For the 2002/03 academic year, the School of Law at King's College London is once again offering a one-year, part-time postgraduate course in sports law, leading to a College Postgraduate Certificate in Sports Law.

The course is led by programme director Jonathan Taylor, partner in the Sports Law Group at Hammond Suddards Edge (ex-Townleys), who teaches the course along with other leading sports law practitioners such as Nick Bitel, Adam Lewis, Alasdair Bell, Nicholas Green QC and Mel Stein, and sports law academics such as Simon Gardiner, Gary Roberts and Richard McLaren.

The course covers the range of key sports law issues:
- constitutional issues: self-regulation by sports governing bodies/the European Model of Sport; judicial control of sports bodies;
- commercial issues: broadcasting, sponsorship, IP rights, ambush marketing;
- issues for individual athletes: doping, discipline, player contracts, endorsement contracts, civil and criminal liability for sports injuries;
- EC law and sport: competition law, freedom of movement; and

The course is taught in weekly evening classes from October to March and is open to both law graduates and non-law graduates. For further details, visit the KCL sports law website at www.kclsportslaw.co.uk.

For a full prospectus and application form, contact: Annette Lee, School of Law, King's College London, Strand, London WC2R 2LS
Tel: 020 7848 2849, fax: 020 7848 2912, E-mail: sports.law@kcl.ac.uk

CPD credits available; equality of opportunity is College policy.
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Raymond Farrell
Steven Downes
Edward Grayson
Walter Cairns
Gerry Boon
Paul Harris
Paul Harris
Lesley Swindell
Nick Rudgard
Ron Hurst, Paul Zoubek, Catherine Pratsinakis
Edward Grayson
Apologies are due for the late publication of this edition of the Sport and The Law Journal, which was due to the late arrival of several items. Hopefully, the patience of our members and subscribers has not been exhausted.

Since the previous edition of the Journal the Association has held two events, one in Manchester and one in London. On May 2nd, in conjunction with the School of Law at the Manchester Metropolitan University, a seminar entitled “Sports, Law and the Management of Risk” took place, chaired by our President, Maurice Watkins. One of the papers presented at the seminar, by Nick Rudgard of Addleshaw, Booth & Co., appears in this edition. Since the tragic events of September 11th last year in New York this was particularly relevant. It is to be hoped that the Commonwealth Games in Manchester pass without incident.

On May 29th a seminar was held at the British Academy in London entitled “A Time for Salary Caps.” Papers presented by Gerry Boon of Deloitte and Touche, Chartered Accountants, and Paul Harris of Monckton Chambers, also appear in this edition.

Both of these free seminars were well attended and dealt with issues of current significance thereby helping to fulfil the main object of the Association which is that of education. We hope to continue attaining that object when the next Annual Conference takes place. This year’s event will take place on October 9th, again at Lord’s Cricket Ground in London. The finishing touches to the programme are currently being made and members will receive their invitations in good time.

Recent developments in sport and the law are chronicled by Walter Cairns and others in this edition but one particular item deserves special attention. In February this year Alain Baxter won a bronze medal in a slalom event at the Winter Olympics but was later stripped of his medal as a result of a drug test which revealed the prohibited stimulant, methamphetamine. His defence that he inadvertently inhaled this substance by using an American Vick’s inhaler to relieve a congested nose was rejected. It was reported on June 4th that the International Ski Federation had imposed a three-month ban on him for the same offence. The ban would normally have been for 2 years but the FIS accepted that the use had been inadvertent.

The next stage in this sorry saga is a hearing before the Court of Arbitration for Sport at which Baxter will seek to overturn the IOC’s decision to strip him of the medal. He has powerful support from the British Olympic Association.

Baxter contends that he was unaware that the American version of the Inhaler contained different substances to that sold in the UK but it beggars belief that he did not seek advice from the BOA medical staff in Salt Lake City. Whoever sits on this CAS appeal will be faced with a major difficulty and if they decide to overturn the IOC’s original decision then it will be increasingly difficult for the IOC to maintain its stance relating to strict liability. The wisdom of Solomon may be required to bring this latest saga to an acceptable conclusion. That is, of course, if CAS accepts that the US inhalant did in fact contain an illegal stimulant. Professor Arnold Becket, formerly head of the IOC Medical Commission, contends that the US version contains levmetamfetamine which is not a stimulant, as opposed to isomer methylamfetamine hydrochloride otherwise known as speed which is. He claims that the IOC testing regime is not sufficiently sophisticated to make the distinction. What CAS will make of this view may well determine the outcome of this particular appeal.
It was when I was asked to review the organisation’s contract with its race organisers that I got the biggest shock. “Why me?” I asked. “Why don’t you have it looked at by your lawyer?”

“Because,” said the secretary of a regional federation of an Olympic sport, “it would be far too expensive.”

Despite the six-zero contracts bandied about on the back pages over footballers’ wages, or the latest details of Tiger Woods’ new endorsement contract, or the latest government announcement of millions of Lottery sports fund for “grassroots investment”, the harsh reality for many sports organisations in the 21st century is that they rarely have enough money to operate on a professional basis. Costs have to be cut, and rather than scrim and save on what are regarded as “the essentials”, most sports federations will cut the less popular areas of their spending.

Often, among the first to go are the lawyers. Which was where I came in.

I had been working for this European federation for a few months, advising them on their media coverage and working as press officer at last year’s European championships. It was there that, during a casual conversation with one official, I discovered to my horror that there was no written record of the agreement between the federation and the championship organisers over the scope and extent of sponsorship exposure.

Thus, the federation’s sponsors – who paid $100,000 a year for the privilege – were usurped at the venue and on Eurosport by a local brewery, who had paid the race organisers $50,000 to become title sponsors of the event. The federation lost its sponsorship soon after.

Naïve is not the word for it. When asked to review the federation’s agreements with race organisers for its 2002 series of events, I discovered to my horror that it included no clauses to ensure proper third-party insurance cover (and one elderly spectator had been hospitalised after an incident in the 2001 series final), there was no provision for organisers to lodge the prize money they offered with a third party (and some athletes are still waiting for prize money won at these races in 2000), and there was no obligation on any race organiser to organise mandatory, post-competition drug testing. The only thing that the document seemed to be at all secure about was in the specification of terms of the sanction fee, payable by the race director to the federation.

“Who drafted this?” I asked on seeing the federation’s agreement letter with race organisers, feeling slightly edgy about such an obviously flawed document.

“Our president did it,” I was told, “he based it on the international federation’s contract with races for the World Cup. We never thought we needed to use a lawyer...” Famous last words?

Let’s face it, especially when dealing with sports officials who are, or who were until recently, in honorary positions, lawyers represent trouble. And expense.

Some organisations have an in-built aversion to using lawyers. Yet some, however hard they try, keep being dragged back into court like a moth around a flame. And much of the litigation is as a result of being poorly advised, if advised at all.

The International Triathlon Union is a case in point. Founded in 1989, the young sport has prided itself on its rebellious, rock ‘n roll-type approach to sport, and the fact that, by 2000, triathlon was included in the Olympic Games.

Maybe because of its maverick approach, and that of its president, Les McDonald, of Canada, the ITU has managed to acquire a reputation for being constantly embroiled in legal actions, with a string of disgruntled former business partners resorting to law against the federation for alleged breaches of agreements. The actions have usually been settled out of court.

In 2000, six of the ITU’s own member federations,
led by Ireland, Germany and Poland, resorted to legal action, when they claimed that McDonald had deliberately interfered in the conduct of that year’s annual elections to secure for himself and his supporters another term in office. The disgruntled federations also sought disclosure of the full details of the ITU’s spending: McDonald had been refused permission to pay himself an honorarium, or to appoint a paid assistant, yet has done so for the past five years.

The action against the ITU was brought in the Supreme Court of British Columbia in Vancouver, where the ITU has its headquarters. It took the judge, Justice Kersty Gill, more than 14 months to deliver a judgment, a crucial factor in the case. Because of the hiatus, McDonald and the ITU applied pressure on the various “rebel” federations in an attempt to have them withdraw the complaint, threatening to withdraw membership of the ITU, or offering the prestige of a World Cup race if they withdrew, offering “development” funding, even in one case – Costa Rica — establishing a rival national federation, which was immediately “[recognised]” by the ITU (Costa Rica has since embarked on a separate action for redress through the Court for Arbitration in Sport).

All this may seem like a certain amount of petty politicking in a minor Olympic sport. Yet the battle is actually over control of the estimated $1 million annual funding from Olympic television revenues which triathlon can expect to receive from 2004 and onwards, plus the ITU’s other potential revenue streams through sponsors and television (provided McDonald’s prickly reputation has not scared off commercial partners from the sport permanently). It is also about Olympic status, and the potential for the ITU’s president, or successor, to be considered for a much sought-after membership of the International Olympic Committee.

The ITU case is also interesting, in that it illustrates the sheer power of an incumbent in elections for international sports federations. Only McDonald, as ITU president, was able to exercise grace and favour appointments to the sport’s various technical committees, placing his trusted supporters in positions of influence, and maybe ensuring their national federation’s support at the next elections. Only McDonald was able to offer “development grants” to certain federations to assist them in their “coaching programmes” – a technique mastered with some aplomb during his two-decade reign over international athletics by Primo Nebiolo, who was never challenged for the presidency of the IAAF throughout his reign.

And only McDonald was able to affect the conduct of the election congress to best favour his own cause, banning some federations from attending or speaking, distributing information via the ITU’s website and newsletter, and through circulars issued at the ITU congress itself.

Although the “rebel” federations had private financial backing and the representation of a good Vancouver lawyer, they were in reality always fighting a losing battle. Their biggest problem was bringing the ITU to court at all. The ITU maintained that all member federations must abide by ITU rules, and ITU rules demanded that any grievance must be brought to its own council – chaired by McDonald himself, and including his closest aides. This, of course, was no option at all.

The ITU also sought to force all disputes to go to CAS. Yet CAS’s opinion had also been sought, and it ruled that it could not interfere in an internal dispute that had not exhausted the sport’s own appeals procedure. The rebels found that, as drafted, the ITU’s constitution had no independent appeals procedure.

When they eventually got their day in court, in October 2000, the rebels at least won the first battle when Justice Gill over-ruled an ITU application that she did not have jurisdiction. On reviewing the ITU constitution, the judge sided with the petitioners by

Some organisations have an in-built aversion to using lawyers. Yet some, however hard they try, keep being dragged back into court like a moth around a flame.
concluding that there was no other way to seek redress. It is worth noting here that the ITU constitution, although originally drafted with a lawyer, has been amended each year since 1989 by resolutions at congress – but has never been consolidated properly with the benefit of legal advice.

The petitioners were then able to present their case, and left with a wait of more than a year to hear the verdict. It was this delay itself which left them most vulnerable. Eventually, in January this year, Justice Gill delivered her 36-page judgment, which was a real curate’s egg. Yes, McDonald had unfairly interfered with the conduct of the elections, she ruled, but to a significant degree? Probably not, she said.

The judge criticised the ITU for conducting its business in “a divisive and confrontational manner”, and made no ruling as to the awarding of costs, leaving both sides to pick up the tab, estimated at between $40,000 and $100,000 a side.

McDonald had won the 2000 presidential ballot by 36 votes to 20 against the Austrian, Erika Koenig-Zenz. Judge Gill’s judgment reads: “Evidence has been given that the winner of the election received approximately 15 votes more than the loser. While not determinative, it is evidence to be considered. “In the end result, I cannot say that the irregularities found were calculated to affect the end result in the sense described in the authorities. In any event, in all of the circumstances, I conclude that they did not produce the end result.”

McDonald had ruled that national federations, unable to afford the airfares to Western Australia, could not use proxy voters. The judge commented: “At all prior congresses, it was possible for national federations to appoint a non-resident as a delegate so long as they were properly authorised.”

In her judgment, Justice Madam Gill was critical of McDonald’s conduct. She described the organisation’s constitution as “not a model of good draftmanship”, highlighting several inconsistencies and errors.

She also agreed with the petitioners’ assertion that McDonald “usurped” authority by dictating who could – and could not – attend the meeting.

Despite winning, at least in principle, ultimately the judge’s ruling changed nothing, and the petitioners felt the law had let them down. Both sides ended up cursing (metaphorically, at least) lawyers, one because of their cost, the other because they had not received the protection of the law they felt they deserve.

Yet a relatively impoverished sport might have saved itself $100,000, plus a year’s worth of hassle by paying to have its constitution legally drafted, and with an appeals procedure included.

The only question is: who will tell this to Les McDonald?

In her judgment, Justice Madam Gill was critical of McDonald’s conduct. She described the organisation’s constitution as “not a model of good draftmanship”.
The Government Minister: Goodbody and Oxley

By Edward Grayson

John Goodbody’s plea for a Minister of Sport in his guest “A Journalist’s View” (Vol.9 Issue 3) followed a comparable plea in Walter Cairns’ “Current Survey” in the same edition with a citation from David Oxley, CCPR Chairman under the subtitle “Sports Minister should have Cabinet status.” Goodbody cited Derek Wyatt MP and a former rugby international: “We need a Secretary of State for sport and health and education, who will be chairman of UK Sport. We have to locate the issue so that we are in control of decision-making; we can no longer allow quangos to dictate to us. Until we have such a structure we might have such debates but not much will change.”

Cairns’ Oxley quote included a claim “that a Cabinet Minister would have more clout with the Chancellor of the Exchequer and increased access to funding across departments such as health, environment and education, on which sport has a major impact.”

Ironically, however, all had overlooked or been unaware of how the role was created from WITHIN the Cabinet 40 years ago by the then Minister for Science and Technology, the then Viscount Hailsham before his period as Lord Hailsham of St. Marylebone, three times Lord Chancellor in the 1970’s and 1980’s. He explained in his autobiography, “The Door Wherein I Went” (p207):

“It occurred during a Cabinet Meeting in which government responsibility for sport was being discussed. It was being said that, properly speaking, responsibility for sport was being shared between quite a number of departments and authorities, education, local government, universities, the services, and all the voluntary bodies dealing with athletics, from the Olympic and Commonwealth Games and League and Cup football at the top, to badminton, fives and even chess at the most refined and esoteric end of the spectrum. I pointed out that recreation generally presented a complex of problems out of which modern government was not wholly free to opt, and which government funds were, in fact, and were likely to continue to be committed in one way or another in coaching, in the provision of playing fields, in matters of safety at racecourses and football grounds. I waxed eloquent on this subject, talking of the fares for Olympic competitors and many other topics. I suggested that there was need, not for a Ministry but for a focal point under a Minister, for a coherent body of doctrine, perhaps even a philosophy of government encouragement.”

Subsequently, in his final memoirs “A Sparrow’s Flight”, published in 1990, Hailsham concluded with a landmark recollection of how it all began with the recollection: “All of this and more I canvassed in Cabinet and urged the need of a small secretariat under a minister who might be more of a liaison officer than a government spokesman. Whether I was right or wrong in the views I then expressed I do not know. Things have developed on rather different lines. But I soon discovered that I had talked myself into a job, and was myself the first to attempt the task I had tried to outline.”

This he attempted from within the Cabinet as Minister for Science and Technology. None of his successors was elevated to this level. Today’s developments point inexorably for history’s wheel to turn full circle and for a Minister of Sport to operate again at Cabinet level. It exists within the Commonwealth.

Edward Grayson, Founder President British Association for Sport and Law.
### The Current Survey of the Sport and the Law Journal

The Current Survey of the Sport and the Law Journal examines current world-wide developments in the field of sports law, in accordance with the following structure:

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1. General

Conferences, lectures and seminars

**National Football Law & Finance Conference held (UK)**

In late 2002, some of the leading figures in Scottish football, sports law and finance participated in The National Football Law & Finance Conference 2001, which was organised by law firm Harper MacLeod and the Bank of Scotland. Among the line-up of speakers examining the challenges facing Scottish football and the issues which may face it in the future were representatives from the Scottish Professional Footballers’ Association (SPFA), the Scottish Premier League (SPL), leading accountants PricewaterhouseCoopers, law firm Harper MacLeod, the Bank of Scotland and Glasgow club Partick Thistle. It was held at Scotland’s national stadium and attended by approximately 50 delegates representing some of Scotland’s largest financial sporting and investment institutions.

These speakers addressed a wide range of topics, including the part played by the banks in football finance, the impact produced by (English) Premiership millionaires on the Scottish game (dealt with by Tony Higgins of the SPFA), and the way in which the new international transfer rules could be used to clubs’ advantage (examined by Rod McKenzie of Harper Macleod). Iain Blair, for the SPL, discussed the approach taken by FIFA on the new transfer regulations, whereas Stewart Thomson, Director of Marketing at the SPL, examined the part played by marketing and sponsorship in the world of football.

One of the partners in the organising law firm, Stephen Miller, commented that the face of Scottish football was evolving rapidly, and that his firm was delighted to play a leading role at such an exciting time. He expressed the hope that the Conference would become an annual event.

**Obituraries**

**Grobbelaar case QC dies**

In December 2001, Sir Rodney Klevan, the barrister who successfully defended former Liverpool and Southampton goalkeeper Bruce Grobbelaar against allegations of bribery, died of cancer. Sir Rodney had also successfully acted for former Deputy Leader of Liverpool City Council, Derek Hatton, against fraud charges.

Lawyers in sport

**Profile of West Ham legal eagle in professional journal (UK)**

When Scott Duxbury became the first in-house lawyer to be employed by English Premiership club West Ham United in June 2001, this signalled the desire held by the East London side to give a considerable impetus to the commercial aspect of its activity. Despite a sizeable and extremely loyal following, the Hammers have never been one of football’s wealthiest clubs – at least when compared to the likes of Manchester United, Liverpool and Arsenal. However, they have recently started to nurture considerable ambitions in this regard. Duxbury’s arrival, coinciding as it does with that of Stuart Ryan from sportswear firm Nike, has given shape to the club’s aspirations in this regard.

Mr. Duxbury is a product of the legal academy organised by Maurice Watkins, of James Chapman & Co, Manchester, whom he regards as the foremost sports lawyer in the country. He spent five years with this firm, learning and perfecting his skills under the watchful eye of Mr. Watkins. Soon, however, he was ready for a move. At James Chapman, he may have been able to claim that he had contributed towards the effort involved in signing seven-figure players, but he could not boast any involvement in the actual negotiations. Now, whenever West Ham are considering a potential new signing, Duxbury meets the player in question and discusses the terms of the deal. This has already taken him to many parts of Europe. As a member of the board, he will also play an important part in building the club’s brand. Although the long-term objective is to achieve the brand recognition of the leading Premiership clubs, Duxbury is concentrating in the first instance on consolidating its local following.

In his capacity of head of the legal department and company secretary, Duxbury has three core areas of activity on which to concentrate. The first embraces sports rights, branding and sponsorship. Secondly, he is in charge of human resources, and as such responsible for preparing contracts and rules of conduct. Thirdly, he has to ensure compliance with FIFA rules governing transfers and the behaviour of players on the pitch.

**British Olympic Association in-house lawyer describes some legal headaches arising from the Winter Games**

Another in-house lawyer, Sara Friend of the British Olympic Association (BOA), was the subject-matter of a feature in another legal journal aimed at practising solicitors. More particularly, it focused on Ms. Friend’s role in preparation of, and during, this year’s Winter Olympics in Salt Lake City. Although she did not actually
1. General

attend the Games herself – indeed, she was only one of a handful of BOA employees who watched the magnificent opening ceremony on the small box instead of in the US – the part she has played in the legal issues surrounding the British team’s participation in this momentous event has been considerable.

Continuing the BOA tradition of employing litigators as its in-house lawyers, Ms. Friend had four years’ experience with City firm Baker & McKenzie when she applied for the BOA position in succession to Robert Datnow. The latter left the Association’s employment in order to compete in the 2004 Olympics himself, to wit in the 800 or 1,500 metres event. Although not originally a sports lawyer herself, she had been involved in several Formula One deals, thus gaining invaluable experience in international issues as they affect the world of sport. Although she describes the Winter Olympics as an “opportunity to break in gently”, she has had plenty of difficult issues to cope with during her tenure thus far.

One of these has, sadly but inevitably, been the issue of drug-taking. With Ms. Friend’s assistance, sports quango UK Sport has embarked upon an anti-doping policy. More specifically, all endurance performers are henceforth tested for the EPO drug, which increases the oxygen-carrying capacity of the blood (and has already featured prominently in these columns). Thus the BOA can be confident that all competitors performing under its banner are regularly tested.

The question of nationality has also proved to be a contentious issue which Ms. Friend has had to handle. The case of Glynn Pedersen is a good example of the difficulties involved. The 20-year-old ski jumper was born, and competed, in Canada, whereas his parents are UK citizens who emigrated before he was born. On applying for British citizenship, he had to take a year out of the sport in order to meet the nationality-switching conditions laid down by the International Skiing Federation.

However, since he had competed in the 1999 World Cup Competition representing Canada, Ms. Friend was obliged, under International Olympic Committee rules, to obtain the consent of a number of parties – including the international and Canadian skiing federations in order to secure his lawful transfer to UK citizenship.

Selection is another issue which has claimed her attention, requiring her to pick her way through the maze of procedures, standards and rules which attend this issue. In principle, the selections are decided by the individual governing bodies and communicated to the BOA, which then has to ratify them. This involves checking the competitors’ nationality and anti-doping credentials, after which the matter is referred to the Technical Unit, which assesses their individual skills. Inevitably, some competitors who have not been selected seek redress from the Association. These are normally referred back to their governing bodies. This is what happened in the case of one particular bobsleigh competitor, who felt frozen out – so to speak – of the Olympic team. However, if there is a suggestion that the relevant rules have been misapplied, Ms. Friend and her colleagues will become involved.

Even as the Games were in full flight, the BOA team was already dealing with issues which will arise in the near future – such as boosting the chances of London in its bid to become the chosen venue for the 2012 Summer Games. The feasibility of this plan is currently being assessed by a partnership involving the Government, the BOA and the Greater London Authority; in addition, an external consulting firm is expected to submit an independent report shortly. If London won the bid, Ms. Friend believes that this would change her life.

Southampton lawyer paddles for charity

In October 2001, Matthew Robbins, of Southampton law firm Abels, chose an unconventional means of transport in order to convey him to the Solicitors’ Annual Conference in Birmingham. In a journey lasting approximately 80 hours, he paddled 140 miles through all kinds of weather including driving rain, negotiating 180 canal locks in the process and camping in car parks and church halls, and raising over £5,000 for the Solicitors’ Benevolent Association.

Manchester solicitor fails to toe the line when capturing national Aikido team

Steven Evans, a solicitor with the new three-partner firm Wingate Evans, of Manchester, recently gave new meaning to the term “personal injury” when capturing the Great Britain team at the Aikido World Championships in Japan. In one of the bouts in question, he fractured his toe in four places after having kicked what he described as a “very large Japanese”. Undeterred, he struggled manfully on to reach the semi-finals, before having to drop out of contention. He was, however, able to compete in the Kata event, being a demonstration of martial arts techniques, and carried off the gold medal.

Manchester United solicitor given place on FIFA dispute panel

Manchester United’s solicitor Maurice Watkins has become a familiar name in these columns, and was in the news again recently when he was appointed as one of the five European representatives on the newly-established FIFA Disputes Resolution Chamber, which adjudicates on issues arising from the new football transfer regulations. Mr. Watkins is senior partner of Manchester firm James Chapman & Co.
British firm’s sports law team assists with Singapore sports project ....

British firm Hammond Suddards Edge, in conjunction with the Singapore Sports Council, the Football Association of Singapore and the Law Society of Singapore, is currently assisting with the implementation of Sports Singapore, a $500 million commitment towards making Singapore one of the top ten sporting nations in Asia. The Hammonds sports team have also won instructions from Sportinc, Singapore’s latest sports marketing and consultancy firm.

...and advises Tenpin Bowling governing body

The sports law team of the firm of Hammond Suddards Edge, referred to in the previous section, has also been appointed honorary adviser to the World Tenpin Bowling Association in order to review its worldwide governance.

Digest of other sports journals

Latest issue of German sister journal

The sixth issue for the 2001 volume of our German sister journal, the Zeitschrift für Sport und Recht (SpuRt), contained a number of highly interesting features. One particular contribution, by the authors Offerhaus and Augsten, examines the conditions which sporting associations – and in particular golf clubs – must meet in order to achieve charitable status for tax purposes. In the process, this article describes the various methods of obtaining finance currently available to sports clubs whilst meeting these criteria – such as investment levies, admission fees, adopting certain variants on the limited partnership as their corporate form – all this in the light of the case law of the country’s supreme fiscal court, the Bundesfinanzhof. Also prominent is a paper on the right to reporting events in summary form (Recht zu Kurzerichterstattung), by author Christian von Coelln. On the basis of the available case law, more particularly that of the German Supreme Administrative Court (Bundesverwaltungsgericht), the author analyses the meaning of this concept and the balance which it needs to strike between the interests of the broadcaster and its audience.

Its section devoted to recent court decisions features the long-awaited decision in the Katrin Krabbe case (which has been reported in a previous issue of this journal), in which the former East German Olympic sprinter was awarded a considerable sum against the International Amateur Athletics Federation (IAAF) for having wrongly banned her for drug abuse. This feature also contains the court order given in the dispute between the German broadcaster ARD and the Kirch media group on the right to report on sporting events.

In the final part, the author Sommerer examines the new structure of professional football.

Other issues

Should the ordinary courts have jurisdiction over disputes involving sporting rules?

Article in German professional journal

This journal would lose the reason for its existence if sporting figures did not on a regular basis seek the assistance of the law in order to attempt the redress of perceived wrongs. However, even with the benefit of several years of experience with the interaction between sport and the law, it remains difficult to establish exactly to what extent the sporting rules themselves, i.e. the rules governing the sporting context, may be the subject-matter of judicial inquiry. It is this difficult issue which the author of the paper under review seeks to address in a leading German professional journal aimed at practising lawyers.

The author takes as his starting point the Sandra Gasser case. Ms. Gasser, a Swiss national, won the bronze medal for the 1,500 metres event at the World Championships in Rome (1987), but had her medal subsequently removed by the world governing body IAAF for drug-taking. She sought to have this decision overturned by the High Court in London (which at that time housed the IAAF), but without success. Prior to this, Ms. Gasser had taken the matter to the Swiss courts, bringing an action against both the IAAF and the Swiss federation which implemented the latter’s decision. The Berne court in question extensively dealt with the distinction between sporting rules and legal rules (Spielregel und Rechtsregel), and set out a number of criteria which should enable this distinction to be applied in practice.

However, the author details a number of cases in which this distinction has in fact become increasingly vague. To illustrate this, he examines a wide range of cases which concerned – at least originally – sporting rules, and concludes that the competitors and their lawyers always attempt, and sometimes succeed in, finding a legal “peg” on which to hang the sporting rule in question, thus bringing it within the jurisdiction of the ordinary courts. He also points out that even the existence of specialist sporting courts does not deter those seeking to redress sporting decisions from applying to the ordinary courts, since there are considerable differences between the two as regards procedural issues. Thus the Court of Arbitration for
1. General

Sport (CAS) has, under rule 57(1)(1) of the Code of Sports-related Arbitration, “full power to review the facts and law”. This gives the CAS the power to correct procedural defects which may have occurred in the course of proceedings before the national federations, and thus put it in a position to “save” a decision by the federation which was inherently incorrect.

The difficulties involved in drawing the distinction in question was also exemplified by the case law of the Court of Justice – starting, of course, with Bosman. Although the indicted rules were not actually “rules of the game”, they nevertheless constituted “internal” rules which were being tested in the light of the ordinary law.

**Director of football club resigns over Right-wing party reception (Belgium)**

As the old year turns into the new, political and other organisations frequently hold New Year’s parties and receptions. In Belgium, the right-wing Vlaams Blok decided to hold theirs in the business suite of the stadium which accommodates First Division football club KRC Genk. This has prompted the resignation of one of Genk’s directors, Jean-Claude Van Rode, who is Chairman of the ABVV trade union for the relevant province, i.e. Limburg. He found it unacceptable that this party, which has highly controversial policies on such matters as race and immigration, could be treated as any other political grouping would. Because the club’s supporters represented a cross-section of various cultures, this could not, in his view, be reconciled with the presence of this party on the club’s premises.

The club’s Chief Executive, Louis Croonen, on the other hand, stressed that the club was non-political and based on the idea of mutual tolerance – in fact, it was in the process of drafting a charter of ethical values along the lines of those already adopted by Manchester United and Glasgow Celtic.

**UK sports lawyers tending to converge into “powerhouses”**

According to a recent newspaper report, British sports lawyers are following the trend of football agents whereby the best exponents of the medium converge to form a small number of “powerhouse” companies. Thus Mel Goldberg, whose clients include John Fashanu, Chris Eubank and Joe Calzaghe, has joined forces with eminent sports lawyer Nick Bitel, who attends to the legal needs of the All England Club, the Ryder Cup, and the London Marathon, at City firm Max Bitel Green.

**Medico-legal issues examined in Australian law journal**

The link between health and sport is one which the medical profession has recognised for some time. Although this area is fraught with legal implications, little attention has been given to this aspect amongst Australian academics – which is why this contribution by Hayden Opie, of the University of Melbourne, is particularly welcome. He examines successively the following areas of relevance:

**(a) Liability for injury:** under this heading, he analyses first of all the subject of claims made against medical practitioners, and expresses his surprise at the relative scarcity of litigation in this field. The position is quite different, however, in relation to sports injury litigation as such, which has spawned a large number of court cases covering various sports, some of which have been featured in previous issues of this organ. He draws an interesting parallel with product liability when discussing some of these decisions. Thus in relation to the decision in *Agar v. Hyde*¹⁶, he examines the claim made by the plaintiff that the Rugby Union governing body had incurred liability for serious injuries suffered by players in club competitions, in that it owed these players a duty of care in negligence to amend the rules of the game in order to remove unnecessary risks. This, claims the author, is the equivalent of pleading a design fault under product liability. This prompts him to question the dismissal of the action by the High Court, alleging that the latter failed to explore the meaning of the expression “responsibility for inherent risk”. He points out that the incidents giving rise to the litigation occurred in 1986 and 1987, just before the introduction of the “crouch-touch-pause-engage” (CTPE) formation which was intended to reduce the incidence of the kind of injury incurred by the claimants. Prior to that, concern had been rising in the relevant medical and scientific literature at the increasing number of spinal cord injuries resulting from rugby scrums, particularly by rugby forwards. The author clearly feels that the rugby authorities responded too slowly to this concern, and that the plaintiffs therefore had an arguable case. As a result of the High Court decision, participants are, in the author’s view, largely on their own in terms of their protection against this type of “design faults”.

**(b) Infectious diseases.** On this topic, the author draws attention to the revelation by US basketball player Magic Johnson in 1992 that he had contracted HIV, and the furore which resulted when some Australian players expressed misgivings about playing against him during the Barcelona Olympics. He adds that hepatitis B and C could present even more serious public health
problems. This raises the thorny legal question as to whether players suffering such diseases could be excluded from sporting participation – particularly in the light of existing anti-discrimination legislation. In this context the author focuses on a case in which a Victorian footballer, who was HIV positive but otherwise in perfectly good health, was banned from competing in an amateur league. The association which issued the ban admitted that the refusal to register the player was discriminatory, but pleaded Section 65 of the 1995 Equal Opportunities Act, which allowed discrimination which was reasonably necessary to protect the health or safety of persons. The Victoria Equal Opportunities Tribunal proposed a risk assessment which involved answering seven relevant questions, and on the basis of this assessment concluded that the risk to other players by the infected player was so low that it had not been reasonably necessary to ban him. A subsequent action brought by the player for damages and court costs was, however, dismissed.

(c) The pregnant athlete. Time was when an athlete’s pregnancy virtually put an end to her career. However, advances in medical science are such that this outcome is no longer necessary – subject, of course, to appropriate medical management. This may have legal implications in the following circumstances (i) where the athlete is not provided with adequate information about the attendant risks, and consequently participates and she or the foetus is injured; (ii) an error has been made in assessing the athlete’s health, and the woman is cleared to participate, as a result of which either she or the foetus suffers injury, and (iii) the athlete competes against the medical advice provided – can she be banned from competition, and who will be liable towards the foetus should it be injured?

The first two questions raise relatively straightforward issues of negligence. However, injury to the foetus raises more problematical issues. There are four potential targets for any claims in tort arising from them: the athlete herself, her doctor, the organisers of the event at which the foetus is injured, or a fellow-participant at the event who caused the injury. As regards the last three categories of potential defendant, there is a lack of specific precedents, which makes this a somewhat speculative area for discussion. On the mother’s liability towards the unborn child arising from her participation in sport, some commentators claim the existence of a precedent in the shape of a decision by the New South Wales Court of Appeal. This was a case in which a child successfully sued her mother for pre-natal injury, claiming that the actions of the mother which gave rise to a car accident responsible for this injury were negligent. However, the author points out that the Court emphatically restricted the scope of its decision to injuries arising from motor vehicle accidents, and refrained from making this ruling generally applicable to all forms of physical activity. The issue therefore remains, in the author’s view, an open and controversial one.

(d) Performance-enhancing drugs. Here, the author homes in on the legal implications of the situation which arises where an athlete claims to need a prohibited performance-enhancing drug for a bona fide therapeutic reason. He concludes that there is sufficient authority for the view that where such a claim can be proven, use of the drug in question should be allowed. The position of asthmatic athletes has for some time been the focus of attention in this respect. Some treatments for this illness take the form of prohibited performance enhancers – either as respiratory stimulants or anabolic agents. However, the problem to which this may give rise has been solved by identifying treatments which, under specific prescription and method of administration, do not produce an performance-enhancing effects. Nevertheless, there are other medical conditions which are more problematical in this regard.

(e) Gender Status. The problems to which the gender status of athletes give rise have arisen principally in two areas: (i) attempts to eliminate the practice whereby male athletes impersonate female status, thus gaining an unwarranted advantage over other competitors in women-only events, and (ii) participation by transsexuals. As regards the former, it is now generally accepted that various medical tests aimed at establishing the gender of athletes are both unproductive and demeaning, which is why they have been abandoned as a general measure at such events as the Olympic Games. The issue of transsexuals participating in sporting events presents more serious legal problems. The author establishes that the position is unresolved at the common law, and that the anti-discriminatory legislation adopted at the state level on this subject gives rise to as many problems as it solves.

The author’s general conclusion is that many of the legal outcomes to the problems referred to above are strongly influenced by advances in medical science and by medical evidence. It will require greater levels of mutual understanding of these issues between the medical and legal professions if effective health and risk management policies are to be developed in the world of sport. Sports administrators and health professionals will view the interest which the law has in protecting human rights as an irritating obstacle. However, the author insists that such protection is a crucial element of a free and democratic society, and that it has been
demonstrated that anti-discrimination law has an increasing part to play in the medico-legal arena.

**Is Olympic supremo Rogge as “clean” as he is made out to be?**

One of the main virtues attributed to the appointment of Dr. Jacques Rogge as the new President of the International Olympic Committee (IOC) was his image of integrity and competence – as opposed to some of his predecessors this column is too polite to mention. However, some recent developments have cast doubts on this image and may leave the sporting world wondering whether Jacques “Mr. Clean” Rogge is in fact all that he is claimed to be.

**“Letter to Mr Clean”**

27 April 1976. The dark yellow Mini disappears from my sight, and I give it one last wave. The young man driving the Mini is about to make the journey from Deurne to Ghent in order to have an injured tendon treated by a sports doctor in Ghent, whose star is gently in the ascendant. A few hours later, the telephone rings – the young man in question has been admitted to the Ghent University Hospital (UZ) where “they are trying to pull him through”. A further couple of hours later I am the stunned observer of a scene in which a scrum of doctors are pinching and pricking his beautiful athletic body without obtaining the desired pain reaction. He is in a coma.

Then ten days of sheer hell, waiting for just one pupil reaction, the batting of an eyelid, a contraction of the hand, the almost imperceptible trembling of a muscle, a sigh, any sign of life resuming its course. Ten days accompanied by the sucking sound of the breathing apparatus and the nervous sound of the beeping heartbeat. Then – that eternal silence. Ten days which were also marked by the almost total absence of the famous doctor – with the exception of the question, asked on the first day, which was “is your husband allergic?”, and, on the final day, a handshake accompanied by a mumbled expression of condolence. Then – silence, lasting 25 years.

Mr. Rogge, from your interview with Humo, which I read with a few weeks’ delay since I no longer live in Belgium, I am pleased to conclude that you can at least still remember the death of your husband. You may also therefore remember the precise circumstances in which he died, as well as the name of the product with which you injected him in order to nurse his tendon back to health. Was it Cortisone, Infiltrina DMSO, or – whatever? A number of products have been named from various sources. My husband, who could have told me, was silenced very effectively, whilst you yourself have maintained a terrified silence for 25 years. I received no reply to my recent request to consult the medical file in the Ghent University Hospital. I have, however, been informed that it is in your possession.

Mr. Rogge, I can still vividly recall the question which you addressed to me on the day of the accident, and which was “Is your husband allergic?”. My husband was indeed allergic, a condition which sometimes found expression in the problems which he had with his respiratory organs. A somewhat belated question, addressed to the wrong person, I would have thought. Just as vivid in my memory is your reply, which was “Ah, that explains it” or words to that effect. I can only hope that, after 27 April 1976, you addressed this question to your patients first, before treating them with certain types of medication.

I am also pleased to note that you do not consider yourself guilty, because I can assure you that there are no greater banes in one’s life than festering feelings of guilt. To this day I keep blaming myself for failing to react with greater urgency. In spite of all the crushing sadness which mentally disabled me for some considerable time, and the advice given to me that I should let the matter rest – on grounds of lack of evidence and the prospect of a hopelessly exhausting battle which was virtually certain to serve no purpose – I still regret having failed to make all hell break loose.

Don’t worry, Mr. Rogge, it is not my intention to disrupt your fine career. It is not in my nature to hit back with certain types of medication.

1. General
current position. However, in that Humo interview you kept your head safely below the parapet, neatly side-stepping the more pesky questions – it would seem that keeping your “Mr. Clean” image is the most important consideration as far as you are concerned.

I continue to love sport and still enjoy the Olympic Games. When seeing the present generation of somewhat bony sprinters haring across the athletics track, I cannot help thinking of my handsome and promising athlete Romain Roels. However, I will switch to another channel for the opening and closing ceremonies of the forthcoming Games. You will probably understand why.

In the meantime, my life has taken many different turns and I have found a new balance which I insist on guarding anxiously. Happiness is a very fragile commodity and can very easily slip from one’s grasp. Sometimes it only takes a visit to the doctor’s”.
2. Criminal Law

Corruption in Sport

The Sepp Blatter affair
That all is not well in the ranks of FIFA, the world governing body of football, is a fact which has been known to regular readers of this journal, judging by, inter alia, the ignominious collapse of its ISL marketing company, which was extensively covered in the previous two issues of this organ. However, the troubles besetting it have hitherto smacked more of rank incompetence than of corruption. It seems that even this illusion is about to be brutally shattered as a result of recent enquiries and investigations into FIFA’s finances. More particularly, the accusations are focused on one man – its much-criticised President, Sepp Blatter.

The first suspicions of financial chicanery within the organisation came in early December 2001. According to a secret report consisting in a review of FIFA’s finances prepared by KPMG, its Zürich-based auditors, which was leaked to the British newspaper The Daily Telegraph, the firm revealed that FIFA suffered losses amounting to around £27 million during the first six months of the year 2001.

Moreover, the report made it clear that the firm had not carried out a full audit, and that accordingly its contents “provide less assurance than an audit”. This seemed to indicate that the auditors were not able to obtain all the relevant facts and figures on which to base a full audit. The report in question was the result of the pledge made by Blatter at the extraordinary FIFA congress held in Buenos Aires in July last year that an audit of the organisation’s finances would be carried out, coupled with an assurance that FIFA would not lose more than £21 million as a result of the collapse of ISL. However, KPMG revealed that in the accounts for 31/12/2000 (which were prepared after the demise of ISL) FIFA had made provision for more than twice that amount. In their report, the auditors felt that they could not categorically state whether even this amount would be sufficient, and although since then they have been provided with more information making them more comfortable with this provision, their verdict was that:

“due to the inherent uncertainties of such bankruptcy cases, the overall implications of ISL’s bankruptcy for FIFA may only be assessed once bankruptcy proceedings are completed”.

In other words, it was impossible to tell what the final loss suffered by FIFA would be. There was also a question mark over the financial implications of the cancellation of the World Club Championship, one of Blatter’s pet projects. Originally, this was to have been held in Spain during the summer, with Blatter proudly announcing a deal with Traffic, the Brazilian marketing company, for television and marketing rights which were believed to be worth around £45 million for the next three editions of this competition. The auditors noted that £15 million of this had been paid in advance to FIFA, of which £3.5 million was paid out to the clubs due to participate. However, FIFA then became involved in a dispute with Traffic, and here again the auditors noted that the effect of this matter on FIFA’s finances was uncertain.

Clearly, then, Blatter had a good deal of explaining to do – and a good deal of money to account for. A few days later, the European governing body UEFA held a secret meeting which resulted in a demand on its representatives’ part that FIFA should open the books. This demand was tabled at the FIFA Executive Committee meeting held in mid-December. More particularly the UEFA treasurer, Mathieu Sprengers, who had grilled Blatter about the state of FIFA’s finances at the extraordinary Buenos Aires meeting referred to earlier, tabled a communication raising five areas of concern, and demanded to know why the full audit which had been promised by Blatter at that meeting had not materialised. He also wished to know what were the losses FIFA had incurred from their various tournaments, since it was known that the organisation made a loss on every one of its ventures with the exception of the World Cup. The general concern was that the parlous state of FIFA’s finances could adversely affect the next two World Cup tournaments. Once again, Blatter was evasive in his replies.

Undeterred by the storm gathering around him, Blatter confidently announced his intention to stand for re-election as FIFA President in early January of this year. He did so in an ethically questionable way, by announcing that in fact he could not, under the rules as they stood, be considered as an official candidate for at least another ten weeks, but that he was merely responding “to the 100 national associations who have written to me and appealed to me to continue”. This was the perfect example of the way in which he operates: the artful politician who ensured that he would receive maximum coverage without infringing any of the relevant conventions or regulations during the build-up to the election, to be held in Korea on 29/5/2002. Just days after this announcement, 13 members of FIFA’s executive wrote to Blatter demanding a full independent audit of the organisation’s accounts as concern over its financial position mounted. The letter was prompted by a general sense of dissatisfaction by Executive members in relation to the KPMG report referred to earlier, and it was considered that Blatter would feel himself under greater pressure to respond now that he had “announced” his candidature for re-election.

Meanwhile, the role played by Blatter during the aftermath of the ISL collapse continued to give cause for disquiet. It will be recalled that following the ISL bankruptcy, the World Cup television rights contracts had been transferred to FIFA’s other world-wide agents, Kirch,
in order to complete the deals. However, some former ISL executives claimed that Blatter had no right to take back the World Cup contracts – most of which had been completed – without paying the agreed 15 per cent commission. This was particularly serious since this fee, which was estimated at £33.3 million, was crucial in the effort to repay the many creditors of ISL. Thus the defunct company was claiming that it did most of the work, but that in spite of this FIFA was not being required to pay anything in return. Ernst and Young, who handled the ISL bankruptcy, were in the best position to judge whether in fact Blatter was legally entitled to reclaim ISL's World Cup business, but have thus far failed to make a pronouncement on this matter. KirchMedia, for its part, claimed that both the ISL and Kirch contracts contained a clause giving the other company the option of taking over the World Cup deals if one of them went bankrupt.

In later February, Blatter ran into more trouble when a British newspaper, the Daily Mail, published the results of an investigation it had carried out into the inner workings of the organisation. Its findings purported to reveal:

- that bribes of $100,000 were offered in order to persuade FIFA delegates to vote for Blatter in the 1998 presidential elections;
- that no fewer than 18 votes pledged to UEFA President Lennart Johansson ultimately ended in the Blatter camp after Arab backers knocked on hotel doors late at night;
- the tortuous trail that saw Blatter emerge as the President, as well as the “jobs for the boys” culture keeping him and his placemen in charge of the world governing body.

To this were added accusations against Blatter of bribery over the transfer of World Cup rights from ISL to KirchMedia, and claims that he had lied about the debts which had brought FIFA to the brink of financial disaster, as detailed above. More particularly UEFA treasurer Mathieu Sprengers claimed that Blatter had played down the serious state of FIFA's finances in a bid to retain his position of power ahead of the forthcoming Presidential elections. Blatter's response was to brush aside these accusations, ascribing them to jockeying for position for the coming election. In the meantime, an extraordinary meeting was called of the FIFA Executive Committee, at which Blatter's critics called for the setting up of an independent panel in order to investigate the body's financial position.

On the eve of this meeting, the Daily Mail made further damaging allegations against the FIFA president, claiming to have in its possession the names of six African countries whose votes were allegedly bought by Blatter's campaign team for the 1998 election. Even more damaging for Blatter were allegations made by Farah Addo, President of the Somali FA, that this plot had been orchestrated by both Blatter himself and his predecessor, Joao Havelange. More specifically Addo claimed that the President of the CECAFA zone, Omar Abou Harraz of Sudan, as well as its Secretary-General S.J. O Bingo and a Vice-President of the Rwandan FA, enjoyed an all-expenses-paid trip courtesy of FIFA and were accommodated at the Paris Montparnasse Hotel for the entire duration of the 1998 World Cup, in return for their contribution towards Blatter's campaign. The total bill for this “junket” was estimated at around $200,000. Addo further revealed that he had refused a $100,000 bribe aimed at switching his vote, and that Havelange and Blatter had pledged a further $800,000 to CECAFA in order to finance the 1999 Regional Cup of Nations, in addition to office equipment. Once again, Blatter denied all these charges.

At the fateful FIFA Executive meeting on 7 March, the Executive voted to establish an internal investigation, in spite of Blatter's undisguised attempts to frustrate this design. Members of FIFA's Finance Committee would be excluded from the ad hoc committee to be set up for this purpose, which was to consist of one member each from the six confederations which make up FIFA, including Scotland's representative David Will. Even that vote was extremely close (12-11), after one of the original 13 members to have tabled the motion changed his mind, and one of Blatter's supporters failed to attend the meeting on grounds of illness. This vote made Blatter’s hold on power even more precarious. Within hours of this decision, rumours began to circulate that certain people within the organisation were engaged in efforts at hiding information damaging to Blatter.

The embattled President hit back immediately, insisting that he had nothing to hide, and launched an attack on those whom he accused of plotting to remove him from office. In an apparent attempt to protect his power base, he made it clear that, should the investigation reveal any serious mismanagement, he would immediately address the entire FIFA Congress for support. Antonio Mattarese, a FIFA Vice-President, gave the assurance that no stone would be left unturned in order to discover the truth.

However, in yet another twist to this sorry saga, it was discovered a few days later that Richard Teixeira, President of the Brazilian Football Confederation, who was one of the members of the ad hoc committee which was to carry out the inquiry was himself under investigation in Brazil for corruption and embezzlement. He had been the subject-matter of two prominent investigations into corruption in Brazilian football which ended the previous year (see below, p.21). As one
Brazilian media commentator put it, it seemed that once again the fox was being put in charge of the chickens.

Just before this journal went to press, yet another skeleton seemed to have been hauled from the FIFA President’s cupboard – this time in the shape of question marks over his flagship GOAL project. This scheme is hailed by FIFA as an enormous success in bringing soccer facilities to the poorer parts of the world. However, major question marks have emerged over some of the projects carried out under the scheme. Thus it emerged that the construction of one pitch on the tiny island of Montserrat, and another in the Bahamas, cost a staggering £400,000 each. The oil-rich state of Bahrain has also been a beneficiary of the scheme, as have almost all Central American states. Interestingly, the only exception to this was Mexico, which just happened to be fielding its own candidate to oppose Blatter ally Jack Warner for the presidential elections to the Central American and Caribbean Confederation later this year. Coincidentally or not, the regional GOAL office is in Trinidad (Port of Spain) and headed by Warner’s long-term colleague, Keith Look Loy.

In addition, many of the African countries which supported Blatter in his bid for election in 1998 have also been beneficiaries of the scheme. However, plans to award GOAL money to Somalia were withdrawn by Blatter ally Mohammed Bin Hammam – which may be not entirely unconnected with the fact that, as reported earlier, the president of its Football Association, Farah Addo, had allegedly refused a $100,000 bribe to switch his vote to Blatter (see above, p.17). Addo commented on the affair in the following terms:

“The GOAL project is open to abuse either by the top leadership, or by the people who administer it. In principle, the GOAL money should go to countries which need development but now it is being used to influence people. Somalia was on the list of approved projects, presented by the CAF (the African Confederation) and myself. Then we were postponed by Bin Hammam and his committee. We are very angry. I denounce this.”

It goes without saying that this column will follow the dénouement of this saga with the keenest of interest.

Cricket corruption scandal – an update

General developments
In February 2001, amid signs that the cricketing authorities seemed to be winning the battle against corruption, the stringent new measures aimed at preventing a recurrence of past malpractices were put into place for the first time in Test cricket. With Sarjah being installed as the newest, and 83rd, test venue, the Pakistan v. West Indies fixture played there provided a possible blueprint for the anti-corruption plans being implemented by the International Cricket Council (ICC). The whole exercise, however, will not be cheap, with attendant costs being expected to exceed £3.5 million over the next three years.

Five new full-time security officers have been appointed in order to patrol world cricket, and they are overseen by a new anti-corruption co-ordinator based at Lord’s. These officers will liaise with the existing Anti-Corruption Unit (ACU). Closed circuit television cameras point towards the dressing room, mobile telephones are banned except for those used by the team managers, the names of visitors to the dressing rooms are vetted and listed, lobby traffic in team hotels is scrutinised, telephone calls are monitored, all passes must carry a photo-identity, and there is a hotline to the ACU.

Although the officers in charge claim that the measures in question are not unnecessarily intrusive on the players, West Indies batsman Carl Hooper was only one of several players who felt that their privacy had been invaded. Generally, however, there was a recognition that they were necessary in order to start the long-term process of repairing the long-term damage caused by the Hansie Cronjes of this world on the noble sport. Speaking of whom…

End of the road for Cronje
As was reported in the previous issue, the decision by the Pretoria High Court to dismiss the appeal brought by disgraced former test captain Hansie Cronje against the life ban imposed on him for his part in the bribery scandal seemed to have put paid to his chances of ever darkening a cricket pitch again. However, the new year was hardly four days old when Percy Sonn, the controversial new President of the United Cricket Board (UCB) of South Africa, stated that he would be prepared at some stage in the future to lift the life ban imposed on Cronje in 1999.

This news was, however, received with dismay at the ICC, whose efforts to stamp out this cancer eating away at the game are detailed in the previous section. ICC President Malcolm Gray stated that:

“Cronje’s life ban has been confirmed by the ICC’s Code of Conduct Commission. Any move to lessen that penalty in South Africa would still have to be dealt with again by the Code of Conduct Commission. It has to go through that formal process, and I am not saying what the outcome would be. But the general mood within the ICC strongly supports the life ban that has been imposed on Hansie Cronje”
Sonn’s change of heart seemed all the more astonishing since, whilst the said appeal before the Pretoria court was grinding through its procedures, he had stated that Cronje would not “even be allowed to play beach cricket again”. He explained his about-turn by pointing out that Cronje had been working with disabled cricketers and had shown suitable remorse. Cronje for his part has at no time said that he wished to resume his test career, but indicated a desire to coach and cover cricket in the media. The UCB had insisted that Cronje’s ban should include access to media areas at grounds controlled by it, and coaching at any club or school within the official South African cricketing system.

However, any hopes Cronje may have entertained of redemption were dashed a week later, when a statement issued by the UCB precluded any possibility of the ban being lifted.

**Is murder part and parcel of illegal cricket betting?**

It may be recalled from a previous issue that Hanif Cadbury, a well-known figure in betting and cricketing circles in South Africa, was reputed to have been cricket corruption’s first murder victim. That the problem may be even more deep-seated, to the point of being an integral part of the cricketing underworld, more particularly in India, was revealed by the results of a special investigation published in The Daily Telegraph in mid-December 2001.

The sheer volumes of cash changing hands in illegal cricket betting are truly astronomical, with the three-match one-day series between India and England late last year being estimated to have accounted for some £420 million. The bets are placed by mobile phone, with punters paying for running commentary on the match. These bets are illegal because Indian legislation only allows betting to take place at racecourses.

This is naturally an environment in which the most extreme forms of crime could flourish, and according to one bookmaker, the gang warfare involved had already accounted for 19 murders. Apparently the bookmaker who imparted this information had himself been under threat and required protection by two armed men wherever he went.

**Does FIFA official’s on-line betting venture involve a conflict of interests?**

In mid-December 2001, it was announced that Chuck Blazer, a prominent FIFA official had established an on-line gambling business which plans to take bets on the outcome of fixtures in this year’s football World Cup. For this purpose, Mr. Blazer had entered into a partnership with Kirch Media, the company which markets television rights on FIFA’s behalf (supra, p.17).

This alliance raised concerns about the possibility of a conflict of interests and profit-taking at the highest levels of world football. As a member of the FIFA’s ruling body, Blazer is responsible for overseeing the marketing by Kirch of World Cup broadcasts. His partnership with the same company to share in gambling profits from the same broadcasts could divide his loyalties. Bettors using this service to gamble on World Cup matches may feel that they should be advised that a senior FIFA official has a financial interest in their bet.

In order to entice the public into patronising its services, the company concerned, called Global Interactive Gaming Ltd., is offering what it describes as the world’s first live action interactive betting service. Customers are even able to place bets during the seconds which elapse between a free kick being awarded and the player who takes it scoring (or failing to). They will also be able to place bets on the timing of the next goal, or throw-in awarded. It is based in London’s Centre Point tower block, and is jointly owned by Kirch subsidiary Prism Ventures and an American group, Multisports Games Development Inc., registered in the state of Delaware, where companies are not compelled to disclose detailed financial records and ownership. Its promotional literature fails to mention that Mr. Blazer is the sole owner of Multisports. In addition, Telewest, the cable company which is contracted to supply the betting service to over one million homes in the UK, has also omitted Blazer’s name from Press handouts.

Blazer has denied the existence of any conflict of interests because the results of World Cup fixtures were irrelevant to the company’s profits. He explained that all the stakes are placed in a pool from which the winners receive their pay-outs, with five or six per cent of the money involved going to the company; therefore the latter did not take the risks assumed by conventional bookmakers. He also claimed that as soon as the company had been set up, he informed FIFA thereof and has since refrained from voting at the Executive Committee meeting at which Kirch had been the subject for discussion. He dismissed suggestions that he should have made a choice between remaining a FIFA official and becoming the operator of a gambling company.

The FIFA official also confirmed that discussions had taken place at the highest level of the world governing body on the possibility of financing the latter’s costly new internet strategy with money emanating from soccer gambling. A plan to that effect had been submitted to FIFA the previous year which suggested that a possible £45 million stood to be made from a link to a gambling site from FIFA’s planned World Cup internet site. He denied, however, that this idea had been emanated from him, or that he had ever contemplated that his company would bid for this lucrative link. Unsurprisingly, however, this plan...
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has run into obloquy from a number of FIFA members, particularly those from Asia where – as cricket enthusiasts are only too well aware – sport has for years been beset with the attentions of unscrupulous bookmakers. The day after these revelations were made, the beleaguered FIFA Presidet Sepp Blatter undertook to investigate the entire matter. He claimed that Blazer had telephoned him at 3 am from New York the previous day in order to inform him that he had set up the gambling company in question, and that this was the first that he (Blatter) had known of this matter. This appears to conflict with Blazer’s claim that he had informed FIFA of the company’s formation. Blatter even talked about drawing up a code of conduct in order to enable Executive Committee members to avoid such situations.

However, the credibility of this pledge was undermined by the disclosure of the manner in which FIFA had resolved the Jack Warner question, the earlier developments of which are featured in the previous issue of this journal. Warner, a FIFA Vice-President from Trinidad – who has turned out to be a close associate of Blazer – had acquired Caribbean rights to the next two World Cup competitions (2006 and 2010). This disclosure also gave rise to concerns about conflicts of interest. As a result of the ensuing outcry, FIFA agreed to increase payments to the 32 teams involved in this year’s World Cup tournaments. This hardly amounted to a measure in keeping with the blood-curdling noises made by Blatter about the manner in which he was going to deal with this blatantly corrupt situation. It also leaves the public less than confident that the Blazer issue will be dealt with as firmly as the case merits.

