
sportscotland Independent Appeals

Rules and Procedure

(SGBs, Partner Organisations and Recognition Appeals)

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the national agency for sport

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1. Introduction

- 1.1. This document sets out the appeals process against **sportscotland** decisions. Prior to lodging an appeal it is important that all other courses of action (including the Representation Stage in **sportscotland**'s Decision Making Processes) have been pursued which are integral to the appropriate decision making process.

Anyone considering lodging an appeal should first consider **sportscotland**'s complaint procedure to decide which process is more suitable. **sportscotland** will not consider an appeal and a complaint on the same matter.

- 1.2. Sport Resolutions UK ("SRUK") will manage the process for each appeal. The contact details for SRUK are:

Sport Resolutions (UK)
1 Salisbury Square
London
EC4Y 8AE

Tel: 020 7036 1966
Email: resolve@sportresolutions.co.uk

2. Appealable Decisions

- 2.1. An appeal may not seek to reargue the merits of a decision itself only the integrity of the decision making process. Rules 2.1.1 to 2.1.2 below set out who can make an appeal and the types of decision that can be appealed:

- 2.1.1. a SGB, Partner Organisation or any other grant applicant/recipient can appeal against an investment/grant award decision made by **sportscotland** that apply to SGBs, Partner Organisations or other investment/grant recipient;
 - 2.1.2. a decision by **sportscotland** on an investment/grant application, or any other application or decision which **sportscotland** has agreed can be considered through the appeals process.
- 2.2. A final determination of the appeal will be reached by the Arbitrator within 60 Working Days of the receipt of the Notice of Appeal detailed in Rule 3.

Appeals relating to recognition of sports governing bodies or sporting activities

- 2.3. Where a pre-application or full application for the recognition of a Scottish Governing Body (SGB) of sport is unsuccessful, applicants will be able to appeal through the independent **sportscotland** appeals process detailed herein.
- 2.4. Where a pre-application or full application for recognition of a new sporting activity is unsuccessful, applicants will be able to appeal under the independent appeals process outlined in the UK Sports Council Recognition Policy, as the appeal will be against a decision taken collectively by the UK Sports Councils.
- 2.5. Where a pre-application or full application for the recognition of a GB or UK wide sports governing body based in Scotland is unsuccessful, applicants will be able to appeal under the independent appeals process outlined in the UK Sports Councils Recognition Policy, as the appeal will be against a decision taken collectively by the UK Sports Councils.
- 2.6. Where a Scottish Governing Body (SGB) is dissatisfied with the outcome of a recognition review or a decision to de-recognise the said SGB by **sportscotland** they will be able to appeal through the independent **sportscotland** appeals process detailed herein.
- 2.7. Where a GB or UK wide sports body, based in Scotland, is dissatisfied with the outcome of a recognition review or a decision to de-recognise the said sports governing body, they will be able to appeal through the independent appeals process outlined within the UK Sports Councils Recognition Policy as the appeal will be against a decision taken collectively by the UK Sports Councils.

3. Notice of Appeal

3.1. The organisation or person who wishes to appeal (“Appellant”) must submit a written request to SRUK within 5 Working Days of the conclusion of the Representation Stage in **sportscotland’s** Decision Making Processes.

3.2. The written request must contain:

3.2.1. the name and address of the Appellant (and any legal or other representative);

3.2.2. a brief statement describing the nature and circumstances of the decision against which the Appellant wishes to appeal or the nature of the application;

3.2.3. the Ground/s of Appeal. The Grounds of Appeal are set out in Schedule 1 - Grounds of Appeal to these Rules; and

3.2.4. further details of the decision being appealed (including copies of any documents that support your request)

together the “Notice of Appeal”.

3.3. If a written request for an appeal is received outside of the 5 Working Day time limit, and there are extraneous circumstances for the delay, then SRUK may agree to waive the time limit. The Appellant must set out the reasons for the delay within the request for an appeal and request a waiver.

3.4. On receipt of the Notice of Appeal, SRUK will immediately send a copy to **sportscotland** which for the purposes of Rule 11.3 shall act as an acknowledgement that the appeal has been lodged.

4. Appointment of Arbitrator

4.1. SRUK will nominate an Independent sole arbitrator (“the Arbitrator”) within 5 Working Days of receiving the Notice of Appeal.

