

**IN THE MATTER OF PROCEEDINGS BROUGHT UNDER SWIM ENGLAND'S
JUDICIAL REGULATIONS 165 and 177**

Before:

Gemma White QC (Chair)

Ian Wilson

Maria Abrams

BETWEEN:

Sue Arrowsmith

Appellant

-and-

Chris Bostock

Respondent

DECISION OF THE APPEAL COMMITTEE

1. This is an appeal from the decision of a Disciplinary Committee of Swim England dated 1 February 2019 ("the Decision"). The appeal is brought by Ms Sue Arrowsmith, pursuant to Swim England Judicial Regulation 108.4.

2. The respondent to the appeal is Mr Chris Bostock who was, at the time of the events in question, Chairman of the Swim England Board. The appeal concerns his conduct at the Swim England Masters conference in Loughborough on 30 September 2017.

3. The background to the issues with which we are concerned was helpfully summarised by the Disciplinary Committee as follows (Decision, paragraphs 8 to 16):

"8. In brief outline, the starting point is the 2016 European Masters Championships in London. It is common ground that the Championships were badly organised. We were told that some 9,000 swimmers were permitted to enter, when the capacity was closer to 5,000. One consequence is that the female swimmers were relegated to a training pool, whereas the men competed in the Olympic pool. This, understandably, caused considerable dissatisfaction and raised allegations of discrimination.

9. We heard evidence of a strong feeling within the Masters swimming community that the shambles of the 2016 Championships should not be repeated. Ms Arrowsmith was clearly a well-known voice in this community and had developed an online following. She, together with Jeroen Peters, decided that they would use the 2017 Masters Conference as a forum to raise their concerns about the 2016 Championships and wider questions about the governance of Masters Swimming in general.

10. On 2 August 2017, Ms Arrowsmith emailed Verity Dobbie - who was putting together the programme for the Conference - to ask for a 2-hour session in which to present their proposals. The purpose of the presentation was clearly set out within the body of that email: 'There is undeniable frustration and even anger about the lack of respect for the Masters community and how its voice is ignored and even talk of affiliating with other bodies and breaking away from the current governing body.....Our proposal is for a 2-hour slot in the afternoon on the conference agenda for a discussion based on the paper to be drafted by us.'

11. On 3 August 2017, Ms Dobbie replied by email to Ms Arrowsmith and Mr Peters as follows: 'Thanks for that, yes that's not a problem from 2 - 3.30pm and then 30 mins for any questions although I appreciate this might all morph into one slot...'. Ms Dobbie told us that there was some concern within Swim England about the nature of this proposed presentation but she considered that it was appropriate to allow time within the Conference schedule for the presentation.

12. On 22 September 2017, Ms Arrowsmith sent the draft paper which she intended to present with Mr Peters to Ms Dobbie.

13. On 27 September 2017 at 21:19 - two working days before the Conference - Ms Dobbie emailed Ms Arrowsmith to say - in as conciliatory a way as was possible in the circumstances - that there was not time in the schedule to cover the entire scope of the material she had presented, but instead (1) Ms Dobbie would raise Ms Arrowsmith's points in her own presentation and (2) the hour and a half general session at the end of the day could be used to discuss these points. Ms Dobbie was candid in her oral evidence that Ms Arrowsmith's presentation had effectively been blocked by the CEO of Swim England, Ms Jane Nickerson.

14. Meanwhile, Mr Bostock had been discharged from hospital in the week prior to the Conference following a stroke. He went to Sports Park on either 28 or 29 September and met with Ms Nickerson and Ms Lock. Ms Nickerson informed him of the Conference and of the issues which Ms Arrowsmith intended to raise. He gave evidence that Ms Nickerson told him to 'do his best' to make sure that the Conference 'sticks to the agenda'. It was clear from his evidence that Ms Arrowsmith was known to the powers that be within Swim England and that she was seen as something of a troublemaker.

15. Mr Bostock would have attended the Conference with Ms Nickerson's words ringing in his ears. He also firmly believed that the issues being raised by Ms Arrowsmith were not matters which should have been raised at this, a Swim England conference, but were instead issues for British Swimming to deal with.

16. On the other side of the fence, Ms Arrowsmith understandably felt aggrieved at

having their Conference paper - which they had clearly put a huge amount of time and energy into – pulled from the agenda just days prior to the event. We heard from a number of witnesses that they attended the Conference specifically to hear this presentation and that there was considerable disquiet that it was no longer on the agenda.”

