

Appeal Tribunal Procedure

Purpose

This Appeal Tribunal Procedure (**Procedure**) explains how Appeal Tribunals under the Report and Complaint Resolution Procedure are set up and how they will run. Also see the flow chart in Annexure 1 for guidance.

Scope

This Procedure applies to any appeal against a Hearing Tribunal decision relating to a Complaint or review of a disputed Breach Notice under the Report and Complaint Resolution Procedure.

Definitions

Where capitalised words are used, if not defined within this Procedure, the definition in the Report and Complaint Resolution Procedure will apply.

Step 1: Referral to Appeal Tribunal – Notice of Appeal

An Appeal Tribunal may be triggered and formed under the Report and Complaint Resolution Procedure only where there is a right of, and legitimate grounds for, an appeal.

There may be a right of appeal to an Appeal Tribunal where a Hearing Tribunal:

- has made a decision regarding a Complaint; or
- has made a decision regarding a disputed Breach Notice, i.e. confirming that this stands or changing any Sanction(s).

There is one right of appeal only in relation to a particular matter.

Permitted grounds for an appeal are:

- the Hearing Tribunal did not follow the correct process/procedures and this resulted in unfairness; and/or
- the decision was clearly unreasonable, not justified or did not have a proper basis based on the evidence and information available to the Hearing Tribunal.

Only a Complainant or Respondent may appeal.

No appeals will be allowed following a Hearing Tribunal review of interim action, in this instance, the Hearing Tribunal decision is final.

A person seeking to appeal a Hearing Tribunal decision (**Appellant**) must give written notice of their intention to seek an appeal within 48 hours of the relevant Hearing Tribunal decision by sending a 'Notice of Appeal' to the relevant managing Cricket Organisation.



The Notice of Appeal must:

- identify the decision being appealed;
- clearly state the grounds of appeal relied upon; and
- be provided to the relevant managing Cricket Organisation.

Step 2: Pay appeal fee and submit written appeal grounds

Within seven (7) days of sending the Notice of Appeal (or a shorter timeframe if urgent) the Appellant must:

- pay an appeal fee of \$250; and
- send a written summary of their grounds of appeal

to the relevant managing Cricket Organisation.

If these requirements are not met on time, the appeal is taken to be withdrawn.

Step 3: Appointing the Appeal Tribunal

As soon as feasible after receiving a Notice of Intention to Appeal, and receiving the appeal fee and grounds, the relevant managing Cricket Organisation should appoint an Appeal Tribunal to hear the appeal.

The Appeal Tribunal will consist of three (3) people.

The people sitting on an Appeal Tribunal will be:

- selected from a panel of people approved in advance by the relevant managing Cricket Organisation; and
- appointed by a member of the Board, Committee or executive within the relevant managing Cricket Organisation (tasked with that responsibility) to sit on the specific Appeal Tribunal.

When appointing Appeal Tribunal members, the following should be considered:

- fairness and independence;
- diversity and inclusion; and
- any skills or experience relevant to the subject matter of the Complaint (or interim action review, if applicable).

Appeal Tribunal members must not:

- be on the Board or Committee of the Cricket Organisation that appointed the Hearing Tribunal or Appeal Tribunal;
- have any conflict interest (or perceived conflict of interest) - Appeal Tribunal members must disclose any actual or perceived conflict of interest and a member with a conflict must not take part in the decision - a replacement member should be appointed if required;
- have a relationship with the Complainant or Respondent or any witnesses that could reasonably affect their impartiality.

One Appeal Tribunal member will be appointed as the Appeal Tribunal Chairperson by the relevant managing Cricket Organisation.



Step 4: Preliminary assessment

An early check may be carried out by the Appeal Tribunal Chairperson to decide whether the appeal should in fact proceed (i.e. decide if there is a valid right of appeal and whether there are valid grounds for an appeal). If so, an appeal hearing should be scheduled. If not, no Appeal Tribunal process should go ahead. Any decision to not proceed with an Appeal Tribunal must be made as quickly as possible, objectively and fairly and the Appellant should be notified of that decision in writing and the reasons for it.

