SPORT RESOLUTIONS (UK)
SPECIALIST INDEPENDENT DISPUTE SERVICE

CASE 27 – Decision

DECISION ON APPEAL

1. As the host nation, Great Britain has been granted the opportunity to enter a team in the Rhythmic Gymnastics Group event at the 2012 Summer Olympic Games.

2. The British Olympic Association ("BOA") wisely decided that despite the availability of host nation places for events in the 2012 Summer Olympic Games, it would not nominate British competitors unless those competitors were capable of putting in credible performances.

3. The respondent, British Amateur Gymnastics Association ("BG") is the national sport federation in the United Kingdom for the Gymnastic disciplines.

4. On 20 October 2011 the BOA and BG entered into an "*Olympic Qualifying Standards Agreement*" for London 2012. The purpose of this agreement was, *inter alia*, to set out the basis upon which the BOA would accept host nation places for each of the Gymnastics disciplines.

5. Pursuant to the Olympic Qualifying Standards Agreement, the BOA would accept a host nation place for the Rhythmic Gymnastics Group event only if the team concerned had fulfilled a "benchmark" standard for qualification set out in the *British Gymnastics Selection Policy* (the "Policy").

6. The benchmark set by BG was a score 45.223, which was 82% of the winning group's score in "Competition 1" at the Rhythmic World Championships 2011.

7. No group from Great Britain has previously qualified for the Rhythmic Gymnastics Group event at the Olympics. Indeed, the British rhythmic gymnastics team had achieved poor results in the 2010 World Gymnastics Championships. The establishment of a benchmark score as the minimum standard that a British team would have to achieve in order to be nominated for entry to the Olympic Games was therefore seen as a necessary and responsible measure by both BG and the BOA.

8. The group hoping to represent Great Britain at the Rhythmic Group event at the Olympics was formed in 2009 and by 2011 had evolved into the team comprised of the appellants in this case. This group, referred to in the balance of this decision as the "GB Group", has based itself in Bath, where the members of the group share a residence and train at Bath University. The GB Group is self-funded. Some of its members have deferred educational pursuits in order to train full time and focus on their goal of Olympic qualification.

9. Following participation by the GB Group in the Olympic Test Event in January 2012, British Gymnastics

concluded that the group had failed to achieve the required benchmark score in accordance with the terms of the Policy and, hence that the GB Group would not be nominated to fill the host nation place in the Rhythmic Gymnastics event at the 2012 Olympic Games.

10. The GB Group now appeals against that decision. The basis for the appeal is that BG has not adhered to its own Policy. The appellants assert that had it done so, the GB Group would have been nominated.

11. The parties have agreed that the appeal should be decided by an independent arbitrator appointed by Sport Resolutions in accordance with the *Arbitration Rules of Sport Resolutions (UK),* 2008. On 6 February 2012, I was appointed as sole arbitrator to hear and finally determine[1] the appeal.

The Benchmark and the Selection Process

12. The benchmark score[2] established by BG was the product of several months of discussions between BG and the BOA culminating in a meeting in May 2011. It was agreed and understood that the group nominated by BG would then have to achieve this benchmark score at the 2nd FIG[3] Olympic qualification competition scheduled to take place as part of an Olympic "Test Event"[4] to be held in January 2012 at the O[2] arena in January 2012.

13. According to Jane Allen, the Chief Executive Officer of British Gymnastics:

> *The choice of the 2nd Olympic Qualification competition which was to be incorporated into the qualification phase of the Olympic Test Event was critical as it provided the correct environment for a BG Group to strive for Olympic nomination. This event provided a world class venue and an international standard judging panel.*

14. If the benchmark score agreed with the BOA was not achieved, BG would not be making a nomination. Specifically, it was agreed that there would be no discretion with respect to the score.

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[1] Rule 12.4 of the Rules provides:

> *All decisions and/or awards of the Tribunal shall be final and binding on the parties and on any party claiming through or under them and the parties agree, by submitting to arbitration under these Rules, to waive irrevocably their right to any form of appeal, review or recourse to any state court or other judicial authority, subject to any applicable statutory or other rights*

[2] As already noted, the benchmark standard was set at 82% of the winning group's score in "Competition 1" at the Rhythmic World Championships 2011 in Montpellier.

