

The Arbitration Process

What happens if the Judicial Commissioner allows me to proceed with my Complaint?

Unless the complaint is to be dealt with by mediation or the Commissioner himself decides that he has sufficient information to enable him to reach a Determination on the substantive merits of your complaint then he will refer matters to the Arbitration process.

What happens next? – The Procedural Timetable

The process is covered by the detailed ASA Judicial Regulations and any Directions made by the Judicial Commissioner. This note provides an overview of the procedure for a typical case that proceeds to an Arbitration hearing.

The Commissioner in conjunction with the Chairman of the ASA Independent Disciplinary and Dispute Resolution Panel will advise the parties of the date set for the Hearing and details of the three panel members who will hear the case. You will have a right to object to particular individual panel members if you have a good reason and if this is accepted by the Commissioner or Chairman.

You should expect the hearing to take place, subject to availability of the parties and panel members, **within the next two months at a location which is local to the parties.**

Each of the parties will be responsible for presenting their case to the panel. For information the standard Guidance issued with Hearing Direction is set out below as Annex 1.

If either Party or both Parties wish to be assisted or represented by individuals of their choosing the OJA shall be informed of the identity and postal addresses of the representatives at least **fourteen (14) days** prior to the date of the Hearing.

Typically the Parties are also required at least **fourteen (14) days** prior to the day of the Hearing submit to the OJA in the form of Bundles (five copies in total)

- (a) their written statements of claim, defence and counterclaim (if any)
- (b) names and addresses of any witnesses they intend on calling together with their witnesses' written statements; and
- (c) any other material they wish the Committee to consider and they propose to rely on at the Hearing.

Further Directions will be provided as to the precise requirements for the Bundles and of the arrangements for seeking an order that any person giving evidence on behalf of the other party be required to attend the hearing so they may be questioned concerning their statement.

IMPORTANT NOTE: It is each party's responsibility to present their own case, including ensuring their witnesses attend.

Sanctions and Costs

The ASA Arbitration Committee's powers include imposition of financial sanctions and costs orders on parties to ASA complaints. The Parties conduct may also be taken into consideration. However, professional charges are not recoverable.

APPENDIX 1

GUIDANCE NOTES (These notes are provided to assist the parties to ASA Judicial hearings; they do not replace ASA Judicial Laws and Regulations)

Hearing Procedure:

The conduct of both disciplinary and arbitration committee hearings is determined by the Committee Chairmen who have discretionary powers over the proceedings.

Normally, the chairman invites the parties, representatives, witnesses and others with interests into the room "the room" in which the hearing will be conducted. The chairman will introduce him/herself and the committee members to those present, after which the parties and others present will be invited to introduce themselves.

The Chairman will outline the manner in which he/she intends to conduct the hearing and then ask all witnesses to leave the room.

The complainant or representative, if present, will prosecute/present his/her case before the committee. When the complainant's presentation has been completed, the respondent (or respondent's representative) will be invited to cross examine the complainant. The Chairman and the committee members may and usually do question the complainant.

The Complainant will be invited to call his/her witnesses (one at a time) and invite them to give their evidence. As the witnesses complete their evidence they may be questioned by the respondent and the committee.

When the complaint's case is completed the respondent will be invited to present his/her case and the procedure will follow the steps in paragraphs 4 and 5 above, closely.

On completion of the respondent's account of the matter the Chairman usually invites the Complainant to sum up his/her case followed by an invitation to the respondent to do likewise.

The parties and their respective entourages are asked to leave the room and the committee will deliberate on what they have heard and read.

The parties shall preserve and respect the confidentiality of the arbitration proceedings, including the issues in the dispute and the evidence and arguments presented by the parties.

Except with the prior written agreement of the parties to the arbitration, no disclosure shall be made to any third party of the contents of any documents or other evidence produced in the arbitration or any procedural decision of the Arbitrator or the Arbitration Committee or his or its Award, or any part of them save and to the extent that disclosure may be required of any party by legal duty, to protect or pursue a legal right or to enforce an award.

The procedure at a hearing shall be flexible and shall be at the discretion of the Arbitrator or the Chairman of the Arbitration Committee who may make such orders as he/she feels necessary to ensure the orderly and effective conduct of the hearing.

An Arbitration Committee shall decide on any issue by a majority and if it fails to reach a majority decision on any issue, the decision of the Chairman of the Arbitration Committee shall be final. The decision and/or award shall be in writing and shall be dated and signed by the Arbitrator or the Chairman of the Arbitration Committee and unless otherwise agreed shall be accompanied by the reasons on which it is based.

Considerations regarding children

Any person under the age of eighteen (a "child") who is a party to a dispute or who has been called as a witness shall normally be accompanied by a parent, a person with parental responsibility or a suitable adult. The Chairman shall have the sole discretion as to whether a child is permitted to present or defend a case or be questioned as a witness and may order that the child be assisted or represented by an adult.

The Chairman shall give due consideration to any child attending a hearing as a party to a dispute or to give evidence and in particular:

No child aged fourteen or under shall normally be expected to attend a hearing to give evidence in person. His evidence shall normally be given as a written statement with the assistance of a club welfare officer or other person acceptable to the child and parent. Questions and responses may be relayed by a panel member. If the child appears distressed the panel shall rely only on the written evidence:

A child over the age of fourteen shall only attend a hearing as a party to the dispute or to give evidence in person provided he wishes to, and the Chairman has consulted with the parent and child and is satisfied that they both understand the nature of the hearing and what will happen and that the child is competent to attend:

If there is a disagreement between parent and/or child and the Chairman on any of the considerations above, the Chairman shall consider requesting advice from the Independent Child Protection Officer via the ASA Legal Department.

During the hearing, a child who is expected to give evidence in person and his accompanying adult(s) shall be required to attend only those parts of the hearing which are necessary for him to give his evidence and shall be provided with a separate waiting area with no contact with any of the [other] parties.

After the hearing the Chairman shall inform the parent of the Committee's findings and decisions and shall discuss whether he or the parent shall inform the child.

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