## Contents

### Editorial

2 Simon Gardiner

### Opinion and Practice

6 Mrs Murphy, QC Leisure and the Future: An Opinion  
Daniel Geey

11 Using athletes in advertising – The impact of “Rule 40” and its interpretation on brand owners  
James Whymark

14 Sports Betting – A safe bet for the future  
Jody MacDonald

18 The Journal Interview: Andy Gray  
Walter Cairns

### Analysis

28 Corruption in cricket: Using the law to cull the crooks from the gentleman's game  
Tim Ross

46 The Fairness of UEFA Financial Fair Play Rules  
Jamie Fletcher

### Reviews and Reports

70 Sports Law Foreign Update  
Walter Cairns

88 Book Review  
Graeme MacDonald

91 Sport and the Law Journal Reports
This issue concerns a number of on-going and current topics. The Opinion and Practice section provides comment on three topical issues. First, Daniel Geey’s ‘Mrs Murphy, QC Leisure and the Future: An Opinion’ provides an evaluation of the potential impact of the decision of the Court of Justice of the European Union. Second, James Whymark’s ‘Using athletes in advertising – The impact of “Rule 40” and its interpretation on brand owners’ focuses on the impact that there may be on brand owners and companies operating and advertising during the 2012 Olympic and Paralympic Games. Third, Jody Macdonald’s ‘Sports Betting – A safe bet for the future’ evaluates recent developments in the sports betting industry. Fourth, Walter Cairn’s interview with the leading sports governing body lawyer, Andy Gray.

The Analysis section has two articles Tim Ross’s ‘Corruption in cricket: Using the law to cull the crooks from the gentleman’s game’ focuses on recent development in cricket concerning match fixing. Jamie Fletcher’s ‘The Fairness of UEFA Financial Fair Play Rules’ provides a theoretical analysis of the impact of UEFA’s policy with a very useful theoretical comparison of the economic framework of the Premier League and the National Football League in the U.S.

The Reviews section has the usual items, the Sport and the Law Journal Reports and book reviews. The International Sports Law update has a focus on Corruption in Sport from around the world.

In recent months there have been a number of incidents of alleged racism in English football. The two incidents that have gained most media coverage is firstly that involving the Liverpool player, Luis Suarez, and secondly that involving Chelsea player, John Terry.

The Suarez incident resulted in a disciplinary hearing by an independent Football Association Commission ruling that Suarez had racially abused Patrice Evra during a match in October. The Commission’s Report stated that Suarez had used the term “negro” seven times in around two minutes and claimed he had ‘damaged the reputation of English football around the world with his conduct’.

Suarez was penalized with an eight-match ban and issued a general apology. He was reported as saying that he: ‘admitted to the commission that I said a word in Spanish once, and only once... I never, ever used this word in a derogatory way and if it offends anyone then I want to apologise for that... I told the panel members that I will not use it again on a football pitch in England.” Neither Liverpool nor the player has appealed against the decision.

The second incident involves John Terry who will face a criminal trial in July 2012 concerning a charge that he used threatening, abusive or insulting words or behaviour, or disorderly behaviour within the hearing or sight of a person likely to be caused harassment, alarm or distress which was racially aggravated in accordance with section 28 of the Crime and Disorder Act 1998, towards Queens Park Rangers’ footballer Anton Ferdinand during a Premier League game on 23 October, 2011. We will need to await the result of the trial.

These two incidents graphically show the alternative mechanisms for ‘policing’ these happenings. Suarez was dealt with by the sports-based disciplinary procedures and FA regulations and Terry is to be prosecuted under the criminal law. This latter approach has engendered some high-profile comment. Lord Ouseley, chairman of Kick it Out which campaigns against all forms of discrimination in football, was reported as saying it was a ‘very sad day for football’ and added that he was “surprised” at the CPS decision... But it’s equally important to understand that we do positive educational work alongside trying to work with the authorities to make sure that they enforce their own regulations, their own standards
The display of racist attitudes by players to black team-mates, at least in football, was thought thankfully to have become a thing of the past when these allegations are made.’ Gordon Taylor, chief executive of the PFA, was reported as saying he wanted to warn members that ‘just because it is a football pitch it is not a vacuum’ and the law of the land applies.

Unfortunately racism is not new to football. The most visible manifestation of racism in football has concerned spectator racism and the respective roles that the criminal law and sports-based policies should have in engaging with the problem English football has become, in terms of ethnicity, cosmopolitan. Over the last three decades, the participation of black players of Afro-Caribbean descent has dramatically increased. Many of these players have been second or third generation children of immigrants from the Caribbean who came to Britain in the 1950s and 1960s. Today, in English professional football, players of Afro-Caribbean descent are over-represented in relation to the general population with over 25% of professional footballers of Afro-Caribbean or African origin. However, representation by players from other ethnic minorities, for example, those of Asian descent, is significantly lower than in the general population. Black players have had to fight to achieve this prominence despite the dominant values within football culture. Also, the glass ceiling of structural barriers continues to obstruct the ability of those from ethnic minority groups to rise into positions of influence and power in football administration and management. This is despite the fact that there was briefly a black manager of a Premiership club – Paul Ince at Blackburn Rovers.

The display of racist attitudes by players to black team-mates, at least in football, was thought thankfully to have become a thing of the past before the Suarez and Terry episodes. The most likely context in which black players will subject to racist abuse is on the field of play by members of the opposing team. Thus, the issue of racial harassment at the workplace – both on and off the field of play – is one which must be addressed.

On the field incidents occur where a player, who as an individual is racist, express racism to an opponent (or less likely against a team-mate). Such racism may be used as a cynical and calculated act of ‘gamesmanship’ to wind up an opposing player to put him off his game and/or provoke him into committing a foul or offence which results in the victim of racism rather than its perpetrator being sent off. It is, of course, primarily the referee who is in control during the course of a match, and it should be the job of the match officials to deal with any racist conduct committed by players.

In the context of football, measures proposed by the Football Task Force (Football Task Force, Eliminating Racism from Football (1998), London.), to make racism a red card offence and to incorporate anti-racist clauses into players’ and managers’ contracts should now be implemented. These measures should operate in a two-pronged and mutually reinforcing manner. First, referees will be obliged to send off players who are guilty of racism during the course of a game. Secondly, clubs can regard such players as having acted in breach of their employment contracts and can take disciplinary action against them accordingly.

It is opportune that this proposal in the light of recent events is urgently reviewed by the FA. The fact that the racist player has been sent off and consequently damaged his team’s prospects of success will, hopefully, encourage his club to subject him to disciplinary proceedings. Similarly, clubs will begin to demand that referees are consistent in regarding racism as a red card offence. Anti-racist clauses in managers’ contracts will also deter the more cynical manager (should he exist) from encouraging his players to engage in racist ‘gamesmanship’. These measures would be very significantly reinforced by current proposals to deduct points from clubs that fail to take effective action to combat racist abuse (these proposals are recommended by a FA Working Party, chaired by John Mann, a Labour MP and Leeds supporter).
As far as the Suarez incident, there was some dismay when Liverpool were at the best equivocal in their response to the FA Commission decision. Liverpool decided not to appeal against the Uruguayan's suspension but continued to challenge the Commission's findings. Earlier before the Commission hearing, Liverpool players and manager, Kenny Dalglish wore T-shirts showing their support for the striker, days after the Commission decision in the warm-up to a Premier League match.

The Suarez incident highlighted the problematic nature of language and the cultural specificity around certain phrases, a particular problem where the participants in an activity come from a wide-range of cultural backgrounds. According to the transcript of the FA Commission hearing, the context of the incident was that Patrice Evra asked Suarez why he had kicked him, to which Suarez replied: "Because you are black."

When Evra challenged him to repeat the answer and said he would “punch him”, Suarez said: “I don’t speak to blacks.” According the report, Evra then told Suarez he was going to hit him, to which the Uruguay international replied in Spanish: “Dale, negro, negro, negro.” That translates to “okay, blackie, blackie, blackie”.

The Report stated that Suarez said he 'used the word 'negro' in a way with which he was familiar from his upbringing in Uruguay'. A key question is to what extent this could be an excuse for the actions and utterances of Suarez. Under the relevant rule of the FA, Rule E3(1) concerning misconduct which is aggravated when it involves a number of characteristics including another's 'colour or race', the Commission stressed that the test is an 'objective' one and merely requires the determination of whether the ‘words or behaviour were abusive or insulting’ (para. 389). There is no requirement to prove that the individual intended the words or behavior to have this effect. In essence it is a strict liability test. To that end the Commission heard evidence from a range of witnesses including academic experts in linguistic and cultural matters involving South America. The decision benefits from a careful reading and can be found at www.thefa.com - the determination of essentially a factual issue about the nature of Suarez’s speech concluded in finding him in breach of the rule in that the words he used were insulting.

Any arguments that Suarez was using the word in a different cultural construct were dismissed. The understanding of most rule and law systems is of course that ignorance of the law is no defense nor is an argument about lack of awareness due to cultural differences and specificity. It is clear that professional footballers should be expected to learn quickly (and be taught) of the social mores that exist within a particular national league.

The Suarez and Terry events highlight the alternative approaches available to respond to allegations of racist hate speech. A detailed comparison and evaluation of the efficacy of these alternatives is best reserved until after Terry's trial. A positive outcome of the Suarez and Terry incidents is that in addition to suggested developments that it is argued should be made by the FA discussed above, is that it has been reported that the PFA is urgently planning to extend anti-racism education session to all professionals. Scholars at Premier League and Football League clubs currently attend PFA workshops about diversity, at which they are given examples of unacceptable language. Additionally the Parliamentary Culture, Media and Sport Committee will hold hearings on racism in sport in the spring 2012 and a wider examination of responses and future action can be made.

Finally, the Journal welcomes contributions from all BASL members and other readers in any of the sections of the Journal including reviews of future sports law related publications. Please contact the Editor with any suggested offerings.

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Mrs Murphy, QC Leisure and the Future: An Opinion

BY DANIEL GEEY, ASSOCIATE IN THE SPORTS GROUP AT FIELD FISHER WATERHOUSE LLP

Introduction

Many column inches have been dedicated to unravelling the implications and consequences of the decisions by the Court of Justice of the European Union (“the CJEU”) in the Karen Murphy and QC Leisure football broadcasting cases. The detailed facts and background of the case can be found in various articles in this and other prominent journals and are briefly set out below.¹

Karen Murphy is a pub landlord. She was prosecuted after purchasing a Greek decoder and decoder card in order to broadcast live Premier League (PL) matches in her pub. She argued that as a Member State citizen she should not be prevented from finding the cheapest subscription in the European Union to broadcast the live matches. The PL alleged that Murphy’s actions, among other things, breached its IP rights. The PL argued that the way they sold their rights was backed up by European Court precedent supporting the notion of exclusive territorial licensing.

Mrs Murphy’s case was joined with a supplier of the decoder cards QC Leisure, in a reference to the CJEU. In October 2011, the CJEU answered the EU law questions on issues that included free movement, competition law and copyright posed by the English High Court.

The CJEU Decision

In summary, the CJEU held that restricting the importation of a Greek satellite decoder and decoder card to view the live PL games and clauses prohibiting an authorised PL broadcaster selling its service to a Member State citizen outside of its allocated territory were contrary to EU law. However, the CJEU did conclude that the PL owned copyrighted works such as the anthem and the logo which were embedded in the broadcast. As Mrs Murphy was deemed to be making a further communication to the public under the Copyright Directive (by broadcasting the pictures), Murphy required authorisation from the PL to show the copyrighted works in order to broadcast the live pictures.

The extremely tricky balancing act for the CJEU involved the need to safeguard the fundamental EU free movement freedoms whilst giving a degree of intellectual property protection to the PL as a rights holder. Many have suggested that the judgment is actually unbalanced; on one hand it extols the virtues of free movement whilst curtailing the very same freedoms through protection granted to ancillary copyrighted materials.

The CJEU judgment is set in the context of Mrs Murphy using a Greek domestic, residential subscription for commercial use. The CJEU appears to have said that even if free movement principles and competition law apply, Mrs Murphy still needs authorisation because it was not granted by the PL in Greece to enable the communication of a domestic subscription broadcast to a wider public in a commercial setting. Thus the CJEU has taken the specific facts of Mrs Murphy’s case and narrowly construed them.

The CJEU’s rationale is that the PL authorised the Greek broadcaster to sell live PL matches to residential premises and whilst such residential subscriptions appear to be legitimately available to domestic UK subscribers, the PL did not authorise the Greek broadcaster to sell the subscription to a commercial subscriber. Therefore Murphy is using the wrong decoder subscription and appears to be in breach of the domestic copyright laws by showing the pictures.

Based on the current Murphy facts, it would appear difficult for the High Court to interpret the answers given by the CJEU in relation to the relevant copyright legislation in such a way that would permit Murphy to screen matches without PL authorisation.
What happens however if Mrs Murphy argues that she would have purchased a commercial decoder subscription, but was restricted by the Greek national broadcaster who was following the apparently anti-competitive contractual stipulations imposed by the PL? Whereas the CJEU appears satisfied that broadcast of a private, domestic subscription to a public venue in another Member State country is a further communication to the public, would the same apply if Murphy had bought a commercial Greek subscription?2

The real question is whether Murphy will argue in the High Court that she was prevented from purchasing a Greek commercial subscription and therefore the CJEU needs to consider whether such a subscription would be a further communication to the public under the Copyright Directive. Murphy would no doubt argue that the PL authorised the Greek broadcaster to sell the commercial subscription in Greece and therefore no further communication to the public would occur when that broadcast was shown in the UK. It is not beyond the realms of possibility that further questions may need to be referred back to the European Court for further European law assessment.

Another conundrum the High Court will be faced with relates to the contractual prohibitions within the PL contract that the CJEU ruled contrary to EU law.3 As such, the High Court has the ability to strike out the anti-competitive restrictive clauses. If, after removing the relevant clauses, the remainder of the agreement can reasonably be carried out, it can be enforced. The High Court may need to consider this in some detail because there should be over a year left on the deal with, for example, Sky and ESPN which would be worth over £500m. It is common practice in such contracts for there to be standard clauses to allow either party to look again at the deal in case of significant regulatory or legal intervention impacting on the contract.

The Next Premier League Tender
Against this background, the question arises as to how the next PL auction will work in practice. It is believed that the PL will publish its EU rights tender document in the first half of 2012. The quandary for the PL is what to do. It may be that the High Court rules by that time and is definitive in its judgment. However, the ramifications of the CJEU’s answers with specific reference to the contractual restrictions in the PL contract it entered into with national broadcasters, would suggest that regardless of the ultimate decision in the High Court, it will have to amend its tender document accordingly. Indeed Mathieu Moreuil who is head of European public policy at the PL, explained that:

"Some clauses might be illegal, but the principle of exclusivity was not called into question. Territorial exclusivity is not dead. We feel confident for the future. Will we have to change contracts? Yes. How we will do it, I do not know."

I did not believe that any European court was going to rule that exclusivity would be, per se, illegal. Almost all vertical distribution agreements entered into in the EU allow for a licensor to allocate exclusive territories, customers or regions to licensees. The CJEU agreed that competition law was not at odds with such exclusive allocation. However it was the PL’s additional contractual restrictions entered into with national broadcasters, which forbid broadcasters to sell the broadcasts outside of their territory, effectively partitioning markets and foreclosing inter-Member State trade, which was contrary to EU competition law.
From a domestic viewing perspective, it appears that a Member State citizen in the UK can subscribe to the authorised Greek broadcaster for live PL matches. Practically, whether this will have a cooling effect on the price UK broadcasters are willing to pay remains uncertain. This is because the likelihood of consumers buying two domestic decoders and subscriptions to view a game (possibly only available in another language) for a similar price for Sky Sports 1-5 may make this avenue rather limited. Many believe the larger price differential is the subscription for commercial broadcasts. Broadcasters may be insulated from such commercial switch-over because at present it appears that Mrs Murphy requires PL authorisation.

In an excellent recently published article, the authors pointed to the practical fact that the impact of the judgment will depend on whether the exclusive PL broadcasters, especially BSkyB and ESPN in the UK, will be happy to pay the large rights sums for “territorial exclusivity without absolute protection.” The PL will have to understand the commercial imperatives of the broadcast purchasers in determining how it may maximise its commercial rights revenues.

Alternatives to the way the current live matches are sold in each Member State territory may include a pan-EU offering of a number of exclusive packaged rights. Such a scenario does pose as many questions as it answers with few, if any, broadcasters having the resource, capability and capacity to serve the whole of the EU market. Any pan-EU tender could provide incumbent broadcasters with the ability to sub-licence particular broadcasts for certain low demand territories. Similarly, it may be possible that the satellite footprint which currently extends across the EU, which allows Mrs Murphy to broadcast the Greek feed, to be narrowed, so that each authorised broadcaster can only link to the satellite that covers their territory. Whether that would be feasible or legal would be another matter. Lastly, the PL may try to build licences based on commentary and production language into its tender documents, so that, for example, a Greek broadcaster would be able to purchase the right to broadcast the game so long as it added only Greek language commentary and graphics, thus restricting the language used in the broadcast.

It may ultimately depend on whether UK broadcasters like Sky or ESPN or new entrants like Al Jazeera are happy with less territorial protection. The PL may decide that all it needs to remove from its tender documents are the prohibitions requiring national authorised broadcasters not to sell to other Member State citizens outside of their allotted territory. Just as Sky considered live football rights to be the “battering ram” for its pay-TV offering back in the early 1990’s, Sky may still be willing to pay large sums for rights to retain its subscriber base. An added reason why Sky may still wish to retain the live rights is because an alternative scenario where the PL starts its own channel may be even more unpalatable.

A Channel for the PL?
There is one alternative option that the PL is no doubt considering which would strike at the very heart of Sky’s business model. If the PL considers that it is not able to extract maximum value from broadcasters for the live and associated PL rights, the PL may consider starting its own channel. This has been mooted before but may shift back into focus due to the more limited ways the PL may be able to auction its rights to maximise revenues. The channel in the UK for example, could be sold on each of the available platforms (Sky, Virgin, Top Up TV, BT Vision etc), just like ESPN, by paying a carriage fee for an allocated platform channel. The Dutch Eredivisie sells its rights in such a cross platform manner.

Some point to the fact that Sky Sports subscribers pay for a whole raft of packaged rights that they may never watch but pay for as part of their monthly subscription (cricket, darts, speedway, powerboat racing, tennis etc)
The PL would be faced with some very large risks, none more so than starting with zero subscribers and no revenue. This could be offset by venture capital money to guarantee each club at least the previous deal’s revenue levels. Put in context however, the overseas non-EU broadcasting deals the PL has entered into would also cushion any initial shortfall. Another large burden would include infrastructure and start up costs though this could be outsourced to established industry companies. The Dutch Eredivisie partnered with Endemol to set up, produce and distribute its channel. Many may argue that there would be a number of competition law concerns with clubs going straight to the downstream market. Similar arguments were raised by the Commission and were set out in some detail with the PL, UEFA and Bundesliga commitment packages in mid 2000’s.7 Such competition law discussions could form the basis of another article, but in summary competition issues could relate to a PL channel charging a higher price because it is in a position of strength. This may not however be any different to the way Sky prices its subscription service at present8. Some point to the fact that Sky Sports subscribers pay for a whole raft of packaged rights that they may never watch but pay for as part of their monthly subscription (cricket, darts, speedway, powerboat racing, tennis etc). The PL could price its channel accordingly because it has the one crucial product that most Sky Sports viewers subscribe for. It could potentially give consumers the choice of a variety of platforms from which to purchase that channel and in time that channel could even become a purchaser of other live football matches.

In the alternative it may be in everyone’s interest for Sky to keep the majority of live UK rights (if they are still sold on a territory by territory basis). It would mean the PL receiving a level of revenue they are happy with and the PL not removing Sky’s battering ram. From a cost-benefit analysis, Sky may ultimately believe it would be significantly cheaper to pay over the market odds for the rights rather than compete downstream with the PL channel on its own platform.

**Conclusion**

The prompt timing of the listing of the High Court QC Leisure hearings for late December 2011 demonstrates the parties are keen to quickly head back to the English courts to receive judgment.9 It is in part understandable for the PL who requires a degree of certainty in order to structure its next EU broadcasting tender procedure to ensure EU law compliance. The opening of the tender process is believed to be imminent.

As they have in the past, the PL will be closely liaising with the European Commission to receive a degree of comfort that an extension or revision of the commitments package that was originally entered into in 2006 will be possible. Whilst the contractual implications of what is permitted in the tender arrangements are debated on by the PL, Mrs Murphy has a real fight on her hands to legitimately broadcast live PL matches in her pub. If PL authorisation is not forthcoming, which appears likely, she will require a commercial licence. The debate for the High Court, or possibly the CJEU, will be whether a Greek commercial licence will suffice. However, with only one and a half years left of the current three year UK PL deal, it may be that at the end of the 2012-13 season, the option for Mrs Murphy to purchase cheap Greek decoder cards is not even available because of the reformatted PL tender process. Presumably the tender process is likely to change more radically if Mrs Murphy is allowed to broadcast games. Less fundamental revisions may be needed if pubs ultimately require consent from PL to show the matches.

With so many potential outcomes still possible in the High Court, the first step is to ascertain how the High Court interprets the CJEU’s answers and which side of the line it comes down on. When the PL gains the certainty of the High Court judgment in tandem with the CJEU’s answers, the PL’s lawyers will structure the new tender accordingly. The options for the PL tender range from only removing the EU infringing contractual clauses to the ‘nuclear’ option of starting its own channel. One of the fascinating elements of the entire case is that should the High Court agree with the copyright elements of the CJEU’s judgment, the PL may be content that at least in the commercial setting, pubs in the UK will be effectively outlawed from broadcasting live PL matches without its consent. In doing so, Mrs Murphy arrives back at square one.
Interestingly in the ITV v TVC judgment on 14/11/11 see [http://www.mlex.com/Attachments/2011-12-05_63357897HCKD7U2T/ITV%20v%20TVC.pdf] a referral has been made to the CJEU regarding what constitutes a further communication to the public in certain, albeit not entirely similar, circumstances.

Any agreement that infringes the Chapter I prohibition is void and cannot be enforced (section 2(4), Competition Act).

'It isn’t all over: The Full impact of the recent FA Premier League case is not yet clear’ Philipp Werner and Christoph Volk, Competition Law Insight 15 November 2011


Indeed, the QC Leisure civil hearing before Kitchin J is expected to reach judgment, if there are not any unforeseen complications, in early 2012. At the time of writing no set date has been set for the Murphy hearing.
Using athletes in advertising – The impact of “Rule 40” and its interpretation on brand owners

BY JAMES WHYMARK, ASSOCIATE SOLICITOR BAKER & MCKENZIE LLP

Introduction
Over this summer, the London Organising Committee for the Olympic and Paralympic Games (“LOCOG”) quietly published a guidance document entitled “Rule 40 - What athletes and agents need to know”. The title of the document belies its potential significance to brand owners and companies operating and advertising during the 2012 Olympic and Paralympic Games. Whilst all indications are that the guidance is relevant only to athletes and their agents, the restrictions under Rule 40 of the International Olympic Committee (“IOC”) charter and the guidance published by LOCOG will in fact have a much wider impact as they appear to increase risks for brand owners using athletes in many forms of advertising. Brand owners therefore need to be conscious of this additional restriction when considering using current Olympic or Paralympic athletes in advertising campaigns.

The background to using athletes in advertisements
Before the publication of this guidance note, the principal restriction placed on brand owners to advertise around the 2012 Olympics or Paralympics was contained in the London Olympic and Paralympic Games Act 2006 (the “2006 Act”). Specifically, under the 2006 Act a third party who was not an official sponsor of the 2012 Games is prevented from making any “association” with the Games. There is very little guidance on what constitutes an “association”. LOCOG naturally place a very wide definition of the term “association” in their guidance documents but until tested through the courts it is a significant grey area.

This has presented brand owners with difficulties - clearly some forms of advertising will not create an association, even if they link to individual aspects that are arguably connected with the Olympic Games (e.g. sports, London, Britain etc). However, it is not clear where the line is drawn between advertisements which associate with a general concept (such as sport) and advertisements which stray into creating an association with the 2012 Games.

One area that caused particular debate when the 2006 Act was passing through parliament and which remains a key question for brand owners is whether using current or previous Olympians or Paralympians in advertising will automatically create an “association” or will be otherwise prohibited, especially where a brand has an existing commercial relationship with an athlete. This question was a key element of the negotiations when the original 2006 Bill was being discussed in the Commons. The London 2012 bid team, as it then was, were also lobbied by athletes and agents to ensure that they could continue to exploit their own image rights around the 2012 Games. Indeed, the explanatory notes to the 2006 Act and the statement by Parliament as to its purpose did not reference any additional prohibition on athletes seeking endorsements.

It was therefore thought that the use Olympians or Paralympians in advertising did not per-se create an association with the London 2012 Games. Provided that it is clear that a brand owner is supporting that individual athlete or conversely that the athlete is endorsing that brand and there is no excessive reference to the 2012 Games or their Olympic links, then it was argued that an association would not be created.

However, this is likely to be dependant to a large extent upon the context within which the athlete’s image is used. LOCOG’s objections to Honda’s recent “Dream Team” campaign which sponsors four athletes and follows their progress gives some indication of the stance that LOCOG is likely to take. The Honda “Dream Team” site did not feature the London 2012 trade mark, Olympic rings or other overtly Olympic brand elements. However, the athletes chosen to be part of Honda’s Dream Team are all likely to compete at the
2012 Games and were pictured in national team clothing against a red, white and blue backdrop with references to gold, silver and bronze throughout the site. This combination was enough for LOCOG to consider the use of the athletes in this manner to constitute an unlawful “association” and approach Honda to change the site.

It is also unclear whether producing an advertising campaign that runs only during the 2012 Games Period (18 July 2012 - 15 August 2012) or is focused only on London at the time the Games are taking place would in itself lead to an association being created. It seems likely that these elements would however be considered cumulatively so that an advert containing an athlete may be more likely to create an association in combination with these other factors.

**Rule 40**

As well as the “association” restrictions contained within the 2006 Act, the IOC Charter sets out the further rules and restrictions placed on the athletes themselves in order for them to compete in the 2012 Games.

Rule 40 of the IOC Charter states that “except as permitted by the IOC Executive Board, no competitor, coach, trainer or official who participates in the Olympic Games may allow his person, name, picture or sports performances to be used for advertising purposes during the Olympic Games”. In general terms, Rule 40 prevents competing athletes (and coaches, trainers and officials) from using their name or image in advertising during the period of the Olympic Games (and under the Paralympic Handbook, the Paralympic Games).

Rule 40 only applies to current competing athletes and only during the Games period itself. Using ex-Olympians or running advertising campaigns featuring Olympians at other times are therefore only restricted under the “association” right contained within the 2006 Act.

The charter, including Rule 40, does not directly apply to brand owners who may have a commercial relationship with the athletes. Until the release of the latest LOCOG guidance note it was thought that the restrictions in Rule 40 were the responsibility of the competing athlete and that equally, any sanctions imposed for breach could only be brought against the athletes themselves. However, LOCOG’s interpretation of the Rule 40 indicates that LOCOG considers brand owners have a separate responsibility to ensure that any athletes they engage comply with these restrictions.

**LOCOG’s guidance on the effect of Rule 40**

LOCOG’s guidelines state that “it is the responsibility of all participants to comply with Rule 40” but that “businesses using participants in their advertising… will want to ensure they are not putting an athlete in breach of Rule 40”. It is on this basis that the guidelines put pressure on businesses engaging athletes during the Games Period to comply with the terms of Rule 40.

The guidelines set out certain forms of advertising which LOCOG consider will not breach Rule 40 and for which they therefore provide “deemed consent”. The guidelines also provide that London 2012 official sponsors may be granted express consent to use athletes in advertising during the Games Period and in some limited circumstances, non-sponsors may also be granted such consent. However, in practice it seems unlikely that non-sponsors will be able to obtain express consent except in some narrow scenarios.

Deemed consent will be provided in circumstances including:

- Using images or references to competing athletes on corporate websites during the Games Period provided that the athletes are not shown on the home page and the website does not expressly refer to or emphasise that the athletes are involved in the 2012 Games.

- Using images or references to competing athletes in product catalogues or corporate brochures provided that such brochures were produced and were widely available before 1 March 2012, does not feature the athlete on the front or rear cover, does not expressly refer to the Games and is not distributed during the Games Period.

- Using images or references to competing athletes on product packaging provided that the products were widely available in the UK before 1 March 2012 and are not reasonably anticipated to be available in shops during the Games Period or are part of a giveaway during the Games Period.

- Using images or references to competing athletes on merchandise relating to an athlete or their club provided that the sponsor’s mark is only incidentally included. This
would mean that, for example, a football club’s replica kit bearing the name of an athlete competing in the Games would be granted deemed consent.

However, LOCOG’s guidance specifically states that non-sponsors wishing to use competing athletes during the Games Period will not be able to do so in paid advertising space (such as online, television and billboard advertising) and that no express consent will be granted for such adverts. Clearly the circumstances where deemed consent will apply are therefore small although, as noted above, Rule 40 only applies during the Games Period and so does not prevent use of athletes in advertising outside this period (although this is still subject to the “association” right).

Enforcement of Rule 40

Whilst these restrictions seem fairly clear, how they will be implemented and enforced in practice is not. As mentioned, the only formal sanction available to LOCOG is against the athletes themselves. If a competing athlete allows their image to be used in advertising during the Games Period, they can face financial penalties or ultimately, disqualification from the 2012 Games. However, top level athletes are paid huge sums for endorsement and sponsorship opportunities. There have been numerous examples of competing athletes flouting Rule 40 in previous Games and receiving little or no official sanctions. One of the iconic images from the Beijing Games was Usain Bolt winning the 100m final and posing with his gold Puma boots (Puma being his personal rather than a Games sponsor). Similarly, Linford Christie was famously interviewed during the 1996 Atlanta Games wearing Puma contact lenses and, whilst the IOC banned him from wearing them whilst competing, he was not prevented from running.

What is equally unclear is how LOCOG’s guidelines will be enforced against brand owners themselves. Obviously, brand owners will need to obtain an agreement with athletes to use their image and this will likely also deal with advertisement during the Games Period. However, Rule 40 does not grant LOCOG the right, per se, to demand that a non-sponsor removes an advertisement which it may consider breaches Rule 40. Provided that an advertisement does not create an “association” under the 2006 Act (which is by no means a clear), the only sanction available is against the athlete. Brand owners at past games have been willing to pay large sums to athletes to carry out “ambush marketing” activities and cover potential financial penalties they may suffer on the basis that the advertising exposure is much more valuable. Linford Christie’s contact lenses were front page news for a week after the initial press conference.

Conclusion

It therefore remains to be seen whether LOCOG takes a stricter line with athletes competing in the 2012 Games and whether they would take the step of issuing the ultimate deterrent by preventing an international top level athlete from competing. It is however difficult to imagine that Usain Bolt, for example, would be prevented from defending his Olympic title because he endorsed a product during the Games.

In any event, brand owners will still need to bear in mind the impact that Rule 40 has on using images and representations of athletes, especially during the Games Period. This will be the case when negotiating endorsements or sponsorship agreements with athletes that may apply before, during and after the Games.

Brand owners who are not official sponsors may consider athlete-based advertising outside of the Games Period or rely on the limited “deemed consents” provided by LOCOG. However, careful consideration should be given to whether activities falling outside of Rule 40 may nevertheless be subject to the restrictions in the 2006 Act and the wide grey-area that the “association” prohibition creates.
Sports Betting – A safe bet for the future

BY JODY MacDONALD, SOLICITOR, COUCHMANS LLP

Introduction
In the last issue of the S&LJ, Simon Gardiner provided a fascinating insight into the history of the relationship between betting and sport, recent developments in the fight against match-fixing and the principles of gambling legislation in the UK. In this article, the various ways that sport and betting interact and some of the common regulatory and legal issues that arise from the array of sports betting products in the marketplace will be examined.

Additionally, the latest developments in the sports betting sector, particularly the emergence of sports betting via social media amid recent reports that Facebook could soon allow real-money betting and gaming applications on its platform in the UK will be considered.

As the sports betting sector continues to grow at an unprecedented rate it is becoming ever more important for those involved in the business of sport to have knowledge of how sport betting products operate and are regulated.

However, the rules and regulations governing the advertising and promotion of betting/gaming products will not be discussed in detail – this is a discrete and complex area in itself.

Why should sport be interested in the betting industry?
Many sports have traditionally been reluctant to engage with the betting industry or acknowledge the extent of the betting that takes place on their competitions. Whilst there is no doubt that serious damage (both reputational and commercial) can be caused to any sport that is unfortunate enough to be affected by a betting scandal it is now widely accepted that a refusal to engage with lawful betting operators does not help (and may well hinder) a sport from being affected by these issues.

IOC President Jacques Rogge recently stressed the need for sports to “collaborate closely with public authorities and the legal gambling industry” in order to address the problem areas of sports betting. Betting will take place on a sport regardless of whether those in charge of that sport approve or not and therefore it is preferable for a sport to engage with the industry on terms that allow it to control the risks whilst also taking advantage of the commercial opportunities offered by sports betting.

These commercial opportunities are hard to ignore. The size of the global sports betting market cannot be measured exactly as at least 50% of the value generated by it currently originates from unregulated/illegal markets but figures of between $350-$400 billion per year are often quoted. To put this into context the mainstream global sports industry is thought to generate “a mere” $300 billion per year. Fuelled by the popularity of live in-match betting, sport betting is the single biggest sector within online gambling1 a market which as recently as 2010 still accounted for just 10% of the global gambling market and therefore has huge scope for growth.

The inevitable growth of sports betting will be further encouraged by the liberalisation of betting markets around the world. Currently only 20 of the world’s 200 most developed countries have legalised/liberated sports betting markets and this excludes some of the biggest economies such as China, India and the US where sports betting is hugely popular but currently takes place in a mostly unregulated/illegal environment.

Advances in digital technology are making it quicker, easier and more socially acceptable to bet on sport. 62% of UK sport fans now engage in “multi-screening”2 (carrying out some form of online activity whilst watching live sport), and this behaviour brings online betting even closer to hand for these fans.
Regulated Activities
Gaming, betting and participating in lotteries are all forms of gambling that are regulated by the Gambling Commission under the Gambling Act 2005 (the “Act”) but identifying when a particular activity constitutes one of these regulated activities and if so which one is not always straightforward.

The general definition of “betting” in the Act is very wide and covers all forms of betting as it is commonly understood including wagers, fixed odds betting, spread betting and pool betting. However, the Act goes on to make some key qualifications and extensions to this definition.

