



Managing breaches of the Code of Conduct

This document is designed to help clubs and zones with the requirements for managing suspected breaches of the PCNSW Code of Conduct, where a formal process is the preferred approach.

Formal approaches to managing suspected breaches of the Code of Conduct and other disciplinary issues.

Until a determination has been made that a breach has occurred, the breach remains a 'suspected breach' or 'suspected misconduct.'

The principles underlying procedures for managing breaches of the Code of Conduct are:

- Everyone associated with Pony Club NSW - members, officials, Instructors, volunteers, and observers alike - must comply with both the Pony Club NSW and National Code of Conduct.
- Taking action in cases of suspected misconduct is primarily aimed at protecting the integrity of Pony Club as an organisation and thereby maintaining confidence in the pony club movement.
- Pony Club discipline procedures should be fair and reasonable, striking an appropriate balance between the needs of members, officials and supporters and the needs of the Pony Club as an organisation.

Although the range of sanctions, including termination of membership, form an integral part of any misconduct process, imposing sanctions is not primarily about 'punishing' someone who has failed to meet the required standards of conduct. Sanctions are intended to be proportionate to the nature of the breach and in some cases will identify that a club, Zone or Pony Club NSW no longer has confidence that the person is able to demonstrate and uphold the appropriate values and behaviors' on a reliable basis to participate in some, or all, pony club activities. Sanctions also operate as a deterrent to others and confirm that misconduct is not tolerated in Pony Club.

Not all breaches of the Code will necessarily be the subject of formal action. Depending on the seriousness of the conduct, the person's history with Pony Club and an assessment of whether the incident is likely to be an isolated one, counseling or a warning may be a more appropriate way of dealing with the specific behaviour.

Other actions, such as specific coaching, exclusion from team or club based activities for a period of time or acting in a non-riding support role, should also be considered.

It is important to stress that a person suspected of having breached the Code is presumed not to have committed the breach until a determination has been made in accordance with these procedures for investigating a breach. The determination may, of course, be that the person did not breach the Code and no further action is taken.

It is also important to note that a sanction cannot be imposed on any person until there is a determination that the Code has been breached.

What is a breach of the Code of Conduct?

In broad terms, any member, supporter, volunteer, instructor, official or other member of the Pony Club community whose conduct does not comply with an element of the Code of Conduct can be found to have breached the Code.

The following behaviour are considered serious breaches of the Code of Conduct:

- Violent or abusive behaviour toward another person
- Failure to maintain a safe environment
- Vilification of any kind towards another person
- Discrimination against another person based on their sexual orientation, race, culture or religion
- Discrimination against another person based on their physical or mental ability
- Sexual harassment or intimidation of another person
- Victimization of another person for exercising their rights through the Code of Conduct

Before a Club, Zone or Pony Club NSW can impose a penalty for such behaviour, the breach must be confirmed through the complaints handling procedures at Club, Zone or State level, as appropriate.

It is important, however, to note the following points:

- Where a provision of the Code contains more than one element, it may not be necessary for the person to have breached all elements in order for a breach of the Code to be determined. For example, a parent who verbally abuses an instructor does not also have to assault them to be found to have breached the Code of Conduct.
- Where a suspected breach appears to be a minor infringement, it may be sufficient to warn the person about his or her conduct, noting that any further similar conduct could lead to formal action. In these cases the decision may be that a determination is not required but a note should be made of the basis on which the warning was given. For example, a rider may be publicly critical of another team's performance or abilities without resorting to verbal abuse or belittling remarks.

First Steps

Before any determination about whether or not a person has breached the Code of Conduct is made, the person must be informed of the details of the suspected breach and the possible range of sanctions that may be imposed, should there be a finding that the person has breached the Code. The person must also be given a reasonable opportunity to make a statement in response to the suspected breach.

This can be done verbally in some cases. However, where the suspected breach of the Code is considered to be of sufficient concern, it is preferable to record the matter in written form. The guiding principle is that the process for determining whether a person has breached the Code must be carried out with as little formality and as much expedition as a proper consideration of the matter allows.

