



Case number: NST-E21-138149

Case Title: Smith v Gymnastics Australia and Sport Integrity Australia

Determination

National Sports Tribunal General Division

sitting in the following composition:

Panel Member/s Mr David Grace AM QC (Presiding Member)
 Ms Elisa Holmes
 Ms Rebecca Ogge

in the arbitration between

Deborah Smith *(Applicant)*

Represented by Mr Simon Grant of Counsel, instructed by Mr Glenn McCracken and Ms Katie Cameron, Solicitors

and

Gymnastics Australia *(Respondent)*

Represented by Mr Rhys Harrison

and

Sport Integrity Australia *(Interested Party)*

Represented by Mr Patrick Knowles of Counsel, instructed by Ms Peta Rogers, Senior Lawyer

PARTIES

1. The Applicant, Deborah Smith (“the Applicant”), is a coach in the sport of Gymnastics. Since 2017, she has been a coach at the Allstar Gymnastics Academy (“Allstars”) in Toowoomba, Queensland. She has had over 30 years’ experience coaching gymnasts and she also has had a managerial role overseeing other coaching staff. Gymnastics Australia (“GA”) is the Governing Body for the sport of Gymnastics in Australia. Sport Integrity Australia (“SIA”) is an Interested Party in the proceedings.

INTRODUCTION

2. The Applicant, as a member of GA, is and has been subject to Gymnastic Australia’s various Policies in respect of Member Protection, Child Safety and other relevant Policies in force from time to time. The Applicant was the subject of several complaints made by Felicia Platz on behalf of her daughter Sofia Balderson (“Sofia”). Sofia participated in gymnastics at Allstars during the period 2017 to 2020, between the ages of 8 – 12, she having been born on 9 December, 2008. The complaints made by Ms Platz were supported by specific statements by both Ms Platz and Sofia. The complaints were brought under Gymnastics Australia’s **Supplementary Policy for the Management of Complaints relating to conduct covered by the 2020/2021 Australian Human Rights Commission Review into Gymnastics in Australia** (“SCMP”). The SCMP establishes a procedure for dealing with Relevant Complaints made by an Eligible Complainant about Relevant Conduct that if proven would amount to a breach of a Relevant Policy. A complaint can only be a Relevant Complaint if it is made during the Specified Period.
3. The following definitions in the SCMP are relevant. Relevant Conduct is defined as being conduct towards an athlete amounting to misconduct, bullying, abuse, sexual harassment or assault. A Relevant Policy is defined as any policy that was in force at the time that the Relevant Conduct is alleged to have occurred. An Eligible Complainant is a person who has made a complaint during the Specified Period about the conduct of a natural person who is a current member of GA or who remains bound by any Relevant Policy and the conduct is Relevant Conduct and was experienced by the person at a time when they were an athletes (at any level) in Gymnastics in Australia.

4. The complaints made for and on behalf of Sofia, as the Complainant, were made during the Specified Period. The procedure for relevant complaints is specified in the SCMP. The procedure was followed in relation to the complaints by the Complainant. Under the terms of the SCMP, SIA investigated the complaints pursuant to an external investigation. SIA made findings that six of the complaints against the Applicant were substantiated and that the Applicant's conduct variously breached GA's Member Protection Policies and GA's Child Safe Policies that were in force at relevant times. The alleged conduct may be generally described as inappropriate activities in terms of stretching, strength training as punishment and injury management, and bullying or verbal abuse. As a result of the findings of the SIA Investigation, GA proposed a Disciplinary Measure, as defined in the SCMP, comprising a 6 month suspension of technical membership of GA, of which 3 months was to be suspended pending completion of a 3 month reintegration period.
5. Pursuant to "Attachment C4: Supplementary Discipline By-Law", the Applicant elected to have the Disciplinary Dispute (as defined in the SCMP) heard in the General Division of the National Sports Tribunal ("NST"). The Applicant did not accept that she had breached any of the Relevant Policies, and disputes that any of the complaints can be made out. Pursuant to the SCMP, SIA is entitled to appear as an Interested Party, and appeared by Counsel and lawyers in these proceedings. SIA, pursuant to the SCMP, took the lead in presenting GA's position.

NST JURISDICTION

6. The Supplementary Discipline By-Law provides that the jurisdiction of the NST is engaged for Disciplinary Disputes. Disciplinary Disputes are brought before the General Division of the NST for Arbitration under Section 23 of the National Sports Tribunal Act, 2019 ("NST Act"). The dispute in this matter arises between a sporting body, GA, and the Applicant. The Applicant is a member of GA and is bound by its policies including the SCMP and the SCMP permits the dispute to be heard by the NST. Disciplinary Disputes brought before the General Division of the NST under the SCMP are "Disciplinary Disputes" for the purposes of Rule 7 of the National Sports Tribunal Rule, 2021 (Cth.)

ALLEGATIONS and RELEVANT POLICIES

7. On 8 July 2021, the Applicant was advised by GA as to the outcome of the Complaint made against her by Felicia Platz under the SCMP, which had been referred for external investigation by SIA. The Applicant was advised that GA was required under the SCMP to adopt and implement any determination or recommendation made by SIA as to the outcome of the investigation, including with regard to any Disciplinary Measures. Seven allegations were investigated by SIA. Allegation 1 was found to be unsubstantiated but Allegations 2, 3, 4, 5, 6 and 7 were found to be substantiated. The allegations and the relevant parts of the Policies that were alleged to be breached by the Applicant in respect of each Allegation are set out later in this Determination.

FACTUAL BACKGROUND

8. Allstars provides a competitive program for young gymnasts who possess the necessary attributes and have displayed a desire to enter a competitive gymnastics program. Gymnasts in the competitive program are required to train longer hours than those engaged in the general gymnastics program and require specialised coaching and resources. Sofia was part of the competitive program. The published values of Allstars include the aim to provide an excellent gymnastics experience for its members including athletes, staff, family and friends. Allstars sets out this goal in its publications and emphasises values of excellence, care, opportunity, safety and a happy healthy environment. As part of its pursuit of excellence Allstar aims to employ staff, including coaches, who genuinely care about children, and take the time to show them they care about them and their gymnastics, and ensure that the staff are great role models for the young gymnasts. In respect of the expressed value of care, Allstars expects that its staff will be respectful when interacting with children and their families and that all staff, athletes, officials and members need to embrace Allstars Codes of Conduct. Allstars expects its coaches to abide by a Code of Behaviour and a Code of Conduct and that all coaching staff be accredited with GA. It also embraces a Child Safety Policy.
9. GA has for many years adopted a Member Protection Policy and a Child Safe Policy. GA is committed to ensuring that everyone involved with gymnastics in Australia is treated with respect and dignity and is protected from abuse, bullying, harassment, sexual misconduct, unlawful discrimination, victimisation and vilification and seeks to ensure that everyone involved in gymnastics is aware of their rights and responsibilities. The various

policies set out the standards of behaviour of those involved in the sport of gymnastics and the behaviours that are not acceptable. So much is emphasised in the preamble summary of the Member Protection Policy. GA has publicly stated it will not tolerate acts of physical violence, discriminatory or harassing behaviour under any circumstances and may take disciplinary action against anyone who breaches its policies. Its Child Safe Policy express a zero-tolerance policy to child abuse and neglect in any form and states that GA is committed to safeguarding and promoting the welfare of children in gymnastics by providing a safe and inclusive environment by ensuring that everyone involved is educated and informed of their responsibilities to protect and look after children. The Policy emphasises that all children have the right to feel safe and protected from all forms of abuse, harm and neglect and the right to take part in the sport in a safe, positive and enjoyable environment. The relevant policies of GA impose obligations on GA and member organisations in relation to responding to allegations of prohibited conduct.

10. The commitment of GA to athlete safety and wellbeing resulted in GA recently engaging the Australian Human Rights Commission to conduct an independent review of the sport of gymnastics in Australia. The task of the Review was to examine the culture and practices in gymnastics and provide all those involved in the sport and the public the opportunity to discuss any concerns with the existing culture and practices. Furthermore, the Review examined the nature and impact on athletes of misconduct, bullying, abuse, sexual harassment and assault, such conduct typically amounting to a breach of GA Member Protection Policies or Child Safe Policies or equivalent policies of GA enforced from time to time. In order to facilitate the complaints the SCMP was established.
11. At the hearing, Felicia Platz gave evidence on behalf of Sofia and the Applicant gave evidence supported by Vicki Flamsteed. In addition, and by consent, a large number of outlines of evidence of witnesses relied upon by the parties were tendered together with a body of emails, physiotherapy notes, Allstars publications and the relevant Policies relied upon. Crucially, the SIA Record of Interview with Sofia was relied upon. She was not required by any of the parties to give oral evidence due to her age and potential vulnerability.
12. The SIA Investigation Report was not tendered in evidence. It was not appropriate for that Report to be considered as these proceedings are not an appeal against the findings of SIA. The proceedings amount to an election on the part of the Applicant to have her

dispute determined by the NST ab initio. It is on this basis that the Panel conducted the hearing, and considered in detail the evidence and submissions thereon. Each party was given full opportunity to present its case and to rely upon evidence from witnesses and, where appropriate, relevant documents. The Applicant was aware of each allegation relied upon at the hearing and although she criticised the fact that during the investigation phase she was not informed of the particulars of the allegations, there can be no doubt that by the time of the hearing she was fully aware of each aspect of the allegations and gave direct evidence in response thereto.

13. While the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the parties, the Panel refers in its Determination only to the submissions and evidence it considers necessary to explain its reasoning.

PROCEEDINGS BEFORE THE NST

14. The Applicant filed her Application to the NST on 28 July 2021. In that Application, the Applicant set out her reasons for contesting the matter and indicated that she disputed the alleged breaches and the proposed disciplinary measures. By an Arbitration Agreement dated 24 August 2021, the Applicant agreed to have her matter arbitrated before the NST. GA and SIA, as discussed earlier, became parties to the Arbitration.
15. A Pre-Hearing Conference was held on 24 May 2022 at which procedural directions were given in relation to the dates for hearing, the witness order, the filing of an electronic bundle of documents and the logistic arrangements for the conduct of the hearing by video. The delay between the filing of the Application and the ultimate hearing was due to preliminary and logistical issues not relevant to this Determination.
16. The hearing commenced on 27 June 2022. On that date, Felicia Platz gave evidence, was cross-examined and re-examined. On the same day, Vicki Flamsted gave evidence and was cross-examined.
17. The hearing continued on 29 June 2022 when the Applicant gave evidence, was cross-examined and re-examined.

18. As outlined above, a large body of documentary material in the form of witness outlines and other documentation was tendered by consent. The parties agreed on a joint tender bundle of documents to be considered by the Panel in its Determination and this bundle included the aforementioned documents. The parties relied upon written submissions filed prior to the commencement of the hearing.
19. On 29 June 2022, the Panel also heard oral submissions from SIA and the Applicant and these submissions addressed arguments as to whether or not the allegations or any of them had been proved to the requisite standard of the balance of probabilities. There was no dispute that if any of the allegations were found proved on the balance of probabilities (pursuant to Clause 7.6(a) of the SCMP) the Relevant Policy would have been breached. The standard of balance of probabilities, particularly in the context of sporting disciplinary disputes, requires a NST to be satisfied that it is more likely for a matter to have occurred than not to have occurred. The NST is not bound by the rules of evidence and satisfaction on the balance of probabilities requires actual persuasion. However, in reaching its findings, the NST may properly have regard to the seriousness of each of the allegations that have been made against the Applicant, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences falling from a particular finding. These principles flow from the seminal High Court Decision of Briginshaw v Briginshaw (1938) 60 CLR 366. (See also Neat Holdings Pty. Ltd. v Karajan Holdings Pty. Ltd. (1992) 67 ALJR 170, at 171-2). At the conclusion of the hearing on 29 June 2022, the Panel advised that its decision would be reserved. It was also determined on that day that the Panel would publish its reasons in relation to liability and then invite submissions as to penalty if any of the allegations were found to have been proved.
20. No objection was made at the outset of the hearing to the composition of the Panel and at the conclusion of the oral hearing the parties confirmed that their procedural rights had been fully respected.

