



Guide to Managing Breaches of the Code of Conduct

This document is designed to help clubs and zones with the requirements for managing suspected breaches of the PCAV Code of Conduct [Link] where a formal process is the preferred approach. For more information on the options available for resolving disputes please see *PCAV's Options for Managing Disputes. Which option is best for our club?* www.ponyclubvic.org.au

Formal approaches to managing suspected breaches of the Code of Conduct and other disciplinary issues

Until a determination has been made that a breach has occurred, the breach remains a 'suspected breach' or 'suspected misconduct.'

The principles underlying procedures for managing breaches of the Code of Conduct are:

- Everyone associated with PCAV - members, officials, supporters, and observers alike - must comply with the Code of Conduct and uphold and promote Our Values and Behaviours
- Taking action in cases of suspected misconduct is primarily aimed at protecting the integrity of PCAV as an organisation and thereby maintaining confidence in the pony club movement
- PCAV procedures should be fair and reasonable, striking an appropriate balance between the needs of members, officials and supporters, the needs of the PCAV as an organisation and the wider public interest.

Although the range of sanctions, including termination of membership, form an integral part of any misconduct process, imposing sanctions is not primarily about 'punishing' someone who has failed to meet the required standards of conduct.

Sanctions are intended to be proportionate to the nature of the breach and in some cases will identify that a club, Zone or PCAV no longer has confidence that the person is able to demonstrate and uphold the appropriate values and behaviours on a reliable basis to participate in some, or all, pony club activities. Sanctions also operate as a deterrent to others and confirm that misconduct is not tolerated in clubs, Zones or PCAV.

Not all breaches of the Code will necessarily be the subject of formal action. Depending on the seriousness of the conduct, the person's history with PCAV and an assessment of whether the incident is likely to be an isolated one, counselling or a warning may be a more appropriate way of dealing with the behaviour. Other actions, such as specific coaching, exclusion from team or club based activities for a period of time or acting in a non-riding support role, should also be considered.

It is important to emphasise that a person suspected of having breached the Code is presumed not to have committed the breach until a determination has been made in accordance with these procedures for investigating a breach.

The determination may, of course, be that the person did not breach the Code and no further action is taken. It is also important to note that a sanction cannot be imposed on any person until there is a determination that the Code has been breached.

What is a breach of the Code of Conduct?

In broad terms, a member, supporter, official or other member of the PCAV community whose conduct does not comply with an element of the Code of Conduct can be found to have breached the Code.



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The following behaviours are considered serious breaches of the Code of Conduct:

- Violent or abusive behaviour toward another person
- Failure to maintain a safe environment
- Vilification of any kind towards another person
- Discrimination against another person based on their , age, gender, sexual orientation, race, culture or religion
- Discrimination against another person based on their physical or mental ability
- Sexual harassment or intimidation of another person
- Victimisation of another person for exercising their rights through the Code of Conduct

Before a club, Zone or PCAV can impose a penalty for such behaviour, the breach must be confirmed through the complaints handling procedures at Club, Zone or PCAV, as appropriate.

It is important, however, to note the following points.

- Where a provision of the Code contains more than one element, it may not be necessary for the person to have breached all elements in order for a breach of the Code to be determined. For example, a parent who verbally abuses an instructor does not also have to assault them to be found to have breached the Code of Conduct.
- Where a suspected breach appears to be a minor infringement, it may be sufficient to warn the person about his or her conduct, noting that any further similar conduct could lead to formal action. In these cases the decision may be that a determination is not required but a note should be made of the basis on which the warning was given. For example, a rider may be publicly critical of their team's performance or abilities without resorting to verbal abuse or belittling remarks.

First Steps

Before any determination about whether or not a person has breached the Code of Conduct is made, the person must be informed of the details of the suspected breach and the possible range of sanctions that may be imposed, should there be a finding that the person has breached the Code. The person must also be given a reasonable opportunity to make a statement in relation to the suspected breach.

This can be done verbally in many cases. However, where the suspected breach of the Code is considered to be of sufficient concern, it may be preferable to record the matter in written form. The guiding principle is that the process for determining whether a person has breached the Code must be carried out with as little formality and as much expedition as a proper consideration of the matter allows.

