

MIDDLE TEMPLE ROSAMUND SMITH MOOTING COMPETITION 2025

IN THE SUPREME COURT OF JUSTICE

B E T W E E N:

MRS HARMONY WATERS

Appellant

and

UK PADDLEBOARDING

Respondent

1. UK Paddleboarding (“**UP**”) is the National Governing Body responsible for the organisation of competitive paddleboarding competitions in the United Kingdom of Great Britain and Northern Ireland and a member of the International Paddleboarding Association (“**IPA**”).
2. UP’s role has never had a statutory underpinning. When established in 1995, UP was a private not for profit company incorporated under UK law. In recognition to its services to sport, it was awarded a Royal Charter in 2015.
3. Its functions include the setting of a Code of Conduct with respect to national standards for clubs, coaches, professionals and volunteers. The Code includes requirements on the part of participants in competitions to conduct themselves at all times in a sportsmanlike manner.
4. Affiliated clubs, their members, coaches and professional athletes (“**participants**”) must agree to abide by the Code, as a condition of accreditation, and participation at competitions. UP enjoys a disciplinary jurisdiction over participants. Its decisions are subject to an appeal to the UP Disciplinary Panel (“**the Disciplinary Panel**”), composed of members selected by UP for their expertise and experience in paddleboarding and sports generally. The Panel enjoys powers to issue sanctions, including the exclusion from UP affiliated membership, accreditation and participation in competitions.
5. Whilst membership of UP is voluntary, each of the UK paddleboarding clubs, and over 90% of the 1 million regular paddleboarders are affiliated to it. UP has been entrusted by the IPA with selection of athletes to represent the UK at international competitions, and is responsible in the UK for the organisation of major national competitions. UP trains and licences coaches entitled to work at UP affiliated clubs, and awards a number of lucrative central training contracts for coaches engaged to train its elite group of athletes. A requirement of UP affiliation is routinely imposed upon coaches by professional indemnity insurers.

6. UP was initially funded solely by membership subscriptions, and by the revenue generated from its commercial activities in running and promoting paddleboarding activities and competition. Since 2015, it has received funding from the Department for Culture, Media and Sport to fund its administration and its promotion of paddleboarding participation at grassroots level. In 2024, some 50% of UP's overall budget was made up of that public funding, the calculation of which in turn is underpinned by a statutory instrument.
7. UP's UK Paddleboarding Championship is held on 1 March 2025.
8. During the competition Harmony Waters ("HW") a paddleboarding coach with a rolling central coaching contract with UP, renewed annually, loses the final in a controversial photo finish to Glen Rapid. She had to that date enjoyed a lucrative competitive and coaching career, spanning a decade, and enjoyed six figure commercial endorsements.
9. Interviewed immediately after the race, HW questions the organisation of the event, criticises what she described as the "disgraceful" state of the course and particularly the pollution/ water quality of the river selected which she claims impacted upon athlete health. Later that evening, she sends a series of tweets. She describes the state of watercourses as a national emergency and advocates the disruption "by any means" of the industrial activities discharging untreated sewage into courses used by UP. The next day, roads adjoining industrial plants and trading estate near several rivers favoured by the UP are found blocked by a series of sand deposits.
10. HW is referred by UP to its Disciplinary Panel. On 1 April 2025, HW is found to have conducted herself in an unsportsmanlike manner both in the intermediate aftermath of the race, and by her tweets issued later that evening. The Disciplinary Panel finds that HW has brought the sport into disrepute, and imposes a two-year ban from competition.
11. The Disciplinary Panel does not revoke HW's affiliation, and her entitlement to continue activities as a UP affiliated coach remains. Its decision is final.
12. Shortly afterwards, the UP's Chief Executive declines to renew HW's coaching contract. A press spokesman states that the decision has been taken for "sporting reasons", unconnected to the 1 March controversy. It is said that the UP has for some time wished to refresh its coaching roster and bring in new talent.
13. HW makes a GDPR request. She obtains the minutes of the meeting discussing renewal. There was a lengthy discussion of her conduct. UP's officers had advised that it was felt difficult to justify non-renewal in light of the Disciplinary Panel's decision on HW's entitlement to retain her coaching affiliation. It was nonetheless considered by the Chief Executive to be prudent not to renew until "the 1 March controversy" had died down. "Sporting reasons" were to be given as the reason for that decision.
14. HW brings an action for judicial review against the UP. She argues
 - (1) the decisions of the Disciplinary Panel are subject to judicial review;
 - (2) the Disciplinary Panel's decision was unlawful on account of the Disciplinary Panel's failure to take into account material considerations: she points to the lack

of any consideration or reference in its reasons to her unblemished record, to the sincerity of her views, and to her constitutional entitlement to express such views. It was telling that the Panel declined her request to be permitted to attend its hearing to voice those concerns in person.

- (3) the decision of UP not to renew her national coaching contract is subject to judicial review.
 - (4) that decision was taken in bad faith: the reasons offered by UP did not properly reflect the underlying grounds of the decision. She argues that the minutes of the relevant meeting demonstrate UP's awareness that the actual rationale of the decision would not withstand legal scrutiny.
15. The Administrative Court grants permission for judicial review, but dismisses HW's claim, on the grounds that it is well established that neither the decision of a national sporting governing body's disciplinary panel, nor a decision of that body in a commercial context are subject to the Court's judicial review jurisdiction. The judgment records that, had the court enjoyed jurisdiction, then it would have found for HW on both of the substantive grounds advanced.
16. HW appeals. UP enters a Respondent's Notice with respect to the substantive conclusions of the Administrative Court. The Court of Appeal has upheld both aspects of that decision.
17. HW is granted permission to appeal by the Supreme Court, the Court considering that the issue of the susceptibility of National Sports Governing bodies to judicial review is ripe for consideration by the highest court.
18. The Supreme Court has directed that:
- a. Leading counsel should address the primary question of *whether* the challenged decisions of the UP's Disciplinary Panel / its activities in the commercial sphere are subject to judicial review.
 - b. Junior Counsel should address the question of the *grounds* of judicial review available to HW if either (1) the decision of the Disciplinary Panel or (2) its decision not to renew the contract with UP are subject to judicial review.

COLIN THOMANN KC

39 Essex Chambers

28 May 2025