

**IN THE MATTER OF THE ARBITRATION ACT 2010 - IN THE MATTER OF
AN ARBITRATION**

BETWEEN/

**IRISH HOCKEY COMPANY LIMITED BY GUARANTEE –
'HOCKEY IRELAND'**

APPELLANT

AND

LISNAGARVEY HOCKEY CLUB

RESPONDENT

AND

**THREE ROCK ROVERS HOCKEY CLUB, BANBRIDGE HOCKEY CLUB,
LORETO HOCKEY CLUB AND PEGASUS HOCKEY CLUB**

THIRD PARTIES

Hearing: Carlton Hotel, Blanchardstown, Dublin 15 – 13 August 2020 at 10:00am

Tribunal/Sole Arbitrator: Mrs Susan Ahern BL, FCI Arb.

The following persons attended the Hearing, which was conducted in accordance with HSE Health & Safety Guidance in relation to COVID-19.

Appellant: Mr Jerome Pels, CEO Hockey Ireland (via Zoom)
Mr Eric Bracy, Chair of the Board Hockey Ireland
Ms Fiona Hanaphy, Board Director Hockey Ireland

Respondent: Mr Kyle Lunn, Chair Lisnagarvey Hockey Club
Mr Keith McGarry, Conn & Fenton Solicitors

Third Parties: Written submissions only

SDSI Secretariat: Ms Sinead Conroy

INTRODUCTION

1. This is an appeal by Hockey Ireland against the decision of the independent Hockey Ireland Appeal Panel (“HIAP”) decision dated 30 June 2020 (the “Decision”).

PARTIES

2. Hockey Ireland (“HI”) is the governing body for the sport of hockey in Ireland. It runs the Ernst & Young Hockey Leagues (“EYHL”) and Ernst & Young Hockey Champions Trophy from which teams qualify for the European Hockey Federation (“EHF”) Club Competitions.
3. Lisnagarvey Hockey Club (“LHC”) is a club registered with Hockey Ireland and participates in the EYHL.
4. Together HI and LHC shall be referred to as the “Parties”.
5. Three Rock Rovers Hockey Club, Banbridge Hockey Club, Loreto Hockey Club and Pegasus Hockey Club are the interested third parties likely to be affected by the decision of the Sole Arbitrator (the “Award”), (together the “Third Parties”).

FACTUAL BACKGROUND

A. Background Facts

6. Normally, the means by which HI nominates club teams to represent Ireland in the EHF Club Competitions (per 4.3 - Irish Hockey League Regulations 2019/20) is that the winner of the EY Hockey Champions Trophy (which is a play-off between the top four teams from the EYHL) is the Irish Champion and qualifies as the Number 1 representative from Ireland. The Number 2 representative is the winner of the EYHL (unless the winner of the EYHL is also the Irish Champion, in which case the runner up will be No.2).
7. The emergence of the COVID-19 virus and the pandemic surrounding it had a massive impact upon sport in Ireland. Hockey Ireland like other national sports governing bodies followed the advice of the Government and Sport Ireland and on 12 March 2020 suspended all hockey activities on the island of Ireland with immediate effect until 29 March 2020.
8. On 25 March 2020, following consultation with its branches, the HI Board held a meeting regarding the ongoing suspension of hockey activities due to the COVID-19 pandemic. A decision was issued on 26 March via the Hockey Ireland Coronavirus (COVID-19) Update No.3 - confirming that:

“...the 2019/20 hockey season for all league, cup and all other domestic hockey competitions in Ireland are deemed to have finished.

The consequences of this decision will be looked at by a Hockey Ireland Competitions Working group. The Competitions Working Group will consist of representatives from the Hockey Ireland Board, the Competitions Committee, and representatives from the each of the four branches.

The Competitions Working Group’s proposals, addressing the postponement or cancellation of fixtures, the final league standings, promotion and relegation, and possible European spots for the 2020/21 season will then go to the Hockey Ireland Board for consideration and approval...”

9. The HI Board asked the Competitions Working Group (“CWG”) to make recommendations regarding the consequences of the HI Board decision to conclude the Provincial Leagues, Provincial Cups and the EYHL and EYHL2. On 1 April 2020, the CWG held a meeting to consider the issues. Following consideration by the CWG its recommendation to the HI Board in respect of the EYHL was as follows giving reasons:

“EYHL and EYHL2 Leagues are null and void with no relegation or promotion. EYHL 2 will be reconstituted by qualifying teams from provincial leagues”.

10. On 8 April 2020, the HI Board met to consider the recommendations of the CWG. On 9 April 2020, HI issued the Hockey Ireland Coronavirus (COVID-19) Update No.4 to its members reflecting its decision. The relevant aspects are set out below:

“The Hockey Ireland Board, in consultation with the Branches and on recommendation of the Competitions Working Group, have decided the following:

- *The EYHL 1 and 2 season 19/20 has been stopped and has been declared null and void as there are too many games left to play to determine a fair final ranking by mathematical or other method.*
- *The EY Hockey Champions Trophy is cancelled for the 2019/20 season.*
- *There will be no automatic promotion/relegation in the EYHL 1 and 2 (...)*
- *European club competition places will be determined at a later stage by the Board pending the outcome of the current European season and a conclusive decision from the European Hockey Federation (EHF)...”*

11. On 16 April 2020, EHF issued a statement to the European national governing bodies regarding the selection of teams for the EHF Club Competitions in 2020/21 following the cancellation of the 2020 EuroHockey Club Events. It read as follows:

“The EHF acknowledges that many leagues in our Member Associations countries will not have been fully completed due to the impact of COVID19 in Europe.

