

Swim England Judicial

Guidelines on imposition of sanctions

Introduction

This document will provide an outline of the approach that Swim England's Judicial and Appeal Committees will adopt when considering the imposition of sanctions through the Judicial Regulations. Sanctions will only be imposed following a hearing, whether in person or on paper.

Due to the wide range of circumstances that may cause a Judicial Complaint to be made, we cannot define a specific sanction to be imposed for each individual case. However, the Judicial and Appeal Committees will follow the principles outlined below in determining what sanctions should be imposed.

Please note that this document does not apply to sanctions imposed in relation to a Complaint regarding conduct during a water polo match. Information on sanctions for such may be found within the sanctions guidelines for water polo complaints.

These sanctions guidelines must be read in conjunction with the Swim England Regulations and any capitalised words would adopt the definition included therein. To the extent there is any discrepancy between these guidelines and Swim England's Regulations, the Swim England Regulations shall apply.

These sanctions guidelines may be updated from time to time, however, the parties to a Judicial Complaint will be provided an up-to-date copy by the Office of Judicial Administration. The current version will always be accessible directly from www.swimming.org.

Powers

Under Swim England's Judicial Regulations, a Judicial or Appeal Committee has powers to impose the following sanctions:

1. a reprimand;
2. a requirement to complete training or mentoring;
3. any requirement in respect of a specific Club, or Clubs in general, with the exception of any requirement to amend a Club's constitution;
4. any requirement in respect of a specific location, or locations in general;
5. any requirement in respect of a specific person, or classes of person in general;
6. any requirement in respect of the aquatics sports, or an aspect of the aquatics sports;
7. a fine;

8. a fixed term suspension from any or all activity within the decision maker's jurisdiction;
9. permanent exclusion from a Club;
10. permanent exclusion from any or all activity within Swim England's jurisdiction; and
11. an order to pay some or all of the costs of the proceedings.

Sanctions may be applied alone or in combination with each other.

Principles

Any sanction imposed must be no more than is necessary to achieve its purpose. It must comply with the overriding objective that it should be fair, balanced and proportionate. While each case is different, sanctions imposed should also be consistent with those imposed in previous determinations within the Swim England judicial process, so far as is possible.

Considerations

When determining the imposition of sanctions, the Judicial or Appeal Committee will consider a number of factors, including but not limited to:

1. the nature of the behaviour;
2. the harm or distress caused to the Complainant(s);
3. the position of the Respondent within the organisation or Swim England and how long they have been in the position;
4. any position held by the Complainant within the organisation or Swim England;
5. the ages of the individuals involved;
6. the content of the dispute, including any previous issues between the parties or with the behaviour of the individual being sanctioned;
7. the Respondent's response to the Complaint;
8. the Respondent's previous record whilst a member of the Club;
9. assistance by the Respondent with the disciplinary process following notification of the Complaint;
10. each party's willingness to engage in the disciplinary process, including adherence to time periods set for the provision of information (if requested);
11. whether the incident giving rise to the Complaint was witnessed by other Club members and the account of those members if applicable;
12. any representations made by either of the parties regarding the imposition of sanctions; and
13. the outcomes of any previous cases, since the publication of the sanctions guidelines, with a similar factual basis.

Aggravating and mitigating factors may affect the level of sanction imposed. These may include, but not be limited to:

Aggravating (more serious)	Mitigating (less serious)
Failure to comply with the Club Complaint process, where appropriate.	Lack of a previous disciplinary record.
Any attempt to conceal the conduct in question.	Admission at the earliest opportunity (where the facts could be disputed).
Premeditation.	Genuine remorse.
The public nature of any conduct (e.g. at a gala in front of a crowd of spectators).	Inexperience of the Respondent at the time of the conduct.
Failure to comply with actions agreed to be undertaken at mediation.	Where there has been an apology.
Where the conduct is the result of an inappropriate culture at the Club fostered by the individual.	Where steps have proactively been taken to prevent repetition of the conduct in the future.
Where the Respondent has previously been sanctioned by Swim England.	The personal circumstances of the Respondent (including any medical/health issues).
Non-compliance with the Swim England Judicial Regulations.	

