



DISCIPLINARY PROCEDURES

BRITISH DISABLED SKI TEAM (BDST)

INTRODUCTION

Disciplinary Procedures (Managing Performance and Conduct)

The BDST has formal procedures for the management of performance and misconduct where a member of the squad falls short of the standards expected. These are encapsulated in the following procedures and apply to all BDST squad members and management officials (or their future equivalents). It should be recognised that the prime purpose of the procedures is to encourage an improvement in an individual's performance or conduct but that in appropriate circumstances, as set out in these procedures, an individual's performance or conduct may result in dismissal.

There are separate arrangements for:

- Performance Inefficiency
- Misconduct
- Gross Misconduct

Before embarking on any of the procedures it is essential that all of the procedures and relevant appendices are read in full.

GENERAL PRINCIPLES

The procedures are designed to provide a fair, non-discriminatory and consistent method for dealing with problems of conduct and athlete performance. Formal procedures should be used only when oral warnings have failed to produce the required improvement or when the disciplinary matter is sufficiently serious.

As part of the procedures a thorough investigation to establish the facts will be carried out.

Athletes have the right to be accompanied or represented by a colleague, who is a member of the squad or DSUK and is not materially involved in the issues, at each stage of the procedures.

An athlete has the right to appeal against any disciplinary decision and penalty if they believe the decision is flawed.

Disciplinary sanctions will be applied where appropriate.

Capability issues arising from ill health should not be dealt with under these procedures.

Disciplinary Procedures (May 2008 – Final)

CONSIDERATIONS

It should not be necessary to use the formal disciplinary procedures if problems are dealt with early. Minor faults such as minor errors associated with development or performance etc. should, first of all, be dealt with informally and, if appropriate, an oral warning given. When the matter is more serious, the appropriate formal procedure will be applied. Any decision to enter into formal procedures should be reasonable in all the circumstances and should only normally occur after establishing and considering:

- the facts;
- the seriousness of the issue;
- the athlete's personal circumstances and health;
- if a final oral warning has been given;
- the athlete's disciplinary history;

At all times it is important to be objective and fair, to keep an open mind and not prejudge the issues. It is essential to take and retain factual notes of the issues. In such circumstances a copy should be provided to the individual.

CRIMINAL OFFENCES

BDST Squad athletes and management should report their involvement in any criminal offences outside their involvement with BDST immediately to a member of the Team Management Committee or the DSUK Chief Executive Officer. If the offence has a potential impact on the individual's suitability and/or the work they do and/or their acceptability to other staff/athletes then the disciplinary procedures should be implemented.

COUNSELLING/INFORMAL ACTION

Where it is considered appropriate to deal with any issues by counselling, rather than using the formal procedures, the following approach should be adopted:

- All discussions should be conducted in a private room.
- The athlete's reasons for any shortcomings should be explored and their explanations taken into account.

Supporting managers should be aware that counselling discussions or informal oral warnings are not part of the formal disciplinary process and should not be confirmed in writing, held on an athlete's record nor referred to in any future formal disciplinary hearing.

If, following counselling/ informal warnings, insufficient improvement has been achieved and management believes that a final oral warning may need to be given at a meeting, and that this final oral warning may need to be held on the athletes record, they should advise the athlete prior to meeting with them that they have the right to be represented/ accompanied during this meeting.

Criticism should be constructive with a view to addressing and rectifying any deficiencies.

A detailed improvement plan on how the athlete will rectify the deficiencies should be drawn up and, where possible, agreed.

The athlete should be advised of the consequences of not achieving any such improvement plan.

File notes should be made and copies given to the athlete.

Where it appears that any performance issues may be the result of ill health the matter should be discussed within the TMC. A counselling discussion (or performance review meeting) must not turn into a disciplinary hearing, as this will prevent the athlete from exercising their rights under the procedures. Where it appears that the issue is a disciplinary matter the meeting should be adjourned and the athlete advised accordingly.