DISCIPLINARY COMMITTEE DECISION

4. The Disciplinary Committee had before it complaints from three people who had attended the Masters conference: Ms Arrowsmith, Kirsten Cameron and Alison Gwynn. The complaints were described by the Disciplinary Committee, in summary, as follows (Decision, paragraph 7):

“...that Mr Bostock behaved in a way which was:

A. Threatening and intimidating towards Ms Cameron, specifically by pointing at her and saying ‘you don’t know what you are talking about you are trying to hijack swimming and take it over for Masters’

B. Threatening and intimidating toward Ms Arrowsmith, specifically by standing close to her when he was responding to the points she had just made and telling her that she should reply ‘in one sentence’

C. Threatening and intimidating towards Ms Gwynn, specifically by aggressively telling her she was speaking out of turn; he was also towering over her

D. Discriminating between men and women by answering questions from the men present at the Conference, but showing hostility towards the women

E. Threatening and intimidating towards Ms Arrowsmith during the lunch break of the Conference, specifically by accusing her of hijacking the Conference, within earshot of other delegates.”

5. The Disciplinary Committee found the complaints brought by Ms Cameron and Ms Gwynn in respect of Mr Bostock’s threatening and intimidating behaviour to be substantiated. It concluded that Mr Bostock had responded to them in a

dismissive and aggressive way which was not justified and amounted to intimidation (Decision, paragraph 21). The Disciplinary Committee ordered Mr Bostock to apologise to them in writing (Decision, paragraph 23), which he has done.

6. As to Ms Arrowsmith's complaint, the Disciplinary Committee found that an apology was not warranted for reasons it explained at paragraph 20 of the Decision as follows:

"A. Both parties were equally at fault. Ms Arrowsmith was clearly aggrieved at having her paper pulled from the agenda at short notice. She nevertheless wanted to make her points 'from the floor', which she did despite having been informed by Ms Dobbie in her email, rightly or wrongly, that this was not the appropriate forum. Mr Bostock then attempted to quell this debate on behalf of Swim England, doing the job which he understood Ms Nickerson had instructed him to do. We have no doubt that tempers flared and that both sides overreacted. We are not, however, in a position to apportion blame and do not consider it appropriate for us to do so.

B. Mr Bostock did stand up to respond to Ms Arrowsmith and did walk down the Conference room to stand behind Ms Arrowsmith. We do not agree with Ms Arrowsmith that this was intended to intimidate her. She may have felt intimidated, but we agree with Mr Bostock that it was reasonable for him to move from the back of the room - where he was seated - to the side of the room in order to allow him to be heard by all delegates.

C. Others were also at fault. We find that the meeting descended out of control. Whilst we commend Ms Dobbie's intentions in attempting to deal with Ms Arrowsmith's issues in her own presentation, this backfired as it lifted the lid on these issues and did not satisfy Ms Arrowsmith and others in any case. Ms Dobbie and Ms Long [sic] did not provide a strong enough chairing role, which may have prevented the dispute escalating - it was unclear to us which one of them was in fact chairing the meeting.

D. We do not consider that the conduct amounted to bullying. This was not a repeated course of conduct, nor is there sufficient evidence in our view that Ms Arrowsmith has suffered emotional harm. As set out above, we consider this to have been an

unfortunate argument between Ms Arrowsmith and Mr Bostock in which both were at fault.

E. Mr Bostock was effectively a lone voice in the room. There is no evidence that anyone spoke up in support of his views. Ms Arrowsmith, in contrast, clearly had support from a number of people at the Conference, including Ms Cameron, Ms Gwynn and Mr Peters.

F. The incident at lunch, we find, was a continuation of the dispute which had happened during the session which had just ended. We find that neither party was willing to let the matter rest and both wanted to have the last say. Again, we find fault on both sides and do not consider an apology is merited."

7. The Disciplinary Committee disposed of the complaint of discrimination as follows, at paragraph 22 of the Decision:

"There is insufficient evidence for us to conclude that Mr Bostock discriminated between men and women in the way in which he addressed delegates to the Conference. We heard evidence from Mr Peters, Mr Boucher and Mr Short to the effect that Mr Bostock did discriminate between men and women. We found all of these witnesses credible and we do not doubt that they perceived that Mr Bostock did discriminate in this way. However, this does in our view need to be balanced against the fact that the focus of the incident was the dispute between Ms Arrowsmith and Mr Bostock - his treatment of any other delegate, male or female, was very likely to be less combative given (1) she spoke for around 10 minutes on this issue (longer than anyone else) and (2) she was a 'known trouble maker', regardless of her gender. In any case, as we have found, this was a meeting which descended out of control. There is insufficient evidence that sexual discrimination played any role in this, over and above the highly contentious issues which were being raised and caused tempers to flare."

