



**Arbitration CAS 2015/A/4208 Horse Sport Ireland (HSI) & Cian O'Connor v. Fédération Equestre Internationale (FEI), award of 15 July 2016 (operative part of 4 January 2016)**

Panel: Mr Jeffrey Benz (USA), President; Prof. Philippe Sands QC (United Kingdom); Mr Nicholas Stewart QC (United Kingdom)

*Equestrian (jumping)*

*Field of play decision*

*Appeal to CAS of field of play decisions*

*Field of play doctrine*

*Importance of respecting field of play decisions*

*Limits of review of field of play decisions*

*Ultra vires*

1. The question whether or not a decision that is classified as field of play decision may be appealed to at CAS is not an issue of admissibility of the CAS appeal but rather a question of the merits of the appeal.
2. According to CAS jurisprudence it is the rules of the game that define how a game must be played and who should adjudicate upon the rules. Furthermore the referee's *bona fide* exercise of judgment or discretion is beyond challenge other than in so far as provided by the rules of the game themselves. Strong sporting-based principles are underlying this so-called field of play doctrine, including the need for finality and to ensure the authority of the referee and match officials, the arbitrators' lack of technical expertise, the inevitable element of subjectivity, the need to avoid constant interruption of competitions, the opening of floodgates and the difficulties of rewriting records and results after the fact. Moreover, it is widely recognised that the respective decisions are best left to field officials as they are specifically trained to officiate the particular sport and are best placed, being on-site, to settle any question relating to it.
3. The principle of respecting field of play decisions is one of the defining characteristics of the *lex sportiva*, as a sport specific rule that guides much of sports competition at a fundamental level. Applying this principle is important and disturbing it risks an undermining of the fundamental fabric of the law of sport, opening the door to a more general review by adjudicators of matters that have long been considered as relating to the field of play. Accordingly, decisions taken by match officials enjoy a "*qualified immunity*" and for CAS to review a field of play decision, there has to be more than that the decision is wrong or one that no sensible person could have reached; put differently, field of play decisions are not open to review on the merits. Rather, CAS may interfere only if the person requesting the review establishes that a field of play decision is tainted by fraud, bad faith, bias, arbitrariness or corruption; furthermore, whether the accusation is one of fraud, bad faith, arbitrariness or corruption, the person requesting

the review must demonstrate evidence of preference for, or prejudice against, a particular team or individual.

4. The field of play doctrine only permits review of field of play decisions in so far as the rules of the game themselves provide. Put differently if the applicable rules do not provide for any review after the event or match has finished, then the CAS is directed to respect such silence. Furthermore, in cases where a decision rendered by the match officials during the competition is reviewed by an appeals body immediately after, or even proximate to the competition, the respective decision rendered by the appeals body is also only open to review by CAS under the limitations of the field of play doctrine.
5. If the applicable competition rules foresee that a specific decision is to be rendered on site by one member of a jury composed of several members, and further that any appeal against the decision taken by the specific member is to be considered by the entirety of the members of the same jury (*i.e.* including the member of the jury that has taken the initial decision) the jury in question is not acting *ultra vires*.

## I. INTRODUCTION

1. This is an appeal by Horse Sport Ireland (“First Appellant”) and Cian O’Connor (“Second Appellant” or “Mr O’Connor”) against the decision of the Federation Equestre Internationale (“FEI”) Appeal Committee dated 22 August 2015 (“Appealed Decision”), which was issued following an appeal against a decision of the FEI Ground Jury dated 21 August 2015 (“Ground Jury Decision”). The Ground Jury Decision arose from a protest related to the European Jumping Championship Round 2 Team Final and third Individual Competition, held in Aachen on 21 August 2015. Mr O’Connor was a rider in the Irish team. During Mr O’Connor’s round, an arena crew member ran across the path of Mr O’Connor and his horse, and the crowd reacted audibly. As a result, it is claimed the horse and rider were distracted and had to change their planned approach to an obstacle and as a result knocked down the obstacle. The effect of the Ground Jury Decision was to cause Mr O’Connor to finish the event in 21<sup>st</sup> place instead of 12<sup>th</sup> place, resulting in the Irish team finishing in 7<sup>th</sup> place, 0.38 points behind Spain. As a consequence the Spanish team qualified for the 2016 Olympic Games instead of Ireland.

## II. PARTIES

2. Horse Sport Ireland is the governing body for equestrian sport in Ireland.
3. Mr O’Connor is an accomplished Irish equestrian athlete who has represented Ireland in international competition.

4. The FEI is a Swiss law association established in accordance with Articles 60 *et seq.* of the Swiss Civil Code. Headquartered in Lausanne, Switzerland it functions as the International Olympic Committee-recognized international federation for the equestrian sport disciplines of dressage, jumping, eventing, driving, endurance, vaulting, reining and para-equestrian. Its members are the national governing bodies of the sport.

