

DECISION

issued by the

IRISH SPORT ANTI-DOPING DISCIPLINARY PANEL

sitting in the following composition:

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

in the disciplinary proceedings between

SPORT IRELAND

Claimant

and

ATHLETE IS-4158

Respondent

A Introduction

1. This is the written decision of the Irish Sport Anti-Doping Disciplinary Panel (the “Panel”) in proceedings brought by Sport Ireland (the “Claimant”) under the Irish Anti-Doping Rules (2015 version)(the “Rules”) against IS-4158 , an Athlete engaged in the sport of soccer.
2. The Anti-Doping Rule violation alleged against Mr. IS-4158 was that he was in breach of Article 2.1 of the Rules in that a prohibited substance, namely, cocaine was found in a sample of urine given by him during in-competition testing on the [...] 2015. Defined terms in the Rules carry the same meaning in this decision.

B Relevant Background

3. Mr. IS-4158 is a soccer player. He was playing for his club [...] on the [...] 2015 when he was selected for in-competition testing which was carried out after a match. He completed a doping control form on which he disclosed the fact that he had taken certain prescribed or non-prescribed medications and/or supplements within the previous 14 days.
4. An analysis of Mr. IS-4158’s “A” sample was conducted by the Deutsche Sporthochschule Köln Institut Für Biochemie. The analytical report in respect of the analysis of Mr. IS-4158’s sample dated the 29th September 2015 disclosed the presence of cocaine, which is a prohibited substance under the World Anti-Doping Code 2014 prohibited list maintained by the World Anti-Doping Agency (WADA).
5. The analytical report was immediately furnished to Sport Ireland which then conducted an initial review pursuant to Article 7.2 of the Rules to determine whether the presence of cocaine was consistent with a valid and applicable therapeutic use exemption held by Mr. IS-4158 , 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 Sport Ireland on the 7th October 2015. In a certificate dated the 7th October 2015, Sport Ireland certified that its review did not reveal the existence of a valid and applicable therapeutic use exemption in Mr. IS-4158's favour, or any departure from the International Standard for Testing or 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 findings were communicated to Mr. IS-4158 by letter dated the 8th October 2015. The purpose of that letter was to notify Mr. IS-4158 of the alleged violation of the Rules. Mr. IS-4158 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 promptly, failing which his right to have the "B" sample analysed would be deemed to have been waived. Mr. IS-4158 was also informed that he had the right to admit or deny the alleged violation to the Panel by the 29th October 2015. Mr. IS-4158 was informed that if he admitted the alleged violation, the consequences or sanctions to be imposed in respect of that violation would be specified by the Claimant or 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 29th October 2015, 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. In the same letter, Sport Ireland notified Mr. IS-4158 that he was automatically provisionally suspended pending the outcome of the Panel hearing in accordance with Article 7.8.1 of the Rules. Sport Ireland also

wrote on the same day to the Football Association of Ireland notifying them of the alleged anti-doping rule violation.

8. On the 3rd November 2015 the Claimant 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 to Mr. IS-4158 .

9. A hearing Panel was convened in November 2015 and fixed a provisional hearing date of the 16th December 2015. The Panel directed that Mr. IS-4158 's Solicitors should deliver Written Submissions by the 27th November 2015, and the Claimant's Solicitors should deliver Replying Submissions by the 4th December 2015.

10. By Submission dated the 27th November 2015 [...] , Solicitors acting for Mr. IS-4158 , admitted the anti-doping rule violation on the basis that Mr. IS-4158 clearly did not use the drug for reasons of performance enhancement and that his mental state was such that it resulted in impairment of his cognitive functions and judgment. It was submitted that he had no significant fault or negligence and that a ban of no more than 12 months was applicable, but further that a ban of 12 months was disproportionate and unjust and that it should be considerably lower than 12 months. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

11. The Claimant delivered Replying Submissions on the 4th December 2015. They accepted that mental health issues can amount to an impairment of cognitive function such as to establish a basis for asserting no significant fault or negligence, and they noted that the definition of fault refers to

“special considerations such as impairment”. However, they submitted that no evidence had been provided in relation to the Athlete’s mental health issues or the alleged impairment of his cognitive functioning and judgments. They argued that the case the Athlete was making required detailed medical evidence, specifically forensic psychiatric evidence and upon receipt of same the Claimant would have to be afforded the opportunity to have the Athlete examined by a forensic psychiatrist at that point.

