

LORD ADVOCATE'S GUIDELINES TO CHIEF CONSTABLES INCIDENTS DURING SPORTING EVENTS

1. The Lord Advocate recognises that the principal reason for the presence of police officers at sporting events is to ensure crowd safety at the beginning of, during and after the event. Taking steps to ensure crowd safety is the duty to which police officers should give priority whilst they are in attendance at sporting events. However, from time to time incidents occur in which one or more of the participants in the sporting fixture itself become involved in conduct which could be viewed as constituting criminal behaviour. In some instances police officers will themselves witness the incident. In others, the circumstances will be reported to the police, either immediately or at a later stage. Some incidents, particularly those involving the use of physical violence, attract considerable public attention. Such attention is more likely when the incident is witnessed by a large crowd or when it is televised. Moreover, the conduct of participants in a sporting event may have a bearing on the subsequent conduct of those spectating. For all these reasons the Lord Advocate considers that it would be helpful to those who attend sporting events, whether as participants, officials, spectators or police officers, if he were to issue instructions to chief constables as to the approach he wishes to be followed by the police in the investigation of incidents of violent behaviour or disorderly conduct on or in the immediate vicinity of the field of play and the reporting of such incidents to the Procurator Fiscal.

2. The Lord Advocate is firmly of the view that all those involved in the administration, refereeing and playing of sports have the initial and the major responsibilities to avoid and in any event to deal with excessive violence or serious disorderly conduct on the part of players, coaches and managers. These responsibilities rest on clubs, managers, referees and the governing bodies of individual sports and the Lord Advocate expects these to be treated seriously. Nothing in these instructions seeks to interfere with or diminish the authority of such individuals and bodies. In particular the responsibility of the referee and other officials to control a sporting fixture and those participating in it must remain paramount. However, even if those involved seek to discharge their responsibilities to the best of their abilities, sportsmen cannot be regarded as exempt from compliance with the criminal law. On occasion their conduct may make it appropriate for the police and the Procurator Fiscal to take action.

3. The Lord Advocate recognises that some sports, such as football, ice hockey, rugby and shinty, involve deliberate physical contact and a measure of aggression as essential elements of the game. In these sports the participants know (and by taking part accept) that such deliberate physical contact may result in injury. By taking part they assume the risk that the deliberate contact may have harmful effects, including serious injury. However, where the violence used goes well beyond what can be regarded as normal physical contact for the sport concerned, no question of consent arises and an assault may have been committed. If a police officer witnesses or learns of an incident at a sporting fixture, which has gone well beyond what can be regarded as normal physical contact in the sport concerned, then consideration should be given by a senior officer as to whether the incident should be investigated and the circumstances of the incident reported to the Procurator Fiscal for consideration of prosecution or some alternative disposal. Similarly, if the police learn of an incident where a participant in a sporting fixture appears to have conducted himself in a disorderly or seriously provocative manner, the crime of breach of the peace may well have been committed. In such circumstances, also, a senior officer should consider whether the incident should be the subject of investigation and report.

4. The Lord Advocate takes the view that incidents of violent or disorderly behaviour by sportsmen, including coaches and managers (in so-called technical areas or elsewhere), may require to be investigated by the police and reported to the Procurator Fiscal even if no complaint has been made to the police by a participant in the game or an official.

5. All contact sports are regulated by referees who have powers to award penalties and fouls for violent play and to warn players and send them from the field of play in punishment of such conduct. The fact that a player has been penalised or sent from the field of play does not necessarily mean that police involvement is appropriate. Conversely, the fact that neither the referee nor the linesman have intervened to deal with a violent incident would not necessarily exclude police involvement.

6. The Lord Advocate considers that experienced police officers are well able to identify incidents where the conduct involved falls to be viewed as criminal behaviour warranting investigation by them. For that reason these instructions do not seek to define in detail the circumstances in which police officers should take action. Moreover, the Lord Advocate recognises that police match and game commanders should exercise a broad discretion in the performance of their duties during sporting events. In exercise of their duty to ensure crowd safety police officers have the discretion to speak to an individual spectator about his behaviour, to eject such an individual from the sports ground or arrest that individual, as seems appropriate in the circumstances. Equally the Lord Advocate recognises that police officers are entitled to exercise a discretion in relation to incidents involving players, coaches and managers. Police officers are under no obligation to institute an investigation and make a report to the Procurator Fiscal merely because a complaint has been received. However, the Lord Advocate wishes the police to investigate and, where appropriate, report to the Procurator Fiscal incidents where the violence used by a participant goes well beyond that which would be expected to occur during the normal run of play and that which the rules of the sport concerned are designed to regulate. In deciding which incidents to investigate the police should pay particular regard to incidents where the violence or disorderly behaviour has occurred after the whistle has been blown and whilst the ball is dead and to incidents where the violence or disorderly behaviour has occurred in circumstances designed or liable to provoke a disorderly or violent response from spectators.

7. When an incident is reported to the Procurator Fiscal, the best evidence available should be submitted with the report. Any video recordings or other photographic evidence available should be recovered by the police and forwarded to the Procurator Fiscal.

8. The Lord Advocate also wishes the police to report on what sanctions, if any, the club or sporting authority concerned is liable to take or has already taken to discipline and punish those involved for their conduct. That information may be relevant to any decisions to be taken by the Procurator Fiscal.

9. While cautioning and charging of an accused would normally precede the submission of a police report, that is not, of course, invariable practice. In cases where the police seek guidance or instruction from the Procurator Fiscal, a preliminary report may be submitted.

10. When investigations are instituted, both preliminary and final reports should be submitted to the Procurator Fiscal as soon as practicable. Experience suggests that where there is uncertainty as to whether or not a report is to be submitted, public attention and

media speculation flourish. Procurator Fiscals for their part will deal with such reports promptly.

11. Chief constables will understand that it is always open to a Procurator Fiscal to call for a report on an incident which has come to his attention, whether or not such incident has been reported by the police. However, the Lord Advocate considers that it will only be on rare occasions that a Procurator Fiscal will find it necessary to take the initiative and instruct a report.

12. These instructions are issued by the Lord Advocate in terms of Section 12 of the Criminal Procedure (Scotland) Act 1995.

Mackay of Drumadoon Lord Advocate