

## 1. Introduction & purpose

- 1.1. This document sets out the British Orienteering Selection Appeals Procedure for all international team selection decisions including Foot O and Trail O (the **Appeals Procedure** or **this Procedure**). This Procedure will remain in place until superseded or amended by British Orienteering from time to time. It is the Appeals Procedure referred to in all British Orienteering Performance documents and governs all challenges by an athlete to a selection decision, on the basis that it is a condition of membership that all British Orienteering members abide by British Orienteering policies and procedures.
- 1.2. Selections will take place in accordance with the selection policy published annually, supplemented by any other published addenda for that particular year. Any athlete wishing to file an appeal under this Procedure must do so with reference to the detailed provisions of the relevant selection policy.
- 1.3. **An athlete seeking to appeal a selection decision must be aware of the importance of the time limits contained within this Procedure. These time limits are designed with the intention of resolving issues as expeditiously as possible consistent with ensuring a fair and just outcome.**
- 1.4. British Orienteering has a standing panel of members who may be appointed to hear selection appeals (the **Standing Appeals Panel**), presided by a Chair (the **Chair**), whose details are set out in Schedule 1. When an appeal is filed under this Procedure, the Chair will appoint three members from the Standing Appeals Panel to form a panel to hear the appeal (each an **Appeal Panel**).
- 1.5. British Orienteering and each member under British Orienteering's jurisdiction agree that first instance nomination/selection decisions may be appealed under this Procedure only. The decision of an Appeal Panel under this Procedure is final and binding on the parties to the proceedings. No party will have any right of appeal against the Appeal Panel's decision. All parties waive irrevocably any right to any form of appeal, review or recourse by or in any court or judicial authority in respect of such award, insofar as such waiver may validly be made.
- 1.6. The Appeal Panel will determine selection appeals in accordance with this Procedure and any other applicable British Orienteering rules, with English law applying subsidiarily. Subject to para 1.5, the English courts / Sport Resolutions UK have exclusive jurisdiction over disputes relating to or arising out of this Procedure.

## 2. Scope

- 2.1. This Procedure is binding on British Orienteering and on each athlete who is seeking selection to any Great Britain Team selected by British Orienteering by virtue of his/her British Orienteering membership.

## Procedures

### 3. How to appeal

- 3.1. To challenge a selection decision pursuant to this Procedure, an athlete must (i) be directly affected by the nomination/selection decision, (ii) file a 'Notice of Intention to Appeal' within 48 hours of the selection decision being announced and (iii) send a formal written appeal (the **Notice of Appeal**) to the Chair or his/her nominated alternate by email (see contact details at Schedule 1). This must be done by **5pm UK time on the third working day** after the selection decision is announced on British Orienteering's website. If the athlete fails to submit the Notice of Appeal within the time limit set out in this paragraph, s/he will lose his/her right of appeal under this Procedure, save in wholly exceptional circumstances as determined by the Appeal Panel. If the athlete requires more time to file a Notice of Appeal, s/he must apply to the Chair or his/her nominated alternate by email to request an extension, providing reasons for his/her request.
- 3.2. The Notice of Appeal must set out the grounds of appeal (see para 4.1, below) and must 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 athlete must also file any documents s/he wishes to rely on in support of his/her appeal. The Notice of Appeal (and supporting documentation) should be as full as possible as it will form the basis of the remainder of the proceedings. The appellant should also specify if s/he wishes to request an oral hearing, and the reasons for doing so (keeping in mind that the exchange of written submissions is the norm, and an oral hearing is the exception: see para 7.5, below).
- 3.3. No fee is payable in respect of the Notice of Appeal.

### 4. Grounds for appeal

- 4.1. The only grounds of appeal against the decision of any selection panel are the following:
- (a) the selection policy was not properly followed and/or implemented (for example, the selectors failed to apply the selection criteria, or did not give proper consideration to the factors identified);
  - (b) the selection panel failed to take into account relevant considerations, or took into account irrelevant considerations;
  - (c) the selection process was tainted by bias; and/or
  - (d) the selection decision was made in bad faith, dishonestly or perversely.
- 4.2. It is not the role of an Appeal Panel to review the merits of the selection policy/criteria or a selection decision (i.e. the issue is *not* whether the Appeal Panel agrees with the selection policy or selection decision in question, but only whether any of the grounds of appeal have been established). A selection panel must necessarily exercise discretion, and such exercise of discretion may not be challenged.

