

DECISION of the FEI TRIBUNAL

25 June 2024

(Ref. no. FEI Tribunal: A23-0010 Gillian Kyle v FEI)

In the matter of

Gillian Kyle (“Appellant”)

vs.

FÉDÉRATION EQUESTRE INTERNATIONALE (the “FEI” or the “Respondent”)

COMPOSITION OF THE FEI TRIBUNAL PANEL:

Mr José A. Rodríguez Álvarez (MEX), Chair

Dr Armand Leone (USA), Member

Mr Brian Ward (CAN), Member

I. INTRODUCTION

1. The Appellant submitted her appeal (the “Appeal”) to the FEI Tribunal (the “Tribunal”) against an email sent by the FEI Education & Olympic Games Senior Specialists on 11 September 2023 (the “Decision”).

Applicable Rule Provisions:

Statutes 24th edition, effective 19 November 2019 (the “Statutes”).

Internal Regulations of the FEI Tribunal, 3rd Edition, 2 March 2018 (the “IRs”)

Eventing Rules, 26th edition, effective 1 January 2023

FEI Eventing Officials Education System, effective 1 January 2023

II. FACTUAL BACKGROUND

2. On 26 August 2022, the FEI published the new Eventing Officials Education System (the “System”).
3. On 1 January 2023, the System was implemented and came into force.
4. Before the System came into force, there were only two levels of FEI Eventing Officials (equivalent to the current Levels 2 and 3). In order to harmonize with other FEI Disciplines and education systems, two new levels were therefore introduced (Levels 1 and 4).
5. Under the new System, the Appellant was a Level 3 Technical Delegate (“TD”).
6. On 9 May 2023, the FEI informed the Appellant that she was eligible to participate in the process to transfer from Level 3 to Level 4.
7. The Appellant confirmed her interest to be transferred up and to register for the case study exercise and online interview (the “Exam”).
8. In May 2023, the Appellant completed a case study exercise, where she was required to provide written responses to three case studies in three hours.

9. In August 2023, the Appellant attended a 15-minute interview with five interviewers.
10. On 11 September 2023, the Appellant was informed that she did not pass the Exam and would thus not be transferred up to Level 4.

III. PROCEDURAL BACKGROUND

11. The Appellant filed her Notice of Appeal on 2 October 2023 (case number A23-0010). By 2 October 2023, four other similar appeals were lodged by other officials.
12. On 17 October 2023, in line with Article 23.1 of the IRs, the FEI Tribunal confirmed receipt of the appeal and decided to consolidate the procedure with four other proceedings initiated by other officials due to their substantially similar nature. Furthermore, the FEI Tribunal Chair informed the Appellants that a three-member panel was appointed composed of Mr José A. Rodríguez Álvarez (MEX), Ms Constance Popineau (FRA) and Dr Armand Leone (USA) and informed the Parties that they had until 20 October 2023 to object to his nomination.
13. None of the Parties objected to the three-member panel's nomination.
14. The FEI Tribunal Chair also requested the FEI to present its answer to the Appeals by 6 November 2023 and requested the Parties to indicate by 9 November 2023 whether they requested a hearing.
15. On 17 October 2023, the Appellants¹ noted that they would not object to the consolidation of the proceedings but requested that the FEI Tribunal would issue separate decisions for each Appellant given that the requests for relief are not identical.
16. On 24 October 2023, the FEI Tribunal Chair confirmed that separate decisions would be issued.
17. On 31 October 2023, the FEI requested an extension of its deadline to file an answer until at least 6 December 2023.

¹ In view of the consolidation of the procedures, the term "Appellants" refers to all officials whose appeals were consolidated.

