



# ESNZ Officials Workshop

## Disciplinary Processes and Courageous Conversations

25<sup>th</sup> September 2019



# ESNZ General Regulations – Legal System

## Summary of Changes

### Complaints Procedure

1. In addition to protests Ground Jury and Appeal Committee can now determine, on the day, complaints of misconduct occurring at an event.
2. Misconduct occurring at an Event (complaints) **can only be dealt with by the Ground Jury and Appeal Committee or by the Complaints Review Officer if submitted (up to 10 days) after the event.** This will limit what comes before the Judicial Committee which previously dealt with the complaints. **If the complaint is not raised on the day or within the time period it cannot be dealt with at all.**
3. Complaints process simplified and streamlined to ensure efficiency and ease of use (e.g. time limits).
4. Principles of natural justice (e.g. the right for all affected parties to be heard) inserted throughout the process (except at the Complaints Review Officer level – see below).
5. ‘Complaints Review Officer’ position created. All Complaints not occurring on the day (i.e. that could not have been dealt with by the Ground Jury) now go to the Complaints Review Officer. The Complaints Review Officer operates as a “clearing house” and has powers to dismiss a complaint that is frivolous, trivial, vexatious, or otherwise without merit.
6. The Complaints Review Officer may also issue a written caution in lieu of any other action.
7. More serious complaints would be referred by the CRO to the Judicial Committee.
8. Complaints will be accompanied by a \$50 fee whether on the day of competition or after the event.

### Conflict of Interest

9. Amended Article 138 regarding conflicts of interest. Further work is necessary on each discipline’s rules to remove the ability for non-judicial decisions of the Ground Jury (e.g. the set up of the course in cross country) to be protested to the Ground Jury.

### Protests

10. Largely unchanged, although some amendments have been made to simplify the process and allow for the principles of natural justice.

### Expansion of Ground Jury’s Powers

11. The Ground Jury now has wide jurisdiction to investigate and determine matters (including issuing penalties) that are not the subject of a protest or a complaint. For example if the Chief Steward observes misconduct by Rider B, he/she could in the past have issued an Official Warning. Now he/she should bring this issue to the attention of the Ground Jury, and the Ground Jury would have jurisdiction to investigate and determine the matter, so long as

the principles of natural justice are observed. **If an official does not raise something with the Ground Jury on the day and within the time period, it cannot be dealt with at all.**

## Appeal Committee

12. Largely unchanged – acts as a straight appeal body for decisions of the Ground Jury. Appeals must be accompanied by a fee of \$100 and be submitted within 60 minutes of the Ground Jury's decision.

## Limited Appeal Rights from Appeal Committee to Judicial Committee

13. Parties may only seek a review of an Appeal Committee decision – they cannot appeal. The review must be submitted within 10 working days and accompanied by \$500. The Judicial Committee **only reviews the process or considers whether there is substantial new evidence**. A party cannot appeal if they simply don't like the decision of the Appeal Committee– there has to be a procedural flaw or a breach of natural justice.

## Judicial Committee

14. The Judicial Committee's jurisdiction is amended to the following matters:
  - a. A request for a review from the decision of an Appeal Committee;
  - b. A protest that has been determined by the Ground Jury can also be referred to the Judicial Committee by the Ground Jury if the GJ consider there are wider implications for the sport (unchanged);
  - c. A selection dispute as per the National Selection SR (unchanged);
  - d. A complaint referred by the Complaints Review Officer;
  - e. A matter referred by ESNZ (e.g. more than two official warnings in a 12 month period); and
  - f. Any other matter as determined by the CEO of ESNZ (general catch all).
15. ESNZ to have the power to select the Judicial Committee each time from the ESNZ Board-appointed Judicial Panel. This allows ESNZ to select the most suitable Committee for each individual matter – "horses for courses".
16. Judicial Committee process streamlined and simplified, as well as the addition of natural justice principles.

## Official Warnings

17. Only the Ground Jury, Appeal Committee, and Judicial Committee may issue Official Warnings. The reason for this is two Official Warnings result in a two month ban which is a significant penalty. Therefore there should be some opportunity for an affected party to appeal an Official Warning. In practice, an official who used to have the power to issue an Official Warning would now report what he/she has seen to the Ground Jury who would investigate as per paragraph 8 above.