Reasonable steps must be taken to ensure that the person or committee who determines whether there has been a breach of the Code is, and appears to be, independent and unbiased. In some instances, it may be appropriate to select a person from outside the particular club or zone, if it is not possible to satisfy this requirement. In such cases, advice from Zone or PCAV should be sought via the Zone Representative. PCAV will assist with identifying a suitable decision maker who meets the required criteria. At each stage of the misconduct process, whether the decision maker is appointed by club, Zone or PCAV, it is important to ensure that the decision maker is appropriately authorised to exercise power in this context. This can be done via a letter of appointment outlining the issue to be determined.



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To suspend or not to suspend pending a decision?

Suspension while an investigation is proceeding is an administrative action that must be taken for sound reasons. It should not be characterised as a sanction in itself. In exercising the power to suspend pending a determination, it is important for the decision maker not to prejudge, and not to be seen to prejudge, whether a breach has occurred. More information regarding suspension including a suspension checklist is included below. [\[Link\]](#)

The Decision Making Process

Procedural Fairness

The decision making process should be governed by the principles of procedural fairness.

The principles of procedural fairness require people whose interests will be adversely affected by a decision to be given an opportunity to be heard, and requires decision makers to act without bias or self-interest, and to base their decisions on compelling, factually based, reliable, evidence.

The application of the principles of procedural fairness may vary, depending on the circumstances of the particular case. The more serious the allegation, the stricter should be the application of procedural fairness.

In its fullest application, procedural fairness requires that

- People against whom an adverse decision may be made are informed of any allegations against them in as much detail as possible
- Wherever possible people must be provided with an opportunity to put their case, and to hear the case against them, whether at an oral hearing or otherwise
- Where a decision has to be made between competing interests, all parties to a matter must be heard and all arguments considered
- No person judges their own case or a case in which they have a direct interest
- Decision makers must act fairly and without bias or a perception of bias

Standard of proof

The standard of proof for determining whether a breach of the Code of Conduct has occurred is *on the balance of probabilities*. This means that the decision maker must be satisfied that a breach of the Code is more probable than not.

The level of proof, while still being on the balance of probabilities, will rise in accordance with the seriousness or importance of the issue to be determined. For example, an allegation of being rude to an official will have a lesser standard of proof than an allegation of theft.

Investigating a complaint of misconduct

At the beginning of an investigation about a complaint, the Club, Zone or PCAV (as appropriate) should, among other things, ensure that the person who is the subject of an investigation is familiar with the PCAV's policy in regard to complaint handling. The person being investigated should be advised **in writing**, that an investigation regarding the complaint is underway, what the complaint is



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about and that personal information about them may be disclosed to others, where necessary and appropriate as part of the investigation. The Club, Zone or PCAV should answer any questions the person may have at this time about the process and the complaint under investigation.

The person about whom the allegation has been made should be treated in a manner consistent with the Values and Behaviours set out in the Code of Conduct.

Other parties to the investigation such as the complainant and any witnesses should be advised that personal information relating to them may be disclosed to the person being investigated and others where necessary and appropriate.

Recording the determination

After a determination in relation to a suspected breach of the Code has been made, a written record of the findings should be prepared. The written record should identify the alleged breach of the Code and also set out the findings on relevant questions of fact and refer to the evidence or other material on which those findings were based.

Disclosure of personal information

Where an investigation has been completed and part of the recommendation is for the person's personal information to be released to another person, body or agency (including the complainant), the individual concerned should be advised and provided with an opportunity to respond to the proposed release of their personal information prior to release. For example, a finding regarding damage to property is to be provided to the Committee of Management for the grounds on which the pony club is permitted to hold its rallies. A reasonable time frame should be allowed for the person's response and should be sufficient to allow them to seek advice about the proposed disclosure as necessary.

The primary consideration should be that disclosure of personal information regarding misconduct is managed in such a way that personal information is not revealed **unless it is necessary, appropriate and reasonable to do so**. It should be possible in most circumstances to give a complainant adequate information about the way their complaint has been handled *without* disclosing personal information about the person.

Sanctions

A sanction can be imposed on a person only after it has been determined that the person has breached the Code of Conduct.

Where such a determination has been made, PCAV, a Zone or club may impose one or more of the following sanctions on the person:

- termination of membership
- refusal to renew membership
- suspension of membership
- exclusion from certain pony club activities
- a reprimand.



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There is no impediment to the imposition of more than one sanction, but PCAV, the club or Zone in imposing the sanction must be satisfied that more than one sanction is appropriate in the circumstances. For example, a member may be excluded from selection for team events for a period of time and required to attend team practices prior to the event as a non-riding member.