4.2. The Arbitrator shall be drawn from the group of eight legally qualified individuals from a SRUK list.

4.3. The Arbitrator must confirm to SRUK that he/she is independent, is able to act impartially and has capacity to reach a determination within the timescales detailed in Rule 2.2. The Arbitrator shall have no connection with the Appellant or **sportscotland**. The Arbitrator shall not at any time have been involved in any capacity with any aspect of the decision that is the subject of the appeal.

4.4. Either party has the right to challenge the independence and impartiality of the

nominated Arbitrator on good and evidenced grounds. If any party intends to challenge the nomination of the Arbitrator that party shall, within 5 Working Days of notification by SRUK of the nomination, submit in writing to SRUK the reasons why that party is challenging the appointment of the nominee.

- 4.5. Unless the challenged nominee withdraws or the other party agrees to the challenge, SRUK will determine the challenge, and if that challenge is accepted, SRUK will nominate a replacement nominee arbitrator. SRUK shall notify the parties accordingly.
- 4.6. In the absence of any challenge to the nominations proposed within 5 Working Days of notification, SRUK will appoint the Arbitrator.
- 4.7. The Arbitration shall be constituted under and will be governed by the Arbitration (Scotland) Act 2010 and the seat of arbitration will be in Scotland. The Appeal shall be conducted in accordance with the law of Scotland.
- 4.8. Any hearings will normally take place in Edinburgh or Glasgow. However, should circumstances so warrant, and after consultation with all parties, the Arbitrator may decide to hold a hearing at another place and issue the appropriate directions related to any hearing. The Arbitrator shall take into account the individual needs and circumstances of the Appellant in deciding the location of the hearing. The Arbitrator may also decide the location of the meeting or whether it can be held via telephone or video link.

5. Conduct of Proceedings

- 5.1. The Arbitrator shall implement the appeal rules and make his/her decision based on fairness and natural justice; ensure he/she is impartial and independent; not act as an advocate for either party; and ensure the parties are given a proper opportunity to present their case.
- 5.2. Once the Arbitrator has been appointed, the following procedure applies:
 - 5.2.1. The Appellant must file details of its claim, known as a 'Statement of Claim' within 5 Working Days of notification that the Arbitrator has been appointed. The Statement of Claim must fully set out:
 - 5.2.1.1. any facts, law or rules on which the Appellant is relying;
 - 5.2.1.2. the relevant ground(s) from Schedule 1 - Grounds of Appeal; and
 - 5.2.1.3. the relief or remedy it is claiming.
 - 5.2.2. The time limit to file a Statement of Claim shall be inclusive of the time limit of any objection to the appointment of the Arbitrator.

5.2.3. **sportscotland** may, within 15 Working Days of receipt of the Statement of Claim, file a “Response”. The Response must fully set out:

5.2.3.1. those facts, law or rules in the Statement of Claim that the Respondent admits or denies;

5.2.3.2. the grounds and any other facts, law or rules on which it relies.

5.2.4. If the Appellant wishes to file a reply to the Response (“the Reply”), they must do so within 5 Working Days of receipt of the Response.

5.3. The time limits set out in Rule 5.2 may be varied by agreement between the parties and the Arbitrator.

5.4. Each party must submit at the same time as filing the Statement of Claim, Response or Reply (as applicable) copies of all documents on which the party concerned relies unless the document has previously been submitted by any party.

5.5. The Arbitrator may proceed with the Appeal and make the decision and/or recommendation even if the Respondent fails to serve a Response or if the Appellant fails to serve a Reply.

5.6. The Arbitrator will normally consider the written submissions of each party and will decide the Appeal on the papers. However, the Arbitrator may agree to hear evidence or legal or other submission in a specific case, where it believes that to be appropriate. If hearing is to be held then Rule 6 below will apply.

5.7. The Arbitrator has absolute discretion to admit or refuse evidence submitted by any party whether or not that evidence was presented before the party making the decision that is the subject of the Appeal.

5.8. If the Arbitrator considers it appropriate, the Arbitrator may adjourn the proceedings for the purpose of considering new evidence.

