

# APPEAL POLICY

## Purpose

1. This *Appeal Policy* provides Representatives and Clients with a fair, affordable and expedient appeal process.

## Scope and Application of this Policy

2. This Policy applies to all Representatives and Clients, as applicable. However, it does not apply to any decision related to the application of the UCCMS made by the OSIC, the Director of Sanctions and Outcomes, the SDRCC's Safeguarding Tribunal or any other competent instance within the Abuse-Free Sport program.
3. Subject to Section 5, any Representative or Client who is directly affected by a decision made by the CSCS shall have the right to appeal that decision provided that there are sufficient grounds for the appeal under the **Grounds for Appeal** section of this Policy.
4. This Policy **will apply** to decisions relating to:
  - a) Conflict of Interest
  - b) Discipline
5. This Policy **will not apply** to decisions relating to:
  - a) Reported complaints that were managed by the OSIC
  - b) Employment matters
  - c) Infractions for doping offenses
  - d) Budgeting and budget implementation
  - e) The organization's operational structure and committee appointments
  - f) Decisions or discipline arising within the business, activities, or events organized by entities other than the CSCS (appeals of these decisions shall be dealt with pursuant to the policies of those other entities unless requested and accepted by CSCS at its sole discretion)
  - g) Commercial matters for which another appeals process exists under a contract or applicable law
  - h) Decisions made under this Policy

## Timing of Appeal

6. Representatives and Clients who wish to appeal a decision have seven days from the date on which they received notice of the decision to submit the following:
  - a) Notice of the intention to appeal

- b) Their contact information
  - c) Name and contact information of the Respondent and any Affected Parties, when known to the Appellant
  - d) Date the Appellant was advised of the decision being appealed
  - e) A copy of the decision being appealed, or description of decision if written document is not available
  - f) Grounds for the appeal
  - g) Detailed reasons for the appeal
  - h) All evidence that supports these grounds
  - i) Requested remedy or remedies
  - j) An administration fee of \$200, which will be refunded if the appeal is upheld
7. A Representative or Client who wishes to initiate an appeal beyond the seven-day appeal deadline may only do so if exceptional circumstances prevented them from filing their appeal within the deadline indicated in Section 7 above. Any such Representative or Client must provide a written request stating the reasons for an exemption. The decision to allow, or not allow, an appeal outside of the seven-day period will be at the sole discretion of the Appeal Manager and may not be appealed.

### **Submitting an Appeal**

8. Appeals of decisions made by the CSCS and/or an External Discipline Panel can be submitted to the CSCS Athlete Services Manager to be heard pursuant to this Policy.

### **Grounds for Appeal**

9. A decision cannot be appealed on its merits alone or because an individual does not like or agree with a decision. An appeal may only be heard if there are sufficient grounds for appeal. Sufficient grounds include the Respondent:
- a) Made a decision that it did not have the authority or jurisdiction (as set out in the Respondent's governing documents) to make
  - b) Failed to follow its own procedures (as set out in the Respondent's governing documents)
  - c) Made a decision that was influenced by bias (where bias is defined as a lack of neutrality to such an extent that the decision-maker appears not to have considered other views)
  - d) Made a decision that was grossly unreasonable or unfair
10. The Appellant must demonstrate, on a balance of probabilities, that the Respondent has made a procedural error as described in Section 10 and that this error had, or may reasonably have had, a material effect on the decision or decision-maker.

### **Screening of Appeal**

11. The parties may first attempt to resolve the appeal through the *Dispute Resolution Policy*.

12. Appeals resolved under the *Dispute Resolution Policy* will result in the administration fee being refunded to the Appellant.
13. Should the appeal not be resolved by using the *Dispute Resolution Policy*, the CSCS will appoint an independent Appeal Manager (who must not be in a conflict of interest or have any direct relationship with the parties) who has the following responsibilities:
  - a) To determine if the appeal falls under the scope of this Policy
  - b) To determine if the appeal was submitted in a timely manner
  - c) To decide whether there are sufficient grounds for the appeal
14. If the Appeal Manager denies the appeal on the basis of insufficient grounds, because it was not submitted in a timely manner, or because it did not fall under the scope of this Policy, the Appellant will be notified, in writing, of the reasons for this decision. This decision may not be appealed.
15. If the Appeal Manager is satisfied there are sufficient grounds for an appeal, the Appeal Manager will appoint an appeal panel which shall consist of a single arbitrator, to hear the appeal. In extraordinary circumstances, and at the discretion of the Appeal Manager, an appeal panel composed of three persons may be appointed to hear the appeal. In this event, the Appeal Manager will appoint one of the panel's members to serve as the chair.