[3] Fédération Internationale de Gymnastique

[4] The Olympic Test Event is conducted every four years in the city that hosts the Olympic Games to allow them to test their systems, volunteers and plans.

The Policy

15. The Policy, in its final form, was promulgated in September 2011. It was drafted by Steve Green, the Performance Director [Non-Olympic] of BG and Jo Coombs, the Chair of the British Gymnastics Rhythmic Gymnastics National Technical Committee. By then, the Rhythmic World Championships for 2011 had already taken place in Montpellier, so that it was possible to put a firm number to the benchmark score which the British Rhythmic Group would be required to achieve: 45.223.

16. Copies of the Policy were sent to the members of the GB Group in October 2011. Each of them (or a parent on their behalf) signed an acknowledgment that they had received and reviewed the Policy. A copy of the Policy sent to members of the BG Group is annexed to this decision (Annex 1).

17. The relevant provisions of the Policy are set out below. The Policy was presented in tabular form, with section descriptions or headings in the left-hand column and narrative in the right-hand column.

In the "*Competition Format*" section:

- The current FIG Technical Regulations, [2011] and Code of Points [2009-2012] apply throughout this policy.
- FIG Competition I: CI using FIG designated Olympic Apparatus; 2011-2012: 5 Balls, and 3 Ribbons with 2 Hoops.

In the "*Performance Targets*" section

Improve upon the benchmark score achieved by the British Group at the 2nd Olympic Qualification.

In the "*Qualification possibilities*" section:

<u>GROUP QUALIFICATION: From Qualification Event 2</u>

The 31st World Championships, 19th – 24th September, Montpellier [France] is defined by FIG as the 1st Olympic qualification event.

A benchmark score of 45.223, [82% of the winning group score extracted from CI at the 1st Olympic qualification event will be the largest score that a British Senior Group will need to achieve at the 2nd Olympic qualification, CI, 15th – 18th January 2012, [Test Event].

If the minimum benchmark score is achieved a nomination will be submitted by British Gymnastics to the BOA in order to register an acceptance of the host country wild card to compete at the Olympic

Games in 2012.

The process below is wording taken from the Qualification System – Games of the XXX Olympiad document published by the International Federation [FIG] outlining the host country place:

For Groups:

a) If the presence of the Host Country is neither guaranteed after the 1st nor after the 2nd Olympic Qualification, the group from the Host NOC which participated in the 1st Olympic Qualification will obtain an NOC quota place. In case the Host Country did not take part in the 2011 World Championships, the Host Country Group from the 2010 World Championships will obtain an NOC quota place.

NOC, [National Olympic Committee] is otherwise known as the BOA. The above wording has been clarified with FIG, and its interpretation, therefore in summary; If a British Group qualify with the benchmark score at the 2nd Olympic Selection event, the fact that GBR were represented at the 30th World Championships, Moscow 2010 means that Great Britain are eligible for a Host Country place for a British Group at the Olympic Games, 2012.

The agreement made with the BOA 11th May 2011, means that in order for a host country place for the group to be considered, first the benchmark score at the 2nd Olympic qualification event, [Test Event], must be achieved.

In the "Selection Process" section:

2. A British Group must achieve the benchmark score at the 2nd Olympic Event, [the Test Event, 15th – 18th January 2012]

…….

The Olympic Test Event – January 2012

18. The test event for the purposes of the selection Policy took place at The North Greenwich (O^2) Arena, Greenwich, between 16th and 18th January 2012. There were 8 teams including the appellants. 7 out of 8 teams were competing against each other for Olympic places. The appellants were seeking only to meet a minimum standard as GB was the host nation for the 2012 Games.

19. The Test Event consisted of two parts: (a) a qualification phase on 16 and 17 January, which was also the 2nd Olympic Qualification competition; and (b) a final phase on 18 January. Although the scores achieved in the final were irrelevant for the purpose of the 2nd Olympic Qualification competition, medals were

nevertheless awarded based on the scores achieved on the final day by the participating teams.