12. Mr. IS-4158’s representative submitted a medical report on the 10th of December 2015 from Dr. Colin O’Gara, Consultant Psychiatrist. At the same time they consented to the Claimant’s wish to have Mr. IS-4158 examined by their own psychiatrist. By letter dated the 14th December 2015 the Panel notified the parties that the hearing date scheduled for the 17th December 2015 was vacated and stated that the Panel would await an update from the parties in early course.
13. The Claimant submitted a medical report from Dr. Eamon Keenan, Consultant Psychiatrist in Substance Abuse on the 8th February 2016. By letter dated the 22nd February 2016 the Panel notified the parties that it had decided to hold the hearing on the 4th April 2016 and issued Further Directions in relation to the filing of any supplemental Submissions and the furnishing of a list of persons attending the hearing on behalf of the parties.
14. The Claimant then delivered supplemental submissions on the 1st March 2016. They submitted there was no medical evidence that the Athlete’s gambling addiction or any related mental health issues led to impairment of his cognitive function and judgment, and thus no medical evidence of a direct causative link between any impairment of his cognitive functions and judgment and the taking of cocaine. In their submission the Athlete had failed to establish No Significant Fault or Negligence. They argued

that, subject to the evidence establishing that the Athlete took cocaine Out-of-Competition in a context unrelated to sport performance, the period of ineligibility to be imposed was two years.

C The Hearing on the 4th of April 2016

(a) Parties Present

15. The hearing took place on the 4th April 2016. The composition of the panel at the full hearing was Mr. Seamus Woulfe S.C. (the Chair of the Panel), Mr. Bill O'Hara (Sports Administrator) and Professor Colm O'Morain (Medical Practitioner). Mr. Gary Rice of DAC Beachcroft Solicitors appeared on behalf of Sport Ireland, accompanied by Mr. Aidan Healy, Associate at DAC Beachcroft, Ms. Siobhan Leonard, Anti-Doping Manager of Sport Ireland, and Ms. Maria Walsh, a representative of the Football Association of Ireland. Mr. G [...] , Solicitors appeared representing Mr. IS-4158 , accompanied by the General Secretary of the Professional Footballers' Association of Ireland, Mr. Stephen McGuinness. Ms. Nicola Carroll B.L. attended as secretary to the Panel.

(b) The Sequence of Evidence and Submissions

16. 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 imposed certain procedural and evidential burdens on Mr. IS-4158 , that Mr. IS-4158 should present his evidence in the first instance, and thereafter Sport Ireland would present such evidence as they wished. There would then be closing submissions from all sides. The parties agreed with that proposed running order.

[REDACTED]
[REDACTED] By about 8.30 that night he was stupidly drunk and he decided to go to a pub down the road and play Bingo. [REDACTED]
[REDACTED]

[REDACTED] He proceeded to play bingo and was stupid drunk, and was drinking vodka and red bull. At one point in the evening he went into the toilet and kind of fell in against the urinal and that is when an old fellow that was in the pub said “look, go get that into you”, and Mr. IS-4158 basically took a coin out and put the coin as the old fellow said “get that into you, it will wake you up”. Mr. IS-4158 stated that he felt disgusted the next morning and he confirmed that he had never taken cocaine before. He was not sure whether to play for [...] on the following Saturday, as he knew he was wrong to do what he had done on the Thursday, and obviously it was not the ideal preparation for a match. When asked whether he took the cocaine with the intention of enhancing his performance, he replied not a chance, and he didn't see how it could enhance performance, as taking the cocaine could have had a very bad effect on his health, and it badly affected his performance in the match on the Saturday.

19. Mr. IS-4158 dealt with an accident he had on the [...] 2015. He was on his way to training in [...] on his bicycle from his work place in [...]. He got the bicycle to travel across the city to train, and he could lock the bike up and run into a bookie along the way. He was on his way to training in a rush going up through [...], when a woman came across two lanes of traffic and smacked into his bicycle, and he went over the handlebar and over her bonnet and got a smack in the head and a smack down the shoulders. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

22. Mr. IS-4158 was then cross-examined by Mr. Rice on behalf of Sport Ireland. He confirmed that he had been made permanent [REDACTED] and had done his job well. He then went into a bit of detail about what he was doing when he had the job in [REDACTED]. He confirmed that [REDACTED] [REDACTED] were not looking for him to resign when he did so on the Monday after the doping violation, as he had been functioning fine in the job. As regards the reference in his direct evidence to being disgusted when he woke up on the Friday morning, he confirmed that he was disgusted because he had taken cocaine. He confirmed that when the guy in the toilet handed him the cocaine, he knew it was cocaine. He denied that he would take cocaine on another occasion if he walked into a toilet, and he was sober, and a man handed him cocaine on a coin. Under further cross-examination Mr. IS-4158 accepted that he knew it was wrong to take cocaine. He accepted that he was getting his life together slowly, notwithstanding the ban from playing football, but he missed his involvement in soccer terribly.