Prize Competitions
Certain competitions that don’t appear to be betting in the classic sense can in fact be regulated as betting under s.11 of the Act. Any competition that involves payment to enter, asks participants to make a guess or prediction and awards prizes for successful guesses/predictions could be a regulated prize competition. Whether it is or not will depend on a complex analysis in each case of:

(i) what participants are being asked to guess about (e.g the outcome of race, competition or other event or whether a statement of past or present fact is or is not true); and

(ii) whether they are required to guess with or without using skill or judgement.

To avoid this analysis many competitions (such as fantasy leagues) have simply removed the requirement on participants to pay to enter the competition and operate on a free-to-play basis. Another commonly used entry format of requiring entrants to purchase a product in order to participate in a competition will not constitute “payment” provided that the price of that product has not been inflated to reflect the benefit of being entered into the competition.

Well known spot-the-ball competitions that require payment to enter (such as those promoted in airports awarding luxury cars as prizes) often operate on the basis that in trying to match their decision on the location of the ball to that of a panel of judges participants are able to use skill and judgement if they choose to, making this a genuine prize competition that is not regulated as betting.

Spread Betting
Spread betting involves an operator making a prediction (e.g. the total number of corners during a football match) and customers betting on whether that prediction is too high or low. The amount a customer stands to win or lose is not fixed but depends on the extent to which he has been right or wrong – crucially, the customer can lose more than his original stake. The financial arrangement underpinning this relationship is known as a contract for differences (or “CFD”) and the activity itself is regulated by the FSA under the Financial Services and Markets Act 2000 (FSMA) and not the Gambling Commission.

Spread betting operators must register with the FSA and comply with a strict regulatory regime particularly in relation to their advertising and promotional activities that can be deemed to be “financial promotions”. The content of financial promotions themselves is also strictly regulated and if a person communicates a financial promotion they will be committing a criminal offence unless a person authorised under s.31 of FSMA has approved the contents of that communication or one of a limited number of exemptions applies.

Any sports property entering a sponsorship/partnership with a spread betting operator (or any organisation regulated by the FSA for that matter) should be aware of this issue. Purely profile raising activities such as use of a name or logo in a title sponsorship is unlikely to cause an issue but other activation of a sponsorship involving the property will need to be carefully considered.
Betting intermediaries
Operators that provide facilities designed to facilitate the making or acceptance of bets between others in the UK, such as betting exchanges and bet brokers are required to hold an operating licence and are regulated by the Gambling Commission.

Some critics of betting exchanges argue they are particularly vulnerable to use by match-fixers as they allow customers to “lay” bets i.e. to bet on something not happening. In their defence betting exchanges point to the fact they have particularly stringent customer identification procedures and have led the way in terms of being the first operators within the betting industry to put memorandums of understanding in place with sports bodies governing the exchange of information. Due to the sheer volume of bets processed by betting exchanges they can provide a “bird’s eye view” of global betting activity that can be invaluable in identifying suspicious betting patterns.

Pool betting
Pool betting is a form of regulated betting that traditionally involves participants paying money into a pool that is held by a promoter who then distributes some or all of the pooled stakes to the winning participant(s) after deducting a commission or fee. Prior to the 2005 Act, only forms of pool betting that gave scope for the exercise of skill were permitted. This is no longer a requirement and therefore there can be overlap between activities that can constitute pool betting and a lottery.

The most common forms of pool betting in the UK are totalisator betting on horse racing (offered under an exclusive licence in the UK by The Tote) and football pools betting. The popularity of pool betting declined somewhat in the UK after the introduction of the National Lottery but has been recovering and the market is set to develop further after the privatisation of the Tote achieved through its sale to Bet Fred in June 2011.

Pool betting is generally considered a “safe” form of betting on sport as it is difficult to unduly influence the large number of matches that are often involved. As a result pool betting is often offered via government owned companies that have monopoly status in countries where other forms of betting are not generally permitted. For example, China has operated a successful pool betting competition on football matches (known confusingly as the “China Soccer Lottery”) since 2001, generating significant revenues that have been used for the development of sport and other good causes.

Lotteries
A competition is likely to be classed as a lottery if participants are required to pay to enter and prizes are distributed wholly by chance (or if more than one process is involved in choosing a winner the first process relies wholly on chance). Lotteries differ from most regulated gambling activities in that they cannot be run for private or financial gain and the minimum participation age is 16 in most cases as opposed to 18.

The National Lottery is regulated by the National Lottery Commission but other forms of lottery do exist and are regulated by the Gambling Commission. Some sports bodies have set up non-commercial society lotteries in order to raise funds. Different licensing conditions apply to Small Society Lotteries and Large Society Lotteries but in both cases there are limitations on the maximum proceeds from one prize draw and the total proceeds in one year, the minimum percentage of gross proceeds that is applied to the purposes of the society each year and ticket information.

Social Sports Betting Games
The worlds of sport and betting continue to be thrown together in new and exciting ways.

Social games are generally played via a social network platform such as Facebook and have a strong element of social interactivity where users are encouraged to share the

In a development that could change the landscape of the betting/gaming market forever, Facebook is now showing signs of being willing to allow real-money betting and gaming to take place on its platform.
game experience with friends. These games usually operate on a “freemium” model meaning they are free to play but users must earn or purchase virtual currency (such as Facebook credits) in order to access premium content, features or virtual products. Half of all people logging into Facebook now do so specifically to play social games and revenues from social games in the US alone are expected to hit $2 billion in 2012.

Facebook currently prohibits applications that involve real-money betting or gaming. However, a host of extremely popular social games have been developed that allow players to engage in gaming and betting “for fun” using virtual currency that cannot be exchanged for real money. Games such as Zynga Poker which has 30 million monthly active users and is said to be worth up to $8 billion have taken Facebook by storm. Social games developers such as Crowdpark have also seen the potential in social betting on sport and now offer realtime betting on sports events for fun in games such as Bet Tycoon. Sports fans around the world already use social media to make predictions and challenge each other on matters of sporting knowledge, converting this behaviour into “virtual” betting is a logical next step.

In a development that could change the landscape of the betting/gaming market forever, Facebook is now showing signs of being willing to allow real-money betting and gaming to take place on its platform. After announcing relaxed restrictions in its advertising guidelines regarding gambling advertising and allowing gambling companies to create free to play apps in August 2011, reports are now circulating that Facebook is planning to open its platform to a limited number of real-money online gambling operators in the UK as soon as the first quarter of 2012.

Facebook will no doubt take great care to ensure that any moves it makes into real-money betting and gaming are made in a way that is compliant with the regulatory environment in each international market. For this reason progress is likely to be slow with a limited number of licences being granted initially to the largest / most sophisticated operators who have experience of doing business within the regulatory constraints of these territories. It will be interesting to see the commercial basis on which Facebook allows real-money betting, at the moment Facebook takes a 30% cut of all the virtual currency purchased in social games on its site.

Combining social media and sports betting has been seen as something of a “holy grail” for sports betting operators in that it provides an opportunity to turn banter between fans into bets and unlocks key youth and female markets. It now seems a step closer to reality and it will be fascinating to see how it develops in the coming months.

**Conclusion**

Much is written, quite rightly, about the threat that irregular betting and match-fixing pose to the integrity of sporting competitions. However, it is important not to view sports betting itself as something negative per se. The legal sports betting sector is a dynamic industry that is continuing to grow at a rapid pace and is set to be an even larger influence within the business of sport in the coming century than it was in the last. Every sport should have a strategy regarding its relationship with sports betting but this strategy should arguably include ways to engage with the industry and take advantage of the huge commercial opportunities presented by it as well as mitigating the potential risks.

The opportunities for sports to engage with fans and to benefit from commercial tie-ups with betting operators, be that through traditional sponsorships or more modern official data licensing arrangements are clear and the relationships formed through engagement with the legal betting industry can also help a sport’s anti-corruption activities.

All the forms of sports betting we have examined in this article operate in a unique and at times complex regulatory environment and this will continue to be the case as advances in technology allow people to bet in new and interesting ways. It is useful for all sports lawyers to maintain a working knowledge of these regulations in preparation for the increasingly inevitable circumstance of coming into contact with the world of sports betting in their working lives.

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1. H2 Gambling Capital 2010, includes fixed odds betting, pool/pari mutuel betting and betting via betting exchanges but excludes spread betting.
2. Research carried out by Octagon (published in SportCal O2.11.11)
3. S.25 FSMA.
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Since 1996 he is also the Director of Regulatory and Legal Affairs to the national governing body for British Swimming, in which capacity he advises on a broad range of commercial, disciplinary and regulatory issues with both a national and international dimension, with a particular interest in doping control and child protection.

He is a member of the Board of the British Association for Sport and the Law, and sits on the Editorial Board of World Sports Law Report as well as the Advisory Board of The International Sports law Journal. He is a contributor to “Drugs and Doping in Sport” (Cavendish Publishing, 2001) and “Sport: Law and Practice” (Tottel Publishing, 2008)

To start on a general note, what is your view on the state of sports governance in this country today?

I have to say I do not subscribe to the media/populist conception of widespread maladministration or poor governance within sport. In fact, I think that sport has made great strides over the past decade or two to embrace principles of good corporate governance. By a process of evolution admittedly not revolution many sports have transformed their governance structures from the traditional Victorian model to a more modern business model whilst still respecting and encapsulating the special characteristics of sports organisation, particularly the important interface between professional staff and volunteers. The problem is of course that almost any aspect of the operations of certain sports bodies be it the FA or the RFU are so much in the public eye that these organisations are subjected to a level of detailed (often unfair and invasive) scrutiny that certainly is not something that features in the boardrooms even of our most prominent blue chip companies. So I would say sport is in quite a good shape, obviously there are no grounds for complacency and more could be done I am sure but overall the standard of governance is significantly better than that which I recall from my first involvement with sports governing bodies back in the early 1990s.

It is certainly true that there is a distinction to be drawn between “occasional” and “systemic” failure. However, would you not say that there are certain governing bodies which at least fall somewhere between these two categories? I am thinking more particularly of the way in which the organs you mention - the Rugby Football Union (RFU) and the Football Association (FA) – have handled some of their more contentious issues over the years…

For these two bodies, I would reinforce the point I made earlier, i.e. that the intense media scrutiny to which they are subjected and the way in which their actions are presented to
the world at large tend to fuel that perception of maladministration. Being familiar with the legal and governance teams of both these organisations, with whom we have a healthy and ongoing dialogue on a range of issues, I am quite satisfied that there is no systemic failure at the heart of either. However, we must remember that there is a “political” dimension to their activity and that there are interest groups within these organisations which occasionally are misguided in the way they put their heads above the parapet in addressing certain issues. This can expose that body to criticism, but then this concerns not the governance of the body, but the individuals in question. Particularly in football and rugby, the relevant stakeholders have a significant financial interest in those sports, so you can understand, perhaps, why they are so passionate and committed to being at the heart of the decision-making processes. There may be a need for more independence, and the RFU and FA on the one hand, the Government on the other, have recognised the value of the impetus for stakeholder independence. More particularly the FA has shown, in its latest recruitment exercise, a commitment towards achieving key independence at the highest level of their structures of governance. Indeed, there is a momentum towards this goal within all sports generally, but the media do not tend to focus their attention on such developments.

So you would not subscribe to the populist mantra, frequently encountered in the media, that these organs are populated by “unaccountable bureaucrats” who are “totally cut off from the grass roots”?
In most sporting federations, there is a delicate balance to be struck between the professional level and the volunteer, grassroots sector, and there is a constant need to ensure that both these groups are appropriately represented. Some governing bodies find this easier to achieve than others. In sports such as football, with the huge amounts of money involved, there is perhaps a perception on the part of the grass roots that the top, professional end may be over-represented. On the other hand, the professional level of the sport may experience a sense of frustration at failing to secure adequate progress because they are being held back by the grass roots. Such tensions are inherent in sporting federations that have a professional elite and a grass roots involvement. Essentially, it is for each organisation itself to tackle that conundrum and reach the appropriate balance point. The latter obviously needs to be kept under review over time; however, external, one-size-fits-all solutions, be they imposed by the Government, UK Sport or by any other authority, are unlikely to find favour or to be fit for purpose. It is for each sport to take the basic core principles of governance and to adapt them to their own needs.

But do you not think that tighter governmental control might be appropriate for certain aspects of sporting governance? I am thinking more particularly of the federations’ disciplinary procedures. Might the requirements of the Human Rights Act (HRA) 1998 not demand, at a certain point, a greater degree of uniformity as between the various disciplinary procedures and their outcomes?
To be honest, most of the sports we were referring to earlier have very sophisticated disciplinary processes. There may be some practical differences in the way in which they manage these processes; fundamentally, however, they all comply with the principles of natural justice – and in this context, human rights and natural justice can, in practical terms, fairly be said to be interchangeable. That is definitely one of the better aspects of sports governance in its present form.

As to greater governmental control, I would ask the question: to what end? If the object is to raise the game and the standards of governance, such intervention may turn out to be welcome. Indeed, I have long held the view that there are some areas in which greater governmental intervention is to be applauded. Let us take the example of child protection (to which we will return later). I have long believed that there are severe limits to the ability of a sport to deal properly with the full range of child protection concerns. The contract with the membership governs the basis of the federation’s jurisdiction; therefore they can encounter potential difficulties in dealing with non-members and with the conduct of those who may have a connection with the sport but are not actually part of
it. I believe that I speak on behalf of most sporting bodies where I say that in such a sensitive area as child protection, to require sports bodies to develop their own disciplinary processes without necessarily having the statutory rights to information-sharing with the police, children’s services and other agencies, is actually requiring them to tackle a problem that is one for society at large which merely manifests itself in part in a sporting context. The relevant issues are far too important for governing bodies to be expected to act as prosecutor of last resort. This is, therefore, one area which admits of greater government involvement. But in terms of deciding who sits on what board, or what decisions are made as regards bidding for certain international events – this has nothing to do with governments. At worst, that can amount to a populist intrusion by government in response to concerns about governing bodies expressed in the media and elsewhere which may well be ill-informed. Much of the criticism levelled at the FA and RFU, to which you referred at the start, is based on misinformation – and even a lack of any information which is privy only to those involved in the decision-making process – but that does not make very good copy, does it? The sporting columns of the tabloid press are not necessarily the best forum for informed debate on such esoteric topics!

Criticism has frequently been levelled at the lack of co-ordination and co-operation between the various sporting federations. Do you share that criticism, and have you any suggestions as to how this could be improved?

I am not sure I do accept such a broad criticism although doubtless in certain areas there may well be a lack of co-ordination and co-operation. What I would accept is that partly due to the historical conventions and constitutions of sports federations change often seems painfully slow in the making and to the outside observers the processes employed could be regarded as prevarication and/or reluctance to move forward. I have certainly found relationships and information sharing between sports federations in this country to be quite excellent and a collegiate community spirit is very much encouraged by funding agencies such as UK Sport and Sport England. One practical step which has resulted in greater co-ordination and co-operation between sporting federations is the creation of central hubs, of which perhaps SportPark at Loughborough is the most prominent example. Here a number of sports federations co-exist, sharing office and other common resources in a University setting. The mixture of a number of sports and arguably the most sport-focused University in this country (if not indeed the world) has given rise to some really valuable relationship building and some synergies that have benefited all the organisations concerned.

Do you consider that there is a sufficient degree of legal awareness amongst the administrators of our top sporting bodies? I am thinking more particularly of the contractual implications. Did it not, for example, occur to the top officials of the FA that the vast salary of the England football manager might give rise to legal issues if the performance of the manager concerned proved to be below par, but his dismissal is out of the question because the contractual fall-out would be that the individual concerned is “too expensive to sack”?

We should bear in mind that organisations such as the FA have access to a highly professional and competent team of lawyers. I am absolutely convinced that there was no lack of understanding of the various contractual issues relating to termination of employment, etc., among the organisation’s legal team. In a highly competitive environment, the terms on which the very best talent is available are favourable to the individual concerned. We are all familiar with a situation whereby sizeable pay-offs are the result of a decision to “change horses”. So I believe that it is the reality of the market place, rather than any lack of legal knowledge, which plays a part in this context.
The current climate of economic and fiscal austerity is likely to have an impact on Government funding of sport in general, and sporting federations in particular. How should sport prepare for this eventuality?

I think this is a complete no-brainer. Sport has to consider a future in which there will be significantly reduced government funding. Whilst indications are that the Lottery element of financing may well be secure there will no doubt be increasing pressures on all aspects of present funding sources and as such sport needs to consider its own revenue streams and cost structures to ensure sustainable finance.

Indeed sustainable finance was identified back in 2009 as one of the key elements of the British Swimming Strategic Vision moving forward to 2020, and we have set ourselves some very challenging targets to hopefully ensure that we can continue the same level of support to our clubs and athletes even in the face of reduced state funding.

Sport does have a broader role to play in pursuit of broader Government agendas, be it health or social inclusion. What sport has to recognise however is that it is not a “given” that monies can be secured from these sources, sport has to demonstrate genuine collaborative working with Government and other agencies and, most importantly, be able to deliver on agreed targets.

Let me press you on this issue of revenue streams, which can obviously take multiple forms. On the one hand, one could increase fees for members – but then they themselves may be subject to similar budgetary restrictions. On the other hand, one could go down the commercial road, in terms of sponsorship, merchandising, etc. Is there not a danger that particularly the latter could affect the integrity of the sport?

You have indeed identified a dilemma facing sport in general. Sporting federations hold a very privileged position. One could regard them in a certain sense as the ultimate monopoly – as the regulator of a particular sport they are uniquely placed to set the rules, and therefore have to be very careful, in the light of the relevant case law, particularly that of the European Court of Justice, to ensure that the proper checks and balances are in place and the two roles are not confused. They have to be careful not to use their privileged position to secure an advantage in the marketplace. However, I am sure we all want the support with which the governing bodies provide their athletes to remain at the levels which they have enjoyed because of the national lottery and other Government initiatives over the past ten years. The alternative is actually to start unwinding these systems and provide less support. British Swimming does not subscribe to this – we want to maintain the same level of support that we have enjoyed up to this point, whilst recognising that the taxpayer simply cannot be expected to pay the amounts required in the current economic climate. So pursuing independent revenue streams is most important, and you have highlighted some of those available – the membership, merchandising, sponsorship, etc.

However, I think that there is another stream which could be tapped by sporting federations, and that is to add value as a key stakeholder within this particular industry to provide a range of services such as consultancy, accreditation, and other services which the governing body may provide, not so much by dint of its monopoly position, but because of its skills and experience and which the market is actually crying out for. I can only speak with the benefit of my experience with British Swimming, but operators such as private health clubs, commercial pool operators would welcome the opportunity to engage with the governing body in order to raise the standard, to set the parameters for training, and to ensure that there are a sufficient number of trained swimming teachers to meet the demand, which is growing. It represents a fantastic opportunity for employment as well. So the governing bodies must really “think outside the box” of their traditional roles and be prepared to move into the commercial field. However, they must do so with caution, recognising that they are in a privileged position, and they should not confuse their roles, and in any way be seen to be distorting competition within their sector.
But is there not the danger that, as competition for commercial opportunities of the type you describe increases, so does the danger that the sport in question starts to compromise its integrity?

That is a very important point. Ultimately, the sporting bodies must remember that they are non-profit making organisations. We at British Swimming, now that we have ventured into the field of commercial activity, have redefined ourselves as being a “more-than-for-profit” organisation, in the sense that we are actively seeking to increase revenues, but the latter will be redistributed within the sport. So there will be no stockpiling of money for the benefit of any shareholder or other vested interest – the monies thus earned are used and reinvested to assist development. The efforts invested in increasing revenue must start from a credible basis of integrity. There is no point, as a sporting federation, to involve oneself in myriad activities if this will compromise its role as a responsible governing body or undermine public perception of its integrity. The reputation of a governing body is extremely important, so one has to proceed with a great deal of caution and sense of public perception.

In relation to sponsorship, etc., from the betting industry, such vigilance is obviously highly important. I have no direct involvement in the regulation of betting involvement in sport – other than in relation to our betting and integrity code – but I must say that we have in this country a very well-regulated betting industry in this country. In addition, the betting operators themselves – in particular Betfair – are highly proactive in drawing the attention of the world of sport at large to the dangers of undermining sporting integrity. It is simply not in the interests of the betting industry for there to be any suspicion of match-fixing or spot-betting fakery, because that in turn affects their customer base. Thus any rush of betting activity on, for example, the number of no-balls to be bowled in an over must alert any betting operator to the danger that this was inspired by inside knowledge – and therefore very suspicious.

Has British Swimming ever been involved in any serious court litigation during your period in office?

Very early in my career as in-house Legal Director the Association was involved in a case that ultimately reached the Court of Appeal. This case was particularly close to my heart as it centred about the construction of an agency contract which I had prepared on behalf on behalf of the Association whilst a lawyer in private practice. Fortunately the agent’s claim for damages for wrongful termination of a contract was ultimately unsuccessful by unanimous ruling in the Court of Appeal and I do recall skipping out of RCJ straight over the road on the Strand into the George for a particularly welcome pint (or two)…

Perhaps the most challenging feature of this litigation was the fact that it focused on a contract which I had prepared and whilst I was in the courtroom during all phases of the case the parole evidence rule of course inhibited the Court from looking to the draftsman to explain the particular intent of the words on the page. But when faced with contentions of the opposing barrister it is very difficult to remain impassive throughout the process!

It is interesting that this litigation concerned the activity of sporting agents, which has become a highly topical issue. What is your view of the present attempts being made to exercise some controls over the activities of agents – both at the national and at the international level?

There seem to be a number of swings and roundabouts on this particular question. On the one hand, the FA appear to have a highly sophisticated set of rules governing the activity of agents, whereas world governing body FIFA seem to have gone somewhat cold as regards their own engagement with the regulation of agents – for a variety of reasons. It is no secret that a good number of football-related transactions are being conducted by agents, and that obviously gives rise to a variety of concerns. Football agency is a particularly high-profile issue, and I can understand perfectly well why the European institutions are anxious to ensure adequate standards of governance.
I would now like to bring into focus your long-standing association with British Swimming and the issue of child protection.

(a) Does swimming as a sport require any special measures and approach as distinct from other sports?
I think back in the early days, by which I mean the 1990s when sport (perhaps particularly swimming) and child abuse came to particular public attention, there was a misconception that sports like swimming were particularly vulnerable to abusers due to the fact that young children took part in a state of semi-undress. I rather think this missed the point: the reason why sports like swimming and gymnastics have encountered the spectre of child abuse is perhaps more aligned to the demographic of the sports when compared to some others. We are dealing with a particular younger age of participant with many children taking up sport within clubs at aged seven/eight and continuing through their mid or late teens. Any sport that does have a predominantly young participant base must recognise its responsibility (in conjunction with other agencies) to ensure the very best standards of child safeguarding are maintained. This is much more about vigilance and common sense procedures than anything else.

(b) How has the position in this regard evolved over the past few decades?
There has been significant evolution over the years. Back in the early days once the spectre of child abuse had been raised we encountered a number of often quite historic cases of abuse drawn to our attention by, for instance, people in their 20s or 30s speaking opening perhaps for the first time of their experiences as young children. Gradually over time the focus has shifted to other forms of alleged “abuse” (or perhaps inappropriate practice would be a better term) and I think it is fair to say that the majority of the cases that we deal with under our safeguarding procedures now relate to inappropriate coaching methodology, bullying or other forms of emotional abuse, although from time to time we do of course encounter more serious cases of physical or sexual abuse. But I feel confident that our processes and even more importantly our relationships with police forces throughout the country are so much stronger, being based upon years of collaborative working, and we have the systems in place to confront various types of problem in an appropriate and proportionate manner.

(c) Are the current safeguards adequate?
I believe there is widespread good practice within sport very much encouraged by the Child Protection in Sport Unit who have done an excellent job in raising awareness across the sports industry and providing guidance and mentoring to raise standards. This work obviously continues and what safeguards are adequate will continue to be a question for careful scrutiny.
I have to say that I am disappointed with the Coalition Government’s stance with regard to the future of the Vetting and Barring Scheme and what I see as a retrograde step with regard to Criminal Record Bureau checks which will restrict the ability of sports federations to access important information individuals wishing to take part in their sports. We do however continue a dialogue through the agency of CPSU and the Sport and Recreation Alliance with the Government and we will continue to make our case that sport faces particular changes in this area due to the demographic of its participants and the fundamental right and expectation of every parent in this country to ensure that their children are kept safe when they are involved in enjoying their chosen sport.
(d) So you are broadly in favour of the current legislation on this issue, as well as the way in which it operates. However, the criticism has been made that the CRB checks are acting as a deterrent to those who would otherwise gladly volunteer their services for such activities as refereeing and coach youngsters. Has perhaps the pendulum swung too far the other way?

Certainly I regard CRB checks as part of the armoury available to organisations employing people who work with youngsters. However, it is not in my view the most important part. Far more significant are individual references from people with previous knowledge of the individual in question. They are much more likely to give rise to concerns that can be acted upon than is the case with CRB searches. The reason for this is that there can be a whole set of behaviours emerging from a reference that can fall short of interesting the police or a relevant agency, yet affect the individual’s suitability for that particular position. Denying the various governing bodies the present level of access to that information is a retrograde step. As to the overly bureaucratic nature of CRB checks – sometimes I have the impression that people tend to over-egg that particular pudding. In the case of volunteers, these checks are available free of charge and, yes, there is a form to be completed, but I would suggest that this is a relatively minor intrusion on anyone’s liberty.

Slightly more annoying is the discouragement of greater portability of CRB certificates, and the fact that an individual has to submit separate forms to different organisations – and if they are in paid employment, a fee is payable every time. As long as there are adequate checks and balances, I am a fan of portability. Provided one can check the date of the previous certificate submitted to an organisation, and have a direct dialogue with the organisation that received the earlier certificate, to satisfy yourself that there is nothing else which is not on the face of the certificate that could give rise to concern, that would be a welcome move and go some way towards removing that perception of bureaucracy and disincentive that you refer to.

(e) In addition to issues of bureaucracy, the concern is often expressed that the CRB checks are yet another manifestation of the nanny state. Is there any evidence that child abuse in sporting circles is more prevalent in countries where child protection is less stringently regulated?

I am a firm believer in the dictum “the more you look, the more you find”. I simply cannot give any credence to countries and organisations that claim to have no problems whatsoever with such issues as doping, child abuse and sporting integrity if they do not have a comprehensive programme to investigate and deal with reported concerns. It is those organisations and countries that do have sophisticated processes who, by that very fact, uncover more instances of malpractice in the area under their jurisdiction – because by looking for more, you find more.

(f) Is this also an area in which improved co-ordination and co-operation between the sporting federations is required?

There has been manifestly improved co-ordination and co-operation between sporting federations. I think in this area as indeed with other areas those sports who have first encountered a problem (which with regard to child protection is arguably swimming) have been very happy to share their experiences and learning with other agencies. We published a document “In At The Deep End” some years ago which contained anonymised examples drawn from our case files in order to raise awareness and to assist in development of good practice both within and outwith swimming. We are looking at re-visiting this subject ten years on and hope to be in a position to produce an updated survey which may prove a very interesting basis for comparison.

The overly bureaucratic nature of CRB checks - sometimes I have the impression that people tend to over-egg that particular pudding.
In some respects swimming does not quite have the global financial muscle of, say, football and accordingly is not perhaps subject to the same level of interventions from the European institutions or national governments which does assist in its autonomy and ability to operate efficiently.

British Swimming currently operates a Betting and Integrity Policy. Could you tell us a little more about this?
Continuing in the theme of co-ordination and co-operation, we certainly did not re-invent the wheel on this one but we were very pleased to be able to follow in the footsteps of other organisations such as rugby and football who had developed policies in this area before us. We have modelled our own procedures upon those adopted by other organisations as of course there are common themes which is prohibition upon placing bets on events in which a competitor is taking part and, arguably most importantly, reporting any inappropriate approaches made by third parties.

Are the current safeguards against betting-induced corruption adequate in sport generally?
Again I think there has been some very sensible evolution of policy and practice in this area as with child protection and doping control before it. I think that the combination of governing body regulation, relationships with betting operators and the impact of the criminal law with the Gambling Act provides a comprehensive and robust response. I think the way in which sporting sanctions and the criminal law, for instance, have impacted in the recent cricket cases shows the value of joined up thinking and action with sporting sanctions playing a very important part of providing an effective sanctioning regime. What is most important is that no sport is complacent as, even though at the present time my understanding from discussions with betting operators is that there is not an active market in betting on outcomes in swimming competitions, nonetheless the scourge of spot fixing is universally applicable to any sporting encounter and I am pleased to note that those involved in the organisation of the Olympics are very much alive to the damage to the reputation of sport at large if there were to be a betting related scandal at the London Games.

Particularly cricket should be singled out for significant praise in the way it has tackled this problem by proceeding with their disciplinary processes working in harmony with the prosecuting authorities who dealt with matters from a criminal law perspective. A combination of police involvement and of sporting regulatory involvement is the key to tackling such issues, and the way cricket has handled this is almost an exemplar of good practice. As for swimming, this is something which we do keep a watchful eye on. As I said earlier, I am not aware of any active market in the betting of outcomes here, or of any spot betting, but we are not complacent about this and are fully aware that swimming might be as vulnerable as any other sport. This is why we were very keen to follow good practice of other governing bodies and put in place an appropriate code. Indeed, our athletes were very supportive of this initiative, and we work closely with them in elaborating these regulations.

On a more international note, does FINA operate effectively and efficiently, in your view?
Yes most certainly, but then I would say that wouldn’t I! British Swimming has always enjoyed extremely good relations with the world governing body and we have found FINA very open and amenable to sensible and constructive suggestions and this has been a prominent feature of the development of governance, doping control and other rules over the years. Of course, in some respects swimming does not quite have the global financial muscle of, say, football and accordingly is not perhaps subject to the same level of interventions from the European institutions or national governments which does assist in its autonomy and ability to operate efficiently. I like to think that at least to a small extent the involvement of key British representatives on various FINA committees has assisted in that process.
FINA and FIFA may be separated by only one letter, but in other respects the differences are considerable. The latter has recently been involved in corruption scandals, and indeed a number of its officials have been disciplined as a result. Is it not inevitable that an organisation that presides over such a multi-million pound enterprise as international football will always be vulnerable to corruption?

I do not believe that corruption is something that is endemic in world sport. It is true that FIFA has been in the spotlight in this respect, although I do not have first-hand information on the subject – I can only proceed on the information available to anyone else. I am sure that the football authorities across the world recognise the need to ensure that their processes command confidence, and that if prominent individuals are alleged to have taken money or other inappropriate inducements, effective processes must be in place to deal with such persons. I am wary of kneejerk reactions which hold that all such organisations are subject to systemic corruption – what is needed is due process to deal with cases of inappropriate behaviour in order to give people confidence in the sport concerned. If such confidence becomes undermined because of the uncertainty as to the probity of the sport, people will simply move their entertainment elsewhere!

Still on the subject of FINA, what are your views on the Great Swimwear Testing controversy?

I think FINA has been unfairly maligned for its handling of the swimwear testing controversy. Whilst it could be argued that FINA was initially slow in recognising and responding to an evolving situation regarding non-textile swimwear the issue was firmly on the radar during the World Championships in 2009 and FINA did then develop a comprehensive two-stage plan to seek to resolve the situation which ultimately, and ironically, led to the banning of non-textile swimwear and a return to some would describe as the halcyon days of the old-fashioned “Speedos”! What of course has to be recognised is that FINA were placed in a situation where there were a number of key stakeholders with disparate interests and aspirations (be it individual sports federations, athletes and manufacturers) and so plotting a sensible course that took account of the legitimate interests of these parties, and minimise the prospects of FINA becoming embroiled in unseemly and expensive litigation, was never going to be easy. I think overall FINA did a good job and I feel certain that lessons were learned and the sport feels in a stronger position then was the case prior to the 2009 controversy.

Mr. Gray, thank you for a very extensive and authoritative interview.
Corruption in cricket: Using the law to cull the crooks from the gentleman’s game

BY TIM ROSS, LAW MASTERS STUDENT, UNIVERSITY OF MELBOURNE

This paper seeks to explore how interested parties are addressing the real and pressing threat which corruption poses to the game of cricket. It examines the situations which have arisen damaging the reputation of the game, and describes how these have been handled by the International Cricket Council, the national federations and other entities. The principal objective is to analyse how law (using the word broadly, to include private regulations introduced under contract law) has been utilised to reduce the scope for manipulation of games and where necessary to punish those involved in the practice of fixing. The paper outlines jurisprudence in this area and aims to set out the appropriate approach, mindset and regulatory framework for the future.

The gentleman’s game
Many will say that cricket has never ever been a gentleman’s game. It is true that the game has not suffered from a shortage of controversy, scandal and characters of a devious disposition. There have inter alia been scandals pertaining to ‘Bodyline’ bowling, other hostile and dangerous bowling, underarm bowling, ‘chucking’, batsmen not walking when they know they’re out, dissent at umpiring decisions, World Series cricket and other disputes in relation to remuneration, tours to Apartheid South Africa, slow over rates and ‘sledging’ ¹. Taking such episodes into account, a notion of cricket’s erstwhile nobility and innocence has to be seen as patently flawed.

However a thoughtful person needs to look past these examples and see such complications and differences as being an inevitable part of any significant, and for a long time now international, activity. Strong minded individuals (and their respective cultures) clash, tempers can be tested on and off the field and yes, moral standards may falter. Through all of this though, the essence at the heart of the game persists, with the majority of participants and officials appearing to faithfully observe traditions and mores, with respect for the welfare of the game, opponents and a loyal, adoring public.

In 2000 Marylebone Cricket Club (which has retained responsibility for the game’s Laws) codified the ‘Spirit of Cricket’, introducing it as a pre-amb to the Laws of Cricket. ² This confirms the continuing importance to the game of upstanding, gentlemanly behaviour; it is so crucial that it can only make sense to have a formal reference point.

Match/spot fixing
Cricket has always been inextricably linked with gambling. Sir William Draper, the Duke of Dorset and their acquaintances, who initially drafted the Laws of Cricket in 1774, reportedly also attempted to control betting on the sport, which was at the time ‘prodigious’. ³ During the 19th century, illegal bookmakers flocked to the streets of St John’s Wood, where Lord’s Cricket Ground is still situated. ⁴

It is now possible to watch cricket on television and bet on it, almost every day of the year. ⁵ The popularity of the game has continued to rise and so has the associated betting. ⁶ After India won the World Cup in 1983, live telecasts to the subcontinent commenced on a regular basis and the illegal gambling markets started to develop, with ever increasing sophistication. ⁷ Now illegal betting is worldwide ⁸ and reportedly the amount placed illegitimately on just a single one day international match between India and Pakistan might be circa US$500 million.⁹

The greatest threat to cricket’s integrity is that of ‘match fixing’, together with what has become known as ‘spot fixing’.¹⁰
A definition of match fixing is ‘deciding the outcome of a match before it is played and then playing oneself or having others play below one’s/their ability to influence the outcome to be in accordance with the pre-decided outcome. Match fixing is done primarily for pecuniary gain. [with betting markets used to achieve this].

