Bird & Bird Guide to *Safeguarding Regulation in Sport*

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Contents

Welcome to this Bird & Bird Guide to *Safeguarding Regulation in Sport...*

The importance of safeguarding[1] in sport is something that many sports organisations[2] clearly recognise - and increasingly so over recent years. However, despite such recognition, safeguarding remains an underdeveloped area of sports regulation that, for many sports organisations, is very challenging to get right. In our experience, sports organisations often struggle with their responses to cases involving abuse and with situations in which participants might present a risk of harm to others. We have put together this guide with a view to helping sports organisations address such cases.

1. 'Safeguarding' means, per the IOC's 2024 definition (IOC consensus statement: interpersonal violence and safeguarding in sport), "all proactive measures to both prevent and appropriately respond to concerns related to harassment and abuse in sport as well as the promotion of holistic approaches to athlete welfare". The IOC defines 'Safe Sport' (also per the 2024 consensus statement) as "A physically and psychologically safe and supportive athletic environment where participants can thrive and experience the full benefits of sport participation". 'Safeguarding' and 'Safe Sport' are therefore not the same thing, and 'Safe Sport' can perhaps be viewed as the ultimate aim of 'safeguarding'.

2. Throughout this guide we refer to 'sports organisations', by which we principally refer to those organisations in sport that do, should or may wish to adopt safeguarding regulations (or otherwise have regard to them). These will typically include International Federations, National (and, where applicable, State) Federations, sports teams, and event organisers.

Why is effective safeguarding regulation such a *challenge for sport?*

There are many reasons why effective safeguarding regulation can be so challenging for sports organisations, including (not exhaustively):

- Cases involving allegations of abuse, particularly of the most serious kind, are inherently difficult in terms of their subject matter and correspondingly difficult to address in a way that is both effective in alleviating risks of future harm, while also ensuring that the process does not cause any further harm to the victims/survivors of abuse.
- Historically at least, sports organisations have not been set up to handle cases of abuse, which require a markedly different approach when compared to sports disciplinary cases - including in respect of processes/procedures and skillsets. The very important distinction between 'disciplinary' and 'safeguarding' cases is explained below.
- Based on the way that many sports organisations have addressed (or failed to address) cases concerning abuse in the past, there is an understandable scepticism among the wider sports ecosystem (including, most significantly, victims/survivors of abuse) that sports organisations are capable of effective regulation in this area.
- Unlike other areas of sports regulation, most notably anti-doping and the WADA Code, there is no uniform or even widely adopted approach to the regulation of safeguarding in sport. While there is existing guidance available[3] there is, for example, no universal code setting out the scope of what safeguarding regulation should cover, the approach to handling cases of abuse, or what steps should be taken where a participant might present a risk of harm to others.
- Unfortunately, while the position will of course vary (significantly) between sports organisations, the practical reality is that the resources available for safeguarding are often limited (even the largest sports organisations have finite resources). While we can perhaps expect that additional resources may be made available as sports organisations increasingly recognise the importance of effective safeguarding, current constraints inevitably present operational challenges in practice.

3. For example, in some countries, template safeguarding policies are available for adoption by sports organisations (such as in the UK and Australia, produced by the NSPCC Child Protection in Sport Unit and Sport Integrity Australia respectively).

Why is it important to have *effective* safeguarding regulation in sport?

It is clearly very important that sports organisations seek to deliver effective safeguarding regulation, including because (again, not exhaustively):

- There is an overwhelmingly clear moral imperative to provide a safe environment to participate in sport, particularly for those who might be more vulnerable to harm, including children and adults who might be at a greater risk of harm (e.g., because of their clinical needs or individual circumstances, such as where there is risk of abuse of the athlete/coach relationship).
- If a sports organisation does not operate a sufficiently safe environment in which to participate then that carries clear reputational risk, which might in turn (among other things) (1) have an adverse impact on participation numbers, and (2) potentially discourage commercial partners and investment into the sport. In addition to the clear moral imperative, there are therefore sound sporting and commercial reasons for a sports organisation to ensure it has an effective approach to safeguarding, including ensuring the long-term development and sustainability of the sport.
- There is a risk of legal liability if things go wrong. Abuse in sport is an obvious foreseeable risk, so where abuse occurs and a sports organisation has not taken sufficient steps to mitigate and respond to that risk, legal action could follow (e.g., in the form of a negligence/liability claim).

Points to note in reading this Guide to *Safeguarding Regulation in Sport*

In presenting this guide, in which we set out some of our views on good/best practice in respect of safeguarding regulation in sport, we wish to note the following important points at the outset:

- We have put together this guide based on our many years of experience in advising sports organisations in respect of safeguarding regulation and the handling of safeguarding cases (which has been informed by our wider expertise in sports regulation). In doing so, we do not purport to have all the answers, and we ourselves are constantly seeking to continue to learn and improve. Safeguarding regulation in sport is quickly evolving, and healthy debate among stakeholders is to be actively encouraged. If this guide prompts debate and development in this area, we welcome that.

- An effective approach to safeguarding requires a multi-disciplinary effort. In particular, it requires the experience of those who have an understanding of risk and trauma, both in respect of abuse and the possibility of further trauma (or re-traumatisation) that safeguarding cases might themselves present (in respect of investigation, procedure, and any proceedings). In advising sports organisations, we have developed an extensive network of independent professionals who support our work and that of our clients. Working alongside others, we recognise that our main roles are to

  1. inform, draft, and review safeguarding policies,
  2. inform, draft, and review safeguarding regulations (addressing substantive conduct and procedure), and
  3. act and advise in respect of case management (i.e., the investigation and presentation of cases, including appeals).

- In putting together safeguarding policies, procedures etc., meaningful stakeholder engagement is exceptionally important. This is most succinctly expressed through the slogan “nothing about us without us”, meaning (in this context) that no policy or regulation should be developed and implemented by a sports organisation without the meaningful and direct participation of its stakeholders, including those who might be significantly affected by the policy or regulation and/or be aware of the effect of the policy or regulation – notably those with lived experience of abuse. While a sports organisation should aim high, it and its stakeholders must have (and share) a clear and realistic expectation of what the sports organisation seeks to achieve and what it is capable of.

A true ‘safeguarding’ approach to cases is fundamentally different in character to a ‘disciplinary’ approach. A disciplinary approach essentially seeks to sanction (punish) participants in sport for breaches of a sports organisation’s rules, i.e., where a participant is “guilty” of (or liable for) a disciplinary offence such as an anti-doping rule violation, or general misconduct.

A safeguarding approach, on the other hand, is not concerned about “guilt” (or liability) but is concerned about managing risk within a sport. The essential question in a true safeguarding case is therefore whether a participant poses risk of harm to others and, if so, what steps should be taken by the sports organisation to manage that risk. Adopting a safeguarding approach to cases has a number of benefits, including that a focus on a ‘live’ risk of harm (i.e., does an individual present a current risk of harm to others?) avoids issues such as retroactive application of rules (in a disciplinary context, alleged conduct will generally be caught only if rules prohibiting that conduct were in place at the time the alleged conduct took place) and limitation periods (i.e., having to bring cases within a certain time from when the alleged conduct took place). An objective focus on risk should also allow for a more constructive/cooperative approach to cases between concerned parties than might be the case in a disciplinary context - because the concern is not about establishing individual “guilt” (or liability) but about the more objective assessment of risk to others. However, it be appropriate in certain cases for the outcomes of cases to have both risk management and punitive elements (as to which, see Section B, paragraph 3(c) below).

Independent expert risk assessments can be an effective alternative to factual investigations and can help determine whether a participant is a risk of harm to others. Independent expert risk assessments can avoid

1. the potentially harmful effects inherent in a factual investigation and/or proceedings, and
2. the difficulties sports organisations might have in proving whether or not abuse has taken place, e.g., where evidence is difficult to get hold of and/or finely balanced (see section E below).

What does this guide to safeguarding regulation in sport *cover?*

This guide addresses the content listed below, which in our experience are the key aspects of safeguarding regulation in sport (some are unique to safeguarding regulations, whereas others are not unique to safeguarding but require particular consideration in a safeguarding context):

This guide includes some model provisions (set out in text boxes below). If a sports organisation intends to adopt (or adapt and adopt) any of the model provisions set out in this guide, care should be taken in ensuring that the ultimate provisions are appropriate for the needs and aims of that specific sports organisation and its stakeholders. Similarly, while this guide has been prepared to be of a universal nature, regard must also always be had to national laws and any other governing legal or regulatory frameworks in which a sports organisation operates.

This guide is also supplemented by

1. links to previous resources that we have produced in respect of safeguarding and safeguarding regulation (see Annex 1), and
2. general information about our safeguarding practice and our key contacts (see Annex 2).

We hope that this guide will serve as a useful tool for all sports organisations and other relevant stakeholders, whether the sports organisation has a national or international scope, and regardless of its experience and available resources. We will look to update this guide from time to time, when necessary, to ensure that its content remains reflective of good/best practice in this important and evolving area of sports regulation.

A Scope of persons covered by safeguarding regulations

1. The scope of safeguarding regulations has two important aspects:
   a. The scope of persons covered by the safeguarding regulations, i.e., against whom a sports organisation might wish to take regulatory action.
   b. The scope of persons that the safeguarding regulations seek to protect.

2. In general terms, the first category should capture all of those who are subject to the jurisdiction of the sports organisation (to cast the widest possible net). Again, in general terms, jurisdiction can be established by express or implied agreement to a sports organisation's rules, and individuals can be bound by rules by virtue of their participation in the sport. Ideally, and to the extent possible, a sports organisation will be able to identify with certainty who is and who is not bound by their rules at any given time, e.g., through records of membership, registration, entry forms etc.

3. The second category can be more focussed. Traditionally, safeguarding regulations in sport have sought to protect (1) children and (2) adults who have been at risk of harm by virtue of their clinical needs (at least in the UK, more historically referred to as 'vulnerable adults' and now commonly referred to as 'adults at risk'). However, the scope of protected persons can be extended beyond that, up to and including all persons who are subject to the jurisdiction of the sports organisation (so that all participants are both bound by the regulations and protected by them). The scope of protected persons within a sports organisation's safeguarding regulations might be informed by things such as the risk profile of the sport and the experience and/or evidence of those who have historically been most vulnerable to harm in the sport, e.g., elite athletes can be included as a specific sub-category of protected person. In practice, resource limitations could also be a relevant consideration, i.e., the wider the net is cast, the greater number of potential cases arising under the regulations, meaning more dedicated resources are likely to be required.

4. For the purposes of the following sections of this guide and its model provisions:

I. 'Participant' is used to refer to the first category of person,

II. 'Protected Person' is used to refer to the second category of person, and

III. 'Participant of Concern' is used to describe a Participant suspected of posing a risk of harm to Protected Persons.

B The ‘harm provision’

1. As set out in the introductory sections to this guide, in our view it is important to note that safeguarding regulation (properly understood) is not principally about the punishment of wrongdoing by those who perpetrate abuse but rather about the management of risk arising from those who might present a risk of harm to Protected Persons (i.e., it is literally about safeguarding others from harm).

