

HOW MCASA DEALS WITH COMPLAINTS

A guideline from the MCASA Disputes and Disciplinary Committee

1. Purpose

- 1.1. **This document is intended to provide an overview of how complaints made to MCASA are handled. This essential guidance is provided for MCASA committee members, officials and any other interested party.**
- 1.2. For reasons that are both practical and appropriate all formal complaints to MCASA are directed to the MCASA Disputes and Disciplinary Committee (DDC).
- 1.3. [Note: Under Swim England rules and by comparison to dealing with Disciplinary matters in employment, disciplinary issues may involve serious offenses and need to be addressed through a formal process to protect all parties involved. However, many COMPLAINTS do not meet this bar and do not necessarily need this sort of process to address them, however they still must be resolved within the guidance Swim England provides in its Codes of Conduct and Ethics within Wavepower and following mechanisms consistent with the judicial guidelines within the Swim England Handbook].

2. MCASA Disputes and Disciplinary Committee (DDC)

- 2.1. The DDC is directly accountable to the President of Middlesex Amateur Swimming Association.
- 2.2. The DDC will normally consist of three members of the Counties Executive Committee nominated by the Executive and following the succession process of appointments to the Executive.
 - 2.2.1. They take their responsibility following the AGM and remain in office until their successors are elected.
 - 2.2.2. Nominations for the Disciplinary Panel are viewed and voted on at the first Executive meeting following the ACM each year.
 - 2.2.3. The DDC will appoint amongst themselves a person to act as secretary.
- 2.3. The DDC shall be immune from complaint only while acting in accordance with Swim England Regulations in their respective capacities as members of the DDC. In all other respects they shall be treated as members of Swim England.

3. Complaints, disputes and disciplinary issues

- 3.1. It is possible that from time to time MCASA will receive a formal complaint relating to its areas of responsibility and jurisdiction.

- 3.2. The primary role of the DDC is to secure as expeditiously as possible a just outcome following the submission of a formal complaint to MCASA relating to its swimming activities.
- 3.3. What is a complaint? A complaint is defined in the Swim England handbook as:
 - 3.3.1. 'a formal expression of dissatisfaction with the actions or behaviour of any person, including an individual or a club, or other body, or organisation or with alleged unfair practice in connection with the sport'.
 - 3.3.2. [Note: Complaints can only be made against people, clubs, individuals or other bodies and associations which are members of Swim England]
 - 3.3.3. [Note: Decisions of by MCASA on the selection of individuals and teams for its development opportunities and inter-county competitions or other galas may not be the subject of a complaint].
- 3.4. To be a formal complaint to MCASA it must be made in writing.
 - 3.4.1. In the first instance, if a MCASA Committee member is aware of a dispute situation relating to the County's swimming affairs, is in the making, it is appropriate that they do try to informally address the issue with the parties (see dispute resolution procedures in this document)
 - 3.4.2. If an MCASA Committee Member is aware that a situation, concerning the County's Swimming affairs, has escalated to the point where there is the likelihood of a Formal Complaint being made, they should advise the Complainant to put their complaint in writing to the MCASA.
 - 3.4.3. The formal complaint should clearly include a detailed statement of the matter(s) of which the complainant is dissatisfied, where and when the issues occurred and the reasons for dissatisfaction. Where relevant and, if known, the Swim England Regulation or part of the Swim England Code of Ethics which the complainant alleges has been violated or breached.
- 3.5. Complaints can cover a wide range of issues and vary significantly in their gravity. They may include a local dispute or more significant allegations of a disciplinary nature. The first role of the DDC is to assess the legitimacy and severity of the formal complaint in order to determine the correct response to dealing with it.
- 3.6. It is the role of the DDC, and no other part of MCASA to assess ALL formal complaints and determine the response from MCASA.
- 3.7. The DDC will, in good faith and with integrity, follow the complaint to a natural conclusion and determination. Under normal circumstances, a formal complaint will only be addressed once by MCASA. Although it should be noted, the parties (complainant and, where appropriate, the respondent) will always be reminded of their right to appeal a DDC decision.
- 3.8. Appeals: If one of the parties disputes the outcome and wishes to appeal, this appeal must be made outside the County to the Judicial Commissioner and the Jury of Appeal Procedures of Swim England.