There are many aspects of a match which can be bet upon though, not just the result. It is possible for manipulation of a minor contingency of a match to have little or no effect on the outcome of the game, but for financial gains to still be made from betting on it. The term ‘spot fixing’ has been used lately for this type of interference.

There have consistently been rumours and speculation regarding this area but this paper nominates three astounding key moments which have shocked modern cricket devotees in relatively recent times.

The first came when details were published of a report by Australian players Shane Warne and Tim May that in 1994 the captain of the Pakistan team at the time, Salim Malik had made an approach offering money to Warne and May in exchange for bowling poorly in a test match. Subsequent investigations revealed a pattern of suspicious behaviour involving a number of Pakistan players and questionable characters who appeared to fit the description of illegal bookmakers and/or gamblers.

The second was in April 2000, when the then South African captain Wessel ‘Hansie’ Cronje confessed to close associations with bookmakers, to accepting payments from these parties and to manipulating matches in return. He even put a proposal to the entire South Africa team that they should lose a match for a substantial amount of money (the fact that they seriously contemplated this offer during three separate team meetings is mind boggling). The New Delhi Police had uncovered recordings of telephone conversations between Cronje and a bookmaker where games involving South Africa were discussed. Cronje confirmed that Salim Malik was also closely connected with the same network of bookmakers and additionally implicated the captain of India at the time, Mohammad Azharuddin. Explorations by the Indian Central Bureau of Investigation (CBI) which followed led to insinuations about numerous players of various nationalities. Corruption was (at least allegedly) rife in international cricket.

In 2010 the game’s integrity and reputation appeared to have been largely recovered, the International Cricket Council having taken robust, decisive actions; the sport seemed to be relatively healthy (although there were some warnings about being complacent). Then the third landmark event arrived. On 29 August 2010 the British tabloid newspaper, the News of the World, published an article. This story alleged that during the Test match at Lord’s against England, which was in progress, the Pakistan fast bowlers Mohammad Asif, and Mohammad Amir, on instruction from their captain Salman Butt, deliberately bowled no balls at specific points in the game, in exchange for financial reward.

During the 2011 World Cup spot fixing was highly topical and there was a climate of paranoia. Sri Lanka lost an early, closely fought game and the country’s media focussed on the failures of two senior batsmen, questioning whether these may have been deliberate. Australia made a grinding start to its innings against a lowly rated Zimbabwe team and conjecture about a potential investigation followed. Adopting this type of mindset, it was impossible to view any course of play as being indubitably legitimate. As incidents such as no balls and short periods of slow batting are often of minor impact to a match’s result, it makes spot fixing extremely difficult to detect. Former Sri Lanka player Hashan Tillakaratne even questioned the approach by his country to the tournament final and said that match fixing had been ‘rife in Sri Lankan cricket since 1992’.

The key tenet of sport is trying to win; this is what makes fixing so reprehensible and far worse than the use of performance enhancing drugs (in this case, the object is still to win). It taints and changes the game. Sports can die as a result of a loss of faith in their integrity; an example is professional rowing which enjoyed a considerably higher profile in the past but popularity waned following
speculation about the legitimacy of results.30 Soccer leagues in Asia have been decimated, with the public abstaining from patronising them because people now understand that a significant proportion of results are pre-arranged.31 It is also not in the game’s interests for it to be associated in any way with illegal bookmakers, given that these are generally reported to be organised by violent Mafioso types32 who use the markets for money laundering and also indulge in drug trafficking, amongst other activities.33

Introduction to the International Cricket Council
This is the global body which supervises and regulates all forms of cricket. The Imperial Cricket Conference was established in 1909 to govern international matches involving England, Australia and South Africa34. In 1997 the International Cricket Council (the change to the present nomenclature occurred in 1989) became an incorporated body with a President.35 The Council assigns an appointment to a member nation, who nominates an individual to serve for three years.36 The board consists of representatives from all the full (Test playing) members, as well as from three of the Associates.37 There are several departments which report to the board: Commercial, Cricket Operations, Development, Human Resources & Administration, Legal, Media & Communications, Member Services, and the Anti Corruption and Security Unit (ACSU). The ICC is currently based in Dubai and incorporated in the British Virgin Islands.38

Discipline
Contract law is the basis of disciplinary actions in sport. Individuals consent, through signing contracts, to being controlled by private governing bodies. If athletes wish to take part in the competitions organised by these parties, they need to adhere with set regulations.39 When sports professionals commit offences under Codes of Conduct promulgated by private governing bodies, they are effectively breaching their contracts.40 International cricketers who sign agreements with their respective national federations agree to be bound by all of the applicable terms and conditions, including not just the rules and regulations specific to that jurisdiction but also those applied by the ICC.41 It follows logically that if a member nation does not agree that its employees will comply with the ICC Codes, it risks being expelled.

Examples of past disciplinary proceedings
Erstwhile instances of corruption allegations appear to have been handled in an ad hoc manner with little structure.

The Pakistan government commissioned an official inquiry in relation to the accusations against Malik, presided over by Justice Qayyum who was nominated by the Chief Justice of the Lahore High Court; this did not begin until October 1998. The government appointed the Commission under the Commission of Inquiry Act 1956. The judge summoned numerous persons to appear before the Inquiry and also examined a range of evidence applying rules of natural justice.

Its findings were released in May 2000 and recommended life bans for Malik and another player Ata-ur-Rehman, and the removal from the captaincy of Wasim Akram. Some of the recommendations, for example ‘that Pakistani cricketers should declare their assets at the time they start their career and annually submit their asset forms to the Pakistan Cricket Board’42 and ‘that a permanent Review Committee should be formed to look into inter alia allegations of the match fixing in the future’, in the report may not have been implemented.43 In South Africa, the United Cricket Board (UCBSA) conducted disciplinary hearings for two players Herschelle Gibbs and Henry Williams addressing admissions that they accepted money passed on by Cronje and that they agreed to follow instructions from Cronje to deliberately perform poorly (neither player carried out their promises).44 UCBSA banned them both from international cricket for 6 months.45 In relation to Cronje, UCBSA elected not to renew his contract, announcing that he was banned for life from any activities linked to the Board;46 a full constitutional inquiry followed.

The CBI in India published a report in November 2000, which led to the Board for Control of Cricket in India (BCCI) imposing life bans on Azharuddin and another player, Ajay Sharma, plus five year suspensions on players Manoj Prabhakar, Ajay Jadeja and a medical staff member Dr Ali Irani.47

Before 2011 there had been suspensions of two players for committing corruption related offences under the ICC Code of Conduct. Maurice Oдумbe of Kenya had allegedly been in contact with and received payments from a bookmaker and was banned for five years by the Kenyan Cricket Association, in conjunction with the ICC.48 Similarly West Indies player
Marlon Samuels received a two year sentence from a West Indies Cricket Board Disciplinary Panel for breaching provision C4 of the ICC Code of Conduct Regulations, by passing match related information to a person who subsequently bet on that match. The ICC Code of Conduct Commission conducted an inquiry and upheld the ban, finding that the punishment and process were appropriate. 49

The ICC Anti-Corruption Code for Players and Player Support Personnel
ICC now has an Anti-Corruption Code, which came into force on 6 October 2009. 50 It states that ‘all players and player support personnel are automatically bound by and required to comply with all of the provisions of the Anti-Corruption Code’.

A number of examples of conduct which constitute offences are set out in Article 2 under the headings: ‘Corruption’ (acts of fixing, contriving and improper influence), ‘Betting’ (no player is permitted to bet on any aspect of an international match and may not ensure the occurrence of an incident which he or she knows is the subject of a bet), ‘Misuse of Inside Information’ (which is defined as ‘any information relating to any international match … that a player or player support personnel possesses by virtue of his/her position within the sport’) and ‘General’ (which includes accepting questionable gifts and failing to make appropriate disclosures or co-operate with investigations). 51

Cricket Australia Code of Behaviour
Cricket Australia has its own Code of Behaviour for players, which contains provisions in relation to gambling and associations with bookmakers. Article 9 of the ICC Anti-Corruption Code covers the recognition of decisions. It is a ‘condition of membership of the ICC that all national cricket federations shall comply with, recognise and take all necessary and reasonable steps within their powers to enforce and give effect to the Anti-Corruption Code and to all decisions taken and sanctions imposed thereunder.’ 52 Where an Australian cricketer is found to have committed an offence under his or her domestic Code of Behaviour, through proceedings locally, article 9.2 of the Anti-Corruption Code covers this scenario, ‘decisions and sanctions of national cricket federations…based on same or similar anti-corruption rules shall be recognised and respected by the ICC and all other national cricket federations …’.53

There is a clause in the Cricket Australia standard player contract54, that the individual in question:

(a) agrees to comply in all respects with (i) the ICC Code of Conduct; (ii) the CA Code of Behaviour…as amended from time to time.

(b) …acknowledges that the CA Code of Behaviour: (I) contains important rules regarding betting, match fixing and corruption, which are designed to protect the integrity of the game…and that if those rules are contravened, the player is likely to be subject to stringent penalties, including fines and suspension...

Interestingly there is no specific reference to the ICC Anti-Corruption Code but this is very likely to be included in updated versions of the contract. The Betting, Match Fixing and Corruption section of the Code of Behaviour contains wordings in relation to offences which are very similar to those in the ICC Code. It is less detailed but there are provisions that are quite generic so they cover broadly the behaviours contemplated by the ICC, for example ‘any other form of corrupt conduct’55 and ‘conduct that relates directly or indirectly to any of the conduct described… above and is prejudicial to the interests of the game of cricket or which could bring him or her or the game of cricket into disrepute’. 56 One provision in the Australian Code, for which there is no equivalent in the ICC version is for the offence of failing ‘to promptly disclose to the Chief Executive Officer of Cricket Australia that he or she has received, or is aware or reasonably suspects that …any other person has received, actual or implied threats of any nature in relation to past or proposed conduct…’57

Both Codes refer to the existence of serious threats to the lives or safety of people being a valid defence. There is a difference though in that for the ICC Code it is a defence to any charge, whilst for the Australian Code it is only a defence in relation to charges concerning failure to promptly disclose matters to the Chief Executive. When considering this, along with Article 1.8(j), the explicit terms of the Australian Code can be seen to be less tolerant then, of mafia style coercions.

The Pakistan three: Butt, Amir and Asif
When allegations were made against these three players, it represented an invaluable opportunity for the new Anti-Corruption Code and its procedures to be fully tested. The
News of the World had extremely cogent video evidence to support the accusations it was making.\(^{58}\)

A journalist pretended to be ‘a representative of a Far Eastern Gambling Syndicate’\(^{59}\); Mazhar Majeed, who was an agent for several Pakistan players, asked him for payments of 160,000 pounds in exchange for inside information on fixed events. (150,000 pounds being described as a security payment\(^{60}\)) Majeed said that they would start with no balls (occurring at certain points during the test match) because these were the easiest types of incidents to organise. A hidden camera recorded a meeting between these two men on August 2010, where Majeed counted 140,000 pounds in cash (10,000 had apparently been paid during a previous rendezvous and 10,000 was expected later) and gave assurances regarding when exactly these no balls would occur and who they would be delivered by. He emphasised that there would definitely be no problem with Salman Butt arranging them.\(^{61}\)

At the Lord’s game, Amir and Asif bowled the no balls precisely when Majeed predicted they would, their front feet being a long way over the crease on each occasion, prompting remarks from the Sky Sports commentators.\(^{62}\)

The ICC needed to act efficiently; the General Manager of the Anti-Corruption and Security Unit did so by deciding (it seemed) almost immediately that there was enough evidence to justify a charge without further investigation, issuing Notices of Charges (for various offences under Article 2 of the Code) just four days after the story broke.\(^{63}\)

Then, invoking Article 4.6 of the Anti-Corruption Code, he imposed provisional suspensions on the three players.\(^{64}\) This part states that when, following an investigation, the ICC decides that there is a case to answer and that it will charge a player with an offence, it can provisionally suspend the player from cricket and related activities.\(^{65}\)

The Tribunal considered it appropriate to adopt ‘beyond reasonable doubt’\(^{66}\) as the applicable standard of proof because of the ‘gravity of the charges and the implications for the players’.\(^{67}\) The players adopted differing stances over why the no balls were bowled, reducing the credibility of their defences.\(^{68}\)

Charges under Article 2.1.1: ‘fixing or contriving in any way or otherwise influencing improperly, or being a party to any effort to fix or contrive in any way or otherwise influence improperly, the result, progress, conduct or any other aspect of [a match]’\(^{69}\) in relation to the now infamous incidents during the Test match at Lord’s were upheld. It was determined that Asif had breached this provision by bowling one deliberate no ball and Amir had committed the same offence through two intentional transgressions.\(^{70}\) The Tribunal had also concluded that Butt had been a party to this effort, the same section therefore also being relevant to him.\(^{71}\)

Butt was also found to have been asked by Majeed to bat out a maiden over and did not make the necessary disclosure; he was therefore in breach of Article 2.4.2\(^{72}\): ‘failing to disclose to the ACSU (without undue delay) full details of any approaches or invitations received by the player… to engage in conduct that would amount to a breach…’\(^{73}\)

This was the verdict in relation to sanctions: ‘On Mr Butt a sanction of ten [for Asif, seven] years eligibility, five [for Asif, two] years of which are suspended on condition that he commits no further breach of the Code and that he participates under the auspices of the PCB in a program of Anti-Corruption education … On Mr Amir a sanction of five years of ineligibility.’\(^{74}\)

The table under 6.2 of the Code sets out ranges of permissible periods of ineligibility for each Article 2 offence. For 2.1.1 the range is ‘a minimum of five years and a maximum of a lifetime’.\(^{75}\) It was therefore mandatory for the Tribunal to operate within this constraint in deliberating upon a sanction.

At the Lord’s game, Amir and Asif bowled the no balls precisely when Majeed predicted they would, their front feet being a long way over the crease on each occasion, prompting remarks from the commentators.
The gentlemen on the Panel, to adhere with Article 6.1, needed to determine the relevant seriousness in each case of the offence with regard to a list of potential aggravating and mitigating factors. This was pertinent to the case of Amir who was 18. The tribunal believed that Amir’s penalty was proportionate: ‘although the minimum sanction is severe it is not so severe as in his case to take it into the realms of gross disproportion or oppression.’

It states though that ‘…minimum sentences always pose problems for judges who wish to tailor penalties to a range of diverse facts, not all of which can have been envisaged by the legislative body: hypothetical examples where a minimum five year ban would be palpably unfair can be easily suggested.’ The tribunal stressed that ‘a five year ban is far from being…a mere slap on the wrist’, stressing that it did not want to act in ‘…an unduly vengeful way…’

The tribunal was largely correct in its deliberations, acknowledging the mitigating factors, and applying a sanction within the Code’s penalty range in a logical way.

Imagine for a moment a situation where Australian fast bowlers Mitchell Johnson and Peter Siddle had behaved in an identical fashion in 2010 (and with a similarly matching level of corroboratory evidence), deliberately bowling no balls at Lord’s under instructions from their captain Ricky Ponting. It is feasible that Cricket Australia might have declared to the ICC that it wished to bring proceedings against the players before the Cricket Australia Code of Behaviour Commission. It is equally probable that the ICC would have been happy for Australia to deal with this in house and would have abstained from bringing action itself. The Commission would have found difficulty in finding each of these individuals liable under Article 1.8© of the Code of Behaviour (fixing an event in exchange for reward) because of the non-existence of sufficiently salient evidence of rewards to the players.

Instead section 1.8(d) would have been invoked for Johnson and Siddle: failing ‘to attempt to perform to the best of his ability in any cricket match for any reason whatsoever…other than for legitimate tactical reasons in relation to that cricket match’, and (e) for Ponting, this provision making it an offence to: ‘induce or encourage any player not to attempt to perform to the best of his ability…’ etc. The Commission would have had no option but to impose a life ban from cricket for all three players.

This therefore demonstrates a lack of equitability in the global disciplinary framework, with Australians Johnson, Siddle and Ponting (hypothetically) removed from the game for the rest of their lives and the three Pakistanis effectively banished for five years. Is either of these outcomes suitable and if so, which one? It is already stated above that the Tribunal was correct in its application of the Code, in that there were circumstances which made these actions less serious than some which could be envisaged and the penalty range was employed with this in mind. It is the range which is not appropriate; the scope should align with that defined in the Australian Code of Behaviour for fixing offences. It seems absurd that the Tribunal has requested that it should be made more flexible.

This author disagrees with the assertion that a five year ban for a reprehensible act such as deliberate underperformance could ever be palpably unfair (to the perpetrator). The Tribunal has admitted that there should be zero tolerance for any form of fixing but subsequently remarked that the players need to be given the opportunity ‘to recover much of their honour and dignity, and be able to make valuable contributions to cricket in the future. We sense that a restorative process of that kind would be well received by the general cricket loving public, and the ICC.’

Mohammad Amir was the most exciting young bowler in world cricket and it would undeniably have been heartbreaking for cricket to see him suffer a lifelong exclusion. The tribunal did not allow his talent to carry weight though, pointing out the unfairness of more severe sanctions for less talented players.

He may only have been 18 but when young sportsmen play at a senior level, they are treated like adults and have to behave accordingly. He has abused a major privilege and honour, which is sought after by millions.

**Court of Arbitration for Sport (CAS)**

Article 7 of the Anti-Corruption Code provides that the only avenue for appeal is the Court of Arbitration for Sport and that ‘the decision of CAS on the appeal shall be final and binding on all parties, and no right of appeal shall lie from the CAS decision’. The CAS hearing will ‘be limited to a consideration of whether the decision being appealed was erroneous’. Butt, Asif and Amir have all lodged appeals against the Tribunal’s rulings with CAS.

CAS was formed by the International Olympic Council.
(IOC) in reaction to a perceived need for a sports-specific jurisdiction. The ‘court’ is freely available to but not imposed on sporting bodies; they voluntarily include a model arbitration clause in their regulations. Disputes are heard and ruled upon by a panel of arbitrators; CAS has heard a wide variety of types of cases. It has been recognised as a true court of arbitration by the Swiss Federal Tribunal, although this recognition was qualified and led to reform with a view to improving impartiality and independence. The court is now run by the International Council of Arbitration for Sport but does retain strong links with the IOC. Its organisation and arbitration procedures are governed by the Code of Sports-related Arbitration.

CAS seeks to implement uniform judicial practice and in respect of appeals, aims to address any haphazard application of the law by sports bodies. Arbitrators on the panel hearing the appeals of Butt, Amir and Asif shall determine whether the Anti-Corruption Tribunal has been misguided or overzealous. It may be concluded that the Tribunal’s decision is arbitrary ‘if it harms in a deplorable way a feeling of justice or of fairness or if it is based on improper considerations or lacks a plausible explanation of the connection between the facts found and the decision issued.’

CAS will deal with cases of match fixing in line with CAS jurisprudence on disciplinary doping cases. The respondent will need to establish the facts to the comfortable satisfaction of the Court having in mind the seriousness of the allegation which is made and the Court can consider a chain of circumstantial evidence. The Court is able to take account of any relevant facts and legal issues; therefore information can be brought which was not included in the tribunal proceedings.

The legal representatives of each of the Pakistani appellants will seek to establish instances where their respective clients have been mistreated. The lawyers may argue that the accused players were not given sufficient access to evidence, the legal teams were hindered in their preparation of a defence, the individuals did not fully understand what was occurring, or too much weight was placed on evidence from unreliable witnesses who may have had ulterior motives. These are examples of submissions made by the (unsuccessful) appellants in the Pobeda case.

Unfortunately for the players, it appears from the judgement, that the Code and due process were adhered with carefully.

The respondents can point to the concessions made by the tribunal, which demonstrated that it was not unduly favourable to the ICC’s case. It did not uphold the fixing charge in relation to the Oval test because of insufficient evidence, it was prepared to acknowledge that there was no proof that the players were financially rewarded. It also recognised the dignity which the Pakistanis conducted themselves with during proceedings, the trio’s clean records (although Asif had previously been banned for a drugs related offence) and the sportsmanlike conduct of Butt.

The Counsel for all of the players admitted during the tribunal hearing that the News of the World’s recordings were genuine; these were very incriminating. The tribunal made inferences about certain evidence, such as the times of telephone calls on the billings, without learning unequivocally of the details of conversations. It dismissed claims about discussions centring on sponsorship, tickets or trousers.

Although some of the evidence relied upon was circumstantial, in combination with the undeniable facts it formed an incontrovertible pattern which could only reasonably lead to the conclusion that spot fixing occurred. In addition the accused individuals did not appear to provide credible, consistent answers. Given the effective validation that has now been made publicly by a jury in an English Crown Court (see below), all of the applicants would struggle to build a convincing case against the tribunal’s findings regarding the sufficiency of evidence and their culpability generally.

Counsel for Amir could put the case that the young man did not fully understand his obligations under the Code, as explained to him during the ICC education program.

During the hearing, the tribunal was implored by Counsel for Butt and Amir to be proportionate and consider arriving at a sentence below the minimum set by the Code, citing a previous CAS case. Its response includes a statement that it is not a supervisory jurisdiction; CAS will not be able to say this. It is likely to say however that the Code still does not afford it the discretion to go below the minimum five year sentence. ‘The measure of the sanction imposed by a disciplinary body in the exercise of the discretion allowed by the relevant rules can be reviewed only when the sanction is evidently and grossly disproportionate to the offence.’
Notwithstanding the remarks in relation to sentencing earlier in this paper, an objective overall assessment is that the tribunal has made a full and sound appraisal of the situation.

The adjudicators ‘have chosen to set out the evidence before [them] in considerable detail since [their] objective is to ensure that [their] reasoning can withstand proper scrutiny from all persons interested in the game of cricket.’ The tribunal has carried out a very thorough attempt at the formulation of a judgement which will stand up to scrutiny from CAS.

Sports governing bodies
Speculation will always abound about the integrity of the individuals who have the privilege of administering major, popular sports. It is a logical inference that if there are administrators of a doubtful integrity at an organisation then a culture will permeate throughout all the employees, including (or especially) where star athletes are involved.

Many ‘industry leaders’ seem content with their seven figure salaries and all the corporate perquisites which accompany their packages but if they are not susceptible to improper influences, they may be too arrogant to believe there is anything wrong or too incompetent to proactively alter policies and practices. This may be seen as ‘rocking the boat’. ‘If you rock the boat, you can forget about the five star hotels, free food and expense accounts.’ In certain sports though, administrators appear to have been complicit in or instigators of, fixes.

Corruption in general ‘strikes at the root of our commercial life and of democracy itself’. It would be naive to believe that it could ever be eliminated but if there are no attempts to keep incidents to a minimum the results can be disastrous for any sector.

Sports governing bodies form one of the three traditional lines of defence against fixing (the other two being legal gambling companies and the police). It is crucial that those in positions of authority are of the highest integrity and are efficient in carrying out their supervisory functions.

The effectiveness of the ICC
Sir Paul Condon produced a detailed Report on Corruption in International Cricket, published in April 2001. He implored that the ICC:

must become a modern, regulatory body with the power to lead and direct international cricket … the current corporate governance arrangements within cricket are inadequate for the task … [the Board] does not yet provide an infrastructure to meet the financial and governance requirements of the modern game.

He recommended clear financial reports outlining the allocation of resources and also the resolution of issues surrounding conflicts of interest. The ICC does now produce an annual report incorporating audited financial statements and it has a Governance Review Committee to recommend improvements to practices and procedures where necessary. The ICC President has stated that ‘the recruitment of additional independent directors would improve the corporate governance of the ICC’. It has also incorporated an audit function into its organisational structure, ensuring that it has suitably independent checks and measures.

Some pointed criticisms of the ICC were articulated last year by an individual who would understand a great deal about the way the body operates: the former Chief Executive Malcolm Speed. He stated in relation to the composition of the board, that ‘some are elected and others appointed by government’ and remarked that at times politics arose and directors could be ‘parochial and devoid of logic and balance’. Speed advocates the board’s replacement with an independent commission, based on the model utilised by the Australian Football League: ‘nine persons, each independent of the administration of cricket in their country of origin: three current or former players; three outstanding nominees from business or the professions; and three current or former administrators’.

The ICC has acted efficiently in reaction to breaking scandals; it established a Code of Conduct (Corruption) Commission in 1999 which reviewed ongoing domestic enquiries. Then when the Cronje story came to light the ACSU went through its formative stages and the Condon report was released ten years ago (interestingly this report refers to possible pre-arrangement of ‘no balls occurring in a designated over’). The ICC constantly pledges its ongoing commitment to combating corruption and has implemented the 24 recommendations.

The ICC is regarded as a leader on this issue, with sporting
bodies such as the European Union of Football Associations (UEFA) not even having a security unit in the mould of the ACSU. There is a section in each ICC Annual Report on Anti-Corruption which always stresses the need to be vigilant in relation to potential corruptors. The three main objectives of the ACSU are educating the players, preventive vigilance and enquiries and investigations in relation to potential breaches. Every international match is covered by one of the five Regional Security Managers, who enforce ‘strict anti-corruption protocols’ and also ‘deliver the anti-corruption education program to all international players and match officials’. This is competency based and was established in October 2008. As part of the education process, players are given details of the ways in which corruptors may seek to ‘groom’ them from an early age as well as the penalties that exist...

The ACSU has assured the cricket loving public that it will address any allegations of substance or merit. The ACSU’s Information Manager coordinates the entire intelligence gathering, collating and its dissemination to appropriate officers of the ACSU. He also continues to build an international network of contacts, both in the legal and illegal betting markets. These relationships not only provide a wealth of information on potential corruptors, they also assist in investigating allegations and breaches, effectively.

The comment needs to be made that in August 2010 when the News of the World announced the results of its ‘sting’, this should have caused the ACSU and the ICC a great deal of embarrassment. The New Delhi Police had uncovered, by accident, the Cronje situation and now it had taken some investigative journalism by a tabloid newspaper to identify a potential incident of crime against the game. Here was a cogent manifestation of a failing of the ACSU. The education program had been completely ineffective; perhaps the content of these require review. The Regional Security Manager would have been at Lord’s for the game and the ICC has minimum standards in relation to players’ areas, including a complete ban on the use of mobile devices. Fifteen minutes after the close of play on the first day Amir telephoned Majeed, and four minutes after this Butt attempted to call him. The measures in place had been futile.

The video evidence supplied by the journalist Mazeer Mahmood contains footage of Mazeer Majeed boasting about the fixing accomplishments of him and the Pakistan players under his ‘control’. A worrying statement, from an Australian point of view, was one which claimed that this group conspired to fix a test match between Australia and Pakistan in Sydney during January 2010. This was an unusual game, as Australia conceded a 206 run first innings lead and during its second innings only led by 51 runs, having lost 8 wickets. Bookmakers’ odds on a victory by Australia must have been very generous at this juncture, but it was the Australian team which prevailed with Pakistan inexplicably collapsing. Majeed stated that he made US1.3 million on this match.

A documentary piece on the television program ‘Four Corners’ attempted to determine the way in which the ACSU and the ICC were planning to investigate these ‘confessions’. The ICC Chief Executive Haroon Lorgat disappointingly responded that there was insufficient credible evidence to justify reopening an ACSU investigation into the Sydney test, despite the fact that there was a tape available of Majeed admitting to it. Lorgat said there is an ongoing internal review in relation to procedures but he does not think there is any need for another full scale report on corruption in cricket. The ICC needs to be more proactive than it appears to have been at certain times; it should also be taking Hashan Tillakaratne’s assertions very seriously (see above).

The content of the education programmes is not known but players need to be taught about the methods and psychologies fixers employ. Fixers will seek to gain contact with star players because these are the individuals who ‘have the influence and prestige on the team that means that few of...
the other players will say no to them. They are able to build a corrupt network and culture on the team far more easily than any other player. Fixers will play a game of seduction, using charm and sometimes just giving money as a gift. One practice is using win bonuses, so the player reasons that he will be trying to win in any case, so there is absolutely no element of fixing whatsoever. His action is symbolic of accepting the fixer’s terms for a long term relationship; it creates a bond and a sense of loyalty plus it also might purvey an opportunity for future blackmail. Once the funds are accepted, the charm can swing to an air of authority and control. Players will be treated with disdain by mafia types with whom they choose to associate, graduating from their friend to their slave. This is illustrated perfectly in the context of the interaction between Majeed and Amir. Majeed is aware that Amir is sleeping and needs to play the following day, yet repeatedly telephones him (and uses profane language), the final time being at 1:24 am.

The ICC should be open to innovative techniques of stamping out corrupt practices. For example, the academic Declan Hill found in his analysis of corruption in soccer that it is common for team administrations to send prostitutes to referees before a big game. He proposed fast tracking female referees. With cricket’s elite panel, it is less likely but still conceivable that this problem might arise. The ICC, in its management of the game, needs to be responsive to the type of lateral thinking displayed by Hill on this occasion.

During the year ended 31 December 2009 the ICC generated US$173.6 million in revenue. It spent on anti-corruption (excluding staff costs) US$600,000, which equates to 0.35% of turnover. (For the following year, the corresponding figures were 134.9 million, 900,000, 0.67%.) There may be perfectly satisfactory explanations behind this low figure but in the absence of these, this does not appear to be a serious financial commitment, commensurate with the constant tough rhetoric in the annual reports.

The future of Pakistan

Pakistan is a troubled nation, with far reaching ills which inevitably impact cricket. Over the years it has churned out precociously talented cricketers but the set up has been plagued by scandal after scandal. On 3 March 2009 terrorists fired with machine guns on the bus of visiting Sri Lanka players, who were on their way to Gaddafi Stadium in Lahore for a day’s play at a test match. Until the volatility and hostility levels dramatically decrease, there is zero probability of a fellow ICC member bringing its team back to this part of the subcontinent. The result is a sharp reduction in revenue from TV rights and sponsorship. After the Mumbai attacks Indian Premier League Clubs refused to recruit Pakistani players; they have now become ‘the poor cousins of world cricket’. Comparatively poor remuneration will make sports professionals very susceptible to the advances of a fixer. There will be widespread fixing if players are exploited. There will be fixing if the players perceive their administrators and officials are making money off the players’ labour. (Although there will always be a few lowest of the low players who, regardless of salary or status, will fix.) The ICC must address this issue by introducing a global remuneration policy, with minimum standards of pay. There are severe question marks over the leadership by the Pakistan Cricket Board (PCB). The former CEO of the PCB Ramiz Raja remarked (in relation to the spot fixing scandal):

I think the PCB clearly missed the boat because here was a great opportunity for them to tell the world that they meant business, that there was a controversy and they had to admit it forcefully with truth and honesty and they completely refused to act when it was required.

The ICC gave the PCB a 30 day deadline to comply with and this was met, a national Code of Conduct with an emphasis on anti-corruption being promulgated with great efficiency. The PCB has also introduced comprehensive background checks for player agents and they have held lectures for domestic regional sides, and members of the national under 19 and ‘A’ set ups, including the coaches. This new found enthusiasm has to be sustained.

In November 2010 wicketkeeper Zulqarnain Haider abandoned the Pakistan one day team during the course of a series, claiming that he and his family had been threatened by fixers for not complying with their wishes. The ACSU have spoken with Haider and the Pakistani police have arrested a number of bookmakers in connection with the alleged threats.

India: the sole superpower

In contrast to Pakistan, the Board of Control for Cricket in India is the world’s richest cricket body and has signed some
impressive television rights deals. This affluent organisation needs to use its financial clout to put some real pressure on the illegal bookmakers within the same country, which pose such a threat to the source of its revenue. Paul Condon stated ten years ago that ‘the CBI and the Indian Government have courageously acknowledged the role which the unlawful betting industry in India has played. In many ways the Indian betting industry has been the engine room which has powered and driven cricket corruption.’ The BCCI should be using its financial might and applying pressure to the CBI and the Indian government to provide credible enforcement measures to deter these organised criminals. Although there is equal representation of the major cricket playing nations on the ICC board, India is disproportionately influential. Again the BCCI has to utilise its power and adopt a leading role in anti-corruption initiatives.

Regulatory framework
The game is reliant worldwide on the ICC and its Codes for regulation. It is in the best interests of each nation to have a strong local federation; locally the applicable body is Cricket Australia. Its board consists of 14 directors nominated by state associations, apparently serving the game well, with this model unlikely to change. It has implemented strong anti-corruption measures, with the Australian team manager reportedly making a presentation to the team at the beginning of every tour, and it has recently created its own anti-corruption unit. A recovery in reputation was crucial after the poor way that the Australian Cricket Board, as it was known at the time, handled the censorship (in secret, with consequential fines) of Shane Warne and Mark Waugh for accepting money from and providing information to a bookmaker. All regulators concerned have to contemplate carefully the probable plans of the fixers, with officers monitoring and analysing in depth players’ behaviour. Corrupt cricketers will face three problems: how do you deliver the promised result, how do you make sure that no one guesses that you are fixing... and how do you play badly enough... but not jeopardise your place on the team? Batsmen, bowlers and wicketkeepers may have developed strategies in mastering ways of deliberately underperforming. Those who seek to prevent this type of behaviour need to be able to spot signs of it.

If the internet has been used, bets should be traceable. Unfortunately the intelligence, sophistication and diligence (though perverse) of fixers are pressing factors. Declan Hill has described these activities in the context of gamblers in the Asian markets corrupting soccer. They ‘spend enormous energy calculating when to put their money into the market for a fixed game ... with a click of the mouse the fixer can place bets with a half-dozen bookmakers around the world, and with a few elementary precautions, no one is the wiser.’

If any of the regulators do correctly pinpoint a fix through their systems, because of the size of the markets, an enormous amount of investigation would have to follow, to bring anyone to account. The financial services sector assigns considerable effort and resource to reducing the scope for its abuse; the Australian Securities and Investments Commission attempts to deter parties from exploiting inherent information asymmetries in the financial markets. There is an overlap between trading in securities and gambling. Some betting exchanges offer their customers the opportunity to speculate on the price of companies’ equities. Spread betting on derivatives and contracts for difference ‘involves a greater degree of judgement, skill and experience than that which applies to spread betting on sporting fixtures...’ The ACSU may benefit from the implementation of methodologies employed by its counterparts in the financial world, aiming to reach new levels of regulatory sophistication.

