

Keeping children safe whilst playing sport: What can South Africa learn from the United Kingdom experience?

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OPSOMMING

Om Kinders Veilig te Hou Terwyl Hulle aan Sport Deelneem: Wat kan Suid-Afrika uit die Ervaring in die Verenigde Koninkryk Leer?

Sportbeheerliggame het ernstige problem in die gesig gestaar met kinderbeskerming en was dikwels nie toegerus om die problem te hanteer nie. 'n Sleutelvraag was of daar van sportbeheerliggame verwag is om die problem alleen die hoof te bied en of kinder beskerming in sport deel moes uitmaak van 'n breër holistiese stelsel van kinderwelsyn wat ook ander organisaies moes insluit. Die Verenigde Koninkryk het daarna gestreef om 'n beskermende raamwerk van kinderwelsyn dwarsoor alle sport te bewerkstellig wat deur sportbeheerliggame afgedwing word, en fokus op onderrig en opleiding van vrywilligers wat by sport betrokke is. 'n Sleutelpunt was die skepping van die *Child Protection in Sport Unit* binne die *National Society for the Prevention of Cruelty to Children*. Die *Safeguarding Vulnerable Groups Act 2006* het 'n sentrale ligaam, die *Independent Barring Board*, later verander na die *Independent Safeguarding Authority* ingestel wat verantwoordelik is vir die bedryf van 'n keuring- en uitsluitingskema. Sport klubs val binne die omskrywing van "*Regulated Activity Provider*" en moet die status van enige persoon wat gereeld by bedrywighede betrokke is en kontak met kinders het, nagaan. Aanvanklik is die vlak van bedrywighede wat as gereelde kontak beskou is, taamlik laag gestel sodat 'n groot aantal aktiwiteite en persone binne die omskrywing sou val. Latere hersienings het voorgestel dat die vlak van bedrywighede beter omskryf en op 'n hoer vlak gestel word ten einde die proses meer vaartbelein te maak. In Suid-Afrika, bevorder Sport en Ontspanning Suid-Afrika gestruktureerde deelname aan sport- en ontspanningsbedrywighede in skole en die opheffing van sport in skole en sportklubs. Die Suid-Afrikaanse sportsektor moet ook die problem van seksuele teistering en misbruik is sport aanspreek en kan in hierdie verband gerus uit die ondervinding in die Verenigde Koninkryk leer.

1 Introduction

The United Kingdom (UK) has sought to establish a protective framework of child welfare across sport enforced through sports governing bodies, concentrating on education and training for volunteers.¹ Whilst this has

¹ The UK does not have one single unified legal system but the child protection legislation across England, Wales, Scotland and Northern Ireland is "fundamentally similar". Williams "Human Rights v Human Responsibilities: Striking a Balance Between the Rights of Child Athletes and the Resulting responsibilities of Volunteers in Sport" 2009 *Cambrian LR* 76-92, 77.

been developed, governments have also introduced specific legislation to institute a rigorous system of vetting and barring to check individuals and exclude those considered unsuitable from working with children. By including sport within this scheme it is suggested that it should be viewed within a wider child protection framework and that internal strategies were insufficient on their own.

However the comprehensive vetting and barring scheme (VBS) attracted widespread criticism in terms of its breadth and depth of coverage leading to proposals for reform. A change of government in 2010 quickened the pace and desire for change and a further review of the scheme has been conducted with a view to cutting it back further. Contemporaneously numerous reviews have been instigated across a range of areas that interlink with child protection in sport. The fundamental difficulty is achieving a balance between keeping children safe and maintaining a system that does not deter the volunteer culture that is essential to the maintenance of sporting opportunities. This article considers the legislative framework in operation in the UK and the amendments that have been introduced and highlights the problems that such legislation can unwittingly contain. Given the growing recognition of the civic significance of sport within South Africa, the UK experiences can provide a constructive contribution to the ongoing policy discussions.

2 Promoting Sport for Children and the Volunteer Culture

Sport for children is generally viewed as an important cultural activity however it may be described, and this is specifically recognised in the United Nations Convention on the Rights of the Child:

Article 31

(1) States Parties recognise the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.

(2) States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

Encouraging children to participate in sporting activities has been a continuing UK Government policy since 1991 when inclusion in the National Curriculum started a significant change in the perception and role of Physical Education and School Sport (PESS) which had previously been somewhat marginalised.² This transformation included an increased political commitment, the setting of targets, increased funding (including lottery money) and the development of specialist sports

2 Houlihan & Green "The changing status of school sport and physical education: explaining policy change" 2006 *Sport Ed and Society* 73-92.

colleges.³ Carter⁴ optimistically noted that “the decline in P[hysical] E[ducation] and school sport has been reversed”. This he attributed to policy setting and an investment of some £1.5 billion. However Green has noted that the prioritisation of young people through a policy of using sport and physical exercise as a vehicle to deliver welfare objectives may leave some other groups such as the elderly disadvantaged.⁵ Interestingly the School Sports Partnerships that were an important part of the infrastructure for the delivery of sport, under the previous administration were initially abolished by the incoming 2010 coalition government. However after widespread protest some limited funding it was restored.⁶ In 2011 the Secretary of State for Education announced a review of the national curriculum but in terms of PE it was made clear that it would remain as a central tenet:

Children need access to high quality physical education. Physical education will, therefore, also remain a compulsory part of the National Curriculum at all four key stages and the first phase of the review will advise ministers on a much simplified and less prescriptive programme of study. This is also for introduction in 2013. It is proposed the revised curriculum for physical education will set out a clearer expectation that all pupils should play competitive sport, and will retain the expectation that all children learn to swim.⁷