2. The main substantive provision of a set of safeguarding regulations, enabling a sports organisation to take regulatory action, should therefore be engaged where a Participant is suspected of posing a risk of harm to others (often because of an abuse allegation, but not necessarily so in all cases). If such a risk is then established, this will ultimately enable a sports organisation to ensure that one or more ‘risk management measures’ are put in place to manage that risk (as to which, see section K of this guide).

Model provision - the ‘harm provision’

No Participant may:

i. engage, or attempt or threaten to engage, in conduct that directly or indirectly harms the physical and/or mental welfare and/or safety of one or more Protected Persons, and/or

ii. pose a risk of harm to the physical and/or mental welfare and/or safety of one or more Protected Persons.

3. There are a few important points to note about the 'harm provision':

a. The factors giving rise to the risk of harm need not arise in a sporting context so long as the evidence suggests that the risk of harm exists in a sporting context. For example, a conviction or caution for a criminal offence that concerns harm to other individuals outside of a sports context (e.g., a conviction for a sexual offence) might serve to evidence a risk of harm in a sports context (because the same conduct/risk could present itself in the sports context).

b. The concern is with a risk of harm to Protected Persons, which means a 'live' (or current) risk of harm. Therefore, as noted in the introductory sections, issues in respect of retroactive application (i.e., conduct taking place prior to the implementation of the safeguarding regulations) and limitation periods (i.e., cases having to be brought within a certain time of an 'offence') that might arise under disciplinary regulations should not arise under safeguarding regulations. The question is whether the available evidence (including evidence of conduct that took place in the past, i.e., prior to the safeguarding regulations coming into effect) suggests that the Participant of Concern poses a current risk of harm to others.

c. Those who have suffered abuse or harm will often rightly seek 'remedy' for the abuse or harm they have suffered. 'Remedy' is a broad and flexible concept, which will (understandably) mean different things to different people. Previous research has shown that victims/survivors almost universally prioritise non-repetition (which is the aim of a safeguarding/risk management approach),[4] but some complainants/victims/survivors[5] (or indeed many or possibly even a significant majority of them) will also want to see perpetrators punished (which is a potential consequence of a disciplinary approach). In that context:

I. while the main consideration should be (in our view) the management of risk in the wider interests of other participants in sport, the model provision above does allow for the 'sanctioning' of abuse in appropriate cases (see part (i), which prohibits harmful conduct), and

II. the effect of a 'risk management measure' might well be very similar to, if not the same as, any 'sanction' that could potentially be issued, e.g., in serious cases of abuse, an abuser is likely to be removed from the sport for a significant or indefinite period.

Moreover, a sports organisation progressing cases through its safeguarding regulations should not, in doing so, close off other routes of remedy that might be available in a particular case (such as disciplinary proceedings, criminal prosecution, or civil action). Again, whatever approach is adopted, it is important that all stakeholders (and in particular complainants/victims/survivors) understand what it is that a sports organisation is seeking to achieve and what can realistically be achieved in any specific case.

4. Centre for Sport & Human Rights' Roadmap to Remedy Output Three: Understanding Remedy, p.12.

5. This Guide uses the term 'complainant' to describe those who have reported abuse/a risk of harm that has not yet been established, and the term 'victim/survivor' to describe those who have been established to have suffered abuse (noting that those who have suffered abuse might describe themselves as a victim or survivor, or something else).

C Supporting provisions

1. The ‘harm provision’ should be supported by other substantive provisions.

2. One particularly important supporting provision concerns the protection of those who

   I. seek to report abuse or other safeguarding concerns (whistleblowers), whether to a sports organisation or third parties (such as the police, local authorities, and other sports organisations), and/or

   II. cooperate with and/or support any related process/procedures/proceedings - whether or not reporting persons come under the jurisdiction of the sports organisation. Such a provision should seek to address circumstances where Participants might seek to discourage others from such reporting, cooperation and/or support, and/or retaliate against them for taking such steps (discouragement or retaliation can come in many forms, such as physical threats to the person or threatening to ‘drop’ an athlete from a team or reduce their playing time).

Model provision - protection in respect of reporting and retaliation

No Participant may:

I. commit any act which threatens or seeks to intimidate another person with the intent of discouraging that person from

   i. the good faith reporting of information that relates to a Participant presenting a risk of harm or a possible breach of these regulations to [SPORTS ORGANISATION], any other sports organisation, law enforcement, local authority, regulatory body, professional disciplinary body, or any other analogous body, and/or

   ii. cooperating with and/or supporting in good faith any process related to such risk of harm or a possible breach of these regulations;

III. retaliate against a person who, in good faith, has (1) provided information that relates to a Participant presenting a risk of harm or a possible breach of these regulations to [SPORTS ORGANISATION], any other sports organisation, law enforcement, local authority, regulatory body, professional disciplinary body, or any other analogous body, and/or (2) cooperated with and/or supported in good faith any process related to such risk of harm or a possible breach of these regulations.

3. Other supporting provisions might include

   I. an obligation to report safeguarding concerns to the sports organisation (although this is a matter that requires careful consideration[6]),

   II. provisions that prohibit complicity in any conduct prohibited by the safeguarding regulations, including attempts to cover up any relevant conduct,

   III. provisions that prohibit knowingly making a false report or otherwise acting in bad faith in matters covered by the safeguarding regulations (although it should be made clear that, absent good reason to the contrary, the sports organisation's starting point will be to assume that individuals are acting in good faith[7]), and (importantly)

   IV. an obligation to cooperate fully and promptly with any investigation carried out by the sports organisation.

4. Imposing an obligation to cooperate fully and promptly on Participants is particularly important in a safeguarding context where a sports organisation is primarily looking to protect others. In that context, it is especially important that a sports organisation obtains, and Participants provide when requested, all relevant information and evidence that a sports organisation might reasonably request, and in such a manner as a sports organisation might reasonably request (e.g., by Participants providing information/documents/records, answering questions at interview, and co-operating in any other manner as might be necessary or desirable). While seeking to enforce an obligation to cooperate will need to be handled appropriately in each case, the obligation should extend to Participants whatever their role in a safeguarding case might be (whether they are engaged as a Protected Person, a Participant of Concern, a witness, or otherwise).

5. Breach of any supporting provision may be treated as a disciplinary matter by a sports organisation and dealt with accordingly.

6. Participants should be motivated to report matters that cause serious damage to their sport (in particular harm or possible harm to others), as reporting such matters (1) helps ensure that serious misconduct does not go unchecked, and (2) can help ensure that others are not seen as somehow complicit in abuse/harm (by failing to report it or concerns relating to it). However, there are potential advantages and challenges to a sports organisation in obliging Participants to make reports to it. Potential advantages include that a reporting obligation should (1) serve to increase awareness of reporting concerns, (2) help identify more cases, and potentially at an earlier stage, and (3) create a higher risk environment for those who might abuse/harm others. Potential challenges include (1) an increased number of unsubstantiated reports and/or poorer quality reports (as a result of those under a duty to report over-reporting), making it harder to distinguish serious cases, (2) the possibility of dissuading those who have suffered harm from disclosing incidents to Participants under a duty to report for fear of their confidentiality being undermined and/or being forced into a process that they do not wish to be part of, (3) the possibility of retraumatising those who have suffered harm/abuse following receipt of a report, and (4) discouraging some who present a risk of harm from seeking help. In considering imposing such an obligation it is also necessary to consider matters such as (1) which Participants should be subject to the obligation, (2) what behaviour should trigger the duty, and (3) what level of knowledge should trigger the duty. The overriding point is that significant consideration should be applied in considering whether and how to impose a reporting obligation on Participants.

7. Various studies have shown that, in the context of sexual assault, there is a 'false report rate' of between 2% and 10%. Insofar as those studies can be applied in a sports/safeguarding context, that is low enough to make the starting point one of belief, but significant enough to emphasise that those against whom reports are made are (of course) entitled to a fair process (or, again insofar as it can be applied in this context, they ought to be presumed "innocent till proven guilty"/proven to present a risk of harm). See Weiser, D.A. (2017). Confronting Myths About Sexual Assault: A Feminist Analysis of the False Report Literature. Family Relations, 66, 46–60: 'Studies from the United States, Australia, New Zealand, and the United Kingdom using such methodologies consistently find that the false report rate is estimated to be between 2% and 10%' (as quoted in Rape Crisis Scotland's 2021 Briefing Note, 'False allegations').

D Provisional suspensions

1. Where there are reasonable grounds to suspect that a Participant poses a risk of harm to others, i.e. they are a Participant of Concern, a sports organisation will want to be able to take steps to manage that risk as soon as it is possible to do so. In many cases, that will involve provisionally suspending the Participant of Concern, either from all participation in the sport or on a more limited basis, subjecting them to restrictions on their participation as appropriate to the case at hand. Such provisional restrictions might include, for example, prohibiting a Participant of Concern from being in contact with others in respect of whom the Participant might present a risk of harm - be that a specific individual or category of individuals (e.g., children), or prohibiting a Participant of Concern from participation without appropriate supervision and/or some form of chaperone.

2. The imposition of a provisional suspension can be done in one of two main ways, subject to appropriate provision in the sports organisation's safeguarding regulations:

   a. The sports organisation can directly issue a provisional suspension by way of executive decision.

   b. The sports organisation can apply to a separately constituted, ideally independent, decision-maker or decision-making body to issue a provisional suspension.

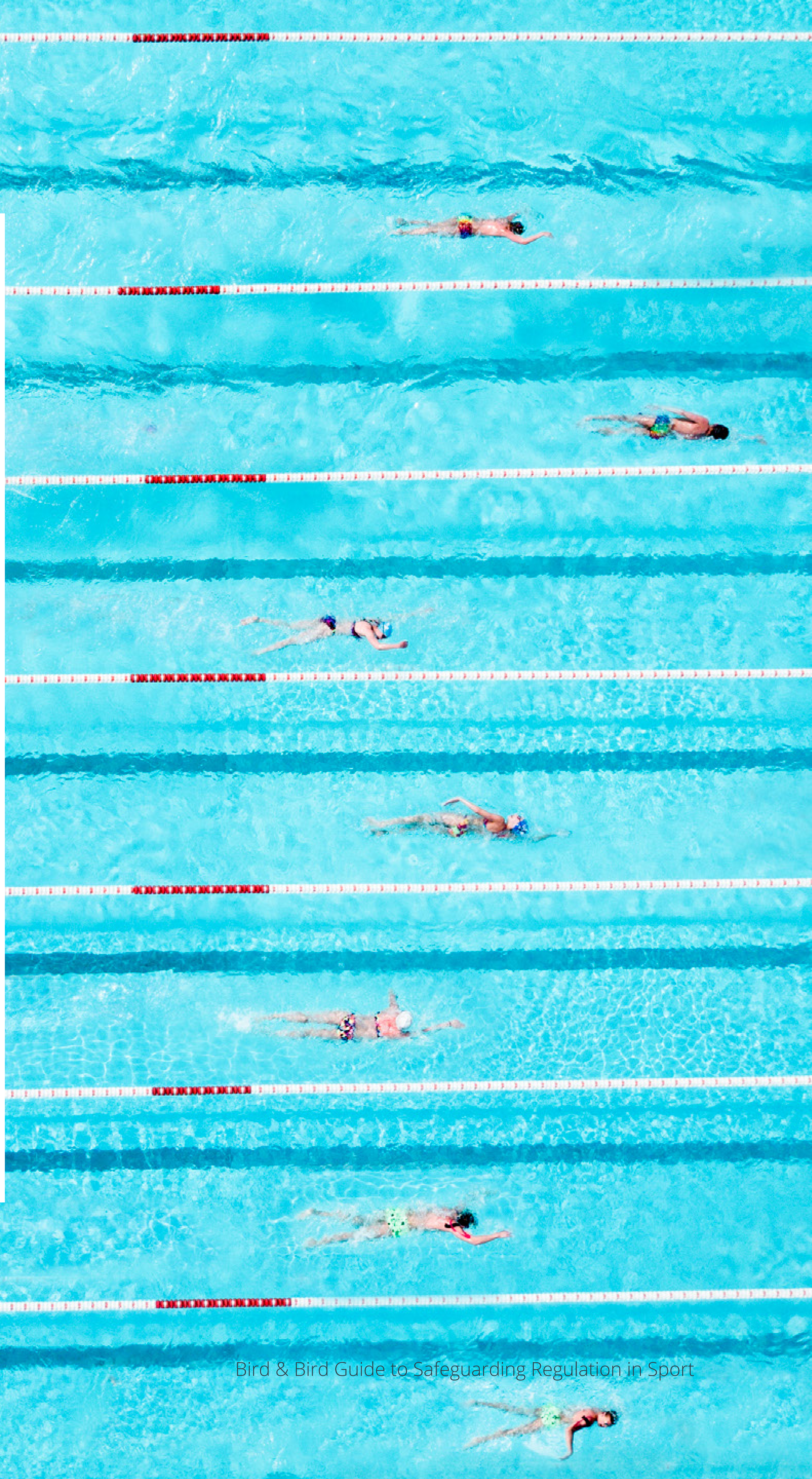
3. The specific way in which a sports organisation approaches the issuing of provisional suspensions requires careful consideration, and might depend on matters such as

