

# Government Sponsored Professional Sports Coaches and the Need for Better Child Protection

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*The recent media publicity given to the case of Amy Gerhing, the young Canadian teacher acquitted of having a sexual relationship with two of her pupils is in marked contrast to the lack of interest shown to the later cases of Gary Hinds, John Glyn Jones, Mike Edge, Matthew Pedrazzini, Paul North, Frank Slatterwaite, George Ormond and others, all sports coaches who have been convicted of sexually abusing the children they train. This lack of interest is reflected in the recently published Department for Culture, Media and Sport and Sport England Final Report of the Coaching Task Force, a document that sets out recommendations for the future of coaches and coaching in English sport. In amongst the Report's 84 pages only one sentence makes any mention of the protection of the children these 3,000 coaches have the potential to be training. This article briefly discusses the Report's proposals, the current state of child protection in sport in England and Wales and argues that with the advent of the publicly funded professional coaches recommended in the Report, the time has come for sport to be made subject to more areas of child protection law than at present.*

## Introduction

The recent (February 2002) media publicity given to the case of Amy Gerhing,<sup>1</sup> acquitted on three charges of indecent assault on two of the boys to whom she taught biology, is in sharp contrast to the lack of interest shown in the later cases of Gary Hinds, John Glyn Jones and Paul North (March, September and November 2002 respectively),<sup>2</sup> all sports coaches sentenced to 20 years, 10 years and 10 years respectively for the rape or sexual assault of children they coached. A similar lack of interest has also been shown in many others cases of sports coaches who have abused children in their care; cases which over the past two years have included Mike Drew, Barry Bennell, Matthew Pedrazzini, Alan Green, Mike Edge, Richard Bristow, Joseph Griffin, Frank Slatterwaite and George Ormond.<sup>3</sup>

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Entertainment Law, Vol.2, No.1, Spring 2003, pp.55-84

PUBLISHED BY FRANK CASS, LONDON

In July 2002 the Department for Culture, Media and Sport published the *Final Report of the Coaching Task Force* (the Report), which proposes the recruitment of 3,000 sports coaches to help develop sports skills across England.<sup>4</sup> The Report is lengthy and comprehensive; however, despite the fact that:

The deployment of skilled coaches to work with schools and young people as part of a progression model which is mapped out by and across sports is a key requirement if we are to create a physically literate population which both participates and performs to the highest levels;<sup>5</sup>

something that has been relegated to one sentence on page 23 is the concern that 'Child protection issues must be considered and dealt with before the [advertising] campaign is launched.' Considerable research and advocacy has been carried out over the past 15 years into the issue of the abuse of children in sport,<sup>6</sup> and faced with such a wide-ranging subject the focus of this article is confined to that of the potential for the sexual exploitation of children by their sports coaches, identified in a recent Amateur Swimming Association (ASA) report as the most prevalent in sport.<sup>7</sup> Within this context the article briefly discusses the Coaching Task Force (CTF) Report, identifies some child protection issues already faced by sports organisations in England and Wales, and argues that as the proposed recruitment and employment of the 3,000 coaches is to be funded initially from the public purse, sport should become subject to more areas of child protection law than it is now.

### **The Final Report of the Coaching Task Force**

In his introduction to the Report the Minister for Sport, Richard Caborn MP, pledged a minimum investment of £25m to aid the creation of 3,000 full-time qualified Community Coaches to help develop sports skills across England.<sup>8</sup> How this money is to be spent is set out in the Report, and the hope is expressed that, 'UK Sport in conjunction with the home countries will give serious consideration to whether any of the proposals are appropriate to be progressed on a UK wide basis'.<sup>9</sup> The Report recognises that compared to other countries (Australia, France, Germany and Sweden were used as benchmarks) there are significantly fewer full-time coaches employed in the UK and a lack of clearly defined standards to which all coaches in all sports in the UK work.<sup>10</sup> In order to remedy this, amongst other things, the Report recommends:

- a national certificate of coaching (NCC) at 5 levels. This is to be adopted by all Sports Council recognised National Governing Bodies (NGBs) in order to continue to be eligible for public funding. Delivery of the

- training is to be through NGBs, further and higher education establishments and the University for Industry;<sup>11</sup>
- the appointment by NGBs of National Directors of Coach Education (NDCE) and ring-fenced budgets for selected NGBs in order to help them 'make a step change in their coach education system and to meet the requirements of the proposed NCC';<sup>12</sup>
  - funding to help NGBs either; employ full- or part-time Regional Talent Development Coaches (RTDC); or implement high quality training for coaches of talented performers; or provide scholarships for coaches of talented performers; or invite overseas coaches to work alongside English coaches to improve performance standards;<sup>13</sup>
  - the establishment of local coach employment 'franchises' to recruit, employ and deploy professional coaches in their area ('Coachmatch');<sup>14</sup>
  - the employment by sportscoachUK (scUK) of 45 sub-regional Coach Development Officers, to assist in the strategic planning, implementation and management of coach development;<sup>15</sup> and
  - a 'Come into Coaching' Recruitment Campaign targeted at adults, specifically parents of children who are already sports participants,<sup>16</sup> women returning to work, young graduates entering industry for the first time, young unemployed people who have developed sporting expertise but who had previously not been able to use their skills in seeking employment, and those aged 50+, already active in sport and keen to apply knowledge and experience in a new setting ('Community Coaches').<sup>17</sup>

This process is to be carried out between 2003 and 2006 at a total cost to the Exchequer of £15m in year one; £22.5m in year two and £30m in year three;<sup>18</sup> and the Report says that:

these proposals [are] expected also to have a major impact on overall levels of participation and standards of performance in sport. For the first time we will have in place the right kind of resources to effectively identify, nurture and develop talent. It should enable our performers to compete on even terms with those from other countries with integrated coach development systems, which are perceived to be more successful ...<sup>19</sup>

However, as there is to be 'a proactive deployment in the right locations of skilled coaches and role models', there will be 'implications for the wider policy agenda' in that:

Locally employed coaches ... will provide the opportunity to reach people when they have the time and availability to participate. This

will be most true of the young unemployed, people with disabilities, the elderly and those living in isolated communities for whom travel and cost is the biggest single barrier to participation. This approach could have a major impact in areas where crime and community cohesion concerns dominate and where long term sustainable development opportunities are often lacking.<sup>20</sup>

The purpose behind these recommendations then is twofold; to improve the international chances of success for UK elite sports participants, as 'Without this intervention through quality coaching many young people will not achieve their potential and standards at International level will decline';<sup>21</sup> and to 'improve' social conditions by having 'a major impact in areas where crime and community cohesion concerns dominate and where long term sustainable development opportunities are often lacking'. However, the irony of this grand plan is the scant attention being paid to child protection issues while at the same time bringing together two of the lead players in the sexual exploitation of children taking part in sport – young elite athletes and sports coaches. As will be shown below, these are the ones with the greatest potential to be abused and the greatest potential to be abusers.

### **Sexual Exploitation of Children in Sport**

Celia Brackenridge is acknowledged to be the leading researcher and advocate on the sexual exploitation of children taking part in sport, and she argues that two types of sexual abuser – the paedophile, and his mirror image, the predator – can be found within a male-dominated sports hierarchy.<sup>22</sup> Both types use the process of grooming – the deliberate selection and establishment of a relationship of trust – to trap their young victims, and their position of authority to keep the victim under control.

#### *The Abusing Sports Coach*

So who are these abusers, and how are they allowed to abuse the children and young people they come into contact with in a sporting context? Both research<sup>23</sup> and case law<sup>24</sup> suggest that the majority of abusers in sport are male, often, but not always, much older than the children they abuse and are sports coaches.<sup>25</sup> As has been said above, both use grooming to trap the victim; however, they also groom parents and officials into believing that this is a nice person with only the best interests of the child at heart.<sup>26</sup>

The trust and power that is vested in a coach, combined with the opportunities coaching can provide for the misuse of them, has been acknowledged in sport, the courts and by a number of government

departments. In sport for example, as far back as 1991, Peter Radford, in his capacity as chairman to the Sports Council's Coaching Review Panel, identified trust as playing an important part between coaches and their students, saying:

Sportsmen and sportswomen of all ages place enormous trust in their coaches, and coaches must be equal to it and never knowingly do anything that would harm their charges physically, psychologically, emotionally or mentally.<sup>27</sup>

That Radford was not alone in placing responsibility on the coach can be seen from the Codes of Conduct and Ethics of the British Institute of Sports Coaches (the Institute) which the Review Panel used as an example to sports governing bodies for setting up their own codes of conduct and ethics. The Institute's Code of Conduct contained a clause (1.4) which pointed out the importance of coaches being the ones who were 'responsible for setting and monitoring the boundaries between a working relationship and friendship', especially where 'the coach and performer are of opposite sex, and/or ... a young person'.<sup>28</sup>

Acknowledgement by the court of the power of the coach came in *Morrell v. Owen* in 1993, when, faced with evidence as to a coach's status, Mitchell J. said, 'What Mr Taylor did say which I found persuasive was this: "[a coach's] word is law. He is akin to God. What he says goes". More recently in *Caring for the Young and Vulnerable? Guidance to Preventing Abuse of Trust*, government departments in the form of the Home Office, Department for Education and Employment, Department of Health, The National Assembly for Wales and the Northern Ireland Office expressly included sports coaching as a particularly important area warranting a code of conduct on sexual activity within a relationship of trust (for further discussion, see below).

