended from February 2011. So the sanction was in effect ten (10) months, in circumstances where the athlete had demonstrated greater care than Mr IS-1501.
42. In considering Mr IS-1501's degree of fault under Article 10.3 Mr Farrelly also referred to the definitions in the Rules of 'No Fault or Negligence' and 'No Significant Fault or Negligence' for guidance (which definitions underpin the defences in Article 10.4.1 and 10.4.2 of the Rules):

²¹ Appeal Hearing Transcript, page 33 line 22.

²² Appeal Hearing Transcript, page 37 line 26.

²³ Appeal Hearing Transcript, page 38 line 13.

²⁴ CAS 2012/A/2268.

²⁵ CSA 2011/A/2403.

'No Fault or Negligence' is defined as "The Athlete's establishing that he or she did not know or suspect, and could not have reasonably 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".

'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 relationship to the anti-doping rule violation".

43. Mr Farrelly contended that Mr IS-1501 made no effort to establish what he was ingesting when he took his mother's tablet, so he clearly could not demonstrate he satisfied Article 10.4.1, (which provides for the elimination of a sanction if an athlete can prove how a Prohibited Substance entered their body and that they have No Fault or Negligence). He further contended that as Mr IS-1501 could have readily found out about the tablet by taking the simple precaution of telephoning the High Performance Unit to discuss it before ingesting it, he could not demonstrate he satisfied the test in Article 10.4.2, (which provides for the reduction of a sanction if an athlete can prove how a Prohibited Substance entered their body and that they have No Significant Fault or Negligence). In the circumstances Mr Farrelly submitted that Mr IS-1501 did bear a significant degree of fault for the Rule violation.
44. In relation to Mr IS-1501's point about proportionality and missing future events, Mr Farrelly submitted that the sporting calendar and ability to participate in competitions should not dictate what is an appropriate sanction. Rather it should be appropriate in the circumstances of the case. The Appeal Panel agrees. WADA's comment in relation to Article 10.4 of the Code gives some guidance on the issue, which is consistent with his submission:

"The fact that an athlete would lose the opportunity to earn large sums of money during a period of ineligibility or the fact that an athlete only has a short time left in his or her career by the timing of the sporting calendar would not be relevant factors to be considered in reducing the period of ineligibility under this Article."

45. By way of clarification to the stated position at the Disciplinary Hearing Mr Farrelly submitted that in fact the existing nine (9) months sanction will not have the automatic impact feared by Mr IS-1501 because selection for the World Championships is a matter over which the IABA has ultimate discretion. He submitted therefore that through his boxing club Mr IS-1501 will be entitled to apply for selection in the special circumstances that prevail²⁶.
46. At the Disciplinary Hearing the IABA indicated that they would have no difficulty with some reduction in the period of Ineligibility and suggested a period of twelve (12) months would be an appropriate sanction. At the Appeal Hearing the Mr Farrelly submitted that twelve (12) months would still be an appropriate sanction but having considered the Disciplinary Panel's Decision the IABA would accept the sanction imposed of nine (9) months. Mr Farrelly contended however that any reduction below nine (9) months would not be appropriate given Mr IS-1501's degree of fault²⁷.

²⁶ Appeal Hearing Transcript, page 21 line 2.

²⁷ Appeal Hearing Transcript, page 29 line 7, line 16 and line 25.

Appeal Panel Decision on Degree of Fault & Sanction

47. It appears to the Appeal Panel that Mr IS-1501 has been afforded fair procedures throughout the disciplinary process. The letter of notification from the Irish Sports Council dated 9 December 2011 set out his right to representation, to submit evidence and to make submissions on the allegations against him. At the Disciplinary and Appeal Hearings Mr IS-1501 and his family were given every opportunity to give evidence, ask questions and make submissions and were provided with all relevant documentation. The Appeal Panel therefore sees no basis to this complaint²⁸.

48. In considering an athlete's degree of fault for departing from the expected standard in Article 2.1.1 WADA's comment on Article 10.4 of the Code (which is equivalent to Article 10.3 of the Rules) is relevant. It notes:

'[i]n assessing the Athlete's degree of fault, the circumstances considered must be specific and relevant to explain the Athlete's or other Person's departure from the expected standard of behaviour.

And

The period of ineligibility could be eliminated entirely in only the most exceptional cases".

49. The Appeal Panel notes that the sanction to be imposed must further the objective of the WADA Code, which states there should be proportionate and, so far as possible, consistent sanctions imposed in comparable cases. In reaching its decision the Appeal Panel must though have regard to the particular circumstances of this case.

