

Swim England Talent Selection Appeals Policy

This document sets out Swim England's Appeals Procedure where an athlete (the "Athlete") wishes to appeal any selection decision taken by Swim England which may be appealed.

The overriding aim of this Appeals Policy is to enable Swim England to deal with selection appeals fairly and swiftly. Any Athlete seeking a review of a decision should be aware of the time limits contained within this policy, which are designed with the intention of resolving issues in a timely, fair and transparent manner while also ensuring certainty for athletes who were selected. The outcome of any Appeal may have consequences for other athletes and, accordingly, the timeframes for bringing an Appeal shall be strictly enforced. If something unexpected happens or if a situation comes up that isn't clearly covered by this Policy, we'll handle it by keeping in mind the main goals of this Policy and using it as a guide.

This Appeals Policy does not apply to any selection decisions in respect of the Olympic Games, or any selection decisions made by Aquatics GB.

Who may appeal?

Any athlete who is (i) eligible for selection under a Swim England selection policy granting a right to appeal and (ii) is directly affected by and is dissatisfied with a selection decision made under that selection policy (an "Athlete(s)") may appeal the selection decision in accordance with this Appeals Policy.

Any Athlete may appeal a selection decision in respect of:

- a decision to select the Athlete;
- a decision to not select the Athlete; or
- a decision to deselect the Athlete.

A person who was not selected or was deselected on the basis of eligibility shall not have the right to appeal against such a selection decision.

There may be occasions where England qualifies for a competition and needs to select athletes to compete. For example, where a team qualifies for a competition late, on such short notice that it would not be possible to fairly consider any appeal. In an instance where this would apply to a selection process, the Athletes involved will be notified in advance of the selection discussion that the appeals policy will not be applicable due to the timescales.

Grounds of Appeal

An Athlete may appeal against a selection decision only on the grounds that:

1. the respective selection process has not been followed, including in relation to conflicts of interest
2. the Selection Panel reached a selection decision based on a clear error of fact, OR

3. the decision is unreasonable and one which no reasonable selection panel could have made – please note that disappointment or disagreement with a selection decision is insufficient, nor is the fact that another selection panel may have come to a different conclusion.

An Athlete cannot appeal against any Selection Decision on the grounds that they disagree with the judgment or discretion exercised by the Selection Panel, or that they disagree with the content of the applicable Selection Policy.

Commonwealth Games Nominations: Please note in the event of a Commonwealth Games appeal, an Athlete may only appeal against non-selection for nomination to Commonwealth Games England. Commonwealth Games England confirms the final selection of athletes, of which any appeal in this instance would be at the sole discretion of Swim England in line with the relevant Commonwealth Games England Guidelines

How to Appeal

Prior to submitting a notice of appeal, the Athlete may contact the Chair of the original Selection Panel to gain further information regarding the selection decision. Following this, if the Athlete still wishes to submit a formal notice of appeal, they must do so no later than 48 hours after the selection decision was sent to the Athlete by Swim England, following the process outlined below.

The appeals process may be commenced by an Athlete submitting a formal written appeal (the “Notice of Appeal”) by email to selectionappeals@swimming.org. The Notice of Appeal must be received by Swim England no later than 48 hours after the selection decision was sent to the Athlete by Swim England.

The Notice of Appeal must set out:

1. the details of the decision that the Athlete is appealing;
2. details of the ground(s) of appeal upon which the Athlete wishes to rely, including an explanation as to why the Athlete believes that the grounds are met; and
3. any documents or written evidence upon which the Athlete relies to support their appeal. Any such documents must specifically relate to the grounds of appeal being relied upon.
4. **Commonwealth Games Nomination appeal only:** A fee of £500, payable to “The Amateur Swimming Association (Swim England) Limited”, must be included as a contribution towards administrative costs. This fee will be refunded to the Athlete if the appeal is successful

If the Notice of Appeal does not include all of the above information, the Appeal shall automatically be dismissed.

Upon receipt of a valid appeal, the Swim England Director of Sports shall appoint an Appeal Panel within 48 hours. In the case of an appeal concerning a Commonwealth Games Nomination decision, the matter shall instead be referred to Sport Resolutions (UK) (a trading name of The Sports Dispute Resolution Panel Ltd – Company No. 3351039) to be considered in line with the procedure contained within this Appeals Policy. For the purpose of this document, any reference to an 'Appeal Panel' shall also include reference to a Sole Arbitrator considering a Commonwealth Games Nomination Decision.

On confirmation of an Appeal Panel being appointed, the athletes selected by the Selection Panel will be informed confidentially that an appeal has been submitted and will be reviewed by an Appeal Panel, which may or may not result in the selection decision being reviewed. Following the appeal panel's decision, they will be informed of the decision of the appeal and any next steps.

