

THE PROCEDURE FOR RUNNING AN INVESTIGATION AND DISCIPLINARY PANEL

THE PROCEDURE FOR RESPONDING TO WELLBEING & PROTECTION CONCERNS ABOUT THE CONDUCT OF A MEMBER OR SCOTTISH SWIMMING STAFF MEMBER

This section of the procedures should be read in conjunction with Governance rule R13.2 and Scottish Swimming Complaints procedure, Staff Performance Management and Disciplinary Procedures. Sections 6, 7 and 8 in the Child Protection Policy cover what to do if a child tells you about abuse. That guidance applies whether the information is about a member of staff or someone not connected in any way with the sport. The following section details the procedure to be followed where the concern is about a member or Scottish Swimming staff.

In the event of an investigation into the conduct of a member, Scottish Swimming staff or volunteer all actions will be informed by the principles of natural justice:

- The individual will be made aware of the nature of concern or complaint
- where the concern is about possible child abuse, advice will firstly be taken from the police as to what can be said to the individual
- an individual will be given an opportunity to put forward their case
- Scottish Swimming will act in good faith, ensure the matter is dealt with impartially and as quickly as possible in the circumstances

In all cases where there are concerns about the conduct of a member or Scottish Swimming staff towards children & young people, the child / young person's wellbeing will be the paramount consideration.

At any point in the management of concerns about the conduct of a member of staff/volunteer, advice may be sought from the police or social work services.

Initial reporting of concerns

Any concerns for the wellbeing of a child or young person arising from the conduct of a member, Scottish Swimming staff must be reported to the Scottish Swimming Wellbeing & Protection Officer or Chief Executive Officer on the day the concern arises, or as soon as practically possible.

Where the concern is about the Scottish Swimming Wellbeing & Protection Officer it must be reported to the Chief Executive Officer, if the concern is about the Chief Executive Officer it must be reported to the Chair of the Board.

Recording

Concerns must be recorded using the Incident / Wellbeing Child Protection report form Appendix 32 as soon as possible. Reporting the concerns to Scottish Swimming's Director of Services, CEO or Scottish Swimming's Wellbeing & Protection Officer should not be delayed by gathering information to complete the form or until a written record has been made.

All subsequent actions taken and reasons for decisions shall be contemporaneously recorded on the Incident / Wellbeing Child Protection report form signed and dated by Scottish Swimming's Director of Services, CEO or Scottish Swimming's Wellbeing & Protection or the person appointed to manage the response to the concerns. Where Complaints process / Disciplinary / Performance Management Procedures are invoked, a written record will be made of all actions and reasons for decision. Guidance on the storage, sharing and retention of such records is contained in the relevant [Data Protection Policy](#).

Once the concerns have been reported Scottish Swimming's Director of Services, CEO or Scottish Swimming's Wellbeing & Protection officer will:

Establish the basic facts

- Conduct an initial assessment of the facts in order to determine the appropriate course of action
- Consult external agencies such as the police and social work services for advice at any time. This is important because they may hold other important information which, when considered alongside the current concerns builds a significant picture of concern

Conducting the initial assessment

Scottish Swimming's Director of Services, CEO or Scottish Swimming's Wellbeing & Protection Officer will conduct the initial assessment.

The purpose of the initial assessment is to clarify the nature and context of the concerns. It should determine whether there is reasonable cause to suspect or believe that a child / young person has been abused/harmed or is at risk of abuse or harm. Every situation is unique so guidance cannot be prescriptive.

