

Judicial Regulation for the Judicial System

Definitions and Limitations

These Judicial Regulations are to be read in conjunction with the Articles, the Company Regulations, the General Regulations and the Technical Rules of Swim England.

The definitions in the Company Regulations (1.2) shall apply to these Judicial Regulations.

Regulation numbering shall refer to the Company Regulations, General Regulations or Judicial Regulations as appropriate.

100. Judicial

- 100.1** The primary objective of the judicial system shall be to secure, as expeditiously as possible, a just outcome following the submission of a complaint, protest appeal or water polo appeal, by the system and procedures set out in these Judicial Regulations.
- 100.2 There shall be five levels of judicial authority:**
- 100.2.1** the Water Polo Delegate(s) or the referee(s);
 - 100.2.2** the Jury of Appeal;
 - 100.2.3** the Judicial Commissioner ('the Commissioner');
 - 100.2.4** the Independent Disciplinary and Dispute Resolution Panel, (the 'Disciplinary Panel'), and its agents;
 - 100.2.5** the Independent Disciplinary and Dispute Resolution Appeals Panel, (the 'Appeals Panel'), and its agents.
- 100.3** Any deviation from any provision of these Judicial Regulations shall not invalidate any finding, procedure or decision unless that deviation raises a material doubt as to the reliability of the finding, procedure or decision.
- 100.4** A member of the Scottish Swimming or Swim Wales shall be governed by Swim England Judicial Regulations whilst engaged in activities under the jurisdiction of Swim England in England.
- 100.5** A complaint against a member of Swim England whilst under the jurisdiction of British Swimming whether in England, Scotland, Wales or abroad shall be dealt with by and under the disciplinary code of British Swimming.

- 100.6** Any case involving a prohibited substance or other offence under the British Swimming Anti-Doping Rules shall be dealt with by British Swimming according to those Anti-Doping Rules.
- 100.7** All documents submitted to the Office of Judicial Administration howsoever whether directly related to a complaint that has been determined by the Commissioner in accordance with his powers under the Judicial Regulations or by way of an enquiry to the Office of Judicial Administration shall be solely used in relation to that dispute or enquiry, shall be kept confidential at all times by any individual in receipt of any documents from the Office of Judicial Administration and which shall not be used for any collateral or ulterior purpose. Documents marked confidential originating from a judicial authority (as defined in Regulation 100.2) shall also be kept confidential and not used for any collateral or ulterior purpose.

101. Protests

- 101.1** A protest is an allegation that Swim England Regulations, Technical Rules or the promoter's conditions governing a competition have not been complied with or have been misinterpreted.
- 101.2** A protest may be made by a competitor (who may nominate another person to act on his behalf) or a club, body or official taking part in the competition. A protest must be made orally to a referee, or if appropriate, to a Water Polo Delegate, and confirmed in writing within thirty minutes following the conclusion of the event or match during which the incident giving rise to the protest took place unless the reason for the protest is known before the event or match, in which case the protest must be made as soon as reasonably practicable before the event or match starts. If a protest is made prior to the appointment of the referee(s) or the Water Polo Delegate(s) then the protest should be made to the promoter who shall refer the protest to a referee or a Water Polo Delegate when he appoints the referee(s) or the Water Polo Delegate(s).
- 101.3** Where material facts are brought to the attention of a competitor, club, body or official taking part in the competition which if they had been known during that competition a protest would have been likely to have been made during that competition or within thirty minutes following the conclusion of the relevant event, a post-event protest may be made to a referee or, if appropriate, to a Water Polo Delegate who may in his discretion deal with it as if it had been made under Regulation 101.2 provided he is satisfied that it would be in the best interests of the sport to do so and provided further that the individual or other person making a post-event protest did so as soon as was reasonably practicable after acquiring knowledge of those material facts.
- 101.4** A protest may not be made against a decision of a referee or any other official regarding placing, fouling or any other facts of a competition. A referee's interpretation of Swim England Regulations, Technical Rules or promoter's conditions must be accepted at the time but may be the subject of a protest.

101.5 An appeal ('a protest appeal') may be made against the decision of a Water Polo Delegate or a referee on a protest (Regulation 108.1).

101.6 the promoter of an event at which a protest has been made shall take possession of and store any documents relating to the protest and its resolution or otherwise, for a period of not less than 12 months after the event.

102. Complaints

102.1 A complaint is a formal expression of dissatisfaction with the actions or behaviour of any person, including an individual or a club, or other body, or organisation or with alleged unfair practice in connection with the sport. Decisions of a club, body, organisation, association, County Association or Region on selection of teams may not be the subject of a complaint.

102.2 If a person, club or other body or organisation is dissatisfied with a decision of a Committee appointed under the Articles an appeal may be made by lodging a complaint with the Judicial Administrator under this Regulation 102 (See Regulation 159). In such cases only decisions of a disciplinary nature may be the subject of an appeal. Decisions made in the normal course of the business of a Committee on administrative and technical matters, appointments and selection of teams may not be the subject of an appeal.

102.3 No complaint may be made under the Judicial Regulations against an employee of Swim England relating to any action taken in the course of his employment. Any complaint about such an action shall be dealt with by Swim England and should be addressed to the Chief Executive Officer.

102.4 **Grounds for a complaint shall include but shall not be limited to the following:**

102.4.1 misconduct;

102.4.2 'serious misconduct'; being any action, behaviour or practice liable to bring the sport into disrepute;

102.4.3 maladministration or breach of Swim England Regulations, or the rules of a club, body or organisation etc.;

102.4.4 a breach of the Swim England/Institute of Swimming Code of Ethics.

102.5 **A complaint may be made by:**

102.5.1 any member who is aged 18 years or over on the date of the complaint;

102.5.2 the parent of or other person with parental responsibility for a member, who is aged under 18 years on the date of the complaint, on his behalf;

102.5.3 any affiliated club, body, organisation, association, County Association or Region through its secretary or other officer acting on its behalf;

- 102.5.4** the Board or any committee of Swim England, Region or affiliated organisation through its secretary or other officer acting on its behalf;
- 102.5.5** a person officiating at an event;
- 102.5.6** any member of an Associated Organisation, a Corporate Organisation, an Associate Association, or an Affiliated Body who is aged 18 years or over on the date of the complaint. Any such complaint may only be made relative to swimming related activities in which the complainant was engaged;
- 102.5.7** the parent of or other person with parental responsibility for a member of an Associated Organisation, a Corporate Organisation, an Associate Association or an Affiliated Body, who is aged under 18 years on the date of the complaint, on his behalf. Any such complaint may only be made relative to swimming related activities in which the member was engaged.
- 102.6** A complaint which the Commissioner determines (in accordance with Regulation 160) raises an allegation which is properly to be categorised as misconduct and refers the matter to be dealt with by a Disciplinary Committee shall be prosecuted by the complainant pursuant to the disciplinary procedure. (See Regulations 162 et seq.).
- A complaint which the Commissioner determines (in accordance with Regulation 160) raises an allegation which is properly to be categorised as serious misconduct liable to bring the sport into disrepute and refers the matter to be dealt with by a Disciplinary Committee shall be prosecuted by a Disciplinary Officer pursuant to the disciplinary procedure. (See Regulations 162 et seq.).
- Any other complaint which is permitted to proceed shall be decided by the Commissioner or dealt with under the dispute resolution procedure. (See Regulations 167 et seq.).
- 102.7** A complaint must normally reach the Judicial Administrator not later than thirty days after the alleged incident that gave rise to it.

Principles

103. Powers and Limitations concerning a Disciplinary Committee

- 103.1** The Chairman of a Disciplinary Committee may, via the Judicial Administrator, require that Swim England members and request that other individuals participate and give evidence and/or that further written documents or other evidence be supplied by any or all of them. The Chairman of the Disciplinary Committee must take all reasonable steps to ascertain the relevant facts and be satisfied that a Swim England member has refused or wilfully neglected to comply with the Chairman's requirement(s) made under this Regulation before the Chairman invokes the right to take action by way of imposing sanctions available under Regulation 109 against that Swim England member.

Any improper contact, approach or attempt to influence or intimidate a Disciplinary Committee member, complainant, respondent, any other party to the proceedings, a witness or a representative either in person or through an intermediary must be immediately reported to the Judicial Administrator who shall report it to the Chairman of the Disciplinary Committee or, if one has not been appointed, to the Chairman of the Disciplinary Panel who may take such action as he deems appropriate. Such improper conduct may in itself form the subject of a complaint.

103.2 It shall be for the prosecution to prove its case on the balance of probabilities.

103.3 The Disciplinary Committee shall make its decisions on cases before it by majority.

103.4 The Disciplinary Committee may make whatever order it considers just, including the imposition of a financial penalty and/or suspension for a period. It may alter any decision of a Committee appointed under the Articles.

103.5 An appeal may be made against the final decision of a Disciplinary Committee under Regulation 108.4 (See Regulation 165).

104. Powers and Limitations concerning an Arbitrator or an Arbitration Committee

104.1 The Arbitrator or the Chairman of the Arbitration Committee, as appropriate, may, via the Judicial Administrator, require that Swim England members and request that other individuals participate and give evidence and/or that further written documents or other evidence be supplied by any or all of them. The Arbitrator or the Chairman of the Arbitration Committee must take all reasonable steps to ascertain the relevant facts and be satisfied that a Swim England member has refused or wilfully neglected to comply with the Chairman's requirement(s) made under this Regulation before the Arbitrator or Chairman invokes the right to take action by way of imposing sanctions available under Regulation 109 against that Swim England member.

104.2 Any improper contact, approach or attempt to influence or intimidate a sole Arbitrator, an Arbitration Committee member, complainant, respondent, any other party to the proceedings, a witness or a representative either in person or through an intermediary must be immediately reported to, the Judicial Administrator who shall report it to the sole Arbitrator or the Chairman of the Arbitration Committee as appropriate or, if one has not been appointed, to the Chairman of the Disciplinary Panel who may take such action as he deems appropriate. Such improper conduct may in itself form the subject of a complaint.