Step 5: Notice of Appeal Tribunal hearing / decision-making process

The Appellant and any other relevant parties involved will be given written notice by the Appeal Tribunal (through the Chairperson) of:

- the method for deciding the appeal (a hearing with parties involved and attending or only based on written evidence and documents); and
- if there is to be a hearing, when and where the hearing will take place and format of the hearing (in person, by telephone, online or via video conference).

In some circumstances, the Appeal Tribunal may not hold a hearing and instead decide an appeal based solely on documents (e.g. based on written submissions, witness statements and documentary evidence), as long as Appeal Tribunal members still consider this will be fair and there is still a right of response and opportunity to provide sufficient materials to the Appeal Tribunal to clearly put forward a party's position. The Appellant may respond and raise concerns if this method is nominated by the Appeal Tribunal. The Appeal Tribunal will consider any response or concerns raised and then decide how to proceed, including deciding whether a hearing is more appropriate based on the response.

The Appeal Tribunal will also provide written notice (through the Chairperson) of any requests for written submissions or other material or evidence that the Appeal Tribunal considers may be required for the appeal and the timeline for provision.

Step 6A: Appeal hearing process (if an appeal hearing is held)

The Appeal Tribunal decides how the hearing will be run, provided it is fair.

An appeal hearing will be informal, fair and efficient. It will be conducted respectfully. It will be focused on the appeal grounds only.

The Appeal Tribunal must:

- act fairly and impartially;
- not have any conflict of interest or bias;
- give each party a reasonable chance to be heard and to respond; and
- take a Child-Focused Approach or make other appropriate reasonable adjustments for a Vulnerable Person where applicable.

An appeal is a review of the original Hearing Tribunal decision, not a completely new hearing. The appeal hearing will generally follow the same procedural format as the original Hearing Tribunal. However, the appeal does not start again fresh from the beginning. It is not a re-hearing, where the case is re-run with new evidence or witnesses.



The Appeal Tribunal will consider and base its decision on the same evidence and materials that were available to the original Hearing Tribunal and the original Hearing Tribunal's findings, decision and reasons. The appeal considers whether the original Hearing Tribunal decision was correct, reasonable, fair and properly made based on the evidence already available and what was known at the time.

Witnesses and new witness statements are not generally permitted for an appeal. The original witness statements provided to the Hearing Tribunal and notes, records or any transcript of witness evidence will be shared with the Appeal Tribunal.

The Appeal Tribunal may ask for submissions to be provided by the Appellant or any other relevant party (written or verbal).

The Appeal Tribunal may ask questions or seek clarification.

Legal representation is not required and generally will not be permitted, unless the Appeal Tribunal has approved a request for legal representation (given the nature of the allegations or other relevant circumstances).

Any party involved in an appeal hearing may bring and have a Support Person present. Their Support Person may not speak on their behalf unless permitted by the Chairperson of the Appeal Tribunal. The Support Person is not there as an advocate and must not be a Legal Representative.

Where needed, the Appeal Tribunal may allow an Interpreter or Translator to assist a party during the appeal hearing. This may be someone neutral who volunteers their time approved by the relevant managing Cricket Organisation or may be a paid Interpreter or Translator, paid for by the relevant managing Cricket Organisation.

The Appeal Tribunal will decide how much importance to give to the available evidence, witness statements and submissions by considering:

- relevance;
- consistency; and
- reliability.

If a party fails to attend or participate without reasonable excuse, the Appeal Tribunal may still go ahead in their absence and decide the matter on the available information.

Appeal Tribunal proceedings must be recorded in writing, in accordance with record-keeping requirements under the Report and Complaints Resolution Procedure.

Step 6B: *No appeal hearing held and decision based on documents alone*

As set out above, in some circumstances, the Appeal Tribunal may not hold a hearing and instead decide an appeal based solely on documents (e.g. based on written submissions, witness statements and documentary evidence), as long as Appeal Tribunal members still consider this will be fair and there is still a right of response and opportunity to provide sufficient materials to the Appeal Tribunal to clearly put forward a party's position.

