

SWIM ENGLAND NORTH WEST

Rules of Darwen Masters Swimming Club as at 1st January 2019

1. NAME

1.1 The name of the Club shall be Darwen Masters Swimming Club, herein after called the Club.

2. OBJECTIVES

2.1 The objects of the Club shall be the coaching, development and practice of Masters and Open Water Swimming, the promotion of competitions and championships for its members and shall where appropriate be to compete at Local, County, Region, National and International level. In the furtherance of these objects:

- 2.1.1 The Club is committed to treating everyone equally within the context of its activity and with due respect to the differences of individuals. It shall not apply nor endorse unlawful or unjustified discrimination and shall act in compliance with the protections afforded by the Equality Act 2010.
- 2.1.2 The Club shall implement the Swim England Equality Policy (as may be amended from time to time).
- 2.1.3 The Club shall comply with the Data Protection Act 2018 as may be modified from time to time.

2.2 The Club shall be affiliated to Swim England North West and the Lancashire County Water Polo and Swimming Association and shall adopt and conform to the rules of those Associations, and to such other bodies as the Club may determine from time to time.

2.3 The business and the affairs of the Club shall at all times be conducted in accordance with the Articles, Company Regulations, General Regulations, Judicial Regulations and Technical Rules of Swim England, and in particular:

2.3.1 All competition entrants from the club shall be members of the club and all competing members shall be eligible competitors as defined in Swim England Regulations.

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

2.4.1 The Lancashire County Water Polo and Swimming Association, and

2.4.2 Swim England North West and Swim England (to include the Code of Ethics); and

2.4.3 British Swimming (in particular its Doping Control Rules and Protocols and the Judicial Code); and

2.4.4 FINA, the world governing body for the sport of swimming in all its disciplines (together “the Governing Body Rules”).

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

Rule shall prevail.

3. Membership

3.1 The total membership of the Club shall not normally be limited. If however the Committee considers that there is a good reason to impose any limit from time to time then the Committee shall have the power to do so at its own discretion.

3.2 All persons who assist in any way with the Club's activities shall become members of the Club and hence of Swim England and the relevant Swim England membership fee shall be paid. Assisting with the Club's activities shall include, but not be restricted to, administrators, associate members, voluntary instructors, teachers and coaches, committee members, helpers, honorary members, life members, officers, patrons, presidents, technical and non-technical officials, temporary members and verifiers or tutors of the Swim England's educational certificates.

3.3 Paid instructors, teachers and coaches who are not members of the Club must be members of a body which accepts that its members are bound by the Swim England's Code of Ethics and whilst engaged in activities under the jurisdiction of Swim England shall be subject to all the constraints and privileges of the Judicial Laws and Regulations.

3.4 Any person who wishes to become a member of the Club must submit a signed application to the Secretary. Election to membership shall be determined by the Secretary but other person(s) authorised by the Committee may make recommendation as to the applicant's acceptability.

3.5 The Secretary shall be required to give reasons for the refusal of any application for membership. Any person refused membership may seek a review

of this decision before a Review Panel appointed by the Committee comprised of not less than three members, who may or may not be members of the Committee. The Review Panel shall [wherever practicable] include one independent member nominated by Swim England North West. The person refused membership shall be entitled to make representations to the Review Panel. The procedures for review shall be at the discretion of the Review Panel whose decision shall be final and binding.

3.6 In its consideration of applications for membership, the Club shall not act in a discriminatory manner and in particular, shall adhere to the Equality Act 2010 (as may be amended). Accordingly, (unless the Club chooses to restrict its membership to only people who share the same Protected Characteristic) the Club shall not refuse membership on the basis of a Protected Characteristic within the Equality Act 2010, such as disability, gender or gender identity, pregnancy, race, religion or belief, or sexual orientation. Neither may refusal be made on the grounds of political persuasion.

3.7 The Club may refuse membership only for good and sufficient cause, such as conduct or character likely to bring the Club or the sport into disrepute, or, in the case of an athlete, being unable to achieve the entry standards as laid down and provided by the Club to the applicant for membership.

3.8 Membership of the Club shall be renewed on an annual basis through the process of reapplication not later than 1st January each year.

3.9 The category of membership shall be decided in accordance with the following:

- 3.9.1 Members, who shall be not less than 18 years of age, shall be eligible to stand for election for office and for membership of the

Committee, to attend and vote at general meetings of the membership and to submit nominations, proposals and resolutions to a general meeting of the membership.