4. Reporting a Complaint

4.1. It is possible that formal complaints might come to the attention of the MCASA via different routes. For example, via a person officiating at a gala, or in an e-mail to the MCASA President.

4.1.1. In the first instance ANY FORMAL COMPLAINT received by any official or committee member should be directed to the Secretary of the DDC.

4.1.2. MSASA Officials and Committees should avoid discussion of complaints received either informally or in other MCASA committees; they should be regarded with sensitivity and confidentiality unless, in due course, the determination of the DCC raises matters relevant to particular officers or committees and the DDC refers these for consideration to the officers or committee concerned.

5. Initial response.

5.1. On receipt of a formal complaint, the Secretary to the DDC will normally:

5.1.1. Write to the complainant, confirming that a complaint has been received by the DDC and outline how the process will progress (appendix 1 specimen response).

5.1.1.1. The letter will also advise the complainant of the membership of the DDC and give at least 7 days for the complainant to object to their involvement. (The DDC shall consider any such objections, decide whether they are justified and act accordingly).

5.1.2. Where relevant (usually) this confirmation of receipt of complaint will also be copied to the Chairperson of the Club to which the complainant is associated (as a member, employee or official).

5.1.3. Arrange for the DDC to convene as soon as it is reasonable and make their preliminary assessment of the complaint and to determine how it will be addressed.

6. Initial Assessment

6.1. Overview

6.1.1. The initial assessment and determination of the response will be made by the DDC.

6.2. How complaints are considered

6.2.1. The DDC's initial assessment of the complaint must determine its nature, assess its validity and, therefore, how it should be proceeded with.

6.2.2. To do this the DDC must consider if there is evidence that conduct which is inconsistent with the Swim England Codes of Ethics and Conduct has occurred, as outlined in the Swim England Handbook and Wavepower and/or to see what

the nature of the complaint as set out in the Judicial Guidelines. The process, following this initial review, will then depend on the severity of the issue. For example, if a complaint involved allegations of serious misconduct or maladministration, then the disciplinary committee might deem that it should be referred to the Swim England Judiciary rather than address it within the County or, if it involves allegation of criminality, to the police. If it were a complaint around an interclub dispute within the county, the DDC might instigate an arbitration process and could engage a 'Swimming Friend' to help try to resolve and mediate. The general guidance from Swim England is that, where possible, it is preferable to avoid formal procedures and to try to resolve the issue with the parties concerned, informally and amicably if possible. At the lower end of the spectrum, particularly if it is around a local breach of the Swim England/Institute of Swimming Code of ethics, the DDC may simply refer the complaint to the home club of the respondent with the recommendation that it is addressed through that club's own complaint and disciplinary procedures as set out in their club constitution which should be aligned with Swim England's guidelines. Swim England rightly prefers that complaints are addressed at an appropriate level. The aim of the DDC will be on all occasions to avoid escalation, to treat the complaints properly but as informally as possible, being conscious of the possibility that the DDC may need to institute a more formal process along the lines of the Swim England Judicial panel, should emerging evidence and circumstances deem this be necessary.

7. Complaints

7.1. Under the Swim England judicial guidelines complaints are categorised so that the grounds for a complaint include but shall not be limited to the following:

7.1.1. Misconduct;

7.1.2. Serious misconduct: being any action, behaviour or practice liable to bring the sport into disrepute;

7.1.3. Maladministration or breach of Swim England Regulations or the rules of a club, body or organisation etc;

7.1.4. A complaint or dispute which otherwise breaches of the Swim England/Institute of Swimming Codes of Conduct and Ethics.

7.2. When do complaints arise?

7.2.1. Complaints to MCASA are likely to arise over matters within its jurisdiction including but not confined to:

7.2.1.1. Complaints concerning the organisation and running of the MCASA's committees and organisational procedures.

7.2.1.2. Complaints arising from its galas, development days or its other activities.

7.2.1.3. Where there is a complaint involving a dispute between two or more clubs or individuals within different clubs affiliated to the County.