### III. FACTUAL BACKGROUND

5. Below is a summary of the relevant facts and allegations based on the parties' written submissions, pleadings and evidence adduced at the hearing. Additional facts and allegations found in the parties' written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the arbitral tribunal (the "Panel") has considered all the facts, allegations, legal arguments and evidence submitted by the parties in the present proceedings, it refers in its Award only to the submissions and evidence it considers necessary to explain its reasoning.
6. The facts of this case are straightforward:
  - a. At the FEI European Jumping Championship 2015 held in Aachen on 21 August 2015, as the rider (the Second Appellant) and his horse *Good Luck* were coming up to a corner on the course during the Team Final, an arena crew member, wearing a bright yellow shirt, strayed onto the course and ran across their path. The errant crew member came close to being hit by the horse and rider and had to take evasive action by jumping into a flower bed to avoid being hit. The result was that the crowd made an audible noise and the horse and rider had to approach the next obstacle with a deviation in their prepared plan. According to the Appellants, they were significantly distracted. The horse and rider struck the next obstacle, obstacle 11, incurring four penalty points.
  - b. The competition was being refereed by a Ground Jury of five, three of whom were in a high tower overlooking the course, with one of them manning a bell. Under Article 233.1 of the FEI Jumping Rules 2015 (the "JRs"), if the Ground Jury member in charge of the bell felt that the rider was "*not able to continue his round for any reason or unforeseen circumstances*", he was to ring the bell to stop the round. The Ground Jury member did not consider the Second Appellant was not able to continue, because when the interference happened, "*it was some way before the next jump and the horse was not committed to a jump yet*".
  - c. The Athlete was the only rider of the competing 40 riders in the team event in Round 2 of the Team Final to knock down the front pole of obstacle 11. This was, by the standards of the competition, an easy fence for Mr O'Connor and his horse to clear. They otherwise jumped a clear round.
  - d. As a result of the four penalty points incurred at obstacle 11, Mr O'Connor finished the Round in 21<sup>st</sup> place instead of 12<sup>th</sup>, effectively removing any chance of winning a medal in the Individual Competition. In addition, the Irish team finished the Team Final in 7<sup>th</sup> place,

0.38 points behind Spain, and the Spanish team qualified for the 2016 Olympic Games instead of Ireland as a result. Notably, no party sought to bring the Spanish team into this arbitration proceeding to be bound by its result with respect to the relief requested by the Appellants.

- e. The Appeal relates in particular to Articles 233.1 and 233.3 of the JRs.
- i. Article 233.1 of the JRs states: *“In the event of an Athlete not being able to continue his round for any reason or unforeseen circumstance, the bell should be rung to stop the Athlete. As soon as it is evident that the Athlete is stopping, the clock will be stopped. As soon as the course is ready again, the bell will be rung, and the clock will be restarted when the Athlete reaches the precise place where the clock was stopped; no penalty is incurred and six seconds are not added to the Athlete’s time”* (emphasis added).
  - ii. Article 203 of the JRs (Bell) states: *“One of the members of the Ground Jury is in charge of the bell and responsible for its use”*. The Ground Jury are the referees of the event. There are between 3 and 6 of them at each event. At the event that is the subject of these proceedings, the Ground Jury had 6 members.
  - iii. Article 230 of the JRs (Interrupted Time) further states: *“230.2 The responsibility for starting and stopping the clock rests solely with the Judge in charge of the bell”* (emphasis added).
  - iv. Article 233.3 of the JRs states: *“If the Athlete stops voluntarily to signal to the Ground Jury that the obstacle to be jumped is wrongly built or if due to unforeseen circumstances beyond the control of the Athlete, he is prevented from continuing his round under normal circumstances, the clock must be stopped immediately”*. In other words, even if the Ground Jury member does not ring the bell to stop the round, the Athlete may stop himself if he considers he has been prevented by unforeseen circumstances outside his control from continuing his round under normal circumstances. Article 233.3.1 states that if the Ground Jury does not agree, then the Athlete will receive a six second penalty; while Article 233.3.2 states: *“If the obstacle or part of the obstacle needs to be rebuilt or if the unforeseen circumstances are accepted as such by the Ground Jury, the Athlete is not penalised. The time of the interruption must be deducted and the clock stopped until the moment when the Athlete takes up his track at the point where he stopped. Any delay incurred by the Athlete must be taken into consideration and an appropriate number of seconds deducted from his recorded time”*.
  - v. In addition, under Article 233.3 of the JRs, the Second Appellant himself could have stopped riding, if he felt that due to this interference he was *“prevented from completing his round under normal circumstances”*. He did not do so, but instead continued with the round.
  - vi. Immediately after the round, the Appellants filed a Protest with the Ground Jury based on the alleged interference of the arena crew member. The Ground Jury rejected the Protest on the basis that *“[a]s the athlete continued his round the GJ saw no reason to stop him by ringing the bell. According to art. 233 of the Jumping Rules, the athlete had the opportunity to stop voluntarily due to unforeseen circumstances beyond his control. However the athlete chose not to do so”*.

- vii. The Appellants then appealed immediately to the Appeal Committee. The Appeal Committee was also present at the venue and heard the appeal immediately. In a decision handed down in the early hours of the following morning, the Appeal Committee decided to give *“value to the Ground Jury’s decision in hearing the Protest and does not believe that it should replace its judgment call with that of the Ground Jury on a matter which is directly related to or is at least most closely related to a field of play decision. The Appeal Committee cannot say that the Ground Jury’s decision was capricious or arbitrary or so unreasonable that it should replace it with a different judgement call by the members of the Appeal Committee”*. It also decided the Appellants’ complaints about the procedure followed by the Ground Jury were *“cured by this Appeal which has examined all evidence, given Mr O’Connor a full and complete right to be heard and confirmed the decision taken”*. It therefore rejected the appeal.
7. This appeal was filed against the decision of the FEI Appeal Committee dated 22 August 2015 (“the Appealed Decision”), which was issued following an appeal against the above-referenced decision of the FEI Ground Jury dated 21 August 2015. As described above, the Ground Jury Decision arose from a protest related to the European Jumping Championship Round 2, Team Final and third Individual Competition, held on 21 August 2015.
8. The Appealed Decision was notified to the Appellants on 22 August 2015.