   I. the relative urgency with which a provisional suspension should be issued (in the most urgent cases, seeking a decision from a separate decision-maker or decision-making body might cause undesirable delay),

   II. the sports organisation's confidence in making its own decisions based on risk (if it is confident it can do so itself, it might be more comfortable in making an executive decision), and

   III. the nature of its Participants or the particular Participant of Concern (for example, if the decision might impact an individual's livelihood, it might be more appropriate, and carry less legal risk, for an independent decision-maker to decide whether a provisional suspension should be issued).

   For those reasons, it is generally prudent to ensure that safeguarding regulations provide for both options in respect of the issuing of provisional suspensions.



4. Provisions relating to the provisional suspension of Participants should also set out the considerations that a sports organisation/separate decision-makers will take into account when issuing a provisional suspension.

Model provision - provisional suspensions

Definition: "Provisional Suspension" means that the Participant is suspended temporarily from participating in competition and activity under the jurisdiction of [SPORTS ORGANISATION] (or such lesser restriction as may be specified in any Provisional Suspension notification).

X.1 If, at any time, [SPORTS ORGANISATION] has reasonable ground(s) to suspect that a Participant presents a risk of harm, it may:

i. decide to issue a Provisional Suspension directly on that Participant; or

ii. make an application to [DECISION-MAKING BODY] for a decision issuing a Provisional Suspension on that Participant.

X.2 [SPORTS ORGANISATION] will issue or seek the issue of a Provisional Suspension only in cases where it considers that a Provisional Suspension is reasonable and proportionate (the seeking or issuing of a Provisional Suspension does not of itself imply any wrongdoing on the part of the Participant in respect of whom it is issued or sought, but should be seen as a neutral measure).

X.3 Prior to issuing a Provisional Suspension, [SPORTS ORGANISATION] will consider the following matters:

i. whether any Protected Person (or other person) is or may be at risk of harm;

ii. the prospect of any concern(s) or charge(s) made (or that might be made) pursuant to these regulations being upheld;

iii. the seriousness of the conduct alleged to have been committed by the Participant/risk of harm potentially presented by the Participant;

iv. whether a Provisional Suspension is necessary or desirable to allow the conduct of any investigation by [SPORTS ORGANISATION], the police, or any other relevant authority to proceed unimpeded;

v. the opinion of any independent safeguarding expert (should [SPORTS ORGANISATION] choose to seek such an opinion), including by way of expert risk assessment; and

vi. any other circumstances that might be relevant to the individual case.

X.4 Where [SPORTS ORGANISATION] makes an application to [DECISION-MAKING BODY] for the issuing of a Provisional Suspension on any Participant under regulation X.1.ii:

i. the application, and any decision in respect of it, may be made with or without notice being given to the Participant;

ii. [DECISION-MAKING BODY] shall determine the application and the procedure for determining the application shall be determined by [DECISION-MAKING BODY], as appropriate to the circumstances of the application;

iii. [DECISION-MAKING BODY] may seek the opinion of an independent safeguarding expert in determining the application, including by way of expert risk assessment; and

iv. the test that [DECISION-MAKING BODY] shall apply when determining the application is whether or not the Provisional Suspension sought by [SPORTS ORGANISATION] is reasonable and proportionate, giving consideration to the factors set out at regulation X.3 above:

a. if [DECISION-MAKING BODY] is satisfied that the Provisional Suspension sought is reasonable and proportionate, [DECISION-MAKING BODY] shall issue the Provisional Suspension; and

b. if [DECISION-MAKING BODY] is not satisfied that the Provisional Suspension sought is reasonable and proportionate, [DECISION-MAKING BODY] may either (i) not issue a Provisional Suspension, or (ii) issue a Provisional Suspension on such alternative terms and/or conditions as [DECISION-MAKING BODY] considers are reasonable and proportionate in the circumstances.

5. Provisions relating to provisional suspensions should also address

   I. the communication of the provisional suspension to the Participant of Concern and any third parties who need to be made aware of the provisional suspension so that it can be implemented effectively[8], and

   II. the manner in which a provisional suspension might be lifted or varied, either by way of appeal by the Participant of Concern or by the sports organisation (for example, if new information were to come to light during the course of an investigation).

8. Many safeguarding regulations provide for provisional suspension decisions to be publicly disclosed (including by notice on the sports organisation’s public website) unless on the recommendation of the police or other relevant statutory authority, or for other good reason, the sports organisation (or relevant decision-making body) decides otherwise. However, the provisional suspension should, at a minimum, be notified to any third party that will be required to recognise, uphold, and enforce the terms of the provisional suspension. Sports organisations should also consider whether it is appropriate to communicate the decision to provisionally suspend a Participant of Concern to any complainant.

E Safeguarding investigations and expert risk assessments

1. As a general overriding point, it is important that safeguarding investigations are conducted by individuals who have sufficient experience, skills, and understanding of the specificities of safeguarding and cases of abuse. There are key aspects of safeguarding investigations that need to be handled differently to disciplinary investigations (or at least with a greater degree of care). In particular, a 'trauma-informed' approach to safeguarding investigations requires a proper understanding of safeguarding and abuse, and how trauma might affect those who have suffered abuse - including in respect of their recollection of relevant events and their subsequent engagement with an investigation. A sports organisation should seek to ensure that (as far as possible) evidence sought during an investigation is provided when individuals are able to give evidence to the best of their ability. That is true in respect of both complainants/victims/survivors and Participants of Concern (and any other witnesses), as it helps to ensure the reliability of the evidence and allow greater weight to be placed on it for the purposes of decision-making.

2. It is important that safeguarding regulations provide safeguarding investigators (be they 'in-house' or externally appointed by the sports organisation) with the tools that they need to carry out the most effective investigation possible. Many of these tools will be the same as those utilised in disciplinary investigations, such as requiring attendance at interviews and the provision of information and documents when requested by the sports organisation (though these tools should be used in an appropriate manner for investigating safeguarding cases). In the event that a sports organisation's investigation seeks access to, for example, electronic devices that might contain sensitive information of the Participant of Concern, a procedural safeguard can be included into the safeguarding regulations whereby a separate, ideally independent decision-maker, will consider the legality, appropriateness, and scope/limits of the request.

3. Further, a sports organisation should ensure that its safeguarding regulations state that the sports organisation is able to

   I. stay/suspend its own investigations pending any separate relevant investigations that might be being undertaken by the police or other authorities (which might have greater investigative powers), and

   II. lawfully share information with and receive information from the police, other authorities, and other sports organisations (which might enable access to information/evidence obtained by such parties).

4. One tool that is unique to safeguarding is an expert risk assessment of a Participant of Concern. Such a risk assessment will not look to investigate any underlying factual allegations, but will instead focus on the psychological profiling of a Participant of Concern, taking into account issues such as

   I. any patterns of behaviour,

   II. any predisposing factors (e.g., early life experiences, trauma etc.),

   III. any precipitating factors (triggers, critical life events etc.), and

   IV. any 'protective' factors (abilities, skills, personality, support systems etc.).

   In appropriate cases, such risk assessments can be used as an alternative to a factual investigation - which might have significant benefits, including progressing a matter more quickly and avoiding any risk of retraumatising complainants/victims/survivors. Risk assessments can also help inform decisions in respect of provisional suspensions (for example, if having conducted a risk assessment, the expert agrees that the Participant of Concern poses a risk of harm, then the sports organisation and/or any relevant decision-making body may be more inclined to issue a provisional suspension on the Participant of Concern). Of course, anyone conducting such a risk assessment should be appropriately trained and qualified to seek to ensure that their conclusions can be relied upon for the purposes of decision making by the sports organisation and any relevant decision-making bodies.

Model provision - investigation and risk assessment

X.1 [SPORTS ORGANISATION] shall have the power to gather intelligence and conduct investigations into matters that may evidence or lead to the discovery of evidence of a Participant presenting a risk of harm or a possible breach of these regulations. Such investigations may be conducted in conjunction with, and/or information obtained in such investigations may be shared with, the police, other sports organisations, local authorities, regulatory bodies, professional disciplinary bodies, or any other analogous bodies. [SPORTS ORGANISATION] will have discretion, where it deems it appropriate, to stay its own investigation pending the outcome of investigations being conducted by the police or other relevant bodies. However, the mere existence of another investigation does not entitle the Participant(s) subject to an investigation to seek a stay of the investigation being carried out by [SPORTS ORGANISATION].

X.2 Investigations carried out under these regulations may be undertaken in whole or in part by [SPORTS ORGANISATION] employees or other persons acting under delegated authority from [SPORTS ORGANISATION] - including, without limitation, safeguarding experts drawn from legal, policing, social work, offender management, sport and/or other relevant backgrounds. These regulations shall be construed accordingly.

X.3 In carrying out investigations under these regulations, [SPORTS ORGANISATION] shall have special regard to and shall always take account of (1) the risk of harm that may be caused to Protected Persons and others as a consequence of the investigation, particularly those who might already have been subject to harm, and (2) how to minimise that risk of harm, balanced against the need to ensure the proper conduct and effectiveness of the investigation.

X.4 In carrying out investigations, [SPORTS ORGANISATION] shall also have regard to the wellbeing of the Participant(s) subject to investigation.

X.5 At any stage, [SPORTS ORGANISATION] may require a Participant to undertake a risk assessment conducted by a suitably qualified person in such form as [SPORTS ORGANISATION] considers appropriate.