#### **Determination of Affected Parties**

16. In order to confirm the identification of any Affected Parties, the Appeal Manager will engage the CSCS. The Appeal Manager may determine whether a party is an Affected Party in their sole discretion and may not be appealed.

#### **Procedure for Appeal Hearing**

17. The Appeal Manager shall notify the Parties that the appeal will be heard. The Appeal Manager shall then decide the format under which the appeal will be heard. This decision is at the sole discretion of the Appeal Manager and may not be appealed.
18. If a party chooses not to participate in the hearing, the hearing will proceed in any event.
19. The format of the hearing may involve an oral in-person hearing, an oral hearing by telephone or other electronic means, a hearing based on a review of documentary evidence submitted in advance of the hearing, or a combination of these methods. The hearing will be governed by the procedures that the Appeal Manager and the panel deem appropriate in the circumstances, provided that:
  - a) The hearing will be held within a timeline determined by the Appeal Manager.
  - b) The Parties will be given reasonable notice of the day, time and place of an oral in-person hearing or oral hearing by telephone or electronic communications.
  - c) Copies of any written documents which the Parties wish to have the panel consider will be provided to all Parties in advance of the hearing.
  - d) The Parties may be accompanied by a representative, advisor, or legal counsel, or may engage a translator or transcription services, at their own expense.

- The panel may request that any other individual participate and give evidence at an oral in-person hearing or oral hearing by telephone or electronic communications.
- e) The panel may exclude any evidence filed by the Parties that is unduly repetitious or otherwise an abuse of process. The discipline panel shall otherwise apply relevant and applicable evidentiary rules in relation to the admissibility and weight given to any evidence filed by the Parties.
  - f) Nothing is admissible in evidence at a hearing that:
    - i. would be inadmissible in a court by reason of any privilege under the law of evidence; or
    - ii. is inadmissible by any statute.
  - g) If a decision in the appeal may affect another party to the extent that the other party would have recourse to an appeal in their own right under this Policy, that party will become an Affected Party to the appeal in question and will be bound by its outcome.
  - h) The decision to uphold or reject the appeal will be by a majority vote of panel members when the panel is composed of three members.

20. In fulfilling its duties, the panel may obtain independent advice.

### **Appeal Decision**

21. The panel shall issue its decision, in writing and with reasons, within seven days of the hearing's conclusion. In making its decision, the panel will have no greater authority than that of the original decision-maker. The panel may decide to:
- a) Reject the appeal and confirm the decision being appealed
  - b) Uphold the appeal and refer the matter back to the initial decision-maker for a new decision
  - c) Uphold the appeal and vary the decision
22. The panel will also determine whether costs of the appeal, excluding legal fees and legal disbursements of any parties, will be assessed against any party. In assessing costs, the panel will take into account the outcome of the appeal, the conduct of the parties, and the Parties' respective financial resources.
23. The panel's written decision, with reasons, will be distributed to all parties, the Appeal Manager, and the CSCS. In extraordinary circumstances, the panel may first issue a verbal or summary decision soon after the hearing's conclusion, with the full written decision to be issued thereafter. The decision will be considered a matter of public record unless a Party otherwise makes a request to the appeal panel and the panel orders that the decision, in whole or in part, remain confidential.

### **Timelines**

24. If the circumstances of the appeal are such that adhering to the timelines outlined by this Policy will not allow a just resolution to the appeal, the Appeal Manager and/or panel may direct that these timelines be revised.

### **Confidentiality**

25. The appeals process is confidential and involves only the Parties, the Appeal Manager, the panel, and any independent advisors to the panel. Once initiated and until a decision is released, none of the Parties will disclose confidential information to any person not involved in the proceedings.
26. Any failure to respect the aforementioned confidentiality requirement may result in disciplinary action being taken against the individual(s) pursuant to the *Discipline and Complaints Policy*.

### **Final and Binding**

27. No action or legal proceeding will be commenced against the CSCS or its representatives in respect of a dispute, unless the CSCS has refused or failed to provide or abide by the dispute resolution process and/or appeal process as set out in governing documents.

### **Privacy**

28. The collection, use and disclosure of any personal information pursuant to this Policy is subject to the CSCS's *Privacy Policy*.
29. The CSCS or any of its delegates pursuant to this Policy (i.e., Appeal Manager, appeal panel) shall comply with the CSCS's *Privacy Policy* in the performance of their services under this Policy.