

DECISION

issued by the

IRISH SPORT ANTI-DOPING DISCIPLINARY PANEL

sitting in the following composition:

Chairperson:	Mr. Seamus Woulfe, Senior Counsel
Panel Member:	Dr. Martin Walsh, Medical Practitioner
Panel Member:	Mr. Bill O'Hara, Sports Administrator
Secretary to the Panel:	Ms. Nicola Carroll, Barrister

in the disciplinary proceedings between

THE IRISH RUGBY FOOTBALL UNION

Claimant

and

Athlete IS-1538

Respondent

A. Introduction:

1. This is the written decision of the Irish Sports Council Anti-Doping Disciplinary Panel (the “Panel”) in proceedings brought by the Irish Rugby Football Union (the “IRFU”) under the Irish Anti-Doping Rules (2009 version)(the “Rules”) against IS-1538 , an athlete engaged in the sport of rugby.
2. The Anti-Doping Rule violation alleged against Mr. IS-1538 was that he was in breach of Article 2.1 of the Rules in that a prohibited substance, namely, carboxy – THC (cannabis) was found in a sample of urine given by him during in-competition testing on the [...] 2013. Defined terms in the Rules carry the same meaning in this decision.

B. Relevant Background:

3. Mr. IS-1538 is a mostly amateur and occasional semi-professional rugby player with [...] Rugby Football Club and was playing for his club against [...] on the [...] 2013 when he was selected for in-competition testing which was carried out after the game. He completed a doping control form on which he disclosed the fact that he had taken certain prescribed medication within the previous 14 days, being two diazepam.
4. An analysis of Mr. IS-1538’s “A” sample was conducted by the Deutsche Sporthochschule Köln Institut Für Biochemie. The analytical report in respect of the analysis of Mr. IS-1538’s sample dated the 19th February 2013 disclosed the presence of carboxy THC, which is consistent with the administration of a prohibited substance tetrahydrocannabinol (“THC”), which is a prohibited and also a specified substance under the World Anti-Doping Code 2011 prohibited list maintained by the World Anti-Doping Agency (WADA).
5. The analytical report was immediately furnished to the Irish Sports Council which then conducted an initial review pursuant to Article 7.2 of the Rules to determine whether the presence of THC was consistent with a valid and applicable therapeutic use exemption held by Mr. IS-1538 , or whether there had been any apparent departure from the International Standards for Testing or

Laboratories that might have caused the adverse analytical finding. The review was carried out by the Irish Sports Council on the 21st February 2013. In a certificate dated the 21st February 2013, the Irish Sports Council certified that its review did not reveal the existence of a valid and applicable therapeutic use exemption in Mr. IS-1538's favour or any departure from the International Standard for Testing for Laboratories in force at the time of testing or analysis which might have caused the adverse analytical finding.

6. The results of the adverse analytical finding were communicated to Mr. IS-1538 by letter dated the 22nd February 2013. The purpose of that letter was to notify Mr. IS-1538 of the alleged violation of the Rules. Mr. IS-1538 was provided with detailed information and extensive documentation with that letter. He was informed of his right to have his "B" sample tested in order to determine whether it disclosed the same substance found in the "A" sample. He was informed that under the Rules any such request had to be made by the 8th March 2013, failing which his right to have the "B" sample analysed would be deemed to have been waived. Mr. IS-1538 was also informed that he had the right to admit or deny the alleged violation to the Panel by the 15th March 2013, under Article 7.3.2.8 of the Rules. Mr. IS-1538 was informed that if he admitted the alleged violation, the consequences or sanctions to be imposed in respect of that violation would have to be determined by the Panel and that he had a right to a hearing before the Panel. He was also informed that if he failed to admit or deny the alleged violation by the 15th March 2013, he would be deemed under the Rules to have admitted the violation. The potential consequences or sanctions in respect of the alleged violation were also set out in that letter.
7. On the same date, the Irish Sports Council wrote to the Secretary of the Panel informing the Panel of the alleged violation and enclosing a copy of the correspondence and other documentation which it had furnished that day to Mr. IS-1538 .
8. The Irish Sports Council also wrote to the IRFU on the same day notifying them of the alleged Anti-Doping Rule Violation.

