

DECISION

issued by the

IRISH SPORT ANTI-DOPING DISCIPLINARY PANEL

sitting in the following composition:

Chairperson:	Mr. Seamus Woulfe, Senior Counsel
Panel Member:	Dr Mary O'Flynn Flannery, Medical Practitioner
Panel Member:	Ms. Sarah Keane, Sports Administrator
Secretary to the Panel:	Ms. Nicola Carroll, Barrister

in the disciplinary proceedings between

CYCLING IRELAND

Claimant

and

CIARAN KELLY

Respondent

and

THE IRISH SPORTS COUNCIL

Notice Party

A. Introduction

1. This is the written decision of the Irish Sports Council Anti-Doping Disciplinary Panel (the “Panel”) in proceedings brought by Cycling Ireland (the “Claimant”) under the Irish Anti-Doping Rules (2009 version)(the “Rules”) against Ciaran Kelly, an athlete engaged in the sport of cycling.
2. The Anti-Doping Rule violation alleged against Mr. Kelly was that he was in breach of Article 2.1 of the Rules in that a prohibited substance, namely, clenbuterol was found in a sample of urine given by him during in-competition testing on the 20th April 2014. Defined terms in the Rules carry the same meaning in this decision.

B. Relevant Background

3. Mr. Kelly is now an amateur cyclist and was formerly a professional cyclist. He was competing in a cycling event in Gorey, County Wexford on the 20th April 2014 when he was selected for in-competition testing which was carried out after a stage of the event. 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. Kelly’s “A” sample was conducted by the Deutsche Sporthochschule Köln Institut Für Biochemie. The analytical report in respect of the analysis of Mr. Kelly’s sample dated the 7th May 2014 disclosed the presence of clenbuterol, 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 the Irish Sports Council which then conducted an initial review pursuant to Article 7.2 of the Rules to determine whether the presence of clenbuterol was consistent with a valid and applicable therapeutic use exemption held by Mr. Kelly, or whether there had been any apparent departure from the International Standards for Testing or Laboratories that might have caused the adverse analytical finding. The review was carried out by the Irish Sports Council on the 28th May 2014. In a certificate

dated the 3rd June 2014, the Irish Sports Council certified that its review did not reveal the existence of a valid and applicable therapeutic use exemption in Mr. Kelly'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. Kelly by letter dated the 3rd June 2014. The purpose of that letter was to notify Mr. Kelly of the alleged violation of the Rules. Mr. Kelly was provided with detailed information and extensive documentation with that letter. He was informed of his right to have his "B" sample tested in order to determine whether it disclosed the same substance found in the "A" sample. He was informed that under the Rules any such request had to be made by the 17th June 2014, failing which his right to have the "B" sample analysed would be deemed to have been waived. Mr. Kelly was also informed that he had the right to admit or deny the alleged violation to the Panel by the 24th June 2014, under Article 7.3.2.8 of the Rules. Mr. Kelly was informed that if he admitted the alleged violation, the consequences or sanctions to be imposed in respect of that violation would be determined by the Panel and that he had a right to a hearing before the Panel. He was also informed that if he failed to admit or deny the alleged violation by the 24th June 2014, he would be deemed under the Rules to have admitted the violation. The potential consequences or sanctions in respect of the alleged violation were also set out in that letter.
7. On the same date, the Irish Sports Council wrote to the Secretary of the Panel informing the Panel of the alleged violation and enclosing a copy of the correspondence and other documentation which it had furnished that day to Mr. Kelly.
8. The Irish Sports Council also wrote to Cycling Ireland on the same day notifying them of the alleged Anti-Doping Rule Violation.
9. By letter dated the 12th June 2014 Andrew McQuaid of Trinity Sports Management, acting for Mr. Kelly, denied the Anti-Doping Rule violation on the

basis that Mr. Kelly did not knowingly use or attempt to use a prohibited substance or a prohibited method.

10. On the 13th June 2014 Cycling Ireland notified Mr. Kelly that he was provisionally suspended pending the outcome of the Panel hearing in accordance with Article 7.6.2. of the Rules, and Mr. Kelly returned his 2014 Cycling Ireland license.
11. A hearing Panel was convened in June 2014 and agreed to conduct a hearing as soon as practicable.
12. An analysis of Mr. Kelly's B sample was also conducted by the Deutsche Sporthochschule Köln Institut für Biochemie. The analytical report in respect of the B sample dated the 27th June 2014 confirmed a positive test for clenbuterol.
13. The Panel notified the parties by letter dated the 4th July 2014 that it had decided to hold a hearing on the 22nd July 2014. The Panel issued a direction requiring each of the parties to supply to the Panel and to the other parties further Particulars of their case, including details of all witnesses that the party intended to call at the hearing and details of the evidence to be given by those witnesses.
14. In advance of the proposed hearing date Mr. Kelly's representative submitted a "Skeleton Argument" dated the 15th July 2014. In this document Mr. McQuaid did not dispute the positive test for clenbuterol, and accepted that as a result of this positive test the Claimant's burden of proof of an Anti-Doping violation under Article 8.4.1. of the Rules had been met. However, it was submitted that Mr. Kelly did not knowingly ingest the substance in question, and that as a result under Article 10.4.1 of the Rules Mr. Kelly bore no fault or negligence as a result of the prohibited substance having entered his system. As paragraph 6 of the document it was submitted that the positive test was more readily explained through contamination of food which Mr. Kelly had ingested in the days and weeks before the anti-doping test, and the document then continued as follows:

- “7. It is well known that the Prohibited Substance in question can be found in meat.
8. The Respondent had several opportunities to eat contaminated meat in the weeks leading up to the positive test:
- I. The Respondent trained in Lanzarote between 2 February 2014 and 10 February 2014 where he ate meat on several occasions.
 - II. The Respondent ate meat from his (regular) butcher in Ireland in the days before his test occurred.
 - III. Since receiving notification of the positive test, the Respondent has carried out research into his (regular) butcher, and has found out the following:
 - A. The butcher brings in some meat from Holland and Germany through a company called [named supplier].
 - B. These companies bring in their meat from Argentina, New Zealand, Brazil and Spain.
 - C. The meats on special offer in his (regular) butcher are brought in from abroad frozen, and marked as fresh and Irish.”
15. By email dated the 20th July 2014 Mr. McQuaid requested an adjournment of the hearing scheduled for the 22nd July 2014 on the basis that they would not be in a position to present his full defence on that date, as they were waiting for certain outstanding information. By email dated the 21st July 2014 the Claimant did not object to the hearing being postponed, but added the qualification that they would like to request the particulars of the report or information that was causing the delay, as there was no reference to same in the Skeleton Argument.
16. The Panel decided to accede to Mr. Kelly’s request for an adjournment, and by letter dated the 22nd July 2014 the Panel proposed the 16th September 2014 as a provisional date for the adjourned hearing of the matter. The Panel stated that it would confirm this provisional date in due course after compliance with certain

directions which it then issued, with regard to any further submissions to be furnished by the parties.