104.3 The arbitration of a complaint or protest appeal shall be decided on the balance of probabilities.

104.4 The Arbitrator or the Arbitration Committee, as appropriate, may make whatever order he or it considers just, including the imposition of a financial penalty and/or suspension for a period. He or it may alter any decision of a Committee appointed under the Articles.

104.5 The decision of the Arbitrator or the Arbitration Committee shall be final and binding on the parties except that an appeal may be made in limited circumstances under the provisions of Regulation 108.5.

105. Powers and Limitations concerning Mediation

105.1 Any improper contact, approach or attempt to influence or intimidate a Mediator, complainant, respondent, or any other party to the mediation either in person or through an intermediary must be immediately reported to the Judicial Administrator who shall report it to the Mediator or, if one has not been appointed, to the Chairman of the Disciplinary Panel who may take such action as he deems appropriate. Such improper conduct may in itself form the subject of a complaint.

106. Powers and Limitations concerning Appeal Committees

106.1 The Chairman of an Appeal Committee may, via the Judicial Administrator, require that Swim England members and request that other individuals participate and give evidence and/or that further written documents or other evidence be supplied by any or all of them. The Chairman of the Appeal Committee must take all reasonable steps to ascertain the relevant facts and be satisfied that a Swim England member has refused or wilfully neglected to comply with the Chairman's requirement(s) made under this Regulation before the Chairman invokes the right to take action by way of imposing sanctions available under Regulation 109 against that Swim England member.

106.2 An Appeal Committee shall have the power to:

106.2.1 quash any penalty and/or to substitute for it any other penalty it may think fit;

106.2.2 make such other order or determination as it may think right and just.

106.3 The decision of an Appeal Committee shall be final.

106.4 Any improper contact, approach or attempt to influence or intimidate an Appeal Committee member, complainant, respondent, any other party to the proceedings, a witness or a representative either in person or through an intermediary must be immediately reported to the Judicial Administrator who shall report it to the Chairman of the Appeal Committee or, if one has not been appointed, to the Chairman of the Appeals Panel who may take such action as he deems appropriate. Such improper conduct may in itself form the subject of a complaint.

107. Powers and Limitations concerning automatic water polo sanctions

107.1 Swim England, acting through the Judicial Administrator or a Water Polo Delegate, may apply an automatic sanction to any member of Swim England of suspension from a specified number of water polo games in any competition or competitions promoted by Swim England or any Region, association, organisation or body under the jurisdiction of Swim England.

107.1.1 for a breach of the FINA Water Polo Rules regarding:

107.1.1.1 misconduct; or

107.1.1.2 brutality;

107.1.2 which has been:

107.1.2.1 committed by the member of Swim England in a game held under Swim England Regulations, and

107.1.2.2 reported to the Judicial Administrator or to a Water Polo Delegate by a referee of the game;

107.1.3 provided that the imposition of any such sanction shall be governed by regulations which shall be made and published by Swim England from time to time.

107.2 An appeal may be made against the imposition of an automatic sanction, other than a summary minimum sanction imposed by a Water Polo Delegate, under Regulation 108.6 (See Regulation 158).

107.3 Nothing in the foregoing or in any other Regulations including the imposition of any automatic sanction, shall prevent a referee, a Water Polo Delegate or any other member of Swim England making a further complaint about the incident under the Judicial Regulations.

108. Rights of appeal

108.1 If there has been a failure to resolve a protest under Regulation 413, 414 or 415 or if a person, club or body is dissatisfied with a decision of a Water Polo Delegate, or a referee in regard to a protest he may appeal by submitting a protest appeal always provided that the notice of appeal setting out the detailed grounds of appeal and any supporting documents is lodged with the Judicial Administrator within fourteen days of the date on which the protest was dealt with. The notice of appeal must be accompanied by the fee which shall be refunded if the appeal is upheld, or if the Disciplinary Committee, Arbitrator, Arbitration Committee or Mediator dealing with the appeal deems it to be appropriate (see Regulation 110).

- 108.2** There shall be a right of appeal by the complainant(s) or a respondent against any decision of the Commissioner that a complaint shall be dealt with under either Regulation 160.2.1 (serious misconduct) or Regulation 160.2.2 (misconduct) or Regulation 160.2.3 (less serious allegations) or against a decision made under Regulation 160.3 (late submission), to the Chairman of the Disciplinary Panel provided that the notice of appeal, setting out the detailed grounds for appeal, is lodged with the Judicial Administrator within twenty one days of the date upon which the Judicial Administrator sends the written notification of the Commissioner's decision. No fee shall be levied for an appeal under this section.
- 108.3** There shall be a right of appeal by the complainant(s) or a respondent against any decision of the Commissioner made in deciding a complaint under Regulation 78.3.1.1 and Regulation 160.2, provided that the notice of appeal, setting out the detailed grounds for appeal, is lodged with the Judicial Administrator within twenty one days of the date upon which the Judicial Administrator sends the written notification of the Commissioner's decision. The notice of appeal must be accompanied by the fee which shall be refunded if the appeal is upheld, or if the Disciplinary Committee deems it to be appropriate (see Regulation 110). Nothing in this or any other Regulation shall prevent an appeal under Regulation 108.4 being made by any of the parties against the final decision of the Disciplinary Committee which heard the appeal.
- 108.4** There shall be a right of appeal by any of the parties against any final decision of a Disciplinary Committee, always provided that a notice of appeal setting out the detailed grounds of appeal and supporting documents is lodged with the Judicial Administrator within twenty one days of the date on which written reasons were given. The notice of appeal must be accompanied by the fee which shall be refunded if the appeal is upheld, or if the Appeal Committee deems it to be appropriate (see Regulation 110).
- 108.5** There shall be a right of appeal to the Appeals Panel by any of the parties against any final arbitration provided that such an appeal is restricted to any or all of the grounds that:
- 108.5.1** the Arbitrator or the Arbitration Committee exceeded his or its jurisdiction or acted without jurisdiction;
 - 108.5.2** the Arbitrator or the Arbitration Committee failed to act in accordance with the rules of natural justice;
 - 108.5.3** the determination of the arbitration exhibits an error of law on the record;

- 108.5.4** the determination of the arbitration includes a financial penalty or suspension. An appeal solely on this ground shall only be entertained regarding the amount of the financial penalty or the application of the suspension; and always provided that a notice of appeal setting out the detailed grounds of appeal and supporting documents is lodged with the Judicial Administrator within twenty one days of the date on which written reasons were given. The notice of appeal must be accompanied by the fee which shall be refunded if the appeal is upheld or if the Appeal Committee deems it to be appropriate (see Regulation 110). The decision on whether an appeal satisfies the requirements of this Regulation 108.5 and, accordingly, should be permitted to proceed shall be made by the Chairman of the Appeals Panel and shall be final.
- 108.6** There shall be a right of appeal ('a water polo appeal') by the suspended party against the imposition of an automatic suspension for a breach of the FINA Water Polo Rules notified by the Judicial Administrator or his nominee, always provided that a notice of appeal setting out the detailed grounds of appeal and any supporting documents is lodged with the Judicial Administrator within fourteen days of the date on which written notice of the suspension was given. No fee is required for an appeal made under this Regulation (see Regulation 110).
- 108.7** There shall be a right of appeal to the Chairman of the Appeals Panel by any of the parties against any decision by the Chairman of a Disciplinary Committee or the Chairman of an Appeal Committee to vary any period of time permitted under the Regulations, always provided that a notice of appeal setting out the detailed grounds of appeal and supporting documents is lodged with the Judicial Administrator within seven days of the date upon which the Judicial Administrator sends the written notification of the Chairman's decision. No fee shall be levied for an appeal under this section.
- 108.8** There shall be a right of appeal by an individual who has been summarily suspended by the Chief Executive Officer, (or any Acting or Interim Chief Executive Officer) for a specified term decided by the Chief Executive Officer (or any Acting or Interim Chief Executive Officer) under the Child Safeguarding Regulations 241.4, 241.6, 241.7 or 241.10, always provided that a notice of appeal setting out the detailed grounds of appeal is lodged with the Judicial Administrator within 21 days from the date of the notice informing the individual of the specified term suspension. The notice of appeal must be accompanied by the fee which shall be refunded if the appeal is upheld, or if the Appeal Committee deems it to be appropriate (see Regulation 110).

- 108.9** There shall be a right of appeal by an individual who has been suspended by the Chief Executive Officer (or any Acting or Interim Chief Executive Officer) under the Child Safeguarding Regulation 241.10, always provided that a notice of appeal setting out the detailed grounds of appeal and supporting documents is lodged with the Judicial Administrator. The notice of appeal must be accompanied by the fee which shall be refunded if the appeal is upheld, or if the Appeal Committee deems it to be appropriate (see Regulation 110).
- 108.10** If the Chairman of the Appeals Panel, having received a notice of appeal under any of the foregoing sections of this Regulation 108 which was lodged with the Judicial Administrator later than the time period allowed in the relevant section of this Regulation, is satisfied that it is in the interest of the sport to do so he may, in his absolute discretion, permit the appeal to proceed.
- 108.11** There shall be a right of appeal against the recognition by Swim England and enforcement in England under Regulation 109.4 of a sanction imposed by Scottish Swimming or Swim Wales. The decision on any such appeal shall not be permitted to affect a sanction imposed by the Scottish Swimming or Swim Wales in any way which applies to any competition or matter wholly within the jurisdiction of the Association which has imposed the sanction.
- 108.12** Swim England shall have the right to enjoin any appeal made under this Regulation 108 as a party or initiate an appeal under this Regulation 108 if it is considered by Swim England to be in the best interest of the sport for it to do so.
- 108.13** An appeal submitted under the provision of this Regulation 108 and Regulation 161.2 shall be considered by the Chairman of the Panel whose members will be designated to hear the appeal. The Chairman of the Panel shall decide if the appeal shall proceed.
- 108.14** An application to withdraw an appeal initially made under the provision of this Regulation 108 and Regulation 161.2 shall only be granted if the Chairman of the Committee appointed to hear the appeal decides that the application for withdrawal of the appeal should be accepted.