In order to ensure fairness and to support our Member Associations, we are waiving the need for countries to enter their Championships winners.

Therefore for 2021 EuroHockey Club Events, all Member Associations can decide internally on their participating teams. They are free to decide their own procedure for selecting their first and second club entry...”

12. On 16 April 2020, the Chair of the CWG wrote to HI as follows:

“Following on from the EHF announcement – the EYHL WG has confirmed that their previous recommendation to the Board is the same – ie that last years HI European representation should remain the same for next seasons European club competitions and in the same order ie 1st – Pegasus (w) and Three Rock Rovers (m) 2nd – Loreto (w) and Lisnagarvey (m). Could the Board agree (or not) this recommendation ASAP...”

13. Also on 16 April, the Chair of HI clarified in an e-mail response that *“while the idea of last years representatives progressing to next years European competition was part of the recommendations it was not part of the final piece voted upon as some Board members wished to have a discussion about it...The Board will need to reconvene to discuss this”*.

14. On 5 May 2020, the HI Board met and determined the selection of the Hockey Ireland representatives for the 2020/2021 EHF Club Competitions.

15. On 6 May 2020 HI Issued a statement to its members regarding the Hockey Ireland EuroHockey Club Competitions Representatives for 2020/21 as follows:

“With the 2019/2020 EYHL season declared null and void due to the ongoing COVID-19 situation, the Hockey Ireland Board has made the following decision regarding the representatives for next seasons EuroHockey Club competitions: The European representatives for the EuroHockey Club competitions shall remain the same for next season, and in the same order. Therefore;

- Pegasus Hockey Club Women will retain their position as the representative in the Euro Hockey League Final

- Three Rock Rovers Hockey Club Men retain their position as the representative for the Euro Hockey League

- Loreto Hockey Club Women retain their position as the representative for the EuroHockey Club Trophy

- Lisnagarvey Hockey Club’s Men retain their position for the EuroHockey Club Trophy II...”

16. On 10 May 2020, the then Vice Chair of LHC wrote to the Chair of HI seeking clarity on the decision to determine that Three Rock Rovers HC would be seeded No. 1 and Lisnagarvey HC No.2 for the EHF Club Competitions 2020/21 and

putting forward six specific points of clarification and sought details on the process and timelines for appealing the HI decision.

17. On 18 May 2020, the President of Loreto HC wrote to HI expressing disappointment at being selected as the “*number 2 representative this season*” and seeking clarification in relation to the rationale and process employed by the HI Board in reaching its decision, in particular the criteria underlying the decision and the options considered in making such decision.
18. On 2 June 2020, the Chair of Hockey Ireland wrote to the HI Board Members to request that matters concerning the decision of the Board on 5 May pertaining to the selection of the HI club representatives for the EHF Club Competitions be re-presented to the Board to address certain procedural matters which might, in his personal view, have been incorrect.
19. On 6 June 2020, the HI Board met and considered the matter (noted as Agenda item No. 3.1 Places for EHF Club Competitions) including the correspondence received on the matter since its last meeting. The Board endorsed its prior decision of 5 May.
20. On 21 June 2020, LHC submitted its substantive appeal of the HI Board decision. The original LHC appeal letter of 10 May 2020 was confirmed by HI as constituting the appeal request. A HI Appeal Panel was constituted to hear the matter.
21. On 30 June 2020, the HIAP issued its Decision determining that LHC’s Appeal should be upheld and that LHC “*should be given the first place in the nominations for European Club Competitions for the season 20/21.*”
22. On 14 July 2020, HI appealed the Decision to Sports Dispute Solutions Ireland.

B. Proceedings before Sports Disputes Solutions Ireland (SDSI)

23. The Appellant, in accordance with Rule 14.2 and Rule 57 of the SDSI Rules filed its Notice of Appeal on 14 July 2020. It identified certain clubs as interested third parties and requested that the appointed arbitrator consider the admission of the interested third parties in the proceedings as the outcome of this Appeal could affect them.
24. The Respondent in accordance with Rule 14.3 and Rule 57 of the SDSI Rules filed its Reply on 29 July 2020. The Respondent in its Reply (i) contended that while

LHC is an interested party it was not the appropriate respondent and (ii) acknowledged, that consistent with the HI Notice of Appeal, there were multiple other hockey clubs who may be affected by the outcome of the SDSI Appeal.