INTERVIEWS AND HEARINGS

Throughout the process managers may be involved in a number of different types of meetings with athletes who are, or may be, subject to the procedures:

Routine Interview/Fact Find -May arise where the Team Management Committee, as part of their managerial responsibilities, becomes aware of issues directly concerning an athlete that may require addressing. In practice such interviews will necessitate a certain amount of limited investigation. This should usually go no further than interviews with the athlete themselves. They may necessitate interviews taking place with one or a number of different athletes to investigate admissions/allegations and which may be of a questioning, but not accusatory nature. Please see Fact Finding/Routine Interviews Guidance.

Initial Assessment - May arise following the receipt of an allegation of unlawful discrimination or bullying. It is the equivalent of a fact find interview albeit, given the nature of any allegations, it may involve the assessor in interviewing a number of individuals to determine whether there is a suspicion that the allegations could have some substance - see Harassment and Discrimination Investigations.

Non-routine Interviews -May take place when an issue is being investigated internally by trustees/management of DSUK and when, during those investigations, there may be reason to believe that the athlete being interviewed has a personal involvement in the matter.

Disciplinary Hearing -A disciplinary hearing is, in itself, part of the investigative process. Where an athlete is called to a disciplinary hearing he/she should be presented with all of the facts and evidence available and their responses and comments carefully listened to before arriving at any decision.

Appeal Hearing – An athlete has the right to appeal against any disciplinary decision taken. An appeal hearing will usually be heard by a level of management above the level responsible for taking the disciplinary decision. Where the disciplinary decision has been to dismiss, and the Team Management Committee has decided this, then any appeal must be heard in a different area of DSUK.

FACT FINDING/ROUTINE INTERVIEW GUIDANCE

A 'fact find' or 'routine' interview is where the Team Management Committee, as part of their managerial responsibilities, becomes aware of issues directly concerning an athlete that may require addressing. In practice such interviews will necessitate a certain amount of limited investigation. This should usually go no further than interviews with the member of staff themselves. This investigation may necessitate interviews taking place with one or a number of different athletes to investigate admissions/allegations and which may be of a questioning, but not accusatory or interrogatory nature.

The following guidance should be carefully followed to ensure that athletes are interviewed in accordance with both our internal procedures and employment legislation.

BASIC PRINCIPLES

When deciding whether an individual may have a personal involvement in a matter it is vitally important to undertake a thorough investigation of all the facts.

The start of this investigation process usually includes a fact-finding interview.

Given that the interview is not part of the disciplinary process the interviewee has no formal right to be represented at a fact find. However, there may be occasions where the individual wishes to have someone accompany them, and wherever reasonable this should be accommodated. The individual may be accompanied by a colleague who is readily available. There is no obligation to delay the meeting unreasonably to arrange for the attendance of such a person. In these cases, the observer will not participate in the interview, but may record questions and answers. They may also seek clarification of any points at the conclusion of the interview.

GUIDANCE NOTES

The fact-find interview should be just that – a fact find; the fact-find interview must not be of an interrogatory or accusatory nature.

The fact-finding interview is not part of the formal disciplinary process, but a routine interview to establish the facts of the case, and allow athlete(s) the opportunity to present their explanation of those facts/their version of events.

The interview should be conducted privately, with normal courtesies being observed. At the beginning of the interview explain to the individual that you are conducting a fact-finding interview to clarify the sequence of events that occurred.

In normal circumstances it will necessitate an interview with the individual only, although it may be necessary on occasions to interview other people who could have something to contribute to the investigation, or indeed to determine who, amongst a number, may be involved.

No notice of the interview is required – (See Basic Principles above re Accompaniments).



The interview must not be tape-recorded but detailed notes should be taken and a comprehensive file note made of the interview. Both the interviewer and the interviewee should be asked to sign a copy of the interview note in acknowledgement that it represents a fair and accurate reflection of the discussion.

- You must not accuse the individual of anything nor cross-examine them. Never say, for example, "I don't believe you" or "I have conflicting information". (If you do continually challenge the individual there is a danger that you may stray into areas more rightly reserved for a formal
- 'non-routine' interview or disciplinary hearing. As such you may be accused of denying them their rights of accompaniment/representation).
- You should not lead them with questions and try and trap them. In no circumstances should the interview be allowed to develop into a disciplinary interview.
- Use open questions, e.g. "How do you explain...? Can you...? Why did...?"
- If you have any conflicting information, present the information that you hold and ask them what they know about it, or what they can tell you about it.
- Record what they say to you and ask sufficient probing questions until you understand the sequence of events. Do not make any other comment. The interviewer must not convey any decision or opinion to the interviewee at the interview but should conclude the discussion by stating that the facts and explanations that have been established through the interview will be fully considered in the context of the investigation that is taking place.