Corruption rears its ugly head in the Sport of Kings

It may seem somewhat surprising that a sport such as racing, which has the potential for a wide range of malpractices in view of its almost inherent link with the gambling industry, has hitherto remained relatively free from any large-scale corruption. However, even this happy state of affairs may soon belong to the past as irrevocably as plastic raincoats and ear trumpets, if some recent developments are anything to judge by.

In February 2001, the news broke that John Egan, the Irish Flat jockey who until recently was based in Newmarket, was among 19 people from the Hong Kong racing community arrested in an operation conducted by the country’s powerful Anti-Corruption Unit (ACU) aimed against suspected race-fixing. Egan was himself already serving a two-month suspension for misleading the stewards in an inquiry. (Several top British jockeys who were also serving a two-month suspension for misleading the stewards in an inquiry.) Robbie Fradd, the South African-born champion jockey, was also named amongst those held under this operation. The results of the crackdown were not yet known at the time of writing.

The next month brought more news of alleged corruption in the sport – this time closer to home but linked to the Hong Kong operation – when it was disclosed that police were investigating leading jockeys and trainers in Britain as part of a top-secret inquiry into corruption and race-fixing. This was confirmed by the Greater Manchester Police (GMP), who were heading the investigation. They fear that the feared Chinese mafia, the Triads, may have infiltrated British racing, and were therefore co-operating closely with the Hong Kong Jockey Club, who had been assisting the ACU with the operation described above. Police were believed to have the names of five jockeys and their Triad connections. This followed repeated sightings of top jockeys with known Triad members in restaurants and nightclubs, as well as – more worryingly – in the hospitality boxes of various racecourses at major meetings the previous summer.

The Jockey Club had already warned the country’s leading jockeys of the dangers of associating with known “undesirables”. Licensing Committee Chairman Gurney Sheppard claims that on more than one occasion, jockeys have found themselves compromised after accepting favours such as “holidays and nights out on the town”. This had prompted him to write a letter to leading jockeys reminding them “of the dangers of regularly meeting with (sic) people who might wish to corrupt horse racing”.

Brazil’s corrupt football hierarchy exposed in Congressional investigation

The rulers of “the beautiful game” in Brazil – where the sport achieves even higher levels of deification than in this country – have for a long time now been regarded as symbols of authoritarianism and impunity, as well as being one of the last of the country’s institutions to be unaffected by the modernisation process which has occurred ever since the old dictatorship fell 17 years ago. That a top-level investigation was able to be held into its inner workings, and to produce a damning verdict for its corrupt autocrats, can itself be regarded as a major triumph for the progress recorded by Brazilian democracy.

As readers of this column may recall, the first attempts by the Brazilian Congress (Parliament) to investigate the upper echelons of Brazilian football date from the controversy surrounding striker Ronaldo’s poor performance in the 1998 World Cup Final, in which it was suggested that he was in fact unfit and had taken the field purely because of outside commercial pressures. However, it was only after a string of abysmal results
by the national team, which culminated in its defeat in the 2000 Olympics, that public opinion had become sufficiently enraged to demand a public inquiry.

The main target of the report is the President of the Brazilian Football Confederation (CBF), Ricardo Teixeira, against whom accusations run to over 300 pages. For the past five years he has been regarded as a national villain who angered the Brazilian public by selling the national team to Nike. (The controversy surrounding the Ronaldo affair referred to earlier was fuelled mainly by the suspicion that the Brazilian striker had been fielded because of pressures emanating from the sportswear firm). Even though the Nike deal enriched the CBF by some $160 million, the enquiry chairman found that the Confederation's finances were in a state close to bankruptcy. Thanks to the unprecedented powers conferred on the investigators, they were able to consult the Confederation's bank, tax and telephone records. These revealed that, although the CBF Articles of Association prohibited the Confederation from paying salaries, Teixeira had pocketed £150,000 in 2000, whilst the General Secretary – who just happened to be his uncle – received £120,000.

The report also claims that on several other occasions, Teixeira misappropriated CBF funds amounting to hundreds of thousands of pounds. In addition, it reveals how the CBF bought power and influence by funding political campaigns and arranging for five senior judges and their spouses to attend the 1998 World Cup – taking in visits to London, Budapest, Prague, New York and Los Angeles en route. Teixeira was also found to have concluded a £28 million deal with a soft-drinks company. He subsequently announced that £5 million thereof would be paid to a "middle man" who turned out to be a close friend and former business partner. Not that Teixeira was the only leading light of Brazilian football to have been "caught bending" by the inquiry. Other indicted figures included:

- Eduarndo Jose Farah, President of the Sao Paolo Football Federation, an eccentric figure famous for his innovations such as basketball-style "time-outs" during games and the use of white spray for marking out the distance by which players must retreat at free-kicks. He is accused of taking a $1.2 million backhander from a transfer deal involving Polish player Mariusz Piekarski.

- Eurico Miranda, President of leading club Vasco de Gama, who is alleged to have misappropriated £6 million from the club coffers. The club is currently bankrupt and owes its players outstanding wages going back several months (the star international Romario being owed approximately £4 million).

- Edmundo Silva, President of the Flamengo club, who broke down in tears during his appearance before the investigators begging the latter not to "treat him like a common criminal". He is alleged to have taking a backhander from the transfer of Yugoslav player Dejan Petkovic from Italian club Venezia.

- Wanderley Luxemburgo, former national coach and currently manager of leading club Corinthians, who conceded to the inquiry that he has lived most of his life with a forged birth certificate showing that he is three years younger than his actual age.

The report concludes by calling for the prosecution of 16 leading football directors. Presenting the 1600-page investigation findings in Brasilia in December 2001, inquiry chairman Alvaro Dias described the CBF as being " truly a den of crime, revealing disorganisation, anarchy, incompetence and dishonesty". A more damning indictment of the sport's governing body it is hard to imagine.

**Rugby stewards accused of ticket touting**

In February of this year, an investigation conducted by the Daily Mail newspaper led to accusations that ground staff at Twickenham, the headquarters of the Rugby Football Union, were regularly selling their identity documents to fans desperate to see Six Nations Tournament matches. In one particular incident, the reporter in question witnessed a man offering red ground staff wristbands to ticketless fans at £100 each just hours before the England v. Ireland fixture. The implications went beyond considerations of public morality to include issues of crowd safety, for if the bands in question emanated from those who should have been stewarding the 75,000 crowd, who was performing this task in their absence?

The reporter also posed as a fan seeking to buy match tickets on the black market. He quickly discovered that many of the tickets on sale from the seasoned ticket touts were those which had been allocated by rugby clubs throughout the country in ticket ballots. He also found that many of the touts were not interested in selling to punters on the street, but were feeding a large internal market of unofficial agencies whose clients were ready and waiting.

Enquiring what the penalties were for any clubs ad/or individuals known to have parted with their tickets on such dishonourable terms, the reporter found that these ranged from reduced ticket allocations to downright ostracism. However, he also learned that the RFU has drawn up secret proposals aimed at dealing with the problem more effectively.
Show jumping executive suspended pending inquiry  
Shortly before this issue went to press, it was learned that Jacky Wood, Chief Executive of the British Show Jumping Association (BSJA), had been suspended pending an inquiry at Stoneleigh, Warwickshire. The allegations concerned payments made to affiliated shows as well as bonuses awarded to staff at Christmas. It is hoped to be able to report on the outcome of this investigation in the next issue.

Belarus goalkeeper accuses team-mates of taking bribes  
In December 2001, Gennady Tumilovich, goalkeeper of the Belarus national football team, alleged that his team-mates took bribes in order to engineer defeat by 1-0 in their World Cup qualifying tie against Wales. As a result of the tie, Ukraine reached the play-offs. Tumilovich claims that some players were offered material gifts and were at best “going through the motions”.

Accusations of corruption in Chinese football  
As China prepared for their first-ever appearance in the soccer World Cup finals, the reputation of their domestic game was being besmirched by match-fixing allegations. More particularly businessman Li Shufu, owner of the Guangzhou Jili club, and Song Wei Ping, director of Zhejiang Lucheng, have made public confessions to that effect, the latter claiming that, for important games, he handed over “six-figure sums”. Li for his part claimed that money changed hands in 70-80 per cent of all matches.

Belgian FA threatens legal proceedings over bribery claims  
In December 2001, Daniel Leclercq, the former manager of Belgian football club La Louvière, caused a stir in Belgian footballing circles by claiming that matches were being regularly “thrown” in that country. Although he was not the first to make such allegations, he had failed to produce concrete facts with which to substantiate his allegations. This was not to the taste of Belgian Football Association’s lawyers to invite Leclercq for an interview at which he will be required to provide names, dates and matches to which his allegations relate. Should these not be forthcoming, Peeters has threatened retribution ranging from suspension by the Association to an action in defamation.

English FA upbraided over inaction in York City “asset stripping” affair  
Some time ago, the English Football Association (FA) adopted a rule designed to protect football clubs against asset strippers by laying down that, where a club is wound up and its assets sold, any surplus is to be paid not to the shareholders, but to other sporting or charitable institutions. However, it would seem that the Chairman of Nationwide League club York City, currently in dire financial trouble, has found a loophole in these rules enabling him to circumvent these safeguards. Worse still it appears that the FA has been a good deal less than energetic in its response to this manoeuvre.

In 1999, the Chairman in question, Douglas Craig, wrote to all York City shareholders requesting them to endorse a transfer of their shares, as well as the club’s Bootham Crescent stadium, to a holding company, called Bootham Crescent Holdings. He justified this move on the basis that the FA rule referred to above made York City insecure and could adversely affect their ability to remain at Bootham Crescent. The transfer went ahead, and in January of this year, Craig, pleading rising debts at the club, revealed his asking price of £4.5 million for the club and ground – failing which he would sell the ground, probably to property developers. The existence of the holding company meant that the FA rule referred to had been circumvented, and that should the club be wound up and the stadium sold off, the estimated £3.5 million surplus would, once the club’s creditors had been paid, be shared by Craig and his three directors – John Quickfall, Colin Webb and former player Barry Swallow, who together own 94 per cent of the holding company.

The existence of this loophole has been widely criticised, not least by Alan Keen MP, Chairman of the House of Commons All-party Parliamentary Football Group and Malcolm Clarke, Chairman of the Football Supporters’ Association. Yet the FA seem remarkably reluctant to do anything about it. During the same month, investigative reporter David Conn, who writes for The Independent, asked Paul Newman, Head of Communications at the FA, a series of questions about the shortcomings of this rule – which were also communicated to Chief Executive Adam Crozier and FA lawyer Nic Coward. More particularly they were asked whether it was correct that Rule 34(b) was designed to protect clubs and their grounds, and why Coward had recommended only three years previously that the rule was necessary and sufficiently valuable to be retained. Answer came there none. York fans appealing for help have met with the same fate.

The threat to York City materialised in the same week in which the Independent Football Commission (IFC), the game’s new self-regulating body, meets for the first time. The IFC was the result of the tortuous inquiry mounted by the Football Task Force, a Government-appointed body, into the management of the sport. This had produced a majority report in December 1999 calling for a more robust system of regulation, as well as a strengthened Rule 34 aimed at protecting clubs. The football authorities
refused to sign this report, and presented their own, in which they proposed the establishment of an IFC. Over two years later, the IFC has now finally met. It has five members and is chaired by Derek Fraser, the Vice-Chancellor of the University of Teesside, who was selected after a controversial process. Generally speaking, there is a good deal of scepticism about the willingness or ability of this body to bring about any change in the unsatisfactory situation described above.

As for York City, its fans have reacted with considerable purpose and have formally launched a Supporters’ Trust. Together with the City Council and a consortium of businessmen, they have made a constructive offer to Craig and his fellow directors. The offer does not approach the £4.5 million demanded by Craig, but would repay the directors that which they had paid for their shares, possibly with some extra money in recognition of their work. The consortium would also clear City’s debts and guarantee running costs for at least the 2002-2003 season. Whether they will succeed in their rescue attempt remains to be seen.

**Arsenal midfielder in ticket investigation**

In late January 2002, Arsenal FC initiated an investigation into the process whereby tickets purchased by midfielder Ray Parlour for the ill-fated FA Cup tie with Liverpool (which featured the coin-throwing incident related below) found their way onto the black market and were ultimately sold outside the stadium. The seats in question were located in Highbury’s Lower East Stand. It appeared that Parlour had purchased a batch of tickets at their face value of £26 each. Before the match, a student from Dublin acquired three tickets from a black marketeer outside the ground. The student later noted Parlour’s name on the tickets.

The initial reaction by the North London club, which has a strict policy on “touting”, was to maintain that the former England international had acted properly in relation to the cup tie tickets, adding that Parlour had given them to an acquaintance in good faith. The investigation continues.

**Triathlon – a thoroughly corrupt sport? UK newspaper report**

Triathlon is a multidisciplinary competition consisting of swimming, cycling and running events. It was only elevated to Olympic status at the Sydney games of 2000, but already there are sizeable question marks looming over its continued status as an Olympic sport. This follows allegations of widespread corruption and drug-taking at all levels of the competition, which were exposed in a British newspaper report which appeared in mid-December 2001. The issue which has lifted the veil on the apparently sorry state of this competition was the accusation made against the President of the International Triathlon Union (ITU), Les McDonald, that, in a desperate attempt to save the sport’s Olympic status, he attempted to mislead International Olympic Committee (IOC) President Jacques Rogge by suggesting that a court action brought against the ITU had been settled. This claim was hotly disputed by those who had initiated the judicial proceedings.

In a letter issued in September 2001, Dr. Rogge had put the ITU on warning on the grounds that McDonald had ignored IOC attempts to broker a peaceful settlement in order to resolve a lawsuit brought in Canada by the Irish and German triathlon authorities (as well as four other national federations) based on allegations of ballot-rigging and financial mismanagement by the ITU. As a result of this warning letter, McDonald attended a meeting with the IOC in Lausanne, Switzerland, at the conclusion of which the IOC President was quoted as stating that the problems in question were in the process of resolution, and that the cases had been withdrawn.

The man who was instrumental in bringing the court actions is Ron McKnight, President of the Irish federation, and he believes that McDonald has made a fatal error in attempting to mislead the IOC. McKnight initiated proceedings against the ITU after Ireland’s representative, as well as some twelve others, had been refused access to, and voting rights at, the ITU annual conference in Perth, Australia, in April 2000, at which McDonald was re-elected President. According to the lawyer handling the case against the world triathlon body, Christopher Wilson, four of the court actions remain active, i.e. those brought by Ireland, Poland, Costa Rica and Venezuela (Germany having withdrawn after being offered a seat on the ITU Executive Board, as well as a World Cup event in 2002).

It was not only the vote-rigging issue which had concerned McKnight. The latter had become equally concerned at the way in which large sums of money – estimated at a minimum of £500,000 – have been used since 1996. According to ITU accounts, these amounts were set aside in order to pay McDonald and his assistant, Loreen Barnett. The Irish Federation President alleges that at no time were these sums approved by the appropriate authority. Moreover, documents obtained by the newspaper in which these allegations appeared appear to show that this is not the first occasion on which McDonald has been investigated, since he resigned as President of Triathlon Canada in 1996 following an inquiry into the accounts of his organisation. He had been discovered operating a secret bank account together with Barnett, apparently using the six-figure proceeds for his ITU activities.

The ITU is also likely to incur the displeasure of the supreme Olympic body because of alleged inadequacies in its procedures on drug-taking.
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Hooliganism and related issues

The Ninian Park riot and its aftermath (UK)

The riot itself, and immediate reactions
The Third Round of the FA Cup, which is the point at which football’s top sides join the quest for Cup glory, often sets the scene for what the media tend to describe as a “major upset”. This tradition was taken a trifle too literally for comfort by some of the less civilised of the followers of nationwide League side Cardiff City, who marred one of the finest performances by their team in defeating Premiership side Leeds United by a display of mindless hooliganism which threatened to cast the game once again into the abyss of spectator violence which has taken such a toll of its image since the 1970s.

Throughout the match, Leeds players had continuously been struck by objects, including bottles and coins, thrown by Cardiff fans, and at one point referee Andy d’Ursø himself required treatment from the Leeds physiotherapist after being hit on the head. A female Leeds fan also received head wounds as a result of this missile-throwing. The worst crowd trouble, however, arose after the final whistle had gone, with thousands of supporters storming the pitch. The police made four arrests. Leeds player Lee Bowyer was hit by celebrating home fans, who then proceeded to taunt the 2,000-strong contingent of visiting supporters and had to be forced into retreat by police dogs and baton-wielding officers. In addition, the visitors’ team coach was attacked by home supporters after the game.

Leeds manager David O’Leary became involved in a heated argument with Cardiff City owner Sam Hammam, accusing the latter of having incited the trouble by walking round the pitch during the final moments of the game and giving his trademark “ayatollah” salute. (Earlier, Hammam had distinguished himself by ripping a microphone out of a Radio 5 Live tape machine and walking away with it because he objected to the interviewer’s line of questioning.)

No sooner had the dust settled, than the post-mortems began – some a little less thoughtful than others. David O’Leary started by maintaining the splendid tradition now prevalent amongst football managers in blaming the referee for everything from lost matches to the physiotherapist’s car breaking down. Appropriately making his observations at the Press conference called to promote that other monument to managerial self-pity, to wit his book Leeds United on Trial (see below, p.33), he blamed Andy d’Ursø for failing to protect his players, in the following terms:

“It’s in the referee’s charter that he has to protect the players. He was hit by missiles thrown from the crowd and so was the linesman. He should have gathered the players in the middle and ordered an announcement to be made in which he would threaten to take the players off if it (the missile-throwing) continued. Before the game, Cardiff security officials told us to draw the curtains on the team bus and suggested we shouldn’t celebrate if we scored a goal. (…) Sadly, the referee was weak in protecting (my players).”

No doubt had Mr. D’Ursø interrupted the match O’Leary would have criticised him for over-reacting. Earlier, O’Leary had also criticised the referee for the red card issued to Alan Smith during the game.

Perhaps slightly less psychotic was the criticism made of the manner in which the game was policed by the stewards. Although supporters were searched by stewards before they were allowed to enter the ground, various objects including bottles appear to have been smuggled in undetected. Before the match, the club had agreed only to sell drinks served in plastic containers. However, suggestions that the stewards deliberately opened the gates after the final whistle in order to allow Cardiff fans onto the pitch are strongly denied by the club’s authorities. It also must be conceded that even the strictest stewarding cannot prevent coins from being cast onto the pitch (as even David O’Leary admitted a few weeks later).

Some criticism has been levelled at the Football Association (FA) for refusing to meet Sam Hammam’s request to transfer the game to the ultra-modern state-of-the-art Millennium Stadium. However, the latter is also difficult to police and has no segregation fencing. It is true that Ninian Park is an ageing ground lacking some of the technological wizardry found at more modern stadia, but how come there were no such riots in earlier and much less “sophisticated” times?

The aftermath

The criminal investigation and prosecution. A few days after the event, South Wales police had identified 15 to 20 ringleaders of the violence, and sufficient evidence to prosecute 100 offenders, after poring over the closed circuit pictures of the incident. Four men had already been charged with public order offences. Claims that Bristol City fans had infiltrated the ranks of local supporters were proved to be unfounded. Although anyone who ventured onto the field of play at the end of the match was in principle committing an offence, the police concentrated on the most serious infringements.

Embarrassingly for the Ninian Park club, one of the nine hooligans arrested on 11 January as a result of the South Wales police operation was himself a former Cardiff City
player. Dai Thomas, a former Wales Under-21 international, played 36 times for the club, but had been suspended two years ago after having allegedly been filmed as being one of a group of hooligans on the rampage during the 2000 European Championship disturbances in Brussels, and never played for Cardiff City again78. At the Cardiff FA cup tie, he had been caught on camera throwing an advertising hoarding at rival fans and pleaded guilty to one count of threatening and violent behaviour to Cardiff magistrates at a hearing on 17 January79. A few weeks later, he was jailed for 60 days and banned from football grounds in England and Wales for six years80.

Because of the role which – yet again – alcohol seems to have played in the disturbance, the Metropolitan police advised the BBC to move the Cup tie between Arsenal and Liverpool on 27 January from 7 pm to 12 noon81.

Hamman and his entourage under the spotlight. Although it would be churlish to blame the crowd trouble on the Cardiff owner’s custom of walking around the pitch whilst the match is still in progress and giving his famed Ayatollah salute, it was felt that this habit was likely to have an inflammatory effect of the Ninian Park crowd. At first, Hamman defiantly refused to discontinue this practice, on the grounds that (a) he was entitled to walk around his own ground and cheer on the spectators, and (b) the incident in question was not a crowd invasion during the match, but a pitch invasion following the final whistle, which was a long-standing football tradition. He therefore categorically denied that he had been in any way inciting violence82.

However, the next day Hamman agreed to stop this practice after it was revealed that he had been warned before about this matter. More particularly John Nagle, representing the Football League, claimed that three months previously, Hamman had been instructed by letter that the practice should end. This had been prompted by complaints from visiting teams. Although Hamman denied having acted against the League’s wishes and insisted that an arrangement had been found, he agreed to stop his walkabouts83.

The Cardiff City proprietor then incurred some considerable embarrassment when it was revealed that Neil MacNamara, one of his bodyguards, was himself a convicted hooligan. He had been arrested at an away match between Cardiff and Blackpool in March 2000, and appeared before Blackpool magistrates three days later, where he admitted a charge of threatening and abusive behaviour. He was fined £100 and ordered to pay £60 costs, as well as incurring an order banning him from football grounds for 12 months84. This earned him the dubious distinction of being classified as a Category C hooligan – the highest rated group registered with the National Criminal Intelligence Service at Scotland Yard85.

Following this revelation, MacNamara was dismissed from his employment with Unisec Security Services, who claimed that this information was previously unknown to them. Incredibly, Hamman vowed to continue to employ him, claiming that “sometimes in the security business, you need a poacher-turned-gamekeeper”86, and that the convicted hooligan was a “decent man”87.

Action by the football authorities. Obviously the game’s various authorities could not afford to be inactive in relation to this outrage. Particularly the Football Association was always going to be to the forefront of any such action if only, as some cynical observers noted, in order not to endanger negotiations over sponsorship contracts or over the funding of Wembley, which could be endangered by an impression that hooliganism was once again on the march88. Almost immediately after the ill-fated Cup tie, it announced a joint enquiry with the Football Association of Wales – as well as an independent investigation of its own, since the match in question was an FA Cup fixture. The joint enquiry related to issues of safety, security and crowd control, whereas the independent FA investigation was aimed at making decisions on the action to be taken in relation to the rules of the Cup competition. Sam Hamman declared himself prepared to abide by any penalties and measures the FA would decide to impose as a result of this affair, although few doubted that the Cardiff owner’s own rather eccentric behaviour would also attract the interest of the game’s governing body. The behaviour of some Leeds fans was also to be scrutinised89.

A few days later, FA Executive Director David Davies gave an indication that the punitive action would be taken when he stated that the matter would be “dealt with strongly”. Hamman reacted by continuing to suggest that the entire matter had been blown out of all proportion by the media87. Yet in so stating, he appeared to contradict his earlier statement that his club would impose its own punishment on the miscreants and ban them for life89.

At the time of writing, no action had yet been taken.

Does media coverage distort the perception of football hooliganism? Obviously Sam Hamman had his own self-serving reasons for his inverte towards media coverage of these disturbances, described above. Yet other, less subjective, commentators have also expressed the view that our perception of hooliganism is affected by that of the media. Thus Dougie Brimson, former hooligan turned author and film-maker, pointed out that if Sky Sports had not broadcast the Cardiff-Leeds tie live, the incidents there would undoubtedly have attracted little more media attention than similar disturbances that same day at Stamford Bridge and Millwall91. This prompts him to

2. Criminal Law
Missile throwers halt Aberdeen fixture

Unfortunately, hooliganism is no respector of borders – and of little else – so it was with a sigh of resignation that football followers learned of the disturbances at Pittodrie, the hitherto relatively peaceful stadium which accommodates former European Cup winners’ Cup champions Aberdeen FC. In mid-January of this year, missile throwers succeeded in halting the Scottish Premier League fixture between Aberdeen and Glasgow Rangers, the players having been forced to leave the pitch.

The trouble started in the 24th minute of the game when home player Robbie Winters was struck by a missile hurled by Rangers fans as he prepared to take a corner kick. (The proximity in dates with the Cardiff riot described in the previous section suggests yet another lamentable example of “copycat” behaviour.) A group of approximately 30 Aberdeen supporters reacted by charging from their seats and confronting the visitors. As stewards attempted to intervene, referee Martin McCurry decided to lead the players back to the dressing-rooms. Around 50 police officers in riot gear lined up along the part of the ground which housed both sets of supporters until order was restored 17 minutes later. Police made 13 arrests before the game and one during it, and a number of fans needed treatment whilst others were ejected from the stadium.

Naturally this disturbance also galvanized the relevant governing bodies into action. The Scottish Premier League (SPL) immediately launched an inquest whereas the Scottish Football Association announced a fact-finding review. Club officials met local police to discuss the violence. Because the Aberdeen v Rangers fixtures have over the past two decades had what could euphemistically be described as “an atmosphere of their own” – particularly as from the time when the Pittodrie club started to constitute a serious threat to the cosy Rangers/Celtic duopoly – this could not be simply dismissed as a “one-off” disturbance. In fact, Rangers’ Head of Security, Lawrence McIntyre, has admitted that this fixture is more problematical for him than the “old firm” derbies with Glasgow Celtic. Proposals to prevent a recurrence of the violence included noon kick-offs and even banning away fans from frequenting these fixtures. However, the SPL did not indicate any willingness to abandon the controversial Saturday evening kick-offs for those games which are screened on Sky Sports.

Many observers feared that this disturbance would make a serious dent in Scotland’s bid to stage the 2008 European Championships. It was also a sad return for Alex McLeish, a former Aberdeen player, on his first visit to Pittodrie since taking over as Rangers manager from Dick Advocaat in December 2001.

Other incidents involving football hooliganism in Britain

Goodison Park, Liverpool. In early March 2002, Leeds United Chairman Peter Ridsdale was threatened with arrest after he walked across the pitch at the conclusion of the Everton v. Leeds fixture in order to quell a rebellion by incensed travelling fans. Approximately 2,000 Leeds supporters had vented their anger on the side’s youth team coach, former Manchester United star Brian Kidd, blaming the latter for the slump in the Yorkshire club’s performances in recent games.

Craven Cottage, London. In December 2001, a half-empty bottle was thrown at Fulham player Steed Malbranque during the first half of the Fulham v. Everton match. The incident was noted by referee Phil Dowd. (This game also featured an on-field brawl described below, p.106.)

To emphasise his point, he highlights the fact that the football disorder log compiled annually by the National Criminal Intelligence Service (NCIS) (see above, p.25) shows a breathtaking variety of clubs whose fans are involved in violent disorder. These range from the usual suspects, such as Leeds, Chelsea and West Ham, to the more outlandish such as Lincoln City, Watford and Southend. The previous season had witnessed an 8.1 increase in football-related arrests. Particularly disturbing was the rise in “copycat” incidents such as that which was in evidence during the Cardiff match.

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Stamford Bridge, London. In March 2002, Chelsea were faced with the prospect of an FA enquiry after player Gianfranco Zola detained a fan as he charged towards referee Peter Jones during the Premiership fixture with South London neighbours Fulham. Zola had noticed the hooligan running across the field after the referee had awarded a penalty to the visiting side. The Italian star succeeded in catching the fan and handing him over to stewards before he could reach Mr. Jones. 

Earlier, in January, Tottenham Hotspur player Les Ferdinand had been struck by an empty plastic beer bottle and home player Jimmy Floyd Hasselbaink was hit by a coin whilst being treated for injury.

Stadium of Light, Sunderland. In early February 2002, during a Premiership match between Sunderland and Middlesbrough, fans shouted foul and abusive language, bombarded the home side’s dugout with shirts and season tickets, whereas others attempted to make physical contact with the Sunderland manager, Peter Reid. As a result, the club has installed closed-circuit television in order to be able to identify such troublemakers in the future.

White Hart Lane, London. In March 2002, on the occasion of an FA Cup tie between Tottenham Hotspur and Chelsea, linesman Alan Green was struck by a 50p piece hurled from the crowd, and the Chelsea coach was hit by missiles, one of which broke a window.

Sheffield. In late January, Sheffield Wednesday fans complained about “heavy-handed” policing after 12 supporters were arrested during the club’s away Cup tie with Blackburn. Fans clashed briefly with police in riot gear who had filed behind one of the goals 20 minutes before full-time in order to reinforce stewards overseeing the 5,000-strong Sheffield following.

Middlesbrough. The problems which Manchester United have for some time now experienced with troublesome away supporters took its toll again in January of this year, when their ticket allocation for the FA Cup fourth round tie with Middlesbrough at the Riverside Stadium was slashed. Whereas visiting teams normally have 5,000 tickets allocated to them, United on this occasion had to content themselves with 2,400. More particularly this reflects a concern about the number of United supporters who insist on standing during games, which has been highlighted in previous editions of this column. Safety officials were also concerned at the pitch invasion by United fans of the pitch at Villa Park following their team’s 2-3 win against Aston Villa.

Anti-hooligan measures adopted and planned (or not)

Japan and Korea gear up for possible World Cup trouble.

The forthcoming World Cup competition to take place over the coming summer will no doubt be remembered for some outstanding soccer skills. In order to ensure that this, rather than crowd trouble, is the abiding memory of the tournament, the host countries are leaving little to chance in the measures adopted to prevent – and if necessary deal with – any incidents involving hooliganism from visiting supporters, of whom over 350,000 are expected during the competition.

Unfortunately, one of the main focal points for any such action is inevitably any fixture involving the English national team. Accordingly, 700 extra police officers will be on duty for each of England’s three matches in Japan against Sweden, Argentina and Nigeria. Organisers are particularly concerned about the Argentina fixture in Sapporo scheduled for 7 June, and private security guards will be on duty at the stadium as well as police. The Japanese authorities have also requested the English police to provide them with a list of known or potential hooligans in order to prevent them from entering the country. One of the main problems, however, will be the fact that the Japanese authorities have had virtually no experience of street violence since the student riots of the 1970s. The police are used to dealing with any stray miscreants by compelling them to write letters of apology, a measure that might not work with football hooligans.

However, it may be that the problems are less momentous as was at first feared – if only because estimates of the number of English fans travelling to Japan has dropped dramatically from over 10,000 to fewer than 5,000. The high cost of doing so has obviously been one of the factors involved.

Are the courts failing in their duty to impose banning orders?

One of the official measures which has had the most impact on hooligan control has been the Football Disorder Act 2000, which has been featured extensively in these columns, and which gives magistrates wide powers to issue banning orders against known hooligans. However, recently concern has been expressed that the courts are failing to use these powers to the full against convicted troublemakers.

It emerged that although 815 convicted hooligans had been prevented from attending matches since the legislation was introduced, more than 300 had escaped banning orders.

Football clubs were themselves expressing their disenchanted at this development, with Chelsea...
naming and shaming three men convicted for hooliganism in January 2002, but who remained free to attend games.

**Stringent measures taken for Netherlands v. England international.**

Any football fixture involving the presence of Dutch and English football fans in the same stadium will inevitably cause the authorities to take considerable care in attempting to prevent trouble, and the Holland v. England friendly international in Amsterdam in mid-February of this year was no exception.

This was particularly the case as over 1,000 fans were known to have travelled to Amsterdam without a ticket. There were increased fears about this particular fixture because although over 800 banning orders were in force, nearly 400 convicted hooligans eluded this measure because the courts declined to enforce the anti-hooliganism laws against them (see above). In the Ajax stadium, where the match was played, anti-missile netting was installed in the section which was to house the majority of England supporters.

On the day of the match itself, over 60 suspected hooligans were turned back by police at English ports and airports. This was welcomed by the Dutch authorities. In the event, the match and its aftermath passed off without trouble. Five English people were arrested for minor offences, but they did not involve any violence.

**Strict security demanded for Turkey v. England fixture in Istanbul.**

When the draw was made for the 2004 European Championships (soccer), one of the qualifying groups slotted England together with Turkey. The Turkish coach Senol Gunes expressed the hope that the home fixture for his side would be played in the Ali Sami Yen ground where top team Galatasaray are accommodated. As this is also the ground where Bryan Robson and Eric Cantona were assaulted playing for Manchester United in a European Champions League fixture some years ago, and since the surrounding streets were witness to the murder of two Leeds United fans two years ago, this match has the potential for an extremely explosive encounter, both on and off the pitch. David Davies, the FA Executive Director, indicated that plans to meet Turkish football officials were already in place. Adam Crozier, its Chief Executive, has also called for severe restrictions on the officials were already in place. Adam Crozier, its Chief Director, indicated that plans to meet Turkish football on and off the pitch. David Davies, the FA Executive the potential for an extremely explosive encounter, both

**Stadium banning orders effective, concludes Netherlands Interior Minister.**

In a letter addressed to the Second Chamber (Tweede Kamer) of the Netherlands Parliament, the Minister of the Interior communicated (a) the Annual Report by the Central Football Hooliganism Information Agency (Centraal Informatiepunt Voetbalvandalisme) for the 2000-2001 season, (b) two reports on stadium banning orders, and (c) a letter regarding anti-hooliganism measures communicated to all Mayors having professional football clubs within their jurisdiction. One of the conclusions reached by the Minister was that, in spite of a number of problems still to be resolved, the stadium banning order (civielrechtelijk stadionverbod) had turned out to be quite an effective way of combating hooliganism. It can be imposed quite speedily and therefore had considerable merit in terms of instant justice.
**EU law implications of recent English banning order decision**

In a previous issue[12], it was reported that the High Court had upheld the powers of the courts to impose football banning orders under the 2000 Football Disorder Act. The full text of this decision has in the meantime become available, and reveals a number of EU law issues which had not featured in the newspaper report on which this item was based. This aspect is discussed in full under the EU Law section (see below, p.75).

**Italian emergency legislation on football hooliganism confirmed by statute**

The previous issue[12] reported on the emergency legislation adopted by the Italian Government in order to counter violence in sporting arenas. As is required under the Italian constitution, this measure has since been converted into a Law (legge), thus giving it permanent status[121].

**Hooliganism rears its head in rugby (both codes)**

Both codes of Rugby Football have hitherto remained relatively free from crowd trouble. However, recent months have seen worrying signs that this disease is spreading to these sports as well.

In late December 2001, crowd trouble erupted at the Gloucester v. Newcastle fixture (Rugby Union) after players Olivier Azam and Epele Taione were sent off the field after punching incidents. Part of the crowd levelled racial abuse at Taione, a Tongan flanker[12]. (This incident also led to accusations of racism made against Azam – see below, p.88). A few weeks later, Newcastle were involved in a tie with Newport at which two of its supporters were ejected from the Rodney Parade ground[121]. Both incidents prompted former England international Rob Andrew, Newcastle’s director or rugby, to make a heartfelt plea for those in authority to eradicate hooliganism from rugby.

Earlier, a nasty incident had occurred at Bridgend during a (Rugby Union) fixture with Cardiff. After referee Nigel Williams blew the final whistle, a supporter of the local team, allegedly incensed by the fact that the visitors had come from behind to snatch a draw at the death, confronted the referee and assaulted him[124].

In the other code, the Rugby Football League launched an investigation after reports of crowd trouble at Leigh during the local side’s fifth-round victory against Whitehaven in February of this year. Visiting supporters alleged they had been struck by bottles and baseball bats by rival fans[125].

**Hooliganism abroad – a summary**

**American Football.** There have recently been some disturbing signs that crowd trouble may become a problem in this major US sport (see “Philadelphia experiment” item above, p.28). In February, the final game of the season for the Cleveland Browns, at home to the Jacksonville Jaguars, was marked by a crowd disturbance which led the referee to attempt to abandon the fixture. The trouble started as a result of a disputed instant-replay call during the final minute which cost the Browns victory – and thereby almost certainly any prospect of reaching the play-offs. Sections of the crowd started pelting the field with beer, plastic cups filled with ice and other missiles. Referee Terry McAulay decided that it was too dangerous for play to continue, and declared the game over with 48 seconds to go and the Jaguars leading 15-10[126].

Whilst the teams were still in the dressing rooms, National Football League (NFL) commissioner Paul Tagliabue contacted the match supervisor, as a result of which he ordered that the remaining few seconds be played out – which it was, following a 30-minute delay.

Only the next day, trouble flared at a different fixture – this time in New Orleans[12]. Missiles were thrown after a straightforward decision which went against the home team in the final minute of the match. The trouble was, however, quickly contained and seemed to have a large element of “copycat” about it.

**Cricket.** Cricket hooliganism has given rise to serious concern during the past year, both at home and abroad. During the one-day international between Australia and New Zealand at the Melbourne Cricket Ground in early January, the surprise victory by the visiting side was marred by a hail of bottles and other missiles hurled from the infamous Bay 13[127]. Umpires Darryl Hair and Robert Parry consulted police, who promptly increased their presence in front of the stand, after which play resumed.

For the next one-day fixture between the two teams in Sydney a few days later, the police banned the use of snakes of yards-long, stacked plastic cups – the latest and extremely eccentric form of amusement amongst the crowd as part of a crackdown on crowd unruliness.

Later that month, Pakistan fast bowler Shoaib Akhtar was struck by a piece of brick when fielding during a one-day international against Bangladesh in Dhaka, causing his team to leave the field in protest[128]. The fast bowler was taken to hospital after twice vomiting. Play resumed 45 minutes later.

In view of these incidents, one cannot help wondering whether the New Zealand authorities were wise in their efforts to emulate England’s “Barmy Army” which has caused a nuisance to cricket spectators worldwide. Appeals have been issued for a group of
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Soccer hooligan video game officially endorsed by British film censors
Concern was expressed in the previous issue of this organ at the appearance of a new computer game in which players are encouraged to form the “most notorious” group of football hooligans in Europe by killing, maiming and destroying their rivals. In early March of this year, this game, called “Hooligans: Storm over Europe” was granted an 18 certificate by the British Board of Film Classification (BBFC) – despite calls for it to be outlawed by the Football Association.

The Dutch creators, Darxabre, defended the game on the basis that it was based on “humour, strategic thinking and gameplay”. Exactly how true this claim is can be seen from the publicity material for this product, which encourages the player to “muster and control” his faithful troops by administering drugs, alcohol and “of course, a good dose of violence”. Already, many retailers have refused to stock this product.

Official appointed to enforce anti-hooligan legislation may not delegate interviewing powers. Belgian court decision
On the occasion of a game between KV Mechelen and FC Denderleeuw in April 1999, a supporter of the local team climbed onto the fencing separating the field of play from the spectators and started shouting at the police officers in attendance. For this incident he had an official report (proces verbaal) issued against him by a member of the national police force (rijkswacht). When describing the indictable facts, the report stated that the accused had shouted at them. However, he asserted that what he was shouting could not be provocative, and that he therefore did not commit any offence under Article 23 of the Law, qualified as provocative, and that he therefore did not perpetrate any material damage. However, he maintained that, since he had not been interviewed by the officially accredited civil servant, but by a different official, his rights of defence had been infringed. The Belgian State – respondent in such proceedings – argued that the officially accredited civil servant was entitled to delegate her duties, and that the relevant Law of 1998 did not specify that the interview should be conducted by the accredited civil servant.

The Court agreed with the appellant. It held that, “where a Law, in the context of administrative judicial proceedings, expressly and personally imposes on the civil servant appointed for this purpose by the King, and no-one else, certain obligations, some of which are purely administrative by nature (such as the fixing of the date on which oral defence may be submitted), it is self-evident that that same civil servant must, whenever he/she is required to do so, interview the person in question personally before imposing a penalty. Nowhere does the Law of 28/12/1998 allow for the possibility that the civil servant appointed by the King may delegate his/her powers, either wholly or in part, to a different official not appointed for this purpose by the King.”

(b) His actions did not constitute provocation. The appellant did not deny that he climbed onto the fencing, and that in so doing he committed an infringement of Article 22 of the Law, even if he did not perpetrator any material damage. However, he asserted that what he was shouting could not be qualified as provocative, and that he therefore did not commit any offence under Article 23 of the Law, which prohibits disturbing a match by incitement to assault and battery, hatred or fury. The Court found that relevant photographs showed the appellant shouting whilst pointing an outstretched arm in the direction of the police, and that the appellant himself had stated that he had shouted at them. However, this was not sufficient to warrant a finding that he had infringed Article 23.

The Court therefore reduced both the fine and the duration of the stadium banning order.
In an annotation to this decision, the author Catherine Idom on disagrees entirely with this decision, on both points. On the alleged infringement of the appellant’s right of defence, she points out that the 1998 Law merely confers a right, rather than an obligation, of an oral defence which must be expressly applied for. Drawing a parallel with similar cases in the law of social security, she concludes that in such cases, it is not necessary that the official who takes the decision should also be the official who conducted the interview at which the oral defence was submitted.

Even assuming that the Court had been right on this issue, however, it had no right to examine the substance of the matter, since it should have restricted itself to setting aside the decision, since it has no appellate powers of substitution under the 1998 Law.

“On-field” crime

The Jamie Carragher incident (UK)
During the fourth-round FA Cup tie between Arsenal and Liverpool at Highbury on 28 January, visiting player Jamie Carragher was about to take a free kick when he was hit by a coin from the crowd. He promptly picked it up and threw it back into the crowd, thus earning him a red card from referee Mike Riley 138. The police launched an inquiry and studied closed-circuit television pictures of the offence, and the 37-year-old man who claimed to have been hit by Carragher’s coin, incurring a half-inch gash to his scalp in the process, called for the Liverpool player to be prosecuted 139. Predictably, however, the player escaped with a formal warning from the police. He did not even face a misconduct charge from the FA 140. (There were, however, disciplinary consequences for Carragher arising from this incident – see below, p.106)

Australian Grand Prix “avoidable” says coroner
It may be recalled from a previous issue 141 that the Australian Grand Prix (motor racing) was marked by tragedy in the shape of the death of Graham Beveridge, a marshal, as a result of being struck by a loose wheel after a collision between two drivers at 160 mph. In his report on the incident, Victoria’s State Coroner Graeme Johnstone found that the race organisers had failed to manage properly the risk to marshals at Albert Park, the Melbourne track where the event took place. More particularly he held that they failed to take adequate measures about gaps in the debris fence – a risk of which the Australian Grand Prix Corporation was aware through its Chief Executive 142. The drivers in question, Ralf Schumacher and Jacques Villeneuve, were absolved from all blame 143.

Earlier, the world governing body for this sport, the FIA, had already been warned by the Melbourne Coroner’s Court that another fatal accident could occur at this event if they refused to increase the height of safety fences 144.

Police inquiry follows motor rally accident 145
During last year’s (Motor) Rally of Great Britain, 13 spectators were injured when Spain’s champion driver, Carlos Sainz, ploughed into the crowd as he lost control of his vehicle on a right-hand bend of the track in the Brechfa Forest near Carmarthen in November 2001. This was the second occasion during that month in which rally spectators had been hit. A police investigation was held.

Mountainbike race organisers are responsible for spectator safety. German criminal court ruling 146
In August 1998, the German Downhill Mountainbike championships took place on a track in Todtnau. The event was promoted by the German Cycling Federation (Bund Deutscher Radfahrer) and organised by a local cycling club. During the competition, one of the contestants fell down a steep stretch of the track, causing his mount to fly through the air and strike a spectator on the head. In spite of intense medical efforts, the spectator in question died three months later. Manslaughter by negligence proceedings were brought against the Chairman of the Competition Committee (Wettkampfausschuß), who had been appointed by Federation. According to the preliminary investigation by the court, this was the person who was responsible for ensuring that the track in question complied with the Federation competition rules, checking the course and making sure that the event organiser rectified any objections which may thus have arisen.

The Court found that the spectator’s death was eminently avoidable, since he would not have been struck if he had not found himself in the area situated underneath the first part of the steep stretch referred to above and hemmed in by a sharp leftward curve. His presence in that location could have been avoided had this part of the course been cordoned off, a restriction which is normally respected by the spectators. The accused was therefore criminally liable for the spectator’s death, since he was legally responsible for avoiding such outcomes, having taken over the responsibility for course safety from the German Cycling Federation. The case law of the Supreme Court (Bundesgerichtshof) had clearly established that responsibility for course safety was incumbent not only on the promotor of the event, but also on the individual who assumes those tasks which are connected with

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ensuring course safety.

This responsibility was not in any way diminished by the fact that there were other parties, such as the local organiser or the operator of the track, who also had course safety obligations which in part coincided with the responsibility incumbent on the Cycling Federation.

The Court did not consider that the liability of the accused could be mitigated by the fact that he had only committed a mildly negligent error. The error in question had been committed in the performance of a task for which the accused had assumed responsibility, and in such cases the distinction between an act of commission and an act of omission was of no significant import. However, the Court did mitigate the penalty to be imposed on the accused because of (a) his clean criminal record hitherto, (b) the contributory negligence on the part of the spectator, and (c) the fact that responsibility for course safety was shared with others.

The accused appealed against this sentence, but his appeal was dismissed by the Court of Appeal (Oberlandesgericht) of Karlsruhe.

Other cases
Bolton, UK. An investigation was launched by the Greater Manchester Police into an incident which took place at the end of an FA Cup tie between Bolton Wanderers and Blackburn Rovers on 2/3/2002. A Bolton steward alleged that he was assaulted in the tunnel after the game. Blackburn’s Turkish midfielder Tugay was said to have been involved in the incident. The tie had been an explosive one, with trouble erupting near the dressing rooms at half time and after the final whistle. Tempers had flared as a result of the sending-off of Blackburn’s Andy Cole for stamping on Mike Whitlow. Police said that Cole himself was not under investigation; however, he had to be dragged from the entrance to the Bolton dressing room at half-time.

Cambridge, Mass. (US). In late January 2002, the father who beat another man to death on the occasion of a youth hockey game in Massachusetts was sentenced to a term of imprisonment of 6-10 years for involuntary manslaughter. The culprit, Thomas Junta, had fought with his victim, Michael Costin, after Junta broken off an engagement with a woman of Indian extraction because he did not “want a brown baby.”

The Najeib family were not alone in feeling that they had been betrayed by British justice. They announced that they would be bringing a civil action against the Leeds footballers – which they did a few days afterwards. They also attacked the decision by Leeds United to continue to employ Woodgate, even though its management had stated that the players would be dismissed if found guilty. Far from dismissing them, the club immediately fielded them for the next match, against Newcastle.

“Off-field” crime

“Leeds Two” walk free from court – but not from condemnation
As was anticipated in the previous issue, one of the longest-running criminal trials in this country, which involved charges of various forms of violent behaviour against, amongst others, Leeds United players Lee Bowyer and Jonathan Woodgate, finally came to an end in mid-December 2001. Both men were cleared by Hull Crown Court of causing grievous bodily harm with intent to student Sarfraz Najeib after the jury had deliberated for more than 21 hours following the 43-day trial. This was in fact a retrial, since the first hearing earlier that year had to be abandoned following certain revelations in a Sunday newspaper which was considered by the court to impede the guarantee of a fair trial. However, Woodgate was sentenced to 100 hours’ community service for the affray which led to the attack on Mr. Najeib. The maximum punishment for this offence is a three-year jail sentence. Both he and Bowyer had costs awarded against them by judge Henriques – in Bowyer’s case because his statement to the police had been “littered with lies.” One of the pair’s drinking friends, Paul Clifford, was sentenced to six years’ imprisonment for having assaulted the student, whilst another friend, Neil Caveney, was also found guilty of affray and sentenced to the same community service as Woodgate.

The jury was not told that Bowyer had been convicted of affray in 1996 after wrecking a McDonald restaurant and throwing a stool at one of the Asian staff, or that Woodgate had headbutted a teenager outside a shop in Middlesbrough when he was 14, and spent a night in a police cell in 1999 on suspicion of having taken part in the beating and kicking of a student outside a Middlesbrough pub. Nor was it allowed to hear the evidence that one of the group which was in pursuit of Mr. Najeib had shouted “Do you want some, Paki?” – thus appearing to give the lie to the judge’s instruction that the crime was not racist by nature. One particular newspaper also alleged that Bowyer had broken off an engagement with a woman of Indian extraction because he did not “want a brown baby.”

The Najeib family were not alone in feeling that they had been betrayed by British justice. They announced that they would be bringing a civil action against the Leeds footballers – which they did a few days afterwards. They also attacked the decision by Leeds United to continue to employ Woodgate, even though its management had stated that the players would be dismissed if found guilty. Far from dismissing them, the club immediately fielded them for the next match, against Newcastle.
Condemnation of the two players was virtually unanimous in the media. Public figures also added their verdict. Tessa Jowell, Secretary of State for Culture, attacked the yobbish behaviour of the Leeds players as “appalling” and called upon the club and England to “put their houses in order”\textsuperscript{157}. Gerald Kaufman MP also joined the chorus of condemnation\textsuperscript{158}. Lord Bassam of Brighton, a former Chairman of the Government’s working group on football disorder, expressed his concern over the duration of the trial and the fact that the jury which heard the trial had no ethnic minority members. He also called for an official inquiry into the implications of the implications of the case for the game\textsuperscript{159}.

The attitude by the Leeds United staff at all levels also came in for a good deal of condemnation. Not only was there the failure on their part to dismiss Woodgate despite their earlier pledge to the contrary, or their decision to field the two players for the first match following the verdict (see above). Many commentators considered that the revelations of Bowyer’s past – particularly the attack on the Asian employee of a McDonald’s restaurant – should have prompted Leeds to dismiss him if it was to retain any credibility as a side which took the issue of racism in football seriously. The prevarication shown by Bowyer in accepting the £88,000 fine imposed on him by the club should also have decided the issue, in the view of many\textsuperscript{160}. The attitude of the other Leeds players also caused a good deal of anger when, during the fixture against Everton a few days after the verdict, David Batty, Mark Viduka and Rio Ferdinand appeared to dedicate the first goal Leeds scored to Bowyer, watching from a TV gantry\textsuperscript{161}. In addition, both manager David O’Leary and Chairman Peter Ridsdale inflamed public opinion by their self-pitying attitude, particularly the former, who lost no time in allowing the News of the World to serialise his book, entitled – with a lack of sensitivity matched only by the timing of the publication – Leeds United on Trial. He used the same paper to attack the FA for its decision to suspend the two players for England duty during the trial – repeating, as he had endlessly done for the previous few months, the mantra that “a defendant should be presumed innocent until found guilty” – conveniently forgetting that the players’ actions had already merited condemnation regardless of the verdict\textsuperscript{162}.

In any case, both O’Leary and Ridsdale will, during the civil action brought by Mr. Najeib, need to account in court for the alleged cover-up of some of their players’ involvement in the incidents surrounding the assault which gave rise to the criminal trial. The claimant’s lawyers will use statements collected from the West Yorkshire police but unused in the criminal proceedings in their bid to prove who attacked Sarfraz and his brother Shahzad\textsuperscript{163}. The outcome of the civil action against Bowyer and Woodgate was not known at the time of writing.

**Fowler continues Leeds United tradition**

With impeccable timing, Robbie Fowler, who had been at Leeds United for barely two weeks following his £11 million transfer from Liverpool, chose the week in which the jury were in the process of considering their verdict in the Bowyer/Woodgate case to get himself arrested following a night out with his team-mates and be questioned about an alleged offence of criminal damage\textsuperscript{164}. He was released without charge following the incident, in which a photographer’s equipment was damaged. Fowler claimed to have been a victim of a “set-up”\textsuperscript{165}.

**Newcastle United players in trouble with the law...**

As if intent on not being outdone by their rivals Leeds United not only in the Premiership, but also in the criminal courts, judging by the antics of some of their players in recent months.

Thus in late December 2001, striker Carl Cort was ejected from a supermarket and his wife banned following a “trolley rage” incident. Police were called to Tesco’s in Kingston Park, Newcastle, as a disturbance broke out at the checkout where the couple had been accused of queue-jumping. A couple had allegedly complained that the Corts had pushed to the front and shouted abuse when asked to join the queue at the back. Northumbria police warned Mr. and Mrs. Cort about the abusive language\textsuperscript{166}.

Two months later, it was Welsh international Craig Bellamy’s turn to fall foul of the forces of law and order when he was named by a 20-year-old female student following an incident in the small hours. The altercation took place as Bellamy’s team-mate Kieron Dyer arrived in the city centre in order to collect a number of players and take them home. The woman who made the complaint was one of several who attempted to board Dyer’s car. She claimed she was hurt as Bellamy attempted to remove her from the vehicle. A spokesman for the Northumbria Police stated afterwards that:

> “as a result of an allegation of assault, police have questioned and cautioned Newcastle United footballer Craig Bellamy for the offence of common assault”\textsuperscript{168}

 Barely a week after this incident, midfielder Jamie McClenn was cautioned for being drunk and disorderly after having been stopped, along with his brother,
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walking through Newcastle city centre during the early hours of the morning. His brother Steve was charged with drunk and disorderly conduct.

...as well as their Chelsea colleagues

Not to be outdone by their Northern rivals, Chelsea footballers seemed determined to ensure that the South could match the North in lawless behaviour. In early January of this year, John Terry, in the company of his Wimbledon colleague Desmond Byrne, were charged with affray and assault occasioning bodily harm following an alleged fight at a nightclub in London, according to Scotland Yard. Days later, Terry’s team-mate Jody Morris was charged with these offences arising from the same incident. All three were remanded on bail to appear in court on 20 February.

The outcome of the trial was not yet known at the time of writing.

Kickboxer jailed for manslaughter

In February 2001, Ian McSween, a former kickboxer who taught Tony Blair’s children to fight, was jailed for manslaughter. He plunged a knife into play-group worker Franklin Bryam’s neck after he had found him smoking cannabis in his girlfriend’s flat. McSween had been British Continuous novice kickboxing champion for his weight in 1998.

Dwight Yorke (naturally) escapes speed charge

In February 2002, Manchester United player Dwight Yorke eluded a conviction for speeding on a legal technicality. The striker had been stopped whilst driving on a 70 mph stretch of the Handforth bypass at Wilmslow, Cheshire in March 2001 after a police officer with a hand-held speed gun recorded his speed at 85 mph. In court, Yorke’s solicitor, who had already won acquittals on speeding charges for Yorke’s manager Sir Alex Ferguson and team-mate David Beckham, insisted that the police should prove that the speed gun was fully authorised for use, claiming that a certificate outlining Home Office conditions for the US-made Custom Pro Laser Mark II device had not been produced at the hearing. Thereupon magistrates at Macclesfield dismissed the charges, stating that there was not enough evidence to prove that Yorke had been speeding.

The Lewis-Francis affair (UK)

British sprinter Mark Lewis-Francis’s preparations for the European Indoor Championships in early March 2002 were put into reverse when a warrant was issued for his arrest to answer a string of charges for motoring offences. More particularly he was charged with driving without a full licence, having no insurance, no MOT certificate, driving through a red traffic light and failing to produce the relevant documents. Instead of appearing in court, he joined members of the British team on a flight to Vienna where he was amongst the favourites to win the 60 metres title. In the event, he was allowed to compete and won the silver medal. However, on his return to Birmingham Airport he was arrested and spent the night in a police cell. He appeared in court the next day where he was fined £420 and banned from driving for six months.

UK Athletics had previously contacted the court to arrange for Lewis-Francis to report voluntarily to his local police station on that Monday, and had in fact sent a driver to the airport to take him there. The fact that he was arrested in spite of this aroused the ire of UK Athletics David Moorcroft, who has complained to the West Midlands Police about Lewis-Francis’s treatment.

Tyson cleared of new rape charges

Mike Tyson, the former world heavyweight champion boxer, was imprisoned for three years for a rape which he committed in 1992. Since then, other accusations of this nature have been levelled against him without resulting any formal charges being brought. This contingency seemed much more likely when, following an investigation which commenced in September 2001, Las Vegas police announced they would seek a warrant for his arrest as a result of an accusation made by a woman reported to be a lap dancer who had been in a relationship with Tyson for at least six months. This news broke as it became apparent that another woman in her twenties also accused Tyson of sexual assault at the boxer’s home in November 2000. However, prosecutors refrained from issuing the warrant in order to provide the police with more time to interview the two women in question. This was perhaps just as well, since three weeks later the Las Vegas prosecutors announced that they had declined to bring charges, as it was impossible to determine whether the women involved had had consensual sex with him or not.

America’s Cup hero shot dead in Brazil

In December 2001, Sir Peter Blake, one of the best-known yachtsmen the world over, was found dead, having been shot by a group of armed pirates known as “the water rats” during a night-time robbery on his boat in Brazil. The New Zealander, who had won the America’s Cup for his country on two occasions, had returned from dinner with his crew in Macapa, a remote city on the North bank of the river Amazon, when a gang of men wearing motorcycle helmets, boarded his boat by rubber dinghy. Blake died from gunshot wounds.
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while two other members of his crew were wounded. The next day, police arrested seven men said to have confessed to Blake’s shooting, although they claimed to have done it in “self-defence” having expected no resistance during the raid in question . The trial was expected to take place later this year .

