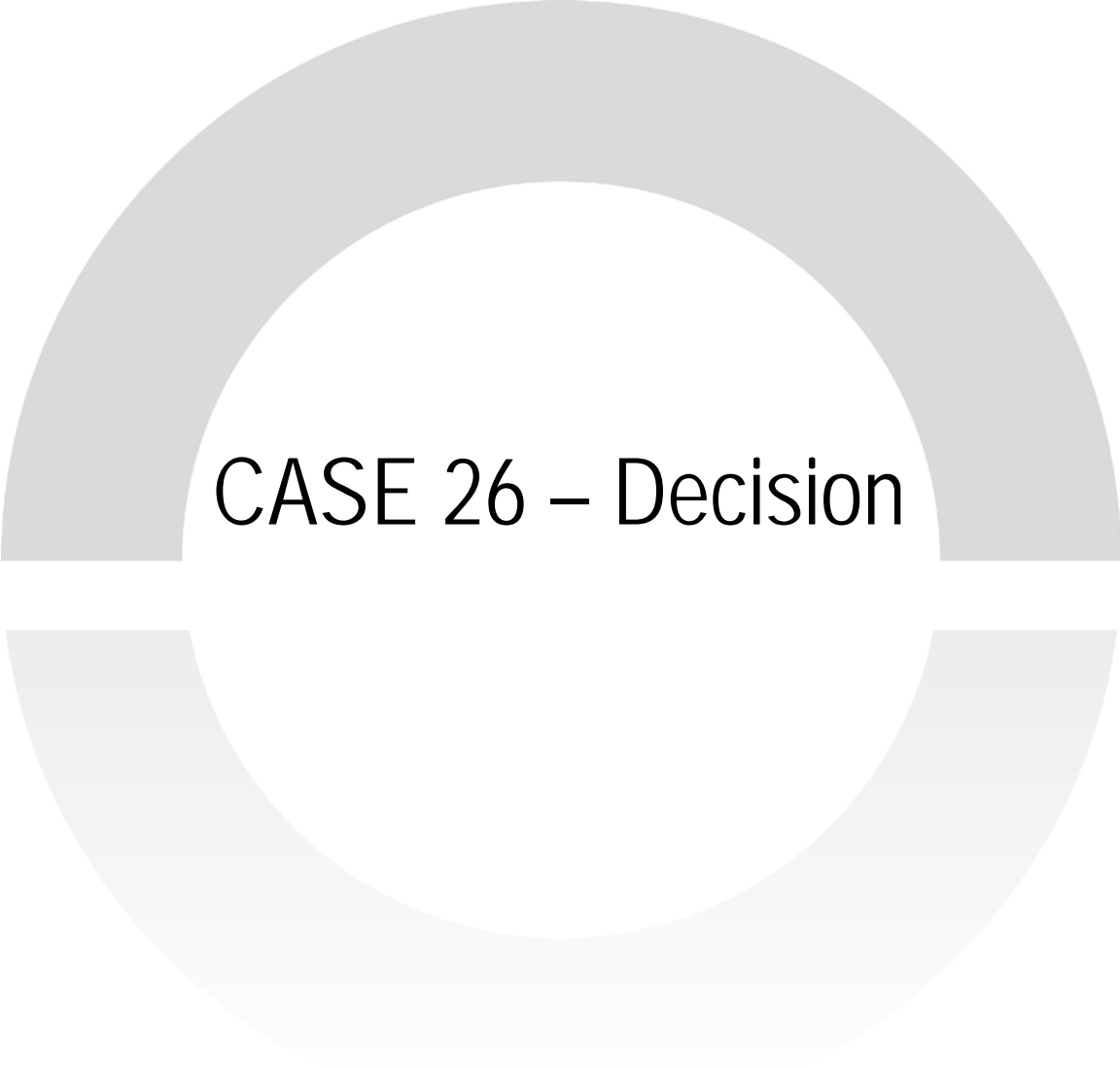




[



# CASE 26 – Decision

1. In this appeal Athlete D appeals against her not being nominated for the 10m Individual diving event at the London 2012 Olympic Games. Pursuant to the Fast Track Team Selection Appeals Procedure permission to appeal was granted by the Chairman on 18th June 2012.
2. Athlete D was represented by Mr Michael Beloff QC and Mr Nick Collins. British Swimming was represented by Mr Christopher Stoner QC and Mr Ash Cox. Witness statements were received from Athlete D and her coach Witness A (in his case two), and, on the part of British Swimming, Witness B, British Swimming's National Performance Director ("the NPD") and Witness C, High Performance Manager of British Swimming. A witness statement was also received from Witness D.
3. Athlete D is an enormously talented diver who is regarded as a serious medal prospect for the 10 metre synchronized pair platform diving event ("10m synchro") with her diving partner Athlete E. She also competes in the 10 metre individual platform diving event ("10m individual"). In the 10m individual, Athlete F won the British Diving Championships ("the British Championships") earlier this month. Athlete D came second and Witness D third.
4. Athlete D and Athlete E were selected for the Olympic team for the 10m synchro. However, Athlete F and Witness D were selected for the 10m individual. Athlete D says that her results in the 10m individual have been consistently better than those of Witness D and that she should have been selected for the 10m individual ahead of Witness D.
5. As the result of these proceedings may potentially affect Witness D, she was given the opportunity to attend. In the event, she put in a witness statement but did not attend the hearing. Whilst we read her witness statement, we should point out that when in this decision we make comments about Witness D's diving results, we have not heard submissions from her.
6. Witness B, who is enormously experienced and was Head Coach and Team Leader for the Russian team for many years, made the selection himself, as is required. He has explained the basis for his selection. He regards Athlete D and Athlete E as serious medal prospects for the 10m synchro. He does not regard Athlete D as a serious medal prospect for the 10m individual, he expects she would come 7th to 9th. He considers that on previous occasions when Athlete D has competed in both events, it has, at least on occasion, affected her performance in the 10m synchro. He considers that it is important not to jeopardize the team's, and Athlete D's, medal prospects in the 10m synchro by putting her in the second event where he does not expect her to win a

