



CASE 25 – Decision

This appeal is brought by Athlete E against the decision of the British Shooting (“BS”) Selection Panel established under the British Shooting London 2012 Selection Policy (‘the 2012 Policy’) not to select her to represent Great Britain (“Team GB”) in the Ladies’ Trap competition at the London 2012 Olympic Games.

1. Athlete E’s case is essentially that she should have been nominated instead of Athlete F as she was the “athlete most likely to win a medal in this event” (paragraph 2 of the Notice of Appeal). In support of this, she puts forward two grounds:

1.1. That BS failed to give any proper consideration to whether she should be selected; and

1.2. That BS failed to follow its own procedure.

2. This appeal is governed by Appendix 3 of the 2012 Policy. Athlete E having requested an oral hearing at the time of giving Notice of Appeal a hearing was listed for Thursday 17 May 2012. In accordance with paragraph 5 of Appendix 3 Athlete F was given notice of Athlete E’s appeal and made a party to the Appeal although she ultimately chose not to attend the hearing in person.

3. As the outset of the hearing the parties agreed that the proper approach to the appeal was akin to that in judicial review, such that it was necessary for Athlete E to demonstrate that the Selection Panel either failed to take into account a relevant consideration, took into account an irrelevant consideration or that their decision was otherwise perverse. Graeme McPherson QC, who appeared on behalf of Athlete E, indicated that he sought a decision quashing the decision of the Selection Panel of 2 May 2012 and a declaration that it should have been Athlete E who should have been nominated, failing which, an order that the Selection Panel should reconsider the decision.

I. Facts

4. Athlete E is a British shooter who competes in the Ladies’ Trap event. She is 25 years old but has already had a successful career in her chosen event and has won a number of medals in both domestic and international events both as a junior and senior. Most recently she achieved particular success at the World Cup event in Lonato, Italy, on 3 May 2012 when she won the gold medal ahead of the current Olympic champion and the London World Cup gold medallist. However, as provided for in the 2012 Policy, the Final Selection Meeting at which the Selection Panel determined which athletes were to be nominated for inclusion in Team GB had

been held the day before, 2 May 2012, without therefore taking any account of this result.

5. The date of 2 May 2012 had been established by BS in November 2010 when the Selection Policy was published, having been agreed with the British Olympic Association ('the BOA'). As that time there would have been three World Cup events in 2012 before the selection date, in Cairo, Tucson and London. I was told by fitnessA, BS Programme Manager, that in November 2011, after the Cairo World Cup event which had previously been scheduled for March 2012 was cancelled and the event at Lonato organised in its place for May 2012, BS considered whether that date should be moved. However, BS concluded that it should not be, on the basis that it remained the appropriate time to notify athletes of their selection as it was neither too close nor too far out from the start of the Olympics, and was shortly after the London World Cup event the week before.
6. As at 2 May 2012 Athlete E was ranked 34th in the world rankings behind Athlete F (13th), Athlete A (31st) and Athlete B (32nd). In the domestic rankings she was ranked 2nd after Athlete B (1st), and before Athlete A (3rd) and Athlete F (4th). Athlete E, Athlete F and Athlete B, together with Athlete C, a junior, had all obtained the relevant ISSF Minimum Qualifying Score(58) for her discipline, as well as the Olympic Qualification Standard (known as the Minimum Consideration Standard ('MCS')) of 63 such that they were eligible for selection for the Games under the 2012 Policy. Those four athletes' performance in International Shooting Sports Federation (ISSF) competitions during the selection period (i.e. the period after the publication of the 2012 Policy to 2 May 2012) was summarised in the following table provided to the Selection Panel:

Name	World Champs. 2010	World Cup Chile 2011	World Cup Sydney 2011	World Cup Beijing 2011	World Cup Maribor 2011	European Champs. Belgrade 2011	World Champs. Belgrade 2011	World Cup Tucson 2012	World Cup London 2012
[Athlete B]		68 9 th	65 18 th	62 28 th	68 24 th	67 16 th	69 24 th	65 19 th	64 17 th
[Athlete F]	66 30 th	65 19 th	61 30 th	63 15 th	64 53 rd	66 17 th	69 21 st	67 12 th	67 7 th
[Athlete E]	59 63 rd	59 30 th	61 32 nd		64 49 th				65 15 th
[Athlete C]	66 8 th Jnr					69 3 rd	66 7 th Jnr		

7. As is clear from the table, Athlete E did not compete in the World Cup event in Tucson in March 2012.

Although Athlete E was ranked no. 2 domestically at that time, in January 2012 she was not invited to attend the Tuscon event as a team member but on a MQS basis. Athlete E immediately queried why this should be, given her understanding that the three available places would be allocated to individuals by virtue of their position in the domestic rankings. An MQS place would have meant that not only would Athlete E have had to fund herself for the event but that her scores would not have counted in the World Cup. The purpose of the MQS event is to give an opportunity to people who have not qualified for a World Cup but would benefit from going either for experience or training.