Such support for promoting physical education is linked to concerns around the transition of taking part in recreation in adulthood and the physical and mental health of the population at large. There is a sharp drop off in participation in exercise post school that makes instilling a lasting exercise ethic a key challenge.⁸ There is no clear understanding as to why individuals do not take part in sport and physical activity particularly at different stages of life.⁹ The limited research evidence makes both the construction and the implementation of policy more difficult although there are examples from other countries that can be drawn upon.¹⁰ It has been identified that there are diverse influences on participation in physical activity and as a consequence health policy

³ *Ibid.*

⁴ Carter *Review of national sport effort & resources* (2005) 7. To monitor participation the Department for Culture Media and Sport (DCMS) commissions an Annual Statistical Report, *Taking Part: The National Survey of Culture, Leisure and Sport* (DCMS 2006, 2007, 2008, 2009, 2010, 2011). The questionnaire is updated at intervals to reflect the changing circumstances.

⁵ Green *Review of national sport effort & resources* (2007).

⁶ The School Sports Partnership was one of the 8 strands of the previous Government's PE, School Sport and Club Links (PESSCL) policy – see www.parliament.uk/briefing-papers/SN06052.pdf (accessed 2013-02-12).

⁷ <http://www.education.gov.uk/inthenews/inthenews/a0073149/national-curriculum-review-launched> (accessed 2012-06-17).

⁸ Carter *op cit.*

⁹ Allender, Cowburn & Foster “Understanding participation in sport and physical activity among children and adults: a review of qualitative studies” 2006 *Health Ed Research* 826-835.

¹⁰ Carter *op cit.*

needs to adopt a multi faceted solution.¹¹ One of the major difficulties in terms of sports policy in the United Kingdom is the sheer number of parties involved in delivery and the complexity of the relationships. For example sport is within the jurisdiction of the Department of Culture, Media and Sport but responsibility for schools and the curriculum, which includes physical exercise, is located within the Department for Education (DofE). Carter¹² proposed a cross departmental Sports Cabinet Committee to improve co-ordination. Aside from the Government Departments other relevant bodies include the schools themselves, Sport Governing Bodies and regional or County Associations, sports clubs and private providers. There are also relevant non-departmental public bodies the most important of which is Sport England.¹³ Thus the overall picture of the provision of children's sport indicates a complex and piecemeal approach. To overcome some of these problems Carter recommended that the Government:

[d]evelop, communicate and embed a 'single system' for sport in the community from Government to grass-roots-by investing in clubs, coaches and volunteers, strengthening school-community links and integrating talent pathways for aspiring performers.¹⁴

South Africa is also engaged in developing a clear strategy to promote participation in sport. The 2011 Sport and Recreation South Africa (SRSA) *White Paper* set out the Government's mission:

[t]o maximise access, development and excellence at the levels of participation in sport and recreation in order to improve social cohesion, nation building and the quality of life of all South Africans¹⁵

Sport, in South Africa, is also increasingly being viewed, as it has in other countries, as a valuable social policy that can bring a host of benefits throughout society:

For every rand invested in sport there are multiple social benefits such as long term health benefits, stronger and more secure communities, social cohesion, crime reduction, psychological well-being, improved productivity and employment opportunities where participants benefit from developing and improving a variety of skills. Sports programmes can also empower and promote the inclusion of marginalised groups.¹⁶

11 Biddle, Gorely & Stensel "Health-enhancing physical activity and sedentary behaviour in children and adolescents" 2004 *J of Sports Sciences* 679-701.

12 Carter *op cit*.

13 Sport England "works to build the foundations of a world-class community sport system by working with national governing bodies of sport, and other funded partners, to increase participation and improve performance at all levels of English sport"; http://webarchive.nationalarchives.gov.uk/20121015000000/http://www.direct.gov.uk/en/D11/Directories/DG_10012236 (accessed 2013-02-12). There are equivalent bodies for Scotland, Wales and Northern Ireland.

14 Carter 28.

15 Sport and Recreation South Africa (SRSA) (2011) *The White Paper On Sport and Recreation for the Republic of South Africa* 24.

16 SRSA 16.

Whilst there is no doubting the importance of a clear and coherent national policy on sport there is also a concomitant need to construct a framework for the actual delivery of sport and recreation. The *White Paper* recognises the number of role players involved but also the need for one central authority and a national strategy. It is clearly a mistake to create, albeit unwittingly, an overly complex model of delivery. However there will inevitably be a large number of different groups involved given the diverse nature of the area.

In the UK sports clubs and private providers now occupy a much greater role in two distinct ways. First schools have brought in external expertise that may be part of Community Outreach programmes by professional sports clubs.¹⁷ By offering extra school activities such clubs establish a stronger relationship with the community. Secondly amateur clubs provide an alternative location for participation in sports. These may be either specialist junior clubs or youth sections of adult clubs. Both of these models, the “in” and “out of” school, raise two questions related to the personnel involved in coaching.¹⁸ There is the child protection dimension that has become a prominent issue in children’s sport.¹⁹ There is also the separate, though allied point, about the qualifications of those involved given that they will not ordinarily have the specific educational credentials required of teachers. This is more likely to be an issue where those involved are volunteering and not professional coaches. Volunteers may be required to obtain some level of qualification but a distinction can be drawn between volunteers who coach and those who coach as a paid occupation.