109. Sanctions

- 109.1** Sanctions may include but shall not be limited to:
- 109.1.1** a written warning;
 - 109.1.2** a requirement to change current practices;
 - 109.1.3** a requirement to change the rules of a club, body or organisation;
 - 109.1.4** suspension from any or all activities under the jurisdiction of Swim England for a specified number of events or for a period with or without limit of time;
 - 109.1.5** a financial penalty.

- 109.2** A club, body, organisation or individual against whom an order has been made by the Commissioner, a Disciplinary Committee, Appeal Committee, Arbitrator, Arbitration Committee or who has been suspended under the provisions of the British Swimming Anti-Doping Rules shall comply with the terms of that order including any full or partial suspension from any part of any activity controlled by Swim England Regulations or any other activity within the sport.
- 109.3** Any sanction including partial or full suspension by the Commissioner, a Disciplinary Committee, an Arbitrator, an Arbitration Committee or an Appeal Committee shall be binding on all clubs, Associated Organisations, Corporate Organisations, Associate Associations, County Associations, Regional Associations and other bodies affiliated directly to Swim England and if it has, or might have, any effect on international competition or competition in another country, shall be reported by the Judicial Administrator to British Swimming for onward transmission to FINA for recognition world-wide and, in the case of foreign nationals, to their country of origin.
- 109.4** Any sanction imposed on a competitor or any other person by FINA, by or recognised by a National Federation affiliated to FINA or a continental body recognised by FINA or by Scottish Swimming or by Swim Wales shall be recognised and enforced by Swim England except that an appeal may be made against the recognition by Swim England and enforcement in England of a sanction imposed by Scottish Swimming or Swim Wales. (Regulation 108.11).
- 109.5** The registration card of a registered member suspended from any activity which requires him to be registered shall be withdrawn by the Commissioner, a Disciplinary Committee, an Arbitrator, an Arbitration Committee or an Appeal Committee and forwarded to the Membership Team. He may, at the end of his suspension, apply to the Membership Team for his card to be returned, unless it has expired when he may make a fresh application for registration.
- 109.6** After six years from the date of a Judicial Commissioners Determination, a Disciplinary Committee, or an Arbitration Committee hearing or any appeal hearing, or, if a suspension was imposed, after six years from the end of that suspension all records of the relevant hearing(s) shall be destroyed and any penalty shall be expunged from the record of the person or body.

110. Fees and costs

- 110.1** The fees to be enclosed with a complaint or an appeal shall be:
- 110.1.1** for an appeal against a decision by the Commissioner to permit or to refuse to allow a complaint to proceed on the grounds of late submission or that a complaint is to be dealt with under either Regulation 160.2.1 (serious misconduct) or Regulation 160.2.2 (misconduct) or Regulation 160.2.3 (less serious allegations)
No fee;

- 110.1.2** for an appeal against a decision of the Commissioner made in deciding the issue of a complaint under Regulation 78.3.1 and Regulation 160.2 **£50.00;**
- 110.1.3** for an appeal against the decision of a Water Polo Delegate or a referee in regard to a protest or the failure of a Water Polo Delegate or a referee to resolve a protest (protest appeal) **£50.00;**
- 110.1.4** for a complaint (no fee is required when the complaint is made by an official arising from an incident or incidents dealt with in pursuance of his duties under Swim England Regulations and Technical Rules or FINA Technical Rules) **£50.00;**
- 110.1.5** for an appeal against an automatic suspension imposed by the Judicial Administrator for a breach of FINA Water Polo Rules (water polo appeal) **No fee;**
- 110.1.6** for an appeal against the decision of a Disciplinary Committee made in deciding a water polo appeal **£120.00;**
- 110.1.7** for any other appeal to the Appeals Panel (no fee is required when the appeal is made by an official, following a complaint or report made originally by him arising from an incident or incidents dealt with in pursuance of his duties under Swim England Regulations and Technical Rules or FINA Technical Rules) **£120.00.**

110.2 The Commissioner, a Chairman of a Disciplinary Committee, a Chairman of an Appeal Committee, an Arbitrator or a Chairman of an Arbitration Committee or a Mediator may order the return of the fee if, in all the circumstances, it seems to him to be reasonable to do so. Alternatively, the return of the fee may be taken into account in an award of costs against an unsuccessful party.

110.3 In addition to any financial penalty which the Commissioner, a Disciplinary Committee, an Appeal Committee or an Arbitrator or an Arbitration Committee, as appropriate, may impose under Swim England Regulations the Commissioner, the Chairman of the Disciplinary Committee, the Chairman of the Appeal Committee or the Arbitrator or the Chairman of the Arbitration Committee may, at his discretion, make an order for the costs of the hearing to be paid, in such proportion as he may decide, by any of the parties to the hearing. These costs may include expenses reasonably incurred in the preparation for the hearing and in attending any hearing and otherwise in presenting or defending the case. In calculating the amount of such a sum, nothing shall be included on account of professional charges for representation or otherwise.

110.4 When he considers that it is impracticable or unjust to award costs or that the recovery of costs would cause undue hardship, the Commissioner, the Chairman of a Disciplinary Committee, the Chairman of an Appeal Committee or an Arbitrator or the Chairman of an Arbitration Committee or the Chairman of the Appeals Panel may recommend that Swim England should make a contribution towards the costs of the successful party.

Internal Disputes

150. General

- 150.1** The primary objective of the Regulations in this section is to set out ways by which a just outcome of an internal dispute between the members of a club, organisation, association or body may be secured as expeditiously as possible.
- 150.2** An 'internal club dispute' is a dispute involving an alleged breach of the club's rules, between two or more club members, any or none of whom may be an officer of the club, or one or more club members and one or more employees of the club (the 'parties').
- 150.3** Any dispute which involves an allegation that there has been a breach of Swim England Regulations by a member must be dealt with as a Complaint under Regulation 102 and the other relevant Regulations.
- 150.4** If the dispute involves an allegation against a paid employee of the club the issue must be dealt with under the terms of his contract of employment.
- 150.5** A failure by a club or any of the parties to comply with these Regulations 150 to 155 inclusive shall be grounds for a complaint under Regulation 102.
- 150.6** Organisations, associations or bodies affiliated to Swim England shall conform with such parts of Regulations 150 to 155 inclusive as may reasonably be applied to them, in all respects as if they were a club.

151. Sequence of steps to deal with a dispute

- 151.1** The parties shall use any reasonable means to settle the issues between them informally and amicably.
- 151.2** If such a resolution cannot be achieved, the dispute shall be referred to the chairman of the club committee or, if he is a party to the dispute, to another officer of the club who is not a party who within seven days of the reference shall appoint an independent person to act as a mediator between the parties. The mediator may be a member of the club or a member of another club affiliated to Swim England.
- 151.3** If the mediator is unable to bring about a satisfactory settlement within twenty one days, the club committee shall within a further fourteen days appoint a panel (the 'panel') to determine the dispute.
- 151.3.1** The panel shall consist of three persons who have not been involved in the dispute, either from the members of the club or, if this is not possible or desirable, from the members of any other club affiliated to Swim England.

151.3.2 The parties shall be given the opportunity to object to any of the members of the panel at least seven days before the scheduled date of any hearing. The club committee shall consider any such objections, decide whether they are justified and act accordingly.

151.4 If a dispute cannot be resolved fairly and amicably between the parties concerned, and does not include a breach of Swim England Regulations, it may be dealt with under the relevant provisions of Regulation 281 which deal with club rights and responsibilities.

152. Procedure before a hearing

152.1 The panel members shall appoint one of their number to act as the Chairman and either appoint another of their number, or alternatively appoint an additional person without any other powers, to act as the clerk of the hearing.

152.2 The Chairman of the panel shall arrange the date of the hearing and notify the parties of the arrangements at least fourteen days in advance of the date set. The notified date shall not be changed unless one or more of the parties has a compelling reason for not being able to attend on the notified day or time.

153. Procedure at a hearing

153.1 The procedure shall be flexible and it shall be the responsibility of the Chairman of the panel to ensure the orderly and effective conduct of the hearing.

153.2 The panel shall not be bound by the judicial rules of the courts of England and Wales governing procedure or the admissibility of evidence provided that the hearing is conducted in a fair and orderly manner and that each party is given a reasonable opportunity to give and call evidence, address the panel and present his case. The Chairman shall have the discretion to limit the number of witnesses that would otherwise have been called.

153.3 Witnesses shall normally be provided with an area outside the hearing room and not take any part in the hearing other than giving evidence and responding to questions

153.4 The parties shall be informed of their right to make a complaint under Regulation 102 if they are dissatisfied with the conduct of the hearing or the grounds upon which the decision was made or if they consider any sanction imposed to be disproportionate.

154. Procedure after a hearing

- 154.1** The panel shall come to a decision as soon as reasonably practicable after the hearing and if possible announce its findings and decisions orally to the parties.
- 154.2** Notwithstanding anything in Regulation 154.1 the Chairman shall notify the parties and, if the club was not a party to the dispute, the club secretary in writing of its findings and decisions within five days of the hearing.