The picture that emerges from this is of a well liked and respected man, who uses the power and trust placed in him by parents and other sports people in order to abuse the children he coaches; and there are instances of people coming into sport for the sole purpose of gaining access to children.<sup>29</sup> However, coming into sport in order to have access to children does not explain the case of Paul Hickson,<sup>30</sup> a man who 'grew up' in swimming and went on to receive the longest sentence that had then been imposed for the rape and sexual assault of children.

#### *Paul Hickson: A Defining Moment in Sport*

While still at school Paul Hickson was regarded as a competitive swimmer of considerable ability. He became County Champion and on leaving school became a physical education teacher and swimming coach. By 1975, at the

age of 27, he had achieved a national reputation as a coach and had started an elite club of swimmers in the Norwich area where he was teaching. It was usual for him to train his swimmers, amongst whom were several girls aged 12, 13 and 14 years old, early in the morning, and sometimes in the evening and at weekends.

By 1983 he had been appointed as Director of Physical Education at Swansea University, and soon after asked by the Welsh Swimming Authorities to form an advanced training squad enrolling the most prominent swimmers in the South Wales and Swansea area. He became official coach to the Great Britain swimming team at the Commonwealth Games of 1985 and the Olympic Games in 1988. In September 1992, as a result of allegations made against him by some of the young girl swimmers he had coached while at Swansea, Hickson was arrested at Millfield School, where he was then teaching. Although due to stand trial later that year, he then left the country, ostensibly to work in France,<sup>31</sup> and did not return for the trial. Hickson eventually stood trial in 1995 and according to the evidence he had been sexually abusing at least four of the young girls he had coached while in Norwich, and six in Swansea. He was also alleged to have sexually assaulted at least one elite mature woman swimmer.

#### *Closing of Ranks and Someone Else's Problem*

No evidence was given at the trial to suggest that Hickson came into sport in order to gain access to children, rather he was in the sport from a young age, had graduated into coaching, and chose to abuse the children he coached. Hickson was not one of the 'dirty old men brigade ... in raincoats and mucky hats ...'<sup>32</sup> that is often believed to be typical of child abusers; instead he was a well educated, well qualified professional person, who although not necessarily liked by some other adult swimmers was nevertheless held in some considerable esteem by officials in his governing body.<sup>33</sup> At the time of his arrest he was also married with an eight-year-old child. A particularly disturbing feature of the case, however, is the lack of attention paid by Hickson's governing body officials to his activities, as it was made clear at his trial and in later newspaper reports that, although complaints had been made about him to officials of the Amateur Swimming Association, they had been reluctant to intervene.<sup>34</sup> However, as the rumours and initial complaints about him had focused on female swimmers above the age of consent the fact that he was also sexually abusing children appears to have been unsuspected.

A similar reluctance to intervene is illustrated in a case identical to Hickson's in the Republic of Ireland in 1990, where again allegations of sexual abuse had been made about an Olympic swimming coach and the sports governing body had ignored them.<sup>35</sup> The coach, George Gibney, was

charged with serious sexual offences in April 1993, but was not prosecuted. Hickson's trial followed in 1995; and at the same time a second Irish Olympic swimming coach (Derry O'Rourke, the successor to Gibney) was sexually abusing children and young people he was coaching. Complaints against O'Rourke had been investigated by the governing body in 1992, and the finding had been that the incident complained of had 'resulted from a misunderstanding'. He was allowed to continue coaching and abusing.<sup>36</sup> O'Rourke was eventually sent to trial in 1997, and after pleading guilty was sentenced to 12 years in prison.<sup>37</sup>

The result of the two Irish cases was a government enquiry in 1998 into child protection in sport,<sup>38</sup> in which the Joint Committee on Tourism, Sport and Recreation could find no links between Hickson and the first Irish Olympic coach apart from the fact that they had both been at the Seoul Olympics at the same time. However, it is particularly disturbing that at least three Olympic swimming coaches were sexually abusing young people in their care during a given period of time, especially as a fourth coach, Mike Drew,<sup>39</sup> and Mike Edge, a British Olympic diving coach have both been recently convicted for the sexual abuse of children they coached.<sup>40</sup>

According to Brackenridge the case of Hickson:

was a defining moment in the history of sexual exploitation in sport. Despite the fact that research and advocacy work for better standards of athlete care had been underway for some ten years or more in Britain prior to his arrest, there had been little in the way of official responses to the issue.<sup>41</sup>

However, following the trial all that changed as far as swimming was concerned, and now the ASA sets the standards that other sports organisations sometimes struggle to keep up with (for more discussion on this, see below).

#### *Which Sport and Stage of Imminent Achievement*

Swimming is not the only sport that has problems with abuse. Research carried out by Fasting *et al.* found that sexual harassment (as opposed to sexual abuse) was carried out in almost all of the 58 sports in their study.<sup>42</sup> Also, no significant differences were found between the sports when compared by the extent of clothing cover or by team/individual sport, either overall, or in and outside sport.<sup>43</sup> Almost no type of sport therefore is free from sexual harassment. In-depth research into the extent of the sexual abuse of children in sport has still to be carried out; however, research for this article produced reports of convictions of coaches in squash, football, athletics, horse riding, gymnastics, karate, archery and table tennis,<sup>44</sup> suggesting that, like sexual harassment, instances of sexual abuse of children in sport are also not

governed by the extent of clothing cover, or by team/individual sports; or, in the case of horse riding, a need to 'touch' the student.

Research by Brackenridge and Kirby, on the other hand, suggests that there is a higher risk of sexual abuse to an athlete at the 'stage of imminent achievement' – that is just prior to elite level in sport, especially where this coincides with puberty.<sup>45</sup> Further empirical work needs to be carried out to test this; however, the case of Hickson appears to illustrate a perfect example of abuse at the stage of imminent achievement, as all but one of his reported victims were young, elite female swimmers.

### **Child Protection Initiatives: The Response from Sport**

Following Hickson the ASA became the innovator of rigorous and enforceable child protection procedures. Beginning 'at the top' the Chief Executive of the Association has been given emergency powers to allow: i) the temporary suspension of suspected child abusers who are the subject of a police investigation; and ii) the withdrawal of teaching and coaching certificates of convicted offenders. A database was established containing the details of anyone with access to one-to-one private contact or handling of children.<sup>46</sup> Information on these people is obtained by a standard questionnaire that is handed out at club level. If anyone refuses to fill in the questionnaire they are not to be used by the club in any position that gives intimate access to child members.

The questionnaire is in two parts: Part A, signed at club level by the club secretary after seeing some identification to confirm the person is who s/he claims to be; and Part B, a self-declaration form filled in by the person concerned. This is not seen at club level and the completed form is sent directly to a Legal Affairs Department which holds the database under the Data Protection Act provisions. The ASA also has a Child Protection Working Group to monitor the practical operation of the procedures and formulate and develop new strategies; recent developments have been to register with the Criminal Records Bureau, the production of guidelines on photographing or videoing at swimming events, and in conjunction with the National Society for the Prevention of Cruelty to Children (NSPCC), the publication of *SafeSportAway – A Guide to Good Planning*, designed to help organisers of sports events plan safely for trips away, and the *In at the Deep End* report.

