

# COMPLAINTS, APPEALS, EXPULSIONS AND OTHER DISCIPLINARY HEARINGS

## Disciplinary Subcommittee; Complaints Panel Appeals Panel, Expulsions and Disqualifications Panel

*Proposal: that a new disciplinary system described within this document be ‘piloted’ as set out below, for 6 months from the 2019 AGM, and the resulting data should be evaluated by the NC for consideration of changes to the Constitution by the membership at the 2020 AGM*

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*This document assumes a degree of familiarity with the Constitution of the BKA; it may be helpful to read ‘Document 4’ circulated recently by the Chair “Everything you always wanted to know about the Constitution but were afraid to ask”. The proposed changes refer to the revised 2019 Constitution – both Doc 4 and a summary of the changes to the Constitution (Document 3) can be found in the Management section of the BKA website.*

## 1.0 Introduction

### 1.1 What is the current system?

The relevant sections of the Constitution are:

- Article 10- suspension and expulsion of members
- Article 11- suspension, expulsion, disqualification of officers
- Article 13- Complaints and Appeals procedure

The current system involves:

1. Hearing of complaints by a subcommittee from a different Bu (BuCC)
2. Hearing of appeals by the National Committee Appeals Committee (NCAC, ie the Chair, Vice-Chair (VC), 3 Dojo Reps Committee (DRC) Chairs
3. The NC suspend and then the case for expulsion goes either to an EGM or the AGM for 'hearing' by the wider membership.

There are 3 Bu complaints committees (**BuCC**) drawn from 3 panels of 5 people from each Bu i.e. a pool of 15 people. 3 people sit on any one case. In practice, there have been 3 panels of 3 as the same people tend to sit on each panel.

Additionally, the NC Appeals Committee (**NCAC**) acts as the hearing Panel for appeals. Unless it recommends expulsion as a sanction on an appeal, it is not normally involved in the expulsions process. It consists of 5 people. There are therefore between 14 and 20 people (plus Complaints Officer) currently involved in the running of complaints/ disciplinary matters in the British Kendo Association (BKA).

**Expulsion** : Currently, the NC suspends a member or officer and refers the question of expulsion direct to the membership for hearing at an EGM or an AGM. The evidence is heard at the AGM by the membership who attend which could be 100-200 people, and the matter is decided by vote. In the 2019 revised Constitution the Defendant member is allocated 15 minutes to defend themselves (extendable by votes every 15 minutes).

### 1.2 Why do we think the system needs to change?

(a) **Skills set:**

Most of the people involved in the current process are already doing another job as Bu or NC officers. People are elected for their ability to carry out their main role and may not even be aware that they are taking on responsibilities for hearings which need different skills.

(b) **Work overload:**

They are also likely to be overloaded with work. This is not only unfair on the volunteer officers but may introduce delays into the complaints system. This applies to the NCAC hearing appeals as well as to the BuCC.

(c) **Delay:**

(i) Delay is likely where one BuCC is hearing several complaints at the same time. This has occurred recently, resulting in considerable delay to individual cases. While these delays are understandable, they are not in the interests of either the participants or the BKA. If someone is accused of malpractice, long delays have significant detrimental implications not only for the individual but for the reputation of the BKA. Justice delayed is justice denied.

(ii) The short notice for calling an EGM may make it difficult to obtain a quorum, despite the recent reduction in the number required for this. There needs to be a physical meeting because the member or

officer should have the chance to have the evidence heard. Therefore this means in practice that cases might only be heard once a year at an AGM which could leave a person suspended for a long time before the case is resolved.

**(d) Balance between the Bu:**

Currently the NCAC acts as the appeals panel for the BuCC. Currently on the NCAC, there is at least one representative from each Bu (the DRC Chairs) but the other two members' Bu affiliations are random as they are elected.

**(e) Natural justice:**

Under the 2017 Constitution, the NCAC also acts as a tribunal for appeals against suspension of NC officers. It is composed of some of the same people who have made the decision to suspend. This ought to be avoided because it raises inherent conflicts of interest and offends against the principle of Natural Justice that "No-one should be a judge in his own cause".

In the proposed 2019 Constitution this has been avoided (Article 11.12 and 11.13) by removing the suspended officer's right of appeal. While we understand that this was done as a matter of practicality, it cannot be right to deal with a systemic problem by removing individual rights rather than by seeking to improve the system. The new Article 11 means that the officer's case might take up to a year to resolve, leaving the suspended officer with no redress for that time. Given that the officer has been elected by the membership to represent them, this is not ideal.

**(f) Separation of Powers:**

The NC is essentially the executive, or governmental, arm of the BKA, whereas hearing disciplinary cases is 'quasi-judicial', or more like a jury. The part of the organisation which makes the rules should be separate from the part that decides if the rules have been broken. The fact that all powers do not rest with one body acts as a safeguard for anyone subject to the disciplinary system.

**(g) Problems with 'trials' at AGMs:**

- There are natural justice implications when time pressures at an AGM make it virtually impossible for cases to be properly heard.
- It is intimidating for most people to defend themselves in front of hundreds of people and this has unpleasant 'show-trial' overtones.
- Unless the case is quite simple, there is likely to be extensive background reading. Where a significant % of those present haven't read it, this has stopped matters being heard in the past. It is too cumbersome to have a jury of 100+ people.

### **1.3 What is the alternative proposal?**

We propose replacement of the current system with a Disciplinary Subcommittee (DSC) from which panels can be drawn to hear complaints, appeals and other disciplinary matters. The complaints, appeals, and disciplinary panels could be drawn from a pool of 9 people. Although the pool would be common to all 3 panels, the same people would not sit in the same cases, to avoid people appealing their own decisions.

This section deals with the general proposal and the principles involved. There may be several different ways of achieving the aims of this proposal. The details, choices and reasoning is set out in detail in Appendix 1.

