

Swim England Safeguarding Hearings

Guidance Note

Swim England has updated its Judicial and Safeguarding Regulations and procedures, effective from 3 September 2024, in order to ensure that individuals involved in aquatics who are the subject of a safeguarding concern receive a fair investigation and hearing, guaranteeing their right to respond to any allegations.

This guidance note will provide Swim England members with an outline of the new Judicial and Safeguarding Regulations as they relate to safeguarding hearings, following a concern being raised. It is intended to support, and should be read in conjunction with, the Swim England Judicial and Safeguarding Regulations. It does not form a part of the Judicial and Safeguarding Regulations and is not binding upon individuals. Capitalised terms within this guidance note hold the same definition as they do within the Swim England Regulations.

The Swim England Judicial and Safeguarding Regulations are contained within the Swim England Handbook at Regulations 101 – 120. A digital copy of the Handbook is available at <https://www.swimming.org/swimengland/swim-england-handbook/>.

This guidance note relates to safeguarding hearings only. Swim England has produced an additional document outlining our approach to safeguarding investigations, which is available on our website.

To the extent there is any discrepancy between this guidance note and Swim England's Regulations, the Swim England Regulations shall apply.

This guidance may be updated from time to time, however, subjects of a safeguarding concern will be provided an up-to-date copy of this guidance by the Safeguarding Team if and when they are notified that any concern is being referred to a hearing. The current version will always be accessible directly from www.swimming.org.

Purpose and structure

The purpose of the Safeguarding Regulations is to ensure that no person engages, attempts, or threatens to engage in conduct that directly or indirectly harms a child or adult. Each person must always act in the best interests of any child or adult with their safety, welfare and wellbeing a paramount decision.

Subjects of a safeguarding concern will be investigated fairly and as efficiently as the circumstances allow. Prior to any hearing, a Subject of Concern will be granted the opportunity to speak with an investigator about the concerns and present their side of the story and any evidence upon which they wish to rely. However, a Subject of Concern will also be given the right to make representations and provide evidence to a Judicial Committee deciding on the imposition of any sanctions on the basis of an Investigation Report.

Sanctions in respect of a safeguarding matter will be imposed by a Judicial Committee. Fast-track directions may be used in cases where a suspension from Swim England will not be imposed.

There is a right of appeal against a decision by a Judicial Committee.

A flowchart describing the structure of the Judicial and Safeguarding Regulations is contained within the Swim England Handbook and at the end of this guidance note.

Swim England Personnel

Where a safeguarding hearing is to take place, the following may be involved with the handling of the matter:

- **The Swim England Safeguarding Team:** The key point of contact for any Subject of Concern or Complainant in a safeguarding matter during the course of an investigation.
- **Lead Safeguarding Officer:** Swim England's Head of Safeguarding and Welfare. The Lead Safeguarding Officer has responsibility for safeguarding in aquatics and, in particular, determining whether a safeguarding concern should be referred to a Judicial Committee.
- **Case Management Group:** A group of Swim England personnel and independent persons which considers the progression of safeguarding and welfare concerns. The group has the power to impose interim orders, such as a temporary suspension.

The Case Management Group operates under Terms of Reference, published by Swim England from time to time on our website.

- **Judicial Office Manager:** The key point of contact for any Subject of Concern in a safeguarding matter where a hearing is to take place by way of a Judicial Committee.
- **Judicial Commissioner:** An independent, legally qualified individual, who makes Orders regarding the procedure for safeguarding hearings taking place by way of a Judicial Committee.
- **Dispute Resolution Panel:** A panel consisting of independent Swim England members who sit on Judicial Committees, including those hearing safeguarding concerns.
- **Appeals Panel:** A panel consisting of independent Swim England members who sit on Appeal Committees to determine appeals against decisions made by hearings of a Judicial Committee.
- **Swim England Friends:** A network of experienced Swim England members who provide advice to other members who have queries regarding the Judicial Committee process. Swim England Friends are unable to advise on more general safeguarding matters, including the investigation processes.