155. Considerations regarding children

- 155.1** Any person under the age of eighteen (a 'child') who is a party to a dispute or who has been called as a witness shall normally be accompanied by a parent, a person with parental responsibility or a suitable adult. The Chairman shall have the sole discretion as to whether a child is permitted to present or defend a case or be questioned as a witness and may order that the child be assisted or represented by an adult.
- 155.2** The Chairman shall give due consideration to any child attending a hearing as a party to a dispute or to give evidence and in particular:
- 155.2.1** No child aged fourteen or under shall normally be expected to attend a hearing to give evidence in person. His evidence shall normally be given as a written statement with the assistance of a club welfare officer or other person acceptable to the child and parent. Questions and responses may be relayed by a panel member. If the child appears distressed the panel shall rely only on the written evidence:
 - 155.2.2** A child over the age of fourteen shall only attend a hearing as a party to the dispute or to give evidence in person provided he wishes to, and the Chairman has consulted with the parent and child and is satisfied that they both understand the nature of the hearing and what will happen and that the child is competent to attend:
 - 155.2.3** If there is a disagreement between parent and/or child and the Chairman on any of the considerations above, the Chairman shall consider requesting advice from the Independent Child Protection Officer via the Swim England Legal Department.
- 155.3** During the hearing, a child who is expected to give evidence in person and his accompanying adult(s) shall be required to attend only those parts of the hearing which are necessary for him to give his evidence and shall be provided with a separate waiting area with no contact with any of the [other] parties.
- 155.4** After the hearing the Chairman shall inform the parent of the panel's findings and decisions and shall discuss whether he or the parent shall inform the child.

Note: Further guidance is available on the clubs and members section of the Swim England Website.

Judicial Regulations for the Operation of the Judicial System

Protests and Complaints

156. Procedure to deal with a protest

156.1 The procedures for dealing with a protest are set out in Regulations 413, 414 and 415.

157. Procedure to appeal against a referee's decision on a protest

157.1 An appeal against a decision of a referee in regard to a protest shall be made by completing a standard protest appeal form (available from the Office of Judicial Administration), together with the appropriate fee. (See Regulations 101.4 and 110). The completed form (and any other communications to the Office of Judicial Administration under Swim England Regulations) shall be sent to the Office of Judicial Administration c/o British Para-Swimming, St James Building, Floor 2, 79 Oxford Street, Manchester, M1 6FQ.

158. Procedure to appeal against an automatic suspension for a breach of FINA Water Polo Rules

158.1 An appeal against the imposition of an automatic suspension for a breach of FINA Water Polo Rules shall be made by sending to the Office of Judicial Administration, a completed standard water polo appeal form (available from the Office of Judicial Administration). (See Regulations 108.6).

159. Procedure to make a complaint

159.1 A complaint shall be made by sending to the Office of Judicial Administration a completed standard complaint form (available from the Office of Judicial Administration) incorporating a detailed written statement of the matter(s) with which the complainant is dissatisfied and the reasons for the dissatisfaction stating, where relevant, Swim England Regulation violated or the particular breach of the Swim England Code of Ethics. The complaint must be accompanied by the fee (see Regulation 110). A copy of the completed complaint form shall be forwarded as soon as reasonably practicable by the Office of Judicial Administration to the Commissioner.

160. Procedure to deal with a complaint or protest appeal

160.1 The Commissioner (or his nominee) shall as soon as reasonably practicable, and normally within five working days of receiving a complaint or protest appeal, decide if the complaint or protest appeal should be allowed to proceed. If declined reasons shall be given in writing to the complainant or respondent where they have been previously notified of the complaint from the office of Judicial Administration. Reasons for declining to allow a complaint or protest appeal to proceed shall include that it:

- 160.1.1** does not meet the criteria for a complaint or protest appeal in that, for example, it was submitted late;
- 160.1.2** does not have enough evidence to warrant further action being taken;
- 160.1.3** is not serious enough to warrant further involvement by Swim England. The Commissioner may nevertheless decide that no further action is required and/or decide to deal with the complaint informally by way of advice or information.
- 160.1.4** raises an allegation which is unreasonable or vexatious or which is one which is not of concern to Swim England as the National Governing Body of the sport of swimming;
- 160.1.5** raises an allegation which is not appropriate to be dealt with by the Swim England judicial system and/or which the Commissioner believes should be referred to an outside body;
- 160.1.6** raises an allegation which is not appropriate to be dealt with by the Swim England Judicial System and/or which the Commissioner believes should be dealt with under other Swim England procedures, such as the Swim England Protocols for Child Safeguarding Investigations.
- 160.1.7** raises matters against which there can be no protest.

160.2 If the Commissioner decides to allow a complaint or protest appeal to proceed, he shall decide: whether:

- 160.2.1** it involves an allegation properly to be categorised as serious misconduct liable to bring the sport into disrepute, in which case he may decide the issue or may judge that his powers of sanction are insufficient for the gravity of the case and refer the complaint to be prosecuted by Swim England before a Disciplinary Committee in accordance with Regulations 162 to 164 inclusive; or
- 160.2.2** it involves an allegation properly to be categorised as misconduct, in which case he may decide the issue or may judge that his powers of sanction are insufficient for the gravity of the case and refer the complaint to be prosecuted by the complainant under the disciplinary procedure before a Disciplinary Committee in accordance with Regulations 162 to 164 inclusive; or
- 160.2.3** it involves less serious allegations, in which case he may decide the issue or refer the complaint to be dealt with under the dispute resolution procedure in accordance with Regulations 167 to 174 inclusive.

- 160.3** In the case of a complaint which was submitted later than thirty days after the alleged incident giving rise to it, the Commissioner may nevertheless permit it to proceed, if he is satisfied that it would be in the interests of the sport to do so. Before arriving at a decision, he may, through the Office of Judicial Administration, seek an explanation for the delay in submitting the complaint.
- 160.4** The Commissioner shall endeavour to reach his decisions under this Regulation 160 as soon as reasonably practicable and normally within twenty four hours from the time he receives his copy of the complaint, but may delay doing so in the event that he needs further information or he requires some further preliminary investigation.
- 160.5** The Commissioner shall direct the Office of Judicial Administration to notify all interested persons and/or bodies as soon as reasonably practicable, and normally within two working days, of any decision by him under this Regulation 160, setting out his reasons for the decision.
- 160.6** In accordance with Regulation 108.2 or 108.3, the complainant or a respondent or Swim England may appeal, against a decision by the Commissioner to permit or to refuse to allow a complaint to proceed on the grounds of late submission or that a complaint is to be dealt with under either Regulation 160.2.1 (serious misconduct) or Regulation 160.2.2 (misconduct) or Regulation 160.2.3 (less serious allegations) or against a decision of the Commissioner made in deciding the issue of a complaint under Regulation 160.2.3.

161. Procedure to deal with an appeal against a decision of the Commissioner

- 161.1** For an appeal against a decision by the Commissioner to permit or to refuse to allow a complaint to proceed on the grounds of late submission or that a complaint is to be dealt with under either Regulation 160.2.1 (serious misconduct) or Regulation 160.2.2 (misconduct) or Regulation 160.2.3 (less serious allegations):
- 161.1.1** The Chairman of the Disciplinary Panel may consider the grounds of appeal himself or appoint another member of the Disciplinary Panel to do so. The Chairman or the appointed member shall as soon as reasonably practicable, and normally within five working days of being appointed, confirm or reverse the decision made by the Commissioner and may grant or refuse permission to proceed with the complaint. The decision of the Chairman or the member of the Disciplinary Panel considering the appeal shall be final.
- 161.1.2** If the Chairman or the member of the Disciplinary Panel considering the appeal allows an appeal against the refusal of the Commissioner to allow a complaint to proceed on the grounds of the lateness of the complaint, the committee or individual hearing the complaint in any subsequent proceedings shall give due regard to the lateness of the complaint.

- 161.2** For an appeal against a decision of the Commissioner made in deciding the issue of a complaint under Regulation 160.2.3:
- 161.2.1** On receipt of a notice of appeal, the appropriate fee and supporting documents, the Office of Judicial Administration shall send a copy of the notice and the supporting documents to the Chairman of the Disciplinary Panel.
 - 161.2.2** The Chairman of the Disciplinary Panel may on receipt of the notice of appeal if he decides that an appeal may proceed suspend the decision of and/or penalty imposed by the Commissioner pending the outcome of the appeal. If a notice of appeal is withdrawn the Chairman of the Disciplinary Panel shall uphold the decision of the Commissioner.
 - 161.2.3** When the Chairman of the Disciplinary Panel shall direct, the Office of Judicial Administration shall send a copy of the notice of appeal and the supporting documents, including a copy of the written decision and the written reasons for the decision of the Commissioner, to each of the other parties involved and to the Commissioner. The Office of Judicial Administration shall also notify the appropriate Regional Chairman, or his equivalent, and any other interested person or body that was informed of the decision of the Commissioner, that an appeal has been lodged and whether the decision of and/or any penalty imposed by the Commissioner has been suspended pending the outcome of the appeal.
 - 161.2.4** The Office of Judicial Administration shall notify the parties of the procedure to be followed leading up to a hearing by a Disciplinary Committee and confirm whether the decision of and/or any penalty imposed by the Commissioner will be suspended pending the decision of the Committee on the appeal.
 - 161.2.5** Subject to the discretion of the Chairman of the Disciplinary Panel the hearing may be a complete reconsideration of the case or a hearing on the specific issue(s) raised in the appellant's notice of appeal.
 - 161.2.6** The Disciplinary Committee shall be conducted as far as is practicable as if it was an Appeal Committee, in accordance with Regulation 106 and the procedures set out in Regulations 175 to 177 inclusive.

Disciplinary Procedures

162. Procedure to deal with a complaint which involves misconduct or serious misconduct liable to bring the sport into disrepute by reference to a Disciplinary Committee

162.1 On a decision of the Commissioner that a complaint involves misconduct or serious misconduct and that his powers of sanction are insufficient for the gravity of the case:

162.1.1 in the case of a complaint which involves 'serious misconduct liable to bring the sport into disrepute' the Commissioner shall process the Complaint through Swim England. The Disciplinary Officer appointed to discharge the prosecution before a Disciplinary Committee shall be responsible for formulating particulars of the charge(s) of serious misconduct to be laid against the defendant(s) to the complaint.