If this method of decision-making is adopted, the Appeal Tribunal will decide how much importance to give to the available evidence, witness statements and submissions by considering:

- relevance;
- consistency; and
- reliability,

in reviewing available material and considering its decision and findings.



Step 7: Appeal Tribunal decision

After considering the appeal grounds and available evidence (and any submissions), the Appeal Tribunal will decide the appropriate findings and outcome.

The Appeal Tribunal must decide whether the original Hearing Tribunal decision should:

- stand (be upheld);
- be varied (change the decision or parts of it); or
- be overturned or set aside (whether all or part of it).

The Appeal Tribunal may:

- dismiss the appeal;
- confirm the original Hearing Tribunal decision, including any Sanction(s) or recommended actions;
- reduce, increase, vary or set aside (i.e. remove) the original Sanction(s) or recommended actions; or
- impose any new Sanction(s) permitted under the Report and Complaint Resolution Procedure.

Possible Sanctions are listed in the Report and Complaint Resolution Procedure.

The Appeal Tribunal will decide the matter:

- based on the balance of probabilities (what is more likely than not);
- based on any Relevant Policies or Code(s) of Behaviour (if applicable); and
- based on the available evidence.

The Appeal Tribunal will make its decision as soon as practicable, whether at the conclusion of the appeal hearing or within a specified timeframe after the appeal hearing. The parties should not be present while the Hearing Tribunal considers its decision.

Appeal decisions are final.

Step 8: Notification of decision

The Appeal Tribunal will provide its decision and brief reasons in writing as soon as feasible after making a decision to:

- the relevant managing Cricket Organisation;
- the Appellant; and
- the original Complainant.

The relevant managing Cricket Organisation must notify any other affected Cricket Organisation(s).

Step 9: Implementation of outcome(s)

The relevant Cricket Organisation will be responsible for implementing any required actions or outcomes (including enforcing any Sanctions). A timeframe for compliance may be specified by the Appeal Tribunal in its decision.



Costs and appeal fee refunds

Appeal Tribunals should be run in a way that keeps costs as low as possible.

The relevant managing Cricket Organisation will be responsible for reasonable costs that may be incurred with convening and hosting an Appeal Tribunal hearing.

The Appellant is required to pay a \$250 appeal fee to initiate an appeal, as set out in Step 2 above.

If an appeal is successful (i.e. the original decision Hearing Tribunal decision is varied in a material way or dismissed / overturned), 80% of the appeal fee (being \$200 of the \$250 appeal fee) will be refunded to the Appellant.

If the appeal is not successful, the \$250 appeal fee will be retained by the relevant managing Cricket Organisation to cover any costs associated with the appeal and its administration.

Each party pays their own costs for their own role and involvement in a hearing (e.g. if they seek legal advice or legal assistance with submissions, transport, parking, photocopying etc). The relevant managing Cricket Organisation will, however, pay the costs of an Interpreter or Translator where applicable.

The Appeal Tribunal has no power to award costs.

Confidentiality

Appeal Tribunal proceedings are confidential.

All Appeal Tribunal members and other people present at an appeal hearing or involved in an Appeal Tribunal process or decision must:

- keep the appeal hearing and all related information confidential; and
- only share information where permitted by the Report and Complaint Resolution Procedure or law.

Records and reporting

The relevant managing Cricket Organisation must:

- record the final outcomes carefully;
- keep records of Hearing Tribunal matters for at least seven (7) years; and
- store all documents, decisions and Sanctions securely and confidentially.

Outcomes or Sanctions may be published or recorded as a Non-Game Incident on PlayHQ (or any substituted system).

Interaction with external processes

Appeal Tribunal proceedings do not prevent a party from pursuing external remedies (if applicable). The Appeal Tribunal process may be paused while external proceedings are underway, where appropriate.



Inconsistencies

If there is any inconsistency between:

- a Cricket Organisation's constitution, policy or procedure; and
- this Procedure and the Report and Complaint Resolution Procedure,

this Procedure and the Report and Complaint Resolution Procedure take priority for all Complaints handled under them.



Annexure 1: Appeal Tribunal Flowchart