CONSIDERATIONS PRIOR TO FORMAL HEARING

Prior to any decision to enter into formal procedures, the MC to consult with CEO of DSUK, who will provide appropriate procedural guidance.

Within the first 12 months of joining the squad any athlete may be referred immediately to the final stages of the relevant procedure, notwithstanding the absence of warnings or a clean disciplinary record.

Where a TMC member has been fully involved in detailed investigations prior to any hearing they are precluded from involvement in any subsequent hearing.

The TMC will normally deal with Stage One of the procedures for inefficiency and misconduct.

The Team Management Committee will also normally deal with subsequent stages.

Other than for disciplinary hearings including athletes within the first 12 months of their joining, the final stage hearing of any disciplinary procedure will be heard by a DSUK Trustee or employee.

Where it is not possible to hold the interview with a DSUK Trustees or manager, then it may be arranged to take place with a TMC manager provided they have not been fully involved in detailed investigations prior to any hearing. However, this must be arranged with the athlete's agreement.

All evidence that may be relied upon in a hearing should be made available to the hearing manager, the athlete and his/her representative in advance of the hearing.



Where multiple conduct issues occur they may be dealt with simultaneously under the appropriate procedures.

Depending upon the seriousness of any issue it may be referred to the final stage within the appropriate procedure.

If an athlete resigns during any investigation/disciplinary process their resignation should only be accepted with due notice according to athlete agreement. Any disciplinary procedure should normally continue unaffected by such resignation.

The athlete should be given sufficient notice and time to prepare for the hearing (usually not less than five working days).

The hearing itself is part of the investigation and, before any decision is made, an adjournment will be taken to give due consideration to all the facts and issues.

During any hearing a private recess room should be made available for the athlete and their representative for use in any adjournment. Where this is not feasible the BDST designated officials will withdraw from the meeting room.

CONSIDERATIONS AFTER FORMAL HEARING

Where action is taken short of dismissal a warning should be given of the consequences of any further occurrences.

Where sufficient improvement within the identified timescales has occurred the athlete should be advised in writing that no further action would be taken.

However, any future repetition may be dealt with under the appropriate procedures at the appropriate level.

Where any previous action was taken under the procedures for inefficiency it may be appropriate for any repetition to be dealt with as a conduct issue.

Subsequently if any further performance issues occur within a reasonable timescale (e.g., 12 months) the disciplinary procedures may be entered into immediately.

Likewise, if any further similar conduct issues occur within a reasonable timescale (i.e., 2 years -misconduct) the disciplinary procedures may be entered into immediately.

Any disciplinary penalty decided will be advised to the athlete wherever possible after the adjournment of the disciplinary hearing, but in any event will be confirmed in writing normally within five working days of such hearing.

The time period for review of any further disciplinary action will depend upon individual circumstances e.g. if the individual's main activity is measured in terms of sales then this time period could be as short as one month, but no longer than three months.

If disciplinary sanctions result in dismissal the athlete will be advised of the date of termination of their membership of BDST.

An athlete will be advised of their right of appeal and how to exercise that right.

In normal circumstances, any disciplinary action arising from allegations of theft, fraud or a potential criminal offence will be reported to the police for consideration of a criminal prosecution.

Where as a result of fraud/theft or negligence a loss has been incurred by BDST/DSUK, the BDST/DSUK reserves the right to recover that loss by the most appropriate means.

REPRESENTATION/ACCOMPANIMENT

Athletes have the right to be accompanied by a colleague, who is an athlete of BDST and is not materially involved in the issues, at each stage of the procedures. If they are to be so accompanied or represented they should advise the TMC with the name of the individual.

Representatives/ Companions have the right to:

- speak for the athlete in their defence;
- query or seek clarification of the procedures;
- examine and question any evidence or papers produced for the hearing;
- address the disciplining manager in writing or verbally, including bringing to attention any mitigating circumstances.
- sum up the case.

