

DISCIPLINARY PROCEDURE

SUPPORTING NOTES

These notes provide additional guidance for Clubs embarking on a disciplinary process and should be read in conjunction with the Club's disciplinary procedure ("the Procedure"). The notes seek to elaborate on some of the key stages within the disciplinary process and to offer guidance on some of the complexities that can arise.

When dealing with a disciplinary matter, whether it is an alleged breach of Club Rules, Policies or Code of Conduct or unacceptable conduct, it is important to ensure that a fair process is followed.

IS A FORMAL INVESTIGATION AND FORMAL DISCIPLINARY HEARING ALWAYS NECESSARY?

No, not always and it very much depends upon the individual case. Often informal resolution and a "quiet word" may be all that is needed to resolve a problem. This may involve an informal discussion with the Member, alerting them to the fact that their conduct has been noticed and is not acceptable. This can often be a better way of dealing with the problem than launching straight into an investigation and formal disciplinary proceedings. If this approach, is however, unsuccessful as the Member continues with his/her unacceptable behaviour, or if an informal approach is considered to be inappropriate given the nature / seriousness of the issue then a formal and thorough investigation may be needed which could in turn lead to formal disciplinary proceedings being instigated.

If an informal approach is suitable, any informal warning should be verbal but confirmed in writing.

The written confirmation should make clear that the warning is "informal" and set out what is expected in terms of future conduct. You may also wish to explain that formal action may be required if there is repetition of the unsatisfactory behaviour.

It is for the Club's Disciplinary Secretary / other appointed person to consider how best to deal with a matter informally. As a general guideline, the Disciplinary Secretary / other appointed person should consider:

- Holding a confidential, private meeting with the Member to highlight the problem.
- Establishing why the problem has arisen.
- Agreeing what action is needed.
- Keeping an informal record of the conversation.
- Sending a letter or email to the Member setting out what has been agreed or decided and advising that disciplinary action will follow if there is no change in the Member's conduct or behaviour.

HOW MUCH INVESTIGATION IS REQUIRED AS PART OF THE FORMAL PROCEDURE?

Whilst nearly every case will require an investigation, the amount of investigation required will vary enormously depending on the individual circumstances of the case. The Club needs to ensure that a reasonable investigation is carried out. While it is difficult to give hard and fast guidelines as to what this means in practice, the Club should investigate sufficiently to ensure that the detail of the allegations made against a Member is clear, in order that the allegations can be put to the Member in sufficient detail to enable a meaningful response from him/her.

If a Member admits the alleged misconduct, breach or inappropriate behaviour, it may be reasonable for the Club to take this at face value without undertaking further investigation.

However, if there is any doubt as to the Member's motives or the truthfulness of the confession, or if their confession implicates others, or if the Member concerned may be particularly vulnerable, for example, by reason of disability, or if there are any extenuating circumstances, these should be investigated.

Any investigation undertaken by the Club should ideally be conducted as quickly as is reasonably possible, without unreasonable delay. Witnesses should be spoken to and notes taken of their recollection of events before memories fade. Consideration also needs to be given as to whether any physical evidence is required. The type of physical evidence required will obviously depend on the issue to be determined: for example, it may be appropriate for the Club to review its CCTV recordings, particularly when this has been requested by the Member.

The evidence of witnesses is often crucial to the investigation. Witnesses should be interviewed privately and the need for confidentiality should be emphasised. Notes should be made of the statement or of the information provided by the witness and where possible the witness asked to sign the statement to confirm that the version of events taken down by the interviewer is correct. If a witness requests anonymity the reason for the request and the motive need to be explored. Clubs should try to avoid anonymising witness statements whenever possible and should only agree to anonymise in exceptional circumstances where a witness has a genuine fear of reprisals. Where a Club decides that the circumstances do warrant anonymity, interviews should be conducted and notes taken without regard to the need for anonymity. The investigator should then consider what, if any, points need to be omitted or redacted to prevent identification.

WHO SHOULD CARRY OUT THE INVESTIGATION?

An Investigations Officer should be appointed (by the Disciplinary Secretary or such other nominated person as identified in the Procedure) to gather the relevant information and evidence. The individual should have the requisite skills and the time to undertake the task. The Investigations Officer should not be part of the ultimate Disciplinary Committee. The Investigations Officer is not required to decide whether and how a Member should be disciplined. His/ her role is to gather facts and to decide whether there appears to be a case to answer in a formal disciplinary setting. If there is a case to answer, the matter should be passed to a Disciplinary Committee. If there appears to be no case to answer, the matter should not proceed.