#### **IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT**

9. In accordance with Articles R47 and R48 of the Code of Sports-related Arbitration (the “Code”), the Appellants filed their statement of appeal on 11 September 2015, completed on 17 September 2015. The Appellants jointly nominated Mr Philippe Sands QC as arbitrator.
10. On 18 September 2015, DAC Beachcroft, on behalf of Horse Sport Ireland, submitted a letter to the CAS Court Office requesting a 30-day extension of time to file its appeal brief. On the same date, Eversheds, on behalf of the rider, applied for a similar extension. On 22 September 2015, the CAS Court Office granted the FEI a deadline until 24 September 2015 to provide its position on the Appellants’ requests, and suspended the deadline for the appeal briefs. The FEI opposed this request by letter dated 24 September 2015. The CAS Court Office, on 24 September 2015, sent a letter acknowledging receipt of the opposition of the FEI and advised the parties that the deadline for filing remained suspended pending a decision on the Appellants’ requests by the President of the CAS Appeals Arbitration Division, or her Deputy. The requests were partially granted by the President of the CAS Appeals Arbitration Division and the parties were so informed by letter dated 25 September 2015 that the Appellants would have an extension to file their appeal briefs until 9 October 2015.
11. On 28 September 2015, the FEI submitted a letter nominating Mr Nicholas Stewart QC as arbitrator.

12. On 29 September 2015, both Messrs Philippe Sands and Nicholas Stewart submitted their “Arbitrator’s Acceptance and Statement of Independence” forms, accepting their respective mandates and disclosing any required matters.
13. On 5 October 2015, Smithwick Solicitors confirmed in a letter that they had been appointed to replace DAC Beachcroft on behalf of Horse Sport Ireland in this arbitration proceeding.
14. On 6 October 2015, Smithwick Solicitors sent a letter to the CAS Court Office requesting that the FEI be required to produce a copy of certain of the FEI’s General Regulations. The time for the Appellants to file their appeal briefs was further suspended pending resolution of this matter. On 9 October 2015, the FEI confirmed that it had supplied the requested regulations to the Appellants the day before.
15. On 9 October 2015, the CAS Court Office confirmed that the new deadline for the Appellants to file their appeal briefs shall be 12 October 2015.
16. On 11 October 2015, Mr Jeffrey Benz submitted his “Arbitrator’s Acceptance and Statement of Independence” form, accepting his mandate as Panel President and making any necessary disclosures.
17. On 12 October 2015, the Appellants lodged a common appeal brief with the CAS Court Office.
18. On 23 October 2015, the CAS Court Office sent a letter to all parties’ lawyers acknowledging receipt of the parties’ payments towards the advance of costs for this procedure and confirming the Panel as consisting of the following:
  - a. Jeffrey G. Benz, as President;
  - b. Philippe Sands QC, as Arbitrator; and
  - c. Nicholas Stewart QC, as Arbitrator.
19. On 5 November 2015, the FEI filed its answer.
20. On 24 November 2015, the First Appellant enquired whether the CAS Court Office had notified the appeal to the Spanish Equestrian Federation and the International Olympic Committee who were referred to as “interested parties” in the statement of appeal. On the same date, the CAS Court Office informed the First Appellant that it was for the Appellants to name the Respondent(s) for their case and that the Code does not envisage the notion of interested parties; therefore, the CAS Court Office had not notified either the Spanish Equestrian Federation or the International Olympic Committee, as the Appellants could have done so directly for them to intervene or the Respondent could have requested their joinder.
21. The parties signed the Order of Procedure prior to the hearing.
22. A hearing was held on 16 December 2015 at the CAS Court Office in Lausanne, Switzerland. Horse Sport Ireland was represented by counsel Mr Martin Hayden S.C. and Mr David Casserly,

assisted by Messrs Joseph Fitzpatrick and Carey Eamonn of Smithwick Solicitors and Prof. Antonio Rigozzi of Lévy Kaufmann-Kohler. Cian O'Connor was present and was represented by counsel Mr Jeffrey Chapman QC, assisted by Messrs Neville Byford and Cameron Forsaith of Eversheds. The Respondent was represented by Mr Jonathan Taylor, solicitor of Bird & Bird, assisted by its in-house legal counsel Ms Aine Power and Ms Carolin Fischer, its legal counsel.