20. On 16 January 2012 the appellants scored 23.100 for the first routine. On 17 January 2012 the appellants scored 21.850 for the second routine. Their total score was therefore 44.950 – 0.273 points below the required benchmark. As permitted by FIG rules, the GB Group's coach lodged an appeal against the score of the second routine within the Olympic qualification competition, but this was dismissed, with no change being made to the overall score of 44.950

21. On 18 January 2012 the GB Group scored 24.100 for the first routine and 23.100 for the second routine, giving them a total score of 47.200 for both routines. This score surpassed the benchmark.

Circumstances Giving Rise to this Appeal

22. The respondents contend that only the combined scores on 16 January and 17 January 2012 could be taken into account. If so, the appellants did not meet the minimum standard. The appellants contend that their score on 18 January could also be taken into account. If so, the Appellants did meet the minimum standard.

23. Shortly after the appeal against the score of the second routine on 17 January had been rejected, BG's Olympic Performance Director, Tim Jones, publicly announced that the GB Group would not be nominated for a place at the Olympics. In his witness statement filed in this appeal, Mr Jones explained his actions by reference to a meeting that had take place earlier that day:

> *On Tuesday 17th January 2012, prior to the start of competition I met with Martin Reddin and Jane Allen in the VIP Area of the 02 Arena to discuss the possible results of the GBR Group performance in the Olympic Qualification Competition on 16th and 17th January 2012. The outcome of the meeting was agreement that the published selection policy was clear in that if the score of 45.223 was achieved in CI, British Gymnastics would be nominating a Group to the BOA. If the benchmark score agreed with the BOA were not achieved, British Gymnastics would not be making a nomination. It was on the basis of the complete agreement and guidance from this meeting that subsequent statements were made by me to the media in the Mixed Zone at the conclusion of Competition CI on Tuesday 17th January 2012.*

24. On 20 January BG made an "official announcement" confirming the position. It states in part:

> *This standard needed to be achieved at the second FIG designated Olympic Qualification Event, which took place on Monday 16th and Tuesday 17th January, within the recent London Prepares*

series. Unfortunately, the Group from Great Britain fell short of meeting this definitive target. In accordance with the selection process approved by the BOA (which was agreed and acknowledged by all competing Group members), British Gymnastics wishes to confirm that in line with this policy it will not be nominating a Rhythmic Gymnastics Group for inclusion into Team GB for the London 2012 Olympic Games.

25. On 20 January 2012 the GB Group submitted a notice of appeal. This document was based on an old, rather than current, version of the selection policy (this first, older, version was referred to for convenient reference during the hearing of the appeal as "Policy A").

26. The same day, Jane Allen of BG wrote to the BG Group rejecting the notice of appeal because it had been submitted under the wrong policy. Her letter attached "the Selection document that should be used for any Appeal that you wish to lodge". In fact the document that was enclosed (referred to at the hearing as "Policy B") was not the correct version of the policy either. It was, as BG subsequently explained, a draft of the correct policy. Then on 23 January, Ms. Allen sent the BG Group an email attaching what is now accepted by all to have been the operative Policy (referred to at the hearing as "Policy C").

27. On 24 January 2012, the BG Group lodged what was described as a "Protective Appeal". This document appears to have been based on Policy B. However, both appeal documents identify as the basis for the appeal that:

    BG incorrectly applied the selection policy by refusing to nominate the Group despite the fact that the Group had satisfied the only remaining condition standing between them and nomination by scoring in excess of 45.223 at the Olympic Test Event.

    No technical objections remain concerning the process followed to initiate the appeal. The parties accept that the appeal is procedurally valid and that this tribunal has jurisdiction to deal with it.

Hearing

28. The hearing of the appeal took place in London on 29 February 2012. It lasted a full day. In addition to comprehensive submissions by counsel for the parties, the tribunal was provided with witness statements, legal resources (precedent cases and legal texts and literature) and the written submissions on the evidence and the applicable law. Oral testimony was also received from seven witnesses.

