

Hearing Tribunal Procedure

Purpose

This Hearing Tribunal Procedure (**Procedure**) explains how Hearing 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 Complaint, disputed Breach Notice or review of interim action that may be referred to a Hearing Tribunal 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 Hearing Tribunal

A Hearing Tribunal will be formed under the Report and Complaint Resolution Procedure where:

- a Respondent disputes a Breach Notice relating to a Complaint (disputing findings and/or Sanctions);
- there is direct referral to a Hearing Tribunal due to:
 - a Complaint involving allegations of a possible Serious Breach or allegations that are complex and/or high risk (including involving integrity or safety concerns, Discrimination, Harassment or Abuse);
 - concerns as to possible conflicts of interest if other Complaint Resolution Process pathways are used; or
 - fairness or transparency requiring an independent determination; or
- a Respondent seeks to review any interim action taken under the Report and Complaint Resolution Procedure, on specified grounds to be notified in writing by the Respondent to the relevant managing Cricket Organisation.

Note: Where appropriate, the referring Cricket Organisation may engage the National Sports Tribunal (**NST**) to administer a tribunal, with any associated costs to be borne by the referring Cricket Organisation. That is a separate process, conducted by the NST and governed by NST procedures. This option will not be available for a review of interim action.

Step 2: Appointing the Hearing Tribunal

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

The people sitting on a Hearing Tribunal will be:

- selected from of a panel of people approved in advance by the relevant managing Cricket Organisation;
- 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 Hearing Tribunal.

When appointing Hearing 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).

Hearing Tribunal members must not:

- be on the Board or Committee of the Cricket Organisation that appointed the Hearing Tribunal;
- have any conflict interest (or perceived conflict of interest) - Hearing 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 Hearing Tribunal member will be appointed as the Hearing Tribunal Chairperson by the relevant managing Cricket Organisation.

Step 3: Preliminary assessment (excludes review of interim action)

An early check may be carried out by the Hearing Tribunal Chairperson to decide whether a Complaint should in fact proceed to a Hearing Tribunal or if it should more appropriately be handled through an Alternate Resolution Pathway or should be discontinued and closed.

The Hearing Tribunal Chairperson may decide the Complaint:

- is only a personal grievance;
- is a minor breach;
- is frivolous, vexatious or malicious; or
- should be dealt with under another policy or procedure by another body.

If so, no Hearing Tribunal process should go ahead. Any decision to not proceed with the Hearing Tribunal process must be made as quickly as possible, objectively and fairly.

If the Complaint is minor or better handled elsewhere, it may be redirected or returned for alternative handling. Alternatively, the matter may be closed.

Step 4: Notice of Hearing Tribunal hearing

For a Complaint, the Respondent and other relevant parties involved will be given written notice by the Hearing Tribunal (though the Chairperson) of:

- the alleged Prohibited Conduct and/or breach of a Relevant Policy or Code of Behaviour (including details as to when and where it is alleged to have occurred and what is alleged to have happened);
- a copy of the Complaint;
- if a Breach Notice is being disputed, a copy of the Breach Notice;
- when and where the hearing will take place and format of the hearing (in person, by telephone or online via video conference).



For a review of interim action, the Hearing Tribunal (through the Chairperson) will confirm the interim action the subject of review and the Respondent's stated grounds for challenging it, as well as when and where the hearing will take place and format of the hearing.

Reasonable advance notice should be given to the parties (and at least 4 days) in advance of the scheduled hearing. The Chairperson of the hearing Tribunal will set the hearing date and time. People should seek to make themselves available wherever possible. If a Complainant or Respondent is not available, they should immediately notify the Hearing Tribunal (via the Chairperson) in writing. Alternative arrangements to better accommodate availability may then be explored by the Hearing Tribunal.

A hearing must be scheduled as soon as reasonably feasible.

Step 5: Witnesses and witness statements

A Complainant or Respondent may request involvement of witnesses who have relevant information about a Complaint. A request should be directed to the Chairperson of the Hearing Tribunal for their consideration and response.

The Hearing Tribunal may decide to limit the number of approved witnesses, provided that the process remains fair and efficient. This decision will also be guided by the nature of evidence a witness can provide and its relevance. The Hearing Tribunal may also decide that a matter can be decided without witnesses, including given available documents. The Hearing Tribunal will communicate its decision on these aspects to the parties in writing.

Witnesses and witness statements will not be permitted for a review of interim action.

Witness evidence should usually be provided in the form of a written witness statement. A written witness statement should:

- be factual and based on what the witness directly saw, heard or experienced;
- be written in the witness's own words; and
- include the witness's name and relationship (if any) to the parties.

Witness statements must be provided within the timeframe given by the Hearing Tribunal for lodging any witness statements and must be shared with the other party or parties.

The Hearing Tribunal will decide whether any witnesses may required to attend a hearing (in person or remotely) or if the Hearing Tribunal will rely on a witnesses' witness statement only (without them needing to attend).

Step 6: Written submissions (optional)

A Complainant or Respondent may request an opportunity to provide written submissions to the Hearing Tribunal. The Hearing Tribunal will respond (through the Chairperson) as to whether submissions will be allowed or not and the timeframe for providing them. The Hearing Tribunal may also request written submissions within a specified timeframe if they consider this will assist a fair and efficient process.