9. A hearing Panel was convened and agreed to conduct a hearing on the 9th April 2013.
10. By letter dated the 22nd March 2013 the IRFU informed the Panel that it had imposed a provisional suspension on Mr. IS-1538 pending the outcome of the Panel hearing in accordance with Article 7.6.2 of the Rules, and that Mr. IS-1538 and his club had been advised accordingly.
11. By email letter dated the 13th March 2013 [...], Solicitors acting for Mr. IS-1538, attached a copy letter from Mr. IS-1538 together with a copy report from Mr. IS-1538's G.P., Dr. M . In his letter dated 7th March 2013 Mr. IS-1538 admitted the anti-doping rule violation and briefly explained the circumstances in which he had used the prohibited substance. He stated that he did not use the prohibited substance to mask the use of a performance-enhancing substance, and he sought to rely upon the provisions of Article 10.3.1 of the Rules and to replace the period of ineligibility found in Article 10.1. Mr. IS-1538 indicated that he would like to exercise his right to a hearing before the hearing Panel regarding the appropriate sanctions.
12. In his report dated the 4th March 2013 Dr. M referred to certain health matters affecting Mr. IS-1538, and the content of which need not be set out in detail here. Dr. M felt that Mr. IS-1538 had tended to use cannabis for its relaxing properties which Dr. M accepted was inappropriate, but which he felt was understandable in the circumstances.
13. The International Rugby Board and WADA were informed of the hearing and of the right to attend the hearing as observers. The International Rugby Board informed the Secretary that they would not attend, and WADA did not respond.

C The Hearing of the 9th April 2013:

(a) Parties Present:

14. The hearing took place on the 9th April 2013. The composition of the Panel at the hearing was Mr. Seamus Woulfe S.C. (the Chair of the Panel), Mr. Bill O'Hara

(Sports Administrator) and Dr. Martin Walsh (Medical Practitioner). The IRFU was represented by its Head of Legal and Compliance, Mr. Declan McPhillips, accompanied by its Anti-Doping Officer, Mr. Gordon Black. Mr. N [...] of [...], Solicitors, appeared representing Mr. IS-1538. Mr. IS-1538 was also present. He was accompanied by Mr. C [...], Secretary of [...] Rugby Football Club. Ms. Siobhan Leonard was present on behalf of the Irish Sports Council which was attending as an observer. Ms. Nicola Carroll attended as Secretary to the Panel.

(b) The Sequence of Evidence and Submissions:

15. It was confirmed with the Parties at the outset of the hearing that the purpose of the hearing was to determine the appropriate consequence or sanction to be imposed in respect of the admitted violation. It appeared to the Panel that having regard to the provisions of Article 10 of the Rules, which impose certain procedural and evidential burdens on Mr. IS-1538, that Mr. IS-1538 should present his case which would be subject to cross-examination on behalf of the IRFU, and thereafter the IRFU would present such evidence as it wished to present. There would then be submissions from both sides. The Parties agreed with that proposed running order.
16. Mr. N then made a brief opening submission. He noted that Mr. IS-1538 had admitted the violation in a timely manner in accordance with Article 10.7.2 of the Rules. He was seeking a reduced sanction for Mr. IS-1538 pursuant to Article 10.3.1 of the Rules. The reasons would be that Mr. IS-1538 had admitted the violation in a timely manner, that he would establish how the specified substance entered his body, and also that the specified substance was not intended to enhance Mr. IS-1538's performance or to mask the use of a performance-enhancing substance. Mr. IS-1538 would provide the appropriate corroborating evidence, by way of the report from Dr. M. He would also, as corroborating evidence, rely on a Master's thesis carried out in 2011 by a student in the University of Utrecht, which was taken into account in a previous decision of the Panel.

