

Hearing Tribunals

Purpose

This document is **not** to be used as a substitute for any official Netball NSW Policy. The relevant Netball NSW Policy should be read in its entirety before consulting this document. This reference guide is designed to be used in conjunction with the full policy to simplify the process for Affiliated Clubs and Associations who may be required to undertake a hearing tribunal in accordance with the Complaints Handling Procedure. If you have any questions or would like to discuss any of the information contained within this document, please contact policy@netballnsw.com.

Relevant Netball NSW Policies

- [Member Protection Policy – Attachment B: Complaints Handling Procedure](#)
- [Netball NSW Member Protection Policy](#)

Checklists

Pre-Tribunal				
Task	Policy/Rule	Responsibility	Key Considerations	Actioned
Appoint Tribunal Members - Chairperson	Complaints Handling Procedure – 8.2 (b), 8.3.1 (a), 8.3.2, 8.3.3	Hearing Officer	Should have experience and skills, including legal background or chair experience if possible. Can hold another role within Affiliate, but cannot be an Executive Committee member of the club/association organising Tribunal.	
Appoint Tribunal Members – Additional Members	Complaints Handling Procedure – 8.2 (b), 8.3.1 (b), 8.3.3	Hearing Officer	Two additional members. Can hold another role within Affiliate, but cannot be an Executive Committee member of the club/association organising Tribunal.	
Schedule venue, time and date	Complaints Handling Procedure – 8.2 (a)	Hearing Officer		
Declare potential conflicts of interest	Complaints Handling Procedure – 8.5 (d)	Tribunal Members	Consider if they can act impartially?	
Deal with any	Complaints Handling	Tribunal	Remove Hearing	

Conflicts of Interest	Procedure – 8.4 (d)	Chairperson	Tribunal member with conflict or ensure appropriate safeguards.	
Provide Hearing Tribunal with all material relating to the matter	Complaints Handling Procedure – 8.2 (f)	Hearing Officer	No additional evidence/witness statements will be obtained prior to the hearing unless specifically requested by the Chairperson.	
Notify Respondent of Hearing Tribunal	Complaints Handling Procedure – 8.2 (g), 8.2 (h), and Appendix G	Hearing Officer	Use Appendix G. Must be done at least five days prior to the Hearing.	
Determine witnesses to attend	Complaints Handling Procedure – 8.2 (g), 8.4 (a), 8.6.1.1, 8.6.1.4	Tribunal Chairperson	Invite anyone they believe will assist. Consider how they should present their evidence.	
		Hearing Officer	Notify those required to attend at least five days prior to the Hearing. Respondent, complainant, and witnesses are required to attend.	
Consider evidence and information	Complaints Handling Procedure – 8.5 (a)	Tribunal Members	As provided by Hearing Officer or Chairperson.	
Consider any applications for adjournment	Complaints Handling Procedure – 8.6.2.2	Hearing Officer or Tribunal Chairperson	Any person may apply for adjournment. Hearing Officer or Chairperson have sole discretion.	

During Tribunal				
Task	Policy/Rule	Responsibility	Key Considerations	Actioned
Take attendance	Complaints Handling Procedure – 8.6.3 (a)	Tribunal Chairperson	Identify panel members and ensure respondent is present.	
Consider failure to attend by any person required to attend without a reasonable excuse	Complaints Handling Procedure – 8.6.2.1	Tribunal Chairperson	Can proceed in the absence of the person. Can make decision provided all of the correct steps have been taken.	
Monitor for unreasonable or intimidatory behaviour	Complaints Handling Procedure – 8.6.3 (j)	Tribunal Chairperson	Chairperson has the power to modify proceedings as appropriate or stop involvement of any person.	
Notify Complainant(s) and Respondent of rights	Complaints Handling Procedure – 8.6.3 (b)	Tribunal Chairperson	Right to remain in hearing until all evidence is presented. Must not be present while panel considers findings and determines disciplinary measures.	
Read charges	Complaints Handling Procedure – 8.6.3 (c), 8.6.3 (d)	Tribunal Chairperson	Ensure Respondent understands charges. Chairperson to explain if not.	
Respondent given opportunity to contest	Complaints Handling Procedure – 8.6.3 (e)	Tribunal Chairperson	Ask whether or not the respondent intends to contest.	
<u>NO</u> Contest	Complaints Handling Procedure – 8.6.3 (f)	Tribunal Chairperson	Read summary of facts, admit complainant(s) evidence, no witnesses need to be called (unless deemed to be required).	