17. The Panel received a letter sent by Mr. McQuaid on the 25th August 2014 stating that a report which Mr. Kelly hoped to obtain in relation to testing of meat had been delayed, and would not be received until the 29th August 2014. It was stated that this testing related to meat “from a butcher where the Respondent would have purchased meat and consumed it before the anti-doping test in question”.
18. Mr. McQuaid then furnished a report by email dated the 2nd September 2014. It was stated in the email that this was a report from the lab which tested meat from Mr. Kelly’s regular butcher, and that Mr. Kelly had eaten meat from this butcher in the days leading up to the adverse finding. The attached report dated the 2nd September 2014 was submitted by a Lab Analyst, Marc Farrelly, who was part of a company known as [REDACTED]. In his report Mr. Farrelly stated that on the 21st August 2014 4 individual bovine samples were delivered for testing of the presence/absence of the substance clenbuterol, and he concluded that there was a high level of clenbuterol present in all the samples provided.
19. Following receipt of the said report the Panel notified the parties by letter dated the 5th September 2014 that it would not be in a position to hold the hearing on the 16th September 2014, and it offered the Claimant the opportunity to make a response to the report submitted on behalf of the Athlete. Solicitors for the claimant, Daveron & Co. Solicitors, subsequently wrote to the Panel by letter dated the 25th September 2014. In that letter Daveron & Co. stated that the report from [REDACTED] did not provided adequate information such that Cycling Ireland could respond to in any meaningful way, and it set out alleged deficiencies in the information provided by the Athlete in 15 listed paragraphs. It requested the Panel to make a direction under Article 8.6.6. of the Rules requiring the Athlete to furnish further and much more detailed particulars of his case, including particulars of the matters set out in the 15 listed paragraphs insofar as possible.

20. Further correspondence ensued, and Mr. McQuaid furnished further particulars in response to the Claimant's queries by letter dated the 17th October 2014. By letter dated the 4th November 2014 Daveron & Co. stated that the said letter dated the 17th October 2014 did not adequately address the deficiencies in the information provided by the Athlete, and Cycling Ireland repeated its request to the Panel to make a direction under Article 8.6.6. of the Rules requiring the Athlete to furnish further and much more detailed particulars of his case.
21. In the light of the complex issues arising in this case, the Panel decided to hold a preliminary hearing on the 3rd December 2014 to consider the request made by the Claimant that the Panel make a direction for further and better particulars, and to deal with case management generally.
22. In advance of the preliminary hearing DAC Beachcroft, Solicitors on behalf of the Irish Sports Council, by letter dated the 28th November 2014 indicated that the Council was exercising its right to become a party to the case under Article 8.3.6. of the Rules.

C. The Preliminary Hearing on the 3rd December 2014

23. The preliminary hearing took place on the 3rd December 2014. The preliminary hearing was attended by all of the parties and their representatives. The parties made submissions regarding the Claimant's request for a direction requiring the Athlete to furnish further and better particulars of his case. The parties also made submissions regarding the reporting of matters arising to the relevant authorities and regarding the disclosure or non-disclosure of these matters to third parties, pending potential investigations by the relevant authorities.
24. Following the preliminary hearing the Panel issued further directions by letter dated the 8th December 2014. These included a direction that the Respondent furnish further and better particulars, by way of more detailed replies to certain paragraphs of the letter from Daveron & Co. dated the 25th September 2014. In addition the Panel fixed the 11th February 2015 as a provisional date for the adjourned hearing of this matter, and made certain ancillary directions regarding details to be furnished by the parties in advance of the hearing.

D. The aftermath of the preliminary hearing

25. The Respondent furnished further and better particulars of its defence of contaminated meat by letter dated 18th December 2014. By letter dated the 2nd February 2015 DAC Beachcroft suggested that the provisional date of the 11th February be vacated, on the basis that they understood that a report/analysis from the Food Safety Authority of Ireland (the “FSAI”) would be forthcoming within the next week or so.
26. By email dated the 6th February DAC Beachcroft submitted a report of the FSAI of its investigation into the presence of clenbuterol in meat dated the 6th February 2015. Following receipt of this detailed report from the FSAI the Panel notified the parties by letter dated the 9th February 2015 that the proposed hearing date of the 11th February 2015 would now be vacated, to allow the parties consider the said report and matters arising, and stated that the Panel would be proceeding to fix a further date as soon as possible.
27. By letter dated the 11th of February 2015 DAC Beachcroft requested further directions from the Panel, requiring the Athlete to make certain requests of the [REDACTED] Laboratory. The Athlete’s representative agreed to make the said request without the necessity for the Panel to make a direction, and by letter dated the 17th March 2015 Mr. McQuaid indicated the response of [REDACTED] to said requests. There then followed contacts between the Notices Party’s expert, Dr. Michael O’Keeffe, and Mr. Farrelly of [REDACTED] regarding the analysis of the meat samples carried out by [REDACTED] and the methodology used.
28. By letter dated 8th April 2015 the Panel fixed the 19th May 2015 as the date for the adjourned hearing of this matter, and made certain ancillary directions regarding steps to be taken by each party in advance of the hearing date.
29. By letter dated the 8th April 2015 DAC Beachcroft notified the Panel that it had come to their attention that the Athlete had not respected the provisional suspension imposed in June 2014, and had competed in an event on the 15th March 2015 at Ticknock, Co. Dublin. They stated that they would submit at the hearing that the Athlete is not entitled to receive any credit for his provisional

suspension against any period of ineligibility which may ultimately be imposed, pursuant to Article 10.7.3.1 of the Rules. Mr. Kelly responded by email dated the 8th April 2015 in which he stated that his participation in this event was an honest mistake as he went to this event with friends, none of whom had Cycling Ireland licenses, and the position on a certain website had allowed him to believe that this was a privately run event.

30. In April 2015 further correspondence ensued regarding contact between Dr. O'Keeffe and Mr. Farrelly. By letter dated the 27th April 2015 the Panel adjourned the hearing date from the 19th May 2015 to the 25th May 2015, in order to facilitate Mr. McQuaid's unavailability during the week commencing the 18th May 2015.
31. The World Anti-Doping Agency and the International Cycling Union were both notified of the hearing date and of their right to attend the hearing as observers.

E. The Full Hearing on the 25th May 2015

(a) Parties Present

32. The full hearing took place on the 25th May 2015. The composition of the panel at the full hearing was Mr. Seamus Woulfe S.C. (the Chair of the Panel), Ms. Sarah Keane (Sports Administrator) and Dr. Mary O'Flynn Flannery (Medical Practitioner). Cycling Ireland was represented by Mr. Larry Fenelon of Leman Solicitors, accompanied by the C.E.O. of Cycling Ireland, Mr. Geoff Liffey. Ms. Louise Reilly B.L. appeared on behalf of the Irish Sports Council, instructed by Mr. Gary Rice of DAC Beachcroft Solicitors. Mr. Andrew McQuaid of Trinity Sports Management appeared representing Mr. Kelly, and Mr. Kelly was also present. Ms. Nicola Carroll B.L. attended as secretary to the Panel.

(b) The Sequence of Evidence on Submissions

33. 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. Kelly, that Mr. Kelly should present his evidence in the first instance, and thereafter the other parties would present such evidence as they wished. There would then be closing submissions from all sides. The parties agreed with that proposed running order.

34. Mr. McQuaid then made a brief opening submission. He said that the Respondent's case was quite straightforward as they had never claimed there was not a positive test for clenbuterol, but the Respondent was saying that it got into his system by meat ingested by him in the days or the week prior to the testing taking place.
35. Mr. Fenelon then made a brief opening submission on behalf of Cycling Ireland. He noted that Mr. Kelly alleged he unknowingly ingested contaminated meat which had high traces of clenbuterol, and he noted that the athlete bore the burden of establishing the specified circumstance on the balance of probability.
36. Ms. Reilly then made an opening submission on behalf of the Irish Sports Council. She pointed out that under the Rules the starting sanction for the presence of a prohibited substance was two years unless the conditions for eliminating or reducing the period of ineligibility, as provided in Articles 10.3 and 10.4, or the conditions for increasing the period of ineligibility, as provided in Article 10.5, were met. In order to have the period of ineligibility eliminated or reduced for no fault or negligence, or no significant fault or negligence, the Athlete had to establish how the prohibited substance entered his system. In the present case, Mr. Kelly's defence was one of meat contamination, and it was the submission of the Irish Sports Council that it was highly unlikely and certainly not probable for meat contaminated with clenbuterol to be found in Ireland. As regards aggravating circumstances which may increase the period of ineligibility, the Council would adduce evidence which raised serious questions over the provenance of the meat sample which Mr. Kelly submitted to the [REDACTED] lab for testing. It would be the Council's case that these meat samples did not come from the butcher named by Mr. Kelly. The next issue was that the Council submitted Mr. Kelly should not be given any credit for the period of provisional suspension served, against the period of ineligibility ultimately imposed, on the

basis that he knowingly and deliberately breached that period of provisional suspension by competing in an event on the 15th March 2015. Finally, there was an administrative issue about the Panel anonymising certain third parties or geographical locations in any published award, so as to avoid damage to the reputations of third parties.

