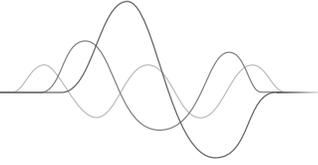


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British Association for Sport and Law Ltd

5 Fleet Place · London · EC4M 7RD

Email: basl@britishsportslaw.org

www.britishsportslaw.org

Registered Office

c/o Charles Russell

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EDITORIAL

BY SIMON GARDINER, EDITOR

This issue concerns a number of on-going and current topics. The Opinion and Practice section provides comment on a number of topical issues. First Christian Edwards' **'Child Safeguarding and Sport'** provides practical advice for ensuring children have a safe experience during sports participation. Second, 'Urvasi Naidoo and Zachery O'Brien's **'Force Majeure and Sports Events'** uses the recent Sochi Olympics as the backdrop as to how sports event organizers can manage risk and eventualities with this contractual provision. Kerenza Davis' **'Force India and Damages for Misuse of Confidential information'** provides a detailed analysis of the Court of Appeal decision concerning the value and protection of confidential information in Formula One racing. Lastly, **Walter Cairn's interview** is with the lawyer who deals with a variety of mainly criminal cases of well know sports stars, Nick Freeman.

The Analysis section has two articles. First, Simon Gardiner's **'Challenging decisions of match officials: Guidance from Football and other sports'** provides an analysis of the recent case involving attempts by West Ham F.C. to challenge the red card and subsequent three-match ban of the their star striker, Andy Carroll. The article also examines more generally when 'game rules' (including connected use of technology assisting decision making by match officials) can be challenged. Urvasi Naidoo's **'Cheating in Sport: is Increased Regulation the Answer?'** provides an interesting analysis on legal implications of a number of issues of gamesmanship and cheating as forms of competition governance.

The Reviews section has the usual items, Walter Cairn's **'Corruption watch'**, a regular survey of recent developments, both at home and abroad, of corrupt activity in sport, the **Sport and the Law Journal Reports**, and lastly a **book review**.

Next year will be the 20th anniversary of the Bosman ruling, which as we all know has had a significant impact not only on European and world football but also more generally as to the relationship between sport and regulatory regimes. The specific elements of the Bosman ruling by the European Court of Justice was that the requirement for the payment of a transfer fee to and control of the player's registration by the players employing club was ruled unlawful under freedom of movement of worker provisions under Article 45 TFEU. The concept of free agency was introduced into European football and subsequently very quickly into world football. A second limb of the Bosman ruling concerned the compatibility with EU law of national rules that imposed quotas on the number of foreign players that could be fielded in a match. The ECJ ruled that in so far as players who were EU nationals were concerned, such quota systems were unlawful.

The ruling has also had incremental and limited impact upon the restraints that the transfer and registration system has for players within their contract. In late 2013, it was reported that FIFPro, the international players' union, using the findings of a EU study, published on 7 February 2013 that supports the overhaul of football transfer system (see <http://ec.europa.eu/sport/library/documents/cons-study-transfers-final-rpt.pdf>), will launch a legal challenge against the transfer system.

The organisation, which represents nearly 70,000 footballers, claims that the current system needs an overhaul due to its restrictions on the freedom of movement of players and is ready to take the case to the European Commission, the European Court of Justice and human rights' courts. FIFPro also insists that sanctions for breaches of contract are "exorbitant" compared with any other industry.

Philippe Piat, the newly elected FIFPro president has declared that a review of the transfer system was his “top priority”. He has said: “Football’s governing bodies, clubs and leagues claim the transfer system is necessary to ensure competitive balance, whereby in fact it creates a spiral of economic and sporting imbalance, which only benefits the richest one per cent of clubs and player agents. These legal and monetary shackles binding footballers to their current clubs can no longer be accepted and upheld ... the current industrial model of football in general fails to ensure a professional management and compliance culture that is capable of safeguarding our game against internal and external abuse.”

The essence of this argument is that the existing system is increasing the relative deprivation between a small elite of super wealthy clubs and the rest of professional football.

The Bosman ruling nor the reformed FIFA rules have led to substantial changes to, let alone the abolition of, the transfer system as it operates within domestic leagues in professional football. Moreover, even with regard to international transfers it has proved much harder than anticipated for players under contract to move to other clubs outside of the protected period of their contracts. It is also the case that transfer fees remain highly inflated, despite the FIFA rules seeking to restricting fees to the costs of developing a player’s abilities; and the transfer system continues to have its murky side with regard to the activities of agents and deals allegedly conclude through the handing over of ‘bungs’ in plain paper bags and ongoing controversies concerning third party ownership of players. FIFPro claims that 28% of all the money from transfer fees ends up in the pockets of agents.

It has been argued by a number of legal and industry experts that the transfer system should simply be abolished. It has, for example, been and continues to be argued that the transfer system is a form of slavery and that players should be freed from the shackles it provides to enable clubs to tie players to them for the entire period of their contracts. If clubs were no longer able to hold on to a player by refusing to release that player’s registration, a footballer would be in the same position as employees in general. On the other hand, it can be argued that even if clubs were no longer able to hold on to a player’s

registration the commodification of professional football is such that there would still be an informal transfer system in that clubs would still need to negotiate sums of compensation if a player was to move to a new club in breach of contract. Essentially, footballers would be in the same position as that currently occupied by their managers and coaches.

Therefore, the solution lies not so much in the abolition of the transfer system as in putting place a workable system of regulation which recognises the valid concerns of regulatory bodies, players, clubs and, indeed perhaps most importantly of all, long-suffering football fans. In the context of the transfer system, I have contended that the best basis for resolving the potential for conflict in advance is by moving to a system of reflexive law using the method of EU social law as a paradigm (see Gardiner, S. and Welch, R.’ ‘The Contractual Dynamics of Team Stability Versus Player Mobility: Who Rules ‘The Beautiful Game?’ (2007) 5(1) Entertainment and Sports Law Journal). The advantage of EU social law is that it requires the involvement of the relevant social partners. Under Article 154 TFEU, the European Commission must engage in dialogue with the social partners as to the content of any proposed Directive. Moreover, Article 155 TFEU permits the relevant social partners to conclude their own collective agreements, which, if the social partners so request, may then be given legal force through an EC Directive. What hopefully will emerge is a sporting rule that provides on the one hand, a better and fairer balance between contract stability maintained by the clubs as necessary for both their financial sustainability and promotion of competitive balance, and on the other, greater player mobility.

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. 



Simon Gardiner
 s.gardiner@leedsmet.ac.uk

OPINION AND PRACTICE



Child Safeguarding and Sport

BY CHRISTIAN EDWARDS, JCP SOLICITORS, SWANSEA

We all know how important it is encourage children to participate and flourish in sport, however we should also remember that the safeguarding of children involved in sporting activities is of paramount importance.

Whilst for some years now, those involved in coaching or mentoring children may have been subject to CRB checks (now covered under the Disclosure and Barring Service following the implementation of the Protection of Freedoms Act 2012), this system has not been without criticism; particularly in terms of it being seen to be reactive rather than proactive. Accordingly, the UK government continues to work and promote legislation in order to ensure the welfare and safety of children.

Larger organisations such as the Football Association have in place their own additional safeguards and requirements. Such organisations have both the resources and knowledge to implement the safeguards. However for smaller and often volunteer led organisations, this is not always the case. It is the smaller local club/organisation which is the trigger for any sporting career as most if not all children start playing or participating in sport through their local club.

As is described further below, these local clubs are bound by the same provisions as the regional or national clubs/organisations.

The evolving legislation and requirements impact on all organisations/employers notwithstanding their nature, size and knowledge; and with particular reference to children. The law does not give any leeway to smaller and amateur organisations and applies across the board.

The legal framework for the safeguarding of children in sport is found in such legislation as the Safeguarding Vulnerable Groups Act 2006 (“the SVGA”) and the Protection of Freedoms Act 2012 (“the PFA”). The intention of the SVGA is to ensure an effective means of identifying and barring those persons who are deemed to be unsuitable for work with children and vulnerable adults. The PFA in turn, sets out the definition of “regulated activity” to identify those types of activities which would be covered by the SVGA.

Take as an example a local football club with a number of children’s teams from under 8’s upwards. Often those people involved in helping to coach children play the sport are parent volunteers who give up their time to help develop their child’s interest in the game. Often such clubs are run by a committee; again usually volunteers or sometimes with a paid club secretary or administrator responsible for the day to day running of the club.

Under the provisions of the SVGA:

1. Are regulated activities being carried out (see further below)?
2. There is a duty not to employ or use as a volunteer a person who is on the “barred list”; and
3. It is a criminal offence not to refer someone who is dismissed/resigns and is suspected of “harm” to a child.

Those provisions are rather strict and for a rather obvious reason. Whilst it is not compulsory for those running sporting clubs/associations to carry out a Criminal Record Check (CRC) on all individuals, it will be an offence if a person is subsequently employed who was on the barred

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list. In other words, a CRC check would have revealed such information.

It is therefore good practice to carry out CRC checks. The DBS publishes a fact sheet which is readily available online and which seeks to detail procedures and obligations in this regard.

Regulated activity

Many smaller clubs/organisations rightly question whether it is proportionate and necessary in every case to carry out a CRC check. What for example, of a parent who helps out on the weekend in taking children to and from venues?

Unfortunately, if that parent is doing it regularly, he or she is covered by the legislation of carrying out “regulated activity” and it is therefore prudent for the club to carry out the appropriate checks.

What amounts to regulated activity?

- Covers children under the age of 16 and not 18. However if a child (or even adult) is older than 16, he or she may still be classed as vulnerable and therefore subject to the provisions of the SVGA.
- Covers teaching, training, care, supervision, advice or treatment and transportation
- The legislation covers people present in changing rooms even when supervised
- Unsupervised coaching and mentoring
- Transporting youth team/player to and from venues (the example above)

What of club staff who have already been employed but have not been checked? For example this would cover a situation where a long serving coach has coached at a club but has not been subject to a check because his or her involvement in the club pre-dates any legislation.

Firstly is the person carrying out regulated activity? If not, there is no need legal obligation to perform a search. If so, is it reasonable for the club secretary/administrator to request that the coach be subject to a check? Legally and insofar as that coach may be formally retained under a contract of employment, that may need to be revised.

Sports bodies are not required by law to have an effective child protection policy; but quite clearly, in light of the provisions of the SVGA, it makes sense that sports bodies adopt such a policy or at the very least, set out a procedure of best practice which it ought to follow.

In Summary, it is always a good idea to regularly analyse the activity of your coaches and/or volunteers to consider whether their activity can be defined as regulated. My advice would always be that every club or organisation should have a policy of best practice and that it is indeed good practice to run checks on all volunteers and coaches involved in your club whether you consider their activity regulated or not. **IBASL**

Force Majeure and sports events

BY URVASI NAIDOO, FORMER CEO OF THE INTERNATIONAL NETBALL FEDERATION AND FORMER IN HOUSE COUNSEL OF THE INTERNATIONAL CRICKET COUNCIL AND ZACHERY O'BRIEN, TRAINEE SOLICITOR, PINSENT MASONS

Introduction

The 2014 Winter Olympics commence next month in Sochi which is located in one of the most volatile parts of Russia. Close to Chechnya and Dagestan there have been heightened security concerns not just in relation to terrorist attacks but also political protests around Russia's alleged breaches of human rights and gay rights. For this event additional troops and security have been assigned with substantial financial implications.

The bombing last year of the Boston Marathon serves as a reminder that terrorists are not just targeting the biggest sporting events, all popular sports events carry a risk. All event owners and organisers need to anticipate such situations and besides having security and insurance in place they also need to have in place appropriate contract provisions to deal with any cancellations.

This article will give an overview of the Force Majeure clause and its application. It will then consider some sporting examples of where Force Majeure may have applied and then finally we look at some hypothetical examples to consider how far sports can rely on the doctrine of force majeure.

What is Force Majeure?

Force majeure, often referred to as "Act of God", in French literally translated as "a superior force", has no formal definition in English common law and therefore it needs to be carefully defined by those who seek to rely on it taking into consideration the unique circumstances and the specific technical, human and natural risks. It is usually defined to mean an exceptional event or circumstance:

- which is beyond a party's control;
- which such party could not reasonably have provided against before entering into the contract;
- which, having arisen, such party could not reasonably have avoided or overcome; and
- which is not substantially attributable to the other party.

The definition would then go on to give examples of what type of exceptional events or circumstances would be considered force majeure but this should be illustrative and not limited e.g:

- (i) War, hostilities (whether war be declared or not), invasion, act of foreign enemies.
- (ii) Rebellion, terrorism, revolution, insurrection, military or usurped power, or civil war.
- (iii) Riot, commotion, disorder, strike or lockout by persons other than the contractor's or its subcontractors' personnel.
- (iv) Natural catastrophes such as flood, earthquake, hurricane, typhoon, tsunami or volcanic activity.

Some force majeure clauses specifically excluded strikes and lockouts as one of the parties is usually in a position to do something to resolve a strike. Force majeure is not intended to excuse negligence, or other malfeasance, of a party, as where non-performance is caused by the usual and natural consequences of external forces (e.g. rain stops play), or where the intervening circumstances are specifically contemplated.

FORCE MAJEURE AND SPORTS EVENTS

“Although force majeure and frustration are often mentioned in the same breath, they are distinct doctrines. In general, a frustrating event makes a contract impossible to perform and leads to its termination. A force majeure event on the other hand can frustrate a contract but it may equally only delay the parties’ ability to fulfil their contractual obligations. There is a further distinction: whereas frustration is a common law doctrine, force majeure has no strict legal meaning. Force majeure must therefore be provided for contractually.”¹

A well drafted clause will also set out what will happen if a force majeure incident occurs e.g:

- suspension of the duty to discharge contractual obligations or the extension of the time for performance
- option to terminate
- performance indefinitely excused without payment of damages
- or returning the parties to a position they were in prior to entering into the contract
- dispute resolution to resolve issue of any damages incurred.
- first option to re-negotiate

In some sports events extreme weather is not something which will prevent or postpone an event it is merely an additional challenge to the athlete. This is another reason for tailoring force majeure clauses to ensure they are fit for the specific purpose.²

Those drafting international contracts also have to consider that the law concerning Force Majeure may differ in another jurisdiction and if the contract is not governed by English Law then further research is needed to be certain that this will not impact upon the application of the clause.

Interesting sports cases

In 1972 the Munich Olympics were brought to a shocking pause when a group of Palestinian terrorists attacked members of the Israeli team in the Olympic Village taking them hostage. 11 athletes, 2 policemen and 5 of the terrorists were eventually killed. Despite this horrific incident the Games proceeded after a brief stoppage of 34 hours. The then IOC President, Avery Brundage, famously said “The Games must go on!” and they did. This actually took place at the beginning of the event. If it had occurred during the event or towards the end of the event it is interesting to consider what the sporting impact would have been as there would have been less time available in the venues to complete all the competition.

Following the horrific 9/11 events in USA the owners of the Ryder Cup decided to postpone the event which was due to take place later that same month September 2001 at the Belfry in England. It was played in September 2002 at the same course and whilst the contracts have not been seen it is clear that the organisers and the Belfry itself would have relied on the Force Majeure clause in all contracts to avoid extensive liabilities for such a late cancellation.

In September 2001 Glasgow Rangers unsuccessfully tried to gain an order to stay a proposed UEFA match which was due to take place against Anzi Makhachkala at their home ground in Makhachkala, Dagestan. The UK government had advised against the travel given the heightened state of security and due to recent bombings in Makhachkala.³ The Court of Arbitration ruled against the application on the basis that the Russian and Dagestan authorities had put in place additional security measures. UEFA eventually relented and the match was played in a neutral venue, Warsaw in Poland. Whilst contracts have not been examined it is most likely that UEFA would have relied on a force majeure clause within their contracts and regulations to avoid liabilities incurred in cancelling the match in Makhachkala.

In May 2002 the New Zealand Cricket team abandoned their tour of Pakistan after a suicide bomb exploded outside their hotel in Karachi. 11 people were killed and 18 people were seriously injured in the blast.

FORCE MAJEURE AND SPORTS EVENTS

Following the horrific 9/11 events in USA the owners of the Ryder Cup decided to postpone the event. It was played in September 2002 at the same course and the Belfry itself would have relied on the Force Majeure clause in all contracts to avoid extensive liabilities for such a late cancellation.

In 2003 England tried to argue that it was unsafe for them to travel to Zimbabwe to fulfil their International Cricket Council (ICC) Cricket World Cup fixture which was scheduled to take place at the ground in Harare. The British government exerted pressure on the England and Wales Cricket Board (ECB) to pull out of the match but this was for political reasons and there were no legal grounds for this. At the time the UK government had not imposed sporting or economic sanctions on Zimbabwe.

The ICC participating nations agreement defined force majeure as “any circumstance not reasonably foreseeable at the date of the Agreement and not within the reasonable control of the party in question including, without limitation civil commotion, riot, invasion, war, terrorism, fire, explosion, storm, flood, earthquake or any other natural disaster (but excluding strikes, lockouts or industrial action.”⁴ The safety and security concerns which the ECB raised at the dispute resolution hearing and appeal hearings held in South Africa did not fall within this definition and it was found that England were deemed to have lost the match and the points were awarded to their opponents Zimbabwe.⁵ The process for hearing the dispute was flawed in that the ECB were given the opportunity to raise the matter and then appeal during the event itself, even though they had known

about the fixture for months beforehand. The ICC changed the dispute resolution process after this to introduce a fast track hearing process to minimise disruption at event time and to put in place a specific process to deal with safety and security concerns which it recognised were unlikely to go away.⁶

In August 2006 the South African cricket team pulled out of a one day series in Sri Lanka following a bomb, which went off a mile away from where the teams were staying, killing seven people. In this instance an independent safety and security report was commissioned and concluded that there was a continuing threat if the team remained in Sri Lanka and this was unacceptable.

The 2007 Netball World Championships had been scheduled to take place in Fiji in July 2007 but in December 2006 the International Netball Federation withdrew the hosting rights following a military coup. Fiji had been awarded the hosting rights in 1999 and considerable preparations had already been underway. The Championships were eventually held in New Zealand in November 2007.

In March 2007 the ICC revised its Future Tours Programme Regulation which provides for the rotation of tours amongst the top cricket playing nations who are required to play each other both home and away at least once in a six year period.

The regulation was amended to define what would be acceptable non-compliance (with the regulations) by extending force majeure to “circumstances of Force Majeure as a result of which Compliance is rendered impossible, illegal, likely to give rise to a serious risk of death or personal injury to the players and/or officials due to take part in the Tour concerned or in respect of which appropriate insurance is unavailable on reasonable terms and, in each case, where there is no action that the party or parties concerned could reasonably take to render Compliance possible, legal, free of a serious risk of death or personal injury and covered by appropriate insurance.”⁷

The ICC also established a panel of suitably qualified independent security experts to be appointed by any international cricket authority in the event that it had safety and security concerns. One of the consultants

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would be appointed to report on the safety of the proposed tour and then there would be consultation and dispute resolution if there was still disagreement between the relevant cricket authorities.

Obviously the interesting point here is the addition “likely to give rise to a serious risk of death or personal injury to the players and/or officials due to take part in the Tour concerned or in respect of which appropriate insurance is unavailable on reasonable terms”.

It is worth noting that the ECB failure to travel to Zimbabwe in 2003 would probably not have fallen within this definition as the Zimbabwean and South African police and intelligence gave evidence that the threats were not real and that the security measures in place were more than sufficient to protect the teams and officials. Similarly in the Glasgow Rangers case above the security measures in place meant that there was no serious risk of death or personal injury.

In 2009 six members of the Sri Lankan Cricket team were injured when their bus was attacked in Lahore, Pakistan. Six policemen and two civilians were killed in the attack. The Test series was abandoned. Following this Pakistan lost the right to co-host the 2011 ICC Cricket World Cup and no international cricket team has since toured Pakistan. Pakistan is required to play all its home fixtures in the United Arab Emirates. Five years later and the volatile situation in Pakistan remains a serious threat to safety and security of players and officials.

Following the “Arab Spring” and various civil protests and disturbances the 2011 Formula 1 race which was due to be held in Bahrain was cancelled. Interesting to note that the race returned to Bahrain the following year and took place without major incident.

In March 2013 two bombs went off at the Boston Marathon, three people were killed (one an eight year old boy) 144 people were injured of which 17 were critical and 25 were serious. A police officer was also later killed in the hunt for the terrorists.

Hypothetical Questions

We have already considered the most horrific act of terrorism which the Olympics faced the Munich siege in 1972. The 2002 Winter Olympics was held in the USA less than six months after the 9/11 attacks. It seems clear from this that for the IOC and Olympic organisers to cancel or postpone an event an even more serious threat would be required.

For instance in the summer of 2011 widespread riots broke out in London and spread to other parts of the country with widespread protests, civil disobedience, looting and arson. If this had occurred a few weeks before the 2012 Games would organisers been able to rely on force majeure clauses within the various contracts to cancel or postpone the event? It is not dissimilar to the occurrences in Bahrain which led to the Formula 1 event being cancelled albeit that was a much smaller sports event both would have fallen within the usual force majeure definition of riot and civil commotion.

What of the pictures which shocked the world of the preparations for the Delhi 2010 Commonwealth Games. There were serious concerns about the facilities, health, wellbeing and security of the athletes and also the safety of venues and infrastructure as one picture was of a collapsed footbridge. Is this force majeure? Should the Commonwealth Games Federation have been considering cancellation or postponement of that event?⁸ In March 2003 the Women’s World Ice Hockey Championships scheduled to be held in Beijing were cancelled because of the Severe Acute Respiratory Syndrome (SARS) epidemic and the serious risk to the health of the competitors.⁹ How is this different from Delhi where the village accommodation was, at one point, deemed unfit for human habitation and there was a health alert of the possibility of the debilitating dengue fever arising due to stagnant water and improper drainage? Or was this just negligence on the part of the Delhi 2010 Organising Committee as they should have anticipated and resolved all of these risks?

FORCE MAJEURE AND SPORTS EVENTS

Conclusion

All sports events rely heavily on a myriad of contracts to ensure their success. Careful and innovative drafting of such contracts is essential so as to ensure minimum disruption to the event and the sport but also to avoid later lengthy and expensive litigation. The force majeure clause must anticipate all eventualities and learn from other sports events.¹⁰ It is no longer appropriate to just rely on the standard clauses. As we have discussed above Force Majeure has no strict legal meaning under law so it is always necessary to define and provide examples.

“to mitigate as many risks as possible and therefore limit the required insurance cover and cost, lawyers and specialist event brokers are recommending tailoring the force majeure provisions at an early stage in the contract process.”¹¹

Standard force majeure clauses would not anticipate the cancellation or postponement of a sports event and so for instance if the event official travel company had booked hotel rooms for fans and used the standard clause they would not have been able to rely on Force Majeure and instead would have to fall back on the law of Frustration.¹²

Given the continuing threat of terrorism do we now have a greater responsibility to include, as ICC has, that force majeure will apply if attendance is likely to give rise to a serious risk of death or personal injury to the athletes and/or officials due to take part in the event. Of course this will not be easy to establish particularly for the mega events where security is taken very seriously and the evidence of such security will show reasonable reduction of the threat of death or injury. For Sochi it is said there are 40,000 police and military personnel deployed for the security of approximately 6,000 athletes, coaches and officials from around 90 countries. For the Salt Lake 2002 Olympics it was said that the security budget was increased to over \$300 million following the 9/11 attacks. Of course the threat can never be totally eliminated and no event owner or organiser can offer guarantees but if the threat of death or personal injury cannot be reduced to an acceptable level (as for example, in the case of Pakistan) and remains then event owners and organisers should be looking at invoking the force majeure clauses which they should have already carefully inserted into their contracts. 

- 1 See *The Force Majeure Clause: Terror and Politics in Sport* N White and E Wright Sept 2003 - [http://www.couchmansllp.com/documents/news_press/Foreure\(Sep03\).pdf](http://www.couchmansllp.com/documents/news_press/Foreure(Sep03).pdf)
- 2 For examples of force majeure clauses within sample event contracts see the Appendices in the *Essential Legal Guide to Events* D. Becker Dynamic Publishing Ltd 2006.
- 3 See *Arbitration CAS 2001/O/341 Glasgow Rangers FC plc / Union des Associations Européennes de Football (UEFA), order of 11 September 2001* <http://jurisprudence.tas-cas.org/sites/CaseLaw/Shared%20Documents/341.pdf>
- 4 From the personal knowledge of the author Urvasi Naidoo who was In House Counsel to the ICC at the time.
- 5 See *The Force Majeure Clause: Terror and Politics in Sport* Sept 2003 N White and E Wright and *Sports, War, Disease and Political Unrest - is Force Majeure the Answer* S Gardiner and JT Gray SLB 2003 6 (1) (2) which also consider this case.
- 6 See below.
- 7 See *ICC Future Tours Programme Members Agreement* <http://www.icc-cricket.com/about/38/rules-and-regulations>
- 8 See <http://www.bbc.co.uk/news/world-south-asia-11379020>
- 9 See *Sports, War, Disease and Political Unrest - is Force Majeure the Answer* S Gardiner and JT Gray SLB 2003 6 (1) (2).
- 10 For further discussion on drafting of force majeure clauses within sports contracts see *Sport: Law and Practice 2nd Edition - A Lewis and J Taylor* G8 77 Pg 1346.
- 11 See *Terrorism and event cancellation: protective measures* P Morton, W Phelops and J Davies WSL July 2005
- 12 See *Cancellations: Event Cancellation and Force Majeure* D Bray WSL Feb 2004

Force India and damages for misuse of confidential information

BY KERENZA DAVIS, BLACKSTONE CHAMBERS

Introduction

In the world of Formula 1 (“F1”), millions of pounds can be won or lost over the matter of a few seconds. Mega-rich companies compete to create faster cars, carefully guarding any information that might shave a few moments off a model’s time. The aerodynamism of a F1 model is crucial to this time performance, and it transpires, also useful for generating questions on the misuse of confidential information. This is good news for lawyers since it has produced the helpful Court of Appeal judgment *Force India Formula One Team Limited v Aerolab SRL and others* [2013] EWCA Civ 780, which provides guidance on a number of tricky issues, including:

- How to distinguish between a claimant’s confidential information and a defendant’s knowledge;
- The impact of “confidential” information also being publically available;
- Quantification of damages where the misused information has been developed to create something more valuable; and
- Quantification of damages where only part of a corpus of confidential information has been misused.

Background facts

In 2008 Force India (who design and produce F1 cars) entered into an agreement with Aerolab for the latter to perform aerodynamic tests on Force India’s model.

Aerolab was required to keep certain information provided to them confidential during the course of the Agreement and for two years following its termination.

The “information” covered by this clause was very broadly defined, but contained some exceptions including information in the public domain and information already independently known by Aerolab.

In 2009 Force India fell behind with its payments to Aerolab and subsequently failed to comply with an agreed remedial plan. Accordingly, Aerolab stopped work and purported to terminate the contract. The precise date of termination was in dispute but settled by the Court of Appeal as 19 August 2009, by which time Aerolab had started working for Force India’s competitor Team Lotus.

Force India alleged that confidential drawings it had provided to Aerolab during the Agreement had been used by Aerolab in developing Lotus’ model both before and following termination. Their claim came before Arnold J in the High Court ([2012] EWHC 616 (Ch)). Force India appealed Arnold’s findings on a number of points, but while the Court of Appeal disagreed with some of his analysis it left his overall judgment on liability and quantum largely intact. The leading judgment was given by Lewison LJ.

Information v Knowledge

In considering how Force India’s confidential “information” could be distinguished from the knowledge of Aerolab’s employees (some of which had inevitably been developed by working with this very information) Lewison disagreed with Arnold’s analysis on the significance of how memorable the information was, preferring Roxburgh J’s analysis in *Terrapin Ltd v Builders’ Supply Company (Hayes) Ltd* [1967] RPC 375, 391, which defined information as:

“something that can be traced to a particular source and not something which has become so completely merged in the mind of the person informed that it is impossible to say from what precise quarter he derived the information” [at 391].

The dividing line between “information” and “knowledge” then can be taken as the point at which an idea becomes so entrenched in an individual’s understanding that s/he can no longer specify where s/he learnt it. The fact that information is remembered without reference to any external materials will be irrelevant if the party knows its source was originally confidential information.

Information in the public domain

It was common ground between the parties that by August 2009, having been raced at 10 Grands Prix, the general aerodynamic design of Force India’s 2009 model was in the public domain. Given Arnold’s finding that Aerolab’s work for Lotus used Force India’s design *“at the level of the general shape and configuration of its component parts, but no more”* [at 130] could Aerolab rely on the public availability of such information as a defence?

