



**XXII Commonwealth Games,**  
**Birmingham, England 28<sup>th</sup> July to 8<sup>th</sup> August 2022**  
**England Athletics Appeals Policy**

**Part 1.**

**1. Introduction**

1.1 This document sets out England Athletics' ("EA") Appeals Policy for all decisions relating to the nomination of an athlete to Commonwealth Games England ("CGE") for selection to compete at the XXII Commonwealth Games. It constitutes the Appeals Policy ("**Appeals Policy**") referred to in the England Athletics Selection Policy for the XXII Commonwealth Games, published March 2021 ("**Selection Policy**").

1.2 Nominations will take place in accordance with the Selection Policy, supplemented by such other published addenda as EA may deem appropriate. Any individual wishing to lodge an appeal must be fully familiar with and adhere to the detailed provisions of the Selection Policy.

1.3 This is the only applicable appeals procedure and forms the entire agreement between each affiliated athlete and EA (together "**the Parties**"), as to how the nomination decision may be challenged. The Parties agree that they will not commence, continue or maintain any legal challenge to any matter falling under the jurisdiction of this Appeals Policy, or any decision made under this Appeals Policy, before any court of law or other dispute resolution body. The Parties will treat all decisions made lawfully under this Appeals Policy as final and binding upon them.

1.4 The Parties agree that any Appeal under this Appeals Policy is to be treated as an arbitration procedure under Part 1 of the Arbitration Act 1996 ("**the Act**") and the provisions of clause 1.3 above amount to a binding arbitration agreement for the purposes of section 6 of the Act. The seat of the arbitration shall be England. Arbitration is a non-court alternative method of resolving disputes, where an arbitrator or panel of arbitrators is appointed by the parties to make a binding decision, from which there are very limited grounds of challenge.

## 2. PARTIES

This Appeals Policy is binding on EA and on each athlete seeking selection to the England Commonwealth Games Team nominated to CGE by EA.

## 3. GROUNDS OF APPEAL

3.1 The grounds of appeal against the decision of any Selection Panel will be that:

3.1.1 there has been a failure to follow the applicable Selection Policy; or

3.1.2 the decision has been made on the basis of error(s) of fact.

3.2 This Appeals Policy is provided on the limited grounds of appeal set out in clause 3.1 above only and must not be an opportunity to dispute the opinion of the Selection Panel where they have followed the proper procedure. In reaching their decision, members of the Appeals Panel are acting as experts in their field. By agreeing to be bound by this Appeals Policy, athletes acknowledge and agree that the Appeals Panel will exercise independent judgement and discretion which they are not in themselves capable of challenging.

3.3 There are no appeals allowed against the content of the published Selection Policy and therefore against the actions of the Selection Panel, provided they follow the Selection Policy.

## 4. HOW TO APPEAL

4.1 The Appeals Procedure is commenced when an athlete affected by a selection decision (“**Appellant**”) makes an appeal in respect of such decision (“**Appeal**”) by submission in writing in the form required by clause 4.2 below (the ‘**Notice of Appeal**’) to the Chair of the Appeals Panel (“**Appeals Panel**”). The Notice of Appeal must reach the Appeals Panel **between 5pm on Tuesday 14<sup>th</sup> June 2022 and 5pm on Thursday 16<sup>th</sup> June 2022**. If the Appellant fails to submit the Notice of Appeal within this period, he or she will have lost their right of Appeal under this Appeals Policy, save in wholly exceptional circumstances which will be judged by the Appeals Panel at its absolute discretion.

4.2 The Notice of Appeal must:

4.2.1 identify the specific decision being appealed;

4.2.2 set out the ground(s) of the Appeal and the reason(s) why it would be substantially unfair not to alter the original decision; and

4.2.3 set out a statement of facts upon which the Appeal is based, including full details of the basis of the appeal (in accordance with clause 4.3 below) and the precise way the Appellant alleges that the Selection Policy has not been followed.

4.3 The Notice of Appeal should be as full as possible as it will form the basis of the remainder of the Appeal process under this Appeals Policy.

4.4 EA has consulted with the British Athletes Commission (‘**BAC**’) in devising this Appeals Policy. Any athlete who requires support in an Appeal may consider contacting the BAC.

4.5 The Appeals Panel may at its discretion elect to receive evidence from such person(s) (including the Appellant) as it deems appropriate to, without limitation, verify facts as submitted in the Notice of Appeal. In such circumstances, the Appeals Panel will:

4.5.1 determine the nature and relevance of any new evidence received;

4.5.2 consider any representation(s) as to why such new evidence was not disclosed in the Notice of Appeal;

4.5.3 if such new evidence is allowed in the Appeal, disclose it to the Appellant.

## **5. COMMUNICATIONS AND NOTICES**

5.1 Due to the timescales involved, the EA Selection Panel will use any reasonable method of communicating with athletes which it considers appropriate and may include (without limitation) oral announcements to groups of athletes, telephone calls, text messages (WhatsApp) or email. Athletes must review these communication channels to receive the selection decision and any subsequent communication relating to any related Appeal. Athletes should inform EA of a preferred method of communications and provide relevant telephone numbers etc.

5.2 Any Notice of Appeal must be sent by email to the addresses set out in Schedule 1.

## **6. APPEALS PANEL**

6.1 The Appeals Panel (the '**Appeals Panel**') will consist of two EA Board directors and one independent legal representative (who shall be a qualified barrister) with the requisite skills and experience to form an Appeals Panel. They shall determine between themselves which of them shall chair the Panel.