(c) Mr. Kelly's Evidence

37. Mr. Kelly first gave evidence. He explained how he had been a full time cyclist when he was younger, but had then quit cycling some years ago when he had just had enough, and had then started racing again in Ireland the previous year just for fun. When he was informed that he had tested positive for clenbuterol he was completely shocked. When asked why he got meat tested, he stated this was because he was informed by Mr. Liffey from Cycling Ireland, who got in contact with [REDACTED] in the [REDACTED] for him, and [REDACTED] got back to him and put him in touch with Mr. Farrelly from the [REDACTED] lab, so Mr. Kelly thought "might as well get something tested to see where it is from". He added that obviously looking back at a lot of cases it comes from meat. There was some in Portugal, Germany and obviously the **Contador** case stood out so that is why Mr. Kelly got the meat tested. He confirmed that when he got the meat from the butcher he drove straight to the [REDACTED] lab. As regards the mountain bike race during the period of provisional suspension, this had been just for fun. He stated that he did this fun race with a few friends of his who were not Cycling Ireland license holders, and they did not have to show a Cycling Ireland license to enter the fun race. There was no visibility of Cycling Ireland at the race, and Mr. Kelly did not know the fun race was affiliated to Cycling Ireland as when he checked the website there was nothing about it and that is why he did it.
38. Mr. Kelly was first cross-examined by Mr. Fenelon on behalf of Cycling Ireland. As regards the reason why he got the meat tested, he confirmed that he had spoken to [REDACTED] in [REDACTED], as well as having received advice from Mr. Liffey of Cycling Ireland, and that was why [REDACTED] had put him in touch with Mr. Farrelly from the [REDACTED] lab. As regards his participation in an event during the provisional suspension, he confirmed that

his reference in his direct evidence to having checked the website related to another website and not Cycling Ireland's website and there had been no reference to any affiliation to Cycling Ireland when he checked the other website.

39. Mr. Kelly was then cross-examined by Ms. Reilly on behalf of the Irish Sports Council. When asked if he had lost any weight in preparation for his return to racing in 2013 he accepted that he lost 10 kilos, which is about 1½ stone, in the period from September to December 2013. He was asked where he had bought the meat delivered to the [REDACTED] lab, and he named a particular butcher. He stated that he did not have a receipt or any other proof of purchase from this butcher's shop. When asked why he bought the meat, he said it was to get it tested. He was then asked if the purpose was also to use the meat as evidence in his case, and he answered as follows (Transcript page 21, line 7):

“To be honest we didn't know if anything was going to show up. It was to show we were trying to do something. There were so many other places we could have went but that is what we were trying to do to be honest.”

40. When asked to clarify his suggestion that there were so many other places he could have gone to, he stated that he and others used to go to this particular butcher more regularly, and when they looked back at the **Contador** case it was in meat, and they were just trying to go to the most common place they bought meat from.
41. Mr. Kelly was then asked about the colour of the bags in which he delivered the meat sample to the [REDACTED] lab. He stated that he thought the colour was clear. He could not remember who put the meat in the bag after he bought the meat in the butcher. The meat was picked up from the display cabinet on the right hand side of the shop. One of the meat samples was in a vac pack. He thought the other three meat samples were in a bag, but he could not remember what kind of bag. He was later asked whether he had asked the butcher to vacuum pack the three samples which were loose, and he answered yes, and added that he thought they would keep fresher. When asked what the butcher did next after vacuum packing the meat, he answered that the butcher put it in a bag. He was then asked to look at photographs of the samples of the meat which

he had delivered to [REDACTED]. It was put to him that the Panel would hear evidence that the meat was delivered in white, blue and transparent bags. It was put also to him that the Panel would hear evidence from the butcher that the butcher only used certified butcher bags, which are small white bags with a green logo on them. Ms. Reilly put it to Mr. Kelly that samples he delivered to [REDACTED] were not bought from the butcher in question, and he replied that they were taken from the butcher in question 100%.

42. Ms. Reilly then moved on to ask Mr. Kelly about his provisional suspension by letter dated the 13th June 2014. He was asked about applying online for a license in 2015, and he stated that this was meant to be for his dad, and he had made a mistake. He was then asked about his signature on a sign on sheet for a cycling event during the period of his provisional suspension. He stated that he could not really see Cycling Ireland's logo at the top right hand side of the sign in sheet and it was fuzzy. He could not read two references to Cycling Ireland in the fourth line of the waiver at the top of the sign in sheet. He agreed that he had apologised to Mr. Liffey of Cycling Ireland after the event for competing in the event.
43. On questioning by the Panel members, Mr. Kelly explained that Mr. Liffey of Cycling Ireland had been trying to help him after the positive test for clenbuterol. Mr. Liffey had got in touch with [REDACTED] from the [REDACTED], who had previously worked for Cycling Ireland, and there had then been contact between [REDACTED] and Mr. Kelly. [REDACTED] basically said he was going to try and get it sorted, get some sort of test done if he could get meat from me. When asked about his mentioning of the **Contador** case and his previous awareness of issues about positive testing, he said he was aware of just what you read but never went into detail, then when this happens you are looking at everything and going through every case bit by bit. [REDACTED] had then got back to say the [REDACTED] wouldn't test meat independently, but [REDACTED] had then made contact with Mark Farrelly of [REDACTED]. Mr. Kelly had been talking on the phone with Mr. Farrelly before buying the meat and bringing it to him for testing, but Mr. Kelly did not recall any specific advice from Mr. Farrelly about any matters to do with the packaging of the meat or how to bring it to him or anything like that.

44. Mr. Kelly was then asked about the submission back in his Skeleton Argument dated the 15th July 2014 that the butcher in question brought in some meat from abroad through a meat supplier company, and he was asked what was the basis for the reference to this named supplier. He answered that he thought it was a customer in the shop who said this to him, that the butcher brings in meat from abroad. He did not know this customer, and this conversation had come about because this customer worked in the Department of Agriculture and “he comes in and out but we haven’t seen him”.

(d) Mr. Farrelly’s Evidence

45. Mr. Mark Farrelly of [REDACTED] then gave evidence. He stated that he had been working with [REDACTED] for about 8 years. He described how [REDACTED] and he were reasonably good friends, and [REDACTED] had sent him an email saying there was an Athlete who was involved a suspected doping case and they would like to get some meat tested. Mr. Farrelly had told [REDACTED] that [REDACTED] had the equipment, and did similar tests on a daily basis. There were no labs in Ireland who were accredited specifically for the test in question. He explained how Mr. Kelly had got in touch with him and said that the clenbuterol could have been from when he was away on holiday, or could have been from meat he ingested at home. Mr. Kelly had informed him that he was told to just grab the meat and bring it to Mr. Farrelly as soon as possible for the testing. Mr. Kelly delivered the meat to him. It was locked up in a special fridge under padlock and key. Mr. Farrelly came in at the weekend, did the test and there were traces of clenbuterol in the sample.
46. Mr. Farrelly was then asked if he had retested the meat sample with Dr. O’Keeffe, an expert retained by the Irish Sports Council, since his report dated the 2nd September 2014. Mr. Farrelly confirmed that he had discussed his testing and results with Dr. O’Keeffe, and sent his raw data to Dr. O’Keeffe who reviewed it. The outcome was that Mr. Farrelly’s results were revised, and there seemed to be a miscalculation on the part of Mr. Farrelly, and he had overestimated the level of clenbuterol in the samples. While the samples were still positive, there wasn’t as much clenbuterol in them as Mr. Farrelly had

initially reported. The meat was still available for retesting, and Dr. O'Keeffe had collected it the previous week for storage.

