

APC Code of Ethics

Appendix A – Regulations governing the procedures for dealing with complaints regarding alleged breaches of the APC Code of Ethics

February 2016

**Asian
Paralympic Committee**

P.O.Box: 38483
Sharjah, United Arab
Emirates

Tel. +49 228 2097-200
Fax +49 228 2097-209

www.asianparalympic.org
info@asianparalympic.org

The APC Code of Ethics (“the Code”) has been adopted by the APC and is incorporated within the APC Handbook. While it represents a set of legal obligations, some of the concepts contained within the Code are not easy to define as they seek to describe the boundaries of acceptable human behaviour. This difficulty will be borne in mind by the APC Legal and Ethics Committee (LEC) when it considers complaints brought under these regulations. The LEC will always strive to encourage ethical behavior through guidance, protocols, advice and education. The process of sanctioning parties for breach of the Code should be viewed as a last result for persistent and/or serious breaches.

1 Authority of the Legal and Ethics Committee, and the parties that may bring a complaint

- 1.1 Save in the case of Appeals, the Legal and Ethics Committee shall have the exclusive authority to deal with complaints brought under these Regulations (a ‘Complaint’) in accordance with the procedures set out below.
- 1.2 Any person or body (‘the Complainant’) that falls within the scope of the Code shall be entitled to bring a complaint to the Legal and Ethics Committee that some other person or body (also falling within the scope of the Code) (‘the Respondent’) has breached the Code.

2 Confidentiality

- 2.1 Every member of the Legal and Ethics Committee, and any member of any Hearing or Appeal Panel formed under these Regulations, shall be obliged to keep all the information regarding any Complaint confidential throughout the procedure described below. This obligation of confidentiality will not prohibit the Legal and Ethics Committee or any Hearing or Appeal Panel from publishing the outcome of their consideration of a Complaint and such details as are considered necessary or desirable so as to give a proper context and understanding of the decision reached.

3 Interim suspension

- 3.1 Where a complaint is received under these Regulations and it is considered by the Legal and Ethics Committee to be appropriate for the Respondent to be suspended from any position or office that he or she holds within the APC, or to have any other privilege, accreditation or recognition suspended, during the conduct of this procedure the Legal and Ethics Committee may by a resolution passed by no less than two thirds of its members impose such suspension.

- 3.2 Any interim suspension shall be notified to the Respondent and to those people with a genuine need to know of the suspension in order for the suspension to operate effectively. The suspension will be given no more publicity than is considered necessary by the Legal and Ethics Committee.
- 3.3 Imposing a suspension prior to the determination of the Complaint must be considered an extraordinary measure, and must be taken only where the Legal and Ethics Committee believe on genuine grounds that it is necessary to protect the legitimate interests of the APC, or some person or other body to whom the APC owes a duty to do so. The imposition of a suspension does not indicate that the Legal and Ethics Committee has made any judgement on the Complaint. It is not to be seen as a sanction, it should be seen as a neutral act taken to protect the parties during the process governed by these Regulations.

4 Burden and standard of proof

The Complainant must prove their case on the balance of probabilities.

5 Statement of Case

- 5.1 The Complainant shall first submit to the Legal and Ethics Committee a written document which shall be referred to as their "Statement of Case", which will describe the conduct complained of, and will specify the way in which that conduct is alleged to amount to a breach of the Code. The Complainant must identify which parts of the Code they believe have been breached by the conduct described in their Statement of Case.
- 5.2 The Statement of Case should identify if there are any witnesses to the conduct complained about and whether or not the Complainant intends to rely upon their evidence and whether or not those witnesses have confirmed to the Complainant their willingness to give evidence in support of the Complaint.
- 5.3 The Statement of Case should also identify what documentary, video or other evidence the Complainant will seek to rely upon. Where that evidence is in the possession of the Complainant at the time he or she submits his or her Statement of Case it should be produced with the Statement of Case.
- 5.4 The Complainant should state in the Statement of Case whether or not he or she desires to be heard in person at a hearing.
- 5.5 The object of these Regulations is to ensure that at this initial stage the Complainant sets out his or her case fully, together with the evidence he or she wishes to rely upon in support of the Complaint. However, the Legal and Ethics Committee will have regard to the experience and resources of the Complainant and recognises that in the field of ethical conduct it can be difficult to precisely identify the nature of the breach or to obtain the evidence to prove the allegation.

