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The potential of the Safeguarding Vulnerable Groups Bill for children's sport

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YVONNE WILLIAMS

WELFARE IN SPORT
RESEARCHER, DEPARTMENT
OF LAW, UNIVERSITY OF
WALES, ABERYSTWYTH.

ABSTRACT

Currently making its way through Parliament is the Safeguarding Vulnerable Groups Bill, a new piece of legislation designed to fill some of the loopholes discovered following the conviction of Ian Huntley in 2003 for the murder of Holly Wells and Jessica Chapman. As it stands the provisions of the Bill have the potential to have a considerable effect on many people, (whether paid or volunteers) coming into contact with children taking part in sport at a local level.

KEYWORDS

Vulnerable Groups - Independent Barring Board - Regulated Activity and Provider - Monitoring - Fingerprints and DNA Retention

INDEPENDENT BARRING BOARD

Clause 1 of the Safeguarding Vulnerable Groups Bill establishes a new statutory body, that of the Independent Barring Board (IBB); with Schedule 1 making provision for membership and staffing arrangements, and the IBB's responsibilities in regard to reporting to Parliament and the Secretary of State. In brief, when set up the IBB must establish and maintain two new lists:

a) a children's barred list which will integrate the current List 99 (for teachers) and Protection of Children Act (POCA) List; and

b) an adult's barred list which will replace the existing Protection of

All future decisions as to whether someone ought to be barred from working with children or vulnerable adults will be the responsibility of the IBB, thus removing it from the Secretary of State (Jones 2006). However, the Secretary of State will still retain a certain amount of authority over the IBB; *e.g.* pay scales, appointment to and removal from the IBB and the form in which it keeps its accounts (Schedule 1: 2(a and b); 3, 2(a); 11). More importantly, referral of names to it will be within the remit of a Secretary of State (Schedule 2, Part 1).

In order to allow its workload to be managed effectively the IBB will be able to delegate its core functions internally. Core functions are defined as:

- a) determining whether it is appropriate for a person to be included in a barred list;
- b) determining whether to remove a person from a barred list;
- c) considering representations made for the purposes of Schedule 2 (Schedule 1 8).

Any function other than core functions can be delegated externally, (*e.g.* purely administrative work to the Criminal Records Bureau. Schedule 1 7). The IBB must issue a report annually of the exercise of its functions during the previous year. However, it will be up to the IBB to arrange for the report to be published in such a manner as it considers appropriate (Schedule 1 9).

REGULATED ACTIVITY PROVIDER AND REGULATED ACTIVITY

The legislation also creates 'Regulated activity providers' (RAP), to wit a person who:

- a) has responsibility for the management or control of regulated activity; and
- b) makes arrangements (whether in connection with a contract of service or for services or otherwise) for another person to engage in that activity (Clause 6(2)(a) and (b)).

The most obvious person in sport who would have both management and control of an activity and arrange for someone else to engage in that activity would be a sports coach/instructor. Here,

the coach could arrange for children to engage in the sport and could also arrange for parents to help out. However, unincorporated associations will also fall within the definition of a RAP. For these any requirement of or liability (including criminal liability) under the Act will fall on:

- a) the person responsible for the management and control of the association; or
- b) if there is more than one person, all of them jointly and severally (Clause 6(7)(a) and (b)).

The majority of local sports clubs are unincorporated associations, managed and controlled by a committee; and the majority of these clubs provide an 'activity' (sport). If the sport provided falls within the scope of a regulated activity, by definition all the committee members, be they paid or unpaid, will be RAPs for the purposes of the Act. 7

Where children are concerned there are a number of definitions of regulated activity; however, the one that has the greatest potential to apply in a sports setting is: 8

- ... any form of teaching, training or instruction of children, unless the teaching, training or instruction is merely part of or incidental to teaching, training or instruction of persons who are not children (Schedule 3, Part 1, clause 2(a)).

