

Regulation 3

**Procedure to address
Misconduct and Disputes.**



Regulation 3 Procedure to address Misconduct and Disputes

The purpose of this Regulation is to set out the procedure for determining Misconduct and Disputes at Centre Level and applies to all Centre Board Members, Members, Member Clubs, appointed Personnel and Officers.

This Regulation was adopted by the Centre Board, in accordance with the Constitution on the 18th October 2021.

This Regulation shall come into force on the date the Regulation was adopted by the Centre Board. It shall continue in force until such time as revoked by the Centre Board. This Regulation may be amended by the Centre Board provided such amendments are not inconsistent with the Constitution.

All information received by the Centre Board and the Centre Judicial Committee in accordance with this Regulation, and its deliberations, shall be kept confidential except to the extent required by law. Any Centre Judicial Committee Member who considers s/he may have a potential conflict of interest in determining a disciplinary matter in accordance with this Regulation shall declare that potential conflict of interest to the Chairperson and if the Chairperson considers it appropriate to do so, s/he may require that member not to continue as a Centre Judicial Member in these proceedings. This discontinuance will also apply to the Chairperson if there is a potential conflict of interest.

No Centre Board Member or Centre Judicial Committee Member will be liable for any act done or omitted to be done by a Centre Judicial Committee Member in good faith pursuance or intended pursuance of the function, duties, powers or authorities as specified in this Regulation.

The Centre Board may, by resolution, set a filing fee for any proceedings to be heard by the Centre Judicial Committee. The Centre Board may, at its sole discretion, waive all or part of any fee if it considers appropriate to do so.

Unless otherwise determined by the Centre Board, every party and person involved in any proceedings shall bear their own costs.

The Centre Board and Centre Judicial Committee shall, in all matters, observe the principles of natural justice.

3.1 Misconduct - Commencement of Proceedings

- (a) Any person, Member, Member Club, who considers that a Member Club or other Member of the Centre, or an official of the Centre, has engaged in Misconduct, under Part V – Rule 23 of the Bowls Counties Manukau 2010

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Inc. Constitution, can initiate an allegation of misconduct as set out in the Bowls Counties Manukau 2010 Inc. Constitution and the Centre Regulation 21.

- (b) An allegation in Regulation 3.1(a) shall be submitted in writing in the prescribed form set out in Regulation 18 and must be submitted as soon as possible and no later than 14 days after the alleged incident or incidents of Misconduct occurred. The Centre Judicial Committee in its discretion may accept an allegation after 14 days if exceptional circumstances exist.

3.2 Procedure for Hearing

- (a) Upon the Board Secretary receiving an allegation of Misconduct under Regulation 3.1(a) s/he shall as soon as practicable:
- (i) Confer with the Board Chairperson and if deemed appropriate, establish a Centre Judicial Committee under Rule 23.2 of the Centre Constitution. The Chairperson of the Centre Board to appoint the Chairperson of the Centre Judicial Committee;
 - (ii) Notify the other parties affected by the allegation of the fact that notice has been received and send to them copies of the allegation and any documentation or materials received in relation to it. Documents sent to the parties shall be delivered personally and/or by email, post or courier to the last known address of the party or parties concerned;
 - (iii) Request the Chairperson of the Centre Judicial Committee, in consultation with the other members of the Centre Judicial Committee, to determine a date, time and place for the hearing of the allegation;
 - (iv) Appoint a suitable Committee Administrator for the Centre Judicial Committee;
 - (v) Give the parties affected by the allegation at least 7 days' notice of the hearing, unless the Centre Judicial Committee considers that the allegation must be determined urgently, in which case it may vary the timeframes set out in these Regulations. The notice of the hearing shall:
 - Be in writing;
 - State whether the party or parties concerned, are required to appear or whether the allegation will be determined on the papers;