Sports clubs are essential to the delivery of children’s sport outside of the school environment.²⁰ According to Nichols there are somewhere in the region of 150,000 sports clubs in the UK staffed by volunteers.²¹ However the level of volunteering in the UK generally compares poorly

17 See for example the activities established by Brentford FC a professional English League Division 1 Football Club <http://www.brentfordfcst.com> (accessed 2013-02-12). See also <http://www.saracens.com/sport-foundation-2/> (accessed 2013-02-12).

18 The school system in England is generally organised on an infant/primary and senior school basis. The former is for children aged 5-11 and the latter 11-18. Currently children may leave school at the end of the academic year in which they become 16 though this is being raised to 17 from 2013 and 18 from 2015. Children after the age of 16 can however engage in education and training outside of the school environment. In relation to the delivery of sport at primary school level one issue that has been raised is the shortage of male primary school teachers. In 2011 it was reported that one on four primary schools had no male teacher registered; <http://www.bbc.co.uk/news/education-14748273> (accessed 2013-02-12).

19 Brackenridge “... so what? Attitudes of the voluntary sector towards child protection in sports clubs” 2002 *Managing Leisure* 103-123.

20 Whilst PE is a compulsory part of the national curriculum at all ages participation in competitive inter-school sport is not generally a “requirement”.

21 Nichols *Active Citizenship: The Role of Voluntary Sector Sport and Recreation* (2003).

with other European countries.²² In 2002 Sport England estimated there were 1.5 million sports volunteers that accounted for a quarter of all volunteering.²³ Although the overwhelming majority of those working in sports clubs are volunteers, with few paid employees, it is not clear that they are a part of a homogenous group and that sports volunteers may not share the same motivation as those volunteering in other sectors with sport based more on a form of “mutual production and consumption”.²⁴ In terms of motivation to volunteer to coach junior sport there are several factors to consider and understanding the strength of motivating factors is important to be able to ascertain what may act to discourage volunteers. Requirements to obtain qualifications may be imposed such as the completion of a Sports Governing Body approved training course particularly if the club is in receipt of public grants or has achieved a certain status such as “Clubmark” that brings with it a higher level of regulation.²⁵ So enthusiastic parents may not be able to formally “coach” unless they obtain an appropriate qualification. There may be further requirements with respect to undertaking a Criminal Records Bureau check.²⁶ However not all clubs will enforce all of the requirements. Those volunteers who do undertake coaching courses should have a greater understanding of strategies and approaches. Alternately coaches may feel, particularly at the outset that they are ill equipped for the role and the expectations that parents may bring. A survey of 25, mainly male, volunteer sports coaches found concerns centred around “negative parental behaviours, a lack of mentorship, pedagogical aspects of working with children, and concerns with appropriate and legal boundaries of working with children”.²⁷ This suggests something of a dichotomy as too much training and regulation may deter some volunteers from coming forward in the first instance but others in post may want a greater degree of help and support. It is apparent that Government has increasingly seen sport as a means of delivering a range of social policies and the environment outside of the school is critical. Within this environment there are less prescribed controls than within formal education structures. Volunteers are an integral part of sports clubs that could not operate without them given the limited resources available. Unfortunately sport has become a site for serious child abuse

22 See Coalter “Sports Clubs, Social Capital and Social Regeneration: ‘ill defined interventions with hard to follow outcomes?’” 2007 *Sport in Society* 537-559.

23 *Sports Volunteering in England in 2002* (2002).

24 Coalter 551.

25 Clubmark is an accreditation system set up for sport clubs to ensure good practices are in operation. <http://www.clubmark.org.uk/about/about-clubmark> (accessed 2013-02-12).

26 Such a check will reveal whether the applicant has any formal convictions and also cautions and warnings. http://www.direct.gov.uk/en/Employment/Startinganewjob/DG_195809 (accessed 2013-02-13).

27 Wiersma & Sherman “Volunteer Youth Sports’ Coaches’ Perspective of Coaching Education/Certification and Parental Codes of Conduct” 2005 *Research Quarterly for Exercise and Sport* 324-338, 335.

to take place that has caused consternation both within and well beyond sport.

In South Africa the *White Paper* also envisages a greater role for private sector sport particularly with respect to the workplace.²⁸ Schools have the primary role in the provision of children's sport – indeed *Strategic Objective 1* is school sport. Parallels with the UK determination to reinvigorate school sport can be drawn as one of the Policy directives based on *Strategic Objective 1* is to “[a]dvocate and lobby for the reintroduction of structured physical education in all schools and elevate sport in schools as a matter of priority and urgency”.²⁹

However, South African schools are not envisaged as the sole site of sport delivery as *Strategic Objective 11* specifies the role of Clubs as an integral part of the framework. In partnership with the development of Clubs is the aim to develop an appropriate coaching framework. Similarly there is the identified need to support volunteers, who are seen as crucial to the delivery of sport, through additional training and support. An interesting policy directive is to “establish and maintain a register of trained volunteers”.³⁰ Once a register of volunteers is in place it is of course much easier to operate a scheme of vetting if this is subsequently deemed necessary. Bora³¹ explored the development of social capital through community clubs and noted the benefits brought to the individual that volunteering and coaching could bring. This is borne out by the UK experience where clubs are overwhelmingly reliant on volunteers and a key issue is how to support and maintain this culture and not deter volunteers.

3 The Abuse of Children in Sport and Beyond

The civil law, through the tort of negligence, has been used as vehicle for children injured in sport and recreation, through fault, to obtain compensation for their injuries.³² Contemporaneously governing bodies have also sought to alter some of the practices and the rules of sports to make playing safer.³³ This might be either to avoid liability or as a consequence of claims. Whilst physical injuries can easily be recognised the abuse of children in sport within the UK has, until relatively recently,

28 SRSA 31-32.

29 *Idem* 29.