- 3.9.2 Honorary Members, who shall be elected by the Committee for such a period as they think fit and they shall be entitled to all the privileges of membership except that they shall not be entitled to make nominations for office, to submit proposals and resolutions for consideration at a general meeting of the membership, to vote at meetings or serve as officers or on the Committee unless any such person shall have retained in addition their ordinary membership of the club. Such honorary members must be included in the Club's annual return as to membership.
- 3.9.3 Life Members, who shall be elected at the Annual General Meeting on a recommendation made by the Committee in recognition of outstanding services rendered to the Club. Life members shall be entitled to all the privileges of membership except that they shall not be entitled to make nominations for office, to submit proposals and resolutions for consideration at a general meeting of the membership, to vote at meetings or serve as officers or on the Committee unless any such person shall have retained in addition their ordinary membership of the Club. Such life members must be included in the Club's annual return as to membership.
- 3.9.4 Associate Members, who shall be not less than 18 years of age, who shall be elected by the Committee in recognition of support or services rendered to the Club. Associate members shall be entitled to all the privileges of membership including the right to

make nominations for office and for the committee, to submit propositions and resolutions for consideration at any general meeting of the membership, to vote at general meetings, to hold office and be elected to the Committee and must be included in the Club's annual return as to membership.

- 3.9.5 Temporary Members, who are individuals granted temporary membership by Swim England by virtue of their participation in specific event(s) organised by the Club in conjunction with a club, body, association or organisation under the provision of the Swim England Regulation on temporary membership. Temporary members shall not be entitled to make proposals and resolutions, to vote at meetings and serve as officers or on the Committee.

4. Subscription and Other Fees

4.1 The annual members' subscription and training session fees, as applicable, shall be determined from time to time by the Committee and the Committee shall in so doing make special provision for different classes of membership as the Committee shall determine.

4.2 The annual membership fee shall be due on joining the Club and thereafter on the 1st day of January each year. The member's initial/1st January subscription payment is inclusive of their membership fee, and by paying that fee the member agrees to membership of the club for the remainder of/full calendar year to the following 31st December.

4.3 Any member whose subscription is unpaid 30 days after the due date for payment may be suspended by the Committee from some or all Club activities from a date to be determined by the Committee and until such payment is made.

4.4 The Committee shall, from time to time, have the power to determine the annual membership subscription and other fees. This shall include the power to make such increase in the subscription as shall, where the Club pays the individual Swim England membership fees to Swim England on behalf of members, be consequential upon an increase in individual Swim England membership fees. Any increase in subscriptions shall be advised to the members in writing or by email with the reasons for any increase to be reported to the members at the next Annual General Meeting.

4.5 The Committee shall have the power in special circumstances to remit the whole or part of the fees, including the Swim England membership fees, to address issues of social inclusion.

5. Resignation

5.1 A member wishing to resign membership of the Club must give to the Secretary written notice of his/her resignation. A member's resignation shall only take effect when agreed by the Committee and there is no financial commitment or disciplinary action outstanding against the individual and this Rule 5.1 has been complied with.

5.2 A member who resigns from the Club in accordance with Rule 5.1 above shall not be entitled to have any part of the annual subscription or membership fee or any other fees returned.

5.3 Notwithstanding the provisions of Rule 5.1 above a member whose subscription is more than two months in arrear shall be deemed to have resigned. Where the membership of a member shall be terminated in this way he/she shall be informed in writing that he/she is no longer a member by notice handed to him/her, or emailed to him/her, or sent by post to his/her last known

address.

5.4 The Swim England Membership Department shall be informed should a member resign when still owing money or goods to the Club.

6. Expulsion and Other Disciplinary Action

6.1 The Committee shall have power to expel a member when, in its opinion, it would not be in the interests of the Club for the individual to remain a member. The Club in exercising this power shall comply with the provisions of Rules 6.3 and 6.4 below.

6.2 Upon expulsion the former member shall not be entitled to have any part of the annual membership or other fees refunded and must return any Club or external body's trophy or trophies held forthwith.

6.3 The Club shall comply with the requirements and procedures of the relevant Judicial Rules and Regulations for handling Internal Club Disputes as the same may be revised from time to time. A copy of the relevant Regulations and Procedures are given as an appendix to these constitutional rules.

6.4 A member may not be expelled or, subject to Rule 6.5 below, be made the subject of any other penalty unless the panel hearing the dispute shall by a two-thirds majority vote in favour of the expulsion of, or other penalty imposed upon, the member.