THE RELEVANT EVIDENCE, SUBMISSIONS OF THE PARTIES AND FINDINGS

21. Each of the allegations will be examined in turn.

ALLEGATION 2: During 2018 and 2019, in Toowoomba, Deborah Smith prescribed strength training as a disciplinary measure

22. Between 2018 and 2019, it was alleged by SIA and GA that the Applicant had prescribed strength training for Sofia as punishment in breach of the following Policies and Codes:

Gymnastics Australia Child Safe Policy Version 1, February 2019 and Version 2, February 2020

Attachment K: Codes of Behaviour When Dealing with Children (the same Attachment applies to each Version)

Section 4. Positive Coaching Techniques – Under no circumstances are our Personnel to take disciplinary action involving physical punishment or any form of treatment that could reasonably be considered as degrading, cruel, frightening or humiliating.

Gymnastics Australia Member Protection Policy Version Eleven, February 2019 and Version Twelve, April 2020

Section 2. Part B: Code of Ethics and Codes of Behaviour

- I To prioritise the safety and wellbeing of all athletes, particularly children involved in our sport.

Section 4. Attachment B2: Code of Behaviour – Coach Role and Responsibilities

- 47.(c) Provide positive reinforcement and constructive comments rather than the use of negative feedback.

The same Section 2 and Section 4 applied to each Version

EVIDENCE

23. SIA relied on its interview with Sofia, the evidence and witness statement of Felicia Platz, Ms Keely Beutel, Ms Nicole Fuller and Ms Jessica Hollister. Only Ms Platz was required for cross-examination by the Applicant at the Hearing in respect of any of the Allegations. Ms Beutel and Ms Hollister are former gymnastics coaches at Allstars. Ms Fuller is a parent of a gymnast who trained with Sofia. Ms Platz also coached at Allstars during the relevant time period but no longer coaches there.
24. Sofia in her Interview with SIA, stated: *“I would have to go do strength a lot, like, when it came to apparatus, I couldn’t do most of the other stuff the other girls could do, so she just*

told, told me to go do strength again. And that was like, strength was really hard core. It was like, 45 leg lifts, 20 chin ups...". Sofia said that strength training included activities which helped gymnasts develop the strength they needed to perform. She said that strength was not her favourite aspect of gymnastics, that it was difficult and sometimes it could get a bit boring however she knew that it was important to do the training to improve. She said that she was often punished by the Applicant with extra strength training and other girls in the group were also punished with strength training. She gave the example that if *"someone did something wrong or didn't get a drill right"*, the Applicant would send them to do strength training. Sofia said that the Applicant would say words to the effect of *"no more, just go and do strength"* or *"you're not doing this properly so you may as well just either go home or go to strength"*. Sofia recalled one time when the group was doing straight jumps on the vault table, the other gymnasts were given three attempts to do the jump and she was given one attempt before she was sent to strength training by the Applicant. Sofia said she was often sent to do strength training by the Applicant because she was not able to carry about a lot of the skills due to her back injury.

25. Ms Platz's evidence was that Sofia had told her that the Applicant would often send Sofia off to do additional strength training without supervision. It appeared to Ms Platz that the extra strength training was directed when the Applicant was not happy with Sofia's performance or conduct. An example Ms Platz gave was the Applicant would say to Sofia, *"if you can't do this skill you will do extra strength"*. She recalled an occasion where Sofia was told to do strength training for about forty minutes after not being able to do straight jumps on the vault perfectly on her first attempt.
26. In cross-examination, Ms Platz said that Sofia had an elbow injury in 2018 and hurt her back after the State Championships in 2019. She said that Sofia's physiotherapist had recommended altered training for Sofia when she was injured in 2019, and was recommended to do restricted programming for the rest of each session.
27. Ms Fuller gave evidence that sometimes gymnasts in Sofia's group would be sent to do strength training if they were too afraid to do certain things or if they were not paying attention. She recalled a time when Sofia was sent to climb the rope or do leg lifts after she was chatting to another gymnast.

28. Ms Beutel gave evidence that she saw strength training used as a punishment quite regularly at Allstars by the coaches. She said that in her opinion the strength training directed by the Applicant was excessive. Ms Beutel said that she would know when one of the Applicant's gymnasts was in trouble because she would be sent off to do strength training away from the whole group without supervision.
29. Ms Hollister gave similar evidence to Ms Beutel and said that she saw gymnasts doing extra strength training from the rest of the Applicant's group for what she thought was punishment. Ms Hollister said that she could recall a specific situation when Sofia was chatting away to another gymnast, when she was supposed to be watching someone else, and was then sent to do rope climbing and leg lifts. A Psychological Report written by Sofia's psychologist dated 6 March 2020 tendered in evidence, documented that Sofia complained to the psychologist that her coach expected her to participate fully in the training program despite injury.
30. The Applicant provided evidence and relied on a number of witnesses including Ms Vicki Flamsteed, Ms Chloe Gilliland, Ms Sarah Warburton, Ms Jemima Love, Ms Charlotte Love, Ms Allison Love and Ms Jorja Kate Mahoney. The Applicant and Ms Flamsteed were the only witnesses required for cross-examination by SIA at the hearing in respect of any of the Allegations.
31. The Applicant, in her evidence-in-chief, stated that the normal program for her gymnasts was warming up for half an hour, strength training for half an hour and then apparatus. The Applicant said she did not send athletes to do strength training instead of apparatus unless the gymnast had an injury and could not do the standard training. She said that with the uncertainties surrounding Sofia's injury, Sofia would spend a lot of time doing strength training "*as there was not much else she could do*". The Applicant maintained that she had limited guidance from a physiotherapist and was critical of Ms Platz who had not sought assistance from an Allstars preferred physiotherapist. The Applicant said that she would regularly check on Sofia while she was doing the strength training.
32. In cross-examination, the Applicant said that strength training was not a gymnast's favourite part of the sport and that strength training was to improve safety for the gymnast and improve performance. She agreed that additional strength training should not be used

for punishment and she denied that she would send her gymnasts off to do strength training in the event that they could not properly perform a drill.

33. Ms Flamsteed, the owner of the Allstars since 2009, said in evidence-in-chief that she frequently watched training including when Sofia was at Allstars. She said that Sofia did not like strength training and that no complaints whatsoever were raised by Sofia or Ms Platz during 2018 and 2019, including in respect to suggested additional strength training.
34. In cross-examination, Ms Flamsteed said that strength training was for injury prevention and performance. She agreed that strength training should not be used to punish the gymnast. When Ms Flamsteed was questioned, however, about whether a gymnast should be sent to strength training in the event that she was not listening to a coach, she replied that it was inappropriate and unsafe for the gymnast to continue on the apparatus if she was not listening. Further, Ms Flamsteed denied children were punished at Allstars and she said that in respect to Sofia's injury, she had talked to all coaches about modifying her programme until a physiotherapist diagnosis was provided.
35. In response to questions from the Panel, Ms Flamsteed said that Allstars had staff training sessions to instruct coaches about the applicable Codes of Behaviour.
36. Ms Warburton's evidence supported the Applicant and said that she had never seen the Applicant send gymnasts (including Sofia) off to strength training for punishment but saw the Applicant use strength training as part of rehabilitation for an injury and also to maintain strength and flexibility when a gymnast could not do full training.
37. Both Ms J Love and Ms A Love provided evidence that they never saw the Applicant send gymnasts to strength training for punishment. Ms J Love, a fellow coach, said that Sofia did a lot of strength training because "we" (the coaches or Allstars) were not sure what training Sofia could do with her injury. Ms C Love, a gymnast with Sofia, said that Sofia would be sent off to do strength and conditioning after she started complaining about her injury. Ms A Love, the mother of Ms C Love, recalled an instance when the Applicant sent her daughter to strength training "*when she couldn't fix what was wrong with a skill that she was doing but it wasn't for punishment, it was to divert her to do something else so she did not injure herself trying to do the skill wrong*".

38. Ms Mahoney, who had coached for ten years and who was employed at Allstars since September 2019, said that she shadow coached with the Applicant twice a week and supervised the strength training while Sofia was at Allstars. She said that Sofia was limited due to her injury.

SUBMISSIONS

39. SIA submitted that strength training is training which builds a gymnast's muscle strength and fitness. Strength training was submitted as being an important component of pursuing competitive gymnastics, however it often tends to be a gymnast's least favourite aspect of training because it does not involve work on gymnastic apparatus. Emphasis was placed on the fact that the Applicant did not deny that the imposition of strength training as a disciplinary measure would be a breach of the Relevant Policies, but, rather, she denied that she required any gymnast to undertake strength training as a punishment. The Applicant accepted that it was not appropriate for a coach to impose strength training out of frustration or to punish the gymnast. SIA submitted that the evidence relied upon by SIA was in clear conflict with the evidence relied upon by the Applicant but that the SIA witnesses should be preferred.
40. The Applicant denied sending Sofia or any gymnast to do strength exercises as a punishment and maintained that strength training was undertaken as part of the gymnast's usual training program. It was submitted that the Applicant's approach as a coach was (and still is) to work with the athlete, identify the issue and if the issue involved the athlete's physical strength, then part of the approach could be to have the athlete work on their strength to help them achieve the skill. It was emphasised that strength training could be the only task an athlete could undertake when injured.
41. Reliance was also placed on the fact that strength exercises are not a gymnast's (including Sofia's) favourite aspect of training and that when Sofia was not able to fully train and needed more strength exercises, she found it frustrating.
42. Whilst it was accepted that Ms Fuller provided evidence that the Applicant sent gymnasts to strength training for punishment, Ms Platz stated that the gym was very noisy and the Applicant questioned as to how Ms Fuller could have heard above the noise any reasons why the gymnasts were performing strength training.

43. It was accepted that it would be inappropriate for a coach to send gymnasts to strength training for misbehaviour, but that Applicant complied with the relevant Policies by sending gymnasts to strength training to avoid injuries and her evidence should be accepted.
44. A general submission was made by the Applicant that applied to all the Allegations. The submission was to the effect that the Allegations made by Ms Platz on behalf of Sofia were motivated by a grudge or animosity felt by Ms Platz against the Applicant due to the fact that Ms Platz effectively had been replaced as a particular competitive coach at Allstars during the Covid lockdown and felt that the Applicant was at least complicit in that decision.

MERITS

45. The question for the Panel is whether Sofia was directed to do strength training by the Applicant as a form of punishment. It is agreed by both parties that in gymnastics, strength training is necessary for injury prevention and improved performance. It is accepted by both parties that strength training is not always the most favourite part of a gymnast's training. Sofia gave evidence that she was often punished by the Applicant with extra strength training, however in addition, she stated that she was often sent to do strength training by the Applicant because she was not able to carry out a lot of the skills due to her back injury. It is not disputed that Sofia was injured in 2018 (elbow) and then in 2019 (back). The Applicant did not deny that strength training as a disciplinary measure would be a breach of the relevant Policies but she denied that she required a gymnast to undertake strength training as a punishment.
46. Appropriately, the Applicant accepted that it would not be appropriate for a coach to impose strength training out of frustration or to punish the gymnast. It is the Applicant's evidence that Sofia could not do a lot of the group training largely due to her injury and that the Applicant, not being certain as to the nature and extent of the injury, sent her to do strength training. The Applicant admitted that Sofia was sent to strength training because there was not much else she could do when she was injured. Ms Platz confirmed that Sofia's physiotherapist had recommended altered training for Sofia when she was injured in 2019 and for the rest of her sessions to do restricted programming. However, Sofia also claimed that she was often sent to do strength training after one attempt at a drill. A number of witnesses including Ms Fuller, Ms Beutel and Ms Hollister gave evidence

that that they saw a number of coaches including the Applicant regularly use strength training as punishment. Ms Fuller's evidence was that she recalled Sofia being sent to climb the rope or do leg lifts after she was chatting to another gymnast. Ms Hollister supported Ms Fuller's evidence. The Applicant and Ms Flamsteed denied that children were punished at Allstars and agreed that it would be inappropriate to send children to do additional strength training as punishment for behavioural issues or for poor performance. The Applicant had a number of witnesses in support who provided evidence that they had never seen the Applicant send gymnasts to do strength training for punishment and that the Applicant would send gymnasts to strength training to fix a skill or due to limited training capacity due to injury.