29. At the end of the hearing I reserved my decision. I was informed that my decision – with or without reasons therefore – was required within 7 days. I have elected to provide my decision and reasons

together. In doing so I confirm that I have fully considered all of the evidence and submissions presented to the tribunal. However given constraints of time, I have focused in these written reasons on the issues and evidence which seem to me to be important to the determination of this appeal.

Issues

30. The issue on appeal is whether British Gymnastics correctly applied the Policy. To determine this it is necessary to consider the following sub-issues:

    a) What was the relevant selection Policy?

    b) What did the Policy establish by way of criteria for selection?

The Policy

31. It is now agreed that the applicable policy is what was referred to at the hearing as Policy C. Extracts from it have already been recited earlier in this decision and a full copy is attached at Annex 1.

32. It is nevertheless argued by the appellants that in construing the Policy, its earlier iterations – Policies A and B – should be regarded as aids to interpretation.

The Selection Criteria

33. There is no dispute about the benchmark score required. What is in dispute is whether, during the course of the 2nd Olympic test Event, the GB Team had two opportunities to achieve the benchmark score of 45.223 (in either the qualification phase or the final) or one (in the qualification phase only).

34. The parties agree that in determining what the parties meant, regard must be had to the ordinary principles applied by courts when called upon to construe contracts. Although many of the cases discussed by courts relate to commercial agreements, those principles can and should be adapted to guide the interpretation of rules, regulations and other agreements which arise in the sport environment.

Determining What the Policy Means

35. In construing the Policy, words should be ascribed their natural and ordinary meaning having regard to the context in which they arise:

a) the ultimate aim of interpreting a provision in a contract is to determine what the parties meant by the language used (*Pink Floyd Music Ltd v EMI Records Ltd* [2010] EWCA Civ 1429; [2011] 1 WLR 770, per Lord Neuberger MR at para 17);

b) the subjective interpretations of the parties – what they thought the Policy meant – are immaterial (Chitty on Contracts 30th ed, vol 1, para 12-043);

c) the standpoint in determining what the parties meant is that of a reasonable person with all the background knowledge which would reasonably have been available to the parties in the situation in which they were at the time that the Policy was made (*Investors Compensation Scheme Ltd v West Bromwich Building Society* [1998] 1 WLR 896 (H.L.), per Lord Hoffman at 912H);

d) In ascertaining what a reasonable person would have understood the parties to have meant, the tribunal must have regard to all the relevant surrounding circumstances. If there are two possible constructions, the tribunal is entitled to prefer the construction which is consistent with common sense and to reject the other (*Rainy Sky SA v Kookmin Bank* [2011] UKSC 50, per Lord Clarke at para 21);

e) where the parties have used unambiguous language, the court must apply it (*Rainy Sky SA v Kookmin Bank*, per Lord Clarke at para 23);

f) where terminology is used which has a known meaning in a particular context (such as the sport of rhythmic gymnastics), the meaning of that terminology will be a question of fact to be determined by the tribunal (although the meaning of the contract remains a question of law) (*Chitty*, 12-057)

g) where a contract is poorly drafted and ambiguous, a tribunal should endeavour to ascertain the intention of the parties from the language that has been used having regard to the factual circumstances in which the contract was made (*Mitsui Construction Co Ltd v A-G of Hong Kong* (1986) 33 BLR 14 (P.C.) per Lord Bridge, cited with approval by Mance L.J. in *Sinochem International Oil (London) Ltd v Mobil Sales and Supply Corp* [2000] CLC 878 at p 885 and by Lord Clarke in *Rainy Sky SA v Kookmin Bank* at para 26);

h) if a doubt or ambiguity as to what the parties meant by the language used in the Policy cannot be resolved by application of these ordinary principles of construction, the contract must be construed *contra proferentem* (in modern parlance, the words will be construed against the person who put them forward, in this case, against British Gymnastics) (*Chitty*, para 12- 083).

36. Bearing these principles in mind, it falls to this tribunal to determine what the Policy means. In doing so, sentiment must play no part. The question is not whether the BG Group should be nominated to participate in the 2012 Summer Olympic Games. It is whether they have, in fact, met the qualifying standard that was set for them in accordance with the terms of the Policy.