Where the sanction imposed is a reprimand, it is subject to the same standards of record-keeping as apply to other sanctions.

A determination that a breach has occurred does not necessarily mean that a sanction must be imposed. A decision can be taken that other action may be appropriate. For example, the person may be counselled, with a view to preventing a recurrence of the conduct in question.

In reaching a decision to impose or not impose a sanction, a statement of reasons should be provided to the person affected.

Other considerations

There are a number of other issues relevant to the misconduct process, particularly relating to past conduct, resignation of membership or transfer to another club and potentially zone during an investigation.

Suspension Checklist

In deciding whether or not to suspend a person's participation, the following questions should be considered:

Pre-decision suspension

- Is it appropriate pending a decision to remove the person from the pony club activities?
- Has a change in responsibilities or role been considered as an option? Eg. could the member still attend in a non-riding capacity, could the instructor who is also a parent still attend in a non-coaching role
- Is it clear that the decision maker is not prejudging and is seen as not prejudging whether the person has breached the Code of Conduct?

Pre-decision and post-decision suspension

- Has there been an opportunity for the person to make a statement before the suspension is implemented?
- Has the person been advised of the possible length of the suspension and of his/her ongoing status? (e.g. attendance at training courses previously booked, entitlement to enter or participate in competitions)

Past Conduct

The person who is determining whether or not a breach has occurred should ordinarily consider only the incident(s) in question to make that determination. In some cases, however, evidence of prior similar incidents, or evidence which shows a particular tendency, may be relevant to a determination about the incident(s) in question. The person should be advised of any past conduct that it is proposed to take into account in this regard.

When deciding on an appropriate sanction, a decision maker may consider past behaviour, and in particular whether previous warnings, counselling or sanctions have relevance. For example, if repeated counselling has not changed the person's conduct, a more serious



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sanction may be appropriate. The person should be advised of any past conduct (both satisfactory and unsatisfactory) that it is proposed to take into account when deciding a sanction. This should be included in the statement of reasons provided to the person affected.

Right to review

A person who has been found to have breached the Code and who wishes to challenge either the determination that a breach has occurred or the sanction imposed, may lodge an application for a review of actions with PCAV. An application for review must state why the review is sought, the facts or matters relevant to the review and the outcome sought.

The making of an application for review does not operate to stay the sanction. PCAV may confirm or overturn the determination or confirm or vary the sanction imposed, including imposing a greater sanction. Applications should be made in writing and directed to PCAV's Coaching Director.

Criminal matters

Criminal proceedings may result from a person's behaviour related to their involvement with pony club as well as through his or her private actions.

PCAV should be notified in all instances where criminal behaviour is suspected.

Where a person is being dealt with in connection with both criminal action and a suspected breach of the Code, procedural fairness requires that the two matters are dealt with by different people. For example an allegation of theft of pony club funds or property.

While it is possible to pursue the misconduct process at the same time as the criminal process, care must be taken not to risk jeopardising the prosecution of the criminal charge. Close liaison with the external investigating authority and the prosecuting authority is recommended and clubs and Zones should be guided by PCAV in these instances who can obtain legal advice as required.

Where it comes to light that a person, *through their private actions*, has been charged with a criminal offence, and where the criminal charge relates to behaviour that could have an impact on the person's ability to maintain honesty and integrity in their PCAV involvement or is likely to damage the integrity and/or good reputation of the PCAV or the pony club movement, it may be appropriate to take action to investigate the matter as a possible breach of the Code. For example, a parent is charged with drug trafficking to minors.

In serious cases, it may be appropriate to suspend the person until the decision of the Court is known. Action to suspend should only be taken where the club, zone or PCAV, believes on reasonable grounds that the person has, or may have, breached the Code; and that the suspension is in the public or organisation's interest. Certain criminal charges may have different impacts. For example, charges related to insider trading or tax avoidance do not have the same effect and will be dealt with quite differently from charges of child abuse.

If a criminal charge has been heard, the club, zone or PCAV may commence a misconduct process on the basis of its effect on the person's involvement with pony club.



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Resignation during a misconduct investigation

Where a person resigns their membership or ceases their involvement with the club during the course of an investigation of suspected misconduct, the investigation should be discontinued. Any documents that have been obtained or created up to the date of resignation should be retained, even where the investigation is not complete. A copy of such records should be provided to PCAV.

If the person later seeks to re-join the same or a different pony club, these records may be used as part of a pre-membership review process. Where this is done, those using the information for that purpose will need to ensure that the principles of procedural fairness are applied, including advising the former member that the decision maker was taking such records into account and giving them the opportunity to comment.