**A. Replacing the BuCC with a 3 person DSC complaints panel (CP):**

The complaints panel would operate in much the same way as it does now, except for a change in personnel. It would be composed of 3 people, one from each Bu rather than, as now, 3 members of a different Bu to the complainant.

### ***B. Replacing the NCAC with an Appeals Panel (AP)***

The AP would take over the NCAC's role as an appeal panel for complaints appeals. This would work in a similar way to the present complaints appeals system. (See appendix 4 for details). It would also deal with appeals from decisions of the Child Protection Officer.

### ***C. Replacing the current system of referral by the NC direct to AGM with an Expulsions and Disqualifications Panel (EDP)***

The EDP would have a role in hearing the evidence in expulsions and disqualifications cases referred to it by the NC. It would then report to the membership at the AGM who would make the final decision **on the basis of facts found** by the EDP. Members therefore retain the power of the final vote, but based on a report from the EDP covering the following:

- summary of evidence heard
- findings of fact
- reasons for decision
- recommendations / sanctions

The written evidence considered by the EDP should also be available at least 7 days in advance of the AGM to interested members on a private area of the website, in the interests of transparency.

In all variations of this proposal, the actual hearing of evidence would take place at the EDP rather than at the AGM. The parties would still have a proper opportunity to contest the evidence. This might not be as extensive as a court case would be, but would provide a better opportunity for meaningful consideration rather than a short slot at the AGM.

The Chair of the EDP could be available at the AGM to answer members' questions about the report; but generally there should be a basic principle that there should be as little discussion at the AGM as possible. All the hearing of evidence will have been done in advance. The AGM should only allow further discussion if:

- The expulsion paper calls for further discussion (unlikely in the case of gross misconduct).
- Someone is bringing something new to the proceedings (unlikely if all the processes have been followed).

It would be the expectation that the case would be based on clear, objective and extensive evidence and that the EDP report would summarise the evidence heard as well as the 'findings of fact' drawn from any such evidence. This should remove the need for extensive discussion at any AGM.

The proposed expulsions procedure is putting the defendant member on the same footing as someone subject to a complaint (i.e. the right to a proper hearing). As expulsions are serious it cannot be right for a person to have fewer rights than they would in a complaint, as they do currently.

In Articles 11.12 and 11.13 of the Constitution, where the grounds for suspension or expulsion are "an inability to sustain a relationship with the NC", we accept that the matter must go direct from the NC to the membership. Whilst not ideal, due to the inherent problems with EGM quorums, in this specific instance the matter probably does need to be decided by members because it is effectively a choice between the suspended member and the rest of the NC and only the members can resolve this and decide who to trust in representing them.

Expulsions which go through the complaints route (ie the CP or AP have heard a case and recommended expulsion) can be referred direct to the membership at the AGM rather than having a further hearing by the EDP.

This proposal does not add an additional layer of bureaucracy or administration to the current system - the 'layer' is already there- this is just replacing it with a system involving different personnel.

The fact that we are a small Association should not of itself be a reason not to aim for procedures which are reasonable and fair to all concerned. This is not intended to be a 'court level service'; it is a question of finding a balance between the rights of members and officers, and what is reasonably workable.

#### **1.4 How will the alternative system address the current problems?**

- (a) Having different personnel to Bu and NC officials would enable recruitment of people with the specific skills needed for complaints determinations (as set out in Appendix 3).
- (b) There are benefits in having a 1st stage complaints procedure that is separate from the Bu, to relieve the workload of Bu officials, and a similar argument for appeals, given the workload of the NC.
- (c) Under the proposed scheme there could be a hearing much sooner and reinstatement, if the case were not proven, rather than waiting for the next AGM.
- (d) Balance between the Bu could be considered in any panel selection.
- (e) Natural justice: it will be possible to avoid overlap of roles and people judging appeals from their own decisions.
- (f) 'Separation of powers' forms part of the checks and balances which are beneficial in a democratic Association. Setting up an independent panel helps avoid any perception of partiality in situations where there might be a possibility of bias.
- (g) Avoiding trials at the AGM is better for both the member under threat of expulsion (Defendant), and for the BKA as a whole:
  - Defendant would still have the right to a full hearing and be able to respond to any accusations at the panel hearing
  - There would be more time available than would be the case at an AGM.
  - If the charges were dismissed, Defendant could be immediately reinstated and the details of the charges and evidence would not need to be disclosed to the membership.
  - The facts of the matter would be settled earlier.
  - The membership would not have to plough through dozens of pages of evidence.
  - It might shorten the running time of the AGM.

## **2.0 What are the options?**

There might be several options for how the DSC should be constituted, to whom it should report, quorums and how much of the final decision is taken by the membership at the AGM. There is not necessarily a right or wrong answer, but a range of options all of which have advantages and drawbacks. Some put the emphasis more on speed of determinations, certainty and ability of the NC to oversee things; others on member democracy and checks and balances on the power of any one part of the BKA. These options are discussed in detail in Appendix 1.

Once the principle of having a separate system has been piloted, the conclusions of the pilot will inform further proposals as to the technicalities. More than one alternative scheme could be put to the membership at the 2020 AGM, to allow the Membership to choose the principles they want to reflect.

### 3.0 Pilot scheme- why not just implement change?

A disciplinary system is inherently complex. As these are significant changes, we propose that the scheme should be 'piloted' for 6 months, and the results sent to the NC for evaluation. The NC would then report to the 2020 AGM with recommendations. This would allow the new scheme to be assessed on its merits, based on evidence of how it might operate in practice and willingness of members to participate.

Suitable adjustments could also be tried if there are aspects which do not work well in practice. Alternatively, if it is concluded that it would not be practicable in the long term to run such a system, this would be evidence which might be useful in finding a complaints procedure (including the current one) which is the right 'fit' for an organization of the size and scope of the BKA.

### 4.0 How will the pilot work?

The proposal is currently that working with 9-15 volunteers (ideally 3- 5 from each Bu), we should, over 6 months, run an exercise based on a number of constructed complaints, appeals and expulsion scenarios. This material could be used later in training for future panel members.