25. As the case was not one which fell to be considered on an expedited basis under SDSI Rule 16, the Sole Arbitrator was appointed by SDSI. SDSI appointed Mrs Susan Ahern, Barrister as the Sole Arbitrator.
26. The deadline for the submission of the entries for Ireland to the European Hockey Federation (“EHF”) for the EuroHockey Club Competitions is 31 August 2020. In light an expedited hearing date of 13 August 2020 was agreed by the Parties and the Sole Arbitrator, to be held in-person.
27. On 7 August 2020, the Sole Arbitrator issued Procedural Order No. 1, determining that that each of Pegasus HC, Loreto HC, Three Rock Rovers HC, and Banbridge HC were interested Third Parties in the proceedings and invited them to make written submissions by 11 August 2020, such submissions to indicate if they wished to make an application to be present at the hearing (noting that the Parties would also be asked their views) and to answer the following questions:

Question 1: Does the Third Party accept the decision of the Hockey Ireland Management Board to declare null and void the EYHL?

Question 2: What is the Third Party view in relation to the three Options put by Hockey Ireland to the Sole Arbitrator for determination regarding relief?
28. On 10 August 2020, the Sole Arbitrator issued Procedural Order No.2 to the Parties addressing standard procedural and related issues. The matter of jurisdiction of SDSI was identified as a preliminary issue for consideration at the hearing.
29. On 12 August 2020, the Sole Arbitrator issued Procedural Order No.3 determining, having considered the submissions of each of the Parties and Third Parties, that none of the Third Parties should be invited to participate in the hearing, but noting that their written submissions would form part of the evidence in the appeal.
30. On 12 August 2020, the SDSI issued COVID guidance for the Hearing.
31. The seat of the Arbitration is Dublin, and the law applicable to the merits, in accordance with Rule 55 of the SDSI Rules, is Irish law.

THE HEARING

32. At the opening of the hearing the Parties each confirmed that they had no objection to the composition of the Sole Arbitrator and agreed with the content of Procedural Order No.2 regarding the procedure for the hearing. The Sole Arbitrator, in accordance with SDSI Rule 26 has the power to regulate their own procedures. Mr Pels was attending the hearing via Zoom due to necessity arising from the COVID-19 travel restrictions, without objection and consistent with SDSI Rule 27.4.
33. The Respondent raised the matter of SDSI's jurisdiction to hear this matter and the Sole Arbitrator indicated that this would be dealt with as a preliminary matter at the outset with the decision on the point to be reserved to the Award. The Respondent objected to the reservation of the decision and the Sole Arbitrator made a ruling that it would be so reserved.
34. In reviewing this case the Sole Arbitrator has had regard to all of the documentation submitted by each of the Parties and the submissions of the Third Parties. Below is a summary of the relevant facts and allegations based on the Parties' written submissions, pleadings and evidence adduced and at the hearing. While the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the Parties and Third Parties in the present proceedings, she refers in this Award only to the submissions and evidence considered necessary to explain her reasoning.

A. Submissions of the Appellant

35. The Appellant requested that the Sole Arbitrator overturn the Decision of the HIAP and grant one of the following reliefs:

“Option 1: back to the original decision of 5 May:

With the 2019/2020 EYHL season declared null and void due to the ongoing COVID-19 situation, the Hockey Ireland Board has made the following decision regarding the representatives for next seasons EuroHockey Club competitions:

The European representatives for the EuroHockey Club competitions shall remain the same for next season, and in the same order. Therefore;

- Pegasus Hockey Club Women will retain their position as the representative in the Euro Hockey League Final

- Three Rock Rovers Hockey Club Men retain their position as the representative for the Euro Hockey League

- Loreto Hockey Club Women retain their position as the representative for the EuroHockey Club Trophy

- Lisnagarvey Hockey Club's Men retain their position for the EuroHockey Club Trophy II

Option 2: The Board of Hockey Ireland is directed to make a new decision on the method of determining the European places, whereby the option should be considered of a play-off between the top clubs (men and women) in the unfinished league standings. Due to the Covid-19 crisis this play-off event may not be possible and in that case another method should determine the outcome.

Option 3: Any other option that would be deemed suitable as an outcome of this procedure.”

36. The submissions of the Appellant can be summarised as follows:
- 36.1 The HIAP panel focussed on the LHC position without any or insufficient regard to the consequences of a change to the original HI decision on selection for EHF Club Competitions 2020/21. The decision to award LHC first seed status had relevance to the determination of the Men’s second seed and the first and second Women’s seeds. The HIAP changed the basis of the decision for European qualification but applied to only one club when they should have looked at the consequences for all four clubs.
- 36.2 The HIAP Decision criticises the HI Board for not having considered other options in selecting its club representatives in Europe when in fact four other options were considered.
- 36.3 The HIAP Decision criticised the HI Board for de-coupling the ‘null and void’ decision from the European nominations. This was done at a time when HI were awaiting the decision / direction of the EHF with regard to the 2020/21 European Club Competitions and HI had to de-couple the decisions.
- 36.4 The HIAP reasoning, is that the HI Board, notwithstanding that it had decided that the 2019/20 season should be deemed null and void, should nevertheless have developed a formula to decide the European nominations and seedings based on 2019/20. The HIAP awarded LHC first seed even though no playoffs took place on the basis that LHC was in the lead in the EYHL at the point that it was truncated. That ignores the clear definition and legal understanding of ‘null and void’ – which according to the Cambridge Dictionary is: *‘(of an agreement or contract) having no legal effect and to be considered therefore as if it did not exist’*.
- 36.5 The HI Board’s position reflected in its original decision is that as no qualification process had been concluded it would be fair and logical to go back to the first moment in history where such a process had been completed, which was the 2018/19 season. Consequently, the HIAP decision is neither fair nor logical.
- 36.6 The Board had the full right to make the decision it did to use the 2018/19 season standings for the purposes of its selection of the club nominees for