47. Mr. Farrelly was then briefly cross-examined by Mr. Fenelon on behalf of Cycling Ireland. When asked again why he had got involved in this matter, he stated that he had known [REDACTED] for a few years, and [REDACTED] had asked could the test be carried out, and Mr. Farrelly could not find anyone else to do it. When asked whether the testing had been authorised by [REDACTED], he answered yes but with the caveat that the results were solely on his own head. This was the first clenbuterol test which Mr. Farrelly had carried out.
48. Mr. Farrelly was then cross-examined by Ms. Reilly on behalf of the Irish Sports Council. When asked if he would describe himself as an avid cycling fan, he answered this was only in recent times. While he had his own cycling blog, he hadn't filled that in for about 4 years. When asked if it would be fair to say that he carried out the testing as a favour to [REDACTED], he answered that it would have been a consideration in that he knew [REDACTED] and that he was capable of doing it. Ms. Reilly then asked Mr. Farrelly whether he had subsequently updated his report dated the 2nd September 2014, and he confirmed this and distributed some copies of an updated report. When asked why he had updated his report, he referred again to his discussions with Dr. O'Keeffe and said that it was apparent after these discussions that he had miscalculated some of the results, so the initial report wouldn't have been an accurate reflection of the results. He had made a few changes in the updated report, which was just to slightly expand upon the initial testing.
49. Mr. Farrelly was then asked by Ms. Reilly to look at the photographs which he had taken of the samples tested. He was asked about the fact that in his original report he had said 4 bovine samples were delivered to him but in his updated report he had changed that to 3. Mr. Farrelly explained that he had only said 4 in the opening line of his initial report, and then referred to 3 at every other point in it. He thought that the first sample that came was in two pieces, and that the reference to 4 was a clerical error on his part. It was clarified that the white sample was the one in two pieces. He was then asked about the colour of the bags in which the meat was delivered to him. The 3 samples were

individually wrapped up in bags and then thrown in a bigger shopping bag. The samples arrived in a blue bag, a white bag and a transparent bag. When asked if he had taken any steps to satisfy himself that there was a chain of custody for the samples, Mr. Farrelly said that it wasn't understood that this was a legal case and that it was later explained by him to Mr. Kelly that there wouldn't be a correct chain of custody. When asked whether he had double checked his findings at the time with a colleague, he mentioned that he went over them with a named colleague who was happy enough that the calculations were okay, but Mr. Farrelly admitted that it turned out subsequently that the calculations were not correct. No confirmatory analysis had been carried out with the screening test. Ms. Reilly concluded by asking Mr. Farrelly if he thought he could stand over his report as containing scientifically robust findings. Mr. Farrelly replied that he could stand over it in that there was the presence of clenbuterol or beta agonists. As regards the actual concentration, he said that no scientist is going to stand over the concentration amounts without further testing, and at the time of the testing Mr. Farrelly was under the impression that the meeting with the Irish Sports Council was only days away and [REDACTED] were quite busy.

50. On questioning by the Panel members at the conclusion of his evidence, Mr. Farrelly stated that nobody at the time was concerned with such things as chain of custody, and the Athlete simply handed him the sample. If he had realised there was going to be a more serious process he would have identified a UK or EU lab that was accredited, and he would have recommended Mr. Kelly to contact them, and they would have dealt with an independent chain of custody. As far as the chain of custody went in the present case, Mr. Farrelly was happy that from when he had the samples no one else had access to them until he passed the meat to Dr. O'Keeffe. Before that it was Mr. Kelly's word. Dr. O'Flynn Flannery asked Mr. Farrelly whether, as a member of Cycling Ireland himself, he was aware of the Anti-Doping Rules and legislation, and he confirmed that he was. Dr. O'Flynn Flannery then asked him would he not then be aware of the ensuing proceedings which would follow a positive doping test, and he answered that he wouldn't follow it that closely and it was not his area. Mr. Farrelly was then further cross-examined by Mr. Fenelon on behalf of Cycling Ireland. He was asked by Mr. Fenelon whether it was credible that he didn't think there was going to be any legal ramifications in Mr. Kelly getting on to him, a

scientist, to test the sample. He answered that he had never seen in any newspaper in Ireland such matters going in front of a court or anything else. He wasn't entirely sure there would be much of a legal process at all until he started getting emails from DAC Beachcroft. He was asked why he had not taken any earlier opportunity to mend his hand when he became aware that he was in the heart of a legal process and he answered that he was only present to testify to the results and that was it.

(e) Mr. W's Evidence

51. The next witness was an employee of the butcher from whom Mr. Kelly stated he had purchased the meat samples. The Panel has decided to anonymise this witness, in the interests of the protection of the rights of third parties, and he will be referred to in this decision as Mr. W. Mr. W stated that he had been working for the butcher in question for the last 21 years and was in the shop seven days a week. He was a certified craft butcher, which standard involved knowledge of traceability requirements. He was asked by Ms. Reilly whether this butcher bought any beef from the supplier named by Mr. Kelly, and he answered no. He named three other suppliers from whom the butcher did buy its beef. When asked how this butcher guaranteed that the beef it bought was Irish born, reared and slaughtered, he explained about the process of farmer's traceability, and the record-keeping covering all beef coming in to the butcher's shop on any given week. He explained the regime of government testing and other testing which this butcher was subject to. He stated that this butcher did not sell foreign frozen meat as fresh and Irish.
52. Mr. W was then shown photographs of the meat which Mr. Kelly was stating he bought from this butcher. Ms. Reilly asked Mr. W whether it was possible that Mr. Kelly could have gone into this butcher shop, picked up a piece of beef which was already vacuum packed and bought it, and Mr. W answered no. Ms. Reilly asked Mr. W to compare the sealing system on the meat samples shown in certain photographs before him, and the sealing system that is used by his butcher's shop. Mr. W explained that the sealing system on the vacuum pack bags used by his shop involved two seals, whereas when looking at the vacuum

packed bag in the photograph there was no visible evidence that there was 2 seals on it, and it looked to Mr. W like one continuous seal.

53. Mr. W was then asked about the colour of carrier bags used by this butcher. He described using a certified craft butcher bag as indicated by the logo, and explained that butchers got an exemption from the 22c levy which was only available on this small certified craft butcher bag. He was then asked about the blue carrier bag and white bag in which meat samples were stated to have been delivered to [REDACTED], and he was asked whether his butcher's shop used blue bags or white bags like that, and he answered no, that the certified craft butcher bag was the only carrier bag used by his shop. When asked what would happen if they used a different type of carrier bag, he explained that if they were caught using the bigger sized carrier bags they would be audited on all bags used for the last number of years since the 22c levy came in, and they would be charged 22c for every bag used for that length of time.

54. Mr. W was then briefly cross-examined by Mr. McQuaid of behalf of Mr. Kelly. He confirmed that his butcher's shop bought their meat from meat suppliers and not from farms. He explained that the traceability system meant the meat in his shop was certified as coming from a particular farm, and a particular herd number. He agreed it was possible for his shop to do vacuum packed meat, if the customer wanted it done.

