

Case number: NST-E22-73674

Case Title: Lizanne Wilmot v AusCycling

Written Opinion

National Sports Tribunal

Panel Member/s

Professor Deborah Healey, case appraiser

In the case appraisal between:

Lizanne Wilmot

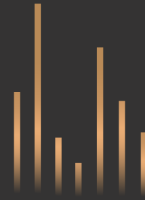
(Applicant)

And

AusCycling

Represented by Kipp Kaufmann

(Respondent)



PARTIES

Lizanne Wilmot

Athlete

AusCycling

National Sporting Body

Represented by Kipp Kaufman

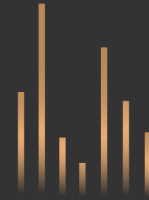
INTRODUCTION

The Athlete is a dual citizen of Australia and Canada and an Australian resident. This dispute relates to her eligibility to compete at the Australian National Track Championships as a member of a State Team.

The Respondent is the governing body of the sport of Cycling in Australia. The Respondent has advised the Athlete that given her UCI ID status as Canadian she is not eligible under current regulations to race as a member of a NSW team in the Australian National Track Championships and equivalent Championships. As long as she keeps her UCI ID designation of nationality as Canadian, she must compete as an international competitor. The Athlete can change her UCI ID country designation.

The Athlete challenges this conclusion based on her reading of the relevant rules and also on advice which she says she received from the Respondent.

The Parties have sought Case Appraisal of these issues from the National Sports Tribunal (NST) under the relevant legislation.



NST JURISDICTION

The jurisdiction of the NST is engaged by the written agreement of the parties operative 9 June 2022, under which the Parties accepted the appointment of Member Ms Deborah Healey to conduct the Case Appraisal. The Case Appraisal proceeded under section 25(1) of the *National Sports Tribunal Act 2019* (NST Act).

The law applicable to the merits of the case appraisal is the law of the Australian Capital Territory.

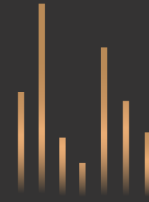
FACTUAL BACKGROUND

The Athlete is a dual citizen of Australia and Canada and an Australian resident. To compete, cyclists must be registered with the international cycling body, the Union Cycliste Internationale (UCI), and each such registration is linked to a nationality. The Athlete's UCI ID designates her as Canadian. The Athlete could change her UCI ID nationality but is reluctant to do so despite her Australian residency and her dual citizenship of Canada and Australia. The Athlete seeks to compete in events, including the Australian National Track Championships, as part of the NSW State team.

The Respondent has advised the Athlete that given her UCI ID designation as Canadian, she is not eligible under current regulations to race as a member of the NSW team in the Australian National Track Championships and equivalent Championships, but can race as an international individual, subject to certain conditions.

The Athlete challenges this conclusion based on her reading of the relevant regulations. She also states that she has been given conflicting information regarding her eligibility to compete for NSW and in the Australian National Track Championships on different occasions. If ultimately found by this Appraisal to be eligible, the Athlete is seeking an apology from the Respondent for previous incorrect advice.

In more detail, the Athlete states that, to be eligible to compete in the National Championships as a member of a state team, she did not compete in the Canadian Nationals competition for a period of



two years, i.e., from 2018-2020. The Athlete at that stage relied on clause 2.01.03 in the Technical Regulations of Nov 1 2020 ('Regulations') which stated:

'Non-Australian citizens, who reside in Australia, who are members of AusCycling, and who do not hold a UCI licence issued by a UCI recognised National Federation, may compete in an Open Australian Championship.'

In 2021 the Applicant applied to compete in a state team and was rejected. She was advised at that time that this part of eligibility clause 2.01.03 which had been included in the Regulations dated Nov 1 2020, and on which she relied, had been removed by Regulations dated December 2020, but that she had interpreted the clause incorrectly in any event.

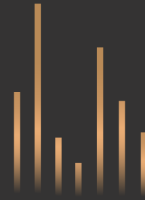
In 2022 she attempted to compete for the NSW team after gaining selection. She relied on the AusCycling Selection Policy and Appeals Process for the AusCycling National Championship State/Territory Teams. She was selected for NSW Team but ultimately told that she could not compete given her UCI ID nationality, after first being told she needed an international licence.

The Applicant challenged this advice and after some correspondence with the Respondent sought this Case Appraisal on the issue.

