



**SWIM IRELAND
COMPLAINTS & DISCIPLINARY
RULES AND PROCEDURES**

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INTRODUCTION

It is the right of a Swim Ireland Member to make a complaint where standards of care, treatment and practice are perceived to fall short of what is acceptable and should be expected. Likewise it is the right of Swim Ireland Clubs, Regional and/or National Bodies to take disciplinary action against a member and others outlined in paragraph 1.2 of the Complaints & Disciplinary Rules and Procedures of Swim Ireland for misconduct that has been committed by a Respondent.

The Complainant and Respondent and the Complaints and Disciplinary Committees should have ease of access to clear and simplified rules and to fair procedure in dealing with any complaint or disciplinary action.

These Rules (Part 1 of this document) and Procedures (Part 2 of this document) are designed to provide a quality and consistent approach to complaints. These Rules and Procedures deal with complaints from Swim Ireland Members or from an appropriate person acting on behalf of a Swim Ireland Member, and disciplinary action against Swim Ireland Members and others outlined in paragraph 1.2 of the Complaints and Disciplinary Rules.

This Handbook is divided into two sections (Part 1 and Part 2). The first section deals with the scope of the disciplinary rules, the offences and sanctions. The second section covers the rights and obligations of parties and the procedures to be used before the Complaints and Disciplinary Committees (Club, Regional and National).

Responding effectively and in a timely manner to complaints is a key element of quality service. Co-operation with the investigation of the complaint is essential and the use of a standardised approach is of benefit to complainants and to all involved.

It should be emphasised that disputes should be dealt with at a local level and all resolutions at this level exhausted. In the event that the matter is not resolved satisfactorily at the local level, the matter can then be appealed to the National Swim Ireland Complaints and Disciplinary Committee (SICDC). If either party is still not satisfied with the outcome there is right to challenge the decisions of SICDC before Just Sport Ireland (JSI) arbitration.

Just Sport Ireland (JSI) is an independent arbitral body which was set up by the Federation of Irish Sport in 2007. National Governing Bodies which have signed up to JSI arbitration bind their members so that any challenge to decisions of the internal bodies of those National Governing Bodies shall be referred to JSI arbitration and therefore challenges cannot be taken to the Courts. Swim Ireland has signed up to JSI arbitration.

Complaints or disciplinary issues relating to Associate Members working in a private capacity do not come within the jurisdiction of Swim Ireland or these Procedures, except for exceptional circumstances where there is no other independent third party to refer the complaint to, in which case Swim Ireland may accept jurisdiction. Similarly complaints relating to Affiliate Members should be referred to the Affiliate Member organisation in the first instance but these may be appealed to the SICDC.

These Rules and Procedures are not an appropriate mechanism for dealing with certain complaints such as allegations of physical or sexual abuse or other potential child abuse issues for which other procedures exist using the appropriate statutory authorities. In respect of allegations of physical or sexual abuse or other potential child abuse issues, parties are referred to the Swim Ireland Guidelines for Safeguarding Children as amended from time to time. This Handbook is also not an appropriate mechanism for dealing with complaints against employees of Swim Ireland at Club, Regional or National level. Such complaints should be referred to the relevant employer – in general this will be the line manager of the employee. These Rules and Procedures provide guidance to Members as to the appropriate mechanism for dealing with complaints or issues that may arise in relation to their membership of Swim Ireland, and to whom each type of complaint should be referred.

If there is an omission in these Rules, then the Complaints and Disciplinary Bodies (Club, Regional and/or National) shall decide in accordance with the Swim Ireland (or Regional or Club) custom or, in the absence of custom, in accordance with the spirit of the Rules.

Swim Ireland may review and amend these Rules and Procedures from time to time, particularly where legislative updates or legal developments require it. Swim Ireland will also review, and may amend, the monetary value of the complaint and appeal fees and/or the penalties payable by Clubs or Regions under these Procedures on an annual basis. Swim Ireland will undertake a formal review of the Procedures before or during 2012. **Each Club and Region must incorporate these Rules and Procedures into its Constitution/Rules.**

Definitions

Affiliate Member: means an Affiliate Member as defined in the Swim Ireland Memorandum and Articles of Association (and includes but is not limited to the Irish Schools Swimming Association (ISSA) and the Irish Water Polo Association (IWPA)).

Associate Member means an Associate Member as defined in the Swim Ireland Memorandum and Articles of Association.

Board: means the members of the Board for the time being of Swim Ireland.

Club: means any Club as defined in the Swim Ireland Memorandum and Articles of Association.

Complaint: means an expression of discontent, which must be submitted in writing (which may include email), accompanied by all relevant documentation in support of the complaint and the appropriate fee.

Complainant: means the person making the complaint.

Discipline: means a punishment inflicted by way of correction and training. Disciplinary will have the equivalent meaning.

Event: means any Club, Region or Swim Ireland National or International Event (including but not limited to training, meetings or competitions) that may or may not involve an overnight stay.

First Instance Matter: means a matter that is within the first instance jurisdiction of Swim Ireland because it falls within one of the following categories:

- a. a serious claim or allegation which, if substantiated, has the possibility of bringing Swim Ireland into disrepute;
- b. a majority of a Club or Regional Committee are involved in the decision to bring a Complaint against a Member to the extent that the Club or Region could not form a Complaints Committee that would be free from conflicts of interest; or
- c. a complaint is brought by a Member against a Club or Regional Committee as a whole such that the Club or Region could not form a Complaints Committee that would be free from conflicts of interest;
- d. a complaint relating to a National event or occurring at a National High Performance Centre.