Written submissions should set out a person's position and the key things they rely on, for example:

- relevant facts;
- supporting documents (including any witness statements, if witnesses are approved);
- other relevant circumstances or context; and
- desired outcome.

A Respondent may also include any mitigating factors that might reduce severity.

Any written submissions must also be shared with the other party (or parties).



Step 7A: Hearing process (if a hearing is held)

The Hearing Tribunal decides how the hearing will be run, provided it is fair. This includes:

- holding hearings in person, by phone, via video conference (Teams/Zoom or similar); and
- allowing any witnesses to participate (with the Chairperson's approval);

The Hearing 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.

For a Complaint (including a disputed Breach Notice), the purpose of the hearing is to decide:

- whether Prohibited Conduct and/or a breach of a Relevant Policy or Code of Behaviour occurred;
- if so, whether a Sanction should be imposed (and what any Sanction(s) should be);
- if a Breach Notice was issued and disputed, if the Breach Notice should stand, be varied or be dismissed.

For a review of interim action, the purpose of the hearing is to decide:

- whether the interim action taken was appropriate in the circumstances to reasonably address the risk(s); and
- whether the interim action should stand, be varied or be withdrawn.

The Hearing Tribunal Procedure is informal and intended to be discussion-based and resolution focused rather than confrontational. The Hearing Tribunal is not required to follow strict formal rules of evidence. It may consider any material it considers is relevant and reliable. It may exclude material that is irrelevant, repetitive or unfair.

Each party will be given a reasonable opportunity to:

- explain their position; and
- respond to questions from Hearing Tribunal members.

The Hearing Tribunal members may ask questions and seek clarification at any time.

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

The Hearing Tribunal may adjourn (pause/break) proceedings if additional information is required, due to a party or witness not being available or fairness requires more time. Adjournments are discretionary and not automatic – the Hearing Tribunal members will decide if there is to be any adjournment and when the process will resume.

The hearing may involve:

- the Complainant(s) (if applicable);
- the Respondent(s) (including if reviewing interim action);
- the Cricket Organisation; and
- any approved witnesses (if applicable).



Any party or witness involved in a 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 Hearing Tribunal. The Support Person is not there as an advocate and must not be a Legal Representative.

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

The Hearing Tribunal controls how parties and witnesses participate and may ask questions of any party or witness.

Witnesses may be asked questions by:

- the Hearing Tribunal members; and
- the parties, if allowed by the Hearing Tribunal Chairperson.

The Respondent(s) and Complainant(s) may also be asked questions by the Hearing Tribunal members. They may also be asked to respond to or clarify matters raised by witnesses or other evidence.

Questioning will be respectful and focused on clarification, not confrontation.

The Hearing 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 Hearing Tribunal may still go ahead in their absence and decide the matter on the available information.

Hearing Tribunal proceedings must be recorded in writing (including electronically), in accordance with record-keeping requirements under the Report and Complaints Resolution Procedure.

Step 7B: No Hearing held and decision based on documents alone

In some more sensitive circumstances, or where other factors make it appropriate, the Hearing Tribunal may not hold a hearing and instead decide a Complaint based solely on documents (e.g. based on written submissions, witness statements and documentary evidence), as long as Hearing Tribunal members still consider this will be fair and there is still a right of response and opportunity to provide sufficient materials to the Hearing Tribunal to clearly put forward a party's position.

This might be appropriate where, for example:

- there are safety concerns;
- there is a risk of intimidation;
- trauma is involved;
- a party has, on a reasonable basis, requested it (and the other party's rights will not be undermined); or
- the parties agree.

Parties will be advised (in writing) if a matter is to be decided in this way.

If this method of decision-making is adopted, the Hearing 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 8: *Hearing Tribunal decision*

After considering the available evidence, the Hearing Tribunal will decide the appropriate findings and outcome.

Possible outcomes for a Complaint may include:

- dismissal of the Complaint;
- confirmation or variation of an earlier decision, including in a Breach Notice (if applicable);
- recommendations for corrective or remedial action(s); or
- imposition of Sanctions.

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

Possible outcomes for a review of interim action may include:

- confirmation of the interim action taken;
- variation of the interim action taken; or
- a finding that the interim action taken was disproportionate or unreasonable and should be varied or withdrawn.

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

Decisions are final subject to any appeal rights under the Report and Complaint Resolution Procedure and Appeal Tribunal Procedure (or other Relevant Policy).

Step 9: *Notification of decision*

For a Complaint, a written decision (with reasons and recording any actions required) will be provided to:

- the relevant managing Cricket Organisation;
- the Complainant; and

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

For a review of interim action, a written decision with reasons will be provided to the Respondent/person seeking the review and relevant Cricket Organisation who took/imposed the interim action.



Step 10: Implementation of outcome(s)

The relevant managing 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 Hearing Tribunal in its decision.

Implementation will be paused if there is a right of appeal available and an appeal is lodged, until the appeal is decided.

Costs

Hearing 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 a Hearing Tribunal hearing.

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, as set out above.

The Hearing Tribunal has no power to award costs.

Confidentiality

Hearing Tribunal proceedings are confidential.

All Hearing Tribunal members and other people present at a hearing or involved in a Hearing Tribunal process or decision must:

- keep the 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

Hearing Tribunal proceedings do not prevent a party from pursuing external remedies (if applicable). The Hearing 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: Hearing Tribunal Flowchart