Was Italian cycling legend poisoned?
Although the plaudits which Italians reserve for their national sporting heroes have occasionally been known to succumb to the excesses of hyperbole, there was nothing exaggerated about the title Il Campionissimo (the greatest champion) which they conferred upon one of the greatest cyclists of all time, Fausto Coppi, who in 1949 became the first person to win the Tour de France and the Giro d’Italia during the same year. He suffered an untimely death in 1960 following a trip in Burkina Faso, Africa, from the effects of malaria. At least that is the official version.

Recent studies, however, seem to raise doubts on the official cause of his death. Reports in a leading Italian newspaper allege that he was poisoned in retaliation for the death of an African cyclist which occurred in the late 1950s. These are based on the allegations of Brother Adrien, a French Benedictine priest resident in Burkina Faso, who claims having been told during a confession that Coppi had been poisoned with a mysterious herbal mixture. Apparently the African rider in question, who came from the Ivory Coast, fell to his death after having been forced off the road during a race in which Europeans had taken part.

The allegations have been passed onto the authorities in the Northern Italian town of Tortona, where Coppi died, and magistrates have opened an investigation. These reports have been greeted with disbelief from Coppi’s friends and relatives. Nevertheless, at the time of his death there were those who believed that the cause of his demise had been misdiagnosed; in addition, Coppi’s friend and cycling colleague, Raphael Geminiiani, who had accompanied him during his African journey, had also contracted malaria and survived.

Olga Korbut charged with shoplifting … and perhaps more
In early February, Olga Korbut, the Soviet gymnast who won three Olympic gold medals in 1972 and one in 1976, was arrested in her present home town of Duluth, Georgia (US) on a shoplifting charge, having allegedly removed cheese, figs, tea, chocolate syrup and seasoning mix from a supermarket. Later, US Secret Service agents investigated the discovery of nearly $4,000 in counterfeit $100 notes at her home. The former champion was said to have faced mounting financial problems since attempting to set up a gymnastics centre in neighbouring Atlanta.

Steaua Bucharest official may be charged after stating that journalists ”ought to be killed”
The late Bill Shankly is reported to have said that football “is not a matter of life and death – it’s more serious than that”. This seems to have been taken almost literally by Gigi Becali, the main shareholder in Steaua Bucharest, the only Romanian side ever to have won the European Cup in 1986. Reacting to reports in the newspaper Adevarul (The Truth) which accused him of corruption, Becali announced not only that he would fight “the entire media” in order to be vindicated, but also that, in his view, all Romanian journalists “deserved to be killed” for what he described as the “worst possible offences”. The previous year, Becali had given ample evidence of the low opinion in which he held the media when he responded to a request for an interview by punching the television reporter in question in the face.

The newspaper in question now wants Becali charged with public order offences.

Everton fan walks free rather than alone
In December 2001, Pub disc jockey Alan Selsby, a supporter of Premiership team Everton, was cleared of a charge of wounding with intent, after a Liverpool fan was shot during a disagreement over Mr. Selsby’s refusal to play the Liverpool FC anthem “You’ll Never Walk Alone”.

Former Olympic marathon winner convicted of taking part in murder
In January 2002, Mamo Wolde, who unexpectedly won gold in the marathon event at the 1968 Mexico Olympics, was found guilty of participating in the murder of a 15-year-old boy in his native Ethiopia. Wolde, who later became an Army captain, was sentenced to six years’ imprisonment but released immediately because, incredibly, he had been held for nine years before being brought to trial. Wolde had been arrested ten years ago on charges of genocide and illegal detention of prisoners during the “Red Terror” reign of torture and execution which followed the overthrow in 1974 of Emperor Haile Selassie by the Mengistu regime.

Footballer arrested following brawl in hotel bar (UK)
Disreputable behaviour by professional footballers with possible criminal consequences has not been restricted to the ranks of the Premiership. In late December 2001, Allan Smart, the Scottish striker who plays for
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Nationwide League side Oldham, was arrested following a drinking session during the early hours of the morning at a hotel, during which three staff members were alleged to have been assaulted. One employee, a night porter, needed hospital treatment as a result of a punch in the face, whereas a barman was said to have been headbutted and a third staff member punched as the fight spread into the street. The incident occurred during a Christmas night out with his team-mates.

It is reported that, after a minicab had been called in order to collect the player, the driver in question refused to take him home because of his drunken state. The driver alleges that Smart then kicked out at the vehicle in his fury. He was then arrested.

Boxer convicted of rape released after only one year in goal

In April 2001, John Archibald, a bare-knuckle boxer, was jailed for three years at Reading Crown Court for the rape of a terminally-ill woman in a nursing home. He was released on 27/3/2002 before a High Court ruling issued on whether his sentence could be increased. Archibald, who was said to have a mental age of nine, had, together with his brother, lured the victim into a bedroom by offering her cigarettes which turned out to be cannabis.

The woman’s husband protested his outrage at this development.

O’Leary family receive death threats

In late January 2002, it was revealed by West Yorkshire police that David O’Leary, Leeds United’s beleaguered manager (see above), had become the target of a “menacing and chilling” letter threatening the life of his spouse. The anonymous author apparently sent seven letters to the former Irish international making certain demands of him and threatening “serious harm” to his wife Joy if these were not accepted. These letters were taken seriously because the writer clearly saw himself as the “champion of a cause”.

Fulham’s Jean Tigana targeted by blackmailer

In March 2002, Jean Tigana, the French manager of English Premiership side Fulham, also suffered the unwelcome attentions of an anonymous correspondent when he received two letters threatening to infect his team’s players with the HIV virus if he did not receive the sum of £10 million. In fact, the second letter claimed that two of his squad had already been attacked by the virus. Police had been summoned to investigate the matter when the first demand was made in November. The person responsible is believed to have been the one who had made similar threats to Manchester United early last year.

However, since there is no evidence that the blackmailer has infected any player or been in a position to do so, the letters are believed to be hoaxes. However, police were continuing their investigations at the time of writing in a bid to catch the offender.

Brazilian football legend’s company accused of theft

No-one who ever watched the exploits of Edson Arantes do Nascimento – known to grateful football commentators as Pele – is likely to have forgotten the experience, having witnessed a player with one of the most glittering careers in the game’s history. He played in four World Cups, of which his country, Brazil, won three, and scored 1,281 goals before retiring in the mid-1970s. His status in his native country – which he also served as Sports Minister – has stopped little short of deification. However, his halo is currently slipping as fast as that of cricketer Hansie Cronje – particularly in the light of recent allegations of his involvement in a large-scale theft of charity funds are proved to be correct.

The money in question, i.e. £400,000 which was awarded by the UN children’s organisation UNICEF, was paid in 1995 for a benefit match, but was not returned after the game had been cancelled. Pele, pledging himself to conduct a full inquiry, then revealed that he was closing down his company, Pele Sports & Marketing. He later told a television news programme of his suspicion that his business partner of the last 20 years, Helio Viana, had stolen up to $10 million from his company – including the UNICEF funds.

In June 2001, Viana was accused of five offences in the final report of the parliamentary investigation into the corruption at the heart of Brazilian football (see above, p.20). Pele has also stated that he had suspected for five years that his company was being mismanaged, and ordered a final audit prior to the company being liquidated. However, commentators are claiming that the former soccer star can no longer claim naive innocence, particularly since details of some of his other business deals have come to light. Thus in 1995, his company concluded a contract for the organisation of a fund-raising match for UNICEF-Argentina, for which Pele was to provide his services free of charge. However, the newspaper Folha de Sao Paulo unearthed a similar contract under which a Miami-based company would pay Pele $3 million for the same event. A $3 million loan was arranged with an Argentinian bank and $700,000 were transferred to PS&M before it went bankrupt. This UNICEF match was never played either.

His shadier business dealings have also cast a shadow on his attempts, as Sports Minister, to rid the
game of corruption. Having proposed legislation to this effect, which has been reviewed in an earlier issue of this organ\(^{210}\), this was seen at the time as the altruistic act of a crusading individual pitting himself against the game’s vested interests. However, increasingly commentators are reassessing this action as self-serving, since the reforms also served as a means of giving his company a larger share of Brazil’s lucrative market. His role in the parliamentary investigation referred to above has also been questioned.

Manchester United cup hero found guilty of benefits fraud\(^{208}\)

Another sporting figure who has fallen from grace is former Manchester United striker Lee Martin, who was credited with saving Sir Alex Ferguson’s position at the club when in 1990, following an extremely modest few seasons in the Football League, United won the FA Cup in a replay, thanks to a goal by Martin. The rest of his footballing career was less illustrious, and he later played for Celtic and Bristol Rovers before retiring through injury. His fortunes took an even deeper dive recently, when he was prosecuted for benefits fraud.

The court at Glossop, Derbyshire, heard that Martin applied for a job-seeker’s allowance in August 2000 and was awarded council tax benefit. Every two weeks as he signed on, he had to declare that he had not undertaken any work, whether paid or unpaid. However, early last year Benefits Agency investigators found that he had been working for MUTV and interviewed him.

He stated that his circumstances had not changed, but three days later stopped claiming benefits. Later, interviewed under caution, he declared that he had not been working when he started claiming and that, when he did work, he did not know whether this would be on a permanent basis. Only after he was shown the evidence did he admit that he had worked for MUTV. Evidence was also produced that he worked for Granada Television. He pleaded guilty before the Court.

Round-up of other cases (all months quoted refer to 2002, unless stated otherwise)

Southend-on-Sea, UK. In March, former middleweight boxing champion Steve Collins was cleared of road rage attack by Southend magistrates\(^{207}\).

Exeter, UK. In February, Fiona Townsend, a martial arts teacher, was kidnapped by a pupil who hit her with a home-made weapon and threatened to cut her throat. Martin Stone had asked for a lift from her, then attacked her with a beer bottle wrapped in a sock and bound with tape. He then tied her up and bundled her into her car, but she succeeded in escaping. At Exeter Crown Court, he admitted kidnapping and taking a car without consent\(^{206}\).

Northwich, UK. In February, Wolverhampton Wanderers footballer Mark Kennedy was banned from driving for three years for refusing to take a breathalyser test. He also admitted careless driving, and was fined £1,500\(^{209}\).

Pietersburg, South Africa. In January, two white rugby players were accused of murdering a black teenager after the latter was found poaching. They admitted dumping his body in a dam, but denied murdering him. The outcome of this case was not yet known at the time of writing\(^{215}\).

Essex, UK. Boxer Herbie Hide is no newcomer to the criminal law section of this organ\(^{211}\). In February, he was arrested and questioned at Stansted Airport, Essex, on suspicion of assisting someone to enter the UK illegally. The former WBO heavyweight champion was bailed until March. The outcome was not yet known at the time of writing\(^{212}\).

Durham, UK. In February, the man who butted Claire Robson, the daughter of former England captain Bryan Robson, was jailed for three months. Ms. Robson had been left scarred after an assault by Mark Bregazzi, of Durham, in which he abused her over her father’s managerial career\(^{217}\).

Greater Manchester, UK. In November 2001, Paddy Crerand, a former Manchester United star and Scotland international, was charged with assault following an alleged road rage attack near his home in Sale, Greater Manchester\(^{214}\).

Bedford, UK. In December 2001, Welsh Rugby Union international Andy Newman was banned from driving for 18 months and fined £400 after having been found to be almost twice over the legal limit when stopped by the police in Bedford. He was also dismissed by his club, Northampton\(^{216}\).

Moscow, Russia. In December 2001, Kiri Ivanova, the first female figure skater to win an Olympic medal for the Soviet Union, was found dead in her Moscow flat with knife wounds. Ivanova had worked as a children’s coach following her ice-skating career\(^{219}\).

One month later, in the same city, Russia’s world champion wrestler Saguid Murtazaliev was stabbed near the heart as he left a hotel where he had visited a sauna with friends. The wrestler survived, but his assailant died later in hospital\(^{218}\).

Telford, UK. In January, Adam Proudlock, the former England youth international who plays for Nationwide...
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League club Wolverhampton Wanderers, was arrested on a charge of affray following an incident in Newport, Shropshire.

Brussels, Belgium. In December 2001, Stefan Teelen, who plays for Belgian First Division football club RC Genk, was accused of offending public morality and had an official report (proces-verbaal) to that effect made against him. The incident in question occurred as the players were waiting for their assistant trainer on the team coach following an away fixture against SC Lokeren, when they were verbally abused by supporters of the home team. Teelen, who was sitting at the back of the coach, dropped his trousers and “mooned” at the fans in question. This was observed by police officers in civilian clothes, who made an official report.

Leverkusen, Germany. In December 2001, Germany’s national football coach Rudi Völler is to have round-the-clock protection from an armed bodyguard after his newly-renovated home was destroyed in an arson attack. The former international admitted that he feared for his safety and immediately increased his personal security. No-one was injured in the blaze.

Virginia, US. In January, American boxer Pernell Whitaker, who won world titles in four different weight divisions, was jailed for 30 days for reckless driving. He was convicted by a court in Virginia of having driven at 90 mph in a 55 mph zone last October and driving whilst banned. Days earlier, he had also pleaded guilty to the possession of cocaine.

Cali, Colombia. In January, Colombian boxing champion Efren Granados was shot dead in the city of Cali on New Year’s Eve whilst fighting off robbers. Granados, who was only 18, was due to represent Colombia at the Odesur Games in Bogota in April.

Mold, UK. In February, Chinyelu Obue, of Edinburgh, who had driven 230 miles to confront Manchester United star David Beckham and his wife, pop idol Victoria, at their home in Cheshire, was ordered to be detained indefinitely in a mental hospital. The court heard that Ms. Obue had carried a knife when she appeared at the Beckhams’ home and was prepared to use it.

Vienna, Austria. In November 2001, the five men who killed a member of the British Army bobsleigh team outside a nightclub were jailed for four years. Captain Derek Osborne had been beaten to death outside the nightclub in Innsbruck, Austria, in February 2001. He was with the Army bobsleigh team taking part in a competition nearby. The public prosecutor (Staatsanwalt) had not brought a charge for grievous bodily harm leading to death, claiming that the investigation had shown that they did not intend to kill their victim, although they did intend to cause him injury.

The victim’s mother expressed her outrage at the verdict.

Antwerp, Belgium. In December 2001, Ratko Svilic, the former goalkeeper and manager of top Belgian football team Antwerp, was arrested on charges of smuggling cigarettes. He had already been sentenced to a provisional term of imprisonment in 1991 for receiving stolen fur coats.

Wisconsin, US. Matthew Fisher, an ice skater with the Disney on ice tour in America, has been accused of sexually assaulting an 11-year-old girl. He has also been charged with child enticement and criminal trespass. He is said to have entered a hotel room in Wisconsin on 9/12/2001 when he fondled a girl whose parents were asleep in the next room. Fisher denies touching the child. The outcome of the trial was not known at the time of writing.

London, UK. In February, Marlon King, a soccer star playing for Nationwide League side Gillingham, added further embarrassment for the game’s administrators when he appeared before the Inner London Crown Court accused of smashing a bottle over a policeman’s head. King was granted unconditional bail, and the trial is to be held later this year.

Antwerp, Belgium. In October 2001, the Criminal Court (Correctionele Rechtbank) of Antwerp provisionally found Ismail Ayaz, a professional footballer employed by Dutch club Fortuna Sittard but on loan to Eindhoven VV, not guilty of having murdered his sister’s lover.

Other issues

Jurors prefer watching darts to considering verdict in rape case

Sport and the law mixed in the most disreputable fashion in January 2002, when a jury considering its verdict in a rape trial tuned in to a darts match on television instead of performing their duty. The incident occurred at York Crown Court as the court prepared to restart proceedings after the lunch adjournment. Defence barrister Taryn Turner informed judge Paul Hoffman that she had learned that some jury members had watched the darts match, as well as a local news bulletin and the weather forecast. She was concerned that their judgement may have been affected by that
which they had witnessed on the screen. The jurors were then summoned back to the court and the foreman confessed that some members had preferred television to the evidence.

Expressing his dismay and concern, particularly at the fact that some jurors were watching whilst others were discussing the case, the judge discharged the entire jury and ordered a retrial. Amazingly, none of the jurors were charged with contempt of court. Even though the Crown Prosecution Service criticised the jury for their actions, it failed to press charges.

Security doubled amidst cricket World Cup crime fear
Towards the end of last year, it was announced that the security budget for the cricket World Cup, to be played in South Africa in 2003, has been doubled to £1 million as a result of the increase in lawlessness in the country. Particularly the murder of the country's former First Lady, Marikke de Klerk, in Cape Town – the city which will host the opening ceremony – had impelled organisers to adopt unprecedented levels of security cover.

Riot police who beat soccer fans escape prosecution
Following an FA Cup semi-final tie between Newcastle and Sheffield United at Old Trafford in 1998, rival fans had gathered peacefully in the Wetherspoons pub near the Manchester Piccadilly railway station after the game, when officers in riot gear burst into the inn and lashed out at fans with their truncheons. One victim, Newcastle United supporter and retired detective Russell Grayson, was hit over the head and left lying with blood pouring from his wound. He was later taken to hospital where staff inserted four staples. The incident was captured in closed-circuit television cameras. However, it was impossible to identify them because at the time they were wearing helmets and uniforms which did not display their serial numbers.

In January 2002, it was announced that the police officers in question would not face prosecution because of this uncertainty. The culprits had been condemned by an internal inquiry as “despicable”, but could not be disciplined. However, Steve Powell, spokesman for the Football Supporters’ Association, refused to accept this, stating that:

“It does stretch credibility to think that, with the amount of evidence available, it is not possible properly to identify the officers responsible. The police have accepted their men acted in a way that, if they’d been civilians, they would have been in front of the magistrates in the morning and possibly gone to jail. It can’t be acceptable that the same doesn’t apply to the police”.

Mr. Grayson and another victim, Graham Helling, have been paid £10,000 and £15,000 each in compensation.

Paedophile let out to act as football referee (UK)
In late December 2001, it was revealed by a Sunday newspaper that a psychopathic paedophile was allowed to leave his secure unit in order to referee at football matches. Convicted sex attacker Peter Oakes took charge of a number of matches involving teenage boys in the course of last year.

Oakes is a resident at Chadwick Lodge, a medium secure unit for 40 adults having severe and long-term mental health problems. He was sent to the centre after a judge had described him as having an appalling criminal record. He was first convicted in 1982 when he took indecent pictures of young children. In 1985 he kidnapped an 18-year-old and threatened to shoot his genitals off. Four years later he served a three-year sentence for kidnapping a 15-year-old boy at knifepoint. Weeks after he was freed he sexually assaulted a 23-year-old man.

However, in spite of this he succeeded in being entered on the register of the Milton Keynes Referees’ Association for the 2001 season, regularly taking charge of Sunday league matches. The association is holding an inquiry into how this was allowed to happen.

Rogue football scout at large? (UK)
Parents of young players had cause for concern at the beginning of this year when Middlesex County FA contacted its junior clubs with a warning to be on full alert for a rogue England scout posing as one of the backroom staff used by England manager Sven Göran Eriksson. He apparently approached an under-13 footballer after a game in the Harrow Youth League. The youngster became suspicious and ran off after being given a name and address, which police later found to be fictitious.

Fulham step up war on ticket touts
Premiership club Fulham have announced that they are stepping up their campaign against ticket black marketers. They are paying for extra police to patrol outside the ground and catch the culprits red-handed. The person who was the original owner of the ticket will also be prosecuted.
3. Contracts

Media Rights Agreements

“Big Five” car producers threaten Formula One breakaway over media rights dispute

The Kirch Group is a German media which has already featured prominently in these pages – although perhaps not for much longer, see below p.43 – and whose tentacles seem to reach into virtually every major sporting activity. Thus it possesses 75 per cent of the commercial rights for the existing Formula One championship, and the teams involved are bound to honour for the next seven years any agreements which they have concluded. This was as a result of Formula One entrepreneur Bernie Ecclestone having sold the media rights for the championship to Kirch the previous year. This situation obviously creates a somewhat restrictive business climate, which is why in late November 2001 teams such as Ferrari and McLaren threatened to compete in a breakaway Formula One championship rather than allow the Kirch company to dictate to the sport. The company which would operate this alternative to F1 if negotiations with Kirch broke down would be formed by the five major car manufacturers, i.e. Renault, BMW, Mercedes, Ferrari and Jaguar. The Fiat chief Paolo Cantarella had already been designated as its chairman.

For several months, there was no breakthrough in the impasse, until the world governing body FIA decided to intervene. In February 2002, Max Mosley, its President, urged a settlement, warning that “a single championship was worth more than the sum of two competing series”. He claimed that Ecclestone himself held the key to a peace deal between the two warring factions and could solve the dispute within the next 18 months. If this did not happen, warned Mosley, the future of the sport was in serious jeopardy. His words did not seem to be tainted by hyperbole, since sponsors were gripped by a genuine sense of uncertainty – particularly in the wake of the bankruptcy of Alain Prost’s company (see below, p.78).

BBC wants entire Six Nations tournament – but is this in rugby’s interest?

Those wishing to follow the entire Six Nations rugby championship over the past few seasons have had to be prepared to dig deep into their pockets, since the televising of the various matches was shared between the BBC and fee-charging Sky Sports. With the relevant contracts about to expire, the battle lines are being drawn for the rights to broadcast the tournament over the next few years. The BBC fired the opening shots in mid-December 2001, when it announced that it would no longer be interested in any joint deal with Sky (or any other operator) – in other words, it would be bidding for the entire Championship or nothing.

It may be recalled that the BBC’s monopoly in relation to the tournament was first broken by England, when its unilateral action in selling its matches in the series to fee-paying television provoked such an outcry from its fellow-competitors that the latter temporarily expelled them from the championship. However, the disagreement was patched up, but not before the Sky deal, worth £65 million, set a benchmark which enabled Wales, Ireland and Scotland to clinch a combined deal with the BBC worth over £13 million per country per season. This contract ran out with the ending of the 2001-2002 season. Tender documents were issued at the beginning of 2002, and shortly before this, the Six Nations committee voted to condense the 10-week series into a seven-week tournament (see also under section 17, below p.108). The new contract will bring together all six nations for the first time, pooling all the monies concerned.

Most rugby fans would naturally be inclined to support a BBC monopoly, which would enable them to watch the entire tournament free of charge. However, not everyone sees this outcome as beneficial to the sport. Thus Neil Wilson, writing in the Daily Mail, says that the BBC is extremely likely to acquire the rights to the entire championship, since the Six Nations committee wants the greater exposure which only the BBC can offer, and will have nothing left with which to bargain for the greater possibilities offered by Sky’s purse. However, a price will need to be paid – not by rugby viewers through television subscriptions, but by the game in the shape of lower revenues. At a time when many are arguing for an end to the television licence, the BBC cannot be seen to be underwriting the professional aspirations of sport by means of unnecessarily generous media rights fees. The need to be generous will disappear completely if Sky declines to enter the bidding. This may well mean that Sky loses interest in top-class Rugby Union altogether – with devastating consequences for the clubs.

ITV Digital in trouble – at home and abroad

In July 2001, amidst much fanfare, UK television company ITV launched its Digital channel. The main attraction of the new service was to be the widespread coverage given to games in the three divisions of the Nationwide (Football) League. However, the channel has not proved to be the creak of gold which it had been made to appear, and soon ran into trouble. The plight of ITV Digital became evident in late November of the same year, when Granada, one of its joint owners conceded that the cost of attempting to keep pace with Rupert Murdoch’s BSkyB, its main competitor, was “unacceptably high”. Charles Allen, Granada’s Chairman, admitted that his company could not...
continue to meet the new channel’s spiralling losses as his own company announced a loss of nearly £200 million for the previous year and confirmed almost 1,000 redundancies amongst its staff.

These problems rightly sparked fears that ITV Digital would not be able to meet the Nationwide deal referred to above. Stuart Prebble, its Chief Executive, immediately called a meeting with representatives of all 72 clubs involved. The deal in question, which runs over three seasons ending in 2004, is worth £315 million to the clubs, but now the question arose whether ITV Digital would remain able to pay this amount.

Rumours to that effect were initially rubbished by those involved – not least the League authorities. However, they acquired increasing substance as time progressed. Then in late February 2002, the two companies which owned ITV Digital made it clear that they would attempt to renegotiate the agreement with the League, because it simply was failing to pay its way. This was alarming indeed for the Nationwide League, since it was estimated that between 14 and 16 clubs were on the brink of bankruptcy, and that any reduction in television revenues would be enough to push them over the edge.

The decision by the digital channel’s owners to seek this renegotiation was prompted by the failure on the part of ITV to agree on a price which would see ITV Sport beamed into the 5.7 homes which take BSkyB’s digital TV service. This had prevented BSkyB subscribers from watching both Nationwide League and European Champions League fixtures. In relation to the latter, however, more bad news hit ITV Digital from Brussels a few days later, which made it extremely unlikely that the channel would lose even its European “jewel in the crown”. Apparently there had been rapid and satisfactory progress in negotiations between European governing body and the European Commission competition authorities to resolve the latter’s complaints about the way in which Champions’ League television rights had been sold in the past. This held out the prospect that bidding for the 2003-4 season and later could start as early as the following summer. Given the financial difficulties plaguing the ITV channel, it was extremely unlikely that the latter would be able to make a competitive bid.

Both the Nationwide contract negotiations and the Champions League television rights issue had not yet been resolved at the time of writing. Obviously this journal will follow further developments with keen interest.

BBC and ITV resolve dispute over World Cup broadcasts

It will be recalled from the previous issue that, in October 2001, following a long period of often bitter deadlock between BBC and ITV on the one hand and German media company Kirch Media on the other, the UK rights were finally allocated to the two terrestrial broadcasters for the relatively low sum of £160 million (although it dwarfed the £5 million which the two UK channels paid between them to secure the rights to the previous World Cup). However, anyone who thought that all would be sweetness and light as regards the British television rights was in for a disagreeable surprise.

Ever since the 1966 tournament, the two channels had divided the games between them, with both taking care not to show the same match before the final unless England made it as far as the semi-final stage. However, the nature of the draw for the first-round matches threatened to upset this arrangement. Group F, based in Japan, will bring together the “old enemies” England and Argentina, making this one of the hottest fixtures in the tournament. Even if one of the channels were to obtain exclusive rights to the group matches England are to play with Sweden and Nigeria, this would not be sufficient to compensate for missing the “big one”. At a certain point it looked as though deadlock had been reached, with both channels indicating that they were prepared to go “head to head” with regard to this fixture and show it simultaneously – thus resulting in less choice for the viewer. The BBC was particularly keen to show the Argentina match since its sports coverage had been in the doldrums for some time, having lost broadcasting rights to such key events as Test cricket and key football fixtures. The 1998 World Cup game between the two countries was screened by ITV, a situation which the BBC were not keen to repeat.

However, after ten meetings of tough negotiations, the rival channels finally agreed on the way in which the 64 World Cup games would be shared out. ITV was to show exclusively the France v. Senegal – the opening game in the tournament – as well as England’s first Group F game with Sweden. The BBC would broadcast on an exclusive basis the two remaining Group F games, with Nigeria and Argentina. The two channels would then proceed on a “head-to-head” basis for all remaining England and Ireland fixtures if either or both qualified for the last 16. Clearly, it was the BBC which had emerged as the winner from this encounter.
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Dispute over radio rights to Germany/England Munich clash continues

The historic 5-1 victory by the England side over Germany last September may still leave football fans in this country dewy-eyed. However, a good deal less sentimentality surrounds the long-running dispute between the Football Association (FA) and one of its broadcasting partners, TalkSport, arising from this fixture. The FA are demanding that the commercial station should pay a broadcasting rights fee of £15,000 for the Munich match – which the BBC, having held a similar radio contract, remitted some time ago.

However, TalkSport alleges that it had been negotiating for these rights with the German footballing authorities for a price of £2,000 only. The commercial broadcaster is therefore unwilling to pay the FA, especially since it still has strong feelings about the initial demands made by the FA marketing department to both itself and the BBC, which would have required both to pay £100,000 each for the privilege. The FA for its part insists that it may sell its radio rights at whatever price it sees fit, and that TalkSport also owes it approximately £300,000 from the existing contract. It also stated that it would consider barring TalkSport from future England games if it failed to pay its debts.

At the time of writing, this issue was still unresolved.

French sports minister expresses concern at exclusive World Cup radio rights contract

In December 2001, Marie-George Buffet, the French Minister for Youth and Sports, issued a press statement in response to the announcement that the RMC radio station had obtained from the Kirch media group exclusive rights to broadcast the 2002 Football World Cup. She expressed her disappointment at this news, which unfortunately confirmed the concerns which she had expressed some months previously as to the manner in which commercial interests were taking over the tournament, and as to the danger which this turn of events represented for the social and cultural role which sport had to play in our society.

She observed that French legislation on the subject strikes a fair balance between the need to enable the commercial aspects of sporting events to be utilised and the requirement that the right to information be protected. It was indispensable for the international sporting organisations to observe the logical implications of the statement on the specific nature of sport as adopted at Nice under the French presidency of the European Union. It was a dubious proposition to claim that sport was specific by nature whilst at the same time allowing sporting events to be made exclusively subject to market forces.

On the specific issue of the rights to the broadcasting by radio of the World Cup, she expressed the hope that the French radio broadcasting companies should agree to an arrangement which would enable all French people to have access to comprehensive coverage of the World Cup – as indeed to that of any other major sporting event.

Television rights deal ends football strike threat – the aftermath

Just as the previous issue went to press, it was learned that the threatened first-ever strike by professional footballers in England had been averted by the conclusion of a media rights deal acceptable to all those involved in the dispute. It will be recalled that under this deal, reached on 23/11/2001, the Professional Footballers’ Association (PFA) would receive £52.2 million over the next three years of the current television contract concluded by the two Leagues involved. This represented 2.5 per cent of the television deal in question. The agreement also contains a contingency clause which will extend the deal for a further seven years, with the PFA being entitled to spend the money as it sees fit.

Obviously this was never going to put a complete end to the controversy. The exact reason why the PFA suddenly appeared to be open to compromise was the subject of much debate. Some claimed that the PFA had sacrificed immediate gain for long-term security. However, Premier League Chief Executive Richard Scudamore claimed that it was the shift in public opinion which was the decisive factor in bringing the PFA round. This change had come about after the PFA were seen to be refusing a “very reasonable offer”. Certainly it came as a surprise to many that the PFA suddenly settled for almost £20 million less than it had originally sought. However, PFA chief Gordon Taylor emphatically denied that he had backed down, calling the deal a “compromise that is good for the game”.

It also appeared that Cherie Booth QC had been instrumental in advising the PFA and had assured them that they had a good case if they were to challenge the Premier League and the Football League in court. Ms. Booth specialises in employment law.

Shortly after the resolution of the PFA dispute, lawyers representing the leading bodies of the game committed themselves to negotiating a new standard player’s contract.

Another split looming on racing media rights (UK)

It may be recalled from a previous issue that the dispute between the Go Racing consortium and the British Horseracing Board (BHB) over media rights to racing events had been settled, with 49 racecourses
joined the Go Racing group whereas ten others preferred to set up a separate group called GG-Media.

However, fresh trouble may be brewing for all concerned, since around 20 racecourses from both groups have voiced concerns at the manner in which their joint trade organisation, the Racecourse Association (RCA), has been managing their interests, especially in the course of the acrimonious negotiations which were played out over a period of several months. These 20 “rebels” may withdraw their annual subscription to the Ascot-based RCA, which averages at around £200,000, and establish their own organisation. This would only serve to make the command structure of British racing even more complex and confusing. This journal pledges itself to following any further possible developments in this field and keeping its readers fully informed.

**Police restrictions on FA Cup starting times cannot give rise to legal action**

The attempts by the police to change the timing of FA Cup ties away from prime time slots in order to prevent drink-fuelled hooliganism are documented elsewhere in this organ (see above, p.24). It appears, however, that BBC Sport will not be able to take any legal action for breach of contract against the Football Association (FA) as a result of changes to these scheduled times, which were an integral part of the £440 million contract. The latter has the crucial clause “subject to police acceptance” written into it.

**Kirch financial difficulties bode ill for sports rights market**

Having burst onto the sporting media market threatening to devour everything in its path, the Kirch Media Group, which has already featured extensively in our columns (see above), is already experiencing severe financial difficulties which may endanger not only its own position, but also the lucrative sports rights market as a whole.

Kirch is currently German’s largest television broadcaster, operating both free-to-air and pay channels. It also has the country’s largest film library and interests in sports rights which include the rights to the 2002 and 2006 World Cups (for which it paid FIFA £1.4 billion) and a 53.8 per cent stake in SLEC Holdings. This is the company holding the rights to operate Formula One races for the next 99 years, which Kirch was hoping to broadcast on a pay-per-view basis. Other media investments by the group include a 40 per cent stake in Axel Springer, the media group which publishes the Bild tabloid newspaper (generally regarded as Germany’s answer to The Sun).

The company currently has debts amounting to approximately £3.5 billion, and its cash problems are compounded by it having been compelled to buy back the stake held by the aforementioned Springer Group in the ProSiebenSat.1 television group for €767 million, well above its current value. In addition, it is being required to repay a €460 million loan from the Dresdner Bank by the end of April, and Rupert Murdoch could compel it to buy back his stake in loss-making TV channel Première World at a cost of €1.6 billion. KirchMedia may well be forced to sell off some of its assets in order to remain afloat.

The problems experienced by this media giant could have serious implications for sports such as football and Formula One racing. They have also come at a time when television companies the world over face financial hardship after having paid too much for sporting broadcasting rights – particularly in football. This applies particularly to this country (see in particular the problems experienced by ITV Digital, above p.40).

**Legal issues arising from transfer deals**

**Concern mounts at Old Trafford over Ferguson Jr.’s role in transfer deals (UK)**

The reader may recall from the previous issue that certain question marks had begun to arise over the part played in the transfer (from Manchester United to Lazio Roma) of defender Jaap Stam by the Elite Sports Group, a Manchester-based consortium having on its board one Jason Ferguson, son of Manchester United manager Sir Alex. Although the Manchester club have continued to use the services of the Elite group – by using them inter alia, in an official capacity to operate the regular “United for Unicef” charity events – the role played by Ferguson Junior continues to cause tremors in the Old Trafford boardroom. In fact there are signs that recently, the club has attempted to distance itself from the group, and has notified Sir Alex that involving his son in future transfer deals could land United in trouble with the Financial Services Authority (FSA).

The fears expressed at Old Trafford are based on regulations governing the day-to-day business practices of companies quoted on the London Stock Exchange. These rules are designed to ensure that directors, substantial investors and other associates are unable to use their position to disadvantage the interests of shareholders. A listed company considered to be in breach of such rules can find itself subject to an FSA investigation and, if the company is then found to be guilty, the FSA can impose certain penalties.
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Agent Roach takes FA to High Court (UK) 264

Dennis Roach is a name which has already been featured in these columns in relation to the activities of football agents. More particularly it may be recalled that some months ago, the Football Association (FA) brought charges against Roach arising from the transfers of Paulo Wanchope and Duncan Ferguson, following a lengthy investigation. Roach has now decided to take the initiative himself by taking the FA to the High Court.

Essentially, Roach does not believe that he has a case to answer. However, his main objection to being investigated by the FA disciplinary panel is his fear that his high profile will count against him. Accordingly, he is seeking to obtain that the Court should find that he is a FIFA-registered agent. As such, if any rules have been infringed, these will be FIFA rules and therefore his case should be heard by the world governing body of football. The FA disagrees, arguing that rules governing the activities of agents have been issued not only by FIFA, but also by the FA, Premier League and European governing body UEFA. Therefore the FA has jurisdiction to take the action envisaged.

Battle has only just been joined in earnest on this case, with a procedural hearing having taken place in early February 2002, and the main trial yet to commence at the time of writing. Roach was represented by leading City form Clifford Chance. Watch this space for further details.

Agents push for involvement in new transfer rules 266

Although not universally admired for their role in, and effect on, the world of football, players’ agents seem increasingly to be gaining in self-confidence – to the point of wanting a seat at the sport’s top table. Thus far, talks aimed at rewording the standard players’ contract have involved only the ruling authorities, the clubs and FIFPRO (the official agents’ trade union). However, Jon Smith, joint owner of the London-based agency First Artist Corporation, believes that the largest agencies, rather than some umbrella organisation, should become involved in these negotiations. Smith claims that football agents, from being the pariahs of football, have now become a powerhouse, and an influential voice for positive thinking in the industry.

First Artist Corporation has currently 375 clients ranging from Chelsea manager Claudio Ranieri to the Barcelona and Sweden star Patrick Andersson. Through an association with Portuguese agency Superfoot, they also hold the rights to Luis Figo, which means that any transfer of the Real Madrid star to the Premiership would also have to go through First Artist. Whether this will carry sufficient clout to bring about such top involvement, however, remains to be seen.

Belgian court in landmark transfer deal ruling 267

Towards the end of last year, the Industrial Court of Appeal (Arbeidshof) of Brugge, Belgium, made a ruling which is likely to have far-reaching consequences for many professional football clubs in the country.

In June 1999, KV Oostende transferred their player Sidney Lammens on a definitive basis to KVC Westerlo for the sum of BEF 3.2 million (£50,000). In addition, Westerlo paid the Ostend club £30,000 in order to buy out the remainder of Lammens’s contract, which in principle had still to run until the end of the 2000 season. Since the three parties involved had signed a clause in the contract that “none of the parties shall henceforth have any claims against each other”, the Ostend club considered that this represented full and final settlement of the deal. It therefore did not pay the player for the last two months of the 1998-1999 season. However, Lammens later brought a claim for outstanding wages for May and June 1999. Because it did not prove possible to reach an amicable settlement, the matter landed before the Industrial Court of First Instance (Arbeidshof), which awarded the action to the player – as did the Industrial Court of Appeal. As a result, the courts had in effect ruled that a club does not automatically become released from all its obligations towards a player by concluding a transfer deal. Only time will tell exactly what effects this will have on other clubs.

Football embraces transfer windows – but will English clubs wear it? 268

In early December 2001, the face of British football was set to change after the top European leagues agreed to introduce two transfer windows per season, restricting the periods in which clubs may buy and sell players. They are scheduled to enter into effect as from the start of the 2002-3 season, along with a transfer system which will otherwise give players greater freedom of movement. The windows are to apply to all international and domestic transfers amongst the top leagues of Europe, and should operate from (a) the end of the domestic season to 31 August, and (b) from 1 to 31 January. Outside these periods, clubs will not be allowed to transfer players.

The above measures were decided by the professional football committee of European governing body UEFA, with Premier League secretary Mike Foster representing England, at a meeting in Nyon, Switzerland. The following week, the deal was submitted to the UEFA Executive, which endorsed it. UEFA also stated that individual leagues, rather than clubs, would be able to apply for certain exemptions – e.g. in the case of injured goalkeepers. However, it
warned that the use of such exemptions would not be allowed to circumvent transfer window regulations.

However, doubts started to arise immediately as to whether the English clubs would abide by this new system. The main objection seemed to be that, although these restrictions on cross-frontier transfers were acceptable, movements of players between domestic clubs should be preserved in order to protect the teams in the lower leagues, who rely on “quick-fix” transfer income for their survival. In the words of David Burns, Chief Executive of the Football League:

“The idea that we should impose this is rubbish. We already have player stability in this country and what we do in our domestic market is our business. If these windows are imposed, it will destroy the ability to get income, especially among clubs who develop players deliberately to sell them on.”

He went on to suggest that having two parallel systems, one for the European transfer market and one for domestic movements, would have a beneficial effect, by stimulating the development of home-grown players and reducing the number of mediocre imports. UEFA insiders, however, warned that applying two separate systems would lead to legal challenges by foreign players claiming the same right to move between clubs as their English counterparts – which is exactly the scenario which the introduction of a uniform format was designed to avoid.

Undeterred, Ken Bates, the Chelsea chairman, announced in mid-February 2002 that his colleagues in the English Premier League would not support the introduction of these transfer windows. He was speaking after a lunch in London with Gerhard Aigner, Chief Executive of UEFA, and other leading figures in the Premiership. Aigner had urged the latter to accept the transfer window system, warning about the possibility of legal challenges. Bates used the £5 million sale of Nottingham Forest midfielder Jermaine Jenas to Newcastle United as a measure of the extent to which the UEFA plans would be resisted in England. He pointed out that Forest, a club in dire financial difficulties (see below, p.78) needed the funds badly. Allowing players to be transferred only at one point in the season would turn a player from a liquid asset into a fixed asset, making life very difficult for smaller clubs, he added.

Perhaps Mr. Bates should at some stage be reminded that some of his own players seemed intent on giving new meaning to the term “liquid asset” (see above, p.34). At any events, this saga is set to continue for some time to come. Watch this space for further details.

3. Contracts

**Court case holds up financial settlement in Rune Lange transfer**

Norwegian football Rune Lange star hopes to net well over £1 million from his recent transfer from Turkish club Trabzonspor to Belgian side Club Brugge. However, he will need to wait a while before this is officially confirmed, since this depends on the outcome of the decision to be made in the legal proceedings currently being played out between himself and the Turkish club.

After a tussle lasting many months, Lange joined Brugge in April 2001. However, Trabzonspor claimed a substantial transfer fee, whereas Lange claimed that he was allowed to move transfer-free from Turkey on the basis that the club had failed to meet all its contractual obligations towards him. FIFA issued a transfer certificate. Club Brugge provisionally made no transfer payment, but set aside the proposed transfer fee, said to be well over £1 million. Both Lange and Trabzonspor claim to be owed this amount. A court in Oslo found for Lange, but the Turkish club have appealed. The case is expected to drag on until the summer.

**Round-up of other cases (all months quoted refer to 2002, unless stated otherwise)**

- **Bracknell, UK.** British ice hockey team Bracknell Bees have finally signed ex-National Hockey league forward Daniel Goneau. The latter attempted to move to Germany, but joined Bracknell when this club, who held his international transfer card and a signed contract, complained to the international federation.

- **Leicester, UK.** Aftab Habib effectively became the subject of cricket’s first “Bosman” transfer after buying himself out of his contract with Leicestershire. Habib, who has played two Tests for England, has agreed a five-figure compensation sum to the club, and is now a free agent.

- **Chesterfield, UK.** It will be recalled that Nationwide League club Chesterfield had a number of penalties imposed on it by the Football Association (FA) following a series of financial irregularities at the club. One of these measures was a transfer ban, which expired in mid-December 2001. Chesterfield moved quickly to take advantage of this state of affairs, signing Mark Allott and Mark Innes from Oldham on loan deals.

- **Swindon, UK.** Another club which has had a transfer ban imposed on it is Nationwide League side Swindon Town. This measure will apply until such time as the club repays the £50,000 loaned by the Professional Footballers Association (PFA) in order to pay players’ wages. At the time of writing, Swindon were losing £120,000 per month and had admitted to total debts...
3. Contracts

amounting to £3,500,000, of which £500,000 are owed in taxation and £200,000 to the local authority for rent and rates.

Employment law

The John Crawley affair

John Crawley’s cricketing career, which at one time bore such rich promise, is currently in the doldrums. Following a brilliant start as a Cambridge blue and England Test batsman, he suffered leaner times with his club Lancashire, culminating in the latter’s decision to dismiss him as captain following the 2001 season. As was reported in the previous issue, he promptly announced that he no longer wished to play for Lancashire in order to sign a three-year contract with Hampshire – even though there remained three years of his five-year contract with the Red Rose county to run. He considered himself to have been constructively dismissed, alleging that his position as a player and captain had been undermined. Mindful no doubt of the fact that, with Mike Atherton’s retirement, they would find themselves short of experienced batsmen if Crawley left as well, Lancashire refused to let him go. They appeared to be supported by the rules of the England and Wales Cricket Board (EWC B) which state that a player cannot be signed by another county in mid-contract without the consent of the county with whom the contract has been signed.

Initially, attempts were made to settle the differences between the two parties outside the courtroom. However, these negotiations, including the county club’s grievance procedure, ran into the sand in late January 2002, leading Crawley to resign formally from Lancashire. The county’s response was to refer the matter to the EWC B, before its contracts appeal panel. The hearing was held in mid-February.

Following a hearing at Lord’s which lasted eight hours (at which Crawley’s legal team was headed by none other than Cherie Booth QC), the Panel ruled that Lancashire had not been in “serious or persistent breach” of their contractual obligations. This meant that, in principle, Crawley would have to see out the remainder of his contract. Initially, it seemed that judicial action would inevitably follow, what with the eminence (and expense) of the QC leading the legal team, and the frequent indications given previously by Crawley that he would not hesitate to take the matter to the employment judiciary.

However, at the time of writing this threat has yet to materialise. Crawley did not even appeal against the panel’s verdict, settling instead for expressing the hope that Lancashire would be conciliatory on the issue.

Several days later, he made Lancashire an offer of around £35,000 to buy his way out of his contract. The county’s response was to propose a sum considerably higher than that, well beyond the player’s means. The issue had not yet been resolved at the time of writing.

Although the ECVB Panel ruled in Lancashire’s favour, the text of the decision, not yet available at the time of going to press, was expected to criticise the county club for the manner in which it had handled the entire dispute.

Referee wins racial discrimination claim from employment tribunal

This issue is dealt with under Section 14, headed “Human Rights/Civil Liberties” (see below, p.89).

Will the salary cap fit? Ins and outs of wage ceilings in football and rugby

The history of attempts at placing upper limits on the earnings of sporting performers in football is not a happy one. The maximum £20 weekly wage was banished as its deadening effect on English soccer became increasingly evident, and although some half-hearted attempts were made to revive interest in this practice at the end of the 1960s, maximum earnings have hitherto been considered as quaint a memento of old-time soccer as brylcreem ed hair partings and players arriving at the ground on bikes.

Yet there are other professional sports in which this concept is still very much alive, although in a different form – the two best-known examples being rugby (both codes) and American Football. In addition, the ever-spiralling wage bills of clubs are now making such serious inroads on their finances as to be capable of threatening their survival. All this has revived interest in the concept of a salary cap in footballing circles, as will be detailed below. However, this section will also focus on some difficulties encountered by both Rugby codes with this concept, as a reminder that – as any other field of human endeavour – this practice also has its pitfalls.

Former Football league chairman Graham Kelly started the ball rolling in a newspaper article pointing out the dangers which the present “devil-take-the-hindmost” attitude by the professional footballing elite in this country presents for its long-term survival. He concluded in these terms:

“The FA must now apply independent thinking to the urgent problem of the structure of the British game before it implodes. The first condition for any restructuring should be the imposition of a salary cap either linked to turnover or based on a maximum number of squad players over 21.”
Nor were concerns over players’ earnings restricted to this side of the channel. Later that month, the Chairman of the German football federation, Gerhard Mayer-Vorfelder, raised the question of introducing a salary cap at the European level with the governing body UEFA. According to Herr Mayer-Vorfelder, the gap between top teams such as Bayern Munich and Real Madrid and the rest threatened to become too great, and it should be possible to devise a system of monitoring the clubs’ accounts to accompany such a salary cap by 2004.

Whether either or both of these events were decisive in prompting the top clubs to give serious consideration to this idea is unknown to the present writer. However, it is a fact that, in late February 2002, the G14 group of leading clubs met in Barcelona and agreed in principle to a salary cap because most of their turnover was being eaten up by players’ earnings which they could no longer afford. Coincidentally or not, this development came at around the same time as it was announced that Roy Keane had signed a new contract with Manchester United which would give him £100,000 per week for the next four years.

A few days later, Sergio Cragnotti, President of Lazio Roma, announced that he would propose a salary cap for the top Italian side that very month. However, as has already been detailed in these columns, salary caps can harbour their own problems, and so it has proved for both Rugby codes in this country over the past few months. Thus in late November 2001, Rugby Union players were taking legal advice ahead of a possible challenge to the salary cap enforced in that sport. More particularly the Professional Rugby Players’ Association (PRPA) sought advice about the lawfulness of the cap, which had been set by the clubs without consulting their players. Since then, nothing has been heard of this challenge, so it must be assumed that the PRPA was able to work out a deal with the Zurich Premiership clubs on ways of refining the £1.8 million salary cap.

Early this year, the coach of top Australian Rugby League side Newcastle Knights, which had been beaten by Bradford Bulls for the World Club Championship, confirmed that in his view, the Bulls would more than hold their own in his own league, which is the toughest in the game. However, he warned that unless Super League clubs in England enforced a strict salary cap, the game here would be dominated by a handful of clubs. He was referring to the fact that in England, the salary cap is uneven. Indeed, some, like Wigan chairman Maurice Lindsay, would like to see the salary cap scrapped in order to prevent Rugby Union from poaching the game’s top players.

3. Contracts

Springbok becomes the first player to sign dual-code rugby contract (UK)

The evolution in the movements of players between the two codes of Rugby in this country is one of the more curious phenomena in sport. For many years, whilst the Union code was strictly (?) amateur, many a player was enticed from its ranks to join the lucrative uplands of the international code. Recently, however, as the Union code also adopted professionalism, the traffic seems to have moved almost entirely in the other direction. Now a new dimension has been added to this question, to wit the signing of dual code contracts with the same club.

Leeds are a club which operates both codes – either as the Tykes, who play Rugby Union, or as the Rhinos who play under the League code. In January 2002, they signed the Springbok centre Japie Mulder, who was a member of the World Cup-winning South African team in 1995. Mulder will play for the Tykes in the Zurich Premiership until May before switching to Rugby League with the Rhinos for the remainder of their Super League season. He could be joined in this category by fellow-Springbok Bram van Straaten, who joined the Tykes late last year.

Darlington commercial manager dismissed after fight with director’s wife wins unfair dismissal claim (UK)

In the previous issue, this section featured the case of Helen Coverdale, who was dismissed as commercial manager for Nationwide League club Darlington following a fight with Michelle Metcalfe, the wife of a director who accused Ms. Coverdale of having an affair with her husband. The dismissed employee sued the club for breach of contract and unfair dismissal, and in early January 2002, the industrial tribunal at Newcastle-upon-Tyne awarded the action to her in so doing, the tribunal ruled that Ms. Coverdale had not in any way caused or contributed to any extent towards her dismissal.

The level of compensation was to be set at a later date.

Bristol RFC, Joel Stransky and Bob Dwyer involved in legal scrum

In December 2001, it was announced that Bristol Rugby Club had taken legal action against their former coach Bob Dwyer in relation to a £250,000 claim made by Springbok Joel Stransky against the club for breach of contract. The tangled web involving Stransky, Dwyer and the West of England club was set in motion two years ago, when Dwyer was Bristol’s director of rugby and Stransky a free agent after having left Leicester. The South African alleged that Dwyer had offered him a
3. Contracts

post as coach to the club’s backs worth over £100,000 per year, and that in June 2000 he was introduced as such to the players. However, shortly afterwards Bristol announced that Stransky had not been offered any contract. Dwyer then left the club to take up a coaching appointment in his native New South Wales. In March 2001, Stransky claimed that Bristol had reneged on an offer to employ him on a two-and-a-half year contract.

The Bristol club authorities explained that originally Dwyer wanted Stransky as a player-coach, but was in no position to do this because the South African had already put in a claim for a permanent disability pension, having finished his playing career through injury. Apparently this had been pointed out expressly to Dwyer, and the latter had been formally told not to appoint Stransky. This, claimed the club, left them no option but to take legal action against the Australian for negligence.

The outcome to this dispute was not known at the time of writing.

Motor racing team owner pay compensation to Pedro Diniz, says Court of Appeal

Tom Walkinshaw, the owner of the Arrows team, will need to pay compensation amounting to £500,000 to Brazilian driver Pedro Diniz after the Court of Appeal in London dismissed a challenge by the Leafield-based team. The Court upheld a ruling made in February 2001 that Diniz was allowed to leave the Arrows to join the Sauber team at the end of 1998, on the grounds that Walkinshaw’s team had breached a number of clauses in their contract with the Brazilian. Diniz later became a major shareholder of the troubled Prost team (see below, p.000) after failing to retain his drive at Sauber two years ago.

At the time of writing, it was not yet known whether Walkinshaw had decided to appeal to the House of Lords.

Recent developments under National Collective Agreement in France

In France, Collective Agreements (conventions collectives) are agreements concluded between, on the one hand, employers of employer organisations and, on the other hand, representative trade unions, in order to determine the working conditions and social benefits of employees. There currently also exists one such collective agreement for sport, under which a number of transactions are regularly concluded. The end of the previous year was a particularly productive time for such transactions. One of these concerned the financing of the Social Dialogue Development Fund (Fonds d’aide au développement du paritarisme).

Henceforth, all employers covered by this Agreement will contribute 0.03 per cent of the salary mass relating to their employees towards this endeavour. This fund serves the purpose of, inter alia, repaying the costs of the “social partners” when engaging in social dialogue negotiations, and of financing studies undertaken at the instance of the “social partners”.

Also, on 20/12/2001 the “social partners” concluded an agreement on continuous professional training and education.

Lancashire CC dismiss physiotherapist without compensation

That Lancashire Cricket Club are not exactly blessed with the Midas touch in industrial relations is something which is quite evident from the manner in which it handled the John Crawley affair (even though it won the contractual dispute with the player – see above, p.46). The club now seem almost determined to heap further shame on the Red Rose by dismissing long-serving physiotherapist Laurie Brown – without paying the latter a penny in compensation. The club’s Chief Executive, former footballer/cricketer Jim Cumbes, explained that Brown was working for the club on a freelance basis, and as such the latter were under no obligation to pay him any compensation.

This is the second occasion on which Brown has had his services dispensed with at Old Trafford. He was dismissed by football club Manchester United in 1981, but at least on that occasion he was also awarded £8,000 in compensation.

Mr. Brown expressed his disgust at the action by Lancashire CC. He added that, even though the club may be legally in the right, its action was morally repugnant.

Top soccer clubs continue to seek compensation for absent internationals (UK)

In the previous issue, it was reported that G14 group of leading European clubs were becoming increasingly restive about the question as to who pays their players when the latter are away from the club on international duty. These demands have become increasingly strident, to the point where some clubs are now openly threatening to withhold their players from international duty unless their demands are met. Some teams want the Football Association (FA) to pay every penny in wages due whilst their players are representing their country; however, the majority would content themselves with a contribution of £15,000 per week.

What is frustrating some clubs in particular is the fact that they have to release their most valuable “assets” free of charge whilst the FA makes a fortune from England fixtures. Now some clubs are prepared to risk a
showdown with the FA and even with world governing body FIFA, by either refusing to release players for England matches or stopping their pay whilst they are thus engaged. Premiership clubs want the FA to follow the example of Germany, Italy and Holland, whose national associations pay some or all of the players’ wages whilst on international call-up.

The FA are wealthier than ever thanks to their £500 million three year television contracts with the BBC and BSkyB, sponsorship deals and booming sales of England shirts and other merchandising products. The England v. Sweden friendly international alone earned them £6.5 million, which did not deter them from presenting Manchester United with a £250,000 bill for hosting the match.

**Castaignède may bring court action against French rugby authorities**

French Rugby Union international Thomas Castaignède has recently initiated proceedings which could lead to a court action against the French Rugby Federation (Fédération Française de Rugby – FFR) over potential loss of earnings which were caused by an injury to his Achilles tendon and left him unable to play for over a year. He sustained this injury whilst warming up for his country against Australia in November 2000. Since then, his salary has been met by his English club Saracens, who ever since have attempted to reach a settlement over compensation with the FFR. An agreement seemed to have been concluded just before the end of the year, but since then matters appear to have stagnated. Saracens then informed Castaignède that they would stop paying his salary unless the FFR acted.

Legal difficulties have arisen because Castaignède is employed by a club outside France, which means that his salary is not protected under French employment legislation which would have treated the injury as an accident in the workplace. Apparently it is unclear whether the FFR had taken out insurance to cover a possible injury which fell outside the system.

The outcome of this dispute was not yet known at the time of going to press.

**Contract between tennis federation and tennis coaches is not contract of service. Italian court decision**

In the case under review, the Italian National Social Security Agency had demanded that the Italian Tennis federation should pay full social security contributions in respect of five tennis coaches. These were operating under contracts which were expressly qualified as contracts for services as regulated by the Civil Code, and did not contain any details as to the manner in which these services were to be performed. At first instance and on appeal, the relevant court had ruled that these contracts contained no elements enabling them to be qualified as contracts of employment.

