

Internal Guidelines

Special measures for protecting vulnerable witnesses

Introduction

1. Pursuant to Section 4 of the *GEF Operational Rules*, the GEF Safeguarding Section is tasked, *inter alia*, with providing support and protection to victims, whistle-blowers and witnesses. These *Internal Guidelines on Special Measures for Protecting Vulnerable Witnesses* (hereinafter: the Guidelines) further expand on the relevant provisions of the FIG and GEF rules, in particular the *FIG Code of Discipline* and the *FIG Policy and Procedures for the Safeguarding and Protection of Participants in Gymnastics* (hereinafter: the FIG Safeguarding Policy). As part of the process of their adoption, the Guidelines have been consulted with the members of the GEF Disciplinary Commission and Appeal Tribunal.
2. Article 18 of the *FIG Code of Discipline* provides: "In **exceptional circumstances**, including, for the avoidance of doubt, matters arising from the "FIG Policy and Procedures for Safeguarding and Protecting Participants in Gymnastics", **special measures** will be provided to support witnesses giving evidence in person, where the witness is under 18 or where the Panel President reasonably believes that the witness is likely to experience an unreasonable level of distress in relation to providing their evidence".
3. The present Guidelines elaborate and further clarify the notion of "exceptional circumstances" in the context of safeguarding proceedings as well as the measures which can be taken to protect vulnerable witnesses. Should any conflict or ambiguity arise with other FIG regulations, rules or procedures, the applicable provisions shall take precedence.

Current context

4. Safeguarding practices are aimed at managing risk and promoting the well-being of participants. Insofar as safeguarding proceedings may be necessary to manage the risk of physical harm or maltreatment that a certain individual may pose to others, a key element of safeguarding is to ensure as much as possible that such proceedings are not themselves the cause of further harm or trauma.
5. Addressing safeguarding issues is particularly delicate where national federations and national courts may be less than sufficiently independent. In such cases, during the investigation phase, the GEF has an increased duty of care and an obligation to provide support in respect of the provision of evidence by vulnerable witnesses. Consequently, in disciplinary proceedings, when an imbalance of power and resources at the disposal of the parties exists, the Panel should adopt a proactive approach to establishing the facts and questioning the witnesses by exercising more extensive control over the questions than the parties may ask to the witnesses.

Definitions

6. For the purpose of the present Guidelines, in addition to the definitions contained in the FIG Safeguarding Policy¹, the following terms are further defined².
7. **Harm** refers to mistreatment and other forms of maltreatment caused by acts of commission or omission, such as the impairment of the physical and/or mental health, and emotional, social or behavioural development of any person³. This includes, for example, impairment suffered as a result of seeing or hearing the mistreatment of another person (secondary trauma).
8. **Safeguarding** is the process of protecting *Participants*⁴ and ensuring a safe environment that is respectful, equitable and free from all forms of non-accidental violence. This includes all procedures designed to prevent harm and re-trauma, such as those which:
 - ensure the protection of participants from abuse, neglect or any form of mistreatment;
 - preclude harm to the health and/or development of participants;
 - promote the wellbeing of participants⁵.
9. **Participant at risk** means someone who is incapable or less capable of protecting themselves from the risk or the experience of abuse and/or neglect due to specific needs determined by a range of factors, including personal and environmental characteristics (e.g. age, gender, ethnicity, sexual orientation, (dis)ability, faith, socio-economic/financial status and their intersections)⁶.
10. **Vulnerable witness** is an individual who may be eligible for special protection measures on the grounds of existing or potential fear or distress (including but not limited to fear of retaliatory action of any kind) that they may suffer as a direct result of providing evidence in a given case⁷.
11. **Trauma-informed approach** to safeguarding and disciplinary proceedings is one which takes into account trauma-based reactions that impact an individual's ability to give coherent evidence, such as the inability to coherently recall certain aspects of traumatic experiences. This approach seeks to

¹ Article 3 of the FIG Safeguarding Policy provides for definitions of the following terms: *psychological abuse, physical abuse, sexual harassment, sexual abuse, neglect, bullying, hazing and poor practice*.

² Taking into account the definitions provided for in the following documents: 1) IOC Consensus Statement on Harassment and Abuse (non-accidental violence) in Sport, 2016; 2) Universal Code of Conduct to Prevent and Address Maltreatment in Sport, Canadian Centre for Ethics in Sport, 2022; 3) Practical Guide to Undertaking Safeguarding Investigations in Sport, Sport Resolutions; 4) Safeguarding Adults Policy and Procedures, Rugby Union, 2020.

³ According to the Practical Guide to Undertaking Safeguarding Investigations in Sport, Sport Resolutions.

⁴ As defined by the FIG 2022 Code of Conduct.

⁵ According to the Practical Guide to Undertaking Safeguarding Investigations in Sport, Sport Resolutions.

⁶ According to the Safeguarding Adults Policy and Procedures, Rugby Union, 2020.

