

## THE SCOTTISH GYMNASTICS ASSOCIATION ("SGA")

### CONDUCT IN SPORT CODE

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The object of the Conduct in Sport Code is to set down rules and procedures with a view to obtaining justice in gymnastic Conduct proceedings and to ensure that decisions are made in a fair, consistent, impartial, independent and expeditious manner.

#### **Interpretation**

In this Code, unless the context requires otherwise "Conduct in Sport Officer" means the person appointed on a permanent basis to carry out this role (as defined by the Conduct in Sport Panel Terms of Reference) or any person nominated and trained to perform this role on a short term basis should circumstances require, or at any time at the direction of the Board or the CEO.

#### **1. Jurisdiction**

- 1.1 This Conduct in Sport Code shall apply to all Members of the SGA and all office bearers of the SGA and all coaches, judges, technical officers and adult helpers of Club or member schools of the SGA and all persons registered with the SGA in any capacity. The Code shall apply and SGA shall continue to have jurisdiction over any person or entity after registration with SGA ends, in the event that an alleged breach or any matter arising further to this Code is alleged to have occurred during any period of registration and remains to be dealt with; or in the event that any proceedings are not completed at that time.
- 1.2 The Board of the SGA shall from time to time establish an independent Conduct in Sport Panel which shall have delegated power to act in the name of the SGA through Conduct Committees and Appeals Committees appointed from the members of the Panel to hear and determine conduct issues arising out of gymnastics in Scotland or where an individual or individuals or Club against whom a complaint is made comes within the jurisdiction of the Panel by

virtue of this Conduct in Sport Code or otherwise through their membership of the SGA.

- 1.3 The Board of the SGA shall from time to time appoint a Chair of the Panel who will determine which members of the Panel shall hear any case put before it. The Chair of the Panel shall appoint persons to sit as Conduct Committees or Appeal Committees on a case-by-case basis. No member with an interest in the case to be heard shall be appointed or otherwise sit. Committees shall ordinarily comprise three members but the quorum shall be two persons. The Chair of the Panel shall designate one member appointed to the Committee to be Chair.
- 1.4 No person sitting at first instance in a Conduct Committee shall be appointed to a subsequent appeal in the same matter but any member of the Conduct in Sport Panel shall be eligible to be appointed to sit on matters at first instance as part of a Conduct Committee or on appeal as part of an Appeal Committee.
- 1.5 All decisions shall be by majority unless there is an even number on the committee in which case the Chair shall have the casting vote.
- 1.6 Meetings of the Conduct Committee, Appeals Committee and otherwise any business of the Panel may take place, either in one or more places, by letter, telephone, e-mail, webcast or by other or combinations of convenient means. Any party against whom a complaint is made or any other party to proceedings may request a personal hearing and the Chair of the Conduct Committee (or Appeals Committee as applicable) shall consider the request.

## 2 **Misconduct**

- 2.1 The conduct which may be brought before a Conduct Committee is:-
  - a. conduct by any person or body subject to these rules which amounts to a breach of these rules;
  - b. any alleged breach of the Articles of Association of the SGA;

- c. any alleged breach of any rules and/or procedures promulgated under the Articles of Association of the SGA;
- d. any alleged breach of any other policy of the SGA and/or the British Gymnastics Association and/or the Federation Internationale de Gymnastique and/or any other body or organisation to which the SGA may be a member of or affiliated to and which the party is expected to comply;
- e. any conduct which is otherwise conduct which may be considered to bring the sport of gymnastics into disrepute or which is considered to be detrimental to the best interests of the sport of gymnastics.

