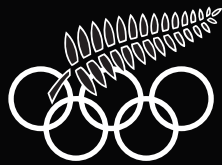


#2

Guidance Notes on Selection



GUIDANCE NOTE ON SELECTION¹ #2

Selection Policies

This Guidance Note covers the status, content and process for developing a National Sports Organisation's (NSO's) Selection Policy for selecting athletes to national teams.

Why have a Selection Policy?

- The key reason for having a written Selection Policy is to ensure the NSO selects the right athletes to meet its performance goals. By setting a criteria and policy for selection, the NSO can ensure its high performance strategies and goals can be achieved.
- Another reason is to ensure athletes, coaches and selectors understand the basis on which athletes will be selected to represent New Zealand for the relevant events. If it is clearly understood, it reduces uncertainty and therefore challenges to the selection process.
- A Selection Policy which clearly sets out the criteria and process for selection also ensures fairness to all athletes as there is a clear framework for selectors to apply and ensure consistency and transparency in the selection decision making process.

Status of the Selection Policy

- The Selection Policy is a legally binding agreement between the NSO² and the athletes seeking selection. This agreement arises from either:
 - The athlete being a member of the NSO (either directly or via their club) and in that capacity they are bound by the rules, regulations and policies of the NSO (if specified in the constitution); or
 - The athlete's agreement to be bound by the Selection Policy. This agreement can be achieved by the athlete signing an application form to be considered for selection, in which they agree to the Selection Policy. This process is recommended as it ensures athletes expressly agree, and sign up to, the Selection Policy and there can be no doubt about their agreement to the Policy.
- As it is a legally binding agreement, it is important that the Selection Policy is well drafted, clear and unambiguous. It is recommended that NSO's have their draft Selection Policy reviewed by a specialist sports lawyer. Reliance on a Board member with a legal background or a lawyer with non-sports specific legal background is not recommended.
- The Selection Policy may be called a "policy" or a "regulation" or some other title as specified in the NSO's constitution. For example, if the NSO has regulations, then the document might need to be called a Selection Regulation to ensure it is applicable and enforceable (depending on the wording of the constitution).

TIP: Check the NSO Constitution to see what status the Selection Policy should be to ensure it applies to the athletes and is enforceable.

¹ This Guidance Note is one of five Guidance Notes covering the process of selection of athletes by National Sports Organisations (NSOs) to national teams.

² For Selection Policies of the New Zealand Olympic Committee and Paralympics NZ see the Guidance Note #5 on "Selection for Commonwealth, Olympic and Paralympic Games"

Other Relevant Documents

- There are a number of other documents of the NSO that may legally link to, and form part of, the Selection Policy and therefore will be part of the legally binding agreement. These documents should be reviewed when developing the Selection Policy to ensure the Selection Policy complies and is aligned with them to avoid inconsistencies. These documents may include the following:
 - Constitution – check who has the power to appoint the Selectors; who can make the final selection decision (e.g. the Selectors or the Board) and who can issue the Selection Policy;
 - Other selection documents – general selection guidelines; other selection policies (e.g. for Olympic Games or other key events like World Championships); terms of reference for Selectors and the selection process;
 - High Performance Strategy – the objectives and performance criteria for selection should align to this strategy;
 - Eligibility Rules – most international sports organisations and NSOs have rules on the eligibility of athletes to compete in the sport's events. These should be checked to ensure the Selection Policy aligns with these, especially in terms of eligibility for selection;
 - Athlete Agreements – these usually deal with post-selection requirements but sometimes they also contain selection matters. For example, if selection of a team is done from a high performance squad and the squad athletes have signed an agreement to be in the squad.

CASE STUDY:

In *Raguz v Judo Federation of Australia (2000)* the Court of Arbitration for Sport allowed an appeal where the basis for nomination to the Australian Olympic Committee was set out in two contradicting documents – the Nomination Criteria (prepared by the AOC) and the Participation Criteria (prepared by the NSO). The inconsistency was in the different points awarded towards the athlete who placed 9th in the 1999 World Championships, and who would have the Oceania qualifying place in the Olympics. In the Participation Criteria it awarded 8 points and in the Nomination Criteria only 6 points. The inconsistency arose because the Participation Criteria had been amended after the Nomination Criteria has been agreed with the AOC. The Court found that all Athletes had a legitimate expectation that the nomination to the AOC would be governed by the Nomination Criteria and original Participation Criteria which gave Raguz more points.