162.1.2 in the case of a complaint which involves misconduct the Office of Judicial Administration shall notify the complainant of the requirement that the complainant shall prosecute the complaint before a Disciplinary Committee.

162.1.3 in either case the Commissioner shall give directions for the future conduct of the complaint. The Commissioner may make such orders as he thinks fit relating to the procedural aspects prior to the hearing which may include, but not be limited to:

162.1.3.1 the procedure and timetable for submitting written statements of claim, defence and counterclaim and reply;

162.1.3.2 the procedure and timetable for the production and inspection of documents or property;

162.1.3.3 the procedure and timetable for the submission of the names and details of any witnesses the parties concerned wish to call.

162.2 The Office of Judicial Administration shall as soon as reasonably practicable, and normally within two working days of receiving the Commissioner's directions, send a copy of the complaint to the defendant(s) and notify the parties in writing of the directions given by the Commissioner and the names from the panel from whom the three individuals who will constitute the Committee will be selected and the parties shall have seven days from receipt of this notification in which to lodge with the Office of Judicial Administration any objection to any member(s) of the panel stating the grounds for the objection.

162.3 The Office of Judicial Administration shall forward any objections to the Commissioner who shall consider them. The decision of the Commissioner in respect of an objection shall be final.

- 162.4** The Commissioner, having taken account of any objections made under this Regulation 162, shall, after consulting the Chairman of the Disciplinary Panel, appoint a Disciplinary Committee which shall normally consist of three members of the Disciplinary Panel. One of the three members shall be appointed by the Commissioner as the Chairman of the Committee.
- 162.5** The Commissioner shall as soon as reasonably practicable, and normally within five working days, arrange the date, time and venue of a hearing of the Committee which shall normally commence within 60 days of the receipt by the Office of Judicial Administration of an accepted complaint form and fee.
- 162.6** The Commissioner and where appropriate a Disciplinary Committee shall have the authority to strike out a complaint or bar a defence in the event that the complainant or defendant(s) fail to comply with the directions given.
- 162.7** The Commissioner, through the Office of Judicial Administration shall as soon as reasonably practicable, and giving them at least 28 days notice, notify the parties of the arrangements for the hearing including the date, time and place of the hearing. The Office of Judicial Administration shall notify the parties of the procedure to be followed prior to the hearing, following the Commissioner's direction under Regulation 162.1.3, as soon as reasonably practicable and giving them at least 28 days' notice.
- 162.8** Where, under Regulation 78.3.2, the Commissioner has directed an expedited hearing all requirements in these Regulations related to periods of limitation may be waived by the Commissioner, including those periods stipulated in Regulations 162.5, 162.7, 162.9, 162.10, and 162.12.
- 162.9** The parties concerned may rely on written representations made prior to the hearing and/or appear in person. The parties shall be asked to confirm whether they intend to attend the hearing and they shall reply within five days of being asked.
- 162.10** At least twenty one days in advance of the hearing date each party to the complaint must provide to the Office of Judicial Administration details of any witnesses he wishes to call (including, where appropriate, any complainants or defendant(s)) together with copies of their written statements, and copies of any other documentary evidence he proposes to rely on at the hearing.
- 162.11** At least fourteen days in advance of the hearing date each party to the complaint must provide to the Office of Judicial Administration, the name and status of any representative (professional or otherwise) through whom he proposes to present his case.
- 162.12** As soon as reasonably practicable and normally within five working days of receiving notification of representation in 162.10 and/or 162.11 above, the Office of Judicial Administration shall notify each party to a complaint the names of the other party's witnesses and the name and status of any representative who will be presenting a party's case.

- 162.13** Once a Complaint has been accepted by the Commissioner, unless the Commissioner or the Chairman appointed to hear the Complaint direct otherwise, the Office of Judicial Administration shall copy all subsequent correspondence relating to that complaint received from one party to the other party as soon as reasonably practicable, and normally within five working days of the receipt of the respective communications.
- 162.14** Notwithstanding Regulation 162.15, copies of all written documents or other evidence relevant to the dispute between the parties shall be provided by the Office of Judicial Administration to the parties to the complaint and the members of the Committee at least seven days in advance of the hearing. The evidence shall be provided without modification. No further written evidence shall be accepted after this date without the prior agreement of the Chairman of the Committee.
- 162.15** All documents provided in accordance with the Regulations by the Office of Judicial Administration to the parties or to the Commissioner or for the purposes of a hearing by a Disciplinary Committee shall be solely for the use of those parties in connection with the issues to be determined by the Committee. They must be kept confidential and shall not be used for any collateral or ulterior purpose.
- 162.16** The hearing shall normally take place in private except that the Chairman of the Committee may decide to hold a hearing in public provided that:
- 162.16.1** before making the decision he has consulted the parties involved and has taken their wishes into account;
 - 162.16.2** he is satisfied that it is in the interest of the sport to do so, having regard to the interests of the Committee, any particular need for privacy, the rights of others and the need to encourage others to cooperate with judicial proceedings in general.
- 162.17** If any of the parties concerned do not attend the Committee hearing the matter may be dealt with by the Committee in the absence of that party taking into account any written representations that may have been received from that party.
- 162.18** At least twenty eight days in advance of the hearing the Office of Judicial Administration shall send to the defendant(s) the record of previous offences, if any, of the defendant(s). The defendant(s) shall have ten working days from the date of sending the record to challenge its accuracy.
- The Office of Judicial Administration shall subsequently send to the Chairman of the Committee the record of previous offences, if any, of the defendant. It shall be supplied in an inner sealed envelope which shall be opened only in accordance with Regulation 163.4.
- 162.19** If the Commissioner is satisfied that it is in the interest of the sport to do so, he may vary any period of time specified in this Regulation 162 relative to that Committee and its procedures. The decision shall be notified by the Office of Judicial Administration to all the parties to the complaint.

162.20 Where an appeal is made under the provisions of Regulation 108.7, the Office of Judicial Administration shall forward any such appeal to the Chairman of the Appeals Panel who shall consider it and respond as soon as reasonably practicable and normally within five working days. The decision of the Chairman of the Appeals Panel in respect of the appeal shall be final.

163. Procedure at a Disciplinary Committee hearing

163.1 The procedure shall be flexible and shall be at the discretion of the Chairman of the Disciplinary Committee who may make such orders, as he feels necessary to ensure the orderly and effective conduct of the hearing.

163.2 The Chairman of the Disciplinary Committee may, in his discretion invite a Regional legal adviser or another legally qualified person or discipline expert to act as adviser to him and/or the Committee.

163.3 The Disciplinary Committee shall not be bound by the judicial rules of the courts of England and Wales governing procedure or the admissibility of evidence provided that the hearing is conducted in a fair and orderly manner and that each party is given a reasonable opportunity to give and call evidence, address the Committee and present his case.

163.4 Prior to a hearing, the Office of Judicial Administration shall provide the Chairman, with a sealed envelope enclosed within an outer envelope; the sealed envelope shall contain the party's record of previous offences. Where that party has no previous offences the record shall show this. Where a complaint is upheld the record of previous offences, if any, of the party concerned shall be opened prior to the Disciplinary Committee's consideration of penalty.

163.5 In any case where the complaint is not upheld the record of previous offences, if any, of the alleged offender supplied by the Office of Judicial Administration shall be returned to the Office of Judicial Administration unopened.

164. Procedure after a Disciplinary Committee hearing

164.1 The Chairman of the Disciplinary Committee may inform the parties orally of the decision of the Disciplinary Committee, after the hearing. Whether or not this is done he shall through the Office of Judicial Administration communicate the decision in writing to the parties, the Judicial Commissioner, the appropriate Regional Chairman, or his equivalent, and to such other interested persons or bodies as are advised to the Office of Judicial Administration by the Chairman of the Disciplinary 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 parties shall be given in writing the reasons for the decision, notification of their entitlement to appeal and the time by which any notice of appeal must be lodged.

164.2 On the instructions of the Chairman of the Disciplinary Committee and/or Swim England, the Office of Judicial Administration shall normally publish, within the sport, a report of the proceedings, findings and penalties unless in the opinion of the Chairman of the Disciplinary Committee there is a significant reason not to do so. However, no report shall be published until the time for appeal against the Committee's decision has expired. In the event of an appeal publication shall be at the discretion of the appropriate Appeal Committee.

164.3 The Office of Judicial Administration shall send a copy of the Disciplinary Committee's findings, with the notes of the evidence of the witnesses and any observations the Chairman of the Disciplinary Committee may think useful, to the Chairman of the Disciplinary Panel, the Chairman of the Appeals Panel and the Commissioner for their information. The Office of Judicial Administration shall also maintain a record of offences and punishments and then store the papers.

165. Procedure to deal with an appeal against a final decision of a Disciplinary Committee

165.1 On receipt of a notice of appeal under Regulation 108.4, the fee and supporting documents, the Office of Judicial Administration shall, as soon as reasonably practicable and normally within five working days, send a copy of the notice and the supporting documents including any record made of the Disciplinary Committee proceedings to the Chairman of the Appeals Panel. As soon as reasonably practicable after the receipt of the appeal documentation and normally within five working days, the Chairman of the Appeals Panel will decide, or may nominate another member of the Appeals Panel to decide, whether the appeal may proceed and direct the Office of Judicial Administration accordingly who, if the appeal proceeds, will inform each of the parties involved. If the Chairman of the Appeals Panel rejects the appeal the Office of Judicial Administration will inform the appellant only.

