

**IN THE MATTER OF
AN APPLICATION FOR AFFILIATION TO SWIM ENGLAND**

**BY
ELLESMERE COLLEGE SWIMMING ACADEMY (in a form as yet unconstituted)**

Decision Report

For the ELLESMERE COLLEGE AFFILIATION REVIEW

Dated 6 September 2024

As required by paragraph 3.1 -3.7 and 4 of the Terms of Reference (undated, but sent in final form to the reviewer on 14 June 2024)

Katherine Apps KC

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Chapter 1: Introduction and Summary

1. This is the Decision Report for the Ellesmere College Affiliation Review. I have considered the application presented in October 2023 by the Head Coach, who is currently Guy Worrow, for a swimming club to be affiliated to Swim England called the "Ellesmere College Swimming Academy" ("the Club"). The proposed Club is to be a "closed club" based at Ellesmere College in Shropshire ("the School").
2. Terms of Reference were sent to me on 14 June 2024. These are discussed in Chapter 2. I have endeavoured to deliver my Decision report as swiftly as is fairly possible and have conducted a thorough and detailed process to do so. I have not completed the task in 6 weeks, which would have been impossible due to a recent incident in Spring 2024, ongoing legal proceedings and a request by the Club and School for additional time which I considered would be fair and should be granted.
3. I am grateful to all of who have contributed to this review including, especially, the current child members of the Club. I would like to thank the Club officers and especially the current Head Coach Guy Worrow, who has been patient and measured as well as generous with his time; the acting Headteacher of the School, Vicky Pritt-Roberts who managed my questions around her role as acting Headteacher, and during Employment Tribunal litigation against the School; the Governors; all Club Officers and coaches who I interviewed; current and past members and parents some of whom gave powerful evidence of past trauma and what their current concerns are; statutory agencies; the children's current Club, Leicester Sharks; those at Swim England who addressed my targeted questions, and in particular those at Swim England who provided my administrative assistance with very considerable patience.
4. Hearing from a wide range of stakeholders across the piste has helped me gather the most focussed evidence for the task I was set. It was especially valuable to be able to have a process which enabled the current child members to contribute. I summarise their input and my process in Chapter 4.
5. As with any legal decision making, this Decision report records the core elements of my Decision making so that the Club which made the application (principally) can understand the reason for my Decision.
6. As with anything relating to Safeguarding, I have looked very widely for the most relevant evidence. No person ever has 100% visibility across the entire child welfare canvas which is why a bedrock of Child safeguarding law ensures that all "agencies" (of which Swim England is one), Schools and sports participants report in welfare and safeguarding information and share between agencies. Information flow to individuals and the public is much more limited. At its core, this information often relates to highly sensitive matters relating to children. What I can say in this Decision report is more limited where it relates to such sensitive information, while also remains sufficient to combat some misinformation which appears to be circulating in some quarters.

7. It was also necessary to have proper regard to past findings relating to the previous Club and arrangements and to consider whether adverse findings or where there is other relevant evidence of past practice not complying with Swim England rules or required safeguarding law or good practice have been addressed. That has been done with great care as set out in Chapter 5.
8. The application for affiliation has been a very closely balanced determination.
9. On balance, and it has been a close balance, I recommend that the Club as it is proposed be Constituted, be affiliated to Swim England.
 - a. The Club's proposed policy arrangements were not compatible with Swim England rules at the time of its application.
 - b. There have been some misunderstandings and misconceptions as to how this operates (and must operate under the law). There is a detailed section on the legal and safeguarding framework in Chapter 3.
 - c. The position now appears to be correctly understood in the Club and is fully committed to by both the Club, and the Governors.
 - d. The Club and School working appropriately together (as this arrangement necessitates) have a suitable plan for resolving the current issues within the usual 3 month window and are reassuringly committed to the usual Rules of Swim England (including all Safeguarding Rules and complying with information requests from safeguarding and reporting information).
10. I am very grateful to the hard work of the Club Officers, the School and the School Governors and those others who I have interviewed, who have worked hard and at pace over the Summer holidays to enable this to occur.

What does affiliation mean?

11. Affiliation means that all Club officers agree that they will ensure that all members of the Club are bound by, and fully follow, all rules, procedures policies of the sports national governing body (NGB)
 - a. Affiliation means that they gain access to:
 - i. the Sports NGB's membership portals,
 - ii. their processes (for example their disciplinary and judicial processes),
 - iii. their insurance for clubs, and that
 - iv. their members can compete in Swim England organised competitions.
 - b. Affiliation requires that:
 - i. all members pay their membership fees to Swim England, or have another pay on their behalf, and
 - ii. that all members agree to be bound, both at the time of affiliation and at all times after that to be bound by the Sporting NGB's rules without exception.
 - c. Affiliation potentially incurs costs to the NGB:

- i. directly in insurance premia, to staff the teams required to administer clubs, membership, safeguarding and judicial services.
 - ii. non compliance with rules and policies indirectly increases those costs and impacts on whether the NGB can fulfil its duty of care and other specified duties.
 - d. Affiliation requires mutual trust from members and from the NGB. In particular a sports NGB is entitled to consider it a risk factor, if an individual states that they do not wish to follow some or all of a sporting NGB's rules. Some of those rules, especially safeguarding rules, are required of the NGB under private law or statutory duties, and an NGB cannot lawfully derogate from those.
12. The usual legal position in this area is that no person or club has an automatic right to affiliate to a sports NGB. If the Sports NGB has doubts as to whether the club or member will comply with the rules and policies from time to time, this may provide grounds for refusal. It is also a positive factor if the sports NGB's teams which manage Safeguarding and Affiliation feel confident in the arrangements under which the Club proposes to operate. There is a wide margin of discretion granted to Sports NGBs. This is explained in more detail below in Chapter 2.
 13. Swim England have a usual process for new clubs affiliating. This Club is both a new club (the Constitution is entirely new as are many of the personnel) but there are also features which are not new (many of the children and parents will be the same, it is at the same School and some of the School staff who were there are the time of the Titans remain in the School).
 14. Swim England's usual process has been disapplied in the current matter by my Terms of Reference which have been agreed both by Swim England and by the School.
 15. The usual Swim England process does not require a Club to be fully operational and compliant at the time of application. It is a three stage process, and full compliance must be satisfied within 3 months. Some affiliation benefits, for example booking courses and conducting DBS checks through Swim England, can only be done once the Club is set up on Swim England's electronic membership system. Many things can be done in advance. For example, the rules are publicly accessible.
 16. It is not unusual in a sporting context for a club to set up and expressly adopt a sports NGB's rules and to bind its members by contract to follow those rules: for example, a group of children who agree to play football in the park under FA Rules. Those rules would not give the club access to the NGB's insurance or judicial processes, or the online membership system, but can provide evidence of seeing the correct policies in place and that they are being operated in practice. This has not been done here. This is not in breach of any Rules, whatsoever, but means that I do not have a currently constituted Club to consider.

A greater focus across all sports on safeguarding compliance at affiliation

17. There have been many independent reviews in Sport and further afield and well known cases in the past few years which have resulted in many sports NGBs (not just swimming) altering their own safeguarding policies and also enhancing what is required by Club Officers when applying for affiliation or renewing affiliation each year.
18. Part of this has been as a result of (now Sir) Clive Sheldon KC's review into child sexual abuse in football (his recommendation 5 which recommends that the NGB require all clubs which affiliate to promise to ensure that all its members understand and agree to the sports NGB's rules, and specifically their safeguarding rules and can demonstrate this. This is discussed in Chapter 3. Swim England has also changed some of its rules from 3 September 2024.

Developments in safeguarding law

19. There is also an additional legal angle. Under English law, Sports NGBs are also defined as "agencies" for safeguarding law. For many sports, and this includes swimming, the majority of individual members are children (which the law in this area defines as being under 18). Those children predominantly interact in their Club, or in regional or national competitions, but have little day to day involvement with the central sports NGB. This means that the central sports NGB is reliant to a great deal on adult members, the club and other information sharing to be able to safeguard children. They also owe a duty of care in private law to their child members. Being an "agency" comes with particular statutory requirements explained below at in Chapter 2. They:
 - a. must require members to refer safeguarding matters to their safeguarding team (for most sports a national team because of this information sharing role)
 - b. must both gather information from other agencies (as defined in safeguarding law) and may share that information where appropriate.

As Lord Wilson held in a leading case in safeguarding¹ **this is not a "procedural" requirement, but enables agencies to assess risk and put in place risk mitigating measures relevant to their circumstances.**

20. The status of Sports NGBs as "agencies" also requires steps to be taken by other organisations, for example by Schools. Schools are subject to statutory requirements (in the case of independent schools the Independent School Standards ("ISS") and additional Boarding standards) which require them to have:
 - a. arrangements are made to safeguard and promote the welfare of pupils at the school; and

¹ Reilly v Sandwell Metropolitan Borough Council [2018] UKSC 16. <https://www.supremecourt.uk/cases/docs/uksc-2016-0170-judgment.pdf>

- b. such arrangements have regard to any guidance issued by the Secretary of State. (ISS standard 7).
21. That Guidance includes national guidance called Working Together, which expressly requires the school to share welfare and safeguarding information with sports NGBs on a “seeds of doubt” basis.
 22. The principle of concurrent and simultaneous sporting and School rules is essential both for the Club and the School to be operating under the legislative scheme and are expressly fully accepted by the School and by its Governing body as well as by Club Officers.
 23. Some things were said in some survey responses and in correspondence to me questioning why the ISI progress monitoring report in October 2023 that ISS standard 7 was “met” in the school (following two previous “unmet” inspections in May/ June 2021 and October 2022) is not decisive in the club’s favour. The answer to this question lies in a proper appreciation of the legal nature of an ISI progress monitoring report. It is not something that others must bow to or “respect.” It records the inspectors’ impression of the ISS standards on the day of the visit. It does not mean that the standard is “met” for all future days, nor does it decide the issue of whether, currently there are sufficient policies, processes, staff insight and dynamic risk assessment and mitigation in place to adequately safeguard children in the context of an affiliated club to a sports NGB. Where it is unmet in a School Club it is a relevant consideration for a sports NGB when considering whether that Club is likely to be compliant with its own Safeguarding rules for the children in the Club who attend that School. Those reports are, also, relevant “findings” to which I must have regard under 3.5 of my Terms of Reference.
 24. There are exceptions to information sharing between agencies. These include where the sharing of information may fall within public interest immunity (for example if the police have an ongoing investigation and it could prejudice that investigation if information is shared and the potential perpetrator becomes aware). Agencies must neither confirm nor deny whether this has occurred in some circumstances which may potentially come across to some as lacking transparency but is legally required (irrespective of whether there is an ongoing investigation by, for example, the police).
 25. Where information can be shared between agencies, that does not necessarily mean it should be shared in public or with parents. There is detailed guidance on how information sharing lawfully can take place under GDPR. As I am working for and on behalf of a sports NGB and I am also separately regulated as a barrister and am an information controller in my own right registered with the ICO, information has been able to be shared with me, which might not lawfully be shared in public. This is also why public reports, for example on school inspections carried out to assess on the day of inspection whether a school meets or does not meet the Independent School

Standards, summarise conclusions and provide summarised information, but do not provide detail on individual paperwork considered or individual children.

26. The core benchmark in this area, which identical to my Terms of Reference, is to **safeguard children** (see my Terms of Reference at 3.4). The principles in this area require the focus to be on **identifying potential sources of identified risk, and risk mitigating measures for that risk**. It is not principally a disciplinary exercise or one similar to the criminal law.

Procedural fairness

27. Procedural fairness remains important in a safeguarding context. As set out in Chapter 2, there is an established and substantial body of law in this area. This has informed the approach I have taken on this Review.
 - a. My Review is focussed on the **current position of the Club and the College**, and must, so as to have a desire to safeguard children at its heart, consider risk factors and risk mitigating factors as well as the policies, procedures, culture and any current concerns.
 - b. I also have to consider “**past findings**” to assist determine “**whether the College has now addressed previously existing concerns.**”
28. My role is not to make a determination of whether the Club was suitable for affiliation in the past, although it is inevitable that the evidence relevant to past findings and current position may look at the same evidence as would be relevant to that inquiry (which is not my inquiry).
29. I expressly have wide information gathering powers and it became apparent early on that the Terms of Reference and child welfare focus would require me to be able to hear from the current and previous children, as well as potentially their parents and other individuals with potentially relevant information for me to assess and weigh both individually and as a whole. I set up a survey to gather information from those people. I discuss my process in Chapter 4.
30. I am pleased that the Club officers have seen the value, and indeed normality, in asking child members on an online survey about their past and current welfare experience and that they have agreed both to do their own surveys and also for Swim England Safeguarding to be able to carry out welfare surveys with the child members every 6-12 months for the first 3 years.
31. As set out in Chapter 4, I engaged in a more detailed fact finding process with the Club Officers and with the School (through the acting Head and the Governors). I wrote to them by letter or email and summarised my concerns at an early stage where those emerged and did so in an iterative process. I was given access to a large array of documentation, for which I am very grateful, and a considerable amount of their time.

32. I also interviewed all (bar the proposed Treasurer) Executive Officers for the club and all members of the proposed executive committee and Welfare Officers. I also interviewed all coaches. With those I interviewed, I was up front with potential adverse findings that I might make so as to give an adequate opportunity to respond.
33. I also conducted fact finding with external statutory agencies as is good practice in this area. I was not able to share all of this information (lawfully) with the School or Club, and some matters from the past required special care not to unnecessarily disclose past sensitive data about children to new school staff or club officers who would not have had access to that information at the time. This was done with very great care, and this Report necessarily may sound vague to others when it deals with those issues.
34. There are some past findings that I have approached with considerable care as it has been suggested to me that the process conducted by Swim England was procedurally unfair. It would not be appropriate for me to give weight to findings which had been reached unfairly. I can give weight only to such findings if they are corroborated by further evidence, or where my own process has considered the particular matter fairly. This is outlined in Chapter 5.
35. One of the first steps I took was to share the documentation sent to me by Swim England on the previous findings with Ms Pritt-Roberts so that there could be a fair opportunity to respond. I also did the same with the summary of the findings against the coach, Danny Proffitt, within the Club and with the School so that this could be considered fairly, and I gave Danny Proffitt himself an opportunity to fully respond and provide any information he so wished. He has had the considerable assistance of a Mentor provided through Swim England safeguarding from another Club, from the City of Manchester Swimming club, who has been of very considerable assistance both to Mr Proffitt and Swim England but also to me in this review.
36. What has emerged as set out below is that the School has been aware of most matters through unofficial channels before I provided a copy of the second ICPO report to them. For example, they knew sufficient detail in 2022 about allegations relating to 2021 that they threatened to sue Swim England for defamation and asked them to make undertakings in respect of safeguarding matters (which I consider Swim England could not lawfully have agreed to consistently with its legal duties). There were also some potentially relevant factual inaccuracies in those letters which put forwards a timeline. I went to very great care to give both the School and Governors (the Chair, the Safeguarding Governor and Chair of the Regulatory Compliance Committee) both sufficient opportunity to respond, but also to show how the risk of such a letter in future would be minimised. I discuss this in my Decision along with other matters in Chapter 6.

What this process is not

37. It is not the role of this report to constitute disciplinary proceedings against any individual in the Club or the School. I have become aware that there have been some processes against some individuals who remain within the School and Club. Some individuals are named, especially where their names are already in the public domain. In the case of the one remaining coach from before, Danny Proffitt. Some who had negative experiences previously might potentially have particular concern whether there had been relevant change. As set out below, I looked at this with very particular care and have found credible and corroborated evidence of a very considerable change of approach and very significant improvement in insight. This has not occurred in a vacuum, but has been the result of his hard work and the significant work of the current Head Coach and his Mentor and colleagues working together admirably. Even if I were to have an overly optimistic impression (which I do not believe I do) there are additional risk mitigation measures in place within the club set up and working practices.
38. I am also aware that there are some individuals, who are not officers in the Club or staff at the School who have asked me to disclose material that I have gathered with them for the purposes of making complaints against Swim England, or reassuring themselves on matters which concern them. Where those individuals have been from other agencies and there is a lawful basis for sharing information, some information has been shared. Where there is no lawful basis, and it would be inconsistent with the welfare of children to do so, I have not done so. I have on occasion explained to those people why I am not doing so.
39. It is not in my control what complaints others may seek to bring after this report or what use others might put passages in this report to. I have been careful as to the summary of sensitive materials considered. I hope that this report is not used for other purposes, for purposes that are unlawful, or which are targeted towards others. I particularly hope that others will not take steps that are ultimately unhelpful to the interests of children, including speculating about material that I have seen, which inevitably includes highly sensitive matters such as medical records, children's feelings online and social media messaging (that every School and sports Club with teenage members in the modern day will encounter).
40. This review has elements that are similar to those conducted in a safeguarding risk assessment. This has been necessary to balance the welfare of children in the club and who participate in swimming activity (e.g. other clubs) and to identify risks and risk mitigating features. It is not a risk assessment process under Swim England's Wavepower more generally, nor should it be treated as locked in time.
41. Any risk assessment is only as good as the time it is made and the risks it identifies. Those risks can change, and in a child participation in sport context, often do so rapidly. Risks may also change in society generally, for example the particular risks posed by social media messaging, peer or peer sexual incidents (most of which currently occur through phones, computers and social media but not exclusively) are

dynamic and can change over time both in form and what is available to mitigate those risks. As set out below, there can be risks from a club culture, and I have some very particular concerns about the impact of some of the mostly parental feelings about the past may be having on children currently in the Club, and may (in most cases entirely unintentionally) be an additional obstacle to the sort of low level reporting required both in the educational context and the sporting context.

Current Employment Tribunal proceedings

42. As set out below in Chapter 5, there have been two recent claims in the Employment Tribunal which have referred to some extent to matters in the context of swimming at the school. One of these claims (a joined claim) has been dismissed and the claim determined in the School's favour (1305501/2022 and 1302659/2024 *Mrs A Done v Ellesmere College Ltd*²). Another claim is still pending (Case 1305650/2024 *Mrs A Done v Ellesmere College*).³ A preliminary application in that claim to prevent Ms A Done's dismissal from her role as Housemistress and Maths Teacher was dismissed on 15 June 2024⁴ but the claim continues. I have been provided with some of the legal documents in that claim and can see that it is alleged that Mrs Done made a protected disclosure concerning an incident in Spring 2024 reported by the School to the Police, which I am aware of documents relating to and have considered with great care. As children might be identifiable I have dealt with this case in a confidential Annex F which is not to be published, and even then have not provided all information to the Board – albeit I have provided a document which has been in open court in the interim relief hearing as this is a public document.
43. It is often the case, where there are legal proceedings where a Court or Tribunal may make findings of fact of relevance to a lower legal process, such as this one, the lower status legal proceedings are stayed (i.e. they pause) while the Court or Tribunal consider the facts. I have carefully considered whether this should be done in this case. I do not think that this is necessary, principally because my Terms of Reference are forward looking and are significantly different to the task in the Employment Tribunal proceedings. The Employment Tribunal in a whistleblowing dismissal case does not look at whether the matter to which the whistleblowing relates is true or not. That is not the test. They may look at whether the claimant disclosed information which tends to show that one of the whistleblowing “gateways” has been met (which includes the health and safety of others) but that is not the end of the matter. They will also consider the mental processes of the whistleblower (which are not relevant to my review) and

² <https://www.gov.uk/employment-tribunal-decisions/mrs-a-done-v-ellesmere-college-ltd-1305501-slash-2022-and-1302659-slash-2023>

³ <https://www.gov.uk/employment-tribunal-decisions/mrs-a-done-v-ellesmere-college-1305650-slash-2024>

⁴ I have asked for the reasons given by the ET as these were given orally but I have not been provided with these. The parties have not, so far as I have been informed, applied to the ET for those reasons.

whether the disclosure was made in good faith and in the public interest. They may also consider the manner of the protected disclosure and whether that is such as to make any particular conduct unprotected by employment law (irrelevant to my review). They also then look at the employer's mental reasoning and what was the sole or principal reason for the dismissal, and additionally whether there was another potentially fair reason for dismissal (conduct, capability or "some other substantial reason" such as loss of trust and confidence).

44. I make clear that **I make no finding on any matter which the Employment Tribunal will be likely to consider, given the particular legal formulation of that claim. My focus is a different one.** I will consider the particular incident said to be the focus of the alleged protected disclosure, but I am doing so to consider whether the way that was dealt with shows that there can be sufficient confidence from the sports NGB that such matters will be dealt with appropriately under its own policies in future by the Club, and whether there is evidence of change from previous adverse findings set out in Chapter 5. I have seen evidence of change from previous findings in relation to this incident and some very commendable sensitivity, rapidity and appropriate conduct from the Head Coach in particular when my survey indicated that there was an additional welfare issue which had occurred after those that the School was already aware of (and I make no criticism that the School was not aware of it). This was inevitably a sensitive matter for the School to manage. In particular I note that I have seen the reporting on this and the School has recorded the matter internally and made some relevant suitable external referrals. The matter has also been considered by the Department for Education which has recorded itself satisfied by the way the School handled it. This is not decisive for my review because my focus is different, but this is relevant information for me to consider and which I have considered with great care. Not everything that I would expect to have been reported through Swim England processes were reported but much was. I have received assurances about how such issues will be dealt with going forwards and I have sufficient trust that this is well understood and that it will occur.

Summary of decision

45. Having very carefully considered all of the evidence from past findings and my information gathering process, no single one piece of evidence has been decisive one way or another. However, having weighed together all of that evidence and carefully tested it in this process **I am satisfied that affiliation can be granted with regard to the welfare of children as the primary objective.**
46. That will require steps to be taken in the Club and which, in my process, have very helpfully been discussed with the Club and to which the Club and School Governors have expressly agreed.

a. **The policies, Code of Conduct operating in the Club are not wholly compliant with the Swim England Handbook, Wavepower and the World Anti Doping Agency Code.**

- i. These were not compliant when the application was made and are in the process of rectification.
- ii. In the usual process (which does not apply here) a club would have 3 months to do this. I consider this to be a reasonable time.
- iii. I have identified in this report what I see as the current key defects and identified the most important issue (the misunderstanding about the extent of Swim England's rules – that they do not only apply in competition) at the very first meeting with the School and club on 1 July 2024.
- iv. Some have already been addressed, and some are pending.
- v. I am very pleased that the Governors have decided that the Club can benefit from its own independent legal advice to assist with this from a law firm, Onside Law (with whom I have not previously worked or had appear before me when sitting as a sports arbitrator or panel chair or member).
- vi. I interviewed the new Governor who is also to join the Executive Committee of the Club, and agree entirely with what she says. She says:

I have been approached to act as the Ellesmere College governor representative on the Ellesmere Swim Academy Executive Committee. In this role I would ensure that Swim England policies were both implemented and followed. These would be independent of the College policies and would be compliant with Swim England's 'WavePower' policy and procedure. It would be prudent to seek independent legal advice from specialist sport/education lawyers in reviewing policy documentation in order to ensure full compliance. This would benefit not only the Swim Academy athletes, coaches, volunteers and parents, but the College too in that clear, compliant policies will ensure full transparency and enable the organisation to operate with ease.

- vii. While the current policies are not wholly compliant, they also contain some features which are different from previously and which are especially helpful (especially from a child welfare perspective). All children are currently members of another club, Leicester Sharks, whose policies are much more closely aligned to Wavepower (save for a couple of small instances which appear to be unintentional and which have been notified to them and which they have addressed). Those expressly make clear that reporting of welfare concerns is mandatory for all members. It emphasises the importance, both in avoiding abusive conduct, but also going further to try to make swimming as positive experience as possible for all child participants (both those in the club and outside the club).

b. Key risks from the previous findings are mitigated.

- i. **New people:** not every person is new. However, there are many who are new amongst the Executive Officers, welfare, coaches and the new Governor. I have all interviewed carefully. I have found a calm, sensible,

sensitive child welfare approach in the swimming club. I see insight of safeguarding principles and the importance of full low level recording such as risk assessments, as well as recording and reporting more serious incidents. There is experience of pushing back and challenging decisions of others where appropriate to do so and in a manner which holds the interests of children at its core. There is a non confrontational listening approach, which appears to have benefited children and parents. I believe that the new Governor will also be a considerable asset once she and the executive Committee have started to work together. I believe there is also additional expertise and particular insight brought by the school Welfare Officer, who has a background from outside of Schools and seemed to understand entirely properly the core of what is required, as well as the detail and have child welfare as her key priority.

- ii. **Coaching approach;** I believe the coaching approach to be significantly different to that at the time of the Titans and can see evidence both from the coaches, and also from parents and children, as to how that is operating in practice. This includes the existing coach who was present from the time of the Titans, Danny Proffitt. I heard both from him and from others, including others outside his circle and from further afield, which evidences a change of his approach. In my view his coaching has changed, and is one that I am satisfied holds child welfare at its core.
- iii. **Dual simultaneous application of school requirements and Swim England requirements.** This is what the law provides and has not always been done in the past. The Governors and acting Head have both confirmed that they fully accept that this is the correct legal position and that it will be fully embraced going forwards.
- iv. **Constitution:** the Constitution is agreed in principle by Swim England. It provides expressly for School processes to apply in certain contexts, in particular applications by members (including any applications by parent volunteers for membership). There is no right to join the Club. The Club constitution appears capable of lawful implementation. The Club officers and Governors have considered potential flash points entirely properly as I would expect when considering Constitutional Club documents.
- v. **Insurance:** There is already School insurance in place which also covers the two non pupils. The Chair of Governors has assured me that this will be maintained after affiliation (as indeed is appropriate, especially as many of the children are boarders and the coaches directly employed).
- vi. **Financial provisions:** the Club is essentially funded through the School. The school Director of Finance is the Treasurer who recovers fees for Swim

England (which the Governors have also confirmed will be provided in full to Swim England; even where a person does not pay them themselves, the school will step in). There is additionally a budget for the Club and this can include independent legal advice. The Club officers are fully aware of the importance of ensuring sufficient financing for the Club to enable the rules to be complied with and the Governors have put this in place.

- vii. **Access to premises:** the School own the swimming pool and facilities and have their own measures through which individuals must pass before being granted access. The Chair of Governors has expressly confirmed that the independent Welfare Officer will have access to the pool and the Club at all times and will be treated essentially as a governor in terms of having access to premises (only signing in at the gate in the event of a fire alarm – she will not be stopped).
- viii. **New safeguarding case management system:** the School has a new computerised safeguarding case management system, used by other schools. The ISI found ISS standard 7 to be unmet in 2022 as staff were not using it correctly. They found this to have been addressed in October 2023. In addition, I have seen direct evidence of it being used appropriately. The School Welfare Officer already has access to this and uses it frequently. The independent Welfare Officer will also have access to it and will be trained on it so as to enable sharing. It is simple to download from to provide information to Swim England safeguarding and indeed material from it has been provided to me in this form as part of this review.
- ix. **Is information relevant to welfare being shared with Swim England?** I have considered this carefully.
 - 1. There is evidence of some sharing appropriately.
 - 2. There is some additional information which, under best practice, ought additionally have been shared more recently,
 - 3. This would appear to be understood by the Coaches and by the new Governor and I have their assurances that there will be full sharing directly to Swim England after affiliation.
 - 4. This will further be formalised by a **Memorandum of Understanding** agreed and signed by both Swim England and the School to ensure the continued provision of information. This would not replace Working Together (which already imposes such an obligation on the School under standard 7(b) of the Independent School Standards) but is helpful to formalise the position and which has been agreed to in principle.
- x. **Safe recruitment:** undertakings discussed in Chapter 6 have been made in relation to safe recruitment.

- xi. **Answers to hypothetical welfare scenarios:** I also asked all Welfare Officers and coaches a series of hypothetical questions as to what they would do in various welfare scenarios both to gather evidence on insight and on matters relevant to my terms of reference. Some provide answers based on real cases and what they had done; other answers were provided hypothetically (both forms of evidence were helpful). The real examples enabled me to cross check the accuracy of what I was told. I was satisfied by the responses of the Club Executive Officers and Coaches. I will not identify all the instances in this report so as to protect the children.

- xii. **Drugs and anti-doping:** there is evidence of there having been anti doping training provided in the club in recent times. I have reviewed the slide pack which appears to be accurate. Some survey responses indicated that this should be reinforced and also that the policies did not seem to fully reflect the often onerous and particular requirements in this specialised area. This is a Club with some extremely able athletes who have the potential for international swimming careers so anti doping education is essential so that they can avoid the risk of the automatic provisional suspensions that accompany an alleged anti doping rule violation charge and the sorts of fixed term suspensions which apply under those Rules. The Head Coach responded immediately and appropriately when I informed him of the survey responses and is planning some additional training.

- xiii. **Mobile phone use:** one of the key risks identified by Swim England in the 2024 Wavepower is the potential for mobile phones in changing rooms to give rise to a risk of compromising phone footage being created, and bullying of others in the changing room or out of the changing room. The School policies and Club policies do not yet clearly match the 2024 Wavepower requirements and in the survey a considerable % of child members did not answer the question correctly as to whether phones are allowed in changing rooms. The incident in Spring 2024 at Annex F also concerned mobile phones. As with all Schools, the School is now under specific obligations under the Independent School Standards Guidance as to the use of mobile phones and risk of children sharing intimate images and peer/ peer phone abuse. That guidance and those standards were not as advanced several years ago. The Club and School also have very clear and appropriate policies regarding how staff can contact children (not by mobile phone directly) and have processes in place, which in interview I found to be properly understood as to how communications with children should occur and that there should be absolutely no direct messaging by staff of children on social media, Snapchat, text or WhatsApp. I flagged to the coaches the availability of software used in other sports for communicating with sports teams through mobiles in a safe manner which prevents the risk of opening up direct mobile to mobile communications

between coaches and children out of hours. This is a matter for the Club and School, and not for me going forwards.

- xiv. **Culture:** what I saw from the survey and the other evidence (including that from other clubs who see these individuals at competitions) is that there has been a marked shift in culture within the Club. Culture takes a lot of effort and time to shift and it is not possible to do so with only one thing. There are still steps that will need to be taken to embed good practice and so that the working relationship with Swim England can be sustained and flourish.
1. The most major potential risk to culture that I saw in all of the evidence reviewed, sadly, was the strongly expressed position of some who identified as being parents, which, may (and quite possibly entirely unintentionally) be posing an additional obstacle to children feeling as though they can come forwards to those in the Club (and ultimately to the Safeguarding team) if there are safeguarding matters. Some of the evidence is similar to that reviewed by Anne Whyte in her review into British Gymnastics summarised in Chapter 2.
 2. The second most major risk is present in all schools and youth organisations generally; that of peer-peer abuse and bullying, especially around sexualised messaging and video images. The recent events in the Club are likely to have made several children uneasy and they may naturally have questions for the adults in a position of trust around them which the Club and School are equipped to respond to and have responded to recently.
47. If the mitigating features had not been agreed I would consider imposing them as conditions for affiliation. I do not believe that I additionally need to do so on top of recording them in this report. This report will be public and the Club members, Swim England and club officers will be able to refer to this report in the event that any of those assurances are not made good in practice.
48. I have also set out my likely findings and this approach to Helen Weeks at Swim England, whose team, in practice administers affiliations and Kevin Suckling the Head of Safeguarding and both have confirmed they are content with my approach and recommendation and I have confidence that they will receive the information and cooperation necessary from the Club Officers that they are entitled to expect from an affiliated Club.
49. **Child welfare:** returning to my core consideration I also need to consider whether this decision is justified from a child welfare perspective, both from the perspective of the current members and other children in swimming.

- a. It would not have been in the interests of child welfare to have acceded to an application for affiliation on the basis that Swim England's rules were to apply only in competition or for there to be other exceptions. I do not believe this to be the current position of the School or the Club.
- b. If there had been unsafe operations in the Club or risks that had been unmitigated, there might be a risk to children at Ellesmere College swimming as part of the swimming academy. Even if those children really wanted to swim, and swim with a sense of belonging for where they go to school and train, and wear their preferred hat, the nature of some of the risk factors considered above or which occurred in previous findings (only those on which I can lawfully rely) are such that it would not have been in the interests of those children to grant affiliation. Those previous risks would have included if there were barriers or failures in reporting and disclosing information as required by the relevant legal standards and rules, absence of insurance or activation of exclusions, inappropriate attitudes in the coaching staff to risk, insufficiently addressed peer on peer risks (including risk of predation from other children, bullying or sharing indecent images such as to amount to criminal offences). As set out above, I consider those risks either no longer to be present or to be mitigated sufficiently to satisfy me that affiliation can be granted, on the basis of the features listed above.
- c. I also need to consider the risk to other children in swimming. That requires the Club to robustly ensure that all members follow the relevant rules and also that Parents fully abide by the Code of Conduct. There needs to be an adequate system in place to mitigate potential peer- peer risks. Information sharing is also a key risk mitigation measure. The recent incident brings this risk into especially sharp focus. I consider that an appropriate plan is in place for this and that the Club Officers and coaches fully understand what is required.
- d. I would hope that parents, who also perform a crucial role to support swimmers, work with the Club officers on this, even the very small number who have been seeking alterations to welfare and safeguarding reporting information to bypass the Swim England safeguarding team.
- e. I would hope that this report and my FAQs answer the worries that some raised with my survey in this process that welfare surveys are frequently done and are actively both encouraged by other sports NGBs and in School settings and by the education inspectorates (ISI and Ofsted), on which mine was partly based.

50. **My recommendation therefore is 3.1.1 that the Board recommends that the Club affiliate to Swim England.**

51. This is assisted by the following agreed assurances provided by the Club, Governors and School. To record them expressly:

- a. **All Swim England rules and policies apply without exceptions:** All accept that affiliation means that all of Swim England rules apply. This includes the Parents Code of Conduct.
- b. **Concurrent and simultaneous;** Swim England Rules and School rules will apply concurrently and simultaneously. This may require some doubling up of processes and duties; it may mean some incidents are treated differently. Sharing of information is necessary for each to assess and mitigate risks in its setting (which might be the same or different). This is what the law requires and it is understood and will occur.
- c. **Memorandum of Understanding;** As with all School Clubs, the School will sign a Memorandum of Understanding ensuring that relevant safeguarding information will be shared with Swim England's safeguarding team (as is already mandatory under the legislative scheme, but this adds a contractual dimension to it and is conditional to affiliation: without appropriate information sharing that is obstacle free, affiliation is not lawfully possible).
- d. **Affiliation is a yearly process and is subject to review yearly:** The new rules and position mean that monthly monitoring information will be supplied.
- e. **A welfare survey will be done by Swim England Safeguarding with the members every 6-12 months for the first 3 years.** This is being trialled with some clubs and is wholeheartedly supported by the Club Executive and the School.
- f. **Insurance:** The School will maintain its insurance for the Club operations and continue cover for the two non pupil members.
- g. **Access for the independent Welfare Officer:** the Club is on school premises. The independent (non staff) Welfare Officer will have access to premises without need for an appointment. She will essentially be treated as a governor for access purposes. She will also have access to the online case management system.
- h. **Safe recruitment checks will be carried out** for all adults in the club.
- i. **Use of libel and defamation law:** Threats to sue Swim England for defamation law or libel law relating to child safeguarding will not be made.

Chapter 2: Terms of Reference

52. I was provided with Terms of Reference on 14 June 2024. A copy is attached at Annex A. I have been informed by the current Acting Headteacher that those Terms of Reference were agreed with the School on behalf of the Club. They were also agreed by the Board of Swim England.
53. Throughout the process various people wrote to me both through the survey and directly criticising my Terms of Reference and asking that I determine or have regard to other matters. While I appreciate that the history of the safeguarding matters at Ellesmere College and the previous Swimming Club engages strong feelings, emotions and, in some people, strong feelings of injustice and grievance, this Report focusses on the task set out the Terms of Reference. As set out below, when I consider risk factors at the Club if affiliated, I will return to some of the views expressed through the survey and by email to me as they are potentially relevant to:
- a. the current “culture” within the Club;
 - b. whether Swim England can have assurance that all members of the Club and the parents at the Club who are required to sign and agree a code of conduct will abide by all of the rules and policies of Swim England from time to time; and
 - c. whether there is a culture or specific current behaviour likely to be repeated were affiliation to be granted.
54. My specific responsibilities were set out at paragraph 3 of the Terms of Reference.
55. This provides:
3.
 - 3.1. *The Individual’s role shall be limited to considering all evidence available to them or requested by them, and delivering a report to the Swim England Board considering the question of whether Swim England should allow the Club to affiliate to Swim England (the “Decision”). The report shall make one of three recommendations:*
 - 3.1.1. *that Swim England should allow the Club to affiliate;*
 - 3.1.2. *that Swim England should allow the Club to affiliate, subject to conditions outlined by the report; or*
 - 3.1.3. *that Swim England should not allow the Club to affiliate.*
 - 3.2. *The Individual shall seek to make the Decision in as timely a manner as possible.*
 - 3.3. *In coming to the Decision, the Individual shall have consideration to Swim England’s Regulations and required standards for Club Affiliation.*
 - 3.4. *The Individual shall adopt a principles-led approach in making the Decision, with the desire to safeguard children at the heart of the decision. Accordingly, they shall consider both the positive and negative outcomes of a decision to allow the Club to affiliate, or not.*
 - 3.5. *The Decision shall be based upon the current position of the Club and the College, including but not limited to its policies, procedures, culture and any current concerns, and accordingly shall not consider whether the College was suitable for affiliation in the past. The Individual shall consider past findings in respect of ECT and the College as background information, to assist the Individual in determining whether the College has now addressed previously existing concerns.*

- 3.6. *In the event that the Individual is made aware of a current safeguarding concern, they shall firstly ensure that the Swim England safeguarding team are aware of such. Following, the Individual shall determine the extent to which it is relevant to the Decision and the weight that shall be given to the concern given (i) its nature, and (ii) whether any Swim England process has been completed in respect of such.*
- 3.7. *In making the Decision, the Individual shall consider any evidence provided to it by Swim England or any other involved party. The Individual may request evidence or representations from any involved party, including by way of an open consultation, should they consider such appropriate.*
- 3.8. *The Individual shall, in consultation with Swim England, determine the process to be adopted for the purpose of considering the matter and coming to a decision.*
- 3.9. *Notwithstanding these terms of reference, the Individual shall be entitled to disclose any detail to the statutory agencies (including, but not limited to, the police, LADO, DBS) they shall be entitled to do so in the interests of discharging safeguarding obligations.*

56. The reporting obligations are set out at paragraph 4. This provides:

- 4.
- 4.1. *The Individual shall report directly to the Swim England Board, through Swim England's executive.*
- 4.2. *The Individual shall endeavour to complete the process within six weeks.*
- 4.3. *The Individual shall provide bi-weekly updates to Swim England on the progress of the matter, including detailed timeframes for completion.*
- 4.4. *The Decision may be disclosed to interested parties at Swim England's discretion. Swim England shall review the Decision and make any redactions it considers appropriate for the safeguarding of children and adults prior to any disclosure.*

57. This means that this report is my Decision under 3.1 as to the recommendation regarding affiliation. That Decision is to contain my reasoning. In the usual way, and similar to court judgments, this Decision will not list every single letter I have written or piece of evidence provided by each person. It provides sufficient reasoning so that the Board and the Club is able to see my reasoning as well as the General Public. Paragraph 4 envisages that some information may be capable of being provided lawfully to the Board but not to the public at large, in particular identifying matters relating to child welfare or identities of adults who have negative findings made but have not had an adequate opportunity to respond. Every individual who filled in the survey or wrote to the apps.review email address received a link to the Terms of Reference and Privacy Notice so was aware that this would be a public decision, with all that usually flows with that. A small number of individuals early on indicated that they wished their names not to be public (and some have since changed their mind and are content). Very late in the day a couple more indicated that they wished me to consider what they said, but not to mention them even in general terms. I have done so in general terms where necessary for the accuracy of this Decision and public confidence for me to do so where the position taken has not enabled me fairly to rely

on the evidence provided from the perspective of the Club's application, this cannot be given weight.

58. Paragraphs 3 and 4 of my Terms of Reference substantively mean that my task involves the following:

- a. **Assessing all relevant factors and principles primarily through the lens of the desire to safeguard children (3.4).** I set out below in greater detail how I approach this task (Chapter 3 Legal Framework, Chapter 4 Methodology and Chapter 6 Decision). In order to do this I needed a process for being able to hear views expressed by children currently in the Club and outside the Club (for example competitors) so that I could take account of their expressed wishes and feelings, as well as considering other factors and evidence, which they might not be aware of, or on which their views would not be decisive, as to whether the structure and likely operational reality of the new Club may pose a risk of harm to children either directly or indirectly, which could not suitably be mitigated by protective factors.
- b. **Determining the standards for Club affiliation (3.3).** Both the Club officers, School (Governors as well as Acting Head) and Swim England agreed that affiliation requires that the Club officers and all members agree at all times (and not only during competitions) to follow the Handbook and policies of Swim England, the anti doping rules of Aquatics GB and international swimming federation (World Aquatics) rules. It was also common ground that:
 - i. Many of those rules apply to conduct both in and out of competition. An example of such rules are the anti doping provisions, which include obligations both in and out of competition.
 - ii. In the case of safeguarding policies these mean that, evidence from any walk of life (i.e. including activities not carried on in swimming competitions), which give rise to an evidential basis that shows there may be a risk of harm to children or vulnerable people in swimming related activities:
 1. must be reported through the appropriate Swim England channels,
 2. must be mitigated and addressed within the Club machinery itself, including officers reminding members of the relevant rules and if necessary enforcing codes of conduct, suspending members in breach and, if necessary taking appropriate action to remove a member;
 3. can be considered at Club level when considering applications for membership of the Club, and in the event of dispute, through the internal dispute resolution processes for the Club in relation to disputes about applications for membership. For example, simply not being suspended currently by Swim England, does not mean a

Club should not consider whether allowing an application for membership by a previously suspended person, whether that person is likely to follow the relevant rules, codes of conduct and policies and whether there is evidence, relevant to the current time, as to whether, if they became a member they may pose a risk of harm to children (including children outside the Club) or vulnerable adults (including those outside the Club).

c. **The standards for affiliation should be primarily assessed against evidence of the current position of the Club and the College, including but not limited to its policies, procedures, culture and any current concerns (3.5):**

- i. **Policies and procedures:** As became apparent shortly after I began the fact finding process, the current Club does not see itself as a “Club” operating under Swim England Rules. Views expressed by the current staff suggested that they considered the rules of Leicester Sharks Swimming Club to apply only during competitions, and while at School the School policies would apply (which do not in some respects, for example safeguarding and anti doping in particular) follow the rules of Swim England. This would plainly not have been a position compatible with Swim England’s rules. The reality, however, was less stark. Referrals were, in fact, made by the School to Swim England safeguarding and welfare officers at the Clubs of which the children at the School were members, even where the activities had not occurred during a swimming competition. Training was given to swimmers on anti-doping which emphasised the conduct necessary outside of competitions. I therefore considered both the words of the policies and procedures and the operational reality and insight of the Club proposed officers and relevant School staff (albeit issues with compliance with Wavepower within the School can be mitigated going forwards if the Club and School are committed to improving both policies and practice, as they are). There was some awareness of policies by Children in the survey, but there is room for improvement (awareness of rules on mobile phones in changing rooms in particular).
- ii. **Culture:** culture of a Club can be difficult to discern, especially where the Club, as it is proposed be constituted, is not in current operation and the plan is for future operations to run differently. The requirement to consider culture also necessitated an information gathering exercise that extended beyond the Club officers and took account of the views of children both at the School and outside it, parents (past and current and from competitor teams) and potentially other interested parties. As set out below, there were marked differences in the tone of responses from children and parents. Especially amongst the parents there was evidence from some (not all) of an extreme level of polarity and expression of views

which showed lack of insight into what Club affiliation is, what safeguarding rules applied and some other misconceptions. The children's responses, in the main, were expressed with a greater degree of moderation, although some of them repeated some of the language of some parents. Some parents' responses were of particular help and provided particulars which enabled incidents to be cross checked against the Schools' records mostly positively.

iii. **Current concerns (also relevant to ToR 3.6):** I set out details in a confidential annex of a recent matter from Spring 2024 which was recorded by the School on their online system as "crime", reported by the School to the Police and disclosures made by the School to Swim England safeguarding. It is necessary for Swim England's Board to be apprised of some details of this incident and the risk factors associated with it and how they are mitigated in the proposed Club structure. Some documents are in the public domain as they have been referred to in a hearing in the Employment Tribunal. However, due to the small size of the swimming Club, reporting further details in the public report would risk mosaic identification of children. Some specificity of the information should not be provided to the Board unless it proves necessary to do so (in which case the process set out in Annex I applies. The features of this incident demonstrate how risk factors previously present during the operation of the Titans and in the operation of the Club and at the School in 2021-2022, are mitigated differently in the proposed Club structure and by mostly new Club personnel. There is evidence of some operational and procedural changes in the handling of this incident compared with previous findings. This incident included children being sensitively, proactively and appropriately supported by Club Officers and at the School in coming forwards in a difficult situation. There is also some evidence of underreporting by children in relation to this incident and an element of underreporting by the School.

d. **Previous findings (3.5):** I must consider past findings in respect of ECT and the College as background information, to assist the Individual in determining whether the College has now addressed previously existing concerns. When I started this Review I had thought that it would be straightforward to identify what "findings" had been made in relation to Titans from previous Swim England determinations, appeals and potentially other court or tribunal litigation. This has not proved straightforward as set out below in Chapter 5.

59. There were also requirements in my Terms of Reference that related to my qualifications and any conflicts. Those were:

- a. **That I must have no prior involvement in respect of Swim England, the College, the Club, ECT or members thereof which would create or infer an actual or perceived conflict of interest or bias (6.2).**
 - i. I confirmed prior to my appointment that I did not believe that I had any prior involvement which would satisfy this test.
 - ii. I believe at the end of my Decision making that this remains the case.
- b. **My qualifications (2.1).** I am required to be of Kings Counsel with specific experience within regulation and safeguarding. I can confirm that I do. I also have experience of education law and schools (both independent and state), the Education (Independent School Standards) Regulations 2014, Department for Education guidance on Independent School Standards and Keeping Children Safe in Education and Working Together. I sit as a member of the National Safeguarding Panel for Sport Resolutions and Appeals Panel and have determined first instance and appeal determinations involving sports safeguarding for a number of sports (but not Swimming). I have also previously acted for the Department for Education in cases including management of Independent Schools and decisions to remove contracts and funding following an Ofsted Inadequate rating. I have also advised on and worked on cases relating to local authority safeguarding duties, public law issues relating to safeguarding duties, disclosures and risk mitigation in the context of overlapping regulatory regimes. I have also worked on cases and advised on matters relating to the Safeguarding of Vulnerable Groups Act and Disclosure and Barring Service. I have experience of employment law, including whistleblowing. My employment related whistleblowing experience includes matters relating to child protection issues in Schools and duties to refer to statutory agencies and the local authorities. I have experience in correctly and lawfully handling personal data and sensitive personal data including medical notes and information relating to children. I have experience as a legal advisor to a large non statutory review. I believe I am professionally competent to take on this work.

60. **Administrative support:** My Terms of Reference at paragraph 5 provided for Swim England to provide administrative support to me. This has principally been undertaken by a trainee solicitor and administrative assistant within Swim England's legal team, and a member of the Swim England insight team who is also a member of the Market Research Society and who assisted with the coding and formulation of the online survey. I have also made specific requests for relevant information from Swim England Safeguarding, the Shropshire Amateur Swimming Association, Swim England West Midlands and Swim England's Sport Governance and Welfare Manager. Paragraph 5.4 requires that where I require the attendance of a Swim England employee to provide administrative support they will not take any part in the decision making process. My evaluation of the evidence in this report is solely my own. As I wrote to several concerned individuals, were Swim England to attempt to ask me to

determine this matter in any particular way I would politely remind them of my Terms of Reference and I would be my own woman. Those providing me with Administrative Support have not sought to influence my decision. Indeed, Swim England Legal Department have on occasion declined to provide their view on what my Terms of Reference mean or make representations when the opportunity has been provided for this to occur. As set out in Annex I, this necessarily limits Swim England's appeal avenues in respect of this Decision.

61. **Confidentiality:** Paragraph 7 of my Terms of Reference provides as follows:

7.1. The Individual must keep confidential all information provided by Swim England or any third party in respect of these Terms of Reference, including any documentation, evidence, personal data and information provided verbally. The Individual shall not disclose any such information to any party without prior written permission from Swim England.

7.2. Upon delivery of the Decision to the Swim England Board, the Individual must destroy or return to Swim England (at Swim England's cost and discretion) all information provided to them by Swim England or any third party under these Terms of Reference. The Individual shall therefore ensure that any individual providing relevant evidence to them as part of the process hereunder is aware of such.

7.3. The Individual must refrain from comment in the press or on social media on work connected to these terms of reference, unless in accordance with and on permission of the Swim England Communications team.

62. This must also be read with paragraph 3.9 which specifically permits me to share information if it is necessary to share it for safeguarding reasons including permitting disclosure to statutory agencies and the appeal provisions as set out below. Permission was received to share the ICPO 2 report extracts that I had received with the School and I made clear to Swim England legal team at the start that if I was to make a finding adverse to the Club or college or an individual, I would need to provide sufficient gist so that they would have an adequate opportunity to respond. They should therefore make clear to me if any information provided to me could not be shared with the relevant individual at the Club or School and I would expect that to be clearly set out and be persuaded of the reason not to share the information. If I was not persuaded that I should rely on the matter without sharing it I would not rely on it. This is my understanding of the process which has been adopted by undertaken by Swim England. I have also shared some information with statutory agencies as specifically permitted under my Terms of Reference.

63. **Privacy Notice:** As my decision making would inevitably involve the processing of personal data I took the view that there needed to be a discrete Privacy Notice for the review's activities and for that to be available in public with the Terms of Reference. This was also provided in response to any email to the apps.review email address which was set up for the purposes of the review. That privacy notice was also embedded in the survey. That notice explained the potential for me to share data

without consent if reasonably necessary and proportionate for the purposes of the review, any professional obligation or safeguarding children. A copy of the privacy notice is included with this report at **Annex B**.

64. **FAQs:** shortly after the start of my process I was notified that a couple of individuals had contacted Swim England's CEO with concerns about my review and approach and I began to see some considerable polarity of parent views and some strong views, some of which were expressed with considerable force in survey entries dated after 10pm on a Friday evening. The process leading up to the FAQs is set out in Chapter 4. The FAQs are attached at **Annex C**.

65. **Appeal rights:** I set out my analysis on appeal rights in Annex I.

a. In my view, where the application is by the Club, any right of appeal is exercisable by the Club. At the time of the application the Club Executive was not formed and indeed the Governor member was not identified until mid-August 2024. The usual position for an unincorporated association would be for the Chair to act for the association. In this case it was the Head Coach (Mr Worrow) rather than the Chair (Mr Horrocks) who made the application for affiliation. I also checked with the Governors whether they had any expectation of an appeal right and the Chair confirmed by letter sent to me on 16 August 2024 that the governors did not expect a right of appeal and that the Chair and Head Coach could decide between themselves.

b. Sometimes in application cases a sports NGB or licensing authority would have an opportunity to appeal. In the context of these Terms of Reference, however, that would be somewhat of an oddity as the Appeal lies from my "Decision" but the ultimate decision is made by the Board of Swim England (who would also presumably have the right of appeal). I wrote to the Director of Legal at Swim England asking for her submissions on what was intended on 26 July 2024, 31 July 2024, 1 August 2024, 2 August and 23 August 2024. No substantive submissions were made save that if there was a right of appeal it would be exercised by the Director of Legal herself. As I had made clear on 2 August 2024 that the usual position is that making no submissions when offered to do so at first instance precludes an appeal on a ground that could have been advanced sooner, I do not consider Swim England is entitled to appeal this Decision as no submissions were made. An advanced draft of this Report was provided on 2 September 2024.

c. I also heard from a person in response to my call for evidence that my Terms of Reference would be defective if they did not provide for a right of appeal for the previous Ellesmere Victims. That is not, in effect, a submission that my Terms of Reference did contain such a right. If it were such a submission, I do not agree that my Terms of Reference could lawfully contain such a right as a matter of

law, nor do I consider that such a right could be exercisable for the reasons set out in greater detail in Annex I. The principal reason is that paragraph 8.3.3 of the Terms of Reference provides for an appeal right based on whether I had rationally considered the information before me. In the context of a Club with child members also based in a School, and especially where some of the material relates to highly sensitive personal data identifiable to specific children and some of which included medical notes, it would be wholly inappropriate for other parents to have access to those records to assess whether they had such an appeal right. The small size of the current Club and the success of many of its members in national competitions means that those children would be readily identifiable if their names were redacted to cypher or alternative names in those documents. Some of the documents were of such sensitivity that there could also be potential issues with all of the proposed Club Executive having access to some of those documents. I believe that sufficient gist can lawfully be given to them (and has been given to them) in correspondence and interview so as to have a lawful opportunity to respond to potentially adverse findings. Also, some individuals at the School, especially the current Acting Headteacher and DSL had full access to those documents, many of which were shared by her with me. The sensitivity of some is that they should not be shared with Swim England's Board. This also means that parents of current members should also not have any right of appeal, despite the strong views of some expressed through my call for evidence and the expectations which appear to be based on Louis Weston's report discussed in Chapter 3 but which I do not consider reflect that report. Furthermore, in the context of this review, there has, in any event been a consultation, conducted in public which has allowed current and past parents and members to share their evidence, views, wishes, feelings and any legal submissions and was an appropriate information gathering exercise that I believe was lawful. Only one public respondent made submissions on appeal rights.