7.2.1.4. Complaints should be made within 30 days of when the incident is alleged to have occurred.

7.3. A complaint can be made by:

7.3.1. Any Swim England member who is aged 18 years or over on the date of the complaint.

7.3.2. The parent of or other person with parental responsibility for a member, who is aged under 18 years on the date of the complaint, on their behalf. Any such complaint may only be made relative to swimming related activities in which the member was engaged.

7.3.3. Any Swim England affiliated club, body, organisation, association, County Association or region through its secretary or other officer acting on its behalf.

7.3.4. The Board or any committee of Swim England, region or affiliated organisation through its secretary or other officer acting on its behalf.

7.3.5. A person officiating at an event.

7.3.6. Any member of an associated organisation, a Corporate Organisation, an Associate Association, or an Affiliated Body who is aged 18 years or over on the date of the complaint. Any such complaint may only be made relative to swimming related activities in which the complainant was engaged.

7.4. A complaint must normally reach the DDC not later than 30 days after the alleged incident that gave rise to it.

8. Grounds for rejecting a complaint

8.1. In the initial Assessment the DDC must determine if the complaint should be accepted in whole or in part or rejected.

8.2. If declined reasons must be given in writing to the complainant or respondent where they have been previously notified of the complaint by the DDC. Reasons for declining to allow a complaint to proceed shall include that it:

8.2.1. Does not meet the criteria for a complaint.

8.2.2. Does not have enough evidence to warrant further action being taken.

8.2.3. Is not serious enough to warrant further involvement by MCASA. The DDC may nevertheless decide that no further action is required and/or decide to deal with the complaint informally by way of advice or information.

8.2.4. Raises an allegation which is unreasonable or vexatious or which is one which is not of concern to MCASA as the County Level body for the sport of swimming.

- 8.2.5. Raises an allegation which is not appropriate to be dealt with by the MCASA DDC system and/or which the DDC believes should be referred to an outside body.
 - 8.2.6. Raises allegations of criminality or illegality in law – such as allegations of theft, assault, racial abuse or homophobic behaviour then the complaint and evidence will, without prejudice, be immediately referred to the police for their prosecution.
 - 8.2.7. Raises an allegation which should be dealt with under other MCASA procedures, such those concerning the Swim England Protocols for Child Safeguarding Investigation.
- 8.3. Where relevant, were the complaint is rejected, the written response of the DDC to the Complainant will be copied to the Chairperson of their club.

9. Assessing the severity of the complaint allegation

- 9.1. If a complaint is accepted by the DDC, it must then decide whether:
- 9.1.1. It involves an allegation properly to be categorised as serious misconduct liable to bring the sport into disrepute, in which case the DDC may decide the issue or may judge that their powers of sanction are insufficient for the gravity of the case and refer the complaint to be dealt with by the Swim England Judicial Commissioner, recommending it be dealt with before their Disciplinary Committee; or,
 - 9.1.2. It involves an allegation properly to be categorised as misconduct, in which case the DDC may decide the issue or may judge that their powers of sanction are insufficient for the gravity of the case and refer the complaint to the Swim England Judicial Commission to be prosecuted by the complainant under the disciplinary procedure before a Disciplinary Committee; or,
 - 9.1.3. It involves less serious allegations, in which case the DDC may decide the issue refer to its procedures for mediation and dispute resolution.
 - 9.1.4. When the DDC has confirmed its next steps in pursuing a complaint, it will inform the respondent that a complaint has been made against them and inform the respondent and complainant of the intended next steps in addressing the complaint.
- 9.2. In the case of a complaint which was submitted later than 30 days after the alleged incident giving rise to it, the DDC may nevertheless permit it to proceed, if they are satisfied that it would be in the interests of the sport to do so. Before arriving at a decision, the DDC may, seek an explanation for the delay in submitting the complaint.
- 9.3. The DDC shall endeavour to reach their decisions as soon as reasonably practicable and normally within 7 days from the time the DDC Secretary receives their copy of the complaint but may delay doing so if they need further information, or they require some further preliminary investigation.

9.4. The DDC shall notify all interested persons and/or bodies as soon as reasonably practicable, and normally within two working days, of any decision by them.

