

Constitution of Tavistock Swimming Club (est. 1990) as a Charitable Incorporated Organisation with voting members other than its charity trustees

Date of constitution (last amended): 18th June 2014

Amended: 10th September 2020

Re-amended: 28th November 2021

1. Name

The name of the Charitable Incorporated Organisation (“the CIO”) is **Tavistock Swimming Club (est. 1990)**.

2. National location of principal office

The CIO must have a principal office in England or Wales. The principal office of the CIO is in England.

3. Objects

The objects of the CIO are: The promotion of community participation in healthy recreation in particular by the provision of facilities for the teaching, development and practice of swimming for all age groups within the town of Tavistock, Devon and its locality.

4. Further details regarding Objects

(1) In the advancement of these objects:

- (a) The CIO shall be affiliated to Swim England South West Ltd, and shall adopt and conform to the rules of Swim England South West Ltd in relation to equal opportunities, child protection matters, all matters relating to swimming and other specified matters.
- (b) The CIO may vary its affiliation and affiliate to other such bodies as the CIO may determine appropriate from time to time.
- (c) The CIO 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 or endorse unlawful or unjustified discrimination, and shall act in compliance with the protections afforded by the Equality Act 2010.
- (d) The swimming affairs of the CIO shall at all times be conducted in accordance with the Articles, Regulations and Technical Rules of Swim England (“Swim England Regulations”) and in particular:
 - (i) All competing members shall be eligible competitors as defined in Swim England Regulations ; and
 - (ii) The CIO shall in accordance with Swim England Regulations adopt the Swim England’s Child Safeguarding Policy and Procedures (“Wavepower”) ; and shall recognise that the welfare of children is everyone’s responsibility and that all children and young people have a right to have fun, be safe and be protected from harm; and

- (iii) Members of the CIO shall in accordance with Swim England Regulations comply with Wavepower.
- (e) By virtue of the affiliation of the CIO to Swim England South West Ltd, the CIO and all members of the CIO acknowledge that in relation to the aspects of competitive swimming, they are subject to the laws, rules and constitutions of:
 - (iv) Swim England South West Ltd and Devon County ASA and
 - (v) Swim England (to include the Swim England/Institute Of Swimming (IOS) Code of Ethics); and
 - (vi) British Swimming (in particular its Doping Control Rules and Protocols and Judicial Code); and
 - (vii) FINA, the world governing body for the sport of swimming in all its disciplines
(together "the Governing Body Rules").
- (f) In the event that there shall be any conflict between any rule or by-law of the CIO and any of the Governing Body Rules then the relevant Governing Body Rule shall prevail.

(2) Nothing in this constitution shall authorise an application of the property of the CIO for purposes which are not charitable in accordance with the Charities Act 2011.

5. Powers

The CIO has power to do anything which is calculated to further its objects or is conducive or incidental to doing so. In particular, the CIO's powers include power to:

- (1) borrow money and to charge the whole or any part of its property as security for the repayment of the money borrowed. The CIO must comply as appropriate with sections 124 and 125 of the Charities Act 2011 if it wishes to mortgage land;
- (2) buy, take on lease or in exchange, hire or otherwise acquire any property and to maintain and equip it for use;
- (3) sell, lease or otherwise dispose of all or any part of the property belonging to the CIO. In exercising this power, the CIO must comply as appropriate with sections 117 and 119-123 of the Charities Act 2011;
- (4) employ and remunerate such staff as are necessary for carrying out the work of the CIO. The CIO may employ or remunerate a charity trustee only to the extent that it is permitted to do so by clause 7 (Benefits and payments to charity trustees and connected persons) and provided it complies with the conditions of that clause;
- (5) deposit or invest funds, employ a professional fund-manager, and arrange for the investments or other property of the CIO to be held in the name of a nominee, in the same manner and subject to the same conditions as the trustees of a trust are permitted to do by the Trustee Act 2000.

6. Application of income and property

- (1) The income and property of the CIO must be applied solely towards the promotion of the objects.
 - (a) A charity trustee is entitled to be reimbursed from the property of the CIO or may pay out of such property reasonable expenses properly incurred by him or her when acting on behalf of the CIO.
 - (b) A charity trustee may benefit from trustee indemnity insurance cover purchased at the CIO's expense in accordance with, and subject to the conditions in, section 189 of the Charities Act 2011.
- (2) None of the income or property of the CIO may be paid or transferred directly or indirectly by way of dividend, bonus or otherwise by way of profit to any member of the CIO. This does not prevent a member who is not also a charity trustee receiving:
 - (a) a benefit from the CIO as a beneficiary of the CIO;
 - (b) reasonable and proper remuneration for any goods or services supplied to the CIO.
- (3) Nothing in this clause shall prevent a charity trustee or connected person receiving any benefit or payment which is authorised by Clause 7.
- (4) The financial affairs of the CIO will be managed as defined within clause 37 .

7. Benefits and payments to charity trustees and connected persons

(1) General provisions

No charity trustee or connected person may:

- (a) buy or receive any goods or services from the CIO on terms preferential to those applicable to members of the public;
- (b) sell goods, services, or any interest in land to the CIO;
- (c) be employed by, or receive any remuneration from, the CIO;
- (d) receive any other financial benefit from the CIO;

unless the payment or benefit is permitted by sub-clause (2) of this clause, or authorised by the court or the Charity Commission ("the Commission"). In this clause, a "financial benefit" means a benefit, direct or indirect, which is either money or has a monetary value.

(2) Scope and powers permitting trustees' or connected persons' benefits

- (a) A charity trustee or connected person may receive a benefit from the CIO as a beneficiary of the CIO provided that a majority of the trustees do not benefit in this way.
- (b) A charity trustee or connected person may enter into a contract for the supply of services, or of goods that are supplied in connection with the provision of services, to the CIO where that is permitted in accordance with, and subject to the conditions in, section 185 to 188 of the Charities Act 2011.
- (c) Subject to sub-clause (3) of this clause a charity trustee or connected person may provide the CIO with goods that are not supplied in connection with

services provided to the CIO by the charity trustee or connected person.