medal. He considers that such a decision would not be in the interests of the team, Athlete E, or Athlete D. He says that if Athlete D had won the 10m individual in the National championships, she would have been entitled to be selected. She did not, and he says he was entitled to take into account the objectives as a whole in choosing the diver for the second available place in the 10m individual.

7. Athlete D herself takes the opposite view in relation to the effect of competing in two events, that competing in the second event would improve her focus rather than divert her. She considers that the evidence on which the NPD's view is based in that regard does not show what the NPD believes it shows. But, of course, the decision and the discretion are for the NPD not her. She recognises that the NPD holds this view in good faith.

8. What Athlete D argued, through counsel, was that the grounds for the selection decision were not in accordance with the published selection criteria. We turn to consider the basis for this contention.

9. The Fast Track Team Selection Appeals Criteria provides that the athlete must on appeal show (so far as relevant to the present):

- (a) Relevant information was ignored or not considered by the Selectors or
- (b) The provisions of the relevant Selection Policies were not adhered to.

10. The Selection Policy starts by stating that:

"Diving is an extremely subjective sport and thus there will be a significant component of subjective decision making in regard to final selection of the team."

Subsequently it is stated:

"The final selection will be at the sole discretion of the NPD."

11. The Selection Policy provides for four objectives:

- To select athletes that will form the team to achieve the best possible results
- To select athletes for the Olympic Games 2012 that have the best chance of potential success
- To select athletes that have the potential to succeed in the Olympics of 2016
- To employ a transparent and fair selection process that provides all athletes a chance to challenge for team selection."

