

DECISION OF THE IRISH SPORT ANTI-DOPING
DISCIPLINARY PANEL

This is a summary of the decision of the Irish Sport Anti-Doping Disciplinary Panel (the "Panel") in proceedings by Sport Ireland against Kenneth Daly ("Mr Daly") under the Sport Ireland Anti-Doping Rules 2015 (the "Rules"). Mr Daly is a go-kart racing driver.

A. RELEVANT BACKGROUND

1. Mr Daly competed in the Irish Karting Club Championship at White River Park, Collon, Co Louth on 9 July 2017. He was selected by a Sport Ireland Doping Control Officer ("DCO") to provide a Sample and was informed of this fact by the DCO following the completion of his final race. He attended the Doping Control Station with the DCO. It seems likely that he then received a phone call in relation to a medical emergency. Mr Daly decided to leave without completing the sample collection process. The Sport Ireland chaperone warned him that by leaving he was violating his obligation to provide a urine sample for testing and that he could be subject to a sanction of up to a four-year ban from racing. Mr Daly said that he understood but nonetheless explained that because of medical emergency, he had to go to the hospital. Mr Daly drove away in a van.
2. The relevant Irish Anti-Doping Rules in force at the time were the 2015 Rules which have since been replaced by Rules effective as of 1st January 2019. This matter is dealt with under the provisions of the 2015 Rules although in relation to the relevant Articles, there is no difference between the 2015 and 2019 Rules.
3. Article 2 of the Rules defines a number of Anti-Doping Rule Violations (ADRVs) including Article 2.3:

"Evading Sample collection, or without compelling justification, refusing or failing to submit to Sample collection after notification as authorised under these Rules, or other applicable Anti-Doping Rules."

A violation of Article 2.3 carries a period of four years "unless, in the case of failing to submit to Sample collection, the Athlete can establish that the commission of the Anti-Doping Rule Violation was not intentional (as defined in Article 10.1.3) in which case the period of Ineligibility shall be two (2) years."

4. Sport Ireland asked Mr Daly to provide correspondence in relation to the medical emergency to establish that he had a "compelling justification" for not providing a sample. Mr Daly provided Sport Ireland with a note from a GP clinic / surgery, dated 9 July 2017 which stated that a third party was suffering from a health issue and was unable to attend work that day. The note was purportedly signed by a doctor. Sport Ireland advised Mr Daly that the note was not sufficient, following which

he provided Sport Ireland with a second letter also dated 9 July 2017, which confirmed that the third party attended the clinic with Mr Daly for an emergency appointment. The second letter was also purportedly signed by the same doctor.

5. Based on this information, Sport Ireland notified Mr Daly by letter dated 8 August 2017 that it was satisfied that he had provided compelling justification for failing to submit to sample collection and that he had not committed an anti-doping rule violation.
6. Subsequently, Sport Ireland received anonymous information that gave it grounds to call into question the veracity of the doctor's letters provided by Mr Daly. On 1 April 2019, Sport Ireland wrote to the doctor in question (pursuant to Article 5.8.4 of the Rules which provides that Sport Ireland may seek to obtain additional information from any source as part of its investigation) asking if he had prepared and signed the letters and whether Mr Daly had attended his clinic on 9 July 2017. The doctor replied by letter of 2 April 2019 confirming he did not prepare or sign either of the letters and that he had no recollection or record of Mr Daly or the third party attending the clinic for an appointment on 9 July 2017. In consequence, Sport Ireland wrote to Mr Daly on 13 May 2019 formally alleging that he had committed a breach of Articles 2.3 (quoted above) and Article 2.5 which provides:

“Conduct which subverts the Doping Control process but which would not otherwise be included in the definition of Prohibited Methods. Tampering shall include, without limitation, intentionally interfering or Attempting to interfere with a Doping Control official, providing fraudulent information to an Anti-Doping Organisation or intimidating or Attempting to intimidate a potential witness.”

