



**DISCIPLINARY CODE**

**JUNE 2007**

# BRITISH SWIMMING DISCIPLINARY CODE

## 1 DEFINITIONS

1.1 In this Disciplinary Code the following acronyms, words and phrases shall have the meanings assigned to them:

- 1.1.1 "FINA" Federation Internationale de Natation
- 1.1.2 "ASA" Amateur Swimming Association;
- 1.1.3 "SASA" Scottish Amateur Swimming Association;
- 1.1.4 "WASA" Welsh Amateur Swimming Association;
- 1.1.5 "Association" any of the three member Associations of British Swimming;
- 1.1.6 "International Event" any competition where all the participating teams are selected by any or all of the ASA, the SASA, the WASA and/or any Member of FINA.
- 1.1.7 "Delegate" a person authorised by the Technical Water Polo Committee to act on its behalf in matters of discipline at Water Polo competitions promoted by or on behalf of British Swimming in England, Scotland or Wales.

1.2 For the purposes of this Disciplinary Code, the duties set out in the FINA Regulations for Disciplinary Actions in Water Polo of the following bodies shall be assigned and authority delegated, as follows:

- 1.2.1 "Management Committee" - to the British Swimming Technical Water Polo Committee with its summary disciplinary powers devolved to Delegates.
- 1.2.2 "Board of the Organising Body" - to the British Swimming Managing Board with its judiciary powers devolved to the judicial system as laid down in this Disciplinary Code.

## 2 OBJECTIVE OF THE BRITISH SWIMMING JUDICIAL SYSTEM

2.1 The primary objective of the judicial system is to secure, as expeditiously as possible, a just outcome following the submission of a protest or complaint by the system and procedures set out in this Disciplinary Code.

## 3 APPLICATION

3.1 This Disciplinary Code shall apply to:

- 3.1.1 all persons (including coaches, trainers and officials) involved in competitions promoted by or on behalf of British Swimming in England, Scotland or Wales;
- 3.1.2 matters concerning or arising out of the British Swimming Selection Agreement and Code of Conduct for Athletes or Coaches and Support Staff and/or the conditions pertaining to participation by athletes and coaches in World Class Programmes;

- 3.1.3** all members of the ASA, the SASA and the WASA (including coaches, trainers and officials) involved in competition and/or training camps outside Great Britain whether with the approval of British Swimming or otherwise.

Such individuals shall remain subject to the jurisdiction of British Swimming during the period of time from their departure until their return to Great Britain.

The Chairman of the Judicial Panel shall have the right to delegate the authority to deal with a complaint against an individual member arising out of such a visit, which has not been dealt with by the Member of FINA concerned, to the Association of which the individual is a member. The Chairman of the Judicial Panel shall have the right to review any decision made following a referral under this section and, if he is of the opinion that reasonable grounds exist, may order the case to be reheard under the provisions of this Code.

If members of more than one Association are subject to a complaint under this section, relating to the same incident, British Swimming shall deal with the matter.

- 3.1.4** all persons (including coaches, trainers and officials) involved in training camps or other activities (whether in Great Britain or outside) in respect of which they are in receipt of financial assistance from British Swimming or the Sports Lottery Fund (or any successor organisation with responsibility for the making and distributing of awards to elite athletes).

- 3.1.5** any incident within Great Britain under the jurisdiction of the ASA, the SASA or the WASA, whether in competition or otherwise, resulting in a complaint being made against an individual who is a member of another Member of FINA.

The Chairman of the Judicial Panel shall have the right to delegate the authority to deal with any such complaint, and any associated complaint against a member of the ASA, the SASA or the WASA, to the Association under whose jurisdiction the incident took place. The Chairman of the Judicial Panel shall have the right to review any decision made following a referral under this section and, if he is of the opinion that reasonable grounds exist, may order the case to be reheard under the provisions of this Code.

If members of more than one Association are subject to a complaint under this section, relating to the same incident, British Swimming shall deal with the matter.

- 3.2** This Disciplinary Code shall not apply to:

- 3.2.1** any competition or matter wholly within the jurisdiction of the ASA, the SASA or the WASA.

#### **4 POWER TO CHANGE, RESCIND OR ADD TO THE PROVISIONS OF THIS DISCIPLINARY CODE**

- 4.1** The Managing Board of British Swimming may add to or change the provisions of this Code at any time provided that such changes are reported to the next following Annual General Meeting of British Swimming.

#### **5 LAWS AND PROCEDURES PERTAINING TO THE JUDICIAL SYSTEM**

- 5.1** The laws of England and Wales shall apply to this Disciplinary Code.
- 5.2** A Judicial Tribunal or an Appeal Tribunal shall not be bound by judicial rules governing procedures or the admissibility of evidence provided that the hearing is conducted in a fair and orderly manner and that each party is given a reasonable opportunity to give and call evidence, address the Tribunal and present his case.
- 5.3** Any deviation from any provision of this Code shall not invalidate any finding, procedure or decision unless that deviation raises a material doubt as to the reliability of the finding, procedure or decision.