The answer from Lewison LJ was a resounding no. Advocating an approach aimed at preventing guilty parties avoiding potentially significant amounts of work or getting an unfair head start, he held: *“It is clearly not a defence that the person in breach of confidence could have obtained the information elsewhere if he did not in fact do so”* [72]. Since Aerolab had used the information from the confidential source it did not matter that it might have been publically available to them.

Evolution of information

Aerolab admitted to using some of Force India’s confidential information in their work for Lotus, but argued this was only a basic starting point in an evolutionary process. Significantly, by August 2009 Force India’s model was the worst performing model in the 2009 F1 Championship so arguably any value in the misused information was only realised following Aerolab’s independent input.

Lewison LJ rejected the idea that this could serve as a defence, again quoting Roxburgh J in Terrapin, who remarked [at 390]:

“information is none the less used if it serves as a starting point for a new design, because in the end the design wholly or partially discards the information from which it was originally built up”.

However, the Court found that such matters can impact on quantum.

In general, damages for misuse of confidential information are assessed on one of three bases: the profit made by the guilty party, the loss suffered by the innocent party or a reasonable price that would have been negotiated for the use of the information (*as per Wrotham Park*).

Where the third of these bases is used Lewison LJ approved the distinction made in *Seager v Copydex* (No 2) [1969] 1 WLR 809, between situations where there was *“nothing very special”* about the information used and those where the information *“involved an inventive step”* [at 813]. In the former case the fee of a competent consultant is the appropriate measure of damages but in the latter the measure would be much higher, equating to the price paid by a willing buyer desirous of obtaining the information.

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In the immediate case as Arnold J had found the misused information only served to save Aerolab some time (there being nothing “special” or “inventive” about it) Lewison LJ approved his finding that the appropriate measure was the cost of a consultant. Force India’s initial claim for c. £13 million (essentially the entire cost of developing the model) was rejected; instead, the Court upheld the finding that the appropriate measure of damages was a reasonable fee for the pieces of information used, here £25,000 [at 103].

Information from a larger matrix

Lewison LJ also commented that Arnold J had not addressed the question of whether Aerolab regarded themselves as free to use all Force India’s confidential information, but suggested that if Arnold J had found this to be the case “then it seems to me that compensation should have been assessed on the basis of the value to Aerolab of the whole corpus of information. After all, if A wrongfully retains B’s dictionary, it does not matter that he only looked up a few definitions” [at 96].

While this is a pleasing analogy it raises some difficulties. Such an approach would move away from the concrete question of the value of the information that has actually been used to the more theoretical question of the value of the opportunity to use it. This risks creating liability for contemplated rather than actual wrongdoing. Must a wrongdoer pay a reasonable fee for the opportunity they had to use the information if they had been moved do so? In the absence of any loss to the claimant or gain by the defendant could this be justified?

Further, while one can undoubtedly see that in the real world having a large cache of information will be of greater value than having a few individual pieces, this value lies in the ability to pick out all the salient pieces of information from the overall corpus. Given that damages are awarded on the basis of a theoretical negotiation, with value being attributed to the information used according to the cost the defendant would have had to incur in obtaining it (whether by paying a competent consultant or negotiating with the owner) arguably the value the defendant would gain from having such a cache is (or could be) already factored into the quantification of damages. It is at least a plausible argument that the cost of

In general, damages for misuse of confidential information are assessed on one of three bases: the profit made by the guilty party, the loss suffered by the innocent party or a reasonable price that would have been negotiated for the use of the information

“obtaining information” could include the cost of identifying which pieces would actually be of use, in which case what “reasonable” buyer would pay more to have a consultant also provide them with ancillary bits of information they did not need?

Lewison LJ’s suggested approach seems to be based more on compensating the claimant for an understandable sense of grievance at having their intellectual property treated by another as if it belonged to them than on any actual loss they have suffered as a result or any tangible benefit derived by the wrongdoer.

These latter points are perhaps questions to be thrashed out in another lap round the same kind of circuit but in the meantime Lewison LJ’s is a highly useful judgment in clarifying the law in this area. ■ **BASL**

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THE JOURNAL INTERVIEW

NICK FREEMAN

BY WALTER CAIRNS SENIOR LECTURER IN LAW AND LANGUAGES,
MANCHESTER METROPOLITAN UNIVERSITY

Nick Freeman is perhaps the most famous solicitor practising in the country today. From his early days as a prosecuting solicitor for the Greater Manchester Police, both his skill as an advocate and his reputation has grown to such a level that he is not only the first choice for many high profile and celebrity clients but regularly appears on national television and radio as a respected legal commentator.

Following his graduation from Chester Law School in 1979, Nick began his legal career as a prosecuting solicitor for the Greater Manchester Police. Owing to his advanced legal knowledge and courtroom style he was soon recruited into private practice by the then highly respected firm of Burton & Co, where he was soon made a partner. In 1999 Nick made the move of starting his own solicitors' firm and at that point Freeman & Co was created. Nick has developed Freeman & Co into one of the best known and highly respected solicitors' firm in the country.

In the first instance, how would you explain your drive to find weaknesses in the law in order to save your well-heeled clients?

I will answer that in three ways. The main reason for this drive is that I love looking at the law and examining the evidence. My approach is probably slightly different from that employed by other lawyers, although some may have started to follow suit recently. My guiding principle is that there is a presumption of innocence and the Crown has to prove its case. My starting point is to get the Crown to serve their evidence on me. Quite often I need to take it no further than that, because I will have discovered some legal defect. In addition, I am very competitive and like to win! Sometimes I liken my activity to a game of chess, you always try to guess what the other side is going to do. There is also the advocacy element, the art of cross-examination and of picking up certain issues which will be favourable to your case. (I am of course aware that the High Court has told us that the law is definitely not a game!) So it is all these factors combined that feed the drive. And I would add that, in my case, all these factors apply regardless of the length of one's heel. I act for Joe Bloggs and David Beckham in equal measure. Exactly the same approach applies to every single case. Thus, immediately after that David Beckham case at the Crown Court, I spent about two hours in the car park preparing for a case on Merseyside in a speeding case, defending someone who is completely unknown but for whom the outcome was very important. In fact all cases are important to me on an equal basis, it is just that some are distorted through their treatment in the media because they involve well-known personalities.

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But we are not really dealing here with major points of law or with life-defining outcomes. There are worse outcomes than speeding fines or six-month driving bans!

You must at all times remember that I am a criminal lawyer, and until relatively recently around 50 per cent of all my work was general crime. I am pigeonholed by the media because people mainly read about traffic offences which involve well-known people, as well as some of the quirkier defences which also reach the public domain – and that has caused a label to be attached to me.

On a general plane, are there any changes in the law relating to court procedure you would wish to see implemented?

Yes indeed! I am very much in favour of a level playing field in court, and I take the view that this is far from being the case at present. Probably the playing field used to be level, but now we are now faced with this slight dichotomy – we trade under an adversarial system, but this has been diminished to such an extent that we now need to ask the serious question, i.e. do we really want an adversarial system or would we be better off adopting an inquisitorial one. You might consult me as a client, send me all the relevant papers, and I would see five – possibly six – defences which could be raised. Under the current administrative rules of court procedure, I am now obliged to attend several administrative hearings – which delay proceedings and cost money – and tell the court exactly what I am going to argue, what is wrong with the Crown's case, what points I am going to make, a skeleton argument and supporting authorities. If I fail to do this, and I “ambush” the opposition, the case will be adjourned, unpleasant noises will be made about me, and they will probably make a Wasted Costs Order against me. Look, just suppose I wanted to attack you. I would hardly say to you that at five o'clock tonight “I will be waiting beside your car with a sledgehammer” – you would probably be ready for me if I did that. By the time I have complied with all these requirements, my client, who has paid good money for me to look at the papers, may not have a defence left. Why should the defence have to tip-off the Crown as to what is wrong with their case? But let me tell you, even when we do meet all the requirements, they still frequently make a hash of it. The level of incompetence in some courts is truly horrifying...

I always thought that it was somewhat dangerous to talk about a “legacy” of the Olympics. We never said that it would mean an improvement in sporting facilities in every part of the country.

.... yes, you often make that point quite emphatically in your book...

... it is staggering beyond belief, even now. My position is this: I am paid to do my job – there are a large number of highly qualified Crown prosecutors who need to devote the appropriate resources to their case, and if they don't have the interest, that's their problem. There should not be an expectation on the part of defence lawyers to do their (the prosecution's) job. That is where we are at the moment, and I do not think that this sits comfortably with an adversarial system. So what I am saying is: if we want an adversarial system, let the opposition prove their case and I will defend it. I don't in any way mind outlining basic points, as long as I am entitled to retain my priority, which is a duty towards my client, and my obligation not to do anything that reduces his chances of winning. That, as I understand the law, is how it has always been. We now have a struggle in this department!

But, in fact, under an inquisitorial system a good deal more is known about the other party's intentions than under the adversarial scheme of things, because under this system (e.g. that of France) the preliminary enquiry, which is mainly written, yields so much information that a good deal more is known about the other party's line of argument than is the case under English law....

Indeed! As I said earlier, the relevant authorities keep telling us that “the law should not be a game”. Well, how can you have an adversarial system which is not a game? The whole point of an adversarial system is conflict, it is

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confrontation. So if it is no longer a game – let's get rid of it! It has to be one thing or the other, I don't think you can have both. We have reached a point where we are masquerading under an adversarial system which is no longer worthy of the name. What I am saying is that it has to be one thing or another, it cannot be both. It is not fair to the client, it is not fair to the law, it is not fair to anyone!

It is quite interesting that you should say this, because there are a number of countries which are steeped in the inquisitorial tradition that are now moving towards a more accusatorial one!

Indeed, and I remain firmly in favour of it. Many of the administrative hearing rules I referred to earlier were introduced because lawyers such as myself were frequently being accused of “ambushing” the opposition – in this case the Crown. I find that very hard to understand because all I am doing is to point out what they need to do. It is very rare for an argument to be raised that takes anyone by surprise. The basis of the prosecution is their evidence – theirs. If they know what it takes to win their case, there can surely be no element of surprise! People use the term “ambush” rather loosely. To me, the word “ambush” means something by which a person can take you completely by surprise, i.e. something that you could not have reasonably foreseen. My answer to that is: “you're a lawyer, you have the papers – do your job and if you can't, find someone who can!” That is my view, although I have to admit it is not a view that the Government find very palatable.

In fact, would a change towards an inquisitorial system not imperil your reputation as Mr. Loophole – and its attendant benefits? I refer more particularly to the fact that, as I mentioned earlier, under the inquisitorial procedure, a good deal is more about the other party's intentions than is the case under the adversarial system.

Look, we adapt to whatever changes in procedure are forced through. If you have an agile brain, you adapt to whatever procedure you are faced with. I have made my fame and reputation under an adversarial system which is currently changing. I would not mind if we changed to an inquisitorial system – if that happened I would just adapt

my approach. Ultimately, you have to be interested in the law, and even my holiday reading is dominated by legal literature!

Let me give you an example of how to illustrate this – which I may have referred to in my book. An architect came to see me – he had four previous convictions for drink-driving. I examined his papers and informed him had no defence – he was clearly going to prison. Nevertheless, he still told me he wanted me to fight it, saying “I will pay you to go to court and sit and listen”. This made me concerned about my position, as I was not comfortable taking money off a client in those circumstances, and was thinking of my professional credibility. Anyway, I consulted the Law Society, who replied that it was perfectly in order for me to go to court and hear the prosecution give their evidence.

Well, I started to probe, and asked the prosecution a fairly irrelevant question about the machine used, which was a Lion Intoximeter 3000. I asked him what happened, and what the machine had shown when the defendant started to blow. He answered “the machine showed void” Immediately, I remembered from my reading the significance of that word. I wanted to be absolutely sure we were on firm ground, so I asked the officer: “Without wishing to be rude, how do you spell that”? Those present looked at me as though I had taken leave of my senses! Of course he spelt it correctly. I then made a submission that the word “void” meant that the machine wasn't working. The case was adjourned for expert opinion. The expert confirmed that “void” meant the machine wasn't functioning, whereas “voided” meant the defendant had failed to produce sufficient quantities of breath – which might have been what the officer intended to say, I don't know, that wasn't the evidence. The point I am making here is that, because I was hungry to understand the law and I had taken this book on holiday and read it, I appreciated the significance of the absence of those two letters e and d. It enabled my client to avoid prison, win the case and recover costs. That, to me, is what being a hungry lawyer is all about. People afterwards said: how could you do that, he was guilty! No he was not! The officer had definitely said that the machine was defective, and that was the evidence. If he didn't mean to say that – he shouldn't have done.

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Let us consider some of the famous “loopholes” which have earned you your renown. Are some of these not normal defences to which neither the authorities nor other lawyers have paid sufficient attention? I take as an example the defence which was used in the David Beckham case, that he felt his safety was being endangered – surely that should be an obvious defence to any competent lawyer?

Yes, you would think so! We are talking here about the defence of necessity, where the defendant has to show there was a danger to life or a risk of serious damage to property. When David told me what happened, my immediate reaction was that there must have been some special reason for the speeding incident, but it fell outside the established criteria for “special reasons”. So I asked myself whether there was anything else that could have played a part. Well, I once again did a lot of reading, as I do, and suddenly realised that this might be a “defence of necessity” case. David Beckham was driving at 72-74 mph, which is quite fast, but if he had crashed he could seriously damage his car and suffer serious injury – why could I not argue that? It is true that I could not find any road traffic decision in support of that. But this case fell within the definition of necessity as I understood it, so I put it forward as an argument. With no reported authority on this defence, maybe it was a case of “thinking outside the box”. Just because no-one else has thought of it there is no reason not to use it.

I will give you another example, of another client whom I had previously defended in a drink-driving case, who consulted me again and had this terrible habit of getting absolutely inebriated every time his wife went away. He was involved in a serious car accident, as a result of which he was thrown out of the roof and projected fifty yards away. His life was in serious danger and he was surrounded by surgeons who were trying to save his life. The police surgeon arrived and wanted to take his blood. I remember looking at these papers and was convinced there must be an argument to raise as a defence. Then I remembered reading that the blood has to be taken by someone not looking after the patient. The police surgeon had arrived before any police officers could get to the body of this person who was still alive (and went on to live). So the blood taken by that surgeon was inadmissible in evidence. I had never come across such a case before, but it was only because I was interested enough to research this issue that I

found a solution. I had never heard of this rule before – but it was there in the book!

Too many lawyers simply do not bother to research their case properly. I remember doing a case at Macclesfield where a colleague I was talking to told me that his client has been charged with speeding at 104 mph on the motorway and that he was pleading guilty. I asked him whether he had looked at the evidence, e.g. what kind of device the police used to catch his client. But he said – oh no, my client’s pleading guilty – just like that! That kind of attitude drives me to despair, is the tail wagging the dog here? I know it was quite unorthodox of me to do so, but I advised the colleague to sit behind me and watch me in action. In the end this client came over to me and asked whether I would defend him instead! To me, taking money off a client and not doing your job properly is a disgrace to the profession.

It also might appear that, in some cases, it is not the “loopholes” themselves, but their interpretation, that have provided the positive outcome for your famous clients. Was this not the case, for example, with the “medical emergency” plea entered in the case of Sir Alex Ferguson?

Yes, very often it is a case of interpretation. As I said to the court in Sir Alex’s case, there were two alternatives open to my client, and one of them was unpalatable. Obviously the United manager wasn’t going to die, the worst thing to happen was for him to make a mess. Would the law regard that as an emergency? After all, the condition was not life threatening. But obviously the law did allow for that interpretation, in the sense of someone being that desperate to get to the bathroom. Had he set off on his journey knowing he was ill, I wouldn’t have had a defence. He had initially been ill, then felt better, then it recurred. In fact, the law doesn’t require a medical emergency – if you look at the definition, it has to be an emergency full stop, it does not need to be life-threatening. In fact, no-one in court argued against me on that point. Had the definition stated that it had to be a medical emergency, I might have been on thin ice because it clearly was not life-threatening. However, if you find yourself driving and suddenly you are assailed by high stomach pains, should the law not offer you a way out? It is common sense isn’t it – much of the law is pure common sense. I had never

argued this line before. Obviously once I had, many clients wanted me to use the same defence, but in most cases were given short shrift.

But in the case of David Beckham, for example, the necessity pleaded was being “chased” by the paparazzi. Most people would not regard being “chased” by journalists as particularly endangering their safety.

I think it is hard for anyone to begin to understand what it is like being David Beckham. Look, on the morning of that particular trial, someone had attempted to kidnap his child (and no, this was not a stage managed stunt!). It was just unbelievable timing. Also, even though I have in my time been involved in some high-profile cases, I have never seen a media scrum such as the one that attended the court that day. His is a unique position, so I based my argument on this uniqueness. One tends not to have packs of journalists in hot pursuit, you do not confront something like that on a regular basis. But for him it is a regular occurrence, and is he not entitled to his privacy? I didn't mention Princess Diana's fate at this point, but it did have some hallmarks of that incident – someone driving dangerously close to a celebrity to try to get that picture. It is also a fact that, within 90 seconds of the camera flashing, he (David Beckham) made three 999 calls reporting the incident...

Hmmm.... was this not a stage-managed move perchance...?

... not at all. He didn't phone me and say, “I've just had a camera flashing close by me and have been speeding – tell you what, let's argue defence of necessity and dial 999 a few times!” Why would someone like David Beckham, not exactly known as an intellectual powerhouse, dial 999 unless there was something untoward?

Without wishing to detract from your skills and knowledge, does it not sometimes occur to you that the judges and magistrates in question are simply star-struck? In other words, could it truthfully be said that Joe Bloggs would have enjoyed the same outcome had he been the client in question?

No, in fact I think that the situation is completely the contrary. It is much harder to defend a celebrity than it is an ordinary person, because it will come under the intense scrutiny of the media spotlight. Whenever the prosecution

have a file involving a celebrity it is marked “media attention” and examined microscopically by several lawyers, they get their best brains on it, it is not one that is going to slip through the net. So I would repeat – completely the contrary.

But there have been cases such as the trial of Ian Bowyer and Jonathan Woodgate (2001) where the suggestion was made that the court may have been star-struck.... In other words, anyone less famous might not have been spared a guilty verdict (Bowyer) or convicted of the lesser charge (Woodgate)...

Well, in the second trial in that case, some amazing things happened. The jury returned a verdict before lunch, and prior to that I had visited Jonathan Woodgate in the cells and told him that I feared he was “going down”. Richard Henriques, the trial judge, was clearly very excited about the prospect of a guilty verdict, because Bowyer had a record of previous racially-tainted offences and could have been facing a long time in prison. I returned after lunch and saw Mr. Henriques's face contorted with anguish, which told me that, amazingly, the accused had not been convicted (at least of the greater charges). Was the jury influenced by the defendants' celebrity? Well, let's just remember the evidence, which was that an ethnic minority group had started an assault on English footballers. Juries are human beings. Whether a professional tribunal would have arrived at the same conclusion – I could not possibly comment. The jury system is very different from the magistrate system, and there are cases where a jury acquits defendants where this would not be the case before a magistrates' bench or a district judge. In other words, it is much easier to defend the accused in front of juries, and that is hardly surprising if you look at the constitution of most juries.

In your book, you describe many instances of your succeeding in sparing your client driving bans of varying lengths. How would you respond to the criticism that you give undue weight to such triumphs, particularly since, in most cases, we are dealing with clients who could easily afford the services of a chauffeur for the duration of the ban?

It would reply to this by saying that people are entitled to the same fair treatment by the law regardless of wealth – the law applies equally to all. If someone is extremely

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wealthy but they have a defence which I advise them to put forward, it would be very unfair to say to them that, because they have deep pockets, they should be deprived of that defence, which would only be available to those in a lower income bracket. People now are eligible for legal aid if they earn under £37,000 per annum. This is admittedly not a huge sum, but I think wealth is a total irrelevance in terms of whether people are entitled to run a defence, the justice system should apply equally to all. And remember that what is involved is not necessarily restricted to a driving disqualification – it could mean a criminal record and a prison sentence, it could affect the defendant’s insurance premiums, their employment, etc. The potential consequences should be irrelevant in terms of anyone’s eligibility to run a defence.

Inevitably, some moral questions have been asked about your activity. How do you respond to the criticism that it is “only the rich wot can afford it”?

First of all, let me say that there are a lot of experts out there who charge a good deal more than I do. There is a perception that I only represent the rich and famous – this is completely misplaced, the majority of my clients are ordinary folk and pay the same rate as the wealthy ones. I can assure you that my fees are not inflated because of the length of any client’s heel. I try to provide a very good service which gives good value for money despite anything you may have read in the press (I never talk about fee levels, because that is inappropriate) and all I can say is that ordinary folk keep this practice extremely busy. There are many people who, so to speak, have been doing this for five minutes and are charging a good deal more than I am. Well, that’s their business, and good luck to them.

Is it morally questionable to use technicalities in defence of people who infringed the broad sweep of the law and would otherwise have received condign punishment?

The law is put into place by democratic governance. We have as our starting point a presumption of innocence and the rule that the Crown must prove their case. Are we suggesting that, although this is the democratic rule of law, we should dispense with it and just conclude that, because the authorities consider that a defendant is guilty, they should simply be allowed to say “that will do for us, we will have you”? I form the view that if a certain rule represents the rule of law, it is available to everybody. I have no moral difficulties whatsoever about the way I perform my work. There is a certain line, you reach it, you never cross it, and you do your best as a lawyer to defend people. It is also important to remember that all I am doing is putting forward one side of an argument. The Crown, with its vast resources, has the other side of the argument. And it is the bench – or the jury with the assistance of the judge – who will make the decision. I am not the one who decides, I am not acquitting anybody. All I can tell the court is that, in my view, the defendant did not commit the offence or did not perform such and such an act. Someone else may say the opposite, and someone else decide – I myself have no part in the decision-making process.

But – and I realise I am really putting you on the spot here – suppose your defence results in the acquittal, on a technicality, of a driver who then proceeds to injure or even kill someone on the road. Would you still feel justified in using a technicality to win the case?

Look, at one stage I defended one woman who had four drink-driving offences against her name, and three men whom I had already acquitted three times each for the same offence. On no occasion have I ever said to any of these clients that, after one, two or three acquittals, I was no longer prepared to represent them – that would be a dereliction of duty on my part. I am not getting them off – I am putting forward an argument. The question you ask is an interesting one, but, if I may be so bold as to say so, might be more appropriately directed at the police officer who screwed up the procedure, at the prosecutor who has misunderstood the law, or, arguably, at the Bench who got the evidence and the law wrong. All I have done is to flag up a point and let other people deal with it, and

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that is where my responsibility ends. I cannot control the way people drive. Through the publicity that my cases attract these issues get raised – they are in the public domain and if people want to do their job properly they are there to be used. I am not hiding anything under a bush because I simply cannot. So I have no moral difficulties at all with the way I operate.

One case – a very painful one – that is very apposite here was one in which a lorry driver crashed into a car, virtually wiping out an entire family in the process. This case was highly unusual not only because of the devastating effect it had on the family but also because I was asked by a television company to meet the members of the devastated family – which I accepted. What had happened in this case was that, after the collision, the driver had been taken to a police station where he agreed to perform a breath test. However, he was not blowing hard enough, at which point the police gave him the opportunity to undergo a blood test which showed him to be well over the legal limit. But I spotted the flaw straight away. After the failed breathalyser test, the police should have charged him with “failing to provide” – along with any other offence he may have committed. Therefore, the blood sample was unlawful and inadmissible. Even then they could still have charged him with dangerous driving, or driving whilst unfit – no, they didn’t charge him with anything, they had not spotted the flaw I had noted. I only raised the point after six months because that was my duty towards my client, and he was acquitted. Did I feel any sense of joy – I didn’t. I felt desperately sorry for the family – the outcome was deplorable but I asked myself, was it my fault? Indeed not, I highlighted a point, police officers need to be better trained in these matters, and prosecutors should be more diligent in the way they look at the law – I can’t control them. All I can do is flag it up. In fact, many officers have come up to me and said that what I am doing is great because it is making their bosses sit up and take note, and train them properly.

Both in your book and in the course of this interview, you have highlighted the many shortcomings in the way the prosecution performs its tasks. Does this not also raise the issue of the Crown Prosecution Service (CPS) and its inadequacies?

It does indeed. Different people have different levels of interest, of dedication, of intelligence. I would like to point out that I used to prosecute for the police before the CPS was created, as a very inexperienced newly-qualified solicitor. I used to take my files home every night because I wanted to do my best – for myself, because I took pride in what I was doing. If you want to win and look at a file the first time, you might get by on a wing and a prayer but the probability is that you will make a mistake, and if you have failed to look properly at your trial file, you will probably lose heavily. There is less opportunity for that now, because, as I said earlier, we have to inform the prosecution in advance of any flaws we see in the case, but my view is that you can never over-prepare for a case, you can’t know your subject too well.

But does the CPS attract the right people, though, I am thinking more particularly of its rather indifferent salary structure...

Really? If you look at the level of legal aid nowadays, I am not too sure that these people are that poorly paid. Most criminal lawyers are legal aid lawyers. After Minister Grayling’s recent changes, QCs are being paid at a rate of £320 per day, even for some of the most complex fraud cases. So your average legal aid criminal lawyer cannot really make a living, and that’s why they are all leaving. By contrast, the CPS provides a reasonable wage – admittedly not a king’s ransom, but quite reasonable – a career structure and job security. That seems a cosy attractive package, and that is the kind of comfort blanket they like, lacking “get up and go”, well, you will end up with mediocrity.

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NICK FREEMAN

Still on this question of professionalism, in your book, you decry the antics of some magistrates who feel inclined to use the celebrity status of your clients as their “Andy Warhol 15 minutes of fame”. Does this, in your view, make out a case for abolishing lay magistrates altogether and – as happens in other countries – reserving the judicial process exclusively to professionals?

No, definitely not! Most magistrates are extremely well trained and do a fantastic job, and I think it is much healthier to have three people deciding than one professional magistrate. I like the balance. Nothing against professionals – I simply prefer the opinion of three people to that of one. You do get the occasional larger-than-life magistrate. When you asked the question, I assume you were referring to the Ronnie O’Sullivan case – but this happens extremely rarely. I had a similar situation with the magistrate in the David Beckham case (whose decision I successfully appealed) and he was clearly playing to the cameras rather than concentrating on the issues. In both cases, of course, they were dealing with two very high-profile sporting celebrities. But on the other hand, I have acted for hundreds of celebrities in other cases, and the court has not been in the least affected by their celebrity status – they just dealt with it as competent and able magistrates. So I think the system works fantastically well and I am very much in favour of its retention. I should perhaps declare an interest: my father was a magistrate, and used to tell me that I would never have got away with my arguments in his court!

Finally, how would you want the “epitaph” on your work to read?

“He tried his best for everyone”.

Thank you very much for this very interesting and informative interview. ■ **BSL**

*The book referred to in the interview is: Freeman, N., *The Art of the Loophole – Making the law work for you*, published by Coronet (2012 – London).*

ANALYSIS



Challenging decisions of match officials: Guidance from Football and other sports

BY SIMON GARDINER, LEEDS METROPOLITAN UNIVERSITY

Introduction

The recent incident involving the appeal against the red card and sending off of West Ham F.C. player Andy Carroll for violent conduct has highlighted the challenges that can be made to decisions of match officials and subsequent disciplinary tribunals. This article will provide an analysis of how this incident was dealt with under the procedure within the FA and also examine more widely the approach of judicial bodies to attempts to set aside the interpretation of so-called 'game rules' by officials.¹

Carroll's Red Card

The incident happened in early February in a match against Swansea F.C. where Carroll and Chico Flores were involved in an aerial challenge for the ball and Flores fell to the ground after being caught by the former's trailing arm as the pair untangled themselves. Flores fell clutching his face. Carroll was given a red card and sent off by referee Harold Webb.

West Ham challenged this decision and the automatic three-game playing ban through the customary process of the FA Independent Regulatory Commission (IRC). The decision of the three-person tribunal was a 2-1 majority that 'no obvious error' had been made by the referee in his decision to send off Carroll. Under the FA Disciplinary Regulations there are no further grounds of appeal. West Ham believed that they had been wronged and made public pronouncements that it was their intention to seek legal address including a potential action to the High Court. In fact an interim tribunal hearing took place 6 days later under the FA Rule K1(d) which provides a generic jurisdiction to appeal against the validity of a FA Regulation Commission or an Appeals Board decision. This appeal is under English law provisions 'on the

grounds of ultra vires (including error of law), irrationality or procedural unfairness, with the Tribunal exercising a supervisory jurisdiction'.

