



SELECTION AND NOMINATION “COMMONWEALTH GAMES” APPEALS PROCEDURE

1. INTRODUCTION

- 1.1. This document sets out Badminton England’s Selection Appeals Procedure for all international team selection decisions (including deselection) for the Commonwealth Games 2022. It applies equally to such nomination decisions as if each reference to the “selection” was replaced with the word “nomination” unless otherwise stated. This document will remain in place until superseded or amended by Badminton England from time to time.
- 1.2. Anyone wishing to lodge an appeal under this procedure must be fully familiar with the detailed provisions of Badminton England’s Selection Policy for the Commonwealth Games 2022.
- 1.3. This is intended to be an accelerated procedure to enable any challenge to be resolved as quickly as is reasonably possible. There is considerable potential for onward impact on athlete preparation related to the outcome of the appeal. Accordingly, the aim of this appeals procedure is to return a decision on appeal within 5 working days.
- 1.4. This is the only applicable appeals procedure for Commonwealth Games 2022 and forms the entire agreement between each athlete (which for this purpose includes the parents or guardian of any athlete under the age of eighteen) and Badminton England (together "the Parties") as to how selection decisions may be challenged. The Parties agree to submit any dispute concerning any matter/issues connected with or arising out of the selection process to binding arbitration in accordance with the provisions of this Selection Appeal Procedure (see section 10.1). The Parties agree that they will not commence, continue or maintain any legal challenge to any matter falling under the jurisdiction of this Procedure, or any decision made under this Selection Appeals Procedure, before any court of law or other dispute resolution body. The Parties will treat all decisions under this Selection Appeals Procedure as final and binding upon them.
- 1.5. The Parties agree that this Selection Appeal Procedure is to be treated as an arbitration procedure under Part 1 of the Arbitration Act 1996 (“the Act”) and the provisions of clause 1.4 above amount to a binding arbitration agreement for the purposes of section 6 of the Act. The seat of the Arbitration shall be England.

2. PARTIES

- 2.1. This Selection Appeals Procedure is binding on Badminton England and on each athlete who is seeking selection to any England Team selected by Badminton England.

3. HOW TO APPEAL

- 3.1. This Appeals Procedure is commenced when an athlete affected by a selection decision makes a formal written appeal (the 'Notice of Appeal') addressed to the Chair of the Badminton England Selection Appeals Panel to appeals@badmintonengland.co.uk. This must be done within 72 hours of the selection being communicated to the athlete in accordance with the selection policy (10 Feb 2022). This commences from when the notice is sent on the date of announcement. If the athlete fails to submit the Notice within the time limit set out in this

Procedure he or she will have lost their right of Appeal under this Procedure, save in wholly exceptional circumstances which will be judged by the Appeal Panel in their absolute discretion.

- 3.2. The Notice of Appeal will set out the ground of the appeal and will include full details of the basis of the appeal including the precise manner in which the appellant alleges the selection criteria have not been followed. The Notice of Appeal should be as full as possible as it will form the basis of the remainder of this procedure. Appeals will normally be conducted based on the written submissions only of the appellant and the relevant Badminton England Selection Panel, without a hearing or the calling of witnesses or the giving of oral evidence.

4. GROUNDS OF APPEAL

- 4.1. The sole ground of appeal against the decision of any selection panel will be that there has been a failure to follow the applicable selection criteria, decision was made on an error of fact, or decision maker was biased. This Selection Appeals Procedure is provided on this limited ground only and must not be seen as an opportunity to dispute the opinion of the selection panel where they have followed the proper procedure. In reaching their decision the selection panel are acting as experts and athletes agree that in so doing the panel will exercise judgement and discretion which are not in themselves capable of challenge unless there is a proven perception of bias.
- 4.2. There are no appeals allowed against the content of the published selection criteria and therefore against the actions of the selection panel, provided they follow the selection criteria.

5. COMMUNICATIONS AND NOTICES

- 5.1. Due to the timescales involved, the Badminton England Selection Panel will use any reasonable method of communicating with athletes which will inform athletes via telephone call prior to receipt of an email stated in 8.1 and 8.2 in the selection policy. Athletes must be aware of this and keep a constant review of these communication channels to receive the selection decision. Athletes are advised that they should inform the Performance Operation Team of a preferred method of communication and accept full responsibility for ensuring relevant contact details are provided.
- 5.2. Any Notice of Appeal must be sent by email as set out at Schedule 1.