## **6 ADMINISTRATION OF THE JUDICIAL SYSTEM**

- 6.1** The management of the judicial system shall be the responsibility of the Chairman of the Judicial Panel in consultation with the Judicial Administrator of British Swimming. Administrative support for the judicial system shall be provided by the Judicial Administrator.
- 6.2** The Judicial Administrator shall in consultation with the Chairman of the Judicial Panel and the Head of Legal Affairs, as and when it is deemed to be appropriate, convene a meeting of the members of the Judicial Panel and the Appeal Panel. The meeting shall be chaired by the Chairman of the Judicial Panel or, in his absence, the Vice Chairman of the Judicial Panel or, in his absence, by a person elected from those present.
- 6.3** The meeting may discuss such matters as the Chairman of the Judicial Panel or his substitute, following consultation with the Chairman of the Appeal Panel and the Judicial Administrator, may decide.
- 6.4** At this meeting the members of the Judicial Panel shall, from amongst their members, elect a Chairman and a Vice Chairman for a term of four years.

## **7 CHILD PROTECTION**

- 7.1** In this Rule the expression 'Offence' shall mean any one or more of the offences contained in Schedule 1 to the Children and Young Persons Act 1933 as amended and any other offence which reasonably causes the Chief Executive to believe that the person accused of the offence is or may be a risk or potential risk to children or young persons.
- 7.2** For the purposes of this Rule, "child" or "young person" shall be construed to include "vulnerable adult" and "children" or "young persons" shall be construed to include "vulnerable adults".
- 7.3** Upon receipt by the Chief Executive of:
- 7.3.1** notification that an individual has been charged with an Offence; or
  - 7.3.2** notification that an individual is the subject of an investigation by the police, social services or any other authority relating to an Offence; or
  - 7.3.3** other evidence which causes the Chief Executive reasonably to conclude that an individual may have committed an Offence then in any such case the Chief Executive may impose upon the individual an interim suspension from any event or activity promoted or authorised by British Swimming wherever held.
- 7.4** In reaching his determination as to whether an interim suspension should be imposed the Chief Executive shall give consideration, inter alia, to the following factors:
- 7.4.1** whether a child or children or young person(s) are or may be at risk;
  - 7.4.2** whether the allegations are of a serious nature;
  - 7.4.3** whether a suspension is necessary or desirable to allow the conduct of any investigation (by British Swimming or any other authority or body) to proceed unimpeded.
- 7.5** Where an individual shall have been convicted or have been the subject of a caution in respect of an Offence the Chief Executive shall have power to impose summarily the suspension sine die of the individual from any event or activity promoted or authorised by British Swimming wherever held. There shall be a right of appeal under this Code against a decision of the Chief Executive under this Rule 7.4.

## **8 SANCTIONS**

- 8.1** Suspensions by a Judicial Tribunal or an Appeal Tribunal shall be reported to the FINA for recognition world wide and in the case of foreign nationals to their country of origin.
- 8.2** The registration card, of a suspended registered member of the ASA, the SASA or the WASA, shall be withdrawn by a Judicial Tribunal or an Appeal Tribunal and forwarded to the Registrar of the appropriate Association. He may, at the end of his period of suspension, apply to the relevant Registrar for his registration card to be returned, unless it has expired when he may make a fresh application for registration.
- 8.3** Any sanction imposed on a competitor or any other person or organisation by the ASA, the WASA, the SASA, the FINA, by or recognised by another National Federation affiliated to the FINA or a continental body recognised by the FINA shall be recognised and enforced by British Swimming.

## **9 JUDICIAL AUTHORITY**

- 9.1** There shall be four levels of judicial authority:-
- 9.1.1** the Referee;
  - 9.1.2** the Delegate for water polo competitions and the Jury of Appeal for all other competitions
  - 9.1.3** the Judicial Tribunal;
  - 9.1.4** the Appeal Tribunal.

## **10 REFEREE**

- 10.1** A Referee shall be appointed for all competitions other than water polo competitions promoted by or on behalf of British Swimming in England, Scotland or Wales. In addition to any other duties, he shall be responsible for:-
- 10.1.1** the enforcement of the FINA Technical Rules of the discipline and the promoter's Conditions of the Competition;
  - 10.1.2** deciding protests.

## **11 JURY OF APPEAL**

- 11.1** A Jury of Appeal shall be appointed at all competitions other than water polo competitions promoted by or on behalf of British Swimming in England, Scotland or Wales. This shall comprise persons appointed in accordance with the British Swimming Policy for Appointment of Juries of Appeal in force from time to time.
- 11.2** The Jury of Appeal shall be responsible for dealing with:-
- 11.2.1** appeals from decisions on protests made by the Referee.

## **12 WATER POLO DELEGATE**

- 12.1** A Delegate shall be appointed by the Technical Water Polo Committee to act as the agent of the Committee at all water polo competitions promoted by or on behalf of British Swimming in England, Scotland or Wales. He shall be qualified and experienced in accordance with the criteria issued by the Committee from time to time.
- 12.2** The Delegate shall be responsible for:-
- 12.2.1** the enforcement of the promoter's Conditions of the Competition;
  - 12.2.2** deciding protests;

**12.2.3** the enforcement of the FINA Water Polo Rules including the application of sanctions as set out in the relevant Appendix to those rules, and as such

**12.2.3.1** he may summarily impose the minimum sanction, according to the tariffs as laid down by FINA from time to time, on any player, team official, team or other person who has committed an offence, or offences, against an official, a player, a team official or any other person present. There shall be no appeal against a decision of a Delegate to impose a summary sanction under this section.

