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Safeguarding in Tennis

An Enforceable Duty of Care

ILIAS BANTEKAS

1 Introduction

High-profile scandals, chiefly involving coaches,[1] have served as the catalyst for legislative change and the promulgation of robust safeguarding policies with a focus on vulnerable persons, chiefly children, and disabled athletes. In 2001, the United Kingdom extended the scope of the National Society for the Prevention of Cruelty to Children (NSPCC) by the introduction of a Child Protection in Sport Unit.[2] In 2008, AusAID became the first bilateral donor to implement a Child Protection Policy,[3] with a view that funding is only provided to sports organizations that implement robust safeguarding policies. In 2012, UNICEF adopted a set of International Safeguards for Children in Sport,[4] and a working group was set up as a follow-up mechanism. Despite the significance of safeguarding for children in sport, the subject has received very little attention in the legal literature. This may, of course, be due to the fact that the well-being of children is also the subject matter of specific criminal laws[5] and human rights standards pertinent to children, chiefly as articulated by the Convention on the Rights of the Child

[1] See Hadley Freeman, 'How Was Larry Nassar Able to Abuse So Many Gymnasts for So Long?' *The Guardian* (26 January 2018), available at: www.theguardian.com/sport/2018/jan/26/larry-nassar-abuse-gymnasts-scandal-culture.

[2] Available at: https://thecpsu.org.uk.

[3] The Policy is available at: www.dfat.gov.au/international-relations/themes/child-protection/child-protection#:~:text=The%20Department%20of%20Foreign%20Affairs,prevent%20child%20exploitation%20and%20abuse.

[4] Available at: https://downloads.unicef.org.uk/wp-content/uploads/2014/10/International-Safeguards-for-Children-in-Sport-version-to-view-online.pdf.

[5] Elisabeth St Pierre, Sylvie Parent and Nadine Deslauriers-Varin, 'Exploring the Modus Operandi of Coaches Who Perpetrated Sex Offences in Canada' (2022) 13 Front Psychol 1; Ingunn Bjørnseth and Attila Szabo, 'Sexual Violence against Children in Sports and Exercise: A Systematic Literature Review' (2018) 27 J Child Sex Abus 365.

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(CRC),[6] as well as Article 30 of the Convention on the Rights of Persons with Disabilities (CRPD).[7] Even so, all these laws are focused exclusively on child–adult relationships; are unconcerned with the particular sporting context; fail to consider the well-being of adults; and, equally, do not account for all those situations that pose a likelihood of 'harm' to athletes in their future life without the intervention of any criminal conduct. The latter category includes 'burn out', no alternative career transition upon termination of a sporting career, health and safety concerns on the court, child-to-child abuse, bullying and others.

It should be stated from the outset that there is an extensive body of rules on safeguarding generated by tennis academies and clubs, and the International Tennis Federation (ITF) has promulgated a Safeguarding Children Policy,[8] and another for adults.[9] The Women's Tennis Association (WTA) released a Safeguarding Code of Conduct on 26 December 2024, at a time when this book was already in production.[10] Hence, this late-December 2024 development will not be discussed here. The Association of Tennis Professionals (ATP) has drafted an instrument, but has not promulgated a discreet safeguarding code, and as far as this author is aware such a process is ongoing.[11] There is also a good number of general safeguarding codes,[12] as well as others that are tennis-specific and generated

[6] See, in particular, CRC, Art. 19, emphasising that everyone has the responsibility to protect all children from all forms of harm, abuse, neglect and exploitation, and Art. 31, confirming every child's right to participate in play and recreational activities.

[7] Ilias Bantekas, 'The Right of Access to Sport and Recreation for Disabled Persons under International Law: What Does It Really Entail?' (2022) 45 Loy LA Int & Comp L Rev 157 (discussing CRPD, Art. 30 and arguing that states are obliged to facilitate access to sporting opportunities to persons with disabilities and by implication safeguard their well-being and welfare).

[8] ITF Safeguarding Children Policy 2023, available at: www.itftennis.com/media/4458/itf-children-safeguarding-policy-2023.pdf.

[9] ITF Safeguarding Adults Policy 2023, available at: chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.itftennis.com/media/4457/itf-adult-safeguarding-policy-2023.pdf.

[10] The Code is available at: https://wtafiles.wtatennis.com/pdf/publications/2025-WTA-Safeguarding-Code.pdf. It should be noted, however, that the WTA has a safeguarding policy in place with required safeguarding education for anybody seeking a credential.

[11] In 2021, the ATP appointed ATP Tour Director of Safeguarding, while later this year the ATP received an Independent Safeguarding Report.

[12] A good example is offered by the US Center for Safesport's Code for the US Olympic and Paralympic Movement (2023), available at: https://uscenterforsafesport.org/wp-content/uploads/2023/09/2023-SafeSport-Code.pdf, which provides an elaborate definition of all the conduct prohibited in the safeguarding context.

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by national tennis associations.[13] Safeguarding policies and codes are further supplemented – and superseded where in conflict – with national legislation. Such legislation may be sport-specific, such as the US Protecting Young Victims from Sexual Abuse and Safesport Authorization Act of 2017, upon which the USTA Safe Play Handbook is predicated, as well as others of a more general nature aiming to protect children athletes from abusive behaviour.

In order to avoid a legalistic approach to the subject by squeezing into a relatively short chapter an abundance of rules from a variety of instruments, the chapter relies principally on ITF and WTA instruments. Space constraints sadly dictate that the analysis is not exhaustive, the aim being to provide an overall perspective of the legal aspects of safeguarding. The chapter adopts a broad definition of safeguarding, which encompasses all aspects of the safety and well-being of tennis players, whether children or adults, the enforcement of which is incumbent on all tennis professionals and tennis institutions enjoying a direct relationship with players. This duty is not exhausted by one stakeholder (e.g. the ITF or an academy) on account of the fact that another stakeholder (e.g. a parent) enjoys a closer relationship with a particular player. It should be understood that safeguarding obligations are not ethical duties, at least in the sense of largely personal decisions about what is good or bad; rather, as will be explained, they are concrete duties imposed by law or contract on the pertinent stakeholders.

