

PRACTICAL GUIDE TO UNDERTAKING
SAFEGUARDING INVESTIGATIONS
IN SPORT

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I. INTRODUCTION

1. It is a fundamental responsibility of a national governing body ('NGB'), to make and keep its sport safe for all, including children and adults at risk. That duty should not be devolved. In that respect, it is no different from, for example, licensing coaches or Anti-Doping.
2. In this Guide a child is anyone who has not yet reached the age of 18 years. An adult at risk is any person who is aged 18 years or over and at risk of, or experiencing, abuse or neglect because of their needs for care and/or support and as a result of those needs is unable to protect themselves from the abuse or neglect or the risk thereof¹.
3. Safeguarding is the process of protecting children and adults at risk and to provide them with safe and effective care. This includes all procedures designed to prevent harm to a child² and adults at risk such as those which:
 - a. protect them from abuse, neglect, cruelty, or any form of mistreatment;
 - b. prevent the impairment of children's health or development;
 - c. ensure that children grow up in circumstances consistent with the provision of safe and effective care; and
 - d. involve taking action to enable all children to have the best outcomes.
4. The public profile of safeguarding and how a sport governing body ensures the welfare and wellbeing of its participants has never been higher. Past and current reviews and enquiries conducted by or on behalf of NGBs³ have highlighted the duties, responsibility and failings in this regard. Increasingly, sport is being held to account for its safeguarding practices. All NGBs will have developed safeguarding and disciplinary policies and procedures. It is imperative that all sports ensure that those are comprehensive, robust, transparent, fit for purpose and capable of withstanding scrutiny and challenge.

¹ See Care Act 2004.

² <https://the cpsu.org.uk/help-advice/introduction-to-safeguarding/what-is-safeguarding>

³ For ease of reference we use NGB throughout. It is intended to refer to and to include any sporting organisation or body.

5. While sport owes a duty to keep all of its participants safe, safeguarding concentrates on children and adults at risk. The growth of participation by people with disabilities in both elite sport and that enjoyed as a pastime, has added complexity to a difficult field.
6. A critical aspect of the safeguarding process is the manner in which an NGB or any sporting body responds to a safeguarding complaint, disclosure or concern. A competent response underpinned by a thorough and competent investigation ensures, not only that complainants and witnesses are protected; but also, that those who are subjects of concern⁴ are treated fairly. It also facilitates the correct distinction between abuse or mistreatment from poor practice.
7. A safeguarding policy contains statements of principles stating how an NGB intends to keep children and adults at risk, safe and protected from harm. A safeguarding procedure documents the method by consistent and repetitive steps by which children and adults at risk, will be kept safe and protected from harm. Neither helps with how one investigates a complaint, disclosure or concern. This Guide is intended to complement existing policies and procedures and act as a practical resource for any individual tasked with the responsibility of undertaking the investigation of a safeguarding matter.
8. All parents place a degree of trust in those they permit to coach their children. The investment of trust is obvious. It goes beyond the mere physical; it is also emotional. In elite or high-performance sport, it goes further. Potential careers, hopes, ambitions and dreams are put in the hands of coaches. Those may be realistic or illusory.
9. Elite sport is intense, as is the pressure. The demands on the athletes and coaches are significant. It is competitive. The pressure for success is greater. The time spent training and being together is considerable. The 'relationships' are necessarily closer. Each invests considerably in the other. Trust is - or should be – at the heart of it. The balance of power lies very obviously with the coaches. As Baroness Grey-Thompson wisely observed:

⁴ Those about whom disclosures or complaints are made or in respect of whom there are safeguarding concerns.

“it was often difficult to challenge the programmes that they were in, and hard to know where to go if they want to make a complaint about behaviour. It was also clear that people did not want to be seen to be causing trouble or jeopardise their sporting career, and felt they had little power to bring about change. Many reported that bullying behaviour could at least sometimes be the ‘norm’ in sport, and that Duty of Care Review they felt that they just had to ‘get on with it’...”⁵

10. Just as there is trust, so there are also responsibilities. There is pressure and demands on coaches. It is not easy to deal with such demands, including performance targets set by funding bodies and the realistic or unrealistic ambitions of players and/or parents. Difficult messages have to be delivered.
11. In that elite environment the safeguarding risks are more pronounced. It is in such environments that all must be alert to the risk of abuse. Not just sexual but of all kinds of abuse, including the emotional and the subtle.
12. Every investigation is different. However, there is merit in following a recognised framework which includes:
 - a. professionalising and standardising the investigation process to drive a consistent approach and achieve consistent outcomes;
 - b. providing clarity and transparency for complainants, subjects of concern, all contributors to the process and the public;
 - c. enhancing the quality of the investigation product to better meet the needs and expectations of the highly skilled and qualified members of tribunals, and disciplinary and appeal panels; and
 - d. building confidence by developing or refreshing the skills and training of those tasked with undertaking an investigative role.
13. The Guide is split into the following Chapters:
 - a. I. Introduction
 - b. II. Fundamentals of an Investigation
 - c. III. Legal Framework of an Investigation

⁵ Duty of Care in Sport, April 2017

- d. IV. Conducting the Investigation
- e. V. Report Writing
- f. VI. Preparing for the Safeguarding or Appeal Panel
- g. VII. Self-Care Guidance

14. At the end are three appendices, namely:

- a. Appendix A - Glossary of Terms
- b. Appendix B - a more detailed consideration of the legal framework for safeguarding investigations in sport.
- c. Appendix C - a collection of pro forma documents for you to use in any investigation, should you need or find them helpful.

15. We know that safeguarding is not glamorous. It is not well resourced. The work can be demanding, emotional, sensitive, unpopular, difficult and unheralded. Safeguarding personnel tend to be serious, industrious and dedicated individuals doing their best in difficult circumstances. Investigating a case without the advantages enjoyed by statutory agencies such as the police, can be (at best) challenging. This Guide aims to help you. The Guide also informs the commissioning NGB of the steps necessary to investigate properly and effectively. The challenges are identified as well as solutions suggested.

16. Solely for ease of reference, where we have needed to use a gender specific pronoun, we have used the masculine.

II. FUNDAMENTALS OF AN INVESTIGATION

A. What is an Investigation?

1. An investigation is the process by which a person examines or searches to discover fact or to gain information often with the aim of determining if, how, or why something has happened. There is anecdotal evidence to indicate that within a safeguarding in sport context, the term 'investigation' is interpreted in many ways. It is common to hear terms such as "*a fact finding enquiry*", "*mini investigation*" or "*informal, off the record discussion*" as a prelude to declaring that a *formal* investigation has begun or is required.
2. Such are popular misconceptions. By definition, from the moment that a safeguarding officer receives information about a safeguarding concern and takes *any* action to elicit further material or evidence or explores any aspect of the concern, the investigation has begun. In this regard it is therefore prudent to ensure that the guiding principles of undertaking an investigation are followed from the outset. For the purposes of this Guide the term 'investigator' is used to refer to the individual undertaking that task.

B. Principles of an investigation

3. Any safeguarding investigation carries with it a burden of responsibility. The outcome is important for those with a direct or an indirect interest. That will include:
 - a. Complainant/s and their friends/families;
 - b. the subject of concern and their friends/families;
 - c. witnesses;
 - d. the host sport or sport club;
 - e. the host sport's NGB;
 - f. possibly third-party stakeholders such as commercial sponsors; and potentially
 - g. the wider public.
4. Regardless of the level of the perceived seriousness, an investigation is likely to be a source of anxiety for the parties involved. It is therefore incumbent upon the investigator

to always maintain a person-centred approach. It is advisable to adopt the key principles set out below, which are briefly defined in the context of undertaking a safeguarding investigation in sport:

- a. **Integrity** - being honest with all the parties involved. For example, you are not able to provide any guarantee on the outcomes as your role is confined to gathering information on behalf of the commissioning body.
- b. **Fairness and impartiality** - seek and gather the information from complainants, witnesses and the subject of concern to ensure you capture a balanced and unbiased account of events.
- c. **Confidentiality** - treat with respect all the information that comes into your possession. Many of the people you will communicate with, particularly those involved in the elite level of a sport, may wish to protect their identity vis-à-vis the wider world. There is a difference between disclosing identity within the investigation (for example to the NGB and the subject of concern⁶) and the wider public.
- d. **Proportionality** - this is a judgement to be made on a case-by-case basis and, a number of factors will determine your decision making on the scope and scale of the investigation. Acting in accordance with the terms of reference, once you consider that you have gathered sufficient information and there is unlikely to be anything gained from interviewing additional witnesses, you should conclude the investigation. For example, if a complaint is made by one athlete in relation to a coach which amounts to a low level breach of the sports code of conduct, you may consider that it is not necessary or proportionate to interview the entire squad or other coaching staff. It is good practice to record the rationale⁷ for your decisions in this respect.
- e. **Timeliness** - the instigation of an investigation within any level of sport may create significant disruption. It is not unusual to find yourself under pressure from all parties to progress and complete their enquiries forthwith. This is particularly so where a member of staff is suspended from duty. Invariably you will not be able to meet the expectations of all involved. Whilst it is important to act expeditiously, it is also necessary to work methodically and with a measured,

⁶ See Glossary of Terms for definition of subject of concern.

⁷ For example in an Investigation Case Log – see Form 2 in Appendix C.

person-centric approach. Depending on the nature and scale of the investigation, together with the significance of the impact of the events on the persons involved, dealing with some individuals will necessarily take time and the process should not be rushed. It is helpful to reflect the reasons for any time delays within the final report.

C. Factual framework for Investigation

(1) Initial report

5. In the initial report stage, dealing with a safeguarding concern can feel chaotic. Information may be received from a variety of sources and appear to be inconsistent, vague and or conflicting. There is also a high likelihood that the initial report will come from a third party and not by the complainant themselves. In cases where the complainant is a young child, the report will probably have been made on their behalf by a parent/carer or another responsible adult. They may lack direct knowledge of the events of which they speak of and/or consent (or even knowledge) of the child.
6. While it is incumbent upon all adults to act appropriately to safeguard children, and the investigator should keep the fundamental principles of safeguarding at the forefront of their mind, the investigation should be child-centred; the voice and wishes of the child should be elicited wherever possible; and all actions that are taken must be done so in the best interests of the child or children. The focus of attention must be on managing any risk that is posed to a child or children. Similar principles apply to adults at risk.
7. As an investigator, do not be fazed by the initial report. It will contain the limitations we have identified. Consider it an introduction: it will give the investigator a basic introduction to the matter and help plan the next steps. As with many things, a cool head and a plan will be the investigator's essentials.

(2) Early considerations

8. A case may be referred to an investigator by different routes or come from different sources. In some organisations the decision to refer for investigation is delegated to, and taken by, a formal case management group (CMG). A CMG will be responsible for ensuring that all safeguarding concerns are dealt with appropriately and within an agreed timescale. CMG members will come from a variety of safeguarding backgrounds and will have knowledge of child protection and adult at risk guidance and legislation. In other organisations the decision is made at an executive level.
9. If the investigator is independent of the NGB, they should obtain a copy of the relevant safeguarding policy and procedure (if it is separate) and ascertain whether the relevant policy and procedures have been followed to date.
10. There are a number of options as to what could have happened by this stage; or be required to happen next. That will depend on variables so plentiful we cannot anticipate them. However, the fundamental issue will be whether you can start the investigation. If the matter requires referral to the statutory agencies, or there is an ongoing statutory investigation, then that must take precedence. A Local Authority Designated Officer (LADO) may be responsible for the case. We look at the role of the LADO in the next Chapter and in Appendix B⁸. There may be an urgent decision to be made as to whether it is appropriate for a member of staff to be suspended from their role/responsibilities.
11. A statutory agency investigation may result in a number of outcomes including criminal proceedings, leading to a trial and conviction or acquittal. There may be no such proceedings because (for example) the complainant does not support criminal prosecution or police decide not to charge because (for example) there is insufficient evidence to establish the commission of a criminal offence.

⁸ Appendix B - Consideration of the Legal Framework for Safeguarding Investigations in Sport.

12. You must await the result of any statutory agency investigation. Once it is complete, or the statutory agency confirms they will take no further action, the matter will be referred back to the NGB . At this stage the NGB should consider the need to undertake an investigation and decide who is best placed to conduct that process. A number of factors will determine who is best placed to conduct the investigation. Ensure you have the relevant skills, experience and capacity to conduct the investigation, considering its complexity, scale and scope of the matter to be investigated.

(3) Investigation plan

13. The plan starts with the first step. The investigator should make an initial assessment of the information received. It is important at this stage to keep an open mind and to not make any judgements about the perceived level of seriousness or potential scale of the complaint or disclosure.

14. It is helpful to follow this thought process:

- a. what do I know?
- b. what do I need to know?
- c. how will I find that information out?

15. The investigator should be mindful of the potential sources of evidence. Relevant information may be gathered from witnesses or from documents, photographs or other forms of media. The actual and potential sources will reveal themselves from the information you have. From those preliminary thoughts you can begin to formulate an investigation plan which details the action required for the next steps.

16. A simple example - child 'A' (aged 13) made a disclosure of abuse suffered at the hands of his coach, 'X'.

- a. If the abuse is sexual or physical has there been a referral to the statutory agencies? Should there be? What are the issues in respect thereof?
- b. 'A' will need to be spoken to. He has two brothers who trained with him 'B' and 'C'. There are three potential witnesses; and the coach will need to be spoken to.
- c. 'A' kept a diary – another potential source to be explored.

- d. 'A' trained at a club. Enquiries will need to be made there and with the club welfare officer to whom he made his disclosure.
- e. Has 'A' confided in others? If so who?
- f. You will be thinking about how best to interview 'A' and his brothers. You will be considering the extent to which his parents/carers have been informed.

17. It is good practice for the investigation plan to be written. Set out in clear terms the decisions taken, with the reasons or rationale for your proposed course of action. Commonly the rationale will reflect that the actions are both necessary and proportionate to ensure that the matter is brought to a safe conclusion.

18. Many NGBs have developed a formal 'incident' recording document or report. They may engage an electronic case recording and management system. If available, it should be used to record actions and decisions. Where such a system is not available it is prudent for the investigator to maintain a personal record of the actions taken and thereby create an investigation plan document⁹. At this stage it is essential to maintain proper levels of confidentiality in order to preserve the integrity of the investigation.

(4) Investigation by NGB

19. Undertaking an investigation can have a significant impact, not only on all persons who are involved but also on the functionality of the organisation as a whole. Where the decision is made to undertake an internal investigation, the organisation should recognise the challenges of that task for the lead safeguarding officer and afford the necessary sources of support throughout.

(5) Commissioning an independent investigation

20. Where the preferred option is to commission an independent investigation through, for example, the National Safeguarding Panel, in such circumstances it is beneficial to both

⁹ Investigation Plan Form 1 in Appendix C

the commissioning body and the appointed investigator to ensure that the arrangement is agreed formally and confirmed by a Letter of Appointment. The letter should enclose the investigations' Terms of Reference and set out clear expectations of the NGB including:

- a. content of the final report;
- b. need to include findings;
- c. request for recommendations;
- d. regularity and format of progress reports;
- e. date for completion;
- f. support resources that are available;
- g. fees;
- h. use of Non-Disclosure Agreement.

21. The appointed investigator should work with the NGB to consider the suggested Terms of Reference and discuss or agree any appropriate amendments. When agreed the investigator should accept the appointment and proceed within the relevant terms. Before the investigator makes contact with any of the parties involved in the investigation, the NGB should confirm that the complainant and subject of concern have been notified of the investigation and of the appointment and identity of the independent investigator.

III. LEGAL FRAMEWORK FOR SAFEGUARDING INVESTIGATIONS IN SPORT

A. Introduction

1. There is no single overarching legal notion or criminal offence of child abuse. Safeguarding children or adults at risk in sport is not addressed by a bespoke act of parliament. There is a host of legislation which protects children, adults at risk and their rights. Physical or sexual abuse of a child will engage both the criminal and civil law, as might neglect or cruelty¹⁰. Similarly, physical or sexual abuse of an adult, including an adult at risk. But sport has to fill the gaps where conduct is neither criminal nor gives rise to a civil action but has no place in sport.
2. Safeguarding responses are not an alternative to police involvement. As we note above, if there is an immediate risk of harm or it is suspected that a criminal offence has been committed the police and relevant authorities should be notified in the first instance.