The ACSU needs to be supported by local federations, governments, organisations such as Interpol and legal bookmakers. In Victoria the Gambling Commission has a framework in place for the approval of sports betting events. Sports controlling bodies enter into agreements with betting exchanges; there are minimum requirements for these under the Victorian legislation. Part 4.5.29 of the Gambling Regulation Act 2003 (Vic). states that the:

(1) The Commission, by instrument, may prohibit betting on a contingency if the Commission considers that betting on the contingency-

(a) may expose the relevant event or class of event to unmanageable integrity risks; or

(b) is offensive; or

(c) is contrary to the public interest; or

(d) is unfair to investors; or

CO RRUP TION IN CRICK ET :USING THE LAW TO C UL L THE C ROOK S FR OM THE GENT LE MAN ’S GAME

SPORT AND THE LAW JOURNAL ANALYSIS
VOLUME 18 ISSUE 3

CORRUPTION IN CRICKET: USING THE LAW TO CULL THE CROOKS FROM THE GENTLEMAN’S GAME

38
CORRUPTION IN CRICKET: USING THE LAW TO CULL THE CROOKS FROM THE GENTLEMAN’S GAME

Criminal laws
As a result of the current topicality of match/spot fixing and the perceived dangers accompanying the proliferation of legitimate and illegal gambling, prominent individuals have suggested that there may be an overhaul of the criminal laws which it is possible to invoke in respect of these types of allegations. The common law offence of conspiracy to defraud is limited because there is an ‘imprecision in the definition of what constitutes an act of defrauding...’ and state statutory fraud offences are similarly inadequate for this purpose, especially in relation to the use of inside information.

The Gambling Regulation Act 2003 (Vic). provides that:

A direct participant in a brokered betting event, an indirect participant in a brokered betting event, or an associate of a direct participant or indirect participant in a brokered betting event, must not offer or accept a bet, through a betting exchange, of a kind that could reasonably be taken to constitute an inducement for-

(a) a human competitor in the event-
(i) to withdraw from, become disqualified for, or fail to participate in the event; or
(ii) not to participate in the event to the best of the human competitor’s ability; or
(iii) to interfere with or jeopardise, contrary to the rules of the event, the performance of other human competitors, or any non-human competitors, in the event … ” or
(b) an official in the event-
(i) not to officiate in the event impartially…

(e) should be prohibited for any other reason.

In this way betting on extremely minor events in the context of a game can be controlled. Such a provision should be replicated by other jurisdictions.

International collaborations are key; illegal betting markets need to be targeted as these are the source of the problem. A global task force has recently been established, which the ICC and ACSU should keep themselves well informed about, to address illegal and irregular betting. Operations targeting the closure of bookmakers must be persisted with; the power to intrude in relation to telecommunications being particularly vital.

Case law
After the UCBSA banned Hansie Cronje for life, he appealed against this, taking the board to the High Court of Transvaal. It was relying on section 18 of the Constitution Act: ‘everyone has the right to freedom of association’; the Board had exercised its right in this regard to not associate with Cronje. Cronje claimed that the board’s resolution had infringed his ‘personal rights of liberty, privacy, dignity and the right to pursue his life and interests freely in society without interference; and... commercial rights to pursue a trade, profession or calling of his own choice without interference’ and sought injunctions to remedy these alleged infringements. The court appeared to take these assertions very seriously and did introduce some injunctions on the respondent. The effects of these were that Cronje could coach at some schools, seek employment, and could enter a cricket ground as a spectator for the purpose of journalism work.

Judges are unlikely to be impressed with behaviour involving gambling by professional sportspeople (on their own respective sports). They will also be reluctant to try and second guess disciplinary actions taken by private sports bodies. ‘The courts will not discourage private organisations from ordering their own affairs within acceptable limits’, as long as natural justice principles are adhered with.

The optimal use of a court of law in this context will come in the form of prosecutions under criminal law. If a fixer is found guilty of a criminal offence, with a custodial sentence imposed, this will do far more for the cause of cricket integrity than a playing ban of any length could.

ANALYSIS SPORT AND THE LAW JOURNAL
VOLUME 18 ISSUE 3

39
These have not yet been tested.\textsuperscript{184} They appear to be relevant to parties who are in some way engaged in gambling; to be liable as an accessory a player would need to know the essential facts behind the case. There may also be difficulty here if the case involved illegitimate betting markets.\textsuperscript{185} ‘Fraud, unlawful device or ill practice’ is quite vague and in spot fixing a win is not due to this; it is due to the participant’s conduct.\textsuperscript{186} The UK has cheating in gambling provisions (see below). This may not be viewed to cover a case where inside information is used but the player is unaware of intended bets.\textsuperscript{187} South Africa has formulated corruption law concerning sporting events, in the \textit{Prevention and Combating of Corrupt Activities Act 2004 (South Africa)}.\textsuperscript{188}

The New South Wales Law Reform Commission has proposed a new statutory cheating offence and if this is enacted, Victoria with the other states and territories will need to decide whether to follow. The New South Welsh laws could form a template for a uniform national framework, ensuring consistency in applications and outcomes.\textsuperscript{189}

This potential NSW offence appears to be modelled on the South African provisions, but with slight differences. For example, this South African legislation refers to ‘...in any way influencing the run of play or the outcome of a sporting event...’ It is questionable whether this wording would apply to spot fixing in the form of bowling deliberate no balls, as a view may be taken by a court that a no ball does very little to influence the run of play.\textsuperscript{190} The New South Welsh potential offence does not have this requirement, merely needing the fixing of an outcome or contingency where money can be gained or lost.

This is part of the ‘possible draft provision’:

(1) An offence is committed where:
(a) a person, directly or indirectly, with intent:
(i) to obtain a benefit for himself or herself or for any other person; or
(ii) to cause a loss or disadvantage to any other person,
dishonestly induces or attempts to induce a participant, or makes an offer to such a participant:
(iii) to engage in any act or omission which constitutes a threat to or undermines the integrity of any sporting or other event, including:
(A) deliberately underperforming or withdrawing from such event; or
(B) in any way fixing or influencing the outcome of such event, or of any contingency that may occur during it, being an event, outcome or contingency upon which the person or any other person stands to lose or gain any money or monies worth, whether as a participant, or by betting on such outcome or contingency...\textsuperscript{190}

It states in addition that ‘it is not necessary for proof of any of the offences contained in this section that the act or omission results in a win or gain, or in the securing of any advantage, or the causing of any disadvantage.’\textsuperscript{191} The proposed provisions are comprehensive and also cover the dissemination and use of insider information, as well as the obligation to make disclosures regarding approaches from fixers.\textsuperscript{192}

A potential defence to criminal charges brought for fixing is duress. Fixing and organised criminals (who utilise violence as a means of persuasion) are strongly linked so there may be some danger accompanying any refusal to participate in such an enterprise.\textsuperscript{193}

The trial of Mazhar Majeed and the Pakistan 3
The criminal trial took place at Southwark Crown Court in the UK during October 2011. Butt, Asif, Amir and Mazhar Majeed all faced a charge of conspiracy to obtain and accept corrupt payments under section 1(1) of the Prevention of Corruption Act 1906 (UK).\textsuperscript{194} This subsection states that: if any agent corruptly accepts or obtains, or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gift or consideration as an inducement or reward for doing or forbearing to do ... any act in relation to his principal's affairs or business, or for showing or forbearing to show favour or disfavour to any person in relation to his principal's affairs or business ... he shall be guilty of a misdemeanour, and shall be liable ... to imprisonment for a term not exceeding 7 years or to a fine, or to both.

The words ‘corrupt’ and ‘corruptly’ may have been the subject of analysis; the judge would have needed to instruct the jury how to make the decision, as a question of fact,\textsuperscript{195} whether the four’s behaviour was corrupt. There are competing definitions of ‘corruptly’, the first being ‘an act which the law forbids as tending to corrupt’\textsuperscript{196}. Another is where there is ‘a dishonest intention to weaken the loyalty of an agent to his or her principal’.\textsuperscript{197}
Under section 1(1) (the offence of conspiracy) and section 3(3) (penalties for conspiracy) of the Criminal Law Act 1977 (UK) the parties to an agreement having the intention to carry out a plan and therefore enact a crime, can be punished accordingly (in line with the relevant offence) even if this agreement is not executed.

The Prevention of Corruption Act 1906 has been replaced by the less limited Bribery Act 2010 (UK)\(^{198}\), the former Act being applied in this case though because it was still in force at the time of the relevant events.\(^{199}\)

Under the 1906 Act the recipient of the bribe needs to be the same person who acts in breach of his or her duty. Third party private sector\(^{200}\) transactions are problematic, although it must have been demonstrated that Majeed intended to be a 'recipient agent'. He may not be viewed as an agent in general, as the term was contemplated by the Act, but as he had dealings with existing agents\(^{201}\) (the players being agents of the PCB) and was party to the relevant agreement, the Prosecution was obviously able to work with this. The Anti-Corruption Tribunal judgement found that there was not evidence beyond reasonable doubt of any financial reward for the players but concluded that their actions were performed in the hope of pecuniary gain.\(^{202}\) Given the conspiracy charge, the jury must have decided that the cricketers were all involved an agreement, with an intention to make money from it. Cooke J, when sentencing, remarked that 'your motive was greed, despite the high legitimate rewards available in earnings and prize money'.\(^{203}\)

The second charge was conspiracy to cheat under section 42 of the Gambling Act 2005 (UK).\(^{204}\) The principles in relation to conspiracy to commit an offence outlined above also apply. Section 42 states that:

1. A person commits an offence if he (a) cheats at gambling, or (b) does anything for the purpose of enabling or assisting another person to cheat at gambling;
2. For the purposes of subsection (1) it is immaterial whether a person who cheats (a) improves his chances of winning anything, or (b) wins anything.
3. Without prejudice to the generality of subsection (1) cheating at gambling may, in particular, consist of actual or attempted deception or interference in connection with—
   a. the process by which gambling is conducted, or
   b. a real or virtual game, race or other event or process to which gambling relates.
4. A person guilty of an offence under this section shall be liable to imprisonment for a term not exceeding two years, to a fine or to both.

The prosecution would have demonstrated that Majeed has links with illegal bookmakers and/or gambling syndicates and this is why he and the three cricketers were party to this plan. The court heard that he passed on information about fixed events to his contacts in India and Dubai.\(^{205}\) The defence may have put forward that this piece of legislation was not intended to cover interference in events for the purpose of attaining an advantage in the context of illegal overseas markets. The CPS would have been able to point to the definition of 'betting' under section 9 being no more specific than 'making or accepting a bet on...the outcome of a race, competition or other event or process'.\(^{206}\)

Cooke Jcommented that '...the effect of what you were seeking to do was to defraud bookmakers, whether licensed or unlicensed... If other fixes were to be done on less esoteric events than no balls, such as brackets [periods of play, measured in overs bowled], then it is certain that they would affect lawful betting.'\(^{207}\)

Cooke J determined that these crimes were '...so serious that only a sentence of imprisonment will suffice...'.\(^{208}\) For each individual he imposed concurrent custodial sentences for the two charges. For Majeed (who pleaded guilty) these were 32 and 16 months, Butt 30 and 24, Asif 12 and 12, and Amir (who also pleaded guilty) 6 and 6. It is noteworthy that the sentencing judge took into account the ICC tribunal’s playing bans, in applying some leniency to these terms.\(^{209}\) This is another reason for CAS to be reluctant to reduce their length.

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CORRUPTION IN CRICKET: USING THE LAW TO CULL THE CROOKS FROM THE GENTLEMAN’S GAME

World Sports Integrity Authority
There has been speculation that a new worldwide body may be created to combat corruption in all sports, similar to the World Anti-Doping Agency (WADA).\(^2\)10

WADA was established in 1999 and is an independent agency, funded equally by sports bodies and governments.\(^2\)11 The purpose was to set unified standards and coordinate efforts on anti-doping work; it now monitors compliance with the World Anti-Doping Code (WADC). The WADC provides a framework for policies, rules and regulations. Governments have accepted this Code and jurisprudence from the Court of Arbitration for Sport has grown. Implementation and enforcement follow the acceptance stage. Signatories need to ensure that their own rules are in line with the mandatory parts of the Code.\(^2\)12

WADA develops protocols to ensure evidence gathering and information sharing between the sports movement and governments; cooperates with Interpol; in collaboration with UNESCO, works with individual governments to persuade them to have laws in place that allow to combat manufacturing, supply and possession of doping substances on their territories.\(^2\)13

Given the size of the gambling industry and in particular the illegal operations around the world, it is feasible that a SIA mirroring WADA may be of huge benefit, providing additional resource for the purpose of surveillance and networking, plus a think tank in respect of legal solutions to organised crime. The aim of persuading governments is particularly necessary, given the political pressure which needs to be placed on governments in countries where illegal betting markets operate (effective investigations and prosecutions are required).

Doping in sport results from a combination of individual, cultural, societal, and physiological factors. Prevention of doping in sport must be based on a clear understanding of the complex nature of the problem and the comprehensive mix of strategies needed to address them successfully.\(^2\)14

These statements also apply to corruption (‘physiological’ is obviously less pertinent), with rational, thoughtful and culturally sensitive analysis crucial again.

The WADC is:

aimed at enforcing anti-doping rules in a global and harmonised way…and are…not intended to be subject to or limited by any national requirements … [The] … rules represent the consensus of a broad spectrum of stakeholders around the world with an interest in fair sport.\(^2\)15

Regarding possible negative implications, cricket already has the ACSU to manage its interests in this area, so it may be argued that the introduction of a new authority would duplicate work and make matters overly convoluted. The ‘SIA’ would be able to challenge the outcomes of disciplinary proceedings and too much resource could be assigned simply to establishing which body has jurisdiction. Governments of ICC member countries may not, for whatever reason, be enthusiastic about the formation of this body and may not choose to recognise its jurisdiction.\(^2\)16

A global integrity authority would bring a more consistent approach across all sports though, with uniformity and a perception of fairness in the outcomes. The existence of a SIA would increase the number of avenues available for handling incidents.

Conclusion
Lord Condon has opined that ‘you will never entirely eradicate fixing from the game of cricket’ but it can be controlled if authorities do not become complacent.\(^2\)17 The health of the sport during the coming years will depend on the effective, practical control resulting from the associated governance, regulation, communication and deterrence. The ICC needs to continue its evolution into an advanced, accountable organisation with high standards, effective in executing its supervisory duties, and needs also to allocate more funds and thought to anti-corruption endeavours. It should actively consider as well Malcolm Speed’s proposal of an independent commission, as an alternative.

It is probable that a world integrity authority, empowered by an international code, with prospective aid from subordinate national authorities, would be highly beneficial to the current regulatory framework for cricket, adding substantial resource for monitoring, surveillance, detection, and enforcement. Regulation can become more structured and sophisticated, emulating measures in place for the financial services industry. The ICC currently needs to improve the deterrence impact of its disciplinary proceedings by amending its Anti-Corruption...
Corruption in Cricket: Using the Law to Cull the Crooks From the Gentleman’s Game

Code to incorporate a mandatory life ban for fixing. There has to be no tolerance at all for this type of behaviour. Cricket nations’ jurisdictions need to implement clear and specific criminal laws addressing the manipulation of sporting events, such as the provisions suggested by the New South Wales Law Reform Commission. Custodial sentences would send an undeniably powerful message. It is absolutely crucial that (competent and capable) regulators and law enforcement authorities speak with each other regularly, share information and instil a culture of collaboration. If all of this occurs, the resulting synergies will lead to significant progress being made in the fight against the sinister forces which seek to corrupt the gentleman’s game.

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The Fairness of UEFA Financial Fair Play Rules

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Introduction
In 2012/13 The Union of European Football Associations will begin to introduce new rules that require all licensed football clubs in Europe to break even financially to compete in continent wide competitions. Clubs failing to break even on profits and losses will be excluded from these competitions. This article will examine the intellectual merit of these new rules within a jurisprudential framework, highlighting how UEFA, despite good intentions are undercut in their endeavour by poor theorising. While in theory their ideals, ambitions and desires appear to support a positive future for European football, the consequences of their actions are not practical. UEFA in their analysis of European football have failed to arrive at a sound definition of what they consider fairness to be. Financial fairplay rules and their insufficiency will be shown with reference to the theories of John Rawls and Robert Nozick and already established sporting structures, in the National Football League (NFL), and the classic European football model, demonstrated in the Premier League. It will be shown that UEFA are aiming for the best of both governance structures. While this sounds good, like with the theories of Rawls and Nozick, the NFL and Premier League models are very difficult to reconcile. Any conception of them requires hard analysis, which is missing from UEFA’s proposed financial fair play rules. UEFA’s fairplay rules do not fit squarely into this matrix at any level. The fairplay rules are neither practically similar to the NFL or European soccer model, nor do they theoretically conform to the Rawls/Nozick model.

This article will be divided into three sections. Part One will look at the rationale behind UEFA’s fairplay rules, enquiring into UEFA’s aims and objectives in introducing the new regulations. A look at these aims and objectives, however, will expose how UEFA have not properly constructed a vision of fairness, creating gaps and inconsistencies in how soccer will be governed. Part Two will build upon Part A, by making comparisons between the English Premier League and the National Football League; to show how UEFA’s financial fair play rules are based in, and have created a practical gap that will result in stagnation within European soccer. Part Three will then show how established theories of justice and their current application to models of sporting governance expose the theoretical gap highlighted in Part One.

Part 1: The Rationale
The financial fairplay rules are being introduced by UEFA to secure the long term stability of football within Europe. UEFA President, Michael Platini recently said that regulation would, “help clubs free themselves from the cost spiral that has seen many of them experience severe financial difficulties in recent times.” The aim of this exercise is “to put stability and economic common sense back into football” by ensuring that clubs cannot spend beyond their financial capabilities in their chasing of success. An issue that has become apparent recently with football clubs particularly in England, facing winding up orders from Her Majesties Royal Customs and Revenue. Most prominently in the case of former premiership club Portsmouth Football Club.

UEFA fears that steep growing transfer fees, sharp increases in player salaries, and the uncontrollable pumping of money into certain clubs by rich foreign investors will eventually leave European football in financial chaos. The result of which will see, “clubs that are part of European football’s heritage disappear[ing] as a result of hazardous management.” To ensure that this does not occur, European football will operate under a new theory of governance that forces clubs to run a profitable football business through a “break-even requirement, under which a club must not repeatedly spend more than its income”. Failure to adhere to the break even requirement comes with serious on field penalties, primarily the inability to participate in European soccer’s two flagship pan-European competitions, the UEFA Champions League and the UEFA Europa Cup.
these competitions are viewed as pinnacle achievements for clubs in the European soccer structure. Failure to participate in these competitions has several self-enforcing punishments that flow from clubs being unable to contextualize their achievements on the international sporting stage. Firstly, this outcasts the club from the history of the game as the club cannot be measured against its closest rivals. Secondly, the clubs fan base will suffer as fans look for the highest quality football. Thirdly, footballers looking to demonstrate their skills at the highest level will leave clubs which cannot provide them with the highest platform to exhibit their skills. With these issues in mind it is evident that failure to adhere to these regulations has serious consequences. It has recently been highlighted that had the regulations been in place for the 2011/2012 season two Premier League teams which qualified to the UEFA Champions League on merit, Chelsea and Manchester City, would not have qualified for the Champions League because of unbalanced budgets.\(^\text{11}\)

In introducing these rules UEFA have signalled the desire to move from a laissez-faire model of governance in which they have little to no input in financial dealings, to a model that gives them a larger role in policing member clubs financial dealings. UEFA’s objectives are outlined as:

- to introduce more discipline and rationality in club football finances;
- to decrease pressure on salaries and transfer fees and limit inflationary effect;
- to encourage clubs to compete with (in) their revenues;
- to encourage long-term investments in the youth sector and infrastructure;
- to protect the long-term viability of European club football;
- to ensure clubs settle their liabilities on a timely basis.\(^\text{12}\)

It is now important for us to look at these six aims in more detail. From looking at the consequences of these six aims we will be able to see how the break even requirement will not necessarily have the effect on football that UEFA desire.

(i) To introduce more discipline and rationality in club football finances.

It is an admirable aim of these new rules that they will force clubs to balance their budgets and become accountable for their expenditure. The new regulations, however, do not allow teams a sufficient chance to grow.\(^\text{13}\) Growth is important in any business. Without growth businesses sizes remain stagnant, never changing. There are currently two business models within sport that will be identified in this article as the NFL model and the European soccer model. Both of these models of sporting governance have mechanisms within them allowing for different teams to either grow or decline. In the classic European model clubs can do this by boosting incoming capital, whereas under the NFL model, teams grow through the success of the league as a whole.\(^\text{14}\) Both of these models have mechanisms by which clubs fluctuate through the table. In the Premier League for example clubs can simply spend large amounts of money based on the Nozickian model of just acquisition. In the NFL clubs have best access to resources when they are at their sporting lowest based on Rawls’ second principle of justice.\(^\text{15}\)

The fair play regulations, however, have no mechanism for movement. UEFA in attempting to secure football financially have turned their back on free market capitalism demonstrated in the European soccer model. However, UEFA have also refused to incorporate any methods of redistribution found in the NFL model. UEFA’s fair play rules in turning their back on capitalism without incorporating any redistributive tools will be disastrous for soccer. In the Premier League teams that currently have a consistently high level of income, through better revenues, global marketing, and greater sponsorship deals will remain at the top of the Premier League because nobody will be able to catch them.\(^\text{16}\) The result of this will be a stagnation of teams at the top of the Premier League and little room for clubs to join them. As a half-way house between these two established systems the new rules provide no method for team movement.
Platini may contend that this is countered by the exclusion of youth development and improvements to infrastructure from the break even requirement of the fairplay regulations, thus creating a method of movement between clubs, the effect of this however is a highly debatable ideal. This is mainly because while weaker teams will be able to develop good players, the prohibition on their money output at the senior level will result in the continued selling of good young players to aid with short term gains. Consequently smaller clubs will become the equivalent of nurseries or farms, churning out new players as the only method of giving themselves higher revenues. This means that rather than improving growth the new rules will result in a heightened increase in bigger teams using the smaller teams as development factories. Moreover, clubs are unlikely to push money into infrastructure when there is no guarantee that those investments will see any returns. Why would individuals spend money on teams if the product that a team offers can not be improved. Under what circumstances would a high street brand spend all their money on making the shop look good, if their product was awful? European soccer clubs need to be able to spend money on their immediate on field product, otherwise European soccer will become stagnant.

(ii) to decrease pressure on salaries and transfer fees and limit inflationary effect;

While it is desirable for UEFA to want to reduce the inflationary costs in football it is unlikely that the new regulations will achieve this aim. Clubs will first look to other areas of the business to cut costs, and then look to raise revenue. The only alternative is to force the allocation of resources. This is what occurs in the NFL. In the NFL there is a cap imposed on the amount of money teams can spend on, on-field talent. This cap asks teams to decide how they wish to spread their financial resources across their players. UEFA’s rules will simply deter teams with smaller incomes from affording the salaries of high quality players. Rather than achieving stability and equality within soccer, UEFA’s rules will lead to players having fewer clubs to choose from when renewing their contracts. There are many disadvantages to this, for the players, the clubs and the state of soccer. Chief amongst these is that players and clubs will look for long term deals that crystallise earnings, rather than the more fluid system that exists at the moment, making European football saturated with overpaid players of a below par quality. Knowing that there is little room for financial gain, or little scope to offload short-term players, clubs will look for safe financial options. Safe financial options do not make for the best product.

This halfway house measure will result in a worse quality of player in top flight football. Teams in the Premier League will have to make up numbers in their salaries bill with journeymen and youth team players to subsidize big names that demand large chunks of the salaries bill. This phenomenon is already apparent currently in the Champions League where ill thought out home grown player regulations exist. These regulations force the teams participating in the Champions League to include a certain number of home grown players under 25 in their squad for each game. Nevertheless, this number is less than the amount of players required on the bench and does not ensure that any of the home grown talent necessarily plays the highest standard of football. This does not occur in the NFL because the salary cap forces all teams to ration wages, to the point whereby individual players are known to have taken cuts in pay to ensure that new players can be brought into the team. A recent example of this was star quarterback Tom Brady of the New England Patriots. This system works because it has a pre-conceived equilibrium. The equilibrium includes planned economic features like a fixed salary for rookies, ensuring that players coming out of the college draft are accessible to all clubs.

Why would individuals spend money on teams if the product that a team offers can not be improved. Under what circumstances would a high street brand spend all their money on making the shop look good, if their product was awful?
(iii) to encourage clubs to compete with (in) their revenues;

While in theory this objective seems sounds, the idea that clubs should not have expenses greater than their revenue over a period of time, in practice will have a detrimental effect on the quality of football and the fluid movement of clubs between leagues. Conclusions like these can be drawn quite simply from the business cycle most common in capitalist industries. Growth in capitalism occurs primarily through an injection of capital into a business. This short term loss is then outweighed by a long term gain, a gain of which entry to European football competitions is seen as part of. Without the ability to inject large amounts of cash into a football club on a short term basis, other than through trading benefits and burdens (i.e. the transferring of players), clubs will have little means of growth. Sponsorship could be a form of revenue, however, it would make little sense for a sponsor to input large amounts of money into a club without pre-existing signs of growth. With no avenues to grow we will see clubs cement their places within their respective leagues with little fluctuation in membership between the leagues. For example why would a Russian billionaire buy Oldham Football Club if when he gets them to the Premier League, and then the Champions League, his team will be unable to participate? The payoffs and incentives for owners to inject money into clubs are removed.

The UEFA message on this is clear, owners will not be put off buying clubs but like all stakeholders will be assured by the new fiscal discipline involved in running a football team. They will avoid a race to the bottom, spending massive money in order to compete at a higher level, and will be happy with the long term stability of the sport. What this, however, does not account for is the fact that owners will not be happy with this arrangement because it offers neither the incentives of the European soccer model, unlimited individual team potential, or the NFL, unlimited league potential. Instead it asks owners to remain content with their current market position, punishing owners who wish to develop their team in the short term. Of course it allows them to make long term investments; however, as outlined above, long term investments cannot always help a team grow. We can look at the example of Southampton Football Club who in the past ten years has seen Alex Oxdale-Chamberlin, Gareth Bale and Theo Walcott lured away by bigger teams. Sales of this nature will grow under the UEFA regulations because the sale of young talent will be the easiest method for smaller clubs to generate revenue from which to buy more experienced short term solutions. In the NFL the egalitarian method of distribution is not perfect, and not unanimously supported, but the benefits are clear. Firstly, teams while still striving for maximum profit are doing so as a league, choosing to see themselves as a collective product rather than individual products. The rationale behind this is that the more exciting the league is, and the greater the chance of any team winning, on any particular game, the wider appeal the league will have. Secondly, there are provisions within the NFL that allow teams to maintain their individuality, to achieve this certain elements of profit are not shared. For example, Jerry Jones, a strident opponent of the profit sharing scheme won through legal brinkmanship the right for teams to keep local sponsorship deals. What is not acceptable for European football is the halfway house in these regulations which will reduce profits and lower the quality of owners in European football.

(iv) to encourage long-term investments in the youth sector and infrastructure;

UEFA’s fairplay rules will have a mixed result on encouraging long-term investment in soccer’s youth sector and infrastructure. Firstly, the importance put into these areas by UEFA will mean that youth and infrastructure will become much more important within clubs. The problem with the UEFA regulations, nevertheless, is whether or not young talent is best (a) raised for the right reasons, or (b) being put to best use.

In the NFL young talent is supported by a vast collegiate system, which harvests youth players into professional sports athletes while giving them an education. This is one of the elements of American sports which give it the cradle to grave attitude of European social democracy. In America upon retirement most American footballers have college degrees and alternative careers that they can fall back on. On the contrary soccer finds its stars at a much earlier age; and as such soccer is often all these young talents have. Also when NFL players are drafted they are often placed in the team which needs them most in their position, putting their talent to best use. This system ensures that few players are lost in the process through mismanagement. Soccer’s management of youth, however, is much more localized, controlled by the individual clubs rather than a national body, this means that players are trained on separate and distinct programs.
it is true that future NFL players attend different colleges, these colleges are competing in a heavily regulated, controlled set up which demands certain qualities of its players.29 Under the new UEFA regulations teams will be mindful to take greater care of their youth players because they can provide them with medium term benefits through play, however, this paper contends that the major benefit of raising good youth players that they generate income from transfer fees, will be greatly increased. Youth programs will receive more investment which will have a positive impact on young footballers in England.

Infrastructural investment is also not necessarily a room for growth for individual teams. It is well documented that as teams go down the leagues or as performances decline that individual team’s attendance figures will suffer. On field performances are essential for teams to maintain a large proportion of their casual fans.30 This is a catch 22 position, if teams cannot improve by spending money on their on-field product then investment in infrastructure, most obviously stadium capacity, will not make a return in the long term. Ironically UEFA in this situation are allowing clubs to make irresponsible financial decisions with regard to infrastructure, almost singling it out as a special kind of expenditure. It is difficult to find rationality behind allowing teams to spend unlimited amounts of money on infrastructure if the aim of the fair play regulations is for teams to be driven into making better financial decisions.

(v) to ensure clubs settle their liabilities on a timely basis

While this appears as the sixth aim on UEFA’s list, I will take it as the fifth point because the original penultimate point seems like a better way to conclude this section of the paper. Of course it should be the desire of UEFA to move clubs into a better financial position but is questionable whether or not it is the proper role of a regulatory body such as UEFA to become involved in an individual companies desired ordering and payment of debts. Stepping outside the institutional conception of justice, this issue is also hypocritical. For example it is very hypocritical for clubs who used the classic business growth model to gain success over other clubs to now frown on that model and stop other clubs from using similar tactics. Teams like Manchester United who have grown into the position they are now in, as a result of heavy investment, are now preventing other clubs from taking a similar path by excluding them from the most important competitions if they fail to meet these new financial standards. Moreover, by only tackling issues of profitability UEFA are turning a blind eye to the debts currently held by the soccer’s elite clubs. For example Manchester United’s owner, Malcolm Glazer, currently has at least £600 million pounds worth of debt.31 If UEFA are attempting to secure the financial security of soccer they must also tackle the issue of debt reduction.

(vi) Conclusion: to protect the long-term viability of European club football.

Far from protecting the long-term viability of European club football it has been shown in this section that the new UEFA financial fair play rules will undermine the future of European club football. The new regulations will undermine club football because UEFA’s use of the word fairness lacks any rationale. Financial fairplay is caught in a gap, neither following the class European model, or the redistribution found in the NFL. The confused rationale behind UEFA’s fairness that will result in a stagnant sport that fails to recognise or provide a method by which clubs can grow or decline.

UEFA’s New Fairness

It is clear from these six aims that UEFA believes that regulating the financial balance sheets of clubs will make football fairer. Football will be fairer for UEFA because clubs will no longer be able to price other clubs out the market. UEFA is looking towards fair access, moving away from the ability to pay. It will be fairer because clubs will not have to undertake disadvantageous and risky financial situations to remain competitive.32 Nevertheless, it is unclear as to what UEFA means by the word ‘fairness’. Its move is ill thought out and it will be shown in this article that a greater level of analysis of the world ‘fairness’ is required. This is due to the fact that UEFA’s definition of fairness does not deal with the problems of allocation and distribution. Any theory of justice must have consistent methods through which it allocates and distributes resources. Consequentially UEFA have not properly addressed how their scheme achieves fairness. Rather how it creates a scheme of financial conservatism, entrenching for the foreseeable future footballs current hierarchy of clubs.

UEFA’s definition of ‘fairness’ is very indeterminate. It is indeterminate because it is highly confused, based upon a
meshing of two seemingly irreconcilable theories. The core beliefs of UEFA’s financial fairplay rules allude to the ideas behind the governance of the NFL in America, yet at their practical level the fair play rules will seemingly do nothing more than crystallise the current method of governance.

While the desire and push towards more egalitarian financial management is in place this is not being backed up by a method of redistribution that allows for club growth. Clubs will not be able to spend their way to success or rely on the league for assistance in the process of growth. As a result of this, badly performing teams have little recourse to growth. UEFA in their fair play analysis have failed to properly assess the correlation of two elements behind any theory of governance or theory of fairness. First, you need to be able to deal with the original positions of individuals within a society and how society will treat the differences of those positions. Secondly, one needs a sound theory of distribution, how goods are to be distributed or redistributed within an individual’s lifetime. Both the National Football League and the classic European football method have a correlation between how they view fair distribution of goods in a clubs original position, and how view further redistribution via the league. The new UEFA financial fair play rules, however, do not.

The main problem with a disjointed theory of fairness being at the heart of these new regulations is that UEFA will cause football to stagnate. Stagnation will occur because there is no mechanism by which teams can grow or decline, succeed or fail. The consequences for soccer will be dire. Under the classic European model there is perceived fairness because there is unlimited scope for both success and failure of clubs. If a club can attract investment from a third party it has unlimited scope for growth, however, if that club is not a viable business then it is likely to fail as a club. American football on the other hand has a conception of fairness based on collective responsibility. While individual teams are fiercely competitive on the play field, off the field their business decisions are made at a collective level, with the aim of making all teams economic equals. The driving force behind this is the concept that the sport as a whole will thrive only if the lowest club within the sport has equal opportunity to resources. There are several issues about the current model of sporting governance within European soccer that need to be questioned in relation to the new UEFA financial fairplay rules. The new model of governance being ushered into European soccer through the financial fairplay rules is a half measure. We will now turn to these two models of sporting governance to show how there is a gap in UEFA’s financial fairplay rules. A gap which means it is difficult for us to resonate or place the regulations in any of our current conceptions of sporting governance.

Part 2: The differences in the NFL and European soccer model

Comparative analysis between the National Football League and the European soccer model is easy to make. The two leagues are run off two different conceptions of how a sport should be governed, creating opposing models from which sporting governors can choose. In the European soccer and most notably the English Premier League, you have a highly decentralized conception of sporting regulation. Under this system the central administration, in English football the Football Association, and UEFA play a minimal role. This minimal role is similar to the classic idea of ‘the night-watchman state’. In a night-watchman state governing bodies are created only to enforce contracts and protect members of society from one another and not to force transactions between clubs. A night-watchman government does not become involved in the individual aspects of a person’s affairs in society, leaving these decisions to the individual. In sporting context, the Football Association is in place to ensure that rules are followed and that a foundation level of protection is offered to the clubs. The bodies deal only with enforcement of rules and regulations and not with the individual success and failure of each team. The role of the governing body is one of a referee, instituted to ensure fairness between the individual teams and not to ensure each team is treated fairly. This creates a system of ‘possible access’ not ‘equal access’.