(f) Mr. C's Evidence

55. The next witness was the managing director of the meat supplier referred to by Mr. Kelly in his Skeleton Argument dated the 15th of July 2014. His evidence was that the butcher in question was not a customer of his wholesale meat supply business, and his business had never supplied beef products to the butcher in question. He was asked two questions in cross-examination by Mr. McQuaid and he explained where his business got their meat from.

56. On questioning by the Panel Chairman at the conclusion of his evidence, Mr. C stated that he was shocked that he featured in this matter especially as he did not supply the butcher in question. When asked whether he knew any reason

why his business might have been connected with the butcher in question, he explained how his vans would have been circulating in the geographic area. When asked again by the Chairman whether his business had ever supplied directly to the butcher in question, he explained that this had happened on only one occasion at Christmas approximately 3 years ago when the butcher was short of hams, and that was the only occasion when his van might have been present at the butcher's premises.

(g) Ms. Conefrey's Evidence

57. The next witness was Ms. Ruth Conefrey who stated that she was an authorised officer of the FSAI, working as an audit and investigations manager in the Audit Unit. She had been working in that role for 14 years. Ms. Conefrey gave evidence about a letter dated the 6th February 2015 written by the Authority. The Authority had carried out unannounced inspections of the meat supplier and the butcher on the 13th January 2015. At the meat supplier they asked for a supplier list and a customer list, and received full cooperation from the food business operator. The butcher was not on the supplier's customer list. They took two poultry samples from the supplier because there was no beef there. They took two poultry samples which originated in China as they thought that would be a useful sample to take for testing for clenbuterol. As regards the inspection at the butchers, all of the beef that was on the premises was all Irish. When Mr. W came to the butcher's premises they asked him questions about traceability information, supplier lists, and asked questions about who the butcher bought meat from. Ms. Conefrey clarified matters regarding country of origin and traceability documents. She explained how an animal is tracked from birth through to slaughter in Ireland. Ms. Conefrey stated that the Authority Officials saw no evidence during their inspection of the butchers that any of the beef in the cold room was supplied by the named supplier. They took 4 triplicate samples of beef and these were ultimately sent to a laboratory in the UK called Fera which carries out testing. The results of the Fera testing were that there was no clenbuterol.

(h) Ms. Minihan's Evidence

58. The next witness was Ms. Michelle Minihan who stated that she was a technical executive in the Consumer Protection Division of the FSAI, working on food incidents. She had been working for the Authority for the last 7½ years, with the last 3 years in her current role. She was asked about the analytical report prepared by Fera relating to the meat sample taken by the Authority during their inspection of the named butcher on the 13th January 2015. The result of that analysis was that all the samples were satisfactory and there was no evidence of beta agonists found in the samples. Nor was there any evidence of clenbuterol found in those samples.
59. Ms. Minihan was then asked about the National Residues Control Programme (the "NRCP") and what this was. She explained that the NRCP is an EU mandated programme set down under a Council Directive, and it requires all Member States within the EU to implement national programme monitoring of food of animal origin for the presence of a range of substances, which included banned substances, permitted veterinary residues, animal feed additives and environmental contaminate. These results of this programme for 2014 and 2013 and 2012 showed that all samples of bovine origin which were analysed for residues of beta agonists were negative. In 2011 two samples were positive for residues having been taken in the course of an investigation into the suspected presence of prohibited animal remedies on a farm. Prior to 2011 the last time there was a positive test for clenbuterol in Ireland was back in 1999. When asked by Ms. Reilly whether there was an issue with meat contaminated with clenbuterol in Ireland, Ms. Minihan answered that the Authority had no evidence to suggest any such issue based on the reports of the NRCP going back several years. Similar reports in the UK showed no incidents of clenbuterol and another European report showed very low levels of incidents of clenbuterol in animals, and the Authority had no evidence to suggest there was anything other than very low levels seen in the EU and in Ireland.
60. On questioning by the Panel members at the conclusion of her evidence, Ms. Minihan stated that the Authority were surprised to hear about Mr. Farrelly's test. She stated we don't see clenbuterol in Ireland very often, and the reason is

that because Ireland has introduced a successful monitoring programme that has pretty much eradicated it from farms here. Clenbuterol is something that is viewed very seriously because it is a banned substance. Under further questioning by Mr. McQuaid, Ms. Minihan accepted that clenbuterol has been seen in Ireland before, two samples in 2011 and before that in 1999.

(i) Dr. O'Keeffe's Evidence

61. The next witness was Dr. Michael O'Keeffe, who stated that he was an independent consultant and a residue specialist. Before that he had worked for 30 years in the area of chemical food safety and research and testing with Teagasc, the agriculture and food development Authority. He stated that the Authority was involved in a considerable amount of research in beta agonists, particularly clenbuterol. When asked what advantages taking clenbuterol give an athlete he agreed that it promotes muscle growth and burns fat. Dr. O'Keeffe was asked to identify a document in the book of exhibits, and he confirmed this was a report he had prepared in relation to a meeting he had with Mr. Farrelly of [REDACTED] on the 22nd of April 2015, and he confirmed the contents of the report as correct. He stated that Mr. Farrelly had stated that the meat samples were received by him as follows, one sample in a white bag, one sample in a blue bag and one sample in a transparent bag. He confirmed Mr. Farrelly had sent him photographs of the meat samples.
62. Ms. Reilly asked Dr. O'Keeffe to read out his primary conclusion in his report in relation to the testing carried out by Mr. Farrelly. Dr. O'Keeffe confirmed that the conclusion in his report was that the nature of the samples was that they were not independently obtained, and without a chain of custody this rendered them unsuitable to subsequent testing for clenbuterol. Therefore any results of such testing had no value. He explained the importance of a chain of custody, which was to establish both the origin of the samples and that there was no potential for any interference with the samples at any time. When asked what were the main deficiencies which he had identified in Mr. Farrelly's analysis, he stated that the analysis was poorly undertaken. First of all there was variation between replicate subsamples, and Dr. O'Keeffe gave a detailed technical explanation about this issue. The second thing was that there were no quality

control samples run with the testing. There were also other issues, but one in particular was that the calculations in the original report were incorrect, and did not follow the protocol that was supplied with the test kit. Dr. O'Keeffe stated that Mr. Farrelly's updated report did not address the deficiencies identified. He also did not consider Mr. Farrelly's report to contain scientifically robust findings.

63. Dr. O'Keeffe was then briefly cross-examined by Mr. McQuaid on behalf of Mr. Kelly. He was asked whether in his opinion he would call Mr. Farrelly a well learned person in his profession or an experienced practitioner. Dr. O'Keeffe answered that it was difficult to make a judgment, but he thought that in this case Mr. Farrelly had moved outside his area of expertise and competence. While Mr. Farrelly's second report had corrected deficiencies in the numbers from his original report, and still showed clenbuterol in the meat, Dr. O'Keeffe added that there were deficiencies in that from an analytical point of view or from a reporting point of view, there were issues around the variation between replicates and subsamples, and they were still in the results. When asked for his opinion as to whether the meat did have clenbuterol in it, he referred to certain limitations within the testing carried out by Mr. Farrelly, but within those limitations Dr. O'Keeffe would say there probably is clenbuterol in the samples.