Is the Meaning of the Policy Clear?

37. According to the respondent, "*the policy could not be clearer*". The Policy required the appellants to obtain a benchmark score of 45.223 at the 2nd Olympic qualification, CI, 15th – 18th January 2012, [Test Event].

38. The appellants say that the Policy is anything but clear. It uses inconsistent terminology sometimes inserting the abbreviation "CI" in the description of the event but other times leaving it out. The one consistency the appellants do note is that the Policy refers throughout to the dates for the whole Test Event, not just the two days of the qualification phase. Furthermore, the reference to "CI" – which the respondent asserts is shorthand for the qualification phase, is out of place in an event which follows the Olympic format, and should not be ascribed the meaning put forward by the respondent. Indeed the appellants dispute that the abbreviation "CI" can be clearly understood to have the meaning which the respondents ascribe to it.

39. I would observe at the outset that the Policy is not well drafted. While it is not unusual to see terminology and abbreviations in the rules of sporting competitions (which might mean something to people knowledgeable about the particular sport but might not be readily intelligible to outsiders not involved in the sport), the document is repetitive, it uses inconsistent terminology (such a "CI") and has a certain "cut and paste" appearance.

40. Of particular note is that the two people from BG principally involved in developing the Policy cannot agree on what it means.

41. One of the authors, Steve Green, has worked in the sport for 20 years and, since 2007, he has attended meetings of the BG Rhythmic Gymnastics National Technical Committee ("TC") where:

> *…. I have updated the TC on Technical and Performance matters related to the day to day operations of the Technical Programme, including Selection Policies, specifically in this case the*

Test Event I 2nd Olympic Qualification and OG Policy, as well as the stages preceding the BOA's decision for a Host Nation place to be contested by a Group and Individual, subject to a benchmark score being demonstrated by the Group at the 2" Olympic Qualification/Test Event.

42. It would appear that Mr. Green was responsible for initially preparing each of the three versions of the policy that were in evidence at the appeal. However he sought input from Jo Coombs, the Chair of the TC in respect of these documents and, ultimately, the Policy bore the signatures of both Mr. Green and Ms. Coombs.

43. While Mr. Green says that there was no shadow of a doubt that the GB Group and its coach knew that the Policy required the benchmark score to be achieved at the qualification phase of the Test Event, Ms. Coombs says that there was never any discussion of restricting the opportunity to qualify to the first two days of competition only, and that she does not read the Policy as doing so. She points to the term "CI" as being out of place in an event following the Olympic format, and, therefore redundant.

44. Ms. Coombs adds (although it does not in my view have any bearing on the proper construction of the document), that she never agreed to the content of Policy C in its final form. She had been sent Policy B by Mr. Green who had asked her to approve the draft and to authorise him to affix Ms. Coombs' electronic signature. Ms. Coombs suggested some minor amendments which are not germane to this appeal and authorised Mr. Green to use her signature on the final version of the Policy once those comments had been taken on board. Mr. Green did indeed make some changes reflecting Ms. Coombs' comments. But he also inserted the abbreviation "CI" in the "Qualification possibilities" section of what then became Policy C. Mr. Green did not tell Ms. Coombs that he had done this, although he did send her a copy of the Policy by email.

45. Ms. Coombs acknowledges receiving the email, but she says that she did not review the attached policy to check that Mr. Green had done what he had said he would do. Indeed, her evidence is that she did not look at the Policy again until after the events of 17 January.

46. Mr. Green also sent a copy of the Policy to Sarah Moon, the coach of the GB Team. In his covering email he wrote:

As you are aware from Saturday's 1st Olympic qualification at the 31st World Championships - Montpellier, the Italian Group had a winning AA score of 55.150 in CI. 82% of this figure means a

combined score, over the two exercises, of 45.223. This will be the exact score that will be required at the 2nd Olympic qualification, [the Test Event 15th 18th January].

47. Mr. Green, Ms. Coombs and Ms. Moon all say that, prior to the Test Event, there was never any discussion between themselves, or between other representatives of BG on the one hand, and the GB Group on the other hand, about restricting the opportunity to achieve the benchmark score to the qualifying stage.