EHF Club Competitions 2020/21 based upon the EHF mandate of 16 April 2020 which gave national hockey federations the autonomy to determine the representatives they send and the manner in which they select them.

36.7 HI need an outcome from this appeal which will apply to all four positions for Europe.

B. Submissions of the Respondent

37. The Respondent in defence of the HIAP Decision findings made submissions which were presented by Mr McGarry, and can be summarised as follows:

37.1 LHC is not the appropriate respondent in this matter as it did not have a case to defend. It was rather “*an interested party who followed the HI appeal rules (Bye Law 20) successfully*”. As HI is appealing against the decision of its own Appeal Panel, LHC is not the appropriate respondent but rather has the status of an ‘interested party’.

37.2 SDSI does not have jurisdiction to consider this matter as HI is not a permitted appellant under the Hockey Ireland Bye Laws.

37.3 The decision of the HIAP is correct and should be upheld. HIAP dealt with the appeal that was before them from LHC, it did not have the remit to go beyond that.

37.4 The Sole Arbitrator has no power to revisit the original decision of HI or to make a decision that would give options to HI which it did not consider.

37.5 The LHC position was unchanged from when it appealed before the HIAP which in summary was as follows:

- The LHC case before the HIAP was premised on a number of points including the working hypothesis that the teams best placed at the time of the HI Board decision (5 May 2020) should represent Ireland.
- Therefore, the decision to select the 2018/19 Champion who was in 4th position in the EYHL at the time of its cessation was;
 - (i) flawed – several options that could have been used to determine the best team were not used. Speed should not have been the primary consideration
 - (ii) unjust – at the conclusion of the EYHL there was a clear gap between 1st & 2nd: 5 points & 2 games in hand and between 1st & 4th: 8 points and 2 games in hand. The head to head record between 1st & 4th placed teams was 6-0 and 4-3

- (iii) without reasonable rationale to support it – CWG and HI Board had the discretion to use whatever reasonable measure they determined. Instead they used a historic ranking. No alternatives were discussed.

C. Written submissions of the Third Parties

38. The Third Parties all made submissions and answered the questions posted by the Sole Arbitrator which contributed to the Sole Arbitrator’s understanding of the issues in the round and how the Decision affected the different parties. The main point of each is reflected below.
- 38.1 Banbridge HC: Following the HIAP Decision and its reasoning, Banbridge HC being in second place in the EYHL at the time the league was declared null and void, should be awarded the second Irish representative position in Europe for 2020/21.
- 38.2 Three Rock Rovers HC: Contests the HIAP Decision on the basis that it goes against the HI Board decision to ‘null and void’ the season. The submission addressed numerous points including the view that consequences of the HI decision to ‘null and void’ the season were applied to all EYHL and EYHL2 teams and while some teams benefited and others were disadvantaged (relegation /promotion) the decision was balanced across all Full Members. The HIAP Decision was not applied other than to LHC and themselves.
- 38.3 Loreto HC: Does not support the ‘null and void’ decision of HI but should have adopted the same stance as other hockey nations / sports in declaring the season finished and final placings based on the positions as at that date. The strongest teams should go to Europe. It supported the HIAP Decision.
- 38.4 Pegasus HC acknowledged the opportunity to make submissions but declined to make any.

D. Other Matters

39. During the hearing, following certain submissions of HI, the Respondent sought specific clarification on whether HI was in fact appealing the HIAP Decision to rank LHC as No.1 for the EHF Club Competitions, or whether HI was appealing the failure of the HIAP to go on and consider the No.2 seed and the consequences for the EHF Women’s Club Competitions. HI clarified that it was appealing on all grounds including the No.1 seeding of LHC for the EFH Club Competitions. HI reasoned that the decision of the HIAP had to be taken in its entirety and HI could not accept that Decision as it dealt only with one of the four positions available in

the EFH Club Competitions. Its view was that HIAP should not have been so selective as to deal solely with the LHC position.

40. The Parties also confirmed to the Sole Arbitrator that in the context of the Option 2 relief proposed by HI, it was no longer an option to consider a play-off between the top clubs, due to COVID but also to the alterations and adjustments in the make-up of the teams in the intervening period.

