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CHILD SEXUAL ABUSE IN SPORT

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Introduction

Childhood sexual abuse in sports has been brought into the open in recent years, with more and more sports people across a wide range of sporting areas coming forward. Football has been the epicentre of the movement, likely due in part to the sheer numbers of young people involved in the sport, and the criminal prosecution of Barry Bennell. This is an issue though, facing all sports in respect of both historic abuse and the protection moving forwards. Clearly there is a need to prevent the sexual abuse in the first place, however in the modern world we are much better dealing with the challenging issues arising after the event. An important question is whether it is now fair, just and reasonable to extend the doctrine of vicarious liability for Sporting Organisations and Governing Bodies?

We would say that the following considerations are a good starting point either way:

- (i) Children and young people have a right to protection, welfare is paramount, and all organisations and governing bodies should have a written, clear and easily understandable Child Protection Policy.
- (ii) The recruitment procedure and policies for staff, volunteers and those in frequent contact with the children need to be comprehensive and rigorous in terms of the references, interviews and police checks.
- (iii) Child protection officers or Safeguarding Designated Lead Officers should be mandatory at each organisation to ensure that policies and procedure are clear and unambiguous in terms of the management procedures of the organisation and its complaints procedure.

The prosecution of Barry Bennell, former football coach and convicted paedophile, has brought this issue to the forefront of our consideration. Greg Clarke, Chairman of the Football Association ("FA") stated in 2016 that there was a "total unawareness" of safeguarding children in 1990s, and that football was "sleepwalking" as opposed to tackling the problem. In our view, he was quite wrong when he suggested that, "Society seemed to have a total unawareness of the nature of the problem." We would say that society has been aware of the problem throughout, but simply didn't want to know, or was wilfully ignorant as to what was going on. In a very similar way to the Catholic Church around the world, and other organisations in the entertainment industry, people who knew or were suspicious kept quiet and closed rank. This was obviously unacceptable and should not have been allowed to happen. To simply state that the world was a different place some 30 years ago is a clear and obvious example of individuals and organisations burying their heads in the sand. To tackle this issue would require positive and wholesale changes, and fingers being pointed at influential and apparently well-respected people and organisations. These outside forces are a drag on the change in this area.

The net has broadened in recent years so that those institutions no longer have a legal shield to avoid culpability and the payment of compensation. Foster parents now fall within the category of individuals for whom Local Authorities are liable for their acts even if there is no direct fault on the

part of the Local Authority itself. Accordingly, if a foster parent sexually abuses a child, the Local Authority is responsible, as clearly outlined in the recent case of ***Armes v Nottingham City Council 2017*** (see also PILJ Article, March 2018). It is our opinion that the responsibility, as a matter of law, of the Local Authority for the actions of the foster parent is the beginning of the same principles being considered and applied to other organisations and institutions. As a matter of law, it is arguable and right that the Local Authority-Foster Parent relationship be applicable to other organisations, institutions, and type of positions of care and responsibility. The FA provides football coaching, and in many cases club coaches have been recruited and trained by the FA. Football coaches provide de facto care to a child as part of their role as an integral part of a Football Club and the FA itself. Is it arguable therefore that a coach committing abuse has done so in the course of an activity for the benefit of the FA and the Football Club. We would say that this satisfies the legal principle and tests set out in ***Armes***.

The Police are now potentially liable for inadequate or negligent investigations into sexual abuse claims (***Commissioner for Police of the Metropolis v DSD 2018*** and ***Robinson v Chief Constable of West Yorkshire 2018***). To our minds, this extends the responsibility for abuse beyond organisations directly involved with the abuser to other more removed organisations. The Police have been held responsible for an inadequate and inappropriate/negligent investigation, however this could, and probably should apply to the FA. At the present time it is being argued by many that the FA as a Governing Body has historically failed to enforce its own rules and procedures. In the past professional football clubs had more limited access to young boys, perhaps as little as one hour a week, with overnight stays prohibited. Whilst this situation provided a direct benefit to safeguarding children, the reasoning behind it does not appear to have been the prevention of sexual abuse. In the past couple of decades, organisations having acquired greater access to children, through extended camps, and residential arrangements. Some football clubs now arrange for schooling of children, and for training each afternoon, with children living away from home for long periods of time. This also happens in other sports, more famously in tennis, swimming and golf, where children relocate in an attempt to maximise potential. These situations provide the abusers and paedophiles with few external controls and unfettered access to children, aside from the rules and regulations of the organisations. The grooming process in all sports enables those in authority, with the trust of the children and parents, to take advantage. The rewards of getting into a team or other similar privileges provide an unhealthy and fertile ground for the sexual predator. It should never be forgotten that children cannot only be abused by male or female adults, but also by other children. Inappropriate initiation ceremonies and rituals with sexual connotations still occur and don't have any place in modern society. They were never appropriate, and now is the time to eradicate them once and for all, especially with the instant internet access and phone cameras. This would also not only minimise the potential for sexual abuse, but also bullying and harassment with the well publicised health issues that those can cause.

