

IRISH SPORT ANTI-DOPING APPEAL PANEL

REASONED DECISION

IN RELATION TO

APPEAL BY MR IS-4158

(A) INTRODUCTION

1. This is the Reasoned Decision of the Irish Sport Anti-Doping Appeal Panel (the "**Appeal Panel**") in appeal by [...] ("**IS-4158**") against the decision of the Irish Sport Anti-Doping Disciplinary Panel (the "**Disciplinary Panel**") to impose a period of Ineligibility of two years on him in the matter of Sport Ireland versus Mr IS-4158
2. Mr IS-4158 is a twenty-four year old man who participates in League of Ireland Soccer. On [...] 2015, after a day of gambling and drinking and when in a reportedly extremely intoxicated state, Mr IS-4158 inhaled cocaine in the toilets of a pub, where it was offered to him by a stranger. On [...] 2015 he was selected to play a match the following day for his club, [...]. On [...] following the match Mr IS-4158 was selected for In Competition testing and his A Sample resulted in an Adverse Analytical Finding of the presence of the substance cocaine. Cocaine is a Prohibited Substance, listed as a stimulant under the Prohibited List under S.6(a) of the Prohibited List published as an international standard by the World Anti-Doping Association ("**WADA**"). Accordingly Mr IS-4158 was automatically provisionally suspended pursuant to Article 7.8.1 of the Rules from 8 October 2015.
3. Mr IS-4158's case was heard on 4 April 2016 (the "**Disciplinary Hearing**"). The Disciplinary Panel gave their decision and related sanctions and consequences in writing on 24 April 2016, and delivered a reasoned written decision on 28 April 2016 (the "**Disciplinary Panel's Decision**").
4. In advance of the Disciplinary Hearing Mr IS-4158 admitted his ingestion of cocaine, resulting in the Adverse Analytical Finding, was an anti-doping rule violation ("**Anti-Doping Rule Violation or ADRV**") of Article 2.1 of the Irish Anti-Doping Rules (the "**Rules**").
5. 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, 10.4 or 10.5 are met. Mr IS-4158 did not submit Article 10.3 was relevant. The Disciplinary Panel held that Mr IS-4158 had not satisfied the provisions of Article 10.4, Article 10.5 had no application and accordingly it imposed a period of Ineligibility of two years. Taking account of Mr IS-4158's timely admission of the Anti-Doping Rule Violation the Disciplinary Panel decided that the period of Ineligibility should run from [...] 2015, the date on which Mr IS-4158's sample was taken.

6. Mr. G of [...] Solicitors served a Notice of Appeal on Mr 's behalf on 9 May 2016 ("**Notice of Appeal**"). The Chair of the Irish Sport Anti-Doping Disciplinary Panel appointed three members of that Panel to decide the Appeal, being Ms Helen Kilroy, Dr Rachel Cullivan-Elliott and Mr Liam Harbison.
7. The Appeal was heard on 2 June 2016. Mr IS-4158 was represented by Mr G of [...]. Sport Ireland was represented by Mr Gary Rice and Mr Niall Sexton of DAC Beachcroft Solicitors. The Football Association of Ireland was represented by Mr Mark McNamee. Ms Siobhan Leonard of Sport Ireland attended as did Ms Nicola Carroll BL, the Secretary to the Appeal Panel.

(B) GROUNDS OF APPEAL

8. The Notice of Appeal set out grounds of appeal against the Disciplinary Panel's Decision imposing sanctions and consequences. In his Notice of Appeal Mr IS-4158 accepted the following four points and did not appeal them:
 - The Decision that an Anti-Doping Rule Violation was committed.
 - The Decision that Articles 10.1.1.1 and 10.1.1.2 do not apply and therefore as a consequence that the maximum suspension is two years.
 - The Decision that proportionality does not arise. Specifically and for the avoidance of doubt Mr IS-4158 indicated that he would not argue on appeal that a one year suspension is disproportionate.
 - The Decision to commence the period of Ineligibility the date his sample taken ([...] 2015) in line with his timely admission of the Anti-Doping Rule Violation.
9. The Notice of Appeal went on to confirm that the single issue for determination on appeal related to whether or not the two year period of Ineligibility applicable under Article 10.1 should have been reduced by virtue of the application of Article 10.4.2

(where an Athlete can show that they bore No Significant Fault or Negligence for the Anti-Doping Rule Violation). Specifically Mr IS-4158 asserted that the Disciplinary Panel erred in its Decision that Article 10.4.2 did not apply to his case (on the grounds he had failed to establish that he bore No Significant Fault or Negligence) and contended this Decision was wrong for three reasons:

- (1) The Panel failed to take into account the full extent of the impairment of Mr IS-4158 on the night in question.
- (2) The Panel failed to take into sufficient account the evidence of Mr IS-4158's psychiatrist Dr Colin O'Gara.
- (3) The Panel failed to take into sufficient account the relevant case law on comparable sanctions in similar cases.

C) NATURE AND SCOPE OF APPEAL

10. Under Article 13.4.2 of the Rules the Appeal Panel must decide the appeal *de novo* so the Appeal Panel must make its decision looking at the matter afresh and not merely based on whether the Disciplinary Panel erred in how it arrived at its Decision in accordance with Article 10.4.
11. The Appeal Panel has considered the grounds of appeal set out in Mr IS-4158's Notice of Appeal, the transcript of the Appeal Hearing, the submissions made on behalf of Mr IS-4158 and Sport Ireland at that hearing and case law. While noting its jurisdiction to decide the case afresh, in reaching its Decision the Appeal Panel has also carefully considered the Disciplinary Panel's Decision and all related documentation before it including the transcript of the Disciplinary Hearing, correspondence exchanged between the parties, expert reports and written submissions.
12. As was apparent from the Disciplinary Hearing, no issue was taken by Mr IS-4158 with the finding that there was cocaine in his sample taken immediately after the football match. Article 2.1.1 of the Rules provides that Athletes are strictly liable for what they ingest:

"2.1.1 It is each Athlete's personal duty to ensure that no Prohibited Substance enters his or her body. An Athlete is responsible for only 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 on the Athlete's part be demonstrated in order to

demonstrate an Anti-Doping Rule Violation Article 2.1.”

13. The presence of a Prohibited Substance in an Athlete’s “A” sample or the confirmation of this in the analysis of the “B” sample is treated under Article 2.1.2 as establishing an Anti-Doping Rule Violation. Accordingly, there was no dispute but that Mr IS-4158 was guilty of the Anti-Doping Rule Violation alleged.
14. What is at issue is the question of the appropriate sanction. The steps by which the Appeal Panel must approach this issue are set out in the opening words of Article 10 of the Rules:

“The appropriate sanction shall be determined in a sequence of four steps. First, the Irish Sport Anti-Doping Disciplinary Panel shall determine which of the basic Ineligibility sanctions (Article 10.1 or 10.2) apply to the particular anti-doping rule violation. Second, if the basis Ineligibility sanction provides for a range of sanctions, the Irish Sport Anti-Doping Disciplinary Panel shall determine the applicable sanction within that range according to the Athlete or other Person’s degree of Fault (Article 10.3 or 10.4). In a third step, the Irish Sport Anti-Doping Disciplinary Panel shall establish whether there is a basis for elimination, suspension, or a reduction of the sanction (Article 10.5). Finally, the Irish Sport Anti-Doping Disciplinary Panel shall decide on the commencement of the period of Ineligibility under Article 10.7.”