18. On 1 November 2023, the Appellants indicated that they would only agree to a deadline extension until 17 November 2023.
19. On 2 November 2023, the five Appellants submitted additional evidence and submissions, requesting them to be admitted since the information would be highly relevant to the subject matter and the information was not available at the time of filing their appeals.
20. On 3 November 2023, the FEI reiterated its request for a deadline extension until, at least, 6 December 2023.
21. On the same day, the Appellants reiterated that they would only agree to a partial extension until 17 November 2023.
22. On 6 November 2023, the Panel granted an extension for the FEI to answer until 6 December 2023 and requested the Parties to confirm by 11 December 2023 whether they wish a hearing to be held.
23. On 28 November 2023, the Appellants informed the Panel about new possible appeals stemming from decisions of the FEI dated 9 November 2023, which would be of similar nature to the existing ones and there would likely be consolidated with the present proceedings (“New Appeals”).
24. On 1 December 2023, two separate appeals were filed by Dr Joachim Dimmek and Mr Stuart Bishell (case numbers A23-0011 and A23-0012) (“New Appellants”).
25. On 2 December 2023, the Appellants requested the stay of the proceedings due to efforts to amicably settle the dispute.
26. On 4 December 2023, the Panel acknowledged receipt of the New Appeals (A23-0011/12) and decided to consolidate them with the other proceedings (A23-0006/7/8/9/10).
27. The FEI Tribunal Panel Chair also informed the Parties that Ms Popineau would no longer be a member of the FEI Tribunal for the following term and therefore the three-member panel would be now formed by Mr José A. Rodríguez Álvarez (MEX), Dr Armand Leone (USA) and Mr Brian Ward (CAN). The Parties were invited to submit any objections to the constitution of the FEI Tribunal Panel by 7 December 2023.
28. None of the Parties objected to the three-member panel’s nomination.

29. The FEI Tribunal Panel Chair requested the FEI to submit its Answer to the New Appeals by 24 December 2023.
30. On 5 December 2023, the FEI Tribunal Panel Chair decided to suspend all deadlines with immediate effect for a period of two weeks.
31. On 11 December 2023, the Appellants informed the FEI Tribunal that the Parties' amicable discussions were unsuccessful, and they wished to resume the proceedings with immediate effect. The Appellants requested that the FEI would be required to provide its answer by 15 December 2023 as per an agreement reached between the Parties.
32. On the same day, the FEI clarified that its deadline to Answer should expire on 18 December 2023 only, while the Appellants held onto the understanding that the Answer should be submitted by 15 December 2023.
33. On 13 December 2023, the FEI Tribunal Panel Chair determined that the FEI's deadline to submit its answer to the Appeals would be fall on 18 December 2023. In addition, the FEI was requested to file its answer to the New Appeals by 3 January 2024. Finally, the FEI Tribunal Panel informed the Parties that they would be required to inform whether they wish a hearing to be held within four working days after the FEI's last answer was filed.
34. On 18 December 2023, the FEI filed its answer to the seven appeals (the "Answer").
35. On 20 December 2023, the FEI Tribunal Panel Chair acknowledged receipt of the FEI's Answer.
36. On 22 December 2023, the Appellants requested that a hearing be held in this matter via video-conference.
37. On 18 January 2024, the Panel confirmed its decision to hold a virtual oral hearing. It also indicated that it would treat the witness statements provided by the Appellants as evidence in chief and granted them the possibility to supplement their respective witness statements by 24 January 2024. Furthermore, the FEI was instructed to advise if they wished to cross-examine any of the Appellants.
38. On 22 January 2024, the Appellants requested an extension on their deadline to file potential additions to the witness statements until 31 January 2024.

39. On 23 January 2024, the Panel granted the Appellants' deadline extension request.
40. On 31 January 2024, the Appellants informed the Panel that they did not wish to supplement their witness statements.
41. On 1 February 2024, the FEI informed the Panel that it would not specifically intend to cross-examine the Appellants, but would reserve its right to do so, depending on the direct examination.
42. On 5 February 2024, the Panel granted a three-day deadline to the FEI to produce any documentation used by the examiners to guide them in their decision-making process during the interview phase. The Appellants would then have a deadline to provide their comments strictly limited to such documents. Finally, the Panel informed the Parties that it had decided to hold a case management videoconference on 23 February 2024.
43. On 8 February 2024, the FEI submitted three documents, which were used by the examiners as a guide for their decision-making process during the interview phase.
44. On 15 February 2024, the Appellants provided their comments on the documents produced by the FEI. Additionally, the Appellants requested the FEI to clarify various points about the usage of the documents produced.
45. On 23 February 2024, the case management videoconference was held in which several procedural matters were discussed.
46. On 27 February 2024, the Panel indicated that it would hold a virtual hearing on 22 April 2022 and enclosed a tentative hearing schedule. The Panel also requested the FEI to confirm if it had produced all the documents at its disposal that were requested in the Panel's letter of 5 February 2024.
47. On 4 March 2024, the FEI informed the FEI Tribunal that it had found additional documents and submitted five additional documents.
48. On 22 April 2024, the day of the hearing, all Appellants except Mr Andrew Bowles submitted an alternative prayer for relief.
49. A hearing was held by video-conference on 22 April 2024. In addition to the Panel, Mr Jaime Cambreleng Contreras, FEI Tribunal Clerk, and the Appellants, the following persons attended the hearing:

