

WORLD ATHLETICS

MECHANICAL AIDS REVIEW PANEL

IN THE MATTER OF AN APPLICATION BY OLIVIER HENDRIKS

PANEL MEMBERS

DAVID GRACE KC – CHAIR (AUSTRALIA)

RAUL CHAPADO (SPAIN)

JINARO KIBET (KENYA)

DR CAROLINE NICOL (FRANCE)

ANNA RICCARDI (ITALY)

DECISION

The Mechanical Aids Review Panel (“the Panel”) of World Athletics is satisfied that Olivier Hendriks will not be provided with an overall competitive advantage by the use of his Mechanical Aids in the form of the running specific prostheses known as Ottobock 1E90 Sprinters provided the authorisation for the use of his running specific prostheses is restricted to him competing at his current MASH or below. Further, the Panel requires that the relevant event organiser of any Applicable Competition in which Mr. Hendriks competes to monitor Mr. Hendrik’s then current MASH. The Panel at the present time determines that Mr. Hendriks is authorised to compete in the 100m, 200m, 400m, 800m, 4 x 100m relay and the 4 x 400m relay disciplines. This decision is made pursuant to Rule 6.3.4 of the Technical Rules of World Athletics. The Panel notes that a formal study is to be conducted by the Royal Dutch Athletics Federation with the full consent and participation (as required) of Mr. Hendriks as to whether there is a risk to the safety of Mr. Hendriks or other athletes by Mr. Hendriks competing in the 800m discipline and any of the last three legs of the 4 x 400m relay discipline. The Panel retains jurisdiction to invite

further submissions upon conclusion of this study or any further study and may revise its decision accordingly.

Introduction

1. Olivier Hendriks is a bilateral transtibial amputee track athlete from the Netherlands. He uses carbon-fibre running-specific prostheses (RSPs) to enable him to engage in track running.
2. On 23 August 2022, he submitted an Application to World Athletics to be permitted to run on particular RSPs in the same competitions as able-bodied athletes in a World Athletics “Applicable Competition”, as defined in the Mechanical Aids Regulations (“the Regulations”). The prostheses are called “blades”. The blades used by Mr. Hendriks are standard Ottobock 1E90 Sprinters.
3. In determining the Application, World Athletics is required to consider its Technical Rule 6.3.4. That Rule provides as follows:

“for the purpose of this Rule, the following examples shall be considered assistance and are therefore not allowed:

...

6.3.4 The use of any mechanical aid, except by an athlete with an impairment as authorised or permitted in accordance with the Mechanical Aids Regulations.”
4. The Mechanical Aids Review Panel (“the Panel”) was established by the World Athletics Council in January 2021. The Panel reports to the Council. The role of the Panel is to consider Applications and determine pursuant to Technical Rule 6.3.4 and in accordance with the Regulations, whether the use of a Mechanical Aid (in this case the aforementioned prostheses) will, on the balance of probabilities, provide the athlete with an overall competitive advantage when comparing:
 - (a) the performance that the athlete who uses a Mechanical Aid is capable of achieving while competing with their impairment and their Mechanical Aid; and
 - (b) the performance that the same athlete would hypothetically have been capable of achieving in the same event if they were competing without their impairment

and without that Mechanical Aid. If the Mechanical Aid will provide the athlete with an overall competitive advantage, its use will not be authorised (see Regulation 3.3.1 and following).

