

# Swim England Judicial Regulations

## Guidance Note

From 31<sup>st</sup> January 2023, Swim England has updated its Judicial Regulations and procedures, in order to ensure that members and Clubs who are involved in disputes or who allege breaches of Swim England Regulations may resolve their disputes as easily and smoothly as possible.

This Guidance Note will provide Swim England members with an outline of the new Judicial Regulations. Swim England has further published additional Guidance Notes for those in specific roles as follows:

- Guidance Note: Judicial Regulations for Club Committees
- Guidance Note: Making a Judicial Complaint
- Guidance Note: Receiving a Judicial Complaint

This Guidance Note is intended to support, and should be read in conjunction with, the Swim England Judicial Regulations, contained within Regulations 100-106 of the Swim England Handbook 2023. It does not form a part of the Judicial Regulations and is not binding upon individuals. A digital copy of the Handbook may be found at <https://www.swimming.org/swimengland/swim-england-handbook/>

## Purpose and Structure

The primary objective of the Judicial Regulations is to ensure, as quickly as possible, a fair outcome following the submission of a Complaint in accordance with the Judicial Regulations.

The Judicial Regulations seek to achieve this purpose in two ways:

1. By providing a structure and procedure by which Clubs can resolve internal Club Complaints (Judicial Regulation 103).
2. By providing a structure and procedure for the handling of Judicial Complaints escalated to the Swim England Office of Judicial Administration (Judicial Regulations 104 and 105).

A flowchart describing the structure of the Judicial Regulations may be found within the Swim England Handbook and at the end of this Guidance Note.

Clubs are required to ensure that they have a fair and open disciplinary system for the handling of internal Club Complaints conforming with Judicial Regulation 103. A Club's failure to comply with Regulation 103 may result in a Judicial Complaint being made.

## Personnel

Where a Judicial Complaint is made or an individual involved in a dispute has a query in relation to a Club or Judicial Complaint, the following may be involved with the handling of the matter:

- **Judicial Office Manager:** The key point of contact for all parties to a Club or Judicial Complaint, and any individuals seeking to enquire about making a Complaint.
- **Judicial Commissioner:** An independent solicitor who reviews all Judicial Complaints to determine whether it may be allowed to proceed under the Judicial Regulations and makes orders regarding the procedure for such Complaints.
- **Dispute Resolution Panel:** A panel consisting of independent Swim England members who sit on mediations or hearings for Judicial Complaints.
- **Appeals Panel:** A panel consisting of independent Swim England members to determine appeals against decisions made by the Judicial Commissioner or at hearings.
- **Swim England Friends:** A network of highly experienced Swim England members who provide advice to other members who have or are concerned about a Club Complaint or a Judicial Complaint.

## Contacting the Office of Judicial Administration

The Office of Judicial Administration (the “OJA”) may be contacted by email at [judicial@swimming.org](mailto:judicial@swimming.org) or by phone at 01509 640 764.

The Office of Judicial Administration must be contacted in order to obtain a copy of the Judicial Complaint Form if you wish to file a Judicial Complaint and all correspondence relating to a complaint should be directed to it. Any correspondence from the Judicial Commissioner, a Judicial Committee or the other party shall be sent via the Office of Judicial Administration.

The Office of Judicial Administration is unable to provide advice relating to a Club or Judicial Complaint, or any potential ones. It may, however, arrange for a Swim England Friend to contact you to discuss and provide advice on your concerns.

## Club Complaints (Regulation 103)

A Club Complaint is any internal Club dispute between members of a Club concerning an alleged breach of the Club’s rules.

A Club Complaint is not:

- a Complaint alleging that Swim England Regulations have been breached, which should instead be made as a Judicial Complaint; or
- a Complaint against a paid employee of the Club that does not allege that Swim England Regulations have been breached. Such a complaint should be dealt with under the terms of the employee’s contract.

## Making a Club Complaint

Any member of a Club may make a Club Complaint. Prior to doing so, the parties to the dispute should seek to resolve the matter informally, within two weeks, such as by having a discussion. If the matter cannot be so resolved, the Complainant should request, as soon as reasonably possible, a copy of the Club Complaint Form from the Chair of the Club. The Chair is reminded to send this form out as soon as possible.

The Club Complaint Form should be completed and returned to the Chair (or nominee) within seven days of receipt. Once returned, it will be forwarded to the Respondent within three days, who will have seven days to complete and return the form with their response to the complaint.

The Club Complaint Form includes an administrative section for the Club Chair (or their nominee) to complete as the matter progresses. It is essential that this section is completed and a copy of the final form sent to the parties to the Club Complaint. If a Judicial Complaint is made following a Club Complaint, the completed form, documenting the Club's actions, will form a key piece of evidence for the Club.