Contacting the Office of Judicial Administration

The Office of Judicial Administration provides administrative support to the Judicial Commissioner, Appeals Panel Chair, the Dispute Resolution Panel and the Appeals Panel. Any documents and correspondence intended for such must be submitted to the Office of

Judicial Administration. Any response from such shall be sent by the Office of Judicial Administration on their behalf.

The Office of Judicial Administration must also be contacted in order to obtain a copy of the Judicial Complaint Form if you wish to file a Judicial Complaint.

The Office of Judicial Administration may be contacted by email at judicial@swimming.org or by phone at 01509 640 764.

The Office of Judicial Administration is unable to provide advice relating to safeguarding matters. It may, however, arrange for a Swim England Friend to contact you to discuss and advise on the judicial process, or signpost you to other available resources. A Swim England Friend may be requested at any time during the complaints process, but will only advise on the judicial process, not on the merits of a case or on general safeguarding matters.

Notification of hearing

Upon receipt of a report by an investigator which has upheld a safeguarding concern, Swim England's Lead Safeguarding Officer shall review the report and consider whether it is necessary to file a complaint against the Subject of Concern with the Office of Judicial Administration. Such a decision may be made in consultation with the Case Management Group.

The Lead Safeguarding Officer may annex additional comment or recommendations to the Investigation Report as they see fit. They will include a 'charge sheet' detailing the findings of the Investigation Report and any the parts of Swim England's Regulations or Wavepower they consider have been breached.

Notwithstanding the above, information may be redacted where the Lead Safeguarding Officer considers it necessary to do so. This may occur, for example to protect a witness' identity, protect the identity of a separate but connected Subject of Concern, or to protect the integrity of another investigation, whether commissioned by Swim England or externally.

Judicial Committee hearing

A Judicial Committee shall hear all safeguarding concerns which have been founded by an investigator and, in the Lead Safeguarding Officer's opinion, warrant the imposition of sanctions. Judicial Committees shall be convened on a case-by-case basis to consider safeguarding concerns.

Preliminary

Upon making a decision to refer a concern to a Judicial Committee, the Lead Safeguarding Officer shall inform the Judicial Commissioner of the referral through the Office of Judicial Administration, who will determine whether the matter may proceed.

If accepted, a reply form shall be sent to the Subject of Concern for completion within 28 days, following which the matter will be referred to a Judicial Committee. The Reply Form will require the Subject of Concern to confirm whether they accept or deny the matter and any sanctions sought.

Pre-hearing

Safeguarding hearings by a Judicial Committee shall be arranged by the Judicial Office Manager on behalf of the Judicial Commissioner and communicated to the parties. Hearings shall take place in private and will be held online. Hearings may take place in person only

where exceptional circumstances are deemed to apply and the Chair has sought the views of all parties involved and the consent of Swim England.

Usually, and unless a fast-track process is ordered by the Judicial Commissioner, the below directions will apply.

Within 14 days of being notified that the concern is to be resolved by a hearing, Swim England will file a Statement of Complaint, which will include:

1. a written statement detailing the facts and its arguments;
2. all evidence on which they intend to rely upon to support the concern, including the Investigation Report; and
3. whether they are happy for the matter to be decided based on written arguments, rather than through an oral hearing.

Failure to provide such in time will result in the matter being dismissed.

Swim England's Statement of Complaint shall be provided to the Subject of Concern, who will then have 14 days to file a Statement of Response, which must include the same categories of information as the Statement of Complaint.

Failure to provide such in time will result in the matter proceeding to a hearing.

Within 14 days of the receipt of the Statement of Response, the Judicial Commissioner will appoint a Judicial Committee. A Judicial Committee shall be formed of three members that are members of the Dispute Resolution Panel, of which one shall be appointed as Chair. The Chair of a Judicial Committee hearing a safeguarding matter shall be a qualified lawyer, with at least one wing member a member of the 'Safeguarding List', a list of Dispute Resolution Panel members with experience in safeguarding matters.