7. The ineligibility period to be imposed by way of sanction for a breach of Article 2.5 is four years (Article 10.2.1). It will be noted that the possibility (which exists under Article 2.3) of having this reduced to two years if the athlete can establish that the violation was not intentional does not apply in the case of a violation of Article 2.5.
8. In the letter of 13 May 2019, Sport Ireland also notified Mr Daly that he was provisionally suspended from 14 May 2019 pending the resolution of his case pursuant to Article 7.8.2 of the Rules meaning that he was banned temporarily from participating in any competition or activity (including coaching) prior to the final decision. Mr Daly has the right to appeal the provisional suspension but he did not do so.
9. A solicitor acting on behalf of Mr Daly wrote to Sport Ireland on 16 May 2019 in relation to the consequences of being provisionally suspended. Sport Ireland's solicitors, DAC Beachcroft, provided this clarification in a letter of 21 May 2019.
10. Mr Daly was asked to furnish a response to the letter by 27 May 2019 and the letter outlined the various options open to Mr Daly, the procedure thereafter and the possible sanction.

11. A copy of this letter was sent to Motorsport Ireland, Federation Internationale de l'Automobile and the World Anti-Doping Agency (WADA) pursuant to Article 7.6.2.
12. On 30 May 2019, the solicitor for Mr Daly wrote to Sport Ireland's solicitors (DAC Beachcroft), which letter was received by them on 31 May 2019, which stated:

"My client admits his Anti-Doping Rule Violation, which is a prompt admission".

13. The letter acknowledged the possibility of a four year ban but expressed hope that it could be reduced to 2 years on the basis that this was his first offence, he had made a prompt admission of guilt. The letter also details that when Mr Daly left the event without providing a sample, *"he genuinely believed [he was required to attend at a medical emergency]"*. He was dependent on Irish karting for his income and he unreservedly apologised.
14. If an athlete promptly admits a asserted anti-doping rule violation which would otherwise attract a four year sanction under Article 10.2.1, the sanction may be reduced under Article 10.5.3 of the Rules to a minimum 2 years at the discretion of both WADA and Sport Ireland¹ depending on the seriousness of the violation and the athlete's or other person's degree of fault. If, however, the athlete elects for a hearing before the Disciplinary Panel (either admitting the anti-doping rule violation and seeking a ban of less than four years or denying the anti-doping rule violation), then the option of a discretionary reduction from four years to two years on the basis of prompt admission no longer applies. (The Disciplinary Panel may, of course, reduce the period to 2 years if satisfied that the violation of Article 2.3 was not intentional but, as noted above, the four year ban is mandatory in the case of a violation of Article 2.5 - see Article 10.2.1 of the Rules).
15. In light of the apparent prompt admission on behalf of Mr Daly, Sport Ireland's solicitors wrote to Mr Daly's solicitors saying that they would engage with WADA, inviting Mr Daly's solicitors to *"submit any additional observations on the seriousness of the violation of the athlete's degree of fault"* and stated that at the end of the process they would write to Mr Daly's solicitors with a proposed sanction. If Mr Daly did not accept the proposed sanction, then Sport Ireland would refer the matter to the Irish Sport Anti-Doping Disciplinary Panel to determine the length of the sanction. The letter pointed out that the Panel was not entitled to reduce the sanction based on a prompt admission under Article 10.5.3.
16. Having consulted with WADA, DAC Beachcroft wrote again to Mr Daly's solicitors on 14 June 2019 enclosing a copy of a decision of the Court of Arbitration for Sport (CAS 2017/A5282) in relation to prompt admissions. The letter pointed out that it was not clear from 30 May letter what Mr Daly was admitting to and WADA had advised *"that based on its practice and CAS jurisprudence, an "enhanced admission" is required and the admission contained in your letter of 30 May 2019 cannot*

¹ Previously the Irish Sports Council.