- (d) A charity trustee or connected person may receive interest on money lent to the CIO at a reasonable and proper rate which must be not more than the Bank of England bank rate (also known as the base rate).
- (e) A charity trustee or connected person may receive rent for premises let by the trustee or connected person to the CIO. The amount of the rent and the other terms of the lease must be reasonable and proper.
- (f) The charity trustee concerned must withdraw from any meeting at which such a proposal or the rent or other terms of the lease are under discussion.
- (g) A charity trustee or connected person may take part in the normal trading and fundraising activities of the CIO on the same terms as members of the public.

(3) *Payment for supply of goods only – controls*

The CIO and its charity trustees may only rely upon the authority provided by sub-clause (2)(c) of this clause if each of the following conditions is satisfied:

- (a) The amount or maximum amount of the payment for the goods is set out in a written agreement between the CIO and the charity trustee or connected person supplying the goods (“the supplier”).
- (b) The amount or maximum amount of the payment for the goods does not exceed what is reasonable in the circumstances for the supply of the goods in question.
- (c) The other charity trustees are satisfied that it is in the best interests of the CIO to contract with the supplier rather than with someone who is not a charity trustee or connected person. In reaching that decision the charity trustees must balance the advantage of contracting with a charity trustee or connected person against the disadvantages of doing so.
- (d) The supplier is absent from the part of any meeting at which there is discussion of the proposal to enter into a contract or arrangement with him or her or it with regard to the supply of goods to the CIO.
- (e) The supplier does not vote on any such matter and is not to be counted when calculating whether a quorum of charity trustees is present at the meeting.
- (f) The reason for their decision is recorded by the charity trustees in the minute book.
- (g) A majority of the charity trustees then in office are not in receipt of remuneration or payments authorised by clause 7.

(4) *In sub-clauses (2) and (3) of this clause:*

- (a) “the CIO” includes any company in which the CIO:
 - (i) holds more than 50% of the shares; or
 - (ii) controls more than 50% of the voting rights attached to the shares;
or
 - (iii) has the right to appoint one or more directors to the board of the company;

- (b) “connected person” includes any person within the definition set out in clause 39 (Interpretation).

8. Conflicts of interest and conflicts of loyalty

- (1) A charity trustee must:
 - (a) declare the nature and extent of any interest, direct or indirect, which he or she has in a proposed transaction or arrangement with the CIO or in any transaction or arrangement entered into by the CIO which has not previously been declared; and
 - (b) absent himself or herself from any discussions of the charity trustees in which it is possible that a conflict of interest will arise between his or her duty to act solely in the interests of the CIO and any personal interest (including but not limited to any financial interest).
- (2) Any charity trustee absenting himself or herself from any discussions in accordance with this clause must not vote or be counted as part of the quorum in any decision of the charity trustees on the matter.

9. Liability of members to contribute to the assets of the CIO if it is wound up

If the CIO is wound up, the members of the CIO have no liability to contribute to its assets and no personal responsibility for settling its debts and liabilities.

10. Membership of the CIO

(1) Admission of new members

- (a) Eligibility
 - (i) Membership of the CIO is open to anyone who is interested in furthering its purposes, and who, by applying for membership, has indicated his, her or its agreement to become a member and acceptance of the duty of members set out in sub-clause (3) of this clause and complied with the membership procedure defined in clause 31.
 - (ii) A member may be an individual, a corporate body, or an individual or corporate body representing an organisation which is not incorporated.
- (b) Admission procedure
 - (i) The charity trustees require applications for membership to be made as specified in clause 31 (membership procedure).
 - (ii) Subject to (iii), a person shall become a member when they hand a signed membership application to a charity trustee or someone authorised by the charity trustees.
 - (iii) The charity trustees shall have 28 days from the date of the person becoming a member under sub-clause (ii) above to cancel the person’s membership, if they believe it to be in the best interests of the CIO to do so.
 - (iv) If the trustees cancel a person’s membership under sub-clause (iii) above, they shall inform the person of that decision within 21 days.

They must give reasons and allow the person to seek a review of the decision in accordance with clause 31(5).

- (v) In its consideration of applications for membership, the CIO shall not act in a discriminatory manner and in particular, shall adhere to the Equality Act 2010 (as may be amended). Accordingly, (unless the CIO chooses to restrict its membership to only people who share the same Protected Characteristic) the CIO shall not refuse or cancel 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 or cancellation be made on the grounds of political persuasion.
- (vi) The CIO may refuse or cancel membership only for good and sufficient cause, such as conduct or character likely to bring the CIO or the sport into disrepute, or, in the case of a swimmer, being unable to achieve the entry standards as laid down and provided by the CIO to the applicant for membership.

(2) Transfer of membership

Membership of the CIO cannot be transferred to anyone else.

(3) Duty of members

- (a) It is the duty of each member of the CIO to exercise his or her powers as a member of the CIO in the way he or she decides in good faith would be most likely to further the purposes of the CIO.
- (b) Each member of the CIO will abide by the rules, codes of conduct and ethics and by-laws of the CIO and of Swim England as defined and varied from time to time. Failure to abide by such provisions may result in disciplinary action as defined in clause 33.

(4) Termination of membership

- (a) Membership of the CIO comes to an end if :
 - (i) the member dies, or, in the case of an organisation (or the representative of an organisation) that organisation ceases to exist; or
 - (ii) the member sends a notice of resignation to the charity trustees; or
 - (iii) any sum of money owed by the member to the CIO is not paid in full within four months of its falling due; or
 - (iv) membership is cancelled under sub-clause 10(1)(b)(iii) above; or
 - (v) the charity trustees decided that it is in the best interests of the CIO that the member in question should be removed from membership, and pass a resolution to that effect.
- (b) Before the charity trustees take any decision to remove someone from membership of the CIO under (v) above they must follow the procedure referred to in, and comply with the provisions of, clause 33.
- (c) The Swim England Membership Department shall be informed should a member resign when still owing money or goods to the CIO.

(5) *Membership fees*

The CIO may require members to pay reasonable membership fees to the CIO as detailed in clause 32 (subscription and other fees).