47. After considering all the evidence before it, the Panel finds that Sofia spent a lot of her time doing strength training over the 2018 and 2019 period due to her injuries. However, the Panel also finds that if additional strength training was used to enforce good behaviour or vent frustration it would be a form of discipline and physical punishment. While Sofia spent additional strength training while she was restricted due to injury, the Panel finds that on the balance of probabilities, Sofia was sent by the Applicant to do strength training at times as punishment for misbehaviour including when she was chatting to gymnasts when she was supposed to be paying attention. Allegation 2 therefore is proven to the requisite standard. It is in clear breach of the Policies in place at the relevant time, namely, the Child Safe Policy and the Member Protection Policy and the relevant Codes of Ethics and Behaviour. In so finding the Panel prefers the evidence relied upon by SIA and GA to that relied upon by the Applicant. SIA's witnesses gave direct evidence of the use of strength training as punishment. The Applicant's witnesses gave evidence of not seeing this happening, not that it did not happen. It is instructive to note that Ms Flamsteed was somewhat uncertain about the contents of the Relevant Policies and this may well have flowed through to the coaches at Allstars.
48. The Panel has formed the view that the Applicant herself was uncertain of the updated coaching course contents she had been educated upon in the relevant period in professional development sessions. As to the general submission that Ms Platz was motivated to make false complaints against the Applicant due to a grudge or animosity, the Panel rejects that assertion. No such proposition was put to Ms Platz in cross-examination by the Applicant. The Panel finds Ms Platz to have been an honest and frank witness. Her obvious interest in the outcome does not affect adversely the Panel's

assessment of her evidence. She made proper concessions when appropriate and answered questions directly. There is no basis on the evidence to impugn her credibility in respect of the evidence given in respect of any of the Allegations.

ALLEGATION 3: During 2018 and 2019, in Toowoomba the Respondent enforced physically excessive stretching manoeuvres causing Sofia pain.

49. Between 2018 and 2019, it was alleged by SIA and GA that the Applicant had enforced physically excessive stretching manoeuvres causing Sofia pain in breach of the following Policies and Codes:

Gymnastics Australia Child Safe Policy Version 1, February 2019

Attachment K: Codes of behaviour when dealing with children

16. Flexibility/Stretching exercises

(a) use slow, progressive and prolonged stretching exercises within the “discomfort zone”, rather than what might be considered excessive force.

(g) do not sit on or straddle a gymnast to encourage flexibility.

Gymnastics Australia Member Protection Policy Version Ten, June 2017.

Part B: Codes of Behaviour, Attachment B1: General Codes of Behaviour

8. Establish and maintain an environment that is safe for the conduct of activities and for children.

Gymnastics Australia Member Protection Policy Version Eleven, February 2019

Section 3. Attachment B1: Code of Ethics

(h) Establish and maintain an environment that is safe for the conduct of activities for children.

EVIDENCE

50. SIA relied on its interview with Sofia, the evidence of Ms Platz and the witness outlines and statement from Ms Fuller and Ms O’Leary respectively Ms O’Leary is a former Coaching Director and Chief Operating Officer of Allstars.

51. Sofia provided evidence that the Applicant would not stretch her gymnasts *“the way other coaches would”*. She stated that when the Applicant was supervising, *“we were told to put our whole body weight on each other. Lots of the girls would cry when this happened and sometimes I would cry”*.
52. Sofia described one stretch as ‘froggy stretch’ where the gymnasts would lie on their backs under the beam with their knees at the same level as their hips. The Applicant would tell the partner to stand on the stretching gymnast, near their knees with all of their weight. Sofia said that when she was standing on her partner, if the Applicant was not looking, she would try to take some of the weight off her partner by using the beam to lift herself up. If the Applicant saw this, she would require the stretch to start again.
53. Ms Platz’s evidence was that the Applicant would instruct her gymnasts to do the ‘froggy’ stretch. She described the stretch as athletes laying under the beam on their back in a split position and while in this position, another gymnast would stand on their inner thigh/knee with “all” of their weight for a minute. She said sometimes the gymnasts who were standing would use the beam to try and lift their weight so it was not so heavy. Another stretch involved a gymnast in a split position with their hands off the ground while a partner sat on them for two minutes. Ms Platz stated that several girls would cry when doing the ‘froggy’ stretch which was done on a daily basis and sometimes done with the Applicant stretching the gymnast. In cross-examination, Ms Platz accepted that stretching could be uncomfortable. She said that Sofia would not come home from training crying due to the stretching but that Sofia was “probably” crying through the stretching. She told the Panel that she had not complained about the conduct but, in re-examination, she clarified for the Panel she had complained to the Club “informally”.
54. Ms Fuller recalled seeing the Applicant instruct her gymnasts to do the ‘froggy’ stretch. She remembered that there were a few different variations of the stretch, one having a partner either sitting or laying on top of the gymnast or standing while holding onto the beam to push down to force the stretch.
55. Ms O’Leary in her statement said that she had regularly witnessed a froggy stretch being used where gymnasts would lie on their back with their legs bent and feet together while a partner stood on the inside of the gymnast’s legs near their knees using the assistance of the beam to control the amount of body weight applied to push their legs closer to the

floor. She said that on one occasion she spoke with the Applicant's gymnasts about the stretch and that they had complained about how this stretch hurt their back. Ms O'Leary stated that the gymnasts had not complained to the Applicant about the stretch hurting as they felt it would be ignored. She said that she witnessed an athlete doing the splits between two objects with a partner sitting on their back leg. She confirmed that Sofia was subjected to both the frog stretch and the split stretch.

56. The Applicant stated that the frog stretch was used instead of side splits if the gymnast was not particularly flexible. She said that the gymnast would lie on her back and bend their knees while another gymnast would push their partner's knees towards the ground. In cross-examination, the Applicant accepted that the frog stretch put pressure on the stretching gymnast's legs or knees but that most of the partner's weight was on the beam. The Applicant denied that the gymnast was sat on or stood on but said that the partner applied "just gentle force to the back". She said that sometimes she saw gymnast's cry during the stretch. She said that she no longer directed her gymnasts to do the frog stretch and that she had "stopped a couple of years ago". The Applicant further stated that she had stopped the stretch when the Child Safe Policies were commenced but then stated that she was not sure when she became familiar with the relevant Policies. She commented that gymnasts had "lost flexibility" since the guidelines were introduced.
57. Upon the Panel questioning the Applicant, she confirmed that she was aware of the Australian Human Rights Commission Report, but she stated that she had not seen the relevant policies until she was served the breach notice by Gymnastics Australia. The Applicant told the Panel that she had completed an online Child Safety Course in 2020 but she had not received any instructions from the Allstars head coach about the relevant Policies. She said that she did not do frog stretching anymore (since 2019) and she had changed her stretching practices because she had heard from other coaches of a change in the Child Safe Policy. When pressed, she told the Panel that she did not think to make her own enquiries about the relevant Policies or take steps to review the Policies herself.
58. Ms Flamsteed stated in her written statement that she had seen the frog stretch and partner stretching in the gym but she had never witnessed gymnasts crying or upset during their stretching. In cross-examination, Ms Flamsteed was questioned at length by SIA about partner stretching, her witnessing partner stretching in the gym, how the partner stretching was performed and the weight the partner may be placing on the other partner.

Ms Flamsteed, in response to being questioned about whether partner stretching consisted of a gymnast sitting or standing on another gymnast, she said “no, partner stretching is very common, they would not be sitting, putting entire body weight on another gymnast, it is assisted stretching”. She conceded that some body weight would be placed on the gymnast by the partner and the stretch could have the partner standing on the gymnast while holding onto a beam. When questioned whether all coaches at Allstars required this stretch, Ms Flamsteed said that not every gymnast would be doing this stretch and asked whether the question referred to every competitive coach. She said that it is quite standard for all coaches to do some sort of side split stretch and that the Applicant was not the only coach at the Club to perform the frog stretch. However, she said in an answer to a different question that she could not specifically say that she saw the Applicant supervising the frog stretch or side split stretch. Later, she said that the Applicant “does not” do that stretch. Finally, she stated that she never saw or knew that the gymnasts were crying because of the stretch.

59. The Panel asked Ms Flamsteed whether she had read the Gymnastics Australia Child Safe Policy Version 1, February 2019, Attachment K: Codes of Behaviour when Dealing with Children. Ms Flamsteed told the Panel that “she had read most of these documents”. When asked by the Panel about whether she had seen Paragraph 16 (g): “do not sit on or straddle a gymnast to encourage flexibility”, Ms Flamsteed said she was not aware of this specific provision until she had been asked the question.
60. Other witnesses including Ms Warburton recalled the frog stretch being used when she worked at Allstars between 2019 and March 2020, Ms J Love stated that the frog stretch as a paired activity was used while she was at the Club in 2018 and 2019 and Ms A Love stated that her daughter Ms C Love had not complained about doing the frog stretch.

SUBMISSIONS

61. It was submitted by SIA that Ms Platz witnessed Sofia using stretching techniques known as “froggy” and “over split” under the direction of the Applicant. The stretches were performed with a partner gymnast applying pressure to the body and legs by sitting, lying or standing on top of the gymnast on the floor. It was submitted that in some instances, the partner gymnast would hold onto the beam to apply additional pressure. It was further submitted that the Applicant conceded during her interview that she instructed gymnasts

to perform the “froggy” and “side split technique” and that sometimes the stretching would cause the girls to cry.

62. Reliance was placed on the evidence of Ms O’Leary and Ms Fuller who stated that they saw gymnasts sitting on the back of the gymnast’s legs, or other gymnasts either sitting or laying on top of a gymnast’s back or standing, while holding onto the beam, and pushing down to force the stretch. Ms O’Leary witnessed girls crying while performing the stretch.
63. It was submitted on behalf of SIA that the Applicant’s stretching was contrary to the relevant Child Safe Policy, Attachment K - Codes of Behaviour When Dealing With Children, which provided that members use slow, progressive and prolonged stretching exercises within the “discomfort zone”, rather than what might be considered excessive force and that it is not appropriate to “sit on or straddle a gymnast to encourage flexibility”.
64. Further, SIA submitted that the Applicant’s conduct had contravened Attachment B1 - The General Code of Behaviour of Member Protection Policy Versions 10 and 11 which required members to establish and maintain an environment that is safe for the conduct of activities and for children.
65. It was submitted on behalf of the Applicant that she had denied enforcing physically excessive stretching manoeuvres and breaching the relevant versions of the Policies, in particular, Attachment K, on the basis that no stretching exercise she supervised or required of athletes was in breach. It was emphasised that the Applicant’s position was supported by the evidence of Ms A Love, Ms J Love, Ms Warburton, Ms Mahoney, Ms Gilliland, Ms Mathison, and Ms Flamsteed. It was argued that the Applicant was transparent about gymnasts crying about the exercise known as a “froggy”, but as they learned to relax, they complained less. It was submitted that if an athlete cried, the Applicant would tell them to stop the exercise. The Applicant further submitted that she had not seen an athlete cry “for a very long time” and it was not common for athletes to cry. It was further submitted that stretching is an exercise which naturally places stress on an athlete’s body to promote flexibility and that any individual experiences physical stimulus differently to others.
66. It was argued further that Sofia had not raised any issues about the stretching at the time, leaving it impossible for the Applicant to identify the issue. In any event the partner was

not standing on the gymnast but was hanging off the beam, that Ms Platz had never complained about the particular stretching, Ms O'Leary had never stepped in as head coach and stopped it, and that the Applicant ceased the particular stretch after professional development in respect of the Child Safe Policy.

