

Principles of Natural Justice

GUIDELINES

The rules of natural justice are the minimum standards of fair decision-making imposed on persons or bodies acting in a judicial capacity. Where the relevant person or body is required to determine questions of law or fact in circumstances where its decisions will have a direct impact on the rights or legitimate expectations of the individuals concerned, an implied obligation to observe the principles of natural justice arises. However, in the Code of Conduct there is an express requirement (in Section G 8) on the Adjudicator to conduct any hearing in accordance with the principles of natural justice.

In the event of a hearing taking place or a decision being reached which breaches the principles of natural justice, the person charged may seek a review of the hearing and/or decision in the courts.

The following are guidelines of natural justice. If an Adjudicator is in any doubt as to the procedure he is proposing to adopt he should take legal advice.

The rules of natural justice consist of the following elements:

- a. The right to a fair hearing; and
- b. 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, a fair opportunity to answer it and the opportunity to present his own case.

Each individual must have the opportunity to present his version of the facts and to make submissions on the relevant principles of the Code of Conduct and the allegations against him.

The right to a fair hearing involves the following:

1.1 Prior notice of the hearing

Natural justice generally requires that the person charged should be given adequate notice of the allegations against him and of the procedure for determining the alleged breaches of the Rules of Conduct so that he may be in a position to make representations on his own behalf, to appear at the hearing, to effectively prepare his own case and to answer the case against him.

The time and location of the hearing must be notified to the person charged. In any event there is a requirement under Section G 2 to give details of the time and place of the hearing at the same time the particulars are given in accordance with Section G 1.

In determining when the hearing should be the Adjudicator should have in mind:

- i) the requirement in Section G 2 that it be held as soon as reasonably practicable and where the hearing falls under the jurisdiction of the Referee, within 36 hours of notification under Section E; and
- ii) the requirement in Section G 5 that the person laying the charge, the person charged and the Adjudicator shall give each other notification of the evidence they shall refer to at the hearing, at least 2 hours before the hearing;
- iii) the seriousness of the alleged breach; and
- iv) the likely amount of evidence and ease, or otherwise, of obtaining such evidence.

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The detailed provisions for notifying a person who has been reported as being in breach of the Rules of Conduct appear in Section E. It would be prudent to ensure that the persons who need to be notified in accordance with that procedure are notified as soon as possible.

In accordance with Section G 1, the Adjudicator should aim to provide the particulars of any alleged breach as soon as possible. The 15 hour period has been provided to allow for breaches which may have occurred off the field of play or outside the precincts of the ground, where it may take more time to collect the necessary information to be able to provide the particulars required in Section G 1.

If any person charged requests, under Section G 6, that any of the provisions of Section G are waived the Adjudicator, in exercising his discretion whether or not to accept the request, shall pay particular regard to the nature of the offence and whether the person charged wishes to accept the charges against him. If the offence is not serious (relative to the various breaches of the Rules of Conduct which may be alleged) the Adjudicator ought to allow the request. If the person charged wishes to accept the charges against him and the Adjudicator does not need to consider detailed, or any, evidence to determine the appropriate sanction the request should also be granted. Each request, however, should be considered on its own merits.

1.2 The opportunity to be heard

The person charged has a right to attend the hearing and be allowed to present his case, as provided for in Sections G 9 and G 10.

Where the person charged does not attend at the time and place of which he was given notification in accordance with Sections G 1 - G 3 the Adjudicator has a discretion whether or not to proceed. This is confirmed in Section G 10. In deciding whether to proceed in the absence of the person charged, the Adjudicator must consider whether he is satisfied the person charged was aware of the time and place for the hearing, whether the time and place for the hearing was such that the person charged could reasonably attend and whether there is any indication the person charged was under any misapprehension as to the time and place for the hearing. The Adjudicator should also have regard to whether or not he was able to give details of the time and place of the hearing to the person charged in accordance with Section G 3, or whether such notice was given only to the person to whom notification was given in accordance with Section E.

1.3 The conduct of the hearing

The conduct of the hearing is a matter to be determined by the Adjudicator. This is confirmed in Section G 8. The overriding objective the Adjudicator should have in mind, when deciding how the hearing should be conducted, is that the person charged has a proper opportunity to consider, challenge or contradict any evidence, is fully aware of the nature of the allegations against him and has a proper opportunity to present his own case.

Generally when an oral hearing is conducted the parties must be allowed to call witnesses and cross examine the witnesses called by others. This is confirmed in Section G 16.

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Sections G 14, G 15 and G 17 enable the Adjudicator to adjourn the hearing if, in his discretion, he considers that it is appropriate to do so. In deciding whether to adjourn the hearing, and if so for how long, the Adjudicator should, as an overriding objective, have in mind the requirements that the person charged is fully aware of the allegations and evidence against him and that he has a proper opportunity to prepare and present his case.

1.4 The right to legal representation

The Adjudicator has an absolute discretion, confirmed in Section G 11, to allow a person charged to be represented at the hearing by a legally qualified person.

An Adjudicator is entitled in the exercise of his discretion to refuse to allow the person charged to be legally represented at the hearing if the alleged breach of the Rules of Conduct is not serious (relative to the various nature of possible breaches) and where it is unlikely that a severe sanction (relative to the various sanctions available) will be imposed.

If a person charged seeks and is allowed to have legal representation, the Adjudicator is entitled to seek his own legal advice. This would be by exercising the discretion in Section G 17.

If the Adjudicator has obtained legal advice, whether before or during the hearing, and the person charged asks that his legal representative be permitted to attend the hearing and make representations on his behalf, the Adjudicator should not, unless the legal advice he received is not relevant to any matter in issue at the hearing (especially where the advice taken relates to a purely procedural matter), refuse the request.

1.5 The decision and the reasons for it

The details of how and when the decision should be given are provided for in Section H. In particular the Adjudicator should note that there is a requirement in Section H 3 that the Adjudicator give reasons for both his decision and the sanction he is imposing and that section H 2 requires that the decision be given as soon as possible but, in any event, no later than 24 hours after the hearing finishes.

2 THE RULE AGAINST BIAS

The two main aspects of this rule are that 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 Adjudicator must be able to show that he has conducted a full enquiry into the circumstances involved before making his decision as to whether a breach of the Rules of Conduct has occurred and, if so, what sanction should be imposed.

There should be no suggestion in his conduct of the hearing that prior to its commencement he has irrevocably decided the outcome.