THE APPEAL

8. By notice of appeal filed on 21 February 2019 all three complainants appealed from the Decision. However, following receipt of an apology from Mr Bostock, Ms Cameron and Ms Gwynn withdrew their appeals. Only the appeal brought by Ms Arrowsmith remains for us to determine.
9. The notice of appeal consists of 18 closely typed pages challenging many of the Disciplinary Committee's findings, alleging that it misdirected itself, that there were procedural irregularities which affected all the complainants and that it ought to have required Mr Bostock to attend relevant training.
10. The Chair of this Appeal Committee conducted a directions hearing by telephone on 28 June 2019 and directed, amongst other things, that the appeal would be a rehearing of Ms Arrowsmith's complaint against Mr Bostock save that this Appeal Committee would rely on any findings of fact contained in the Decision unless either party indicated in their statement of case (in respect of which directions were given) that particular findings are in dispute. Both parties have served statements of case which have helpfully crystallised the issues for us.
11. The key document identifying the issues on this appeal is Ms Arrowsmith's statement of case served on 1 July 2019. In that document Ms Arrowsmith summarises her complaints, indicates where she disagrees with the Disciplinary Committee and sets out the findings she asks this Appeal Committee to make, with references to supporting evidence. The complaints are summarised as follows:

*"**The first complaint** is that Mr Bostock's behaviour amounted to misconduct towards me and/or failed to respect my dignity contrary to the Swim England Code of Ethics in five ways, namely in that he: was aggressive and rude; created a hostile and menacing environment for me, using his position of authority; behaved in a belittling and*

dismissive manner towards me; interrupted me and refused to listen or engage (other than by berating me and shouting me down), in particular when I sought to respond to untrue accusations; and was physically intimidating. I would characterise this behaviour overall as bullying and intimidating but consider that nothing turns on those labels in deciding whether misconduct/infringement of dignity occurred.

***The second complaint** is that Mr Bostock's behaviour at the meeting was discriminatory in that he treated the female delegates, including myself, with less respect than the male delegates."*

FINDINGS OF FACT ON APPEAL

12. We have before us, and have considered, all of the documentary evidence which was before the Disciplinary Committee, including statements from a large number of witnesses. Before the hearing we received statements of case from both parties and further witness statements were served by Ms Arrowsmith. At the hearing we invited Ms Arrowsmith and Mr Bostock to describe the relevant events of 30 September 2017 to us in their own words.

13. Our findings are based largely on the evidence – written and oral – of the parties themselves, supported by the evidence to which we make footnoted reference. We are satisfied that both parties spoke to us candidly and described the relevant events as they recalled and perceived them. It is nearly 2 years since the events in question. Ms Arrowsmith's recollection of the relevant events was more detailed than that of Mr Bostock. This is understandable given the obvious significance of those events for her. In the limited number of areas in which their recollections conflict, we consider her account more likely to be correct. Ms Arrowsmith's evidence on points of detail, such as what Mr Bostock said to her at different times, was consistent with the written submissions and evidence provided by her throughout the complaints process and was often supported by written evidence from other witnesses.

14. We set out below our findings of fact, many of which are not substantially in dispute.

Before the conference

15. Mr Bostock told us, and we accept, that on the Thursday before the conference Sharon Lock and Jane Nickerson had told him that they believed there would be a problem, namely that Ms Arrowsmith would attempt to discuss matters which were not within the remit of Swim England at the conference. Mr Bostock said that he would go along to the conference to make sure everything was OK.

The day of the conference

16. Ms Arrowsmith arrived at the Masters conference on 30 September 2017 with no proper understanding of the reasons why her presentation had been cancelled. On the morning of the conference, she was invited into a meeting with Verity Dobbie, Sharon Lock and George Wood, who were presenting the conference. There was discussion of the fact that the paper had been cancelled and the way in which the issues Ms Arrowsmith had wanted to raise would be covered in the conference. Mr Wood suggested that Ms Arrowsmith have a 15 minute slot in the afternoon.¹

17. Mr Bostock came into the room in which this meeting was taking place and said, amongst other things, that this issue was not being discussed on Swim England premises. Ms Lock, Ms Dobbie and Mr Wood went into the conference and left Ms Arrowsmith in the corridor with Mr Bostock. Ms Arrowsmith suggested that she could do the presentation at lunch time. Mr Bostock replied that she was pursuing a vendetta, harking back to London and that it was not being discussed on his premises. He told Ms Arrowsmith that she could discuss the issue with him, as Chairman. Ms Arrowsmith found Mr Bostock's manner to be rude and aggressive.

¹ Statement of George Wood, 3 January 2018.

Relevant events during the conference

18. Mr Bostock and Ms Arrowsmith joined the conference after the first session had started. There were 8 or 9 rows of seats. Mr Bostock went into the conference and sat at the back. Ms Arrowsmith, who joined later than Mr Bostock, sat at the end of the front row near the door to the room (where she had put her belongings when she arrived).

19. The conference started with a session presented by Ms Lock, who was the Swim England Masters Officer. The following session was presented by Verity Dobbie. Ms Dobbie's session was entitled "Committee or not Committees" and, according to the agenda was to cover the following points:

- How does it all work? I'm confused?
- What do these groups do?
- How can I get involved?
- So why has the British Masters Championships changed?

20. As Ms Dobbie had indicated in her email of 27 September 2017, her session covered some of the issues which had been raised in Ms Arrowsmith's paper. In the course of Ms Dobbie's presentation Ms Arrowsmith made 2 contributions. Ms Arrowsmith told us, and we accept, that the conference was conducted relatively informally with contributions being made and questions being asked in the course of presentations. There was, therefore, nothing unusual in Ms Arrowsmith contributing before the end of the presentation.