15. The default period of Ineligibility for a violation of Article 2.1 is 4 years as cocaine, although a Prohibited Substance, is not a Specified Substance. If the Athlete can establish that the Anti-Doping Rule Violation was not “intentional” (which means used to cheat), then the combination of Article 10.1.1 and Article 10.1.2 mean that the period of Ineligibility shall be 2 years. Article 10.1.3 provides:

“10.1.3 As used in Article 10.1 and 10.2, the term “intentional” is used to identify athletes who cheat...

An anti-doping rule violation resulting from an Adverse Analytical Finding for a substance which is only prohibited In-Competition:

10.1.3.2 shall not be considered “intentional” if the substance is not a Specified Substance and the Athlete can establish that the Prohibited Substance was used out of competition in a context unrelated to sport performance.”

16. There is scope then for a potential further reduction in the period of Ineligibility under Article 10.3 or Article 10.4. These Articles draw a distinction between “No Fault or

Negligence” and “*No Significant Fault or Negligence*”. If an Athlete establishes No Fault or Negligence, then pursuant to Article 10.3 “*the otherwise applicable period of Ineligibility shall be eliminated.*” If the Athlete establishes No Significant Fault or Negligence, then pursuant to Article 10.4.2. “*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*”.

17. The Appeal Panel accepts that Mr IS-4158 through the evidence of [REDACTED] (before the Disciplinary Panel) corroborated how the cocaine entered Mr IS-4158’s system and that the cocaine was used by Mr IS-4158 in a context unrelated to sport performance. Mr IS-4158 was not trying to cheat. The Appeal Panel therefore accepts that the ingestion was not “*intentional*” within the meaning of Article 10.1.1.1 and Article 10.1.3.2. That reduces the period of Ineligibility from 4 years to 2 years. Mr IS-4158 did not contend that Article 10.3 is relevant to his case. So the Appeal Panel must consider whether the same factual circumstances as gave rise to the Anti-Doping Rule Violation establish No Significant Fault or Negligence on Mr IS-4158’s part, in which case the Appeal Panel has discretion to reduce the 2 year period of Ineligibility to something between 1 year and 2 years but not less than 1 year based on the Panel’s assessment of Mr IS-4158’s degree of Fault.

18. The expression “*No Significant Fault or Negligence*” in Article 10.4.2 is defined in Appendix 1 to the Rules, which sets out the definitions, 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. Except in the case of a Minor, in order to establish No Significant Fault or Negligence for any violation of Article 2.1, the Athlete must also establish how the Prohibited Substance entered his or her system”.

19. The expression “*No Fault or Negligence*” is defined in Appendix 1 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. Except in the case of a Minor, in order to establish No Fault or Negligence for any violation of Article 2.1, the Athlete must also establish how the Prohibited Substance entered his or her system”

20. The expression "Fault" is defined in Appendix 1 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 considerations such as impairment, the degree of risk that 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. Thus, for example, the fact the Athlete only has a short time left in his or her career, or the timing of the sporting calendar, would not be relevant factors to be considered in reducing the period of Ineligibility under Article 10.4.1 or 10.4.2".

(D) EVIDENCE AS TO MR IS-4158 'S DEGREE OF FAULT

21. At the Disciplinary Hearing and the Appeal Hearing Mr IS-4158 gave evidence about his gambling addiction and the circumstances in which he ingested the cocaine and played the match. Medical evidence was given by Dr Colin O'Gara and Dr Eamonn Keenan to the effect that Mr IS-4158 had a severe gambling addiction at the time of the Anti-Doping Rule Violation and it is a recognised medical illness. Both doctors agreed that the illness impaired MrIS-4158 's judgment but differed on the impact of that impairment on the steps leading to MrIS-4158's commission of the Anti-Doping Rule Violation. Dr O'Gara thought it was causative, whereas Dr Keenan thought Mr IS-4158's consumption of alcohol was causative. As the Appeal Panel's analysis of this evidence underpins its decision, to contextualise the Appeal Panel's findings we summarise elements of the relevant evidence and set out other aspects verbatim.

Mr IS-4158's evidence to the Disciplinary Hearing

22. In his very first engagement with the Disciplinary Panel Mr IS-4158 submitted through his solicitors that he:

[REDACTED] has a serious gambling addiction. As a result, his cognitive functions and judgment were impaired on the night in question... [REDACTED]. He will argue that given the circumstances outlined above he is entitled to rely on the first instance on Article 10.4.2 and that he has No Significant Fault or Negligence”.

23. Mr IS-4158 's oral evidence before the Disciplinary Hearing was summarised in the Disciplinary Panel’s Decision as follows:

“17. Mr. IS-4158 first gave evidence. He gave a brief history of his footballing career from when he started out playing schoolboy football with [...] , and then played in the League of Ireland with various clubs until he moved to [...] Club where he was playing at the time of the violation in [...] 2015. [REDACTED]

[REDACTED]. He explained how he had developed gambling problems over the last few years, and this had led him to attending a number of meetings of Gamblers' Anonymous, but he had stopped because he didn't quite trust that his identity might not be revealed on some online forums. During the second half of 2014 he thought that his gambling problem was getting better, but [REDACTED] that is when he found himself going into decline again. [REDACTED]

18. Mr. IS-4158 then moved on to deal with the events on the [...] 2015. He went to bed on the night of Wednesday the [...] 2015, [REDACTED]

[REDACTED]. He woke up on the Thursday morning and rang into work sick. He got his wages and decided that he was going up to the local pub and was going to drink for the day. There was a fellow taking bets [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] 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]

and he didn't play for a bit after that which obviously had a bit of an effect on him.

20. Mr. IS-4158 stated that he had a fair idea what the result was going to be after the doping testing. He went in on the Monday and offered his resignation [REDACTED]
[REDACTED]
[REDACTED] He then got a job [REDACTED], and this was keeping his mind away from everything that was going on and that is where he was now. In terms of football he didn't play after the doping test, but instead told the manager he was injured because he didn't feel right about it.

21. As regards treatment for the gambling addiction, [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

████████████████████ He regretted the night in question as the biggest mistake of his life. As regards how he could assist other people in the future, he thought he could go out and speak to other clubs in all different sports, and speak to young lads to see if his story could prevent someone else sitting in the seat where he was now.

22 Mr. IS-4158 was then cross-examined by Mr. Rice on behalf of Sport Ireland. He confirmed that he had been made permanent ██████████ 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 ██████████. He confirmed that ██████████ 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. ██████████
████████████████████”

Mr IS-4158's oral evidence at the Appeal Hearing

24. As well as having the benefit of the Disciplinary Panel's summary of Mr IS-4158's evidence and the transcript what he said at the Disciplinary Hearing, the Appeal Panel had the opportunity to hear Mr IS-4158 give evidence directly. The Appeal Panel found him to be an honest and credible witness. He is clearly remorseful about what happened. Experiencing the In Competition test on [...] 2015 seems to have been a wake up call for Mr IS-4158 ██████████
████████████████████ Focusing on the impact of his gambling addiction on his behaviour and decision making the Appeal Panel noted the following aspects of his oral evidence as particularly relevant.

