

Swim England Judicial Regulations

Guidance Note

Swim England has updated its Judicial Regulations and procedures, effective from 3 September 2024, in order to ensure that members and Clubs (or counties and Regions) 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. It is intended to support, and should be read in conjunction with, the Swim England Judicial Regulations. It does not form a part of the Judicial Regulations and is not binding upon individuals. Capitalised terms within this guidance note hold the same definition as they do within the Swim England Regulations.

The Swim England Judicial and Safeguarding Regulations are contained within the Swim England Handbook at Regulations 101 – 120. A digital copy of the Handbook is available at <https://www.swimming.org/swimengland/swim-england-handbook/>.

This guidance note relates to Club and Judicial Complaints only. Swim England has produced additional guidance notes covering safeguarding hearings and Water Polo Complaints, which are available on our website.

To the extent there is any discrepancy between this guidance note and Swim England's Regulations, the Swim England Regulations shall apply.

Please note that the timeframes stated within this guidance note and the Regulations are maximum time limits, intended to account for the busy lives of our volunteers and members, and in the absence of unforeseen circumstances will be enforced strictly. Swim England encourages all involved in a complaint to take any necessary action quickly, not leaving submissions until the deadline where possible. It is in the best interests of all to resolve any issue swiftly.

The guidance may be updated from time to time and members should always ensure that the latest version is being used. The current version will always be accessible directly from www.swimming.org.

Purpose and structure

The overriding objective of the Judicial Regulations is that matters must be resolved fairly, justly, expeditiously, and at proportionate cost.

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; and
2. by providing a structure and procedure for the handling of Judicial Complaints escalated to the Swim England Office of Judicial Administration.

Flowcharts describing the structure of the Judicial Regulations are contained 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 to the Judicial Regulations. A Club's failure to conform to the Regulations may result in a Judicial Complaint being made against it.

Swim England personnel

Where a Judicial Complaint is made, or an individual involved in a dispute has a query in relation to a 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, legally qualified individual, 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 experienced Swim England members who provide advice to other members who have or are concerned about a Club Complaint or a Judicial Complaint.
- **Disciplinary Officer:** Swim England's Disciplinary Officer, who represents Swim England at any complaint to which it is a party and investigates allegations of serious misconduct. Please see below for more details.

Contacting the Office of Judicial Administration

The Office of Judicial Administration provides administrative support to the Judicial Commissioner, Appeals Panel Chair, the Dispute Resolution Panel and the Appeals Panel. Any documents and correspondence intended for such must be submitted to the Office of Judicial Administration. Any response from such shall be sent by the Office of Judicial Administration on their behalf.

The Office of Judicial Administration must also be contacted in order to obtain a copy of the Judicial Complaint Form if you wish to file a Judicial Complaint.

The Office of Judicial Administration may be contacted by email at judicial@swimming.org or by phone at 01509 640 764.

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, or signpost you to other available resources. A Swim England Friend may be requested at any time during the complaints process.

Club Complaints (Regulation 107)

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

A Club Complaint is not:

- serious misconduct, being the action, behaviour or practice of misconduct liable to bring the sport into disrepute;
- a Complaint alleging that Swim England Regulations have been breached, which should instead be made as a Judicial Complaint; or
- a Complaint not solely within the jurisdiction of one Club.

Any allegation of these forms of conduct should be submitted directly to Swim England as a Judicial Complaint.

An employee of a Club may not be the Respondent to a Club Complaint until any disciplinary process under their contract of employment has ended.

The Judicial Commissioner has the power to direct that any Judicial Complaint made to Swim England must instead be determined as a Club Complaint and vice-versa.

Making a Club Complaint

Any member of a Club may make a Club Complaint against another member of the same Club.

Prior to doing so, the parties to the dispute are encouraged to resolve the matter informally such as by discussing their issues or attending mediation. Informal resolution ensures that matters are resolved quickly and smoothly and, to encourage such, any timeframes within the Regulations will be paused pending attempts to resolve the dispute informally.

If the matter cannot be informally resolved, the Complainant should complete the Club Complaint Form and send it to the Club Chair within 28 days of the matter being complained about arising. The time limit to bring a Club Complaint will be paused while informal resolution is taking place. The Club Complaint Form will then be provided to the Respondent by the Club Chair to complete by providing their response within 28 days, which will be forwarded to the Complainant.

The Club Chair shall have seven days to provide each party with the Club Complaint Form as required. Where a Club Complaint identifies the Club Chair as the Respondent, or where the Club Chair isn't impartial for any other reason, another member of the committee of the Club shall act in the place of the Chair.