On the other hand the National Football League is operated under a system of governance whereby the regulatory body has a substantial role in not only creating the rules but also in making sure all teams within the league remain competitive. This hands on approach known as ‘League think’, views the individual teams, and their success, as inseparable from the whole league, and for the whole league to succeed the regulatory authorities must take an active role in ensuring all teams remain competitive within the league. This is similar, and is compared later on in this article to the theory of government in modern welfare democracy.
The comparisons that can be made between these two models of governance are fascinating; however, we make them here for a greater purpose. Through these different solutions it will be shown that again UEFA’s fairplay regulations are lacking. Firstly, the new rules undermine current regulation in place that deals with soccer’s structure by limiting the possibilities in promotion and regulation. Secondly, the new rules do not conform to the chief alternative model, offered in the NFL. Resultantly European soccer is left in a confused state, whereby not only will there be no method by which the individual teams can grow, but also creating a situation that creates confusion in expectations concerning the regulatory bodies governing sport. To explain this we can look at several issues in depth. First, we will look at how the two models deal differently with on-field form. Secondly, we will explore how the regulatory bodies deal with team with the financial strength of the various teams. Thirdly, we will look at the regulatory body’s relationship with individual talent. Finally, we will deal with the movement of assets within a league and how the regulatory bodies become involved in the process. It will be shown that in each of the cases the new UEFA rules undermine current solutions without fully endorsing a new system of regulation. This leaves a lot of situations whereby the new rules undercut the rationale behind the current system.

(i) Franchising v Promotion and Regulation

Under the European soccer model teams are relegated and promoted from different divisions based upon that team’s on-field performance. Three teams that currently make-up the English Premier League will next year play their football in the lower Championship division, and the three best teams from this year’s Championship division will play their football in the Premier League next year. This process recreates itself throughout the whole of the soccer structure, down to the lowest local leagues. Behind this system is the idea that any team can either become good enough through on-field performance, or big enough through off-field investment to rise through the rankings system. Promotion and regulation keep the on-field product in the better leagues consistently high, and offer fans with competing centers of soccer, always offering them with new options as the team they currently support do worse on-field or off-field. The new regulations by UEFA, however, undermine this system by preventing lower ranked teams from attracting investment in their club. There is little incentive to invest in a club that once promoted is limited in its chance of success. Fairplay regulations undermine the promotion and relegation system in three ways. First, in the short term the clubs currently middling in the Premier League will be unable to grow into top teams because their income does not support them spending money to remain competitive with teams at the top of the table. Secondly, in the medium term to combat this, the Football Association have pushed for all leagues within the structure to adopt a form of Fairplay regulations that force clubs to break even before achieving promotions. Finally, in the long term smaller clubs will not attract large investments because there is conceivably little room for pumping investment into a club and thus a lower chance of profits. If an owner did pump money into an organization the new UEFA rules aided by the Football Association would prevent owners from reaping rewards for their investment.

The NFL operates an alternative model known as the franchised system whereby thirty-two teams are guaranteed spaces in the league, regardless of performance. Recently foreign, mainly American, team owners in the Premier League has discussed the possibility of introducing a system similar to this in the Premier League. Talk of franchised soccer, however, was firmly rejected. This method is different to the classic soccer model, whereby the worst performing teams are relegated to a lower standard league, and the best teams from the next best league are promoted to the top league. Such a system of team management results in the NFL becoming a closed market, with other teams unable to compete.

The NFL is therefore far more egalitarian than European football in how it deals with profitability. That is the NFL focuses more on the equality of its teams to promote the overall product it offers rather than individuals teams driver to innovate and succeed.
to join the competition. This means unlike most other sports markets the NFL’s choice of team management is diametrically opposed to the basic economic argument that underscores the free market that the rational individual knows best. Rational individuals in a free market can choose which products they want to buy on the basis of which would rationally benefit them. In sporting terms we can do that in the Premier League, London side West Ham United suffered relegation in the 2010/2011 season, while, London side Queens Park Rangers replaced them in the Premier League. A fan in London could therefore make the choice on whether they continue to support their faltering West Ham United or show their support to the upcoming Queens Park Rangers. Moreover, new fans can make their decision on which team to support based on the clubs fortunes, giving no single club a consistent monopoly over one geographical area, for example if I wanted to set up a soccer team in my hometown of Southampton called Southampton Legal and they had good enough players to rise up the league system they could eventually challenge the established city club Southampton. In the NFL, however, such a possibility does not exist instead teams have a consistent right to play in the NFL, giving them a monopoly over American football’s biggest stage.

While European soccer maintains this open-ended system there is no way that financial fair play rules would have a positive effect. The financial fairplay rules that are introduced effectively create a franchised system masquerading under the European soccer model. Hypothetically under the current model it is currently plausible that seventeen buyers could purchase the teams ranked four down to twentieth in the Premier League and invest enough money in those clubs for them to force teams ranked one through three to eventually be ranked seventeen through twentieth. Under the new system, however, the teams ranked fourth through twentieth have no incentive to spend money and are in fact penalized for doing so, by being prohibited access to the European competitions. Therefore coupled with the UEFA financial fairplay rules foreign owners have nothing to worry about as the majority of Premier League clubs will remain Premier League clubs, as teams lower than them with ambitions are unable or unwilling to spend the level of money required to challenge them.

(ii) Individual Team Finance v Collective Team Finance

In the Premier League an individual team’s financial situation is guided by their own ability to record a profit or loss. If an individual team fails to draw spectators to watch their team, they fail to make the money to improve their team’s performance. The ability of a team to compete in football therefore relies heavily on the position of that team to draw individuals to that team. The money each team reaps from soccer is tied to both, the success they have within the various competitions, and their ability to remain within their competitions. If a team, as stated in the first point cannot manage to remain in the Premier League they are relegated to the Championship, a competition which has less competition money, and small television incomes. Contrastingly, in the NFL the teams share the profits gained from their collective enterprises. For example every year, at the end of the season the best two teams play each other in the Superbowl to crown that year’s champion. Getting to the Superbowl is an amazing success but on-field there is a great drive to win. Coming runner up in a Superbowl carries no prestige. However, while the teams that win the Superbowl are remembered as the greatest to have played the game those teams do not take all of the profits gained from their success. Instead these profits are divided among all the teams in the league, to make sure that all teams benefit from the success of the league. Also the revenue taken from massive television deals does not get divided between the teams based on ability to produce ratings, rather the teams split the money equally amongst the collective.

The NFL is therefore far more egalitarian than European football in how it deals with profitability. That is the NFL focuses more on the equality of its teams to promote the overall product it offers rather than individuals teams driver to innovate and succeed. American football is governed by rules which are not aimed at merely creating conditions that allow teams to make use of the resources at their disposal, but redistributes those resources amongst the teams, giving each team an equal opportunity to succeed. In American politics such measures would be badly received, viewed as outside mainstream political discourse. Under these circumstances some commentators have highlighted a socialist undercurrent in the administration of the NFL. The use of the term socialist, however, is an exaggeration of the term, and does not properly consider the true to nature of the NFLs administration. A socialist administration would attempt to
achieve equality amongst all teams, running them centrally for the benefit of the whole league, whereas the NFL's policies only aims at adjusting brazen unevenness amongst teams, offering the struggling teams opportunities outside of financial ability to have a level playing field with the bigger clubs. Nevertheless, this rebalancing is outside the acceptable sphere of normal politics and normal law. It would be unthinkable for the government to redistribute the best quality workers to struggling companies, or the government to prevent companies from spending more than a certain percentage of their income on staff wages, or for the government to mandate that a new worker in y field must be paid z. This makes the NFL, and other sports in the United States that operate under this system of special academic interest.54

UEFA's fairplay rules make no such allowance for the redirection of profit between different clubs. The fairplay rules make no changes to the way money is allocated between the various clubs within European soccer, money is still allocated through the traditional mechanisms of the market. In fact the financial fairplay rules only look at the teams individually and never talk about soccer as a collective. UEFA's rules seek to make each individual team profitable and not soccer as a whole, refusing to subsidize clubs as in the NFL. By focusing on the individual team UEFA's new regulations cement the current world order of soccer. This is done, as outlined early by closing the methods through which teams can grow. The issue with this is that clubs which make more money have more to spend and that the teams with the weaker financial base have diminished growth capabilities. Recognising this, the NFL commissioner and its owners decided that a shared system of finance was required otherwise the weakest teams will find themselves consistently in the worst positions,55 while the top teams will remain the best teams forever. The middling position taken by UEFA's fairplay rules undercuts a team's ability to push its own brand without giving it the incentive to develop a league image.

(iii) Salary Cap v Profit maximisation

In the NFL the amount of money individual teams are permitted to spend on player salaries is capped.56 Salary caps mean that teams must make weighted choices across their player roster. If a team wishes to spend a large amount of money on one particular player they will have less money to spend on other players. In soccer, meanwhile, there is little means of price control amongst players. Teams can buy and sale players on the basis that they can afford them. If a team can afford a player, they have the right to buy them, and if a team needs income then they will sell players as required. Even major Premier League clubs are not excluded from this race, Manchester City have recently bought players from fellow table topper Arsenal by offering inflation busting prices for top stars.57 The only rule in European soccer is that transfers may only occur at certain periods during the year,58 so as not to disrupt the season. The quality of the team, therefore, rests on a team's ability to buy and retain players. Often this creates a situation whereby the best teams become a lightning rod for the best players. We can see that some teams such as Southampton Football Club, noted earlier who despite having a strong academy, that has developed many Premier League soccer players, have not benefited in the long term from this due to the teams need to sell those players to make enough income, or improve results in the short term.

The financial fair play rules will only exacerbate this situation by preventing smaller clubs from being able to offer higher wages, in competition with bigger teams. Clubs will be limited to signing players within their own wage range, or selling their better players to fund the wages of stars. Moreover, the European soccer model has no method of redistributing talent to ensure that the smaller clubs can remain competitive. The European model views fairness as just entitlement, meaning the clubs as free entities can judge what matters more to them, maintaining talent for long term gain or the monetary gain from the selling off of a young talent prospect. UEFA's fairplay model will never achieve fairness in player distribution because the new governance structure does not allow for smaller clubs to make a substantial investment in their product without future repercussions, as the new rules take stock of cross season spending. Therefore the UEFA fair play model falls foul of
current European soccer’s ability to allow clubs free reign as individual businesses to maximize their chance of success, or fail, and also short of the NFL’s ability to allow growth through planned distribution.

What UEFA do need to do, however, and what the UEFA Financial fairplay does not address is the problem with spiralling player transfer fees. There is a difference between a salary cap that is definitive and equal for all teams as in the NFL, and the fairplay regulations that prevent teams from spending beyond their income. The first is egalitarian and based upon equal access to resources, the second is a constrictive measure that prevents team from spending beyond their means. While it does this, however, it keeps teams within their current hierarchical setup. The financial fairplay regulations will not offer smaller teams an equal playing field with more established clubs; instead fairplay rules impose a limit on smaller teams, forcing them to spend less money than the bigger clubs. The consequences of this are clear, bigger clubs will remain big, and smaller clubs will remain small.

(iv) Transferring of Players v Drafting of Players

One of the biggest issues in the Premier League and widely across the soccer world has become the issue of player transfers. Transfers have become more common in soccer, especially since the introduction of the European Champions League. As players desire to compete at the highest level of soccer, and clubs hold the ambition of playing the best level of football they can, players are bought and sold as vehicles of success. Demand for quick success within the Premier League has heightened, and as a result of this both coaches and players are signed and dropped quickly if on field results do not live up to the owners expectations. Chelsea Football Club and Manchester City Football Club are prime examples of this form of ‘cowboy capitalism’. In the past eight seasons, multi-billionaire owner Roman Abramovich has seen nine managers control his well backed Chelsea. In each occasion managers left the club after their failure to bring about the immediate sporting results expected by Mr. Abramovich. On the other hand Manchester City has invested over £800 million in transfer fees, bringing in the quality of players into the club to ensure they reach the Champions League. In the 2010/2011 season the club finished third in the Premier League and is currently participating in the 2011/2012 edition of the Champions League.

This drive for success has created a race to the bottom that would not occur in the NFL. ‘Race to the bottom’, is an economic theory that as regulation is removed, or as one competitor undermines another through a commercial advantage, all other competitors would be forced to follow suit until the competitor no longer enjoyed that advantage. This theory is traditionally used to explain competition between nation states or component parts of a state for businesses, however, it is equally applicable to private enterprise. For example as Chelsea grew stronger and spent hundreds of millions of owner Roman Abramovich’s considerable fortune on transferring in players, to improve their clubs success rate, other clubs are forced to make similar transfers. At the end of the race to the bottom is a dangerous situation of financial turmoil. Clubs are forced to push one another to the brink of financial ruin.

By comparison in the NFL there is a yearly draft for talent whereby the worst teams from the previous season get first access to the best young players from college football. This means that each individual team over a period of time should have equal access to the best new players. As a team does badly in the NFL, rather than face relegation as they would under the European football model, instead they are endowed with the best young talent. Moreover, if a team does not need the player who is perceived to be the best in the upcoming draft they can trade their preference draft pick for more experienced players. A team therefore which has the worst record in the NFL one season could trade its number one draft picking opportunity to a better team in return for senior players who could become team leaders.

Conclusions

The introduction of UEFA’s fairplay rules create much inefficiency in how soccer is governed within Europe. There is a gap between the current model and what would be practical after the implementation of the fairplay rules. However, upon comparison with the National Football League in the USA it is unclear how the new model will operate. The new model of governance seems to continue under the same rules without any thoughts to how this it will practically continue. Now we will turn to the final problem with UEFA fairplay rules, the fact that they are jurisprudentially and philosophically weak.
Part 3: The (lack of) Philosophy behind UEFA’s Fair Play Rules

Two Models of Fairness within Sport and Philosophy

Governance of sport in the National Football League and the classic European model of soccer demonstrated in the Premier League are not merely based off different understandings of justice but are arguably opposite conceptions. Conceptions which cannot be recognised in the aims and objectives of UEFA’s fairplay rules. These conceptions can be carried forward into political philosophy and the opposing theories of justice created by John Rawls and Robert Nozick. Again, UEFA’s fairplay rules do not fit into either of these theories; instead UEFA fairplay rules borrow and ignore issues from Rawls and Nozick in a haphazard way creating a confused and under-theorised idea of justice. By muddle these two philosophies together the UEFA fairplay rules in the process achieve neither. Before, however, we address the consequences the fairplay rules have we must first look into the merits of such a discussion, between sport and philosophy. The benefits of which are not immediately apparent.

Why Sport Matters

It may be a little farfetched for some scholars, to consider the relationship between politics and sport, there is however good reason to make comparisons between the two and their principles. The first reason is very simple, people care, and if people care then an activity is deserving of public and scholarly attention. Sport is one of the biggest industries in the world, 3 billion people watched India win the 2011 cricket world cup, 160 million plus people yearly watch the Superbowl worldwide, and 265 million people across the globe play soccer. When Karl Marx described religion as the opium of the masses he clearly had not been a sports fan. The second reason that sport is deserving of consideration, which is more theoretical, is that sport, despite its deceivingly simple nature, is actually at the centre of our conception of philosophy and jurisprudence. A sport by its nature plays a key role in shaping an individuals and societies understanding of justice. The slogans of justice and wider philosophy are everywhere in sport, youth competitors for example are taught the basic principles of sportsmanship, the National Football League markets the egalitarian slogan of; “any given Sunday”, Manchester United Football Club’s stadium is nicknamed “the field of dreams”, Liverpool Football Club’s motto is “you’ll never walk alone”, whereas the American baseball franchise the New York Yankee’s promote “courage, tradition and heart”. Cricket, ‘the gentlemen’s sport’ is operated on a set of rules which encourages honesty, respect and personal responsibility in upholding the laws of the game, and often individuals that do not follow these principles are said to have performed an action, that is “just not cricket.”

This relationship between sports and jurisprudence, however, is not one way. Scholars of jurisprudence have also benefited greatly from sport due to its natural accommodation for ideas of justice. Many key works of jurisprudence have explained, rationalised, dismissed or separated their work from others by use of sporting examples; using chess, American football, baseball and cricket to explain conceptions of justice, or ideal situations. Sport with its preconceived rules creates a universally understood standard of behavioral constructs, a test laboratory for understanding huge philosophical questions. Just as Justice Brandeis described the stage legislatures as laboratories of democracy in the scheme of federalism, sports become a laboratory representing life. Sports teams are made up of equal numbers of players, the referee is neutral protecting both teams and enforcing rules evenly, everyone has an opportunity to play, and everyone has the chance to use their talents to win the game. These conditions give sport the potential to provide a level of fairness that is unachievable in everyday life, nevertheless, this level is not always sought after and just as in life, individual sports and leagues having different interpretations of what justice entails. Sports introduce systems of promotion and relegations, define how players are assigned to individual teams, choose how players are paid for their services, decide how to apportion income, expense and profit, choose the methods in which teams, matches, and the league are advertised, create the rules which govern team ownership, and settle the conditions for new teams joining the competition. All of these differences mean that while sports are a laboratory for democratic theory at a basic level, it is also a crystal glass into much deeper questions. Asking us to consider questions such as what is justice? What is the role and effect of governing bodies on sports? How does this role parallel with the state and how it conceives justice? Why are we so happy for sports, such a fundamental part of society to run on principles different to our political conception of justice?
A comparison between sport and politics could be conceived as ludicrous, after all the subject of politics is national governance, decisions which underpin the existence of a country, how it is run and the life or death decisions that affect its people. Whereas professional sports have little tangible affects beyond their own industry and in the case of recreational sport, beyond its own competitors. Nevertheless, it is the size of these industries, and the emotion they invoke in the people who consider themselves a part of that industry that give sports their importance. Oddly enough, sports almost more so than politics can help define a community and give it a sense of achievement, pride or worth. In Glasgow, politics and religion is split by the city’s catholic and protestant sects, however, this is most practically manifested on the playing field when the Glasgow Rangers, largely a protestant team, face Celtic Football Club, primarily a catholic team. Meanwhile on a national level individuals support their country with immense pride as they battle in soccer competitions against other nations. Every time England and Germany take the soccer pitch it is both a reminder and resonation in fans of World War One and Two, with the match almost representing a symbolic continuation of those conflicts. George Orwell once described sport as akin to war without the violence. Meanwhile, at the heart of the international sport of cricket is the idea of ‘empire’, and specifically the British Empire. All the nations that compete in the sport had the sport thrust upon them in the glory days of the British Empire and all compete with the old Master country for sporting supremacy, perceived often also as a fight for national autonomy. It is this human element of sport, the unique ability to strike at the heart of the individual that puts sports on a comparative level with politics, and makes the comparison between justice and sports fair.

The NFL is based on a model of governance which while maintaining the individual dignity of teams seeks to maximize the chances of the worst off teams, for the development of the whole league. This model is roughly akin to the theory of justice proposed by Rawls for whom justice is fairness. Rawls’ fairness is achieved through the creation of basic liberties for the individual and redistributive arrangements which support the least well off. The European model on the other hand is more closely associated with the justice theories of Nozick. Through Nozickian principles the European football model has a structure which involves minimal regulation in clubs private affairs and through which clubs are viewed as autonomous entities. Fairness in this world is achieved through entitlement, as clubs acquire more capital they are in turn entitled to use that capital as they see fit. Neither of these models can be truly reconciled with UEFA’s financial fair play rules. This is because while UEFA’s new rules represent a shift towards the NFL model; this shift is undercut by UEFA’s inability to change the infrastructure and culture of European soccer which is deeply suspicious of the ‘one team’ attitude of the NFL. We will now turn to look at these two individual systems of governance. Through this in depth analysis it will be shown that the new financial fair play rules struggle to find themselves a jurisprudential home.

Rawls and Nozick

Political philosophy in the twentieth century, and now as we turn through the twenty first century, has been dominated by the works of John Rawls and Robert Nozick. As sporting analogies go these two have been ‘boxing’ for their vision of justice. The debate between these two academics hinges on our understanding of justice in the modern world, and how we interpret the role of governments. At the heart of their debate are their competing visions of institutional justice, whether or not, and to what extent, is government’s power legitimate and justified. A similar debate is currently taking place as UEFA seek to realign how soccer is governed in Europe. This makes the extrapolation of this debate to the governing and regulation of soccer not so farfetched. Through Rawls and Nozick we can ask deep questions about the changes that are being made to the European soccer model and whether or not those changes can be read as compatible with a particular theory of justice. Rather than asking how regulators and governments should infringe or impede on the lives of individuals we are charged with looking at how they deal with the independence and competence of various sports teams under their control.

In this section we will ask what UEFA are trying to achieve philosophically in their movement from the traditional European model to the fairplay regulations. By again looking at the NFL it will be shown that the main philosophical alternative to the current European soccer model, that of Rawls, is certainly implausible under the proposed changes.

John Rawls in A Theory of Justice expounds a vision of justice that hinges on his idea of justice as fairness. Searching for a definition of justice, Rawls seeks to explain how institutions
controlling the ‘basic structure’ of society; that is the organisations, relationships, governance and rights, of a community, that forms the most important part of justice. Institutions for Rawls are therefore at the centre of justice, and an institution can only be just if it governs with fairness by treating individuals within society as equals. It is from the just nature of society’s main institutions and how they fit together that we can grasp the level of justice within a society. For Rawls the basic structure:

“is the way in which the main political and social institutions of society fit together into one system of social cooperation, and the way they assign basic rights and duties and regulate the division of advantages that arises from social cooperation over time. The political constitution ... the legally recognized forms of property, and the structure of the economy ... as well as the family in some form, all belong to the basic structure.”

To fill this basic structure Rawls believes that we must rid ourselves of any bias that we have towards our own lifestyle and put our own preferences to the side. Obviously this would be difficult in European soccer with clubs having preconceived understandings about their fortunes. As noted earlier Manchester United could support these changes because they are currently in a more advanced financial position than other soccer teams. Rawls highlights how this undercuts his work, often rendering it inapplicable; “

“The difficulty is this: we must specify a point of view from which a fair agreement between free and equal persons can be reached; but this point of view must be removed and not distorted by the particular features and circumstances of the existing basic structure.”

To achieve this detached level of thinking Rawls places individuals in what he calls ‘the original position’, a position that presupposes the conditions of a society. In this position Rawls erects what he calls a ‘veil of ignorance’. Once behind this veil of ignorance individuals, free of their natural biases will be able to pick principles of justice fairly. Taken from this position Rawls contends that individuals will arrange society around two principles. These two principles will be the principles from which all other beliefs in justice flow. Firstly, Rawls holds that in the original position we will assign maximum individual liberty to individuals within society. This will allow individuals to be free and equal within society, executing the same level of rights. Secondly, individuals will have fair and open access to offices and positions in society and that social and economic inequalities will be arranged to benefit the least advantaged members of society.

As it will be shown throughout this section the UEFA fairplay rules do not coordinate with Rawls’s theories. The confused nature of the fairplay regulations makes it difficult to grasp any definition of justice within them. While UEFA may try and create an institutional belief in fairness, by trying to hold licensed football clubs to a break even point, ensuring that clubs only use resources available to them, UEFA fail to acknowledge that Rawls’ theory requires a greater level of analysis. This analysis would lead them to the conclusion that Rawls relies on the second principle of justice, ordering of socio-economic activities to favour the least advantaged, to work. UEFA have plainly ignored this, refusing to deal with issues of distributive justice in their new regulations.

Instead UEFA cling onto Nozick. Nozick’s Anarchy, State and Utopia, which takes particular issue with Rawls’ conclusions, sits at the forefront of current regulatory methods in European soccer. For Nozick, and other critics of Rawls, it is difficult to see how individuals behind the veil of ignorance would necessarily choose his two principles of justice, or more specifically why they would choose those two principles over other possible principles. A key example of an opposing principle could be the lottery principle. Under the lottery principle individuals would not establish Rawls’ second principle of justice to order social and economic inequalities to favour the least advantaged. Rather than presupposing that individuals would take a negative view of the future and protect themselves from potential harm they would increase their chances of getting the most out of the original position by ensuring that they could be one of the winners in society.

Moreover, Nozick takes political issue with Rawls and how he views justice as fairness. As opposed to fairness Nozick views justice as acquisition. Rather than justice being about how governing bodies distribute resources, justice is found in how individuals are respected within society. For Nozick, “Individuals have rights... and there are things no person or group may do to them (without violating their rights).” Rights in an individual are not there for society to distribute to favour the least favoured members but inherent in individuals...
regardless of circumstance. In Nozick’s theory there can be no justice flowing from the original position because justice is a direct result of the individual. The original position for Nozick is a loosely veiled version of utilitarianism, merely affording greater weight to the concerns of those least advantaged in society. Only in Nozick’s theory is an individual accorded the correct level of protection.

From these two theories, studied further in the rest of this article we can see that two clear theories of governance have been developed in sports. In the National Football League we can see the development of governance based loosely on the theories of Rawls, while in European soccer and most ardently the Premier League we can see the application of Nozick’s theory. UEFA’s fairplay rules, however, lack any of the intellectual quality of either the NFL or European model. While UEFA attempts to move from a Nozickian approach to a Rawlsian protection it fails to tackle the problem of distribution. By refusing to acknowledge this issue, reforms will be undercut. UEFA must consider the idea of redistributing resources amongst soccer teams to make fairplay possible.

The Philosophy of the Leagues

A. The Premier League

Currently in England, the home of soccer’s Premier League, soccer is at odds with the countries perceived egalitarian politics. This is not to say that England is an egalitarian country, or a socialist utopia, like all other European countries England has a mixture of right and left wing politics, creating a form of European social democracy. However, England can be seen to be more egalitarian than America for a variety of reasons, making the switch in governance models which occurs in sport very interesting. Before we begin we must identify what makes the United Kingdom’s political system to the left of the American political system. First and foremost there are political positions in England which are vastly different than in America and see the state take a much more active role in citizens lives for example the government gives all students with ability, regardless of income, access to university. Secondly, some issues at the centre of English politics are untouchable by politicians, regardless of ideology; issues which if placed in the American political system would either be adaptable depending on government policy or out of place. An example of this is the National Health Service (NHS), government controlled healthcare. In England, the NHS is off the political table, the country’s most right wing post war Prime Minister Margaret Thatcher could not disband it. Third, without a written constitution the British political system is reflective and open textured, making it progressive and capable of change. In contrast to this, the written constitution in America is underpinned by values of the past, and this gives the American political system roots in the past. American politics can be seen as backwards exercise which looks to justify development on its compatibility with the past.

The Premier League, however, is the antithesis of English political egalitarianism. As an organisation the league is run with one intention, namely to make money for the individual owners of soccer teams. In the Premier League, and in fact under the European soccer model, club owners are not interested in maintaining the whole product; they are simply concerned with ensuring they are as successful as possible. Unlike the NFL the Premier League is not concerned with individual teams going bankrupt. Bankruptcy in the Premier League is a natural part of the game, as teams fail as a business they are allowed to take their natural course. While individuals and communities could contest this intention and argue that profitability is not the chief purpose of soccer teams, it has been proven otherwise. Over the past three seasons the legal system has clearly shown its interpretation of sport as a business, liable like any other business to the rigors of capitalism. Teams in the Premier League are involved in a battle for survival. Unlike the NFL the Premier League is not a closed shop and membership of the league is dependent upon results on the pitch. As a result of this, unlike in the NFL, teams are not entering the league with a joint interest in maintaining the quality of the league; rather they enter the league with the express intention of personal survival. If a team finishes in the bottom three of the Premier League they are relegated, and play their football in the Championship with weaker football teams. Contrastingly, the two teams and a winner of a playoff competition from the Championship are promoted to the Premier League. This is a system that is repeated throughout the European soccer structure. A teams failure on the pitch will result in the team playing a lower standard of football and a substantial loss of revenue, these combined elements will have detrimental effects on the quality of players at the club, and the level of support for the club. This makes for an
environment that is reminiscent of Hobbes’ Leviathan, a war of all against all. In which every club must fight for its open survival by putting itself in the strongest possible position. Any notion of the cooperation identified in the NFL would look out of place in this structure. Helping the opposition would directly result in your own demise as a sporting club and as a business. The smartness of this is doubted by traditional notions of sporting philosophy. Gardiner has pointed out that some level of co-operation is absolutely necessary for sports to remain competitive. This is also true of Nozickian theory, and this is why the Premier League is much more akin to his theory of justice than of Hobbes understanding of society. The minimal state required by Nozick is repeated in the minimal regulation required by such bodies as UEFA and FIFA.

The Premier League and Nozick

The Premier League adopts a political philosophy that could be more readily associated with the American tea party, that of free market capitalism, particularly the brand associated with Robert Nozick. Nozick’s theory of governance looks at government as nothing more than a structure that defends an individual against others within the structure. The night watchman state is very similar to the Football Association in the United Kingdom. Unlike the NFL regulators in America, the FA is a body which plays a minimal role in the regulation of football, mainly because it is neither directly in charge of the Premier League, or involved in the financial operations of the individual teams. Finance in the Premier League is primarily a responsibility of the club, not the league. Patterned distribution similar to that of the NFL would be alien, and this is one of the issues analysed in Part three of this article. For Nozick and the Premier League there is no way to redistribute benefits and burden justly, the only just way benefits and burdens can change hand is through the proper acquisition and disposal of assets. This means that property can only move hands in three ways through acquisition, transfer or rectification. At the foundation of all three of these is the free movement of goods between two willing parties. Under this theory it is just that Manchester City by having the most money means that they can acquire the best players, so long as the players are acquired in adherence to the rules of transfer. This is because for the other team to sell that player they must have benefited sufficiently from the transfer fee.

In Nozick’s theory nobody should be made worse off through redistribution. Under the NFL model that follows a more Rawlsian set-up Nozick would view intervention in financially independent teams as being improper. Nozick views Rawlsian redistribution as a violation of teams individual rights. An example of this in Nozick’s writing is the discussion of Wilt Chamberlin and why he should not have to forfeit profits from his labour. Chamberlin, a basketball player is used to explain why taxation is a form of slavery. Analogous to politics, Nozick questions why rich individuals must subsidize the poor through welfare benefits to ensure they survive. In Nozickian philosophy the individual unit should have maximum autonomy to make decisions which put them in a stronger position. Individual teams decisions, on the free market, will be place them in a better position to provide a greater product for fans. An example of this is Barcelona for who have the greatest collection of footballing talent in Europe. They have benefited from this and have put themselves in a position whereby they can define themselves as the greatest team in European football. In Rawlsian systems it is questionable whether or not such greatness can develop with the best players being redistributed through the system to the worst teams.

UEFA therefore has an established system of governance which treats the individual clubs as the only unit of autonomy. As Margaret Thatcher once said “there is no such thing as society”, in European football there is no such thing as the collective. Therefore the introduction of financial fair play measures which aim to introduce NFL style stability cannot work successfully because European football does not recognize a fixed entity such as the Premier League. The Premier League’s membership changes each year, with the worst clubs being kicked out of the competition to participate in a lower league. An example of how unjust Rawlsian redistribution can be is most evident in the Barcelona dilemma. Barcelona provide Nozick with a key example of how a team that has put so much effort into their success will be forced under the NFL model to redirect their gains to other teams.

UEFA’s financial fair play rules are a confusing mismatch of jurisprudence. The definition of fairness that UEFA seeks to create, attempts to borrow concepts from both its current model and the NFL, without committing to either. These theories, however, mixed together draw from two
jurisprudential theories of justice which are irreconcilable. In attempting to move closer towards a definition of fairness that looks towards fair access to resources UEFA misguide their efforts. By focusing on breakeven what UEFA have done is separated itself from both Nozickian and Rawlsian theory. Rawls could not support breakeven because there is no obvious way in which resources can be redistributed amongst clubs, and Nozick could not support the new efforts because by forcing individual teams into breaking even UEFA are undermining the clubs as individual autonomous units. Moreover, UEFA are not offering the clubs even the Nozickian method of growth, through calculated risk in the free market. This has serious practical consequences for European soccer. In introducing the fairplay regulations UEFA are moving soccer into a philosophical hole. What they should do is either maintain the current system of governance as advocated by Szymanski and better outline the capitalist underpinnings of soccer, or alternatively turn to the NFL and adopt strong Rawlsian principles. We will now turn to the NFL to show how it is both different from the European soccer model and the new UEFA fairplay regulations.

B. The National Football League
The National Football League (NFL) is the largest sports organisation in America, and is considered in the 21st century to be “America’s pastime.” It has a dominant position within the countries culture, politicians have played an active role in setting its playing dates, games are often attended by 75,000 people plus, weekly televised games are watched by millions, and the world watches to view the sport that George F. Will describes as a combination of two of America’s worst things, violence punctuated by committee meeting. The importance of the NFL can be understood when you walk down any street in the country, “The NFL is America’s clothier. Walk down the street, and all you see are guys with jerseys on, hats, jackets, whatever it is.” To these ends Gannon has tried to explain the use of Football as a metaphor for understanding the American way of life, with the notion of competition and the winners mentality that underpin football seeping into American culture. Every game in the NFL matters, there is virtually no such thing as a tie, the winners of the Superbowl are remembered, the runners up forgotten, similarly in American politics, there are only victories and defeats and no conception of coalition government, politicians are dumped to one side once they no longer serve electoral purposes and the media are always looking for ways to create winners and losers. This on the field psyche of winners and losers, however, is not shared off the field, by the owners, the league or the players.

Away from the highly competitive and often cut-throat sports field, behind the scenes, off the field, the NFL is run in a remarkably different fashion. In the boardroom the NFL is run in a more consensual fashion, with the teams looking to secure the foundations of the sport itself through cooperation and redistribution, not competition and survival of the fittest. In this sense only the football game is competitive and comparative to the conservative vision within American politics. Contrastingly the football business is collective and protective. American politics is characterized by its right wing conservative nature in contrast to European liberal democracy. In American politics society focuses around the individual and their ability to compete within the free market. In contrast the machinery of the NFL is focused towards entirely different aims, with principles entirely contrasting to those outlined in the American political vision. As a business the NFL has enacted a series of mechanisms that ensure on field competition remains level, preventing teams from dominating the league. The NFL makes business choices and allocates its resources amongst teams artificially, on a model seemingly contradictory from the free market preached in ordinary business, in the aim of securing fair competition or good competition to make on field competition engrossing for fans of all teams. This ensures that no one team becomes untouchable, and that no team is left without access to the resources to win. To these ends the NFL holds central to its philosophy that for its product to remain enjoyable, interesting and just there must be ways in
which the teams are kept on a level playing field.\textsuperscript{113} An NFL which corresponds with the American vision would look entirely different. This separates the NFL from the European soccer model,

Szymanski has described this as “American football socialism.”\textsuperscript{114} Critical of this model Szymanski believes that all it does is make the owners rich.\textsuperscript{115} However, Szymanski comes purely from the position of an economist. Not only is it sustainable because of the money it places back in the owners pocket but also due to the interest it generates amongst a majority of fan bases. The UEFA fairplay regulations, upon implementation, will have the effect Szymanski levied at the NFL model. Without Rawlsian redistribution the new measures will not increase competition amongst teams but merely shore up the potential for the best teams to perform well.\textsuperscript{116}

The NFL and Rawls
In the NFL either consciously or subconsciously, clubs have taken a Rawlsian approach to understanding justice. This Rawlsian approach is more identifiable in American sports than politics. In government America incorporates a more individualistic idea of justice. Rawls’ influence on the NFL is evidenced through the thought pattern of its owners, placing the interests of the league as a whole, and the worst off team within that league above their own, looking towards a competition that operates from a level playing field. One of the main issues here is that the NFL’s changes occurred before the founding of the modern league, making it easier for the owners to be objective. In this sense the main problem with the UEFA fairplay rules is that they are not revolutionary enough, refusing to deal with certain issues. To this end the formation of the league, and how it has been run since, is similar to the social contract that Rawls proposes in his theory. Rawls’ theory is primarily a way of taking the social contract to a higher level of abstraction; however, in the NFL we see how Rawls’ theory can be demonstrable in an organisation.\textsuperscript{117} Through pooling together various benefits and burdens, the owners in the NFL created an organisation that promotes the interest of all owners.\textsuperscript{118} Rawls believed that individuals in society would support as just such rules “that free and rational persons concerned to further their own interests would accept in an initial position of equality”.\textsuperscript{119} While it is difficult, and beyond the scope of this essay to go back and trace the evolutionary steps of this process it is important note that many devices that would be considered Rawlsian have developed in the NFL. Moreover, it is because of these devices that teams make decisions now as if in the original agreement situation outlined above. Teams do this because if they only take into account their current interests and demand a system that is favourable to them, in the long term their team maybe one of the franchises that suffers through poor performance. For example, if a team votes for the best teams to receive all the revenues from the Super Bowl, as opposed to the redistributive system that currently exists, when that team worsens in quality due to the reallocation of players via the Draft from college, that team will be at a loss in the long term. So while the image painted by Rawls of the people in the original position cannot exist in the governance of the NFL,\textsuperscript{120} a slightly modified version does. A modified version that is contextualized by the league rules, teams must adopt a ‘veil of ignorance’ as to their future ability. This is different to the Premier League where there are fewer factors for teams to consider when they judge how a rule will benefit or burden them in the future. In this system teams take account of their long term interest in the product, American football, and weigh it against their short term personal gains, on field. This is different to the Premier League where there are fewer factors for teams to consider when they judge how a rule will benefit or burden them in the future. The problem for UEFA is they do not fully cloak themselves in a ‘veil of ignorance’.\textsuperscript{121} The financial fair play rules do not put clubs behind the ‘veil of ignorance’ in assessing whether or not they believe the new regulations will benefit football.