As the intention was to hold a hearing before the first game for which Carroll would serve his ban, there was not time to empanel a full three-person tribunal and therefore the interim hearing with a sole arbitrator was to decide whether there was a case to answer for a full hearing. The provisions of the relevant process exclude a 'full merits appeal' – the issues to be decided was whether there had been an error in law as to the test applied to evaluating the referee's decision and secondly whether there had been procedural unfairness at the IRC hearing. West Ham argued this latter ground on basis that it was unfair that Carroll had not been given the opportunity to give oral evidence before the Commission. The argument that a lack of oral representation, 'may amount to procedural unfairness invalidating the decision' was dismissed. The sole arbitrator was of the view this was far from the case here – there was no absolute right to an oral hearing.

There was a stronger case to argue on the first ground concerning an error in law of the test applied by the IRC. The test that had been applied was a determination of whether the referee's decision amounted to an 'obvious error' even though this was not formally within the relevant FA disciplinary rules but was mentioned in the ancillary guidance provided by the *FA's Guidance on Disciplinary Matters for Participants and Clubs 2013/2014 Season*. The FA's Disciplinary Procedures, specifically Section A, Regulation 5 indicates a different test. It refers to the IRC determining that 'a Player and his Club may seek to limit the disciplinary consequences of the dismissal of a Player from the Field of Play by demonstrating to the Association that the dismissal was wrongful ... a claim of

wrongful dismissal is ... concerned with only the question of whether any sanction of a suspension from play is one which should be imposed in view of the facts of the case.’ West Ham contended that this test of ‘wrongful dismissal’ was the correct one, which if applied was a lower test than establishing ‘obvious error’ and could have led to the IRC considering the dismissal was wrongful and therefore resulting in a successful appeal against the playing ban.

The sole arbitrator concluded that the IRC ‘did make an error in law in identifying the wrong test but the error did not affect its decision’. He stressed that there was a need for interpretative clarity and that the FA should act with some urgency as ‘unless the rule is amended by the proper procedures, those questions will not go away and cannot be resolved without a definitive decision by a tribunal (or court). Regulatory Commissions need to know what test they should apply’. However his view was that it did not have any impact upon the decision reached and therefore the original IRC decision was upheld.

This case provides some clarity of procedural issues for challenging decisions of football referees for specific disciplinary matters. This quick and responsive additional process appears now to be available to clubs under FA Rule K1(d) to challenge for on-field straight red card offences. It is hoped however that it is used appropriately where the particular facts of the case involve uncertainty and real issues of justice. More widely, guidance is given on the potential grounds for questioning decisions of match officials. The FA’s disciplinary regulations and procedures stress that the role of being able to subsequently challenge disciplinary measures for players ‘is not to usurp the role of the Referee’. The sole arbitrator made it clear that his determination was that the IRC findings were emphatic and ‘amounts to a clear view that the referee was right and not merely that he was not obviously wrong.’

Judicial approaches to Match Officials and Game Rules

There is a complex interaction between the playing rules and the officials that enforce them. At particular points in time, governing bodies instruct referees or umpires to enforce the rules more or less strictly.² This can lead to disquiet from players and more or less formal infringements and fouls during the game.³ The statistics may indicate a fall or increase in foul play but it is unlikely to be primarily about changes in the style of play, becoming more violent, for example. It is much more about officials’ attitudes towards actual and potential perpetrators during the game.⁴

National law courts have provided very limited opportunities for individuals to challenge decisions of adjudicative officials for on-field decisions. A major issue has been what legal standing an action might have. Actions in breach of contract, administrative law or in the law of tort are possible alternatives, insofar as analogies can be found in case law concerning other non-sporting matters.⁵ Others argue that decisions within sport involving so-called “game-rules” are ‘virtually certain to be held non-reviewable by the courts ... so obvious is the above proposition that one ought not to need authority to support it; it simply goes without saying’.⁶ Arguing that this view is simplistic, one writer states that ‘as with all other matters, judicial remedies may be suitable and available in certain cases, yet unsuitable and unavailable in others,’⁷ and concludes,

*[T]hat the question of whether judicial or other intervention in decisions taken by officials at a sports events is possible, is more complex than a simple “yes” or “no” would permit ... officials who act reasonably and in good faith, should not have to fear legal action. However, it is equally clear that officials who act in bad faith or in way that is grossly unreasonable, may have to answer to the courts.*⁸

In the United Kingdom, although case law has developed in the connected area of referee liability in negligence for injury caused to participants,⁹ there are no authorities

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concerning successful challenges of officials' decisions concerning play. Any arguments along these lines have been given short shrift. In the Australian case of *Sinclair v Cleary*,¹⁰ an action in negligence failed when it was brought by the owner of a horse against horseracing official on the grounds of the failure to place his horse as winner. The judge held that the plaintiff was contractually bound to accept the official's decision, the official was independent, and no wrongdoing was found on his part. In the U.S. case of *Bain v Gillespie*,¹¹ a vendor of team apparel brought an action against the umpire in a basketball match for an alleged wrong decision contributing to a victory by the opponent team and consequential loss of business for the vendor. The judge commented: 'Heaven knows what the uncharted morass a court would find itself in if it were to hold that an athletic official subject himself to liability every time he makes a questionable call ... the possibilities are mind boggling.'¹²

This reluctance to intervene into decisions of sports adjudicative officials is also evident within the jurisprudence of the Court of Arbitration for Sport (CAS) where decisions of match officials will not be questioned when they take place within their specific jurisdiction of play. In essence, CAS recognizes subsidiarity as far as match officials are concerned.¹³ Cases in this area have generally been heard as appeals during Olympic tournaments when CAS is sitting in its ad-hoc jurisdiction.¹⁴ It has been consistently ruled that decisions made on the field of play should not be questioned and is premised on the understanding that 'any contract that the player has made in entering the competition is that he or she should have the benefit of honest "field of play" decisions, not necessarily the correct ones.'¹⁵

In *Mendy v Association Internationale de Boxing Amateur (AIBA)*,¹⁶ CAS ruled that it would not review an allegation that an official had made a wrong ruling, in this case disqualifying a boxer who had hit his opponent "below the belt". The tribunal reasoned that it was 'less well placed to decide than the referee in the ring or the ring judges'.¹⁷ CAS further held that:

[T]raditionally, doctrine and judicial practice have always deemed that game rules, [i.e. technical field of play rules] in the strict sense of the term, should not be subject to the control of judges, based on the idea that "the game must not be constantly interrupted by

Increasingly, the human vulnerability of officials is being questioned. A number of sports are using various forms of technology to aid officials in coming to decisions. In sports such as horse racing and athletics, cameras have been used for many years.

*appeals to the judge"*¹⁸ ... [And further] in comparative law the game rule is not shielded from the control of judges, but their power of review is limited to that which is arbitrary or illegal...¹⁹

In *Korean Olympic Committee (KOC) v International Skating Union (ISU)*,²⁰ CAS stated that before it would review a field of play decision, there must be evidence, which generally must be direct evidence, of bad faith. If viewed in this light, each of those. CAS accepts that this places a high hurdle that must be cleared by any applicant seeking to review a field of play decision. However, if the hurdle were to be lower, the flood-gates would be opened and any dissatisfied participant would be able to seek the review of a field of play decision.²¹

In this case and others, however this autonomy of adjudicating officials is clearly not a policy of "complete abstention" but rather one of "self-restraint". Technical rules can be reviewed where there were actions that could be characterized as being "arbitrary", a "breach of duty" and "malicious intent".²² Essentially there needs to be some evidence of preference for, or prejudice against, a particular team or individual and 'decisions are taken in violation of [...] social rules or general principles of law'.²³ CAS arbitrators do not review the determinations made on the playing field by judges, referees, umpires, or other officials as they are not, 'unlike on-field judges, selected for their expertise in officiating the particular sport'.²⁴

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The view of CAS continues to be that decisions by officials irrespective of whether or not technology is involved, will only be reviewed in narrow circumstances where there is evidence helping to evaluate the decision which can be characterized as being clearly in bad faith, however that might be constructed within the specific case.²⁵

Use of Technology

Increasingly, the human vulnerability of officials is being questioned. A number of sports are using various forms of technology to aid officials in coming to decisions. In sports such as horse racing and athletics, cameras have been used for many years. In tennis, line decisions are determined electronically by the 'Hawk-Eye system. The use of video cameras as an aid to the officials on the field of play or as a guide to 'third umpire' as the final arbiter have been used in sports such as cricket and rugby league in Britain for some years. There are interesting issues concerning whether this undermines the officials' authority, and makes a game too clinical, or whether human error needs to be minimised as much as possible when a wrong decision may have an enormous financial cost.²⁶ Where does justice lie in terms of adjudicating sporting performance? It reflects the debate concerning judging within the law – whether disputes should be treated consistently with the minimum of discretion, the notion of formal justice or formalism (prioritising the unquestioned application of law), or whether the individual issues of the case should be considered specifically, the notion of substantive justice.²⁷

CAS guidance on the issue of challenging technology-based decisions is instructive. In *Neykova v International Rowing Federation (FISA) & International Olympic Committee*²⁸ the applicant was a participant in the women's single sculls event final during the Sydney Olympics. Following a photo finish, the first place for the women's single sculls was awarded to Karsten from Belarus, (time 7:28.141) and second place to Neykova from Bulgaria, (time 7:28.153) on the basis of evidence produced by the official "Scan'ovision" photo finish system using two special Swatch photo finish cameras fixed permanently to the structural steel frame of the finish tower. The Bulgarian Olympic Committee challenged the result based on video evidence provided by television cameras. These cameras were set-up in an

There are interesting issues concerning whether this undermines the officials' authority, and makes a game too clinical, or whether human error needs to be minimised as much as possible when a wrong decision may have an enormous financial cost.

approximate manner for the television audience and served no official purpose. So the question facing the panel was to what extent video evidence that has been presented as contradicting the official photographic technology might be used to override the stated result.

Essentially, *Neykova* concerned a challenge to the accuracy of the official technical equipment that determined placings in the race. Because the panel found that on this question, the applicant had not proved that the technical equipment was deficient, it dismissed the application. The case had not been based on evidence questioning the reliability of the official photographic equipment, but rather on the basis of images produced by TV cameras primarily positioned to produce pictures for viewers. In fact expert evidence argued that the TV cameras were *located 10 centimeters ahead of the finish line.*

*When this 10 centimetre discrepancy is projected across the 200 metre width of the course, it is not surprising that the television camera's perspective is different to that of the Scan'ovision photo finish. This was therefore "different to that of a typical official's field of play decision."*²⁹

The limitations of video imagery from single or multiple cameras is highlighted by the facts that

it is obvious that a camera can only show what it sees from its particular angle. What it shows will depend upon where it was in relation to the particular incident when that incident took place. A different

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*camera showing the same incident from a different position may well give an entirely different perspective of the same incident.*³⁰

In the subsequent case of *Canadian Olympic Committee v International Skating Union (ISU)*,³¹ the Canadian Olympic Committee (COC) filed an application with the CAS AHD the day after the final of the ladies' short track speed skating. The COC requested CAS to order the ISU to instruct its referee to review the race's videotape. The COC was seeking determination of whether a "kicking out" infraction was committed by the winner of the race, Radanova, a Bulgarian skater. Possible disqualification of Radanova would have resulted in Canadian athletes advancing to the second and third places. The view of the panel was that,

*there is a more fundamental reason for not permitting trial, by television or otherwise, of technical, judgmental decisions by referees. Every participant in a sport in which referees have to make decisions about events on the field of play must accept that the referee sees an incident from a particular position, and makes his decision on the basis of what he or she sees. Sometimes mistakes are made by referees, as they are by players. That is an inevitable fact of life and one that all participants in sporting events must accept. But not every mistake can be reviewed. It is for that reason that CAS jurisprudence makes it clear that it is not open to a player to complain about a "field of play" decision simply because he or she disagrees with that decision.*³²

Conclusion

Controversies will of course continue to occur in sport and adjudicative officials and technology will often be central to them. The Andy Carroll case shows that attempts to set aside disciplinary penalties will be rigorously scrutinized. This article suggests that technology is likely to have an increasing impact upon these deliberations. In both sport and the law, adjudication is often in the context of "hard cases", where the outcome is unclear and is based on contingencies. The relationship between technological and human deliberation is crucial and the proper role of the former is best as an 'interpretive tool', helping to manage human error. **BASL**

- 1 In *The Matter of an FA Rule K Arbitration Reasons For Award Friday 7 February 2014 - Nicholas Stewart QC sitting as Interim Tribunal between West Ham United Football Club Limited and The Football Association Limited - can be found at fa.com*
- 2 *World Cup 2010: Fifa cautions referees to get tough in knockout rounds, 27 June 2010, www.guardian.co.uk/football/2010/jun/26/world-cup-2010-fifa-referees,*
- 34 'Referees must go with the flow' *The Observer*, 18 September 1994, p. 6.
- 5 *Op cit, fn XX, Fraser (1993), makes some interesting comparisons between umpires (officials) and judges; see Chapter 6, 'The man in white is always right: umpires, judges and the rule of law'. The comparison between styles of umpiring, being interventionist or not, frequently (using discretion) reflect the theorising of the jurist, Karl Llewellyn, concerning his formal and grand style of judging; see Twining, W, Karl Llewellyn and the Realist Movement (1973), London: Weidenfeld & Nicolson.*
- 6 Cornelius, S (2004) *Liability of Referees (Match Officials) at Sports Events, International Sports Law journal* 1-2.
- 7 Beloff, M, Kerr, T and Demetriou, M, (1999) *Sports Law Hart Publishing, Oxford, 107.*
- 8 Cornelius, *supra*. 65.
- 9 *Ibid.* p 61.
- 10 *Smoldon v Nolan and Whitworth [1997] The Times 18 December (2007); Vowles v Evans and the Welsh Rugby Union Ltd. [2003] EWCA Civ 318.*
- 11 *Sinclair v Cleary (1946) St. R. Qld 74, discussed in Kelly, GM (1987) Sport and the Law, Sydney: Law Book Company, 183.*
- 12 *Bain v Gillespie 357 N.W. 2d 47 (1984).*
- 13 *Ibid.*
- 14 *Oschutz, Frank (2006), 'The Arbitrability of Sports Disputes and the Rule of the Game in Blackshaw, I, Siekmann, R, Soek, J The Court of Arbitration for Sport 1084-2004, The Hague. Asser Press.*
- 15 For a general analysis of this areas see Nafziger, James (2004) *International Sports Law 2nd ed. New York; Transnational Publishers 109-118 and Foster, K (2006), Lex Sportiva and Lex Ludica: The Court of Arbitration for Sports Disputes' in Blackshaw, I, Siekmann, R, Soek, J The Court of Arbitration for Sport 1084-2004, The Hague: Asser Press.*
- 16 *Yang v Hamm CAS 2004/A/704, 37, award dated 21 October 2004.*
- 17 *Mendy v Association Internationale de Boxing Amateur (AIBA), 18 CAS ad hoc Division, Atlanta, OG 96/006,*
- 19 *Ibid.* para. 13.
- 20 *Ibid.* para. 5.
- 21 *Ibid.* para 11.
- 22 *Korean Olympic Committee (KOC) v International Skating Union (ISU), OWG 02/007 award of 23 February 2002.*
- 23 *Ibid.* para 16.
- 24 *Ibid.* para. 17.
- 25 *Mendy supra. N. 34 Para. 13.*
- 26 *Segura v International Amateur Athletic Federation (IAAF) (CAS OG Sydney 2000/13 Digest Vol.2 p.680. para. 17.*
- 27 *Ibid. fn 36 Mendy*
- 28 See Gardiner, S, 'The third eye: video adjudication in sport' (1999) 7(1) SATLJ 20.
- 29
- 30 *Neykova v International Rowing Federation (FISA) & International Olympic Committee Arbitration CAS ad hoc Division (O.G. Sydney) 00/012.*
- 31 *CAS OG Sydney 2000/12 Digest Vol.2 p.674. para. 13.*
- 32 *KOC v ISU supra n 40 para 11; also see Gardiner, S (1999), 'The Third Eye: Video Adjudication in Sport', 7(1) Sport and the Law Journal 20.*
- 33 *CAS OG 06/006 Canadian Olympic Committee v ISU.*
- 34 See *KOC v ISU supra n 40 para 11 earlier - 'arbitrary', 'a breach of duty' and 'malicious intent'.*

Cheating in sport: Is increased regulation the answer?

**BY URVASI NAIDOO CEO OF THE INTERNATIONAL NETBALL FEDERATION
JULY 2008 TO SEPTEMBER 2013¹**

Introduction

Cheating in sport has been getting a lot of attention lately with various extremely high profile anti-doping cases, such as Cycling and Lance Armstrong, and match fixing cases such as Snooker and Stephen Lee. We feel a sense of outrage as cheating in sports is so contrary to the traditional values of sportsmanship but what of other occurrences of cheating in sport which do not involve doping or match fixing? This paper briefly examines some recent examples of breaching or manipulating the rules. It examines what sports or sports events have done about these infractions and then gives some thoughts on how sports lawyers have a role to play to try and combat cheating and help lead sports back to a more wholesome sports culture where cheating in any form is recognised as morally and ethically wrong and against the core values of fair play which sports at all levels aspire to.

The IOC Code of Ethics lays down the principles that “fairness and fair play are central elements of sports competition. Fair Play is the Spirit of Sport and the values of respect and friendship shall be promoted.”²

Cheating is the antithesis of this – it is not just breaking the rules but it is the ultimate disregard for the unwritten code of sportsmanship.

If it is so abhorrent why does it occur so frequently and what can be done legally to cure it?

What do we mean by cheating? How do we define it? When we look at the dictionary definition of cheating words such as deception, delusion, fraud, trickster, rogue, swindler, imposter, duped all show up. This invokes in us a sense of outrage. It offends us that “cheating” can take place in sports because sport is supposed to embody all that is healthy and good.³

In Sports the most obvious and more wide-scale instances of cheating – doping and match fixing - will not form part of this paper as these topics have been extensively explored in existing sports law publications. This paper seeks to examine the cheat who breaches or manipulates the rules of the sport to gain an advantage. We look at some examples and how they were handled by the relevant sport or event and then we look at what further role the law or regulations play in resolving these infringements and preventing “cheating” in sport.

BadmintonGate

During London 2012 the sport of badminton was in the spotlight as it transpired that several women’s doubles pairs were not playing to win, they were deliberately trying to lose in order to manipulate the competition format. The Chinese team had two women’s doubles pairs entered in the competition. The players Wang and Yu (who were the world champions and the number one seeds) wanted to come second in their group and thus avoid playing the other Chinese pair Qing and Yunlei (who were the number two seeds) in an earlier match and only meet them in the final. Their opponents the Koreans became aware of the manipulation and also started to play badly and this was during an Olympic competition in front of not just fee paying spectators but a world-wide television audience. It was an embarrassment for the Badminton World Federation and the International Olympic Committee as eight badminton players, two from China, four from South Korea and two from Indonesia, were disqualified from the competition.

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It was not the first time that the sport of badminton had faced this cheating scandal. In Athens 2004 Olympic Games the Chinese coach admitted to asking one Chinese player, Mi, to throw a semi-final match so that the other Chinese player, Ning, could go on to win the gold medal as it was believed she was the strongest candidate to win the Gold medal.

Although they did not attract as much media attention there were other instances of “cheating” during London 2012 Olympics.

It is interesting to note that also during London 2012 the Japanese Women’s Football team was not disciplined for playing for a draw in order to avoid winning their group. Winners of the group would be required to play their next match in Glasgow and the Japanese who were based in Cardiff did not want to move city. Their 0-0 draw against South Africa meant that they finished behind Sweden in their group, and went on to meet Brazil in Cardiff for their next match. FIFA reviewed the case but decided not to take any disciplinary action. The IOC also took no action despite the Coach admitting that he had instructed his team not to play to win.

South African swimmer Cameron Von Burgh who won a gold medal admitted after winning his medal that he used “dolphin kicks” during the race. FINA rules permit only one dolphin kick at the turn. Von Burgh argued that all the swimmers at the Olympic level of competition used dolphin kicks as they were swimming in between the turns and that if he failed to do so he would be the only one who was not doing it and he was not prepared to sacrifice his Olympic career to swim by the rules.

Despite the admission there was no disciplinary action because the officials did not spot the infringement. FINA recently reviewed all its rules and opted not to make any changes to the breaststroke rules. They rejected the implementation of underwater cameras and a proposal to allow unlimited dolphin kicks off of the start, and then revert to current rules for turns off of other walls.⁴ Finally, also during London 2012 the British men’s cycling sprint relay team won a Gold medal but this was after the first cyclist, Philip Hindes, fell over in the first lap and a re-start was called. After the race, when interviewed, Hindes admitted that he had fallen over

deliberately to gain a re-start. The team management later retracted this statement claiming that Hindes, who is German born, had said this due to an incorrect understanding of English and he had not fallen over deliberately at all. The IOC and the International Cycling Union (UCI) were aware of the statement but took no action. Despite call for the rules to be changed, to date, the UCI have not done anything to make it clear that a deliberate crash is not permitted.⁵

Instances of Anti-Doping are all treated in a uniform way and there is a zero tolerance why is the same weight and ethical abhorrence not attached to other occurrences of cheating in the Olympics?

BountyGate

In 2012 it was discovered that the NFL Team, the New Orleans Saints, were paying their players a bonus payment (a bounty) to deliberately injure their opponents. The bounty was payable if an opponent player was taken out of the match. The American sports model, and in the NFL in particular, is that the salary cap prevents the payment of bonuses to players as such payments would take a player over the salary cap.

The scandal was discovered following an anonymous tip off which led to an investigation by the NFL. Apparently there was a culture within the Saints management of using this tactic to win during the 2009, 2010 and 2011 seasons with between twenty-two to twenty-seven players involved.

The NFL had no clear process in place to handle this sort of allegation as it could have been dealt with as a breach of the salary cap or it could have been dealt with as an on field breach of the rules. The Coach, general manager, defence co-ordinator and assistant coach were suspended. Four players were also suspended but appealed. On appeal the suspensions were overturned, then re-applied and then overturned again on appeal. The appeals centred on whether the action had been brought under the correct procedure and whether the NFL Commissioner had the power to impose sanctions.

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“The Bountygate case publicly played out the very interesting conflicts involving due process rights of individuals, collective bargaining agreements, and private disciplinary procedures against the highly visible tapestry of professional sports. The federal judge who heard the case questioned the fairness of the process, but chose not to rule in part because it was unclear if she had the power to do so. The process that governed Bountygate was bargained for as one part of a very large agreement between the league and the NFLPA as part of very extensive negotiations covering a wide spectrum of issues. The CBA gave Commissioner Goodell the power to act in many ways as the prosecutor, judge, and jury, but this case shows that it may not be in the leagues’ best interest for the Commissioner to have that kind of power.”⁶

The farce around how the players were disciplined and the flawed governance process actually became a bigger story than the cheating. The NFL governance structure and rules and regulations are long overdue for a complete overhaul.

Nelson Piquet Junior crashed into a wall during the Singapore Grand Prix in 2008 to allow his teammate Fernando Alonso to win the race.

BloodGate

In 2009 Harlequins player Tom Williams leaves the field during a Heineken Cup quarter final rugby match at Twickenham with blood streaming from his mouth. As a temporary replacement Nick Evans, a specialist kicker is allowed onto the field under the “blood” rules. Evans takes a last minute kick but misses and Harlequins lose the match to Leinster 6 – 5. It transpires that a blood capsule was used to feign a blood injury. Director of Rugby - Dean Richards was banned for three years by the European Rugby Cup. Steph Brennan, the Club Physio, was banned for two years by the Health Professions Council. Williams had an initial ban of 12 months reduced to 4 months for his help in disclosing the deception. Harlequins were fined £258,000.⁷ It is also interesting to note that the team doctor Wendy Chapman who deliberately cut the players lip to add weight to the deception and also lied at the initial hearing was only suspended for a year and was not struck off the medical register by the General Medical Council.⁸

CrashGate

Nelson Piquet Junior crashed into a wall during the Singapore Grand Prix in 2008 to allow his teammate Fernando Alonso to win the race.

The team, Renault, were given a two year suspended ban from Formula 1 for their role. Former team boss Flavio Briatore was banned from FIA sanctioned events for an unlimited period. Renault did not contest the charges. Their former Engineering Director, Pat Symonds was excluded for five years. No charges were brought against Piquet in return for his uncovering the details of the scandal. Alonso was cleared of any involvement.

Not only did this compromise the integrity of the sport but it also endangered the lives of spectators, officials, the driver himself and his competitor drivers. Many have argued that the disciplinary process and the disparity in sanctions –suspended ban for the team versus life ban for Briatore- were seriously flawed.⁹

ING later withdrew their commercial sponsorship of the Renault team thereby illustrating the negative commercial impact that unethical behaviour can have on sports. The European Sponsorship Association (ESA) warned sports

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governing bodies to clamp down on cheating or face a backlash from Sponsors.

“Over the years, sponsors have been extremely loyal and have provided an invaluable income stream for sport. However, sponsors are becoming increasingly selective and demanding about the returns and standards they expect. Like the fans watching live at events and on television, sponsors will start to feel cheated and will certainly not want to have their brand linked with a sport, a team or individuals who have deliberately cheated in order to win.”¹⁰

It is interesting to see that in both Bloodgate and Crashgate the governing bodies were prepared to see the disciplinary action through to its conclusion but also that the individual player/drivers were spared in recognition and appreciation for their role as whistle blowers.

Mike Tyson – Evander Holyfield

In 1997 during a Heavyweight Championship Boxing match Mike Tyson took a bite out of Evander Holyfield’s ear in the third round of the fight with millions of people watching. The fight was stopped and Tyson was disqualified. He was then initially suspended from boxing for life by the Nevada Athletic Commission but the very next year his suspension was lifted.

Holyfield refused to press criminal charges against his opponent who would clearly have been guilty of a criminal assault as the action was intentional and it was not within the rules and the wound inflicted could have been described as serious. Tyson later said of the incident that he was just so mad because Holyfield kept head-butting him but several people close to Tyson claimed he was frustrated because he knew he could not win the fight, he could not intimidate Holyfield and therefore deliberately got himself disqualified. This complete disregard for the rules of boxing was shocking but it is interesting to note that it was not viewed as cheating. It was just perceived as a more murky side of a sport where blood-shed is commonplace and acceptable.¹¹

The world of Ice Skating was rocked in 1994 when it transpired that Tonya Harding had conspired to break the leg of her opponent Nancy Kerrigan.

Tonya Harding

The ultimate “cheat” resorting to criminal action to exclude your opponent from the competition. The world of Ice Skating was rocked in 1994 when it transpired that Tonya Harding had conspired to break the leg of her opponent Nancy Kerrigan. In the run-up to the U.S. Figure Skating Championships 1994 in Detroit, Harding’s husband Jeff Gillooly and ex-bodyguard Shawn Eckardt hired Shane Stant to take a collapsible baton to Kerrigan’s knee during a practice session. She was forced to withdraw, and Harding subsequently won the event. Harding thus qualified for the US Olympic Team but shortly after her success her husband was arrested and Harding was also a suspect. The U.S. Figure Skating Association (USFSA) and U.S. Olympic Committee started proceedings to remove her from the Winter Olympics in Norway. Harding hit back, threatening legal action, and was allowed to compete. Harding finished eighth but Kerrigan, by then recovered from her injuries, won the silver medal. After conducting its own investigation a few months later, the USFSA stripped Harding of her figure-skating title and banned her for life from participating in USFSA-run events as either a skater or coach.¹²

CHEATING IN SPORT: IS INCREASED
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Why Cheat?

