

# Swim England Disciplinary Officer

## Role, Investigations and Charging

### Introduction

Under Swim England's Judicial Regulations, Swim England shall have a Disciplinary Officer. The role of the Disciplinary Officer is to represent Swim England in judicial hearings to which it is a party. This may be the case, for example, where Swim England has raised a Judicial Complaint against an individual following receipt of a safeguarding concern.

In addition, the Disciplinary Officer shall receive concerns in respect of conduct that does not pose a safeguarding risk. The Disciplinary Officer may, at their discretion, investigate a serious concern that has been raised with them and, following such an investigation, decide whether Swim England should bring a Judicial Complaint against the individuals concerned.

This document shall detail the process by which the Disciplinary Officer shall review any concern raised to them and the criteria which will be applied in making such a decision to investigate or bring a Judicial Complaint.

Please note that a decision by the Disciplinary Officer not to investigate or make a complaint on behalf of Swim England does not prevent you from raising your concerns as a Judicial Complaint separately.

### General principles

Swim England has the power to investigate, conduct judicial hearings and impose sanctions upon any participant in Swim England activities, including but not limited to any Swim England member, any affiliated body, any member of an affiliated body, or any other person or body bound by Swim England Regulations at the time of the conduct giving rise to the sanctions.

The overriding objective of the Disciplinary Officer is to protect the reputation of, and uphold a high standard of conduct within, the aquatics sports. They do so in order to maintain and promote fair play, protect the health and welfare of all involved in the game, and ensure breaches of rules or regulations are dealt with fairly and expeditiously.

It is not the function of the Disciplinary Officer to determine whether any individual or body is guilty of serious misconduct or breaching any rule or regulation. Instead, it is their role to assess whether it is appropriate to issue charges that will result in a hearing before an independent Judicial Committee. Only a Judicial Committee can make a determination as to whether such has occurred and issue sanctions as a result.

Similarly, a decision by the Disciplinary Officer not to investigate or make a Judicial Complaint should not be considered as the Disciplinary Officer stating that no offence has taken place.

If any concern is subject to ongoing police investigation, criminal proceedings, or a Swim England safeguarding investigation, due to the risk of prejudicing those processes, it may not be possible for the Disciplinary Officer to investigate or file a complaint until they are complete.

Where this is the case, the Disciplinary Officer shall place the matter on hold, with all timeframes paused accordingly, until the processes are complete.

## Raising a concern

You may raise a concern by emailing the Disciplinary Officer at [discipline@swimming.org](mailto:discipline@swimming.org). Your email should detail your concerns, including details of the individuals involved, what happened, key dates, supporting evidence and why you consider that the conduct in question amounts to serious misconduct.

We will usually respond within two working days to confirm receipt of your concern and will seek to inform you whether the matter reaches the threshold for investigation within 10 working days, however, the Disciplinary Officer may require more time for complex cases or where further information is required.

Where the Disciplinary Officer determines that an investigation is necessary, you will be informed of the decision and the process for such.

Where the Disciplinary Officer determines that an investigation is not necessary, you will be informed of the decision and the other avenues open to you, such as making a Judicial Complaint. If the matter is to be referred instead to the Swim England Safeguarding Team, we will let you know.

## Thresholds

The Disciplinary Officer shall usually investigate a concern raised to them where: (i) the concern demonstrates a good reason to believe that an individual has committed serious misconduct, and (ii) that it is in the best interests of the sport to investigate such. The individual in question must be within Swim England's jurisdiction and eligible to be the subject of a Judicial Complaint.

Following investigation of a concern raised to them, the Disciplinary Officer shall usually file a Judicial Complaint on Swim England's behalf against an individual where: (i) they are satisfied that there is sufficient evidence that there is a realistic chance of a Judicial Complaint of serious misconduct being proved, and (ii) that it is in the best interests of the sport for Swim England to bring the Judicial Complaint.

A decision by the Disciplinary Officer to investigate a concern or bring a complaint in respect of such (or to not do so) will be provided to you in writing, including the reasons for the decision. The decision is not subject to appeal, however, a decision by the Disciplinary Officer not to investigate or make a complaint on behalf of Swim England does not prevent you from raising your concerns as a Judicial Complaint separately and the Disciplinary Officer shall signpost you to our Office of Judicial Administration if you wish to make such a complaint.

In addition to concerns raised by members, the Disciplinary Officer may also file Judicial Complaints on behalf of the Swim England Safeguarding Team in respect of breaches of Swim England's Regulations or Code of Ethics identified within a safeguarding investigation. The decision to file such complaints shall be made on the same criteria as above.

## Serious Misconduct

In order to ensure that resources are most effectively allocated and that the most serious cases receive the appropriate focus, the Disciplinary Officer shall consider cases alleging serious misconduct.

Serious misconduct is an action, behaviour or practice of misconduct liable to bring the sport into disrepute. It may also include a failure to do something, for example failure to take action to protect an individual. These are cases which, if proved, would likely result in a suspension from Swim England activity.