Chapter 3: Legal framework

66. Some of the responses received during my evidence gathering process showed that the legal framework is not necessarily generally understood. This is no criticism of any person. For example, there is no way I am expecting teenage members of a swimming team or non-lawyer parents to display a specialist understanding of the law which would come from many years legal practice. I would expect the school's senior leadership team to have some understanding of the legal framework and duties which apply in the context of a school, and indeed the acting Headteacher's submissions to me included some submissions on the school's legal duties and some of the applicable guidance. There have also been some instances where the School has taken legal advice or has had legal representation in actual or threatened litigation, and that necessarily and understandably involved more distinctly legal content being considered.
67. There has also been the separately commissioned Weston Report⁵ of 17 March 2023 which looked purely at a paper review of some complaints made relating to Swim England. That process included some, but not all, documents relating to Ellesmere Titans, and in particular does not appear to have been privy to some additional documentation that I have had access to from external agencies, the School, club officers and Swim England. The Weston Report is carefully and appropriately caveated. Those caveats are not necessarily repeated by those who have sought to highlight some of the passages to me as part of this Review. I include some comments as to where I depart from some of the legal analysis in that report below. That should not be read as any personal criticism whatsoever of Louis Weston. It would seem that some are interpreting it in a manner in the context of this club's affiliation which I do not consider to be likely to be the intent, nor an accurate statement of the law.
68. Also, during this review, some of the rules of Swim England have been changing. There are new rules which apply from 3 September 2024 in relation to several processes.⁶ There is also a new Handbook with some different provisions and numbering, see Chapter 6. These new rules were provided to the Club Officers, Acting Headteacher and Chair of the Governors on 29 August 2024 in case they wished to make any further representations on those. They have confirmed they do not.

Affiliation and other applications to join sports NGBs

69. Affiliation comes from the Latin "affiliare." Without wishing to go on too much of a digression into Ancient Rome,⁷ being "affiliated" was a principal means of transferring property and solidifying loyalty by the affiliated person (who may have been a relative,

⁵ <https://sportengland-production-files.s3.eu-west-2.amazonaws.com/s3fs-public/2023-03/SRUK%20report.pdf?VersionId=z9yBTbldSvHFcaezmxJmv9Jmyv7GnPv3>

⁶ <https://www.swimming.org/swimengland/updated-regulations/>

but most often was not). It required loyalty in exchange for a degree of financial protection.

70. In the context of sports clubs and NGBs, it has, of course, developed substantially from Ancient Rome, but it is still principally the same bargain. Affiliation is more than a Club deciding to play by a sports NGB's rules (for example a group of children agreeing to play football under FA rules in a park is not affiliating). It may access greater benefits (for example insurance, legal assistance, access to specific competitions and events organised by the NGB), but is always requires that the person or entity agrees absolutely (and without exception) to be bound by the sports NGB's rules from time to time.
71. No individual or corporate entity has an automatic inalienable right to join any sports National Governing Body ("NGB) or to benefit from procedures and insurance purchased by such a body or other benefits of membership. There may be particular instances where the law may impose some duties or the Court may intervene under its "supervisory" jurisdiction where issues of Competition law apply, restraint of trade or where there is a contract in existence between the NGB and challenger under which duties are imposed expressly or through the implied term of good faith as set out below.
72. Originally many Sports NGBs were unincorporated associations (similar to some smaller sports clubs nowadays) and entirely financed themselves through the levying of membership fees or license fees on participants such as players, coaches, agents, promoters and affiliated clubs.
73. Nowadays, most sports NGBs have their own corporate structure and are incorporated. They may receive funding from both membership fees and license fees (for example both on participants and for events) and operate as a joint venture vehicle for event organisation and for participation in the sport, as well as licensor for training and coaching and also for setting and enforcing the rules for the sport itself and its governance structures. Their funding may come from members and licensees and also from central government funding (through the Department for Culture Media and Sport), or from charitable organisations or benefactors.
74. National sports NGBs may also be affiliated members of International Sporting federations for their particular sport (for example in the case of Swimming to World Aquatics). The rules of the International Federation may require the NGB to include particular rules in its own rules, and to take steps to bind members and participants to follow such rules.
75. Most international federations and NGBs also have committed to the World Anti Doping Code within the framework of its own national rules. This requires all members, athletes and participants to comply with particular duties, and to agree to

be subject to the relevant anti doping body for the particular activity (which may in the UK be UKAD, a body which is independent from the UK NGB).

76. Sports NGBs may also have their own membership bodies so that they can reach the “grass roots.” In many sports this will take the form of clubs, which agree to bind their members to the rules both of the sports NGB and the international federation (where relevant) in a chain of contracts.
77. Sports NGBs require their members to comply with their procedural rules as well as substantive rules. They usually have their own dispute resolution processes, disciplinary processes for members who breach the rules, and Safeguarding Processes, which provide for risk assessments to be carried out on clubs and on individual participants such as members, coaches, promoters etc. The new Swim England rules which apply from 3 September 2024 provide considerable detail on some of those processes.
78. There are additionally legal duties on sports NGBs and their members which apply irrespective of their contractual rules including private law tortious duties of care, specific duties under tax laws and under statutory safeguarding duties, as set out in greater detail below.
79. Competition law generally applies to sports NGBs. Their rules are also usually accepted as including the implied term of good faith, which requires procedures to be consistent with common law duties of fairness in their contractual processes and that substantive decisions are not irrational.
80. One of the earliest sports law cases concerned a decision of the Jockey Club to keep refusing applications by a female trainer for a license while granting licenses to men (*Nagle v Fielden* [1966] 2 WLR 1027). The Court found that this was an unlawful breach of the law on restraint of trade by a trade association in a monopolistic position to act as a gatekeeper for who would be permitted to work as a racehorse trainer. The Equality Act 2010 now applies to this situation and the claim is likely to be brought differently than in 1966. However, this case gave rise to an area of law where restraint of trade law applied to sports NGBs.
81. The way that area has developed is that a sports NGBs decisions especially in taking sanctioning powers against individuals who are already registered or licensed and powers to impose sanctions on other sports participants are usually required (both expressly and by implication) to be proportionate (or not to be “unduly disproportionate” – wording used in the rules of another well known sports NGB).⁸ One of the classic statements of the law was explained by Richards J (as he then was) in *Bradley v Jockey Club* [2004] EWHC 2164 (QB) approved in the Court of Appeal and subsequent cases). It often does not matter whether the source of the duty on NGBs is

⁸ The new Swim England rules refer to decisions needing to be “proportionate.”

from competition law (either restraint of trade law or the Competition Act 1998), the contract or from implied terms.

82. There is a legal distinction between cases where a decisions of a sports NGB affects a person's (either natural or legal) right to earn money (for example charge for being a trainer etc) and where the impact is non-economic only (for example barring from competing in a competition such as the Olympics for which there is no prize money) and where the duties may not apply.⁹ Membership of a sports NGB by a coach, for example, impacts their ability to work. Affiliation of a club to a sports NGB has a more remote connection.
83. Such duties apply both where a person is applying to join a sport (with a right to work element) and to be removed, but higher standards apply in "forfeiture" cases than "application" cases.¹⁰ Since *Nagle v Fielden* application cases in the Courts have been rare.
84. Even in application cases, as Richards J said in *Bradley* at [37]:

"The most important point, as it seems to me, is that it is supervisory. The function of the court is not to take the primary decision but to ensure that the primary decision-maker has operated within lawful limits. It is a review function, very similar to that of the court on judicial review. Indeed, given the difficulties that sometimes arise in drawing the precise boundary between the two, I would consider it surprising and unsatisfactory if a private law claim in relation to the decision of a domestic body required the court to adopt a materially different approach from a judicial review claim in relation to the decision of a public body. In each case the essential concern should be with the lawfulness of the decision taken: whether the procedure was fair, whether there was any error of law, whether any exercise of judgment or discretion fell within the limits open to the decision-maker, and so forth."

85. He continued at [47] to reinforce that these are likely to be cases on which there is more than one potentially lawfully available answer and there is a significant margin of discretion for the decision maker:

"The test of proportionality requires the striking of a balance between competing considerations. The application of the test in the context of penalty will not necessarily produce just one right answer: there is no single "correct" decision. Different decision-

⁹ Bradley at [35], *Dwain Chambers v British Olympic Association* [2008] EWHC 2018 (QB) available for free <https://www.casemine.com/judgement/uk/5a8ff7b760d03e7f57eb1756> at [46]. Recently in *Dymoke v Association for Dance Movement Psychotherapy UK Ltd* [2019] EWHC 94 the Judge, Poppelwell J (now Lord Justice Poppelwell) said at [68] that his "strong inclination is that ADMP is not a body to which such rule [the rule in *Nagle v Fielden*] applies not least because membership does not substantially determined whether a dance movement psychotherapist can practice as such." In *Nagle v Fielden* Lord Denning recognised that a social club can bar any person from entry because there is no contract with that person and because such a club does not affect access to a trade, profession or work. The case law on good faith has now moved on and there is case law on whether it applies to the termination of a contract.

¹⁰ *McInnes v Onslow Fane* [1978] 1 WLR 1520 1529-1530

makers may come up with different answers, all of them reached in an entirely proper application of the test.”

86. The law of judicial review has also moved on since the early cases and, like the sporting cases, makes a distinction between application cases and removal cases. A wider margin of discretion is applied in application cases, especially if there is a risk assessment element.¹¹ For a time, the law appeared to provide for a separate ground for judicial review for “inconsistency” by a regulator between regulated entities. However, the Supreme Court confirmed in 2018 that there is no such separate legal principle, even where there is a background of Competition law.¹²
87. In some sports there have been calls for greater government regulation, and even the formation of a statutory regulator.¹³ There is no statutory regulator for swimming. Instead, all participants¹⁴ agree to Swim England’s rules and Swim England has contractual jurisdiction over those participants.
88. Regulating participants in a sport requires the NGB to put trust in individual members to comply with rules and trust in clubs and event organisers to take steps to require those individuals to comply with rules. Every Sports NGB, in reality, faces a practical dilemma as to how to ensure its legal duties can be administered when its directly

¹¹ See for example the law on applications for leave to remain, and for citizenship (both applications for citizenship and revocations of citizenship).

¹² *Gallaher Group Ltd V Competition and Markets Authority* [2018] UKSC 25 at [24]-[30]. I discussed this case and what the law requires in interview with some of those interviewed for the club who were concerned whether they might be being treated inconsistently. They were provided with an opportunity to respond both on the facts and the law. There may be rational reasons to take a different approach in another case. Fairness will not prevent this occurring unless there are other fairness breaches or there is a legitimate expectation following a promise that is sufficiently clear, precise and given without relevant qualification by a person with sufficient power to do so. I have checked in this case. The club does not seek to rely on any such legitimate expectation other than the limited one set out below that they considered that an employee from Swim England had approved their Constitution (which I am also content to recommend be approved) but I have found that what was said could not have amounted to a legitimate expectation of approval or that the standard process rather than what these Terms of Reference provide for, would apply. The findings discussed in Chapter 5 are relevant (where I can rely on them fairly) and deciding this matter with regard to the welfare of children requires me to have careful regard to what the risks were and now are and whether risk mitigations are in place. I also need to consider carefully not to require a counsel of perfection or to hold this club to a higher substantive standard ultimately than is appropriate. The fact that steps may not have been taken in relation to other clubs, however, is of limited weight especially if there are relevantly different circumstances and it has been possible to conduct the process as I have been able to in this case. The new Swim England Rules in some places refer to “consistency so far as possible.” I will not determine in this report whether this adds to or is any different to the legal duties that in any event apply because this is a legal question which may call to be determined in cases or on appeal.

¹³ <https://www.gov.uk/government/publications/football-governance-bill-supporting-documents/fact-sheet-the-independent-football-regulator-ifr>

¹⁴ As noted in Chapter 6, the previous reference to participants in the Handbook has been removed. However, in my view the concept, as it is interpreted more broadly in sports law appears still to apply to the participation referred to in both the Handbook, Code of Ethics, Anti Doping rules and Wavepower.

employed staff cannot be everywhere at all times, and there is the inevitable information asymmetry familiar to all regulators.

89. It is not uncommon in any regulatory or sports NGB environment for participants to say that they are complying with rules, but that does not necessarily mean that they are. Participants who do not disclose sufficient relevant information, or which “information bomb” by providing so much irrelevant information that extracting the relevant information is unduly costly are administratively more expensive to administer than those which comply straightforwardly. The provision of information by a Club is therefore, as a matter of law, a potentially relevant consideration both for this Review and also for any sports NGB to consider. It is also sadly not uncommon in serious safeguarding cases across sport¹⁵ for perpetrators to seek to use a sports NGB’s processes to attempt to control the flow of information into the relevant safeguarding team by making complaints about staff in that team, raising multiple low level concerns and flooding the team, raising grievances or launching campaigns.¹⁶
90. The law, as it has developed, therefore recognises that:
- a. Sports NGBs and event organising joint venture entities can legitimately expect all participants both to
 - i. comply with the rules and
 - ii. to proactively cooperate both in providing information and abiding by all rules.¹⁷
 - b. No new or existing Club usually has an automatic right to join with a sports NGB. An NGB should act procedurally fairly, but can legitimately have a wide margin of discretion in considering whether it has sufficient confidence that its rules will be complied with by the member and that all necessary information will be disclosed to it. As with all application cases (as opposed to expulsion cases) less is required in terms of particularisation but sufficient gist should be provided to the person who faces their own application not being granted so that they know what affiliation requires. That does not mean that all information submitted by a participant or which is relevant to the decision relating to their membership be shared with all other members or participants in the sport.
 - c. Sports NGBs may both require clubs and participants to follow their rules and also follow all relevant duties in English law.

¹⁵ Or indeed in other fields

¹⁶ This is not only done by perpetrators but is a feature which can be observed in serious cases and which increases the resources required and time take to complete the safeguarding process against the perpetrator. I am of course not saying that no campaign can ever be appropriate in a sporting context or any other regulatory context.

¹⁷ For example *Everton FC v Premier League Appeal Decision* at [90] - [91]. Publicly available at <https://resources.premierleague.com/premierleague/document/2024/02/26/b1c920ab-c053-4414-913a-c529efd27d18/Everton-FC-and-Premier-League-appeal-decision-260224.pdf>

- d. Safeguarding has increasingly become important. This requires a risk based framework and unhindered information flow into the Sports NGB to its Safeguarding team and any independent investigator. Barriers to the flow of that information hinder the NGB's duties in that field, set out in greater detail below.
 - e. Where a risk is based on a failure to disclose relevant information, the allegation may need to be clearly put, but the totality of the full information coverage of the Sports NGB's safeguarding team would rarely be provided.¹⁸
91. Cases which reach the Courts under the supervisory jurisdiction are unusual nowadays, since many sports have internal independent processes, some of which are arbitral in nature and many of which (especially safeguarding) are confidential by default.¹⁹ Those which do reach court more usually concern procedural fairness rather than substantive rationality (for example *Dymoke v Association for Dance Movement Psychotherapy UK Ltd* [2019] EWHC 94 (QB) which concerned failures adequately to particularise a case against an individual before her individual membership was terminated so that she did not have an adequate opportunity to respond.

Sports clubs

92. Sports clubs may be established as bodies with separate legal personality (such as companies) or more commonly are unincorporated associations. Unincorporated associations have no separate personality but are made up of their members. Legal liability of the club can be enforced against all members. A practical example of this principle in the context of a sports club was *Howells v Dominion Insurance Co Ltd* [2005] EWHC 552(Admin) a case about a football club, where there had been a fire and an exception from the insurance had been activated by the failures of some officers to disclose relevant information. The High Court allowed an appeal against a Master's order that a judgment could not be enforced against individual club members. Cox J reversed the Master's order and ordered that the named club members all be separately and concurrently liable subject to any further order by the Master (in their discretion) that any individually may be able to show special circumstances which mean that the order should not be individually enforced against them.

¹⁸ Similar to other regulators and information led organisations, full information coverage is rarely provided to a regulated entity for the reasons summarised in [4] of *National Crime Agency v Ex parte Namli* [2014] EWCA Civ 411. The new Swim England Safeguarding procedures for investigations additionally expressly recognise that "*While we appreciate that all involved in a concern will want information, we are often unable to provide the full details. This may be for a number of reasons, such as the need to protect certain people, the need to not prejudice a police investigation, and to protect the integrity of the investigation that we have commissioned.*"

¹⁹ There may on occasion be disputes as to whether an internal process is disciplinary in nature or whether it is intended to be Arbitral under the 1996 Arbitration Act: see for example in gymnastics <https://www.british-gymnastics.org/articles/independent-complaints-process-icp-appeal-panel>

93. Clubs formed as unincorporated associations tend to have a Constitution which provides for an Executive Committee to have powers to act for the Club and to appoint relevant officers (for example in the present matter the Executive Committee must be formed under the Constitution before Welfare Officers can be appointed, and the Club has not yet been in operation or considers itself constituted). The Constitution may provide for a Club Chair who may have powers to act. Some club constitutions generally in sports provide for the Officers to be indemnified by members in the event of a claim. This is not provided for in this Constitution.²⁰
94. In the context of a school sports club, some or all of the Executive Committee may be employees or office holders at the School. In the present matter one of the proposed Executive Committee is the Safeguarding Governor. In such structures it is essential that there is adequate insurance cover in place to cover activities within the club, but also to maintain the school's insurance covering the acts and omissions of all employees and officers in the course of their employment and office holding. I return to this below in Chapters 5 and 6. The position in relation to legal liability for tortious harms can be legally complex in sports generally, and especially so in sports clubs affiliated to an NGB within schools.
95. Sports clubs also need to consider carefully their taxation status. In the context of a school club it is necessary to consider whether it is within or outside the School's charitable status (charitable status is inconsistent with Community Amateur Sports Club (CASC) status, were this to be pursued) I would expect that careful assessment will be required to determine the appropriate VAT treatment in light of the proposed change in VAT status for Private Schools.

Development of the law on sports safeguarding

96. The law on safeguarding, especially in sports, has developed substantially over the last 30 years. There has been a shift from focussing predominantly on whether alleged perpetrators carried out particular prohibited conduct or criminal offences, to a much broader scope, imposing interlocking and in many instances overlapping duties which address potential risk factors for abuse. Some of those risk factors will be from individual perpetrators themselves but other duties are directly addressed at reducing the scope for potential harmful activity to children in future, by removing or reducing the opportunities or by mandatory reporting duties which enable detection and risk mitigation at an early stage before harm occurs and which take the "heat off" the victim reporting it.
97. Much of the initial development of this area arose in the context of sexual offences against children in sport. However, this area does not only apply to sexual forms of abuse, and has developed more broadly into an area covering both sexual and other

²⁰ The Swim England insurance provides some insurance for officers but not if they have failed to report relevant matters.

forms of harm and addressing risks which may pose harm to children in the context of sporting activity including low level harms, peer on peer harms, bullying and conduct which can give rise to self harm and body image disorders.

98. One of the pioneers of Sports Safeguarding, Celia Brackenridge,²¹ wrote²²:

“In Britain, the moment of sporting truth occurred in 1993 when former Olympic swimming coach Paul Hickson fled the country and hid in France before sentence could be past. A further two years elapsed before he was apprehended and convicted of 15 sexual offences including two rapes. His prison sentence of 17 years was the longest ever rape sentence imposed in an English court. The “Hickson case” was a defining moment in the history of sexual exploitation in sport. Despite the fact that research and advocacy work for better standards of athlete care had been underway for some ten years or more in Britain prior to his arrest, there had been little in the way of official responses to the issue....”²³

Moral panic and safeguarding

99. The period that followed was characterised by what Brackenridge and several other authors characterised as “moral panic.”²⁴ In the context of sports safeguarding the coverage and focus of campaigning initially posited that the major threat came from “paedophiles” who were able to infiltrate sport as “bad apples” within an otherwise satisfactory organisation. The focus was initially on the use of the criminal law to identify and punish sexual offenders, and less on considering broader and other forms of abuse which could pose a risk to children in the context of sport or practical steps which could be put in place to make serious sexual abuse more difficult to perpetrate undetected in a sporting environment. As Brackenridge wrote in 2001:²⁵

“whether sexual exploitation in sport qualifies as a classic moral panic may perhaps be debated. The danger, as with all moral panics, is that exaggerated claims and surface hysteria mask genuine underlying problems. This appears to be happening in sport: attention has become focussed on perceived external sexual threats (where only limited evidence is yet available to substantiate such fears) and at the same time, internal sexual threats to athletes in sports have been downplayed. The concept of the moral panic is helpful in understanding the rapid spread of concern about the issue of sexual exploitation in sports and the ways in which different individuals and events have contributed to the discourses surrounding it. Examining the processes of moral panic may also help those of us in sport who wish to defuse the hysteria around the issue and separate myth from reality.”

²¹ Whose work is extensively cited from page 53 of Sir Clive Sheldon’s report into child sexual abuse in football.

²² Celia Brackenridge, *Spoilsports: understanding and preventing sexual exploitation in sport* (2001: Routledge) p 17

²³ See further Sheldon at 4.1.13-4.1.16

²⁴ Adopting a phrase from Cohen S *Folk Devils and Moral Panics: the Creation of the Mods and Rockers* : (1972: McGibbon and Kee) p 9.

²⁵ Brackenridge 2001 p 24

100. This work became highly influential within the development of child safeguarding law and practice. As set out below, I have been struck by the tone of “moral panic” expressed in some (not all) parental responses to the survey and that it will be necessary for the Club perhaps also with the School’s assistance to be able to take steps to defuse this tone so that children participating in swimming in the club, and competing with the club, can do so in accordance with both the text and spirit of Wavepower.

Beyond moral panic: carefully identifying and mitigating risk factors

101. In sport, the NSPCC’s Child Protection in Sport Unit was established which adopted an approach developed in the context of probation services, of identifying risk factors posed by individuals or within organisations and focussing on putting in place checks, policies, working practices and duties to report focussed at making it practically more difficult and less likely that abuse could occur, and if it did that it would be capable of rapid detection. The approach developed by the probation service used a tool developed by Finkelhor, known as the “*four preconditions*” for sexual abuse:²⁶
- a. An individual **motivated** to abuse;
 - b. Who **overcomes internal inhibitors** (ie whether the person cares about following rules preventing harm to others);
 - c. Who **overcomes external inhibitors** (ie, who is able to contact a child and develop contact undetected and undeterred by others, from which they then have the opportunity to abuse);
 - d. Who **overcomes resistance by a child** or is able to isolate the child or inhibit the child by their own internal fear or by threat of external detriment from reporting the contact or abuse, or from accessing other potentially protective individuals or mechanisms.
102. The approach in sport and safeguarding law generally focusses on (c) and (d): the external inhibitors and empowering the child and removing barriers to reporting and accessing support.
103. As the area of sports safeguarding has developed, these include a wide range of different steps including:²⁷
- a. Effective and overlapping policies and codes of conduct.

²⁶ Referred to in Brackenridge and also p 17 of Scolding: <https://www.westminster.org.uk/wp-content/uploads/2022/03/Independent-Review-into-Harmful-Sexual-Behaviours-Fiona-Scolding-QC.pdf>

²⁷ The original list: Brackenridge, Summers and Woodward, Child Protection in Sport was “*the introduction of codes of ethics and codes of conduct for sports leaders and coaches; the adoption and regular updating of comprehensive registers of coaches to monitor who moves where between clubs, sports or regions; the introduction of criminal record checks for all those placed in a leadership role, whether it is paid or not; the introduction of compulsory child protection modules in all coach education syllabi and governing body awards; the development and dissemination of training materials for parents, athletes and coaches, including simple codes of practice, checklists or contracts for all concerned to guide them to follow simple, basic rules of conduct; [and] the development and dissemination of examples of good practice in child protection in the voluntary sector of sport.*” Cited in Sheldon at 4.4.6

- b. Mandatory reporting and ensuring lack of obstacles to inter agency information sharing.
- c. Decreasing invisibility and appropriate use of surveillance mechanisms (both online and in person avoiding coaches being with children 121).
- d. Hard edged legal duties to avoid sexual activity, relationships and purely social contact within a position of trust relationship.
- e. Effective disciplinary and risk reduction processes.
- f. Recording and addressing minor incidents as well as major to reduce the risk of invisible escalation.
- g. Child centric coaching styles.
- h. Awareness of power imbalances.
- i. Distribution of information proactively to parents and other care givers to enable them to spot concerning indicators, change in behaviour or underreporting.
- j. Preventing inappropriate Non Disclosure Agreements or other legal tools used to stifle or inhibit reporting, for example Strategic Litigation Against Public Participation (SLAPPS).²⁸
- k. Addressing the fears that reporting may lead to reprisals or other detriment (eg non selection from teams/ disfavour from coaches).
- l. Higher vigilance or risk mitigation measures where other protective factors are absent or vulnerabilities are present.
- m. Awareness of patterns of grooming including grooming of parents and ensuring parents are aware of the potential to be groomed by perpetrators.
- n. Ensuring that parents and other caregivers are aware that those who abuse sadly very often treat others (very often the majority) particularly well, in order to trigger a positive campaign, petitions or references in their favour once identified by a victim who comes forwards. A petition or campaign does not mean this has occurred, but is not automatically treated as a wholly positive indicator.
- o. Active discouragement of minimisation by those with power over those in a position of trust with children.
- p. An open mind to learning good practice from previous cases and identifying barriers to reporting and harm prevention.
- q. Awareness of the potential for false allegations and indicators of falsity.
- r. Providing access to counselling and support gateways for those affected.
- s. Maintaining calm if faced with moral panic reactions.
- t. Governance structures which avoid a concentration of power and knowledge in one individual and which encourage and permit challenge.

104. When abuse is uncovered,

“such allegations cause personal anguish upset and shock; they threaten the stability and credibility of the organisation and those in charge...organisations whose leaders have anticipated the possibility of such problems by developing and implementing

²⁸ <https://www.sra.org.uk/solicitors/guidance/slapps-warning-notice/>

comprehensive protection policies are much more likely to maintain control of the issue and to be able to resolve it with the minimum of upset for all parties.”²⁹

105. This “*risk based*” approach to child safeguarding has led to a number of discrete legal developments:³⁰

a. **Barring:** In 1999, the Protection of Children Act 1999 required the Secretary of state to keep a list of individuals “considered unsuitable to work with children.”³¹ The successor organisation, the Disclosure and Barring Service (originally the Independent Safeguarding Authority) was set up in 2006 to maintain a barred list of those who have carried out conduct which causes harm to children or where they “may” pose a “risk of harm” to a child. As specified in para 5 of Schedule 3 to the Safeguarding of Vulnerable Groups Act 2006 A person **may pose a risk of harm** to a child if they

“**may:**

- a) *harm a child,*
- (b) *cause a child to be harmed,*
- (c) *put a child at risk of harm,*
- (d) *attempt to harm a child, or*
- (e) *incite another to harm a child*

This critical part of the legal framework emphasises why the test may be essentially forward looking to assess the future risk of harm, and not only on past conduct in a purely disciplinary or criminal sense.

b. **Safe recruitment checks:** The 2006 Act was the successor act to the Police Act 1997 which imposed a duty on those carrying out regulated activity to conduct checks as to whether a person is on the barred list. An “*enhanced criminal records*” check was also developed so that those who employed or used volunteers in carrying out specified activities would need to conduct an enhanced check, through the Disclosure and Barring Service, which would show both whether the individual was on the barred list but also whether there was additional information recorded by a Chief Constable relating to a risk they pose or may pose to children or adults at risk. That information might include allegations which had not been found to be substantiated.

i. Most sports NGBs mandate safe recruitment checks including enhanced DBS checks for those who may carry out regulated activity, 121 supervision

²⁹ Brackenridge at p182

³⁰ This is a huge area of law. This summary is necessarily high level and should not be treated as exhaustive of all relevant legal duties, regulatory structures, obligations and criminal offences in this area.

³¹ Previously known as “list 99”

of children, access to bathrooms and changing facilities and transporting children.

- ii. Outside of sport, greater safe recruitment duties in other contexts, for example in the Independent School Standards 2014, may additionally apply.

Not all safeguarding relevant information is recorded by the Chief Constable. A DBS check is a legal requirement but it does not reflect the totality of safe recruitment practices. In some instances relevant information may be held by the Local Authority Designated Officer (LADO) in England³² who has statutory responsibility relating to people in a position of trust. Information may be held by former employers or by other regulators who, depending on the circumstances, should be contacted. Just because a person isn't barred doesn't automatically mean they are suitable, fit or proper to have access to children in sports or education setting.

- c. **Compulsory regulatory overlap:** This grew out of the original "Working Together" Guidance: Working Together to Safeguard Children Guidance. This has been added to by a complex web of statutory duties provides for multiple public bodies and safeguarding "partners" to owe **parallel and overlapping** duties to safeguard children. This is now built into the statutory schemes for Education standards, local authority duties, designated agencies (which include sports national governing bodies) and professional regulators and the national guidance Working Together to Safeguard Children 2023³³ and Keeping Children Safe in Education (now in its 2024 version). The system provides for information sharing between "safeguarding partners" and a series of mandatory referral duties.
 - i. The principle of regulatory overlap may require the same incident to be referred to different bodies, who may already hold some (but perhaps not all) relevant information and to mandate both working together;
 - ii. But also that there is no inappropriate deferral to another agency where the jurisdiction is different, where the information may have been different, or where risk assessment judgement differs.

³² LADOs do not exist in Wales and the responsibility for people in a position of trust is addressed differently

³³ Usually updated in November or December of each year

For example, in sports safeguarding, a coach who also has qualified teaching status would be obliged to self report to a sports governing body with which they hold their coaching license. Depending on how they cooperate with both bodies it is conceivable that they may receive a different risk management measure from one (for example Teaching Regulation Agency (“TRA”) decisions are public which is sometimes seen as sufficient proportionate sanction) but the sports national governing body may impose a different measure (for example if there has been a failure to cooperate, misleading information has been provided or additional risk factors present in that context or if the sport setting means that risks mitigated in the school setting may not be adequate to safeguard children in sports). The fact the TRA has dealt with it in a particular way is evidentially available to the sports NGB but is in no way decisive or to be deferred to.

- iii. Working Together specifically and expressly provides that it applies (in addition to and in parallel to) Educational guidance.³⁴
- d. **Mandatory regulatory duties to report:** Some professions and rules of sports NGBs (including Swim England) also have mandatory duties for all members, licensees and participants to report safeguarding matters of concern to external agencies and to proceed on a “*seeds of doubt*” basis.³⁵ These duties are imposed to combat the information asymmetry which may occur in abuse scenarios and that, especially if there happens to be an individual intent on a campaign of abuse, different aspects might be visible only to different people at different times, which only permit detection if all of that information can be shared. Those mandatory duties also can take the “heat” off the victim so that addressing the matter does not fall wholly or mainly on their shoulders. This was a key recommendation of the Independent Inquiry into Child Sexual Abuse (IICSA).³⁶ There is a difference between the threshold for reporting in and the threshold for taking further investigatory steps. In some cases reporting and recording will be sufficient or the matter may be capable of being devolved to the Club, or sometimes within a School setting once it has been reported.
- e. **Information sharing (including sensitive information sharing):** Information sharing across relevant statutory agencies, bodies, regulators and education provision is a bedrock of safeguarding law. This includes information sharing mandated by section 27 of the Children Act 1989 and specifically encouraged by statutory guidance from the Information Commissioner’s Office (the data

³⁴ See Working Together page 9 point 4 “It applies, in its entirety, to all education providers, and childcare settings.”

³⁵ Sheldon Report at 2.45, 2.83,

³⁶<https://www.iicsa.org.uk/final-report.html#:~:text=In%20accordance%20with%20the%20Inquiry's,and%20makes%20recommendations%20for%20reform.>

protection regulator under UKGDPR and the Data Protection Act 2018) and in statutory guidance Working Together to Safeguard Children 2023³⁷ and Keeping Children Safe in Education (now in its 2024 version from September 2024). The most recent version of Working Together (2023) included a new section bringing together and existing guidance to emphasise that successful outcomes for children depend on strong multi-agency partnership working across the whole system. As paragraph 28-31 of Working Together states (emphasis added):

28. ***No single practitioner can have a full picture of a child's needs and circumstances so effective sharing of information between practitioners, local organisations and agencies is essential for early identification of need, assessment, and service provision to keep children safe. Rapid reviews and child safeguarding practice reviews have highlighted that missed opportunities to record, understand the significance of, and share information in a timely manner can have severe consequences for children***
29. ***Practitioners should be proactive in sharing information as early as possible to help identify, assess, and respond to risks or concerns about the safety and welfare of children. This may be when problems are first emerging ...***
30. ***Information sharing is also essential for the identification of patterns of behaviour***
31. ***The Data Protection Act 2018 and UK General Data Protection Regulation (UK GDPR) supports the sharing of relevant information for the purposes of keeping children safe. Fears about sharing information must not be allowed to stand in the way of safeguarding and promoting the welfare of children.....***

It also contains helpful guidance on “common myths that hinder effective information sharing.”

- f. **Information retention:** GDPR in many areas requires information to be deleted after a period of time. In relation to child welfare information, however, there is a requirement that this be retained and stored for a significant period of time so that the relevant information sharing and reporting can properly occur and so that evidence of trends is not deleted. There was a rapid change of approach which occurred as a result of the IICSA report and an information preservation notice in 2015.³⁸ The NSPCC now has some helpful guidance.³⁹

³⁷ Usually updated in November or December of each year

³⁸<https://www.iicsa.org.uk/news/chair-of-the-inquiry-issues-guidance-on-destruction-of-documents.html>

³⁹<https://learning.nspcc.org.uk/research-resources/briefings/child-protection-records-retention-storage-guidance>. Information must be kept until a child is 25. Records about adults of concern must be kept until either their 65th or 70th birthday.

- g. **Compulsory policies and personnel:** Some of the statutory duties and duties set by NGBs specify that particular personnel must have particular specified policies or personnel.
- i. The Education (Independent School Standards) Regulations 2014 (“ISS”) and statutory guidance on Independent School Standards⁴⁰ include a duty that the school have arrangements to safeguard and promote the welfare of pupils including a risk assessment policy appropriate to the risks encountered in that particular school and that the school has a written behaviour policy including anti bullying. They require Independent Schools to have a policy on complaints and assess and ensure suitability of all staff. Guidance on Keeping Children Safe in Education requires that the school has a Designated Safeguarding Lead (DSL) on the Senior Leadership Team and a Governor responsible for Safeguarding. This guidance also mandates child protection policies and codes of conduct for staff and students. It is not unlawful for the DSL and Headteacher to be the same person (albeit it is unusual outside the context of very small schools but the Keeping Children Safe guidance recommends that the person either keep regular contact with the Local Authority Designated Officer (LADO) and/or has access to independent advice, including legal advice to do so lawfully). In interview Ms Pritt-Roberts explained how she considered carefully whether she could, as DSL, accept the acting Head role while the Governors looked for a replacement (who has now been appointed and is due to start in September 2025) and that she keeps this under review. She considers that having so many deputy DSLs and an experienced Safeguarding Governor helps her do this.⁴¹ It is not my role to consider whether this meets the ISS, as that is not my remit. It has clearly been thought about with care.
- ii. In sports safeguarding, it may be a requirement of the rules of the NGB that particular individuals are appointed within a club (for example Welfare Officers), and that there are compulsory policies, such as Codes of Conduct and compliance with their safeguarding or welfare policy. After NGBs were specified as Agencies for the purposes of the Children Act 2004, many NGBs include specific contractual duties applicable to all participants to comply with Working Together and other statutory guidance on safeguarding and information sharing across agencies. I note that Swim England’s amended rules also require mandatory training for some officers including the Welfare Officer, Chair and Vice Chair on safeguarding as well as that any school club must require the School to agree to Swim England’s Memorandum of Understanding on information sharing (which

⁴⁰ https://assets.publishing.service.gov.uk/media/5cd3fc2fe5274a3fd6ee74b0/Independent_School_Standards-_Guidance_070519.pdf

⁴¹ See at paragraph 102-105 and footnote 31.

provides a contractual basis in addition to the legal requirement already embedded in standard 7(b) of the ISS).

- h. **Mutual challenge:** Working Together requires that *“leaders hold each other and their teams to account and are held to account by their teams for the quality of the partnership working”* and that *“constructive challenge within and across agencies and disciplines is actively encouraged, independent judgements are valued and given space alongside collective decision-making to avoid groupthink.”* It is good practice for governance structures within sports clubs and schools echo this structure and avoid concentrating power in one individual or enabling one individual to act as a single gatekeeper for all referrals to external agencies or internal governance controls.
- i. **Children Act 1989 and 2004:** the Children Act 1989 and 2004⁴² include statutory duties on various agencies including schools, local authorities, NHS bodies for safeguarding children.
 - i. Key provisions include section 17, 27 and 87C of the Children Act 1989 and sections 10,11, 16A-K of the Children Act 2004.
 - ii. These include duties so that all people and organisations working with children have a responsibility to help safeguard children and promote their welfare. The Acts place a general duty on local authorities to promote and safeguard the welfare of children in need in their area by providing a range of services and specifies a number of individuals and bodies which must exist within a local authority (for example the LADO in England) and mandatorily to share relevant safeguarding information. Similar duties also apply specifically in Education under section 175 of the Education Act 2002 and sections 94(a)-(2) of the Education and Skills Act requires governing bodies schools, to make arrangements for ensuring that their functions are exercised with a view to safeguarding and promoting the welfare of children who are either pupils at the school or are receiving education or training at the institution.
 - iii. Sports NGBs (including their Safeguarding teams) are “agencies” within the meaning of these Acts, as specified in paragraph 38 of the Schedule to the Child Safeguarding Practice Review and Relevant Agency (England) Regulations 2018 as amended (“2018 Regulations”).
- j. **Children’s voice;** in child safeguarding processes there has in some quarters historically been a nervousness about hearing evidence from children and

⁴² Which was enacted following Lord Laming’s review after the death of Victoria Climbié

affected young people. Some of this may be due to a reluctance to risk retraumatising children. Sometimes decisions have been made on which children have not been consulted. Consulting children is not mandatory in all areas (indeed there are some specific areas where it is not done and should not be done, or where there may be reasons to discount views, especially if potentially procured through grooming) and sometimes disciplinary or safeguarding proceedings can be conducted without the need to hear from a child victim or having made special measures to hear evidence in a particular way. In cases which turn on whether inappropriate messages have been sent by an adult, or contact has been made on social media, the facts can usually be determined without hearing from the child as they can be shown on the documents (eg screenshots). However, the Children's Social Care National Framework and Working Together both provide that "*children's welfare is paramount and children's wishes and feelings are sought, heard, and responded to.*" This may be relevant to the extent of harm and presence of other conduct or facts giving rise to increased risk of harm. As part of this process I have conducted a survey which was designed to permit children to be able to contribute if they wished on matters of relevance to these Terms of Reference so as to enable their wishes and feelings to be sought and heard, as is consistent both with the legal framework and practice generally in this area. I deal with this in Chapter 4. This survey was not popular with some parents. I am reassured that the normality and utility of surveys is especially well understood by the Safeguarding Governor and there is commitment to doing them within the Club going forwards and when asked to send out monitoring surveys by Swim England's Safeguarding team and as recorded in Chapter 6.

- k. **Charities law:** some bodies involved in sports are also charities. Private schools are also sometimes charities. Charity law imposes a statutory duty on individuals involved in charities and especially trustees to report serious incidents, including safeguarding incidents to the Charity Commission⁴³ and also to relevant statutory agencies.
- l. **Whistleblowing law and policies:**
 - i. There is statutory protection for "whistleblowers" who are workers from detriment by their employer under Part VIA and section 103A of the Employment Rights Act 1996 (as amended by the Public Interest Disclosures Act 1998). This is a detailed and complex regime which requires a "*protected disclosure*" to fulfil various legal characteristics. The person raising the protected disclosure does not have to be the first person to raise it, may raise information which is already in the knowledge of the employer (although these features alone do not mean that the disclosure is protected, nor that the person can never be the subject of dismissal or

⁴³ <https://www.gov.uk/guidance/how-to-report-a-serious-incident-in-your-charity>

detrimental action). The statutory protection does not turn on whether the subject matter in the disclosure was true or not.⁴⁴ The statutory protection is not available to volunteers.

- ii. There are also specific protections for whistleblowers provided for in the rules of various Sports NGBs and duties may be imposed through policies or Codes of Conduct within sports clubs.
 - iii. There are some narrow circumstances where there may be a legal duty to protect whistle-blowers outside of the context of the statutory scheme.⁴⁵ This is a technically complex area of law, the particular structure of which is relevant to consider in the context of the Employment Tribunal proceedings.
- m. **Other provisions in criminal law:**
- i. In addition to existing sexual offences, the sexual offence of “*abuse of position of trust*” including causing or inciting others was finally, after considerable lobbying by the NSPCC expanded by the Police, Crime, Sentencing and Courts Act 2022 s 47(2) to include sports coaches and those who regularly supervise sport (see section 27A of the Sexual Offences Act 2003).
 - ii. There are now specific sexual offences relating to the creation, sharing and threatening to share online sexual or intimate imagery (enhanced in the Online Safety Act 2023).
 - iii. There are also specific powers courts to impose sexual harm prevention orders with the aim of protecting the public or any particular members of the public, children or vulnerable adults from sexual harm which do not require a criminal offence to have been committed (section 103A of the Sexual Offences Act 2003).

However, most of safeguarding law does not come from the criminal law. The view of some that if the previous club “did the crime” they have “served their time” is not how the law generally approaches safeguarding in a sports club context.

- n. **Consideration in case law:** these legal regimes have also been the subject of consideration by appellate courts. Key cases relevant to this area include:⁴⁶

⁴⁴ See under the previous statutory scheme *Babula v Waltham Forest College* [2007] ICR1026 (CA): a reasonable but mistaken whistleblower.

⁴⁵ *Gilham v Ministry of Justice* [2019] UKSC 44 : <https://www.supremecourt.uk/cases/docs/uksc-2018-0014-judgment.pdf>

⁴⁶ This is necessarily a highly edited list

- i. **Case law on procedural fairness:** there are many cases considering what is required by common law principles of natural justice. The House of Lords decision in Lord Mustill in R v SSHD ex p Doody [1994] 1 AC 531 at 560 is often cited as the key summary. In some contexts (including safeguarding) it may be that all of the potential evidence is not provided but there must be sufficient “gist” of a potential adverse finding that the person has a fair opportunity to respond. What amounts to a sufficient gist will depend on the circumstances, and the legal context. While in some areas of law, the gist almost always requires documents,⁴⁷ that is not the case in all. A recent summary was provided by Cavanagh J in R(All Saints Dunstable v Ofsted [2024] EWHC 1792 (Admin)⁴⁸ , a case in the education context, at [137]-[139]

- (1) *the Defendants' statutory powers must be exercised in a way which is fair in all the circumstances;*
- (2) *the standards of fairness are not immutable and may change with the passage of time, both in general and in their application to decisions of a particular type;*
- (3) *what fairness demands is dependent on the context of the decision;*
- (4) *an essential feature of the context is the statute⁴⁹ which creates the discretionary power, as regards both its language and the shape of the legal and administrative system within which the decision is taken;*
- (5) *fairness will very often require that a person who may be adversely affected by the decision will have an opportunity to make representations on his own behalf either before the decision is taken with a view to producing a favourable result, or after it is taken with a view to procuring its modification, or both;*
- (6) *since the person affected usually cannot make worthwhile representations without knowing what factors may weigh against his interests, fairness will very often require that he is informed of the gist of the case which he has to answer;*

⁴⁷ For example see Roche Diagnostics Limited v the Mid Yorkshire Hospitals NHS Trust [2013] EWHC 933 (a case concerning legal challenges brought by economic operators to a public procurement decision by a contracting public authority) that extent is not required for example in challenges to Ofsted; see per Cavanagh J in R(All Saints Academy Dunstable v Ofsted [2024] EWHC 1792 (Admin) , reported by the BBC at <https://www.bbc.co.uk/news/articles/ckrgj93rg38o>

There is also the additional principle, where an organisation may have “enforcement” powers and may receive information from inter statutory authority information sharing or whistleblowers where, provided that the decision maker does not rely on that information adverse to the party sanctioned or subject to powers, there is no need to disclose that material (Serious Organised Crime Agency ex parte Namli [2011] EWCA Civ 1411). Even if that material is relevant there may be circumstances where public interest immunity applies or a closed procedure is adopted if that is provided for in rules. Most sports governing bodies have powers similar to public interest immunity processes. Some (but not all) have closed material procedures. Difficulties can arise in practice if there was an ongoing police investigation. The usual position is that the police require other agencies to whom it is disclosed that there is an ongoing investigation that they must neither confirm nor deny whether such an investigation is taking place. This can be difficult to communicate and handle in practice.

⁴⁸ Publicly available at this link: <https://www.bailii.org/ew/cases/EWHC/Admin/2024/1792.html>

⁴⁹ Or in the case of sports national governing bodies, the scope of the power provided for in the contractual rules

- (7) *fairness does not require that a person to be criticised knows from whom or from what source or why those criticisms have been made but does require that he knows what that criticism is and to be given sufficient information about it to enable him to deal with it and to make the necessary investigations on his own side and to come up with any explanations or to set right any errors of fact which may lie behind it; and*
- (8) *the reasons given for a decision must be intelligible, adequate and proper, they must enable the reader to understand what conclusions were reached on the main issues, and they must not leave room for genuine doubt as to what has been decided and why*

...

*In **In re Pergamon Press** [1972] Ch 388, Lord Denning held that, where a public body is to make criticism of a person, fairness requires that a person must be given a "fair opportunity for correcting or contradicting what is said against him" but the inspectors "need not quote chapter and verse.*

For an example of a risk based decision process in relation to an individual, as opposed to an organisation, which was unlawful due to procedural fairness and irrationality, *R v Civil Service Appeal Board ex parte Cunningham* [1992] ICR 816 is a salutary tale.⁵⁰

ii. Maxwellisation; there is a process known as Maxwellisation which is sometimes carried out during independent reviews if a person may be referred to by name in the context of an adverse finding. In Maxwellisation the person is provided either with a gist of the potential adverse finding or sometimes the particular report passage in draft.

1. Fairness does not always require full Maxwellisation or provision of report contents or extracts.
2. It does not require that all persons named are maxwellised, especially if there is no adverse finding or if the material summarised including their name is a matter of public record or otherwise in public.
3. Indeed, there is a recognised risk of going so far with Maxwellisation that it inordinately delays a lawful report or results in a report which has black boxes which hamper understanding of the report. The touchstone is whether the legal or natural person identified in the adverse finding has had an adequate opportunity to respond to sufficient gist (see Cavanagh J in *All Saints Dunstable* at [130] and following, citing *Clegg v Secretary of State for Trade and Industry* [2001] EWHC Admin 394 at [37]-[51]. This does not require production of all evidence, nor does it involve a constantly reiterating process of re-gisting and inviting further representations.

⁵⁰ This report is so old that it is not available online. The judgments can be read without a subscription charge at <https://vlex.co.uk/vid/r-v-civil-service-793881549>

4. There has been a move in more recent years in some reports to give gist early and in correspondence giving notice of the matters of concern and for matters to be put in insight or credibility focussed interviews.⁵¹ Also where there are published requirements (eg rules and policies) there is no need to re-put them in correspondence or interviews, even where they go to the heart of someone’s character.⁵²
 5. I have followed this early gisting process in this Report, but also advance drafts of some sections were additionally provided to some individuals (for example the Governor due to sit on the Executive Committee who is also Safeguarding Governor, and some sections to the Head Coach).
- iii. **Case law considering the powers and jurisdiction of the Disclosure and Barring Service’s** decision making as to whether a person has caused harm or may pose a risk of harm to children.⁵³
 - iv. Case law considering how serious a **failure to disclose** a relationship with a third party who poses a risk of harm is in the educational context and how a failure to disclose (even where there was no express duty to disclose in the statutory framework) may be critical evidence of lack of insight into behaviour which may pose a risk of harm to children or which prevents others from risk assessing, and which constitute grounds for lawful dismissal: *Reilly v Sandwell Metropolitan Borough Council* [2018] UKSC 16.⁵⁴
 - v. Cases considering where evidence of **previous unproven allegations can be considered**. In the context of safeguarding, previous unproven allegations can also, sometimes, be considered. The Supreme Court recently held in *R(Pearce) v Parole Board* [2023] UKSC 13⁵⁵ that this could lawfully be done. The law often takes a binary view of whether something

⁵¹ For example this was the process undertaken by Sir Gary Hickinbottom in the Commission of Inquiry in the British Virgin Islands <https://www.gov.uk/government/publications/british-virgin-islands-commission-of-inquiry-report>

⁵² See eg *SK (Sri Lanka)* [2012] EWCA Civ 16 [36], and *R(Thamby)* [2011] EWHC 1763 at [40]-[42]

⁵³ *RI v DBS* [2024] EWCA 95, *Kihembo v DBS* [2023] EWCA Civ 1547, *JHB v DBS* [2023] EWCA Civ 982, *RCN v Wright* [2009] UKHL 3, and *R(G) v X School* [2011] UKSC 30.

⁵⁴ <https://www.supremecourt.uk/cases/docs/uksc-2016-0170-judgment.pdf> In this case a school it was sufficient reason for dismissal that a primary school headteacher had not disclosed that she was in a non sexual relationship with a convicted sex offender. The Supreme Court, upholding the decision of the Employment Tribunal, held that in the educational context, there was a positive duty to disclose the relationship, even though the contract of employment and policies stated that the headteacher “advise, assist and inform the Governing Body in the fulfilment of its responsibilities” and to “be accountable to the Governing Body for the maintenance of ... the ... safety of all ... pupils” (see at [25]-[29]). The failure to disclose was inconsistent with the structure of the legislative scheme for safeguarding, even though specific statutory duties did not apply in that case, and because it demonstrated lack of insight.

⁵⁵ <https://www.supremecourt.uk/cases/uksc-2022-0052.html>

is a fact that is proven on the balance of probabilities (or for criminal cases beyond reasonable doubt) but it does not always do so, and it does not do so where the relevant test is whether a child or others is / are at risk of suffering significant harm. This second approach has been approved in the context of Children Act 1989 proceedings, some Home Office decision making and judicial risk assessments and where

*“in the assessment of **risk of future behaviour** — an inherently imprecise exercise — it is not necessary to consider each allegation of past behaviour individually and decide whether it is established on the balance of probabilities. Depending upon the legal context, the court can assess risk by weighing up the possibility that an allegation or several allegations may be true having regard to the whole material before it”*⁵⁶

Decision makers must consider whether they can make findings of primary fact, and do so applying normal procedural fairness. In cases where they have the allegations but are not able to make findings on the evidence, or potentially do not have the evidence the decision maker can still test the truth of the relevant person’s account and assess their insight and they may also be able to consider other background facts in a holistic assessment of risk and to provide sufficient gist to enable a fair response. There is a helpful summary in the decision in that judgment at [87].

Peer on peer issues

106. In addition, the potential for harm caused by “peer on peer” abuse has developed, especially following the “Everyone’s invited” campaign and the development of forms of bullying and harm perpetrated through use of mobile phones and online.
107. The exact definitions of bullying vary across sports and other areas. The Weston Review suggests use of the Anti Bullying alliance definition. This is not the only definition used. The Morris review into Culture in South Wales Fire Service⁵⁷ used the following definition which spells out the necessary ingredients with greater precision.

Unwanted behaviour from a person or group that is either offensive, intimidating, malicious or insulting, or an abuse or misuse of power that undermines, humiliates, or causes physical or emotional harm to someone. It may be a regular pattern of behaviour or a one-off incident, happen face-to-face, on social media, in emails or calls, happen at work or in other work-related situations. Bullying may not always be obvious or noticed by others, and someone might not intend, know or realise that their behaviour is bullying, but it can still amount to bullying.

⁵⁶ *Pearce* at para [65] (iv)

⁵⁷<https://www.southwales-fire.gov.uk/app/uploads/2024/01/SWFRSCultureReviewReport.pdf>.

This is also consistent with the way in which bullying was considered by Adam Tolley KC in his report into alleged bullying by the Lord Chancellor [chrome-https://assets.publishing.service.gov.uk/media/6442539622ef3b000f66f65f/2023.04.20_Investigation_Report_to_the_Prime_Minister.pdf](https://assets.publishing.service.gov.uk/media/6442539622ef3b000f66f65f/2023.04.20_Investigation_Report_to_the_Prime_Minister.pdf) at paragraph 53

and by the Divisional Court in *R (FDA) v Prime Minister and Minister for the Civil Service* [2021] EWHC 3279 (Admin), [2022] 4 WLR 5 both of which postdate the antibullying alliance definition.

108. The behaviour does not have to be known to be likely to cause this effect. It is bullying if the perpetrator knew or ought to have known that it would have this effect.⁵⁸
109. All schools and sports clubs with teenage members also encounter the entirely natural desires of teenagers to explore the potential for relationships, intimate contact and sexual behaviour. Sometimes this is navigated with clumsiness. However, it can also lead to potential for abuse, especially if there is no informed consent, power dynamics and the potential for sending, storing and sharing of intimate images which may later be used to control, bully or coerce. If such behaviour is unaddressed, it can rapidly escalate from low level harm into serious, lasting harm and potentially into criminal conduct. It can frequently be accompanied by bullying or coercion to stay silent. Threats may range from social ostracization and discontent to blackmail threatening release of intimate images or other forms of additional harm.
110. It would be impossible for a School or sports Club to guarantee that no such conduct or harm of this sort occurred between child members. For example, as cited in Fiona Scolding KC's report into harmful sexual behaviours at Westminster School,⁵⁹ Ofsted's report in June 2021 reviewing "sexual abuse in schools and colleges" found:
- 92% had experienced sexist name-calling.*
- 80% had received unwanted or inappropriate comments of a sexual nature.*
- 88% reported receiving pictures or videos of a sexual nature they did not want to see.*
- 80% reported being put under pressure to provide sexual images of themselves*
- 73% had experienced videos or pictures which they had shared, or had been shared more widely by the recipient without consent.*
- 79% reported having suffered a sexual assault of some kind.*
- 68% reported feeling pressured to do sexual things that they did not want to do.*
- 64% complained of unwanted touching*
111. Since 2021 both the ISS Guidance and Keeping Children Safe in Education has required Schools to do more than they had previously to address such behaviours. In the sporting sector, such behaviours also fall within most sports safeguarding and welfare policies which require mandatory welfare reporting (which may be capable of being referred back to the club Welfare Officer to be addressed once recorded) and in some cases referral to the sports NGB's safeguarding case management group. Across all sports there has been an increase in peer-peer risk cases some of which have involved risk of sexual harm elements. These are inevitably difficult to case manage and may

⁵⁸ See Adam Tolley's Report at [64].