A co-ordinator will report to the NC, who may recommend a course of action to the 2020 AGM; accept, reject or amend the changes in the light of the data gathered. The matter will then be for the Membership to decide.

Please see **Appendix 2** for details.

Possible role descriptions are in **Appendix 3**.

Example technical changes to the constitution based on the suggestions of the authors are set out in **Appendix 4**.

### 5.0 Conclusions

We would ask the NC and Bu to consider supporting a pilot scheme along the lines proposed by fielding 3 participants as a control team.

We intend to run the pilot scheme from September 2019 to March 2020 with a view to any substantive changes being put to the 2020 AGM.

The intention, as stated, is to find a workable solution to some of the difficulties the Association's disciplinary system has encountered in recent years, and to ease the burden on existing officers by seeking to diversify the personnel involved in the system and create more specialized roles. A pilot scheme would assist the Association in making decisions about this complex area of its Constitution by providing data about how changes might take effect in practice.

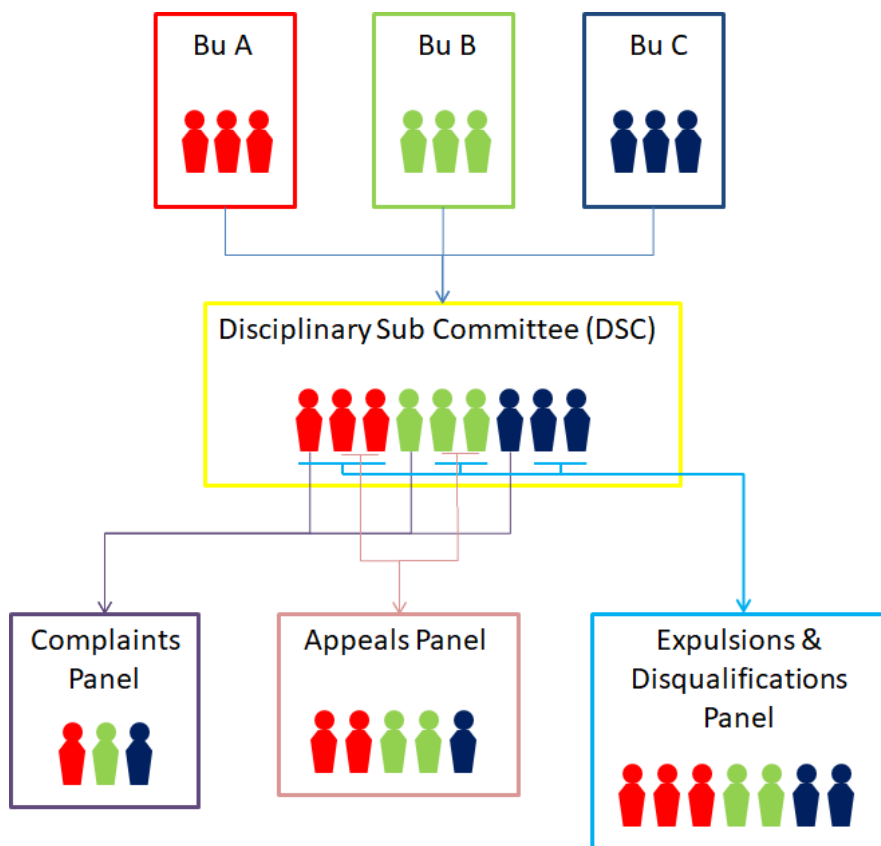
The scheme is not 'set in stone' and the authors would welcome constructive feedback and suggestions.

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## APPENDIX 1: Details and options

### 1. Introduction:



The basic proposal is to replace the current system with the following:

- That there should be a pool of 9 people (the DSC) - 3 from each Bu.
- They should be elected.
- To serve for a term determined by hearing 2 cases - the first as a member and the second, when more experienced, as Chair of a panel.
- Panels of 3 (one from each Bu) will hear complaints (the DSC Complaints Panel or 'CP').
- From these 9 people, 5 would serve as an Appeals Panel for complaints; they would not be the same people as heard the complaint (The AP)
- For expulsions, the NC would refer a case to an Investigating Officer who would present it to a panel of 7 (the Expulsions & Disqualifications Panel picked from the 9: 'The EDP'). A report would go to the AGM, and the membership would make the final decision.
- If the NC disagrees with the EDP decision then they can also put in a report to the AGM.
- Where the grounds are that the relationship between the NC and an officer has broken down this is not resolvable by any 'court' and must go direct to the AGM.

Our proposal decisions have been based on some of the considerations of options set out below.

### 2. Options

In order to decide how to set up a system like this in practice, you need to find a balance between several principles,

which are all good in themselves but not always compatible:

- a. Independence of Panels
- b. Efficiency and Workability
- c. Democracy
- d. Need for one body to have oversight and overall responsibility (NC)

Within these principles there are several issues that need resolving:

- (i) Constitutional set-up
- (ii) Election or co-option of officers
- (iii) Extent to which the membership decide matters at an AGM

**(i) There are 2 ways in which this panel could be set up:**

As an ***independent committee*** which is autonomous in the same way that the Bu are autonomous:

- The **advantages** of this are that the Panels would be completely independent of the NC and that the NC would not be responsible for their decisions.
- The **disadvantages** are that the Association already has 4 'managing committees'. Adding an autonomous judicial committee would make 5. This would require additional constitutional rules for the regulation of the relationships between the NC and the Panels. It therefore could be argued that it adds an additional layer of bureaucracy to the BKA.

As a ***subcommittee of the NC***:

- **Advantages** - this is a simpler structure which can be accommodated by minor changes to the Constitution, because currently the BuCC and NCAC are both subcommittees of the NC. It leaves the NC with overall oversight of the Association in line with the principles of the Constitution.
- **Disadvantages** - there may be a perception that the Panels are less independent. This is because it is a principle of constitutional law that the NC would remain liable for any decisions of subcommittees. Therefore, it must be right that the NC should have the chance to express its opinion on any decision made by the Panel. In our view this is not necessarily a bad thing; but should be subject to a requirement that in the event of a dispute between the NC and EDP, that the reports of both must be put to the Membership. The expectation would be that any power to alter sanctions or not to approve a DSC complaints panel, AP or EDP decision would be exceptionally rare and would need to be justified. It is essential that there should be transparency of any decisions made.