2 Safeguarding as a Duty of Care

It is by no means an easy task to locate the legal premise of this duty of safeguarding.[14] However, it is important for the purposes of this discussion to do so because one needs to be aware of the consequences for a stakeholder's failure to uphold the requisite safeguarding standards. The law requires that those entrusted with a 'duty of care' over others must exercise such duty to the best of their abilities and by considering the

[13] See e.g. US Tennis Association (USTA) Safe Play Handbook, which was the first comprehensive safeguarding code in the tennis sphere, available at: www.usta.com/content/dam/usta/2021-pdfs/Safe%20Play%20Handbook%20051420%20-%20updated%20Center%20reporting%20number.pdf; Tennis Australia Safeguarding Children Code of Conduct, available at: www.tennis.com.au/wp-content/uploads/2023/10/TA-Safeguarding-Children-Code-of-Conduct-12-Oct-2023.pdf; Lawn Tennis Association (LTA) Safeguarding Children Policy and Procedure 2023, available at: www.lta.org.uk/498128/siteassets/about-lta/file/lta-safeguarding-children-policy.pdf.

[14] See Jack Anderson and Neil Partington, 'Duty of Care in Sport: Time for a Sports Ombudsman?' (2018) 1 Int Sports L Rev 3.

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best interests of the protected person. The law does not always spell out all such relationships (i.e. parent–child or teacher–child), but there are tests to ascertain these. In the English case of *Donoghue* v. *Stevenson*, Lord Aitkin set out the contours of 'good neighborliness' as follows:

> You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbor. Who then in law is my neighbor? . . . Persons who are so closely and directly affected by my act that I ought reasonably to have them in contemplation as being so affected when I am directing my mind to the acts or omissions which are called in question.[15]

This is a test for tort-based liability and not a mere reference to expected ethical conduct lacking enforcement. Common law and civil law jurisdictions have further elaborated this duty on sports coaches and by extension also to academies – as a direct tort liability based on a duty of care, or alternatively on the basis of vicarious liability. By way of illustration, in *Shone* v. *British Bobsleigh and Skeleton Association* (BBSA), it was held that the BBSA, through the actions of its coaches, 'owed the claimant [athlete] a duty to take reasonable care of her safety [ultimately resulting in injuries]. . . . The BBSA owed a duty of care to the claimant to take all reasonable actions to ensure she was reasonably safe in the course of her activities on the bobsleigh run, in accordance with the prevailing standard of reasonable practice.'[16] While the duty of care for sports professionals is extensive, the standard is hardly an impossible one. It is based on a test of reasonableness.[17] The various rules set out by tennis clubs and the ITF effectively clarify and contextualise what is reasonable in the realm of a tennis relationship. While no doubt such rules do not bind the courts about what is *in fact* reasonable,[18] they do give rise to general principles and at the very least provide concrete guidelines to the club, coaches and other stakeholders about their duties of care. However, such duty is clearly broader than said rules and injured players and their families may well argue for broader tort-based liability. Article 14 of the ITF's Safeguarding Policy for Children correctly adopts the trust-based model of the duty to care, as follows: '[T]o address the risk of sexual abuse perpetrated by adults exploiting an imbalance of power

[15] *Donoghue* v. *Stevenson* [1932] AC 562, at 580.
[16] *Shone* v. *British Bobsleigh Ltd* [2018] 5 WLUK 226, at paras 2 and 4.
[17] Neil Partington, *Coaching, Sport and the Law: A Duty of Care* (Routledge, 2021), 29–39.
[18] See e.g. Art. 1 of the ITF's Safeguarding Policy for Children, whose definition of 'safeguarding' is significantly narrower than that suggested in the introduction to this chapter. It chiefly focuses on abuse, harassment, violence and exploitation.

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over a child or young person, the ITF applies the "Relationship of Trust" doctrine. This covers relationships between a covered person who cares for, advises, supervises, trains or supports any child participating in any tennis activity.' This model is unconcerned with the age of consent to engage in sexual relations. Any covered person engaging in sexual activity with a child athlete (i.e. below the age of 18) is considered to be in breach of the ITF's Safeguarding Policy.[19] This has also long been part of the WTA's Safeguarding Code of Conduct, as contained in its Rulebook. This model is in line with the laws of most countries. In 2022, the United Kingdom's 2003 Sexual Offences Act was amended to include a new Article 22A, which extends the 'position of trust' to include any adult that regularly coaches, teaches, trains, supervises or instructs a 16- or 17-year-old in sport. This category of people is presumed to be aware of the power imbalance they hold over children and are under a duty not to use this for personal advantage or gratification.

3 The Sporting Context of Abuse

Sexual, physical and emotional abuse, as well as violence, are the most prevalent safeguarding concerns in sports, most often perpetrated by sports professionals in a position of trust against children athletes. The cultural context of abuse is predicated upon the unequal and discriminatory power differentials across a range of social and individual factors. It has been reported that on average, 40 to 50 per cent of athletes have experienced some degree of mild harassment to severe abuse during their lifetime in organised sport.[20] On average, 44–75 per cent of athletes have experienced psychological abuse by stakeholders in sports settings.[21] Sexual abuse is particularly pervasive and in a study conducted on 159 cases of sexual abuse in sport-related contexts, 98 per cent of the perpetrators were coaches or sports personnel.[22] Significantly, research demonstrates that elite young athletes are more likely to be sexually assaulted and abused than their lower-level counterparts.[23]

[19] ITF Safeguarding Policy for Children, Art. 14.
[20] Tine Vertommen, Nicolette Schipper-van Veldhoven, Kristien Wouters et al., 'Interpersonal Violence against Children in Sport in the Netherlands and Belgium' (2016) 51 Child Abuse Negl 223.
[21] Ibid.
[22] Ibid.
[23] Kari Fasting and Trond S. Sand, 'Narratives of Sexual Harassment Experiences in Sport' (2015) 7 Qual Res Sport Exerc Health 573.