## Mediation

If both Parties express a willingness to have the Club Complaint mediated, the Club Chair of the Club shall appoint an independent person to act as mediator. The mediator will seek to arrange a meeting, either in person or on video call, within 14 days.

If an agreement is made at mediation, the mediator shall record the outcome and provide a copy to the Parties and the Club Chair. If no agreement is reached, the mediator shall notify the Club Chair that it has failed.

Mediation is a confidential process and, as such, the contents of the mediation meeting should not be discussed with anyone who did not participate, save for where a mediator provides the Club Chair with confirmation of a successful outcome.

Swim England strongly recommends that individuals consider mediation as a means to resolve a Club Complaint. While it is unlikely to result in both parties to the complaint obtaining their ideal outcomes, it can produce an outcome that both are satisfied with, whilst preserving and repairing the relationship between the parties. Mediation also provides the parties themselves with control over the outcome, which will be lost if the Club Complaint escalates to a hearing.

## Club Complaint Hearing

If the Parties do not agree to mediation or mediation fails, the Judicial Regulations require that a Club Complaint Hearing takes place.

The Club shall appoint a panel of three independent members, including a Chairperson who will usually be proposed by the Region and two wing members, who may be members of the Club or, if this is not desirable, members of any other Swim England affiliated Club. Parties to a Club Complaint may object to any individual sitting on the Club Complaint Panel and such objections shall be considered and determined by the Club's Chair (unless involved in the Club Complaint personally).

A hearing shall take place within 28 days of the panel's appointment. The procedure for the hearing shall be flexible and at the discretion of the panel. Each party will be limited to bringing a maximum of three witnesses unless the panel considers there to be compelling reasons for more to attend. The parties must obtain the consent from the panel for each witness to attend.

by providing the panel with a list of the witnesses in advance, explaining why they consider each witness' attendance necessary.

Upon completion of the Club Complaint Hearing, the Panel shall provide a copy of their decision to the parties and the Club Chair within 14 days. If the panel finds that there has been a breach of Club rules, it may apply sanctions to a Club member within the Club's power (i.e. suspensions from training, competing or volunteering with the Club). If the panel believes that a breach of Swim England Regulations has taken place, the matter should be referred to the Office of Judicial Administration as a Judicial Complaint.

The outcome to a Club Complaint is binding upon the parties to it. However, a party to the Club Complaint may make a Judicial Complaint to the Office of Judicial Administration if:

1. they believe that the Club or panel did not comply with Judicial Regulation 103; or
2. they believe that a sanction imposed by a panel is disproportionate.

A Judicial Complaint may not be made by a party to a Club Complaint on the sole basis that a panel's decision was not in their favour.

## Judicial Complaints (Regulation 104)

### Making a Judicial Complaint

A Judicial Complaint may include:

1. a complaint alleging maladministration, misconduct or serious misconduct by a Club or individual;
2. a complaint arising from a water polo match following conduct which, in a referee or delegate's view, warrants a sanction more severe than a water polo automatic sanction;
3. a complaint alleging a breach of Swim England Regulations or the Code of Ethics;
4. a complaint arising out of a Club Complaint outcome (see above); or
5. a protest appeal.

An individual may make a Judicial Complaint by filing a completed Judicial Complaint Form with the Office of Judicial Administration. A copy of this form can be obtained from the same. When providing you a copy of the Judicial Complaint Form, the OJA may also offer to put you in contact with a Swim England Friend to provide advice on the specifics of your concern.

The Judicial Complaint Form contains advice for filling in the form. We strongly recommend that you read this prior to completing it.

A Judicial Complaint must be made within 30 days of the incident occurring. This may for instance include the date of the alleged breach of Swim England Regulations or the date that a Club Complaint outcome was distributed. A Judicial Complaint received late will not be allowed to proceed unless the Judicial Commissioner determines that it is in the best interest of the sport to allow it.

Judicial Complaints must usually be accompanied by a fee. Please see Judicial Regulation 100.8 for details.

## Commissioner's Determination

Upon receipt of a Judicial Complaint, the Judicial Commissioner shall accept or reject the Complaint. If accepted, the Judicial Commissioner shall determine whether the complaint shall be decided by the Commissioner themselves or by a Judicial Committee.

If accepted, the Judicial Complaint Form shall be sent to the Respondent, along with a blank Judicial Response Form for completion within 21 days.

The Judicial Commissioner's determination may be appealed under Judicial Regulation 104.6.

## Mediation

If both parties consent to mediation, the Judicial Commissioner may appoint a mediator to assist the parties in finding a resolution. The mediator, or Office of Judicial Administration on their behalf, will seek to arrange a meeting between the parties to seek a resolution.