Why do people cheat? Of course there is an overwhelming desire to win, there is financial reward, and even sport rage as seen in the Tyson example? It has been going on for a very long time and the scourge of cheating seems to have affected every sport at one time or another. Whether it be the use of handball in football, moving the ball in golf, ball tampering in cricket, 7up on curling brushes, or wiring your sword in fencing.¹³

“Are we really surprised when sports stars cheat, or are we in fact now coming to expect it because everyone is at it? Chicago Cubs baseball star, Mark Grace, is reported to have said, ‘if you’re not cheating, you’re not trying.’ Whether or not cheating is becoming more commonplace, we certainly should have little trouble understanding why it happens – the financial incentives alone (never mind the glory – however hollow) make it easy for us all to see how elite athletes and management are sometimes tempted to break the rules, whether by trying to win illegitimately or – like the sumo wrestlers – by trying to lose.”¹⁴

Mike Rowbottom, in his newly published book, examines many examples going back to the Ancient Greeks, attempting to identify a dividing line between gamesmanship, mental intimidation, the manipulation of rules and out-and-out dishonesty.¹⁵

His thesis is that every game has an unwritten etiquette alongside its formal rules, and what is acceptable in one sport is taboo in another. For instance, while in rugby the odd punch-up has traditionally been regarded as part of the fun, tripping an opponent is deemed disgusting. Similarly in Ice Hockey a fight is great and acceptable and even expected as part of the match but using your stick to hit someone is definitely abhorrent.

There is also a fine line between tactics and cheating. In sports there are all sorts of methods of putting your opponent off and proponents of such tactics argue that if it is in the rules or the rules are silent then it is acceptable gamesmanship and not cheating. 16 Siekmann has written extensively on the deliberate own goal which seem ludicrous and completely against the integrity of football yet it is not actually against the rules. Surely this is cheating?^{17 18}

So what is wrong with this sort of “cheating”? It strikes at the integrity of the sport if a player under performs or manipulates or breaks the rules. At the elite level if we cannot guarantee this integrity the sporting public, the fans, fee paying spectators, commercial sponsors and broadcasters are entitled to distrust and maybe even eventually abandon the sport and of course the same can be said for the other cheating scandals of doping and match fixing.

What is the role of the sports lawyer?

If we agree that we want to protect the integrity of sports and return to honesty, incorruptibility, wholeness and all things which reflect true sportsmanship then the sports lawyer does have a role.

Firstly, in drafting regulations– it is now understood that in the interests of good governance, every sport governing body has to have rules fit for its purpose with appropriate but proportionate disciplinary powers. These regulations are of course drafted by sports lawyers. Careful and measured drafting is necessary. There is a danger of just using a standard template but this can lead to inconsistencies and flaws. Each clause of the regulations needs to be considered in the context of the sport it is written for.

Secondly, when disciplinary matters arise the sports lawyer has to ensure that the governing body applies its rules and regulations correctly and consistently. In the interests of transparency, many sports governing bodies now publish all decisions. The more high profile the sport or the particular case the more likely it is that every word of the judgment/disciplinary ruling will be scrutinised by the world’s media and sports fans. With the increasing litigious nature of the sports world and the fact that an

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athlete's short lived career may rely on the outcome of any disciplinary case many lawyers will also pour over the words of any written decision and consider the merits of an appeal. It is therefore crucial that there is attention to detail and all written communications are meticulously drafted.

There are many other aspects of good governance where the sports lawyer can provide guidance and advice on accountability, transparency, good communication and education all of which help to establish confidence in the sports body and build the "sports culture" which is discussed below. The International Olympic Committee and the SportAccord encourage and facilitate knowledge sharing among sports and this development of best practise and case studies in governance and integrity, whilst primarily focussed on match fixing and corruption, is invaluable in attempting to re-set the moral and ethical compass for sports.¹⁹

Conclusion

Cheating in all forms strikes at the integrity of sport but increased regulation alone is not the answer. "Regulations alone won't combat cheating; the relevant sporting authorities need to have the necessary will to enforce them. Federations and governing bodies have to be prepared to investigate and prosecute suspected wrongdoing, even if it means some short term pain, like loss of sponsors or star teams/players being suspended or withdrawn."²⁰

If sports governing bodies can adopt this approach as a start, leading from the top down and leading by example, this in some ways may change the culture of a sport. What is further required is a change of mind set. In the work place a modern development is that we now talk about a "Work Culture" where the values, beliefs and expectations of the organisation guide employee behaviour. What we need to re-establish is a "Sports Culture" – where values, beliefs and expectations of the sport guide and inspire the athlete to act ethically and to refrain from cheating. Athletes are currently asking what can I do within the bound of the regulations and/or how can I circumvent the regulations. We need to instil in them a sense of what would be the honourable/within the spirit of sport thing to do? Everyone involved in sports can help to instil these values, it is not just down to governing bodies but also parents, teachers, coaches and support personnel. There was no such "Sports Culture" at Harlequins rugby team, Renault Formula 1 team or the New Orleans Saints NFL team and this has been to their detriment as we have considered above.

The Council of Europe first adopted a Code of Sports Ethics in 1991 which was updated in 2001. The Committee of Ministers of the Council of Europe made recommendations to governments and regional, national and international sports organisations to adopt and promote "fair play" and many bodies did establish ethics committees and put in place their own code of ethics. The Code elaborates on how "Fair play means more than just abiding by the rules. It covers such notions as friendship, respect for others and the sporting spirit. Sports ethics signify not just a certain form of behaviour but also a particular way of thinking. It involves the elimination of cheating, bending the rules, doping, abuse of food additives, physical and verbal violence, the harassment

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and sexual abuse of young people and women, trafficking in young sportsmen and women, discrimination, exploitation, unequal opportunities, excessive commercialisation and corruption.”²⁰ The modern pressures of competing at the highest level, commercial demands, the increasing need for sports stars, exposure to mass and new media mean that now, more than ever, this work needs to continue. “Above all, it is necessary to recognise a positive culture of sport, which should be promoted through communication and education. Physical and sports education should include learning how to make ethical choices.”²²

The Canadian Centre for Ethics in Sport (CCES) originally formed as an anti-doping organisation has recently re-branded and evaluated its strategy. “Ethics in sport is not an end to be achieved, but rather a dynamic process that helps us to navigate the sometimes blurred lines governing behaviour, inside and outside of sport. With this in mind, the CCES reorganized itself to better fulfil its important mandate. We see ourselves as contributing in three interconnected ways to fair, safe and

open sport in Canada. The first way is through our role in protecting the integrity of sport and our administration of the CADP for, and on behalf of, Canadian sport – part of our “acute response system.” The second way is our upstream work on preventing doping and other ethical issues by helping to activate a principle-driven sport system at all levels – our long-term “prevention strategy.”

And the third way is our role in advocating and facilitating an ethical orientation and approach to all issues in sport. This relies on the use of values and principles to guide decision-making when the rules of sport do not or cannot.”²³ The work of this organisation is based around the premise that essentially what Canadians want is sport with a conscience and they see their role as continually raising, or elevating the conscience of Canadian sport. This is an admirable and worthwhile aspiration and is an example of the notion of working to establish a “Sports Culture”. **IBASL**

This is a slightly modified version of a paper published in ‘ThinkSport’, a journal published by the South African Government’s Department of Sport and Recreation and reproduced with kind permission.

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- 1 LLB, LL.M. *Writing in a personal capacity and not on behalf of current employer the University of Warwick. Previous employment: 2002 Salt Lake Olympic and Paralympic Winter Games; the International Cricket Council and the International Netball Federation. Co-author of 4th edition of Sports Law, Gardiner et al. Currently sits on Disciplinary Panels of Badminton England and England Netball and the FIH Judicial Commission.*
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REVIEWS AND REPORTS



CORRUPTION WATCH

COMPILED BY WALTER CAIRNS SENIOR LECTURER IN LAW AND LANGUAGES,
MANCHESTER METROPOLITAN UNIVERSITY

Corruption Watch is a feature of this Journal, although in practice it is a continuation of the relevant section in the present author's general sports law surveys compiled over the past 16 years under the "Current Survey" and "Foreign Update" columns.

Its specific focus is the various ways in which sport has been influenced by such malpractices as match-fixing, sport-fixing bribing, dubious transfer-inspired deals known as "bungs", and other untoward activities which have undermined the integrity of sporting activity, both professional and amateur.

OBITUARY

Ronnie Fenton

Ronnie Fenton, who has died aged 73, was a former Burnley, West Bromwich Albion and Birmingham City footballer who later became a trusted lieutenant to Brian Clough during the latter's heyday as manager of all-conquering Nottingham Forest in the late 1970s/early 1980s. He became implicated in an investigation into transfer corruption which also involved the controversial Mr. Clough. Following an inquiry by the Premier League, the Football Association brought charges against both men, the authorities having decided that they had unlawfully taken money. However, this case was abandoned in 1998 because of Clough's ill health – he died three years later – and because Mr. Fenton had left the game at that stage (*The Independent* of 18/10/2013, p. 64).

SEMINARS, CONFERENCES, ETC

In mid-October 2013, the second annual Sports Law Conference, hosted by the Law Society of Northern Ireland in association with the Northern Ireland Sports Forum, addressed a number of major and emerging issues in sport with considerable legal implications. Prominent among these were issues of corruption, fraud and match-fixing (*The Daily Telegraph* of 17/10/2013, p. 60).

CRICKET

IPL spot-fixing allegations result in criminal charges

Accusations of corruption have never been far away from the Asian cricketing scene, which is why it came as no surprise when, in mid-May 2013, the billion-dollar Indian Premier League (IPL) was thrown into turmoil as three players, including test star Sri Sreesanth, were arrested for alleged spot-fixing following an under-cover operation by Delhi police. The President of the Board of Control for Cricket in India (BCCI), N. Srinivasan, attempted to

limit the damage by issuing a statement denying that the IPL had become “untenable” after Rajasthan Royals players Sreesanth, off-spinner Ajit Chandila and left-arm spinner Ankeet Chavan were remanded in custody for five days by a Delhi court having been charged with fraud, cheating and criminal conspiracy. All three were immediately suspended by the BCCI (*The Daily Telegraph of 17/5/2013, p. S12*).

Delhi police informed a press conference that they had tapped into “hundreds of hours” of telephone conversations during which players were allegedly promised sums ranging from £23,000 to £71,000 for conceding a certain number of runs in three fixtures between 5 and 15 May 2013. In an uncanny echo of the Hansie Cronje corruption affair, extensively reported in this organ at the time, the authorities had discovered the alleged fix while investigating the criminal underworld. Mr. Sreesanth, who has played 27 tests for India, reportedly agreed to concede 13 runs in his second over of a game held in Mohali on 9 May, in return for £48,000. He is alleged to have given a signal to the bookmakers in question that he agreed to the fix by tucking a towel into his trousers. According to Delhi police commissioner Neeraj Kumar:

“Sreesanth bowled the first over without the towel. In the second over he put a towel in his trousers, in order to give the bookies time to

indulge in betting, he did some warming up, some stretching exercise, and then went on to give 13 runs (away)” (Ibid.)

Chandila, for his part, is alleged to have conceded 14 runs in one over against the Pune Warriors, but apparently failed to go through with the fix and was told by the bookmakers to return the £23,000 bribe. The police alleged that Mr. Chandila was the middle man for Ankeet Chavan’s fixing activity on 15 May, when he gave away 15 runs in one over. Chavan’s signal to the bookmakers was allegedly to tamper with his wristband. Police claimed the fix was arranged by organised crime gangs in Mumbai and masterminded from abroad. Police also arrested 11 bookmakers as well as an alleged middle man named Jiju Janardhan, described as Mr. Sreesanth’s friend and team-mate at club level.

As rumours swirled around the inquiry, other players were being drawn into the investigation before the police were able to confirm that they were merely investigating the three cricketers arrested. Thus Shaun Tait, the Australian bowler playing for Rajasthan, saw himself compelled to deny any involvement (*Ibid*). Similarly, it was not long before rumours surrounded former England batsman Owais Shah as it was confirmed that the Anti-Corruption and Security Unit (ACSU) of the England and Wales Cricket Board

(EWCB) wished to interview him on the subject of this affair – even though there was no possible suggestion that Mr. Shah had any involvement whatsoever with the alleged misdemeanours. However, it did emerge that a former Rajasthan player, Amit Singh, had been arrested on suspicion of having acted as a “talent spotter” for bookmakers. The BCCI also initiated its own investigation, and soon it appeared that more IPL matches and players had come under suspicion (*The Daily Telegraph of 18/5/2013, p. S14*).

It soon became apparent that the scandal implicated not only players, but also match officials. Barely a week after the news of the arrests broke, it emerged that Asad Rauf, a Pakistani umpire who had featured on the panel of the International Cricket Council (ICC) for seven years, had been reported as forming part of the police investigation into the match fixing in question (*The Independent of 24/5/2013, p. 72*). Although the exact nature of his purported involvement in the scandal is not entirely clear, it was later announced that he was among several players and officials to be arrested in connection with the allegations (see below). Two weeks after the match-fixing is said to have occurred, two leading officials from the BCCI, to wit Secretary General Sanjay Jagdale and Treasurer Ajay Shirke, tendered their resignation – hours after Indian Test veteran Sachin Tendulkar had expressed his sadness at these events

and called for action. This was swiftly followed by the resignation of IPL Chairman Rajiv Shukla.

The following week, one of the owners of the IPL also became involved in the affair after admitting illegal gambling. Raj Kundra, the owner of the Rajasthan Royals franchise (and husband of Bollywood and Big Brother star Shilpa Shetty) was ordered to surrender his passport to police investigating unlawful betting and alleged corruption links between players and organised crime syndicates (*The Times of 7/6/2013, p. 61*). Days later, the BCCI President, Narainswamy Srinivasan, announced that he would suspend his function whilst the affair was being investigated. He stressed that he was not resigning as he faced no allegations of wrongdoing – however, calls for his resignation had started after his son-in-law and Chennai Super Kings official Gurunath Meyiappan had been arrested by police in the investigation (*The Daily Telegraph of 3/6/2013, p. S19*). At the time of writing, a total of 22 people, including the players and officials mentioned above, have been charged by Mumbai police on charges of gambling, cheating and fraud (*The Daily Telegraph of 22/9/2013*).

Naturally, this latest set of allegations compromising the probity of the IPL – and of Indian cricket in general – prompted a good deal of recrimination and soul-searching among cricketing officialdom and the civilian authorities alike. The need for prompt action was inspired not only by the scandal itself, but also by the flurry of protests and demonstrations which erupted throughout the

country on a scale and intensity which took the authorities by surprise (*The Independent of 27/5/2013 p. 53*). It was not long before the Indian parliament became involved, and its intention is to adopt new sports legislation in the foreseeable future. One of the difficulties involved in adopting specific legislation against match-fixing is the fact that betting itself is illegal in India (except in relation to horse racing) (*The Independent of 24/5/2013, p. 72*). This was a dilemma fully acknowledged by Justice Mukul Mudgal, who was called upon to head the panel investigating the IPL match-fixing affair. He has expressly stated that legalising and regulating sports betting is the need of the hour. He gave several reasons to emphasise his point at a seminar entitled “Regulating Sports Betting and Sports Law”, whilst at the same time recognising the risks and pitfalls to be avoided:

“India has a paradoxical situation. You can bet on the skill of a horse and its jockey but you cannot bet on the skills of let’s say Sachin Tendulkar or Sardar Singh. I would suggest that the government considers having Sports/Gambling, Sports Betting and Regulating Act and invite suggestions from (the) public, on the moral front, ethical front and the practical front, and thereafter go ahead with the drafting (.....) (However) there are drawbacks and that is where a rethink is required. There is a threat towards children who get exposed and for the gambling addicts it can lead to destruction of families. Betting in sports or gambling would keep this

factor in mind and provide some kind of a solution or some kind of protection so that the law is not misused” (Daily Mail of 13/10/2013, p. 48)

He also pointed out the attractions of the proposed legislation from the Government’s point of view, highlighting the fact that the revenue from betting was “staggering” and would be best treated as a taxable resource rather than funding the criminal underworld and its activities. He also emphasised the dangers to the integrity of sports in general if no action were taken, and pointed to legislation on this topic in various countries such as Australia, France, the UK, Belgium, Spain, Brazil and South Africa. Alex Ward, the Vice-President of the Commonwealth Lawyers Association, agreed, saying that the concern of the Australian legislation was less about betting and gambling as such than on corruption and match-fixing. A. Didar Singh, the Secretary-General of the Federation of Indian Chambers of Commerce and Industry (FICCI) added his support, stating that, globally, funds from sports betting and gambling are used to generate funds for good causes – the same should happen in India (*Ibid*).

Charges brought against players accused of match-fixing in Bangladesh Premier League

The sorry saga of corruption in Asian cricket continued shortly after the IPL scandal referred to above broke, when allegations were made in the media that Mohammad Ashraful, the former captain of the national team,

had been paid £8,500 by the owner of his Bangladesh Premier League Twenty20 team, Dhaka Gladiators, to lose a fixture against Chittagong Kings in early February 2013. This had followed an approach by inspectors attached to the Anti-Corruption and Security Unit (ACSU) of the International Cricket Council (ICC), the world governing body in the sport. A formal investigation was launched by the ACSU a few days later, which inevitably required the co-operation of the England and Wales Cricket Board (EWCB) since around 20 players employed by the English first-class counties also appeared for the Bangladesh Premier League (BLP). The Bangladesh Cricket Board (BCB) had already called upon the services of the ACU after Shariful Haque, a former international spinner, was found guilty of spot-fixing in the course of the 2012 competition and banned indefinitely (*The Guardian of 31/5/2013, p. 41*).

The investigation duly took place. Mohammad Ashraful was the first victim, and broke down in tears as he admitted to spot-fixing, not only in the game against Chittagong Kings referred to above, but also in a fixture with the Barisal Burners the same month. A few months later, a joint statement by the BCB and the ICC announced that nine players had been charged with corruption offences in connection with the Dhaka Gladiators franchise. The charges related not only to spot-fixing and match-fixing, but also to failure to report illegal approaches. Seven of these were suspended (*The Guardian of 14/8/2013, p. 38*). It later emerged that one of the players charged with

failing to report an approach was Kent all-rounder Darren Stevens. The player denied the charges, and was free to continue playing for Kent whilst the investigation continued (*The Independent of 15/8/2013, p. 65*). He later pleaded not guilty to the charge when formally charged with the offence. The outcome of these proceedings was not known at the time of writing. He could face a ban of up to five years if found guilty, although he is likely to receive a one-year suspension since the offence is at the lower end of the scale (*The Daily Telegraph of 11/9/2013, p. S14*).

Another player, the England international Ravi Bopara, was also investigated by the ACSU, but ultimately faced no charges. Although the Test all-rounder was found to be innocent, the incident caused alarm in England since it seemed to bear out that corruption allegations were not an issue confined to the Indian subcontinent (see also the Mervyn Westfield affair, extensively reported in these columns, as well as below). This may also stiffen the Board's resolve not to allow its players to compete in franchised Twenty20 contests, wary as they are that they could be vulnerable to the approaches of match-fixing rings (*The Times of 26/10/2013, p. 18*). The investigation into Mr. Bopara's actions appears to have been extremely thorough, involving as it did cross-referencing the telephone numbers of known match fixers with any calls the player may have made or received (*Ibid*).

Earlier, the agent of one of the English players involved in the

scandal-hit BLP had revealed disturbing details about fixing and illegal gambling in the competition. The agent, who declined to be named, made his revelations to a leading Sunday newspaper. By virtue of his position, he was able to travel to and from matches on board the team coach and admitted to being shocked at the proximity and access which franchise owners and other unidentified figures were able to have to the players. Witnessing the lax security at first hand, the source in question failed to be surprised that the competition appeared to be little more than a money-laundering operation. He added:

“There was a saying, especially among some businessmen I met who were involved in the franchises, that there was only one way to make money in the tournament and that wasn't by winning. The implication was that fixing matches was the only way to make large sums of money. The owners were around in the dressing room all the time and there were very few restrictions placed on where people could and couldn't go. I was surprised I was able to use my mobile phone so easily. A couple of times I was told to turn it off by tournament officials, but on the whole I was able to use it pretty much whenever and wherever I wanted to” (*The Mail on Sunday of 2/6/2013, p. 103*).

Disturbingly, he went on to state that ACSU officials were present at the event, which was ICC-sanctioned. The consensus appeared to be that “there was so much going on that he had absolutely no chance of keeping

on top of everything”. It was, he said, a thankless task. None of the English players with whom he spoke had been approached directly, but there was a “strong undercurrent” that untoward activity was being transacted. A few of the players even spoke of receiving knocks on the doors of their hotel rooms at the dead of night and being offered large amounts of money to bowl no-balls or wides at certain times (*Ibid*).

Pakistan request reduction in Amir suspension – amid moves for a new anti-corruption code

The case of the Pakistani players who were found to have engaged in spot-fixing in the course of the England v Pakistan series in 2010 has been extensively documented and commented upon in these columns. One of those found guilty of this practice, the young fast bowler Mohammad Amir, was banned from the game for five years. In early July 2013, the Pakistan Cricket Board requested that certain conditions of his suspension be lifted in order to allow him to use their facilities, which are covered by the ban. In response, the ICC set up a committee to decide on this request – which is also said to involve proposed amendments to its anti-corruption code (*The Daily Telegraph of 2/7/2013, p. S19*). This body met in mid-October for two days, and concluded the meeting with a statement that a decision on the Amir request was being deferred pending the adoption of a “more robust and strengthened” anti-corruption code. A revised code is due to be submitted to the ICC Board for discussion and

approval in January 2014 (*The Sunday Telegraph of 20/10/2013, p. S13*).

West Indies v Pakistan fixture under examination

The international game was once again faced with the spectre of corruption with the recent one-day series between the West Indies and Pakistan currently being investigated over allegations of wrongdoing. Suspicious betting patterns were identified during the low-profile five-match series, which concluded in late July 2013, whilst unusually slow run-rates during certain overs followed by bursts of high scoring ‘set alarm bells ringing’, according to industry experts. Concerns were raised in particular around the tied third match of the series played in St Lucia, as well as the final game, which resulted in a last-ball win for Pakistan. The second game, which saw Pakistan failing to score a run off the bat in the first five overs after being set 233 to win, is also being investigated (*The Mail on Sunday of 28/7/2013, p. S4*).

One betting website reported unusually large sums of money — said to run into several millions of pounds — being bet between innings on a tied result during the third international after the West Indies were set 230 to win from 50 overs. Pakistan appeared to be cruising to victory, with their opponents still requiring 45 off the last 21 balls and only three wickets remaining. However, with the tail-enders scoring at more than four times the rate of most of their team-mates, West Indies managed the unlikely of ties. Field

placings for the final over, when No 11 Jason Holder and fellow tail-ender Kemar Roach crashed 14 off six balls from Wahab Riaz, are being scrutinised by officers of the ICC Anti-Corruption and Security Unit (ACSU), along with a failed run-out bid off the final ball. Television commentator Ian Bishop, the former West Indies fast bowler, said at the time that there is no way he could be convinced, whatever happened to this last ball, that Wahab Riaz and Misbah ul Haq, the players in question, had their field “right to the length they have been trying to execute”.

The fifth match, which saw Pakistan win by four wickets off the final ball, is also being examined. ACSU are also analysing patterns on spread-betting sites around the first 18 balls of the West Indies innings when only one run was scored. According to betting expert Ed Hawkins, the author of a seminal work on this subject entitled *Bookie, Gambler, Fixer, Spy*, commented:

“There were suspicious betting patterns on a betting exchange. A suspicious pattern, simply, is a flood of money wagered on an outcome just before it happens. There were some noticeable examples of this during the West Indies-Pakistan series. In the tied match, a weight of cash arrived on the tie market before Pakistan’s innings” (Ibid)

Another passage of play, between the 29th and 34th overs, when experienced West Indies batsmen Chris Gayle and Marlon Samuels were at the crease, is also being analysed in an effort to understand why just two runs were scored from

five overs before 16 were hit off the 35th over. ACSU investigators, are examining betting patterns around those overs amid concerns that anyone with prior knowledge could have made a certain profit in the market for run predictions, which are usually based on totals in five-over “brackets”. The same process will occur for the second ODI (*Ibid*).

It may not be totally irrelevant in this context to mention that, as was extensively covered in these columns at the time, in May 2008 Mr. Samuels was suspended for two years, the West Indies Board deciding that he had “received money, benefit or other reward which could bring him or the game into disrepute”. They examined charges that Samuels had passed on team information to a bookmaker during a one-day series in India in January 2007, which he denied. Key to any investigation will be to establish a link between illegal bookmakers, normally working on behalf of billionaire businessmen in India or the Middle East, and the players. The ACSU have the power to access a player’s bank records and analyse mobile phone data. Deleted text messages can be accessed through improved data retrieval methods. Players know the investigators are on the look-out for wrongdoing, but they also know that it is a process akin to looking for a needle in a haystack, according to an ICC source. The ICC are expected to request more detailed information from legitimate bookmakers to try to identify potential wrong-doing surrounding West Indies v Pakistan, though with many online firms registered offshore for tax purposes, they are not obliged to provide

information on their customers’ activity. A “memorandum of understanding” exists between sites such as Betfair but they do not come under the remit of the Gambling Act, which requires high street bookmakers in the UK to notify the publicly-owned Gambling Commission, as well as the respective governing body of any suspicious behaviour. Betfair declined to comment, while a Pakistan Cricket Board spokesman said that his organisation had “no knowledge of an ICC investigation”. The West Indies Board were unavailable for comment (*Ibid*).

Did match-fixing intimidation play a part in Tim May resignation?

In early June 2013, the world of cricket was thrown into further turmoil on the eve of one of its most important tournaments. The resignation of Tim May, the voice of cricketers worldwide for the last eight years, brought into stark relief the difficulties in which the game finds itself in as the Champions Trophy began the very next day. Stepping down as chief executive of FICA, the umbrella body for players’ unions, Mr. May commented that the game was “increasingly seems to be pushing aside the principles of transparency, accountability, independence, and upholding the best interests of the global game” in favour of a system that appears to operate through threats, intimidation and backroom deals (*The Independent of 6/6/2013, p. 64*).

There has been speculation that the “intimidation” referred to by the

former Australian Test spinner may have been connected to match-fixing rings operating in the criminal underworld. At all events, Mr. May probably decided enough was enough a month ago when his place as a players’ representative on the ICC’s cricket committee was usurped at the last moment after he had already been elected. Since then, as is extensively documented above, the game has been rocked by spot-fixing scandals in its most lucrative competition, the Indian Premier League, and in the Bangladesh Premier League. The ICC seem powerless to cope. Mr. May’s departure will not have any effect on the ICC or the manner in which many consider that the Board of Control for Cricket in India truly controls the game. However, it was accompanied by a warning from Angus Porter, the chief executive of the Professional Cricketers’ Association which represents all the players in this country. He said:

“I think there are many good things about the game and its quality. We’re about to go into a fantastic competition but I think we are at a real crossroads. If we want the game to kick on and thrive for the next 100 years, as it has for the last, it needs proper governance” (*Ibid*)

The ICC has steadfastly declined to act on the recommendations of the Woolf Report which it commissioned last year. Lord Woolf had suggested an overhaul of the ICC to reflect its global status rather than “reacting as a members’ club”. The report was quietly ignored after the BCCI took against it, though Porter called it “the best game in town” (*Ibid*).

ECB reopen inquiry into county game 'targeted by match-fixers' in India

In late July 2013, it emerged that an allegedly fixed county game given the all-clear by the International Cricket Council was still being investigated by the England Cricket Board. As was reported in these columns at the time, the 40-over match, in which Kent beat Sussex at Hove in August 2011, was probed by the ICC's Anti-Corruption and Security Unit (ACSU) after allegations Sussex players had been contacted by bookmakers with a view to fixing the outcome, only for the case to be closed because there was not enough evidence. However, a leading Sunday newspaper revealed that the ECB were not satisfied with the initial findings and have sought clarification from two Sussex players who played in the game. The newspaper claimed to be aware of the identity of both, one of whom could presently be subject to charges, but chose not to publish these names so as not to prejudice the relevant investigation by the anti-corruption team. The ICC and the Sussex county club stated there was not enough evidence to back up claims, made in the aforementioned work *Bookie, Gambler, Fixer, Spy*, based on information from an Indian bookmaker, that the outcome of the game was fixed in favour of a Kent victory. The Sussex statement said:

"The club can confirm approaches were made to players regarding this game. Working with the Professional Cricketers' Association, the club investigated and reported the issue, passing all the information promptly to the ECB after the match. In

conjunction with the ICC, a full investigation was undertaken with nothing untoward coming to light, and the club's prompt action receiving praise. There have been no further reports to the club concerning any Sussex matches. As a club, we are committed to ensuring the game's integrity is not breached and will continue to take a leading role in the ECB's endeavours to protect the game" (Ibid)

County cricket is viewed by some as a "soft" target for fixers because of the relative lack of scrutiny compared with international cricket, allied to increased TV coverage overseas and sometimes lax security at smaller grounds. Research by the players' union, the PCA, has shown that, for simple match odds offered to punters wishing to bet on who wins and loses, an average of about £1million was wagered on non-televised domestic limited-overs matches last season. However, that figure rose to £12m for Twenty20 matches televised through the ECB's deal with Sky Sports to India and Dubai, and up to £16m for 40-overs matches. With 60 domestic one-day matches televised last season and the same number to be screened next year, industry officials estimate the total figure gambled on English domestic cricket is upwards of £880m per year.