MERITS

67. It is not disputed by the parties that the frog stretch was used by the Applicant as a stretching technique at Allstars. There is a dispute between the parties about the stretch being a breach of the relevant Policies, whether the stretch caused Sofia pain and at which time the stretch was used and ceased by the Applicant. The Panel heard from the Applicant, Ms Platz and Ms Flamsteed that the frog stretch could be performed in a number of ways but that it was common for the frog stretch to be performed by a partner gymnast sitting on the stretching gymnast or, as alleged by Sofia, by the partner gymnast exerting force with her feet near the stretching gymnast's knees with all of their weight as instructed by the Applicant. The Applicant admitted that she used the frog stretch instead of side splits if the gymnast was not particularly flexible. She accepted that the frog stretch put pressure on the gymnast's knees and that she saw gymnasts cry during the stretch but that she would stop the exercise if the gymnasts were in pain. The stretch was described by a number of witnesses as a gymnast lying on their back while the partner gymnast applied gentle pressure on the stretching gymnast while leaning on the beam. Evidence was provided about the amount of pressure or force placed on the stretching gymnast by the partner gymnast.
68. It is not accepted by the Panel that the majority of the pressure of the gymnast partner was placed on the beam and that for all gymnasts "gentle" pressure was applied. The Panel finds that the Applicant, as the coach, had responsibilities to the gymnasts and the responsibility to administer safe stretching. Children could not be responsible for monitoring the pressure or force exerted on their child partner.
69. The Applicant gave evidence that she no longer used the frog stretch as a coach. Her evidence about when she stopped the frog stretch was internally inconsistent. The Applicant said that she stopped the frog stretch "*a number of years ago*". She then went on to say in evidence that she had not done the stretch since the Child Safe Policies were commenced. When pressed in cross-examination, the Applicant admitted that she was

not sure when she became familiar with the relevant Policies and that she had first seen the policies when she was served with the Breach Notice in this matter in 2021.

70. Ms Flamsteed's evidence, particularly in cross-examination, was most unimpressive and was highly inconsistent. She tended to tailor her answer to support the Applicant and as the owner of Allstars, it was perhaps self-serving. Ms Flamsteed confirmed that she had read the Applicant's previous witness statements, had discussed the evidence in the matter with the Applicant and had attended as a support person for the Applicant at her SIA investigation interview.
71. At the hearing, Ms Flamsteed avoided answering questions directed as to whether the Applicant had included the frog stretch in her programme. Concerningly, Ms Flamsteed, when asked by the Panel whether she had read the Child Safe Policy, Version 1, Attachment K 16 (g) in respect to stretching, admitted that she had not.
72. The Panel, in conclusion, makes the following findings:
- (a) given that the Applicant admitted to subjecting the gymnasts that she coached, including Sofia, to the frog stretch and side split stretch, there is no doubt that those stretches were employed on Sofia;
 - (b) it is clear from the evidence that gymnasts would cry due to the implementation of the stretches;
 - (c) there were inconsistencies in the Applicant's evidence as to when she ceased the stretching in terms of the implementation of the relevant Policies;
 - (d) the frog and side split stretching techniques were utilised by the Applicant with Sofia in 2018 and 2019, causing pain rather than discomfort.
73. The Panel finds, to the requisite standard, that this Allegation is proven as the various Policies have clearly been breached.

ALLEGATION 4: During 2018 and 2019, in Toowoomba, Deborah Smith used denigrating language towards Sofia.

74. SIA and GA allege that during 2018 and 2019 the Applicant used denigrating language towards Sofia. In particular it is alleged she referred to her in terms such as "sook", "brat"

and “Princess”, criticised her in other ways, and raised her voice at her in breach of the following Policies and Codes:

Gymnastics Australia Child Safe Policy Version 1, February 2019 and Version 2, February 2020

Attachment K: Codes of Behaviour When Dealing With Children (the same Attachment applies to each Version)

Section 6. Use of Language and Tone of voice (b) derogatory, belittling or negative, e.g. by calling a child a ‘loser’ or telling them they are ‘too fat’

Gymnastics Australia Member Protection Policy Version Ten, June 2017.

PART: B: Codes of behaviour, Attachment B2: Coaches’ Code of ethics

Refrain from any verbal, physical or emotional abuse

Gymnastics Australia Member Protection Policy Version Eleven, February 2019 and Version Twelve, April 2020.

Section 3. Attachment B1: Code of Ethics (the same Attachment applies to each Version)

(m) Be a positive role model, demonstrating a high degree of responsibility (especially when dealing with children), understanding that their words and actions are an example.

(p) Do not shame, humiliate, oppress, belittle, harass or degrade any person, particularly children.

Section 4. Attachment B2: Code of Behaviour – Coach Role and Responsibilities (the same Attachment applies to each Version)

4.2(a) Be constructive with criticisms and direct comments and observations to the direct individuals and organisations, to avoid gossip, innuendo and malicious comment.

75. In oral submissions, SIA helpfully broke the complaint down into three discrete allegations:

(a) That the Applicant told Sofia to stop acting like a brat. This allegation was accepted by the Applicant as a matter of fact, and it was accepted that it was inappropriate;

(b) That the Applicant told Sofia, on at least one occasion, to stop being a sook. This allegation was denied in its entirety;

- (c) That the Applicant repeatedly referred to Sofia as “Princess” or “Princess Sofia”. The facts alleged were largely accepted, but the Applicant denied that, in context, the conduct was inappropriate.

EVIDENCE

76. Sofia’s evidence was as follows (as extracted from her Witness Outline):

“16. On many occasions, Debbie yelled at me when I accidentally made a mistake trying a skill or sometimes even yelled at me when I didn’t do anything wrong. Sometimes Debbie would not speak to me at all during a training session.

17. When Debbie yelled, she said things like, “go do your strength”, “that’s disgusting”, “do it properly or you can sit in the corner”, “you can just go home” or “do it properly or you can just do nothing”.

18. On one occasion, I remember a local television news crew attended Allstars to film. I found out that I wasn’t going to be involved in the filming and became upset. Debbie pulled me aside and asked, “Why are you crying?” I explained why I was upset and Debbie responded by saying words to the effect of, “Well stop being a sook and go and do your strength” and “Just stop playing your sook to me.” Those words made me really upset so I went outside to the carpark to have a breather. I was too upset to go back inside the gym so I just stayed in the car.

19. Later, Maggie, a friend of mine from gym training told me that Debbie called me a “brat” in front of the other gymnasts and had told the other gymnasts that’s why I was in the car park.

20. Debbie also regularly called me a “Princess” but not in a nice way, she meant that I was weak, emotional or scared. She would call me a “Princess” when I couldn’t run fast enough or was scared to complete a skill. Debbie laughed when she called me a “Princess” and would think it was a joke.

21. Debbie would write the other girls names on their things, but she wrote my name as “Princess Sofia” on my gym bag that we were given to put our weights in. Debbie also wrote “Princess” on my drink bottle (photographs included at Attachment “A”). I remember she would also call me other names, such as “drama queen” and “grandma”.

77. Ms Platz gave evidence that Sofia had complained to her, and she heard for herself, the Applicant calling her a “sook”, “little brat” and “Princess”. Ms Platz said that language was used consistently toward Sofia. Ms Platz also gave evidence that Sofia’s drink bottle and ankle weights bag was labelled “Princess” by the Applicant, and she wrote that name on team sheets instead of her real name. Ms Platz understood the term to be derogatory and

was used in a sense that meant Sofia was spoiled or unwilling to work hard. Her evidence is that the Applicant did not refer to any other gymnast as “Princess”.

78. Ms Platz stated that Sofia told her that the Applicant called her a “brat”. She said it occurred on more than one occasion. Ms Platz said that Sofia also told her that the Applicant called her a “sook”. Ms Platz accepted in cross-examination that she did not complain to anyone about this. She said that Sofia was the only gymnast that had her nickname on her equipment. Ms Platz’s evidence was that Sofia did not like being called a “Princess” and that she told Ms Platz that. She said that the other children in the team also called her “Princess” and that they knew the context in which it was used (that is, in the context of laughing at her). Again, Ms Platz accepted that she did not complain about the use of the nickname.
79. Ms Beutel’s witness outline was also relied on by SIA. Her evidence was that she observed the Applicant say to Sofia “Oh, why can’t you just keep your chin in”. Sofia said “Oh, I’m trying”, to which the applicant responded “Well, it’s not good enough”.
80. In her written evidence, the Applicant accepted that she once said to Sofia “Why are you acting like a spoilt brat” for which she later apologised. This was in the context of Sofia not being invited to participate in a news media piece. But she denied that this amounted to “verbal abuse” and she said it was not “harmful” to Sofia. This occurred shortly before a competition at which most but not all of the Applicant’s gymnasts were competing. Those who were selected attended training on the day in question dressed and turned out in their competition attire, whereas those not selected, including Sofia, were not so dressed. Before this training session, Ms Platz had spoken to the Applicant to express concerns that Sofia was likely to be upset given she was not selected for the relevant team. As things transpired, Sofia did become upset and walked out of Allstars into the carpark crying.
81. The Applicant in cross examination said that this event occurred in 2019 after a film crew attended Allstars. On that occasion Sofia cried again. On this occasion Sofia was upset about not appearing in the film. On that occasion the Applicant said she said “stop being a spoiled brat”. The Applicant, in cross-examination, said she apologised because it was not very professional. She accepted that there was not much difference between it not being an appropriate way to speak to a child and not being professional.

82. The Applicant otherwise denied the allegations. She denied calling Sofia a sook or describing her as a sook (although in cross-examination she did not deny that she could have said “stop being a sook”).
83. The Applicant said that Sofia’s nickname was “Princess” and that Sofia would refer to herself as “Princess Sofia”. She says it was not used with malicious intent, and indeed Sofia liked it. She denied in cross-examination that it was used in a derogatory context with Sofia, although she accepted that it could sometimes be used in that context. The Applicant denied using it in a derogatory fashion even when used following a failure by Sofia adequately to perform a skill expected of her. The Applicant accepted that she wrote the word “Princess” on Sofia’s bag and water bottle. She accepted she never asked Sofia if that was acceptable, but she says she did not need to because she knew Sofia liked it.
84. There was debate about whether or not “Princess” was written on Sofia’s shorts (the implication being that, if it was, she liked the name and used it herself).
85. The Applicant maintains that her position is supported by Ms A Love, Ms J Love, Ms S Warburton, Ms Michelle Reynolds, Ms J Mahoney, Ms C Gilliland, Ms Mikaela Mathison and Ms Flamsteed. Much of the written evidence of these witnesses does not take the matter much further, since it is concerned with what they did not hear, and otherwise much of their evidence does not rise any higher than conjecture. Insofar as that evidence is relevant:
- (a) Ms Gilliland said that Sofia “used to wear a pair of shorts to training that had ‘Princess’ written on the back” and that she used to call herself “Princess” and that she never heard anyone in the gym use it in a negative way.
 - (b) Ms Reynolds said that she never heard the Applicant call Sofia “Princess” but she did hear other girls call her that, but not in a negative way. She said that in her opinion “Sofia was a bit of a Princess”. She also said her own daughter also had a nickname – “Titch” – which reflected the fact that her daughter was small. She said all the girls had nicknames.