MERITS - PRELIMINARY MATTERS

I. PARTIES TO THE PROCEEDINGS

41. HI has sought to review the Decision of the HIAP by way of this appeal. It is not disputed that LHC made a substantive appeal on 21 June 2020, and that an Appeal Panel was established by HI under its Bye Law 20 resulting in the HIAP decision of 30 June 2020 upholding the appeal of LHC.
42. Rule 14 of the SDSI Rules provides for an appeal to SDSI where the regulations of the relevant body provide for an appeal to be heard by reference to SDSI, and all of the internal procedures have been exhausted.
43. The decision of the HIAP is final, subject to the Appeals Arbitration process under HI Bye Law 21 whereby such a decision may be appealed by referral to SDSI within 14 days from receipt of such decision.
44. There will be an appellant and respondent within the Appeal's Arbitration procedure under Bye Law 21 and the SDSI Rules. LHC is the Respondent to this appeal as the successful appellant within the internal procedures of HI and is a party personally affected by the claim brought by the Appellant. A party has standing to be sued and may thus be summoned before an arbitration tribunal if has some stake in the dispute because of something that is sought against it.

II. JURISDICTION OF SDSI

45. SDSI Rule 14.1 relating to the 'Ability of SDSI to hear an Appeal' provides:
*“(a) A Party may challenge or appeal a disciplinary or other decision of a sports federation, governing body, or other sports-related body where;
(i) The regulations of the relevant body; or (ii) A specific written agreement;
provide for an appeal to be heard by reference to SDSI or in with the SDSI Arbitration Rules and unless the parties agree otherwise, that the party*

bringing the Appeal has exhausted all the internal procedures of that relevant body under any applicable regulations”

46. The Appellant relied upon Bye Law 21 of the Hockey Ireland Bye Laws adopted May 2019, (hereinafter the “Bye Laws”) as conferring jurisdiction on Just Sport Ireland to deal with the appeal in this matter. Just Sport Ireland operates under the business name Sports Disputes Solutions Ireland (“SDSI”). The provisions of Bye Law 21 dealing with Appeals Arbitration provide:

“All decisions issued under the Appeals procedure set out in Bye Laws 19 and 20 above may be appealed by the appellant by referral to Just Sport Ireland, within 14 days from receipt of such decision, for final and binding arbitration in accordance with the Just Sport Ireland Arbitration Rules.”

47. Bye Law 19 relates to appeals on decisions arising from Bye Law 18, which is itself a provision dealing with Discipline (namely breach of conduct, bringing the game or Hockey Ireland into disrepute or a breach of the Bye Laws). Bye Law 20 is concerned with “*Appeals (on decisions of the Board, its Committees and Working Groups)*” and contains 13 provisions. Those relevant to jurisdiction are set out below:

Bye Law 20.2:

“A Member or Associate may seek to challenge any decision of the Board or its Committees on matters other than those described in Bye Laws 17 and 18.”

Bye Law 20.3

“The Member or Individual who raised the query in 20.2 above shall have the right to appeal.”

Bye Law 20.12

“The decision of the Appeal Panel shall be final. The Appeal Panel shall inform the CEO of its decision within twenty four (23) hours of the conclusion of the Appeal Panel meeting.”

48. The Respondent submitted that SDSI was the appropriate appellate body but did not have jurisdiction to consider this particular matter as:

- Bye Law 20.12 is unambiguous when it says that “*The decision of the Appeal Panel shall be final*” and HI is bound by its own rules.
- Alternatively, Bye Law 21 of the Hockey Ireland Constitution only allows the “appellant” in an internal appeal of HI to refer to SDSI and not HI itself. As there is no definition of “appellant” in the Bye Laws a review of the language of the Bye Laws makes it clear that it is only a Member or Associate or Individual who has the right to appeal to SDSI.

- To the extent there is any ambiguity the *contra-proferentem* rule of contractual interpretation should apply such that any ambiguity in the rules should be interpreted against the drafter, in this case HI.
49. The Appellant submitted that SDSI was the appropriate appellant body with jurisdiction to consider this particular matter as:
- the Bye Laws are clear and reflect a normal system of review that is a requirement of good governance: incorporating an appeal option within the organisation, followed by the capacity to appeal the relevant decision to an independent review body. HI has chosen SDSI as relevant body.
 - Bye Law 21 applied equally to HI as it did to its members.
 - Nowhere in the Bye Laws is HI excluded from being an appellant. And that the purpose of the provision was to ground the period within which such appeals must be made to SDSI.
50. The Sole Arbitrator in accordance with SDSI Rule 24 has the power to determine questions regarding the competence of the tribunal – *“The Arbitration Panel shall decide on their ability to hear an arbitration including what matters have been submitted and any objection regarding the existence, validity or scope of the agreement to arbitrate.”*
51. The jurisdiction of SDSI to hear appeals from certain decisions of HI Appeal Panels is granted by Bye Law 21. This point was not disputed. The question for this Tribunal is whether or not the scope of Bye Law 21 is such that it excludes HI from having a right of recourse itself to arbitration before SDSI to challenge any decisions issued under the Appeals procedures in Bye Laws 19 and/or 20.
52. Bye Law 20.12 does say that the decision of the Appeal Panel shall be final. Bye Law 19.10 says exactly the same, in the context of disciplinary appeals. However, Bye Law 21 specifically provides, in unambiguous language that *“All decisions issued under the Appeals procedure set out in Bye Laws 19 and 20 may be appealed”*. Therefore, the finality of such Appeal Panel decisions must logically be such that they are final, unless and until further appealed in accordance with Bye Law 21 which permits recourse to arbitration before SDSI. The Sole Arbitrator makes this finding.
53. Bye Law 21 refers to the party appealing a decision under the Appeals procedure as the “appellant”, a term which is not defined in Bye Law 21 or elsewhere in the Bye Laws. A review of the Bye Laws as a whole reveals a number of drafting elements which the Tribunal considers relevant.