Mervyn Westfield tells of the events before and after his ban and imprisonment

It will be recalled from a previous issue of this Journal that former Essex fast bowler Westfield was jailed in 2012 and banned from professional cricket for five years and club cricket for three for accepting £6,000 to concede more than 12 runs in an over in a 40 over match against Durham in September 2009. In a film recorded by the Professional Cricketers' Association, Westfield has recently revealed how he was groomed to fix from the age of 18 by Essex's Pakistan leg-spinner Danish Kaneria, who was never put on trial but banned for life by the England & Wales Cricket Board. He describes the shame of letting down his family and how becoming the first English cricketer to be jailed for corruption shattered his dreams of playing for England. Instead he works as a shop assistant in a Tesco supermarket in east London.

Westfield joined Essex aged "nine or ten" and says signing his first professional contract was "the best thing that ever happened to me". But he soon came under the influence of Kaneria, who at Westfield's trial was accused of attempting to corrupt other young players at the club. He added:

"Danish was very bubbly person and everyone liked him in the dressing room. He got on well with everyone. He was a role model for most people in our team. We were at his house and he asked if he could speak to me outside. That is when he started to first talk about it. He said it is hard for young players to get money in cricket

these days. That was how conversation started. They [Kaneria and his associates] said they wanted me to go for 12 runs or more in first over I bowled. They suggested to me that a few people in the game were doing it as well. I was confused and I didn't understand what he was talking about. Him (sic) and his friends kept on asking. I felt pressured into it. I felt I had to do it. I felt so confused what was going on. I didn't know if I could talk to anyone or if anyone knew what it was as it was new to me. I didn't know if they would be in the same situation as me. I was confused. I decided to keep it all to myself. The day came when I played against Durham in the CB40. I bowled my first over, but I did not check the scoreboard to see if I went for 12 or more." (The Daily Telegraph of 27/9/2013, p. S12).

Westfield agreed to concede more than 12 runs in his first over in a match televised on Sky and beamed live into India, where fixers were hoping to manipulate the odds. The PCA film in question is combined with images from his over. At one stage he bowls a big wide and is consoled by Mark Pettini, then Essex captain. The other player in the shot is Kaneria, standing at mid-on, who has a big smile on his face and appears to say something to Westfield. In the end Westfield only conceded 10 runs. Westfield added:

"We stayed in the changing room for a bit and had a couple of beers. We got back to the County Ground and because Danish lived

next to me he always gave me a lift. It was late, about three in the morning. He had two friends in the car. They had a black bag of money and gave it to me. I said I had not done it and did not go through with it and give away the amount of runs I was supposed to. They said it doesn't matter. The money is yours. In the next couple of days we went up to Somerset. They tried to get me to do that game as well. I said definitely not. I was worried if someone found out what would happen to me. I love cricket, I love playing cricket and I didn't want to lose my career. That Durham game has cost me my career." (Ibid)

It took nearly a year for the fix to emerge when Tony Palladino, then an Essex team-mate, reported Westfield who had shown him the money which he kept in a plastic bag. At first, the matter was kept between coach, captain and chief executive. A week there apparently was a team meeting about the matter, and it came to light to the entire team. Westfield "felt like an outsider and felt he was unable to talk to anyone about the matter". Everyone distanced themselves from him, and he felt as if he was on his own. He was initially informed that the matter would be dealt with within the club, so the news of police involvement came as "a massive shock" to the player. He eventually pleaded guilty to a charge of accepting corrupt payments in a brief hearing at the Old Bailey in January 2012 and was sentenced to four months imprisonment. He takes up the tale from there:

"They took me down to the room, handcuffed me and put me in the security van," he said. "I felt so scared. You are in this little box [prison van] and you can't look outside the windows because they were blacked out. Personally I didn't know anything about Belmarsh but my solicitors ran it by me. They said it was double A category jail and the most secure jail in Europe. All the high [risk] people go there. I was wondering why am I going there? My time in Belmarsh was hell for me. They tell you what you can do and what you can't do. What time you eat and what time you go back into the room, what time you can come out for exercise, what time you have a shower. I didn't shower any more. I found my dad had cancer as well. Obviously I wanted to be there for my Dad but I couldn't. I didn't want to let down my parents and my two little brothers as well because they might look up to me and seeing their older brother go to prison is not the best thing. When it has been all over TV and in the newspapers then their friends are going to ask them about it." (Ibid)

After serving his sentence Westfield cut himself off from the PCA and the ECB. It took a subpoena from the High Court to force him to appear at Canarias's appeal hearing this year. If he had not testified Kaneria could have had his life ban overturned on a legal technicality. Instead he gave evidence and in return has had his ban cut and will be free to play for his club side Wanstead from next April 2014. He also agreed to film the educational video for the PCA which will be

shown to professionals at the start of next season as part of their anti-corruption programme. Westfield remains banned from professional cricket until 2017 and admits his career is over. "I am not asking people to feel sorry for me because I know what I have done is bad," he said. "But not being able to play or coach any sort of cricket is a massive shock to me. Hopefully I want to rebuild my life and help the PCA out and try and get back on track. I want to give something back and make sure nobody else goes through what I went through." (*Ibid.*)

It has since emerged that Mr. Westfield has had his five-year playing ban varied and that he could return to club cricket on 1 April 2014, three years earlier than anticipated (*The Independent of 3/7/2013, p. 63*)

Kaneria ban upheld

As is evident from the previous feature, as well as from earlier editions of this organ, former Pakistan leg spinner Danish Kaneria was closely connected to the Mervyn Westfield affair. It will be recalled that he was served with a lifetime suspension from the game by the England and Wales Cricket Board (EWCBC) in June 2012 for having "cajoled and pressurised" Westfield into accepting a bribe in respect of a Pro40 fixture between Essex and Durham in 2009. The player appealed against this decision, but this was dismissed in early July 2013 by the EWCBC (*The Independent, op. cit.*)

How do the fixers operate?

A leading British Sunday newspaper recently provided a systematic overview of the various techniques normally applied by match- and spot-fixers (*The Mail on Sunday of 28/7/2013, p.55*):

- There are many ways for unscrupulous fixers to target cricket, with huge sums bet online for every televised match, much of it deriving from India, Bangladesh and Pakistan.
- Betting is illegal in India, so there is no paper or electronic trail for bets. This means bookies and fixers can launder money easily.
- The average amount bet on a one-day international is £15m, with legitimate online sites such as Betfair and Sporting Index offering markets on anything from the number of runs scored in a five-over "bracket" to the number of wickets a player will take in the series.
- The five-over "brackets" are especially vulnerable to manipulation, with prior knowledge of a player's intentions potentially worth millions of pounds.
- Illegal gambling syndicates often have a network of "employees" – with the majority of activity, but by no means all, emanating from the Middle East and India.
- Crucial to any syndicate intent on fixing matches is access to players. There are several ways of

"grooming" players, including lavishing gifts, offering them cash incentives or even, as has been the case in some cases in India, employing beautiful women to initiate contact between the player and the syndicate.

- Bookmakers will try to befriend players and, despite stringent ICC rules about player access, have even been known to book hotel rooms long in advance of a tour and paying corrupt hotel employees to ensure they stay on the same floor as the team.
- The captain of the team is seen as the most important element when it comes to carrying out a fix. The captain is in charge of all on-field strategy such as field settings and bowling changes and influences the outcome of a game.
- So-called 'court-siders' have been targeted this season in an effort to identify possible fixers who are passing real-time information back to bookies from games, in order to manipulate markets before the nine-second time-delayed broadcasts show play 'live'.

It should also be pointed out that the nine-second time delay between live action and the TV broadcast in India is enough for "market manipulation". The ECB say there have been 17 incidents this season, with 14 individuals removed from 13 different county grounds and they are putting pressure on broadcasters to reduce the gap between real-time action and when it is broadcast "live".

PCA joins scheme for gambling addiction

The world of gambling is obviously one of the main breeding grounds for corruption in the sport (and not only in cricket, as will be seen in other sports featured below). The gambling habits of sporting performers themselves can contribute towards their corruption. Cricket in particular has a long history of players betting among themselves, and the increased availability of online gambling, allied to long periods spent away from home, have left the sport vulnerable to a growth in gambling addiction. This is why various initiatives have been taken to assist players with this perilous habit. In early August, it was learned that professional cricketers who may be beset with a gambling problem have been urged to volunteer for a ground-breaking project which is aimed at helping them. To this end, the Professional Cricketers Association, the players' trade union, have teamed up with National Problem Gambling Clinic (NPGC) which is based in North London (*The Mail on Sunday of 4/8/2013, p. S5*).

FOOTBALL**Sepp Blatter under fire for bribery culture following resignation of FIFA honorary president**

Previous editions of this Journal have frequently highlighted the various dubious practices which have beset the world governing body in football for quite some time now. However, on each occasion its President, Sepp Blatter, has invariably escaped censure

or penalty for corrupt activity himself in the absence of any evidence against him. The same oracle appears to have been at work in relation to the latest corruption scandal to have gripped the organisation, when, in early May 2013, it was learned that, although subjected to fresh questions over the extent to which he was aware of the bribery culture at FIFA, he was nevertheless personally cleared of any "criminal or ethical misconduct".

The long-awaited report by then world governing body's ethics committee into the scandal involving collapsed marketing partner ISL – again extensively covered in earlier editions of this organ – has described Mr. Blatter as "clumsy" in his apparent failure to identify a bribe intended for his predecessor as President, Joao Havelange. It also questioned whether the current President knew that FIFA executives had been in receipt of such kickbacks both before and after he took office. The report by FIFA Adjudicatory Chamber chairman Hans-Joachim Eckert named Havelange, and former executive committee members Ricardo Teixeira and Nicolas Leoz, as having taken bribes from ISL, which had been granted exclusive rights to market the World Cup (*The Daily Telegraph of 1/5/2013, p. S6*).

Mr. Eckert revealed that Havelange, who presided over the world governing body between 1974 and 1998, had resigned two weeks previously as its honorary president. He had previously stood his ground despite legal documents stating that not only he, but also his son-in-law Teixeira, as well as Leoz, might have received almost £15 million between

them. As such payments were not illegal at the time, and with Messrs. Leoz and Teixeira also having resigned, Eckert said no further proceedings were warranted against "any other football official". This was despite Investigatory Chamber chairman Michael J. Garcia – who conducted the probe on which Eckert's findings were based – remaining "in the dark" about certain aspects of the case, with several former FIFA employees apparently refusing to co-operate with his enquiries. Mr. Garcia, a US lawyer, was unable to discover the full extent of Blatter's knowledge prior to the ISL bankruptcy. However, FIFA reform campaigner Damian Collins, an MP who sits on Parliament's culture, media and sport select committee, opined that Mr. Sepp Blatter should himself resign "for his failure to expose the wrongdoing sooner, and to take action earlier against those who had done wrong." (*Ibid*).

Investigation into Qatar World Cup award

One of the more surprising decisions in the various bidding wars for major tournaments in the course of the past few years has been the controversial award of the 2022 football World Cup to the Gulf state of Qatar. So strange indeed was this award that ever since questions have been asked of the probity which attended the bidding and award process. The fact that – as is evident if only from the previous feature – the world governing body's procedures have not invariably passed the probity test has added to the pressure for further inquiry. As a result, any evidence of

malpractice in this regard could see the tournament taken away from Qatar. It should also be borne in mind that, in fact, the 2022 World Cup bidding process had already been tainted with suspicion of corruption. It will be recalled from previous issues of this Journal that three of the 14 Qatar voters have already departed from FIFA with corruption clouds over them: Qatar's Mohamed bin Hammam, Paraguay's Nicolas Leoz and Brazil's Ricardo Teixeira. Another two, Cameroon's Issa Hayatou and Ivory Coast's Jacques Anouma, still Executive Committee (ExCo) members, were alleged by British MP Damian Collins under parliamentary privilege to have received \$1.5m for voting for Qatar. A pre-Garcia FIFA ethics committee found no evidence. Thailand's Worawi Makudi, also an ExCo member who voted for Qatar 2022, has faced claims he accepted favours from Qatar, first aired by this newspaper almost three years ago. He remains in his post. It has also been alleged that Spain and Qatar entered a collusion pact to trade votes in their respective bids for 2018 and 2022. Spain's ExCo member Angel Maria Villa Llona is alleged to have been a key architect.

Michael Garcia, the US lawyer requested by FIFA president Sepp Blatter to investigate the way the tournament was awarded to the desert state three years ago, is understood to have established multiple cases of political influence being brought to bear on FIFA ExCo voters. On their own, these could be enough to see Qatar stripped of the tournament. Mr. Blatter hinted at these findings in late September

2013, laying the groundwork for announcing Garcia's report findings in the near future, when he said in an interview with the German newspaper *Die Zeit* that direct political influence had definitely been exerted, and that European leaders recommended voting members to opt for Qatar because of major economic interests in the country. In fact, France's ExCo member, Michel Platini, has admitted that he was encouraged by former French president Nicolas Sarkozy to vote for Qatar, although he has always maintained that he did so not as a result of political pressure. However, it is now understood that several other major European political leaders similarly asked their ExCo members to vote for Qatar, and at one ExCo member outside Europe, perhaps more, came under such pressure (*The Mail on Sunday of 22/9/2013, p. S8*).

It is routine for politicians to lobby on behalf of their bidding football associations in such bidding processes. However, one source has maintained that the Qatari state influence in the 2022 process was "unprecedented". FIFA prohibits governments from trying to influence football policy decisions, the ultimate punishment being expulsion from FIFA. What remains unclear at the time of writing is whether Blatter and FIFA will use evidence of politicians influencing ExCo voters to take the World Cup from Qatar or use it as "leverage" to engineer a re-vote on the process that Qatar would almost inevitably lose. In fact, Qatar is facing a four-pronged attack on its right to stage the 2022 event: from Europe's major leagues, broadcasters, losing

2022 bidders and Mr. Garcia's findings. It is now generally accepted Qatar cannot stage a summer World Cup in June and July because of the heat, and the umbrella body of Europe's major leagues, i.e. the European Professional Football Leagues (EPFL), which includes the English Premier League, are against a switch to winter. It has also been revealed that a 35-page EPFL impact assessment study has already been compiled. It is neutral in tone but detailed about the significant disruption to global football of a winter World Cup (*Ibid*).

Of the options available, the report suggests a summer World Cup in Qatar with games played at night is the best choice. However, with that option effectively ruled out, only winter options, each with 'major disruptions to three football seasons', remain. One former FIFA official, Chile's Harold Mayne-Nicholls, who was in charge of the FIFA inspection team of 2022 bidders and billed Qatar's bid as "high risk", has suggested that a World Cup from January 6 to February 6 might be the least disruptive winter option but admits his scenario "does not take commercial contracts into consideration". The EPFL dossier details the problems such contracts pose, not least TV deals worth \$1 billion (£630m) combined for US networks Fox and NBC (via subsidiary Telemundo) to show summer World Cups in 2018 and 2022. The document also highlights how a winter World Cup would create most havoc in the leagues that provide the most players for a World Cup - the Premier League, Italy's Serie A, Spain's La Liga, France's

Ligue 1 and Germany's Bundesliga. It shows clashes with the Winter Olympics, major US sports and even other major football events, such as the Confederations Cup and African Cup of Nations.

The following week, it was learned that Mr. Garcia was to embark on a global evidence-gathering tour within the next few weeks to visit every country involved in the convoluted and controversial dual race to host the 2018 and 2022 World Cups. Garcia, who has stressed his independence from the FIFA executive, has confirmed he will conduct interviews with those involved in a race that was ultimately won by Russia for 2018 and Qatar for 2022, but refused to comment on the specifics. The process of gathering new witness statements will be seen as a major escalation in an investigation that some senior figures within world football believe could yet lead to a re-vote for the 2022 World Cup. Garcia is expected to deliver his conclusions by March or April. Among those Garcia is likely to seek out are the executives involved in England's bid for the 2018 World Cup, which cost the Football Association £21m but garnered only two votes. The other losing bidders for the 2018 tournament were Belgium/the Netherlands and Portugal/Spain. Australia, Japan, South Korea and the US lost out to Qatar for 2022. The former New York attorney and Interpol vice-president has no powers to compel those involved in the bidding process to speak to him but is said to be encouraged by the information he has received so far as he gathers evidence (*The Guardian of 11/10/2013, p. 48*).

Shortly afterwards, Andy Anson, the chief executive of England's failed bid to host the 2018 World Cup, confirmed that he had been contacted by the FIFA Ethics Committee chief who is leading an inquiry into the 2018 and 2022 bidding processes. Mr. Anson, who is the chief executive of the online sports retailer Kitbag, said he had requested further clarity about the aims and remit of the inquiry before agreeing to meet Michael Garcia. He was expected to meet the FA general secretary Alex Horne, who was not part of the 2018 bid team but was at the FA at the time. He has also contacted Lord Triesman, the former chair of the FA and the England 2018 bid who was forced to quit seven months before the vote following a newspaper "sting" operation. England's bid cost £21m but won only two votes. It will be recalled from a previous issue that Lord Triesman later made a series of allegations to a parliamentary select committee about the bidding process (*The Guardian of 2/10/2013, p. 45*).

However, some of those who have been contacted are understood to harbour reservations about Mr. Garcia's approach. They believe the letter requesting assistance was too vague and remain unclear what he is trying to achieve two and a half years following the chaotic vote to hand the 2018 World Cup to Russia and the 2022 tournament to Qatar. Mr. Garcia, who is said to be encouraged by the headway he has made in investigating a bidding process that became mired in allegations of corruption and collusion, hopes to report by next March or April. He has repeatedly asserted his

independence from the FIFA executive but some remain sceptical about how far reaching his investigation can be given that he has no power to compel witnesses to give evidence. The associations of the bidding nations are compelled to assist the world governing body's investigation under their own rules. The other losing bidders for the 2018 tournament were Belgium/the Netherlands and Portugal/Spain. Australia, South Korea, Japan and the US lost out to Qatar for 2022. At the FIFA Congress in May 2013, Mr. Garcia called for anyone with evidence of malpractice during the bidding process to come forward now (*Ibid*).

In the meantime, further lines of inquiry emerged for Mr. Garcia and his team to probe. One of these was a £27million land deal in Cyprus involving a member of FIFA's executive committee and Qatar's sovereign wealth fund. Garcia will be looking into the way ExCo member Marios Lefkaritis became involved in several trade deals with Qatar regarding oil and land. Mr. Lefkaritis was one of 22 ExCo members who voted in December 2010 on the locations of the 2018 and 2022 tournaments, and voted for Qatar for 2022. In 2011 a pocket of land reported locally as being owned by the Lefkaritis family in Cyprus was sold to Qatar's sovereign wealth fund, QIA, for €32 million (£27m). One of Garcia's tasks is to investigate whether there was any ethical violation by any party involved in bidding for the two World Cups – especially violations involving ExCo voters (*The Mail on Sunday of 6/10/2013, p. S8*).

Lefkaritis has declined to talk about the deals. When a leading British Sunday newspaper attempted to interview him about his 2022 voting, his office replied that Lefkaritis was “recovering from a surgery and cannot answer your questions. He will not attend FIFA meetings in early October.” The motivation of the 14 ExCo members who voted for Qatar 2022 is of interest to Garcia, as are the circumstances in which their votes were gathered. As was mentioned earlier, Mr. Blatter has admitted that there was a “bundle of votes [traded] between Spain and Qatar”. Despite this, and repeated testimony from multiple sources of Spain-Qatar collusion, Qatar’s position remains that there were “absolutely no formal or informal agreements between the Qatar 2022 Bid Committee and the Spain/Portugal 2018 Bid Committee, or any other Bid Committee” (*Ibid*). Collusion is an ethics violation, and potentially grounds for stripping Qatar of 2022, although pre-Garcia ethics investigations found ‘insufficient evidence’. Garcia has a remit to “re-examine the process from scratch” and he expects to meet Villa Llona.

Quite apart from any accusations, whether proven or not, of corruption, several officials have now admitted that the world governing body was seriously mistaken in handing Qatar 2022 World Cup finals. Thus it was revealed that Qatar won the bidding race even before FIFA even considered the inspection reports, according to the leader of the team who wrote the summaries. Harold Mayne-Nicholls, the former FIFA official, described the 2022 decision

“a mistake” and called for a new voting process to stop executive committee members agreeing “deals”. Mr. Mayne-Nicholls informed a Leaders in Sport conference, held in London in mid-October 2013, that FIFA should put politics aside and obey the recommendations of its task force when deciding an autumn/winter slot for Qatar 2022. His view that FIFA effectively ignored his team’s report adds weight to the suspicion that money and power counted for more than practicalities. He added:

“When we made a report, they had a look at it, but the decision was taken before. Or the word was given: ‘I gave you my word that I will vote for you,’ even when the report was not on the table. We need to change the system of how we elect who will be hosting the World Cup. We cannot keep this system. It has too many imperfections, for the legacy of the World Cup, and for FIFA” (The Daily Telegraph of 9/10/2013, p. S5)

Mr. Mayne-Nicholls further called for an “untouchable” expert commission to produce a ranking, with a three-nation shortlist, which would be taken to the FIFA congress, on the basis of one country, one vote. “We do it in a very short time, so it will be really difficult to concentrate the power of the votes.” Almost three years into the wrangling over whether Qatar 2022 will be moved from summer to winter, the lead inspector insisted there was no evidence of corruption, but agreed that FIFA ignored his evidence. How exactly Qatar won the 2022 bidding race remained unexplained. Mr. Mayne-Nicholls said:

“Let’s say commerce, the power of money. They were very ambitious. They pushed hard. Qatar also wanted the Olympics, and bid for them, but the technicians said no”.

Choosing a new slot in the calendar was, he said, fraught with problems. One option was April, but in that case all the leagues had to complete their programmes by March and would not be seen again until August. That would be chaotic for the football family. The second option was October/November. The weather is less oppressive then, but there would be conflicts with all the club competitions all over the world. The third is January/February. The temperature at that time tends to be 20-25 degrees, cool enough to play football. However, that would create problems with the three biggest leagues: Spain, Italy and the Premier League, because have no breaks at that time - unlike Germany, France and Russia, but not here.

Mr. Mayne-Nicholls was also at a loss to explain how England’s 2018 bid failed so –miserably, saying “You can always lose, but what I cannot understand is that you got two votes in the first round. Why two votes when the bid presentation was, if not No 1, very close to No 1? It’s only political, it’s not commercial, or communications, or legal, or the government, or the football. But you were not able to convince them.” (*Ibid*)

He believed FIFA will survive one World Cup fiasco, but not a second: *“It’s created a bad image for the World Cup, but we have 2018 and we will have 2026. We will*

lose credibility, but the players will show the [Fifa] board members, the press and the politicians, the right way to do things, in the game itself. They will prepare themselves and play. It doesn't matter if they have to do it on the moon. As we say in Spanish, it's for the glory." (Ibid)

Four British footballers charged in alleged Australian match-fixing scandal

Corruption in football is not restricted to the higher echelons of the sport's governing bodies, as recent events in the relatively obscure regions of the Australian leagues have shown. In mid-September 2013, the story broke that four British players were charged with match-fixing offences in the second-tier Victorian League. The quartet were among 10 people who face up to a decade behind bars if found guilty of being part of an elaborate scheme in Australia in which expatriates were said to have been recruited to throw games and concede goals. The alleged swindle was immediately linked to Wilson Raj Perumal, a former London resident responsible for fixing matches for 30 years but widely assumed to have been under police protection in Hungary for 18 months, apparently in order to assist the authorities. Mr. Perumal has been featured prominently in earlier editions of this Journal. Three of the British footballers charged, i.e. goalkeeper Joe Woolley, 23, and defenders Reiss Noel, 24, and Nicholas McKoy, 27, all recently left English non-league club AFC Hornchurch, whom the Football

Association placed under investigation in March over irregular betting patterns. Hornchurch were relegated by one point last season and chairman Colin McBride "was surprised, shocked and bemused" by the arrest of his club's former players, who received between £100 and £150 a week in expenses while there. Insisting he had no reason to doubt their performances, he added: "You can look deep into all our games and get paranoid." (*The Daily Telegraph of 19/9/2013, p. S8*)

The other English player charged by Australian authorities was defender David Obaze, 23, who had come from Eastbourne Borough. All four men, from Melbourne's Southern Stars team, were released on bail and faced up to eight charges each of engaging in and of facilitating conduct that could corrupt the outcome of a betting event. A Malaysian man, Segaran "Gerry" Gsubramaniam, 45, allegedly ordered the players how to play – or how not to play – in five matches. Police told a court that Gsubramaniam, described as the local "bigwig" of the operation, took instructions on the phone from known match-fixers in Malaysia and Hungary. He was due to fly out of Australia at the time of the investigation, having allegedly made inquiries about fake passports. The syndicate is alleged to have made its most adventurous gamble on Friday in the penultimate game of the season, with betting markets calculating that the chances of Southern Stars losing were 78 per cent. The syndicate was said to have bet about £70,000 that the team, who were bottom of the table, would draw. The odds rose to six-to-one and

the syndicate reportedly picked up £1.2 million after the match finished goalless. The result prompted police to swoop amid concerns players would fix the last game of the season and then leave the country. Nine players and coach Zaya Younan were arrested. The other games alleged to have been fixed occurred since July 21 and involved three 4-0 defeats and a 3-0 defeat.

The alleged match-fixing scheme, which took millions of pounds in winnings, would be the biggest in Australia's history. The bets were reportedly made online and at underground betting markets in India and Singapore. As reported in an earlier issue of this Journal, Mr. Perumal, 48, a former engineer, was jailed in Finland in 2011 after fixing games in an obscure Finnish league. He had fled to London in 2009, after being sentenced to jail in his native Singapore for bribing a referee, and proceeded to run elaborate betting schemes from his modest flat near Wembley. He spent a year behind bars after his capture but was put under protection in Hungary to assist police with match-fixing investigations in five European countries, as well as in Africa, Asia and South and Central America. Police in Victoria began investigating in August 2013 after the British gambling analysts Sportradar spotted unusual betting patterns, including a flood of bets on the team to forfeit goals near the end of games. Police said the firm had labelled five games as "highly suspicious" (*Ibid*).

The outcome of the criminal proceedings were unknown at the time of writing. However, in late

October, world governing body FIFA imposed worldwide suspensions on Messrs. Noel, Obaze, Woolley and McKoy, as well as coach Zia Younan (*The Daily Telegraph of 31/10/2013, p. S7*).

Unfortunately, this problem does not seem to have been confined to the Oceanian continent. Asian match-fixing gangs have “probably” already infiltrated English football, according to the world’s leading authority on match-fixing, Chris Eaton. He believes evidence from the emerging corruption scandal referred to above points to that shocking conclusion. Mr. Eaton is a former high-ranking police officer who worked for Interpol and as FIFA’s security adviser. He also helped to bust the alleged £1.2 million fixing ring “Down Under”. As was mentioned above, it has emerged that all six British players under suspicion spent at least part of the 2012-13 season playing football in the Conference South in England, three of them with AFC Hornchurch and three with Eastbourne Borough. All 22 teams in the Conference South were contacted by the Football Association in March after suspicious betting patterns were reported. There was no formal FA investigation following “intelligence” passed on by ‘early warning’ specialists, and no action was taken beyond ‘reminding’ the clubs of their responsibilities. In a warning that should sound alarm bells throughout the game, Eaton says that football authorities everywhere, England included, have failed in their duty to investigate and stamp out fixing. He claims that there are “clear connections between what’s happened in Australia and

groups in England” (*The Mail on Sunday of 22/9/2013, p. S17*).

The English players were recruited via a common acquaintance, Zia Younan, a 36-year-old Czech-born Australian coach who faces 10 corruption charges. Younan in turn is linked to Gsubramaniam. Mr. Eaton commented that “one has to assume from what we know” that Perumal was involved. The connections are troubling, he added, since Southern Stars have allowed players to arrive and the club promptly loses nearly all their matches. He praised the Victoria police for their “difficult and meticulous work” but says far too few forces or FAs take any meaningful action on fixing.