25. In the months prior to the Anti-Doping Rule Violation Mr IS-4158 was struggling as a result of his gambling addiction. [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

26. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

27. Mr IS-4158 explained to the Panel that the night of [...] 2015 was very difficult for him [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

28. It is clear from Mr IS-4158's evidence to the Appeal Panel that on the morning of [...] 2015 he decided not to go to work and instead went to the bookies [REDACTED]

[REDACTED]
[REDACTED] The focus of his day appears to have been to gamble, rather than to drink but he started drinking when he went to the pub to fit in, and he expected he could gamble there without distraction. [REDACTED]

[REDACTED]
[REDACTED] While at the pub Mr IS-4158 started to drink heavily. [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]

29. Mr IS-4158 described his appearance that evening as “sloppy”. He said it was at this time that he met a man in the bathroom of the pub who offered him cocaine saying “*get that into you, it will wake you up, sober you up a bit*”.⁴ Mr IS-4158 believes that had he not spent the day gambling and losing money he would never have taken the cocaine. Mr IS-4158 admitted that he was aware that the substance offered to him was cocaine. [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

30. Mr IS-4158 admitted that the following day he felt ashamed of his actions. He said he felt “*disgusted really. I didn’t know what to do.*” He said that he went to training on the Friday night and was thinking about whether or not he should play in the game the following day. Mr IS-4158 went on to explain that he had missed a number of games previous to that due to an accident on [...] 2015 where he was knocked off his bike by a car. He said he felt that if he did not play the match on the Saturday that he would let more people down. Mr IS-4158 wanted to receive a €50 appearance bonus for playing the match on the Saturday.

31. In terms of his knowledge of the Anti-Doping regime and the Rules the Appeal Panel noted the following evidence as relevant. Mr IS-4158 explained to the Panel that when he was tested he thought he had gotten away with taking the cocaine as at the time he “*hadn’t a clue*” how long the substance could stay in a person’s system.⁷ When questioned by the Disciplinary Appeal Panel, Mr IS-4158 explained that he had consumed a lot of fluids during the two days prior to the match. He said that he was also unaware of the effect that taking cocaine could have on your body until he looked it up on the internet some time later. In the Disciplinary Hearing Mr IS-4158 had explained “*I thought I had got away with it. Obviously when you look up what effects it could do to your body and, you know, I look back now and I could have had a heart attack it says on the internet.*”⁸

[REDACTED]
⁴ Pages 13 – 14 of the Appeal Hearing Transcript

⁵ Page 29 of the Appeal Hearing Transcript

[REDACTED]
⁷ Page 43 of the Appeal Hearing Transcript

⁸ Page 32 of the Appeal Hearing Transcript

32. During questioning by the Appeal Panel Mr IS-4158 explained that he had never been tested prior to this incident. He said he had been playing with the League of Ireland for seven years and had only seen FAI officials visiting two or three times and was never fully aware of why they were there. Mr IS-4158 said he has had no Anti-Doping education as to the testing process. He said he had seen some cases in the newspapers but was not aware of how the process worked.
33. The Appeal Panel regarded as significant the fact that that the FAI, Mr IS-4158's National Governing Body, did not adduce any evidence at either hearing or make any submissions about its education of its members on Anti-Doping issues.

Dr O'Gara's Medical Report

34. Dr Colin O'Gara Consultant Psychiatrist at Saint John of God Hospital, Stillorgan, Dublin, provided a medical legal report in relation to Mr IS-4158, which was submitted to the Disciplinary Panel. In his report Dr O'Gara summarised his views based on his psychiatric interview and examination of Mr IS-4158 on 7 December 2015. He noted that as at the date of examination Mr IS-4158 had [REDACTED]

[REDACTED]

[REDACTED] The key section of the Report provides as follows:-

1. "History of Gambling

[REDACTED]

[REDACTED]

[REDACTED] He went to the pub and drank a large amount of alcohol to include spirits and red bull. He subsequently went to the toilets where he was presented to cocaine and as he put it in an act of stupidity

[REDACTED]

[REDACTED]

[REDACTED]

4. Impression

Having had the opportunity to review Mr IS-4158's case and meet him in person, it is clear to me that he has suffered a severe gambling disorder, based on DSM-5 classification of the gambling disorder. Mr IS-4158 exhibited the following criteria which are necessary to diagnose gambling disorder:

- (1) The need to gamble with increasing amounts of money in order to achieve the desired excitement;
- (2) Restless or irritable when attempting to cut down or stop gambling;
- (3) He had made repeated unsuccessful efforts to control, cut back or stop gambling;
- (4) He described being frequently pre-occupied with gambling have persistent thoughts of re-living past gambling experiences and in the next venture thinking of ways to get money in which to gamble;
- (5) He described gambling when distressed;
- (6) He described chasing;
- (7) Lying - concealing his gambling;
- (8) The consequences of his gambling are clear;

[REDACTED]

From this case Mr IS-4158's gambling is not explained by a manic episode. As all of the DSM-5 criteria are met the appropriate diagnosis is Gambling Disorder (Severe)".

Dr O'Gara's Oral Evidence

35. Dr O'Gara gave evidence to the Disciplinary Hearing⁹.
36. With regard to the classification of gambling as a medical illness Dr O'Gara stated that as of 2013 it is classified as an illness alongside alcohol and drug addiction:

"In May 2013 DSM 5, which was the most recent and up to date classification in the States clearly classified gambling disorder along side alcohol addiction and drug addiction¹⁰."

37. Dr O'Gara went on to note in relation to the classification that Mr IS-4158 was suffering from a severe form of the addiction:

"They have specifiers with regard to mild, moderate and severe and I think that is very important with regard to my assessment and the consequences for the individual involved.

Just to say that at St John of God Hospital we see a tenth of the people with severe gambling disorders. That is international figures, only one in ten people will actually land into any treatment centre. 90% of people with this severe form of the condition will be out in the community, will be bailed out by family or friends or whatever or the condition keeps going on¹¹."

38. Referencing his report Dr O'Gara went on to describe the exact nature of the addiction suffered by Mr IS-4158 as follows:

"So the criteria which I have outlined in the report outlines the various criteria you have to meet to be diagnosed with the condition and I have outlined those in the report. But ultimately to summarise there is a compulsion, there is a significant deterioration in the quality of the gambling. Gambling is thought to be a very pleasurable and benefit activity for the majority of people, that is probably 90% of people but for anywhere up to 10% it is very very destructive and for a small percentage, maybe 1% of the population it is catastrophic. So the consequences as were outlined to me on the day [referencing his interview with Mr IS-4158] were very much catastrophic and this was an example of a young man who had an awful lot

⁹ Pages 49 to 69 of the Disciplinary Hearing Transcript

¹⁰ Page 52, line 6 of the Disciplinary Hearing Transcript

¹¹ Page 52, line 9 of the Disciplinary Hearing Transcript

going on for him [REDACTED]

[REDACTED] *and then engaging in behaviours which one ordinarily wouldn't do. The concept of getting intoxicated to that extent and then using a drug which hasn't been used before where it could lead to consequences is really something that we would see regularly with regards to the extent and depth of difficulty that people get into. That is what presented to me was very much an example yet again of in the severe form of this condition the depths that people would plummet to with regard to the illness*"¹². (emphasis added)

39. On the extent of Mr IS-4158 's impairment from his illness on the night he took cocaine Dr O'Gara stated that the impact of the illness underpinned his behaviour:

*"There are two things that strike me. The first thing is you have intoxication which is one issue but prior to that, you know, we are in a medical illness here where the core feature is impairment, it is impairment of judgment it is persistence with the behaviour in the face of adverse consequences which is the World Health Organisation's definition of addiction. Nobody sets out to persist with these behaviours*¹³.