**12.2.3.2** If, in his opinion, the minimum tariff is insufficient sanction for the offence, he shall make a complaint against the alleged offender(s).

### **13 THE JUDICIAL PANEL**

**13.1** The Judicial Panel shall be appointed by the Judicial Appointments Panel and shall be composed of up to eleven members, each of whom shall hold office for two years, nominated by the Associations in the proportions:

**13.1.1** the ASA up to six members;

**13.1.2** the SASA up to three members;

**13.1.3** the WASA up to two members.

**13.2** Each member Association may only nominate persons who are currently members of that Association to serve on the Judicial Panel.

**13.3** In the event of a member vacating his position before the termination of his period of office the appropriate Association may nominate a replacement for the remaining period of office.

**13.4** In alternate years three ASA nominees, one WASA nominee and firstly two SASA nominees then one SASA nominee, shall retire and be eligible for re-nomination.

**13.5** The appointments shall be effective from the date of the first meeting of the Managing Board in each calendar year.

**13.6** No member of the Managing Board or Technical Committees of British Swimming or the Committees or Technical Committees of the ASA, the SASA or the WASA shall be appointed as a member of the Judicial Panel.

### **14 FUNCTIONS OF THE JUDICIAL PANEL**

**14.1** The functions of the Judicial Panel shall be to provide members for Judicial Tribunals to hear and decide:

**14.1.1** complaints;

**14.1.2** appeals against decisions of Delegates on protests;

**14.1.3** appeals against decisions of Committees appointed under Article 20 of the British Swimming Articles of Association.

Note: Only decisions of a disciplinary nature may be the subject of an appeal. Decisions arising in the normal course of the business of a Committee on administrative and technical matters, appointments and selection of teams may not be the subject of an appeal (See Rule 23).

### **15 THE APPEAL PANEL**

**15.1** The Appeal Panel shall be appointed by the Judicial Appointments Panel and shall be composed of up to six members, each of whom shall hold office for four years, nominated by the Associations in the proportions:

**15.1.1** An independent chairman, who shall be a qualified lawyer and who may be a practising solicitor or barrister;

**15.1.2** ASA up to three members;

**15.1.3** SASA one member;

**15.1.4** WASA one member.

- 15.2** Apart from nominations for the post of Chairman, each Association may only nominate persons who are currently members of that Association to serve on the Appeal Panel.
- 15.3** In the event of a member vacating his position before the termination of his period of office the appropriate Association may nominate a replacement for the remaining period of office.
- 15.4** At alternate two year intervals, firstly two ASA nominees then one ASA nominee shall retire and be eligible for re-nomination.
- 15.5** The appointments shall be effective from the date of the first meeting of the Managing Board in the relevant calendar year.
- 15.6** No member of the Managing Board or Technical Committees of British Swimming or the Committees or Technical Committees of the ASA, the SASA or the WASA or the Judicial Panel shall be appointed as a member of the Appeal Panel.

## **16 FUNCTION OF THE APPEAL PANEL**

- 16.1** The function of the Appeal Panel shall be to provide members for Appeal Tribunals to hear and decide appeals from decisions of Judicial Tribunals except those made under Rule 14.1.2.

## **17 RIGHTS AND RESPONSIBILITIES OF PANEL MEMBERS AND OTHER PERSONS**

- 17.1** Members of the Judicial Panel and the Appeal Panel shall be immune from complaint only while acting under the provisions with this Code.
- 17.2** No complaint may be made against an employee of British Swimming, the ASA, the SASA, or the WASA relating to any action taken in the course of his employment. Any complaint about such action shall be dealt with by British Swimming, the ASA, the SASA or the WASA and should be addressed to the Judicial Administrator to be passed to the appropriate body.
- 17.3** Any improper contact, approach or attempt to influence or intimidate any Judicial Panel or Appeal Panel member, witness, potential witness or representative either in person or through an intermediary must be reported immediately to the Judicial Administrator (if it is prior to a hearing) or to the Chairman of the Judicial Tribunal or Appeal Tribunal (if it is during the course of a hearing). The office holder receiving the report may take such action as he deems appropriate.
- 17.4** Every member of the Judicial Panel and the Appeal Panel shall be required to comply with the provisions of the British Swimming Conflicts of Interest policy including the making of any return required for entry in the Conflicts of Interest Register. In particular, any member who believes he may have a conflict due to the circumstances of any particular case shall alert the Judicial Administrator to his concerns.