6.2 If any member of the Appeals Panel has any involvement with or is related to an Appellant or any athlete(s) 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 an Appeal they shall be disqualified from sitting on the Appeals Panel and will be replaced by an alternate selected by EA at its discretion.

## **7. CONDUCT OF THE APPEAL**

7.1 As soon as reasonably practicable following the receipt of the Notice of Appeal, the Appeals 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 any response which they wish to make 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 Appeals Panel but may, at the discretion of the Appeals Panel, be invited to provide information by telephone or in writing (or such other method of communication as the Appeals Panel shall decide).

7.3 The Appellant will be asked to commit to pay to EA a sum of £100 as a contribution to the administrative costs of holding the Appeal, which may be refunded to the Appellant if the Appeals Panel at its sole discretion thinks fit.

7.4 Until the Appeal is decided, EA will refrain from publishing any further details in relation to selection which is the subject of the Appeal, although the existing details will remain where originally published when the Notice of Appeal was received.

7.5 Where it appears to the Appeals Panel that the interests of some other athlete(s) (other than the Appellant) may be affected by any decision of the Panel, they will invite the other athlete(s) to submit written representation(s) in relation to the merits of the Appeal and will provide such person(s) with copies of all relevant documentation. In such a situation, it is likely that the decision of the Appeals Panel will determine the rights of all the affected athlete(s) (not just the Appellant) and therefore the other athlete(s) will be prohibited from raising again, by way of a separate or further appeal, matters which have already been decided upon as a consequence of the Appeal.

7.6 The Appeals Panel will seek to reach its conclusion **before 5pm on Sunday 19<sup>th</sup> June 2022**. The Appeals Panel will inform all interested Parties in writing and by telephone (or such other method of communication as the Appeals Panel shall decide) as soon as possible.

7.7 A decision of the Appeals Panel shall be determined by a majority. Each member of the Appeals Panel shall have one vote, save that the chair shall have a second or casting vote in the event of deadlock.

## **8. APPEALS PANEL DECISIONS**

8.1 The Appeals Panel will be entitled to:

8.1.1 allow or dismiss the Appeal;

8.1.2 exercise any power of the Selection Panel against which the Appeal is made;

8.1.3 rescind the decision of the Selection Panel and confirm the selection of the Appellant only in a clear case where the Selection Policy has not been followed;

8.1.4 refer the decision back to the Selection Panel for re-consideration; or

8.1.5 make such further order(s) as it deems fit to give effect to its decision.

## **9. MINOR AND NON-CONSEQUENTIAL BREACHES OF THIS APPEALS POLICY**

9.1 Save that the time limit for commencing an Appeal under this Appeal Policy by the Appellant shall be strictly enforced, where any Party deviates from any requirements of this Appeals Policy, this shall not invalidate the Appeal process or the decision of the Appeals Panel, unless there is a clear and significant risk that the deviation has affected the decision of the Appeals Panel.

## **10. CONFIDENTIALITY OF PROCEEDINGS AND PUBLICATION OF DECISION**

10.1 Each of EA, the Appellant and any third Party are under an obligation of confidentiality in respect of any proceeding under this Appeals Policy. Save as permitted under this Appeals Policy none of these Parties will make any public statement or disclosure of the contents of the Notice of Appeal, or any other matter referred to by any of the Parties during the Appeal proceedings.

10.2 EA will be entitled to publish the decision of the Appeals Panel where it upholds the Appeal (or any elements 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. AMENDMENTS TO THIS POLICY

EA will be entitled to amend this Appeals Policy from time to time and such amendment(s) will take effect from the first date of publication of the complete amended Appeals Policy on the EA website.

## 12. SCHEDULE 1

All Appeals must be sent by email to the address below:

email: [birm2022appeals@englandathletics.org](mailto:birm2022appeals@englandathletics.org)

## 13. PARA ATHLETES APPEALS POLICY

13.1 EA will accept **all invitations** provided by the CGF through the 'Athlete Allocation system'. If an English qualified athlete does not take up an invitation, the invitation will then be handed back to the CGF who will pass onto the athlete who is next in the World Rankings, according to the reallocation policy detailed in the Athlete Allocation system. EA and CGE do not have any influence on this procedure.

13.2 As detailed in the Athlete Allocation System all disputes shall be addressed by the CGF Executive Board.

### Part 2.

## 14. Confirmation of ratification/selection by Commonwealth Games England ("CGE")

14.1 EA will nominate the EA team for the XXII Commonwealth Games to CGE on Tuesday 21<sup>st</sup> June 2022 for final ratification.

14.2 CGE may reject nominations from EA but will only do this on non-performance issues such as those raised by UKAD, the Home Office, and any other relevant body.

14.3 Should CGE reject a nomination for selection from EA, CGE will notify EA, which in turn will inform the affected athlete within 24 hours of receipt of the rejection of such nomination.

14.4 An affected athlete may then query a CGE ratification decision. This must be made directly to CGE Deputy Chef de Mission (Sport and Athletes), Frankie Carter-Kelly, by email only at: [f.kelly@teamengland.org](mailto:f.kelly@teamengland.org) as soon as they are informed.

14.5 EA will not make any representation for or on behalf of the affected athlete should this situation arise.

14.6 Should CGE reject the ratification of an athlete, EA will seek to replace the athlete from the reserve list (to be confirmed at a later date)

### Notes

<sup>i</sup> <http://www.legislation.gov.uk/ukpga/1996/23/section/1>

<sup>ii</sup> British Athletes Commission. <http://www.britishathletes.org>