While we cannot provide a comprehensive list of every example of serious misconduct, some examples of what serious misconduct is and is not are detailed below.

Serious misconduct	Not serious misconduct
Abuse of a position of power.	A coach refusing to promote a swimmer up a lane.
Abuse of officials.	Breaches of Swim England regulation with no material impact.
Retaliation against someone for raising a concern.	A genuine mistake.
Failure to comply with a Swim England investigation.	Poor performance in a committee role.
Attempts to conceal breaches of Swim England Regulations.	Disparaging remarks.
Discrimination.	
Intentional breaches of Swim England Regulations with a major impact on a member or club.	
Online harassment campaigns.	
Assault inflicting injury.	

Some of these examples may amount to safeguarding concerns or a criminal offence in addition to serious misconduct. Where this is the case, the matter will initially be referred to the Swim England Safeguarding Team, police or other authority as appropriate.

### **Evidence Requirements**

The Disciplinary Officer shall be satisfied that there is a good reason to believe that an individual has committed serious misconduct before investigating the conduct. This requirement will usually be met where the initial evidence submitted supports the concern and no evidence exists to disprove such. Suspicion that serious misconduct has been committed, without any evidence to support such a claim, is not sufficient.

When taking a decision to make a Judicial Complaint, the Disciplinary Officer shall consider the evidence collected as part of an investigation. A charge may be brought (subject to it being in the best interests of the sport), where they are satisfied that there is sufficient evidence that there is a realistic chance of a charge of serious misconduct being upheld by a Judicial Committee on the balance of probabilities.

A realistic chance of success will reflect a genuine possibility that the complaint will be upheld, and not a remote or fanciful one.

In determining whether this evidentiary requirement has been met, the Disciplinary Officer shall consider all evidence available to them, considering its admissibility, reliability and

credibility. This will include considering whether key witnesses are willing to attend a hearing as a witness to help prove the alleged conduct. They will consider any possible defence or information which may be put forward by the individual in question, along with any other relevant factors.

### **Best Interests of the Sport**

Where the evidential requirements for serious misconduct have been met, the Disciplinary Officer will consider whether it is in the best interests of the sport for Swim England to proceed with an investigation or complaint. Whether proceeding is in the best interests of the sport may change as a result of the findings of any investigation.

The Disciplinary Officer shall consider a number of factors when determining whether proceeding is in the best interests of the sport, including but not limited to:

- The seriousness of the offence
- Culpability of the individual - for example, the level of involvement, intent, or premeditation
- The role of the individual within a club
- Any prior disciplinary record of the individual
- The harm or risk of harm caused to any individual, club or the sports
- The age and personal circumstances of those involved
- The impact on the reputation of the sports, any club, or Swim England
- Time since the breach occurred - usually a Judicial Complaint must be brought within 56 days, though this period is paused during any investigation by Swim England
- Swim England's available resources
- Swim England's strategy, culture, values and goals

### **Judicial Complaints process**

If a decision to make a Judicial Complaint is made, the Disciplinary Officer shall file such with the Swim England Office of Judicial Administration. The Judicial Complaint shall include a charge sheet listing the details of the complaint and the sanction(s) sought by Swim England. An individual subject to such a complaint will be given the option of denying the charge or accepting it and the proposed sanctions. In the event of the latter, the case will be at a close and the sanctions shall apply.

If the charge is not accepted, the Judicial Complaint shall proceed in line with our Judicial Regulations, contained in the Swim England Handbook. The Disciplinary Officer shall ensure that the individual is given any relevant guidance documents published in respect of the Judicial Regulations from time to time.

### **Assistance**

Anyone raising a concern with the Disciplinary Officer will be expected to comply in all reasonable respects with a request from the Disciplinary Officer. This may include, but not be

limited to, requests for documentation and clarification and attendance at a Judicial Complaint hearing as a witness. Individuals raising concerns are expected to disclose any evidence that undermines, as well as supports, their allegations.

Failure to comply with requests by the Disciplinary Officer may result in the Disciplinary Officer bringing an investigation to a close or withdrawing a Judicial Complaint.

## Persistent, Repeat and Vexatious Concerns

It is possible that an individual may raise a concern already raised by another and considered by the Disciplinary Officer (a “repeat concern”). Where such a concern contains no new evidence, the previous decision will stand and shall be communicated to the individual raising the repeat concern. If new evidence is raised, the Disciplinary Officer shall reconsider whether the thresholds for investigation and filing a complaint are now met.

A concern will be deemed persistent if it is substantially the same as a previous concern raised by the same individual, with no new allegations or evidence. In such a case, the previous decision shall stand and communication on the matter brought to a close.

If an individual raises a concern which is intended to cause annoyance or nuisance, or otherwise intended as an abuse of process, the concern will be considered vexatious. In such cases, the case will be closed and the individual raising the vexatious concern informed of such.