PERFORMANCE INEFFICIENCY

Inefficiency occurs when, during or after the programme of training an athlete cannot achieve or maintain the performance standards necessary for their membership of the squad. Any issues arising from neglect of these performance duties should be progressed via Misconduct or Gross Misconduct as appropriate.

The managers responsible for the stages of this procedure will arrange to interview the athlete in accordance with the At the Hearing.

Stage 1

If disciplinary action is necessary then the following sanctions may be applied:

- A final written warning. The athlete will be advised of the disciplinary action and the reasons for it together with their right of appeal.

In normal circumstances, and if sufficient improvement has occurred, the final written warning will be ignored after 3 months. The athlete will be advised in writing. If sufficient improvement has not occurred the next stage of the procedure will normally be implemented.

Stage 2

If disciplinary action is necessary any, or a combination, of the following sanctions may be taken:

- dismissal with notice appropriate to contract
- a final written warning (this would only be used where procedures were instigated at Stage 2 of the procedures).

The athlete will be advised of the disciplinary action and the reasons for it, together with their right of appeal.

Where dismissal does not take place the athlete should also be advised that any future repetitions will lead to a repeat of this stage which may lead to their dismissal.

MISCONDUCT

Misconduct occurs when an individual, through carelessness and/or negligence fails to comply with or achieve the required standards of conduct. The following are examples:

- regular or persistent lateness;
- unauthorised absence;
- neglect of duties and responsibilities;
- contravention of any of the BDST policies or regulations.

This list is not exhaustive and other issues may be dealt with under this procedure as necessary.

The managers responsible for the stages of this procedure will arrange to interview the athlete in accordance with the "at the hearing".

Stage 1

If disciplinary action is necessary then the following sanctions may be applied:

- a final written warning

The athlete will be advised of the disciplinary action and the reasons for it together with their right of appeal.

In normal circumstances, and if sufficient improvement has occurred, the final written warning will be ignored after 3 months. The athlete will be advised in writing.

If sufficient improvement has not occurred the next stage of the procedure will normally be implemented.

Stage 2

If disciplinary action is necessary any, or a combination, of the following sanctions may be applied:

- dismissal with notice appropriate to contract;

The athlete will be advised of the disciplinary action and the reasons for it, together with their right of appeal.

Where dismissal does not take place the athlete should also be advised that any future repetitions will lead to a repeat of this stage which may lead to their dismissal.

GROSS MISCONDUCT

Gross Misconduct occurs when an athlete is in serious breach of their contract and/or wilfully fails to conform to the required standards of behaviour, is wilfully negligent and/or wilfully fails to comply with BDST regulations and procedures.

The following are examples:

- acts dishonestly or knowingly aids and/or abets another athlete acting dishonestly;
- falsifies/forges any BDST/DSUK records;
- wilfully neglects duties, for example;
 - persistent absenteeism without authorisation,
 - incapability caused by alcohol or drugs;
 - deliberately causes damage to BDST/DSUK property;
 - is seriously disobedient/insubordinate;
 - seriously contravenes, or knowingly fails to report any contravention of BDST/DSUK regulations and procedures;
 - is considered unsuitable due to a criminal offence;
 - is involved in any form of drug dealing;
 - brings the name of BDST/DSUK into disrepute or acts in a way that, in the opinion of the BDST/DSUK, could bring BDST/DSUK into disrepute;
 - provides, or knowingly aids and/or abets another athlete in providing, a third party with any of BDST/DSUK confidential information;
 - without prior authorisation, accesses, removes or misuses any BDST/DSUK data, software or hardware in any form whatsoever;

IN ALL SUSPECTED CASES OF GROSS MISCONDUCT THE ATHLETE WILL NORMALLY BE SUSPENDED WHILE INVESTIGATIONS ARE CARRIED OUT.

The athlete must be informed of their suspension, together with the reasons, in writing. They are required to maintain regular contact by telephone each two weeks, or as agreed and have the right to request an update on the current position after each 20 working days.

The manager responsible for the hearing will arrange to interview the athlete in accordance with the “at the hearing”

If disciplinary action is necessary, any of the following actions may be taken, although summary dismissal may be the most appropriate:

- a final written warning,
- dismissal with notice appropriate to contract
- Summary dismissal. The athlete will be advised of the disciplinary action and the reasons for it, together with their right of appeal. In the case of dismissal this will include the date on which involvement with BDST/DSUK will terminate.