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It is no accident that the International Olympic Committee (IOC),[24] UNICEF[25] and the European Union,[26] among many others, have adopted several instruments, reports and guidelines in order to counter sexual and other types of abuse in the sporting context. All of these instruments emphasise the close link between elite athletes and their coaches – as well as other stakeholders – which is easily manipulated, thus mandating increased safeguarding by all covered persons.

4 Safeguarding in Child–Adult Relationships in Tennis

The following sections focus on safeguarding in child–adult relationships. The various sub-sections explain the pioneering contribution of the WTA but go on to analyse safeguarding in this context on the basis of the ITF Policy.

4.1 The WTA's Pioneering Safeguarding Role

The WTA's contribution should not be underestimated. The WTA conducted its first formal review of the unique needs of young women participating in elite international professional tennis in 1994. The independent body which conducted that groundbreaking first study and made its attendant recommendations continues to oversee WTA initiatives relating to healthy and safe participation of WTA athletes. The WTA's Age Eligibility Rule (AER) and Player Development Program (PDP), which will be explored in more context in a subsequent section of this chapter, are designed to identify and ameliorate the stressors in professional tennis, improve athlete career longevity and enhance player

[24] IOC, 'Safeguarding Athletes from Harassment and Abuse in Sport: Toolkit for IFs and NOCs' (2018), available at: https://stillmed.olympics.com/media/Document%20Library/OlympicOrg/IOC/What-We-Do/Promote-Olympism/Women-And-Sport/Boxes%20CTA/IOC_Safeguarding_Toolkit_ENG_Screen_Full1.pdf; IOC Guidelines for International Federations and National Olympic Committees Related to Creating and Implementing a Policy to Safeguard Athletes from Harassment and Abuse in Sport, available at: https://olympics.com/athlete365/app/uploads/2020/12/IOC_Guidelines_for_IFs_and_NOCs.pdf.

[25] UNICEF, 'Protecting Children from Violence in Sport', available at: www.oroplatay bronce.com/wp-content/uploads/2017/01/violence_in_sport-Unicef.pdf.

[26] European Union, 'Safeguarding Children in Sport Report' (2019), available at: https://op.europa.eu/en/publication-detail/-/publication/03fc8610-e4c2-11e9-9c4e-01aa75ed71a1; European Commission, 'Study on Gender-Based Violence in Sport' (2016), available at: https://sport.ec.europa.eu/sites/default/files/gender-based-violence-sport-study-2016_en.pdf.

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safety and well-being. Two further extensive formal reviews (in 2004 and 2014, respectively) clearly demonstrated the effectiveness of these initiatives since their inception in 1995. The WTA has successfully decreased premature retirements (players leaving the Tour at or before the age of 21) and increased players' career length. In recognition of the need to enhance the safeguarding of WTA players, the WTA convened a Safety and Security Task Force in 2006 to review its procedures and policies relevant to that area. That year-long review process identified critical components necessary to enhance athlete health and safety. Accordingly, key elements were implemented, including a robust augmentation of the Code of Conduct, clear complaint and violation procedures, instigation of an educational and training program for WTA personnel, players and Player Support Team members, all designed to specifically address and prevent abuse and harassment. Additionally, the safeguarding role was included as part of a restructuring of responsibilities of the former Athlete Assistance position. It is also worth noting that with the addition of a formal safeguarding position at the WTA, a mandatory safeguarding education course was introduced in 2023 for anyone seeking a WTA credential that provides access to player-protected areas as part of the WTA's Credential Eligibility System. That system itself was designed to improve and centralise the information of anyone with access to the WTA environment, along with ensuring (through the safeguarding education course) that those individuals also understood their obligations under the WTA Code of Conduct, as well as when and how to report suspected misconduct to the WTA.

The view of the WTA is that safeguarding incorporates the whole of the WTA environment, as safeguarding is not limited to a specific dynamic. Player safety has always been a priority, not only under the WTA Rulebook, but it has also been augmented by the introduction of a formal safeguarding policy.

4.2 The ITF Safeguarding Policy for Children

The asymmetry in maturity between a child athlete and its coaches, medical professionals, club/academy/federation administrators and potentially other tennis stakeholders raises the likelihood of abuse, whether sexual, physical or mental. This includes sexual grooming, rape, manipulation with the aim of enhancing one's abilities through the use of banned substances, match-fixing and even less innocuous conduct but no less harmful, such as preventing a child athlete from focusing on his or her

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studies or inflicting upon a child a sense of unworthiness and contempt. While some of the aforementioned conduct clearly constitutes a violation of criminal laws (e.g. rape, grooming, integrity), what is the status of chastisement (and punishment intended to improve a child's sporting performance) that is prohibited, albeit not necessarily criminal?[27] The answer to this important question lies in the foundational and customary principle of the 'child's best interests', as enshrined in Article 3 of the CRC. According to this principle, any decision, judgment, action (e.g. contract) or law (legislative or administrative) concerning children is enforceable only if it is in the best interests of the child.[28] The application of the 'best interests' principle under Article 3(2) of the CRC must take into account 'the rights and duties [of the child's] parents, guardians or other individuals legally responsible'. A child's best interests must be assessed on an individual basis by the courts and administrative authorities, and hence pertinent decisions must be reasoned as to their effects and outcomes on the particular child.[29] According to the European Court of Human Rights (ECtHR), the best interests of the child comprise two limbs: maintaining family ties (except where the family has proved particularly unfit); and ensuring the child's development within a sound environment, such as would not harm his or her health and development.[30]