The Supreme Court (Corte di Cassazione) confirmed these decisions. It ruled that, given the contract in question, it was for the creditor to provide the evidence that the contract was one of employment rather than for services. There was, moreover, specific legislation in relation to sporting professionals in the shape of the Law of 23/3/1981. This Law specified the conditions in which certain persons working as sporting professionals could be regarded as operating under a contract of employment. However, for those sporting professionals covered by Article 2 of this Law – which clearly included the tennis coaches in question – there was an extra criterion: for these people, the employment nature of the work needed to be confirmed on a regular basis in accordance with the criteria laid down by the ordinary employment law.

**Round-up of other cases (all months quoted refer to 2002, unless stated otherwise)**

**Manchester, UK.** Struggling Nationwide League team Stockport County have lost a court dispute which has raged for almost five years over their appointment of manager Gary Megson, previously with Blackpool Town. The club have been ordered by the courts to pay Blackpool compensation to the tune of over £100,000.

**London, UK.** Jim McKenzie, dismissed from his post as Chief Executive of the World Professional Billiards and Snooker Association (WPBSA) on 12/12/2001, announced one month later that he intended to take out a legal action claiming over £100,000 in compensation. The WPBSA said that the action would be “vigorously defended”.

**London, UK.** In January, Nationwide League club Crystal Palace won an injunction from the High Court preventing their manager Steve Bruce from leaving the club for Birmingham City without serving nine months’ notice.

**Other Issues**

**Leading law firms advise in sporting deals**

The following leading law firms have recently been advising in a number of important sports-related deals:

- Kent firm Gulland and Gulland represented cricket ball manufacturer Alfred Reader & Co on its sale to the UK branch of Australian group Kookaburra Sport, who are advised by London firm Charles Russell;
3. Contracts

- D.J. Freeman acted for Fulham FC on its ground share agreement with Queen’s Park rangers – who are advised by Harbottle & Lewis – for the coming 2002-03 season whilst Craven Cottage is being redeveloped. D.J. Freeman is also advising on the redevelopment.

Lennox Lewis wins court battle with former promoter Eliades

The previous issue reported on the lawsuit initiated against boxing champion Lennox Lewis by his former promoter Panos Eliades – followed by a counterclaim brought by the former – over their contractual split. In the meantime, the New York court in question has settled the issue – in Lewis’s favour.

The action brought against Eliades by the WBC and IBF world heavyweight champion had been for breach of contract. However, after two days of deliberations, the jury found in favour of Lewis, awarding him $8 million.

The full text of the decision was not available at the time of writing.

Former ice skater Harding evicted from home

Tonya Harding, the disgraced figure skater banned for life for the assault on rival Nancy Kerrigan before the 1994 US Championships, was compelled to move from her riverfront home in January 2002 following an eviction ruling. Harding lived with her manager in a house overlooking the Columbia River. Both owed $4,530 in unpaid rent.
4. Torts and Insurance

Sporting Injuries

Operator of skiing centre held liable for injury to skier. Norwegian court decision

In August 1990, Anne Hedevig Ly visited a skiing centre together with a number of friends. At a certain point she went down a track in order to get her lunch packet. Along this descent there was a crack in the snow surface, in which Ms. Ly fell, incurring serious injuries to the head. The crack in question had been caused by a slide in the snow caused by the gradient of the terrain on which the descent was situated. This crack had been marked out by means of a green net disposed in a semi-circle approximately 20 metres above the crack. This net had been placed there in order to warn the public of the danger rather actually preventing any skier from falling into the crack. The ski operator’s insurers paid Ms. Ly compensation to the amount of 2 million kroner. However, the victim brought an action for an additional amount for loss incurred.

The District Court (Herredsretten) dismissed the claim, which prompted Ms. Ly to apply to the Gulating Court of Appeal (Lagmannsretten). The latter set aside the challenged decision, finding that the ski operator was liable for the loss incurred by Ms. Ly. The ski operator then applied to the Supreme Court (Høyesteretten) for review of the Court of Appeal decision.

The Court conceded that the track in question was located outside the prepared area, and therefore required higher standards of care on the part of the skier, but confirmed the Court of Appeal’s finding that it nevertheless constituted part of the area intended for general descent. The ski operator had accepted that it was under a duty to warn about the crack in the surface; the question to be settled was whether the warning put in place by the operator was adequate for the purpose of meeting the requirements of the Law on Compensations for Liability (Skadeserstatningsloven).

The key issue here was whether it was negligent not to warn the user of the skiing centre of the extra danger represented by the crack, and to do so in such a way that the skier had the opportunity to select a different track. The Court found this a very difficult question to answer. Ultimately, it held that the ski operator had been negligent in failing to place a warning sign at the top of the track, because from this vantage point, the western track (in which the crack was located) looked as though it constituted a descent presenting no particular problem, whereas from that same point the cracks in the eastern track were visible. The operator was therefore negligent in not placing a warning sign at the top warning of the danger present on the western track.

It also found that there was no contributory negligence on Ms. Ly’s part.

The Supreme Court accordingly confirmed the ruling by the Court of Appeal.

County council did not incur occupier’s liability for injury to football trainer. Irish court decision

In July 1996, the claimant in this case was training an under-15 football team at the playing fields of Sallynoggon. Co. Dublin. He claims that the boys were playing a six-a-side game when the ball went over his head, whereupon he turned to call out to the boys that he had gone to retrieve the ball. He then stepped into a hole and fell on his ankle. The claimant was taken to hospital where he injured ankle was placed in plaster for a period of six weeks. Once the cast was removed, the claimant’s ankle gave way, and the plaster was reapplied for a period of four weeks. During this time, he was unable to perform his normal duties as a funeral director; moreover, he could no longer train boys at football as before and had experienced difficulties using that ankle. The defendant, for its part, argued that the claimant had failed to obtain permission of the council to use the playing fields at this time as it fell in the off-season, and that there was no evidence that there was a hole in the fields.

The Circuit Court held that the claimant was a recreational user of the lands under s. 4 of the Occupiers’ Liability Act 1995. There was no evidence that there was a hole in the fields, but rather a mere indentation in the ground. The Court also held that, in the circumstances, it could not conclude that the defendant had acted in reckless disregard for the claimant and therefore dismissed the latter’s action with no order for costs.

German court ruling on duty of care to be observed by skiers

In a recent ruling, the Court of Appeal (Oberlandesgericht) of Hamm ruled that the duty of care and behavioural rules to be observed when skiing are based on the rules of the International Skiing Federation (FIS). Under these rules, the skier may only ski at a speed at which it is still possible to avoid other skiers when these are encountered, or even, where necessary, to come to a standstill. The rules relating to the duty to wait only apply to the skier who starts skiing from a standstill position, whereas a skier who is already in motion, even where he makes a sideways movement towards the slope, enjoys the protection of FIS Rule 3. This provision stipulates that the skier who moves along faster from above must have regard to the person skiing below and, where necessary, avoid him/her. Any decision holding liable a skier who collides...
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with another must be based on the finding that this skier failed to observe the right of way enjoyed by the skier who was noticeable, in motion and close by.

Libel and defamation issues

**Boxing judge wins libel action against Sunday Mirror**

As has been stated in previous issues, the majority of threatened court actions for libel and defamation turn out to be so much hot air. However, there are a number which are seriously implemented, as was the case with boxing judge Eugenia Williams. She recently won a libel action against the Sunday Mirror after the latter had claimed that she may have taken a cash bribe in order to score in favour of Evander Holyfield during his heavyweight title fight with Lennox Lewis in March 1999.

The text of the decision was not yet available at the time of writing.

**Jockey Fallon to sue Sunday newspaper over Triad link allegations**

Another Sunday newspaper which may be about the experience the full weight of England’s libel laws is the News of the World. This worthy organ had suggested, in February 2002 that top jockey Kieren Fallon was seen meeting members of the feared Chinese mafia, the Triad, in Hong Kong. Fallon’s agent, Dave Pollington, quickly dismissed this claim as “laughable”, adding that the jockey had not been to Hong Kong for a long time. However, the latest information is that Fallon will not restrict himself to denials, but proceed to take court action in respect of these claims. This journal will obviously follow any court proceedings arising from this matter with considerable interest.

Other issues

**Student to sue Metropolitan police for Euro 96 assault**

A student who was knocked unconscious during the Euro 96 football championship in England is to claim £400,000 from the Metropolitan Police, as a result of the Court of Appeal ruling in February 2002 that the unnamed officer was guilty of “a deliberate, unlawful assault” on him. The three judges unanimously dismissed an appeal by Sir John Stevens, the Metropolitan Police Commissioner, against a High Court ruling made in July 2001 that the officer had attacked the student.

The victim’s claim includes £75,000 for epilepsy caused by the incident. He will also claim for loss of earnings because his injuries caused him to abandon his studies on account of loss of concentration. This cost him the opportunity to go to University. Over the past five years, he has only been able to work for a total of five days.

Mr. Wilson had watched the England v. Germany game in a Twickenham bar and then travelled to Trafalgar Square to “soak up the atmosphere”. At the High Court hearing, the trial judge, Mr. Justice Morland, had witnessed a traffic video of the incident and held that the student had been the victim of a deliberate assault.
5. Public Law

The Wembley fiasco.... and related issues. The saga continues

General developments
It may be recalled that the last issue of this organ left this particular saga at a point where serious doubts began to arise as to whether the New Wembley project was at all feasible, or even desirable. Developments since then have left the long-suffering general public as confused as ever on the fate of the project.

The previous instalment of this regular update also reported that the bids from the Midlands to house the new national stadium were constantly gaining in confidence. Here too, acrimony and controversy were not slow to raise their heads. Towards the end of November 2001, FA Chief Executive Adam Crozier was being fiercely denounced by the team behind the Coventry bid of “contemptuous and appalling” behaviour towards them. More particularly they claimed that Crozier had shunned the Coventry bid since the Government adviser on the Wembley project, the ubiquitous Patrick Carter, had rubbed its projected costs. Carter had dismissed the £254 million cost put forward by Coventry, claiming that the true figure was actually £576 million. This fuelled suspicion in the Midlands that the authorities involved were determined to site the new stadium at Wembley come what may.

At first this suspicion seemed well founded, particularly when it was learned that lawyers representing the various groups involved in the Wembley project were drawing up legally binding documents which all parties would be required to sign before an announcement was made on the project. This was expected to be issued by Culture Secretary Tessa Jowell in the House of Commons in mid-December. However, here again there occurred an unexpected turn of events. With everyone expecting this announcement, the Government stated that it was demanding a tendering competition, which would include the bids from Birmingham and Coventry. It was believed that this would have the effect of pushing down the eventual cost of the project. Thus the whole issue was yet again thrown into confusion, particularly since the FA seemed to be prepared to defy the Government by driving ahead with its plans for the new Wembley. However, it then was the FA’s turn to indulge in a dithering exercise when, without producing any reason, it postponed for 48 hours its expected announcement that Wembley was the chosen venue.

So the day finally dawned which would put an end to all the dithering and uncertainty. Except that it did not. The FA announced, on 19 December, that it had finally reached an agreement with a financial institution to fund the project, with a “revised scheme” which was in fact strikingly similar to the original blueprint. This stadium, assured the national governing body of soccer, would be “one of the finest, if not the finest, in the world”. However, the euphoria evident at FA headquarters was not matched by the Government, which announced that it was still prepared to consider an alternative from Birmingham – or even to scrap plans for the stadium altogether. Minutes before Mr. Crozier was about to make the fateful FA announcement, Culture Secretary Tessa Jowell told MPs that a final decision would not be made until April the following year. In justification, she cited the emergence of a confidential report to the House of Commons which, although it contained no evidence that any criminal or improper action had tainted the process, highlighted concerns at the manner in which contracts for the redevelopment of Wembley had been awarded. The report in question was drawn up by David James, a business troubleshooter, and had been prepared with the assistance of a City law firm.

It was not entirely clear why this report could not be made public in the interests of transparency – something which the present Government constantly claims to favour. This was particularly the case since Ms. Jowell herself had urged that details of the report be made public. Wembley insiders claimed that it contained highly damaging material which exposed that which truly went wrong in the decision-making process. This may explain why the Wembley company, the FA and the lawyers involved stated that the report was covered by “legal privilege” (a common practice with such inquiries) and therefore could not be made available to the public.

It would have been hard for even the most committed opponent of the Conservative Party to accuse the latter of political opportunism when shadow Culture Secretary Tim Yeo scathingly commented that “if dithering were a spectator sport, the roar of the crowd would be deafening”. Gerald Kaufman, the (Labour) Chairman of the Commons Culture, also had some hard words to say, but directed them rather at the FA, where he stated that the scheme:

“had become a grubby and dodgy project in which the Football Association has shown itself to be greedy in holding onto £120 million of public money to which it has no conceivable right.”

It then became apparent that the Prime Minister’s preference had definitely swung towards the Birmingham bid. One of the reasons for the total lack of co-operation with the FA on this issue was considered to be the anger felt by Mr. Blair and the ministers
involved at the manner in which the Association had approached the Government shortly before the General Election in June 2001 and requested £300 million from it towards the Wembley project. Shortly afterwards, the Government announced that it would play a more direct role in the running of the project, with ministers being henceforth required to approve those who would form a new Board for Wembley National Stadium Ltd., the FA subsidiary which owns the stadium. Whereas the old board was made up of five nominees from Sport England (who, lest it be forgot, provided the much-disputed £120 million of Lottery money) and seven from the FA, the new body was to have no more than eight or nine members. Sir Rodney Walker continued as Chairman, FA Chief Executive Adam Crozier would also retain his seat on the Board, and Michael Connah, the FA Finance Director, was to be the Project Director. These changes too were apparently inspired by the David James report, which had concluded that the FA needed to tighten up its management structure to make the Wembley project more attractive to the financial institutions in the City from whom they needed to obtain the money to finance it. Some of the mystery surrounding the aforementioned David James report which caused the Government to frustrate the FA announcement on the Wembley project (see above) appeared to be lifted by a report which was leaked to the newspaper The Daily Telegraph and which concerned a review carried out by Tropus, the firm which had managed the project until last year. It blamed poor management and an absence of adequate checks and balances in the way in which the projected cost of the project had spiralled from the original £300 million to the present £715 million, and was highly critical of the way in which the contract to build the stadium was awarded to the Australian company Multiplex. (In relation to the latter, see below). These revelations came at a delicate point, since Wembley New Stadium Ltd. had hoped to announce the next month that it had secured sufficient finance in order to go ahead with Lord Foster’s design for the new Wembley. In its desperation to rebuild faith in its plans, it commissioned David James, assisted by City firm Berwin Leighton Paisner, to investigate the claims made by Tropus. Even the Government had by this time become thoroughly embarrassed by not only the Wembley fiasco, but also the Picketts Lock disaster which was closely related to it (see below, p.55). It therefore launched its most comprehensive review for 20 years of the manner in which sport is organised. Tessa Jowell accordingly announced to Parliament that the Performance and Innovation Unit, which is based in the Cabinet Office, was to undertake a six-month study to develop a Government strategy on sports policy. Prominent among the points to be reviewed would be the finding of a new approach towards deciding the major events for which Britain should bid, and a blueprint which ties in with the official priority of getting more people involved in taking part in sport. At the time of writing, another hitch has arisen which could delay the project even further, with a disagreement looming over a demand for a £100 million upgrade for the local underground station. Brent, the London borough in which the Wembley site is located, insists that work must go ahead on this project and that it is the taxpayer who should fund it. Ministers are said to be furious at this development. They clearly feel that the local council are relying on what they believe to be the desperation with which the Government wants the Wembley project to go ahead, which amounts to little short of blackmail.

Is Wembley’s “Australian saviour” all that it appears to be?

When, in late June 2001, Australian construction firm Multiplex offered to provide in excess of £350 million in return for a 20 year lease on the stadium which it would build at Wembley, it was hailed as the saviour of the entire project. However, (coincidentally?) at around the time that the Culture Secretary poured cold water over the FA Wembley proposal in December, news broke that the company in question was under investigation by a Royal Commission examining claims of widespread corruption in the Australian construction industry. The newspaper The Sydney Morning Herald was also told by sources in the industry that the Commission was particularly interested in the remarkable growth displayed by Multiplex, which built the much-lauded Sydney Olympic Stadium, and moved into the British scene with the construction of the Western Stand at Stamford Bridge, home to Chelsea FC.

More particularly, Multiplex, the country’s largest construction firm, was compelled to hand over documents to the Commission regarding its development of Federation Square in Melbourne, a prestigious Government project which came in for fierce criticism from Victoria’s Auditor-General when its cost spiralled from A$128 million to A$262 million. The Commission, responsible for cleaning up some of the murkier aspects of the Australian building trade, was also examining improper payments made between Trade Unions and the larger firms, which appear to be commonplace in a notoriously tough industry. These payments also apparently involved Multiplex. During a Federal Court hearing into this issue, the Company’s

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founder and Chairman, John Roberts, had confirmed that these payments took place and were for “casual tickets”, in order to placate the unions for the small number of non-unionised project workers.

It has also come to light that the company also caused considerable disappointment to Australian Football fans last year when it failed to deliver a stadium in Perth (where the company is based) under a proposed leasing deal similar to that under which the Wembley project is to operate. A Western Australian Government spokesperson confirmed shortly afterwards that it was pursuing Multiplex for a £614,000 penalty claim over this affair.

Multiplex, for its part, denied any impropriety and even went to the trouble of taking a half-page advertisement to this end in a newspaper in order to denounce what it described as “inaccuracies” in the press. On the Federation Square project, it maintained that the overrun in costs was due to “significant design changes”, whereas the failure of the Perth stadium had been due to “poor project economics”. In addition, John Roberts, had been “completely exonerated” following a fraud enquiry into business dealings of the Western Australian government.

Picketts Lock/Sheffield fiasco leads to loss of World Athletics Championships...

It will be recalled how the various tergiversations of the Government and the Wembley company on the question whether athletics was to be a feature of the new Wembley or would be reserved for a separate stadium at nearby Picketts Lock had already badly undermined the British bid to host the 2005 World Athletics Championships, which had been awarded to this country in April 2000. When it became clear that it would be impossible to construct any new stadium in London in time for this event, the British Government, in its desperation to keep the bid alive, had proposed that the Championships be held in Sheffield instead. Lamine Diack, President of the world governing body IAAF, was dismissive of this proposal, and announced that he would reopen the bidding at the next meeting of the IAAF Council.

As expected, the Council refused even to discuss the proposal to substitute Sheffield for London. The Government, in order to save itself any further embarrassment, immediately announced that Sheffield would not be among the new bidders. During the said Council meeting, one prominent representative had stated that Britain was unlikely ever to stage the Championships. Undeterred, the Government announced a few months later that it was supporting the London bid for the 2012 Olympic Games, and that a firm of specialist consultants had been employed to carry out a feasibility study into the staging of the event.

At the time of writing, eight cities had expressed an interest in hosting the 2005 World Championships. The decision on the successful bid was to be announced in Nairobi in mid-April 2002.

...yet athletics may still be on the menu at Wembley after all

By the time the World Championship fiasco had run its course, any prospect of ever witnessing athletics at Wembley seemed about as remote as that of Richard Caborn winning the Brain of Sport competition. This was particularly the case in view of the fury felt by athletics circles at what they considered to have been a ploy by the FA to avoid repaying the £120 million allocated to them by Sport England for what was originally intended as either a permanent athletics track or one covered by retractable seating. Not even the prospect of a specially constructed platform track in the ultimate design of the new stadium appeared likely to entice them. Certainly David Hemery, the former Olympic gold medal winner who is now the Chairman of UK Athletics, stated that, although his organisation would wait to see whether or not the new Wembley was finally given the seal of approval in April, such a track was not “something that we shall be driving for”.

Undeterred, the Wembley company Chairman, Sir Rodney Walker, announced in February 2002 that the removable athletics track facility was expected to be part of the design for the new stadium. This was in spite of an earlier proposal for such a track having been rejected in December 1999. When it was finally given the seal of approval in April, such a track was not “something that we shall be driving for”. In addition to the reservations expressed by David Hemery above, the plans for the track in question are fraught with all manner of difficulties. One is that converting the stadium from a football ground to an athletics venue would involve losing nearly 20,000 seats whilst the track, on its platform, is inserted into the ground. This would reduce the stadium capacity to 72,000, which would fail to meet by 3,000 the current minimum size for a main stadium stipulated by the International Olympic Committee (IOC).

Financing the project

One of the thorniest issues to have beset the entire project is the basic problem of “who pays for what”. It also goes to the heart of the reasons why the entire enterprise has hitherto proved such a massive fiasco for all involved.
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One of the most fundamental questions that needs to be asked is how it was possible for a project which initially was costed generously at £475 million to have spiralled into £750 million and rising. The following are some of the factors which have fuelled this increase:

- **maintenance costs**: the existing Wembley stadium has not yet been demolished and it is costing the FA around £1.5 million per month to maintain it;

- **the Wembley site itself**: this was purchased in March 1998 at a cost of £103 million. The FA has been fiercely criticised for paying such an inflated amount for what in effect amounts to a piece of industrial estate in North-West London;

- **design costs**: there have been two different sets of designs for the new stadium, which were both rejected by the FA and the Government – this has added a further £17 million to the bill;

- **construction costs**: if built by Multiplex, this will amount to £358 million.

Even the cost of investigating what went wrong with the project, carried out by Patrick Carter, has cost the taxpayer a cool £500,000!

Attempts to raise the finance from various sources have also proved to be extremely problematical. The attentive reader will need no reminding of the £120 million in National Lottery money allocated to the project. This has been fiercely criticised – not least by former Sports Minister Kate Hoey, who accused the Government of pressuring Sport England into allocating the money to the FA in its desperation to succeed in its bid to host the 2006 World Cup. In any case, as has been noted earlier, that money was intended primarily to fund the Athletics Stadium, with its cantilevered roof, cables and towers. In recent months, there have been indications that even this inflated cost will be inadequate for the purpose, as inflation, running costs and never-ending legal and consultancy fees threaten to push the cost through the £1 billion barrier.

All this has understandably increased the attractiveness of the Birmingham alternative. However, if the bid went to the Midlands, this would also have serious financial knock-on effects on the Wembley project. The FA would be compelled to repay the £120 million lottery grant, and lose a further £60 million in depreciation, design and construction costs. The book value of the current Wembley site stands officially at £38.5 million, but is virtually worthless to any prospective new purchaser; in addition, the £20.7 million spent thus far on design and construction would need to be written off.

At the time of writing, the main repository of any hopes to raise at least some of the cash required appeared to lie with Barclays Bank. Having already emerged as one of English football’s principal financiers – in the shape of Barclaycard’s sponsorship of the Premiership – the bank had embarked upon prolonged discussions with the FA about organising the crucial loan required.

**Watch this space (literally!)**

As the controversial project enters an amazing sixth year of discussion, acrimony and intrigue, the present writer will refrain from engaging in any post-mortems, since, although the body is badly ailing, it remains twitchingly alive and will clearly provide more material for this journal in future issues. However, he cannot resist the temptation of giving the reader a glimpse of “what might have been” (and may still be if the powers-that-be see the error of their ways, step out of character and display a minimum level of competence). As the FA and Government lurch towards the latest incomprehensible twist in their sequence of bungling-induced crises on the project, 300 miles to the North-West, dead on time and within the required budget, the final touches were being put the City of Manchester Stadium, with its cantilevered roof, cables and towers.
This will be the pride and joy of the Commonwealth Games and dispels the notion that this country cannot be trusted with organising anything more complex than an egg-and-spoon race – provided that all concerned get their act together.

Charity Commissioners publish Charity Shield inquiry findings (UK)

It may be recalled from a previous issue that the Charity Shield – the annual fixture which normally pits the (Premier) League soccer champions against the FA Cup holders and whose proceeds are intended for charitable purposes – had attracted the interest of the Charity Commissioners, who felt sufficiently motivated to conduct an official investigation into the question whether or not this event broke fund-raising regulations. The outcome of this enquiry was made public in early March.

Essentially, the inquiry found that the Charity Shield held in 2000 infringed the relevant rules in two ways. First of all, the FA had failed to inform the ticket-holders of the gate receipts. The FA has agreed henceforth to set a levy for the coming year, leaving the industry in a state of financial limbo.

Second, there were unacceptable delays in processing funds and making donations to the charities nominated by the winning clubs.

The report added that nevertheless, the nominated charities had hitherto received all the money intended for them, which amounts to approximately 35 per cent of the gate receipts. The FA has agreed henceforth to comply fully with all the relevant fund-raising legislation, and to speed up the distribution of funds. The Commission would monitor the 2002 Charity Shield in order to ensure that no improprieties occur.

Gooch “hairpiece advert” raises eyebrows at advertising watchdog

Since his days of scoring runs for England earned him many an appearance on the nation’s televised sports broadcasts, former opening batsman Graham Gooch has found another way of appearing on the small screen – as the protagonist in an advertisement which hailed the merits of a new hair-grafting procedure. The claimed benefits of the hairpiece were summarised in the slogan “Swim, shower, play sport? No problem!”. This claim came to the attention of the Advertising Standards Authority, as a result of a complaint lodged by an IT consultant from Macclesfield, Cheshire, who claimed that his own treatment went seriously wrong. The ASA upheld the complaint on five out of seven counts.

As a result Gooch, now Chief Coach to Essex CC, dived into a hotel swimming pool, worked out in its gym and subsequently took a shower in the presence of ASA members in order to prove the veracity of the claim. However, the ASA was not impressed. It persisted in its view that it was misleading to describe the hairpiece as a “treatment”, as well as criticising the claim made by the company in question that it had invented not only the “strand by strand” procedure on which the graft is based, but also the notion of “advanced laser treatment”.

Government Ministers intervene in dispute over funding of racing (UK)

Previous issues of this periodical have borne ample testimony to the state of flux currently prevailing in the debate on the way in which racing is to be financed in the future. Although the end seemed to be in sight for the levy system, a charge on bets which has financed the sport through the Levy Board since 1962, no-one – least of all those directly involved – had succeeded in devising a suitable alternative.

The British Horseracing Board (BHB) had proposed that the levy be replaced by a charge payable by bookmakers by way of media and information fees, which the “bookies” considered vastly excessive and threatened to pass on to the hapless punter. Peter Savill, the BHB’s forceful Chairman, was unyielding, stating that the 2.5 per cent of betting turnover, which was the amount demanded from the bookmakers, was non-negotiable. The Government Minister responsible (if that is the correct word to use) for this area, Tessa Jowell, had failed to set a levy for the coming year, leaving the industry in a state of financial limbo.

The first major event to have occurred since then was a crucial board meeting of the Tote, the government-owned bookmaker. Savill, who as BHB Chairman has a seat on the board, argued that the Tote should sign up to the BHB proposal before 31 December, which would have entitled it the concessionary rate of two per cent until 2004 granted to those who signed a licence agreement on BHB terms by this date. (It should be recorded, however, that Savill avoided a conflict of interest by withdrawing from the meeting before the matter was put to the vote.) The Tote did not accede to this proposal, and announced that it would not be applying for one of the BHB’s licences, either at the full or at the concessionary rate.

Then came the announcement of the 41st and final Levy scheme, which runs from 1/4/2002 to 31/3/2003, by Culture Secretary Tessa Jowell. This made provision for a payment by off-course bookmakers of approximately nine per cent of their gross profits from racing. This method was expected to yield between £90 million and £105 million for the Levy Board. This was...
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never going to be music to the ears of the BHB, since they were aiming for a figure based on a percentage of turnover (which has increased by 30 per cent since the abolition of betting tax\textsuperscript{384}). Anticipating the inevitable backlash from the racing industry, the Minister informed the House of Commons that she understood the latter’s disappointment, but that the method she had laid down was the “fairest and most reliable indication of the bookmakers’ capacity to pay”. It emerged that her Department had employed the Organisation Consulting Partnership to assess the rights and wrongs of the acrimonious dispute. The latter had concluded that the demands by the racing industry for large-scale injections of fresh money were hard to justify\textsuperscript{375}.

Ms. Jowell also urged the two sides involved in the long-running dispute to work together in the industry’s best interests, saying:

“I would now like to encourage the betting and racing industries to develop a modern relationship as business partners and move away from an adversarial approach. It is clear that the Levy Scheme is flawed and should not be needed if satisfactory commercial agreements between parties can be made to work. We remain committed to abolition”\textsuperscript{376}.

Taking a cue from his Head of Department, Sports Minister Richard Caborn also warned that the squabbling must stop. In a powerful speech given at a seminar organised by the British Betting Offices Association in London on the same day as the Levy announcement, he denounced the “megaphone diplomacy” which had dominated the argument hitherto, and urged both sides to abandon the “them and us” mentality\textsuperscript{377}.

The bookmakers gave a broad welcome to the scheme. However, the levy would not be the only standing charge facing them, since the BHB had previously announced that it intended to charge all bookmakers, both on and off course, for the use of its pre-race data at a rate of 1.5 per cent of turnover, plus VAT. This charge was to enter into effect on 1 May of this year\textsuperscript{378}. Thus bookmakers found themselves faced with the prospect of having to pay both the Levy and the race data charge. This resulted in a letter sent a few days later to the Department of Culture, Media and Sport by the Bookmakers’ Committee of the Levy Board, hinting at judicial action against the Government should the bookmakers be forced to pay this dual charge\textsuperscript{379}. (This charge for use of data is currently the subject-matter of an investigation by the Office of Fair Trading – see below, p.72)

Naturally, this did not go down very well in Government circles, particularly as it came just 24 hours after a petulant performance by the bookmakers when they visited Whitehall officials on this matter\textsuperscript{380}. It also came days before Mr. Caborn was due to address a meeting of the Betting Office Licensees’ Association. Unsurprisingly, the Sports Minister’s performance at this meeting was hardly a cordial one, consisting as it did of a vague repeat of his call for dialogue between the two sides followed by a swift exit which some described as “a flounce”. At the same gathering, Alex Gibbs, a senior civil servant a the Treasury, gave the clearest possible indication of the Government’s extreme displeasure should there be any attempt by bookmakers to reintroduce deductions from bettors’ stakes in order to cover their liability towards the racing industry, reminding those present that betting duty had been abolished on the basis of “firm assurances” from the industry that this would not happen\textsuperscript{381}.

Peter Savill was quick to take advantage of this faux pas by the bookmakers, portraying the latter as “bully boys” and insisting that the demands made by the racing industry were both fair and reasonable. He went on to state that the Government had every reason to be annoyed with the betting industry, having given the latter a tax cut worth £250 million\textsuperscript{382}. It also soon became obvious that the Government were entirely unfazed by the threatening noises made by the bookmakers, since Whitehall proceeded to complete the final details of the new Levy scheme without making any concession whatsoever to their demands\textsuperscript{383}.

Yet anyone believing that the bookmakers had been roundly defeated in this battle could still be in for a rude shock. It may have been thought that the BHB was in a strong position, since without the data supplied by them, the bookmakers would be unable to accept bets on British racing. Yet at the time of writing, the majority of the nation’s 8,000 betting shops had failed to sign with the BHB, and there were few indications that they were prepared to change their stance. Was this a sign of purblind defiance or a display of confidence? The answer may well be the latter, if a report in the Daily Mail is anything to go by\textsuperscript{384}.

An entirely unforeseen event appears to have thrown the bookies a lifeline – to wit, the cancelling of race meetings at the height of the foot-and-mouth scare over a year ago\textsuperscript{385}. This caused the bookmakers to look elsewhere for betting events, which is why the punter had to become accustomed to a steady diet of dog racing, Irish racing and numbers games. This showed that the majority of regular bettors will gamble on “anything that moves”, and led to forays into other relatively new – or hitherto under-used – betting material, such as racing from such countries as South
Africa, Italy, France and even Dubai. Margins in favour of the bookmakers from these events are enormous. In addition, the punters will still have access to the data from the “rebel” 10 GG Media racecourses (see above, p.42). This has led to a growing belief among bookmakers that they can outlast the BHB and its demands.

However, the remainder of the industry, i.e. horse owners, trainers, jockeys, stable staff and mainstream racecourses, are backing the BHB’s stance, and seem to believe that the bookmakers are bound to lose in the long run. Thus the president of the Racehorse Owners Association (ROA), the appropriately-named Jim Furlong, opined that:

“Racing accounts for nearly 70 per cent of betting turnover, so it is extraordinary to think that shareholders of the bigger (bookmakers’) companies will allow the most successful product to disappear. That’s why we are urging owners to stand behind the BHB. If there was reduced prize money for a while it would hurt them a lot less than bookmakers, who would be harmed by poor trading figures. It’s a bluff and we will stand firm.”

All this means that, ministerial exhortations to the contrary notwithstanding, the stand-off between the BHB and the bookmakers is as acrimonious and uneasy as ever. These columns will, as ever, follow further developments in this fascinating saga with keen interest.

MPs persist with attempts to reintroduce standing at soccer grounds

Judging by the report featured in these columns a few issues ago, the Government seemed as determined as ever that watching football matches in a standing position – at least in a stadium – should definitely be consigned to the game’s history. This has not, however, deterred a hardy band of people’s representatives from attempting to revive the issue. The issue made its reappearance on the House of Commons agenda early in the new year, when a cross-party of MPs attempted to introduce a bill to the House seeking to reintroduce the “right to stand” at matches. The proposal, entitled the Football Spectators Bill, proposed to give local authorities and clubs the right to decide whether they wished to introduce safe standing areas in grounds which are currently all-seater.

The bill was sponsored by Labour MP Roger Godsiff and signed by 73 of his colleagues, including the former Sports Minister Kate Hoey, Frank Field, Bob Russell (Liberal Democrat) and Sir George Young (Conservative). It was introduced on 2/11/2001, but talked out – as was its fate in January. The Football Association refused to be drawn on the issue.

Undeterred, Kate Hoey returned to the fray in late February, using her now-regular column in the sporting columns of the national press. As she has done before, she referred to the example of the German Football League (Bundesliga), whose authorities have once again allowed standing at matches under strict conditions. They did not constitute a return to terraces, since they could be converted to seats as and when required. Waxing lyrical about this example, she writes:

“The technology and methods of conversion vary but all offer a full view of the pitch and satisfy UEFA and FIFA regulations. The standing areas in the Bundesliga clubs are hugely popular, with standards of safety and modern comfort synonymous with modern stadiums. Everybody is satisfied: police, clubs and fans. Even the corporate clients who are seated behind the standing areas enjoy soaking up the atmosphere, and those who want to sit throughout the game can do so”

Ms. Hoey must, however, surely be aware that the last occasion on which the Sports Minister (then Chris Smith) had ruled out a return to standing at matches was based on a report which had in fact examined the German precedent, but deemed it inappropriate for English conditions. Her latest plea is therefore unlikely to cause any change whatsoever in the official position.

Fury greets £500,000 pay-off for Sport England chief

Beleaguered Sports Minister Richard Caborn found himself the subject of more controversy in November 2001, when a national daily newspaper revealed that a report by the National Audit Office (NAO), Parliament’s financial watchdog, would show that Derek Casey, the former Chief Executive of Sport England, had received a secret pay-off amounting to some £500,000 as he quit his post earlier that year. This amount was equivalent to over six years of Mr. Casey’s salary and was more than double the amount which the former Chief Executive would have received had he served the remainder of his contract.

Although the Government claimed that this amount was “in line with the settlements for senior executives,” it caused a storm of controversy in many quarters, particularly in view of the scathing criticism which Sport England had incurred under Mr. Casey’s stewardship for its part in the Wembley and Picketts Lock fiascos (see above, p.53). Tim Yeo and Nick
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Harvey, opposition spokesmen on sport, roundly condemned the deal.

As predicted by The Guardian, the NAO revealed the Casey payoff deal in February[396]. The NAO report had more trouble in store for Mr. Caborn, since it was being alleged that he had wrongly given the go-ahead to this deal, which was then not objected to by the Treasury because this would have landed the taxpayer with an even more sizeable legal bill if the matter went to court. The NAO stated that the deal was discussed at a meeting between the Sport England Chairman (Match of the Day analyst Trevor Brooking), Caborn and Casey on 14 June, and concluded:

“*The severance package was discussed by the Minister and the Chairman and, on the basis of those discussions, Mr. Brooking was left with a clear view that the Minister had approved the severance package*”[397]

Making a distinction of Clintonian proportions, the Department of Culture, Media and Sport agreed that Caborn had discussed the deal and endorsed it, but insisted that this did not amount to approving it legally...

**Distribution of sports lottery money to be overhauled by Government (UK)**[398]

In March 2002, it was announced that the Government was drawing up radical plans for a complete overhaul of the manner in which lottery money allocated to sport was to be distributed. This announcement came as concern was mounting at the millions of unspent money and the sizeable administration costs of the current system.

Culture Minister Tessa Jowell wants sports lottery cash to be distributed by a single body, on the basis that the present system is cumbersome, bureaucratic and without benefit to the country’s athletes. The Performance Innovation Unit (PIU), established by the Prime Minister in a bid to review the manner in which sport is run in Britain in the wake of the Wembley fiasco and the failed 2005 World Athletics Championship bid (see above), has also been considering ways of making the distribution of these monies more efficient. At present, the money is allocated through five different bodies – Sport England, UK Sport, and the Sports Councils for Wales, Scotland and Northern Ireland. This gives rise to a good deal of duplication and unnecessary administration, as well as causing a good deal of money to remain unspent.

**Will Scottish bid for Euro 2008 end up with SFA (Scottish Football Association, of course)?**

The bid by Scotland to host the 2008 European Championships in football has been experiencing some difficulties lately. Initially, Scotland’s bid was described as a “partnership between the Scottish Executive, the Scottish Football Association (SFA) and Sport UK”. When the post of First Minister of Scotland was held by Henry McLeish, a former professional footballer with East Fife, the project had a fervent ally within the Scottish Executive[399]. However, his successor, Jack McConnell, appeared to be a good deal less enthusiastic as he refused to commit himself or the Executive to backing the country’s bid.

This led to the possibility being canvassed of a joint Scottish/Irish bid to host the tournament. This proposal also ran into flack in late February 2002 with increasing signs of a dispute between the two countries involved. It appeared that the Progressive Democrats, the smaller party in Ireland’s coalition government, had refused to sign a letter to the Scottish executive committing it to the bid. The main objection on their part seemed to be the building of a new stadium which would be an inevitable consequence of hosting the tournament[400].

No more had been heard of this joint bid by the time this issue went to press.

**Regional boards proposed by Caborn in major shake-up of sports administration (UK)**[401]

In a major speech to the Central Council for Physical Recreation (CCPR) in November 2001, Sports Minister Richard Caborn announced his intention to modernise the sporting administration of this country – a process which would involve a restructuring of Sport England. He also referred to plans for funding initiatives to be taken over by nine regional boards, clearly believing that his own experience as Minister for the Regions between 1997 and 1999 would stand him in good stead in this context.

However, his claim that this would result in less, rather than more, bureaucracy was disputed by several representatives to the CCPR Annual Conference in Grantham. These included CCPR Director John Crowther of the Lawn Tennis Association (LTA), who said:

“The Minister is clearly very keen to go down the regional path, but for the moment it is unclear exactly what he means by that. Tennis, for example, has a national plan that it is delivering through the regions. I don’t want to have to sell that plan nine times. The Government’s plans are
still being formulated, but we expect them to be published at the beginning of next year. I hope that is the case”.

Nigel Hook, the CCPR Head of Policy, also spoke of widespread concern about the Minister’s plans, claiming that “sport doesn’t fit with regions”. The plan also seems to be at odds with the proposals to streamline the distribution of lottery money for sport, set out above (p.60).

Proposed Wimbledon move debated in Parliament (UK)

This issue is dealt with full in Section 17 (below, p.104).

Cheshire campaigners win fight to save local playing fields (UK)

The failure by this Government to halt the sale of playing fields, which has already been documented in previous issues of this journal, leaves those who are concerned about this dereliction of governmental duty no option but to resort to individual campaigns. That this can prove to be a successful tactic was shown in late January 2001, when the doughy campaigners of Bowdon, Cheshire, won their battle with a local council to save their playing fields. Originally the local authority in question, Labour-controlled Trafford Council, had earmarked for a major housing development land used by Bowdon Church School, as well as the local cricket, hockey and squash club. However, following a vigorous campaign – which even included the voice of Coronation Street actress Sally Whittaker, whose children are pupils at the school – the Leader of the Council, David Acton announced that they had listened to local people and therefore scrapped the plans. Instead, the area formerly under threat would be designated a protected area for recreational use.

French adopt measures to rein in reckless British skiers

“Mad dogs and Englishmen go out in the midday sun” sang Noel Coward in the late 1940s. It seems that the reputation enjoyed by the natives of this sceptred isle for foolhardy recklessness has not abated since those days, if a recent spate of measures hastily introduced by the French government at the height of the last skiing season is anything to go by. These controls were prompted by a rising toll of accidents on the slopes, which have claimed 11,000 injuries – and seven fatalities – amongst British skiers in France alone. Particularly the craze for “freeriding” (roaming off-piste across mountains) has caused this exponential increase in victims.

Marie-George Buffet, the French Sports Minister, wishes to exercise “total control” over these dangerous skiers and snowboarders by means of an information blitz backed up by such measures as the power to confiscate the culprits’ lift passes and even to order them off the slopes.

Internal rifts continue to endanger preparations for 2004 Athens Olympics

The various political power games and manoeuvres which have already played havoc with preparations for the next Olympic games in Greece have already been reported in an earlier edition of this journal. Matters do not appear to have improved in the meantime, to the point where Gianna Angelopoulos, who heads the relevant Organising Committee, has warned the Greek Government that if it does not deliver the stadia in time for the scheduled testing events, the Committee cannot guarantee the quality of the Games.

One of the reasons for this rift between the Ms. Angelopoulos and the Government may be a difference in political persuasions, since she is right-wing and the Government, under PASOK’s Costas Simitis, is a Socialist one. In fact, the Government initially attempted to keep her off the Organising Committee, to the rage of the then President of the International Olympic Committee (IOC), Juan Antonio Samaranch, who warned the Government that if she was not placed at the helm of preparations for the Games Athens ran the risk of losing them altogether.

These differences between the organisers and the Government have been compounded by the fact that the task of building the relevant infrastructure is a Government responsibility, but with different ministries being in charge of constructing different stadia, since there is no Government Minister to co-ordinate matters. According to IOC sources, things have improved as a result of a constant stream of nagging visits by their representatives, but there remains too much Government interference. For example, during one particular IOC visit, the Minister for Culture wanted to take part in the relevant Press Conference, only to be told that this was an IOC event and as such nothing to do with him.

Apart from the actual Games infrastructure, a major problem for the organisers is also presented by the scarcity of accommodation for the event. The city is 3,000 beds short for the Olympic family alone. As a stopgap measure, more ships are to be introduced into the port to house them; however, no transport has as yet been arranged to convey the athletes and officials to the sites of the Games. The building of hotels just for 17 days in two years’ time also seems a remote prospect.

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Balancing the interests of public safety and sporting gun users. Article in professional journal (UK)

Ever since the tragedies at Hungerford and Dunblane, the use of guns and other weapons has become the subject-matter of an increasing amount of regulation and control by the public authorities. As could be expected, much of this public intervention has served to irritate those who engage in shooting as a sport, and the columns of the shooting press have regularly featured bitter invective to that effect. It was in response to one such poisonous missive that James Hart, who holds the portfolio for firearms licensing with the Association for Chief Police Officers (ACPO), decided to respond by means of an article in Policing Today.

In this paper, Mr. Hart acknowledged the general feeling amongst sporting shooters that the police regulated their activity without due consultation, had no consistency of practice and failed to administer the system efficiently. In the light of these criticisms, he attempted to explain the fundamental principles on which the approach by the police towards this issue was based, which were that (a) civilian shooting was a lawful and legitimate activity, (b) the shooting community is predominantly law-abiding and should be treated as such, and (c) the shooting community had shown itself prepared to uphold and enforce acceptable safety standards. These principles were to be given expression by giving priority to three areas for action:

Consultation. The key towards building up a relationship of trust and mutual respect was to engage in dialogue with the major representative organisations. Attempts have been made to achieve this at various levels.

National consistency. To try to achieve this, the relevant ACPO subcommittee, drawing on the considerable experience and knowledge of many members, issued a substantial guidance document in 1999.

Tackling criticism. Attempts have been made to respond to the criticisms of those areas of licensing practice which have irritated the shooting community whilst doing little to assist the cause of safety. More particularly the Subcommittee had recently revised its guidance on the use of sound moderators (silencers) with full bore rifles as a result of such interaction.

Child Protection in Sport Centre established (UK)

The National Society for the Prevention of Cruelty to Children (NSPCC) has recently established a Child Protection in Sport Unit (CPSU), based in Leicester with the NSPCC National Training Centre. This is a crucial step in the NSPCC STOP campaign aimed at ending cruelty to children. Its objectives are:

- to act as a first point of contact for sports bodies concerned about the protection of children in sport;
- to establish procedures for dealing with allegations of child abuse in sport;
- to commission research into the incidence and risk factors which relate to child protection and child abuse in sport;
- to minimise opportunities for undesirable individuals to have access to, or operate in, sport, as well as raising awareness of the importance attaching to child protection in sport;
- to provide information and training;
- to develop inter-sport standards and systems, and
- to provide advice and support in developing child protection policies.

As from March 2001, all organisations funded by Sport England must have child protection policies in place in order to obtain funding.

Law firm assists football club supporters with charity registration omission (UK)

Law firm White & Case are assisting a fundraising organisation established by supporters of Brighton & Hove Albion FC after its founders omitted to register it as a charity. More particularly the law firm is providing pro bono advice to the Robert Eaton Memorial Fund, established in memory of an Albion fan who was an employee at Cantor Fitzgerald, a major financial services conglomerate, and was one of those killed in the attacks on the World Trade Centre in New York on 11/9/2001. The memorial fund is intended to raise funds for football academies for underprivileged children.

Following the first fund-raising match played under the auspices of this body, which was featured on a television news programme, the Director of Registrations at the Charity Commission contacted the founders and informed them that they should not raise any more funds until they had registered as a charity.

White & Case are also assisting the memorial with its business networking, as well as providing free legal advice.
Regional law on sports medicine and health care adopted in Sicily (Italy)\textsuperscript{110}

In late December 2000, the Region of Sicily adopted a Law on Sports Medicine and the Protection of Health in Sport. Those to whom it is addressed are defined in the widest possible terms in Article 2, and concerns not only those professionally engaged in this area, but also students and pupils undergoing training and education in this area. Its main objective is to implement and enforce national legislation in this area at the regional level.

**Functions of Secretariat-General of Sports Ministry in Portugal defined by law**\textsuperscript{111}

The Secretariat-General of the Ministry of Youth and Sport (Ministerio da Juventude e do Desporto) was established by a Decree-Law adopted in August 2001, but had yet to have its functions defined by law. This was done by a Decree-Law adopted five months later. Generally speaking, Article 1 defines its function as that of a public administrative unit which has administrative autonomy which is responsible for providing and co-ordinating the technical, administrative and legal support for the benefit of Ministry in question.

**Role of Australian Institute of Sport explained in academic journal**\textsuperscript{112}

For a long time, the world of Australian sport worried little about any policy which may govern this aspect of the nation’s culture; after all, success on the sporting field was almost regarded as a national birthright. However, as the Australian star started to wane in a number of sporting areas – the extremely low medals haul at the 1976 Olympics and the relatively poor performances of its cricketers and tennis players in later years being particular examples of this trend – the need for a national sporting institute was increasingly felt.

Hence the establishment in 1980 of the Australian Institute of Sport (AIS).

In the paper under review, author Andy Gibson explains the part which the AIS has played in the development of Australian sport ever since. He details the improved results recorded within a few years of setting up the AIS, leading to a considerable increase for federal funding of sport, which has also benefited the AIS. This has enabled the latter to expand its programmes, employ more coaches, establish specialist satellite centres around the country, and provide scholarships for athletes. This in turn has improved performances on the sporting field.

The author also sets out some of the specific changes which have occurred in sporting organisation since the establishment of the AIS.

**Round-up of other issues (all months quoted refer to 2002, unless stated otherwise)**

**Manchester, UK.** Concern has been expressed at the standard of accommodation with which athletes are to be provided during the forthcoming Commonwealth Games in Manchester. The Commonwealth Games Federation evaluation team found that the competitors will be housed in accommodation normally used by students. There are concerns that the Games organisers will be under extreme pressure to have rooms ready between the students leaving in the early summer and the start of the Games (25 July). The capacity of these halls has also been questioned, as has the standard as compared to previous major events\textsuperscript{113}.

**London, UK.** The controversial Millenium Dome, which has been standing idle ever since the year 200 ended, will be used for sporting events and concerts. This was revealed in mid-December 2001, when the Meridian Delta Consort won a bid to take out a lease on the East London site\textsuperscript{114}.

**Japan/South Korea.** In late February, FIFA, the world governing body in football, Japan and Korea agreed to allow the sale of beer during the coming World Cup, although fans will only be allowed to buy one cup at a time\textsuperscript{115}.

**London, UK.** In December 2001, it emerged that former Northern Ireland Minister Peter Mandelson was given free membership to one of London’s most exclusive health clubs. This information was provided by Mr. Mandelson for the latest House of Commons Register of Members’ Interests. The membership was a gift from PR executive Matthew Freud (husband of newspaper heiress Elisabeth Murdoch) and Joel Cadbury, heir to the famous chocolate manufacturers.

**Slovenia.** Slovenia’s Olympic Committee have recommended that the Government should grant citizenship to Jamaican-born Merlene Ottey, who has lived in the country for several years\textsuperscript{116}.

**London, UK.** A House of Commons Committee report on drownings among under-14s has stated that inadequate school swimming lessons were putting lives at risk\textsuperscript{117}.

**San Juan, Puerto Rico.** In January, Puerto Rico’s Supreme Court overturned a ban on a racehorse imposed because of its name, “Peace for Vieques”. Many Puerto Ricans are opposed to US Navy bombing exercises on the island of Vieques\textsuperscript{118}.
5. Public Law

**Nottingham, UK.** In late February, Kenneth Clarke, the former Chancellor of the Exchequer, was elected as new President to Nottinghamshire Cricket Club, in succession to Richard Cope. Mr. Clarke’s constituency Rushcliffe contains the Trent Bridge ground.

**London, UK.** In March, it was announced that the House of Commons football team was snubbing the Queen’s Golden Jubilee by attending the opening World Cup fixtures pitting England against Sweden and Argentina.

**Dublin, Ireland.** On 18/12/2001, an Act came into operation by virtue of the Irish President’s signature, which increases the number of ordinary members of the Board of Horse Racing Ireland from 12 to 13 and provides that the additional member shall be appointed directly by the Minister for Agriculture, Food and Rural Development. This Act is the Horse Racing Ireland (Membership) Act 2001 (No. 46 of 2001).
Planning Law

Mixed fortunes for English clubs seeking planning permission for grounds

Arsenal FC
The trials and tribulations encountered by North London football club Arsenal in its quest for a new home at Ashburton Grove, close to their present home at Highbury, have continued during the period under review. In the previous issue of this journal, the present writer concluded the item on this affair by stating that “a public inquiry looked a certainty” regardless of the decision taken by Islington Council in November. Unfortunately for the “Gunners”, this prophesy has proved all too well-founded.

The vote at Islington Council on the proposed development was taken on 10 December, and unsurprisingly the outcome was a positive one for the club, with 34 councillors voting for the proposal, seven against and one abstaining. This held out the prospect of the club being able to move into its new premises in time for the 2004 season. However, as was reported in the previous issue, not all residents were happy with the proposed development, and many had called for a public inquiry. This threat was duly realised little over a month later.

On 17/1/2002, the Government served an Article 14 notice on Islington Council, effectively preventing it from approving the development until such time as Stephen Byers, the Secretary of State for Transport, Local Government and the Regions (DLTR) had considered the plans. An Article 14 notice enables the Secretary of State to order a public inquiry into the project, which could cause it to incur considerable delay. The DLTR announced that it expected to give a ruling by the end of February, although at the time of writing this had not yet materialised.

Arsenal director Ken Friar, who heads the development and has concluded a deal to that effect with Sir Robert McAlpine’s construction company, pronounced himself confident that the Government would give the go-ahead after having studied the plans. His fellow-director Danny Fiszman echoed these sentiments, stating that “Following the major public consultation that we and Islington council have already undertaken, together with the exemplary way we conducted out environmental assessment, we do not believe that a public inquiry is necessary”.

Fulham FC
Readers may recall that the attempts made by Fulham FC to redevelop their Craven Cottage ground have already been the subject-matter of court challenges. On that occasion, the House of Lords refused the club’s application. However, the South London side fared better in the courts some 18 months later. Nevertheless, although they have – provisionally at least – done better than the “Gunners” in their tussle with the planning laws, their immediate future is not entirely problem-free in terms of its accommodation.

On the same day that Arsenal were served with the “Article 14 notice” referred to in the previous section, Fulham saw the final obstacle to their £70 million redevelopment of Craven Cottage removed when a High Court judge dismissed calls from local campaigners for a public inquiry. This will enable the club to increase its capacity from its present 21,000 to 30,000.

However, there remains the problem as to where they will be playing whilst the work is being carried out. Their preferred option would be to share Loftus Road, Queen’s Park Rangers’ ground in West London, during the next season, but that would infringe the 10-year ground-sharing agreement the latter have with top rugby club Wasps – unless the latter find another venue, which looked unlikely at the time of writing. Wasps had originally wanted to share Adams Park, the accommodation of Nationwide League side Wycombe Wanderers, but in the latter’s case, district council planning restrictions mean that only football can be played at this ground. Fulham may therefore have to look towards Upton Park (West Ham United), the New Den (Millwall) or even the Madejski Stadium (Reading) as an alternative.

Chelsea FC
These are definitely busy times for London’s builders. The Chelsea Village, as the company owning the club is called, has applied for planning permission to construct a 23-hectare training academy for the club at Sudbury-on-Thames. They have chosen East Anglian law firm Mills & Reeve to advise on this application.
6. Administrative Law

**Everton FC**
The Liverpool-based club has also had its share of problems in looking for a new home. It has applied for planning permission to redevelop the Kings Waterfront area for this purpose, but their application has run into flack from a pressure group concerned about the impact this redevelopment would produce on lugworms in the banks of the river Mersey. It appears that these worms are important for the purpose of attracting freshwater fish back into the river. Everton could therefore yet learn the true meaning of the expression “the scales of justice”.

To handle both the legal negotiations and the documentation for this proposed development, Manchester law firm Halliwell Landau won a tender issued by Liverpool City Council.

**Warrington Wolves**
In December 2001, Rugby League side Warrington were finally given permission to build a new stadium in the town. The new 25,000 capacity stadium is expected to be completed by mid-2003. A public inquiry was held the previous May as a result of objections to the proposal, but planning permission has now been granted. The funding will be supplied by sponsors, the local council and Tesco’s, who are building a superstore on the site, which is that of the old Tetley Walker brewery. Warrington will therefore soon be leaving Wilderspool, their home for the past 104 years.

**St. Helens**
Warrington’s fellow-Lancastrian Rugby League rivals at St. Helens are also looking for pastures new. In February 2002, they made an application to build a new 17,000 capacity stadium to their local council.

**Bradford Bulls**
Meanwhile, across the Pennines things are also moving at Rugby League club Bradford Bulls – or not, as the case may be. In late February 2002, they were surprised by a decision to order a public inquiry into their plans to redevelop the Odsal Stadium. Bradford Council had supported the plans for a new 26,000-seater stadium alongside retail and leisure facilities, but, like Arsenal FC (see above), they were required to refer the project to the Department of Transport, Environment and the Regions (DTER) which will investigate the matter more closely.

**Surrey CC**
In December 2001, Surrey Cricket Club obtained planning permission from the London Borough of Lambeth for their ambitious proposal to redevelop the Oval. The project will involve improved facilities for members and the public, and an increase in seating capacity to 23,000.

**Andy Cole wins planning appeal, but not neighbours’ goodwill**
Although striker Andy Cole recently moved from Manchester United to Blackburn Rovers, he is likely to see a good deal of some of his former team-mates, since he is planning to move to a £1.5 million mansion in Alderley Edge which also accommodates David Beckham and Dwight Yorke. However, it is doubted whether his other neighbours will be equally welcoming, since many of them have objected to the proposed development on the grounds that it will spoil the environment.

Both the parish council and Macclesfield Council had dismissed the plans, but Cole appealed to the Planning Inspectorate and won. This has naturally aroused the ire of not a few local residents, who are furious that their wishes and those of the local planning authorities were ignored by the Inspectorate.

Whether this is yet another example of sporting figures being granted judicial privileges denied to lesser mortals will be left for the discerning reader to judge.