⁷ According to the Practical Guide to Undertaking Safeguarding Investigations in Sport, Sport Resolutions.

avoid, as much as possible, re-traumatizing and re-victimizing those who have suffered abuse or harm during hearings and the investigation of safeguarding cases⁸.

General measures to limit harm to vulnerable witnesses

12. While as a matter of principle oral testimony is preferred and remains important in particular to address the credibility of a witness, the interests of a vulnerable witness should be given due consideration and they should not be made to provide in-person testimony where it is not necessary to establish facts. If the circumstances of the case permit, in instances when testimony is required from vulnerable witnesses, priority should be given to the provision of only written testimony.
13. In determining whether in-person testimony by a vulnerable witness is necessary, considerations should include such factors as:
 - the witness' wishes and feelings;
 - the witness' specific needs and past experiences;
 - the questions that need to be determined;
 - the nature and gravity of the issues to be determined;
 - whether the resolution of the case depends on the provision of such evidence; and
 - whether a fair and equitable result may be achieved even without such evidence.
14. For instance, cases of lesser severity (i.e. poor practice concerns) may be resolved by means of alternative measures, such as guidance and training. Alternative solutions should also be explored as to the appropriate measures to be applied in each individual case.
15. For cases that are being heard following criminal investigation and conviction, findings should be deemed as evidence of the facts relating to the conviction. As such, there should generally be no need to hear factual evidence to establish the same facts.
16. Where the in-person provision of testimony of a vulnerable witness is effectively required, measures must be taken to ensure that such evidence is given only once. This may be achieved by treating written witness statements as evidence in chief. It may also be achieved through the recording and/or transcription of testimony to avoid the need for witnesses to appear in later appeal proceedings.

⁸ According to 1) SAMHSA's Concept of Trauma and Guidance for a Trauma-Informed Approach, 2014 ; 2) "We have to empower each other", An assessment on the development of a global solidarity network among athlete survivors, Sports and Rights Alliance 2023.

Special measures

17. In determining whether a witness may be eligible for special protection measures on the grounds of actual or potential fear or distress about providing testimony in a given case or investigation, the following factors should be considered in particular:
- the nature and alleged circumstances of the alleged rule violations;
 - the age of the witness;
 - the domestic and employment circumstances of the witness;
 - any past, current or potential behaviour towards the witness on the part of the accused, namely any potential risk of retaliation;
 - any views expressed by the witness.
18. Special measures may be granted on the basis of an application by a party or by the GEF Safeguarding Section on behalf of a vulnerable witness, or on the Panel President's own motion. Given the circumstances of the case and the specific situation of the witness, the Panel President may order, *inter alia*, that one or more of the following measures be taken:
- the witness' identity not be revealed and all precautions be taken so that his/her identity is protected (full anonymity);
 - all or some of the information that could be used to identify the witness be included only in a separate, confidential document which forms a part of the case file which may be accessed only by the Panel and GEF Safeguarding Section;
 - the witness may not participate in the hearing;
 - the witness' voice be distorted (voice-scrambled) while providing testimony in a hearing ;
 - the witness be questioned in a room separate from the hearing room by the Panel not in the presence of the parties;
 - the witness be questioned only in writing;
 - cross-examination questions be disclosed in advance and approved by the Panel;
 - the witness be prevented from seeing the accused by means of a screen or switching off the camera of the accused;
 - the witness' pre-recorded testimony be considered as evidence in chief;
 - examination/cross-examination of the witness to be conducted through the Panel, who will question the witness using the questions it has approved.

Anonymous participation in the proceedings

19. Witnesses granted anonymity who participate in a hearing shall be identified *in camera* in the absence of the parties to the proceedings. The witness identification shall be conducted by the Panel President or someone acting on their behalf, and the witness' identification details (name, date of birth and passport or ID card number) shall be duly recorded. All parts of the record that relate to or

which may serve to identify the witness shall be omitted from the copy of the minutes, transcript and/or hearing recording before communication to the parties. Once the identification has been completed, the parties shall be informed by the Panel President.

20. If no other evidence is available to corroborate the testimony provided by an anonymous witness, such testimony may only be used in the context of imposing sanctions if:

a) the parties and their legal representatives have had the opportunity to pose questions to the witness in writing; and

b) the members of the Panel had the opportunity to interview the witness directly and in full awareness of their identity.

21. Disclosing the identity of a witness who has been granted anonymity or any information that may be used to identify such person may constitute a violation of FIG rules and could be subject to disciplinary sanctions⁹.

These Guidelines will be regularly reviewed and updated as deemed necessary by the GEF Director in consultation with the GEF Safeguarding Section and the members of the GEF Disciplinary Commission and Appeal Tribunal.

Last revised: 16 Nov 2023

⁹ See Part 2, Sections 1 and 5 of the FIG Safeguarding Policy in conjunction with Art. 3 of the FIG 2021 Code of Discipline.