23. Several witnesses were heard at the hearing: Mr Robert Splaine, Chef d'Equipe Ireland, Mr James Tarrant, Assistant to Chef d'Equipe Ireland, Mr Darragh Kenny, Irish team member, and Mr Ulrich Kirchhoff on behalf of Horse Sport Ireland. Mr Ben Mayer, a Great Britain international rider, testified on behalf of Mr O'Connor, and Mr O'Connor gave written and oral evidence. Mr Mikael Rentsch, FEI Legal Director, and Mr Stephen Ellenbreck, Ground Jury member who was responsible for the bell during Mr O'Connor's round, testified on behalf of the FEI.
24. On 18 December 2015, the First Appellant filed the correspondence it had sent to the Spanish Equestrian Federation, the International Olympic Committee and the Olympic Council of Ireland on 9 and 10 December 2015, informing them of the pending proceedings.
25. In response to a request by Horse Sport Ireland and Mr O'Connor, acceded to by the FEI, for a swift operative decision in light of pending selection deadlines related to the 2016 Olympic Games, the Panel issued its operative award on 4 January 2016.

## V. SUBMISSIONS OF THE PARTIES

26. The Appellants' submissions, in essence, may be summarized as follows:
  - The Ground Jury Decision was null and void and should have been given no weight in the Appealed Decision because it was *ultra vires*.
  - The Appealed Decision was wrong because it was expressly based on the Ground Jury Decision.
  - The Ground Jury approached the matter by considering whether Article 233 of the JRs was applicable. But Article 233.1 of the JRs imposes an obligation on the Ground Jury to ring the bell to stop Mr O'Connor, "*In the event of an Athlete not being able to continue his round for any reason or unforeseen circumstance, the bell should be rung to stop the Athlete*". The Ground Jury purported to rule on the legitimacy of its own omission to act and so the decision was *ultra vires*.
  - If the Appeal Committee had fairly and properly considered the Protest it would have found that the Ground Jury should not have ruled on the Protest and that the Ground Jury Decision was wrong and not one that could have been reached by any reasonable Ground Jury, and that it had failed to consider all relevant factors or relied on irrelevant factors.

- The interference caused to Mr O'Connor and his horse was so substantial that the Ground Jury should have rung the bell to stop the round in accordance with its obligation under Article 233.2 of the JRs.
- The distraction caused by the crew member running in front of Mr O'Connor and his horse and the audible reaction of the crowd caused Mr O'Connor and his horse to knock down obstacle 11.

27. In their statement of appeal, the Appellants request the CAS to:

- “11.1.1 Determine that the Appealed Decision should be quashed;*
- 11.1.2 Take all steps necessary to ensure that either (1) Ireland should be added as a qualifying team of the Olympic Games in Rio de Janeiro; or (2) Ireland should replace Spain as a qualifying team for the Olympic Games in Rio de Janeiro;*
- 11.1.3 Order the Federation Equestre Internationale to pay the full amount of the CAS arbitration costs;*
- 11.1.4 Order the Federation Equestre Internationale to pay a significant contribution toward the legal costs and other related expenses of Horse Sport Ireland and Cian O'Connor;*
- 11.1.5 Provide all other necessary relief”.*

28. In their appeal brief, the Appellants request that the CAS:

- “1. Determine that the Appealed Decision should be quashed;*
- 2. Take all steps necessary to ensure that either (1) Ireland should replace Spain as a qualifying team for the 2016 Olympic Games in Rio de Janeiro; or (2) Ireland should be added as a qualifying team for the 2016 Olympic Games in Rio de Janeiro; or (3) to order such further or other relief to remedy the injustice suffered by the Appellants;*
- 3. Order the Federation Equestre Internationale to pay the full amount of the CAS arbitration costs;*
- 4. Order the Federation Equestre Internationale to pay a significant contribution towards the legal costs and other related expenses of Horse Sport Ireland and Cian O'Connor;*
- 5. Provide all other necessary relief”.*

29. The Respondent's submissions, in essence, are summarized by it as follows:

- “1.1.1 The Ground Jury were the referees at the event. The decision of the Ground Jury member that the Second Appellant was able to continue his round and so he should not ring the bell was a quintessential 'field of play' decision. The FEI says the decision was right, but for present purposes that is a moot point. The CAS jurisprudence is absolutely clear that a 'field of play' decision, even if it is wrong, cannot be disturbed absent proof of bad faith or corruption. There is no such allegation here: the Appellants have not suggested that the Ground Jury member in charge of the bell was dishonest, just mistaken. Therefore the challenge must fail.*
- 1.1.2.1 The same is true of the Ground Jury Decision on the Protest filed immediately after the round. The*

*FEI maintains it was correct. But the CAS jurisprudence is clear that this decision also falls within the 'field of play' doctrine. Therefore, the only issue is whether it was in bad faith/corrupt, and that is not even alleged, let alone proven, so again the matter must fail.*

*1.1.2.2 The same is also true of the Appeal Committee decision taken within hours of the Ground Jury Decision. Again the FEI maintains it was correct. But again the CAS jurisprudence is clear that this decision also falls within the 'field of play' doctrine. Therefore, the only issue is whether it was in bad faith/corrupt, and that is not even alleged, let alone proven, so again the challenge must fail.*

*1.1.2.3 If the Second Appellant thought the bell should have been rung, he could have stopped the round himself. He also was given the opportunity to protest to the Ground Jury immediately after the race. And he was given a further opportunity to argue his case to the Appeal Committee after that, even though the rules did not really permit that appeal. That is enough. However sympathetic the Appellants' case may be, it is no different from (and in many cases far less extreme than) the many 'field of play' cases that have come before the CAS before and that the CAS has declined to disturb. Since (quite properly) no allegation is made of bad faith or corruption on the part of the FEI officials, that should be the end of the matter".*