⁵⁹<https://www.westminster.org.uk/wp-content/uploads/2022/03/Independent-Review-into-Harmful-Sexual-Behaviours-Fiona-Scolding-QC.pdf>

require delicate judgment calls. In many there may be more than one potentially lawful way of dealing with them. Stakes for all parties are potentially high.

112. One of the **most major risk factors** in the context of peer on peer behaviour is if there is **minimisation of harmful conduct by parents, carers, coaches, teachers or those in a position of trust to the children** (which in a sports club within a school would include coaches, volunteers, teachers and school governance).
113. Minimising by those in a position of trust can, either directly or indirectly escalate harmful behaviours. It can also act as a potentially significant deterrent to victims (who are usually but not exclusively girls) from coming forwards and seeking help, support and protection from such behaviours. It can lead to normalisation, which itself can hinder reporting and risk others developing similar behaviours, increasing risk of peer on peer abuse both inside and outside the setting.
114. One of the **major protecting factors** can be if those in a position of trust establish open lines of communication, both individually and in team groups, discuss boundaries (especially using hypothetical examples which can take the personal heat out of a situation) and expectations.
115. Other potentially particularly effective strategies can include:
 - a. Establishing specific risk mitigation strategies.
 - b. Record minor behaviours so that trends and escalation can be rapidly identified.
 - c. In the context of a sports club within a school some of this (but not everything) can be helped through PSHE lessons,
 - d. Those in a position of trust not being alone 121 with children.
 - e. Those in a coaching environment never being alone with multiple children in the pool. I note that this was brought in at the School after the first Titans report.
 - f. Educating parents in helpful strategies and how to spot harms and risk factors as well and making sure they know what is and isn't permitted in the sport/School.
 - g. Training all involved in pastoral care and welfare roles.
 - h. Role modelling by coaches and other staff.
 - i. Sensitively and encouraging people to come forwards.
 - j. Giving individual reassurance where appropriate.
 - k. Identifying and applying sanctions to coercive behaviours.
 - l. Recording and reporting, including where appropriate to other agencies in accordance with Working Together are also key.

Reporting and recording is not only important so that trends can be recorded and actions recorded, but because this can take the "heat" off a potential victim who may be feeling "guilty" for having been in a position where such harms had occurred to them, and feeling as though everything fell on their head alone⁶⁰.

⁶⁰ The potential for victims to internalise feelings of guilt, despite the abuse not being in any way their "fault" is discussed in depth in Fiona Scolding's report.

If there is underreporting by those who know of an incident this can indicate a risk factor, which needs to be addressed rapidly and sensitively internally within the setting.

116. Coaches, volunteers and all participants must, as members of a body specified as an “Agency” under the 2018 Regulations carry out both statutory duties, and duties specified in the rules and policies of a sports governing body to record and report matters if they encounter “seeds of doubt” of potential parental abuse.
117. Difficult situations can also arise if false allegations are made which put alleged perpetrators (more likely than not to be boys, albeit not exclusively) so processes need to be conducted fairly and with reference to the evidence analysed in a calm manner. Lessons from the Henriques review considered below can be of assistance where there may be false allegations made.
118. It is regrettably also possible for false allegations of peer/ peer abuse to be made as a means of bullying or exerting control. If such allegations take root, these have the potential to cause harm both to the person about whom the allegation is made, but also culturally within the organisation and lead to a culture of fear and mutual suspicion, rather than of mutual support, tolerance, respect and understanding that different people may have different experiences and a positive experience in an organisation does not mean that others cannot have negative experiences.

Emotional harm

119. It is not only criminal conduct which can cause harm. There is now a greater awareness of how conduct can constitute emotionally harmful behaviours which can lead to emotional harm and later difficulties in establishing loving, caring and trusting adult relationships.
120. Those behaviours can include inappropriate manifestations of power, bullying, inappropriate fixation on weighing,⁶¹ emotional overdependence, blurring of lines between coach and athlete into social dependency, under prioritisation of education or need for rest and leisure, behaviour which encourages athletes to feel generalised sense of “failure” if they do not achieve a particular sporting score of achievement, inappropriately creating a need for approval from a coach for activities beyond technical sporting performance. As recognised in Wavepower 2024;

Emotional abuse is persistent and, over time, it severely damages a child’s emotional health and development. It may include:

- *making children feel that they are worthless or unloved, inadequate, or valued only insofar as they meet the needs of another person;*

⁶¹ See Whyte for a discussion of weighing in gymnastics.

- *not giving the child opportunities to express their views, deliberately silencing them or making fun of what they say or how they communicate;*
- *age or developmentally inappropriate expectations being imposed on children – for example, interactions that are beyond the child’s developmental capability, as well as overprotection and limitation of exploration and learning, or preventing the child participating in normal social interaction;*
- *a child seeing or hearing the ill-treatment of another; and*
- *bullying, causing children frequently to feel frightened or in danger, or the exploitation or corruption of children. In a sporting context, emotional abuse could include, but is not limited to, a coach who continuously criticises, uses sarcasm and/or name calling or who generally belittles the child.*

121. As Anne Whyte KC observed when conducting her review into gymnastics;

“BG’s role in assessing the conduct of its members is different to that of the LADO and the police although there will be issues of overlap. Reliance by BG in the complaints and disciplinary context on decisions by the police or LADOs was not appropriate. There is a wide spectrum of coaching practice and behaviour that would fall foul of the standards and relevant policies, but which may not be criminal in nature and may not place a gymnast at risk of significant harm. The considerations underlying charging decisions by the police or Crown Prosecution Service are not the same as the considerations that apply to BG’s disciplinary and conduct procedures.”

122. Conduct that falls below the “*threshold*” for action under Keeping Children Safe or Working Together may still be relevant and require recording to spot trends and to give opportunities for de-escalation and reducing the risk of escalation of harmful behaviours. This can be particularly important in addressing the risks potentially posed by peer on peer inappropriate sexual behaviours, if consent is misunderstood or minimised or where there is bullying.⁶² Fiona Scolding KC’s review at page 16 reproduces the sexual violence pyramid and explains:

*“The pyramid represents a continuum of behaviours progressing upwards through sexism, harassment, unwanted physical touch and unwanted sexual touch to sexual assault and rape. This is what Everyone’s Invited refers to when talking about “rape culture” and most experienced commentators agree that any solutions to tackling sexual violence at the top of the pyramid have to involve tackling and ideally removing the foundations and intermediary steps of that pyramid. That ultimately involves tackling attitudes and beliefs which are often called “culture.” In an organisation like Westminster, who has existed in some way shape or form for over 1,000 years, tackling those beliefs and attitudes is a long-term process.”*⁶³

123. It is quite often the case in the Sports safeguarding context that low level reporting of welfare or safeguarding matters are recorded then rapidly returned to the club setting to be dealt with locally. Often the best place for resolution and risk mitigation is locally

⁶² <https://www.farrer.co.uk/globalassets/news-articles/downloads/low-level-concerns-article---may-2017-final-version-.pdf>

⁶³Scolding p 16

in the setting. The recording enables patterns to be picked up later, should similar fact allegations later arise or relevant similar patterns emerge that require risk mitigation steps to be taken to avoid harm occurring (for example individuated risk assessments). The existence of individuated risk assessments would usually be reportable in a sports safeguarding context they are relevant to whether other agencies or settings may also need to put in place something similar.

Parental abuse in a sporting context

124. While it may be uncomfortable to recognise and confront, abuse can arise from a parent. This is expressly recognised in the legislative structure of the Children Act 1989 and 2004, Working Together, Keeping Children Safe and other guidance.

125. Wavepower is not the only sports safeguarding policy which recognises the potential for a parents' well intentioned but overly high expectations of a child can tip over into abusive behaviour. It says:

Parents/guardians can emotionally abuse a child by having excessively high expectations which places unrealistic pressure on the child, or by constantly giving the child negative feedback.

126. Wavepower also considers parental neglect also to be "abuse" as well as bullying. Bullying in a sports context can include:

The competitive nature of sport can create an environment which provides opportunities for bullying. Examples of bullying in our sports could be:

- *a parent/guardian who pushes their child too hard;*
- *a coach who adopts a win-at-all-costs philosophy;*
- *a Member who intimidates others inappropriately; and*
- *an official who places unfair pressure on a person.*

Bullying in our sports could include a child being ostracised by others in their lane, squad or age group, refusing to talk to them and/or encouraging others to treat them with contempt.

127. It also makes reference to grooming and the potential for parents to be groomed by a manipulative abuser.

128. These are not the only potential form of parental abuse.

129. There can also be parental conduct which is not abuse, but which might disable one or more other risk mitigation features and which might lead to a risk of harm, if other risk factors are also present.

Boarding school context

130. There are additional legal and regulatory standards which apply to Boarding Schools. These are the National Minimum Standards for Boarding Schools published by the Secretary of State for Education under section 87C of the Children Act 1989 and as amended by the Education Act 2011.⁶⁴ Boarding Schools are usually inspected by the Independent Schools Inspectorate rather than OFSTED. Standard 8 relates to Safeguarding. The current guidance provides at para 8.1-8.4;

8.1 *The school should ensure that:*

- *arrangements are made to safeguard and promote the welfare of pupils at the school; and*
- *such arrangements have regard to any guidance issued by the Secretary of State*

8.2 *The school should ensure that all staff are aware that safeguarding and promoting the welfare of children is everyone's responsibility throughout the school and the boarding facilities.*

8.3 *It is essential that children are safeguarded from potentially harmful and inappropriate online material. The school's approach to online safety should be reflected in the child protection policy, having regard to the Department's Keeping children safe in education guidance.*

8.4 *Keeping Children safe in education sets out that boarding schools have additional factors to consider with regard to safeguarding. As such it will be important that the boarding school's child protection policy (and/or other policies if appropriate) reflect:*

- *the school's policy on sexual relationships between children (and importance of boarders understanding this policy);*
- *the school's approach to child-on-child abuse, reflecting the unique nature of boarding accommodation and the risks associated with children sharing overnight accommodation;*
- *the approach to protecting children where there is a significant gender imbalance in the school; and*
- *the approach to harmful online content and how boarders' devices are managed in terms of bringing a device into the school, and harmful content that may already be downloaded on to it, and the opportunity to download harmful content via 3,4 and 5G that will bypass the school's filtering and monitoring systems.*

131. In relation to private schools, specialist schools and Boarding schools there were also the detailed findings of the Independent Inquiry into Child Sexual Abuse. (IICSA)

⁶⁴ <https://www.gov.uk/government/publications/boarding-schools-national-minimum-standards>

132. There are three potentially relevant reports from IICSA:
- a. The general report: October 2022⁶⁵
 - b. Residential schools March 2022⁶⁶ which comprised:
 - i. Part 1; music schools and residential special schools and
 - ii. Part 2: safeguarding day and boarding schools
133. Key findings include that some characteristics unique to the Boarding School environment heighten risks of sexual abuse of pupils. This is not to say that there cannot be safe Boarding Schools (indeed there can be) or that these risks eventuate in every Boarding School. Nothing should be read into this report as to whether I consider them to be present or not present in Ellesmere College. They are, however, features which should be borne in mind when considering club affiliation to a NGB by a club based in a Boarding School.
134. The IICSA report team framed the particular issues as follows:
- 3.1. *Boarders are under the authority of adults in the school and are dependent upon them for their welfare. Staff may live on site and spend time alone with individual children, creating opportunities for grooming and abuse, ... For children living away from home, staff play a unique role in their lives and this may create a dynamic of power and control that can be abused by offenders. The innate power imbalance between children wanting to succeed and staff responsible for helping them can facilitate abuse. This is especially true of staff with pastoral roles, such as housemasters or housemistresses and matrons. In some boarding schools, a sense of staff having power and control over pupils may be exacerbated by a strong sense of hierarchy within the school*
 - 3.2. *There is often a higher incidence of individual tuition at boarding schools, in music or sports coaching or for additional academic tuition. This can lead to unique and close relationships developing between pupils and staff...*
 - 3.3. *Some boarding schools, especially long-established institutions, have developed strong traditions and a particular ethos in which the institution's own rules and ways of doing things are seen as paramount. This may lead to a sense of exceptionalism and the tolerance of perceived 'idiosyncrasies' from staff, which can mask abusive or grooming behaviours. This enabled Jonathan Thomson-Glover's offending to go undetected at Clifton College: "With a father and a grandfather who were Old Cliftonians, he had a deep understanding of the school's history, culture and values, which camouflaged his eccentric behaviour".*
 - 3.4. *Boarding schools often produce a strong sense of group allegiance and very close relationships may exist between members of staff, some of whom will live together on site. Pupils' awareness of such allegiances between staff may make it more difficult to identify staff members in whom they may confide, impeding the reporting of concerns. As was reflected in the evidence from Clifton College, parents as well as school governors in the independent sector may have attended the school*

⁶⁵ <https://www.iicsa.org.uk/reports-recommendations/publications.html>

⁶⁶ <https://www.iicsa.org.uk/reports-recommendations/publications/investigation/residential-schools.html>

themselves and have a strong loyalty to the institution and a tendency to protect its reputation.

- 3.5. *Boarding pupils can be emotionally isolated because they are separated from their parents. Sometimes parents may choose to send their children to boarding school to distance them from domestic difficulties. Some boarding schools are also geographically isolated and some have limited opportunities for contact with people outside of the school....*
- 3.6. *Around one-third of boarding pupils are international students who are living far away from their families, having to adapt to what may be a very different culture, and who may also encounter difficulties in communicating in English. Some international pupils may have limited opportunities to contact their families, either because of time-zone differences or because of the regime of the school.*
- 3.7. *The very nature of boarding schools can create a number of issues that can compromise effective safeguarding. The school may exist within a “bubble where there is little influence over the norms of the school from the outside environment”. Boarding schools may be less often visited by external agencies, which can find it difficult to understand their practices and ethos.*

135. In the case of specialist music schools and church schools there was in some cases also a “*great pressure on children to succeed,*” and strong influence of specialist teachers who may not have been employed by the school and who considered that they fell within the jurisdiction of others (see eg para 9 under C2 of Part 2).
136. The general IICSA recommendations also included specifically a recommendation that reporting must be mandatory by all ⁶⁷(including schools and agencies – and where there is a club affiliated to an agency in the School, this means double reporting, not deferral of one to the other).
137. Nothing in this report should be read as confirming that standard 8 NMS or standard 7 of the ISS are met or indeed not met at Ellesmere College based on the information reviewed. That has not been the task I have been set in these Terms of Reference.

The role of Culture

138. There is also the very important role that “culture” can have. Culture is one of those concepts that is difficult to define exhaustively. I note that Swim England has commissioned some consultants (not lawyers) to conduct a Listening Exercise which has considered culture from a somewhat different angle, albeit there are also key similarities. In relation to whether there is a culture that enables the rules of a regulator or a sports NGB, the framing tends to be somewhat different. As Adele Eastman and Katie Rigg stated in 2017:⁶⁸

⁶⁷<https://www.iicsa.org.uk/reports-recommendations/publications/inquiry/final-report/ii-inquirys-conclusions-and-recommendations-change.html>

⁶⁸ <https://www.farrer.co.uk/globalassets/news-articles/downloads/low-level-concerns-article---may-2017-final-version-.pdf> in a passage reproduced in the Whyte Review

“Culture forms the context within which people judge the appropriateness of their behaviour. An organisation’s culture will influence human behaviour and human performance at work, and it is vital to recognise the danger of cultural slippage. A Code of Conduct which is understood, accepted and followed by all adults associated with the organisation is integral to this, and strong governance and leadership are vital.”

139. In a sport where most participants are children, the impact on club and sport culture by parents, coaches and other adults is vital. It makes the duty to report and call out poor practice particularly important. As Anne Whyte KC concluded in her report into Gymnastics:

91. *The reluctance or failure, at times, of other adults such as club staff or coaches to call out visible poor coaching practice has **contributed to a culture where gymnasts and their parents have felt unable to express concerns.** This is, in part, why I have recommended that BG operate a low-level or ‘neutral notifications’ policy so that Standards of Conduct can be respectfully maintained and breaches of Standards adequately monitored.*

92. *Other cultural factors have contributed to the reluctance of some gymnasts to make complaints. These have included:*

- a. *A cultural disregard for what is now referred to as ‘the athlete voice’. This disregard was often accompanied by excessive levels of coach control;*
- b. *The historic coach-centred philosophies that have prevailed, compounded sometimes by the over dominant personal style of some coaches;*
- c. *A lack of confidence at club level in the independence of Club Welfare Officers or in their ability to confront coaches;*
- d. *The closed training environments that have characterised some clubs, including high performance clubs and at times Lilleshall, especially in WAG. This has contributed to the relative lack of parental involvement in training issues; and*
- e. *Problematic coaching styles being so prevalent in some environments, especially at elite level, that some gymnasts and parents assumed that they were acceptable and necessary to achieve success, when, in fact, they were not. In this way inappropriate or abusive practices were normalised and not deemed worthy of complaint.*

140. Anne Whyte KC also noted the significance in Gymnastics of lack of action or lack of anything being seen to be done to popular coaches. When no action was taken to address poor behaviour by senior coaches, who were “*seen to be integral to medal success*” was followed through, “*this had the obvious capacity to stifle complaint.*”⁶⁹

141. Some coaches had lacked insight and awareness into the way coach/ child power imbalance could work and would usually affect particular children in relation to the coach, rather than being felt uniformly across the squad. There was particular lack of

⁶⁹ Whyte Review at para 89

insight into why gymnasts may have “*been in fear of them*” and “*pointed to expressions of thanks and endearments in cards from gymnasts or to lack of contemporaneous formal complaint as if that disposed of any suggestion that gymnasts had been in fear.*”⁷⁰

142. Another key factor was territorialism of club culture which led to “*the immaturity and unpleasantness that reportedly followed a change in club on some occasions. This could be played out in unattractive social media exchanges, some of which I was able to read. These exchanges involved a variety of club owners, coaches and parents.*”⁷¹

False reports

143. There are also well known cases where safeguarding “*concerns*” have been pursued by those with alternative agendas and where steps have been taken. The most famous of these was the Henriques report into claims made by Carl Beech⁷² known as Operation Midland. A number of recommendations were made including:
- a. **Henriques’ recommendation 2:** that duty of an officer interviewing a complainant to investigate the facts objectively and impartially and with an open mind from the outset of the investigation. At no stage must the officer show any form of disbelief and every effort must be made to facilitate the giving of a detailed account in a non-confrontational manner.
 - b. **Henriques’ recommendation 4:** false complaints are made from time to time and should not be regarded as a remote possibility. The risk of false complaints may increase immediately following publicity. There is a danger of a “*bandwagoner*” who is “*a person who learns that a complaint has been made and decides to support the original complaint (true or false) with a false complaint.*” This does not mean the first complaint was false but may cloud the picture and if not noticed by those investigating, could give rise to a risk of injustice.
144. A calm concentration on the evidence, including the contemporaneous material, and not being swayed by vociferous tides of public opinion is important. A complaint which is overblown or exaggerated and that is a “*bandwagonner*” does not mean necessarily that there is no original matter to investigate. The must be done calmly and by reference to all the relevant evidence.
145. It is important that those who are raising genuine complaints are not stigmatised by others as “*bandwagonners*” or are subject to additional victim blaming language, even if there are additionally bandwagonners at play. There is also the potential for those

⁷⁰ Whyte at para 290

⁷¹ Whyte at para 388

⁷²<https://www.met.police.uk/police-forces/metropolitan-police/areas/about-us/about-the-met/henriques-report/>

who are perpetrators or who have been groomed by perpetrators to frame themselves as victims which, in a field of complaints, grievances, and cross complaints, the key risks which pose risks to children in a setting, and the centrality of information reporting to agencies and inter agency information sharing and recording is stifled, making it more and not less likely that harm to the most vulnerable occurs.

146. As set out below, there are factual findings which indicate both bandwagoning and genuine matters which crossed the threshold for safeguarding investigation in the context of the operation of the Titans club which has required that calm focus to be brought to bear, even if I cannot in public report spell out precisely how that has occurred I have benefited from being able to see information shared by agencies as well as a very helpful degree of information sharing from the School and School records for which I am most grateful.

More lessons learned

147. There have been a number of recent lessons learned reviews in sport including Sir Clive Sheldon's report into Child sexual abuse in football and Anne Whyte KC's review of British Gymnastics referred to above as well as IICSA. Key themes of potential relevance to club affiliation are the following.

- a. **Recommendation 5 of the Sheldon report** was that it should be an express condition of affiliation that a club require all of its members to abide by the NGB's safeguarding policy and that this is demonstrated actively. This new enhanced emphasis on safeguarding compliance by all as an affiliation standard is taking root across multiple sports NGBs. The NGB safeguarding policy would usually (like Swim England's Wavepower) include a mandatory duty to report and references to the importance of safeguarding being everyone's concern.
- b. **The IICSA recommendation that duties to report safeguarding concerns should be mandatory.** It is noted that IICSA states that it was the ISI's view (see Part C para 77) that there was already a mandatory duty to report from paragraph 7 of the Independent Schools Standards and from Keeping Children Safe and also by obligations of Teachers holding qualified Teacher Status under Teacher's Standards to make safeguarding referrals.

Key risk mitigation factors for a Club

148. Drawing these threads together from both the legal materials and the relevant other independent reports, the following are key risk mitigation features I would expect to see in a Club:

- a. **Reporting:** If those in a position of trust to children in the organisation report and refer matters to the (usually central) safeguarding team on a “*seeds of doubt*” basis and fully understand what protecting child welfare means.
- b. **Safe recruitment:** it is not assumed that this is limited to checking whether a person is not barred. A DBS is a starting point, but if clear is not the end point.
- c. **The people:** If those in the position of trust are credible and report fully, comprehensibly and wholly accurately and with appropriate insight into risk driving behaviours and potential harm.
- d. **Minimising is not tolerated:** those in a position of trust do not minimise harm and potential for harm, and do not permit others to do so.
- e. **Effective challenge:** The governance structures do not report to only one person or role, but there are avenues for effective challenge horizontally and vertically.
- f. **Visibility:** The child protection policies and their operation in practice is visible within the organisation. Visibility of those in position of trust by others in a position of trust can also be helpful.
- g. **Risk focus:** The language of “sanction” may be used, but generally the analysis is conducted based on whether there may be a risk and what steps could mitigate, remove or address the risk (and indeed what measures are missing).
- h. **Culture:** a supportive culture is fostered where raising and reporting concerns is seen as normal, and not a threat and where there is a focus on child welfare and empowering children to raise concerns if they have them without worrying about what their peers or other people might think of them if they do.
- i. **Children’s voice:** ensuring that children are used to being asked for their views, wishes and feelings and where those are listened to. No one assumes that if only a small number of children or one child reports a concern, that the absence of reporting from others is decisive or means that there is no matter requiring investigation or addressing. If a report is made, the fact it has not been raised by other children or felt to be problematic by other children is not taken as meaning that there is no problem.
- j. **Insight into how safeguarding issues can evolve and become other sorts of issues dynamically:** an issue that is first reported as, for example bullying, might become a more serious safeguarding issue if the bullying transpires to have a sexual element or online images element. It may also have elements of coercion if after it is first reported, there is pressure from others to stay silent. There may also be worries from children who hear of the incident, may have misunderstood it but have concerns relating to their welfare, understanding of boundaries,

understanding of appropriate behaviour and reassurance about how to report matters.

- k. **Avoidance of moral panic:** when issues arise moral panic reactions are avoided, and instead the issues are identified calmly, evidence gathered from the best available sources and with an adequate opportunity to respond to potential adverse findings and cross agency working encouraged and reporting and recording completed.
- l. **Parental involvement;** parents views should be capable of being heard and listened to but the primary focus must be on child welfare. There will be situations when Club officers and parents may disagree about what constitutes child welfare in the Club, or in relation to other decisions. The Club should have a Code of Conduct for parents but should also show that, while parents are listened to, in the Club structure it is the club Officers and not the parents who decide what is and is not permitted in respect of members. If a parent is breaching the Code of Conduct and this is impacting on the welfare of children in the club, steps may be taken by the Club. In the most extreme cases, if the risk to other children is not manageable, that parent's child may not be able to remain in the Club due to the impact on other children.

Weston report

- 149. The Weston Report was based on documents provided to Louis Weston and a meeting between him and a group of former parents (but there is no record in his report of a meeting with Swim England). An organisation calling itself the Ellesmere Parents Campaign Group, said to be comprised of two parents (but which did not identify its members to me) has written to me expressing the view that it was their input that led to this Report having been commissioned.
- 150. That Report makes a number of recommendations principally aimed at Swim England so that their CEO was not involved in individual cases or complaints, that confusing provisions in the rules were simplified and clarified, and ensuring that in individual cases that the person subject to that process was informed of sufficient gist against them that they could have an opportunity fairly to respond (*ex parte Doody*) and that there were complaints processes in place. In the case of Case 1 (Titans) he characterised this as a complaint of maladministration (a process similar to an ombudsman complaint).
- 151. I address in the Chapter on factual findings several of the factual comments because they do not fit with the underlying documents I have reviewed.
- 152. This was not a report carried out following interviews with relevant people or directed at finding primary facts. It also appears to have been unlikely to have had access to the following:

- a. Evidence that other statutory agencies had been in contact with the School in the relevant period and had multiple discussions with the headteacher who some considered minimised the previous findings and characterised the previous issues as procedural.
 - b. Information relating to the Employment Tribunal litigation (ongoing at the time of his report) brought by the anonymous whistleblower against the School.
 - c. Following the February 2022 ISI inspection there was another inspection in October 2022 which found various safeguarding duties within the school as “not met.” This is not mentioned in the report.
 - d. At the same time various parents issued complaints to Swim England. The School instructed solicitors who threatened defamation proceedings against Swim England. That letter contains some factually inaccuracies which to the School’s credit have candidly been accepted in this process and corrected. This is considered in Chapter 5. I am unclear if the threat of a defamation claim was known to Mr Weston.
 - e. Information relating to any investigation by another agency or agencies relating to 2021 and 2022.
153. It also frames the decision to disaffiliate as a “sanction” on members which the members were not entitled to challenge. This is, in my view, a in some senses an unusual way of framing a decision to disaffiliate a club under the rules in the Handbook from that time (which are now different).
- a. Disaffiliation removes the club from the insurance of the sports NGB, removes access to judicial processes and removes access to members from that club registering to compete with that club (albeit it does not prevent those members competing for another). It is in my view, more akin to a termination of contract provision which relates to the Club Executive rather than members. It has been necessary to consider the issue of who is properly concerned and should have procedural rights in relation to affiliation when considering rights to appeal under my Terms of Reference and what the law requires. This is in Annex I.
 - b. The Sheldon Review emphasises in recommendation 5 why it is necessary and a condition for affiliation that the rules of the sport, including all safeguarding policies are complied with by all members. Even if some members are complying with those provisions, but others are not, or others external to the club, but who are interrelated to the club or also present in the setting, are evidenced to be demonstrating behaviour which may pose a risk of harm to children in a swimming environment, this does not necessarily make disaffiliation a “sanction” in the usual sense of a punishment. It may be a risk mitigation

measure as that term is understood in this field, where the focus would be on whether there were sufficient steps in place to mitigate that risk, if that risk was present.

- c. An annual affiliation review such as will be done for all clubs following the 3 September rule changes is forward looking and ultimately appears to be risk based and I would not frame as a “sanction.”
154. Also it appears that some may have read the Weston report’s conclusions as to what procedural fairness requires in a different way than it has been written and caveated. If there is sufficient evidential basis, based on a procedurally fair process, to conclude that a club may pose a risk to children requiring a sanction of dissolution or structurally destructive step, that does not necessarily require sharing of that full evidence base with all club members. Indeed, there may be sound reasons for not doing so, for example if the evidential basis relates to a child’s medical notes or to records of another statutory agency with a statutory bar on onward disclosure (as can be the case with law enforcement agencies). Working Together and Keeping Children Safe and the ICO guidance promotes sharing between “agencies” but not necessarily with broader stakeholders and not with, for example parents of other children. This is explained in the 3 September 2024 rule changes for Safeguarding Investigations and is a reason why my Decision provides gisted information rather than full details as it is intended for publication.
155. There has also been more recent articulation in the case law of why indirect effects on others, such as parents, in such cases affecting whether a setting remains open or is restricted are rarely afforded substantial weight. For example,
- a. In an inspection from Ofsted which results in an “inadequate” rating, from which detrimental consequences including potential school closure, may flow, the views of parents, however strongly expressed, are not capable of being an overriding factor (Cavanagh J in *All Saints Dunstable* [46]).
 - b. Similarly, in regulatory and disciplinary proceedings, where the object of the disciplinary rule is to maintain confidence in the profession and protect members of the public, decisions to “sanction” an individual may have serious or even tragic impacts on that person and their family but that is given “less significance” (see the summary of cases by the Premier League Appeal Board at [82] in the determination of Everton Football Club’s appeal dated February 2024)⁷³.
156. It is outside my remit to determine whether the decision to disaffiliate was unlawful, in breach of a duty to consult or demonstrated any other breach of contract between

⁷³ Provided as a summary as some of the Court’s case law cannot be accessed without a subscription charge; <https://resources.premierleague.com/premierleague/document/2024/02/26/b1c920ab-c053-4414-913a-c529efd27d18/Everton-FC-and-Premier-League-appeal-decision-260224.pdf>

members and Swim England. However, some of the information I have reviewed relevant to whether there has been sufficient change would inevitably overlap.

157. However, as the Weston Report has been relied on by some in support of affiliation it is necessary to explain what I have seen that is different, and also where, with the greatest respect to Louis Weston, where I do not share quite the same legal analysis or would use the same legal vocabulary as he has. Some of this derives from a shift in some of the legal language and analysis in this evolving area of law.⁷⁴
158. There is also very much which I would not disagree with in his report for example the inappropriateness of limiting safeguarding policies to “significant” harm or criminal conduct, the utility of clear, administrable and comprehensible processes, avoidance of unreasonable delay, use of independent judicial and safeguarding processes in addition to an internal safeguarding team tasked with the statutory agency role, and importance where possible of processes both being fair and sufficiently transparent so that those who are subject to them can trust that they are fair. I note that Swim England has substantially amended its own rules in relation to these aspects.
159. I also share some of the concerns expressed in relation to the previous role of ICPO who was investigator, decision maker and sanction recommender without sufficient prospect of legal challenge or alternatively internal appeal as this was an unusual structure to see in a sports NGB. I do not agree with his paragraph 116 where it is said that a single person who is investigator, decision maker and sanction recommender is necessarily unfair in all processes. There are multiple processes both in sports law and outside it where there are such processes, but where there is a clear contractual framework (on which there may be legal challenge through the supervisory jurisdiction or, for example arbitration if provided for) contractually and that review process safeguards fairness. In sports safeguarding it is more usual to separate out the investigator, fact collator and charge / risk factor particularisation from a separate decision maker or decision making panel (who may also, on hearing further evidence further identify or particularise discrete issues so that the person who is the subject of proceedings can adequately respond to potentially adverse findings). This helps with the firewall necessary to protect full information coverage but allows the central team to communicate that which can be (provided sufficient gist is provided to the person who may be sanctioned for it or subject to an adverse finding based on it). Decision makers are then sometimes subject to an appeal limited to misdirection in law or serious disproportionality, or very occasionally a full merits de novo hearing in an

⁷⁴ Or really “areas” of law. Different branches of regulatory law have approached issues of safeguarding risk, what precisely is required to be disclosed as sufficient “gist” to a person to which an adverse finding may be made in different ways. There have, since the publication of the Weston review and 19 August 2024 been a total of 47 cases on the Westlaw legal database considering *ex parte Doody*. There have also been many sports safeguarding cases determined by independent panels, whose full rationale is often not published but where there is, for the most part, a common understanding across those who regularly practice in those panels and tribunals.

appeal brought by the individual to which the risk measure is imposed (but no appeal by others).

160. I also agree with Louis Weston's analysis that personal involvement of the CEO at a first instance stage is unusual, may be procedurally unhelpful and may in an individual case give rise to unfairness. It also has the potential to considerably undermine individual legal processes and operational processes within the sport NGB's teams include those, such as safeguarding, which have statutory information recording and gathering functions.
161. In some ways I am also in the position of both making some findings of primary fact, and also recommending the appropriateness of affiliation and/ or conditions, or finding against the Club's application. I have therefore very carefully followed a process of informing the relevant person at Club, or in some cases the School, of sufficient gist of potentially adverse findings. Others who wrote to me were informed of my privacy notice both by the automatic response from the review email and it was put in public on the website. It was also specifically linked and explained in the Survey. I have not sought to identify individually named interested parties. Where individuals are named that is either because they are already in the public domain or need to be due to other regulatory requirements under the ISS or Swim England rules requiring publication of club officers or where necessary to do so. However, I have referred to the Campaign Group as they have specifically sought that I consider their perspective, which I have done. I also corresponded with them to indicate that I would not be sharing information from my review with them for the purposes of a complaint and that not sharing who they are means that it is, in practical and legal terms, difficult for me to give their submissions to me substantial weight in terms of what the current position of the club is. I have been helped by being able to hear directly on this from those at the Club through the survey conducted which is summarised in Chapter 4.

The Listening Report and what is meant by transparency

162. Some interested parties made reference to some behavioural research done for Swim England as independent "listening research." This was part of the Heart of Aquatics work carried out by Swim England following the Weston Review. Some appear to have elided this with an expectation that all decisions, including welfare and safeguarding decisions in Swim England could be challenged, in real time, and outcomes changed. The report was not conducted by lawyers, nor does it purport to be legal advice. It recommends listening to victims, but not that they have the power to alter live processes while they are in train.
163. That report did contain a trigger warning, as would be expected for a piece of research publishing the results of listening to accounts (ie substantive accounts of abuse and trauma). That is different fundamentally to the approach required when gathering evidence for a risk assessment of a club applying to affiliate or any other legal process.

164. It would be fundamentally at odds to the legal framework set out above for there to be an expectation by an interested party of receiving welfare information or safeguarding information relating to a specific child or other individual. The sports world has only in relatively recent times begun to experience the intersection of complaints processes and its own internal disciplinary and safeguarding processes but there is longstanding experience in education law and schools and also in relation to local authority welfare functions as well as many other processes.
- a. Sadly individuals who are suspected of abuse or who pose a risk to children sometimes attempt to use such processes to obtain information (ie full information coverage) of a regulatory body or from which to threaten SLAPPS action to limit its sharing. The control of lawful and usual channels of information sharing is a major risk to child welfare and is well recognised as such in this field of law.
 - b. Sometimes ex spouses or former partners seek to use such processes to gather information to be used for collateral purposes, for example in private family court proceedings, circumventing the established information sharing routes and court directions and orders within the Family Court structure.
 - c. Sometimes those with strong views and past hurt, especially those who have not been afforded closure, may seek information and reassurances which, if given with any specificity would result in unlawful information sharing relating to children or vulnerable adults, even if that information is sought from a place of genuine deep worry.
 - d. Every safeguarding team of a sports NGB, local authority, Academy Chain and many others who exercise functions in this field, receive complaints from individuals who are dissatisfied with those with those child safeguarding functions preventing them access on a frequent basis.
 - e. Such complaints can be meritorious. Bad safeguarding practice can ruin lives. Others which are not can be operationally disruptive for the operation of a team, if they are permitted to prevent the lawful sharing of information or result in the unlawful sharing of information. It is always necessary to be very careful. Not every complaint is of course unmeritorious and the approach taken by some teams may not be lawful and may give rise to genuine complaints. Of those who do pose a risk of harm to children, the use of complaints is common and is sometimes used to control and adversely affect information flow.
165. Other areas of law ensure that the ordinary day to day operational processes continue to run, and can run fairly, without becoming derailed by allegations, complaints or grievances which proceed to be considered as allegations essentially of maladministration. Sometimes matters are heard together, in other instances that would be inappropriate.

166. This is not to say that this always occurs, but in this Review to have received requests from some interested parties for information which I have reviewed, and which is highly relevant for the club's application and for Swim England's quasi public functions, but which cannot be shared. Some have expressed disappointment that this in some way in their view may conflict with the Listening Report (which is not legal advice, nor does it purport to be) and I have considered this carefully. This may arise from a genuine misunderstanding.
167. It is difficult to disagree in principle, and I would not do so, that public bodies and quasi public bodies should be transparent and indeed that is a very important principle and value. Hopefully it is assisted by this Report in full (except for confidential annexes) being published generally.
168. However, there are legally established exceptions to that transparency in this field, which are not much litigated (yet) in public in sport, but are in other allied areas where similar issues arise.
- a. In a disciplinary and most regulatory processes it is possible to protect the public and the *ex parte Namli* principle by having a very clear line between the information presented for the case (which might not be all there is) vs the full information coverage. Information relied on against an individual in an individual process should be disclosed either by documents or sufficient gist. Sometimes it will be procedurally unfair not to provide documents. A sports NGB may hold information in its full information coverage which it chooses not to deploy in proceedings so as to protect that source and the future in flow of information.
 - b. Decisions in safeguarding matters are often conducted in private (as indeed are other proceedings under the Childrens Act 1989). This is sometimes helpful for vulnerable witnesses, in others it is helpful for the tribunal or panel to have the full evidence, which often contains highly sensitive material on which to make a holistic assessment. Some NGBs provide for public summaries to be directed by the Panel specifically. Most NGBs consider this to be available as any other order, which is usually provided for in safeguarding rules. There are cases where the oxygen of a public decision is the greatest risk mitigator. Decisions of the Teaching Regulation Agency (TRA) that find allegations to be proved always publish a reasoned decision which remains with that person's name as a public record. Many other regulators publish all decisions.
 - c. Some processes, such as Parole and Probation have very particular provisions which relate to how information is treated.
 - d. In the education context, this section has already cited the *Ofsted* case law. Schools, colleges and educational institutions are well versed in explaining to one aggrieved set of parents that they understand why they are concerned about their

own child, but they cannot share information about another person's child with them. Schools usually at least termly (if not more often) tend to remind parents that they may have a concern and if they do they should raise it with the School. The School may not be able to tell them everything done about it, especially if it relates to other people's children and other people.

- e. In education law, the Court's case law also regulates what can be published and blocked from publication about educational institutions (including when based on safeguarding findings). That case law also applies more generally to whether a public body will be prevented from carrying out its statutory powers; *R(X) v OFSTED* [2020] EWCA Civ 594⁷⁵ : the Courts will very rarely injunct a public body from acting in what is potentially within its public functions unless an extremely high threshold is surmounted.⁷⁶
 - f. Some public bodies have statutory gateways for sharing /preventing sharing. The gateways which provide an obligation to share between agencies applies to sports NGBs, but there are fewer statutory exceptions for disclosure which expressly apply. GDPR and their obligations to act primarily in the interests of children do, however, apply and the 2004 Act and 1989 Act duties can (separately from GDPR) govern disclosure in some cases.
169. The principle of transparency is different from the *ex parte Doody* principle of fairness which requires sufficient gist (and often in individual safeguarding cases disclosure of documents relied on as the evidence base) to the person subject to those proceedings. Disclosure of documents may be required to an affected individual but not generally. Sometimes child welfare is inappropriately raised in this context to defend failing to provide an individual with sufficient particulars and disclosure, which is not what this area of law, when properly understood, permits.
170. Some who sadly pose the greatest risk are extremely skilled at presenting an unlawful attempt to obtain information or frustrate a lawful evidence gathering process through the use of arguments appealing to transparency, which the NGB or regulator or other public body cannot fulsomely and in public respond to without frustrating the central protection for the sensitive information. This does not mean that safeguarding processes occur outside legal gaze or can get around the principle in *ex parte Doody*. Nor does it mean that appropriate transparency should not be adopted. If they do not provide for internal processes that are arbitral, sports NGBs are subject to the supervisory jurisdiction of the Kings Bench Division in the same was as other decisions of sports NGBs. There are usually individual judicial processes involved if sanctions

⁷⁵<https://www.judiciary.uk/wp-content/uploads/2020/05/Governing-Body-of-X-v-Ofsted-judgment-7-May-2020-1.pdf>

⁷⁶ This is reversed in some areas which do not apply to this review, for example provisions in public procurement law where in the event of a challenge sometimes government contracts are automatically suspended unless a court determines that they should be permitted to proceed.

or risk mitigation steps that hamper participation in sport are being considered. Those may also give rise to independent appeals. Appeals are dealt with in Annex I.

171. From the new Club's perspective, this could be unhelpful if there were to be any attempts to divert the usual flow of safeguarding information to the sports NGB. I believe it to be the strong wish of the Club officers and School to operate the Club in line with the relevant duties and rules.
172. I should note that the School and the Club have not as part of this application sought to find out any information inappropriately from me whatsoever. It is not my role to consider, as the ICPO2 did, whether inaccurate appeals to alter what the legal framework provides for in terms of sharing (or prohibits) have been made in the past.
173. I too will find myself not being able to say precisely in public what my risk assessment has turned on, but I hope that this published report will help address some of the misinformation which appears to be in circulation while being transparent as to the process. The greatest transparency has been with the Club and School, as is appropriate for their application. This would not have been possible had every letter I wrote or every email been fully in public.
174. I have also set out in Annex I why, while my Terms of Reference provide for an appeal to stay publication, there is power to publish by agreement and this is in my view in the interests of the welfare of children in this case. An appeal, even if brought, has no suspensive effect on my recommendation and the reasoning in this Report is also aimed at helping child welfare by combatting some misinformation in public circulation currently.

Chapter 4: Methodology

175. This section does not set out every exhaustive step taken in my review process as that would need to set out multiple letters and emails per day, plus the agreed transcripts of all interviews (which can be provided, albeit may require some safeguarding redactions if required by the Board).
176. My FAQs set out my proposed process as follows.
1. **Considering the documents submitted by the Club.** *I have received the documents sent by the Club with their application to affiliate. I will consider these against the Swim England Handbook and requirements in place currently. Where I have questions arising from those documents, I have raised those with the Club officers referred to on that application and/ or the School.*
 2. **Considering documents provided by Swim England:** *I will review documents received from Swim England.*
 3. **Considering documents provided by the School:** *I have written to the School and received documents submitted by them. I have already had a meeting with the School's Acting Headteacher and responded to the School's questions about my process and about the relevance of some of my information requests and information gathering.*
 4. **Interviews:** *I have sought interviews with those named on the Club's application as relevant officers.*
 5. **Survey:** *I am collating responses from individuals other than the School itself, the Club and other agencies through an online survey.*
 6. **Targeted document requests:** *Where a document, correspondence, or information gives rise to a relevant question I may request further information or documents from the person or organisation.*
 7. **Public documents:** *I have considered the Weston review. I will also consider public judgments of Courts and Tribunals where relevant.*
 8. **Other agencies:** *I have written to the Independent Schools Inspectorate, Local LADOs, relevant sections and bodies within Swim England referred to in my Terms of Reference, the current swimming club that Ellesmere College Swimming Academy Members are members of and are registered with for Swim England. I may also write to other statutory agencies or Sports Governing bodies or other third parties where appropriate.*
 9. **Swim England Safeguarding:** *I will also ask Swim England Safeguarding if they hold any other information relevant to my Terms of Reference, including evidence and findings and for their view, once I have reached factual conclusions, based on those factual conclusions whether they consider the Club to be compliant currently with Swim England Rules, policies and the Handbook and if not to explain to me why not. I am not bound by those submissions and will exercise my own judgement. I will exercise particular care if I consider that a factual finding from a previous process cannot be relied on or given significant weight due any failure of fair process.*

10. ***Ensuring an opportunity for the Club to be heard; I am following principles set out in English case law. This means that where I may make a finding adverse to a person or the club, that I give that person or the Club an adequate opportunity to respond. What an adequate opportunity is will depend on the circumstances. Some of this is built into the process and Terms of Reference. For example, the Club already knows from my Terms of Reference that I will consider all documents submitted against the Handbook, Rules and Policies and that I will be considering whether they are fully cooperating currently with those Rules and policies, and whether I accept that their processes, governance etc have changed sufficiently since the previous processes. It will also be clear in the questions I am asking in correspondence. The interview process also allows me to gather relevant information and for relevant people from the club to be heard. At the end of the evidence gathering process, I will carefully consider whether I need to give any particular separate further opportunity to make any further submissions or evidence before reaching my conclusions on the evidence.***

177. I have followed this process:

- a. I wrote to the Club and School as my first letter on being appointed.
- b. I have interviewed:
 - i. Both proposed Welfare Officers.
 1. Jennifer Dalziel and
 2. Katie Mason (also a current School House Mother).
 - ii. Mr Worrow (Head Coach).
 - iii. Mr Horrocks, (Director of Sport and proposed Club Chair).
 - iv. Mr Hire (Coach).
 - v. Mr Proffitt (Coach and former Coach during the Titans time).
 - vi. Dr Scanlon (Safeguarding Governor and proposed Governor Member).
 - vii. Ms Pritt-Roberts acting Headteacher and Designated Safeguarding Lead.
 - viii. Several Local Authority Designated Officers.
- c. I have written to all of these individuals plus the Chair of Governors and the Governor who is currently the Chair of the Regulatory Compliance Committee at the School.
- d. I have written to the Shropshire Amateur Swimming Association, West Midlands Swim England (Amanda Swan), Sport Governance and Welfare Manager (Helen Weeks), the Head of Safeguarding at Swim England, the CEO, the Director of Legal at Swim England for the purposes of obtaining information relevant to this review. I have shared some safeguarding relevant information directly with the Safeguarding Team where necessary to do so for the purposes of my review, carefully considering whether the sharing was necessary and proportionate for a lawful purpose. Where such correspondence gave rise to a potential adverse finding in this review I notified the School and/ or Club either in writing or in interview so that they had an adequate opportunity to respond.

- e. I have listed the third party agencies I have written to. I have not included all of their responses as to do so would be inappropriate. Where necessary I have provided either a gist or the full email to the School and/or Club so that they have a fair opportunity to respond.

Did I visit?

- 178. At the outset of this Review I considered whether I may need to visit the Swimming Academy and School. I also discussed this with Ms Pritt-Roberts and Mr Worrow on our first meeting. On the one hand a visit might show me the facilities and some of the reality of day to day life in the Swimming Club. However, from the documents which were sent to me in the first week of my review, it did not appear as though there were any live concerns about the swimming facilities at all. I would also need to be aware both of my own professional limitations and also what would be appropriate. The nature of the safeguarding findings in relation to the Titans, as set out below, are not such as they would necessarily be visible on a visit, if one was conducted. It would be inappropriate for me to seek access directly to children, to changing rooms while changing was taking place or indeed to poolside. The School kindly trusted in my professional position and confidentiality to be able to see unfiltered access to the school's online systems, as an ISI inspector would, but I was not sufficiently persuaded this would be appropriate or necessary for my role under these Terms of Reference. Pages could be downloaded from systems and I could ask about the number of flags for particular descriptors which would avoid the risk of my seeing sensitive information relating to children beyond the scope of my review. I record that the School's offer was both helpful and entirely lawful under its legal obligations.
- 179. There was another factor which also weighed heavily on me and that was the timing of my review. I was appointed very shortly before the end of the Summer term at Ellesmere as the children break up comparatively early to other Schools. Moreover, many members of the Club were in their GCSE or A level year or would otherwise be on study leave. It would have been unhelpful to have rushed a visit before reading into the relevant materials and arriving in what would have been the last week of term. No School has its "normal" atmosphere in the last week of term. Furthermore, no School or sports club has anything like its normal atmosphere in School holidays. Even the most welcoming and friendly School tends to feel a shadow of itself in School holidays. I was also alive to the School and Club's expressed wish that I progress as quickly as possible, so pausing until September would not have been consistent with that wish or my Terms of Reference.
- 180. I set out my rationale in writing shortly after the 1 July meeting and also in subsequent correspondence. Ms Pritt-Roberts kindly confirmed that I would be welcome any time, but that she understood and accepted my reasoning.

181. I have been able to gather information on the “feeling” and “culture” within the Academy through my interviews, the documents and the survey. The nature of the concerns which arose during the survey are such that they would be unlikely to be visible to me on a visit, but that did not mean that they were not such as to require consideration within the Club Executive as to what may need to be done. I am satisfied that the information shared from the survey with the Club (which is more detailed than that recorded in this Decision) is being considered with great care for the purposes of child welfare. Again, such planning steps would not be visible on a visit, but this does not mean they are not occurring.

Survey

182. Soon after reading the Terms of Reference, I came to the view that it would be helpful for me to have a way in which children, parents, former members and other relevant third parties and interested parties to be able to provide relevant evidence and submissions (should they so wish) to my review to ensure that I was considering potentially relevant information.
183. It would be helpful for such information to be manageable and structured so far as possible so that I could view both individual responses and themes across different groups so as to better identify what the current position in the Club is, and also to identify risks and risk factors which may require mitigation measures to be baked into the Club governance structure or require practical steps to be taken.
184. This became more pressing when, on considering the first pack of documents sent, there appeared to be a question over whether some previous findings had been provided to the School and whether I could safely rely on any of them. I would inevitably need to consider what the key issues had been so that I could look for relevant evidence as to whether the situation now adequately addressed them or whether concerning features were no longer present.
185. I asked the School in my first letter to them about doing a survey inspired by the questions asked by Ofsted and the ISI on an inspection (with which I was familiar) and whether the School would be willing to provide it to all staff, parents and pupils and former Club members. Ms Pritt-Roberts had already responded in the affirmative. I provided a draft of the questions in advance of the meeting with Ms Pritt-Roberts and with Mr Worrow on 1 July 2024. The reason Ofsted and the ISI conduct surveys of children in schools (in which they ask direction questions: for example whether they have been bullied or harmed) is both to consider individual answers, but also sense a collective picture of the children’s engagement in the school, whether there a low or high numbers responding, whether there is a healthy diversity of views and experience, whether there is evidence of underreporting and to be able to test the responses with what the internal school documents show. Those surveys are never published in full and Ofsted and the ISI do not share the full responses with schools.

They carry out an inspection, write a brief report of their findings and provide 5 days to respond.

186. I considered how a survey for this decision making could be best set up and determined that it would need to be set up by Swim England as part of their administrative assistance to me and that it be hosted on software with a stable logic and back end. The Terms of Reference provided for me to make recommendations to Swim England and it was essential that any relevant safeguarding information was capable of rapid disclosure to Swim England before that was completed. It was also essential that Swim England held the log of information I had been sent in case of appeal or in case it was relevant to any future matter.
187. The Trainee Solicitor assisting me with my administrative assistance, Guy Ward, kindly arranged a meeting with Swim England's Head of Insight (ie, market research) Kerry Watkiss, on Friday 21 June 2024 to discuss practicalities. The Head of Insight is a member of the Market Research Society and in the call expressed her view that I should consider carefully the specific guidance of that organisation as it provided helpful guidance on administering surveys to children. She also asked me to be sure what the basis was for providing the survey to children. I was aware of some of the guidance and had already considered some of it, but went back and downloaded more of the MRS guides and considered them with care. The basis for providing the survey to children would be through the School. We considered IP locking the survey but this would not be possible with the particular security features of the School's network, as this would prevent more than one entry from any person within the boarding school's network (ultimately there were many responses from the IP address of the School). We decided to age-grade the questions and include an age filter early in the survey with a trigger question for those below age 10 which, if selected, jumped to the end screen to thank them for participation. In the event no child in the youngest age bracket with the adapted shorter question filled in the survey.
188. I considered whether it was appropriate to require a child to carry out the survey with a parent and considered that it was not because, in summary
 - a. Wavepower included the express potential for parental abuse;
 - b. some of the findings of the first ICPO related to officers who were also parents at the Club at that time; and
 - c. in a boarding school, parents are not generally present so this could hamper children from responding.
189. We discussed the framing of the questions asking about body image and whether eating disorders were dealt with appropriately by staff. I took very great care was in the framing of these questions. I considered whether this was a survey requiring a trigger warning. My view was that it was not and that the wording of such a warning would inevitably be more triggering (for those likely to be triggered) than asking

appropriately focussed questions and embedding the avenues for support and reporting on the pages about harm and risk of harm (as was planned). It was difficult to conceive of a warning which was not itself more potentially damaging, thus defeating the purpose of it. Such warnings are usually not appropriate in the context of fact finding in legal proceedings or as part of a legal investigation. The questions asked focussed in the main on how the Club or School had processes in place and whether they identified such issues.

