

BEFORE THE SPORTS TRIBUNAL  
OF NEW ZEALAND

ST 05/14  
ST 06/14

BETWEEN SCOTT WILSON (ST 05/14)

Appellant

AND NEW ZEALAND SHOOTING FEDERATION INCORPORATED

Respondent

BETWEEN PAUL WILSON (ST 06/14)

Appellant

AND NEW ZEALAND SHOOTING FEDERATION INCORPORATED

Respondent

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DECISIONS OF SPORTS TRIBUNAL  
Dated 5 June 2014

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**Hearings:** ST 05/14: by telephone conference at 9.30 am on 4 June 2014  
ST 06/14: by telephone conference at 11.30 am on 4 June 2014

**Tribunal:** Sir Bruce Robertson (Chairperson)  
Dr Jim Farmer QC (Deputy Chairperson)  
Rob Hart

**Present:** ST 05/14 hearing only  
Scott Wilson  
Andrew McCormick, counsel for Scott Wilson  
Anna Kissick, assisting Andrew McCormick

**Present:**

**ST 06/14 hearing only**

Paul Wilson

**Both hearings**

Clark Pirie, counsel for New Zealand Shooting Federation

Ewen Pire, New Zealand Shooting Federation

Gavin Paton, New Zealand Shooting Federation

Bevan Mehrtens, New Zealand Shooting Federation

**Registrar:**

Brent Ellis

## The Appeals

1. On 10 May 2014 and on 13 May 2014, Scott Wilson and Paul Wilson respectively filed separate Notices of Appeal to the Sports Tribunal against the failure of the New Zealand Shooting Federation [NZSF] to nominate each of them for selection in the New Zealand Shooting Team to compete in the Double Trap (Clay Target) and Skeet events respectively in the 2014 Commonwealth Games in Glasgow.
2. The NZSF challenged the validity of both appeals on the grounds that they were out of time. On 21 May 2014 the Tribunal in an Interim Judgment rejected both challenges and ruled that it had jurisdiction to hear both appeals.
3. The hearing of the appeals by both Appellants took place sequentially on 4 June 2014. Because the appeals raised similar issues, though differing facts, and because the Tribunal's decision is the same, it is convenient to deal with both matters in this single Judgment. In addition, time is at a premium and the parties all require speedy decisions. The Tribunal has nevertheless given separate consideration to the factual situations in each case.

## The Nomination Criteria

4. The criteria to be applied by selectors in making nominations are set out in the NSO [National Sporting Organisation] Agreement which was entered into by NZSF with the New Zealand Olympic Committee Inc. [NZOC]. The Nomination Criteria for Individual Events at the 2014 Glasgow Commonwealth Games are to be found in Schedule B1 of the Agreement. Clause 4.1 of that Schedule provides the Nomination Criteria are made up of two parts: (a) the Over-riding Nomination Criteria specified in clause 4.2(a); and (b) the Specific Nomination factors specified in clause 4.3. Clause 4.2(b) must be read together with 4.2(a) in that it sets out certain evidential requirements that must be met "as a minimum" in order that the over-riding nomination criteria in 4.2(a) can be said to have been met.
5. Clauses 4.2 and 4.3 read in full as follows:

### **4.2 Over-Riding Nomination Criteria:**

- (a) *In determining whether or not to nominate an Athlete to the Games Team for any Discipline Event(s), the NSO Selectors must be satisfied overall that:*
  - i. *the Athlete is capable of achieving a top 6 placing at the Games in the Discipline Event; and*

ii. *the Athlete has a track record of sufficient quality and depth that the NSO Selectors believe demonstrates the Athlete will be competitive at the Games and will perform credibly in the Discipline Event.*