Contest by Respondent – Complainant(s) to present evidence	Complaints Handling Procedure – 8.6.3 (g), 8.6.3 (g) (i)	Complainant(s)	Brief notes may be referred to (written/verbal)	
Contest by Respondent – Complainant(s) to call witnesses	Complaints Handling Procedure – 8.6.3 (g) (ii), 8.6.4	Complainant(s)	Witnesses must be pre-approved to attend by Chairperson.	
Contest by Respondent – Respondent to question Complainant(s) and witnesses	Complaints Handling Procedure – 8.6.3 (g) (iii), 8.6.4	Respondent	At the discretion of the Chairperson.	
Contest by Respondent – Respondent to respond	Complaints Handling Procedure – 8.6.3 (i), 8.6.3 (i) (i)	Respondent	Brief notes may be referred to (written/verbal).	
Contest by Respondent – Respondent to call witnesses	Complaints Handling Procedure – 8.6.3 (i) (ii), 8.6.4	Respondent	Subject to approval at the discretion of the Chairperson.	
Contest by Respondent – Complainant(s) to question Respondent and witnesses	Complaints Handling Procedure – 8.6.3 (i) (iii), 8.6.4	Complainant	At the discretion of the Chairperson.	
Consider evidence presented by involved parties	Complaints Handling Procedure – 8.5 (b), 8.6.3 (k)	Tribunal Members	May include video evidence at the discretion of the panel.	
Consider lesser charge	Complaints Handling Procedure – 8.6.3 (l), 8.6.3 (m), 8.6.3 (n)	Tribunal Members	May decide a lesser charge is more appropriate if not satisfied with particular charge. Apply penalty accordingly.	
Provide independent assessment and contribute to agreed decision	Complaints Handling Procedure – 8.5 (c), 8.6.3 (o)	Tribunal Members	Each member is independent and does not need to follow the Chairperson. Consider what is most probable.	

Reach an outcome	Complaints Handling Procedure – 8.1.4	Tribunal Chairperson	Suspend, disqualify, reprimand, ban, otherwise deal with matter.	
Inform Respondent of finding	Complaints Handling Procedure – 8.6.3 (p), 8.6.3 (q)	Tribunal Chairperson	Provide decision to respondent and complainant.	

Post-Tribunal				
Task	Policy/Rule	Responsibility	Key Considerations	Actioned
Communicate outcome to Hearing Officer	Complaints Handling Procedure – 8.4 (b), 8.6.3 (r)	Tribunal Chairperson	Must be completed as soon as possible.	
Complete record of tribunal hearing	Complaints Handling Procedure – Appendix H, 8.4 (c), 8.6.3 (s), 8.6.3 (t), 8.6.3 (u)	Tribunal Chairperson	Return to Hearing Officer within 24 hours.	
Provide NSW a copy of record	Complaints Handling Procedure – 8.6.3 (u)	Hearing Officer	Send to policy@netballnsw.com	
Provide record of hearing tribunal to Complainant and association	Complaints Handling Procedure – , Appendix H, 8.6.3 (s)	Hearing Officer	To Complainant and the Secretary of Respondent’s club/association within 24 hours.	
Consider Appeals process	Complaints Handling Procedure - 9	Tribunal Members	See ‘Appeals’ Resource Guide.	

Frequently Asked Questions

Can the panel members/chairperson be members of my association executive?

Whilst there is no strict rule against this it is strongly recommended that members of the executive do not act as Tribunal Chairperson or panel members. This is to avoid any actual or perceived biases from impacting on the tribunal process. You should aim to select tribunal members which are completely independent from the issues and persons involved.

How many witnesses are each side allowed?