- 53.1 There are capitalised terms used throughout the Bye Laws not all of which correspond to defined terms or to the appropriate terms which are in fact defined in the Interpretation section at the commencement of the Bye Laws. For example, references to “Member” and “Associate” while capitalised do not precisely match with the Interpretation definitions which are “Full Members” and “Associate Member”. In addition, “Individual” and “Working Group” are both capitalised in Bye Law 20 but there are no corresponding definitions.
- 53.2 Bye Law 20.7 refers to the capacity of “the offender” to apply to the Chairman of the relevant Appeal Panel for interim measures pending the outcome of the Appeal Panel decision. However, Bye Law 20 is concerned in essence with a challenge by a party to “*decisions of the Board, its Committees and Working Groups*” and therefore it is difficult to see how this language is appropriate in the context of Bye Law 20, as compared to Bye Law 19.5 (discipline) where its usage is entirely appropriate.
54. The above examples demonstrate to the Sole Arbitrator, that the Bye Laws have been drafted in a manner that is somewhat ambiguous. As such, in the absence of a provision that does not allow HI to appeal decisions of its Appeal Panel(s), it appears to the Sole Arbitrator, reasonable and logical to conclude that it does have this right. To interpret Bye Law 21 such that only members of HI can appeal to SDSI and get a second chance while HI cannot, would be unjust and inequitable. It would in the view of the Sole Arbitrator, disproportionately bind the hands of the governing body in the act of governing if it could not fully enforce and test its own rules, a position HI resisted.
55. Therefore, the Sole Arbitrator finds that she cannot accord the precision of interpretation the Respondent seeks and only impute that it is the Members, Associates or Individuals who can appeal to SDSI and not HI itself as the regulating governing body of the sport. As such HI has the right to appeal to SDSI in this matter.

MERITS

56. The HI Bye Laws are silent with regard to the scope of the powers the HIAP has and/or the manner in which they are to be exercised. Neither do they specify any threshold test for appeals of HIAP decisions. There was no issue raised by the Parties with regard to how the HIAP conducted their appeal or any challenge to its power to make the decision it did.

57. The principal issue and the basis of the appeal before the Sole Arbitration was that the HIAP Decision was wrong as it changed the basis upon which the Men's teams were selected for Europe, based upon factual findings which were incorrect, and in the absence of any findings of procedural irregularities on the part of the HI Board in making its decision of 5 May 2020.
58. In assessing if the HIAP Decision was correct there are four principle areas of the Decision the Appellant has sought to challenge: That HI (i) did not consider other options to determine the seeding for European places, (ii) did not follow proper procedures, (iii) should not have decoupled the 'null and void' decision from the determination of the selection of clubs for EHF Club Competition, and (iv) gave no rationale for the selection it made.
59. The decision of HI to bring all the national hockey leagues to an end on 25 March 2020 was one that was necessitated by the COVID-19 pandemic. It was taken in light of the Government announcements of further measures to address the spread of COVID-19 and was done in the interest of the health and safety of the hockey community. The Parties did not dispute that this was the correct and necessary action that had to be taken at that time.

(i) Other Options

60. Dealing with the consequences of that decision and in particular its impact upon the selection of the clubs for European Club Competition was inevitably going to be complex. The HI Board adopted a consultative approach and engaged cross-provincial expertise. The CWG members and meeting attendees comprised senior representatives from Connacht, Leinster, Munster, Ulster, the HI Board, and Chair of the HI Competitions Committee and HI executive management.
61. The CWG minutes of its meeting of 1 April 2020 reflect four options which they were asked to consider by the HI Board namely - (i) percentage equalisation (e.g. points gained divided by games played), (ii) season over null and void (iii) suspend season indefinitely (this option was rejected at the joint meeting of Hockey Ireland and the Branches on 15 March because of operational and scheduling concerns) or (iv) season over, take league standings as they are. Having considered these options across the relevant competitions, the CWG recommended that: - *“EYHL WG made the recommendation to announce EYHL and EYHL 2 Season null and void.”*
- “Reasons were:*
- *Men have 21 games left to play; women have 28 games left to play*
 - *Impossible to fit these games in at the start of the season as well as the Champions Trophy without affecting next season*