The Respondent believes its position has been communicated to the Applicant but supports the Case Appraisal process.

The questions to be answered in the Case Appraisal, set out at para. 5.5 of the Case Appraisal Agreement, are as follows:

- (a) How do the AusCycling policies, being the Technical Regulations and any other relevant policy, such as an applicable Selection Policy, apply to the Applicant's eligibility in these circumstances?
- (b) In accordance with the AusCycling policies, is the Applicant eligible to compete for NSW and in the Australian National Track Championships in following years?



(c) If any, what are the appropriate next steps for the Participants?

The Parties have complied with the Procedural Directions set out in the Case Appraisal Agreement.

The Panel Member requested brief additional information which was provided by the Parties in a timely manner and is incorporated into the decision.

APPLICABLE RULES

This dispute is primarily about the eligibility of the Athlete with dual citizenship and Australian residency, but with the UCI ID designation of another jurisdiction, to compete in the Australian National Track Championships as a member of a State team.

The Respondent superseded Cycling Australia as the National Sporting Organisation for cycling in Australia in November 2021. New technical regulations were adopted and were updated throughout 2021 to align cycling disciplines and to facilitate the merger of state/territory associations. The relevant regulations are discussed below.

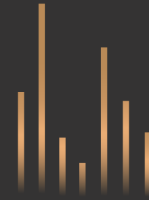
Relevant regulations

The eligibility regulations for cyclists are set out in the 'AusCycling Technical Regulations-General' ('Regulations'). The Regulations refer to 'Australian' Championships, which appear to be known in the sport as 'National' Championships. As all of the discussion in the submitted documents refers to 'National Championships,' Australian Championships will be referred to as 'National Championships' throughout this Appraisal.

The Regulations are complex and, in some respects, difficult to understand.

The Preamble to the Regulations states:

'Where any ambiguity or lack of a clear ruling exists the UCI regulations or discipline specific regulations will take precedence.'



The Preamble thus clearly puts the UCI Regulations at the forefront of consideration in cases of ambiguity, and they are particularly relevant to this eligibility dispute as they set out some basic rules about cycling identity, so they are noted first.

UCI regulations

All references in this part are to the UCI regulations.

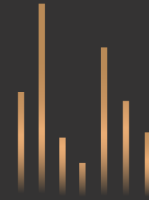
Under the UCI regulations, a licence holder may only hold the licence of one national federation. All licences are given a UCI ID, which appears on any licence that the athlete holds and remains the same regardless of who issues a later licence (UCI regulations 1.1.009 and 1.1.009 bis). All licence holders are assigned a sporting nationality corresponding to their nationality, regardless of which national federation issues the licence (UCI regulation 1.1.033). A rider holding multiple nationalities must choose one nationality on the first licence application (UCI regulation 1.1.033). A rider may in certain circumstances change sporting nationality up to twice in a career (UCI regulation 1.1.033 bis). Participation in National Championships is regulated by the relevant national federation and only riders who hold the nationality of that federation can compete for the title of national champion and relevant points (UCI regulation 1.2.028).

In summary, this means that all riders have a continuing UCI ID linked to a nationality. The Applicant had and has a UCI ID with a sporting nationality as Canadian, but this may be changed up to twice in her career. In relation to National Championships, AusCycling regulates participation, but its Regulations are overridden by the UCI regulations in cases of ambiguity or uncertainty.

AusCycling Regulations

Section 1 of the Regulations, 'General Regulations', provides in clause 1.00, Eligibility that: *'all participants in cycling events shall hold a current AusCycling membership and UCI ID.'*

Section 2, 'Australian and State Championships,' divides these Championships into two categories: 'Domestic' or 'Open' (clause 2.00). AusCycling may decide the category by declaration from time to time (clause 2.00.03). Domestic and Open Championships have different eligibility rules. Both are



mentioned here because when the Applicant first entertained the idea of competing as a non-international competitor, the National Championships were Domestic. The status of the National Championships was changed to 'Open' in late 2019.

National Championships

The eligibility regulations for 'Domestic Championships' and 'Open Championships' are set out below.

Domestic Championships

'Domestic Championships' are those where only *'AusCycling members who meet regulation 2.01.01 can compete.'* (clause 2.00.01). These are divided into UCI registered and non-UCI registered events.