11. Mr Beloff submitted as follows:

- a. that the starting point, or presumption, was that the best athletes would be selected for each event
- b. that each event needs to be looked at separately
- c. that the objectives focused on the position of the individual athlete, rather than the team
- d. that the criteria made no reference to winning medals, merely referred to the best possible results
- e. that Athlete D had consistently better results in the 10m individual than Witness D
- f. that Athlete D was much more likely to be a contender for a place for the 2016 Olympics than Witness D
- g. that for the NPD to select Witness D over Athlete D for the 10m individual on the grounds that (on the basis of some rather fragile evidence) it might affect her performance in the 10m synchro was to go well outside the selection criteria set out in the objectives
- h. there was an inconsistency of approach, in that Athlete G had been selected for two events although not obviously a medal contender
- i. that although the decision was in the discretion of the NPD, that did not permit him to go outside the four corners of the Selection Criteria in reaching a decision, and the panel were required to consider the decision in accordance with principles of administrative law.

12. We do not accept that the NPD went outside the Selection Criteria. Our reasons are as follows:

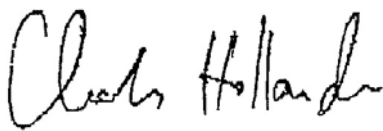
- a. the starting point is that the selection is for Team GB. British Swimming is selecting the team to represent Great Britain in the Olympics. The first objective refers to selecting "the team" to achieve the best possible results. The interests of the team are thus paramount.
- b. although the objectives do not refer to winning medals, the second objective refers to "success", which we take to mean winning medals. Coming fourth is not, in this regard, success, whilst coming third is. We cannot ignore that the success of British Swimming, and its funding, is related to whether and to what extent it achieves medal targets and we consider anyone reading the objectives would recognize that.

- c. we see no basis for treating each event in isolation: the objective is to win diving medals for team GB.
  - d. the objectives make clear that the diver with the best results will not always be selected; otherwise the third objective makes no sense. It would be permissible for the NPD to select a lesser-performing diver with a view to potential in the 2016 Olympics.
  - e. in the light of these objectives, we consider it is permissible for the NPD to have in mind that the realistic prospect of a medal for team GB in the 10m synchro, and for Athlete D and her diving partner, should not be jeopardized by selecting Athlete D also for the 10m individual in circumstances where the NPD genuinely considers there is evidence that competing in both events may, at least on occasion, affect Athlete D's performance in the 10m synchro.
  - f. we do not think the charge of inconsistency is made out in relation to Athlete G. The decision not to select Athlete D for the 10m individual was not a policy decision against permitting divers to compete in two events; it was with reference to Athlete D's particular circumstances.
  - g. in exercising his discretion, we do not consider the NPD departed from the Selection Criteria.
  - h. we reiterate that the decision is made by the NPD, not this panel. Athlete D does not agree with his view in certain respects. It is not for us to decide whether he is right. Our decision is based merely on whether his exercise of discretion fell within or outside the terms of the required criteria.
13. It may be that the objectives could be better expressed in the Selection Criteria document, but that is a matter for British Swimming.
14. We have enormous sympathy for Athlete D. Olympic selection is the pinnacle of an athlete's career. We can understand that it must be very disappointing to miss out on a place in the 10m individual in circumstances where she feels, with a measure of justification, that she deserves a place. We very much hope she will put this disappointment behind her and now focus her attention on winning a medal for team GB in the 10m synchro. We will be watching out for her.
15. We therefore dismiss this appeal.
16. In a case such as this, an arguable appeal brought by an athlete against whom no criticism can be levelled, we

consider that British Swimming should pay the costs of the appeal (which do not include costs of legal representatives). We consider such costs are part of the costs of regulating the sport. We also have in mind that Athlete D's coach, Witness A has himself funded the appeal, which we regard as highly impressive.

17. We therefore order:

- (1) the appeal is dismissed
- (2) the costs of the appeal (but not including legal costs of the parties) be paid by British Swimming.



Charles Hollander QC Chair

Carole Billington-Wood

Tim Ollerenshaw

London, England, 29 June 2012



Sport Resolutions (UK)  
1 Salisbury Square  
London EC4Y 8AE

T: +44 (0)20 7036 1966  
F: +44 (0)20 7936 2602

Email: [resolve@sportresolutions.co.uk](mailto:resolve@sportresolutions.co.uk)  
Website: [www.sportresolutions.co.uk](http://www.sportresolutions.co.uk)

Sport Resolutions (UK) is the trading name of The Sports Dispute Resolution Panel Limited