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5. Communications, notices and calculation of time limits
    - 5.1. Due to the time limits involved:
      - (a) the first instance selection panel will use any reasonable method of communicating with athletes, and athletes must continuously review the relevant communication channels to keep informed of selection decisions; and
      - (b) written communications under this Procedure must be sent by email (unless agreed otherwise by the Chair and/or Appeal Panel).
    - 5.2. Athletes filing an appeal must inform the Chair or his/her nominated alternate (contact details set out at Schedule 1) and the British Orienteering Head of Development ([canthony@britishorienteering.org.uk](mailto:canthony@britishorienteering.org.uk)) of the email address and telephone number on which s/he can be contacted.
    - 5.3. Parties must communicate with the Appeal Panel using the contact details set out at Schedule 1, or using such other contact details as may be notified to the parties by British Orienteering, the Chair, or the Appeal Panel from time to time.
    - 5.4. Weekends and holidays must be counted in any deadlines specified in this Procedure, save that if the last day of the deadline falls on a weekend or UK public holiday, then the deadline will be deemed to fall on the next working day (unless ordered otherwise by the chair of the Appeal Panel in exceptional circumstances to take account of the timing of a relevant competition).
  6. Appeal Panel
    - 6.1. The Chair will select three members from the Standing Appeals Panel to form each Appeal Panel, and one of the three members will be designated as the chair of the Appeal Panel. The Chair will notify the parties in writing of the composition of the Appeal Panel without delay.
    - 6.2. In the event that any member of the Appeal Panel has any direct connection or involvement with or is related to an appellant or any athlete who might be affected by the outcome of the Appeal, was a member of the selection panel that made decision under appeal, or is in any other way placed in a position of conflict of interests in respect of the appeal, s/he will be disqualified from sitting on the Appeal Panel and will be replaced by one of the alternates.
    - 6.3. A party may challenge the appointment of a member of the Appeal Panel where there are justifiable doubts as to that member's impartiality or where the appellant raises any well-founded objection(s). If a party intends to challenge any appointment, that party must, **within 24 hours** of notification of the appointment, submit in writing to the Appeal Panel (with a copy to the Chief Executive at [phart@britishorienteering.org.uk](mailto:phart@britishorienteering.org.uk)) the reasons why that party is challenging the Appeal Panel member. Unless the challenged member recuses him/herself, the Chair (or his/her alternate) will decide on the challenge and that decision will be final, without any right of appeal.

## 7. Conduct of the appeal

- 7.1. As soon as practicable after the Appeal Panel has been convened, the chair of the Appeal Panel will issue directions to the parties in relation to the procedure and timetable to be followed in the proceedings, in accordance with this Procedure and otherwise as s/he sees fit. The parties may apply in writing to the chair to vary those directions.
- 7.2. The chair of the Appeal Panel may vary the time limits set out in this Procedure (i) if s/he considers it necessary in the circumstances (and where any such variation is not prejudicial to any of the parties), and/or (ii) by agreement of the parties.
- 7.3. As soon as reasonably practicable following the receipt of the Notice of Appeal, the chair of the Appeal Panel must (i) notify the first instance selection panel of the appeal, (ii) provide it with a copy of the Notice of Appeal, and (iii) request that it provide written reasons for its selection decision and any comments on the appeal by **5pm UK time on the third working day** following its receipt of the Notice of Appeal. To be clear, the chair of the Appeal Panel may not discuss the substance of the selection decision or the appeal with the selection panel; rather s/he may only notify the selection panel of points (i)-(iii). The chair of the Appeal Panel must circulate any submissions provided by the selection panel to the other parties to the proceedings without delay.
- 7.4. Where it appears to the Appeal Panel that the interests of an athlete other than the appellant (a **Third Party**) may be directly affected by the decision of the Appeal Panel, it will invite the Third Party to make a submission (whether written or orally) on the merits of the appeal, and (if the Third Party accepts that invitation), the Appeal Panel will provide the Third Party with copies of all relevant documentation as soon as reasonably practicable and set a deadline for the Third Party's written submissions (if any are to be filed). The Third Party will have the same right to be heard as the appellant before the Appeal Panel, save that the deadlines imposed may be shorter if necessary in the circumstances. As the decision of the Appeal Panel will determine the rights of any Third Party (not just the appellant), the Third Party is prohibited from raising again (by way of a separate or further appeal) matters that have already been decided on by the Appeal Panel.
- 7.5. Appeals will ordinarily be conducted based on the written submissions of the appellant and the relevant first instance selection panel, and any Third Party (if any), without an oral hearing, the calling of witnesses or the giving of oral evidence. If the Appeal Panel determines that the circumstances warrant the holding of an oral hearing, the parties will ordinarily be invited by the Appeal Panel to be heard by video or telephone conference (i.e. not in person) at a specified date and time. In exceptional circumstances, the Appeal Panel may hold an oral hearing in person at a specified date and time.
- 7.6. No formal rules as to admissibility of evidence apply. Facts may be established by any reliable means. Unless otherwise specified in the applicable British Orienteering rules, the burden of proof is on the party asserting the claim or fact in issue, and the standard of proof to be met is the balance of probabilities.
- 7.7. Parties may be represented in this Procedure if they so wish, at their own expense.