21. Ms Arrowsmith's second contribution was made as a result of Ms Dobbie referring to the issue of discrimination at the European Masters Championships. Ms Arrowsmith told us that Ms Dobbie talked about the discrimination issues at the

European Masters Championships in London and that Ms Dobbie had said that they did what they did for scheduling reasons because there were fewer women. Ms Arrowsmith intervened to say that this did not mean that their action was not discriminatory, explained how the event could have been scheduled and that there was no objective legal justification for what they had done. Ms Arrowsmith described her contributions to us as being “not terribly brief”. In response to further questions from a member of the Appeal Committee Ms Arrowsmith explained that what she had meant by this was that the discrimination question in particular required some explanation.

22. The precise nature of Ms Arrowsmith’s contribution was addressed in the following additional evidence:

- a. In an email to Ms Dobbie dated 17 December 2017, which was written as part of her preparation for the hearing before the Disciplinary Committee, Ms Arrowsmith described this intervention as follows:

“Discrimination at the Europeans. On this I explained (in response to your remark that the manic concern at the time was simply to get the scheduling done) how [sic] approach to scheduling fitted with the legal obligations on sex discrimination and how easily it could have been done without discrimination. I also repeated a request previously made in a letter for you to ask HCMSMG to chase this issue with British Swimming and you agreed to this.”

- b. Ms Dobbie responded to this point as follows:

“As for your comments on my session as I said to Chris I was trying to concentrate on my presentation and respond to a series of questions which were being raised, some of which appeared to me to be quite hostile and required careful though [sic] to respond I therefore don’t have a clear recollection of what you were saying, although I agree with what you say you said and I also recall you provided me with the correct statistics as to how women had been adversely affected.”

- c. In a statement contained in an email dated 23 July 2019 provided for the purposes of this hearing Mr Peters provided the following evidence:

"The next session was introduced by Verity Dobbie ... In it she briefly raised the issue of gender inequality that had its origins in respect of women having fewer opportunities to swim in the competition pool during the European Masters Championships in London in 2016 compared to men. It was at this point that Sue Arrowsmith made a brief mention that she had planned to cover that in more detail in the presentation she had prepared but had been taken off the agenda. This triggered questions from a number of attendees in the audience, including Duncan McCreedy and Kirsten Cameron, in addition to others I do not personally know..."

23. On the basis of this evidence we find that:

- a. Ms Dobbie briefly raised the issue of gender inequality arising out of the events at the European Masters Championships in London.
- b. In response, Ms Arrowsmith intervened to make a contribution in which she:
 - i. Spoke about the way in which scheduling fitted with the legal obligations on sex discrimination and how easily it could have been done without discrimination;
 - ii. Repeated a request which she had previously made in a letter to Ms Dobbie to chase this issue with British Swimming;
 - iii. Provided statistics as to how women had been adversely affected; and;
 - iv. Said that she had planned to cover this in more detail in the presentation she had prepared but had been taken off the agenda.
- c. Ms Arrowsmith's contribution was significant and would reasonably have appeared to Mr Bostock, in light of what he had been told by Ms Nickerson, as Ms Arrowsmith addressing issues which were not on the agenda (albeit that the question of gender inequality had been touched on by Ms Dobbie).

d. The contribution triggered further interventions and comments from delegates questioning why Ms Arrowsmith had not been permitted to present on the issues.

24. One of the interventions came from Ms Cameron. Mr Bostock responded to her in an aggressive and intimidating way saying, "You don't know what you are talking about. You are trying to hijack swimming and take it over for Masters".²

25. Mr Bostock left his seat at the back of the room and took up a position at the side of the room behind the row in which Ms Arrowsmith was sitting. Mr Bostock then addressed the room over Ms Arrowsmith. He spoke loudly and firmly to the effect that the issues were not to be discussed on Swim England premises. Mr Bostock said, amongst other things that Ms Arrowsmith was "pursuing a vendetta", harking back to London, and trying to "hijack the conference".

26. Ms Arrowsmith asked if she could reply to what Mr Bostock had said. Mr Bostock said, in a manner which came across as aggressive, sneering and dismissive³, words to the effect that she could reply if she did so in one sentence. Ms Arrowsmith responded that she would take as much time as Mr Bostock had taken. She stood to face the audience and responded to what Mr Bostock had said.

² See Decision, paragraphs 7 and 21.

³ See, for example, the witness statements provided by Mr Short, Ms Cameron, Ms Gwynn, Mr Bolton and Mr Boucher.