(c) Mr. IS-1538's evidence:

17. Mr. IS-1538 first gave evidence. He gave details of how the cannabis had entered his body, explaining how he was at a friend's birthday party about three weeks before he got tested and he was after having a few drinks and he then smoked about three to four joints of cannabis. He stated that he did not have it in his mind when taking the substance that it was going to be performance-enhancing for him for a rugby match three weeks down the line. He added that he definitely did not take it with a view to masking another substance between that time and the date of the rugby match. His general feelings now about the whole situation were that he was just ashamed about what had happened and he was embarrassed for his family and for the club that it had happened.
18. Mr. IS-1538 was then briefly cross-examined by Mr. McPhillips on behalf of the IRFU. When asked how regularly he had taken cannabis, he stated once every two months maybe. He confirmed that it was roughly around three weeks before the test that he had last taken cannabis. He confirmed that he was aware that cannabis was a prohibited substance. He stated that he had received no education through his club or through the IRFU website on anti-doping and prohibited substances generally.
19. On questioning by the Panel members at the conclusion of his evidence, Mr. IS-1538 stated that he didn't think that any of his club mates had been tested prior to this incident. He had not discussed the question of doping with any of his club mates in the months or even years preceding the incident, and he wasn't aware that this was going to be a problem for him three weeks down the line. Mr. C , the Secretary of the Club, intervened to clarify that Mr. IS-1538 only reached the senior panel this year, or maybe at the end of last year. The club doctor would address the senior panel at the start of each season but Mr. IS-1538 probably wasn't there. There had been players from the club tested in recent seasons. Dr. Walsh then asked Mr. IS-1538 about the doping control form which he had completed dated the [...] 2013. Dr. Walsh noted that Mr. IS-1538 had disclosed that he had taken some diazepam, and he wondered why he didn't write down that he had taken some other substance. In response Mr. IS-1538 stated that he was embarrassed to write it down and was "kind of

panicked” at the time. When asked by Dr. Walsh whether he was a semi-professional or a pure amateur, he stated that he was amateur mostly. Mr. C again intervened to clarify that Mr. IS-1538 had only played three or four matches in the senior team this year, and that you could call his status semi-professional.

(d) Dr. M’s report:

20. Mr. N then introduced the report of Dr. M dated the 4th March 2013, and read same into the record in the absence of Dr. M. As set out at paragraph 12 above, in his report Dr. M referred to certain health matters affecting Mr. IS-1538, which need not be set out in detail here. Dr. M felt that Mr. IS-1538 had tended to use cannabis for its relaxing properties which Dr. M accepted was inappropriate, but which he felt was understandable in the circumstances. Dr. M felt that if Mr. IS-1538 were to lose the outlet of rugby, then this could greatly interfere with his ability to deal with his health issues.

(e) Master’s Thesis from the University of Utrecht :

21. As regards producing further corroborating evidence, Mr. N then introduced a Master’s thesis from a student in the University of Utrecht, Mr. Michel Riemersma, dated the 17th June 2011 entitled “High on Sport: The Ethically Unjustified Inclusion of Cannabis on the Anti-Doping List”. Mr. N read out the conclusion to this thesis which included the author’s conclusion that cannabis is not performance enhancing. Mr. N referred to a previous decision of the Panel in *Cycling Ireland v Hennessy*¹, where the Panel appeared to accept the same thesis as corroborating evidence for the purpose of Article 10.3.2 of the Rules.

¹ Decision of the Irish Sport Anti-Doping Disciplinary Panel (Chair David Casserly B.L.) dated 27th June 2012.

(f) Mr. C 's evidence:

22. Mr. C then gave some brief character evidence. He confirmed that he was the Secretary of the Club and the manager of [...], and he had dealt closely with Mr. IS-1538 since he joined the club five or six years ago. He described Mr. IS-1538 as the quietest lad in the club, who had never given an ounce of trouble. He said that Mr. IS-1538 turned up for training and turned up for matches and the club would definitely not like to lose him. He mentioned how Mr. IS-1538 gives a hand with the club gym and the all-weather pitch. As regards the provisional suspension imposed upon Mr. IS-1538, Mr. C said that the club thought that that suspension would be more than sufficient punishment, because Mr. IS-1538 "didn't set out to hide it or anything". While Mr. IS-1538 might not have filled out the form, that was "reaction" and since then Mr. IS-1538 had cooperated in every way. He had come out to the club and apologised to the Committee, and guaranteed to the club that it would never happen again and the club just wanted him back playing rugby as soon as possible.