The conduct and procedure of the hearing shall be determined by the Judicial Committee who will have discretionary powers over the procedure, including whether the matter will be considered on the basis of written arguments only, where both parties consent to such.

If the matter is to be determined by online hearing, Swim England and the Subject of Concern will be informed of the date and must inform the Judicial Commissioner who will be attending the hearing within seven days.

Prior to the hearing, the Judicial Committee will produce a timetable and issue any directions required for the hearing to take place smoothly.

Hearing

While the conduct of any hearing is at the discretion of the Judicial Committee, they will usually follow a common format. The format may differ if a fast-track process is ordered.

At the start of the hearing, the Chair of the Judicial Committee will outline the manner in which they intend to conduct the hearing and then ask all witnesses to leave the room.

Swim England will present its case before the panel. When Swim England's presentation has been completed the panel may, and usually do, question its representative.

Swim England will then usually be invited to call any witnesses (one at a time) to give their evidence. As the witnesses complete their evidence, the Subject of Concern and the Judicial

Committee may question them. After Swim England has finished its case, the Subject of Concern shall do the same. Witnesses shall not take any part in the hearing other than giving evidence and responding to questions.

If the Subject of Concern does not attend the hearing, the Judicial Committee may proceed in their absence.

Decision

Following the hearing on the safeguarding concern, the Judicial Committee shall prepare a written decision, which shall be circulated to Swim England, the Subject of Concern and any other individual to which the Judicial Committee directs. This is to be done within 28 days of the hearing. The decision may not be distributed to any other individual without the permission of the Judicial Committee, with the exception that Swim England may provide a copy to external agencies or persons where required by its safeguarding obligations.

The Decision may include dismissing the safeguarding concern or applying a sanction or measure under Regulation 111. Swim England has produced guidelines for Judicial Committees to use when imposing sanctions following a safeguarding concern being referred to it. Such guidelines will be available to Judicial Committees and all involved in the safeguarding concern.

Appeals (Regulation 110)

An appeal is a review of a previous decision made by a Judicial Committee, to consider whether the decision in question is flawed in such a way that it should not remain in place. An appeal is not a re-hearing of the matter and is instead limited to determining whether an Appellant has proved any claimed grounds of appeal.

An appeal may be made either by Swim England or by the Subject of Concern.

An appeal may be made on one or more of the following grounds:

1. that the Judicial Committee exceeded its power or acted without having the power to do so;
2. that the Judicial Committee failed to act in accordance with the rules of natural justice;
3. an error of law was made;
4. new evidence is available that could not have reasonably been obtained previously and which would have changed the outcome of the decision;
5. that the Judicial Committee made a decision which no reasonable decision-making body could have made; or
6. that the Judicial Committee issued a sanction or measure which was manifestly disproportionate

Disagreement with the findings of the Judicial Committee alone does not form grounds for an appeal.

Commencing an appeal

An appeal may be made by sending a completed Appeal Form to the Office of Judicial Administration, along with the £200 fee.

An appeal must be filed within 14 days from the date of which the final decision of the deciding body was made. Alongside the Appeal Form, an Appellant must submit a bundle of documents (with pages numbered), which the Appellant seeks to rely upon to prove the grounds of appeal, including any arguments.

If an Appellant does not wish to use the Appeal Form, they may still file an appeal by providing the information required within the Appeal Form in an alternative format, alongside the bundle of documents.

An appeal is not made until the fee is paid.

Permission to appeal

The Chair of the Appeals Panel shall review the appeal documents and determine whether the appeal may be allowed to proceed or not. To assist them, they may request further information from an Appellant, to be provided within seven days.

An appeal may be refused permission to proceed for the following reasons:

1. the Appellant failed to submit it in time;
2. the appeal does not identify any valid grounds of appeal;
3. the appeal has no real prospects of success; or
4. the appeal is an abuse of process.