40. On how alcohol consumed by Mr IS-4158 interacted with his impairment from his illness Dr O'Gara opined that the illness (rather than the alcohol) impaired Mr IS-4158 's judgment and caused him to do things that he ordinarily would not do:

"Well we have heard exactly how it did. [REDACTED] I think there is two things to it. This illness and thankfully I am not in a position where I have to argue it is a medical illness, it is a medical illness and the illness is characterised by impairment of judgment, that is persistence with gambling, persistent losses, [REDACTED] and doing things that you ordinarily wouldn't do in the severe form of the condition. The intoxication adds injury to insult and clearly on the night that was the case but in my opinion enough had happened before that." (emphasis added)

41. As to what connection Dr O'Gara saw between Mr IS-4158 taking the cocaine and his gambling addiction he opined that the act of taking cocaine was the end result of an awful period of time for him due to his addiction:

¹² Page 53, line 19 of the Disciplinary Hearing Transcript

¹³ Page 54, line 14 of the Disciplinary Hearing Transcript

“
I believe it mimics the description that we see time and again of people who end up with severe gambling conditions. Of course his story is very particular, it is his life obviously but the principles are the same, there is a constant deterioration over a period of time with this thing in the background¹⁴”. (emphasis added)

42. On whether Mr IS-4158 would have ingested the cocaine on [...] if he had the addiction under control Dr O’Gara opined that in his view he would not have:

“We will never know, will we. But my opinion is that a young man with his prospects wouldn’t be in that situation and if somebody says get it into you at that stage I would say he would tell them what to do.” (emphasis added)

43. When asked whether gambling was comparable to depression in terms of its severity and impairment Dr O’Gara said that in his view such comparisons were not helpful or relevant and the proper question is whether a person has the illness under the classificatory system. In his view gambling is a horrific condition and gambling addicts do not always get the recognition for what they are experiencing that people suffering from other terrible conditions do:

“I don’t think we compare and contrast, if something meets the criteria for an illness it is the illness. It is in a classificatory system. “To pull from the literature David Forrest is a Professor in Liverpool who has written about the state of unhappiness in pathological gamblers, that is a British term, gambling disorder is the more general term now. He made the connection or his quote is “as unhappy as cancer patients”. That is often quoted which I think perhaps there is a tinge of frustration in there that maybe people who suffer from gambling addiction don’t get the recognition that other people who suffer from terrible conditions do. But certainly the distress here, and I see this on a daily basis, it is horrific, this condition is terrible and there is no question that sports people or people affiliated with sports or people who work for instance in the racing industry, stables, all that kind of thing is disproportionately affected¹⁵.” (emphasis added)

44. Under cross examination by Mr Rice, on behalf of Sport Ireland, Dr O’Gara addressed the question of whether he had come to a view that Mr IS-4158’s “cognitive functioning was impaired”. He opined that while Mr IS-4158’s cognitive function in the “mini-mental state examination” was not impaired his (cognitive) judgment and behaviour was:

¹⁴ Page 55, line 14 of the Disciplinary Hearing Transcript

¹⁵ Page 56, line 5 and line 12 of the Disciplinary Hearing Transcript

"I cant comment from a legal point of view I can comment from a medical point of view which is cognitive impairment as we know it as doctors refer to a situation where you sit down with the mini-mental state examination or some other objective instrument and look at somebody's ability to perform under certain circumstances, useful in conditions such as dementia or brain injury or that type of thing. That is not what we are talking about it is not certainly what I am talking about I am taking about an impairment of judgement and behaviour, an impairment of behaviour such"¹⁶. (emphasis added)

45. Mr Rice subsequently put it to Dr O'Gara that the triggering event for Mr IS-4158 taking cocaine was alcohol and Dr O'Gara described the assertion "as a bit of a leap":

"I would personally view that as a bit of a leap. I think that you have to look what comes before that. I think, you know, it doesn't all happen in an instance. I think we heard the description of a few second. I think an awful lot came before that. [REDACTED] I think that led to a series of effects after that like a domino effect and I think the end result in my mind was that this thing that he hadn't done before which was out of character."¹⁷ (emphasis added)

46. When Mr Rice put it to Dr O'Gara that Mr IS-4158 knew right from wrong on the day he ingested the cocaine Dr O'Gara remarked as follows:

"I don't know what was in Mr IS-4158's mind on the particular night. I can only give based on what I saw when I met him and the description of his difficulties and I what I observed, I observed somebody who had been through a significantly difficult time. What happens to people at the end of that journey really, is, this is how people present to the hospital, it is invariably a situation like that where people land in an awful lot of trouble and this is how I see it"¹⁸. (emphasis added)

47. Mr Rice had a further exchange with Dr O'Gara about the impact of the addiction on Mr IS-4158's decision to take cocaine and whether it impacted his ability to make a moral decision Dr O'Gara opined that it did:

Q. I suppose it is fair to say that a gambling addiction is one of compulsion or impulse?

A. Yea, absolutely.

Q. All actions flow that impulse or compulsion to keep going with that?

¹⁶ Page 57 line 19 Disciplinary Hearing Transcript

¹⁷ Page 59 line 1 Disciplinary Hearing Transcript

¹⁸ Page 59 line 21 Disciplinary Hearing Transcript

A. Yes.

Q. So while it will to some degree interfere with one's judgment in relation to going for the next bet or an assessment of risk is it fair to say it actually doesn't, I appreciate you don't use this terminology but in terms of ones moral compass or ones ability to assess moral matters it doesn't really significantly impact on that?

A. I think it does actually. I think that when you meet really well-meaning people who come in and tell you [REDACTED] [REDACTED] that is the global deterioration or that is the collateral from the chasing behaviour or the gambling addiction itself. It is pervasive it doesn't just stay within that little bubble, it affects all facets of life. The story as I heard it today with regard to being in the pub doing the things he did, yes, of course there is an intoxication piece there and you can look it is due to that, the guy got drunk and he took coke and that was that, I don't think so. As I say I think there was too much there in the preceding experience that led to this global affect it started affecting other facets of his life. Why otherwise would he do that? [REDACTED] [REDACTED] [REDACTED] [REDACTED]. (emphasis added)

48. Mr Rice then gave Mr O'Gara the chance to address aspects of Dr Keenan's evidence. Mr Rice noted that Dr Keenan was of the view Mr IS-4158's cognitive function was normal. Dr O'Gara as agreed it was in the context of a mini-mental state test but opined that was irrelevant here as Mr IS-4158's (cognitive) judgment was impaired by his illness:

Q. Drawing from that then having seen his report Dr Keenan will be of the view that Mr IS-4158's cognitive functioning is normal, you wouldn't differ. It comes back to the question I asked you earlier, Dr O'Gara, and I think you agree Mr IS-4158's cognitive functioning was not impaired at the date you examined him?

A. I think we are getting mixed up I think we need to clarify exactly what we are talking about just like you said. I think if we are talking about a mini-mental state examination, that cognitive functioning that we would use in very specific states and conditions, the answer is Mr IS-4158 would score 30 out of 30 in that. He wouldn't have a problem there but that is stuff like who is the current Taoiseach, who is the

current President, what day is it, what date, month, year, spell world, spell world backwards, that type of thing. I don't think that is relevant here. I hear what you are saying about the legal definition but we are dealing here with an illness that is way down in the pecking order with regards to acknowledgement as an illness and way down the pecking order with regards to appreciation as a medical illness. I work in this area, you could probably say I am going to say that but we see people very, very distressed with this condition and spend our day treating people with this condition so I will argue cognitively impaired from the point of view of judgment and judgment should come into that cognitive assessment²⁰" (emphasis added)

49. Dealing with this distinction between impaired cognitive function and cognitively impaired from the judgment perspective Mr G re-directed Dr O'Gara on this point as follows:

Q. *Sorry, I just want to be clear on this I think we are all clear it is common case that as of the date he was examined by you and Dr Keenan he was cognitively fine, I don't think there is any question about that, everyone accepts that. I think what we are talking about, it is of importance here, is the night of the incident when the cocaine was involved. You have said certainly that his judgment was impaired?*

A. *As a result of gambling addiction, correct.*

Q. *You also use the word, maybe you didn't mean to use it do you way that you felt as though it may have been cognitively impaired?*