#### *Sports Council 'Recognition'*

However, a major problem with regard to child protection in sport has to be that sports organisations can be divided into two categories: those 'recognised' by the national Sports Councils and therefore eligible to

receive Exchequer funding; and those 'not recognised' and not eligible for funding. Each home country in the UK has its own Sports Council, and as a group the national councils identify an activity with which they wish to be associated and which they believe should be developed by them through practical and financial assistance. Therefore, the same activities receive funding whether they are participated in in Scotland, Northern Ireland, Wales or England. However, once an activity has been recognised as a sport for the purposes of development, each national Council is then free to identify one national organisation to represent that activity within its borders; and it is these national organisations, or through them their individual clubs and members, that receive financial assistance.

The recognised governing bodies have to satisfy certain criteria in order to receive funding, and as far as child protection is concerned, up until October 2001 (see below) mandatory child protection policies and procedures were not included. Despite this, a number of governing bodies in both England and Wales did have child protection policies and procedures. However, until comparatively recently most of these policies and procedures have varied in standard and content; also, few of them have been enforceable, either by the organisations themselves or by the Sport Councils.

#### *Governing Body Developments: The 'Good'*

Because the ASA child protection procedures applied to the whole of the UK children swimming in ASA affiliated clubs in Wales received the same protection as those in England, and over the years a number of other Sports Council recognised governing bodies in England and Wales have followed the ASA example. However, others adapted the National Coaching Foundation (NCF, now sportscoach UK) *Child Protection Awareness and Code of Conduct*, a basic set of guidelines and principles, with the result that their protection policies were not as sophisticated as the ASA model. An example here is that of the Football Association of Wales (FAW): established in 1998, the main constituents of this child protection programme were a database of all FAW registered coaches (whether they coached children or not), a child protection awareness, a code of conduct guidelines document based on the NCF guidelines and a self-declaration form. The declaration form followed the pattern of the ASA form and required all applicants to the FAW Junior Leaders Course to declare that they had not been questioned, charged or convicted in relation to any child abuse offence. They were also bound to inform the FAW if they were questioned, charged or convicted. However, because of costs involved, only FAW employed coaches and staff who had any involvement in the instruction or tutoring of children were police-checked; and the distribution

of the code of conduct was confined to registered coaches. Also, because the code was made up of unenforceable guidelines the FAW had no means of ensuring whether it was complied with.<sup>47</sup>

This is now in the process of changing, as the FAW is currently developing a 'welfare' policy and enforceable procedures under which the welfare of all participants in Welsh football is being reassessed. A new clause had been added to the FAW Misconduct Rule making abuse of any 'vulnerable' person a disciplinary offence;<sup>48</sup> a Welfare Regulation has been adopted and the Secretary General (currently Mr David Collins) has been given emergency powers enabling him/her to act in cases of abuse or suspected abuse. All FAW employed staff (including the Secretary General) and members of the Council are to undergo Criminal Records Bureau checks and will have to take part in welfare awareness training programmes. The requirements will then be enforced down to regional and local level. In all, the completed FAW programme will exceed that of the Sport England basic standards (for more on this, see below) and the current Football Association child protection programme.<sup>49</sup>

Also in Wales, and in a separate initiative in 1999, the Athletics Association of Wales (AAW) set up a child protection working group which designed, and brought about the adoption of, child protection procedures for athletics in Wales. These were more comprehensive than those adopted by FAW in that they contained disciplinary procedures as well as abuse awareness information. Copies of the procedures were also sent to all AAW affiliated clubs, a policy statement was required to be displayed on club notice-boards, and this simple requirement brought the child protection policy to the attention of all club members rather than just the coaches.<sup>50</sup> The AAW is also in the process of changing its child protection programme into 'welfare' for all athletics participants and in this is co-operating with the Amateur Athletics Association for England and UK Athletics to ensure that standards offered to participants in England and Wales are the same. This too will exceed the Sport England standards.<sup>51</sup>

### *The 'Not So Good'*

An example of a 'not so good' child protection policy can also be found in Wales where, apart from those following the AAW or ASA child protection programme, the NCF/FAW document became the template for the remaining Sports Council recognised bodies. Here it appears to have become the practice for the bodies to insert their names into the document in place of that of the FAW; and mention their sport instead of football. However, whether all of these bodies followed the procedure of the FAW in having declaration forms or distributing the document to their coaches is not known. What is known is that at least one body funded by the Sports

Council for Wales, the Welsh Karate Federation (WKF), failed to remove the name of the FAW from two places in the document distributed under the WKF name. It also failed to alter the types of injuries that could be received in football to those that could be received in karate. That these errors went unnoticed by officials in both the WKF and Sports Council for Wales suggests that at the time (June 2000) little attention was being paid to child protection in Sports Council for Wales funded karate.

*Sports Council Developments: Sport England, Setting a Standard for Sport*

It has not only been the individual governing bodies that have had varying standards of child protection programmes, the national Sports Councils in England and Wales have also been out of step with each other. In the summer of 2000, Sport England began talks with the NSPCC with the result that in March 2001 it announced that it intended to part-fund an NSPCC Child Protection in Sport Unit (CPSU). Compulsory standards of policies and procedures for all Sport England funded governing bodies were also to be introduced, and *Safeguarding the Welfare of Children in Sport: Setting a Standard for Sport* was published in July 2001. Then, in October 2001 Sport England amended its recognition criteria and included mandatory Equity and Child Protection policies based on its new standards.<sup>52</sup>

*Setting a Standard for Sport* is a very detailed document that not only sets out minimum standards of child protection criteria, it also contains sections on support and advice, acknowledgements and contacts, and examples of child protection related forms. Sections 1 and 2 focus on the criteria and ways of demonstrating achievement of the standards; and a particularly positive point in the policy section is the requirement that the policy be consistent with the national governing body constitution.<sup>53</sup> Again the ASA had led the way in this by ensuring that its policies and procedures were capable of being enforced on all its officials and members, and governing bodies in England and Wales which had followed the ASA pattern could also enforce their policies and procedures; as could the AAW. However, those with the simpler NCF/FAW model of guidelines had little control over whether its officials and clubs followed, or even read, those guidelines. With the introduction of the new requirements, all Sport England funded bodies should be able to enforce their child protection policies and procedures, and by linking distribution of all Sport England grants and awards to the standards, affiliated clubs and individuals are given the incentive to have enforceable policies and procedures of their own.<sup>54</sup>

The procedures themselves range from effective and appropriate recruitment of staff (including registration with the Criminal Records Bureau or an 'umbrella organisation') to monitoring the whole system.<sup>55</sup>

Also, importantly, communication of the policy and procedures to everyone in the organisation is required, as without procedures and wide communication of them, a child protection policy remains nothing more than words on paper. To re-enforce the practice of the procedures, 'education, advice and support' is also included in section 2. This set of criteria is particularly important, as not only does it include the requirement for training in abuse awareness for those who come into direct contact with children, training is also to be given to members of the governing body's National Executive, people who are so often not aware of the consequences of a lack of effective child protection procedures. Each governing body is required to set up a child protection panel/working group, appoint a national child protection officer and establish and maintain strong links with the CPSU.<sup>56</sup> Section 3 sets out names and addresses of organisations that can provide support and advice on achieving the criteria, with sections 4 and 5 giving acknowledgements and useful contact names and addresses. Finally, appendices contain a comprehensive list of the criteria and samples of self-declaration, application, reference and incident record forms. In all the document contains most of what any national governing body, or club, needs to know in order for it to set up a minimum standard of child protection policy and procedures.

Sport England carried out an evaluation of the first 6 months of its new standards and published a report in March 2002.<sup>57</sup> This shows that although the main cause of concern for the governing bodies appears to be a lack of resources, either staff or financial, the majority of them were on the way to having effective child protection policies and procedures in place. Something that may not have happened if it had not been for the fact that Sport England was prepared to make future funding conditional on having a basic set of standards of child protection.

#### *Sports Council for Wales, Child Safe in Sport: Wales*

On the other hand, in June 2000 and in response to a proposal made in a plenary debate on sport held in the National Assembly for Wales,<sup>58</sup> the Sports Council for Wales held a consultation into the merits of a national register of sports trainers, both in matters of qualification to coach and suitability to have unsupervised contact with children.<sup>59</sup> The results of this consultation were published on 2 October 2000 with the conclusion that: 'It is considered that the development and maintenance of a centralised register for coaches/trainers would not provide sufficient benefits nor reduce the risk of harm.'<sup>60</sup> However, in line with its suggestion to continue to provide advice, guidance and support to governing bodies on the establishment of appropriate policies and procedures,<sup>61</sup> Sports Council for Wales officials later agreed to support the production of a *Child Safe in Sport: Wales*

information pack to be distributed to sports organisations, parents and other interested parties throughout Wales. The information pack, containing voluntary guidelines on child protection, was launched in November 2001 with the result that by the beginning of 2002, in comparison to the child protection standards in English sport, sport in Wales only had a set of voluntary guidelines. The Sports Council for Wales had also taken a passive role in the enterprise, in that the initiative had come from a South Wales police inspector; money for the pack came from the National Assembly for Wales; responsibility for the distribution of the pack lay with Welsh local authorities; and use of the pack was not a condition of receiving Sport Council funding.