### **3 Procedure**

3.1 The SGA shall be entitled to put before the Panel any matter that falls within these rules. The SGA Conduct in Sport Officer shall present the complaint by sending to the Chair of the SGA Conduct in Sport Panel a notice of complaint containing details of the alleged conduct and the breach(es) together with a request that a Conduct Committee be convened. It shall be open to the SGA Conduct in Sport Officer to ask, at this same time or at any point in time prior to the determination of proceedings before a first instance Conduct Committee, to impose a provisional suspension and/or any other interim order on any person or club who is the subject of a complaint and proceedings. The SGA CEO or Chair of the Conduct in Sport Panel shall be entitled to impose the same without any hearing or further enquiry, but the Chair may if the Chair so chooses, take steps to question the SGA Conduct in Sport Officer or the person or club concerned as to any matter concerning or connected to the complaint and the possibility of provisional suspension and/or interim order prior to deciding to impose a provisional suspension and/or interim order. The Chair of the Conduct in Sport Panel shall be

entitled to review, vary, extend, revoke or take such further action as they see fit in relation to any provisional suspension and/or interim order imposed whether at the request of the person or club concerned or the SGA Conduct in Sport Officer or of their own volition.

- 3.2 Only the SGA Conduct in Sport Officer shall be entitled to put before the SGA Conduct in Sport Panel a complaint.
- 3.3 Any person who wishes to notify the SGA Conduct in Sport Officer of any alleged breach or otherwise any grounds for complaint against any person to whom this Conduct Code applies should notify the Chief Executive Officer (CEO) of the SGA, unless the matter is in respect of the CEO in which event notification should be made to the Chair of the SGA. The CEO (or the Chair in the case of a complaint in respect of the CEO) shall be entitled to direct that either (i) the allegations be investigated by the SGA Conduct in Sport Officer and for the SGA Conduct in Sport Officer to thereafter determine whether a complaint should be put before the Panel or (ii) no further action be taken.
- 3.4 The decision as to whether a complaint should be put before the Panel will be made by the SGA CEO, following receipt of an investigation report and recommendations from the Conduct in Sport Officer. It is final and binding and is not a decision that may be appealed or otherwise challenged. The SGA shall not be obliged to provide to a member reasons for bringing or refusing to bring a complaint.
- 3.5 On receipt of a complaint the Chair of the Conduct in Sport Panel shall appoint a Conduct Committee to consider the complaint. The Chair shall notify the parties of the date time and place of the hearing. In the event that any person or club is provisionally suspended or subject to any interim order they shall be notified of the same at this time or prior to and in anticipation of a hearing or as soon as practicable thereafter.

- 3.6 A complaint may be brought notwithstanding that the party against whom the complaint is brought may be separately under investigation by any regulatory authority or in respect of any alleged criminal conduct arising from the same or connected circumstances. Proceedings further to this Conduct Code shall not be automatically stayed if there are criminal proceedings connected to or arising out of the same circumstances as the complaint.
- 3.7 Unless otherwise directed by either the Chair of the Conduct in Sport Panel or the Chair of the Conduct Committee the party against whom the complaint is brought shall set out, in writing, no later than 48 hours prior to the commencement of the hearing (i) whether or not they accept the complaint in whole or in part (including but not limited to whether the complaint should be upheld); (ii) whether they have any preliminary matters to raise and (iii) who shall attend the hearing and in what capacity. At the same time copies of any documentary or other evidence to be produced and relied on at the hearing must be lodged by the party with the Conduct Committee and provided to the other side. The Conduct in Sport Panel shall at all times and whether sitting as a Conduct Committee or Appeals Committee conduct all proceedings in an inquisitorial manner.
- 3.8 The Conduct Committee shall have the power to regulate its own procedure and to determine any matter arising under or in connection with the Conduct Code (except in relation to appeals when the Appeal Committee shall be entitled to exercise such powers) and in so doing may waive any requirement of and/or extend any period of time provided for in this Conduct Code. All decisions and procedural directions taken shall have due regard to the requirements of natural justice. Subject to the foregoing it shall ordinarily be for the SGA Conduct in Sport Officer to place before the Conduct Committee the complaint and all supporting material. The function of the SGA Conduct in Sport Officer shall be to assist in the proceedings by taking such steps as are reasonably necessary in assisting the Conduct Committee's inquisition of the complaint.