This definition has been designed to include sports clubs run solely for children, for it excludes clubs where both children and adults train together. The result is that, when this provision becomes law in 2007, anyone involved in the control and management of 'all-children' clubs are going to have extra legal responsibilities relating to the care and supervision of those children. 9

CRIMINAL OFFENCES

The extra legal responsibilities are going to arise as a result of the creation of a number of new criminal offences. 10

- i) An individual will commit an offence if s/he:
 - a) seeks to engage in a regulated activity from which s/he is barred;
 - b) offers to engage in a regulated activity from which s/he is barred;
 - c) engages in regulated activity in a

regulated activity from which s/he is barred (Clause 7).

Barring will come as a result of a referral to the IBB, and can be automatic or subject to representations. Here, a coach who has been barred will commit the offence if s/he continues to coach children after being barred; or tries to take up coaching children after being barred.

ii) It will be an offence for a RAP to use a barred person for a regulated activity if the RAP knows or has reason to believe that person has been barred (Clause 9).

iii) RAPS will not be the only ones with responsibilities under the legislation. Clause 8 (1) makes it an offence for an individual to engage in regulated activity 'with the permission of' a RAP if s/he is not subject to monitoring (see below) by the Secretary of State. What this will mean in practice is not made clear in the Explanatory Notes (Notes 2006) accompanying the Bill. However, it would seem to be applicable to anyone; be it an employee, independent contractor, or volunteer; a RAP allows to help with the activity, for example assistant or trainee coach, club physiotherapist, or parent helper.

iv) Linking these last two offences is a further offence, that of RAPs permitting someone to take part in a regulated activity without first making an 'appropriate check' with the Secretary of State to obtain 'relevant information' (Clause 11). Relevant information will include, but will not be restricted to, whether or not the individual is barred from the relevant regulated activity; or is subject to monitoring.

v) Finally, there is to be a duty on a RAP to provide the IBB with prescribed information about an individual (Clause 27); and a duty to provide information if requested to do so (Clause 28). In fact, it is to be a criminal offence not to do so (Clause 28). The type of information here includes

a) the withdrawing of permission for an individual to engage in a regulated activity; and

b) the fact that the RAP would have withdrawn permission if the individual had not stopped engaging in the activity (Clause 27).

MONITORING

Monitoring will come about if an individual is:

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a) not barred;

- b) makes a monitoring application;
- c) satisfies the prescribed identification requirements; and
- d) pays the prescribed fee (Clause 21 (1)).

When a monitoring application has been made to the Secretary of State s/he will make all enquiries thought relevant to the application. These inquiries can include, but not be restricted to, looking at records held by the Passport Office, DVLA, National Insurance numbers office, and anywhere else if it is decided that these places might hold relevant information. 12

COMMENTS

The legislation is not intended to be retrospective and will not apply to anyone already engaging in regulated activities - thus avoiding the chaos experienced at the start of Criminal Records Bureau (CRB) checks when both existing and new teachers and others deemed to be working with children had to have a CRB check before starting work (Cowie 2002). However, if s/he changes 'jobs' within a regulated activity, or someone new is taken on, then the law begins to apply. The result is that generally, it looks as though a lot more responsibility, and work, is going to be placed on the shoulders of volunteers in sport at a local level. It could also put an added financial burden on 'cash strapped' local sport. 13

Unless changes are made during the Bill's passage through Parliament a surprising loophole in the legislation will be that although those who engage in the activity with the permission of the RAP will have to be monitored, the RAP him/herself will not have to be. One result will be that a self-employed RAP with an income from the activity will not have to pay any monitoring fees. On the other hand, the volunteer helper may have to, as it has not yet been decided how much the prescribed fee will be; or whether, unlike now and CRB checks, volunteers will have to meet some or all of the costs themselves. 14

However, one of the more controversial aspects of the monitoring, especially as far as volunteers are concerned, may prove to be that, in meeting the prescribed identification requirements, the legislation provides for the taking of fingerprints (Clause 21(9)). Whether this will be at a police station and under controlled conditions has not yet been decided. The same Clause also gives the Secretary of State the option for making provision requiring the destruction of those finger prints in specified circumstances and by specified people. 15