The pack itself is a bilingual version of one originally developed by Somerset and Avon police and contains a video, guideline booklets for parents and organisers, a standard letter to parents, policy statement, support sheet, and a declaration form for volunteers and staff. Monitoring the effectiveness of the pack is to come from the return of a 'parent feedback' form to a Sports Council for Wales freepost address. The video is quite short (approximately 12 minutes), and begins by asking people to think about the possibility of abuse taking place in a sports setting. It quickly and effectively describes circumstances in which abuse can intentionally, and unintentionally, take place; it also describes what *Child Safe in Sport: Wales* is and how to look for help if needed. However, there are flaws in the video, and the fact that the majority of participants are white and all without disabilities has to be one of them.

What may turn out to be a major flaw though is that in the commentary a promise is made that sports organisations which sign up to the *Child Safe* programme will ensure that child participants in that organisation are safe from abuse. However, as this is a voluntary scheme, with no monitoring at ground level, there is no way of ensuring that the signed-up organisation does keep that promise and to what extent. The problem is exacerbated in that the pack includes a 'fill in and return' form for child protection officers (CPO) so that regional presentations outlining the role of a CPO can be held. However, and this is where matters begin to be disturbing, advice to organisers on how to appoint a CPO, contained on page 8 of the 'Guide to Organisers' booklet, simply suggests that a 'respected and committed volunteer' be appointed as CPO, and it is not until page 10 that examples of good practice in recruitment are given. Therefore, although requesting references; talking to referees with knowledge of an applicant; asking about past, or pending, criminal convictions; obtaining CRB checks and proof of identity are given as examples of good recruitment practice for staff and volunteers, none of this good practice is suggested for the appointment of a CPO. The result is that the potential exists for a 'respected and committed

volunteer' who is also an abuser of children to be appointed to a crucial position in a sports organisation without first being checked as to his/her suitability to be in that position.

An added worry has to be that the NSPCC Educare *Making Sport Safe Child Protection* programme advertised on page 14 of the organisers' booklet is a 'tick the correct box for a mark' programme that is open to all-comers. While it is understandable that, at the 2002 price of £20, no background checks are carried out by the NSPCC on those following the programme, it does mean, however, that convicted or otherwise unsuspected abusers could easily obtain an NSPCC qualification, one which might be welcomed by officials in sports organisations eager to have a CPO, and who think that because the NSPCC has awarded the qualification the person is suitable to be in the proximity of children. In other respects the organisers' guide does contain useful guidance for helping sports organisations, at national and local level, set up a child protection policy, and it can help raise awareness of the potential for abuse and false accusations, positive attributes that are most welcome. However, because of the way the booklet has been designed and the fact that these are voluntary guidelines, the positive attributes of the information have the potential to be cancelled out by the negative.

The 'Guide to Parents' is also informative and includes recognition of symptoms of abuse and advice on what to check on before allowing a child to join a sports club or organisation. However, here again there are only general guidelines – a 'good practice' for parents – which does nothing towards setting up a standard for sport in Wales. The remaining items in the pack are the standard letter to parents, policy statement, support sheet and declaration form for volunteers and staff, and all of them have the potential to be useful. However, here again use of them is voluntary as, unlike Sport England, the recognition criteria for Wales funded bodies has not yet been amended, and without a mandatory element they all remain words on paper; good intentions that could have so much more effect if the Sports Council for Wales played an active part in regulating the pack's use.<sup>62</sup>

#### *Child Protection in Sport Unit Developments*

By July 2002 both Sport England and the Sports Council for Wales had handed responsibility for child protection in sport over to the CPSU, and copies of nationally agreed cross-sport standards to be used by national governing bodies were being distributed by September 2002.<sup>63</sup> These are a simplified version of the Sport England Standards and are incorporated in *Child Protection Policy and Implementation Procedures*, a document produced by Coachwise Ltd, the trading arm of scUK, which in turn is funded by Sport England and UK Sport.<sup>64</sup> scUK is to play an important part

in the development and delivery of the CTF Report's recommendations, including responsibility for the overall strategic and co-ordinated development of coaching from the school playground to the Olympic arena, and responsibility for the development and operation of Quality Assurance of the proposed National Coaching Certificate.<sup>65</sup> However, scUK and CPSU quality control of legal information in both the February 2001 and August 2002 versions of *Child Protection Policies and Procedures* leaves much to be desired, as neither document includes any mention of Part II Criminal Justice and Court Services Act 2000, the major legislation regarding the employment of people suitable to be working with children (for more detailed discussion, see below).<sup>66</sup> This is remedied somewhat in the NSPCC/CPSU publication *sportscheck*, a 'step by step guide to implementing a child protection policy, procedures and code of practice'. However, even here Part II is relegated to a short paragraph and three bullet points included under the general heading of 'Other relevant Acts' in Annex B; with the Children Act 1989, Human Rights Act 1998 and the UN Convention on the Rights of the Child, none of which are essential to the protection of children in sport, being given priority.

It is possible that, being part of the NSPCC, the CPSU sees child protection through statutory body eyes, where standards have to be those of the professional social worker, as the Children Act, Human Rights Act and UN Convention on the Rights of the Child are all relevant to its work. However, being told that under the Children Act the law is founded on the assumption that it is generally best for children to grow up in their own families, and that apart from social services only the police and the NSPCC have the legal right and responsibility to investigate concerns about child abuse, is of little practical use to a volunteer who is trying to run a sports organisation/club and has to ensure that s/he does not allow a disqualified person to work in a regulated position (see Part II below). The situation at present then is that the CPSU, a unit within the NSPCC, is supporting the distribution of misleading or inappropriate information regarding the present state of child protection law, and people in sport who may be unaware of the law are expected to use this information in the establishment of their child protection policies and procedures.

### **Part II Criminal Justice and Court Services Act 2000**

All national or local organisations in England and Wales which offer services to children are currently subject to Part II Criminal Justice and Court Services Act 2000; and for sport this will not change with the advent of the CPSU standards, nor with the recruitment and employment of the proposed Community Coaches. Section 36(1) of Part II provides a widened

legal definition of 'working with children' (called 'regulated position' in the Act) which now covers both paid and voluntary positions. The ones that have the potential to apply to posts in sport are those whose normal duties:

- c) include caring for, training, supervising, or being in sole charge of children;
- d) involve unsupervised contact with children under arrangements made by a responsible person;
- e) involve caring for children under the age of 16 in the course of the children's employment;
- f) a position a substantial part of whose normal duties includes supervising or training children under the age of 16 in the course of the children's employment;
- g) ...
- h) include supervising or managing an individual in his work in a regulated position.

The most obvious regulated positions in sport would be, for example, coaches (training), referees or team managers (supervising), chaperons (caring for) and parents or taxi/minicab drivers, who provide lifts in cars that are arranged by the sports organisation (unsupervised contact under arrangements made by a responsible person). However, what is not so obvious is the extent to which the supervising or managing category will apply as a person is deemed to:

- a) only supervise an individual if he supervises the day-to-day performance of the individual's duties (s.36(10)(a)); and
- b) only manage an individual if the individual is directly responsible to him for the performance of his duties or he has the authority to dismiss the individual (s.36(10)(b)).

The inclusion of b) is a result of events in children's homes where abuse was not uncovered until long after the event, and how it applies in sports organisations will depend on the administrative structure of each organisation. However, a consequence for one NGB in Wales has been that members of its Council are covered by these provisions because, although they do not come into contact with child participants, nevertheless they have the authority to appoint and dismiss a National Under 16 Coach.<sup>67</sup>

### *Criminal Offences*

Part II also creates two new criminal offences:

- a) knowingly applying for, offering to do, accepting or doing any work in

- a regulated position if disqualified (s.35(1));<sup>68</sup> and
- b) i) knowingly offering work in a regulated position to, or procuring work in a regulated position for, an individual who is disqualified from working with children; or
- ii) failing to remove such an individual from such work (s.35(1)).