A particular dimension of the best interests principle is its direct application to entities and institutions other than the courts or the state. Private entities and institutions are not immune from the application of this principle in their dealings with children. Although such an obligation is not conferred on private entities, states parties to the CRC, International Covenant on Civil and Political Rights (ICCPR) and CRPD are obliged to incorporate such obligation in their domestic laws on the basis of which

[27] See above Section 2 of this chapter for a discussion of the extension of the 'trust relationship' in the English Sexual Offences Act.

[28] According to CRC, Art. 3(1), 'the best interests of the child shall be a primary consideration'. Article 2 of the Optional Protocol to the CRC (Communications Procedure) setting out the general principles guiding the functions of the Committee stipulates that the Committee on the Rights of the Child (CtRC) 'shall be guided by the principle of the best interests of the child'. Under Art. 3(2) of the Optional Protocol, the CtRC 'may decline to examine any communication that it considers not to be in the child's best interests'.

[29] See *Y. B. and N. S.* v. *Belgium*, CtRC Views, UN Doc. CRC/C/79/D/12/2017 (5 November 2018), at para. 8.3.

[30] See *Neulinger and Shuruk* v. *Switzerland* (2012) 54 EHRR 31, at para. 136; see generally Michael Freeman, *Commentary on the UN Convention on the Rights of the Child: Article 3* (Brill, 2007), and, in the digital context, CtRC, General Comment 25 (2021) on children's rights in relation to the digital environment, UN Doc. CRC/C/G/25 (2 March 2021), at paras 12–13.

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private entities are obliged to apply the welfare principle. For the purposes of this chapter, such an obligation extends to all private tennis stakeholders because of their relationship of trust with children athletes. It should be stated that because a parent endorses an unhealthy child–adult relationship out of financial greed or sport favouritism, this does not mean that the duty of care of incumbent tennis stakeholders is discharged; quite the contrary, identifying abusive parents is a continuous and integral part of such a duty.[31]

Article 5 of the ITF's Guidelines Policy for Children sets out its core principles as follows:

- The welfare of every child and young person is of paramount importance.
- Safeguarding is everyone's responsibility.
- All children, regardless of colour, race, nationality, ethnic or national origin, age, gender, sexual orientation, disability or religion have the right to protection from harassment, abuse, violence, exploitation and poor practice.
- All children have the right to participate, enjoy and develop through tennis, in a safe and inclusive environment, free from all forms of harassment, abuse, violence, exploitation and poor practice.
- Children should feel safe, respected and valued in all our activities and engagement.
- All Covered Persons must be alert to the signs of abuse and neglect and report their concerns to ensure that children receive effective protection.

What is important in this statement is the ITF's acknowledgement that all covered persons, as stakeholders and as gatekeepers, are incumbent with a duty of care that includes a threefold dimension: (1) provision of actual care; (2) a preventive duty; and (3) a concrete reporting duty. It is instructive that Article 6 of the ITF Policy refers to a 'culture of embedding of reporting concerns and aims to create a culture of vigilance', as well as 'promote safe environments'.

4.3 The ITF's Monitoring Process

A key element of the ITF's safeguarding is its safer recruitment policy,[32] and its commitment that persons recruited by it to work with children

[31] See Art. 4 of the ITF Children's Safeguarding Policy, which encompasses parents and legal guardians among the group of persons 'covered' by the Policy.

[32] The ITF does not seem to have publicised such a policy, so it is the opinion of this author that the ITF's own declaration of such a policy is not in the formal published sense, but as part of its overall safeguarding policy.

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are appropriately qualified for that role. This includes rigorous background checks prior to a job offer being made.[33] The ITF has established the office of the Safeguarding Manager and each ITF event is equipped with a Designated Safeguarding Officer (normally the Tournament Supervisor), who is responsible for receiving reports and ensuring timely processing, whether internally or with national police authorities. At the time of writing, the ITF's Safeguarding Manager, Gary Bye, was a former law enforcement officer, thus demonstrating the kind of skills required to undertake a thorough investigation of harmful conduct against athletes, alongside a capacity to engage with victims and alleged perpetrators, as well as effectively collaborate with police authorities. The Safeguarding Manager has overall responsibility for background checks, training and the enforcement of the ITF's policy, among other duties.[34] Where an allegation injurious to the welfare of a child athlete occurs and concerns a covered person at an ITF tournament:

> . . . the ITF will encourage and support the relevant National Association and/or Regional Association to investigate and resolve the allegation in the first instance by implementation of the applicable local safeguarding policies and procedures. In the absence of such policies and procedures, or for any of the reasons stated at section 22 below, the ITF will assume jurisdiction to ensure that all safeguarding concerns are investigated and sanctioned as appropriate.[35]

One of the more persistent safeguarding issues concerns child athletes' accommodation while away from home in tournaments. Most families cannot afford a separate accommodation for their child and their coach (whose expenses are typically covered by the family) and a large part of sexual abuse arises as a result of shared accommodation between children and adults. Article 12(9) of the ITF's Safeguarding Policy for Children makes it clear that children are under no circumstances to share accommodation with persons above the age of 18 and if they are to be hosted by families, appropriate background checks are to be made in advance. This is no doubt welcome, but does not eliminate situations of children athletes being sent to tournaments by parents unable to afford travel and accommodation expenses for themselves, for which a distinct investigation should be required. The ITF has not set out any requirements for

[33] ITF Children's Safeguarding Policy, Art. 10.
[34] Ibid., Art. 11.
[35] Ibid., Art. 12(4).