Reasonable steps must be taken to ensure that the person or committee who determines whether there has been a breach of the Code is, and appears to be, independent and unbiased. In some instances, it may be appropriate to select a person from outside the particular club or zone, if it is not possible to satisfy this requirement. In such cases, advice from Zone or State Office should be sought via the Zone Representative, Zone secretary or Zone President.

The State office (MPIO) will assist with identifying a suitable decision maker who meets the required criteria. At each stage of the misconduct process, whether the decision maker is appointed by club, Zone or State Office, it is important to ensure that the decision maker is appropriately authorised to exercise power in this context. This can be done via a letter of appointment outlining the issue to be determined.

To suspend or not to suspend pending a decision?

Suspension while an investigation is proceeding is an administrative action that must be taken for sound reasons. It should not be considered as a sanction in itself. In exercising the power to suspend pending a determination, it is important for the decision maker not to prejudge, and not to be seen to prejudge, whether a breach has occurred.

The Decision Making Process Procedural Fairness

The decision making process should be governed by the principles of procedural fairness.

Natural justice (also referred to as procedural fairness) incorporates the following principles:

- *both the Complainant and the Respondent must know the full details of what is being said against them and have the opportunity to respond;*
- *all relevant submissions must be considered;*
- *no person may judge their own case;*
- *the decision maker/s must be unbiased, fair and just;*
- *the penalties imposed must be fair.*

The principles of procedural fairness require people to base their decisions on compelling, factually based, reliable, evidence. The application of the principles of procedural fairness may vary, depending on the circumstances of the particular case. The more serious the allegation, the stricter should be the application of procedural fairness.

Standard of proof

The standard of proof for determining whether a breach of the Code of Conduct has occurred is ***on the balance of probabilities***. This means that the decision maker must be satisfied that a breach of the Code is more probable than not. The level of proof, while still being on the balance of probabilities, will rise in accordance with the seriousness or importance of the issue to be determined. For example, an allegation of being rude to an official will have a lesser standard of proof than an allegation of theft.

Investigating a complaint of misconduct

Investigating a complaint of misconduct

At the beginning of an investigation about a complaint, the Club, Zone or State Office (as appropriate) should, among other things, ensure that the person who is the subject of an investigation is familiar with the policy in regard to complaint handling. The person being investigated should be **advised in writing**, that an investigation regarding the complaint is underway, what the complaint is about and that information about them may be disclosed to others only where necessary and appropriate as part of the investigation.

Other parties to the investigation such as the complainant and any witnesses should be advised that information relating to them may be disclosed to the person being investigated and others only where necessary and appropriate.

Recording the determination

After a determination in relation to a suspected breach of the Code has been made, a written record of the findings should be prepared. The written record should identify the alleged breach of the Code and also set out the findings on relevant questions of fact and refer to the evidence or other material on which those findings were based.

Disclosure of personal information

The primary consideration should be that disclosure of personal information regarding misconduct is managed in such a way that personal information is not revealed unless it is necessary, appropriate and reasonable to do so. It should be possible in most circumstances to give a complainant adequate information about the way their complaint has been handled without disclosing personal information about the person.

Sanctions

A sanction or penalty can be imposed on a person only after it has been determined that the person has breached the Code of Conduct. Where such a determination has been made, Pony Club NSW, a Zone or Club may impose one or more of the following sanctions on the person:

- termination of membership
- refusal to renew membership
- suspension of membership
- exclusion from certain pony club activities
- a reprimand

There is no impediment to the imposition of more than one sanction, but the club or Zone in imposing the sanction must be satisfied that more than one sanction is appropriate in the circumstances. For example, a member may be excluded from selection for specific State events for a period of time and required to attend rally days during this time as a non-riding member.

Where the sanction imposed is a reprimand, it is subject to the same standards of record-keeping as apply to other sanctions.

A determination that a breach has occurred does not necessarily mean that a sanction must be imposed. A decision can be taken that other action may be appropriate. For example, the person may be counselled, with a view to preventing a recurrence of the conduct in question.

In reaching a decision to impose or not impose a sanction, a statement of reasons should be provided to the person affected.

