

APPENDIX 21 BUCS MISCONDUCT DISCIPLINARY POLICY AND PROCEDURE

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Overview

BUCS has established a disciplinary policy and procedure for managing disciplinary proceedings. This policy and procedure describe the process that BUCS will follow when taking disciplinary action against a BUCS Member Institution/Playing Entity through a Disciplinary Panel Hearing.

Disciplinary proceedings may occur where there has been a breach of the provisions of BUCS REG 5, or BUCS general and sport specific regulations in which the consequence of a breach is the raising of a REG 5 charge.

Introduction

BUCS is a membership organisation, responsible for organising and delivering higher education sport pathways and competitions. Through doing this it aims to deliver exceptional student sporting experiences that inspire, develop and unite.

All disciplinary action taken by BUCS in respect of a BUCS Member Institution/Playing Entity or their student-athletes, officials, employees, representatives and anyone reasonably believed to be its supporters or followers will be undertaken in accordance with the procedures described below and led by a Disciplinary Panel.

Scope

BUCS is empowered to take disciplinary action where two conditions are fulfilled:

1. Disciplinary proceedings may be taken against a Current BUCS Member Institution/Playing Entity or a lapsed Member if the complaint related to a point in time in which they were in membership.
2. Where a complaint has been made by an individual against a BUCS Member Institution/Playing Entity and following investigation it is deemed there is a case to be answered under BUCS' Misconduct Complaints Policy leading to a charge of misconduct being raised.

BUCS is not empowered to take disciplinary action against organisations who do not hold a BUCS Membership, or individuals who engage in any BUCS Competition, BUCS Competition Event(s) and BUCS Organised Activity not through a Member.

Our approach

The purpose of a Disciplinary Panel Hearing (a Hearing) is to investigate a charge, make a decision as to what happened, establish if a charge has been proved and, if so, decide what sanction should apply. The Disciplinary Panel (the Panel) shall consider all the evidence that is available and decide whether BUCS has established that it is more likely than not that the alleged acts took place and that they amounted to misconduct.

BUCS will endeavour to conduct all disciplinary proceedings promptly and without delay. Both BUCS and the Member Institution/Playing Entity should raise and deal with issues, meetings and decisions without unreasonable delay, and in accordance with timescales outlined in this disciplinary procedure.

BUCS aims to apply a fair and consistent approach throughout all its disciplinary proceedings, and will keep all records associated with disciplinary proceedings, their investigations and their outcomes for the duration of the relevant organisation's membership, or where the organisation has been subject to investigative or disciplinary action within their last two years of membership, until two years after the conclusion of the last investigative or disciplinary action they were subject to, whichever so arises latest, and will be subject to regular monitoring and review.

The Panel is not a court of law but a disciplinary body whose overriding objective is to achieve a fair and just result. Accordingly, Panels enjoy procedural flexibility in the way in which they conduct hearings, and technical and procedural considerations will take second place to securing the overriding objective. Panels have the power to excuse non-compliance with any of the provisions in this policy and to depart from it where necessary.

Disciplinary proceedings

1. Commencement of disciplinary proceedings

- 1.1. BUCS will commence disciplinary proceedings if upon completion of a misconduct complaint investigation, following a misconduct complaint made by stakeholder against a Member Institution/Playing Entity, both pursuant to the BUCS Misconduct Complaints Policy and Procedure, it is deemed that there is a case to be answered.
- 1.2. BUCS will commence disciplinary proceedings by providing the Member Institution/Playing Entity with a notice of a charge, or charges, of misconduct and that disciplinary proceedings have been commenced. The notice will contain the following:
 - 1.2.1. Details of the reason for the charge(s) of misconduct and the commencement of disciplinary proceedings and any accompanying evidence that BUCS has at the time at which the notice is sent;
 - 1.2.2. An invitation to respond and provide details, a written response, footage, recordings or documentation relating to the charge(s) of misconduct which they wish to be considered;
 - 1.2.3. The proposed date, time and venue for a Hearing;
 - 1.2.4. A form to confirm the Member Institution/Playing Entity's intention to attend a Hearing;
 - 1.2.5. A copy of BUCS' Misconduct Disciplinary Policy and Procedure;
 - 1.2.6. Any other information that may be relevant to the disciplinary proceedings.
- 1.3. The accused Member Institution/Playing Entity shall have five working days¹ from receipt of the notice of a misconduct charge, or charges, to respond and provide their availability for a Hearing. An extension to the response deadline may be requested by emailing discipline@bucs.org.uk prior to the response deadline, with the grounds on which the extension is being requested. It is at the discretion of the BUCS to determine if the request for an extension should be granted, with a maximum of one extension of five working days being permitted.