The SGA Conduct in Sport Officer is not acting as a "prosecutor" or "against" the party in respect of whom proceedings have been put before the Conduct in Sport Panel. Without limitation to the ways in which the SGA Conduct in Sport Officer may assist the Conduct Committee they shall be able to answer questions, furnish information, guide generally and highlight matters of policy and/or principle relevant to the matters under consideration.

- 3.9 For the purposes of this Conduct Code the SGA Conduct in Sport Officer shall be regarded as a party to proceedings, allowing, for example, an appeal to be pursued in the name of the SGA Conduct in Sport Officer for SGA. Without limiting the circumstances in which an appeal may be taken this will allow an appeal to be advanced if, for example, an error has been made by the Conduct Committee concerning an important principle to SGA, or a sanction issued on disposal is unduly lenient.
- 3.10 It shall be the duty of any party wishing to call a witness to ensure their attendance. Subject at all times to the direction and control of the Chair of the Conduct Committee, the parties can take evidence from witnesses, and cross examine witnesses (through the Chair) at any hearing. Witnesses must be pre-notified. The Conduct Committee can require an explanation in writing of the anticipated relevance of the witness evidence. The Conduct Committee can decline to allow a witness to attend and give evidence if the Conduct Committee considers the witness to be irrelevant to the issue(s) to be considered.
- 3.11 The Conduct Committee shall not be bound by any rule of evidence and shall be entitled to receive and consider such evidence as it considers appropriate, including expert evidence, attaching such weight to evidence put before it as it sees fit. The Conduct Committee shall have the power to summon witnesses to any hearing or call for any documents or other evidence to be produced at or in advance of any hearing and all persons and parties who are subject to this Conduct Code shall comply and cooperate with the

same. At any hearing the Conduct Committee shall be entitled to ask such questions of any witness as it considers fit and undertake such investigations as it considers appropriate. The Conduct Committee shall also be entitled to require questions of witnesses to be put through the Chair, rather than directly, whether those questions are in "chief" or "cross" examination of the witness.

3.12 Ordinarily a decision shall be taken as to liability (whether or not the complaint is upheld or not) and separately a decision shall be taken as to sanction, albeit both decisions can be taken at the same hearing.

3.13 The Conduct Committee shall have the power to postpone or adjourn a hearing on the application of any party to the proceedings or on its own motion.

#### **4 Representation before the Conduct Committee or Appeal Committee**

4.1 Any person, club or other party in respect of whom a complaint is made may be legally represented at any hearing. In addition, a person who is a member of a club in membership of the SGA and who wishes to be accompanied by a club official may request the same. Where a club is the subject of proceedings the club should be represented by no more than 2 officials of the club.

4.2 Any individual who is the subject of a complaint or who is a witness and is under the age of 18 years shall be entitled to be accompanied by one of his or her parents or legal guardian.

#### **5 Deliberations**

The deliberations of the Conduct Committee and the Appeal Committee shall be in private.

#### **6 Notification of decisions**

The decision shall be notified in writing to all interested parties as soon as reasonably practicable after conclusion of the hearing and where practicable no later than ten working days from the date of hearing. When it

considers it appropriate the Conduct or Appeal Committee may deliver an oral decision at the conclusion of a hearing. In the event that an Appeal is lodged, the Conduct Committee shall be entitled to supplement its reasons either at its own discretion or at the direction of the Appeal Committee.

## 7 Disposal

7.1 In the event that the Conduct Committee determines that a complaint brought before it has been established and is upheld, the Conduct Committee may impose whatever penalty it considers appropriate. The Conduct Committee shall have regard to any recommended sanctions for offences published from time to time by the British Gymnastics Association and/or the Federation Internationale de Gymnastique subject to any guidelines or direction published from time to time by the SGA or the Appeal Panel and in force at the time regarding the same. Examples of sanctions include, but are not limited to:

- (a) a caution;
- (b) warning as to future conduct;
- (c) reprimand;
- (d) a fine;
- (e) probation;
- (f) a suspension for a period of time;
- (g) expulsion from the SGA;
- (h) any combination of the above.