30 *Idem* 39.

31 Bora “Building Social Capital Through an ‘Active Community Club’” 2006 *Int Review for the Sociology of Sport* 283-294.

32 Greenfield, Osborn & Rossouw “The juridification of sport: a comparative analysis of children's rugby and cricket in England and South Africa” 2011 *J for Juridical Science* 85-104.

33 *Ibid.*

been largely hidden. Boocock³⁴ notes that:

[s]wimming was the first sport forced to face up to the seriousness of child abuse following the conviction of Olympic swimming coach Paul Hickson in 1993 for 15 offences including 2 rapes and indecent assaults committed against athletes he was responsible for coaching.

Serious issues of child abuse were identified with respect to swimming in a number of countries including Ireland.³⁵ There are numerous other examples, across different sports, of coaches being convicted of abuse.³⁶ Brackenridge *et al* point out that abuse in sport was known about but not acted upon for different reasons.³⁷ Sport Governing Bodies faced serious problems in addressing child protection issues and were often ill equipped to deal with the problem. Boocock³⁸ (cites an unpublished report by White) showing that “fewer than half of grant aided bodies had in place a child protection policy or responsible child welfare officer”. A key question was whether sports governing bodies were expected to tackle this issue alone or whether child protection within sport should be part of a broader holistic system of child welfare encompassing other agencies. Nichols and Taylor³⁹ raise the important point about whether volunteer run clubs can be reasonably expected to achieve the same level of care as professional organisations.

Even if a holistic approach was not adopted sports governing bodies needed to act to, at the very minimum, restore public confidence that children were safe when engaging in sport. A key point was establishment of the Child Protection in Sport Unit (CPSU) within the NSPCC.⁴⁰ The overall result was the production of the “Child Protection in Sport Action Plan” that provided a clear framework encompassing the dissemination of increased knowledge of the problem, training of specialist child protection officers and the establishment of reporting mechanisms coupled with strategies to prevent opportunities for potential abusers to gain access to victims. A vital issue was how sports governing bodies could be encouraged or persuaded to both adopt and

34 Boocock “The Child Protection in Sport Unit” (2002) *J of Sexual Aggression* 99. Hickson was originally charged with 17 counts, was acquitted of 2 and sentenced to 17 years imprisonment, reduced to 15 years on appeal; *R v Hickson* 1997 CrimLR 494.

35 McCarthy *Deep Deception* (2009). McCarthy’s work offers a perceptive insight into how abuse occurs and the possible reactions of some within the higher echelons of the administration of the sport. It is a disturbing account but insightful case study of what can happen.

36 Williams “Government Sponsored Professional Sports Coaches and the Need for Better Child Protection” *Ent Law* Spring 2003 55-84.

37 Brackenridge, Bringer & Bishopp “Managing Cases of Abuse in Sport” 2005 *Child Abuse Review* 259-274.

38 Boocock 100. White *Report on child protection policy development in national governing bodies of sport* (1999).

39 Nichols & Taylor “The Balance of benefit and Burden? The Impact of Child protection Legislation on Volunteers in Scottish Sports Clubs” (2010) *Eur Sport Management Quarterly* 31-47.

40 See Boocock *op cit*.

implement robust policies. The solution was found by linking receipt of funding to the requirement to embrace the new protection agenda.⁴¹ These new policies permitted the recording and analysis of data relating to the number and type of cases of abuse opening up a new research agenda.⁴²

Since the difficult period from the mid 1990s when sports governing bodies faced a seemingly impossible task, a new approach has been forged. A comprehensive training and educational framework has been established and knowledge of the issue widely disseminated. Different strategies have been adopted in different sports.⁴³ Sports clubs seeking accreditation and participation in organised competition will have to appoint welfare officers and incorporate appropriate policies. However White's view, in 1999, that child protection in sport needed to be considered as part of the wider system of child welfare was a perceptive one and the major legislative impact resulted from the tragic murder of two girls outside of the sporting environment. The Safeguarding Vulnerable Groups Act 2006 (SVGA) was introduced following the recommendations of the *Bichard Report* that was established after the horrific murders of Jessica Chapman and Holly Wells.⁴⁴

The fulcrum of the legislation was the establishment of a central body, the Independent Barring Board, later changed to the Independent Safeguarding Authority (ISA) responsible for the operation of the Vetting and Barring Scheme.⁴⁵ There were two distinct elements to the scheme, vetting and barring and the latter aspect has been subject to judicial challenge.⁴⁶ The scheme was launched in October 2009 with referrals for

41 Boocock 101 notes that "[b]y March 2001 all 558 publicly funded governing bodies had in place child protection policies and many other sports organisations have since been working to include child protection policies within their guidelines".

42 Brackenridge *et al op cit*.

43 See the implementation of a child protection scheme within tennis instigated by the Lawn Tennis Association using coaching qualifications as a means of addressing child protection issues, Turner & McCrory "Child protection in sport" 2004 *Br J of Sports Med* 106-107.

44 School caretaker Ian Huntley murdered the two ten-year old girls in 2002. Huntley was convicted in 2003 and sentenced to life imprisonment. The terms of reference for Bichard were to inquire into "child protection measures record keeping, vetting and information sharing in Humberside Police and Cambridgeshire Constabulary". *The Bichard Inquiry Report* (2004).