B. Legislation

3. We consider the legal aspects in more detail in Appendix B. Therein you will find consideration of the relevant legalisation. It is helpful for investigators to have a working knowledge of the legislative framework and statutory guidance for protecting children and adult at risk. It includes:
 - a. Children Acts 1989 and 2004;
 - b. Sexual Offences Act 2003 (SOA 2003);
 - c. Mental Capacity Act 2005 (MCA 2005);
 - d. Working Together to Safeguard Children 2008 (WTSC), which deals expressly with NGBs;
 - e. Rehabilitation of Offenders Act 1974 Safeguarding Vulnerable Groups Act 2006, Protection of Freedoms Act 2012 and the Disclosure and Barring Service;
 - f. Care Act 2014;
 - g. Children and Social Work Act 2017.

¹⁰ See Offences against the Person Act 1861, s.27 (abandoning or exposing children under two years) and Children and Young Person Act 1933, s.1 (cruelty to persons under sixteen).

4. The Child Protection in Sport Unit (CPSU) works with Sports Councils, NGBs and other sporting organisations to help them minimise the risk of child abuse during sporting activities. Pursuant thereto, it has produced Safeguarding Standards. The standards provide a framework for all those involved in sport to help them create a safe sporting environment for children and young people and protect them from harm. NGBs will find the standards helpful when informing their decision making and evaluating their own safeguarding practice. They can be used as a benchmark to evaluate best practice as well as highlight poor practice. For this reason, investigators should be familiar with the standards and how they are applied within each sport.
5. While principally for the police, it is possible that investigators will be required to investigate the possible commission of such offences. That may occur where police have, for whatever reason, decided not to charge a suspect. Sections 16-19 of the SOA 2003 create sexual offences where the abuser is in a position of trust vis-à-vis the victim. Positions of trust are defined in sections 21 and 22, for example, looking after persons in educational establishments or residential settings. Sports coaches, instructors or helpers are not expressly included. A sports coach may hold a position of trust for the purposes of the SOA, if, for example, they are employed in a school but not if they coach in a private club. In the context of adult safeguarding, investigators will note that the SOA provides protection for persons with mental disorders.
6. Adult safeguarding is working with adults at risk to keep them safe from abuse or neglect. The six core principles in the Care Act 2014 that underline adult safeguarding are: empowerment, prevention, proportionality, protection, partnership and accountability. Those values should inform and guide the work of investigators.
7. In the context of adult safeguarding, investigators should be alive to issues of capacity and the Mental Capacity Act 2005. The MCA concerns people who can't make decisions for themselves, perhaps because of:
 - a. a learning disability;
 - b. dementia;

- c. a mental health illness;
- d. a head injury or a stroke;
- e. an acute illness, or the treatment for it; and/or
- f. a drug, alcohol or substance addiction.

8. The fact a person has any one or more of the above does not mean they *necessarily* lack capacity. It is also important to note that a person may lack capacity to make one type of decision (for example complicated financial matter) but not another. Capacity may fluctuate from time to time. By way of example if it is caused by some external factor such as alcohol or drugs.

9. It will not be for an investigator to decide whether a person lacks capacity. But the investigators will want to ensure that all steps have been taken to enable the person to participate, such as giving a statement to assist an investigation. More help is to be found in Appendix B¹¹.

C. Statutory Authorities

10. We consider in more detail in Appendix B at the role of the key or statutory authorities. They are the local authority, namely the children's and adult services, police, and health services.

(1) Local authorities

11. Every local authority has a Local Authority Designated Officer (LADO). The LADO is responsible for managing child protection allegations made against those who work with children. The LADO ensures that all allegations or concerns about professionals or adults working or volunteering with children are recorded appropriately, and progressed in a timely and confidential way.

¹¹ See Appendix B, §36-45

12. Save for the most obvious of cases, where the matters concern a child, the sensible first point of reference may be the LADO. Investigators should be open and honest with the individual (and/or their family where appropriate) from the outset about why, what, how and with whom information will, or could be shared, and referral made and seek their agreement, unless it is unsafe or inappropriate to do so.

(2) Police

13. Allegations may be referred to the Police for two reasons:

- a. to consider the need for police to investigate an alleged crime; or
- b. to enable information sharing and aid decision-making relating to potential risk to children.

14. A referral to police will or may be appropriate in the following circumstances concerning:

- a. allegations of a sexual assault or abuse of a child or adult at risk;
- b. assault of a child or adult at risk;
- c. wilful neglect of a child; or
- d. any other conduct which may amount to a criminal offence.

15. Particular issues may arise where police have investigated a case and decided not to charge, or the criminal proceedings have resulted in an acquittal. It is important to remember that different considerations apply in criminal cases. The police should charge only where it is in the public interest to do so and there is a realistic prospect of conviction. Absent case-specific considerations, the former test is generally met in respect of offences against a child.

16. The latter test requires consideration of the available evidence. There must be sufficient evidence to provide a realistic prospect of conviction against each suspect on each charge. That should involve an objective assessment by the police, or more likely the Crown Prosecution Service of the nature, quality and admissibility of the available evidence. That in turn will involve consideration of the reliability and the credibility of the

evidence. It will be done within the framework of the rules of evidence which prevail in criminal case.

17. Different considerations apply for safeguarding or disciplinary proceedings. The standard of proof is different: it is likely to be to the civil standard namely the balance of probability rather than beyond reasonable doubt (or sure). The admissibility of material before the appropriate tribunal will not be governed by the strict rules of evidence which apply in criminal cases.

18. Importantly, the test for a safeguarding tribunal is likely to be centred on an assessment of risk raised. A good example is Regulation 15 of the FA's Safeguarding Regulations 2020/21:

*"In addition to The Association's powers under Regulations 2.6, 3, 13 and 14 the Safeguarding Review Panel shall have the power to make any order that it considers appropriate, including but not limited to an order that any individual be suspended from all or any specific football activity for such period and on such terms and conditions as it considers appropriate, if it is **satisfied that the individual poses or may pose a risk of harm to a child or children and/or that the individual is or was in a position of trust in relation to any person and has engaged in sexual activity and/or an inappropriate relationship with that person.**"*
(emphasis added)

19. The level of satisfaction in Regulation 15 is the balance of probability. Therefore, the Safeguarding Review Panel may¹² (1) make any order that it considers appropriate when (2) it is satisfied that the individual probably (3) was in a position of trust in relation to any person and has engaged in sexual activity and/or an inappropriate relationship with that person or (4) poses or may pose a risk of harm to a child or children¹³.

20. A conclusion that a person poses or may pose a risk of harm to a child or children is case or fact specific. However, it is obvious that it is not dependent upon proving the commission of crime by the individual beyond reasonable doubt or at all. It may not

¹² In addition to other powers under Regulations 2.6, 3, 13 and 14.

¹³ There is an almost identical provision for adults at risk – see FA Safeguarding Adults at Risk Regulations, Regulation 16

involve proof that the individual has breached any internal disciplinary provision or establishing a disciplinary charge. The latter can involve challenges not unlike criminal cases, such as reluctant witnesses and/or other evidential problems.

21. In a risk assessment model, the hurdle to overcome or issue to be resolved is more holistic; and for good reason. At its heart is protecting children and adult at risk. The determination of risk may be based upon expert reports such as a risk assessment and material from a Disclosure and Barring Service (DBS) enquiry.

22. It follows that the fact the police have decided not to charge, or the criminal proceedings have resulted in an acquittal is not a bar to a proper safeguarding investigation. It does not forecast the outcome of safeguarding proceedings. Obviously, the investigators in sport do not have the powers available to police officers. There is no power to arrest, detain or to enter or search a person or premises¹⁴. They have no legal power to seize or retain evidence, they will lack intelligence systems and resources of the police, including the scientific capabilities.

D. Data Protection Act 2018 and General Data Protection Regulation

23. You will find in Appendix B more detailed guidance on the Data Protection Act 2018 (DPA) and the General Data Protection Regulation (GDPR), as well as information sharing.

24. The DPA sets out the framework for data protection law in the UK. The GDPR sets out the core principle, obligations and rights. The GDPR was effective in the UK from 25 May 2018 and it sets out the key principles, rights and obligations for most people and organising processing of personal data. There are exceptions. There are substantial fines for breaching the DPA/GDPR provisions.

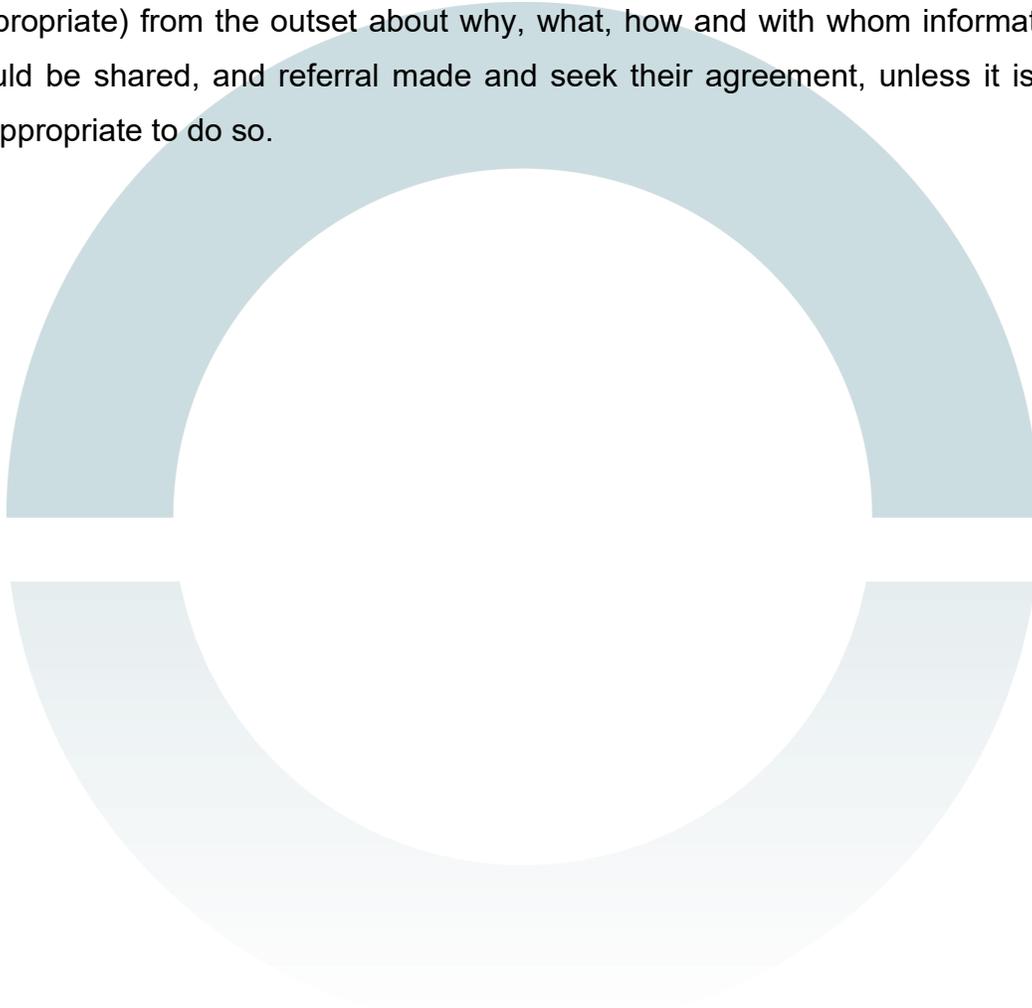
¹⁴ Strictly speaking police cannot compel a person to submit to an interview; still less make them cooperate.

25. Obligations under the GDPR will vary depending on whether one is a data controller, joint controller or processor. Controllers have the highest level of compliance responsibilities: they must comply with all the data protection principles as well as the other GDPR requirements. They are responsible for the compliance of their processors.
26. Under the DPA 2018 every organisation or sole trader who processes personal information is required to pay a data protection fee to the Information Commissioner's Office (ICO), unless they are exempt. Sport Resolutions is a registered organisation for that purpose. However, it is advisable for investigators who have established their own independent organisation, are operating as a sole trader or limited company to consider whether they too should have a certificate of registration. For more information, this link will help¹⁵.
27. It is essential that investigators keep accurate records. That is especially so when recording disclosure from a child or adult at risk. A written record of a disclosure should contain all the essential detail. Safeguarding records must be kept confidential and secure. Security is a key principle of processing personal data. There must be appropriate security to prevent personal data being accidentally or deliberately exposed.
28. It is worth stating that while confidentiality is important, the DPA and GDPR do not prevent necessary or information sharing, which is a vital aspect of effective safeguarding. However, such must be done according to the law. The circumstances in which such information can legitimately be shared and to whom and whether or not the subject's consent is required are all catered by the DPA/GDPR framework and are set out in Working Together to Safeguard Children 2018 and Care Act 2014.
29. The Working Together to Safeguard Children 2018 guidance contains valuable advice and its five myths (each of which is false) are a useful starting point:
- a. data protection legislation is a barrier to sharing information;
 - b. consent is always needed to share personal information;

¹⁵ Information Commissioners Office; www.ico.org.uk

- c. personal information collected by one organisation cannot be disclosed to another;
- d. the common law duty of confidence and the Human Rights Act 1998 prevent the sharing of personal information;
- e. IT systems are often a barrier to effective information sharing.

30. Investigators should be open and honest with the individual (and/or their family where appropriate) from the outset about why, what, how and with whom information will, or could be shared, and referral made and seek their agreement, unless it is unsafe or inappropriate to do so.



IV. CONDUCTING THE INVESTIGATION

1. This chapter is intended to provide the investigator with a practical framework of considerations for planning and executing the next steps of the investigation.

A. Evidence¹⁶

(1) Introduction

2. We use the word 'evidence' as a convenient shorthand for the material gathered during the investigation. It may be placed before the panel charged with the task of deciding safeguarding risk. Evidence is the material which proves facts. At its most basic, you establish a case from facts and from inferences drawn from facts. Inferences are common sense conclusions from facts the panel finds proved or which are agreed. In a court, you prove facts by admissible evidence which is either accepted by the decision-making tribunal or is agreed.
3. In safeguarding proceedings, the admissibility of evidence before the appropriate decision-maker will not be governed by the strict rules of evidence which apply in criminal cases. Instead, it will be based on relevance. If it is a panel, that body will take a more holistic approach and consider and give appropriate weight to any relevant material.
4. The investigator should start with and maintain an open mind while investigating a complaint, disclosure or individual. That is both right but also important. The investigator must look for and seek to gather all relevant material. That may help establish that a person presents or may present or risk; or it may help demonstrate the opposite.
5. The investigator will have kept a list of all material gathered, whatever it demonstrates¹⁷. It is helpful to have separate lists. By way of example:
 - a. witness list;

¹⁶ It is not strictly evidence for it will not be given on oath or affirmation.

¹⁷ See forms in Appendix C.

- b. list of all persons spoken to, whether or not they give a statement. If they did not, why not;
- c. list of exhibits;
- d. list of material you gathered but do not rely upon, so-called 'unused material'. Some of it may help the individual who is the subject of the proceedings; and it is fair that they have access to it. It should contain material from other sources, such as a police investigation.

(2) Types of evidence

6. This is not intended to teach the law of evidence. Evidence comes in many different forms. To keep matters simple and relevant to safeguarding investigations and proceedings you may encounter the following:
- a. **Witness 'testimony'** – a person saying, for example, what they saw or heard.
 - b. **A witness statement** – a written record of a person's account. It may or may not contain hearsay.
 - c. **Hearsay** – everyone thinks they know what hearsay is. The most common example¹⁸, involves a person who speaks of something about which they do not have first hand knowledge. They do not have first-hand knowledge because they did not see or hear the event of which they now speak. For example, 'A' says in her statement that, 'B' told her that when they were alone in a car 'C' touched her indecently. 'A' was not in the car at the time and so relies upon what 'B' told her.
 - d. **Exhibit** – a physical thing such as a photograph, a CCTV recording or a document which records a relevant event or fact, such as letter, a diary or an attendance register.
 - e. **Expert evidence** – evidence from a witness, sometimes a mixture of fact and technique with opinions in a specific area or areas from person/s with appropriate qualifications and experience in specific areas were the panel may or does not have such specialist knowledge. By way of example, a risk assessment or (in courts more likely) a forensic scientist or doctor.

¹⁸ There are complex legal aspects to this we need not explore.

