

1. On 21 June 2024, Sammie Maxwell (the appellant) filed an appeal to the Sports Tribunal (Tribunal) against the decision of the respondent, Cycling New Zealand (CNZ) not to nominate her for selection by the New Zealand Olympic Committee (NZOC) for the Women's Mountain Biking event.
2. The issues for determination were whether CNZ:
 - (i) had properly followed and/or implemented the criteria from its 2024 Paris Olympic Games Nomination Criteria;
 - (ii) The appellant was not afforded a reasonable opportunity to satisfy the nomination criteria;
 - (iii) The nomination decision was affected by bias; and/or
 - (iv) There was no material on which the nomination decision could reasonably be based.
3. On 4 July 2024, the Tribunal delivered a results decision, in which it concluded that the grounds of appeal were made out.
4. The Tribunal upheld the appeal and nominated Ms Maxwell for selection to the New Zealand Olympic Team.
5. The reasons for the Tribunal's decision are set out below.

Background

6. Ms Maxwell earned an Olympic quota spot in the 2024 Paris Olympics in Women's Mountain Biking.
7. Ms Maxwell has been mountain biking since she was a teenager and has worked with a coach, Sam Thompson, for the last six years. Together they have positioned her as one of the rising stars of the sport.

Why didn't CNZ nominate Ms Maxwell?

8. The CNZ process for nominating an athlete to NZOC for selection to the NZ Olympic Team begins with the 'Discipline Panel' (DP) which assesses whether an athlete is eligible for nomination and then applies the selection criteria contained in CNZ's 2024 Paris Olympics Nomination Criteria. If the DP determines that an athlete is eligible and

meets the criteria, it makes a recommendation about that athlete to the CNZ Olympic Nomination Panel (CNZONP).

9. The DP met and considered Ms Maxwell's application to be nominated on 29 May 2024. The DP assessed the eligibility criteria and in particular clause 2.1(j) which requires an athlete to:

j. demonstrate to CNZ's satisfaction that the athlete does not suffer from any mental or physical impairment that would prevent them from competing at the 2024 Games to the highest possible standard;

10. The DP rightly expressed concern over Ms Maxwell as she has fought an eating disorder since the age of 15. From the evidence put before the Tribunal there are times when the disorder is worse than other times, and times when Ms Maxwell is controlling the disorder. The DP noted that Ms Maxwell seemed to have her disorder under control at the present time (see the Minutes of the meeting, document 011).
11. The DP resolved to gather further information about Ms Maxwell's health and to put together a case to demonstrate that she met the performance criteria for selection, and it met again on 4 June 2024.
12. The panel discussed the information it had gathered, including from Ms Maxwell's coach and concluded that it did not tell them anything new. The DP interpreted clause 2.1(j) to mean that they had to be sure the athlete can perform (see Minutes of meeting, document 022); in this case, the DP believed that Ms Maxwell can perform and had proved this with some outstanding results.
13. The DP noted that Ms Maxwell had not been removed from consideration for nomination by any of the NZOC, HPSNZ or CNZ and so it was not for it to remove her from contention given that she met the eligibility and performance criteria. The DP, while acknowledging it was not made up of medical experts determined that Ms Maxwell met the 2.1(j) criterion, and it decided this on the basis of her ability to perform.
14. The DP was also satisfied that Ms Maxwell 'comfortably' met the minimum standards and did not see a need to apply any conditions to its recommendation.
15. Ryan Hollows, High Performance Director (HPD) at CNZ, had attended both the DP meetings although he was not the convenor or a selector. He attended in his capacity as HPD to provide the DP with information about Ms Maxwell's medical situation. He informed the DP that HPSNZ had recommended that she stop physical exercise and commit to the eating disorder clinic. Mr Hollows said that her decision to go to Europe

was against medical advice and at the 29 May 2024 meeting, he said he thought the DP should 'dive into' Ms Maxwell's medical situation further.