- *EYHL WG do not want to relegate clubs which is what will happen if percentage equalisation is used*
- *Still over 30% of league to play so percentage equalisation would not be valid to use*
- *Too many games left to play (...)*

RECOMMENDATION TO THE BOARD = EYHL and EYHL 2 Leagues are null and void with no relegation or promotion... ”

62. In deciding on 8 April 2020 to ultimately null and void the EYHL 2019/20 season, the HI Board was primarily concerned with ensuring that there was no promotion or relegation. It noted the CWG recommendation *“that last years HI European representation should remain the same for next seasons European club competitions and in the same order...”* but deferred the consequences aspect of their decision on EYHL because the Board was awaiting further information from the EHF on the issue, as set out in its COVID-19 Update No.4. - *“pending the outcome of the current European season and a conclusive decision from the European Hockey Federation (EHF).”* In effect it bifurcated the decision to ‘null and void’ the EYHL from the decision regarding who would go to Europe.
63. The EHF announcement on 16 April 2020 acknowledged the difficulty caused by COVID 19 to the national leagues and therefore gave national associations a derogation for the 2021 EuroHockey Club Competitions. All national associations were given the freedom to *“decide internally on their participating teams”* and how they determine *“their own procedure for selecting their first and second club entry.”* This decision gave HI the freedom to make the selection of clubs on whatever basis it chose itself, providing no limitations but equally, providing no specific direction.
64. The HI Board at its 5 May 2020 meeting debated essentially between two options regarding the Irish EuroHockey Club Competitions representatives. The first option was to accept that the ‘null and void’ decision meant that performance in 2019/20 should not be a determining factor. The second option, that a formula should be found from the truncated 2019/20 season performance to determine nominations. Ultimately the HI Board decided on the first option and thus made the decision that *“The European representatives for the EuroHockey Club competitions shall remain the same for next season, and in the same order.” “Therefore, our nominations for Europe are Pegasus No 1 for women and Loreto for No 2 position, Three Rock No 1 position and Lisnagarvey No 2 position.”*

(ii) Proper procedures

65. The HI Board decision was re-confirmed by the Board at its meeting of 2 June 2020 at which time the HI Board also had the benefit of the LHC (original appeal) letter, the Loreto HC letter and a personal letter from the HI Board Chair raising certain procedural issues around how the 5 May 2020 Board decision was reached. The re-confirmed decision on selection and seeding of the EYHL club teams was communicated to the respective clubs on 8 June.
66. In the view of the Sole Arbitrator, the HI Board minutes and correspondence evidenced do not support the HIAP finding that *“Their review of the correspondence and minutes did not allow the panel to find that proper procedures were followed”*. In fact, the opposite was the case. To the extent there may have been any procedural deficiencies in the manner the HI Board came to its decision on 5 May 2020, as documented in the HI Chair’s letter to the Directors of 2 June 2020, these were cured by explicitly revisiting the matter at the HI Board meeting also on 2 June 2020 at which *“the majority of the Board were of the view that the full facts were available to them and that the decision of the previous meeting of 5th May should not be revisited. Based on this the original decision stands as is.”*

(iii) Null and void decision

67. The bifurcation of the HI Board decision into (i) ‘null and void’ and (ii) the determination of the European club representatives for 2020/21 is one that was based on necessity. The HI Board did not know on 8 April what the direction(s) of the EHF would be with regard to the EuroHockey Club Competitions for 2021 or what the qualification criteria would be. In normal circumstances the EuroHockey Club Competitions Regulations (September 2019) stipulate at Rule 2.2 that for the Euro Hockey League (Men) the national association *“(a) SHOULD enter its champion club for the first ranked place for which it is qualified... (b) Is entitled to decide its own procedure for choosing/qualifying the other club(s) it will enter, and the ranking of those clubs.”* In the 2019/20 season there would be no “champion club” as the Ernst & Young Hockey Champions Trophy was cancelled.
68. In addition, while misgivings were expressed by LHC, the decision to declare the EYHL ‘null and void’ was accepted by it. In its letter to HI of 10 May 2020 LHC stated that : *“The decision on how to resolve the EYHL has already been taken, and whilst we do not agree with the decision to ‘null and void’ the league, we have moved on from that. For your information, Ulster Hockey never consulted with us regarding this (as Jerome Pels has advised us that they were to do) and conflicting correspondence is never helpful, but that decision has been taken and we at*

Lisnagarvey accept it.” Banbridge HC and Three Rock Rovers HC also did not take issue with the decision of HI to declare the 2019/2020 EYHL null and void.

69. Consequently, the HIAP was misguided in its view that the separation of the decision by HI into two parts “*placed LHC at a disadvantage of considering appealing the ‘null and void’ decision*”. LHC argued before the HIAP and again at the appeal hearing, that if they had known the consequences of the ‘null and void’ decision at the time it was made they would have appealed it at that point. It is the Sole Arbitrator’s view that the first time the ‘null and void’ decision could have been challenged by LHC (or any other club affected in the EYHL for European places) was when the consequences of that decision were known. Therefore, the first time the HI Board decision could be properly challenged was after 5 May 2020 when the HI Board made its decision to revert to the last available results to determine selection and seeding for the EHF Club Competitions. LHC did challenge the consequences of that decision on 10 May 2020 so far as it affected its seeding position in Europe.