Owners in the National Football League look on foreign leagues like the Premier League in England with suspicion.\textsuperscript{122} The open ended nature, and possibility for financial loss, presents them with a deterrent to investment. In 1960 when the NFL was founded owners decided to sacrifice certain

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liberties of ownership to reserve the possibility of facing many of the harsh consequences of poor performance. These sacrifices also limited the financial liability of an individual team by sharing the financial benefits and burdens of the league. There is still individuality amongst the teams. For example the Dallas Cowboys remain the Cowboys. This then follows Rawls's first principle of justice that "each person is to have an equal right to the most extensive total system of basic liberties compatible with a similar system of liberty for all." This occurs in the NFL as the individual teams are provided with the ability to buy and sell players as they wish, giving them each independent trademarks, and by allowing the owners to make basic business decisions for each team. Even if Cowboys' owner Jerry Jones would like to see greater stake placed in this first principle of justice. However, the issue that makes the NFL so different from the European football model of ownership is that the NFL withholds certain benefits of ownership from the NFL teams, choosing to incorporate Rawls' second principle that,

"Social and economic inequalities are to be arranged so that they are both;"

(a) To the greatest benefit of the least advantaged, consistent with the just savings principle." This second principle is often known as the difference principle. This principle for Rawls holds that governing bodies should distribute resources within society to benefit the least well off members of that society. It is through the difference principle that the NFL is able to ensure that all the teams are evenly matched. An example of this is how NFL gate revenues are not simply taken by the home team, or the teams that advance into the post-season. Instead gates, including that of the Super Bowl go through a complex method of redistribution amongst the NFL teams to ensure that no team is favored because of its (1) fan base, (2) greater stadium capacity, (3) on field success, or (4) wealth. In 2004 for example eighty per cent of the leagues income was redistributed amongst the teams.

This Rawlsian approach shows that National Football League believes that their product requires both cooperation and competition to survive. Under this model despite the fact that every club should have its individual identity and liberty, as proposed under Rawls' first principle, if each club does not have the resources or capabilities for on field success then the league could not maintain its prominence. To achieve this owners follow the two basic rules outlined by Rawls. Owners do this to protect their own investment, knowing that they will not always dominate on field proceedings. An example of that is in the 2011 off season the NFL owners voted to move the kick off spot, the position from where games and drives are started from the 30 yard line to the 35 yard line. This will be disadvantageous for teams who have the best punt returners, as it will be more difficult for them to run the football to the best possible position in the field. Nevertheless owners unanimously voted the proposal through knowing that they firstly will not always have the best kickoff returners, and secondly will better protect individuals on their team from less kickoff returns. A similar situation is less likely to happen in the Premier League, where the majority of rules are unchangeable due to the world governing structure. The cut throat nature of the Premier League's promotion and regulation system means that the rules are controlled by a governing body, the Football Association, and not by the clubs within the Premier League. It would be very unlikely that the individual teams could come to a solution without separating themselves from their own short term needs.

To move across to a system similar to the NFL would be a remarkable change to the structure of European soccer, however, without these changes the UEFA fairplay rules are inherently unfair. UEFA are putting teams which have benefited from Nozickian free market governance in the position of being unthreatened by teams that have not had the same benefit because those teams neither have the right to spend capital as they see fit, nor the support from the structure to have equal access to the best resources. Without either committing to its current model of Nozickian justice or throwing its weight behind Rawlsian equality UEFA are wounding European soccer.
Conclusions

This article has accessed three issues for the new UEFA fairplay rules. Firstly, it evaluated the rationale behind the new fairplay rules. Secondly, the paper questioned the practical possibilities of moving between the classic European soccer model and the NFL. Lastly, the paper asked whether moving into unchartered practical territory could be philosophically possible by looking at the theories of justice that could possibly underpin the fairplay rules. In conclusion it is clear that the NFL is governed by an egalitarian constitution that is highly different from the individualistic basis of European soccer, however, UEFA’s fairplay rules do not adopt move towards the NFL model. Instead UEFA fairplay rules attempt to cherry pick between the NFL and European soccer models, and the Rawls and Nozick theories, adding and subtracting parts of the two theories them deem fit to protect the future stability of European soccer.

It is clear that UEFA want to move away from its current model, however, UEFA is not in the process moving towards a more Rawlsian theory of fairness. Rawls’ fairness requires two that two principles are followed, the liberty principle and the redistributive principle. Under the new regulations UEFA will be following the first principle of fairness, UEFA is avoiding the second principle. Moreover, through infusing its conception of fairness with a requirement to break even UEFA is moving away from its current concept of fairness without a purposeful direction. It is clear to see why UEFA would want to move European football towards a similar model to the NFL. The NFL is founded on a system of governance which ensures long term stability with mechanisms that prevent teams from spiraling into financial or competitive obsolescence. Nevertheless, there are serious difficulties in UEFA being able to introduce NFL style concepts into European football. Most obvious is the problem with team mobility. Under the NFL or current European football methods there are ways in which new teams can rise amongst current teams, as currently witnessed by Manchester City in the Premier League and the Detroit Lions in the NFL. In the fairplay proposals teams are limited in how they can improve and as Part A highlighted UEFA have been misguided in believing that these areas can seriously help a team grow.

UEFA should rethink their financial fair play rules and ask themselves the following questions. First, do the financial fair play rules provide initial fairness? Secondly, do the financial fair play rules provide for distributive fairness? Thirdly, are the answers to these questions aligned? If not how can this be rectified?

Initial fairness under the new model is Rawlsian in spirit but without any form of redistribution this is undercut and in all practicality European soccer remains Nozickian. UEFA fails to take Rawls’ second principle of justice seriously. Without redistribution UEFA’s model is hollow and useless, leaving us with simply Rawls’ first principle which is maximum individual liberty, which on its own is no different to the Nozickian model of justice. In fact this principle, combined with the breakeven requirement creates a system of governance that is Nozickian without the recourse to new growth. Breaking even does not encourage fairness, it simply protects the current status quo, it is value neutral. The clubs achieved this by creating a false manifestation of the original position, pretending to hold up a ‘veil of ignorance’. Through these new rules the current batch of top clubs within European football will gain a long term benefit. These teams have higher revenues than other teams and will therefore have access to a larger pool of cash from which to spend, crystallising their position as market leaders. Clubs in agreeing to these rules, and not opposing them, have in turn failed to put themselves behind the ‘veil of ignorance’ to ask whether they would support the new governance model regardless of their financial position.

In this sense UEFA’s new model of governance remains Nozickian, except in pandering the need to introduce financial stability into European football UEFA have been required to consider reforms to how clubs spend their money. Rather than introducing many of the NFL’s redistributive tools into European football UEFA have also chosen to introduce fiscally conservative measures. The problem with these financially conservative measures is that while taking aim at controlling the spending of larger clubs they did not consider the terrible consequences they would have for smaller teams. UEFA need to go back to the drawing board and consider how they can introduce rules into football that not only introduce stability for the biggest clubs but also that provide the smallest clubs with the opportunity to grow and become the best.

It is clear that while UEFA do not want to change the structure of European football to include many of the NFL’s redistributive tools because they are not looking to change
the definition of fairness within football. They do not have the power or the will to instigate redistribution in resources. Such a program of reform would be revolutionary for football and its consequence would be that clubs would be deterred from pushing themselves to be great. This article has shown that this is a similar argument as that deployed in propositions as to why the free market trumps socialism, and why philosophical one either supports Rawls or Nozick. Nevertheless, the Nozickian distributive model of European football combined with the Nozickian/Rawls hybrid original position of the Fairplay rules provides individual clubs with no avenue for growth. Without growth European club football will face rapid decline as predictability sets in. In conclusion European club football faces a huge dilemma. It has conceived a theory of fairness that is inherently unfair and incoherent. Unless something is done to remedy the philosophical shortcomings of the financial fairplay rules then the future of European club football will be greatly undermined. [13]

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1 UEFA, UEFA Club Licensing and Financial Fair Play Regulations, 2010
2 Ibid at 38 (Article 57)
3 John Rawls, A Theory of Justice (HUP 1971)
4 Robert Nozick, Anarchy, State and Utopia (Basic Books 1977)
7 Her Majesties Royal Customs v. Portsmouth City Football Club Ltd & Ors (2010) EWHC 2010 (Ch) (05 August 2010)
8 Supra Note 5.
9 Supra Note 6.
10 Supra Note 5, President Platini stating, “If clubs do not respect what has been the will of European football, they will have to face the consequences. There is no going back.”
15 Supra Note 3 at 83.
16 Supra Note 14.
17 Short-termism is a problem with British industry in general; however, it is a common problem in soccer when success is measured in such a short period. Richard Rae, Roy Hodgson bemoans short-termism after West Brom fail to beat Fulham, Guardian (London, 25th September 2011).
19 2010/11 Season Champions League Regulations, Article 18, Clause 8.
20 Ibid at 38 (Article 57)
22 This seems counter to the point of the transfer window. Clubs that amount any form of debt will then be left with only a small window to gain revenue. See Borja Garcia, UEFA and the European Union: from confrontation to co-operation?, (2007) 3 JCEER, 201 at 207. “The transfer system was said to protect the small clubs that dedicate their resources to training and educating young players, thus preventing the richest clubs from stealing the players once they had finished their grassroots education.”
23 A ‘race to the bottom’ occurs when competing business organisations are forced to continually undercut each other to remain competitive. See William L. Cary, Federalism and Corporate Law: Reflections upon Delaware, (1974) 83 Yale LJ 663.
26 ‘Cradle to the grave’ is an expression commonly used in British politics to discuss the scope of care offered to an individual through the National Health Service. Sport in America offers care for an individual in a separate way, through giving them a free ticket through college and a possible career.
28 David Conn, Clubs leave lost youth behind as academies fail English test, Guardian (London, September 9th 2009).
29 See NCAA Division I Manual 2010-11, August 1st 2010.
THE FAIRNESS OF UEFA FINANCIAL FAIR PLAY RULES

30 So far in the 2011/12 Season newly promoted teams have achieved the following average attendance figures: QPR 16,787, Swansea City 19,688, Norwich City 26,446, whereas in the 2010/11 Season Championship teams they only achieved the following: QPR 15,635, Swansea City 15,507, Norwich City 25,386. Meanwhile in 2010/11 Premiership teams that got relegated drew; Blackpool 15,773, Birmingham City 25,461, West Ham United 33,439, in 2011/12 however, these clubs have only managed attendance figures of Blackpool 12,593, Birmingham City 18,810, West Ham United 29,354. As this shows relegation and promotion have significant consequences for gates. If a team fails to maintain their status as a Premier League team they face the possibility of not merely relegation but of losing fans.


32 See Note 17.

33 Supra Note 2 at 2. (UEFA outline the new rules as being for the long-term viability and stability of European club football. This is very similar to the message developed by Commissioner Rozelle in the NFL.) See Sanjay Jose’ Mullick, ‘Browns to Baltimore: Franchise Free Agency and the New Economics of the NFL’ (1996) 7 MARQ. SPORTS L.J. 1, 1.


35 Principle 1 ‘Initial fairness’; Supra Note 3 at 17-22, Supra Note 4 at 258-313, Supra Note 4 at 149-232.

36 David Bradley, et al, Distribution and Redistribution in Postindustrial Britain: As this shows, relegation and promotion have significant. Each of these footnotes give a good introduction to the wide literature that deals with this question.

37 Ibid.


39 See Note 33, Mullick at 1.

40 This article will focus on the English Premier League due to the extreme nature of the league. It is the financial responsibility of the English Premier League that many perceive as the catalyst for the new regulations.


42 See Note 4 at 26-28.

43 Herbert Hart, Between Utility and Rights, (1979) 79 Colum L. Rev. 828 at 832 defines the night watchman state as “The only legitimate State on this view is one to which individuals have transferred their right to punish or exact compensation from others, and the State may not go beyond the night-watchman functions of using the transferred rights to protect persons against force, fraud, and theft or breaches of contract. In particular the State may not impose burdens on the wealth or income or restraints on the liberty of some citizens to relieve the needs or suffering, however great, of others.”

44 David Harris, The League: The Rise and Decline of the NFL (Bantam 1987) 12


46 Culture, Media and Sport Committee, Football Governance, (HC 2010-2011 792-11), 14 “The point you make about rewarding failure is a very important one, because the Committee will think a little about the American model and why something like the NFL—we just had the Superbowl—is so incredibly successful. One of the points people make about that is that it is a system that rewards failure as well. The traditional football model we have in Britain, Europe and most of the world is a model that punishes failure through relegation, and that is one of the things that drives the clubs to live financially on the edge.”


49 Supra Note 4 at 27 (The relegation scheme is similar to a voucher scheme whereby individuals can put their trust in competing products. In the NFL system individual teams have a monopoly over a particular geographical area.)

50 Alan Switzer, The Cost of Relegation, Telegraph (London, 23 May 2011)

51 See Note 33, Mullick at 2. Mullick also goes on at 3-5 to discuss how attitudes to this have begun changing within the owners of NFL teams.

52 Mark Yost, Tailgating, sacks, and salary caps: how the NFL became the most successful sports league in history (Kaplan Publishing 2006) 17-19 and 73-74.

53 Stefan Fatsis, Can Socialism Survive? The All-For-One, One-For-All Ethos of Pro Football Has Made it the Env of Other Sports; The NFL is Fighting To Make Sure It Stays That Way, WALL ST. J. (New York, September 20th 2004)


55 See Note 45 at 643, Moorhead identifies the problem with the increased level of local revenue and how it is undermining the equality of teams.

56 Supra Note 20 at 666-669.

57 Samir Nasri joined Manchester City from Arsenal in August 2011 for a transfer fee of roughly £25 million pounds. Gail Clichy joined Manchester City from Arsenal in July 2011 for a transfer fee rumoured to be around the £7 million pound mark.

58 Currently in the English Premier League transfers can occur between two periods. Firstly transfers can happen between the end of the domestic season and the 31st August. Secondly midseason transfers can take place between January 1st and January 31st of the year.

59 Supra Note 5.

60 Since Roman Abramovich took over Chelsea FC in 2003 they have had 8 different managers. Claudio Ranieri, José Mourinho, Avram Grant, Luiz Felipe Scolari, Ray Wilkins, Guus Hiddink, Carlo Ancelotti, and currently Andre Villas-Boas.

61 Tom Coulson, Manchester City Squad of 25 Cost: £86million, Telegraph (London: September 8th 2011) < (This estimated price would have risen since the publication of this article.)

62 William Cary, ‘Federalism and Corporate Law: Reflections Upon Delaware’ (1973) 93 Yale L.J. 663 (Race to the bottom theory is
used to explain how in a situation without regulation one party will undercut another party even if it is at everyone’s expense. In this sense race to the bottom theory is a construct that allows us to show how Hobbesian war against all would persist. In Cary’s article he explores corporate law in Delaware to show how its low standards force other states into implementing similar standards. In relation to football as one team, Manchester City, spend more other teams are forced to do so."

63 Ibid at 668-671.
65 See Note 62.
66 Ibid at 705. Cary talks about the need in a free market society for continued regulation.
67 In 2010 after finishing with the worst record in the NFL the Carolina Panthers picked Camerion Newton as there number 1 pick. This would be similar if the seventeenth premier league team had access to the best younger player in English football.
69 Marx, Critique of Hegel’s ‘Philosophy Of Right’, (CUP 1977) 127
70 Sports has proved a fruitful field for explaining basic philosophy, see The Philosophy of Popular Culture book series published by University of Kentucky Press to see how various sports can be used as a vehicular mechanism for explaining philosophy. This connection has been long felt. Sandiford, Keith A.P., Cricket and the Victorians. (Aldershot: Scholar Press 1994) 1 “Cricket was much more than just another game to the Victorians. They glorified it as a perfect system of ethics and morals which embodied all that was most noble in the Anglo-Saxon character.”
71 See Note 2 at 161-164 (Using basketball player Wilt Chamberlain:);
72 New State Ice Co. v. Liebmann (1932) 285 U.S. 262, 311
75 Arjun Appadurai, “Playing with Modernity: The Decolonization of Indian cricket” in Modernity at Large, (UMP 1996)
76 Supra Note 45 at 647.
77 Supra Note 3 at 11-17.
78 Supra Note 4 at 149.
79 Alasadair MacIntyre, After Virtue (UND Press 1981) 244-252.
81 Supra Note 3 at 7-11.
83 Ibid. 15.
84 Supra Note 4 at 150-153.
85 Ibid. 274-375 discussing the issue of redistribution.
86 Ibid. ix,
87 Ibid, generally Nozick draws no distinction between utilitarianism and Rawls’ patterned distribution.
89 Rudolph Klein, Why Britain’s conservatives support a socialist health care system, (1985) 4 Health Affairs, 41-58.
90 In 2010 Chester City Football Club was wound up after an order from Her Majesties Revenue and Customs.
92 Thomas Hobbes, Leviathan (OUP Oxford Classics 2009)
93 Supra note 33 at 3-4 (Stressing the requirement for ‘real competition’)
94 Supra Note 4 at 24-25 (The development of controlling forces has been represented in European soccer as UEFA and FIFA have introduced rules that govern football within countries. UEFA’s financial fair play rules, however, may just overstep Nozickian concepts of regulation.)
95 Ibid, 26. The Premier League protects its teams but it does not support them. In the NFL by contrast teams are given means through which to improve.
96 Ibid. 150-151.
97 Ibid, 149-183.
98 Ibid, 168.
99 Ibid, 190-191 Nozick explains the inadequate nature of Rawls second principle of justice.
100 Ibid, 171-172.
101 Ibid, 161-165.
102 Margret Thatcher, The Downing Street Years, (HarperCollins 1993) 626. Thatcher discusses the meaning behind her quote
103 Ellis Cashmore, Making Sense of Sport, (Taylor and Francis Group 2010) 104-106
105 Dale Swihart, A Dedication Tribute to Frank W. Miller, (1991) 69 Wash. U. L. Q. 5, 6
106 Jeff Davis, Rozelle: Czar of the NFL, (McGraw-Hill 2008) 238
108 Only 17 ties have ever been recorded in NFL history.
THE FAIRNESS OF UEFA FINANCIAL FAIR PLAY RULES

109 Supra Note 33.

110 See Note 46. Szymanski describing his interpretation of the salary cap, “They also have a salary cap, which limits the amount that they can pay players, and they have a draft system, which rewards the worst performing team with the first pick in the draft, which in addition gives them exclusive negotiating rights, which helps to keep the wages down. They have designed a system that keeps wages down.”

111 Supra Note 45 at 651-659.

112 Ibid.

113 Ibid.

114 See Note 45, “The NFL is the most profitable football sports league in the world by a country mile. The 32 owners are incredibly wealthy and they get incredibly wealthy out of American football, and they do this by being, as they describe themselves, 32 socialists who vote Republican, because what they do is they share everything in common”

115 Ibid.

116 Ibid, the Report concluded that wealth re-distribution is currently strained by FIFA’s transfer windows. A point that would be further damaged by the UEFA Fair play regulations.

117 Supra Note 3 at 3.

118 Supra Note 17 at 12; Supra Note 17 at 18

119 Supra Note 3 at 11.

120 Supra Note 3 at 17-22

121 Ibid at 137 (The major difference between the NFL and the Premier League is that the NFL owners could not have foreseen how the new league would have panned out. In contrast European soccer teams are unable to divorce themselves from the present system.)


123 Supra Note 3 at 305

124 Supra Note 17 at 4; Supra Note 33 at 658

125 Supra Note 3 at 83.

126 Supra Note 45 at 643.

127 Supra Note 3 at 19-20.

128 Supra Note 3 at 20. Comparable to Rawls conditions of living.

129 The Premier League must remain obedient to decisions made by FIFA. The flat structure of the NFL means that its decisions are not answerable to any other body.


131 Supra Note 3 at 137.
Background

The manner in which the world governing body in football has conducted itself has, for a number of years now, been surrounded by intense controversy—not only because of the allegations of cronism, obscure processes and “clientilism” which have been well-documented in the media over the past decade, but, more seriously, also because of allegations of corruption. These have centred on two main aspects of the organisation’s operation: the manner in which its top officials are elected and selected, and the bidding process for the major tournaments over which it presides, in particular the World Cup, held every four years. In the previous issue, we reported on allegations that the process whereby South Africa was selected for the 2010 tournament had been tainted by corruption. However, the greatest controversy and to have affected the world’s most prestigious international tournament in the sport has come in the shape of the manner in which the hosts for the forthcoming two World Cups (2018 and 2022) were selected, i.e. Russia and Qatar respectively.

It will be recalled that the first indications that improper conduct had entered the bidding process came in mid-2009, when Lord Triesman, then Chairman of the English Football Association (FA), was compelled to resign after making allegations of corrupt collusion against Spain and Russia. Later, a leading British newspaper published allegations that two members of the crucial Executive Committee, Issa Hayatou (Cameroon) and Jacques Anouma (Ivory Coast) had been paid £1 million in bribes by the Qatari authorities in return for their vote relating to the 2022 tournament. This charge has been denied by the two members in question, although it did give rise to a FIFA investigation which had yet to reach a conclusion when the last issue of this Journal went to press. Since then, however, the allegations of corruption have continued to roll, and the manner in which FIFA has dealt with these has, as will be seen in the pages below, once again shown the world governing body in an extremely unfavourable light.

For some considerable time after the World Cup vote and its bitter aftermath, which caused FIFA president Sepp Blatter to brand the English authorities and media as “bad losers”, there was relatively little to reignite and stoke the fires of controversy on this issue, and it seemed therefore that the issue would slowly remove itself from the headlines. It is true that, in early February 2011 Mr. Blatter confirmed that the Qatari and Spain/Portugal bids had colluded to trade votes in the contest, in spite of an earlier FIFA investigation into these accusations which had concluded that there was insufficient evidence to take any action. However, this admission came with the caveat by the FIFA supremo that it made no difference to the final outcome. This assertion was certainly open to challenge, since the deal between Qatar and the Iberian bid was thought to be worth seven votes—which was exactly how many votes Spain-Portugal received in both rounds of the 2008 voting. If, as Mr Blatter claimed, Qatar received the same seven votes, this provided more than half of the 12 which they required to win (The Daily Telegraph of 8/2/2011, p. S3).

Nevertheless, the losing bid nations did not pursue the matter, which added to the feeling that the controversy surrounding the 2018 and 2022 bids had been laid to rest.

This illusion was brutally dispelled in mid-May 2011, when Lord Triesman returned to the fray with a fresh round of corruption allegations. Giving
evidence to the British House of Commons Select Committee on Culture, Media and Sport, the former FA Chairman accused no fewer than six members of the FIFA Executive Committee – i.e. a quarter of its membership – of “improper and unethical behaviour”. In so doing, he reiterated the accusations made against Messrs. Hayatou and Anouma referred to above, and accused four other members of the FIFA Executive of making inappropriate requests for cash or favours. The bribery accusations made against Qatar in relation to Hayatou and Anouma were based on the allegations made in the British Sunday Times and published by the Select Committee. Protected by Parliamentary privilege, Lord Triesman listed four examples of “inappropriate behaviour” by executive members, claiming that they had allegedly requested favours ranging from a £2.5 million “donation” to build a school to a request for an honorary knighthood. More particularly, he alleged that:

• Jack Warner (a well-known figure in these columns) had requested money to build a school as part of his “legacy”, and asked for a £500,000 donation to buy the rights to the World Cup for Haiti so that games could be shown to the survivors of the catastrophic earthquake last year;

• Worawi Makudi (Thailand) had requested the sale of UK television rights from a proposed friendly fixture against England as a condition for supplying his vote


• Nicolas Leoz, from Paraguay, had requested an honorary knighthood, and

• Ricardo Teixeira, president of the Brazilian federation, had requested Triesman to “come and tell me what you have got for me”.

His Lordship conceded that he had failed to report his misgivings about these approaches to FIFA’s Ethics Committee at the time when they were made for fear that this could adversely affect the England bid. He admitted that, in retrospect, this was not the right view to take. The Qatar FA, dismissed the allegations as “baseless”, adding that the Ethics Committee had investigated certain allegations and had “entirely exonerated the Qatar bid (\textit{Ibid}). Sepp Blatter, for his part, ordered a fresh inquiry into the 2022 bid in the light of these allegations, but on an extremely restricted timescale, aiming to have the investigation completed before the next FIFA Congress on 1 June, when he would be standing for re-election for a fourth term in charge of the governing body (\textit{Daily Mail of 12/5/2011, p. 80}). At the same time, he demanded that the English FIFA furnish evidence of these claims. He had the opportunity to discuss the impact of the allegations directly with the Crown Prince of Qatar, who was also the President of the Qatar 2022 World Cup Organising Committee, later that day. It was also learned that Mr. Blatter faced a challenge to his re-election from Bin Hammam, the Qatari president of the Asian Football Confederation who played a key role in securing the Qatar bid (\textit{The Daily Telegraph of 12/5/2011, p. S6}).

As the inquiry progressed, relations between the English FA and FIFA, already under severe strain, were sinking to below freezing point. First, it was learned that the investigation, led by leading QC James Dingemans, had widened its brief from examining Lord Triesman’s specific accusations against FIFA Executive members to requesting further examples and evidence of FIFA wrongdoing. This raised concerns about the way in which any evidence not connected to the Triesman allegations, made under Parliamentary privilege as is mentioned above, would be used by the FA, the legal ramifications of this development, and the alienation this would cause at FIFA headquarters (\textit{Daily Mail of 20/5/2011, p. 77}). At all events, Mr. Dingemans interviewed almost every senior member of the England bid team before completing his report, which was communicated to FIFA in compliance with the latter’s deadline for the Ethics Committee to receive submissions to its parallel investigation into the allegations made in the UK Parliament (\textit{The Guardian of 24/5/2011, p. S8}). It was also learned in the meantime that the “whistleblower” whose revelations had formed the basis for the Sunday Times feature which had exposed the alleged scandal would travel to Zürich to give evidence in person to the FIFA investigation (\textit{The
had been approached. The report was alleged that all 25 members of the CFU during private meetings, and it was election. These approaches were made for return for votes in the presidential "development projects," allegedly in the in question would come in "gifts" and "harmless" claims that he had orchestrated the affair and its timing. He insisted that he could be trusted to cleanse the world body, which has reserves of $1.28 billion (The Guardian of 27/5/2011, p. G1).

For his part, the Secretary-General, faced with Bin Hammam's formal request, had no choice but to draw Mr. Blatter into the investigation. The latter was invited to reply to the allegations in writing prior to appearing at the hearing scheduled for the following day (The Daily Telegraph of 28/5/2011, p. S4). Meanwhile, more details emerged from the Blazer report. It appeared that the $40,000 involved was not an aggregate total, but the sum allegedly offered to each of the 25 CFU members concerned. Those CFU members who reported the incident to FIFA claimed they were initially informed that the money was a gift from the CFU, but that the next day Mr. Warner told them that, in fact, the cash emanated from Bin Hammam and that he had advised the latter to make "gifts" in cash. The "whistleblowers" were led by Bahamas FA President Anton Sealy, whose claims were supported by statements from the Bermuda, Cayman Islands and Turks and Caicos Islands football associations. As for Bin Hammam, it was understood that, at the hearing, his defence consisted in claiming that he played no part in offering bribes, and that his contribution was restricted to travel, accommodation expenses and "administrative costs" relating to the meeting. Mr. Warner's defence, on the other hand, was thought to include statements from 12 other Caribbean football officials claiming that the allegations were entirely false and that nothing untoward had occurred in Trinidad (The Sunday Telegraph of 29/5/2011, p. S1).

Came the day of the hearing, held in camera, and the outcome, which was that the Ethics Committee decided to suspend Messrs. Bin Hammam and Warner pending a full investigation into the allegations made against them.
Mr. Blatter, for his part, was cleared of any wrongdoing. Announcing the decision, Ethics Committee Chairman Petrus Damasedb (Namibia) said that, since no payments had been made at the time when Blatter was warned, he had no case to answer. As for Warner and Bin Hammam, he stated that the Committee was assuming they are innocent until proven guilty, but were “satisfied that there is a case to answer”. He added that the two would face a full inquiry, with independent investigators and legal counsels assisting the Committee. He hoped to report within the next 30 days, but added that the bans served on Warner and Bin Hammam could be extended if necessary. Both the accused continued to deny the allegations, with Mr. Warner even making the sensational claim that Jérôme Valcke had informed him of his belief that Qatar had “bought” the 2022 World Cup. He also claimed that Blatter had given the Concacaf Confederation, which is led by Warner, a $1 million gift earlier that month. Not to be outdone, Bin Hammam accused Mr. Valcke of “influencing” the Ethics Committee process and of pursuing the investigation for political advantage (The Daily Telegraph of 30/5/2011, p. S2). He also said he would appeal his provisional suspension in the hope of taking part in the FIFA Congress later that week (Daily Mail of 31/5/2011, p. 71). The Committee also found that Paraguayan Nicolas Leoz, referred to above, had not requested a knighthood (Daily Mail of 30/5/2011, p. 64).

The portents of all this for president, Sepp Blatter were mixed. On the one hand, Bin Hammam’s suspension meant that he would be unopposed in his candidacy for a renewed term of office. Nevertheless, he had to face up to a barrage of criticism over corruption within football’s governing body. However, after a day of high drama in which Qatar threatened legal action against Jérôme Valcke, for implying, as was mentioned above, that it had bought the right to host the 2022 World Cup, Mr. Blatter defiantly insisted there was nothing for FIFA to investigate.

In an echo of the (entirely inaccurately) reported dictum of a certain British Prime Minister over 30 years ago, the FIFA President, without a trace of irony or sense of self-parody, saw fit to ask: “Crisis? What is a crisis?”. The same congress of national federations which issued the suspensions referred to above would now be his judge, he claimed – “they will decide if I am a valid or a non-valid candidate, or if I am a valid or non-valid president”. Certainly there were some references to reforms Mr. Blatter intends to initiate. One is for FIFA’s Ethics Committee to be strengthened. Blatter, alone on the press conference podium at FIFA headquarters, spoke of “all the devils who are in this game”. This was never a criticism that was likely to shake the support of his member organisations. However, the lack of support among football fans for his 13-year stewardship of the world game was clear as “Blatter out” became the second most popular international trend on a certain social media network.

As to Secretary-General Valcke’s allegation that Qatar had “bought the World Cup”, the nation in question quickly denied the allegations. Hours later, Mr. Valcke issued his own clarification:

“When I refer to the 2022 World Cup in that email, what I wanted to say is that the winning bid used their financial strength to lobby for support. I have at no time made, or was intending to make, any reference to any purchase of votes or similar unethical behaviour.” (The Guardian of 31/5/2011, p. 1).

Mr. Blatter, who as president has a ‘statutory’ responsibility for the line management of the secretary general, refused to express any view about Valcke’s explanation. The organisation’s reputation suffered a further blow with the emergence of photographic evidence of neat bundles of cash allegedly paid to the Bahamas Football Association by Mohamed Bin Hammam, in an effort to garner support for his election campaign. In an almost satirical touch, the money had been delivered in a brown envelope. Chuck Blazer, the US official who was the chief accuser of the two senior figures to have been suspended this week, stated when asked if he thought FIFA was corrupt: “I think individuals are”.

Blatter’s refusal to accept any criticism of his oversight of FIFA was put in relief by the public comments of Coca-Cola, a major sponsor. They described the allegations raised as “distressing and bad for the sport”, adding their expectation that FIFA would “resolve this situation in an expedient and thorough manner”. Though those words may have seemed innocuous, they marked a significant departure from the usual steadfast support which the sponsors demonstrate for the organisation. Usually, they separate their partnership with the World Cup from any controversy at FIFA Towers. Now, in a potentially strong coalition of
interest forming against FIFA, world governments were joining the sponsors. In addition to the UK parliamentary inquiry into football governance, the Australian government — whose 2022 World Cup bid failed against Qatar’s — also began to express grave concerns. Newspapers in the Middle East even likened the situation in FIFA to the Arab spring that has unseated a number of governments in the region.

However, Mr. Blatter did make one apparently extraordinary admission. Under his presidency the annual revenues of football’s world governing body have grown to $1.3bn as it feasts on sponsors’ and broadcasters’ appetite for the World Cup. That presidency began in 1998, making his remark revelatory. He commented that “we had no problems until 1998; this was a modest FIFA — now we are a comfortable FIFA” (Ibid).