165.2 The Chairman of the Appeals Panel or his nominee may, if he decides that an appeal may proceed, suspend the decision of and/or penalty imposed by a Disciplinary Committee pending the outcome of the appeal. If a notice of appeal is withdrawn, the Chairman of the Appeals Panel shall uphold the decision of the committee.

165.3 In the event of an appeal being permitted to proceed, the Office of Judicial Administration shall notify the parties of the procedure to be followed leading up to the Appeal Committee hearing and confirm whether the decision of and/or any penalty imposed by the Disciplinary Committee will be suspended pending the decision of the Committee on the appeal. The Office of Judicial Administration shall also notify the Commissioner, the Chairman of the Disciplinary Panel and, where appropriate, the Chairman of the Disciplinary Committee that first heard the complaint and any other persons informed of the original decision under Regulation 164.1 that an appeal has been lodged, accepted and whether the decision of and/or any penalty imposed by the Disciplinary Committee has been suspended pending the outcome of the appeal.

165.4 Subject to the discretion of the Chairman of the Appeals Panel the hearing may be a complete re-hearing or a hearing on the specific issue(s) raised in the appellant's notice of appeal.

165.5 The Appeal Committee shall be governed by the procedures set out in Regulations 175 to 177 inclusive.

166. Procedure to deal with a water polo appeal

166.1 On receipt of a notice of appeal and supporting documents under Regulation 108.6, the Office of Judicial Administration shall as soon as reasonably practicable, and normally within five working days, send a copy of the notice and the supporting documents to the Chairman of the Disciplinary Panel. As soon as reasonably practicable after the receipt of the appeal documentation and normally within five working days, the Chairman of the Disciplinary Panel will decide, or may nominate another member of the Disciplinary Panel to decide, whether the appeal may proceed and direct the Office of Judicial Administration accordingly who, if the appeal proceeds, will inform each of the parties involved. If the Chairman of the Disciplinary Panel rejects the appeal the Office of Judicial Administration will inform the appellant only.

166.2 The Chairman of the Disciplinary Panel or his nominee may, if he decides that a water polo appeal may proceed, suspend the automatic sanction imposed by the Office of Judicial Administration pending the outcome of the appeal. If a notice of appeal is withdrawn, the Chairman of the Disciplinary Panel shall uphold the original sanction.

166.3 When the Chairman of the Disciplinary Committee hearing the Appeal shall direct, the Office of Judicial Administration shall send a copy of the notice of appeal and the supporting documents, to each of the other parties involved. The Office of Judicial Administration shall also notify any other interested person or body that was informed of the imposition of an automatic sanction for a breach of the FINA Water Polo Rules that an appeal has been lodged and whether the penalty notified by the Office of Judicial Administration has been suspended pending the outcome of the appeal.

166.4 The Office of Judicial Administration shall notify the parties of the procedure to be followed leading up to the Disciplinary Committee hearing and confirm whether or not the automatic sanction imposed will be suspended pending the decision of the Committee on the appeal.

166.5 The Disciplinary Committee shall generally be conducted in accordance with the procedures set out in Regulations 175 to 177 inclusive in all respects as if it were an Appeal Committee with the exception of those provisions which are incapable of being applied to a water polo appeal.

Dispute Resolution Procedures

167. Provision of persons to deal with dispute resolution procedures

167.1 Following a determination of the Commissioner that a complaint or protest appeal be dealt with by the dispute resolution procedure the Commissioner shall make due provision for settling such differences and disputes and may appoint such sole Arbitrator(s), Arbitration Committee(s), mediator(s), expert(s) or other person(s) as may be appropriate to consider and determine the issues.

168. Agreement to refer a complaint to arbitration

168.1 The fact of membership of, or affiliation to, Swim England shall constitute an agreement under the Arbitration Act 1996 and any statutory modification thereto, to refer to arbitration all complaints determined by the Commissioner to be suitable for arbitration.

169. Procedure to deal with a complaint by arbitration

169.1 The Commissioner shall notify the Office of Judicial Administration who shall notify the parties in writing of the list of names from the panel from whom the Arbitrator or the Arbitration Committee will be selected and the parties shall have seven days from receipt of this notification in which to lodge with the Office of Judicial Administration any objection to any member(s) of the panel stating the grounds for the objection.

169.2 The Office of Judicial Administration shall forward any objections to the Commissioner who shall consider them. The decision of the Commissioner in respect of an objection shall be final.

169.3 The Commissioner, in consultation with the Chairman of the Disciplinary Panel, having taken account of any objections made under this Regulation shall appoint an Arbitrator or an Arbitration Committee which shall normally consist of three members of the Disciplinary Panel. One of the members of the Arbitration Committee, if one is appointed, shall be appointed by the Commissioner as the Chairman of the Arbitration Committee.

169.4 The Commissioner shall determine all procedural and evidential matters. Those matters may include but are not limited to:

169.4.1 the procedure for submitting written statements of claim, defence and counterclaim and reply;

169.4.2 the procedure for the production and inspection of documents or property;

- 169.4.3** the procedure for submitting other material to the Arbitrator or the Arbitration Committee, including whether to apply strict rules of evidence or any other rules as to the admissibility, relevance or weight of any material tendered by a party on any matter of fact or expert opinion and to determine the true manner and form in which such material should be exchanged between the parties and presented to the Arbitrator or the Arbitration Committee;
- 169.4.4** whether after consultation with the Chairman, there should be a hearing or hearings before the Arbitrator or the Arbitration Committee or whether the dispute should be determined on the basis of written submissions and documents alone.
- 169.5** The Commissioner or the Arbitrator or the Chairman of the Arbitration Committee may arrange a preliminary meeting with the parties and/or their representatives to assist in determining the procedures for the arbitration.
- 169.6** In the event of default by either party in respect of any matter under these Regulations or of any procedural order or direction of the Commissioner, Arbitrator or the Arbitration Committee, the Commissioner, Arbitrator or the Arbitration Committee shall have the power, upon application by any party or of its own motion:
- 169.6.1** to debar that party from further participation, in whole or in part, in the arbitration; and/or
- 169.6.2** proceed with the arbitration and deliver an award; and/or
- 169.6.3** make such other order as seems fit.
- 169.7** The parties shall preserve and respect the confidentiality of the arbitration proceedings, including the issues in the dispute and the evidence and arguments presented by the parties.
- 169.8** Except with the prior written agreement of the parties to the arbitration, no disclosure shall be made to any third party of the contents of any documents or other evidence produced in the arbitration or any procedural decision of the Arbitrator or the Arbitration Committee or his or its Award, or any part of them save and to the extent that disclosure may be required of any party by legal duty, to protect or pursue a legal right or to enforce an award.

170. Procedure for an arbitration hearing

- 170.1** The Commissioner in consultation with the Arbitrator or the Chairman of the Arbitration Committee shall fix the date, time and place of any hearings in the arbitration and the Office of Judicial Administration shall give the parties as much notice as is reasonable of the date, time and place of any hearings.
- 170.2** The hearing shall normally take place in private except that the Arbitrator or the Chairman of the Arbitration Committee may decide to hold a hearing in public provided that:
- 170.2.1** before making the decision he has consulted the parties involved and has taken their wishes into account;

170.2.2 he is satisfied that it is in the public interest to do so, having regard to the interests of the Arbitrator or the Arbitration Committee, any particular need for privacy, the rights of others and the need to encourage others to co-operate with judicial proceedings in general.

170.3 The procedure at a hearing shall be flexible and shall be at the discretion of the Arbitrator or the Chairman of the Arbitration Committee who may make such orders as he feels necessary to ensure the orderly and effective conduct of the hearing.

170.4 An Arbitration Committee shall decide on any issue by a majority and if it fails to reach a majority decision on any issue, the decision of the Chairman of the Arbitration Committee shall be final. The decision and/or award shall be in writing and shall be dated and signed by the Arbitrator or the Chairman of the Arbitration Committee and unless otherwise agreed shall be accompanied by the reasons on which it is based.

171. Procedure after arbitration

171.1 The Arbitrator or the Chairman of the Arbitration Committee shall arrange for the decision and/or award to be delivered to the Office of Judicial Administration together with details of the persons or parties including the Commissioner to be informed of the findings of the Arbitrator or Arbitration Committee and the Office of Judicial Administration shall notify the parties and the Commissioner accordingly.

171.2 There shall be a right of appeal against the decision and/or award of an Arbitrator or an Arbitration Committee in accordance with Regulation 108.5.

172. Procedure to deal with an appeal against a final arbitration decision

172.1 On receipt of a notice of appeal under Regulation 108.5, the fee and supporting documents, the Office of Judicial Administration shall as soon as reasonably practicable, and normally within five working days, send a copy of the notice and the supporting documents including any record made of the Arbitration proceedings to the Chairman of the Appeals Panel. As soon as reasonably practicable after the receipt of the appeal documentation and normally within five working days, the Chairman of the Appeals Panel will decide, or may nominate another member of the Appeals Panel to decide, whether the appeal may proceed and direct the Office of Judicial Administration accordingly who, if the appeal proceeds, will inform each of the parties involved. If the Chairman of the Appeals Panel rejects the appeal the Office of Judicial Administration will inform the appellant only.

172.2 The Chairman of the Appeals Panel or his nominee may, if he decides that an appeal may proceed, suspend the decision of and/or penalty imposed by the Arbitrator or the Arbitration Committee pending the outcome of the appeal. If a notice of appeal is withdrawn, the Chairman of the Appeals Panel shall uphold the decision.

172.3 In the event of an appeal being permitted to proceed, the Office of Judicial Administration shall notify the parties of the procedure to be followed leading up to the Appeal Committee hearing and confirm whether the decision of and/or any penalty imposed by the Arbitrator or the Arbitration Committee will be suspended pending the decision of the Committee on the appeal. The Office of Judicial Administration shall also notify the Commissioner, the Chairman of the Disciplinary Panel and the Arbitrator or, where appropriate, the Chairman of the Arbitration Committee that first heard the complaint and any other persons informed of the original decision under Regulation 171.1 that an appeal has been lodged, accepted and whether the decision of and/or any penalty imposed by the Arbitrator or the Arbitration Committee has been suspended pending the outcome of the appeal.