X.6 [SPORTS ORGANISATION] may at any stage of an investigation under these regulations make a written demand ("**Demand**") to a Participant to

I. provide [SPORTS ORGANISATION] with any information, record, article or thing in their possession or control that [SPORTS ORGANISATION] reasonably believes may evidence or lead to the discovery of evidence of a Participant presenting a risk of harm or a possible breach of these regulations, or

II. undertake any other course of action that might assist the investigation - including, without limitation, appearing before [SPORTS ORGANISATION] for an interview, or to provide a written statement setting out their knowledge of any relevant facts and circumstances.

X.7 Subject to regulation X.8, any Participant issued with a Demand must comply with such Demand within such reasonable period of time as determined by [SPORTS ORGANISATION] and set out in the Demand. Each Participant waives and forfeits any rights, defences and privileges provided by any law in any jurisdiction to withhold any information, record, article or thing requested in the Demand.

X.8 Where a Demand relates to any information, record, article or thing that [SPORTS ORGANISATION] reasonably believes is capable of being damaged, altered, destroyed or hidden (any electronic storage device or electronically stored information shall be deemed to meet this criterion), then for the purposes of evidence preservation, [SPORTS ORGANISATION] may require the Participant to comply immediately with the Demand. In such a case:

X.8.1 the Participant must immediately comply with the Demand and permit [SPORTS ORGANISATION] to take immediate possession of, copy and/or download the information, record, article or thing. However, [SPORTS ORGANISATION] shall take no steps to inspect or use the same other than as provided in regulation X.8.4 below;

X.8.2 a refusal or failure by a Participant to comply immediately with the Demand shall constitute an independent violation of these regulations and any attempted or actual damage, alteration, destruction or hiding of such information, record, article or thing upon receipt of or after the Demand shall constitute an independent violation of these regulations;

X.8.3 the Participant has seven (7) days from receipt of the Demand to file an objection to the Demand by requesting a review by [DECISION-MAKING BODY] in accordance with regulation X.9;

X.8.4 if the Participant does not file an objection within seven (7) days of receipt of the Demand (or files an objection and the [DECISION-MAKING BODY] subsequently finds that there is a reasonable belief basis to the Demand), or notifies [SPORTS ORGANISATION] that they do not object to the Demand, [SPORTS ORGANISATION] may forthwith inspect the information, record, article or thing and otherwise make use of it in accordance with these regulations.

X.9 A Participant may object to a Demand made under regulation X.6 by filing an application with [DECISION-MAKING BODY] within seven (7) days of receipt of the Demand specifying the grounds for such objection. Where such an application is made, subject always to regulation X.8 the time for complying with a Demand shall be stayed pending the outcome of the objection.

X.10 [DECISION-MAKING BODY] shall consider the objection to the Demand with as much expediency as the justice of the matter permits and, unless exceptional circumstances apply, such review shall be conducted by way of written evidence and submissions only. In considering the Demand, [DECISION-MAKING BODY] shall have the discretion but not the obligation to invite submissions from [SPORTS ORGANISATION] and the Participant, as they see fit.

X.11 Where [DECISION-MAKING BODY] determines that there is no reasonable belief basis to the Demand, then [SPORTS ORGANISATION] shall not pursue the Demand with the Participant and the information, record, article or thing and any copy or download of the same shall either be immediately returned to the Participant or destroyed, as the case requires.

X.12 Where [DECISION-MAKING BODY] determines that there is a reasonable belief basis to the Demand, then if the Participant fails to produce the information, record, article or thing and any copy or download of the same, then it shall constitute an independent violation of these regulations.

X.13 The ruling of [DECISION-MAKING BODY] as to whether there is a reasonable belief basis to a Demand shall not be subject to appeal.

X.14 If a Demand is set aside, it shall not preclude [SPORTS ORGANISATION] from making any other Demand in relation to the same or another investigation.

X.15 Any information, record, article or thing provided to [SPORTS ORGANISATION] under this regulation will be kept confidential except when it becomes necessary to disclose such information, record, article or thing to further the investigation of and/or to bring or as part of proceedings relating to a risk of harm or a possible breach of these regulations, or when such information, record, article or thing is reported to administrative, professional or judicial authorities pursuant to an investigation or prosecution of non-sporting laws or regulations, or is otherwise required by law.

X.16 If a Participant obstructs or delays an investigation (e.g., by providing false, misleading or incomplete information or documentation and/or by tampering with or destroying any documentation or other information that may be relevant to the investigation), this shall constitute an independent violation of these regulations.

F Dealing with Participants of Concern who are, or become subject to, physical and/or mental health issues

1. In our experience, it is (perhaps unsurprisingly) very common for those subject to investigation in safeguarding cases to be under significant stress, which can impact the progress of a sports organisation's investigation. In this section, we further address this issue by contextualising and illustrating what model provision X.4 in the preceding section might mean in practice. In doing so, we of course do not suggest that the treatment of a Participant of Concern is any more or less important than the treatment of complainants/victims/survivors. The treatment of a Participant of Concern is an important practical consideration, because in the most serious instances of stress/mental health concerns, there might be questions raised as to the reliability of any evidence they provide to an investigation and/or in any proceedings.

2. The fact that a Participant of Concern is suffering (or may suffer from) stress or physical and/or mental ill health should not, of itself, serve to prevent an investigation and/or a risk assessment from proceeding as fully as possible. In a safeguarding context, effective regulation and the protection of others will likely necessitate a full investigation/risk assessment in light of a sports organisation's responsibility towards other Participants and others who might be at risk of harm.

3. However, given the foreseeable stress that an investigation can put on a Participant of Concern, sports organisations should, where circumstances require

   I. act with an appropriate degree of caution/care/circumspection, and

   II. let the Participant of Concern know where they may go to receive help and support – this may vary depending on a sports organisation's available resource but it could include, for example, support from representative bodies, access to pro bono (i.e., free) legal advice, and/or the provision of contact details for one or more mental health services.

4. Where a Participant of Concern is displaying signs of significant stress, it might also be appropriate – unless there is a risk of material prejudice to the effectiveness of an investigation (which might be the case in some circumstances) – to offer and/or take such steps as rescheduling interviews, allowing the Participant of Concern to have (in addition to any legal representative) a friend, family member, or other appropriate person present during any interview (so long as such person has no other role in the case that might be prejudiced, e.g., if they might be a witness), and putting certain questions to the Participant of Concern in writing rather than by way of interview.

5. In handling the most serious instances of stress/mental health concerns relating to Participants of Concern under investigation, the following principles/guidance might be instructive:

   a. A Participant of Concern might be at risk from the conduct of an investigation if:

      i. engaging with the investigation could significantly harm the Participant of Concern's physical and/or mental state; or

      ii. any evidence the Participant of Concern provides to the investigation in relation to their suspected wrongdoing/ level of risk might be considered unreliable because of their physical and/or mental state.

   b. In assessing whether the Participant of Concern should be asked to engage (or engage further) with the investigation, the following should be considered:

      i. how the Participant of Concern's physical and/or mental state might affect their ability to understand the nature and purpose of the investigation (or any part of it, e.g., an interview), to comprehend what is being asked of them, to appreciate the significance of any evidence they provide, and to make rational decisions about whether they wish to provide evidence;

      ii. the extent to which the Participant of Concern's engagement with the investigation might be affected by their physical and/or mental state, and the impact this may have on their ability to rationally and accurately relay evidence; and

      iii. how the nature of the investigation, including any form of probing, might affect the Participant of Concern.

   c. Consideration should be given as to whether an independent healthcare professional should be consulted to consider the functional ability of the Participant of Concern rather than simply relying on any medical diagnosis (it is possible for an individual with even severe mental illness to be fit to engage with an investigation).

   d. Where an independent healthcare professional is consulted and identifies risks, they should be asked to quantify such risks and provide the investigators with an indication of:

      i. whether the Participant of Concern's condition is likely to improve, or will require or be amenable to treatment;

      ii. how long it may take for such improvement to take effect; and

      iii. whether any adjustments might be made to mitigate the risks to the Participant of Concern while allowing the investigation to proceed.

   e. It is ultimately a matter for the investigators to decide how to proceed, and to consider whether any period of delay is desirable and/or what measures are needed to minimise any risks to the Participant of Concern while at the same time also adequately safeguarding others (e.g., if the Participant of Concern is subject to a provisional suspension, that will mitigate risk to others during any period of delay).

G Agreed safeguarding outcomes

1. It is generally preferable (wherever possible) for matters to be concluded without the need for any form of contentious proceedings or for a hearing of any sort. For one thing, such an outcome prevents complainants/victims/survivors from having to provide any form of oral evidence (which might be traumatic), but it is also generally more efficient.

2. Safeguarding regulations can provide an express basis pursuant to which a Participant of Concern may admit that they present a risk of harm (or have otherwise 'breached' a sports organisation's safeguarding regulations) in exchange for an agreement on the appropriate risk management measure(s) (and/or sanction(s)) to be applied to them.

3. Of course, any agreed risk management measure(s) should be appropriate to the facts and circumstances of any particular case, and such provisions can provide for independent oversight to ensure that the risk management measures are appropriate (viewed objectively). Moreover, any relevant complainant/victim/survivor should at least be apprised of any proposed agreement and the reasons for it, prior to it being entered into (as to communication/publication of an agreed outcome, see section L).

Model provision - agreed safeguarding outcomes

X.1 Notwithstanding any of the other provisions of these regulations, it will be open to a Participant under investigation or subject to any form of proceedings under these regulations to admit that they present a risk of harm and/or that they have breached these regulations, in exchange for an agreement with [SPORTS ORGANISATION] on the appropriate risk management measure(s) and/or sanction(s) to be applied to them in order to avoid the need for any form of proceedings, or the continuation of proceedings, under these regulations.

X.2 Any such discussions between [SPORTS ORGANISATION] and the Participant will take place on a "without prejudice" basis and in such manner that they will not delay or in any other way interfere with an investigation or any proceedings.

X.3 Any resulting agreement will be subject to the prior approval of [DECISION-MAKING BODY] and evidenced in writing between the [SPORTS ORGANISATION] and the Participant (in a form as directed by [SPORTS ORGANISATION]) and will set out the risk management measure(s) and/or sanction(s) to be applied to the Participant and the reasons for the issuing of such risk management measure(s) and/or sanction(s).

X.4 In reaching an agreement, [SPORTS ORGANISATION] may agree to any risk management measure(s) and/or sanction(s) appropriate to the case at hand.

X.5 If an agreement is reached, a decision under these regulations will not be required. A Participant who agrees to resolve matters in accordance with this regulation will waive their right to appeal against or otherwise challenge any aspect of the agreed outcome.

H Safeguarding procedures/ proceedings

1. The lack of uniform approach to the regulation of safeguarding in sport extends to case management procedures for the handling of safeguarding cases. Therefore, each sports organisation generally needs to determine the most appropriate approach for its cases, which should in all cases require decisions to be made by decision-making bodies with sufficient independence and experience e.g., by independent safeguarding panels comprising individuals with legal, policing, social work, offender management, sport and/or other relevant backgrounds.

