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Re: DISCIPLINARY PROCEDURE

30/10/2017

To the Club President,

Over the past few months there has been an increase in the number of disputes which have been referred to BSA for adjudication. In considering these matters it is evident that various aspects of the disciplinary procedure are being incorrectly applied at Clubs. The aim of this communication is to provide a brief synopsis of the various components of a disciplinary procedure and to serve only as a guideline and framework around which Clubs are to formulate a disciplinary procedure which is legally compliant.

The various aspects which will be addressed are:

- Code of conduct
- Composition of the Committee
- Procedure
- Laws of Natural Justice
- Sanctions

1. CODE OF CONDUCT:

It is recommended that Clubs formulate a code of conduct which sets out various offences as well as the sanctions relating to such offences. Keeping in mind that a Club's authority to discipline its members arises only through its constitution, it is essential that the code of conduct be incorporated into the constitution. The Code of Conduct must be formulated to include the various forms of misconduct and the possible sanctions relating to the misconduct. A practical recommendation is to

draft the code of conduct to include different categories of offences and provide the corresponding recommended sanction for such offences.

2. **COMPOSITION OF THE COMMITTEE:**

A Club's constitution must contain the procedure and mechanism to be followed in selecting the Disciplinary Committee. It is important to strive to keep this Committee as independent as possible, as it is this Committee who will make the recommendations to the Executive Committee of the Club regarding their findings as well as the recommendation of the appropriate sanction. It should be noted that the Disciplinary Committee **does not** have the authority to impose a sanction on a member. The Disciplinary Committee's function is to ensure that the correct procedure is followed and that an appropriate sanction is then recommended to the Executive Committee. The Disciplinary Committee need not be members of the club and may be appointed on an ad hoc basis by the Executive Committee.

3. **PROCEDURE:**

The disciplinary procedure of a Club commences at the time of the laying of charges against a member(s). An example of this procedure is available on the BSA website. There are however certain aspects which need to be highlighted as they are the essential elements in ensuring that the procedure is both substantially and procedurally fair. In order to comply with the basic principal of fairness a disciplinary procedure must adhere to the two rules of natural justice being *nemo iudex idoneus in propria causa est*, which means that no person is fit to be the judge (or witness) in his own cause, and *audi altram partem*, which means that all parties must be given an opportunity to be heard. It should now become clear why the Disciplinary Committee should be selected as independent as possible in order to ensure compliance with the *nemo iudex* rule. Once appointed, the Disciplinary Committee can give directions on the procedure to be followed, provided the laws of natural justice are adhered to.

3.1. **NOTICE:**

The aggrieved party must provide a written complaint to the appropriate Executive Member (usually the Secretary), setting out brief explanation of the facts upon which the complaint is founded. The Secretary will assist the complainant in completing the correct documents; including the notice to the accused person. The Executive Committee will then appoint the Disciplinary Committee; who will attend to the matter.

Remember: a member may only be charged with an offence which is stipulated in the Constitution of Code of Conduct.

3.2. REASONABLE TIME:

The accused must be provided with notice of the disciplinary hearing within a "reasonable time". This means that not only must the notice be given as swiftly as possible after the complaint has been received, but must also provide the accused with sufficient time within which to prepare for the hearing. It is advisable that a maximum time limit be set, within which to lodge a complaint in order to avoid members being held hostage by an ongoing threat of lodging a complaint.

3.3. CONDUCT THE HEARING:

The appointed Disciplinary Committee will conduct the disciplinary enquiry by following the procedure set out on the BSA website.

3.4. RECOMMEND SANCTION:

The Chairperson of the Disciplinary Committee will then; after consultation with the other appointed members; make recommendations to the Executive Committee regarding the appropriate sanction. No club should be allowed to impose a ban on any member of more than 1 year and only BSA should be empowered to impose a lifetime ban on any member.

4. SANCTIONS:

In the event that a member is found guilty of an offence, the appropriate sanction must be imposed. What is of importance is that the sanction must be appropriate in the sense that the sanction must be relative to the specific offence and must be justified in the specific circumstance when considering all the background facts and evidence. A sanction must not only serve to punish the offender but must serve as a deterrent to other members and may also be aimed at rehabilitating the offender.

5. APPEAL:

It should be mandatory that all disciplinary procedures include the right to appeal. The appeal should be directed first to the District and thereafter to BSA. The appeal to BSA should only be allowed by a District except where the District fails or refuses to direct an appeal to BSA; within 30 days; after having received such a request from a Club / affiliate member / person.

NOTE:

There are many finer aspects of the disciplinary procedure which are too detailed to address herein. This does not mean that they are not of importance. Should any Club / District wish to obtain any further information regarding this topic, they are welcome to contact Thomas Minnie at the e-mail address provide above.

Thomas Minnie Attorneys
Per: T. E. Minnie