For the Appellants: Tom Seamer, Legal representative
Donna Bartley, Legal representative
Ellen Kerr, Legal representative

For the Respondent: Mikael Rentsch, FEI Legal Director
Áine Power, FEI Deputy Legal Director
Belén Flores Trelis, FEI Intern, Legal Department

50. The Parties then had full opportunity to present their case, submit their arguments and answer the questions posed by the Panel. At the end of the hearing, the Parties confirmed that they were satisfied with the hearing and that their right to be heard was respected.

IV. THE PARTIES' SUBMISSIONS

51. Below is a summary of the relevant facts, allegations and arguments based on the Parties' written and oral submissions and documentary evidence filed during these proceedings. Although the Panel has fully considered all the facts, allegations, legal arguments and evidence in these Appeals, the Panel will only refer to the submissions and evidence it considers necessary to explain its reasoning in this decision.

i. Submissions by and on behalf of the Appellants:

52. The Appellants submitted the following in their written submissions:

- (i) They are currently a Level 3 official, which was the highest ranked official prior to the introduction of the System. Under the System, the highest rank is Level 4, which gives access to the highest international competitions.
- (ii) The System outlines the prerequisites for Level 3 officials to be eligible for promotion to Level 4 as well as the education requirements they must satisfy to obtain a promotion, which includes meeting evaluation requirements, passing an online exam (case study exercise) and an online interview.
- (iii) The Appellants completed their case study exercises, which they felt was fairly simple. They later attended a 15-minute interview, which in their opinion was not enough time to properly evaluate their experience. No feedback was provided to the

Appellants, and they only received a generic e-mail from the FEI informing them that they had not been promoted to Level 4.

- (iv) The model answers received from the FEI on 27 October 2023 lacked any personal feedback, lacked information of how they were used to score the answers of the applicants. It was also unclear how and when they were prepared (i.e., before or after the time of grading the exams). Moreover, some answers went beyond the scope of the questions that was asked, and the applicants could not reasonably be expected to cover such an answer in the given time limit.
- (v) The Appellants contend that the Decision is unreasonable as it violates the following principles and obligations:
 - a) *The common principles of fairness*
- (vi) To ensure fairness in the process for selecting which officials would be promoted to Level 4, the FEI should have had in place (a) a well-qualified and independent panel to review the applicants and (b) grading criteria for both the case studies and the interview.
- (vii) However, several panel members possess less experience than some of the applicants. One review panel member represented himself as a Level 4 CD when communicating the rejections, albeit the FEI declaring that it was the first round of Level 4 promotion.
- (viii) In order to reach a fair decision, it would have been fair to share the grading criteria with the officials in advance of the Level 4 Education Programme and share the results of the grading criteria with the officials that were not promoted.
- (ix) If the FEI did not have any grading criteria in place, the Level 4 Education Programme could not ever be considered fair as the Appellants were not provided with any grading criteria ahead of the Programme.
- (x) FEI should be asked to provide the grading criteria and grades in order to consider their applications for Level 4 Promotion in light of those metrics.
- (xi) Upon submission by the FEI of the documentation used by the examiners to guide them on their decision-making process during the interview phase, the Appellant

considered that it was not clear if the examiners completed the standard matrix for the candidates or not. If not, it would be difficult to understand how the examiners ensured that they assessed the candidates in a structured manner. In any case, it was unclear how the examiners used the matrix. Moreover, some Appellants contended that they were not asked the questions as written in the protocols.