The proposals below and in Appendix 4 are based on the subcommittee arrangement.

**(ii) Election or co-option or both?**

**Election by whom?**

Election should be at the Bu AGM. There needs to be an option to co-opt panel members as necessary or in the event of unfilled posts.

**Arguments in favour of election:**

- Election is democratic and may give the panel more legitimacy: It is an established principle of the Association and specified in **article 3** of the Constitution, that the Chair of a committee, at least, should be an elected official.
- If it is accepted that there should be an elected Chair, and **all** panel members are co-opted, then the Chair would have to come from existing elected officers- most likely a major officer of the NC (rather than someone closely connected to one Bu)- this could possibly be perceived to undermine the independence



- of the panels.
- Election by the whole membership may be a good way of avoiding appointment by a faction and accusations of cronyism.

**Arguments in favour of co-option:**

- May be a more certain route to ensuring that people who are on the panel have the skills they will need, e.g. ability to think analytically and logically, and to set out clear reasons, as well as understanding about confidentiality etc.
- NC can remove co-opted panelist if it turns out that an individual is incompetent, unable to deal with the workload or cannot keep things confidential. In practice this rarely happens.
- The NC are themselves elected by the Members on the basis that they trust them to act on their behalf.

**'Mixed' option:**

It would be possible to have a proportion of any of the panels being co-opted; for example an elected chair, with the rest of the members being split between elected and co-opted. That way there is some direct accountability to the membership, but also the ability to recruit more widely and people who may be qualified but less well known. The elected must be able to outvote the co-opted.

**Conclusion:**

In our view, the legitimacy conferred on the panel members is important and therefore all members of the panel ought to be **elected** if possible. Co-option would need to be retained for any posts that were unfilled, but the posts should be re-advertised at the next AGM. If possible elected officers should outnumber co-opted officers on panels. The requirement to ensure that people elected have the right skills may be assisted by clear guidance on the role and what to look for when voting.

**Term of holding posts:**

We suggest that terms of office should be 3 years and that the panellists should be able to stand for 2 terms.

The pool of 9 people would elect the Chair of the DSC each year from amongst themselves.

**(iii) The extent to which decisions are taken by the Membership**

There are a range of options to deal with what type of disciplinary matters the Membership decide as final arbiter.

Currently:

- Expulsions are decided by the Membership at an AGM.
- Removal of office proposed by the NC goes to the AGM.
- Removal from office as a complaints appeal are sanctioned by the NCAC - it isn't clear if it should go to the AGM for ratification.
- BuCC and NCAC sanctions from complaints, such as disqualification from office, censure etc and other recommendations are not voted on at the AGM.
- If a motion for disqualification from office is put by the membership it is heard at the AGM
- If the NC overturn a complaints decision by the BuCC or NCAC it is unclear what rights the membership have for a say on this or to be informed that this is the case (rather than just being informed of the outcome of the complaint).

We consider that there ought to be more logical consistency in what does and doesn't get referred to the AGM and that this should depend more on the issue being referred, rather than the body doing the referring.

The **advantages** of decisions made by an EDP not being further appealable are certainty and dealing with matters more quickly. The case is decided by people with full information about it.

The **disadvantages** are that it is much less democratic; it has always been a principle of the BKA that the Members should ultimately set the expectations for the behaviour of members and officers. It is in the interests of justice for there to be ratification by the Membership as a protection for the Defendant against grounds which are popularly thought to be too narrow or minor, or in exceptional circumstances if the NC has become dominated by a faction of people pursuing a vendetta.

Expulsion and disqualification are matters which obliterate or seriously affect the rights of a member, and in those cases in our (majority) view it is right that the Membership should remain involved in taking decisions of such magnitude.

Our suggestion therefore is:

- Serious matters affecting the rights of the individual such as expulsion, disqualification, banning or removal from office, should always be decided ultimately by the Membership at the AGM
- But, based on a report by the EDP, this should be available at least 7 days before the AGM.
- The evidence would not be heard at the AGM; the EDP would do that and make findings of fact and recommendations as to appropriate sanctions
- The NC would have the right to accept or reject the EDP's findings. They could make their own recommendation to the AGM if necessary, together with a report explaining the reasons. All reports would be available to the membership in advance of the AGM on the Members Documentation area of the website. The members can decide based on both reports.

Some situations would need to go direct to the membership:

- Where the issue is suspension of an officer on the grounds of a breakdown in the relationship with the NC. This needs to go directly to the membership because it is a choice between the officer and the NC and not amenable to a 'court hearing'.

Situations reported to the AGM but not decided by the membership:

- Where there has been a reprimand or censure or other minor sanction or recommendation by the complaints panel (equivalent of the BuCC) or AP ( equivalent of the NCAC) if appealed, the decision would be final and reported to the AGM as complaints outcomes are now.

### **3. How the Committees would work- further details:**

**The Complaints Panel** would operate in the same way as the BuCCs now, on the procedure contained in Article 13 (as revised.) The advantages of replacing the BuCC would be:

- To ease the burden of work on Bu officials who are mostly very busy with other Bu matters
- To allow the Members to elect those with skills related to complaint handling and resolution if possible; would allow a diverse range of participants on Panels.

Other than a change of personnel, the CP would operate in a similar way to the BuCC and handle the same range of complaints against members and officers and would retain the same powers of recommendation. It would, therefore, be logical for it to continue to report to the NC. The terms for appeal against a decision would be the same, with the addition of an **automatic right of appeal** should the NC decide not to follow the recommendations of the complaints panel.