D: Submissions on behalf of Mr. IS-1538 :

23. Mr. N first made submissions on behalf of Mr. IS-1538. He stated that his side were seeking a reprimand and no period of ineligibility pursuant to Article 10.3.1 of the Rules. As regards the four elements referred to in Article 10.3. of the Rules, he submitted that the evidence established how the specified substance had entered Mr. IS-1538's body, and that this specified substance was not intended to be performance-enhancing or to mask performance-enhancing substances.
24. As regards the requirement for the participant to produce corroborating evidence to establish the absence of intent to enhance sport performance, Mr. N relied upon Dr. M's report together with Mr. Riemersma's Master's thesis as considered by a previous Panel in the Hennessy case.
25. Mr. N requested that if the Panel were to decide that there should be a period of ineligibility, then the Panel would take into account Articles 10.7.2 and

10.7.3 of the Rules. Article 10.7.2 provides that the period of ineligibility may commence as early as the date on which the violation occurred, in the case of a timely admission by the athlete which Mr. N submitted was the case here. Article 10.7.3 provides that the athlete shall receive a credit for any period of provisional suspension against any period of ineligibility which may ultimately be imposed, and there had been a provisional suspension in the present case.

26. The final element in Article 10.3 of the Rules relates to the participant's degree of fault and the Chairperson asked Mr. N for his submission on the issue of Mr. IS-1538's degree of fault in this matter, in relation to the way in which the form was answered. In response Mr. N referred to Mr. IS-1538's letter dated the 7th March 2013 and said that the Panel would see from this letter that Mr. IS-1538 was not inclined to blame anybody else. He referred to the evidence of Mr. C and submitted there was obviously an element of panic involved. He submitted that there had never been any consideration that what had happened wasn't Mr. IS-1538's fault, and that this was shown in the fact that it was admitted in a timely manner and also that there was no request for a B analysis or any further test.

E: Submissions on behalf of the IRFU:

27. In response and on behalf of the IRFU Mr. McPhillips first sought to establish that this was Mr. IS-1538's first violation, and this was confirmed by Mr. N. Mr. McPhillips then acknowledged that there had been a timely admission in this case, and that the IRFU had imposed a provisional suspension which had been running since the 25th February 2013. He then opened the provisions of Article 10.3 of the Rules and stated that the burden was on the Respondent to come within the ambit of Article 10.3.1 as regards establishing how the substance entered his body, and that his use of the cannabis was not intended to enhance his sport performance or mask the use of a performance enhancing-substance. As regard Article 10.3.2 and the issue of fault, Mr. McPhillips submitted that it was useful to have regard to the guidance provided by WADA in its commentary on Article 10.4 of the World Anti-Doping Code (the "Code"). It is stated therein that in assessing the athlete's degree of fault, the circumstances considered must be specific and relevant to explain the athlete's

departure from the expected standard of behaviour. He anticipated that the period of ineligibility would be eliminated entirely in only the most exceptional cases. Mr. McPhillips stated that although the use of cannabis may be more commonplace, it is illegal under the law of the land and WADA had determined that its use was inconsistent with the spirit of sport by including cannabis in the prohibited list.

28. The IRFU considered that an appropriate sanction was required to demonstrate that the player's regular use of cannabis while participating in sport was totally unacceptable. While Mr. IS-1538's medical condition as referred to in his GP's report was noted sympathetically, Mr. McPhillips asked the Panel not to accept the statement by Dr. M that it was understandable in the circumstances that Mr. IS-1538 had taken a prohibited substance. The IRFU must take the stance that it is not understandable that Mr. IS-1538 should take a prohibited substance while at the same time seeking to gain from the benefits of participating in a sport, and it must surely be one or the other.