7. There are (of course) different kinds of evidence within those examples. It may be direct or indirect evidence. For example, witness testimony may be direct evidence – I saw ‘A’ touch ‘B’ in the car. It may be indirect – I saw ‘A’ get out of the car and ‘B’ was crying. Indirect or circumstantial evidence is not an inferior form of evidence.
8. Most criminal prosecutions rely on some circumstantial evidence. Others depend entirely or almost entirely on circumstantial evidence. The prosecution may rely upon pieces of evidence relating to different circumstances, none of which on their own directly proves that the defendant is guilty but which when taken together leave no doubt that he is (guilty)¹⁹. Those circumstances may include motive, opportunity, proximity to the critical events and communications between participants, as well as scientific evidence.
9. Since in safeguarding proceedings there will be no formal rules which govern admissibility of evidence, the investigator is not constrained in the way, for example, police are. A panel should consider whatever is relevant and give it appropriate weight having regard to its nature and the circumstances in which it was obtained. A formal statement is not a necessity; hearsay evidence may well be considered, as might anonymous evidence. Therefore, material should not be discounted simply because it would not have past muster with a court.
10. In the next chapter we look at the admissibility and weight of evidence on the context of preparing a case for a panel. We turn now to the difficult topic of witness management and gathering evidence from human beings.

¹⁹ Circumstantial evidence “works by cumulatively, in geometrical progression, eliminating other possibilities” (*DPP v Kilbourne* [1973] AC 729 per Lord Simon at p758).

B. Witness Management

(1) Planning

11. Your investigation plan will tell you who you need to speak to. It should tell you in summary what areas particular witnesses may be able to help with. For example, they may be:

- a. a complainant;
- b. a key witness who can provide corroborative testimony i.e., they saw, heard, have in their possession material evidence to the incident that has been reported;
- c. in a peripheral or supporting role such as parents, friends or witnesses who can provide information as to the impact of the incident on the complainant;
- d. the subject of concern.

12. Adopting a methodical approach to evidence gathering helps to build the investigation. Wherever possible the most appropriate starting point is to establish the exact circumstances of the incident by eliciting an account from the complainant. On occasions where the identity of the complainant is unknown or the complainant is unaware of the investigation, the account from the originating complainant should be elicited. Again, this needs some careful planning. It is helpful to consider a range of factors about the person you intend to contact, which includes:

- a. the age and maturity of the person;
- b. any additional vulnerabilities, for example learning or communication difficulties.
- c. potential language barriers, cultural or other needs;
- d. likely availability having regards to possible employment, educational or recreational commitments.

(2) Initial contact

13. Establishing contact and building a professional rapport with each person involved is the foundation of completing a thorough investigation. This may be challenging. For example, it will be less straightforward when the person is:

- a. unaware that the investigation is taking place;

- b. not anticipating any form of contact from the investigator;
- c. reluctant to be involved in the investigation process; or
- d. hostile to the proceedings.

14. Consideration should be given to the most appropriate method of making initial contact. That may be by telephone or email. If contact is to be made by telephone, thought should be given to:

- a. the time of day and day of the week;
- b. who else might answer the phone and your strategy for dealing with that;
- c. if a parent or grandparent answers the phone-the appropriateness of asking to speak to the child and vice versa;
- d. what do you wish to achieve from the call i.e., an agreement to provide a face-to-face or more comprehensive telephone interview?
- e. their wellbeing.

15. If contact is to be made by email, thought should be given to such things as:

- a. who else may see/read the message-what level of detail will you provide?
- b. what response do you wish to achieve from sending the message i.e., consent to be contacted by telephone or a written account;
- c. the impact on their wellbeing when they read the message.

16. It may seem obvious, but you need to think carefully about what you are going to say in that first call/contact with the complainant. How will you introduce the investigation; yourself; what you want or are doing? It is wise to plan that.

(3) Managing several witnesses

17. On occasions there may be numerous individuals named as potential witnesses either from the outset or as the investigation develops. In these circumstances, consider:

- a. who you need to speak to?
- b. in what order?

- c. do you need statements or information from them all? That decision will be guided by what is necessary and proportionate to the level of the enquiry which should be subject to continuous review throughout.

18. Remember to be flexible – you do not know what is coming. You need to be prepared to be led and to follow the evidence.

19. When the list of possible witnesses has been determined you should plan the order of approach to each person²⁰. It is likely to make sense to start with the complainant, if he is cooperative and able. In circumstances where there are several persons who are expecting to be contacted you may find it helpful to correspond with them all in the initial phase to provide reassurance that you will recontact them in due course.

20. It is good practice to gather all the available information from the complainant(s) and witnesses prior to planning an interview with the subject of concern.

C. Witness Interviews

(1) Statements

21. Except with children, and perhaps adults at risk and other vulnerable witness, who may be interviewed, for an important witness a written, signed and dated statement is the preferred course to adopt. That can then be placed before the panel and if the witness is prepared and required to, they can give an oral account of what is in that statement; and answer questions about any relevant matters.

22. The statement enables the witness to impart the information they are able and willing to provide. In addition to the importance of the statement in terms of capturing evidence, the statement also provides the complainant with an opportunity to express how they wish

²⁰ See Form 3 in Appendix C.

their information to be used. The significant impact upon the complainant of providing a statement should not be underestimated.

23. It is helpful therefore to give some consideration to *how* the statement will be obtained, and this may be determined by a number of factors which include the:

- a. age of the witness;
- b. any additional communication needs;
- c. role played in the matter being investigated;
- d. obtained by face-to face/telephone/video interview;
- e. written notes made or voice recorded.

24. Irrespective of the methodology, the objective of a written statement is to present the information provided by the witness in a clear, concise, and chronological way. It is good practice to ensure that it is encrypted with password protection.

25. A witness statement template has therefore been developed²¹. You are encouraged to use the document wherever relevant, not least because it contains a declaration as to its truth and accuracy. The witness should be invited to proof-read and make any amendment/s necessary before dating and signing the declaration.

26. On occasions, a witness may wish to either add, edit, decline to sign or completely disengage from the process and not return the statement to the investigator at all. When faced with these various scenarios it is good practice to take the following steps:

- a. If the witness wishes to **add** further information, for example when the witness has been able to recall or locate some additional information, then:
 - i. if the statement is still in a draft format the extra information should be incorporated into the final draft before it is signed and dated by the witness;
 - ii. if the final draft has already been agreed and signed, the additional information should be captured in an addendum statement.
- b. If the witness wishes to **edit** the draft statement:

²¹ See Form 4 in Appendix C.

- i. the reasons for wishing to make such an amendment should be elicited. The amended version should form the final draft and be signed and dated;
 - ii. the original statement should be retained and recorded as unused material²² at the conclusion of the enquiry. The reasons cited by the witness for wishing to make the amendment should be reflected in the final report to the Commissioning Body;
 - iii. the witness should be informed that you will submit the original statement to the Commissioning Body as unused material.
- c. If the witness, **declines to sign** their statement:
- i. their reasons for declining to sign the statement should be elicited and recorded on the draft statement;
 - ii. the reasons cited by the witness for declining to sign the amendment should be reflected in the final report to the Commissioning Body;
 - iii. the witness should be informed that their information will be returned with the investigation case papers to the Commissioning Body and that the statement may still have some evidential value and be utilised by the Commissioning Body for the purposes of a disciplinary process²³.

27. Remember to exhibit in the statement relevant materials produced by the witness. For example, a photograph, letter or a text message. If a witness, John Smith, received an inappropriate text message, the message is 'owned' by that witness and should be referenced 'JS1'. Any subsequent exhibits from the same person are referenced sequentially.

(2) Refusal to make a statement

28. However, if the witness will not give a written statement, that is not necessarily an end of the matter. Investigators should explore why a witness is not prepared to provide a statement. There may be an explanation which can be addressed to their satisfaction. By way of example, if they do not wish to give a written statement because they believe they

²² See §5(d) above re unused material

²³ Paragraph 47 and Chapter VI: Preparing for the Safeguarding or Appeal Panel

will have to repeat it at a hearing. That may not be the case. Alternatively, their concerns may be assuaged by special measures, such as giving their account to the panel from behind a screen or remotely from another location.

29. If they have important information to share, there may be other options. By way of example will they allow an account to be recorded. If not, will they permit you to record write down what he or she says. If they consent, do it there and then while speaking to them. If so, ask them to sign and date your note, correcting any errors and indicate it is otherwise accurate. Record in any such note, why they are not prepared to give a statement. Even if they are not prepared to engage in such a way, you should note what they say. Since there will not be strict rules of evidence you may then be able to put that account before the panel. The reluctance of a witness and any information they have provided should be reflected within the final report.

(3) Children and consent

30. A child under 16 may or may not have disclosed the matters in question with parents or carers. If they have not, the general rule is that they should be told unless to do so would affect their safety and well-being. For example, the parent or carer is the alleged abuser. Where it is decided not to inform a parent or carer, a record should be made of both the decision and the reasons for it. The needs and safety of the child must be your first consideration.

31. Where a child or adult has sufficient understanding, consent must always be obtained from them. Consent must be informed so they should be told the purpose of the interview.

32. When deciding whether a child is sufficiently mature to make decisions about matters which affect them, including whether to be interviewed without a parent or carer present, the test to be applied is one of *Gillick/Fraser* competency.

(4) Gillick competency and Fraser guidelines

33. Both *Gillick* competency and *Fraser* guidelines are commonly used in the context of medical law. Whilst the two are often used interchangeably *Gillick* competency is more commonly used in a wider context to help assess whether a child has the maturity to make their own decisions and to understand the implications of those decisions.
34. If the child wants to consent to interview without their parents or carer's present and/or without their knowledge you need to consider if they are *Gillick* Competent. There is no set of defined questions to assess *Gillick* competency. There are however several things you should consider when assessing a child's capacity to consent to interview, including: Age, maturity, understanding of the issues under discussion and the reasoning behind their decision.
35. It is important to remember that capacity to consent and understanding can be affected by stress, anxiety and the complexity of the situation. If you believe that the child is being negatively influenced by someone else or pressured into taking part then this is not consent.
36. If you do not think a child is *Gillick* competent or you are uncertain about their ability to understand, you should seek consent from their parents or carers before undertaking an interview. It is important to appreciate that a child may be considered *Gillick* competent to make one decision it does not always follow that they are competent to make another.
37. As stated above you must always report child protection concerns to the police, even if a child does not give their consent for this to happen.

(5) Planning interviews

38. It is important to remember that for many of the children and adults spoken to this will be their first experience of a formal or investigative interview, which can be a daunting and frightening experience.

39. They may be distressed by the content of the interview and concerned about the outcome not only for themselves but for the person who is subject of the concern. They may feel unsafe and may struggle to cope with any emotions that the interview may trigger. It is important to provide a safe and comfortable environment and to respond sensitively to any concerns that they may have about the process and the conclusion of the enquiry.

- a. Plan the time that will be needed - remember to factor in the distance to be travelled by interviewer and interviewee and their respective modes of transport.
- b. Choose a suitable venue:
 - i. if it is a person's home address - who else will be there - is it a confidential space?
 - ii. is a neutral or public space an appropriate environment to hold the conversation?
 - iii. are funds available to hire a more suitable venue?

40. Where possible they should be able to contribute to the planning and preparation of the meeting for example when and where the interview will take place and who else will be in the room.

41. Ahead of the interview there are several general factors which you should consider these are:

- a. preferred name/mode of address;
- b. ability and willingness to talk to an interviewer;
- c. the reason for the interview;
- d. the ground rules for the interview;
- e. the opportunity to practise answering open questions;
- f. cognitive, social, and emotional development - does the child or adult understand the questions asked of them?

- g. how long might the interview take - you may need to take regular breaks and or obtain refreshment;
- h. attention span and need for any breaks;
- i. any special requirements the interviewee may have;
- j. any apparent clinical or psychiatric problems (for example, panic attacks, depression) which may impact upon the interview;
- k. an assessment of competency to give consent to interview (see below Fraser/Gillick guidelines²⁴).

42. You should also decide who will be the best choice for interviewer and keep in mind the following:

- a. any strong gender or ethnic preferences of those being interviewed;
- b. ability to establish rapport;
- c. ability to communicate effectively either directly or indirectly for example through an intermediary;
- d. knowledge of the points to prove for the purpose of the enquiry²⁵.

43. If a second interviewer is to be present their role should be clearly set out, they may be present to:

- a. make sure the child or adult is kept central to the interview;
- b. have oversight of the concerns relating to the investigation;
- c. monitor and promote wellbeing;
- d. identify any gaps in the account being given;
- e. identify errors and any confusion;
- f. operate any recording equipment and/or take notes for statement;
- g. reflect to the original planning and identify any further areas for discussion.

²⁴NSPCC Learning. "Gillick competency and Fraser guidelines". NSPCC. 10 Jun 2020. [<https://learning.nspcc.org.uk/child-protection-system/gillick-competence-fraser-guidelines>]. [Accessed: 25 January 2021]. See also, §33 to §36 of this Chapter (Chapter IV: Conducting an Investigation).

²⁵ Achieving Best Evidence in Criminal Proceedings, Guidance on interviewing victims and witnesses and guidance on using special measures March 2011.

44. You will also want to consider other logistical matters:

- a. the logistics - will you have the capacity to plan and undertake more than one interview in one day?
- b. where you plan to host several consecutive interviews at the same venue, remember to factor in an adequate period of time between each one. Careful scheduling helps to ensure that;
 - i. the witnesses are not present at the venue at the same time which enhances confidentiality;
 - ii. any unexpected delays or prolonged interviews can be accommodated (do you have sufficient time in venue, can you accommodate comfort breaks and break out space if needed?);
 - iii. you have given yourself sufficient time to reflect on the interview when concluded, make any records that are necessary, take a rest break and then prepare for the forthcoming interview.

(6) Interpreters and intermediaries

45. When an interpreter is used, the lead interviewer should be clear who is who, and maintain good eye contact, with those being interviewed. An interpreter is used solely to interpret what is being said, an intermediary may be used to explain the questions or answers to the extent necessary to enable them to understand.

46. An intermediary may be used to facilitate communication between the complainant and the interviewee. One should be employed where the witness has special needs, such as learning difficulties. They should not lead the interview. Their role is to ensure the interviewee understands what they are being asked and is able to give their best account to the interviewer.

47. Exceptionally, it may be in the interest of the child or adult to be interviewed by someone in whom they already have confidence, but who is not a member of the investigating team. Provided that person has appropriate professional qualifications, is independent and impartial, is not a party to the enquiry, is prepared to co-operate with the interviewer(s) and

can accept briefing, including permitted questioning techniques, this possibility should not be excluded.

D. Interviewing Children and Vulnerable Witnesses

(1) Introduction

48. It is likely that many of your interviews will take place in an informal setting without access to office facilities, video or recording equipment. It is important that confidentiality is maintained, the child or person you are talking to is comfortable in the chosen setting and understands the purpose and outcome of the interview.

49. It may, on occasion, be necessary to source a formal working space as well as undertake an audio recording of an interview which may or may not be transcribed. For example, if you are interviewing alone it can be difficult to ask questions and record what you are being told accurately, it can also lengthen the amount of time spent in interview which, may be stressful for the child or adult you are talking to.

50. Investigators will not be undertaking Achieving Best Evidence (ABE) interviews to support criminal or care proceedings, but the principles of good practice remain the same²⁶. Achieving Best Evidence Guidance describes good practice in interviewing complainants and witnesses and sets out how interviews should be tailored to individual need and circumstances. The guidance is for everyone involved in investigations and includes those who may be described as vulnerable and intimidated witnesses.

²⁶ *Achieving Best Evidence in Criminal Proceedings Guidance on Interviewing victims and witnesses and guidance on using special measures* (Revised March 2011).

(2) 'Vulnerable witnesses'

51. Vulnerable witnesses or more accurately witnesses eligible for assistance²⁷ on grounds of age of incapacity include²⁸:

- a. children;
- b. witnesses who have a mental disorder as defined by the Mental Health Act 1983 (as amended by the Mental Health Act 2007);
- c. witnesses significantly impaired in relation to intelligence and social functioning (witnesses who have a learning disability);
- d. witnesses who have a physical disability;
- e. witnesses suffering from fear or distress in relation to the case.

52. For all of those involved, early identification of abilities as well as any disabilities is important to guide your interview planning. An emphasis on what a child or adult cannot do may lead you to ignore the strengths and abilities that they may have, which is why good planning is crucial.

53. Where the child or adult knows the alleged perpetrator, and where there is repeat victimisation such as stalking or harassment, research has shown that this is more likely to lead to intimidation.²⁹

54. Some children and adults may be frightened and distressed. They may require additional support because of that, or for other reasons, such as their mental health. That support, if needed or wanted, throughout the interview process. There are specialist support services available for victims of sexual violence. That support may have been accessed before the interview and can, of course, be accessed after. If they wish for help in this regard, there is no reason at all why the investigator should not help in that regard.