“It’s a problem in all of football, governing bodies wanting a silver-bullet remedy to this destructive phenomenon, but without any effort. You cannot eradicate fixing, which is a major international problem, without hard work. Football doesn’t want to do the work” (Ibid)

The FA have limited resources and their intelligence on suspicious Conference games stretched only to unusual betting patterns. Mr. Eaton says the Australian police used electronic surveillance and wire-tapping to gather their evidence. As a result, the English footballing authorities have come in for considerable criticism for their inaction in this sphere. More particularly English football’s ability to tackle the threat from Asian match-fixers has been criticised by a senior official at Europol, the European Union’s law enforcement agency. Asian gangs are known to

operate in English football, paying players to lose games to order so they can make huge corrupt betting profits. Betting data from low-level leagues, particularly in the Conference South, and links between fixers in England and those in other parts of the world have convinced global match-fix experts of the need for robust action here.

However, Nick Garlick, Europol’s senior specialist in organised crime networks, recently informed a leading British Sunday newspaper that the Football Association (FA) have done little or nothing to probe a string of suspect games in non-League football – and that failing to act only encourages the criminals to strike again. He added:

“It is a disappointment that nothing was done by the FA [this year] in investigation terms. When no action is taken, it emboldens the criminals, and it happens again. We believe people involved in the match-fixing in Australia had been involved in Britain. Proper co-operation and the agencies working together makes a difference; we saw that when we pooled information from different police forces around Europe” (The Mail on Sunday of 3/11/2013, p. S8)

Mr. Garlick insists that attitudes must change within many bodies, including the FA and even his own organisation Europol. He said the “stars” of the fight against fixing are those who make the effort to investigate. But he said “it seems clear” that the FA “could have done more” and added he was unaware of any investigative action by the FA.

The fact that low-level football in England was attracting such huge amounts of money, as much as Barcelona games, was “an indicator that something highly suspicious was ongoing”. It appears that the UK police have taken an interest in this matter, and issues of this kind would normally be handled by the City of London police. Mr. Garlick appreciated that the latter had been supportive of the activities which he and his team were undertaking under their joint investigation team into global fixing]. However, he was unable “to give details about ongoing matters” (*Ibid*).

In March, the FA told all the Conference South clubs “to remind their players and officials of their responsibilities under the betting and integrity rules of the FA”. This followed warnings from international betting monitors that millions of pounds were being wagered on Conference games. As is mentioned above, UK bookmakers stopped taking any bets on matches featuring AFC Hornchurch, Billericay Town and Chelmsford City. It is understood games involving those teams, plus Welling United, Eastbourne Borough and others, were “irregular”. The FA were also lambasted the previous month by former compliance head Graham Bean for a ‘dereliction of duty’ in not investigating this activity. Clubs involved say none of their officials or players have been questioned. The FA, for its part, maintains that it takes the matter of integrity “extremely seriously” and that it did not wish to confirm any details of enquiries made, or indeed whether they are continuing.

At around the time when Mr. Garlick was making his comments, the world’s foremost experts in match-fixing gathered at the Play The Game conference on sports integrity in Aarhus, Denmark to share research and information. Mr Garlick was among them, as was FIFA’s former head of security and now match-fix consultant, Chris Eaton, one of Interpol’s top policemen, Dale Sheehan, the head of the OECD’s working group on bribery, Drago Kos, and the legal director of the international players’ association FIFPro, Wil van Megen. FIFPro interviewed 3,357 professional footballers across 15 countries in eastern Europe, an area especially blighted by fixing. Almost 12 per cent said they have been approached to fix games and double that number said they were aware of fixing in their league. A third of Kazakhstan players had been approached to fix games, similar to Greece, and almost half of Russians were aware of fixing in Russia. Turkish football, rife with fixing, was described at the conference as “riddled with corruption, a dead man”. Of those who had been approached to fix games, FIFPro found 55 per cent were at clubs where there were financial problems where salaries were often late or not paid at all. Kos and Van Megen both talked extensively about how fixers target players susceptible because of financial crises. Teams that are playing badly and would be relegation fodder without fixing are also targeted, to guarantee losses that do not appear shocking. Remarkably, there are huge betting markets in Asia on the most obscure low-level leagues, which experts value

anywhere between £300billion and £850bn per year combined. The Conference South, with its modest pay would be a typically low-profile but lucrative league to target (*Ibid*).

A typical case study would appear to be that of Mario Cizmek, a former Croatia Under-21 midfielder who took part in match-fixing in 2010 when playing for a top-division team, Sesvete. He told the British newspaper in question how his club did not pay them regularly for 14 months. Mr. Cizmek, now 37, as well as his team-mates, borrowed to survive but could not move clubs because Sesvete set potential transfer fees too high. Eventually a regional football official, who had been approached by Asian fixers, offered a ‘solution’ to eight Sesvete players and eight at two other clubs. They had to lose the final six games of the season, for which they would each be paid thousands of euros. “We were already relegated so it would not affect that,” said Cizmek “It is not easy because it eats your soul and we were ashamed. Physically it is not remarkable to lose. You just do not give all your effort”.

In June 2010 there was a knock on the door. It was the police. They arrested Mr. Cizmek in front of his young daughters. One moment he was a footballer and their father. The next he was their shame. He subsequently spent 47 days in gaol. A subsequent court case found him and others guilty. Even now he awaits confirmation of his final prison term, expected to be around 10 months. He will find out soon and then serve his time in prison. He now works as a farmer, and is warning others not to go down this way (*Ibid*).

English football has gambling problems... at all levels

That gambling can be a catalyst for corruption in sport is evident not only from the various betting syndicates who have wrought their pain on various popular sports, but also from those sporting practitioners. Among the latter, the problem as regards sporting corruption is twofold: on the one hand, there is a constant temptation of placing a bet on a fixture in which the player has a personal and significant involvement; on the other, players who develop an addictive gambling habit are easy targets for those who would offer them the means to feed their addiction in exchange for a performance – or lack of it – that may change the course of a fixture, or part thereof. It is in the light of these dangers that the gambling problems of leading personalities in British football which have of late come to light should be understood.

This is not a new problem. Keith Gillespie, the former Newcastle and Manchester United winger, suffered from gambling problems and was declared officially bankrupt in 2010. Dietmar Hamann, the former Liverpool and Germany international, started to gamble excessively after his marriage broke down and once spent £288,400 in a single night spread betting on a cricket match. Matthew Etherington lost £1.5 million when playing for West Ham. Dominic Matteo, who played for Liverpool, lost £1 million betting on racing whilst at Blackburn, including £100,000 in one bet (The Mail on Sunday of

25/5/2013, p. 126). As was reported in these columns at the time, Ipswich striker Michael Chopra lost £2 million, betting as much as £20,000 per day. Further back, top stars such as Stan Bowles were also notorious for their gambling habits. However, the problem appears to have assumed a new urgency in recent time. Just before this contribution went to press, it was learned that some footballers were even resorting to the infamous “payday loans” to fund their gambling habits, according to charity Sporting Chance. These players are so desperate to gamble that they are contract short-term loans before turning to the charity for help, chief executive Colin Bland told the BBC Radio Five Live programme. The charity, which helps sportsmen and women tackle their addiction, has dealt with one footballer who has lost an estimated £7 million in three years of gambling. Mr. Bland added:

“It’s not uncommon for us to have a footballer who has turned up that’s in a circle of payday loans and gambling. One of the (footballers) I was talking to sort of said ‘actually one of the problems is I can afford to place these bets. We’ve worked with players who have lost up to £7 million in three years in gambling. But the particular young man I’m talking about said ‘it’s the quantity of bets I’m placing, I’m placing 50 bets a day. All I’m thinking about is my next bet or my last bet. It’s affecting my life, it’s affecting my performance, it’s affecting my marriage. It’s affecting what sort of father I can be’. We’ve had sportsmen who have

got caught in the scenario of taking out payday loans to place those bets. We’ve had several of those over the last couple of years. The vicious circle continues” (The Daily Telegraph of 24/10/2013, p. 12).

In those circumstances, it was only a matter of time before this habit brought some players into disciplinary difficulties with the footballing authorities, who have adopted strict rules on players betting – even on matches in which they are not involved. In early June of this year, it emerged that Andros Townsend, the Tottenham Hotspur winger, had been suspended for one month for infringing the betting rules laid down by the Football Association (FA). He thus became the first player in the existence of the Premier League to be penalised for this offence. In fact the penalty imposed by the independent commission was a ban of four months, three of which are suspended. He admitted placing several bets on fixtures in which he was not involved, but in competitions in which he was, which is something prohibited by the FA. There was, however, no suggestion of any match-fixing having taken place. Indeed, the FA made it clear that it and Mr. Townsend’s club would provide him with “full support” in “seeking rehabilitation” (The Daily Telegraph of 5/6/2013, p. S12). Two months later, Stoke City striker Cameron Jerome also admitted to breaching FA betting rules (The Daily Telegraph of 6/8/2013 p. S8). He was subsequently fined £50,000 by the independent regulatory commission – again it must be stressed that the games in question

were not fixtures in which the player had any involvement – nor is he believed to have been placing bets on the outcome of matches involving his own club. He was also warned as to his future conduct by his club (*Daily Mail of 15/8/2013, p. 81*).

That players' gambling problems were not confined to south of the border became evident in mid-September 2013, when it was learned that Rangers midfielder Ian Black had been handed an immediate three-match ban - with a further seven games suspended until the end of the season - for breaching rules on gambling. The 28-year-old was fined £7,500 by the Scottish Football Association (SFA) following a hearing at Hampden Park. The sanctions were issued after Black admitted charges of betting on three football matches on his then-registered club not to win and betting on a further 10 football matches that involved his own club. He also received a warning over bets on a further 147 football matches. The SFA operates a zero tolerance approach to gambling, which restricts players from betting on any football match, anywhere in the world. The range of punishments includes a fine, suspension or even expulsion from the game.

Mr. Black was charged with betting against his then registered club on three occasions between March 4, 2006 and July 28, 2013. As well as Rangers, Black also played for Inverness and Hearts during that period, and it is not known which or how many of the three clubs he is accused of betting against. On the first date mentioned in the statement of complaint, Black played 90

minutes for Inverness in a 1-0 home defeat by Motherwell, which cut Caley Thistle's lead over the Lanarkshire side to three points in the race for a top-six place in the Scottish Premier League. The final date in question saw Mr. Black score in a 4-0 Ramsdens Cup victory for Rangers against Albion Rovers. The disciplinary tribunal outcome stated that there was no evidence to suggest any breach of rule 23, which prohibits players and officials knowingly behaving in a "manner, during or in connection with a match in which the party has participated or has any influence, either direct or indirect, which could give rise to an event in which they or any third party benefits financially through betting".

At the time of the charges, Rangers said they were "currently investigating the matter". Following the verdict, the club released a statement which read:

"Rangers Football Club notes today's verdict by the Judicial Panel which has imposed a 10-match ban and £7,500 fine on Ian Black. Three of the matches will be served immediately - meaning the player would miss games against Arbroath, Queen of the South and Forfar - and a further seven games will be suspended until the end of the 2013/14 season. Black would be free to return to action against Stenhousemuir on Saturday, September 28, 2013" (The Daily Telegraph of 13/9/2013, p. S8).

The former Blackburn trainee signed for boyhood heroes Hearts in July 2009 and left for Rangers last

summer after the Tynecastle club slashed their wage bill. He famously worked as a part-time painter and decorator in December 2011 to help pay bills when his Hearts wages were overdue.

The penalty administered to Mr. Townsend ultimately gave rise to some controversy following the case of Accrington Stanley managing director Rob Heys. Barely a few days after the fine imposed on Jerome was announced, it emerged that Mr. Heys had been issued with a 21-month ban and a £1,000 fine for a breach of the FA betting rules. Heys had admitted no fewer than 735 infringements over a period of 10 years, including 230, which involved his club, who play in League Two of the English national competition. More than 30 of these bets were for his team to lose (*The Daily Telegraph of 20/8/2013, p. S7*). His appeal against this penalty was dismissed. Mr. Heys then accused the FA of double standards by contrasting what he described as Andros Townsend's "lenient" punishment with his own. He wrote on his personal website:

"It has been a high price to pay for what I would argue is a lesser offence than some of the high-profile cases we have seen in recent years. Punishments handed out by the FA for infringements of betting regulations appear to be inconsistent. I certainly don't want to see [other players or club officials] hit with harsher penalties, particularly as, like me, most, if not all, were unaware that they were breaking any rules. Indeed, if Andros had received a lengthy suspension, England might not have been going to Brazil next

summer. It does appear, though, that the FA are prepared to show far more leniency to higher-profile individuals” (The Times of 18/10/2013, p. 90).

The FA, for its part, pointed out that the sanction reflected the seriousness of betting not only in competitions involving Accrington, which is prohibited under their regulations, but also in fixtures in which the club were competing (*Ibid*). However, another charge of hypocrisy on the part of the footballing authorities came from no lesser figure than Graham Bean, a former FA compliance officer who has featured in these columns before. He argued that it was somewhat contradictory for the football authorities to be penalising Mr. Heys when the gambling site Sky Bet were the title sponsors of the Football League and the FA itself had betting firm William Hill as gambling partners (*Daily Mail of 9/8/2013, p. 87*).

Equally disturbing was the case of Gordon Taylor, Chief Executive of the players’ union, the Professional Footballers’ Association (PFA). Allegations of his gambling habit surfaced in late August 2013 when it was claimed that he had accumulated gambling debts exceeding £100,000. This came in the wake of Mr. Taylor having solemnly preached the need for his members to meet their “social responsibility” as well as highlighting on a regular basis the perils which gambling held for the young and wealthy players in his charge (*The Independent of 29/8/2013, p. 50*). Initially, it looked as though Mr. Taylor’s position with the PFA might be under threat. However, the

players’ union gave its embattled Chief Executive its full support following extensive talks among members of the organisation’s management committee. It was made immediately clear that Mr. Taylor had not infringed any of the governing body’s regulations; nor was there any suggestion that he had perpetrated anything unlawful. Nevertheless, it was suggested that he had acted unethically by betting on fixtures in which his members had played, as well as inviting accusations of hypocrisy (*The Times of 30/8/2013, p. 69*). It was later learned that the PFA was planning to tighten its betting rules in order to prevent the situation in which Taylor found himself from recurring. One measure it was expected to adopt was to bar its officials from betting (*The Daily Telegraph of 26/9/2013, p. S6*).

OTHER ISSUES
(all months cited refer to 2013 unless otherwise stated)

Fenerbahce in trouble – again.

In June, the Turkish side, who were banned from the 2011-12 Champions League because of a match-fixing scandal, were once again charged with corruption when it was learned that the club and five officials would have match-fixing allegations heard by a disciplinary panel (*The Daily Telegraph of 11/6/2013, p. S7*). As a result, they were expelled from the Europa League and barred from qualifying for the following season’s Champions League (*The Daily Telegraph of 29/8/2013, p. S6*).

Armenian officials banned. In early August, European governing body UEFA announced that they had suspended two Armenian match officials after they had admitted to attempted match-fixing in the first qualifying round of the Europa League, in a fixture played in mid-July (*The Daily Telegraph of 8/8/2-13, p. S6*).

Maury ban extended. In early October, it was learned that Stefano Maury, captain of Italian side Lazio, was to serve a nine-month suspension for his alleged involvement in match-fixing following an unsuccessful appeal against an original six-month ban. The Italian Football Federation had suspended the player in August after an investigation into Lazio’s league fixtures with Genoa and Lecce in 2011 determined that he had failed to report his knowledge of match-fixing in the latter match (*The Daily Telegraph of 3/10/2013, p. S9*).

Spanish games under investigation.

In early August, it was learned that nine matches in the Spanish league were under investigation for match-fixing, including three in the top range. Two of the games under suspicion, i.e. Girona v Xerez and Hercules v Racing Santander, are already the subject-matter of proceedings before the Spanish courts (*The Daily Telegraph of 6/8/2013 p. S12*).

Phone app to beat match fixers.

Henceforth, footballers who are approached with a view to fixing matches or who suspect that fixtures are being manipulated will be able to press a panic button on their mobile telephones for the purpose of

reporting suspicions. Players across the European continent can now download an anti-match fixing app to their apparatus and will be issued with a password which will enable them to report any illegal approaches via a red button (*The Daily Telegraph of 26/6/2013, p. S9*).

CYCLING

Cookson becomes UCI President on a platform of fighting doping and corruption

As anyone who has taken even the most token interest in the sport will be all too well aware, the problems besetting this sport, and its authorities, have been related mainly to the various doping scandals which have tainted its competitions since time immemorial. In recent years, however, this problem has seen another nefarious element added to it, to wit that of corruption, in particular in connection with the most sensational doping episode of recent times, i.e. the revelations about Lance Armstrong, who, after a record number of Tour de France wins and years of steadfast denial, finally admitted to having had his performances enhanced by means of prohibited substances. Shortly after this scandal broke, it was revealed that the world governing body in the sport, the UCI, had accepted a donation of \$100,000 from the fallen idol in 2007. This in turn led to calls for the resignation of the then President of the organisation, Pat McQuaid. The latter, however, not only refused to leave his post, but also announced his intention to stand for

a third term of office once his reign had expired. He has also strenuously denied knowledge of any cover-up over Armstrong's doping programme. In this context, Mr. McQuaid was involved in defamation actions in Switzerland against certain parties who accused the UCI of corruption and collusion in connection with doping.

Mr. McQuaid's bid for re-election proved to be an obstacle course from the outset. Initially, his native Irish association, Cycling Ireland, appeared to have nominated him, but in mid-June 2013 it was learned that, following a backlash among the association's membership, the latter reversed its decision. Mr. McQuaid then successfully secured nomination by the cycling federation of Switzerland, where in his capacity of UCI president he had been living for the previous eight years (*The Daily Telegraph of 17/5/2013, p. S17*). Less than wisely, he continued to make pronouncements on the Armstrong affair, even claiming that the UCI was "fault-free" in its handling of this imbroglio, insisting that his organisation had always been at the forefront in the battle against doping during the US rider's years of domination from the late 1990s to the mid-2000s (*The Daily Telegraph of 30/5/2013, p. S8*). Whether this was the proverbial final straw for some will never be known. However, the fact is that, shortly after this somewhat disingenuous pronouncement, Brian Cookson, the President of British Cycling, announced he was also allowing his name to go forward for the UCI Presidency – fewer than three months after having pledged his full support

for the Irishman. To this end he set out his vision for restoring the organisation's credibility, which he was determined to make both more modern and transparent in the wake of the Armstrong saga. Certainly there can be little doubt that Mr. Cookson had overseen the most successful, and arguably cleanest, period in the history of British cycling during his 16 years in office (*The Daily Telegraph of 4/6/2013, p. S13*).

The former Irish cycling professional's position became even more beleaguered a few days later. In the first place, it was learned that the Swiss federation's decision to back McQuaid had angered a number of its members and some in the Irish federation, who claimed that the Swiss organisation had infringed rules preventing one federation from going against the wishes of another. Three members of the Swiss organisation appealed against the nomination, whilst a legal challenge was also lodged aimed at establishing a panel to decide whether the endorsement would stand. Then came a stormy meeting of the UCI Management Committee in Bergen, Norway, at which Mike Plant of the US, compelled McQuaid and the remainder of the committee to discuss a dossier which concerned the UCI President's use of private investigators. Mr. McQuaid's attempts to block this move failed – yet the contents of that dossier were not made public (*The Daily Telegraph of 15/6/2013, p. S9*).

From that point onwards, the contest became even more acrimonious. McQuaid saw fit to describe

Cookson's election manifesto as "half-baked, flawed and financially impractical", which drew from the latter the description of the former's response as "bullying" (*The Independent of 27/6/2013, p. 57*). He then insisted that the Armstrong affair should not be an issue in the election campaign, to which Mr. Cookson ominously replied that Mr. McQuaid would be judged "on his record", and that the question would be asked "why those things haven't been done in the last eight years". The incumbent President did, however, admit that accepting that donation from Armstrong was "a mistake", even though he insisted it was done with the best of intentions (*The Independent of 13/7/2013, p. 55*). More serious, however, were the machinations regarding Mr. McQuaid's nomination. It will be recalled that, with his sponsorship by the Irish federation in doubt, Mr. McQuaid had persuaded its Swiss counterpart to do the deed, and that this manoeuvre had led to a legal challenge. In late July, however, the news broke that the Malaysian federation and the Asian confederation had proposed a change in the rules which would allow any candidate to stand as long as he/she had two nominations emanating from any federation in the world. This was interpreted by the Cookson campaign as a tactical attempt by McQuaid to ensure a nomination by "moving the goalposts" (*The Guardian of 30/7/2013, p. 42*).

The wrangle over McQuaid's eligibility to stand remained, as we shall see, unresolved until the very day of the election. However, the rancorous battle for the presidency

took yet another extraordinary turn with just a couple of weeks to go before election day, with the appearance of a dossier which accused McQuaid of corruption. In this 54-page file, Mr. McQuaid and his predecessor, Hein Verbruggen, were accused of soliciting a bribe from a team owner in 2012, of manipulating the drug-testing rules for the benefit of Lance Armstrong, and of attempting to cover up Alberto Contador's positive drug test in 2010. This explosive report was understood to have been commissioned by the head of the Russian cycling federation, Igor Makarov, who also owns the Katusha cycling team and was supporting Mr. Cookson's campaign. Although the existence of the dossier was already widely known, the specific allegations made in it had been shrouded in secrecy. Its contents were presented to the management committee of UCI at the ill-tempered meeting in Bergen referred to above by Mike Plant, the former president of USA Cycling, as the work of "two senior law enforcement and intelligence officers". The executive summary contained 12 direct accusations against McQuaid and Verbruggen, all of which were claimed to be supported by testimonial and documentary evidence (*Daily Mail of 11/9/2013, p. 69*).

Unsurprisingly, Mr. McQuaid dismissed these accusations as "complete fabrication" and "not supported by a scintilla of evidence", and requested the UCI Ethics Committee to investigate these claims. He also pledged to resign if it were proved he had been involved in any wrongdoing. He even gave permission for the allegations against

him to be published, so confident was he that they were untrue. Equally unsurprisingly, Mr. Cookson also pressed for an inquiry into the dossier's allegations (*The Daily Telegraph of 11/9/2013, p. S17*). The very next day, more turmoil materialised with the emergence of a letter from Mr. Verbruggen in which the latter appeared to pressurise delegates into voting for McQuaid and to dismiss two rival candidates as "unsuitable" for the previous election, held in 2005. The latter also revealed a plan by Verbruggen to hold onto power in the event of McQuaid not being elected, by secretly adding his name to the list of candidates (*Daily Mail of 12/9/2013, p. 80*).

The acrimony which marked the entire campaign continued until the very day of the election, when it emerged that Mr. Cookson had frustrated an attempt by the UCI to allow close colleagues of Mr. McQuaid to count the votes. More particularly Cookson succeeded in preventing UCI lawyer Philippe Verbiest and the manager of the national federations, Dominique Raymond, from being part of the team charged with verifying the number of votes cast for the two candidates. Mr. Cookson is said to have been taken aback at learning that colleagues of the incumbent President could be so directly involved in administering the election. In the event, his argument that this represented a potential conflict of interest appears to have held sway, with the votes being counted instead by two national federation presidents before being independently scrutinised (*The Daily Telegraph of 26/9/2013, p. S8*).

Came the day of the actual election, and one issue which seemed to have been resolved – or at least no longer constituted an obstacle to McQuaid’s eligibility to stand – was the issue of his nomination, which in the meantime appeared to have been bogged down in a quagmire of legal proceedings. Not that this failed to prevent the proceedings from plumbing new depths of unseemliness, judging by all accounts, with one press observer opining that “it was nearly enough to make even the oversize copy of the statue of David, standing bare and proud outside the Palazzo Vecchio [of Florence, where the session was held] look embarrassed” (*The Independent of 28/9/2013, p. 52*).

That cycling was in desperate need of a change of leadership was laid painfully bare inside one of the city’s most striking landmarks as a morning of farce tumbled into a lunchtime of squabble, an early afternoon of confused anger and the inevitable tears before tea-time. Long before the bicycle had been invented, Leonardo da Vinci was among those asked to decorate the Salone dei Cinquecento, the room in which the election took place. He could have completed the task, invented a flying bicycle and cracked a few codes in the time it took the International Cycling Union to decide who should be its next president. The tears, predictably, belonged to Mr. McQuaid, who was finally ousted by Mr. Cookson. There can be no doubt that it was the Irishman who had to bear responsibility for the less than dignified proceedings, which took the form of five hours of shambolic process that embarrassed a sport

whose star was not exactly in the ascendancy. Ultimately, it was Mr. Cookson’s day, and not only because he won by 24 votes to 18. Rather it was because of the manner in which he ended the uncertainty and confusion. Indeed, there must have been times during the debate when he considered withdrawing his nomination, given that leading an organisation capable of producing such a chaotic show must have seemed a somewhat unattractive proposition.

Election day began with the validity of McQuaid’s nomination unclear, and it never became clearer despite the efforts of lawyers consulted by the UCI to claim otherwise. “Opinions can be bought and obtained,” observed the Australian delegate archly. “I know because I am a lawyer.” Cookson sat on the podium, occasionally shaking his head, at other times raising his eyebrows. Then he snapped, stood up and strode to the lectern. “We have had enough of this,” he declared, and demanded that the congress put aside the question of McQuaid’s eligibility and just vote on who should finally be their president.

It was something of a gamble. An earlier vote on an amendment to the constitution that would permit the incumbent president to stand without nomination – ultimately McQuaid was nominated by the Thais and Moroccans – had been tied at 21-21. After eight years in post it appeared that McQuaid still had strong support, particularly in Asia. However, Cookson’s move seems to have worked and may have even swung a final vote or two behind

him, as it was a display of leadership that had been lacking throughout a morning which had included delegates accusing their leaders of “changing the rules once the race had begun”. “It’s a masquerade,” said the Algerian delegate. At one point proceedings were delayed because the Russian interpreter had gone missing. It was easy to understand why she had taken flight. It was easy to feel for those delegates who work for their sport seeing it made a mockery of. Mr Cookson said afterwards that he felt he owed it to the cycling world “to put an end to the misery we were all going through. We can all agree that today was pretty disastrous for cycling and the UCI” (*Ibid*).

Barely had the dust settled on this troubled election, than Mr. Cookson set about fulfilling his pledge to explore to the full all aspects of the doping scandal in cycling, and announced the formation of an independent commission at an extraordinary meeting of the UCI’s management committee. And despite confirmation that representatives of Lance Armstrong have been approached to discover whether he would be willing to take part, a source close to Mr. Cookson has indicated that they plan to press ahead regardless of whether the disgraced seven-time Tour winner was involved. Armstrong – who has so far only admitted using performance-enhancing substances on Oprah Winfrey’s chat show earlier this year – had previously asked the newly-elected UCI supremo on Twitter whether he was planning to investigate the UCI’s past in order fully to “understand the mistakes of previous generations”. Now that has

been facilitated via the new commission, it remains to be seen whether cycling's highest-profile doping user decides to tell all to the governing body. Mr. Cookson added: *"Today's management committee meeting was an important moment for the UCI as we put in place a number of measures to restore trust in the UCI and ensure our great sport is able to move forward. I would like to thank my management committee colleagues for the professional and collegiate way they approached today's meeting and I am encouraged by the strong sense of common purpose. There is a huge amount of work to do in the coming months and beyond, but I am excited by the passion and support my colleagues have shown for implementing a real programme of change for the good of cycling"* (*The Independent of 30/10/2013*, p. 63).

Mr. Cookson has also confirmed he will be paid an annual salary worth £76,000 less than his predecessor McQuaid's, as part of his pledge to be more transparent. Other measures promised by the new president include a full audit of the systems and controls currently employed by the UCI's anti-doping operations ahead of the establishment of an independent anti-doping operation next year, as well as the establishment of an international commission to work on global growth (*Ibid*).

Operation Puerto storm as vital evidence is destroyed

On assuming his new duties, Brian Cookson will have found plenty of contentious issues in his in-tray. One of these is the verdict in, and aftermath of, Operation Puerto, the blood-doping scandal, extensively reported on in earlier issues of this organ, at the centre of which was one Dr. Fuentes, who has peddled his wares with plenty of sporting performers of all disciplines, but with a particularly heavy emphasis on cycling. As with the Armstrong affair featured above, this episode has also given rise to suspicions of corruption, particularly in relation to the lack of transparency displayed by the authorities involved in this affair. These suspicions were further kindled when the judge giving her ultimate verdict in the criminal proceedings against Dr. Fuentes sparked outrage by ordering the destruction of more than 200 blood bags that could hold the secret to one of the biggest doping conspiracies in sporting history. Judge Julia Patricia Santamaria rejected a request by the World Anti-Doping Agency and the country's national anti-doping organisation to hand over some 211 bags of blood and plasma and other documentary evidence seized by police seven years ago from the clinic of Dr. Fuentes. Earlier, she had found Fuentes guilty of endangering public health by giving blood transfusions to elite cyclists and sentenced him to a one-year suspended jail term, but frustrated anti-doping officials by ruling that all evidence relating to the case, right down to the computers used during the Operation Puerto investigation, would be destroyed.