## **18 PROTESTS**

- 18.1** A protest is an allegation that the FINA Rules or the Promoter's Conditions governing the competition have not been complied with or have been misinterpreted. No protest shall be allowed against decisions of fact;
- 18.2** Procedures to deal with a protest in competitions other than water polo competitions
  - 18.2.1** the Referee and Jury of Appeal shall be empowered to act on and decide, as appropriate, protests made initially to the promoter between the closing date and the start of the competition.
  - 18.2.2** if a protest is made prior to the appointment of the Referee then the protest must be made to the promoter who shall refer it to the Referee when appointed;
  - 18.2.3** A protest must be submitted in writing together with the protest fee (Rule 26.5)

- 18.2.4** A protest may be made
  - 18.2.4.1** in International Events held within Great Britain to which this Disciplinary Code applies, whether promoted by British Swimming or the ASA, the SASA or the WASA on its behalf, only by a Team Manager of a competing team,
  - 18.2.4.2** In Events other than International Events to which this Disciplinary Code applies, by a competitor (who may nominate another person to act on his behalf) or a club, body or official taking part in the competition.
- 18.2.5** A protest may be made orally to the Referee and must be submitted in writing within thirty minutes following the conclusion of the event or match during which the incident giving rise to the protest took place unless the reason for the protest is known before the event, in which case the protest must be made as soon as is reasonably practicable before the event starts.
- 18.2.6** Where material facts are brought to the attention of a competitor or a club, body or official taking part in the competition which if they had been known during that competition a protest would have been likely to have been made during that competition or within thirty minutes following the conclusion of the relevant event, a post-event protest may be made to the Referee of that competition who may in his discretion deal with it as if it had been made under Rule 18.2.5 provided he is satisfied that it would be in the best interests of the sport to do so and provided further that the individual or other person making a post-event protest did so as soon as was reasonably practicable after acquiring knowledge of those material facts.
- 18.2.7** any protest, including any made initially to the promoter before the start of the competition, shall be considered and decided by the Referee. If he rejects the protest he must state the reason for his decision in writing;
- 18.2.8** in the event of the rejection of a protest the protesting party shall have a right of appeal to the Jury of Appeal. There will be no further fee.
- 18.2.9** any appeal against a decision of a Referee to reject a protest, which was made:
  - 18.2.9.1** before the day of the competition, must be submitted in writing within seven days following the issue of the Referee's decision in writing and before the day of the competition, whichever is the lesser period;
  - 18.2.9.2** on the day of the competition must be submitted in writing within one hour of the delivery of the written decision of the Referee.
  - 18.2.9.3** after the day of the competition, must be submitted in writing within seven days following the issue of the Referee's decision in writing
- 18.2.10** the Jury of Appeal shall deal with the appeal as soon as is practicable after it is received. The Jury of Appeal shall ascertain the relevant facts and endeavour to resolve the matter. The decision of the Jury of Appeal shall be final.

- 18.2.11** in the event that a protest or an appeal against a Referee's decision on a protest is received but not resolved before the event is scheduled to start, or before the presentation of awards, that fact shall be reported to the promoter. In the event of the protest not being resolved before the event is scheduled to start, the event shall be held under protest. Unless the Referee in the case of a protest, or the Chairman of the Jury of Appeal in the case of an appeal, is satisfied that the protest or appeal, however resolved, can have no effect on the awards, they shall be withheld until the protest and any appeal has been heard.
- 18.3** Procedures to deal with a protest in water polo competitions:
- 18.3.1** the Delegate shall be empowered to act on and decide, as appropriate, protests made initially to the promoter between the closing date and the start of the competition.
- 18.3.2** if a protest is made prior to the appointment of the Delegate then the protest must be made to the promoter who shall refer it to the Delegate when appointed;
- 18.3.3** A protest must be submitted in writing together with the protest fee (Rule 26.5).
- 18.3.4** A protest may be made:
- 18.3.4.1** in International Events held within Great Britain to which this Disciplinary Code applies, whether promoted by British Swimming or the ASA, the SASA or the WASA on its behalf, only by a Team Manager of a competing team;
- 18.3.4.2** in Events other than International Events to which this Disciplinary Code applies, by a competitor (who may nominate another person to act on his behalf) or a club, body or official taking part in the competition.
- 18.3.5** A protest may be made orally to the Delegate and must be submitted in writing within thirty minutes following the conclusion of the event or match during which the incident giving rise to the protest took place unless the reason for the protest is known before the event, in which case the protest must be made as soon as is reasonably practicable before the event starts.
- 18.3.6** Where material facts are brought to the attention of a competitor or a club, body or official taking part in the competition which if they had been known during that competition a protest would have been likely to have been made during that competition or within thirty minutes following the conclusion of the relevant event, a post-event protest may be made to the Delegate of that competition who may in his discretion deal with it as if it had been made under Rule 18.3.5 provided he is satisfied that it would be in the best interests of the sport to do so and provided further that the individual or other person making a post-event protest did so as soon as was reasonably practicable after acquiring knowledge of those material facts.
- 18.3.7** any protest, including any made initially to the promoter before the start of the competition, shall be considered and decided by the Delegate. If he rejects the protest he must state the reason for his decision in writing;
- 18.3.8** in the event of the rejection of a protest the protesting party shall have a right of appeal to a Judicial Tribunal. There will be no further fee.