A First Instance Matter includes a matter referred to the SICDC by a Club or Region Complaints Committee because it falls within one of (a) to (d) above.

Member: means Member of Swim Ireland as defined in the Swim Ireland Memorandum and Articles of Association.

Misconduct of Members: means a breach of any of the Offences as specified in Section 2 of the Complaints and Disciplinary Rules.

Officer: means a person who holds an executive position on a Club or Regional Committee of Swim Ireland, normally the Chairperson, Treasurer and Secretary.

Official: means any person who officiates at or assists in or time keeps at a competition.

Parent: means the legally appointed person responsible for a child – parent or guardian.

Privileges: means normal social entitlements of participants at an Event.

Procedures: means these Swim Ireland Complaints and Disciplinary Procedures.

Region: means any Region as defined in the Swim Ireland Memorandum and Articles of Association.

Respondent: means the person responding to or the subject of a complaint as specified in Clause 1 of the Complaints and Disciplinary Rules.

Responsible Person: means the Coach, Manager and/or Leader that has responsibility for Members at a particular Event.

SICDC: means the Swim Ireland Complaints and Disciplinary Committee.

Swim Ireland: means the Irish Amateur Swimming Association Limited t/a Swim Ireland.

Spectator: means any person who neither participates in nor officiates at an event but who attends in a capacity to support a participant or participants.

Time Out: shall mean a temporary suspension from participation at an Event.

PART 1 – COMPLAINTS AND DISCIPLINARY RULES (“the Rules”)

1. JURISDICTION

Any breaches of (i) these Rules (ii) Memorandum and Articles of Association of Swim Ireland (iii) Swim Ireland Rulebook (iv) Swim Ireland Guidelines for Safeguarding Children, as amended from time to time, and other Swim Ireland regulations in existence will be dealt with under the Complaints and Disciplinary Rules. In doing so the Complaints and Disciplinary Bodies shall determine the offences committed and the sanctions to be imposed, if any, at Club, Regional or National level.

These Rules together with the Complaints and Disciplinary Procedures (Part 2) regulate the organisation and function of the bodies responsible for taking decisions and the procedures to be followed by these bodies.

1.1 The Rules apply in respect of:

- (a) Complaints against Members
- (b) Allegations of Misconduct of Members
- (c) Any breach of the Rules, Codes of Conduct and Regulations of Swim Ireland as specified above
- (d) Appeals from Immediate Disciplinary Measures imposed by Responsible Persons
- (e) Appeals as outlined in the Procedures section.

1.2 The following persons are subject to these Rules:

- (a) Member
- (b) Parent of an underage Member
- (c) Coach
- (d) Manager
- (e) Leader (as defined in Swim Ireland Guidelines for Safeguarding Children document, as amended from time to time)
- (f) Affiliate Member
- (g) Associate Member
- (h) Official
- (i) Spectator

1.3 Exclusions:

- (a) Employment and quasi employment contractual disputes involving personnel at Club, Regional or National level.
- (b) Breaches of Swimming Competition rules (which are dealt with separately pursuant to Swim Ireland Competition Rules).
- (c) Complaints relating to Board Members of Swim Ireland (which shall be referred to the Chairman of the Board).
- (d) Allegations of child abuse (which shall be referred to statutory authorities and be dealt with as per process under Swim Ireland Guidelines for Safeguarding Children, as amended from time to time).
- (e) Organisation of National Events (which shall be referred to Swim Ireland).
- (f) Misconduct arising at a level other than the level at which the Complaint of Misconduct refers. For example a Complaint or allegation of Misconduct of a Member at Club level must be dealt with by the Complaints and Disciplinary Committee at Club level and not at Regional or National level.
- (g) Criminal matters (which shall be referred to the statutory authorities).
- (h) Anti-doping matters (which shall be dealt with in accordance with the Irish Anti-Doping Rules).
- (i) Matters relating to an Affiliate Member or Associate Member outside the auspices of Swim Ireland (which shall be referred to the Affiliate Member or party engaging the Associate Member).

2. OFFENCES

- (a) Breach of Swim Ireland Codes of Conduct
- (b) Breach of Club, Regional or Swim Ireland rules
- (c) Aggressive or threatening behaviour
- (d) Fighting
- (e) Inciting hatred or violence
- (f) Bullying
- (g) Ineligibility
- (h) Racism
- (i) Intimidation or threats
- (j) Coercion
- (k) Discrimination
- (l) Foul language
- (m) Disparaging comments
- (n) Forgery or falsification
- (o) Corruption
- (p) Actions bringing the sport of swimming into disrepute
- (q) Curfew violation
- (r) Alcohol or substance use
- (s) Visitation violations
- (t) Criminal investigation
- (u) Criminal conviction – which is likely to bring the Club, Region or Swim Ireland into disrepute.
- (v) Mischievous or vexatious complaints

3. SANCTIONS

3.1 Warnings

Prior to imposing an Immediate Sanction, where appropriate a Responsible Person may issue the following warnings to a Member at an Event:

- (a) First verbal warning
- (b) Second verbal warning
- (c) Written Warning

3.2 Immediate Sanctions

The following Immediate Sanctions may be imposed by a Responsible Person to a Member **at an Event**:

- (a) Time Out from the Event
- (b) Removal of Privileges at the Event
- (c) Suspension from the Event
- (d) Expulsion* from the Event

***Expulsion from an Event at a certain level shall automatically prevent the Respondent from participating in the next two Events at that level in which the Respondent is due to participate.**

3.3 Interlocutory Sanctions

3.3.1 On confirmation that a Respondent is under criminal investigation for a criminal offence, which if proven, is likely to bring the Club, Region or Swim Ireland into disrepute, then the Complaints and Disciplinary Committee shall be empowered to suspend a Respondent from membership and/or from future participation in a Club, Regional or National Event and/or from attending a Club, Regional or National building pending the outcome of a criminal investigation but without necessarily convening an oral hearing on the matter.