# Protests

Can only be made, on the day, to the Ground Jury and before 60 minutes after completion of the relevant event (with some exceptions regarding course set-up). \$50.00



Ground Jury to conduct an informal hearing that adheres to the principles of natural justice.



De novo (heard afresh) right of appeal to the Appeal Committee (where possible). \$100



A party can apply for review by Judicial Committee within 5 working days & \$500.  
Review only on process, natural justice, or substantial new evidence that was not available at the time.

# Complaints

(e.g. misconduct, abuse of officials, abuse of other competitors, conduct generally unbecoming of the sport – generally everything that can't be protested)

Did the conduct occur during an ESNZ event?

YES

Complaints can only be made during the event to the Ground Jury and before 60 minutes after the end of the event. \$50

Unless frivolous, vexatious, or completely without merit, the Ground Jury will conduct an informal hearing that adheres with the principles of natural justice.

Can be appealed to Appeal Committee within 60 minutes of decision & \$100  
Appeal done afresh, informal, and adheres to principles of natural justice.

A party can apply for review by Judicial Committee within 5 working days & \$500.  
Review only on process, natural justice, or substantial new evidence that was not available at the time.

NO

Can complain, within 10 working days, to ESNZ. ESNZ will refer to Complaints Review Officer. \$50

Unless frivolous, vexatious, or completely without merit, Independent CRO decides if complaint merits a written caution or should go to Judicial Committee

Judicial Committee to hold a hearing (flexible – could be by video/audio). JC formed of 3 members of the Board-appointed independent Judicial Panel. Hearing to adhere to principles of natural justice. If complaint not upheld, complainant liable for costs up to \$500; if complaint is upheld the person the complaint is against is liable for costs up to \$500 (at the discretion of Judicial Committee)

Can appeal to Sports Tribunal on limited grounds

# Disciplinary Processes and Courageous Conversations

Grant Fraser, Sport New Zealand



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## Overview

- Process and policies in an Equestrian context isn't employment law but it is a relevant reference point. I'll cover natural justice, employment laws tests and standards and the role of the decision maker.
- It's very likely some of you work in this area so if I say something you disagree with please sing out and we can discuss different perspectives.
- While the Employment Relations Act does not apply to volunteer/organisation relationships it does provide a good reference point and stand you in good stead should the matter been dealt with end up in a judicial hearing.
- The points below will also help with you, as officials, representing the wider organisation.

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## From the Employment Relations Act (1)

- **Good Faith:** The parties must deal with each other in good faith and most not, directly or indirectly, do anything to, or likely to, mislead or deceive each other.
- **Test of Justification:** Whether the actions, and how the organisation acted, were what a fair and reasonable organisation could have done in all the circumstances at the time.
  - Did the organisation sufficiently investigate the issues?
  - Did the organisation raise the concerns with the person before taking action/making a decision?
  - Did the organisation give the person reasonable opportunity to respond to the issues before taking action/making a decision?
  - Did the organisation genuinely consider the explanation before taking action/making a decision?
- Those 4 items, plus the right to have the decision made by an unbiased person, form 'natural justice'.
- "Were what a fair and reasonable organisation could have done in all the circumstances at the time". What does that mean?

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### From the Employment Relations Act (2)

- Procedural Fairness: Did the organisation follow the 'rules of natural justice' and any internal policies, procedures and rules?
  
- Substantive Fairness: Was the decision reached one a fair and reasonable organisation could have reached?
  
- Decision Makers: in employment law it's important that the person under scrutiny has the opportunity to 'present their case' to the decision maker and that the decision maker has the appropriate delegated authority.

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### From the Employment Relations Act (3)

- If you have rules and policies – you need to follow them. This is for 2 reasons:
  - If you don't this could lead to a finding of procedural unfairness.
  - If you do – you can't be accused of bias or making it up as you go along. As soon as you have an exception or a special rule or a 'just this once' you've potentially set a precedent that everyone else will want to use. That doesn't mean you can't use judgement ("could have done in all the circumstances") but exercise judgment within the rules.
  