²⁷ So-called 'special measures'.

²⁸ Section 16, Youth Justice and Criminal Evidence Act 1999 as amended.

²⁹ Vulnerable and Intimidated Witnesses: A Police Service Guide (Ministry of Justice 2011).

55. It is your responsibility to ensure that those you are interviewing are well informed and well supported before and after the interview. It may be wise to check that they have had or do not wish to have such support before embarking upon the interview. By way example, you may wish to signpost or provide information on Childline (<https://www.childline.org.uk>, an online counselling service for young people up to the age of 19 or Victim Support (<https://www.victimsupport.org.uk>) an independent charity that offers emotional and practical support to young people and adults who have experienced traumatic events. If they wish to seek support, let them.

(3) Ground rules

56. Children (and adults) may perceive you as a figure of authority. Interviewers should use the rapport phase to combat any answers, which may indicate an eagerness to please. This can be done by stating the following:

- a. the interviewer was not present when the events under investigation allegedly took place and that the investigator is relying on their account;
- b. if the interviewer asks a question which is not understood, the person should feel free to say so;
- c. if the interviewer asks a question to which the person does not know the answer, they should say 'I don't know';
- d. if the interviewer misunderstands what has been said or summarises what has been said incorrectly, then the person should point this out.

(4) Content

57. The ABE guidance³⁰ suggests that for all interviews there should be four main phases:

³⁰ P. 68, §3.3, Achieving Best Evidence in Criminal Proceedings; Guidance on interviewing victims and witnesses, and guidance on using special measures, March 2011.

- establishing rapport;
- initiating and supporting a free narrative account;
- questioning; and
- closure.

58. The time taken for each phase of the interview will be dependent on the age and/or development of the child or adult.

(5) Rapport

59. All interviews should have a rapport phase. It gives the interviewer the opportunity to:

- a. build on their knowledge of the person, which they will have gathered at the planning stage;
- b. learn more about their communication skills and degree of understanding and vocabulary and ensure appropriate communication systems are available;
- c. set the tone and style of questions to be used for the main part of the interview.

60. Rapport should normally encompass the following:

- a. discuss neutral topics. Initial discussions should focus on events and interests not related to the investigation;
- b. reassuring the person who is not subject of the complaint that they have done nothing wrong;
- c. explaining the ground rules;
- d. establishing the purpose of the interview;
- e. supplement the interviewer's knowledge of the person's social, emotional, and cognitive development.

(6) Establishing the purpose of the interview

61. The reason for the interview needs to be explained in a way that makes the focus of the interview clear but does not specify the nature of the concern. It is also important to stress that what the interviewer wants to discuss is their memory of the incident(s) that gave rise to the concern.
62. It is important that the child or adult is encouraged in the rapport phase to talk freely through the extensive use of open-ended questions. Questions requiring a 'yes' or 'no' answer should be avoided.

(7) Free narrative recall

63. An interview requires that information flows from the child or adult to the interviewer. It is crucial that interviewers inform those being spoken to that they were not present at the event and do not yet know what occurred.
64. Only the most general, open ended questions should be asked in the free narrative phase as guidance to the child or adult. If they respond to questions such as *"do you know why you are here today?"*; *'is there anything you would like to tell me?'* in a positive way the interviewer should encourage them to give a free narrative account. Questions such as *'tell me all you know about...'* *'Did anything else happen?'*
65. The prompts used as this stage should not include information known to the interviewer concerning relevant events that have not yet been communicated by the interviewee. Interviewers should take care not to prematurely get to the heart of the matter and allow those being interviewed to proceed at their own pace. You should be patient with what may appear to be pauses, silences, repetitions and irrelevant information.
66. If, during this stage, the interviewee has communicated nothing of relevance regarding the purpose of the interview the interviewer should consider whether to proceed to the

questioning phase. In exceptional circumstances, consideration may be given to moving indirectly to the closure phase.

(8) Asking Questions

67. It is not easy to ask effective questions. It is a skill. It requires thought – what is the purpose of this question? What am I trying to discover or reveal, or what answer/s am I seeking? It is also about making yourself understood by the witness. It requires clarity of thought and language.
68. Those being interviewed can vary in how much relevant information they provide in free narrative. In nearly all cases it will be necessary to expand on the initial account through questions.
69. The construction of questions and information requested should always take account of:
- a. stages of development, language, cognition, impairments;
 - b. feelings and attitude of the child or adult for example if they have been threatened;
 - c. when working with an interpreter, consider before and during the interview how accurately some questions can be interpreted or whether there are cultural implications that could impact on the understanding and responsiveness of the person.
70. Questions should be kept short and simple in construction always avoid double negatives. For example, “Is it not true that you were not there?”
71. Language and words should be familiar to and understood by a child. If you have to use or introduce an unfamiliar concept, asking if they understand may not suffice. There may be a temptation for the child or adult at risk to agree with the adult, through embarrassment or otherwise. It is better to check their understanding by asking them to explain to you.

72. Concepts in conversation are often taken for granted, children and some adults may acquire them gradually. There are techniques for addressing some difficult areas. For example:

- a. dates and times can be related to specific times such as holidays;
- b. length and frequency of events can be related to routines;
- c. height, weight, and age can be used in relation to other people as a guide.

73. Different types of questions provide varying amounts of information and accuracy. The five most important types of questions are:

- a. Open-ended
- b. Specific
- c. Closed
- d. Leading
- e. Tag

74. During the questioning phase it is important to:

- a. move sequentially through the types of questioning appropriate to the response, returning to open-ended/specific questions and avoiding leading questions;
- b. ask one question at a time;
- c. give time to respond but remember too long can be uncomfortable;
- d. do not interrupt;
- e. questions should not be repeated in the same form when the first answer is deemed unsatisfactory.

75. If at any point during questioning the person becomes distressed it may be necessary to move back to the rapport phase.

76. Open-ended questions:

- a. an open-ended question is one that is worded in such a way as to enable the child or adult to provide more information about an event which is not leading, suggestive or putting them under pressure;
- b. it is important that the questioning phase begins with open-ended questions and this type of question should be widely used throughout the interview;
- c. open-ended questions enable interviewee's to expand on what has already been said: "So, you said that someone hit you, tell me some more about that?";
- d. It is rarely possible to use only open-ended questions with children or those with learning difficulties, particularly if they have been threatened or sworn to secrecy;
- e. Children and those with learning difficulties may find open-ended questions do not prompt recall;
- f. Specific questions may be necessary to obtain information to assist the investigation.

77. Specific questions:

- a. specific questions serve to ask in a non-suggestive way for extension and clarification of information provided previously. Specific questions vary in their degree of explicitness:
 - i. a person tells you that they were assaulted;
 - ii. follow up question:
 1. specific non-leading –“Were they wearing clothes? What clothes were they wearing?”;
 2. the best examples of specific questions are: who, what, where, when and why?;
 3. ‘why’ questions should be used with care to avoid implying blame.

78. Where there may have been repeated incidents and there is difficulty isolating events, the interviewer:

- a. might ask if there were any incident's that were particularly memorable or exceptional?
- b. might ask if they remember the first or last time the incident occurred?
- c. should finish asking about one incident before moving to the next one.

79. Specific questions can explore whether an account is being given for the first time. A closed question is one that poses fixed alternatives, and the person is invited to choose.

80. Closed questions:

- a. are designed to elicit a 'yes' or 'no' response;
- b. should never be used for probing central events, which are likely to be disputed at a safeguarding hearing.

81. Leading questions:

- a. a leading question is one which implies the answer or assumes facts which the witness has not hitherto said;
- b. they should not be used for contentious matters, for the elicited answer may well be rendered worthless if the answer has been suggested;
- c. an example of a leading question is: "did 'X' abuse you?" where the person has said no such thing;
- d. the use of leading questions in the rapport phase risks inhibiting and producing nonsensical and inconsistent replies.

82. Tag questions:

- a. tag questions (or question tags) turn a statement into a question. They are often used for checking information that we think we know is true. For example:

- i. “They live in Bristol, don't they?”;
 - ii. “She doesn't have any children, does she?”
- b. they can confuse and should be avoided.

(9) Closing the Interview

83. Some interviewers check or repeat evidentially important parts of the account. It is fraught with difficulty and risk:

- a. the person may be confused or undermined – *I have answered this; why am I being asked again? Does he not believe me? Did I give the wrong answer?;*
- b. it is crucial to be accurate when repeating back answers – if it is done badly or inaccurately the witness may be misled or confused;
- c. repetition rarely improves an account;
- d. you may need to return to a topic to clarify a matter/s. If so, do so with economy and precision.

84. Every interview must have a closing phase, and, regardless of the outcome of the interview, every effort should be made to ensure that the person is not distressed but is in a positive frame of mind. Even if little or no information has been provided, they should not be made to feel that they have failed or disappointed the interviewer. Although praise or congratulations for the providing of information should not be given, the witness should leave with a positive state of mind.

85. They should be thanked for their time and effort, and asked if there is anything more, they wish to communicate. An explanation should be provided about what, if anything, happens next, but no promises should be made about future developments. They should be asked if they have any further questions, and these answered as appropriately as possible.

86. Throughout the interview, and particularly when closing, the interviewer must be prepared to assist the interviewee to cope with the effects of giving an account of what may have been distressing events, and about which they may feel some guilt.
87. A contact name and contact number should be provided in the event the child or adult later decides they have further matters, to discuss with the interviewer.

(10) Advocates gateway

88. There is excellent advice on questioning to be found here:
<https://www.theadvocatesgateway.org/toolkits>³¹
89. Those toolkits provide advocates with general good practice guidance when preparing for trial in cases involving a witness or a defendant with communication needs. They are just as applicable for those planning and asking questions at the interview stage.

“The Toolkits may be downloaded at no cost from the Advocates Gateway Website. They provide excellent practical guides and are to be commended. They have been endorsed by the Lord Chief Justice...as best practice.”³²

E. Interviewing the subject of concern

90. Once all the available information and evidence has been gathered in relation to the complaint the next stage is to plan for an interview with the subject of concern. The objective of the interview is to:
 - a. inform the subject of concern of the details of each complaint made against them;
 - b. provide an opportunity for the person to respond; and

³¹ The Advocate’s Gateway. ‘Toolkits’. (<https://www.theadvocatesgateway.org/toolkits>). [Accessed: 23 December 2020].

³² *R. v Lubemba* [2014] EWCA Crim 2064, §40.

- c. explore other relevant information such as the training undertaken, skills, experience and qualifications achieved.

91. In common with all types of interviews it is prudent to plan. Earlier in this chapter, we looked at the considerations for planning an interview with a witness. Most are also relevant to planning an interview with a person who is the subject of the concern(s) that have been raised. There are some additional considerations for this category of interview which include:

- a. the appropriate method of contact to make the interview arrangements;
- b. what information will be given to the person ahead of the interview i.e., advanced disclosure;
- c. what information will be given to the person at interview;
- d. persons who may be present at the interview and the role they should play;
- e. will the interview be recorded and if so by what means?;
- f. requirement of non- disclosure agreements;
- g. production of a transcript of a recorded interview.

(1) Initial contact

92. It is possible that the subject of concern will have been suspended by the NGB from their role pending the investigation. In these circumstances the NGB should have informed the subject of concern of the investigator's identity and to anticipate contact from the appointed investigator in due course.

93. It is often the case that a person suspended from their role feels a high degree of angst and dissatisfaction. They are likely to want and expect the investigator to undertake and complete the investigation quickly. For a variety of valid reasons, it may not be possible to meet their expectations. In this regard it may be helpful to notify the individual at the

outset that you will be undertaking the investigation expeditiously and will contact them as soon as practicable.

94. The investigator has no power to compel the subject of the concern to take part in the interview process. The interview is therefore conducted on an 'invitation' and 'acceptance' basis.
95. The investigator should consider formal arrangements for interview. For example, communicating an agreed time and date and whether arrangements need to be made for a private meeting room to be booked or video conference to be arranged.

(2) Pre-interview disclosure

96. Once a mutually convenient time and date for the interview is set, consideration should be given to what if any information will be disclosed ahead of the interview.
97. There is a balance to be struck between preserving the confidentiality and safety of complainants and witnesses whilst acting with fairness and transparency for the subject of concern. Consideration should be given to requests by witnesses to remain anonymous, though it should be appreciated that anonymity is not guaranteed³³, for a number of reasons, for example because they have legitimate reasons for fearing reprisals from the subject of concern. The investigator should explain the position regarding anonymity requests to witnesses, where such a request is made. In addition, the subject of concern may struggle to answer the allegations unless they know from whom it comes. Sufficient information needs to be provided to the subject of concern in order for the interview to be of value and meaningful.
98. It is useful therefore to provide a schedule of the complaint(s) ahead of the interview date in the form of an 'advance disclosure schedule'³⁴. That document should contain sufficient detail in order for the interviewee to:

³³ The investigator should refer to the Terms of Reference and/or any applicable rules and regulations to check what process applies to anonymity requests.

³⁴ Form 5 in Appendix C.

- a. prepare for interview by recalling or retrieving relevant data, information, or documents;
- b. consider the identity of potential supporting witnesses;
- c. seek appropriate legal advice where considered necessary.

99. Where the identity of a witness has been withheld prior to the interview date, but anonymity is either not requested by the witness, or not permitted by the relevant NGB, the identity of that witness can be disclosed to the subject of concern during their interview.

100. It is not certain that the subject of concern will attend the interview and therefore the identity of the complainant and any witnesses should not be disclosed in advance. Those identities may be disclosed in due course, during the interview.

(3) Interview planning

101. In preparing for the interview, it is advantageous to draft both an interview plan³⁵ and interview schedule³⁶. In circumstances where there will be a co-interviewer, the interview plan and schedule provide clarity over the process. The interview plan serves as a procedural framework to follow and ensures that any aspects relevant to that case and or the interviewee are addressed.

(4) Persons present at interview

102. The subject of concern may wish to be accompanied during the interview. That person may, for example, be their lawyer. It is acceptable for the interviewee, for such a person to attend provided that they are:

- a. not conflicted i.e., involved or connected to the investigation in any way; and

³⁵ Form 6 in Appendix C.

³⁶ Form 7 Appendix C.

- b. acting solely in the capacity of a source of support.

(5) Interview schedule

103. The interview schedule is a list of topics to be covered during the interview. The questions will be drawn from the information that has been gathered from the complainant(s), witness(es) and any other sources of evidence or information.
104. The schedule is not intended to be a restrictive document but acts as guide for the interviewer and ensures that the interviewee is informed of all matters alleged. Invariably the responses provided by the interviewee will necessitate additional topics for discussion and generate further associated questions.
105. As a matter of fairness and transparency the questions asked during the interview should include, where consent has been obtained, or it is necessary or appropriate, the identity of the complainant(s) and any witness(es)³⁷.
106. In the event that a witness or complainant does not wish their identity to be revealed or it is decided that it should not be disclosed, then the questions should still be posed using a broad term, for example, Athlete 1,2,3. This provides the interviewee with an understanding of the complaint alleged and an opportunity to respond.

(6) Recording the interview

107. It is a matter of good practice for the investigator to audio record the interview. The interviewee should not be permitted to record the interview. If they do so, you have lost control over what happens to it. It may be that you permit the interviewee to have a copy of your recording but only if they sign an NDA or other confidentiality agreement. If the interviewee insists on creating their own recording, the interviewer should politely explain that this is not possible due to data protection considerations. Depending on the

³⁷ See §80 above.

response of the interviewee, the interviewer should consider whether the interview can proceed.

108. Where it is appropriate the commissioning body may fund preparation of interview transcripts.

(7) International Enquiries

109. The nature of many sports, in particular at elite level dictates that training camps, events and competitions are delivered across the world. In this regard, there may be occasions when an investigation includes an international dimension. This is an aspect which presents some additional logistical challenges for undertaking an investigation. By way of example, the need for interpreters, differences in time-zone and so on. The principles of best practice outlined within this Guide remain relevant although legislation relating to children and adults at risk in each country of origin may differ. You will need to familiarise yourself with any relevant legislation, policy, and guidance pertinent to your enquiry and specific to the sport and their jurisdiction.

