

# **THE BERMUDA AMATEUR SWIMMING ASSOCIATION APPEALS POLICY**

*NOTE: In this policy, the term “Member” refers to all categories of members in BASA, as well as to all individuals engaged in activities with BASA including, but not limited to, athletes, coaches, officials, volunteers, directors, officers, team managers, team captains, medical and paramedical personnel, administrators, spectators, and families of members. “Appellant” refers to the Member appealing a decision; and “Respondent” refers to the body whose decision is being appealed. The term “days” refers to calendar days, irrespective of weekends or holidays.*

## **Scope of Appeal**

1. Any member of BASA who is affected by a decision of the Board of Directors, of any Committee of the Board of Directors, or of any body or individual who has been delegated authority to make decisions on behalf of the Board of Directors, shall have the right to appeal that decision, provided there are sufficient grounds for the appeal as set out in Section 4 of this Policy. Such decisions may include, but are not limited to eligibility, selection and discipline.
2. This Policy shall not apply to matters relating to the technical rules of the sport, which may not be appealed, to drug matters which have their own appeal provisions separate from this policy, or to matters of employment, unless otherwise stated.

## **Timing of Appeal**

3. Members who wish to appeal a decision shall have 10 days from the date on which they received notice of the decision, to submit written notice of their intention to appeal, along with detailed reasons for the appeal, to the President of the Bermuda Amateur Swimming Association.

## **Grounds for Appeal**

4. A decision cannot be appealed on its merits alone. An appeal may be heard only if there are sufficient grounds for the appeal. Sufficient grounds include the Respondent:
  - a) making a decision for which it did not have authority or jurisdiction as set out in BASA’s governing documents, including bye-laws, policies, rules and regulations;
  - b) failing to follow procedures as laid out in the bylaws or approved policies, rules or regulations of BASA;
  - c) making a decision which was influenced by bias, where bias is defined as a lack of neutrality to such an extent that the decision-maker is unable to consider other views;
  - d) exercising its discretion for an improper purpose; or
  - e) making a decision for which there is no supporting evidence.

## **Screening of Appeal**

5. Within 3 days of receiving the notice of appeal, the Executive Committee shall decide whether or not the appeal is based on one or more of the categories of possible errors by the respondent as set out in Section 4. The Executive Committee shall not determine if the error has been made, only if the appeal is based on such an allegation of error by the Respondent.
6. If the appeal is denied on the basis of insufficient grounds, the Appellant shall be notified of this

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decision in writing, giving reasons. This decision is at the sole discretion of the Executive Committee and may not be appealed.

## **Appeals Panel**

7. If the Executive Committee is satisfied that there are sufficient grounds for an appeal, within 10 days of having received the original notice of appeal he or she shall establish an Appeals Panel (the "Panel") as follows:
  - a) The Executive Committee shall determine whether the Panel shall be comprised of a single individual sitting alone or by three individuals;
  - b) The Panel member(s) shall have no significant relationship with the affected parties, shall have had no involvement with the decision being appealed, and shall be free from any other actual or perceived bias or conflict; and
  - c) Where the Panel is made up of three individuals, the Panel's members shall select from themselves a Chairperson.

## **Preliminary Conference**

8. The Panel may determine that the circumstances of the dispute warrant a preliminary conference:
  - a) The matters which may be considered at a preliminary conference include date and location of hearing, timelines for exchange of documents, format for the appeal, clarification of issues in dispute, order and procedure of hearing, remedies being sought, identification of witnesses, and any other matter which may assist in expediting the appeal proceedings.
  - b) The Panel may delegate to its Chairperson the authority to deal with these preliminary matters.
  - c) If the appeal relates to a selection matter, any person potentially affected by a decision of the Panel shall become a party to the appeal.

## **Procedure for Appeal**

9. The Panel shall govern the appeal by such procedures as it deems appropriate, provided that:
  - a) The appeal hearing shall be held within 14 days of the Panel's appointment.
  - b) The Appellant, Respondent and affected parties shall be given 10 days written notice of the date, time and place of the appeal hearing.
  - c) In the case of a three person Panel, a quorum shall be all three Panel members.
  - d) Decisions shall be by majority vote, where the Chairperson of the Panel carries a vote.
  - e) Copies of any written documents which any of the parties would like the Panel to consider shall be provided to the Panel, and to all other parties, at least 3 days in advance of the hearing.
  - f) Any of the parties may be accompanied by a representative or advisor, including legal counsel.
  - g) The Panel may direct that any other individual participate in the appeal.
  - h) Unless otherwise agreed by the parties, there shall be no communication between Panel members and the parties except in the presence of, or by copy to, the other parties.

## **Appeal Decision**

10. Within 7 days of concluding the appeal, the Panel shall issue its written decision, with reasons. In making its decision, the Panel shall have no greater authority than that of the original decision-maker. The Panel may decide:

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- a) To confirm the decision, or any part of the decision, being appealed;
- b) To void the decision and refer the matter back to the initial decision-maker for a new decision;
- c) To vary the decision where it is found that an error occurred and such an error cannot be corrected by the original decision-maker for reasons which include, but are not limited to, lack of clear procedure, lack of time, or lack of neutrality;
- d) To determine how costs of the appeal shall be allocated, if at all.

11. A copy of this decision shall be provided to each of the parties and to the Board of Directors.

## **Timelines**

12. If the circumstances of the dispute are such that this policy will not allow a timely appeal, the Panel may direct that these timelines be abridged. If the circumstances of the disputes are such the appeal cannot be concluded within the timelines dictated in this policy, the Panel may direct that these timelines be extended.

## **Bermuda Alternative Dispute Resolution Programme for Amateur Sport in Bermuda (ADR)**

13. All differences or disputes shall first be submitted to appeal pursuant to the appeal process set out in this policy. If any party believes the Appeal Panel has made an error such as those described in Section 4, the matter shall be referred to the ADR, in accordance with the policies of BASA.

## **Location and Jurisdiction**

14. This policy shall be governed and construed in accordance with the laws of Bermuda.

15. No action or legal proceeding shall be commenced against BASA in respect of a dispute, unless BASA has refused or failed to abide by the provisions for appeal and/or arbitration of the dispute, as set out in this or any other policy.