- 18.3.9** any appeal against a decision of the Delegate to reject a protest, which was made:
  - 18.3.9.1** before the day of the competition, must be submitted in writing to the Judicial Administrator, Harold Fern House, Derby Square, Loughborough, Leicestershire LE11 5AL within seven days following the issue of the Delegate's decision in writing and before the day of the competition, whichever is the lesser period;
  - 18.3.9.2** on the day of the competition must be submitted in writing within one hour of the delivery of the written decision of the Delegate.
  - 18.3.9.3** after the day of the competition, must be submitted in writing to the Judicial Administrator, Harold Fern House, Derby Square, Loughborough, Leicestershire LE11 5AL within seven days following the issue of the Referee's decision in writing.
- 18.3.10** The decision of the Judicial Tribunal shall be final.
- 18.3.11** in the event that a protest or an appeal against a Delegate's decision on a protest is received but not resolved before the event is scheduled to start the event shall be held under protest. In the event of the protest not being resolved before the presentation of awards, unless the Delegate is satisfied that the protest or appeal, however resolved, can have no effect on the awards, they shall be withheld until the protest and any appeal has been heard.

## **19 COMPLAINTS**

- 19.1** A complaint is a formal expression of dissatisfaction with the actions or behaviour of affiliated clubs, bodies, organisations or persons or with alleged unfair practice in connection with the sport;
- 19.2** grounds for a complaint shall include, but shall not be limited to, the following:
  - 19.2.1** if any club, body, organisation or person engages in any action, behaviour or practice which may bring the sport into disrepute;
  - 19.2.2** if any competitor takes part in a competition, exhibition or demonstration with one he knows to be under suspension by a Member of FINA or by the ASA, the SASA or the WASA; and
  - 19.2.3** a breach of the British Swimming Selection Agreement and Code of Conduct.
- 19.3** A complaint may be made by:
  - 19.3.1** any person aged 18 years or over who is a member of the ASA, the SASA or the WASA or of a Member of FINA;
  - 19.3.2** the parent of, or other person with parental responsibility for, a member of the ASA, the SASA or the WASA or a Member of FINA, who is under the age of 18 years, on his behalf;
  - 19.3.3** a club or other body affiliated to the ASA, the SASA or the WASA or to a Member of FINA;
  - 19.3.4** any Committee of British Swimming, the ASA, the SASA or the WASA;
  - 19.3.5** an official at an event to which this Code applies.

## **20 PROCEDURES RELATING TO COMPLAINTS**

- 20.1** A complaint shall be made by sending to the Judicial Administrator a completed applicable form of complaint. The form (and any communication directed to be sent to the Judicial Administrator under these Regulations) shall be sent to the Judicial Administrator, Harold Fern House, Derby Square, Loughborough, Leicestershire LE11 5AL. The complaint must be accompanied by the requisite fee.
- 20.2** A copy of the complaint shall be forwarded as soon as is reasonably practicable by the Judicial Administrator to the Chairman of the Judicial Panel.
- 20.3** A complaint must normally reach the Judicial Administrator not later than thirty days after the incident that it is alleged gave rise to it. A complainant may apply, in writing, to the Judicial Administrator for permission to submit and proceed with a complaint later than the specified thirty days. The complainant must set out the detailed grounds for the application including the reason for the delay in making the complaint. The application shall be forwarded as soon as is reasonably practicable by the Judicial Administrator to the Chairman of the Judicial Panel.
- 20.4** The Chairman of the Judicial Panel shall consider the grounds for any such application, and provided he is satisfied that it is in the interest of the sport to do so, may give the complainant permission to pursue the complaint in the normal way.
- 20.5** The Chairman of the Judicial Panel shall give reasons for his decision whether he accepts or rejects the application. If he accepts the application, he shall direct the Judicial Administrator to notify the parties, interested persons and/or bodies of the decision and reasons.
- 20.6** The parties to the complaint shall be entitled to appeal against this decision of the Chairman of the Judicial Panel to the Chairman of the Appeal Panel provided that the notice of appeal, setting out the grounds for appeal, is lodged with the Judicial Administrator within fourteen days of receiving notification of the decision of the Chairman of the Judicial Panel. No fee shall be levied for an appeal under this provision.
- 20.7** The Chairman of the Appeal Panel shall consider the grounds of appeal. He may confirm or alter the decision made by the Chairman of the Judicial Panel. The decision of the Chairman of the Appeal Panel shall be final.
- 20.8** If the complainant is granted permission to proceed with the complaint whether by the Chairman of the Judicial Panel or the Chairman of the Appeal Panel the complaint shall proceed in the normal way except that the person or Tribunal dealing with it shall give due regard to the lateness of the complaint in any subsequent proceedings.
- 20.9** As soon as is reasonably practicable upon receipt of a completed standard complaint form together with the fee, the Judicial Administrator shall notify the Chairman of the Judicial Panel and, when the Chairman of the Judicial Panel so directs, send a copy to each of the parties who are involved. As soon as is reasonably practicable thereafter the Judicial Administrator, in conjunction with the Chairman of the Judicial Panel, shall arrange the date, time and venue of the hearing, which shall normally commence within sixty days of the receipt by the Judicial Administrator of the standard form of complaint together with the fee.