- 5.6 Where any of the requirements set out above are not met by the Complainant the Legal and Ethics Committee shall be entitled to waive the defect or grant the Complainant a further opportunity of rectifying the defect, but is under no obligation to do so. The Legal and Ethics Committee shall not adopt an unnecessarily strict approach to the requirements of form and content of the Statement of Case but shall keep in mind the need to balance the interest and ability of the Complainant to fully articulate his or her Complaint with the right of the Respondent to know the case against him or her at an early stage and the nature of the evidence to support the allegations.

6 Receipt of statement of claim and evaluation by the Legal and Ethics Committee

- 6.1 The Legal and Ethics Committee shall acknowledge receipt of the Statement of Case as soon as reasonably practicable and shall within one month carry out an initial evaluation of the Complaint.
- 6.2 The initial evaluation shall be carried out in order to determine whether or not the Statement of Case has been brought by an appropriate person or body, and whether or not the conduct complained of is capable of amounting to a breach of the Code. Further the Legal and Ethics Committee will consider whether the evidence produced or referred to appears to them on this preliminary examination to be sufficiently credible to give rise to a case that has reasonable prospects of success.
- 6.3 If the complaint is not brought by a person or body covered by these Regulations it shall be dismissed and no further action on the complaint will be taken. Where the Statement of Case substantially fails to satisfy the requirements of these Regulations it may be dismissed, or in the discretion of the Legal and Ethics Committee the Complainant may be notified of the defects in the form and/or content of the Statement of Case and given a period of time to re-submit their Statement of Case.
- 6.4 The Legal and Ethics Committee shall [also] be entitled to dismiss the complaint where it considers that even if proven the matter complained of is minor and that it would be disproportionate to allow this procedure to be used. In such circumstances, the Legal and Ethics Committee may, with or without agreement of the Complainant, informally and privately advise and/or caution the Respondent over his or her future conduct.
- 6.5 The Legal and Ethics Committee will also at this evaluation stage consider whether the matters complained of sufficiently impact on the APC or the Paralympic Movement in Asia to warrant being pursued under these Regulations. Where the matters complained of are such that the APC's interests are not sufficiently engaged the Complaint will be dismissed and the Complainant will be advised as to the reasons and what, if any, steps he or she might take to have his or her complaint dealt with otherwise than by the Legal and Ethics Committee under this procedure.

7 Notification of complaint to the respondent and reply

- 7.1 As soon as practicable following the initial evaluation, and provided the Legal and Ethics Committee has resolved to allow the Complaint to proceed, the Statement of Case and the supporting evidence shall be sent to the Respondent who shall be given a period of 28 days from the day of posting or transmitting the Statement of Claim in which to file a "Reply".
- 7.2 The Respondent will state in his or her Reply whether he or she admits the Complaint, or part of it, or denies the Complaint or part of it, and the reasons why. The Respondent will set out in his or her Reply as fully as possible the nature of any defense and will also produce any evidence he or she intends to rely on and the identity of any witnesses.
- 7.3 In respect of any admission, the Respondent may set out any mitigating factors or explanations which he or she wishes to be taken into account.
- 7.4 The Respondent shall state whether or not the Respondent wishes the matter to be determined by the Legal and Ethics Committee at a hearing at which the Respondent is entitled to present his or her defense, or whether the Respondent is prepared to have the complaint dealt with without a hearing based on the Statement of Case and the Reply.
- 7.5 Where the Respondent indicates that he or she requires a hearing the Legal and Ethics Committee shall hold such hearing in accordance with these Regulations, where the Respondent indicates that he or she is prepared to dispense with a hearing then it shall be up to the Legal and Ethics Committee to decide whether or not in its judgement a hearing is necessary to deal justly with the Complaint.