8. On 18 January 2012 David Wathen, of the British International Clay Target Shooting Federation (BICTSF), informed Athlete E that the teams for Tuscon and London were selected by the Olympic Performance Group ("OPG"). This is a body established under the British Shooting London 2012 Selection Policy and consists of the Chairman of British Shooting and three representatives who have voting rights as part of the selection Panel to select athletes for Team GB. Athlete E continued to correspond with Mr Wathen, and others, in which she appealed against her non-selection for the event. Mr Wathen informed her that the BICTSF and the OPG working in collaboration made a joint decision, that in the interests of fairness and opportunity Athlete E and Athlete F should each receive a chance to go to one World Cup, and that Athlete E had been offered the team place at the London World Cup. Athlete E never appears to have received any satisfactory answer to her concerns.
9. Athlete E says that she was subsequently informed by Peter Croft that any MQS score she may obtain in Tucson would not count towards either the World Cup or her Olympic Selection Record for the 2012 Olympics. As a result, and due to the need to fund her own participation, she decided not to attend that competition.
10. Both Athlete E and Athlete F subsequently attended the London World Cup event as Team members in April 2012.
11. Following the Selection Panel's decision on 2 May 2012 Athlete E filed a Notice of Appeal against that decision on 8 May 2012, reserving the right to further particularise her case once she had received the written confirmation of the Selection Panel's decision.
12. BS responded to this on 13 May 2012 and disclosed the minutes of the Selection Panel meeting on 02 May 2012. The Response justified the decision on a number of grounds:
 - 12.1. Athlete F and Athlete B were considered the "*top two performers*", and Athlete F "*was the only one of the four being considered to have made a final and to have medalled in the past*". In the selection period,

she had *"achieved the highest position [...] at the Olympic venue"*;

12.2. "[Athlete F] *ha[d] beaten [Athlete E] four times and [Athlete E] ha[d] beaten [Athlete F] once in the five competitions that they have competed in together"*;

12.3. Athlete E had chosen not to take the opportunity to shoot in Tucson; and

12.4. The Lonato competition was *"after the selection period ended and after selection had taken place"*.

13. Athlete E filed a further response 15 May 2012 in which she maintained that, contrary to BS's assertion, it had not made a fair and objective assessment of the athletes.

II. The 2012 Policy

14. The 2012 Policy provides that the aim of BS is to win at least one medal at the Games and ensure athletes are prepared to achieve best possible placings in their respective disciplines (§3). The selection process is stated to be *"an exercise of judgment and is guided by, but not determined by, results in competitions and trials"* (§4). The selection of athletes will be based on *"the opinion of the Selection Panel who will together decide who, in their combined opinion, as the greatest medal winning potential for the Games in each discipline."* (§4)

15. In order to be eligible for selection athletes must satisfy a number of criteria, including holding a current ISSF MQS for their event (§6).

16. Section 7 of the 2012 Policy contains a series of factors to be taken into consideration for athlete selection:

16.1. Athletes must have shot a minimum MCS in their event (the score is 63 for Ladies' Trap according to Appendix 2) in the ISSF major international competitions nominated in Appendix 1;

16.2. Progression in training as measured by

16.2.1. Coach reports

16.2.2. Documented progression in training (training diaries)

16.2.3. Consistency of verified training scores

16.3. Attitude and Commitment

16.4. Demonstrated ability to perform under pressure

16.5. Potential to win a medal at the Games

16.6. Depth of field and strength of competition in their event

16.7. Competition results and consistency

16.8. Potential to medal in Rio 2016 based on projected trajectory.

17. Section 8 provides that domestic results and rankings will not be taken into consideration for selection purposes except, if necessary, to adjudicate between two or more otherwise similarly qualified nominees as a guide to current form.

18. Section 9 provides that there will be no substantive changes to the selection policy after publication, and that any changes will be agreed with the BOA and circulated in appropriate time frames to maintain the integrity of the process.

III. Decision

19. The first issue is whether BS acted perversely in failing to put back the date of the Final Decision Meeting scheduled for 2 May 2012. This ground is advanced on both a general and a specific basis. First, Mr McPherson argued that BS ought to have rescheduled the Final Decision Meeting after the Cairo World Cup Event had been cancelled and replaced with the Lonato event which was due to start on 3 May 2012. Secondly, he argues that in any event the Selection Panel ought to have put back the date for determining the athlete for selection at least in the Ladies' Trap event after it became clear at the meeting on 2 May 2012 that Athlete E had been disadvantaged by not attending the World Cup event in Tucson.