- (c) Ms Warburton said that Sofia was not upset by her nickname and that she actively encouraged the use of it. She said she also called Sofia “Princess”. She said she never heard anyone use it in a belittling or denigrating way.
- (d) Ms J Love also gave evidence that she did not think Sofia was offended by the name.
- (e) Ms A Love suggested that Sofia liked her nickname and said that “Felicia does treat Sofia like a princess and would joke about it”.
- (f) Ms Flamsteed’s written evidence was also to similar effect. She said in cross-examination that the applicant only referred to Sofia as “Princess” on some occasions, and when she did it was in a “fun team atmosphere”. In cross-examination she accepted the use of “Princess” could be used in a derogatory sense. She then accepted that she could not be 100% sure that Sofia had shorts that said “Princess”. She accepted that it was possible that she was wrong.
- (g) Ms Mahoney said that she never heard the applicant call Sofia a sook, but that the applicant did tell her that “Sofia could be a bit of a sook”.

SUBMISSIONS

The first allegation

- 86. In respect of this allegation, which was conceded, it was submitted, that the Applicant told Sofia to stop acting like a brat and that Ms Platz acknowledged that the Applicant later apologised for saying it. SIA noted that in oral evidence, the Applicant said it happened in 2019 and not before the 2018 championships. Ms Platz’s clear evidence was that it occurred in 2018 and that is consistent with Sofia’s interview in which Sofia gave evidence of being upset on the occasion that she was not selected in the State team.
- 87. In the end, SIA submitted it probably did not matter because:
 - (a) If it occurred in 2019, it was a clear breach of the 2019 Child Safe Policy and Code of Ethics.

- (b) If it occurred in 2018, it was a breach of the 2018 Coaches Code of Ethics in Member Protection Policy Version 10 June 2017. In that Policy, the definition of abuse includes, as examples, bullying, humiliation, verbal assaults and insults; abuse and bullying are defined widely and include insults and belittling remarks.

88. The Applicant's submissions focused on the fact that her unacceptable behaviour in calling Sofia a "brat" was immediately and appropriately addressed by an apology.

The second allegation

89. As to the second allegation, SIA focused on the fact that the Applicant did not deny calling Sofia a sook in cross-examination. It was submitted that given the evidence of Sofia herself, the Panel should be satisfied that it was something that was said by the Applicant.
90. The Applicant submitted that there was a disconnect in the evidence of whether the word "sook" was used. There was evidence that the Applicant had described Sofia as a sook to a co-coach, but that was not in breach of any Policy. Further, it was submitted that just because the Applicant did not recall saying it did not make it more likely. It was submitted that one would expect the Applicant would both remember and apologise if she had called Sofia a sook given she did so in light of calling her a brat.

The third allegation

91. In respect of the repeated use of the nickname Princess or "Princess Sofia", SIA submitted that there was no dispute that the Applicant used it repeatedly. Ms Platz accepted that other people referred to Sofia in that way, but that Sofia did not appreciate it when the Applicant said it and that it was said in a context that was derogatory, particularly when she was scared of performing a particular skill. SIA submitted that the evidential debate about whether or not "Princess" or "Princess Sofia" was written on Sofia's shorts was at the periphery of the dispute. Whatever the outcome of that debate, the context in which the nickname was used by the Applicant constituted derogatory language which she repeatedly used, it was submitted. SIA submitted that writing these words on her bottle and bag was important because the Applicant accepted that she did not even ask

permission or ask if Sofia liked it, and yet she went ahead and did it, in the context in which Sofia's evidence is that she found that particularly upsetting.

92. The Applicant submitted that it was clear that Sofia was called "Princess" or "Princes Sofia" by everyone. It was highlighted that it was only when the Applicant used the term that it was alleged that it had a derogatory meaning. It was submitted that the Panel should not accept that characterisation. The fact that everyone was calling her that, and that it was the practice within the team, meant that to find it in breach of any Policy would be to treat the Applicant differently in a way that was unacceptable. Further, although it was submitted that the terms were alleged to have been used during the whole period alleged, Ms Platz did not complain, as one would expect, if she really did have a concern.

MERITS

93. The Panel finds to the requisite standard, that the first and the third allegations set out in paragraph 75 have been proved.
94. The facts of the first allegation are accepted. Although the Applicant apologised for her remark, that does not change the character of what was said, although it may be a matter relevant to the determination of penalty. The Panel agrees that it does not make a material difference if the incident occurred in 2018. If it occurred in 2018 it was in breach of the then applicable Member Protection Policy Version 10 and in particular Attachment B2 Coaches' Code of ethics which, relevantly, required coaches to "refrain from any verbal, physical or emotional abuse". For the reasons submitted by SIA, telling a child to stop acting like a brat when the child was upset constituted verbal abuse. If it occurred in 2019 it was a breach of a similar provision in Version Eleven of the Policy. It was also a breach of the Gymnastics Australia Child Safe Policy Version 1, and in particular Attachment K Codes of Behaviour When Dealing with Children" in that it was "derogatory, belittling or negative".
95. As to the second allegation, the Panel is not satisfied to the requisite standard that the Applicant called Sofia a "sook" to her face. That is not to say that it did not happen, but the allegation in this respect was not as specific as the other allegations, and although it seems that the Applicant called Sofia a "sook" when speaking to a third party, the Panel

does not find it established to the requisite standard that she called Sofia a “sook” to her face.

96. The Panel finds the third allegation to be made out to the requisite standard. There was little dispute about the facts. The Panel does not consider that the fact that other children, or even coaches or anyone else, called Sofia “Princess” or “Princess Sofia”, detracts from the inappropriateness of the Applicant referring to her in that manner. There is no doubt that the name could be offensive and that a common meaning of “Princess” when used as a nickname is derogatory. Coaches should take care not to call children names which have derogatory connotations. That is so even if others use that name. Coaches should set examples, and the use by a coach of a name of that kind suggests that it is acceptable to do so, and is likely to have a significant impact on a child when compared to other children using such a name. A coach is in a position of power and some control over child athletes in particular and has the ability to inflict significant psychological harm on a child through the use of nicknames which may be taken to be derogatory. The fact, if it was so, that Sofia had some attributes that might have attracted the derogatory use of the word “Princess”, (which is, perhaps surprisingly, set out in evidence relied upon by the Applicant, although no such finding is made by the Panel), further illustrates that the use of “Princess” as a nickname may well have been taken to have a derogatory meaning when used by the Applicant.
97. In any event, another example of a nickname, the use of which was said to be common, was “Titch” which was said to reflect the physical size of the athlete to whom that was attributed. That suggests that at least sometimes the nicknames were attributed to the children as a result of something thought to be a characteristic of them. The use of nicknames has an obvious potential to cause harm to children particularly when used, encouraged or condoned by adults. They should not be used at least when they have a possible derogatory connotation. The Panel accepts that Sofia did not appreciate being called “Princess” or “Princess Sofia” by the Applicant and does not accept that the fact that she did not complain about it suggests that she did welcome it. The Applicant accepted that she never asked Sofia how she felt about it or whether it was acceptable to her.

98. In this context, the use by the Applicant of “Sofia” and “Princess Sofia” was denigrating and was “derogatory, belittling or negative”. Further, it constituted verbal and/or emotional abuse in the context in which it was used.
99. The Panel finds that the Applicant’s use of denigrating language was in contravention of the relevant Policies set out above and that the substantive Allegation is proven.

ALLEGATION 5: During 2019, in Toowoomba, Deborah Smith threatened to drive Sofia out of the Allstar Gymnastics Club

100. The specific allegation made by SIA and GA was that during training on the bars, Sofia indicated that she did not want to perform a certain skill. Sofia said “You can’t make me”, to which the Applicant responded “I can’t make you but I can drive you out of the club”. This was alleged to be in breach of the following Policies and Codes:

Gymnastics Australia Child Safe Policy Version 1, February 2019

Attachment K: Codes of Behaviour When Dealing With Children

Section 6. Use of Language and Tone of Voice

Avoid language that is:

- (b) derogatory, belittling or negative, e.g. by calling a child a ‘loser’ or telling them they are ‘too fat’.
- (c) intended to threaten or frighten.

Gymnastics Australia Member Protection Policy Version Eleven, February 2019.

Section 3. Attachment B1: Code of Ethics

- (k) Show concern for the health, safety and welfare of members and participants.
- (l) Give all people equal opportunity to participate.
- (m) Be a positive role model, demonstrating a high degree of responsibility (especially when dealing with children), understanding that their words and actions are an example.

EVIDENCE

101. Sofia’s evidence was as follows (extracted from her witness outline)

“22. I recall a time in 2019 when my training group were doing giants, which involves casting up to a handstand on the bar and then swinging the whole way back up to a handstand. I was the first one in my training group to do a giant, however after a while, my hands started to come off the bar. I recall that I got up to the top in a handstand position when my hands fell off the bar, causing me to collapse. When I fell, my knees and shins hit the bar on the way down. Debbie said words to the effect of, “It’s okay. It’ll probably only happen once”. I had another attempt but fell again, which was really painful so I got some ice and put it on my shins and knees.

23. The next time we did giants at training during a morning session, I was really nervous because the last time I did them I had fallen. Debbie wanted me to do them but I was petrified of attempting them. I remember getting off the platform and by this stage I was crying, and Debbie said she wanted to speak to me. I said to Debbie that I couldn’t do them and that, “You can’t make me do them” to which Debbie said to “just do it”, and “I can’t make you but I can drive you out of the club”. I remember Debbie yelled at me specifically and this was one of the worst times she yelled at me.”

102. Whilst Ms Platz was at the gym that day, her evidence was that she did not hear the incident. It was recounted to her by Sofia, and her evidence is that Sofia was distraught after the incident and she did not want to go to training for the rest of that week as a result. Ms Platz said she asked the Applicant about this incident when she next saw her. Her evidence was that she could not recall her exact words but that she said something to the effect of “that wouldn’t have happened”.
103. The Applicant, in her evidence denied that she said any such thing. She says that she recalled Sofia being scared of doing “giants and flics” and her saying that she did not want to do them. She remarked that “she is only one of a very small number of athletes I have coached who have refused to attempt a skill even with spot”. Nevertheless although the Applicant appears to recall the conversation complained of she says that she “would have responded with trying to encourage her to do them and pointing out that if she didn’t want to do them if she was scared that she wouldn’t be able to progress her gymnastics without this skill”.
104. The Applicant said, in cross-examination, that she “doesn’t think she even let her get up to do it again” although she accepts there was a time at which she asked Sofia to do it and Sofia said she did not want to do it. She said the “can’t make me do it” remark from Sofia was some time (could be weeks) after she fell off. She stated that the suggestion she said something about driving her out of the club was “a lie” and that she would never say that. She agreed that saying that would be inappropriate.

105. The Applicant says her evidence is supported by Ms J Love, Ms Warburton, Ms Gilliland and Ms Flamsteed. Again, none of these witnesses are particularly of assistance because the effect of their evidence is that they never heard the Applicant say the words alleged. Some witnesses did say that they it was not something they believed the Applicant would ever say, but the Panel does not place significant weight on this evidence. Ms Flamsteed went further and said that the Applicant “worked so hard to keep Sofia in the club and in the program despite the fact that Sofia was quite difficult to work with and was not willing to commit to all aspects of the program and training”.

SUBMISSIONS

106. SIA noted that it did not seem to be disputed that in 2019 there was an incident in which Sofia fell off after that she expressed fear and said “you can’t make me do it”. SIA submitted that the panel accept Sofia’s evidence and that of Ms Platz, in part because of the way in which the Applicant’s evidence was aimed at establishing enmity on behalf of Ms Platz towards the Applicant. SIA submitted that there was no dispute that it would have been an inappropriate thing to say. SIA further relied upon the Applicant’s abrupt manner and coaching style which was the subject of some evidence before the Panel.