3.3.2 A Complaints and Disciplinary Committee (Club, Regional or National) shall be empowered to impose a suspension on a Respondent pending the determination of a Complaint where the gravity of the Complaint received shall warrant immediate suspension.

3.4 Non Immediate Sanctions

- 3.4.1 The Complaints and Disciplinary Committee (Club, Regional or National) has sole jurisdiction to impose a Non Immediate Sanction save where a fast track committee is convened under Clause 1.5 of the Procedures.
- 3.4.2 Non Immediate Sanctions may only be imposed by a Complaints and Disciplinary Committee following a decision either on foot of a consideration of all of the documents relating to the Complaint or on foot of an oral hearing.
- 3.4.3 Any suspension or removal from membership or affiliation from a Club must be notified to Swim Ireland for consideration in accordance with Article 27 of the Swim Ireland Memorandum and Articles of Association (or the relevant appropriate article if amended).
- 3.4.4 The following **Non Immediate Sanctions** may be imposed by a Complaints and Disciplinary Committee:
- (a) Apology
 - (b) Reprimand
 - (c) Severe Reprimand
 - (d) Written warning
 - (e) Removal of privileges
 - (f) Suspension from participation in:
 - a. Events
 - b. Team/squad
 - (g) Suspension from Membership/Affiliation
 - (h) Expulsion from membership
 - (i) Fine
 - (j) Suspension of a Licence to Practice
 - (k) Revocation of a Licence to Practice
 - (l) Other

4. MITIGATING AND AGGRAVATING FACTORS

- 4.1 A Complaints and Disciplinary Committee shall take into account mitigating and aggravating factors once a decision on culpability is reached but prior to the imposition of a sanction.
- 4.2 A Complaints and Disciplinary Committee shall take into account the following factors:
- (a) Age
 - (b) Cooperation
 - (c) Prior warnings
 - (d) Prior record
 - (e) Apology made
 - (f) Remorse
 - (g) Gravity of offence
 - (h) Effect on victim
 - (i) Effect of sanction on Respondent
 - (j) Any other factor deemed relevant

PART 2 – COMPLAINTS AND DISCIPLINARY PROCEDURES

INTRODUCTION

A Member of Swim Ireland may be the party bringing a Complaint or the party who is the subject of a Complaint relating to their behaviour at Club or Regional or National level.

The Procedures set out below are intended to provide a step by step guideline as to how a Complaint should be commenced, investigated and decided on and appealed for the benefit of any Complainant, Respondent or Complaints and Disciplinary Committee.

Before Formal Complaints procedures are instigated Members should consider whether the matter can be dealt with informally first. If the Informal Complaints procedures does not lead to a satisfactory conclusion then the Formal Complaints procedure shall be adopted.

Complaints relating to incidents at a certain level (Club, Regional, National) should be dealt with by the Complaints and Disciplinary Committee at that level.

The primary function of the Complaints and Disciplinary Committee (at the relevant level) is to process, investigate and decide Complaints and misconduct. They attempt to do so in a fair and swift manner. In so far as there may be minor technical breaches of these Procedures, Complainants and Respondents must recognise that laymen, who are volunteers from Club, Regional and National level may on occasion administer justice somewhat robustly and such breaches as such do not constitute cause for dismissal on appeal of a decision.

If either party is dissatisfied with the final outcome, then they may appeal the matter to the Swim Ireland Complaints and Disciplinary Committee (SICDC).

If either party is still dissatisfied then a challenge to the Complaints and Disciplinary Committee or Appeals Committee decisions may be brought to JSI Arbitration.

1. GENERAL

1.1. PROOF

The Complaints and Disciplinary Bodies shall make decisions on culpability based on the 'balance of probabilities' meaning the incident of misconduct or rule breach was more likely than not to have occurred.

1.2 CONFIDENTIALITY

Members of the Complaints and Disciplinary Bodies shall keep all information disclosed to them confidential and no disclosure of any detail shall be made to any third party unless in the administration of their disciplinary function. The administration of a disciplinary function may require the disclosure of certain offences and sanctions to be made to other persons at Club, Regional or National level but only where strictly required. The documents produced during any internal proceedings shall remain private unless required by Law.

1.3 MINORS

Any Member under the age of 18 shall be accompanied by his/her guardian or parent at any hearing.

Any Member under the age of 18 who is a Complainant or a Respondent is obliged to attend any hearing.

In all cases, but particularly where the subject of the Complaint is under 18, steps should be taken to ensure the fair treatment of both parties, and advice should be sought if necessary from the Club, Regional and National Children's Officer/CEO.

The Complaints and Disciplinary Bodies shall ensure a Children's Officer at the appropriate level is involved where the matter concerns an under 18 year old Member.

1.4 EXEMPTION FROM LIABILITY

Members of Complaints and Disciplinary Bodies may not be held personally liable for any deeds or omissions relating to any disciplinary procedure.

1.5 FAST TRACK HEARINGS

In exceptional and urgent circumstances, where it is not possible to convene a hearing before the National Complaints and Disciplinary Committee i.e. SICDC in the normal course prior to an Event, then where the parties agree, they may jointly apply to the CEO of Swim Ireland who shall arrange an expedited hearing and who shall have discretion to decide on the appropriate members and quorum for the expedited ad hoc SICDC.