6. Conduct of Hearings

6.1. The Arbitrator shall fix the date, time and place of any hearings for directions or for the Appeal and shall give the parties as much notice as practicable.

6.2. All hearings shall be in private and proceedings shall be confidential unless the Arbitrator and the parties agree otherwise.

- 6.3. The procedure followed at any hearing shall be at the discretion of the Arbitrator, provided that the hearing is conducted in accordance with applicable rules on fairness and natural justice, with a reasonable opportunity for parties to present evidence (including the right to call and to question witnesses), address the Arbitrator and present his, her or its case.
- 6.4. Hearings may still proceed if any of the parties, their witnesses or experts fail to appear and the Arbitrator may make a decision.
- 6.5. The Appellant is permitted to have assistance or representation by persons of their choice and, if oral evidence (witness or expert evidence, for example) is heard, it must only be heard in the presence of the Appellant or their assistant/representative who shall be given a fair opportunity to question any witness.
- 6.6. If an Appellant fails to attend a hearing, whether in person or by video link, internet or telephone, on the date and time so fixed then **sportscotland** may apply to the Arbitrator to make a decision in the absence of the Appellant.
- 6.7. Where the Arbitrator decides that a hearing should be held, it shall not take place at the offices of **sportscotland** whose decision is the subject of the Appeal.

7. Witnesses

- 7.1. Where the Arbitrator has decided that a hearing is to be held, the parties must notify each other as soon as practicable and within any time limits set by the Arbitrator of the identity of any witnesses they wish to call. If the Arbitrator requires it, each party shall disclose in the form of a signed witness statement the subject matter and content of the evidence on which each witness will be relying at the hearing and how that evidence relates to the points at issue.
- 7.2. Where the Arbitrator has decided that a hearing is to be held, the parties are responsible for the availability and costs of the witnesses to be called. With the agreement of the parties, the Arbitrator may exempt a witness from appearing at the hearing if the latter has previously filed a signed witness statement. The Arbitrator may also limit or disallow the appearance of any witness on grounds of irrelevance.

8. Experts

- 8.1. The Arbitrator may, provided it has notified the parties who shall have the right to object to such costs being incurred, appoint one or more experts to submit a written report to the Arbitrator on specific issues and may require a party to give such an expert any information which the Arbitrator considers relevant or

to produce, or to provide access to, any documents, goods or property which the Arbitrator considers relevant for inspection by the expert. The costs of the expert shall be borne by the parties in equal shares.

- 8.2. The Arbitrator may (unless the parties shall otherwise agree) direct an expert witness to give evidence either before a hearing in the form of a written report and/or at the hearing in the form of an oral report, and may also require an expert witness to attend a hearing so that the Arbitrator or the parties may question him or her, and the parties may present other expert witnesses in order to testify on the points at issue.

9. Decisions

- 9.1. In coming to a decision, the Arbitrator will only consider the integrity of the decision-making process used by **sportscotland** and will not hear appeals that seek to reargue the merits of the decision being appealed against. When making its decision the Arbitrator will decide whether or not the Appellant has succeeded in establishing one of the relevant grounds of appeal set out at Schedule 1 – Grounds of Appeal.
- 9.2. The Arbitrator must make a decision within 10 Working Days of:
- 9.2.1. receipt of the Reply; or
 - 9.2.2. the deadline for receipt of the Reply, whichever is the later.
- 9.3. Where a hearing has taken place, the Arbitrator will make a decision within 10 Working Days of the date of the hearing.
- 9.4. The Arbitrator does not have the authority to make funding decisions on behalf of **sportscotland** or to reimburse funding that had been reduced or withdrawn by **sportscotland**.
- 9.5. Where the Arbitrator find that one of the Grounds has been made out (that the decision-making process has not been followed correctly), they will set aside the decision being appealed against and the decision will be remitted back to **sportscotland**.
- 9.6. Any decision made by the Arbitrator shall be in writing and shall be dated and signed by the Arbitrator, and shall unless otherwise agreed by the parties be accompanied by the reasons on which it is based.
- 9.7. Decisions of the Arbitrator are final and binding on the parties.
- 9.8. SRUK will issue the Arbitrator's written decision, which is confidential, to the parties.