107. The Applicant submitted that Sofia was scared to do the exercise when she came to do it again after having fallen. It was submitted that there were just three pieces of relevant evidence:

- (a) The Applicant denies ever saying anything to the effect that she would drive Sofia out of the club;
- (b) Sometime in 2019 when Sofia was junior state champion, the Applicant is alleged to have threatened to drive the junior state champion from club;
- (c) Ms Platz did not complain to anyone.

108. For these reasons, it was submitted that the Panel should not accept Sofia’s and Ms Platz’s evidence.

MERITS

109. The Panel accepts that if the words were said, it would be a breach of the relevant Policies.
110. The Panel is not, however, satisfied to the requisite standard on the available evidence, and in the face of strenuous denials by the Applicant, that the threat to drive Sofia out of the club was made. The Panel finds the Allegation not proven.

ALLEGATION 6: Between 2018 and 2020, in Toowoomba, Deborah Smith displayed a lack of care and support to Sofia, both at training and competitions.

111. Between 2018 and 2019, it was alleged by SIA and GA that the Applicant had displayed a lack of support, both at training and competitions, in breach of the following Policies and Codes:

Gymnastics Australia Member Protection Policy Version Ten, June 2017

PART: B: Codes of Behaviour, Attachment B1: General Code of Behaviour

1. Respect the rights, dignity and worth of others

Gymnastics Australia Member Protection Policy Version Eleven, February 2019 and Twelve, April 2020.

Section 2. Part B: Code of Ethics and Codes of Behaviour (the same Attachment applies to each Version)

- (4) To prioritise the safety and wellbeing of all athletes, particularly children involved in our sport.

Section 3. Attachment B1: Code of Ethics (the same Attachment applies to each version)

- (5) Respect the rights, dignity and worth of others.

Section 4. Attachment B2: Code of Behaviour – Coach Role and Responsibilities (the same Attachment applies to each Version)

- 4.7(c) Provide positive reinforcement and constructive comments rather than the use of negative feedback.

EVIDENCE

112. The Applicant coached Sofia for the majority of the time that Sofia attended Allstars. Sofia competed in numerous competitions at local, regional and State level and trained 17 hours per week spread across five individual training sessions. Ms Platz complained of the failure of the Applicant to check on Sofia or console her when Sofia was not part of the twenty gymnasts involved in the filming by a television news crew in 2018 when a story was filmed about Allstars and a club champion competition. This was the incident where, as outlined earlier, Sofia went out to the carpark and was crying. Ms Platz further stated that at the 2019 State Club Championships the Applicant gave no verbal support or technical advice to Sofia as compared to the support and advice she gave other gymnasts. Further complaint was made about the fact that after Sofia had won the State Championships, which was her best result to date, the Applicant did not congratulate her immediately afterwards.
113. Ms Platz stated in her evidence that she had a meeting with Ms Flamsteed and the Applicant in about February 2020 to discuss Sofia's issues with the Applicant and had made numerous approaches to Ms Flamsteed about her concerns about Sofia in the lead up to the meeting. Part of those concerns were expressed as being Sofia's reluctance to go to training because she felt that the Applicant was not giving her attention. At the meeting the Applicant was dismissive of Sofia's concerns. As a result, Sofia was very upset and cried heavily as Sofia expressed the belief that nothing she said was believed. As a result, Ms Platz took Sofia to a child psychologist on 6 March 2020. The psychologist expressed in her Report that Sofia became highly anxious before training sessions due to her difficult relationship with the Applicant which caused her significant stress. In a further Report dated 30 January 2021, the child psychologist, in referring to the events of March 2020, stated that Sofia disclosed she did not receive sufficient emotional support from the Applicant and felt partly isolated from her peer group; further that she was often highly anxious before training sessions and *"experienced high stress levels in anticipation of difficult interactions with her coach"*. Ms Platz made it clear to the Applicant that Sofia was seeing a child psychologist as a result of how the Applicant was speaking to Sofia.
114. Ms Fuller in her witness outline, described the Applicant as a tough coach and not a nurturing coach. She commented that the Applicant did not give a great deal of compliments to Sofia or any other gymnasts. At competitions the Applicant would prepare

the few athletes that she thought were going to place or knew would get good results and would leave the other athletes to prepare by themselves or without offering any guidance. She commented that at a competition in Warwick where Sofia won the competition overall, the Applicant did not speak to her for the whole period of the competition. She stated that the Applicant did not give any positive reinforcement to the gymnasts generally.

115. Ms Beutel in her witness outline commented that the Applicant definitely treated Sofia differently from the other children. There was little or no feedback, but if there was feedback it would just be criticism.
116. Ms O'Leary, in her statement, commented that the Applicant displayed very strong characteristics of having favourites within her program and those gymnasts gained all her attention. She often witnessed Sofia in the group of athletes who appeared to receive very little or no feedback and this was very well known amongst the athletes themselves and at times the parents of those athletes would make similar comments to her. She described the Applicant's coaching style as one of fear and intimidation and she had had a number of staff approach her and advise that they could no longer support the Applicant's bullying approach to coaching. As a result, those staff members felt they had no choice but to leave their employment. She stated that at the end of 2020 she had almost daily conversations with staff as they struggled with the Applicant's coaching approach towards the gymnasts. She further stated that the Applicant made it very clear in numerous conversations with her that the Applicant did not want to have Sofia in her program and from what she observed, the Applicant struggled with Sofia's personality and took a strong dislike to her. She added that during Sofia's last months with Allstars, the Applicant constantly isolated and ignored her and the lack of care and attention towards her escalated.
117. In her witness outline, Sofia complained of the incident after she won the State Championships in 2019 when the Applicant failed to congratulate her after she showed her trophies to her, nor did she congratulate her afterwards. She related how upset she was after the February 2020 meeting with the Applicant and Ms Flamsted as she felt that they did not believe a word she said. She stated that training with the Applicant made her feel like she wasn't good enough because the Applicant always yelled at her and would tell her she was doing things wrong. She related about having anxiety attacks prior to

training sessions due to the treatment she was expecting and since her move to a new club she is doing much better and doesn't feel upset or anxious.

118. Ms Mahoney stated in her statement that the Applicant preferred to work with some of the gymnasts more than others however felt that that was because those gymnasts were constantly asking for attention and feedback and were consistently training hard and seeking to improve, as opposed to the other gymnasts who were not paying as much attention to their training and being diligent and working hard. She further stated that she heard some of the gymnasts saying that they believed the Applicant had favourites and that when Sofia was training it felt to her like it appeared that the Applicant had favourites in that group. She further stated that as a coach you are not meant to have favourites but she had seen the Applicant unintentionally show favouritism to gymnasts at the expense of others because that gymnast had more potential or was putting in more work. It appeared as favouritism because that gymnast took advantage of having more turns because the apparatus was free, and worked hard, and this behaviour was encouraged.
119. Ms Hollister stated that the Applicant was not a very warm woman but she did not seem to single Sofia out. She did not notice that the Applicant talked in a more disrespectful way towards Sofia as compared to other girls. Ms Hollister commented upon the fact that coaches often adopt different styles of coaching and do things differently to each other, but, in any event, the Applicant did not seem to single Sofia out and the things that Sofia feels are probably felt by the majority of the gymnasts that the Applicant has coached because her treatment seemed to be the same with everybody.
120. The Applicant denied ever providing a lack of care or support of Sofia. She stated that she is focussed on getting the best from the athletes under her charge, encourages them and provides them with appropriate feedback. Where an athlete shows initiative and wants to work on a particular skill or whether an athlete requires more feedback in relation to her skill, the Applicant will work with that athlete.
121. The Applicant denied that she shows favouritism to certain athletes in her groups and stated that she treats all athletes in her groups equally. She accepted that there were times when certain athletes in a group are going to require more time and assistance from her as a coach than others in the group, but that was not because of favouritism. It was usually because they needed additional assistance with skill development, spotting or

feedback and though it sometimes appeared that some gymnasts got more feedback or more assistance than others, this was because some of them needed more feedback when they were attempting to achieve a skill than those who had already accomplished the skill. She emphasised that those that were progressing the fastest or who were more successful at competition would always be misconstrued by onlookers as being favoured ones but that this was a total misconception from people who did not understand the sport, coaching and the motivation of the individual.

122. Ms Flamsteed commented in her statement that the Applicant is a quiet and reserved person and that the Applicant always congratulates the girls on their competition performance whether they win or not. Both the Applicant and Ms Flamsteed stated in their evidence that the Applicant participated in what was described as a “*circle of success celebration*” after each competition with all of the girls involved. Ms Flamsteed further stated that the Applicant would never be rude or inconsiderate to a gymnast at a competition. The Applicant commented that she was always very busy at competitions looking after all team members and she had a responsibility for a large amount of gymnasts over the day as the competitions are run on tight schedules.

SUBMISSIONS

123. It was accepted by SIA that there was overlap between this allegation and a number of the other allegations but that there was sufficient evidence to find, to the requisite standard, that the Applicant had failed to display a caring and supportive approach in her role as Sofia’s coach. Reliance was placed on the fact that there must have been an issue when a child needs to see a psychologist because of her relationship with her coach. The Applicant stressed that the evidence did not demonstrate any breach of any relevant Policies or Codes but what the evidence demonstrates is the Applicant’s personality. Emphasis was placed on the fact that not all coaches have the same personality or approach and that it is undeniable that different coaches achieve different results from different teams and it is for that reason that team members move between groups seeking to find a coach they resonate with.
124. The Applicant also sought to rely upon the undisputed fact that Sofia improved from being an average gymnast to winning a State Championship in 2019 under the coaching of the Applicant. A further submission was made that it was inconsistent with the Allegation for

Ms Platz to allow Sofia to continue training with the Applicant after complaints had been made and for her son to continue to be trained at Allstars after Sofia left Allstars.

MERITS

125. The Panel has given careful consideration to the evidence and to the submissions relied upon by the Applicant and SIA. It may be said that on the basis of the findings already made, it is clear that the Applicant has displayed a lack of care and support to Sofia, at least at training. Therefore, there is a considerable degree of overlap in the Allegations and in respect of the evidence relied upon. Although not referred to in the summary of Evidence outlined above, there were a number of statements and witness outlines relied upon by the Applicant which attested to her excellent coaching techniques and methods. These were from gymnasts, coaches and parents of gymnasts. They do not need to be referred to in any detail.
126. The Panel has formed the opinion that it is not possible to come to the conclusion that the Applicant has breached any of the provisions of the relevant Policies or Codes as alleged in this Allegation. This is primarily because, as a discrete Allegation, it primarily relies upon matters of impression and opinion. The specific matters or evidence relied upon in support of the findings made in respect of the proven Allegations cannot be again relied upon in support of this Allegation. To do so would amount to double-jeopardy. Coaching techniques employed by an individual coach may be quite different to that employed by another. Observers have different perceptions as to what is an appropriate coaching technique or method. Upon the evidence relied upon, the Panel is not satisfied to the requisite standard that the coaching techniques or methods relied upon in this discrete Allegation have crossed the impermissible line so as to display a lack of care and support to Sofia. Accordingly, the Panel finds this Allegation not proven.

ALLEGATION 7: During 2019 and 2020, in Toowoomba, Deborah Smith demonstrated a lack of adherence to a formal injury management plan provided by Sofia's Physiotherapist.

127. It is alleged by GA and SIA that the Applicant demonstrated a lack of adherence to a formal injury management plan provided by Sofia's physiotherapist in breach of the following Policies and Codes:

Gymnastics Australia Member Protection Policy Version Eleven, February 2019.

Gymnastics Australia Member Protection Policy Version Twelve, April 2020.

Section 3: Attachment B1: Code of Ethics (the same Attachment applies to both Versions)

- (c) Be fair, considerate and honest in all dealings with others.
- (h) Establish and maintain an environment that is safe for the conduct of activities for children.
- (k) Show concern for the health, safety and welfare of members and participants.

Section 4: Attachment B2: Code of Behaviour – Coach Role and Responsibilities (the same Attachment applies to both Versions)

- 4.4(c) Modify the program for injured participants based on appropriate medical advice when required.