(6) *Informal or associate (non-voting) membership*

- (a) The charity trustees may create associate or other classes of non-voting membership, and may determine the rights and obligations of any such members (including payment of membership fees), and the conditions for admission to, and termination of, membership of any such class of members. This includes the appointment of ceremonial members under clause 35.
- (b) Other references in this constitution to “members” and “membership” do not apply to non-voting members, and non-voting members do not qualify as members for any purpose under the Charities Act 2011, the General Regulations or the Dissolution Regulations.

11. Members’ decisions

(1) *General provisions*

Except for those decisions that must be taken in a particular way as indicated in sub-clause (4) of this clause, decisions of the members of the CIO may be taken either by vote at a general meeting as provided in sub-clause (2) of this clause or by written resolution as provided in subclause (3) of this clause.

(2) *Taking ordinary decisions by vote*

Subject to sub-clause (4) of this clause, any decision of the members of the CIO may be taken by means of a resolution at a general meeting. Such a resolution may be passed by a simple majority of votes cast at the meeting.

(3) *Taking ordinary decisions by written resolution without a general meeting*

- (a) Subject to sub-clause (4) of this clause, a resolution in writing agreed by a simple majority of all the members who would have been entitled to vote upon it had it been proposed at a general meeting shall be effective, provided that:
 - (i) a copy of the proposed resolution has been sent to all the members eligible to vote; and
 - (ii) a simple majority of members has signified its agreement to the resolution in a document or documents which are received at the principal office within the period of 28 days beginning with the circulation date. The document signifying a member’s agreement must be authenticated by their signature (or in the case of an organisation which is a member, by execution according to its usual procedure), by a statement of their identity accompanying the document, or in such other manner as the CIO has specified.
- (b) The resolution in writing may comprise several copies to which one or more members has signified their agreement.
- (c) Eligibility to vote on the resolution is limited to members who are

members of the CIO on the date when the proposal is first circulated in accordance with paragraph (a) above.

- (d) Not less than 10% of the members of the CIO may request the charity trustees to make a proposal for decision by the members.
- (e) The charity trustees must within 21 days of receiving such a request comply with it if :
 - (i) The proposal is not frivolous or vexatious, and does not involve the publication of defamatory material;
 - (ii) The proposal is stated with sufficient clarity to enable effect to be given to it if it is agreed by the members; and
 - (iii) Effect can lawfully be given to the proposal if it is so agreed.
- (f) Sub-clauses (a) to (c) of this clause apply to a proposal made at the request of members.

(4) Decisions that must be taken in a particular way

- (a) Any decision to remove a trustee must be taken in accordance with clause 16(2).
- (b) Any decision to amend this constitution must be taken in accordance with clause 29 (Amendment of Constitution).
- (c) Any decision to wind up or dissolve the CIO must be taken in accordance with clause 30 (Voluntary winding up or dissolution). Any decision to amalgamate or transfer the undertaking of the CIO to one or more other CIOs must be taken in accordance with the provisions of the Charities Act 2011.

12. General meetings of members

(1) Types of general meeting

- (a) There must be an annual general meeting (“AGM”) of the members of the CIO. The first AGM must be held within 18 months of the registration of the CIO, and subsequent AGMs must be held at intervals of not more than 15 months. The AGM must receive the annual statement of accounts (duly audited or examined where applicable) and the trustees’ annual report, and must elect trustees as required under clause 14. The meeting must comply with the requirements specified in clause 36.
- (b) Other general meetings of the members of the CIO may be held at any time.
- (c) All general meetings must be held in accordance with the following provisions.

(2) Calling general meetings

- (a) The charity trustees :
 - (i) must call the AGM of the members of the CIO in accordance with sub-clause (1) of this clause, and identify it as such in the notice of the meeting; and
 - (ii) may call any other general meeting of the members at any time.
- (b) The charity trustees must, within 21 days, call a general meeting of the

members of the CIO if:

- (i) they receive a request to do so from at least 10% of the members of the CIO; and
 - (ii) the request states the general nature of the business to be dealt with at the meeting, and is authenticated by the member(s) making the request.
- (c) If, at the time of any such request, there has not been any general meeting of the members of the CIO for more than 12 months, then sub-clause (b)(i) of this clause shall have effect as if 5% were substituted for 10%.
- (d) Any such request may include particulars of a resolution that may properly be proposed, and is intended to be proposed, at the meeting.
- (e) A resolution may only properly be proposed if it is lawful, and is not defamatory, frivolous or vexatious.
- (f) Any general meeting called by the charity trustees at the request of the members of the CIO must be held within 28 days from the date on which it is called.
- (g) If the charity trustees fail to comply with this obligation to call a general meeting at the request of its members, then the members who requested the meeting may themselves call a general meeting.
- (h) A general meeting called in this way must be held not more than 3 months after the date when the members first requested the meeting.
- (i) The CIO must reimburse any reasonable expenses incurred by the members calling a general meeting by reason of the failure of the charity trustees to duly call the meeting, but the CIO shall be entitled to be indemnified by the charity trustees who were responsible for such failure.
- (3) *Notice of general meetings*
- (a) The charity trustees, or, as the case may be, the relevant members of the CIO, must give at least 14 clear days' notice of any general meeting to all of the members, and to any charity trustee of the CIO who is not a member.
- (b) If it is agreed by not less than 90% of all members of the CIO, any resolution may be proposed and passed at the meeting even though the requirements of sub-clause (3) (a) of this clause have not been met. This sub-clause does not apply where a specified period of notice is strictly required by another clause in this constitution, by the Charities Act 2011 or by the General Regulations.
- (c) The notice of any general meeting must:
- (i) state the time and date of the meeting;
 - (ii) give the address at which the meeting is to take place or, if the meeting is to take place electronically, a statement to that effect and any link needed to join the meeting;
 - (iii) give particulars of any resolution which is to be moved at the meeting, and of the general nature of any other business to be dealt

with at the meeting; and

- (iv) if a proposal to alter the constitution of the CIO is to be considered at the meeting, include the text of the proposed alteration;
 - (v) include, with the notice for the AGM, the annual statement of accounts and trustees' annual report, details of persons standing for election or re-election as trustee, or where allowed under clause 23 (Use of electronic communication), details of where the information may be found on the CIO's website.
- (d) Proof that an envelope containing a notice was properly addressed, prepaid and posted, or that an electronic form of notice was properly addressed and sent, shall be conclusive evidence that the notice was given. Notice shall be deemed to be given 48 hours after it was posted or sent.
- (e) The proceedings of a meeting shall not be invalidated because a member who was entitled to receive notice of the meeting did not receive it because of accidental omission by the CIO.