(j) Mr. Liffey's Evidence

64. The last witness was Mr. Geoff Liffey, who stated that he was the C.E.O. of Cycling Ireland, and he had held that position since July 2008. He was asked about a letter from Cycling Ireland to Mr. Kelly dated the 13th June 2014, and he confirmed that the purpose of this letter was to inform Mr. Kelly of his provisional suspension. This covered all cycling activities run by Cycling Ireland or any of its affiliated groups. In this letter Mr. Kelly was also asked to surrender his 2014 license, and Mr. Liffey had collected it from him. In mid-March 2015 Mr. Liffey became aware that Mr. Kelly had applied for a 2015 license, and this was a full competition license. Sometime in late March 2015 Mr. Liffey had become aware that Mr. Kelly had competed in a mountain bike event. He confirmed that the event came within the definition of a Cycling Ireland activity. Mr. Liffey had spoken to Mr. Kelly a few days later about his

participation in the event, and he queried Mr. Kelly was he aware that the provisional suspension was still in place, and he asked him why did he participate in this event. Mr. Kelly had said he wasn't asked for a license and he didn't believe the suspension carried to that event. Mr. Liffey had said to him was he not aware it was a Cycling Ireland event, because there would have been a sign on sheet he would have seen when he participated, and Mr. Kelly said he didn't notice it. Mr. Liffey confirmed that Mr. Kelly had apologised for his error.

65. Mr. Liffey was then cross-examined by Mr. McQuaid on behalf of Mr. Kelly. Mr. Liffey was asked about a hardcopy of the sign on sheet for the cycling event in question and he confirmed that he had never seen the hardcopy. Mr. Liffey confirmed the sign in sheet was a standard format. Mr. Liffey confirmed that a participant didn't have to have a Cycling Ireland license to compete in this event.

66. Mr. Liffey was later questioned by Mr. McQuaid about what he had done when he was notified that Mr. Kelly had tested positive. He was asked whether he discussed with Mr. Kelly how the substance in question can be and has been found in meat in previous cases, and he answered that Mr. Kelly and himself would have discussed the **Contador** case which was quite topical, and which Mr. Liffey supposed was still to some degree topical. When asked if he helped to advise Mr. Kelly that perhaps the substance could have come from meat he ingested, Mr. Liffey stated that he said it was a line Mr. Kelly could look into, and he mentioned the name of [REDACTED] to him. Mr. Liffey sought to correct the record and to point out that [REDACTED] [REDACTED] [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED]. He told Mr. Kelly that he could talk to this individual and he may be able to give Mr. Kelly some advice, and Mr. Liffey didn't take it any further with him. He did not believe that he had discussed this case with [REDACTED].

67. On questioning by the Panel members at the conclusion of his evidence, Mr. Liffey stated [REDACTED] did not have any experience or expertise in the area of meat contamination, and he worked in the [REDACTED] [REDACTED]. When asked why he had suggested [REDACTED] to Mr. Kelly he answered that this was just because [REDACTED] was in the [REDACTED]

██████████, and he might have been able to find someone within ██████████ who could direct him. He was aware that the ██████████
██████████

68. On further questioning by Mr. Fenelon on behalf of Cycling Ireland, he stated that Cycling Ireland would make contact with all cyclists accused of doping as a duty of care, because they are members of Cycling Ireland. When asked whether it was the fault of the organiser or the participant that an athlete doesn't adhere to the rules of suspension, Mr. Liffey stated that the sign on sheet which had been reproduced at the hearing was fairly legible, and that it showed that the event was a Cycling Ireland event and the athlete's signature was clearly evident on that sheet.

F. Closing Submissions on behalf of Mr. Kelly

69. Mr. McQuaid first made closing submissions on behalf of Mr. Kelly. He pointed out that this was not a case of an elite athlete who has tested positive for a banned substance, but a cyclist who was doing cycling for fun and also to help promote his business. He stated that when Mr. Kelly heard that he had tested positive for a substance he was shocked. When he found out it was for clenbuterol he talked to a few people and tried to figure out a way he could have ingested this substance, because he didn't do it intentionally. Obviously the best way for that which was well known was a contaminated supplement or food, i.e. meat. That is when Mr. Kelly went and got meat from his butcher and organised to get it tested, and he submitted that the Panel had seen the results which showed that there was in fact clenbuterol in the meat. Mr. McQuaid submitted that he could not say 100% that Mr. Kelly ate the meat and it was contaminated, but that he had shown on the balance of probabilities that there was contaminated meat in the food chain in Ireland, and that is how the clenbuterol got into Mr. Kelly's system. In reply to a question from the Chairman, Mr. McQuaid confirmed that his submission was that the Respondent had established on the balance of probabilities that the clenbuterol entered Mr. Kelly's system through the ingestion of contaminated meat.

G. Closing submissions of behalf of Cycling Ireland

70. Mr. Fenelon then made closing submissions on behalf of Cycling Ireland. His submissions focused on the issue of the alleged breach of the provisional suspension by Mr. Kelly. He submitted that there had been a distinct absence of credibility attaching to the evidence of Mr. Kelly as given at the hearing. In particular, Mr. Kelly had told the hearing that he didn't see the Cycling Ireland logo on the sign in sheet, and Mr. Fenelon submitted that anyone even with poor eyesight can see there is a Cycling Ireland logo on the top right hand corner. As regards the issue of the promoter of the event not looking for a license, and that being part of the reason why Mr. Kelly participated, it was the view of Cycling Ireland that it is the responsibility of the Athlete to adhere to the rules, not for the system to check if the rules are being adhered to. Overall Cycling Ireland's view was that there had been a fundamental breach of the provisional suspension, and that could be regarded as an aggravating factor by the Panel in terms of consequences. As regards to the issue of how the clenbuterol entered into the Athlete's system, and the credibility of the Athlete's evidence as to same, Mr. Fenelon proposed to leave further submissions on that issue to Ms. Reilly on behalf of the Irish Sports Council. If the Panel were to find against the Athlete, Cycling Ireland submitted that an ancillary consequence would be disqualification from the event and a forfeit of any award and the record of any award arising from the event.

H. Closing submissions on behalf of the Irish Sports Council

71. Ms. Reilly then made closing submissions on behalf of the Irish Sports Council. She began by pointing out that the Athlete had admitted the Anti-Doping Rule violation under Article 2.1 of the Rules. The issues before the Panel therefore related to determining the appropriate sanction. The starting point was that Article 10.1 of the Rules provided that the period of ineligibility being imposed shall be two years, unless the conditions for eliminating or reducing that period are met pursuant to Article 10.4 of the Rules, or alternatively the conditions for increasing that period are met pursuant to Article 10.5. As regards either reducing or eliminating the period of ineligibility, Article 10.4.1 provides that this may arise if an Athlete can establish in an individual case that he or she

bears no fault or negligence, or no significant fault or negligence. However, pursuant to Articles 10.4.1 and 10.4.2, in order to have the period of ineligibility eliminated or reduced for no fault or negligence or no significant fault or negligence, the Athlete must first establish how the prohibited substance entered his system. This is a threshold question and the burden shifts to the athlete to establish how the prohibited substance entered his system, and he must establish this matter on the balance of probabilities, pursuant to Article 8.4.3 of the Rules.