Clause 2.01.01 is a lengthy clause, which contains eligibility requirements for both UCI and non-UCI events as follows:

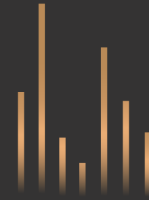
'Entrants in a UCI registered Domestic Championship must be:

- 1. Australian citizens who are current AusCycling racing members or hold a licence of another UCI National Federation with an "AUS" designation; or*
- 2. Australian residents- this does not include visitors to Australia on work permits, student visas or visitor visas- providing they:*
 - (a) have not ridden for another country in that national team in the preceding 2 years: and*
 - (b) have not contested the National Championships of another National Federation in the preceding 2 years.'*

Eligibility criteria for non-UCI Domestic Championships as follows:

'Entrants in non-UCI registered Domestic Championships must be:

- 1. Australian citizens who are a current AusCycling racing member or hold a licence of another UCI affiliated nation with an 'AUS' international designation; or*



2. *Non- Australian citizens under the age of 18 who have resided in Australia since 1 January of the year of competition and hold a valid AusCycling Racing Membership.*

All competitors, when representing a State or Territory, in an Australian Championships must be affiliated with the state or territory they represent for a period of at least two months prior to the start all the first day of the Championships.’ (Clause 2.01.01)

Open Championships

Open Championships are ‘Championships that allow cyclists registered with AusCycling or another UCI recognised National Federation, provided that they have a current International licence and who meet with regulation 2.01.02.’

The Regulations dated 1 November 2020 state in relation to international competitors:

‘ 2.01.02 International competitors wishing to compete in an Open Championships must have:

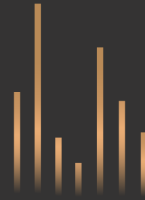
1. *An international licence issued by a National Federation recognised by the UCI.*
2. *Permission from AusCycling to compete.*

Note: International competitors cannot be considered for national team selection. 2.01.02’

2.01.03 Non-Australian citizens, who reside in Australia, who are members of AusCycling, and who do not hold a UCI licence issued by a UCI recognised National Federation, may compete in an Open Australian Championships.

2.01.04 A rider can only represent the State or Territory they reside in and must be an Australian citizen. This may be varied in exceptional circumstances by application to AusCycling.’

The subsequent Regulations dated 16 December 2020 do not contain the above 2.01.03 but the remaining provisions are the same, i.e., Regulations 2.01.02, 2.01.03 (the previous 2.01.04).



The implication from all of this appears to be that non-Australian competitors will compete as international participants. Clause 2.01. 02 deals with international competitors wishing to compete in an Open Championship. Such competitors must have:

1. *an international licence issued by a National Federation recognised by the UCI.*
2. *permission from AusCycling to compete.*

Note: international competitors cannot be considered for national team selection.'

Other relevant documents

The AusCycling Selection Policy and Appeals Process for AusCycling National and Championship State Territory Teams, regulation 2, Eligibility and Selection Criteria, states at Regulation 2.1, General Eligibility Criteria:

2.1 To be eligible for consideration for selection to a STT, athletes must:

2.1.1 In a UCI registered Domestic Championship must be:

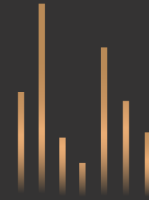
(a) Australian citizens who are a current AusCycling racing member or hold a licence of another UCI National Federation with an 'AUS' designation; or

(b) Australian residents -this does not include visitors to Australia on work-permits, student visas or visitor visas-providing they: Have not ridden for another country in the national team in the preceding two years; and have not contested the National Championships of another National Federation in the preceding two years.

...2.1.3 Have a current All Discipline Membership issued by AC.'

State and Territory Team Specific Selection Criteria for 2022 AusCycling National Track Championships

Clause 1.4 Eligible Riders states:



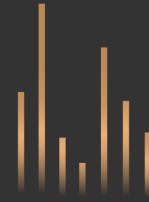
Must be current J19 aged, 'Para-cyclists ...or Elite AusCycling All Discipline Race members or UCI Licensed Riders with an AUS designation and meet the requirements of clause 2.1 of the AusCycling Selection Policy and Appeals Process for AusCycling National Championships.'