EVIDENCE

128. Sofia sustained an injury to her lower back during training in November 2019 and obtained treatment from a physiotherapist over the next few months. Ms Platz provided to SIA investigators five Physiotherapist Reports dated variously between November 2019 and October 2020. These Reports contained a diagnosis of the injury and suggested modifications to Sofia's gymnastics routines to avoid any lumbar spine extensions in order to prevent the injury progressing into a fracture and to aid her rehabilitation. There was a dispute on the evidence as to the number of Reports that were provided to Allstars by Ms Platz. Ms Platz maintained that she provided the Reports to the Applicant in order to ensure that Sofia was given a modified training program to take account of the injury. However, Ms Flamsteed stated in her evidence that the only Report handed to her was one dated 4 March 2020 but which was very brief in its description of the injury and noted that an x-ray had not revealed any fracture. Ms Flamsteed acknowledged in an email dated 22 February 2021 to a Senior Investigator at SIA that the Report dated 4 March 2020 was the only report handed to the Applicant by Ms Platz, and that all other information provided was verbal, as was normal when the coach and parent (Ms Platz), who was a staff member worked together and talked in person often. The other Physiotherapy Reports in Ms Platz's possession were not handed to the Applicant or Ms Flamsteed and

were not therefore contained within the records of Allstars, according to Ms Flamsteed. Ms Platz believes that she provided those Reports to the Applicant.

129. Regardless, it was Ms Platz's evidence that there was no alternative plan established for Sofia's training and no adjustments were made to accommodate the injury and that on one occasion another coach pointed out that the exercises being performed were in fact placing load on Sofia's hips contrary to the physiotherapy advice. Ms O'Leary in her statement commented that she did not observe any rehabilitation work being incorporated into Sofia's training routine. Ms Hollister and Ms Fuller in their witness outlines indicated a general unsympathetic approach by the Applicant to injury management and Ms Hollister specifically commented about the fact that the Applicant did not provide the girls training under her supervision with any guidance about injury management.
130. The Applicant accepted that she had seen a Report dated 13 November 2019 which contained findings of various injuries and tightness and suggested "*things to do*" in terms of exercises and stretches. In respect of a further Report dated 31 March 2020, the Applicant could not recall seeing that Report but commented that the exercises specified under the heading "*things to do*" would be done in any event. The same applied to the Report dated 13 September 2020 generally.
131. Evidence was given by Ms Flamsteed as to the closure of Allstars because of Covid during various periods of 2020. This was said to have an impact upon whether the Panel could accept evidence that Reports dated after the Covid enforced closure in March 2020 were ever brought to the attention of the Applicant or Ms Flamsteed.
132. In her denial of any lack of adherence to an injury management plan for Sofia, the Applicant requested Ms Platz to obtain x-rays to ensure there was no damage. She stated that when the x-ray showed no fracture, the Applicant asked Ms Platz to take Sofia to one of the physiotherapists recommended by Allstars but instead Ms Platz obtained reports from her own chosen physiotherapist and the rehabilitation was managed by Ms Platz. The Applicant maintained that she repeatedly sought information from Ms Platz as to Sofia's injury management without success and that the only Report that she recalls reading did not advise a plan relevant to gymnastics training that the Applicant could implement except for avoiding any lumbar spine extensions. In those circumstances, the Applicant maintains that she was restricted by what knowledge she had, and restricted the

activities of Sofia while attempting to obtain from Ms Platz the appropriate medical advice upon which the Applicant could make an informed decision as to Sofia's training. The Applicant relied upon the evidence of Ms C Love, Ms J Love, Ms Warburton, Ms Michelle Reynolds, Ms Mahoney, Ms Matheson and Ms Flamsted in support of her overall concerns to ensure that gymnasts under her received appropriate injury management and were not prejudiced in their rehabilitation.

MERITS

133. The Panel is of the opinion that on the available evidence it could not be satisfied to the requisite standard that the Allegation is proven. The majority of the time period under consideration was during Covid lockdowns of Allstars. These would have been obvious disruptions that would have impacted on all training programs including rehabilitation required of gymnasts coached by the Applicant. In any event, the evidence is of insufficient weight to establish the Allegation. The dispute about the receipt by Allstars of the relevant Reports cannot be resolved but, in any event, as stated above, the opportunity to implement the specific rehabilitation programs involving stretching and exercises as outlined by the physiotherapist in his Reports or notes provided to Ms Platz, would have been severely limited due to the Covid lockdown restrictions.

PENALTY

134. The Applicant has been found to have breached Versions 10 and 11 of the GA Member Protection Policy and Version 1 of the GA Child Safe Policy in relation to Allegation 2, Versions 10 and 11 of the GA Member Protection Policy and Section 4 of Attachment K to the GA Child Safe Policy in relation to Allegation 3, and Versions 10 and 11 of the GA Member Protection Policy and Version 1 of the GA Child Safe Policy in relation to Allegation 4. Pursuant to the SCMP, Attachment C4: Supplementary disciplinary by-law, Clause 7.6(c), if an alleged breach of a Relevant Policy has been proved, a Disciplinary Measure may be imposed by the Panel as it considers appropriate, consistent with the current GA Member Protection Policy and GA Child Safe Policy.
135. Pursuant to Clause 7.6(d), the Panel is required to consider the proposed Disciplinary Measure in the SIA Investigation Report (see paragraph [4] above), together with any submissions from GA, the Applicant and SIA. Upon delivery of paragraphs 1 – 133 of

this Determination to the parties in the form of an Interim Determination dated 3 August 2022, written submissions as to the appropriate Disciplinary Measure were sought from each of the parties. Written submissions were received from SIA and the Applicant. No party sought an oral hearing in relation to Penalty.

136. The Panel is required, consistent with the SCMP, to determine the appropriate Disciplinary Measure, consistently with the Complaints, Disputes and Disciplinary Policy (“CDDP”), pursuant to the current version of the Member Protection Policy (Version 13), Clause 5 of Version 13 provides that the CDDP applies and Clause 7.5(c) of the CDDP sets out the type of sanctions that may be imposed. Clause 7.5(h) of the CDDP allows for an aggregate sanction to be imposed where multiple breaches have been found and the seriousness of the overall conduct in question considered. Clause 7.5(g) of the CDDP provides that the following factors are to be considered in imposing the appropriate sanction:
- (i) the nature and seriousness of the behaviour or incidents;
 - (ii) the considerations (if any) of the Complainant;
 - (iii) the contrition, or lack thereof, of the Respondent;
 - (iv) any Provisional Action taken in relation to the Breach;
 - (v) the effect of the Sanction on a Respondent including any personal, professional, or financial consequences;
 - (vi) if there have been relevant prior warnings or disciplinary action against the Respondent; and
 - (vii) if there are any mitigating circumstances.
137. As outlined in paragraph [4] above, as a result of the findings of the SIA Investigation, GA proposed a Disciplinary Measure, as defined in the SCMP, comprising 6 months’ suspension of Technical Membership of GA, of which 3 months was to be suspended pending completion of a 3-month reintegration period. This proposal was predicated on the basis of the findings of the SIA Investigation that all six Allegations were upheld.

SIA'S SUBMISSIONS

138. SIA accepts that a lower sanction is warranted in circumstances where not all the allegations were upheld and submitted that the appropriate Disciplinary Measure should be 5-months' suspension of Technical Membership of GA, of which 10 weeks should be suspended pending completion of a 10 week reintegration period. Further, it submitted that the conditions of the reintegration period should be set by GA as the governing body and the Applicant should also extend a written apology to Sofia Balderson.
139. SIA submitted that the following matters are relevant to the appropriate sanction:
- (a) of the six allegations, allegations 2 and 3 were the most serious because they involved the use of physical punishment (in the case of Allegation 2) and the risk of physical injury (in the case of Allegation 3); further, the conduct the subject of Allegation 2 and Allegation 3 involved repeated conduct over a sustained period;
 - (b) the Applicant has not demonstrated any contrition (except to the extent that she apologised to Sofia for one derogatory comment). She denied all of the allegations. She also advanced a case which sought to characterise the complainant, Ms Platz, as a disgruntled former employee with a grudge against the Applicant and the Allstars Club; the Panel rejected that case (at [48]). However, the fact the case was advanced at all demonstrates that the Applicant has not shown contrition;
 - (c) related to the lack of contrition, the Applicant lacks insight into her behaviour. The Applicant, for example, appeared to be critical of the fact that the introduction of guidelines regarded stretching activities had led to a decrease in the flexibility of gymnasts: cf. Panel decision at [56] above; this suggested that she still did not appreciate the protective purpose of GA's Policies;
 - (d) the victim of the Applicant's breaches, Sofia Balderson, was between the ages of 9 and 11 years old at the time of the breaches and, by reason of her age, in a position of vulnerability;
 - (e) the protective purpose of the sanctions should be considered; the Applicant's conduct caused suffering and upset to Sofia Balderson and led to her seeing a child

psychologist; the Applicant's conduct also put the safety of gymnasts at risk; a meaningful and appropriate sanction was required to protect against the risk the conduct would be repeated;

- (f) although the Applicant was subject to interim measures she was not prevented from coaching; she could coach under supervision; the evidence at the hearing was that she did in fact continue to perform coaching activities throughout the period of the interim sanction. It is submitted that, given the seriousness of the conduct, a period of actual suspension is required.

APPLICANT'S SUBMISSIONS

- 140. The Applicant makes a general submission that proportionality in sanction is an accepted principle of sports law which should be reflected in the regulations of a sporting body with regard to sanction and in the interpretation of those regulations. The Applicant accepts that Clause 7.6(c) of the SCMP applies and that the current GA Member Protection Policy and Child Safe Policy are the relevant Policies. The Applicant also agrees that the CDDP is applicable including Clauses 7.5(c), 7.5(g) and 7.5(h) of that Policy.
- 141. The Applicant relies upon the decision in Liddick v Gymnastics Australia and Sport Integrity Australia (NST-E21-148532) delivered on 18 January 2022, in relation to parity. In Liddick, the NST found two of the five Allegations proven and suspended Liddick's Technical Membership of GA for a period of 4 months, wholly suspended for 2 years, and required Liddick to provide a written apology for using negative language which was belittling, offensive and humiliating and caused great upset to the Complainant.
- 142. The Applicant submitted that the findings of the Panel involved findings that were towards the lower end of seriousness. The Applicant submitted that in relation to Allegation 2 that Sofia was often required to do strength training during the requisite period due to her injuries and that the conduct of the Applicant must be considered to be "extremely different to a circumstance where physical punishment was found to include conduct such as striking a child or causing them to undertake physical exertion until they collapse".
- 143. The Applicant submitted that in relation to Allegation 3, the finding of the Panel is to be contrasted with a more serious breach where the facts identify the physical conduct of a

coach directly applying a stretching technique on a sustained and regular basis where a child cries on every occasion. Further, it was submitted in relation to Allegation 4, other than the admitted use of the term “brat” the use of the nickname “princess” was in circumstances where other people used that name with the inference being that it would have been appropriate for the Applicant to ask Sofia if she could use that name before doing so. It was submitted that more serious breaches would have been if a coach used either a clearly derogatory name or an ambiguous name in circumstances where it had been made clear the child did not want to be called by that name.