30. The Respondent makes the following requests for relief, seeking the CAS:

*"7.1.1 to reject the Appellants' requests for relief in their entirety and to dismiss the Appeal in its entirety, so that the decisions of the Ground Jury and the Appeal Committee are left undisturbed;*

*7.1.2 in accordance with Article 64.5 of the CAS Code of Sports-related Arbitration, to order the Appellants to pay all of the costs incurred by the CAS and payable by the parties in these proceedings; and*

*7.1.3 in accordance with Article 64.5 of the CAS Code of Sports-related Arbitration, to order the Appellants to pay a contribution towards the legal costs that the FEI has incurred in these proceedings".*

## **VI. JURISDICTION**

31. The Appellants appealed against the Appealed Decision by submitting a notice of appeal to the Respondent dated 2 September 2015, without prejudice to the Appellants' alternative argument that subject matter may be determined by the CAS, thereby exhausting the internal remedies available to them.

32. By letter dated 9 September 2015, the FEI proposed that the present dispute be submitted to the CAS, pursuant to Article 39.3 of the FEI Statutes. The letter provided, *inter alia*, as follows:

*"The FEI hereby confirms that it will agree to rely on article 39.3 of the FEI Statutes (which stipulates that "Provided both the FEI and the other party or parties agree, any dispute ... may bypass the FEI Tribunal and be submitted directly to CAS and settled definitively by the CAS in accordance with the CAS Code of Sports-related Arbitration") in order to bypass the FEI Tribunal and have the matter settled definitively by the CAS".*

33. This proposal was accepted by the Appellants.
34. In addition to the above acceptance of CAS jurisdiction by the Appellants and Respondent, the Appellants referred the Panel to further provisions in various documents that they believe are relevant to establishing jurisdiction in CAS:
  - a. Article 39.1 of the FEI Statutes, which provides, *“The Court of Arbitration for Sport (CAS) shall judge all Appeals properly submitted to it against Decisions of the FEI Tribunal, as provided in the Statutes and General Regulations”*;
  - b. Article 61 of the Olympic Charter; and
  - c. FEI Statutes Articles 38.1, 39.2, 159.6, 160.6, and 165.2.
35. The Panel need not address these additional citations in detail.
36. Article R47 of the Code provides that *“An appeal against the decision of a federation, association or sports-related body may be filed with the CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of that body”*.
37. The parties here have reached an agreement to arbitrate before the CAS.
38. The jurisdiction of the CAS is not contested by the Respondent, and is confirmed by the parties' respective signatures on the Order of Procedure and their conduct and participation in the proceedings without objection.
39. It follows, accordingly, that CAS has jurisdiction to decide on the present dispute.

## **VII. ADMISSIBILITY**

40. Though they agree on the presence of CAS jurisdiction here, the parties differ over the admissibility of this appeal.
41. The Appellants are of the view that this appeal is admissible because it was otherwise timely filed and met all other procedural requirements in accordance with the relevant rules.
42. The FEI is of the view that this appeal is not admissible because it violates the field of play doctrine established in a long line of CAS cases.
43. The Panel will address this issue in its analysis on the merits as the Panel does not consider this issue to be one that is properly characterised as pertaining to admissibility. The relevant rules for filing the appeal have apparently been followed and it is a matter of proof for the parties to establish that the decision appealed from is either a field of play decision or is fraught with the elements required by the relevant cases to overturn a field of play decision, such as bias,

prejudice, arbitrariness, malice, bad faith, corruption, etc., as more fully discussed below. Accordingly, the Panel determines that this appeal is admissible.

### VIII. APPLICABLE LAW

44. Pursuant to Article R58 of the Code, in an appeal arbitration procedure before the CAS, the *“Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”*.
45. The FEI is domiciled in Switzerland and the applicable law under which the Panel decides the present dispute is Swiss law.

### IX. MERITS

46. The CAS jurisprudence is clear that the rules of game define how a game must be played, and who should adjudicate upon the rules, and that:

*“The referee’s bona fide exercise of judgment or discretion ... is beyond challenge otherwise than in so far as the rules of the game themselves provide. ... This is a fundamental element in sports law, most fully elucidated in the jurisprudence of the CAS”*.

BELOFF/BELOFF, *“The Field of Play”*, Halsbury Laws of England, Centenary Essays, page 148, citing CAS cases.

47. There are strong sporting-based principles underlying this doctrine, including the need for finality and to ensure the authority of the referee and match officials. Moreover, it is widely recognised that such decisions are *“best left to field officials, who are specifically trained to officiate the particular sport and are best placed, being on-site, to settle any question relating to it”*, and that in most cases there is no way to know what would have happened if the decision had gone another way. Other factors that support such an approach include the arbitrators’ lack of technical expertise, the inevitable element of subjectivity, the need to avoid constant interruption of competitions, the opening of floodgates, and the difficulties of rewriting records and results after the fact. *See, e.g.*, CAS 2004/A/704, paras 3.13, 4.8, 4.10; CAS 2008/A/1641, at para 25 (where the Panel stated that it was *“not prepared to interfere with the application of the rules governing the play of the particular game, which is best left to field officials, who are specifically trained to officiate the particular sport and are best placed, being on-site, to settle any question relating to it”*); CAS 2010/A/2090, at para 44 (stating, *“It is not for the CAS with its limited role ... to question decisions of fact (e.g. what was the nature of the obstruction caused, or judgement, what was unsportsmanlike behaviour) ...”*).
48. In fact, this principle of respecting field of play decisions is one of the defining characteristics of the *lex sportiva*, as a sport specific rule that guides much of sports competition at a fundamental level. Applying this principle is important and disturbing it risks an undermining

of the fundamental fabric of the law of sport, opening the door to a more general review by adjudicators of matters that have long been considered as relating to the field of play.