Timing of the Policy

- In fairness to athletes and to minimise uncertainty and appeals, the Selection Policy should be developed and communicated to athletes as early as possible, and prior to the events from which results will be used in any selection decisions. The retrospective application of a Selection Policy, which permits selectors to rely on results from events which have already taken place, may give rise to appeals against the Selectors' decisions.
- Many NSOs have an annual Selection Policy or one applicable season by season. A timetable should be prepared and followed to ensure the Policy's development, input and approval is complete in advance of the next year or season's Policy commencing.

TIP: Sets dates annually for the development, input (by coaches, athletes, selectors) and finalisation of the Selection Policy so it is published well in advance of the relevant events for which the Policy will apply.

- For Selection Policies applying to World Championships or other events which occur less frequently (e.g. every four years), it is important to signal to athletes early the performance results, events and others matters to be taken into account for that selection over the relevant qualification period. Issuing a Selection Policy for an event too close to the event may result in challenges against the Selector's decisions if the events and results relied upon have already occurred. Even if the Selection Policy for that event is not finalised within the qualification period, the athletes should be informed of the events they need to attend, or steps to be undertaken, in advance of them occurring.

Drafting the Selection Policy

- The process for developing the Selection Policy should involve the relevant NSO coaches, high performance staff, Selectors and Chief Executive. Consultation with athletes is also highly recommended. The Board will usually be required under the NSO's constitution to approve the Selection Policy so early engagement with it is also important.
- There is "no one size fits all" approach to the form and content of a Selection Policy. It should reflect the specific criteria decided by the NSO which it thinks is necessary to achieve its performance goals, and the processes of the NSO.
- It is important that the wording of the Policy reflects the agreed criteria and process, and is not simply an edit of a previous versions. The Selection Policy is not just a document. It is the means by which the NSO states how the selection process will help to achieve its performance goals.

TIP: Decide on the NSO's selection criteria and relevant factors before simply editing last year's policy, using templates or "cut and pasting" policies from other sports.

- There are a number of key matters which should be covered in the Selection Policy, as listed below:
 - Scope – this section should set out the scope of the Policy including the event/s and /or age groups it covers, the date it commences, the date/s of the relevant events, camps and trials from which results will be considered, and the dates of selection.
 - Eligibility – this section should list the various matters which need to be satisfied before an athlete can even be considered for selection, such as a New Zealand passport, applicable age limits, membership of the NSO, signing an application form to be considered for selection; no prior convictions, no investigations pending or breaches of the NSO's rules such as anti-doping; any requirements to attend specific events (e.g. national champs) or camps/trials.
 - Performance Criteria – this section should set out the level which the Selectors must be satisfied of, before selecting an athlete. This level should reflect the performance goals for the NSO as stated in its HP strategy. It can either be an objective criteria (which is factually based and no judgment is required), a subjective one (where an assessment is required applying discretion) or a combination of objective and subjective criteria. The Selectors have a narrower role if an objective criteria is used, as the decision is simply based on results. The following are examples of objective/ subjective criteria:
 - An objective criteria would be that the athlete "is ranked in the top 8 on the IF world ranking as at 1 January 2017" or "placed in the top 8 at the 2016 World Championships" or "achieved a time of 10 seconds or less in the 100m final at the 2016 national championships";
 - A subjective criteria would be that the athlete's performances and results at certain key events demonstrate that the athlete "is capable of achieving top 8 placing" at the relevant event or "has the potential to develop towards a top 8 placing at the next Olympic Games".
 - A majority of sports have both objective and subjective criteria to provide on the one hand some clear outcomes required of athletes but on the other, to give the Selectors some discretion to take into account the myriad of factors which may be applicable.
 - Factors to be considered – this section should list the results/performance and factors the selectors must (mandatory) or may (optional) take into account, if there are some subjective criteria, in deciding if the athletes will meet the performance criteria. These will usually include:
 - The results/performances at specified events, in specific races/disciplines. It is usually mandatory for selectors to consider one or more of these results, and weighting or priority may also be specified for more recent results or international level results;
 - Testing/assessment results such as biomechanical, fitness, technical aspects;
 - For teams (e.g. crews, pairs, teams), physical and technical attributes for certain positions;
 - Personal attributes such as training ethic, ability to be a team player, behaviour etc.