7.2 Sanctions shall ordinarily take immediate effect however they may be delayed in commencing or suspended at the discretion of the Conduct Committee.

## 8 Appeals

8.1 The party who has been the subject of a decision of the Panel or the SGA Conduct Officer ("the Appellant") shall have the right of appeal against such decision to the Appeal Panel, but only if a notice of appeal is lodged in writing with the CEO (or Chair if the Appellant is



the CEO) within 7 calendar days of the issue of the written decision of the Panel. Such notice shall state the ground(s) of appeal and contain the full reasons and basis on which the ground(s) of appeal are being pursued.

- 8.2 The grounds on which an appeal can be pursued are:
- (a) the decision was wholly unreasonable (the Conduct Committee upheld the Complaint when no Conduct Committee acting reasonably would have);
  - (b) the sanction as wholly unreasonable (the sanction imposed is one which no Conduct Committee acting reasonably would have imposed);
  - (c) there has been a major procedural error which has led to an unsafe decision; or
  - (d) the interests of justice require an appeal be heard.
- 8.3 The CEO shall on receipt provide the Appeal to the Chair of the Conduct in Sport Panel. On receipt the Chair of the Conduct in Sport Panel shall ordinarily appoint an Appeal Committee to consider the complaint, however the Chair of the Conduct in Sport Panel shall be entitled to refuse to put forward an appeal and shall be entitled to dismiss the appeal without further procedure if in the view of the Chair of the Conduct in Sport Panel the appeal, as set out, has no reasonable prospects of success.
- 8.4 The Appeal Committee shall be entitled to regulate its own procedure in accordance with the principles outlined above for first instance proceedings. The appeal may be determined by way of written representations and without the need for a personal hearing at the discretion of the Appeal Committee.
- 8.5 Appeals shall proceed by way of review. At all times the Appeal Committee shall have regard to and respect the wide margin of discretion that the Conduct Committee has in making determinations at first instance. A re-hearing (*de novo*) of the case considered at first instance shall not be permitted unless (a) an application is made in writing by the party pursuing the appeal; (b) the Appeal Committee is satisfied that there was an error in the decision of the

Conduct Committee and that error requires the case to be re-heard *de novo*; and (c) the circumstances are exceptional and there are compelling reasons to hear the case *de novo*.

- 8.6 Admission of any new evidence not considered at first instance shall only be permitted at the discretion of the Appeal Committee and ordinarily upon cause shown by the person lodging the appeal including a full written explanation as to why the evidence was not produced earlier and placed before the Conduct Committee at first instance. At the appeal hearing the Appellant shall not without the express consent of the Appeal Committee advance any ground of appeal not specified in the original notice of appeal.
- 8.7 Where an appeal hearing is to take place in person the Appellant and any other party to the appeal proceedings shall have the right to be present and be accompanied by their legal representative, if any, at the hearing of the appeal. Scottish Gymnastics may attend through the CEO, Conduct in Sport Officer, a nominee of either and with the aid of legal representation should they so choose.
- 8.8 In disposing of the appeal, the Appeal Committee may decide to:
- (a) affirm the decision of the Panel;
  - (b) uphold the appeal by setting aside the decision appealed against and quashing any penalty imposed by the Panel;
  - (c) uphold the appeal in part by setting aside part only of the decision appealed against and/or modify, reduce or increase any penalty imposed;
  - (d) substitute for the decision appealed against a decision to find the relevant party guilty of a lesser or more serious offence and/or to impose a lesser penalty or penalties;
  - (e) uphold the appeal and remit the issue to the Conduct Committee for reconsideration and re-determination by them;
  - (f) defer consideration of the appeal pending receipt of information, evidence or clarification from the Conduct Committee or from a person not present at the appeal hearing;

(g) stay a suspension imposed by the Conduct Committee pending the determination of an appeal; and/or

(h) take any steps which in the exercise of its discretion the Appeal Committee consider it appropriate to take in order to deal justly with the appeal.