1.6 COSTS/EXPENSES

Any costs or expenses incurred by a Member (or any of his/her witnesses, if relevant) in relation to any matter under the Procedures will be the sole responsibility of that Member. The Complaints and Disciplinary Bodies shall have no authority to make any award for costs.

There is a cost for each Club, Region and Swim Ireland in administering the Complaints and Disciplinary process. Accordingly Members when making a Complaint or an appeal will be subjected to an administration fee as set out below in this document. Where a Complainant is upheld or where an appeal is upheld, the administration fee will be reimbursed to the Complainant.

1.7 CRIMINAL CHARGES

The Complaints and Disciplinary Committee reserves the right to suspend a Member where that Member is subject to a criminal charge where that charge has the potential to bring the Club/Region or Swim Ireland into disrepute. Once the matter has been dealt with by the statutory authorities, the Complaints and Disciplinary Committee reserves the right to take further action in accordance with these procedures including referring the matter to the SICDC, or other Officer such as the National Children's Officer, as appropriate.

In the event of criminal charges being initiated in relation to the alleged misconduct of a Member the subject of the complaint received by the Club/Region, then the Member may be suspended pending the outcome of the said charges, which will be referred to the statutory authorities. Once the appropriate statutory authorities have dealt with the matter, even if the Member concerned is not eventually convicted of the charge, the Club/Region/Swim Ireland shall nevertheless have the right and power to review all circumstances in accordance with this procedure and decide to continue the suspension or expel the Member, if it deems it so necessary in the interests of the Club/Region or Swim Ireland as a whole.

1.8 POOR PRACTICE

It should be noted that allegations of breaching the Guidelines for Safeguarding Children are not necessarily suspected child abuse. A breach of the code of conduct can be due to poor practice which should be dealt with pursuant to these Procedures. If assistance is required in order to define what is abuse vis a vis poor practice the Club/Regional Children's Officers or the Swim Ireland National Children's Officer or CEO of Swim Ireland should be contacted for advices.

1.9 SUSPENSION PENDING HEARING

A Complaints and Disciplinary Committee (at all levels save regional) shall be empowered to impose a suspension on a Respondent pending the determination of a Complaint where the gravity of the Complaint received shall warrant immediate suspension.

1.10 NOTIFICATION TO SWIM IRELAND

Swim Ireland must be notified if a Member is suspended, stepped down from a position or expelled from a Club or Region at any stage during a process. Notification should be received in writing from the person or committee imposing the sanction stating the sanction imposed, the outcome and their authority in the process.

1.11 MEDIATION

Swim Ireland recognises Mediation as a method of dispute resolution however no formal Mediation procedure currently exists within the context of the Complaints and Disciplinary Rules and Procedures. Swim Ireland reserves the right to introduce a formal Mediation procedure in the future. If Mediation is introduced the time constraints as specified in the Rules and Procedures for initiating and completing the Complaints and Disciplinary process will be suspended pending completion of the Mediation.

While Swim Ireland is supportive in the informal resolution of complaints at Club and Regional level, Swim Ireland does not take any responsibility for the outcome of such informal procedures.

2. COMPLAINTS AND DISCIPLINARY BODIES (Club, Regional and National)

2.1 The following Bodies shall be responsible for imposing disciplinary sanctions:

- (a) Responsible Person
- (b) Club Complaints and Disciplinary Committee
- (c) Swim Ireland Complaints and Disciplinary Committee (SICDC)

Note: The current Swim Ireland Memorandum and Articles of Association preclude Regional Complaints and Disciplinary Committees from imposing Disciplinary sanctions on a Respondent but they can hear complaints. Where the Regional Complaints and Disciplinary Committees believe the findings warrant sanction then the matter should be referred to SICDC to impose such sanction.

2.2 RESPONSIBLE PERSON

- 2.2.1 Immediate Sanctions may only be imposed by Responsible Persons at an Event.
- 2.2.2 The imposition of an Immediate sanction need not be imposed in the order set out at Rule 3.2 of the Disciplinary Rules.
- 2.2.3 Responsible Persons shall specify the nature of the misconduct and the rule breached in writing prior to imposing an Immediate Sanction.
- 2.2.4 Responsible Persons shall, where a Respondent is under 18, notify the parents of the Respondent of the Immediate Sanction where such Immediate Sanction involves expulsion from an Event, and/or where a number of warnings and Immediate Sanctions have been imposed prior to the expulsion sanction.
- 2.2.5 Responsible Persons shall prepare a report for the Complaints and Disciplinary Committee within three days of the incident or as soon as possible thereafter only if (i) an Immediate Sanction has been imposed and (ii) where the Responsible Person deems it necessary that further sanction be imposed on a Respondent (without commenting on what that further sanction should be).
- 2.2.6 The report prepared by a Responsible Persons shall contain (a) details of the nature of the misconduct (b) the rule breached (c) Immediate Sanction imposed and (d) time, date and venue of the Event.
- 2.2.7 A Respondent may appeal the imposition of an Immediate Sanction which involves expulsion from an Event to the Complaints and Disciplinary Committee, such appeal to be heard as expeditiously as possible.

2.3 COMPLAINTS AND DISCIPLINARY COMMITTEE (Club and/or Regional)

Note: Prior to the adoption of these Rules, Complaints and Disciplinary Committees did not operate at Regional Level.