The Club Complaint Form includes an administrative section for the Club to complete as the matter progresses, which will assist in recording the Club's compliance with the Judicial Regulations. It is essential that this section is completed and a copy of the final form sent to the parties to the Club Complaint.

Club Complaint Hearing

Where a matter cannot be resolved informally, a Club Complaint Hearing will take place. However, after a Club Complaint has been made, it is still open to the parties to seek informal

resolution and, to encourage such, any timeframes within the Regulations will be paused while the parties seek to come to an informal resolution.

Within 28 days of receiving the Respondent's reply to the Club Complaint, the Club Chair shall appoint a Club Complaint Panel, formed of three members. The Club Complaint Panel must then appoint one of its members as the Chair. Those that are appointed to form a Club Complaint Panel must be drawn from membership of that Club, any other Club affiliated with Swim England, or its County and/or Region.

No one who has been involved with the complaint, or the matter giving rise to it, should sit on the Club Complaint Panel. This includes the Club Chair and anyone connected with the parties involved, such as relatives or close friends.

Parties to a Club Complaint may object to any individual sitting on the Club Complaint Panel on the basis that the person isn't impartial within seven days. Such challenges to the composition of the panel must be by the process in Regulation 104.3.

Within 21 days of being appointed, the Chair of the Club Complaint Panel shall arrange the date of the hearing and notify the parties of such. The hearing must take place between 14 and 56 days after the date of notification, unless the parties agree that it can be held sooner. The Chair shall also issue directions on how the hearing will proceed, for example how any evidence will be provided, whether there will be a cap on the number of witnesses, or (if both parties agree) that the Club Complaint will be considered on the basis of paper statements only.

To assist Club Complaint Panel Chairs, Swim England has the power to produce standard directions from time to time, published on the Swim England website. These may be varied by the Club Complaint Panel Chair to suit the circumstances of the issue if required.

Where a Club Complaint has no real prospect of success, the Chair may dismiss it but must give reasons for doing so. This decision may be appealed.

Parties to a Club Complaint are expected to give the issue high priority. If a Complainant does not attend the hearing, the Club Complaint Panel may dismiss the Club Complaint or make another order as it sees fit. If a Respondent does not attend the hearing, the Club Complaint Panel may proceed in the absence of that party.

Club Complaint Decision

Upon completion of the Club Complaint Hearing, the Club Complaint Panel shall provide a written decision to the parties and the Club Chair within 28 days. If the decision is that there has been a breach of Club rules, it may apply sanctions. 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.

Swim England has produced guidance for Clubs to use when imposing sanctions following a Club Complaint. Club Complaint Panel should consider the guidance when applying sanctions to ensure that they are proportionate and reduce the likelihood of an appeal. We have also produced a template for determinations that may be used by a Club Complaint Panel to write the written decision.

The written decision should also be provided to Swim England at judicial@swimming.org. This requirement has been put in place to allow Swim England to monitor the issues that our clubs and members are facing generally, in order to identify trends within aquatics and seek to resolve any common issues.

The outcome to a Club Complaint is binding upon the parties to it, however, it may be appealed in certain limited circumstances, detailed below.

Judicial Complaints (Regulation 108)

Making a Judicial Complaint

A Judicial Complaint may include:

1. a complaint alleging serious misconduct (action, behaviour or practice with the potential to bring the sport into disrepute) by a Club or individual;
2. a complaint alleging a breach of Swim England Regulations or the Code of Ethics; or
3. a complaint which is not solely within the jurisdiction of one Club.

Additionally, the Judicial Commissioner has the power to direct that any Club Complaint must instead be determined as a Judicial Complaint and vice-versa.

An individual may make a Judicial Complaint by filing a completed Judicial Complaint Form to the Office of Judicial Administration. 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 56 days of the incident occurring or a referral following a Club Complaint process. This may for instance be the date of the alleged breach of Swim England Regulations. The Judicial Commissioner has the power to refuse any Judicial Complaints received out of this period.

If an issue is subject to an investigation by Swim England, the 56 day time period for bringing a Judicial Complaint regarding it shall be paused while Swim England investigates (including time taken to commission the investigation).

A Judicial Complaint is not made until any relevant fee is paid. Please see Judicial Regulation 108.1.4 for details.

Commissioner's Determination

Within 14 days of the receipt of a Judicial Complaint Form, the Judicial Commissioner shall accept the Complaint, dismiss the Complaint, or request further information.

