CONTENTS

EDITORIAL
2 Simon Gardiner

OPINION AND PRACTICE
7 BASL – 21 Years
   Maurice Watkins
9 Sports Law: Its History and Growth and the Development of Key Sources
   Simon Boyes
16 The Journal Interview: The Hon. Michael Beloff QC
   Walter Cairns

ANALYSIS
27 Dangerous sports and obvious risks – Anyone for cricket?
   Jim Corkery
34 The evolving legal issues on Rugby Neuro-trauma?
   Tim Meakin

REVIEWS AND REPORTS
44 Corruption Watch
   Walter Cairns
72 Sport and Law Journal Reports
78 Book review
   Kevin Carpenter
This issue has a specific focus on the state of the study of Sports Law in the UK. The Opinion and Practice section provides commentary on the origins and background of the British Association for Sports Law since its creation in 1992. Over the last 21 years, the concomitant developments of the discipline of Sports Law have been immense. First, Maurice Watkins’ ‘BASL – 21 Years’ charts the background to the creation of the association in the early 1990s. Second, Simon Boyes’ ‘Sports Law: Its History and Growth and the Development of Key Sources’, provides an overview of the literature that has grown significantly in recent years. Lastly, Walter Cairn’s interview is with the lawyer Michael Beloff QC, who provides an insight into his work and his thinking on the state of contemporary Sports Law.

The Analysis section has two articles focusing on liability for sports participation injuries. First, Jim Corkery’s ‘Dangerous sports and obvious risks – Anyone for cricket?’ provides a comparative view of relevant liability from an Australian perspective evaluating potential civil liability in cricket. Second, Tim Meakin’s ‘The Evolving Legal Issues on Rugby Neuro-Trauma’ is timely in the context of increasing awareness of health risks around brain injury particularly in team sport and the legal settlements recently concluded between the NFL and ex-players and their families amounting to over $750 million. Awards are set to be handed out based on three tiers of settlement classes tied to how a player has been diagnosed; those who have had concussion-related symptoms, but have not been diagnosed with more serious neurological disease; players who have been diagnosed with dementia, Alzheimer’s Disease, Parkinson’s Disease or ALS; and players who have died and were found to have had chronic traumatic encephalopathy (CTE), a degenerative brain disease caused by repeated head trauma.

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 of the third edition of the seminal book in the UK for practicing sports lawyers, Lewis & Taylors, Sport: Law and Practice.

Adam Lewis and Jonathan Taylor’s book, more than anything in the discipline exemplifies the growth of the subject of Sports Law in Britain as an important area of academic inquiry. The weighty book reflects the breadth and spectrum of the discipline. This growth over the last twenty years or so can be measured in a number of ways. Significant numbers of lawyers spend a considerable amount of their professional time on sports-related legal issues, with some firms having dedicated sports law practices. There are now a sizeable number of undergraduate modules in sports law on UK law degrees and it has become an important part of the curriculum in the plethora of sports studies courses that have developed in Britain in recent years. A number of postgraduate courses have also developed in UK Universities.

The creation of the British Association for Sport and the Law in 1992 was a key development in this process. The work of Ray Farrell, Edward Grayson and Maurice Watkins amongst others provided the momentum to bring to reality the idea of a professional association in this discipline. Subsequently the work of individuals who have held positions of BASL President and Chairman including Charles Woodhouse, Nick Bitel, Mel Goldberg, Murray Rosen and Adrian Barr-Smith together with the many Board members have provided the on-going activities of BASL, including an annual conference, annual Grayson Lecture and Debate, regional mini-
conferences, periodic seminars on topical issues and this Journal. The link between BASL and its academic partners, at its inception with Manchester Metropolitan University and Ray Farrell, subsequently with Kings College, London and Jonathan Taylor and presently, with De Montfort University and Andy Gray, has been a crucial mechanism to connect Sports Law academe with Sports Law practice.

