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Living in the Same Household - 'Incest' in the Family of Sport

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by

Celia Brackenridge PhD, MA, BEd. (Hons), AcSS.

Celia Brackenridge Ltd/Honorary Visiting Professor, Centre for Applied Childhood Studies, University of Huddersfield.

**Coalheughead Cottage, Harburn, By West Calder, West Lothian, EH55 8RT.
celia.brackenridge@btopenworld.com**

and

Yvonne Williams LLB(Hons) MPhil (Wales)

Welfare in sport researcher based at the Department of Law, University of Wales, Aberystwyth.

**Rhyd Meirionydd Farm, Borth, Ceredigion SY24 5NS
01970 828391. yvonne_williams@btopenworld.com**

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Living in the Same Household - ‘Incest’ in the Family of Sport.

This article focuses on the coach/athlete relationship in the self admitted sporting ‘family’ and, using both the provisions of the Sexual Offences Act 2003 and the civil law remedies of non-molestation orders argues that where matters of abuse are concerned, the private world of the surrogate family of sport could be just as liable under family law principles as any other modern day informal family.

Incest and Familial Sexual Abuse

I consider it incest - that’s what it’s all about. Because the time spent, the demands, the friendship, the opportunity ... they are giving you something no-one else can. They’re brother, uncle, father ... the child will feel safe and do anything. That’s why it is incest. (Survivor of sexual abuse by her sports coach.)

In recognising the changes in the structure of the family that has led to many informal and temporary family arrangements the Sexual Offences Act 2003 (2003 Act) provides a number of new offences replace the offence of incest. However, the two relevant to the argument as to whether the relationship of trust that can develop between a sports coach and his/her young trainee should become subject to the new offences are:

- section 25, sexual activity with a child family member which makes it an offence for a person (A) intentionally to touch a family member aged 13 to 17, where the touching is sexual; and
- section 26, inciting a child family member aged under 18 to engage in sexual activity which occurs if A intentionally incites the family member to be touched by, or to touch, A;

The definition of ‘touching’ is set out in section 79(8) and includes touching with any part of the body; with anything else and through anywhere; and in particular, any touching that amounts to penetration. Whether or not the child consents to the touching is irrelevant. It is in the definition of family relationships in section 27 that the potential appears for these offences to apply within a self confessed ‘family’ of sport context, in particular to sports coaches and their student athletes. Section 27(4) provides for relationships where A and B live in the same household and A is regularly involved in caring for, training, supervising or being in sole charge of B. There is little doubt that coaches can satisfy the second part of this criterion in that they are regularly involved in training, supervising and being in sole charge of their athletes - be they children or adults. Coaches also ‘care’ for their child athletes for the purposes of a ‘child care position’ in ‘other organisations’ in the Protection of Children Act 1999 (see *Protection of Children Act 1999. A Practical Guide to the Act for all Organisations which Work with Children*, Department of Health, London, 1999, paragraphs 3.5 and 4.4.)

The only thing to show therefore is whether coaches and their athletes 'live in the same household'; and an argument can be made to suggest that they do.

The Sporting Family

From the 'Olympic family' to the 'family-like social systems' of sports teams and clubs the concept of 'family' is used to describe the allegedly close and supportive social systems within the organisation, reflecting traditional nuclear and extended family values and ideologies. However, the cosiness of the family metaphor backfires when sexual exploitation in sport is uncovered. Sport combines 'private' family-like circumstances with 'public' training and competition and it is within this private sphere that abusive 'family' relations can develop; with coaches acting *in loco parentis* and sports clubs or squads becoming surrogate families.

'Fathers in sport' assume control of the 'family' in ways that leave little room for manoeuvre by their dis-empowered subordinates. The close-knit relationships which develop with the coach and other club or squad members resemble those within the family unit. The authority structure of many sports clubs also parallels that found in traditional patriarchal families in which the father/coach figure has absolute power over the other family members. The sports club or team becomes the athlete's surrogate family and it is common for high level performers to be geographically isolated from their friends and natural families. In some cases this has led to a cult-like milieu whereby the athlete is prohibited from contacting significant others so s/he gradually shifts dependency from them to the new, surrogate parent. In such conditions, grooming (the gradual development of trust and erosion of normal personal boundaries) becomes much easier and secrecy much more readily maintained.

The sporting family also shares other common family processes such as negotiations over money, housing, shopping, clothing, food, travel, sex and even reproduction with coaches frequently sharing the most intimate knowledge of an athlete's menstrual cycles, moods states, weight, eating, sleeping and contraceptive habits. These incursions into the personal life are justified on the grounds of performance enhancement and often lead to the imposition of restrictive regimes and loss of personal autonomy. The young athlete is under the care and control of a surrogate father (the coach) much of the time and takes on the pseudo-partner role, often for more hours in the week than either party spends 'at home'. In some cases, the structural dependence of the athlete on the coach-parent becomes so strong that they become unable to make even basic decisions for themselves, such as how to manage

personal finances, whether to choose to engage in non-sport social events, or how to make travel arrangements.

In these conditions, for both the athlete and the coach, the sport becomes the family. Indeed, such is the intensity of emotional ties that develop between coach and student athlete in elite sport that in research interviews the sexual abuse that has occurred has been described by athletes and others as ‘incest’ and ‘virtual incest’. It is within the context of the self confessed sporting family that the argument for using family law principles to judge liability for sexual exploitation and harassment is set.