- Where the established facts support a concern about possible abuse, the initial assessment may form part of the disciplinary investigation
- Subject to the nature and seriousness of the situation, if it is not clear at this stage whether a criminal offence may have been committed, the member or Scottish Swimming staff may be approached as part of the information gathering process
- Where the nature and seriousness of the information suggests that a criminal offence may have been committed, or that to assess the facts may jeopardise evidence, advice will be sought from the police before the member or Scottish Swimming staff is approached
- An initial assessment of the basic facts may require the need to ask a child (ren) / young people some basic, open-ended, non-leading questions solely with a view to clarifying the basic facts. It may also be necessary to ask similar basic questions of other children / young people, or other appropriate individuals
- Interviewing children / young people about possible abuse and criminal offences is the sole remit of specially trained police officers and social workers. Questioning of child/ young person by those conducting an initial assessment should always be avoided as far as possible. If it is necessary to speak to the child/ young person in order to clarify the basic facts best practice suggests that consent from the parent / carer should be obtained

Possible outcomes of initial assessment:

- No further action (facts do not substantiate complaint)
- Situation is dealt with under procedures to manage poor practice (Appendix 23)
- Disciplinary investigation (by Scottish Swimming)
- Child protection investigation (jointly by police and social work services)
- Criminal investigation (by the police)
- The results of a criminal investigation may well influence the disciplinary investigation, but not in all cases
- Civil proceedings (by the child/family who alleged abuse)

Initial assessment supports concerns about poor practice and/or misconduct (but not possible child abuse)

Scottish Swimming's Director of Services, CEO or Scottish Swimming's Wellbeing & Protection Officer will deal with the situation in line with the relevant Procedures, depending on the individual involved this may be in agreed conjunction with the Chief Executive Officer who invokes their power under Governance rule R13.2.4 as noted above.

Pending the outcome of any investigation conducted under any of the above named, a precautionary suspension will be considered in all cases where there is significant concern about the conduct of the individual being investigated. The wellbeing of children / young people will be the paramount concern in such circumstances.

Where the circumstances meet the referral criteria set out in the Protection of Children (Scotland) Act 2003, Scottish Swimming has a duty to make a referral to Scottish Ministers.

Initial assessment supports concerns about possible child abuse

Where the initial assessment of information gives reasonable cause to suspect or believe possible child abuse Scottish Swimming's Director of Services, CEO or Scottish Swimming's Wellbeing & Protection Officer will refer the concerns to the police and/or social work services as soon as possible on the day the information is received.

Scottish Swimming's Director of Services, CEO or Scottish Swimming's Wellbeing & Protection Officer will make a written record of the name and designation of the social worker or the police officer to whom the concerns were passed together with the time and date of the call, in case any follow up is required.

Referrals to the police/social work services will be confirmed in writing by Scottish Swimming's Director of Services, CEO or Scottish Swimming's Wellbeing & Protection Officer within 24 hours. A copy of the Incident / Wellbeing / Child Protection report should be provided to the police/ social work services on request.

Appropriate steps will be taken to ensure the safety of the child (ren) / young people or individual who may be at risk. The parents of the child (ren) / young people involved will be informed as soon as possible following advice from the police/social work services.

Advice will firstly be obtained from the police/social work services about informing the member or Scottish Swimming staff about the concerns. If the advice is to inform the individual, they will be told that information has been received which may suggest there is a serious concern about their conduct. As the matter is being dealt with by the statutory authorities no details will be given unless advised by the police/ social services. All actions will ensure the best evidence is preserved for any criminal proceedings while at the same time safeguarding the rights of the individuals involved.

Precautionary suspension

The member or Scottish Swimming staff involved may be suspended whilst an investigation is carried out. Precautionary Suspension is not a form of disciplinary action it is a protective measure and is viewed as a precautionary measure to all involved.

Notification of the suspension and the reasons will be conveyed in writing to the individual.

Disciplinary investigation

Following advice from the police, cases that also involve a criminal investigation, will not preclude disciplinary action being taken provided sufficient information is available to enable Scottish Swimming's Wellbeing & Protection Officer in consultation with the Chief Executive Officer to make a decision and that to do so does not jeopardise the criminal investigation.