It should be emphasised at this point that there is no suggestion whatsoever, that Judge Santamaria was in any way motivated by considerations of corruption in reaching this decision. Nevertheless, her verdict has implications for any alleged corrupt practice, since investigators are anxious to examine the blood bags using the latest scientific methods to identify athletes from a range of sports who availed themselves of Dr Fuentes's services as a blood-doping expert but who have yet to be unmasked. Fuentes openly admitted helping athletes to dope but could be tried only on public health offences because doping was not illegal in Spain when his clinic was raided in 2006. He testified at the start of his 10-week trial that his customers included athletes from football, tennis, athletics and boxing. So far, only cyclists have been implicated in the conspiracy. In response to this ruling, Ana Muñoz, the director general of the Spain's anti-doping agency, said that her organisation has instructed lawyers to file an appeal against the judge's order, adding that her organisation would "use all channels available to pursue this and to identify the names of the athletes involved. Operation Puerto is not over." (*The Daily Telegraph of 1/5/2013*, p. S12).

The blood bags will remain in frozen storage in Barcelona until the appeal process is complete. For its part, the World Anti-Doping Agency (Wada) said that it would not comment on the ruling until it had read the full 400-page judgment. However, the former Wada president Dick Pound – never one to miss an opportunity on the world stage – condemned the

decision. In an interview with BBC Radio 5 Live, he proclaimed

“It’s been a disappointing experience from start to finish, from the original suppression of the evidence to an ongoing resistance that continues to this day. It’s embarrassing for Spain. Everybody knows if the examples are made available, we will be able to uncover quite a bit more doping. The rules are designed to catch people who are doping but the underlying purpose is to try to create a doping-free world of sport so people don’t have to cheat or become chemical stockpiles in order to be successful.” (Ibid)

UK Anti-Doping chief executive Andy Parkinson also criticised the ruling, stating that cannot be right that these names will “remain unknown and that no immediate action can be taken by the anti-doping community to protect our clean athletes.” The judge’s ruling also gave rise to fury on social media websites, with marathon world record-holder Paula Radcliffe, a lifelong anti-doping campaigner, among those voicing dismay. She wrote: “This makes me so mad. Spanish Govt do something, do the right thing. Does this judge understand what they have done? I feel like showing up on their doorstep.” Andy Murray, ranked No 3 in the world of tennis, was equally damning, tweeting: “Operacion puerto case is beyond a joke... biggest cover up in sports history? Why would court order blood bags to be destroyed?” (Ibid)

In addition to his suspended jail sentence, Fuentes, 58, was struck off the medical register for four years. He was on trial with four co-defendants, including his sister Yolanda, but of those only the former manager of the Kelme cycling team, José Ignacio Labarta, was found guilty of a public health offence and handed a four-month suspended prison sentence. The other three were acquitted. Both Fuentes and Labarta avoided having to spend time behind bars because, under Spanish law, prison sentences of less than two years for defendants with no previous convictions are automatically suspended. Judge Santamaria justified her decision not to hand over the blood bags on privacy grounds, though the ruling will do nothing to remove Spain’s reputation for being soft on doping and could potentially harm Madrid’s chances of hosting the 2020 Olympics. It is on the final shortlist along with Tokyo and Istanbul. Should the Spanish anti-doping agency lose its appeal against the destruction order, its only hope of identifying Fuentes’s full list of sporting clients will depend on whether he can be persuaded to identify them. During the trial, he hinted that he might co-operate with anti-doping agencies if officially asked, though so far he has not shown any willingness to help with their investigations (Ibid). It was later learned that the UCI would also appeal the judge’s verdict (*The Times of 11/5/2013, p. S21*).

SNOOKER

Stephen Lee found guilty of match-fixing

Until the past few months, the suspension of Australian competitor Quinten Hann for eight years in 2006 (extensively reported in these columns at the time) for breaking rules governing match-fixing had ranked as the most serious incident of corruption to hit the world of snooker. This episode, however, has recently been superseded in significance by the Stephen Lee affair. It will be recalled from the previous issue of this Journal that the Wiltshire player had come under investigation because of suspicions which attached to several fixtures – four at the Malta Cup in 2008, two at the UK Championship in 2008, and one each at the China Open and the World Championship in 2009. He was suspended in October 2012 and an independent hearing was arranged by Sport Resolutions UK. The sport’s world governing body, the WPBSA requested the Sport Resolutions organisation to appoint an independent QC to hear the available evidence, Adam Lewis being ultimately appointed to hear the case. The latter’s ruling was that Mr. Lee was guilty of

“agreeing an arrangement and of accepting or receiving or offering to receive payment or other benefit in connection with influencing the outcome or conduct of each of the seven matches. Between February 2008 and April 2009, Stephen Lee was in contact with three different groups of people, all of whom placed bets on the outcomes of his matches

or on the outcomes of frames within his matches or on the exact score of his matches. The bets were placed by three groups of people. The first were organised by his then sponsor, who opened multiple betting accounts with various associates. The second group were coordinated by his then manager who placed almost identical bets. The third was an individual known to Lee who placed the same bets. Lee was in contact with the groups in the lead-up to the matches in question and afterwards. In one case the person collected the successful bet and placed the half of the winnings into Lee's wife's bank account. The total amount bet on these matches was in excess of £111,000 leading to winnings of over £97,000 for the persons placing the bets. It is not clear how much Lee benefited from their activity." (*The Daily Telegraph* of 17/9/2013, p. S17)

WPSBA Chair Jason Ferguson described the ruling as a "stark warning to competitors in any sport who could become vulnerable". Ultimately, it was learned that the 38-year-old Lee was issued with the sport's longest ban – 12 years – and ordered to pay £40,000 costs after being found guilty of these charges, in what world snooker's governing body has called the "worst case of corruption" the game has suffered. Mr. Lewis described Lee as "a weak man in a vulnerable position", adding that it was only the fact that the player was manipulated by others had saved him from the life ban that would be mandatory under rules brought in since he was charged. Mr. Lee is unable to play again until after his 50th birthday and the ban will effectively end his career. The player,

for his part, maintained his total innocence and vowed to appeal, describing his treatment as "outrageous".

Nigel Mawer, the chairman of World Snooker's disciplinary committee and a former Metropolitan police chief superintendent, said the tough stance showed a crackdown announced by the sport's supremo, Barry Hearn, in the wake of the high-profile John Higgins case, was shown to be effective. It will be recalled from a previous issue that a Sunday newspaper "sting" operation which ended in September 2010 with Mr. Higgins being cleared of fixing matches, whilst being issued with a six-month ban for failing to report an illegal approach, had thrust the issue back into the spotlight. The details of the Lee case, explained in great detail over 34 pages, paint a picture of a loosely aligned gang, including his then sponsor and then manager, that was more end-of-the-pier than organised crime but nevertheless conspired to benefit from placing bets on specific outcomes. Unlike some previous cases, the authorities relied on circumstantial evidence largely amassed through betting and telephone records rather than having to prove that Lee had missed shots on purpose. Lee is expected to argue in his appeal there is no direct evidence that he cheated.

The ability to bet on players to lose the first frame, or to lose a match 5-0 or 5-1, has removed the need for both players to be in on a fix for it to be effective. However, Mr. Mawer said that of 7,000 matches since he took over from David Douglas in 2011, only three other cases were

investigated. Of those, Joe Jopia was given a two-year ban in July 2012 for "lower-end" offences, one involving Thepchaiya Un-Nooh in a match against Steve Davis was dropped owing to lack of evidence, and another is still proceeding. That is on the generous assumption that the authorities are catching all of those who are attempting to cheat. Mr. Mawer certainly insists that this is the case, hence the fury within the sport when their best-known player by a distance casually suggested that cheating was widespread (see the Ronnie O'Sullivan allegations below). Mr. Mawer, having succeeded Douglas, another former policeman among the cadre of senior officers who have profited from the renewed focus on sporting corruption, said he is confident he now has the tools at his disposal to give the sport a reasonably clean bill of health (*The Guardian* of 26/9/2013, p. S1).

A confluence of factors makes snooker particularly susceptible to the threat of fixing: the rampant growth and increased sophistication of the illegal betting market in Asia, the increase in the variety of bets on offer and the ease with which they can be placed is common to all sports. However, other factors are quite specific to snooker, including the decline in the sport's commercial value since its 80s heyday, the increase in the amount of snooker played around the world and the dangers inherent in round-robin formats, when not every frame is vital. Then there is the difficulty of proving wrongdoing. One of the major difficulties – and the reason why so much of the rhetoric is around educating young players – is

challenging the betting culture that exists within snooker. Until recently, it was common practice for players to bet on themselves to lose as “insurance” against going out in a major tournament. High-profile cases were rare, even in the years preceding the Higgins case, but rumours were rife and governing bodies sometimes gave the impression of sitting on their hands for fear of what they may discover.

As was featured earlier, the Australian Quinten Hann was banned for eight years in 2006 for match-fixing offences after a newspaper sting in which he accepted a proposal to lose a China Open match. South Africa’s Peter Francisco served a five-year ban handed down in 1995 for bringing the game into disrepute following his 10-2 defeat by Jimmy White at the World Championship. The publicity surrounding the Higgins case prompted Hearn and his World Professional Snooker and Billiards Association chair, Jason Ferguson, to declare “zero tolerance” against match-fixing. Their motive was not entirely altruistic – the perception that viewers could not trust what they were watching threatened to undermine all the work they had done to make snooker a saleable proposition again to broadcasters and sponsors. Mr. Mawer informed a leading British newspaper that the moves by Hearn to commercialise the sport and increase prize money, as well as measures such as a loan system that could help bridge the gap between winning prize money and receiving it, provided a carrot to go with the stick of heavy penalties.

He said:

“For the players now, there are something like 38 tournaments, the opportunity to earn money has never been better. If there were problems in the past it’s because there were players playing six tournaments a year and twiddling their thumbs in between. That’s why it’s sad when you get a Stephen Lee.” (Ibid)

He added that a new regulatory regime introduced in the wake of a government review, led by the former Premier League and Liverpool Football Club chief executive Rick Parry in 2009, was working effectively. A beefed up Gambling Commission unit is supposed to act as a bridgehead between the police and sports governing bodies. Meanwhile – still according to Mr. Mawer – collaboration with bookmakers over suspicious betting patterns and with the investigatory units of other sports including horse racing and cricket had improved immeasurably. Parry said that continued vigilance is essential.

“There has been progress, steps have been taken but every time there is a case like this it reminds us there is absolutely no room for complacency. Other well placed insiders challenged Mawer’s confidence in the Gambling Commission, re-voicing long standing concerns over whether a specialist unit might not be preferable” (Ibid).

As is mentioned above, Stephen Lee immediately vowed to fight the ban, still claiming that he was “totally innocent” of match-fixing, and

describing his penalty as a miscarriage of justice. He lashed out at a process which he described as “totally outrageous” and claimed that there were no facts to justify the guilty finding. He also said that if he had been accompanied by a lawyer, the outcome would have been different. Barry Hearn, who chairs World Snooker, warned Mr. Lee that the appeal could result in the penalty being increased, given that the tribunal Chairman had refrained from issuing a lifetime ban. The aforementioned Mr. Mawer added that he had sought a life ban because no fewer than seven matches had been involved, including some World Championship games – although he did concede that the penalty in effect amounted to a lifetime ban (*The Daily Telegraph of 16/9/2013, p. S13*).

This column will naturally follow the appeal process with considerable interest.

Ronnie O’Sullivan, alleges, retracts, then alleges again....

Whilst the Stephen Lee drama was being played out as detailed above, the sport’s biggest star, Ronnie O’Sullivan, saw fit to take to the social media and claim that the scale of match-fixing in the sport was much greater than people suspected and accused the authorities of sweeping the problem under the carpet.

This prompted the sport’s supremo, WPSBA Chair Barry Hearn, to warn the controversial star that he was contractually obliged to provide World Snooker with any information

he might have about possible corruption and also threatening to sanction him if he had spoken out of turn. O'Sullivan then hit back, again via Twitter, posting the following somewhat bizarre riposte:

*"No concrete evidence of match fixing in snooker. But just like everyone one who works in an office they have a good idea who's sh**ing who. Don't give a damn I'm not a Zionist which will eventually get me hung out to dry. But I will keep winning tournaments and entertain the people. I suppose I could always go back to workin (sic) on the farm if world snooker wanna (sic) ban me. Barry I think we need another cup of tea. I've been a naughty boy mwah xxx (sic). (...) I've heard there's many more players who throw snooker matches. I suppose Steve lee was just caught out. I just love putting it out there bring it all out in the open. Nothing like a bit of transparency is what I say. No need to worry if you got (sic) nothing to hide. But plenty of people have got loads to hide. That's why there is no free speech. There (sic) hiding. They will prob (sic) fine me for talking about it. They don't like you doing that. Like to keep things under the carpet." (The Daily Telegraph of 18/9/2013, p. S11)*

That prompted a withering response from Mr. Hearn, who issued a statement drawing attention to the fact that his organisation took these type of allegations "very seriously" He said that they had written to Mr. O'Sullivan requesting him to explain his comments and to provide details of any match fixing and the names of

the players to whom he was referring. To make these type of allegations without informing the governing body through the correct channels, he went on, was "wholly unacceptable and extremely damaging to the sport." He added that O'Sullivan could be charged with bringing the game into disrepute, regardless of his response to Hearn's letter, insisting that the world governing body always investigated any irregularity "and, frankly, we don't have any to investigate at the moment" (*Ibid*).

Mr. O'Sullivan later backtracked on his claim, saying that he was talking about another era (*The Daily Telegraph of 20/9/2013, p. S11*). He was nevertheless promptly rebuked by WPBSA chairman Jason Ferguson, who claimed that O'Sullivan's remarks could cost the sport millions in lost sponsorship (*The Times of 21/9/2013, p. S21*).

However, the furore over the remarks made by the five-times world champion refused to go away. Whether by an uncanny coincidence or not, extracts from his new autobiography, *Running*, appeared barely a few weeks after his Twitter postings. These claimed that he was contacted by a match-fixer who arranged to meet him in Epping Forest, Essex. During their 15-minute meeting, the man told O'Sullivan that he could make around £20,000 if he intentionally lost specified frames. The former champion, who had just started to make a comeback at the highest level of the sport, also claimed that he knew of seven or eight players who had "thrown" frames or matches at

the request of betting fixers, including a few players at the top of the game. He added that the fixer was someone he tried to avoid, and that he could have got away with throwing a frame by playing left-handed, or one-handed, or by giving the impression he was "going nuts". He had "no interest in taking up the fixer's offer" because he was a "compulsive truth teller" and that the pair respectfully parted ways. He added that someone rang him to say that he would like to meet O'Sullivan "over in the forest and have a walk through the woods". He apparently knew the person in question, being "someone you don't want to mess around with". He added, however, that what they were offering him (£20,000) was a sum he could earn for a few nights' work (*The Daily Telegraph of 11/10/2013, p. S17*).

.....
Probe launched into betting patterns at two Shanghai Masters qualifying matches – with possible connection to a firebomb attack

Also whilst the investigation into the Stephen Lee affair was proceeding, it was learned that bookmakers had suspended betting for two matches held in early August 2013, including the clash between Thailand's world No 92 Passakorn Suwannawat and Egypt's Mohamed Khairy. The other match at The Dome featured Suwannawat's countryman and world No 75, Thanawat Tirapongpaiboon, and Scot Ross Muir, ranked 113. Unusually high sums of money were placed on Muir and Khairy to win, and both did, by scorelines of 5-0 and 5-4 respectively. This was Mr. Khairy's first professional victory.

Aware of the speculation, World Snooker had switched the Tirapongpaiboon/Muir match to a TV table to allow post-match analysis.

A statement released by the World Professional Billiards and Snooker Association (WPBSA) said:

“The WPBSA work with partners to monitor betting on snooker matches. As a result of this we were aware of the unusual betting patterns in the matches between Passakorn Suwannawat and Mohamed Khairy, and Thanawat Tirapongpaiboon and Ross Muir. The WPBSA are liaising with the Gambling Commission to establish the available facts surrounding betting on these matches. A decision will then be made on any further action required.” (*The Daily Telegraph* of 8/8/2013, p. S15).

A spokesperson for a leading online bookmaker confirmed that the latter had suspended betting on two matches on Tuesday and did not reopen that betting – i.e. the fixtures between Khairy and Suwannawat, and Muir and Tirapongpaiboon. Leading referee Jan Verhaas was brought in to officiate in the scrutinised decider between Suwannawat and Khairy. However, assistant tournament director Martin Clark insisted the switch from starting official Alex Crisan was coincidental. He explained that the organisers had relieved several referees involved in longer morning session matches who were due to referee immediately afterwards at 2.30pm. It was “not just that match, and that was the reason” (*Ibid*).

The entire affair took on an infinitely more sinister turn when, several weeks later, it was announced that firebomb attack had been made on the Sheffield home of two of the players involved in the corruption probe in a premeditated arson attack. Although the police have established no fixed motive for the arson, which resulted in two people needing medical treatment, one line of inquiry is that it could be linked to gambling on snooker. Violent crime has been a blot on Thai snooker historically. Thailand’s best player, James Wattana, a former world No 3, once had a death threat to encourage him to lose a match, and his father was shot dead in 1992, said to be as a result of gambling debts (*The Mail on Sunday* of 22/9/2013, p. S17).

Suggestions that Asian fixers could be trying to influence British snooker unsurprisingly sent a chill through the sport, hence the complete secrecy which surrounded the attacks for several weeks before it was made public, since it has now been learned that it took place on Friday, 30 August. The property is owned by a snooker academy boss, Keith Warren, and two of those to have stayed there are Thai players, Thanawat Tirapongpaiboon, 19, and Passakorn Suwannawat, 27. The two players were not in the house at the time of the attack, having left for Thailand three or four days earlier, and wanted to remain anonymous. A local fire brigade spokeswoman said three fire engines attended a blaze at 2.30 am and two occupants were advised how to stay safe until rescued. The door area of the house was “on fire and the rest of the property was smoke-logged,” according to the

spokeswoman. A brigade investigation found the fire was “deliberate” and the police took over. It is understood that the WPBSA were alerted that cash in Asian markets had been wagered on the Thai players’ qualifiers, and peculiar betting patterns were also seen in the UK (*Ibid*).

At the time of writing, the inquiry into the matches concerned was continuing.

RACING

Ahern and Clement issued with long ban after being found guilty of corruption

In early June 2013, it was learned that Eddie Ahern, a leading member of Britain’s weighing room for more than a decade, had been banned from racing for 10 years by the British Horseracing Authority (BHA) for a series of breaches of the anti-corruption rules, including one instance in which he deliberately stopped one of his mounts. Neil Clement, a racehorse owner and former professional footballer with West Bromwich Albion, was also banned from the sport – for 15 years and three months – for using information from Ahern to lay bets against his horses on the Betfair betting exchange. Mr. Ahern was found to have deliberately prevented Judgethemoment, a six-year-old gelding trained by Jane Chapple-Hyam, from running on its merits in a two-mile handicap at Lingfield on 21 January 2011. Ahern set a furious pace on Judgethemoment, “what one would expect in a six- or seven-

furlong race” in the eyes of the panel, and then dropped back through the field from halfway.

Mr. Clement, for his part, whose telephone records showed frequent contacts with Ahern, was found to have placed a number of “lay” (i.e. losing) bets against Judgethemoment, including a spread bet which risked a maximum loss of £41,500 in order to win £8,500. It was one of only 11 bets placed on the account in British racing, and risked a greater loss than the other 10 combined. He was also found to have laid four more horses ridden by Ahern on the basis of inside information received from the jockey, and to have conspired with Michael Turl and James Clutterbuck, son and assistant to the Newmarket trainer Ken Clutterbuck, to lay the yard’s Stoneacre Gareth in a race at Lingfield in March 2011. Turl was disqualified for 24 months and fined £10,000, while Clutterbuck, who intends to appeal against the length of the penalty, was banned for 30 months (*The Guardian of 23/5/2013*, p. S6).

Mr. Ahern, who was Ireland’s champion apprentice in 1997 and rode 140 winners in 2006, his best year in the saddle, is the most successful jockey to be warned off by the Authority for deliberately stopping a horse. His big-race record includes Group One wins in the 1999 Moyglare Stud Stakes and 2011 Irish St Leger, in which he rode John Gosden’s Duncan to dead-heat with Jukebox Jury. He rode at least 100 winners four years in a row from 2003, from an average of 1,000 rides per year, although his total for 2013 prior to Wednesday’s ban was just 10

winners from 127 rides. Ahern has also courted controversy, however, since – as was reported in these columns at the time – he was banned for three months in December 2007 after he was found to have deliberately committed a whip offence in order to trigger a suspension at a quiet point in the season.

Neither Ahern nor Clement attended the relevant hearing at the BHA’s offices at High Holborn in London. Martin Raymond and Paul Hill, two professional gamblers who also faced charges in the case, were both cleared of any breaches of the rules. Jonathan Harvie QC, who represented Ahern at the hearing, commented as he left the BHA:

“History is littered with imperfect decisions. I’m not for a moment criticising the tribunal, they came to a decision in good faith and so on and so forth. I happen to think that there might have been a different view and there might even have been a better view, but it’s not for me to impugn the judgment of the tribunal. [Ahern] rode by his own admission an ill-judged race [on Judgethemoment]. It didn’t work and he finished last and Mr Clement had a very substantial lay bet on the horse. That is where you get into difficulty with these cases, how and on what basis do you draw the inference.” (Ibid)

Mr. Ahern’s solicitor, Christopher Stewart-Moore, said his client intends to appeal against both the BHA disciplinary panel’s findings and the severity of the suspension. He described him as “absolutely

devastated, and claimed he had not breached the rules of racing as found by the panel (*Ibid*).

BHA face dilemma over use of inside information

It was recently learned that the British Horseracing Authority (BHA) has been compelled to reconsider their definition of inside information after the Appeal Board produced with a fundamentally different interpretation to that understood by both the BHA’s Integrity Department and its’ Disciplinary Panel in early June 2013. There is now every possibility that they will have a rethink of their strategy and adjust the Rules. The Appeal Board said that if it is legal to back horses to win with the benefit of inside information, which is perfectly legal in racing, then this is no different from laying horses with the benefit of similar information, provided that information has not been communicated for “material reward, gift, favour or benefit in kind”.

When the concept of inside information was introduced to racing just over 10 years ago, shortly after the introduction of betting exchanges, it was initially considered something of a grey area. But, having hammered home the message for a decade, the BHA believed that their rules on the subject were no longer grey, but black and white. The panel’s aforementioned decision appears to have “mixed the paint” again. The difference of opinion follows the appeal of James Babbs and John Celaschi and the Appeal Board’s reasons for revising the penalties for both men – reduced from four years

for corruption and laying horses under their ownership, to an 18 month ban for laying their own horses (*The Daily Telegraph of 5/6/2013, p. S18*).

Hitherto, the BHA has always worked on the principle that backing a horse to win on the back of some inside information, for example a trainer tells you it is his best two year-old and should win – is allowed because you can never be certain a horse will win. However, lay bets are against their Rules because, in contrast, you can be fairly certain, with enough inside information, that a horse will lose a race. In a statement the BHA said:

“The Appeal Board’s findings reveal that their interpretation of Rules (A) 41 appears to differ from the interpretation we have always applied. We will now carefully consider the Appeal Board’s reasons for their decision in detail before deciding how best to proceed.” (Ibid).

It remains to be seen whether this revised interpretation will be beneficial or detrimental to the integrity of the sport.

TENNIS

Match-fixing fears at Wimbledon – as player receives death threats from gamblers

With the world’s most prestigious tennis tournament about due to start at Wimbledon in late June of this year, match-fixing experts voiced fears that up to a dozen top-50 players who

have been involved in “suspicious” fixtures could be in action at the All England Club. One senior official with a long track record of tackling sports corruption informed a leading Sunday newspaper that the Tennis Integrity Unit (TIU), that has the task of eradicating match-fixing in the sport, is not equipped to deal with the problem. It is also alleged that well-known players implicated in suspicious matches are escaping while lesser-known transgressors are being punished, some with lifetime bans (*The Mail on Sunday of 9/6/2013, p. S9*).

The TIU has a policy of never discussing cases in public, or even revealing details of their verdicts. But this means the unit’s operations and subsequent disciplinary proceedings are carried out in almost total secrecy and this lack of transparency has alarmed critics. The official who spoke to the newspaper said:

“The ‘tennis family’ were aware that there was no smoke without fire. They’d had years of accusations of fixing and plenty of hard betting data indicative of fixing. They knew there were people who were corrupt, and corruptible, and there still are. Almost four years after the TIU were set up, I can only conclude that they’re not as effective as they might have been... there are a lot of cheats out there.” (Ibid)

It will be recalled from an earlier issue that the TIU was established in London in 2009 in order to police the sport globally following a report the previous year which exposed tennis’s problems with match-fixing. The report’s authors, Jeff Rees and

Ben Gunn, were former Metropolitan Police detectives with extensive experience of dealing with corruption. Rees ran the unit until earlier this year and has been replaced by Nigel Willerton, another former detective. Critics have claimed that the unit, funded by the sport’s governing bodies – ATP, WTA and ITF – as well as the four “Grand Slam” events, is being run on limited resources and cannot satisfactorily set about eradicating corruption. Some tennis insiders have claimed the unit have been wary of publicly dealing with “big name” players who may have broken the rules, for fear of damaging the sport’s reputation and losing sponsors. According to the unnamed integrity expert:

“There were certainly elements within the ruling bodies, who fund the TIU, that wanted stuff swept under the carpet. But to do the job to the full extent, you need to tackle the higher profile people involved and not just the lesser players. If you don’t want a problem [with bigger players], don’t look for it. And if you want to look for it, be aware that it won’t smell sweet” (Ibid)

He also contrasted the secrecy that surrounds the TIU with the more open approach of other sports, including horseracing, football, cricket and snooker, which have all published extensive details of individual cases of betting-related corruption. Others tend to publish details of their findings, said the official. Some hearings are even public and the outcomes are a matter of record. But the TIU’s aversion to transparency certainly does nothing to dispel “the suspicion that they’re not

reporting to the public everything that they are finding” (*Ibid*).

Integrity unit investigations have led to public punishments only for lower-ranking players. Three have been banned for life, all for corruption offences that have never been described in any detail. It will be recalled that Austria’s Daniel Kollerer was banned in May 2011, Serbia’s David Savic in October 2011 and last week Russia’s Sergei Krotiouk was banned for 41 unspecified breaches of anti-corruption rules. Krotiouk, 34, has never made any impact on tennis’s major circuits, reaching a career-high ranking of No 486 in 2009 and being ranked most recently at 789. However, it is understood that dozens of players, including some who have been inside the top 10 and players inside the current top 50, have been privately warned by Mr. Rees or his colleagues after being involved in matches where suspicious activity was registered in betting markets.

There have also been public accusations that low-profile players have been punished while higher profile players have escaped attention. In 2010, an American lawyer, Robert Elgidely, who represented five Italian players who had served short bans and been fined for betting infringements, accused the tennis authorities of pursuing ‘low-hanging fruit’ while covering up the names of ‘top players’ who were involved in betting. A TIU spokesman responded to this charge by stating that the unit would not comment on their work and declined to say how many cases were dealt with each year, or the rankings of those involved. Documents relating to Kollerer’s

lifetime ban reveal the difficulties the integrity unit face in getting to the truth in corruption cases. Mr. Kollerer faced five charges, details of which have never been made public, and he was banned for life after being found guilty of three of them. These involved asking the current world No 38, Jarkko Nieminen, to lose a match against him in 2009. Nieminen did lose the match but there is no suggestion that he did so deliberately and he reported Kollerer’s approach to the authorities. Kollerer was also found guilty of twice offering a low-ranked Spanish player, Daniel Munoz de la Nava, sums of up to £12,750 to lose a match. Munoz de la Nava rejected Kollerer’s approaches but did not take the issue further until he was approached by the TIU. It was never alleged that Mr. Kollerer succeeded in fixing a match, and the judgment by the British lawyer who heard his case, Tim Kerr QC, described the Austrian as “more motivated by reckless impulses than by ruthless and cool dishonesty”. Two other charges against Kollerer were thrown out because witnesses were deemed unreliable. One was American Wayne Odesnik, who turned “whistleblower” for the tennis authorities in order to get a two-year drug ban reduced.