16. Following the 4 June 2024 meeting where the DP recommended Ms Maxwell's nomination on both eligibility and performance grounds, Mr Hollows, who was convenor of the CNZONP, wrote a memo to the CNZONP about Ms Maxwell (document 024).
17. Mr Hollows had decided to get a report from Ms Maxwell's doctor provided through HPSNZ for an assessment of her medical condition. He sought Ms Maxwell's permission to obtain a report from Dr Snyman which contained information from Ms Maxwell's previous doctor, Dr Ogilvie, and from a clinical psychologist, Chelsea Tremain. Mr Hollows included selected excerpts from the report he received from Dr Snyman and added his own emphasis to those excerpts. He did not share the report with Ms Maxwell meaning that she had no opportunity to comment on the report or on the selected material Mr Hollows chose to share with the CNZONP. Mr Hollows concluded his memo by expressing his own opinion about Ms Maxwell's medical situation and her prospects of competing at the highest standard at the Olympics.
18. The CNZONP decided not to nominate Ms Maxwell because it decided that Ms Maxwell had not discharged the burden of demonstrating that she did not have any mental or physical impairment; that is, the panel did not think she met the eligibility criteria, specifically 2.1(j).

What does the evidence say?

19. Ms Maxwell had been candid with CNZ about her struggles with an eating disorder and she willingly engaged with HPSNZ who referred her to a dietician until she became a TAPS supported athlete. At that time (mid-January 2024) she went under the care of Dr Snyman and in March she was seen by Dr Ogilvie, an expert in Relative Energy Deficiency in Sport (REDS). She had two follow up consultations with Dr Ogilvie, though not in person.
20. Dr Ogilvie reported on 13 March 2024 that she had seen Ms Maxwell that day and that Ms Maxwell likely had REDS, lowered bone density (-2.1 compared to -1.7 in 2017), was in the Red Zone on the CAT2 score and was taking fluoxetine.
21. It was recommended to Ms Maxwell that she cease training and engage in therapy to overcome her eating issues.

22. Ms Maxwell was seen by Ms Tremain, on 12 April 2024, and she diagnosed Ms Maxwell with anorexia nervosa. Ms Maxwell had two psycho-education sessions with Ms Tremain between 12 April 2024 and 1 May 2024. Ms Tremain also assisted Ms Maxwell to access the MANTRA for adults with anorexia which is a 40-week programme. Ms Tremain recommended that Ms Maxwell cease physical exercise.
23. Initially, Ms Maxwell agreed to the plan to engage in therapy and to cease training, but after a short while she came to the realisation that she would struggle to fully engage in the therapy programme without at least trying to chase her dream of competing at the Olympics. She believed this would be the better option for her.
24. Ms Maxwell did not take such a step lightly and, along with her coach, she put a support and medical team in place. This was to help her health continue to improve and to keep her in the positive mindset and upward trajectory that she felt she was in.
25. Ms Maxwell had a French team doctor, Dr Jacky Maillot, and a psychologist, Marie Laure Brunet, in France together with her team manager Samuel Roces, her coach and her cyclist flatmates as holistic support. She informed Dr Snyman of this in an email of 31 May 2024 and that she had made these arrangements to reassure her that she had not totally disengaged and that while in Europe she would continue to access what she needed to keep herself healthy. Ms Maxwell put this support system in place because her own New Zealand based medical team declined to stay in contact with her via Tele-Health.
26. At this time Ms Maxwell already had an agreement with her coach that if her weight fell below 52kg then there would be an intervention which would most likely result in her returning to New Zealand.
27. On 30 May 2024 Ms Maxwell was seen by Dr Maillot and the next day she emailed a copy of the report (which was in French) from Dr Maillot to Dr Snyman. That report said that her weight had increased to 54.3kg; she had previously been around 51kg in January 2024, which was one of the causes of concern. Her present weight, taken after participating in some rigorous competitions in which she performed well, was an indicator that Ms Maxwell was at a healthy weight and that her weight was climbing, even within competition, rather than declining.
28. On 7 June 2024 Ms Maxwell received the results of tests ordered by Dr Maillot from Dr Sophie Legast. These test results showed that she was in the normal range in just about every test. On 25 June 2024, post the nomination date but before the appeal

hearing date, Ms Maxwell had results from a thyroid function test which showed that the T3 hormone level was normal; this had been low before and had been highlighted by Dr Snyman in her 4 June 2024 report to assist the CNZONP – Dr Snyman was referring to tests taken on 15 January 2024, nearly five months before she wrote her report.