190. We considered procedural fairness. My view was that for the adult version and for children old enough to understand them, there should be an opportunity to provide responsive submissions and documents to the wording in my Terms of Reference. Younger children would not be likely to understand those so, inevitably, those would need to be avoided for them. There could be an issue of low numbers of child entries, leading to identification so a doubling up of the young child questions with the adult questions so that the largest child cohort was asked the same questions where appropriate in case that occurred.
191. We considered how, in the event that safeguarding relevant information needed to be disclosed to Swim England Safeguarding, the School or external agencies, how this could be ensured. We set up the system so that daily downloads were carried out in case there were any later allegations that answers had been tampered with. The downloads would show the IP address, dates and times of entries (but these would be unlikely to require disclosing, but could additionally form an extra safeguard from tampering, whether external or internal).
192. Following the meeting, I revisited the draft and updated it to separate out the three threads and age brackets. I read the following guidance, some of which I was already familiar with including:
 - a. MRS Code of Conduct
 - b. MRS Researching vulnerable participants 2022
 - c. MRS Guide Essential Safeguard Part 4
 - d. MRS Guide to ICO Age Appropriate design code
 - e. MRS Guideline conducting data collection activities with children
 - f. Advocates Gateway resources on vulnerable witnesses⁷⁷
 - g. ICO guidance (linked within)
 - h. The published summary of the report of Fiona Scolding KC into Harmful Sexual Behaviours at Westminster School, which had involved a survey of pupils asking about harms, including sexual harms (<https://www.westminster.org.uk/wp-content/uploads/2022/03/Independent-Review-into-Harmful-Sexual-Behaviours-Fiona-Scolding-QC.pdf>)

⁷⁷ <https://www.theadvocatesgateway.org/>

193. I sent the updated questions to the Trainee Solicitor on 24 June 2024 for those to be input by the Head of Insight into the survey beta. Those questions were longer than I had originally hoped they would be but they covered the range of issues flagged in the instructions bundle and asked a mixture of general questions and specific questions so as to highlight if there was “survey capture” or if, for instance, a parent was adamant that the School’s policies were appropriate, but provided incorrect information as to who to report matters to, or disclosed they had never, in fact, made a report which might indicate those answers should be given less weight than those who had practical experience of doing so.
194. I also flagged that I would like to send the beta to the School and to the Safeguarding team in case they had comments.
195. The Head of Insight created the survey online and asked me a series of questions. I responded with clarifications and corrections which she actioned. The survey questions remained entirely my own. The Head of Insight’s input was helpful in assuring the logic and ensuring that the questions were as clear as possible and tailored to the correct age audience. I also conducted my own data protection risk assessment and carefully considered each question.
196. I wrote to the current Head Coach and Ms Pritt-Roberts on 27 June 2024 on a range of matters including:
- a. Seeking to clarify with whom the Club would wish me primarily to communicate with.
 - b. Providing the meeting note of 22 November 2023.
 - c. Providing a gist of the issues I would wish to focus on in reviewing the constitution.
 - d. Describing the process of the survey. I said:
 - a. *Please could you encourage those recipients to fill this in. Please can you give a deadline of 2 weeks from the date sent so as to will capture both some term time and some holiday time.*
 - b. *If you are sending out any bulletins to swimming club members or parents in the next fortnight, please include the final link and encourage people to fill in the survey (once per person).*
 - c. *Once sent out please could you ensure that the communications sent to parents, staff, pupils and any others is sent to the apps.review@swimming.org inbox so it forms one of the documents reviewed as part of this decision making.*
 - d. *The survey asks different questions depending on the age of the person filling in the form. This is to tailor the questions to be most accessible and suitable to those who are younger. Having considered the questions the grown up questions, these should be suitable for a child of 16 and over. While this is not*

a market research survey I have had regard to the guidance of the Marketing Research Society and the guidance on asking children about safeguarding published on the NSPCC website. The survey has also been devised having considered the survey questions asked in the Westminster School Review by Fiona Scolding KC.

- e. If any of your pupils has SEN which cause developmental delay or who would not understand the 16 and over version (or if 13-15 that version), please could you let me know. I would be content with those individuals being emailed the survey and asked to enter 11, 12 or 13 in the age but also to fill in one of the free text boxes on the form to disclose their actual age and they have inserted a lower age on your instruction due to SEN. There is also the possibility of requesting reasonable adjustments to the survey to reduce or mitigate disadvantage due to disability. If you give this permission to any child or parent, please let me know.*
 - f. You will see that the survey flags people to the school's safeguarding policy and also includes links to Childline and the Swim England Safeguarding Team (on the appropriate pages).*
 - g. If you have any concerns with the contents of the beta, I would be most grateful if you could set out those concerns in writing with proposed solutions, with the assistance of the school's educational psychologist, but sufficiently swiftly that the survey can be sent out by latest Monday 1 July 2024 (allowing for it to be filled in in the last week of term).*
 - h. Please do not circulate the beta link other than to the School's educational psychologist and Ms Pritt-Roberts without my agreement. The final link will be a fresh survey link.*
 - i. I am grateful for the school distributing the survey and encouraging participation.*
- e. Asking for specific documents and whether they had any other information they wished me to consider in support of their application. They provided additional information in the week of 1 July 2024 (it proved initially difficult for me to access the information sent but I accessed it on 4 July 2024).
197. The Swim England Safeguarding team confirmed to me through the Trainee Solicitor that they were content with the survey.
198. The beta survey link was sent out to the Head Coach and Ms Pritt-Roberts on 27 June 2024.

Here is the link to the beta for the survey

https://www.surveymonkey.com/r/Preview/?sm=ge0IomT51ijeTv45n2cc2ZDTme6Cwk hBaFXb4AMxWLUz4mlR_2B52Q0dtLbKKHdJOV. If you are content please let us know by 10am tomorrow and we will send you a final link.

If you have any concerns or will not send this out please make suggestions in writing having engaged with the Educational Psychologist who supports the school.

I will take into account any submissions made by midday tomorrow asking for a variation of any of the questions but I will keep an open mind as to whether I agree to any of them. If I consider the survey to be reasonable but this was not to be sent out that is a factor I may take into account when determining the matters within my terms of reference. I currently consider these to be reasonable questions relevant to my terms of reference.

If there are concerns raised about current risks within the School I would hope that there would be a way that those could be shared with you and that such sharing would be lawful and as envisaged under Working Together. I hope you understand there may be circumstances where I may not be able to or may lawfully decide not to (for example if there is a legislative bar on my disclosing matters, or if, for example the police/LADO etc advise me of a current investigation or if the account given in the survey states that they perceive a risk to themselves were the information to be shared). You will see that I have specifically flagged the school contact details and safeguarding policies so I would hope that if information about current harm is disclosed to me that it would also be disclosed to you with that prompt having been given. I also note that the ISI survey also asks questions which may disclose a current risk, and that these answers are not, as I understand it, always provided to a school.

199. The Head Coach responded re the survey late on 27 June 2024. He said:

In relation to the survey draft issued, there are a couple of concerns we would like to share at this stage.

- *The SurveyMonkey Platform allows for the link to be shared, which means there is potential for responses to be collected from individuals that are no longer part of the College, or even individuals that have never been part of the College, which could lead to unrepresentative data / information that has a detrimental impact on the College.*
- *The volume of questions within the survey is substantial, to request for this to be reviewed in less than 24 hours is insufficient time.*

We would ask that further time is given for the review of the survey questions, and consideration is given to how a secure survey methodology could be issued to a relevant and representative population, as we believe there is potential for some bias in the current approach suggested.

200. I responded on 28 June 2024 first thing to say:

Dear Mr Worrow,

Thank you for your email. There is a need for some speed because of the impending end of term. I am content for comments to be provided by 5pm today. There are a fair number of questions but that is due to the nature of the matters relevant to the review. It is a survey that can be done in approximately 20 minutes.

You will see from the questions that this form has been used to structure the information from people both within the school and outside the school. This is to enable me to collate the data meaningfully and to see the responses. There is a question which filters out who is currently in the school and who is no longer there. It is relevant for me to hear from both. Some people who are no longer at the school may have relevant information to the terms of reference and relevant to the questions I should put to club officers in interview. For

example, and this is purely a hypothetical example, if there had been concerns from parents whose children have left the swimming club, their information may be relevant so that I can see what has been done to change things for the better since they left. The survey has been carefully crafted to be able to provide me with relevant information. I am well aware that I may need to treat some information with caution. I am also aware that if there is one person with past, but not present knowledge, they may express their views with force and that they may attempt to post multiple responses. I have taken steps within the survey so that this is representative. That does not mean I will necessarily agree with them.

The ISI survey the school will have been asked to distribute is also not locked so that it is only accessible by parents and pupils. My understanding is that it can be filled in by others (and sometimes is). The strength of a survey like this is that the data together is one potentially helpful piece of the jigsaw. It is not the only thing I will refer to.

There is also particular importance to looking outside the school in the context of Swim England's rules and jurisdiction. A club that is affiliated can attend competitions organised by Swim England attended by members of other clubs. It is essential that I have a means of having relevant information submitted to me from individuals outside the swimming club or school itself.

I do not accept this is a "biased" survey as you suggest.

I hope this explanation is helpful. I am not willing only to ask current pupils, staff and volunteers to input into my decision making, although I am asking you to distribute this survey to those people because you have the means to access them.

If you still have concerns please provide those with drafting suggestions by 5pm today.

If you consider that I am acting outside my terms of reference you are of course able to say so in your correspondence with me and I will consider those representations.

To reassure you, interviews are unlikely to take place next week as I am aware that is both the week of term, which is always busy and I wish to be able to read through the documentation you are to provide me with next week thoroughly before we meet.

201. I also arranged for a pdf of the survey beta to be provided to the Head Coach and Ms Pritt-Roberts in case that assisted their navigation of the survey logic and to consider specific questions with their SENCO or educational psychologist. While I believed I had carefully taken account of how to frame the survey to extract the most relevant information and be suitable to those filling it in, I was very willing to consider amendments. I arranged for the Head of Insight to be available on Monday to process changes to questions or the logic in case such submissions were made.
202. Ms Pritt-Roberts wrote later that day. Ms Pritt-Roberts submitted that:
 - a. Ms Pritt-Roberts and the Head Coach believed "*the Application is a strong one and the outcome of your review should be to agree that Swim England should grant affiliation to the Club.*" She said "*The Club is run in accordance with all applicable standards of best practice, from both a governance and safeguarding perspective, with all appropriate policies and procedures in place. A large number of swimmers stand to gain if the Club gains affiliation as this will enable them to compete under the Ellesmere College name,*

which is something our swimmers, many of whom are students at Ellesmere College, are looking forward to being able to do.” As set out below, I do not consider that the application disclosed that all appropriate policies were in place. Indeed in interview, it emerged that that did not appear to reflect the view of those who were identified for the Executive Committee. Indeed at this stage there was no Executive Committee as no Governor had been identified or notified, so the processes could not have been fully constituted. The Welfare Officers were unaware of each others existence, nor had been trained and steps were not in place for Ms Dalziel to have access to the School’s safeguarding systems.

b. She confirmed that the School would distribute the survey to:

“a) current swimmers in the Club, b) former swimmers in the Club, c) the parents of current/former swimmers in the Club, d) Ellesmere College staff members and e) volunteers/coaches working at the Club”

c. They would like to discuss with me *“the need for the survey to be sent to all parents and students.”* The principal concern expressed was that Ellesmere College was in regular communication with parents on sensitive issues such as VAT on private school fees. She was keen to *“avoid placing an additional burden on parents of non-swimming students by asking them to complete a survey which may not be relevant to them.”*

d. She also stated that; *“we would be grateful to understand how access to the survey would be controlled so that only individuals in the groups that you are interested in are able to respond. It would be inappropriate, in our view, for a recipient to be able to forward the survey on for someone else to complete.”*

e. She noted that the survey was longer than ISI surveys and that she had a concern that *“students may not find the survey easy to answer.”* However, no suggestions were made for alteration of any questions in the survey and thankfully the results show that children did not “drop out” while filling in the survey.

f. She also requested the bundle I had received from Swim England in its entirety and sought an extension of time for their documents. This was provided the following week.

g. She also stated that there were “key issues” she and the Head Coach would wish to discuss with me in the interviews I was to carry out. These were put in the following way:

a. *The complete overhaul by Ellesmere College of how an external swimming club operated on the Ellesmere College site including, as noted above, from a governance and safeguarding perspective from August 2021 until early 2022 and the Application the Club has been able to produce as a result.*

b. *The dis-affiliation of Ellesmere College Titans Swimming Club and related events of 2021.*

- c. *The way in which Swim England have handled its interactions with the Club, including its lack of transparency. One example is Swim England's failure to explain to Ellesmere College what Swim England's "concerns" are that are referred to in paragraph 3.5 of your Terms of Reference.*
 - d. *A malicious hand-written letter making unfounded allegations about Ellesmere College, which Ellesmere College was offered no opportunity to reply to. It is believed this letter is the source of the unidentified "concerns" and is something that has caused significant and unwarranted damage.*
 - e. *Failings of Swim England manifesting itself within the Terms of Reference you have been provided with.*
 - f. *The broad scope of your enquiry including statutory agencies and surveys of the public, past parents/students, current parents and pupils and any interested parties.*
- h. She also asked for an opportunity to submit written submissions following interview.

203. I responded that day in the following form suggesting a meeting on Monday 1 July, explaining some of the rationale, granting the extension of time sought and that I would carefully consider the provision of the entire bundle. I also explained that some of what they wished to discuss in my interviews may fall outside my ToR.

Thank you for your letter of 28 June 2024. The link to be provided to those listed in paragraph 2 of the second page of your letter is <https://www.surveymonkey.com/r/ECSAAffiliation>

I would like to meet with you both online on Monday at 2pm to discuss the distribution of the survey to others beyond that list which I consider to be necessary for my Terms of Reference and the protection of children. I believe this is both helpful to my Terms of Reference, and also not as unhelpful as perhaps you might consider for the school.

I entirely understand that there is some history to this matter and considerable unhappiness and concerns about previous procedural fairness. I also understand that you consider that you have previously received a malicious complaint and that I should be alive to this when considering the results of my fact finding process. For that it is helpful for me to be able to separate out a response which refers to that both for the answers given to the "harm" questions and the questions asking about the position now. It will be helpful for me to listen carefully to any submissions that you have about what weight I should give to particular results. I am already aware that I may need to be alive to the risk that apparently factual accounts may have adverse motivation and the survey is particularly carefully framed to assist me in detecting this and in filtering if it proves necessary. If there are matters in the survey on which I wish to rely as factual findings adverse to the club I will ensure the School and Club has an opportunity to respond to them, as fairness requires. I appreciate you have had concerns about procedures carried out in the past. I was not involved in those and will be my own woman in respect of these Terms of Reference.

I would encourage you and Mr Worrow to read my Terms of Reference carefully. My remit is a forward looking one, but will need to consider whether risks identified in the past, including by the ISI, are resolved and make an assessment of the degree of certainty Swim

England could have, as the sports governing body for Swimming that its rules would be complied with by club members, officers and the club. I will look at the documents you submit to me very carefully.

My remit does not cover all of the matters which you list at a-f and I am not conducting a process where I am determining your matters a-f. If your submission to me is that I should give less weight to a finding in the past due to processes that were unfair I will of course listen to those concerns. If you also wish to show me how concerns which are accepted as to past events would now be dealt with differently, I will of course listen very carefully to those too. My Terms of Reference are my terms of reference. They focus on the Club and the people in it and who will be in it in future and with whom they will interact and how those relate to Swim England's Rules (including Wavepower). I also note that one of the previous findings of the ICPO was that the school had attempted to control the ICPO's processes. That is not a finding I will necessarily replicate and I will consider all matters in the round.

It is well established in the law of safeguarding and the rules of all sports governing bodies and the NSPCC Child Protection in Sport unit that matters relevant to sports safeguarding can arise outside of competitions and can arise, for example at school or online outside of the time spent on sport. It also includes interaction between participants in sport and other people.

It is also a core central requirement and expectation that reasonable questions and requests for information will be responded to. The degree of cooperation with a sport and trust and confidence between participants is also a relevant factor. I will note your letter and that, as at today's date you do not agree to provide the survey link to parents or children beyond the swimming club. I remain of the view that I wish for it to be sent to those I requested.

In order to do that effectively I need to have access to an evidence base separately from that collated by Swim England in those processes and that is part of the purpose of the survey.

I would therefore repeat my request as to who the survey is provided to by the school. It is part of my terms of reference that I can hear evidence from participants other than the club and school. I need to make clear that I may (and I have not yet made up my mind) take into account this refusal to provide the link to all those I have requested when I consider what recommendation to make.

If you still have concerns about distributing the final link more widely than the more limited list in the second paragraph of the second page of your letter I would be content to meet with you both on Teams at 2pm on Monday to listen to your concerns and explain my rationale and how I plan to make sure that this process is fair to all. This meeting would be recorded and I would be attended by [the named Trainee Solicitor], who is assisting with the administration in accordance with my terms of reference. I do not believe that he has previously been involved in any of the processes involving Ellesmere College Titans. My report and recommendations and all factual findings will entirely be my own.

Extension of time

I also grant your extension of time until 10 July 2024. This will, however, mean that the process is likely to take a bit longer as I had planned to have your pack of documentation next week.

Bundle request

I note your request for the bundle that I have received. I will look into practicalities and revert on this next week. I will not promise to provide every document that I may receive as part of this process. Fairness may sometimes be satisfied by provision of the gist of a concern or a potential adverse finding. As Lord Mustill said in the leading case on fairness (R v Secretary of State for the Home Department ex parte Doody [1994] 1 AC 531:

“1. Where an Act of Parliament confers an administrative power there is a presumption that it will be exercised in a manner which is fair in all the circumstances. 2. The standards of fairness are not immutable. They may change with the passage of time, both in the general and in their application to decision of a particular type. 3. The principles of fairness are not to be applied by rote identically in every situation. What fairness demands is dependent on the context of the decision, and this is to be taken into account in all its aspects. 4. An essential feature of the context is the statute which creates the discretion, as regards both its language and the shape of the legal and administrative system within which the decision is taken. 5. Fairness will very often require that a person who may be adversely affected by the decision will have an opportunity to make representations on his own behalf either before the decision is taken with a view to producing a favourable result; or after it is taken, with a view to procuring its modification; or both. 6. Since the person affected usually cannot make worthwhile representations without knowing what factors may weigh against his interests fairness will very often require that he is informed of the gist of the case which he has to answer.”

Please could you send to this address the communication to those you send the link to in the form send so that I can keep this with the documents considered by me.

204. A meeting occurred on Monday 1 July 2024 with Mr Worrow, the Head Coach and Ms Pritt-Roberts. Both consented to the meeting being recorded and transcribed. They were provided with a transcript and confirmed the accuracy. In that meeting they both agreed that the survey would be sent out by them to all those who I had requested it be sent and that they would send me the communication wording that accompanied it. When sent to me, those communications were brief. They did not include any of the rationale that had been shared or the SEN adjustments.
205. Mr Worrow in the meeting was concerned that children might not fill in all the questions if their attention dropped. Thankfully this has not been borne out in practice. This was an entirely appropriate question to have asked. He and Ms Pritt-Roberts were also keen to ensure that I had thought carefully about the questions asked and that I had framed them lawfully and suitably and had in mind the interests of children at the forefront.
206. I became aware through some of the survey responses that some of the parents and respondents to the survey were unhappy. Some made allegations which suggested that

my Terms of Reference had not fully been understood, or why the voices of children or former members and parents had any relevance to what I had to determine.

207. I was also asked by the Swim England CEO to attend a meeting with him on 5 July 2024 as he had received direct communication from several parents and he wished to check what I had set up and that I had sufficient rationale for doing so and that I was doing to in accordance with the law and he was deciding how he should respond to them. He told me at the start of that meeting that he did not wish to influence the outcome of my decision. I explained to him that I would be happy to hear from him on the application. It was unusual in the context of affiliation for an NGB, which would need to administer the affiliated entity to express no view at all. Affiliation would require that entity to be working with Swim England and that would need to be administrable.
208. The contents of those complaints have never been fully shared with me, but I took from his gist that they focussed on whether a trigger warning should have been included, why I was asking about eating disorders at all and why I was asking any questions of children and why members of the public could respond to me. There seemed to be a suggestion by some that I was “biased” against the Club and that my process was outside the range of reasonable processes for me to have adopted. The summary provided to me suggested that I should not be hearing from former Titans members or people in the general public at all. It also suggested that if the complaints were being made by current parents at the School either they had not contacted the School or the School may not have shared with them the information I had shared with them about the rationale and the framing of the questions or, given the rapid timescale for those matters having been raised by them with the Chief Executive Officer that if they had asked the School the School might not have had a chance to respond to them. There was some suggestion in Mr Salmon’s gist that some had suggested that I had terrified the School. I do not believe that that was the School’s position. The School had sought to understand the rationale and process and had some worries about whether the children might stay for the length of the survey, but they were not put as welfare concerns, which thankfully did not eventuate. It was also relevant for me to assess whether reasonable requests for information potentially relevant to welfare and safeguarding was provided or not as that goes to the heart of what the rules and law in this area require to be a central touchstone.
209. I provided an explanation consistent with the correspondence to Mr Salmon and provided a summary line that I was content with. I am not aware of how he responded as that has not been shared with me.

“Ms Apps KC is considering a series of FAQs and summary of her process to host on the website shortly which will provide some background as to Ms Apps’ process in compiling the survey and may answer some concerns. Ms Apps KC has informed me that she both provided a beta of the survey to the school and had a meeting with the School Acting Head Teacher and Swimming Head Coach. The School was expressly offered an opportunity to make drafting suggestions with the School Educational Psychologist’s assistance but no

drafting suggestions were provided. There were also adjustments offered for pupils with SEN or developmental delay. The email address for the review is on the website and is apps.review@swimming.org

210. I also shared my view that it might assist for the website to include some FAQs publicly on the website as well as my Privacy Notice. Even if a process is fair, and the Club and School were content with that fairness, that might not necessarily be apparent to others, even though they would not have the same expectations in terms of contact with me as the School and Club. The survey was an opportunity for them to provide input into my process. I drafted contents which Swim England posted to their website. Their communications team considered it for readability and flow but did not make any suggested substantive changes and it was made clear that, ultimately, I had the final say on the wording.
211. I had seen the reference to risk of retaliation in the ICPO reports and suggested some wording to the school for addressing this and that the school provide a line of their position. Ms Pritt-Roberts asked me not to include such a question in the FAQs and suggested that she was unaware of any risk and did not wish to give such a risk credence if it did not have an evidential basis, which she did not have. I decided instead to see what evidence emerged through the survey and to revisit this question if necessary. I was also keen to see the way that the School approached the potential risk of retaliation in practical terms and also to see what risk if any there was currently. I was unsure at the stage of launching the survey of what exactly the school had previously been shown or not shown from the ICPO reports (that same week I provided all of the reports I had been sent so any previous defect was cured by mid July). What ultimately transpired was that the survey did show a practical recent example (on which I would ask there not be public speculation and where details are provided to the Board at Annex F) which enabled me to see, in real time, the Coaches' and the Acting Headteacher's response to it which was an appropriate response.
212. I include a copy of my FAQs as an Annex to this report.
213. During the life of the survey, I checked daily to check, in particular whether there were entries indicating ongoing harm which would need urgent action and disclosure to the relevant people to address it. The daily background downloads were also completed.
214. I later discovered in early August 2024 that Swim England has a shorter survey that the Safeguarding Team had been trialling for welfare checking on clubs. I refer to this in Chapter 6. There is some overlap with some of the questions I asked, but it is also not asked for the same purpose or against the wide ranging number of findings and factual position of this particular Club and swimming at Ellesmere College. The usual position on that survey, so far, is that children are encouraged to fill it in with their parents or guardians but this is not a concluded position. There can be instances, for example these terms of reference, where seeking parental consent is not consistent with the overall objectives.

215. I also received direct emails from an organisation purporting to be the Ellesmere College Campaign Group, several current parents and former parents and an interested party. I thank all for their contributions. I have read all carefully.
- a. If allegations were made that I could not fairly put to the Club or School after information sharing with statutory agencies, I have not been influenced by those allegations. I would ask those reading the report not to speculate on the potential full investigatory coverage of statutory agencies.
 - b. A party stated that they intended to make a formal complaint against the Swim England Head of Safeguarding and asked me to provide them with information relevant to doing so, which I politely declined. I also explained to them that organisation (the members of which declined to share their identities with me but which said that the CEO of Swim England was aware of them) that the nature of some of the information I was likely to consider would contain highly sensitive matters relating to children and that neither I, nor likely other bodies such as the School, Club or Swim England, would be likely to lawfully be able to share such details with an unidentified group of people.
 - c. There was some suggestion by some that all safeguarding matters concerning Ellesmere should go to an independent person and not to Swim England. I shared my view which is also set out in Chapter 3 that I did not consider that likely to be lawful, and that affiliation would necessarily bind all members to report to Swim England Safeguarding as that is what their rules require, and affiliation requires compliance with the rules.
 - d. Some of those responses sadly appeared to be based on misunderstandings of the legal duties in this area, whether the ISI's recent report was "*binding*" and stated what they considered to be the view of an independent person such as the LADO (I was in the fortunate position to be able to correspond directly and to speak directly with several LADOs).
 - e. I was also sent by the School a copy of a survey that some parents had compiled previously, principally expressing the view that they did not consider there to be issues within the previous Club and that they considered they were being unfairly treated. I have seen this survey and considered it. It is not my role to consider the previous decision to disaffiliate. As Anne Whyte KC observed in gymnastics, a narrative protective of a particular coach or abusive practice does not prevent it from being abusive or harmful for those who have been harmed by it. The loud expression of a majority view risks making it less likely that current concerns, which may be perceived as being at odds with that majority view may be raised by children in a setting. I note that the framing of that survey is not the way welfare surveys are usually framed in the context of sports safeguarding investigations and monitoring. When considering that survey I note, however, in particular, that most parents who responded to my survey did

not seek to rely on that survey, but instead provided germane answers relevant to their own personal experience more recently in the Club, and most did so without the more polarised language of some.

Survey responses

216. In total there were 171 survey responses. There is one entry which seems to have been written by someone who does not intend to provide information to assist this review. That survey respondent says they are a swimming academy member (IP Address in California), but as the responses seem to be messing around (they have written “I am a bully who bullies people” and such like). I have excluded them from the data analysis.
- a. This makes a total of 170 responses.
 - b. No responses were received for the under 12 age group (much shorter) questions.
 - c. 16 responses were received by current swimming member who are pupils are Ellesmere college (I understand the total to be around 20). 11 of those were from children over 16 and 5 from children under 16.
 - d. No responses were received by the two current non pupil swimmers with the Academy (but there are responses from their parents).
 - e. 64 responses were received from current or former parents.
 - f. 21 responses were received from those describing themselves as interested parties (but as set out below, with some overlap).

Themes from the current child entries

217. These figures required aggregation because some questions were asked of both upper age bands and some were not (ie some were only in the adult and over 16 version). Due to the small numbers there is potential risk of mosaic identification of children if responses are shared more widely.
218. These show the following.
- a. Mostly, with small number exceptions current children reported that they considered:
 - i. Safeguarding and bullying policies are appropriate at Ellesmere College and the Swimming Academy (albeit these policies were not at the time compliant with Wavepower, so this is less optimistic than it initially might potentially seem).
 - ii. Bullying and safeguarding concerns are dealt with appropriately.
 - iii. They feel confident that all children are safe with coaches, volunteers and staff at Ellesmere College Swimming academy.

- iv. Bullying and behaviour which poses a risk to children is recognised by staff. One current member described being bullied by another child, who is no longer with the School or Academy. They described that that they were supported by the coach who noticed it (one of the new coaches), addressed it and supported them through it.
 - v. They know who they can go to if they are concerned, although there were no children (or adults, save for an officer of Leicester Sharks who filled in the survey) who said concerns would be raised with the Welfare Officer.
- b. The answers are somewhat more modest in response to “I feel confident that I will be listened to if I raise a concern” (several “agree” rather than “strongly agree to this question) and not 100% in both combined.
 - c. 75% strongly agreed that they would know how to help another pupil with one disagreeing and two agreeing rather than strongly disagreeing.
 - d. Mostly “agrees” but several “I don’t know” or “not applicable to me” about whether medical information is appropriately shared with staff.
 - e. An “I don’t know, two “inapplicable to me,” one “strongly disagree” ,three agrees and eight “strongly agrees” in respect of whether doping education is appropriate.
 - f. A mixed response regarding the questions on mobile phone use:
 - i. Only 63.64% answered “strongly agree” to whether the policies were being followed.
 - ii. Only 25% gave correct answers to whether mobile phones were permitted in changing rooms (they are strictly prohibited in Wavepower and I was informed that they are not permitted under School rules but this is not straightforward to identify from the School policies on the website).
 - iii. There was a mixture of “strongly disagree,” “not applicable to me” and some “I don’t knows” about following rules on phone usage and social media use.
 - g. There was a mixed response to the questions relating to body image, eating disorders and would they know how to help another pupil:
 - i. There were high percentages of “strongly agree” answers to “I know what to do to find help if I am worried about my body image or weight” and “I believe other children at Ellesmere College Swimming Academy know what to do to find help if they are worried about their body image or weight.”
 - ii. There were more modest answers in the older category to whether:

1. "if self harming occurs staff, coaches or volunteers detect this promptly"
2. "Eating disorders and body image disorders are effectively and appropriately managed."
3. "Self-harming is managed appropriately to minimise risk to the pupil and other pupils."

All scored less than 50% of "strongly agree" in the older age group (these questions were not asked to younger pupils).

- iii. There were just over 50% "strongly agree" responses to "There are effective steps for reducing risk of eating disorders and body image disorders."
 - h. There was some knowledge of what Wavepower is (63%) which the other answers across "strongly disagree", "disagree" "I don't know" "inapplicable to me" but this was lower than would be hoped.
219. Across the freer text boxes there were some free text answers which gave context to some of the issues raised in the other questions. Examples include:
- a. *"Please give us affiliation there is nothing wrong with the academy coaches or college. I'm really happy here for last [x] years and really want to compete for the college and not for Leicester sharks."*
 - b. *"As a pupil who joined in [after the Titans and disaffiliation] I am not aware of the previously existing concerns at Ellesmere College. However I have not had any concerns throughout my time so far. I am fully confident that I could talk to anyone if I did have any concerns."*
 - c. *"I'm really happy at the college and academy, my coaches support me and I feel I can go to them if I have a problem. I have a good group of friends but it's annoying me and on my mind a lot that I don't have a club and can't wear my Ellesmere hat. I race as Leicester sharks but haven't ever trained there, it doesn't give me encouragement or a sense of pride"*
 - d. *"Swimming at ellesmere college has provided me with opportunities I never thought I would have. The coaches and staff at ellesmere created a safe environment where I am able grow as a person and an athlete. The swimming coaches supported me in and out of the pool meaning I am able to keep a balanced life of swimming and education. During the disaffiliation process as athletes, we were kept completely in the dark and were unaware of what was about to happen to the club which we were swimming at. We were left without coaches and trying to compete whilst having other clubs staring and questioning us when we didn't even know the answers to the questions ourselves. For me this has had a huge impact on my swimming as it has meant I haven't a club to really belong to and race under for the past 2 years. I am often feeling nervous that the coaches will disappear again or the Leicester sharks will decide they don't want us like City of Leicester did. When wearing ellesmere college uniform I feel as though I'm under a spotlight just because I am related to that name. Ellesmere is the third club that I have belonged to since starting swimming at the age of [redacted to prevent mosaic identification]. I can honestly say*

that it has been the best in terms of understanding and support from (sic) the coaches. Ellesmere and my last club were both performance clubs, so I expect the training to be tough and levels to be high. If I wanted to swim socially then there are other clubs that I could join or like some of the other swimmers in the past I could probably drop down a squad so it would be less demanding. Compared to my last club the coaches have better as they support me when I have a bad session and try and encourage me. As swimmers we spend a lot of time together and of course it is not always happy families. If there have been some issues the coaches know us all well and I feel like they are picked up on quickly and we are helped to deal with them. Overall, I think Ellesmere College swimming academy and the coaches provides us with a safe and supportive environment to be the best that we can possibly be as athletes and without them I wouldn't be in the great position I am today."

220. Overall this shows that:

- a. The pupils who answered the survey did not "drop out" and stayed to the end.
- b. The children did not all tick "strongly agree" to everything potentially favourable to the Club. The numbers and individual entries show a degree of variance which suggests that (some at least and probably more) engaged carefully and thoughtfully with the questions. A 100% "strongly agree" to everything (even questions which would not fit such an answer) might lead to some concern that members were being "positive at all costs," which would potentially be a factor which did not indicate a healthy culture in operation.
- c. There is an evidence base that greater training is required on when mobile phones are and aren't permitted in changing rooms and on the Club's rules regarding social media use and mobile phone use, based on these number. I raised this with the Head Coach as soon as I spotted this. Coaching staff are planning this for the start of term in any event for children.
- d. There is a high degree of trust expressed in the current policies, which on one level is optimistic but this needs to be tempered by a consideration of the policies in place, some of which had clearly apparent issues which I have identified and notified to the Club promptly.
- e. There is mostly a high degree of confidence expressed in the coaching staff to spot harmful behaviours and bullying.
- f. There is less known about when information about children is shared.
- g. I would expect to see a mixed picture in respect of the body image and eating disorder questions, which on one level may initially look repetitive but ask subtly different but nonetheless importantly different questions. I would expect awareness of the nature of such disorders to differ and I deliberately did not ask some questions of the younger swimmers. It appears that:

- i. There is some awareness amongst the pupil swimmers that one of the key issues can be detection and visibility (a key first line to some effective strategies to address at an early stage) which is a positive.
 - ii. This evidence should also not be seen in isolation but also with the evidence given in interview as to the ways in which such issues are discussed in the Club and issues identified. The Head Coach gave powerful evidence about how he discusses nutrition issues with the team and how he and the team aim to detect issues early. They also have power in their specific rules, which they have not needed to use, but which they discuss with the pupils in relation to competitions. That power permits them, if they are away at a competition and they see a student under eating before a competition, to refuse to permit them to compete in the coach's discretion. There was thoughtful discussion of how to address such issues in light of public discussion by existing elite athletes and how to manage the risks of over fixation and maintaining a positive relationship with food and body image and of how to encourage a lifelong positive relationship with their bodies. I also heard evidence of how the positive relationship with food was promoted on a recent squad trip to Cyprus, which both enabled discussion and what look to have been mutually enjoyable team meals. Allergies and particular dietary requirements appear also to be well understood. There is also positive evidence in relation to the School as to the handling of eating disorders in the School context in the first Done judgment.
221. Some of the children left their names. I have not contacted them directly. I have been in touch with some of their parents directly. The School has shared with me some of their notes about recent incidents. Several of the children who those notes show are aware of those incidents filled in the survey and left their names. Those responses were virtually all "*strongly agree*" with any conceivably positive statement. The matters which those children had disclosed to them either by the School or peers showed "risk of harm" in the last 3 years. The survey asked a direct question on this. None of those reported those as a risk of harm or ticked yes to that question. There is one who referenced an issue "with a boy" but no further details were disclosed (the incident sadly went beyond this).
222. These responses meant that it was necessary to notify the Club coaches and School of potential minimisation language and underreporting in the survey, and to ask them for their views on it and any thoughts as to what steps they may be intending to take, or whether they did not accept that the results suggested underreporting.
- a. I was impressed with the Head Coach's response.
 - b. The acting Headteacher's responses to the survey were more mixed and she initially had suggested in correspondence that she would not consider there to

be evidence of a risk of, for example, retaliation if fewer than 50% answered that there was a risk. Such an approach would not in my view be appropriate and in fairness to her this was not a position that was maintained. However, in interview, the position presented was less stark and she indicated that she could see the need for potential further reassurance. She also shared information and screen prints from the system which showed incidents and concerns being uncovered conscientiously, sensitively and appropriately in the context of a different matter arising in the Swimming Academy. The acting Headteacher also provided some helpful contextual information as to how some of the children more usually express themselves.

- c. There are several features of how a recent incident was reported within the School which give me somewhat more confidence that children in the Academy are more comfortable reporting matters of concern to the staff they know (both in the School and in swimming) than to a barrister they have never met. It is entirely understandable that children may be less likely to disclose matters to me than to those they know. Some may potentially not have categorised what they were shown or observed or were told as a “risk” (using the language of the 2006 Act – as teenagers do not always use the same language as the law uses).
- d. I am aware that there is a substantial dispute in the second Done Tribunal case as to whether Mrs Done made a protected disclosure of information regarding matters affecting her maths class and that some parents in that class made complaints. As that matter is sub-judice I make no determination of the facts in dispute in that case. I note that a parent disclosed in my survey that she had raised a complaint relating to Mrs Done, and the fact of this complaint has already been referred to in the documents in open court in the Tribunal (quite properly without the identity of the parent or child).
- e. I also take account of the likely stressful context for the School of the Tribunal litigation and the sensitivity in the context of that case of not inadvertently making a finding as to a risk of detriment following whistleblowing which did not in fact exist. The School needs to be entitled to defend the Tribunal litigation and as set out in Chapter 1. Nothing in this report should be read as supporting or not supporting an issue for determination in the pending claim. That is a matter on which I express no view, no party has sought my view and it would not be appropriate for me to express a view. I need to tread over a factually similar area but I am doing so with a different focus.

223. The key point for the purposes of my Terms of Reference was to be able to:

- a. Hear from the children in their own voices, and also
- b. To see whether (in particular):

- i. their **needs were the priority of the adults in the Swimming Academy** (which I saw evidence of),
 - ii. there was **insight** from those adults into **what could pose a risk and what might hamper reporting** (some other evidence seen);
 - iii. those **adults would consider whether they needed to take appropriate risk mitigating steps** including removing obstacles to reporting, reassurance were appropriate, and to keep an appropriate watchful, but sensitive, sensible and balanced eye on things and address issues at an early stage (some other evidence seen).
 - iv. the **adults were missing problems felt by a minority** because of the views of a majority (this is difficult to discern, but I have seen evidence of those in a vulnerable position in the swimming academy gaining confidence through sensitive support which led to the issues being addressed sensitively, rapidly and properly. I am not in a position to assess this across the School more generally).
224. The fears of some parents that children might not understand the survey or should not be asked for their views on principle as part of this process have, in my view, been misplaced. I have found it helpful to hear from the children who filled in the survey and I am grateful to their patience and perseverance to complete it. I am sorry if any children felt dissuaded by others from providing their views to me. Their responses are an important part, but not the only consideration I have considered in this review. I have considered it along with other evidence gathering from all of the other sources.

Survey responses from current and former child members

225. There were also entries from children, either still within the School or who had left who used to swim with Titans or Ellesmere College Swimming Academy and no longer do so. Given the responses received, a small number of which sought to criticise those who had previously raised concerns amongst some of the parent entries I have not included all of the numbers or the precise percentages here. Themes arising from these included:
- a. A higher percentage than the current swimmers who answered either “disagree” or “strongly disagree to the questions regarding body image and eating disorders, identifying and addressing bullying.
 - b. There also appeared in this cohort to be a higher proportion of “correct” answers to the questions regarding mobile phone usage in changing rooms and smart phone/ social media related questions (ie, mobile phones are never allowed).
226. While this information, taken by itself, does not mean that there have been issues with bullying, phone use and body image in the last 3 years, this is consistent with the need to consider the current position carefully so as to check whether the current staff and

Club members do have the sufficient insight, knowledge and governance structures in place to provide an adequate level of protection those at risk of those harms in the Swimming Academy. It also highlights how the negative effects of bullying can continue long after a person has left the environment where that occurred. It is not helpful for that to be framed by others as being obstructive or something that I should give no regard to.

227. The fact that the majority of current members have not answered in the same % numbers does not mean that the risk is not present. Bullying, for example, usually only targets an individual or small minority, who may be ostracised from the majority. This is why I looked very carefully at recent incidents which contained a bullying element, social media or phone use and peer/ peer issues to see consider trends and whether they were being adequately recognised by those in a position of trust and to see how, in practical terms, those were dealt with and to check them against the findings to which I am permitted to have regard relating to the previous Titans era. No Club, even with the best governance imaginable, can exclude the potential for these harms. What they can do, and indeed must have processes in place and actively encourage, is
- a. to identify it where visible,
 - b. report it,
 - c. take appropriate action
 - d. provide ongoing reassurance and
 - e. consider risk mitigation steps (if appropriate in the context of the particular case: it is not appropriate in every case).

It is the ultimate responsibility of a Club to combat potential obstacles to reporting and conduct in breach of the parents Code of Conduct through its Club processes including triage up to Swim England's process. This Club's Constitution ensures the Club will have access to Swim England processes (save for in respect of adult volunteer members which go through the School's admissions processes). Affiliation requires the Club to take robust action where appropriate to address such matters.

Parent responses

228. A much higher degree of polarity of viewpoint and vigour in expression of views was visible from the parental responses (mainly current, but some past).
229. The views expressed were not all lacking moderation. There were a considerable number of thoughtfully expressed information rich responses which were extremely helpful. Some reported having raised a particular welfare concern with a coach in recent times who dealt with the matter sensitively and appropriately. Some expressed a wish not to be caught in the middle which I considered to be consistent with there being a polarised culture in place in the past and currently and not the only evidence of this.

230. There were a very small number of entries purporting to be from current parents but who answered that they would raise welfare concerns for example with staff no longer with any involvement in the swimming Club or who had left, which I approached with particular caution. There was one entry from a former member of staff who may be the Employment Tribunal litigant. I did not see a large number of vexatious or positionally negative responses, which some parents stated that they feared.
231. There was one entry from someone who called themselves a parent and "associate of the coach" (the current coaches did not know of anyone who they are aware calls themselves their "associate"; it was not language any of them used in interview). That response was considerably immoderate in its tone.
232. The most striking feature for the purposes of this review was the language, power and high pitch of a significant number of the responses from those purporting to be current parents. Even allowing for the potential for upset that might have been caused by the disaffiliation decision in 2022 (which it is not my role to re-determine) the language used by some,
- a. If overheard by their children or their children's peers would be such as to make those children be likely in my view, to think twice before disclosing information to me or others which they might be concerned might put at risk the parent's strongly expressed views; and
 - b. Disclosed in some cases apparent and material misunderstandings of what affiliation to a sports NGB means.
233. Some of the views expressed were also extremely critical of Swim England. The language used in some of these responses was considerably intemperate. It is not my role to determine whether those criticisms have a basis in fact. It is relevant for me to consider whether the parents of the members would comply with Swim England's rules so far as they apply to them through the Code of Conduct and through their children's membership (including those requiring referral to teams some say they do not trust) because that is what affiliation essentially requires.
234. I would hope that concerns about the School's awareness of what was at issue in relation to previous findings is allayed by the fact that the second ICPO report was provided to the School during this Review.
235. Focussing on the position now in the Club from a child welfare perspective what the vigorous expression of parental views might risk, if overheard by the children or the children's friends and peers, is to cause worries about reporting matters which the rules (and statutory framework) require be disclosed to Swim England, welfare officers or appropriate adults.
236. Adults are of course entitled to have their own views and express themselves generally in society, but it is relevant to this review to consider the impact on the culture in the Club and whether there are features which might potentially pose an obstacle in

practical terms to a child feeling sufficiently courageous to come forwards. As set out above in Chapter 3 the loud expression by some can overpower a victim or at the very least is an additional obstacle to reporting.

237. There are also express limits to freedom of expression in the context of swimming activity within the parents' Code of Conduct (a template for which is included in Wavepower, and where the current Code in the Club's Handbook had not to date replicated – albeit I have been assured that this is now being addressed). A parent who wishes to express themselves in such terms has a choice whether they wish their child to enrol in a Club which requires all (including parents) to abide by the Code of Conduct and submit to Swim England rules and policies.⁷⁸
238. It is also apparent that some of the parents appear to be unaware of recent incidents within the Academy which are sufficiently serious as to have been reported by the School to the police. Some parents refer to matters being purely “historic.” Vigorously stating that issues are only “historic” and everything is positive in terms of their experience is unlikely to be most helpful to a child who, unbeknown to that adult, may be experiencing a concern and weighing up whether to raise it. Doing so creates the risk of an additional barrier to genuine reporting and may take up time and resources from safeguarding bodies, agencies and within the School who may feel as though they need to take steps to placate that adult's strongly expressed view rather than addressing the potentially less strongly pursued matter, which discloses evidence of safeguarding risks currently facing a child or children in the context of swimming activity (in competition and out of competition).
239. I am most encouraged that the School and Club Officers did not present a picture of there having been no issues recently – and indeed they all recognised that a complete lack of reporting of any issue would itself cause them very considerable concern as to whether children felt sufficiently safe to do so. The recent incident was proactively raised with me by the acting Headteacher, entirely appropriately and properly. The nature of a swimming club in a School is that issues relating to welfare will inevitably arise. It is important that barriers to reporting by children are low, that issues are reported and actioned properly. One person's positive experience and lack of knowledge of another's negative experience does not negate the negative experience and can make it, in practical terms, more difficult for that person to come forwards. It is for this reason that modern safeguarding law focusses on the features set out at in Chapter 3. Having been sufficiently concerned by some of the responses I wrote directly to some of the parents. Some of whom responded, some of whom did reply courteously and in a more moderate tone, but not all of whom showed insight into the nature of the legal duties and risks in this area.

⁷⁸ This is not said in order to inflame the position or prevent a genuine complaint being made, but is how the law generally approaches issues of parental choice against a freedom of expression or freedom of religion in educational settings: see *R(TTT) v Michaela Community Schools Trust* [2024] EWHC 843 (Admin) at [142]-[155].

240. There were a considerable number of measured responses which provided helpful evidence and positive comments which I have taken fully into account. Those related to the following:
- a. responsiveness and child centred approach of coaches,
 - b. particular praise for care and development,
 - c. some with experience of other clubs said that they were positively impressed with the “step change” (in positive terms) and welfare focussed approach,
 - d. positive experiences of helpfully and sustainably helping a swimmer cope with and not overtrain, or lose confidence in the context of injury,
 - e. praise for the regular coach/ parent meetings,
 - f. the lack of pressure to attend training when ill,
 - g. that coaches encouraged swimmers to take the time needed for study leave and exams,
 - h. support for children starting boarding for the first time,
 - i. provision of “settling in buddies” for new boarders,
 - j. Special help for children with SEN understood well by coaches, sensitively and effectively provided,
 - k. Great promotion of sensible work/ life balance,
 - l. Individual praise for each of the coaches by name, and
 - m. Someone suggested that they would find it helpful if more non swimming squad children were able to use the swimming facilities. The School has stated that there are some opportunities for this.
241. There were also some responses from parents of pupils who used to swim but no longer swim and are still students at the School. There is a risk of them being potentially identifiable if I give too great details. Amongst these were reference to a risk of harm from another pupil (not ongoing) that the pupil did not raise because “I did not think it would be addressed satisfactorily.” I triaged this to the School but unfortunately there was insufficient detail to for them to be able to follow it up. That person had ticked “no” to whether they considered the harm to be ongoing, however which gave some reassurance. I note the School’s proactiveness in considering this.
242. There were also some concerns raised about the remaining coach from the Titans period and that findings indicate they may pose a risk to children which may be unaddressed. I have considered this below. Those are relevant questions for me to ask against the “findings” that I have to have regard to and whether I have been afforded sufficient access to past documents.
243. I have the benefit of being able to interview Danny Proffitt and see multiple internal documents which show what they have been doing, and also evidence from those who have observed the change in his approach. I have also heard from the Head Coach and his Mentor who have both clearly put in a very significant number of hours work with him to his very considerable benefit.

244. Some parents used the survey to cast aspersions on me personally or the process adopted. Comments included (particular spelling in the original):
- a. *“This survey is incoherent, illogical, semantically disastrous. It leads to bias and skewed answers It needs to be WHOLLY DISREGARDED” (capitals in the original)*
 - b. *“The questionnaire seems to be worded in such a bizarre and leading way.”*
 - c. *“I find this survey to absolutely abhorrent...this is a safeguarding concern in itself....no thought has been give to the author of the submission...this survey should be thrown out”*
 - d. *“question is bias”*
 - e. *“Utterly appalled with this survey Swim England need to support the swimmers at Ellesmere and allow them to compete for the club they train with The should not be punished indefinitely. How many more hoops do you expect them to jump through This is unjustified” (filled in by the person who identified themselves as an “associate of the coach”).*
 - f. *“I am concerned that this survey is a public survey. The individuals who wanted to cause harm to the club have access to this survey and are unscrupulous. The survey should only concern those who have been in the club over the past three years nit the general public.”*
 - g. *“I am concerned about this survey which in my opinion has bias questions. I do not trust Swim Englands handling of safeguarding. They just try to cover their own backs instead of thinking about the swimmers at the centre of this. It is absolutely appalling that swim England are preventing the affiliation of Ellesmere college. It needs to think of the interests of the swimmers and members who want to train and compete for their School. There are no trigger warnings”*
 - h. *“Again, why are you questioning the last 3 years? The School has a clear ISA report. This is what the current guidelines say should allow a School affiliation. Why are our children being victimised again?”*
 - i. *“I have no confidence that the current wellbeing of child swimmers is being thought of at all by this entire debarkle. All these children want to do is compete at the same club that they train at. All SE seem to want to do is protect itself and not consider the harm done by not letting them do this. Not allowing the club to be affiliated is a travesty and having had experience with my own children having their club taken from them and SE standing by and doing nothing this is worse than that. The mental well-being of these current children matters and that is not being considered at all. And to have questions around eating disorders and self harm on a survey that anyone at all can access is utterly abhorrent. [...] if a child presented this survey to me I would report it to my safeguarding lead to have it removed. If the LADO and independent Schools board are happy that safeguarding has been met (the schools would not be open if it wasn't) there is absolutely no need whatsoever for this to be happening”*
 - j. *“This is a new team at the swim team, and holding the affiliation back is disgusting and damaging the mental health of swimmers currently at the programme”*
245. Several (and it is potentially concerning that these were not isolated views) repeated the unfortunately legally incorrect analysis in the School’s March and May 2022 letters

that the school has “passed” the ISI or it should be considered decisive or the misframing of what the LADO had written to the School in 2022 that she had no new concern (which did not preclude existing concerns or other agency processes).

246. Several parents also submitted:

- a. What they appeared to consider to be evidence in support of the previous former Head Coach (no longer at the club) in which the parent suggested that they thought the allegations against him had been made up or that they considered the way the previous head coach had been dealt with was disgraceful. Another said that “*all allegations have been dismissed from the coaches.*” This has not been the finding of the relevant Swim England process as I understand it, but is also of limited relevance as the School’s position is that the previous Head Coach would not return.
- b. While those people are entitled to their views, it is consistent with one of the key barriers to reporting of welfare and safeguarding incidents recognised in the literature discussed in Chapter 3 and arguably contained some shade of victim blaming (also see the reference to individuals who “*wanted to cause harm to the club...and are unscrupulous*” albeit in respect of the Employment Tribunal claims I note the Tribunal’s findings that the husband of the Claimant had sought to intimidate Ms Pritt-Roberts in her own home; a finding which could amount to being unscrupulous).
- c. One said that the “*anonymous letter has been found to be false*” – having seen the letters I agree that they include information which is plainly untrue, but that does not necessarily mean that the contemporaneous notes do not give rise to anything that, on a seeds of doubt approach, could legitimately give cause for something that might lawfully be investigated or that should have been reported to Swim England. I would emphasise that it is unlikely to be helpful to any child in the club or former child to speculate about what I have or have not seen.

247. The narrative, if being repeated to children currently in the Club, could impact negatively on the welfare of those children and their peers if those children fear that reporting welfare concerns will be treated by even a small number of parents with such language. They may fear that they will be met with contemptuous views. This is unhelpful and requires greater risk mitigation steps to be taken in the Club than if this factor was not present.

248. There was also moderation after initial high feelings. There was one parent whose “first instinct” was not to have anything to do with the survey, but then helpfully filled it out with detailed and evidentially helpful information and is reflected above in the summary of the supportive parent evidence.

249. Several parents reported what they considered to be “harm” and “abuse” of their children by individuals at other clubs or race officials, or of being taken off national

training schemes and talent development pathways in what some saw as unfair retaliatory action. Some children had also referred to sensitivities around uniform and hats. It is not my role to determine these other matters, some of which may have amounted to breach of Wavepower by others, and which might have fallen within the remit of the Welfare Officer or Code of Conduct of those other clubs (on which I should not express a view in case those were reported as such through appropriate channels). Where those allegations were raised with me I reminded the person raising it that if they are a member of Swim England and this is an issue currently affecting the welfare of children in Swimming there are mandatory duties to report it. It is deeply unfortunate if others, especially adults, bullied children who used to be members of Titans or if that is continuing. I hope nothing in this report gives any encouragement to any person to do so.

250. However, that does not equate to a reason by itself to affiliate the Club, especially if issues such as those addressed in the ISI reports in October 2022 or May/ June 2021 or the matters which I can rely on in the ICPO reports were present (for example if peer/peer risks, online harm risks, sexual messages and photographs, inappropriate sexual behaviours, not identifying bullying etc) were present and insufficiently addressed.
251. Some also raised issues regarding swimming hats. There was a great deal of emotion attached by some to this, and in the swimming world, exchanging hats after meets has a significance. It is also helpful for children to have a sense of belonging – albeit tempered so that it does not enter the sort of tribalistic behaviour recognised by Anne Whyte KC in her report into gymnastics, which creates an unhealthy culture and which is an obstacle to reporting. I also identified to the Head Coach where some confusion may lie from the previous version of the Handbook and the “uniform” requirements of the Club. Where competing in a Swim England affiliated competition for an affiliated Club a swimmer should not be wearing the insignia of a different club, but the Club Handbook might suggest to some that they should wear their School uniform kit at all times. No person should take any part of this report as any encouragement to be unkind, or worse, to any other person, and especially not a child, about their swimming hat whether it be in competition or out of competition.
252. In particular, I do not diminish feelings of upset and worry by the current members. I take particular account of the wishes expressed by many children to swim in an affiliated Club at their School with coaches and officers with whom they feel safe. I also take particular account of those who say that they also feel very supportive and safe in School and that issues such as bullying are identified and addressed appropriately. Feelings and wishes of children are always relevant albeit that they do not necessarily dictate a particular result.
253. As the sporting case law recognises, there is no “right” to affiliate to a sports NGB or to perform, train or represent a particular team. There may be implied or express terms relating to how decisions are made and what procedures apply, but this is predominantly a different question and a wide margin of discretion applies.

254. I also addressed this issue of these matters reported by some parents in the survey with the relevant Club Officers in interview. They provided information about how they had approached officials who had acted, in their view, inappropriately to their children at particular competitions and those coaches had in some instances contacted Executive Committee Members and Welfare Officers at other Clubs (as Wavepower provides).
255. They reported that they had seen evidence of some abuse on social media, which I considered and thankfully did not see any recent public posts that constituted abuse. I have been sent various previous social media entries which do not portray any of the posters in a particularly favourable light and sadly also included victim blaming language, and language misstating the powers and nature of the ISI and School correspondence with the LADO and a wholly unhelpful dialogue to be entering into in public concerning children.
256. I note in particular that the Academy has not in recent times sought to make its social media account private or members only in recent times due to the risk of abuse. This indicates to me that fortunately the Academy currently does not consider the risk of abuse of children on social media to be high. I also discussed with the Club Officers that the level of detail on the current public social media threads for the Academy permitted a significant number of their child members to be identified and a significant amount of personal data was being shared, and the importance of making sure that they were satisfied that this was appropriate. I have carefully considered the welfare of current children and the strength of feeling expressed by parents weighing it carefully with all other evidence considered in this review and the importance when this report is published (timetable set out in Annex I) of the steps which it may be necessary and helpful for them to take to minimise any potential for such unsavoury social media exchanges to occur publicly posted to the Academy's social media pages.
257. I record my finding that I found the Head Coach's response to be appropriately thoughtful and sensibly guided by the best interests of the swimmers in his care.
258. One entry described the lack of affiliation as "embarrassing" for members. I would hope that once the legal context of what affiliation is understood, that these feelings of embarrassment will cease. I would hope that the parents and Club Officers and School would be in a position to provide the reassurance needed. The issue of affiliation should not cause a child to be embarrassed by the affiliation or lack of it.
259. One parent wrote separately about how they wished that I would recognise the drive of the children and referred to how hard they work. That is not, and has never been so far as I have seen, in question and if any adult has been suggesting to children that this is down to them in any way. I would hope that the publication of this Decision may help in alleviating those concerns.

