



# Abuse: Protocol for Notification of Circumstances

Helping National Governing Bodies

In partnership with

brownejacobson<sup>LLP</sup>



# Understanding when to report an abuse incident to insurers

Anyone involved in Sport and Recreation in the United Kingdom, either at National Governing Body or local club level, lives in fear of an abuse allegation being made against one of their own, be it a coach, administrator, participant or volunteer.

Sadly, we all know there is a tiny minority who will use participation in Sport and Recreation as a means of gaining access to young people or vulnerable adults, or who will behave inappropriately towards them. The good news is, access is becoming more difficult thanks to the extraordinary efforts of those who are seeking to improve standards and remove bad practice from their ranks.

On the rare occasions when things do go wrong and an incident is reported or a claim made, associations and clubs do have recourse to their insurance policy, however there are protocols and procedures that need to be followed in order to ensure the policy is triggered or will respond at the appropriate time.

This guidance note, written by Perkins Slade in conjunction with national law firm Browne Jacobson LLP, sets out the procedures you and your constituents need to follow.

We hope you will find it of benefit to your National Governing Body and your clubs.

Richard Doubleday  
Executive Director, Sport and Recreation  
Perkins Slade

It sometimes seems that hardly a day goes by without some fresh allegation of bullying, physical or sexual abuse, or other inappropriate behaviour, in a sporting or recreational context. Whilst in reality such incidents are comparatively rare, we hope that this guidance will be a useful tool for those having to deal with the consequential insurance issues that arise.

Robust safeguarding policies and procedures, and an appropriate incident response strategy, are the best ways to protect your club or association and those who engage in its activities. Sport and recreation offer participants so many positive benefits - and we hope that this guide will enable clubs and associations to concentrate on what they do best, safe in the knowledge that they have access to appropriate expertise in the unlikely event that it needs to be called upon.

David Maggs  
Partner  
Browne Jacobson LLP



The insurance cover provided to a National Governing Body and its constituent bodies and clubs will vary from one policy to another but in all cases there will be a requirement that circumstances that could reasonably give rise to a claim must be notified to the insurer as soon as possible.

In most cases the insurer will take no action on receipt of a notification and will not seek to intervene or interfere with any ongoing investigation. An early notification, however, will allow insurers to prepare for any claim that is likely to arise and to accurately measure the potential cost. Most important, it ensures that you comply with the insurance policy terms and conditions.

Failure to comply with the terms and conditions, including failure to appropriately notify a circumstance that could give rise to a claim, may result in insurers reserving their rights with regard to any claim made or, ultimately, in a claim not being insured at all.

This protocol for notification has been shared with a number of insurers, with the intention of making sure there is as little ambiguity as possible as to what type of information they are expecting to receive and when, and ensuring a fair presentation of risk, to comply with The Insurance Act 2015, which came in to force in August 2016.

## Definitions

- **“Claim”** – A demand, in civil law, for damages or compensation for harm suffered as a result of bodily injury caused by the act or omission of the organisation, its constituent body or club.
- **“Abuse”** – Any form of physical, emotional or sexual mistreatment or lack of care that leads to injury or harm. This may not be immediately apparent and a lack of care or an ongoing course of inappropriate conduct could give rise to abuse.

Examples of abuse include physical acts (e.g. hitting, shaking or burning; coaching beyond the capacity of a child’s physical development or the use of drugs), sexual abuse (e.g. inappropriate physical contact or grooming) and emotional ill-treatment (e.g. name calling, bullying, or pressure to perform to unrealistic expectations).

- **“Poor Practice”** – Behaviour of an individual in a position of responsibility (such as a coach) that falls below an organisation’s required standard. This is typically described in an organisation’s code of conduct. Poor practice is not acceptable but may not be immediately dangerous or harmful.

Examples of poor practice can include shouting at participants, swearing in front of children, coaching with alcohol on the breath or failing to pay due care and attention to participants. Poor practice over an extended period (such as continuously shouting at a child/excluding a child from activity) could cross the line between poor practice and abuse.

For further details please see the website of the Child Protection in Sport Unit (CPSU):  
<https://thecpsu.org.uk/help-advice/introduction-to-safeguarding/child-abuse-in-a-sports-setting/>



Insurers understand that a majority of associations will deal with a number of complaints and suspensions resulting from poor practice and abuse in any given period of time. Also, that in their dealings with other agencies, they will be required to take action as a result of incidents that have no connection to the sport itself.

Insurers require you to notify them of circumstances that may reasonably give rise to a claim against you or one of your clubs. It is often difficult to understand how a claim could arise as a result of the acts of an individual, but this is typically due to the alleged failure of the organisation or club in respect of its duty of care towards the victim. It would be argued that you/your club is responsible for harm suffered by the victim as you/it failed to ensure that the activity took place within a safe environment.