If an appeal is denied permission to proceed, the matter is at a close with no further avenue of appeal.

If an appeal is allowed to proceed, the other party to the decision being appealed shall be informed and will have 14 days to file a response brief – a bundle of documents which they seek to rely upon in response to the appeal, including any arguments.

Following the filing of the response brief, the appeal will proceed to a hearing.

Appeal decision

The Appeal Committee hearing an appeal has the power to:

1. dismiss the appeal;
2. allow the appeal;
3. overturn any part of the original decision;
4. order a rehearing of the matter;
5. substitute a new decision;
6. substitute a sanction or measure imposed by the original decision;
7. order a reimbursement of fees; or
8. make any other order that it sees fit.

The Appeal Committee and all parties to the hearing shall be provided with a copy of the sanctions guidelines for safeguarding concerns.

A decision on appeal is final and not subject to further appeal. Accordingly, once an appeal decision has been made, subject to enforcement of any sanctions, the matter will be at a close.

Further support

Swim England Friends

A Swim England Friend is an individual who is readily available to provide independent advice to help Swim England members, or their parent or other representative in the case of junior members, faced with problems. The Swim England Friends are volunteers who work across the Swim England Regions. They offer support on the Swim England Regulations and the judicial procedure.

A Swim England Friend can bring years of experience in the world of aquatics to assist anyone who has a problem within the sport. In a safeguarding context, their advice is limited to the functioning and the procedure of hearing a matter by a Judicial Committee – they cannot provide advice on the merits of a case or general safeguarding matters.

For the assistance of a Swim England Friend, the Office of Judicial Administration may be contacted by email at judicial@swimming.org or by phone at 01509 640 764.

Legal support

Certain individuals may benefit from free legal advice provided by our insurers.

We provide Clubs with a legal helpline to aid committees in managing their legal responsibilities at the Club and claim legal expenses for certain defence matters including employment disputes. We would strongly suggest that you contact the DAS legal advice helpline prior to taking any such action in order to ensure that you do not prejudice any defence. If you do not contact DAS prior to acting, they likely will not support any claim for legal expenses. The Club legal helpline is 0330 100 7901. You will need to quote your policy number, which may be found on the summary of cover provided at renewal.

Institute of Swimming and Coach Membership members may access legal advice through the insurance provided to them. The helpline may be contacted at 0345 543 8713.

Citizens Advice – <https://www.citizensadvice.org.uk/>

Pro bono advice – <https://www.lawworks.org.uk/>

The Bar Pro Bono Unit - <https://www.weareadvocate.org.uk/>

The Sport Resolutions Pro Bono Legal Advice and Representation Service - <https://www.sportresolutions.com/services/pro-bono-legal-advice/>

Please note that, while the above organisations may be able to assist, whether they give any assistance is up to them and subject to their terms and conditions and eligibility requirements.

Mental health support

Swim England are aware that the circumstances which may give rise to a safeguarding concern, or being subject to a safeguarding concern, may cause some distress to you. We

would therefore like to make you aware of services which may be available to you to provide further mental health support if necessary.

- Your doctor (GP) who will be able to refer you to counselling.
- The Mix (<https://www.themix.org.uk/get-support/>) – Essential support for under-25s on a range of topics including mental health. The Mix offers a free helpline for young people where they can talk to trained supporters about any issues – 0808 808 4994 (open from 3pm – 12am every day).
- MIND (<https://www.mind.org.uk/>) may be able to provide you with support or alternatively signpost you to more local support.
- Hub of Hope (<https://www.hubofhope.co.uk/>) a mental health support database bringing together local, national, peer, community, charity, private and NHS mental health support and services.
- Samaritans (<https://www.samaritans.org/> or 116 123) who offer a free 24-hour helpline.
- The British Association of Counselling and Psychotherapy (<https://www.bacp.co.uk/>), for further information on counselling.

Flowchart

Safeguarding Hearings