260. A parent who also wrote separately said that it was “unpleasant” to read the question as to whether anyone had asked the person to fill in the survey in a particular way. That parent was presumably unaware that there was a recent incident where one child had asked another not to report a particular incident and to respond to questions by staff in a particular way (which that child did not report in this survey but was shown in School records). They may not have been aware that this had been one of the findings in relation to the Titans Club so was a matter which fell within my Terms of Reference to consider the relevant evidence in relation to.
261. I note and have read carefully the comments critical of me personally and my process but have also stepped back to consider with an open mind whether any of the critique of my process is, in fact, correct. I have carefully considered and reconsidered the welfare of children at the core of these questions and the survey design. I have considered the framing of questions, whether a trigger warning was appropriate and whether I should amend the survey mid way through. My view remains that it would risk being more triggering as summarised above and is not appropriate for the particular questions asked in the way they were. The survey correctly embedded referral contact details and avenues for help (both anonymous and not: both internal to the School and Swim England and externally through Childline or the police). The survey did not contain accounts of abuse or eating disorders. The questions were very carefully calibrated so as to be relevant to my Terms of Reference and required given the previous findings.
262. Surveys are a valuable tool used by many youth clubs, sports clubs, Schools and indeed Ofsted and the ISI and are seen as good practice, and indeed normal practice. They promote one of the core aims at the heart of the legal duties in this field to have regard to the welfare of children as a paramount consideration and where possible to consider their views, wishes and feelings.
263. I am very pleased that this is the position taken by the Club and that they have accepted that they will conduct their own surveys and also that they will fully participate in club welfare surveys as arranged by Swim England Safeguarding (every 6-12 months within the first 3 years of affiliation. I discuss some of the safety features for that particular survey in Chapter 6). Those surveys would differ from the one I have performed as part of this process and I have been reassured by the sensible and constructive approach of the new Executive Committee to our dialogue about some of the safety features which were not ultimately suitable for my survey (for example email locking deters participation generally unless the survey is actively promoted in small setting such as a small School or club where there are interpersonal relationships already established) being used. There has been a very helpful positive and constructive dialogue involving the current Head of Safeguarding and staff at Swim England who, as set out in Chapter 6, are keen to work together with the new Club executive.

Other individuals

264. The survey was also open to staff. Two of the current coaches filled in the survey and some other current staff members. I thank them for their entries. Given the small number of answers, there is a risk that they may be identifiable but I have read their responses with care.
265. Two of the responses were from current or past volunteers. Those responses were positive to the Club. They reported that they would raise welfare concerns with the School DSLs. One of them said they would also raise with the head coach and swim England. Neither reported having raised any welfare issue or issue with safeguarding or bullying.
266. There were 21 entries from those who described themselves as other interested parties. Two of those who ticked this also ticked that they swam with Ellesmere College Swimming Academy. Some of the free text answers indicate that the answers were from current or former parents. One was from the Vice Chair of Leicester Sharks swimming club (the only respondent to mention referring to welfare officers at Leicester Sharks). Some were from former Titans members. All were over 18. There was a full mix of responses from these individuals, some of which contain identifying information so I will not include all details here, but I have considered the answers carefully.
- a. Five said they had raised issues with safeguarding or bullying at Ellesmere College in the last three years.
 - b. Of those two said that the issue was satisfactorily addressed and resolved and three said not.
 - c. Two said that they had a concern with safeguarding and bullying but had not raised it with the College. Answers given for why included "I did not think it would be addressed satisfactorily," "I was fearful for myself or others" and "I have raised it with a different body" and one ticked "none of the above" (this question permitted more than one reason to be selected) .
 - d. One referred to matters "leading to Employment Tribunal."
 - e. Another referred to reporting issues of bullying by others of Ellesmere College members to Swim England.
 - f. Some provide their view that children at Ellesmere would be safer in an affiliated Club within a School so that reporting mechanisms are clearly in place and so that the "best safeguards" are in place within the regulations of Swim England.
 - g. One gave more evidence which they appeared to consider to support the former Head Coach, "*the issue has always been about parents who were not satisfied with their child's progress on an ELITE (capitals included) swimming programme that cost a considerable amount of money,*" which does not appear to reflect the findings referred to in the next Chapter and which demonstrates a worrying minimising and victim blaming attitude. That person left their name and I have confirmed they are a former swimmer and not a current or former parent and they do not

live geographically close to the Club or would be in the same age group as the Academy members and that this person is unlikely to have any influence at the Club as it currently is proposed to operate. They would also not be entitled automatically to become a member as an alumni of the college or have any child facing role. I do not consider that it is necessary to name that person in public in this Decision.

Themes and trends

267. This summary cannot include all detail in the survey and should not be read as suggesting that I have not read carefully every entry or taken the views expressed and evidence submitted into account. With a review such as this, my task is to carefully weigh all relevant evidence both individually and in the round to address the matters in my terms of reference. This survey has ultimately provided me with:

- a. A means of hearing from children so that I can carefully hold their welfare and interests at the centre of my decision making.
- b. To see specific relevant evidence of good practice within the Club, as expressed by children and adults.
- c. To see evidence relevant to the “culture” in the Club and how it is seen by those within and without.
- d. To identify some prima facie current potential issues of minimisation and underreporting to and to assess the School and Club officer’s response to those when identified.
- e. To be able to consider whether there is separate corroborative evidence of any of the findings in the two ICPO processes, including the second which I need to approach with caution in light of the School’s submissions.
- f. To see that some parents are repeating the incorrect legal analysis as to what an ISI report is and seem to be of the view that this “clears” an organisation.
- g. To consider evidence from those who were harmed in the previous Titans Club and provide a voice for previous victims should they wish to participate (I entirely appreciate that they may entirely wish not to do so).
- h. To consider evidence from those who have left the school or Club.
- i. To consider evidence from those who may have witnessed facts relevant to my terms of reference.
- j. To see from the IP data what information was submitted from within the school network and what was submitted from outside (outside entries are not irrelevant and indeed a phone within the school on 5G will not show the school IP address – a significant number of entries were received in the first few days within the school).
- k. To see some evidence of extreme polarity of views including amongst current parents and less extremity expressed by those who are current pupils / members.

268. Therefore, while none of the evidence is decisive, I consider the survey to have been a helpful part of this process and I would like to thank all who completed it for their patience and their responses. Even if in this report I have taken a different view to those who responded, or have given matters a different emphasis than that which those respondents may have wished, I am still extremely grateful to have heard from all 170 entries. This report cannot respond individually to everyone. There are a few identifiable individuals with whom I have corresponded directly, who are not named in this section so as to protect them or their children from identification. They will be aware of that correspondence, which the Board can request to see from me if they consider necessary. This correspondence might require some redaction in some cases so as to be lawful, comply with Tribunal orders and protect the welfare of children.

Chapter 5: Relevant Findings

269. This section considers the “*previous findings*” to which I am to have regard under 3.5 of my Terms of Reference.
270. This section therefore considers;
- a. Findings from the Independent Schools Inspectorate;
 - b. Findings from the Employment Tribunal;
 - c. Findings from the Swim England ICPO processes; and
 - d. Additional primary fact finding to assess what reliance I could and could not place on findings in the second ICPO report due to the allegations of procedural unfairness.
271. This has not been as straightforward as I had thought when initially considering my Terms of Reference. I had thought that the relevant Swim England findings would be in reasoned decisions provided to the parties (ie the person being subject to risk mitigation measures and Swim England in the case of individuals, and the School or Club chair and Swim England in the case of the club disaffiliation). However, those findings were not necessarily clear and a clear fact finding and reasoned decision process for decision makers on such matters does not appear to have been the process provided for in the Handbook at the time. The position in relation to Swim England findings was more complicated:
- a. Some findings of the Swim England Independent Investigator had been provided to the School and Club.
 - b. Some had not been provided to the School or the relevant Club Officer. Some findings need to be either disregarded or considered with very particular caution due to risk of procedural unfairness in the process.
 - c. Other findings, where some individuals may have thought that the School had not been given notice of, the School and then Headteacher had, in fact, been given either a sufficient gist to permit an opportunity fairly to respond to matters which concerned the School, or there is separate evidence of letters sent which show that the relevant individuals in the School did know about through unofficial channels, with a great degree of particularity the allegation being made, to the extent that the School felt able to write factually detailed accounts.
272. There has also been Employment Tribunal litigation by a, now former, member of staff, and some of the matters referred to in that claim referred to the period of the Ellesmere College Titans and alleged matters which were said to have occurred in 2022. There is now a published Employment Tribunal decision. There is also a second claim, which refer to more recent events from March – May 2024. An application made by the Claimant in that case for interim relief to prevent her dismissal was refused on 15 June 2024 but the rest of that case progresses. I take into account no finding in relation to that second claim’s findings on the interim relief application because I have not been

provided with any note of that decision's reasoning, other than the brief summary online that it was unlikely that the Claimant would be able to show that whistleblowing was the sole or principal reason for her dismissal. Any matter referred to in this report relating to that period has been from my own fact finding and consideration of evidence provided in the context of this review and I express no view on that claim. It is not in my power to control what use others put this report to, but this is not a report prepared for Tribunal proceedings or treading over precisely the same issues.

The ISI reports

273. The background and legislative framework for the ISI is set out in the preface to their May/ June 2021 report on the School. They are an inspectorate rather than a general regulator and they report on the extent to which they observe whether Schools meet or do not meet the Education (Independent School Standards) Regulations 2014 ("ISS") and National Minimum Standards for Boarding ("NMS") where applicable and report on their observations on progress made to meet any compliance action points set out in the School's most recent statutory inspection.
274. When the ISI inspects a School they inspect compliance with the legislative standards on the days they visit. Later progress monitoring inspections consider the day of the visit and do not usually (and did not in this case) involve a survey of parents and pupils.
275. An ISI inspection does not "*validate*" policies used in the School, nor does it confirm that all standards have been met or continue to be met at all times, other than the instances observed on the inspection. Similarly, this report does not consider the School's current compliance with the ISS or the NMS
276. As with Ofsted reports, schools and parents do not always agree with Inspectors reports. Those reports are subject to judicial review (brought by the School, others would not have standing to bring such a challenge), but the Court gives Ofsted a very substantial margin for discretion. For a recent summary see the principles summarised by Cavanagh J in *R(All Saints Academy) v Ofsted* [2024] EWHC 1792 (Admin), 2024 from paragraph [46], [58]-[79] and [112]-[121] and in relation to what fairness requires, and does not require see at [137]-[143]).

May-June 2021 report

277. The May-June 2021 found that the ISS concerning safeguarding at the School was not met. As set out above, that Standard includes both actions (or inactions) in relation to whether children may be at risk of harm and whether statutory guidance (both Keeping Children Safe and Working Together) was complied with. Failings were

identified both in relation to Guidance and whether children were adequately safeguarded.

278. Key paragraphs in the May – June 2021 report were as follows:

*2.12 Arrangements are made in most areas to safeguard and promote the welfare of pupils by means that pay due regard to current statutory guidance but the **School does not always act in the best interests of children. The School fails to ensure that it provides a safe environment in which children can learn while they are taking part in the activities of the swimming club** which the School permits to use its facilities and which it enables pupils to join. **The annual review of safeguarding does not include adequate consideration of the safeguarding of pupils while they are taking part in the swimming club. The School does not make effective assessment of the potential risks relating to pupils participation the swimming club including those relating to staff involvement in the club.**" (emphasis added)*

279. An action plan was imposed in the following terms:

Action point 1

The club must ensure that those pupil who the School enables to participate in the swimming club's activities do so within a safe environment [reference to paragraphs 7(a) and (b) and 8(a) and (b) of the Independent School Standards and the NMS para 11]

Action point 2

The School must ensure that the annual review of safeguarding gives adequate consideration to the safeguarding of pupils while they are taking part in the swimming club [references to the same paragraphs of the ISS and NMS]

Action point 3

The School must ensure effective assessment of the potential risks relating to pupils' participation in the swimming club and any involvement of School staff in the club, and take appropriate action to reduce any risk identified [paragraph 16(a) and (b) if the ISS and NMS 6.3]

280. Therefore, this report includes relevant "*findings*" for my Terms of Reference as it directly related to Ellesmere College Titans and why the ISI at that time considered that children were not provided with a sufficiently safe environment or sufficient protection by the procedural steps in place.

281. It is also relevant for me to consider what the ISI considered had occurred in relation to the plan on subsequent visits.

282. However, the suggestion made by some, that a later report makes the earlier report irrelevant is legally misconceived. That is not what the legislative underpinnings or

relevant guidance provides. Schools are required in the ISS to provide a link to previous reports on their website, as indeed Ellesmere College does. This is because it provides information for parents and others, as described by Cavanagh J in the *All Saints Academy* case and the case law in this area. Furthermore, the action plan requires risk assessment and that effective steps are taken to mitigate risks. Such a process is a dynamic one which requires assessments to be updated because risks may change and the best steps to address those risks may change. It is not something that can be satisfied for all time by the completion of relevant paperwork.

283. Part 8 of that report also refers to the quality of the leadership. It is correct that this will automatically not be met if the standards referred to in relation to safeguarding are not met. However, paragraph 2.22 also makes additional comments concerning insight, skills and knowledge and that active steps were not being carried out. That paragraph states:

*“the proprietor and School leaders do not demonstrate the good skills and knowledge required to fulfil their responsibilities effectively, so that the other standards are consistently met. In particular they **do not actively promote** the well-being of pupils when they participate in the swimming club based on the School site and **have not made a reasonable assessment of the risks involved in enabling such participation.**”*
(emphasis added)

This finding has potential resonance when considering the up to date risk assessments in the Swimming club, which were mostly satisfactory but omitted the risk of peer-peer harms until their recent update. The School risk assessments do include this risk, so for those who are pupils this is covered generally. It is also relevant in considering whether the School would be sufficiently actively promoting pupil wellbeing in the context of the Swimming Club, when operating their, now mostly amended, processes, which, once the amendment process is complete, I believe they will be in the context of the Swimming Club based on the evidence I have reviewed. This view is of course not a finding as to whether ISS standard 7 is or is not met generally in the School.

February 2022 report

284. A progress monitoring report was completed in February 2022 following an unannounced visit. This records the view of the ISI that the Independent School Standards and NMS were **met** on that visit.
285. The ISI made some positive comments at paragraph 2.6-2.9, 2.13, 2.15 and 2.18 of the report. This reproduces some of the wording on the document prepared by the School in a table format at the time, shared with me in this review, in which the School addressed the action points in turn. There was no survey of pupils conducted at this time but the report recorded that *“pupils who spoke to the inspectors said that they felt confident that they could raise any concerns while taking part in the swimming club’s activities and that they would be listened to.”* I will not reproduce all of those paragraphs as they are lengthy but they include recognition of actions under each of the headings of the

action plus that the proprietor and School leaders demonstrate “*good skills and knowledge and fulfil their responsibilities effectively ...and they actively promote the well-being of pupils particularly those whom the School enables to participate in the swimming club*” (echoing the language emphasised above).

286. It records:

- a. Governors’ oversight and reporting in relation to the swimming club and the swimming club is now part of the annual review.
- b. That the DSL (Ms Pritt-Roberts) had taken over and she had not previously had a leadership role in the swimming club.
- c. The increase in the number of deputy DSLs (I am informed this became 10⁷⁹ – trained to level 3).
- d. Pre employment checks on swimming coaches were carried out.
- e. New poolside supervisors were appointed and pre employment checked. “*swimming club sessions cannot take place unless there is a suitably trained poolside supervisor to ensure that swimming club staff are carefully monitored*”
- f. The School had provided coaches with safeguarding training.
- g. The DSL met regularly with the welfare officer of the swimming club to discuss safeguarding procedures and communications arrangements and conducted risk assessments.
- h. Evidence that safeguarding concerns identified during swimming club participation was swiftly communicated to the School, including concerns about swimming club staff. Where School has identified issues, for example self harm, in the School this is appropriately shared with the swimming club.
- i. Referrals were made in accordance with local inter agency procedures to share concerns with safeguarding locally where appropriate.
- j. DSLs and all staff are trained and displayed an understanding of the staff code of conduct and safeguarding procedures including chin-on-child abuse, the swimming club and allegations against staff or adults working with pupils.
- k. The School filters and monitors use of the internet and teaches pupils how to keep themselves safe including when online and engaged in swimming club activities.

287. This report was then followed by the correspondence in March 2022 where the School threatened Swim England with defamation proceedings and sought their undertaking that they would “respect” the ISI report and cease referring to safeguarding concerns. I now have their confirmation that this will not occur again. I consider the explanation given in the following Chapter of my report.

⁷⁹ It is both unusual in my experience that the DSL of such a large School is acting head and that there are so many DSLs. It is not, in my view, unlawful, and Ms Pritt-Roberts explained particular reasons in interview and it clear this has been considered with care by the Governors and by her . It is one factor amongst many others which are potentially relevant to my Terms of Reference.

October 2022

288. There was another progress monitoring visit in October 2022 which again found various paragraphs relating to safeguarding in the Independent School Standards and NMS **not to be met**. As with the February 2022 inspection there was no survey of pupils and the inspection lasted 1 day.
289. I have been informed by Ms Pritt-Roberts that the School sought to challenge “*the approach*” taken by the inspector and that they disagreed with how the inspector analysed various incidents. The then Headteacher caused to be published a statement on the School website which protected at the term “*inappropriate sexual behaviour*” and stated that the behaviour referred to kissing. There is no reference to there having been a question as to consent.
290. By this time the swimming club had been disaffiliated from Swim England and was operating through the School in an unaffiliated form. The children and coaches were members of (then) City of Leicester Swimming Club and would compete with that team’s name for the purposes of registration.
291. The School’s challenge meant that this report was not published for some time. Louis Weston’s report at 56(c) says that “SE’s communications were inconsistent with other agencies – there was said to be a current safeguarding risk by SE but neither the LADO, School nor the ISI were aware of it.” I do not consider this to be an accurate reflection of the LADO email. I have been able to speak to several LADOs as part of this process. Furthermore, the ISI do not usually share their full information coverage with third parties. They are an inspectorate as set out above. Moreover, they had, by the time of the Weston report made this assessment in October 2022.
292. This report records that:
- a. “*The School’s safeguarding policy is not implemented effectively in all areas*” (2.4)
 - b. “*The assessment of risk to vulnerable pupils in cases of inappropriate sexual behaviour is insufficiently effective.*” (2.6) I asked Ms Pritt-Roberts about this in interview. Her evidence was that this related to a single incident and that her view differed. This incident related to kissing where consent had been withdrawn and her view was that this withdrawal of consent had been respected at the time.
 - c. “*Staff training in safeguarding, including for the designated safeguarding lead, deputies and for governors is comprehensive. It includes appropriate attention to the School e-safety policy, handling allegations and online safety but this training has not been put into practice consistently.*” (2.7)
 - d. Particular concerns regarding the use of the online system for recording information relating to safeguarding incidents (2.8) (CPOMS, introduced in July

- 2022). This *“inhibits the effective and systematic review of safeguarding case work and the identification of any trends or patterns in safeguarding issues”* it also reported information being *“inconsistently recorded”* and *“senior leaders were unaware of this.”*
- e. *“The use of technology by pupils is suitably controlled in most areas. However, some incidents of potential child-on-child abuse and the sharing of online nude images have not been dealt with by senior leaders in line with statutory guidance. Leaders were not familiar with the requirements of key guidance related to online safety.”* (2.9) I asked Ms Pritt-Roberts about this and she said that this related to one incident and she felt as though it had been dealt with appropriately and that the Inspectors view and her view differed as to whether police involvement was required for that incident.
 - f. *“The safeguarding arrangements are reviewed annually by the governors but their review has not identified these weaknesses in safeguarding practice, including the inadequacies in recording case work. This has resulted in ineffective oversight of safeguarding”* (2.10).
 - g. Paragraph 2.20 found that the School has a suitable risk assessment policy in most areas but risk assessments *“in the context of safeguarding including boarders’ welfare are inadequate. In particular risk assessment and subsequent actions in response to situations involving inappropriate sexual behaviour by pupils. Senior leaders give insufficient attention to potential risks to the victim and perpetrator.”* I am informed that things have now changed. However, and despite the findings in the 2023 ISI report, the swimming club risk assessments I have reviewed did not address this risk. I flagged this to Mr Worrow on 30 July 2024 and he has indicated that he is changing the risk assessment. He provided some initial wording which I did not feel fully reflected the correct position and he has revisited his drafting immediately and remedied this so that this is corrected going forwards. As set out below in the section on policies, the other parts of the risk assessments for the swimming club were well written, thoughtful and well judged.
 - h. There were also findings in relation to the provision of complaints (including that all previous ISI inspection reports were not on its website) and the manner in which complaints were handled (paras 2.21-2.25).
 - i. The School also did not meet the standard for leadership and management. This is an automatic fail where there is a safeguarding *“not met.”* There was also commentary that this failure was *“in particular, with regard to safeguarding including oversight of pupils’ use of technology; risk assessment; the provision of information; and record keeping including records of safeguarding risk assessments and complaints.”* (emphasis added).

October 2023

293. There was another progress monitoring inspection in October 2023, again over 1 day and without a student survey although some pupils were interviewed (see at 2.6 and 2.7).

294. That found all of the ISS and NMS to be **“met.”** This recorded some specific measures taken to address the previous “not met” grading. Key passages include:
- a. The School safeguarding policy is implemented effectively including for boarders and there is suitable training (2.4).
 - b. In discussions *“staff demonstrated a competent understanding of their training and spoke of how the safeguarding leads prepared them well for their roles within the School”* the *“understand, and apply effectively, associated policies and procedures including the staff code of conduct and behaviour, bullying and whistleblowing arrangements”* (2.4).
 - c. There has been training on the electronic management system and *“this has significantly strengthened recording procedures since the previous inspection”* (2.4).
 - d. This is used for *“concerns around sexualised behaviours and the misuse”* (2.4) as well as misogyny, racist comments or misuse of technology (2.9).
 - e. Trends were managed effectively (2.4).
 - f. *“The School understands its responsibilities in relation to any safeguarding concerns that might happen outside of School hours and away from the School premises.”* (2.4).
 - g. *“They liaise effectively with local safeguarding partners as required including the police.”* (2.4).
 - h. *“The recruitment processes are thorough and ensure that all pre appointment checks are carried out appropriately before a person commences work at the School”* (2.4).
 - i. There is effective oversight of the School’s safeguarding arrangements by governors and the safeguarding governor meets regulatory with the School leads *“who they meet regulatorily and discuss arrangements with both staff and pupils.”* (2.5).
 - j. *“There are effective systems in place to monitor use of technologies”* (2.6).
 - k. Pupils feel that School teaches them effectively in PHSE. *“Pupils spoken to feel that concerns expressed are acted upon swiftly by staff and they have someone to who they can talk should they have any worries or concerns. 2.6 and 2.7.*
 - l. Bullying is *“not common”* and the *“School’s anti-bullying arrangements are implemented effectively”* and are recorded (2.11).
 - m. Misuse of mobile technologies has reduced (2.11).
 - n. Risk assessments are appropriate including for incidents of sexual behaviour supporting both victim and alleged perpetrator (2.15).
 - o. The School now provides copies of inspection reports on its website (2.27).
 - p. The School has strengthened the recording of complaints since the previous inspection (2.29)
 - q. The standards for School leadership and management are met (the automatic fail) (2.30-2.31).

Issues relevant to my ToR arising from the ISI reports

295. The relevant findings from the ISI reports are already potentially serious and mean that, in order to fulfil my Terms of Reference I would need to consider (not only by looking at the 2023 inspection report) whether as at the current time:

- a. Appropriate steps are being taken to safeguard children within the swimming club.
- b. That all relevant staff and volunteers have been adequately checked with pre-employment checks and risk assessed if they have relevant disciplinary or safeguarding findings
- c. Risk assessments in the swimming club adequately address all risks including peer / peer risks in relation to online nude images and sexual behaviour.
- d. CPOMS is being used by all relevant staff in the swimming club, and who look after the welfare of children in swimming activity.
- e. Whether the governors are having sufficient oversight of safeguarding and the swimming club, have relevant insurance for all relevant risks and potential eventualities and that complaints about the swimming club fall under their jurisdiction.
- f. Whether bullying is suitably identified by staff and addressed, including in the swimming club.
- g. Whether children have effective opportunities to come forwards and that these are used in practice by children in the swimming club.
- h. That mobile phone use and online technologies do not pose a risk to children in the swimming club, or by swimmers to those in other clubs.
- i. That inappropriate sexual behaviours are recognised and addressed at an early stage.
- j. That welfare and safeguarding information is properly shared between School and relevant people in the swimming club where appropriate.
- k. That external agencies (which now include Swim England) are engaged with by the School and employees in the swimming club.
- l. That there is adequate engagement with both pupils and parents on how best to avoid online harms and harm through sexually inappropriate behaviour and peer on peer issues such as bullying as well as the provision of policies.
- m. That appropriate leadership is shown, including insight into what may pose a risk to children either in the School or participation in swimming (inside or outside the School).
- n. Whether views expressed by the pupils who met with the ISI in October 2023 are shared by pupils now in the swimming club.

296. I have considered these features when reviewing the large volume of evidence.

Findings from the Employment Tribunal

297. There are also now findings from the Employment Tribunal in relation to a claim brought by a, now former, member of staff: *Done v Ellesmere College* 1305501/2022 & 1302659/2023 (“the First ET claim”).

298. The issues in the first ET claim involved many that did not involve Titans but some which did. It included a claim that the member of staff was subjected to detriment for

making a protected disclosure and /or disclosure concerning health and safety, relating to some occurrences at Titans. Some Titans members were also boarders within the boarding house that Ms Done was Housemistress for.

299. The Tribunal in that claim also heard oral evidence from Ms Rhona Avery (School Director of Finance and proposed club Treasurer) who had conducted an investigation for the local LADO, Dr Chatterjee and Ms Pritt-Roberts.
300. The Tribunal noted at the start of the decision that there were some documents which the School was under an obligation to disclose, but which had not been disclosed (see at paragraphs [6]-[7]). The previous Headteacher died close to the hearing.
301. Many of the legal and factual issues in the claim are different from those which my Terms of Reference require me to focus on. However, I have had read the decision in full and had regard in particular (non-exhaustively) to the following findings, alongside my other evidence gathering and other relevant findings from other sources.
- a. *“The Tribunal found Mrs Vicky Pritt-Roberts to be a very impressive witness who was highly professional and competent”* (at [104]).
 - b. *“Miss Rhona Avery was an honest witness, but she was inexperienced in investigations”* (at [104]). I do not consider that Ms Avery is likely to be required to carry out investigations in the swimming club.
 - c. Dr Chatterjee also gave evidence and was *“a reliable and honest witness”* (at [104]).
 - d. The Tribunal found that Ms Done had not made a protected disclosure in May 2021 as she had alleged ([127.8.2]). The first protected disclosure was on 30 January 2022 and second on 21 April 2022. I am not clear what evidence was before the Tribunal on this issue as I have not been provided with the bundle for that hearing.
 - e. Ms Done had alleged that it was detrimental treatment by *“being required to continue to deal with issues concerning the students on the swimming club without additional help between October 2019 to May 2021 and October 2021 to April 2022.”* The Tribunal excluded the period prior to 30 January 2022 (the date of the first protected disclosure which related to a parent entering the boarding house and boarding house office without consent – see at 127.8.9). The Tribunal did not find that those issues were not occurring and recorded that some additional supports were put in place by the School for the Claimant with her house charges at that time.
 - f. Paragraph 127.8.14.2.1 states:

“The claimant introduced the issue of the student swimming club into evidence. By way of background an individual not directly employed by the respondent had been investigated for a safeguarding matter concerning a swimming club the Titans; some of the respondents students were members of the Titans. There was no suggestion at all that the claimant was guilty of any wrongdoing concerning the individual or the swimming club. On 24 January 2022 the claimant emailed Dr. Chatterjee to advise she

was resigning from her role of Head of Talbot house one of the competitive houses (page 569) and thanked the head teacher for the opportunity stating she was resigning to give someone else the opportunity to bring in new initiatives. She did not resign from her position as a teacher or housemistress of St. Aidan's. At her request the claimant maintained her responsibility for a competitive house when she became a boarding house mistress. In a letter to the headmaster and chair of governors on 24 February 2022 see page 574 to 575 the claimant raised a concern that the issues with the Titans had increased her workload due to an increase of welfare issues with students and that she had requested some support. In response the claimant was informed that she was doing everything correctly and that the pastoral system was robust enough to deal with issues the claimant was addressing. The Tribunal noted that in the claimant's role as housemistress she has a pastoral role and there may well have been welfare issues arising from the investigation into the Titan swimming club. However, the respondent determined that the claimant was dealing with issues satisfactorily and advised in a meeting on 21 October 2022 that the claimant should develop a more flexible decision-making process; be aware that excessive time and energy in emotional issues can lead to fuelling rather than subduing the situation and recognising that the claimant's strong assertiveness could be perceived as aggressive. The Tribunal did not find that the claimant had a lack of additional help or support or in any event that the protected interest disclosures made on 30 January 2022 or 21 April 2022 had a material influence (being more than a trivial influence) on the employer's treatment of the claimant."

- g. The Tribunal also found that there had been unchallenged evidence (and therefore a final finding) that *"the Claimant's husband began to intimidate [Ms Pritt-Roberts; standing outside her house and staring into her window. Miss. Pritt-Roberts reported this conduct to the police."*

302. It therefore appears that some of the matters alleged in the Employment Tribunal claim were of a similar vein to those described in the Henriques report (see Chapter 3) as "bandwagoner" claims. This does not mean that all were, or that there were no issues at Titans in the period 2021-2022, indeed some of the passages in the ET's decision including 127.8.14.2.1 suggest that there were issues (as indeed the ISI had found) and there is additional corroborative evidence of received and reviewed by me in this review.

303. In the first claim, the Claimant also made an application for what is called "reconsideration" of the decision under rule 70 of the Employment Tribunal Constitution and Rules of Procedure Regulations 2013 in the interests of justice. The Tribunal refused the application.⁸⁰ The Tribunal recorded that the Claimant's application:

"sets out no credible basis on which reconsideration of the decision is warranted. The Tribunal made relevant findings of fact having heard all of the evidence; preferred the respondent's evidence; applied the law correctly in the case and gave full reasons for the decision. There are no reasonable prospects of the judgement promulgated being varied or revoked. I am not satisfied that it is in the interests of justice to reconsider the Judgment."

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https://assets.publishing.service.gov.uk/media/66a0dfca49b9c0597fdb03cc/1305501.2022_1302659_2023_Mrs_A_Done_v_Ellesmere_College_Limited_-_Judgment_upon_Reconsideration.pdf

Findings from the ICPO process

304. There were two ICPO processes in relation to the club and some in relation to particular individuals including a staff member (still at the School - Dr Chatterjee) and one of the current coaches (Danny Proffitt) and some of the former club officers. I have been provided with the findings in relation to Danny Proffitt plus a summary and the appeal board finding dismissing the appeal of the member of staff. Those have all been made available to the club. I have not been provided with the other individual findings.
305. I have not been provided with the full findings of the ICPO reports into the club. Those which I have been provided with (which I am told are the entire ICPO 2 report) have been provided to the Club as part of this process and Ms Pritt-Roberts has responded in writing and in interview.
306. I appreciate that these findings have not previously been fully public (albeit there appears to have been no requirement of confidentiality expressed in the Summary to ICPO 1).
307. As this Decision is to be in public, save where required for child welfare or lawfulness to be redacted, I consider that it aids the transparency of the decision making for this section of the report to be public. I do not consider that it contains identifying individuals (save in two respects).⁸¹

ICPO 1

308. I was sent the “*interested parties*” summary for the first investigation report which I have been informed was also provided to club members’ parents at the time as well as the club committee members. It states;

“This Summary is designed to give those raising, and involved, in child safeguarding concerns about Ellesmere College Titans Swimming Club (“The Club”) and responsible individuals associated with the Club, an appraisal of the outcome of an investigation conducted on this matter”

309. The full report is said to have been in excess of 44,000 words and 125 pages. It adds:

⁸¹ The law in this area does not require me to seek or to obtain his consent, but I sought Danny Proffitt’s views and consent has additionally been provided. I would hope that no person reading this report considers this to be consent to any form of abusive contact or publication as that would not reflect the correct legal analysis. Dr Chatterjee has also been provided with an opportunity to respond. I have written to him and indicated what I am likely to say in the report and he has chosen to respond in writing which is set out below. He has not sought to suggest that I should not mention his name in public. He responded rapidly to my request.

“consideration has had to be given around obligations to not reveal personal data and allegations around those not involved in specific concerns, or subject of them. However, this Summary is also designed to give an overview, sufficient to reassure the recipients that a full and thorough investigation has been conducted following any revelation of information they may have made. It is also written in a manner to try to protect information, given certain sanctions the full Report makes could later be subject of an appeal process.”

310. There is a summary of some concerns in different paragraphs across paragraphs 2 and 3. This relates to a time period between 2016 and 2021. Those paragraphs explain (in edited form reproducing only some of the paragraphs: bold added).

2.3 *The concerns (including some very serious) relate not only to the Club in dealing with concerns, as an affiliated organisation, but specifically **its adoption of its own Safeguarding policies which do not follow Wavepower**. They also relate to **responses to multiple incidents by senior Club members**, including those having overall responsibility for welfare of children, as well as incidents involving Coaching staff.*

...

2.7 *Whilst the concerns raised were varied and often allegedly occurring over a year ago, though some more recent (as Covid measures placed some restriction on Clubs' operations), some had been initially raised through the Club, for complainants generally to be advised the College deal with such. Therefore, **some concerns had been raised to the internal College Complaint process to Stage 3, and appeal**, the outcome of which varied, but did make comment about the Club management, **whilst rejecting College responsibility for Club processes and swimming matters**.*

2.8 *There was clear **misunderstanding / misinformation / misleading documentation or reaction, about the remit of the College** in dealing with what it advertises as its 'Swimming Academy' (the Club) processes in safeguarding children.*

...

2.12 ***Some children or ex members were fearful or concerned about the revelation of their identities**. Therefore, to protect the identity of those children and other parties who have raised concerns, Appendix A to the Report – the identities of children (or others which may identify children) - will not be shared outside of the Swim England Case Management Group*

...

2.14 *Overall, a **small number of concerns I ascertained, involved concerns about Club internal disputes, including around chlorine levels at a pool (resolved), or comments by individuals which were more appropriate as falling as disputes under the Club constitution, and not child safeguarding**. I have NOT included concerns ONLY raised about the College, as this sits outside of my remit.*

...

2.15 In a number of communications / discussions with ex-swimmers or parents, some were **fearful of communicating directly, as they were either suffering with mental health issues, or of being concerned about the impact on their swimming careers, should they raise concerns**, and those become evident. A number of children / young adults are still going through counselling to support them.

...

2.18 As a matter of process, **the Club and individuals alleged to have failed to deal with child safeguarding concerns in line with the National Governing Body's Policies and Procedures, were given the opportunity, prior to the findings, to check around factual accuracy.**

...

3.4 There were concerns raised of **'serious mental health issues caused by the Coaches and College's refusal to do anything about it'**. I make it clear that when Coaches are mentioned, **this does not relate to all Club Coaches, but a section thereof**. No assumption should be made that all Club Coaches over the period of time mentioned were involved.

3.5 It is clear from the documentation I had been provided with, that **most of the identities of the children raising concern (or parents on their behalf) were already known to the Club**, as many complaints were raised to the Club in the period 2016 to 2020.

3.6 Safeguarding matters raised during this investigation were in the main, known to Club management or Coaches, and indeed on occasion, involving activity, behaviour or comments by Coaches. Concerns around both management and Coaches **included failing to follow Child Safeguarding Policies and Procedures by referring safeguarding concerns to Swim England, including a number of children's attempted suicides, selfharming, drug use, physical assaults, sexual offences involving children, 'fat / body shaming' often linked with concerning weighing regime with associated eating disorders, racist and homophobic comments, personal remarks, humiliation, lack of treatment / empathy, sexual comments, direct messaging of children, Coaches getting other swimmers to 'spy' and report on children, and apparent training taking place against Covid19 Regulations.**

...

3.8 It also emerged that **no referrals during the above period were made by Club or Coaches, to the Swim England Child Safeguarding Team, or advice sought, as policy dictated.**

3.9 It also became apparent the **Club had allowed, for in excess of a year before this investigation challenged such, the nominated Club Welfare Officer role to be handed to an Ellesmere College Teacher, who was neither a Swim England Member, nor Swim England Child Welfare Officer trained, and had no jurisdiction, responsibility or required training to carry out this role.**

- 3.10 *The Club had also introduced a **Safeguarding Complaint process which did not follow Swim England guidance, was not fit for purpose, and potentially dangerous to child members in failing to protect them. The Club had not even advised the Welfare Officer as above, of this process, or her being named as part of that internal process. Coaching staff took a highly inappropriate role in that internal process.***
- 3.11 *General interviews took place, and the concerns, numbering in excess of **70 specific concerns, were put to relevant individuals and the Executive Committee to allow response.***
- 3.12 *Sadly, despite the subject matter, in general, while responding, **the Club in this investigation has not been supportive, and on occasion, may have been construed as being obstructive toward the investigation. There are also elements of the Club being defensive towards Coaches, while the investigation continued, and inappropriately sharing information with Coaches, against the direction of the Investigator.***
- 3.13 *The Club and Coaches involved essentially took the view that the College had responsibility for the welfare of child Club members, despite both College and Club trying to suggest both were independent organisations. This position does not hold when examined, given the evidence. It also became clear the Club and Coaches mentioned were **abrogating their Child Safeguarding responsibilities as individual members of Swim England, and as an affiliated Club.** (emphasis added)*

311. The first ICPO made a number of recommendations including:

- a. Placing an experienced talent coach in a position of oversight of the Club swimming programme;
- b. Providing club governance support to review and create a functional Club committee structure with the assistance of experienced volunteers in the Region to manage the Club;
- c. Providing independent welfare support via a Regional Welfare Officer based outside the Club's Region to provide additional welfare guidance and support;
- d. A report to be produced to the Swim England Safeguarding Team ... within 30 days of receipt of these recommendations that identifies the steps taken at that stage to change the culture, environment and structure of the Club and to identify what and how the Conditions are being met. This shall be followed by a report after an additional 60 days (90 days from the date of receipt of these recommendations).
- e. Publication of all swimming club policies on the School's website (ie publicly).

“In the event that Swim England experiences challenges, disruption or a failure to support change from the Club in implementing any of these Conditions or making the required changes the Swim England Safeguarding Team reserves the right to draw such challenges, disruption, or a failure to support change to the attention of the Swim England CEO at any time for consideration of suspending the Club for a specified term

in accordance with the Swim England Safeguarding Regulations set out in Child Safeguarding Regulations 241.”

312. The ICPO added at paragraph 13 (emphasis added):

‘Should any future alternatively named Club, based at the Ellesmere College facility, with a significant number of existing Club staff to which this report applies, apply for affiliation, purporting to be a ‘new’ Club, then the strongest consideration around affiliation, and for the appropriate sanctions and / or conditions as above be put in place.’

‘I am aware of Ellesmere College having provided what appears to be misleading information about the governance of ‘their Swimming Academy’. I am mindful that, should the Club immediately cease to exist, then the College may look to take the ‘Club’ over, by training as a private entity. This is unlikely to give swimmers the degree of protection alone I feel necessary for children in sport and given their lack of acceptance of responsibility in other areas, I do not feel that such should be immediately accepted as being allowed to compete, without the similar conditions we would expect a Club to demonstrate – similar to those conditions set out in my Recommendations as at points 1 to 5 (see 16.1).’

‘Unless there is a significant and demonstrated change in management of any ‘Club’ organised from Ellesmere College, this would most likely be just a ‘name change’ to avoid the safeguarding implications and responsibilities set out in this report. Before any affiliation is allowed, any such ‘Club’ should be examined closely around this matter.’

313. The acting Headteacher has accepted that the then School Headteacher did not manage this first report in the best way. He had framed the findings to parents as “**procedural.**” The acting Head and Chair of the Board of Governors wrote to me on 29 August 2024 said:

“Regarding the use of the term “procedural”, we understand that the Headmaster was referring to the action points highlighted in the ISI report (published in October 2021). It was not intended to minimise safeguarding considerations, but to emphasise the importance of responding to the processes and procedures the ISI report required, such as ensuring there was a written risk assessment of the swimming club in place and the need for the School to change its relationship with the club from a staff involvement perspective (both of which the School has done). We can understand how, on a current reading, it can be interpreted as potentially minimising safeguarding, but that was in no way the intention. “

314. I am not wholly satisfied that this adequately addresses the words used. In my view they were likely to be perceived as minimising in the sense used in Chapter 3. I have set out above why such minimisation of findings and minimising duties as just procedural are both findings to which I would need to have careful regard in this process to see whether there had been sufficient change. I am, however satisfied that the risk of reoccurrence of this has reduced substantially.

315. The findings in the first ICPO report in fact went beyond procedural findings into more substantive findings.

316. I note that Louis Weston records that part of the parents complaints in Case 1 (Titans) was that parents were not interviewed as part of the first ICPO report. I would not expect every parent to be interviewed. The positive experiences of some do not preclude negative experiences.
317. What happened next in the chronology was that :
- a. The coaches with that club plus the School teacher who acted as Welfare Officer then Club Chair (now Deputy Head Pastoral but with no responsibility for the swimming club) were given periods of suspension by Swim England (time now served: I do not need to set out all conditions in this report as they are confidential). Both coaches did not appeal the findings or the risk mitigation measures including the period of suspension. The Deputy Head Pastoral did appeal and the appeal was unsuccessful. New parents were installed in the club who had not previously held office. Ms Pritt-Roberts took over as Designated Safeguarding Lead at the School and multiple deputy DSLs were trained.
 - b. On his return after suspension there was a risk assessment process for the coach Danny Proffitt, although as noted below, that did not address all of the elements of the risk mitigation measures imposed by Swim England at that time and, in my view, was not adequate. What then occurred once the new Head Coach arrived and mentoring progressed for that Coach, does provide some persuasive evidence of a change of approach and improved risk mitigation measures as set out further below. While I am not considering whether there was a basis to disaffiliate the club (that is not for me to determine) there is inevitably some overlap in the evidence that is relevant to the task set to me.

Second ICPO report

318. The second ICPO report arose after the first report when it is said that some more information came forwards. I am told that the document that I (and now also the School) have seen is the entire report.
319. That report contained in large part a summary of the previous report which contained some more details about the process through which the Board of Governors had refused one of the complaints about the swimming club, but that minimising language had also been used in that report. It reports that the Governors had concluded (contrary to the findings of the first ICPO report)

The College did not consider there was a particular problem among pupils who were Titans swimmers. The College asserts that mental health issues amongst College Titans' swimmers 'were and are at rates no higher than would be expected in the comparable College population as a whole'. As we have indicated previously College staff are finely

attuned to the needs of pupils, especially those with full schedules. We are reassured that had there been issues these would have been acted on promptly

320. It also recorded that the Governors had, however, in January 2021 pushed back on the suggestion that the School was not responsible for the club with the then Headteacher.
321. The second ICPO report additionally refers to findings of the ISI in the May/ June 2021 report (published on 29 September 2021) considered above.
322. The new information listed which the ICPO referred to at 3.1 was:
- a. The headteacher's attitude and publications since the first ICPO report and minimisation of them as "procedural" (which is language echoed by some current parents in the course of this review summarised in the previous chapter).
 - b. The College had approached the suspended coaches during their suspensions seeking directly to employ them. It appears that the ICPO was concerned whether this was conducive to the welfare of children and whether this was being done safely.
 - c. The then Headteacher had informed parents that the ISI inspection had related to:

"two related long running complaints' which were not upheld. He did not advise parents the Complaints were rejected by the internal process as the College declined jurisdictions for all matters within the Swimming Academy. Rather unsurprisingly (sic), he makes no reference to the additional dozens and dozens of concerns raised his Governors are aware of through the Swim England process"
 - d. Two anonymous letters, which appear to have been then part of the subject of the Employment Tribunal proceedings.
 - e. I have seen both letters and have also seen the contemporaneous medical notes relevant to one of the matters that they allege, taking very special care to have the consent of the person to whom they relate, but also not to share them with Club staff who would not have seen them and taking care not to identify the person in this report. Those materials in my view give rise to a prima facie case for reporting under Wavepower (both now and as it was at the time of the matters to which they relate) and where further prima facie questions arise on a "seeds of doubt basis." It is not my role to determine whether those would or would not be made out. It is not in any third party's legitimate interest to speculate on what those are. This is entirely a matter for the individual concerned, who is now adult, and not any other person as to what steps they take or do not take. Such matters are highly personally sensitive.
 - f. The anonymous letters, however, also make allegations which are factually inconsistent with those notes and which could not in fact have occurred in the manner alleged in that letter. Some of those additional details are included in the second ICPO's findings. I do not rely on those findings which are inconsistent

with the notes I have reviewed. They are unhelpful and would appear likely to be “bandwagoner” as described in Chapter 3.

- g. I appreciate that navigating this may well have been stressful for the School and acting Headteacher in particular as well as the individual to whom the notes related. The acting Headteacher’s correspondence to me initially framed the ICPO’s references to these anonymous letters as having been “libellous” (when this was mentioned I checked whether she was also saying that the report of the ICPO was libellous and she confirmed she did not, which is why what it says is included here having given her and the School adequate opportunity to consider the matter). It is not in my remit to consider whether the law of libel applies to this letter. As with all matters in safeguarding, one person does not usually hold all of the relevant information. Sometimes exaggerated accounts can, on some elements be true, and others not true which requires a special careful and calm analysis as set out by Mr Justice Henriques’ report into Operation Midland (see Chapter 3).
323. I have been able to gather evidence from the more recent coaching staff as well as those at the time using hypothetical examples which cover the same risk areas as the matters which give prima facie grounds for concern arising from the anonymous letters, but which also took care not to identify individuals. In relation to particular features, taken separately, I consider that all coaches and club staff would take action that would plainly and unarguably be appropriate and would adequately safeguarding children. It should not be read into this or speculated as to what did or did not occur to a vulnerable individual in the past or whether everything done at that time was within the wide margin of potentially appropriate responses. That must solely be a matter for that individual to pursue if they wish. Speculation is most unlikely to be helpful to that person or to be helpful to current children in swimming.
324. It was also necessary for me to consider this incident when it came to the allegations of procedural unfairness and the letter sent by the School threatening litigation against Swim England which also factually did not accurately represent the wholly accurate position. It was necessary for me to consider whether there was a risk of this occurring again and to test the accuracy of the suggestion that the School had not known sufficient gist of the concerns in relation to the club.
325. In relation to this particular incident, I consider that that letter shows the School had sufficient gist in relation to that incident because it felt able to instruct solicitors setting out what purported to be a detailed factual rebuttal (albeit one which contained factually inaccurate content which the acting Headteacher has stated to me was unintentional). The School’s position is that they were aware of this through unofficial sources and not through the ICPO. I do not need to determine the source of the knowledge in this Review. In any event, any potential procedural unfairness was cured by the provision of that second ICPO report and the provision of a full opportunity to address its contents in writing and additionally in interview where these points were all put so as to enable the fullest opportunity to respond.

326. The current acting Headteacher's initial correspondence had initially seemed to suggest that the second ICPO report was based solely on those two letters, but she accepted in interview, after having seen that report, that it was also concerned with what had been thought to be minimising language used about the previous findings and issues in the Titans and the approach taken to the re-employment of a coach from the Titans era. She was provided with that second ICPO report on 4 July 2024. She stated that she was unaware of any retaliation risk (such as that set out in the first report) now. When I proposed wording for the FAQs to address potential retaliation risk and asked for the School's position so that could be captured she sought to persuade me not to do so as it might be seen by some as a finding that retaliation had occurred or was in real prospect when what she was aware of was that she did not consider it was. I was concerned by this when it was said, but decided to see what the evidence ultimately was. I can understand why the School would be cautious about the language of retaliation while the Tribunal litigation was ongoing, and also in that litigation the ET ultimately found that the litigant's husband had sought to intimidate Ms Pritt-Roberts in her own home.
327. The second ICPO report states that the ICPO had concerns about the School requesting affiliation and continuing to present the club online as being the Ellesmere College Swimming Academy and being "demanding" in that process. He also raised concerns about the environment and culture stating that:
- "This environment and culture represent the highest broad risk of harm to children that I have seen in my last 7 years with Swim England, and I echo the fears of the college staff members, around the risk of potential death of a child in the Club, which could be prevented by appropriate management and culture change"*
328. This report is criticised by Louis Weston as failing sufficiently to focus on whether there was a continuing safeguarding risk based on new evidence. The School's correspondence with Swim England at the time sought to rely on an email from the Shopshire LADO as suggesting that there could be no ground for concern because there was no "new" safeguarding concern being investigated (although that email did not preclude a concern about an ongoing continued minimisation and the risk that that could pose within the School to continuation of the previous practices including lack of reporting and children feeling as though they could not come forwards and/ or parents lacking avenues of redress or other matters if they were being investigated by other agencies and not investigated by the LADO's team). This was put to Ms Pritt-Roberts in interview. Her view was that she thought that more could have been particularised and that the School would have wished to have seen the copy of the second ICPO report at the time and that she was not asked to meet with the investigator. She thought that, had she done so, she might have been able to have alleviated some of his concerns. The School sought its own legal advice at the time and while things would be handled differently now, she and the Governors at the time took legal advice because they were concerned that it was being said that the School (and not just the Club) was said not to be safe but that particulars were not sufficiently

provided. She was very concerned that if there was a risk to children in the School that she knew of it and was able to mitigate it. She wrote the correspondence she did in order to seek that particularisation not to inappropriately share any information.

329. As regards the School's awareness of concerns of minimisation, I have been provided with evidence from and external statutory body or bodies (which does not matter) that frequent conversations were had with the previous Headteacher in which they felt he expressed a lack of insight into how in a club where many children felt safe, some may well not and why a petition in support of suspended coaches did not mean those incidents did not occur (especially in cases where individuals involved had accepted the facts alleged against them). That previous Headmaster cannot be approached for comment because he has sadly died.
330. There was also the appeal of the Deputy Head Pastoral, Dr Chatterjee, determined during this period, the outcome of which I have been provided with and read and in which the decision of the Appeal Board does not accept his explanation given for why referrals to Swim England were not made and that the position advanced was untenable when read with the ISI report of May/ June 2021. Ms Pritt-Roberts evidence to me was that the School took the view that they would have had no grounds to dismiss Dr Chatterjee because he had followed the School's procedures but they accepted his decision to step back from the swimming club. I have been told by the Governors that legal advice was not sought on this issue at the time. I have also corresponded with Dr Chatterjee and indicated to him how I proposed to refer to it in my report. He helpfully responded in writing and politely declined my offer of an interview.
331. He has highlighted that his appeal statement says:

'I accept that the club of which I was an executive member did not always have adequate and effective internal complaint and safeguarding procedures. I accept that some safeguarding incidents should have been referred to Swim England and that the fact they were being dealt with separately under College processes did not replace that requirement. I therefore accept the finding at 5.3 of the full report, save that I did not personally harm or knowingly allow the neglect or harm of children. I acted on all concerns that came to my attention to the best of my ability and judgement as an experienced safeguarder. I deeply regret that some children at the club felt bullied, shamed, ridiculed or inadequate.'

332. He emphasises that he did report to the School. He has also said that:

Since July 2021 I have ensured that I have had no involvement with the Titans club that continued to operate through 2021, nor the swimming academy since its establishment in 2022. As a school teacher and Deputy Head I have a job teaching and overseeing the day to day functions of the school, and in doing so I come into contact with pupils. I hold an enhanced DBS and you have had a copy of the outcome letter from DBS that confirms that I may be employed in regulated activity. There is no process with the TRA.

With regard to my current role and any potential handling difficulties for the club. Since July 2021 I have been mindful to not lead on any welfare or safeguarding matter that

relates to a pupil who is also a swimmer. As a senior leader I will be copied in on matters along with other senior leaders but the new structure put in place from September 2021 ensures that the House staff (who oversee the welfare of both day and boarding pupils) are led by the Heads of School sections, each of whom are trained DDSLs, and they are the people who respond to a case. The DDSL will, in turn, report to the Safeguarding lead. It is this structure that has been the conduit for the exchange of information between the swimming academy and school welfare staff. This has been effective and has not presented any difficulties in the academy ensuring that relevant welfare information is shared with the appropriate people between club and school, including swimmer to swimmer cases, and swimmer to non-swimmer.

I note that you have stated that you believe these steps would not be necessary if I was not employed at the school. The expansion of the number of qualified DSLs and the establishment of the Safeguarding team with the improved welfare communication structure was not done because I am employed at the school. It was a response to the failings noted in both the Swim England report and the ISI report with the objective to have open and clear communications between the House staff, Heads of Sections and the swim club and coaches, which had not been effectively working before. It provides distance for me, which I welcome, but more importantly it provides a strong team across the school and age ranges to respond proactively to welfare and safeguarding concerns. The pastoral work of the school does not sit in one persons hands, it is the responsibility of everyone. The staff working in each section of school understand that and have certainly adjusted to the improved team approach.

I have been mindful to ensure that I do not engage with the swimming academy, and engaged positively with the changes the school has put in place to enhance its safeguarding processes and structures. I submit this demonstrates that I have acknowledged, learnt from the past and taken action to ensure that I would never be a hindrance to the effective working of the club, and it's responsibilities as an affiliated club to Swim England.