If the mediator is able to assist the parties in coming to a satisfactory outcome, they shall record the outcome and provide a copy to each party and the Judicial Commissioner. If unsuccessful, the mediator shall notify the Commissioner, for a further Commissioner's Determination to be made.

Swim England strongly recommends that individuals consider mediation as a means to resolve a Judicial Complaint. While it is unlikely to result in both parties to the complaint obtaining their ideal outcomes, it can produce an outcome that both are satisfied with, whilst preserving and repairing the relationship between the parties. Mediation also provides the parties themselves with control over the outcome, which will be lost if the Judicial Complaint is decided by the Commissioner or a Judicial Committee.

## Statement of Complaint and Response

Whether a Judicial Complaint is to be determined by a Commissioner's Decision or a Judicial Committee, each party will be expected to provide the OJA with an electronic copy of its Statement of Complaint (as per Regulation 104...or Response. The Statement of Complaint must be filed within 14 days of the Complainant receiving a copy of the Response Form, and the Response must be filed within 14 days of the Respondent receiving a copy of the Statement of Complaint.

Both the Statement of Complaint and Response should contain the following information:

1. a full written submission explaining the facts and arguments that the party wishes to make;
2. a summary of the evidence on which the party will rely; and
3. copies of all the evidence on which the party will rely, including a maximum of three witness statements.

Where a Judicial Complaint is to be determined by a Judicial Committee, the Statement of Complaint and Response must also include a list of dates for which the party is unavailable. Swim England judicial hearings take precedence over all other swimming matters and, accordingly you may wish to explain why you are unavailable on the listed dates.

Where a Judicial Complaint is to be determined by a Judicial Committee, we also require that you send three paper copies of the Statement of Complaint or Response to the Swim England Office of Judicial Administration, Pavilion 3, SportPark, 3 Oakwood Drive, Loughborough University, LE11 3QF.

## Judicial Hearing

Judicial Hearings shall be arranged by the Office of Judicial Administration and communicated to the Parties. Such hearings may be held in person, on video call, or on papers.

Three members of the Dispute Resolution Panel will be appointed to hear the Judicial Complaint.

The conduct and procedure of the hearing shall be determined by the Panel Chair who will have discretionary powers over such. The proceedings should be flexible.

Normally, the Panel Chair invites the parties, representatives, witnesses and others with interests into the room in which the hearing will be conducted. The Panel Chair will introduce themselves and the other panel members to those present, after which the parties and others present will be invited to introduce themselves.

The Panel Chair will outline the manner in which they intend to conduct the hearing and then ask all witnesses to leave the room.

The complainant will present their case before the panel. When the complainant's presentation has been completed, the Respondent will be invited to question the complainant. The panel may, and usually do, question the complainant.

The complainant will then usually be invited to call their witnesses (one at a time) to give their evidence. As the witnesses complete their evidence, the Respondent and the panel may question them. Please note that witnesses shall normally be provided with an area outside the hearing room to wait while they are not taking an active part in the proceedings and shall not take any part in the hearing other than giving evidence and responding to questions, which may be asked of them by the Panel only.

Each party may usually call no more than three witnesses unless the panel agrees there is a compelling reason to allow more. The parties involved must obtain consent for all witnesses called and they should only provide factual information specifically related to the Complaint.

Once the Complainant has stated their case and any witnesses have spoken, the process will usually be repeated for the Respondent. Once complete, the Panel Chair may wish to finish the proceedings by inviting final comments from each party.

Once each party has finished making their points, the panel will make a decision, which will be documented and distributed by the Office of Judicial Administration. The Panel's decision is by a majority and on the balance of probabilities. If it fails to reach a majority decision on any issue, the decision of the Chair to the Panel shall be final.

If either party fails to attend the hearing, the panel can proceed, taking into account any written submission.

## Judicial Committee Decision

Following a Judicial Hearing, the Judicial Committee shall prepare a decision, which shall be circulated to the parties to the Judicial Complaint and any other individual to which the Judicial



Committee directs. The decision may not be distributed to any other individual without the permission of the Judicial Committee – to do so is a breach of the Swim England Regulations and a Judicial Complaint may be filed against you.

The Judicial Committee, if it sees fit, may issue sanctions including but not limited to:

1. a written warning;
2. a requirement to change current practices;
3. a requirement to change the rules of a Club;
4. quashing an automatic water polo sanction;
5. a suspension from participating in any or all Swim England activities; and/or
6. a financial penalty.

## Appeals (Regulation 105)

There is a right of appeal to the Appeals Panel against:

1. a decision on a Judicial Complaint by a Judicial Committee;
2. a decision on a Judicial Complaint by the Judicial Commissioner;
3. an imposition of a water polo automatic sanction; and
4. a decision by the Lead Safeguarding Officer, other than a decision to impose a temporary suspension, pursuant to Swim England Safeguarding Regulations 241-246 (a “Safeguarding Decision”).