23. On questioning by the Panel Chairman, Mr. IS-4158 gave some further details about the incident in the toilet on the night in question. The pub in question wasn't local to where he was living, but it was sort of local to where he had been brought up in [...]. He had drunk in this pub before but not recently, and he felt it was a place where he could isolate himself. The individual who gave him the cocaine came into the toilets after him, and he had not seen this individual before. The cocaine was in a little bag, and the man was holding the coin and doing it himself. The whole incident was over and done in a matter of a couple of seconds. [REDACTED]

(d) [REDACTED] evidence

23. [REDACTED] then gave evidence. He stated that he was a friend of IS-4158. He and another named friend were going into the named

bar for a game of bingo on the Thursday night, and when he walked in he noticed Mr. IS-4158 sitting there on his own and he was very drunk and not himself. At one point ██████████ walked into the toilet and IS-4158 was in there with some man, and IS-4158 was drunk and falling around. When ██████████ walked in he saw this man with the coin in his hand and with the bag putting it back into his pocket, and he saw IS-4158 taking cocaine, and ██████████ knew what it was. ██████████ was shocked to see IS-4158 so drunk. He thought that his mental state on the Thursday night was very bad. He had been friends with IS-4158 for 23 years and he had been out with him many times, and he had never seen him that bad.

24. Under cross-examination by Mr. Rice a further description of the incident in the toilet was given by ██████████. While he didn't actually see Mr. IS-4158 ingesting the cocaine, he saw that the other man had the coin up towards IS-4158, and then took it back down and he just put the coin into his pocket and the bag, so ██████████ presumed that Mr. IS-4158 took the cocaine if the other man had the coin up towards Mr. IS-4158's face. On questioning by the Panel Chairman, ██████████ stated that he did not know the gentleman with Mr. IS-4158 in the toilet, and that individual left after ██████████ arrived in.

(e) Mr. O'Gara's evidence

25. The next witness was Dr. Colin O'Gara who stated that he was a Consultant Psychiatrist and head of addiction services at St. John Of God Hospital in Stillorgan, Co. Dublin. He went through his experience and training specifically in addiction, and the addictions treated at the addictions unit at the hospital. He went through what Mr. IS-4158 had told him when he saw him on the 7th December 2015, and what Dr. O'Gara's impressions of him were at that stage. He explained how Mr. IS-4158 had given his history of deteriorating and increasingly compulsive gambling. Dr. O'Gara felt that Mr. IS-4158's story added up with regards to the

severity of his condition. He felt that Mr. IS-4158's condition was on a spectrum from harmful gambling through severe and compulsive gambling. When asked what he thought was the extent of the impairment of Mr. IS-4158's judgment on the occasion he took cocaine, Dr. O'Gara stated that we are dealing with a medical illness here where the core feature is impairment of judgment, which is persistence with certain behaviour in the face of adverse consequences which is the World Health Organisation's definition of addiction. As regards how the alcohol interacted then with the impairment of judgment, Dr. O'Gara stated that the intoxication adds injury to insult and clearly on the night that was the case. When asked what he believed was the connection between Mr. IS-4158 taking the cocaine and his gambling addiction, he answered that on the face of it there was no connection, however Dr. O'Gara believed it was the end result of an awful period of time that Mr. IS-4158 was in. When asked to what extent he thought that an incident like this might not have occurred, if Mr. IS-4158 had the addiction under control, Dr. O'Gara answered that we will never know, but his opinion was that a young man with his prospects wouldn't be in that situation, and if somebody says get it into you at that stage, Dr. O'Gara would say that Mr. IS-4158 would tell him what to do.