333. It is not for me to determine whether the decisions made by the School were legally correct or not. The findings in the appeal are potentially serious ones from the perspective of a sports NGB because of what Lord Wilson records in the Reilly case considered in Chapter 3: the core issue with a failure to disclose relevant safeguarding information to those who need to receive it is it deprives the person of the power to be able to risk assess and put in place risk mitigation measures.
334. The continuation of this person in the School in a senior pastoral role poses potential handling difficulties for the Club to ensure that relevant welfare information is shared with pastoral lines in the School and with Swim England. Welfare and safeguarding matters may arise in the School which have relevance to a child's participation in the swimming club or their risk to others (especially peer/ peer risks of sexual harm: for example if a child exhibited predatory behaviour in School to a non swimmer that would be relevant to that child's participation in swimming activity; parent risks apparent in the School may also translate into parent risks in the swimming club).
335. I am very pleased that both the Club and the Governors as well as the Acting Head are considering this with very great care. It is reassuring that the School Welfare Officer is not in the line management of this person. This had been confirmed by the School and

Club and is helpfully also the view of Dr Chatterjee. It is wholly possible that there has been an improvement of insight as compared with how the point was recorded in the Appeal findings. However, as the Governors and Club's position was that he has no involvement at all with children in the Swimming club, it has not been necessary for me separately to consider this. I wrote to this individual on 30 August 2024 to notify him of what I had seen and been told and my likely findings and he wrote to me as set out above on 3 September 2024.

336. It is also potentially relevant to consider this evidence with the Governors' report following the commissioning of an independent educational consultant to consider the first ICPO report in which he made a number of recommendations that legal advice be sought. Ms Pritt-Roberts sent me a note recording that the School had decided not to seek advice on policies in the context of the swimming club because, in part, of the positive February 2022 ISI inspection and also that template policies were provided by a law firm to the School. Ms Pritt-Roberts has confirmed also that since then the School has commissioned an external law firm to review School policies, but it was unclear whether that included ensuring compliance with Swim England rules.
337. As set out in the section on policies in the next Chapter, the policies sent to me do not wholly echo those of Swim England, including in relation to welfare arrangements and mandatory referral of information to Swim England or some of the particular duties which apply to conduct inside and outside swimming for those who participate in swimming activities. I am very pleased that the Club will now be in a position to take independent legal advice on their policies and that this has been confirmed by the Governors who responded rapidly to my identifying this as an issue. When I raised the question this was responded to rapidly, sensibly and with appropriate thought by the School, Governors and Club.
338. It is not part of my role, indeed it is excluded from my role, to consider whether there were grounds to disaffiliate in the spring of 2022. However, I am also directed to consider relevant findings in relation to ECT (Ellesmere College Titans). This means I have to be careful not to rely on procedurally unfair findings, but also not to disregard findings if procedural fairness has been cured in this process (through which the School has had the second ICPO report) or by other documents and material and evidence that I have been able to consider, mostly from documents provided by the Club and School but also in my interviews. Where the matter arose from outside the School sufficient gist was put in interview.
339. In relation to the second ICPO report there is separate independent corroborative evidence that I have viewed of:
- a. A minimising approach by at least the previous Headteacher, and a continuation of some of the language (eg "procedural only" breaches) in some of the parents who have completed the survey. There is also evidence of non minimising language as set out above.

- b. An inadequate risk assessment during the return of the one remaining coach (albeit more suitable steps and a huge volume of work was then carried out by the coaches' mentor and by the current Head Coach which I find has made a real difference along with that coaches own reflections, self education and much improved insight and better working practices).
 - c. Representations to parents about a phoenix club said to comply with Swim England, but which had policies which did not align and a Welfare Officer who had not been informed of a relevant policy or her being named as a contact in it, and prima facie cause for concern when the new Safeguarding Governor was put forwards as the Governor for the Executive Committee before she had confirmed she would accept that role (which she now has).
 - d. The correspondence threatening of defamation proceedings in March – May 2022 is consistent with a “demanding approach to the affiliation process” referred to in this report, even though the School does not accept this characterisation of the words used and has explained its position and it did take legal advice at the time.
 - e. There is separate factual evidence relating to a particular incident which crossed the prima facie threshold. I also note that, but some of the features described in this report as to specific details which would have significantly aggravated that incident, are not supported by that evidence and are contradicted by that evidence.
 - f. There is evidence that some parents have expressed views in some cases somewhat vigorously intolerant towards some or all of those who came forward originally (albeit numerically the continued expression of this view is now a minority number and the most vigorous expression of this view came from a person who has no involvement in the club as set out in the survey section).
340. I can neither confirm nor deny what I have seen from other agencies and the School accepts this. Where it has been necessary to do so for fairness sufficient gist has been shared with the Club. If I have not been able to share it fairly I have not been able to give it weight in my analysis but I have carefully looked for whether there is current evidence of risks to children. This report therefore does not set out the views of external agencies nor does it identify those agencies.
341. I am aware from the Weston Report that some parents had complaints about the way that the previous ICPO performed this second report and how Swim England communicated with the school and that their perspective, having made educational choices should have been taken into account. As set out in Chapter 3, the views of parents in the context of decisions made as to the standards met in Schools or other similar settings may take into account the views of parents, but they are never given overriding weight. There may also be lawful reasons why some information might not be shared, for example why sensitive material relevant to children is not shared with other parents, and if there are ongoing processes in another agency or the police in which a request has been made to neither confirm nor deny them. I do not make these comments to determine any complaint (indeed this is not for me) but to correct some

of what appears to be recorded as what some appear to be treating as findings of fact in Weston, which his report, read as a whole, makes clear they are not. I do not believe Louis Weston was proposing to alter the usual legal principles or statutory schemes which apply in this area. Indeed they are not mentioned.

Chapter 6: Decision

342. As set out in my analysis of my Terms of Reference, consider the affiliation standard, to look for evidence of change from previous “findings” (see Chapter 5), to address current concerns and to address Club culture. All of this must be done with a primary focus on Child Welfare and against the background of the legal framework summarised in Chapter 3.
343. There is inevitably some overlap between these mandatory relevant considerations. I aim not to repeat a factor (for example one of the current concerns is the Spring 2024 incident at Annex F). Where one factor is considered under another section, I have not repeated the analysis.
344. I also reminded myself of the need to not require a counsel of perfection. This is an incipient Club run by people. Those people are not lawyers and I should not expect them to act as lawyers when considering Rules, nor does any swimming club need to run, or indeed should run as governed by lawyers. It is especially important to look at what is done in real life and not only what is done on paper. On many of these issues there is no one right answer but instead a range of reasonable and lawful options.
345. I also bear in mind that sometimes things only become clearer with hindsight. I should not require that of those I interviewed or anything else practically unrealistic.
346. It would be difficult to ensure complete consistency with other clubs because this process is inevitably different due to the background and findings, but also my agreed Terms of Reference are difference. When any person asked me to think about whether what I was asking about was out of step with expectations of other clubs I considered that carefully so far I could with the information available. Inevitably there will be a greater focus on making sure the past findings are either not present or sufficient mitigated and that current concerns are dealt with and /or sufficiently mitigated and those are mostly unique to this club and in some respects especially complex. This is why I have not only looked at documents but also had interviews with the new Executive Committee and Coaches so I could get a real life feel of how they are likely to operate this club moving forwards and how the interests of children could be at the core of that.

Affiliation standard

347. The affiliation standard requires that I look in the round to see whether Swim England is able to have sufficient reassurance that the proposed club would act in accordance with the rules and policies of Swim England from time to time and would effectively bind its members to do so. In its School setting would it enable Swim England’s policies to be fully complied with in that setting and that, in particular, the welfare reporting required is not disrupted or hampered, but operates in addition to as well as alongside without inappropriate deferral?

348. This necessarily meant looking at the documents, policies, past findings, culture, current concerns and all relevant evidence germane to that.
349. At its core affiliation is a bargain where the Club pledges loyalty to the NGB, and binds its members to that. Do they in paper and in practice have what it takes to be able to do that.
350. The principal focus needs to be the welfare of children (both in the club and those elsewhere in swimming). As set out below I consider that the proposed Club Executive hold that value at their very core and that this influences what they do in coaching as well as governance moving forwards.

Constitution

351. I have been asked to review the Club's proposed Constitution from December 2023 (attached at Annex D). The Constitution is one of the documents which Swim England requires clubs to provide accessibly to members online.
352. This is not yet been in operation. It was the result of discussions between the current Head Coach and Helen Weeks at Swim England and it incorporates some features from other school clubs.

Club as unincorporated association: not yet constituted

353. The Club is to be an unincorporated association, like many clubs. It has no separate legal personality but acts through its Executive Committee and officers, as empowered by the rules. The Constitution and rules apply by contract between the Executive Committee and all members.
354. The Constitution expressly and appropriately provides at 2.4 that all members must agree to be bound by all rules and policies of Swim England, Aquatics GB and the international federation for swimming. This includes Wavepower, safeguarding policy and Codes of Conduct. Breach of any of these falls within the Club's powers over members.
355. As the Club has not yet been constituted this provides limited evidence of its current operations. For this I must mainly look at how it is currently operating as an Academy with members being members of Leicester Sharks plus the evidence from the survey, the documents and the interviews.

Executive Committee

356. Paragraph 7.1 provides:

The ECSAMT committee shall consist of the Chairperson, Secretary, Treasurer (together “the Executive Officers of the Club”), the Head Coach, Director of Sport (if not in executive role), and a College Governor. The Executive Officers shall be employed by the school. All committee members must be not less than 18 years of age

357. I was originally informed of all members of the Executive Committee except the Governor. I had asked for their identity in interviews with the acting Headteacher and Head Coach. I requested their name in a letter dated 18 July 2024 to the Chair of Governors (also sent to the Safeguarding Governor and Chair of the Regulatory Compliance Committee and responded to on 16 August 2024).
358. The Executive Committee is an important body. There are various duties that it must follow set out at paragraph 7 of the Constitution. It must be the body to appoint the Welfare Officers under 7.2. This cannot occur until it is formed. The Club has decided, not to operate at all under Swim England’s rules first before applying, but it cannot operate at all until that member is identified.
359. This provision has an additional significance against the background of the findings in relation to Ellesmere College Titans, where in the course of two complaints made by parents at the school and swimming club, relating to what occurred to their children in the swimming club, the Governors in those specific cases declined jurisdiction to deal with matters arising from the Swimming Club. Governors’ oversight into the Swimming Club (and that the Governor Executive Committee member would necessarily need not to sit on any complaints process within the Board of Governors) is therefore a protective feature now present.
360. I was informed that the Governor proposed was to be Dr Scanlon, the Safeguarding Governor who was not a Governor at the time of the Ellesmere College Titans and began in September 2023, shortly before the latest ISI report. I met with Dr Scanlon on 21 August 2024. Dr Scanlon candidly accepted that she had not known that she had been put forwards until I wrote to her. She is the current Safeguarding Governor and has termly updates from the Head. She is able to dip test cases (at her choice not the School’s choice). She also has updates in between those termly updates and informed me that she was made aware of the Spring 2024 incident (albeit not some additional details as set out in the Confidential Annex which she now has).
361. I was impressed by Dr Scanlon in interview. Dr Scanlon has practical experience of safeguarding outside of the context of Ellesmere College and has both worked in primary schools and in a University context. She is a former Civil Servant and currently sits as a Magistrate. Dr Scanlon was careful not to give me assurances beyond what she had knowledge of and was appropriately measured. Dr Scanlon replied quickly and appropriately to emails. I set out below under some of the specific issues where Dr Scanlon’s presence or input is likely to add particular value. I thank her for meeting with me.

362. Dr Scanlon's knowledge of the Titans is limited and she was not a member of the Board of Governors during that period. She joined the Governors in September 2023, although she had some involvement with teacher training at Ellesmere previously and had sat on the International Board. I provided Dr Scanlon with an advanced draft of most of the sections of this report both to assist her knowledge and also so that she could make any relevant representations for the School or Club that she considered appropriate. She has been very helpful throughout her short involvement.

Welfare Officers

363. I was provided with the names of the two individuals who were proposed as Welfare Officers. They have not yet been appointed, and indeed cannot be before there is a full Executive Committee under 7.1. Those Welfare Officers have a right to attend meetings without the power to vote and will share or address matters concerning welfare.

364. The Welfare Officer is a key officer under Wavepower, and there are specific requirements in Swim England's rules as to the qualifications, availability and duties of a Welfare Officer.

365. In the 2023 Handbook (the Handbook at the time of the application) Rule 241.4 in the Handbook provided:

It is a requirement that all Affiliated clubs who have Children as members, appoint a Club Welfare Officer and adopts and adheres to Swim England's safeguarding policies and procedures as set out within Wavepower

366. Rule in 102.4.4 in the 2024 Handbook from 3 September 2024 provides:

There shall be Club Welfare Officers. All Clubs with child members shall be obligated to appoint such officers.

367. Rule 241.4 in the 2023 Handbook provided:

It is a requirement that all Affiliated clubs who have Children as members, appoint a Club Welfare Officer and adopts and adheres to Swim England's safeguarding policies and procedures as set out within Wavepower

368. Rule 241.12 of the 2023 Handbook provided:

All matters relating to poor practice, emotional, physical, sexual abuse or neglect should be reported to the appropriate Club Welfare Officer and, if it has not already happened, as soon as practicable thereafter to the Lead Safeguarding Officer.

369. This is now covered in 103.1 of the 2024 Handbook from 3 September 2024 in the following form.

103.1.1. The scope of the Club Welfare Officer role may be provided for by role descriptions produced by Swim England. The roles must include the content of this Regulation.

103.1.2. Club Welfare Officers shall ensure their Club complies with the Safeguarding Regulations and any safeguarding policies issued by Swim England.

103.1.1. Club Welfare Officers shall address all low level concerns which do not meet the threshold for a safeguarding concern. They shall maintain a record of such concerns.

103.1.4. Club Welfare Officers shall take steps to investigate and address safeguarding concerns at their Club. They shall maintain a record of such concerns.

103.1.5. Club Welfare Officers shall report all safeguarding concerns and the outcome of any low level concerns to the Swim England Safeguarding Department.

103.1.6. Club Welfare Officers shall provide assistance to the Swim England Safeguarding Department as it may require in relation to a concern at their Club.

370. A parent and a person describing themselves as an interested party suggested to me during this review that any matter concerning Ellesmere should not go to Swim England's Safeguarding team but should go to an independent person. That would not be consistent with these rules (either 2024 or 2023 Handbook) nor would it, in my view, be lawful because of the necessary role of Swim England Safeguarding as an Agency under paragraph 38 of the 2018 Regulations. Doing so would wholly sidestep information held by the Safeguarding Team which might be relevant.

371. This was not a request made by the Club or School, both of whom expressly disavowed any such suggestion. It is unworkable and unhelpful for the welfare of children involved in swimming (both in the Club and from other clubs). I therefore do not make such a recommendation. Indeed, I do not consider it to be lawful for Swim England to accede to such a request were it to be made. It would also not be in accordance with these rules require.

372. Part 3 of Swim England's usual process for Club affiliation, which my Terms of Reference supersede in the case of this club, require within 3 months of the date on which affiliation is granted:

1. Club Welfare Officer statement of compliance to Wavepower policies and procedures. Template is mandatory.

2. The school has demonstrated that an independent (non-school employed) Welfare Officer is named in addition to the School Safeguarding lead. This individual will have authority to report concerns as required and independent of the School.

...

I confirm that by signing Part 3 of this application for affiliation the information required for maintaining affiliation will be submitted for approval within 3 months of the date it was granted. Without this information being completed I understand the club is at risk of having their affiliation removed;

373. In my first letter to the Head Coach on 19 June 2024 I asked:

4. I note that the usual process at Stage 3 requires the provision of the information listed in the affiliation pack. It may be helpful for me to consider this information when considering your Club's application to affiliate. If you wish to provide this information or information relevant to stage 3 in the usual affiliation pack, please provide this within 2 weeks.

5. Please provide me with copies of any current Code of Conduct or Policy documents applicable within the Club to staff, volunteers or swimmers within 2 weeks.

374. I was sent statements signed by both named proposed Welfare Officers, one in June 2023 and one in June 2024 along with various other documents that I had requested which would usually be provided at Stage 3 of the general affiliation policy, certifying that all club policies were compliant with Wavepower and that all officers had DBS checks.
375. When I interviewed both Welfare Officers, I asked them about these documents. Both said they had not been aware of the identity of the other when signing the form. The independent Welfare Officer had not been DBS checked herself and is not a Swim England member at all. The School Welfare Officer had not been aware of the independent Welfare Officer and that she had not been DBS checked. Both met each other for the first time on 9 July 2024. Both candidly accepted that they should not have signed those certificates and asked me to disregard them.
376. I also asked the current Head Coach about those forms in interview and how they came to be submitted. He was of the view that the Club had not yet reached "stage 3" of the published process because it had not yet been approved for affiliation. He had been trying to help. I carefully considered whether this response was adequate and whether it was a ground to refuse the application. It is essential that Swim England is able to trust certifications submitted by Clubs and that officers only sign that they confirm the accuracy of the document after taking reasonable steps to consider that the certification is true. However, I consider that the responses given to my questions by the current Head Coach were true, and that the process for affiliation and my Terms of Reference had not fully been understood. Those Terms of Reference provide for my Terms of Reference to override any provision to the contrary in Swim England's rules, which include their standard affiliation process. That process is set out policy rather than rules, and as such is capable of being lawfully departed from if there is a rationally defensible reason for doing so. I find that there was no intention to mislead.
377. There is a rational reason for requiring additional assurances be given in circumstances where there are relevant undisturbed findings (which some of those by the ICPO and all of those by the ISI include) plus evidence of failures to follow Wavepower in the previous iteration of the Club when it was Titans. There is particular reason for caution where, as was found, practices in breach of Swim England rules were not reported and quite how important reporting processes are in the context of child safeguarding law (ie not purely procedural but are a core risk mitigation measure). This provides a rational basis for Swim England to require a greater degree of assurance that policies

and processes in practice will be compliant moving forwards than in other Clubs. This is unsurprising against the background of their legal duties as an Agency under the 2018 regulations.

378. That said, I accept the truthfulness of the Head Coach's answers and also that it was creditable that both Welfare Officers explained the truthful position without prompting and did so entirely honestly. The current Head Coach was not an officer of the club at the time of the first or second ICPO reports and he would not have seen the second ICPO report until that was provided by me to the School in this review, which in terms of dates was after those documents had been filled in. He (personally) would not have had reason to have known that there had been an issue previously with a Welfare Officer having been put forwards by the School but having been unaware of a policy which referred to them or that they had not been contactable on the address supplied. Ms Mason and Ms Dalziel would also have been most unlikely to have been aware of this either. Ms Mason joined in 2023 and Ms Dalziel's children had long finished swimming and finished at the School (albeit one of her children was coached by the one remaining coach from the Titans at the time and ceased swimming shortly thereafter).
379. I also asked both proposed Welfare Officers, as well as the current Head Coach and the acting Headteacher about how the Welfare Officer role would operate in practice. It was clear in interview that these individuals had only recently started to consider this at the time of my interviews in early July 2024. There was some hesitance not having been on all of the required Swim England training as yet (I note that the School Officer has been booked onto full Welfare Officer training in September and the independent Welfare Officer expressed a wish to undertake the proper training).
380. It was also apparent, and likely to be helpful to the Club, that the School Welfare Officer has a professional history of working in children's homes and working under Working Together and making welfare and safeguarding referrals frequently and appropriately in the course of that employment. She showed an impressive grasp, both of the:
- a. legal duties that such a role entails;
 - b. but also the practical skills of obtaining the relevant information, reassuring children where appropriate, observing their behaviour and being alive to potential changes, power play between children and adults, signs of potential abuse, how to identify bullying and how to address it to minimise future recurrence, safe phone and online behaviours, having the confidence to de-escalate tension between children effectively and the importance of not deferring entirely on welfare matters to other staff.
381. The independent Welfare Officer has practical experience of being a swimming parent (not a parent of a current swimmer) and had an impressively calm and open approach, which is likely to instil trust in children to whom she would be a new adult. Her knowledge of current school processes, individuals, and club operations was low. She had not been aware that Dr Chatterjee, the previous Welfare Officer at the Titans had

stepped away from all involvement in swimming but there was no reason why, with her children who had long left the school, she would have necessarily known this. She made no mention of any awareness of the safeguarding proceedings in relation to him or his unsuccessful appeal. She will need to undergo safeguarding training to ensure that she meets the requirements of Swim England rules and may need updating on the types of online harms now facing teenagers, which have evolved since her children were at that stage. She also lives an hour's drive away, so may not be often on site, but understood, when I asked, the requirements of Swim England's Handbook and Wavepower that the Welfare Officers be suitably available. Her answers to hypothetical welfare and safeguarding questions indicated appropriate insight and a proactive approach.

382. I also checked with the Head Coach and acting Headteacher whether there were sufficient practical steps in place to ensure that the Welfare Officers could suitably share information and that the independent officer would be able to access the pool and children at any time, not requiring prior permission from the School. While initially it had been thought that she would not have access to the school's IT system for recording and logging safeguarding matters, after it was understood how that might be necessary in order to take necessary steps to safeguard children both in the club, and from other clubs, in swimming activities (for example if there was a child who posed a potential predation or peer on peer risk) the School confirmed in Ms Pritt-Roberts' interview on 23 July 2024 and in the Chair of Governors letter on 15 August 2024 that she would have access to that online system, and would have an access card to enter the premises at any time (signing in at the school gate in case of fire alarms) but otherwise afforded all access. This is potentially important in the setup of this club because the school Welfare Officer has a swimming child in the academy, so may need to recuse herself, in the event that a welfare issue concerned her own child.
383. I also asked both Welfare Officers separately whether, if they had a welfare concern relating to the swimming academy but which also fell under the School's policies but they were not satisfied that sufficient steps were being taken to safeguard children, would they refer to the LADO, external agencies and Swim England Safeguarding.
384. They both responded that they would, and it was clear in the case of the School Officer that she had previous experience of doing so in a measured and wholly appropriate way in a previous employment (not at the School). I do not believe that either would defer to a school process that they did not consider adequately protected the welfare of children but would take appropriate and legally required steps were that to be necessary. I also consider that they would be unlikely to let an issue escalate to that stage, but instead proactively manage it collaboratively, but with the welfare of children at its heart, at any early stage if they were able to do so.
385. I also consider that Dr Scanlon, while not a Welfare Officer, would also be likely to be of assistance to the Welfare Officers and in helping the Club embed good safeguarding practices. Dr Scanlon understands the critical importance of recording and reporting

low level incidents, identifying and acting on potential trends, the “seeds of doubt” basis, sharing information between statutory agencies, the importance of concurrent duties (and not carving out separate domains between School and swimming club) and how matters which emerge in the School might be relevant to the Swimming Club, and vice versa. Dr Scanlon also has experience of the utility of welfare surveys in her previous working positions and has responded rapidly and appropriately to my correspondence with her about what steps the Club would take.

386. I also asked both Welfare Officers and Dr Scanlon about what I had been seeing from the survey in terms of potential under reporting by children and some of the apparently polarised parental dynamic. This may require robust application of the Code of Practice. There is a range of what that would lawfully require in practice. I am encouraged that they have had advanced notice of what I have seen and that they could see the potential for a polarised parental culture to act as a deterrent to reporting by some children in the Club but also that there are particularly encouraging signs from the children and some other parents who did not show that polarity at all. Some who have written to me earlier in the process identifying as parents with strongly polarised views have more recently written to me again expressing that they are feeling happier, especially with the new Handbook Rules of Swim England.
387. It was also particularly clear that Ms Mason is well used to not only being dependent on reporting by children to spot matters relevant to their welfare and safeguarding and I find that she is likely to continue to do so in her role.

Treasurer

388. I did not separately interview the Treasurer but she is also the Secretary to the Board of Governors to whom I wrote to confirm the various practical questions asked of the Acting Headteacher in relation finance, insurance and so on. I also asked the Head Coach. I also wrote to her separately on 2 August 2024.
389. The Treasurer has a potentially important role in ensuring that Club and membership subscriptions are paid to Swim England. This ensures that appropriate insurance can be in place through Swim England (in addition to that provided for by the School) and so that individual members are, in fact, members of Swim England. The person who will undertake this role is a current poolside supervisor and the Director of Finance at the School.
390. The acting Headteacher and Board of Governors has confirmed that, while the Constitution provides for the Executive Committee to have power to forgive members subscriptions, the School would indemnify Swim England for those sums.

Insurance

391. The issue of insurance has also previously been controversial. The school provided me with notes of an advice note from an Educational Consultant to the Governors which referred to two previous complaints (arising prior to 2021) in at least one of which the School's insurers had declined coverage.
392. The position of the new Club is potentially legally complex from the perspective of tortious liability, as coaches are employed by the school and the pool is on School premises and many of the members are pupils (some boarders). Dual insurance coverage from both the school and through membership is therefore essential to avoid tortious harm, especially were that to occur to children, being uncompensatable. It would not be correct to set up the School Club in a way that was thought to be entirely separate from the School. It is inevitably not separate, especially for those who board at the school and because the coaches are directly employed and the School funds the Club (and indeed is the only source of funding, as there is no revenue generation power or power to borrow).
393. There are a range of potential harms that can occur in the context of swimming activity, which can feel unpleasant to dwell on, but which must be considered to ensure that children are adequately safe. Some can potentially cause lifelong issues with a high potential cost of care and necessary adaptations. Adequate insurance coverage from the School to cover areas of potential exclusion from Swim England coverage, could potentially have been a weighty factor when considering affiliation. Were this not to have been in place my recommendation may well have been different.
394. I was particularly concerned by some of the documents from the Titans era that I had access to that cast prima facie doubt on whether all activities of the Titans were covered by insurance. The School's case is that their view is the situations I queried were at the time adequately covered. I do not need to make a finding on this. I can record that based on the documents reviewed am not as confident as they are that it would have been straightforward had a claim been made. In such claims a legally arguable issue can add to delay, legal costs and the overall stressful experience for all parties.
395. However, I am significantly more confident that this is addressed moving forwards and that the point is well understood by the Governors, by the acting Head and by Dr Scanlon who will be on the Executive Committee.

Finance

396. It is also necessary for a Club to have sufficient financial independence that it is able to carry out its purposes and comply with its duties to members. In the context of this sort of Club/ School arrangement, and because of the potentially complex interplay of legal duties and rules, it is important that the Executive Officers of a School Club have the potential to be able to obtain its own independent legal advice separately from the School. Governance disputes can be costly and lengthy and are best avoided by the appropriate drafting of documentation where possible.

397. When I began this work, I was expecting the Club to have sought and been provided with legal advice on its Constitution and policies in light of the previous serious findings. However, this has not been done.
398. This is not a breach of any rules, but it may have contributed to the misunderstandings of the rules of Swim England in its Handbook and what a lawful and adequate policy, to address the risks within the club environment would be. This is not an area where one size necessarily fits all. However, policies need at a minimum to comply with Swim England's templates in their rules. Affiliation is, at its core, based on the Club pledging its total (unqualified) loyalty to those rules, and pledging that loyalty on behalf of their members.
399. I was told by a number of people interviewed that there was a difficulty doing so without access to the Swim England Online membership portal. The same policies and codes of conduct are, however, published in the Handbook and in annexes to Wavepower so more could have been done. I exercise care in relying on the second ICPO report as this appears not to have been provided to the School before I provided the extracts sent to me during this review 4 July 2024. Therefore, if Ms Pritt-Roberts and the proposed officers did not know of the ICPO's concerns about the adequacy of school policies in relation to Wavepower, they cannot be criticised. There can be no criticism of those who joined after 2022 and who did not see the first report. However, for those who saw the first report, there is specific reference to this issue and this was the basis of the unsuccessful appeal findings for the previous Welfare Officer. I have carefully considered how much weight to give this if any and what impact it could or should have on my recommendation. In the context of my Terms of Reference the focus is on the future. If I am satisfied that adequate steps will now be taken to rectify these issues and that the Club will have the backing of the Governors to do so that would be given significantly greater weight, when balanced along with the large number of other factors and evidence considered.
400. I considered that ensuring adequacy of the indemnity provided under the Constitution from the School was a necessary step. The School was not proposing that it sign the Constitution so the provision referring to the indemnity in 14.2 might have been without effect and the prohibition of borrowing in 15.1 might have stifled a genuine need for independent legal (or other consultant) advice. I asked the Chair of Governors to confirm that sufficient funds would be provided to the Club to obtain legal advice. His answer was more limited than Ms Pritt-Robert's in interview. He confirmed on 15 July 2024 that the Club would have the power to obtain legal advice if necessary but they would also need to stay within their budget. I therefore wrote to Mr Worrow on 19 August 2024, having seen a copy of this section of my report in draft, to see whether he considered this to be sufficient. He had clearly already been in discussions with the Governors and responded confirming that permission had been granted by the Governors that the Club instruct Onside law (not a firm I have previously been instructed by or which has appeared before me when sitting in Sports cases) to assist with the compliance of its policies. This was admirably rapid and appropriate.

401. I can see that the second ICPO report also made reference to the School financially benefiting from the Club. The current rate of advertised subscription cost for the Academy (over and above school fees) appears to me to be likely to be lower than the running costs of the Club in terms of salaries, premises, heating, kit, transport to competitions and so on. There is a potential additional indirect financial benefit to the school in terms of school fees for the School itself and a successful Club may be seen by some prospective parents as adding lustre to the School (albeit that the public reporting of the Titans Club at the School may currently be operating in the opposite direction). I do not think that there is anything untoward which could be inferred from the Club's financing and the position now appears to be the opposite of what the second ICPO report had regard to (but did not base his recommendations solely on).
402. The most important thing from the perspective of this Review is to have considered whether the Club is able to be sufficiently financially independent of the School to secure the welfare of the Children in the Swimming Club irrespective of what the Welfare and Safeguarding arrangements are in the School. I have seen some evidence of positive change in the School. However, as noted in my introduction, it is not my role to determine for the School as a whole whether standard 7 of the ISS or standard 8 of the NMS for Boarding are or are not currently met. The history of recent ISI reports has been that that standard is not met, met, not met then met. Those standards are dynamic and are continuing duties rather than being static in time in any event. Dr Chatterjee is still involved in the School (albeit not the Swimming club and steps have been taken to ensure he has no role including by him) and I have set out his position in the previous Chapter.

Membership

403. The Club is to be a "closed club" in that, save for two members who are non-pupils, and potential for there to be alumni members so long as they have completed year 13, it is restricted to swimmers who are also pupils of Ellesmere College, College staff and College volunteers.
404. There is an additional category of member specified at para 3.1 volunteers to assist at swimming competitions. At the time of the application made by the club 241.5 of the Swim England Handbook provided:
- 241.5. No individual shall be permitted to be involved in any way with Children in any of the Sports, unless:*
- 241.5.1. they are a member of an Affiliated club or of a club body or organisation whose child safeguarding policies and the measures to enforce such are recognised by Swim England; or*
- 241.5.2. where this is impractical, adequate provisions are made by the organiser of the activity or the promoter of the event to assess the risk and ensure that*

appropriate measures to protect any Children who are participating are in place.

405. This is now in Wavepower 2024 from page 66 and following.
406. It is possible that this may include parents of current swimmers who are not yet volunteers through the school. This potentially could cause disagreement between the Executive Committee of the Club, School and the proposed member, especially if the proposed member had had a role in the Titans club, if they had a previous period of suspension from Swim England or if there were grounds to suspect that they did not have sufficient insight into the requirements of Swim England's rules or there were other suitability concerns.
407. I asked Chris Horrocks, Director of Sport, the current Head Coach and Mrs Pritt-Roberts about this provision in interview. I asked who it was intended to include, and whether they would be accepting applications for membership from potentially all parents as volunteers. They expressed the view that they would not. They would not unlawfully discriminate against an individual (as prohibited in 3.5) nor would they exercise their wide discretion with no cause. However, where there was a previous suspension that would inevitably at a minimum require an up to date risk assessment. They would need to be satisfied that the person understood their duties under Swim England's rules and the Club's rules to follow all rules of Swim England including the Code of Conduct and making referrals to Swim England Safeguarding and not engaging in any conduct prohibited by Swim England. As the Club is a School Club, they would also be entitled to consider whether the person fully understood and complied with the School's rules as well where applicable (for example on school premises and interacting with pupils at the School). No parent has an automatic "right" to apply to be a member under 3.1. In the event of dispute, the School's admissions complaints policy would apply, which I have been reassured by Mrs Pritt-Roberts and Chair of the Governors that this would involve escalation to the Governors at the final stage if appropriate.
408. I also discussed with Dr Scanlon and Mr Worrow, and wrote to the Governors and Ms Pritt-Roberts, about safe recruitment checks and what they could practically involve. The Club has, to its credit, agreed that it would check not only an enhanced DBS (as is legally required in any event) but also check with the LADO (and if the person is resident in Wales, the Welsh equivalent - as LADOs do not exist in Wales) to ensure safe recruitment processes are conducted.

Expulsion and other disciplinary action

409. The Executive Committee has the power to expel a member "*when, in its opinion, it would not be in the interests of the Club for the individual to remain a member*" (6.1). Being expelled by the school automatically results in loss of membership (6.2). There is a power of provisional suspension by the Club (6.5) and reference to Swim England's

separate power to make provisional suspensions (6.7). There is no express reference to anti doping provisional suspensions, which have broader effect, save for the reference in 2.4 to Aquatics GB's anti doping rules, which incorporate the UK Anti Doping Rules. I consider that the absence of reference to anti doping provisional suspensions does not prevent these being actioned in this Club. Indeed, my reading of the appropriate Rules require such anti doping provisional suspensions to be given effect.

410. The Constitution adopts Swim England's Judicial Regulations for handling club internal disputes and suspensions. This includes matters under the parents Code of Conduct. Under Swim England's rules a club has the power to remove a child member if their parents fail to abide by the Codes of Conduct for parents, even if a parent is not a member of Swim England in their own right. While it is hoped that such occasions are rare, sometimes it is necessary for Club Executive Committees to both remind parents of their duties under the Code of Conduct and take action to enforce Codes of Conduct where appropriate. All of the Coaches and the Director of Sport were able to recount to me examples from their previous employments where they have needed to have discussions with parents about their behaviour even if unintentional, and the potential impact on their children and other children and are best conducted at an early stage before there has been escalation to actual harm occurring. Such conversations are especially important when either reforming club culture or protecting a good club culture.

411. I also asked the Chair of Governors about this specifically to ensure that the Coaches and Executive Committee would have their express backing in taking such action if it were to be needed. The Chair confirmed expressly:

“children's welfare is paramount, and club officers will have the full support of the governors in ensuring that children do not feel caught up in this. It is of utmost importance to the wellbeing of the children that each feels they can speak freely. We put high value of the code of conduct and will not shy away from enforcing it to protect the interests of the child.”

412. Ms Pritt-Roberts also added expressly:

“Parents speculating about Swim England will have zero influence over the running of the club. The club executive and the school fully accepts that affiliation to Swim England will obligate them to follow Swim England policies and procedures. There will be no interference from any parent, or indeed any employee at the College, in that.”

413. She also gave an example (backed up with CPOMS notes which, so as not to lead to mosaic identification of the child I will summarise in gist form) which showed a child swimmer being appropriately supported. I have also seen evidence of this from several matters discussed in interview and through the survey.

Policies

414. Some of the policies and operating practices in the Club are positively helpful for Welfare.
415. I also note that there are low Athlete/ Coach ratios, an appropriate Coaching culture. There are also
- a. 2 x Training Pools (25m and 20m)
 - b. Open Water Facilities
 - c. Gym and Weights Room
 - d. Strength and Conditioning Coach
 - e. Onsite Physiotherapist
 - f. 2 x Sports Hall and All-Weather Pitches
 - g. Medical Royal College of Nursing staff on site 24/7 during term time
416. The 2024 Handbook provides in rule 1.6

It shall be a condition of affiliation that all Regions, members of the Members Forum, Affiliates and Wider Members (including affiliated clubs, organisations, associations, bodies and individual members) shall be subject to and bound by any Articles, Company Regulations, General Regulations, Judicial Regulations [including the new regulations on safeguarding] and Technical rules of the Company or any rules of Aquatics GB which may from time to time apply to them.

417. Rule 241.6 of Swim England's Handbook 2023 at the time of the application provided:

"241.6. These Regulations shall apply to all Participants within Swim England's Sports."

418. I have not been able to see reference in the 2024 Handbook to the same formulation (which is common across all other sports NGBs I am aware of). The concept of participation in sport is usually seen as important beyond those who hold specific licenses or membership, in part so that the extended definitions for activities, such as being an "athlete" in the WADA Code apply when a person lets their membership lapse, dopes, then seeks to compete or carry out any other activity as an Athlete. It is also a central foundational concept in ensuring that the safeguarding rules of a sport apply, even to those who resign their licenses or memberships but still participate in the field that the NGB covers.
419. There are aspects of Swim England's rules, policies and Codes of Conduct which apply to all participants at all times, both in sporting competitions and outside competitions. In my view participants are still "*participants*" when they live their normal lives outside of swimming competitions. However, they must still comply with the requirements not to bully children, to refer all safeguarding matters under Wavepower where a child participant in swimming may be at risk of harm, and they must comply with relevant duties under anti doping codes including those duties which apply out of competition.

420. I was therefore concerned when, in my first meeting on 1 July 2024 with the Head Coach and acting Headteacher that the way in which policies were explained was that there was one set of policies “*in competition*” and otherwise there were the School policies at all other times. That is not what Swim England’s rules require. There is no requirement that a person be swimming in a competition for Swim England’s rules to apply. Swim England policies do not only apply to those competing. I expressed this concern to both in that meeting and gave them an opportunity to address that concern in the meeting, in writing or in interview. I followed up with a letter and addressed this in interview with all club proposed Executive Officers and coaching staff and the acting Headteacher.
421. The position that emerged was, in fact, much less stark.
- a. There are currently two sets of policies, one purportedly for competitions (those of Leicester Sharks) and the school policies. The Leicester Sharks policies expressly state that they apply “at all times.” The school policies do not match up with all Swim England policies. Examples include:
 - i. The school’s drug policies do not address the full range of duties required by the UK Anti Doping Rules (UKADR)⁸² and the school’s policies do not appear to cover all of the potential forms of abuse listed in Wavepower. When I raised this with the Head Coach he agreed that he would raise anti doping with the squad at the start of term.
 - ii. I have not seen a school policy specifically prohibiting mobile phones in changing rooms. There are policies on mobile phone use, and younger children should not have them at all, but there is no specific provision mirroring Wavepower in relation to use in changing rooms. The survey responses from current swimmers also shows some mixed responses as to whether mobile phones are permitted in changing rooms with some saying that they are and some “don’t know” responses. When I raised this with the Head Coach he confirmed to me on 18 August 2024 that he will raise this with the squad at the start of the season.
 - iii. The staff code of conduct references potential referral to the Teaching Regulation Agency (TRA) but not Sports Governing Bodies/ Swim England/ LADO. There is reference to Keeping Children Safe but not to Working Together, but both apply in schools and the swimming club.
 - iv. The School policies refer to the School’s own policies and not to other duties which may also apply due to membership, license or other participation in Sport under the rules of the National Governing Body.

⁸² I was not able to find any treatment of therapeutic use exemptions for substances that would not be considered contrary to the School’s drug policy (eg some asthma inhalers) or coverage of presence ADRVs. There has been anti doping education within the academy, but in the survey some current swimmers indicated “don’t know” responses. Given the nature of ADRVs it is also an area where parents and carers (for example who may buy medication over the counter and provide food in holidays) will also need to be across the very specific duties imposed and the consequences of an ADRV on an athlete’s ability to participate in sport for a substantial period.

- b. I have also, later in my process been sent last year's and next year's proposed Athlete Handbook, and a Parent Code of Conduct (contained in the Handbook).
- i. There is much in the Handbook which is likely to be very helpful to Athletes and is not inconsistent with Swim England rules, but is not a requirement of Swim England's rules. It, for example, includes some training schedules, kit requirements and operating practices for the academy. I have no issue with this additional information being included. Indeed it is commendable.
 - ii. The Handbook has less in about the importance of supporting the whole team and expected conduct with athletes from other teams (albeit that is included in the Athlete Code of Conduct and Parents Code of Conduct and in practice is emphasised frequently).
 - iii. The Athlete Code of Conduct para 2 omits a requirement not to discriminate on grounds of disability from the list of protected characteristics that an athlete will never discriminate against.
 - iv. The Athlete Code of Conduct directs athletes only to school policies and not Swim England Policies, or the importance of being considerate to all participants in swimming (not just their own team).
 - v. The Parent Code of Conduct is not identical to that annexed to Wavepower. It covers many of the same bases but not all of them. I would suggest this is reviewed carefully and also that Parents are separately directed to it (not just in the Handbook) and sign that they agree to follow it. The Parent Code of Conduct does remind parents of the importance of showing and displaying respect to all children and adults competing in competitions (it should also remind adults of non-competing participants) and of avoiding the use of abusing or inappropriate language, bullying, physical violence or another other behaviour which may pose a risk of harm to children. As with the children's duties, discrimination related to disability is also omitted and reference is only made to School policies and not to Swim England policies or Wavepower.
- c. When I raised this with the Head Coach he confirmed that he was progressing these. Some of this would require liaising with Ms Pritt-Roberts as there may additionally be impact on School policies. He also confirmed to me that the Governors had approved that Onside law be instructed. This has also been confirmed by Dr Scanlon. She is confident that legal advice can be sought by the Club independently and I am too. I am content that this is all appropriately in train and that work has been able to be progressing in this last week while I have been finalising this write up of the Report.
- d. I was sent risk assessments for the squad swimming dated 1 September 2023. These addressed all risks save for peer -peer risks missing from the squad risk

assessment. Most are impressively thoughtful and detailed (but not so detailed that would hamper appropriate action). I flagged to the Head Coach the lack of inclusion of peer-peer risks on 30 July 2024 and he responded with some suggested wording. This wording omitted reference to Welfare Officers (as opposed to coaches plus school pastoral supports) which I highlighted to him on 19 August 2024 and which he then immediately changed and updated appropriately. While I am not in a position to offer legal advice and made this clear, this shows evidence of taking care to follow a lawful approach and responding appropriately. In my view it is likely that the Head Coach would also engage in a similar positive way with independent legal advice once that is secured. I also asked the school proposed Welfare Officer a number of questions in interview designed to ascertain whether these risk assessments had been followed on a recent swimming trip to Cyprus. Her account of that trip was consistent with the risk assessments.

- e. The School has in fact made disclosures by the acting Headteacher to the welfare officers at City of Leicester and Leicester Sharks and centrally to Swim England Safeguarding. Those disclosures were not limited to activities within competitions, but included matters in changing rooms and online.
- f. The coaches have, in fact, made risk reduction strategies for particular pupils involved in swimming competitions to address some very particular peer on peer risks, considering the welfare not only of their own pupils but including express consideration of members of other clubs.
- g. Practice currently within the Club demonstrated an environment where at least some children with concerns did come forwards. Some have first contacted pastoral people within the School (tutor, housemaster, housemother etc) and some have approached coaching staff. It is not possible exhaustively to know if children had concerns and did not come forwards, but it is helpful to see children in fact coming forwards in both environments and that current children did not generally answer in my survey that they had concerns but had not raised them.
- h. When a specific incident of underreporting was identified from the survey, I discussed this (with parental consent) with the Head Coach, who then took what I considered to be appropriate and thoughtful action. I wrote to the parent outlining my impression of this and what I had been told. They have not contacted me with any further concerns. This in my view showed a pro-active approach with child welfare at its core, even where the current policies do not contain all that should be expected from a policy following Swim England's rules, in practice, what occurred in this instance was, in my view both compatible and sensible. This was a potentially important matter to consider as material shared with me by other statutory agencies and the ICPO second report highlighted concerns regarding minimisation and failures to protect those

coming forwards. This one incident does not, by itself, provide decisive evidence of change, but it is a relevant factor to consider along with all of the other evidence I am considering.

- i. The material from the survey is somewhat mixed as set out in Chapter 4. There is a high degree of reporting by those identifying as current swimmers and pupils that they feel confident to report the relevant sorts of incident I asked about in the survey. Some disclosed that they had raised issues. There was not 100% satisfaction (which itself would be an unlikely result from such a survey and would itself have caused me concern for other reasons). There was some evidence indicative of minimisation of incidents as compared with the School's contemporaneous notes relating to those same children. Some of those who the School notes show were aware of some matters had not reported those on the survey. Taken as a whole with the words used, and the particular answers to particularly framed questions, as against the School's contemporaneous records this gives rise to a prima facie evidence of minimisation and underreporting by some (not all) current members. I appreciate that this may have a number of different causes, including the pupils strong desire to be part of an affiliated club, potential mirroring of parentally expressed views or potentially not fully understanding the questions asked. I have also considered the possibility of survey capture, or those responding with false names. I have discarded one entry as set out in the survey section.
- j. However, taken as a whole with the School records my survey showed (mostly) less reporting to me than to the School and to coaches (which ultimately is the better way round than had it shown the opposite), some minimising language and some failures to report. However, when this was identified to the Club and School appropriate and sensible steps were taken.
- k. On the basis of this I shared my provisional view (subject to expressly being capable of being persuaded otherwise by the Club) that steps would be needed within the Club to apply additional reassurance with the swimmers that it is not a sign of weakness to raise a concern, nor will it be considered hampering to affiliation or anything of that sort and that they must not encourage each other not to raise something that worries them. I have also written to some of the parents who filled in the survey or wrote to me with views expressed in such a way as to give rise to a (potentially unintended) risk that children may feel less able to raise concerns or that the process of affiliation turned on their hard work and drive. I have discussed with the current Head Coach how he plans to deal with this (and it was his idea to tackle this first orally with the squad on their return from the summer). I believe based on what he has said to me that he has this in hand with the current students and that he has the support of Mr Horrocks and the Governors behind him to do so. It is also helpful that, when this issue

has been explained to the Chair of Governors he has expressly indicated that he stands behind the Head Coach on this.

- l. There may be additional work required by the Club to address the parental dynamic where it may dissuade children from coming forwards with concerns set out in Chapter 4. I am encouraged by the Governors' express support for the Coaches in implementing the updated Code of Conduct.
- m. I also note that many parents' responses gave me no concerns whatsoever. Their evidence was helpful and framed in a suitably measured manner showing insight of the limitations of their own experience and that they would not know (nor should know) of everything that occurred to other children. However, their powerful expressions of confidence in the approach now being adopted in the Club was reassuringly consistent with the underlying contemporaneous documentation, my interviews with the current Club staff and with children's accounts.

Additional constitutional considerations

422. The current Head Coach suggested that I contact Helen Weeks at Swim England as his understanding of a meeting in November 2023 had been that the Constitution had been approved by her. I did so. I find that the Constitution could not have been approved solely by her, even had she done so, because of the need to consult. It is also not binding on me under my Terms of Reference, which require me to consider the matter in accordance with those Terms (see Chapter 2). She has confirmed that the Constitution was reviewed and approved with the agreement of the West Midlands Region. This matches my assessment above. I am content that the proposed Constitution is in accordance with Swim England rules and is workable in principle.
423. Ms Weeks has also provided me with the current insurance policy for Clubs, which includes a series of exclusions, which appear potentially germane to some of the previous findings. In the case of this Club, where the School has insurance too, this would provide double cover and hopefully avoid any risk that a meritorious claim within the scope of either or both of those policies not being met (there may potentially be contribution proceedings between insurers but those should not delay a claim if brought). Ms Weeks encouraged me to check some specific queries with other individuals in Swim England who would have more directly knowledge of these issues including the Chief Operating Officer. These queries were helpfully triaged to the underwriters themselves and these have informed the analysis of the Insurance position set out above. It is a matter for Swim England moving forwards whether they consider that the exclusions are appropriate and whether any greater notification than the downloadable cover note (accessible to affiliated clubs) is warranted so that Clubs can consider whether they should purchase additional cover.

424. Ms Weeks was also able to update me on a number of further developments that are either shortly to come into force or are in the pipeline generally for Swim England clubs.
425. All School Clubs will be asked to sign a **Memorandum of Understanding** with the School that they would record and share concerns with Swim England from within the school setting which may impact on any Swim England member (including may pose a risk of harm to children in swimming activity). I understand that the School is content with this in principle. I asked the School and Club on 20 August 2024 and the Chair of Governors has confirmed that this will be signed by the School. The Safeguarding Governor also could see the value in this. I do not consider that this is likely to change the legal position in terms of the School's existing legal duties because standard 7 of the ISS and standard 9 of the NMS for Boarding already expressly oblige the School to do this, and this is the position recorded in IICSA, but it is helpful to have it additionally recorded in writing and provide for a contractual basis. That contractual basis is a condition for affiliation.
426. Clubs affiliation is also reviewed on an annual basis. This is already in Swim Mark and the Head Coach had been used to this at previous clubs. **It was agreed by the Club Executive, Governors at the School and acting Headteacher that the affiliation would be reviewed annually as it is for all other clubs.**
427. Clubs will also be expressly required to report **a monthly summary on safeguarding and welfare concerns relevant to a risk of harm** to children in swimming (either in the Club or elsewhere in swimming activity) from 3 September 2024. Details are already to be reported to Swim England Safeguarding in any Event. **It was agreed by the Club Executive, Governors at the School and acting Headteacher.**
428. Ms Weeks also shared that it may be helpful for the West Midlands Region to be able to offer oversight and support.
429. I have also spoken with Amanda Swan from the West Midlands Region who initially dealt with the application for affiliation and the voluminous documentation that was sent to her including by interested parties. She is very happy to offer that assistance especially as the Club is setting up. This has been welcomed wholeheartedly by the Club and by the Head Coach and I am confident that they can work together.
430. From an educational perspective (but not a swimming one) the Club will also have the assistance of Dr Scanlon and I note Mr Horrocks (while not a swimmer, he is from a different sporting background) may be of assistance especially in relation to anti doping standards, duties and some of the (stricter than in the rest of society) expectations of athletes and those who cook, care for them and may on occasion purchase over the counter medications or nutritional supplements.

431. I also asked Kevin Suckling, the Head of Safeguarding at Swim England for his views after I had interviewed all of the Club's witnesses and reviewed the Club and School documentation. He and I had a most helpful discussion.
432. In particular, in relation to moving forwards, the Safeguarding team in Swim England has been developing welfare surveys for some clubs (not this one) and the team has had some positive experience of using welfare surveys in other clubs. This is commonly happening across multiple sports NGBs, especially following on from the findings of Anne Whyte KC and Sir Clive Sheldon summarised in Chapter 2. I provided the draft wording of a recent one to Ms Pritt-Roberts and the Head Coach on 19 August 2024. I asked Dr Scanlon about these too and she confirmed that she considered that such surveys were very helpful to hear the children's voices and have been standard practice in education for a considerable number of years. It would be necessary to consider how to avoid survey fatigue as this can affect results.
433. It has been very helpful to be able to have a discussion on this with Dr Scanlon, Mr Worrow and Mr Suckling, with me as the go between. Our ultimate view is that a survey every 6-12 months in the first 3 years of affiliation has a low risk of survey fatigue and is helpful and will be agreed to. These surveys are shorter than the affiliation survey conducted as part of this review (naturally as they do not have my Terms of Reference including the reference to previous findings). In the context of this Club, it would not be appropriate to ask children to do the survey with parents this would not be practical in a Boarding School setting. This isn't limited to the situation of Boarding Schools. I can see how it also might hamper reporting if the welfare issue derived from parental abuse or issues arising at home or where the child perceived a risk of information being shared by their carers in a way that they were not content with (which hopefully is unlikely but is something that Schools and Clubs need to consider and make sure Children are able to come forwards if this is present). Consent is not required to Ofsted and the ISI's surveys.
434. In these helpful discussions ideas shared included embedding some of the security features which were not suitable for my survey (for example the survey only being accessible by those who have a particular email, for example the school emails of the current members, which is how the Club communicates with them currently).⁸³ No concerns were raised by the School or Club with the current questions used in the other template surveys. I will not set out all of these discussions, especially around security features as these would be defeated by the publication of this report to the general public.
435. **I can therefore record the School and Club's position that they will agree to Swim England Safeguarding conducting a survey every 6-12 months for the first 3 years of affiliation and that they will take care with their additional surveys in the Club to try to avoid survey fatigue.**

⁸³ With the exception of the two non members. Some way of directly contacting those members would be necessary but I am sure can be worked out in practice.

436. **Apology:** I was also approached by a previous parent, who informed me that a previous CEO at Swim England had committed to requiring the School to make a formal apology to victims before affiliation would be granted to a Club at the School. I am not in a position to make a finding as to whether this occurred or not.

437. Apologies can be powerful. The law recognises this. Since 2006 the Compensation Act 2006 section 2 has provided:

An apology, an offer of treatment or other redress, shall not of itself amount to an admission of negligence or breach of statutory duty.

438. I have considered this carefully and my own view is that it is within my power to recommend an apology by the Club, but it is unlikely to be helpful to the previous victims to receive an apology from a Club, whose Executive Committee is made up with significantly more than a quorum (and including Chair, Head Coach and Governor) with no previous involvement with the Titans period. Apologies can be hugely powerful but not so much where they are given by those with no previous role, and in a club with a substantially different constitution and set up (and indeed name) to the previous Club.

439. I asked the School about this and the School's response was:

The School has not made an apology as the Titans were separate to the School. The parents and children concerned no longer have any involvement with the School. We share your current view regarding the likely utility of an apology by the School/new Club at this stage, however we are open to keeping this under review and can assess based on the individual circumstances of each case.

440. In interview with Danny Proffitt, he personally expressed a wish to apologise, however realises that this may well not be welcomed. Instead, he told me that he daily tries to channel that apology into a change in his coaching approach.

441. I have set out Dr Chatterjee's words and apology in the previous Chapter.

Current matters

442. The current position of the policies is dealt with above in this Chapter.

443. I have referred to the Spring 2024 incident in a confidential Annex F.

444. The one remaining coach from the Titans period, Danny Proffitt, still has some ongoing restrictions which I consider are currently being abided by. The mentoring period has formally ended but in practice he benefits from the high quality mentoring of his former mentor, as well as the other experienced coaches within the Academy and Mr Horrocks.

