

# In tense times, tensions and disputes can arise – what are the options?

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We shared recently a note on how the Covid-19 outbreak has impacted the court system in Scotland and how the courts are adapting. Non-urgent business has been suspended for the time being, and whilst we have seen the first “virtual” court case take place of lockdown, in an appeal against a decision relating to defamation, the system will not be returning to “normal” any time soon.

Are there any other options open to SGB's who might find themselves having to deal with any tensions or disputes during this challenging period and for the foreseeable future? Even when lockdown lifts, it is going to take a long time for “normal” to return and alternative options may have to be considered, perhaps not now or in the short term, but as the effects of this emergency are felt in the later part of this year, perhaps even into 2021, SGBs may need to be alive to their options.

Disputes within sports organisations can take many forms. They may involve board members, members of the organisation, athletes, coaches or those working in the organisation whether on a paid or voluntary basis. Disputes can also involve suppliers and 3rd parties. Sometimes disputes are inevitable, or necessary, to ensure that an SGB's position is protected. But what all have in common is that they can be damaging; expensive, time consuming, uncertain. With social media, disputes can quickly become very public and subject to scrutiny from stakeholders.

If faced with the prospect of a dispute, you may wish to consider different forms of alternative dispute resolution (ADR) which could be used to leverage swift, cost effective and certain negotiated outcomes. ADR options for all disputes are many and varied, ranging from short without prejudice (or off the court record) telephone calls or correspondence, to formal settlement meetings, mediation and arbitration.

In this note, we summarise methods by which parties may still commence and pursue dispute resolution processes in a time of social distancing, isolation and quarantine.

## Mediation

Mediation is a voluntary process, conducted confidentially, in which a trained, independent and neutral person known as a mediator, supports and assists the parties to work towards a negotiated agreement of a dispute, with the parties themselves remaining in control of the decision to settle and the terms of any agreement. In short, it is about finding an outcome that everyone can live with and in most cases maintaining or rescuing a relationship.

Mediation is generally a quicker and cheaper alternative to arbitration, whilst still being private and confidential. There are few procedural requirements so a mediation can be organised at short notice and the mediation will normally last no more than a day. Furthermore, parties are not constrained by the outcome, which might be as simple as an apology or a membership concession.

Most sports disputes cases are suitable for mediation, particularly in cases where a speedy solution is required, the parties are likely to deal with each other in the future and/or previous settlement discussions have been unsuccessful. It is only really disciplinary cases which are unlikely to be suitable for mediation because SGB's would be seeking to either impose or uphold sanctions as a result of regulation breaches.

## Virtual ADR

The inherent advantages of ADR, that attract users during more usual times, remain equally applicable in these uncertain times. Mediation and arbitration can be conducted online, for example, through Zoom, an online platform that provides the parties with access to multiple breakout meeting rooms. The present restrictions on travel and need to practice social distancing do not preclude parties availing themselves of whichever ADR method is most suitable to resolving their dispute.

While there are admittedly numerous technical concerns to having virtual hearings / mediation sessions, they are arguably not insurmountable and will smoothen out over time. Given the uncertainty of the current climate, online dispute resolution should be embraced and adapted to as the new norm.

### **Practical Observations**

Very often problems are encountered or exacerbated by a failure to take advice sooner, rather than as if often the case, later, sometimes too late. sportscotland's expert resource support to SGBs allows SGBs to access initial free advice on any legal matter. Even in the space of that time, we can help you to assess the situation you are in, help to begin to assess the merits of any given dispute or pending dispute, and discuss with you the most appropriate method or forum to attempt to resolve disputes in the most timely and cost-effective manner; the vast majority of disputes are resolved without the need for a full determination, whether that is in court or in an alternative dispute forum, but early intervention, advice and support is always essential.

## **Get in touch**

SGBs can access the sportscotland legal expert resource helpline by email at [sportscotlandinfo@harpermacleod.co.uk](mailto:sportscotlandinfo@harpermacleod.co.uk) or by calling 0141 227 9333.