F. Investigation Framework Checklist

Document	Completed/Not Required
Letter of Appointment	
Agreed Terms of Reference	
Investigation Plan (Form 1)	
Investigation Case Log commenced (Form 2)	
Referral to Statutory Authority required/made	
Any proceedings by Statutory Authority	
Obtained relevant documents from the NGB e.g. <ul style="list-style-type: none"> • Policy • Procedures • Organisational Structure • Talent ID Pathway • Coach Licensing arrangements 	
Witness Management Strategy (Form 3)	
Witness Statement Form used (Form 4)	
Advanced Disclosure Schedule (Form 5)	
Interview Plan (for Subject to Concern) (Form 6)	
Interview Schedule (for Subject to Concern) Form 7	
Exhibit list (Form 8)	
Final Report (Form 9)	

V. REPORT WRITING

1. On conclusion of the investigation, the investigator will need to compile a final report which should be fair, balanced and objective. The format and presentation style may vary according to the individual investigator. However, in determining the content it will be helpful to consider:
 - a. who is the report for?
 - b. what is the purpose of the report?
 - c. what are the expectations of the commissioning body set out within the Terms of Reference i.e. is the report limited to detailing 'findings' or is it to include the investigators 'recommendations'?
2. Evidence from all sources should be retained and recorded within the final report. In most cases evidence from other sources is likely to be documents or photographs in a paper or electronic format. This will include materials which have been referenced in witness statements³⁸.
3. Be mindful that the investigation report may be utilised for disciplinary/appeals/employment tribunal processes or even future proceedings within a civil, family or criminal court. It might also be used for an application for a civil orders under the Sexual Offences Act 2003 (sexual risk orders)³⁹.
4. Adopting a report template such as Form 9 within Appendix C assists in ensuring a consistent approach and delivery of a professional product⁴⁰.
5. Once the investigation is complete and the report written, all materials collected during the investigation process should be disposed of confidentially and in accordance with the applicable confidentiality and/or data protection policy in place. The Terms of

³⁸ Form 2 in Appendix C.

³⁹ Section 122A SOA 2003.

⁴⁰ Form 9, in Appendix C.

Reference on your Letter of Appointment should make reference to the relevant policy in place.



VI. PREPARING FOR DISCIPLINARY/APPEAL PANELS

1. The purpose of this chapter is to assist the investigator in conducting an investigation by considering what may most assist a panel in its work. 'Panel' is convenient shorthand for the fact-finding or decision-making person or body who, or which, adjudicates upon safeguarding investigations or proceedings and makes any appropriate order/s or direction/s. We appreciate that not all safeguarding cases end up before a panel. Further, proceedings before a panel may not require or end with an oral hearing in every case. However, the thoughts, suggestions, ideas and advice hereafter will help investigators whatever the ultimate destination of their enquiry. It will also help them gather material to enable them to decide whether there are proper grounds for safeguarding concerns.
2. We recognise that safeguarding proceedings are ultimately likely to involve an assessment of risk. The panel is likely to be deciding whether a person poses or may pose a risk of harm to a child or adults at risk. It follows that it is unlikely to be dependent upon proving the commission of crime by the individual. They may involve breach/es of internal disciplinary rule/s or establishing a disciplinary charge.
3. We look at what a panel would or may wish to see by way of evidence. Of course, facts vary infinitely from case to case and so necessarily the advice and comments are general. It is designed to help the investigator during the enquiry and preparing the case for submission to the panel; and thereafter presenting the case to a panel.
4. For the purposes of this chapter, we assume there has been no criminal proceedings or DBS intervention. In the case of the former, a conviction for a relevant offence such as a sexual or violent crime will often be sufficient to establish a case against an individual. Even if a person has not been charged or convicted, sufficient material may have been gathered to establish a case. A DBS intervention will often be sufficient foundation for suspension from sport. We are concerned with the situation where the investigator has to investigate and has to bring and present a case to a panel.

A. Preparation

(1) The test to be satisfied

5. The thread running through the investigation should be the test the panel ultimately will apply. Mature safeguarding proceedings are likely to have risk at the core of the decision-making process. In safeguarding cases the decision maker is often required to assess risk by considering all the relevant materials, including a professional risk assessment, rather than by reaching a balance of probabilities decision on particular 'charges'. Instead, the panel will assess risk, actual and/or potential, in the context of the NGB's primary duty to protect and safeguard children and adults at risk.

6. By way of example, Regulation 15 of the FA's Safeguarding Children Regulations 2020/21 provides:

"...the Safeguarding Review Panel shall have the power to make any order that it considers appropriate, including but not limited to an order that any individual be suspended from all or any specific football activity for such period and on such terms and conditions as it considers appropriate, if it is satisfied that the individual poses or may pose a risk of harm to a child or children and/or that the individual is or was in a position of trust in relation to any person and has engaged in sexual activity and/or an inappropriate relationship with that person."

7. What is to be proved is almost certainly that the individual poses or may pose a risk of harm. Harm is likely to be defined widely. By way of example the FA's Safeguarding Children Regulations 2020/21 state:

"Harm shall be defined as:

'ill treatment and forms of ill treatment (including sexual abuse and forms of ill-treatment which are not physical) and also the impairment of or an avoidable deterioration in physical or mental health and the impairment of physical, intellectual, emotional, social or behavioural development.'

'Harm' may be caused by acts of commission and acts of omission."

8. The same Regulations provide”

“Abuse shall be defined as:

‘a violation of an individual’s human or civil rights by any other person or persons and, for the purposes of safeguarding children, shall include physical abuse, emotional abuse, sexual abuse, neglect, bullying and hazing.’”

(2) Burden and standard of proof

9. The standard of proof will almost certainly be to the civil standard namely, the balance of probability rather than beyond reasonable doubt (or sure). ‘Probably’ means what it says: not certainly, or possibly, but that the fact/event in question probably happened or the individual probably is, or may be, a risk. It is sometimes expressed thus: the decision-maker must be 51% persuaded.

10. The relevant rules or safeguarding procedure may not place the burden of establishing the case upon the NGB. However, it is wise to assume the burden will be on the NGB; that will both inform and help direct the investigation. It will focus attention on what you are trying to prove, how and why.

(3) Evidence

(a) Admissibility and approach

11. We have looked at different types of evidence⁴¹. The admissibility of evidence before the appropriate decision-maker will not be governed by the strict rules of evidence which apply in criminal cases. Instead, it will be based on relevance. If it is a panel, that body will take a more holistic approach considering and giving appropriate weight to any relevant material.

⁴¹ Chapter IV, Conducting an Investigation, Section A: Evidence.

12. It is likely that the issue to be decided is whether the individual does or may pose a risk of harm to children or an adult at risk. It is not that they *have* caused harm in the past or *will* cause harm in the future. The panel is concerned with assessing future risk, namely whether they *may* cause harm. It is the potential for harm which the panel needs to be satisfied of. Absent a working crystal ball, a panel will judge risk on past and present conduct, informed by what is known about an individual's personality and character and any expert material.

13. The obvious question is how does an investigator establish that an individual poses or may pose a risk or investigate that issue? It is useful to test that by reference to the types of evidence a panel would or may wish to see to help it reach the correct conclusion.

(b) Weight

14. As we have said in the preceding chapter⁴², a panel should consider material which is relevant to the issues it has to decide and give it appropriate weight. Weight is a concept familiar to lawyers and scientists, but perhaps not to all. In simple terms it means the degree of reliance a panel (or other decision maker) places on a piece of evidence. The weight of evidence is based on the credibility or persuasiveness of the evidence. The weight of evidence will depend on different factors, including its nature and the circumstances in which it was obtained.

15. It is for this reason that many NGBs make express provision for the weight to be given to evidence. For example: World Rugby, Regulation 18, Appendix 1, paragraph 3.4 states:

“First-hand accounts from persons present at the hearing as to their observations of the incident in question are to be preferred. Hearsay evidence may be accepted. However, caution will be exercised before hearsay evidence is accepted in preference to first hand evidence and generally less weight is likely to be given to hearsay evidence.”

⁴² Chapter IV, §3 and §9.

16. Safeguarding procedures may not contain any such express provision. However, panels chaired by lawyers are very likely to apply this concept when they assess evidence placed before them. It is integral to their training and decision-making in their professional lives. Investigators are therefore advised to have regard to it when gathering evidence. It would not be a surprise for a panel to inform or direct itself thus:

“Even though these are not judicial or disciplinary proceedings, we have had due regard to the nature of the material. Just as with evidence in judicial proceedings (civil or criminal), the weight to be afforded to pieces of material differs with its nature. By way of example, anonymous hearsay does not have the same weight or probative value as an expert report. Often (but not always), the accuracy and reliability, indeed credibility of anonymous hearsay cannot be tested properly. Though we entirely understand why anonymity is often sought by those who make disclosures in such cases, we must treat such material with the appropriate level of circumspection.”

17. What evidence is a panel likely to find most helpful and persuasive? By way of some examples:

- a. does the evidence come in the form of a signed, dated statement or a scrappy note from an anonymous source? The former will be given more weight than the latter;
- b. is it eye-witness testimony (he did it to me or I saw him do it) or hearsay (he told me she did it)? A panel may find the former more persuasive (give it more weight) than the latter;
- c. has the witness given an oral account when asked or declined to do so? Evidence which is not agreed and is challenged but withstands questioning may be afforded more weight than written evidence which is disputed but not able to be tested by questioning because the witness will not give evidence.

18. The reasons why the particular forms of evidence will be afforded more weight are (perhaps) obvious. A signed statement from a named witness has a degree of formality about it; one might expect a person making a statement to know it would be used for formal safeguarding proceedings. They would, or should, understand the importance of telling the truth and being accurate and try to do both. There might be a warning to that effect in the statement itself. Form 4 in Appendix C (witness statement template) has this caption at its

head:

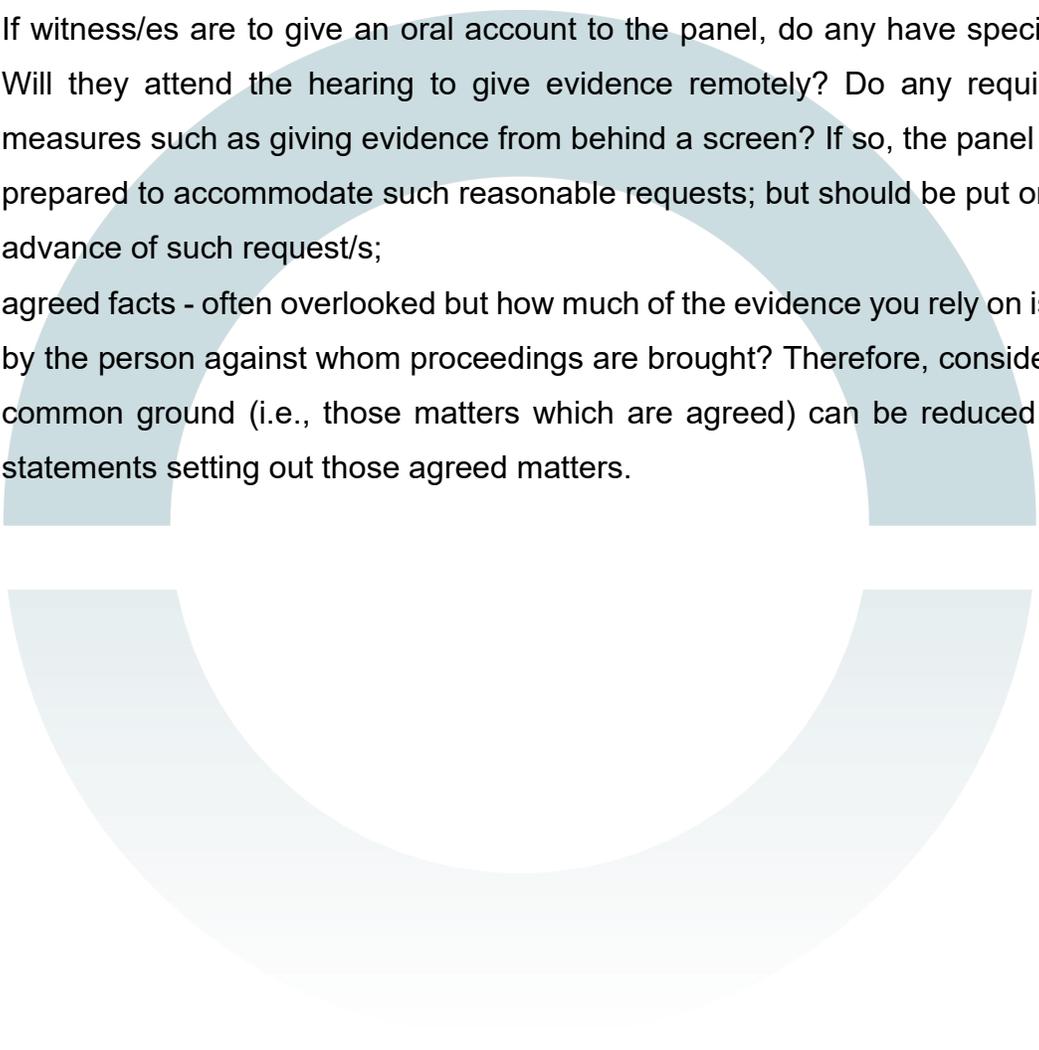
'This statement is true to the best of my knowledge and belief and I have made it knowing that it will be tendered in evidence in safeguarding proceedings, where the Tribunal will rely upon it as being both true and accurate'

19. It is also important to note that the probative force of evidence, namely its strength in proving a particular proposition or case, does not necessarily turn on the number of witnesses. Rather it is the cogency of the testimony which is important. A single honest and accurate witness may suffice in the right case. For example, a witness may give uncorroborated but apparently honest and sincere testimony that commands belief, even though several witnesses of apparent respectability may contradict him. The question is not which side has more witnesses, but which evidence is most persuasive. In that regard:
- a. a first-hand account from a complainant is obviously more likely to be accepted than a scrappy piece of hearsay (X told me what Y did) which may be no more than tittle tattle. The latter is not a safe basis upon which to proceed to make an assessment as to whether a person is or may pose a risk to children;
 - b. where the witness's account is not accepted by the subject of concern, then if the witness has been questioned, and their account remains consistent, it is more likely that the panel will accept what they have said as (probably) true and accurate.
20. None of this is a criticism of individual witnesses. There may be good reasons why a witness will not make a statement or give live evidence or disclose their identity. The panel will take that into account but ultimately must assess the evidence as it is. Investigators should gather all the relevant evidence they can. They should be informed by consideration of weight but not discouraged by them. The panel will consider all relevant material. The weight is for the panel's judgement, not the investigators. Let's take an example:
- a. A is employed as a professional sports coach to work with a young elite level athlete (B). B is feeling unwell whilst at a training camp ahead of a major competition. The team medical doctor C provides verbal advice to the coach A that B should be allowed to rest in order to recover.

- b. It is alleged by C that contrary to medical advice the coach 'A' forced the athlete 'B' to undergo a rigorous training session causing athlete B to suffer significant illness. A denies receiving any such advice from the medical doctor, C.
- c. The only witness to the conversation is C and makes a witness statement to that effect. C dies before the hearing and cannot give evidence. C is the only witness (other than A) who can give this evidence which is fundamental to proving the breach of the Governing Body's Coach Code of Conduct by A. C cannot attend the hearing, so his evidence is hearsay.
- d. On those simple facts, there is no reason why C's statement would not be admitted as evidence for the panel to consider. They would be directed by the panel chair that it was hearsay; that C's' evidence was disputed by A; and it has not been tested by cross-examination, so they do not know how it would have withstood cross-examination. The panel would also consider any matters relevant to assessing the accuracy (i.e. weighing up) C's evidence ; for example, any entry C may have made in A's medical notes or any other record of the advice given.

B. PRESENTATION

21. If the investigator is involved in presenting the case to a panel the following will need to have been addressed in advance:
 - a. consider providing the panel with an edited summary (removing the irrelevant) of the investigator's report. That will identify the:
 - i. witnesses;
 - ii. core facts;
 - iii. details of witnesses not interviewed and why;
 - iv. identify any linked case/s and other person/s of concern whose case/s have been, or yet to be, heard;
 - v. any other relevant proceeding, including criminal, against the same individual;
 - vi. summary of the concerns/risk posed and to whom; and
 - vii. order/s which will address that risk.

- 
- b. do you need a risk assessment of subject of concern ? Does the panel have the power to order one? If so, is it necessary or appropriate to invite the panel to consider doing so in advance of any substantive hearing?;
 - c. decide which witnesses, if any, should be relied upon. If you have witnesses willing to give oral evidence, are they required by you, the subject of concern and/or the panel?
 - d. If witness/es are to give an oral account to the panel, do any have special needs? Will they attend the hearing to give evidence remotely? Do any require special measures such as giving evidence from behind a screen? If so, the panel should be prepared to accommodate such reasonable requests; but should be put on notice in advance of such request/s;
 - e. agreed facts - often overlooked but how much of the evidence you rely on is disputed by the person against whom proceedings are brought? Therefore, consider whether common ground (i.e., those matters which are agreed) can be reduced to written statements setting out those agreed matters.