Other considerations

There are a number of other issues relevant to the misconduct process, particularly relating to past conduct, resignation of membership or transfer to another club and potentially another zone during an investigation.

Suspension Checklist

In deciding whether or not to suspend a person's participation, the following questions should be considered:

Pre-suspension

- Is it appropriate pending a decision to remove the person from the pony club activities?
- Has a change in responsibilities or role been considered as an option? Eg. could the instructor who is also a parent still attend in a non-coaching role
- Is it clear that the decision maker is not prejudging and is seen as not prejudging whether the person has breached the Code of Conduct?
- Has there been an opportunity for the person to make a statement before the suspension is implemented?
- Has the person been advised of the possible length of the suspension and of his/her ongoing status? (e.g. attendance at training courses previously booked, entitlement to enter or participate in competitions)

Past Conduct

The person who is determining whether or not (on *the balance of probabilities*) a breach has occurred should ordinarily consider only the incident(s) in question to make that determination. In some cases, however, evidence of prior similar incidents, or evidence which shows a particular tendency, may be relevant to a determination about the incident(s) in question. The person should be advised of any past conduct that it is proposed to take into account in this regard.

When deciding on an appropriate sanction, a decision maker may consider past behaviour, and in particular whether previous warnings, counseling or sanctions have relevance. For example, if repeated counseling has not changed the person's conduct, a more serious sanction may be appropriate. The person should be advised of any past conduct (both satisfactory and unsatisfactory) that it is proposed to take into account when deciding a sanction. This should be included in the statement of reasons provided to the person affected.

Right to review

A person who has been found to have breached the Code and who wishes to challenge either the determination that a breach has occurred or the sanction imposed, may lodge an application for a review of actions with Pony Club NSW or PCA. An application for review must state why the review is sought, the facts or matters relevant to the review and the outcome sought.

The making of an application for review does not operate to stay the sanction. Pony Club NSW or PCA may confirm or overturn the determination or confirm or vary the sanction imposed, including imposing a greater sanction. Applications for review must be made in writing, including documents and statements that you wish to be considered and directed to The President PCA NSW.

Criminal matters

Criminal proceedings may result from a person's behaviour related to their involvement with pony club as well as through his or her private actions. The state Office must be notified in all instances where criminal behaviour is suspected. Where a person is being dealt with in connection with both criminal action and a

suspected breach of the Code, procedural fairness requires that the two matters are dealt with by different people. For example an allegation of theft of pony club funds or property.

Resignation during a misconduct investigation

Where a person resigns their membership or ceases to be a member with the club during the course of an investigation of suspected misconduct, the investigation should be discontinued. Any documents that have been obtained or created up to the date of resignation should be retained, even where the investigation is not complete. A copy of such records should be provided to the state office for safe keeping.

If the person later seeks to re-join the same or a different pony club, these records may be used as part of a pre-membership review process. Where this is done, those using the information for that purpose will need to ensure that the principles of procedural fairness are applied, including advising the former member that the decision maker was taking such records into account and giving them the opportunity to comment.

Record Keeping

A copy of the investigation report and outcome should be provided to the state office in all instances for their records.

Careful consideration should be given as to whether it is necessary or appropriate to disclose information relating to an investigation to others. Where you are uncertain, seek guidance from the state MPIO.

Providing information on Code of Conduct investigation outcomes to complainants.

Complainants have a legitimate interest in knowing that alleged 'wrongs' have been addressed. Complainants should be given sufficient information to provide assurance that their concerns and complaint has been taken seriously. That Pony Club does not tolerate behaviour that is inconsistent with the Code of Conduct and has imposed an appropriate sanction where a breach has been found and has taken appropriate steps to ensure the problem will not recur.

Disclosure of the Misconduct

In some instances, there may be a desire to highlight particular cases of misconduct for the purposes of education, deterrence or prevention. It will usually be possible to circulate information describing the breach, subsequent actions taken and advising others of appropriate behaviour without disclosing the identity of the person concerned. Disclosure might include the results of an investigation and any sanctions imposed, remedial action taken or changes to information, policies or processes.

Notes