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parents and legal guardians to notify the ITF of accommodation arrangements, nor is there a mechanism for verification.[36]

Article 15 of the ITF Safeguarding Policy for Children contains a long list of conduct that is not allowed by covered persons or those in a position of trust. This list has been carefully thought out and the drafters should be commended because they tackle not simply abusive behaviour, but also situations that while not abusive or illegal may, nonetheless, lead to grooming. One in particular stands out. Article 15 (B)(xi) stipulates that covered persons and those in a relationship of trust:

> [or those who] have authority, supervision or control over any Child [must not] (a) engage in personal electronic communication with that Child, or (b) have that Child as a 'friend' or 'follower' within personal social networking sites and apps, in either case, unless an arrangement approved by the Child's parent/legal guardian is in place and *all* communications are copied to the Child's parent or legal guardian.[37]

Besides abuse, harassment, violence and sexual exploitation,[38] the ITF's Safeguarding Policy for Children adds 'poor practice', 'neglect' and 'emotional abuse'[39] to the list of conduct that is unacceptable and which constitutes a violation of the Policy, even if not an infraction of the law. Poor practice is conduct that is not immediately harmful, but which could cause harm in the future and sets a poor example.[40] Examples of poor practice include 'failing to provide safe training or competition environments, not paying due care and attention to players during participation, inappropriate use of the Internet and online communication or social media apps and platforms, working with children while under the effects of drugs or alcohol, smoking, swearing or acts of aggressive behaviour in front of children'. Research has shown that grooming of child athletes by covered persons through their social

[36] It is not clear to this author that the World Tennis Tour Juniors Organisational Requirements cater for this eventuality. Available at: www.itftennis.com/media/11469/2024-itf-world-tennis-tour-juniors-organisational-requirements.pdf.

[37] Emphasis added.

[38] Celia H. Brackenridge, 'He Owned Me Basically . . .: Women's Experience of Sexual Abuse in Sport' (1997) 32 Int Rev Sociol Sport 115; Celia H. Brackenridge, Daz Bishopp, Sybille Moussalli et al., 'The Characteristics of Sexual Abuse in Sport: A Multidimensional Scaling Analysis of Events Described in Media Reports' (2008) 6 Int J Sport Exerc Psychol 385.

[39] See Charlotte L. Wilinsky and Allyssa McCabe, 'A Review of Emotional and Sexual Abuse of Elite Child Athletes by Their Coaches' (2020) 10 Sports Coach Rev 84.

[40] ITF Safeguarding Policy for Children, Art. 16.

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media platforms is prevalent.[41] Covered persons also have a duty to meet a child's basic physical and psychological needs. Article 16 defines this type of neglect as failing to:

- Provide adequate food, clothing and shelter (including exclusion from home or abandonment);
- Protect a child from physical and emotional harm or danger;
- Ensure adequate supervision (including the use of inadequate caregivers);
- Ensure access to appropriate medical care or treatment.

It may also include neglect of, or unresponsiveness to, a child's basic emotional needs. In elite tennis and sporting environments, psychological and emotional neglect may be exacerbated by adverse reaction from key covered persons (such as coaching staff or parents) to a player's perceived poor performance.

This is a good example of a duty incumbent chiefly on parents and caregivers, with a corresponding duty on the ITF to monitor compliance and report abuses. It is well reported that a good deal of parents have invested much of their earnings and personal time to develop a talented offspring who subsequently loses interest in the sport or under-performs. Abuse against children in this context is hardly unusual. In equal measure, parents, guardians and other covered persons may inflict 'emotional abuse' on children. This is defined in Article 16 of the ITF's Safeguarding Policy as 'persistent emotional maltreatment of a child such as to cause severe and persistent adverse effects on the child's emotional development'. It should be pointed out that where emotional abuse, poor practice and neglect take place, in addition to such conduct constituting an affront to the ITF Policy, they may also give rise to custody arrangements by child protection authorities and the courts because of their negative impact on the child in question. The reports compiled by the ITF Safeguarding Manager and its staff will certainly help national authorities in reaching their decision. Article 16 of the ITF's Safeguarding Policy for Children lists further conduct that is unacceptable and which will be reported to the national authorities. This includes grooming[42] – which has been touched upon in other sections of this chapter – bullying,

[41] Jimmy Sanderson and Melinda R. Weathers, 'Snapchat and Child Sexual Abuse in Sport: Protecting Child Athletes in the Social Media Age' (2020) 23 Sport Manag Rev 81.

[42] See Helen Owton and Andrew C. Sparkes, 'Sexual Abuse and the Grooming Process in Sport: Learning from Bella's Story' (2017) 22 Sport Educ Soc 732.

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radicalisation and extremism, and female genital mutilation, as well as modern slavery and child exploitation.

Training of all staff and a culture of reporting should alert all covered persons when abuse is taking place. But how does one detect it in the face of silence, especially from victims? Article 18 of the ITF's Safeguarding Policy provides a list of key indicators for identifying abuse and poor practice, while Article 19 sets forth a 'listening culture' within the ITF as an integral component of identification and prevention. Articles 20 to 24 of the ITF Safeguarding Policy make it clear that all covered persons and the organisation as a whole have an obligation to report any infraction to the ITF or the police and that the ITF is under an obligation to investigate, report to the authorities and protect whistleblowers from any adverse impact.