The National Appeals Committee (which itself is a subcommittee of the NC) would be **replaced** by an **Appeals Panel** drawn from the same pool of people as the DSC Complaints Panel. It would operate in the same way as the NCAC

does now on complaints appeals and would deal with other miscellaneous functions currently undertaken by the NCAC, such as appeals against decisions of the CPO (Child Protection Officer).

**Function of the Appeals Panel:**

**Under Article 13, to act as the final appeal tribunal on complaints;**

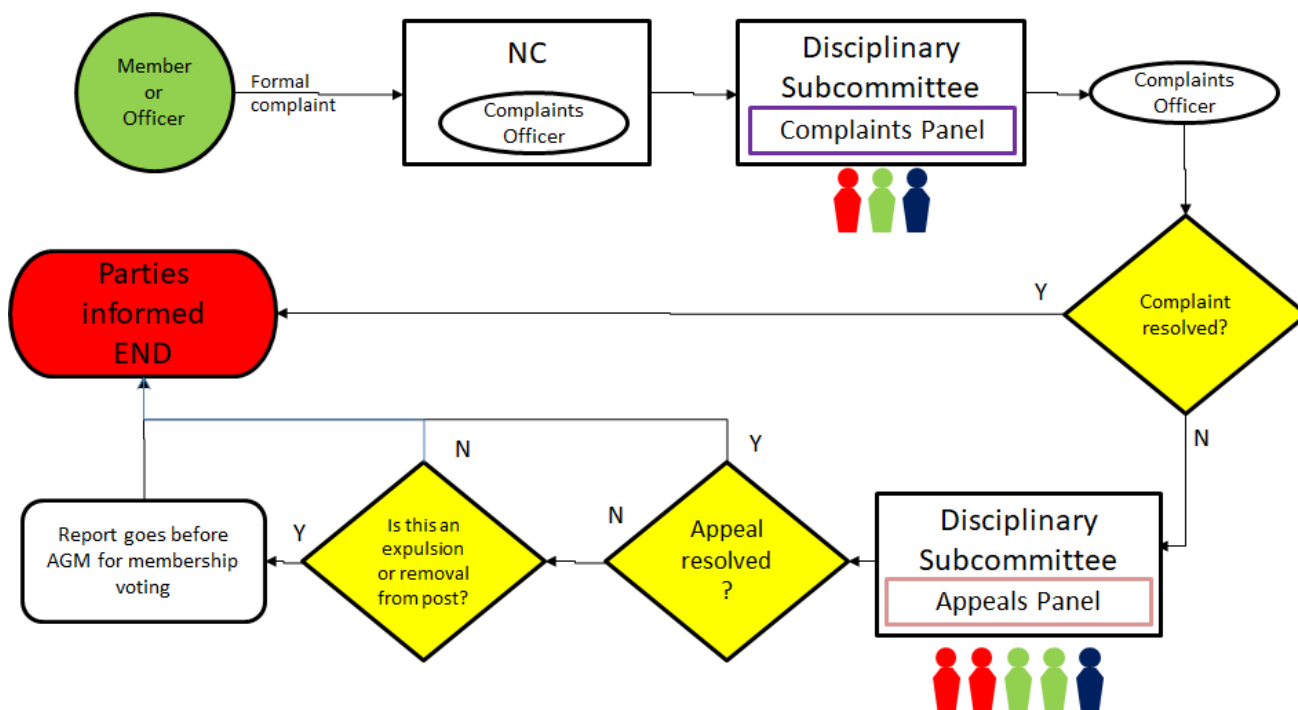


Figure 1.

- The AP would replace the current NCAC on similar procedures to the existing ones.
- However, as appeals usually proceed by way of a review of the Complaints Panel decision rather than a re-hearing of the evidence (unless there are exceptional circumstances), appeals should normally be dealt with 'on paper' by way of further written submissions and the original evidence, rather than an oral hearing.
- If there is a need for a re-hearing (e.g. new evidence) the matter could either be heard by the AP or sent back to the original Panel for this to occur.
- It is proposed that the AP should consist of 5 people and that they should be different people from those who heard the original complaint.

**Function of Expulsions and Disqualification Panel:**

**Under a new Article 13a, to act as a tribunal for the hearing of serious disciplinary matters (disqualification/expulsion) to be referred by the NC.**

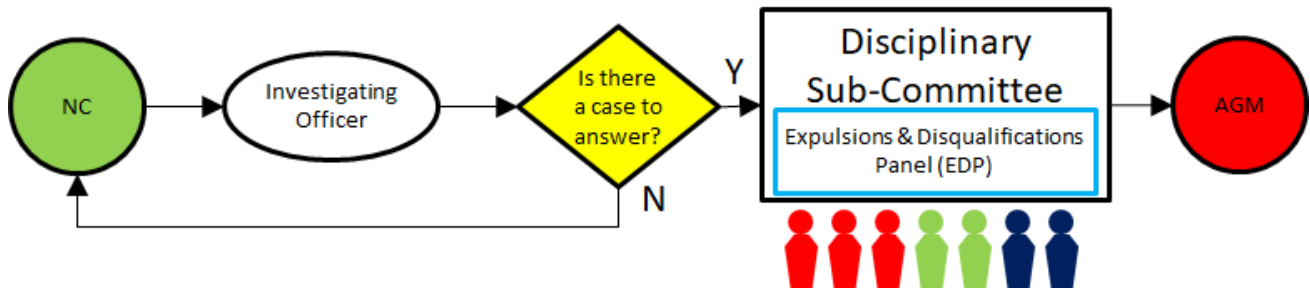


Figure 2.

It is proposed that for this function there should be a panel of 7.

Apart from when the issue is a breakdown of the relationship between the NC and an officer (where it is accepted that the issue is not amenable to a hearing by a tribunal), the evidence for serious disciplinary matters such as expulsion and disqualification should be heard at the EDP and a report made to the membership at the AGM of the facts found and recommendations. This would then be ratified or not by the membership.