(4) *Chairing of general meetings*

The person appointed as Chairman under clause 34 (Officers), shall, if present at the general meeting and willing to act, preside as chair of the meeting. Subject to that, the members of the CIO who are present at a general meeting shall elect a chair to preside at the meeting.

(5) *Quorum at general meetings*

- (a) No business may be transacted at any general meeting of the members of the CIO unless a quorum is present when the meeting starts.
- (b) Subject to the following provisions, the quorum for general meetings shall be the greater of 5% or seven members. An organisation represented by a person present at the meeting in accordance with sub-clause (7) of this clause, is counted as being present in person.
- (c) If the meeting has been called by or at the request of the members and a quorum is not present within 15 minutes of the starting time specified in the notice of the meeting, the meeting is closed.
- (d) If the meeting has been called in any other way and a quorum is not present within 15 minutes of the starting time specified in the notice of the meeting, the chair must adjourn the meeting. The date, time and place at which or method by which the meeting will resume must either be announced by the chair or be notified to the CIO's members at least seven clear days before the date on which it will resume.
- (e) If a quorum is not present within 15 minutes of the start time of the adjourned meeting, the member or members present at the meeting constitute a quorum.
- (f) If at any time during the meeting a quorum ceases to be present, the meeting may discuss issues and make recommendations to the trustees but may not make any decisions. If decisions are required which must be made by a meeting of the members, the meeting must be adjourned.

(6) *Voting at general meetings*

- (a) Any decision other than one falling within clause 11(4) (Decisions that must be taken in a particular way) shall be taken by a simple majority of votes cast at the meeting. Every member has one vote unless otherwise provided in the rights of a particular class of membership under this constitution.
- (b) Any member shall be entitled to put any proposal for consideration at any general meeting provided the proposal in writing was given to the Secretary so as to be received by him/her not later than 10 days in advance of the meeting.
- (c) A resolution put to the vote of a meeting shall be decided on a show of hands, unless (before or on the declaration of the result of the show of hands) a poll is duly demanded. A poll may be demanded by the chair or by at least 10% of the members present at the meeting.
- (d) A poll demanded on the election of a person to chair the meeting or on a question of adjournment must be taken immediately. A poll on any other matter shall be taken, and the result of the poll shall be announced, in such manner as the chair of the meeting shall decide, provided that the poll must be taken, and the result of the poll announced, within 30 days of the demand for the poll.
- (e) A poll may be taken:
 - (i) at the meeting at which it was demanded; or
 - (ii) at some other time and place specified by the chair; or
 - (iii) through the use of postal or electronic communications.
- (f) Only paid up members who have reached their 16th birthday shall be entitled to be heard and to vote on all matters. Members who have not reached their 16th birthday shall be entitled to be heard and vote: (1) themselves, on those matters determined by the Chairman as matters concerning juniors, such as the election of club captains; (2) all other matters, only through their parents or a person with parental responsibility for them.
- (g) In the event of an equality of votes, whether on a show of hands or on a poll, the chair of the meeting shall have a second, or casting, vote.
- (h) Any objection to the qualification of any voter must be raised at the meeting at which the vote is cast and the decision of the chair of the meeting shall be final.

(7) *Representation of organisations and corporate members*

An organisation or a corporate body that is a member of the CIO may, in accordance with its usual decision-making process, authorise a person to act as its representative at any general meeting of the CIO. The representative is entitled to exercise the same powers on behalf of the organisation or corporate body as the organisation or corporate body could exercise as an individual member of the CIO.

(8) *Adjournment of meetings*

The chair may with the consent of a meeting at which a quorum is present (and shall if so directed by the meeting) adjourn the meeting to another time and/or place. No business may be transacted at an adjourned meeting except business which could properly have been transacted at the original meeting.

13. Charity trustees

(1) *Functions and duties of charity trustees*

The charity trustees shall manage the affairs of the CIO and may for that purpose exercise all the powers of the CIO. It is the duty of each charity trustee :

- (a) to exercise his or her powers and to perform his or her functions as a trustee of the CIO in the way he or she decides in good faith would be most likely to further the purposes of the CIO; and
- (b) to exercise, in the performance of those functions, such care and skill as is reasonable in the circumstances having regard in particular to:
 - (i) any special knowledge or experience that he or she has or holds himself or herself out as having; and
 - (ii) if he or she acts as a charity trustee of the CIO in the course of a business or profession, to any special knowledge or experience that it is reasonable to expect of a person acting in the course of that kind of business or profession.

(2) *Eligibility for trusteeship*

- (a) Every charity trustee must be a natural person.
- (b) No one may be appointed as a charity trustee:
 - (i) if he or she is under the age of 16 years; or
 - (ii) if he or she would automatically cease to hold office under the provisions of clause 16(1)(f).
- (c) No one is entitled to act as a charity trustee whether on appointment or on any re-appointment until he or she has expressly acknowledged, in whatever way the charity trustees decide, his or her acceptance of the office of charity trustee.
- (d) At least one of the trustees of the CIO must be 18 years of age or over. If there is no trustee aged at least 18 years, the remaining trustee or trustees may act only to call a meeting of the charity trustees, or appoint a new charity trustee.

(3) *Number of charity trustees*

- (a) There must be at least three charity trustees. If the number falls below this minimum, the remaining trustee or trustees may act only to call a meeting of the charity trustees, or appoint a new charity trustee.
- (b) The maximum number of charity trustees is 18. The charity trustees may not appoint any charity trustee if as a result the number of charity trustees would exceed the maximum.

(4) *First charity trustees*

The first charity trustees of the CIO are – Christopher Anderson, Lisa Jane

France, Lisa Garland, Sandra Kinnest, Neil Marks, Margaret McCall, Shelia Radgick, Esther Rookes, Trevor Rookes.