- (xii) The FEI has violated the common principle of fairness by its poor treatment of its volunteer community, as the Appellants were invited by the FEI to attend a course which should have educated them, which did not happen.
- (xiii) The FEI's violation of the common principle of fairness renders the Decision unreasonable.

b) The FEI's obligations towards officials

- (xiv) Under Article 1.6 of the FEI Statutes, the FEI has the duty to recognize the Appellants' interests, namely in fair treatment, which the FEI did not do.
- (xv) The Decision and the circumstances leading up to it does not foster harmonious collaboration. This is demonstrated by the fact that the overall format of the Level 4 Education Programme was not designed with this obligation in mind.
- (xvi) The FEI committed itself to work with FEI Officials in the spirit of cooperation, respect and transparency based on the Memorandum of Understanding signed between the FEI and the IOEC, who represents over 800 FEI Officials.
- (xvii) Despite this, the FEI was not cooperative, did not treat its officials with respect, and left them feeling overlooked and disregarded. Furthermore, the system implemented is not transparent and permits the FEI to pick and choose between FEI Officials without explanation.
- (xviii) Consequently, the Decision violated the FEI's obligations towards its officials.

c) Violation of the FEI and IOC Code of Ethics

- (xix) The FEI also violated the FEI and IOC Code of Ethics as they require international governing bodies to be transparent in line with previous CAS awards. This also applies in the context of criteria for selecting individuals.

(xx) The basis on which certain officials were promoted to Level 4 is entirely opaque since the FEI neither provided grading criteria for the promotion process nor provided any feedback. Consequently, the FEI has failed its transparency requirements.

d) Violation of the FEI's mission

(xxi) The FEI's mission is *"to drive and develop equestrian sport globally in a modern, sustainable and structured manner with guaranteed integrity, athlete welfare, equal opportunity and a fair and ethical partnership with the horse."*

(xxii) The Decision overlooked three key aspects of the FEI's mission: sustainability, integrity and equal opportunity (as not all attendees to the Level 4 examination process were treated equally because the circumstances of their assessments are unknown).

53. The Appellant finally requested the Panel to:

"(a) set aside the Decision on the basis that it is unreasonable under all the facts and circumstances; and

(b) compel the FEI to provide:

(i) the grading criteria for attendees of the Level 4 Education Programme (both case studies and interviews);

(ii) the grades (and any related feedback) obtained by the Appellant; and

(iii) the (anonymised) grades (and any related feedback) obtained by the other applicants;

(c) promote the Appellant to Level 4 TD based on:

(i) the information provided in connection with this Appeal Brief; and/or

(ii) the information provided in accordance with [b] above; and

(d) compel the FEI to establish and publish criteria for the Level 4 Education Programme (both case studies and interviews), if such criteria does not already exist."

On the day of the hearing, the Appellant submitted the following alternative request:

“The parts of the aforementioned Appellants’ assessments that were deemed to have been failed are to be re-assessed by an individual or individuals and to a timescale agreed between the parties or, if agreement cannot be reached, by an individual or individuals and to a timescale ordered by the Panel.”

ii. Submission by and on behalf of the FEI

54. The FEI submitted the following in its written submission:

- (i) Before the new System, there was no standard exam or standard objective assessment of the FEI Officials for their transfer up. The System has been developed following the considerations of the Eventing Committee and a dedicated working group. It was approved after having conducted a consultation process with various Officials groups.
- (ii) Its purpose is to account for the growth of the Eventing Discipline and to formalize the structure of the System, to clarify the functions with clear job descriptions, provide worldwide standard of education, transparent and objective criteria for transfer and to ensure consistency of officiating worldwide.
 - a) *The Information and Instructions provided by the FEI in advance of the Level 4 examinations*
- (iii) The FEI provided extensive information to all its officials before it entered into force. For example, the FEI organized two webinars on 12 October 2022 on the new FEI Eventing Education System where more than 160 Eventing Officials participated. However, none of the Appellants attended the webinars.
- (iv) The FEI also produced a 9-page document with Questions and Answers about the System.
- (v) The Appellants were informed that the Level 4 Education Programme would consist of a first online part that would require solving three case studies and conducting an online interview, and a second phase consisting of an in-person course that would take place at the FEI Headquarters.
- (vi) The Appellants were also informed that they needed to achieve a minimum score of

50% for each case study cumulating in a total average score of 75% for the case studies. Additionally, they needed to pass the online interview.