27. After Ms Arrowsmith's reply a number of other delegates tried to comment and asked why these matters should not be discussed. One such delegate was Ms Gwynn. Mr Bostock responded to her in a dismissive and aggressive way.⁴

Lunchtime

28. At lunchtime Ms Arrowsmith approached Mr Bostock and asked whose decision it was to cancel her paper and said that Verity Dobbie had said it was Jane Nickerson. Mr Bostock responded, "who told you that, who told you it was Jane Nickerson?". He spoke loudly and at close proximity to Ms Arrowsmith and in a manner which was heard by other delegates. Mr Peters and Ms Arrowsmith tried to explain that they had written the paper and did not understand what had happened. Mr Bostock interrupted them and would not listen to their explanations. He repeatedly said that Ms Arrowsmith was out to hijack the conference.⁵ Mr Bostock stood close to Ms Arrowsmith and spoke loudly. His demeanour was "intimidatory standing close to [Ms Arrowsmith], almost leaning over her, clearly invading her personal space".⁶ Ms Arrowsmith turned away in order to avoid being spoken to further in this way by Mr Bostock.

After lunch

29. In the afternoon Ms Arrowsmith took ten minutes to run through the issues in her paper. Ms Arrowsmith presented in a subdued manner and felt self-conscious as a result of having been told, in public, that she was hijacking the conference.

⁴ Decision, paragraphs 7 and 21.

⁵ See statement of Mr Peters dated 10 December 2018.

⁶ This description was provided by Mr Peters, whose evidence the Disciplinary Committee found credible.

DISCUSSION

30. Overall, for the reasons we explain below, we find that Mr Bostock's behaviour towards Ms Arrowsmith before and during the conference, and at lunchtime was aggressive and dismissive. He acted in breach of the Swim England Code of Ethics by failing to respect Ms Arrowsmith's dignity.

31. Ms Arrowsmith described for us the relevant exchanges and the way in which Mr Bostock spoke to her. Having heard her, we are satisfied that she has a good recollection of these events and the way in which Mr Bostock made her feel. Ms Arrowsmith told us that she felt humiliated by the way in which Mr Bostock had spoken to her. It was clear to us from the way in which she spoke to us that she was (both at the time and at the hearing before us) very upset by what had happened.

32. Ms Arrowsmith is an experienced and confident public speaker who was able to respond robustly to Mr Bostock during the conference. The fact that she nevertheless felt humiliated by him and remains upset when talking about it serves, in our view, to emphasise the inappropriate nature of his conduct in speaking to and about her in the way that he did.

33. We do not consider the fact that Ms Arrowsmith spoke robustly to be evidence that she was not intimidated, as Mr Bostock has suggested.⁷ Nor do we consider it relevant that no-one at the conference asked Mr Bostock to stop or asked him to apologise.⁸ Mr Bostock, as Chairman of the Board of Swim England, was – in terms of the Swim England hierarchy – the most senior person there. In view of the way in which we have heard he was addressing the conference it would, in our view, have been very difficult for anyone to suggest that he should stop or apologise. In

⁷ Appeal statement, paragraph 8.

⁸ Appeal statement, paragraph 8 and his submissions to us at the hearing.

any event, attendees were clearly sufficiently concerned about the way in which Ms Arrowsmith was treated to write to Swim England (see paragraph 35 below).

34. Our conclusions are supported by the numerous witness statements relied upon by Ms Arrowsmith which describe Mr Bostock's conduct using adjectives such as "intimidating", "aggressive", "bullying" and "abusive". We recognise that perceptions can differ and that other witnesses, on whose statements Mr Bostock relies, did not describe his conduct in this way. However, some of those who provided evidence for Mr Bostock, did so in terms which described his general manner in a way which we consider to be consistent with Ms Arrowsmith's description.

a. The first is Geoff Stokes. Mr Bostock wrote to Mr Stokes by email on 10 November 2017 referring to the 3 complaints and asking whether, in Mr Stokes' opinion, his actions were fair and reasonable. Mr Stokes replied, insofar as is material to this issue, as follows (our emphasis added):

"As far as I can see there are two issues:

1) Did the meeting follow its published agenda?

2) Could the way in which you attempted to re-direct the discussions be considered to be bullying and intimidating?

...

Point number 2 is more difficult. We have known each other for many years ... So I am familiar with the way in which you handle discussions and present your opinions. I can appreciate that people who do not know you may find your direct and assertive manner somewhat intimidating. I do not believe that you showed any discrimination against the female members at the meeting. I am sure that you would have used the same words and delivery in addressing a male member..."

b. The second is Verity Dobbie. She sent Mr Bostock an email dated 13 November 2017 in which she said: "I thought that some of your

contributions were knowledgeable and helpful, it certainly never registered with me that you were being discriminatory or bullying or that anyone was cowed by your comments." However, at the beginning of her email she wrote the following:

"Can I preface my comments by saying that whilst you come across as someone who "does not suffer fools gladly" you are generally prepared to listen to the other person's point of view, you are often authoritative and at times opinionated, all of which are attributes I would generally ascribe to someone in a role, such as Chair of a board."