8 Formation of the hearing panel

- 8.1 If a hearing is requested (or determined to be required in the interests of justice taking into account the views of the Complainant set out in his or her Statement of Case) the Chairperson of the Legal and Ethics Committee shall form a Hearing Panel of three people two of which will normally be members of the Legal and Ethics Committee. In any case where an interim suspension has been imposed there will be a maximum of one member of the Legal and Ethics Committee permitted to sit on the Hearing Panel. The Legal and Ethics Committee Chairperson shall nominate one member of the Panel as the Panel Chairperson. The Legal and Ethics Committee Chairperson can nominate him or herself to the Panel and may nominate him or herself as Chair of the Panel. The Panel shall be unbiased and panel members shall be free of any connection with either the Complainant or the Respondent which is of a kind likely to compromise their ability to reach an independent and just decision on the Complaint. In order to secure the required degree of independence, the Legal and Ethics Committee Chairperson may select any number of people willing to sit on the Hearing Panel from outside the Legal and Ethics Committee members.

- 8.2 Once the Panel is formed the Complainant and the Respondent will be notified of the identity of the members of the panel and they shall have a period of 14 days to lodge any objection they may have concerning the bias or lack of independence of any panel member. Any challenge to a Panel member shall be resolved by the Chairperson of the Panel, or if he or she is the subject of the objection, by a meeting of the Legal and Ethics Committee (which may be held by telephone) at which the Chairperson of the Panel shall not participate.
- 8.3 There shall be no further procedure for challenging any Panel member.

9 Pre-hearing orders

The Chairperson of the Hearing Panel may on his or her own initiative or at the request of either Party make such orders as he or she considers desirable for the just resolution of the Complaint. This may include orders regarding submission of witness statements prior to any hearing, the admission of further evidence, or clarification of either the Statement of Case or Reply. The Party to whom the order is directed will be obliged to comply with the order within the time scale set down by the Chairperson. If a Party fails to comply with such an order the Panel may make such ruling as it considers just including the dismissal of the Complaint, or dismissal of aspects of the Statement of Case or of the Reply, or the refusal to allow certain evidence to be relied on by either Party.

10 Hearing

- 10.1 The Panel Chairperson will set a date, time and place for the Hearing and he or she will normally consult with the Parties before doing so. In exceptional circumstances outside of the control of a Party the Panel may adjourn the Hearing to another time and/or place at the request of either Party.
- 10.2 The Panel Chairperson will consider the need for interpreters to be present (including for sign language) and any other service, adjustment or accommodation reasonably required by any of the Parties.
- 10.3 The date, time and place of any hearing will be notified to the Parties at least 28 days before the day set for the Hearing. A failure of any party to attend, or any witness, shall not prevent the Hearing from taking place so long as the Panel is reasonably satisfied that due notice had been given
- 10.4 The Parties will be responsible for the costs and expenses of their own attendance and of any witnesses they call.
- 10.5 If it is considered appropriate, the Panel Chair, after consulting with the other Panel members, may direct that the Hearing will take place with all Parties participating by some form of video or teleconference.