F: Replying Submission on behalf of Mr. IS-1538 :

29. In reply Mr. N reiterated his submission that Mr. IS-1538 had satisfied the requirements for Article 10.3 of the Rules. In relation to the reference by Mr. McPhillips to Mr. IS-1538's regular use of cannabis, he stated that Mr. IS-1538 had confirmed to the Panel that he does not use it any more. Mr. N suggested that Mr. IS-1538 had learned his lesson from what had happened, as regards the whole "hullabaloo" for somebody who would not be used to disciplinary proceedings of this nature. It was his first year with the [...] [...], and he had played a few matches. He had learned a very big lesson, and had shown remorse and there was huge respect for him in [...] [...]. In reply to a question from Mr. O'Hara, Mr. IS-1538 confirmed that he had not played a game of rugby since the 23rd February 2013. In reply to questioning by Dr. Walsh, Mr. IS-1538 stated that there were two matches left in this season, and this was confirmed by Mr. C. As regards what Mr. IS-1538 proposed doing during the closed season for recreational pursuits, Mr. C indicated that Mr. IS-1538 would be running the gym and the all-weather that kept going through the summer. Mr. Walsh clarified that he was

thinking about any alternative exercise from a therapeutic point of view, and Mr. IS-1538 stated that he normally plays hurling for Newport over the summer as well. Mr. N made a request that the content of Mr. IS-1538's medical report was not disclosed in the Panel's decision, given the sensitive nature of same, and the Committee noted that request.

G: Further Submissions on behalf of the IRFU:

30. After a short break, Mr. McPhillip's drew the Panel's attention to a number of previous cases involving the use of cannabis. The first case was a decision of the International Rugby Board Judicial Committee in 2009 in the case of **IRB v Chvihiviadze**². In that case a ban of four months was imposed where the adverse analytical finding showed a concentration of 38.3 ng/ml, which was greater than the permitted threshold level of 15 ng/ml. The second case was another decision of the International Rugby Board Judicial Committee in 2010 in the case of **IRB v Van Stavaren**³ where a sanction of six months was imposed. In this case the adverse analytical finding showed a concentration of 40 ng/ml, where the permitted threshold was again 15 ng/ml. The third case was another decision of International Rugby Board Judicial Committee in the case of **IRB v Jamaluddin**⁴. In this case a sanction of six months was again imposed, where the adverse analytical finding showed a concentration of 32 ng/ml, with the permitted threshold level again being 15 ng/ml. The fourth case was another decision of the International Rugby Board Judicial Committee in 2013 in **IRB v Fletcher**⁵. In this case the concentration level was 31.2 ng/ml, where the permitted threshold was again 15 ng/ml, and a sanction of five months was imposed.
31. Mr. McPhillips then cited a previous decision of the Panel in the case of **Motor Sport Ireland v Sheahan**⁶. In that case there was an exceptionally high reading of 1260 ng/ml, which was much further in excess of the permitted threshold level of 15 ng/ml than in all of the earlier precedents, and the Panel imposed a period of ineligibility of nine months. Mr. McPhillip's drew the Panel's attention to the

² Decision of the Board Judicial Committee dated the 2nd June 2009.

³ Decision of the Board Judicial Committee dated the 17th February 2010.

⁴ Decision of the Board Judicial Committee dated the 14th February 2011.

⁵ Decision of the Board Judicial Committee dated the 16th January 2013.

⁶ Decision of the Irish Sport Anti-Doping Disciplinary Panel (Chair Adrian Colton Q.C.) dated the 29th May 2012.

fact that there was a reading in the present case of 144 ng/ml, which was considerably less than the reading in the Sheahan case, and he suggested that the appropriate ban in this instance would be six months.

