

## Disputes & Disciplinary - Q&A

I recently worked through a number of questions presented by a person who is facing into the Disciplinary Process, it occurs to me that the conclusions we came to on this occasion may be of benefit to anyone else who may be supporting someone in similar circumstances. The questions as written here represent the essence of the various questions that arose for us and the answers are based on my reading of the relevant documents and my view on what would be a reasonable interpretation of them.

It is necessary to have processes to handle Grievances and Disputes as well as the occasional Disciplinary Matter that may arise. Nothing in this article is intended as commentary from me on the appropriateness of the current processes, how they are being utilised, or the people who operate them on our behalf.

If you are going through the process, you might consider the following:

- Get support from someone you trust; you undoubtedly will benefit from having someone to talk to about it
- Consider engaging professional advice, if you are unfamiliar with such processes
- Pay full attention to the process and to represent properly and fully what you did and why you did it, don't assume that "they will understand"
- Review carefully all documentation and correspondence received during the process including the proposed Terms of Reference and the investigation report,
- If you are unsure of anything, ask for clarification
- If you disagree with anything, challenge it right away
- Retain a copy of all communications, documentation and reports throughout the process, you may need them for reference later on
- Respond to the process in a timely fashion, don't leave your response until a deadline is upon you,
- If it is not feasible to comply with any request, flag that immediately, say why and propose an alternative timeline

I hope you never have need for this article, but if you do need it sometime then I hope that you will find it useful.

### **When a matter is raised with a Specified Officer are they required to consider if, in fact, the matter is proper for consideration as a disciplinary matter?**

This is not specified explicitly in the Disciplinary Process, but it seems appropriate that they should consider the substance and the circumstances including the following:

#### ***Due Process***

Has this matter been already managed under the Grievance and Disputes Process?

If not, would it not be appropriate for it to be progressed in that way now?

It seems reasonable that considerations might include:

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- Should the person raising the matter be advised to raise it directly with the person(s) who they have the issue with?
- Should the relevant officer (Group Leader, County Commissioner, Provincial Commissioner, Team Lead, Department Manager, etc) be informed and asked to progress the matter as a Grievance?
- If so, then should the person raising the matter be advised to ask the relevant officer, or do the circumstances or nature of the matter indicate that it would be more appropriate for the Specified Officer to do that?
- Do the circumstances indicate a referral to the Disputes Process?
- If so, then can the person raising the matter raise a Formal Complaint, or do the circumstances or nature of the matter indicate that it would be more appropriate for the Specified Officer to do that?

### ***Repetitious Behaviours***

Is this one of a number of issues concerning the behaviour of the same person(s)? If so, then does the Complaint need to reflect this?

Is this one of a number of issues raised by the same person(s)? If so, then what should be done to examine the possibility of trivial, vexatious or malicious use of the process?

### ***Motivation***

Does the person raising the matter stand to gain by having this matter pursued via the Disciplinary Process?

If so, it would seem appropriate that this potential conflict of interest be noted for the information of the Disciplinary Panel. Also, should their attempt to use the process in this way be reported as an issue and followed up accordingly?

### **When a Specified Officer raises a Formal Complaint to refer the matter to the Disciplinary Panel what further role have they in the process?**

The process does not appear to require anything else of the Specified Officer. However, it seems probable that the Investigation Officer and/or the Disciplinary Panel may wish to meet with them during the process.

The Disciplinary Process also indicates that, once the process is completed, the Specified Officer may feel it appropriate to communicate the outcome to the person(s) who raised the matter with them.

The process does not appear to require anything else of the person who raised the matter either. However, it seems probable that the Investigation Officer and/or the Disciplinary Panel may wish to meet with them during the process.

### **Does the Disputes Resolution and Appeals Panel (DRAP) receive ALL complaints or only some? Does the Disciplinary Panel (DP) receive disciplinary complaints directly?**

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According to the Disciplinary Process, Complaints that are raised by Specified Officers as disciplinary matters are referred to the DP for processing under the Disciplinary Process. All other Complaints are managed by DRAP under the Grievance and Disputes Process.

It should be noted that all Appeals are managed by DRAP, this includes appeals regarding Disciplinary Panel outcomes as well as appeals regarding Dispute Hearing Panel outcomes.

### **Can the Disputes Resolution and Appeals Panel (DRAP) or the Disciplinary Panel (DP) decide if they should proceed with the complaint or not?**

The Disciplinary Process seems to imply that the DP has some discretion in this regard. It does not specifically set out that they might conclude that the matter complained of should not be pursued by them, but this could be inferred.