6.5 The Officers of the Club, or any person to whom the Committee shall delegate this power, may temporarily suspend or exclude a member from particular training sessions and/or wider Club activities, when in their opinion, such action is in the interests of the Club. Where such action is taken the incident

or matter will thereafter be dealt with in accordance with the appropriate Judicial Regulations.

6.6 The Club Officials in charge of a particular event shall be responsible for the discipline of the Club members. If further action is required this is to be referred to the Internal Disputes procedures as laid down in Swim England Judicial Regulations.

7. Committee

7.1 The Committee shall consist of the Chairman, Secretary, Treasurer (together the Officers) and not more than 10 elected members all of whom must be members of the Club.

7.2 The Club Secretary shall be the Membership Secretary and the Club will also appoint a Data Control Officer (DCO), both of shall be responsible for any membership data processing in accordance with the Data Protection Act 2018. The person elected as DCO may or may not be elected to the Committee in accordance with normal election procedures for the remaining members of the Committee.

7.3 The Committee shall appoint as and when required a member of the Club as Welfare Officer who shall have an appropriate background. The Welfare Officer shall not be a member of the teaching and coaching staff.

7.4 The Officers and Committee members shall be proposed seconded and elected by ballot at the Annual General Meeting each year and shall remain in office until their successors are elected at the next Annual General Meeting and will take office when the Chairman has closed the meeting. Any vacancy occurring by resignation or otherwise in any position previously filled at the

Annual General Meeting or other General Meeting may be filled by the Committee. Retiring officers and members of the Committee shall be eligible for re-election.

7.5 Committee meetings shall be held not less than quarterly save where the Committee itself shall by a simple majority resolve not to meet, but there shall be not less than 4 meetings of the Committee per year. Any member of the Committee shall have discretion to call further meetings of the Committee if they consider it to be in the interests of the Club. The Secretary shall give all the members of the Committee not less than seven days notice of a meeting in writing or by electronic means. Decisions of the Committee shall be made by a simple majority of those eligible to attend and vote and in the event of an equality of votes the Chairman, or the acting Chairman of that meeting, shall have a casting or additional vote. The Secretary, or in his/her absence a member of the Committee, shall take minutes.

7.6 The quorum for a Committee meeting shall be such number as shall represent not less than a simple majority of the Committee members entitled to attend and vote, to include not less than one Officer. In the event that a quorum is not present within 30 minutes of the published start time, a meeting shall stand adjourned to the time and date falling seven days after the date of the meeting, or such other date and time as may be determined by the Chairman but shall be reconvened on a date within one month of the original date and a minimum of seven days advance notice given to the members of the rescheduled date, time and venue. At this meeting, the same agenda as originally issued shall be used. If a quorum is not present at the adjourned meeting then those Committee members attending may act for the purpose of calling a Special General Meeting of the members, to which the provisions as to the minimum notice contained in Rule 10.1 and Rule 10.2 shall not apply.

7.7 In addition to the members so elected the Committee may co-opt up to 5 further members of the Club who shall serve until the next Annual General Meeting. Co-opted members shall be entitled to vote at the meetings of the Committee.

7.8 The Committee may from time to time appoint such sub-committees as they may consider necessary and to remove, in whole or in part, or vary the terms of reference of such sub-committees and may delegate to them such of the powers and duties of the Committee as the Committee may determine. All sub-committees shall periodically report their proceedings to the Committee and shall conduct their business in accordance with the directions of the Committee.

7.9 The Committee shall be responsible for the management of the Club and shall have the sole right of appointing and determining the terms and conditions of service of employees and voluntary helpers of the Club. The Committee shall have power to enter into contracts for the purposes of the Club on behalf of all the members of the Club.

7.10 The Committee shall be responsible for ensuring that the Financial Accounts of the Club for each financial year be examined by an independent examiner to be appointed by the members at the Annual General Meeting.

7.11 The members of the Committee shall be indemnified by the members of the Club against all liabilities properly incurred by them in the management of the affairs of the Club.

7.12 The Committee shall maintain an Accident Book in which all accidents to Club members at swimming related activities shall be recorded. Details of such accidents shall be reported to the insurers in accordance with the Accident/Incident Notification guidelines. The Club shall make an annual return to

the Swim England Membership Department indicating whether or not an entry has been made in the prescribed on-line form.

7.13 The Committee shall have power to make regulations, create by-laws, see also Rule 12.1, and to settle disputed points not otherwise provided for in this Constitution.

7.14 The Committee shall ensure that the financial records and minutes of meetings are retained for a period of at least 6 years.