A. *I said as a judgment if it is going to it under, I mean where does judgment fit in in, does it fit in as a cognition or what, you could argue it is behaviour as well. To clarify on the strict sense of cognitive testing with regard to somebody's ability to carry out basic functions I am not talking about that, I am talking about judgment impairment as it falls in under gambling addiction.*

Q. *That is what you thought was the most likely on the night?*

A. *Correct" (emphasis added)*

Dr Keenan's Medical Report

50. Dr Eamonn Keenan Consultant Psychiatrist in the HSE in substance misuses since 1996 and current national clinical lead in addiction services also provided a report on behalf of

²⁰ Page 66 line 16 Disciplinary Hearing Transcript

Sport Ireland in relation to his examination of Mr IS-4158 on the 28th of January 2016. In his report he made the following observations in relation to Mr IS-4158's addiction:

[REDACTED]

[REDACTED]

[REDACTED] *At his point his football was going well and he realised his problem with gambling could interfere with this so he first went to Gambling Anonymous meeting.* [REDACTED]

[REDACTED]

[REDACTED]

His gambling was typified by the following points;

- *He was pre-occupied with gambling in that he would wake up in the morning thinking about gambling and arranging his work and life schedule around getting access to his gambling forms which were generally in bookies or virtual gambling sites. The reason for this was that he wanted to have immediacy in relation to accessing money.*

- [REDACTED]

- *He admits to gambling to escape his distress and difficulties. He was continually hoping that a big win in the bookies would relieve some of the anxieties and concerns he was experiencing.*

- *He admits to chasing losses whenever he would lose a significant amount of money.* [REDACTED]

- [REDACTED]

- [REDACTED]

- [REDACTED]

Mr IS-4158 divulged his gambling was increasing steadily. However to did manage to kerb his gambling in the summer of 2014 for a period of time when he was trying to save some money to go on holidays to America. [REDACTED]

At this time he also signed for [...] Club and a friend got him a job working in [REDACTED]. He himself felt it was okay to work there as he though he was cured and he thought that his gambling would be better as he would be able to hear tips and gamble more effectively. However the opposite was the case. He began losing significant amounts of money. He became completely pre-occupied with gambling. He arranged his work schedule around opportunities to gamble in that he would often swap into an early shift so that he would start work at 7 am to finish at 1 pm and then be available to go to the bookies at 3 pm. [REDACTED]

[REDACTED] In the summer 2015 he had become completely pre-occupied with betting. He was studying form in bed but on many occasion when was in the bookies he would not rely on form instead he would rely on coincidences or pure luck to place his bets. [REDACTED]

He went to pub in [...] and began betting at 1 pm that day. To fit in with the crowd he stated that he started drinking at 1 pm. His betting continued throughout that afternoon [REDACTED]

[REDACTED] He also continued drinking very heavily. He moved from pints of stout to vodka and red bull. Subsequently, bingo started and he began betting on this. He became very drunk. At 11.30 pm he was extremely intoxicated and stumbling. He went into the toilet and he stated that somebody in there saw him in the state he was in and offered him cocaine and as this individual put it "to bring him to life". He was aware of what it was but took it anyway. His friend brought him home at 2 am saying that he was in an extremely bad state quite aggressive and argumentative but extremely intoxicated. In relation to other substances he states that he had never taken any other drugs of any type and he never smoked cigarettes. He does drink alcohol at this point and he states that he has a drink once every couple of weeks. During these drinking episodes, he states that he drinks between 4/5 pints at a maximum or perhaps six bottles of beer. [REDACTED]

[REDACTED] He does described concentration but says he is determined to do whatever is necessary to move beyond this."

Dr Keenan's Oral Evidence

51. Dr Keenan gave oral evidence to the Disciplinary Panel²¹.
52. Mr Rice asked Dr Keenan to explain cognitive impairment and he responded as follows:
- A. "Well, I suppose first of all you need to talk about cognition and what cognition is. Cognition could be as sort of conscious mental disorders which involve a number of areas including thinking, understanding, learning, remembering, executive function which would be the ability to carry out complex tasks such as maybe getting dressed, judgment would come into cognitive processes as well behavioural issues, volition, it is a very broad concept involving many different areas of the brain involved in making a decision or coming to a conclusion."
- Q. Right. If somebody has severe cognitive impairment can you give us a description of what that might look like?
- A. Somebody with severe cognitive impairment would be unable to attend to the day to day functions of living. If someone had severe cognitive impairment you could perhaps think of an individual suffering from Alzheimer's disorder who would be unaware perhaps of their name, surrounding, date, family members. They would be unable to function without the aid of other people so severe cognitive disorder would be a fairly debilitating condition. (emphasis added)
53. In relation to examination of Mr IS-4158 and describing the impact of his gambling Dr Keenan noted as follows:

" [REDACTED]
[REDACTED] I suppose initially at one point he was looking at form and he was studying the form in racing papers but eventually he ended up, this is another example of how cognitive distortions can happen with gambling, he ended up relying on pure luck or superstition so maybe if he wore yellow socks today that would mean he would have better luck gambling so again an example of how thinking could be impaired, distorted by gambling.

²¹ Page 75-92 Disciplinary Hearing Transcript

It all came to a head on the day we have heard when he woke up and decided not to go into work that day and went to a pub in [...] where he started betting and to fit in around 1pm he started drinking”²²,” (emphasis added)

54. In response to further questions from Mr Rice about the nature of Mr IS-4158’s addiction and how it created cognitive distortions in Mr IS-4158’s thinking, the exchange went as follows:

Q. Can I bring you back to a number of points. Are you satisfied that Mr IS-4158 has a gambling addiction?

A. Yes, I am satisfied.

Q. You speak of cognitive distortion. Is it fair to say gambling addiction as you say yourself create cognitive distortion in ones thinking?

A. Someone with a gambling problem has cognitive distortions in the way they approach matters around gambling in that I think Dr O’Gara explained it as well that somebody who is in control will walk away from gambling after a period of time someone with a gambling disorder will not be able to rationalise their gambling, they will chase losses, use superstitions, gambling fallacy that Dr O’Gara has mentioned where if something has happened a number of times the gambler will think that in the future that means it won’t happen a number of times. Instead of issues in relation to the past which have no relevance on the future the gambler doesn’t see it like that, they see that everything that has happened in the past has got a direct implication for what has happening in the future. These would be the types of rationalisation of cognitive distortions that an individual with a gambling disorder would experience.

Q. But does that amount to cognitive impairment?

A. Again cognitive distortions could be seen as an impairment of your cognition, in your way of thinking but it wouldn’t be to the extent whereby it should interfere with your activities of daily living.²³ (emphasis added)

55. Under redirect cross-examination from Mr G Dr Keenan had an exchange about the interaction between gambling and alcohol consumption as causative contributors to Mr IS-4158 taking the cocaine. The exchange was as follows:

²² Page 79, line 19 Disciplinary Hearing Transcript

²³ Page 81, line 16 Disciplinary Hearing Transcript

- Q. Dr Keenan I think it is probably fair to say if I am understanding you correctly that the gambling addiction from which I think everyone here agrees Mr IS-4158 was suffering from is the underlying cause of where we are today?
- A. Yes.
- Q. Certainly that would have caused him to be in the pub?
- A. That's correct.
- Q. That would have caused him to drink amounts of alcohol which would have been out of character for him?
- A. I am not sure whether that would have caused him to drink that amount of alcohol. I think he went to the pub to gamble. He drank to fit in with the milieu that was in the public house at the time but I don't know if you can say what you said here.
- Q. The alcohol flowed I suppose from the fact that he was in the pub again due to the addiction and that in turn led to the poor decision he made in respect of the cocaine at toilet ?
- A. Yes.
- Q. I think the suggestion that has been made here, it certainly hasn't been made explicitly but I have no doubt it will be at some point, that the actual reason for him taking cocaine was the fact he was drunk. I know that Dr O'Gara has specifically said that is not the case and I am wondering is it your opinion also that the underlying cause, I think you have said it anyway, is the gambling addiction and the alcohol was merely an add on as it were?
- A. But without the alcohol I do not think he would have taken cocaine.
- Q. I accept that but without the gambling addiction he wouldn't have necessarily been where he was?
- A. Perhaps, yes.²⁴ (emphasis added)