45 The name change is contained in s81 Police and Crime Act 2009. The ISA was given 4 main functions (i) To maintain a list of individuals barred from engaging in *regulated activity* with children; (ii) To maintain a list of individuals barred from engaging in *regulated activity* with vulnerable adults; (iii) To maintain both barred lists; and (iv) To reach decisions as to whether to remove an individual from a barred list. The Government has renamed it the Disclosure and Barring Service (DBS) encompassing the Criminal Records Bureau.

46 The Barring aspect has been subject to judicial review on compatibility with the Human Rights Act 1998; *R v Secretary of State for the Home Department* [2010] EWHC 2761.

those convicted or cautioned for offences against children.⁴⁷ From July 2010 new staff and volunteers could register with the ISA with compulsory registration from November 2010.

The essence of the SVGA was the use of defined activities as either “regulated” (section 5) or “controlled” (section 21). It is from these that the various offences flow. Sport is captured by the definition of regulated activities found in Schedule 4 Part 1:

2(1)(a) any form of teaching, training or instruction of children, unless the teaching, training or instruction is merely incidental to teaching, training or instruction of persons who are not children.

So a typical weekly team coaching session would be covered, as would competitive matches. Similarly a sports club is determined as a “Regulated Activity Provider” (RAP) within section 6 which then imposes a range of obligations related to the purposes of the SVGA including checking the status of the individual engaged in the regulated activity. For example Section 11 makes it an offence for an RAP to permit someone to engage in the regulated activity without checking his or her status with respect to monitoring. A key aspect was to determine how often contact with children must be to trigger a requirement for registration – the “frequency” question. Given the consequences of an activity being caught by the provisions for both the individuals and providers this is a crucial element. There are two separate limbs to cover both “regular” and “irregular” contact. Schedule 4 Part 1 Section 1(1)(b) determined that a regulated activity is “carried out frequently by the same person or the period condition is satisfied”. Interestingly “frequently” is not defined in the legislation but given its normal usage and subject to guidance issued by the Secretary of State.⁴⁸ The original statutory provisions referred to the period condition as being overnight or more than 2 days in a 30 day period.⁴⁹ Thus adults who carried out any of the regulated activities (which itself was broadly defined, see above) would be subject to the scheme if the activity took place frequently (once a month or more) or intensively on 3 or more days in a 30-day period.

It was clear that the fairly low level of contact that triggered a requirement to register would encapsulate a huge range of activities by volunteers with children that had previously been uncontrolled. The legislation sought to introduce a comprehensive scheme that would impose conditions and sanctions on both individuals and organisations some of which would be ill equipped to deal with the requirements. Given the sheer size and complexity of the exercise it seems likely that there would be a degree of non compliance even if unwittingly. Interestingly

47 The concept of maintaining lists of those considered undesirable in terms of working with children is not a new one and one aspect of the role of the ISA was a consolidation of lists that were maintained under for example The Protection of Children Act 1999 and The Education Act 2002.

48 See the Explanatory Notes that are issued with the Primary Legislation.

49 Sch 4 P 3 10(1) Safeguarding Vulnerable Groups Act 2006.

the survey of Scottish sports clubs showed a surprisingly low level of checking under the existing vetting scheme. It indicated that of the 52 clubs surveyed 16 had not undertaken any disclosure checks in the previous two years.⁵⁰ Furthermore of the 744 current volunteers only around two thirds had been checked. The proposed new scheme was a huge undertaking but the sheer enormity needs to be set against the revulsion of the Soham murders and the apparent deficiency in existing provisions.

4 Concerns about the VBS

Further questions about the extent of the scheme and who would be covered were raised on a number of fronts. A group of distinguished authors of children's books indicated they would not be prepared to be vetted and as a consequence would no longer visit schools to talk about their work.⁵¹ These concerns were fuelled by the fear that the scheme would encompass up to 11.3 million adults, around one in four who would come into contact with children. Potentially this would have led to the creation of the most extensive database of its kind in the world. The list of those required to register because of their interaction with children seemed endless, including not only sports coaches, but also coach drivers with education contracts and potentially school governors. It was apparent that there was a degree of hostility from some of those who were volunteering to work with children, to the very idea of being checked and registered on the database. This led to concerns that the number of volunteers would lessen. Accordingly the then Secretary of State for Children, Schools and Families, Ed Balls, requested Sir Roger Singleton to review the level of interaction with children that required registration, effectively where the line should be drawn.⁵² As Balls noted "a critical point is deciding how precisely the 'frequent or intensive' principle ... should be applied to real life situations".⁵³ Singleton applied two basic principles. First that parental choice in child care was essentially a private matter at the discretion of parents but that once the child was in a situation, such as a sports club, where the parent was no longer choosing who was responsible for the child, a check was required.

50 Nichols & Taylor *op cit*.

51 Philip Pullman author of the Dark Materials trilogy indicated his disquiet: "This reinforces the culture of suspicion, fear and mistrust that underlies a great deal of present-day society. It teaches children that they should regard every adult as a potential murderer or rapist". Green "Authors boycott schools over sex-offence register" *The Independent* 2009-07-16. See also for criticism of the original Bill, Williams "The potential of the Safeguarding Vulnerable Groups Bill for children's sport" 2006 *Ent and Sports LJ* <http://www2.warwick.ac.uk/fac/soc/law/elj/eslj/issues/volume4/number1/williams/williams.pdf> (accessed 2013-02-12).

52 Sir Roger Singleton's Report was accordingly entitled "Drawing the Line" (2009) <http://dera.ioe.ac.uk/9818/> (accessed 2013-02-12)

53 Balls e-letter to Barry Sherman MP 2009-11-14 <http://webarchive.nationalarchives.gov.uk/20100202100434/http://publications.everychildmatters.gov.uk/eorderingdownload/dcsf-01122-2009.pdf> (accessed 2013-02-12).