A nasty development during the early stages of the tournament seemed to emphasise the dangers posed by corrupt practice, especially that which is associated with the world of betting. One of the major shocks of the 2013 Wimbledon tournament was the defeat of Angelique Kerber, the No 7 seed who reached the semi-final last year, to Kaia Kanepi in three sets. This defeat took on a sinister

dimension when it was learned that she was left shaken after she received death threats on Facebook. These were believed to emanate from gamblers who lost money when she went down in the second set tie-break from 5-1 up. Several people posted angry messages on Kerber’s Facebook page, the majority by a man called Marijan Batinich Maali, who is based in the US and whose profile picture includes a swastika. The 25-year-old player was not told about it until after her post-match press conference (*Daily Mail of 29/6/2013, p. 109*).

As has been noted in previous issues of this Journal, Gamblers are an increasing problem on the tennis tour, with men and women regularly abused on Facebook or Twitter by people who have lost cash. However, the threats to Kerber were more serious.

MOTOR RACING

Formula One supremo Bernie Ecclestone indicted on bribery charges

In mid-July 2013, it was learned that Formula One magnate Bernie Ecclestone was facing the greatest battle of his career as the Formula One chief executive was formally indicted by German prosecutors on bribery charges. The announcement, after a 2½-year investigation by the Munich state prosecutor, sent shockwaves through the sport, with senior figures privately questioning how long the 82-year-old Ecclestone could continue in his current role.

Talks between F1’s various stakeholders, including Ecclestone,

are expected to take place, with one source describing the situation as “total chaos”. At the time of the indictment, Mr. Ecclestone was still in negotiations with teams and the governing body, the FIA, over the latest Concorde Agreement, the commercial pact which binds Formula One, a delicate state of play which may explain why so few within the sport were prepared to speak publicly yesterday. Daimler AG, Mercedes’ parent company, was one notable exception, reiterating the position it adopted last summer when it admitted its board’s deep unease over the allegations in Germany. It said in a statement:

“Compliance is of central importance for Daimler. We support the clarification of the allegations against the CEO of Formula One. We will now consult with the other partners in the sport of Formula One [Teams, FIA, F1 stakeholders] on the contents of the proceedings and the next steps, before commenting further.” (The Daily Telegraph of 18/7/2013, p. S11).

Formula One’s largest shareholder, the private equity firm CVC Capital Partners, is certain to come under intense pressure from investors and is unlikely to be thrilled by the prospect of a court case in Germany. For a start, any plans to float the sport on the Singapore stock exchange, as Ecclestone wanted to do last year, will surely be put on the back-burner again. CVC sold off a large slice of its equity in the sport last year, which was seen by many as a pre-emptive measure aimed at reducing its exposure should Ecclestone be charged, or eventually convicted of

bribery. Last year it emerged in its flotation prospectus that it already started the search for a new CEO, appointing head-hunters Egon Zehnder to identify possible successors (*Ibid*).

CVC declined to comment, although board member Sir Martin Sorrell, the founder of advertising agency WPP, has been deeply critical of Ecclestone in the past, accusing him of being “totally out of touch with reality”. Ferrari president Luca di Montezemolo has also been extremely vocal on the subject of Ecclestone’s future. Montezemolo said last December that he fully expected Ecclestone to resign as CEO “in the interests of the sport” should he be charged. Montezemolo added that Ecclestone’s era was “slowly approaching” its end. Ferrari declined to comment or to clarify whether their president stood by those remarks. Mr. Ecclestone, who is facing a separate case in London’s High Court from Constantin Medien, a former F1 shareholder who claims his stake was undervalued, has always denied paying German banker Gerhard Gribkowksy bribes to facilitate the sale of the sport to CVC seven years ago. He insists that he was blackmailed by the former chief risk officer of Bayern LB, who threatened to cause problems for him with the British tax authorities. Mr. Gribkowksy was sentenced last year to 8½ years in gaol after confessing to tax evasion, breach of trust and being in receipt of corrupt payments. Mr. Ecclestone, who leaked the news of his indictment himself, said it was “a pity” that it had come to this. “We are defending it properly,” he told the Financial Times. “It will be an

interesting case. It’s a pity it’s happened.” He added it was “inevitable” that the indictment had been served. “If someone wants to sue you, they can do it and you have to defend it.” He told the FT that he had not been offered a way to settle the case financially (*Ibid*).

The Munich state prosecutor’s office revealed in its own statement that the indictment was in fact dated May 10 and had since been translated into English and delivered to Mr. Ecclestone and his lawyers and that he had until mid-August to respond. It added that a decision will then be taken on whether to proceed to trial.

The trial had not yet commenced at the time of writing.

ATHLETICS – WINTER OLYMPICS

Drugs, bribery and the cover-up! Russian athletes “ordered to dope by coaches” and officials “demanded cash to mask positive tests”

Russia’s suitability to host the World Athletics Championships this year, and the Winter Olympics in February 2014, was plunged into doubt by allegations that Russian athletes are doping under instruction from coaches and are assisted by cover-ups at the country’s main anti-doping laboratory. The claims centre on the laboratory, which will handle samples taken at the world athletics showpiece in Moscow from August 10-18 and the 2014 Sochi Games between February 7-23. Any suggestion that anti-doping

procedures are being mishandled will be of serious concern to participants worldwide. An investigation by a leading Sunday newspaper discovered that the head of the key laboratory was arrested and questioned on suspicion of sourcing and selling banned drugs. Director Grigory Rodchenkov, 54, was released without charge or public explanation and is back running the laboratory. However, his sister was convicted and jailed in December 2012 for buying and possessing banned drugs, with the intention of supplying them to athletes. Russian athletes, coaches and support staff have alleged corruption at the lab, including test rigging. They claim to be disenchanted with corruption within their own system and have made concerns known privately to the World Anti-Doping Agency (WADA) (*The Mail on Sunday of 7/7/2013, p. S11*).

The newspaper in question claims to have seen correspondence that “whistleblowers” claim has been sent to WADA, including by one Russian athlete who won a medal at last summer’s London Olympic Games. WADA will not comment on individual cases, but have confirmed they have received information from ‘informants’ about the situation. A spokeswoman said:

“WADA receives information on a regular basis from “informants” globally. Over recent years, this has included individuals with information about Russia and Russian athletes. In every situation, we undertake appropriate enquiries to learn more before passing on any information to those who may

have an appropriate mandate to deal with it. We cannot comment on specific cases as they may be subject to further and current investigation by others” (Ibid)

Sources claim that some of those who have sought to expose alleged corruption have been threatened with retribution from the Russian government if they go public. Russia are desperate to protect their international reputation ahead of the two major events they are hosting in the next seven months. But in an echo of the Soviet era, it is alleged athletes were encouraged to pay for doping assistance which would also guarantee clean tests would pass through the Moscow laboratory. One former coach, Oleg Popov, said he attended an Olympic preparation camp in 2008 with one of his athletes, javelin thrower Lada Chernova. He claims that the officials informed the athlete she had “to prepare with doping”. Everyone had to go, and the official told the athletes what doping substances to take. They also allegedly told Popov that he had to “pay 50,000 roubles for the preparation. If you pay she’ll get prepared”. Mr. Popov has written letters to WADA and Russian sports minister Vitaly Mutko and claims athletes are faced with ‘dead-end conditions’, given little choice but to subscribe to a programme of doping.

Ms. Chernova, no longer coached by Popov, had a positive drug finding and subsequent ban overturned by a court last year. Her lawyer, Alexander Chebotarev, has told *The Mail on Sunday* this was because they proved ‘grave mistakes’ were made at the lab, including a fake signature on

paperwork. Chebotarev represents several Russian sporting clients who allege malpractice or errors by the laboratory, which he claims cannot be trusted to handle the Winter Olympics. He told the newspaper that, from what he saw, he would not “100 per cent trust them because there’s many violations that we see”. This was not just his opinion, he added, it was “clearly stated as fact in the documents” with which he had to deal..

Another athlete, 400metre runner Valentin Krugliakov, had been banned from attending the London Olympics, despite having achieved the qualifying standard. Krugliakov says he was told that this was because he had tested positive for drugs, though he was not given details. After he spent a large part of the past year trying to establish what substance had caused him to fail a test, he was notified last week by RUSADA that he had not, in fact, failed any test last summer. Mr. Krugliakov claims some doping athletes with ‘falsely clean’ tests went to London while others, including him, did not fail tests but were prevented from doing so. Having been falsely told last summer he had failed a test, Krugliakov was also told in March he had failed another test in February. He is currently contesting this.

The full official title of the laboratory, based in Moscow, is The Russian Federal State Unitary Enterprise Anti-Doping Centre. Known as the Anti-Doping Centre Moscow, it is the only WADA-accredited laboratory in Russia and there is no other facility in the country that could handle the World Championships or Olympics.

Some 2,500 samples are to be tested by the laboratory – at a satellite location – during the Sochi games. The testing is carried out under the control of the International Olympic Committee (IOC), who confirmed that testing “will be run by the director and staff from the Moscow laboratory”. The IOC control drug-testing at all Games, in conjunction with WADA-accredited labs. At the London Olympics, they used the laboratory at King’s College to conduct about 6,000 tests. Local anti-doping agencies such as UKAD, in the UK, and RUSADA are not directly involved with Games testing, though they provide logistical support and perform tests away from accredited venues.

A number of British athletes have been critical of Russia’s murky record on doping, with 44 Russian competitors currently serving bans. Lynsey Sharp took silver in the 800m at the European Championships last June in Helsinki, only to be upgraded to gold when Russia’s Yelena Arzhakova, the winner, received a two-year doping ban. Britain’s Olympic long jump champion Greg Rutherford also questioned the wisdom of holding the World Championships in Russia, stating that the country “clearly has a problem”. Details of lab boss Rodchenkov’s arrest and the prosecution of his sister may leave British athletes with even less faith. Documents and court records seen by the newspaper apparently show Rodchenkov was arrested and questioned in 2011 on suspicion of being part of a major operation supplying drugs that are banned for athletes. The case against him,

pursued under a law that could have led to a four to eight-year sentence, is categorised as secret by Moscow court authorities. His sister Marina Rodchenkova, 51, was jailed in December 2012 for buying and possessing banned drugs which she admitted she had intended to supply to athletes (*Ibid*).

Her brother Rodchenkov, a former athlete and respected around the world for his anti-doping work, was deeply traumatised around the time of the police investigation into his activities, according to sources, though it is unclear whether his distress was connected to the case. It is claimed he attempted suicide and spent at least two months in a Russian psychiatric hospital. Yet he is now once again in charge of the laboratory, apparently cleared of wrongdoing, though there is no official confirmation that the investigation into allegations against him has concluded. Rodchenkov has not responded to the multiple written requests or telephone calls for a comment. RUSADA and the laboratory also declined to comment, redirecting calls to the Ministry of Sport, who said they “find it impossible to comment on Mr Grigory Rodchenkov’s private life” and refused to elaborate on any aspect of the case.

The IOC said they had no knowledge of any investigation into Rodchenkov. When the newspaper provided details of the investigation into Rodchenkov, including a case number as logged in Moscow court records, an IOC spokeswoman said: “Thank you for sharing with us this information. We have passed it on

internally to the relevant people.’ Over the course of the newspaper’s investigation, worrying attitudes towards the use of performance enhancing drugs in Russia appear have been uncovered. An official for a major Russian sporting federation, a former international competitor, spoke to us under condition of anonymity and admitted taking drugs throughout his career. He even spoke of his regret that

“Russia are behind the rest of the world in the development of the substances that could affect the results. Russians are still taking anabolics that were developed in the GDR in the 1970s. Every sportsman takes doping at the early stages as they are not tested until they become grown-ups. Believe me, you won’t hear about a single doping scandal involving Russians during the [Sochi] Olympics. Everything will be done so that Russia will definitely get the most medals.”(Ibid)

However, an IOC spokesman insisted that anti-doping measures in Russia had “improved significantly over the last five years” with an effective, efficient and new [RUSADA] laboratory and equipment in Moscow. He added that there would be at least 20 international experts working in laboratories throughout the time of the Games to ensure the very best methods and practices, the best expertise, and to enable the lab to process the uniquely large number of samples. In addition, there would be three lab experts in the IOC Games Group whose specific task will be to oversee and guarantee the integrity of all processes of analyses and reporting to the IOC (*Ibid*).

SPORT AND LAW

JOURNAL REPORTS

(2013) SLJR4

Arbitral proceedings – Cricket – Disciplinary procedures – Witness summonses

ENGLAND AND WALES CRICKET BOARD LTD v KANERIA

Queen's Bench Division (Commercial Court), Cooke,
J.21 March 2013 [2013] EWHC 1074 (Comm).

Facts:

On an application for a witness summons under the Arbitration Act 1996 s.43, the court was required to determine whether proceedings before the appeal panel of the applicant cricket board (E) were arbitration proceedings within the meaning of the Act. The respondent professional cricketer (K) was involved in appeal proceedings against a decision of E's Cricket Disciplinary Commission (CDC). K had previously signed an undertaking confirming that he agreed to abide by E's rules and that he had read E's disciplinary regulations. The regulations referred to the CDC and the appeals procedure. K argued that the governing authority for determining whether proceedings were arbitral was *Stretford v Football Association Ltd* [2007] EWCA Civ 238, [2007] 2 All E.R. (Comm) 1, rather than the obiter comments in *Walkinshaw v Diniz* [2000] 2 All E.R. (Comm) 237; Stretford underlined the need for the parties to waive their rights to a hearing before the courts and their rights to a public hearing and a fair trial under the European Convention on Human Rights 1950 art.6, and there was no evidence that K had waived his rights. K further argued that the disciplinary nature of the proceedings indicated that they were not arbitral, and that characterising the proceedings as arbitral led to a reduction in standards of fairness.

Held (Application granted)

(1) E's appeal procedures bore all the hallmarks of arbitration set out in *Walkinshaw*. Although the *Walkinshaw* criteria were obiter, they outlined the kind of factors which were plainly material to whether

proceedings were truly arbitral in nature. There would rarely be doubt about that, but where doubts arose, those were the indicia of arbitration, *Walkinshaw* considered (see paras 31-41, 47 of judgment). Stretford had not concerned doubt about whether a particular form of words or procedure constituted arbitration or an arbitration agreement. The issue in that case had related to rules which unarguably contained an agreement to arbitrate. *Stretford* had concluded that there had been a valid incorporation of the clause which referred expressly to final resolution by arbitration, but that was of no assistance in the instant case and was no basis for saying that there had to be an express reference either to arbitration or to finality, *Stretford* considered (para.49). In his undertaking, K had specifically agreed to abide by E's rules, in particular the CDC regulations, which he acknowledged he had read. He had therefore been aware of the CDC and the appeal provisions and agreed to them. There was no ouster of the court's jurisdiction: it had jurisdiction in relation to failures in the proceedings either under the arbitration, if there was an arbitration, or as a matter of common law, if it was a matter of private contractual provision only. When agreeing to the procedures K must also be taken to have agreed to them being held in private; that would amount to a waiver of that element of his art.6 rights. Further, if the proceedings had been internal only, they would also have been in private, simply because they were internal to the body concerned. There had therefore been unequivocal agreement to the process and to its being private (paras 55-57). The fact that the proceedings were disciplinary and had a charge made by a "prosecutor" against an "accused" did not mean that they could not readily be the subject of arbitration. Many sporting bodies adopted arbitration processes for disciplinary offences and there was no reason in principle against arbitration in such circumstances. Nor did the characterisation of the appeal proceedings as arbitral result in any reduction in standards of fairness or in recourse to law. Accordingly, the appeal panel was an arbitral body and the proceedings were arbitration proceedings within the *Walkinshaw* criteria (paras 58-60). (2) As the witness in question was a central

witness, whose presence was desirable for justice to be done, the witness summons would be issued (para.60).

Commentary

This case has given guidance on what issues are relevant and material when considering whether proceedings are truly arbitral in nature. In most cases there is no doubt about that, but where doubts arise it was held that the following are the indicia of arbitration:

- it is a characteristic of arbitration that the parties should have a proper opportunity of presenting their case;
- it is a fundamental requirement of an arbitration that the arbitrators do not receive unilateral communications from the parties and that they disclose all communications with one party to the other party;
- the hallmarks of an arbitral process are the existence of proper and proportionate procedures in place for the provision and receipt of evidence;
- the agreement pursuant to which the process is to be carried out (the procedural agreement) must contemplate that the tribunal that carries out the process will make a decision that is binding on the parties to the procedural agreement;
- the procedural agreement must contemplate that the process will be carried on by those persons whose substantive rights are determined by the tribunal;
- the jurisdiction of the tribunal to carry out the process and to decide the rights of the parties must derive either from the consent of the parties, from an order of the court or from statute, the terms of which make it clear that the process is to be an arbitration;
- the tribunal must be chosen either by the parties or by a method to which they have consented;

- the procedural agreement must contemplate that the tribunal will determine the rights of the parties in an impartial manner, with the tribunal owing an equal obligation of fairness to both sides;
- the agreement of the parties to refer their disputes to the decision of the tribunal must be intended to be enforceable in law; and
- the procedural agreement must contemplate a process whereby the tribunal will make a decision upon a dispute that has already been formulated at the time when the tribunal is appointed.

It was decided that all of these factors were present in the Kaneria case. In particular, it was held that the Cricket Disciplinary Commission’s regulations – to which Kaneria had agreed to be bound – provide a number of safeguards to ensure that appropriate procedures are followed to give rise to a fair and impartial determination. It was also found to be clear that the decision of the appeal panel was to be determinative of the rights of the parties without any appeal under the regulations, and that it was agreed by the parties that the appeal proceedings (which were governed by English law) were intended to give rise to an enforceable result.

The judge specifically rejected Kaneria’s contention that the Cricket Disciplinary Commission’s appeal panel was too closely connected with the ECB to be seen as a truly independent and impartial arbitral body. Having considered the ECB’s articles of association, the judge held that the Cricket Disciplinary Commission is clearly intended to be an arm’s-length body, distinct from the ECB and its other committees. This was evidenced in part by the fact that, in the case of all of the various ECB committees other than the Cricket Disciplinary Commission, it is required that a director of the ECB be chairman, whereas the chairman of the Cricket Disciplinary Commission – who is responsible for appointing appeal panels – is in fact an independent lawyer and a Queen’s Counsel.

SPORT AND LAW
JOURNAL REPORTS

In clarifying the circumstances where a decision-making process constitutes arbitration proceedings under English law, the Kaneria case provides useful guidance for a range of cases – not solely in the context of sports-related disciplinary procedures. In particular, Kaneria will be instructive in the commercial setting where there are doubts about whether parties to a contract have agreed to refer certain disputes to arbitration or expert determination. More generally, the confirmation that it is not necessary for an arbitration agreement to refer expressly to the concept of “arbitration” or to the finality of the decision-making process in order to be valid under English law is to be welcomed, and reiterates the pro-arbitration stance of the English courts.

Reporter: Ben Hornan, Hogan Lovells

(2013) SLJR5

Cheating at gambling – Conspiracy –
Corruption – Cricket – Expert witnesses
– Jury directions – Summing up

R. v ASIF (MOHAMMAD)

**Court of Appeal (Criminal Division); Lord Judge,
L.C.J.; Openshaw, J.; Griffith Williams, J.; 2 June
2013, [2013] EWCA Crim 1153**

Fact

The applicant international cricket player (M) applied for permission to appeal against his convictions for conspiracy to accept corrupt payments and conspiracy to cheat. M was a member of the Pakistani national cricket team. An agent (Z) worked on behalf of M and other team members. M had been charged after a journalist launched an investigation into an allegation that Z was acting as a middle man between Pakistan cricket players and bookmakers. At trial, the central issue for the jury was whether M had been knowingly concerned in “spot fixing” and an expert (S) gave evidence for the prosecution. M submitted that (1) the judge had erred in directing the jury that they had to be sure that he was guilty without making reference to “reasonable doubt”; (2) the prosecution had failed to establish the ingredients of the offence of conspiracy to cheat; (3) S should not

have been called at trial as he was not an expert.

Held (Application refused)

(1) M’s submission overlooked the current judicial practice of providing directions in simple terms. It must have been clear in the jury’s mind that they could only convict him if they were sure. (2) No misdirection as to the law of conspiracy could be identified in the summing up. (3) The submission that S was not an expert should have been investigated at trial, but no challenge to S’s status had been made in the court below. There were no arguable grounds for attacking the safety of M’s convictions.

Commentary

This case involved a very ambitious appeal against the applicant’s conviction in 2011. None of the three grounds were found to have merit. This may represent the last formal hearing of a number that have taken place in terms of the criminal convictions and sports disciplinary punishments that arose out of the match fixing by three Pakistan international cricketers in 2012, one of which was Asif.

Reporter (SG)

(2013) SLJR6

Breach of contract – Cars – Confidential information – Designs – Findings of fact – Measure of damages – Motor sports – Repudiation

FORCE INDIA FORMULA ONE TEAM LTD v 1 MALAYSIA RACING TEAM SDN BHD (also known as: FORCE INDIA FORMULA ONE TEAM LTD v AEROLAB SRL)

Court of Appeal (Civil Division); Lewison, L.J.; Briggs, L.J.; Sir Stanley Burnton; 03 July 2013; [2013] EWCA Civ 780; [2013] R.P.C. 36;

Facts

The appellant (F) appealed against a decision (*Force India Formula One Team Ltd v 1 Malaysia Racing Team Sdn Bhd* [2012] EWHC 616 (Ch), [2012] R.P.C. 29) that it was in breach of contract and owed the respondent aerodynamic

design consultants (X) unpaid fees due under the contract. In 2008, F, who designed and built Formula 1 cars, entered into a contract with X to provide wind tunnel aerodynamic testing on its cars. The contract included terms that X would deal with F in the utmost good faith, that intellectual property created or developed by X became F's sole property, and that X and its employees were under a duty of confidentiality and an obligation of non-disclosure. X experienced difficulties in obtaining payment for its work from F. On July 31, 2009, F informed X that it was unable to pay and would discuss the matter after a two-week shutdown. On the first day of the shutdown, August 3, X disabled F's connection to X's servers. F discovered the severance on its return to work after the shutdown on August 17 and was informed on August 19 that X had stopped work because of F's failure to pay. X then began work for another Formula 1 team (Lotus). F alleged that there was a plan to copy the design of its car using its CAD files and brought a claim for breach of contract, misuse of confidential information and copyright infringement. X made a cross-claim in respect of the unpaid debt. The judge found that X was entitled to work for Lotus because it had accepted F's repudiatory breach of the contract on July 31, 2009, but that in some respects X was in breach of contract because some of its employees had copied confidential material belonging to F. He found that the CAD files were in the nature of trade secrets. He assessed damages at £25,000 which was to be set off against the £846,230 F owed X in fees due under the contract. F submitted that the judge had been wrong on some of his findings, including the date of repudiatory breach and his selection of the measure of compensation for the misuse of confidential information. Appeal dismissed. (1) The judge was wrong to find that the disabling of the server connection on August 3 had retrospective effect so that the contract was terminated by X with effect from July 31. For acceptance of a repudiation, there had to be a clear, unequivocal communication to the party in default, *Vitol SA v Norelf Ltd (The Santa Clara)* [1996] A.C. 800 followed. A demand for future instalments of periodical payments due under a contract was not consistent with an unequivocal communication that the contract was at an end. Neither was disabling the server connection during a shutdown. The communication to F on August 19 that X had stopped work for F and would be working for someone else would reasonably have been understood as treating

the contract as being at an end. It followed that there was a breach of the exclusivity clause by X until August 19 (see paras 35-45 of judgment). (2) The judge had been wrong to find that if the CAD files contained a precise dimension that was memorable then that dimension could be regarded as part of X's employees' skill, knowledge and experience. An identified piece of confidential information did not cease to be confidential simply because it was memorable (paras 67-69). (3) The judge was clear in his finding that X had not copied or taken the aerodynamic system of F's car which was a finding he was entitled to make. It was not possible for the Court of Appeal to interfere with his primary findings of fact on the basis of a highly selective exposure to only some of the materials that were before the judge (paras 88-89, 94). (4) There was no error in his approach to quantum which he assessed by reference to the benefit that X derived from misuse of the confidential information by saving time in producing a model for Lotus that could be subjected to wind tunnel testing. The approach used by the judge of assessing the cost of engaging a consultant to do the work saved was an appropriate measure of compensation for misuse of confidential information. Any disagreements with the judge's reasoning did not affect the overall outcome of the case (paras 3, 100-108).

Commentary

The judgment of Lewison LJ contains a useful summary of the authorities on user principle damages and the level of damages for breach of confidence. The Court of Appeal has approved the approach of the High Court in the award of €25,000 for damages and dismissed Force India's claim for a higher level of damages. For further analysis of case see earlier pages 12-14. **■** **BASL**

Reporter (SG)

BOOK REVIEW



Mark James (2013)
Sports Law,
Basingstoke:

Palgrave Macmillan
 2013. 2nd edition,
 (376 pp)

The recent publication of the second edition of this popular text emphasises the rapid development of sports law since Mark James'

earlier edition of 2010.

It aims not only to update this area of law, but also to introduce readers to the challenges and controversies which face sports participants generally and in particular with regard to the settlement of sporting disputes.

This text has a similar structure to that of the earlier edition, in that it is divided into four parts with each one consisting of separate but related chapters. All of these chapters conclude with a summary of their content, together with a list of suggested reading. In addition, a 'hot topic' is provided which allows the reader to reflect on selected recent developments and refinements in sports law.

Regarding the contents of this new edition, the coverage in Part One of the Court of Arbitration for Sport is worthy of note. This Court is becoming increasingly important in the ways in which sporting disputes are resolved and interpreted and the revision of this subject and its attendant case law provides compelling reading. The remainder of this Part concerns the origins and sources of sports law and includes an appraisal of the procedures and decision making of governing bodies and how challenges are made to such decisions.

Part Two concerns aspects of civil and criminal liability which arise within sports participation. Importantly, developments relating to vicarious liability are given deserved prominence in Chapter Four; especially with regard to the 'hot topic' which appears towards the end of this section. Furthermore, the recent racial abuse issues involving prominent premier league footballers is given detailed coverage. Corruption in sport in relation to match fixing and sport fixing in gambling is widely covered and is the concern of the 'hot topic' in chapter six. This Part concludes with an innovative discussion on the legal problems associated with boxing and also martial arts.

The matters dealt with in Part Three centre around the problems encountered by those who control sporting venues and events, with particular emphasis on spectator safety. In Chapter Nine the problems associated with the Hillsborough disaster of 1989 re-emerge with the findings of the Independent Panel which reported in 2012. This episode is extensively commented upon in the 'hot topic' at the end of this chapter. The major statute law and case law is well described through considerable emphasis on the Football Spectators Act 1989. This controversial Act, which regulates the behaviour of football fans, provides some of the remedies available to those who fall victim to crowd disorder. Here the role and effects of Football Banning Orders is well documented and is extremely instructive.

The Fourth Part of this new edition concerns the important subject of the commercialisation of sport. Initially coverage relates to contractually based relationships in sport and then moves on to deal with the impact of EU Law on these regulatory issues. Mark James is to be commended for the skilful way he interweaves the effects of the TFEU with the existing rules of player transfers which have been used since the decision of Bosman [1995] and Meca-Medina [2006].

The major statute law and case law is well described through considerable emphasis on the Football Spectators Act 1989. This controversial Act, which regulates the behaviour of football fans, provides some of the remedies available to those who fall victim to crowd disorder.

The commercial exploitation of sport through intellectual property and merchandising rights provides the subject matter for Chapter Thirteen. His commentary upon the Murphy case and broadcasting rights is particularly useful. Part Four concludes with a re-appraisal of sporting mega-events together with the impact and legacy of the 2012 Olympic Games which are of paramount importance.

It is suggested that Mark James has met his aims; stated at the start of this review. This text provides both students and practitioners with appropriate reading, not only to update existing knowledge, but also various commentaries on recent developments and refinements relevant to the law relating to sport. The subject matter is well referenced and structured in order to enhance the reading experience. In the context of this review it is expected that this edition will join the ranks of essential texts for acquisition by those who closely follow sports law. **BLASL**

David Dovey LL.M
Associate Lecturer in Sports Law
Buckinghamshire New University

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