7.15 At the first Committee meeting following the Annual General meeting the Committee shall appoint the delegates to attend the Council meetings of Swim England North West, Lancashire Water Polo and Swimming Association and such other bodies and associations to which the Club is affiliated, as required.

8. Annual General Meeting

8.1 The Annual General Meeting of the Club shall be held each year on a date in May. The date, time and venue for the Annual General Meeting shall be fixed by the Committee.

8.2 Only in the event of exceptional circumstances shall an AGM be postponed by the Committee once the date, time and venue has been fixed and advised to members. A postponed AGM shall normally be reconvened on a date within one month of the original date and a minimum of 7 days advance notice given to the members of the rescheduled date, time and venue. At this meeting, the same agenda as originally issued shall be used.

8.3 In any event no more than 15 months shall elapse between any two consecutive Annual General Meetings.

8.4 The purpose of the Annual General Meeting is to transact the following business:

- 8.4.1 To receive the Chairman's report of the activities of the Club during the previous year;
- 8.4.2 To receive and consider the financial accounts of the Club for the previous year and the report on the accounts of the independent examiner and the Treasurer's report as to the financial position of the Club;
- 8.4.3 To remove and elect the independent examiner (who must not be a member of the Committee or a member of the family of a member of the Committee) or confirm that he/she remain in office;
- 8.4.4 To elect the Officers and other members of the Committee;
- 8.4.5 To decide on any resolution, proposal or submission that is duly submitted in accordance with Rule 8.6.

8.5 Nominations for election of members to any office, named position or for membership of the Committee shall be made in writing or by electronic means by the proposer and seconder to the Secretary not less than 7 days prior to the date of the meeting. The nominee shall be required to indicate on the nomination form his/her willingness to stand for election.

8.6 Notice of any resolution, proposal or submission to be moved at a General Meeting, duly proposed and seconded shall be given in writing or by electronic

means to the Secretary not later than 7 days prior to the date of the meeting.

9. Special General Meetings

9.1 A Special General Meeting may be called at any time by the Committee.

9.2 The Secretary shall notify the members of the arrangements for holding a Special General Meeting within 21 days of receiving a written or electronic request for a Special Meeting to be held signed by not less than 20% of the members entitled to attend and vote at a General Meeting stating the purposes for which the meeting is required and the resolutions proposed. The meeting shall be held within two months of the receipt of the request to hold the meeting. No business shall be discussed at such a meeting other than that prescribed by the Management Committee or that stated in the request, as the case may be. [SEP]

9.3 A Special General Meeting shall be called in response to a resolution to that effect passed at the Annual General meeting or at any other Special General meeting.

9.4 Only in the event of exceptional circumstances shall a Special General Meeting be postponed by the Committee once the date, time and venue has been fixed and advised to members. A postponed Special General Meeting shall be reconvened on a date within one month of the original date and a minimum of 7 days advance notice given to the members of the rescheduled date, time and venue. At this meeting, the same agenda as originally issued shall be used.

10. Procedures at the Annual and Special General Meetings

10.1 The Secretary shall personally be responsible for making available to each member a written or electronic notice of the date, time and venue of the Annual

or Special General Meeting together with the closing date for the receipt of any resolutions, proposals, nominations or reports to be considered thereat not less than 14 days before the date of the meeting. The Secretary may, alternatively, with the agreement of member(s) concerned distribute these materials by e-mail or similar form of communication. The Notice of the Meeting shall in addition wherever possible be displayed on the Club Notice Board where one exists.

10.2 The Secretary shall personally be responsible for making available to each member a written or electronic agenda for a General Meeting together with the resolutions to be proposed thereat at least fourteen days before the meeting and in the case of the Annual General Meeting a copy of the reports to be considered, a list of nominees for the Committee posts and other positions and a copy of the examined accounts. The Secretary may, alternatively, with the agreement of member(s) concerned distribute these materials by e-mail or similar form of communication.

10.3 The quorum for the Annual and Special General Meetings shall be 10% of the members entitled to attend and vote at the Meeting which must include at least one officer.

10.4 Having called a General Meeting, it may only proceed to business if the correct quorum of members is present within 30 minutes after the time fixed for the meeting; otherwise, the meeting if convened at the requisition of the members shall be dissolved; if convened by the direction of the Committee it shall be adjourned to the same time in the following week save that the adjourned meeting may proceed to business whatever the number of members present.

10.5 If the meeting commences but is adjourned for want of time (or other good reason) members present at the meeting will be notified there and then of the

adjourned date if practicable. If not and the matter is adjourned for more than 14 days all members shall receive 7 days notice in writing of the adjourned meeting; otherwise only those who attend the original meeting will be notified of the date.