5. Regulation 3.4, inter alia, provides that an athlete who does not have legs or part of their legs and applies for authorisation to use Mechanical Aids so the athlete competes at or below their MASH (as assessed and decided by the appropriate World Para Athletics Panel) in running events, the athlete will benefit from a rebuttable presumption that use of a Mechanical Aid will not provide them with an overall competitive advantage (see Regulation 3.4.1).
6. Under the Regulations, “MASH” means “*maximum allowable standing height*”. The formula used by World Para Athletics to determine the maximum permitted standing height in competition of an athlete who is eligible for Para Athletics on the basis of a bilateral lower limb deficiency and requires the use of two leg prostheses in order to compete, is based on measurements of that athlete’s other body segments. It would be expected that the athlete would compete in sport class T/F61 or T/F62 in Para Athletics. Mr. Hendriks competes in the T62 Class.
7. Regulation 4 deals with the Application process for authorisation to use a Mechanical Aid in Applicable Competitions. The phrase “Applicable Competition” is defined in the Regulations as meaning a competition that holds a permit issued by either World Athletics, an Area Association or a National Federation where all relevant World Athletics’ Rules and Regulations are complied with and consequently at which World Ranking Points are obtained. Mr. Hendriks has provided documentation that proves that if authorised to use Mechanical Aids of the type and with the dimensions and specifications as submitted by him that he will compete at or below his MASH. World Athletics does not dispute that this is the case. World Athletics concedes, in consideration of Regulation 3.4 and on the basis of the rebuttable presumption, on the balance of probabilities that Mr. Hendriks RSPs do not give him an “*overall competitive advantage*” as that phrase is understood in Regulation 3.3.1. The Panel is satisfied, on the basis of the information provided to it, that this concession is well made. The Panel also accepts that World Athletics

has satisfied itself that Mr. Hendriks' MASH has been properly measured and certified. The Panel sees no reason to go behind those measurements and certification and accepts them. There is now no opposition to the Panel granting authorisation for Mr. Hendriks to compete using his existing RSPs subject to the issue raised immediately below.

8. World Athletics initially requested the Panel to only authorise Mr. Hendriks to compete using his RSPs in disciplines of 100m, 200m, 400m, 4 x 100m relay and the first leg only of the 4 x 400m relay, due to safety concerns arising from the possibility of bumping, knocking and otherwise interfering with able-bodied athletes where the competing athletes are not confined to designated lanes (World Athletics has now revised its position after the publication of an Interim Decision, as discussed below). Mr. Hendriks disputed this and sought to be able to compete unrestricted in events (the 800m and any leg of the 4 x 400m relay) where there are no designated lanes. World Athletics initially consented to the authorisation for Mr. Hendriks to use his RSPs in the Netherlands National Championships in 2023 and if he qualifies, the European Under 23 Championships (Applicable Competitions as defined in the Regulations), but only in disciplines run in designated lanes. World Athletics has requested that the Panel impose a monitoring requirement that the MASH of Mr. Hendriks be taken at each Applicable Competition and that his RSPs be inspected by a spot check at each of those competitions. The effect of authorisation is set out at Regulation 3.2.1. It will allow Mr. Hendriks to compete in Applicable Competitions and the competition organiser will list his results in the same category as those of the other competitors (and where applicable note the athlete's "sports class") and his results will be valid for World Athletics' purposes.

Analysis

9. Mr. Hendriks is 19 years of age, and his last MASH assessment was in May 2021. In his Application, he states that he is still growing and he indicates the need to have his MASH reassessed from time to time as a result of his growth. It is uncertain as to when his MASH will be reassessed. Mr. Hendriks will turn 20 years of age in July 2023 and will thereafter become a senior athlete. At present, the personal best times from Mr. Hendriks fall well outside the top performers in disciplines of 100m,

200m and 400m. Although Mr. Hendriks seeks to be allowed to compete in 800m events he has not provided any times for any competitions he has competed in that event. The 800m and 4 x 400m relay competitions do not feature in Para Athletics competitions.