56. Then on the issue of impairment Mr G acknowledged that severe cognitive impairment, as explained by Dr O'Gara and Dr Keenan is not what we are here dealing

²⁴ Page 86, line 4 Disciplinary Hearing Transcript

with and asked a question as follows:

Q. *What we are dealing with, what I think Dr O’Gara said and what you have said is that we are dealing with judgment which was impaired and behaviours which were impaired by a severe gambling addiction?*

A. *Insofar as the gambling addiction has impaired judgment and behaviours, yes.*

Q. *You did describe cognitive distortions which occur as a result of gambling addictions.*

A. *Yes.*

Q. *And again that brings a cognitive element into it I suppose in that it does affect your functioning, not in the way that being able to dress yourself or go about your daily business but it does affect the decisions you make?*

A. *Yes.*

Q. *And it can cause you to make decisions which are entirely out of character to stuff that you would normally do?*

A. *One of the characteristics of gambling disorder would be that there would be an increase in impulsivity in relation the individual and perhaps that would be associated with this as well.²⁵*

57. Mr Rice’s examination of Dr Keenan on the causation issue was as follows:

Q. *Just arising from the cross-examination, is the position then that Mr IS-4158 does not have an alcohol addiction Dr Keenan?*

A. *No, he doesn’t have alcohol dependent syndrome.*

Q. *Am I right in understanding your testimony to be that he chose to drink that day to fit in?*

A. *Yes.*

Q. *Am I right to understand that he would not have taken the cocaine if sober?*

²⁵ Page 87, line 21 Disciplinary Hearing Transcript

A. He has said he wouldn't have taken it and I feel that he wouldn't have taken it if he had been sober.

Q. Is it fair to say then as a result of that that the gambling is not the direct cause of the ingestion of cocaine?

A. The gambling per say is not the direct cause of him taking the cocaine that night but it is an interlinked situation that he found himself in and he ran into the wrong person in the toilet who took advantage of his vulnerability”²⁶

(E) CLOSING SUBMISSIONS

Submissions on behalf of Mr IS-4158

58. Mr G 's submissions centred on the evidence adduced on behalf of Mr IS-4158 relating to his medical illness at the time leading up to and when the Anti-Doping Rule Violation occurred and the Rules and relevant case law.

59. As to the definition of “impairment” referred to in the definition of “Fault” set out in the Rules, Mr G submitted that there had been some confusion on this issue at the Disciplinary Hearing with the focus on the phrase “cognitive impairment” and whether or not Mr IS-4158 was severely cognitively impaired. He submitted that in the **Livermore** decision the expression “cognitive impairment” may have been wrongly used when one had regard to the evidence provided by both experts in this case as to what that means, namely the capacity to meet a mini-mental state test. He accepted though that we do not have the full facts of the Livermore case as many of them have been redacted. In any event he submitted that Dr O’Gara’s evidence clearly supported a finding that a gambling addiction was a recognised medical illness, Mr IS-4158 had a severe form of the illness and it impaired his judgment and behaviour. [REDACTED] [REDACTED] in the days leading up to the Anti-Doping Rule Violation and submitted that the medical evidence supported a finding that Mr IS-4158’s medical illness was causative of his decision to both ingest cocaine and then subsequently to play in the match two days later, even though he did not know whether the cocaine had still remained in his system.

60. In respect of the argument which Mr G expected Mr Rice to make in his closing submissions, that alcohol was causative of the decision by Mr IS-4158 to ingest the cocaine,

²⁶ Page 91, line 28 Disciplinary Hearing Transcript

Mr G submitted that the Appeal Panel had to look at what came first and he submitted that was the gambling addiction. He pointed out that at this time Mr IS-4158 had never taken cocaine or any other drugs before the Anti-Doping Rule Violation (nor has he since) and his mind was not in the right place. Mr G accepted that Mr IS-4158 knew what he was taking but submitted that Mr IS-4158's mind was impaired to such an extent that he could not be responsible for making that decision to take cocaine, it was a decision that had effectively been taken out of his hands because he was not thinking straight, he was thinking as an addict, [REDACTED]

[REDACTED] Mr G submitted that it is not quite as simple as Mr Rice has said saying there are choices. He submitted that is a little bit like saying that an alcoholic has a choice to drink. He remarked that in a sense yes, everybody has a choice but sometimes you are so overtaken by the compulsion and the effect that this compulsion, this addiction has on you that effectively that choice is taken away from you because you cannot see the wood for the tree.

61. Referring to the **Livermore** decision, Mr G said that the criteria relevant to the decision to give Mr Livermore no ban (which Mr G was not contending for) were that he had no intention to enhance his performance, he had been tested previously and all tests returned negative, it was a one off incident in respect of the use of cocaine, he had never used recreational drugs previously and his "*cognitive function and judgment had been impaired*" by his illness. He noted two of those four criteria applied to Mr IS-4158 and his judgment was impaired by his illness.
62. Mr G submitted that in determining No Significant Fault or Negligence mental incapacity is a relevant factor and that this is where the Disciplinary Panel went wrong in its decision. He submitted they were too simplistic in looking at the original concept of No Fault or Negligence without taking into account how mental capacity can affect one's ability to make decisions. He submitted that in the cases of **Vlasov**, in which depression was seen as affecting the Athlete's cognitive functioning and in **Cosby** where depression was again seen as impacting the Athlete's ability to make decisions, they each got reduced sanctions on the basis of No Significant Fault or Negligence, with the depression being the central reason. In the case of **Thompson** where the young athlete who took cocaine was found to have No Significant Fault or Negligence Mr G noted that he had no medical illness impairing his judgment, yet he was given a reduced ban of 1 year for his one off ingestion of cocaine because of his inexperience, lack of awareness of Anti-Doping and lack of coaching support.

63. Mr G cited and relied upon the decision referred to in **Livermore**, namely **Lewis v Taylor** where CAS stated:

“CAS has shown a willingness in appropriate cases to impose a lesser sanction than otherwise applied where an Athlete’s failure to meet the standards was in fact due to the fact that his judgment was impaired by illness or extreme stress”.

Mr G submitted the Appeal Panel should take that approach with Mr IS-4158 as his judgment was certainly impaired by his illness.

64. The last case that Mr G addressed was **Hayden**, in which an athlete found to have No Significant Fault or Negligence in circumstances where his drink was spiked with cocaine when he was attending a party in a private house. He received a ban of fifteen months. Mr G submitted in circumstances where there were no special circumstances in relation to Mr Hayden’s decision making that the ban to be given to Mr IS-4158 should be less than Mr Hayden’s, as Mr IS-4158 was suffering from a medical illness that impaired his judgment.