48. The athletes are unanimous in asserting that they were unaware that they had only one opportunity – the qualifying stage of the Test Event – to achieve the benchmark score.

49. Whether or not Ms. Coombs in fact read Policy C before 17 January 2012 (BG suggests that she surely must have), the fact that the abbreviation "CI" was inserted into the "Qualification possibilities" section during the course of the drafting process without any discussion between the two authors of the document, deprived BG of an important opportunity to reflect on the very issue that has ultimately led to this appeal.

The Significance of the Abbreviation "CI"

50. Having regard to the various principles of construction set out above, the meaning to be attached to the abbreviation "CI" is of great significance. If, as BG contends, "CI" is synonymous with the "qualification" stage of the Test Event (i.e. the competition that took place on 16th and 17th January) then the appeal would fail.

51. The question of whether "CI" has a recognised technical meaning is a question of fact.

52. It was common ground that The "C" in "CI" stands for "competition". The "I" is the capital Roman numeral "one".

53. [redacted], a [redacted] old member of the GB Group, gave evidence that neither she nor her team-mates were familiar with the abbreviation "CI" or knew what it meant. Ms. Allen, on behalf of BG, accepted that evidence. But, she said, the GB Group's coaches would have known exactly what "CI" meant and should have explained it to the athletes.

54. Ms. Coombs and Ms. Moon were both familiar with the term "CI". But they said its meaning would depend on the type of competition that was involved.

55. The *FIG Technical Regulations*, 2011 contain the rules that govern the various competition formats which fall under the international federation's jurisdiction, including the Olympic Games and the World Championships.

56. In the regulations relating to the Olympic competition programme, there is no use of Roman numerals in the text of the regulations. According to Regulation 3.1.2., the format is that of a "General Multiple Competition" consisting of (a) Qualifying Competition; and (b) Final. The eight best groups from the Qualifying Competition take part in the Final. The group achieving the highest score in the Final is the Olympic Champion.

57. By contrast, in the World Championships, a different format is used.

58. Regulation 2.1.4.2 applies to the Worlds Championships and, in connection with Rhythmic Gymnastics, states:

> *Where Roman numerals are used they relate, respectively to:*
>
> *- Qualifying Individual Competition with Team ranking Competition I (C-I)*
>
> *- All-Around Final: Competition II (C-II)*
>
> *- Apparatus Finals: Competition III (C-III)*
>
> *- General Competition for Groups Competition I (C-I)*
>
> *- Finals for Groups (1 type of apparatus) Competition III (C-III)*
>
> *- Finals for Groups (2 types of apparatus) Competition III (C-III)*

59. The first day of the competition is the *General Competition for Groups Competition I (C-I).* It is an "All-Around" event. All groups perform two routines and add the scores together. Medals are awarded to the teams with the highest combined scores.

60. On the second day of the group competition, the groups with the top eight scores on each of the routines in the first day compete again for medals in each of the separate routines - *Finals for Groups (1 type of apparatus) Competition III (C-III)* [balls] and *Finals for Groups (2 types of apparatus) Competition III (C-III)* [ribbons/hoops].

61. The competition in World Championships lasts for two days in total. Medals are awarded on both days because the events on each are different: an "All-Around" event on day one and separate routines on day two. By contrast, competition in the Olympic format lasts for three days. All teams participate in all events on the first two days. Only the teams selected for the final stage participate on the third day.

62. According to Ms. Coombs, there should have been no reference to CI in the Policy. The reference to CI in the "Competition Format" section of both Policy B (which she had seen) and Policy C was erroneous. In her view, while CI has a technical meaning in events following the World Championship format, it has no application in events following the Olympic format.

63. Mr. Green on the other had said that he regarded the term "CI" as synonymous with the qualifying competition in the Olympics as well as the general competition in the World Championship format. Ms Allen's evidence was to similar effect. In fact, while recognising that there was no unanimity in the use of the various acronyms encountered in rhythmic gymnastics, Ms. Allen stated in evidence that all of her staff at BG referred to the qualifying stage as CI and that the term was one of common usage.