H Further Replying Submissions on behalf of Mr. IS-1538 :

32. By way of replying submissions Mr. N stated that the facts of the various cases would be very different, and the level of cooperation in various cases is also different, and that has resulted in different sanctions being imposed, and he asked the Panel to consider these issues in deciding what sanctions should apply here.

I The Decision:

33. In light of the fact that Mr. IS-1538 had admitted the violation alleged against him prior to the hearing, the function of the Panel was solely to determine the appropriate sanction to impose in respect of the violation. The admitted violation was a breach of Article 2.1 of the Rules by virtue of the presence of a prohibited substance, namely cannabis. Article 10.1 of the Rules provides for the relevant penalty to be imposed in respect of a first violation of Article 2.1 and this was Mr. IS-1538's first violation.
34. Article 10.1 provides that the period of ineligibility to be imposed shall be two years unless the conditions for eliminating or reducing the period of ineligibility, as provided for in Article 10.3 and 10.4, are met. This case turns on the possible application of Article 10.3 of the Rules.
35. The burden of proof under Article 10.3 rests with the participant, so the issues which the Panel must determine are as follows:
- (a) Whether Mr. IS-1538 has established how cannabis entered his body;
 - (b) Whether Mr. IS-1538 has established that the cannabis was not intended to enhance his sporting performance, or to mask the use of a performance-enhancing substance, and whether Mr. IS-1538 has produced corroborating evidence in addition to his or her word which establishes to

the comfortable and satisfaction of the Panel the absence of any such intention; and

- (c) If the Panel is satisfied that Mr. IS-1538 has met the above requirements, what degree of fault should be attributed to Mr. IS-1538 and whether this merits any reduction in the period of ineligibility of two years.

36. As regards issue (a), the Panel accepts that Mr. IS-1538 has discharged the onus on him of showing, on the balance of probabilities, how the cannabis entered his body. As regards issue (b), the Panel accepts Mr. IS-1538's evidence that he had no intention of enhancing his sporting performance by taking the cannabis. However, that on its own is not enough to satisfy Article 10.3.2, given the obligation on Mr. IS-1538 to adduce corroborating evidence which establishes the absence of intent to the comfortable satisfaction of the Panel. The Panel considered Dr. M's report rather than Mr. Riemersma's Master's thesis as corroborative of Mr. IS-1538's evidence of lack of intention. The Panel is therefore comfortably satisfied that Mr. IS-1538 has established that he did not intend to take the cannabis to enhance his sporting performance.
37. As regards issue (c), the Panel must now determine Mr. IS-1538's degree of fault in deciding whether, and if so, to what extent, the two year period of ineligibility should be reduced. The Panel regard the facts of this particular case as the most important factor in determining Mr. IS-1538's degree of fault. In Mr. IS-1538's favour was the fact that he is not an elite professional, but only a mostly amateur and occasional semi-professional rugby player. [...]
- [...] and the evidence was that he probably was not present when Dr. Michael Griffin addressed [...] regarding the testing regime. On the other side of the equation, while the Panel noted Mr. IS-1538's medical condition was referred to in Dr. M's report, the Panel did not accept Dr. M's comment that it was understandable in the circumstances that Mr. IS-1538 should take a prohibited substance. Having regard to all of the circumstances the Panel concluded that a period of ineligibility of three months was appropriate.

38. The last issue which the Panel had to determine was the date from which the period of ineligibility should run. Article 10.7.2 provides that where the participant promptly admits the anti-doping rule violation after being notified of same, 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. The Panel is satisfied that Mr. IS-1538 did promptly admit the violation in the overall circumstances of this case. The Panel is satisfied therefore, that the period of ineligibility in this case should commence on the [...] 2013.

J Concluding comments:

39. The Panel wishes to thank its Secretary, Ms. Nicola Carroll, for her hard work and assistance relating to these proceedings. The Panel would also thank the parties and participants in the proceedings for their assistance.

Dated the 16th May 2013.

A handwritten signature in cursive script, reading "Seamus Woulfe", is written over a horizontal line.

Signed on behalf of the Panel by

Seamus Woulfe, Chairperson