There would be a need for someone to put the case against the Defendant:

- One option **(x)** would be for this to be part of the duties of the Vice-Chair
- Or **(y)** rather than the VC and NC being perceived as a 'prosecutor', this could be run as an 'inquisitorial' style system. An 'Investigating Officer'(IO) would be appointed:
  - The simplest system would be to have the Complaints Officer act as 'IO' and if they could not due to workload or a conflict of interest, then for the Chair of the DSC to act as IO (meaning they would not sit on the EDP).
  - The IO can pursue evidence from any relevant witnesses and Defendant, identify areas of dispute and produce a case summary. The IO would be neutral and there to assist the EDP in getting at the truth, rather than there to obtain a 'conviction'.
  - If **y** were adopted then the IO could have the power to recommend discontinuation of the investigation (to the NC, at any point) if s/he feels that *'there is no case to answer'*.
  - Non-co-operation with the process or the IO would be at the risk of the person concerned; i.e. the matter would proceed without their evidence. They should however be given a fair chance to cooperate first and be kept informed of progress, so they have a chance to change their mind.

Our view is that it would be better for there to be a system that reduces the risk of the perception of a 'war' between the NC and an officer and better reflects the idea that the NC are referring concerns to an independent body, and therefore **option y would be preferable**. (Example technical section in Apx 4 is based on **y**).

## APPENDIX 2: Outline proposal for piloting Panels

**Duration** - 6 months:

There will be 10 hypothetical case scenarios covering:

- Simple complaints
- Complex complaints
- An appeal
- Appeal from a CPO decision on criminal records checks
- Referrals by NC for serious disciplinary matters and
- A suspension/expulsion case.

**Step 1:** Organise volunteers into panels of 3 people who will work together. Give them the existing guidance for panels and some additional practical guidance and notes on officers duties, tort, duty of care to juniors, equalities issues (and if practicable include some advice from people who have been on panels before).

If possible, include an NC 'team' and /or Bu officers' team to run a few of the cases in parallel to provide a comparator to the current system.

**Step 2:** Send case scenarios by email. Ask the panel members to work together to discuss and write a short summary of their findings and recommendations in 2 or 3 complaints of escalating complexity. Each group will have a different combination of cases but there will be some overlap to look at how people deal with things differently.

Receive and collate answers.

**Step 3:** Some cases will 'go to appeal' e.g. group A's report on a case will be sent to group B who haven't seen that case scenario before. And vice-versa. They will be asked to 'review' the decision and report with recommendations and reasons.

Collate answers.

**Step 4:** Run an exercise with serious disciplinary and 'expulsion' case, from simple to increasingly difficult or borderline scenarios.

Collate answers.

**Step 5:** Hold a de-briefing by asking each group to write a short report about how they think it worked, what issues they encountered, what they found helpful in dealing with it etc. It may be helpful for the groups to see the other groups' reports and discuss. Discussion should also then be reported back.

**Step 6:** Collate answers, draw up report presenting data and conclusions to NC.

## APPENDIX 3: Role Descriptions

### **Investigating Officer:**

Key responsibilities:

1. To investigate the circumstances of a disciplinary referral for exclusion or disqualification by the NC to the EDP
2. To interview witnesses and obtain statements.
3. To report back to NC if in his/her view, the case against the member is not sufficient for the EDP to proceed (must be based on constitutional conditions).
4. To assemble all relevant documents in a logical order and present to the EDP.
5. To summarise the relevant arguments in the matter for the EDP
6. To assist the EDP or any participant on request.

Skills:

1. Ability to understand what matters are relevant to the criteria for suspension or expulsion in Articles 10 and 11
2. Ability to deal with potentially large amounts of material under time pressure
3. Ability to present potentially complex matters in a succinct, logical and clear manner
4. Impartiality and integrity
5. Ability to deal sympathetically with participants and witnesses
6. Understanding of strict confidentiality

Desired experience:

1. Complaints handling
2. Investigation activities

### **Committee/Panel members**

Key responsibilities:

1. To determine complaints, appeals and disciplinary matters referred from the NC, make findings of fact and recommendations.
2. To work cooperatively with other panel members.

Skills:

1. Ability to understand what matters are relevant to issues within the case
2. Ability to deal with potentially a large amount of material under time pressure
3. Impartiality and integrity
4. Ability to deal sympathetically with participants and witnesses
5. Understanding of confidentiality aspects, conflict of interest rules.

Desired experience:

1. Dealing with or sitting on tribunals
2. Legal qualification or experience
3. Dispute resolution
4. Complaints handling

## APPENDIX 4: Technical section (for Constitutional drafting fanatics only)

### Article 13 proposed amendments should the new structure be adopted after a trial run (2020)

#### 13. Disciplinary Subcommittee

13.1 *Substitute* “Complaints Panel” for “Bu complaints committee” and “Appeals Panel” for “NC Appeals Committee” throughout.

*Same substitution throughout article 13 unless otherwise amended.*

#### Amend diagram 13-1.

13.2 *substitute*: There shall be a Disciplinary Subcommittee (“DSC”) composed of 3 members from each Bu.

13.2.1a Each Bu shall elect, at a Bu AGM or EGM, 3 members to participate in the DSC. In the event that there are insufficient officers to fill elected posts then the NC may co-opt additional members until such time as elections can be held for the posts. The identities of the DSC members shall be published to the membership in accordance with the Communications Policy. The DSC will nominate one of their members as Chair of the SubCommittee.

13.2.1b A Complaints Panel of 3, one from each Bu, shall be selected from the DSC by the DSC Chair to hear any formal complaint. The quorum for a complaints panel shall be 3. The 3 members of a panel shall agree which of them will chair the panel.

13.2.3 The DSC Chair will advise the NC Chair of the names of the members of the Complaints Panel for each complaint.

#### 13.3 *substitute* “Appeals Panel (‘AP’)”

13.3.1 There shall be an Appeals Expulsions & Disqualifications Committee (‘AP’), composed of 5 members of the DCS appointed by the DSC Chair. This Panel will hear Appeals from complaints determinations, or from a decision of the Child Protection Officer. There shall be representatives on the AP of all 3 Bu. If a member has sat as part of a Panel hearing the initial complaint, he or she shall not be eligible to sit on the Appeals Panel hearing the appeal of that complaint.

