

# Club Complaints

## Panel Hearing Guidance

This guidance attempts to clarify the later stages of the Club Complaint process explaining, in practical terms, what happens before, during and after a Club Complaint panel hearing.

### Definitions

- **Club Complaint:** a complaint involving an alleged breach of the club's rules or any other dispute not relating to an alleged breach of Swim England regulations, between two or more club members, any or none of whom may be an officer of the club, or one or more club members and one or more employees of the club.
- **Club Chair:** principle officer of the Club
- **Panel Chair:** one of the three individuals that form a panel as part of the hearing. They lead on the hearing.
- **Club Complaint Outcome:** a written documentation, which records details of the hearing.
- **Club Complaint Form:** a form, which is completed by the person making the complaint, the respondent and the Club Chair.
- **Complainant:** a party who submits a Club Complaint to the relevant body.
- **Respondent:** a party responding to the Club Complaint.

### What is a hearing?

A Club Complaint hearing is a process in which a Club Complaint between two parties is resolved by a panel of three independent members who, after listening to each party, decide upon an appropriate outcome.

Such a hearing is part of the Club Complaints procedure. If mediation is unsuccessful or does not occur, then the Club Complaint will be resolved through a hearing. The Swim England Handbook, Regulation 103.5, details the hearing proceedings that Clubs must follow.

### Natural Justice

Natural Justice refers to the basic principles of fair treatment for individuals who have a dispute, which is being heard by a body, including a Club Complaint panel. These principles include the duty to ensure a fair hearing; the duty to ensure that someone who is impartial decides the matter; and the duty to allow an appeal against a decision (through a Judicial Complaint).

A Club Complaint hearing is rooted in the principles of natural justice and it is essential that these principles be adhered to throughout the Club Complaints process.

## Before the hearing

Within seven days of the mediation either not being agreed to, or the mediation failing, the Club Chair shall organise a panel of three independent members to hear the Club Complaint.

The panel consists of three individuals who have had no involvement in the Club Complaint. One of these individuals shall be the Panel Chair. The Club Chair, or their nominee if involved in the Club Complaint, is responsible for assembling the panel. Ordinarily, the Club Chair should contact their Region to request that it proposes an independent person to serve as the Panel Chair. Where such a person is not proposed, the Club Chair (or their nominee) should themselves appoint the Panel Chair. The Club Chair must also appoint two independent wing members. Once appointed, the Chair must communicate the identities of the panel to the parties to the Club Complaint.

Either party can object to a panel member's appointment within three days of being notified of the panel members. The grounds for objection to a panel member's participation are (Regulation 103.5.3):

- the panel member has prior involvement in the complaint;
- the panel member will be realistically or may be adversely affected by the club complaint; and
- the panel member will be or realistically may be conflicted in determining the club complaint.

The Panel Chair should then set a date for the hearing, which should take place within 28 days of the panel appointment. The parties must be notified at least 14 days in advance. Once set, the date may only be changed for a compelling reason and with the approval of the panel.

Please ensure that the hearing is held in person where possible, and the venue is appropriate to hold a hearing. You may need two rooms within the venue or a place to separate the witnesses and the hearing. A hearing may be conducted via videoconferencing software where an in-person hearing is impractical.

## Holding the Hearing

Natural Justice must be adhered to throughout the process as it ensures the parties receive a fair hearing.

The conduct and procedure of the hearing shall be determined by the Panel Chair who will have discretionary powers over such. The proceedings should be flexible.

Normally, the Panel Chair invites the parties, representatives, witnesses and others with interests into the room in which the hearing will be conducted. The Panel Chair will introduce themselves and the other panel members to those present, after which the parties and others present will be invited to introduce themselves.

The Panel Chair will outline the manner in which they intend to conduct the hearing and then ask all witnesses to leave the room.

The complainant will present their case before the panel. When the complainant's presentation has been completed, the Respondent will be invited to question the complainant. The panel may, and usually do, question the complainant.

The complainant will then usually be invited to call their witnesses (one at a time) to give their evidence. As the witnesses complete their evidence, the Respondent and the panel may question them. Please note that witnesses shall normally be provided with an area outside the hearing room to wait while they are not taking an active part in the proceedings and shall not

take any part in the hearing other than giving evidence and responding to questions, which may be asked of them by the Club Panel only.

Each party may usually call no more than three witnesses unless the panel agrees there is a compelling reason to allow more. The parties involved must obtain consent for all witnesses called and they should only provide factual information specifically related to the Club Complaint.

Once the Complainant has stated their case and any witnesses have spoken, the process will usually be repeated for the Respondent. Once complete, the Panel Chair may wish to finish the proceedings by inviting final comments from each party.

Once each party has finished making their points, the panel will make a decision, which will be documented as a Club Complaint Outcome. The Panel's decision is by a majority and on the balance of probabilities. If it fails to reach a majority decision on any issue, the decision of the Chair to the Panel shall be final.

If either party fails to attend the hearing, the panel can proceed, taking into account any written submission.

## Club Complaint Panel Powers

The panel must ensure that Natural Justice is adhered to throughout the hearing.

Where the panel finds that there has been a breach of the Club's rules (as stated in Regulation 103.6.1). They may:

- apply sanctions to a member relating to activities wholly within the Club's power, up to and including suspension from any or all of them (for example, including but not limited to training with the Club, competing for the Club in Club competitions and volunteering for the Club); and/or
- submit a Judicial Complaint to the Commissioner in accordance with Regulation 104.

If the alleged offence is deemed a breach of Swim England Regulations, the Club shall not deal with it but may instead make a Judicial Complaint to the Commissioner under Regulation 104.

## Outcome

Once the panel has come to a decision, it shall be recorded in writing as a Club Complaint Outcome, shall be dated and signed by the Panel Chair and, unless otherwise agreed, shall be accompanied by the reasons on which it is based.

The Club Complaint Outcome should include:

- a list of individuals in attendance from each party;
- a list of panel members in attendance;
- a description of the disputed issue;
- a rough outline of evidence before the panel;
- the facts found including a background if necessary;

- conclusion, determination and sanction (if any); and
- who it should be sent to

Once the Club Complaint Outcome is complete, it should be distributed to the parties to the Club Complaint and the Club Chair within 14 days of the date of hearing. The Club Chair should also note the outcome on the Club Complaint Form.

A Club Complaint hearing is a confidential process. Accordingly, the Club Complaint Outcome should not be distributed or discussed beyond those who the Panel Chair states should see it. Breach of confidentiality may result in a breach of Swim England Regulations and a Judicial Complaint.

The Club Complaint Outcome is final and binding unless there are grounds to make a Judicial Complaint.

### Next Steps

The Club Chair shall complete the Club Complaint log form, including details of the hearing and Club Complaint Outcome, and provide a pdf copy to all parties to the Club Complaint.

Either party may escalate to a Judicial Complaint if they believe that the Club Complaints procedure or natural justice have not been complied with under Regulation 103. They can also escalate if they believe that the sanction imposed by the panel is disproportionate. A Judicial Complaint may not be made by a party to a Club Complaint on the sole basis that the Club Complaint Outcome was not in their favour.

### Further Guidance

Swim England Handbook: <https://www.swimming.org/swimengland/swim-england-handbook/>

Club Complaint Log Form: <https://www.swimming.org/members/how-to-resolve-issues-with-your-club/>

Swim England Friends: <https://www.swimming.org/members/how-to-resolve-issues-with-your-club/>