The following few days failed to provide a breathing space for the beleaguered world governing body. Just as the footballing world was absorbing the full measure of the Blazer report, more allegations of corruption emerged when, a week later, it was learned that the Ethics Committee inquiry was to be widened to include two members of the FIFA executive who allegedly attended the controversial Caribbean “bribes summit”. These were Worawi Makudi from Thailand, a long-standing member of the executive, and V Manilal Fernando, from Sri Lanka, who had only taken his seat on the Committee the previous week. More particularly, investigators were keen to clarify in what capacity the two officials attended the meetings, as well as receiving their impression of events in Port-of-Spain. It was also learned that the investigation, by former FBI director Louis Freeh, faced a boycott on the part of Caribbean federation officials who were reluctant to co-operate with the inquiry, claiming that there was a US-led conspiracy against them (The Daily Telegraph of 8/6/2011, p. S11). Mr. Blazer, for his part, dismissed these allegations as “nonsense”, and that the only US element involved in the entire affair was the $100 notes which were said to have been flourished during the contentious meetings. Indeed, sources close to the investigation seemed to confirm that those claiming the existence of a US conspiracy were merely attempting to create a diversion. An email from the secretary of the Ethics Committee Marc Cavaliero accordingly warned the 25 CFU associations that the Committee might draw a “negative inference” from any refusal to attend the hearing in question (The Guardian of 8/6/2011, p. S1).

However, it soon appeared that this move by the CFU officials owed more to wishful thinking than to evidence-based reality. Indeed, just a few days later fresh evidence of CFU-based corruption reportedly emerged when it was learned that the President of the Surinam Football Association, Louis Giskus, confirmed that he had been presented with a $40,000 cash gift on 10/5/2011. He insisted that he had been told that this sum concerned a CFU gift aimed at development projects. However, it seemed as though some heat might have disappeared from the confrontational abrasiveness which had developed in this affair when the CFU federations decided to end the boycott and co-operate with the investigation. Horace Burrell, the Jamaican who is acting President of the organisation, agreed to participate “in the interests of this game” (The Observer of 12/6/2011, p. S4). However, the entire issue was given a new controversial twist when, three weeks after vowing to unleash his “football tsunami” in response to his suspension, Jack Warner resigned as FIFA vice-president. To this end, he sent a letter to the Ethics Committee indicating his intention to concentrate on his political career in Trinidad and Tobago, where he is a cabinet minister. The Committee immediately abandoned its follow-up investigations into his conduct, pointing to the restrictions on its jurisdiction under the Swiss law of associations, which stipulates that it may only exercise its powers over affiliated members (The Guardian of 21/6/2011, p. S7). In spite of this, it was expected that he would still be interviewed by investigation chief Louis Freeh and that his role in the alleged bribery operation would be examined in the investigator's final report.

Warner’s departure from the football stage, which FIFA insisted was not the result of an immunity deal, also seemed to make it increasingly likely that Bin Hammam would consider following suit and resign to spare himself further investigation. Warner was, after all, the key witness capable of providing an evidential link between Bin Hammam and the Trinidad cash offers. To recall, Bin Hammam had asked for the meeting to set out his election manifesto, and according to witnesses Warner told delegates that cash payments of $40,000 were from the Qatari. If Warner were to endorse that account of events in his interview with Freeh, it was felt that Bin Hammam’s position would become untenable. The 12 Caribbean national associations who wrote to Fifa in support of Warner,
insisting that they were not offered any money, were also thought to have been exposed by his resignation. Mr. Warner, even as he resigned, continued in the combative mode – as well as once again betraying his antipathy for the British authorities and media – explaining his resignation in these terms:

"I have lost my enthusiasm to continue. The general secretary that I had employed [Blazer] who worked with me for 21 years, with the assistance of elements of FIFA has sought to undermine me in ways that are unimaginable. Payments throughout the Concaaf and the regions and so on over the last 30 years have been done for all kinds of things. I’m not saying I have seen Bin Hammam make payments at this meeting, but if he did, it’s not unusual for such things to happen and gifts have been around throughout the history of Fifa. What’s happening now for me is hypocrisy at the highest level. At the end of the day I don’t want to be seen to be vengeful. I am saying over time history will judge Mr. Blatter. (…) has never stopped complaining, nor has the US ever stopped conspiring. England and the US have never stopped because they believe they have some kind of divine right to host a World Cup. The BBC called everybody extortioners and bandits and so on. I felt insulted. I did not believe I should vote for England anymore because I felt insulted. That was the decision of many other members of the executive. England could have easily got nine or 10 votes. They may not have won but they wouldn’t have been embarrassed. The BBC programme’s insult to the members was in my view the last straw." (The Daily Telegraph of 21/6/2011, p. S9 including reference to BBC Panorama programme 2011).

In the event, Mr. Bin Hammam did relinquish his position on the FIFA Committee – but not of his own volition. Two days after Warner’s resignation, it seemed that his position had become even more untenable when the full report by the Ethics Committee was made public and proclaimed that here was “comprehensive, convincing and overwhelming” evidence that Bin Hammam had attempted to bribe the officials in question, on the basis of the witness statements made to the Committee (Daily Express of 23/6/2011, p. S8). The report also concluded that Warner had colluded in the corruption, describing the latter’s evidence to the Committee as “self-serving” as well as finding that he had failed to provide a “plausible explanation” as to why the witnesses in question would have lied. Predictably, Mr. Warner rejected the findings, arguing that, if the evidence as strong as presented, FIFA would not have accepted his resignation or dropped the investigation. Equally unsurprisingly, Mr. Bin Hammam also restated his denial of any involvement in improper conduct in Trinidad (The Daily Telegraph of 23/6/2011, p. S9).

The pressure on the Qatari official increased when Louise Frech completed his report which was then widely leaked to the media, and in which he concluded that there was “compelling circumstantial evidence” that Bin Hammam was the source of the Caribbean bribe offers. He added that Bin Hammam had refused to speak to Mr. Frech, but expressed his desire to co-operate with the enquiry and appear before the Ethics Committee. He had accordingly provided some documentary evidence, but refused to provide his banking records for review and claimed that requested telephone records did not exist. The sole banking record he provided was proof of a wire transfer to the CFU in April 2011 to the amount of $363,000. That sum was intended to cover the cost of the CFU delegation’s travel and accommodation expenses for the Trinidad meeting (The Daily Telegraph of 16/7/2011, p. S6).

Still Bin Hammam denied any wrongdoing, claiming that his accusers were mounting a “politically motivated campaign” against him (The Guardian of 22/7/2011, p. S5). He immediately announced his attention to lodge an appeal with the Court of Arbitration for Sport if found guilty, describing the case against him as made out in the report as “flimsy” and incapable of “standing up to scrutiny in any court of law” (The Daily Telegraph of 23/7/2011, p. S11).

The next day, the Ethics Committee produced its final verdict, and found Bin Hammam guilty of the bribery allegations made against him, as well as banning him from football for life. The ban relates to all football-related activity, although the Committee Chairman, Namibian Petrus Damaseb, was unable to specify whether this meant that Bin Hammam would thus be prevented from bidding for construction contracts in relation to the 2012 World Cup to be held in Qatar. (The Sunday Telegraph of 24/7/2011, p. S1). Irresistible as ever, Mr. Bin Hammam launched a counter-attack against the world governing body and claimed that his life ban was a direct act of vengeance for challenging Mr. Blatter for the Presidency (see above).
He recognised that he could apply for a review by the FIFA Appeal Committee, but he dismissed this body as a “kangaroo court”, adding that the following step would be the CAS where “things are going to be much improved”. His parting shot was that he was not resigning, and that he would only quit “with the final say of Switzerland”. Warming to his theme, he proceeded to accuse FIFA of degenerating into a “dictatorship” under Mr. Blatter, adding dramatically:

“You have witnessed, through history, the dictators when they think that a person is prominent to replace him, the first thing they do is to execute him. They try to fabricate any allegation against him, to jail him or something like that” (The Daily Telegraph of 25/7/2011, p. S16).

Mr. Damaseh’s report, also called for further investigations into others who attended the relevant CFU meeting in Trinidad. A few days later, FIFA gave all 25 Caribbean football associations 48 hours in which to provide statements about the events as they occurred at that gathering, having warned them of the need for “truthful and complete” reporting, with anyone not coming forward facing “the full range of sanctions”, including life bans (The Independent of 27/7/2011, p. 66).

In the meantime, almost forgotten amidst the Bin Hammam scandal, the allegations that three African members of the FIFA Executive Committee, Messrs. Anouma, Hayatou and Adamu, had received cash in order to secure their votes for the award of the 2022 tournament to Qatar, were continuing. They experienced an unexpected twist when, just before the decision to ban Bin Hammam was made, the “whistleblower” who had fed this allegation to the British Parliament via the Sunday Times (see above), retracted her story, saying that she had “fabricated” the entire saga. The person in question, who publicly identified herself as Phaedra Almajid, was apparently employed as an international media specialist at Qatar’s bid team between May 2009 and March the following year. She claimed that she had made up the story because she intended to “hurt” the bid after the team had decided to move her from her post. She had declared herself “furious” at the bid’s suggestion that she was incompetent in handling the international media and, “acting irrationally”, decided to fabricate the corruption allegations “to show them I could control the international media” (The Guardian of 11/7/2011, p. S1).

The world governing body, accordingly, announced the next day that the Qatar probe was at an end, and pledged its support for the nation, adding that it would “stand firmly by its members” unless it received firm evidence to the contrary (The Daily Telegraph of 12/7/2011, p. S6).

However, it turned out that this episode would not, after all, draw a line under the allegations of corruption swirling round the Qatar bid. Two weeks after the retraction referred to above, Sepp Blatter announced that he would look again at Qatar hosting the 2022 World Cup if any evidence of corruption emerges from FIFA investigations. This followed the torrent of suspicion, led by German football chief Theo Zwanziger and sponsors Adidas, over the manner in which Qatar was awarded the competition. Mr. Blatter made no further comment, other than to say that Mr. Zwanziger “knows he has to first come to FIFA with the evidence”, adding, somewhat cryptically, that “sponsors have no influence. What they want is to be associated with FIFA” (Daily Mail of 29/7/2011, p. 68). No further details were available at the time of writing.

Turkish football in turmoil over corruption allegations

Turkey is a country which has hitherto failed to make the headlines in relation to football-related corruption. However, this beneficial state of affairs was discontinued during the summer of 2011. In early July, top side Fenerbahce announced that their President, Aziz Yildirim, was among a group of people arrested in a match-fixing probe. The Turkish media had already reported that around 40 people, including officials and players from a number of clubs, had been detained following police raids across 15 cities, as part of an investigation into allegations of match-fixing in domestic football the previous season (The Guardian of 4/7/2011, p. S7). Both Mr. Yildirim and 25 others were remanded into custody pending trial (The Independent of 11/7/2011, p. 66). Later, Yildirim announced that he would step down as president, after the Turkish football federation postponed the Supercup match between his club and rivals Besiktas, who were also implicated in the match-fitting inquiry (Associated Press, www.findlaw.com of 22/7/2011).

It transpired that the Istanbul side had won 16 out of 17 league matches during the latter part of the previous season, coming from a distant third
place to claim a record 18th title, beating rivals Trabzonspor only on goal difference. Evidence of corruption was also being sought in suspicious movements in the price of shares in Fenerbahce and certain other clubs on the Istanbul stock market the previous season. The investigation widened later in the month, with police detaining another Fenerbahce director, Murat Ozaydinli, alongside another club official, as well as a Buyuksehir Belediyesi player and Gecderbirligi official (Associated Press, www.findlaw.com of 29/7/2011). Earlier that year, the Turkish government had pledged a tough stance on match-fixing, introducing legislation on football corruption which provided for a maximum 12-year prison sentence for fixing matches (Ibid). As a result of the investigation, which had not been completed at the time of writing, the start of the Turkish football season was postponed (The Independent of 26/7/2011, p. 70).

Mystery officials in friendly internationals indicates possible corruption
(Turkey/Hungary/Latvia/Estonia/Bulgaria/Bolivia)

The Mardan stadium, which usually plays host to Turkish side Antalyaspor, merely houses 7,500 spectators at a maximum. However, in early February 2011 there was plenty of spare seating when barely a few hundred people were scattered across the stands of this small but well-equipped ground. The players may have been disappointed by the meagre turnout, but for anyone who had an interest in influencing the outcome of the game it offered the perfect setting. First, Latvia played Bolivia, with the Baltic side winning by 2-1, with all the goals being the result of penalties. Then Estonia took on Bulgaria in a 2-2 draw – once again, all the goals scored came from the penalty spot. This highly unusual outcome led to suspicions that Asian match-fixers had been at work. As Mihkel Uiboleht, of the Estonian Football Federation (EFF) explained,

“Match-fixers are not looking for big matches. They will not try and fix an FA Cup final or a big Champions League game. They are looking for matches with less attention, less (sic) spectators – where it is easier to carry out the fix. There were only a couple of hundred spectators in Turkey. Somebody must take the initiative here” (The Independent of 11/3/2011, p. 55).

Although there is some evidence that the early-warning systems used by the two supranational footballing bodies, FIFA and Uefa, flagged up the Estonia match, this did not prevent millions being wagered on the outcome of the game in the Far East. It is from there, from locations such as Singapore and Thailand where those suspected of influencing this game have their bases, that the problem of match-fixing has become an increasing danger for the sport. This incident is far from the only one to be suspected in this manner. Significantly, the matches in question were played the day after two Debrecen (Hungary) players started their appeal to the Court of Arbitration for Sport (CAS), having been banned by UEFA for failing to report approaches from fixers ahead of a home fixture with Italian side Fiorentina two years ago. In Germany, four men were being tried for operating a match-fixing ring (see also below). However, here the focus was very much on Turkey, where a little-known company with no track record whatsoever in staging such events was able to set up two internationals – one with a referee who was reportedly only cleared to officiate in the third tier of the Hungarian game. The company in question, Footy Sport International, approached all four federations concerned in order to stage the games, selecting the venue and organising the match officials. There remains a good deal of confusion as to the identity of the officials. FIFA started disciplinary proceedings against six men, and three Hungarian officials have been suspended by their federation. However, who took charge of the first match – for which there was significantly less betting interest – remains unclear. Mr. Uibolhlet has expressed the bafflement among the Estonian party as to the nationality of the officials for the Latvia match, saying that they were “still not sure of their identity” (Ibid).

In fact, the Estonian official expressed his disappointment that the world governing body did not do more to take preventative action, claiming that his association had alerted FIFA about its initial doubts and suspicions on 27 January, i.e. two weeks before the game. The Estonians’ concern was aroused when it became aware that one of the key figures involved in staging the fixtures was a Singaporean national associated with a convicted match-fixer (The Guardian of 11/3/2011, p. 53). There is clearly room for improvement here. The outcome of this case was not yet known at the time of writing.
Was Argentina v Nigeria match fixed?

When Nigeria emerged victorious by 4-1 in a friendly fixture with leading South American side Argentina, few eyebrows were raised – after all, friendly fixtures, exerting as they do less pressure on the players of leading sides, have been known to throw up even more surprising results. However, suspicions were aroused at the official level, not by the result itself, but by Argentina’s only goal, a penalty awarded in the dying moments of the game, which attracted a huge swing in betting on Asian handicap markets. The referee was Ibrahim Chaibou, of Niger, who awarded the penalty for handball. Mr. Chaibou was in fact already on the radar of the world governing body FIFA after taking charge of a notorious fixture featuring a “fake” Togo team in Bahrain the previous September. Another match in which he officiated, between South Africa and Guatemala, has also been examined. Even more intriguingly, one of the assistant referees in the Nigeria fixture, Hamani Tinni Tondo, also officiated during the Bahrain fixture (The Daily Telegraph of 8/6/2011, p.S11). That game was arranged by none other than Wilson Raj Perumal, the Singaporean convicted match-fixer referred to in the previous section. Two more trams were devastated by the arrest of 11 senior players, and the integrity of the entire Finnish game was called into question. Confirmation of the shadow cast over the sport came hours before the national kick-off as a court in Helsinki handed down seven-month suspended sentences to Dominic and Donewell Yobe of FG Oulu, who had pleaded guilty to charges of bribery and admitted accepting €50,000 to fix a match the previous season (The Daily Telegraph of 7/5/2011, p. S11).

As for Mr. Perumal, he went on trial for match fixing in June and the following month was jailed for two years – delivering another high-profile scalp to the continuous global investigation into football corruption. He was convicted alongside nine players from two Finnish clubs who were paid between €20,000 and €50,000 to fix games. He was described in court as a member of an “international organised group doing betting scams”. Chris Eaton, head of security at world governing body FIFA, welcomed Perumal’s conviction, but added that the sentence was woefully inadequate as a deterrent, describing it as “token”. He called for tighter, more focused legislation aimed at protecting the integrity of the sport. Certainly Perumal’s arrest and conviction seems to have sparked off a rash of investigations around the world which bear out serious concerns about the global reach of match-fixing networks (The Daily Telegraph of 20/7/2011, p. S8).

Match fixer jailed in Finland match-fixing scandal (Finland/UK/Singapore)

Because of the peculiarities of its climate and geographical location, Finland starts its top football competition much later than other European nations. This year, however, the season started even later – but for reasons totally unconnected with the natural elements. The cause for this delayed start was, in fact, an off-season dominated by the impact of suspected match-fixing. One club was removed from the league for its contact with Wilson Raj Perumal, the Singaporean convicted match-fixer referred to in the previous section. Two more trams were devastated by the arrest of 11 senior players, and the integrity of the entire Finnish game was called into question. Confirmation of the shadow cast over the sport came hours before the national kick-off as a court in Helsinki handed down seven-month suspended sentences to Dominic and Donewell Yobe of FG Oulu, who had pleaded guilty to charges of bribery and admitted accepting €50,000 to fix a match the previous season (The Daily Telegraph of 7/5/2011, p. S11).

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London offices of international bookmaker raided in match-fixing probe (Germany/UK/Hong Kong)

The intensity with which global match-fixing in football is being pursued and investigated by the public authorities was thrown into sharp focus in late June 2011, when it emerged that a British-registered bookmaker had been searched three times by police in connection with the largest criminal match-fixing inquiry ever undertaken in Europe. The searches were conducted by City of London police at the request of their German counterparts as part of an investigation which followed a large-scale European match-fixing ring uncovered by criminal authorities in Bochum. Police searched the Wembley offices of Samvo Entertainment Limited, a Hong-Kong controlled bookmaking and gaming group, for the first time in November 2009. A second search followed a year later and the most recent occurred in late May. The Bochum investigation has seen six members of a match-fixing operation convicted for their part in the suspected manipulation of more than 300 club and international matches.
Ante Sapina, the Croatian leader of the operation, was jailed for 5½ years (The Daily Telegraph of 29/6/2011, p. S16).

German investigators are investigating whether some of the bets placed on fixed matches were channelled via accounts registered with Samvo, and if employees of the company may have personally placed bets on behalf of a match-fixing gang. The company has denied any wrongdoing and says it has co-operated with the police in the UK and Germany throughout the investigation. The latest raid on Samvo came after Sapina was convicted at the end of May. City of London police are understood to have removed documentation from the Samvo offices and passed the information to their German counterparts. No arrests were made during the searches and the British authorities are not conducting a separate investigation. City of London police confirmed to a leading British newspaper that they conducted the searches under warrants requested by the German authorities, but declined to comment further. Samvo repeated that it had co-operated with the police investigation, and denied that its employees were linked to offences exposed by the German authorities. It is licensed by gambling regulators in Alderney, the Dutch Antilles and the UK, where it is regulated by the Gambling Commission. David Miller, the company’s senior marketing manager, claimed that it was compliant with all three regulators, saying:

“Throughout the investigation of Sapina, Samvo has provided its full support to the City of London Police and to the German Authorities. I can confirm that no employee of Samvo has been implicated in any of the offences for which Sapina and the other defendants in the German court proceedings have been found guilty. Any accounts which were identified by the German Authorities as being potentially connected to the activities of Sapina or the other defendants were promptly suspended by Samvo and any monies held in those accounts were frozen and were transferred to the German Court.” (Ibid)

Samvo is a gaming and betting company that describes itself on its website as a “global investment company” focused “on the areas of pleasure and leisure”. It claims to be “one of the largest licensed betting brokers in the world”, and describes its sports betting arm as “a very exclusive betting service” catering for “an extremely niche market”. The company is owned and controlled by Shung Fai “Frank” Chan, a Hong Kong businessman and politician who sits on the Hong Kong North District Council. It recorded a turnover of £31 million in 2009, and lists three other directors of Chinese extraction, according to its most recently published accounts, and is ultimately owned by a company registered in the Cayman Islands. The police action in relation to Samvo emphasises the international reach of match-fixing operations. Investigators from FIFA also believe that London may be a conduit for illegal betting.

No further details are available at the time of writing.

Shadow of alleged match-fixing already haunting 2014 World Cup (Brazil)

The preliminary draw for Brazil’s World Cup took place in late July 2011, but by then the shadow of alleged match-fixing had already touched the 2014 qualifying tournament. The threat of fixing was highlighted by FIFA president Sepp Blatter prior to the draw in Rio, and it was revealed that one of the early rounds of Asian qualifying had already been internally investigated following allegations of manipulation. Investigators acting for the world governing body were alerted to unusual betting patterns in connection with the two-legged tie between Cambodia and Laos in the first round of the Asian Football Confederation qualifying zone. Both countries were eliminated before the preliminary draw in Rio, but the case highlights the rash of match-fixing allegations that have touched teams in more than 50 countries. The first game in Phnom Penh on June 29 was won 4-2 by Cambodia, with the return in Vientiane on July 3 won by Laos 6-2 after extra time, enough for them to progress to the second round. The second leg was followed by accusations in Cambodia that the game was manipulated, and Telegraph Sport understands that data from betting monitoring software, including the Early Warning System used by FIFA, highlighted unusual patterns, particularly in the first game (The Daily Telegraph of 3/8/2011, p. S8).

The last goal in that game, scored by Cambodia in the 88th minute, attracted highly unusual betting patterns. With 86 minutes gone Cambodia were five-to-one on to score
again on Asian handicap markets, an extreme price. According to footage of the game on YouTube, Cambodia had two goals disallowed in the last six minutes, after 84 and 86 minutes, and Laos had a penalty appeal turned down in the 88th minute shortly before Cambodia’s Samel Naso scored. The second leg finished 4–2 to Laos after 90 minutes, with two further goals in extra time sealing their progress to the second round, in which they were beaten by China 13–3 on aggregate. The Football Federation of Cambodia carried out an internal investigation after receiving allegations that the games might have been manipulated, but has found no evidence of match-fixing. May Tola, the deputy general-secretary of the FFC, said that it had heard “unconfirmed rumours” about the tie, and that supporters had made accusations after the disappointment of the second-leg defeat, adding:

“Some have accused players of result manipulation. Immediately after the team returned home, our FFC leadership has instructed the federation to form an investigation commission to find out if there is any irregularities as rumoured accusation (sic). After thorough examination and discussion, the Commission has found no substantial evidence or suspicion that the match had been manipulated by players or whosoever (sic) within the team.” (Ibid).

The acting president of the Asian Football Confederation informed a leading British newspaper that, whilst he was not aware of any direct evidence that the Cambodia v Laos games were “not genuinely contested”, the allegations underlined “the destructive nature of match-fixing”. Zhang Jilong, of China, who became acting President when Mohamed bin Hammam was suspended by FIFA, as reported earlier, described match-fixing as a “pandemic” in world football, and is hoping to open a dedicated Fifa security office in Asia next year. As has already been mentioned, Asia is considered the hub of match-fixing and Jilong is said to have been in talks with Fifa’s security department to open a dedicated security office in Asia by the start of 2012 (Ibid).

Hateley claims bribe offers - UEFA refuses to re-investigate (UK/ France)
The commitment on the part of the world’s footballing authorities to tackling the problem of corruption in general, and match-fixing in particular, was blown into doubt in mid-February 2011 when the European governing body, UEFA, refused to re-investigate claims of impropriety against a French side which has been mired in corruption controversy for several decades. The claims in question were made by former England international Mark Hateley, and purported to confirm that the 1993 Champions League title, won by the club for whom he was playing at the time, Marseille, was tainted by corruption. Mr Hateley was apparently offered what he describes as a “large sum of money” to miss Glasgow Rangers’ crucial away game against Marseille. He refused the offer, made via a “friend of a friend”, but was to miss the match anyway after having been dismissed in the preceding fixture against FC Bruges. Hateley was suspended for the Marseilles match, and has also voiced concerns that the referee who dismissed him against the Belgian side had been a target for Bernard Tapie, the Marseilles president. The latter, it will be recalled from previous issues of this Journal, served a prison sentence for fixing a French League game that season, but despite numerous allegations and a UEFA investigation their triumph over Milan in the first-ever Champions League final has never been overturned. UEFA reacted by stating that they considered the fact that Marseilles were not allowed to defend their title the following season, for which they were also relegated from the top tier of French football, sufficient punishment for the club. The governing body of the European game also said they applied a 10-year time limit after which they will not mount any further inquiries. It means that Marseilles cannot be stripped of the only European trophy won by a French team, despite strong evidence that their path to the trophy was eased by Mr. Tapie’s machinations (The Independent of 24/2/2011, p. 61).

The alleged attempt to bribe Hateley is another striking example of the corruption controversy surrounding the French champions of the time. Hateley received a telephone call in a Glasgow hotel room he was sharing with Trevor Steven ahead of a Scottish Premier League match. He recalled:

“It was a French-speaking person, offering me large sums of money not to play against Marseilles. It points the finger at a person, or persons, working within that club not wanting me to play.” (Ibid)

Jean Pierre Bernes, once Mr. Tapie’s right-hand man, admitted that they would try and “buy six or seven games.
a season” by “tapping up” players and match officials. Former French international Marcel Desailly, who played in the Marseilles side that won the European Cup in Munich, confirmed that there was a dark side to Marseilles where anything could happen. Mr. Hateley has acknowledged that he should have come forward sooner. As well as Rangers he also played for Milan and Monaco. “If you’re brought up in Italian football then you’ve seen it all before” he said of corruption in the game (Ibid).

CRICKET CORRUPTION SCANDAL – AN UPDATE

Pakistani trio banned – and face criminal charges

The advised reader scarcely needs reminding of the background to this case. During the later summer of 2010, a British newspaper claimed that three Pakistani players, Salman Butt, Mohammad Amir and Mohammad Asif – conspired, inter alia, to bowl no-balls at specific times on the orders of Butt’s agent Mazher Majeed. It was alleged that the latter accepted a payment of £150,000 for this exploit. The players and agent were promptly suspended, and proceedings were opened against them by the world governing body, the ICC. It was also expected that the four would face criminal charges in the country in which the incident took place, i.e. the United Kingdom.

With ICC proceedings imminent in Doha, the three players sought an adjournment on the grounds that, if the hearing proceeded, this would significantly prejudice their chances of receiving a fair trial (The Daily Telegraph of 5/2/2011, p. 54). This came hot on the heels of the news that the British Crown Prosecution Services formally charged the players and agent with conspiracy to cheat the bookmakers who stood to lose as a result of the bets placed on the contingency of the no-balls being bowled (Daily Mail of 5/2/2011, p. 78). However, this manoeuvre failed, and the hearing went ahead. The outcome was that Butt was banned for 10 years, five of which were suspended, Asif was banned for seven years, two of them suspended, and Amir received a five-year ban. These were the minimum penalty allowed for the offence in question under the ICC code. Michael Beloff QC, who chaired the three-man anti-corruption tribunal, found the charge that Ms. Butt had failed to disclose an approach from Mazher to bat out a maiden over during the Lords Test against England had been proved, but a charge that he actually agreed to act accordingly was dismissed. Charges under Article 2.1.1. of the anti-corruption code against Amir and Asif, which concerned the no-ball allegations referred to above, were also found to be proved, with Butt being found to have been a party to the no-balls also (The Mail on Sunday of 6/2/2011, p. 95). The trio later announced that they had appealed against these sentences to the Court of Arbitration for Sport (CAS) (The Independent of 2/3/2011, p. 56).

Although some commentators considered these decisions as over-harsh, particularly in relation to the callow Amir, it is fair to state that majority opinion was favourable to the outcome, with some even suggesting that the penalties issued had erred in the side of leniency by being restricted to the minimum permissible. Thus Scyld Berry, in The Sunday Telegraph (6/2/2011, p. S12) considered the effect which these sentences would produce on the remainder of the cricket world, and opined that their deterrent effect would be inadequate. He also ventured to suggest that the outcome might have been different if the tribunal had been provided with more evidence beyond that produced by the British newspaper which had arranged the relevant “sting” operation. This related more specifically to the ICC Anti-Corruption Unit, which could have supplied evidence with regard to the two matches which Mazhar had claimed to have been fixed – the Sydney Test between Pakistan and Australia in January 2010, and the Asia Cup match between Pakistan and Sri Lanka in Dambulla later that year. A former Pakistani player, informed of the alleged irregularities in the latter game, contacted the Unit, supplying his telephone number. However, the Unit never established contact with the player. This is scarcely a very professional approach towards the problem.

The ICC Chief Executive, Haroon Lorgat, unsurprisingly expressed the opinion that the sentences were appropriate and severe enough to “send out a clear message” that the governing body would do everything in its power to prosecute any player found to be wanting in the field of corruption. At the same time, he defended the game itself, claiming that this was a “very isolated case” and that he did not believe that spot-fixing was rife in the sport. As for the three cricketers involved, he commented that it would be extremely difficult for the three to return to the Test format, since the punishments hit them at the peak of
their careers. He also praised the speed with which the entire affair had been handled, which emphasised the seriousness with which the game’s authorities regarded this aspect of the sport (The Independent of 7/2/2011, p. S14). At the time of writing, the criminal trial of the players involved had not yet been completed – although Mr. Amir was facing a fresh investigation into claims that he broke his suspension by playing in a village game in the Surrey league (The Daily Telegraph of 9/6/2011, p. S8).

Nor was the spate of allegations against the Pakistan team about to end with this saga. Shortly after the ICC verdict referred to above was known, it was alleged that a third Pakistani fast bowler was prepared to bowl deliberate no-balls during the fateful Test series of 2010. The plan failed to be realised, but Wahab Riaz, was referred to by a businessman during a telephone conversation with News of the World reporter Mazher Mahmood as “one of the three ones that we could get no balls off”. Mr. Riaz had been interviewed by Scotland Yard detectives in September 2010 before being released without charge. However, in a conversation between the businessman in question and Mr. Mahmood, transcribed in a redacted version of the ICC tribunal’s report referred to above, Riaz’s name is mentioned as the pair discuss plans for Pakistani bowlers to send down deliberate no-balls on the fourth morning of the Third Test at the Oval. According to the transcript, the plan failed because Pakistan coach Waqar Younis had lectured his bowlers on the need for discipline at the start of the fourth morning of the game (Daily Mail of 19/2/2011, p. 107). However, nothing has ever been proved against Mr. Riaz.

Three weeks later, more strange happenings on the field of play once again aroused suspicion against the Pakistan team – this time during the initial stages of the 2011 World Cup, in which Pakistan were due to play New Zealand, which the latter won by the sizeable margin of 105 runs. Batsman Ross Taylor should have been out twice before he had even scored five. When on nought, he sliced a catch between the wicket keeper and first slip, who stood and stared at each other as the ball flew away for a boundary. Two balls later, he edged through to Kamran Akmal, who snatched at the ball and watched it fall to the floor. Then fast bowler Shoaib Akhtar conceded 31 runs in five overs, 21 of these wides, no-balls, free hits and four overthrows (The Guardian of 9/3/2011, p. S8). Again, nothing improper was ever proved, but the suspicions remained longer after the last ball in the tournament was bowled. It later emerged that suspicions had also surrounded the indifferent start made by Pakistan against minnows Kenya.

Betfair move could jeopardize fight against corruption

The ability of sport to protect itself against match-fixing was dealt a blow in mid-March 2011, when online bookmakers Betfair announced that it was heading offshore. Currently, as a UK operator, Betfair is bound by its statutory obligations to inform the sporting governing bodies of instances of suspicious betting. If it fails to adhere to this code it risks having its Gambling Commission licence revoked. Now that it intends to move offshore, Betfair will now be bound only by its own conscience. The online betting exchange had gone to great lengths to defend its commitment to root out corrupt betting practice, insisting that it has “always gone above and beyond (its) statutory requirements” and that it would continue to do so even if no longer subject to UK law. However, the authorities, both criminal and sporting, may be excused a certain degree of nervousness at being dependent on goodwill alone (The Guardian of 9/3/2011, p. 32).
Steve Waugh claims 56 players contacted by illegal bookmakers over previous year (Australia)

In late July 2011, Steve Waugh revealed that 56 cricketers had reported illegal approaches from bookmakers over the past year as player unions reacted with anger to his proposal to introduce lie detector tests to aid anti-corruption investigations. The figure rose from five the previous year and coincides with the push to uncover corruption in the wake of the Pakistan spot-fixing scandal. Mr. Waugh proclaimed himself “shocked” when he heard the numbers, “adding that this showed that the players have more belief in the world governing body ICC and trust them. The bad aspect, however, was that there was obviously a good deal of “activity out there.” Former Australian Test captain Waugh chairs the MCC world cricket committee’s working party, which is investigating corruption in cricket, and told the BBC yesterday he is hoping to set up a meeting with the ICC’s anti-corruption detectives. The MCC committee met at on Monday, when David Richardson, the general manager of the ICC, told Waugh of the number of cases reported to the board.

Waugh proposed the use of lie detectors after submitting himself to the procedure as part of his research. The proposal was “rejected outright” by former team-mate Tim May, the chief executive of the Federation of International Cricketers’ Associations. To this Mr. Waugh replied:

“Tim’s job is to look after the welfare and interests of the players and I understand and respect that. Maybe be is not quite sure what we are trying to get across. We are not suggesting people should be forced to take polygraph tests. It is a voluntary thing. I understand the concern that if you don’t take one you might look guilty but that’s not the intention. You would only use a polygraph in corroboration with other work.” (The Daily Telegraph of 22/7/2011, p. S6)

Angus Porter, the chief executive of the Professional Cricketers’ Association, confirmed he was unaware of any English players reporting approaches by bookmakers since the Pakistan spot-fixing case emerged last August. He was also critical of the decision to publicly reveal the number of players contacting the ICC. He reminded us that the whole premise of the system is that players can report in confidence. They may or may not involve player associations, and may or may not involve boards and may deal directly with the ICC. He added that the PCA had not been notified of any further incident since the Pakistan imbroglio referred to above, but conceded that this was not to say they had not been “reporting directly into the confidential helpline.” (Ibid).