172.4 Subject to the discretion of the Chairman of the Appeals Panel the hearing may be a complete rehearing or a hearing on the specific issue(s) raised in the appellant's notice of appeal.

172.5 The Appeal Committee shall be governed by the procedures set out in Regulations 175 to 177 inclusive.

173. Procedure to deal with a complaint by referral to an expert

173.1 If in the opinion of the Commissioner a complaint relates to issues within the expertise of a technical expert then the Commissioner may direct that such dispute shall be referred to a person agreed between the parties, or, in default of agreement by both parties within twenty one days of notice from the Office of Judicial Administration calling upon them so to agree, by the Commissioner. Such person shall be appointed to act as an expert and not as an arbitrator and the decision of such person shall be final and binding. The costs of such expert shall be borne equally by the parties unless such expert shall decide one party has acted unreasonably in which case he shall have discretion as to costs.

174. Procedure to deal with a complaint by mediation

174.1 As soon as reasonably practicable upon receipt of a decision of the Commissioner that a complaint is to be dealt with by mediation the Office of Judicial Administration shall send a copy to each of the parties who are involved.

174.2 The Commissioner shall nominate an individual to act as the mediator. However, if the Chairman of the Disciplinary Panel is nominated to act as the mediator, the Commissioner shall receive the mediation report and the Chairman of the Disciplinary Panel shall take no part in any subsequent arbitration or hearing of the appeal or complaint.

- 174.3** The Office of Judicial Administration shall notify the parties of the identity of the nominated mediator, as soon as reasonably practicable and normally within ten working days of the receipt of the Commissioner's decision that the matter be dealt with by a mediator. The parties shall within seven days of receipt of this notification be entitled to lodge with the Office of Judicial Administration objections against the nominated mediator stating the grounds for the objection.
- 174.4** If in the judgment of the Commissioner the parties are not co-operating in good faith at any stage in the process with any direction for mediation the Commissioner is empowered to make such order as he sees fit including making a summary judgment.
- 174.5** If the Commissioner or where appropriate the Chairman of the Disciplinary Panel accepts an objection to a nominated mediator either the Commissioner or the Chairman of the Disciplinary Panel may nominate another member of the Disciplinary Panel to act as the mediator and the Office of Judicial Administration shall notify the parties of the identity of the new nominated mediator.
- 174.6** If the parties and/or the Commissioner, or as the case might be the Chairman of the Disciplinary Panel, cannot, within twenty eight days of the initial notification to them of the identity of a nominated mediator, agree on a mediator the appellant or complainant shall have the right to have the matter referred to arbitration and any time expended on the mediation procedure shall be discounted when fixing the date of the hearing.
- 174.7** The mediator shall normally have a period of twenty eight days from the date of his appointment to assist in the settlement of differences between the parties. If the mediator is unable to assist in settling the differences he shall report to the Commissioner who shall then proceed to deal with the complaint or appeal under the Regulations regarding arbitration unless, in the opinion of the mediator, there is a possibility of serious misconduct having been involved but not disclosed in the original complaint in which instance the Commissioner will reassess the Complaint.
- 174.8** No formal record or transcript of the mediation process shall be made.
- 174.9** There shall be no appeal from a mediation agreement signed by the parties following the mediation.

175. Procedures for an Appeal Committee

- 175.1** The Office of Judicial Administration shall notify the parties in writing of the list of names from the panel from whom the three individuals who will constitute the Appeal Committee will be selected and the parties shall have seven days from receipt of this notification in which to lodge with the Office of Judicial Administration any objection to any member(s) of the panel stating the grounds for the objection.

- 175.2** The Office of Judicial Administration shall forward any objections, to the Chairman of the Appeals Panel who shall consider them. The decision of the Chairman of the Appeals Panel in respect of any objections shall be final except that where an objection relates to the Chairman of the Appeals Panel himself the Office of Judicial Administration shall forward it to the Commissioner, or his nominee for decision.
- 175.3** The Chairman of the Appeals Panel having taken account of any objections made under Regulation 175.1 shall appoint a Committee, which may consist of the Chairman of Appeals Panel or one of the Vice-Chairmen and two other members, who may be Vice-Chairmen of the Appeals Panel. One of the three shall be designated by the Chairman of the Appeals Panel as the Chairman of the Appeal Committee.
- 175.4** As soon as reasonably practicable thereafter, and normally within five working days of the receipt of his appointment, the Chairman of the Appeal Committee shall arrange the date, time and venue of a hearing of the Appeal Committee which shall normally commence within sixty days of the receipt by the Office of Judicial Administration of the appeal form and fee.
- 175.5** The Chairman of the Appeal Committee may make such orders as he thinks fit relating to the procedural aspects prior to the hearing, which may include, but not be limited to:
- 175.5.1** the procedure and timetable for submitting any further written statements of claim, defence and counterclaim and reply;
 - 175.5.2** the procedure and timetable for the production and inspection of any further documents or property;
 - 175.5.3** the procedure and timetable for the submission of the names and details of any witnesses the parties concerned wish to call.
- 175.6** The Office of Judicial Administration following consultation with the Chairman of the Appeal Committee shall, as soon as reasonably practicable and giving them at least twenty eight days notice, notify the parties of the arrangements for the hearing including the date, time and place of the hearing and of the procedure to be followed prior to the hearing.
- 175.7** The parties concerned may rely on written representations made prior to the hearing and/or appear in person. The parties shall be asked to confirm whether they intend to attend the hearing.
- 175.8** At least twenty one days in advance of the hearing date each party to the original complaint must give to the Office of Judicial Administration details of any witnesses he wishes to call, together with copies of any further witness statements and any further documentary evidence he proposes to rely on at the hearing.
- 175.9** At least 14 days in advance of the hearing date each party to the original complaint must give to the Office of Judicial Administration the name of any representative (professional or otherwise) through whom he proposes to present his case at the appeal hearing.

- 175.10** The Office of Judicial Administration shall notify the parties to the appeal of the names of the other party's witnesses and the name and status of any representative who will be presenting a party's case.
- 175.11** Copies of written documents or other evidence relevant to the dispute between the parties shall be provided by the Office of Judicial Administration to the parties to the appeal and the members of the Appeal Committee at least seven days in advance of the hearing. The evidence shall be provided without modification. No further written evidence shall be accepted after this date without the prior agreement of the Chairman of the Appeal Committee.
- 175.12** Any copy documents provided in accordance with the Regulations by the Office of Judicial Administration to the parties to a hearing by an Appeal Committee shall be solely for the use of those parties in connection with the issues to be determined by the Committee. They must be kept confidential and shall not be used for any collateral or ulterior purpose.
- 175.13** The hearing shall normally take place in private except that the Chairman of the Appeals Panel and/or the Chairman of the Appeal Committee may decide to hold a hearing in public provided that:
- 175.13.1** before making the decision he has consulted the parties involved and has taken their wishes into account;
 - 175.13.2** he is satisfied that it is in the interest of the sport to do so, having regard to the interests of the Appeal Committee, any particular need for privacy, the rights of others and the need to encourage others to co-operate with judicial proceedings in general.
- 175.14** If any of the parties concerned do not attend the Appeal Committee hearing the matter may be dealt with by the Appeal Committee in the absence of that party taking into account any written representations that may have been received from that party.
- 175.15** The Office of Judicial Administration shall send to the Chairman of the Appeal Committee the record of previous offences, if any, of the alleged offender. It shall be supplied in an inner sealed envelope, which shall be opened only in accordance with Regulation 176.4.
- 175.16** If the Chairman of an Appeal Committee is satisfied that it is in the interest of the sport to do so, he may vary any period of time specified in this Regulation 175 relative to that Committee and its procedures. The decision shall be notified by the Office of Judicial Administration to all the parties to the appeal.
- 175.17** An appeal may be made against any such decision. (See Regulation 108.7). The Office of Judicial Administration shall forward any such appeal to the Chairman of the Appeals Panel for his decision unless the appeal lies against a decision of the Chairman of Appeals Panel in which instance the Office of Judicial Administration shall forward it to a Vice-Chairman. The decision of the Chairman or Vice-Chairman of Appeals Panel in respect of the appeal shall be final.

176. Procedure at an Appeal Committee hearing

- 176.1** The procedure shall be flexible and shall be at the discretion of the Chairman of the Appeal Committee who may make such orders as he feels necessary to ensure the orderly and effective conduct of the hearing.
- 176.2** The Chairman of the Appeal Committee may, in his discretion invite a Regional legal adviser or another legally qualified person or discipline expert to act as adviser to him and/or the Appeal Committee.
- 176.3** The Appeal Committee shall not be bound by the judicial rules of the courts of England and Wales governing procedure or the admissibility of evidence provided that any hearing is conducted in a fair and orderly manner and that each party is given a reasonable opportunity to give and call evidence, address the Appeal Committee and present his case.
- 176.4** In any case where an appeal by a complainant is upheld the record of previous offences, if any, of the offender, supplied by the Office of Judicial Administration shall be opened before the Appeal Committee considers the imposition of a penalty.
- 176.5** In any case where an appeal by a complainant is not upheld or an appeal by a defendant is upheld the record of previous offences, if any, of the alleged offender, supplied by the Office of Judicial Administration shall be returned to the Office of Judicial Administration unopened.