The key word in the offences is 'knowingly'. Although a defence to 'knowingly' applying for work with children is being able to prove 'he did not know, and could not reasonably be expected to know' he was disqualified from working with children (s.35(1)), there is no defence to knowingly offering work to or procuring work for a disqualified individual (s.35(2)). Unless, however, the regulated position comes within the 'employed child' loophole of section 36(1)(e) and (f).

#### *The Loophole*

In every other respect Part II considers children to be those aged under 18;<sup>69</sup> however, for employment purposes a child is considered to be under 16. A consequence of this is that although a disqualified person can not care for, train or supervise children aged 16 and 17 generally, because of section 36(1)(e) and (f) s/he will nevertheless be able to care for, train or supervise 16 and 17 year olds during the course of their employment, and this employment can include 16 and 17 year olds paid for taking part in a sport.<sup>70</sup> It follows then that the potential is there for officials in a sports organisation to be committing an offence by knowingly employing or allowing a disqualified person to train 16 and 17 year olds who freely participate in a sport, but at the same time, they will not be committing an offence by knowingly employing or allowing him/her to train young people of the same age group who are being paid for taking part in the sport.<sup>71</sup> This loophole will apply to existing voluntary and professional coaches as well as the proposed publicly funded Community Coaches.

#### *Home Office Recruitment Guidance*

The Home Office has produced guidelines for the recruitment of staff to regulated positions and this is contained in the *Criminal Justice and Court Services Act 2000: Protection of Children Guidance*.<sup>72</sup> The question now facing many in the sporting world is – how do they know that the individual they are allowing to work in a regulated position is not disqualified from that type of work? The answer – they will have to be asked and/or have background checks carried out on them – has the potential to pose many problems for the smaller sports organisations, as most of them are run on a voluntary basis and often on limited funding.

The *Guidance* says that:

With particular reference to child protection, all recruiters should ensure that their good practice for recruitment is carefully set out for all those directly involved in recruitment for regulated positions, preferably in a written document or child protection policy. For example a recruitment process for a regulated position might include:

- a detailed application form for the recruits to fill out;
- face to face interviews, involving careful scrutiny of the applicant's details;
- appropriate background checks, including asking for and taking up references;
- application to the CRB for an SD or ED<sup>73</sup> once the position has been offered to an applicant (in accordance with the CRB Code of Practice).<sup>74</sup>

However, another loophole in the law exists here in that Part II only applies to individuals disqualified since January 2001. It does not apply to abusers convicted before the Act came into force, nor to those whose conviction since January 2001 carries a sentence of less than one year. In these cases, although background checks may bring up past convictions, cautions, suspensions or suspicions of abuse, the individual concerned can still be employed in sport in a regulated position provided s/he has not been disqualified under Part II.

#### *Recruitment of Community Coaches*

We can now turn to the proposed recruitment and employment of the 3,000 qualified Community Coaches, all of whom will have the potential to work in regulated positions. As well as the employed child and disqualification loopholes mentioned above, Part II guidelines are only voluntary for organisations such as sports clubs and governing bodies unless they fall into the childcare organisation category of the Protection of Children Act 1999 (see below). However, background checks generally are nevertheless 'very strongly recommended' in the *Guidance*,<sup>75</sup> and carrying them out may help to demonstrate that all available means were used to protect children should any manner of legal difficulty later arise.<sup>76</sup> It can be argued at this point that as so much public money is going to be put into the recruitment and employment of Community Coaches, at the very least, following the guidelines ought to be made mandatory for the recruitment and employment of Community Coaches; and at the most, for all coaches. As to where responsibility for carrying out background checks should lie and who

should be checked, Community Coaches are to be recruited, employed and deployed by local franchises under the 'Coachmatch' scheme as part of the work of the franchise, or in generating substantial new activity.<sup>77</sup> Therefore, it can be argued that the responsibility should lie with the franchises as they would be the ones offering work in a regulated position to, or procuring work in a regulated position for, the coaches. Anyone in the franchise responsible for managing and/or supervising the coach in a regulated position will be in a regulated position and should also be checked.

#### *Coach Development Officers*

Coach Development Officers (CDOs) are to be employed nationally by scUK and deployed locally with county sport partnerships, Coachmatch franchisees or in sport-focused Higher or Further Education institutes. Whether they will hold regulated positions is not made clear in the Report, which says:

The role of CDOs will essentially be generic rather than sport specific. They would work with local 'Coachmatch' franchises and other agencies to co-ordinate a programme of training and development across their area working closely with NGBs, FE, HE and the UF.<sup>78</sup>

However, should this role involve work in a regulated position, scUK should be responsible for checks for suitability to that post.

#### *NGB Regional Talent Development Coaches*

These are to be the responsibility of the NGBs and it will be up to the NGBs to ensure that background checks are made on their Regional Talent Development Coaches (RTDCs). However, it had been suggested in the Report that the NGBs would be able to use its funding to 'invite overseas coaches to work along side English coaches' and this is where problems could arise as, presumably, although background checks should have to be carried out on these coaches as well, the fact that they come from overseas will mean that they will not necessarily be on the CRB or any other UK 'abuser or suspected abuser' database.

At least one coach convicted of sexual offences against children and subsequently barred for life from coaching in Australia, was working as a professional coach in Switzerland in 2002, and because he and others like him have not been disqualified under Part II in the UK, the potential seems to be there for them, quite legitimately, to take up the RTDC posts.<sup>79</sup>

### **Protection of Children Act 1999**

The loopholes in Part II are not blocked by the Protection of Children Act

1999 (POCA), the purpose of which is to prevent 'unsuitable' people obtaining work with children. The Act came about as a result of concern shown for the comparatively easy way in which abusers were able to move from one sector of society to another, without being detected until considerable harm had been done. Under section 7 POCA, 'child care organisations':

- i) proposing to employ someone in a 'child care position' are to ensure that they are checked through the 'one stop shop' system of the CRB before being employed and not to employ anyone included on any of the lists kept there; or
- ii) to cease to employ them in a child care position if they were found to be on the lists.<sup>80</sup>

A child care organisation is defined in the Act as an organisation:

- a) concerned with the provision of accommodation, social or health care services to children or the supervision of children;
- b) whose activities are regulated by or by virtue of any prescribed enactment, and
- c) which fulfil other such conditions as may be prescribed.<sup>81</sup>

To be a child care organisation for the purposes of the Act both conditions a) and b) have to be fulfilled. However, the Act also contains provisions enabling 'other organisations' to refer names voluntarily to the POCA List and to check against it when proposing to appoint people to child care positions. These other organisations range from the smaller voluntary organisations, through the 'uniformed' youth activities (Scouts, Guides, Cadet Forces and so on), to national and local youth clubs and religious organisations, incorporating the whole range of sporting and leisure activities undertaken by children.<sup>82</sup>

For the purposes of the Act it makes no difference if the child care post is paid or unpaid, so that the name of a voluntary coach in a local sports club can be referred to the List if he is in a position which meets the criteria of a child care position.<sup>83</sup> However, neither under POCA nor any subsequent legislation is there any obligation for sports organisations to apply to the lists before allowing anyone to work with children; nor do they have to refer names to the Secretary of State for inclusion on the lists. Indeed under the present law, unless someone has been disqualified under Part II there is no obligation on the part of a sports organisation to refuse to employ a suspected or convicted child abuser even if the potential was there for him or her to come into close contact with children within the organisation.

It is possible that eventually the CPSU standards will include a requirement for NGBs to abide by the POCA requirements. However, at present, applications and referrals from sporting organisations under POCA will not only depend on the good will of the organisations, they also depend on them having adequate child protection systems in the first place, something that the sports organisations in the UK that do not receive Sports Council funding do not have, nor have the incentive to have. However, this article is focusing on the recommendation in the CTF's Final Report that public funding be made available to train and employ professional Community Coaches, all of whom would have the potential to work with children; and a way of making it mandatory for sports organisations to comply with the POCA provisions (and block the 'employed child' loophole) would be to make them organisations 'concerned with ... the supervision of children' or 'whose activities are regulated by or by virtue of any prescribed enactment and which fulfil other such conditions as may be prescribed'.<sup>84</sup> The prescribing can be done by the Secretary of State and it seems reasonable to suggest that as some of the funding of both Community Coaches and Regional Talent Development Coaches is to come from the public purse, their recruitment and employment should become subject to POCA.