**Other issues**

**Milan Baros work permit first refused, then granted**
The Czech Republic is a relatively small country with a relatively modest population, but in spite of this has succeeded in producing outstanding football talent on a regular basis. One such product is Milan Baros, late of Banik Ostrava, now of Liverpool FC. However, the journey from Moravia to Merseyside was has been far from smooth for the Czech international.

Liverpool became interested in Baros because of the need to find a replacement striker for Robbie Fowler, who had departed for Leeds United in November 2001. However, when the club applied for a work permit for the player, this was turned down on the grounds that, as a player from outside the European union who had not played in 75 per cent of his country’s competitive international fixtures over the previous two years, he did not satisfy the Government’s criteria to qualify for a permit. The Merseyside club thereupon appealed to the Home Office against this decision, and succeeded. A special review panel ruled that the 20-year-old...
Czech’s outstanding talent exempted him from the 75 per cent requirement.

**Australian Rugby League player has work permit refused**

In December 2001, it was learned that Australian Heath Cruickshank, who was to play for Huddersfield this season, had his appeal against the refusal of a work permit refused.

**Sports federations may award different prizes for competitions to athletes depending on their situation. French administrative court decision**

Unless this outcome is the necessary consequence of a statute, the awarding of different prizes to competitors taking part in the same sporting event means either that there exist considerable differences between the participants’ circumstances, or that this measure is dictated by a public interest requirement connected with the objective of the event. Thus ruled the Administrative Court (tribunal administratif) of Châlons-en-Champagne in relation to a marathon event held in a local municipality.

The Court found that, because of the physical capacity required in order to compete in a marathon at the top level of competition, female athletes cannot, regardless of the intensity of their efforts, be placed on the same level as male athletes. This consideration had prompted the local municipality to make provision for two sub-categories, depending on the competitors’ gender, for a locally organised marathon. Having thus organised two distinct categories for male and female athletes, the municipality was not bound to award the same place prizes in accordance with the equality principle, it being impossible to regard these prizes as constituting remuneration for equal work to be awarded to men and women.

Under the French Law on Sport of 16/7/1984, local authorities were empowered to contribute towards the development of physical and sporting activity at the highest level, and, where appropriate, to organise sporting events involving the award of prizes. In organising such events, municipalities may, when fixing the amount of these prizes, take account of this statutory objective. Under the decision challenged before the Court, the local council had reserved certain place prizes to athletes of French nationality who also had a French athletics licence. The council had justified this decision on the grounds that in so doing it sought to encourage this particular category of competitors, who were also the youngest, to enter for the marathon, in order to promote the development of marathon racing in France at the highest level. This public interest consideration justified making those not having this licence subject to rules which were different from those applying to those in possession of a licence issued by the French federation. However, the infringement of the equality principle by the French nationality requirement could not be justified in this way, given the various ways in which French nationality could be obtained.
7. Property Law

Land law

Ruling that golf balls landing on cattle farmer’s land constitute nuisance to land overturned in part by English Court of Appeal

In the case under review, the claimant was a cattle and sheep farmer, whose neighbour, being the first defendant, was the owner of a golf range operated by the second defendant. The claimant had brought an action in nuisance against both defendants, on the basis that a large number of golf balls were falling onto his land. He contended that he mowed the land and sold the hay to stable owners. The land area in question had been “contaminated” and amounted to approximately 2.5 acres.

At first instance, the court had found that some 1,000 golf balls were escaping onto the claimant’s land per year, and that this established a nuisance in law. The Court also found that the presence of the golf balls on the land made the entire 18 acres of the claimant’s land unusable for the purpose of mowing and the selling of the resulting hay. Accordingly, the Court ordered that the defendants should erect a fence to the south of the golf range in order to abate the nuisance. The order, however, had to be made conditional on planning permission being obtained for the erection of that fence. The Court further ordered that the defendants should pay to the claimant damages for the loss of hay and silage. The defendants appealed.

The defendants argued, inter alia, that the first judge should have found that the “escape” of the golf balls onto the land did not substantially interfere with the use of the land, and that injunctive relief should not have been granted. Secondly, as regards the damages issue, the defendants asserted that the claimant could, in any event, use the hay taken from the contaminated land for his own winter feed.

The Court allowed the appeal. It was unacceptable to hold that the entire 18 acres of the claimant’s land was incapable of being mowed by machinery and unusable. There had occurred a nuisance, but this was restricted to the contaminated areas of the land. The effect of the injunctive relief which the first judge had ordered, to wit that the defendants should erect and maintain a fence to the south of the golf range, would have an impact on the largest area of the contaminated land only, i.e. approximately 1.5 acres. In these circumstances, such injunctive relief could not be justified, and that part of the order was to be set aside. However, the appellants’ second contention failed. It was not reasonable to expect the claimant to have used the hay from the contaminated land for his own winter feed. Accordingly, the appropriate relief for the claimant was in damages. This issue had to be remitted to the appropriate County Court.

Intellectual Property law

War of the Roses breaks out over England Rugby shirt

The red rose is one of the more recognisable emblems of English sport, emblazoned as it is on the short of every player defending the national colours on the Rugby Union field. This has now become the subject-matter of a legal tussle before a High Court trademark action. The Rugby Football Union and Nike, its official kit supplier, are accusing Cotton Traders of reneging on an agreement to discontinue using the rose on its white rugby jerseys after 1997 when Nike took over.

Fran Cotton, the former England prop and captain, who is managing director of the defendant company, argues that the red rose is a commonly used decoration or national emblem and that, in any case, the agreement under which Nike bought the rights as kit suppliers for £2 million did not prevent Cotton Traders from continuing to use the design.

The outcome of the case was not yet known at the time of writing.

Beckham image rights hold up contract negotiations with Manchester United

At the time of writing, the future of David Beckham at Manchester United was still a matter of speculation, since the player was still in negotiation with the club over the terms of any new deal between the two. The England captain is insisting that any new contract should pay him not only £80,000 per week, but also £20,000 per week in image rights. However, Peter Kenyon, the United Chief Executive, maintained that English football could not follow the precedent of image rights as applied in US sport, where fans follow individuals rather than teams. He called the issue of image rights “untried and untested” in this country.

Details of the new contract – if any – will obviously be featured in the next edition of this column.

BBC has no goodwill in words “live sports broadcasting”, rules High Court judge (UK)

On 19/6/2000, Blackburne J ruled that the British Broadcasting Corporation (BBC) had no goodwill in the words “live sports broadcasting”.

The BBC held exclusive rights to the live broadcasting of the Euro 2000 soccer tournament. On 10/6/2000, it started broadcasting live from the various football grounds involved on Radio 5. The defendant, Talksport Ltd. is a commercial radio station. On that
same 10 June, it also began to provide national coverage of the tournament by radio, and did so from its studio, where its commentators witnessed the games on television to the accompaniment of added background stadium noise taken from its archives.

The BBC accordingly initiated proceedings for passing off, seeking an interim injunction to prevent the defendant from falsely representing that it was providing live coverage, whereas in fact its coverage was unofficial and “off-tube”. During the hearing, the BBC accepted the undertaking by the defendant that it would take active steps to indicate clearly that its coverage was not live and that it was not entitled to live coverage. However, the BBC subsequently took the view that the defendant’s actions were not sufficient, and returned to the Court for an interim injunction.

Blackburne J. dismissed the application. For the BBC to be able to prove passing off, he held that the latter had to prove three matters: (a) that it had goodwill in the services which it provided, (b) that the defendant had misrepresented that its own services possessed some of the qualities associated with the BBC which they did not in fact possess, and (c) that this had caused loss to the BBC.

Blackburne J. accepted that, in spite of a disclaimer broadcast every 10 minutes, the listener may continue to believe that the defendant was providing a live broadcasting service. However, he held that the BBC had failed to show that it had acquired the necessary goodwill in the market of live sports broadcasting or that it had incurred any damage. He dismissed the BBC’s argument that it possessed a world-wide reputation for the term “live sports broadcasting”. There could be no goodwill in words which merely described the service being provided. It was the indicia by which the activity was known, not the activity itself, which gave rise to a claim in passing off.

**Beijing Municipality adopts rules on protection of Olympic intellectual property rights (China)**

The licensing and use of Olympic marks, symbols, mascots, broadcasting rights and other intellectual property rights have been a crucial element in the funding of the Olympic Games ever since the Los Angeles Games in 1984, which set new standards in the commercial utilisation of the Games. The protection of these rights has accordingly been one of the chief preoccupations of each city and country in which the Olympics have been held subsequently. It did not therefore come as a surprise to learn that the Beijing authorities moved quickly in this field as soon as they learned that their city had been awarded the 2008 Games.

The Regulations in question take the intellectual protection of the Beijing Games well beyond the traditional scope. Whilst those rights which are already available under existing intellectual property law are confirmed in the Regulations, they extend protection to areas hitherto not covered by traditional rules. Firstly, unlike the Chinese law on Trademarks, they do not specifically require the owners of Olympic intellectual property rights to register these rights in order to enforce them. This presumably extends protection to all categories of goods and services, as well as all uses of Olympic intellectual property rights without limitation. Although it would appear probable that potential holders of trademarks and other items of intellectual property will continue to follow the normal procedures required under existing law in order to protect various forms of Olympic intellectual property, it seems that blanket protection has been given even before any such procedures have been undertaken. This should effectively prevent any other parties from attempting any pre-emptive filings or registrations. In addition, the Regulations stipulate that any use of Olympic intellectual property rights, for whatever reason, must be approved or authorised – unlike the (Chinese) Law on Patents and the (Chinese) Law on Copyright, which make provision for certain exceptions to the exclusive use of intellectual property by the holder of these rights.

Even before Beijing was selected as the host city for the 2008 Games, there were many instances of unauthorised use of Olympic intellectual property rights in China. This is obviously expected to become an even more pressing problem now that Beijing has been chosen. The intention to control and reduce such infringements is reflected in Article 8 of the Regulations, which lists a range of prohibited activities, most of which are, however, already laid down by existing legislation on patents, trade marks and copyright.

One interesting innovation in the Regulations is the idea of delegating third parties to assist with their enforcement. Article 11 states that:

> “Any organisation and individual may report any activity in violation of Olympic intellectual property rights to the administrative departments of industry and commerce, intellectual property rights, copyright, etc.; and shall be rewarded if the case reported proves to be true.”

This constitutes a marked departure from the existing law, which only allows those holding intellectual property rights to initiate enforcement actions. The Regulations do not provide any further detail, but the notion of millions of Beijing residents being motivated to identify infringements of Olympic intellectual property rights is a unique and unprecedented one.

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7. Property Law
Ice hockey trademark refused by Canadian trademark authority

In the case under review, the applicant applied to register the KC BLADES & Design trademark, based on its use and registration in the US in connection with the uniforms and ice hockey equipment, as well as entertainment services in the form of professional ice hockey matches and exhibitions. This application was objected to on the grounds that

(a) the trademark was incapable of being registered under s.12(1)(d) of the Trade-marks Act, because of the confusion it would cause with the opponent’s registered trade mark BLADES design, used for the operation of an ice hockey team, entertainment services as well as various items of sports equipment;

(b) the applicant was not entitled to register the mark because of the prior use by the opponent of the BLADES and SASKATOON BLADES trademarks, as well as the Saskatoon Blades Hockey Club trade name, and

(c) the trademark was not distinctive of the applicant.

The applicant filed no evidence.

The Trade-marks Opposition Board held that the application should be refused. It was the issue of the confusion between the applicant’s mark and the opponent’s trademarks BLADES and BLADES & Design which would effectively decide the outcome of the case. The opponent’s BLADES trademark had been used extensively in connection with the operation of a junior hockey team since the mid-1960s. The registered trademark BLADES Design had been used since the mid-1990s. The period for which they had been used, as well as the extent to which they had become known, accordingly favoured the opponent. The wares and services in question were almost identical. Although the applicant’s services related to professional ice hockey and the opponent operated a junior team in this sport, the Saskatoon Blades were a member of the Western Canada Hockey League, which was one of the feeders of young hockey players to the National Hockey League. Use of the applicant’s trademark would lead to the inference that there was some link or affiliation between the opponent’s hockey club and the club operating under the mark applied for. In addition, the opponent’s wares had been sold in locations where one would expect also to find merchandise relating to professional ice hockey teams. Accordingly, there was a potential overlap in the parties’ channels of trade. The trademarks were similar in appearance and sound. Although the applicant’s trademark included the stylised letters “KC”, these letters were not obvious to the general public. The ideas suggested by the trademarks were slightly different. The trademarks were accordingly confusing. All grounds of objection were successful.

Other issues

“Million dollar baseball” case: the court battle begins

Readers may recall the dispute between two baseball spectators who both claimed title to the ball hit by Barry Bonds of the San Francisco Giants to achieve his record 73rd home run in October 2001. At the time of writing, the position was that a San Francisco judge had ordered a trial to establish ownership of the ball. The full trial is not expected until later this year. This journal will obviously keep its readers fully informed of the outcome.
8. Competition Law

National Competition Law

**Shirt-pulling? Trading practices in replica shirts continue to give rise to official and unofficial complaints (UK)**

Replica shirts are one of the major merchandising success stories in the commercial utilization of sport. The wearing of a football shirt which is identical to that borne by the David Beckhams and Michael Owens of this world has become a “must” for many a football fanatic. Naturally, the captive market thus obtained sometimes induces those engaged in their production and selling of these garments into applying trading practices which are less than equitable – as witness the report in the previous issue on the way in which price-fixing in this area had attracted the interest of the fair competition authorities in this country \(^{452}\). Since then, there have been other instances where trading in replica shirts have given rise to complaints, both official and unofficial.

Thus in December 2001, Manchester United fans learned to their despair that, yet again, the Old Trafford club was to “update” its strip for away matches, which had only been introduced four months earlier at the beginning of the season. This seemed to infringe an undertaking signed by all Premiership clubs to adhere to the same strips for at least two years running \(^{453}\). United, for their part, making the traditional elision between a reason and an excuse, claimed that they had to change home and away shirts to include the logo of new manufacturer Nike. This is surely a matter which should be investigated by the Office of Fair Trading (OFT).

Not that the latter has been idle over the past few months in monitoring the probity of replica shirt-trading practices. Thus in January of this year, a leaked memorandum from the official kit suppliers to the England football team appeared to reveal price-fixing at the highest level of the game. The document in question disclosed that sportswear manufacturers Umbro attempted to ensure that leading sports outlets did not discount the “three lions” replica shirt below the official price of £39.99 \(^{454}\). It is being alleged that shops were informed that supplies of top-selling club kits such as those of Manchester United could be “interrupted” unless they co-operated. The OFT are investigating these claims, particularly since it had already had occasion to remove documents in raids on Umbro’s headquarters in Cheadle, Cheshire, as well as searching the base of retailers JJB Sports in Wigan. This will be particularly embarrassing for the footballing authorities, since the OFT had, in March 2000, received undertakings from the Football Association (FA), the Scottish FA and the Premier League that price-fixing in this area would be discontinued \(^{455}\).

More controversy in this area arose in February 2002, when the OFT were compelled to open an investigation into the sale of shirts retailing at £39.99 each through the England-direct website. It was being alleged that the FA had ordered the price to be fixed at that level, even though the shirts had originally been offered at up to £10 in other outlets \(^{456}\). They had gone on sale before the Euro 2000 tournament, since when some 10,000 had been purchased. In a conciliatory gesture, the FA have issued free T-shirts to fans to these purchasers, but could still face a hefty fine from the OFT \(^{457}\).

**SKY abused market dominance in sports pay-TV, rules OFT (UK)**

Satellite television broadcaster Sky was facing a massive fine recently after the Office of Fair Trading (OFT) ruled that the company was abusing its dominance of the market for premium pay-TV sports and movie channels. In an interim decision which followed a two-year investigation, the OFT announced that it would rule that BSkyB had unfairly discouraged competition. It intended to make this ruling on the basis that Sky had been sideling rivals by applying a punitive pricing policy, and that it was deterring new programme distributors from entering the market. The OFT suggested that the Sky group was charging so much for its premium channels that rivals such as ITV Digital and Telewest were unable to make a profit from broadcasting them. Sky was therefore in breach of the 1998 Competition Act.

The OFT’s main concern was the margin between the wholesale price which BSkyB charges distributors and the retail price paid by its own subscribers. The OFT stated that the gap may not be sufficiently wide to enable third-party distributors to make a profit on Sky’s premium channels. Thus, for example, if an ITV Digital customer takes only one or two of the Sky premium channels, ITV may lose money on the deal.

BSkyB now has the opportunity to submit its defence before the OFT’s final ruling some time this coming summer.

**Betting pitches monopoly infringes competition law, rules OFT (UK)**

In December 2001, the Office of Fair Trading (OFT) ruled that the monopoly held by the National Joint Pitch Council (NJPC), the body which administers Britain’s betting rings, on the sale of betting pitches contravened competition laws.

This decision could pitch the Council into a financial crisis. It could allow bookmakers to trade or even swap pitches privately between themselves. Hitherto, bookmakers were only allowed to sell pitches at official...
8. Competition Law

NJPC auctions, at which the Council charges a commission of 12.5 per cent on all sales. With prime positions at racecourses such as Ascot or Cheltenham sometimes changing hands at six-figure sums, this represents the main source of income for the NJPC. The size of the commission, which also attracts VAT, has given rise to complaints amongst racecourse bookmakers ever since the system was introduced. The OFT has now informed the Council that it cannot compel bookmakers to sell pitches at its own auctions, leaving the way open for rival companies to hold their own auctions attracting much lower rates of commission.

OFT investigates racing media rights deal (UK)

The OFT has recently stated that it is to investigate the deal to acquire media rights to British racing concluded by Attheraces. It claims that it has “reasonable cause to suspect” that the joint selling of rights by 49 racecourses has infringed UK competition law. The OFT has accordingly contacted the racecourses in question demanding information, including accounts for the previous five years. It has also requested copies of correspondence regarding the sale of audio-visual rights over the past two years, as well as seeking an explanation as to how courses chose between the Attheraces offer and that from GG Media.

The result of this investigation was not yet known at the time of writing.

Ruling lifting restrictions in insurance business likely to have repercussions for sporting agents (UK)

A recent landmark ruling under the new Competition Act in favour of lifting restrictions in the insurance business is likely to have considerable repercussions in the sports world, particularly as regards regulating football agents. Currently, the Football Association (FA), which has taken over administration duties from world governing body FIFA, demands that prospective agents should pass an examination, as well as paying a bond of £35,000 if they wish to obtain an official licence to operate in this field.

However, the first-ever decision of the Competition Commission Appeals Tribunal in favour of the independent Institute of Insurance Brokers suggests that anti-competitive rules, such as those requiring a licence to represent players in transfer deals, may be difficult to justify legally in the future.

Agassi sues Rolex for unlawful trading practices (US)

Former Wimbledon singles winner André Agassi is currently suing the Rolex Watch company, as well as other associated companies, for over £2 million. The court action arises from two television commercials for Rolex, and claims misappropriation of Agassi’s right of publicity, unfair competition and deceptive practices, consumer fraud and unjust enrichment. The outcome was not yet known at the time of going to press.

Reebok arrangement with French football federation is violation of competition law, rules French court

For some time, a certain degree of controversy has arisen in French legal circles over the lawfulness of arrangements whereby a company occupying a dominant position on a particular market may attempt to extend its dominance to future contracts. In this context, a recent decision by the Paris Court of Appeal is likely to have considerable resonance. Here, the challenged practice was a clause in a sponsoring contract frequently concluded by Reebok, a company occupying a dominant position on the market in designer sports shoes, under which the other contracting party (a) undertakes to communicate to Reebok, at the latest four months before the expiry of the contract, copies of the proposals made to it by companies which are Reebok’s competitors and (b) gives the dominant company a period of 30 days in which to exercise a right of first refusal on terms equivalent to these proposals. The Competition Council (Conseil de la concurrence) had ruled that such clauses infringed French competition law, and fined the Reebok company FF 16 million and the French football league, as the party of the second part, the sum of FF 800,000. The Court of Appeal confirmed these fines.

In an annotation to this decision, A. Marmontel points out that the Court of Appeal (or the Competition Council, for that matter) could do no more than this – in that neither had the power actually to annul the offending clause. Even though Article L.420-3 of the Commercial Code (Code de Commerce) states that such clauses “shall be null and void”, it is only the court seized of the contractual dispute which may impose this nullity.

EU Competition Law

European Commission investigates English Premier League

In October 2001, the European Commission announced that its Competition Directorate was carrying out a preliminary investigation into the manner in which the English Premier League sells its broadcasting rights. It appears that the Premiership failed to inform the Commission formally of the television rights deal, worth £1.65 billion, which it concluded in 2000. The investigation
could result in a fine if the Premier League are found to be in violation of Articles 81 (EU anti-trust rule) or 82 (EU rule on dominant position) of the EC Treaty.

The Commission also stated that it was waiting for the Premier League to provide the Commission with reasons why it should be exempted from the said EU competition rules.

**EU competition law and sport. Article in academic journal**

The relationship between the EU and sport has always been a deeply ambiguous one. Sport cannot be slotted easily in the “socially conscious” areas of EU concern which have become an increasing – if extremely vague – feature of the more recent Treaties such as Maastricht or Amsterdam. Yet it does not entirely fit into the business area either, if only for the simple reason that, although there is an undoubted business side to sport, its main purpose has and continues even today to be that of enabling people to channel their physical skills and capacities through activities which benefit mainly themselves. Even in these days of £100,000 per week footballers, 97 per cent of all sport is amateur.

This ambivalent relationship is also experienced at the level of EU competition policy, which was the subject-matter of an important paper in a rival journal. The authors start by explaining the political background to the way in which sport relates to EU law, pointing out in particular the rather haphazard manner in which the two have made contact – first in Walrave & Koch**, and then the Bosman ruling, which (although it has nothing to do with competition law) has had an impact on sporting activity which has even transcended the boundaries of Europe. In recognition of the fact that, as has been stated before, sport occupies a special position under EU rules, the distinction has been developed between the economic aspects of sporting activity, which fall within the scope of EU rules, and those which are “purely” sporting. However, the authors rightly point out that the distinction is at times very difficult to draw.

The EU has tried to bring some clarity to this position, but only in rather vague statements such as the “Declaration on Sport” which was agreed along with the Amsterdam Treaty. This did not end the ambiguity: at the same time as the EU was making these grandiloquent declarations hailing the special position of sport, the competition authorities of the Commission were in the process of considering over 70 cases relating to sport.

The authors regret this missed opportunity, and rue the fact that rather than laying the groundwork for reliable precedent, the Commission has opted for a “soft law” approach. This omission is compounded by the fact that it is often very unclear what EU competition law actually is. This is particularly the case in relation to the system of notifications to the Commission, which very rarely give rise to any actual decisions.

Typical also for the “soft law” approach has been the series of non-binding notices and press releases on this subject. A typical example of the latter is that which was issued on 9/12/1999** as, and the guidelines which the Commission supplied on the subject in its Helsinki Report. Here, it made the distinction between (a) practices which do not come within EU competition rules, (b) practices which are in principle prohibited by competition rules, and (c) practices likely to be exempted from competition rules. However, the authors find that the Commission has made pronouncements on all these issues without specifying a single principle which could be relied upon in law. They conclude that sporting bodies are in for a long wait before they will have the benefit of clear competition rules against which to measure their activity.

**How relevant is EU competition law to the new football transfer system? Article in Netherlands academic journal**

Whereas the authors of the previous article examine the relationship between EU competition law and sport in a spirit of “constructive criticism” – in that they point the finger of “how things might be” – the author of this paper examines the more fundamental question of exactly how relevant is EU competition law to one particular aspect of it – i.e. the new system of footballer transfers.

She does this more particularly by drawing a comparison with what has happened to transfers in the major US sports under American competition law. She first gives a brief introduction to the competition law systems of the US and the EU, and then proceeds to place sport in the context of the competition law of both systems. Of particular interest here is the comparative analysis of the manner in which, under both systems, attempts have been made to find a coherent legal basis for exempting sport from competition rules. Thus in the US application has been made for this purpose of the well-known “rule of reason” and the less well-known “single entity” theory. The latter arose because of the notion that sporting clubs and teams could not be regarded as independent enterprises in relation to the making of the product. Instead, it was the league in which they played which was the body exercising the necessary degree of control to be able to characterised as an independent entity. Therefore both the league and the clubs playing in them were to be regarded as a single entity – with
the result that transfers between clubs could no longer fall within existing competition law, since they were to be regarded as matters of purely internal organisation.

For a long time, none of the professional leagues succeeded before the American courts in being recognised as a single entity. However, recently the US soccer federation called Major League Soccer has in fact been accepted as such. This happened in Fraser v. Major League Soccer \(^47\) which, interestingly, concerned the FIFA transfer system. It had been argued by the claimant that this transfer system was inherently an infringement of the US Sherman Act since it involved horizontal price agreements. However, the District Court in Massachusetts did not agree. It conceded that, as a rule, transfer systems could be regarded as inherent violations of the Act, but that in this particular case the horizontal enterprises could not determine independently how the market operated, which is why they could not be regarded as independent enterprises.

Under EU law, attempts have been made to exempt sporting transfer deals from competition law by applying the “inherent limitations” theory. It is very interesting to note that this theory rears its head in two leading decisions on EU law in relation to transfers: on the one hand, Bosman and on the other hand Lehtonen \(^47\); that they were both made by the Advocate-General in attendance, and that they both went against the ECJ decision. Thus in Bosman, Advocate-General Lenz sought to apply the inherent limitations theory which had already been part of the ECJ case law thanks to, inter alia, the Danish Co-operation case \(^47\).

The author’s conclusion is that there is a legal field of tension between sports rules and competition law – as witness the attempts being made in the US, through the rule of reason and the “single entity” theory, and in the EU, through the notion of “inherent limitations”, to place sports rules as much as possible outside the scope of competition law. However, the author believes that these theories have their limitations. Thus the “inherent limitations” theory could only be justifiably relied upon in relation to the fixing of exclusion periods for transfers. She regrets the new transfer system which has been thrashed out between the soccer governing bodies and the European commission, since it contains a number of compromises which remove them from the scope of EU competition law. This legal conundrum will, in the author’s opinion, only be solved if competition rules are given less prominence, in favour of an approach based rather on employment law, which will serve as a better justification for transfer rules. Where sporting federations impose transfer rules which have a market restricting effect, it is the players rather than the consumers who are being disadvantaged. The employment law approach is in fact that which has been increasingly adopted in the United States. However, since collective agreements at the European level remain something of a pipe dream at the moment, this approach will need to be developed primarily in the context of national employment law.
9. EU Law

Free movement of goods infringement proceedings started against Belgium and Italy

In February of this year, the European Commission decided to bring proceedings before the European Court of Justice (ECJ) against Belgium and Italy for their alleged infringement of the rules relating to the free movement of goods. In Belgium the problem concerns barriers to imports of pharmaceutical products arising from the system laid down for making medicinal products eligible for reimbursement under the health insurance scheme, whereas in the case of Italy the indicted measures concern restrictions on the marketing of products for sportsmen. The Commission considers these restrictions to be infringements of Articles 28 and 30 of the EC Treaty.

More particularly as regards the action started against Italy, the Commission has referred to the ECJ the Italian administrative procedure for placing on the market nutritional products intended mainly for people practising sports. The Commission considers that the Italian provisions in this area are inconsistent with the principle of the free movement of goods as stated in Articles 28 and 30 of the Treaty. The decision to refer this to the Court was taken as a result of the failure on Italy's part to respond to the additional reasoned opinion notified by the Commission in July 2001.

In Italy, in the absence of any specific harmonising provision to that effect, any product intended for intense muscular effort is subject to a procedure for prior authorisation. This requirement applies both to nutritional products manufactured in Italy and to those emanating from other Member States where they are already being lawfully produced and/or marketed.

The ECJ has already emphasised on a number of occasions that, in accordance with the principle of mutual recognition, products lawfully manufactured and/or marketed in one Member State must be able to move freely in the other Member States. Any departures from this rule are allowed only for compelling reasons such as the need to protect health or the interests of the consumers.

The Commission considers that the requirements laid down by the Italian regulations are not directly linked to the need to protect health or the interests of consumers, and that the explanations provided by the Italian authorities in support of their measures are not adequate justification for the additional costs imposed on Community operators.

Obviously the reader will be kept fully informed of the outcome of this action.

EU law aspects of Gough and Smith football banning order case (UK)

From a previous issue \(^{474}\), it will be recalled that two Derby County season ticket holders brought a test case against football banning orders issued pursuant to the Football (Disorder) Act 2000. Since then, the full text of this decision \(^{475}\) has been published and has revealed a number of issues of EU law, which are dealt with here.

The claimants had contended that football banning orders in question infringed the provisions of the EC Treaty on the free movement of persons (Article 49), and that the exception based on public policy, stated in Article 46 thereof, did not apply to EU citizens leaving a Member State. It only applied to foreign nationals attempting to enter another Member State, and not to nationals of a Member State attempting to leave it. They also relied upon Directive 73/148, Article 2 of which lays down that Member States must grant to nationals of Member States the right to leave their territory. Article 8 thereof requires Member States not to derogate from this rule except on grounds of public policy; it was contended by the plaintiffs that Article 8 had to be read in line with the general public policy exception of Article 46, and could not extend the latter's scope.

The Court declined to take up the option of requesting a preliminary ruling on this issue from the European Court of Justice (ECJ) (under Article 234 EC Treaty) and preferred to interpret the relevant EU legislation itself. The judge cautioned against an excessively literal interpretation of the Treaty which would result in Member States acquiring more power to refuse foreign nationals entering those countries than they would have over their own citizens leaving them. Directive 73/148 concerned the rights of EU citizens to leave their own Member State. If Article 8 thereof had to be read restrictively in the light of Article 46, there was no point in including it in a directive which related to EU citizens leaving their own state. By way of contrast, Directive 64/221 was concerned with the rights of EU citizens entering a Member State. Certainly directives need to be issued intra vires the rules of the Treaty, but a literal interpretation of Article 46 was not appropriate here. Were a literal approach to be adopted, this would entail that Member States would never be able to prevent its own citizens from leaving that Member State.

The circumstances in which Member States may prevent their citizens from leaving have been worked out in the case law of the ECJ. In Kremzow v. Austria \(^{476}\), a lawful term of imprisonment imposed on a person by a Member State does not remove the latter's rights to free movement under EC law. On the other hand, where an EU citizen seeks to exercise a right such as the free movement of persons but is actually doing so with an ulterior motive for which the EU right is merely
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A false cover, Member States can prevent such a citizen from taking advantage of EU law under the “abuse of rights” principle. If persons intended to travel abroad with a view to engaging in acts of violence and hooliganism, the UK would be entitled to stop them under this “abuse of rights” principle. It could do so in any case on public policy grounds.

The claimants also argued that the provisions of the hooliganism legislation in question were disproportionate to the end sought. (The proportionality principle is one of the “general principles of law” which have become an acceptable source of EU law.) Less draconian measures could have been taken in order to achieve the objective pursued – for example, the issuing of international banning orders preventing attendance at the ground, or an order restricting travel to the country where the match was taking place.

The Court decided that the State was justified in taking very firm measures to confront football violence and that the provisions of the 1989 Football Spectators Act were not disproportionate. The question then to be settled was whether it was proportionate to restrict the individual’s right to free movement within the EU in this manner. In this connection, Law LJ cited the view stated by Lord Steyn on the proportionality principle, where he stated that

“First the doctrine of proportionality may require the reviewing court to assess the balance which the decision-maker has struck, not merely whether it is within the range of rational or reasonable decisions. Secondly, the proportionality test may go further than the traditional grounds for review in as much as it may require attention to be directed to the relative weight accorded to interests and considerations (...) In human rights cases, it must be shown that the limitation of the right was necessary in a democratic society in the sense of meeting a pressing social need and the question whether the interference was really proportionate to the legitimate aim being pursued”.

Accordingly, the judge considered that the measures taken did not infringe the proportionality rule.

Bosman principle does not apply to internal transfers, rules Austrian court

In the case under review, a clause contained in a contract made between two Austrian football clubs made provision for the payment of a transfer fee for any player who moved from Club A to Club B. Referring to the Bosman decision, Club B refused to pay this transfer fee.

The Supreme Court (Oberster Gerichtshof) did not consider it necessary to request the ECJ for a preliminary ruling. It held that the Bosman principles did not apply to purely domestic cases, where the rules on the free movement of persons contained in Article 48 (now 39) of the EC Treaty were not relevant. Therefore a transfer fee which was paid for the transfer of a footballer from one Austrian club to another was not inconsistent with Community law.

In addition, the Bosman rule only applied to contracts concluded after 15/12/1995, and the contract in question had been made prior to this date.

Conclusions of EU sports ministers’ conference

The Ministers responsible for sport in the 15 Member States of the EU assembled in Brussels on 12/11/2001 under the presidency of Mr. Bert Anciaux and in the presence of Ms. Viviane Reding, European Commissioner responsible for sport.

Apart from their deliberations on the fight against doping, which is covered in the relevant section (below, p.96), the Ministers, according to the Belgian Presidency of the EU, arrived at the following conclusions:

• Women in Sport: the Ministers proposed that the Commission should carry out a far-reaching study on the situation of women in sport in the EU. This study should cover all aspects of the participation of women in sport: the practising of sport, relations with sponsoring arrangements, refereeing, cultural and social aspects, etc. This study should enable actions to be proposed in the future.

• Follow-up to “Specificity of Sport”. The Ministers were informed of a number of initiatives which have been taken in order to give further shape to the “Declaration on the specific characteristics of sport and the social function thereof in Europe”. A survey was conducted among the Member States in order to establish the extent to which they are developing, or wish to develop, their sports policy in the light of the principles of the “Declaration on Sport”. From this survey, it appears that there is a definite will to explore in greater depth the principles of this Declaration, and where possible integrate it into the relevant structures at various levels. A survey was also made amongst the European and international sporting federations active in Europe regarding their stance on the Nice declaration and the consequences for sport in the EU. Given the limited
number of responses, the replies cannot serve as a representative analysis. However, the Belgian Presidency (of the EU) will conduct an additional survey and communicate the questionnaire to the National Olympic Committees and the national sporting federations. These responses will then be forwarded to the Spanish presidency of the EU.

- Declaration on safety in sport, the fight against doping and the specific position of sport in the European construction: the Ministers unanimously adopted this declaration (see next section, below).

- 2004 – Year of Education through Sport: this proposal was supported.

- Athens Olympics 2004: the Ministers were informed of progress (if that is the correct term!) thus far (see above, p.61)

- Attention on television to sport for the disabled: the Ministers supported this proposal, more particularly with regard to the then imminent Salt Lake City Winter Games.

**Statement on Sports Safety, the Fight against Doping and the Specific Function of Sport in EU integration**

The same meeting of the 15 Sports Ministers of the EU member states made a statement to this effect, the main points of which are as follows:

- **Safety and tolerance in sports:** in a world in which tensions have increased considerably, sport can often assist with the reconciliation of people from different countries and cultures. Sport and the Olympic ideal must play a greater part in this, and convey a message of tolerance and mutual respect. Also, given the priority which must be afforded to ensuring the safety of all those involved in sporting events, the Ministers are of the opinion that to ensure that events such as the Winter Games in Salt Lake City and the World Cup in Japan and Korea take place in conditions of optimum safety, with the highest possible number of participants. They also strongly urge that all necessary measures be taken to combat racism and xenophobia in sports.

- **Fight against doping:** see below, p.96.

- **The future role and specific characteristics of sport:** here, the Ministers recall the Nice Declaration and encourage an open debate on the social, educational and cultural values in sport in order to guarantee the specific characteristics of sport in Europe at all levels.

**Swedish Government working party on sport recommends Swedish strategy for sport in the EU**

In November, the Working Party on Sport (Idrottsarbetsgruppen) of the Swedish Government issued a number of recommendations for a Swedish strategy on sport at the EU level. Apart from the mandatory statements welcoming the contribution to be made by sport to society, the preamble to the recommendations accepts that sports policy amongst the 15 Member States must operate under, and be accepted by, EU institutions which were created for totally different purposes from those which sport as a movement seeks to achieve. The group therefore is of the opinion that sport does not invariably fit into the policies for which the EU was constructed or intended. It is for this reason that, in Recommendation 1, the Working Party advises that the Government should not just now seek to achieve the insertion of a special Article on sport in the Treaty on European Union.

Another interesting recommendation is that the Government should, in narrow co-operation with the Swedish sports movement, conduct an analysis of the manner in which sports circles in Sweden implement and perceive the Declaration on Sport made at the Nice Conference of 2000, and that the Government should urge the other Member States to do likewise.
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Bankruptcy (actual or threatened) of Sporting Clubs and Bodies

**Prost Grand Prix team in liquidation**

In November 2001, the Prost Grand prix team went into receivership with debts amounting to approximately £21 million. Director Alain Prost set a deadline for 15 January in order to find investors in a bid to rescue the team. His employees, however, decided that the French Government might lend a helping hand in finding potential buyers before the deadline, and held talks with the Minister responsible, Laurent Fabius, early in the New Year. They did not plan to request state funding, but were merely desperate to prove that they were committed to enabling the team to be “on the grid” at the start for the first Grand Prix of the season, in Australia on 3 March.

However, the team missed several deadlines to stave off extinction, and on 28/1/2002, a French court at Versailles ordered that the company be put into liquidation after weeks of fruitless searching for a financial saviour. Some offers had been submitted, but none were considered sufficient to save the team.

This development naturally sent serious shockwaves through the sport of motor racing. In the first place, over 200 employees of the team suddenly had to find alternative employment. Most of the leaders of rival teams, however, seemed to believe that the demise of Prost was the result of poor management than any symptom of economic recession. It was even claimed that Bernie Ecclestone, the Formula One commercial rights holder, had assisted Prost on a number of occasions by paying advances on his team’s share of future television income. Nevertheless, everyone in the sport seemed to agree that Formula One was heading for difficult economic times.

**Manchester Giants removed from basketball league because of financial troubles (UK)**

In the summer of 2000, the city of Manchester added another item to its already long list of sporting successes when the Giants won the British Basketball League Championship. However, success on court has not been matched by similar fortunes in the boardroom, since 18 months later, they were compelled to postpone their scheduled game away to London Towers, with desperate basketball officials attempting to put together a rescue deal for the club which was in severe financial difficulty. The previous season, they had been forced to move their home games to the Manchester Velodrome after playing at the MEN Arena for five seasons.

Several days later, the club had their franchise cancelled and were expelled from the League, as they could not guarantee that they would field a team that weekend. Mike Smith, the League’s Chief Executive, stated that there “was no way back for them”.

**English football clubs in financial trouble**

**Bury FC**

In mid-February 2002, the Chairman of Nationwide League side Bury FC, John Smith and Fred Mason, announced that the 117-year-old Gigg Lane club was weeks away from extinction. With creditors demanding repayment of debts amounting to a total of £1 million, a High Court hearing at which its fate could be sealed was set for 4 March. However, three days before this date, Bury went into administration, thus buying time to find the funds required – even though this amounted to a mere two weeks. That was the position at the time of writing.

**Nottingham Forest**

Towards the end of last year, news broke that all was not well with the midland club’s finances, when shares in Nottingham Forest plc were suspended by the Alternative Investment Market after the company failed to publish its annual accounts within the required time limit. This announcement came amid fears that the debts incurred by the Nationwide League First Division side had grown to almost £20 million. The last public statement on total debts had been made in May 2000, when Forest were £10.1 million in the red. Accounts published in March 2001 had shown losses running at £105,000 per week. The former double European Cup winners had also since forfeited their annual “parachute payments” from the Premier League, which expire two years after a team is relegated from it. Forest’s shares were floated in 1997, with £44 million available at 70p per share. The club called an Annual General Meeting for 14 January to give shareholders the opportunity to decide the club’s future.

That was the position at the time of writing.

**Halifax Town**

The fortunes of Halifax Town in the boardroom reflected those on the football field in February 2002. As the club became anchored firmly at the bottom of the Third (and lowest) Division in the Nationwide League, it was learned that the club had been put up for sale and the entire first-squad team placed on the transfer list. The team were losing £8,000 per week and at 2,101 attracted the smallest average attendance across the three League divisions.

No buyer had yet been found as this issue went to press.
St. Albans City
In mid-January, St. Albans City were suspended from the Ryman League after failing to provide guarantees that they could meet their financial commitments. The League took this decision after Lee Harding, the club Chairman and majority shareholder, had rejected an offer for his shares from a source which would have met the League’s requirements. However, at the time of writing a fresh consortium had entered the picture and it was hoped that a deal could be struck with Harding.

The “Saints” had incurred debts of around £100,000 – mostly to the Inland Revenue – and also faced a High Court winding-up order.

Other clubs in difficulty
Boston United. In early February 2002, it was learned that Boston United, although in a good position to win the Nationwide Conference and thus be promoted to the eponymous League the following season, were threatened with bankruptcy. Earlier, a winding-up petition had been brought by Scarborough FC for delayed payments on the transfer of central defender Paul Ellender, but had been withdrawn after the clubs arrived at an agreement. However, a second petition, involving a car dealer, was threatened at the time of writing.

Queen’s Park Rangers. It may be recalled from an earlier edition of this journal that the Loftus Road club had gone into administration. This was still the case at the time of writing, although owner Chris Wright had in the meantime informed a Sunday newspaper that he was willing to write off some of the £6 million debt owed him by the club in order to encourage bids for the side.

York City. The poor financial fortunes of this Nationwide League side have already been discussed earlier (above, p.22).

Snooker governing body “facing insolvency”
In January 2002, Jason Ferguson, Chairman of the World Professional Billiards and Snooker Association, addressed a letter to its members in which he stated that the body governing the sport faced insolvency this year – if no substantial income or a major investing partner were forthcoming in the near future. No further details were available at the time of writing.

Other issues
Director-turned-life president of football club may retain gratuities acquired as life president. Scottish court decision
In the case under review, Mr. Mercer, a majority shareholder and director of Scottish Premier League club Heart of Midlothian FC, made it known publicly that he was selling his shareholding and going to live in France. As he was negotiating the sale of his shareholding, the club board decided to offer him the position of Life President in the event of his retirement. This position would come with a number of privileges, such as two box seats at Tynecastle, access for him and a guest to the boardroom, the provision of a car park pass, the right to wear the same dress as Directors, etc. Mr. Mercer accepted. However, the club sought to withdraw these privileges in 1997, on the grounds that they did not comply with Section 312 of the Companies Act 1985, which makes it illegal for a company to make any payment to a director connected to his loss of office, or by way of compensation or consideration for this loss of office, without the members of the company being informed and the proposal being approved by the company.

Mr. Mercer took legal action against this move, seeking (a) a declarator (i.e. declaratory decision) confirming him as life president as conferred on him by the Board, and (b) an interdict (Scottish equivalent of prohibition) preventing the club from removing the privileges referred to above.

In the Outer House of the Court of Session, Lord MacFadyen considered that the issue requiring resolution was whether the benefits conferred by the club constituted “payment” by the club to Mr. Mercer “in connection with” the latter’s retirement from office as a club director. When considering such a question, it was necessary to have regard to the nature and circumstances of the payment in order to determine its true character. It was therefore necessary to examine the nature and purpose of the payment. The following points made, in his Lordship’s view, the position clearer on this issue:
- the directors were contemplating the eventuality – then clearly in view – of the pursuer (the claimant in Scottish court procedure) retiring as chairman and director;
- their wish to recognise his achievements during his period of office was one factor motivating the granting of the life presidency;
- another factor was his continuing commitment to the club – as expressed in particular by his willingness to...
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continue to offer it financial support, to the point of guaranteeing their borrowings to the tune of £1 million;

- the decision taken in the light of these considerations was to offer him the position of life president;

- at the time of taking the decision, it was recognised that certain “conditions and privileges” would attach to this position

- these were subsequently spelled out in a letter sent to the pursuer, and included the privileges the pursuer sought to protect by his court action, but covered other issues as well, such as the right to wear official dress and the inclusion of his name on the club’s official letterhead;

- it was clearly envisaged that the position would be for life;

- the privileges were those of an honorary life president, and would not have been bestowed on him had he declined that position.

In the light of these considerations, Lord MacFadyen was of the opinion that the disputed privileges were conferred on Mr. Mercer as honorary life president, and could not be divorced from that office. They were not, therefore, granted in connection with his retirement from office as director.

Moreover, the benefits in question could not really be regarded as “payment”, since in his Lordship’s view, the primary meaning of this term was the transfer of money, and not of other valuable property.

The judge therefore awarded the declarator sought by the pursuer. It had been agreed between counsel that in that event, it was unnecessary to grant the interdict applied for.

Will Irish gambling billionaires take over Manchester United (UK)?
As Manchester United’s footballing fortunes took a temporary dip towards the end of the year 2001, they faced another crisis in the boardroom when two billionaire friends of manager Sir Alex Ferguson prepared to launch a bid for control at Old Trafford. J.P. McManus and John Magnier, the two men involved, were already the largest shareholders in United, and in early December were planning a daring bid to purchase the 9.9 per cent stake which BSkyB has in the club.

The Irish duo had made their fortune mostly from owning, breeding and gambling on horses, and had forged increasingly close ties with Sir Alex through their common interest in racing. Soon, the name of their partner, Glasgow Celtic chairman Dermot Desmond, was also being linked to these plans.

It was suspected that the tycoons in question were biding their time in the hope that the share price in the club would continue to drop from its all-time high of £4 to a point even below the paltry £1.30 it experienced as United’s fortunes slumped on the field. However, even if this was achieved, there remained formidable obstacles to be overcome – not least the fact that, if their holding exceeded 29.9 per cent, rules stipulated by the City (i.e. the financial City, not United’s rivals at Maine Road) decree that they must offer to buy every share in the club.

Further difficulties for the trio of businessmen arose in late January 2002 when they came in for acrid criticism from a number of angry creditors. Desmond, Magnier and McManus were called “the Coolmore Mafia” because of their connections with a certain Irish stud farm. More particularly attention has focused on their recent attempt to enter the tourist market at the top by redeveloping the Sandy Lane Hotel in Barbados, where a night’s stay costs £1,400. Three businesses involved in the refurbishment have claimed that it took several months for them to secure any payment for their work, and that the money eventually received fell short of that which was expected.

One firm was even said to have gone into liquidation whilst waiting for more cash. Ian Smith, of South London, worked for Interior Workshop Solutions Ltd., a building firm based in Hertfordshire. IWS were contracted to carry out a considerable amount of redecorating, joinery and plastering at the hotel, with up to 40 men working at the site. Obtaining the money for this work from the trio took months – and even when it came, the payment was several thousands of pounds short. IWS went bankrupt just before Christmas last year. Mr. Smith is now unemployed as a result.

Ross Westwood, a marketing and design consultant from Chester, produced suitably lavish brochures to publicise the hotel. For this, Desmond & Co. owed him £150,000, and did not pay for six months, providing no reason. Eventually, he had to serve a writ and they settled out of court, but for a lesser sum which left Westwood dissatisfied. Also in dispute with Desmond and his colleagues is their former PR consultant Jo Vickers, who claims that they owe her £27,000.

No more had been heard of the bid at the time of writing.

Are Manchester United too cosy with their auditors? (UK)
The Old Trafford club seem to be attracting business controversy in droves these days – not only because of
the events described in the previous section, but because of question marks over the way in which its finances are being invigilated. Its last published accounts reveal that the club paid leading firm PriceWaterhouseCoopers the sum of £35,000 to be its auditors. However, the club also awarded the firm £255,000 for “non-audit services”. This has raised some eyebrows in business circles, since the cosy relations between directors and auditors potentially give rise to the kind of conflict of interest which came to the fore in the collapse of US energy conglomerate Enron, whose auditors, Andersen, were paid considerable consultancy fees whilst apparently turning a blind eye to enormous holes in the company accounts. Pressure group Shareholders United have in fact issued warnings to the club about the “Enronesque remuneration” which is being awarded to their auditors.

Kirch media group faces financial meltdown (Germany)

This issue has already been dealt with under the section entitled “Media Rights Agreements” (see above, p.43).

Ascot becomes Limited Company (UK)\(^\text{507}\)

In December 2001, it was announced that the Ascot racecourse has become a Limited Company. This will enable it to raise funds on the open market for what is expected to be a £100 million redevelopment programme to be carried out in the course of 2004. Its profits have risen from £3.77 million to £7.27 million over the past five years, on a turnover of £25.73 million. This makes it by far the most profitable racecourse operating on mainland Britain.

Real Madrid turn round their financial fortunes (Spain)\(^\text{508}\)

Multiple European Cup winners Real Madrid recently had something to celebrate other than their 100th birthday. Until recently, the top Spanish club had been experiencing financial difficulties as a result of their extravagant signings of Portuguese star Luis Figo and French World Cup winner Zinedine Zidane, which left them on an annual operating loss of £70 million and debts of £200 million. (This may account for the difficulties Arsenal FC claimed to have experienced over the Anelka transfer deal – see previous edition of this journal\(^\text{509}\).) However, the club have experienced a veritable turnaround in their financial fortunes recently by selling 30 per cent of their marketing rights for the next 15 years to a television cable network for £85 million, whilst the sale of the club’s training ground, located in one of the commercially most attractive parts of Madrid, has raised more than £300 million.

Real are operating on a five-year business plan, by the end of which they intend to show a significant annual operating profit and player costs pegged at 50 per cent of turnover (English clubs, please note!) as opposed to the current 75 per cent.

Leading law firms advise on Internet sports business merger (UK)\(^\text{510}\)

It was recently announced that leading law firm Taylor Johnson Garrett have advised digital media company 365 Corporation on its joint venture with the Chrysalis Group, aimed at merging their Internet sports businesses, to wit Rivals.net and 365.com, thus becoming Rival Digital Media. Harbottle & Lewis acted for Chrysalis and Berwin Leighton Paisner for the management of 365.

Right of gymnastics club not to renew membership confirmed. Canadian court decision\(^\text{511}\)

In the case under review, the claimant was an 11-year-old gymnast taking part in the competitive programme of the defendant – a gymnastics club operating both recreational and competitive programmes. It is a non-share capital corporation, and therefore its members are the equivalent of shareholders. The parents of the gymnast were acting on her behalf in this action. As a result of a number of problems which arose between Mr. and Mrs. Dunford on the one hand, and the coaches on the other hand, the Club Board decided that the Dunfords’ membership should not be renewed at the end of June 2001. It was particularly the conduct of the parents which had given rise to this decision. This gave rise to a number of related court actions.

In the first, the claimants applied for an injunction which would prevent the club from reviewing and affirming the decision not to renew membership until an internal action had been concluded. The judge considered that for the action to succeed, it was for the plaintiff to demonstrate three things: (a) there was a serious question to be tried, (b) the plaintiffs would suffer irreparable harm if their application is refused and (c) the plaintiffs will suffer the greater harm from not having the application granted, applying the “balance of convenience” test.

On the first question, the main issue to be decided was which of the club’s rules should have been applied. The club had based its decision not to renew membership on Clause 35, which states that the Board of Directors has the discretion to accept or reject any membership, subject to a review by the members at any general meeting of the corporation. The claimants, however, argued that the applicable rule was Clause 36, which relates to termination of membership, and
stipulates that, apart from voluntary termination, membership may also be terminated by “a majority vote of the members of the corporation at any general meeting”.

The judge found that the parents of every gymnast received a handbook setting out rules and guidelines for their behaviour, which states that the club may take appropriate action in the event of the parents’ actions not being specifically covered by the list of offences stated in that handbook. The indicted behaviour in the case under review had been that of Mr. Dunford, more particularly the use of profanities and intimidatory behaviour. In the judge’s opinion, an organisation has the right to make and enforce its own rules and require its members from refraining from conduct injurious to it. There was accordingly nothing in the rules, guidelines or procedures of the club preventing the Board from acting under Clause 35 rather than Clause 36. The judge therefore ruled that there was no serious question to be tried.

The plaintiffs had complained also that they did not receive “notice” of the concerns of the Board, as is required by natural justice, and that as a result they were denied procedural fairness. To this end they cited the procedures set out in Robert’s Rules of Order. The judge, however, held that it was an established rule in the US and Canada that the content of the notion of procedural fairness depended on the circumstances of each case; therefore the wholesale transplantation of Robert’s Rules was unnecessary to ensure fairness in this case. The claimants may not have been invited to appear before the board before the 8 May meeting at which the decision not to renew membership was taken; however, they were presented with an opportunity to meet the Board’s representatives before the meeting, and to make a submission in writing. In any event, even if the plaintiffs may have been unsure of the Board’s concerns before the decision was made on 8 May, they were in no doubts on this matter now; in addition, the ultimate decision had yet to be made (since the 8 May decision was subject to review at a General Meeting). This ground was therefore dismissed.

The other major issue to decide was whether the plaintiffs would suffer irreparable harm if the injunctive relief applied for was not granted. The judge considered that there was insufficient evidence that such harm existed. Although it was not the gymnast’s first choice, there was a comparable gymnastics club with training and facilities available which Jamie Dunford could attend so that her aspirations to continue to practise this sport were not ended. The only real “harm” demonstrated was that this alternative was a less convenient 20 minute drive from her home rather than the present five or ten. In addition, the club had agreed to maintain the plaintiff’s membership until the issue could be decided at the Annual General Meeting.

In the light of the above, it was not necessary for the judge to determine where the “balance of convenience” would lie.

The second action was for the obtention of a declaration that the motion passed at the 8 May meeting that the plaintiffs’ membership should not be renewed as from 30/6/2001 was valid and enforceable until reviewed by the members at the Annual General Meeting. Since the judge had found that the 8 May decision was not a nullity, the defendant was entitled to a declaration that the motion in question was valid and enforceable.

The third action was for the obtention of a declaration that the defendant (the club) may place on the agenda of a properly convened Annual General Meeting an item of special business relating to the termination of the plaintiffs’ membership, and that such termination will be effective if approved by a majority vote of the club members. The judge found that, having determined that the Board’s actions were properly taken under Clause 35, it was now appropriate for those proceedings to continue and the matter to go to the general membership. The declaration was therefore granted.

The other two declarations sought, i.e. that Mr. Dunford was not eligible for election as an officer (as well as an injunction preventing him from seeking such office), and that any proxies solicited by him were invalid (as well as an injunction preventing him from obtaining any such proxies) were also granted. The Court also directed that the AGM of members be called in accordance with s. 138 of the Corporations Act, and specified the agenda to be tabled.

“Juve” floated – but share price falls (Italy)

In December 2001, Juventus, one of the most successful Italian football sides ever, was floated on the Italian stockmarket at a price of around £2.33 per share. However, its shares fell almost by four per cent following flotation. Juventus are the largest listed club in Italy, and second in the world only to Manchester United.
11. Procedural Law

Those responsible for administering drugs to young athletes in GDR can still be prosecuted, rules German Supreme Court

It has by now become a well-known fact that the enormous success experienced by the athletes of the former German Democratic Republic was bought very much at the expense of the long-term health of many of these top performers. Under-age athletes had, without their knowledge, regularly had anabolic steroids administered to them in order to boost their performance. In the case of young girls, this had resulted in serious physical problems which had or could have been foreseen and predicted by the sporting authorities on whose instructions and advice these drugs had been administered by coaches and trainers.

In criminal proceedings brought against certain persons who were accused of having participated in these practices, the defendants argued the procedural point that these proceedings were out of time, since the period of limitation for bringing such prosecutions had already expired.

The German Supreme Court did not agree. It ruled that during the time in which these state-controlled, systematic and concealed drug-administering operations had proceeded, the period of limitation for the relevant offences had been suspended. No criminal charges could have been brought until the GDR was dissolved, so that a person responsible for administering these drugs could still be prosecuted.

12. International Private Law

[None]
Irish Government review income tax changes in order to retain riding talent\textsuperscript{514}

The English racing scene has always had a very strong Hibernian flavour to it, mainly because of the continuous stream of first-class jockeys who come and excel on our racecourses. Of the top 10 riders in the jump jockeys table, only two were born in England. However, this country’s gain has undoubtedly been the Emerald Isle’s loss, which is why the Irish authorities are reviewing their tax legislation in order to provide more incentives for their riders to pursue their careers in the countries of their birth.

Henceforth, jockeys based in Ireland will be able to reclaim 40 per cent of the income tax which they paid on their basic earnings during the best ten years of their careers when they retire. Thus a top Irish Flat jockey such as Mick Kinane is in line for a tax rebate which could amount to six figures when he finally hangs up his saddle.