10. DDC Decision making

- 10.1. Decisions made by the DDC will be made by a simple majority.
- 10.2. Decisions shall be based on the available evidence and where necessary seeking enough evidence to make an unbiased and informed judgement.
- 10.3. Decisions do not require the same levels of proof as required by English Law but can be made on the balance of probabilities.
- 10.4. The powers of the panel shall include, but not be limited to, the power to co-opt persons with suitable specialist skills and expertise where necessary to assist with the deliberations of a specific protest appeal or complaint which requires such input (such co-opted members will not be entitled to vote).
- 10.5. The DDC may take advice from any person when reviewing any complaint or protest appeal.
- 10.6. No DDC member shall act on a complaint to which they were a party in the original incident (other than being called as a witness).
- 10.7. In the event of a complaint relating to one or more of the members of the DDC (outside their role on the DDC), other members of the Executive, not involved in the complaint, will be nominated to take their place for the deliberations on this complaint.

11. The functions and responsibilities of the DDC

- 11.1. To consider any complaint brought before it and decide if it is appropriate to pursue.
- 11.2. To come to a judgement on a complaint.
- 11.3. Take all reasonable steps to ensure the judgement is based on sound evidence.
- 11.4. Where appropriate to convene as a disciplinary panel to hear evidence from complainants, respondents and relevant witnesses.
- 11.5. Where appropriate to provide mediators/arbitrators for cases which do not come under the category of serious misconduct, pursuant to the dispute resolution procedure.
- 11.6. Where appropriate to advise on appeals procedure to MCASA decisions to higher bodies – to the England Judicial Commissioner and Jury of Appeal procedures.
- 11.7. To require that County Members of Swim England, and to request that others where appropriate, give evidence and/or further written documents or evidence or participate in arbitration processes, as required of them.

- 11.8. To recommend the appointment of a solicitor or council to chair or witness hearings of a Disciplinary Committee should the circumstance of a case require it.
- 11.9. To monitor the progress of any complaint that the Disciplinary Committee has reviewed and referred to a Club regarding one of its Committee, Officers, Employees or Members, and to instigate necessary action with the club and/or Swim England where it fails to deal satisfactorily with its responsibilities.
- 11.10. To maintain a record of the Complaint and of the DDC treatment of it, including evidence statements, key correspondence, the deliberation and any sanctions, in a secure archive for six years after which the records will be destroyed.
- 11.11. Any improper approach or improper contact, or attempt to influence or intimidate a DDC member, complainant, respondent, or any other party to the proceedings, a witness or a representative, mediator or arbiter, either in person or through an intermediary must be immediately reported to the DDC who can take such action as they deem appropriate. Such improper action may be subject of a complaint.

12. Powers and limitations

- 12.1. The DDC has the authority to make any order it considers appropriate, including but not limited to:
 - 12.1.1. A written warning
 - 12.1.2. A requirement to change current practices.
 - 12.1.3. A requirement to change the rules of a MCASA affiliated club or other body.
 - 12.1.4. The imposition of a financial penalty to individuals, clubs or other organisations if deemed appropriate
 - 12.1.5. The imposition of non-financial sanctions including barring or suspension of parties including individuals or affiliated clubs from any or all MCASA events for a period.
 - 12.1.6. Referring the determination to Swim England with the recommendation that they take sanctions, such as suspensions of membership (by the DCC making a consequential complaint based on the determination to the Swim England Judicial Commissioner).
 - 12.1.7. To insist that parties engage in a mediation or arbitration process.
 - 12.1.8. Failure to comply with a DDC order may mean the DDC escalates the complaint to the Swim England Judicial Commissioner.

13. Right of appeal

- 13.1. Appeals against the determinations and orders of the MCASA DDC must be made to the Swim England Judicial Commissioner following the guidelines set out in

the Swim England Handbook and within the timelines and other requirements set out there.

13.2. Grounds for appeal might include that:

13.2.1. The DDC exceeded its jurisdiction or acted without jurisdiction.

13.2.2. The DDC failed to act in accordance with the rules of natural justice.

13.2.3. The determination of the DDC exhibits an error of law on the record.

13.2.4. The determination of the DDC includes a financial penalty or suspension. An appeal solely on this ground shall only be entertained regarding the amount of the financial penalty or the application of the suspension.