properly be considered an enhanced admission. An enhanced admission would require your client to provide a detailed account of the violation(s), rather than to simply acknowledge the violation". Accordingly, DAC Beachcroft asked that Mr Daly provide such an account. The letter went on to identify a number of ambiguous aspects about Mr Daly's admission, including whether he was admitting to violations of both Article 2.3 and 2.5, whether he was arguing for a non-violation of Article 2.3 on the basis of "*compelling justification*" in light of his position that he "*genuinely believed*" he was required at a medical emergency on that day and what his position was in relation to the allegation of a violation of Article 2.5 (false documents being provided to justify not providing a sample), which was inextricably linked to the alleged violation of Article 2.3. The letter also asked for an explanation of the circumstances of the violation so that to enable Sport Ireland to assess the seriousness of the violation and Mr Daly's degree of fault as required for the purpose of assessing a possible reduction in the sanction.

17. After a number of letters of reminder from Sport Ireland's solicitors, Mr Daly's solicitors wrote to DAC Beachcroft by letter of 11 September 2019 admitting the violation of Article 2.3 (but nonetheless maintaining he had a compelling justification for the failure to give a sample because of his "*genuine belief*" in the medical emergency) and not admitting the alleged violation of Article 2.5. In relation to Article 2.5, the letter stated that following his departure from the venue Mr Daly was informed that there was in fact no medical emergency, that someone else had procured the two forged certificates purportedly signed by the doctor without any input from him, that he forwarded the certificates to Sport Ireland knowing them to be false and that he should not have done so.
18. By letter of 31 October 2019, Sport Ireland's solicitors wrote to Mr Daly's solicitors, noting that Mr Daly did not admit the Article 2.3 violation (given his "*compelling justification*" argument) but did admit the Article 2.5 violation. The letter pointed out that pursuant to Article 10.6.4.1, where two violations are to be considered together as one single first violation, "*the sanction imposed shall be based on the violation that carries the more severe sanction*". Accordingly, DAC Beachcroft pointed out that "*even if your client were to satisfy the Disciplinary Panel that he had a compelling justification or otherwise did not commit an Article 2.3 violation, he would still be subject to a four year ban based on the Article 2.5 violation*".
19. Since Mr Daly denied the Article 2.3 violation, Sport Ireland proposed to refer the matter to the Disciplinary Panel unless Mr Daly admitted the Article 2.3 violation.
20. The procedures in relation to the Panel are governed by Version 2.0 of the 2015 Rules effective as of 1 January 2019 ("*the 2015 Rules*"). On 2 December 2019, the Chair of the Irish Sport Anti-Doping Disciplinary Panel, Michael M. Collins SC, appointed three members from the Irish Sport Anti-Doping Disciplinary Panel to hear and determine the case. The appointed members of the Hearing Panel were Judge Rory McCabe, Ms Elizabeth Howard and Dr Mary O'Flynn Flannery, being members drawn from the Irish Sport Anti-Doping Disciplinary Panel. Judge McCabe had been originally appointed as a member of the Panel when he was a barrister. However, under

Article 8.1.1.1, the Irish Sport Anti-Doping Disciplinary Panel is to consist of a chair and up to 9 vice-chairs, each of whom is a solicitor or barrister of not less than five years qualified or a retired judge. By virtue of Judge McCabe's judicial status, he was no longer eligible to be a member of the Disciplinary Panel. Accordingly, on 8 March 2020, the chair of the Panel, Michael M. Collins SC, appointed himself to the hearing panel pursuant to paragraph 4.6 of Appendix 2 of the 2019 Rules in place of Judge McCabe.