9.9. Without prejudice to Rules 6.2 and 9.8 **sportscotland** may, with the prior written consent of the Appellant, at the end of the proceedings publish any report or press release including (but not limited to):

9.9.1. the details of the proceedings under these Rules (including any facts alleged in support)

9.9.2. any topics of inquiry that the Arbitrator raised, and

9.9.3. the decision made.

10. Costs

Each Party shall be responsible for its own costs and costs of the Arbitrator in equal part. Further, in the absence of any express award by the Arbitrator (in respect of the costs of the parties in the Appeal), the parties shall each be responsible in equal shares for the costs of SRUK. Payment shall be made in full by all parties to SRUK within 7 days of receipt of invoice. The Decision/Award will not be released by SRUK to any party until all invoiced payments have been paid in full.

11. General Rules

11.1. The parties shall communicate through SRUK. The Arbitrator may direct that communication can take place directly between the parties with copies of all correspondence and documents to be sent at the same time to the Arbitrator and SRUK.

11.2. All communications shall be delivered or sent by first class post, fax or email to the parties at the addresses notified to SRUK.

11.3. Deemed date for receipt of documents:

If sent by first class post, the notice or other communication shall be deemed to have been given on the "Working Day" following the day it is sent. If transmitted by facsimile or email before 5pm (UK GMT) on a Working Day, the notice of communication shall be deemed to have been given on that Working Day. If transmitted on a non-Working Day, at or after 5pm (UK GMT) on a Working Day, the notice or other communication shall be deemed to have been given on the next Working Day.

11.4. A party's last-known residence or place of business shall be a valid address for the purpose of any notice or other communication, unless notification of a change to such address has been communicated to all parties and to SRUK.

11.5. For the purpose of calculating a period of time under the Rules, such period shall begin to run on the day following the day when a notice or other

communication is given. Non-Working Days occurring during the period are not included in calculating the running of that period.

- 11.6. If a party proceeds with an Appeal in spite of the fact that a provision of, or requirement under these Rules has not been complied with, without promptly stating its objection, that party has waived its right to object.
- 11.7. If the Arbitrator, after appointment dies, refuses or in the opinion of the parties and the Director of SRUK becomes unable or unfit to act, SRUK shall appoint a replacement Arbitrator.
- 11.8. These Rules and any dispute or claim arising out of or in connection with them, or their subject matter shall be governed by and construed in accordance with the law of Scotland.

Schedule 1 – Grounds for Appeal

sportscotland Investment / Grant Application Decisions

1. Under Rules 2.1.1 and 2.1.2, only the following will be legitimate grounds for appeal:
 - 1.1.that the decision-making body failed properly to take into account relevant information; or
 - 1.2.that the procedure for making an application was not fairly or reasonably applied; or
 - 1.3.that the reasons given in the decision not to make the requested investment/grant do not correspond to the criteria published according to which applications are to be considered.
2. An appeal may not seek to reargue the merits of the decision itself, only (in accordance with the foregoing grounds) the integrity of the decision-making process.

Recognition or withdrawal of recognition status decisions by sportscotland

3. Under Rule 2.1 only the following will be legitimate grounds for appeal:
 - 3.1.that the decision-making body failed properly to take into account relevant information; or
 - 3.2.that the procedure for making an application for recognition or the procedure for withdrawing recognition was not fairly or reasonably applied; or
 - 3.3.that the reasons given in the disputed decision do not correspond to the criteria published in the Policy on the Recognition of Sporting Activities and Governing Bodies and/or the **sportscotland** Process for the Recognition of Sporting Activities and Governing Bodies of Sport (and/or any applicable replacement or subsidiary documents in force from time to time) according to which recognition or withdrawal of recognition status decisions are to be made.
4. An appeal may not seek to reargue the merits of the decision itself, only (in accordance with the foregoing grounds) the integrity of the decision-making process.

Schedule 2 – Definitions

“SGB” means national governing body of a sport in Scotland.

“Partner Organisations” means organisations such as Scottish Association of Local Sports Councils, Scottish Student Sport, Sports Coach UK; (this list is not exclusive) and other stakeholders who receive funding from **sportscotland** who deliver services to the sporting system in Scotland.

“Working Day” means any day other than Saturday, Sunday or any public holiday in Scotland.