8.6 The decision of the Appeal Committee shall be advised to the Appellant as soon as practicable after the conclusion of the hearing. When it considers it appropriate the Appeal Committee may deliver an oral decision at the conclusion of a hearing.

8.7 Where an appeal is taken the determination arrived at and/or the sanction imposed by the Conduct Committee shall not be automatically stayed pending resolution of the appeal. A party against whom a decision has been made and by whom an appeal has been taken shall be entitled to ask that the imposition of the determination and/or sanction be stayed pending resolution of the appeal and the Appeal Committee shall consider the same as a preliminary matter. The Appeal Committee will, when deciding whether to stay any determination or sanction, have regard to all such matters as it considers appropriate in determining the application including but not limited to the interests of the sport, any prejudice that may arise and the impact that any such stay may have on any other party.

## 9 **Standards and Burden of Proof**

The standard of proof on all matters shall be proof on the balance of probabilities. For the avoidance of doubt no burden rests with the SGA Conduct in Sport Officer. Rather the applicable Committee shall satisfy itself by applying the foregoing standard.

## 10 **Multiple Incidents**

Where Conduct proceedings, however arising, are taken against more than one person or club as the result of a related incident or incidents such proceedings may be heard together, where the Chair of the Conduct in

Sport Committee or Conduct Committee so determines, provided there is no manifest prejudice to any person against whom such Conduct proceedings are taken.

## 11 **Publicity**

The Board may publish details of any misconduct or offence together with the sanction imposed or other determination and the identity of the person or club concerned. The Conduct Committee and/or Appeal Committee shall be entitled to recommend that publication takes place.

## 12 **Additional Provisions Procedures**

12.1 Procedures or proceedings under these Rules or any decision of a Conduct Committee or Appeal Committee shall not be quashed or held invalid by reason only of any defect, irregularity, omission or technicality unless such results in a material doubt as to the reliability of the findings or decision of the Conduct Committee or Appeal Committee, or results in a miscarriage of justice.

12.2 In respect of any matter not provided for in these Rules, a decision of the Conduct Committee or, as the case may be, the Appeal Committee shall be taken according to the general principles of fairness and justice.

12.3 The SGA Conduct in Sport Officer may appear at any hearing in person or through a nominee and they may be legally represented.

12.4 As a general rule all parties shall bear their own costs and expenses but the Conduct Committee and/or the Appeal Committee shall be entitled to make an award of expenses against one or more parties as they see fit. In respect of an appeal, an appellant shall lodge £250 with the notice of appeal (unless waived by the Board) as a contribution towards administrative costs of the appeal. No action shall be taken to register or progress an appeal until the SGA has received the appeal fee (unless waived by the Board) in cleared funds. Failure to ensure that the SGA is in receipt of the appeal fee

(unless waived by the Board) by no later than 7 days from the date of lodging of the appeal shall lead to the appeal being dismissed.

- 12.5 The Chair of the Conduct in Sport Panel shall be entitled to co-opt (i) any person from any panel maintained by Sport Resolutions; or (ii) any other person with suitable experience; to the SGA Conduct in Sport Panel on a term or temporary basis for the purposes of appointment to any Conduct Committee or Appeal Committee.
- 12.6 Where any member of a Conduct Committee or Appeal Committee is unable to sit or to continue sitting in any matter the remaining members shall be entitled to continue to sit as a Committee and determine all matters before them, or the Chair of the Conduct in Sport Panel shall be entitled to appoint a further person to the applicable Committee.
- 12.7 In the event of non-attendance by any party to proceedings the Committee may continue and hear any matter and reach a conclusion in the absence of that party, including but not limited to reaching a determination, imposing a sanction or disposing of an appeal in that party's absence.
- 12.8 The decisions of Conduct Committees that are not competently appealed and the decisions of any Appeal Committees shall be final and binding on all parties.