72. As regards the burden on the athlete to establish how the prohibited substance entered his system on the balance of probability, Ms. Reilly cited the **Gasquet** case, where the CAS Panel in that case held that the Athlete needs to show there is a 51% chance of the position advanced by the athlete having occurred. So he needs to show that one specific way of ingestion is marginally more likely than not to have occurred.
73. Ms. Reilly then cited the case of **Alberto Contador**, which had been mentioned several times during the course of the hearing. She stated that what had not been mentioned was that Mr. Contador's submission, that his positive test was as a result of contaminated meat, was not accepted by the CAS Panel who found it was not likely that he tested positive for clenbuterol as a result of eating contaminated meat bought in Spain. She submitted that Ireland is subject to the same EU monitoring and Directives as Spain, as per the evidence of Ms. Minihan during the hearing, and the evidence indicated that there is no problem of clenbuterol in the Irish food chain. As regards the case of **Michael Roger** referred to by Mr. McQuaid, that concerned an athlete who was successful in establishing that contaminated meat was the source of his positive test for clenbuterol, but in that case he ate the meat in China. There were two geographical locations where there is a problem with clenbuterol in the food chain, and these countries are Mexico and China, and WADA has issued a warning in that regard.
74. Ms. Reilly submitted that the burden of establishing how the clenbuterol entered his system had not been met by Mr. McQuaid, and that the Panel did not have a single piece of evidence to demonstrate how the clenbuterol entered Mr. Kelly's

system. While she felt she could rest there, she proposed to go on and make submissions as to why it was not probable that clenbuterol was the cause of the adverse analytical finding. She noted how Mr. Kelly had initially submitted in his Skeleton Argument that the contaminated meat could have been meat eaten in Lanzarote in early February 2014, but this point appeared to have been abandoned after that. The alternative submission as originally made in the Skeleton Argument appeared to be that his regular butcher bought meat from the named supplier which imported meat from Argentina, New Zealand, Brazil and Spain, and that is where the contaminated meat came from. Ms. Reilly submitted that it was not entirely clear as of the hearing whether the Respondent's case was now that the contaminated meat was in fact Irish beef. She submitted that the Applicant had failed to discharge his burden of proof on either case.

75. Ms. Reilly submitted that the evidence had clearly established that the named butcher sources its beef from Irish suppliers. Mr. W had given detailed evidence about their system to ensure the traceability of their meat, to ensure that every piece of beef they sell from their shop is of Irish origin. She referred to the evidence of Ms. Conefrey from the FSAI, who found no evidence to support the Athlete's allegations that the named supplier supplied to the named butcher. The FSAI had taken samples from both the named supplier and the named butcher, had those samples analysed, and those samples were negative for clenbuterol. While it was submitted at paragraph 7 of the Athlete's Skeleton Argument that it is well known that clenbuterol can be found in meat, Ms. Reilly submitted that while that may be the case if you're talking about meat in China and/or, Mexico, it certainly is not the case in Ireland. It is not the case in the UK and it is not the case in Europe. The CAS Panel found in **Contador** that it was not the case in Spain.

76. Ms. Reilly next referred to the absence of clenbuterol in the Irish and European food chain, based on the NRCP, and she referred to the evidence of Ms. Minehan of the FSAI given at the hearing. She highlighted the onerous sanctions which would arise in the case of a butcher who breaches the labelling and traceability requirement for food businesses. She submitted that these extremely serious sanctions are reflective of the gravity with which the use of clenbuterol is viewed

in Ireland. In those circumstances she submitted that it was quite shocking that Mr. Kelly thought fit, in order to save himself, to make those types of accusations against the named butcher.

77. Ms. Reilly then referred again to the finding of CAS Panel in **Contador** and the factors that led to those findings, and she submitted that those same factors pointed to the inevitable conclusion that the possibility of a piece of meat being contaminated in the EU cannot entirely be ruled out, but that the probability of this occurring is very low.
78. Ms. Reilly next referred to the point made by Mr. McQuaid that Mr. Kelly is now an amateur cyclist, and that he only went back to cycling at the end of 2013 or the beginning of 2014. She submitted that unfortunately amateur cycling is not clean from doping. She referred to a report published by the Cycling Independent Reform Commission in February 2015, and the Commission's stated belief that doping in amateur cycling is becoming endemic. She cited an extract from that report which suggested that amateur cyclists know that it is highly unlikely that they will be tested, so they know that it is easy to dope and get away with it. She also referred the Panel to another extract from that Report where the Commission commented on the ease of access to doping products.
79. Ms. Reilly then turned to the issue of the [REDACTED] testing. She submitted that it would simply be too easy for an Athlete to contravene the entire Anti-Doping framework, if he were allowed to have a random piece of meat tested at an unaccredited laboratory by an unaccredited analyst, without any proper procedures, oversight, or confirmation in place and therefore rely on that testing to prove the source of the clenbuterol. In this case the situation was complicated by the fact that there were serious discrepancies in the Athlete's version of events, and she submitted these discrepancies were evident from the evidence given by Mr. W about the samples, about the bags in which the samples were delivered, and about the sealing system that appeared to apply to those bags.
80. Ms. Reilly then moved on to the next part of her submissions, dealing with aggravating circumstances. She referred to Article 10.5 of the Rules, which gives the Panel discretion to increase the two year period of ineligibility up to a

maximum of four years, where the Panel determines that “aggravating circumstances” are present. Ms. Reilly referred to the comment to Article 10.6 of the WADA Code, which is the equivalent provision to Article 10.5 of the Rules, which sets out a non-exhaustive list of examples of what might constitute aggravating circumstances. Such circumstances include the situation where “the athlete or person engaged in deceptive or obstructing conduct to avoid the detection or adjudication of an Anti-Doping Rule violation”. Ms. Reilly submitted that the meat samples provided by the Athlete to [REDACTED] were not bought from the named butcher, and the allegations made were deliberately deceptive to avoid the detection or adjudication of the Anti-Doping Rule violation. In the light of the evidence it was the submission of the Irish Sports Council that the Panel should apply Article 10.5.1 of the Rules and impose a period of ineligibility up to the maximum of 4 years. It was submitted that not only had the Athlete engaged in deceptive conduct in an attempt to save himself, he had also made allegations that an innocent third party was guilty of a criminal offense.

81. Ms. Reilly then made the broader submission that Mr. Kelly had tried to call into question the entire beef industry in Ireland. Ms. Conefrey had given evidence that the FSAI had launched an investigation as soon as they were notified of the allegation of clenbuterol in meat in Ireland. That investigation had lasted five months, and had taken up the time of three FSAI Officials.
82. As regards the potential application of Article 10.5.1 of the Rules, Ms. Reilly stated that there wasn't a lot of guidance as to how the Panel might exercise its discretion in imposing a period of illegibility between 2 and 4 years. She stated that a sanction of 4 years should only be imposed in the most serious of circumstances. She referred to the English case of **Martin Gleeson and UK Anti-Doping** where the athlete made false statements to the Arbitral Tribunal, and for that the Athlete accepted an additional penalty of 18 months. Ms. Reilly submitted that comparing the false statement made in **Gleeson** with the false statements made by Mr. Kelly, this pushed the present case very far up to the maximum of 4 years.
83. Ms. Reilly then made submissions on the issue of when any period of ineligibility should run from. The starting point was that the period of eligibility would start

on the date of the Panel's decision providing for ineligibility, pursuant to Article 10.7 of the Rules. However, Article 10.7.3 provides that an athlete shall receive a credit for any period of provisional suspension imposed, if a provisional suspension is respected by the Athlete. Ms. Reilly submitted that the evidence established that the Athlete deliberately and knowingly breached his provisional suspension, and in those circumstances he should receive no credit for any period of provisional suspension already served. Accordingly, the ultimate submission of the Irish Sports Council was that the Disciplinary Panel should impose a period of ineligibility of 4 years, commencing on the date of the Panel's final decision.

I. The Panel's Decision

84. In light of the fact that Mr. Kelly 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 clenbuterol. Article 10.1 of the Rules provides for the relevant penalty to be imposed in respect of a first violation of Article 2.1, and this was Mr. Kelly's first violation.
85. Article 10.1 provides that the period of ineligibility to be imposed shall be two years unless the conditions for eliminating or reducing the period of ineligibility, as provided for in Article 10.4, or alternatively the conditions for increasing that period pursuant to Article 10.5, are met. This case turns on the possible application of Articles 10.4 and 10.5 of the Rules.

Article 10.4 of the Rules

86. The burden of proof under Article 10.4 rests with the participant, and the first issue which the Panel must determine is whether Mr. Kelly has established on the balance of probabilities how the clenbuterol entered his system. As confirmed in Mr. McQuaid's closing submission on his behalf, Mr. Kelly's submission was that he had established on the balance of probabilities that the clenbuterol entered his system through the ingestion of contaminated meat

purchased at a named butcher. The Panel does not accept that Mr. Kelly has discharged the onus of showing, on the balance of probabilities, that the clenbuterol entered his system through the ingestion of contaminated meat.