MAIN SUBMISSIONS OF THE PARTIES

Submissions of the Applicant

The Applicant made the following submissions:

- (a) she is a dual citizen of Australia and Canada, with a UCI Code which is Canadian;
- (b) she has been a member of Cycling Australia (now AusCycling) since 2010;
- (c) in 2018 she decided to stop racing Canadian nationals (for the minimum 2 year period outlined in the Cycling Australia tech regs) so she could race the Australian Nationals.
- (c) she discussed this clause with Louise Jones an employee of the Respondent in early 2020 because she was a few months shy of the 2 years to race the 2020, and she tried to get an exemption to race. Louise Jones told her she had to wait the whole 2 years to be eligible;
- (d) she followed all the eligibility requirements for the re-scheduled 2020 nationals but days out from the 2020 nationals the eligibility clause she was following was removed from the Regulations and she was also told she had been reading the document incorrectly;
- (e) Louise Jones then told her she needed to make the state team if she wanted to race Nationals. She qualified for 2021 but was not selected on the state team;
- (f) she fulfilled eligibility requirements for 2022 and was selected on the state team;
- (g) a week after the selection had been announced, days before entries closed, and after she had started to make final preparations for nationals, Louise Jones called NSW and informed them they could not select her;
- (h) she has not been given a proper reason for being ineligible;



- (i) Canada allows internationals on state teams.

In more detail, the Athlete submitted that the Respondent, through its employees, misled her in relation to her ability to compete in National Championships as a non-international competitor.

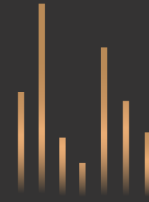
The following communications were provided:

- Messages included in the Athlete's submissions between the Athlete and Louise Jones on Facebook Messenger in March 2020 discussed the issue of eligibility and the two-year rule. There the Athlete noted that it had been 18 months since her last participation in the Canadian Nationals. She referred to the fact that there would be few participants at Nationals and asked for dispensation from the two-year rule. Louise Jones states that she 'will discuss with Tech commission chairman' but subsequently confirms that 'Unfortunately you cannot ride until 2021.'
- Messages included in the Athlete's submissions between the Athlete and Louise Jones on Facebook Messenger in November 2020 clearly stated that the Athlete could compete as an international competitor with an international licence, or as a domestic rider on a domestic licence for NSW if selected since she had 'waited out 2 years' i.e., had not competed in another National Championships for 2 years, based on Regulation 2.01.03. This required her to be a 'non-Australian citizen.'
- Messages between the Athlete and Respondent in 2022 about the need for her to hold an international licence on the assumption that she would be competing on at state team.

Submissions of AusCycling

The Respondent submits that:

- (a) the status of the National Track Championships changed from a Domestic to an Open event in late 2019. This meant that individuals could race if they were selected to a State/Territory team (under the individual selection processes set by the State Sporting Organisation and

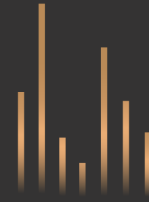


within the Australian Technical Regulations) or were categorised as an international competitor.

- (b) The Respondent noted that the Applicant had participated in the 2020 Australian Championships as an international competitor, and as such she required and had a UCI International License.
- (c) UCI Regulations require participants to compete under the UCI ID. Part 1: General Organisation of Sport states: '1.1.034 bis, For participation in events on the international calendar and national championships, riders shall be required to hold a UCI ID.
- (d) several international competitors based in Australia have participated in the Championships since 2020 and have complied with the following requirements:
- UCI Licence
 - UCI ID from the sport country.
- (e) the prohibition on state and territory teams selecting riders identified as international by the UCI is to avoid creating super teams and denying opportunities to development riders.¹
- (f) the primary purpose of state and territory teams at national championships is to provide the opportunity for riders within the performance pathway to be categorised under the AIS categorization framework or qualify for the national team.²
- (g) until the 2022 championships state and territory teams was selected by the state or territory member of Cycling Australia.
- (h) the applicant sought selection to the championships in 2022 as part of the New South Wales team. Her successful selection was announced by NSW selectors prior to approval and review of the regulations. She would have been permitted to compete for the New South Wales team should she have chosen to change her Sporting Country with the UCI.

¹ This was not public information at the time the Applicant sought a place on the NSW team.

² This was not public information at the time the Applicant sought a place on the NSW team.



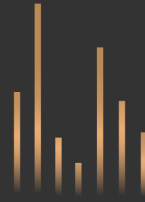
- (i) the Respondent acknowledged that the wording used for State/Territory team selection for 2022 may have created confusion. However, it stated that ‘ the intent was consistent with all previous Championships criteria.’ It added that this position was communicated with other riders and that the intention was to clarify this wording for 2023 selections.