10. A major question that this Panel needs to determine is whether a restriction should be placed upon Mr. Hendriks to only allow him to compete in 100m, 200m, 400m, 4 x 100m relay and the first leg of the 4 x 400m relay events or whether no restriction should be placed upon him. World Athletics initially contended that there are safety concerns for able-bodied athletes if competing against an athlete running with prostheses in events where there are no designated lanes. The physical injury that may be caused by an inadvertent strike of the prostheses to any part of the body of an able-bodied athlete may be greater than an inadvertent contact being made between two able-bodied athletes. Mr. Hendriks believes that that concern is unfounded. He asserts that there is no evidentiary foundation to reach that conclusion and, further, he states that he trains regularly with able-bodied athletes and has run in relay races without designated lanes with no issues or concerns being raised. The last time Mr. Hendriks competed in the 800m event, however, was in October 2018 when he was 15 years of age. Mr. Hendriks relies upon an example of an American runner who uses similar prostheses who has run multiple times in 4 x 400m relays in non-designated lanes without issue. Further, Mr. Hendriks relies upon the contentions that the blades used by him are 20 per cent smaller than a normal foot, 15 per cent lower due to the MASH, 50 per cent smaller than the normal sole of the foot and move less, and in less directions. The Panel notes that neither party has referred to the prospect of able-bodied athletes refusing to run against Mr. Hendriks for fear of injury in disciplines without designated lanes.
11. The head of World Para Athletics, Paul Fitzgerald, was consulted by World Athletics in relation to this issue. He confirmed in writing that the longest distance track event currently in the World Para Athletics Championships or Paralympic Games program for the T62 Class (the class of Mr. Hendriks) is the T62 400m. Those athletes are also eligible to compete in the 4 x 100m Universal relay. He confirmed that the track events currently in the WPA Championships or Paralympic Games are over

distances that require athletes to stay in their lanes. He further stated that the World Para Athletics Medical Delegate would be entitled to prevent any athlete from competing, where in their opinion, it would be dangerous for the athlete to compete, including where the safety of other athletes is put at risk. The Royal Dutch Athletics Federation's opinion, after consulting with Paralympic Coaches, is that for all events not run in lanes it would be more dangerous when athletes are running closely to each other for there to be inadvertent injury to an able-bodied athlete by contact being made with a blade on Mr. Hendrik's prostheses.

12. Clause 1.1.2 of the Regulations provides that:

"World Athletics wishes to be as inclusive as possible and recognises that such competition and technical rules may in some cases necessarily also operate as eligibility conditions for certain athletes."

13. Clause 1.1.3 provides, inter alia, that World Athletics seeks to encourage and facilitate the participation in Applicable Competitions for athletes who use Mechanical Aids on conditions that go only so far as is necessary to protect the fundamental nature, values and meaning of the sport, to deliver on the promise of fair and meaningful competition and to protect the health and safety of athletes (emphasis by underlining added).

14. Importantly, Clause 1.1.4 provides that:

"the requirements, processes, and conditions for authorisation and permission of the use of a Mechanical Aid that are established in these Regulations are driven solely by the desire to guarantee fairness within the sport. They are in no way intended as any kind of assault on the dignity of any athlete who uses a Mechanical Aid, and the need to respect and preserve the dignity and privacy of such athletes, and to avoid improper discrimination and stigmatisation on grounds of disability, is paramount...."

15. Clause 2.6 of the Regulations provides that:

"Each Member Federation is entitled to adopt its own regulations to determine the eligibility of athletes that use a Mechanical Aid to compete in events (except for Applicable Competitions) taking place under its own jurisdiction."

16. Clause 3.2.1 of the Regulations provides that if an athlete is authorised to use a Mechanical Aid the athlete will be eligible to compete using the Mechanical Aid in Applicable Competitions subject, inter alia, to any conditions to the authorisation made pursuant to Regulation 4.3.2.

17. Clause 4.3.2 of the Regulations provides as follows:

“If the Mechanical Aids Review Panel authorises the athlete’s use of a Mechanical Aid, it may place conditions on the authorisation (for example, that the athlete may use a specific Mechanical Aid only and/or use that Mechanical Aid in certain athletics events/disciplines only). The Mechanical Aids Review Panel may issue an official document (such as a certificate) confirming its authorisation which may include any conditions, including specifications...of the Mechanical Aid authorised to be used by the athlete or, if applicable the athlete’s MASH, which the athlete must bring with him to any Applicable Competition they compete at”.