10.6 Procedure at the Hearing

- 10.6.1 The procedure during the Hearing shall be flexible and shall be at the discretion of the Panel Chair who may make such orders as he or she feels necessary to ensure the orderly and effective conduct of the hearing.
- 10.6.2 The Hearing will take place in private.
- 10.6.3 Each Party will be entitled to be present throughout the Hearing and they shall be entitled to be represented at the hearing by a single representative of their choice who shall also be entitled to be present throughout.
- 10.6.4 Witnesses shall generally not be entitled to be present at the Hearing prior to giving their evidence.
- 10.6.5 Parties and their witnesses may be heard by video or tele-conference with the permission of the Hearing Panel.
- 10.6.6 The Panel Chair will open the Hearing by introducing the Panel Members and reading out a brief statement of the allegations and asking the Complainant to confirm that the statement is accurate and that the Complainant wishes to proceed with the Complaint.
- 10.6.7 On the basis that the Complainant confirms his or her desire to proceed, the Parties will each be given the opportunity to make a brief opening statement and to call their witnesses and to formally put in evidence any documents or other material they wish to rely on.
- 10.6.8 Witnesses who have prepared a witness statement will generally not be required to give their evidence again but will be asked to confirm the truth of their statement.
- 10.6.9 Each Party will be given a proper opportunity to question (or cross-examine) the other parties' witnesses.
- 10.6.10 At the close of the evidence and at the discretion of the Chair the Parties may be given an opportunity to make a final and closing statement. The Panel must give the same right in this regard to both the Complainant and the Respondent. The Respondent will speak last.
- 10.6.11 All Panel decisions will be reached by majority vote as soon as possible and, if not made on the day of the Hearing, within 14 days following the hearing and will forthwith communicate the decision to the Parties and others with a legitimate interest in it.
- 10.6.12 It is the obligation of each Party and every witness to tell the truth. Any Party who wilfully misleads the Panel will be deemed to have breached the Code by their behaviour and may therefore be the subject of a Complaint under these Regulations in connection with their conduct at the hearing.
- 10.7 The decision shall specify whether the Complaint has been proven either in whole or part, any relevant comments or observations of the Panel and any sanction to be imposed.
- 10.8 The Panel may choose to impose a sanction amounting to advice, training, mentoring or other support either alone or in conjunction with any of the sanctions set out at clause 13 below.

11 Accelerated procedure for complaints arising from conduct during the Asian Para Games and Asian Youth Para Games

- 11.1 Where the conduct complained of takes place during the Games period, which shall be treated in these Regulations as the period commencing ten days before the Opening Ceremony and ending on mid-night of the day of the Closing Ceremony, the following procedure will apply.
- 11.2 The procedures set out in other parts of these Regulations shall apply as varied below.
- 11.3 A Complainant will send his or her Statement of Case to the Chairperson of the Legal and Ethics Committee who will proceed immediately to form a Hearing Panel and will serve a copy of the Statement of Case on the Respondent with a request that the Respondent attend a hearing which shall be held no later than 24 hours from the time of the receipt of the Statement of Case.
- 11.4 The Hearing Panel may on consideration of the Complaint, impose an interim suspension in accordance with section 3 of these Regulations.
- 11.5 The Respondent may prepare a Reply but is not under an obligation to do so.
- 11.6 Communications to the Parties will be to such office, hotel room, Athlete Village location, email address as are determined most appropriate by the Legal and Ethics Committee Chair.
- 11.7 At the hearing, the Hearing Panel shall hear the submissions of the Complainant and Respondent and may proceed there and then to determine the matter as if it were being conducted under sections 9, 10 and 13 of the Regulations. However, if the Panel consider it appropriate to do so, the matter may be adjourned to be dealt with after the Games where upon the Panel shall (so far as they are able) set out a time table for the further steps to be taken by the Parties and a date for the hearing to finally determine the outcome of the Complaint.
- 11.8 For Complaints finally dealt with at the hearing held during the Games period the decision in respect of any Sanction applied during the Games period shall be enforceable immediately and there shall be no right of appeal or other challenge and the provisions of section 14 shall not apply. Where a Sanction has effect after the Games period then an appeal can be brought in respect of that Sanction after the Games period in accordance with the provisions at Section 14. The period of 21 days set out at 14.2 will in such a case run from the date of the relevant Closing Ceremony.
- 11.9 If the Complaint is adjourned to be dealt with after the Games period, the Hearing Panel may continue any Interim Suspension imposed until the final hearing.

12 Anti-technicality

Any failure to follow any procedure outlined in these Regulations shall not invalidate the proceedings or any decision taken unless in the opinion of the Legal and Ethics Committee (prior to the formation of a Panel), or in the opinion of the Panel (following its formation), the failure is considered material in that it is likely to inhibit a fair determination of the Complaint.