29. In support of her appeal, Ms Maxwell filed an opinion from a recently retired sports medicine doctor and former elite triathlete Dr John Hellemans, who commented that the symptoms Ms Maxwell was presently exhibiting were not unusual or abnormal in female endurance athletes, and Dr Ogilvie confirmed this under cross-examination.
30. Dr Hellemans reviewed the medical information that had been available to the DP and the CNZONP and, whilst he had not physically examined Ms Maxwell and he was not an expert on eating disorders, he concluded that Ms Maxwell was:

‘unlikely to be at risk of a relapse of her eating disorder between now and the Olympic Games and that there is no medical contraindication – that is, mental or physical impairment – against her competing at the highest possible level, particularly if there is ongoing medical oversight’.

31. Under cross-examination Dr Ogilvie acknowledged that she had not seen Ms Maxwell since the 12 March 2024. She conceded that she had made mistakes with Ms Maxwell’s spinal bone density and that in fact her bone density had improved since 2017. She also conceded that Ms Maxwell no longer sits in the Red Zone of the CAT2 scoring and that she had written her report to Dr Snyman on outdated information.
32. Mr Hollows, when questioned about seeking the additional information for the CNZONP to consider, conceded that he had not shared the report he received from Dr Snyman with Ms Maxwell. He also conceded that he had selected and emphasised parts of the report and of Ms Maxwell’s email to him and that he had presented them to CNZONP out of context.
33. When questioned about the most up to date medical information that was available to CNZ, that being Dr Maillot’s report, Mr Hollows said it was in French and he had not taken the trouble of getting it translated for the panel. When questioned about the significance of Ms Maxwell’s weight in that report, Mr Hollows dismissed the report as being from a doctor from France whom he would not trust.
34. Mr Bennett, a lawyer and CNZONP member was surprised that the report commissioned by Mr Hollows had not been shared with Ms Maxwell and said that he

thought it would have been. He also accepted that it was unfair not to have provided her with a copy.

35. In closing submissions, counsel for the appellant, Mr Hunt, took the Tribunal through Dr Snyman's evidence as the statement had been admitted but Dr Snyman had not made herself available for cross-examination.
36. Mr Hunt highlighted that Dr Snyman had presented incorrect information in her 4 June 2024 report with regard to Ms Maxwell disengaging from medical assistance. He also pointed out that Ms Maxwell had been put on fluoxetine for an eating disorder and not because of anxiety or depression. It was therefore incorrect for Dr Snyman to say that Ms Maxwell was suffering with a mental impairment.

The Tribunal's view

The medical evidence was not up to date

37. CNZ filed with the Tribunal the information that was provided to the CNZONP to assist it in its selection decision. The Tribunal notes that the report provided by Dr Snyman contained information which was out of date. Dr Snyman had relied on information provided by Dr Ogilvie who had not seen Ms Maxwell since March, some three months earlier. Dr Snyman also failed to report to the panel that Ms Maxwell had put a medical and support team together for herself in France, and instead reported that Ms Maxwell had disengaged from medical support.
38. The report from Dr Snyman was pivotal in the panel's decision-making and the reliance on out-of-date and inaccurate information meant that the panel's decision was not going to be made on a proper basis.

Dr Snyman's report was not shared with Ms Maxwell

39. In Ms Maxwell's statement she said that she had not seen the report prepared by Dr Snyman for the CNZONP. This was confirmed by Mr Hollows under cross-examination. Also under cross examination Mr Bennett, expressed surprise that the report had not been shared with Ms Maxwell and he agreed that it should have been and that she should have had the opportunity to respond to it.
40. The Tribunal considers that not sharing the report with Ms Maxwell violated clause 2.1(j) because the clause states that the 'athlete must demonstrate' their eligibility. The onus is therefore on the athlete and not on the selectors. The panel convenor, Mr

Hollows, it seems to the Tribunal, has gone out of his way to demonstrate that Ms Maxwell did *not* meet that eligibility criteria. At the very least, under the terms of that clause, Ms Maxwell should have had the opportunity to respond.