64. I am not satisfied, on a balance of probabilities, that the reference to "CI" in a Policy governing selection at a competition based on the Olympic format, would have been known and understood by the parties to mean the "Qualifying Competition". The January event was a "Test Event". It was based on the Olympic format, in which the term "CI" has no application. The fact that the event was doubling up as an Olympic Qualification event for the other teams participating, and that it had been stipulated that the selection of those teams would be based on the qualification stage scores, is irrelevant. For the GB Group, this was a unique event, and their route to the Olympics was not in any way dependent on the performance of the other teams participating.

65. I therefore conclude that the meaning of the abbreviation "CI" in the Policy is neutral and does not convey the meaning ascribed to it by BG in the context of the Test Event which followed the Olympic format.

Did Only the Qualification Stage Count?

66. Even if the term "CI" is ignored, BG would still assert that allowing the final day score to count for selection purposes would be contrary to the Policy's objective of providing the correct environment for the BG Group to achieve the required benchmark score – requiring a "credible performance" – and, hence, obtain nomination.

67. I accept the evidence of Mr. Green, Ms. Allen and other BG representatives that it was always the i n t e n t ,

at the executive levels of BG at least, to require the GB Group to achieve the benchmark score in the qualification stage. As Ms. Allen explained:

> *The choice of the 2nd Olympic Qualification competition which was to be incorporated into the qualification phase of the Olympic Test Event was critical as it provided the correct environment for a BG Group to strive for Olympic nomination. This event provided a world class venue and an international standard judging panel.*

68. But the perspective of Ms. Coombs – albeit, perhaps, as suggested by Mr. McKay in argument, with the benefit of hindsight - is different:

> *I cannot think of any reason why BG would want to specify that the possibility of achieving the qualification or selection score would be restricted to the competition held on the 16th and 17th January, thereby excluding the routine that was to be performed (and of course was performed) on the 18th January. From a competition point of view the environment was exactly the same on The 18th January as on the 16th and 17th January. Crucially the same panel of Judges judged the RG competition on all days. Sometimes at FIG competitions there can be two panels of Judges and where this is the case there is the possibility for a variation of scores as between the different judging panels due to the slight variations in interpretation that will inevitably exist. All the competitors had the benefit of the same facilities, the same floor etc, across the whole competition.*

69. Regardless of what was intended and what was or was not discussed, it would seem that the Policy could easily have included language which clearly and unequivocally stated that the GB Group would have only one opportunity – in the qualification stage of the test Event – to achieve the benchmark score. Ms. Allen very fairly acknowledged as much in her testimony. But it did not. The question therefore is whether – ignoring, as the tribunal must, what the parties say they intended – the words that were used were sufficient to convey that requirement.

70. On 17 January 2012, prior to the start of competition for the day, there was a meeting involving three BG officials – Timothy Jones (Olympic Performance Director), Martin Redden (Executive Director) and Jane Allen (CEO).

71. An extract from the witness statement given by Mr. Jones referring to this meeting has already been recited earlier in these reasons. His colleagues also referred to the meeting in their statements:

Martin Reddin

On the morning of January 17th 2012, I met with BG CEO Jane Allen and the BG Olympic Performance Director to discuss the possible results of the GBR Group performance in the Olympic Qualification Competition on 16th and 17th January 2012. We agreed that the published selection policy was clear in that if the score of 45.223 was achieved in CI, British Gymnastics would be nominating a Group to the BOA. If the benchmark score agreed with the BOA were not achieved, British Gymnastics would not be making a nomination.

Jane Allen

A meeting was held on Tuesday 17th January 2012 prior to the second day of the Olympic qualification competition to discuss with the Head of Delegation Tim Jones both scenarios (if the Group passed the mark or if they fell short). Due to the large media contingent at the Olympic Test Event, it was important to be clear on the selection policy and its application once the actual score for the two apparatus was posted by the Group. We exercised care around the possible outcome and steps taken as the welfare of the gymnasts and managing their expectations and possible disappointment was paramount.