R13.2 Where an individual shall been convicted or have been the subject of caution in respect of an Offence the Chief Executive Officer shall have the power to impose summarily either or both of the following penalties:

- a) **the withdrawal with immediate effect of an license granted by the Company, which the individual may hold**
- b) **the life suspension of the individual from any event or activity promoted or authorised by the Company or any other body directly or indirectly affiliated to the SASA wherever held.**

There shall be a right of appeal under this section R13.2.4

False or malicious allegations

In the very exceptional circumstances, that an investigation establishes an allegation is false, unfounded or malicious:

The member or Scottish Swimming staff involved will receive an account of the circumstances and / or investigation and a letter confirming the conclusion of the matter

The Scottish Swimming's Director of Services, CEO or Scottish Swimming's Wellbeing & Protection Officer will take all reasonable steps to support the individual in this situation

In these circumstances, Scottish Swimming will review the child's participation in the sport
Data collected for the investigation will be destroyed in accordance with the requirements of the Data Protection act 2018.

ADAPTING THE PROCESS FOR UNDER 18S

Scottish Swimming has an established complaints and disciplinary process and recognises that there is need to adapt this when children and young people are involved. The priority with any adaptations is to create a child centred approach and to ensure that children and young people are not put through a case management and disciplinary systems that in its self causes harm. The process that they are involved in should reflect this and be based on the following key principles:

- Those who know the child/young person best should be the ones who discipline, mentor, guide and educate them as part of their development
- The disciplinary/complaint procedure should be simple, easy to understand and conducted more informally than the adult procedure
- The wellbeing of the child / young person is paramount and any arrangements around meetings should take into account their educational commitments and family life. Therefore meetings will be conducted locally and by those with experience in dealing with child/ young people
- Sanctions and any suspensions should not normally be so severe as to discourage the child/young person from continuing within the sport and should be tiered in severity to their age, responsibility and culpability
- The right to appeal is a required part of the process and should be included when communicating any final outcomes

U13

Any disciplinary matter arising in clubs for participants aged 12 years or younger shall be dealt with in person by the athletes coach with input and advice of the club wellbeing and protection officer. A child aged 12 or under should not appear at a disciplinary panel or meeting. An alternative method should be adopted which could include:

1. The child's coach to talk to the child to warn them about their behaviour as a normal part of the coaching process, the coach may wish to discuss their approach with the Wellbeing & Protection Officer (WPO) and engage with the child's parents to address the behaviour
2. If the behaviour persists or is a significant breach of the players code of conduct a meeting should be arranged bring the parties together to talk through the issues normally the coach and the parents and if required the WPO – informal mediation

If points 1 and 2 do not resolve the issue then a more formal approach is required:

3. Private meeting between child and WPO to establish child's version of events (with parent/carer present) – WPO to make notes and provide summary to the disciplinary meeting, the WPO may also require to follow the same process if the behaviour involves other children
4. WPO to obtain written statement from child and any witnesses via their parents and the disciplinary meeting to proceed on paper basis only – the WPO may need to write the statement in conjunction with the child(ren) and parent/carer

U16

A child of 13,14 or 15 years inclusive can attend a disciplinary meeting provided that:

- They understands it is their duty to speak the truth
- Their evidence is sufficiently important to justify it being heard
- The appropriate procedures adopts the U16 provisions and the child must be accompanied by a parent/carer

U18s

Best practice when dealing with a disciplinary panels involving those aged 16 & 17 years is to follow the guidance established for adults, and to make reasonable adjustment to reflect the age and stage of the young people involved.

- Where a child is aged 17, consent of the parent should be obtained for the child to attend the disciplinary commission where possible / appropriate
- By law a 17 year old is still a child and if they choose to have adult representation this should be allowed

Serious Cases

Escalating behaviour patterns where permanent exclusion is a potential outcome of the disciplinary process, cases that may require police investigation, racial abuse etc should be referred to the Scottish Swimming Wellbeing and Protection Officer who will provide advice on how to deal with the matter / refer it to external agencies.