14. Appointment of charity trustees

- (1) At the first AGM of the members of the CIO all the elected charity trustees shall retire from office.
- (2) At every subsequent AGM of the members of the CIO, one-third of the elected charity trustees in post on the day of the AGM shall retire from office. If the number of elected charity trustees is not three or a multiple of three, then the number nearest to one-third shall retire from office, but if there is only one charity trustee, he or she shall retire.
- (3) The charity trustees to retire by rotation shall be those who have been longest in office since their last appointment or reappointment. If any trustees were last appointed or reappointed on the same day those to retire shall (unless they otherwise agree among themselves) be determined by lot.
- (4) The vacancies so arising may be filled by the decision of the members at the AGM; any vacancies not filled at the AGM may be filled as provided in sub-clause (e) of this clause.
- (5) The members or the charity trustees may at any time decide to appoint a new charity trustee, whether in place of a charity trustee who has retired or been removed in accordance with clause 16 (Retirement and removal of charity trustees), or as an additional charity trustee, provided that no more than 3 additional trustees are appointed in this way between general meetings.
- (6) A person so appointed by the members of the CIO shall retire in accordance with the provisions of sub-clauses (b) and (c) of this clause. A person so appointed by the charity trustees shall retire at the conclusion of the AGM next following the date of his appointment, and shall not be counted for the purpose of determining which of the charity trustees is to retire by rotation at that meeting.

15. Information for new charity trustees

The charity trustees will make available to each new charity trustee, on or before his or her first appointment:

- (1) a copy of this constitution and any amendments made to it; and
- (2) a copy of the CIO's latest trustees' annual report and statement of accounts.

16. Retirement and removal of charity trustees

- (1) A charity trustee ceases to hold office if he or she :
 - (a) retires by notifying the CIO in writing (but only if enough charity trustees will remain in office when the notice of resignation takes effect to form a quorum for meetings);
 - (b) is absent without the permission of the charity trustees from all their meetings held within a period of six months and the trustees resolve that

- his or her office be vacated;
- (c) dies;
 - (d) in the written opinion, given to the CIO, of a registered medical practitioner treating that person, has become physically or mentally incapable of acting as a charity trustee and may remain so for more than three months;
 - (e) is removed by the members of the CIO in accordance with sub-clause (2) of this clause; or
 - (f) is disqualified from acting as a charity trustee by virtue of section 178-180 of the Charities Act 2011 (or any statutory re-enactment or modification of those provisions).
- (2) A charity trustee shall be removed from office if a resolution to remove that trustee is proposed at a general meeting of the members called for that purpose and properly convened in accordance with clause 12, and the resolution is passed by a two-thirds majority of votes cast at the meeting.
- (3) A resolution to remove a charity trustee in accordance with this clause shall not take effect unless the individual concerned has been given at least 14 clear days' notice in writing that the resolution is to be proposed, specifying the circumstances alleged to justify removal from office, and has been given a reasonable opportunity of making oral and/or written representations to the members of the CIO.

17. Reappointment of charity trustees

Any person who retires as a charity trustee by rotation or by giving notice to the CIO is eligible for reappointment, following the process defined in clause 14 .

18. Taking of decisions by charity trustees

Any decision may be taken either:

- (1) at a meeting of the charity trustees; or
- (2) by resolution in writing or electronic form agreed by a majority of all of the charity trustees, which may comprise either a single document or several documents containing the text of the resolution in like form to each of which one or more charity trustees has signified their agreement. Such a resolution shall be effective provided that:
 - (a) a copy of the proposed resolution has been sent, at or as near as reasonably practicable to the same time, to all of the charity trustees; and
 - (b) the majority of all of the charity trustees has signified agreement to the resolution in a document or documents which has or have been authenticated by their signature, by a statement of their identity accompanying the document or documents, or in such other manner as the charity trustees have previously resolved, and delivered to the CIO at its principal office or such other place as the trustees may resolve

within 28 days of the circulation date.

19. Delegation by charity trustees

- (1) The charity trustees may delegate any of their powers or functions to a committee or committees, and, if they do, they must determine the terms and conditions on which the delegation is made. The charity trustees may at any time alter those terms and conditions, or revoke the delegation.
- (2) This power is in addition to the power of delegation in the General Regulations and any other power of delegation available to the charity trustees, but is subject to the following requirements -
 - (a) a committee may consist of two or more persons, but at least one member of each committee must be a charity trustee;
 - (b) the acts and proceedings of any committee must be brought to the attention of the charity trustees as a whole as soon as is reasonably practicable; and
 - (c) the charity trustees shall from time to time review the arrangements which they have made for the delegation of their powers.

20. Meetings and proceedings of charity trustees

- (1) *Calling meetings*
 - (a) Any charity trustee may call a meeting of the charity trustees.
 - (b) Meetings of the charity trustees shall be held not less than quarterly (save where the trustees themselves resolve by a simple majority not to meet).
 - (c) The Secretary shall give all the charity trustees not less than 5 days written notice of a meeting.
- (2) *Chairing of meetings*

Meetings shall be chaired by the Chairman appointed under clause 34. If no-one has been so appointed, or if the person appointed is unwilling to preside or is not present within 10 minutes after the time of the meeting, the charity trustees present may appoint one of their number to chair that meeting.
- (3) *Procedure at meetings*
 - (a) No decision shall be taken at a meeting unless a quorum is present at the time when the decision is taken. The quorum is a simple majority of the total number of charity trustees provided at least one Executive Officer is present, or such larger number as the charity trustees may decide from time to time. A charity trustee shall not be counted in the quorum present when any decision is made about a matter upon which he or she is not entitled to vote.
 - (b) 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. If a quorum is not present at the adjourned meeting then those Committee members attending may act

- for the purpose of calling a general meeting of the members.
- (c) Questions arising at a meeting shall be decided by a majority of those eligible to vote.
 - (d) In the case of an equality of votes, the chair shall have a second or casting vote.