**The following criteria should be used to decide whether an incident should be notified to insurers:**

**Is the incident connected to your sport?**

For example, is the alleged victim a member of your organisation or an affiliated club? Did the alleged incident take place within a club or as a result of club activities? If the incident took place away from the club, did the alleged victim meet the perpetrator as a result of your activity (i.e. within the club environment or as a result of coaching) and could an allegation of grooming be made?

**If the answer is yes, please consider:**

- Is the incident **poor practice** or **abuse**?
- If the incident is **poor practice** it should be the case that no actual harm has been suffered and therefore there is no requirement to notify insurers. However, please see page 7 of this document, which sets out our recommendations for "Periodic Reporting".
- If the incident falls into the classification of **abuse**, the circumstance must be notified to insurers immediately. Any circumstance connected with your sport that involves a criminal investigation must also be notified.

It is important that National Governing Bodies of Sport and Recreation ensure that all incidents taking place at a local level are notified to the organisation centrally, to ensure that no potentially notifiable circumstances are missed. As such, you need to have clear and consistent internal procedures and rules that are disseminated to all local clubs and affiliated representatives. This should include the sharing of this document with all such parties and it should specify exactly who they should report a circumstance or incident of poor practice to.

You may need to consider providing specific training and you will need to ensure that local clubs are regularly reminded of these requirements. Also, this issue should be part of the induction training provided to any new contact point within a local club.

**Perkins Slade will be happy to provide advice and assist with training if required.**



## Initial notification

Insurers appreciate there is sensitivity around the sharing of data relating to abuse incidents. Please be assured it will be handled with total confidentiality and in line with data protection requirements.

The information provided at the point of first notification should include enough detail for the circumstances to be readily identified should a subsequent claim arise. Data can be anonymised to a degree but we recommend it should include:

- Initials of the individual alleged to have committed the abuse
- Initials of the alleged victim
- Name of the club
- Date of the incident
- A brief description of the circumstance

If you prefer, insurers may accept circumstances identified by way of a unique case reference, as long as there is sufficient detail included to ensure it can be identified if a claim is made. If you are able or wish to provide additional information, that is acceptable. If you have any concerns regarding the sharing of information please speak to your usual Perkins Slade contact or refer to the Government Information Sharing Advice for Safeguarding Practitioners. Link:

<https://www.gov.uk/government/publications/safeguardingpractitioners-information-sharing-advice>

Once a circumstance has been notified to your insurer, you will be advised as to whether this has been accepted against your policy cover. Prompt notification will minimise the risk of your insurer reserving its rights in respect of a future claim that may arise from the matter in question. It may be it will request additional information, but it is important to note that insurers will not take any action that could impede an ongoing investigation.





After the circumstance is accepted by insurers, it is important that additional information is provided as and when the matter develops. Such information should be supplied in a timely manner and should include any material change in the circumstance, such as:

- The initiation, development, conclusion or abandonment of a criminal action
- Any allegation of wrongdoing against the organisation or club
- The result of any internal review panel or disciplinary hearing
- Any other significant development in the circumstance

## Receipt of a letter of claim

If, at any time, your organisation or club receives a letter of claim, either from an individual victim or their representative (for example, a parent or solicitor), this must be passed to Perkins Slade IMMEDIATELY and we will advise what action is needed.

Neither you nor the club concerned should acknowledge the letter or respond in any way. Most importantly, you must not offer compensation or admit responsibility or liability for any injury or harm suffered.

### Important

Insurers appreciate there may be cases that do not meet the above criteria, but result in a claim being made against an association or one of its clubs. Clearly it is not possible to give absolute 100% clarity or certainty around all conceivable scenarios but, by following the advice contained in this document, you are significantly reducing the risk of your organisation failing to notify a potential claim to insurers in the correct manner or at the right time. As such, you are minimising the risk of a future dispute with your insurers as to whether a claim has been properly reported in line with policy conditions.

**If in doubt – always speak to Perkins Slade immediately for advice**



There will be a number of circumstances each year where the threshold for notification described previously will not be reached. This could be:

- Reports or complaints of poor practice
- Suspensions that are put in place as a result of incidents/complaints that arise away from your activities

Whilst neither of these would constitute a circumstance that could reasonably give rise to a claim, either because there is no harm or there is no complaint or allegation made in connection with your activity, they can act as an early warning of potential claims in the future.

For example, if a coach is suspended because of an allegation of abuse resulting from an incident at his/her place of work (which is not connected to the activity), within his/her family, or in another activity in which they coach, this would not reasonably give rise to a claim against your organisation or club. It could, however, be that the coach has engaged in inappropriate behaviour within your activity that has simply not yet come to light and that a claim may follow in due course.