The Tribunal Chairperson has discretion over the number of witnesses (and which witnesses) attend the tribunal hearing. If a party wishes to nominate witnesses they should make a request to the Chairperson via the Hearing Officer. The Chairperson can then either provide permission for the nominated witness to attend and give evidence or not. The Chairperson is also entitled to call additional witness that they consider to be relevant to the matter, even if they are not nominated by either side.

Are witnesses entitled to sit in the tribunal hearing?

Before they give their evidence witnesses (excluding the Respondent and the Reporting Person) are not entitled to be in the hearing room. However, once a witness has provided their evidence they may remain in the hearing room (so long as it is practical) if they wish to do so. However, witnesses who chose to remain in the hearing room should not be called upon to provide further evidence.

What rules of evidence apply?

No rules of evidence apply. A Tribunal panel may take into account any evidence, in whatever form, they consider will be of assistance.

Is it ok to hold a tribunal remotely?

As above, the Tribunal panel has discretion over how evidence is to be submitted and accepted. This means that the tribunal can accept evidence provided by alternative means such as telephone, zoom, or written submissions. Ultimately this aspect of the tribunal is left to the tribunal panel to determine how best to collect evidence.

Can the Reporting Person/Respondent/ Witness have a supporting person?

Yes any person involved in a tribunal hearing may nominate a support person. However, this support person does not have any rights to answer or ask questions unless the tribunal directs them to.

Can the support person ask/answer questions?

The role of the support person is not to answer or ask questions on behalf of the person they are supporting. HOWEVER, in the case of a person who is under the age of 18, or who is otherwise unable to represent themselves, the tribunal may provide permission for an adult representative (not acting as a legal advisor) to ask/answer questions on that person's behalf. This is a different role to the support person and is at the discretion of the tribunal.

Who is entitled to know the outcome of a tribunal hearing?

NNSW considers that any person involved in the tribunal hearing (e.g. witnesses etc.) can learn the outcome of the tribunal hearing if they wish.

Should the panel members just agree with the Tribunal Chairperson?

No. The point of having three panel members is that each panel member provides their views and that the panel reaches an agreed position.

Does the tribunal panel need to provide a decision at the tribunal hearing?

It is preferable that a decision be communicated to all parties at the tribunal hearing. However, where this is impractical, or where the tribunal panel members require further time to deliberate, the decision of the tribunal should be communicated to the parties as soon as possible following the conclusion of the tribunal. As a guide 24 to 48 hours after the conclusion of the tribunal hearing would be considered a reasonable timeframe.

Should a tribunal panel provide Netball NSW with a copy of any decision handed down?

Tribunal panel should forward any tribunal decision involving a sanction (including an official warning) for record keeping purposes.

Can the minimum sanctions in the disciplinary policy be reduced for mitigating circumstances?

No – Once an offence has been proven or admitted by a respondent the minimum sanction must apply and cannot be reduced. However, the tribunal panel does have the option of downgrading the charge (for example reclassifying the offence from a level 3 offence to a level 2 offence) which would attract a shorter sanction.

Does a suspension apply to all netball roles e.g. if a sanctioned Respondent is both a coach and the president of a club are they suspended from both roles?

The starting position is yes, that a suspended Member should be suspended from all positions/roles including official positions such a president or secretary for the duration of the suspension. However, the Tribunal has the discretion to apply a sanction as it sees fit i.e. it may be comfortable suspending a Respondent from their coaching position but allowing them to continue in their official capacity. Any alteration to the starting position (i.e. a suspension from all roles) should be clearly expressed when the decision is communicated.

Does a suspension preclude a person from spectating netball?

As highlighted above, the Tribunal has discretion over how the suspension should apply. The Tribunal should take a common-sense approach in this respect, i.e. if the Respondent's offence relates to courtside conduct, or if the tribunal considers that the Respondent is likely to breach their sanction by attending (e.g. that they will unofficially coach) then the Respondent should be directed that they do not attend netball activities as a spectator. However, it may be the case that the Tribunal is comfortable with the Respondent attending netball in a spectator capacity only (for example to watch their children play – this being unrelated to the offence the Respondent has been charged with).