177. Procedure after an Appeal Committee hearing

- 177.1** The Chairman 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, he shall through the Office of Judicial Administration communicate the decision in writing to the parties, the Commissioner and the appropriate Regional Chairman, or his equivalent, and additionally to such other interested persons or bodies as are advised to him by the Chairman 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.
- 177.2** The Appeal Committee and/or Swim England shall normally publish a report of the proceedings, findings and penalties unless in the opinion of the Chairman of the Appeal Committee there is a significant reason not to do so.
- 177.3** The Office of Judicial Administration shall send a copy of the findings of the Appeal Committee with the notes of the evidence of the witnesses and any observations the Chairman of the Appeal Committee may think useful, to the Chairman of the Disciplinary Panel and the Chairman of the Appeals Panel for information. The Office of Judicial Administration shall also maintain a record of offences and punishments and then store the papers.

Guidelines for Water Polo Delegates, the Referees (of all disciplines) and Juries of Appeal when dealing with protests or appeals and providing guidance on complaints procedures.

The following guidelines do not form part of Swim England Regulations but they have been revised to take account of recent changes in the Regulations.

The Regulations relating to the treatment of Protests, Appeals and Complaints have changed. Fortunately the need for a Water Polo Delegate or a Referee to handle a Protest or for a Jury of Appeal to adjudicate on a referee's decision on a protest occurs infrequently and therefore reference to procedures to be followed is very advisable. Protests can arise in any discipline of our sport and the purpose of these notes is to give guidance to Referees of all the Disciplines about how to handle a Protest and/or an appeal as and when received. Dealing with Complaints is not part of a Water Polo Delegate's or a Referee's or a Jury of Appeal's duties but guidance on the procedures may sometimes be needed.

Specific procedures apply to some disciplines e.g. water polo which require the referee to adhere to FINA Rules and Swim England Water Polo Referees handbook. These guidelines should therefore be read in conjunction with the appropriate other documentation. As far as possible the Swim England Regulation numbers in the current Handbook have been quoted.

It should be remembered that, particularly at the higher levels of our sport, competitors are receiving funding for their achievements and decisions made by officials could have a profound effect on an individual's 'earning power'. In sport, generally, recourse is increasingly being made to litigation. It is partly for this reason that the Regulations have been strengthened and the need to take the correct action at the start of a potential dispute is very important. The Protest is the first stage of the Judicial process and the referee is at the forefront.

Protests (Regulation 101)

Definition

A protest is an allegation that the Swim England Regulations, Technical Rules or the promoter's conditions governing a competition have not been complied with or have been misinterpreted.

For example

- a swimmer is competing out of age;
- the correct officials are not present;
- competition starting times are not being adhered to;
- a swimmer is ineligible to represent a club.

A protest cannot be made against the decision of a Referee or any other Official regarding placings, Disqualifications, fouling or any other facts of a competition. If an individual believes that a Referee was misinterpreting the Swim England Technical Rules with regards to the Backstroke turn for example he could make a protest but would have to accept any disqualifications at the time. If the individual after making a protest is still not satisfied with the Referee's decision then he has the right of appeal to the Judiciary (see later).

Appointment of a Jury of Appeal

A promoter can appoint a Jury of Appeal. If one is appointed then the responsibility for dealing with Protests remains with the Referee but the Referee's decision on a protest made to him may be appealed directly to the Jury of Appeal.

Swim England Regulations now require, wherever practicable, that a Jury of Appeal be appointed for all licensed events, including County events. The Jury must consist of three persons of whom normally at least one must be familiar with the discipline concerned. Prior to the competition commencing one member of the Jury should be appointed as Chairman and another as Secretary. The members of the Jury should be available immediately but shall not undertake any administrative or officiating duties during the competition.

How is a Protest made?

If the reason for the protest is known before the meet/match/events starts then it must be made, orally, to the Referee as soon as reasonably practicable beforehand. It may mean that the protest is sent to the Promoter before the date of the meet/match/event starts. The Referee should be told whether a Jury of Appeal is being appointed. The Promoter has no power to deal with a protest. It can only be dealt with by the Referee. This may mean the Promoter has to appoint the Referee well before the date of the event and pass on the protest to him. The Promoter should provide the Referee with a copy of the Competition Conditions before the event.

Where more than one referee has been appointed for a competition comprising swimming races, one of their number shall be appointed and empowered, from the date upon which entries to that competition close, as the lead referee. The lead referee shall receive all protests of a general nature (e.g. a protest which covers more than one specific event). However if a protest relates to a specific event then the referee responsible for that event must also be responsible for the protest.

If the protest arises whilst the competition is taking place then it must be made to the Referee within thirty minutes of the incident which gives rise to it occurring. The previous definition of 'event' no longer applies because it is difficult to define when an event is completed. Bear in mind these Regulations apply equally to an open water 25km swim, a water polo match, 50 metre sprint event, diving or synchronised swimming.

A protest can be made by a competitor (or someone on his behalf) a club, or an official taking part in the competition. In other words virtually anybody can make a protest. Some flexibility may need to be applied in the case of a 25km open water swim when it may be physically impossible for someone trying to make a protest to reach the Referee within 30 minutes of the incident.

How should a Protest be dealt with?

The procedure for the handling of a Protest should include the following objectives and principles:

Try to resolve the matter, as soon as possible, to the satisfaction of all parties. Emotions are often running high and a protest is not going to be resolved on the poolside surrounded by swimmers, coaches, parents and officials who all know the rules and regulations better than the Referee!

Hopefully in swimming events a second referee can keep the competition moving.

Find a quiet area away from the poolside and listen to the individual making the protest quietly and carefully making a written note of all the salient facts.

Decide whether a protest is, in fact, being made and if so, whether it can be accepted.

Involve all the other parties who are the subject of the protest. Listen to their point of view, issues and concerns. If any of the parties concerned are under eighteen then the Referee must involve the Parent, Guardian or suitable Club Official. Do not interview a minor alone.

Try and get all the parties together in a calm and constructive atmosphere and hopefully, endeavour to reach agreement rather than compromise. Do not rush the matter, let all concerned have their say and try and resolve grievances.

At the end of the discussion the Referee must reach and record a clear and positive decision based on the facts submitted, Swim England Regulations and the Promoters Conditions.

The information recorded should include, the original protest, the reason for it names of all the parties involved and witnesses, a brief summary of the evidence and the decision with reasons.

No firm guidelines about types of decisions can be given as every case is different. The Referee has to make every effort to reach a fair and just result based on facts.

Exceptionally sufficient information may not be available to resolve the Protest immediately (e.g. such as the eligibility of a swimmer to take part in a competition when the registration documentation may not be available). The Referee may then ask all parties to 'pend' the matter until the information can be obtained. In such circumstances, unless the outcome can have no effect on the awards, all medals and prizes will have to be withheld until any protest has been heard and resolved. A short timescale should be put on receipt of the information. In such cases it is the responsibility of the Referee to keep all the parties concerned informed of progress. It is recommended that if the matter cannot be resolved quickly and within a reasonable timescale, agreed with all the parties, the Referee informs all the parties accordingly so that they may decide if they wish to appeal.

It should be noted that the promoter no longer has any function in the judicial process other than to receive a protest made prior to the event and to collect and store the protest paperwork for a year after the event (Regulation 101.6). Should the Referee be unable to resolve the protest the only means by which any party can pursue the issue is by way of an appeal either to the Jury of Appeal if one has been appointed or, if not, to the Judiciary under the Judicial Regulations. If there is no appeal then the protest lapses. It is advisable for the Referee to inform the promoter that an unresolved protest exists.

Communication, to all concerned, is very important and the Referee must decide when and what to communicate. It is essential to keep the rumour machine under control. If the announcer is asked to explain what is happening then give him a written note rather than have the announcer produce an interpretation.

If the protest cannot be resolved to the satisfaction of all the parties concerned then they must be informed of their rights of appeal. These include not only the right to appeal against the Referee's decision to the Jury of Appeal if there is one, or straight to the Judiciary if there isn't. The requisite appeal form can be obtained from the Judicial Administrator at the Swim England Office of Judicial Administration.

Pitfalls to watch for when handling a protest include but are not limited to:

Not made in the correct timescales;

Insufficient facts collected;

All parties not given the opportunity to have a hearing;

Failure to make a full record of the issue;

Promoter takes over.

Be seen to be easily available, a good listener, fair, positive, decisive, thorough, just.

Complaints – Regulation 102 and Regulation 159

The procedure for dealing with Complaints is well documented in the Regulations: the following information may, however, be helpful to a Referee asked to provide guidance on the poolside.

Definition

A complaint is a formal dissatisfaction with the actions or behaviour, or unfair practice of a club, body, or individual in connection with the sport.

It can include, for example bringing the sport into disrepute, swimming/competing against unaffiliated individuals or anyone under suspension, violation of Swim England Regulations or the Code of Ethics.

A complaint can be made by a wide range of people including any individual who is a member of Swim England, (or if under eighteen by someone acting on their behalf), whether as a competitor, official or other interested party. There is a full list in Regulation 102.

A complaint can be made by a Referee in his capacity as an Official or Swim England member and similarly a Complaint can be made against a Referee in his role as an official or as a member of Swim England.

How is it made?

The Referee has no power to deal with a complaint. All complaints have to be made direct to the Judicial Administrator at the Swim England Office of Judicial Administration on the official complaint form also available from this Office.

The Complaint should contain full details of the Complainant, the defendant and any witnesses and a narrative description of the incident. Sketches of poolside layouts can be useful in some cases. It must be submitted within 30 days of the incident taking place.

If the Referee decides that an incident is a complaint and directs an individual accordingly he would be well advised, as soon as possible to make full notes of the matter in case he, the Referee, is required to attend a hearing and provide evidence either as a witness or defendant.

Whilst the Referee has the same rights as any other member of Swim England as regards making a complaint he is also in a unique position because he has to see that Swim England Regulations is upheld. If through a protest or other incident he realises that the Law is not being upheld it is up to him to take action. He should not shirk from the responsibility of making a complaint if he thinks it is necessary to do so.