13.3. Appeals to the Swim England need to be submitted to the Judicial Administrator within the fixed time period (21 days), setting out the detailed grounds of appeal and supporting documents and accompanied by the appropriate fee. The judgement of the Swim England Appeals process, including whether the appeal can proceed, is final.

14. DDC procedures for minor complaints and disputes, their mediation or resolution

14.1. Disputes

14.1.1. The MCASA will not involve itself in 'internal club disputes' the guidelines for addressing these are set out in the Swim England Handbook.

14.1.2. The MCASA may involve itself in trying to deal with disputes:

14.1.2.1. Between more than one of the MCASA associated clubs, or involving individuals from more than one club associated with the MCASA.

14.1.2.2. Disputes between clubs and the MCASA, its committees or officials

14.1.2.3. Internal MCASA disputes.

14.2. Initial steps for dispute resolution:

14.2.1. The DDC will use any reasonable means to settle issues informally and amicably.

14.2.2. If such a resolution cannot be achieved, the DDC may then appoint an independent person to act as a mediator between the parties. The mediator may be a member of DDC, another member of the MCASA Executive, an MCASA 'Swimming friend' or a member of another club or body affiliated to Swim England.

14.3. Resorting to a hearing

14.3.1. If the mediator is unable to bring about a satisfactory settlement usually within 21 days, the DDC will convene within usually a further 14 days as a panel (the 'panel') to determine the dispute. The parties shall be given the opportunity to object to any of the members of the panel at least seven days before the scheduled date of any hearing. The panel will make a determination

on the balance of the evidence available. The determination may be dealt with, if it the issue does not include a breach of Swim England Regulations, under the relevant provisions of Swim England which deal with club rights and responsibilities

14.3.2. Procedure before a hearing

14.3.2.1. The DDC appoint one of their number to act as the Chair and either appoint another, or alternatively an additional person without any other powers, to act as the clerk of the hearing.

14.3.2.2. The Chair of the panel shall arrange the date of the hearing and notify the parties of the arrangements at least 14 days in advance of the date set. The notified date shall not be changed unless one or more of the parties has a compelling reason for not being able to attend on the notified day or time.

14.3.3. Procedure at a hearing

14.3.3.1. The procedure shall be flexible, and it shall be the responsibility of the Chair of the panel to ensure the orderly and effective conduct of the hearing.

14.3.3.2. The panel shall not be bound by the judicial rules of the courts of England and Wales governing procedure 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 panel and present their case. The Chair shall have the discretion to limit the number of witnesses that would otherwise have been called.

14.3.3.3. Witnesses shall normally be provided with an area outside the hearing room and not take any part in the hearing other than giving evidence and responding to questions

14.3.3.4. The parties shall be informed of their right to make an appeal if they are dissatisfied with the conduct of the hearing or the grounds upon which the decision was made or if they consider any sanction imposed to be disproportionate.

14.3.4. Procedure after a hearing

14.3.4.1. The panel shall come to a decision as soon as reasonably practicable after the hearing and if possible, announce its findings and decisions orally to the parties.

14.3.4.2. The Chair shall notify the parties and, if not a party to the dispute, any relevant club secretary in writing of its findings and decisions within five days of the hearing.

14.3.5. Considerations for hearings regarding children

14.3.5.1. Any person under the age of 18 (a 'child') who is a party to a dispute or who has been called as a witness shall normally be accompanied by a

parent, a person with parental responsibility or a suitable adult. The Chair shall have the sole discretion as to whether a child is permitted to present or defend a case or be questioned as a witness and may order that the child be assisted or represented by an adult.

14.3.5.2. The Chair will consult with the MCASA Child Welfare Officer and, subject to their guidance, give due consideration to any child attending a hearing as a party to a dispute or to give evidence and in particular:

14.3.5.2.1. No child aged 14 or under shall normally be expected to attend a hearing to give evidence in person. Their evidence shall normally be given as a written statement with the assistance of a club welfare officer or other person acceptable to the child and parent. Questions and responses may be relayed by a panel member. If the child appears distressed the panel shall rely only on the written evidence.

14.3.5.2.2. A child over the age of fourteen shall only attend a hearing as a party to the dispute or to give evidence in person provided they wish to, and the Chair has consulted with the parent and child and is satisfied that they both understand the nature of the hearing and what will happen and that the child is competent to attend.