21. Saving provisions

- (1) Subject to sub-clause (2) of this clause, all decisions of the charity trustees, or of a committee of charity trustees, shall be valid notwithstanding the participation in any vote of a charity trustee:
 - (a) who was disqualified from holding office;
 - (b) who had previously retired or who had been obliged by the constitution to vacate office;
 - (c) who was not entitled to vote on the matter, whether by reason of a conflict of interest or otherwise;
 - (d) if, without the vote of that charity trustee and that charity trustee being counted in the quorum, the decision has been made by a majority of the charity trustees at a quorate meeting.
- (2) Sub-clause (1) of this clause does not permit a charity trustee to keep any benefit that may be conferred upon him or her by a resolution of the charity trustees or of a committee of charity trustees if, but for clause (1), the resolution would have been void, or if the charity trustee has not complied with clause 8 (Conflicts of interest).

22. Execution of documents

- (1) The CIO shall execute documents either by signature or by affixing its seal (if it has one).
- (2) A document is validly executed by signature if it is signed by at least two of the charity trustees.
- (3) If the CIO has a seal:
 - (a) it must comply with the provisions of the General Regulations; and
 - (b) it must only be used by the authority of the charity trustees or of a committee of charity trustees duly authorised by the charity trustees. The charity trustees may determine who shall sign any document to which the seal is affixed and unless otherwise determined it shall be signed by two charity trustees.

23. Use of electronic communications

(1) General

The CIO will comply with the requirements of the Communications Provisions in the General Regulations and in particular:

- (a) the requirement to provide within 21 days to any member on request a hard copy of any document or information sent to the member otherwise

than in hard copy form;

(b) any requirements to provide information to the Commission in a particular form or manner.

(2) *To the CIO*

Any member or charity trustee of the CIO may communicate electronically with the CIO to an address specified by the CIO for the purpose, so long as the communication is authenticated in a manner which is satisfactory to the CIO.

(3) *By the CIO*

(a) Any member or charity trustee of the CIO, by providing the CIO with his or her email address or similar, is taken to have agreed to receive communications from the CIO in electronic form at that address, unless the member has indicated to the CIO his or her unwillingness to receive such communications in that form.

(b) The charity trustees may, subject to compliance with any legal requirements, by means of publication on its website –

(i) provide the members with the notice referred to in clause 12(3) (Notice of general meetings);

(ii) give charity trustees notice of their meetings in accordance with clause 20(1) (Calling meetings)); and

(iii) submit any proposal to the members or charity trustees for decision by written resolution in accordance with the CIO's powers under clause 11 (Members' decisions).

(c) The charity trustees must:

(i) take reasonable steps to ensure that members and charity trustees are promptly notified of the publication of any such notice or proposal;

(ii) send any such notice or proposal in hard copy form to any member or charity trustee who has not consented to receive communications in electronic form.

(4) *Meetings*

(a) A meeting, whether of the members of the CIO or of the charity trustees or any other meeting, may be held by suitable electronic means agreed by the charity trustees in which each participant may communicate with all the other participants.

(b) Any person participating at a meeting by suitable electronic means agreed by the charity trustees in which a participant or participants may communicate with all the other participants shall qualify as being present at the meeting.

(c) Meetings held by electronic means must comply with rules for meetings, including chairing and the taking of minutes.

24. Keeping of Registers

The CIO must comply with its obligations under the General Regulations in

relation to the keeping of, and provision of access to, registers of its members and charity trustees.

25. Minutes

The charity trustees must keep minutes of all:

- (1) appointments of Officers made by the charity trustees;
- (2) proceedings at general meetings of the CIO;
- (3) meetings of the charity trustees and committees of charity trustees including:
 - (i) the names of the trustees present at the meeting;
 - (ii) the decisions made at the meetings; and
 - (iii) where appropriate the reasons for the decisions;
- (4) decisions made by the charity trustees otherwise than in meetings.

26. Accounting records, accounts, annual reports and returns, register maintenance

- (1) The charity trustees must comply with the requirements of the Charities Act 2011 with regard to the keeping of accounting records, to the preparation and scrutiny of statements of accounts, and to the preparation of annual reports and returns.
- (2) The statements of accounts, reports and returns must be sent to the Charity Commission, regardless of the income of the CIO, within 10 months of the financial year end.
- (3) The charity trustees must comply with their obligation to inform the Commission within 28 days of any change in the particulars of the CIO entered on the Central Register of Charities.
- (4) The charity trustees shall maintain an Accident Book in which all accidents to CIO 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 CIO shall make an annual return to the Swim England Membership Department indicating whether or not an entry has been made in the prescribed form.

27. Rules

The charity trustees may from time to time make such reasonable and proper rules or bye laws as they may deem necessary or expedient for the proper conduct and management of the CIO, but such rules or bye laws must not be inconsistent with any provision of this constitution. Copies of any such rules or bye laws currently in force must be made available to any member of the CIO on request.

28. Disputes

If a dispute arises between members of the CIO about the validity or propriety of anything done by the members under this constitution, and the dispute cannot be resolved by agreement, the parties to the dispute must first try in good faith to

settle the dispute by mediation before resorting to litigation.

29. Amendment of constitution

As provided by clauses 224-227 of the Charities Act 2011:

- (1) This constitution can only be amended:
 - (a) by resolution agreed in writing by all members of the CIO; or
 - (b) by a resolution passed by a 75% majority of votes cast at a general meeting of the members of the CIO.
- (2) Any alteration of clause 3 (Objects), clause 30 (Voluntary winding up or dissolution), this clause, or of any provision where the alteration would provide authorisation for any benefit to be obtained by charity trustees or members of the CIO or persons connected with them, requires the prior written consent of the Charity Commission.
- (3) No amendment that is inconsistent with the provisions of the Charities Act 2011 or the General Regulations shall be valid.
- (4) A copy of any resolution altering the constitution, together with a copy of the CIO's constitution as amended, must be sent to the Commission within 15 days from the date on which the resolution is passed. The amendment does not take effect until it has been recorded in the Register of Charities.