5 Safeguarding for Future Harm

A particular concern that is hinted (i.e. poor practices) in the ITF Safeguarding Policy but not highlighted enough is the likelihood of future harm to children. Indeed, the majority of talented tennis players train long hours, engage in several long-distance trips in any one year (and hence spend many hours travelling) and as a result fail to keep up with their academic pursuits. This is further fuelled by family and tennis professionals. When the child is either burnt out or ultimately realises that a professional career is not feasible, the family is already in significant debt and the child has no fall-back plan.

The question then arises whether the future welfare of child tennis players should be a concern for the ITF, WTA and ATP and top-flight tennis academies and whether this should constitute a recognisable duty of care.[43] In the opinion of this author, the answer is self-evident. All three entities would be rendered meaningless and generate no profit without the struggle of junior players to make it into the professional circuit. Top professional players do not just happen; they are part of a process involving intense competition at the junior ranks and it is because of this competition with other players through the course of multiple years that they later achieve stardom. Simply using those other players to create the tennis stars of tomorrow and in the process deprive them of future prospects is as bad as all the evils that safeguarding aims to

[43] Harmonisation and joint education efforts have been in place; that said, there are jurisdictional issues as the WTA and ATP cannot take jurisdiction over matters that arise at ITF events.

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eradicate. It is for this reason that the WTA Rulebook sets out in its section X a series of Age Eligibility Rules (AERs) which, among others, require 'minimum educational requirements' for children participating in its pro-path phase: 'Each player must submit to the WTA an official certificate from her country of legal residence verifying that she is meeting or has met her country's minimum educational requirements. A player must submit updated documentation annually until she reaches 18 years of age.'[44] The same requirement is demanded in respect of the WTA's introductory phase,[45] and during the rookie phase players must participate in educational programmes offered by the WTA's PDP.[46] Female players who succeed to the elite phase are required to undergo several education programmes, crucially including fundamental financial planning and career development.[47] Even players ranked in the top 100 of the WTA rankings, and who are below 18 years of age, must not only attend the WTA's mandatory courses, but equally provide evidence that they are meeting their countries' minimum educational requirements.[48] It is no accident that the vast majority of WTA-ranked players are multilingual, with many pursuing a university degree. A longitudinal study commissioned by the WTA aptly demonstrated that:

> Adolescent athletes participating in the WTA after the combined AER/PDP initiative had longer career durations, higher probabilities of 10-year and 15- year careers, and decreased risk of premature retirement compared with those participating prior to AER/PDP. Organisational practices that encompass both education and competition regulation can positively affect career longevity related to improving athlete well-being.[49]

While this is a splendid example of preventing future harm to junior tennis players, it does not account for the fate of other junior players at the lower tiers of the game. It would be extremely impactful if the ITF, WTA and ATP used some of their resources with a view to collaborating with national tennis federations to create similar programmes and set out minimal educational requirements for their top 100 (or more) nationally ranked players.

[44] 2024 WTA Rulebook, s. X(B)(2)(b)(ii).
[45] Ibid., s. X(B)(3)((b)(ii).
[46] Ibid., s. X(B)(4)(b)(iii). A brief overview of the WTA's Development Program is available at: www.wtatennis.com/player-development.
[47] WTA Rulebook, ibid., s. X(B)(5)(b)(v).
[48] Ibid., s. X(B)(6)(a).
[49] Carol L. Otis, Brian Hainline, Christopher Harwood et al., 'Differences in Career Longevity before and after Implementation of the Women's Tennis Association Tour Age Eligibility Rule and Player Development Programs: A 25-Year Study' (2022) 56 Brit J Sport Med 1.

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Top-flight tennis academies should play a major role in this development and assume the development role required.

There is also a worrying trend of doping among children in a variety of sports settings. The latest World Anti-Doping Agency (WADA) report did not single out tennis, as opposed to weightlifting, swimming and athletics, but it did highlight six areas of concern arising from doping in junior categories, namely: trauma, isolation, impact, pressure, ignorance and abandonment.[50] This should be a safeguarding concern for the International Tennis Integrity Agency (ITIA). Given the absence of anti-doping control in the majority of junior tennis tiers, it is very difficult to have an overview of the prevalence of doping among children tennis players.[51] While it might be difficult, from an ethical, financial and logistical perspective, to undertake doping controls in national junior circuits, there is little doubt that tennis stakeholders can and should educate parents, players, clubs and tennis professionals on a mandatory basis.

6 The Safeguarding of Adult Athletes

The ITF's Safeguarding Policy for Adults is modelled on its equivalent policy for children.[52] In order to avoid overlap, this section will explore only notable differences. Article 4 of the Adults' Policy emphasises that in the adult context safeguarding refers to 'vulnerability to risk or harm'. Risk and vulnerability are considered interchangeable, and each is dependent on personal circumstances, such as disability, poverty, homelessness, domestic violence and others. Unfortunately, however, despite two articles on the likely risks to disabled tennis players, the Adults' Policy is an almost verbatim iteration of the Children's Policy and is hardly personalised to the plight of adult players.[53] This is, in the opinion

[50] WADA, 'Operation Refuge: An Examination of Doping among Minors' (24 January 2024), 7, available at: www.wada-ama.org/sites/default/files/2024-01/wada_public_report_-_operation_refuge_24jan.pdf.

[51] See allegations by a 12-year-old Romanian star player who alleged that she was provided with enhancing substances during her training at the Mouratoglou Academy. Available at: https://as.ro/tenis/dezvaluiri-explozive-de-la-academia-mouratoglou-li-se-dau-sportivilor-substante-unii-nu-sunt-prinsi-ca-stiu-cand-sa-le-ia-374118.html (in Romanian).

[52] See also LTA Safeguarding Adults at Risk Policy and Procedure 2003, available at: www.lta.org.uk/498128/siteassets/about-lta/file/lta-safeguarding-adults-policy.pdf, which mainly emphasises the protection required by adults with disabilities.