26. Under cross-examination by Mr. Rice Dr. O'Gara stated that he did not think we were talking about cognitive impairment. He was talking about an impairment of judgment and behaviour, an impairment of behaviour as such. He was not looking at impairment of Mr. IS-4158's cognitive functioning. On the day when he examined Mr. IS-4158 he formed no view that his cognitive function was impaired. Dr. O'Gara accepted that there were two issues here, intoxication on the one hand, and Mr. IS-4158's addiction on the other. When it was put to him that the triggering event for Mr. IS-4158 taking cocaine was alcohol, Dr. O'Gara stated that he would personally view that as a bit of a leap, and he thought you have to look at what comes before that, [REDACTED]

[REDACTED], and it led to a series of effects after that like a domino effect. Dr. O’Gara was then asked whether in terms of one’s moral compass or one’s ability to assess moral matters, the gambling addiction doesn’t really significantly impact on that. Dr. O’Gara answered that he thought it did so, and that the gambling addiction affected all facets of life, and if Mr. IS-4158 didn’t have this cloud behind him, Dr. O’Gara thought he would have told this guy in the toilet to go and take a hike.

27. Dr. O’Gara was then further cross-examined by Mr. Rice, to ensure that he would get the opportunity to comment on certain matters in Dr. Keenan’s report. Mr. Rice put it that Dr. Keenan would be of the view that Mr. IS-4158’s cognitive function is normal, and he asked Dr. O’Gara to agree that Mr. IS-4158’s cognitive function was not impaired at the date that Dr. O’Gara examined him. Dr. O’Gara responded by stating that he and others see people very, very distressed with this gambling addiction condition, and he would argue that they are cognitively impaired from the point of view of judgment, and judgment should come into that cognitive assessment. He later clarified that Mr. IS-4158 did not have severe cognitive impairment. Under further re-examination by Mr. G [REDACTED], Dr. O’Gara clarified that when he had referred to cognitively impaired, he wasn’t talking about the strict sense of cognitive testing with regard to somebody’s ability to carry out basic functions, he was talking about judgment impairment as it falls in under gambling addiction. That is what he thought was the most likely type of impairment on the night in question.

(f) Mr. [REDACTED] D’s evidence

28. Mr. [REDACTED] D [REDACTED], the manager of [REDACTED] Club, then gave evidence. He explained how he had first come into contact with Mr. IS-4158 in December 2014, and how he agreed to sign for [REDACTED] and how the 2015 season progressed up to [REDACTED] 2015. He described how Mr.

IS-4158 had an accident in July 2015, and he missed a bit of football after that. As regards the match where the drug testing took place, Mr. D did not notice anything different about Mr. IS-4158 on the day, but when he put two and two together after they got the results of the drug test Mr. IS-4158 was thinking that Mr. IS-4158 had been acting a little bit different. When asked how he reacted to the test result when it came in, Mr. D said that his initial thought was that he was going to have to have a go at Mr. IS-4158 , but he was shocked when he realised where Mr. IS-4158 was at, and within five seconds of phoning him Mr. IS-4158 knew he was in a really bad place and said that [...] would try and help in whatever way they could help. The test result left Mr. D very, very shocked. He did not regard it as being in character for Mr. IS-4158 . Mr. IS-4158 was a player whom Mr. D would have back, based on what he knew of him and based on what Mr. IS-4158 can do on the football pitch.

(g) Dr. Keenan's evidence

29. The last witness was Dr. Eamon Keenan, who was the sole witness on behalf of the Claimant. He stated that he had been a Consultant Psychiatrist in Substance Misuse since 1996, and he gave details of his work experience, which included that since January 2016 he had been seconded into the national clinical lead post for addiction services in the HSE. He had published about 60 articles in Peer Review Journals, and given expert evidence in various regulatory body hearings in relation to addiction disorders. He explained the nature of severe cognitive impairment, and he described his experience in treating patients who present with cognitive impairment. He then went through his examination of Mr. IS-4158 on the 28th January 2016, and the detailed history of his gambling problem as presented by Mr. IS-4158 . Dr. Keenan referred to his note of what Mr. IS-4158 had told him about meeting the individual in the toilet who offered him cocaine, and this note recorded

that individual as having said “this will bring you back to life”. He was satisfied that Mr. IS-4158 had a gambling addiction. When asked by Mr. Rice if a gambling addiction creates a cognitive distortion in a person’s thinking, Dr. Keenan stated that someone with a gambling disorder has cognitive distortions in the way they approach matters around gambling, and he gave examples of how such a person would not be able to rationalise their gambling. When asked whether these type of cognitive distortions would amount to cognitive impairment, Dr. Keenan answered that cognitive distortions could be seen as an impairment, in your cognition, in your way of thinking, but it wouldn’t be to the extent whereby it should interfere in your activities and daily living.