2. As with disciplinary matters, safeguarding proceedings will ordinarily be commenced by the sports organisation sending a written notice to a Participant of Concern[9], identifying:

   I. the conduct alleged to have been committed/the alleged risk of harm, together with a summary of the facts supporting the allegation(s);

   II. a summary of the potential risk management measure(s) and/or sanction(s) that may be imposed if such conduct/risk of harm is found proven;

   III. any provisional suspension to be issued in respect of the Participant of Concern and their rights to challenge such suspension (if a provisional suspension has not already been issued); and

   IV. the Participant of Concern's right to respond to the notice by way of an admission (either of the conduct/risk of harm and proposed risk management measure(s) and/or sanction(s), or the conduct/risk of harm alone leaving the issue of sanctions/risk management measures to be determined) or denial (although in the absence of any response, the Participant of Concern should be deemed to have admitted the alleged conduct/risk of harm and accepted the sanctions/risk management measures proposed).

3. Alternatively, although by similar means, a sports organisation may seek to issue risk management measures/sanctions immediately, but permit the Participant of Concern to challenge/appeal those sanctions/risk management measures to an independent decision-making body (in which case proceedings are only necessary in the event of any challenge/appeal). Any such process would be similar to that set out in respect of provisional suspensions (as set out at section D above).

4. A number of considerations inform the most appropriate approach to be adopted by a specific sports organisation, including the resource available to it, the level and nature of expertise available to it, the number and nature of cases it expects its procedures to deal with, and how its safeguarding procedures might sit alongside and/or relate to its disciplinary procedures.

5. Set out below are some considerations that a sports organisation might find to be of assistance when establishing or reviewing its safeguarding case management procedures/proceedings.

9. Generally, such a notice will be called a 'notice of charge' although in the safeguarding context other terminology might be more appropriate, such as (for example) 'notice of concern'. Typically, the fact that a 'notice of charge' has been sent to a Participant of Concern will not (of itself) be publicly disclosed by the sports organisation.

Inquisitorial v adversarial approach

6. An adversarial approach to proceedings means, put very shortly, that the sports organisation and the respondent to the proceedings (the Participant of Concern) oppose one another, i.e., argue against one another. In such proceedings, a decision-making body's fundamental roles are to determine the case based on the submissions and evidence presented to it, and to ensure that procedural rules are followed. The questioning of a party's witnesses will predominantly be undertaken by the opposing party (although the decision-making body may also ask questions).

7. An inquisitorial approach means, again put very shortly, that the decision-making body takes the driving seat in establishing the facts of a case. Accordingly, it is the decision-making body that will direct the proceedings and take the lead in questioning witnesses, consequently exerting a greater degree of control over the questions that the parties might ask of witnesses.

8. The greater degree of control exerted by the decision-making body in respect of questioning in inquisitorial proceedings has clear advantages in potentially limiting any harm that might be caused by the examination of a complainant/victim/survivor's evidence by the Participant of Concern (or their representative) in adversarial proceedings. Further, an inquisitorial approach might reduce concerns in respect of equality of arms, because if the decision-making body has a more active role, there is less opportunity for advantage by virtue of one party having greater resources at its disposal to more effectively advocate its position.

9. However, an adversarial system is generally considered better at protecting the rights of respondents – at least in a criminal context, some typical features of the inquisitorial approach (including in relation to the more limited abilities of parties in respect of witness evidence) have much more often given rise to issues relating to procedural fairness. It is obviously important that any proceedings are fair – that is important in its own right – but if decisions are consistently successfully challenged/appealed then that will ultimately erode faith in the system. In more practical terms, sports organisations will generally also be more used to dealing with disciplinary cases using an adversarial system, and such proceedings can be adapted to enable decision-making bodies in safeguarding cases to adopt a more sensitive approach in respect of appropriate methods of questioning, including the judicious use of "special measures" (as to which, see immediately below).

Adopting special measures

10. Even in adversarial proceedings, a decision-making body will typically have significant discretion as to how any hearing is conducted. When oral examination of a complainant/victim/survivor is necessary, the sports organisation and the decision-making body should consider whether any "special measures" (examples below) are appropriate and, if so, which measure(s) should be adopted.

11. In determining whether oral evidence is necessary in the first place, considerations might include such things as

I. the complainant/victim/survivor's wishes and feelings,

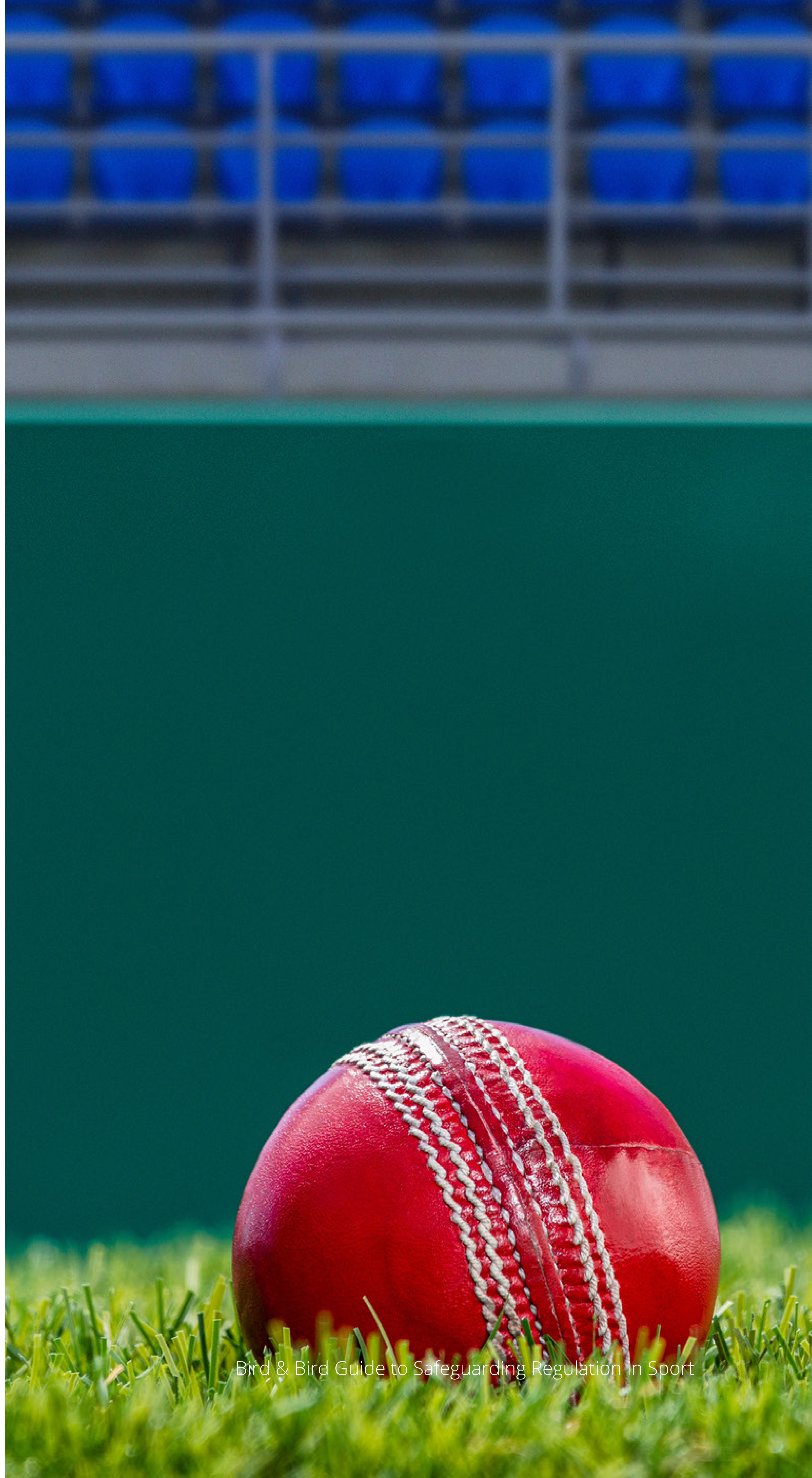
II. the complainant/victim/survivor's needs and abilities,

III. the issues that need to be determined,

IV. the nature and seriousness/significance of the issues to be determined,

V. whether the proper determination of the case depends on the evidence, and

VI. whether justice can be done without the evidence.



12. In cases where oral evidence is necessary, special measures might include

I. a complainant/victim/survivor giving evidence anonymously,

II. the use of screens or voice distortion to shield the complainant/victim/survivor from the respondent,

III. evidence being taken remotely from the complainant/victim/survivor so they do not need to appear in person,

IV. the examination of the complainant/victim/survivor through an intermediary,

V. advance approval by the decision-making body of questions to be put to the complainant/victim/survivor, and

VI. the discussion and setting of ground rules for the questioning of the complainant/victim/survivor.

13. Of course, the decision-making body should ensure that the adoption of any special measure(s) does not unfairly restrict the Participant of Concern's ability to challenge the complainant/victim/survivor's evidence or fully answer the case against them.

Seeking to ensure live evidence is required to be given only once

14. In many cases, a complainant/victim/survivor will be required to provide their account on numerous occasions, e.g., when they first disclose abuse, in respect of any police investigation, to the sports organisation as part of its investigation, and so on. The potential for retraumatising complainants/victims/survivors is obvious and safeguarding procedures/proceedings should not require a complainant/victim/survivor to provide their account on any more occasions than is strictly necessary.

15. Safeguarding procedures/proceedings will typically have first instance and appeal stages. Importantly, when considering whether or not procedures/proceedings are fair, reference should be made to the procedures/proceedings as a whole (i.e., including any appeal process).

16. At first instance, to potentially avoid the need for a complainant/victim/survivor to give live evidence, a safeguarding procedure can operate on the assumption that cases will be reviewed on the papers only. Such an operating assumption can save the need for complainants/victims/survivors to give live evidence, at least until a challenge/appeal is issued. Alternatively, if there is a fuller hearing and live evidence is taken at first instance, the appeal rights could be limited to reduce the possibility that live evidence would be required again at the appeal stage.

Role and support for complainants/victims/survivors

17. In safeguarding proceedings, the sports organisation will generally be responsible for the presentation of the case and the other party to the case will be the Participant of Concern as the 'respondent' (i.e., the person responding to the case). That means that a complainant will be a witness for the sports organisation and will not themselves be a party to the case (which is consistent with a sports organisation's safeguarding aim of managing a risk of harm to others in the sport). Some complainants might wish for a more direct remedy against a Participant of Concern, e.g., through civil proceedings (which course of action can be taken separate to any safeguarding proceedings carried out by a sports organisation). However, a sports organisation can give more of a role to complainants in safeguarding proceedings, e.g., by allowing them to challenge decisions taken in respect of cases where it is alleged that they have suffered harm.

18. In all cases, under whatever form of procedure/proceedings is adopted, it is important for complainants to feel that they have been taken seriously and that they have a voice throughout the process. A sports organisation should therefore provide complainants with a clear explanation of the case management process and what it might entail – including the nature of any process and what it can and cannot achieve. Assuming the complainant so wishes, a sports organisation should also provide a complainant with updates in a manner and frequency of their choosing – in particular, a sports organisation should make sure the complainant is kept up to date with decisions relating to their case. Ideally, a dedicated support person will be allocated to the complainant (who has no other role in the case but to provide support to the complainant), but if that is not possible, the complainant should be directed to appropriate support services (funded, where possible, by the sports organisation).