Precautionary Suspension

Depending on the nature of the complaint/disciplinary issue a precautionary suspension may be given, this is a precautionary step as it means no further allegations or incidents can happen. It is important to consider the following when considering and issuing a precautionary suspension:

- Is a precautionary suspension required in this case?
 - Can management measures be put in place to facilitate continued participation while the matter is investigated?
- What will the suspension cover?
 - Partial suspension – some activities?
 - All aquatics activities in any role – total suspension?

Good Practice in running disciplinary meetings and panels for U16s and U18s

Overriding principles are that the process of appearing in a disciplinary meeting or panel should not expose a child or young person to intimidation, distress, a late start time or long travelling times/distance during the school week. All possible steps should be taken to assist the child/young person to understand and participate in the process.

Meeting / Panel Preparation

There should always be a pre disciplinary meeting/panel session by the members running the process when it involves U18s. This should include an agreement on the process to be used, procedures to be adopted and how the case should be heard – in person or on paper

- Consent of the parent/carer will always be required
- The young person should be accompanied at the disciplinary commission by an appropriate adult who could be a parent, carer, grandparent, social /care worker or Club official properly in loco parentis or could be a friend of the family etc.
- The disciplinary meeting / panel should be at a location and time that is convenient to the child/young person
- Restrict attendance at the disciplinary meeting / panel to as small a number of people as possible
 - A disciplinary meeting for 13-15 year olds is often made up of 2 and no more than 3 individuals
 - A disciplinary panel is made up of 3 members, and may on occasion based on the needs of the young person drop down to 2
- Before the disciplinary commission, it may be appropriate to allow the child or young person to visit the room so that they can familiarise themselves with the layout
- Make sure the young person is aware of the format and process they are about to be engaged in
- WPO should be available at the disciplinary meeting/panel to advise/support the child/young person **or** the disciplinary meeting/panel members; they **can not do both**. It must be clear to all which function they are fulfilling.
- Physical layout of room can affect the process and play a role in the effective engagement with the child/young person – try to remove physical barriers e.g. arrange chairs in two semi circles facing inward, avoid sitting behind tables etc.
- The members of the disciplinary meeting/panel should sit at the same level as other parties to encourage eye contact.
- Provision should be made for parents/carers to be able to sit next to their child/young person
- If the child/young person is formally or legally represented, they should be seated in a place that allows easy communication with their representative

THE DISCIPLINARY Process

- At the beginning of the case, disciplinary meeting/panel members should introduce themselves and those present in the room
- The Chair should briefly explain the role of each person
- Minutes are not normally taken, but the outcome will be recorded
- Written statement from the child/young person will also be taken to ensure that their position is clearly recorded
- Meeting/Panel members will make notes for their own recollection
- Address child by first name

- Be aware of the impact body language can have e.g. - folded arms and peering over spectacles = negative - occasional nod / leaning forward = positive
- Remain seated throughout proceedings
- If the disciplinary meeting/panel is lengthy, regular breaks should be taken
- Proceedings should be inquisitorial rather than adversarial
- Closed questions (those that allow a yes or no answer) and legal jargon should be avoided
- Rephrase a question to simplify it, if the child/young person is finding it difficult to answer
- Questions should be in plain English and at a level the child/ young person can understand taking into account their age, maturity and intellectual and emotional development
- Disciplinary meeting/panel members should consider what information they are trying to obtain and how it is relevant to the case
- The nature and extent of the questioning of any witness is under the control of the Chair
- The Chair can and should intervene to prevent the child/young person being questioned in a hostile way
- If a parent/carer has accompanied the child/young to the disciplinary commission, the Chair should make clear that the parent is there in a supporting role only and should not conduct the proceedings on behalf of the child/young person
- A timeline for outcome communication should be given at the end

Communicating Outcomes

- Should not be unreasonably delayed or go beyond stated timescales without notification
- If the case is proven someone should talk directly to the child, encouraging them to confront their behaviour, taking responsibility for it and its consequences. As this is a sensitive area it is recommended that someone with the appropriate training should undertake this e.g. the WPO or child/young person's coach
- The outcome should also be communicated in writing and include the right to appeal as per R13.2.4