30. As regards Mr. IS-4158’s awareness of what he was doing on the day in question, Dr. Keenan thought that he was extremely intoxicated which would have impaired judgment. At the same time he was aware that he was being offered cocaine and he made a conscious decision at the time to take cocaine. [REDACTED]

[REDACTED] and he felt his cognitive function was normal on that day. He felt that maybe a more robust treatment programme would be of benefit to Mr. IS-4158 , but he didn’t know what exact type of treatment he was getting. Dr. Keenan felt Mr. IS-4158 would not have taken cocaine if he hadn’t been intoxicated to the extent that he was.

31. Under cross-examination by Mr. G [REDACTED], Dr. Keenan agreed that it was fair to say that the gambling addiction which Mr. IS-4158 was suffering from was the underlying cause of where we were at today. When asked whether the alcohol was merely an add-on, Dr. Keenan responded that he did not think Mr. IS-4158 would have taken cocaine without the alcohol. Dr. Keenan agreed that we were dealing with a situation where the gambling addiction had impaired judgment and behaviours. Dr. Keenan agreed that the gambling addiction does affect your functioning, in the

sense that it does affect the decisions you make. Mr. G asked was there a chance that you would do something that you would never consider doing in the normal course, if you weren't suffering from the gambling addiction. Dr. Keenan said he thought the alcohol was a significant contributor to the decision to take the cocaine in the toilet at 11.30 on that night when he was so intoxicated, and he thought if Mr. IS-4158 had been offered cocaine at another point he would not have taken that cocaine.

32. On re-examination by Mr. Rice, Dr. Keenan repeated again that he felt Mr. IS-4158 would not have taken the cocaine if he had been sober. When asked whether it was fair to say then, as a result, that the gambling was not the direct cause of the ingestion of cocaine, Dr. Keenan answered that the gambling per se was not the direct cause in taking the cocaine that night, but it was an interlinked situation that he found himself in and he ran into the wrong person in the toilet who took advantage of his vulnerability.

D. Closing Submissions on behalf of Mr. IS-4158

33. Mr. G first made closing submissions on behalf of Mr. IS-4158 . He first submitted that the evidence showed that the drug was taken in an out of competition context without the intention to enhance performance, and therefore this meant an automatic reduction in the period of ineligibility from 4 to 2 years. The next question which arose was how much further that 2 year period should drop. The Athlete was seeking to make the case that he had no significant fault or negligence, and he referred to the evidence particularly of Dr. O'Gara who stated that the Athlete's severe gambling addiction was characterised by impairment of judgment and behaviour. Mr. G submitted that Mr. IS-4158 was not in the right frame of mind, that he made a judgment call, an error of judgment that was completely out of character for him and which was caused by the effects of his gambling addiction. Mr. G accepted that

this error of judgment was exacerbated by the fact that Mr. IS-4158 had too much alcohol that night, but he said it would appear as though the reason he took the alcohol was because he had a gambling addiction, and while alcohol was a factor, it was not the overriding factor. He submitted there was not actually too much between the evidence of the two doctors, and that they largely said that Mr. IS-4158's judgment was impaired by the gambling addiction, and they both took the view that had he not had the problems he had, that he likely would not have made the decision that he made to take the cocaine.

34. Mr. G then ran through the **Livermore** case and submitted that there were parallels which needed to be taken into account, although he was not suggesting that the present case was on all fours with the **Livermore** case. In the **Livermore** case the decision stated that one of the reasons why Mr. Livermore should not be considered at fault was in that the incident in question was as a result of severe impairment of his cognitive functions and judgment caused by circumstances for which he was in no way at fault. Mr. G submitted that there was a parallel between the impairment of Mr. IS-4158's judgment and the impairment of Mr. Livermore's judgment. Mr. G referred to certain other cases mentioned in the **Livermore** decision, where it was decided that there was no significant fault. In particular the case of **Lewis v Taylor** had stated that CAS had shown a willingness in appropriate cases to impose a lesser sanction where an Athlete's failure was due to the fact that his judgment was impaired by illness or by extreme stress. Mr. G submitted that this was exactly what we were talking about in the present case, where Dr. O'Gara had referred a number of times to Mr. IS-4158's condition as being a medical illness. In the of **Vlasov** case the Tribunal had spoken of the player's depression having impaired his personal judgment. The **Thomspon** case related to a young boy who had taken cocaine, and there was a reference to his motivation appearing to have been an act of youthful exuberance representing a momentary