## **21 INFORMAL DISPUTE RESOLUTION**

- 21.1** The Chairman of the Judicial Panel may, after consideration of the papers, direct that a complaint be dealt with by reference to an informal mediator without resort to the formal judicial procedure.
- 21.2** A member of the Judicial Panel may be appointed to act as mediator.

**21.3** The mediator shall, normally, have 28 days from the date of his appointment to assist in the resolution of the differences between the parties. If the mediator is unable so to assist he shall report that fact to the Chairman of the Judicial Panel who shall then direct that the matter proceed to a formal hearing.

**21.4** no formal record or transcript of the mediation process shall be made.

## **22 JUDICIAL TRIBUNAL**

**22.1** The selection of the members of a Judicial Tribunal shall include, without limitation, the following procedures:

**22.1.1** The Judicial Administrator shall notify the parties in writing of the complete list of names of the panel from whom the individuals who will constitute the Judicial Tribunal will be selected and the parties shall have seven days from the receipt of this notification in which to lodge with the Judicial Administrator any objection to any member(s) of the panel stating the grounds for the objection;

**22.1.2** The Judicial Administrator shall forward any objections to the Chairman of the Judicial Panel who shall consider any such objections in determining the composition of the Tribunal. The decision of the Chairman in respect of an objection shall be final. If there is an objection to the Chairman that objection shall be referred to the Chairman of the Appeal Panel whose decision shall be final;

**22.1.3** The Chairman of the Judicial Panel shall then appoint a Judicial Tribunal which shall normally consist of himself and two other members of the Judicial Panel. Such a tribunal shall not be of less than two members. If the Chairman of the Judicial Panel is unable or unwilling to act, then he shall appoint another member of the Panel to act as the Chairman of the Judicial Tribunal.

**22.1.4** The Chairman of the Judicial Panel shall have the power exercisable in his absolute discretion to co-opt from time to time additional persons with specialist skills or experience to a Judicial Tribunal to deal with a specific complaint which in the view of the Chairman requires such specialist skills or experience.

**22.1.5** The Athletes' Council and the Coaches' Forum shall be invited to nominate respectively up to four athletes and four coaches with international experience to a panel from which, in suitable cases, the Chairman of the Judicial Panel may co-opt representative(s) to a Judicial Tribunal.

**22.1.6** Any person co-opted to a Judicial Tribunal shall unless otherwise directed by the Chairman of the Judicial Panel serve as a full member of the Tribunal for the particular hearing.

**22.2** The arrangements for a hearing shall include, without limitation, the following conditions:-

**22.2.1** The Judicial Administrator shall make arrangements for the hearing and shall give the parties at least twenty-eight days' notice of the arrangements, including the date, time and place of the hearing. The Judicial Administrator shall notify the parties of the procedure to be followed prior to the hearing;

**22.2.2** The parties concerned may rely on written representations made prior to the hearing and/or appear in person. The parties shall be asked to confirm whether they intend to attend the hearing;

- 22.2.3** At least fourteen days in advance of the hearing date each other party to the complaint must give to the Judicial Administrator his response to the complaint and each party must provide the Judicial Administrator with details of any witnesses he wishes to call, witnesses' statements, any written evidence he proposes to rely on and the name of any representative (professional or otherwise) through whom he proposes to present his case;
  - 22.2.4** No further evidence shall be accepted after this date without the prior agreement of the Chairman of the Judicial Tribunal;
  - 22.2.5** Normally, the Judicial Administrator will provide to the parties, and to the members of the Judicial Tribunal, a bundle of documents for use at the hearing containing copies of the documentation submitted by each of the parties. He shall also notify the parties of the name of any representative who will be presenting a party's case;
  - 22.2.6** The Chairman of the Judicial Tribunal may, through the Judicial Administrator, require that members of the Associations, and request that other individuals, participate and give evidence at the hearing and/or that further written documents or other evidence be supplied by any or all of them.
- 22.3** The arrangements at a hearing shall include, without limitation, the following conditions:-
- 22.3.1** The hearing shall normally take place in private except that the Chairman of the Judicial Tribunal may decide to hold a hearing in public provided that:
    - 22.3.1.1** before making the decision he has consulted the parties involved and has taken their wishes into account;
    - 22.3.1.2** he is satisfied that it is in the public interest to do so, having regard to the interests of the Judicial Tribunal, any particular need for privacy, the rights of others and the need to encourage others to co-operate with judicial proceedings in general.
  - 22.3.2** If any of the parties concerned do not attend the hearing the matter may be dealt with by the Judicial Tribunal in the absence of that party taking into account any written representations that may have been received from that party.
  - 22.3.3** It shall be for the complainant to prove the complaint on the balance of probabilities.
  - 22.3.4** The Judicial Tribunal shall make its decisions on cases before it by majority. In the event of equality of votes any complaint shall stand dismissed.
  - 22.3.5** In the case of a complaint the Judicial Administrator shall send to the Chairman of the Judicial Tribunal the record of previous offences, if any, of the alleged offender. It shall be supplied in an inner sealed envelope which shall only be opened, in the presence of the parties, if the complaint is established. This shall include the record of previous offences with the ASA, the SASA or the WASA
  - 22.3.6** The procedure at a hearing shall be flexible and shall be at the discretion of the Chairman of the Judicial Tribunal.
  - 22.3.7** The Judicial Tribunal may make whatever order it considers just, including the imposition of any financial penalty/and or suspension for a period.