21. Following a procedural conference call with the parties on 17 December 2019, the hearing panel, through the Registrar, Mr Andrew Nugent BL, gave directions (confirmed in Mr Nugent's letter of 15 January 2020) requiring the parties to give details of the witnesses they intended to call together with details of the evidence to be given by those witnesses by 7 February 2020.
22. Sport Ireland provided witness statements from two witnesses dated 9 January 2020, which were furnished to Mr Daly's solicitors on 21 January. These witnesses were prepared to give oral evidence at any hearing before the hearing panel. The witness statements provide an account of the events relevant to this matter in great detail. The key aspects of the evidence, for present purposes, may be summarised as follows.
23. On the night before the event Mr Daly smoked multiple joints of cannabis. On the day of the event there was discussion about the possibility that if Mr Daly won the event, he might be tested. Detailed accounts of what occurred on 9 July 2017 after Mr Daly was notified of the requirement to provide a sample were provided. Instead of attending at a hospital or GP surgery or clinic, they went to a pub.
24. Detailed accounts were also provided in relation to obtaining letters from a doctor to establish a "compelling justification" for not providing a sample.
25. Attached to one of the witness statements is a copy of the medical records of a third party which showed no attendance at a hospital or GP surgery / clinic on 9 July 2017.
26. A photo of Mr Daly was also attached, said to have been taken after the race on 9 July at a pub, although there is no way to tell from the photograph that this is necessarily so.
27. An account was also provided in relation to why the witness decided to contact Sport Ireland.
28. The other witness also provided a description of events.
29. Under cover of letter of 12 February 2020, Mr Daly's solicitors sent written submissions on behalf of Mr Daly to DAC Beachcroft. The submissions were very short, being just over one page. They refer to Mr Daly's constitutional right to earn a living and that his income is derived from his go-kart racing activities with NCM Motor Sports Limited. In these submissions Mr Daly also denies the assertions made in the accounts of witnesses and say they are motivated by malice towards him.

30. The submissions point to the admissions previously made by Mr Daly, reiterates that he genuinely believed that he was required to attend an emergency and argues that a four year ban would be disproportionate. The submission states that apart from his own oral evidence, he proposed to call as witnesses, three named people to rebut the statements of the Sport Ireland witnesses.
31. No witness statements were furnished with this submission.
32. In light of this, Sport Ireland requested an adjournment of the hearing with a direction that Mr Daly's witness statements should be delivered in advance. A further directions hearing took place with the Panel by conference telephone call on 13 February 2020 and both parties agreed that Mr Daly's solicitors would deliver his witness statements by 28 February 2020 and that Sport Ireland would deliver any replying statements no later than 14 days before a rescheduled hearing which was suggested to be for late March or early April 2020.
33. However, on 26 February 2020, Mr Daly's solicitors notified the Panel's Registrar that Mr Daly had instructed him that he did not wish to engage further and would not be proceeding. Accordingly, his instructions were that he would not be delivering witness statements or any further submissions.
34. By email of 26 February 2020, the Panel through its Registrar sought clarification from Mr Daly's solicitor as to whether his client accepted the alleged anti-doping rule violations and pointed out that a hearing might still have to be held in Mr Daly's absence. This point was also made by DAC Beachcroft in a letter to his solicitors of 3 March 2020. Also, by letter of 3 March 2020, Sport Ireland's solicitors requested that the Panel should make a decision based on the papers without the necessity for an oral hearing.
35. No response was received to any of these communications from Mr Daly or his solicitor.
36. The hearing panel, under its new chairman, reviewed the correspondence and submissions. By email of 15 May 2020, the Panel, through the Registrar, informed the parties (including Mr Daly's solicitors and Mr Daly directly) that it proposed to make its decision based on the written evidence and submissions unless either party requested an oral hearing. Neither party made any such request.

C. DECISION

37. Insofar as the alleged breach of Article 2.5 of the Rules is concerned, the relevant part of which relates to conduct which subverts the doping control process which includes providing fraudulent information to an Anti-Doping Organisation, Mr Daly admits that he forwarded documentation to Sport Ireland knowing that the content of these documents to be false. Mr Daly therefore committed an Anti-Doping Rule Violation pursuant to Article 2.5 of the Rules.