**13.3.2 *substitute***: “On an Appeal from a complaint, the AP will operate as a review of the original decision. It may determine whether the CP was correct in upholding or dismissing the original complaint and may uphold or vary penalties. In the event that the Complaints Officer is of the opinion that there were serious procedural flaws in the original process, the AP may operate as a re-hearing of the original complaint.

The powers of the Appeals Panel are detailed in Article 13.4

13.3.3. The powers of the CP are detailed in 13.4

#### Complaints general procedures:

13.4. *remove the words-* “and additionally constitutes the Final Appeal Body for all Complaints.”

#### 13.4.5 Formal complaints:

2. *Stet up to* ‘... remit...’ *then substitute*: “If it is then DSC will constitute a complaints panel from its members”

*Substitute*:

3. (a) The Complaints Officer shall send all the documents provided by the Complainant to the Chair of the DSC panel as soon as practicable once the matter has been decided to be ‘within remit’.

(b) The Complaints Officer shall then send the Complaint and witness statements to the subjects of the complaint ('the Respondents') and shall invite them to respond within 21 days.

(c) The Complaints Officer shall send any written material and witness statements filed by the Respondents to the panel members and the Complainant as soon as possible after receipt.

(d) Once the initial evidence is filed then the Complaints Officer, in consultation with the Panel Chair, will decide whether there is a need for a physical hearing using the procedure set out in 4 below.

3(e). The Complaints Officer shall seek 'dates to avoid' from the panel members and from the parties, shall set a date of hearing and notify it to all parties and the panel as soon as available. Unless there are exceptional circumstances then the date of the hearing should be within 2 months of the date of the receipt of the complaint by the Complaints Officer.

(f) Parties shall be responsible for ascertaining their own witnesses' dates to avoid, informing the Complaints Officer of the number of witnesses and any dates to avoid at the earliest possible opportunity, and for informing their own witnesses of the date of any hearing.

(gf) The parties shall inform the Complaints Officer of any statements filed by the other parties which are accepted without the need to call the witness to give evidence.

5. Substitute: the date of the hearing may be amended by the Complaints Officer for any reasonable cause and any new date must be communicated to the parties and panel by the CO as soon as practicable

6. *remove* and *substitute*: All evidence should be filed insofar as possible a minimum of 7 days before the hearing .

Remove 7.

8; becomes 7 *substitute*: "All parties shall have the right to be accompanied to any oral hearing by a representative and the Panel shall be notified in advance of the name of any such representative if the representative intends to participate in the hearing. The Panel may exclude the representative if that person is disruptive at the hearing."

9 becomes 8..

9. *add*: . "If a sanction imposed by a CP is not complied with (unless the matter is under appeal) then the NC may write to the member concerned to enforce compliance. Should the sanction still not be complied with then the NC may refer the matter to the EDP for further consideration of the imposition of harsher sanctions including disqualification from office or expulsion"

**13.4.6 and 13.4.7 no longer needed if the CP has representatives of all Bu for all Complaints; all complaints will be dealt with on the same procedures**

**13.4.8 (A) change** "NC Appeals Committee" to "AP"\* *throughout also in (B)*

**13.4.9 insert**

*Substitute* AP for NCAC

*Substitute* CP for Bu CC.

*Insert 13.4.9A*: where the penalty imposed by any of a complaints, Appeal, or Expulsion & Disqualification Panel on the member is suspension/ expulsion, removal from office, disqualification or banning from office, or other sanction which has a major adverse effect on that members rights under Article 7, then (subject to any appeal) the matter must be referred to the AGM for ratification by the Membership. The relevant Panel shall provide the AGM with a full report including an account of what evidence was considered, findings of fact, and recommendations. The Defendant member shall have the right to put a written statement to the AGM explaining why he or she disagrees with the recommendations. All reports should be made available to the membership via the private members area of the website at least 7 days before the date of the AGM.

13.4.10 Appeals: *substitute*: (a) An appeal against the findings and/or penalty imposed at a CP hearing, must be put in writing and sent to the Chairs of the DSC and NC within 14 days of the date of notification of the decision and any penalty imposed. The grounds for the appeal must be made in writing and set out why the complaint should be reconsidered. Reasons for an appeal could include significant new evidence or witness statement, or relevant



facts not available to the original CP, correct procedures not being followed or any other reasonable grounds. In the event that the NC 'overrules' a decision of the CP, there shall be an automatic right of appeal to the AP.

(b) The National Committee Chair will, within 14 days of receipt of the written request for appeal, contact the Chair of the DSC Panel Chair requesting any written documentation relating to the hearing of the complaint. The Chair will make a decision in consultation with the Complaints Officer and DSC Panel Chair within a further 14 days of the written information being received, as to whether there are sufficient grounds for an appeal to take place. The complainant or individual/s complained about will be notified in writing by the NC Chair within a further seven days of the decision and, if the appeal has been refused, detailing the specific reasons for refusal.

(c) If leave is given to appeal, then the DSC Chair shall refer the matter to an AP constituted from 5 members of the pool of DSC officers. All parties to the appeal will be notified and shall provide their dates to avoid to the Complaints Officer if necessary.

(d) Appeals will normally be conducted by a review of the evidence 'on paper' and on the basis of the original documents except where circumstances exist as set out in ( e) below. Where the appeal is determined by a review, the parties may file a written submission to the AP within 14 days of being notified of the Appeal. Such submissions should be sent to the Complaints Officer who will forward them to the AP.

(e) A case may proceed by re-hearing in circumstances where:

(i) There is new evidence; or

(ii) The Appeal seeks to challenge a finding of fact of the CP on the grounds that it is untenable in the face of the evidence filed; or

(iii) If in the view of the Chair of the DSC panel, it would be in the interests of natural justice for there to be a further hearing.