### **Part VI Care Standards Act 2000**

The extent to which Part VI Care Standards Act 2000 is going to apply to sport is at present unknown, and because of devolution the potential is now there for the same law to be applied differently in England and in Wales.<sup>85</sup> In the context of this article, Part VI provides for a new area of regulation, the need for certificates of suitability to be in the proximity of children aged eight to 15 (17 if disabled).

#### *Certificates of Suitability*

Introduced by section 79W Care Standards Act 2000 is the requirement that anyone who 'looks after, or provides care for children' (s.79(W)(1)) between the ages of eight to 15 (17 if disabled) for more than five hours a week, will have to apply for a certificate as to his, and any prescribed person's, suitability to look after children (s.79(W)(4)). Wales has yet to hold its consultation on this matter; however, in the consultation held by the Department for Education and Skills (DfES)<sup>86</sup> it was decided that individuals connected with the running of sports clubs are to be excluded from registration for certificates of suitability under section 79(W).

The reasoning behind the exclusion of sports clubs from the Regulations is that the law has been interpreted to mean that 'activity-based provision ...

where the care is strictly incidental to the main purpose of the facility, is not covered'.<sup>87</sup> However, *The Protection of Children Act 1999: A Practical Guide to the Act for All Organisations Working with Children* makes it clear that, for the purposes of POCA, sports organisations are 'other organisations' which provide care for children.<sup>88</sup> The situation now being proposed by the DfES, therefore, will result in there being two interpretations of the law regarding those who provide sports activities for children. For the purposes of POCA (a Department of Health regulated Act) sports organisations and sports coaches 'care' for the children they train or provide training facilities for. On the other hand the DfES says that for the purposes of certificates of suitability, sports organisations and sports coaches do not 'care' for children. As both the Care Standards and Protection of Children Acts are aimed at the same thing – protecting children – it seems highly regrettable that they are at odds with each other in this way.

It is also regrettable that although the time limit in the Care Standards Act of five hours in any one week may have been introduced so that the scheme would not have an impact on 'scouts, guides and other groups',<sup>89</sup> research shows that some children take part in sport for more than five hours a week, usually with the same coach or instructor.<sup>90</sup> Indeed, as it was said in a speech given at the 'Promotion and Protection of Human Rights of Child Athletes' seminar on the protection of children, young people and women in sport:

Since the 1970s the sports world has increasingly been professionalised. This trend directly impacted on child athletes, with intensive training programme schemes starting at an alarmingly young age. Today in many sports, any athletes who aim to reach a high level need at least ten years of intensive training during his or her childhood. Intensive training for children, which can vary between 1 and 5–6 hours daily, is characterised by high demands on human beings, that are still developing, both physically and mentally, and go through a unique period of learning and socialising in and outside school. In sports such as tennis, gymnastics, ice hockey, football, figure skating and swimming, most gifted athletes often engage in intensive training around 5, 6 or 7 years old.<sup>91</sup>

Consideration should also be given to the fact that even now voluntary and professional coaches and club instructors frequently run more than one club or hold sessions on one set of premises for more than five hours a week. Further, it is debatable whether many of the professional coaches proposed in the CTF Report will work for less than five hours a week. Although the obvious loophole here is that while many individuals will only

train children for four hours and 59 minutes a week in order to escape liability,<sup>92</sup> to have decided at the outside to exclude sports individuals from the need for certificates of suitability has the potential to continue to leave children taking part in sport vulnerable to abuse from their coaches and club instructors, especially where a coach or instructor not affiliated to an organisation sets up on his own, as currently there is nothing in the law to cover independent coaches or club instructors.

### **Sexual Offences (Amendment) Act 2000**

The final piece of law that needs to be considered is the criminal offence of abuse of trust contained in section 3 Sexual Offences (Amendment) Act 2000. It has been accepted for some time that the potential exists for the development of intense relationships between some young people and those, other than their parents, who have considerable influence over them.<sup>93</sup> This acceptance in some professions has in turn led to the development of codes of conduct and ethics which regard such relationships as having the potential to be abused. However, although these codes often form part of the 'rules' of the profession, they can nevertheless be unenforceable as they rely on the full co-operation of the individual to which they apply. This co-operation is sometimes sadly lacking, with the result that some relationships have continued to develop unhindered from the purely platonic to the fully sexual.

The government's answer to this is the criminal offence of abuse of trust, which is aimed at protecting vulnerable 16 and 17 year olds. The offence occurs when anyone over the age of 18, and in a position of trust in relation to a younger person, has sexual intercourse or engages in any other sexual activity with or directed at that younger person. For the purposes of the offence (which has the attribute of making ostensibly consented-to sexual activity illegal), to be in a position of trust the older person was to be 'regularly involved in the caring for, training, supervising or being in sole charge of' the younger person.<sup>94</sup> Liability for the offence lies only with the person in the position of trust, as it was thought that making the 16-to-17-year-old liable would result in an unwillingness to give evidence to support a charge against the person in the position of trust.<sup>95</sup>

#### *Guidance on Preventing Abuse of Trust*

Restricted as it is to relationships of trust in the public sector areas of full time education, detention under any court order or enactment and public authority and hospital care, the offence of abuse of trust does not cover the relationship between sports coaches and their students. However, sports coach-student relationships are expressly provided for in *Caring for the*

*Young and Vulnerable? Guidance on Preventing Abuse of Trust* (abuse of trust *Guidance*), a multi-departmental publication aimed at organisations involved with caring for young people and vulnerable adults. The abuse of trust *Guidance* explains and sets out 'Model Principles' the government believes the organisations should enforce on its employees and volunteers; and the suggestion is made that organisations design and implement a code of conduct relevant to the particular circumstances of the organisation. In reflecting the offence, the guidelines restrict abuse of trust to sexual intercourse and any other sexual activity.

The completed code is to make clear to members of the organisation that abuse of a relationship of trust within the organisation is unacceptable; and that anyone whose association with the organisation brings them into a relationship of trust should adhere to the requirements of the code. For its part the organisation is required to set up both a clearly defined confidential procedure by which allegations of abuse of a relationship of trust can be investigated, and disciplinary measures should they be needed. The code is to be self-standing or part of existing codes to provide safeguards and to prevent abuse.

As far as the Home Office is concerned:

we do not believe that the position of vulnerability will be strong enough to justify bringing consensual relationships between a community coach and a pupil within the scope of the criminal law ... We believe that codes of conduct and disciplinary guidelines are the appropriate means of controlling consensual relationships in such circumstances.<sup>96</sup>

However, no matter how much the Home Office supports voluntary codes on abuse of trust, the reality in sport is illustrated by the fact that the scUK/CPSU *Child Protection Policies and Procedures* document confines the subject of abuse of trust to just two sentences in the 'Guidelines' section;<sup>97</sup> and there is no mention of it at all in 'Standard 4 Codes of Practice and Behaviour'.<sup>98</sup> This is something that suggests that, unlike the Home Office, scUK and the CPSU do not necessarily see the potential for abuse of relationships of trust in Exchequer funded sport as being worthy of a code of conduct.<sup>99</sup>

## Conclusion

The argument being made in this article is a simple one. Up until now sports coaching has been predominantly a voluntary activity; individuals taking part because they want to (albeit occasionally because of the unsupervised contact with children it brings them), and not because their income depends

on it. Because sport has been a private matter, quite correctly, it has not been liable to child protection issues aimed at the public sector. Now however, the CFT Report is recommending changes that will encourage many people to become professional coaches, an initiative that has the potential to change a previously predominantly voluntary sector into one especially designed to address both sporting excellence and public social issues. In order to bring this about, public funding is to be made available to Sports Council recognised governing bodies. The Report admits that work with schools and young people is a key requirement for participation and performance at the highest levels and accepts (albeit briefly) that child protection issues must be considered and dealt with before the Community Coaches are recruited.

Child abuse is not rampant in sport. However, research and case law shows that, as in other areas of society, abuse does exist – and as the public sector becomes more regulated, private sector sport has the potential to become fertile ground for abusers. Although there are those who deliberately come into sport in order to gain access to children, there are others, like Paul Hickson, who grow up in it and for some reason decide to take advantage of the position of trust in which they find themselves to abuse the children they coach. However, as has been suggested in this article, acceptance within sport that it has a child protection problem is recent; and while some organisations are prepared to tackle the problem head on, others pay lip service to it. Also, the autonomy of the Sports Councils has resulted in England and Wales being out of step with each other to the extent that while Sport England funded governing bodies have to have basic child protection standards in order to receive funding, Welsh organisations can still choose whether they have them or not.