49. For example, in CAS 2004/A/704, the CAS panel held that the participants are entitled to have referees make honest decisions, but not necessarily correct ones. The CAS panel noted that this was partly because no one could predict how the event would have played out if the referee had not made that decision. The panel stated: *“In short Courts may interfere only if an official’s field of play decision is tainted by fraud or arbitrariness or corruption; otherwise although a Court may have jurisdiction it will abstain as a matter of policy from exercising it”* (CAS 2004/A/704, para 3.17; *See also*, CAS 2008/A/1641, at para 37; CAS OG 02/007, at para 16). The panel therefore declined to interfere in a “field of play” decision, even though the judges later admitted the decision was wrong. It was clear: *“... there is no evidence of prejudice against the Appellant or preference for the athlete who was awarded the gold medal. There are therefore no grounds permitting the Panel to review the decision of the Jury of Appeal. The Appellant has not established that the decision of the Jury of Appeal was tainted by bad faith or arbitrariness”*.
50. In this case, assuming *arguendo* that the Appellants are correct that the Ground Jury member should have rung the bell and stopped the ride before the Second Appellant and his horse tried to jump obstacle 11, thereby stopping the clock, requiring the Second Appellant and the horse to stop, and then restarting the round and jumping obstacle 11, it is not possible to know with any degree of certainty how the round would have been completed. The horse and rider might have jumped a clear round – as the evidence before us appears to indicate would have been the most likely outcome – but it cannot be excluded that, disturbed by the interruption, they may have knocked over any one or even all of the remaining obstacles, or completed the course in a much slower time. In such circumstances, arbitrators find themselves in a situation of manifest difficulty and uncertainty.
51. Moreover, as noted above, the established field of play doctrine permits review of “field of play” decisions *“in so far as the rules of the game themselves provide”*. If the rules do not provide for any review after the event or match has finished, then the CAS is directed to respect such a silence and draw the necessary consequences. In *CPC v IPC*, the CAS panel held that, where the rules of the game make the starter the sole judge of whether a race should be stopped for collision, whether he stops the race is entirely a matter for him, and cannot be reviewed by anyone else, regardless of the merits of that decision (CAS 2000/A/305, at para 5).
52. But even if the rules do provide for the possibility of review of the decision *“immediately after, or even proximate to the competition”* after the match, the CAS has been clear that *“prima facie the same doctrine applies”* (CAS 2010/A/2090, at paras 35(6) and 38). In CAS 2010/A/2090 the CAS determined that: *“The Competition Jury makes what are quintessentially field of play decisions. If there were no internal mechanism for appeal, but an appeal was direct to CAS, CAS would not interfere other than if bias or other equivalent mischief or error of law were identified. The Appeals Commission (again on the same hypothesis that an appeal from its decision was direct to CAS) would enjoy the same qualified immunity from CAS review. Appeals to the Commission are at large: it determines appeals proximately to the competition. Its decisions could therefore be classified as field of play decisions”*. That has to be right, or else the post-match review provided for in the rules would lead to a complete end run around the ‘field of

play' doctrine, frustrating all of the public interest and other objectives that underlie it. It would have the most undesirable result that sports bodies would be forced to write out of their rule books any mechanism for post-match review of the original match official's decision, to ensure that the "qualified immunity" his or her decision enjoys was maintained.

53. So, for example, in CAS 2004/A/727, a spectator ran out onto the course of the marathon at the Athens 2004 Olympic Games and attacked and pushed the leader into spectators. The leader resumed racing but was later overtaken and only won bronze. After the race, he filed an appeal with the referee, stating that the spectator's interference had cost him the gold medal and that therefore he should be awarded gold. The referee referred the appeal to the Jury of Appeal. They reviewed the video and the times of the finishers. While they expressed sympathy, their decision was that the result could not be changed. The CAS panel was clear that it was the decision of the Jury of Appeal that it was reviewing, and was also clear that that was a "field of play" decision for purposes of application of the doctrine. It further stated: "*Before a CAS Panel will review a field of play decision, there must be evidence of bad faith or arbitrariness. In other words, the Appellant must demonstrate evidence of preference for, or prejudice against, a particular team or individual*". Since there was no such allegation in that case, there was no basis to interfere (CAS 2004/A/727, at paras 10 and 11).
54. This decision is of obvious relevance to this case. Immediately after Mr O'Connor's round the full Ground Jury heard the Appellants' Protest against the failure to ring the bell and interrupt the ride before the 11<sup>th</sup> obstacle, and (when the Ground Jury decided not to uphold the Protest) the Appeal Committee, which was also present at the venue, immediately heard an appeal against that decision. The FIS Competition Jury is equivalent to the FEI Ground Jury, and the FIS Appeals Commission is equivalent to the FEI Appeal Committee, the bodies discussed in CAS 2010/A/2090. For the reasons set out above, it is clear that their decisions too "*enjoy the same qualified immunity from CAS review*" as the original decision of the Ground Jury member not to ring the bell when the incident occurred; in other words, they can be reviewed where it is proven, for example, that a decision was made in bad faith, prejudice or corruption, or some other analogous situation, rather than on the merits of the decision itself, made in exercise of a judgment not tainted by such considerations.
55. The CAS has also been clear that the references in its awards to permitting a challenge to a 'field of play' decision on grounds of 'arbitrariness' does not allow a review on the merits.
56. To the contrary, in CAS OG 02/007, the Panel stated: "*The jurisprudence of CAS in regard to the issue raised by this application is clear, although the language used to explain that jurisprudence is not always consistent and can be confusing. Thus, different phrases, such as "arbitrary", "bad faith", "breach of duty", "malicious intent", "committed a wrong" and "other actionable wrongs" are used, apparently interchangeably, to express the same test (M. v/ AIBA, CAS OG 96/006 and Segura v/ IAAF, CAS OG 00/013). In the Panel's view, each of those phrases means more than the decision is wrong or one that no sensible person could have reached. If it were otherwise, every field of play decision would be open to review on its merits. Before a CAS Panel will review a field of play decision, there must be evidence, which generally must be direct evidence of bad faith. If viewed in this light, each of those phrases mean there must be some evidence of preference for, or prejudice against, a particular team or individual*".