72. It is argued by the appellants that the meeting on the 17th was necessitated because the Policy was unclear.

73. According to Mr. Jones, however, the meeting on 17 January was not just to discuss selection. That said, because, at the end of the day, he wanted to be clear about what he would say to the media, he wanted to speak to his CEO and the Executive Director before doing so. He denied that the discussion took place because there was uncertainty about the Policy. He also acknowledged that as a courtesy, he could have at least told Jo Coombs about what had been agreed at the meeting but said that even if he had it would not have changed anything because the Policy was unambiguous and objective.

74. While I accept that the meeting on 17th January was not convened because of concerns on the part of those present that the Policy was unclear, it is notable that all three witnesses record in their statements (prepared, of course, for the purpose of this appeal) their agreement that the Policy was "clear". With respect, while I accept that the Policy may have been clear to them, it was not as clear to others. Had Ms. Coombs, who was onsite, been consulted, she may have expressed a different view.

75. I am not persuaded either that the appellants and their coaches must have known that selection would be

based only on the qualification stage because only that stage would replicate the pressures of Olympic qualification competition (the Olympic qualification of other teams participating was dependent only on the first two days of competition). The GB Group, however, was in a different position. They were not competing with the other teams for a place. Rather, they were competing against the benchmark.

76. Whether the BG Group had two attempts to qualify rather than one, the pressure on 18th January must have been immense. To be sure, they had been told that BG was not going to nominate them. But they had also been told that if there was any hope of reversing that decision they would have to achieve a benchmark score. And they did. To the extent that it was said by representatives of BG that on the 18th "the pressure was off", I do not accept that evidence.

77. I would note that Mr. Reddin very fairly conceded during the course of cross- examination that, having regard to the different pressures the GB Group would have been under during the two phases of the competition, it would have been neither easier nor harder for them to achieve the benchmark score in each of the two phases.

78. Whether or not it accurately reflects what BG's views on the selection policy in this case might have been, I am inclined to accept the common sense implicit in the following statement made by Jo Coombs:

> *To my knowledge within rhythmic the general policy of BG when considering selection and qualification opportunities for its athletes is to try to give the athlete at least 2 chances to achieve the applicable standard. I have never known a situation where an athlete or a group is given just a single opportunity to achieve a qualification standard where 2 or more such opportunities reasonably exist. The general principle within rhythmic is that athletes should not be given just one opportunity to perform to a given standard. Anything can go wrong and it is both fairer and more indicative of the athlete's ability to observe their performance over 2 or more competitions. I accept that circumstances may dictate that a one-off qualification (or selection) opportunity might have to be offered; but I do not think, based on my experience, that this is BG's preferred route. Based on this, I feel that if the question had been put to anyone at BG on the 27th September 'what if the girls compete in the final round on the 18th Jan and score more than 45.223, would that be good enough?' then the answer would have been 'of course it would be good enough'.*

79. It seems to me, therefore, that a reasonable person with all the background knowledge which would reasonably have been available to the parties in the situation in which they were at the time that the Policy was made, would conclude that the Policy required the BG Group to achieve a benchmark score during

the 2nd Olympic Event [the Test Event, 15th – 18th January 2012].

80. Because the GB Group achieved a score of 47.200 on 18 January, they easily exceeded the benchmark score of 45.223 and thus, according to the Policy, should have been nominated by BG to fill the host nation place at the 2012 Summer Olympic Games.

Conclusion

81. For the reasons given, the appeal is allowed. It follows that the GB Group's nomination should now be directed by BG to the BOA.

82. I may be spoken to in the event that any issues of costs (whether under Rule 13.2 of the Arbitration Rules of Sport Resolutions (UK), 2008 or otherwise) or other issues relating to the implementation of this decision arise.

83. It should be recorded that I was left in no doubt at all that BG has at all times endeavoured to maintain the integrity of the sport and to act in the best interests of its athletes and coaches. BG's decision not to nominate the GB Group was doubtless a hard one to make, but it was a decision made in good faith and in the belief that it was correct.

Graeme Mew
Arbitrator

5 March 2012

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