VII. SELF CARE GUIDANCE

1. Investigators often work in complex areas, with people who are in crisis, are emotionally demanding and who require high levels of empathy. Their role is often isolated as they are working independently, and it is not unusual to be exposed to threats of litigation, mistrust, and high levels of scrutiny. Added to this is the uncertainty of working with involuntary witnesses who may be dealing with trauma in an unsupportive and competitive sporting culture.
2. It is important to ensure self-care, which is about identifying and developing practices that enable you to preserve well-being amid demanding jobs. Practicing self-care is a way of mitigating stress and avoiding emotional and physical breakdown.
3. One way to do this is to create an environment that is flexible, where there are opportunities to increase your knowledge and add to your learning and development. Where it is okay to take time off and to put your own needs first. Creating habits that work for you is important to keep stress away which, might mean stepping away from your working environment for shorter or longer periods.

A. The investigator is subject to a complaint

4. There are occasions when the appointed investigator can find themselves subject to a complaint. This can be a source of anxiety for the investigator and may render a feeling of isolation. Anecdotally the source of complaint is likely to emerge from the person(s) who is subject to the investigation. The nature of their complaint is commonly related to the:
 - a. perceived lack of competency, skills, experience, independence of the investigator;
 - b. methodology and procedures followed, or lack of them;
 - c. timeliness of the investigation;
 - d. data protection rules.

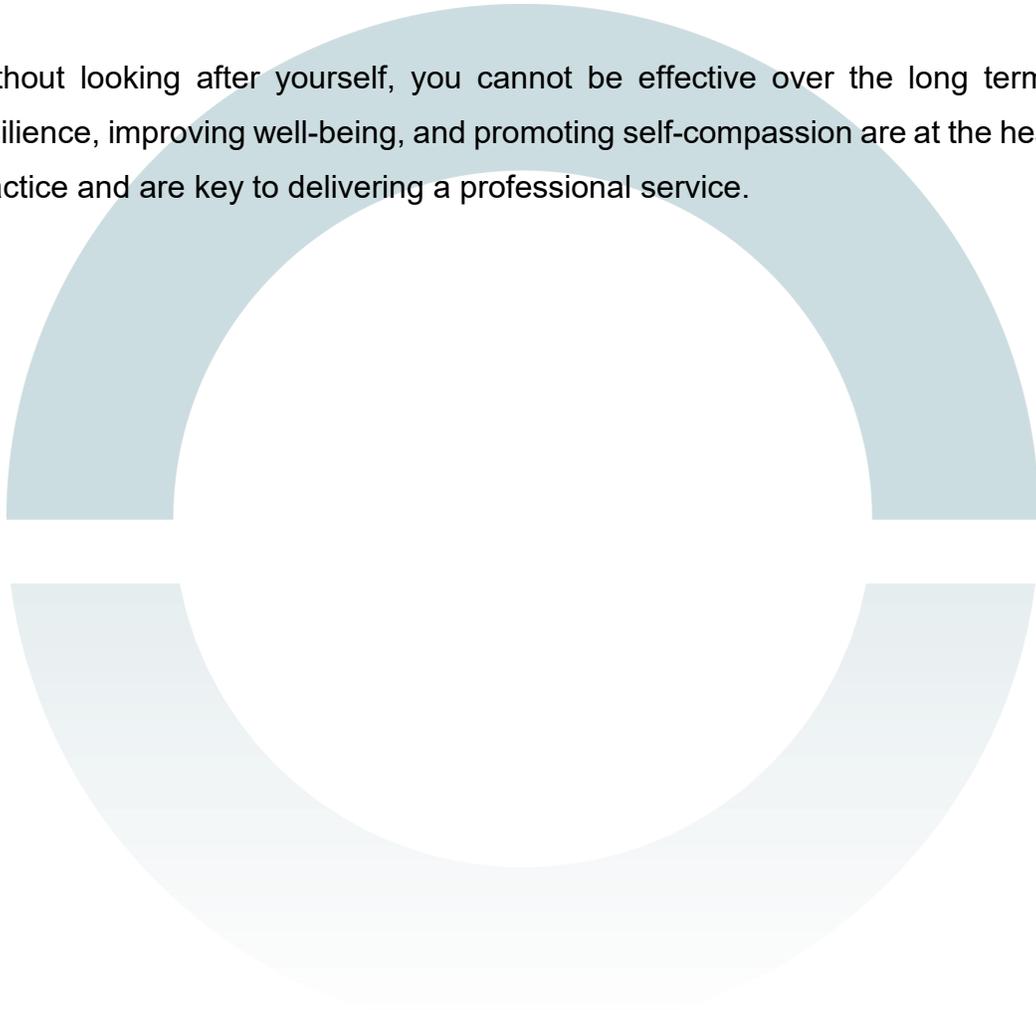
5. Investigators appointed to an investigation through Sport Resolutions, as a member of the National Safeguarding Panel, are afforded access to a high level of professional advice, support and cover of Public Liability Insurance facilitated by Sport Resolutions. At the earliest opportunity the investigator should inform Sport Resolutions of any complaint made against the investigator in the course of their investigation.

6. Where an investigator has been commissioned independently from Sport Resolutions it is advisable to secure their own public liability insurance and access to professional support.

B. Self-Care Guidance

7. There are several ways in which you can make self-care a priority. Although this list is by no means exhaustive you may find some of the following suggestions helpful:
 - a. ensure that you have a clear remit for your role and understand what is expected of you;
 - b. ask questions if you are uncertain about anything. There will be confusion at times but asking questions can ensure you clarify what is known and not known;
 - c. be flexible in your approach. If you try to do everything, you may not succeed and may be setting yourself up to fail. You are working in challenging circumstances you can use your professional judgement when needed and adapt your approach to suit you;
 - d. set goals to break down tasks into small attainable chunks: 'don't try to eat an elephant';
 - e. say 'no'... do not take on additional work commitments when demands on your time are already high;
 - f. do not forget to take regular breaks and day's off. It is too easy to stay working and you can quickly begin to feel overwhelmed;
 - g. set boundaries between your work and personal life and have a buffer zone between your activities;

- h. avoid a culture of just getting on with it; seek help if needed. Speak openly about challenges and how they are impacting on you;
 - i. identify a professional support system which can be drawn upon as needed, seek out others who work in similar circumstances;
 - j. arrange debriefings when working in complex and sometimes emotive areas. It is important to have supportive opportunities to discuss challenging cases and to address any pressures and anxieties.
8. Without looking after yourself, you cannot be effective over the long term. Building resilience, improving well-being, and promoting self-compassion are at the heart of good practice and are key to delivering a professional service.



APPENDIX A

GLOSSARY OF TERMS

Abuse

Abuse is the violation of an individual's rights by any other person or persons. Somebody may abuse or neglect a child or an Adult at Risk by inflicting harm, or by failing to act to prevent harm. It may occur in a family or in an institutional or community setting by those known to them or, more rarely, by others. Abuse can take place wholly online, or technology may be used to facilitate offline abuse. Children may be abused by an adult or adults, or another child or children⁴³.

Adult

Any person eighteen years of age and over.

Adult at Risk

A person who is aged 18 years or over and at risk of or experiencing abuse or neglect because of their needs for care and/or support and as a result of those needs is unable to protect themselves from the abuse or neglect or the risk thereof⁴⁴.

Case Management Group

A case management group will be responsible for ensuring that all allegations, concerns or referrals relating to the safeguarding of children or adults at risk are dealt with appropriately and within an agreed timescale. Members hip of the group should include staff from key roles within the sport such as the Lead Safeguarding Officer, Legal Adviser, HR Manager together with independent safeguarding advisers from a variety of safeguarding backgrounds such who have knowledge and experience and of child protection and adult at risk guidance and legislation

⁴³ See for example the definition in *Working Together to Safeguard Children, 2018*, as amended.

⁴⁴ See Care Act 2014.

Child/young person

A person under the age of eighteen years.

Child in need

A child who (1) needs local authority services to achieve or maintain a reasonable standard of health or development (2) needs local authority services to prevent significant or further harm to health or development and or (3) is disabled.

Child Protection in Sport Unit (CPSU)

Is a partnership between the NSPCC, Sport England, Sport Northern Ireland and Sport Wales. In Scotland, there is a similar partnership between Children 1st and SportsScotland. The CPSU works with NGBs to provide safeguarding support, guidance, resources, training and advice to help them develop and implement policies and procedures to safeguard and protect children and young people.

Complainant

Person who makes a disclosure about abuse or possible abuse or who is the subject of any such disclosure, for example one made for or on their behalf or by a third party.

Criminal exploitation

Where an individual or group takes advantage of an imbalance of power to coerce, control, manipulate or deceive a child or young person under the age of 18 into any criminal activity (a) in exchange for something the victim needs or wants, and/or (b) for the financial or other advantage of the perpetrator or facilitator and/or (c) through violence or the threat of violence. The victim may have been criminally exploited even if the activity appears consensual. Child criminal exploitation does not always involve physical contact; it can also occur through the use of technology. An example is county lines drug supply, where gangs and organised criminal networks use dedicated mobile phone lines or other form of 'deal line' to deal illicit drugs. They are likely to exploit children and vulnerable adults to move and store the drugs and money, and they will often use coercion, intimidation, violence (including sexual violence) and weapons.

Disclosure and Barring Service (DBS)

The DBS processes and issues DBS checks for employees in England, Wales, the Channel Islands and the Isle of Man. It also maintains the adults' and children's Barred Lists and decides whether an individual should be included on one or both of these lists and barred from engaging in regulated activity.

Discrimination

Different treatment based on race, gender or disability or any protected characteristics.

Emotional abuse

The persistent emotional maltreatment of a child such as to cause severe and persistent adverse effects on the child's emotional development. It may include not giving the child opportunities to express their views, deliberately silencing them or 'making fun' of what they say or how they communicate. It may involve bullying, cyber bullying, causing children frequently to feel frightened or in danger, or the exploitation or corruption of children.

Adults at Risk – it includes threats of harm or abandonment, humiliation, controlling, intimidation, coercion, harassment, verbal abuse, and withdrawal from services or support networks.

Extremism

Extremism is vocal or active opposition to fundamental British values, including the rule of law, individual liberty and mutual respect and tolerance of different faiths and beliefs.

Local Authority Designated Officer (LADO)

Local authority employee responsible for managing child protection allegations made against those who work with children.

National Safeguarding Panel (NSP)

The NSP is operated by Sport Resolutions. The NSP supports National Governing Bodies in the professional management of safeguarding complaints and concerns, covering both children and adults at risk.

Neglect

The persistent failure to meet a child's basic physical and/or psychological needs, likely to result in the serious impairment of the child's health or development. Neglect may occur during pregnancy as a result of maternal substance abuse. Once a child is born, neglect may involve a parent or carer failing to:

- a. Provide adequate food, clothing and shelter (including exclusion from home or abandonment);
- b. Protect a child from physical and emotional harm or danger;
- c. Ensure adequate supervision (including the use of inadequate caregivers); and
- d. Ensure access to appropriate medical care or treatment.

It may also include neglect of, or unresponsiveness to, a child's basic emotional needs.

In Adults at Risk, it includes ignoring medical or physical needs, failure to provide access to appropriate health social care or educational services, and the withholding medication, adequate nutrition and heating.

Non-recent abuse

Disclosure of abuse that was perpetrated in the past.

Policy

A document which sets out statements of principles.

Procedure

A procedure documents how a policy will be implemented.

Physical abuse

A form of abuse which may involve hitting, shaking, throwing, poisoning, burning or scalding, drowning, suffocating or otherwise causing physical harm to a child or Adult at Risk. Physical harm may also be caused when a parent or carer fabricates the symptoms of, or deliberately induces, illness in a child.

Radicalisation

Radicalisation is the process by which a person comes to support terrorism and/or forms of extremism.

Safeguarding

The process of protecting children and adults at risk to provide safe and effective care. This includes all procedures designed to prevent harm to a child⁴⁵.

Safeguarding Policy

A document which sets out statements of safeguarding principles, stating how an organisation, in this context intends to keep children and adults at risk, safe and protected from harm.

Safeguarding Procedure

A procedure documents the method, by consistent and repetitive steps of, in this context, by which children and adults at risk, will be kept safe and protected from harm.

Sexual abuse

May involve physical contact, including assault by penetration or non-penetrative acts such as masturbation, kissing, rubbing and touching outside of clothing. They may also include non-contact or online activities, such as involving looking at, or in the production of, sexual images, watching sexual activities, encouraging sexually inappropriate behaviour. It includes grooming a child in preparation for abuse. Sexual abuse is perpetrated by males, females and by children. Child Sexual Exploitation is a form of sexual abuse in which children are sexually exploited (involving contact or non-contact such as online) for money, power or status.

Subject of Concern

A person who the complaint or concern has been made against (has or is alleged or suspected to have mistreated a child or the complaint or concern has been made against adult at risk or alleged to have breached safeguarding policy)

⁴⁵ NSPCC CPSU. 'What is Safeguarding?'. CPSU Website. 30 Nov 2016. (<https://thecpsu.org.uk/help-advice/introduction-to-safeguarding/what-is-safeguarding>). [Accessed: 21 December 2020].

Terms of Reference

A document created by the commissioning body of an investigation, in which the scope, requirements and expectations for the investigation are clearly set out.



APPENDIX B

CONSIDERATION OF THE LEGAL FRAMEWORK FOR SAFEGUARDING INVESTIGATIONS IN SPORT

A. Introduction

1. This is not, nor is it intended to be, legal advice. It does not purport to advise on the specific applicability of any particular provision. There is no substitute for taking, if needed, expert advice and considering the source material. Instead, this is an overview of legislation which is or may be relevant to those investigating child or adult at risk safeguarding matters. It looks at legislation which impacts upon safeguarding in sport.

B. Relevant Legislation

(1) Children Act 1989

2. The introduction to the Children Act 1989 (CA 1989) declares “*An Act to reform the law relating to children...*”. Section 1 announced that “*the child’s welfare shall be the court’s paramount consideration*”. That is the derivation of the fundamental principle of child safeguarding. It defines a child as a person under 18⁴⁶. In Scotland, it is under 16⁴⁷.
3. The CA 1989 provides the legislative framework for child protection in England. It introduced the concept of the child’s welfare being paramount. It articulates the expectations and requirements of the duties of care owed to children. It provides for what local authorities and courts should do to protect the welfare of children. It is the responsibility of the local authority to investigate any concerns raised about a child’s welfare.

⁴⁶ S.105.

⁴⁷ Children (Scotland) Act 2005, s1(2).

4. Investigators should be particularly aware of section 17 which places upon local authorities the general duty to safeguard and promote the welfare of children within their area who are in need. A child is in need if:
 - a. He is unlikely to achieve or maintain, or to have the opportunity of achieving or maintaining, a reasonable standard of health or development without the provision for him of services by a local authority;
 - b. His health or development is likely to be significantly impaired, or further impaired, without the provision for him of such services; or
 - c. He is disabled.

5. If a child has such needs, they should be assessed under section 17. Further, where there are concerns that a child is suffering, or is likely to suffer, significant harm the local authority must make enquiries and decide if any action must be taken⁴⁸. The definition of harm provided by the CA 1989⁴⁹ is replicated in many safeguarding policies. As well as Care and Supervision Orders, it creates the Emergency Protection Order where there is immediate risk that a child is likely to suffer significant harm⁵⁰.

6. Under section 46, where a police officer has reasonable cause to believe that a child would otherwise be likely to suffer significant harm, the officer may:
 - a. remove the child to suitable accommodation and keep him there; or
 - b. take reasonable steps to ensure that the child's removal from any hospital or other place in which the child is then being accommodated is prevented.

7. No child may be kept in police protection for more than 72 hours. Where a local authority:
 - a. are informed that a child who lives, or is found, in their area (i) is the subject of an emergency protection order, or (ii) is in police protection; or
 - b. have reasonable cause to suspect that a child who lives, or is found, in their area is suffering, or is likely to suffer, significant harm.

⁴⁸ S.47.

⁴⁹ "harm" means ill-treatment or the impairment of health or development, including, for example, impairment suffered from seeing or hearing the ill-treatment of another, s.31(9).