30. Voluntary winding up or dissolution

- (1) As provided by the Dissolution Regulations, the CIO may be dissolved by resolution of its members. Any decision by the members to wind up or dissolve the CIO can only be made:
 - (a) at a general meeting of the members of the CIO called in accordance with clause 12 (General meetings of Members), of which not less than 14 days' notice has been given to those eligible to attend and vote:
 - (i) by a resolution passed by a 75% majority of those voting, or
 - (ii) by a resolution passed by decision taken without a vote and without any expression of dissent in response to the question put to the general meeting; or
 - (b) by a resolution agreed in writing by all members of the CIO.
- (2) Subject to the payment of all the CIO's debts:
 - (a) Any resolution for the winding up of the CIO, or for the dissolution of the CIO without winding up, may contain a provision directing how any remaining assets of the CIO shall be applied.
 - (b) If the resolution does not contain such a provision, the charity trustees must decide how any remaining assets of the CIO shall be applied.
 - (c) In either case the remaining assets must be applied for charitable purposes the same as or similar to those of the CIO.
- (3) The CIO must observe the requirements of the Dissolution Regulations in applying to the Commission for the CIO to be removed from the Register of Charities, and in particular:

- (a) the charity trustees must send with their application to the Commission:
 - (i) a copy of the resolution passed by the members of the CIO;
 - (ii) a declaration by the charity trustees that any debts and other liabilities of the CIO have been settled or otherwise provided for in full; and
 - (iii) a statement by the charity trustees setting out the way in which any property of the CIO has been or is to be applied prior to its dissolution in accordance with this constitution;
- (b) the charity trustees must ensure that a copy of the application is sent within seven days to every member and employee of the CIO, and to any charity trustee of the CIO who was not privy to the application.
- (4) If the CIO is to be wound up or dissolved in any other circumstances, the provisions of the Dissolution Regulations must be followed.

31. Membership Procedure

- (1) The total membership of the CIO shall not normally be limited. If however the CIO considers that there is a good reason to impose any limit from time to time then the CIO shall put forward appropriate proposals for consideration at a general meeting of the CIO. The members shall have the right to impose (and remove) from time to time any limits on total membership (or any category of membership) of the CIO.
- (2) All persons who assist in any way with the CIO's activities shall become members of the CIO and hence of Swim England and the relevant Swim England membership fee shall be paid. Assisting with the CIO's activities shall include, but not be restricted to, administrators, associate members, voluntary instructors, teachers and coaches, CIO members, helpers, Honorary members, life members, Officers, patrons, Presidents, technical and non-technical officials, temporary members, Vice Presidents and verifiers or tutors of the Swim England's educational certificates.
- (3) Paid instructors, teachers and coaches who are not members of the CIO must be members of a body which accepts that its members are bound by the Swim England's Code of Ethics, Swim England's Regulations relating to Wavepower, those parts of the Judicial Regulations and procedures necessary for their implementation and whilst engaged in activities under the jurisdiction of Swim England shall be subject to all the constraints and privileges of the Judicial Regulations.
- (4) Any person who wishes to become a member of the CIO must submit a signed application to the charity trustees (and in the case of a junior swimmer the application must be signed by a parent or guardian of the swimmer).
- (5) Any person whose membership is cancelled under clause 10(b)(iii) may seek a review of that decision before a Review Panel appointed by the CIO ("Review Panel") comprised of not less than three members (who may or may not be members of the CIO). The Review Panel shall wherever practicable include

one independent member nominated by Swim England South West Ltd. The person whose membership has been cancelled 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.

32. Subscription and other fees

- (1) The members' subscription and coaching and squad fees (as applicable) shall be determined from time to time by the charity trustees and the charity trustees shall in so doing make special provision for different classes of membership as it shall determine.
- (2) Unless the charity trustees decide otherwise, membership shall be free for all persons who become members because they are required to do so under cl.31(2).
- (3) The entrance fee (if any) shall be due on joining the CIO. The subscription fee shall be due on such date or dates as determined from time to time by the charity trustees.
- (4) Any member whose coaching and squad fees are unpaid in whole or in part by the date falling 30 days after the due date for payment may be suspended by the charity trustees from some or all CIO activities from a date to be determined by the charity trustees and until such payment is made.
- (5) The charity trustees 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 or other exceptional circumstances. Members are entitled to request consideration of such circumstances by writing to the charity trustees.
- (6) Coaching, squad and other fees become due on the first day of each month in advance by standing order or through other agreed payment methods. The CIO can charge additional processing fees that are agreed by the charity trustees and published to members for specific payment methods.

33. Expulsion and Other Disciplinary Action

- (1) The charity trustees shall have power to expel a member when, in its opinion, it would be in the best interest of the CIO for the member not to remain a member. The CIO in exercising this power shall comply with the provisions of sub-clauses (3) and (4) below.
- (2) Upon expulsion the former member shall not be entitled to have any part of the annual membership fee or any other funds to be refunded and must return any CIO or external body's trophy or trophies held forthwith.
- (3) In the event of any internal club dispute (including deciding whether or not to expel a member), the CIO shall comply with the relevant Swim England

Regulations for handling internal CIO disputes (“the Regulations”) as the same may be revised from time to time and shall take account of the Swim England “Guidelines for Handling Internal Club Disputes” at Appendix 1 to this constitution. A copy of the Regulations may be obtained from the Swim England website, Swim England Handbook or from the Office of Judicial Administration.

- (4) A member may not be expelled or (subject to sub-clause (5) below) be made the subject of any other penalty unless a panel hearing the complaint shall by a two-thirds majority vote in favour of the expulsion of (or other penalty imposed upon) the member.
- (5) The charity trustees (or any person to whom the charity trustees shall delegate this power) may temporarily suspend or exclude a member from particular training sessions and/or wider CIO activities when, in their opinion, such action is in the interests of the CIO. Where such action is taken the incident or matter will thereafter be dealt with in accordance with the appropriate provisions of this constitution and Swim England Regulations and guidance.

34. Officers

- (1) The charity trustees shall elect from amongst their number a Chairman, Secretary and Treasurer (together “the Executive Officers”).
- (2) The charity trustees must appoint a natural person as Welfare Officer who must be not less than 18 years of age, who should have an appropriate background and who is required to undertake appropriate training in accordance with Wavepower. The Welfare Officer will have a right to attend trustee meetings without a power to vote.
- (3) A person elected as an Executive Officer shall hold that position until he resigns it, or the trustees elect a different person to his position, or he next retires (whether under clause 14 or otherwise) as or otherwise ceases to be a trustee. In all events, he shall be eligible for re-election if re-elected as a trustee.

