

Investigating and Responding to Eligibility Concerns –Female Category Competitions

Procedure

1. Raising a Concern – Female Category Competitions

1.1. For the purposes of this Policy, 'Athlete' is defined as the Athlete against whom the eligibility concern is made. This procedure applies to an Athlete who has competed, or wishes to compete, in an event licenced by the NGBs (an "**NGB Licensed Event**").

1.2. The NGBs have jurisdiction to determine the eligibility of Athletes to compete in NGB Licensed Events pursuant to the Competition and Technical Rules for use in the UK.

1.3. Those who wish to raise an eligibility concern about an Athlete competing in the Female category in an NGB Licensed Event must do so as soon as possible and in accordance with the time periods set out in this Policy. Before any referral is raised, the complainant should read the [UKA Transgender Principle Statement](#) (the "**Principle Statement**") and be familiar with its contents and the definitions which apply consistently within this Policy.

1.4. The NGBs are determined that the transgender community can access athletics without fear of discrimination or prejudice. People who identify as transgender have the right to be treated with dignity and respect and the NGBs operate a zero-tolerance policy on homophobia, biphobia, and transphobia. Any vexatious complaints raised about sex verification eligibility may result in disciplinary proceedings being commenced against the complainant.

1.5. Any concern must be made to the relevant NGB via welfare@englandathletics.org providing full details in writing of the eligibility concern and the Athlete against whom the concern is raised. There is not a specific form for raising a concern, but the NGB requires a detailed explanation, together with documentary evidence where available, to be provided before any action will be taken in relation to a complaint.

1.6. The complainant and Athlete accept that all matters considered under this Policy are confidential and are not to be disclosed to any third party. A breach of confidentiality may result in disciplinary proceedings being commenced against the complainant.

1.7. This Policy has retrospective effect and will be applied to all cases.

2. Investigating and Responding to Eligibility Concerns

2.1. Following receipt of an eligibility concern, the relevant NGB will consider the information provided to establish whether or not there are grounds to investigate the concern raised. That may involve the NGB seeking additional information from the complainant, or conducting its own investigation into the matter, as provided for in this Policy.

2.2. Where the complaint relates to an event that occurred more than 3 months ago, the NGB will not issue an informal warning nor investigate the matter unless, at the event in question, the Athlete won a prize; achieved a record; set a qualifying time or mark; or had points count towards team scoring.

2.3. The implementation of this Policy and the decision to investigate is reserved to the sole discretion of the NGB.

Informal warnings

2.4. In relation to any Athlete who admits they have competed in the female category when they were ineligible to do so but who has not won a prize; achieved a record; set a qualifying time or mark; nor had points count towards team scoring:

2.4.1. the NGB may in its sole discretion provide the Athlete with a verbal warning that they should enter the Male category in future; or

2.4.2. If the Athlete enters the female category again, the NGB may in its sole discretion provide the Athlete with a written warning that they should enter the Male category in future.

The actions set out above are referred to as an “**Informal Warning**”.

Investigation of complaints

2.5. If the NGB considers in its sole discretion that there are reasonable grounds to proceed to investigate the concern raised (i.e. that there is evidence of a breach of the Principle Statement), and the NGB considers it is reasonable and proportionate to do so, the NGB will contact the Athlete to:

2.5.1. explain that an eligibility concern has been received;

2.5.2. set out the procedure it will follow to investigate the complaint together with a best estimate of the timescales in which the investigation will be completed; and

2.5.3. confirm whether or not a Suspension has been imposed in accordance with clause 2.7 of this Policy.

2.6. Details of the complainant will not be disclosed to the Athlete. The complainant will not be kept informed of the process or told of the outcome of the process.

2.7. During the conduct of the investigation, and in the sole discretion of the NGB, an Athlete may

(i) be permitted to continue to compete in the Female category in NGB Licensed Events;

or (ii) be suspended from competition in the Female category in NGB Licensed Events until conclusion of the investigation procedure (a “**Suspension**”).

In most cases the Athlete will be issued with a Suspension if they have won or are likely to win a prize or have achieved or are likely to achieve a qualifying time in an NGB Licensed Event. Any breach of a Suspension by an Athlete may result in disciplinary action being commenced against the Athlete.

2.8. The Athlete accepts that any investigation under this Policy, including documents submitted to it and evidence obtained by the NGB, is confidential and is not to be disclosed to any third party except to the Athlete’s professional advisers (who are bound by a duty of confidentiality). A breach in confidentiality may result in disciplinary action being commenced against the Athlete proceedings.

Provision of Evidence in the Investigation

2.9. During the investigation the NGB may ask the Athlete to provide documentation to evidence their eligibility to participate in Female events pursuant to the Principle Statement. Documentation which the NGBs may request includes, but is not limited to:

2.9.1. the Athlete’s original birth certificate, issued at the time of birth;

2.9.2. a written declaration that no hormone treatment for gender transition has commenced;

2.9.3. written declaration that there has not been any application for a Gender Recognition Certificate; and / or

2.9.4. written declaration that the Athlete’s sex at birth was female.