41. Principles of natural justice are to be read into the activity of the Tribunal (Rule 17 of the Tribunal Rules). While it is acknowledged that a breach of natural justice was not a specific ground of appeal (because it is not available under the regulations) nonetheless, natural justice cannot be excluded from any decision-making process. The Tribunal views the CNZONP to have breached natural justice principles by not sharing Dr Snyman's report with Ms Maxwell and by not giving her the opportunity to comment on it.
42. Had the CNZONP given Ms Maxwell the right to be heard in the context of that report, the inaccuracies and out of date medical information could have been corrected and the nomination decision might well have been different.

Mr Hollows influenced the nomination process

43. Mr Hollows attended the meeting of the DP to outline CNZ's concerns about Ms Maxwell's health. The DP requested further information and when it received that it concluded that it had added nothing to the information it had before it on 29 May 2024. It therefore proceeded to recommend that Ms Maxwell be nominated.
44. Mr Hollows was instrumental in obtaining the report from Dr Snyman, and in an email to Dr Snyman dated 30 May 2024 he expressed concern at the DP's response to Ms Maxwell's medical situation. As the convenor of the CNZONP he wrote a memorandum to the panel outlining some of the issues to be considered by the panel. That memorandum, it became apparent during cross-examination, was skewed. Rather than attaching the entire report from Dr Snyman and the full contents of Ms Maxwell's email regarding her decision to go to Europe, Mr Hollows selected certain paragraphs and added his own emphasis to them. In the final paragraph of his memorandum Mr Hollows expresses a 'view' and an 'opinion'.
45. The Tribunal considers Mr Hollows involvement in the decision-making process to have been inappropriate and that the memorandum carried considerable influence over the panel's decision.
46. Ms Maxwell had provided information to CNZ about her medical situation previously, and in time for the CNZONP's meeting. That included an up-to-date medical report

from Dr Maillot, her doctor in France. This report was written in French. Mr Hollows was asked whether he had had the report translated so that the CNZONP members could understand its contents and take it into account. Mr Hollows said that he had not. Mr Bennett told the Tribunal during cross-examination that he had gone to Google to translate the report, but that translation was not presented to the Tribunal, and it is not clear it was shared with the other panel members. The Tribunal therefore cannot be certain that the contents of that report were either considered or properly understood by the panel.

47. When questioned about the failure to have Dr Maillot's report translated, Mr Hollows dismissed the report as a document that could not be trusted. He further implied that Dr Maillot's interest was in results and so he did not put much weight on what French doctors had to say.
48. The Tribunal is of the view that it was not for Mr Hollows to decide that a medical report from Ms Maxwell's current doctor in France was not worth considering, and yet that appears to be what has happened.

Ms Maxwell met the 2.1(j) criterion

49. The onus was on Ms Maxwell to demonstrate that she did not have a mental or physical impairment that would prevent her from performing to the highest standard.
50. Ms Maxwell was able to provide medical evidence which showed that she had improved since a low patch in the previous few months.
51. Under cross-examination Dr Ogilvie agreed that Ms Maxwell was no longer on either the Red or the Orange CAT2.
52. There was no concrete evidence provided that stated Ms Maxwell was suffering from a mental impairment and indeed, at page 17 of the HPSNZ bundle of documents filed by the appellant, Ms Maxwell's Mental Health Screening results dated 2 April 2024 (the most up to date information the Tribunal has seen on this aspect) she scored in the normal range for depression and anxiety and moderate for stress.
53. With regard to a physical impairment, the Tribunal might have expected to see evidence of an actual injury or illness; instead, the Tribunal saw evidence that Ms Maxwell has gained weight and had a safety plan in place, her scores for the spinal

bone density were incorrect and that in fact those results showed an improvement and that her hip bone density was normal.

54. The Tribunal notes that an eating disorder can be a lifelong condition with ups and downs. The decision which Ms Maxwell appeals was made at a time when she was better than she has been for quite some time. The mountain bike race at the Olympics is a single race; there is nothing the Tribunal has seen that leads it to consider that Ms Maxwell could not ride that race “to the highest possible standard” due to either a mental impairment, a physical impairment, or both.
55. The Tribunal is satisfied that on the evidence, Ms Maxwell discharged the onus of 2.1(j) and that the CNZONP based on out of date and incorrect medical evidence, incorrectly concluded otherwise.