Specific sanctions

While Judicial and Appeal Committees have discretion to apply the sanctions that they consider necessary, based upon the above criteria, certain specific sanctions are more likely to be applied in certain situations.

In any case, any aggravating or mitigating factors may result in a sanction more or less severe than that listed below.

Review of Rules

Where the Judicial or Appeal Committee has concerns regarding the rules of a Club, it may require that the Club resubmits its constitution or rules to the Region for approval, or resubmits its Club Affiliation or SwimMark Application.

Suspension from a Committee Role

In the following circumstances a Judicial or Appeal Committee may consider it appropriate to impose a suspension from holding a Club committee role:

1. where there has been an abuse of position;
2. a failure to follow the Swim England Judicial Regulations as they relate to Clubs;
3. conduct which brings their Club into disrepute; or
4. a breach of the Swim England Regulations whilst in office as a committee member.

The length of any such suspension will be influenced by any aggravating and mitigating factors that the Judicial or Appeal Committee considers to apply.

Suspension from Swim England

In the following circumstances a Judicial or Appeal Committee may consider it appropriate to impose a suspension from any or all Swim England activity for:

1. serious misconduct;
2. violence;
3. any incidents involving discrimination; or
4. non-compliance with previously imposed sanctions.

The length of any such suspension may be influenced by any aggravating and mitigating factors that the Judicial or Appeal Committee considers to apply.

Costs

A Judicial or Appeal Committee has the power to order that some or all of the costs of a hearing be paid by either party to the Judicial Complaint. Usually each party will bear responsibility for their own costs, however a Judicial or Appeal Committee will be more likely to make an order for reasonably-incurred costs to be paid in the following circumstances:

1. where there has been a lack of reasonable attempts to resolve the matter informally or through mediation;
2. a failure to comply, or late compliance, with directions issued by the Judicial Commissioner and/or the Judicial or Appeal Committee;
3. non-compliance with other aspects of the judicial process; or
4. non-compliance with a previously agreed resolution.

Any award of costs should be limited to costs of accommodation, travel and sustenance. Costs shall not be awarded for legal or other professional fees.

Fines

While Judicial and Appeal Committees have the power to fine a party to a Judicial Complaint, Judicial and Appeal Committees shall bear in mind that fines imposed upon a club harm the interests of the swimmers within that club.

A Judicial or Appeal Committee will be more likely to make an order for a fine to be paid in the following circumstances:

1. a failure to comply, or late compliance, with directions issued by the Judicial Commissioner and/or the Judicial or Appeal Committee;
2. non-compliance with other aspects of the judicial process; or
3. non-compliance with a previously agreed resolution.

The total amount of any fine shall be proportionate and reflect the cost (or a fraction of the cost) incurred by Swim England in hosting the hearing.

Enforcement

Any sanction requiring that an individual or Club completes a condition shall include a deadline by which they must comply. Such a sanction may also include an 'unless' order, which directs that a specified further sanction will automatically be issued should the initial sanction not be complied with by the deadline.

Compliance with sanctions must be evidenced to the Office of Judicial Administration by the specified deadline. Upon receipt, the Office of Judicial Administration will provide such evidence to the chair of the Judicial or Appeal Committee (or another member of the Committee in their absence) responsible for issuing the sanction, for confirmation that the condition has been met. If an 'unless' order is in place and compliance is not evidenced by the individual to which it applies within the specified deadline, the specified further sanction will automatically be issued.

Where it is alleged that any further sanction, or a sanction not subject to an 'unless' order, has not been or is not being complied with, the matter shall be referred to a Judicial or Appeal Committee for consideration. The individual alleged to have breached the sanction shall be invited to provide written representations on such. Upon considering the matter, the Committee may issue further sanctions as a result of non-compliance, including but not limited to suspension from Swim England for a specified period.

Communication of outcome

Following a hearing, all parties to the Judicial Complaint shall receive a written copy of the decision which will detail any sanctions imposed, and the reasons for such. The reasons shall include an outline of any relevant aggravating or mitigating factors that the Judicial or Appeal Committee applied in determining the sanction.