The Judicial Commissioner may dismiss any Judicial Complaint if:

1. the Complainant has failed to submit it in time;
2. it has no real prospect of success;
3. it is not within the scope of Swim England's jurisdiction;
4. it is considered insufficiently serious; or
5. it is an abuse of process.

Dismissal by the Judicial Commissioner may be appealed under Judicial Regulation 110.

Replying to a Judicial Complaint

If a Judicial Complaint is accepted, the Judicial Complaint Form shall be sent to the Respondent, along with a 'Judicial Complaint Reply Form,' for completion within 28 days.

Once in receipt of the Judicial Complaint Reply Form, the Judicial Commissioner shall refer the matter for decision by a Judicial Committee. The Judicial Commissioner may decide that another individual or organisation should be substituted into the Complaint. For example, they may determine that the Complaint is more appropriately made against a Club rather than an individual member, or that the Complaint is so severe that Swim England itself should act as the Complainant.

If both parties have indicated that they are willing to mediate, the Judicial Commissioner must order that the Judicial Complaint is put on hold for mediation to take place, facilitated by the Office of Judicial Administration.

If a Respondent fails to submit a Judicial Complaint Reply Form in time, the Judicial Complaint will still proceed to a hearing.

Mediation

If both parties consent to mediation, the Judicial Commissioner will appoint a mediator to assist the parties in finding a resolution and the Complaint shall be put on hold during such. 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. The matter shall be closed. If unsuccessful, the mediator shall notify the Judicial Commissioner and the Judicial Complaint shall proceed.

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 a Judicial Committee.

Pre-hearing

Judicial hearings shall be arranged by the Judicial Office Manager on behalf of the Judicial Commissioner and communicated to the parties. Hearings shall take place in private and will be held online. Hearings may take place in person only where exceptional circumstances are deemed to apply and the Chair has sought the views of all parties involved and the consent of Swim England.

Usually, and unless a fast-track process is ordered by the Judicial Commissioner, the below directions will apply.

Within 14 days of being notified that the Judicial Complaint is to be resolved by a hearing, the Complainant must file a Statement of Complaint, which must include:

1. a written statement detailing the facts and their arguments;
2. all evidence on which they intend to rely upon to prove their Judicial Complaint, including any witness statements; and

3. whether they are happy for the matter to be decided based on written arguments, rather than through an oral hearing.

Failure to provide such in time will result in the Judicial Complaint being dismissed. Any request for a time extension must be made before the time limit runs out.

The Complainant's Statement of Complaint shall be provided to the Respondent, who will then have 14 days to file a Statement of Response, which must include the same information as a Statement of Complaint.

Failure to provide such in time will result in the matter proceeding to a hearing. Any request for a time extension must be made before the time limit runs out.

Within 14 days of the receipt of the Statement of Response, the Judicial Commissioner will appoint a Judicial Committee. A Judicial Committee shall be formed of three members that are members of the Dispute Resolution Panel, of which one shall be appointed as Chair.

The conduct and procedure of the hearing shall be determined by the Judicial Committee, who will have discretionary powers over such, including whether the matter will be considered on the basis of written arguments only, where both parties consent to such.

If the Judicial Complaint is to be determined by online hearing, the Complainant and Respondent will be informed and must inform the Judicial Commissioner who will be attending the hearing within seven days.

Prior to the hearing, the Judicial Committee will produce a timetable and issue any directions required for the hearing to take place smoothly.

Judicial Hearing

While the conduct of any hearing is at the discretion of the Judicial Committee, they will usually follow a common format. The format may differ if a fast-track process is ordered.

At the start of the hearing, the Chair of the Judicial Committee 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 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 Judicial Committee may question them. After the Complainant has finished their case, the Respondent shall do the same. Witnesses shall not take any part in the hearing other than giving evidence and responding to questions.

If the Complainant does not attend the hearing, the Judicial Committee may make any order, including dismissing the Judicial Complaint. If the Respondent does not attend the hearing, the Judicial Committee may proceed in the absence of that party.

Judicial Complaint Decision

Following a Judicial Hearing, the Judicial Committee shall prepare a written decision, which shall be circulated to the parties to the Judicial Complaint and any other individual to which the Judicial Committee directs. This is to be done within 28 days of the hearing. The decision may not be distributed to any other individual without the permission of the Judicial Committee.

The Judicial Complaint Decision may include dismissing the Judicial Complaint or applying a Sanction or Measure under Regulation 111. Swim England has produced guidelines for Judicial Committees to use when imposing sanctions following a Judicial Complaint. Such guidelines will be available to Judicial Committees and the parties to any complaint.

