

Sports clubs and Safeguarding: the Protection of Freedoms Act 2012

Katherine Apps

In the wake of the London 2012 Olympics and Paralympics local sports clubs, centres and teams have been inundated with interest from children and adults alike, keen to perpetuate the golden Olympic summer. There has been an almost universal call both for greater investment in grass roots sports coaching and for the tremendous power of volunteers to be harnessed. For clubs, particularly in less mainstream sports, this was a longed for boost.

On the day of the Paralympic closing ceremony on 10 September 2012, as the Government promised support for the Legacy, the first provisions of the Protection of Freedoms Act 2012 (PFA) came into force. This Act aims to simplify the legislative scheme for the protection of children and vulnerable adults, reducing “red tape,” and overall narrowing the definition of “regulated activity” and number of those who should require a Criminal Records Bureau (CRB) check before becoming employed or volunteering. From 1 December 2012 it merges the Independent Safeguarding Authority (ISA) and CRB into a new body, the Disclosure and Barring Service (DBS).

Things are looking up for sports clubs: a rapid increase in interest of volunteering; potential for funding and a reduction in red tape and CRB checking – all great news.

Helpful sources of guidance for sports clubs can be found from:

- The Local Safeguarding Children Board run by each Local Authority;
- Specific sports governing bodies;
- The Sport and Recreation Alliance
<http://www.sportandrecreation.org.uk/smart-sport/regulated-activity-children-defining-supervision>
- Through the NSPCC’s Child Protection in Sport Unit (CPSU):
http://www.nspcc.org.uk/inform/cpsu/cpsu_wda57648.html

However, the Safeguarding legislative regime remains a complex and sprawling minefield. Difficult legal questions still arise under the new legislative changes.

This note highlights some of the legal issues most pertinent to sports clubs:

To CRB or not to CRB? Regulated activity

One of the main aims of the PFA was to narrow and clarify the scope of what is a “regulated activity.” Those who have been barred by the ISA commit a criminal offence if they undertake “regulated activity.” The details of their barring is contained on the enhanced CRB check.

It is an unfortunate fact that sporting clubs can provide opportunities for adults intent on abuse. When children and vulnerable people are alone in the power of an adult with influence, there is an opportunity for abuse and a risk it will remain undiscovered. The PFA alters the scope of “regulated activity” to focus on where there is unsupervised access to children or those who are vulnerable (section 64 PFA). The Department of Education has published two sets of detailed statutory guidance on this new definition:

- Department of Education Guidance: Regulated Activity (children) - supervision of activity with children which is regulated activity when unsupervised: <http://media.education.gov.uk/assets/files/pdf/s/supervision%20guidance%20revised%20sos%20sept%202012.pdf>
- Department of Education Guidance Regulated Activity in relation to Children: scope: <http://media.education.gov.uk/assets/files/pdf/r/regulated%20activity%20children%20full%20information%20ewni%20final%202012-06-01.pdf>

Essentially, if a volunteer is supervised by a regulated activity provider or they are not providing the service regularly (ie once a week), they will not be undertaking regulated activity, and so do not require an enhanced CRB check. The club would not be able to check whether the volunteer is on the barred list. However, two pertinent practical challenges for sports clubs will be:

1. Where they may require volunteers to “step in” in the event of a (vetted) coach being unavailable, for instance if the coach is ill or attending a sporting fixture elsewhere.
2. Where volunteers for children’s sports clubs are required to assist children getting changed/ going to the toilet. These activities relate to personal care and would be regulated activity even if only done once (rather than regularly), and even if supervised.

Age limit of 16

Since 10 September applications can only be submitted to the CRB for Standard or Enhanced checks where the applicant is aged 16 or over at the time of making the application (section 80 PFA). Where sports clubs are helped by junior volunteers they will not be able to conduct a CRB check. Good practice, however, may suggest that these volunteers are supervised by an adult.

Portable CRB checks

From Spring 2013 (the date has not yet been announced) individuals will be able to apply for one criminal record check certificate, which can be used for several employers or clubs (section 83 PFA). Portable CRB checks ought to enable clubs to share coaches and regular volunteers more easily.

Duty to refer individuals

One aspect which has not changed is the club's duty under the Safeguarding Vulnerable Groups Act 2006 to refer individuals to the ISA/ DBS where the club:

1. withdraws permission for an individual to engage in Regulated Activity, or may have done so had that individual not resigned, retired, been made redundant or been transferred to a position which is not a regulated activity; and,
2. they think that the individual has:
 - engaged in relevant conduct;
 - satisfied the Harm Test; or
 - received a caution or conviction for a relevant offence.

What duties does a club owe an individual before a referral is made? If the coach or staff member is an employee, the club will owe duties to the employee under employment law not to breach their contract or unfairly dismiss them. However, there are no human rights duties beyond this. In 2011 the Supreme Court held in *R(G) v X School and Y City Council* [2011] UKSC 30 that Article 6 ECHR (the right to a fair trial) is not engaged at an internal disciplinary/ grievance hearing. This means that, unless otherwise required by employment law, a club does not need to hold a fair and impartial hearing with an employee or volunteer before making that referral. It may, however, be the most effective way for the club to find out whether the individual has committed the alleged conduct or satisfied the Harm test.

Conclusion

Sporting bodies played a key lobbying role in securing these legislative amendments. It remains to be seen whether they will make things simpler, or create more confusion and complexity for grass roots sports clubs.

Katherine Apps is a barrister specialising in sports law, employment and disciplinary/ regulatory and public law. She represented the School and Local Educational Authority as junior counsel to John Bowers QC in the Supreme Court in *R(G) v X School and Y City Council* [2011] UKSC 30.

kapps@littletonchambers.co.uk