Treasury at loggerheads with sports clubs over tax status (UK)

The present New Labour Government has always delighted in associating itself with the leading figures in the world of sport. However, this love affair seems to have soured of late, not least because of the fiscal status of sports clubs which has increasingly led to openly expressed bad feeling between the two sides. This has been particularly the case in the early months of this year, when sports clubs accused the Chancellor of the Exchequer, Gordon Brown, of reneging on a pledge to reduce their tax burden by thousands of pounds per year.

In last year’s Budget, Dr. Brown had pledged that sports clubs would be exempted from tax on savings, bequests and gifts, and that they would be granted 80 per cent business rate relief. However, new Treasury guidelines state that clubs having “restricted” membership, such as those which select by ability, will not qualify. The guidelines also mean that sports clubs whose activities are not deemed to be healthy, such as shooting, flying or angling clubs, could be refused these tax breaks. Expensive sports such as equestrianism are also likely to fall foul of the new rules because they are “elitist” and “not available to the community at large”\textsuperscript{515}.

Hundreds of clubs and sporting federations have voiced their protest against these guidelines. Many felt that the Government was attaching so many conditions to the tax-free status of sports clubs as to make them virtually meaningless. Concern was also expressed over the proposal that sports clubs would have to register as charities in order to enjoy these tax exemptions, whereas initially the Government had stated that clubs would be eligible for these tax breaks simply by applying to the Inland Revenue\textsuperscript{516}.

In spite of intensive negotiations, the Government was not to be deflected from its course, and in March published the proposal that amateur sports clubs should be given charitable status\textsuperscript{517}. This would make them eligible for tax breaks worth between £40 million and £60 million. Up to 150,000 clubs stood to benefit from this decision. Obtaining charitable status would mean that sports clubs could obtain 80 per cent mandatory rate relief, with a further 20 per cent available at the discretion of the local authority.

However, the sports world was far from impressed, and its leaders sought a meeting with Dr. Brown before his Budget was announced on 17 April. In addition, 132 MPs signed an Early Day Motion requesting the Chancellor to reconsider the scheme\textsuperscript{518}. The main objection appeared to be that as few as 5,000 clubs would be eligible, and even those that were would be confronted with bureaucratic and accounting procedures, which it is claimed would dissuade people from becoming volunteers – these being the people who are vital to virtually every sports club. In addition, club constitutions would have to be rewritten, and members and assets may have to be separated into two entities.

The Central Council for Physical Recreation (CCPR) was opposed to this plan, and proposed a straightforward mandatory rate relief of 80 per cent for all sports clubs, with the remainder being discretionary\textsuperscript{519}.

As this edition went to press just before the Chancellor issued his Budget, the definitive outcome of this saga will be reported on in the next issue.

Input tax incurred by rugby club is recoverable, rules tax tribunal (UK)\textsuperscript{520}

In the case under review, the VAT & Duties Tribunal was required to decide whether or not the appellant was making taxable supplies in the course or furtherance of a business, and whether the input tax incurred in the construction of club changing rooms was attributable to those supplies. The appellant was a non-profit making rugby club located in Llanrwst, Conwy, North Wales, and had been in existence for over 20 years. In 1993, the club bought a plot of land from a local farmer. It then applied for a lottery grant which, together with donations and other sources of income, was used to build changing rooms and other facilities.

Having obtained the lottery grant, the club registered for VAT in 1996. It opted to levy tax in respect of the land and embarked on the building work. When they were completed the following year, the club premises consisted of players’ changing rooms, complete with showers and toilets, a treatment room and a referee’s
room, toilets for spectators and visitors, a kitchen, a disabled toilet and a store room. There was no bar.

The tribunal confirmed as fact that the appellant intended to raise funds for the operation of the club by encouraging third parties to pay for the use of the club premises for mountain bike events, wedding receptions, events organised by young farmers’ organisations and caravan clubs, as well as by charging spectators for admission to fixtures and for the match programmes. Other revenue was provided by social events, raffles and donations. It also received zero-rated rent for allowing farmers to use the field for grazing. The club did not make a profit, but neither was it registered as a charity.

The club premises were used by rugby players, committee members for meetings, and by spectators for tea at major games. The spectators used the toilets and the disabled toilet, and occasionally used the premises to shelter from the elements. They were also used by those taking part in mountain bike events. Initially, the constitution governing the club made provision for different membership fees for players and non-players. However, this was amended in September 1997 – with retroactive effect to May 1997 – and henceforth players were not required to pay membership fees in order to play rugby.

In its returns for the November 1996, February 1997 and May 1997 accounting periods, the appellant claimed input tax credit on the goods and services supplied to it in connection with the building of the changing rooms. As a result of a visit paid to the club by a Customs officer on 30/6/1997, the Customs Authority decided that the input tax claimed was attributable to exempt supplies. A month later, Customs notified the club of a decision to amend the return for the May 1997 accounting period by disallowing an amount of input tax. On 13 August of that year, Customs notified an assessment issued in relation to input tax claimed for the November 1996 and June 1997 periods.

The appellant argued that the club was a non-profit sports and social club, whose activities were fully taxable, and which had always intended third party sporting supplies, which were taxable, to be made from the new premises. The letting of facilities fell within the exceptions to exemption conferred by the VAT Act 1994, Sch. 9, Grp 1, and the club had exercised its option to tax in relation to the land which it owned. The income derived from ticket sales, sponsorship, advertising and sports letting to third parties was taxable, since all these activities required the use of the club premises. Therefore input tax incurred in the building of the facilities related to these taxable activities and should be recoverable.

The Commissioners, for their part, argued that the appellant was a non-profit making body concerned with providing facilities for playing rugby. Once an intention had been formed no longer to charge members for playing rugby, that activity was no longer a business activity in itself, and since the changing rooms were wholly used by the players and no other taxable use was being made of them, the input tax was not deductible. Whilst there had occurred a limited number of taxable activities, such as had occurred were associated with the playing of rugby, and whereas admission charges to the games amounted to a business use, the spectators’ use of the premises was minimal and restricted to the use of the spectators’ toilets and obtaining occasional cups of tea from the kitchen.

The tribunal allowed the club’s appeal, on the following grounds:

(a) the club had always intended to use the club premises to make taxable supplies, and they did so when the club premises were built and opened. There was a direct link between the construction of the building and the making of taxable supplies from the premises.

(b) Customs were wrong to conclude that the construction was for non-business purposes. Since the club could not have charged admission fees, sold its programmes, advertised or obtained letting income from the premises without the premises being constructed, it could be said that the taxable supplies which it made were directly referable to the construction of the building.

(c) at all events, the granting of facilities for playing sport and participating in physical recreation were excluded from the VAT exemption of the grant of an interest in, or right over, land conferred by the VAT Act 1994, Sch. 9, Grp 1, item 1.
Racism in Sport

Racism in Rugby Union

The Azam/Andrew affair (UK)

Hitherto, the world of Rugby Union has been relatively free from any accusations of racism – both on the field and in the stands. However, recent events have tended to cloud this idyllic picture, to the point where it threatens to poison the game at all levels. The main development which highlighted the problem was the accusation made against a Gloucester player regarding his conduct during a Zurich Premiership end-of-year match and the resulting fall-out, which at one point threatened to end in the courtrooms.

The match in question was between Gloucester and Newcastle on 29 December. At its conclusion, Rob Andrew, former England international and now Newcastle’s Director of Rugby, claimed that one of his players, Tonga international Epi Taione, had been subject to racist abuse from Gloucester’s French hooker Olivier Azam. The latter was alleged to have called Taione a “black bastard”, in a stormy match which saw both Taione and Azam sent off the field. This claim was backed up by the Tynesiders’ Samoan players Va’aiga Tuigmala and Pat Lam. Andrew also claimed that this was not an isolated incident, since some of the violent incidents early in the game were allegedly sparked off by Azam’s racist remarks. Racist behaviour was also reported amongst the crowd, and the police confirmed that they had ejected several supporters.

Philippe Saint-André, Azam’s compatriot and director of rugby at Gloucester, denied that racism was part of the club, pointing to the multi-racial make-up of his team. Azam, for his part, “categorically denied” having racially abused Taione. Gloucester conducted their own investigation into the affair, but the fact that they had themselves announced Azam’s denial seemed to indicate that this inquiry was unlikely to shed any new light on the matter. Referee Ray Maybank’s match report had in the meantime reached the Rugby Football Union (but, as matters turned out, made no reference to any racist behaviour). Steve Ojomoh and Adedayo Adebayo, two Nigerian players who used to play for Bath (now playing for Italian side Overmach Parmal), called for the RFU to make an example of Azam if found guilty, adding that in their own playing days, they seldom if ever encountered any problems with racist behaviour, either from playing opponents or from the spectators.

As the temperature over the entire affair mounted, it was announced that a three-man RFU tribunal was to sit in judgment on the matter the following week. Stoking the fires in the meantime was Rob Andrew, whose club planned to use videotape evidence allegedly showing Azam spitting in Taione’s face. Andrew’s anger was understandable, but it may have been more politic on his part not to be seen to prejudice the matter to such an extent – particularly as Newcastle had not yet made an official complaint to the RFU about the matter. Angered by what they saw as a slur on their club, Gloucester indicated that they could very well take legal action against Newcastle over Andrew’s allegations. A few days later, Gloucester announced that they were banning Andrew from their Kingsholm ground. In addition, Gloucester owner Tom Walkinshaw, Azam himself and the Gloucester Supporters’ Club announced that they were all considering taking legal action against Andrew for his allegations unless the latter apologised.

In preparation for the RFU hearing on the matter, Gloucester produced a 65-page report containing interviews with over 150 people which denied that any racist comments had been made by any player or spectator.

In retaliation, Newcastle stated they were prepared to boycott their next match at Gloucester unless the ban on Rob Andrew was lifted. Chairman David Thompson commented that the accusations had not been made against Gloucester as a club, and that far from Andrew “shooting from the hip”, as Walkinshaw had claimed, Newcastle had held a “council of war” in the dressing room after the match in question before deciding to go public with their allegations against Azam. Newcastle also finally made their formal complaint with the RFU against Azam the next day. This also contained allegations of racist abuse on the part of sections of the crowd at Kingsholm.

Came the day of the RFU hearing, which ended inconclusively – at least as far as the allegations of racism were concerned. Azam was suspended for a total of five weeks for spitting at, and then fighting with, Taione, whereas the latter received a three-week ban for his part in the fracas. As regards the alleged racism which had marked the incident, the RFU announced that they were about to entrust this matter to “a judge”. This turned out to be Michael Beloff QC, a member of the Court of Arbitration for Sport (CAS), who was to chair an RFU panel investigating the matter, joined by Gordon Skelton, a former police inspector, and Budge Rogers, former England captain and the RFU President the previous season. This panel is to report on Robert Horner, the RFU’s Disciplinary Officer, in due course. This at least had the virtue of placing the matter sub judice and preventing any more untimely outbursts on the subject from the various parties involved.

This journal will obviously follow the panel’s deliberations with considerable interest. A chink of light at the end of the tunnel seemed to be in evidence,
14. Human Rights/Civil Liberties

However, when Olivier Azam claimed that both he and Taione had “shaken hands and made up” at the end of one of the panel’s hearings on the matter in Coventry. Earlier, Jimmy Marlu, the black French international who hails from Martinique, gave his unconditional support to Azam. Having shared dressing rooms with him for five years whilst the two were team-mates at top French club Montferrand, he claimed that Azam had never said “a word out of place”.

**The Peter Clohessy affair (Ireland)**

As if the events described were not enough to arouse disquiet in rugby circles, allegations of racism were levelled against Munster and Ireland prop Peter Clohessy, barely a few weeks after the tempestuous Gloucester v. Newcastle game. French club Castres made a formal complaint to this effect following their European Cup tie with Munster on 12 January. Scotland’s fly half Gregor Townsend, who plays for the French club, drew the club authorities’ attention to the alleged remark as Munster cited Ismael Lassissi, the Castres player who hails from the Ivory Coast, in connection with the biting of Clohessy’s ear as a scrum degenerated into a punch-up. No allegations of racism had been made immediately after the game.

However, the accusation of racism was withdrawn at the disciplinary hearing arising from the incident. The three-man European Rugby Cup disciplinary committee, meeting in Dublin on 17 January, upheld the complaint against Lassissi, who was banned for 12 months. (See also below under Section 17, p.108).

**Other incidents**

In early February 2002, former Scotland hooker Jim Hay apologised for racist comments made during an after-dinner speech the previous weekend, stating that he had learned “a very painful lesson” from the entire experience. The Scottish Rugby Union (SRU), for whom Hay works as a member of the marketing team, issued a statement afterwards to the effect that appropriate disciplinary action had been taken over the incident, adding that racism was not tolerated and “isn’t part of Scottish rugby.”

Later that month, Welsh club Bonymaen launched an investigation after the Newport scrum-half Ofisa Tonu‘u claimed that he had been the subject of racial abuse during their Principality Cup tie at the Morfa Stadium, Swansea, on 23 February. The outcome was not known at the time of writing.

**How endemic is racism in the English game?**

In spite of the reassuring statements made by Steve Ojomoh and Adedayo Adebayo earlier (see above), other ethnic minority players have not been quite as sanguine. Thus Leicester back Leon Lloyd informed a Sunday newspaper that he had been called a “nigger” during a match at Bristol. Paul Hull, who manages Bristol’s rugby academy, said he had been labelled a “black bastard” in a club fixture against Orrell. Both men also claimed to have been racially abused when playing at Kingholm (Gloucester’s ground). It was also revealed that in 1993, an article appeared in Rugby News in which several high-profile black players were critical of the treatment they had received at the Gloucester ground. Floyd Steadman, Chris Oti and Victor Ubogu had all referred to unsavoury incidents at Kingholm when they were interviewed by the magazine. Jason Robinson, who converted to Union from the League code, also claims to have experienced racism in his League days.

Lloyd, Hull and Robinson stressed that the incidents were isolated and untypical of the treatment they had received during their time playing rugby. However, the Azam incident may have highlighted the need for the game to become more inclusive.

**Racism in football**

**Referee wins racial discrimination claim from employment tribunal (UK)**

In early December 2001, the Football League were forced to apologise to an Asian referee after having been found guilty of racially discriminating against him and preventing him from being promoted to the panel of Premiership referees. An employment tribunal held that Gurnam Singh had been allocated fewer prominent matches on account of his Asian origins, and that the Football League’s National Review Board, which controls the promotion and demotion of referees, had racially discriminated against him. The League was also ruled to have unfairly dismissed Singh, even though he consistently performed well on the football field and finished top of the referees’ performance list for the 1994-95 season.

During the hearing, the tribunal panel had been told that Singh had found himself out of favour because of his race and unable to referee in the Premier league because there was a determination amongst the relevant officials to “get rid of him”. Alan Seville, a former regional referees’ co-ordinator who was responsible for assessing match officials, told the panel that it had become apparent at an early stage that Singh had been unfairly treated. He recalled a meeting at which Ken Ridden, Director of Refereeing to the Football Association (FA), was alleged to have stated “we don’t want people like him in the Premier League.” Football League referees’ Officer Jim Ashworth was also named as one of the main instigators.
14. Human Rights/Civil Liberties

The Football League immediately announced their intention to conduct an internal investigation, with Chief Executive David Burns, who was not in charge at the time when the indicted events took place, accepting that such discrimination could not be tolerated and that the League “had to take a lead in this matter”. Yet by the time this Journal was about to go to press, no action had as yet been taken, and Ridden and Ashworth were still involved in football at the highest levels. Ridden holds an influential position on the referees’ committee of European governing body UEFA, whereas Ashworth is one of the three national group managers running the Professional Game Match Officials Board, which was established at the start of the 2001-2002 season for the purpose of administering and assessing all referees of professional fixtures.

Everton crack down on racist fans (UK)
The authorities at Everton FC have become increasingly concerned at the antics of some of their supporters, particularly at away fixtures. Matters seemed to be getting out of hand towards the end of November 2001, when there occurred particularly nasty outbreaks of racist chanting at Leicester and Fulham’s grounds. At other away matches, Everton fans were heard to chant uncomplimentary things about Liverpool’s Emile Heskey (as well as engaging in chants mocking manager Gérard Houllier’s health problems). Accordingly, the club – who this season appointed their first-ever black team captain in Kevin Campbell – have threatened to stop selling tickets to their fans for away games should this kind of behaviour continue.

Mark Wright “not told of racial allegations (UK)
In late November 2001, the Football Association were accused of failing to inform Oxford United manager Mark Wright that he faced charges which included a “racial element” when he was disciplined for verbally abusing a black referee. He had received a £1750 fine and a four-match touchline ban but only learned that the FA had considered a racial element to his remarks from a statement issued by the Association later.

Racial issues beset South African cricket team selection
In a previous issue of this journal, it was reported how, in spite of the official ending of the apartheid era, racial issues continued to set the tone in some aspects of South African sport. This issue was highlighted once again when a black South African fast bowler was not selected for a forthcoming Test match with Australia, and the top cricketing official in South African cricket overruled his selectors by selecting a black batsman instead of a white one during the same series.

Makhaya Ntini had taken 11 wickets in nine Tests, but was replaced for the Melbourne Test against Australia by Allan Donald, who had been unfit for some time, but was now restored to health. As this news broke, the South African Sports Minister announced, through his spokesman Graham Abrahams, that:

“If the selectors feel that a player is not performing to their full potential, then it is their right to drop him. But there should be fairness and equal opportunity irrespective of who the player is.”

These comments were interpreted in some circles as having racial overtones, but this was denied by Abrahams. However, accusations of racial manipulation were heard once again when Justin Ontong, an uncapped 21-year-old black batsman who had made two ducks in his only previous match on tour, was selected for the Third Test against Australia to replace the out-of-form Lance Klusener. This was at the instance of Percy Sonn, the President of the United Cricket Board of South Africa, and overruled the choice made by the selectors, who was white batsman Jacques Rudolph. Sonn insisted that Ontong was on the tour as the shadow No. 6, and that the Board’s “team of colour” policy required that a “person of colour” be given the opportunity. Graeme Pollock, the former South African batsman and member of the panel selectors, made his opposition to this move quite plain. Australia won that Test by 10 wickets.

Mr. Sonn’s move was widely criticised – in the first instance by members of the team. One player, speaking anonymously, expressed the view that Sonn had undermined the tour with his interference. Players out on the field were “busting a gut” and were not at all helped by people like Sonn who “know very little about cricket”. Clive Rice, former Nottinghamshire batsman and currently their director of cricket, also criticised the quotas policy – only to be severely castigated by Sonn. However, the voice of criticism was heard not only in South Africa. Even as liberal a newspaper as The Guardian was at odds with this approach. In its comment on the affair, it recognised that some things were bigger than cricket, and prominent among them was the need to assist South Africa with the daunting task of becoming a society of equal opportunities. However, for an administrator to take such a direct role in team selection was to invite trouble. Instead, it argues, “rather than exerting his right of veto over the selection in order to shoehorn an individual player into the team, he should be using his time and his power to ensure that better coaching is available.
for black schoolchildren. That might improve the prospects of South Africa one day being represented by a team chosen on the basis of talent alone while accurately representing the country’s ethnic composition.”

However, the United Cricket Board later confirmed its stance on the selection of non-white players for the national cricketing side, its Executive Committee having met to clarify its position. In fact little over a month later, it was announced that the South African Government was considering legislation compelling its sports bodies to field more non-whites, as Sports Minister Balfour indicated that he would be meeting the various national federations for this purpose. He restated his view that Percy Sonn had been right to veto the selection of Rudolph.

Human Rights Legislation

Does Ryan ban infringe freedom of expression rule in Human Rights Act? Article in academic journal (UK)

This brief comment concerns the four-week touchline ban imposed by the Rugby Football Union (RFU) Disciplinary Panel against Dean Ryan, the Bristol Shoguns coach, for his outburst following a Zurich Premierships match against London Irish, in which he had called the referee “incompetent”. The author believes that a case can be made out for considering such bans as an infringement of the right to free speech provision contained in Article 10 of the European Convention on Human Rights, given force of law by the Human Rights Act 1998. Many sports bodies try to enforce rules such as that under which Ryan was disciplined on the basis of the general charge of “bringing the game into disrepute”, which is a rather vague notion capable of a wide variety of interpretations.

The author also points out in this context that the ban imposed on Mike Tyson for his threat that he would “eat Lennox Lewis’s children” was later replaced by a fine by the British Boxing Board of Control with specific reference to the Human Rights Act.

Does Diane Modahl have a case under Human Rights Act? Comment in academic journal (UK)

It was reported in the previous issue that Diane Modahl would not pursue her claim against the British Athletics Federation before the House of Lords. The author of this brief comment considers this a matter of regret, since there are a number of legal issues which have been left unexplored in this case – not least the human rights aspects. He considers that sports disciplinary bodies fall within the scope of the Human Rights Act – and therefore also of Article 6 of the eponymous Convention, which lays down the requirement of a fair trial. This could be relevant to the Diane Modahl case in view of the doubts which arose as to the fairness and impartiality with which the national athletics body had acted in the British runner’s case.

Gender issues

Symposia on women and sport in France

Two important symposia on the place of women in sport were organised recently in France. The first, organised by the French Government, was held on 1/12/2000 in Tours, and was called “Women in Sport – a Developing Area” (Femmes et Sports Territoire en mouvement) and sought to take stock of the progress made in France in this area since the first seminars on Women and Sport were held in May 1999. It brought together some 450 participants, ranging from athletes to representatives from the various organisations involved in this question.

The agenda included such items as access by women to positions of responsibility in sport, sporting facilities and financing for feminine sport, training, and international campaigns. The symposium was concluded by the Sports Minister, Marie-Georges Buffet, who has taken a close personal interest in this matter.

On 2/2/2002, another symposium called “Women and Sport” was held by the national Olympic Committee on Women in Sport (CNOSF). This Committee has, since 1999, organised a programme of activities and campaigns seeking to improve the conditions giving women access to sport. The agenda consisted mainly of reports back from the various organisations involved in the campaigning activity referred to above.

“Blonde Pioneer” strikes blow against football machismo by refereeing Madrid derby (Spain)

At the beginning of this year, Carolina Domenech, the female referee known as the “Blonde Pioneer”, showed football machismo the red card by becoming the first woman to referee a match in the Spanish league – i.e. no lesser fixture than the hard-fought Madrid derby between Real and arch-rivals Atletico. All players were on their best behaviour. Her father, himself a referee, opined that his daughter was treated with more respect than he was.
Government back Private Members’ Bill on equal club rights for women (UK)

Clubs of all descriptions will be banned from relegating women to second-class status, if a proposal for legislation backed by the Government makes it onto the statute book. This will mean that private premises of clubs will no longer be able to prevent women from using bars or other facilities, or deny them the right to vote or stand for office. Although this proposal started life as a Private Member’s Bill in the House of Lords, the Government are giving it its support, thus considerably enhancing its chances of becoming law.

If this proposal does become an Act, it will have a considerable effect on sports bodies such as golf clubs, where such restrictions remain widespread.

Review of major US work on athletes and acquaintance rape

The work under review introduces the reader to the manner in which the American professional athletics culture produces the sexual subjectivity of the athlete and the female complainant in acquaintance rape trials. In his attempt to reply to the question why jurors are disinclined to convict famous athletes charged with sex crimes, the author considers three cases: Massachusetts v. Marcus Webb (1993), Victoria C. v. The Cincinnati Bengals (1993) and Indiana v. Mike Tyson (1992). The writer uses these three cases as a vehicle for understanding how the male celebrity athlete is constructed within and outside the law, and how this cultural and legal construction affects the female complainant in acquaintance rape trials.

In the chapter entitled “The Subculture”, the author contends that the American professional athletic culture is responsible for turning athletes into irresponsible and promiscuous national icons. The irresponsibility and promiscuity of athletes are associated with the money which the culture of US professional athletics invests in them. The athletes fail to learn responsibility because they can afford to employ lawyers, accountants and similar professionals to manage their everyday affairs. They become promiscuous because they have a good deal of idle time which is filled by indulging in sex. Athletes and the general public consider the women who follow athletes around and often have sexual relations with them as being “groupies” – a term which suggests that they have willingly engaged in this sexual intercourse. Benedict argues that the “groupie” phenomenon not only causes athletes to “objectify” women but also considerably reduces their ability to distinguish between compulsion and consent. If an athlete finds himself accused of acquaintance rape – as did the athletes in the cases cited by the author – then expensive defence lawyers depict the female complainant as a “groupie” and suggest to the jury that she gave implicit consent to the sexual intercourse which occurred. The “groupie” construction enables defence lawyers to obtain the acquittal of athletes in acquaintance rape trials.

The unnamed reviewer is of the opinion that, whilst the author may be right in his claim that the culture of American professional athletics promotes and sustains violence against women, his argument is “teeming with prejudices” against sexually active subjects. The male athlete who indulges in sex with various partners is described as “deviant”, whereas the woman who likes to have sex with athletes is regarded as “peculiar” and as an accomplice to the “athletes’ attitude of sexual licence”. These particular characterisations are fundamental to the author’s argument. They enable him to argue that promiscuity, as well as the cult of celebrity, erode the sexual subject’s understanding of that which is consent and non-consent. In addition, as Benedict continues, these two phenomena in turn obscure juries’ judgments of what is and is not rape.

The unnamed reviewer also opines that, if Athletes and Acquaintance Rape was written as an attempt to address the callousness which the sporting industry might display towards violence against women, Benedict succeeds in reproducing that violence. By emphasising the culture of professional sports and the “groupies” phenomenon, rather than the responsibility incumbent on the athletes, he portrays the athletes as being non-responsible for their acts and not guilty of acquaintance rape. He finds an excuse for them. In addition, he fails to understand that the man who rapes a woman is not sexually “deviant”, and that the woman who has been raped is neither “peculiar” nor an “accomplice” to the rape. Instead, all these terms are part of the normative discursive practices that produce them as such.

Other issues

Restrictions on non-EU players are “discriminatory”, rules Italian Football Association Court

In the case under review, a number of non-EU players representing AC Milan, Lazio Rome and Sampdoria had brought before the Federal Court of the Italian Football Federation a challenge to the rules of the Italian Football Federation which restricted non-EU players registered with Italian clubs to three for any officially recognised match. They considered this rule to be discriminatory, under various provisions of domestic and international law. The Court agreed with the claimants, but allowed the relevant rules to stand until such time as the Italian
Olympic Committee had drawn up appropriate rules on this subject.

“Love cheat” footballer loses fight against being named by newspaper (UK)
In mid-February 2002, a Premiership footballer commenced a defensive action in the Court of Appeal against a Sunday newspaper attempting to publish an account of his extra-marital sexual exploits. In September 2001, a High Court judge had ruled that the laws on confidentiality could apply to relationships outside marriage, and ordered that the newspaper should be debarred from reporting so-called “kiss-and-tell” stories. The newspaper wanted to publish details of the player’s affairs with two women, one of whom was said to be a lap-dancer, and appealed against this decision.

Alistair Wilson QC, representing the player who could not be named, argued before the court that sexual relations should remain private and that, where two people entered into one, they were “put on notice” that the relationship was confidential. Lawyers for the “newspaper” concerned, i.e. the Sunday People, contended that the media must retain the right to publish “kiss-and-tell” stories about famous personalities because it was in the public interest to do so.

The Court of Appeal found for the appellant. In so doing, the three Appeal Court judges, headed by the Lord Chief Justice Lord Woolf, laid down guidance for the first time for judges who may soon be faced with an avalanche of applications by celebrities relying on privacy rights under the Human Rights Act. He said:

“Any interference with the press has to be justified because it inevitably has some effect on the ability of the press to perform its role in society. This is the position irrespective of whether a particular publication is desirable in the public interest. (....) In our view, to grant an injunction would be an unjustified interference with the freedom of the press. Once it is accepted that that the freedom of the press should prevail, then the form of reporting in the press is not a matter for the courts but for the press council and the customers of the newspaper concerned”

He added that footballers were role models for young people, and inappropriate behaviour on their part could set an unfortunate example. The footballer was inevitably a figure in whom a section of the public and the media would be interested. Public figures were entitled to have their privacy respected and were entitled to a private life. However, they had to acknowledge that their public position subjected their actions to closer scrutiny by the media. Whether they had courted publicity or not, they could be a legitimate subject of public attention.

At the time of writing, the player in question had not yet been named.

Sports shoe companies “fail to stop sweatshop abuses” says report
In March 2002, a report published by Oxfam Community Aid Abroad, called We Are Not Machines, claimed that Indonesian workers producing sports shoes for multinational companies Nike and Adidas live in extreme poverty and face prosecution and physical assault for engaging in trade union activity. Although conditions had improved over the past 18 months, workers were still being subjected to verbal abuse, intrusive physical examinations and dangerous conditions.

At the Nikom as Gemilang factory in West Java, which produces shoes for both the companies in question, half a dozen workers are reported to lose fingers in cutting machinery every year, although there has been a reduction in illnesses caused by poisonous organic solvents used in the process. In the same factory, female workers are routinely subjected to humiliating physical examinations by company doctors before they are allowed to claim legally mandated but unpaid menstrual leave of two days per month. One female worker was arrested and imprisoned for a month last year for organising a strike at the PT Panarub factory, which supplies Adidas.

Nike is the world’s largest sports shoe company, and has 11 Indonesian factories producing up to 55 million pairs of shoes per annum. Only one pair in 50 is sold in Indonesia, and the majority are exported to the US. One of its executives, Chris Helzer claimed that the report was not an accurate reflection of working conditions in Indonesia.

Kangaroos suffer “slow agonising deaths” to put extra swerve in football boots, claim animal rights activists (UK)
Early in the New Year, it was reported that soccer stars David Beckham and Michael Owen were being targeted by animal rights activists because their boots are being made from kangaroo hide. Footballers believe that these shoes give them unparalleled grip, swerve and control, but campaigners maintain that countless thousands of kangaroos suffered slow and agonising deaths so that the great footballers may pursue goals and glory. Michael Owen uses the latest Umbro XAI boots, whereas Beckham favours the Adidas Predators. Both are made of extremely thin kangaroo leather, which is flexible and tough, and coated with rubber to make them more durable.

Umbro spokesman Nick Crooks, however,
Maintained that the hide used emanated from animals slaughtered legally, and that the Australian government authorised the cull of six million kangaroos per year in order to control numbers.

**Jockey Club offers to meet animal rights activists (UK)**

In February 2002, the Jockey Club, in a surprise move, offered to meet animal rights activists who are campaigning for the abolition of racing, in order to discuss its policies for the welfare of horses. A letter issued by John Maxse, Public Relations Director to the Jockey Club, also suggests that the two organisations may have more in common than may have been expected.

The Animal Aid group have been campaigning against racing in general – and the Grand National in particular – for a number of years. It hopes this year to organise the biggest demonstration at Aintree ever seen against the Grand National race (6 April). The letter sent by Maxse included a document detailing the Jockey Club’s work in such areas as racecourse safety, veterinary facilities and care for horses both during and after their racing careers. More particularly, he claimed that:

> “the welfare of the horse is of primary importance to the Jockey Club, and it seems that Animal Aid also places great importance on the welfare of the horse. Taking that into account, it appears possible that our two organisations have more in common than one might expect.”

However, the Jockey Club public relations offensive looks unlikely to bring a halt to the Animal Aid campaign. The group’s website claims that every year, approximately 300 horses are raced to death in Britain, and that half the 8,000 foals bred each year never even see the starter’s flag before being put down.

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Scientific and technological developments

“Next wave” in doping already on its way? Feature in national newspaper (UK)

Even the most lukewarm observer of the sporting scene needs no convincing that keeping control of the way in which athletes use drugs currently available in order to gain an unfair advantage is difficult enough for the relevant authorities. However, there are some signs that certain changes are afoot which may make this task very nearly impossible, if a recent British newspaper report is to be believed.

According to Jon Entine, an expert in this field, a new wave of performance-enhancing drugs is on its way the use of which is utterly undetectable. The key appears to be genetic manipulation. By the time the Athens Olympics are upon us in 2004, dozens if not hundreds of athletes are expected to have experimented with the rapidly emerging range of gene-altering drugs. It appears that in recent years, geneticists have made major advances in gene therapy. This involves injecting the body with artificial genes which then produce therapeutic proteins capable of limiting the spread of disease and ease chronic pain. The technique has apparently already been successfully used on animals. It will undoubtedly lead to better disease treatment; it will also open a Pandora’s box for sporting performers.

Thus it appears that scientists have already perfected a virtually undetectable version of EPO, to be administered by injection. According to leading geneticists, if the direct injection method is used, the DNA will only be present in that specific muscle. A positive test would therefore require a slice of actual muscle tissue – located at the exact spot of the injection. Nor is the danger of taking these substances restricted to the damage they will cause to sport, since these drugs will have dangerous side-effects. A ban on the genetic engineering of athletes therefore appears to be of the utmost urgency – and the IOC is already making moves in this direction. Whether this will succeed is another matter.

New blood-booster is “10 times stronger than EPO”

As if the problems posed by genetic manipulation were not enough, scientists now apparently face a race against time to combat the latest drug of choice for athletes determined to acquire an unfair advantage. No sooner has a reliable test for EPO been established, than it emerges that a new drug, called Aranesp, is being widely abused in the world of cycling. Aranesp is a prescription drug used to treat anaemia caused by cancer or kidney failure. According to anti-doping experts, it is ten times more powerful than EPO in boosting the body’s capacity to produce oxygen-carrying red blood cells. It was among the drugs found in a police raid during last year’s Giro d’Italia (Tour of Italy), and some 15 competitors were thought to be using the substance during the Vuelta (Tour of Spain) in October 2001.

As yet, there is no test for this drug.

Doping issues and measures – international bodies

WADA Chairman Pound announces pre-Olympic Games drugs test drive

In mid-January 2002, the Chairman of the World Anti-Doping Agency (WADA), Richard Pound, called a Press Conference at which he announced details of the major anti-doping campaign which was being mounted in the run-up to the Olympics – more particularly the Winter Games at Salt Lake City. Stating that at the Olympics we want “heroes and not just winners”, he announced that WADA within the 12 months prior to the Winter Olympics had completed 3500 out-of-competition tests, including 1200 during the two months preceding the Salt Lake City Games. WADA had also concluded agreements with 34 of the 35 International Olympic Sports federations, including all seven Winter Olympic sports. These sports were conducting their own tests and were allowing WADA to conduct unannounced testing at any time. WADA was also near to completing an agreement with the world governing body of football, FIFA, thus bringing WADA into agreement with all 35 sports federations.

Obviously the tests in question sometimes caught some athletes out, but they were very much the exception: out of 2600 tests conducted to 10 January, approximately one per cent were positive or elevated – and some athletes having elevated results may have pre-approved medical declarations to support them.

WADA was to have 12 independent observers at the Winter Games for the seven sports involved. Given that there were 15 observers for the 35 sports engaged in at the Sydney Olympics, this represented proportionately a significant increase, and demonstrated the importance of WADA’s independence and mission. Protecting
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athletes’ rights by ensuring that all athletes are competing drug-free and by enabling increased public accountability was a critical part of ensuring that the Games succeed. Also at Salt Lake City, WADA was to institute an athlete’s "drugs passport" for the purpose of documenting doping control records.

(On the subject of drugs passports, see below).

Another important project which WADA was embarking upon was the harmonization of standards, thus enabling the various sports to have a uniform World Anti-Doping Code. WADA would take action aimed at clarifying the confusion caused by many sports banning different substances. In addition, the Agency was continuously researching and upgrading testing procedures, including those which related to the banned EPO enhancer.

On the opening day of the Winter Olympics, Pound announced the final statistics and breakdown of the 3,500 tests referred to earlier. The following figures were of particular interest:

- WADA conducted 193 out-of-competition EPO blood tests for winter sports during the run-up to the Winter Games. In addition, 20 EPO tests were conducted on behalf of the International Rowing Association.

- The tests involved athletes from 76 nations conducted in 49 different countries.

- Out of all the tests, WADA had received 27 positive analysis results. Of these, six failed to result in penalties because they were medically justified. One test resulted in a warning by the international federation concerned, 16 resulted in penalties and four were yet at the analysis stage.

WADA inaugurates "Athlete’s Passport” as well as educational measures

Passport launched

The day before the Winter Games at Salt Lake City were officially opened, i.e. 7 February, WADA unveiled its “Athlete’s Passport”. Joining the WADA Chairman, Richard Pound were a number of athletes led by four-time skating gold medalist Johann Olav Koss (Chairman of the Passport programme and WADA Board Member) and European Sports Commissioner Viviane Reding.

The Passport is similar in design to a government travel passport and combines with a WWW-based programme to provide access to doping control records and educational resources. The programme had been developed in conjunction with several national anti-doping organisations, Olympic international sports federations, the International Olympic Committee (IOC) Athletes’ Commission, and had the support of the European Commission. The “Athlete’s Passport” programme has three main objectives:

- **Education:** to provide comprehensive and up-to-date information regarding current rules and regulations, the list of banned substances and methods, the harmful effects of doping, etc., on the Athlete Passport website, which is “www.wadapassport.org”;

- **Text database:** to collect each athlete’s doping control details and record these in a secure web-based database;

- **Communication:** to foster communication between WADA and athletes through the website, giving them greater involvement in the anti-doping effort.

**How it works**

The Athlete’s Passport combines a paper passport, in which doping control officials may log doping control information, with an internet-based database (at the Passport website the address of which is provided above), through which athletes can access anti-doping information and obtain personal data regarding their own testing history. Eventually this world-wide database will enable WADA, the international sports federations, the national Olympic committees and national anti-doping organisations to organise, harmonise and link testing programmes.

Testing officials will use the Passport, to be stamped after each doping test, in order to review an athlete’s testing record and add new data to the database. WADA’s central database will receive and sort all doping control results as well as other related information. Authorised WADA officials, international testing bodies, and the laboratories conducting the tests will be able to access the data, i.e. athletes’ test results, approved medication, longitudinal studies, etc., in order to improve their doping control programmes.

**Impact of the programme**

The programme will enhance doping control programmes in many ways. In the first place, it will assist officials in reviewing those who have been tested when, as well as the results of those tests, and enable athletes to monitor their own testing history. Secondly, it will improve the ability to maintain longitudinal studies of the natural levels of various chemicals and hormones in top athletes. Thirdly, the programme will help to pinpoint an athlete’s whereabouts for unannounced out-of-competition testing. Finally, as the “one-stop shop” for anti-doping information, the project will ultimately assist in harmonising and co-ordinating anti-doping programmes.
Future developments
The “athlete’s passport” constitutes a continuous, long-term project. WADA launched this programme during the 2002 Winter Games and hopes to have it fully operational by the 2004 Summer Olympics in Athens. Six national anti-doping organisations are currently conducting, or have completed, pilot programmes for the Athlete’s Passport. These will enable WADA to evaluate and shape the programme more effectively with regard to the challenges of, for example, the differences between national laws, customs and technologies. In future, WADA will act as a clearing house for the integration of doping control results from WADA, national anti-doping organisations, international federations and national Olympic committees into the passport, so that each athlete’s testing history will constitute a complete record and the process will become fully harmonised.

E-learning: interactive training and education
As an integral part of WADA’s Ethics and Education programme, the e-learning pilot project was launched at the Winter Olympics. This project, which is also financed by the European Commission, provides an opportunity for athletes, trainers, doctors, coaches and the general public to learn about anti-doping rules and regulations regarding information about the list of banned substances and related health dangers involved in drug abuse by athletes. A key aspect of this programme is the “True Game”, being an interactive computer-based game which challenges and engages participants as they learn about true sport as well as doping control.

Salt Lake Games show “vastly improved” doping record, says Pound
At the conclusion of the 2002 Winter Games, WADA Chairman Pound asserted that the doping problem appeared to have vastly improved at the Salt Lake Games compared to previous major world and Olympic events. The new anti-doping culture has ensured that very few athletes had returned positive tests. He attributed this in part also to the introduction of the Athlete’s Passport (see previous section). He also praised the significant international and inter-governmental co-operation achieved during various meetings at Salt Lake City.

He also announced a forthcoming Conference on genetic doping as a way of staying ahead of, and taking action against, potential high-tech cheating, complete with physical and ethical considerations. This conference was to be held in New York in March 2002.

(However, on the doping issues which actually did mar the Salt Lake City games, see below, p.102).

France “will not withhold its WADA contribution”, says Sports Ministry
In mid-December 2001, the French Ministry of Youth and Sports announced that, contrary to a report in leading newspaper Le Monde and in spite of certain regulatory aspects which were yet to be clarified, France did not intend to withhold its contribution towards WADA, provision for which had already been made in its 2002 budget. The various methods of financing the agency – direct contribution, financing individual programmes, the financing of a special Council of Europe fund, etc. – were currently the subject-matter of a study being undertaken by the legal department of Sports and Foreign Ministries.

Euro-Mediterranean seminar on forming a partnership against doping
On the initiative of the European Commission, and the Spanish, French and Moroccan sports ministries, there took place in January 2002 a seminar entitled “Which partnership in the fight against doping?”. It was attended by representatives from sports ministries from the various Mediterranean countries and from such organisations as WADA, the IOC and the various national Olympic committees. It had three objectives:

• to intensify the Euro-Mediterranean dialogue in the spirit of the Barcelona Declaration;

• to create an international environment which favours bilateral or multilateral national actions in the context of the fight against doping;

• to contribute to the drawing up of the WADA strategic development plan.

European Commission and International Basketball Federation sign anti-doping convention
On 19/12/2001, in the context of the fight against doping, the European Commission and the International Basketball Federation (FIBA) signed a convention aimed at “cleaning up” the sport. The campaign, entitled “For a clean future”, was intended to raise awareness among young players and spectators of the damage to health caused by doping, and to provide information on banned substances as well as the penalties imposed for using them.

The European Commission has provided €84,000 in support of this initiative, which is one of the anti-doping projects for which the Commission has earmarked the sum of €2.5 million. The campaign would take the form of placing posters with eye-catching slogans setting out the true nature of doping, disseminating the same message on internet sites, distributing information.
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material to players, and setting up anti-doping information points.

Statement on Sport and Community (EU) Integration – the fight against doping

The other aspects of this Statement, made on 12/11/2001, have been reported earlier (see above, p.76). On the fight against doping, this Statement urged all the EU member states and Community institutions to do everything in their power to discontinue this abuse. This was particularly the case since doping no longer seemed to be a marginal phenomenon in the world of sport, but an increasingly heavy burden on the credibility of sport. To this effect, all concerned were urged to work in close co-operation with WADA to implement the international standards for doping control and to use these as a basis for mutual co-operation. This should include acceptance of testing results in countries within the European Union.

EU rules out funding WADA operational budget

It may be recalled from a previous issue that WADA faced an uncertain financial future, particularly once the initial pump-priming funds provided by the International Olympic Committee had expired. Since then, attempts to place the Agency on a more secure financial footing have continued to experience difficulties. Particular problems have been encountered in obtaining funding from the EU. Negotiations to this effect had already been conducted earlier last year. However, as a result of more recent developments, financial support from the EU can be ruled out for the foreseeable future. In early December 2001, the WADA Foundation Board met in Lausanne (Switzerland) to discuss the proposal which the Commission had made to the European Parliament and the Council of Ministers for Community funding of the Agency. The proposal stipulated certain criteria which WADA had to meet in order to secure EU funding, more particularly as regards budget estimates and budgetary control.

At the conclusion of this meeting, the European Commissioner for Sport, Viviane Reding, declared that the WADA Board had been unwilling to meet the criteria in question – despite manifold warnings by EU representatives at previous meetings. Since these criteria had not been met, the Commission would not be able to present a proposal for WADA funding, and would only continue to fund it on a case-by-case basis by allocating funds to WADA pilot projects.

The reasons why the criteria stipulated by the Commission had not been met were the following:

• Budget estimates: the EU had asked for detailed and transparent estimates. At the Lausanne meeting, the Foundation Board of WADA had refused to provide a legal guarantee for the 2003-2006 budget estimates. There was therefore no legally binding guarantee that the ceilings presented at the meeting would not be exceeded.

• Budgetary control: the Foundation Board had refused to define a mechanism whereby contributors towards the Agency’s budget could safeguard their budgetary independence. This point was essential if the requirements set by the EU budgetary authority were to be met.

This journal will naturally report on any change which may occur in this position.

IOC Executive Board orders proper chain of custody procedures following inquiry

At its meeting of 17/2/2002, the Executive Board of the International Olympic Committee (IOC) discussed an isolated case of a breach in the chain of custody of samples, which occurred during a doping testing procedure applied to an athlete tested at random. The breach occurred when a bag containing athletes’ samples was not properly sealed, thus infringing the relevant rules. Article 5 of Chapter VI of the Olympic Anti-Doping Code states that breaches of chain of custody cannot be characterised as minor irregularities having no effect on the results of tests.

Because of these circumstances, the Executive Board decided to direct the IOC Medical Commission to take all necessary steps to ensure proper testing, including reliable chain of custody samples. The Board also instructed the relevant national Olympic Committee to take all appropriate measures to avoid any repetition of such incidents. The athlete concerned was subjected to a new anti-doping test.

FIFA launches World Cup anti-doping campaign

See next section, p.98.
Doping issues and measures – individual countries

**UK sport launches national anti-doping policy**

In late January 2002, sport in the UK took a major step in the fight against doping as it launched its National Anti-doping Policy. According to UK Sport Chairman Sir Rodney Walker, it sets out clear standards that should protect the reputation of those athletes who compete without taking drugs, and will endorse the commitment of those sporting bodies which are taking their responsibilities in this regard seriously.

The new policy calls upon the national sporting bodies to:

• publish a statement of commitment to drug-free sport in their constitution;

• educate, inform and – where relevant – test their athletes;

• involve athletes in the planning, review, target-setting and monitoring of the anti-doping policy and programmes applied by the sport;

• publicise targets and achievements in this regard, including the results of testing;

• establish an independent disciplinary process for doping offences, and

• ensure that Lottery-funded athletes have priority for testing purposes.

Many sports already comply with this policy. The document also strengthens penalties against erring athletes. Previously, athletes found guilty of doping offences were able to reapply for Lottery funding once they had served their ban. This will henceforth no longer be the case. Thus sprinter Doug Walker, who returned to athletics following a two-year ban for testing positive to nandrolone, would not be eligible for any funding now (although officials have stressed that penalties would not be applied retrospectively).

At the launch of the new policy, Michelle Verroken, Director of UK Sport’s ethics and anti-doping directorate, stated that the organisation wanted to encourage athletes to “blow the whistle” on each other. This could take the form of a Crimestoppers-style telephone line to encourage competitors to identify cheating rivals.

**UK Sport launches drug information database**

UK Sport recently launched what it considers to be the world’s most comprehensive and up-to-date online drug information service for athletes. This database will allow athletes, coaches, team doctors and other support staff to check the status of most UK licensed pharmaceutical products or licensed substances in accordance with sport’s anti-doping “bible” – to wit, the Olympic Movement Anti-Doping Code (see above).

The database draws on information from 102 sports and covers some 2,100 substances and 4,300 products. It is available publicly online. It provides details of licensed medications and products. It does not cover unlicensed products such as supplements, but reminds athletes that they should exercise extreme caution when considering taking such products.

The database is updated monthly.

**Amateur Swimming Association to publish dope tests on the Web (UK)**

Earlier this year, a leading British governing body decided to lift the lid on the secret world of drugs testing by publishing the results of all drug tests carried out on its athletes, both positive and negative, on its official website. The Amateur Swimming Association (ASA) is one of the most vocal champions of transparency in doping controls, and in so doing will follow the example of the world governing body in this sport, FINA.

**Doping controls stepped up in football (in England and internationally)**

The Jaap Stam affair, highlighted below (see p.98), has combined with a number of other high-profile cases in which top soccer stars, mainly in Italian football (but chiefly of Dutch nationality) have been caught taking drugs and disciplined. This has highlighted the need for a stricter approach in other countries, since it seems inconceivable that Italian football should have the monopoly of such practices. Indeed, many have voiced doubts about the effectiveness and seriousness of drug-testing in English football. Paolo di Canio, West Ham’s star who, because of his experience of Italian football doubtless has a greater awareness of this issue than domestic players, has openly questioned the methods used in England, going so far as to label them as “meaningless.” Since news broke of the Italian cases, Alan Hodson, head of the FA’s medical education and services department, has admitted to having increased the number of post-match tests during the 2001-2002 season as a direct result of the Italian cases. Even so, there is still no random testing after each game as happens in Italy. Middlebrough’s Gianluca
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Festa – also an Italian – has also accused the English football authorities of failing to provide an adequate defence against drug users – once again citing the strict Italian system as the model to follow. This may have played a part in the FA’s decision, made in March, to proceed to random drug tests. Even the game’s youngest exponents will be included in the crackdown, since even the young hopefuls at the FA’s elite Football Academies and Centres of Excellence will be required to provide regular urine samples.

Meanwhile, alarm bells had begun to ring at the international level as well. In February 2002, world governing body FIFA announced that it was launching its most stringent anti-doping campaign during the coming World Cup in June. For the first time in football monitoring, there will also be tests for EPO. By that time, the trial will have taken place in Italy of Juventus (Turin) officials accused of “sporting fraud” and other charges, at which evidence will be presented from 150 players, from Ronaldo to Zidane, as well as from medical experts and match officials who were interviewed by the Turin examining judge over three and a half years.

“Don’t trivialise use of creatine and food supplements” urges French sports minister

In late January, Marie-George Buffet, French Minister for Youth and Sports, urgently cautioned against any trivialisation of the use of the substance creatine or of food supplements. This exhortation was based on the conclusions of an opinion drawn up by the French Agency for Health in Food (AFSSA) concerning the use of creatine. More particularly this report had made the following points:

- the human body inherently produces a sufficient quantity of creatine for its requirements. Any amount added from outside has no ascertained usefulness;
- the alleged virtues of creatine as regards the strengthening of human muscles, improvement of speed and increase in endurance are entirely without foundation;
- the risks inherent in the consumption of large quantities of creatine are currently being subjected to extensive study, which has already revealed the existence of carcinogenic effects.

The Minister also noted with satisfaction that the IOC had undertaken an in-depth study of this matter.

Doping issues – Football

The Jaap Stam affair

It will be recalled from the previous issue that Jaap Stam, freshly transferred from Manchester United to Lazio Rome, was suspended from competitive football in Italy as a result of having tested positive for nandrolone. In late January 2002, Stam was banned for five months by way of penalty for this offence. He was also fined €50,000 by the Italian FA, which had rejected a recommendation by the Italian Olympic Committee of an eight-month ban. Stam has continued to protest his innocence.

Stam appealed against this penalty, and although the Olympic Committee had applied for an increase in the ban to 10 months, the ban was reduced to four months by the Appeal Board of the Italian FA. This was in order that Stam’s sentence should be harmonised with that of Brescia player Josep Guardiola, whose four-month ban for the same offence was upheld at the same hearing. It has been pointed out that Stam was relatively fortunate in this regard – and would have been even if the original sentence had been allowed to stand, since in most other sports a ban for a drugs offence starts at two years.

Peterborough striker banned for failing test

In March 2002, Andy Clarke, Peterborough’s striker, was banned until the end of March for having failed a drugs test after the clash between the “Posh” and Cambridge in the Nationwide League on 29 December. Manager Barry Fry admitted that Clarke had been dealt with leniently.

Doping issues – Cycling

Giro doping scandal inquiry continues

As was reported in a previous issue, the 2001 Tour of Italy (Giro d’Italia) was all but brought to a standstill as a result of a major drugs probe by the Italian criminal authorities, culminating in a dramatic raid on a hotel in San Remo. Thus far, the Public Prosecutor’s Department of Firenze has interviewed a long list of riders, mainly Italian and Spanish. This includes Marco Pantani, the winner of the 1998 Tour de France. No further details were available at the time of writing.

Controversy surrounding Lance Armstrong continues as various drugs trials and investigations open

In mid-December 2001, the trial commenced of Dr. Michele Ferrari, trainer to a number of high-profile cyclists, the most famous of whom is undoubtedly
three-times Tour de France winner Lance Armstrong. Dr. Ferrari is standing trial on four separate charges of having supplied banned substances to top cyclists over a considerable period during the 1990s. Throughout the controversy, Texan Armstrong has put his own reputation — and perhaps a good deal more — on the line to defend the probity of his adviser and confidant, and will either be vindicated or have his name severely tarnished by the outcome of the case. Tony Rominger, three times winner of the Tour of Spain, former World Champion Abraham Olano, and Axel Merckx, son of the legendary Eddy, are also among the doctor’s list of clients.

The evidence assembled by the examining judge of Bologna, where the trial is taking place, includes tapped telephone calls, prescriptions allegedly signed by Ferrari, a list of drugs found at his premises, and cyclists’ training programmes. In the course of the trial, Filippo Simeone broke the code of silence amongst Italian riders when he admitted to the Court that he had taken banned substances, including EPO, which were prescribed by Ferrari.

Armstrong did nothing to enhance his reputation a few months later, when a French judicial inquiry began into the alleged drug-taking amongst members of the US Postal Service team, of which Armstrong is a member, during the infamous 2000 Tour de France. Armstrong was summoned to give evidence, but notified investigators that he would not be travelling to Paris to face the questioning. The American has never failed a drugs test, but suspicions have constantly dogged his career.

In January, it was also learned that former double World Champion Gianni Bugno was to stand trial in Kortrijk, Belgium, in April 2002, together with five other riders, on drugs charges. And in March, Belgian Frank Vandenbroucke was arrested after Belgian police stopped his doctor, Bernard Sainz, and inspected his car — finding substances which Sainz claimed to have been intended for Vandenbroucke. Police subsequently found a range of substances at Vandenbroucke’s home and, after having been questioned through the night, the latter was charged. He has since been dismissed by his team, Domo. During the subsequent few days, doping inspectors checked the hotel normally occupied by the Domo team.

The outcome of these proceedings were not yet known at the time of writing.

Spanish cycling federation refuses to discipline positive-tested Del Olmo

One of the riders who was caught in the anti-drugs net during the last Tour de France was Spanish rider Txema Del Olmo. The positive test result was subsequently confirmed by the counter-expertise. However, the Spanish Comité Nacional de Competición decided, in December 2001, to discontinue the investigation against the Basque rider, as it considered that the analysis procedure applied by the French laboratory in question was legally too uncertain to warrant issuing a ban.

More particularly the Spanish authority questions the thresholds applied under the French method, which was 85 per cent EPO not produced by the human body in the bloodstream. However, the Spanish federation claims that this threshold value is not stated in any regulation on the subject, and has merely been imposed by the French laboratory in question. Moreover, they claim that those in charge of the laboratory have themselves admitted that the methods used by them are far from perfect. They also pointed out that the IOC recommends that EPO testing be based on samples of both urine and blood, whereas the tests imposed by the international cycling body (UCI) merely require urine samples.

The UCI could not compel the Spanish federation to impose a penalty, but is entitled to appeal to the Court of Arbitration for Sport (CAS) — which it promptly did. The outcome was not yet known at the time of going to press.

Doping issues — Racing

UK racing drugs “scandal” — the story so far

Although racing has been one of the sports which has attracted the most intense suspicion in the public mind when it comes to distorting results through the administration of drugs, it has hitherto remained remarkably free from any major scandal or frequency of penalisation in this regard. Recently, a number of high-profile incidents initially appeared to indicate the contrary, although ultimately they may have proved to be no more than a false alarm.

In December 2001, serious suspicions began to arise that a number of trainers were injecting horses with EPO and thus enhancing their performance. No-one in the sport seemed more determined to draw attention to the menace than the Lambourn trainer, Charlie Mann, who demanded urgent action by the Jockey Club against the miscreants, claiming that this malpractice had been proceeding for some five years. His allegations brought a swift response from the Jockey Club, which announced that it would soon be in a position to detect the drug. More particularly it was claimed that a laboratory in Australia seemed to be close to a breakthrough. In the meantime, many commentators were openly calling into question Mann’s claims. Thus Des Leadon, head of the Irish Equine Centre who is one of the most internationally travelled

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of all veterinary figures, claimed that these allegations had all the credibility of a real-life Harry Potter. He went on to state that they

“perpetuate the blind belief that some guru of the needle can come along totally ignorant of the science of pharmacokinetics (the study of drug distribution through the body) and consistently enhance the performance of an animal bred to be an athlete for two hundred years. The equine athlete and the human athlete are completely different. If you try to give a horse human EPO it is likely to be very dangerous. The idea that this is happening every day is absolute garbage.”

This view was echoed by Peter Webbon, the Jockey Club’s chief veterinary officer, and the recognised expert on blood in horses, Barry Allen. They claimed that the performance-enhancing properties of EPO occurred naturally in horses, so that EPO would only produce all the detrimental side-effects without any of the benefits. A month later, the Horseracing Forensic Laboratory at Newmarket, which operates drug-testing for the Jockey Club, announced that it was seeking accreditation from the International Olympic Committee (IOC) in its capacity of the organisation responsible for tackling the use of EPO. Meanwhile, Mann persisted with his allegations, claiming that various people had approached him with expressions of support ever since he aired his concerns in public.