In addition, the Sports Law literature has expanded considerably over the last twenty or so years. Books such as Craig Moore’s *Sports Law Litigation*, David Griffith-Jones’ *The Law and Business of Sport*, Richard Verow et al’s *Sport* (two editions), *Business and the Law*, and importantly Adam Lewis and Jonathan Taylor’s *Sport: Law and Practice*, now in its third edition, are focused primarily at practitioners. Steve Greenfield and Guy Osborne’s edited collection, *Law and Sport in Contemporary Society*, William Stewart’s edited collection, *Sports Law: The Scots Perspective* and recent books with Mark James’s *Sports Law* and Jack Anderson’s *Modern Sports Law: a Textbook*, are focused primarily on a wider academic examination; and of course the late-Erward Grayson’s *Sport and the Law*, provides his uniquely detailed and dense account of the development of sports law.

Lastly, my co-authored book with a number of colleagues (in the fourth edition, with John O’Leary, Roger Welch, Simon Boyes and Urvasi Naidoo), *Sports Law*, provides an analysis of the legal regulation of sport clearly within the socio-cultural and political context of contemporary sport. A primary focus has been to highlight the contingencies as to how certain areas of law are developing in sport. The areas of uncertainty have been highlighted in the hope that this will lead to further research and inquiry in these areas. Sports law is an area where different types of legal research methodology, ranging from traditional library based methods to socio-legal empirical approaches, are possible. The book attempts to explain quite technical and formal bodies of law and also to put the development of sports law into a socio-economic context, in order to help understand the reasons for the increasing role of the law in regulating sport. The term regulation is used throughout the book, typifying the reality that law plays a role along side other normative rules within a regulatory framework of sport.

I think it is apt that three original thinkers need to be highlighted in the history of the discipline of UK Sports Law. Edward Grayson’s contribution to Sports Law has been identified in a past special issue of the Journal (*BASL Volume 19, Issue 2/3*). His significance is primarily in championing the role of the law in sport and justifying its intervention on strong ethical grounds. The second original thinker in the discipline in the UK has been Michael Beloff and his contribution in the two editions of Beloff et al’s *Sports Law*. Michael has been one of the most influential proponents in the area of sports law, combining the role of advocate in many significant cases, adjudicatory role in CAS and sporting disciplinary tribunals and significant scholar in the discipline. This almost unique position has enabled him to provide thoughtful and reflective insight and analysis. The third original thinker and the creator of the earliest Sports Law components at degree level at the University of Warwick, is Ken Foster. Ken’s contribution through a series of academic journals articles has been through highlighting the concept of juridification, with the intervention of law into a new ‘social field’. He identified that a real danger is that what were intrinsically social relationships between individuals resolved by application of the sporting rules, become imbued with legal values and are understood as constituting legal relationships – thus social norms become legal norms. The threat of juridification is that if a dispute then befalls the parties, a legal remedy is seen as the primary remedy and the nature and perception of the dispute and the relational connection between the parties changes. Additionally, Ken has provided conceptual rigour and clarity with his work on theoretical models of Sports Law and a systemized approach to explaining crucial developments such as the now primary role of the Court


All of the academics and practitioners listed above and many others have published widely in the aforementioned journals and importantly in many other high-status legal, sports management and sports studies journals. The result is an amalgam of exceptional scholarship, which has intellectual rigour reflecting the many challenging issues with which to engage. For sport, as for society in general, legal regulation and litigation are a reality of modern life. The law has expertise and values that can contribute to the running and organisation of modern sport. However, there is still debate over the legitimacy and extent to which the law should be involved with sport. What role should the law have in the ‘regulatory space’ surrounding sport? The recent debate concerning the future development and application of European Union policy concerning sport is an example of where the intervention of the law is contested: should sport have a special exemption or should it be subject to the general regulation of European law?