⁵⁰ S.31.

8. The authority must make, or cause to be made, such enquiries as they consider necessary to enable them to decide whether they should take any action to safeguard or promote the child's welfare⁵¹.
9. Further, a court may also include an exclusion requirement in an interim care order or an Emergency Protection Order. This allows a perpetrator to be removed from, or be prohibited entrance to, the home or to be excluded from a defined area in which the home is situated, instead of having to remove the child from the home⁵².
10. NGBs and other sporting bodies do not have any such legal duty to report. However, many cater for such duty and the involvement of the statutory bodies in safeguarding policies. The policies, together with linked procedures will be informed by the CA 1989 principles and other relevant legislation. They will provide investigators with guidance for dealing with children and adults at risk who are, or may be, at risk of harm.

(2) Children Act 2004

11. The Children Act 2004⁵³ (CA 2004) supplements the CA 1989. It reformed children services. It created the office of Children's Commissioner⁵⁴. It provided (as amended) for the setting of targets for safeguarding and promotion the welfare of children⁵⁵ and mandated cooperation between local authorities and relevant agencies⁵⁶ to improve the well-being of children⁵⁷. It is worth noting that the arrangements to be made by those bodies to promote children's wellbeing related to:
 - a. physical and mental health and emotional wellbeing;
 - b. protection from harm and neglect;
 - c. education, training and recreation;
 - d. the contribution made by them to society; and

⁵¹ S.47(1).

⁵² Ss.38A & 44A.

⁵³ As amended by the Children and Social Work Act 2017.

⁵⁴ S.1.

⁵⁵ S.9A.

⁵⁶ Including NHS services and trust, police and probation and young offenders' institutions.

⁵⁷ S.10.

e. social and economic well-being⁵⁸.

12. The duty of cooperation extends beyond local authorities and relevant agencies to “*such other persons or bodies as the authority consider appropriate, being persons or bodies of any nature who exercise functions or are engaged in activities in relation to children in the authority’s area*”⁵⁹. That will include voluntary organisations such as NGBs, sports bodies and clubs.

13. CA 2004 also mandated the creation by local authorities of Local Safeguarding Children Board (LSCB). A LSCB is a multi-agency body set up in every local authority. Each LSCB had an independent Chair, who does not work for social services. It comprised representatives from the local authority and relevant agencies including police, health services, probation, and local youth offending team. The LSCB’s role was to coordinate action to safeguard and promote the welfare of children in its area. It was amended by the Children and Social Work Act 2017 replacing LSCBs with local safeguarding partners.

14. The CA 2004 was accompanied by a strategy document “*Every Child Matters: Change for Children 2004*”. That was a response to the appalling death of Victoria Climbié who was tortured and murdered by her great-aunt and her partner and the subsequent enquiry into her death by Lord Laming. The most recent incarnation is “*Working Together to Safeguard Children*” published in July 2018. We look at that next.

(3) Working Together to Safeguard Children 2018

15. ‘*Working Together to Safeguard Children 2018*’ (WTSC) was published by HM Government in July 2018. As the introduction makes clear “*everyone who comes into contact with children has a role to play*” in keeping them safe. It was issued under a number of statutory provisions including the CA 2004⁶⁰. It sets out what organisations

⁵⁸ S.10(2).

⁵⁹ S.10(1)(c).

⁶⁰ Ss.10(8), 11(4), 16B(7), 16C(2), 16K, 16Q; as well as s.7 Local Authority Social Services act 1970 and s.175(4) Education Act 2002.

and agencies who work with children must and should do to safeguard and promote the welfare of all children and young people under the age of 18 in England. As WTCS declares, everyone who comes into contact with children and families has a role to play in sharing information and identifying concerns and making the appropriate referrals⁶¹.

16. Chapter 2 sets out how organisations and agencies should take a coordinated approach to ensure children are effectively safeguarded. It expressly states that every voluntary organisation, charity, or social enterprise (VCSE) which provides sport should have arrangements in place to comply with its safeguarding responsibilities⁶². The CA 2004 places duties on a range of organisations, agencies and individuals to ensure their functions, and any services that they contract out to others, are discharged having regard to the need to safeguard and promote the welfare of children. Paragraphs 63 and 64 of Chapter 2 states:

“63. There are many sports clubs and organisations including voluntary and private sector providers that deliver a wide range of sporting activities to children. Some of these will be community amateur sports clubs, some will be charities. All should have the arrangements described in this chapter in place and should collaborate to work effectively with the safeguarding partners as required by any local safeguarding arrangements. Paid and volunteer staff need to be aware of their responsibilities for safeguarding and promoting the welfare of children, how they should respond to child protection concerns and how to make a referral to local authority children’s social care or the police if necessary.”

*64. All National Governing Bodies of Sport, that receive funding from either Sport England or UK Sport, must aim to meet the Standards for Safeguarding and Protecting Children in Sport”.*⁶³

17. There is also a useful WTSC guide to the statutory framework relevant to safeguarding and promoting the welfare of children. It includes reference to Education Acts, Crime and Disorder Act 1998, Housing Act 1996, Childcare Act 2006, Police Reform and Social

⁶¹ See Introduction, §§17, 23-26.

⁶² Chapter 2, s62.

⁶³ NSPCC CPSU. ‘Standards for Safeguarding and Protection Children in Sport’. CPSU website. (<https://thecpsu.org.uk/resource-library/tools/standards-for-safeguarding-and-protecting-children-in-sport/>). [Accessed: 21 December 2020].

Responsibility Act 2011 and Legal Aid, Sentencing and Punishment of Offenders Act 2012 the provisions of which are unlikely to be of immediate use by or relevance to investigators.

(4) Children and Social Work Act 2017

18. It is convenient at this stage to mention the Children and Social Work Act 2017 (CSWA). The CSWA amended both the CA 1989 and CA 2004. It made several significant changes for safeguarding at both local and national levels. Its key safeguarding provisions are threefold.
19. First, the Child Safeguarding Practice Review Panel was established to review and report on serious child protection cases that are complex or of national importance⁶⁴.
20. Second, the LSCBs were replaced by local safeguarding partners, namely the local authority, any Clinical Commissioning Groups operating in the area and the Chief Officer of Police who will make safeguarding arrangements that respond to the needs of children in their area. Their main responsibilities are:
- a. to involve 'relevant agencies' in their area;
 - b. to identify and supervise the review of serious safeguarding cases in their area;
 - c. to publish their local safeguarding arrangements; and
 - d. to arrange for independent scrutiny of their local safeguarding arrangements.
21. To publish a report every 12 months on what they and the relevant agencies have done as a result of the local safeguarding arrangements and how effective the arrangements have been in practice⁶⁵.

⁶⁴ S.16A-D.

⁶⁵ S.16E-L.

22. Finally, child death review partners are required to review each death of a child normally resident in their area and identify matters that are relevant to public health and safety and children locally⁶⁶. The purpose of the review is to:

- a. identify any matters relating to the death or deaths that are relevant to the welfare of children in the area or to public health and safety; and
- b. consider whether it would be appropriate for anyone to take action in relation to any matters identified.

(5) Sexual Offences Act 2003

23. The Sexual Offences Act 2003 (SOA) came into force on 1 May 2004 and applies to all offences committed after that date. The commission or alleged commission of criminal offences will remain primarily for the police. However, it is possible that investigators will be required to investigate the possible commission of such offences. That may occur where police have, for whatever reason, decided not to charge a suspect.

24. The SOA is divided into two parts. Part 1 sets out the sexual offences. Part 2 contains the notification requirements (commonly and incorrectly) called the Sex Offenders' Register) and other orders. This is not the place for a detailed examination of the SOA. As we have observed, cases of this kind will be principally for police to investigate. Of particular note in the context of safeguarding in sport, the SOA has three categories of offences against children:

- a. offences against children under 13;
- b. offences against children under 16; and
- c. offences against children under 18.

25. The latter category, offences against children under 18, may give rise to particular issues, not least because the age of sexual consent in this country is 16. These offences concern principally the situation where a child has given consent to the sexual activity, but that consent is irrelevant because of the nature of the relationship between victim and abuser.

⁶⁶ S.16M-P.

26. Sections 25-27 create familial child sex offences. Sections 16-19 create sexual offences where the abuser is in a position of trust vis-à-vis the victim. Positions of trust are defined in sections 21 and 22 and include looking after persons in educational establishments or residential settings. Sports coaches, instructors or helpers are not expressly included. Sports coaches may hold a position of trust for the purposes of the SOA, if, for example, they are also employed in a school' They will not be included if they only coach in a private club. The NSPCC's "*view is that because of the vulnerability of young people and the particular circumstances of sport that the legislation should be extended to roles and settings within sports*"⁶⁷.

27. However, even if the sexual conduct is not criminal (i.e. does not amount to an offence within sections 16-19 of the SOA), it may give rise to legitimate safeguarding concerns. The relevant safeguarding policy and procedure will guide the investigator. But the touchstones should include the age differential between adult and child; the need to protect young people aged 16 and 17 who, despite reaching the age of consent for sexual activity, may be vulnerable to sexual abuse and exploitation, by those who occupy positions of authority over them; and an assessment of risk posed by the adult.

28. In the context of adult safeguarding, investigators will note that the SOA provides protection for persons with mental disorders. There are three categories of offences for vulnerable persons:

- a. offences against persons with a mental disorder impeding choice⁶⁸;
- b. offences where there are inducements, threats or deception to persons with a mental disorder⁶⁹; and
- c. offences by care workers against persons with a mental disorder⁷⁰.

⁶⁷ CPSU. 'CPSU Briefing: Preventing Abuse of Positions of Trust in Sport'. CPSU website. (<https://thecpsu.org.uk/media/2489/preventing-abuse-of-position-of-trust-jan15.pdf>). [Accessed: 21 December 2020].

⁶⁸ Ss.30-33.

⁶⁹ Ss.34-37

⁷⁰ Ss.38-41.

29. The SOA draws a distinction between those persons who have a mental disorder impeding choice⁷¹; those who have the capacity to consent to sexual activity but who have a mental disorder that makes them vulnerable to inducement, threat or deception; and those who have the capacity to consent to sexual activity but who have a mental disorder and are in a position of dependency upon the carer. Mental disorder is as defined the Mental Health Act 1983⁷², as amended by the Mental Health Act 2007, namely “*any disorder or disability of the mind*”⁷³.

(6) Care Act 2014

30. The Care Act 2014 (CA 2014) creates a single, consistent route for establishing an entitlement for all adults with needs for care and support, called adults at risk⁷⁴. It makes provision for protecting adults from abuse or neglect. An adult at risk is any person who is aged 18 years or over and at risk of or experiencing abuse or neglect because of their needs for care and/or support and as a result of those needs is unable to protect themselves from the abuse or neglect or the risk thereof.

31. An adult with care and support needs may be a person with physical disability, learning disability or sensory impairment. They may have mental health needs or may have a long-term health condition. People with care and support needs are not inherently vulnerable but may come to be at risk of abuse at any point due to deteriorating health, being socially isolated and not having support networks.

32. The CA 2014 identified the following conduct which may give rise to a safeguarding concern: physical abuse, sexual abuse, psychological/emotional abuse, financial abuse and neglect, including self-neglect. The latter includes ignoring medical or physical needs, failure to provide access to appropriate health social care or educational services,

⁷¹ Unable to refuse because of or for a reason related to a mental disorder. A person is unable to refuse if they lack the capacity to choose to agree, engage, be present or watch or is unable to communicate such choice - see ss.30(2), 31(2), 32(2) and 33(2).

⁷² S.1.

⁷³ S.79(6).

⁷⁴ Replacing those who used to be referred to as Vulnerable Adults.

and the withholding medication, adequate nutrition and heating. It may also include discrimination (the different treatment based on race, gender or disability or any protected characteristics) or bullying, which may be physical, emotional, verbal or online. Abusive behaviour can be assessed on a scale from poor practice to bad practice to abuse.

33. An adult at risk may be vulnerable to extremism and 'mate crime', where they are befriended by people who exploit and take advantage of them and/or abuse them in other ways.

34. The CA 2014 made adult safeguarding a key responsibility of local authorities. The Act required local authorities to:

- a. make enquiries, or ask others to make enquiries, when they think an adult at risk has need for care or support or may be at risk of abuse or neglect to decide whether action to be taken in respect thereof and if so by whom⁷⁵. Such enquiry may lead to a number of outcomes, including to prosecution if abuse or neglect is proven. In other cases, the risk of abuse may be tackled, but the adult may have other care and support needs which require different services and may lead to a needs assessment or review of an existing care and support plan.
- b. set up a Safeguarding Adults Boards⁷⁶ (SAB) in their area. The Act requires SABs to meet regularly to discuss and act upon local safeguarding issues; to develop shared plans for safeguarding, working with local people to decide how best to protect adults in vulnerable situations; and to publish this safeguarding plan and report to the public.
- c. where there has been a safeguarding failure⁷⁷ arrange a safeguarding adults review.

35. Investigators should be alive to the potential for a section 42 safeguarding enquiry for an adult at risk in the sporting environment. However, if an adult who is able to protect themselves, despite having care and support needs then a local authority safeguarding

⁷⁵ S.42.

⁷⁶ S.43.

⁷⁷ As defined in s.44.

response or intervention from statutory services may not be appropriate. In all cases consideration should be given to the wishes and preferences of the person concerned and where possible before any enquiry is undertaken consent for referral should be sought. The related issue of capacity may be engaged (as to which see below).

36. A section 42 safeguarding enquiry must take place if there is reason to believe that abuse is taking place or is at risk of taking place; and the local authority believes that an enquiry is needed to help it decide what action to take to support and protect the person in question. The circumstances of each individual case will determine the scope of each enquiry as well as who leads it and what form it takes.

37. The views and wishes of the adult at risk are paramount if there are risks to others within a particular setting or circumstance then the wishes of the individual would not be the sole consideration.

(7) Mental Capacity Act 2005

38. The Mental Capacity Act 2005 (MCA) provides a statutory framework in England and Wales for people who lack capacity to make decisions for themselves; or who have capacity and want to make preparations for a time when they may lack capacity in the future. It sets out who can take certain decisions, in which situations, and how they should go about this.

39. The issue of capacity should be addressed in the NGB's adult at risk policy. It may have particular relevance in cases concerning an Adult at Risk, may lack the mental capacity or ability to make a decision ('capacity'). The potential relevance may occur when investigating a person who lacks or may be suspected of lacking capacity. It may also arise as a consideration where a witness does or may lack capacity.

40. The MCA concerns people who can't make decisions for themselves, perhaps because of:

- a. a learning disability;
- b. Dementia;

- c. a mental health illness;
- d. a head injury or a stroke;
- e. an acute illness or the treatment for it; and/or
- f. a drug, alcohol or substance addiction.

41. The fact a person has any one or more of the above does not mean they *necessarily* lack capacity. It is also important to note that a person may lack capacity to make one type of decision (for example complicated financial matter) but not another. Capacity may fluctuate from time to time. By way of example if it is caused by some external factor such as alcohol or drugs.

42. The 5 principles of the MCA enshrined in Section 1 are:

- a. a person must be assumed to have capacity unless it is established that they lack capacity.
- b. a person is not to be treated as unable to make a decision unless all practicable steps to help him to do so have been taken without success.
- c. a person is not to be treated as being incapable to make a decision merely because they make an unwise decision. If they have capacity, they are free to make bad decisions.
- d. an act done, or decision made, under this Act for or on behalf of a person who lacks capacity must be done, or made, in his best interests.
- e. before the act is done, or the decision is made, regard must be had to whether the purpose for which it is needed can be as effectively achieved in a way that is less restrictive of the person's rights and freedom of action.

43. For the purposes of the MCA, a person is unable to make decisions if they are unable to:

- a. understand the information relevant to the decision;
- b. retain that information;
- c. use or weigh that information as part of the process of making the decision; or

- d. communicate his decision (whether by talking, using sign language or any other means)⁷⁸.

44. Investigators will want to ensure that all steps have been taken to enable people to participate, such as giving a statement to assist an investigation. Therefore, the investigator will want task themselves such questions as:

- a. could information be explained or presented in a way that's easier for them to understand (for example, by using simple language or visual aids)?
- b. have different methods of communication been explored, such as non-verbal communication?
- c. could anyone else help with communication, such as a family member, carer or advocate?
- d. are there particular times of day when the person's understanding is better?
- e. are there particular locations where the person may feel more at ease?
- f. could the decision be delayed until they might be better able to make the decision?