indiscretion, and this was effectively the only reason for reducing Mr. Thompson's sanction to a much lower amount on its own without any mental health issues. Finally on the issue of no significant fault, Mr. G referred to the **Cosby** case, where the Athlete's judgment was adversely affected by depression, and she thus bore less responsibility than normal for what happened to her. In conclusion on the no significant fault or negligence issue, Mr. G submitted that there was no an abundance of authorities that assist Mr. IS-4158's case, although he accepted there were none specifically on all fours for the reason that he did not believe a gambling addiction case had ever come before an Anti-Doping Tribunal.

35. The final part of Mr. G's submission related to a proportionality argument. He submitted that while a finding of no significant fault or negligence should be enough to reduce the sanction from two years to one year, even one year would be too much in the case of Mr. IS-4158. He stated it would be disproportionate to apply a one year ban to a man like this who has had a moment of madness while suffering from an impairment of judgment or behaviour, as a result of an addiction which is not his fault. As regards the proportionality principle in this context, Mr. G relied upon the **Puerta** case, as set out in some detail in the **Livermore** decision, and accepted the Panel could only step away from the Rules in the most extreme cases.

E. Closing submissions of behalf of Sport Ireland

36. Mr. Rice then made then made closing submissions on behalf of Sport Ireland. He began by stating that over its life the World Anti-Doping Code has evolved, and has become more finessed to reflect great proportionality given the thousands and thousands of cases that have occurred since it had come into being. As regards the proofs which Mr. IS-4158 had to satisfy, Mr. Rice accepted it was quite likely that the Panel would find

that the cocaine was taken in a context unrelated to sport performance, and therefore that he did not intend to take cocaine to enhance his sport performance, which might bring him in the Panel's judgment to two years. However, Mr. Rice submitted that there was nothing which the Panel had heard which could bring about any further reduction in the sanction.

37. As regards the issue of no significant fault or negligence, Mr. Rice reminded the Panel that the commentary to the Code Article for no significant fault says that it applies in exceptional circumstances. He submitted that the definition of fault and negligence related to the knowledge of the person as to what they were doing in the circumstances, and he argued that what the evidence of the doctors actually pointed the Panel towards is an indication of the Athlete's awareness on the day. While he accepted Mr. IS-4158 has a gambling addiction, Mr. Rice submitted that this had very little if anything at all to do with the fact that he ingested cocaine. The evidence as to the Athlete's conduct on the day in question meant that the fault or negligence was clear and substantial. It simply was not acceptable to say that by spending the day drinking that one is not substantially at fault or substantially negligent. In the course of exchanges with the Panel, Mr. Rice submitted there wasn't any impairment in this case of a level that would trigger Article 10.4.2 of the Rules, because at all material times the Athlete knew what he was doing. He was drunk because he chose to be drunk that day, and the Claimant's case was that the impairment caused by his gambling didn't cause him to take cocaine, it was the intoxication that caused him to take that course. Mr. Rice submitted that it was simply a point of causation that arose. Any impairment due to his gambling would have to be such that his obvious lack of care or caution in being extremely drunk was not significant in relation to the doping violation.
38. Mr. Rice then referred to the **Keyter** case, where the Panel stated that it could not accept the submission that getting drunk and possibly not

realising or remembering what was going on is an exceptional circumstance for excusing an Athlete for his fault or negligence. Mr. Rice then referred to the **Livermore** case and submitted that it did not apply for a number of reasons which he set out. As regards the proportionality issue, Mr. Rice referred to some relevant decisions, but argued that these should not trouble the Panel as the Panel should not make any finding of no significant fault or negligence, which might then open up the proportionality argument.

