

## Case 30 – Selection Appeal

### 2012 London Paralympic Games

#### Key words

*Selection Policy; Discretion; Qualifying Standard; Trials; Clarity; Drafting; Illness; Injury; Relevant Information; Medal Potential; Consideration; Rankings; [Fair Selection of athletes](#)*

#### Summary

Athlete C appealed the decision of the British Swimming (BS) Selectors not to select him for the 2012 Paralympic Games on the grounds that relevant information was ignored or not considered by the Selectors, and the provisions of the relevant Selection Policies were not adhered to. An Appeal Committee was appointed by Sport Resolutions pursuant to the BS Team Selection Appeals Procedure (the Appeals Procedure). The Appeal Committee found that certain relevant information was not considered by the Selectors in relation to one aspect of the procedure - an exercise of discretion relating to additional nominations for selection. The Appeal Committee therefore upheld the appeal and ordered the decision as to the exercise of that discretion to be taken afresh.

#### Background Facts

Athlete C appealed the decision of the British Swimming (BS) Selectors not to select him for the 2012 Paralympic Games on the grounds that relevant information was ignored or not considered by the Selectors, and the provisions of the relevant Selection Policies were not adhered to.

The Selection Policy made reference to two trial events in London and Sheffield. Prior to these trial events, Athlete C became seriously ill with pneumonia when at

a training camp abroad and was quickly flown back to England and admitted to hospital on arrival. He did not recover in time to compete in the London trial. He did make a sufficient recovery to be able to compete in the Sheffield trial but did not reach the qualifying standard and argued that he had not fully recovered from the effects of the pneumonia. In the year prior to this illness, Athlete C had also recovered from a serious injury to his triceps.

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

Athlete C argued that the Selectors misunderstood and therefore misapplied paragraph 1.3.1 of the Selection Policy, which, Athlete C argued, provided discretion to the Selectors to consider him for selection given his performance at the Sheffield trial was impaired by illness and even though he had not achieved the stated qualification time at other permitted events as stated in the Selection Policy. BS acknowledged that Athlete C had been excluded from consideration under paragraph 1.3.1 and argued that this decision had been taken in accordance with the Selection Policy. The Appeal Committee noted the lack of clarity in the drafting of the Selection Policy, but found that the distinctions in the Selection Policy, as identified and argued by Athlete C, were out of line with the clear thrust and common sense of the Selection Policy, which required achievement of the stated qualification time at other permitted events as a pre-requisite to selection under paragraph 1.3.1. This ground of appeal was dismissed by the Appeal Committee.

Paragraph 4.18 of the Selection Policy gave a residual discretion to the National Performance Director (NPD) to make additional nominations after the main nominations had been made. The NPD exercised this power by nominating four male swimmers, but not Athlete C. Athlete C argued that in reaching this decision, the NPD ignored or failed to consider relevant information, specifically the non-consideration of Athlete C 's recent pneumonia.

The Appeal Committee found that the NPD did not take into account Athlete C 's recent illness/injury because he did not consider Athlete C had medal potential at the outset. Further, the Appeal Committee found that the process undertaken by the NPD to establish 'genuine medal potential' involved considering athletes' times

against world ranking times, and when considering Athlete C 's recent times against world ranking times, Athlete C 's slower Sheffield trial time was used, as opposed to quicker times from the previous year. This ground of appeal was therefore upheld by the Appeal Committee, which directed that the NPD should exercise his discretion under paragraph 4.18 afresh.

### **Learning points**

- Selection policies should be clearly drafted and easy to understand; time and effort spent drafting coherent and complete selection policies will be well worth it in the end.
- Where a Selector is afforded a measure of discretion, this must be exercised in a fair and unbiased manner, ensuring they interpret the Selection Policy carefully and taking into account all factors that are relevant (and not taking into account factors that are irrelevant) in the context of the Selection Policy.