¹ For the purpose of this document working days refers to Monday-Friday and does not include public holidays, BUCS all staff training days and periods of closure for the BUCS office.

- 1.3.1. Should the accused Member Institution/Playing Entity fail to respond within the five working days, or any subsequent extension timeframe and it cannot be shown that this is due to extenuating circumstances, they shall lose the right to submit evidence and a response to the charge to the Panel in advance of a Hearing.
- 1.3.2. Where the response deadline is missed, and it cannot be shown that this is due to extenuating circumstances, it shall be at the discretion of the Panel to determine what information the Member institution/Playing Entity is able to share in a Hearing.

2. Disciplinary Panel Hearings

- 2.1. A Member Institution/Playing Entity must confirm whether they and any representatives can attend a Hearing at least five working days in advance of the scheduled Hearing date.
 - 2.1.1. If a change of date from the originally scheduled Hearing date is required, the Hearing should where reasonably practicable take place within 10 working days of the originally scheduled Hearing date.
 - 2.1.2. If the Member institution/Playing Entity fails to notify BUCS at least five working days in advance of the Hearing for point 2.1, then BUCS may complete the Hearing in the absence of the Member Institution/Playing Entity.
 - 2.1.3. It is at the discretion of BUCS to offer an alternative date if insufficient notice has been provided. The alternative date should, where reasonably practicable, be scheduled within 10 working days of the originally scheduled Hearing date.
- 2.2. If a Member Institution/Playing Entity does not wish to attend the Hearing but wishes for the Hearing to take place in their absence, they must inform BUCS at least five working days in advance of the scheduled Hearing.
- 2.3. If the Member institution/Playing Entity is unable to provide five working days' notice as specified in points 2.1–2.2 due to extenuating circumstances, then the Member institution/Playing Entity should notify BUCS as soon as reasonably possible.
- 2.4. The Member Institution/Playing Entity is expected to be in attendance for the full duration of the Hearing. Where a Member Institution/Playing Entity is unable to complete the full duration of the Hearing, it will continue in their absence. In exceptional cases, the Panel may use their discretion to suspend or adjourn the Hearing.
- 2.5. If an alternative date is provided for the Hearing, then points 2.1–2.4 shall apply to the rescheduled Hearing.
- 2.6. Information obtained and used throughout the disciplinary proceedings will be handled sensitively and in accordance with current legislation and requirements of confidentiality.
- 2.7. Relevant BUCS personnel or other third parties who need to be aware of the disciplinary proceedings will be informed where applicable. It is the responsibility of the Member Institution/Playing Entity to notify individuals involved in the alleged misconduct of the Hearing and the opportunity to attend to provide oral evidence. Individuals who choose not to attend should be aware that the Panel may make adverse findings about their conduct in their absence.

2.8. Hearings will take place virtually via video conferencing software.

2.8.1. In exceptional cases, the Panel may in the exercise of its discretion agree to host a Hearing in person where this is requested by one of the parties, but this is at the discretion of the Panel. A request for an in-person meeting must be put in writing to BUCS at least five working days in advance of the Hearing. Should a misconduct charge be upheld, the Panel may pass additional costs associated with hosting the Hearing in person to the Member institution/Playing Entity.

2.9. The Panel shall apply the principles of natural justice to all Hearings. These principles include the right to a fair Hearing and to equality of arms. In practice, this means that both Parties must be able to understand and to challenge the other Party's case and to present their own case, on terms of equality. The Panel has a general power to regulate its own procedure and so may adjourn or suspend a Hearing if it is in the interests of justice or necessary to achieve a fair Hearing.