So a private music tutor would fall under the former but music lessons at external premises the latter. Secondly that the statutory provisions should be the minimum necessary but with flexibility for organisations to check staff if they so desired even if not required by the legislation.

Singleton's method of reducing the overall impact of the scheme was to reconsider the question of frequency of contact that brought the scheme into operation. Singleton⁵⁴ noted the issues:

I have had regard to the need for the application of the scheme to be proportionate to risk, to be clearly understandable, to be affordable, and not to discourage those thinking of volunteering to work with children.

A real problem was to devise a definition that dealt with the huge range of activities where an adult might come into contact with a child outside of the family setting. Starting with a broad classification of "activities" inevitably meant this would be problematic. Singleton altered frequency from the original once a month to once a week or more thus only requiring those with a much heavier involvement, weekly rather than monthly, to be covered. Part of the justification was that irregular contact allowed a potential abuser far less opportunity to build a relationship with the child. The "intensive" element which is less regular, Singleton suggested should be set at four times a month bringing it in line with the test for regularity. This, he thought, would have the advantage of permitting potential volunteers to undertake a trial period before any firm commitment was made and without the necessity for vetting. The criticism raised by the peripatetic groups such as the children's book authors was dealt through recommending that registration should only be required if it was the same group of children involved rather than concentrating on the same activity being carried out. Thus a visit to the same school but working with a different age group would not contribute towards the definition of regular contact. Singleton also tidied up a number of allied points around issues such as overseas visitors and host families. It was estimated that the Singleton's reforms would have reduced the numbers required to register with the ISA from some 11 million to around 9.3 million. This is still an astonishingly large number so the essence of the scheme was retained.

Balls⁵⁵ indicated that the Government accepted Singleton's ten recommendations in their entirety and stressed the need to find the appropriate balance:

Our aim throughout has been to develop an approach which is proportionate, balanced and effective, with the scheme operating in a way which is neither burdensome nor bureaucratic, or off-putting to potential volunteers in children's settings, while still meeting the concerns of parents.

54 Singleton *op cit*.

55 Balls Response to Singleton 2009-12-14 <http://isa.homeoffice.gov.uk/default.aspx?page=451> (accessed 2013-02-12).

The recommendations were broadly welcomed by a range of voluntary groups who had been concerned about the stringency of the original proposals.⁵⁶ However amendments to the scheme were largely overtaken by political events as the incoming coalition government of 2010 sought yet a further review.⁵⁷ The Government committed itself to reform of the Vetting and Barring Scheme in its outline programme: “We will review the criminal records and vetting and barring regime and scale it back to common sense levels”.⁵⁸ Accordingly a Review across the 3 Government Departments for Health, Education and the Home Office was set up in October 2010 and reported in February 2011.⁵⁹ The thrust of the review was to:

[c]onsider the fundamental principles and objectives behind the vetting and barring regime, including:
evaluating the scope of the scheme’s coverage
the most appropriate function, role and structures of any relevant safeguarding bodies and appropriate governance arrangements
recommending what, if any, scheme is needed now; taking into account how to raise awareness and understanding of risk and responsibility for safeguarding in society more generally.⁶⁰

This was an internal review conducted inside Government swiftly carried out with the intention of providing a method of reducing and reshaping the existing scheme. A central barring scheme was to be maintained – it would have been surprising if this had been jettisoned given the long history of the operation of “lists” of those considered unsuitable to work with children. This was in any event the less controversial aspect of the scheme although the Royal College of Nursing’s judicial review had previously challenged it. In terms of registration however a new approach was adopted with the proposal to scrap the principle completely. Coupled with a far tighter definition of what amounted to a regulated activity the emphasis of the VBS was shifted. The rationale was the fear of discouraging potential volunteers and the disproportionate nature of the original scheme.

56 <http://news.bbc.co.uk/1/hi/education/8410912.stm> (accessed 2013-02-12).

57 In his Oct 2011 Party Conference speech Prime Minister David Cameron said: “This isn’t how a great nation was built. Britannia didn’t rule the waves with arm-bands on. So the vetting and barring scheme – we’re scaling it back. CRB checks – we’re cutting them back. At long last common sense is coming back to our country”.

58 As the coalition consisted of two independent parties (the Conservatives and Liberal Democrats) a new policy agreement was required and duly published. http://www.cabinetoffice.gov.uk/sites/default/files/resources/coalition_programme_for_government.pdf 20 (accessed 2013-02-12). Common sense is of course a difficulty standard to legislate towards.

59 The Review was carried out by a group of civil servants; gathering information from the organisations, agencies and other bodies involved in the vetting process, seeking the views of a wide variety of external stakeholders. (DoE 7). <https://www.education.gov.uk/publications/eOrderingDownload/vbs-report.pdf> (accessed 2013-02-12).

60 <http://www.homeoffice.gov.uk/publications/crime/vbs-report?view=Binary> 7 (accessed 2013-02-13).