Record Keeping

Records relating to misconduct action should not be placed on a personal or membership file, but rather on a separate misconduct action file or, where appropriate, an investigation file. Access to such files should be limited on a need to know basis. The existence of a separate misconduct file should, however, be made apparent (eg by cross-reference). Decision-makers who are determining whether the Code has been breached or who are deciding an appropriate sanction should have access to these records where appropriate. The weight they give to the person's conduct record in the decision making process, however, will depend on the recency and the nature of the misconduct that has been recorded.

Disclosure to other parties

A copy of the investigation report and outcome should be provided to PCAV in all instances for their records.

Careful consideration should be given as to whether it is necessary or appropriate to disclose information relating to an investigation to others, including to:

- the complainant
- the Club
- the Zone
- PCAA
- Police or other authorities

The primary consideration should be that disclosure of personal information regarding misconduct is managed in such a way that personal information is not revealed **unless it is necessary, appropriate and reasonable to do so**. It should be possible in most circumstances to give a complainant adequate information about the way their complaint has been handled *without* disclosing personal information about the person.

Where you are uncertain, seek guidance from your Zone Representative or PCAV.



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Providing information on Code of Conduct investigation outcomes to complainants

Complainants have a legitimate interest in knowing that alleged 'wrongs' have been addressed. Complainants should be given sufficient information to provide assurance that the club, Zone or PCAV:

- has taken the allegation seriously
- does not tolerate behaviour that is inconsistent with the Code of Conduct
- has imposed an appropriate sanction where a breach has been found
- has taken appropriate steps to ensure the problem will not recur.

However, when considering what information to provide to complainants to ensure confidence in PCAV's administration, there is a need to balance:

- an individual's right to privacy; and
- the need to take reasonable steps to be transparent and accountable to any other parties involved.

PCAV can provide general information to complainants about the outcome of investigations. Consideration should be given to the circumstances of **each individual case** when deciding if, and to whom, personal information might be released. Deliberations about any disclosure of personal information will be informed by the:

- nature and seriousness of the misconduct
- likelihood of consequences to the person about whom the information relates
- the type of information that could be disclosed

A suggested format for a letter advising a complainant of the outcome of an investigation is attached [[Link](#)].

Disclosure of the Misconduct

In some instances, there may be a desire to highlight particular cases of misconduct for the purposes of education, deterrence or prevention. It will usually be possible to circulate information describing the breach, subsequent actions taken and advising others of appropriate behaviour without disclosing the identity of the person concerned. Disclosure might include the results of an investigation and any sanctions imposed, remedial action taken or changes to information, policies or processes.

PCAV may elect in future to report breaches at their AGM or in their annual report or other manner. Such actions may serve to increase the public's confidence in the pony club movement as a whole.

With the possible exception of serious criminal misconduct supported by a finding by a Court, care should be taken, to ensure that the person's identity cannot be reasonably ascertained from this information. Consideration should be given to any adverse effects that disclosure of information might have on the welfare of a person if, for example, rumours of their misconduct and sanction become widespread. This would particularly be the case where a person's personal circumstances may have contributed to the behaviour or conduct under investigation.



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In the case of criminal matters, care must be taken to ensure, that criminal proceedings are not jeopardised by the inappropriate disclosure of information related to the Zone or PCAV investigation. Legal advice via PCAV should be sought as to what information may be disclosed in these circumstances (for example, advising that the matter has been referred to a court of law).

Suggested format for letter advising outcome to complainant

Dear {complainant}

I am writing in relation to your complaint about {nature of complaint}, which you forwarded to {name of club/zone} on {date}.

An investigation of this matter has been conducted in accordance with PCAV's Code of Conduct investigation procedures. This investigation has now been finalised.

{May insert one of the following}

As a result, a breach of the Code of Conduct was found and a sanction imposed.

In addition, {club/zone} will undertake to {remedial action eg, run theory sessions at the club on competition rules, run coaches/officials clinic on [topic], improve access to information on procedures} to ensure this situation does not arise in the future.

OR

As a result, no breach of the Code of Conduct was found in this case. However, {agency} will undertake to {remedial action eg, run theory sessions at the club on competition rules, run coaches/officials clinic on [topic], improve access to information on procedures} to ensure such a situation does not arise in the future.

OR

As a result, no breach of the Code of Conduct was found in this case.