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- State the nature of the hearing and the matters or alleged offence(s) the subject of determination, the possible penalty or penalties and the date, place and time of the hearing; and
 - Be delivered personally, by post and/or email to the last known address or email address of the party or parties concerned.
- (b) Subject to these Regulations, the Centre Judicial Committee shall conduct the hearing as it sees fit and in particular, it may accept evidence whether or not it would otherwise be legally admissible in a court of law and it shall not require any unnecessary formality, provided that it must comply with the principles of natural justice.
- (c) The Chairperson may, if necessary, make orders as to the direction of the hearing.
- (d) The hearing shall take place as soon as practicable. It may be held in person, by consideration of written submissions, by telephone or video conference, or any combination of the above or otherwise as determined by the Centre Judicial Committee.
- (e) Persons appearing before the Centre Judicial Committee shall be entitled to call witnesses but must present their case in person unless the Centre Judicial Committee permits presentation through an advocate or legal representative. All parties and their witnesses shall be given a full opportunity to be heard.
- (f) If the person against whom the allegation is made is absent or fails to make any written submissions, or their witness is absent, a decision may be made by the Centre Judicial Committee in their absence or an adjournment may be granted. Before making such a decision in the person's absence the Centre Judicial Committee must satisfy itself that the person concerned was aware of the time, date and place of hearing and had been requested to participate on the hearing in accordance with these Regulations.
- (g) If the hearing is in person, the Chairperson shall, at the commencement of it, announce the opening of the hearing, stating the Judicial Committee's authority, jurisdiction, composition and the nature and purpose(s) of the hearing.

At the commencement of the hearing, the procedure to be followed at a hearing shall be clearly explained by the Chairperson. The Chairperson shall in every case determine who is entitled to be present throughout hearing during evidence and submissions (including representatives of the media) and whether or not the proceedings are to be confidential.

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- (h) The allegation(s) which are the subject of hearing shall then be read to the person(s) concerned. The body or person making the allegation(s) shall be given the opportunity to give evidence and make submissions about those allegations. The person(s) concerned will be given the opportunity to respond to this evidence and submission. Any witnesses called by either the reporting body or the person(s) concerned will be given the opportunity to give evidence or make submissions. Witnesses may be questioned on their evidence by members of the Centre Judicial Committee, and other parties to the matter as determined by the Chairperson. Evidence and/or submissions may be given in writing.
- (i) The Centre Judicial Committee will consider the evidence presented.
 - The Centre Judicial Committee may adjourn the hearing if necessary to do so.
 - No other person shall be present or partake in any discussion with the Centre Judicial Committee at this time.
- (j) The Committee Administrator shall keep a record of the hearing, in the form determined by the Centre Judicial Committee, and any decision made.
- (k) The Centre Judicial Committee shall have the power to request the attendance of any Member, or party or their representative at any proceedings before it. Where a person who is requested to attend, fails to attend or participate (whether by telephone or otherwise) in the hearing without reasonable excuse and explanation for that failure, the Centre Judicial Committee may draw inferences from that failure to attend.

3.3 Procedure after Hearing

- (a) If, after hearing from the parties, the Centre Judicial Committee finds an offence of Misconduct has not been committed, it will advise the Board Secretary as soon as possible, and dismiss the matter, accordingly.
- (a) If the Centre Judicial Committee finds an offence of Misconduct has been committed it may impose, in its discretion, an appropriate penalty or penalties set out in Regulation 3.4.

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- (b) In addition, or in the alternative to imposing any penalty, the Centre Judicial Committee may, report its findings to the Board's Chairperson with such recommendations as it considers appropriate.
- (c) If a decision cannot be given by the Centre Judicial Committee immediately after the hearing, the relevant party or parties must be advised of the date by which the decision will be given. The decision, any penalty, the reasons for the decision and notice of the person's appeal rights shall be given in writing to the parties, and the Centre Board, signed by the Centre Judicial Committee Chairperson.

3.4 Recommendations and Penalties

- (a) If the Centre Judicial Committee finds that an offence has been committed; it may impose anyone or more of the following penalties:
 - A reprimand;
 - Suspension from such activities of the Centre and/or its Members, including competitions, tournaments, events, General Meetings or other meetings or functions, on such terms and for such period as it thinks fit;
 - Exclusion from a particular competition, tournament, event, General Meetings or other meetings or functions of the Centre and/or its Members;
 - Suspension or termination of membership of the Centre;
 - Fines, imposed in such manner and in such amount as the Judicial Committee thinks fit;
 - Any other penalty specified in these Regulations, or any policy, resolution or determination which the person has breached, failed, refused or neglected to comply with;
 - Such other penalty as the Centre Judicial Committee considers commensurate with the offence; and/or
 - Such combination of any of the above penalties as the Judicial Committee thinks fit.
- (b) In addition to any penalty imposed under Regulation 3.4(a) or in the alternative to such penalty, after hearing an allegation of Misconduct the Centre Judicial Committee may make recommendations to the Centre Board through the Board Secretary.
- (c) A decision of the Centre Judicial Committee under Rule 23.5 may be appealed under Rule 24 of the Constitution and Regulation 4.