Where dismissal does not take place the athlete should also be advised that any future repetitions will lead to a repeat of this stage which may lead to their dismissal.

APPEALS

An athlete has the right of appeal if they believe that:

- not all the relevant facts were available to the disciplining manager;
- the procedures were not followed;
- The decision was perverse or unreasonable.

To exercise their right of appeal an athlete must write to TMC/DSUK with full reasons for the appeal within three weeks of being first advised of the disciplinary decision. An Appeal will not normally be heard by the management conducting the disciplinary hearing. Any appeal will be heard, wherever possible, within two weeks of receipt.

Any appeal hearing should be arranged and conducted following the general guidance set out in At the Hearing.

The decision of the appeal hearing, which may only be to waive, reduce or confirm the original decision, will be confirmed in writing and will be final. However, where the Appeals Officer believes that there has been a fundamental procedural flaw, or further relevant evidence has emerged he/she has two further options:

1. After advising the athlete and his/her representative, and after a suitable adjournment, the hearing can be reconvened as a disciplinary hearing and the case reheard. Depending on the outcome the athlete will then retain his/her right to an appeal from any decision reached.
2. Remit the case for a rehearing by a different disciplining manager. Where the appeal is against dismissal this will necessitate the re-instatement of the athlete in the intervening period and, where appropriate, the suspension of that athlete.

NON ROUTINE INTERVIEWS

IF A GROSS MISCONDUCT SITUATION IS BEING INVESTIGATED INTERNALLY BY DSUK THE FOLLOWING GUIDELINES WILL APPLY:

A non-routine interview takes place when there is a belief that an athlete may have a personal involvement in the matter under investigation. The Investigator must recognise when an interview becomes non-routine and advise the athlete of their rights;

The athlete will be reminded of their right of accompaniment by an observer who is a colleague or representative who is involved by BDST/DSUK and is readily available. The Investigator also has the right to call upon another athlete, preferably a member of management or another Investigator, to act as an observer during the interview.

The observers will not participate in the interview, but may record questions and answers. They may seek clarification of any points at the conclusion of the interview. The observer(s) may leave the interview at any time, by mutual consent;

- the athlete will be advised of the nature of the enquiry and the interview will be conducted privately, in line with the BDST/DSUK policy on dignity and respect, with normal courtesies being observed;
- unless mutually agreed otherwise interviews will not last more than 2 hours at any one time, with a minimum 1 hour break between;
- interviews will be recorded and two confidential copies of the recording made. One will be retained by BDST/DSUK and the other provided to the interviewee;
- unless there are exceptional circumstances interviews will be conducted on BDST/DSUK premises;
- statements given to Investigators are voluntary and may be prepared without supervision;

If a further interview is necessary, the Investigator will again remind the athlete of their rights. Similar arrangements to the above will be followed by harassment/discrimination investigators.

DISCIPLINARY HEARINGS

Athletes will normally be interviewed at each stage of the formal procedures. Where possible these guidelines should be followed when preparing, arranging and conducting hearings.

Before the Hearing

The arrangements for all hearings should be confirmed to the athlete in writing and include:

- the reason(s) for the hearing;
- the stage of the procedure to be followed and, if applicable, that the procedure may involve dismissal;
- the date, time and venue for the hearing;
- reasonable notice of the hearing should be given (5 working days) to allow the athlete time to prepare their case;
- the athlete's rights under the procedures, including that of accompaniment or representation;
- copies of the relevant papers should be provided to the athlete before the hearing;
- where appropriate a schedule of all documents should be provided.

Prepare for the hearing by:

- carrying out sufficient investigation;
- ensure that all the relevant facts and papers are available;

- ensure that the hearing manager has, in advance of the hearing, copies of any documents that the athlete, or their representative will be relying on at the hearing;
- ensure that a private room is available for the athlete and his/her representative/colleague. Where this is not possible the hearing manager should withdraw from the hearing room during the adjournment;
- careful planning; make notes of the points, questions and areas of clarification which need to be covered, which should be reflected in the hearing minutes.

