

Discipline Process and Procedure

June 2021



1. Introduction

This appendix sets out the process and procedure for dealing with complaints which may fall under the Cricket Scotland Code of Conduct.

The objective of this process is to ensure that complaints are dealt with as far as possible in a manner which is:

- Fair
- Consistent
- Efficient, and
- Speedy

The Discipline sub-Committee and Discipline Panel in relation to a particular complaint:

- Has power to regulate its own procedure
- May waive any procedural requirements under this document

The Discipline Officer (DO) is responsible for managing the process and reporting the outcome and it should be clear who the designated person is.

2. Reports from Match Officials

It is expected that all reports from Match Officials, will be submitted in writing on a form – within seventy-two hours of a game taking place on Who's The Umpire (WTU). There should be discretion to accept non -standard reports or ones submitted outside the normal deadline if circumstances warrant this, by exception. Match Officials should also ensure that the captains and relevant player(s) are advised immediately after the conclusion of the match that a report will be made to the relevant body. The report will go to the relevant DO.

Consistency of format and approach should make the process easier.

Reports from Match officials fall into two categories:

a) Where the match officials consider that a Level One offence has been committed during a match and the relevant on-field penalty applied.

Matters at Level One are the equivalent of a caution/yellow card and shall not be subject to a right to either a hearing or an appeal unless there are exceptional circumstances such as mistaken identity.

Except in such exceptional circumstances, the matter is concluded by the submission of the report and the role of the DO is essentially an administrative one as follows:

- Acknowledge the report to the officials through WTU
- Confirm to the player and their club that a Level One offence has been reported and this will be recorded on the player's record
- The communication issued should highlight the need for the player and their club to read the Code of Conduct to understand how penalty points work; confirm there is no right to a hearing or appeal save in exceptional circumstances and that the matter will be recorded by the Association and by Cricket Scotland.
- The DO should intimate the finding for record purposes to Cricket Scotland.

b) All other matters reported by Match Officials.

The DO should take the following steps:

- Acknowledge the report to the Officials through WTU.
- Review the report and discuss the matter with the Discipline sub-Committee Chair/ a member of the sub-Committee and agree:
 - i. Whether a charge, or charges is/are warranted
 - ii. The Level and wording of the charge(s). This should be done as soon as possible and no later than seven days after the incident has arisen.

Should the proposed action be not to make a charge, or to make it at a different level from that of any on-field penalty imposed, this should be advised to the Head of Match Discipline at the Cricket Scotland Match Officials Association (CSMOA) with the reason for the decision.

Once the Level of charge and the charge have been determined by the Discipline Officer in conjunction with the Discipline sub-Committee Chair/a member of the sub-Committee the matter should be intimated to the player through their club. It shall be open to the DO to make non material changes to the complaint submitted. The player should be given seven days to respond. The report provided by the Officials should be included with the charge.

If the charge is at Level One, the automatic penalty should be included. For all other levels, the player should be advised to refer to the Code of Conduct in terms of the charge and the penalties that might be imposed. The player should be asked:

- i. Is the charge accepted and if it is, does the individual wish to make any representations in writing in mitigation? This applies only to matters at Level Two and above. It should be made clear that if the matter is admitted the Panel will take that into account when considering penalty.
- ii. If the charge is disputed the individual may make written representations in relation to matters and/or request a hearing in relation to a matter at Level Two, Three or Four. There is no hearing for a Level One matter.

If the matter has been accepted by the player, a Panel of three can decide the matter without a hearing (by email) and the Chair of the Panel should write the decision and arrange for the DO to issue the decision setting out the charge, the facts that have been accepted, the penalty being imposed and the reasons for that. It should be made clear that any appeal may only be in respect of the penalty. This only applies to matters at Level Two and above.

3. Reports from Players/Clubs/Third Parties.

Any complaint being made should be submitted on the relevant form and submitted within seventy-two hours of the matter taking place/the complainer becoming aware of it – the latter part is important in terms of potential complaints about the use of social media. It is acknowledged that there may be cases where it is impracticable to submit full details within 72 hours and in this case an initial intimation of a likely complaint should be made with the formal complaint made within 7 days.

It should be noted that this complaint process only applies to complaints relating to the conduct of individuals coming under the scope of the Code of Conduct.

The DO should ensure that the report has been raised timeously and should acknowledge it. The DO shall then in conjunction with the Discipline Sub Committee Chair/ a member of the sub-Committee if appropriate decide on the charge and the Level of the charge and intimate if the matter is at Level Two or above.

If the matter is deemed to be Level One, before any formal written process the individuals should be contacted and asked if they wish to try and resolve the matter by discussing the matter within the next fourteen days – mediation/conciliation.

If matters are resolved the matter is closed.

If matters are not resolved, then the Level One matter is put to the relevant individual(s) along with the proposed penalty and they are asked if they accept the charge or not. If they do, they should be asked for any written representations in mitigation; if they do not accept the charge, they should be asked for their written representations on why it is not accepted. A panel can then determine the matter by email. It should be made clear on intimation of the matter that because it is Level One there is no hearing and no right of appeal.