Thus the new scheme would only cover those “who may have regular or close contact” with vulnerable groups. Furthermore “regulated activity roles will be redefined and will be the only ones covered by this new barring scheme. Bars will continue to apply to both paid and unpaid roles”.⁶¹ Of course what matters is how regulated activity is to be defined though the review suggested that; “a volunteer touchline judge at a children’s football match” would not be covered.⁶² The ability of employers or providers of activities to carry out a Criminal Records Bureau check will be maintained so the shift, outside of a regulated activity, is onto those bodies to determine whether a check is required. In sport the governing body may decide that certain roles, even if outside of the “regulated activity” definition in the Statute, require checking. The detailed parameters of the new scheme are not yet set out as it requires amendment to the SVGA and statutory guidance.⁶³ It is however clear that the approach recommended by Bichard and embraced by the previous government will be substantially reversed. However the same problem still exists which is where the line over checking is to be drawn and what role will be just outside it. What needs to be determined is how those delivering sport to children will operate the new scheme and the potential costs. Even if the new scheme is less rigid it is still not clear whether legislation on its own is an effective vehicle in this field.

5 Government Intervention and the Problems of a Legislative Approach

A question for all governments is the extent to which sport is subject to political direction and regulation. As noted above sport can be a vehicle for a variety of political aims ranging from health through education to the criminal justice:

As the economic and civic status of sport gains in importance for a country, the government typically takes a more active role in how sport is run, either directly through legislation or indirectly through incentives such as tax breaks or grant criteria.⁶⁴

Keeping children, who are playing sport outside of the school environment, safe is a priority because of the publicised examples of abuse within and outside the sporting setting. However there is a clear danger that a very strict regime of regulation may act to deter volunteers who are the very lifeblood of sports clubs. This is the simple superficial critique of an overly bureaucratic system that can be observed through

61 Department of Education 17.

62 *Ibid* 17. It is perhaps a little churlish to note the confusion in the terminology. The correct terms are touch judges in Rugby Union and assistant referees (formerly linesman) in football.

63 The Government introduced legislation in 2010, the Protection of Freedoms Bill, to enact the Review’s recommendations, which is now in place.

64 UNICEF (2010) 20 http://www.unicef-irc.org/publications/pdf/violence_in_sport.pdf (accessed 2013-02-12).

survey analysis of volunteers. There is however a further possibility that the system is ignored as its values are not internalised and adopted with any vigour what might be termed a lip service approach. Furthermore child protection may be seen as the sole responsibility of the designated welfare officer creating something of a vacuum.

The 2011 review drew out two criticisms of the central barring scheme. First, that those carrying out checking rely too much on whether the person being vetted is barred or not to the exclusion of a more holistic overview. Described as a “tick box” approach “rather than following the range of other checks and safeguards which should be in place”.⁶⁵ The underlying problem is that a central scheme promotes a culture of disempowerment by shifting responsibility for the individual onto the State agency. The second perceived criticism was the “erosion of trust” between the various parties and that checking somehow implied suspicions about the motives of well meaning volunteers. Implicit within the review was a criticism of over reliance on the legislative approach:

‘Blanket’ approaches such as the VBS have the potential to place the emphasis on safeguarding in the wrong place – on the State rather than on employers and individuals. That encourages risk aversion rather than responsible behaviour. And it is the effective management of risk rather than aversion of risk which is most likely to protect vulnerable people.⁶⁶

There is merit in this evaluation that legislation may produce a risk aversive strategy and lead to an assumption that a positive outcome to a check is all that is required to keep children safe and create a false sense of security. It becomes someone else’s responsibility, in this case the ISA, to carry out the necessary check. The Review promotes a shift in the burden for safeguarding more squarely onto employers and managers of volunteers.

This critique might similarly be applied to the internal protective regime that is used within sports and policed downwards through governing bodies. If child protection is delegated specifically to one named individual and the principles not specifically internalised the risk is that child welfare becomes the responsibility of that one person and not everyone. Measurement of the readiness of organisations to adopt and embrace change is an important dimension to the research into the effectiveness of child protection policies. For the work with the Football Association Brackenridge *et al* developed and applied the idea of “Activation States”:

The term ‘Activation States’ was adopted to indicate the level of activation of each stakeholder group towards CP (child protection) in football. Five states were identified:

Inactive i.e. demonstrating no knowledge or commitment to CP

Reactive i.e. demonstrating reluctant commitment and engagement.

Active i.e. demonstrating satisfactory awareness and involvement.

65 Department of Education 13.

66 *Idem* 14.

Proactive i.e. demonstrating full commitment and advocacy.

Opposed i.e. either overtly critical of, or covertly against, the CP initiative.⁶⁷

The essence of this model is that it provides a framework to measure individual perspectives on child protection but also to draw out inconsistencies. For example someone involved in running of a sports team may be active in recognising the issue of child protection but failed to have contributed and accordingly be considered inactive. This multi-layered approach permits a more intensive interrogation of the strengths and weaknesses that may exist within organisations.

The 2011 review hints at the outset how the problem could be re-considered:

Responsibility for protecting children and vulnerable adults sits with individuals, their families, the wider community, employers, service providers and regulators as well as Government and Parliament, where the overarching legislative framework is set for any national systems of public protection.⁶⁸

What is missing from the remainder of the review's analysis is the role of parents and other adults within the community. Those best placed to judge the behaviour of coaches are the athletes themselves and the parents of all those in the coach's care. Unfortunately sport may be seen by some as a form of cheap child minding enabling the parent to drop off the child and return at the end of the session. This point is well made by Norman Brooks a former national athletics coach who questions why parents are prepared to leave their children without making sufficient checks.⁶⁹ What is not clear is whether parents would take more care if the raft of child welfare policies were not in place. Put crudely, does knowledge that there is a regime of "protection" reassure parents to the extent that they do not carry out their own fundamental checks to ensure their child is safe. At the most simplistic level this would involve remaining at the training session or match and sharing experiences with other parents. The over emphasis on checks may also lead to parents ignoring other "means" of ensuring that a child is safe.⁷⁰ However this critique goes beyond the individual relationships to the broader message that a national vetting scheme communicates:

The implementation of a national vetting scheme directly challenges positive assumptions about the relationship between adults and children that until recently were taken for granted. The demand that adults be licensed before they can engage with children signals the sentiment that it should no longer be presumed that adults will have a positive, protective influence upon children.⁷¹

67 Brackenridge, Pawlaczek, Bringer, Cockburn, Nutt, Pitchford & Russell "Measuring the impact of child protection through Activation States" 2005 *Sport, Ed and Society* 247.