Legal support for the Participant of Concern

19. A sports organisation should also provide Participants of Concern with a clear explanation of the case management process and what it might entail. Regardless of the nature of the proceedings, Participants of Concern are of course entitled to a fair procedure (in accordance with principles of natural justice and, in jurisdictions where it is applicable, Article 6 of the European Convention on Human Rights). That means, in respect of procedural matters:

I. the right to present evidence and submissions that they regard as relevant to their case,

II. the right to have knowledge of and comment on all evidence and submissions that seek to influence a panel's decision, and

III. the right to a reasonable opportunity to present their case, including evidence, under conditions that do not place them at a substantial disadvantage when compared to the other party, i.e., to have 'equality of arms'.

20. One way in which a sports organisation can seek to ensure that the 'equality of arms' principle is not infringed is to ensure that legal support is made available for Participants of Concern in appropriate cases. This can perhaps be achieved through 'pro bono' arrangements or feasibly through a form of 'legal aid', although the strength of justification for that will vary from case to case - relevant considerations might include

I. the importance of what is at stake for the Participant of Concern (in particular, whether or not their livelihood is on the line),

II. the mental and/or physical health of the Participant of Concern (as discussed in Section F above),

III. the complexity of the case, and

IV. the Participant of Concern's ability to arrange for their own effective legal representation.

I Exceptional material

1. In safeguarding cases, there will be times where a sports organisation is in receipt of information or evidence that might require it to take immediate action against a Participant of Concern to protect others (e.g. a provisional suspension) but which cannot be provided to the complainant, e.g., where doing so would create:

   I. a risk of harm to another person and/or

   II. be unlawful, and/or

   III. prejudice any ongoing investigation (by the sports organisation, the police, or any other relevant authority).

In some cases, it might be that the Participant of Concern has information that they cannot share with the sports organisation.

2. In order to address such circumstances, a sports organisation can adopt procedural rules that enable a decision-making body to receive the information or evidence – 'exceptional material' - but for it not to be provided to the other party. Any such procedure should be utilised only where necessary and it should be applied fairly, bearing in mind that each party is generally entitled to know and challenge all the information and evidence relied upon in respect of decisions made by relevant decision-making bodies. However, fairness is context-specific and it might well be appropriate, in particular in the context of provisional suspensions or at other interim stages of proceedings (i.e., prior to a final decision, where the case will be determined on the basis of all the available information or evidence), for a party to rely on such exceptional material even if the other party has not had sight of it. Consideration should also be given as to whether (or the extent to which) exceptional material can be provided to the other party to proceedings in redacted or summary form.

Model provision - exceptional material

X.1 In considering any concern, charge or application brought under these regulations, any Provisional Suspension application, or any other substantive matter, the relevant decision-makers may not in the ordinary course of events consider any evidence provided by either [SPORTS ORGANISATION] or the Participant that the other party has not seen and had a reasonable opportunity to respond to. Exceptionally, however, [SPORTS ORGANISATION] or the Participant may make an application for permission to submit evidence that has not been provided to the other party where [SPORTS ORGANISATION] or the Participant considers that such evidence should not be sent to the other party because revealing it (or the identity of, or anything which might reveal the identity of, any individual within such evidence) to the other party may

i. create a risk of harm to any person, and/or

ii. be unlawful, and/or

iii. prejudice an ongoing investigation (by [SPORTS ORGANISATION], the police, other sports organisations, local authorities, regulatory bodies, professional disciplinary bodies, or any other analogous bodies).

Applications under this regulation should be lodged with [DECISION-MAKING BODY] as soon as practicable.

X.2 Where either [SPORTS ORGANISATION] or the Participant makes an application for permission to submit exceptional material to any relevant decision-maker, the applicant party shall provide reasonable advance notice to the other party, unless the applicant party considers that such written notice itself would create a risk of harm to any person or and/or be unlawful. Any reply from the other party must be provided alongside any application.

X.3 [DECISION-MAKING BODY] will determine any application brought under this regulation (the individual decision-maker must have had no prior involvement in the proceedings). [DECISION-MAKING BODY] will issue such directions as they consider appropriate to determine the application, and [DECISION-MAKING BODY] may allow or reject the application in whole or in part. In making its decision, [DECISION-MAKING BODY] may seek the opinion of an independent expert.

X.4 If [DECISION-MAKING BODY] allows the evidence to be submitted to the relevant decision-maker but withheld from the other party, [DECISION-MAKING BODY] shall consider, in its sole discretion, whether a redacted version of the evidence and/or a summary of the evidence should be provided to the other party as an alternative.

J Burden and standard of proof, and admissibility of evidence

1. Safeguarding regulations should provide that the sports organisation will have the burden of establishing a risk of harm (or other relevant conduct), based on a balance of probabilities, i.e., it is more likely than not that there is a risk of harm (or other relevant conduct has been committed). A higher standard of proof is not appropriate in a safeguarding context (certainly as opposed to a disciplinary context), because (put simply) if someone probably presents a risk of harm, then steps should definitely be taken to manage that risk.

2. Moreover, in order to prove a case, there should be no formal rules as to admissibility of evidence (as might apply in courts) and a party should be able to establish relevant facts by 'any reliable means'. Such a provision gives leeway to a sports organisation (or a Participant of Concern) to prove facts, so long as they can satisfy a decision-making body that the means of proof is reliable.

Model provisions - burden and standard of proof, and admissibility of evidence

X.1 [SPORTS ORGANISATION] will have the burden of establishing a risk of harm and/or a breach of these regulations. The standard of proof will be whether [SPORTS ORGANISATION] has established a risk of harm and/or breach of these regulations by a balance of probabilities.

X.2 Where these regulations place the burden of proof upon the Participant to rebut a presumption or establish specified facts or circumstances, the standard of proof will be by a balance of probabilities.

X.3 No formal rules as to admissibility of evidence will apply. Facts may be established by any reliable means

K Risk management measures and sanctions

1. If, having heard all the arguments and evidence, the decision-making body concludes that (on the balance of probabilities) a Participant of Concern poses a risk of harm to others, then it should issue one or more risk management measures to manage that risk. Again, because safeguarding proceedings are fundamentally concerned with the management of risk, the aim is not to 'punish' Participants of Concern by way of 'sanctions' – although sanctions might nonetheless be appropriate in safeguarding cases in some circumstances, e.g., where that might be necessary to seek to provide adequate 'remedy' or for breach of supporting provisions. Risk management measures should be necessary and proportionate to the type and level of risk posed, e.g., subject perhaps to practical considerations relating to the enforceability of any risk management measure, if a Participant of Concern poses a level of risk specifically to female children, it is likely to be disproportionate from a safeguarding perspective to prohibit them from engaging in any activity where only adult males are present.

Model provision - risk management measures and sanctions

X.1 Where it is decided by [DECISION-MAKING BODY] that a Participant presents a risk of harm and/or that another breach of these regulations has been committed, [DECISION-MAKING BODY] will issue such risk management measure(s) and/or sanction(s) as it deems necessary and proportionate including, without limitation, any one or more of the following (any of which, where appropriate, may be suspended):

X.1.1 a caution, reprimand and/or warning as to future conduct;

X.1.2 guidance or an order as to future conduct (whether or not accompanied by an order to undertake specific training/education as to how that conduct can be achieved and/or measured in practice);

X.1.3 an order requiring the Participant be monitored in undertaking specific activities and/or for a specified period of time (up to and including indefinitely);

X.1.4 a compensation payment and/or reparation to any victim(s)/survivor(s) (to be calculated in such manner as [DECISION-MAKING BODY] sees fit);

X.1.5 community service within the sport;

X.1.6 suspension or removal from office, either: (i) until the Participant's attitudes/behaviours are deemed to meet certain identifiable and measurable minimum standards and/or for a specified period of time (up to and including indefinitely);

X.1.7 removal of any award or other honour bestowed by [SPORTS ORGANISATION];

X.1.8 disqualification/expulsion from competitions or events; and

X.1.9 a specified period of ineligibility, or lifetime ban, from participating in any capacity in the sport and/or in any activities authorised, organised, controlled, recognised, sanctioned and/or supported in any way by [SPORTS ORGANISATION] (other than authorised education or rehabilitation programs).

L Decisions and publication of decisions

1. A decision-making body should issue its decision as soon as practicable following its hearing or review of a matter. The decision-making body's decision should comprise a determination of all issues that have been referred to the decision-making body – principally in a safeguarding case

   I. whether a Participant of Concern does or does not pose a risk of harm and,

   II. if the Participant of Concern does pose a risk of harm, the appropriate risk management measure(s) to be issued (although, as noted above, sanctions might also be appropriate in certain cases).

   The decision should be clear and not leave any ambiguity as to its effect, and the decision-making body should deal with all the issues necessary for it to reach its decision and explain its reasoning.

3. The publication of decisions is not a straightforward issue. Publication to the world at large, e.g., on a sports organisation's website, may be warranted in some circumstances for the purposes of transparency, to show that a full and fair decision had been reached, and so that others can learn from the decision. However, there is a danger that publishing full decisions (even with anonymisation) might lead to the identification of victims/survivors - for which consent ought to be obtained, and the identification of victims/survivors without their consent might in some jurisdictions constitute a criminal offence.

4. Consideration should therefore be given to the publication/sharing of decisions on a more limited basis, e.g., to those who need to know of the decision to implement risk management measures and/or for any publication to the world at large to be limited to identifying the Participant of Concern, the nature of the risk they pose, and the risk management measure(s) issued.

Model provisions - decisions and publication of decisions

Definition: "Publicly Disclosed" means disclosure of the decision or other relevant document to the public on [SPORTS ORGANISATION'S] website and/or such other notification as decided by [SPORTS ORGANISATION] (which may include, without limitation, notification to relevant third parties who need to know of the decision in order to effectively implement any risk management measure(s) and notification to any person who might have been harmed by the Participant).

X.1 [DECISION-MAKING BODY] will announce its decision to the parties in a written, reasoned decision, dated and signed by [DECISION-MAKING BODY], as soon as practicable and ordinarily no later than twenty-eight (28) days after the date of the oral hearing or the filing of the final submission(s) where conducted in writing only. [DECISION-MAKING BODY] may, if it considers it appropriate, announce its decision in advance of the reasons for it.

X.2 If the decision is that the Participant poses a risk of harm to others or that another breach of the regulations has been committed, the decision and/or other parts of the proceedings may be Publicly Disclosed at the discretion of [SPORTS ORGANISATION]. In considering whether a decision and/or other parts of the proceedings should be Publicly Disclosed, [SPORTS ORGANISATION] will consider

I. the views and safety of any Protected Person(s) harmed by the Participant,

II. whether such disclosure would further the safeguarding aim of these regulations, and

III. any other matter [SPORTS ORGANISATION] considers relevant to the particular case. If it is determined that the decision should not be Publicly Disclosed in full, consideration will be given as to whether it is appropriate as an alternative to Publicly Disclose

i. a summary or redacted version of the decision, and/or

ii. the effect of the decision.

X.3 If the decision of [DECISION-MAKING BODY] is that the Participant does not present a risk of harm and/or has not breached the regulations, then the decision may only be Publicly Disclosed with the consent of the Participant who is the subject of the decision.