We must grasp the reality of the situation and have an understanding of the grooming and entrapment process. The NSPCC's Child Protection in Sport Unit says, "sexual abusers groom children, protective adults and clubs/organisations in order to create opportunities to abuse and

reduce the likelihood of being reported". The Organisations and the Courts have to recognise that "coaching techniques... can create situations where sexual abuse can be disguised and may therefore go unnoticed."

UNICEF published an article in 2010, "Protecting children from violence in Sport" which found that "it has become evident that sport is not always a safe place for children.. ", and that there is ".. a need to develop structures and systems for eliminating and preventing ..violence." The same principles obviously apply to sexual abuse too.

In the **Woodland** v Essex County Council case (2013) a Defendant was held liable, without fault, for the negligence of an independent sub contractor to whom it had delegated the performance of its obligation. The Supreme Court held that the Local Education Authority owed a non-delegable duty of care to ensure that reasonable care was taken to secure the safety of a pupil attending a swimming lesson conducted through an independent contractor. This principle should now be revisited in relation to sexual abuse claims in sport to include the consideration of the organisations and governing bodies. Whilst many abusers in sport are not employees, this is the same position as priests in the Catholic Church, in which relationship the courts established a link. As mentioned above, the courts have now established a link between foster parents and the local council, albeit this was previously unsuccessful in **S v Walsall MBC 1985**. This case failed to establish that the relationship was akin to an employment or that foster parents were agents of the Local Authority. We would argue that in that it is now fair, just and reasonable for vicarious liability to be established and this appears to be the potential for a sea change in the law as adumbrated in the Armes case by the Supreme Court.

In our experience, schools often notice issues with children and we should encourage them to continue to do so without fear of criticism. Members of society should be encouraged to invest their time and energies into protecting children so that they can participate freely in all sporting activities, whatever their ability. This in our view could include the informal, but informed input from the Police and Fire Service, as well as the Armed Forces. Local businesses should be engaged as well as Local Authorities and Social Services. However, each and every person irrespective of their position in society, should be subject to the same scrutiny as everybody else. Parents and carers should also be alert and alive to the risks and not be frightened to challenge the behaviour of others. It is now well recognised, and probably should have been many years ago, that an individual's perceived station in life does not mean that he/she is not a sexual predator. If someone had undertaken specific consideration for the behaviour of Jimmy Savile then the number of victims may have been minimised. The same could be said in relation to the allegations in Rochdale involving Cyril Smith and others. Dangerous individuals will go to great lengths to gain expert training, qualifications and behavioural skills to enable them to groom and secure victims in sporting environments. Consideration needs to be given to preventing these predators gaining access to these environments in the first place.

There has to be a political will to deal with these problems. A cynic might say that this will only happen if the politicians at local and national level perceive it as being a "vote winner". If we were

able to prevent the sex abuse in the first place that would remove or minimise the future impact on the individuals, and the inevitable effect on the National Health Service stemming from the abuse. Abuse in some instances has a widespread impact on the abused individual's education, including behavioural issues, and poor performance, and also creates a higher risk of future criminal behaviours. Ultimately, it would achieve a target of having engaged children and adults who would have no fear or worry about reporting any suspicious behaviour. Of course, many do not disclose due to the grooming process, not being believed, and the significant trauma they endure when they do disclose. The majority of abused children never disclose, and it is clear from the organisation known as "SAVE" that most of the footballers went on to become successful individuals. Sexually abused children develop incredible coping strategies thereby hiding all indicators of abuse.

The Police have now received far better training in dealing with vulnerable witnesses, which obviously includes abused children. This is clearly seen in criminal cases in the Crown Court. There are clear facilities for achieving best evidence and a thoughtful and more considered view is being taken. This is now part of judicial training for all Judges sitting in the Crown Court on sexual offence cases. There is obviously still room for improvement and this is constantly being revisited by the various police forces. One of the authors, when sitting as a Recorder in the Crown Court, has noticed a positive change over the past five years. We are of the view that the following would be positive steps for each and every organisation and governing body to form part of the duty of care owed to all both systemically and individually:

(i) Codes of Practice and Behaviour

The organisation should have:-

- a code of ethics.
- guidance on appropriate/expected standards of behaviour from adults towards children and young people.
- guidance on expected and acceptable behaviour of children towards other children.
- processes for dealing with unacceptable behaviours at all levels.
- non-violent and non-humiliating disciplinary measures/sanctions.
- managers and senior staff who promote a culture ensuring that children are listened to and respected as individuals.

(ii) Equity

- The Safeguarding Policy should make it clear that all children have equal rights to protection.

- The child protection procedures, guidance and training help staff and volunteers to recognise the additional vulnerability of some children and the extra barriers they face to getting help, because of their race, gender, age, religion or disability, sexual orientation, social background and culture.
- Codes of conduct/behaviour should include statements about the responsibility of adults and children to treat one another with dignity, respect, sensitivity and fairness.
- Codes of conduct/behaviour should make it clear that discriminatory, offensive and violent behaviours are unacceptable and that complaints will be acted upon.
- Processes for dealing with complaints should be fair and open to challenge through an appeals process.