2.10. Where it considers it appropriate to do so, the NGB may ask for any written declarations to be given in an affidavit accompanied by a signed statement of truth in the form set out in Appendix 1 to this Policy.

2.11. The Athlete will be given ten working days from the date of the request to provide this documentation.

3. Outcome of the Investigation

3.1. If the documentation provided demonstrates to the satisfaction of the NGB the Athlete's eligibility to compete in the female category, the Athlete will be notified in writing at the earliest opportunity.

3.2. Failure to provide the requested documentation will result in the Athlete being declared ineligible for the Female category until the requested documentation is provided. The NGB may also follow the steps in paragraph 3.4 below.

3.3. If the documentation provided is, in the reasonable opinion of the NGB, inconclusive, the Athlete will be asked for further information or invited to undertake a blood test to prove eligibility for the Female Category. If the Athlete refuses or fails to undertake the blood test within a reasonable period or to the satisfaction of the NGB, the NGB may also follow the steps set out in paragraph 3.4 below.

3.4. Where eligibility to compete in the Female category is not established by the evidence provided or a blood test:

3.4.1. the NGB will require relevant organisers of Licensed Events to disqualify the Athlete from all previous results (from 1 April 2023 onwards) where they were ineligible for the Female category;

3.4.2. move the Athlete into the Male category for any Licensed Events they have already entered in the Female category, with the option to be "unnamed" on the race results; and

3.4.3. not permit the Athlete to enter any future Licensed Events in the Female category and require organisers of Licensed Events to disqualify any future results in the Female category.

3.5. If the Athlete fails to comply with this procedure, the NGB will require relevant Event Directors not to permit the Athlete to compete in the Female category in any future Licensed Events until eligibility is established. The NGB will also require relevant organisers of Licensed Events to move the Athlete into the Male category for any Licensed Events they have already entered in the Female category.

3.6. The NGB reserves the right to inform organisers of Licensed Events of the outcome reached under this procedure and the eligibility of an Athlete which has been established.

3.7. On conclusion of this procedure the NGB may also determine that the actions of the Athlete are in breach of the Principle Statement and / or have brought the sport into disrepute. The NGB therefore reserves the right to enact disciplinary proceedings against the Athlete under its Disciplinary Policy.

4. Appeals

4.1. The Athlete may appeal a decision of the NGB by doing so in writing, stating the grounds of their appeal within five working days of receiving the outcome set out in paragraphs 3.2, 3.3 or 3.4 above. Athletes wishing to appeal must provide specific details of the reasons for the appeal and send their appeal directly to welfare@englandathletics.org

4.2. An appeal can be made on the following grounds only:

4.2.1. There was material procedural or other irregularity in the proceedings by the NGB.

4.2.2. The Decision by the NGB was based on error of fact.

4.2.3. The Decision by the NGB is unreasonable and one that no reasonable decisionmaker could have reached when faced with the evidence presented. The Athlete is advised that this ground cannot be used simply because the Athlete believes the NGB made a wrong or unreasonable decision. The decision would need to be so unreasonable that no reasonable person/panel (acting reasonably) could have made it.

4.3. Any appeal from an Athlete will be dealt with by Sport Resolutions (a trading name of The Sports Dispute Resolution Panel Ltd - Company No. 3351039) who will offer an independent appraisal of the original decision. The Appeal shall be governed by the Arbitration Act 1996 and Sport Resolutions' Appeal Arbitration Rules (the Rules), which Rules are deemed to be incorporated by reference to this clause. For the avoidance of doubt, where provisions of the Rules differ from this procedure, this procedure shall take precedence.

4.4. A copy of the Rules will be provided to the Athlete so that they understand the appeal framework.

4.5. Any appeal shall be considered by way of review and shall be heard by a sole arbitrator appointed in accordance with the Rules. The decision of the sole arbitrator shall be final and binding on all concerned.

4.6. EA and the Athlete appealing shall be liable to Sport Resolutions for an equal share of the costs of the arbitration, in accordance with the provisions of the Rules. Sport Resolutions require a signed agreement accompanied by 50% deposit of the estimated total costs of convening the appeal from each of the NGB and the Athlete prior to the appointment of a sole arbitrator to ensure they are in funds prior to the delivery of the appeal decision. For the avoidance of doubt if the Athlete fails to sign the agreement and pay the 50% deposit within the timeframe notified to them by Sport Resolutions the appeal will not proceed.

APPENDIX 1 – FORM OF AFFIDAVIT

IN THE MATTER OF AN INVESTIGATION BY [UK ATHLETICS]

and

[NAME OF ATHLETE]

AFFIDAVIT

[I, *[full name]* of *[state residence or workplace and occupation or, if none, description]*, state on oath as follows.

1. I confirm that:
- a. **CONFIRMATIONS**
2. There is now shown to me marked '*[exhibit]*' a bundle of the following documents:
- a. **LIST DOCUMENTS**
- I confirm that the documents in the Exhibit are true and accurate copies of the originals and bear no modifications or changes.

SWORN at *[address]*,

[date]

Signature:

.....

Full Name:

.....

Before me:

.....

Name of witness:

.....

Occupation:

.....

Address:

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