To fully understand the issues and complexities of sports law, it is vital that a thorough theoretical examination informs practice and vice versa. The two approaches are intertwined, but it is crucial that a rigorous theoretical underpinning of sports law practice is made explicit. Sport has immense cultural significance. Its future regulation is increasingly subject to external legal norms. If lawyers are to play an increasingly influential role as the custodians of sport, they need to take on this responsibility in an informed and dependable way.

Sports Law is a fast moving legal discipline and clearly one that interacts and is constitutive of the normative rule milieu within and around sport. The interaction between the body of academic literature in the UK exemplifies the importance of theoretical analysis to provide insight and inform practice concerning the future regulatory issues around sport.

So what of the future? The likelihood is that the law will continue to play an increasing role in sport. That is the reality of the modern trend of legal appropriation of new social fields. Sport has shown it is able to develop mechanisms of resistance. The emergence of self-regulatory mechanisms as exemplified with the growing influence of the Court of Arbitration for Sport in resolving a range of sports disputes and additionally the World Anti Doping Agency.

The British Association for Sports Law has been an indispensable part of supporting the academic research in sports law particular through the University partners it has had, currently with De Montfort University Law School. What is crucial to the dynamic maturation of the discipline of Sports Law is that new organizations have emerged, notably the Law in Sport organisation who have seized the opportunities of digital media and given a voice to a broad range of sports law commentators from both academe and practice.

However, I would argue that there still remains something of a gulf between academics, sports administrators and sports lawyers and there needs to be continued active moves to highlight the importance of theoretical analysis to provide insight and inform practice concerning the future regulatory issues around sport. Both BASL, sports practitioners and academics need to support the new
generation of sports lawyers and administrators to be able to engage with the challenges ahead. An observation - recognition of issues of diversity and discrimination in this discipline are apposite. The individuals listed above are almost exclusively male and ethnically white. This is in the context of the diverse composition of participants in both professional and recreational sport, although there are rightly concerns about structural obstructions on grounds of ethnicity and gender to career progression in sports management and administration.

The Sports Law research agenda has many challenges and needs to continue to develop by broadening and intensifying. Breadth will be facilitated by increasingly internationalized research with greater comparative inquiry. Additionally, more interdisciplinary work will help identify that the role of law in sport is better understood with a multitude of disciplinary perspectives. This has been manifest in Europe where EU law has driven much of the debate around regulation of sport and impacted upon national legal regimes. Intensification will come from more empirical work particularly of a qualitative nature to add weight and inform theory.

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.

Professor Simon Gardiner
s.gardiner@leedsbeckett.ac.uk
BASL – 21 Years

BY MAURICE WATKINS CBE SENIOR PARTNER, BRABNERS CHAFFE STREET SOLICITORS

It was Saturday 6th February 1993 (significantly the 35th anniversary of the Munich tragedy) that I found myself entertaining for lunch at a Manchester United game three gentlemen I had never clapped eyes on before.

They were Barrister Edward Grayson and two academics from the Department of Law at Manchester Metropolitan University – Peter Rayburn and Raymond Farrell. Thinking about it I am at a loss as to how this meeting was arranged in the first place but on reflection it was probably as a result of a telephone call from Edward whose reputation went before him in sport and the law.

These three gentlemen raised what, at the time, seemed to me the rather ambitious idea that we should set up an association for sport and the law based at the Manchester Metropolitan University. Well, the three were as good as their word and on 12th May 1993, in MUFC’s Stretford Suite at Old Trafford, the Association was formally launched.

In spite of clashing with the European Cup Winners’ Cup Final at Wembley that evening and the AGM of the Central Council of Physical Recreation, over 100 invitees, representing not only the law and other professions but also a large number of different sports, helped to make the event a memorable occasion.

The only disappointment at the opening reception was the failure of MUFC to produce the recently-won Premier League Trophy. This was due to the considerable foresight of the Club’s Birmingham Supporters’ Club who had booked the trophy at the beginning of the season for their AGM on the same day, 12th May.