35. We also consider it important that two of the people on whose evidence Ms Arrowsmith relies wrote, unprompted, to complain about the way in which she had been treated very soon after the events in question.

a. In a letter written to Jane Nickerson on 2 October 2017 (2 days after the conference) Graham Short wrote:

".. I was disappointed to see the Swim England chairman Chris Bostock behaving in a disrespectful and bullying manner.."

Chris Bostock was very rude to two delegates. He told swimmer Kirsten Cameron that she didn't know what she was saying ... I also didn't like his attitude towards Sue Arrowsmith. He spoke for five minutes and when Sue got up to reply, he said to her, "Reply in one sentence!"

b. Stewart Crowe emailed Jane Nickerson on 13 October 2017 insofar as is material in the following terms:

"It was bad enough that member of SE (Mr Bostock) prevented open discussion by instructing Sue Arrowsmith what she could or could not discuss. That was bad enough but the manner in which he spoke to Sue was totally out of order and by its very nature "bullying". In my view (and others at the Conference), Mr Bostock was verbally abusive towards Sue.

I hope that a public apology will be made to Sue Arrowsmith by Mr Bostock."

36. We do not agree with the Disciplinary Committee's decision that Ms Arrowsmith was "at fault" in seeking to raise issues from the floor which she had been told she could not present. We find that her contributions were properly made in response to Ms Dobbie's presentation.

37. We accept that from Mr Bostock's point of view Ms Arrowsmith's contribution in relation to the question of discrimination at the European Masters Championships in 2016 would have been precisely the type of discussion that he had been warned about and been told was not on the agenda. It is clear to us from his evidence, and in particular his oral evidence to us, that he feels very strongly indeed that these matters are not Swim England matters and ought not to have been the subject of discussion at the Swim England Masters conference. As a result, when Ms Arrowsmith's contribution triggered further comments and questions about why she was not allowed to present he moved to shut the discussion down,⁹ effectively doing the job he had been given by Ms Nickerson. While this provides some explanation for Mr Bostock's behaviour it does not justify the manner in which he carried out this task.

38. Ms Arrowsmith has submitted that Mr Bostock took up the position he did with the intention of intimidating her. We accept that Ms Arrowsmith felt intimidated by the position taken up by Mr Bostock – behind her. However, for the reasons we explain below, we find that he did not take up this position with the intention of intimidating her.

⁹ See Ms Dobbie's description in her email dated 17 December 2017.

- a. The appeal hearing was conducted in the room in which the Masters conference took place. Both parties described how the room was crowded, with 8 or 9 rows of chairs facing the speakers. The position which Mr Bostock took up, at the side of the room behind the first row, appeared to us to be a natural position for him to have stopped, short of coming right to the front of the room.
- b. Ms Arrowsmith contends that if Mr Bostock had simply wished to make himself more prominent the natural position would have been to stand in front of the room, directly facing the audience. We asked Mr Bostock about this and he explained that he did not consider that appropriate as he was not chairing the session and had not been invited to the front by the Chair. We accept his explanation.
- c. We also note that Mr Bostock was not described by anyone (including Ms Arrowsmith) as having physically directed his comments at Ms Arrowsmith (we emphasise that we accept that some of the *content* of what he said was directed at her). Rather, he was speaking to the room, across her.
- d. In reaching our conclusion we have taken account of the fact that while some witnesses expressed views (which we accept were genuine views) that Mr Bostock positioned himself in order to intimidate Ms Arrowsmith, others described matters more generally. For example, in her email dated 7 November 2017 Alison Gwynn described the situation as follows (with our emphasis added):

"During discussions arising from the talk given by Verity Dobbie, a man from the back of the room stood up and come to stand at the side of the room between the first and second row of seated delegates.....He is a large man and his stance towering over the delegates in the two front rows was very intimidating. He was clearly trying to inhibit discussion."

- e. In a further email of 25 November 2017 she stated as follows (again with our emphasis added):

"Without being rude myself there was no way I could have challenged Mr Bostock after the way he told me to be quiet. I felt I had been cowed into not contributing any further in the discussions. He was standing directly beside the row where I was sitting and I felt that he was towering over me. I was very upset by his manner of speaking to me and his intimidating position".

39. We have no doubt that Mr Bostock took up the position he did in order to present more clearly and to impose his authority on the room. However, on balance, we find that his purpose was not to intimidate Ms Arrowsmith.

Our overall conclusion on this complaint is that Mr Bostock failed to respect Ms Arrowsmith's dignity, in breach of the Swim England Code of Ethics and that this amounted to misconduct.

DISCRIMINATION

40. We now turn to Ms Arrowsmith's second complaint, discrimination on the grounds of sex.

41. Sex discrimination occurs when a person treats someone less favourably than they treat or would treat another (or others) because of their sex (Equality Act 2010, section 13(1)¹⁰). In order to establish discrimination a comparison must be made with the treatment of a person (real or hypothetical) of the opposite sex whose circumstances are not materially different (see Equality Act 2010, s23(1)).

¹⁰ This section defines "direct discrimination", which is the essence of the complaint which has been made in this case.