Appeals (Regulation 110)

An appeal is a review of a previous decision made under the Judicial Regulations, to consider whether the decision in question is flawed in such a way that it should not remain in place. An appeal is not a re-hearing of the matter and is instead limited to determining whether an Appellant has proved any claimed grounds of appeal. The burden of proof is on the Appellant to prove their case.

For the purposes of this section, 'deciding body' shall mean the body which made the original decision and 'appeal body' shall mean the body hearing the appeal.

There is a right of appeal to the Dispute Resolution Panel against:

1. the outcome of a protest;
2. decisions by a Club Complaint Panel on a Club Complaint; and
3. the imposition of a water polo automatic sanction by the Office of Judicial Administration.

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

1. a decision on a Judicial Complaint (including a safeguarding complaint brought by Swim England) by a Judicial Committee;
2. a decision on a Judicial Complaint (including a safeguarding complaint brought by Swim England) by the Judicial Commissioner;
3. a decision on a Water Polo Complaint.

Where an appeal against a decision of a Club Complaint Panel has been heard by a Judicial Committee, the decision of the Judicial Committee is final and may not be appealed further.

An appeal may be made on one or more of the following grounds:

1. that the deciding body exceeded its power or acted without having the power to do so;
2. that the deciding body failed to act in accordance with the rules of natural justice;
3. an error of law was made;
4. new evidence is available that could not have reasonably been obtained previously and which would have changed the outcome of the decision;
5. that the deciding body made a decision which no reasonable decision-making body could have made; or
6. that the deciding body issued a Sanction or Measure which was manifestly disproportionate

Disagreement with the findings of a Club Complaint Panel or 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.

An appeal must be filed within 14 days from the date of which the final decision of the deciding body was made. Alongside the Appeal Form, an Appellant must submit a bundle of documents (with pages numbered), which the Appellant seeks to rely upon to prove the grounds of appeal, including any arguments.

If an Appellant does not wish to use the Appeal Form, they may still file an appeal by providing the information required within the Appeal Form in an alternative format, alongside the bundle of documents.

An appeal is not made until the fee (where applicable) is paid.

Permission to Appeal

The Chair of the Appeals Panel, or the Judicial Commissioner if an appeal is made to the Dispute Resolutions Panel, shall review the appeal documents and determine whether the appeal may be allowed to proceed or not. To assist them, they may request further information from an Appellant, to be provided within seven days.

An appeal may be refused permission to proceed for the following reasons:

1. the Appellant failed to submit it in time;
2. the appeal does not identify any valid grounds of appeal;
3. the appeal has no real prospect of success; or
4. the appeal is an abuse of process.

If an appeal is denied permission to proceed, the matter is at a close with no further avenue of appeal.

If an appeal is allowed to proceed, the other party to the decision being appealed shall be informed and will have 14 days to file a Response Brief – a bundle of documents which they seek to rely upon in response to the appeal, including any arguments.

Following the filing of the Response Brief, the appeal will proceed to a hearing.

Appeal Decision

The appeal body hearing an appeal has the power to:

1. dismiss the appeal;
2. allow the appeal;
3. overturn any part of the original decision;
4. order a rehearing of the matter;

5. substitute a new decision;
6. substitute a Sanction or Measure imposed by the original decision;
7. order a reimbursement of fees; or
8. make any other order that it sees fit.

The appeal body and all parties to the hearing shall be provided with a copy of the sanctions guidelines relevant to the original decision.

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 a close.

Disciplinary Officer

Swim England has created the position of Disciplinary Officer to address and tackle poor conduct within our sports. The Disciplinary Officer shall represent Swim England in Complaints which it is involved in as a party.

The Disciplinary Officer shall also be available to receive and consider concerns raised by our members in respect of behaviour. The Disciplinary Officer will focus specifically on cases of serious misconduct and, in certain circumstances, will investigate such and bring a Judicial Complaint against an individual if necessary.

The decision of the Disciplinary Officer not to investigate a matter or bring a complaint does not prevent someone with a concern raising the issue themselves as a judicial complaint.

For more information, please see the Disciplinary Officer's published document on investigations and charging.

Further support

Representation

If you are a party to a Judicial Complaint, you are entitled to have a representative support you during the process if you wish. If you want to appoint a representative, please inform the Office of Judicial Administration.

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 on the Swim England Regulations 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 Office of Judicial Administration may be contacted by email at 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.

IOS and Coach Membership members may access legal advice through the insurance provided to them. This helpline may be contacted at 0345 543 8713.