Conclusion

18. On 8 December 2022, the Panel, after considering all the written material provided to it by World Athletics and Mr. Hendriks, issued an Interim Decision authorising Mr. Hendriks to compete only in 100m, 200m, 400m, 4 x 100m relay and the first leg of the 4 x 400m relay disciplines. The Panel expressed its inability to be satisfied on the evidence presented to it as to whether or not there should be a restriction placed upon the authorisation granted to Mr. Hendriks to compete in applicable competitions, such restriction being that he may only complete in disciplines where he competes in designated lanes. The Panel directed that World Athletics and Mr. Hendriks provide evidence and/or submissions in relation to whether the use by Mr. Hendriks of his prostheses in disciplines that do not have designated lanes will or will not jeopardise the health or safety of, and will not instil fear in, an able-bodied athlete against whom Mr. Hendriks is competing.
19. The Interim Decision authorised Mr. Hendriks to compete using the specified prostheses at a height not greater than his MASH only in events or disciplines where there are designated lanes, and the Panel issued a Certificate to that effect.
20. Pursuant to the directions given by the Panel to the parties, the Panel received submissions from both parties. Mr. Hendriks maintained in his submissions that he had run hundreds of times with able-bodied athletes without being confined to designated lanes without incident. Further, no person has complained to him or to others about not wanting to compete or train with him due to fear of injury. He emphasised that the intention of World Athletics to promote inclusivity would be reflected in allowing him to compete in events in disciplines without designated

lanes. He expressed agreement with the proposition that his Member Federation conduct its own risk assessment, which had been suggested by that Federation.

21. World Athletics in its further submissions agreed that Mr. Hendriks should be permitted to compete in all legs of the 4 x 400m relay and in the 800m disciplines on condition that he participates in studies and/or risk assessments agreed by World Athletics in relation to the safety of him running in track races (whether indoor or outdoor) which are not conducted in designated lanes. World Athletics agreed with the submission made by Mr. Hendriks that he works with his Member Federation in its conduct of a formal study or studies and/or risk assessment. World Athletics further submitted that following such a study or studies and/or risk assessment, or during such studies, if World Athletics has concerns about safety because of the studies, World Athletics be permitted to make further submissions to the Panel based on the outcome of the studies and any other study or studies World Athletics may conduct.
22. The Panel has given careful consideration to the submissions and is prepared, at the present time, to authorise Mr. Hendriks to compete in the 100m, 200m, 400m, 800m, 4 x 100 relay and all legs of the 4 x 400m relay disciplines. The Panel is also prepared to allow the parties to make further submissions upon the completion of the study conducted by the Royal Dutch Athletics Federation or any study conducted by World Athletics as to the existence of any risk to the safety of Mr. Hendriks or able-bodied athletes by permitting him to compete in disciplines not conducted in designated lanes. The Panel will retain jurisdiction in this matter, and at a future time, upon conclusion of the aforementioned studies, may issue further directions upon submissions and/or evidence being received from the parties. The Panel will issue a further Certificate to Mr. Hendriks to reflect the amended authorisation granted herein.

DECISION

The Mechanical Aids Review Panel (“the Panel”) of World Athletics is satisfied that Olivier Hendriks will not be provided with an overall competitive advantage by the use of his Mechanical Aids in the form of the running specific prostheses known as Ottobock 1E90 Sprinters provided the authorisation for the use of his running specific prostheses is restricted to him competing at his current MASH or below. Further, the Panel requires that the relevant event organiser of any Applicable Competition in which Mr. Hendriks competes to monitor Mr. Hendrik’s then current MASH. The Panel at the present time determines that Mr. Hendriks is authorised to compete in the 100m, 200m, 400m, 800m, 4 x 100m relay and the 4 x 400m relay disciplines. This decision is made pursuant to Rule 6.3.4 of the Technical Rules of World Athletics. The Panel notes that a formal study is to be conducted by the Royal Dutch Athletics Federation with the full consent and participation (as required) of Mr. Hendriks as to whether there is a risk to the safety of Mr. Hendriks or other athletes by Mr. Hendriks competing in the 800m discipline and any of the last three legs of the 4 x 400m relay discipline. The Panel retains jurisdiction to invite further submissions upon conclusion of this study or any further study and may revise its decision accordingly.

Dated this 22nd day of December 2022



David Grace KC

Chair, World Athletics Mechanical Aids Review Panel

RAUL CHAPADO (Panel Member)

JINARO KIBET (Panel Member)

DR CAROLINE NICOL (Panel Member)

ANNA RICCARDI (Panel Member)