38. In his letter of 11 September 2019, Mr Daly's solicitors communicate Mr Daly's instructions as to how Mr Daly obtained these documents. This version of events is in contrast to the version outlined by other witnesses. It is not necessary for the Panel to resolve this conflict of evidence for the purposes of finding a violation of Article 2.5 given Mr Daly's admission that he forwarded the documents to Sport Ireland knowing them to be false. A conflict of evidence is, however, something that arises in the context of the alleged breach of Article 2.3.

39. The essence of the Article 2.3 allegation is that Mr Daly evaded a sample collection without compelling justification. It is not in dispute that he evaded the sample collection by leaving the event without giving a sample as he was required to do. Leaving in circumstances where he thought there was a medical emergency would, in the Panel's view, amount to a compelling justification and, indeed, Sport Ireland came to that conclusion when it had no reason to doubt the truthfulness of Mr Daly's explanation.

40. The issue therefore reduces down to the question of whether Sport Ireland (which carries the burden of proof of the allegations) has established the alleged violation to the "comfortable satisfaction" of the Panel bearing in mind the seriousness of the allegation that is made. The standard of "comfortable satisfaction" is that contained in Article 8.4.1 of the Rules which also provides:

"This standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt".

41. Very detailed witness statements have been provided by Sport Ireland's witnesses which have been signed and in which they have confirmed that they are prepared to attend any oral hearing to give evidence which, of necessity, means that they are willing to undergo cross examination. Witness statements in various forms of tribunal hearings, arbitrations and court hearings are frequently accepted as evidence in chief of the witness without the necessity for the witness to repeat the evidence orally where, if the other party then chooses, the other party can cross examine such witness. The witness statements in the present case are not sworn statements in that they are not affidavits. However, in many dispute resolution mechanism tribunals, signed statements are frequently taken as a statement of the witness's evidence once they confirm the statement is true. In the present case, all signed witness statements contain a statement in which the witnesses confirm that the statement is true to the best of their knowledge and belief.

42. Accordingly, in such circumstances, and where all witnesses knew and understood that they might be called to an oral hearing at which they might be cross examined on their statements, the Panel accepts their witness statements as admissible evidence in these proceedings and regards their statements as their evidence in chief to the Panel.

43. If key questions of fact were the subject of conflicting witness statements from Mr Daly or witnesses called on his behalf, it would generally be impossible to resolve those conflicts without an oral hearing at which the witnesses would testify and be cross examined. This would enable the Panel,

in the ordinary way, to assess the credibility and truthfulness of the witnesses by listening to their oral evidence and assessing their overall demeanour and the way in which they give their evidence. But in the present case, there are no conflicting witness statements from or on behalf of Mr Daly and so the question of resolving such a conflict does not arise.

44. Such conflict as does arise is between the signed witness statements produced by Sport Ireland and a letter and a written submission from Mr Daly's solicitor. In his letter of 30 May 2019, he says his client "genuinely believed" that a medical emergency existed. He repeats this in his written submission of 12 February 2020 in which he relays his client's position that he disputes in a very general way the witness statements produced by Sport Ireland. The very short written submissions do not go into any detail about any of the allegations beyond singling out a single allegation was a "concocted fabrication". Beyond this, no explanation or alternative account of what occurred is supplied on behalf of Mr Daly, let alone any account directly from Mr Daly in the form of a statement from him (as distinct from his solicitor relaying his client's instructions).
45. Expressing disagreement with Sport Ireland's witness statements at this very high level of generality and without any attempt to furnish the Panel with an account and an explanation of what happened is not satisfactory and does not, in the Panel's view, amount to evidence which could credibly be weighed in the balance against the very detailed evidence from the two Sport Ireland witnesses.
46. A general allegation of malice made by Mr Daly in relation to the witnesses cannot suffice to cast doubt on witness statements which are uncontradicted by any other witness statements, or, at least, to create sufficient doubt that the Panel should not accept the witness statements of the Sport Ireland witnesses.
47. Given that there is no contradictory witness statements (leaving aside a slight inconsistency in some details in the accounts of Sport Ireland's witnesses), the evidence of Sport Ireland's witnesses should be accepted unless there is some reason to doubt it. For the Panel not to accept to the level of comfortable satisfaction the account given by these witnesses, the Panel would have to consider that it has something more than a reasonable doubt about the account given by those witnesses. That means the Panel would have to consider that the very detailed account given by the witnesses of what occurred on the day in question, the conversations that occurred, the account of going to the pub instead of the hospital etc are quite possibly fabrications by the witnesses, all born of malice against Mr Daly, the source of which is unidentified. The Panel would have to entertain sufficient doubt about this evidence, having regard to Mr Daly's solicitors instructions from Mr Daly, that it is not comfortably satisfied as to the truth of the key aspects of these statements. The Panel does not have such a doubt as to the veracity of this evidence.
48. It is apparent from the medical records that the third party did not attend a hospital or a GP clinic / surgery on 9 July. Thus, if Mr Daly's claim that he was duped about the medical emergency, the fact there was no medical emergency must have become apparent to him immediately after leaving the event. If that were the true situation, it is surprising that Mr Daly did not return to the event or contact