2.10. Before any Hearing the Panel will review the written evidence and submissions of the Parties. The procedure at the Hearing will usually consist of the following stages, although this order may be adapted where appropriate at the discretion of the Panel:

2.10.1. The Panel may introduce the issues for the Hearing. The Panel may, at the outset, have questions for a Party or ask a Party to focus on specific issues.

2.10.2. A member of the BUCS Executive or a representative (see section 3) shall present the charge(s) of misconduct on behalf of BUCS. BUCS shall bear the burden of showing that it is more likely than not that the Member institution/Playing Entity did the act (or acts) complained of. BUCS, and any witnesses BUCS is providing in support of the charge(s), will give evidence. BUCS may ask questions of its witnesses and the Member Institution/Playing Entity may do the same. BUCS will also present any other evidence relied upon, for example video recordings or written statements.

2.10.3. The Member Institution/Playing Entity ("respondent") shall present their response to the charge(s) of misconduct. The respondent's witnesses will give evidence. The respondent may ask questions of its witnesses, as may BUCS and the Panel. The respondent will also present any other evidence relied upon.

2.10.4. The Parties will then make submissions about the evidence with BUCS going first, the respondent responding, and BUCS having a reply at the discretion of the Panel.

2.10.5. The Panel will retire to consider its decision. The Panel will then return and announce its decision. If a charge is upheld, the Panel will invite the Parties to make submissions about the appropriate sanction(s) and then retire before announcing its decision.

3. Statement of Agreed Facts

3.1. In the event that a Member Institution/Playing Entity admits to the allegations made in the notice of a charge, or charges, of misconduct, then they may request a statement of agreed facts.

3.2. This request must be sent to BUCS, in writing, at least five working days prior to the Hearing.

- 3.3. The statement of agreed facts must be signed by BUCS and the Member Institution/Playing Entity, prior to the date allocated for the Hearing. If it is not signed before that date, the Hearing will take place as scheduled.
- 3.4. The statement of agreed facts means that the Panel does not have to engage in any fact-finding but can move straight to considering the appropriate sanction.

4. Representation at Hearings

4.1. Representation for a Member Institution/Playing Entity

- 4.1.1. A Member Institution/Playing Entity may request that they are accompanied by a representative at a Hearing. This should be notified to BUCS at least five working days ahead of the scheduled meeting. The role of a representative is to provide support to a respondent during a hearing and to assist a respondent in the presentation of its case. A representative is not there to give evidence on behalf of a respondent; that is the role of the witnesses.

4.2. Companions for Witnesses

- 4.2.1. A witness may request that they are accompanied by a companion at a Hearing. The role of a companion is to provide practical and emotional support to a witness. The request for a companion should be made at least five working days before the scheduled date of a Hearing. The companion may address the Hearing if requested by the witness to do so but may not give evidence on behalf of the witness.

5. Evidence and Witnesses

- 5.1. BUCS will send a copy of any evidence and/or witness statements that will be used within a Hearing with the notice of the charge(s) of misconduct and disciplinary proceedings. This will normally be at least five working days in advance of the scheduled meeting.
- 5.2. BUCS will inform the Member institution/Playing Entity if it intends to call witnesses to the Hearing at least two working days in advance of the Hearing.
- 5.3. The Member Institution/Playing Entity will be able to call witnesses to the Hearing.
- 5.4. The notification of a witness must be put in writing to BUCS at least two working days in advance of a Hearing;
- 5.5. The written notification must include the following:
 - 5.5.1. The name of the witness;
 - 5.5.2. Relevance to the case;
 - 5.5.3. Confirmation that they can attend the Hearing.
- 5.6. If the notification is not submitted at least two working days in advance of the Hearing, BUCS reserves the right to refuse the witness and their testimony.
- 5.7. If witnesses or evidence are submitted during the Hearing and prior notification was not received, then the Panel may disregard this information at their discretion.

- 5.8. In addition to calling witnesses, the Member Institution/Playing Entity will be able to submit evidence for consideration at the Hearing in addition to that provided during the misconduct complaint investigation.