CNZ's attitude to eating disorders

56. The Tribunal is concerned that CNZ is taking a discriminatory attitude towards athletes who have eating disorders.
57. The decision of the CNZONP is essentially saying that if an athlete has an eating disorder, they must have a mental and/or physical impairment. If this is the case, the result is that it can never select such an athlete. The Tribunal finds that to be an uncomfortable precedent to set and is concerned that such an attitude could do more harm than good.

Can Ms Maxwell perform to the highest standard?

58. Ms Maxwell has demonstrated through her recent and current results that she is capable of performing to the highest standard.

Conclusion

59. CNZ is to be commended for its concern about Ms Maxwell's health and the harm it could cause her if she was allowed to compete at the Olympics. The Tribunal readily acknowledges that anorexia is a very serious condition that can cause long term harm. However, in this instance CNZ was obliged to consider Ms Maxwell's health in the narrow context of the nomination criteria. It had to properly apply the concepts of mental or physical impairment, as they related to how they might adversely affect her performance in a single race at the Olympics.

60. From the Tribunal's perspective the medical evidence provided to the CNZONP did not identify the actual mental impairment that flowed from Ms Maxwell's anorexia or the extent to which it might adversely affect her performance. Did it mean that because of her anorexia she was more susceptible to injury through a fall or crash in the midst of a race than other competitors who did not have anorexia? With physical impairment the Tribunal would have expected this to cover an athlete who had not fully recovered from an injury or was viewed as being injury prone. Again, the actual physical impairment that flowed from her anorexia had not been defined and nor had the impact, if any, on her performance. Of course, in considering these matters there were Ms Maxwell's results and the high level at which she had been performing which, to the Tribunal, were impossible to ignore.
61. Regrettably, in the absence of the type of evidence just discussed, the Tribunal is forced to conclude that the approach adopted by CNZ was tantamount to saying that because Ms Maxwell had anorexia it automatically meant that she had a mental or physical impairment which prevented her from competing to the highest standard. That is unfair as it ignores her particular circumstances. It is also discriminatory.
62. Ms Maxwell was entitled to have a nomination decision based on medical evidence that was both accurate and up to date but she received neither.
63. Such medical information was available from Ms Maxwell's doctors in France but that was not pursued. Apart from being French and part of Ms Maxwell's support team we did not understand Mr Hollows had any other reasons to question their medical credentials or integrity.
64. The failure to provide Ms Maxwell with copies of the medical report supplied to the Nomination Panel, in circumstances where the onus was on Ms Maxwell to satisfy the panel that she was not suffering from a mental or physical impairment that would affect her ability to perform to the highest standard, was a serious breach of natural justice. There was also a failure to alert Ms Maxwell that CNZ was even considering the very unusual step of invoking clause 2.1(j) in determining her nomination.
65. Against that background the Tribunal is surprised that CNZ now appears to rely on a failure by Ms Maxwell to meet the performance criteria. That emerges at the end of Mr Hollows written statement where he expresses that opinion, and it is repeated by counsel for CNZ. It presents as a belated attempt to justify the non-nomination decision which was always based on her not meeting the eligibility criteria.

66. The Tribunal found that the appeal succeeded on the following grounds:
- (i) CNZ did not properly implement or follow the nomination criteria; and
 - (ii) There was no material on which the decision could reasonably be based.

Decision

67. Having assessed the evidence and the oral submission of all parties, the Tribunal concludes that the grounds of appeal were made out.
68. Under Rule 49 (b) (i) the Tribunal allows the appeal and conclusively determines that Ms Maxwell is nominated for selection to the New Zealand Olympic Team because it would be impracticable to refer the question of nomination back to CNZ in the time available in which entries into the 2024 Paris Olympic Games are to be submitted.
69. The Tribunal decided upon this extraordinary step because it was aware that NZPC would need to make contemporary enquiries into Ms Maxwell's medical status prior to selecting her and to revert the issue to CNZ would limit NZOC's ability to do this before the selection cut-off date.
70. The issue of costs has not been raised with the Tribunal so costs will lie as they fall.

Dated: 11 July 2024



John Macdonald
Chair



Dr Helen Tobin



Pippa Hayward