- Conflict of Interest/Bias – touches on both the 'natural justice bias' issue above and perception.
  - From a legal perspective: *"the test for disqualification of a Judge is whether a fair-minded lay observer might reasonably apprehend that the Judge might not bring an impartial mind to the resolution of the question the Judge is required to decide"*.
  - From an HR perspective – decision makers should not be a party to the issue. If an employee assaults/abuses their Manager then it's a good idea to remove that Manager as decision maker.

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### Human Rights Act

- Discrimination – both the Employment Relations Act and Human Rights Act determinate what is illegal to discriminate over:
- For the purposes of this Act, the **prohibited grounds of discrimination** are—
  - (a) sex, which includes pregnancy and childbirth:
  - (b) marital status: single, married, civil union, de facto relationship; the surviving spouse/partner of a marriage/civil union/de facto relationship; separated from a spouse or civil union partner; party to a marriage or civil union that is now dissolved, or to a de facto relationship that is now ended;
  - (c) religious belief:
  - (d) ethical belief: the lack of a religious belief, whether in respect of a particular religion or religions or all religions:
  - (e) colour:
  - (f) race:
  - (g) ethnic or national origins, which includes nationality or citizenship:
  - (h) disability: physical disability/impairment, physical/psychiatric illness, intellectual/psychological disability/impairment, any other loss/abnormality of psychological, physiological, or anatomical structure or function, reliance on a guide dog, wheelchair, or other remedial means, the presence in the body of organisms capable of causing illness:

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### Human Rights Act (2)

- (i) age
- (j) political opinion, which includes the lack of a particular political opinion or any political opinion:
- (k) employment status, which means being unemployed or being a recipient of a benefit as defined in [Schedule 2](#) of the Social Security Act 2018 or an entitlement under the [Accident Compensation Act 2001](#);
- (l) family status, which means having the responsibility for part-time/full-time care of children/dependants; having no responsibility for the care of children/dependants; or being married/in a civil union/de facto relationship with, a particular person; or being a relative of a particular person:
- (m) sexual orientation, which means a heterosexual, homosexual, lesbian, or bisexual orientation.
- In Employment there is a 'Genuine Occupational Qualification' clause. So it isn't discrimination to refuse to employ a visually impaired person as a bus driver.
- Responsibilities under Health and Safety Legislation also come into it – PCBUs must ensure, as far as reasonably practical, that health and safety is not put at risk.
- Application of these concepts to Equestrian activities?

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### Health and Safety at Work Act

**PCBU – Person Controlling a Business or Undertaking**

(1) In this Act, unless the context otherwise requires, a *person conducting a business or undertaking* or *PCBU*—

- (a) means a person conducting a business or undertaking—
  - (i) whether the person conducts a business or undertaking alone or with others; and
  - (ii) whether or not the business or undertaking is conducted for profit or gain; but
- (b) does not include—
  - (i) a person to the extent that the person is employed or engaged solely as a worker in, or as an officer of, the business or undertaking;
  - (ii) a volunteer association;
  - (iv) a statutory officer to the extent that the officer is a worker in, or an officer of, the business or undertaking;
  - (v) a person, or class of persons, that is declared by regulations not to be a PCBU for the purposes of this Act or any provision of this Act.

(2) In this section, *volunteer association* means a group of volunteers working together for 1 or more community purposes where none of the volunteers, whether alone or jointly with any other volunteers, employs any person to carry out work for the volunteer association.

**Drug and Alcohol Testing – Can you and When?**

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### Wrap Up - Part One

- Not an exact cross over – but relevant and a good basis
- Take your time – more information is always good.
- Stick to the polices, rules and procedures – they are there for a reason.
- Any questions, comments, war stories?

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### Courageous Conversations

- Consider the When, Where, Who and What if you need to talk to someone:
  - **When** – does it need to be straightaway or is it a good idea to let them cool down?
  - **Where** - Can you speak to them in private/away from others? Is there a suitable meeting room/space?
  - **Who** - Is it a good idea to talk to them by yourself? If you want someone as an independent/observer who should it be?
  - **What** – before you start are you sure what you want to discuss? Have you got all your facts? Do you need to do more investigation? Are you clear on what your options are? Can you make that decision or should someone else?
- Thank you for listening. Any final questions/comments/stories?

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