Submissions in reply

Athlete

In response to the submissions of the Respondent and in particular, the wording of UCI Regulations-Part 1, the Applicant argues:

- (a) that she does hold UCI ID, which is attached to her Australian licence. She argues that when she applied for an international licence to race for NSW, the AusCycling Membership did not know she needed an international licence to race within Australia.
- (b) when AusCycling was Cycling Australia there was a rule that allowed international riders to race Nationals if they were not on a national team or had not raced in the nationals of another country for 2 years.
- (c) ‘The current rules isolate foreign born AusCycling members from participating in a team and put additional financial burden on them.’
- (d) AusCycling at its discretion may invite competitors from Australia or overseas to compete in any Australian championship (Regulations, clause 2.07).
- (e) The Athlete pointed to a number of examples of correspondence from Australian Cycling and AusCycling which exhibited confusion about the requirements for the Athlete to participate.
- (f) Resulting from the confusion in relation to the State/ Territory team selection criteria, the Applicant complained that her mental health had suffered and that two years had been a big commitment on her part. She stated: ‘I invested 2 years of my life for an opportunity I thought (and was led to believe by AusCycling officials) I had.’



Respondent

In response, the Respondent clarified that it has provided 'equal treatment to all individuals who are recognised as having a non-Australia UCI country' and in response to questions gave examples of international athletes who had sought to ride in state teams in 2022. These athletes had been informed that they could ride as internationals under their sport country or change their country to Australia to be selected for a state team. The UCI ID was the primary repository of sporting country of the individual. It could be activated without a UCI licence but then did not permit international participation.

MERITS/REASONS FOR OPINION

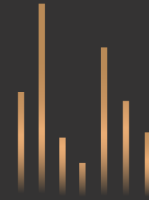
While the Member has considered all the facts, allegations, legal arguments and evidence submitted by the parties she refers in her Opinion only to the submissions and evidence she considers necessary to explain her reasoning.

The basic facts are set out above, as are the regulations which are applicable to the current circumstances.

The Applicant was originally from Canada and was designated as Canadian on her UCI ID. This did not change when she became a dual citizen of Canada and Australia (Rule 1.1.033 UCI regulations). She was, however, entitled to change her designation. (Rule 1.1.033 UCI regulations).

The Athlete relied originally on clause 2.01.03 in the Technical Regulations of Nov 1 2020 ('Regulations') which stated:

'Non-Australian citizens, who reside in Australia, who are members of the Respondent, and who do not hold a UCI licence issued by a UCI recognised National Federation, may compete in an Open Australian Championship.'

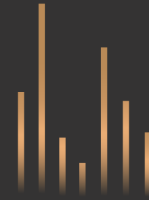


Regardless of the existence of this clause prior to the amendment to the Regulations in December 2020, in my view the Applicant did not, in fact, fall within it. She was at no point during the relevant period a 'Non-Australian citizen.' She may have been a dual citizen but was not a 'non- Australian citizen.'

The Applicant argues that she was given incorrect information by the personnel of AusCycling and its predecessor. She states that she was told that if she did not compete in the Canadian Nationals for two years, she could compete for a state team in the National Championships. In making this claim and to support her eligibility she relies on a number of emails from Facebook Messenger with employees of Cycling Australia are noted above and do uphold her submission on this issue. A chain of messages in November 2020, 2021 and 2022 appears to confirm the Athlete's view that she would be able to compete for the state if selected, and if she raced on a 'domestic licence'. It should be noted that at the time of this correspondence, she had completed most of the two years.

As noted at the outset, the Regulations are not entirely clear and are overridden in any event by the UCI regulations. They are complex and there are a number of documents covering the same issue. They are not always consistent. This is not unusual where the regulations and rules of sporting organisations are involved. They are not as precise as legislation. There is a distinction drawn in the Regulations between the position of a domestic cyclist and an international cyclist i.e., one who has a UCI nationality which is not that of the particular country. It appears that the existence of a non-Australian UCI designation always indicates that the cyclist is an international cyclist regardless of any dual citizenship or place of residence of that cyclist. This appears to be the bottom line.