One of the first members of the Association was Rick Parry, the first Chief Executive of the Premier League, which very kindly sponsored the initial Newsletter of the Association. Rick also wrote the opening article in the Newsletter and confirmed the League’s pleasure in helping the Association to take, as he put it, a small but tangible step forwards. Well that step certainly turned into a gigantic stride.

I believe it is also worth recording Rick’s further comment in the Newsletter where he said:

“It is wholly unrealistic to imagine that sport can exist in a vacuum somehow isolated from the law. The promotion of a better understanding between those involved in sports and legal practitioners is surely a laudable, and wholly worthwhile, objective.”

I think we can safely say that thanks to the efforts of our many members over the years, the Association continues to promote that objective.

It was Rick and the Premier league who collaborated with the Association in the organisation of the FA Premier League Seminar on the Bosman Case which was held at Middle Temple Hall on 8th January 1996. This was a hugely successful event widely reported and televised and attended by many representatives of professional clubs and footballing bodies, as well as Association Members. The main speakers were Rick himself, barristers Rhodri Thompson, Robert Reid QC and Edward, together with Sir John Wood the Chairman of the Football League Appeals Committee who sadly died just a few weeks ago.
Above: This photograph was taken at the reception, held at Old Trafford on May 12th when the Association was formally launched. It features the four founding members together with Mrs Sandra Burslem, the Deputy Vice-Chancellor of the Manchester Metropolitan University. From left to right: Edward Grayson, President; Mrs Burslem, Maurice Watkins, Peter Rayburn and Raymond Farrell.

Left: At the Association’s launch, Edward Grayson presented to Maurice Watkins, on behalf of Manchester United, a commemorative plaque to Harold Hardman, that contains a photograph of the 1908 British Olympic Football Team, winners of the gold medal.

Harold Hardman, a solicitor and chairman of Manchester United form 1951-1965 was a member of the victorious team. He also won an F.A. Cup winners medal with Everton F.C. The plaque now hangs in the Manchester United Football Club Museum. Harold Hardman’s portrait is featured in the background.
Sports Law: Its History and Growth and the Development of Key Sources

Abstract: In this article Simon Boyes traces the development of the discipline of sports law as represented and effected by the literature in the field. The article identifies different aspects of sports law and the various levels and locations within which it operates and identifies the leading academic and practitioner works associated with each. The article also considers the major developments in the field and the way in which they have shaped the sports law literature.

Keywords: sports law; sport and the law; national; regional; international; European Union

The Development of Sports Law
Sports law is a relatively young sub-discipline in English law, though it has a much longer and stronger history in the activities of academics and attorneys in the United States. Indeed, in its formative years, it was often questioned whether such a discipline could genuinely be held to exist as a distinct and delineated subject area, or whether this could simply be regarded as being an instance of applied law:

"No subject exists which jurisprudentially can be called sports law. As a soundbite headline, shorthand description, it has no juridical foundation; for common law and equity creates no concept of law exclusively relating to sport. Each area of law applicable to sport does not differ from how it is found in any other social or jurisprudential category . . . When sport hits the legal and political buffers, conventional and ordinary principles affecting the nature of the appropriate sporting issue concerned including parliamentary legislation are triggered into action."

The debate has often centred on whether the appropriate term is "sport and the law" or "sports law". The former connotes a simple confluence of the two areas – law that happens to apply to sporting situations; whereas the latter conceives of a more complex relationship between the two in which the sporting context has a material impact upon the applicability and application of the law.

Despite disputes about nomenclature, the area has gained increasing traction amongst both academics and practitioners as an area of genuine interest and substance. It is now well established as an area of practice and there are a growing number of dedicated departments with law firms and even specialist firms operating in the field. Similarly there has been significant growth in the provision of opportunities to study sports law as a part of undergraduate law degree programmes and a number of postgraduate sports law Masters programmes are now well embedded at United Kingdom universities.