87. The Panel did not find the defence of contaminated meat made by Mr. Kelly, and the evidence adduced by him in support of same, to be consistent or coherent or credible. The Panel would highlight the following factors which led to this conclusion:

(a) The defence of contaminated meat was first advanced by Mr. Kelly in his Skeleton Argument dated the 15th July 2014. At that juncture Mr. Kelly suggested two possible sources for the contaminated meat, with the first being meat eaten in Lanzarote in early February 2012, but this suggestion was never pursued subsequently. The second suggested source was meat from his regular butcher in Ireland eaten in the days before the positive doping test occurred. It is important to note that this reference to his regular butcher was on the basis that Mr. Kelly had “carried out research into his regular butcher” and had found out that the butcher brings in some meat from Holland and Germany through a named supplier, that these companies (sic) bring in their meat from Argentina, New Zealand, Brazil and Spain, and that the meats on special offer in his regular butcher are brought in from abroad frozen, and marked as fresh and Irish. At the hearing, however, Mr. Kelly failed completely to adduce any evidence to support these very serious allegations against the named butcher and the named supplier. As set out at paragraph 44 of this Decision, when Mr. Kelly was asked what was the basis for his reference to the named supplier, it transpired that this serious allegation was based upon a conversation with an unknown customer in the shop who works in the Department of Agriculture. The Panel did not view this as a credible basis for the allegations made by Mr. Kelly.

(b) An important part of Mr. Kelly’s defence related to his evidence about purchasing 3 or 4 samples of meat from the named butcher on a given day, and bringing those meat samples immediately to the [REDACTED] lab in bags of a certain colour. The Panel notes at the outset that the alleged purchase of the meat samples from the named butcher took place on the 21st August 2014,

i.e. on a date subsequent to the allegations made in the Skeleton Argument dated the 15th July 2014. The Panel did not find Mr. Kelly's evidence on this issue consistent or credible. While stating in evidence that the purpose of purchasing the meat samples was for possible testing Mr. Kelly failed to keep a receipt or any other proof of purchase. Mr. Kelly's evidence as to the bagging of the meat samples was unclear and inconsistent. However, it appeared from the overall evidence that the meat samples were delivered in white, blue and transparent bags to [REDACTED]. The Panel accepts the evidence of Mr. W, which was in effect not controverted by Mr. McQuaid, that the named butcher only uses a particular type of certified craft butcher bag, which are small white bags with a green logo on them. The Panel also accepts the evidence of Mr. W that the bags used by the named butcher involve a different sealing system from the seals shown on the bags containing the meat samples given to [REDACTED]. In the circumstances Mr. Kelly failed to establish on the balance of probabilities that the samples that he delivered to [REDACTED] were bought from the named butcher.

- (c) As regards the testing carried out by [REDACTED] on behalf of Mr. Kelly, the Panel accepts the evidence of Dr. O'Keeffe regarding the deficiencies in Mr. Farrelly's analysis, as set out at paragraph 62 of this Decision. The Panel accepts Dr. O'Keeffe's conclusions that Mr. Farrelly's updated report did not fully address the deficiencies identified by him, and that Mr. Farrelly's report could not be viewed as containing scientifically robust findings. The Panel notes that Dr. O'Keeffe's evidence was almost entirely uncontroverted by Mr. McQuaid on behalf of Mr. Kelly.
- (d) The Panel accepts the evidence of Ms. Conefrey on behalf the FSAI regarding the investigation carried out by that Authority following the allegations made by Mr. Kelly. This investigation established that the named butcher was not on the named supplier's customer list. It also established that all of the beef that was on the butcher's premises on the date of inspection was all of Irish origin. There was no evidence during the inspection of the butcher's premises that any of the beef in the cold room was supplied by the named supplier. The samples taken from the named supplier and from the butcher were sent to an accredited laboratory in the UK which carries out testing and the

results of that testing showed no evidence of clenbuterol. The Panel notes that this evidence of Ms. Conefrey was not challenged in any way by Mr. McQuaid on behalf of Mr. Kelly.

- (e) The Panel also accepts the evidence of Ms. Minihan of the FSAI. Ms. Minihan's evidence essentially was that the Authority had no evidence to suggest that there was any issue with meat contaminated with clenbuterol in Ireland, based on the reports of the National Residue Control Programme going back over several years. The Panel notes that all of this evidence was in effect un-contradicted by Mr. McQuaid on behalf of Mr. Kelly, and Mr. McQuaid asked only two questions in cross-examination of Ms. Minihan.

Article 10.5 of the Rules

88. The next issue which the Panel must determine is whether the conditions for increasing the two year period of ineligibility are met, pursuant to Article 10.5 of the Rules. Article 10.5.1 provides that if the Panel determines that "aggravating circumstances are present" which justify the imposition of a greater period of ineligibility, then the two year period of ineligibility otherwise applicable should be increased up to a maximum of 4 years, unless the participant can prove to the comfortable satisfaction of the hearing Panel that he or she did not knowingly commit the Anti-Doping rule violation. The Panel notes that the burden is on the Claimant and the Irish Sports Council to establish aggravating circumstances to the comfortable satisfaction of the Panel.
89. The Panel is comfortably satisfied that aggravating circumstances are present in this case which justifies the imposition of a period of ineligibility greater than the standard sanction of 2 years, and that the period of ineligibility otherwise applicable should be increased up to the maximum period of 4 years. The Panel bases its decision upon the combination of all of the factors set out at paragraph 87 of this Decision. In particular the Panel would highlight three of those factors. Firstly, the reckless manner in which the allegations were first made against the named butcher and the named supplier in the Skeleton Argument dated the 15th July 2014, where a reference was made to the Respondent having carried out research into his regular butcher, but the evidence completely failed to support

any such research. Secondly, the serious discrepancies in the Athlete's version of events regarding the provenance of the samples he provided to [REDACTED] would lead the Panel to make a finding that the Athlete engaged in deceptive conduct. Thirdly, the allegations made by Mr. Kelly called into question the reputation of the entire beef industry in Ireland, and had required the FSAI to launch an investigation which had lasted five months, and had taken up the time of 3 FSAI Officials.

Article 10.7.3 of the Rules

90. 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 Cycling Ireland advised Mr. Kelly on the 13th June 2014 that he was provisionally suspended with immediate effect from all Cycling Ireland activities. The Athlete was asked to surrender his licence to Cycling Ireland and he did so. The evidence at the hearing established that Mr. Kelly participated in a Cycling Ireland event in March 2015. The sign – in sheet for that event showed that Cycling Ireland's logo was printed at the top right hand side of the page, and there were two references to Cycling Ireland in the waiver paragraph at the top of the sheet. In those circumstances the Panel finds that Mr. Kelly failed to respect the provisional suspension imposed by Cycling Ireland, and have decided that he should not receive any credit for the period of provisional suspension against the four year period of ineligibility which is now imposed.

Article 9 of the Rules

91. As regards any other consequences, the Panel declares pursuant to Rule 9 that Mr. Kelly is disqualified from the Gorey 3 –day 2014 race, with all of the resulting consequences including forfeiture of any medals, points and prizes. In addition, all competitive results obtained by Mr. Kelly from the 20th April 2014 through the commencement of the applicable period of ineligibility shall be disqualified, with all of the resulting consequences including forfeiture of any medals, points and prizes.

J Concluding comments

92. 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 27th July, 2015.

Signed on behalf of the Panel by
Seamus Woulfe, Chairperson