A number of arguments advanced by the Applicant lacked relevance in relation to the interpretation of the Regulations. Issues based on what had happened before regulations were amended or what happens in other countries or the Applicant's views of what should or should not be the case, for example, and those related to cost and 'fairness' were not really relevant to the application of the Regulations. Nor were the views of others (presumed to be cyclists) as to what the rules do or should mean.



Nevertheless, it appears that incorrect information was given by at least one employee of the Respondent and its predecessor on a number of occasions to the Applicant's queries, which suggested that the Athlete could participate in future National Championships but not as an international rider, provided she served a two year period where she did not compete in the Canadian Nationals.

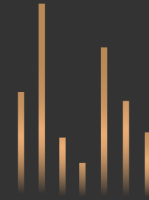
The Respondent has not acknowledged that misleading advice was given but has stated in relation to the *State and Territory Team Specific Selection Criteria for 2022 AusCycling National Track Championships* that:

'we acknowledge that the wording used for State/Territory team selection may have created confusion. However, the intent was consistent with all previous Championships criteria. This position was communicated with other riders. Our intention is to clarify this wording for the 2023 selections.'

The current set of circumstances must also be assessed in the context of changes to regulations at UCI level and in Australia during the transfer period between the two Australian associations, along with the uncertainties arising from the change in the structure of the organisation. For example, the Nationals were changed from a Domestic to an Open event, which was clearly allowed under the Regulations. Changes to regulations are regular events in sport. Nevertheless, these changes may have impacted the position of the Athlete.

One can sympathise with the Athlete. Based on her understanding of the Regulations, she chose not to compete in the Canadian Nationals for two years with the aim of competing in the Australian Nationals as a member of a state team. (Although at least one of these years was during covid-19 when it was unlikely that she could actually have travelled to Canada for Nationals competition.) This was unfortunate for her.

Nor does the evidence presented suggest that the Athlete at any stage received any comprehensive written advice or explanation from the Respondent to support or disabuse her in her decision not to



compete for two years, although it appears that at least one employee knew that this was happening. Whether or not she asked for full advice, the seriousness of her course of action once known to the Respondent and its predecessor should have triggered caution in the organisation to ensure that her assumptions were either confirmed or rejected in a thorough consideration of the issue of eligibility by the Respondent.

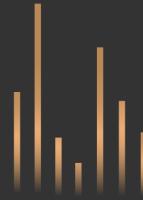
It would be impractical to recommend that athletes in a large sport with many competitors should be kept informed or warned individually of changes to regulations which might impact them in particular severely. The Respondent would not be aware of the intentions of athletes generally in relation to issues of eligibility. But the organisation did have notice of what the athlete was intending to do on more than one occasion in this case. It is recommended that, going forward, the Respondent should amend the way in which it responds to queries from athletes affecting eligibility which might impact their ability to compete. The Respondent should respond carefully and comprehensively to such queries, giving full reasons. The Respondent should also ensure that it publicises to athletes proposed and actual changes to the Regulations, particularly those which have a serious impact on athlete eligibility. This may prevent the significant inconvenience and disappointment of athletes who may rely upon regulations which are likely to change.

But at the heart of this dispute lies the fact that the Athlete can compete as she wishes if she chooses to change the designated nationality on her UCI ID.

OPINION OF THE NST MEMBER

Answers to the questions posed in this Case Appraisal:

- (a) How do the AusCycling policies, being the Technical Regulations and any other relevant policy, such as an applicable Selection Policy, apply to the Applicant's eligibility in these circumstances?



The Athlete has a UCI ID with the country of designation as Canada which makes her an international competitor under the UCI Regulations and the Regulations, regardless of her Australian citizenship and residency.

- (b) In accordance with the AusCycling policies, is the Applicant eligible to compete for NSW and in the Australian National Track Championships in following years?

The Athlete is currently ineligible but could change the designation of her country as she has citizenship of both Canada and Australia. She could also compete subject to conditions as an individual international competitor, which would require her to hold an international licence.

- (c) If any, what are the appropriate next steps for the Participants?

The Respondent should review its approach to dealing with athletes' requests for information about eligibility to ensure that full and specific responses are given, particularly where advice has significant implications for athletes. The Respondent should ensure that, to the extent possible, major changes to the Regulations and their potential implications are well publicised to athletes and other stakeholders, to minimise the impact of changes on individual athletes.

Date: [...] 16/9/22

D.J. Healey

Signature

DEBORAH HEALEY

[Member Name]