

ECB GUIDELINES ON THE CONDUCT OF HEARINGS AND APPEALS

Natural Justice

The rules of natural justice are the minimum standards of fair decision-making imposed on persons or bodies acting in a judicial capacity. The rules of natural justice consist of the following elements:

- (i) The right to a fair hearing
- (ii) The rule against bias

1. The right to a fair hearing

The right to a fair hearing requires that an individual shall not be penalised by a decision affecting his rights or legitimate expectations unless he has been given prior notice of the case against him and a fair opportunity to answer the case against him and to produce his own case.

(a) Prior notice of the hearing

The accused person should be given adequate notice of the allegations against him and of the procedure to be followed so that he may be in a position to make representations on his own behalf, to prepare his own case and to answer the case against him. The time and location of the hearing must also be properly notified to the reported person.

(b) Opportunity to be heard

The reported person has a right to attend the hearing and be allowed to present his case. If the Disciplinary Panel is satisfied that the reported person has been given adequate notice of the alleged breach and of the time and location of the hearing, they may allow the hearing to proceed if the reported person fails to attend. However, it may not be justifiable to proceed if the time or location fixed for the hearing is such that the person cannot reasonably be expected to attend. Within the Model Discipline Regulations it states that "at least seven days' notice in writing of the hearing and of the offence(s) alleged shall be given to the player, or in the case of a club, its Secretary".

2. The rule against bias

A person adjudicating on a dispute must have no pecuniary or proprietary interest in the outcome of the proceedings and must not reasonably be suspected, or show a real likelihood, of bias.

The rule against bias also provides that a party should not normally be judged by his accuser.

Conduct of Hearing

Within these Guidelines words importing the singular shall include the plural and vice versa, and those importing the male shall include the female, and vice versa.

1. A complaint is received by either the General Manager of the League or the Chairman of the League Disciplinary Committee who decides to refer the matter to a Disciplinary Hearing.
2. The Hearing is conducted by at least three persons (the Panel) appointed by either the Chairman of the League or the Chairman of the League Disciplinary Committee. No-one connected with the individual or the club, or their opponents, or a club which might directly benefit from any disciplinary action (e.g. by the deduction of points), should be a member of the Panel.
3. The accused person/club should be notified of the offence(s) alleged against him/them and the time and location of the hearing. The notification should be in writing, include all relevant documentation and give at least seven days' notice.
4. The accused person is entitled to be supported by a colleague. There is no right to legal representation but the Panel would normally permit the accused person to be legally represented. However, the attendance or otherwise of the legal representative should not be used as a 'delaying tactic'.
5. If the complaint has been made by the umpires, they should be available to give evidence at the hearing.
6. Witnesses should not be present in the room at the outset but should be called in individually to give their evidence at the appropriate time. (Ideally, a separate waiting area should be provided for each party).
7. The Chairman should open the hearing and introduce all the parties. He should then briefly outline the procedure to be followed.
8. The charges against the accused person/club should be specified.
9. Witnesses should be called individually and asked to give their evidence. The Panel may question the witnesses. The accused person (or representative)/club may question the witnesses.
10. The accused person/club should be asked to give his/their account and may call witnesses. The Panel may question the witnesses.

Once the witnesses have given their evidence and answered any questions, they should either leave the room or, with the permission of the Chairman, they may remain but should take no further part in the hearing.

11. The Panel may question the accused person/club.
12. The Panel should deliberate in private. The Panel's decision should be by majority vote; where necessary the Panel Chairman shall have a casting vote.
13. The accused person/club should be called back in and the Panel should give their decision as to whether the case is proved or not proved. If proved, the accused person/club should be asked to give any mitigation which might affect the Panel's decision as to sentence, if they have any discretion in this area.
14. The Panel should consider the sentence in private.
15. The accused person/club should be called back in and the Panel Chairman should announce the sentence. The accused person/club should be made aware of the Appeals Process, particularly the time within which an appeal should be lodged.
16. The decision of the Disciplinary Panel and if appropriate the penalty should be communicated to the accused person/club in writing within 21 days.

Appeals Process

1. Notice of appeal against the decision of the Disciplinary Panel, whether as to verdict or sentence, to be given in writing to the General Manager of the League within 7 days of the decision of the Panel. The notice of appeal should record the decision or part of the decision against which the appeal is made and the grounds and basis of the appeal.
2. Any penalty imposed by the Disciplinary Panel should not take effect until the appeal has been heard.
3. The appeal must be heard by a different Panel from those who sat on the original Disciplinary Panel. The Appeal Panel must consist of not less than three people, none of whom should be connected with the individual or the club or their opponents, or a club which might directly benefit from any disciplinary action (e.g. by the deduction of points).

4. An appeal against the verdict should take the form of a complete re-hearing. The accused person or club shall have the same rights of attendance and representation and the ability to call witnesses as they did at the first hearing.
5. At an appeal against the sentence, the accused person or club shall have the same rights of attendance and representation as they did at the first hearing.
6. Decisions of the Appeal Panel shall be by majority vote with the Chairman having a casting vote where necessary. The decision of the Appeal Panel is final and binding.
7. The Appeal Panel can confirm the Disciplinary Panel's decision, vary it or reverse it. It has the power to increase the penalty and award costs.
8. The decision of the Appeal Panel and if appropriate the penalty should be communicated to the accused person/club in writing within 21 days.