68 Department of Education 6.

69 Downes "Every Parent's Nightmare" *Observer Sport Monthly* 2002-04-02.

70 Furedi & Bristow *Licensed to Hug* (2008).

71 *Idem* 26.

The balance of the relationship between adults and children is clearly an important consideration for those countries that are developing policies in this area. This goes beyond both the need to encourage volunteers and the sporting environment. The UNICEF policy noted above suggests an increasing role for government, in countries such as South Africa, when sport develops greater importance. It can also be the case that government can drive the agenda to promote sport through legislative intervention. This is acknowledged by the SRSA *White Paper* observing that to give effect to its proposals “it may be necessary to amend and/or promulgate further legislation”.⁷² One aspect of a new regulatory framework is the enactment of a Code of Conduct outlined in the *White Paper* and the *National Sport and Recreation Strategic Plan 2011*. A key element of the Code relates to abuse: “the South African sport sector should also deal with the issue of sexual harassment and abuse in sport”.⁷³ Duffy also notes that the need for “policies relating to child protection and police clearance” were raised in an audit of coaches.⁷⁴ Clearly there are both external and internal pressures on South African sport to address issues around child protection and there needs to be debate as to what these policies should be. As part of this discussion South African schools and clubs need to consider how to effectively harness parents and other volunteers, many of whom already play a significant role in school governance. Training and education of parents is an important aspect in the framework to promote sport and protect children.

6 Conclusion

Sport in the UK has had to face up to a serious situation that attacked its very core values. Although it might be argued that these were isolated incidents in certain sports it was apparent that there was a paucity of formal mechanisms to discover, record and investigate instances of abuse. So in actuality the degree of the problem was unknown. There has undoubtedly been a transformation in the last twenty years that has sought to recognise the potential seriousness of the issue and instigate a change of culture from general indifference to one of realisation and action. Governing bodies now have a raft of policies and procedures that are designed to safeguard children. These though have to be delivered at a local level which further strains limited resources and the potential effect of such measures on the volunteering culture is largely unknown. Conversely evidence needs to establish whether the protective regime also deters those viewed as unsuitable. It is of course possible that the child protection measure neither deters good volunteers nor the unsuitable. As Nichols and Taylor⁷⁵ observe “research evidence is

72 SRSA *op cit*.

73 *Ibid* 51-52.

74 Duffy *South African Coaching Framework: Scoping Report* (2010) 25.

75 Nichols & Taylor 36.

necessary to inform changes in the legislation and development of policy to support sports clubs”.

Contemporaneously the role of the Social Services has come under the spotlight because of several tragedies and this has produced an increasingly rigorous legislative framework on the back of numerous Government initiated inquiries. It is clear from the current changes that this Government doesn't view legislation as the most effective tool to keep children safe but as one of a series of measures. This policy transformation can be set against a wider Government agenda of a reduction in the role of the State and the adoption of Prime Minister Cameron's "Big Society" idea. Promotion of a volunteering culture within community led initiatives clearly falls squarely within this concept.

Greater research and analysis of the problem is required to identify successful strategies and these may need to be tailored to individual circumstances. The most recent and comprehensive report of children's experience of participating in sport was carried out between 2007 and 2010. One of the principal aims of the work was to inform sports governing bodies of the issues, "enabling them to more effectively target policy, resources, training and support".⁷⁶ It paints a largely positive picture of children's involvement in sport but that "sitting alongside the considerable benefits of participating in sport were a range of more negative and harmful experiences".⁷⁷ It is important that harmful behaviour is identified and acted upon whatever the source. The key is to find the suitable vehicle to change behaviour and practices in order that policy goals around sport can be fulfilled and children protected.

For countries with a less developed regulatory framework of sports governance there will be the initial need to recognise the problem and then establish an appropriate protective regime. The *UNICEF Report* proposes the development of a Code of Conduct "framed by child rights" and such rights would need to be articulated and legislated for. Once established for such rights to be effective an effective reporting system for abuses would have to be established. As the *UNICEF Report* suggests, "every country should identify a designated authority with responsibility for child protection in sport".⁷⁸ Countries, such as South Africa, will have to consider what type of authority and framework will work best within its own cultural and sporting framework. Meanwhile for the UK a fundamental issue is to consider how the legislation needs to be

76 Alexander, Stafford & Lewis *The Experience of Children Participating in Organised Sport in the UK* (2011) 6.

77 Alexander et al 94-95. There is insufficient room in this article to go into detail of the results but the size and recent nature of the survey stress its importance and it identifies some broader issues: "One of the main findings from this research relates to children's experiences of sports as they move into and through puberty. Information from other fields of study is beginning to document the extent to which young people, girls in particular, are preoccupied with weight, look and appearance. This study highlighted the way these preoccupations play out in sport".

78 UNICEF 27.

incorporated, as part of a wider structure, with responsible parents at the centre. The need to involve and align the wider community with a dynamic and positive sporting culture for children is a fundamental challenge for all countries.