The decision as to whether the matter should proceed as a review or a hearing should be made by the DSC Chair or substitute member of the DSC.

If this section applies then the Complaints Officer shall set a date for the hearing within 28 days of the notification that leave to appeal has been given

(f) When a decision has been made by the AP the DSC Chair will inform, within 7 days, the complainant/ individual/s complained against in writing of the decision and any penalty imposed, altered or revoked, and this decision will be final and binding on the parties subject to the provisions of this article on ratification by the AGM of removal from office and other serious sanctions .

(g) Where a Complaints Panel (where there is no appeal made) or an Appeals Panel recommend expulsion as the outcome of a complaint or appeal, then the NC shall refer the matter direct to the membership without the matter being heard further by the EDP.

*insert:*

### **Article 13 A : disciplinary matters falling outside of the Complaints Procedure**

13A.1.1 Where the NC consider that a member's conduct is likely to be detrimental to the interests of the Association, they shall write to that member warning him or her that the conduct is unacceptable and requiring that the behaviour ceases.

13A.1.2 In the event that the behaviour does not cease, or that the member engages in further unacceptable behaviour of a different nature but in breach of their obligations under the Constitution, or likely to be detrimental to the interests of the Association, then the NC may suspend the member and refer him or her to the EDP for hearing a case to expel.

13A.1.3 Should the members conduct be so serious as to constitute gross misconduct then there shall be no requirement of a written warning under 13A.1.1 and the NC may suspend the member and refer him or her to the EDP immediately.

13A.1.4 if the grounds on which an officer is suspended are that he or she cannot maintain a reasonable working relationship with the NC then the matter may be referred direct to the membership at an AGM for determination rather than to the EDP.

13A.1.5 On referral to the EDP the Complaints Officer shall act as an Investigating Officer. If the Complaints Officer is unable to act then the Chair of the DSC nominate a member of the DSC to act in this role. The Investigating Officer will be impartial and shall not be a person with any conflict of interest .

13A.1.6 The Investigating Officer will assemble the evidence and liaise with the EDP and parties to set a date for hearing of the matter. The hearing will take place in person. The Investigating Officer should if possible be present to assist the EDP and parties.

13A.1.7 The EDP shall make findings of fact, find the case proven or dismiss the case, and make recommendations as to sanctions. Such findings should be communicated to the parties within 21 days by the Chair of the panel hearing the matter.

13A.1.8 Where the case is dismissed, any suspension of the member shall lapse immediately.

13A.1.9 In the event that the case is found proven then the findings and recommendations of the EDP shall be reported to the NC and shall then be presented to the Membership at the next EGM or AGM for ratification. The EDP shall make a written report of the evidence heard, findings of fact and shall make recommendations. Where the NC disagree with the EDP they may indicate this to the Membership, together with reasons in writing and their alternative recommendations. The Defendant member may make a written statement indicating why he or she disagrees with the recommendations. All reports and statements must be available to the members on the private members area of the Association's website a minimum of 7 days before the meeting.

13A.2 The EDP shall have the same range of sanctions available to it as the AP. If the EDP recommends a lesser sanction than disqualification from office or expulsion, and if such a sanction is not complied with within a reasonable time, then the NC may refer the matter back to the EDP which may impose further sanctions

## **Consequential amendments**

### **Article 10:**

**10.6 and 10.7** *replace with 10.6.1* "The NC may refer a serious disciplinary matter to the Expulsions and Disqualifications Panel for expulsion or other penalty. After determination of the matter by the EDP, the EDP shall report back to the NC. The report, findings of fact and recommendations of the EDP shall be referred to the Membership for ratification at the next AGM or EGM or by another properly constituted voting procedure, unless the recommendations of the EDP are in the view of the NC unreasonable or untenable. In this case the NC shall report to the AGM or EGM giving a full account of the EDP decision and their reasons for not accepting it and shall seek ratification of their decision. The membership may then vote to ratify the NC decision or to endorse the EDP decision.

**10.6.2** Where in the opinion of the NC, a member has persistently breached the Associations bye-laws or Codes of Conduct and has not desisted when given a warning concerning their behaviour, the NC may refer the person to the EDP as a disciplinary matter.

### **Article 11:**

**11.2** replace "by polling ....etc" with "by referring the matter to the Expulsions & Disqualifications Panel under article 13 A

**11.6.5** replace after "shall" as follows: refer the matter to the EDP for hearing and consideration of removal and/or other sanction ;

**11.7** replace after 'office' with "The matter shall be referred to the membership at the next AGM, EGM or decided by other properly constituted voting procedure, and shall not require referral to the EDP"

**11.12** replace with "The NC shall refer the suspension/requested removal from office to the Expulsions and Disqualifications Panel as soon as is practicable and shall follow the procedures set out in article 13 A and any relevant byelaws"

The NC shall within 21 days of the suspension, communicate a brief factual account of the reason for the suspension to the membership. Should the officer be reinstated, the NC shall communicate the reasons to the membership.

#### **Notes on reasons for consequential amendments:**

**11.7:** Votes of no confidence/action by the membership is a democratic right and should follow a different path (ie to EGM/AGM). It does not make sense for something to go from the Membership, to the EDP and then back to the Membership.

**11.12:** Where the officer has been suspended by the NC the matter should go to the EDP, unless the grounds are failure to maintain a reasonable working relationship with the NC. if the matter goes to the EDP then a statement of grounds/evidence to the membership would not, on the face of it, be needed here but it may be advisable for a brief summary of the situation to be made by the NC to avoid the circulation of rumours. It would be needed in the event that the case falls within the 'reasonable working relationship' exemption.

**Appendix 1 - the new posts and job descriptions will need to be added to Appendix 1 (or another similar appendix added, eg 1A) and;**

**the terms on which people will be elected, to the posts should be added to article 14. Diagram in article 13 will need amending.**

~ends~