- 2.3.1 The Complaints and Disciplinary Committee, which shall consist of a minimum of 3 persons over the age of 18, shall be appointed in accordance with the Rules and/or Constitution of the Club/Region/Swim Ireland.
- 2.3.2 A Children's Officer may not sit on the Complaints and Disciplinary Committee.
- 2.3.3 A quorum of 3 Members shall be sufficient to convene a meeting/hearing of the Complaints and Disciplinary Committee.
- 2.3.4 The Complaints and Disciplinary Committee shall be empowered to delegate any particular function to one member of the Complaints and Disciplinary Committee, save and except for any decision making on culpability.
- 2.3.5 On appointment, the Complaints and Disciplinary Committee shall appoint a chairperson to chair any meetings or hearings.
- 2.3.6 No person appointed to the Complaints and Disciplinary Committee shall stand for more than four years.
- 2.3.7 Any member of the Complaints and Disciplinary Committee shall decline to participate in the consideration of certain complaints if there would be serious grounds to question his/her impartiality such as having a direct or indirect interest in the outcome of the proceedings.
- 2.3.8 The Complaints Committee shall act on a simple majority vote (+ 51%) in arriving at its decisions.
- 2.3.9 **Except in the case of a Region**, the Complaints and Disciplinary Committee shall have jurisdiction to impose any sanctions as set out in sections 3.2 and 3.3 of the Disciplinary Rules. In respect of a Region, the Regional Complaints Committee shall be authorised to convene a hearing but shall refer the sanctioning of a Respondent to SICDC.

2.4 SWIM IRELAND COMPLAINTS AND DISCIPLINARY COMMITTEE (SICDC)

- 2.4.1 The SICDC shall act as an appellate body to decisions of the Club or Regional Complaints and Disciplinary Committee decisions.
- 2.4.2 The SICDC shall act in the first instance for First Instance Matters.
- 2.4.3 The SICDC shall hear Complaints in the First Instance at Club Region level where an application has been made to Swim Ireland by any party and consent is given by the CEO of Swim Ireland to such an expedited hearing.
- 2.4.4 The SICDC shall be bound by clause 2.3 above.

3. COMMENCEMENT

3.1 Disciplinary

Disciplinary Action may be commenced in the following ways:

- 3.1.1 By a Responsible Person who imposes any "Immediate Sanction" against a Member.
- 3.1.2 On receipt of a written Complaint or a report from a Responsible Person, by the relevant Complaints and Disciplinary Committee.
- 3.1.3 By the Chair of the relevant Complaints and Disciplinary Committee on becoming aware of any alleged breach of rules or regulations or any act of misconduct.

3.2 Complaints

The Complaints procedure may be commenced when any party (which includes a Club Committee) makes a written Complaint against a Respondent.

- 3.2.1 The Complaint shall be delivered by email/fax/prepaid registered post to the relevant Complaints and Disciplinary Committee.
- 3.2.2 For a Complaint to be valid, the written Complaint shall be made within 14 days of the date of the alleged incident, save where exceptional circumstances are proven to the satisfaction of the relevant Complaints and Disciplinary Committee.

4. INFORMAL COMPLAINTS PROCEDURE

- 4.1 On receipt of a Complaint, (but not a disciplinary matter) by the Club or Regional Secretary or by Swim Ireland, the recipient where appropriate, shall approach both parties to ascertain the parties' agreement to deal with the Complaint under the informal procedure set out below.
- 4.2 In determining appropriateness in referring a Complaint to the Informal Complaints Procedure the recipient as specified above shall approach the Complainant to confirm if the Complainant is agreeable for the Complaint being dealt with in such a manner.
- 4.3 In the case of a Club or Region, the Secretary or Chair (in the case of Swim Ireland, the relevant staff member) shall appoint another Officer/Member to act as the informal neutral party, who does not sit on the Complaints and Disciplinary Committee.
- 4.4 The informal neutral third party may contact or meet the parties and generally go between the parties in an attempt to resolve the Complaint.
- 4.5 In the event that either of the parties to the Complaint is not agreeable to referring the Complaint to the Informal Complaint Procedure then the Complaints and Disciplinary Committee shall deal with the Complaint formally.
- 4.6 If either party is dissatisfied with the outcome of the Informal Complaints Procedure then they may proceed to the Formal Complaints Procedure.