The Investigations Officer should be discouraged from expressing opinions about a Member's conduct. His/her role is not to decide guilt.

WHAT INFORMATION SHOULD BE GIVEN TO A MEMBER BEFORE A DISCIPLINARY HEARING?

Once the investigation is complete, if the Club decides that a disciplinary hearing is required, it should write to the Member to confirm the outcome of the investigation and invite them to a disciplinary hearing. The letter should set out sufficient information about the allegations and their possible consequences to enable the Member to prepare for the disciplinary hearing. Copies of any documents or evidence on which the Club intends to rely at the hearing should be provided. A disciplinary hearing should never be an ambush. The Member must know, in advance, the nature of the concerns and all evidence in support of those concerns. It is advisable to send the Member a copy of the Procedure, so that the Member understands the process. The Club should also inform the Member in writing of the right to bring a companion.

The disciplinary invitation letter should also set out the arrangements for the disciplinary hearing. The disciplinary hearing should be convened at a reasonable time and place. If the matter is of a particularly sensitive or confidential nature it may be advisable for the meeting to be conducted away from the Club's premises, at a neutral venue. A Member should be given sufficient time to consider the allegations and to read any witness statements and other investigation materials before the hearing. The Member should also be asked if there are any documents or other evidence they wish to rely on that have not already been disclosed. If the Member suffers from a disability, consider whether any reasonable adjustments need to be made to the hearing arrangements, such as location, timing or facilities.

WHAT HAPPENS IF A MEMBER IS UNABLE / FAILS TO ATTEND A DISCIPLINARY HEARING?

Members should make every effort to attend a disciplinary hearing. However, Members may seek to postpone their disciplinary hearing, either through their desire to have more time to consider their position or as a result of illness or non-availability of themselves or their chosen companion.

If the Member is unable to attend a hearing with good reason, it would be reasonable to suggest an alternative time that is convenient for the Disciplinary Committee and the Member. If a Member however fails to attend the disciplinary hearing without notice or good cause, the Procedure states that the Disciplinary Committee is permitted to proceed and make a decision in the Member's absence, on the evidence available. This should be a last resort. When considering whether to proceed in the Member's absence, the Club may want to consider the seriousness of the disciplinary issue under consideration and the possible sanctions / outcome and how similar cases in the past have been dealt with before taking that step.

The same points above would apply to attendance at appeal hearings.

WHAT HAPPENS IF THE MEMBER IS UNABLE TO ATTEND A DISCIPLINARY HEARING DUE TO ILL-HEALTH?

This situation is not uncommon. A Member who, on being told to attend a disciplinary hearing, may absent himself or herself by reason of ill-health, in order to stall the procedure or to try and avoid attending a disciplinary hearing. Alternatively, a Member may genuinely not be well enough to attend a hearing.

The Club would need to consider the nature of the Member's illness and the likely extent of the delay and whether the hearing can reasonably be postponed until the Member is well enough to attend. The Club may decide that the matter can wait until the Member is well enough to attend the hearing, but should ensure that matters are not allowed to drag on, bearing in mind that the Member may not be the only individual with an interest in the matter being resolved. Alternatively, the Club may decide that it needs to proceed with the disciplinary hearing, but by way of alternative means, such as by telephone or video call, at a neutral location, or inviting the Member to submit written submissions and holding a hearing in their absence.

WHAT HAPPENS IF A MEMBER'S CHOSEN COMPANION IS UNABLE TO ATTEND A DISCIPLINARY HEARING?

Where a Member's chosen companion is unavailable for a good reason, it would be good practice for the Club to rearrange the hearing to an alternative date. Where the Member's chosen companion is not available for the re-arranged hearing, the Club should either consider rearranging

the hearing for a later time when the companion is available or insist that the hearing proceeds and invite the Member to either attend alone or bring an alternative companion.

The same points above would apply to attendance at appeal hearings.

HOW DO YOU CONDUCT A DISCIPLINARY HEARING?

The following steps are recommended:

- At the start of the hearing, the chair of the Disciplinary Committee should introduce those present and, if the Member is unaccompanied, remind the Member again of their right to be accompanied.
- The chair should ensure that the Member is comfortable, has read the Procedure and has received copies of any documentation that may have been sent to them. Any minute or note-taking arrangements should be discussed and confirmed. Make clear that covert recordings of the hearing are not permitted.
- A final check could be made as to whether any reasonable adjustments need to be made if the Member is disabled, although this should ideally have been addressed at the time the Club first contemplated arranging a hearing.
- The Chair should lead the hearing and should clearly set out the detail of the allegations that have been made against the Member. Any evidence supporting the allegations should be presented.
- The Member should be invited to ask questions as necessary.
- The Member should then be given a reasonable opportunity to respond to the allegations, present their version of events and produce any evidence in support.
- Once the Member has presented their case, the Chair should summarise the information put forward by both parties and any clarification from the Member should be requested at this point.