35. Ceremonial Positions and Honorary Members/Life Members

- (1) The members of the club at a general meeting may, if they think fit, elect a President and Vice-Presidents. A President or Vice-President need not be a member of the CIO on election but shall, ex officio, be an honorary member of the CIO and must be included in the CIO’s Annual Return of Members to Swim England.
- (2) The charity trustees may elect any person as an honorary member of the CIO for such period as they think fit, or as a Life Member. Such an honorary or Life Member shall be entitled to all the privileges of membership except that they shall not be entitled to vote at meetings or serve as Officers or as charity trustees unless they shall have retained in addition to their honorary or Life Membership

their ordinary membership of the CIO. Such honorary members and Life Members must be included in the CIO's annual return as to membership.

- (3) Once created by the Committee, honorary and/or Life membership categories may only be removed (notwithstanding that persons may hold these categories of membership) at a general meeting of the CIO.
- (4) A minimum of 21 days in advance of the general meeting, the Committee shall write to all holders of honorary and/or Life membership affected by the proposal drawing the proposal to their attention and inviting them to attend the general meeting.
- (5) Where the affected holder or holders of the honorary and/or Life membership do not attend or are unable to attend the general meeting, the Chairman may allow the matter (in so far as it relates to the absent person(s)) to proceed directly to vote.

36. Annual General Meeting

- (1) The AGM of the CIO shall be held each year as specified under clause 12(1). The date, time and venue or electronic mode for the AGM shall be fixed by the charity trustees.
- (2) The purpose of the AGM is to transact the following business:
 - (a) to receive the Chairman's report of the activities of the CIO during the previous year;
 - (b) to receive and consider the accounts of the CIO 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 CIO;
 - (c) to elect or re-elect the charity trustees;
 - (d) to decide on any resolution which may be duly submitted in accordance with sub-clause (3) of this clause
- (3) Nominations for election of members as trustees shall be made in writing by the proposer and seconder to the Secretary not later than 2 weeks in advance of the AGM. The nominee shall be required to indicate in writing on the nomination form his/her willingness to stand for election. Notice of any other resolution proposed to be moved at the AGM shall be given in writing to the Secretary not later than 10 days in advance of the AGM.
- (4) The members at the AGM are entitled to waive the time limits specified in sub-clause (3) and no decision of the members at the AGM shall be invalidated merely because the issues decided were not presented in accordance with the provisions of sub-clause (3). This sub-clause does not apply where a specified period of notice is strictly required by another clause in this constitution, by the Charities Act 2011 or by the General Regulations.

37. Finance

- (1) All moneys payable to the CIO shall be received by the Treasurer and deposited in a bank account in the name of the CIO. Any monies not required for immediate use may be invested as the charity trustees in their discretion think fit.
- (2) The income and property of the CIO shall be applied only in furtherance of the objects of the CIO and no part thereof shall be paid by way of bonus, dividend or profit to any members of the CIO.
- (3) Subject to clause 6, the charity trustees shall have power to authorise the payment of remuneration and expenses to any Officer, member or employee of the CIO and to any other person or persons for services rendered to the CIO.
- (4) The financial year of the CIO shall be the period commencing on 1st of April and ending on 31st March. Any change to the financial year shall require the approval of the members in a General Meeting.
- (5) The charity trustees shall retain all financial records relating to the CIO and copies of minutes of all meetings for a minimum period of six years.

38. The members of the CIO acknowledge that this constitution forms a legally binding contract to regulate the relationship of the members with each other and the CIO. The following statement must appear on CIO membership forms and is to be signed by the member. If the member is under 18 years of age, it must also be countersigned by the parent of, or a person having parental responsibility for, the member:

"I acknowledge that I have been directed to the constitution of Tavistock Swimming Club. I confirm my understanding and acceptance that the constitution (as amended from time to time) shall govern membership of the Club. I further acknowledge and accept the responsibilities of membership upon members as set out in the constitution."

39. Interpretation

In this constitution:

"charity trustee" means a trustee of the CIO.

"connected person" means:

- (a) a child, parent, grandchild, grandparent, brother or sister of the charity trustee;
- (b) the spouse or civil partner of the charity trustee or of any person falling within sub-clause (a) above;
- (c) a person carrying on business in partnership with the charity trustee or with any person falling within subclause (a) or (b) above;
- (d) an institution which is controlled –
 - (i) by the charity trustee or any connected person falling within sub-clause (a), (b), or (c) above; or

- (ii) by two or more persons falling within sub-clause (d)(i), when taken together
- (e) a body corporate in which –
 - (i) the charity trustee or any connected person falling within sub-clauses (a) to (c) has a substantial interest; or
 - (ii) two or more persons falling within sub-clause (e)(i) who, when taken together, have a substantial interest.

Section 118 of the Charities Act 2011 apply for the purposes of interpreting the terms used in this constitution.

“Communications Provisions” means the Communications Provisions in Part 9 of the General Regulations.

“Dissolution Regulations” means the Charitable Incorporated Organisations (Insolvency and Dissolution) Regulations 2012.

“Executive Officers” has the meaning given to it in clause 34.

“General Regulations” means the Charitable Incorporated Organisations (General) Regulations 2012.

IOS means the Institute of Swimming

A **“poll”** means a counted vote or ballot, usually (but not necessarily) in writing.

Swim England means the English national governing body for swimming, diving, water polo, open water, and synchronised swimming.

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 needs to be considered. Specialist legal advice may have to be sought.

2 General Principles

ASA 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 ASA Judicial Administrator.

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 ASA Law.

The key principle to be followed is that ASA laws and 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 ASA 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 (or 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 Chairman 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 Chairman. 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 Chairman 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;

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

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.

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.

The Chairman 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 ASA Judicial Laws 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 Administrator at Swim England Head Office, Loughborough.

5 Further Information

Additional guidance can be obtained from the ASA Handbook Judicial Regulations. The Sports Council have also issued a booklet „Getting it Right“ a Guide to Sports Ethics and Disciplinary Procedures.

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; and
- (c) The accused has the opportunity to respond.