- (vii) All instructions were provided in advance of the exams.
- (viii) FEI considers that the current Level 3 officials already completed their technical knowledge and Level 4 would be needed for top-level Events where high pressure situations must be handled.
- (ix) No extra preparation was needed, as eligible candidates had to meet certain requirements such as having officiated a minimum number of times in 4* and 5* Events.

b) *The FEI Eventing Education System is fair, reasonable and transparent*

- (x) Ultimately, despite requiring a minimum score for the case studies, the FEI had decided to allow all applicants to do the online interview, regardless of their scores. This was necessary as the Level 4 system was new and adjustments had to be made as many applicants had not met the threshold for the case studies.
- (xi) There were no set overall weighting grades between the case studies and the online interviews, because an applicant may perform well in written exams but not perform well in the interview or vice versa.
- (xii) The case studies were reviewed and graded in a totally anonymous manner without the examiners knowing any personal information about the applicant. They were only provided with information such as "Candidate 1", "Candidate 2", etc.
- (xiii) While the interviews were impossible to conduct in an anonymized manner, the examiners had no information on the performance of the candidates in the respective case studies.
- (xiv) The FEI had an objective grading system for the case studies. The FEI did not provide the applicants with their score as it wanted to avoid discussions or challenges to the allocation of points with the FEI Officials who failed the exam.

- (xv) All three case studies were evaluated based on four main categories: “Form and Structure”, “Methodology”, “Argumentation” and “Mastery of the Case Study”. The allocation of points was divided in four categories, i.e. “Yes”, “Rather Yes”, “Rather No” and “No”, granting different points for each category and allocation.
- (xvi) The applicants did receive the standard and correct answers from the FEI on 27 October 2023. They therefore knew what was expected in the case studies and they could compare and understand their results. The Appellants have received said email and were therefore able to understand the correct answers to the case studies.
- (xvii) The online interviews were more subjective given their format and there was no separate grade/score for the interview part. However, to conduct a fair and consistent evaluation of the interview phase, the FEI determined as experts, together with the FEI Education & Officials and FEI Eventing Departments:
- Agreed upon an interview protocol for each function, and each candidate was asked the same open questions.
 - Met (online) on several occasions to evaluate the candidates and to debrief about their performance, taking into account the elements outlined in a predefined and standard matrix.
- (xviii) The examiners’ decision to transfer up or not transfer up any candidates to Level 4 was ultimately based on an overall assessment of the responses to the Exam, i.e. both the case studies and during the online interview.
- (xix) Level 4 Eventing means to officiate at the highest levels where risks and rewards are at maximum. It is evident that this level requires dealing with stressful situations which cannot be compared to 1* competitions. Officials are requested to conduct risk management and take the right decisions with time pressure as otherwise the consequences can be disastrous and lead to serious incidents.

c) Qualification of the FEI Examiners

- (xx) The examiners became Level 4 in advance, because they were selected beforehand and had to pass the Level 4 exams alike the applicants of the first Programme. These

soon-to-be examiners were examined by the FEI Director Eventing & Olympics and by the FEI Director Education & Officials.

- (xxi) The examiners had the skills to take that role and fulfil the necessary requirements after having successfully passed the Level 4 Exams.
- (xxii) The Appellants did not provide any evidence for their allegations of bias and non-independence. The FEI confirmed that its examiners were independent without any interference from the FEI Headquarters.

d) *The Appellant's expectation to be transferred up to Level 4*

- (xxiii) The fact that the FEI contacted the Appellants proactively to invite them to participate in the Exam did not mean that they would be automatically transferred up to Level 4. It was always clear that the applicants first needed to comply with the eligibility requirements and pass the Exam.
- (xxiv) The FEI contacted all the FEI Officials who met the eligibility requirements since it wanted to encourage all of them to take the exams. There was no favoritism or cherry picking on who would be contacted.
- (xxv) The FEI made the conscious choice to not limit the number of FEI Officials at Level 4 and therefore did not set a minimum or maximum number for FEI Officials to be transferred to Level 4. The only interest of FEI was and is to transfer any FEI Officials who meet all the requirements and pass the Exam.
- (xxvi) The FEI only sent a standard reply without any personal feedback as the examiners will be officiating with the applicants in the future and it wanted to avoid any discussions during the Events. However, all applicants received a "model" answer to the case studies.
- (xxvii) The Appellants can re-take the Exam once a year without any limitation as to the number of attempts in total. Therefore, the Appellants still have the possibility to be transferred up if they pass the Exam.