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

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

The Bar Pro Bono Unit - <https://www.weareadvocate.org.uk/>

The Sport Resolutions Pro Bono Legal Advice and Representation Service - <https://www.sportresolutions.com/services/pro-bono-legal-advice/>

Please note that, while the above organisations may be able to assist, whether they any assistance is up to them and subject to their terms and conditions and eligibility requirements.

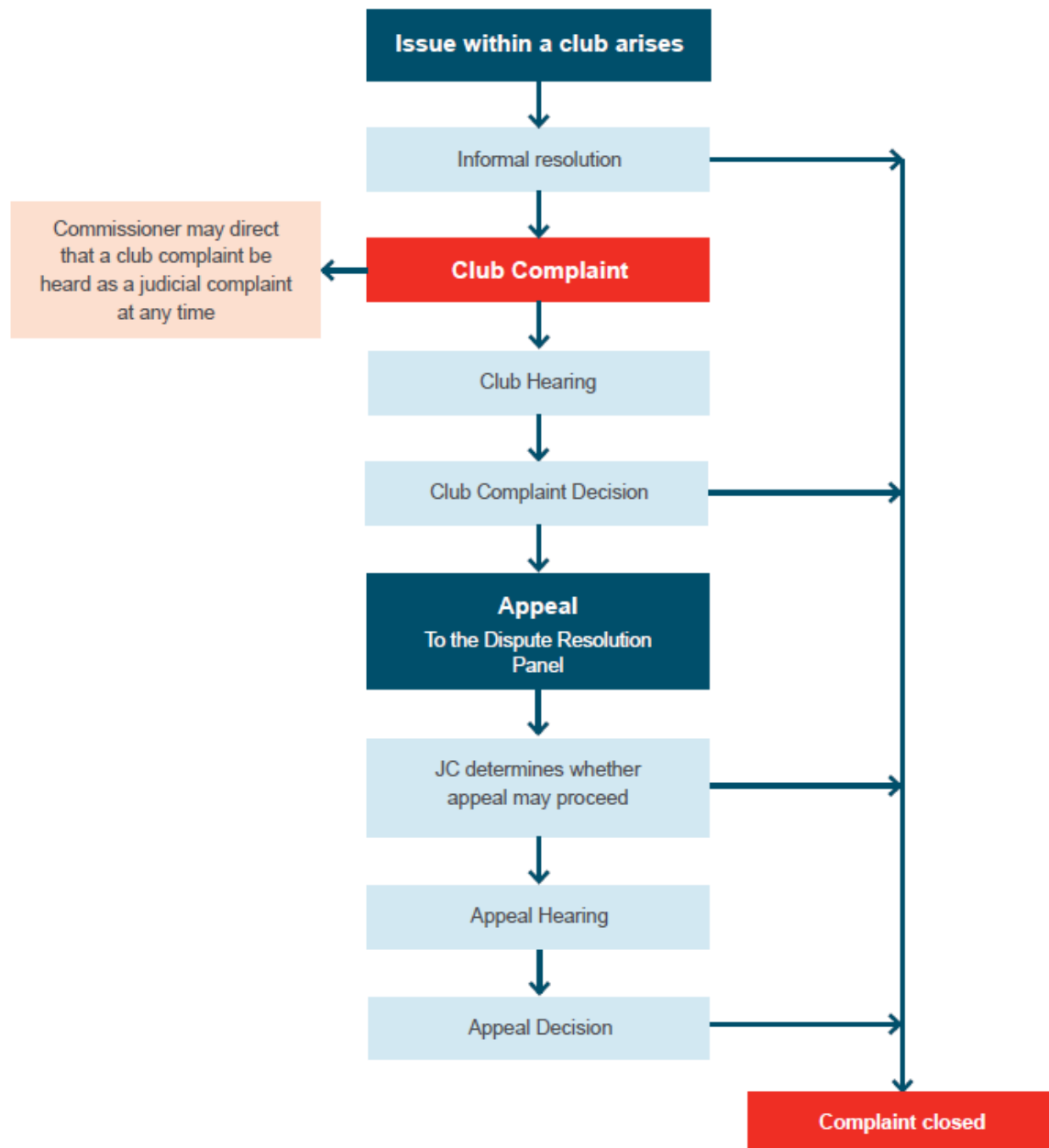
Mental health support

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) – 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) may be able to provide you with support or alternatively signpost you to more local support.
- Hub of Hope (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 or 116 123), who offer a free 24-hour helpline.
- The British Association of Counselling and Psychotherapy (www.bacp.co.uk), for further information on counselling.

Flowchart

Club Complaints



Flowchart

Judicial Complaints