10.6 Any dissolved or adjourned meeting must be re-convened and business completed within 2 months of the adjournment.

10.7 The Chairman, or if the Chairman is not available or declines to act as Chairman a member appointed by the Committee, shall take the chair. [L]
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10.8 Each member present who is entitled to attend and vote shall have one vote and resolutions shall be passed by a simple majority. In the event of an equality of votes the Chairman shall have a casting or additional vote.

10.9 A member who is not excluded under the conditions of Rule 3.9.2, Rule 3.9.3 and Rule 3.9.5 shall be entitled to attend, to be heard and to vote on all matters. Members who are excluded under the conditions of Rule 3.9.2, Rule 3.9.3 or Rule 3.9.5 may be heard by invitation of the Chairman only.

10.10 The Secretary, or in his/her absence a member of the Committee, shall take minutes at the Annual and Special General Meetings.

10.11 The Chairman shall at all General Meetings have unlimited authority upon every question of order and shall be, for the purpose of such meeting, the sole interpreter of the Rules of the Club.

11. Alteration of the Rules and Other Resolutions

11.1 The Rules may be altered by resolution at an Annual or Special General Meeting provided that the resolution is carried by a majority of at least two-thirds

of members present and entitled to vote at the General Meeting.

11.2 No amendment(s) to the Rules shall become effective until such amendment(s) shall have been submitted to and validated by such person as is authorised to do so by Swim England North West or at a later date decided by the meeting.

11.3 Any member who is not excluded under the conditions of Rule 3.9.2, Rule 3.9.3 and Rule 3.9.5 shall be entitled to put any proposal, resolution or submission for consideration at any General Meeting provided the proposal, resolution or submission in writing or by electronic means duly proposed and seconded shall have been received by the Secretary of the Club not later than 7 days before the date of the meeting in the case of the Annual General Meeting or a Special General Meeting and thereafter the Secretary shall supply a copy of the proposal, resolution or submission to the members in the manner provided in Rule 10.1 and Rule 10.2. ^[L]_[SEP]

12. By-Laws

12.1 The Committee shall have power to make, repeal and amend such by-laws as they may from time to time consider necessary for the well being of the Club which by-laws, repeals and amendments shall have effect until set aside by the Committee or at a General Meeting.

13. Finance

13.1 All moneys payable to the Club shall be received by the Treasurer and deposited in a bank account in the name of the Club. No sum shall be drawn from that account except by cheque or by electronic means or online unless sanctioned by two of the three authorised individuals, as agreed by the

Committee from time to time, and as stipulated by the bank mandate. Any moneys not required for immediate use may be invested as the Management Committee in its discretion think fit.

13.2 The income and property of the Club shall be applied only in furtherance of the objects of the Club and no part thereof shall be paid by way of bonus, dividend or profit to any members of the Club.

13.3 The Committee shall have power to authorise the payment of remuneration and expenses to any Officer, member or employee of the Club and to any other person or persons for services rendered to the Club.

13.4 The financial transactions of the Club shall be recorded by the Treasurer in such manner as the Committee thinks fit.

13.5 The financial year of the Club shall be the period commencing on 1st March and end on the last day of February. Any change to the financial year shall require the approval of the members in a General Meeting

14. Borrowing

14.1 The Committee may not borrow money on behalf of the Club for any purpose.

15. Property

15.1 The property of the Club, other than cash at the bank, shall be vested in not more than four Custodians. They shall deal with the property as directed by resolution of the Committee and entry in the minute book shall be conclusive evidence of such a resolution.

15.2 The Custodians shall be elected at a General Meeting of the Club and shall hold office until death or resignation unless removed by a resolution passed at a General Meeting.

15.3 The Custodians shall be entitled to an indemnity out of the property of the Club for all expenses and other liabilities properly incurred by them in the discharge of their duties.

16. Dissolution

16.1 A resolution to dissolve the Club shall only be considered at a General Meeting and shall be carried by a majority of at least three-quarters of the members present and entitled to vote. A specific date for the dissolution shall be included in the resolution.

16.2 The dissolution shall take effect from the date specified in the resolution and the members of the Committee shall be responsible for the winding-up of the assets and liabilities of the Club.

16.3 Any assets remaining after the discharge of the debts and liabilities of the Club shall be given to a charity or charities or other non-profit making organisation having objects similar to those of the Club for the furtherance of such objects nominated by the last Committee.