‘Live in the Same Household’

The precedent in England and Wales for ‘living in the same household’ is provided for in Section 62(3)(c) of Part IV Family Law Act 1996 (FLA) where non-molestation orders are available for ‘associated persons’ who ‘live or have lived in the same household.’ According to the Law Commission Report on domestic violence ‘[t]he crucial test is the degree of community life which goes on..... if they share domestic chores and shopping, eat meals together or share the same living room, they are living in the same household’ (*Domestic Violence and Occupation of the Family Home* Law Commission Report 207 1992; paragraph 3.21, at page 25.) What should be noted here that by using the word ‘or’ the Law Commissioners made sharing a living room an alternative to sharing domestic chores, shopping and eating meals together and not a required element of living in the same household. Does sharing domestic chores, shopping and eating meals together sound similar to what has been said above about the sporting family?

Case law adds to the argument for ‘live in the same household’ to apply to the sporting family, with *Santos v Santos* [1972] FAM 247 (at 262) forming an important cornerstone in that the phrase ‘living in the same household’ was held to be an abstract concept rather than referring to something physical like a house. More recently it was held in *G v F* [2000] 2 FCR 638 that where it was not entirely clear whether or not the parties were associated s62(3) FLA should not be interpreted so as to exclude borderline cases, but should be given purposive construction to offer as much protection as possible to domestic violence victims. Although coaches and their athletes do not always live in the same house, they do nevertheless spend a lot of time in each other’s company. At the highest level, athletes may devolve all their living decisions (food choices, travel arrangements and so on) to a coach, and this will be with the full consent of the athlete’s ‘natural’ family. It is a question of fact

then that a coach can have considerable confidence and status accorded to him by his athlete's family - they trust him to take care of their child.

Abuse of a position of trust

The argument for including sports coaches in the new offences can be added to in that the position of power and influence a coach holds over his athlete has been acknowledged in the government multi-departmental *Caring for Young People and the Vulnerable? Guidance on Preventing Abuse of Trust* (Home Office, London, 1999. *Guidance*), a publication that accompanies the offence of abuse of trust provided for in sections 3 and 4 Sexual Offences (Amendment) Act 2000 (2000 Act). Although the sports coach/athlete relationship is not one provided for in the 2000 Act, for the purposes of the *Guidance* any sexual relationship between a sports coach and his 16 and 17 year old athlete is deemed unacceptable because of the power and influence the coach has over that athlete.

Defences

There are of course the defences to the new 'incest' offences, and apart from lawful marriage (s 28) and sexual relationships which predate family relationships (s 29), ss 25(1)(e)(i) and (ii); and 26(1)(c)(i) of the 2003 Act provide that a defendant is not guilty of the offence if he can prove that he believed the other person was over 18; unless it can be proved that his belief was unreasonable. Also, sections 25(1)(d) and 26(1)(d) provide that a defendant would be not guilty if he could prove that he did not know his relationship to the other party fell within the family relationship definitions, unless it can be shown that he could have been reasonably expected to know he was.

As far as sport is concerned the questions that arise here are: i) whether it would be unreasonable for a coach not to know the age of his athlete; and ii) if he could prove that he did not know his relationship to the other party fell within the family relationship definitions, whether he could have been reasonably expected to know that he did? With regard to the first question, it would be highly unlikely that a coach would not know the correct age of his athlete as age categories are important in sports competitions. As for the second, what is needed here is a test case using an argument similar to the one set out above, because, once it is proved for the first time that a coach and his athlete do come into the family relationship definitions it might be difficult for subsequent defendants to argue that although they do not enter into any formal relationship in the family, they do, however, play a very important role

in the child's life.

Conclusion

It could be argued that as the new offences were designed to protect children within their own family environment it may not be appropriate to include sports coaches within their scope. However, both past and present foster and step-parents who only come into a child's life for a short time have been provided for in the 2003 Act, along with a past or present partner or spouse of the child's parent or aunt or uncle. Therefore the question that can be asked here is: if a past or present step parent, foster parent, partner or spouse of a parent or aunt or uncle who spent/spends less time during the week with a child than a sports coach can be included in the legislation - why should the coach be excluded just because the phrase 'live in the same household' is construed narrowly? If the phrase is 'given purposive construction to offer as much protection as possible to domestic violence victims', it can be argued that the athlete is, to all extents and purposes, living in the same household as the coach on the basis of: i) the confidence and status the coach is afforded by the 'natural' family; ii) Home Office *Guidance* which says it is unacceptable for a coach to have a sexual relationship with his 16 or 17 year old athlete, and iii) the fact that the 2003 Act covers people who, unlike the coach, may no longer have any contact with the child.

Sexual activity with a child family member carries a maximum sentence of 14 years in prison and applies to 16 and 17 year olds, it therefore has the potential to offer young athletes the protection from sexual abuse by their coaches that the 2000 Act denies them. If sports participants regard themselves as being part of a family they should be prepared to accept the responsibilities the law places on families; especially the responsibility of not having a sexual relationship with a child of that family. Facing a long time in prison, or simply being faced with going to prison for having sex with his any of his athletes aged under 18, may make an abusing coach think twice about doing something that is all-too-often regarded as being part of the cultural climate of sport.