445. The previous Head Coach is not currently involved in the club, although I am told he is resident in the local area. The School has indicated that it would not intend to employ him.
446. Dr Chatterjee was the previous Welfare Officer at the Ellesmere Titans and Chair for a time. He has a period of suspension from Swim England and unsuccessfully appealed. He currently holds employment as Deputy Head of Pastoral at the School. I have not interviewed him but I have corresponded with him as set out in the previous Chapter. I have been assured he has no involvement in the Swimming Club. I have also sought assurances that he is not in a line management role to Ms Mason who is a House Mother. I have seen some emails sent by him relating to the time of the Titans and also that he has been copied in but has not responded to some more recent email chains, and that others have stepped in so that he is not having involvement with any of the current students who swim, or with welfare issues. It is possible that Dr Chatterjee's insight may have improved from previous findings, or not, and it is not my role to determine this as I am satisfied that there are structures in place to insulate the Club from any involvement (be it active or passive). Those steps would not be necessary if he was not in employment at the School and I have set out some of the relevant case law above including the *Reilly* case, which means that I have needed to consider this somewhat unusual position with care.
447. I have considered the potential current underreporting and cultural issues under Culture and in relation to the survey.

Consideration of Club Culture

448. I have seen evidence of a substantial change in Club culture from the contemporaneous notes, the survey, interviews and some of the wider information gathering. Culture is difficult to define exhaustively. I highlight in particular in Chapter 4. Within its core coaching values the Academy is plainly operating significantly differently to during the Titans period and that this is strongly and consistently promoted by the current Coaching team (including the coach who was present during the Titans and in respect of whom there is evidence from different corroborated sources of a change of approach, mindset and improved insight).
449. The evidence is not wholly positive and it was disappointing in particular to see some of the language used in some direct correspondence to me and the survey. I was also concerned as to how some misconceptions as to the previous findings and how this area of law operates seemed to have remained in some parlance with a degree of persistence. Chapter 4 has more detail than has previously been published to address some of the misinformation which appears to be in circulation in some quarters.
450. I have outlined in the Survey section of Chapter 4 how I saw evidence of some underreporting by children in the Academy, and also the nature of concerns regarding some strongly held parental views and the potential for that to tip over into conduct

which a child reporter or their family might consider to be retributive harm or which might factor negatively into their own assessment of whether to report a concern.

451. It was particularly valuable for me to consider the reaction of the Club officers to that information and whether they understood its potential impact on club culture as well as whether it fitted with evidence that they had seen, and what in practical terms, they planned to do to address it.
452. It was also important for me to consider whether a culture of low level welfare reporting was embedded within the School's structure. I could see changes in the technology used and also saw some individual cases which provided some evidence of this. It is not my role, and this report does not consider whether standard 7 of the ISS or standard 9 of the NMS for Boarding are met by the school generally. That would have required a different assessment. I note that some previously in the School, and also currently some parents, did not appear to understand the ISI's inspectorate role in relation to those standards. However, this report will hopefully be of assistance in explaining the legal framework and what can and cannot be taken from ISI inspection reports and some of the Courts' case law considering that role.
453. When considering the culture, procedurally I was keen both to notify the School and Club as soon as I saw anything on the survey which they may wish to take action on and also so I could ensure procedural fairness. The School did not sit back or deny the survey results. There were some aspects where I was initially concerned by some responses and suggested approaches to the data analysis (for example what I would need to see to see if there was a risk of retaliatory conduct to appropriate reporting), however, much of this may be explained by the inevitable stresses of being mid way through current and pending Employment Tribunal litigation about whistleblowing and where there is sadly objectively verifiable evidence of some bandwagonner complaints from the Autumn of 2021 and some threatening behaviour towards Ms Pritt-Roberts as recorded in the Tribunal proceedings.
454. I have therefore considered the position of the Club with great care and am on balance reassured that there is sufficient in place in terms of governance, insight of the new Executive Committee, and practical committed support at the Governors level and commitment by all to work cooperatively with Swim England to embed and grow the improved culture.

Welfare of Children

455. The welfare of children is a paramount consideration. I need to consider the position of children in the Club and those from other clubs who also participate in swimming.
456. Key potential risk factors include:
 - a. Whether the policies and operations of the Club risk assess appropriately and adequately protect child members and those from other clubs

- b. Whether information is appropriately shared and will be shared moving forwards.
- c. The adults within the Club and whether they will act appropriately and have sufficient training and insight.
- d. Whether the risk of peer/ peer abuse is appropriately dealt with.
- e. Whether all bullying and welfare issues are identified by Club Officers and addressed at an early stage including issues which may arise from parents.
- f. Whether the child's voice is properly listened to and taken account of.
- g. That medical matters are dealt with appropriately.
- h. That anti-doping education and provision is adequate.
- i. Whether inevitable issues with social media and mobile phone use, body image and the potential for eating disorders are properly understood by adults in the Club and the children's welfare is promoted.
- j. Whether the School's involvement with the Swimming Club is structured and managed so as to promote children's welfare and to promote compliance with the law and Swim England's rules.
- k. Whether the Club has sufficient financial and governance processes and willing adults to be able to push back and require more of the School if that is necessary to protect the welfare of children in the Swimming Club.

457. I consider strongly in the balance the words of current children and former children in the survey for which I am very grateful to have heard from. As set out above I have also considered what parents have said as to their own views as to what is in their children's welfare.

458. I have also been asked to consider the wish of children to compete for the club they train with and which bears the same name as their school and whether, if affiliation is not granted, whether those children may feel as though they needed to move their education which might impact on the stability of their educational provision. This has been expressed to me and I take account of it. As set out above, this could not be capable of being an overriding consideration. A desire to swim with a club that they train in is understandable, but if some of the risks listed above were present and unmitigated it would not be the correct decision to affiliate the Club to Swim England, and to have it potential incur coverage under the insurance policy (or potentially in some instances fall within coverage exclusions if for example there was inadequate reporting).

459. I also appreciate that in swimming and also many types of competitive sport, the insignia of a club are held in high regard by members and that they can add to a sense of belonging. Some expressed a view that they were annoyed not to be able to swim in an Ellesmere college hat (not a Titans hat – that was not expressed and would potentially come with other considerations and is no part of this Club's application). I have been sent accounts by some which suggest that others have been unkind and

potentially bullying⁸⁴ towards children at Ellesmere college when wearing their school uniform, which is not helpful and should not in any way be encouraged.

460. The desire to wear a particular hat and to compete in a particular uniform does not mean that a sports NGB should permit a person to have that uniform or to affiliate a club. At its core affiliation primarily has a different focus. It is the means through which a club agrees to bind its members to the rules of the NGB and where it accesses some processes and in this case insurance through that membership. Furthermore, as set out in Chapter 2, even in the case law on inspection of schools or termination of contracts in the education sector, the desire of a child to be educated at a particular school is given low weight compared with the inspectorate or funding body's views as to whether the institution sufficiently protects children in its care and complies with guidance and regulatory standards more generally.
461. The Spring 2024 incident means that I must inevitably very carefully consider the peer / peer risks and whether there is a risk that is not adequately addressed by the Club to children in other clubs. I have seen children in other clubs being expressly considered in risk assessments and that the School has expressly considered them in particular cases. Risks to other children are not always present. The nature of affiliation is that I do not need to be sure that a future incident would not occur. That is not the nature of the test, but I should look carefully individually and in the round both at the Club's documentation, insight of adults, approach of children and current operations and likely future approach and consider whether it is likely to be sufficiently in line with what a sports NGB is entitled to expect of a Club. I consider that, taking the evidence carefully and in the round there are sufficient protective factors in place to address the core risks which I need to have regard to under these Terms of Reference and which fit what I would expect of a sports club with the history of the relevant findings to which I am to have regard.

Summary

462. Therefore, referring back to the summaries in relation to previous findings in Chapter 5 I consider the following;
- a. **Appropriate steps are being taken to safeguard children within the swimming club.**
 - i. This has mostly been shown.
 - ii. There is recent evidence of underreporting but promises made for the future and evidence of improved insight.
 - b. **That all relevant staff and volunteers have been adequately checked with pre employment checks and risk assessed if they have relevant disciplinary or safeguarding findings.**

⁸⁴ I make no determination of this and have not interviewed the individuals said to have been involved.

- i. Ms Dalziel has not yet been DBS checked and all others have been.
 - ii. I have not heard evidence of relevant disciplinary or safeguarding findings (other than in relation to Danny Proffitt and I consider that he does not pose a current risk and that he is fully compliant with the restrictions that remain, has entered into mentoring properly and fulsomely and it is really encouraging to see that relationship continuing and being of benefit).
- c. **Risk assessments in the swimming club adequately address all risks including peer / peer risks in relation to online nude images and sexual behaviour.**
- i. This was not the case during much of the application period but is now addressed.
- d. **CPOMS is being used by all relevant staff in the swimming club, and who look after the welfare of children in swimming activity.**
- i. I can see this being used frequently and appropriately in the cases I have been able to sample.
 - ii. This is an ongoing duty and is not something that ever stops.
- e. **Whether the governors are having sufficient oversight of safeguarding and the swimming club, have relevant insurance for all relevant risks and potential eventualities and that complaints about the swimming club fall under their jurisdiction.**
- i. The Governors have confirmed they were informed promptly of the spring 2024 matters. Some information disclosed to me relevant to the swimming related risks had not been shared but now will be.
 - ii. Dr Scanlon will likely be of very considerable benefit to the Executive Committee.
 - iii. The assurances of the Governors is express and unqualified and has been recorded clearly in this report and in correspondence.
- f. **Whether bullying is suitably identified by staff and addressed, including in the swimming club.**
- i. I have seen evidence in the survey of this being adequately addressed and in contemporaneous documents which were corroborated (unchanged).
 - ii. Insight in interviews of officers and welfare officers was generally good and in some cases excellent.
 - iii. It is difficult to see how widespread this is but taking the evidence as a whole the position shows a qualitative and quantitative change.
 - iv. It is encouraging that the ISI observed what appears from its report to be a similar picture on its latest inspection (but this is a snapshot in time).
- g. **Whether children have effective opportunities to come forwards and that these are used in practice by children in the swimming club.**

- i. There is recent very specific evidence of this (not recorded to safeguard the children).
 - ii. It is difficult to see how widespread this is but taking the evidence as a whole the position shows a qualitative and quantitative change.

- h. **That mobile phone use and online technologies do not pose a risk to children in the swimming club, or by swimmers to those in other clubs.**
 - i. There have been some examples recently of risk of harm through mobile phones.
 - ii. Understanding of members in the survey was lower than expected and lower than other questions (eg on anti doping).
 - iii. Training is needed and has already been put in train.

- i. **That inappropriate sexual behaviours are recognised and addressed at an early stage.**
 - i. There is some evidence of this being recognised and addressed appropriately (details not included to safeguard children).
 - ii. It is difficult to tell how widespread this is but that is the case in any setting.

- j. **That welfare and safeguarding information is properly shared between school and relevant people in the swimming club where appropriate.**
 - i. There are recent examples where this has not occurred as fully as it should have been in my view and this is potentially serious.
 - ii. I have the School and Club Officer's and coaches undertakings as to their understanding that disclosure is not limited to "in competition" conduct or risks and what will be done going forwards so as to comply with Wavepower.

- k. **That external agencies (which now include Swim England) are engaged with by the school and employees in the swimming club.**
 - i. I have seen evidence of engagement of some external agencies but not all agencies (that said, matters requiring disclosure to all agencies do not necessarily frequently occur).
 - ii. There is a willingness to refer to the relevant agencies.
 - iii. There has been recent sharing with Swim England (which was proper to have occurred).

- l. **That there is adequate engagement with both pupils and parents on how best to avoid online harms and harm through sexually inappropriate behaviour and peer on peer issues such as bullying as well as the provision of policies.**
 - i. I have seen some communications relating to this.
 - ii. This is an ongoing challenge in all schools.

- m. **That appropriate leadership is shown, including insight into what may pose a risk to children either in the school or participation in swimming (inside or outside the school).**
- i. It is not my role fully to assess this from the perspective of the School.
 - ii. There was appropriate insight shown by the Club Officers (Executive and Welfare) and the coaches in my interview.
- n. **Whether views expressed by the pupils who met with the ISI in October 2023 are shared by pupils now in the swimming club.**
- i. There is evidence from the survey which correlates with this and does not appear to be rehearsed.
- o. **Continuation of some of the language (eg “procedural only” breaches)**
- i. I have observed this but it is not from all parents who are parents in the Club.
 - ii. I have seen recent evidence in the School of treating reporting of safeguarding as not only a procedural issue.
- p. **Risk assessments:**
- i. The current Club risk assessments were mainly excellent but had an important omission which is now fixed.
- q. **Did the Club have a strong application where all policies and procedures were in alignment with Wavepower:**
- i. This was not satisfied at the time of the application.
 - ii. It has improved through the process undertaken and considerable work has been done to create a club constitutionally that is capable of lawful administration in line with Swim England rules.
 - iii. New policies are not yet in place but independent legal assistance has been secured and funded.
- r. **Defamation and libel proceedings:**
- i. The School is not undertaking never to bring or threaten libel proceedings. The SRA SLAPPS guidance has been noted and engaged with.
 - ii. The School has undertaken not to threaten to sue or sue Swim England in defamation or libel relating to safeguarding functions.
- s. **A previous past case referred to by ICPO:**
- i. The features which in my view gave rise to a prima facie case for being considered in relation to safeguarding are not likely to occur in the set up of the Club.
 - ii. The coaches responses to the hypothetical questions were unprompted and showed insight and correct risk analysis and that they would likely act entirely appropriately.

- iii. I would ask those reading not to speculate about a previous matter which I have not determined (nor should I) which does not in my view impact the likely operations of this Club.
463. On this basis and because the relevant risk mitigation steps to address the key risks have been made by express assurance and recorded in this report, I am prepared to recommend outcome 3.1.1, that the Club be affiliated to Swim England.
464. The usual period for compliance with policies and training is 3 months which I consider to be adequate and appropriate in this case and nothing else is required.
465. In the event that any of these undertakings and assurances given are not made out, this could go to the heart of the relationship of trust fundamental for any sports NGB to have in its affiliate clubs as it would damage that fundamental bond of loyalty at the core of affiliation itself.

Summary

466. For these reasons my recommendation is 3.1.1 that the Club, as it proposes that it be Constituted, be permitted to affiliate.
467. This has been a very closely balanced exercise and is just satisfied.
468. I have been impressed with how in the final weeks of this report it has been possible to come together with the Club Executive Officers, School, Governors, Helen Weeks, Amanda Swan and Kevin Suckling to work out how this can practically work going forwards. As with any incipient Club, which has only in the past few weeks been capable of being constituted as a club, there will be practicalities to be ironed out, training to be done and a new rhythm of working together to be created.
469. I would ask everyone involved more distantly to help those in the Club and Swim England work together on those as all parties have expressed a wish to do.
470. Doing so best promotes the welfare of children, which is my primary focus.
471. I also hope that this report, which is to be published 14 days after delivery to the Board, if there is no Appeal, and potentially even if there is an appeal (please see Annex I) helps combat some of the worries and misinformation which is flowing in public currently and which, ultimately, is not helpful for the welfare of children in the Club, or children participating in swimming.

Annex A: Terms of Reference

Terms of Reference

Ellesmere College Affiliation Review

1. Background

1.
 - 1.1. Ellesmere College (the “College”) is an independent school based in Shropshire. Until 2022, Ellesmere College Titans Swimming Club (“ECT”) operated at the College. ECT was separate but closely related to the College, with the College having reserved positions on ECT’s committee, including that of the club welfare officer.
 - 1.2. In 2022, a decision was taken to disaffiliate ECT following the completion of two safeguarding reports into ECT. The reports detailed concerns about the conduct of two coaches, but also regarding the relationship between ECT and the College, resulting in safeguarding and welfare concerns going unaddressed and not being referred to Swim England.
 - 1.3. The College has submitted an application for affiliation of a new club (the “Club”) to Swim England’s West Midlands Region. Under Swim England’s Regulations, clubs affiliate to one of eight Regions, which administer the affiliation process where required.
 - 1.4. On 14 May 2024 Swim England received a formal request from Swim England West Midlands that the affiliation application by Ellesmere College for its new swimming club be assessed by Swim England, and that Swim England decides whether the club should be affiliated. This request was made with the approval of Swim England West Midlands’ Regional Management Board, which voted on this matter at a special meeting on Sunday 12th May 2024.
 - 1.5. Swim England West Midlands stated that they were unable to assess this affiliation application, for two reasons.
 - 1.6. The first was the amount of resource that they considered the affiliation assessment task will take. Swim England West Midlands stated that they do not have the resource to gather the information needed for its Board to make a fully informed decision on the affiliation application, and to continue to field enquiries about the affiliation process from various parties.
 - 1.7. The second was that the issues which Swim England West Midlands consider need investigating to gather this information are safeguarding issues. They stated that within aquatics in England, responsibility for investigating safeguarding issues lies with Swim England, and not with the regional governing bodies. Furthermore, it was stated that the recent safeguarding issues at ECT were investigated by Swim England, and they consider that those investigations form part of the relevant background to the current affiliation application. Therefore, an assessment by Swim England West Midlands of the safeguarding issues arising from this affiliation application does not fit within this structure.

- 1.8. Swim England's Board has accepted the request of the Swim England West Midlands Region, despite the responsibility sitting with the relevant region under the Swim England Regulations. This was taken with the best interests of the sport and the individuals involved, and with the overarching principle of safeguarding at the heart of the decision.
- 1.9. Swim England has therefore commissioned an individual under these Terms of Reference to independently consider whether the Club should be affiliated to the West Midlands Region and Swim England

2. Membership

2.
 - 2.1. The individual shall be a King's Counsel, with specific experience within regulation and safeguarding, they shall be independent of Swim England, the West Midlands Region, the College and the Club ("the Individual").

3. Specific Responsibilities

3.
 - 3.1. The Individual's role shall be limited to considering all evidence available to them or requested by them, and delivering a report to the Swim England Board considering the question of whether Swim England should allow the Club to affiliate to Swim England (the "Decision"). The report shall make one of three recommendations:
 - 3.1.1. that Swim England should allow the Club to affiliate;
 - 3.1.2. that Swim England should allow the Club to affiliate, subject to conditions outlined by the report; or
 - 3.1.3. that Swim England should not allow the Club to affiliate.
 - 3.2. The Individual shall seek to make the Decision in as timely a manner as possible.
 - 3.3. In coming to the Decision, the Individual shall have consideration to Swim England's Regulations and required standards for Club Affiliation.
 - 3.4. The Individual shall adopt a principles-led approach in making the Decision, with the desire to safeguard children at the heart of the decision. Accordingly, they shall consider both the positive and negative outcomes of a decision to allow the Club to affiliate, or not.
 - 3.5. The Decision shall be based upon the current position of the Club and the College, including but not limited to its policies, procedures, culture and any current concerns, and accordingly shall not consider whether the College was suitable for affiliation in the past. The Individual shall consider past findings in respect of ECT and the College as background information, to assist the Individual in determining whether the College has now addressed previously existing concerns.
 - 3.6. In the event that the Individual is made aware of a current safeguarding concern, they shall firstly ensure that the Swim England safeguarding team are aware of such. Following, the Individual shall determine the extent to which it is relevant to the Decision and the weight that shall be given to the concern given (i) its nature, and (ii) whether any Swim England process has been completed in respect of such.

- 3.7. In making the Decision, the Individual shall consider any evidence provided to it by Swim England or any other involved party. The Individual may request evidence or representations from any involved party, including by way of an open consultation, should they consider such appropriate.
- 3.8. The Individual shall, in consultation with Swim England, determine the process to be adopted for the purpose of considering the matter and coming to a decision.
- 3.9. Notwithstanding these terms of reference, the Individual shall be entitled to disclose any detail to the statutory agencies (including, but not limited to, the police, LADO, DBS) they shall be entitled to do so in the interests of discharging safeguarding obligations.

4. Reporting

4.
 - 4.1. The Individual shall report directly to the Swim England Board, through Swim England's executive.
 - 4.2. The Individual shall endeavour to complete the process within six weeks.
 - 4.3. The Individual shall provide bi-weekly updates to Swim England on the progress of the matter, including detailed timeframes for completion.
 - 4.4. The Decision may be disclosed to interested parties at Swim England's discretion. Swim England shall review the Decision and make any redactions it considers appropriate for the safeguarding of children and adults prior to any disclosure.

5. Swim England Support

5.
 - 5.1. Swim England's Club Development Team and/or Safeguarding and Welfare Team shall provide administrative support to the Individual as they may require.
 - 5.2. Support shall include, but not be limited to:
 - 5.2.1. providing evidence relevant to the matter that it possesses to the Individual;
 - 5.2.2. receiving evidence from interested parties and providing such to the Individual;
 - 5.2.3. sending communications on behalf of the Individual;
 - 5.2.4. arranging meetings, where required by the Individual; and
 - 5.2.5. arranging any consultation, where required by the Individual.
 - 5.3. Where Swim England is unable to fulfil a request from the Individual for assistance, it shall inform the Individual of such in writing, including reasons.
 - 5.4. Where the Individual requires attendance of a Swim England employee to provide administrative support, that individual shall not take any part in the decision making process.

6. Conflicts of Interest

6.
 - 6.1. The Individual must follow Swim England's Conflict of Interest Policy at all times.
 - 6.2. The Individual shall have had no prior involvement in respect of Swim England, the College, the Club, ECT, or the members thereof, which would create or infer an actual or perceived conflict of interest or bias.

7. Confidentiality

7.
 - 7.1. The Individual must keep confidential all information provided by Swim England or any third party in respect of these Terms of Reference, including any documentation, evidence, personal data and information provided verbally. The Individual shall not disclose any such information to any party without prior written permission from Swim England.
 - 7.2. Upon delivery of the Decision to the Swim England Board, the Individual must destroy or return to Swim England (at Swim England's cost and discretion) all information provided to them by Swim England or any third party under these Terms of Reference. The Individual shall therefore ensure that any individual providing relevant evidence to them as part of the process hereunder is aware of such.
 - 7.3. The Individual must refrain from comment in the press or on social media on work connected to these terms of reference, unless in accordance with and on permission of the Swim England Communications team.

8. Appeal

8.
 - 8.1. There shall be a right of appeal against the Decision. The Individual shall determine at their discretion which parties shall be entitled to avail of the appeals process and provide rationale for such within the Decision. Any appeal should be accessible on the basis that it is fair, just and reasonable for them to have access to an appeal.
 - 8.2. In the event that multiple appeals are made, they shall be consolidated and considered together.
 - 8.3. The grounds of appeal shall be limited to grounds that:
 - 8.3.1. that the outcome exhibited a material error of law, including in respect of Swim England's Regulations provided that where these Terms of Reference and the Swim England Regulations conflict, these Terms of Reference shall take precedence;
 - 8.3.2. that a material error of fact which, had it not been made, would likely have caused a materially different decision to be made; and
 - 8.3.3. that the outcome could not have been reasonably reached when faced with the evidence before them or was otherwise irrational.
 - 8.4. Any appeal must be filed with the Swim England Legal Department within 14 days of the date of the Decision, identifying the grounds of appeal and why the appellant

considers that they are met. The Decision shall not be published, nor shall it take effect until the appeal window has closed or any appeal has been concluded.

8.5. Any appeal shall be a paper review by an alternative individual, whom shall be appointed under separate terms of reference in order to determine whether the grounds of appeal have been made out. In the event that a ground of appeal is made out, the reviewer may:

8.5.1. uphold the Decision;

8.5.2. vary the Decision;

8.5.3. reconsider the matter on the same terms as this Terms of Reference (with the exception of their decision being subject to appeal).

8.6. Any decision on appeal shall be final.

Annex B: Privacy Notice

Privacy Notice

Ellesmere College Swimming Academy Affiliation Review

About this Notice

This Privacy Notice is provided to you on behalf of The Amateur Swimming Association (Swim England) Limited (“Swim England”) and Katherine Apps KC (the “Reviewer”), practising at 39 Essex Chambers. This Privacy Notice explains how the Reviewer and Swim England process personal data for the purpose of a review on the affiliation of Ellesmere College Swimming Academy (the “Review”). The Review has been commissioned for the purposes of determining the application by Ellesmere College Swimming Academy to affiliate to Swim England. This is not a review generally of Ellesmere College or Swim England’s processes, nor is it a Safeguarding investigation. It is limited to the Terms of Reference which can be accessed [here](#).

This Privacy Notice also explains what your rights are in relation to any personal data about you that is processed by Swim England or the Reviewer for the purposes of the Review.

Separately to the Review, full details about how Swim England obtains personal information about our members, including what we collect, the reason we collect it and how it is used, how long it is kept, the types of recipients and circumstances when it is shared is provided in the main [Swim England Privacy Notice](#). 39 Essex Chambers’ Privacy Notice can be found [here](#).

Relevant Law

Our processing of personal data is governed by data protection law, including the UK General Data Protection Regulation (“UK GDPR”) and the Data Protection Act 2018.

Purposes for collecting personal information

The Review is an independent review commissioned by Swim England into the suitability of affiliation to Swim England by Ellesmere College Swimming Academy (the “Club”). The conditions for affiliation are set out on [Swim England’s Club Affiliation webpage](#).

The Review is considering the matter based on the position at present and with a forward looking focus. It will consider evidence and material held by Swim England and submitted to the Reviewer by any stakeholder (including individuals and the Club) which may relate to previous events, including past safeguarding concerns raised in respect of Ellesmere College and Ellesmere College Titans, a club formerly based there.

It is necessary for Swim England to provide safeguarding records, including the details of specific complaints, to the Reviewer for the purpose of determining the Review. In addition, Swim England will provide secretarial support for the Review, receiving all correspondence and representations on such and providing them to the Reviewer.

Terms of Reference for the review may be found [here](#).

Swim England and the Reviewer need to process personal information for the purposes of completing the Review. Personal data is gathered and processed by the Review in a number of ways - for example, to gather evidence, to collate and review evidence in order to come to a conclusion, to communicate stakeholders and to invite individuals to participate by providing their views.

There is also a right of appeal for the Club as set out in the Terms of Reference. Any personal data or material processed by the Reviewer may be disclosed and processed as part of the appeal process.

How the Review collects personal information

The Review collects personal information in two main ways.

Personal data provided directly by you

Some of the personal data processed by the Review will be directly provided by you (or through your legal representative) for one or more of the following, non-exhaustive, reasons:

- You have sought to provide evidence or representations to the Review.
- You have been asked to provide evidence or representations to the Review.
- You have provided evidence or representations to the Review.
- You have contacted the Review (namely Swim England) by email, telephone, or letter.
- You are representing an organisation in engaging with or providing evidence to the Review.

Any personal data you provide to the Review will first be received by Swim England and then shared with the Reviewer if relevant to the Terms of Reference.

In the interests of transparency and openness, any interviewees, or those who provide information to the Review, are encouraged to give their evidence in an open and “on the record basis”. Should an individual wish to provide information which they wish to be held in confidence (whether in part or entirely) it may be difficult to assess the reliability of the account provided or to use the information provided in the Review. Even where information is provided in confidence this confidentiality is not absolute and is subject to limitations. See the Terms of Reference for further information.

Personal data not directly provided by you

Some personal data the Review processes will not have been provided directly by you.

In particular, personal data about you already held by Swim England, or personal data relating to you submitted by other parties or individuals, may be provided to the Reviewer. This may include information relating to you contained within files on safeguarding concerns considered by Swim England, any correspondence that we have had with you, and contact details for you.

Other individuals and bodies may include information about you within the evidence and representations that they submit.

That personal data may include:

- (a) general personal data which will identify relevant individuals (including names, contact details and ages);

- (b) personal statements and accounts of events relevant to allegations or matters of concern previously investigated by Swim England or other bodies or which parties ask the Reviewer to consider;
- (c) special category data such as:
 - (i) racial and ethnic origins;
 - (ii) religious affiliation;
 - (iii) health details; and
 - (iv) details about a person's sex life and sexual orientation;
- (d) information about alleged criminal offences; and
- (e) any other personal data contained in other information shared by others during the course of the Review, for example for the purposes of the Reviewer or Swim England conducting interviews.

What sort of information may be collected as part of the Review?

The Review may receive, process and consider information about people who were survivors of events which occurred at Ellesmere College and Ellesmere College Titans and their families, other swimmers attending Ellesmere College and Ellesmere College Titans and their families at the time of the concerns, and proposed swimmers and their families at the new Ellesmere College Swimming Academy. It may also collect information about past and present staff members and/or volunteers of the Swim England West Midlands Region, Ellesmere College, Ellesmere College Titans, and Ellesmere College Swimming Academy.

The Review may process personal data about the nature of those safeguarding concerns, the affects that they had, and how others acted in response to such, in order to come to a decision on affiliation as detailed within the Terms of Reference. The Review will also collect contact details, so that we may correspond with you.

Some records the Review process may include sensitive personal information relating, for example, to health, racial or ethnic origin and/or a person's sex life or sexual orientation.

Legal basis for processing

The Review processes personal information fairly and lawfully, in compliance with data protection legislation. The lawful basis we rely on to share personal data is article 6(1)(f) of the UK GDPR, which allows personal data to be processed where it is necessary for our legitimate interests (or those of a third party), providing that these interests are not overridden by your interests and fundamental rights. The Review has a legitimate interest in processing the personal information, namely the protection of children within the aquatics sport which Swim England governs and for the making of the decision entrusted to the Reviewer to determine if the Club should be granted affiliation to Swim England. It is necessary and proportionate for personal data to be considered by Swim England and by the Reviewer for the purposes of the Terms of Reference which include examining the evidence based matters in the Terms of Reference and delivering a Report.

Where Swim England needs to share special category or criminal offence data with the Reviewer and where the Reviewer or Swim England may share the information with others, we rely on the following conditions set out in Schedule 1 of the Data Protection Act 2018:

- (a) the processing is necessary for the purposes of complying with, or assisting other persons to comply with, a regulatory requirement¹ which involves taking steps to establish whether another person has, been involved in dishonesty, malpractice or other seriously improper conduct (see paragraph 12 of Schedule 1 to the DPA 2018);
- (b) the processing is necessary to protect the public against dishonesty, where the processing is necessary to exercise a protective function (which includes dishonesty, malpractice or other seriously improper conduct) (see paragraph 11 of Schedule 1 to the DPA 2018);
- (c) the processing is necessary for the purposes of (i) protecting an individual from neglect or physical, mental or emotional harm; or (ii) protecting the physical, mental or emotional well-being of an individual and the individual is (i) aged under 18 or (ii) aged 18 or over and at risk (see paragraph 18 of Schedule 1 to the DPA 2018);
- (d) the processing is necessary for the purposes of the prevention or detection of an unlawful act, including where the processing consists of the disclosure of personal data to a competent authority, or is carried out in preparation for such disclosure (see paragraph 10 of Schedule 1 to the DPA 2018); and/or
- (e) the processing is necessary for the purposes of upholding standards of behaviour in sport (paragraph 28 of Schedule 1 to the DPA).

There are circumstances where the Reviewer and/or Swim England and their employees, officers or staff may be obliged to share personal data including sensitive personal data with other agencies, for example police, Local Authority Designated Officer or the Disclosure and Barring Service or with Swim England's Safeguarding Team.

We may also additionally process personal data by consent under Article 6(1)(a) if an individual participates, provides representations, attends interview or any other interaction with the Review and is provided with a copy of this Notice and agrees to participate in the Review.

The Reviewer and Swim England will also process personal data where necessary as a matter of applicable law or regulation or to exercise, establish the Reviewer or Swim England's legal rights.

How does the Review share personal data?

Personal data will be shared between Swim England and the Reviewer.

The Review may share your personal data between the Reviewer and Swim England and individuals for the purposes of administrative support to the review including setting up,

¹ A "regulatory requirement" means a requirement forming part of generally accepted principles of good practice relating to a type of body or activity.

recording and transcribing interviews and providing an opportunity for representations to be made, summarising responses and reviewing past files.

Personal data, including special category data, may also be shared as part of the process of appeal set out in the Terms of Reference.

The Review keeps your personal data secure and only shares it with those who need to see it. To facilitate the work of the Review, personal information may be shared with third party data processors who supply electronic software and services to the Review, such as the online platform Survey Monkey. Swim England will have contracts in place with such processors to prevent them doing anything with your personal information unless the Review has instructed them to do it. They will not share your personal information with anyone unless directed by the Review to do so and will retain it as the Review instructs.

The Review may have to disclose your personal information to individuals and organisations in the name of procedural fairness. It is important that any person or body subject to an accusation is given the right to reply and enough information to be able to do so. Accordingly, the Review may share your personal information, including any evidence or representations given, with others (including but not limited to Ellesmere College and Ellesmere College Swimming Academy and individuals employed, are office holders or involved in or who are instructed by those bodies), so that they are able to reply to the evidence you provide, if required. Swim England and the Reviewer will consider what, in their view, the duty of fairness reasonably requires and what approach is necessary and proportionate for the purposes of the Terms of Reference.

Where personal information is supplied to persons involved in the Club or School, the Reviewer and/ or Swim England may require that individual/Club/School to undertake to maintain confidentiality.

Where personal information is provided to an individual or body which is confidential, the Reviewer and Swim England will take reasonable steps to inform the recipient of confidential nature. Swim England's Regulations require confidential information to be kept confidential and expressly require participants in swimming (which include those involved in a club applying to affiliate) to keep matters confidential, save for where is clearly set out in the policies (for example there is permission to share data for the purposes of child safeguarding). Any breach of such will be considered serious misconduct by Swim England and result in action being taken through its judicial system.

In accordance with the Terms of Reference (Clause 3.9) and with our power to share information relating to child safeguarding as outlined in *Working Together to Safeguard Children 2023*², Swim England or the Reviewer may, if they consider it necessary, disclose any personal information to statutory authorities including but not limited to the police, the LADO and the DBS service.

Final Report

The final report of the Review will be provided to interested parties and may be published more widely. In producing the final report, personal data will be processed, and the report itself may contain such. Where the Review considers it necessary or appropriate to comply with obligations under the UK GDPR or Data Protection Act 2018, we will anonymise the personal data or seek consent to include the information. Names of survivors are likely to be redacted or shown with an altered name (that is not their own). Names of individuals employed at or involved in the management of Ellesmere College or Ellesmere College Swimming Academy may be published if in the Reviewer's sole discretion, the Review determines that it is

² *Working together to Safeguarding Children 2023*, pp 18-22

reasonably necessary for the purposes of the review for the names to be published with the Review. It is possible that individuals involved in the management of the club or School may be invited to respond to questions or attend interview with the Reviewer for the purposes of the Review. If any individual has any representations as to whether they should or should not be named, they should provide such representations along with the responses to any questions asked.

How we protect your personal information

Your personal information is stored on our secure servers, which are regularly penetration tested. Access to the personal data within Swim England is limited strictly to those providing secretarial support for the Reviewer.

Where Swim England needs to share personal information with the Reviewer or third parties, we do so via Box, a secure file sharing platform.

For data protection steps taken by the Reviewer and by 39 Essex Chambers, please see the [39 Essex Chambers privacy policy](#).

Retention

We will keep a record of all information that is disclosed to the Review for at least six years after the later of (i) the publication of the final report of the Review, or (ii) the publication of a final report on any appeal against the Review.

Information disclosed and the report may be retained beyond six years if it is reasonably necessary and proportionate to do so in the interests of child safeguarding. The review is likely to consider past impact on individuals who were at the time, and may still be, children. If information is provided to the Review which indicates a new or current safeguarding concern, this information will be retained in line with the Swim England safeguarding team's standard retention periods. Under national guidance child protection information should be kept until the child is aged 25. Information relating to child protection concerns about an adult should be kept until at least 10 years after their normal retirement age.

Your rights

Under the UK GDPR and Data Protection Act 2018, you have various rights in connection with any personal information about you that is processed by the Review depending on the reason for the processing of your data:

- **Right of access:** You can ask us for copies of your personal data. There are some exemptions to this right, so we may not provide you with all the information that we process on you.
- **Right to rectification:** You can ask us to correct inaccurate data or complete data you think is incomplete. We will consider all such requests carefully.
- **Right to erasure:** You can ask us to erase all of your personal information in certain circumstances. We will consider all such requests carefully, but it may be necessary to retain some or all of the personal information for the purposes of conducting the Review.
- **Right to restrict processing:** Should you have concerns about how your data is being processed you can ask us to restrict the processing until your concerns have been resolved.

- **Right to object to processing:** You can object to processing. If you wish to do so, we will consider whether the requirements of the Review outweigh the grounds for objection.

Should you wish to exercise these rights we have one month to comply. The rights are set out in detail within the Data Protection Act 2018 and UK GDPR, explaining the circumstances under which you may exercise these rights and any exemptions that we may rely upon.

If Swim England or the Reviewer have collected and processed your personal data with your consent, then you can withdraw your consent at any time. Withdrawing your consent will not affect the lawfulness of any processing we conducted prior to your withdrawal of consent, nor will it affect the processing of your personal data conducted in reliance on lawful processing grounds other than consent.

Contact information and complaints

If you have any comments or queries regarding this Privacy Notice, please contact us at apps.review@swimming.org.

At the request of the Reviewer, please do not make any contact to the Reviewer directly, and instead please direct any queries to apps.review@swimming.org. Any contact made elsewhere shall not be responded to.

If you wish to make a complaint about our collection or use of your personal data for the Review, please contact us in the first instance so that we may seek to resolve your complaint.

If after raising your complaint with us you remain unhappy, you have the right to lodge a complaint with the Information Commissioner's Office (ICO), the statutory body overseeing data protection law in the UK. The ICO's contact details are:

Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF
Email to: casework@ico.org.uk
Telephone: 0303 123 1113

Any complaint to the Information Commissioner is without prejudice to your right to seek redress through the courts.

Review of this Privacy Notice

This Privacy Notice will be kept under review throughout the Review and may be updated from time to time. It was most recently updated on 12 June 2024.

Annex C: FAQs

Copy pasted from the website but formatting has slightly changed

Ellesmere College affiliation application

Updated 9 July 2024

Swim England has received an application from Ellesmere College Swimming Academy to Affiliate to Swim England. Ellesmere College Titans was disaffiliated from Swim England in 2022.

Swim England has appointed Katherine Apps KC as an independent person to make recommendations to the Board of Swim England on the application. She must make a report recommending that the application is accepted, dismissed or accepted with conditions.

- [The Terms of Reference are published here.](#)
- [The Privacy Notice is published here](#)
- [The survey on the application may be found here](#)

The email address for contacting Katherine Apps KC as part of the review is apps.review@swimming.org. Please do not try to contact Katherine Apps KC through other means to discuss the review.

The Terms of Reference require that:

3.3. In coming to the Decision, the Individual shall have consideration to Swim England's Regulations and required standards for Club Affiliation.

3.4. The Individual shall adopt a principles-led approach in making the Decision, with the desire to safeguard children at the heart of the decision. Accordingly, they shall consider both the positive and negative outcomes of a decision to allow the Club to affiliate, or not.

3.5. The Decision shall be based upon the current position of the Club and the College, including but not limited to its policies, procedures, culture and any current concerns, and accordingly shall not consider whether the College was suitable for affiliation in the past. The Individual shall consider past findings in respect of ECT and the College as background information, to assist the Individual in determining whether the College has now addressed previously existing concerns.

3.6. In the event that the Individual is made aware of a current safeguarding concern, they shall firstly ensure that the Swim England safeguarding team are aware of such. Following, the Individual shall determine the extent to which it is relevant to the Decision and the weight

that shall be given to the concern given (i) its nature, and (ii) whether any Swim England process has been completed in respect of such.

3.7. In making the Decision, the Individual shall consider any evidence provided to it by Swim England or any other involved party. The Individual may request evidence or representations from any involved party, including by way of an open consultation, should they consider such appropriate.

3.8. The Individual shall, in consultation with Swim England, determine the process to be adopted for the purpose of considering the matter and coming to a decision.

3.9. Notwithstanding these terms of reference, the Individual shall be entitled to disclose any detail to the statutory agencies (including, but not limited to, the police, LADO, DBS) they shall be entitled to do so in the interests of discharging safeguarding obligations.

The standards for Club Affiliation are set out in the Handbook for Swim England which is [here]. This requires compliance with Swim England's Safeguarding policy, Wavepower. The current version of [Wavepower is here](#).

Both the Handbook and Wavepower have been updated since the [Weston Review which is published here](#).

There are also publicly available Independent Schools Inspectorate reports which refer to the previous swimming club. All of those reports can be [accessed here](#).

The Handbook and Wavepower require that any club, as a condition of affiliation require that all members comply with a Code of Conduct, and all relevant rules and policies of Swim England, Swim UK Anti Doping and World Aquatics, the international federation.

These regulate conduct both in competitions and both inside and outside the pool. They apply to conduct of members outside of swimming including on social media, the internet and otherwise and permit an assessment of safeguarding matters which both cause or have caused harm and which may pose a risk of harm to children and/ or adults at risk.

Katherine Apps KC was appointed and sent documents to commence the review on 14 June 2024.

The Terms of Reference provide for her to regulate her own procedure.

Katherine Apps KC has compiled the following FAQ about her process

1. What is your process?

My process will, broadly, be the following:

1. **Considering the documents submitted by the Club.** *I have received the documents sent by the Club with their application to affiliate. I will consider these against the Swim England Handbook and requirements in place currently. Where I have questions arising from those documents, I have raised those with the Club officers referred to on that application and/ or the School.*
2. **Considering documents provided by Swim England:** *I will review documents received from Swim England.*
3. **Considering documents provided by the School:** *I have written to the School and received documents submitted by them. I have already had a meeting with the School's Acting Headteacher and responded to the School's questions about my process and about the relevance of some of my information requests and information gathering.*
4. **Interviews:** *I have sought interviews with those named on the Club's application as relevant officers.*
5. **Survey:** *I am collating responses from individuals other than the School itself, the Club and other agencies through an online survey.*
6. **Targeted document requests:** *Where a document, correspondence, or information gives rise to a relevant question I may request further information or documents from the person or organisation.*
7. **Public documents:** *I have considered the [Weston review](#) . I will also consider public judgments of Courts and Tribunals where relevant.*
8. **Other agencies:** *I have written to the Independent Schools Inspectorate, Local LADOs, relevant sections and bodies within Swim England referred to in my Terms of Reference, the current swimming club that Ellesmere College Swimming Academy Members are members of and are registered with for Swim England. I may also write to other statutory agencies or Sports Governing bodies or other third parties where appropriate.*
9. **Swim England Safeguarding:** *I will also ask Swim England Safeguarding if they hold any other information relevant to my Terms of Reference, including evidence and findings and for their view, once I have reached factual conclusions, based on those factual conclusions whether they consider the Club to be compliant currently with Swim England Rules, policies and the Handbook and if not to explain to me why not. I am not bound by those submissions and will exercise my own judgement. I will exercise particular care if I consider that a factual finding from a previous process cannot be relied on or given significant weight due any failure of fair process.*
10. **Ensuring an opportunity for the Club to be heard;** *I am following principles set out in English case law. This means that where I may make a finding adverse to a person or the club, that I give that person or the Club an adequate opportunity to respond. What an adequate opportunity is will depend on the circumstances. Some of*

this is built into the process and Terms of Reference. For example, the Club already knows from my Terms of Reference that I will consider all documents submitted against the Handbook, Rules and Policies and that I will be considering whether they are fully cooperating currently with those Rules and policies, and whether I accept that their processes, governance etc have changed sufficiently since the previous processes. It will also be clear in the questions I am asking in correspondence. The interview process also allows me to gather relevant information and for relevant people from the club to be heard. At the end of the evidence gathering process, I will carefully consider whether I need to give any particular separate further opportunity to make any further submissions or evidence before reaching my conclusions on the evidence.

2. Can I contribute?

Yes. You may contribute if you have relevant evidence or other documents relevant to my Terms of Reference. Please follow this [survey link](#).

Please only fill in the survey once.

The survey is open until 22 July 2024.

3. Why are you doing a survey?

My Terms of Reference allow me to consider evidence both from the School, Club and Swim England and other individuals. I have set up a survey to structure and collate relevant information and submissions from individuals who wish me to consider their information or submissions.

I am also aware that Louis Weston's report queried whether members of Ellesmere College Titans and their parents had been permitted to make submissions before the decision to disaffiliate was made.

This survey asks a series of structured questions on topics relevant to my review. In the adult and over-16 versions, at the end of the survey, it asks whether any person has any further submissions or documents they wish me to consider in making my recommendation. There is a shorter, and more suitable formulation for those aged 13-15. I consider that those under 13 may not understand the language used in my Terms of Reference so they have been asked a shorter and simpler list of questions.

The survey asks questions both about the past and the current position. It is helpful for me to see answers to both types of questions due to the questions asked in my Terms of Reference. It is not my remit to determine whether Ellesmere College Titans was suitable for affiliation in the past. It is my remit to consider past findings and whether the College has now addressed previously existing concerns.

4. Why are you asking children questions in the survey?

Children, especially those who swim with Ellesmere College Swimming Academy, who are pupils at Ellesmere College, and potentially other children (for example those who swim in competitions against members of the Swimming Academy) may have information relevant to my review and may wish to contribute.

I have carefully considered how to frame the questions so that this provides a fair opportunity to submit relevant information. It enables me to obtain evidence relevant to the decision I have been asked to make.

Those questions inevitably both relate to the past, and to the time of the Ellesmere College Titans, so that I can make a decision as to whether and to what extent matters have changed, as Ellesmere College Swimming Academy has submitted in their submissions to me that they have. I have also asked some questions about the position now which is also relevant to whether Ellesmere College Swimming Academy currently does and will be able to be in a position to ensure that all of its members (both adult and child members) comply with the rules and policies of Swim England, Aquatics UK and World Aquatics as required in the Handbook.

I have discussed the survey in a meeting with the current acting Headteacher and Head Coach and also corresponded with them. I have explained my process and rationale to them and they have sent out the survey.

5. Why are some of the children questions the same as the adult questions?

Where the questions are appropriate for my Terms of Reference and framed appropriately it is helpful for me to ask the same questions where possible so that I can compile as complete a picture as possible. I am able to filter the data by reference to who the person is, for example whether they are a parent, child, former member etc.

This helps me build an evidential picture. It is not the only information I consider as part of the review. I will also carefully consider the submissions of the Club, School, relevant statutory agencies and Swim England. A summary of my current proposed process is summarised above.

6. Are you asking suitable questions for the age of the children?

In compiling the survey I have carefully considered the framing of the questions. While it is not a market research survey I have read and taken into account the guidance of the Marketing Research Society, the trade body for market researchers which has detailed guidance on creating surveys (albeit for market research purposes). I have used the same age split as they suggest, including a tailored version for 13-15 year olds, which ask some, but not all the same questions as the over 16 version, and a separate shorter simpler version for the survey for those aged in year 5-7. Ellesmere College Swimming Academy takes children from year 5.

Some of the questions are similar to those asked of school children in surveys by Ofsted or the Independent Schools Inspector. I have considered also the Advocates Gateway guidance

materials, guidance from the NSPCC and the Child Protection in Sport Unit and guidance from the Information Commissioners' Office. I have also read and had regard to the formulation of the survey for Fiona Scolding KC into Harmful Sexual Behaviours at Westminster School, which had involved a survey of pupils asking about harms, including sexual harms (<https://www.westminster.org.uk/wp-content/uploads/2022/03/Independent-Review-into-Harmful-Sexual-Behaviours-Fiona-Scolding-QC.pdf>), I have also used my skills and experience from my legal practice.

I gave the School and Club the opportunity to comment on the draft survey and to provide drafting improvements and suggestions in conjunction with their school educational psychologist. While they initially queried whether it was necessary to ask the questions asked, and said that "students may not find the survey easy to answer" and queried whether the survey should be publicly accessible or sent to students or parents not in the swimming club, they did not provide any drafting suggestions.

7. I require reasonable adjustments to be able to submit evidence?

Please email apps.review@swimming.org to ask for a reasonable adjustment.

8. My child or I have special educational needs (SEN), can I fill the survey for a lower age group as a reasonable adjustment?

I explained on 28 June 2024 to the School acting Headteacher that I would like to make this available and set out the process for this.

I explained:

If any of your pupils has SEN which cause developmental delay or who would not understand the 16 and over version (or if 13-15 that version), please could you let me know. I would be content with those individuals being emailed the survey and asked to enter 11, 12 or 13 in the age but also to fill in one of the free text boxes on the form to disclose their actual age and they have inserted a lower age on your instruction due to SEN. There is also the possibility of requesting reasonable adjustments to the survey to reduce or mitigate disadvantage due to disability. If you give this permission to any child or parent, please let me know.

If you are an adult and you would like to fill in a younger version as a reasonable adjustment please contact apps.review@swimming.org and please explain in one of the free text boxes when you fill in the survey that you have done this.

9. Why is this survey being asked of people who are not currently members of Ellesmere College Swimming Academy?

People who are not currently members of Ellesmere College Swimming Academy may have information relevant to my Terms of Reference.

This survey enables any person with relevant information to submit it in the structured manner that the survey asks. There are also several free text boxes.

I will consider all submissions made and consider whether evidence is relevant and if so, how it should be considered within this process.

10. I want to report a current or past safeguarding issue, how can I do this?

Please do report harm or risk of harm to Swim England, details for how to do this online can be found on [this link](#). The safeguarding team can be contacted on 01509 640700 (Option 1 for Swim England and then Option 3 for Safeguarding). Please leave a message if the team is unavailable and they will get back to you as soon as possible.

If you would like to talk to someone independent, [Childline](#) can be contacted on 0800 1111.

If the concern is urgent and about a child at risk within Swimming and you cannot contact your Welfare Officer or the Swim England safeguarding team, you can call the NSPCC on 0808 800 5000.

If it is an emergency because a child or adult is at immediate risk, then call the police or children's social care (if appropriate) in your area.

If a child or adult is in immediate danger contact the police on 999. For non-emergencies 101.

The School Safeguarding policy and contact details are available [here](#).

11. What do I do if I disagree with the Terms of Reference?

I am not able to change my Terms of Reference. If you have information relevant to my Terms of Reference please could you complete the survey.

If you wish to complain to Swim England about the Terms of Reference the details for their complaints policy is [here](#).

For safeguarding concerns or matters relating to safeguarding please follow this link [here](#).

12. Will you respond to me directly if I leave my details?

The purpose of the survey is so that I can receive relevant information, submissions and evidence within scope of my Terms of Reference. I am unlikely to reply individually to all submissions.

I will consider the submissions as a whole along with other evidence in making my decision. Some of the questions asked, are similar to those asked by Ofsted and the Independent Schools

Inspector and are aimed at giving a flavour of school and club culture currently and the awareness generally of policies and processes at the school and club.

Like Ofsted and the ISI, I cannot determine individual complaints against Ellesmere College, Ellesmere College Swimming Academy, Swim England or otherwise. Links to their complaints policies are:

<https://www.ellesmere.com/fs/resource-manager/view/df08a3f2-9e0f-4a16-b6d8-36edf0a836f5>

<https://www.swimming.org/library/documents/6007/download>

If you leave your name and contact details I may respond to you directly but I do not promise to do so.

13. Can I remain anonymous on the survey?

The survey can be filled in anonymously. You do not have to give your name or contact details. However, if you do not do so this might affect the way in which I can use the information submitted and may mean that I can give it less weight.

14. How do you use my data?

Please refer to my privacy policy. The survey contains a shortened summary aimed to be accessible to children, considering the ICO's guidance.

15. I think it is in the best interests of child members to affiliate and it harms them by the club not being affiliated

If this is your view, you are very welcome to fill in the survey.

The interests of child members of the current club are not the only consideration I will consider. One of the purposes of the Swim England Handbook and Wavepower is so that all participants agree to be bound by the code of conduct and rules of Swim England. If there is evidence which suggests that the Club cannot or may not ensure compliance of members, this is relevant to my review. If the Club is not organisationally compliant with the current rules, that is also a relevant consideration. The purpose of the Handbooks and policies are also to protect children at other Swim England affiliated clubs, competitors and those involved in the sport for leisure purposes. There is no inalienable right for any person to be able to join or affiliate to a sports governing body.

For more detail on the rationale for requiring sporting clubs, as a condition of affiliation to bind all its members and participants to the rules of the sport, including safeguarding policies, please see Recommendation 5 in the Sheldon Review into Sexual Abuse in Football at <https://www.thefa.com/about-football-association/sheldon-review>. Many sports governing

bodies have changed their rules over the last several years to mandate compliance with and agreement to be subject to the rules of the sports governing bodies, including safeguarding policies as a condition of affiliation. My Terms of Reference require me to “The Individual shall adopt a principles-led approach in making the Decision, with the desire to safeguard children at the heart of the decision.”

This refers to all children and not only child members of the Club, currently. It includes those who are members of the Club currently.

16. Will you show my survey response to the Club or School?

Possibly but it will depend on the circumstances.

In order to act fairly I have agreed with the Club that I will apply a test from a legal case called [R v Secretary of State for the Home Department ex parte Doody \[1994\] 1 AC 531.](#)

This says:

“Fairness will very often require that a person who may be adversely affected by the decision will have an opportunity to make representations on his own behalf either before the decision is taken with a view to producing a favourable result; or after it is taken, with a view to procuring its modification; or both... Since the person affected usually cannot make worthwhile representations without knowing what factors may weigh against his interests fairness will very often require that he is informed of the gist of the case which he has to answer.”

This does not mean that I will necessarily share the survey response. I may, however, if I consider that I may make a finding adverse to the Club, based on your survey response, either summarise your response, or summarise a theme from responses so that the Club has a fair opportunity to respond.

If you have provided your identity and this is relevant and sharing is reasonably necessary and proportionate to the purposes of this review, then I may share this with the school.