17. Acknowledgement

17.1 We are committed to respecting your privacy and such we will comply with the law on data protection. For the purposes of data protection we will control all of your personal information, during and after your membership with us. Club

members have the right to remove data from the clubs records. All data collected on your membership form will be kept securely by club personnel and medical/disability information will be provided to coaches on a need to know basis. If at any time any of the above details change please contact the membership secretary.

17.2 The members acknowledge that these Rules constitute a legally binding contract to regulate the relationship of the members with each other and the Club. The following statement needs to appear on Club's membership forms and is to be signed by the joining member:

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

In addition to receiving general Club communications please let us know how else you would like to hear from us:

I would like to receive Information from the Club about specially selected products and services available from commercial sponsors and partners.

I am happy to receive communications via:

SMS

Post

email

When you become a member of or renew your membership of the Club you will automatically be registered as a member of Swim England. We will provide Swim England with your personal data which they will use it to enable access to an online portal. It is vital, therefore, that a valid email address is given, so that you can ensure that your data is correct and so that you can set your own privacy settings.

Annex 1 CODE OF ETHICS

Terms of Reference

The content of this Code of Ethics applies to all those involved within the sport of Swimming, Diving, Water Polo, Open Water Swimming and Synchronised Swimming. The Code of Ethics should be read in conjunction with the Codes of Conduct contained in 'Wavepower' (Child Safeguarding Policy and Procedures).

Swim England Code of Ethics

All individuals within the Swim England aquatic disciplines will at all times:

- Respect the rights, dignity and worth of every person, be they adult or child, treating everyone equally within the context of the sport.
- Respect the spirit of the sport adhering to the rules and laws in and out of the pool, incorporating the concept of friendship and respect for others.
- Promote the positive aspects of the sport and never condone the use of inappropriate or abusive language, inappropriate relationships, bullying, harassment, discrimination or physical violence.
- Accept responsibility for their own behaviour and encourage and guide all Swim England members and parents of junior members to accept responsibility for their own behaviour and conduct.
- Ensure all concerns of a child safeguarding nature are referred in accordance with 'Wavepower' (Swim England Child Safeguarding Policy and Procedures).
- Conduct themselves in a manner that takes all reasonable measures to protect their own safety and the safety of others.

- Promote the reputation of the sport and never behave or encourage or condone others to behave in a manner that is liable to bring the sport into disrepute.
- Adhere to 'Wavepower' the Swim England Child Safeguarding Policy and Procedures.
- Adhere to the Swim England Anti-Doping Rules.
- Adhere to the Swim England Equity Policy.
- Adhere to the Swim England Laws and Regulations.
- Adhere to the Swim England Codes of Conduct.

Annex 2 GUIDELINES FOR HANDLING INTERNAL CLUB DISPUTES

1. Introduction

The purpose of these notes is to give Clubs guidance in the handling of internal Club disputes. With the introduction of the Code of Ethics and the increased risk of litigation it is important that internal disputes are handled correctly from the outset. Whilst most Clubs do from time to time have disputes between Committee members, parents and swimmers these can usually be resolved amicably between the individuals concerned. Occasionally it is also necessary to discipline swimmers for minor incidents of misbehaviour and this can also be done fairly by the Coach/Team Manager.

Sometimes a more serious dispute arises in a Club and because such a situation does not occur frequently Clubs are unsure how to handle the matter. This can lead to the dispute becoming more serious with recourse to the Judicial procedures becoming necessary.

These guidelines do not apply to paid employees of a Club. If a Club is in dispute with a paid employee, then the employment contract and employment law need to be considered. Specialist legal advice may have to be sought.

2. General Principles

Swim England Judicial Regulations define Protests and Complaints and it should first be decided whether the matter is a Protest or a Complaint. A Protest can be dealt with by a Club provided they are the Promoter of the Competition to which the Protest relates. A Complaint cannot be dealt with by a Club. However, it is often possible to resolve a dispute within a Club without the matter becoming a formal Complaint. If either party is dissatisfied with a decision reached in an internal Club dispute then they still have the option to make a formal Complaint to the Judicial Commissioner.

It must be noted that a Club only has the power to legislate for a breach of its own rules and can only suspend a swimmer from its own Club activities. A Club has not power to handle a dispute relating to a member of another Club nor deal with an offence against Swim England Regulations.

The key principle to be followed is that Swim England Regulations conform to the law of the land in so much that an individual accused of an alleged offence is innocent until proven guilty and he/she must have reasonable opportunity to present a defence and have his/her views heard.