Classifications of Sports Law
Sports law has been described as being constituted of four types, each of which describe the level and ‘location’ of the legal activity. At its lowest level this can be described as being “domestic” in nature; relating to the internal rules, regulations and dispute resolution processes of national sports governing bodies. Though not law as such, these organisations undoubtedly fulfil similar functions and utilise law-like practices, as well as utilising existing legal frameworks, principally contract, to underpin and enforce their regulatory regimes. At the next level up exists “national” sports law, concerning the interaction between sporting issues and national systems of law. Beyond that are systems of “regional” sports law – represented primarily by the interaction of sport with the European Union as the
most significant and proactive regional agent in the sports law system. At the highest level comes the “international” aspect, derived from sport’s own regulatory and dispute resolution that operate at a supra-national level.

Early Sources and Evolution – the “national” level
At the domestic and national level in English law, the genesis of the area can largely be attributed to one man, the author of the quotation set out at the start of this article, the late Edward Grayson, who is widely regarded as being the father of sports law or, as he would have it, “sport and the law” in English law. His textbook, first released under that title in 1988, for many years provided the sole substantial contribution in this field specific to English law.

Grayson’s book commences with a chapter that clearly sets his perspective as being rooted in the early twentieth century, in particular against the backdrop of the Corinthian spirit. In this respect, Grayson’s work forms an important contribution to the literature in this field as it constitutes a compelling historical narrative of the development of the discipline up until its emergence in the mainstream in the 1990s. However, the text can be challenging to read, best described as charmingly idiosyncratic, and often so packed with detail that the central theme of the work can become obscured. Grayson’s work is also typical of the “national” typology of sports law scholarship, which is characteristic of much of the literature of this early period.

It would be remiss to omit mention of the foremost academic in the formative stages of the development of sports law – Ken Foster – Foster was at the forefront of the development of the specialism as a genuine academic discipline, as well as the first to develop and teach a dedicated sports law module to law undergraduates. Foster’s early work in the field can be seen as providing an important critical, theoretical underpinning for those who have followed. Indeed, without Foster’s early analyses, sports law as an academic discipline would not have been able to develop as fully and quickly as it has.

The discipline gained momentum during the mid to late 1990s, in particular through the establishment of academic centres at Kings’ College, University of London and at what is now Anglia Ruskin University. The latter spawned one of the early specialist sports law academic journals, the Sports Law Bulletin. This publication, which has now been discontinued, was important at a period in time when the internet was in a period of relative infancy and information related to the area was not always readily available. The journal pulled together, in a monthly, newsletter-style, short articles and commentaries along with case notes and reviews of contemporary interest and which could not always be easily independently located. The Anglia Ruskin International Sports Law Centre also spawned the development of the textbook – Sports Law – which replaced Grayson’s Sport and the Law as the principal title in the field and which moved towards an appreciation of the various levels of sports law beyond the “national”.

A parallel development was the inception of the British Association for Sport and Law (BASL), an organisation drawing together and representing the interests of sports lawyers from both practice and academia. BASL continues to enjoy the status of the pre-eminent sports law organisation and its journal, the Sport and the Law Journal, which was also one of the first to emerge, retains an important part of the suite of sports law journals. Similar to the Sports Law Bulletin in terms of its coverage, the Sport and the Law Journal carries articles of greater length in addition to commentary and analysis on key updates in the field. Though submissions to the journal were not peer-reviewed in the early years of its publication, latterly a move has been made towards full peer-review of articles.

During the early period of development of the discipline these two journals were at the forefront of the provision of information on key developments in the field, because of the relative lack of sources of information.