As the law stands at the time of writing, should 16
the Secretary of State choose not to avail
him/herself of that option, the ruling regarding the
destruction of fingerprints in *R (on the application of
S) v Chief Constable of South Yorkshire; R (on the
application of Marper) v Chief Constable of South
Yorkshire* ([2002] EWCA Civ 1275; [2003] Crim LR
39) will apply. This case concerned the destruction
of DNA samples taken from people who have been
arrested and charged and later acquitted. Section
64(1A) Police and Criminal Evidence Act 1984
empowers the police to retain the lawfully-taken
fingerprints and samples of un-convicted persons
provided that they could only be used for
purposes related to the prevention or detection of
crime, the investigation of an offence or the
conduct of a prosecution. Relying on that power,
and in accordance with a policy to retain such
material for those purposes save in exceptional
circumstances, the defendant chief constable
decided to retain the fingerprints and samples
taken from the claimants. The claimants had
appealed.

It was held in *R* that:

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[a]lthough the retention of
[fingerprints and DNA samples]
interfered with the art 8(1) [ECHR]
rights of individuals from whom [they]
had been taken, that interference
was justified by art 8(2)... Nor were
the adverse consequences to the
individual disproportionate to the
benefit to the public... [O]nce
fingerprints and samples had been
lawfully obtained, there was a
perfectly clear objective distinction
between individuals from whom such
material had been taken and
individuals from whom they had not.
No harmful consequences would flow
from the retention unless the
fingerprints or samples matched
those of someone alleged to be
responsible for an offence ([2002]
EWCA Civ 1275, headnote).

The case of *R* reveals the policy of the Home Office 18
to retain as much DNA, and fingerprint, information
as it can. As this legislation is designed specifically
to accommodate the Bichard recommendations
following the scandal about deleted police
information, perhaps it is not surprising that a
fingerprint as well as DNA database is being
designed.

However, as far as sport and volunteers are
concerned, in 2005 (Telegraph) Roy Case,

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Chairman of the English Golf Union was reported as saying that the then new guidelines on child protection in sport were already discouraging volunteers from helping next generation golfers. The report continued by saying that the guidelines '... seem to reflect an unhealthy national obsession with paedophilia, which bears no resemblance to the scale of the danger'. If volunteers are already being discouraged from helping out in children's sport, how many more will be discouraged by the fact that, if they have to have their fingerprints taken, those fingerprints could continue to be held on a government database for the rest of their lives? How many law-abiding parents will be reassured that they will have nothing to fear from the law in the future, as there will never be a 'hit' on their fingerprints retained after they have finished with monitoring?

On the other hand, how many will share similar opinions to those reported to have been expressed by Furedi at the *Cotton Wool Kids* conference in Glasgow in 2005? In referring to sport Furedi argued that: 20

... while many people on the left were concerned about the loss of civil rights, such as free speech in the wake of the war in Iraq, nobody was prepared to raise a murmur when it came to "ritualistic" police checks on individuals in contact with children the "child protection industry" ... can't resist the temptation of going anywhere where there are children. ... Anyone who has anything to do with children has to have a security vetting. There is only one possible consequence - it breeds mistrust.... [police checks] diminish our humanity by making us more suspicious of each other. Freedoms are being taken away because they are to do with children. But they are not good for children, for us or for society (Buie 2005).

These opinions may be controversial ones now, but this new law has the potential to take away still more freedoms and impose still more responsibilities. More innocent people could find themselves on a national government database and it will be interesting to see how many more people will be sharing, and voicing, similar opinions to Case and Furedi in a year or two's time. 21

Buie E (2005) 'Children are "living in a security state"'
The Times Educational Supplement, September 23 p.
1.

Cowie E (2002) 'Criminal vetting backlog spreads'.
The Sunday Times September 1, p. 4.

Notes 2006. Safeguarding Vulnerable Groups Bill [HL]
Explanatory Notes.
www.publications.parliament.uk/pa/ld200506/ldbills/079/ldbills079.htm

Jones G (2006) 'Kelly reveals the extent of sex
offence loophole'. The Daily Telegraph January 20, p
4.

The Daily Telegraph (2005) June 27, p. 19.

Williams, Yvonne, "The potential of the Safeguarding
Vulnerable Groups Bill for children's sport",
[Entertainment and Sports Law Journal](#), ISSN 1748-