14.3.5.2.3. During the hearing, a child who is expected to give evidence in person and their accompanying adult(s) shall be required to attend only those parts of the hearing which are necessary for a child to give their evidence and shall be provided with a separate waiting area with no contact with any of the [other] parties.

14.3.5.2.4. After the hearing, the Chair shall inform the parent of the panel's findings and decisions and shall discuss whether they or the parent shall inform the child.

15. DDC procedures for misconduct and serious misconduct

15.1. Complaints alleging misconduct or serious misconduct will need to be addressed through a Disciplinary Hearing which follows a more formal process.

15.1.1. On a decision by the DDC that a complaint involves misconduct or serious misconduct and that their powers of sanction are insufficient for the gravity of the case then the Complaint will be referred to the Swim England Judicial Commissioner:

15.1.2. If the complaint alleges a level of misconduct which the DDC believes it has the authority and powers of sanction to address, then it will pursue this via convening a disciplinary process and hearing.

15.1.3. A Chair will be appointed from the DDC and a clerk from within the DDC or appointed additionally.

- 15.1.4. The Chair will be responsible for formulating particulars of the charge(s) of serious misconduct to be laid against the defendant(s) to the complaint.
- 15.1.5. In the case of a complaint which involves misconduct, the DDC Secretary will notify the complainant of the requirement that the complainant shall prosecute the complaint before a Disciplinary hearing.
- 15.1.6. In either case the Chair shall give directions for the future conduct of the complaint. The DDC may make such orders as they think fit relating to the procedural aspects prior to the hearing which may include, but not be limited to:
 - 15.1.6.1. The procedure and timetable for submitting written statements of claim, defence and counterclaim and reply.
 - 15.1.6.2. The procedure and timetable for the production and inspection of documents or property.
 - 15.1.6.3. The procedure and timetable for the submission of the names and details of any witnesses the parties concerned wish to call.

15.2. Procedures before a disciplinary panel hearing

- 15.2.1. The DDC will as soon as reasonably practicable, and normally within two working days of their decision to proceed as a 'Disciplinary panel' in regard to the complaint, send a copy of the complaint to the defendant(s) and notify the parties of the intended process and the names of panel members. The parties shall have seven days from receipt of this notification within which to lodge any objection to the DDC to any member(s) of the panel, stating the grounds for the objection. The decision of the DDC in respect of an objection shall be final.
- 15.2.2. The DDC, having taken account of any objections made, will confirm the 'Disciplinary panel'. One of the three members shall be appointed the panel Chair.
- 15.2.3. The Chair shall as soon as reasonably practicable, and normally within five working days, arrange the date, time and venue of a hearing of the Disciplinary Panel which shall normally commence within 60 days of the receipt of an accepted complaint.
- 15.2.4. The DDC shall have the authority to strike out a complaint or bar a defence if the complainant or defendant(s) fail to comply with the directions given.
- 15.2.5. The Chair shall as soon as reasonably practicable, and giving at least 28 days' notice, notify the parties of the arrangements for the hearing including the date, time and place of the hearing and the procedure to be followed prior to the hearing based on the DDC's direction.
- 15.2.6. 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 and they shall reply within five days of being asked.