The Disciplinary Committee should be mindful throughout the process to remain polite and calm, which is sometimes easier said than done. The Member, who will inevitably be under stress, may react in a way not anticipated by the Disciplinary Committee and be bad tempered, angry, abusive or visibly distressed. The Disciplinary Committee should be sensitive to this and, if necessary, make sensible use of adjournments for time out and allow Members to regain their composure before continuing.

Once both sides of the case have been presented and there are no further questions, the hearing should ideally be concluded. The Disciplinary Committee should decide whether any follow up action is required. Issues that have been raised by the Member may require further investigation and witnesses may need to be re-interviewed. If new information subsequently comes to light then this should be given to the Member in writing, together with an opportunity to respond to it.

Avoid communicating an outcome at the end of the hearing. Bring the meeting to a close and advise that the decision will be communicated in writing once the Disciplinary Committee has had the opportunity to consider all of the evidence and form a decision. This ensures that proper consideration is given to what has been discussed at the hearing and that the Member can see that they have been treated fairly and reasonably. Announcing the decision immediately after the Member has finished speaking may suggest that the outcome was predetermined.

WHO CAN THE MEMBER BRING AS A COMPANION TO THE DISCIPLINARY HEARING AND ANY APPEAL HEARING?

Under the Procedure the Member has the right to bring a companion to a disciplinary or appeal hearing (but not to an investigation meeting). The Procedure does not impose any criteria or limitations on the choice of companion and therefore, the Member is at liberty to choose who they wish to accompany them, within reason. Although, the Procedure does reserve the right for the relevant committee to object to a chosen companion, if there are reasonable grounds for doing so (see below).

WHEN WOULD IT BE REASONABLE FOR THE DISCIPLINARY OR APPEAL COMMITTEE TO OBJECT TO A CHOSEN COMPANION?

An objection may arise where the Disciplinary Committee believes that the presence of the chosen companion may prejudice the hearing. This might occur, for example due to their connection with the investigation, any witnesses or involvement in the allegations made. The committee may have concerns regarding the companion's potentially disruptive behaviour or concerns regarding confidentiality or even for their own safety (e.g. if they fear the companion may become threatening, aggressive or violent). The Club may also want to prohibit a legally qualified person (such as a barrister, solicitor or legal executive) from attending as a companion.

In any event, the Club needs to adopt a consistent and fair approach as to who is allowed to attend as a companion and to also be mindful of any disabilities which the Member may have.

WHAT IS MEANT BY THE 'ON BALANCE OF PROBABILITIES' WHEN DETERMINING THE OUTCOME OF THE DISCIPLINARY?

The "balance of probabilities" essentially means that when making their decision, the Disciplinary Committee need to be satisfied, based on the evidence that the alleged misconduct, breach of rules etc. was more likely than not to have occurred. In other words, there was more than a 50% chance that the alleged act or omission occurred.

HOW DO YOU CONDUCT AN APPEAL BY WAY OF A REVIEW?

The appeal under the Procedure should take the form of a "review" of the original decision, rather than a full-re-hearing. In practice, this means that the Appeal Committee should review the original decision of the Disciplinary Committee and all of the evidence that the Disciplinary looked at in reaching its decision. The Appeal Committee should consider whether it was reasonable for the Disciplinary Committee to have reached the decision that it made. In doing so, it should consider whether there were reasonable grounds for the decision made by the Disciplinary Committee based on the evidence available to them at that time, whether the procedure was followed correctly and whether the penalty imposed was too harsh or disproportionate

WHAT RECORDS SHOULD BE MADE OF THE DISCIPLINARY AND APPEAL PROCEEDINGS?

The records should include:

- Details of the allegation(s) and the sanction imposed.
- Details of the investigation that was carried out and the evidence which came to light as a result.
- Copies of correspondence sent to the Member with enclosures.

- Notes from the disciplinary hearing and any appeal hearing.
- So far as possible, the rationale for decisions taken at various stages (including for example why it was decided that there was a case to answer in formal disciplinary setting, why the decision was made to issue the Member with a warning and not uphold his /her appeal and why you refused to allow the Member's chosen companion to attend).

If you have specific queries regarding the conduct of a disciplinary process, you may wish to seek support from Brabners LLP via the LTA Legal & Tax helpline on 03330 433232 and quote your LTA Venue Registration number.