(b) *Evidence: In determining whether or not the Athlete has met the Over-Riding Nomination Criteria in clause 4.2 (a) above, the NSO Selectors must be satisfied as a minimum that the Athlete:*

i. *has met or exceeded **two** MQS Scores listed in Schedule A in the applicable Discipline Event at any of the Key Events listed in Schedule B; **and***

ii. *has attained at least one of the two MQS Scores listed in clause 4.2 (b)i at one of the International Events identified in the Key Events in Schedule B; **and***

iii. *is ranked either first or second in their Discipline Event on the NZSF Three Match Ranking List (see clause 4.6).*

4.3 **Specific Nomination Factors:** *When considering the Over-Riding Nomination Criteria above, the NSO Selectors may also take into account any one or more of the following factors about an Athlete:*

(a) *any other performances or results in competitions/events including but not limited to the Key Events;*

(b) *adequate fitness and a commitment to maintain a fitness and training programme as agreed with the applicable coach(es);*

(c) *demonstrated good behaviour, including a commitment to training and attendance at training camps;*

(d) *demonstrated compatibility with others in a team environment;*

(e) *demonstrated compliance with the rules of events and competitions;*

(f) *understanding and respect for the obligations that accompany being a member of a New Zealand team when competing at the Games, including respect for team members and support staff;*

(g) *willingness to promote NZSF in a positive manner;*

(h) *demonstrated ability to take personal responsibility for self and their results;*

(i) *proven ability to be reliable; and/or*

(j) *any other factor(s) the NSO Selectors consider relevant.*

6. In relation to the clause 4.3 specific nomination factors, clause 4.5 provides that the NSO Selectors may give weight to any one or more of those factors and, if they do, to apply such weighting to one or more athletes. Clause 4.7 sets out a number of specific rules that apply in relation to which scores an athlete can include as an MQS [Minimum Qualifying Score] Score on the Three Match Ranking List (as defined in clause 4.6).
7. Also particularly relevant to both appeals is clause 5.1 of Schedule B1 which provides that, in considering the nomination of athletes in accordance with the Nomination Criteria, the NSO Selectors may, in their sole discretion, give weight to any extenuating circumstances which are listed as (a) injury or illness (b) travel delays (c) equipment failure (d) bereavement or personal misfortune, followed by (e) “any other factors reasonably considered by the NSO Selectors to constitute extenuating circumstances”. None of the specific circumstances in (a) to (d) is relied on by either Appellant but instead they both seek to invoke circumstance (e), which is in the nature of a catch-all provision.

### **Scott Wilson’s Appeal**

8. Scott Wilson is an amateur athlete with a very distinguished record dating at least from his first representing New Zealand in 1997. He represented New Zealand at the 2002 Commonwealth Games and in various World Cups and World Championships between 2000 and 2002. Because of employment and family commitments, he gave up national and international competition until late 2012 at which time he resumed competition with the aim of attending the Commonwealth Games in Glasgow in 2014.
9. He did not meet the mandatory criteria set out in clause 4.2(b) in that he failed during the nomination period (broadly 2013) to attain an MQS score in an International Event nominated by NZSF as a “Key Event”.
10. He invoked however clause 5.0 (extenuating circumstances). In this respect, his case came down ultimately to a complaint that NZSF had failed in a timely way to fix and confirm the MQS for his event so that he was left in a state of uncertainty for most of the qualifying period as to what the “target” was that he should be aiming at. Specifically, he complained that the initial advice of NZSF was that the standard would be 136 (a very high standard) but that this was subject to confirmation and that it would possibly be changed. In the event, it was indeed changed to the much lower standard of 129 but not until very late in the qualifying period (22 October

2013). Scott Wilson's complaint is that by that time he had missed the opportunity to compete in a number of international events at any one of which he may have achieved the adjusted MQS of 129, this being something well within his ability. In his statement of evidence, he said:

*I had initially set my sights on attending the World Cup in Cyprus in June 2013, but because of the very high MQS and without any confirmation from Mr Paton that it would indeed be reduced as rumours suggested it would be, I was forced to forego that opportunity and make what was ultimately a financial decision, but one very relevant to an amateur athlete, not to attend that event or any other international key events during the period. I thought my goal of competing at the Games was lost.*