For a while it seemed as though the matter would rest there. Then came the day of the “February Raids” (26/2/2002), when veterinary officials from the Jockey Club ordered a number of early morning raids to take place at five stables of National Hunt trainers. These were Martin Pipe, Paul Nicholls, Venetia Williams, Alan Jones and Len Lungo. Some 400 samples were taken from various horses in the process, and were to be analysed at the Horseracing Forensic Laboratory (see above). Many commentators welcomed the raids; others dismissed them as a face-saving exercise. However, the next day it was announced that all 408 samples taken had tested negative. Jockey Club officials immediately acclaimed this result, which would “reassure the public” about the sport’s probity. Yet one of the trainers affected, Martin Pipe, called for these tests to be extended to other trainers – if only to dispel any lingering doubts which might persist amongst the general public. In fact a Jockey Club spokesman subsequently confirmed that other unannounced visits to stables were being planned.

Obviously it is too early to tell whether these raids constitute the final say in the matter and put the issue to rest once and for all. This is particularly the case given that the fires of controversy were stoked up almost immediately after the February raids by one of the trainers affected, i.e. Alan Jones. Mr. Jones claimed that, despite strongly expressed opinions to the contrary made by various experts (see above), EPO “definitely helped” the performance of horses, as it provides a diagnosis of the blood and helps a horse to go through the pain barrier. This journal will obviously continue to monitor developments in this field.

German rider gets Hong Kong dope ban

In January 2002, top German jockey Andrasch Starke was banned from riding until July by the stewards of the Hong Kong Jockey Club after having failed a drugs test taken at the Sha Tin course on 16/12/2001. Starke had provided a sample of his urine, which was analysed and found to contain benzoylecgonine, a major metabolite of cocaine.

Doping issues – Winter Sports

The Alan Baxter affair

In spite of the brave words spoken by WADA Chairman Richard Pound concerning the doping record of the 2002 Winter Olympics (see above), the event was marred by a number of high-profile cases of drug-taking. For Britain, the most devastating of these was conveyed by the news that Alan Baxter, who became the country’s first-ever skiing medal winner when he obtained bronze in the slalom event, had tested positive for the banned substance methamphetamine. One of the theories surrounding this case was that the substance may have been present in medication which he was taking for a cold.

At the time of writing, the hearing before the IO C medical panel in Zurich to consider his case had yet to take place, although at the time of writing it was announced that Baxter had “little hope” of overturning the ban.

Cross-country skiers test positive, but keep earlier medals

Towards the end of the Winter Olympics, three gold medallists in the cross-country skiing events tested positive for darbepoetin, a blood-booster said to be infinitely more potent than EPO. Two of the skiers concerned, Johann Muehlegg and Larissa Lazutina, had to return their medals, whereas the third, Olga Danilova, was disqualified from the event for which the test was organised, in which she finished eighth. However, the athletes in question were allowed to keep the medals they had earned in other events. Not everyone was happy with this outcome.
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Other cases
In December 2001, Ludmilla Enquist, Sweden’s Russian-born sprinter, was banned for two years after testing positive for steroids at a Lillehammer bobsleigh competition two months earlier. In the same discipline, Pavel Jovanovic, brakeman for Todd Hays, the main hope for the US for the Winter Olympics, was banned in early December 2001 after testing positive for the anabolic steroid 19-nandrostenedione.

Doping issues – Athletics

“US should be expelled from athletics”, says WADA chief
In early February 2001, Richard Pound, the Chairman of the World Anti-Doping Agency (WADA), expressed the view that the governing body of US athletics should be expelled from the International Association of Athletics Federations (IAAF) for failing to release the names of competitors who failed drugs tests. IAAF rules require that, where an athlete fails a doping test, the national federation should notify the IAAF of their name. The US federation has consistently failed to meet this requirement.

US Track and Field, the national federation in question, have replied that, under US law, they may not provide the names of athletes having failed a test unless the entire judicial process has been exhausted, which can take many years. Just prior to the Sydney Olympics in 2000, it emerged that 18 Americans who had failed drug tests were competing, but despite repeated requests from the IAAF had never had their names reported to the world governing body.

The US record in drug-taking took another blow later that week when it was revealed that some of the country’s top athletes had been denied prize money for their performances in 2001 because they were not tested for drugs often enough. Thus hurdler Anjanette Kirkland had failed to undergo the minimum of two out-of-competition tests in 400 m event at Edmonton, was also known to have been affected by this deficiency.

Shame of Britain’s “no shows” at drug tests (UK)
Britain’s reputation in the area of drug testing is also under threat, following revelations that nearly 23 per cent of the planned 577 out-of-competition drugs tests intended for British athletes failed to be completed. This news has caused some consternation in official circles—not least the Sports Minister, who has written to request clarification from UK Sport. The total of 132 failed tests included 76 cases where testers visited the homes of those targeted on three occasions over five successive days. Competitors are required to inform UK Athletics whenever they are away from home for three days or more for competition or training.

Those responsible for administering drugs to young athletes in GDR can still be prosecuted, rules German Supreme Court
This case is dealt with under section 11, Procedural law and Evidence (supra, p.83).

Richardson may resume Olympic participation
In December 2001, Mark Richardson, the 400 metres runner who withdrew from the Sydney Olympics whilst under the shadow of a ban for taking nandrolone, won his battle for reinstatement by the British Olympic Association. The independent appeal panel of the BOA, led by David Griffith-Jones QC, confirmed that the lifetime Olympic ban, which is normally imposed for a doping offence, would not be enforced in Richardson’s case. It found that there were significant mitigating circumstances which surrounded this case, and that therefore the athlete’s eligibility for Olympic honours should be restored.

It may be recalled from a previous issue that, since testing positive for the drug in 1999, Richardson had campaigned for his reinstatement on the grounds that the nandrolone metabolites in question had been the product of food supplements which he had been taking. Unlike most athletes who have tested positive, Richardson had listed that which he had been ingesting. This openness was one factor in his favour. Another was the research undertaken at Aberdeen University under Ron Maughan which raised the possibility that supplements are converted into nandrolone once they enter the human body.

Round-up of other cases (all months quoted refer to 2002, unless stated otherwise)

• In November 2001, Andrea Longo, the Italian 800 metres runner, incurred a two-year ban imposed by his country’s federation after testing positive for nandrolone after a meeting in Turin months earlier.

• During the same month, Javier Sotomayor, the world record holder for the high jump, tested positive for nandrolone at a meeting in Tenerife. He was accordingly banned for the second time, having incurred a ban for the use of cocaine at the Pan-
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American Games in 1999.

- Olga Yegorova, who failed a drugs test at a Paris meeting the previous summer, was voted Russian Athlete of the Year 2001.

Doping issues – Other Sports

**Boxing (UK)**
In November 2001, British super-bantamweight champion Patrick Mullings was stripped of his title after testing positive for cocaine. He failed the test which was taken at the time of his title-winning fight with Michael Alldis at Wembley the previous summer.

**Snooker (UK)**
In December 2001, it was announced that World Champion Ronnie O’Sullivan was to appear at Stratford Magistrates Court, East London, in connection with the retrial brought for his alleged failure to provide a urine sample the previous year. An application to dismiss the case was rejected. The outcome of the case was not yet known at the time of writing.

**Gymnastics (Russia)**
During the Goodwill Games at Brisbane in August 2001, Russian rhythmic gymnasts Alina Kabaeva and Irina Tchanina tested positive for banned substances. A Commission appointed by the world governing body FIG imposed on them a suspension for a full year, as well as a one-year probation period. The suspension applies to all competitions organised by the FIG, its Continental Unions and affiliated federations.

**Rugby Union**
In January 2002, London Irish hooker Adrian Flavin was banned for 10 weeks after failing a drugs test following the Parker Pen Shield fixture against Valladolid (Spain) the previous November.
16. Family Law

Till full time us do part – proposed changes to wedding legislation (UK)\footnote{103}
Hitherto, the only lawful place for a civil wedding has been register office or, since 1994, an “approved office” – meaning indoors, in such surroundings as stately homes or similar buildings. However, a recent White Paper seeks to liberalise the law considerably on this point and thus remove the ban on open-air nuptials. This holds out the prospect of weddings being celebrated on tennis club premises, football pitches, or even gymnast halls – thus presumably giving new meaning to the vow “with this ring I thee wed”.

Landmark ruling gives racing trainer’s lover right to publish intimate court papers (UK)
In January 2002, the former mistress of racing trainer and owner Ivan Allan obtained a ruling from the Court of Appeal giving her the freedom to publish court papers in which she maintains that he describes her as “a prostitute”. In a ruling which brings new transparency to the family courts, the Court held that secrecy laws will no longer automatically apply to cases which do not involve children or the investigation of the spouse’s finances\footnote{651}.

In an interview with the Daily Mail last year, Glory Anne Clibbery had revealed how she travelled the world with the millionaire trainer, adding that when their relationship ended he dismissed her as “no more than a sexual servant”. Following publication of this interview, Allan obtained a High Court injunction preventing her from repeating her allegations. He argued that the former actress had unlawfully revealed confidential details from a private hearing in the High Court’s Family Division\footnote{652}.

However, in June 2001 his attempt to silence his former lover failed when Mr. Justice Munby ruled that there existed no blanket ban on disclosing material from the Family Division which do not involve children. Allan instituted an appeal against this ruling, which was dismissed by the President of the Family Division of the Court of Appeal, Dame Elizabeth Butler-Sloss.

Bicycles are not part of “necessaries” for the purpose of maintenance payments, rules German court\footnote{653}
In February 2001, a German administrative court ruled that normally, a children’s bicycle cannot be classified as “necessaries” for the purpose of maintenance payments.
17. Issues specific to individual sports

Football

“Phoenix League” rises from and turns to ashes (UK)

“Revolution in soccer!” screamed the Daily Mail front-page headline on 24 November. English soccer was said to be on the brink of a revolution which would break up the Football League and force its smaller clubs out of business. Top-secret talks were apparently being held to expand the Premiership to two divisions of 18 teams each in a new Phoenix league. This would not only feature clubs currently at the top of the Nationwide League First Division, but also the two Glasgow behemoths Celtic and Rangers. In fact, six Nationwide teams had already made up their minds to resign from the League in preparation for this momentous development. As for those left out of this new footballing aristocracy – they would have to adapt as best they could, by becoming feeder clubs for the big teams, going part-time or forming regional leagues.

The disclaimers were not slow in coming. The very next day, Dan Johnson, Press and Communications Executive of the current Premier League, dismissed it as “complete and utter nonsense”654. Few of the Premiership clubs alleged to be so keen on jumping aboard professed any knowledge of the proposal – as indeed did hardly any of the League clubs said to be on the brink of resigning from the Football League. Certainly the “big four” of the Premiership, Arsenal, Leeds, Liverpool and Manchester United, were keen to know why they had been “kept in the dark” about these proposals and negotiations655.

However, some of these protestations of innocence and ignorance soon proved to be rather hollow. The Football Association (FA), which had been expected to oppose the plans, pointedly refused to rule out a Premiership Second Division when its board met after the news first broke656. Also, a stormy meeting of the 72 Football League chairmen ended in an uneasy compromise whereby the six would-be breakaway clubs – Bradford, Manchester City, Coventry, Birmingham, Sheffield Wednesday and Wolves – agreed to discontinue any secret meetings on the subject and instead allow the League to investigate ways of enabling the top clubs to earn more657.

Then, by way of complete anti-climax, the 20 Premiership clubs voted overwhelmingly against the “Phoenix” league – barely three weeks after the project had been first mooted658. They were also unanimous in denying Celtic and Rangers access to the Premiership (see also below, p.105). A few days later came a meeting of the Football League to consider the options available for any attempt at restructuring football outside the Premiership. These included making “laddered” payments to each club, mirroring the merit money currently paid to Premiership clubs.

Nevertheless, the six “Phoenix rebels” announced afterwards that they were still intending to break away from the League, convinced that other would follow suit659. Ultimately, they failed to do so, since their lawyers had warned that to do so could endanger the £315 million contract which the Football League had with ITV Digital660. In view of the news reaching this journal on the fate of this deal just as it went to press, this situation is not without its ironies.

Dons’ proposed move to Milton Keynes kicked into touch – again (UK)

It will be recalled from a previous issue661 that the Football League dismissed an application by First Division side Wimbledon to relocate to Milton Keynes, 60 miles away. Dissatisfied, the club appealed to the Football Association (FA) on the grounds that the League dealt impropemly with the original application662. The FA appointed a three-man panel, consisting of Douglas Craig (York City), David Dein (Arsenal) and Charles Hollander QC663. The panel met and in the end decided... not to decide. Instead, it referred the matter back to the League664. It also decided that the League should pay 70 per cent of Wimbledon’s legal costs, which amounted to £1 million665.

The proposed move by Wimbledon has aroused passions even outside the various board and committee rooms. The Wimbledon MP Roger Casale even raised the matter in Parliament in late January 2002, indicating his opposition not only to this particular proposed relocation but also to the precedent which it would set, leading as it would to an American-style franchising system. Teams would thus be hawked around to the highest bidder, claimed the Labour MP. The Milton Keynes MP, Phyllis Starkey (also Labour), unsurprisingly spoke against this statement, claiming that her town was not attempting to “poach” Wimbledon but merely offering the latter a solution to its location problems. This led to a more general debate amongst MPs, most of whom claimed that the public debate about football had become excessively dominated by the fate of the Premiership665.
Does the Glasgow “Old Firm” have a future in English football (UK)?

The proposal, examined above, that the new structure of English football should also include the “Old Firm” of Celtic and Rangers is not the first occasion on which some proposal along these lines has been made. The proposal that these two clubs should join either the existing Premiership or the “rebel” Phoenix League was not, however, greeted with unwarranted approval by their leaders. Not least amongst the reservations which they experienced was the consideration that joining the Phoenix League would automatically lose them their right to compete in the European Champions League and the UEFA Cup.

Entry into English football via the Premiership, on the other hand, was an entirely different and more enticing prospect (even though it must have occurred to the both clubs that access to the European competitions would be much more difficult for them in the English Premier League than in its Scottish counterpart). Following the Premiership’s unanimous decision that neither Celtic nor Rangers could join its ranks (see above, p.104), the clubs in question nevertheless continued to press their claim, particularly as the news broke that Sky Television looked certain not to renew its sponsorship agreement had another year to run. The sponsors of the Scottish League Cup, i.e. CIS Insurance, who insisted that the sponsorship agreement had another year to run. Rangers themselves also seemed to place a spanner in the works when they announced that they refused to take part in any such competition unless the entire Scottish Premier League was given the same opportunity.

Footballers’ off-field misbehaviour – the disciplinary implications

The Criminal Law section of these columns, and of many of its predecessors, bear ample witness to the increasing problem afflicting the sport by some of the less civilised antics of our footballers. It is not the intention of the present writer to examine at length the implications which this has for the image of football, but merely to report on its implications in disciplinary terms.

Pride of place on this subject must naturally go to the Bowyer/Woodgate affair (see above, p.32). Both players were initially told by their club, Leeds United, to stay away from Elland Road. In addition, Woodgate was ordered to pay a £104,000 fine, to participate in extra club-operated community schemes, and move his home away from his native Middlesbrough. Bowyer, for his part, was also instructed to engage in community work for the remainder of his contract, and issued with a £88,000 fine by his club for bringing the game into disrepute, which he promptly announced he would refuse to pay. Leeds responded by placing Bowyer on the transfer list. A few days later, Bowyer agreed to pay the fine, and he was withdrawn from the transfer list. Shortly afterwards, Woodgate was offered a new five-year contract worth £5 million by the club.

Whether or not the two would be allowed to resume their careers at the international level was not clear at the time of writing. The ban on Bowyer was lifted immediately in the light of the court’s decision. As regards Woodgate, the FA seemed to be prepared to lift the ban, but warned England coach Sven-Göran Eriksson of the possible consequences of picking either of the Leeds two for any international fixtures in the immediate future. The position remained unclear at the time of writing.

The Bowyer/Woodgate affair, however, did not prove to be an isolated incident. Several other high-profile footballers seemed intent on emulating their Leeds colleagues’ exploits in the months that followed their trial. In early January, John Terry and Jody Morris, of Chelsea, were charged with affray and assault following an alleged fight a London nightclub (see also above, p.34). Chelsea chairman Ken Bates immediately fined them both. West Ham’s Hayden Foxe was fined £14,000 by his club when he was ejected from a
nightclub following a drunken night with fellow players\textsuperscript{685}. Titus Bramble, Ipswich’s talented defender, was fined for falling asleep in a taxi after the players’ Christmas dinner, thus showing clearly that he was drunk\textsuperscript{685}. Then Manchester United goalkeeper Fabien Barthez was fined £40,000 when he was spotted at a London nightclub\textsuperscript{687}. Welsh international Craig Bellamy was in trouble when he was cautioned by the police for common assault on a 20-year-old female student at the end of a night out. His club Newcastle fined him £100,000 for this escapade\textsuperscript{685}. Not to be outdone, Manchester City’s Nicky Weaver, Richard Dunne and Jeff Whitley became involved in a fracas with bouncers at a Liverpool nightclub. The trio were fined two weeks’ wages by manager Kevin Keegan.

Exactly what approach the football authorities should take on this issue has been the subject of much debate. Fulham manager Jean Tigana, never a shrinking violet when it comes to issues of club discipline, has imposed random blood tests on his players in order to detect signs of excessive alcohol levels\textsuperscript{687}. Once again the issue acquired a wider political dimension when a former Home Office minister, Lord Bassam, who led Government research into disorder among fans, stated that the publicity generated by top players’ misbehaviour had profound implications for soccer, to which the football authorities should give their most urgent attention\textsuperscript{687}. Ipswich captain Matt Holland opined that the clubs should do more to discourage this kind of behaviour – and not just by penalising players. Thus his club’s Academy conducts a three-year course for young players during which they learn about the media, the peripheral demands on players, the importance of diet and fitness, and the elevated role they have in society. Other clubs should follow suit\textsuperscript{685}.

**Changes proposed for European club competitions**

When the European Cup became the European Champions’ League – mainly to head off a threat from the big clubs who wanted to establish their own European tournament because they had failed to qualify – it seemed unlikely that the only calls for a reduction in the number of matches played would come from the football-hating television watchers. However, towards the end of last year, some voices were being heard in favour of just such a step – one of them coming from the very citadel of European football itself, to wit the governing body UEFA. Its Director-General, Gerhard Aigner, let it be known that his organisation was considering eliminating the second stage of the League\textsuperscript{688}. This was mainly because of certain signs that television’s love affair with the game was on the wane. Nevertheless, when the its Executive Committee met in mid-December, it decided that, for the next three seasons at least, the formula would remain unchanged\textsuperscript{689}.

However, a few months later there were more proposals for change. This time, they emanated from the major clubs themselves, 64 of whom met at Nyon, Switzerland, in early February. More particularly, they proposed an important shake-up of the Champions’ League sister competition, the UEFA Cup. This would be reduced from 96 to 64 teams in order to give it greater credibility and therefore a larger television audience. The tournament would start with a seeded knock-out round, followed by a group stage of 32 teams\textsuperscript{685}. At the same meeting, the group of clubs involved decided to establish a Club Forum. This was mainly in order to remove the elements from the overbearing sails of the elite G14 group of countries, which had previously attempted to shape the future of both the Champions League and the UEFA Cup to their own requirements by only allowing the very top clubs to compete in either tournament\textsuperscript{685}.

**Round-up of disciplinary cases**

(All months quoted refer to 2002, unless otherwise stated)

- In March, the Football Association (FA) found Arsenal striker Thierry Henry guilty of improper conduct for his outburst at referee Graham Poll at the conclusion of the Gunners’ 3-1 defeat at Newcastle earlier in the season, and imposed a three-match ban on the player\textsuperscript{685}. Manager Arsène Wenger hit out at what he described as “trial by television”, claiming that the cameras picked out famous players who then were carpeted\textsuperscript{687}. He also considered that the penalty imposed by the FA was “very harsh”\textsuperscript{687}. In fact, according to M. Wenger, everyone appeared to be to blame except Henry himself.

- As a result of the coin-throwing incident during the Cup-tie at Highbury in late January, Liverpool’s Jamie Carragher had a three-match ban and a £40,000 fine imposed on him by the FA in respect of the red card he received for the incident\textsuperscript{687}.

- In January, Mario Melchiot, of Chelsea, was given a three-match ban for an incident during a match with Tottenham Hotspur, for which a red card had initially and wrongly been issued to his team-mate Jimmy Floyd Hasselbaink\textsuperscript{687}.

- As a result of an on-pitch brawl during their game with Fulham at Craven Cottage in December 2001, Everton were fined £25,000 by the FA on grounds of “disorderly conduct”\textsuperscript{687}.
During the Fulham/Everton imbroglio, Everton’s David Weir was sent off, which earned him a three-match suspension by the FA. As a result of the Cardiff riot in January, described above (p.25), Leeds incurred a warning about the conduct of their fans, and Cardiff City were formally charged with bringing the game into disrepute. During this infamous Cardiff/Leeds tie, visiting striker Alan Smith was sent off, for which the FA banned him for five matches. In November 2001, Oxford United manager Mark Wright was found guilty by the FA of using abusive, indecent and insulting language against referee Joe Ross during a match with Scunthorpe the previous month. He incurred a four-match touchline ban and was fined £1,750.

In February, Leeds player Danny Mills was banned for two games and fined £7,500 for using foul and abusive language against fourth official Andy D’Urso after having been dismissed during a match with Arsenal at Highbury. Mills was already under a four-match ban.

In late December 2001, Newcastle’s Welsh international Craig Bellamy had the red card which he incurred a few weeks previously at Highbury overturned at an FA hearing. Earlier that month, the same fate had befallen Alan Shearer, who also plays for Newcastle.

In January, Leeds United were fined £25,000 by the FA for the misconduct of their players during a game at Newcastle.

Earlier that month, Tottenham and former Manchester United star Teddy Sheringham was banned for three matches following his red card incurred during a game with Ipswich Town.

Bradford star Benito Carbone was fined two weeks’ wages and given a warning as to his future conduct by his own club in January after his refusal to play as a substitute during a home match with Preston.

In December 2001, Paul Scholes of Manchester United and England was given a one-match ban for having received three yellow cards in three matches.

In February, Lee Bowyer of Leeds was handed a six-match ban as well as a £10,000 fine for bringing the game into disrepute. He had been found guilty of elbowing Liverpool’s Gary McAllister in a Cup tie last year and of using foul and abusive language against referee Jeff Winter after having been sent off.

Italian top footballers are “spied on” by private detectives
In January of this year, the story broke that some of Italy’s top footballers are under the surveillance of one of Europe’s largest private detective agencies. Managers of clubs in the top division (Serie A) are employing private eyes from the Rome-based Tomponzi agency if they suspect that one of their players has a problem with drink, drugs or gambling. The agency also goes into the background of young players whom clubs are considering adding to their youth teams.

Clozza Bepi, the house master of the AC Milan youth squad, thinks that this strict approach by the Italian football authorities is one of the main reasons why Italian footballers do not have the same “bad boy” image as their English counterparts.

FIFA ends automatic bye to next tournament for World Cup winners
In December 2001, world governing body FIFA made a surprise announcement that, as from the 2002 World Cup in Japan and Korea, the winners of the tournament will lose the privilege of automatic qualification for the final stages of the following World Cup. This means that whoever holds the Cup aloft in Yokohama during the summer will still need to qualify for the next tournament through the qualifying stages.

FIFA President Sepp Blatter justified this move on the grounds that the World Cup is the only international tournament which bestows this privilege. Nevertheless, the manner in which this decision was taken, without any prior consultation of the interested parties, took the world of soccer somewhat by surprise and did nothing to enhance the already battered reputation of the FIFA President.

Schools issue codes of conduct for parents at soccer matches (UK)
An increasing number of primary schools are considering it necessary to issue codes of conduct informing parents how to behave at sporting fixtures involving their progeny, according to a newspaper report published early in the New Year. These rules are designed to tackle the increasing problem of the disruption caused by parents abusing the referee or coaching their children in an over-aggressive manner.
17. Issues specific to individual sports

Rugby Union

Rugby the poorer for Martin Johnson affair – Mark II (UK)
The reader may recall from a previous issue an occasion on which Leicester and England forward Martin Johnson had been disciplined during a fixture with Saracens, which was followed by a penalty imposed by the rugby authorities which had, to put it diplomatically, a somewhat sensitive regard for Johnson’s commitments to the England team for the immediate future. History seems alas to have repeated itself a year later, once more as a result of Johnson having attempted to give new meaning to the term “knockout tournament”.

On 9 February, Leicester were involved in a fixture, once again with Saracens, in the course of which Mr. Johnson once again dispensed his own version of rough justice when he cleared landed a punch on the features of Robbie Russell, the “Sarries”’ Scottish international. The referee sent both players to the sin-bin, where a red card for the Leicester player seemed more appropriate. Former international referee Fred “fearless” Howard was one of many commentators who felt that the incident proved that there was one law for the top players, another for the minnows. Nevertheless, a disciplinary hearing arising from the incident was arranged by the Rugby Union Disciplinary Tribunal for 21 February.

As a result of this hearing, Johnson was banned for three weeks for the punching incident. This meant that he would miss not only three club matches, but also the all-important Six Nations fixture against France in Paris. However, his ban started with immediate effect, and if he waited a week in which to appeal (the relevant time limit being 14 days) his suspension would be lifted until the hearing was held – which was unlikely to be before the France fixture. This is precisely the course of action taken by Johnson. Nevertheless, this did not in principle mean that the England selectors would necessarily feel compelled or even inclined to pick Johnson for the Paris fixture. Any such illusions, however, were quickly shattered shortly afterwards when coach Clive Woodward named Johnson for the France match. French coach André Laporte responded by including in his team Olivier Azam, the player involved in the notorious incident at Gloucester several weeks previously.

The appeal in question was held in early March before no lesser person than David Pannick QC, who ruled that Johnson had a case to answer. The latter therefore missed the Six Nations encounter with Wales. The Leicester coach justified the decision to appeal on the disingenuous basis that the RFU chief disciplinary officer “had never played at international level” (but nor, for that matter, had David Pannick QC). And England were beaten by France to be denied the Grand Slam. Why to the words “just desserts” come to mind?

Round-up of disciplinary cases (all months quoted refer to 2002, unless otherwise stated)
• In November 2001, former England lock Gareth Archer was issued a three-week ban by the Rugby Football Union (RFU) disciplinary panel after having been sent off for punching in Bristol’s Zurich Premiership match against Gloucester earlier that month.
• In January, Ismaella Lassisi was banned from rugby for 12 months by a three-man disciplinary panel for biting Peter Clohessy during a Heineken Cup match between Castres and Munster. However, this ban was overturned on appeal.
• In February, Coventry back-row forward Mark Ellis was banned for eight months for bringing the game into disrepute. He had admitted throwing a punch the previous September for which a team-mate had been sent off.
• In January, Leicester and England scrum-half Austin Healey was issued with a 21 day ban for kicking an opponent during a game against Sale. His ban ended (by pure coincidence, of course) just in time for the England Six nations fixture against Scotland at Murrayfield. Earlier, he had received a 14 day ban and a £1,000 fine by his club for the same offence.

Changes to tournaments decided
In January 2001, the European Rugby Cup board, at a meeting in Dublin, decided that in future, the knockout stages of the tournament will only be held following completion of the Six Nations championship. The structure for the next tournament will now involve two pool games being played in October, two in December and the final in January. The quarter finals are to be staged over the second weekend of April, the semi-finals two weeks later, and the final on 24 May.

The Six Nations Tournament will also undergo certain changes as from next season. It will henceforth be condensed from its customary ten-week slot, featuring internationals every two weeks, into a seven-week period starting in mid-February and ending during the final weekend of March. The vote at the Committee meeting was 9-2 in favour.
17. Issues specific to individual sports

All Blacks threaten legal action over World Cup hosting (New Zealand)

Just before this issue going to press, it was learned that the New Zealand Rugby Football Union (NZRFU) were considering legal action following the decision to withdraw their status as joint hosts with Australia for the 2003 World Cup, following a disagreement about advertising at the relevant grounds. The NZRFU have insisted on alterations concerning stadium advertising and on taking into account their National Provincial Championship overlaps with the tournament for 10 days, which were unacceptable to the World Cup Board. Australia have now been given 21 days in which to submit a new proposal which could see them becoming the sole hosts for the tournament.

The outcome of this matter was not yet known at the time of writing.

Rugby League

Rugby Football League and Super League merge (UK)

In January 2002, the would of professional rugby in this country witnessed one of the most radical changes in the game’s development when the Rugby League Council approved the merger between the Rugby Football League (RFL) and the Super League. The RFL will retain its title and continue its role as part-administrator of the game, whereas the media marketing and finance departments will be accommodated at the premises of the Super League in Leeds.

Bradford Bulls player suspended (UK)

In February, Leon Pryce, Bradford Bulls’ Great Britain wing, was suspended for four matches and fined £500 for his off-the-ball assault on Kevin Sinfield during a Challenge Cup fixture with Leeds.

Cricket

India tour of South Africa in chaos as referee Denness is dismissed

Sachin Tendulkar, Sourav Ganguly and Virender Sehwag. The latter was issued with a one-match ban with immediate effect, which in principle ruled him out for the Third Test against South Africa in Centurion. The Indian Cricket Board, and particularly its controversial president, Jagmohan Dalmiya, reacted strongly against these measures and threatened to abandon the tour in protest. As a result, The United Cricket Board of South Africa unceremoniously dismissed Denness as referee.

He was replaced by Dennis Lindsay, the former South African wicket keeper/batsman, thus contravening the rule that referees must be independent of the countries competing in the match. This led the International Cricket Council (ICC) to strip the match of its Test status. It then transpired that the order to dismiss Denness had come straight from the top – i.e. from the South African President, Mr. Mbeki, himself.

Since the Third Test had been shorn of official recognition, this made Virender Sehwag ineligible for the next test – i.e. the first Test against England at Mohali. Dalmiya, however, insisted that the Third Test against South Africa was legitimate and that therefore Sehwag was available for selection at Mohali. Since the England and Wales Cricket Board were backing the ICC position, this had the potential of causing the England tour of India to be called off – and causing a crisis in the game which would make the bodyline and Packer affairs seem comparatively benign.

Shortly afterwards, ICC Chief Executive Malcolm Speed gave the Indian board until 30 November to state whether or not Sehwag would be selected for the First Test against England. If he was, India faced suspension from the ICC. This deadline was dismissed by Dalmiya the next day. The ICC then cancelled its deadline and prepared to negotiate in order to save the tour. In the end, the Indian board backed down. Sehwag was not selected, whilst the ICC announced that it was prepared to look into some of the grievances aired by Dalmiya which had given rise to this crisis, by setting up a referees’ commission for this purpose.

The First Test and the England tour may thus have been saved, but this was far from the end of the matter. In mid-January the Indian Board, declaring itself disappointed that the ICC had ignored its suggestions in naming the Referees Commission, rejected the panel which had been nominated by the ICC, consisting of Justice Albie Sachs of South Africa, former Australian opening batsman Andrew Hilditch (also a legal man) and Majid Khan, the former Pakistani test batsman. The Indian Board had proposed Justice Ahmed Ibrahim of Zimbabwe, former Australian captain and commentator Richie Benaud or his fellow countryman Ian Chappell, and Imran Khan (Pakistan) or Arjuna Ranatunga (Sri Lanka). The ICC thereupon disbanded its
17. Issues specific to individual sports

Commission. A new commission was appointed in March, consisting of Ranjan Madugalle (Sri Lanka), Clive Lloyd (West Indies), Mike Procter (South Africa), Wasim Raja (Pakistan) and Gundappa Viswanath (India). However, some commentators and former players have been questioning the value of having match referees at all. Particularly Simon Hughes, the former Middlesex paceman, had a few trenchant things to say on the subject in a recent newspaper article. Hughes concedes that they may have been necessary at a time when umpires did not come from neutral countries. However, now that there is not only the neutral umpires rule, but also the third umpire, why is a referee still needed? Surely he hinders more than helps, particularly because he is not part of the game but merely observes it from a distance. In addition, the fines and sentences which referees impose very seldom have any effect – they certainly have not led to an improvement in players’ behaviour.

No doubt this debate will continue to rage for some time to come.

Round-up of disciplinary cases

- On 29/12/2001, Australian captain Steve Waugh was issued with a £2,000 fine for showing dissent in the course of the second test against South Africa.

- A few days before this, Dion Nash, the New Zealand all-rounder, incurred a 13-day ban from domestic cricket for having breached the code of conduct when he abused an opponent and an umpire during a four-day match between Auckland and Otago.

- In January 2002, Australian paceman Glenn McGrath received a one-match suspension for showing dissent to an umpire when he was dismissed during a one-day match with New Zealand.

- During the same month, New Zealand captain Stephen Fleming was fined 40 per cent of his match fee for showing dissent during a one-day fixture with Australia at Melbourne.

Shoaib action “cleared”, but Muralitharan’s comes under fire

It will be recalled from the previous issue that doubts had arisen over the legitimacy of the bowling action engaged in by Pakistan fast bowler Shoaib Akhtar. In early December 2001, it was announced by the Pakistani Cricket Board (PCB) that his action had been cleared for the second time by Australian experts. PCB director Brigadier Munawwar Rana stated that a report from the University of Western Australia confirmed its findings that Shoaib’s peculiar anatomical characteristics had created the false impression that he was bowling in an unlawful manner. The ICC had previously responded to the disquiet surrounding Shoaib by appointing the former West Indian pace bowler Michael Holding to work with him on his action. The PCB are now requesting the ICC to examine the fresh report so that the Pakistani “Rawalpindi Express” can resume his career without further controversy.

However, there was more controversy for Muttiah Muralitharan, the Sri Lankan off spinner whose action has also been dogged by accusations of “throwing”, when former Indian test spinner Bishen Bedi accused him of having an illegal action, and called upon umpires to take action against him.

ECB drafting new regulations on poaching players (UK)

In late February, it was announced that the England and Wales Cricket Board (EWC) were drawing up tough new regulations aimed at deterring ambitious county clubs from poaching star players from their championship rivals. Under the proposals being drawn up by lawyers, head-hunting counties will be compelled to pay compensation to rivals where they attempt to sign players still under contract. This will mean that counties will be forced to “buy out” the remainder of the player’s contract. These proposals are expected to enter into effect before the next round of player contract talks in the autumn, when players traditionally move between counties.

Tough disciplinary measures threatened for on-field misbehaviour

That standards of behaviour on the field of play are less admirable than they should be is something which has been obvious to most followers of cricket for some considerable time. Thus far, such measures as have been taken to counter this trend do not seem to have been very effective. This is why a new set of proposals has recently been submitted to the England and Wales Cricket Board (EWC) and the Professional Cricketers’ Association (PCA), which makes provision for a set of football-style disciplinary measures. If these proposals are accepted, a player could receive a two-point penalty for abusing an umpire or clashing with fellow-players. In addition, the captain would be penalised for failing to keep control of his players. Penalty points would also be incurred for excessive appealing and persistent running onto the wicket.

Once the player has attained a total of six points, he would be subject to a ban, the length of which has yet to be determined.
New “leg-side rule” needed?
The ICC has requested the game’s legislators to draft proposals aimed at closing a loophole in the current laws which allowed England bowler Ashley Giles to bowl negatively down the leg side at Sachin Tendulkar of India during the recent test series between the two countries.

Winter Sports
“Cold war” breaks out in Olympic ice skating event
Winter Olympics are normally just about as contentious as the shipping forecast, but the Salt Lake City tournament provided such controversy as not only to call into question the future of the event which gave rise to the rumpus, i.e. figure-skating, but also to fear that international relations on a wider stage may be affected.

For years now, the Soviet/Russian hegemony in this discipline has been so complete as to be almost taken for granted. Nevertheless, when Canadian pair Jamie Salé and David Pelletier took to the ice, there was a feeling that this Eastern European domination may have run its course. As the Canadians finished their event, the crowd stood for a two-minute ovation and the hall resounded to the chant of “Six! Six!” as an indication of the spectators’ desire that maximum points should be awarded to the Canadian two. However, chants turned to boos as the judges issued only four 5.9 scores for artistry, and awarded the event to the Russian pair Yelena Berezhnaya and Anton Sikharulidze. Such was the uproar this created that the International Skating Union (ISU) immediately announced an internal inquiry. This was in response to a formal complaint lodged by referee Ron Pfennig, who claimed that judges from Russian, China, Poland, Ukraine and France had colluded to vote for the Russian pair regardless of the quality of their performance. Particularly the decision of the French judge to favour the Russian pair came in for close scrutiny. It was being alleged that the judge in question, Marie-Reine Le Gougne, had been pressurised by persons unknown into voting for the Russians.

As a result of the inquiry, the French judge was suspended, her vote erased, and the event declared a close one, and certainly did not justify the massive outcry that followed. Duncan MacKay of The Observer also gave vent to his unease, stating that in overturning the decision, the IOC President had landed himself into all kinds of problems, and that the judge’s decision seemed final... until NBC, the American broadcasting network, changed it.

Nor did the controversy end with the changed decision. A few days later, the French judge at the centre of the imbroglio informed French sports newspaper L’Equipe that Sally Stapleford, the President of Britain’s National Skating Association, had confronted her immediately after the original vote had been taken, and physically threatened her over the fact that she had voted for the Russian pair. She went on the claim that Stapleford had attempted to coerce her into signing a statement admitting that she had been pressurised to vote against her conscience by the French federation president, Didier Gailhaguet. Stapleton denied this and threatened legal action against the French judge.

Several weeks later, Ms. Le Gougne claimed that she had been the victim of a trap set by Salt Lake City leading officials and the US media, who compelled her falsely to accuse her own federation of pressuring her. She denied that any such pressure had ever existed.

The controversy even seemed destined to erupt into all-out diplomatic warfare when the Russian delegation threatened to boycott the closing ceremony of the Games – and not only over the figure skating affair. Feelings also ran high in the Russian camp over the withdrawal of their women’s relay team from the cross-country skiing event after nine-time Olympic medallist Larissa Lazutina tested positive for having high levels of hemoglobin, the performance-enhancing drug (see above, p.100). However, this threat was withdrawn – but not before further controversy dogged the Russian representation when their plea for the women’s individual figure-skating gold medal to be awarded to Irina Slutskaya instead of American Sarah Hughes had been rejected.

Perhaps the best thing to emerge from the entire episode was the news that the ISU, shortly after the closing ceremony of the Games, had proposed that the judging system which it had used since 1892 be fixed by national federations for several years.
17. Issues specific to individual sports

Boxing

Lewis v. Tyson: fights in and out of the ring
The long-awaited heavyweight clash between Lennox Lewis and Mike Tyson is on – although only after months of wrangling which sometimes verged on the unreal.

The new year was barely three weeks old when a press conference was due to be held at which the title fight, scheduled for 6/4/2002, was due to be promoted. This event degenerated into an ugly brawl between the two boxers and their entourage, in which Lewis even claimed that Tyson had bitten him on the foot. Tyson had started the conference by throwing off his black leather cap and prowling towards the platform to thrust his face into that of Lewis. One of the Lewis team of minders went to push him out of the way and Tyson threw a left hook in such anger that he missed completely. Lewis responded with a glancing right punch, cutting the top of Tyson’s head. The pair then rolled across the stage. After the two had been dragged apart, Tyson mouthed obscenities at a female photographer while clutching his crotch and thrusting it in her direction.

Whether the fight (the one to take place in the ring, that is) could still go ahead now depended on the Nevada State Athletic Commission, who had to decide whether or not to re-licence Tyson, whom they suspended from competing in Nevada and fined $3 million for his cannibalising of Evander Holyfield’s ear in 1997. The licence was refused after the Commission met on 29 January. Lennox Lewis reacted by stating that he would not consider going into the ring with Tyson rather than take an alternative defence against Chris Byrd. The Association of Boxing Councils, however, recommended that other states should follow Nevada by denying Tyson a boxing licence.

In spite of all these pious noises, principle was cast to the winds in mid-February when it was learned that Tyson had been granted a licence to box in Georgia. Other options were still being considered, however, such as Texas – but there, Mr. Tyson drew a blank from the Licensing Executive. The Washington DC’s Boxing and Wrestling Commission approved a licence for Tyson, and a date of 8 June was pencilled in for the contest in the US capital. As this issue went to press, it was being speculated that Michigan had also (almost literally) thrown its hat into the ring and that the fight might take place in Detroit.

Racing

New SP system in the offing?
The intention on the part of the racing industry to design a self-regulatory body dealing with all aspects of on-course betting and official starting prices (SPs) moved a good deal forward following a forum of interested parties in London in December 2001. This forum was chaired by former Labour minister Lord Donaghue, and investigated the path which the industry should take when the Press Association – who together with Trinity Mirror calculate starting prices – withdraw from this process in order to find a new system.

Lord Donaghue expressed the view that a recent Arthur Andersen review into starting prices highlighted the problems inherent in the system. This view was backed by the majority of the 20-strong attendance.

Round-up of disciplinary cases (all months quoted refer to 2002, unless otherwise stated)

• In December 2001, trainer Russell Wilman was fined £2,000 and jockey Robbie Fitzgerald suspended for 15 days after the running and riding of Lucayan Monarch at Southwell. The stewards had decided that the horse had been “tenderly ridden throughout”.

• In January, jockey Jamie Spencer received at 17-day ban from the Jockey Club’s Disciplinary Committee, having admitted causing interference during a meeting at Lingfield.

• In November 2001, Adrian Maguire was banned for six days after having hit another jockey with his whip during a meeting at Wetherby.

• In the same month, trainer Mary Revely was fined £750 when one of her horses, Myline, was adjudged to have schooled in public at Wetherby. The jockey riding the horse, Alan Dempsey, was banned for five days.

• In January, Brian Harding was suspended for seven days by the Haydock stewards for having failed to take measures aimed at ensuring the best possible placing of his horse Paperising.
17. Issues specific to individual sports

- In February, Wilson Renwick was banned for 10 days at Sedgefield after having been found guilty of reckless riding on Harlov.

- Berkshire trainer Gerard Butler was fined £2,500 by the Lingfield stewards in February after his filly Loreto Rose was deemed not to have tried hard enough.

- It will be recalled that in November 2001, Mick Fitzgerald incurred a six-day ban at Cheltenham. Later that month, he failed to have that ban overturned by the Jockey Club Disciplinary Committee.

Gymnastics

Arbitration Court agrees with FIG over suspended judge

In January 2002, the Court of Arbitration for Sport (CAS) agreed with the world governing body in gymnastics, the FIG, in a lawsuit brought against the latter by a rhythmic gymnastics judge who had been found guilty of scandalous and unsportsmanlike behaviour as well as having made serious mistakes, at the European Championships at Zaragoza (Spain) in June 2000.

In August 2000, the FIG Executive Committee had issued the suspension of six judges, which resulted in their being excluded from the Sydney Olympics and given a letter of warning to the Judges' College as a whole in Zaragoza, stressing that any lapse in their future performance would be followed by exemplary penalties. One of the indicted and suspended judges appealed to the Court, which represented one of the final episodes in this legal battle, in which the respect of sporting ethics in judging competitions was at stake.

By its decision of 18/1/2002, the CAS supported the FIG in its campaign against corruption and sent out a clear signal to all judges in the sport who may fail to observe the spirit and authority of the applicable rules, as well as the solemn oath they have sworn to this effect.

Motor Racing

British Grand Prix saved after political intervention (UK)

It may be recalled from the previous issue of this organ that some doubt had arisen in official circles as to the future of the British Grand Prix event at Silverstone because of concern over traffic arrangements at the circuit. These doubts looked as though they had hardened into impecunious opposition when a meeting of the world governing body for the sport, the FIA, was called to discuss the possible downgrading of Silverstone.

More particularly it was learned that FIA President Max Mosley felt that the promoter of the British GP, Octagon Motorsport, had made inadequate progress in sorting out Silverstone's access problems.

These alarming noises prompted action at the political level. Sports Minister Richard Caborn demanded a full report on events surrounding this threat to the GP ahead of the FIA meeting. It appeared that Octagon had indeed invested heavily in its attempts to improve the position at Silverstone as regards parking facilities and speeding up the traffic flow, but that complaints had continued from fans, more particularly from those wishing to leave the event. Since then, Octagon had created a blueprint for the future, with modifications already on the way, but this had failed to sway senior FIA officials.

It then announced an additional £10.5 million programme of improvements days before the fateful meeting. The Sports Minister then threw his weight fully behind the campaign to preserve Silverstone as a GP venue. In the end, the FIA relented after a pledge by Octagon, who offered to lodge the sum of £3.2 million with the FIA to guarantee that it had solved all the problems complained of.

It was learned that Prime Minister Tony Blair had also given his support to the retention of Silverstone.
‘A time for Salary Caps – the financial case’

Gerry Boon
(Partner and Head of Deloitte & Touche Sport)

Introduction

• Last week, Russia and the United States signed a landmark nuclear arms treaty to cut their arsenals by two-thirds – the first major nuclear disarmament deal for almost 10 years. If they can do it, can football be similarly sensible by adopting a ‘non-proliferation’ treaty – a ‘non-proliferation’ of player wages? I hope so.

• Today, within a financial context, I will explore the case for salary caps. I will look at the current situation regarding wages, state why I think a salary cap is feasible, and outline three key points which I believe will dictate if a cap is introduced, and how successful it is...

1. There is a window of opportunity NOW for the introduction of a cap
2. The process must be led from the top – by big clubs & UEFA
3. There are critical factors which must be in place for a cap to work

• So, first, let me briefly sketch out the current situation...

Current situation

• Players are a club’s greatest asset, but also a club’s greatest headache. At a recent international football conference, the CEO of an English FAPL club said to me, “I don’t like the Deloitte & Touche Sport financial reports – because the wages numbers always make my club look bad”. An investment banker on the same table leaned over and said, “So why do you keep paying them then?”

• So, why do player wages go up? It’s for a number of reasons:
  (a) players (and their agents) ask for it;  
  (b) owners have the money (or think they will have the money);  
  (c) because owners sign contracts which put their wages up; and  
  (d) because owners want their teams to win.

• Wages are growing FASTER than turnover across all the major footballing countries in Europe. For example, in England, the CAGR of wages for the past 5 seasons has outstripped turnover growth in every division – by c.6%. Such a trend is unsustainable. Something must give!

• THE key measure for gauging a football club’s health is the Wages:T/O ratio. In our view, alarm bells should be ringing at a Wages:T/O ratio of above 70% for English FAPL clubs. The average Wages:T/O ratio for a FAPL club was 60% in 2000/01. As recently as 1996/97 it was below 50%. And, of course, the average hides a range of figures – ranging from 38% to 83%.

• The situation is even more alarming further down the football pyramid. In Division One in England, in 2001/2 the average Wages:T/O ratio was 101%! (with a range of 53% to 195% at club level).

• The story is the same across Europe as well. Wages:T/O ratios are 75% in Italy, 64% in France, 50% in Germany, 66% in the Netherlands, 66% in Scotland and 90% in Portugal.

• The Wages:T/O ratio is, in our view, also the most appropriate metric to base a ‘salary cap’ on, for a number of reasons...
  1. Wages are the key cost to club – football’s biggest challenge
  2. Wages:T/O ratio already acknowledged as a key measure of financial stability
  3. Achievable – complements UEFA club licensing
  4. A club/league should be incentivised to develop its business/grow its revenues

But is a salary cap feasible?

• We think a salary cap in football is feasible...
  - Wage caps exist and work – and not just in the US (Australia, UK, etc.) but in EU as well
  - There is evidence they work in both big money sports (BA, NFL) and smaller money sports (Rugby)
- Although, in a truly international player market – no best practice to benchmark (yet)

- Let’s look at the situation in other sports with and without salary caps.
  - The NEL has a wage cap. In 1999, of teams providing information, 30 were profitable and only one unprofitable.
  - In sports without salary caps, MLB had 9 profitable and 21 unprofitable;
  - ... the FAPL has 10 profitable and 10 unprofitable
  - ... and Serie A also has an even split of profitable and unprofitable clubs as well.
  - It is clear that salary capping can pave the way towards profitability (or a break-even position if that’s the goal).

It’s pretty straightforward to understand – no need to be an economist (or an accountant!). But, of course, the key question is how to achieve the ‘salary cap’, and this is where I’d like to outline three points which I believe will dictate if a cap is introduced and how successful it is:

1. Window of opportunity
   All the signs are that the time is ripe now for the introduction of a salary cap... for a number of reasons.
   - We need to shut the stable door before the horse has bolted! Salaries and transfer fees have dramatically increased in the recent past. Clubs (and their owners!) need to make a sufficient return (or stop losing money) now. Can we afford to wait?
   - Key stakeholders have now bought into the idea – Top clubs, UEFA and even the EU are receptive to the idea. Struggling FL club chairmen, UEFA and the richest collection of clubs known in the game – the G-14, and the UK Sports Minister may seem an unlikely alliance, but all have publicly called for wage restraint.
   - Other sports are considering ‘salary caps’ (e.g. Formula 1 ‘cost control’)

2. The process must be led from the top
   - The impetus must come from those with economic power in the market – the elite European clubs.
   - Wage inflation trickles down the football pyramid – like the housing market.
   - The system has to be implemented ‘top-down’ – but the key segments of the market need to agree, and support/follow the initiative/rules.

3. Making it happen – critical success factors
   For a salary cap to work it requires:
   - Comprehensive coverage: It must be implemented across all of Europe’s BIG markets for players – otherwise we’ll just see migration of the better players
   - Cohesion and commitment: The clubs to be committed to the execution as well as the idea. A ‘formal’ agreement would be necessary
   - Enforcement: To be enforceable – it’s no use if clubs can break rank. E.g. scrutiny by external accountants. Leads to issues such as how to implement penalties and disputes/appeal processes

4. Possible other measures to reinforce the ‘cap’
   - Performance related pay
   - Addressing transfer spending
   - Licensing/regulatory control
   - Benchmarking/information exchange

Conclusions
- The financial evidence points to the need for a salary cap.
- We suggest one based on the Wage: T/O ratio.
- We believe the evidence from other sports is that a cap does work.
- We have a window of opportunity NOW for implementation – all the key stakeholders are lined up.
- The top clubs will need to drive the process and the cap will need to be panEuropean, and have an effective ‘policing’ system.

Text of paper delivered at BAFSAL Seminar held on May 29th 2002.
N in the sporting world, a salary cap is a global limitation on the amount permitted to be paid to the playing staff of a team, over a given time period. Salary caps are already well established in many sports at home and abroad. It is often said that they promote or preserve ‘competitive balance’ between teams.

Renewed impetus has recently been given to the debate over salary caps, in light both of the high player wages/salaries of some professional footballers, and the financial turmoil besetting the Nationwide Football League following the collapse of its broadcasting deal with ITV Digital.

But are salary caps legal?
In exceptional circumstances salary caps may be legal, but they would not be legal at this point in time in English professional football. The basic problem is that a salary cap would operate too restrictively upon players – and there is (as yet) no overriding imperative requiring such restrictions.

Under the restraint of trade doctrine:

“...All interference with individual liberty of action in trading, and all restraints of trade of themselves, if there is nothing more, are contrary to public policy, and therefore void. That is the general rule...”.

A salary cap is plainly an interference or restraint. Indeed, hardly any restraint could be clearer than replacing a free market in the provision of sporting services with a regulated market in which there is a maximum price set for those services.

The battleground would lie over justification for the restraint by reference to the interests of the parties concerned. On this point, Lord MacNaughten went on:

“...But there are exceptions: restraints of trade and interference with individual liberty of action may be justified by the special circumstances of a particular case. It is a sufficient justification, indeed it is the only justification, if the restriction is reasonable – reasonable, that is, in reference to the interests of the parties concerned and reasonable in reference to the interests of the public, so framed and so guarded as to afford adequate protection to the party in whose favour it is imposed, while at the same time it is in no way injurious to the public...” (loc. cit)

The more difficulties there are with implementation, the more unreasonable looks the restraint. But before turning to those practical difficulties below, one has to question the basic assumption that salary caps have an impact on sporting performance at all.

Whilst there can be little doubt that, at the extremes (consider, for example, a nil cap and a £10m per season cap), there would be some difference in performance, the evidence simply does not (yet) exist for a direct correlation between salaries and performance. Think of your own examples from the Premiership. So many other factors go into making a successful squad than simply player salaries. If the impact of a cap on performance is negligible or small, but the direct impact on players’ interests is very significant, it will be all the harder to justify the restraint. Put another way, the more disproportionate and unfocused a restraint, the more unreasonable it appears.

The practical difficulties include the level at which to set the cap. Too high and it is meaningless for many clubs. Too low and it massively reduces incentives, to the overall detriment of the game. In the middle and it has an unfair and discriminatory impact. Setting it at different levels (which does happen in some sports!) risks not only being discriminatory, but also ineffective in relation to competitive balance, and reversing the normal rewards for success – to the detriment of the game. Having specific exceptions – the so-called “Larry Bird exception” is just that in the NBA – risks making a mockery of the entire system.

Controversy would also arise over the levels of cap between the divisions. It would be unfair to both lower division clubs and players to handicap their ability to be promoted by legally preventing them from spending them as much on players as the Premier League clubs.

In practice, any salary cap for the Premier League
would also have to be introduced into all the other top professional leagues in the EU. To do otherwise would be to introduce a huge distortion into a pan-European market.

Indeed, if only selectively introduced in national markets, one would have horizontal price constraints (that is, the fixed wages) amongst cartels of buyers (the clubs in the leagues that apply the cap) resulting in a degree of partitioning of national markets (those same national leagues) and obstacles to the free movement of EU citizens (the top European players). It is easy to see the application of both domestic and European competition law in these circumstances.

The practical difficulties include the level at which to set the cap. Too high and it is meaningless for many clubs. Too low and it massively reduces incentives, to the overall detriment of the game.

Against the background of all these unreasonable and/or disproportionate impacts upon players (and, in some cases, clubs) would run the argument that there are other measures, less restrictive on individuals, less discriminatory against players and possibly more effective in any event (and, thus, altogether more reasonable), to improve competitive balance. Doubtless, many of these alternative measures would revolve around the distribution of income, including television revenues. That, though, will have to be the subject of another article.

All that said, a salary cap that effectively saves a sport from extinction may well not fall into the same unlawful/unreasonable category. If without the cap, the sport would not exist, then, far from being unreasonable, the cap is the epitome of good sense and financial management— not only for clubs but also for players. It is the stark contrast between the finances of rugby and football in England & Wales that may mark the distinction between lawfulness of the existing caps in the former and potential unlawfulness in the latter. Maybe the collapse of the ITV Digital football broadcasting agreement will bring the sports closer together than they think.

Text of paper delivered at BAFSAL Seminar held on May 29th 2002.

1 Per Lord MacNaughten in Nordenfelt v. Maxim Nordenfelt Guns and Ammunition Co Ltd [1894] AC 535 @ p.565.

The practical difficulties include the level at which to set the cap. Too high and it is meaningless for many clubs. Too low and it massively reduces incentives, to the overall detriment of the game.
Abusive Sports Governing Bodies:
Hendry & Williams & TSN v. World Professional Billiards and Snooker Association

Introduction
In this action two leading professional snooker players and The Sportsmasters Network ("TSN"), a commercial undertaking with which they are connected, challenged certain rules and practices of the World Professional Billiards and Snooker Association ("WPBSA").

The WPBSA is the existing world governing and rule-making body for professional snooker. It is a non-profit making association of players, in the form of a company limited by guarantee. Being the only such body, virtually all professional snooker players worldwide are members.

Of central importance to this case, and of relevance in many other sporting contexts, was that in addition to its governing and disciplinary role the WPBSA organises and promotes most of the important commercial tour events in which the professional players participate ("the Main Tour"). When so doing it negotiates itself for the sale of television and other commercial rights connected with those events, such as sponsorship.

The action was precipitated both by TSN's wish to set up and commercially exploit a rival professional snooker tour, and the desire of the claimant players to participate in such a rival tour.

The challenges
In particular, challenge was made to the following WPBSA rules:

(1) the prohibition on WPBSA members from participating in non-WPBSA professional snooker events without the sanction of the WPBSA, unless those other events would not conflict or adversely affect any WPBSA organised or sanctioned event;

(2) the restriction on the ability of players to wear more than 2 advertising logos when participating in WPBSA events;

(3) the requirement to participate in promotional work for the WPBSA during WPBSA events without payment.