Submissions on behalf of Sport Ireland

65. Mr Rice’s submissions focussed on Mr IS-4158’s responsibility for his actions and the tests to be applied by the Appeal Panel in reaching its decision under the Rules and the WADA Code. He also briefly addressed the case law.
66. Mr Rice submitted that this is a case of an Article 2.1 Anti-Doping Rule Violation and Article 2.1 imposes a duty on Athletes to ensure no Prohibited Substance enters their body. That obligation on Athletes to take responsibility is underscored by Article 1.4.5 of the Rules which provides *“it is the responsibility and role of an Athlete to take full responsibility for what they ingest and use”*. On that basis Mr Rice submitted that this is a case about responsibility and not about impairment. Mr Rice cited Article 10.5.2 of the WADA code which is the equivalent of Article 10.4.2 of the Rules and relevant only to the imposition of sanctions (not whether an Anti-Doping rule Violation has occurred) and whether a reduction might apply. He said that reductions should only apply in exceptional cases. So he submitted that the questions for the Appeal Panel to determine are: Is this an exceptional case? If yes does No Significant Fault or Negligence apply? If yes what is Mr IS-4158’s degree of Fault? Mr Rice submitted that in deciding No Significant Fault or Negligence one has to have regard to the definition of No Fault or

Negligence and that an Athlete's knowledge as to whether or not they have taken a substance is the key component on the No Fault or Negligence test.

67. Mr Rice then took the Panel through the definition of "Fault" under the Rules and submitted that impairment is only one factor to take account of in assessing Mr IS-4158's degree of Fault. Mr Rice submitted that the Disciplinary Panel was correct in finding Mr IS-4158 had Fault as he had spent the day drinking. Mr Rice emphasised that the evidence showed that Mr IS-4158 did know what he had taken and as an experienced Athlete who had played sport at a very high level he had a duty to apply a high standard of care. Mr Rice submitted that his Mr Keenan's medical evidence supported a finding that the gambling addiction was not causative of the decision of Mr IS-4158 to take the cocaine and rather that was caused by his drinking. Mr Rice asserted that Mr IS-4158 made a series of decisions to not go to work, to gamble, to go to the pub to drink, to stay drinking, [REDACTED] to take cocaine, not to tell anyone the next day, to drink fluids and take a chance on playing for which he was responsible. Mr Rice submitted that looking at all the circumstances Mr IS-4158's degree of Fault was significant, notwithstanding the impairment that might have been caused by his illness.

68. Mr Rice submitted that the **Livermore** decision, being one where there seemed to be a finding of the most extreme case of impairment, is not on all fours with Mr IS-4158's case and is distinguishable on the evidence. He argued that **Viasov** was distinguishable because the athlete had sought treatment for a medical condition when taking a prescribed medication. He submitted **Thompson** was distinguishable because the High School athlete was very young at the time, had never competed before in international competition, lacked experience and knowledge of Anti-Doping and support from his coaches. He submitted **Cosby** is distinguishable as the Athlete's entire structure of life fell apart, her engagement was called off, and her coach quit. The substance taken in that case was a water pill to help her urinate. He said each are different and distinct cases. Finally he submitted **Hayden** was totally distinguishable because the Athlete did not know what he had taken.

(F) **ANALYSIS OF MR IS-4158 'S DEGREE OF FAULT AND APPROPRIATE SANCTION**

69. From paragraph 43 onward of the Disciplinary Panel's Decision it is apparent that the Disciplinary Panel did not regard the impairment which flowed from Mr IS-4158's gambling addiction as having the effect, in all the circumstances, of supporting a finding of No Significant Fault or Negligence. In particular the Disciplinary Panel accepted

Sport Ireland's submission that Mr IS-4158 'freely chose' to drink on the day in question, take cocaine when it was offered to him and knew what it was and then 'freely chose' to play the match when the cocaine might still have been in his system.

70. After careful consideration the Appeal Panel has formed a different view to the Disciplinary Panel of the overall circumstances of the case and the level of Fault attributable to Mr IS-4158. The Appeal Panel's decision is based on its assessment of Mr IS-4158's evidence and the medical evidence of Dr O'Gara and Dr Keenan, and its preference for a key aspect of Dr O'Gara's evidence and a different interpretation of one aspect of Dr Keenan's evidence. For the reasons addressed below, and having regard to the three questions the Panel had to consider, the Appeal Panel finds that this is an exceptional case, Mr IS-4158 bears No Significant Fault or Negligence for the Anti-Doping Rule Violation and assessing his degree of Fault the Appeal Panel determines that a period of Ineligibility of 1 year is appropriate in all the circumstances.
71. The first question for the Appeal Panel is whether this is an exceptional case because Article 10.4.2, which allows for a reduction in the period of Ineligibility, should only apply in exceptional cases. In the view of the Panel this is an exceptional case. The Appeal Panel is satisfied on the medical evidence of both experts that Mr IS-4158 had a severe gambling addiction at the time of the Anti-Doping Rule Violation. Dr O'Gara's evidence was that people with severe gambling addictions are slow to present for treatment and international studies suggest that only 10% of such gamblers do. Mr IS-4158 fits into that category. No cases were opened to the Appeal Panel concerning Athletes suffering from a gambling addiction. The addiction is a recognised medical illness only since 2013. Dr O'Gara commented that, as a consequence, it struggles to be acknowledged²⁷ as the severe, damaging and misery inducing illness that is. It clearly impacted Mr IS-4158's life to an increasingly disruptive extent [REDACTED]
[REDACTED] The illness was accepted by both experts as a disease of compulsion which leads to impulsive, irrational and at times out of character behaviour. Mr IS-4158's behaviour in 2015 and in period leading up to the Anti-Doping Rule Violation, (as noted in the summary of his evidence above), typified his addiction. Mr IS-4158 had reached a particular low point in the week of the Anti-Doping Rule Violation [REDACTED]
72. The second question for the Appeal Panel is whether Mr IS-4158 bears No Significant Fault or Negligence for the Anti-Doping Rule Violation and the Appeal Panel so finds.

²⁷ Page 67 line 4 Disciplinary Hearing Transcript.

The Appeal Panel is satisfied that the medical testimony of Dr O’Gara supports a finding that Mr IS-4158’s judgment was impaired by his addiction, it led him to behave as he did on [...] 2015, gambling recklessly, [REDACTED] [REDACTED] drinking excessively and taking cocaine. The Appeal Panel favours Dr O’Gara’s view that the illness caused these behaviours, rather than being an interlinked situation as suggested by Dr Keenan, particularly given that both doctors agreed that alcohol dependence was not in question in this case.

73. Even when Mr IS-4158 realised on [...] what he had done the night before, he continued to behave consistently with his illness. Once picked for the match the next day he gambled the cocaine would be out of his system by drinking plenty of fluids but without checking a medical source to see how long it would remain in his system. He wanted to play to earn the €50 appearance bonus and with a view to securing a contract for the following season, even though he would risk losing much more if he was tested. He gambled he would not be the one in 22 players to be tested. Alcohol played no role in these decisions. Had he not played the Anti-Doping Rule Violation would not have been committed as cocaine is only a Prohibitive Substance in Competition.
74. The Appeal Panel is satisfied that the impact of Mr IS-4158’s illness was very real and debilitating. His capacity to make good decisions was clearly impaired and was causative of these behaviours. Mr IS-4158 could not control his addiction at the time of the Anti-Doping Rule Violation or its impact on his decision making and behaviours. For that reason the Appeal Panel is satisfied that while Mr IS-4158 cannot avoid strict liability for the Anti-Doping Rule Violation, given that he knew what he ingested, he bears No Significant Fault or Negligence for doing so as his judgement was impaired due his medical illness.
75. The third question the Appeal Panel has to determine is the degree of Mr IS-4158’s Fault and what period of Ineligibility should therefore be imposed. The Appeal Panel finds that in the circumstances, of his illness and how it impacted his judgement and decision making and his lack of education on Anti-Doping issues, Mr IS-4158’s Fault is low. It is very difficult when an Athlete has a medical illness to say that one decision is impacted by the illness and another is not. The impact of a medical illness on an Athlete’s judgment has been touched on in some of the case law opened to the Appeal Panel. While the Appeal Panel agrees there is no suggestion of cognitive impairment here, there is evidence from both psychiatrists that impairment of judgement is a core feature of the severe illness they both agree Mr IS-4158 suffered from at the time of the Anti-Doping

Rule Violation. The decisions he made in relation to deliberately missing work, gambling all day, uncharacteristically drinking to excess and uncharacteristically taking cocaine were as a consequence of that impairment of judgment. Furthermore given his level of experience his decision to play forty eight hours later was a poor one, indeed it was that decision, rather than the taking of cocaine, that led to the Anti-Doping Rule Violation. It was a decision however made entirely in keeping with the cognitive distortions described by both medical experts as occurring in the mentality of someone suffering from severe gambling addiction. There was therefore an exceptional circumstance in that there was impairment as a consequence of a clearly identified illness, which lead to Mr IS-4158 exercising a reduced level of care and having a misperception of risk. The circumstances as described by both medical experts are sufficiently specific and relevant to explain Mr IS-4158's departure from the expected standard of behaviour.