42. We have no hesitation in concluding that Ms Arrowsmith was treated less favourably than a number of male delegates. We note, in particular, that Mr Bostock did not speak to Mr Peters – the co-author of the cancelled paper – in the same way that he spoke to Ms Arrowsmith. However, we consider that Ms Arrowsmith was in a materially different position from Mr Peters and other male delegates because she had been singled out by Ms Nickerson in her meeting with Mr Bostock as the person who was likely to attempt to take the conference “off agenda” (as they saw it). Ms Arrowsmith, unlike Mr Peters, contributed during Ms Dobbie’s presentation to speak about discrimination and had said words to the effect that she would have provided more explanation in the paper which she had not been permitted to present. We find that these were the reasons for Mr Bostock’s unfavourable treatment of Ms Arrowsmith.

43. We have also considered whether, more generally, Mr Bostock treated women at the conference with less respect, and therefore less favourably, than he treated men. In this respect we note the unchallenged findings of the Disciplinary Committee that Mr Bostock responded to Ms Cameron and Ms Gwynn in a dismissive and aggressive way. It did not reach any conclusions about the way in which Mr Bostock treated, or would have treated, a man in materially identical circumstances. We have carefully considered the statements from several people attending the conference who expressed the view that Mr Bostock was dismissive/rude/aggressive towards female delegates but not men. We note in particular the following passage in the statement of Mr Peters dated 10 December 2018:

"Another incident of which I have a very clear recollection was when Alison Gwynn, who was seated just in front of me, asked him a question why we could not ask questions about the role of the ASA and British Swimming regarding London and Masters governance, he cut her short and replied that this conference was not to discuss London but looking forward. A similar question was asked earlier by Kristen Cameron but similarly dismissed. Only when I pointed out to him that as Masters are part of the ASA, a membership organisation and we can only hold the ASA to account. The ASA has influence on BS and they in turn with LEN so surely this was the right place to ask questions. He kind of agreed with this but then returned to his earlier

mantra that this was not the purpose of the conference. It left me wondering why he would respond to me but previous, females asking almost the very same questions were addressed rudely, interrupted and cut short. This left me with a distinct feeling disrespect towards women."

44. However, on the other side we considered statements from a number of people who did not perceive Mr Bostock to have behaved in a discriminatory manner. In large part we found their statements to be balanced and objective – particularly the statements of Ms Dobbie and Mr Stokes which we have referred to in paragraph 34 above.¹¹ We also note that the two people who complained to Swim England immediately after the event (Mr Short and Mr Crowe) did not express the view in their immediate complaints that Mr Bostock was discriminating on the grounds of sex (see paragraph 35). The distinction between the way in which men and women were treated appeared only in their later witness statements which were drafted once they had seen Ms Arrowsmith's complaint (including the allegation of discrimination).¹² We emphasise that we do not doubt that at the time they wrote those statements they genuinely remembered matters in the manner they described them but we are conscious of the fact that perceptions can change over time and that the statements were prompted by Ms Arrowsmith's complaint.

45. We have also carefully considered the statement of Duncan McCready in relation to this part of the complaint. While expressing the view that Mr Bostock's conduct was "abrasive and bullying, in particular towards women" and that he responded in a "sexist manner" to Ms Cameron, he wrote the following (our emphasis added):¹³

"When I then suggested that this was [sic] should not be run on behalf of British Swimming he corrected me to sidestep the question by calling it Swim England. A

¹¹ The exception was the statement of Robert Margetts, a fellow Swim England Board member at the relevant time, who sent an email dated 13 November 2017 expressing the view, amongst other things, that Ms Arrowsmith's complaint is "part of her personal anti male agenda". We detected no hint of any such agenda in any of the other material we have considered.

¹² Their statements are dated 4 and 5 December 2018 respectively.

¹³ See his statement dated 4 December 2018.

pointless and irrelevant assertion, I assume to take control again. I found him intimidating and it certainly discouraged me from speaking further.

46. It would therefore appear that Mr Bostock responded to Mr McCready in a similarly intimidating way to the way in which he responded to the women present.

47. Overall, we do not consider there to be a sufficient evidential basis for us to conclude on the balance of probabilities that Mr Bostock treated male and female delegates in materially identical circumstances differently. The way in which Mr Bostock responded to questions may well have depended on the way in which the particular question was asked or the precise content of that question. The evidence which has been provided to us does not provide a sufficient level of detail for that analysis to be conducted and we therefore do not uphold this aspect of the complaint.

PENALTY

48. Ms Arrowsmith has suggested that Mr Bostock should apologise and should be required to undertake training.

49. Circumstances have changed considerably since September 2017. In particular, Mr Bostock's term of office as Chair of Swim England ended in March 2018. He is no longer a member of the board. Nor does he hold any committee position. Mr Bostock told us that he is a member of a club and provides advice in relation to data (for example membership data) for which he gets paid through his company.