The CPSU does not appear to be helping in that its information on the law regarding the recruitment of people to regulated positions in sport is very limited and, unlike Sport England, its standards do not include codes on preventing abuse of trust. However, as things are in January 2003, even if the CPSU does give more information about regulated positions, its child protection standards will only be enforceable on Sport England recognised governing bodies in return for continuance of public sector funding; the funded bodies in Wales and, more disturbingly, the many more unrecognised bodies in the UK have no incentive for change. As has been shown above, there are a number of loopholes in current child protection law that have the potential to allow convicted or suspected abusers to be allowed to work with children in sport, and some of them can be blocked by including sports organisations in POCA and abuse of trust legislation. Extending POCA provisions to sports organisations generally will mean that all of them, and not just those with the incentive of public funding, will have to follow Home Office guidelines in the recruitment of staff to

regulated positions. This is going to be costly and time consuming, and will involve data protection and confidentiality issues. However, it will nevertheless offer more protection from abusers to child sports participants than is there now.

Making the offence of abuse of trust applicable to sports coach–student relationships in the case of publicly funded Community Coaches is essential in order to block the ‘employed child’ loophole in Part II. Also, its extension to other coach–student relationships, and rigorous enforcement of the law, will make sports people realise that, as with other teaching professions, a sexual relationship between a coach and his young student is totally unacceptable.

The CTF Report is correct in that child protection issues must be considered and dealt with before the Community Coaches are recruited. As must the accuracy of the information being put out by the CPSU and the loopholes in the law that have the potential to allow convicted and suspected abusers, aided and abetted by government blessings and public funding, to have access to children taking part in a sport.

#### NOTES

With thanks to Andrew Campbell and Professor John Williams, Department of Law, University of Wales, Aberystwyth, and the anonymous referees for comments on earlier versions of this article.

1. See, for example, *Scottish Daily Record*, 5 February 2002, and various radio and television reports.
2. *Sunday Times*, 27 October 2002; *Western Mail*, 10 October 2002; and *Yorkshire Post*, 27 November 2002.
3. *Observer Sports Magazine*, April 2002, 36, 40; *Birmingham Evening Post*, 2 September 2002; *Sunday Telegraph*, 1 September 2002; *Sunday Times*, 27 October 2002; *Sunday Mercury*, 5 March 2000; *News of the World*, 8 April 2001; *Birmingham Evening Mail*, 21 August 2002; and *Northern Echo*, 17 December 2002.
4. Department for Culture, Media and Sport (DCMS), *The Coaching Task Force: Final Report* (London: DCMS, 2002).
5. *Ibid.*, Point 46, p.19.
6. See, for example, Celia Brackenridge, Kari Fasting, Joy Bringer, and Sandra Kirby, all in the Special Issue on Sexual Harassment and Abuse in Sport, *Journal of Sexual Aggression*, 8 (2002); Diana Summers, ‘Child Protection in Voluntary Sector Sports’ Organisations’, unpublished Ph.D. thesis, University of Bristol, 2000; Peter Donnelly, ‘Child Abuse in Sport’, *Policy Options* 3 (1997), 3–6; and H. Lenskyj ‘Power at Play’, *International Review for the Sociology of Sport* 25/3 (1990), 235–45.
7. Jenny Meyers and Barbara Barrett, *In at the Deep End*, available from the NSPCC Child Protection in Sport Unit.
8. But see DCMS (note 4), p.20, where it says, ‘It is anticipated that the investment proposal will generate in the region of 3,000 part time and full time posts ...’.
9. *Ibid.*, p.3.
10. *Ibid.*, p.5.
11. *Ibid.*, p.9.

12. Ibid., p.9.
13. Ibid., p.10.
14. Ibid., p.11.
15. Ibid., p.12.
16. Ibid., p.13.
17. Ibid., p.20.
18. Ibid., p.17.
19. Ibid., Point 46, p.18.
20. Ibid., p.20.
21. Ibid., p.50.
22. Celia H. Brackenridge, *Spoilsports: Understanding and Preventing Sexual Exploitation in Sport* (London: Routledge, 2000), 29. Brackenridge describes the paedophile as being 'locked into a cycle of low self-worth, sexual exploitation and denial', and suggests that the predator on the other hand, increases in self confidence and self esteem by conquests of vulnerable and less powerful athletes, *ibid.*, 110.
23. Ibid.; and Meyers and Barrett (note 7).
24. Research done for this article produced no cases of female abusers in sport.
25. Brackenridge (note 22), 113.
26. See, for example, 'vile paedophile' Joseph Griffin (55) – parents of children abused by him helped raise money for his club, *News of the World*, April 2001; Malcolm David Clarke [1997] 2 Cr App Reports (S) 53, where it was said that the court had 'a substantial number of testimonies from his pupils and their parents showing the trust and affection in which they held this appellant'.
27. Sports Council, *Coaching Matters: A Review of Coaching and Coaching Education in the UK*, SC/17F/5M/2/91.
28. Now replaced by the sportscoach UK Code.
29. 'The first thing to remember is that, regrettably, there are some men who go into sport to get access to children sexually. Let's stop pretending it doesn't exist, because it does, and I've plenty of evidence to support that', therapist of male sexual abuser in sport quoted in Brackenridge (note 22), 68; and: 'I was sexually attracted to children ... even before I started coaching. And it followed on from there that coaching would a good way of getting access to children', coach convicted of sexual abuse in sport quoted in *ibid.*, 71. See also quote from coach convicted of sexual abuse in sport, in *ibid.*, 130.
30. *R v. Paul Anthony Hickson* [1997] EWCA Crim 458.
31. This is the version in the case report; newspaper reports however, fill in a few more details. For example, *Guardian*, 9 and 28 September 1995, pp.11 and 10 respectively, says that after Hickson had left the country police made an appeal for information on the BBC TV's *Crimewatch UK* programme. This not only resulted in Hickson's re-arrest in December 1994 when he returned to Nottingham to spend Christmas with his family, it also brought forward more young people who said they had been abused by him.
32. Quoted in Brackenridge (note 22), 69.
33. *The Times*, 28 September 1995, 5.
34. Ibid.
35. A female assistant coach had been confided in by a male swimmer who had been abused for some years; and she had told the President (Frank McCann) of the organisation. The President was alleged to have replied that he hoped the matter would not break while he was President. McCann was later arrested and convicted for the murder of his wife and 18-month-old niece. Joint Committee on Tourism, Sport and Recreation (Republic of Ireland), *Protection of Children in Sport*, First Interim Report (Dublin: Stationery Office, 1998), p.43, paras.4.41 and 4.42. Also, *Irish Times on the Web*, Saturday 31 January 1998.
36. Joint Committee on Tourism, Sport and Recreation (note 35), p.60, para.3.6.
37. Ibid., p.72, para.10.3. It is now alleged that while in prison he is 'earning a fortune ... by painting and selling pictures'. He refuses to put his real name on them however as '[h]e is aware that people might not want to buy pictures painted by a paedophile', *Mirror*, 6 December 2002.
38. Also, Eire and Northern Ireland Sports Councils, *Code of Ethics and Good Practice for*