(iv) *Rationale*

70. While HI had flagged (in its COVID-19 Update No.4) the importance of the EHF decision to the ultimate decision it would make in determining European Club Competition places, it is fair to say that HI did not communicate in a clear fashion the rationale it employed in reaching its decision on 5 May 2020. It would have been helpful to the affected clubs to understand the rationale behind the HI Board decision. However, a failure to communicate the rationale for a sports governance decision does not mean that there was no rationale, in this case there clearly was. Nor does it undermine the propriety of the decision itself or annul the capacity of the HI Board to make it.

Conclusion

71. The EHF letter granted HI the authority to make the decision that it did on 5 May 2020 regarding the selected clubs for the EuroHockey Club Competitions 2020/21. In reaching its decision, the HI Board went back to consider the recommendation from the CWG, the product of having considered four options from the HI Board, that the same clubs from 2018/19 should go forward to Europe. In discussing the matter, a variety of views were expressed including that the HI Board was not bound by its decision and could just pick two teams without using the EYHL. Equally there was the desire expressed in the meeting minutes – “*to make sure that [the] decision is not detrimental to the sport, [do] what is the fairest*”. Ultimately the matter went to a vote and it was agreed by majority of six votes to two votes, “*that last year’s teams go to Europe this year*”.

72. Contrary to the determination of the HIAP, the HI Board made its decision having considered a number of options and doing so in the knowledge that they had full flexibility from the EHF derogation to decide which teams they could select for Europe. In the Sole Arbitrators view, the HI decision was made without any procedural infirmity, in the absence of which, there was no basis for the HIAP to overturn the decision of the HI Board.
73. There is a reasonable argument to be made that an alternative decision or conclusion could have been reached by the HI Board, but that is entirely subjective. It was clearly open to the HI Board to make the decision it did. The HIAP were clearly of the view that they were acting in the best interests of the game and they did not agree with the HI Board decision. That was not an unreasonable opinion to hold from a sporting perspective. However, the substitution by the HIAP of the decision made by the HI Board is not supported by any underlying legal or regulatory rationale, other than that they did not agree with the HI Board decision. In my view it was not open to them to come to that decision in the absence of some procedural irregularity which was not the case.
74. For the reasons set out above, the Sole Arbitrator therefore upholds the appeal of the HI Board. Consequently, the decision of the HI Board of 5 May 2020, so far as it relates to the Men's EFH Club Competition 2020/21 selection is reinstated.
75. The matter of the Women's EFH Club Competition 2020/21 selection was not appealed to the HIAP (or at all). Even though it formed part of the reliefs sought by the Appellant, it was not within the remit of the Sole Arbitrator to consider anything beyond the Decision that was appealed.

COSTS

76. With regard to the costs of this arbitration, the Parties were asked to make any submissions they had in relation to costs, in writing to the Registrar so that these could be taken into consideration in the final Award. Both Parties provided submissions.
77. Rule 50 of the SDSI Rules deals with costs.
78. For the reasons explained above, I determined that the appeal is upheld. In the ordinary course the costs of the arbitration might be borne by the unsuccessful party. However, these are disruptive and extraordinary times which have necessitated sports governing bodies such as HI to make unprecedented decisions.

It appears to the Sole Arbitrator to be appropriate in those circumstances that Hockey Ireland should bear the cost of this arbitration and in doing so cognisance is also taken of its submission on costs.

79. The Sole Arbitrator does not consider it appropriate to award any further costs.

MISCELLANEOUS

80. SDSI Rule 59.2 permits the publication of Awards by SDSI in a generic and non-identifying manner unless the Parties expressly agree prior to the making of the Award that it should remain confidential. The Sole Arbitrator is not aware of any such agreement.

81. The Parties agreed that the Award would be made available to the Third Parties.

Dated this the 18th day of August 2020



Susan Ahern
SOLE ARBITRATOR

ON THESE GROUNDS

Sports Dispute Resolutions Ireland rules that:

1. Hockey Ireland has standing to appeal the decision of a Hockey Ireland Appeal Panel before Sports Disputes Solutions Ireland pursuant to the Appeals Arbitration clause which is Bye Law 21 of the Hockey Ireland Bye Laws.
2. The appeal by Hockey Ireland against the decision of the Hockey Ireland Appeal Panel of 30 July 2020 is upheld.
3. The decision of the Board of Hockey Ireland of 5 May 2020 regarding Ireland's selection for the Men's EHF European Club Competitions 2020/21 is reinstated.
4. The costs of the arbitration, to be determined and served to the Parties by the SDSI Office, shall be borne by the Appellant.
5. Each party shall bear its own costs and other expenses incurred in connection with this arbitration.
6. All other motions or prayers for relief are dismissed.

Date: 18 August 2020

SPORTS DISPUTE SOLUTIONS IRELAND



Susan Ahern
SOLE ARBITRATOR