e) The IEOC and its involvement in the Appeals

- (xxviii) The FEI is aware that the IEOC has expressed concerns with the System and does not agree with many of the requirements and process, such as the eligibility requirements to be transferred up to Level 4. The IEOC also stated that more consultation was required on the assessment/evaluation process.
- (xxix) The IEOC invited all FEI Officials who failed the Exam to appeal their decision before the FEI Tribunal, regardless of the FEI's grounds for not transferring up the relevant Official and offered to pay the costs of the proceedings. Given that the IEOC did not review each case, it seems that it effectively submits that it is impossible for any of their members to have failed the Exam. This is neither reasonable nor logical.
- (xxx) No other appeal in Eventing or any other FEI Discipline has been lodged against the FEI Education System and the decision to not transfer up any applicants.

f) The FEI Tribunal does not have the Eventing technical expertise

- (xxxii) The authority to rule on the compliance with the requirements lies solely in the appointed examiners. The FEI Tribunal does not have the expertise to evaluate and assess the Appellant's performance in the case studies and online interviews based on the Appeal Brief. The FEI Tribunal would be acting beyond its jurisdiction and the provisions of the GRs were it to substitute itself for the examiners.
- (xxxiii) Consequently, the only relief that the FEI Tribunal is competent to grant is the right to re-take the Exam. However, since the Appellants are able to do so in any event, the Appeals must be considered moot.

55. The FEI finally requested the Panel to:

"(a) Dismiss the Appeal in its entirety;

(b) Confirm the Decisions not to transfer up the Appellants to Level 4;

(c) Determine that the Appellants shall bear the costs of the Appeal proceedings on a pro rata basis and make a contribution towards the FEI's legal costs."

V. LEGAL DISCUSSION

56. Although the Panel has fully considered all the facts, allegations, legal arguments and evidence in the present proceedings, it only refers to the submissions and evidence it considers necessary to explain its reasoning in this decision.

i. Preliminary issue

57. On the day of the hearing, the Appellant submitted an additional prayer for relief and requested the Panel to accept it.

58. However, the Panel can leave open the question as to whether the additional prayer for relief may be accepted at such stage of the procedure. Regardless of the decision, it would not change the outcome of the proceedings.

ii. Main discussion

59. The Panel has essentially been asked to set aside the Decision for being unreasonable.

60. According to the Appellant, if the FEI's process was (i) unfair, (ii) unreasonable, (iii) lacking in transparency and if (iv) it infringed certain obligations of the FEI (i.e., towards its Officials, to act with sustainability, integrity and equal opportunity), the Decision must be overturned.

61. Therefore, the main question to be answered in the present procedure is if the Decision (and the System in which it was adopted) is flawed in such extent that it indeed caused the FEI to infringe the principles and/or obligations raised and therefore led to an unreasonable Decision under all the relevant circumstances.

62. As will be explained, the Panel considers that, although the System does not cover or envisions all circumstances, the FEI did not violate the general principles or obligations claimed by the Appellant and, therefore, the Decision is not unreasonable under the conditions at stake.

63. To start with, the Panel focuses on the timeline and amount of information that the FEI made available to all officials, including the Appellant.

64. It is undisputed that the FEI implemented the System as of 1 January 2023, but it already announced it on 26 August 2022. Moreover, a transition period was implemented until 14 December 2023, during which Level 3 officials were allowed to officiate at CCIs while they underwent the examination process.

65. The information about the System available prior to the Exam:

- (i) Contained the minimum requirements to become a Level 4 official, as well as the required administrative criteria such as English proficiency and good standing with the FEI.
- (ii) Stated that applicants are required to pass the Exam that consisted of an online case study, an online interview and an in-person course of three days for those who had passed the online examinations.
- (iii) Described its objective: to enhance the applicants' communication and interpersonal skills, which would allow them to officiate at international Events more efficiently, while ensuring rule compliance and technical requirements at the highest level.