20. As for the general argument, I cannot accept that BS acted perversely in not changing the date of the Final Decision Meeting on this basis. Although it could clearly be argued that putting the date back until after the Lonato meeting would provide greater evidence of recent performance that argument could be extended to, for example, a suggestion that the Final Decision Meeting should equally not take place until after the European Championships that I am told are due to take place next week. Reasonable sports governing bodies may well reach different views on such a point, but BS's decision not to change the date cannot be impugned as irrational.
21. In order to succeed on the specific argument Athlete E must show not only that her non-selection for the World Cup event in Tucson was unfair but that the only reasonable way to ameliorate that unfairness was to put back the date for the decision in relation to Ladies' Trap until after completion of the competition in that event at Lonato the following day.
22. The issue of the fairness or otherwise of Athlete E's non-selection for Tucson is by no means clear. According to the BICTSF Selection Procedure for ISSF Events 2011 she ought to have been a team member as a result of her then current domestic ranking of no. 2. The only Selection Procedure which appears to exist for 2012 may be found on the BICTSF website and whilst it provides for a squad system for World Cups which appears to do away with the previous ranking criteria, it is in draft only (and indeed neither party was previously aware of it, which suggests that it may not have come into force or is being otherwise followed.)
23. However, even assuming that Athlete E's non-selection was unfair it does not follow that the only reasonable response was for the Selection Panel to adjourn its determination until the following day (which would have necessitated that it agree that change with the BOA and then circulate it in an appropriate time frame to maintain the integrity of the process as per section 9 of the 2012 Policy). Rather, the Selection Panel could simply have reached its decision taking into account the fact that Athlete E had been disadvantaged by her non-selection, which matter would go to (a) the absence of any results for that event on her part as compared to Athlete F (b) the impact on Athlete E's world ranking as a result of not having competed and (c) the fact that Athlete F's performance in the London World Cup thereafter might have been improved by "*getting her eye in*", as Mr McPherson put it, in Tucson.
24. The second issue is whether the Selection Panel in any event failed to give any proper consideration to whether Athlete E should be selected in accordance with its own procedure.
25. In this context Mr McPherson made the following main points.

- 25.1. Despite the fact that Mr Peel's "Event Commentary" stated that "*there is very little between [[Athlete F, Athlete B and Athlete E]]*" the minutes only record the "*main points emerging from the discussion*" as concerning Athlete F, Athlete B and Athlete C. No discussion of any kind is recorded concerning Athlete E, and it appears that the Selection Panel simply looked at the consistency of results set out in the table and proceeded to choose between Athlete F and Athlete B, rather than consider all athletes against all of the factors identified in section 7 of the 2012 Policy.
- 25.2. It appears from the minutes of the Selection Meeting that the Panel took into account not merely Athlete F's performance in the events listed in the table set out above, but as far back as 2007; there is nothing in the minutes to suggest that Athlete E's performance back to that date was equally considered.
- 25.3. Mr Peel's Event Commentary unfairly yoked together Athlete B and Athlete E's results (achieved over significantly different time periods) in referring to neither of them having made a major final in 38 events between them.
- 25.4. When that Commentary is viewed against the background of Mr Peel having suggested on two occasions that Athlete F is the person who should be nominated the question arises as whether justice was not only done in this case but was seen to be done.
26. In response Mr Newenham emphasised that the minutes did not purport to be a complete record of the discussion, and that Athlete E's other performances had been discussed and considered together with those of Athlete F, and that Mr Peel's previously expressed views in general conversation had in no way negatively influenced his opinion of Athlete E. The major factors which had been taken into account by the Selection Panel were the world rankings, the fact that the highest ranking had been achieved by Athlete F at the recent London World Cup event, and that when assessed head to head Athlete F was the right decision.
27. Whilst I do not doubt the correctness of what Mr Newenham now says about the content of the discussion concerning Athlete E and the other athletes in contention for the single Team GB place in Ladies' Trap, I share the concern expressed by Mr McPherson on behalf of Athlete E that based on the minutes it is impossible to be satisfied that a fair process was followed. I am also concerned that it does not appear that all relevant factors identified in section 7 of the 2012 Policy were taken into account: in particular, there does not appear to have been any consideration of progression in training as distinct from progression in competitions. This concern is highlighted by the fact that the only coach who provided any input to the Panel was Coach A, the Olympic Trap coach, who coached Athlete F. In my view the circumstances of Athlete E's non-selection for

Tucson, and the potential knock on effects on her world ranking and performance in London, were also matters to which the Selection Panel ought to have had regard.

28. I have therefore concluded that the appropriate course is for the Selection Panel to reconsider its decision in relation to Ladies' Trap. It follows from my conclusion that it was not perverse for the Selection Panel not to postpone its decision to take the Lonato results into consideration that the Selection Panel should consider the matter as it stood on 2 May 2012. No doubt the Selection Panel will wish to undertake this review with considerable urgency but this should not prevent both Athlete E and Athlete F (and indeed Athlete B and Athlete C) having the opportunity to submit any information and representations to the Selection Panel that they consider appropriate in the light of this decision. It was not suggested on behalf of Athlete E that it would be necessary in this event for Mr Peel to recuse himself from the Selection Panel, and I do not consider that this would be necessary. I have considered whether I should direct that the Selection Panel should sit with an *ad hoc* independent member or observer to ensure that the proper procedures are followed but from the fair and careful way in which BS presented its case at the hearing I have no doubt that the Selection Panel will conduct itself with the utmost propriety and with due regard to the 2012 Policy.

KATE GALLAFENT

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