5. FORMAL COMPLAINTS PROCEDURE

- 5.1** In the case of a formal Complaint made by a Complainant, the Complainant shall deliver a written Complaint together with an application fee of €50.00 to the relevant Complaints and Disciplinary Committee for there to be a valid Complaint. The Respondent, where possible, shall be issued with a copy of the formal Complaint by the Complainant.
- 5.2** Within 14 days of receipt of the written Complaint, the Complaints and Disciplinary Committee shall write to the Complainant (if any) and Respondent advising the parties of its appointment, the nature of the Complaint, clarification of any facts and copies of documentation, inviting the parties to make any further comment or adduce any further documentation and to seeking any further details as the Complaints and Disciplinary Committee may deem necessary. The Complaints and Disciplinary Committee shall have discretion to extend the deadline where they deem it appropriate.
- 5.3** If, partway through an investigation, it appears that the matter may involve suspected child abuse the investigation must immediately be referred to the appropriate statutory authority. If the matter is not clear, advice must be sought from the Club Children's Officers, National Children's Officer, CEO or the Statutory Authorities.
- 5.4** The Complaints and Disciplinary Committee shall decide either to convene an oral hearing or to decide the matter on a "documents only" basis. In considering the above the Complaints and Disciplinary Committee shall have regard to the gravity of the Complaint amongst other matters.
- 5.5** If the Complaints and Disciplinary Committee elects to convene an oral hearing it shall notify the parties of:
- (i) The specific Complaint
 - (ii) The relevant rule and offence alleged
 - (iii) The parties to the Complaint
 - (iv) The time, date and venue of the hearing
 - (v) The procedures involved
 - (vi) The possible sanctions
 - (vii) The rights of the parties
 - (viii) Any other procedural requirements
- 5.6** The Complaints and Disciplinary Committee, in its discretion, may invite other persons (including but not limited to witnesses, officials or experts) to provide evidence or assistance to the Committee in any form.
- 5.7** The Complaints and Disciplinary Committee shall conduct the hearing of any matter in any manner which it deems appropriate.
- 5.8** The parties to the Complaint are entitled at an oral hearing to:
- (i) Be accompanied at the oral hearing if one is convened, by either a Member of Swim Ireland or a close family member or someone in loco parentis such as an unrelated guardian or custodian.
 - (ii) Call witnesses. Such witnesses may only be present to give their evidence and which witnesses may be questioned by the Complaints and Disciplinary Committee.
 - (iii) Make submissions in writing or otherwise.
- 5.9** The Complaints and Disciplinary Committee shall conduct the hearing in any matter that it deems necessary. The Complaints and Disciplinary Committee shall not be bound by formal rules of Court.
- 5.10** The nature of the hearing shall be inquisitorial rather than adversarial. In this regard the Complaints and Disciplinary Committee may question any party or witness.
- 5.11** In the event of the non-attendance, without reasonable cause (considered by the Committee to be justifiable reason for non-attendance), of a Complainant at a hearing, the complaint against the Respondent shall be taken no further. In the event of non-attendance, without reasonable cause, of a Respondent at a hearing, the Complaints and Disciplinary Committee will be entitled to base its decision on the information and evidence it has received.
- 5.12** The Complaints and Disciplinary Committee may adjourn or rearrange the hearing at its discretion. An adjourned or rearranged hearing shall take place as soon as is practicable, and the suspension of the Member, if already imposed, shall be automatically extended until the rearranged hearing takes place.
- 5.13** The Complaints and Disciplinary Committee will determine whether or not the Complaint is substantiated. If a Complaint is substantiated, the Complaints and Disciplinary Committee (excepting

the Regional Complaints and Disciplinary Committee) in its discretion will determine whether any sanctions as set out in Clauses 3.2 and 3.3 of the Disciplinary Rules shall be imposed on a Member.

- 5.14 The decision of the Complaints and Disciplinary Committee shall be made and notified in writing to the relevant parties within 3 days of the Complaints Committee of the decision, unless the Complaints and Disciplinary Committee deems an extension of time necessary.
- 5.15 The written decision shall be in a format as set out in the appendices. The decision shall include reference to the parties' right to appeal the decision to the Swim Ireland Complaints and Disciplinary Committee (SICDC) or JSI as appropriate within 7 days of the date of the decision.
- 5.16 Pending the appeal the original sanction imposed by the Complaints and Disciplinary Committee shall stand.

6. COMPLAINT TAKEN BY OR AGAINST THE CLUB COMMITTEE (OR BY MEMBER OF THE COMMITTEE AGAINST A MEMBER OF THE CLUB).

- 6.1 A Club Committee Member or the Club Committee as a whole may make a complaint against a Club Member or vice versa.
- 6.2 Where a Club Committee Member makes the Complaint or where the Complaint is made against a Club Committee Member, the Club Complaints and Disciplinary Committee must be appointed without inclusion of that Club Committee Member.
- 6.3 Where a Complaint is made by a Club Member against a Club Committee or visa versa, then jurisdiction should be declined by the Club to determine the Complaint and a reference should be made to SICDC to hear the matter in the First Instance.

7. APPEALS

- 7.1 A decision of the Club/Regional Complaints and Disciplinary Committee may be appealed to SICDC.
- 7.2 The appeal shall be a fresh hearing as if the first hearing before the Complaints and Disciplinary Committee did not take place.
- 7.3 The appellant shall deliver a written notification to appeal to the SICDC committee of Swim Ireland within 7 days of receipt of the Complaints and Disciplinary Committee's written decision specifying (a) date of decision (b) the grounds of appeal and (c) copy of relevant documentation together with an Appeal fee of €100.00.
- 7.4 The procedures as set out in Clause 5 shall apply to Appeal hearings.
- 7.5 A copy of the Notice of Appeal shall be sent by registered post to the CEO of Swim Ireland and the relevant Complaints and Disciplinary Committee and Complainant/Respondent to any appeal.

8. JSI ARBITRATION

- 8.1 In the event of any dispute of difference between any Member, Club, Region or Swim Ireland, its Affiliate or Associate members with any other Member, Club, Region or Swim Ireland, its Affiliate or Associate members, as to the legality of any decision made or procedure used by any Complaints and Disciplinary Committee or SICDC in pursuance of the Rules of Swim Ireland, such dispute may be referred by either party to JSI for arbitration in accordance with the Just Sport Ireland Arbitration Rules (as amended from time to time).
- 8.2 No Member, Club, Region or Swim Ireland, its Affiliate or Associate member may issue Court proceedings relating to such dispute in any Court in any jurisdiction.
- 8.3 No Member, Club, Region or Swim Ireland, its Affiliate or Associate members shall refer a dispute for JSI Arbitration until all available avenues of resolution or appeal under the Swim Ireland Rules have been exhausted.
- 8.4 JSI Arbitration shall be conducted in accordance with the JSI Arbitration rules and procedures and in accordance with the Arbitration Acts 1954-1998 or any statutory modification or re-enactment thereof.
- 8.5 A Notice to arbitrate under JSI Arbitration must be made within 7 days of the date of the last decision by the Complaints and Disciplinary Bodies within Swim Ireland. The CEO of Swim Ireland will be a Notice Party to any Notice to arbitrate.