[53] The introduction of cyber bullying, 'mate crime' and forced marriage in Art. 19 of the Adults' Policy is unconvincing as a meaningful distinction, as these are more likely to affect children than adults.

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of the author, a disappointing effort that very much ignores the real problems faced by young adult tennis players and aims to confirm the ITF narrative that organised gambling in the lower tiers of the sport is good for the game of tennis.[54]

It has been demonstrated elsewhere that adult tennis players who are unable to make a living from prize money (i.e. mid- and lower-tier ranked athletes) are susceptible to match manipulation where organised gambling has been introduced at these lower tiers.[55] By way of illustration, in March 2021, the ITF announced the results of a match-fixing investigation against two Nigerian tennis players. One was ranked 986 and the other was not ranked at all; yet their matches were amenable to betting by the ITF and the two had gone on to bet on their own games.[56] The Independent Tennis Integrity Review pressed the point that:

> A comparison of the costs and available prize money for players at the Lowest Level of professional tennis – ITF men's and women's $15 k or $25 k events – underscores this point. The ITF's review in 2014 demonstrated that the average costs of playing professional tennis, excluding coaching, were $38,800 for men and $40,180 for women. On the other hand, the winner of a singles tournament at that level is unlikely to receive more than $4,000. As a result, a player at that Lowest Level[57] would need to win at least ten tournaments in a year just to break even, without any accounting for coaching. By comparison, at the ATP World Tour level, the loser in a first-round singles event will typically earn over $10,000.[58]

This is hardly a surprising outcome. If the ITF is serious about the safeguarding of adult players, apart from abuse and violence, it has to confront the evils of integrity and manipulation of the game as a matter of

[54] See Ilias Bantekas, 'Is Legitimate Gambling a Threat to the Integrity of Transnational Individual Sport Competitions?' (2024) 25 San Diego Int LJ 23 (demonstrating how the ITF has entered into lucrative deals with live data streaming/gambling companies, which has increased manifold the likelihood of match-fixing in the sport).

[55] See William Ralston, 'The Fixer, the Cheat and the Corruption Crisis in Global Tennis', Financial Review (8 July 2022), available at: www.afr.com/companies/sport/the-fixer-the-cheat-and-the-corruption-crisis-in-global-tennis-20220701-p5aydc; Simon Cambers, 'Organized Crime Has Already Infiltrated Tennis Says Security Expert', *The Guardian* (25 November 2014), available at: www.theguardian.com/sport/2014/nov/25/organised-crime-tennis-security-expert.

[56] ITIA, 'Two Nigerian Tennis Players Banned for Life for Match Fixing Offences' (11 March 2021), available at: www.itia.tennis/news/sanctions/two-nigerian-tennis-players-banned-for-life-for-match-fixing-offences/.

[57] The 'Lowest Level' is made up of ITF men's and women's $15,000 and $25,000 events. The 'Mid-Level' is made up of ATP Challenger, ITF women's $60,000–100,000 and WTA $125,000 events.

[58] Independent Review of Integrity in Tennis (19 December 2018), para. 85.

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safeguarding also. The Independent Review of Integrity in Tennis emphasised in its 2018 report that:

> the imbalance between prize money and costs is foremost among the several circumstances that render professional tennis vulnerable to breaches of integrity. The vast majority of nominally professional players, of whom there are as many as 14,000, are unable to make a living through competition. While players ranked in the top 100, and possibly down to around 150, can generally earn a living from prize money and sponsorships, at the lower rungs of the sport the available money is small and the costs are high. An ITF review in 2014 determined that the 'break even' point – the ranking where a player earned as much money from professional tennis as he or she spent on costs – was 336 and 253 in the worldwide rankings for men and women, respectively.[59]

An additionally egregious practice plaguing the adult professional game is the use of social media to inflict fear, distress and mental harm. Professional players are public figures and are 'easy' prey for malicious users. The ATP and WTA have a duty, as far as possible, to protect their prized assets from such harmful practices, and recently the AI-powered tool Matrix was pioneered with a view to monitoring players' public-facing social media for abusive and threatening content.[60]

7 Health and Safety as a Safeguarding Duty

The safeguarding policies of the ITF refer to health and safety in very general terms. The regulation of health and safety is undertaken at national level through general or specific legislation. In the United Kingdom, for example, the Health and Safety Act at Work of 1974, as updated, regulates the responsibility of employers towards employees and third persons while working or being present at their work premises, or using work-related equipment. For the purposes of this section of the chapter, sections 2 and 3 of the 1974 Act stipulate that employers are under a continuous duty to ensure, so far as is reasonably practicable, the health, safety and welfare at work of all their employees and any other person present at their place of work. An important part of this legislation is the duty to train all employees in health and safety matters. It is clear

[59] Ibid., para. 84.

[60] 'Tennis Players to Get Protection from Online Abuse through New Monitoring Service', Associated Press (20 December 2023), available at: www.tennis.com/baseline/articles/tennis-players-social-media-online-abuse-protection-threat-matrix-service-ai-signify-group.

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that health and safety legislation is of paramount importance in the safeguarding of adult and children tennis players. The Lawn Tennis Association's Coach Qualification Health and Safety Policy emphasises that: 'All individuals have a legal responsibility, as stated under section 7 of the Health and Safety at Work Act 1974, to do everything practicable to prevent an accident or injury to themselves and to others.'[61] Clubs, academies and national associations, tennis professionals acting as consultants or any other entity operating tennis or training facilities, whether privately owned or leased, are charged under the law with ensuring as far as practically possible that all equipment and facilities are safe and do not pose a health hazard. A violation of this duty gives rise to criminal liability and possible tort claim by the person suffering an injury.