57. This ruling was followed in CAS 2004/A/704, CAS 2004/A/727 and CAS 2008/A/1641, where the CAS panel confirmed that whether the accusation is one of bad faith or arbitrariness, *“the Appellant must demonstrate evidence of preference for, or prejudice against, a particular team or individual”* before an official’s “field of play” decision can be disturbed.
58. This principle is important to this case, since the Appellants suggest that the decisions under challenge in this case were arbitrary. They do not, however, allege or demonstrate bad faith, or a *“preference for, or prejudice against, a particular team or individual”*. As a result, their challenge faces an insurmountable obstacle, having regard to the principles identified above, and the practice of the CAS.
59. The FEI maintains that the decision of the Ground Jury member manning the bell not to ring the bell to stop the ride when the incident occurred was entirely correct (though it is explained below why this contention is irrelevant to the Panel’s decision anyway).
60. Under Article 233.1 of the JRs, he or she should ring the bell *“in the event of an Athlete not being able to continue his round for any reason or unforeseen circumstance”* (for example, if the wind had blown down an obstacle (or part of an obstacle) further down the course without there being sufficient time to rebuild it before a rider reached the obstacle). Here, however, the Ground Jury member noted that *“it was some way before the next jump and the horse was not committed to a jump yet”*. The Ground Jury member’s decision not to invoke Article 233.1 of the JRs to ring the bell in those circumstances was a matter within his discretion, and there is no evidence before the Panel to show that it was made in bad faith or prejudice, or that it was arbitrary.
61. The Appeal Committee noted: *“As the athlete continued his round the GJ saw no reason to stop him by ringing the bell”*. Under Article 233.3 of the JRs, in the absence of a signal on the part of the Second Appellant that he was unable to continue his round under normal circumstances, the Ground Jury member in question was entitled to decide not to ring the bell, even if another individual might, faced with a similar situation, have taken a different decision. Such is the essence of a ‘field of play’ decision.
62. The fact that the Ground Jury later said that they would not have penalised the Second Appellant if he had chosen to stop the round – a right he could have exercised but decided against, for reasons that were entirely plausible - does not make wrong and reviewable the decision not to ring the bell and direct him to stop. In the judgment of the Ground Jury member ringing the bell, the Second Appellant appeared to be able to continue, and this was why the bell was not rung. The rules allow the rider to stop if he thinks otherwise, and the Ground Jury can respect that if they think he genuinely and reasonably believed he could not continue, but that does not make the Ground Jury member’s contrary view arbitrary or wrong for a reason that is reviewable having regard to the applicable principles and rules. Indeed, if the Ground Jury member had rung and stopped the round and then, when the Second Appellant started again, he had knocked down obstacle 11, he might well have complained that the Ground Jury member had caused him to do so by stopping him midway through.