X.4 Decisions of [DECISION-MAKING BODY] will be final and binding on all parties and may not be challenged or appealed other than strictly as set out in these regulations. All parties waive irrevocably any right to any other form of appeal, review or recourse by or in any court or judicial authority, insofar as such waiver may validly be made.

M International and national jurisdiction, and giving decisions worldwide effect

1. A very significant challenge in safeguarding regulation in sport is that a decision rendered under the rules of one sports organisation will generally be effective only in respect of its own jurisdiction, i.e., a Participant subject to a risk management measure issued in one sport at the national level would not be subject to the same risk management measure in other sports in the same territory, or the same or other sport in other territories. This is in stark contrast to decisions issued pursuant to the World Anti-Doping Code, which are of worldwide effect in Code-compliant sport.

2. In the absence of a safeguarding equivalent of a World Anti-Doping Code, International Federations can seek to combat these limitations to some extent by

    I. ensuring a clear and inter-connected relationship between their jurisdiction (generally over their officials and other Participants that participate at the international level) and those of their member National Federations (generally those Participants that participate at the national level) (and there will of course be overlap between the two, because some Participants will participate at both the national and international level), and

    II. giving worldwide effect to decisions reached under their safeguarding regulations and also to decisions reached under the safeguarding regulations of National Federations (provided such regulations meet specific standards expressly set by the International Federation).

3. This requires

    I. a requirement for member National Federations to have safeguarding rules in place (in accordance with any minimum standards set by the International Federation) so that there is a coherent regulatory approach across a sport internationally,

    II. provisions requiring an exchange of information between the member National Federations and the International Federation,

    III. the ability for International Federations to

        i. retain or delegate responsibility for cases falling within their direct jurisdiction, and

        ii. assume conduct of cases at the level of member National Federations, and

    IV. provisions that enable decisions taken at the level of the National Federation to be given worldwide effect through the International Federation.

Model provisions (for International Federation safeguarding regulations) - relationship between international and national jurisdiction

X.1 Each [NATIONAL FEDERATION] shall:

X.1.1 implement such safeguarding policies, rules and procedures as may be directed by [INTERNATIONAL FEDERATION] from time to time, and competently and in good faith apply those policies, rules and procedures (in accordance with such with standards as [INTERNATIONAL FEDERATION] may from time to time specify). It shall be the responsibility of each [National Federation] to ensure that they are familiar with the most up to date policies and guidelines issued by [INTERNATIONAL FEDERATION];

X.1.2 pursue diligently in a proper and timely fashion all alleged violations of

i. their safeguarding rules and

ii. these regulations where [INTERNATIONAL FEDERATION] has conferred conduct of the investigation and/or proceedings on the relevant [NATIONAL FEDERATION], in each case ensuring sufficient independence in the process and adequate protection of the rights, and welfare of all individuals involved;

X.1.3 promptly report Provisional Suspensions, hearing results and other substantive decisions issued under [NATIONAL FEDERATION]'s safeguarding regulations (each, a **"[National Federation] Safeguarding Decision"**) to [INTERNATIONAL FEDERATION];

X.1.4 promptly report to [INTERNATIONAL FEDERATION] any act or information of which they become aware, which might reasonably be foreseen to constitute (on its own or with other information):

a. a breach of these regulations by a [INTERNATIONAL FEDERATION] Participant falling within [INTERNATIONAL FEDERATION]'s exclusive jurisdiction under these regulations; or

b. a breach of these regulations by another [NATIONAL FEDERATION];

X.1.5 upon notification by [INTERNATIONAL FEDERATION], permit [INTERNATIONAL FEDERATION] to assume conduct of the investigation of any suspected violation of [NATIONAL FEDERATION]'s safeguarding rules and/or any proceedings brought under [NATIONAL FEDERATION]'s safeguarding rules, including (but not limited to) where such investigation and/or proceedings concern a [INTERNATIONAL FEDERATION] Participant;

X.1.6 if notified by [INTERNATIONAL FEDERATION], refrain from pursuing any conduct or matter that falls within [INTERNATIONAL FEDERATION]'s exclusive jurisdiction under these regulations, or any matter where [INTERNATIONAL FEDERATION] has assumed the conduct of an investigation and/or proceedings from any relevant [NATIONAL FEDERATION]; and

X.1.7 cooperate fully and promptly with any enquiry or investigation by [INTERNATIONAL FEDERATION] under these regulations.

Model provisions (for International Federation safeguarding regulations) - giving decisions worldwide effect

X.1 Provisional Suspensions (however issued), hearing results or other substantive decisions of [INTERNATIONAL FEDERATION DECISION-MAKING BODY] will be applicable worldwide and will be recognised and respected by [INTERNATIONAL FEDERATION] and [NATIONAL FEDERATIONS] automatically upon receipt of notice of the same, without the need for any further formality.

X.2 Final [NATIONAL FEDERATION] Safeguarding Decisions shall be communicated promptly to [INTERNATIONAL FEDERATION] and shall constitute irrebuttable evidence against the person to whom the decision relates. [NATIONAL FEDERATION] Safeguarding Decisions relating to [INTERNATIONAL FEDERATION] Participants will, promptly upon receipt by [INTERNATIONAL FEDERATION], be referred to [INTERNATIONAL FEDERATION DECISION-MAKING BODY], which will transpose the [NATIONAL FEDERATION] Safeguarding Decision by issuing one or more risk management measure(s) and/or sanction(s) on the relevant person that shall be Publicly Disclosed (unless [INTERNATIONAL FEDERATION DECISION-MAKING BODY] decides for good reason otherwise) and applicable worldwide. When issuing such risk management measure(s)and/or sanction(s), [INTERNATIONAL FEDERATION DECISION-MAKING BODY] will contemporaneously provide brief written reasons explaining how the risk management measure(s) and/or sanction(s) issued under this regulation X.2 seek to transpose the underlying [NATIONAL FEDERATION] Safeguarding Decision.

X.3 Save that risk management measures and/or sanctions issued under regulation X.2 will not serve to alter the [NATIONAL FEDERATION] Safeguarding Decision as it applies in the territory of the relevant [NATIONAL FEDERATION], risk management measures and/or sanctions issued under regulation X.2 will be recognised and respected by [INTERNATIONAL FEDERATION] and all [NATIONAL FEDERATIONS] automatically upon receipt of notice of the same, without the need for any further formality.

X.4 [INTERNATIONAL FEDERATION DECISION-MAKING BODY] shall issue risk management measures and/or sanctions under regulation X.2 that are necessary and proportionate in order to protect one or more Protected Persons, having due regard to:

- **X.4.1** the [NATIONAL FEDERATION] Safeguarding Decision (including the reason for the [NATIONAL FEDERATION] Safeguarding Decision and its scope and effect);
- **X.4.2** the safeguarding aim of these regulations;
- **X.4.3** the circumstances of the relevant individual who is the subject of the [NATIONAL FEDERATION] Safeguarding Decision; and
- **X.4.4** any other circumstances that might be relevant to the individual case.

X.5 Where risk management measures and/or sanctions are issued in accordance with regulation X.2, the person subject to risk management measures and/or sanctions shall have the right within seven (7) days of notification of

i. the risk management measure(s) and/or sanction(s), and

ii. the brief written reasons of [INTERNATIONAL FEDERATION DECISION-MAKING BODY], to make an application to lift or vary such risk management measure(s) and/or sanction(s) in a hearing before [SECOND INTERNATIONAL FEDERATION DECISION-MAKING BODY] convened for such purpose.

[SECOND INTERNATIONAL FEDERATION DECISION-MAKING BODY] shall give such directions as are necessary to determine the application.

X.6 The procedure for determining the application shall be determined by [SECOND INTERNATIONAL FEDERATION DECISION-MAKING BODY] as appropriate to the circumstances of the application.

X.7 A risk management measure and/or sanction issued in accordance with regulation X.2 may be lifted or varied only following an application made under regulation X.5 if (or to the extent that) [SECOND INTERNATIONAL FEDERATION DECISION-MAKING BODY] determines that the risk management and/or sanction is not necessary or proportionate, giving consideration to the factors set out at regulation X.4 above and the reasoning of [(first) INTERNATIONAL FEDERATION DECISION-MAKING BODY]. Risk management measures and/or sanctions issued under regulation X.2 shall otherwise remain in force pending the final determination of the matter.

X.8 In the event that a risk management measure and/or sanction is for any reason lifted or varied following its issuing, notification of the lifting or varying of the risk management measure and/or sanction shall be provided to the relevant person and such other persons as had previously been notified of the original issuing of the risk management measure and/or sanction.

"Bird & Bird has provided the BHA with legal advice and support in respect of safeguarding for in excess of five years, since helping to develop our first safeguarding policy and set of accompanying regulations. Richard Bush is responsive, easy to work with, and has a real grasp of the law and practice in respect of safeguarding in sport, particularly from the perspective of a governing body."

Matt Mancini

Head of Safeguarding and Human Welfare,
British Horseracing Authority

Annex 1

Other Bird & Bird safeguarding resources

Over the last few years, we have produced (and we will continue to produce) a number of safeguarding resources that might be of interest or assistance to those concerned with safeguarding in sport, and in particular safeguarding regulation. These resources include those listed below, which are made accessible by way of hyperlinks by clicking on the resource titles.

Audiovisual resources

Podcast series: 'Safeguarding: What Sport Needs to Know'

We have recently launched a podcast series featuring many experts and/or prominent voices in safeguarding in sport. The series will consider various aspects of safeguarding in sport, particularly in respect of regulatory matters, and will look at how safeguarding in sport is addressed in various jurisdictions.

A video introduction

This video summarises the content of the 'Safeguarding' chapter of Sport: Law and Practice'. While it is focussed on the position in England, much of the content is of universal application. The content covers (1) key safeguarding terminology, (2) the child protection and care systems, (3) the role of the Child Protection in Sport Unit, (4) key safeguarding roles and responsibilities, (5) safeguarding policies, (6) information sharing, (7) safer recruitment, (8) regulated activity, (9) safeguarding regulations and case management, (10) non-recent cases, and (11) the 'duty of care' and the scope of safeguarding beyond children and adults at risk.

Safeguarding in sport: The importance and role of expert risk assessment

In this one-hour online session, Marcella Leonard MBE (Director of Leonard Consultancy) joined Richard Bush (Partner and Head of Bird & Bird's Safeguarding in Sport practice), seeking to aid understanding of the importance and role of risk assessment in safeguarding in sport, by discussing and explaining what risk assessment is, why it is a useful tool for sports organisations, and what steps sports organisations must take in order to be able to require a participant to undergo a risk assessment in appropriate cases.

The role of International Federations

This video, a collaboration between Bird & Bird and Safe Sport International, explores the role of International Federations in safeguarding in sport, and what they can do to help eliminate violence, abuse and harassment against athletes of all ages.

In this video we were fortunate to be joined by Janice Shardlow (SSI Associate Consultant), Kat Craig (founder and CEO of Athlead) and Áine Power (Deputy Legal Director, Fédération Equestre Internationale).

Information sharing: safeguarding in sport

This video explores the key data protection principles sports organisations need to understand and follow when sharing safeguarding information.