- 15.2.7. At least 21 days in advance of the hearing date, each party to the complaint must provide to the DDC details of any witnesses they wish to call (including, where appropriate, any complainants or defendant(s)) together with copies of their written statements, and copies of any other documentary evidence they propose to rely on at the hearing.
- 15.2.8. At least 14 days in advance of the hearing date each party to the complaint must provide to the DDC, the name and status of any representative (professional or otherwise) through whom he proposes to present his case.
- 15.2.9. As soon as reasonably practicable and normally within five working days of receiving notification of representation the DDC will notify each party to a complaint the names of the other party's witnesses and the name and status of any representative who will be presenting a party's case.
- 15.2.10. Once a complaint has been accepted by the DDC, the DDC/Disciplinary panel shall copy all subsequent correspondence relating to that complaint received from one party to the other party as soon as reasonably practicable, and normally within 24 hours of the receipt of the respective communications.
- 15.2.11. Copies of all written documents or other evidence relevant to the dispute between the parties shall be provided by the DDC/Disciplinary Panel to the parties to the complaint at least seven days in advance of the hearing. The evidence shall be provided without modification. No further written evidence shall be accepted after this date without the prior agreement of the Chair of the panel.
- 15.2.12. The hearing shall normally take place in private except that the DDC may decide to hold a hearing in public provided that:
- 15.2.12.1. before making the decision, the Chair has consulted the parties involved and has taken their wishes into account;
- 15.2.12.2. the DDC is satisfied that it is in the interest of the MCASA and the sport to do so, having regard to the interests of the Committee, any particular need for privacy, the rights of others and the need to encourage others to cooperate with judicial proceedings in general.
- 15.2.12.3. If any of the parties concerned do not attend the Panel hearing, the matter may be dealt with by the Panel in the absence of that party taking into account any written representations that may have been received from that party.
- 15.2.12.4. If the DDC is satisfied that it is in the interest of the sport to do so, they may vary any time period specified in this section relevant to the panel and its procedures. The decision shall be notified to all the parties to the complaint.
- 15.2.12.5. Where an appeal is made regarding any of the schedules and procedures the Chair, conferring with the panel, will give this consideration, their decision on the appeal is final.

15.3. Procedure at a Disciplinary panel hearing

- 15.3.1. The procedure shall be flexible and shall be at the discretion of the Chair of the Disciplinary panel who may make such orders, as they feel necessary to ensure the orderly and effective conduct of the hearing.
- 15.3.2. The Chair of the Disciplinary panel may, in his discretion invite a regional legal adviser or another legally qualified person or discipline expert to act as adviser to them and/or the panel.
- 15.3.3. The Disciplinary panel shall not be bound by the judicial rules of the courts of England and Wales governing procedure 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 Committee and present their case.
- 15.3.4. Where a complaint is upheld, the record of any previous offences, if any and if known, shall be considered in the panel's deliberation.

15.4. Procedure after a Disciplinary Panel hearing

- 15.4.1. The Chair of the Disciplinary panel may inform the parties orally of the decision of the Disciplinary panel after the hearing. Whether or not this is done, the DDC will communicate the decision in writing to the parties, to the County Chair, and to such other interested persons or bodies as soon as reasonably practicable, and normally within five working days of the date of the hearing. As soon as reasonably practicable then or thereafter, the parties shall be given in writing the reasons for the decision, notification of their entitlement to appeal and the time by which any notice of appeal must be lodged.
- 15.4.2. On the instructions of the Chair of the Disciplinary Committee panel the DDC will provide a record of the proceedings for appeal and archive purposes.
- 15.4.3. Any communication of the outcome of the proceeding will in recognition of the possibility of appeal and in consideration of the good of the sport.
- 15.4.4. A short report on the proceeding and outcome and particular observation may be made available to Swim England's Judicial Commissioner and others the DDC may think useful.
- 15.4.5. No report of the outcome will be published until the time for appeal against the decision of the panel has expired.

16. Limitations

- 16.1. Any deviation from any provision of these guidelines 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.
- 16.2. Any case involving a prohibited substance or other offence under the British Swimming Anti-Doping Rules shall be referred to British Swimming according to those Anti-Doping Rules.

- 16.3. All documents submitted to the DDC shall be solely used in relation to that dispute, shall always be kept confidential by any individual in receipt of any documents from the DDC and shall not be used for any collateral or ulterior purpose. Documents marked confidential originating from the Committee shall also be kept confidential and not used for any collateral or ulterior purpose.
- 16.4. If an individual, club or other body or organisation is dissatisfied with a decision made by the MCASA DDC, they may have the right to appeal to the Swim England Judicial Commissioner/Jury of Appeal. In such cases, only decisions of a disciplinary nature may be the subject of an appeal. Decisions made in the normal course of the business of the DDC on administrative and technical matters, appointments and selection of experts and eye witnesses may not be the subject of an appeal.
- 16.5. No complaint can be made to MCASA DDC against an employee of Swim England relating to any action taken in the course of their employment. Any complaint about such an action shall be dealt with by Swim England and should be addressed to the Chief Executive Officer.