6. Disciplinary Panel Composition and Conflicts

- 6.1. Each Panel consists of three persons:
- 6.1.1. A Panel Chair, who shall be an Independent Judicial Panel Chair or the Independent Head of Judiciary
 - 6.1.2. Two Panel Members, who shall be students or sabbatical officers of BUCS Member Institutions.
- 6.2. A member of the BUCS Executive shall be present to support with minutes and procedural guidance. They will attend in a non-voting capacity.
- 6.3. All individuals of the BUCS Judiciary other than those in the selected Panel will remain independent, to allow for support in the event an Appeal Panel is required.
- 6.4. The Panel will be allocated to a Hearing at BUCS' discretion but taking into account the need to avoid conflicts of interest and taking into account knowledge and expertise in the area of the case.
- 6.5. Confirmation of the Panel Chair and Members will be sent to the Member Institution/Playing Entity at least two working days in advance of a Hearing.
- 6.5.1. If a Member Institution/Playing Entity considers that a Panel Chair or Panel Member is conflicted for any reason that Party must raise this issue when they are notified about the Panel Chair and Panel Members who will conduct the Hearing. This will allow the BUCS Executive and/or BUCS' Independent Head of Judiciary the opportunity to consider the alleged conflict and, if satisfied that there is a conflict, to substitute another Panel Chair or Panel Member.

7. Disciplinary Hearing Outcomes

- 7.1. At conclusion of the Hearing, the Panel will decide whether to uphold any charge and on any sanctions that need to be put in place where a charge has been upheld and/or on any recommendations to BUCS.
- 7.2. The Panel will communicate the outcomes its outcomes of the Hearing, including any associated sanctions in line with the BUCS Misconduct Sanctions Policy for Members (Appendix 11), verbally at the conclusion of the Hearing.
- 7.3. The Panel will provide the outcomes of the Hearing, including any associated sanctions in line with the BUCS Misconduct Sanctions Policy for Members (Appendix 11), in writing via email to the Member Institution/Playing Entity as soon as reasonably practicable following the date of the hearing. This may contain the following:
- 7.3.1. The Panel's finding(s) and reasoning for these findings;
 - 7.3.2. How the Panel identified and applied any mitigating factors and aggravating factors;

7.3.3. The resultant sanction(s), if any, imposed.

- 7.4. BUCS reserves the right to publish the outcomes of a Hearing, including any reasoning and associated sanctions, in full or redacted form if BUCS concludes that it is in the public interest for these to be put into the public domain. BUCS will always act legally when making such a decision. BUCS will normally wait until at least six working days from the outcomes of a Hearing being sent to a Member Institution/Playing Entity in writing before publishing the outcomes, in order to provide the Member Institution/Playing Entity or BUCS with time to appeal. However, there may be exceptional circumstances in which the outcomes are made public sooner than the six working day period. In addition, terminations of Membership will always be published. Further information can be found in the BUCS Misconduct Sanctions Policy for Members (Appendix 11).
- 7.5. If BUCS is aware that the law has been broken, it reserves the right to inform the appropriate authorities.

8. Appeals

- 8.1. A Member Institution/Playing Entity or BUCS is entitled to make an appeal against the outcomes of a Hearing based on any of the following grounds. That:
- (a) the Panel came to a decision to which no reasonable Panel could have come;
 - (b) the Panel Misinterpreted BUCS general or sports specific regulations in reaching its decision;
 - (c) the Panel failed to act fairly in terms of the procedure followed;
 - (d) the Panel imposed a sanction that was so manifestly excessive, or so unduly lenient, as to be unreasonable;
 - (e) the appellant has significant new evidence that could have affected the outcome and which was not reasonably available at the time of the Hearing.
- 8.2. The Member Institution/Playing Entity or BUCS will have five working days from issue of the written outcome to lodge their appeal.
- 8.3. Further information on the process for submitting an appeal can be found in the BUCS Misconduct Appeal Policy and Procedure (Appendix 22).

Review

The BUCS Misconduct Disciplinary Policy and Procedure will be reviewed annually with the next review in August 2027 unless a change in policy, governance or other circumstance requires a review prior to this date. The current copy of the BUCS Misconduct Disciplinary Policy and Procedure will be made publicly available on BUCS' website.