- Children's Sport* (Eire and Northern Ireland Sports Councils, 2000).
39. Convicted for sexually abusing 5 of boys he had trained over the past 30 years, *Observer Sports Magazine*, April 2002.
  40. *Sunday Times*, 27 October 2002.
  41. Brackenridge (note 22), 17.
  42. K. Fasting, C.H. Brackenridge and K. Sundot Bergen, *Sexual Harassment In and Outside Sport* (Oslo: Norwegian Olympic Committee, 2000).
  43. For this, and more study results, see Brackenridge (note 22), 60.
  44. See, for example,
    - squash – *R v. Clarke* [1997] 2 Cr App Reports (S) 53;
    - football – *R v. Smith* [1987] 9 Cr App Reports (S) 228; Philip Turner, *Western Mail*, 13 March 1998; and George Ormond, *Northern Echo*, 17 December 2002;
    - gymnastics – Richard Bristow, *Sunday Mercury*, 5 March 2000;
    - athletics – Paul North, *Yorkshire Post*, 22 November 2002;
    - horse riding – Gary Hinds, *Sunday Times*, 27 October 2002;
    - karate – Joseph Griffin, *News of the World*, 8 April 2001;
    - archery – Martin Saunders, *The Times*, 12 October 1999;
    - table tennis – Frank Slatherwaite, *Birmingham Evening Mail*, 21 August 2002.
  45. Brackenridge (note 22), 118.
  46. These can include club teachers, poolside helpers, team managers, chaperons, social events organisers, staff in a poolside shop, or anyone acting on behalf of the club in giving child swimmers a lift to events or training; in fact anyone in a 'regulated position' as now defined in Part II Criminal Justice and Court Services Act 2002.
  47. *The Football Association of Wales Child Protection Awareness and Code of Conduct*.
  48. This definition will include children, older people and anyone with a recognised disability.
  49. Football Association, *Child Protection Procedures and Practices Handbook*.
  50. *Child Protection Policy for Athletics*, later used by the Amateur Athletics Association of Scotland as a template for its policy and procedures.
  51. UK Athletics/Celia Brackenridge, *Draft Athletics Welfare Policy* (2001).
  52. Sport England, *Draft Revised English NGBs Guidelines*, RCG/ENG/1, dated October 2001.
  53. Sport England, *Safeguarding the Welfare of Children in Sport: Setting a Standard for Sport* (London: Sport England, 2001), Policy point 3.
  54. *Ibid.*, Policy point 4.
  55. *Ibid.*, Section 2.
  56. *Ibid.*, Points 4 and 5, criteria D.
  57. Sport England, *Safeguarding the Welfare of Children in Sport: A Summary Evaluation from NGBs* (London: Sport England, 2002).
  58. Plenary Debate on Sport, 24 November 1999.
  59. Sports Council for Wales, *National Assembly: Register of Recognised Sports Trainers*, F16/3/2b, 6 June 2000.
  60. *Ibid.*, para.20, 26 July 2000.
  61. *Ibid.*, para.21.2.
  62. As at March 2003.
  63. E-mail from Ian Smyth, Coaching Development Officer, scUK, dated 18 September 2002.
  64. Coachwise Ltd, *Child Protection Policy and Implementation Procedures. Guidelines for Governing Bodies of Sport and Local Authorities. Incorporating Standards for Safeguarding and Protecting Children in Sport* (Leeds: Coachwise Ltd, 2002).
  65. DCMS (note 4), p.15.
  66. The document also contains a number of legal inaccuracies; for example, sports organisations accepting the 'legal responsibilities to provide a duty of care for young people' (giving the impression that sports organisations have a choice in whether they have a duty of care or not); confidentiality being upheld in line with the Data Protection Act 1998 and the Human Rights Act 1998, with no mention of the common law of confidentiality (p.1); the Criminal Records Bureau providing 'criminal records checks for volunteers, free of charge to employers or voluntary organisations', when in fact the checks are free to volunteers only and not free to employers or voluntary bodies (p.3); and perhaps worst of

- all, categorising racism as emotional abuse but making no mention of the fact that racism is illegal (p.9).
67. Private Communication with Secretary General, Football Association of Wales.
  68. Disqualification comes as a result of:
    - a) inclusion (other than provisionally) in the list under section 1 Protection of Children Act 1999 (s.35(2));
    - b) inclusion on grounds of not being a fit person in the list kept under section 218(6) Education Reform Act 1988 (s.35(4)(b));
    - c) inclusion on the grounds of being unsuitable to work with children in any list kept by the Secretary of State or National Assembly for Wales of persons disqualified under sections 470 or 471 Education Act 1996 (s.35(4)(c)); or
    - d) a disqualification order following a charge or conviction for an offence against a child (s.35(4)(d) and see Schedule 4 for offences against a child) and a relevant order or qualifying sentence of 12 months (ss.28, 29).
  69. The reasoning behind this is because 16 is the age when a child finishes formal education and enters the workforce, and it is deemed to be unreasonable for a manager to be obliged to reject a child as a worker or to impose constraints on his or her current employees (for example, requiring a disqualified individual to change jobs or be dismissed).
  70. Just how many British children are paid for taking part in a sport is unknown, however, that there are professional sports children is acknowledged in section 25 Children and Young Persons Act 933, which provides for the licensing of persons under 16 who are paid for taking part in a sport in the UK. Section 37 Children & Young Persons Act 1963 provides for children under 18 paid for taking part in a sport abroad (defined in s.30 as outside Great Britain and Ireland).
  71. Football is a good example here, especially in England where 16 year olds are often employed by the larger clubs as professional footballers.
  72. Home Office, *Criminal Justice and Court Services Act 2000: Protection of Children Guidance* (London: Home Office, 2000).
  73. Criminal Records Bureau, Standard Disclosure and Enhanced Disclosure.
  74. Home Office (note 72), para.9.17. *sportscheck* however, advocates that both police and CRB checks be considered.
  75. Home Office (note 72), para.9.8.
  76. *Ibid.*, para.9.9.
  77. DCMS (note 4), p.52.
  78. *Ibid.*, p.13.
  79. Brett Sutton, who according to the *Observer Sports Magazine* is 'acclaimed by some as the world's greatest coach in his sport' (triathlon) was barred for life from coaching in Australia after admitting and being convicted of five offences against a teenage girl. He received a two-year suspended sentence. *Observer Sports Magazine*, April 2002, 38.
  80. Organisations were also given the statutory requirement to refer names of any individuals who had been dismissed, resigned, retired, transferred or suspended from a 'child care position' to the Secretary of State for possible inclusion on the lists (s.7).
  81. Section 12 POCA.
  82. Department of Health, NHS Executive, *The Protection of Children Act 1999: A Practical Guide to the Act for All Organisations Working with Children* (London: Department of Health, 1999), p.8.
  83. *Ibid.*, p.13.
  84. Section 12 POCA.
  85. Part VI sections 79A–79V. In repealing Part X Children Act 1989 in England and Wales and inserting Part XA instead, Part VI provides for the setting up of national standards of child minding and day care services for children. An argument, outside the remit of this article can be made for the provision of day care services to include local sports clubs.
  86. DfES, *Consultation on Early Years and Childcare Regulation*, consultation ended 24 May 2002.
  87. Para.10 of the Introduction to the consultation paper.
  88. Department of Health (note 82):

Paragraph 3.5 – There are many other organisations outside of the ‘regulated’ sectors as set out above which also ‘care’ for children in one way or another. These organisations range from the smaller voluntary organisations through the ‘uniformed’ youth activities (Scouts, Guides, Cadet Forces etc) to national and local youth clubs and religious organisations and incorporate the whole range of sporting and leisure activities undertaken by children.

Paragraph 4.4 – For the purposes of the Act it makes no difference if the child care post is a paid or unpaid position. Thus a person who is acting as a volunteer coach in, say, a local sports club (he may even be a parent helper) may be referred to the List if he was in a position which meets the criteria of a ‘child care position’.

89. DfES (note 86), paragraph 3 Issues for consultation – 2.
90. For example, ‘they provide a service for the parents, it’s a cheap way in the parents’ eyes of making sure their child is alright for two or three hours a week ... or two hours a day for six days a week as I was training ...’, quoted in Brackenridge (note 22), 69. See also Yvonne Williams, ‘Child Labour, Sport Labour: Regulations for Young Professional Sports People’, *childRIGHT*, November 1999, 16; and report on Radio 4, *You and Yours* 28 September 2002, where training of up to 20 hours a week was mentioned.
91. Hanaholmen, Finland 14–16 September 2001.
92. Though this loophole may be closed by the ‘Daycare’ provisions of the Care Standards Act.
93. See Working Group on Preventing Unsuitable People from Working with Children and Abuse of Trust, *The Interim Report from the Working Group: Abuse of Trust* (London: Home Office, 1998).
94. Section 4(7) Sexual Offences (Amendment) Act 2000.
95. Working Group (note 93), para.15.
96. Letter from Home Office dated 27 September 2002.
97. The government-produced, *Caring for the Young and Vulnerable? Guidance for Preventing Abuse of Trust* (London: Home Office, 1999), para.3.3. The guidance is based on the principle that all organisations involved in caring for young people and vulnerable adults should have codes of conduct to protect against sexual activity within relationships of trust.
98. Coachwise (note 64), p.28.
99. A six-line general mention of the Sexual Offences (Amendment) Act is made under ‘Other relevant Acts’ in *sportscheck* Annex B, while *Caring for the Young and Vulnerable?* is only listed by name under ‘Resources’ in Annex D.