TIP: Consider whether the results from certain events should be prioritised in terms of weighting specified in the Selection Policy, to give the athletes an indicator of the events which matter most.

- Exceptional Circumstances – it is recommended that provisions enabling exceptional circumstances affecting an athlete should also be included, so the Selectors can take these into account. This is more difficult to do if the criteria is solely objective, but for subjective criteria it may include reasons such as injury, bereavement, or other exceptional circumstances that happen to an athlete before or at an event or in relation to any other requirement of the Selection Policy (such as attending a camp or a selection trial). The definition of exceptional circumstances and the process for applying it must be clearly specified.
- Appeals – if there is a right of appeal or any process prior to an appeal (such as mediation) this should be specified in the Selection Policy with clear timelines and procedures.³
- Other Provisions – other provisions may be included on matters such as the right to amend the Policy, withdrawal from selection, late selection and reserves.

³ For further guidance see Guidance Note #4 Selection Appeals

- It is recommended that matters relating to the Selectors' appointment and the selection process are not included, or referred to, in the Selection Policy. These can be stated in terms of reference or a similar document and should not be referred to in the Selection Policy itself. This is to minimise the ability for an appeal against the Selectors' decision to be made on technical or minor procedural grounds, rather than on the merits of the Selection decision.

CASE STUDY:

In *Roy v Canoe Racing NZ (2015)* the Sports Tribunal allowed the appeal, concluding that "we think there are good policy reasons for requiring formality around selection processes. The formality of meetings and minutes and the compilation of reports for the purposes of review higher up in the selection decision chain provides a degree of discipline around the whole process that reduces the possibility of a subjective assessment being made by an individual selector or selectors and of that assessment not being adequately tested collectively by the selectors as a group."

- Amendments to the Selection Policy may need to be made, for example due to a change to a qualifying event, or the need for an additional selection trial. Before doing so the NSO should consider the possible implications of the change on all the athletes including the nature and timing of their training preparation and the decisions already made for events they have chosen to compete, or not compete, in. If the amendment results in the athletes not being reasonably able to fulfil the criteria, this can result in the selection decision being overturned on appeal.

Communication of the Policy

- The communication of the Policy to the athletes seeking selection is critical to ensure they know the exact requirements, and cannot then rely on their understanding or what they may have been told.
- Failures in communication of the Selection Policy and its implementation are one of the main reasons that NSO's face selection appeals.

CASE STUDY:

In *Sara Winther & Natalia Kosinska v Yachting NZ (2016)* the Sports Tribunal dismissed the appeal but stated "selectors and national sports organisations must be constantly vigilant to ensure that processes are inclusive and transparent. Sailors (and athletes) must be fully aware of what is being considered and have proper opportunity to challenge and respond. ... While there must be consistency of approach and realism about limited resources the need for sensitive and sensible communication at all times cannot be minimised".

- Direct communication of the Selection Policy is recommended to all of the athletes who may be considered for selection rather than via general publication on the NSO's website. Unless there are strong reasons on grounds of confidentiality, it should also be notified to members, clubs and regional bodies and placed on the NSO's website for transparency and broader accessibility.

TIP: Hold a meeting with the athletes when the Selection Policy is finalised to explain it and how it will work. Matters such as timing of selection dates and rights of appeal should be brought to their attention. Keep a record of who attended the meeting.

- If amendments are made to the Policy, this should also be communicated in the same way as the original Policy to all athletes available for selection as soon as possible.
- Selectors, coaches and other NSO personnel should take care when referring to selection in separate communications whether those are verbally or in emails, letters, HP plans and other documents. If these are inconsistent with the Policy, they can cause confusion and misunderstandings which can give rise to appeals.

TIP: Inform HP personnel that any discussions they have with athletes about selection are based on the criteria and requirements of the Selection Policy and that they always refer the athlete back to the Selection Policy.

- A summary document of the Selection Policy may be prepared as it is not inconsistent with the Policy and clearly states that the Selection Policy and not the summary apply.