8 Consequences for Failure to Meet Safeguarding Obligations

There is nothing in the safeguarding policies examined thus far explaining the legal consequences for failure to meet the stated safeguarding obligations, save for the LTA health and safety policy which refers to consequences arising from statute. The ITF frames the pertinent duties twofold: (1) situations that implicate criminal and child welfare laws, which give rise to a criminal investigation on the part of the territorial state against the alleged perpetrators; and (2) duties that do not fit in category (1), but whose legal implications are somewhat vague. The relevant safeguarding policies may, but not necessarily, give rise to tort-based liability, as well as contractual liability. By way of illustration, the sexual grooming of a child athlete is clearly a criminal offence and the accused will undergo a criminal prosecution to determine his or her culpability. However, this process does not address the potential liability of the club, the national federation or the pertinent sport governing body (e.g. the ITF) for their failure to detect the offence and protect the athlete. If the law treats the relationship between these three entities and the victim athlete as one entailing a concrete duty of care, failure to execute this duty to the best of their abilities gives rise to liability in tort and perhaps also criminal liability.

If the prospect of tort-based liability for stakeholders is remote, chiefly because such a duty is not predicated in common law or statute, then the pertinent safeguarding policy may serve as a contract between the athlete

[61] The LTA Policy is available at: www.lta.org.uk/4a29b3/siteassets/roles/coaches/file/lta-health-and-safety-policy.pdf.

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and the institution that has produced the policy. Where the policy is framed as an *offer* made by the institution to the athlete and the latter *accepts* it tacitly or expressly and both form a *common intention* that the institution is bound to adhere to its terms, then such terms are contractual in nature. In the case of the ITF Safeguarding Policy for Children, the *offer* is clear in Article 2, which reads: 'The International Tennis Federation (ITF) is *committed* to safeguarding all children participating in tennis tournaments, events, projects and programmes that it delivers or sanctions and rejects all forms of harassment, abuse, violence and exploitation' (emphasis added). It is absurd to suggest that welfare policies simply express hortatory principles which the institution is not bound to enforce, especially where the policy in question uses language suggesting commitment. The very fact that the ITF, in addition to its express commitment, has set up the post of Safeguarding Manager subject to elaborate procedures furnishes proof of its commitment to the terms of the Safeguarding Policy. If the institution fails to adhere to the terms in its policy, it is in breach of said policy and the victim may seek recognition of this breach, as well as damages, financial or moral, if these are proven. It is of no significance that the institution might argue that its safeguarding policy is not a contract, especially if its terms are such that leave no doubt about its contractual nature. It is unclear if the ITF Safeguarding Policies constitute 'ITF Rules', which in turn confer authority on the ITF's Internal Adjudication Panel and Independent Tribunal. If this is not the case, an aggrieved athlete can raise a civil claim before the courts against the institution in breach of the contract/policy and seek damages.

In practice, safeguarding-based claims are predicated on the law of torts where there exists an extensive array of duties of care,[62] and hence contract-based claims are extremely rare. This author is not aware of aggrieved athletes making contract-based claims, as explained in this section, against institutions for failure to adhere to their safeguarding policies.

9 The Boundaries of Safeguarding Duties

The various safeguarding policies explained in this chapter concerned abusive conduct, criminal offences or poor practices against tennis players, whether children or adults. They did not in any way discuss

[62] Partington, *Coaching, Sport and the Law*, 87–121.

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equivalent conduct by tennis athletes against non-athletes. It seems fair that safeguarding rules do not apply in such circumstances, chiefly because this does not give rise to a relationship of trust in the sporting context – save where one athlete is being abusive to another athlete. The welfare of the victim, non-athlete, can be adequately remedied by the laws on domestic violence, or violence against one's person. Even so, when allegations of domestic violence against Alexander Zverev emerged, the ATP was quick to institute a 'safeguarding investigation', the aim of which was to make wide-ranging recommendations to 'ensure safeguarding is embedded across all aspects of ATP organisational activity. Topics covered include prevention, reporting and investigation of abuse, disciplinary measures, policy statements, event safety, training, information sharing, collaboration with other bodies of tennis and the appointment of dedicated safeguarding leads.'[63] By January 2023, at which time the investigation was completed and Zverev exonerated due to a lack of evidence, the ATP's press statement made no reference to safeguarding whatsoever and instead justified the investigation on the basis of the ATP's On-Site Offenses or Player Major Offenses rules.[64] It is clear that the ATP reversed its original thinking that the incident in question pertained to safeguarding and went on to dismiss such a notion.

But what of other sports professionals, particularly agents, who enter into agency or advertising agreements with tennis players in a manner that is contractually abusive or is otherwise in violation of restraint of trade rules?[65] Agents owe fiduciary duties to their clients upon entering into the agency agreement, these being contractual and statutory,[66] as well as common law-based. Good faith and loyalty are among these. In addition, prior to entering the agreement, the agent negotiating with a child, or even an adult athlete, must make truthful representations. Besides this contractual realm, however, it is obvious to this author that other stakeholders have a duty to address unequal and unhealthy/predatory athlete–agent relationships as part of their ordinary safeguarding commitments.

[63] ATP Tour News Release, 'ATP Receives Independent Safeguarding Report: Zverev Investigation Announced' (4 October 2021).
[64] See ATP Tour News Release, 'Zverev Investigation Completed' (31 January 2023).
[65] Ilias Bantekas, 'Professional Tennis and Restraint of Trade in the English Common Law' (2023) 22 Va Sports & Ent LJ 1.
[66] E.g. the US Sports Agent Responsibility and Trust Act of 2004 and the Uniform Athlete Agents Act.

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