(iii) Communication

- Information about the organisation's commitment to safeguard children and young people should be openly displayed and available to all.
- Children and young people should be made aware of their right to be safe from abuse.
- Information for young people and for parents should be made available about where to go for help in relation to child abuse.
- Information provided should be in a format and language that can be easily understood by all service users.
- Everyone in the organisation should know who the designated Child Protection Officer is, and how to contact them.
- Contact details for the local social services department, police and emergency medical help and the NSPCC Child Protection Helpline should be readily available.
- Steps should be taken to seek users' views on policies and procedures and how they are working.

(iv) Education and Training

- There should be an induction process for all staff and volunteers who have significant contact with children and young people, which includes familiarisation with the child protection policy and procedures.
- All staff and volunteers should be provided with opportunities to learn about how to recognise and respond to concerns about child abuse.

- Staff and volunteers with special responsibilities in relation to safeguarding children should have training to enable them to develop the necessary skills and knowledge and have regular opportunities to update their knowledge and understanding.
- Training should be provided to those responsible for dealing with complaints and disciplinary processes in relation to child abuse and inappropriate behaviour towards children and young people.
- Training and written guidance on safer recruitment practice should be provided for those responsible for recruiting and selecting staff and volunteers.

(v) Access to Advice and Support

- Children and young people should be provided with information on where to go to for help and advice in relation to abuse, harassment and bullying.
- Designated child protection staff should have access to specialist advice, support and information.
- Contacts should be established at a national and/or local level with the key statutory child protection agencies or locally with the LSCB.
- Arrangements should be in place to provide support to individuals both during and following an incident or allegation of abuse, or a complaint.
- There should be arrangements for providing supervision and support to staff and volunteers.

(vi) Implementation and Monitoring

- There should be a written plan showing what steps will be taken to safeguard children, who is responsible for what actions and when these will be completed.
- The resources essential for implementing the plan should be made available.
- Policies and practices should be reviewed at stated intervals, ideally at least every three years, and revised in the light of changing needs; changes in legislation and guidance; experience.
- Processes/mechanisms should be in place to consult children and young people and parents as part of the review of safeguarding policies and practices.
- All incidents, allegations of abuse and complaints should be recorded and monitored.
- Arrangements should be in place to monitor compliance with child protection policies and procedures and with recruitment and selection policies and procedures.

(vii) Influencing

- The organisation's stance on safeguarding should be made clear to all partners.
- Partnership, funding and commissioning criteria should include a requirement to address safeguarding.
- The organisation should actively promote safeguarding within all partnership working and seeks to establish minimum safeguarding standards.
- The organisation should provide, or signpost, safeguarding support and resources to partner organisations.

Looking back at the historical abuses throughout sport, and especially those in football, it can readily be seen that there was a wholesale failure to protect children by organisations and their governing bodies. These were the people in charge of the sports, and though the abuses occurred at local levels, the frameworks were either non-existent, lacking, or simply not enforced. Even today there is little consideration given by organisations to the outcomes for those child victims, now adults, but lawyers will do so more and more for the purpose of recovering damages and valuing the claims.

The law should, and we believe will, adopt these points moving forwards when considering the legal responsibility of others and the extent of their duty of care. We conclude that many organisations are legally exposed when considering the similarities in relationship in the *Armes* case, between the foster parents and their local authority, and then the football coach or administrator and their club and/or the FA. The Police are similarly exposed for negligent investigations, and the time span for this exposure is lengthening to include historic abuse. The exposure of the FA, the club, or even the Police would obviously involve a forensic analysis of the available evidence at the time, and in all likelihood, some cases would reveal either negligent or wilful ignorance of the complaints made, or simply a "sweeping under the carpet".

Whilst the National Safeguarding Panel for Sport is a mechanism by which complaints or issues can be resolved, it is our view that this is too little too late. There are obviously legal remedies either with the Criminal Injuries Compensation Authority or in the Civil Courts. There are obviously criminal proceedings that could be considered, and again, the Police and the Crown Prosecution Service are more prepared to prosecute than ever before.

Conclusion

The question that we should all ask is, how can the law help to prevent the abuse occurring in the first place, not just to protect and punish afterwards. Lawyers can help recover compensation and perhaps this would lead to results, with various organisations making changes for fear of either adverse publicity or the payment of large amounts of compensation. This would achieve the end goal for the wrong reasons. Society, including the sporting organisations, and even the legal system, need to understand the base level issues and be prepared to widen the legal net for the culpability of organisations for the acts or omissions of others. This can only be achieved where litigators seek

the Court's determination of issues surrounding sexual abuse in sport, either at First Instance before a High Court Judge, or beyond if required.

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"SAVE" : The SAVE Association was created in December 2016 with the slogan "Effecting Positive Change in Safeguarding and Victim Engagement through football"