An appeal made against a decision on a Judicial Complaint by a Judicial Committee or the Judicial Commissioner is limited to the following grounds:

1. the decision maker exceeded its power or acted without having the power to do so;
2. the decision maker failed to act in accordance with the rules of natural justice;
3. an error of law was made; or
4. the decision imposed a disproportionate financial penalty or suspension.

An appeal made against a Safeguarding Decision is limited to the following grounds:

1. the outcome reached was based on an error of fact or was unreasonable given the evidence upon which the Safeguarding Decision was made;
2. significant new evidence has become available since the Safeguarding Decision was made;
3. Safeguarding Regulations 241-246 were not adhered to; or
4. the Safeguarding Decision was irrational or exhibits an error of law on the record.

Disagreement with the findings of a Judicial Committee alone does not form grounds for an appeal.

## Commencing an Appeal

An appeal may be made by sending a completed Appeal Form to the Office of Judicial Administration, along with the £200 fee. There is no fee payable for an appeal against an automatic water polo sanction.

An appeal must be filed within 14 days from the date the decision being appealed, is sent to the parties. The Chair of the Appeals Panel may nonetheless allow a late appeal to proceed if it is in the interests of the sport to do so.

## Procedure

The Chair of the Appeals Panel, or their nominee, shall upon receipt review the Appeal Form and determine whether an appeal may be allowed to proceed or not. If an appeal is not allowed to proceed, the Judicial Complaint is at an end.

If an appeal is allowed to proceed, the other party to the decision being appealed shall be informed and a hearing arranged. The procedure for an appeal, including provision of statements and evidence, is largely similar to that of a Judicial Hearing and may be found in Judicial Regulations 105.5-105.8.

An Appeal Committee hearing an appeal has the power to:

1. quash any decision and substitute its own decision;
2. quash any penalty and/or substitute its own penalty; or
3. make any such order as it thinks right and just.

A decision on appeal is final and not subject to further appeal. Accordingly, once an appeal decision has been made, subject to enforcement of any sanctions, the matter will be at an end.

## Further Support

### Swim England Friends

A Swim England Friend is an individual who is readily available to provide **independent** advice to help SE members, or their parent or other representative in the case of junior members, faced with problems. The Swim England Friends are volunteers who work across the SE Regions. They offer support in the SE Regulations / Constitution and the judicial procedure.

A Swim England Friend can bring years of experience in the world of aquatics to assist anyone who has a problem within the sport.

For the assistance of a Swim England Friend the OJA may be contacted by email at [judicial@swimming.org](mailto:judicial@swimming.org) or by phone at 01509 640 764

### Legal Support

Certain individuals may benefit from free legal advice provided by our insurers.



We provide clubs with a Legal Helpline to aid committees manage their legal responsibilities at the club and claim legal expenses for certain defence matters including employment disputes. We would strongly suggest that you contact the DAS legal advice helpline prior to taking any such act in order to ensure that you do not prejudice any defence. If you do not contact DAS prior to acting, they likely will not support any claim for legal expenses. The club legal helpline is 0330 100 7901. You will need to quote your policy number, which may be found on the Summary of Cover provided at renewal. Further information can be found at <http://asa.howden-sites.co.uk/legal-helpline>.

IOS and Coach Membership members may access legal advice through the insurance provided to them. This helpline may be contacted at 0345 543 8713. Further information may be found at <http://ios.howden-sites.co.uk/legal-expenses>.

Citizens Advice - <https://www.citizensadvice.org.uk/>

Pro bono advice - <https://www.lawworks.org.uk/>

## Mental Health Support

Swim England are aware that the circumstances which may give rise to a complaint, or being subject to a complaint, may cause some distress to you. We would therefore like to make you aware of services which may be available to you to provide further mental health support if necessary.

- Your doctor (GP), who will be able to refer you to counselling.
- The Mix ([www.themix.org.uk/get-support](http://www.themix.org.uk/get-support)) – Essential support for under-25s on a range of topics including mental health. The Mix offers a free helpline for young people where they can talk to trained supporters about any issues – 0808 808 4994 (open from 3pm – 12am every day).
- MIND ([www.mind.org.uk](http://www.mind.org.uk)) may be able to provide you with support or alternatively signpost you to more local support.
- Hub of Hope ([www.hubofhope.co.uk](http://www.hubofhope.co.uk)) a mental health support database bringing together local, national, peer , community, charity, private and NHS mental health support and services.
- Samaritans ([www.samaritans.org](http://www.samaritans.org) or 116 123), who offer a free 24-hour helpline.
- The British Association of Counselling and Psychotherapy ([www.bacp.co.uk](http://www.bacp.co.uk)), for further information on counselling.

## Flowchart for the Judicial System