50. The Appeal Panel notes that Article 1.2.2 of the Rules provides that all athletes participating in events organised by National Governing Bodies shall be deemed to have agreed to comply strictly with the Rules, and no exception is made for minors. The Appeal Panel also notes the case law establishing the principle that there is no distinction to be made between a minor and an adult when determining if a Rules violation has occurred but when dealing with the issue of sanctions the fact that an athlete is a minor, and therefore lacks experience, should be taken into account in determining the athlete's degree of fault. WADA's comment on Article 10.5. and 10.4 of the Code (equivalent to Articles 10.3 of the Rules) states that;

"While minors are not given special treatment per se in determining the applicable sanction, certainly youth and lack of experience are relevant factors to be assessed in determining the Athlete's... fault under Article 10.5.2.as well as Article 10.3.3, 10.4 and 10.5.1" (emphasis added)

51. While Mr IS-1501 was only 17 when the violation occurred he was, at that stage, already an experienced amateur boxer with seven years experience, a member of the IABA's High Performance Unit and European medal winner. He had been given training by the IABA on anti-doping issues, although he did not recall the content. The Appeal Panel believes that he ought to have taken greater care when his brother suggested he take his mother's tablet. The Appeal Panel accepts that it might have been difficult for him to refuse the suggestion, given that it was his mother's tablet and his brother making the suggestion but that is

²⁸ See paragraph 17(a) above.

not an excuse for failing to make a simple enquiry of the High Performance Unit before taking the tablet. As noted in the Disciplinary Panel's Decision it is to Mr IS-1501's significant credit *"that the violation was immediately admitted on his behalf by IS-1502 who sought to take responsibility for it as early as 18 November 2011"* and on a number of subsequent occasions.

52. The Appeal Panel regarded the Disciplinary Panel's Decision on length of sanction to be reasonable based on the submissions and evidence before it. Further evidence was adduced on Appeal about Mr IS-1501's exposure to anti-doping training and his relative experience as a boxer. While both points might suggest a higher sanction than nine (9) months of Ineligibility could be imposed the Appeal Panel is satisfied, on balance, that nine (9) months is an appropriate sanction in all the circumstances of the case.
53. As already noted at paragraph 6 above, Mr IS-1501's Rule violation arising from his In-Competition test on [...] 2011 leads to an automatic disqualification of his results in the competition under Article 9.1 (with all resulting consequences). The Disciplinary Panel held that fairness required all results obtained by Mr IS-1501 in any competition taking place after the date of his sample up to the date of commencement of his provisional suspension should also be disqualified under Article 9.3²⁹ and the Appeal Panel confirms that decision.

(G) COMMENCEMENT OF PERIOD OF INELIGIBILITY

54. The last question to decide is when the nine (9) month period of Ineligibility should commence.
55. Article 10.7.3 provides that Mr IS-1501 is entitled to credit for the period of his provisional suspension, which commenced on 9 December 2011. Article 10.7.2 contains another provision relevant to the date of commencement of any period of Ineligibility which states that:

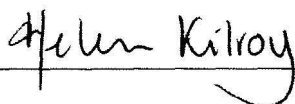
"when the Participant promptly (which in all events, for an Athlete, means before the Athlete competes again) admits the anti-doping rule violation after being notified of the alleged anti-doping rule violation(s) by the Irish Sports Council, the sanction imposed may provide for the commencement of the period of Ineligibility as early as the date on which the anti-doping rule violation last occurred which shall be deemed in a case involving sample collection to be the date of sample collection." (emphasis added)

56. Article 10.7.2 goes on to say *"where this Article 10.7.2 is applied, the sanction imposed must provide that the Participant shall actually serve at least one-half of the period of ineligibility imposed"*.
57. Mr IS-1501 was notified of the alleged anti-doping violation by letter dated 9 December 2011 and was provisionally suspended on that date. The Appeal Panel is satisfied that he admitted the Rule violation by solicitor's letter dated 21 December 2011. That constitutes a prompt admission of liability within the meaning of Article 10.7.2. Mr Farrelly accepted on behalf of the IABA that the admission by Mr IS-1501 had been prompt for the purpose of the Rules. In circumstances where Mr IS-1501's admission was timely for the purpose of Article 10.7.2 the Appeal Panel determines that it is appropriate for the period of Ineligibility to commence on [...] 2011 and expire on [...] 2012.

²⁹ Disciplinary Panel's Decision, Paragraph 96.

(H) CONCLUDING COMMENTS

58. This is an unfortunate case for Mr. IS-1501 , who is clearly a talented boxer and during the Appeal Hearing his family expressed concerns about his future and his appetite to continue with boxing if the sanction was not reduced. The Appeal Panel encourages Mr IS-1501 to learn from this case and return to boxing at the expiry of his period of Ineligibility, committed to fulfilling his potential in the sport at his current age level and in years ahead in the senior ranks.
59. This is also an unfortunate case for the IABA, given its commitment to the Irish Sports Council's anti-doping regime and its excellent anti-doping track record. The Appeal Panel recommends that the IABA use the experiences of this case to remind, in particular, all its junior boxers in the High Performance Programme and member clubs of the need for utmost caution in relation to ingestion of medications and/or supplements, including over the counter products. In this regard IABA might consider producing a form which boxers can sign during anti-doping briefings to state that, first, they attended, and second they understood they had been given appropriate instruction as to their anti-doping duties. This might ensure that the boxers are careful to follow up on their declarations.
60. The Appeal Panel wishes to thank the Parties and participants in the proceedings for their assistance and in particular its secretary Ms Nicola Carroll BL for her hard work and assistance.



Helen Kilroy Solicitor (Chairperson)
Dr Martin Walsh
Warren Deutrom

Members of the Irish Sport Anti-Doping Disciplinary Panel