66. In addition, the FEI referred to other informative documents about the System that were available before the Exam was conducted:

- (i) A webinar was held on 12 October 2022. The recording was published in the FEI's website. It has not been disputed that the Appellant did not attend the Webinar. In any case, the recording was (and still is) available to her prior to the Exam.
- (ii) A Q&A document that was published in the FEI's website, addressing concrete and specific questions about the System. For example, the following question was posed and answered:

If I fulfil all requirements to Level 4, can I officiate as level 4 or am I a Level 4?

If you fulfil the requirements to access level 4 education, you are still a Level 3 AND you are allowed to officiate as a level 4 Official during 2023 (transition period), until you actually graduate as a Level 4. There is no automatic transfer to Level 4. That means that you will have to pass your online examination and the online interview to graduate as a level 4 – and will then be invited to an in-person course to finalise your programme.

(iii) The instructions and details about the online exam procedure that were sent on 9 May 2023. Amongst the information contained in this communication, the Panel notes that the applicants were informed about what was expected from them regarding the case studies:

“Your mission is to answer (in English) the questions by proposing the correct attitude to adopt in each given situation by:

- *Analysing the background and constituents of the case*
- *Identifying the key issue(s) of the case*
- *Outlining the solution(s) to the case*
- *Explaining the reasoning behind the solution(s) of your choice”*

67. These actions reveal that even before the examination process began, there was a sufficient and equal level of transparency to all officials about the characteristics of the System. The FEI showed that it was open to providing more information should the officials have questions about it.
68. Bearing in mind that the System was a new and revamped version of the previous education program, the Panel finds that the FEI provided many opportunities to all affected officials to get acquainted to the changes well before they came into force. In addition, a transition phase of one year was established to allow officials to take the Exam.
69. There is no evidence on file showing that the Appellant asked any questions to the FEI or raised any doubts about the System with the FEI before taking the Exam. If this would have been the case, the evidence on file seems to indicate that such questions would have been addressed by the FEI.
70. Overall, the Panel does not accept the Appellant’s argument that it was impossible to understand what was expected of her.
71. Therefore, the Panel considers that the Appellant was provided with sufficient information about the System and that the level of transparency deployed by the FEI was more than adequate.
72. Concerning the evaluation process, the Appellant claimed that the process was not sufficiently objective. The main contentions revolved around the arguments that (i) there

should have been a well-qualified and independent panel to review the applicants and (ii) no grading criteria were shared with the officials in advance.

73. Regarding the first point, the Panel considers that, under the circumstances (i.e., the new and revamped System), it was reasonable and understandable that certain experienced officials were appointed by the FEI in advance to take the role of examiners. Although the Appellant questioned the experience and knowledge of certain examiners, the Panel was satisfied by the FEI's explanations on their level of expertise and concludes that the Exam was conducted by well-qualified personnel. The Panel did not find any evidence of lack of independence on their end. Therefore, the Panel is comfortable with the way in which the examiners were appointed even if this method could have ideally been announced prior to the exam.
74. Regarding the second point, the Panel is also satisfied that a grading criteria for the case study existed and that the examiners applied them when evaluating the Appellant. In fact, the FEI produced the grading matrix that was completed for the Appellant. The FEI also confirmed that the case studies were examined in a completely anonymous manner and the examiners were not provided with any personal information on the candidates. In addition, when the Appellant was informed about the outcome of the Exam, the FEI provided the correct answers of the case studies. This allowed the Appellant to compare them with their responses.
75. Similarly, while it was admitted that the interview process was more subjective, the FEI demonstrated that it had a protocol in place for the interview process which contained concrete questions and a predefined grading matrix. The FEI produced the completed matrix of several applicants, including most of the Appellants. Even if the Appellant's specific matrix for the online interview could not be retrieved, the analysis of the overall circumstances of the case leads the Panel to be sufficiently satisfied that indeed, all applicants were graded according to the protocol in place. Despite this conclusion, the Panel encourages the FEI to ensure that all notes and grading documents of future exams be duly archived and kept in their internal files. It is recalled that the Panel's analysis is based on the specific circumstances of this case, the main one being the novelty of the System.
76. The Panel has sympathy for the Appellant's wish to have been provided with more information about the grading criteria and methods before the Exam. Nevertheless, it also finds that this argument is not a sufficient ground for appeal as the absence of the additional

information does not constitute an infringement by the FEI of any of the general principles or obligations pointed out by the Appellant.