Appendices

Template Complaints Committee Decision Appendix 1

Disciplinary Administration FAQs Appendix 2

IN THE MATTER OF A SWIM IRELAND COMPLAINT

BETWEEN:

[NAME OF COMPLAINANT]

Complainant

-and-

[NAME OF RESPONDENT]

Respondent

DECISION

A Complaint having been made by [name of Complainant] against [name of Respondent] in respect of an alleged [details of offence] alleged to have occurred at [place] on [date] in breach of rule [specify rule].

The matter having been considered by the Complaints and Disciplinary Committee [on a documents only basis] OR [at an oral hearing] on (specify time date and venue) – DELETE WHERE APPROPRIATE.

On assessment of the evidence before, the Complaints & Disciplinary Committee preferred the evidence of the [Complainant]/[Respondent] - DELETE WHERE APPROPRIATE that the alleged offence as per rule [specify rule for offence] [was]/[was not] - DELETE WHERE APPROPRIATE committed by the Respondent in breach of rule [specify rule].

Having taken into account all aggravating and mitigating circumstances, the Complaints and Disciplinary Committee **HEREBY DETERMINES** by [majority]/[unanimously]] - DELETE WHERE APPROPRIATE [to impose a sanction]/[not to impose a sanction] - DELETE WHERE APPROPRIATE on the Respondent.

Specifically the Complaints Committee imposes the following sanctions:

[Insert (i) sanction and (ii) specific Rule which empowers the Committee to impose sanction].

The Respondent is advised of his/her right of appeal to [name of appeals body] within 14 days from the date of this Decision.

Dated [insert date]

Signed

[by quorum of members of the Complaints Committee present at the hearing – minimum 3]

SWIM IRELAND DISCIPLINARY ADMINISTRATION GUIDE

FAQs

The aim of the document is to provide a user friendly step by step guideline for committees to ensure that basic administrative errors are minimised.

Contents:

1. Commencement of Disciplinary Proceedings
2. Pre Hearing
3. Adjournments
4. Proof
5. Hearing
6. Decision
7. Appeal
8. Top 10 Checklist for Hearings

1. COMMENCEMENT OF DISCIPLINARY PROCEEDINGS

- 1.1 How must disciplinary proceedings begin?**
Upon receipt of a written complaint.
- 1.2 Who should record the Complaint?**
The Complainant, the Responsible Person or the Chair of the Complaints and Disciplinary Committee.
- 1.3 What happens if the misconduct takes place outside of an event?**
The rules contemplate misconduct before and after and outside an event.
- 1.4 What should be recorded in the Complaint?**
(i) who committed the act
(ii) the nature of the act
(iii) the time and date of the incident
(iv) what immediate sanction was imposed, if any and
(v) the specific rule allegedly breached.
- 1.5 How quickly should the disciplinary hearings take place after the incident?**
The Complaints and Disciplinary Committee have 14 days to write to the Complainant and Respondent to advise of its appointment and the next steps in the process.

2. PRE HEARING

- 2.1 Does there have to be an oral hearing?**
No. The Complaints and Disciplinary Committee may decide to arrive at its decision based on the documents before them. However, the more serious a complaint is, the greater the need for an oral hearing. If a party requests an oral hearing then an oral hearing should be granted.
- 2.2. Is there a prosecutor who prosecutes the case?**
No. The Committee is entitled to ask the Complainant and Respondent any questions it deems necessary. It is inquisitorial rather than adversarial.
- 2.3 Can I sit on the committee if I have an interest in the outcome?**
No. Otherwise the decision could be challenged on the basis that you were not impartial. A Complainant cannot sit on a committee.
- 2.4 If we decide to review the complaint on a 'documents only' basis or an oral hearing basis, do we have to notify the Complainant and Respondent?**
Yes the Complainant and Respondent should be notified when you write to them initially.
- 2.5 Do we have to give adequate notice of the hearing, if oral/documents only?**
Yes. The right to adequate notice of a hearing is one of the key rules of Natural Justice.
- 2.6 How much notice should be given?**
To be received in good time before the hearing – usually 7 days is adequate

2.7 What information should be included in the notice?

A specific Form of Notice should be used. The details include:

- Name and address of the party
- Time, date, and venue of the incident
- Alleged offence
- Reference to rule allegedly broken
- Advise the party must attend and the consequences of not attending (e.g. decision in his/her absence)
- Advise of right to be represented (not legally)
- Advise of right to call witnesses to give evidence against member
- Advise of right to call witnesses - notify in advance
- Advise of time date and venue for hearing
- Advise of nature of the hearing – inquisitorial as opposed to adversarial

2.8 Is the Respondent entitled to see the Complaint before the hearing?

Yes.

3. ADJOURNMENTS

3.1 Do we have to entertain applications for adjournments?

A failure to give an adjournment when justified is a breach of the rules of Natural Justice and could be a ground for challenge of any decision made.

3.2 Even if the application for adjournment is very inconvenient to the committee?

No matter how inconvenient, committees may have to adjourn prior to a hearing on application by a party, if justified.

3.3 When should we grant/refuse a request for an adjournment?

Much will depend on the grounds offered as the reason necessitating an adjournment. As a rule of thumb, generally one adjournment should be allowed, if justified.

3.4 What if the member makes more than one application for an adjournment?

Repeat applications can be treated unsympathetically.

3.5 What if the adjournment is sought because the party's representative is unavailable?

Applications on grounds a representative is not available is insufficient unless they are minors (under 18).