Please contact, etc.

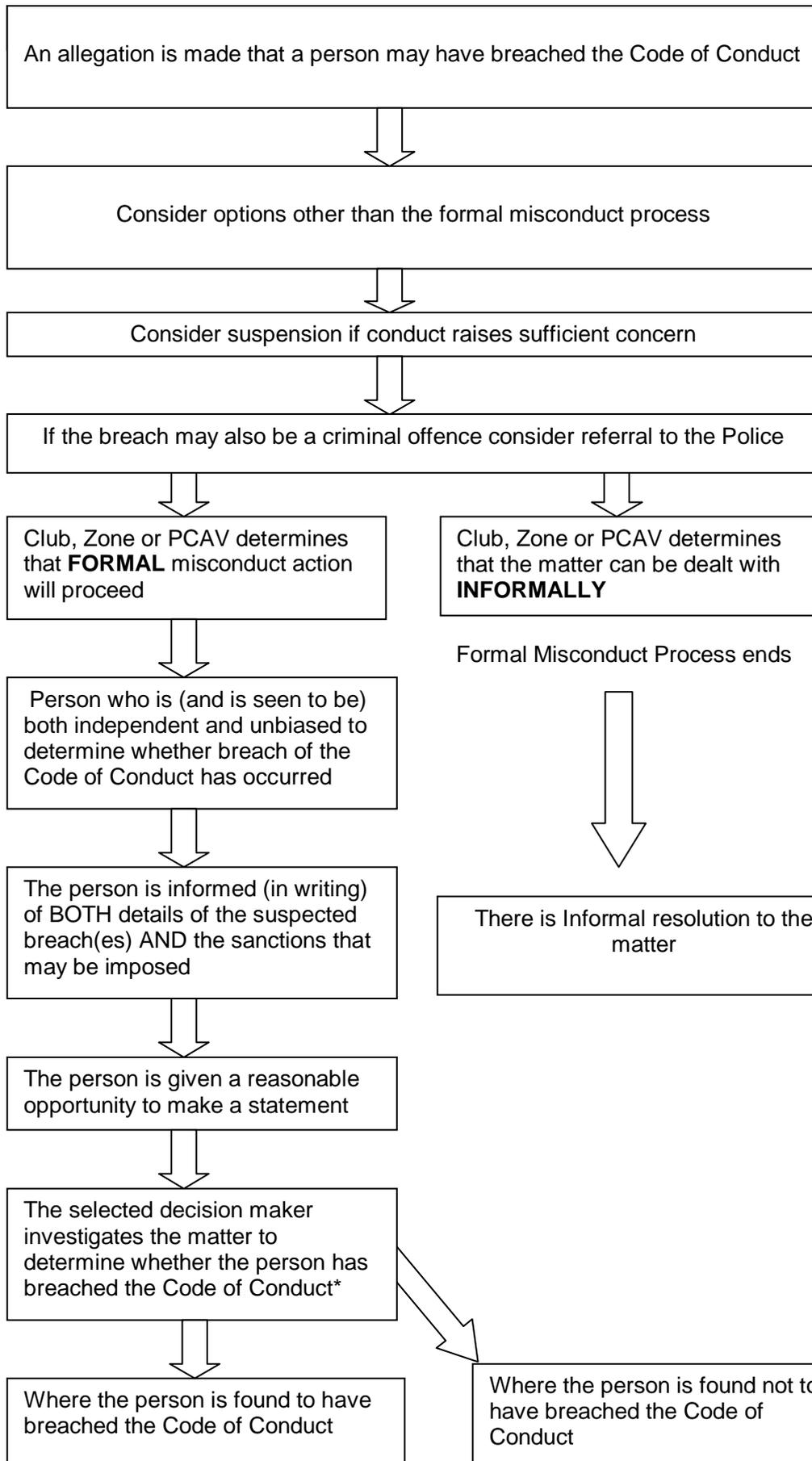
Yours sincerely

The following two pages contain the

Complaint Resolution Flow Chart To Assist with Allegations of Misconduct



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Identify relevant sections in Code of Conduct and relevant factual information

What is the nature of the alleged misconduct? Can it be dealt with more effectively in other ways, eg. counselling?

Refer Suspension Checklist

Advise PCAV

Advise person affected of proposed course of action

Appointment of decision maker advised to affected parties

Communication to be sent by decision maker

Statement to be provided by Decision Maker

Decision Maker reviews material relevant to making a decision



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