PBSA quick to act after suspicious betting pattern (Snooker)

The John Higgins affair, extensively covered in previous issues of this Journal, had at a certain point threatened the good name of a sport which has generally succeeded in steering clear of the rocks of corruption. However, in late January 2011 it seemed that the sport could be plunged into a new corruption scandal after bookmakers reported suspicious betting on a one-frame match between Jimmy Michie and Marcus Campbell at the inaugural World Shoot-out tournament in Blackpool. The sport’s governing body, the World Professional Billiards and Snooker Association, announced an immediate investigation after being informed of a “unusually high number of bets” being placed on a Campbell victory. Some bookmakers stopped taking bets on the game, which Campbell, ranked No 31 in the world, won 32-21 against the 72nd-ranked Michie. The matter was passed to former Scotland Yard detective David Douglas, the head of the WPBSA’s integrity unit, who led the investigation into the John Higgins match-fixing allegations last year. Jason Ferguson, the WPBSA chairman, said that his organisation took the threat of corrupt activity “very seriously” and that it was “treating this matter with the utmost urgency” (The Daily Telegraph of 30/1/2011, p. S12). It will be recalled that world snooker chairman Barry Hearn had pledged life bans for any players guilty of corruption. Thus far, no further news of this investigation has been forthcoming.

Yet a few months later, Mr. Hearn saw fit to warn John Higgins he may never escape the lingering cloud of suspicion over frame fixing allegations, even though he was cleared of match-fixing and served a six-month ban for the lesser charge of failing to report an illegal approach.

“It may never go away. The anoraks will keep a log of this forever. People within the game never forget. People don’t forget that Colin Montgomerie was adjudged to have not declared a
foul. You can’t get rid of it. It’s on tape. There is no answer. John has got to accept that there will be a certain amount of doubt about him probably for the rest of his career. It was a terrible headline for the sport but I can only focus on going forward. I can do my best to make sure it never happens again. There have been questions on the integrity of every sport. Now we have to move on and keep our fingers crossed” (Ibid)

However, he did add that Mr. Higgins had the character to come through this episode, but that there “will there always be a question mark against him? He pointed out that Higgins was found guilty of not reporting an approach but added that he “was not found guilty of anything worse than that” (The Daily Mirror of 3/5/2011, p. 55).

F1 supremo Ecclestone admits to paying banker £27m after “threat”

In mid-July 2011, Bernie Ecclestone admitted to paying a German banker £27 million in relation to the sale of Formula One, but only after claiming that he was “threatened”. That same week, German prosecutors had charged Gerhard Gribkowsky, a former member of the management board at the regional bank BayernLB, for allegedly taking bribes from Ecclestone. Mr. Gribkowsky was in charge of managing the sale in 2006 of BayernLB’s 47 per cent stake in F1 to private equity firm CVC Capital Partners. Prosecutors claimed that Mr. Gribkowsky sold the stake without updating its valuation in return for bribes disguised as consulting contracts. Six months after being detained in jail, Gribkowsky has now been charged with breach of trust, tax evasion and receipt of corrupt payments, and if convicted could face up to 10 years in prison. Mr. Ecclestone has long denied any wrongdoing, and also previously expressed his confidence he will be exonerated. Explaining the $44m payment to Gribkowsky, the 80-year-old claimed that this was due to the threat of certain financial dealings being exposed to the Inland Revenue with regard to an offshore family trust known as Bambino Holdings. He added:

“The Revenue obviously had to check everything. It took five years going through that. I didn’t deal with it. The trust had to show it was correct. The taxation people in England at the time were in the middle of settling everything with the trust, and the last thing you need is for them to start thinking something different. He (Gribkowsky) was shaking me down and I didn’t want to take a risk. Nothing was wrong with the trust. Nothing at all. I never had anything to do with the trust in any shape or form. He (Gribkowsky) threatened that he was going to say that I was running it” (Daily Mail of 22/7/2011, p. 78).

However, Mr. Ecclestone had stopped short of claiming that he had been blackmailed, adding that he “never said to me, if you don’t give me this, I will say that”. In spite of this, he does claim that he was informed by his lawyers it was better to pay Gribkowsky or face three years in court fighting the Revenue. The prosecutors also allege Gribkowsky later used BayernLB’s funds to pay Ecclestone a commission of £25.8 million and added a further agreement of £15.6 million to Bambino Trust. Mr. Ecclestone countered this by stating that he had “never bribed anybody or paid any money to anybody in connection with the company, adding that he received five per cent for the sale of the company, Bayerische Landesbank apparently approved the sale and approved the commission, which was cheap. He felt he “should have got more because for that sort of deal a bank would have charged a lot more. There were no secrets” (Ibid).

Sumo wrestling struggles to rehabilitate itself after corruption (and other) scandals (Japan)

In early February 2011, some of Japan’s top sumo wrestlers were enmeshed in a match-fixing scandal in the latest blow to the ancient national sport that was already reeling from claims of drug-taking, illegal gambling and ties to Yakuza gangsters. Mobile phones confiscated by police investigating an illegal betting syndicate have revealed dozens of text messages from wrestlers suggesting they sold bouts for thousands of pounds a time. The alleged scam involved 11 wrestlers, including three from Sumo’s Premier Division, and at least two coaches. Reports in the Japanese press stated that the wrestlers exchanged information on forthcoming fixtures and worked out how and when to take dives on to the dohyo, the sumo ring. State broadcaster NHK claimed that some bouts were “for sale” for up to £3,800 and that wrestlers worked out quid pro quo arrangements in what was a pattern of repeated cheating. Sumo’s governing body subsequently launched an investigation into the allegations and
summoned most of the men for an explanation (The Independent of 3/2/2011, p. 35). The crisis in Japan’s national sport deepened the weekend following these allegations when its governing body scrapped a major spring tournament as it struggled to deal with the match-rigging claims. The decision on the Basho event – the first cancellation since the Second World War – followed an admission by two top-division wrestlers and a retired coach that they had in fact thrown bouts for money (The Independent of 7/2/2011, p. 30).

The main problem, however, was how fans would react after enduring years of scandals which have tarnished the sport’s image and badly damaged its already waning popularity. Last year, one of the top wrestlers was expelled for illegally laying thousands of pounds in bets with gangsters. Kotomitsuki, who held sumo’s second-highest Ozeki ranking, allegedly tried to receive five million yen (£38,000) in winnings from bets on baseball games, then paid off a mobster who was blackmailing him for 3.5 million yen. A total of 40 wrestlers have since admitted involvement in the betting ring. NHK, which has exclusive rights to broadcast the sport, angrily cancelled its coverage of last summer’s tournament after reporting that leading Yakuza gangsters were given front-row seats by elderly stable masters, allegedly in return for waiving gambling debts. Bizarrely, the broadcaster said the mobsters wanted the seats, directly in the TV cameras’ line of sight, to cheer up associates in prison. Sources inside the sumo world said the odd tradition was half a century old (The Independent of 3/2/2011, loc. cit.).

Rumours of Yakuza ties and match-fixing, vehemently denied by the sumo association, have hung over the sport for many years, although they have never been proven. Mr Hanaregoma responded to the latest claims yesterday by saying his organisation had never experienced this problem before. “I understand this as being something new” he said. Last year, the publisher of the weekly magazine Shukan Gendai was forced to pay more than £300,000 in damages to the association after it claimed the former grand champion Asashoryu repeatedly paid opponents to lose matches in 2006 and 2007. The magazine said bouts involving top wrestlers were fixed, going back to 1975. A now infamous whistle-blowing book by the veteran wrestler Onaruto and commentator Seiichiro Hashimoto in 1996 made the same match-rigging claims and added a few more, i.e. that Yakuza supplied wrestlers with women and drugs. Most damaging of all in a sport that takes itself very seriously and which is steeped in pseudo-religious tradition, Mr Hashimoto said it was “just show business – like pro-wrestling”. Both men later died of unknown causes – on the same day (Ibid).

Years of allegations, ignored by the association, that young apprentices were violently and dangerously hazed to “toughen them up” culminated in 2009 when, as was reported in these columns, a stable master was sentenced to six years in prison for beating to death a 17-year-old apprentice, Takashi Saito. “I just wanted to help him become a respectable wrestler” the stable master said when asked to explain the condition of Saito’s body, which was covered with bruises, cuts and cigarette burns. Saito’s family said the stable colluded with police and doctors to cover up their son’s death. Those claims have confirmed for many what has always been suspected – that the climb to the top of Sumo’s greasy pole, and the riches and fame it brings, is not for the timid. A survey by the association itself found that beatings and punishments were common at most sumo stables. Indeed, for many older fans, part of the sport’s problem is that it can no longer recruit Japanese teenagers tough enough to withstand its bracing challenges.

However, it is the palpable decline of the sport’s cherished dignity that has tried the patience of the average fan. In recent years, several top wrestlers have been suspended for drug-taking, confirming the fear that the new breed does not know how to bear the weight of tradition outside the ring. Last month, two top-ranked wrestlers drunkenly fought at an Indian restaurant in Tokyo, smashing tables and glass partitions. The sport’s only genuine modern superstar, Asashoryu, abruptly left the sport last year following another drunken fracas outside a nightclub in which he allegedly assaulted a man. The Mongolian wrestler had been a thorn in the side of the Sumo Association for years. In 2007, the JSA handed him one of the toughest punishments in the sport’s history, suspending him and slashing his monthly salary after he took sick leave to return home and play in a charity football match. The brawls, the drug-taking claims and other scandals have all involved foreigners, confirming for some xenophobes that the sport’s slide coincides with the end of local dominance. Nevertheless, allegations such as those concerning the Yakuza ties, spear to be as Japanese as sushi (Ibid).
Some immediate measures were taken by the sport's authorities to combat match fixing, such as wrestlers and coaches being banned from bringing their mobile telephones into the dressing rooms in Nagoya. Cell phones were found to have been commonly used to rig matches and place bets. However, the sport of has apparently some way to go in order to retrieve the trust of the Japanese public if the attendance at the next big event is any indication. Only about half the seats were taken at the Nagoya Grand Sumo Tournament, which marks the return of the sport after the scandal that shocked the nation. Only about 3,700 fans appeared Monday at Aichi Prefectural Gymnasium on the second day of competition, about half of what the stadium holds. The crowds were not much better the following day. Clearly, sumo wrestling has a good deal of “fence-mending” to do before its rehabilitation (Associated Press, www.findlaw.com of 13/7/2011).

Former San Diego basketball team members charged with bribery (US)

In mid-April 2011, it was learned that a former University of San Diego assistant basketball coach, as well as two former players, were among 10 people indicted in an alleged conspiracy to affect the outcome of fixtures. The former team members in question were Thaddeus Brown and ex-players Brandon Johnson and Brandon Dowdy. The indictment alleged that Mr. Johnson took bribes in order to influence the result of a game played in February 2010, and solicited someone else in January 2011 to affect the outcome of USD basketball matches. It is also claimed that Brown and Dowdy solicited someone to affect the outcome of a game at the University of California (Associated Press, www.findlaw.com of 11/4/2011). Mr. Johnson later pleaded not guilty and was released on a bail of $25,000 (Associated Press, www.findlaw.com of 25/4/2011). No further details are available at the time of writing.

Rugby prop faces jail over alleged betting coup (Australia)

In early February 2011, Ryan Tandy, the former Ireland international, could face up to five years’ imprisonment for his part in an alleged betting coup. He was charged with providing false and misleading information to the New South Wales Crime Commission when interviewed in connection with the Canterbury v North Queensland match last season. The investigation was started after a spate of bets on Queensland scoring the first points through a penalty. Mr. Tandy apparently conceded a penalty in front of the posts during the first minute, although Queensland chose to run the ball and scored a try (The Independent of 3/2/2011, p. 53). The outcome of this case was not yet known at the time of writing.

Delhi games chair arrested in criminal conspiracy charges (India)

In late April 2011, it was learned that Suresh Kalmadi, Chair of the New Delhi Commonwealth games, was arrested on suspicion of criminal conspiracy in awarding Games contracts, including a £450,000 deal with a London firm. Mr. Kalmadi, who was formerly secretary of the Congress Parliamentary Party in India before being sacked by Sonia Ghandi because of the ongoing furore about the Games’ overspending, joined his two deputies, the secretary general of the organising committee Lalit Bhanot and director general V. K. Verma and three other Games officials in facing serious fraud charges. India’s Central Bureau of Investigation made the arrest after interviewing Kalmadi for the fourth time in three months.

The investigators claim two London-based but Indian-owned companies, AM Films and AM Car, were given contracts without any tender for outdoor display services relating to the Queens Baton relay function in London in October 2009. Neither company is accused of any wrongdoing. Last June and July, the British Revenue and Customs department had raised concerns with its Indian counterparts about the monthly transfer of £25,000 on top of an initial payment of nearly £250,000 to AM Films from India. There had been confusion about what services the company was providing for the Queens Baton Relay function - whether it was cars, videos and large outdoor screens or ongoing costume consultancy services for the Games. Kalmadi told the Indian television station NDTV London officials wanted the equipment at the last minute and he had no time to conduct a tender.

However other organising officials claimed three other London companies were rejected because of high prices. But the three companies named told investigators they had had no contact with the organising committee and had
Indian newspaper reports also claim that Kalmadi announced that Swiss Timing, also known as Omega, was going to get the Games’ timing and results services contract months before the contract was awarded and claim Swiss Timing officials instructed venue engineers about the placement of cables also before being awarded the contract (The Daily Telegraph of 26/4/2011, p. S15).

Jacques Rogge warns sport “in danger” from illegal betting

In early March 2011, it was learned that the International Olympic Committee was to oversee a global taskforce designed to tackle match-fixing and irregular betting, after Interpol estimated the size of the illegal gambling market at $500bn (£308.4bn) in Asia alone and called for urgent action. Following a four-hour meeting between senior government officials, sports bodies, bookmakers and international agencies the IOC president, Jacques Rogge, warned that “sport is in danger” and promised to convene a group shortly. Although Dr. Rogge outlined several options, it is believed that the idea of creating a global body with statutory powers in the style of the World Anti-Doping Agency has been largely discounted. Instead, the working group will attempt to come up with a new model for an organisation where sports bodies, law enforcement agencies and government representatives can come together to share information and co-ordinate global action. Said Dr Rogge:

“Sport is in danger. We had a clear signal from governments, Interpol and international federations that there is illegal betting that threatens the credibility of sport. It is a big problem in the entire world. There is no safe haven” (The Guardian of 2/3/2011, p. S2).

Richard Carrion, a senior IOC member, said the organisation could not finance a monitoring system for all sporting events but added that it was “imperative” that bookmakers, sport and governments came together to find a way to do so. Failure to do so would send the wrong message and result in the largest cost of all. A corruption scandal on a global scale would “take years to recuperate from, and not just money wise”.

While Olympic sport attracts comparatively little betting activity, and Rogge said the IOC had not detected any irregular activity at recent Games, there is an argument that minor sports featuring comparatively less well-off athletes could be more open to corruption. Interpol’s secretary general, Ronald Noble, said the tools for international co-operation already existed, pointing to a recent operation that led to 5,000 arrests and the prevention of $155m in illegal bets, but appealed for them to become “a cornerstone of our common strategy”. He warned that the pressure to violate sports integrity would “increase, diversify and come from anywhere in the world” (Ibid). Dr. Rogge said the problem was not specifically one for the Olympics but for sport as a whole. The issue has come to the fore in recent years amid a series of high-profile cases, including allegations of fixed football matches across Europe and the spot-fixing scandal that gripped cricket last summer. The pace of technological change, allowing bets to be offered on all manner of sporting events across the world via the internet and mobile phones, and the proliferation of illegal markets had intensified the threat.

The British sports minister, Hugh Robertson, informed the meeting it was important to separate the debate about establishing a “betting right” that would effectively impose a levy on bookmakers to fund the fight against corruption from the need to establish a co-ordinated approach to tackling the problem. Rogge has said he would be supportive of such a betting levy, but British bookmakers are expected to resist it fiercely, arguing that they are already more proactive than many sports in tackling irregular betting and maintaining that the problem lies chiefly with the huge, unregulated illegal market (Ibid).
When taking a VAT case the reviewer was encouraged by the then President of the VAT Tribunal to pursue a point on the basis that it could go all the way to the House of Lords because there was so little authority on unincorporated associations. This work fills that gap, and provides guidance to legal practitioners on what Lord Millett in his Forward describes as a legal minefield.

Given that unincorporated associations are so much part of the fabric of our society, and that a whole range of laws, both common law and statute law, impinge upon their activities, it is important that this text is as widely recognised as possible.

It covers a vast range of laws, some in more detail than others, and some in a particularly academic fashion, but others in an intensely practical manner. Where relevant it covers the particular issues applying to Friendly Societies, Trades Unions, Charities and Literary and Scientific Institutions. It is full of nuggets of information which do not always appear where one might expect, but which are invaluable nonetheless. Inevitably it is a text that the reader will dip into, seeking guidance either on a particular area of the law, or on a particular problem arising in the context of a particular unincorporated association. It is against that expectation that this review judges this publication.

The book starts with a short introduction to the nature of unincorporated associations and notes that they are “contractual entities rather than voluntary associations” that are not legal entities and so cannot own property, cannot undertake a business for profit and yet are organic bodies capable of a perpetual existence with a continually changing membership.

This is followed by a substantial chapter on the formation of associations, but it covers much more than just formation. There is a useful section on rules which is as applicable to an ongoing association as to a new one, and there is an appendix setting out model rules as a guideline. Rules form the contractual basis of the association and we are reminded that the Unfair Contract Terms Act 1977 does not apply to these because they do not relate to a business. However the view is expressed that the Act does cover contracts with non-members – something of potential significance to sports clubs which ask for disclaimers to be signed by competitors, members or not, when entering competitions. Particular types of association categorized according to their objects are considered and there is a short section on Charitable status.

For a club secretary wanting guidance on handling membership applications there is an up-to-date section including the application of the Equality Act 2010 and a useful analysis of different categories of membership, explaining in particular the position of minors. The commentary seems out of touch in one small respect in that it is assumed, both in the text and in the model rules appendix, that two current members would normally sign an application form as proposers and seconders. Anybody with experience of submitting grant applications will know that this can lead to difficulties in that potentially it will be seen as a bar to open membership. The short section on membership fees and the distinction between voluntary contributions and contract price provides a short but excellent analysis which should be useful for determining whether there is a supply for VAT purposes.

The chapter on associations and property is for the lawyer. There is an interesting but seemingly academic discussion of the contract-holding theory which seeks to explain the conundrum of how the law deals with property used by an
association which cannot own property. For the everyday administrator it is difficult to see the practical implications. However the section on land reverts to the practical, though remains of particular relevance to the practicing lawyer.

There follows a useful review of termination of an association and the distribution of assets between members. This properly recognises, but all too briefly, that termination might involve continuation in another legal form through incorporation. Given what is explained so well later in the book with regard to liability, it will be quite common for those in an association to consider incorporation. More space could have been given to this, and any later edition ought to correct the statement that “The effect of incorporation is to turn a not-for-profit association into a profit-making organization.” This is certainly not the case, as the number of associations which are now incorporated as Companies limited by guarantee suggests, and a reading of the precedent on which the generalization is based makes it clear that this is the case where the incorporated entity is one with share capital and one which paid dividends.

Administration and meetings sounds tedious, but it is the stuff of the day to day life of an ongoing association. From such detailed matters as filling casual vacancies on committee, to the authority of the committee, altering the rules and the conduct of meetings – there are a range of topics on which any association administrator should find the answer to the question at issue. Whilst they are mentioned in the chapter on rules, there could perhaps usefully have been some coverage on bylaws made by committee.

There follows an interesting chapter on discipline – an area which seems to be increasingly problematic. It is an area of which committees are understandably nervous, but one for which this book provides much reassurance and clear guidance. There is little to fear from the courts, or indeed from the Human Rights Act – both common “threats” used by dissident members – always providing that the processes of natural justice are followed, and on that the book gives ample advice. Appendix 2 usefully sets out model disciplinary regulations.

Chapters 7 and 8 deal respectively with the contractual and tortious liabilities of members and of the committee. These are issues which concern many a member or committee member and the exposition here is as clear a statement of the position as this reviewer has read - disturbingly clear. Possibly the chapter on contracts could have been improved with examples of contracts which potentially do raise issues, if only because of their size – the building and financing of a new clubhouse perhaps. Further it is surprising that model rules in Appendix 1 make no suggestions as to how to bind the membership in respect of contracts undertaken by the executive committee in pursuance of their responsibilities for the day to day running of the club. There is also a misunderstanding of the decision in Tomlinson v Congleton BC from which it is concluded “Accordingly, the occupiers statutory duty, under both Acts, is concerned only with the state of the premises”, as opposed to the activities conducted therein. The Acts do generally apply to both state and activities – it is just that in the case quoted it was decided that the activities were not at issue. This blemish apart, the analysis is so clear that one wonders why an association,
especially its committee members, would wish to remain unincorporated; a brief comparison with position of members and directors in a company limited by guarantee would not have come amiss.

The section on Civil Court Procedure is seemingly the stuff of legal practice, to be confined to legal practitioners, but as so often there is reference to something which is seemingly of greater import: in the section on Enforcement of Judgements there is reference to a recent (2005) case which at first glance limits the application of an old dictum (1903), of which much is made throughout the book, to the effect that “no member is liable to pay to the funds of the society or to anyone else any money beyond the subscriptions required by the rules of the Cub”. The case is discussed largely in terms of Civil Court Procedure, but it is a useful example of a case where members might be protected notwithstanding a rule that the Committee as elected shall have the power to act for and on behalf of the Club in all contracts – entering litigation being distinguished from undertaking a contract.

Finally there follow two chapters which are essentially concerned with compliance over a range of statutory legislation – from licences, data protection, health and safety including food hygiene, and child protection in Chapter 10 to taxation including corporation tax, VAT, business rates and PAYE, national insurance and minimum wage legislation in Chapter 11. This chapter also gives practical advice on fundraising, accounting and insurance, but inevitably given the wide range of topics, the coverage in both chapters is necessarily limited, for many of the topics could justify a chapter in themselves. Even here, relegated to a footnote, we are guided to a rule for ensuring that all members, including future members, are bound by a decision of the association in general meeting.

What is missing for the non specialist club official is some cross referencing – eg the VAT and Corporation Tax treatment of fundraising other than donations, and to the sort of difficulties that associations experience, because of their rules, in meeting the requirements of grant giving bodies and the application by HMRC of the CASC rules.

For anybody seriously interested in how an unincorporated association operates in a legal context this book is indispensable. Governing bodies responsible for advising member organizations should check their advice against the analysis provided here. At £95 small associations will probably not purchase the work, but it is to be hoped that their advisors will. Such criticisms as have been made are made in the expectation that there will at some time be a second edition.

Graeme Macdonald
Held (appeal allowed in part)  
(1) On the true interpretation of the contract, it was the procuring of endorsement contracts that gave rise to the right to commission and not the ongoing provision of services. The word "payable" had the effect that the right to commission arose when sums became payable under endorsement contracts and not when they were actually received. But there was no express or implied restriction to sums payable before termination of the agreement. Contrary to the judge's view, P was entitled to commission on payments made by third parties after termination of the agreement in respect of contracts negotiated by P prior to termination and its appeal on that issue was allowed (see paras 37-51 of judgment). (2) The exploitation of image rights was almost always going to be an activity which was ancillary to another occupation. A person's ancillary activity of exploiting his image rights was just as capable of protection under the doctrine of restraint of trade as any other occupation. The fact that the activity was ancillary might make the restriction on trading insubstantial and thus justifiable, but was not a reason for disapplying the doctrine altogether. The judge relied on a number of factors in combination, including the length of the agreement, the circumstances surrounding its execution and the practical difficulties of termination, which took the agreement out of the range of a normal commercial contract imposing restrictions on a contracting party's ability to carry on a business activity, and considered. The question of restraint of trade had to be considered by reference to the terms of the agreement when executed. It was no answer to say that there had been substantial financial rewards on all sides from the exploitation of R's image rights. The question whether a
contract was oppressive involved an evaluation of all the factors by the judge and the appellate court would not interfere unless he was clearly wrong, which he was not (paras 93-105). (3) The well-established effect of a finding that a contract was in restraint of trade was that, once a party withdrew from the contract, the contract was unenforceable, Esso and Schroeder considered. Thus P could not enforce its contractual right to commission due under the agreement before or after the date that S refused to abide by it. Its only remedy was in restitution for a quantum meruit (paras 115-117). (4) The judge was right to have deferred the question of quantification of the amount to be awarded on a quantum meruit. It could not be assumed, without further evidence, that the contractual rate of 20 per cent should apply (paras 122-124). (5) Contrary to the judge’s view, there was an implied contract between P and W’s company on the same terms as to commission as those in the agreement between P and S (paras 133-135).

Commentary
This is the latest in a series of court hearings concerning litigation between these two parties. Past hearings have raised the key issue of the relationship between player agents and young players under 18 years old, classified legally as minors. It has been emphasised that such athletes must be given a genuine opportunity to obtain independent legal advice on the terms of the agreement they are being invited to sign. It is not sufficient to include a term in the contract stating that all parties have been advised if they have not - particularly when a party is wholly unsophisticated in legal and commercial matters. Where players such as Wayne Rooney, who are minors at the time of entering into an initial contractual relationship with a player agent, will only be enforceable when they are deemed to be a contract for necessities. Such a basic representation agreement will not be such a contract for necessaries and therefore able to be ‘avoided’ by the minor. This will be the case even where the player attracts publicity due to their playing performances and whose value in terms of potential transfer and wages that can be earn can rise very quickly.

The legal rules around avoidable contacts for minors have a basis in public policy and designed to protect such individuals from exploitation by others. This needs to be fully understood by player agents who should be advised to carefully secure subsequent contractual agreement with the player on them reaching majority.

(2010) SLJR 8
Personal injury – Sport – Causation
- Duty of care – Inspection

SUTTON V SYSTON RUGBY FOOTBALL CLUB LTD

Court of Appeal (Civil Division) Longmore, L.J.; Rimer, L.J.; Warren, J, 20 October 2011

Facts
The appellant rugby club (R) appealed against a decision that it was liable for personal injury sustained by the respondent rugby player (S). S had injured his knee when he fell on a broken cricket boundary marker during the course of a rugby training session organised by R. S maintained that one of the rugby coaches who had been present should have inspected the pitch before the training session. R admitted that it owed S a duty of care and that there should have been a general inspection of the pitch before the session. However, R maintained that such an inspection would only have been for obvious obstructions and would not have revealed the broken cricket marker since it did not obtrude above the surface of the grass. The judge held that an inspection of the pitch should have been conducted at a reasonable walking pace and that a more careful degree of attention needed to be paid to the ‘touch down’ ends of the pitch where players were expected to fall on the ground. R submitted that (1) an inspection of the pitch by quickly walking over it would have been sufficient to discharge its duty of care; (2) even if a more detailed inspection had taken place, it would not have revealed the stub of the cricket marker.

Held (allowing appeal)
(1) It was obviously correct that there should have been an inspection of the pitch. The Rugby Football Union risk assessment guidelines recommended that a check of the ground should be carried out to identify any foreign objects and, although the guidelines referred to matches, the duty also applied to training sessions. The appropriate standard of inspection applied to the whole of a pitch rather than requiring a more careful degree of attention to be paid to the ‘touch down’ ends; it was unnecessarily complicated to require different standards of care for different parts of the pitch. It was important that standards were not laid down that were too difficult for ordinary coaches and match organisers to meet. Games of rugby were desirable activities within the. It was therefore appropriate that, before a game or
training session, a pitch was walked over at a reasonable walking pace by a coach or match organiser (see paras 9-11, 13 of judgment). (2) The judge’s conclusion on the issue of causation was not decisive. Causation was a question of mixed law and fact and, in addition, the judge had imposed a higher standard of inspection in relation to the 'touch down' ends of the pitch than for the rest of the pitch. In view of the correct legal standard to be applied, the evidence was that even a reasonable inspection by walking over the pitch would not have revealed the stub (paras 15-17).

Commentary
The maintenance of a safe sporting environment has been high on the agenda of the sports governing bodies that oversee sporting codes which involve an inherently dangerous activity. This form of risk management has partly been caused by an increasing awareness of the need to provide a safe working environment for participants that has been created by the consequences of serious incidents such as the threat of legal liability, increased insurance premiums and the response by the variety of stakeholders in sport including fans, media companies and sponsors. Many examples can be used to illustrate – driver safety has been improved immeasurably in motor racing, the wearing of helmets in cricket is compulsory. In some instances this has led to particular sporting activities such as pole vaulting not taking place in schools. Responding to the threat of legal liability so as to minimise its effect is an effective element of risk management. This approach has also involved education programmes for players emphasising the need to play the game in an ethical manner.

The instant case does however stress that a balance needs to be made safety requirements which would potentially put off sporting clubs and the paid and voluntary staff who run them from remaining involved on the one hand and the responsibilities that Clubs to those using their facilities. The Claimant arguably sought to raise the standard of care owed by sports clubs to that which might apply to an employer. The Occupiers Liability Act 1957 only imposes a qualified duty to take "such care as in all the circumstances of the case is reasonable to see that the visitor will be reasonably safe".

What rugby clubs and those in similar sports need to note from the decision is that for a club to discharge their duty of care, inspections should take place to ensure that the whole pitch is "walked over at a reasonable walking pace by a coach or match organiser (or someone on their behalf)". This includes both actual matches and training sessions.

Reporter (SG)

(2010) SLJR 9

Anti-competitive practices - Broadcasting right - Copyright - Decoders - EU law - Football - Freedom to provide services - Infringement - Licensing agreements - Reproduction right - Satellite television

FOOTBALL ASSOCIATION PREMIER LEAGUE LTD V QC LEISURE (C-403/08) also known as MURPHY V MEDIA PROTECTION SERVICES LTD (C-429/08)

European Court of Justice (Grand Chamber) Judge Skouris (President), 4 October 2011

Facts
The European Court of Justice determined a number of questions concerning the use of foreign decoder cards licensed for watching the matches of a football league (F) broadcast via encrypted satellite television from another Member State. F ran the major football competition in England and organised the filming of matches. F licensed the broadcast of the matches on a territorial basis under an agreement that they would be encrypted to prevent the public outside that area from watching the matches. F conducted a campaign of prosecutions against the suppliers (Q) of the decoders and against a publican (M) and others, who had used the decoders to show broadcasts of Premier League matches transmitted from other Member States. M was convicted of two offences under the of dishonest receipt of programmes broadcast from the United Kingdom with intent to avoid payment. Her appeal was dismissed and she appealed by way of case stated to the High Court using similar arguments to those adopted by Q. The High Court stayed proceedings in both cases and referred a number of questions to the ECJ for a preliminary ruling. F contended that (1) the decoders were illicit devices for the purposes of Directive 98/84 art.2(e); (2) the justification for such a restriction on the free provision of services was the protection of its intellectual property rights and the encouragement of the public to attend football matches by having a "closed period" on Saturday afternoons during which domestic
matches were not shown; (3) the exclusive agreements were not prevented by TFEU art.101(1) as contrary to free competition; (4) acts of reproduction such as those performed within the memory of a decoder or on a television screen did not fulfil the conditions laid down in Directive 2001/29 art.5(1) and therefore could not legitimately be carried out without the copyright holder’s authorisation; (5) transmission of the matches to customers present in a public house via a television screen and speakers was "communication to the public" within the meaning of Directive 2001/29 art.3(1).

**Held (Preliminary ruling given)**

(1) An "illicit device" for the purpose of art.2(e) of Directive 98/84 did not cover a foreign decoder manufactured under authorisation but used outside the licensed area nor did art.3(2) preclude national legislation which prevented the use of such decoders since such legislation did not fall within its remit (see para.74 of judgment). (2) TFEU art.56 required the abolition of all restrictions on the freedom to provide services unless there was justification. Any restriction on basic freedoms had also to be in the public interest and could not to go beyond what was necessary. Consequently, the payment of a territorial premium above that which was reasonable could not be justified (para.116). F could not claim copyright in the matches themselves but it was possible for a national law to protect the audiovisual content (paras 96-99). The "closed period" could have been ensured using contractual limitations (para.124). Article 56 therefore precluded a Member State from legislating to make it illegal to import sell or use a foreign decoder and it did not matter that the device was procured using a false identity and address, with the intention of circumventing the territorial restriction in question, nor that it was used for commercial purposes though contractually restricted to private use (para.132). (3) The exclusive licence agreements restricted cross-border competition and were in breach of TFEU art.101 (para.144). (4) All five of the conditions in Directive 2001/29 art.5(1) had been complied with, such that the acts of reproduction within the memory of a satellite decoder did not require the authorisation of the copyright holder (para.182). (5) The meaning of "communication to the public" in art.3(1) included showing a broadcast match to customers of a public house and therefore required the authorisation of the copyright owner (para.207).

**Commentary**

In summary, the CJEU held that restricting the importation of a Greek satellite decoder and decoder card to view the live PL games and clauses prohibiting an authorised PL broadcaster selling its service to a Member State citizen outside of its allocated territory were contrary to EU law. However, the CJEU did conclude that the PL owned copyrighted works such as the anthem and the logo, which were embedded in the broadcast. As Mrs Murphy was deemed to be making a further communication to the public under the Copyright Directive (by broadcasting the pictures), Murphy required authorisation from the PL to show the copyrighted works in order to broadcast the live pictures.

This extremely tricky balancing act for the CJEU involved the need to safeguard the fundamental EU free movement freedoms whilst giving a degree of intellectual property protection to the PL as a rights holder. Additionally, it is uncertain as to how the ECJ’s reasoning in respect of the broadcasting of football matches will be applied to other commercial markets where digital rights are often licensed on a territorial basis (for example computer software, music, e-books or films made available via the internet).

For further analysis of decision see Daniel Geczy’s article in this issue of S&CLJ.
(2010) SLJR 1-3 are reported in the Sport and the Law Journal, Volume 18 Issue 1

(2010) SLJR 1
Breach of contract - Compensation - Constructive dismissal - Football managers

KEVIN KEEGAN V NEWCASTLE UNITED FOOTBALL CLUB LTD

(2010) SLJR 2
Sport - Intellectual property - Copyright - Database right - Football - Infringement - Preliminary issues - References to European Court

FOOTBALL DATACO LTD V BRITTENS POOLS LTD; FOOTBALL DATACO LTD V STAN JAMES (ABINGDON) LTD; FOOTBALL DATACO LTD V YAHOO! UK LTD

(2010) SLJR 3
Games - Personal injury - Negligence - Reasonable care - Risk

SCOUT ASSOCIATION V BARNES

(2010) SLJR 4-6 are reported in the Sport and the Law Journal, Volume 18 Issue 2

(2010) SLJR 4
Constructive dismissal - Contracts of employment - Implied terms - Mutual trust and confidence - Repudiation - Unfair dismissal

MCBRIDE V FALKIRK FOOTBALL AND ATHLETIC CLUB

(2010) SLJR 5
Broadcasting - Disciplinary tribunals - Horse racing - Libel - Qualified privilege - Television

MCKEOWN V ATHERACES LTD

(2010) SLJR 6
Criminal law - Jurisdiction - Football - Football banning order - Defendants being convicted of football related offence - Whether football banning order inevitable consequence of football related offence - Whether judge erring in failing to impose football banning order

PROSECUTION APPEAL; R V BOGGILD AND OTHERS
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