We would recommend that such incidents, including allegations of poor practice and details of individuals suspended or excluded from your organisation as a result of incidents of abuse that occur away from the activity, should be notified to Perkins Slade and your insurers on a periodic basis. This should be on a six-monthly or quarterly basis (as agreed) and include as a minimum:

- Initials of the individual alleged to have committed the abuse
- Date of the incident
- A brief description of the incident

Perkins Slade is a firm believer in a tripartite relationship between client, broker and insurer, based on full transparency and trust. Whilst such reporting is not compulsory, we would strongly recommend it is provided to insurers. The disclosure of such information will not be detrimental to your organisation but will:

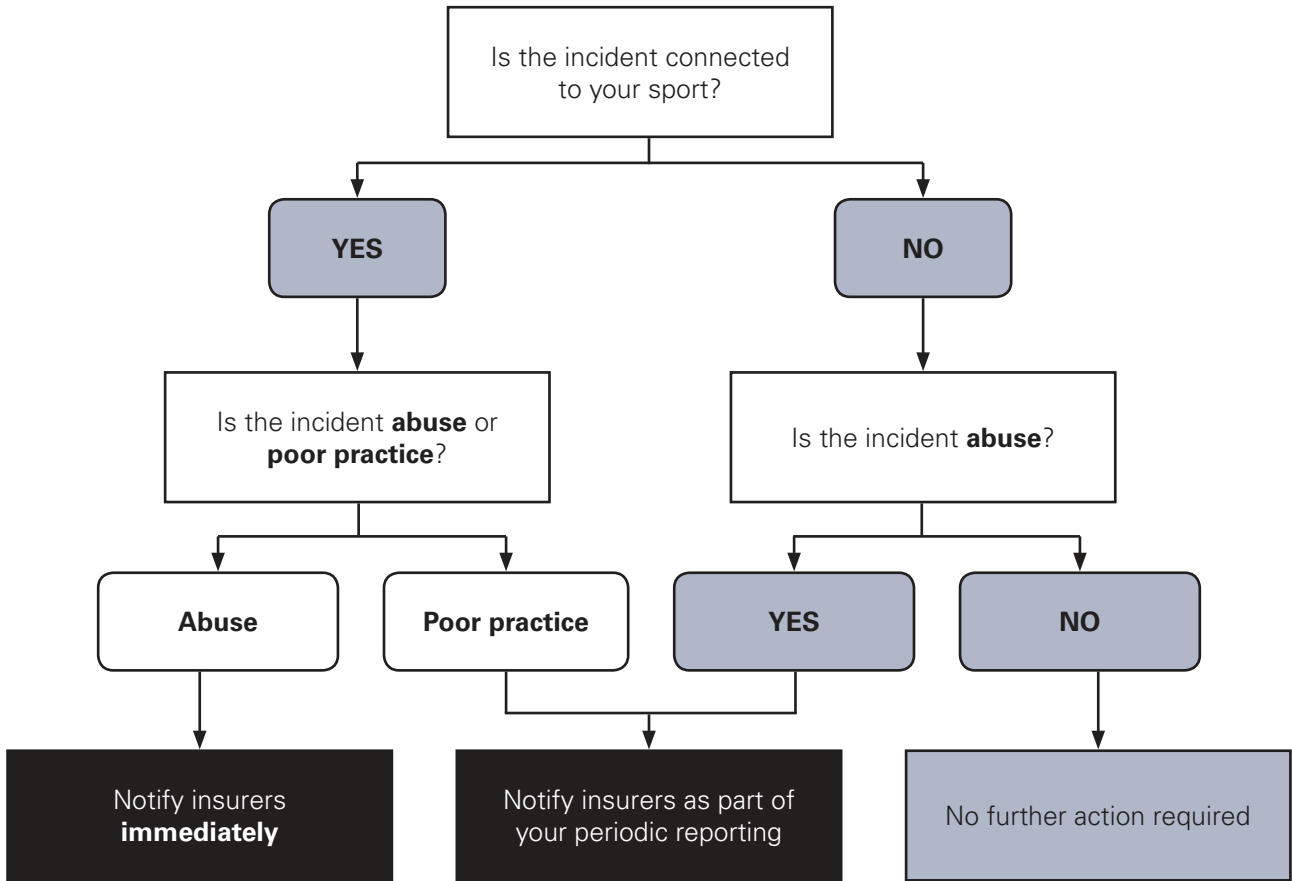
- Help to comply with the requirement that you make a fair presentation of your risk
- Highlight any potential areas of concern, which can be appropriately risk managed
- Minimise any possible ambiguity regarding what knowledge you had of an incident, should a future notifiable circumstance come to light.

It is important to note that the periodic reporting of such incidents does not constitute a notification under your policy. You may therefore need to make a separate notification of the same circumstances should other details come to light (such as further allegations made against the same individual) and you believe that circumstances exist that could reasonably give rise to a claim against your organisation.

**Please note, however, that you should not notify any circumstance where you have been asked by other agencies, such as police or the Local Authority Designated Officer, to maintain confidentiality.**

## Additional assistance

In all cases, if you are in any way unsure as to whether a circumstance should be notified, what to disclose to an insurer about an incident or if you have any queries at all, please get in touch with your usual Perkins Slade contact and we will be pleased to offer any help and guidance we can.



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