3.5 Disputes

Disputes can include issues over application, interpretation and/or actions relating to policies, rules, regulations and the Centre Constitution. In many cases a dispute can be resolved through communication between the parties. It may just take a simple apology, a conversation or a clear undertaking with the relevant parties to resolve the issue.

Complete a written summary for the records and the file can be closed.

If the issue cannot be resolved with this type of intervention, or the complainant wants to take the matter further, then a full written complaint must be made, as per 3.5.1 (b) below, and a formal process started.

3.5.1 Commencement of Formal Dispute

(a) Where there is a Dispute pertaining to:

- (i) The Centre Constitution, policies, rules, Regulations or
- (ii) Where the Centre is the Controlling Body, any party to the Dispute may refer it to the Board Secretary of the Centre for determination by the Centre Judicial Committee.

(b) A Dispute in Regulation 3.5.1 shall be submitted in writing in the prescribed form set out in Regulation 19 and must be submitted as soon as possible and no later than fourteen (14) days after the alleged incident or incidents giving rise to the Dispute occurred. The Centre Judicial Committee in its discretion may accept a Dispute after fourteen (14) days if exceptional circumstances exist.

3.5.2 Procedure for Resolving Dispute

Upon the Board Secretary receiving notice of a Dispute under Regulation 3.5.1 s/he shall as soon as practicable:

- (a) Confer with the Centre Board Chairperson to establish a Centre Judicial Committee and request the Chairperson of the Centre Board to appoint the Chairperson of the Centre Judicial Committee;
- (b) Notify the other parties affected by the Dispute of the fact that the Dispute has been referred to the Centre Judicial Committee and send to them copies of the Dispute and any documentation or materials received in relation to it. Documents sent to the parties shall be delivered personally and/or by email, post, courier to the last known address of the part or parties concerned;
- (c) Request the Chairperson, duly appointed in consultation with the other members of the Centre Judicial Committee, to determine a date, time and place for the hearing of the Dispute;

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- (d) Appoint a Committee Administrator for the Centre Judicial Committee, who shall be a person independent of the Centre and of the parties to the Dispute;
- (e) Give the parties affected by the allegation at least 7 days' notice of the hearing unless the Centre Judicial Committee considers that the Dispute must be determined urgently, in which case it may vary the timeframes set out in these Regulations. The notice of the hearing shall:
 - De in writing;
 - State whether the party or parties concerned, are required to appear or whether the Dispute will be determined on the papers;
 - State the date, place and time of the hearing; and
 - Be delivered personally, by post and/or by email to the last known address or email address of the party or parties concerned.

3.5.3 If after enquiry and agreement of the parties, the Centre Judicial Committee considers that there is a reasonable prospect of the Dispute being resolved by further discussion and/or mediation, rather than by determination of the Centre Judicial Committee, it may refer the Dispute to the Board Secretary for him/her to appoint an independent mediator which is acceptable to both parties. The parties to the Dispute shall share the cost of the mediator equally.

3.5.4 A mediator appointed under Regulation 3.5.3 shall have no power to make a determination, but shall mediate the Dispute to see whether an agreement can be reached between the parties. The parties shall determine, by agreement, the time period in which they will attempt to resolve the Dispute by mediation.

3.5.5 If by the agreed time period an agreement is reached on the outcome of the Dispute, the mediator shall notify the Board Secretary of the outcome. If an agreement cannot be reached within the agreed time period, the Dispute shall be referred back to the Centre Judicial Committee for determination under these Regulations.

3.5.6 The procedures of the Centre Judicial Committee set out in Regulations 3.2(a) to 3.2 (j) with any consequential modifications shall apply to Disputes.

3.6 Procedure after Hearing

- (a) Once the Centre Judicial Committee has determined the outcome of the Dispute, the decision, and the reasons for the decision and notice of the person's appeal rights shall be given in writing to the parties, and the Centre Board, signed by the Centre Judicial Committee Chairperson.

- (b) In addition, or in the alternative to determining the outcome of a Dispute the Centre Judicial Committee may, report its findings to the Board Secretary with such recommendations as it considers appropriate.

- (c) If a decision cannot be given by the Centre Judicial Committee immediately after the hearing, the relevant party or parties must be advised of the date by which the decision will be given.