

## **Case 29 – Selection Appeal**

### **2012 London Olympic Games**

#### **Key words**

*Selection Policy; Lacuna; Team Size; Nomination; Misunderstanding; Times; Standards; [Fair Selection of athletes](#)*

#### **Summary**

Athlete T appealed the decision of the British Swimming (BS) Selectors not to nominate her for selection to Team GB in the 200m breaststroke at the 2012 Olympic Games. An Appeal Committee was appointed by Sport Resolutions to hear the appeal pursuant to the BS Fast Track Team Selection Appeals Procedure. The Appeals Committee found that the policy was clear and was followed, and that there was no lacuna, as argued by Athlete T, because the Selection Policy specifically allowed for a team to be nominated with “up to” two swimmers, thereby acknowledging that BS would not necessarily always nominate two swimmers in all events. The appeal was therefore dismissed.

#### **Background Facts**

Athlete T appealed the decision of the BS Selectors not to nominate her for selection to Team GB at the 2012 Olympic Games. Leave to appeal was granted by the Appeal Committee. The relevant Selection Policy stated that “up to two places [were] available in each event”. The first place would be filled by the athlete finishing first in the Trials, on the condition they achieved the FINA A standard time, and the second place would be filled by the athlete finishing second in the Trials provided that they achieved the World Top 16 time. If required, nominations for any remaining places would be determined at the later Nationals to the fastest available swimmer(s) achieving the FINA A standard time.

At the Trials, Athlete T finished second. The winner achieved the FINA A standard time and was selected. Athlete T finished within the FINA A standard time but outside World Top 16 time, and so was not selected. At the subsequent Nationals, Athlete T won her race but in a time just outside the FINA A standard time, and was not selected.

### **Reasoning and Decision of the Tribunal**

Athlete T argued i) that the Selection Policy was unclear and had been misunderstood to mean that Athlete T would be selected on the basis of the time she achieved at the Trials if she was not beaten at the Nationals, and ii) that there was a lacuna in the Selection Policy, in that no provision had been made for circumstances where the second placed swimmer at the Trials met the FINA A standard time (but not the World LC time) and no one met the FINA A standard time at the Nationals.

The Appeal Committee rejected the appeal on the basis that the misunderstanding (whilst unfortunate) had not arisen as a result of statements made by BS. The Appeal Committee found that the Selection Policy was clear and was followed and that there was no lacuna, as argued by Athlete T, because the Selection Policy specifically allowed for a team to be nominated with “up to” two swimmers, thereby acknowledging that BS would not necessarily always nominate two swimmers in all events.

### **Learning points**

- Selection policies should be clearly drafted, comprehensive, avoid lacunas and be followed when being applied. Care should be taken to record the reasons and rational for why the policy has been drafted as it is.