The Emergence of a Specific Sub-Discipline
It was very much a characteristic of this period of development that though academics were writing and publishing on sports law issues, their work tended to be published through mainstream legal journals, rather than creating a cohesive body of sports law work. However, it is now the case that sports law has become embedded as a
legal sub-discipline, and this much is evidenced by the emergence of a number of texts and journals focussed upon it. Foremost amongst these is the Entertainment and Sports Law Journal – published as a free online journal through the University of Warwick's Electronic Law Journals Project – which offers longer articles, shorter interventions – based around developments in case law or regulation – and book reviews. The journal began life in 2002 as a hard-copy based journal entitled simply Entertainment Law, however upon its move to electronic form in 2005 changed its title to include sport. This change bears witness to the trend in the formative years of sports law as being bound up with a broader consideration of the law as it relates to culture, media and entertainment; but emerging from this over a relatively short period of time to be treated as a distinct area of law. The content of the journal is undoubtedly dominated by sport – particularly in respect of its shorter interventions, though retaining strong elements of the entertainment aspect throughout.

Sports law contributions to the Entertainment and Sports Law Journal are characterised by their contemporary nature, focussing principally on recent developments in the law and regulation of sport. Equally, there is a strong preponderance of contributions that, though concerned primarily with sport, overlap with the journal's other concerns so, for example, focussing on the legal regulation of sports media rights, ticketing at major events, managing event safety and issues associated with football hooliganism.

This is also reflected in the texts now available written from the perspective of English law. Gardiner et al Sports Law has moved to a fourth edition and has evolved substantially to reflect contemporary approaches to sports law.7 The identically titled work authored by Beloff, Kerr and Demeteriou, first published in 1999 and shortly to move to a second edition and likely to reflect the multifaceted nature of the discipline and the often unnoticed overlap between “sports law” and “sport and the law” – often dealing with legal issues that relate to sport but are not necessarily defined or determined because of that context.7 Mark James' Sports Law is similar, but delivered in a very punchy fashion – vying with Gardiner for to be the textbook of choice for students of sports law. Jack Anderson's Modern Sports Law carries an apt title as being a more narrative exposition of a narrower set of themes that can genuinely be described as “sports law” proper and can claim to undertake the most analytical approach to the topic.8 For a comprehensive view of both “sports law” and “sport and the law” aspects, readers should refer to Lewis and Taylor's edited reference work Sport: Law and Practice.9 While it is always unwise to proclaim anything as being comprehensive, this work at least comes close and, while lacking the critical rigour of the other works is an excellent source of information for those studying or practising in the field. These broadly cast works are supported and enhanced by a number of titles focussed on particular aspects of the interface between sport and the law: business and commercial;10 personal injury;11 and safety and risk management.12

**European Union Law as a driver for the development of Sports Law**

There is little doubt that the relatively speedy growth of sports law as an academic and practical discipline can been substantially attributed to the rise of European Union law as a key player and stakeholder in the legal regulation of sport. In 1996 the Court of Justice of the European Union handed down a judgment in the case of Jean Marc Bosman v URBSF13 that has had a fundamental and lasting impact on the way sport is regulated and which effectively triggered the engagement of European Union law with sport on an ongoing basis.

In Bosman the Court of Justice outlawed rules restricting professional footballers from moving freely between clubs at the completion of their contracted periods and declared illegal any limits imposed on the number of ‘foreign’ players permitted to represent club teams, in as much as the restrictions affected nationals of EU Member States.

As well as encouraging further litigation in sports cases, the Bosman judgment also had the effect of encouraging the European Commission to become more proactive in respect of the economic aspects of sport, particularly in its capacity as the competition authority of the European Union. Since December 2009 the European Union has also possessed a specific, albeit ‘soft’, competence in relation to sport, following the insertion of Article 165 TFEU by the Lisbon Treaty.
Indeed, it can be seen that the shock induced by the delivery of the judgment in the case of *Bosman*, and its continuing after-effects have also acted as a ‘trigger’ for the development of sports law as a discipline. This is evidenced by the emergence of key works in the period since the case was decided. In particular, the confluence of European Union law and sport has posed challenging questions to be resolved: does sport benefit from an exemption in the application of European Union law; to what extent does the existence of a sporting context affect any application, and; are there aspects of sport that make it necessary for European Union law to treat it in a particular way?