3.6 What is the rule of thumb regarding adjournments?

Refusal of an adjournment by a committee will be challenged where shown to be unreasonable.

4. PROOF

4.1 Where does the burden of proof lie in a hearing?

On the Complainant.

4.2 What is the standard of proof – similar to a criminal court or a civil Court?

Somewhere in between - "more likely than not to have occurred".

4.3 Must the strict rules of evidence and procedure in the courtroom be mirrored in the hearing?

The strict rules of evidence applicable to a Court room do not apply to a hearing.

4.4 Should our rules be flexible on rules of evidence?

Discretion should be left with the Committee how they want to run its hearing.

5. HEARING

5.1 Does a member have a right to have a representative present at the hearing?

A member does not have a right to legal representation but is entitled to have a representative to attend.

5.2 What is the order that the proceedings should follow?

Order of proceedings is usually:

- (i) Chair ensures that all documents relied on be circulated to Committee members prior to hearing.
- (ii) Chair should advise Committee members of their right at any stage of hearing to ask Complainant or Respondent or witness any questions.
- (iii) Complainant and Respondent are called in together and thanked for attending – Chair should lay down how the hearing will be conducted.
- (iv) Chair explains why parties are here.
- (v) Chair asks Complainant to present complaint and any supporting documents or witnesses.
- (vi) Chair must ensure that witnesses are outside until called to give evidence. Chair ensures that witnesses leave room after evidence.
- (vii) At end of evidence, Chair asks Respondent if he/she has any questions for the Complainant (through the Chair).
- (viii) Chair then calls on Respondent to give his/her response and present any evidence in defence.
- (ix) Chair then asks parties if they have anything further to add.
- (x) Chair should then check records re Respondent if any record of misconduct in presence of Respondent
- (xi) Chair then advises parties that Committee will decide on matter and will send its decision in writing.
- (xii) Chair and Committee then deliberate on evidence and make decision in privacy without the parties present.
- (xiii) Chair ensures that decision is in writing per template (see Appendix 1) and sent to both parties.

5.3 Does the Committee have the right to deviate from the order of proceedings?

Committee members should not deviate from this format.

5.4 Are the witnesses allowed to stay in the room from the start to the finish of the hearing in the same room where the hearing is being conducted?

Witnesses should be excluded from the hearing until their turn comes to give evidence and should exit after their evidence is given.

5.5 Is the Complainant allowed to state what they think should be the sanction?

No because this can be perceived as attempting to influence the Committee.

5.6 Is the Committee precluded from disciplining a party where the cause of delay is the Committee's?

Yes, if the committee delays the hearing or decision then the decision could be successfully challenged.

5.7 Is there a general rule of thumb in conducting a hearing?

Justice must not only be done but be seen to be done.

6. DECISION

6.1 What factors should be taken into account when deciding on a sanction against a party?

When it comes to imposing a sanction the following ought to be taken into account:

- a. past record
- b. gravity of the offence
- c. the member's conduct at the hearing
- d. the effect of the penalty on the party.

6.2 What about mitigating factors – should these be taken into account?

A plea in mitigation must also be taken into account, if a party accepts the misconduct occurred.

6.3 Can we impose a severe penalty on a party for minor offence to show example to others?

The penalty must be proportionate to the offence.

6.4 Should the decision also deal with the costs and expenses of the disciplinary hearing?

The Committee has no jurisdiction to impose an Order for costs on a party.

6.5 Should there be a written decision of the committee and should it include reasons?

Yes it should be in writing. See template at Appendix 1.

6.6 What should the written decision contain?

Generally a brief statement of facts and a brief statement of considerations that led the committee to arrive at the decision that it did is sufficient and that it took into account aggravating and or mitigating circumstances.

6.7 Should our notification of the decision be in writing?

Yes.

7. APPEAL

7.1 Is there an automatic right of appeal?

Yes.

7.2 Can a party appeal any time it wishes?

The appeal must be made within the time limits set out in the rules.

7.3 Can an appeal be ruled out of order if it is not made according to rule?

Yes.

7.4 What if an appeal is received outside the time limit as set out in the rules?

Discretion should be allowed for late appeals. However if no good reason is given the appeal may be excluded.

7.5 Are persons who sat on the Complaints Committee allowed to sit on the Appeals Committee?

Not under any circumstances.

7.6 Should we allow a totally fresh re-hearing of the evidence and facts?

Yes.

7.7 Within what time frame after the notice of appeal does the Appeals Committee have to hear the appeal?

There is an obligation to arrange an appeal hearing as soon as is practicable. Any delay in the hearing which may prejudice the appellant may be successfully challenged before JSI.

7.8 How should the decision of the Appeals Committee be notified to the member?

The Appellant and the Complaints Committee should be notified in writing, electronic or otherwise.

8. TOP 10 CHECKLIST FOR HEARINGS

1. Ensure that disciplinary proceedings are commenced on foot of a written complaint.
2. Ensure that if a party seeks an oral hearing, that they be granted a hearing.
3. If an oral hearing, then give adequate notice of the hearing and all associated rights are given to the party.
4. Ensure that the Respondent receives a copy of the Complaint and is asked for a response.
5. Ensure the hearing takes place without delay.
6. Ask yourself if there could be any perception of bias before sitting on that committee?
7. Explain the process at the start of the hearing – prepare an agenda of steps in the hearing.
8. Afford the party its rights as set out in the notification of the hearing.
9. Use the correct version of the Rulebook and never make a decision outside what the rule allows.
10. Ensure that the party is notified of the decision in writing promptly.