The following practices were also challenged:
(a) the reservation by WPBSA of their system of awarding ranking points to WPBSA events only;
(b) the bringing forward of the deadline for submission of entry forms for the 2001/2002 tour by several months, with a view to impeding the proposed rival tour.

The challenge was made principally on competition law grounds, namely, breach of Articles 81 and 82 of the EU Treaty and Chapters I and II of the Competition Act 1998, and breach of the common law doctrine of restraint of trade. This article focuses most closely on the alleged abuses of a dominant position, which is the approach that received greatest attention in the judgment.

Relevant market: sanctioning rule
As usual, the first key task was to identify the relevant market upon which to assess the anti-competitive impact of each of the restrictions.

Beginning with the sanctioning rule from a demand-substitutability perspective, professional players must, in practice, seek to participate in WPBSA tour events, because they are the most high profile events, they generate the most exposure, they have considerable prize monies, they attract the best other professional players and they award ranking points.

Just as in other sports (or indeed as with other professions regulated by governing bodies, such as lawyers) a professional in one discipline cannot reasonably be expected to switch disciplines, if he does not like the restrictive rules of his particular governing/regulatory body. A snooker player, for example, cannot realistically be expected to earn his living by participating in a tennis tournament. Nor, in practice, can a professional snooker player survive entirely from non-WPBSA events.

In other words, the degree of substitutability of these events for other events, from the point of view of the player, is extremely limited.

Little attention appears to have been devoted to analysis of supply-side substitutability. In theory, it would take relatively little effort (absent the rule under challenge) for a competing (sports) event organiser merely to mount a professional snooker event. What
does such an organiser really need beyond some professional players, a professional referee, and the requisite quality table, baize and balls?

Nevertheless, the judgment appears unwittingly to have been correct in paying little attention to the supply-side. A competing event would have to be one substitutable to the players. It would, in practice, have to have the characteristics (described above) of WPBSA events. Yet it would have been far from easy, if not impossible, in practice, to package together all those characteristics together into a competing event. Supplying a non-substitutable product is not real supply side substitutability.

In this case, demand-side substitutability was, correctly, the key determinant of market definition (in relation to this restriction – see further below).

It was held, then, that the relevant market was a provision of services, namely those of “organising and promoting [professional] snooker tournaments”. This conclusion seems realistic and reasonable.

Fairly obviously, the counterpart of this service was the provision by players of their professional snooker-playing services to the tournament promoters/organisers. The provision of these two kinds of services is integrally linked in professional snooker (as they are in many other sports). At one point this link lead the judge to describe the market as being “the market as between snooker players and the promoters of snooker tournaments”. Whilst that is a fair common-sense description, and whilst it is very important to recognise the link itself between the service and its counterpart, that description appears not to have contributed to useful legal analysis.

If, for example, the relevant market were the provision of snooker-playing services, then supply side substitutability would focus not on undertakings switching into event organisation, but on individuals switching to become snooker players. Demand-substitutability would focus not on whether one tournament was substitutable for another from the perspective of the player, but on whether one player was substitutable for another from the perspective of the organiser. The different perspectives may give rise to different legal answers and it is clearly important conceptually to distinguish between them. Importantly, of course, this concern about relevant perspective permeates all cases relating to competition challenges between players and their governing bodies.

Not surprisingly, the perspective advanced by the WPBSA was that of a far, far wider relevant market. It argued that there was a downstream market for the broadcasting of sports events, and that that was the relevant market.

This approach was fundamentally flawed. There may be an economic market for broadcasting sports events, it may be that snooker events are not dominant on that market, and it may be that the WPBSA restrictions do not have an appreciable anti-competitive effect on that market. But this argument misses the crucial point that there was also a narrow market in organising and promoting professional snooker tournaments and the key WPBSA sanctioning restriction operated on that market by effectively preventing other actual or potential suppliers of organisational and promotional services for snooker tournaments from breaking into the market.

Exactly the same criticisms could be levelled at another of the WPBSA’s ‘relevant’ markets, namely, the sponsorship of sports events.

Importantly, the complaint was not by broadcasters or by sponsors, it was by the players and putative tournament organisers/promoters upon whom the restrictions operated. That is the correct starting point for the analysis in cases such as this.

Dominance: sanctioning rule

It was then held that the WPBSA was in a dominant position on this relevant market.

This conclusion was, in one sense, not surprising given that the WPBSA organised and promoted the Main Tour (and the various qualifying events etc.), the vast bulk of professional prize money came from WPBSA events, and all professional snooker players were members of the WPBSA. In other words, the WPBSA’s market share was very high.

The analysis of barriers to entry was disappointing, notwithstanding its importance in an abuse of a
Abusive Sports Governing Bodies

dominant position case. The Court held that the possibility of rival operators entering onto the relevant market (even leaving out of account the effect of the sanctioning rule) was more illusory than real, certainly in the short to medium term. The real difficulty, it held, for potential new entrants lay in the WPBSA’s other role as the world governing and regulatory body, though it was difficult to pinpoint precisely how that deterred entry.

Though this conclusion is probably correct as a matter of fact, the difficulties for entry should have been pinpointed and analysed. Put simply, it ought as a matter of law to be hard to establish dominance on a relevant market, even where there are high market shares, if there are no barriers to entry.

The answer is that (as is the case with other sports governing bodies) the WPBSA has all the ‘first mover’ advantages of established, long-term dominance, not least of all simply having all existing professional players signed up as members. Existing broadcasting and sponsorship contracts are also capable of being barriers to entry, depending upon their terms and duration.

Abuse: sanctioning rule

Having established the relevant market and the WPBSA’s dominance on it, the claimants then succeeded in demonstrating that the sanctioning rule was abusive, because it unreasonably and unjustifiably had an appreciable effect on the ability of players to earn their livelihoods, both in the UK and overseas, including other Member States. This conclusion is sound, though it perhaps would have been equally helpful to express the abuse as affecting the ability of putative event organisers from earning a living by mounting competing tournaments. The key point is that persons in a dominant position on a relevant market have a ‘special responsibility’ not to exploit that position and/or act in a manner that strengthens that dominance. The sanctioning rule, fairly obviously, did just that. It crystallised into long-lasting rule form the already existing dominance.

The other challenges

The other complaints, however, all failed.

Logos

As to the complaint regarding the restriction on the number of logos, the Court relied entirely on the fact that the BBC, who paid to broadcast large amounts of professional snooker in the UK would not have done so, if the number of logos was greater than two. Ipso facto, it was held, the rule was justified and reasonable, no matter what.

This approach was deeply unhelpful and flawed, and the outcome may be wrong. It fails even to address relevant markets, the most fundamental tool in competition law analysis.

The relevant market was probably not as wide as the market for sponsorship, or for personal (i.e. on-the-person) sponsorship. From the perspective of sponsors, it may be that personal sponsorship logos on snooker players are not substitutable for other personal sponsorship, even of other sportsmen.

It may well be that the market was narrower even than personal sponsorship of snooker players, instead being restricted to personal sponsorship of such players whilst participating in professional tournaments. Is sponsoring Ronnie O’Sullivan while he walks down his local high street the same thing as sponsoring him when he plays at The Crucible before a big crowd and, crucially, the television cameras?

I incline towards the narrowest market suggested above and on that market the WPBSA may arguably have been dominant, or perhaps more accurately, it was (see above) dominant on the very closely related market for organising and promoting tournaments described above.

A dominant undertaking can abuse its position in a very closely related, but economically distinct, market. The abuse here would be restricting, unreasonably and unjustifiably, the most significant opportunities for high profile television exposure of logos on professional snooker players, to the detriment of players and sponsors.

It is, of course, relevant to have regard to the requirements of the BBC. But that cannot be the beginning and end of the story. Otherwise, any dominant undertaking could escape sanction simply by showing that his ‘abusive’ behaviour was (justified by) a contractual condition of a contract with a third party, even one operating in a different market, such as here. If this approach were correct, the abusive sanctioning rule would also be ‘saved’, if only the BBC insisted on it (or even if it just appeared – maybe at the request of the WPBSA!) in the WPBSA contract with the BBC.

That cannot be correct because it avoids altogether the ‘special responsibility’ of dominant undertakings not to abuse – even in related markets.

Another way of exposing the fallacy is to consider the position if the BBC rules about showing logos and advertising changed, which, indeed, they do from time to time. If the BBC rule changed to allow three logos, the WPBSA could not begin – even on their own hypothesis – to justify a restriction to two logos.

This point demonstrates, in fact, the absence (on this rationale – see further below) of any reasonable need for a rule of the WPBSA in relation to logos. No player would, in practice, wear more than the BBC’s quota of logos, if the BBC then told him that it would not broadcast matches in which he participated whilst he wore them.
There is no role for the WPBSA in that relationship. Interestingly, one can imagine a totally different reasonable justification for the restriction, but it does not appear to have been argued. Professional snooker, it might be said, is a suave, genteel, sport, imbued with tradition and decorum. That is a legitimate image and reputation that the WPBSA wishes to protect, both in and of itself, and because it contributes to the tranquility, moderated atmosphere which is essential to performance at the highest level. ‘Uniform’ rules are a part and parcel of preserving that status. That is why it is reasonable and justified to insist that players wear suits and bow ties in tournaments. It is also why the WPBSA cannot allow players to be festooned with commercial advertising logos emblazoned all over their bodies when they participate in events. There must be a reasonable limit somewhere, and the WPBSA is entitled to a measure of discretion in deciding where it is. Whether that would have succeeded in this case is unclear. However, such a justification ought certainly to be potentially available in sport and does not suffer from the difficulty that it amounts to mere reliance upon a third party’s rules.

Promotional work

The complaint regarding free promotional work failed. Insisting on a large amount of free promotional work by players in favour of an existing, established, massively dominant tournament organiser could be unreasonable and, hence, abusive. It could be particularly abusive, if WPBSA members (i.e. professional players) were obliged exclusively to promote the WPBSA, whether during WPBSA tournaments or all the time. The obligation was not, however, exclusive and the evidence showed that, in practice, the amount of free such promotional work was limited and reasonable; not a recipe for successful challenge.

Ranking point system

This claim also failed. Again, a refusal by an existing dominant undertaking to award points could be an abuse. It does strengthen an existing dominant position. It does help to foreclose the market. But, on the facts, the complaint was misconceived. There was no evidence that any other event organiser had ever asked the WPBSA to apply ranking points to that event, let alone that the request had been refused!

Application deadline

As to the earlier than usual application deadline, the Court was satisfied that it had been a reasonable response by the WPBSA to the intended creation of a rival tour. The WPBSA argued that it needed earlier than usual commitments from players to its tour, in order to see where it lay for the season ahead.

This conclusion is highly doubtful. Bringing forward the deadline certainly had the effect of strengthening the existing dominant position of the WPBSA on the market for organising and promoting events. Even if the WPBSA did reasonably wish to receive early commitments, the method it employed (signing up players, by a deadline, to the exclusion of the rival tour) ignored its special responsibility as a dominant undertaking not to use its position to act in a manner that strengthened its dominant position. Indeed, it is a classic example of taking unusual measures in direct response to a competitive threat, in order to foreclose entry to a new entrant. The claimants have legitimate reason to feel aggrieved at the outcome on this issue.

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1 Heard before Mr. Justice Lloyd in the Chancery Division of the High Court, judgment 5th October 2001, unreported.
2 There was a subsidiary attack based upon EU free movement rules.
3 where governing bodies also face Art.82 challenges: see the recent ECI judgment in Wouter C-309/99, judgment of 19.2.02 (unsuccessful challenge to the rule of the Dutch Bar Association prohibiting partnerships between barristers and accountants)
4 Dr. Vejanovski, the expert economist for the Claimants, has described the correct market as being “the market for professional snooker players’ services...” see the Case Associates CaseNote, November 2001.
5 or, from the perspective of the counterpart service, by preventing players from offering their professional services to such other suppliers.
6 The EC Commission’s analysis in the similar FIA motor sport/formula 1 dispute is considerably better. See, for example, the Notice pursuant to Article 19(3) of Regulation 17, OJ C168/5, 13.6.2001.
7 and also void as an anti-competitive agreement under Art. 81 and the Chapter I prohibition.
8 Not surprisingly, the Court concluded that the rule went further than was necessary to protect the legitimate interests of the WPBSA, under the common law rule. It would also, probably, have been unjustified under EU free movement rules.
9 though the victory on this point was somewhat Pyrrhic, since the WPBSA had withdrawn that rule before the trial began.
10 see, Michelin v. Commission [1983] ECR 3451 and see the helpful analysis of this concept in the recent Chapter II challenge before the CCAT in NAPP Pharmaceuticals, judgment 15.01.02, unreported.
11 so it was proved by the evidence.
12 if it had been that wide though, it is impossible to discern dominance of any relevant person or any appreciable effect.
13 It appears likely that the key reason for wanting to sponsor a snooker player is so that, when he is lining up his shot, the logo on his upper arm or breast is clearly focussed upon, by the television cameras, for an uninterrupted period of some seconds. This fairly unique type of exposure may well differentiate this type of advertising from others.
14 See, for example, Tetra Pak II [1992] 4 CMR 551. This analysis does not feature in Lloyd, J’s judgment at all, and may not have been argued, yet is particularly germane to this type of sporting situation where there is a conflict of interest between the governing and the commercial roles of a governing body; see the FIA/Formula 1 case. Though as a matter of competition law there have to be “special circumstances” – see Tetra Pak I [1992] 4 CMR 47 – to justify looking at distinct, but different markets, in order to find abuse, are there not such special circumstances where the commercial markets ‘controlled’ by the governing body are so obviously and so closely related to the market between the organiser and the player? Indeed, so closely connected are they in this case that the rule under challenge itself actually refers to “whilst participating”. In other words, arguably, a special relationship/circum stance is built in to the very restriction.
15 It appears that the Claimants may have failed to establish intent, though the inference of intent to foreclose is clear.

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The relationship between sport, gender and the law forms a complex alliance, where the cohesion of interests represents a dominant male culture. Women involved in that association seek opportunities conceptually based on the principle of formal equality. Where the law intersects that process, discriminatory practices are individually challenged through the Sex Discrimination Act 1975.

Legal redress represents one of the most public challenges to women’s exclusion from sport and legitimately empowers women to confront entrenched discriminatory attitudes and practices. The validity of this legislation in addressing the particular needs of women in sport essentially delivers equality by integrating women into a pre-existing, predominantly male world. The empire of the law is fundamentally masculinist but is supposed to guarantee equality. Equal opportunity though only becomes a reality if we act if that right is denied and it is significantly women who come to the legal system to secure that right.

The mutuality that exists between sport and the law conspires to position women as subordinate where their achievements are often perceived as inconsequential or irrelevant. In sporting organisations such a lack of recognition is sophisticated in its denial of female sports’ status and skills. Yet a commitment towards equal opportunity and an acknowledgement of the contribution women can make to sport continues to be championed by Government and sports bodies as a beacon of enlightened policy and a movement towards equal rights.1

Specifically, the Football Association has raised the profile of women in the game. As a sports body steeped in a heritage of male power and privilege the Association now highlight the women’s game as the growth area of the football industry.2 Historically, the Football Association has been culpable in contriving to limit women’s involvement and defend its status as a man’s game3 but a recognition of the potential that such growth can inspire has now led to significant action in promoting women’s football. As guardians of the English game the Football Association, in essence, now offers to women the spectre of equality of opportunity with men in the game.

Any existing virtue in establishing two separate disciplines ostensibly rests within the legal constraints encapsulated in Section 44 of the Sex Discrimination Act, where an exemption for sport fundamentally based on physical differences between men and women, persists. Such legal provision replicates a philosophy of segregation that has continued throughout the historical development of sport.

Promoting the segregation of any sport can allow a disparity of opportunity and credibility to perpetuate. Generally separatism has been applied in sport in such a way as to reinforce ideas of difference and lower status for women. As Hargreaves (1994) has argued:

‘Long-term separatism institutionalises gender divisions symbolically preserving through sport the power of men over women, where women are easily identified as outsiders.’4

The development of many sporting activities and football in particular tends to confirm this perspective. Birrell and Theberge (1994) believe that:

‘The greatest danger to the transformation of women’s sporting activity is re-incorporation, the pull of dominant forces to recapture its dissidents’.5

Attempts to assimilate women into male constructed sporting organisations, has not, as yet revealed substantive evidence that this approach begins to redress any imbalance. The Football Association may however allow accumulated resources and systems to benefit both disciplines but it can also seek to maintain and influence the status of either. In a sport essentially dedicated to the men who play and run it, then the high profile and reputation of the men’s game may never be challenged.

Delineation of sport along gender lines has also established boundaries of masculine and feminine identities associated with particular sporting activities. This pattern of sex-role stereotyping fundamentally has
its origins in beliefs about the biological and psychological pre-disposition of men and women to play sport. Women's participation is not only viewed as incompatible with their 'natural' qualities of compassion and tenderness but is also based on observable physical attributes leaving women seriously devalued whilst emphasizing the superiority of men.

Conventional concepts of masculinity and femininity have woven their distinctions into the fabric of sport, where masculinity represents privilege. The threat of women's participation, particularly in contact sports like football, heralds an incursion into a male dominated environment where women are perceived to have transgressed accepted boundaries and betrayed their femininity. This dominant concept has fostered a stigmatising rather than a normative image of sportswomen which has conspired to discourage or exclude women from participation.

The injustice of women's alienation from sport fundamentally denies opportunities of self-fulfillment and empowerment and is supported by legislation that seeks to restrain the development of female sporting activity.

Such a defence relies wholly on traditional, stereotypical assumptions surrounding women's perceived inferior physical attributes. This not only seeks to disregard those committed sportswomen at the height of their athletic ability but also fails to recognise other talents and skills many women bring to sport.

The injustice of women's alienation from sport fundamentally denies opportunities of self-fulfillment and empowerment and is supported by legislation that seeks to restrain the development of female sporting activity.

A further decision in Greater London Council v Farrar8 clarified the status of this legislation by ruling that Section 44 only dealt with situations where men and women might be playing in the same competition, stressing that it did not apply to competitions where women were playing against other women. This legally validates the virtues of separatism in sport. Women competing against each other are not therefore subject to a Section 44 defence on the grounds of physical difference. This protects intrusion by women into the arena of the 'real' sporting world of men, leaving women to tread a separate and often undervalued pathway of sporting achievement. Such 'protective' legislation ultimately disables women from full participation and a consequent denial of opportunity. Individually though women continue to challenge discriminatory practices within sport.

Controversy and intransigence towards the acceptance of women in football has not only been evident on the field of play but also within its organisation and it is through the sanctions of the law...
Football is a Masculine Noun

that redress is sought.\(^9\) Evidence of discriminatory practice oppugns suggestions that equal opportunity is a pivotal consideration in any strategy to develop the game. Certainly women who may seek professional and economic success from sport face an enormous task to gain parity with men. Legal challenges have revealed that prejudice remains and, fundamentally, rests with the lack of credibility women endure in an environment dominated by male thinking. Such discrimination not only transmits signals about the worth women command but also restricts the world in which they operate. Sex-based discrimination and economic disempowerment converge in sport to reveal an unbalanced network weighted heavily in favour of male self-interest.

Every legal action however does communicate a powerful message to those involved in sport but for women the importance of creating equal status impinges on their acceptability and willingness to access and participate in sport. Research continues to corroborate that a greater proportion of men take part in sport than women.\(^1\) However analysis of sports specific data reveals that certain sports attract a greater female presence\(^1\), typically keep fit, yoga, swimming and dance. This ostensibly illustrates the distinctions and perceptions of sport that separates those men and women who participate. The apparent lack of a competitive ethos and a concentration on body image not only conforms to the traditional stereotypical definition of femininity but also socialises women into certain ‘appropriate’ sports.

Patterns of female sporting behaviour are also allied to the role women are expected to play in society. The fragmentation of women’s lives into its constituents, places real-time constraints on the opportunity women have to engage in sport. Collectively expectations of sporting involvement are governed by the demands of accepted gender roles where for women, conflict exists between spending time in sport or fulfilling their domestic responsibilities. The gender definition and divisions in society that dictate the parameters are long-standing. The reinforcement and perpetuation of this learned behaviour fundamentally reflects the expectations and influences of childhood and has a long term affect on attitudes to sporting involvement.

The delivery and impact of sports education becomes a highly significant factor in women’s engagement with sport. The provision of equal opportunities for all young people to experience similar choices in education is vital, but research has determined that sport is the only area where not only are boys and girls often taught separately but are offered totally different curricula\(^1\). Taking a gender differentiated approach results in physical education being unique among subjects within the educational system and as conformity to gender stereotypes persists it ultimately retains the ability to subvert the potential of girls and young women.

Adult patterns of participation in sport reflect those experienced in childhood where boy’s involvement outstrips that of girls, again with exceptions centred on those sports considered traditionally to be female appropriate sports like netball, dance and gymnastics\(^1\). Football remained the cornerstone of boy’s physical education where for girl’s discrimination by omission has been the established practice. Research recently undertaken has also established that separatism along gender lines in sport is evident at primary school level where physical difference was the determining criteria\(^1\).

It further concluded, inter alia, that although opportunities to participate in sport implied equal access within the school curriculum, for girls, inherent pupil indifference was identified as a major factor. Indeed the organised unwillingness by pupils to take part proved audacious in its execution.

The established apathetic culture, maintained through the absence of any significant engagement in sport, was further compounded by the restraints of domestic responsibilities and the social expectations placed on young women. This continued to reinforce the deeply embedded belief that girls do not view sport as having any relevance in their lives.

For those young women who do commit to sport this duality of social expectations and gender role responsibilities becomes significant within a network that seems determined to undervalue their achievements. Analysis undertaken of the personal experience and observations of women who play football has continued to show the persistent prejudice and battle for recognition that exists within sport\(^3\). Their intrusion into this high profile male dominated sport contradicts traditional views of female sporting ability and runs counter to the role women are expected to undertake in society. Their identification of a lack of credibility and authority within the sport led them to conclude that men’s domination of football would
always continue.

As status and prestige seem determined by gender, the dis-empowerment of women in sport erects barriers to access and participation. The power to control sport remains vested in men and a willingness to promote the needs of women and address gender bias remains dependant on their acceptance of the need to change. The complicity that has been established between male power and privilege and dominant attitudes in sport have subordinated, marginalised and dissuaded many women from participation.

The evolution of social justice based on equal treatment and opportunity has been promulgated through anti-discriminatory laws. The virtues of the current legislation though, are piecemeal and disguise institutionalised gender inequalities, where conformity to the rule of law is essentially securing whatever purpose the law was designed to achieve. Criticism of the comparative approach that underlies this legislation is, Holmatt states,

"That the problem of oppression of women is not so much that women are compared to men, but are nothing compared to men and that the substantive male substance of the law should be dismantled and reformed by the experiences of women".

A myriad of obstacles shimmer before women and their connection with sport. The complex nexus of sport, gender and the law contrives to inhibit the potential women possess and as women generally remain alienated from sport valuable talents and skills may perish. For the women’s professional football league the long-term implications of this may draw the familiar conclusion that women don’t play football.

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5 For example, Snooker. Mrs. French v Mr. and Mrs. Crosby [ Links Hotel ] [1982] Unreported. Equal Opportunities Commission [online][URL http://www.eoc.org.uk].
8 [1980] ICR 266 EA.
Controlling the risk – who pays when an event is cancelled?

By Nick Rudgard

The short answer to the title question is that “it depends on what it is in the contract”! Having said that, you cannot decide what should go into the contract, and therefore your negotiating position, until you have a proper appreciation of both the risks involved and the potential liability areas.

But why should risk be important? The postponement of the Ryder Cup due to the tragic events in September last year in New York and Washington, followed by the doubts about the England Cricket Tour to India in November, the cancellation of the Australian tour to Zimbabwe, the postponement of six nations rugby matches, and the cancellation of the Cheltenham racing festival have all re-focused attention on the risks faced by events on the scale of the Olympics or the FIFA World Cup. These events cost millions of pounds to stage, and cancellation or postponement can be very expensive.

So imagine that you are involved in a major event, either because you are the organiser, sponsor, broadcaster, supplier of services to the event or because you are advising such parties, and then ask yourself what would happen if something occurred to affect the viability of the event. What are the types of risk, the eventualities which could occur, the loss which could be sustained and how could these things be controlled?

Types of risk
First, what type of risks can occur? Any major sporting event needs to draw up what is often called a “risk assessment matrix”, which could include the following risks:

- boycotts – e.g. the 1980 Moscow Olympic Games
- terrorist threat – e.g. the pipe bomb in Atlanta
- health epidemic – e.g. the foot and mouth outbreak
- national tragedy – e.g. the death of Princess Diana
- weather – e.g. flooding
- health and safety disasters – e.g. Hillsborough, Bradford City
- transport breakdown – e.g. fuel protest or strikes

Eventualities
Secondly, any of these kind of risks could lead to any of the following eventualities:

- cancellation – the inability to proceed in whole or in part with the event
- abandonment – the inability to proceed with the event once it has been commenced
- postponement – the deferment of the event in whole or in part to another time
- relocation – the removal of part or all of the event to another venue
- interruption – discontinuance of any part of the event and its recommencement at a later time

Loss
Thirdly, any one of these eventualities can in turn trigger financial loss for event organisers, broadcasters, sponsors or service providers. In general terms such loss will be derived from:

- physical loss or damage to property – e.g. direct money loss
- liabilities – e.g. actions from customers, employees or the public caused by breach of duties arising from common law, statute or contract
- business interruption – e.g. loss of profits arising from physical or other loss

More precisely, can we identify specific kinds of loss which might arise in connection with major sporting events and for whom? Some examples are:

- the event organiser – money expended on suppliers; catering; telecommunications; venues; security; the opening and closing ceremonies
- the broadcaster – production work on the intended programmes; fitting out of the international broadcast centre; the cost of power supply; camera and commentating facilities such as booths, pontoons etc;
- the sponsor – the cost of advertising; public relations; merchandise; hospitality; programmes; promotions; staff costs
- the service providers – money expended on preparing the goods and services to be supplied
Controlling the risk
So we have looked at the kinds of risk, what can go wrong and the kinds of loss which could occur. The next question is how can you then control these kind of risks and therefore this kind of financial exposure? The answer, in a phrase, is “risk management”, but what does this mean? In basic terms, it means identifying first those kind of risks which can be commercially passed onto another party by way of a contract, and secondly those that have to be accepted yourself, which ones can be insured against. Control can therefore be distilled into three basic types, control by contract, insurance and good management.

(a) Control by contract
Typically contractual controls are clauses excluding liabilities, imposing warranties and indemnities and dealing with force majeure. Precise wordings will clearly depend upon individual circumstances and the negotiating strength of the parties concerned. Risk is controlled through a combination of anticipation, confinement and re-allocation. Here are some illustrations:

Force majeure
Force majeure clauses basically say that the loss lies where it falls. They allow for total or partial failure of performance under the contract by the parties for reasons such as act of God, war, insurrection etc, without that failure amounting to breach. If an event that causes delay to the performance of the contract falls within the contractual force majeure clause, no financial compensation would normally be payable by either party. The time for performance of the contract for these reasons can be extended by notice a time equivalent to the delay caused by the act of God etc. Provisions can be included in the contract for reduction of fees depending upon the nature of the contingency (e.g. how serious it is and for how long it lasts). Termination of the contract can be envisaged. An example of use of such a clause can be seen in a corporate hospitality agreement in which ways to deal with claims from disgruntled suppliers and guests are set out. Risk is therefore anticipated.

Exclusion
Exclusion clauses can expressly deal with liability in the event of cancellation, curtailment and so on. For example one party’s liability to another may be restricted to the actual amount or some proportion of the amount of money paid over to it under the contract, in a form of “quantum meruit”. This links the liability to the contract itself rather than to expectations outside it. In this way recovery does not extend to consequential or indirect loss, although care must be taken with ensuring that restrictions are reasonable under the Unfair Contracts Terms Act 1977. If reasonable, risk is therefore confined.

Warranty & Indemnity
Warranty and indemnity clauses act by trying to transfer the risk from one party to another. These will depend on the bargaining strength of the parties, but typically the objective is for one party to hold the other harmless in given circumstances. Examples might be a sponsored party warranting to its sponsor that it owns the intellectual property rights being granted to the sponsor, or that an event will be held at a particular venue and on a particular date. The sponsor will then be given an indemnity covering it against the financial and legal consequences of any breach. Risk is therefore re-allocated.

(b) Control by insurance
Insurance against the kind of eventualities mentioned above is available in the market, but at a price. Since September 11th 2001, this kind of insurance has come under greater scrutiny than before. As this is a difficult area, policies need to be put together by specialised brokers such as Marsh and reviewed by lawyers. “Cancellation” or “Contingency Insurance” type cover usually covers any cause beyond the reasonable control of the assured (i.e. the event organiser, promoter, sponsor etc) and the participants, which leads to the event being cancelled etc (i.e. the eventualities mentioned above), resulting in an ascertainable loss (i.e. the kinds of loss identified above). Clearly insurance underwriters’ assessment of their risk has been altered.
Controlling the risk – who pays when an event is cancelled?

by the scale of the September 11th disaster. Underwriters typically limit or contain their own exposure by a combination of wording and terms in their policy. Terms will include items such as premium or price, limits of indemnity, deductible or excess and period of insurance. These are usually set out in a Schedule accompanying the wording. The wording will define issues such as the scope of the indemnity in the insuring clause, what conditions precedent have to be complied with for cover to operate, the exclusions from cover, the claims procedure and so on. The following are some selected issues.

Proximate cause
The proximity between the occurrence of the risk and the eventuality is crucial to the confirmation of an indemnity from underwriters. The eventuality words such as “cancellation” etc. will often address different consequences at different chronological points, and are usually carefully defined. The purpose of this is to establish the degree of proximity required between the occurrence of the risk and the relevant eventuality which triggers cover. For example, is there an actual or legal reason why an event cannot take place, or is it in reality a matter of moral or ethical sensitivity? In other words, is the cancellation necessary?

There could for instance be a difference between a Government initiative preventing or inhibiting the movement of people, such as in the case of the Cheltenham Festival or Six Nations Rugby Championship, and a decision not to travel to the UK and play golf as a result of the terrorist bombing in the USA, such as in the case of the Ryder Cup. In these examples, is the external event which has occurred a sufficiently proximate cause of the decision to postpone the event? In the Cheltenham example, the act of the Government could be seen as a type of “force majeure” or frustration which is often included in contracts. Here the executive act of the Government in dealing with the epidemic risk of foot and mouth is directly referable to the decision to postpone, as the event could not continue without risking breaching a Government order. In the golf example however, the terrorist bombing risk does not of itself prevent the event taking place, but rather the personal or collective decision not to travel or take part, for entirely understandable reasons.

Construction of such issues is often a matter of degree, and the inclusion of qualifying terms such as “unavoidable”, “inability” or “necessary” within the definition of the words such as “cancellation” etc could affect whether or not indemnity is provided under the policy. For example, whilst it might be reasonably unwise to proceed with an event, it might not be unavoidable, or necessary, or be classed as an inability to proceed.

Examples of two cases involving significant media events in which the court examines this kind of cover are:

- CNA International Reinsurance and Others v Companhia de Seguros Tranquilidade S.A QBD (1999) CLC 140 – the cancellation of a Placido Domingo concert in Lisbon
- Quinta Communications SA v Malcolm Warrington and Odyssey Re CA 20/5/99 unreported – the cancellation of a Michael Jackson concert in Barcelona

Act of Terrorism/Act of War
There are also typical policy exclusions, such as radioactivity, fraud and war. The word “war” is topical, given its use by the President of the USA in pronouncements on the terrorist attacks on 11th September 2001. A standard type war exclusion might refer to an actual or threatened outbreak of hostilities between either named countries/groups of countries, or a group having some sovereign status or actual or de facto government status, or acting on behalf of some recognised government. Such a potential outbreak would normally be understood as an act of state, rather than what is more typically classed as a privately initiated criminal act, such as an act of terrorism.

What then is an act of terrorism? An understanding of this can be obtained from the government backed “Pool Re” scheme. Pool Re is a reinsurance vehicle formed by most of the major insurers, which supported
by government shortfall provisions, provides cover for fire and explosion for damage to property caused by terrorist attack in mainland Britain in excess of the first £100,000 which must be borne by the insurer concerned. The scheme was set up by the Reinsurance (Acts of Terrorism) Act 1993 which defines acts of terrorism as:

“...acts of persons acting on behalf of, or in conjunction with any organisation which carries out activities directed towards the overthrowing or influencing by force or violence of Her majesty’s Government in the UK or any other government de jure or de facto.”

Bearing this in mind, an interesting contrast could therefore be made between the Lockerbie incident which could now be regarded as an act of state sponsored terrorism following the recent conviction of one of the terrorists in the criminal trial, and the Atlanta pipe bomb, which is probably regarded as the work of an individual.

Underwriters may well make a distinction between cancellation because of actual terrorism, and cancellation through fear of the terrorism occurring. They may pay for the former but not for the latter. They may also impose time and distance constraints. For instance if an event is happening in Oxford on 1st May, it could be stipulated that the actual terrorist act causing the cancellation will have to occur within “X” miles of Oxford and “Y” days of 1st May.

(c) Control by good management
This really speaks for itself and involves good project planning so that contingencies are identified and planned for. This is particularly important for anticipating what needs to be done after the occurrence of an eventuality such as cancellation or postponement, because good mitigation can reduce the potential loss and is often a condition to payout under any relevant insurance policy. So for example, good management would mean looking at the risk matrix and devising contingency plans to deal with those risks. The question to be asked would be, what would happen to the event if there was a terrorist threat, boycott, health epidemic and so on?

Summary
We have examined the types of risk, the eventualities which could occur, the loss which could be sustained and how to control all of this through a combination of contract, insurance and good management. So who does pay when an event is cancelled? The short answer is hopefully anyone but oneself, but if you have to pay, then you should be able to minimise the risk. That is unless you are sponsoring David Beckham’s left foot!

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Ascertainable Losses
Direct net losses, such as the cost to a football club of travelling abroad to a postponed fixture, or consequential contractual damages paid to a third party can be recovered if ascertainable, subject to a duty on the insured to mitigate. This duty could, for example, include the possibility of obtaining compensation from the governing body which cancelled the fixture, as with the case of UEFA over the cancellation last year of Champions’ League fixtures. The duty could also include rescheduling the event at a later date, rather than cancelling it altogether.

1 See the case of MacDonald v FIFA and the SFA TLR 7/1/99. M sued the Defendants (Ds) as organisers, having attended the Scotland v Estonia match which was effectively cancelled because the Estonian team failed to appear. He alleged that FIFA owed him a duty of care not to alter the kick-off time of the match so close to the match that the Estonian team was unable to attend, and that the SFA was under a duty to take reasonable care to ensure that the match could be played at the original time and to ensure that the floodlights were adequate. The Scottish Court of Session held that in the circumstances a spectator at a sporting event was not sufficiently proximate to the organisers to create a duty of care in respect of cancellation.
American Sports as a target of terrorism: The duty of care after September 11th

Introduction
The American sports industry responded quickly and decisively in the wake of the September 11, 2001 terrorist attacks on the World Trade Center and the Pentagon. As the nation mourned, sports leagues, teams and venue operators postponed games. Giants Stadium was turned into a staging ground for volunteers and supplies for rescue workers at Ground Zero. With President Bush’s call for the nation to get back to business, the American sports industry worked tirelessly to enhance security at events and venues throughout the country before resuming play. Working cooperatively with government officials, law enforcement, the military and security experts, leagues, teams and venue operators conducted threat and vulnerability assessments and took aggressive actions to “harden” or protect their “assets” – the athletes, the spectators and the venues. Extraordinary efforts were employed at the World Series, the Super Bowl and the Olympics to prevent further acts of terrorism, all with great success, all with enormous price tags. It is estimated by way of example, that security at the Winter Olympics in Utah cost $310 million. Steve Woodward, Street & Smith’s Sports Business Journal, Security Effort is Always Olympic Event, Vol. 4, Issue 42, at 1, 23 (Feb. 4-10, 2002).

As we look toward the future, the American sports industry is faced with a number of difficult issues:
1) What is the continuing threat against American sports?
2) How do we balance the continuing threat against the need to “get back to business”?
3) What is the duty of care that leagues, teams and venue operators owe players, employees, and fans?

Balancing the Threat of Terrorism against the “Need to Get Back to Business”
September 11th has redefined the way in which Americans view the world and has literally brought “home” the realistic threat of terrorism. For many of us, we only learned in depth about the history of the threat posed by Osama Bin Laden, the Al Qaeda and other extremist groups after our attention was riveted to the collapsing World Trade Center Towers and the question of how could this have happened. Hopefully, we have learned that one of our greatest threats is “complacency.” Nonetheless, only six months after September 11th, it was reported that some sports facility managers were “considering whether some of the extreme measures taken after the terrorist attacks should be eased or abandoned completely...” See Steve Cameron Venues Revisit Safety vs. Cost as September 11th Recedes, Street & Smith’s Sports Business Journal, at 1 (March 11-17, 2002). A May 2000 article in Security Management entitled Building in Terrorism’s Shadow written some eighteen months prior to September 11th, however, gives us an ominous warning of the risk of complacency:

While the World Trade Center and Oklahoma City bombings may be gradually receding into the collective subconscious, leading the public to become complacent, more recent events indicate that the terrorism threat remains... (and is) a stark reminder that the physical protection of America’s signature properties continues to be a critical security issue.


American sporting venues must continue to be viewed as “American signature properties” subject to the real and present threat of a terrorist attack. We have routed the Taliban, but Osama Bin Laden’s whereabouts are unknown. We have learned that the tentacles of the Al Qaeda network not only stretch across many nations but into our borders and that the hijackers lived quietly among us until they were summoned to carry out their holy war through acts of martyrdom with previously unimaginable consequences. As difficult as it is to comprehend, we must remember that these terrorists fundamentally believe in the destruction of America.

We must remain on heightened alert as a nation and we must continue to be vigilant. In testimony before Congress, on February 6, 2002, Mr. Dale Watson head of the FBI Counter-Terrorism Effort talked about the
terrorism threat confronting the United States and warned that:

The Al-Qaeda and other groups associated with the international jihad movement will continue to focus on attacks that yield significant destruction and high casualties, thus maximizing world-wide media attention and public anxiety. As government and the military harden key assets the terrorists will move to others.

As high profile, large public gatherings that celebrate American popular culture, sporting events are, and will remain, a potential target of terrorism for the foreseeable future. So, as a sports lawyer, what should you be doing on behalf of your clients? As lawyers we prefer an analytical framework for approaching a subject. Here we suggest a four-prong test:
1. What is the threat to my client or my client’s business?
2. What are my client’s vulnerabilities to a terrorist attack?
3. What have we done, can we do, reasonably to protect against those threats?
4. What have we done to enhance our capability to respond to an incident?

In the aftermath of September 11th, most leagues, teams and venues went through a comprehensive threat assessment and established updated security guidelines and practices to meet the increased threat. The National Football League, by way of example, created a security task force and issued to teams a “best practices guide” of recommended security measures before resuming play. Some of the new security measures included: heightened security on a twenty four (24) hour basis, use of hand held metal detectors and search of all small bags and personal items; bans on backpacks, large purses, coolers, bags, etc.; parking prohibitions, limited vehicle access near the stadium, and road barricades; increased security personnel; additional surveillance equipment; as well as other internal security measures.

One of the more difficult issues for operators of specific venues and events has been determining just what the potential threat level is that they are protecting against. Since September 11th the nation has been warned to be on a heightened state of alert because of the continuing threat of a terrorist attack. Except for specific high profile events, such as the World Series, the Super Bowl or the Olympics, which logically are greater symbolic targets, the available threat information is general at best, causing leagues, teams and venues to prepare for a range of possible incidents at their facilities and to maintain close contact with federal, state and local law enforcement representatives regarding possible threats.

So far, the public has accepted the additional security and has come to expect it and even demand it. As the nation begins to accept increased security as a necessity in light of the continuing threat, it is important that leagues, teams and venues institutionalize security measures in policy and procedure guidelines, train personnel on the guidelines and stage exercises to drill and test incident response plans. It is also essential to educate the stakeholders – players, fans and employees – about the necessity of adherence to the new practices, the inconveniences that will be caused by the new practices, and, yes, the costs generated by the new practices. By conducting threat/vulnerability assessments, by establishing clear guidelines and procedures, by training personnel on those guidelines and procedures, and by conducting incident drills, leagues, teams and venue operators can take significant and effective measures to prevent and prepare for a terrorist incident and in so doing meet their duty of care.
to players, fans and employees. Whatever the after the fact analysis of the duty of care may be for a specific incident, the fundamental question will always be whether or not reasonable steps were taken to protect against an incident in light of the availability of security measures, the industry “standards” for security, and the potential threat of terrorism.

Just what is the duty of care that leagues, teams and venue operators owe players and fans? Obviously, since we have never experienced an attack of the magnitude of the potential threat posed by a terrorist attack against an American sports target, there is no specific guidance on the issue, but we can turn to duty of care cases generally to establish a framework for analysis.

The Duty of Care Owed By Sports Venue Operators and Owners to Spectators and Players

The legal duty owed to spectators and players is usually determined by the nature of the relationship between such parties as the facility owner, facility operator, team, and/or event promoter. In most cases, the relationship among the parties and the legal duties towards third parties are dictated by contracts that clearly delineate the duties and responsibilities of each party and include liability shifting provisions such as insurance and indemnification. However, in the absence of clear, enforceable contracts that dictate the legal duties and obligations of parties involved in hosting or promoting a sporting event, such parties could be potentially liable to injured spectators or players, for the criminal, or terrorist acts of third parties.

An owner or operator of a sports venue, like any other owner or occupant of a premises, is under a duty to exercise reasonable care under the circumstances to prevent injury to those who come to play upon its field and to those who watch the games played upon its field. See Romualdo P. Eclavea, Sports Playing Fields or Arenas, N.Y. Jur.2d § 106 (2002). Like any premises owner, there exists a duty to exercise care to make the conditions of a sporting venue as safe as they appear to be. Id. Actions by injured sports spectators or players are almost universally based on a theory of negligence. Actionable negligence is comprised of three elements: (1) the existence of a duty on the part of one person to exercise care to protect another against injury; (2) the breach of that duty; and (3) an injury to the second person resulting from the breach of duty. Id.

Both spectators and athletic participants are considered invitees within the business visitor category of section 332(1) and (3) of the Restatement (Second) of Torts. A business invitee is one who is invited to enter or remain on land for a purpose directly or indirectly connected with business dealings with the possessor of the land. See Restatement (Second) of Torts § 332(1), (3) and cmt. e. The owner of premises owes a duty to business invitees to use reasonable care and diligence to keep the premises in a safe condition, or, if the premises are in a dangerous condition, to give sufficient warning so that the danger can be avoided by the use of ordinary care. Wal-Mart Stores, Inc. v. Rolin, No. 1001048, 2001 WL 110519, *1 (Ala. Sept. 21, 2001). This general duty encompasses the legal duty to business invitees to protect them from those dangers reasonably to be foreseen. Stanton v. University of Maine System, 773 A.2d 1045, 1049 (Me. 2001). In fact, “foresight of harm lies at the foundation of the duty to use care, that is the risk of injury to another person, reasonably within the range of apprehension, that is taken into account in determining the existence of the duty to exercise care.” See 62 Am. Jur.2d § 491, at 39-40 (1990).

The first concept of foreseeability concerns the foreseeability of the specific injury that plaintiff suffered, and focuses on whether the defendant’s actions were the proximate cause of the harm. The second concerns general foreseeable risk that is crucial to determining the existence of a duty and to limit the scope of the duty found. Stanford v. Kuwait Airways Corp., 89 F.3d 117, 125 (2d Cir. 1996) (airline had duty to protect passengers from risk of terrorists boarding connecting flight). The court of appeals in Stanford found that the hijacking of a plane was a generally foreseeable risk. Id. The reasoning was that the airline-defendant’s complacency had created a “zone of risk,” where had it not been inactive, passengers would not have been harmed. A duty of general foreseeability risk arose when the airline knew:

(1) of the threatened attacks by Hezbollah terrorists; (2) that terrorists were boarding flights in dirty airports to infiltrate other airlines; (3) that the Beirut airport had extraordinarily poor security; and (4) that the four hijackers who boarded in Beirut had tickets which teemed with suspicion. A jury could reasonably find, under these circumstances, that if [the airline] did nothing, it would create a zone of risk that stretched at least as far as the innocent passengers aboard flights with which the four hijackers would eventually connect.

Id. at 125. Thus, where the circumstances indicate that an extraordinary occurrence like terrorism is in fact foreseeable, the duty to protect invitees arises.

Many states recognize that the owner or operator of premises may owe business invitees the duty to protect them against the criminal acts of third parties, especially where they have knowledge or facts
indicating that such protection is necessary. See, e.g., Nallan v. Helmsley-Spear, Inc., 407 N.E.2d 451 (N.Y. 2001); Wright v. Preston Resources, Inc., 639 N.W.2d 149 (Neb. Ct. App. 2002); Hopper v. Colonial Motel Properties, Inc., 762 N.E.2d 181 (Ind. Ct. App. 2002); Wade v. Findlay Management, Inc., No. A02A0724, 2002 WL 122825 (Ga. Ct. App. Jan. 31, 2002); Eric J. v. Betty M., 76 Cal.App.4th 715, 90 Cal.Rptr.2d 549 (Cal. Ct. App. 1999). As such, an owner or operator of a sports venue may be obligated to take reasonable precautionary measures to minimize the risk of criminal acts and to make the premises safe for visitors when the facts indicate that such a risk is foreseeable. The scope of this duty does not necessarily increase when owners or operators have taken some security precautions on behalf of invitees. Taking such measures does not transform owners or operators into insurer of their invitee’s safety. See Knudson v. Lenny’s, Inc., 413 S.E.2d 258, 260 (Ga. Ct. App. 1991) (undertaking measures to protect invitees does not heighten the standard of care). However, failure to take reasonable measures to protect invitees is actionable.

Following September 11th, the United States has been on a heightened security alert status with current Al-Qaeda threats to American safety. In this age, terrorist attacks could very well be considered generally foreseeable, or “within the range of apprehension.”

The Duty of Care Owed by Professional Sports Leagues to Spectators

Courts have found that there is “no rational basis” for holding a professional sports league liable when a spectator is injured. See Riley v. Chicago Cougars Hockey Club, Inc., 427 N.E.2d 290 (Ill. App. Ct. 1981). In other words, courts have hesitated to find that sports leagues owe a legal duty to spectators because the owners and operators are in the best position to ensure security and safety on the premises. However, where a league sponsors an event, such as an All-Star Game, a duty of care on the part of the league could arise similar to that of an owner or operator of the venue depending upon the specific nature of the relationships between the parties involved with the event and the contractual obligations of each party.

The Duty of Care Owed by Employers to Their Employees

The Occupational Safety and Health Act of 1970 (“OSHA”) imposes two types of duties on employers. 29 U.S.C. § 654 (1999). First, every employer shall comply with OSHA’s enacted standards, rules, regulations and orders to the particular business or activity. Id. at § 654(a)(2) & 654(b). Second, and perhaps most significantly, every employer “shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees.” Id. at § 654(a)(1). The latter, is known as the “General Duty clause,” which was intended by Congress to cover unanticipated hazards that were not otherwise covered by specific regulations. See Teal v. E.I. DuPont de Nemours and Co., 728 F.2d 799, 804 (6th Cir. 1984); Southern Ohio Building Systems, Inc. v. OSHRC, 649 F.2d 456, 458 (6th Cir. 1981).

OSHA currently does not impose any specific duties on an employer with regard to protecting employees from terrorist acts. According to the Office of Compliance, OSHA is in the process of developing basic guidelines on workplace security to protect employees from terrorist acts; however, several commentators doubt that these guidelines will ever become OSHA regulations. See Occupational Safety & Health Daily, Advisory Committees: Nacosh Work Group Says Employers Need More Information To Prepare For Terrorism, BNA (March 15, 2002).

Despite the absence of specific OSHA regulations
regarding security against terrorist threats, the General Duty clause requires each and every employer to provide a workplace free of a recognized hazard that causes, or is likely to cause, death or serious physical harm. See National Realty and Construction Co. v. OSHRC, 489 F.2d 1257, 1265 (D.C. Cir. 1973). The General Duty clause is exceedingly amorphous and subject to judicial interpretation. Courts have avoided a narrow interpretation of the General Duty clause for the sole purpose of better protecting employee health. See American Smelting & Refining Co. v. OSHA, 501 F.2d 504 (8th Cir. 1974). At the same time, courts recognize that employers cannot insure against all hazards. To find otherwise would be to hold employers strictly liable for any injury to an employee. See Industrial Union Dep’t v. American Petroleum Institute, 448 U.S. 607, 642 (1980); Brennan v. OSHRC, 502 F.2d 956 (3d Cir. 1974); National Realty & Constr. Co. v. OSHRC, 489 F.2d 1257 (D.C. Cir. 1973). While the General Duty clause requires the elimination of recognized and preventable hazards from a workplace, hazards that cannot be prevented are not considered “recognized” under the General Duty clause. See Anning-Johnson Co. v. OSHRC, 516 F.2d 1081 (7th Cir. 1975).

The Second Circuit has held that employers are not required to rid their workplaces of possible or reasonably foreseeable hazards, but of “recognized hazards,” defined to include only dangerous conditions that can be detected by the human senses and are generally known as hazardous. See Pratt & Whitney Aircraft v. Secretary of Labor, 649 F.2d 96, 101 (2d Cir. 1981). However, other courts have held that a reasonably foreseeable hazard is a “recognized hazard.” See Kelly Springfield Tire Co., Inc. v. Donovan, 729 F.2d 317, 359 (5th Cir. 1984). Courts, however, agree that a “recognized hazard” may be identified by looking at the standard knowledge and practices in a particular industry. See generally, Ethel R. Alston, J.D., What is “Recognized Hazard” Within

### Sports venue operators and owners should continue to take reasonable steps in preventing terrorist acts in their facilities.

**Hiring practices should include adequate background checks and vendors and subcontractors should also be required to complete such checks.**
General Duty clause. As the Seventh Circuit held in Pitt-Des Moines, “[t]here is no reason to conclude that the specific protection §654(a)(2) affords—freedom for safety violations—is limited to an employer’s own employees” particularly, “when employees of different employers work in close proximity and all are subject to the risk those violations create.” 168 F.3d at 983. Moreover, the Second Circuit in Brennan pointed out the legislative history supporting the proposition that the Act is preventive in nature. 513 F.2d at 1039 (citation omitted). This preventability emphasis supports finding liability where an employer created or controlled a hazardous condition. Brennan, 513 at 1039. In Brennan, the court rejected the Commission’s position that an employer cannot be found responsible for failing to comply with OSHA standards when the only employees exposed to the violative condition were those of another employer. Id. At 1038-39.

Although the sports industry is not required to protect its employees against every “plausible” or theoretically possible condition or activity that can cause an employee to incur serious injury, employers associated with high profile sporting events must rethink safety and security by looking to the industry safety and security procedures, some of the precautionary and emergency measures taken by other facilities, and the recommendations of sport leagues to maintain a safe and secure event. Failure to do so could result in OSHA liability.

Changes in Industry Standards and the Duty of Care Redefined

While it has been well established that sports venue owners and operators have a duty to spectators, participants, and employees, the scope of this duty now requires that reasonable measures be taken to protect against terrorist acts. Terrorist attacks may no longer be characterized as unforeseeable, creating a heightened duty of care owed by owners and operators to spectators, participants, and employees.

For this reason, sports venue operators and owners should continue to take reasonable steps in preventing terrorist acts in their facilities. Hiring practices should include adequate background checks and vendors and subcontractors should also be required to complete such checks. Owners and operators must institutionalize security measures in policy and procedure guidelines, train personnel on the guidelines and stage exercises to drill and test incident response plans. It is also essential to educate the stakeholders – players, fans and employees – about the necessity of adherence to the new practices, the inferences that will be caused by the new practices, and the costs generated by the new practices. By conducting threat/vulnerability assessments, by establishing clear guidelines and procedures, by training personnel on those guidelines and procedures, and by conducting incident drills, leagues, teams and venue operators can take significant and effective measures to prevent and prepare for a terrorist incident and to meet their duty of care to players, fans and employees. Whatever the after the fact analysis of the duty of care may be for a specific incident, the fundamental question will always be whether or not reasonable steps were taken to protect against an incident in light of the availability of security measures, the industry “standards” for security, and the potential threat of terrorism.

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1 Although the requirements are not specifically tailored to terrorism, OSHA regulations do generally require employers to establish emergency and fire prevention plans and provide for safe means of egress in emergency situations. 29 C.F.R. 1910.37 and 38.
Restraint of Trade – A Note

By Edward Grayson

An unreported judgment in the Mayor’s and City County Court (27th May 2002) of H.H. Judge Marr-Johnson involved issues of restraint of trade so far as can be traced for the first time between a professional boxer and his professional trainer.

In the action Bryan Glen Lawrence claimed against the former WBO heavyweight boxing champion Henry Akinwande that they had entered into an oral contract to work together for the purpose of building up Akinwande for a world championship title fight. This was achieved by a build-up of preliminary contests for which a traditional 10% of the boxer’s purse was payable to the trainer.

Part-payments were made and Lawrence’s services were terminated prior to the final contest in 1996 when Akinwande gained the WBO heavyweight title.

In due course the full payments claimed were challenged but overridden by the final judgment, which resulted in an award of over 101,000 US dollars.

The most significant point in the case was that the defendant pleaded that the ongoing rolling contract between the boxer and trainer was in restraint of trade because it tied them contractually together in a manner, which was unreasonable and unforeseeable and contrary to public policy. On the facts this was debatable, and in the absence of the defendant who had withdrawn his instructions prior to the trial the claimant Lawrence was required to prove his case on the evidence and deny the allegation, which he did successfully.

More significantly, however, in an Amended Reply to the Amended Defence pleading restraint of trade, and by reason of the admitted part-payment which confirmed the original oral agreement, Lawrence pleaded the developing cases from the entertainment world of affirmation, acquiescence and waiver to defeat the restraint of trade defence.

The developing cases which signpost this developing growth area can be seen from the Court of Appeal’s approval in the management case of Nicholl and Another v. Ryder (2000) EMLR 632 which applied dictum of Dillon L J in Xang Tumb Tuum Records LTD v. Johnson (1993) EMLR 60 (better known as the Holly Johnson Case) and approved Jonathan Parker LJ’s judgment in what is recognised as the George Michael Case (Panayitou v. Sony Music Entertainment (UK) Ltd. (1984) EMLR 229 between pages 383 and 385), where the defences of affirmation and acquiescence in context of restraint of trade were considered and applied.
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**Ordinary Membership**
Ordinary Membership shall be available to groups of individuals, e.g. firms of solicitors, sports clubs but the organisation shall nominate one person as the Ordinary Member.

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Student Members shall have no power to vote at any Annual General Meeting or any other meeting.

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Honourary Membership may be conferred at the discretion of the governing body.

Please complete the membership form and return to:
Ray Farrell
Hon. Secretary
British Association for Sport and Law
The Manchester Metropolitan University
School of Law
Elizabeth Gaskell Campus
Hatherage Road
Manchester M13 0JA

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ORGANISATION

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For the 2002/03 academic year, the School of Law at King’s College London is once again offering a one-year, part-time postgraduate course in sports law, leading to a College Postgraduate Certificate in Sports Law.

The course is led by programme director Jonathan Taylor, partner in the Sports Law Group at Hammond Suddards Edge (ex-Townleys), who teaches the course along with other leading sports law practitioners such as Nick Bitel, Adam Lewis, Alasdair Bell, Nicholas Green QC and Mel Stein, and sports law academics such as Simon Gardiner, Gary Roberts and Richard McLaren.

The course covers the range of key sports law issues:

- constitutional issues: self-regulation by sports governing bodies/the European Model of Sport; judicial control of sports bodies;
- commercial issues: broadcasting, sponsorship, IP rights, ambush marketing;
- issues for individual athletes: doping, discipline, player contracts, endorsement contracts, civil and criminal liability for sports injuries;
- EC law and sport: competition law, freedom of movement; and

The course is taught in weekly evening classes from October to March and is open to both law graduates and non-law graduates. For further details, visit the KCL sports law website at www.kclsportslaw.co.uk.

For a full prospectus and application form, contact: Annette Lee, School of Law, King’s College London, Strand, London WC2R 2LS Tel: 020 7848 2849, fax: 020 7848 2912, E-mail sports.law@kcl.ac.uk

CPD credits available; equality of opportunity is College policy.