Sport Ireland to say the issue had passed and he was now in a position to take the test. While there might well have been other difficulties with a test taken in such circumstances when the athlete was out of sight of the Sport Ireland officials for a considerable period of time, some attempt to contact Sport Ireland and explain the position would have assisted Mr Daly's credibility.

49. Instead, we know that, far from being truthful with Sport Ireland, he deliberately sought to deceive them by furnishing false medical records to back up the deception. Mr Daly's willingness to persist with this deception until confronted with proof of the lie does not form any basis for the Panel to prefer the assertion made by a solicitor on his behalf who was merely communicating his client's instructions in preference to the signed witness statement of two witnesses.

50. There is also the fact that although Mr Daly was given every opportunity to furnish witness statements and apparently had three other witnesses who were going to give evidence for him, no witness statements from himself or the supposed three witnesses have ever been produced with no explanation as to why they have not been produced. He has simply withdrawn from the process, again without any explanation as to why.

51. Article 8.4.10 of the 2019 Rules² states:

"The Hearing Panel in hearing on an Anti-Doping Violation may draw an inference that is adverse to the athlete or other person alleged to have committed an Anti-Doping Rule Violation based on the athlete or other person's refusal, after a request made in reasonable time in advance of the hearing, to appear at the hearing (either in person or telephonically or by other electronic means as directed by the Hearing Panel) and to answer questions from the Hearing Panel and/or a party".

52. This matter had been scheduled for an oral hearing, Mr Daly had been afforded the opportunity to put in witness statements after he failed to furnish any witness statements with his written submission and he then withdrew from the process which, in the circumstances, is equivalent to not appearing at the hearing. In the Panel's view, it is entitled to draw an adverse inference against Mr Daly by reason of the fact that he failed to provide, at minimum, a statement from himself setting out his account of what he might claim to be the true facts of the case and then declining to take part in any oral hearing. The conclusion which the Panel draws in the circumstances is that it does not believe that Mr Daly genuinely believed there was a medical emergency.

53. The Panel has not overlooked the fact that there are some inconsistencies between the account of one of the witnesses and the contemporaneous records from the DCO and the chaperone (both of whose reports are dated 9 July 2017).