The Appeal Panel

The Appeal Panel will be composed of three voting members:

1. The Swim England Director of Sports (Chair);
2. A member of one of the Swim England Sports 'Leadership Groups'
3. A Swim England Senior Leadership Team member or an individual with high performance sport experience external to Swim England

Commonwealth Games Nomination Appeal Panel: Sport Resolutions will appoint a Sole Arbitrator to review the appeal, who will serve as both the Chair and the sole member of the Appeal Panel

No person who was involved in the original selection decision may sit as a member of the Appeal Panel considering an appeal against that selection decision.

The Appeal Panel or Sole Arbitrator will be appointed with due care and consideration in regard to conflicts of interest with the sport and the athletes involved.

The Athlete shall be notified of the members of the Appeal Panel or Sole Arbitrator as soon as reasonably practicable but no later than 24 hours prior to the Appeals Panel meeting to consider the Appeal. An Athlete may inform the Director of Sport or Sport Resolutions of any belief that an Appeal Panel member or Sole Arbitrator has a conflict of interest which will be considered by the Director of Sports.

Appeal Process

Once an Appeal Panel has been appointed, the Director of Sports shall provide the members of the Appeal Panel with a copy of the Notice of Appeal and convene a meeting of the Appeal Panel to consider the Appeal within 72 hours from the time that the Appeal Panel was appointed.

At the meeting, the Appeal Panel shall investigate the grounds of appeal set out within the Notice of Appeal and determine whether, on the balance of probabilities, the Athlete has demonstrated that the grounds of appeal have been proven. Decisions shall be made by a majority, with the Chair holding a casting vote in the event of a deadlock.

Prior to or after its meeting, the Appeal Panel shall be entitled to take advice (including legal advice) and request further information from both the Selection Panel, Athlete and any other parties which may be affected by the Appeal as they see fit. The Appeal Panel may adjourn its meeting or schedule a further meeting if it considers such necessary to consider additional information or advice received.

The Appeal Panel may:

- **dismiss** the Appeal and confirm the original selection decision; or
- **uphold** the Appeal and refer the matter back to the original selection panel, outlining the errors identified, and requesting that a new decision is made within 48 hours of

the referral. Where an Appeal Panel finds that a Selection Decision was affected by bias, it may require that the individual(s) in question are replaced on the Selection Panel.

Once the Appeal Panel has come to a decision, the Director of Sports will inform all parties to the Appeal of its decision, including the reasons for such, by email within 24 hours of the Appeal Panel's decision.

The decision of an Appeal Panel, and/or the second decision of the original Selection Panel (having had the matter referred back to them) shall be final. Accordingly, there shall be no further right of appeal.

Commonwealth Games Nomination Appeal: If the appeal is successful, the £500 fee will be refunded to the Athlete, and Swim England will cover the costs of Sport Resolutions in processing the Appeal. If the appeal is unsuccessful and the original decision is upheld, the Athlete will be responsible for the costs of Sport Resolutions in processing the Appeal, and Swim England will retain the £500 fee.

For the avoidance of doubt, neither Swim England nor the Athlete shall be responsible for costs incurred by the other, including any professional fees.

General

1. In this Policy the following words or phrases shall bear the following meanings unless the context requires otherwise:

“Appeal”	means an appeal brought under this Policy;
“Appeal Panel”	means the panel convened in accordance with this Appeals Policy to consider an Appeal;
“Athlete”	means someone who Appeals in accordance with this Policy and is entitled to do so;
“Business Hours”	means any time between 09:00 and 17:00 during any Working Day;
“Hour”	means an hour of any day, and Hours shall be construed accordingly;
“Notice of Appeal”	means a notice that an Appellant wishes to Appeal which complies with the requirements of this Appeals Policy;
“Selection Decision”	means a decision to select, not to select, or to deselect a person in accordance with a Selection Policy;
“Selection Policy”	means a selection policy issued by Swim England, pursuant to which people are selected to participate in a Swim England Talent Programme or Competition Squad;

“Working Day”

means any day which is not a Saturday, Sunday or a public holiday in England and Wales

2. Save where otherwise specified or notified, any document, notice or notification sent pursuant to this policy must be sent by email to selectionappeals@swimming.org and shall be deemed to have been received, provided that no undelivered message is received, at the time that it is delivered if delivered during Business Hours or, if sent outside of Business Hours, on the next Working Day at 09:00.
3. The Director of Sports may appoint another Swim England staff member as secretariat to the Appeal who may communicate with the Parties on their behalf.
4. Following receipt of an Appeal, the Appeal Panel Chair may, at any time, pause any timeframes within this policy to allow for the Athlete and Swim England Talent staff members to mediate any concerns that the Athlete has raised. Any such timeframes shall only be paused where the Appeal Panel Chair is satisfied that the parties wish to mediate in good faith and that it is in the best interests of the sport to do so.
5. This Appeal Procedure is the only applicable appeals procedure and forms the entire agreement between each athlete wishing to appeal against a selection decision (together, “the Parties”). The Parties agree not to commence, continue, or maintain any legal challenge to any matter covered by this policy before any court of law. The Parties will treat all decisions under this Procedure as final and binding upon them.
6. The Parties agree that this 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 6 above amount to a binding arbitration agreement for the purposes of section 6 of the Act. The seat of the Arbitration shall be England.