6. APPEAL PANEL

- 6.1. The Appeal Panel will consist of three independent members who will be appointed by Badminton England, and independent of the nomination process.
- 6.2. In the event that any member of the Appeal Panel has any involvement with or is related to an appellant or any athlete who might be affected by the outcome of the Appeal, or is in any other way placed in a position of conflicting interests in respect of any appeal s/he shall be disqualified from sitting on the Appeal Panel and will be replaced by an alternative independent panel member at the discretion of Badminton England.

7. CONDUCT OF THE APPEAL

- 7.1. As soon as reasonably practicable following the receipt of the Notice of Appeal the Chair of

the Appeal Panel shall contact the Chair of the Selection Panel to inform them of the Appeal, provide them with a copy of the Notice of Appeal and request that the Chair provides all relevant documents from the original selection, and any response on behalf of the Selection Panel within 24 hours of this notification.

- 7.2. The Selection Panel and the Appellant will not be entitled to appear before the Appeal Panel but may at the discretion of the Appeal Panel be invited to provide information by telephone or in writing (supported if necessary).
- 7.3. The Appellant will be asked to pay to Badminton England a deposit of £100 as a contribution to the administrative costs of holding the Appeal. The fee will be refunded in full in the case of a successful appeal.
- 7.4. Until the appeal is decided, Badminton England will refrain from publishing any further details in relation to the selection which is the subject of the appeal, although the existing details will remain where originally published before the Notice of Appeal was received.
- 7.5. Where it appears to the Appeal Panel that the interests of some other athlete (other than the Appellant, referred to as the "Third Party") may be affected by any decision of the Appeal Panel, they will invite the Third Party to make their own comments in relation to the issues raised by the Appeal and will provide the Third Party with copies of all documentation that is being considered in the course of the Appeal. In such a situation it is likely that the decision of the Appeal Panel will determine the rights of all the affected athletes (not just the appellant) and therefore the Third Party will be prohibited from raising again by way of a separate or further appeal matters which have already been decided upon.
- 7.6. The Appeal Panel will seek to reach its conclusion no later than 5 working days after receipt of the Notice, and will inform all interested parties in writing and by telephone (or such other method of communication as the Appeal Panel shall decide) as soon as possible.

8. REMEDIES

- 8.1. The Appeal Panel will be entitled to rescind the decision of the Selection Panel and confirm the selection of the Appellant only in clear cases where the Selection Policy has not been followed and it is plain that had it been followed the appellant would have been selected.
- 8.2. The Appeal Panel shall be entitled to confirm the decision of the Selection panel and reject the Appeal.
- 8.3. The Appeal Panel may also quash the selection decision and remit the matter back to the Selection Panel identifying the errors they have identified in the conduct of the Selection process and requesting that a new decision is made within one working week.

9. MINOR AND NON-CONSEQUENTIAL BREACHES OF THIS PROCEDURE

- 9.1. Save that the time limit for commencing this Procedure by the Appellant shall be strictly enforced, where any party deviates from any requirement of this Procedure it shall not invalidate the Procedure or the decision of the Appeal Panel, unless there is a clear and significant risk that the deviation has affected the decision of the Appeal Panel.

10. CONFIDENTIALITY OF PROCEEDINGS AND PUBLICATION OF DECISION

- 10.1. Badminton England, the Appellant and any Third Party are under an obligation of confidentiality in respect of any appeal proceeding under this Procedure. Save as permitted under this Selection Appeals Procedure none of these Parties will make any public statement

or disclosure of the contents of the Notice, or any other matter referred to by any of the parties during the course of these Proceedings.

- 10.2. Badminton England will be entitled to publish the decision of the Appeal Panel where it upholds the Appeal (or any element of it) in such manner and to such extent as is necessary to inform all properly interested and affected parties of the status of the selection decision previously published and the resulting position as to selection.

11. CHANGES AND AMENDMENTS TO THIS PROCEDURE

- 11.1. Badminton England will be entitled to amend this procedure from time to time and such amendments will take effect from the first date of publication of the complete amended procedure on the Badminton England website.

SCHEDULE 1

Any Notice of Appeal must be sent to appeals@badmintonengland.co.uk, and Jeannie Mo (Senior Performance Co-ordinator) will forward these to the Chair of the Appeals Panel on receipt.