13 Sanctions

The Panel may order the following sanctions, or a combination of them. Pursuant to the terms of the APC Handbook (Section 2, Chapter 1, 2.1 Constitution of the APC, 6. Admission, Suspension and Expulsion of Members), membership can be terminated by the General Assembly (Article 6.a). Therefore, any Sanction amounting to termination of membership must be confirmed by the General Assembly before taking effect. Suspensions will have the consequences set out at Article 6.b of the Constitution. Where the Hearing Panel does not include a majority of Legal and Ethics Committee members any sanction of suspension will not take effect unless it is subsequently ratified by a resolution of the Legal and Ethics Committee, and the Respondent will be entitled to send to the Legal and Ethics Committee a single written representation for consideration at the meeting at which his or her suspension is to be discussed and voted on.

- 13.1 In the context of the Paralympic Movement in Asia:
- 13.2 With regard to members of all APC organs: Committees, Councils, Commissions, whether elected or appointed:
 - 13.2.1 A public reprimand;
 - 13.2.2 Suspension, for a specific period of up to four years. The suspension may be extended to all, or part of the rights, prerogatives and functions deriving from the membership of the person concerned;
 - 13.2.3 Termination of membership.
- 13.3 With regard to NPCs:
 - 13.3.1 Withdrawal of the right to enter athletes in Asian Para Games, Asian Youth Para Games and other APC competitions;
 - 13.3.2 Suspension of up to four years to participate in Asian Para Games, Asian Youth Para Games and other APC competitions
 - 13.3.3 Withdrawal of recognition (termination of membership in compliance with provisions of the APC Constitution); and
 - 13.3.4 Withdrawal of the right to organise APC meetings and/or events.
 - 13.3.5 Withdrawal of right to attend or to vote at APC meetings including APC General Assemblies.

14 Appeals

- 14.1 Any person who has been found guilty of breach of the Code and has had a sanction imposed shall have the right to Appeal that decision.
- 14.2 The Appeal must be commenced within 21 days of the notification of the decision being appealed against and must take the form of a written "Notice of Appeal". The Notice of Appeal will be sent to the APC President and will be accompanied by a payment of [USD300] which will be refundable only at the conclusion of the Appeal process and only if the Appeal panel in its discretion so determine.

- 14.3 The Notice of Appeal will set out the facts and arguments giving rise to the Appeal and should fully explain why the Respondent believes the decision of the Hearing Panel was wrong.
- 14.4 The Appeal will take the form of a full re-hearing of the Complaint. The Complainant and the Respondent shall be entitled to produce any evidence they wish in support of their position. The Statement of Case and Reply shall remain the same, unless the Appeal Panel give permission for either of them to be amended in any way.
- 14.5 The Appeal shall be heard by an Appeal Panel established by the APC President made up of three (3) people who have not previously been involved in the Complaint. If the APC President considers it to be desirable one of the Appeal Panel members will be a practicing Lawyer of sufficient experience and seniority to deal with the issues raised on the Appeal.
- 14.6 The APC President shall nominate the Chairperson of the Appeal Panel.
- 14.7 The provisions regarding the availability of Pre-Hearing Orders set out at paragraph 9 and the procedures for the Conduct of the Hearing set out at paragraph 10 of these Regulations shall apply equally to the Appeal process.
- 14.8 The Complainant will be invited to participate in the Appeal process and shall be fully entitled to pursue their Complaint and to attend the Appeal Hearing and to produce evidence. If the Complainant does not participate in the Appeal the Legal and Ethics Committee may appoint a person to present the Complainant's case on behalf of the Complainant, or the Appeal Panel may proceed on the basis of the Statement of Claim and evidence that was before the Hearing Panel.
- 14.9 The Appeal Panel may, if it deems itself to be sufficiently informed, decide not to hold a hearing.
- 14.10 The Appeal Panel shall be entitled to issue a new decision on the Complaint which replaces the decision of the Hearing Panel and in doing so will have available to it the full range of remedies and sanctions as were available to the Hearing Panel. The Appeal Panel may annul the decision and refer the Complaint back to the Hearing Panel with directions or advice as to how they should conduct the Complaint.
- 14.11 The Appeal Panel shall be entitled to impose a greater sanction if it considers that to be appropriate.
- 14.12 The Appeal Panel will be free to decide whether the initial appeal fee of [USD 300] should be returned to the Respondent or retained by the APC.
- 14.13 There shall be no further appeal allowed including to the CAS.