Safeguarding in Sport: From Australia to the UK

Richard Bush and Tom Macken (Senior Associate, Sydney) speak to respected international safeguarding expert, Phil Doorgachurn, about safeguarding in sport from both a UK and Australian perspective.

Bird & Bird Global Annual Sports Day 2025 - Guide to Safeguarding Regulation in Sport

As part of Bird & Bird's 'Annual Sports Day' (2025), Richard Bush and Lereesa Easterbook introduce the Bird & Bird Guide to Safeguarding Regulation in Sport, including a discussion on the importance of safeguarding in sport followed by a Q&A.

Written resources

Safeguarding in Sport: Forms of Remedy

This paper principally concerns the critical issue of 'remedy' in the context of safeguarding/abuse cases relating to sport, setting out some key routes of remedy that are available and offering some comment on how sport governing bodies (SGBs) can effectively address and resolve such cases within sport.

UK Sport's Safe Sport Report 2025: A Bold Vision for Transforming Sport Safety

Following extensive consultation with stakeholders from across the UK's sport sector (including national governing bodies, sports clubs, venue operators, and survivors of harm and abuse in sport), as well as a number of international safe sport organisations, the five UK Sports Councils (UK Sport, Sport England, Sport Scotland, Sport Wales, and Sport Northern Ireland) have published their Safe Sport Report.

The report sets out bold new proposals for the adoption by UK sports bodies of standardised regulations and codes of practice pertaining to safe sport, with compliance overseen by a new independent lead body.

Safeguarding Proceedings - How To Balance The Rights Of The Accused With Treatment Of The Abused? (LawInSport)

This article considers steps that can be taken to balance the rights of respondents in safeguarding proceedings against the need to avoid causing harm (or further harm) to complainants/witnesses, including (1) adopting an inquisitorial approach to proceedings, (2) adopting "special measures", (3) limiting the need for live evidence to be given, (4) support for complainants, and (5) support for respondents.

Addressing Participant Welfare And Safeguarding Issues In Sports Disciplinary Investigations (LawInSport)

This article considers (1) the importance of participant welfare and safeguarding in conducting disciplinary investigations; (2) practical considerations in addressing participant welfare and safeguarding during disciplinary investigations in respect of (i) all participants, (ii) participants with identified physical and/or mental health issues; and (iii) child participants; and (3) the desirability of making provision for participant welfare and safeguarding cases in advance.

Sports Safety: Should It Be Mandatory To Report Child Protection & Safeguarding Concerns? (LawInSport)

This article examines the complex issue of mandatory reporting of child protection and safeguarding concerns in sport, and looks specifically at (1) the pros and cons of mandatory reporting in this context, and (2) the main issues for governing bodies to consider, including (i) to which individuals the duty should attach, (ii) what behaviour should be subject of the duty, (iii) which individuals should be protected by the duty, (iv) whose behaviour should be subject of the duty, and (v) what level of knowledge of abuse should trigger the duty.

The Independent Mali Basketball Abuse Investigation - Important Lessons For International Sport (LawInSport)

In the context of considering the independent Mali basketball abuse investigation, this article looks at (1) universal themes relating to abuse in sport, (2) the need for a proactive approach and monitoring in respect of national federations, and (3) the differences between 'safeguarding' and 'disciplinary' regulation.

FIFA Guardians And Why International Federations Should Play A Greater Role in Safeguarding Sport (LawInSport)

In the context of setting out the key aspects of the FIFA Guardians toolkit, this article looks at (1) the aims of the toolkit, (2) its 'five principles' and 'five steps', and (3) a regulatory role for International Federations.

Addressing "unacceptable behaviour" in sport

This brief article considers possible regulatory/disciplinary responses that sports organisations might adopt to address the issue of "unacceptable behaviour" in sport, and what that term really means.

Child protection and esports

This article looks at child protection in the context of esports and some of the steps that esports entities/organisations can take to minimise the risks of potential abuse occurring in the first place and to respond effectively if concerns arise

Annex 2

Our safeguarding in sport practice and key contacts

We frequently advise our national and international clients in relation to the following:

- The development of clear, easy to understand, and up to date safeguarding policies (meeting any public funding or other requirements, where relevant), including engagement and consultation with key stakeholders.
- Procedures to receive reports of harm/abuse, and to refer such reports to relevant third parties, such as the police, local authorities, and (where appropriate) other sports bodies.
- Effective safeguarding regulations capable of addressing a range of conduct and levels of risk - from low-level/'poor practice' concerns to serious cases of abuse - including procedures to, where necessary, remove individuals who pose a risk of harm from participation in sport (or place appropriate restrictions on such participation).
- The effective conduct of safeguarding investigations and day-to-day case management.
- Information sharing with third parties, including local safeguarding partners, sports stakeholders and other authorities.
- Handling interactions with participants, including information rights requests.
- The conduct of safeguarding proceedings and the presentation of cases before safeguarding panels.
- Awareness-raising, training, and safer recruitment practices (including appropriate criminal record checks).
- Safeguarding case reviews, and monitoring and maintaining appropriate policies and procedures, in order to ensure that standards remain at an appropriately high level

"Richard Bush is recommended, primarily on safeguarding matters. Very responsive, calm, assured manner. Good at communicating with non-lawyers."

Sports respondent, UK

Legal 500 2025

"B&B's sport practice continues to be market-leading and populated with brilliant and personable lawyers. There is a good blend of personalities and gender diversity. I have always felt listened to as a client, and the firm is always seen to be making an effort to respond to particular requests."

Sports respondent, UK

Legal 500 2025

Our team

Richard Bush

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Richard is a Partner in the International Sports Group of Bird & Bird, where he established and leads the safeguarding in sport practice.

He first gained experience of safeguarding regulation in sport while employed as an in-house solicitor with the (English) Football Association, where he provided day to day legal advice to its safeguarding team for three years. Since joining Bird & Bird, he has been fortunate to have applied and built on that experience, and now frequently advises many of Bird & Bird's national and international sports organisation clients on a wide variety of safeguarding matters, from policy formulation through to regulation drafting and case management. As a result of that experience, he is able to provide clients with calm, practical advice in this most difficult of areas.

"Richard [is] very friendly, understated and one of the best I have worked with. He is also, in my view, now the most experienced lawyer in safeguarding."

Chambers UK 2025

Brianna Quinn

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Brianna is a Partner in Bird & Bird's Sports Group in Sydney and - among other external roles - is Co-Chair of the Ethics Board of the International Ice Hockey Federation. She advises national and international sports federations and organisations on regulatory and contentious matters across a wide variety of sports.

Brianna has drafted ethics and safeguarding regulations and advised on their implementation and interpretation. She has also represented clients in safeguarding matters before international tribunals, including the Court of Arbitration for Sport.

Anna Morgan

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Anna is a Partner in Bird & Bird's International Privacy and Data Protection Group, based in the Dublin office where she heads the Irish Privacy & Data Protection practice. She has a special interest, and significant expertise, in matters involving the processing of children's personal data, and also advises clients on the related areas of online safety and content moderation.

Prior to joining Bird & Bird, Anna was Deputy Commissioner and Head of Legal Affairs at the Irish Data Protection Commission, where she established the DPC's Children's Policy function and led work on children's data protection issues.

Pia Ek

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Pia is the chairperson for the Finnish Center for Integrity in Sports (FINCIS) and long-standing member of the Finnish Sports Arbitration Board. She is a member of the expert panel that drafted the Finnish disciplinary rules pertaining to serious inappropriate behaviour and severe ethical violations in sports as well as drafting the disciplinary rules pertaining to manipulation of sports (match fixing). Pia is a frequent lecturer on safeguarding and other sports law related issues.

Emma Drake

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Emma is a Partner in Bird & Bird's data protection and online safety practice in London. She advises a large number of clubs, competitions and national and international sports governing bodies and federations on data protection matters, with particular expertise in safeguarding. She led efforts by a group of national governing bodies in 2017 that resulted in the successful introduction of the safeguarding condition for processing in Schedule 1 of the Data Protection Act 2018, and has since advised a large number of sports bodies on the handling of data subject rights, safeguarding disclosures and matters relating to the use of DBS checks and the handling of personal data within safeguarding reviews and published reports.

She has been described as a 'lead lawyer for sport on data protection' in the House of Lords and is the contributing author of the data protection chapter in 'Sport: Law and Practice' (Bloomsbury Professional, 4th Edn, 2021). She has provided training on safeguarding and data protection for Sport England and for the Premier League, as well as directly to a range of sports bodies.

Alasdair Muller

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Alasdair is a Legal Director in Bird & Bird's sport regulatory team in London. He has extensive experience in assisting sports governing bodies prepare and implement safeguarding regulations and policies, designed to ensure that children and adults at risk are protected from harm and abuse while in sporting environments, while also setting out trauma-informed procedures to ensure that appropriate measures can be taken to manage any risks that are identified, as and when they arise.

Lereesa Easterbrook

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Lereesa is a Senior Associate in the International Sports Group of Bird & Bird. She acts primarily for national and international sports governing bodies, federations and sporting organisations in contentious and regulatory matters, including safeguarding, which is one of the parts of her practice that she finds most rewarding.

In particular, she has experience in advising clients across different sports in relation to safeguarding investigations, safeguarding proceedings, the application and scope of safeguarding rules, as well as appropriate risk management measures. She is passionate about expanding her knowledge and experience of safeguarding regulation and helping clients to navigate this very tricky area.

Magnus Wallsten

Associate

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Magnus is an Associate in Bird & Bird's Sports Group in London. He is a solicitor in England & Wales and an attorney in the State of New York, advising national and international sports governing bodies, federations, and organisations in contentious and regulatory matters across a wide variety of sports.

He has advised clients in relation to a range of safeguarding-related issues, such as investigations into misconduct by participants in the sport, drafting safeguarding rules and guidelines, and acting for clients in disciplinary challenges before sporting tribunals.

Tom Green

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Tom is an associate in our Sports practice, based in Sydney. He advises a range of clients in the sports sector, including national and international sports governing bodies, professional sporting teams, event organisers and athletes.

He has experience drafting codes of conduct and regulations relevant to safeguarding, and has advised on a variety of safeguarding matters, including safeguarding investigations and proceedings, serious misconduct by sports participants, and child protection matters.

Shauna Joyce

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Shauna is a Senior Associate in Bird & Bird's International Privacy and Data Protection Group, based in the Dublin office where she is a member of the Irish Privacy & Data Protection team. She is an expert in her field, advising across a broad spectrum of privacy, data protection and related issues, with a specialist interest in children's rights.

She has extensive experience advising domestic and multinational organisations across a broad spectrum of privacy, data protection, as well as on regulatory strategy and engagement in the context of statutory inquiries, information requests and complaint handling. She has led a number of successful largescale multijurisdictional projects involving children's data protection, online safety obligations and related issues.

She enjoys assisting clients in the technology, gaming and media sectors in mapping the complex regulatory and legal landscape around children as digital rightsholders, advising on the GDPR, UN Convention on the Rights of the Child and current EU and domestic laws on online safety and content moderation, as well as on forthcoming EU legislation and regulatory developments in this area. She has additional experience advising sports clients on the data protection and privacy implications relating to child protection and safeguarding.