54. The reports of the DCO and chaperone are slightly different to the witness statements.

² Article 8.4.9 of the 2015 Rules

55. The primary difference between these accounts is the chaperone's account of Mr Daly receiving a telephone call during the prize giving ceremony whereas the Sport Ireland witness makes no reference to having made a telephone call to him. No doubt had there been an oral hearing, that is a point that might have been explored with Mr Daly, the witness, the DCO and the chaperone. But the fact that there is some difference in recollection between the accounts is not at all surprising given that the chaperone's account was contemporaneous with the events made on 9 July 2017 whereas the witness statement dates from January 2020 (albeit the witness originally provided a statement to Sport Ireland in March 2018, but ultimately refused to allow Sport Ireland to use it). Whether the statement may be regarded as reflecting the witness's recollection in March 2018 or January 2020, it is still at a significant remove in time from the event being described and therefore it would be more surprising if there were no differences in minor details between the accounts. What is striking is that the very detailed accounts, particularly of one of the witnesses, accords on all the essential points with the accounts of the chaperone and DCO, thus lending further considerable support to the veracity of the witness statements of the two witnesses.
56. For these reasons, the Panel is comfortably satisfied that the witness statement of the witnesses are true statements to the best of their recollection and, in particular, that Mr Daly knew at all times that the supposed medical emergency was not true and was designed to provide him with an excuse to evade the sample collection. In other words, the Panel finds that Mr Daly had no compelling justification for failing to submit to the sample collection after notification and accordingly committed an Anti-Doping Rule Violation pursuant to Article 2.3

D. SANCTION

57. As pointed out above, Article 10.6.4 of the Rules provides that where two violations are charged in circumstances where, in effect, they are not to be considered consecutive violations, then they are to be considered as one single first violation but where the sanction is based on the violation that carries the more severe sanction.
58. Article 10.2.1 provides for a sanction of a period of ineligibility of four years for violation of Article 2.3 or 2.5. The sanction for the breach of Article 2.5 is the more severe in the sense that the option of the athlete establishing that the commission of the violation was not intentional and thereby reducing the ineligibility period to two years only applies in respect of a violation of Article 2.3. It follows that Mr Daly must be subject to a sanction of a four year period of ineligibility. For completeness, we find that given the nature of the violation of Article 2.3, no question of the violation not being intentional can arise, so that even if the Article 2.3 violation was considered in isolation, Mr Daly would receive a four year ineligibility period for that violation. As the two violations are to be considered as a single first violation, there is only one four year period of ineligibility applicable.
59. Sport Ireland has asked that the period of ineligibility should run from the date of the Panel's final decision with credit given for any period of provisional suspension served which credit arises under

Article 10.7.3 of the Rules. Article 10.7 provides that the period of ineligibility starts on the date of the decision providing for ineligibility but subject to certain exceptions. Article 10.7.1 permits the period of ineligibility to start at an earlier date where there have been substantial delays in the hearing process or other aspects of doping control not attributable to the athlete or other person.

60. The oral hearing had originally been scheduled for February 2020. By reason of Mr Daly's failure to furnish witness statements and in ease of Mr Daly, this hearing was adjourned with a new deadline for the furnishing of witness statements of 28 February 2020 with the hearing date anticipated to be rescheduled for late March 2020 or early April 2020. If one assumes that a hearing might have taken place in early April and allowing a period of six weeks for the Panel to deliberate and deliver its decision, a decision would have been expected by late May 2020.
61. On the other hand, Mr Daly's solicitor communicated his client's withdrawal from the process on 26 February 2020. In the ordinary course of events, after communication with the parties, the Panel would have concluded that it would deal with the matter without an oral hearing and a decision might have been given by the end of March or early April. Some delay did occur from a combination of the necessity to appoint a new chairman when it was realised that Judge McCabe was not eligible to act as chairman and the disruption caused by the Covid-19 crisis. The net result is that instead of a decision having been given in or about 1 April, this decision is being given as of the date below. This element of delay is not attributable to the athlete. We have some doubt as to whether it can be regarded as "a substantial delay" within the meaning of Article 10.7.1 of the Rules. Notwithstanding that doubt, we think that fairness dictates that Mr Daly should be given the benefit of it and so we direct that the period of ineligibility runs for a period of four years commencing on 1st April 2020 but where Mr Daly gets credit for the period of provisional suspension he has served from 14 May 2019 to 1st April 2020.



Michael M. Collins SC (Chairman)

Ms Elizabeth Howard

Dr Mary O'Flynn Flannery

30th June 2020