11. Scott Wilson did in fact score an MQS of 138 at Balfour in Southland in November but this was a local score and so he still required to shoot 129 or better internationally. The NZSF was critical of this Balfour performance and suggested that it was invalidated by some mechanical issues at the event. We disregard that criticism which was not clearly supported by probative evidence but ultimately the issue still remains whether Mr Wilson has established extenuating circumstances to the level required in respect of his failure to meet the 129 standard at a specified international event.
12. After the Balfour event, he travelled to and competed in the Oceania Championships in Sydney at the beginning of December which effectively was his last and only opportunity to meet the confirmed 129 MQS standard that had been announced in late October. He says that had the standard been confirmed even as late as July, he could have competed in another 3 Australian events after that date apart from the Oceania Championship.
13. Scott Wilson at the Oceania Championship qualified in 5<sup>th</sup> position with a qualifying score of 114, well short of the MQS. He says that the weather conditions were windy and points to the fact that during the finals of that event he finished second overall and defeated a number of top Australian shooters. The position remains however that he did not meet the mandatory criteria in clause 4.2(b) and must necessarily rely, as does, on establishing extenuating circumstances under clause 5.1(e).

### **Paul Wilson's Appeal**

14. The failure of the NZSF to confirm the MQS until very late in the qualifying period was the same complaint made by the other Appellant, Paul Wilson. Both appeals therefore turn on whether the Appellants can make out that the Selectors'

determination in each case that there were no extenuating circumstances within clause 5.1(e) was so unreasonable that the selectors had acted irrationally or in some other respect of the kind that the Courts have described collectively as *Wednesbury* unreasonableness. There was no disagreement in either case that this was the correct standard to apply in these appeals.

15. Paul Wilson has a distinguished record as a sportsman. He represented New Zealand at the Commonwealth Games in 2002 and 2006 and various World Cup Events between 1998 and 2013, in which he performed with distinction. He advanced a number of grounds of appeal that are contained in a letter, that he originally sent to NZSF in March and that he emailed to the Tribunal on 13 May 2014, which in his formal Notice of Appeal he said all “come back to the fact that I have not been given a reasonable opportunity to meet the qualifying criteria due to errors and shortcomings of NZSF”.
16. Paul filed a statement of evidence on 28 May 2014, which in effect supplements and elaborates on the letter accompanying his notice of appeal. As in the case of Scott Wilson, he complains that the NZSF failed to fix an MQS that was certain and fixed throughout the qualifying period, which he says “effectively” ran from January to 4 December 2013, the latter date being the conclusion of the Oceania Championships which was the last opportunity that he had to meet the MQS. He says that the MQS had been set by NZSF at 118 but that this was said to be subject to change and was not confirmed until very late in the qualifying period. He says further that he met the 118 standard on two occasions during the qualifying period – in the New Zealand Championships in February 2013 and in the Southern Zone Championship in Balfour in November 2013 when he shot a score of 121. He thus satisfied clause 4.2(b)(i).
17. He did not however achieve a MQS at an International Key Event which, as set out above by clause 4.2(b)(ii), was required to have been attained at an International Key Event. In essence he puts this down to 2 factors: (1) the failure of NZSF to confirm the MQS until a time when it was no longer possible for him reasonably to attend an international event and attempt to meet whatever the MQS score had been confirmed as; and (2) the decision by NZSF to remove at short notice an international competition that was to take place in Singapore as a listed Key International Event and not replacing it with one that Mr Wilson could reasonably have attended. He says that NZSF refused to add any replacement events to the list and that he was deprived of the opportunity to attend an International Key Event at which he would have had the opportunity to meet the MQS. Mr Wilson relies on both these matters as extenuating circumstances that he says should have been taken into account and that, had they been, he should have been nominated for selection.