76. While each case must be decided on its own facts and circumstances the Appeal Panel found some of the cases opened to it of assistance in considering the degree of Fault question and appropriate sanction. In **Vlasov**, the Athlete was a professional tennis player who prior to his Anti-Doping Rule Violation was diagnosed with depression and back pain. He was described an over the counter medicine for his depression, consumption of which resulted in his Anti-Doping Rule Violation. There had been no intention on Mr Vlasov's part to enhance his performance and although he did not take advice on whether there was any Prohibited Substance comprised in the over the counter medication, even though he was a professional player, he was found to bear No Significant Fault or Negligence given his depression. In that regard CAS held:

"In this case there is a proven medical diagnosis of depression. That condition will impact a person's cognitive functioning. [Mr Vlasov's] conduct would amount to significant fault where it not for his medical condition probably impairing his personal judgment. Although his judgment would have improved over the course of treatment which was very effective for him, in all of the circumstances and particularly because of the medical diagnosis, the line ought to be drawn in favour of the player to say that there is no significant fault".

77. In **Thompson** the Athlete had never taken drugs before his Anti-Doping Rule Violation (or indeed since). In a social context and without any intention of enhancing his performance Mr Thompson had taken cocaine two days before competing. His sanction was reduced to 1 year in circumstances where the Panel held that he was inexperienced in the area of doping, he was not supported by his coaches, it was a one off event but there was no other exceptional circumstance.

78. Most significantly the Appeal Panel notes that in **Cosby** it was held that:

"the Panel believes that USADA was correct when it argued that if Ms Cosby was not affected by depression then Ms Cosby was responsible for taking the pill. But the Panel is of the opinion that Ms Cosby's judgment was adversely affected by depression and she thus bears less responsibility than normal for what happened to her".

██████████ In this case Mr IS-4158 was suffering from a medical illness at the time of his Anti-Doping Rule Violation and it impaired his judgment. ██████████

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██████████ He was gambling without any logic or by reference to form including on virtual races, which are cartoons and totally a matter of chance. ██████████

80. In **Cosby** the Panel noted:

"we understand that in an effort to rid sport of doping we must not accept a series of excuses for doping violations because almost anyone can fashion an excuse once they have been caught. But this is a case of medically diagnosed severe depression that followed a series of negative events".

81. The Appeal Panel finds that this is a case in which Mr IS-4158 has not invented an addiction but has been diagnosed by two eminent and respected psychiatrists as suffering from a gambling addiction at the severe end of the spectrum and that this is a recognised medical illness, which impaired his judgment in his everyday life.

82. Sport Ireland pointed to the **Keyten** where CAS held that getting drunk is not an exceptional circumstance in excusing an Athlete of his or her Fault or Negligence. The Appeal Panel accepts that decision but has concluded that the reason Mr IS-4158 ingested the cocaine was caused by his gambling addiction, not the fact he had been drinking. That decision to ingest the cocaine and then the decision two days later to play was the catastrophic culmination of the consequences of his severe gambling addiction.

83. Notwithstanding the impact of his illness on his decision making and the fact he was not seeking to cheat, which is what the Rules are intending to prevent, Mr IS-4158 accepts responsibility for taking the cocaine and has not sought on appeal to argue for a total extinguishment of sanction. Thus, as a result of the strict liability provisions of the Rules

he faces a minimum period of Ineligibility of twelve months and a maximum of 24 months. Mr IS-4158 has a compelling case for arguing for leniency in relation to his conduct, given his medical illness and the medical view of the Appeal Panel that his illness permeated his every day decisions. In addition there was no evidence before the Appeal Panel that Mr IS-4158 had received any Anti-Doping education and he had certainly never been tested before. The Appeal Panel considers that Mr IS-4158's degree of Fault is tempered by his circumstances and that his period of Ineligibility should be reduced to 1 year.

(G) COMMENCEMENT OF PERIOD OF INELIGIBILITY

84. The Appeal Panel notes that Mr IS-4158 has not appealed the date from which the period of Ineligibility is to apply, namely [...] 2015 (when Mr IS-4158's sample was taken). The Appeal Panel agrees that is the correct date for commencement of the Period of Ineligibility given Mr IS-4158's timely admission of the Anti-Doping Rule Violation under Article 10.7.2 of the Rules.

(H) CONCLUSION

85. Accordingly the Appeal Panel find and orders that Mr IS-4158 bears No Significant Fault or Negligence under Article 10.4.2 of the Rules for his Anti-Doping Rule Violation under Article 2.1 and having regard to his degree of Fault imposes a period of Ineligibility of 12 months, commencing on [...] 2015 and expiring at midnight on [...] 2016. In that period Mr IS-4158 is not eligible to participate in any Competition or other activity as provided for in Article 10.8 of the Rules.

(I) CLOSING COMMENTS

86. For clarity the Appeal Panel notes four important points about the evidence. First, Mr IS-4158 and Dr O'Gara gave evidence that Mr IS-4158 would be likely to experience a positive therapeutic impact once allowed to play again. Second, Mr IS-4158 offered to participate in education of players once this case was over. Neither point was given any weight by the Appeal Panel in determining the sanction to apply under Article 10.4.2 as they are not admissible criteria. Third, the Appeal Panel noted with surprise that the impact of the head injury suffered by Mr IS-4158 several months before the Anti-Doping Rule Violation was not addressed in the medical testimony, so it did not take account of it in looking at the overall circumstances of the case. Finally, the Appeal Panel made its determination on the facts of the case in which the medical evidence, of a severe form of illness with consequential impairment of judgement, was very important. The evidence

was specific to Mr IS-4158 and is not a precedent for any future case involving alleged impairment through illness; any such case would have to be judged on its own merits and the medical evidence adduced in respect of that case.

87. The Appeal Panel notes that this case, which has involved considerable stress, time and costs for the parties involved, related to a situation where the Athlete had no intention to cheat, having ingested a substance in a social context. The Appeal Panel strongly recommends that the Football Association of Ireland use the experience of this case as a catalyst to review its education of players on the Anti-Doping Rules and Regime.
88. Athletes in all sports at every level (under the stewardship of Sports Ireland and all National Governing Bodies) should receive very clear education about Anti-Doping and be warned about the need for utmost caution in relation to ingestion of substances in a social context and out of competition, given the impact they can have at In-Competition Testing. In particular Athletes need to be educated on the importance of voluntarily withdrawing in advance from a competition if they are in any doubt about the impact of a substance which they have ingested out of competition.
89. The Appeal Panel wishes to thank the parties and participants in the proceedings for their assistance and in particular its secretary Ms Nicola Carroll for all her work and assistance.

Helen Kilroy

Dr Rachael Cullivan-Elliott

Liam Harbison

Dated 11 July 2016