In these notes reference is made to the term 'dispute' to avoid confusion with the term 'Complaint' used in formal Swim England Judicial terms. The term Club could also refer to a League or County Association.

It is assumed for the purpose of these notes that the dispute is between the Club and one or more of its members. It is most important that the same people in the Club do not become both the prosecutor (and defender) and the judge. If the Committee or its officers are either the prosecutor or defender or involved in the dispute then they must find other members not connected with the matter to hear the evidence from both parties to the dispute.

There are occasions when a problem arises in a Club, for example fighting between members in a training session, where immediate action is required such as a temporary suspension or exclusion from a training session or from wider Club activities. Coaches and officers should always be given the power to invoke a temporary suspension. A report should then be made, immediately, to the Club officers who should follow the procedures in the relevant section of the rules.

3. Procedures

On receipt of the dispute every effort should be made to resolve the matter by informal discussion. In difficult cases the Chairperson of the relevant Panel is

empowered to appoint an independent arbitrator to assist in achieving a settlement. If this fails or it is clearly necessary to discipline a member, the Club should set up a panel to deal with the matter.

The panel should consist of three persons, one to act as Chairperson. A Secretary may also be needed. The panel will need to consist of people not involved in the dispute and the Club may want to ask individuals from outside the Club to sit on the panel. The full Club Committee could of course hear the dispute but given the number of people on a Committee this could be seen as intimidating and it is usually preferable to have a smaller number of people to hear a disciplinary matter, hence the recommendation to set up a panel of three persons.

The Chairperson must notify both parties of the date, time and place of the hearing and the names of the panel members. Both parties need to be given copies of all the papers and every effort should be made to hold the hearing within 14 days of the receipt of the dispute.

If either party is under 18 years of age they must be advised of their right to be accompanied by a parent (or other person with a parental responsibility for them) or coach to help them present their case.

Both parties should be allowed to bring witnesses.

The hearing should be as informal as possible but needs to be controlled. Points to note:

(a) The complainant will present evidence first and the accused will have the right of reply.

(b) Both parties to the dispute are able to call witnesses, the complainant going first and each party should be allowed to question the other party's witnesses.

(c) Witnesses must wait outside the hearing room until they are called. After questioning they may wait in the hearing room, taking no further part in the proceedings.

(d) The Chairperson or Secretary will make notes of the hearing and the panel will make every effort to announce their decision verbally to all the parties without delay followed by written confirmation to reach all parties within five days.

4. Powers of the Clubs

The powers of Clubs regarding the disciplinary action they can apply must not exceed those in Swim England Judicial Regulations which can result in full suspension from Club activities for whatever period the panel shall decide or in expulsion. The panel if it wishes can impose a lesser penalty such as a written or verbal reprimand.

If either party to the dispute is dissatisfied with the outcome they are still entitled to make a Complaint to the Judicial Commissioner at Swim England Head Office, Loughborough.

5. Further Information

Additional guidance can be obtained from the Judicial Regulations in the Swim England Handbook.

6. Conclusions

The key message when dealing with disputes is to ensure:

- (a) All parties are treated fairly.
- (b) The complainant has the opportunity to present the case.
- (c) The accused has the opportunity to respond.

Annex 3

SWIM ENGLAND REGULATIONS - INTERNAL CLUB DISPUTES

1. CLUB RIGHTS and RESPONSIBILITIES

The rights and responsibilities of a Club in terms of its discipline, its internal dispute procedures and the sanctions it can impose are given in Swim England Regulation 281 which specifies:

Regulation 281: Club discipline and internal dispute procedures

281.1 For a breach of its own rules, but subject to Swim England Regulations 150 and 151, an affiliated Club or body may:

281.1.1 Apply sanctions to a member relating to activities wholly within its own jurisdiction up to and including suspension from any or all of them.

281.1.2 Expel a member, provided that before doing so it informs the member of the alleged offence and gives him a reasonable opportunity to defend himself against the charge. If the alleged offence is also a breach of Swim England Regulations the Club or body shall not deal with it but may make a complaint under the Judicial Regulations.

281.2 A Club or body may expel from membership and/or refuse to renew the membership of any member who has been suspended according to Regulation 109 or Regulation 241 provided that any such expulsion or initial refusal shall not be lawful after the twelve months immediately following the end of the suspension.

281.3 Each Club shall include in its rules provisions specifying the procedures to be carried out to handle internal Club disputes which shall include compliance

with Swim England Judicial Regulations.