144. It was further submitted that the Applicant had shown contrition, indicating prior to the hearing that she would assist Sofia if it would help, but that Ms Platz did not provide any information to the Applicant prior to the making of the allegations. It was further submitted that SIA was in error in submitting that the Applicant lacked insight into her behaviour due to her opinion that the introduction of guidelines regarding stretching activities led to a decrease in the flexibility of gymnasts and this reflected a lack of appreciation of the protective purpose of GA’s Policies. It was submitted that the expression of such an opinion did not reflect a lack of contrition or insight.
145. Reliance was placed on the fact that the Applicant had been subject to interim measures since 17 December 2020 requiring direct supervision of her coaching activities and that this had had a financial impact on the Applicant as her hours working at Allstars were reduced to ensure the Applicant could be supervised by an appropriate qualified person. Next, it was submitted that if the Applicant was made subject to any lengthy suspension as sought by SIA, this would directly affect the Applicant’s ability to continue to work at Allstars as a coach.
146. It was next submitted that if there is to be any period of suspension, regard should be had to the fact that important events are taking place in August and September where the Applicant is currently expected to be acting in a coaching role and that any suspension would impact adversely on the children she is expected to coach.
147. Reliance was placed on the fact that the Applicant had been coaching in excess of 30 years, including as a State Team Coach, and including a role as a Technical Chairperson in the sport for period of 10 years; and that throughout that period of time the Applicant had no prior warnings or disciplinary action taken against her. Next it was submitted that

the Panel should take into account mitigating circumstances in that the Applicant voluntarily participated in a lengthy interview with SIA Investigators and that the investigation has become public knowledge resulting in the Applicant facing shame and questioning in circumstances where she had been unable to respond due to confidentiality requirements. Further, reliance was placed upon the fact that the Applicant in her evidence stated that she had ceased the stretching practice the subject of Allegation 3 which is demonstrative of the fact that she will not continue that practice.

148. It was submitted that personal deterrence of the Applicant from repeating the conduct, as submitted by SIA, was not necessary or required as there was no suggestion that there was any danger of the Applicant repeating the alleged conduct either against Sofia or any other athlete. In this regard, the Applicant noted that Sofia no longer attends Allstars nor is Ms Platz employed there, which, by inference, resulted in the conclusion that there will be little or no contact between the Applicant and Sofia in the future.
149. In conclusion, the Applicant submits that whilst acknowledging that the findings of the Panel against the Applicant involved a child, the conduct was not of such a degree as to require any actual period of suspension after taking into account all the circumstances, and that the Panel should accept the period of 20 months the Applicant has been the subject of interim arrangements as being a sufficient penalty in the matter. In the alternative, the Applicant submitted that if the Panel was of the opinion that suspension was required the appropriate range of penalty would be between the Panel suspending the Applicant's Technical Membership for a period of 3 months, 10 weeks of which should be suspended pending completion of a 2 week probation or reintegration period with a 2 week probation period being served after the initial 2 week suspension had been served and the Panel suspending the Applicant's Technical Membership for a period of 6 months, 5 months being suspended pending completion of a 1 month probation or reintegration period with the 1 month probation period being served after the initial 1 month suspension had been served.

CONSIDERATION

150. Pursuant to Clause 7.5 of the CDDP, the Panel may impose a sanction that may include any of the following measures (but is not limited to these measures), or any combination of such:

- (i) a reprimand or warning;
- (ii) verbal or written apology;
- (iii) direction to attend counselling or training to address their behaviour;
- (iv) suspended Sanction and/or good behaviour period;
- (v) exclusion from a particular gymnastics Activity or Activities;
- (vi) suspension of membership from Gymnastics Australia or a Member Organisation and any other members or affiliates;
- (vii) suspension from Activity or Activities held by or under the auspices of Gymnastics Australia and/or a Member Organisation;
- (viii) a recommendation to take any of the measures set out below or, where permitted under the applicable Gymnastics Australia or Member Organisation constituent document(s), the following measures;
 - a. removal of accreditation;
 - b. removal or withdrawal of awards or achievements (such as life membership);
 - c. suspension and/or termination of any rights, privileges and benefits provided by Gymnastics Australia and/or Member Organisation;
 - d. expulsion from Gymnastics Australia and/or a Member Organisation; and
- (ix) any other form of discipline that is considered appropriate.

151. It is clear from Clause 7.5 of the CDDP that the Panel is invested with a wide discretion in terms of the sanction to be imposed. The Panel has taken into account the submissions made by the parties which have been detailed above. The Panel is of the opinion, as it was in Liddick, that general deterrence from the type of conduct the subject of the findings against the Applicant is a very important consideration and that any penalty imposed must reflect the application of this principle. The Panel accepts that the Applicant has given much to the sport of gymnastics for a period of over 30 years in coaching and administrative roles. Undoubtedly, during that period of time, she has had success with gymnasts and provided expert and competent skills training. The Panel has taken into account the evidence given by the Applicant, her statement and other documents submitted on her behalf. The Panel accepts that there is little likelihood of the Applicant repeating the conduct the subject of the allegations found against her. The need for personal deterrence, in the Panel's opinion, is lessened due to the salutary effect, shame and embarrassment of these findings against the Applicant, and their publication. (In this regard, the Panel is of the opinion that the only redactions appropriate prior to publication

are redactions of the names of Sofia Balderson and Ms Platz, should either or both request this.)

152. In cases of this nature, the Panel is of the opinion that general deterrence is of paramount importance. The type of behaviours the subject of the findings in respect of the three allegations cannot be condoned in the sport of gymnastics, or indeed in any other sport, particularly where children are involved. The behaviour of the Applicant as evidenced in respect of the three allegations reflects a lack of insight on her part, a course of coaching behaviour which was contrary to the applicable Policies in existence at the time and a lack of appreciation of the effect of her behaviour on Sofia. This effect was significant. As the Panel said in Liddick, at [254], “the type of conduct engaged in by the Applicant cannot be tolerated”.
153. These breaches by the Applicant of the applicable Policies are regarded by the Panel as being serious and the Applicant should have known by reason of her vast experience and continuing professional development that the behaviour evidenced by the allegations was in breach of the Relevant Policies. The Panel accepts that the Applicant apologised to Sofia for calling her a “brat”, but otherwise denied the allegations and advanced a case that alleged that the motivation for the complaints was that Ms Platz had a grudge against the Applicant and the Allstars Club as a disgruntled former employee. This proposition was rejected by the Panel at paragraph [48] above and the Panel found Ms Platz to be an honest and reliable witness. The Panel does, however, take into account to a limited extent the apology made contemporaneously by the Applicant to Sofia at the relevant time.
154. The Panel accepts that the interim measures imposed upon the Applicant have had significant consequences upon her. Further, the need for her to be supervised as a coach would undoubtedly have presented practical difficulties for her and Allstars. The Panel is unaware as to the extent of coaching undertaken by the Applicant during the Covid-19 restrictions but would expect that there would have been significant restrictions on coaching gymnasts during that period at Allstars in any event. The Panel, however, does take into account the detriment suffered by the Applicant in this regard. The Panel takes into account the prior good character of the Applicant, her significant achievements in her career and the fact that she undoubtedly has been of great assistance to many hundreds of gymnasts over her career. The cooperation by the Applicant with the investigation process is noted, however, persons bound by the Relevant Policies are required to

cooperate fully with an investigation and a responsible member of the coaching community would be expected to do so.

155. Member Protection Policies and Child Safe Policies, as promulgated from time to time by GA, inform everyone involved in the sport of gymnastics as to their legal and ethical rights and responsibilities and the standards of behaviour that are required. In assessing the appropriate penalty for breaches of the Relevant Policies by a professional coach, the following principles ought to be applied (these principles being consistent with the approach by Disciplinary Tribunals throughout Australia in dealing with misconduct in professional occupations);

- (a) the need to protect the public against further misconduct;
- (b) the need to protect the public through general deterrence of others from similar conduct;
- (c) the need to protect the public and maintain confidence in the coaching and administration of the sport by reinforcing high professional standards even where there is no need to deter the person from repeating the conduct;
- (d) whether the coach has knowingly breached the MPP;
- (e) whether the incidents were isolated;
- (f) the coach's disciplinary history;
- (g) the coach's insight and remorse (or lack thereof);
- (h) the coach's personal circumstances at the time of the conduct and at the time of imposing a sanction, although the weight given to personal circumstances cannot override the fundamental obligation to provide appropriate protection of the public interest in the maintenance of proper standards of coaching practice and behaviour;
- (i) other matters relevant to the coach's fitness to coach, and aggravating or mitigating factors, although, in general, mitigating factors carry considerably less significance because of the nature of the jurisdiction being protective and not punitive.

156. The same principles were applied in Liddick.

157. In the circumstances of this case, and given that three out of the six Allegations were found proven, the penalty should be less than that proposed in the Breach Notice served upon the Applicant by GA, the terms of which are set out in paragraph [4] above.
158. After taking into account all the circumstances of the offending behaviour and accepting that the Applicant now understands the standards of behaviour expected from her and the Panel's opinion that there is little likelihood that the Applicant will pose a risk or threat to other participants in the sport, the Panel finds that the appropriate disciplinary measure is an aggregate penalty in respect of the three breaches of the Relevant Policies, namely a period of 4 months' suspension of Technical Membership of GA, 2 months of which is to be suspended for a period of 2 years. If there is a breach by the Applicant of a Relevant Policy within the next 2 years (regardless of when such breach is proved) the Applicant will be subject to 2 months' further suspension of Technical Membership of GA together with any further penalty that may be imposed in respect of the further breach. The Panel imposes a further disciplinary measure requiring the Applicant, within 7 days hereof, to provide to GA, for GA to forward to Sofia, a written apology in terms acceptable to GA which acknowledges that the Applicant engaged in unacceptable coaching behaviours by prescribing strength training as a Disciplinary Measure, by enforcing physically excessive stretching manoeuvres causing pain to Sofia and by using denigrating language towards Sofia all of which caused great upset to Sofia.
159. The period of suspension will commence on 1 September 2022 so as not to disadvantage gymnasts that are competing in the Club Regional Championships on the weekend of 20 and 21 August 2022. In the period up to and including 31 August 2022, the Applicant is to continue to be supervised in her coaching. The Panel is not of the opinion that a reintegration period is required due to the extensive period of supervision that has occurred to date and the obvious understanding that the Applicant now has as to the appropriate coaching techniques and behaviours required of her.

THE NATIONAL SPORTS TRIBUNAL THEREFORE DETERMINES:

- A. That Deborah Smith has breached Versions 10 and 11 of the Member Protection Policy of Gymnastics Australia and Version 1 of the Child Safe Policy of Gymnastics Australia in relation to Allegation 2, namely that:**

During 2018 and 2019, in Toowoomba, Deborah Smith prescribed strength training as a disciplinary measure

- B. That Deborah Smith has breached Versions 10 and 11 of the Member Protection Policy of Gymnastics Australia and Section 4 of Attachment K to the Child Safe Policy of Gymnastics Australia in relation to Allegation 3, namely that:**

During 2018 and 2019, in Toowoomba the Respondent enforced physically excessive stretching manoeuvres causing Sofia pain.

- C. That Deborah Smith has breached Versions 10 and 11 of the Member Protection Policy of Gymnastics Australia and Version 1 of the Child Safe Policy of Gymnastics Australia in relation to Allegation 4, namely that:**

During 2018 and 2019, in Toowoomba, Deborah Smith used denigrating language towards Sofia.

- D. That Allegations 5, 6 and 7 are not upheld and are dismissed.**

- E. That Deborah Smith's Technical Membership of GA be suspended for a period of 4 months, this being an aggregate penalty, 2 months of such a suspension to be wholly suspended for a period of 2 years subject to Deborah Smith not breaching any Relevant Policy within that period (whether such breach is found proved during or after the end of the 2 year period). The period of suspension will commence on 1 September 2022.**

- F. That within 7 days, Deborah Smith provide to GA for transmission to Sofia Balderson, a written apology addressed to Sofia Balderson in terms acceptable to GA, which acknowledges that Deborah Smith engaged in unacceptable coaching**

behaviours, in particular by prescribing strength training as a Disciplinary Measure, by enforcing physically excessive stretching manoeuvres causing pain to Sofia and by using denigrating language towards Sofia all of which caused great upset to Sofia.



David Grace AM QC
Presiding Member



Elisa Holmes



Rebecca Ogge

15 August 2022