**22.4** The arrangements after a hearing shall include, without limitation, the following conditions:-

**22.4.1** The Chairman of the Judicial Tribunal may inform the parties orally of the decision of the Judicial Tribunal after the hearing. Whether or not this is done he shall, through the Judicial Administrator, communicate the decision in writing to the parties and such other interested persons or bodies as he considers appropriate within seven days of the date of the hearing. As soon as is reasonably practicable thereafter the written reasons for the decision, notification of their entitlement to appeal and the time by which any notice of appeal must be lodged, shall be given to the parties.

## **23 RIGHTS OF APPEAL**

**23.1** There shall be a right of appeal by any of the parties:

**23.1.1** to a Judicial Tribunal against

**23.1.1.1** decisions of Committees appointed under Article 20 of the British Swimming Articles of Association.

In respect of appeals under this section 23.1.1.1 only decisions of a disciplinary nature may be the subject of an appeal. Decisions arising in the normal course of the business of a Committee on administrative and technical matters, appointments and selection of teams may not be the subject of an appeal;

Such an appeal shall be dealt with in all respects as if it were a complaint.

**23.1.1.2** decisions of Delegates on protests;

Such an appeal shall be dealt with in all respects as if it were a complaint except that the decision of the Judicial Tribunal shall be final.

**23.1.2** to an Appeal Tribunal against:

**23.1.2.1** any final decision of a Judicial Tribunal other than any made under Rule 23.1.1.2;

**23.1.2.2** a decision made by the Chief Executive under the Child Protection Rule 7.4 of this Code.

**23.1.2.3** the recognition and enforcement under the provisions of this Code of any sanction imposed on a competitor or any other person or organisation by the ASA, the SASA or by the WASA. The decision on any such appeal shall not be permitted to affect a sanction imposed by the ASA, the SASA or the WASA in any way which applies to any competition or matter wholly within that Association's jurisdiction.

## **24 PROCEDURES RELATING TO APPEALS AGAINST FINAL DECISIONS OF JUDICIAL TRIBUNALS**

**24.1** A notice of appeal, setting out the detailed grounds of appeal, together with supporting documents, shall be lodged with the Judicial Administrator within twenty-eight days after the date of the written notification of the reasons of the Judicial Tribunal stating the nature of the appeal and the grounds on which it is to be made. The notice of appeal must be accompanied by the fee.

**24.2** If no notice of appeal is received by the Judicial Administrator within the requisite twenty-eight days the decision of the Judicial Tribunal shall stand.

**24.3** On receipt of a notice of appeal, the supporting documents and the fee, the Judicial Administrator shall send a copy of the notice of appeal, together with the supporting documents, to the Chairman of the Appeal Panel and, when the chairman shall so direct, to each of the other parties involved.

**24.4** As soon as is reasonably practicable thereafter the Judicial Administrator shall arrange the date, time and venue of the hearing which shall normally commence within sixty days of the receipt by the Judicial Administrator of the notice of appeal. The Judicial Administrator shall give the parties at least twenty one days notice of the arrangements for the hearing.

**24.5** The Chairman of the Appeal Panel may, on receipt of the notice of appeal, suspend the decision of and/or penalty imposed by the Judicial Tribunal pending the outcome of the appeal to an Appeal Tribunal. An appeal to an Appeal Tribunal may only be withdrawn with the consent of the Chairman of the Appeal Panel on receipt of a letter from the appellant setting out the grounds for the withdrawal of the notice of appeal. If a notice of appeal is withdrawn the Chairman of the Appeal Panel shall uphold the decision of the Judicial Tribunal and if that decision has been suspended the effect of that suspension shall be taken into account.

## **25 APPEAL TRIBUNALS**

**25.1** The selection of the members of an Appeal Tribunal shall include, without limitation, the following procedures:

**25.1.1** The Judicial Administrator shall notify the parties in writing of the list of names of the panel from whom the individuals who will constitute the Appeal Tribunal will be selected. The parties shall have seven days from the receipt of this notification in which to lodge with the Judicial Administrator any objection to any member(s) of the panel stating the grounds of objection.

**25.1.2** The Judicial Administrator shall forward any objections to the Chairman of the Appeal Panel who shall consider any such objections in determining the composition of the Tribunal. The decision of the Chairman in respect of an objection shall be final.

**25.1.3** The Chairman of the Appeal Panel shall then appoint an Appeal Tribunal which shall normally consist of himself and two other members of the Appeal Panel. Such a Tribunal shall not be of less than two members. If the Chairman of the Appeal Panel is unable or unwilling to act, then he shall appoint another member of the Panel to act as the Chairman of the Appeal Tribunal.

**25.2** The arrangements for a hearing shall include, without limitation, the following conditions:-

**25.2.1** The procedures prior to hearings set out in Section 22.2 shall apply to an Appeal Tribunal in all respects as if it were a Judicial Tribunal and additionally:

**25.2.1.1** When the Judicial Administrator notifies the parties of the arrangements for the hearing he shall also notify them whether the decision of and/or penalty imposed by the Judicial Tribunal will be suspended pending the decision of the Appeal Tribunal on the appeal.