17. Some of the questions sound negative, I am worried that the survey is biased against the Club?

The survey asks relevant questions to my Terms of Reference. Because those Terms of Reference require me to assess both compliance and potential future compliance with the Handbook and polices (including Wavepower) and to take account of past findings and evidence, it is important I am able to extract evidence relevant to those potentially negative features with sufficient particularity. It is also helpful for me to gather responses to a mixture of specific and general questions.

The School and Club also know the questions asked so they also have a fair opportunity to respond and provide material, which I will review. If there are specific responses to this survey

which lead me to consider a potential adverse finding, the Club and School will be permitted an opportunity to respond.

This survey is only part of the information I will consider under my Terms of Reference. I have summarised my current process above.

18. Why does the survey not ask about the swimming facilities at the School?

In the documents so far submitted to me in this review, there has been no suggestion that the Swimming facilities at the school are not adequate.

You may submit any relevant information in the final questions of the survey which ask about my Terms of Reference paragraphs.

19. What will happen to the review if a safeguarding referral is made?

If I am notified of a safeguarding referral relevant to my review, or if I make a safeguarding referral to a statutory agency, or to Swim England or another body I will carefully consider the appropriate course of action.

If there is a current safeguarding, or other, investigation into a person or persons currently who are listed as Club officers, club coaches or members, and they remain involved in the Club, this may be a factor which leads me to recommend that the application to affiliate should not be accepted while a matter is being investigated. I will consider all relevant factors when making my recommendation to the Board of Swim England.

Annex D: Proposed Constitution of the Club (December Version)



**ELLESMERE COLLEGE SWIMMING ACADEMY
CONSTITUTION
(ECSM)
October 2023**

RULES of Ellesmere College Swimming Academy (“the Club”) as at 24th October 2023.

1. Name

- 1.1 The name of the Club shall be Ellesmere College Swimming Academy.

2. Objects

- 2.1 The objects of the Club shall be the development and practice of swimming and open water swimming for its members and shall, where appropriate, be to compete. In the furtherance of these objects:

2.1.1 The Club is committed to treating everyone equally within the context of its activity and with due respect to the differences of individuals. It shall not apply nor endorse unlawful or unjustified discrimination and shall act in compliance with the protections afforded by the Equality Act 2010.

2.1.2 The Club shall implement the Swim England Equality Policy (as may be amended from time to time).

- 2.2 The Club shall be affiliated to the Swim England West Midland Region, and shall adopt and conform to the rules of the Swim England West Midland Region, and to such other bodies as the Club may determine from time to time.

- 2.3 The business and affairs of the Club shall at all times be conducted in accordance with the Articles, Regulations and Technical Rules of Swim England (“Swim England Regulations”) and in particular:

2.3.1 all competing members shall be eligible competitors as defined in Swim England Regulations; and

2.3.2 the Club shall in accordance with Swim England Regulations adopt the current Swim England’s Safeguarding Policy and Procedures (“Wavepower”); and shall recognise that the welfare of children is everyone’s responsibility and that all children and young people have a right to have fun, be safe and be protected from harm.

2.3.3 members of the Club shall in accordance with Swim England Regulations comply with Wavepower.

2.3.4 members of the Club shall accept and comply with the College and Swim England Code of Ethics, Terms and Regulations relating to Safeguarding Policy and all College Procedures.

- 2.4 By virtue of the affiliation of the Club to the Swim England West Midland Region, the Club and all members of the Club acknowledge that they are subject to the regulations, rules and constitutions of:

2.4.1 Shropshire County Association; and

2.4.2 Swim England West Midland Region; and

2.4.3 Swim England (to include the Code of Ethics); and

2.4.4 British Swimming (in particular its Anti-Doping Rules and Judicial Code); and

2.4.5 LEN, the European governing body for the aquatic sports; and

2.4.6 World Aquatics, the World governing body for the aquatic sports.

(hereinafter defined as “Rules of a Governing Body”).

- 2.5 In the event that there shall be any conflict between any rule or by-law of the Club and the Rules of the Governing Body then the relevant Rule of the Governing Body shall prevail.

3. Membership

- 3.1 Ellesmere College (the “College”) is an independent school and as such membership of the Club is only available to current pupils, staff and volunteers of the College.
- 3.1.1 The current non-pupil members in the swimming squads can remain members of the club until such time as they leave under their own accord or have reached the end of year 13.
- 3.1.2 The ECSAMT committee in line with the College’s international links and ethos will consider membership applications from international swimmers who are in school year 13 and below and coaching/pool staff. These members will have the club as their fee paying club.
- 3.1.3 College students who have completed both year 12 and year 13 as ECSA members, will be considered an Old Ellesmerian (an “OE”). An OE may be permitted to only train at the College outside of term time. This is always subject to pool availability and at the Head Coach’s discretion. The OE’s do not have voting rights. The OE’s will only compete under their fee-paying club if applicable, not for ECSA.
- 3.2 Club membership consists of four parts all or some of which may have annual fees. The four parts with applicable fees to be paid by the due date are Club, County, Region and Swim England membership.
- 3.3 All persons who assist with the Club’s competitive activities shall become members of the Club and hence Swim England and the relevant Swim England membership fee shall be paid. This encompasses all working paid or unpaid in the club.
- 3.4 Any person wishing to join the club who falls outside of the membership as detailed in 3.1 must submit an application by the Club’s stated process to the Club Secretary. Any parent or guardian of a current College pupil who is not an Academy member may submit an application for consideration to the Head Coach via the Club Secretary. Election to membership shall be determined by recommendation of the Ellesmere College Swimming Academy Club Management Team (“ECSAMT”). Other person(s) authorised by the ECSAMT committee may take recommendation as to the applicant’s acceptability. The Club application process should be able to view either online or via a paper format.
- 3.5 In its consideration of applications for membership, the Club shall not act in a discriminatory manner and in particular, shall adhere to the Equality Act 2010 (as may be amended). Accordingly, (unless the Club chooses to restrict its membership to only people who share the same Protected Characteristic) the Club shall not refuse membership on the basis of a Protected Characteristic within the Equality Act 2010. Neither may refusal be made on the grounds of political persuasion.
- 3.6 The Club may refuse membership only for good and sufficient cause, such as conduct or character likely to bring the Club or the sport into disrepute, or, in the case of a swimmer, being unable to achieve the entry standards as laid down and provided by the club by the applicant for membership. The club is a closed club, any membership decisions are subject to the admissions policy of the school. Any person refused membership may seek a review of this decision following College complaints procedure.
- 3.7 Membership is not transferable. This includes the transfer of membership rights from a child under 18 years of age to a parent or guardian.

4. Membership and Other Fees

- 4.1 The annual membership fee and all other fees payable to the Club shall be determined from time to time by the ECSAMT committee and shall in so doing make special provision for different classes of membership as it shall determine.
- 4.2 Fees for membership of the Club are paid in advance of each term and added onto the members school bill, For the current non-pupil and OE's, payment of fees will be by invoice. The annual Swim England, Region and County fees (if any) shall be due on joining the Club and thereafter in September each year.
- 4.3 Any member whose subscription is unpaid by the date falling 30 days after due date for payment may be suspended by the ECSAMT committee, from some or all Club activities from a date to be determined by the ECSAMT committee and until such payment is made.
- 4.4 The ECSAMT committee, from time to time, have the power to determine the Club annual membership and other fees. This shall include the power to make such a change in the fees as shall, where the Club pays the relevant affiliation fees to Swim England on behalf of members, be consequential upon a change of such fees. Any increase in subscriptions shall be advised to the members in writing with the reasons for any increase to be reported to the members at the next Annual General Meeting.
- 4.5 The ECSAMT Executive Officers shall have the power in special circumstances to remit the whole or part of the Club fees, to address issues of social inclusion. The club may also make suitable arrangements for the required payment of Swim England, Regional and County fees (where applicable).

5. Resignation

- 5.1 A member wishing to resign membership of the Club must give to the Club Secretary written notice of their resignation via post or electronic means. Notice period shall be one school term.
- 5.2 A member whose fees are more than one school term in arrears shall be deemed to have resigned from the Club and their membership terminated. Where membership has been terminated in this way the member shall be informed in writing either via post to the last known address or by electronic means.
- 5.3 A member who resigns from the Club or whose membership is terminated shall not be entitled to have any part of the annual Club, Swim England, Region or County membership fee refunded and must immediately return any Club, College or external body's property.
- 5.4 The Swim England Membership Department and the relevant Swim England Region shall be informed by the Club should a member resign or have their membership terminated when still owing money or property to the Club.

6. Expulsion and Other Disciplinary Action

- 6.1 The ECSAMT committee shall have power to expel a member when, in its opinion, it would not be in the interests of the Club for the individual to remain a member. The ECSAMT committee in exercising this power shall comply with the provisions of Rule 6.3 and 6.4 below.
- 6.2 A member who is expelled by the school, automatically loses membership of the club.
- 6.3 The Club shall comply with the relevant Judicial Regulations for handling Internal Club Disputes as the same may be revised from time to time.

- 6.4 A member may not be expelled or (subject to Rule 6.5 below) be made the subject of any other penalty unless the panel hearing the complaint shall by a two-thirds majority vote in favour of the expulsion of (or other penalty imposed upon) the member.
- 6.5 The ECSAMT committee (or any person to whom the Committee shall delegate this power) may temporarily suspend or exclude a member from all or particular Club activities, when the member has been expelled from the school or in their opinion or following, such action is in the interests of the Club. Where such action is taken the incident or matter will thereafter be dealt with in accordance with the appropriate Judicial Regulations.
- 6.6 Upon expulsion the former member shall not be entitled to have any part of the annual Club membership fee refunded and must immediately return any Club or external body's property held.
- 6.7 Swim England shall have power to temporarily suspend members or suspend members for a specified term in accordance with Judicial Regulations and Safeguarding Regulations as the same may be revised from time to time.

7. Committee

- 7.1 The ECSAMT committee shall consist of the Chairperson, Secretary, Treasurer (together "the Executive Officers of the Club"), the Head Coach, Director of Sport (if not in executive role), and a College Governor. The Executive Officers shall be employed by the school. All committee members must be not less than 18 years of age.
- 7.2 In accordance with Wavepower the ECSAMT Committee shall appoint two Welfare Officers who must be not less than 18 years of age, who should have an appropriate background and who is required to undertake appropriate training in accordance with Wavepower. The Lead Welfare Officer will be in the employment of the School. A secondary Welfare Officer will not be in the employment of the School, and be a volunteer member of the club. The Welfare Officer's shall not be related to or in a relationship with any one of the 'Executive Officers of the Club' or the Club's Coaches or Teachers.
- 7.3 The Welfare Officers will have a right to attend Committee meetings without a power to vote. Attendance at meetings will be for the purpose of sharing or addressing matters relating to Welfare.
- 7.4 The ECSAMT Executive Officers and Committee members shall be proposed seconded and elected at the Annual General Meeting each year and shall remain in office until their successors are elected at the next Annual General Meeting and take office when the Chairman has closed the meeting. Any vacancy occurring by resignation, termination or otherwise may be filled by the Committee. Retiring Executive Officers and members of the Committee shall be eligible for re-election.
- 7.5 Committee meetings shall be held every 3 months and the quorum of that meeting shall be 50% of the number entitled to vote with at least one executive officer present. The Chairperson and the Secretary shall have discretion to call further meetings of the Committee if they consider it to be in the interests of the Club. The Secretary shall give all the members of the Committee not less than two days written notice of a meeting. Decisions of the Committee shall be made by a simple majority (and in the event of equality of votes the Chairperson (or the acting Chairperson of that meeting) shall have a casting or additional vote.) The Secretary, or in their absence a member of the Committee, shall take minutes.
- 7.6 In the event that a quorum is not present within 30 minutes of the stated start time, a meeting shall stand adjourned to the time and date falling seven days after the date of the meeting, or such other date and time as may be determined by the Chairperson. If a quorum is not present

at the adjourned meeting, then those Committee members attending may act for the purpose of calling a Special General Meeting of the members, to which the provisions as to minimum notice contained in Rule 10.2 shall not apply.

- 7.7 In addition to the members so elected the ECSAMT committee may co-opt up to two further members of the Club who shall serve until the next Annual General Meeting. Co-opted members shall not be entitled to vote at the meetings of the Committee and shall be counted in establishing whether a quorum is present.
- 7.8 The ECSAMT committee may from time to time appoint such sub-committees and roles as they may consider necessary (and to remove (in whole or in part) or vary the terms of reference of such sub-committees) and may delegate to them such of the powers and duties of the Committee as the Committee may determine. All sub-committees shall periodically report their proceedings to the Committee and shall conduct their business in accordance with the directions of the Committee.
- 7.9 The ECSAMT committee shall be responsible for the management of the Club. The Treasurer shall be responsible for ensuring that the Accounts of the Club for each financial year be examined by an independent examiner to be appointed at the Annual General Meeting.
- 7.10 The members of the ECSAMT committee shall be entitled to an indemnity out of the assets of the Club for all expenses and other liabilities properly incurred by them in the management of the affairs of the Club.
- 7.11 The ECSAMT committee shall maintain a log of Accidents/Incidents at Club related activities. Details of such shall be reported to the College and Swim England insurers in accordance with the Accident/Incident Notification guidelines. The Club shall make an annual return to the Swim England Membership Department indicating whether or not an entry has been made in the prescribed online form. A copy of entries should be kept for a period of six years or in respect of an injury to a child they should be kept for six years after they attain 18 years of age.
- 7.12 The ECSAMT committee shall retain all financial records relating to the Club and copies of minutes of all meetings for a minimum period of six years.

8. Ceremonial Positions and Honorary Members/Life Members

- 8.1 The ECSAMT Committee may nominate any person as an honorary member of the Club for a specified period of time, or as a life member, and they shall be entitled to all the privileges of membership except that they shall not be entitled to vote at meetings, serve as Officers, on the Committee or have any role within the club, unless any such person shall also be a fee paying member of the Club in accordance with Rule 3. Such honorary members and life members must be elected at the Annual General Meeting, confirmed annually and be included in the Club's annual return as to membership.
- 8.2 Honorary and/or life memberships may only be removed at an Annual General Meeting of the Club, when it shall be properly proposed in accordance with these Rules.
- 8.3 A minimum of **21** days in advance of the Annual General Meeting, the Committee shall write to all holders of honorary and/or life membership effected by the above proposal drawing the proposal to their attention and inviting them to attend the Annual General Meeting. Reasons for the proposal will be circulated with the agenda.
- 8.4 Where the effected holder or holders of the honorary and/or life membership do not attend or are unable to attend the Annual General Meeting, the Chair may allow the matter (in so far as it relates to the absent person(s)) to proceed directly to vote, which shall be by show of hands.

9. Annual General Meeting

- 9.1 The Annual General Meeting of the Club shall be held each year on a date falling in the month of November. The date, time and venue / online option for the Annual General Meeting shall be fixed by the ECSAMT Committee.
- 9.2 For the purpose of participation in voting at an Annual General Meeting of the Club, all persons shall have been a member as at the membership deadline day which is the date of closure of nominations and submission of proposals.
- 9.3 The purpose of the Annual General Meeting is to transact the following business:
 - 9.3.1 to receive the Chairperson's report of the activities of the Club during the previous year;
 - 9.3.2 to receive and consider the accounts of the Club for the previous year and the report on the accounts of the independent examiner and the Treasurer's report as to the financial position of the Club;
 - 9.3.3 to remove and elect the independent examiner (who must not be a member of the ECSAMT Committee or a member of the family of a member of the ECSAMT Committee) or confirm that he/she remain in office.
 - 9.3.4 to confirm the Executive Officers for the year ahead,
 - 9.3.5 to decide on the dissolution of existing honorary and/or Life membership categories;
 - 9.3.6 To decide on any resolutions that may be duly submitted in accordance with rule 9.6.
- 9.4 For the Annual General Meeting the Secretary shall be responsible for sending to each member at his/her last known postal or electronic address a written agenda giving notice of the date, time and venue of the General Meeting no later than **28** days prior to the published date. The Notice of Meeting shall in addition wherever possible be displayed on the Club Notice Board and College website.
- 9.5 Nominations for election of the Secretary, Treasurer and Chair of the ECSAMT or for membership of the Committee shall be made in writing by the proposer and seconder to the Secretary not later than 30 days prior to the AGM.
- 9.6 Any member entitled to attend and vote at a General Meeting shall be entitled to put any proposal for consideration at any General Meeting provided the proposal in writing shall have been handed to, emailed or posted to the Secretary of the ECSAMT committee, so as to be received by him/her no later than 21 days prior to the AGM in the case of the Annual General Meeting or, in the case of a Special General Meeting, 18 days before the date of the meeting.
- 9.7 No less than 14 days before the published meeting date, together with the resolutions to be proposed, a list of the nominees for the ECSAMT committee posts and a copy of the examined accounts will be circulated to all club members.

10. Special General Meeting

- 10.1 A Special General Meeting may be called at any time by the ECSAMT committee at a committee meeting.
- 10.2 A Special General Meeting shall be called by the ECSAMT Committee and held within **28** days of receipt by the Secretary of a requisition in writing signed by not less than seven members entitled to vote at a General Meeting or, if greater, such number as represents one-tenth in number of such members, stating the purposes for which the meeting is required, and the resolutions proposed.

- 10.3 For the purpose of participation in voting at a Special General Meeting of the Club, all persons shall have been a member as at the membership deadline day which is the date that the requisition for the meeting was made by the Committee or members.
- 10.4 In the case of a Special General Meeting the Secretary shall be responsible for sending to each member at his/her last known postal or electronic address a written agenda giving notice of the date, time and venue no later than **21** days prior to the date agreed by the Committee following the requisition submitted stating the purposes for which the meeting is required, and the resolutions proposed.

11. Procedure at the Annual and Special General Meetings

- 11.1 The ECSAMT Committee can decide to hold the Annual or Special General Meeting virtually, using such electronic and video technology as it sees fit.
- 11.2 The quorum for the Annual and Special General Meetings shall be seven members entitled to vote at the Meeting or, if greater, such number as represents one-tenth in number of such members.
- 11.3 The Chairperson, or in the Chairperson's absence a member appointed by the ECSAMT Committee shall take the chair. Each member present shall have one vote and resolutions shall be passed by a simple majority. In the event of an equality of votes the Chairperson shall have a casting or additional vote.
- 11.4 Only paid-up members who have reached their 18th birthday shall be entitled to be heard and to vote on all matters.
- 11.5 The Secretary, or in his/her absence a member of the ECSAMT Committee, shall take minutes at the Annual and Special General Meetings.
- 11.6 The appointed Chairperson of the meeting shall have unlimited authority upon every question of order and shall be, for the purpose of such meeting, the sole interpreter of the Rules of the Club.

12. Alteration of the Rules and Other Resolutions

- 12.1 The Rules may be altered by resolution at an Annual or Special General Meeting provided that the resolution is carried by a majority of at least (two-thirds) of members present and entitled to vote at the General Meeting. No amendment(s) to the Rules shall become effective until such amendment(s) shall have been submitted to and validated by such person as is authorised to do so by Swim England West Midland Region.

13. By-Laws

- 13.1 The ECSAMT Committee shall have power to make, repeal and amend regulations and by-laws as they may from time to time consider necessary for the wellbeing of the Club. Such regulations, by-laws, repeals, and amendments shall have effect until set aside by the Committee or at a General Meeting. The ECSAMT Committee shall have power to settle disputed points not otherwise provided for in this Constitution.

14. Finance

- 14.1 All monies payable to the Club shall be received by the Treasurer and the College Finance department and recorded in the College accounts as for the purpose of the club.

- 14.2 The College undertakes to pay the Swimming Academy and support staff, and transport costs of the Club activities and allocate an appropriate department budget for general running costs to be managed by the Head Coach.
- 14.3 The income and property of the Club shall be applied only in furtherance of the objects of the Club and no part thereof shall be paid by way of bonus, dividend or profit to any members of the Club.
- 14.4 The Head Coach in line with the College expenses policy, shall obtain written approval at a minimum from the Deputy Head and will thereafter have the power to authorise the payment of remuneration and expenses to any Officer, member or employee of the Club and to any other person or persons for services rendered to the Club and is obliged to provide supporting invoice/receipts with the claim as required by the Treasurer. All claims are counter signed by appropriate authority.
- 14.5 The financial transactions of the Club shall be recorded by the Treasurer in such manner as the ECSAMT Committee thinks fit.
- 14.6 The financial year of the Club shall be the period commencing on 1st September and ending on 31st August. Any change to the financial year shall require the approval of the members in a General Meeting.

15. Borrowing

- 15.1 The ECSAMT committee shall have no power to borrow.

16. Property

- 16.1 All property used by the club is owned by Ellesmere College. Facility use and management is the responsibility of Ellesmere College.

17. Dissolution

- 17.1 A resolution to dissolve the Club shall only be proposed at a General Meeting and shall be carried by a majority of at least three - quarters of the members present and entitled to vote. A specific date for the dissolution shall be included in the resolution.
- 17.2 The dissolution shall take effect from the date specified in the resolution and the ECSAMT committee shall be responsible for the winding-up of the assets and liabilities of the Club.

18. Acknowledgement

- 18.1 The Members acknowledge that these Rules constitute a legally binding contract to regulate the relationship of the members with each other and the Club.
- 18.2 This constitution must be readily available to all club members. This may be via posting on the College Academy website and/or shared with members annually at the beginning of the school year.
- 18.3 The following statement **must** appear on Club membership renewal forms and is to be signed by the member. It must also be countersigned by the parent, or a person having parental responsibility for the member, if under 18 years of age:

“I acknowledge receipt of the rules of Ellesmere College Swimming Academy Club and confirm my understanding and acceptance that such rules (as amended from time to time) shall govern my membership of the Club. I further acknowledge and accept the responsibilities of membership upon members as set out in these rules.”

Annex E: Club Officers

Executive Committee

Chairperson: Mr Horrocks (also Director of Sport at the School)

Head Coach: Mr Worrow

Secretary (including Membership Secretary): Mr Hire

Treasurer: Mrs Avery

Governor Member: Dr Scanlon

All are employed by the School save for Dr Scanlon who is a Governor.

The ECSAMT committee shall be responsible for the management of the Club

Proposed Welfare Officers:

Mrs Mason (School - also a House Mother at the School) and

Mrs Dalziel (independent)

All are over 18 years of age

The Welfare Officers are not be related to or in a relationship with any one of the 'Executive Officers of the Club' or the Club's Coaches or Teachers.

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Annex G: List of Abbreviations Used

Anne Whyte Review	An investigation into allegations of mistreatment within the sport of gymnastics by Anne Whyte KC, accessible at https://www.sportengland.org/guidance-and-support/safeguarding/whyte-review
BG	British Gymnastics
CASC	Community Amateur Sports Club
Club	The proposed Ellesmere College Swimming Academy Swimming Club
CPOMS	Child safeguarding monitoring software
CPSU	Child Protection in Sport Unit
DBS	Disclosure and Barring Service
DDSL	Deputy Designated Safeguarding Lead
DofE	Department of Education
DSL	Designated Safeguarding Lead
ECHR	European Convention on Human Rights
ECT	Ellesmere College Titans Swimming Club
ET	Employment Tribunal
FAQs	Frequently Asked Questions
GDPR	General Data Protection Regulation
ICO	Information Commissioner's Office
ICPO	Independent Child Protection Officer
IICSA	Independent Inquiry into Child Sexual Abuse. Main report and sector reports and information preservation notice available at https://www.iicsa.org.uk/index.html
ISI	Independent Schools Inspectorate
ISS	Independent Schools Standards
Morris Review	Morris review into Culture in South Wales Fire Service accessible at https://www.southwales-fire.gov.uk/app/uploads/2024/01/SWFRSCultureReviewReport.pdf .
Keeping Children Safe	Keeping Children Safe in Education 2024
LADO	Local Authority Designated Officer
MRS	Market Research Society
NGB	National Governing Body
NMS	National Minimum Standards for Boarding
NSPCC	The National Society for the Prevention of Cruelty to Children
PSHE	Personal, social, health and economic education
School	Ellesmere College

Scolding Review

A Review Into Harmful Sexual Behaviours At Westminster School And Recommendations For The Future by Fiona Scolding KC, accessible at <https://www.westminster.org.uk/wp-content/uploads/2022/03/Independent-Review-into-Harmful-Sexual-Behaviours-Fiona-Scolding-QC.pdf>

SE	Swim England
SEN	Special Educational Needs
SENCO	Special Educational Needs Coordinator
Sheldon Review	An Independent Review Into Child Sexual Abuse In Football 1970-2005 by Clive Sheldon KC, accessible at https://www.thefa.com/about-football-association/sheldon-review
SLAPP	Strategic Litigation Against Public Participation
SRA	Solicitors Regulation Authority
Titans	Ellesmere College Titans Swimming Club
Tolley Report	The report into alleged bullying by the Lord Chancellor accessible at https://assets.publishing.service.gov.uk/media/6442539622ef3b000f66f65f/2023.04.20_Investigation_Report_to_the_Prime_Minister.pdf
ToR	Terms of Reference
TRA	Teaching Regulation Agency
UKAD	UK Anti Doping
UKADR	UK Anti Doping Rules
VAT	Value Added Tax
WADA	World Anti Doping Association
Weston Report	A review of the handling of three cases by Swim England by Louis Weston, accessible at https://www.sportengland.org/news/report-published-handling-complaints-swim-england
Working Together	Working Together to Safeguard Children 2023

Annex H: Agencies written to and /or spoken with

The Independent Schools Inspectorate

The Teaching Regulation Agency (at the Department for Education)

Shropshire LADO

City of Leicester LADO

Leicestershire LADO

The Police

I have not provided all of the information supplied by these agencies or a correspondence log in this report as it would be inappropriate to do so in the context of such information sharing.

If the Board has targeted questions I may be able to respond more specifically.

Annex I: Appeal rights

1. My Terms of Reference leave it to me to determine “at [my]discretion which parties shall be entitled to avail of the appeals process and provide rationale for such within the Decision. Any appeal should be accessible on the basis that it is fair, just and reasonable for them to have access to an appeal.”

What is an appeal?

2. I appreciate that this may sound like a simple question but it is an important one.
3. An appeal is a legal process that is expressly provided for where an order (ie substantive decision) can be challenged to a separate level which had not previously been involved in the process. There must be grounds of appeal (ie reasons why the decision was wrong). Appeals can be rehearings or reviews. There is a large amount of case law on what these words mean in the context of different types of hearing. The appeal provisions in my Terms of Reference require particular grounds to be made out. Those grounds must relate to the decision (ie 3.1 of my Terms of Reference) and whether there is a recommendation to affiliate, add conditions or to refuse.
4. Appeal rights are not general ways of challenging any part of a process or any part of the reasoning. They are a particular type of legal challenge to the order or determination in question not the reasoning. see, e.g. *Morina v Secretary of State for Work and Pensions* [2007] EWCA Civ 749; [2007] 1 W.L.R. 3033, CA, at [6]. The appeal must identify what is wrong with the decision. Even in a rehearing (the most intense form of review) there needs to have been something legally wrong with the first decision. Error of fact appeals do not mean that a person has an appeal if they disagree with a factual finding. There needs to be something more than that. In some instances there might be a challenge not to an order but to a failure of the first instance decision maker to follow a fair process in the particular hearing if Article 6 ECHR applies (which it does not do so to decisions of contractually based jurisdictions such as in sports NGBs or employers, save in very narrow circumstances).¹ It is also possible to have common law fairness appeals if the process provides for it (if not the challenge might be under the supervisory jurisdiction or by judicial review if the decision is of a public body). A party does not have a fairness appeal if they chose not to participate in the first stage.
5. Parties who have a right to make submissions at the first stage of a process are expected to raise that point at first instance.
 - a. As Nourse LJ put it in *Pittalis v Grant* [1989] QB 605 at p. 611 :

¹ *R(G) v X School* [2011] UKSC 32 and *Stretford v Football Association* [2007] EWCA Civ 238

"The stance which an appellate court should take towards a point not raised at the trial is in general well settled: see Macdougall v Knight (1889) 14 App Cas 194 and The Tasmania (1890) 15 App Cas 223 . It is perhaps best stated in Ex parte Firth, In re Cowburn (1882) 19 Ch D 419, 429 , per Sir George Jessel MR: 'the rule is that, if a point was not taken before the tribunal which hears the evidence, and evidence could have been adduced which by any possibility would prevent the point from succeeding, it cannot be taken afterwards. You are bound to take the point in the first instance, so as to enable the other party to give evidence.'"

- b. This is especially important in fairness appeals (Bhardwaj v FDA [2016] EWCA Civ 800 at [93]). Parties cannot let a matter proceed in a particular way aware of the issue, then later say that the Tribunal should have dealt with it in a different manner.
 - c. It will also be especially important if the appeal would require a different factual finding to be made (Rhine Shipping DMCC v Vitol SA [2024] EWCA Civ 580).
 - d. Further as Ward LJ held in Ealing LBC v Richardson [2005] EWCA Civ 1798; Ward LJ observed (at [20]): *"a simple failure to put one's case before the first court is not ordinarily to be cured by a re-hearing."*
6. When considering whether grounds are arguable the Courts have set out some guidance. See Coulson LJ in Wheeldon Brothers v Millenium Insurance Co [2018] EWCA Civ 2403 at [17]-[18], editing this list down this includes the following principles.

(b) applications for permission to appeal on questions of fact or on the evaluation of expert evidence must meet the high threshold summarised in Grizzly Business Ltd v Stena Drilling Ltd [2017] EWCA Civ 94 at [39]-[40] and Thomson v Christie Manson & Woods Ltd [2005] EWCA Civ 555 at [141];

(c) additionally, where permission to appeal ... is sought because it is: "... likely to involve
i) detailed findings of fact in an area of specialist expertise (and/or
ii) lengthy and interlocking assessments of both factual and expert evidence) and/or
iii) factual minutiae which is difficult or impossible sensibly to reconsider on appeal

the Court of Appeal will be reluctant to unpick such a judgment with the inevitable result that obtaining permission to appeal on such matters in a ...] case may be harder than in other, non-specialist types of case.

7. Usually whether there are grounds of appeal which is provided for the legal framework should be apparent from the reasoning that accompanies the order. This may not always be the case. The White Book (the main text book on procedure) says at 52.3.7:

If one ground of appeal is that the judge has failed to deal with a particular point, the judge should be given an opportunity to deal with that point at the hearing before the application for permission is made: see English v Emery Reimbold & Strick Ltd [2002] EWCA Civ 605; [2002] 1 W.L.R. 2409 at [25] and Re S (Children) [2007] EWCA Civ 694 at [23]-[25]. In Greenwich Millennium Village Ltd v Essex Services Group Plc [2014] EWCA Civ 960; [2014] 1 W.L.R. 3517, CA, the Court of Appeal explained that, where a judge of a lower court in refusing

permission to appeal amplifies the reasons for their original decision, the appeal court in determining the appeal is entitled to take those additional reasons into account.

8. In some contexts where Article 6 ECHR applies, that legal process (which might be an appeal or review) must be independent of both parties and must also be impartial.
9. It is also possible to have an internal appeal process, for example as occurs under most contracts of employment, which is internal to the employer, but independent from the first instance decision maker. Compatibility with Article 6 ECHR is supplied by the underlying statutory framework which provides for the law of contract and causes of action, such as unfair dismissal, through which there is the ability of parties to access the Courts.
10. In Sports NGBs the Court's supervisory jurisdiction applies where a decision affects a person's right to work (restraint of trade) or where competition law applies (for example in relation to decisions between competitor clubs in a league through which revenues are earned and shared) or where the implied term of good faith applies in contract (which does not usually apply to termination).
11. Appeals may be provided for in rules of a sports NGB. They do not apply where they are not expressly provided for. Access to justice is provided for by the supervisory jurisdiction. It is common for sports NGBs rules to provide for appeals from decisions affecting individual participants including contested risk management measures in safeguarding. Many NGBs rules also allow clubs to appeal particular decisions.
12. Some first instance decisions are made by independent panels. Some can be made by decision makers which are not independent. Some sporting rules provide for automatic sanctions (for example in the Premier League rules an automatic points deduction on insolvency).
13. Appeals and first instance decisions in sports NGBs may be arbitral in nature such that the Arbitration Act 1996 applies. This, through statute, limits access to the Courts to challenge the decision.
14. Appeals and first instance decisions in sports NGBs are not always arbitral. Sir Gary Hickinbottom recently determined that the specific complaints process introduced by British Gymnastics after the Whyte Review was not arbitral.² Safeguarding processes are usually contractual and not arbitral (but they may be).
15. Even where a contractual process is not arbitral the law still expects the principle of finality to apply. There is no inherent right of appeal in bodies to which the supervisory jurisdiction applies.
16. Sometimes interested parties in the first instance hearing may be able to appeal. I am not aware of any process under which such parties would have a right of appeal to a

² <https://www.british-gymnastics.org/articles/independent-complaints-process-icp-appeal-panel>

recommendation on an application made by another person (save for the very specific and different context of criminal parole).

What does Weston mean?

17. Some appear to have misunderstood Louis Weston's report. I confess I do not find it easy to follow especially on this issue.
18. Some of the issue may arise from the fact that he was considering multiple different types of processes (complaints, disciplinary and safeguarding) all of which are materially different, but some of the recommendations consider them together.
19. This is particularly noticeable in relation to appeals. Some misconceptions may be made if the reader reads across what is said in relation to the criticism of one process (for example that there was no right to make representations in cases where there was a decision under the previous iteration of rule 241 by a club or an appeal by that club because that had to be exercised by an "individual") into his reasoning regarding complaints processes. They are different.
20. This is clear from paragraph 142(b) where he explains that Case 1 (Titans) was essentially one of maladministration and not something where the parents would expect to have procedural rights in the process of determination (see also reference to consultation rather than participation: the two are different). I do not agree with his analysis that consultation is a prerequisite to what is essentially a termination of contract. No authority is cited. Indeed, the authorities on good faith and termination now point very much in the opposite direction (see Chapter 3: Popplewell J in *Dymoke*).
21. Louis Weston also criticised the personal involvement of the CEO in decisions and that they were not subject to any process or appeal. He said at 88:

"Once more, the problems the process causes are manifest in the Cases. In Cases 1, 2 and 3, the CEO was drawn into the process by complaints from members and became involved in the decisions to initiate or act on complaints. The CEO was thus put in a position of involvement in a process that the CEO theoretically would be involved in sanctioning."
22. That too is a separate question and does not relate to whether there should be a right of appeal from the CEO, but instead the personal involvement in complaints made involving a live process that would be subject to its own judicial process. Louis Weston recommended the removal of the CEO from any power of what he called sanction, which as discussed in Chapter 3 is unusual language to have used in the context of a decision that was a safeguarding risk assessment, or in the case of then rule 241 and removal of affiliation, in fact a termination of a contract (again legally different). Reference to the CEO's role as not being involved in complaints or in judicial processes are made at paragraphs 129 and 130. Neither refer to there being a right of appeal.

23. Some confusion may have been contributed to by his paragraph 107 which recommends that judicial processes, both applicable to complaints and safeguarding are reviewed. He does not say that they are the same, nor would he do so.
24. Confusion might further have been added by the finding at paragraph 115 (without hearing from Swim England West Midlands Region by what is recorded) that the complaints of parents relating to the club disaffiliation were substantiated because the cases “do not appear to have obviously followed any fair process whether in the investigation or the disciplinary action that followed.” That is a puzzling sentence because it assumes that a complaint by a parent would have an impact on an investigatory process for a different rule within the Handbook and which relates to termination of the contractual relationship. There is also reference to there not being an “open” process (which would not make any sense in the context of a safeguarding process which in no sports NGB is an “open” process as set out in Chapter 3).
25. There is then at [119] where he comments that “*whichever route SE choose to follow it denies the subjects of the ICPO’s investigation input and challenge, a right to be heard , a right to know the case against them and then a right of appeal.*” Most of the confusion appears to lie in relation to this paragraph:
- a. All parts of this until the reference to appeal appear to refer to the *ex parte Doody* principle which only applies to the person who is subject to the process (ie the individual sanctioned, or in the case of the club , the club itself).
 - b. A right of appeal is then added. There is no common law right to an appeal. No authority is cited for the proposition that there must be a common law right to appeal.
 - c. Most sports NGBs do in practice provide them as an alternative to the supervisory jurisdiction where the matter concerns something within the doctrine of restraint of trade or competition law and provides such a right to an externally appointed independent person. Many sports NGBs do provide for independent appeals which is practice reduces claims in the Kings Bench Division and has the option to apply more intense standards of review which can be appropriate.
26. That does not mean the sport NGB makes no representations. Indeed, it is almost inconceivable that they do not . I have on occasion had a sports NGB take a position that they wish to be neutral, they still provide assistance to the panel in making submissions on their rules, providing the rules and ensuring they are not misunderstood and providing factual clarifications and disclosure of relevant documents. Requests for such assistance in this process have been met by refusals by the Director of Legal on the grounds of ensuring my independence.
27. It is therefore difficult to decipher what his report means regarding an appeal. However, what is clear is that he considers *ex parte Doody* to be important for those with a right to be heard in an adversarial or inquisitorial process. That clearly does not give a right of appeal to a person who is not the person subject to the original decision.

28. There is no reference to any appeal for any party in relation to an application for affiliation of a club.
29. He was clearly unhappy with aspects of what (without evidence save from the complainants) that he thinks occurred in respect of disaffiliation, the role of the CEO having been involved in the merits of the case and the appeal against the CEO being only exercised by an individual and not a club. I do not think it is possible to derive from Weston any further legal principles applicable to this matter.

What is the appeal right in this case?

30. Most unusually my Terms of Reference ask me to derive this rather than setting this out and somewhat opaquely saying "*Any appeal should be accessible on the basis that it is fair, just and reasonable for them to have access to an appeal.*"
31. I take from this that I should have regard to fairness and justice, and any appeal that exists should be capable of being exercised in practice and that the process should be accessible. It does not say that there needs to be an oral hearing or any other process. It does not provide for the appeal to be in public or not. The decision presumably would need to be otherwise this Decision, which is public, would remain. It makes no reference to any existing legal principles relating to appeals.
32. As with any appeal, the appeal would be against the order made (ie the outcome in 3.1 and not the reasoning of the report). This in practical terms means that, as the outcome sought by the club (outcome 3.1.1) has been granted there is no order which they would have a right of appeal against.
33. As I did not know what the recommendation would be I gave fair opportunities to all potentially relevant parties on what my Terms of Reference actually meant.
34. The School Governors confirmed on 15 August 2024 that they did not expect a right of appeal.
35. I raised this also both in interviews with the Club officers, Mr Horrocks and Mr Worrow and Ms Pritt-Roberts. The Club decided that it would tell me which of Mr Horrocks or Mr Worrow would exercise the Club's appeal (practically difficult because the Club is not yet Constituted, albeit it is now capable of constitution now the Governor has been identified).
36. I provided an opportunity to all to make any submission relevant to my Terms of Reference through the survey. Only one person did so. The apps.review email address was also made public. Both my Terms of Reference, and the survey were made public.

37. In my view the first clue to the proper legal analysis appears from paragraph 8.4 of my Terms of Reference.
38. Paragraph 8.4 provides for the appeal to be instituted within 14 days of the “*date of the Decision*,” which presupposes that a person with a right of appeal is notified of the Decision before its publication under paragraph 4 of my Terms of Reference. That suggests strongly it can only be the Club and Swim England.
39. There are 3 potential grounds of appeal. These are:
- 8.3.1. that the outcome exhibited a material error of law, including in respect of Swim England’s Regulations provided that where these Terms of Reference and the Swim England Regulations conflict, these Terms of Reference shall take precedence;*
- 8.3.2. that a material error of fact which, had it not been made, would likely have caused a materially different decision to be made; and*
- 8.3.3. that the outcome could not have been reasonably reached when faced with the evidence before them or was otherwise irrational.*
40. I sought input from the Director of Legal at Swim England as to what these provisions were intended to mean as set out in Chapter 2.
41. Swim England, through their Director of Legal, declined to make any representations purportedly for the reason of ensuring my independence. I explained that I could receive submissions from the original drafters of the Terms of Reference without losing my independence (for example a judge who hears submissions does not cease to be independent). Submissions and representations were not provided save to confirm that Director of Legal at Swim England was not aware of any specific representation made to an individual, organisation or group of individuals that they would have a right of appeal, that was sufficiently devoid of qualification and from which a legitimate expectation of an appeal or particular process might be said to arise. This has also expressly been confirmed by the Swim England CEO, Mr Salmon. The Director of Legal has informed me of her view that the Board is keen to ensure my independence. I understand that wish. I do not consider it prevents any representations on this issue, indeed the Terms of Reference appear to provide for it in their references to my being able to consult with Swim England.
42. On 2 August 2024 I wrote to the Swim England Director of Legal and noted that, as with court proceedings, if a party has an opportunity to address a submission and chooses not to do so, they can rarely do so on an appeal (summarising the principles from the above authorities). I said:

“If you do not respond it may affect whether Swim England can exercise a right of appeal. Generally raising a legal point later when it has not been raised at first instance prevents the point being raised

on appeal. Not making submissions limited what is available to Swim England should the Board think I have got things wrong.”

43. I also wrote to Swim England’s Director of Legal on 26 July 2024, 31 July 2024, 1 August 2024 and 24 August 2024 and on 2 September 2024 seeking clarification of the intention of the Terms of Reference provisions and providing an opportunity to make representations germane to any of the potential grounds of appeal.
44. I also corresponded with the other interested party, the only other person to have sought to address appeal rights. I explained my legal analysis and specifically gave them an opportunity to respond. That person had mentioned that they had received some assistance previously from a barrister friend and I gave permission for that person to make submissions to me if that would assist. No legal submissions were made. The gist of the submissions made were that if victims of the Titans were not granted an appeal the Terms of Reference were deficient. There is no express right of appeal for victims of Titans in my Terms of Reference.
45. I considered whether in my discretion I should afford any other person a right of appeal. I consider that this would be inappropriate for the following summary reasons.
 - a. Firstly, a right of appeal needs to be expressly provided for. In no other area appealing to fairness or justice or accessibility gives a right of appeal. If my decision impacts on restraint of trade, which might conceivably be arguable in respect of the Club but no other person, could it be said that the KBD might have supervisory jurisdiction. No party has taken this position.
 - b. Secondly, the usual position when an unincorporated association applies for something, for example some kind of license, is that the applicant has a right of appeal, and sometimes the licensing body may too, if there is separation between the first instance decision maker and the body itself (but not always). Other interested parties do not usually get a free-standing right to challenge.
 - c. Thirdly, in the context of risk-based processes, there is now (recently) something a bit like an appeal (but not an appeal) in some extremely limited contexts:
 1. In relation to prisoners’ parole decisions, the previous position was that parole decisions were not challengeable by victims. This was changed in legislation following a detailed review of prisons law in 2018.³ Changes to legislation in 2004 had meant that victims of individuals given more than 12 months sentence were entitled to receive specified information about key stages of an offender’s sentence and make representations about license conditions. The reason for this is obvious. For example, for a previous victim of domestic violence they may be likely to

³ https://assets.publishing.service.gov.uk/media/5ae3af95e5274a702130dc17/review-of-the-law_policy-and-procedure-relating-to-parole-board-decisions.pdf

be contacted by the prisoner on his release and may have specific representations to make, particularly if they share children or there is a risk to children. The law was changed in 2018 to provide for parole decisions to be reasoned and also for increased victim participation and something like (but not quite) a victim's appeal; a reconsideration process, with limited grounds. This does not entitle a victim to disclosure of all material relevant to the risk assessment carried out on the prisoner and required particular machinery to implement.

2. My process is not akin to a parole decision in many ways. It concerns a forward-looking assessment of an unincorporated association which is not yet fully constituted, rather than an individual criminal offender.
3. That process, even if similar (which I consider it not to be) is not a full appeal and does not require (or permit) full disclosure of risk relevant information.
4. That procedure did not exist until created by statute, which tends to suggest it could not conceivably have been implied at common law.

d. Fourthly, I give the greatest attention to the words used in my Terms of Reference. I do not believe that the Grounds of Appeal (especially 8.3.3) could be conceivably aimed at any person other than the Club. There are still potential difficulties with disclosing all the material sent to me to Mr Worrow, who is new, and some material relating to medical records have a limited consent (which expressly does not include Swim England) and I do not believe includes new staff at the School (it does include Ms Pritt-Roberts which is how I have been able to assess it fairly and some documentation was sent to or originally copied in Danny Proffitt and I have been able to assess this fairly with him). I am concerned by the reference in Louis Weston's report to openness when he is discussing multiple processes including safeguarding. This would be wholly unusual in my experience and as set out in greater detail in Chapter 3.

46. Therefore, I consider that the grounds of appeal (especially 8.3.3.) can only lawfully include the Club and Swim England.

47. With Swim England, it is difficult to see who, corporately should be entitled to a right of appeal. This Decision goes to the Board, which has not, so far as I am aware, publicly committed to follow it. If Swim England acts through its Board (which would be usual) and the Board accept my recommendation, any appeal would seem meaningless and would, in effect, involve Swim England appealing a Decision adopted by its own Board. I raised the question with the Director of Legal. She indicated that if there is a right of appeal for Swim England, she would be the person to exercise it. She has had ample opportunity to make representations on whether I have made any error falling within the grounds of appeal as this matter has progressed and she has received a copy of my report in substantial draft form on 3 September 2024. I appreciate it is long.

However, I would hope that if there were any matters falling within the appeal grounds that those would have been highlighted to me, in the usual way, at the first time they became apparent. The Terms of Reference envisage that my process will be in consultation with Swim England, so it would not be usual to expect an error of law, process or irrationality known of sooner but not raised, to be capable of being raised on appeal. In relation to fairness in particular, the usual position is that this must be raised immediately. It is not open to a party to wait to see whether they like the result before making an unfairness argument.

48. I am not persuaded that there is a meaningful way Swim England could appeal this Decision when an opportunity to make submissions on any aspect of fairness, decision making or appeal rights was given and not taken. This is reinforced by the lack of substantive response to my 2 August 2024 email.
49. The Club has sought that I recommend affiliation and I have done so, so it would appear that there is nothing to be appealed.
50. There are no express conditions and the matters set out record their agreed position.
51. If they wish to argue otherwise on appeal, they would face the inevitable difficulty of this decision, in effect, having been by consent.
52. Furthermore, the individuals interviewed all agreed the process was fair and in several emails I have been thanked for my transparency.

Procedure to ensure fairness if there is a right of appeal

53. However, if I am wrong about this, I appreciate that Swim England might wish to say that I have made an error of law and they should be entitled to an appeal after all and might seek that the appeal determiner determine this.
54. I therefore direct;
 - a. It must be brought within 14 days of the notification of this decision to the Club and the Board.
 - b. The Club and Swim England must be copied in to any application to appeal and all subsequent appeal submissions and documents.
 - c. The appeal must be accompanied by numbered grounds which must be under one (or more) of the specified grounds.
 - d. Within 5 days it must be accompanied by a legal submission which highlights the paragraphs said to be in error, any legal case or principle relied on in support (including paragraphs), any evidence said to be omitted but relevant and, a reference to the date and time of the email or page of the interview transcript where such information was provided to me.
 - e. In respect of any argument under 8.3.1 that I have made an error of law, this must identify the paragraph or paragraphs where the error is apparent, the source and nature of the error of law, the date on which the Club and /or any

person at Swim England knew or suspected that I had made an error of law, and explain why it was not raised with me at that stage, or before I delivered by final Report. The Club and/ or Swim England must explain why, when draft passages of the report were provided the issue was not raised.

- f. In respect of any argument under 8.2.2 this must identify the error of fact said to have been made and what the correct position is, why it is said to have been material to my reasoning and that my decision fell outside the band of available decisions, whether the DBS case law on error of fact is said to apply (see Chapter 2: provided in draft to Dr Scanlon for the School), and when they first became aware that the error was being made or was likely to be made, and why it was not corrected by the Club/ Swim England at the time identified rather than on appeal.
- g. If the argument under 8.3.3 is that I should have gathered and considered information and did not do so, it must identify the missing evidence, when it first became apparent to any Club Officer/ Swim England employee or office holder that I had not seen such evidence and reasons why this was not raised with me

55. I also direct that the process outlined in *English v Emery Rheinbold and Strick* [2002] EWCA Civ 605⁴ applies. The person determining the appeal may direct questions to be sent to me to determine whether I considered evidence referred to on appeal and whether I considered the matters alleged to form the basis of any arguable grounds. It may be apparent to them whether I have considered the matter based on this published Decision but the nature of some of the safeguarding material is such that it should not generally be published. In the event of dispute this may require a process of clarification to occur.

56. I should also consider whether any appeal suspends the effect of the recommendation if it is approved by the Board. The Terms of Reference provide for it to be published within 14 days unless there is an appeal. The Terms of Reference do not provide for suspensory effect (ie the Club cannot affiliate in the meantime).

57. The wording of paragraph 4 also does not suggest that the Decision cannot be published, especially if this is by the agreement of the Club and Swim England (who agreed my Terms of Reference). As set out in Chapter 3, the threshold for restraining publication of information akin to an Ofsted inspection which relates to a professional's quasi regulatory view of a setting, is that this should not be restrained from publication save in very particular circumstances, and on the application of a high threshold (*R(X) v OFSTED*, [2020] EWCA Civ.594).

58. In my Terms of Reference, the welfare of children is a paramount consideration. There is a large amount of misinformation in circulation which is currently having an impact on at least some of the children in the club. It is therefore in the public interest and in their interest that the Decision is published, even if the Board decide to depart from

⁴ This can be accessed publicly at <https://www.casemine.com/judgement/uk/5b46f1f62c94e0775e7ef1b1>

it, and even if an appeal is ongoing. There can be a public announcement that the decision is under appeal, but preventing its publication potentially makes it more difficult for Club Officers, the School and the children to move forwards without the cloud of further speculation.

59. There is a safety net for third parties that if they consider that my decision is wrong and the supervisory jurisdiction applies they may make an application under the Court's supervisory jurisdiction in the Kings Bench Division. However, I cannot currently see how such a cause of action is engaged.

Complaints as quasi appeals

60. I also note that Swim England has a new complaints process. It is possible that a person who does not have a right of appeal considers that any of the grounds of appeal amounts instead to a complaint.
61. There is no jurisdiction other than in these Terms of Reference (which are agreed by the School and Swim England) to reverse the recommendation of this Decision or Appeal Decision.
62. My view of Louis Weston's report is that he considered that case 1 related to maladministration (ie a complaint similar to that which an ombudsman would consider but where there is no interference with the active operations of the NGB or suspensive effect).
63. In the event of inconsistency between Swim England rules and these Terms of Reference, these Terms of Reference has precedence. It is an exhaustive process.
64. In my view, it is challengeable only by a person to whom it relates under the KBD's supervisory jurisdiction (See Chapter 2) and is not substantively challengeable or challengeable under any of the appeal grounds by way of a complaint. That would be inconsistent with the Terms of Reference, and would also be out of step with other legal processes which are intended to be a final determination. This would not preclude a complaint under Swim England's complaints process about how Swim England engaged with this process, but that engagement has not been active in any event. I have written to seek input. Input has otherwise not been offered or forthcoming. In such complaint this Decision may provide some relevant background for such complaint but that is not for me to determine.
65. If any person raises a complaint about my process to Swim England rather than to me⁵ I would, in practical terms, not necessarily know of it as I am independent of Swim England.

⁵ <https://www.39essex.com/sites/default/files/2024-02/Chambers%20Complaints%20Procedure%20%28website%29%20V0.07%20Feb%202024.pdf>

66. Swim England has expressly confirmed if there were to be an adverse finding considered in their process, which relates to me, my process, my decision or any other matter potentially adverse to me, I would be provided with the complaint and an opportunity to respond. This may be practically important were it to relate to matters either gisted or not included in this Decision Report for the reasons set out in the earlier Chapters in this particular context. There may be a very particular reason for dealing with a matter in a particular way which is not apparent from this Report, but there is sensitive material relating to safeguarding or other matters such as public interest immunity.
67. I note that Louis Weston assumed that other statutory agencies would share information publicly but this is not the case. I wrote to the Board on 19 August 2024 setting out this preliminary view in summary format and there has been no disagreement. It will be necessary for me to conduct this process to keep access to the material gathered and the correspondence sent and my notes for the length of any limitation period of any cause of action or complaints process (whichever is longer). I am not cited on the terms of the new complaints process but I note that it has been determined on appeal in the context of Gymnastics that there is no application of arbitral limitation periods.⁶
68. For the avoidance of future doubt, I direct that the process in *English* set out above can also apply under my Terms of Reference to any complaint made in relation to any aspects of my decision, process or any other matter which relates to how I have conducted this review. I consider that to be within my Terms of Reference to order, in case I am wrong in my conclusion that the complaints procedure recently introduced by Swim England does not apply to any matter considered under these Terms of Reference.

⁶ <https://www.british-gymnastics.org/articles/independent-complaints-process-icp-appeal-panel>

Annex J: Thanks

I would like to thank all those who have participated in providing evidence and submissions to this Review. In particular at the School I would like to thank

- The Board of Governors
- Dr Scanlon
- The acting Headteacher and Designated Safeguarding Lead Vicky Pritt-Roberts
- Mrs Avery
- Mr Worrow
- Mr Horrocks
- Mr Hire
- Mr Proffitt
- Mrs Mason
- Mrs Dalziel
- Dr Chatterjee

And all those who helped those respond to my questions and collate information.

I would also like to thank

- The LADOs I spoke with
- Leicestershire Sharks Swimming club
- Kevin Suckling
- Helen Weeks
- Amanda Swan
- All statutory agencies corresponded with including the police.
- The legal department at Swim England including the Director of Legal, Lois Jarvis
- The Head of Insight at Swim England and their team
- Those providing administrative assistance to me who have worked hard and over long hours, Guy Ward and Craig Pedley.

Thank you also to all those who filled in the survey, especially the children at the Club and who used to be members, their parents, the school staff (past and present) and other interested parties. It was helpful for me to hear across the piste and those who emailed me.

I should also thank the Board for instructing me in agreement with the Club and School. I hope that this Report provides you with assistance now that this matter returns to you for your decision.

I finally thank my family for their very great patience while I conducted this Review, which has taken a considerable amount of my time, and taken from their time, especially over the summer holiday period.