63. But all of these arguments about whether the Ground Jury member's decision not to ring the bell and stop the round was correct are irrelevant, because that decision was a "field of play" decision. That means the Appellants' arguments that the decision was wrong, or even that it was irrational (*i.e.*, a decision that no reasonable person could have reached), are irrelevant. Instead, the only basis on which that decision could be interfered with would be if there was "*evidence, which generally must be direct evidence, of bad faith. ... [T]here must be some evidence of preference for, or prejudice against, a particular team or individual*", as established in the CAS cases cited above. That is not even alleged here, let alone proven. Accordingly, the challenge to that decision must be rejected, even if the circumstances of this unhappy episode evoke a strong sympathy on the part of the Panel for Mr O'Connor and for Horse Sport Ireland.
64. The suggestion that the Ground Jury Decision was *ultra vires* because it "*purported to rule on the legitimacy of its own omission to act in accordance with Article 233*" (*i.e.*, by ringing the bell to stop the round) is incorrect both as a matter of fact and law.
65. As a matter of fact, the Appellants' assertion that, "*The people hearing the appeal were the same people who were charged with ringing the bell during the round*" is wrong. The decision to ring the bell is not a joint decision made at the relevant point in time by all members of the Ground Jury. Rather, the JRs make it clear that only one member of the Ground Jury is charged with the responsibility for ringing the bell. Given that a decision on whether or not to ring the bell must be made in a very short space of time, no more than a few seconds, it makes sense that the decision is left to one person as it would simply not be practical for all Ground Jury members to consult among themselves each time that the requirement to take such a decision arose. Therefore, there were now four other Ground Jury members reviewing that decision afresh. In this regard, *see* CAS 2010/A/2090, at para 41 ("*it is the nature of sports competitions that decisions have to be made quickly. In particular, the jury on site is under high time pressure. It can be expected the jury works as carefully as possible and that hearings are conducted seriously. On the other hand, the requirement regarding the right to be heard cannot be set too high. The Court cannot expect perfection from the Jury. If a party cannot bring in the relevant arguments, an appeal to the Appeals' Commission may bring relief*").
66. As a matter of law, there is no general requirement that there be a mechanism for review of a match official's field of play decision after a sporting event. In the present case, however, the rules expressly provided for the review to be done by the Ground Jury, and did not exclude any member from being involved in that review. We have not been directed to any compelling arguments as to why, if such a review takes place, the relevant individual match official may not be a member of the reviewing body where that is what the rules provide.
67. The Appellants' allegation that the Ground Jury ignored their request to review the video evidence prior to giving its decision is factually incorrect. Under Article 200.5 of the JRs, it was at the Ground Jury's discretion whether or not to grant that request, but the fact is that, although their preliminary view was that there was no basis for the Protest, they did review the video evidence before coming to a final decision. As the Protest requested that the Ground Jury view the video, the President of the Ground Jury agreed to do so, together with the other members of the Ground Jury, prior to giving a final decision. Their final decision makes it clear that they considered the video footage, and that having viewed it they "*did not see anything to alter the result*".

The Appellants are correct that the video was viewed by the Ground Jury without sound and so they did not hear the crowd reaction to the incident, but the Ground Jury members witnessed the relevant incident “live” and percipiently, and so could take the crowd reaction into account from their own experience and memory, to the extent they considered it relevant (and in any case, with or without sound it would have been obvious that horse and rider had been distracted and no sound was needed to judge their reaction from the video).

68. These arguments, however, are all moot, because the Ground Jury Decision on the Protest is itself a field of play decision that “*enjoy[s] the same qualified immunity from CAS review*” as the original decision by the Ground Jury member not to stop the round.
69. The Appellants also argue that the Appeal Committee Decision was “*tainted with the same errors committed by the Ground Jury in that it failed to take proper account of Article 233.1*”. To the contrary, the Appeal Committee specifically noted that the Ground Jury member decided not to invoke Article 233.1 to ring the bell because “*the incident occurred quite a distance from obstacle 11*” and that “*the Athlete himself had the possibility to stop*”. Therefore, it is clear that the Appeal Committee did take into account Article 233 of the JRs. And we have already noted above that it was applied correctly in this case.
70. Whether or not the Appeal Committee’s decision was correct is moot because that decision, made at the venue on the night of the incident in question, immediately after the Ground Jury had rejected the Protest, “*enjoy[s] the same qualified immunity from CAS review*” as the original decision by the Ground Jury member not to ring the bell. And therefore, in the absence of any allegation, or evidence of bad faith or corruption on the part of the Appeal Committee, the challenge to the Appeal Committee’s decision must fail.
71. Accordingly, the Panel finds that the field of play doctrine is applicable to the facts before it, that it prevails, and that accordingly the Appellants’ appeal is to be dismissed in its entirety. The Panel does not make this determination lightly. It is acutely conscious of the impact this decision will have on the career of Mr O’Connor and on the Irish team in depriving them of participation in the 2016 Olympic Games, in circumstances in which it appears that the event organisers may have been at fault in allowing a crew member to enter the course at such an inopportune and unfortunate moment. It is more than an understatement to record that the Panel is highly sympathetic to the circumstances in which Mr O’Connor found himself, faced with the unfortunate situation in which a crew member put himself in a place he should not have been. Nevertheless, as highly professional sportsman Mr O’Connor acknowledged that he was conscious at the moment of the incident of the rule allowing him to raise his hand to signal to stop the round where there was a disturbance just like this one. He told the Panel that he had been trained from a young age not to stop but always to carry on with the round, a sporting instinct that the Panel considers to be both highly professional and admirable. That was his decision and not the fault of the FEI here, and the FEI Ground Jury member charged with ringing the bell had discretion under the rules to make the call to not ring the bell based on what he observed. Under well-established legal principles governing field of play cases as set forth more fully above, the Panel finds itself in circumstances in which it cannot disturb that decision,

having regard to the law it is to apply. Whatever high degree of sympathy felt by the Panel cannot displace the obligation to act in accordance with relevant legal principles.

## **ON THESE GROUNDS**

### **The Court of Arbitration for Sport rules that:**

1. The appeal filed on 11 September 2015 by Horse Sport Ireland and Mr Cian O'Connor against the decision rendered by the FEI Appeal Committee on 22 August 2015 is dismissed.
2. The decision rendered by the FEI Appeal Committee on 22 August 2015 is confirmed.
- (...)
5. All other motions or prayers for relief are dismissed.