**25.2.1.2** Subject to the discretion of the Chairman of the Appeal Tribunal the hearing may be a complete re-hearing or a hearing of the specific issue(s) raised in the notice of appeal.

**25.3** The arrangements at a hearing shall include, without limitation, the following conditions:-

**25.3.1** The procedures at hearings set out in Sections 22.3.1 to 22.3.6 inclusive shall apply to an Appeal Tribunal in all respects as if it were a Judicial Tribunal and additionally:

**25.3.1.1** An Appeal Tribunal shall have the power to:

**25.3.1.1.1** alter or vary any decision of a Judicial Tribunal;

**25.3.1.1.2** quash any penalty and/or to substitute for it any other penalty it may think fit; or

**25.3.1.1.3** make any such other order or determination as it may think right and just.

**25.3.1.2** the decision of an Appeal Tribunal shall be final.

**25.4** The arrangements after a hearing shall include, without limitation, the following conditions:-

**25.4.1** The Chairman of the Appeal Tribunal may inform the parties orally of the decision of the Appeal Tribunal after the hearing. Whether or not this is done he shall, through the Judicial Administrator, communicate the decision in writing to the parties and such other interested persons or bodies as he considers appropriate within seven days of the date of the hearing. As soon as is reasonably practicable thereafter the written reasons for the decision shall be given to the parties.

## **26 PROVISIONS RELATING TO BOTH JUDICIAL AND APPEAL TRIBUNALS**

**26.1** Recording of Tribunal proceedings

**26.1.1** Proceedings before a Tribunal shall be recorded manually and/or mechanically. In the event of a mechanical recording being made, the only official record of the proceedings shall be that mechanical recording. After any hearing, any recording (manual and/or mechanical) shall be retained by the Judicial Administrator together with the entire record of the complaint or appeal.

**26.2** Reporting and publication of decisions

**26.2.1** All decisions of a Tribunal shall be reported to the Chief Executive of British Swimming and such other bodies or persons as the Chairman of the Tribunal shall direct. British Swimming, the Judicial Panel and the Appeal Panel shall be entitled to publish as they think fit reports of proceedings, findings and penalties.

**26.3** Expunging of records

**26.3.1** After six years from the date of the decision of a Tribunal or, if a suspension was imposed, after six years from the end of that suspension, all records of the relevant Tribunal hearing(s) shall be destroyed and any penalty shall be expunged from the record of the club, body, organisation or person.

## 26.4 Costs

- 26.4.1** In addition to any financial penalty which a Tribunal may impose the Chairman of the Tribunal may, at his discretion, make an order for the costs of the hearing to be paid, in such proportions as he may decide, by any of the parties to the hearing. These costs shall include expenses necessarily incurred in the preparation for the hearing by the Tribunal and may include the expenses actually and necessarily incurred by a successful party in preparing and presenting his case to the Tribunal. In calculating the costs to be paid to a party nothing shall be included on account of professional representation.
- 26.4.2** When he considers it is impracticable or unjust to award costs, or that the recovery of costs would cause undue hardship, the Chairman of the Tribunal may recommend that British Swimming should make a contribution towards the costs of the successful party.

## 26.5 Fees

**26.5.1** The following fees shall be required for:

- |                 |  |        |
|-----------------|--|--------|
| <b>26.5.1.1</b> | making a protest;  | £25    |
| <b>26.5.1.2</b> | an appeal to the Jury of Appeal against the decision of a Referee in regard to a protest;  | No fee |
| <b>26.5.1.3</b> | an appeal to the Judicial Tribunal against the decision of a Delegate in regard to a protest;  | No fee |
| <b>26.5.1.4</b> | making a complaint;  | £50    |
|                 | (no fee is required when the complaint is made by an official arising from an incident or incidents dealt with in pursuance of his duties under FINA Technical Rules or by a Team Manager or a Committee on behalf of British Swimming under the British Swimming Selection Agreements and Codes of Conduct);  |        |
| <b>26.5.1.5</b> | an appeal from the decision of a Committee appointed under Article 20 of the British Swimming Articles of Association;   | £50    |
| <b>26.5.1.6</b> | an appeal from a final decision of a Judicial Tribunal or from a decision of the Chief Executive under Rule 7.4 of this Code or for an appeal, made under Rule 23.1.2.3 of this Code, against the recognition and enforcement of a sanction imposed by the ASA, the SASA or the WASA.  | £250   |
|                 | (no fee is required when the appeal is made by an official following a complaint made originally by him arising from an incident or incidents dealt with in pursuance of his duties under FINA Technical Rules or by a Team Manager or a Committee following a complaint made originally by him on behalf of British Swimming under the British Swimming Selection Agreements and Codes of Conduct). |        |

**26.5.2** The Chairman of a Tribunal may order the return of the fee if, in all the circumstances, it seems to him to be reasonable to do so. Alternatively, the return of the fee may be taken into account in an award of costs against an unsuccessful party.