77. Firstly, as pointed out before, the Appellant has not claimed to have asked for a grading criteria of the Exam before undertaking it. Under the circumstances, this could have been expected from any applicant that truly had concerns about the examiners and/or the grading criteria before taking the Exam. Should this information had been requested by the Appellant and not delivered by the FEI, then the Panel might have reached a different conclusion, but this was not the case.
78. Secondly, the Panel does not consider that the Appellant was ever treated differently to other applicants that did pass the Exam and were transferred up to Level 4 or even to those that also failed the Exam and have chosen not to appeal. While there is room for improvement for the FEI in the way the examination process is conducted, the Panel is comfortably satisfied that the system as conducted was reasonable and that there has been no unjust treatment towards the Appellants. Indeed, the FEI even confirmed that given the novelty of the System, it changed its approach, and all applicants were finally allowed to participate in the online interviews regardless of their grades in the case studies. At the very least, this measure of the FEI permitted those applicants who had not passed the case studies to experience the interview process which might allow them to be better prepared for their next exam.
79. Thirdly, as pointed out before, the Appellant did receive the standard answers for the case study. While the Panel considers that it could be advisable to provide specific and concrete feedback to each applicant, it also accepts that providing those standard answers allows the applicants to have sufficient information on what was expected from them.
80. As a result of the above findings, the Panel confirms that the Decision was not made in an unreasonable manner and that the System in place was sufficiently objective. The FEI implemented the System following a consultation process and implemented it in accordance with its discretionary power.
81. Similarly, the Panel finds that the FEI did not breach any obligation towards the Appellant or any other official. Despite the room for improvement that is intrinsic to any new procedure (such as the System), the Panel considers that the FEI did foster a sufficient level of cooperation, respect and transparency with the officials affected by the changes in the System. For this reason, the Panel does not consider that the FEI violated the FEI or the IOC's Code of Ethics.

82. The Panel also disagrees with the Appellant's contention in her Appeal Brief that the FEI overlooked its Mission. Even if this could be considered as a regulation that can be infringed, the Panel finds that the FEI did act in a *"sustainable and structured manner with guaranteed integrity, athlete welfare, [and] equal opportunity"*.
83. Although the Panel finds that the FEI did not infringe any principle, regulation, or obligation, it wishes to emphasize that there is room for improvement in the System. Therefore, the Panel takes this opportunity to make recommendations for consideration that might improve the transparency, education and selection process for the FEI community so that the System becomes even more robust:
- (i) Transparency could be increased by announcing how candidates are invited, how the examiners are chosen and by making some educational material available.
 - (ii) The educational aspect could be improved if the applicants receive feedback on all of their results. The existing model answers are useful, but concrete feedback on how the applicants' answers were measured against those template answers would also be advisable for purposes of learning and improving. Such discussions should not be forums to contesting scores, but they should rather serve as constructive opportunities for applicants to improve.
 - (iii) The selection process could be enhanced if the full grading criteria are published before the exams (i.e., the objective criteria, the subjective factors to be used by the examiners and the passing criteria). Similarly, creating internal template answers should assist the examiners when scoring each exam including in particular, the in person related parts.

iii. Conclusion

84. Overall, the Panel considers that the appeal is dismissed as the Decision was reasonable and respected all general principles, obligations, and regulations in place.
85. No deposit will be returned to the Appellant and each party shall be required to cover their own legal costs.
86. All other prayers for relief are dismissed.

VI. DECISION

87. The FEI Tribunal Panel decides as follows:

1. The Appeal is admissible.
2. The Appeal is dismissed.
3. No deposit shall be returned to the Appellant.
4. Each party shall pay their own costs in these proceedings.

88. According to Art. 165 of the FEI GRs, this decision is effective from the date of oral or written notification to the affected Party or Parties.

89. According to Art. 162.1 and 162.7 of the GRs, this decision may be appealed before the Court of Arbitration for Sport (CAS) within twenty-one (21) days of the present notification.

DECISION TO BE FORWARDED TO:

- a. The Parties: Yes
- b. Any other: No

FOR THE TRIBUNAL

Mr José A. Rodríguez Álvarez, Chair Panel Member