281.4 Any such provisions shall comply with the Swim England Recommended Club Constitution and the accompanying Guidance Notes.

2. COMPLAINT TO SWIM ENGLAND

Any dispute that involves an allegation of a breach of Swim England Regulations must be submitted to Swim England and dealt with as a complaint under the condition of Swim England Regulations 150.4 and 281.1.2.

Judicial Regulation 102 deals with the circumstance of a complaint made to Swim England. It provides the necessary explanation that defines a complaint, the grounds on which a complaint can be made, who can make a complaint and the procedure to be used.

Judicial Regulation 102: Complaints

102.1 A complaint is 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. Decisions of a Club, body, organisation, association, County Association or Region on selection of teams may not be the subject of a complaint.

3. INTERNAL DISPUTES

When a dispute arises between two or more members of the same Club, body or organisation it must be handled using the Internal Disputes procedure specified in the Club Constitutional Rules and Judicial Regulations 150 to 155.

Judicial Regulation 150: General

150.1 The primary objective of the Regulations in this section is to set out ways by which a just outcome of an internal dispute between the members of a Club,

organisation, association or body may be secured as expeditiously as possible.

150.2 An 'internal Club dispute' is a dispute involving an alleged breach of the Club's rules, 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 (the "parties").

150.3 Any dispute which involves an allegation that there has been a breach of Swim England Regulations by a member must be dealt with as a Complaint under Regulation 102 and the other relevant Regulations.

150.4 If the dispute involves an allegation against a paid employee of the Club the issue must be dealt with under the terms of his contract of employment.

150.5 A failure by a Club or any of the parties to comply with Regulations 150 to 155 inclusive shall be grounds for a complaint under Regulation 102.

150.6 Organisations, associations or bodies affiliated to Swim England shall conform with such parts of Regulations 150 to 155 inclusive as may reasonably be applied to them, in all respects as if they were a Club.

Judicial Regulation 151: Sequence of steps to deal with a dispute

151.1 The parties shall use any reasonable means to settle the issues between them informally and amicably.

151.2 If such a resolution cannot be achieved, the dispute shall be referred to the Chairperson of the Club committee or, if he is a party to the dispute, to another officer of the Club who is not a party who within seven days of the reference shall appoint an independent person to act as a mediator between the parties. The mediator may be a member of the Club or a member of another Club affiliated to Swim England.

151.3 If the mediator is unable to bring about a satisfactory settlement within

twenty one days, the Club committee shall within a further fourteen days appoint a panel (the 'panel') to determine the dispute.

151.3.1 The panel shall consist of three persons who have not been involved in the dispute, either from the members of the Club or, if this is not possible or desirable, from the members of any other Club affiliated to Swim England.

151.3.2 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 Club committee shall consider any such objections, decide whether they are justified and act accordingly.

Judicial Regulation 152: Procedure before a hearing

152.1 The panel members shall appoint one of their numbers to act as the Chairperson and either appoint another of their number, or alternatively appoint an additional person without any other powers, to act as the clerk of the hearing.

152.2 The Chairperson of the panel shall arrange the date of the hearing and notify the parties of the arrangements at least fourteen 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.

Judicial Regulation 153: Procedure at a hearing

153.1 The procedure shall be flexible and it shall be the responsibility of the Chairperson of the panel to ensure the orderly and effective conduct of the hearing.

153.2 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 his case. The Chairperson shall have the discretion to limit the number of witnesses that would otherwise have been called.

153.3 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.

153.4 The parties shall be informed of their right to make a complaint under Regulation 102 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.

Judicial Regulation 154: Procedure after a hearing

154.1 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.

154.2 Notwithstanding anything in Regulation 154.1 the Chairperson shall notify the parties and, if the Club was not a party to the dispute, the Club secretary in writing of its findings and decisions within five days of the hearing.

Judicial Regulation 155: Considerations regarding children

155.1 Any person under the age of eighteen (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 Chairperson 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.

155.2 The Chairperson shall give due consideration to any child attending a hearing as a party to a dispute or to give evidence and in particular:

155.2.1 No child aged fourteen or under shall normally be expected to attend a hearing to give evidence in person. His/her 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.

155.2.2 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 he wishes to, and the Chairperson 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.

155.2.3 If there is a disagreement between parent and/or child and the Chairperson on any of the considerations above, the Chairperson shall consider requesting advice from the Independent Child Protection Officer via the Swim England Legal Department.

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

155.4 After the hearing the Chairperson shall inform the parent of the panel's findings and decisions and shall discuss whether he or the parent shall inform the child.