## NZSF Defence

18. The position of the NZSF is set out in both cases by statements of evidence from Bevan Mehrtens, who is the Vice President of NZSF, and Gavin Paton, who is the Sports Development Manager for NZSF and who was responsible for establishing the MQS for each shooting event.
19. Mr Mehrtens said in evidence that the selection committee considered but rejected both Scott Wilson's and Paul Wilson's claim for extenuating circumstances. It was agreed by Mr Mehrtens and by Mr Paton that the likelihood of change of the MQS standards during the qualifying period had been notified but they say:
- (a) In the case of Paul Wilson the standard was in fact not changed. It is said further that in fact Mr Wilson had attended a number of international events (4) at which he could have qualified by meeting the MQS standard but that he failed to do so.
  - (b) The reason for the delay in fixing the standard and maintaining a provisional standard for such a long time was because of a new format that had been established by the International Shooting Sports Federation after the 2012 London Olympics that were intended to increase the difficulty of both the events under consideration here and that it was not possible to fix appropriate qualifying standards for Commonwealth athletes until experience had been gained from the holding of a number of major international events through 2013.
  - (c) While it was true that the Singapore event had been originally listed as a Key International qualifying event at the beginning of the qualifying period, the Singapore organising committee had advised NZSF in early May that the skeet event would not be included in that year's event. Paul Wilson had won that event in the previous year and had already booked his travel for the 2013 event, which he regarded as his best opportunity to achieve the MQS (whatever it might finally be). Paul's evidence appears to suggest that it was NZSF's decision, rather than that of the Singapore organisers, to remove that event as a qualifying event for the skeet event but in any event it is plain enough that he was prevented from competing in Singapore through no fault of his own. He does say further that he asked NZSF to add another qualifying event but that it refused to do so.
  - (d) In the case of Scott Wilson, NZSF also says that no extenuating circumstance has been established and in essence says that the athlete had the whole qualifying



period of January to December 2013 to compete in any of the listed Key International Events. It denies that the uncertainty surrounding the settling of the MQS was relevant.

### **Tribunal Decisions**

20. The Tribunal is concerned at the apparent lack of urgency that the NZSF displayed in settling the MQS standards for both events. It is of the view that, in general, it is good sports administrative practice for there to be certainty as to what an athlete who is seeking to qualify for a Games Event needs to do in order to achieve that end. It accepts that there may often be a need to assess the comparative performance of athletes in other countries – in this case Commonwealth countries – particularly if, as here, there has been a change in the rules or format of an event. However, it does not regard the setting of a standard over three fourths of the way through a qualifying period as good practice.
21. That criticism does not of itself however determine this appeal. While having considerable sympathy for the difficulties faced by amateur athletes who do not receive funding, the Tribunal has to accept that both Appellants did have the opportunity over the full qualifying period to attend international events of their choosing from the Key Events list and it was their responsibility to make the choice of which events and how many events they would attend. The removal of Singapore as a qualifying event was unfortunate but it does not detract substantially from that proposition.
22. Both Appellants claimed that it was important to have a certain standard at which to “aim” and that they were disadvantaged by not knowing what that standard was with certainty. We tested this proposition in the hearing of both appeals with the Appellants and are not convinced that in the case of shooting having a fixed target score was essential to perform to the athlete’s optimum capability on the day. Scott Wilson claimed further that he was prejudiced in the choice of events that he might attend because the provisional MQS had been set at such a high figure that the expenditure of substantial funds to seek to attain a standard that might be beyond him was not justified. Again, we sympathise with that view and consider that the setting of a provisional standard by NZSF at a level that proved to be unjustified was unfortunate. However, we note that in fact Scott did achieve that standard albeit in a local event later in the year.
23. We consider with regret, given the fact that the Appellants are obviously very fine sportsmen, that both appeals must be dismissed. We do so. There will be no order as to costs.

Dated 5 June 2014

A handwritten signature in blue ink, consisting of stylized initials 'JF' followed by a long horizontal flourish.

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**Dr Jim Farmer QC**  
**Deputy Chairperson**  
**For the Sports Tribunal**