50. Mr Bostock told us that he accepted that his behaviour in the conference was "not professional on anyone's part" but stated it was the responsibility of the Chair to

stop anything like that happening. While we are satisfied that Mr Bostock did not set out deliberately to intimidate Ms Arrowsmith, his response fails to show any appreciation of the fact that as Chair of a national sports governing body he had a particular responsibility to behave in a way which was beyond reproach, even if Ms Arrowsmith had also been at fault (which we have found she was not). He has also not demonstrated any understanding of the fact that his position of authority as Chair of the Board would have (a) exacerbated the humiliating effect of his conduct in communicating in the way in which he did and (b) made it very difficult for the Chair to intervene and control proceedings in the manner he now suggests. In our view it was his responsibility to ensure that he behaved in a manner which respected the dignity of all the conference attendees and he failed to do this.

51. Had Mr Bostock remained on the board of Swim England we would have recommended that he undertake some form of communication skills training. However, since he has moved on and is in a very different position we do not make any such order. Nor do we order that Mr Bostock must apologise to Ms Arrowsmith. We are concerned that even at the end of the hearing Mr Bostock continued to stand by the view he had expressed in writing that Ms Arrowsmith's complaint was all part of an "agenda" (which he had previously described as a "vendetta"). We very much hope that he will reflect on the content of our decision and also upon the way in which Ms Arrowsmith described the effect of his behaviour on her. We also hope that he will choose to apologise to Ms Arrowsmith. However, our view is that in this case an apology which is only made in response to an order from this Committee would not be genuine and would risk insulting Ms Arrowsmith, rather than assisting her.

52. In all the circumstances we consider that the appropriate penalty is a warning to Mr Bostock that conduct of the type we have described in this decision is not acceptable. This warning will form part of a "record of previous offences" which any future disciplinary committee would take into account when making a decision as to the appropriate penalty (see Swim England Judicial Regulation 163.4).

PUBLICATION

53. Ms Arrowsmith has submitted that this decision should be published, pursuant to Swim England Judicial Regulation 177.2 which provides as follows:

"The Appeal Committee and/or Swim England shall normally publish a report of the proceedings, findings and penalties unless in the opinion of the Chair of the Appeal Committee there is a significant reason not to do so."

54. It is clear from the wording of the provision that publication of the report described is the default provision. The Chair of the Appeal Committee does not consider that there is any significant reason not to publish (and Mr Bostock did not suggest that there was), therefore a report of the proceedings, findings and penalties must be published. Since this Appeal Committee is not in a position to "publish" a report it must be published by Swim England. Judicial Regulation 177.2 does not state how or where such a report must be published.

55. Following the hearing the Chair of the Appeal Committee made enquiries (through Sport Resolutions) of the Judicial Office as follows:

"Further to the hearing on Friday can you please ask Kerry Moss (copied to the parties) what the usual practice is for publication of reports pursuant to Judicial Regulation 177.2, in particular how and where are such reports made available?"

56. The response received to this query was, insofar as is material, as follows:

"In terms of "publishing" ([177.2](#)) the Determinations are sent to "interested parties" being, all who were on the original distribution list, as follows:-

Ms S Arrowsmith

Ms K Cameron

Mrs A Gwynn

Mr C Bostock

All witnesses in attendance

Ms Jane Nickerson, Swim England CEO

Disciplinary Committee"

57. This response is surprising in view of the contents of Judicial Regulation 177.1 which provides (our emphasis) as follows:

"The Chair of the Appeal Committee may inform the parties orally of the decision of the Appeal Committee, after the hearing. Whether or not this is done the Chair shall through the Office of Judicial Administration communicate the decision in writing to the parties, the Commissioner and the appropriate Regional Chair, or their equivalent, and to such other interested persons or bodies as are advised to the Office of Judicial Administration by the Chair of the Appeal Committee as soon as reasonably practicable, and normally within five working days of the date of the hearing. As soon as reasonably practicable thereafter the written reasons for the decision shall be given to the parties.

58. The list of people to whom the Judicial Office has referred would appear to be the types of "interested party" entitled to receive the decision under Swim England Judicial Regulation 177.1. For the avoidance of doubt the Chair of this Committee considers that the decision should be communicated to the people listed by the Judicial Office and also to the members of the current Swim England Board since it contains observations on the way in which people in their position should conduct themselves.

59. We consider the obligation to "publish" a "report" under Swim England Judicial Regulation 177.2 to require wider publication to the general public, at the very least ensuring that those who participate in swimming are able to access it. We note that the equivalent version of the regulation applicable to publication after a

Disciplinary Committee hearing refers to the report being published “within the sport” (see Swim England Judicial Regulation 164.2). In our view publication under Regulation 177.2, properly construed, also requires publication “within the sport” and therefore wider publication is required. Publication on Swim England’s website would appear to us to be the most appropriate way to publish reports of this nature.

Gemma White

Gemma White QC (Chair)

On behalf of the Appeal Committee

19 August 2019





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