- 7.8. The parties are expected to comply with any orders made by the Appeal Panel. If any party fails to comply with the Appeal Panel's directions or other communications, or to make submissions and/or appear at a hearing (if any), the Appeal Panel may still proceed.
- 7.9. Once the Appeal Panel has received all relevant submissions (whether in writing and/or orally), it will meet to deliberate in private. Such meeting will ordinarily take place by telephone or video conference. Decisions will be made by majority.
- 7.10. The Appeal Panel will seek to issue a decision as soon as reasonably practicable (taking into account the interest of the parties and the competition calendar), and ordinarily within ten days of receipt of the Notice of Appeal (unless it determines that it is not practicable to do so in the circumstances).
- 7.11. The Appeal Panel will inform all interested parties of its decision in writing, with reasons. The Appeal Panel may issue the operative part of its decision first, with its full written decision to follow later. Where an operative decision is issued first, the full written decision will ordinarily be issued within seven days of the operative decision, unless the Appeal Panel determines that it is not practicable to do so in the circumstances.
- 7.12. Until the appeal is decided, British Orienteering will refrain from publishing any further details in relation to the selection that is the subject of the appeal, although the existing details will remain where originally published before the Notice of Appeal was received.
- 7.13. Where a matter arises that is not otherwise provided for in the applicable British Orienteering rules or in this Procedure, the Chair or (if an Appeal Panel has been convened) the chair of the Appeal Panel will resolve it as s/he sees fit.

## 8. Remedies

- 8.1. The Appeal Panel may:
  - (a) reject the appeal and confirm the decision of the first instance selection panel;
  - (b) uphold the appeal and:
    - (i) refer the matter back to the first instance selection panel identifying any errors in the conduct of the nomination/selection process and requesting that a new selection meeting be convened within one week to undertake the selection process again for the appellant; or
    - (ii) if the Appeal Panel finds that the selection panel was biased (or is otherwise unable to hear the matter again in a fair manner), refer the matter to a new selection panel, requesting that a selection meeting be convened within one week to undertake a new selection process for the appellant.
- 8.2. The Appeal Panel may not (under any circumstances) substitute its own decision for that of the selection panel.

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## 9. Deviations and liability

- 9.1. Any deviation from any provision of this Procedure and/or any irregularity, omission, technicality or other defect in the procedures followed by any party, the Chair or any Appeal Panel will not invalidate any finding, procedure or decision unless it is shown to have materially affected the Appeal Panel's decision or caused a miscarriage of justice.
- 9.2. No members of the Standing Appeal Panel (including the Chair) or any Appeal Panel will be liable to any party for any act or omission unless it is actuated by malice or bad faith.

## 10. Confidentiality of proceedings and publication of decision

- 10.1. Save where expressly provided otherwise under this Procedure, British Orienteering, the Appeal Panel and any party or other person involved in an appeal under this Procedure must keep any information relating to the appeal confidential, and (in particular, without limitation) may not make any public statement or disclosure regarding the contents of the Notice of Appeal or any other documents/information/matter referred to during the course of the appeal proceedings.
- 10.2. British Orienteering will 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. British Orienteering may amend this Procedure from time to time and such amendments will take effect from the date when such amendments are published on the British Orienteering website.

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## Schedule 1 Appeal Panel

### **Chair of Standing Appeal Panel** - Peter Hart (temporary)

Email: [phart@britishorienteering.org.uk](mailto:phart@britishorienteering.org.uk)

Telephone: 07384 462432

### **Standing Appeal Panel members**

To be populated

### **Chief Executive**

Peter Hart

Email: [phart@britishorienteering.org.uk](mailto:phart@britishorienteering.org.uk)

Tel: 07384 462432

### **Head of Development**

Craig Anthony

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