AT THE HEARING

ATTENDEES:

- the athlete;
- accompanied or represented by a colleague, who is an athlete of BDST and is not personally involved in the issues.
- the hearing manager ;
- confidential note taker.

INTRODUCTION:

- introduce everyone and explain their roles;
- confirm that the hearing manager is of sufficient status and is authorised to act;
- if attending on their own, confirm that the athlete understood that they had the right to be accompanied or represented;
- confirm that neither the athlete nor the representative (if one is present) has/have any objections to the hearing manager;
- explain that the purpose of the hearing is to consider whether disciplinary action is to be taken in accordance with the disciplinary procedures;
- confirm the level and what procedure is being used and why;
- explain how the hearing will be conducted.

OBTAIN CONFIRMATION:

- whether the representative (if one is present) will be speaking on behalf of the athlete at the hearing if so reserve the right to ask questions directly of the athlete;
- that the athlete has received copies of any report and other documentation being used as 'evidence';
- that the athlete has read and understood the general disciplinary rules and procedures detailed in the athlete handbook.

STATE THE COMPLAINT:

- state precisely what the complaint is and outline the case briefly by going through the facts and evidence that has been gathered.

GENERAL QUESTIONING AND DISCUSSION:

- give the athlete the opportunity to state their case;
- listen attentively;
- ask questions of clarification;
- check that what has been said is understood;
- ask the athlete if they have any explanation for what has happened (or not happened).
- establish if the athlete is prepared to accept fault.
- enquire if there are any special circumstances to be taken into account;
- if further investigation is required adjourn the hearing.
- before reconvening ensure that the athlete has been provided with the results of any further investigation;
- they should be given sufficient time to consider the results of any such investigation and prepare any response;
- if it becomes clear that the athlete has provided an adequate explanation stop the proceedings.

SUMMING UP:

- summarise the main points concerning the complaint, the main points raised, and any matters that need to be checked;
- ask the athlete and their representative, if one is present, if there is anything else that should be taken into consideration or whether they have anything further to add.

ADJOURNMENT:

- during adjournment all of the evidence, including that gleaned at the interview, should be fully reviewed to allow proper consideration of all the matters raised before a decision is made and (where appropriate) any disciplinary penalty is determined;
- make, and keep, contemporaneous notes of all of the considerations during the adjournment;
- if any further investigations are necessary ensure that the results are given to the athlete prior to reconvening (**NB** depending on anything else the athlete has to say about the results of any subsequent investigations, it may be necessary to adjourn again to ensure that full consideration is given to all the evidence).

RECONVENING - THE DECISION:

- ask the athlete if there are any further points they wish to make. If further issues are raised these should be explored and, depending on the issues, it may be necessary to take a further adjournment;
- commence the reconvened hearing with "having reviewed and considered all the evidence available to me" and advise the athlete either at the hearing (after the adjournment) or as soon as possible thereafter the decision and the reasons for that decision;
- agree any steps necessary to resolve the situation (if appropriate);
- explain their right of appeal against the decision, by writing to BDST/DSUK unless there are exceptional reasons, within three weeks of the date they were first advised of the decision;

- remind the athlete that the purpose of any appeal will not be to rehear the disciplinary but to decide whether all the facts relevant to the case have been covered, that the disciplinary procedures have been followed correctly, and that the decision was reasonable.

AFTER THE HEARING

Written confirmation of the decision:

- wherever possible within 5 working days, written confirmation of the disciplinary decision and the reasons for it should be sent to the athlete. This should, where appropriate, confirm the decision, the improvement required, the timescale involved and include a warning that the next stage of the disciplinary procedure will be implemented if there is insufficient improvement and that this may involve dismissal;
- if the decision is to dismiss then any letter will confirm the date on which the membership will end/ended.
- advise the athlete of their right of appeal;

Hearing minutes:

- an accurate summary, not a verbatim report, of the meeting should be prepared;
- where possible the minutes should be taken by a confidential secretary/note taker;
- copies should be sent to the athlete and any representative present at the hearing. They should be invited to submit, within 5 working days, any comments on the accuracy of the minutes.

If agreement cannot be reached, the unresolved issues should be appended to the minutes as a separate note.