45. Consideration of mental capacity is important at all stages of adult safeguarding. It provides a framework for decision-making, balancing independence and protection. For example, it could mean determining the ability of an adult at risk to make informed choices about choosing to remain in a situation where they risk abuse; determining whether a particular act is abusive or consensual; or determining how much an adult at risk can be involved in making decisions in a given situation.

46. All major decisions where a person lacks mental capacity are covered by the Act, from how their finances are managed to whether or not they have medical treatment. One must not discriminate or make assumptions about someone's ability to make decisions and should not pre-empt a best-interest decision merely on the basis of a person's age, appearance, condition, or behaviour.

⁷⁸ MCA s3.

47. The lack of capacity is not a barrier to safeguarding. Expert advice should be sought to ensure individual rights, wishes and feelings are central to the safeguarding process. If a person has been assessed as lacking capacity then any action taken, or any decision which needs to be made for or on behalf of that person, it must be made in their best interests⁷⁹. The person who has to make the decision is known as the ‘decision-maker’ and often will be the carer responsible for the day-to-day care, or a professional such as a doctor, nurse or social worker where decisions about treatment, care arrangements or accommodation need to be made.

(8) Safeguarding Vulnerable Groups Act 2006 and Protection of Freedoms Act 2012

48. It is convenient to look at these together and the related topic of the Disclosure and Barring Service (DBS). The Safeguarding Vulnerable Groups Act 2006 (SVGA) declared that it was an “*Act to make provision in connection with the protection of children and vulnerable adults*”. It was introduced to address failings in child protection measures, vetting and information sharing. The SVGA established a new vetting and barring scheme. It created Independent Safeguarding Authority (ISA), which was then responsible for deciding who should be barred from working with children or certain adults. It established the Children’s Barred List and Adults’ List, the latter protecting persons known as Vulnerable Adults. It also introduced the concept of regulated activity.

49. The SVGA was amended by the Protection of Freedoms Act 2012 (PFA). The key changes are summarised in guidance published by HM Government:

- a. new definition of regulated activity;
- b. repeal of controlled activity;
- c. repeal of registration and continuous monitoring;
- d. repeal of additional information;
- e. minimum age (16) at which someone can apply for a CRB check;

⁷⁹ See above.

- f. more rigorous 'relevancy' test for when the police release information held locally on an enhanced CRB check⁸⁰.

50. The guidance states:

"Vigilant, ongoing, day-to-day management is crucial, in order that unusual or concerning behaviour is picked up at the earliest opportunity. Safe, careful recruitment makes an important contribution. You are best placed to decide if someone is suitable for the role that you have and in doing so it is crucial that you take all sensible steps to identify the right person – including undertaking reference checks and conducting face to face interviews. All of this is just as important as a CRB check⁸¹."

51. ISA and Criminal Records Bureau (CRB) merged on 1 December 2012 to become the DBS.

52. The effect of the PFA was to share the onus for safeguarding between the state and the organisations who engage people to 'work' with vulnerable groups (including children) such as employers, voluntary organisations and charities. It created not insignificant responsibilities for NGBs and sports organisations, including clubs. It also placed duties upon the same. It is not necessary to look at them in depth, for they do not arise directly in the context of investigations. However, investigators should be aware of them in general terms.

- a. It is an offence for:
 - i. a person to seek or offer to engage or to engage in regulated activity from which he is barred⁸²; or
 - ii. a person to permit another to engage in regulated activity from which he is barred⁸³.

⁸⁰ HM Government. 'Changes to disclosure and barring: what you need to know'. May 2012. (https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/118974/leaflet-england-wales.pdf). [Accessed: 24 December 2020] (page 4).

⁸¹ Ibid., p3.

⁸² SVGA, s.7(1).

⁸³ Ibid., s.9(1).

- b. an organisation must refer to the DBS a person if it removes them from regulated activity because they have or may cause harm to a child or adult at risk⁸⁴;
- c. an organisation may request disclosure from the DBS on individuals.

53. Regulated Activity with children is defined in the SVGA, as amended by the PFA. In summary, an individual will fall within the definition where: (a) his/her duties include teaching, training, instructing, caring for, supervising or providing guidance or advice on wellbeing to a child or driving a vehicle (on behalf of an organisation) only for children; and (b) such duties happen frequently (for example once a week or more often) or intensively (for example on 4 or more days in a 30-day period, or overnight); and (c) The individual carrying out any of the duties described in (a) and (b) above is unsupervised except for paid roles in specified places.

54. Regulated Activity relating to adults is split into six different categories, based on the type of work they involve: (1) Providing healthcare (2) Providing personal care (3) Providing social work (4) Assistance with general household matters (5) Assisting with a person's own affairs and/or (6) Conveying a person to a place of social work or care. Unlike certain regulated activities involving children, these activities are regulated regardless of how many times and how often a person engages in them.

55. The effect of those provisions is reflected in the DBS regimes employed by many NGBs and other sports organisations. By way of example, requiring persons who coach, train or otherwise engaged with children or adults at risk to undertake DBS checks before doing so, whether they are employees or volunteers. Employers may make it a condition of the application process. The DBS check will be part of the organisation's assessment of a person's suitability to undertake a particular role.

56. The types of DBS check are as follows:

- a. a basic check, which shows unspent convictions and conditional cautions;
- b. a standard check, which shows spent and unspent convictions, cautions, reprimands and final warnings;

⁸⁴ Ibid., s.35.

- c. an enhanced check, which shows the same as a standard check plus any information held by local police that's considered relevant to the role; or
- d. an enhanced check with a check of the barred lists which shows the same as an enhanced check plus whether the applicant is on the adults' barred list, children's barred list or both.

57. The nature of the check required depends upon the role the person is fulfilling or undertaking. There is no official expiry dates on DBS certificates though it is not uncommon for organisations to require renewal every three years.

58. Of relevance in this context is the Rehabilitation of Offenders Act 1974 (ROA). Its purpose is to:

"...rehabilitate offenders who have not been reconvicted of any serious offence for periods of years, to penalise the unauthorised disclosure of their previous convictions, to amend the law of defamation, and for purposes connected therewith."

59. It makes spent convictions after the passage of time. Once a conviction is spent, it has certain consequences for the individual. For example, they may be treated as having never committed the offence and it may not be disclosed as part of a criminal record check. There is also a process known as "filtering" which the DBS uses to identify protected convictions and cautions and ensure that they are not disclosed on DBS certificates.

60. However, there are also limitations on rehabilitation. A sentence of imprisonment exceeding forty-eight months results in a conviction which will never be spent. Further, the ROA does not apply to criminal proceedings. For example, a spent conviction may be admissible in subsequent criminal proceedings.

61. Further, if the position/occupation is covered by the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 but not subject to a disclosure by the DBS, the employer is entitled to ask about, and receive information about, all spent convictions and cautions. The positions listed in the Exceptions Order mainly relate to particularly sensitive areas

such as work with children or other people in vulnerable circumstances, work in law enforcement and the legal system. They include:

- a. Regulated activity with children and other activities which involve working closely with children such as caring for, training, supervising or being solely in charge of children under 18 (including adoption, fostering, day care and childminding); and
- b. Regulated activity and other activities which involve caring for, training, supervising or being solely in charge of other people in vulnerable circumstances (including social work and advocacy services).

62. The minimum age at which someone can be asked to apply for a criminal record check is 16 years old.

C. The Role of Statutory Authorities

63. The statutory authorities include the Police, Local Authority, Children's Social Care, health professionals and Education.

(1) Local Authority and the Designated Officer

64. Whilst it is parents and carers who have primary care for their children, local authorities, working with partner organisations and agencies, have specific duties to safeguard and promote the welfare of all children in their area. Section 17 of the CA 1989 puts a duty on the local authority to provide services to children in need in their area. Section 47 of the CA 1989 requires local authorities to undertake enquiries if they believe a child has suffered or is likely to suffer significant harm. Section 10 of the CA 2004 imposes upon a local authority a duty to make arrangements to promote co-operation between itself and organisations and agencies to improve the wellbeing of local children. Pursuant to the same Act, the police, clinical commissioning groups and the local authority are under a duty to make arrangements to work together, and with other partners locally, to safeguard and promote the welfare of all children in their area.

65. NGBs and investigators will need to work with the statutory agencies when safeguarding issues arise. It may be by referring a serious matter to police for them to investigate. It

may by referring a case to the local authority and/or by providing written information for child protection case conferences.

66. Every local authority has a Local Authority Designated Officer (LADO). The LADO is responsible for managing child protection allegations made against those who work with children. The LADO ensures that all allegations or concerns about professionals or adults working or volunteering with children are recorded appropriately, monitored and progressed in a timely and confidential way.

67. The LADO also provides advice and guidance to employers and voluntary organisations. They will liaise with police and other agencies and monitor the progress of cases. Sporting bodies should, under section 11 of the Children Act 2004, notify the LADO of all cases where it is alleged a person who works with children has:

- a. behaved in a way that has harmed, or may have harmed, a child;
- b. possibly committed a criminal offence against children, or related to a child; and/or
- c. behaved towards a child or children in a way that indicates they do or may pose a risk of harm to children.

68. The LADO will offer an initial evaluation of the concern. They will also offer advice and guidance as to the most appropriate way to manage the allegation and whether the referral meets the criteria for their involvement. It may be that the allegation or concern does not satisfy the conditions for involvement, in which case it will be referred to the sporting body to undertake their own safeguarding investigation. If the criteria are satisfied the LADO may co-ordinate a strategy meeting between the police, health and the local authority and initiate child protection procedures in order to decide what immediate safeguarding action needs to be taken.

(2) Police

69. Allegations may be referred to the police for two reasons:

- a. to consider the need to investigate an alleged crime; or

- b. to enable information sharing and aid decision-making relating to potential risk to children.

70. The nature of allegations or concerns vary significantly. Inappropriate behaviour towards a child or adult at risk should be taken seriously. However, even if an allegation may technically meet the definition of a crime, for example an assault, a criminal investigation may seem a disproportionate response. There is also a need to distinguish between allegations of assault and the legitimate use of physical intervention or restraint to protect a child or adult at risk from harming themselves or others, or damaging property. It should also be recognised that police may be thought to be experts when conduct amounts to crime; and they should have ready access to expert advice in that regard.

71. Female Genital Mutilation (FGM) is illegal in England and Wales under the Female Genital Mutilation Act 2003 (FGMA). It is a form of child abuse and violence against women. Section 5B of the 2003 Act introduces a mandatory reporting duty which requires regulated health and social care professionals and teachers in England and Wales to report 'known' cases of FGM in under 18s which they identify in the course of their professional work to the police⁸⁵. "*Known*" cases are those where either a girl informs the person that an act of FGM –has been carried out on her, or where the person observes physical signs on a girl appearing to show that an act of FGM has been carried out and the person has no reason to believe that the act was, or was part of, a surgical operation⁸⁶. The duty does not apply in relation to at risk or suspected cases or in cases where the woman is over 18. In these cases, local safeguarding procedures should be followed.

D. General Data Protection Regulations, Record Keeping & Information Sharing

72. Data protection is about safeguarding the storage and use of data. If you hold information about individuals for any reason other than your own personal, family or household purposes, you will need to comply. The UK data protection regime is set out in the Data

⁸⁵ In force 31 October 2015.

⁸⁶ As defined by s1(2)(a) (b).

Protection Act 2018 (DPA), along with the General Data Protection Regulations 2018 (GDPR). NGBs should have policies and/or guidance on the retention, storage and destruction of information.

73. The DPA sets out the framework for data protection law in the UK. The GDPR sets out the core principle, obligations and rights. The GDPR was effective in the UK from 25 May 2018 and it sets out the key principles, rights and obligations for most people and organising processing of personal data. There are exceptions. There are substantial fines for breaching the DPA/GDPR provisions.

74. A discussion of the ambit of the DPA and GDPR is beyond the scope of this work. This is no more than an overview and expert advice should always be taken where issues arise concerning the use or retention of data.

75. "*Personal data*" means any information relating to an identified or identifiable natural person (the "data subject"). "*Special categories*" of data includes reference to personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, trade union membership or sex life. The GDPR covers the processing of personal data in two ways:

- a. personal data processed wholly or partly by automated means (that is, information in electronic form); and
- b. personal data processed in a non-automated manner which forms part of, or is intended to form part of, a 'filing system' (that is, manual information in a filing system).

76. Obligations under the GDPR will vary depending on whether one is the data controller, joint controller or processor. Controllers have the highest level of compliance responsibilities: they must comply with all the data protection principles as well as the other GDPR requirements. They are responsible for the compliance of their processors.

77. A "*data controller*" is the person that decides how and why to collect and use the data. This will usually be an organisation but can be an individual. Where an employee is

acting on behalf of your employer, the employer is the controller. The data controller must make sure that the processing of that data complies with data protection law.

78. *“Processing”* means almost anything done with data including collecting, recording, storing, using, analysing, combining, disclosing or deleting it. A *“processor”* is a separate person or organisation (not an employee) who processes data on behalf of the controller and in accordance with their instructions. Processors have some direct legal obligations, but these are more limited than the controller’s obligations.

79. Article 5 of the GDPR sets out seven key principles at the heart of the general data protection regime. Article 5.1 provides:

“(a) processed lawfully, fairly and in a transparent manner in relation to individuals (‘lawfulness, fairness and transparency’);

(b) collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes; further processing for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes shall not be considered to be incompatible with the initial purposes (‘purpose limitation’);

(c) adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed (‘data minimisation’);

(d) accurate and, where necessary, kept up to date; every reasonable step must be taken to ensure that personal data that are inaccurate, having regard to the purposes for which they are processed, are erased or rectified without delay (‘accuracy’);

(e) kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the personal data are processed; personal data may be stored for longer periods insofar as the personal data will be processed solely for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes subject to implementation of the appropriate technical and organisational measures required by the GDPR in order to safeguard the rights and freedoms of individuals (‘storage limitation’);

(f) processed in a manner that ensures appropriate security of the personal data, including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage, using appropriate technical or organisational measures (‘integrity and confidentiality’).”

80. The DPA is split into a number of different parts, which apply in different situations and perform different functions. It sets out four separate data protection regimes. Part 2, Chapter 2 of the DPA set out the general processing system and it will be the relevant one for most organisations.
81. As many people know, subject to exemptions or restriction, individuals have the right to access and receive a copy of their personal data, and other supplementary information. This is commonly referred to as a subject access request or 'SAR'.
82. The DPA and GDPR do not prevent storage of information for safeguarding purposes. However, organisations and investigators must comply with the relevant data protection law. They will need to know whether they are a controller or a processor and the extent to which and how the statutory regime affects them. It is essential that investigators keep accurate records. That is especially so when recording disclosure from a child or adult at risk. A written record of a disclosure should contain all the essential detail.
83. Safeguarding records must be kept confidential and secure. As is clear from Article 5(1)(g) security is a key principle of processing personal data. There must be appropriate security to prevent personal data being accidentally or deliberately exposed.
84. There should be a file for each child or adult at risk and for each case in respect thereof. There should be appropriate cross-referencing to other files, including their general file (if there is one). The records must be stored securely. By way of example, in a locked cabinet or safe if in paper form; if electronic then password protected files and devices and appropriate encryption.
85. The DPA and GDPR do not prevent necessary information sharing, which is a vital aspect of effective safeguarding. However, such must be done in accordance with the law. The circumstances in which such information can legitimately be shared and to whom and whether or not the subject's consent is required are all catered by the DPA/GDPR framework. The WTSC contains valuable advice and its five myths (each of which is false) are a useful starting point:
- a. data protection legislation is a barrier to sharing information;

- b. consent is always needed to share personal information⁸⁷;
- c. personal information collected by one organisation cannot be disclosed to another;
- d. the common law duty of confidence and the human rights act 1988 prevent the sharing of personal information;
- e. IT systems are often a barrier to effective information sharing.

86. Investigators should be open and honest with the individual (and/or their family where appropriate) from the outset about why, what, how and with whom information will, or could be shared, and referral made and seek their agreement, unless it is unsafe or inappropriate to do so.

⁸⁷ As the WTSC rightly observes, wherever possible consent should be sought and the reasons for disclosure explained.

APPENDIX C

LIST OF TEMPLATES

- Form 1 - Investigation Plan
- Form 2- Investigation Case Log
- Form 3 - Witness management Strategy
- Form 4- Witness Statement Form
- Form 5- Advanced Disclosure Schedule
- Form 6 - Interview Plan (for Subject of Concern)
- Form 7 - Interview Schedule (for Subject of Concern)
- Form 8 - Exhibit List
- Form 9 - Final Report



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