If the Discipline Officer deems the matter to be Level Two or above, then the same process as used for complaints from Officials at that Level should be used.

4. Hearings

Where a hearing is to take place, this should be arranged either in person or virtually, as soon as possible – within fourteen days unless there are exceptional circumstances. It is presumed that hearings will take place virtually, unless the Panel decides otherwise. The DO should arrange the Panel, taking account of any possible conflicts, and ensure they receive all relevant papers. It is the role of the DO to bring forward and to prove the case to the required level. Clarification should be sought from the player if they intend to bring any witnesses; the Chair of the Panel should consider whether any written or oral evidence from the officials is necessary. Any statements from witnesses or officials must be received at least 48 hours before a hearing.

- i. The Chair/an agreed person should take a formal written minute of the hearing, which should include:
 - the charge and its level
 - the facts as determined by the Panel based on the evidence submitted
 - the decision of the Panel, giving reasons for their decision and the penalty imposed
- ii. The Chair of the Panel should sign off agreement and it should be noted if the decision was unanimous or not.
- iii. The standard of proof shall be balance of probability.
- iv. The penalty must be within the range prescribed for the relevant charge and level as stated in the Code of Conduct.
- v. As part of the decision-making process, it shall be possible for the Panel to substitute a reduced Level and Charge, provided that this relates to similar conduct breach and to reach a decision based on that if that is warranted having considered the evidence.
- vi. The Chair/an agreed person should intimate the decision and a note of reasons for the decision and confirm the rights to an appeal. The appeal is time limited in terms of the Association constitution (see Paragraph 12.1.1) and only applies to the person(s) charged with the code of conduct breach. Subject to any appeal the final decision should be recorded by the Association and intimated for record purposes to Cricket Scotland.

5. Appeals

The Appeals sub Committee will be made up of three individuals who have not been involved in the original decision.

The Administrator will run the process, not the Discipline Officer.

Appeals must be made in writing to Cricket Scotland within seven days of the intimation of the decision. A deposit of £ 100 should be lodged with the appeal; the deposit will be refunded if the appeal is successful.

The ground(s) for appeal must be clearly stated, and whether the appeal is against the decision, the penalty or both. An appeal is not a fresh hearing, and can only be made on the basis that:

- i. The process has not been followed in a material way which has been prejudicial to the outcome
- ii. Fresh evidence has emerged which was not available to the original hearing
- iii. There has been demonstrable bias in the decision making
- iv. No reasons/lack of reasons for the decision have been provided
- v. The decision is one which no reasonable panel could have reached

The Appeals Sub-Committee will consider whether the grounds of appeal are competent and, if so, consider them.

The hearing will be held virtually unless the Sub Committee Chair otherwise decides and will normally be held within 7 days of the Appeals sub Committee being formed for the appeal. The appellant will be entitled to attend the hearing in support of their case, and the sub-Committee Chair may request any additional information or evidence in writing for proper consideration of the appeal.

The Appeals sub Committee may:

- Uphold the original decision(s)
- Substitute an alternative order which the original Panel would have been open to impose
- Remit the matter back to the original Panel, or a fresh Panel for reconsideration of it on such grounds as the Appeal sub-Committee advise.

The Chair/an agreed person should take a formal written minute of the hearing, which should include:

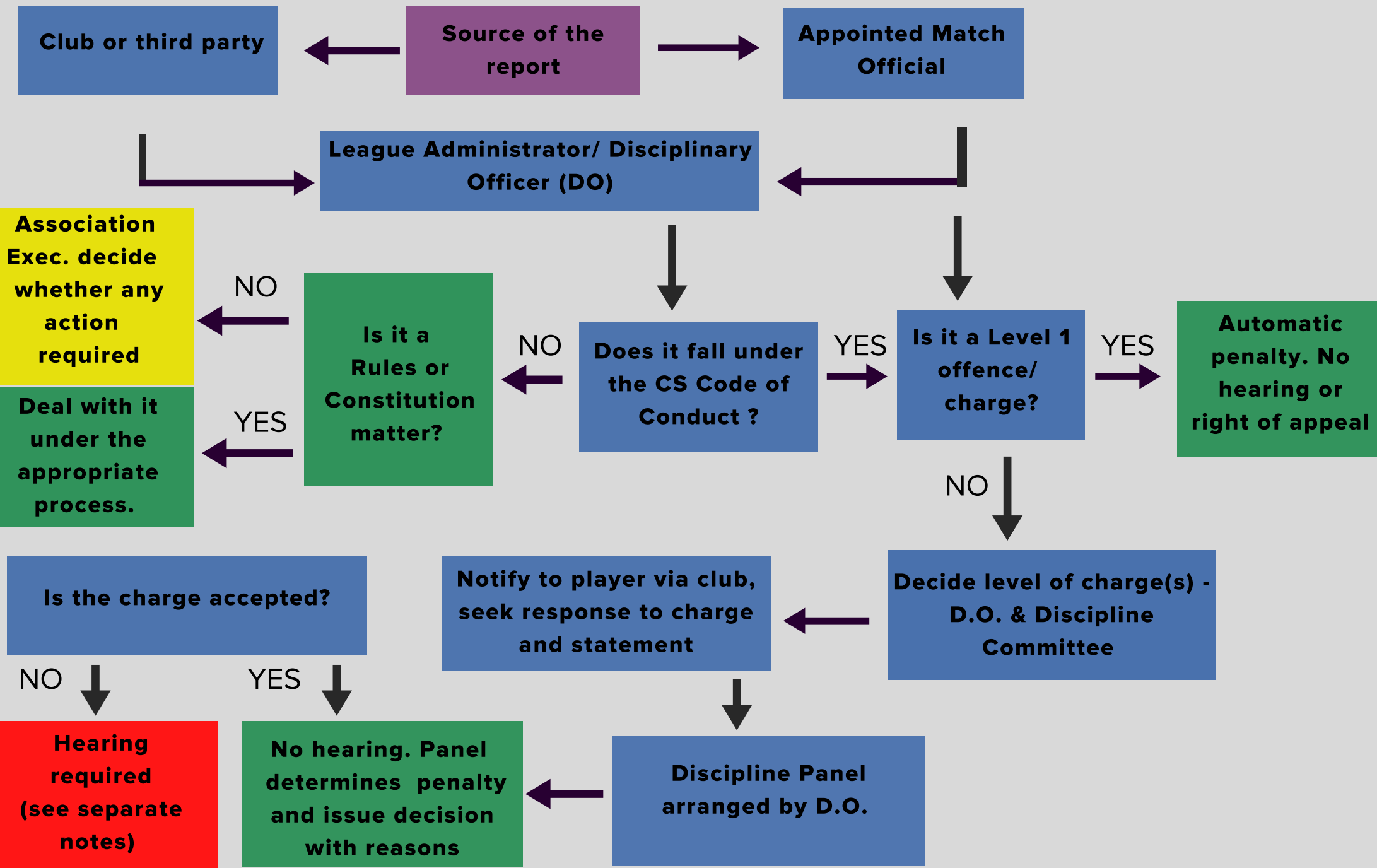
- the original decision
- the basis of the appeal
- the considerations of the Panel based on the evidence submitted
- the decision of the Panel, giving reasons for their decision and the penalty imposed

The Chair of the Panel should sign off agreement and it should be noted if the decision was unanimous or not.

The Appeals sub Committee will give their decision with reasons within 7 days of the hearing in all but exceptional circumstances and will advise if this is the case. The decision will be communicated to the appellant as soon as practicable.

There is no further right of appeal following the decision of the Appeals Panel.

DEALING WITH REPORTS DISCIPLINARY PROCEDURE FLOWCHART



HEARING AND APPEAL PROCEDURE GUIDANCE NOTES

***These notes are intended as a brief summary of suggested good practice and not as a wholly prescriptive process.**

HEARING

- **The Discipline Officer (DO, who could be the Secretary, Administrator or a separate person) is responsible for administering the whole process including a hearing if required. The DO will liaise with the Chair of the Disciplinary Committee (DC) in determining the charge level.**
- **Where a hearing is required, the default position is to do this “virtually”, as soon as possible and within 14 days of the report unless there are exceptional circumstances. The DC Chair will have the final decision on this. All written representations including witness/match official statements must be received no later than 48 hours before a hearing.**
- **The Discipline Officer should arrange the Panel, taking account of any conflicts, and ensure they receive all relevant papers. Clarification should be sought from the player if they intend to bring any witnesses; the Chair of the Panel should consider whether any written or oral evidence from the officials is necessary.**
- **A hearing is not a court of law, and the decision of the Chair of the Panel on its procedure shall be final, subject to basic principles of fairness and natural justice being followed.**
- **A formal minute of the hearing must be taken and it should be agreed in advance who will do this. The minute should include:**
 - **The charge and its level per the Code of Conduct**
 - **A summary of the evidence presented and the facts as determined by the Panel based on the evidence submitted**
 - **The decision, with reasons, and the penalty imposed.**
 - **The standard of proof should be balance of probability**
- **The Panel may decide having considered the evidence to substitute a reduced Level and Charge provided it relates to similar conduct breach.**
- **The Chair or agreed person should intimate the decision and confirm right to appeal, which should be time limited. The DO should record the outcome and ensure it is notified to relevant parties.**

APPEALS

- **The appeal must be in writing, and state whether the appeal is against the verdict or the penalty and state the grounds for appeal.**
- **An appeal should be considered by a completely different panel to those who have made the original decision.**
- **The appeal should not be a re-run of the original case but should be based on one or more of the following principles :-**
 - **The original decision was based on a material misunderstanding of the facts or was one that no reasonable Panel could have arrived at.**
 - **New evidence, which could not reasonably have been made available at the time of the original decision, is now available**
 - **There was fundamental procedural error in applying the Code of Conduct or the Association Rules, or no reasoning provided for the original decision.**