Extract from the Disciplinary Process:

*“Should the DP decide that the matter does not warrant a full investigation then they will dispense with the matter in a manner as they see fit which shall include agreeing an appropriate sanction with the member the subject of the complaint where a minor breach of discipline is accepted to have occurred.”*

For complaints that do not relate to disciplinary matters (do not originate from a Specified Officer), the DRAP is required to ensure that they are satisfied that proper efforts have been made to resolve the issue under the Grievance Process before they pass it to the Disputes Process.

### **Should the subject(s) of a Complaint be told the evidence supporting the Complaint?**

The Disciplinary Process requires that the subject(s) be sent two forms. One (SIF-DPF9) sets out the matter raised by the Specified Officer. The other, (SIF-DPF10) sets out the Complaint and gives the subject(s) 14 days to respond, and to exercise a Right of Reply.

If the subject(s) have not enough information, it seems reasonable that they should request same and then be given time to consider the matter before exercising their Right of Reply.

It should be borne in mind that all of the evidence may not be available at this point, only enough to determine that the Complaint should be investigated.

It would seem prudent in exercising Right of Reply at this point in the process, for the subject(s) to specify that they are only responding to what has been provided to them at this stage and that they reserve the right to respond to any further evidence that may be presented during the process.

### **Should the subject(s) ask for an explanation of any terms used in the Complaint?**

If the subject(s) are not clear on any aspect of the wording, including terms used, then it would seem in their best interests to ask for a proper explanation before they exercise their Right of Reply.

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The same would apply throughout the process. They should be clear on the Terms of Reference, the wording of any questions asked, the terms and wording used in any communications they may receive during the process, as well as any summary or report produced up to and including the final report.

### **What are valid grounds for referral to the Disciplinary Process?**

The Disciplinary Process document contains a list of matters which may form grounds for a referral to the Disciplinary Process. It also declares that “this list is not exhaustive”, which appears to leave this matter somewhat open-ended.

The list in the process includes some reasonably specific items and also:

*(a) The member is alleged to have committed an act of misconduct.*

It should be noted that this specific use of the term “misconduct” is clarified later in the process document.

*(b) The member is alleged to have not acted in accordance with the Scout Promise.*

It is evident that the Scout Promise is a personal commitment to do ones best to adhere to a particular code of living. So, if the basis for a Complaint is that the subject(s) did not act in accordance with the Scout Promise, it would seem reasonable that the person raising the Complaint would explain specifically how they feel the subject(s) contravened their Scout Promise.

*(p) Any other matter of a disciplinary nature which would not be fit and proper conduct for an adult member of Scouting Ireland*

Where these grounds are used it would also seem reasonable that the person raising the Complaint would describe in what respects they believe the subject(s) actions, omissions or behaviours were unsuitable.

### **Does the subject(s) have a right to have another person with them in any meeting during the process?**

From the Grievance and Disputes Process:

*“It should be noted that any party to the dispute will only be permitted to be accompanied and supported at the hearing by a “fellow Scouter” and this should be notified to them by way of the Terms of Reference document. It should also be noted that the “fellow Scouter” cannot take any part in the proceedings other than being there as a support.”*

This aspect does not appear to be specifically covered in the Disciplinary Process, but it would seem reasonable that the same would apply for proceedings under that process also.

### **Are meetings recorded during the investigation?**

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From the Grievance and Disputes Process:

*“The record of all Dispute Hearing Panel proceedings will be by way of audio recording unless any party to the proceedings objects to this. Where there is any such objection the proceedings will then be recorded in writing, agreed as an accurate record of the proceedings by all parties to the hearing and be recorded on an official form SIF-DPF3.”*

This aspect does not appear to be specifically covered in the Disciplinary Process, but it would seem reasonable that the same would apply for proceedings under that process also.

**Does the subject(s) of a Complaint have the right to get a copy of all correspondence concerning the Complaint, including any correspondence between the Specified Officer and the DP and/or DRAP?**

It would seem reasonable that the subject(s) would be entitled to request any such correspondence. If they felt it necessary, it appears that they could utilise a Subject Access Request under GDPR to support their request.

**Where a Specified Officer raises a Complaint based on a matter drawn to their attention by another person, is the subject(s) of the complaint entitled to**

- **know who raised the matter with the Specified Officer?**
- **be provided with a copy of all evidence given to the Specified Officer by that person?**

These questions are not covered in the Disciplinary Process. There may be circumstances in which this would not be appropriate at the start of the process, however the principles of Natural Justice require that the subject(s) be provided with full details of any complaint and be given the right to respond to the allegation(s).

In addition, the Disciplinary Process requires that the subject(s) be provided with a copy of the investigators report when they have completed it.

If the subject(s) have a doubt about the completeness of information provided, then it appears that they could request the relevant records via a Subject Access Request under GDPR.