F The Panel's Decision

39. In light of the fact that Mr. IS-4158 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 cocaine.

40. Article 10.1.1 provides that the period of ineligibility to be imposed for a violation of Article 2.1 shall be four years where Article 10.1.1.1 or 10.1.1.2 applies, subject to the conditions for a potential reduction in Article 10.4. Article 10.1.2 provides that where Articles 10.1.1.1 and 10.1.1.2 do not apply, the period of ineligibility to be two years. In the present case the Panel was satisfied that Article 10.1.1.1 and 10.1.1.2 did not apply, as the substance was not a specified substance and the Athlete has established that the substance was Used Out-of-Competition in a context unrelated to sport performance. Therefore the starting point for the Panel is that the period of ineligibility should be two years, unless the conditions for a reduction are met and this case really turns on the possible application of Article 10.4.2 of the Rules.

Article 10.4 .2 of the Rules

41. Article 10.4.2 provides as follows:

“10.4.2 Application of No Significant Fault or Negligence beyond the application of Article 10.4.1.

If an Athlete or other Person establishes in an individual case where Article 10.4.1 is not applicable, that he or she bears No Significant Fault or Negligence, then, subject to further reduction or elimination is provided in Article 10.5, the otherwise applicable period of ineligibility may be reduced based on the Athlete’s or other Person’s degree of Fault, but the reduced period of ineligibility may not be less than one – half of the period of ineligibility otherwise applicable.”

42. “No Significant Fault or Negligence” is defined in Appendix 1 to the Rules as follows:

“The Athlete or other Person’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.

“No Fault or Negligence” is defined in the same Appendix as follows:

“The Athlete or other Person’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, or otherwise violated an anti-doping rule.

“Fault” is defined in the same Appendix as follows:

“Fault is any breach of duty or any lack of care appropriate to a particular situation. Factors to be taken into consideration in assessing an Athlete or other Person’s degree of Fault include, for example, the Athlete’s or other Person’s experience, whether the Athlete or other Person is a Minor, special consideration such as impairment, the degree of risk which should have been perceived by the Athlete and the level of care and investigation exercised by the Athlete in relation to what should have been the perceived level of risk. In assessing the Athlete’s or other Person’s degree of Fault, the circumstances considered must be specific and relevant to explain the Athlete’s or other Person’s departure from the expected standard of behaviour...”

43. The burden of proof under Article 10.4 rests with the Athlete, and the first issue which the Panel must determine is whether Mr. IS-4158 has established on the balance of probabilities that his 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. The Panel is satisfied that Mr. IS-4158 has not satisfied the onus of showing, on the balance of probabilities, that he bears No Significant Fault or Negligence. The Panel would highlight the following factors which led to this conclusion:

(a) The Panel accepts the Claimant’s submission that Mr. IS-4158 bears some fault by spending the day drinking, and putting himself in the position that he became intoxicated and ended up choosing to take cocaine when offered to him in the toilets.

(b) In assessing Mr. IS-4158’s degree of fault, the Panel have taken into consideration the special consideration in the present case where there is evidence of impairment on Mr. IS-4158’s judgment as a result of his gambling addiction. However, the Panel do not accept that these circumstances are sufficiently relevant to explain the Athlete’s

departure from the expected standard of behaviour. The Panel has also taken into account the criteria for No Fault or Negligence, whereby the Athlete must establish that he did not know or suspect that he had used the Prohibited Substance. In the present there were no evidence that the impairment of Mr. IS-4158's judgment meant that he did not know or suspect that he had used a Prohibited Substance. On the contrary the uncontroverted evidence was that Mr. IS-4158 knew that he was taking cocaine.

- (c) In the circumstances Mr. IS-4158 has failed to establish that his 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.

Proportionality

14. In the circumstances, the issue of the Panel's possible power to reduce the otherwise applicable period of ineligibility to more than one year, on the basis of the proportionality principle, does not arise.

Article 10.7.3 of the Rules

15. As regards duration of sanction, Article 10.7.3.1 of the Rules provides that if a provisional suspension is imposed and respected by the Athlete, then the Athlete shall receive a credit for such period of provisional suspension against any period of ineligibility which may ultimately be imposed. In the present case Sport Ireland advised Mr. IS-4158 on the 8th October 2015 that he was provisionally suspended from that date. The evidence at the hearing established that Mr. IS-4158 did not participate in any soccer competition or activity since the date of his provisional suspension. In those circumstances the Panel finds that Mr. IS-4158 did respect the provincial suspension, and have decided that he should receive a credit for

the period of provisional suspension against the two year period of ineligibility which is now imposed.

G Concluding comments

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

Dated the 28th day of April, 2016.

Signed on behalf of the Panel by
Seamus Woulfe, Chairperson