These issues have engaged academics and practitioners from across and beyond the European Union and the result has been the development of journals and texts that focus around these and other international sports law issues. A key example is the *International Sports Law Journal*, established under the auspices of the Asser Institute, based in The Hague. The journal draws together articles, opinion pieces, reviews and updates alongside a cataloguing of important sports related legal documentation.

Though the title gives the journal an international character, there is little doubt that it is euro-centric in nature. The bulk of submissions focus around the legal regulation of sport either by the European Union or as it applies in the context of an individual Member State. This is certainly not inappropriate – the European Union and its legal system have an influence upon sport that reaches beyond its own geographic boundaries.

A good example are the rules set out by FIFA – the global governing body of association football – the *Regulations on the Status and Transfer of Players*, which govern the employment relationship between clubs and players and transfer of players between those clubs. These have been the subject of significant regulatory input from the European Union, such that rules shaped by the influence, or even demands, of European Union law are applied universally across the globe and well beyond its technical jurisdiction.

Discussion of this interrelationship between European Union law and sport’s self-regulatory structures predominates in the content of the *International Sports Law Journal*. The journal is able to attract submissions from academics of the highest standing from across Europe, but retains strong connections with legal practitioners, which adds to the strong sense of cohesion engendered by the publication.

On any assessment of the journals available to academics, practitioners and students in sports law, the *International Sports Law Journal* certainly ranks highly for the depth, breadth and quality of its coverage, as well as the prestige contributors upon which it is able to draw.

European matters certainly take centre-stage, and it is arguable that this is rightly the case where the European Union has been at the forefront of a global development of the discipline, however the *International Sports Law Journal* does take account of sports law issues from beyond this continent and from non-European jurisdictions. In this much it offers important and useful comparative insights into the different legal approaches adopted across jurisdictions.

The relationship between European Union law and sport has also stimulated the publication of a number of texts focussed exclusively on this aspect of sports law, all of which deal ably with some or all of the key questions posed above. Since the *Bosman* judgment, and now with the granting of a specific competence in sport to the European Union, the reports, studies and documentation of the Union’s institutions form a significant and growing resource for those with an interest in sports law. Because sport had no single place in the European Union’s structures prior to the changes implemented by the Lisbon Treaty – it was split between a number of competences such as health, education, culture, competition and single market – much of the information available was scattered and disparate. However, the European Commission now has a dedicated Sports Unit and, although the Lisbon changes have not diminished the applicability of these diverse competences to sport, this now provides a single point of reference for issues and information pertaining to the relationship with sport. This is a valuable source of information for sports lawyers, pulling together as it does all matters European which may affect sport.
The growth of Global and International Sports Law

If European Union law has been primarily responsible for the rapid rise of the discipline of sports law, it can now be seen – in sports parlance – to be passing the baton on to a growing body of genuinely international or global sports law.

The chief developments that have fuelled the development of a tangible and substantial international sports law are the creation of an international arbitral tribunal, the Court of Arbitration for Sport – as a forum for the resolution of sports disputes – and the establishing of the World Anti-Doping Agency, as a body harmonising the regulation and enforcement of anti-doping regulation across mainstream sports. In conjunction with the rules and regulations of sports federations themselves, in particular the International Olympic Committee’s Olympic Charter, these have had a significant impact on the development of something that has been termed ‘lex sportiva’. This is a body of law specific to sport and its institutions.

The Court of Arbitration for Sport

The Court of Arbitration for sport, more usually known by its acronym of the CAS, was established in 1984 with the express purpose of resolving disputes arising out of sport “within the family of sport”.

The CAS, and other national sports arbitration bodies such as the United Kingdom’s Sports Resolutions, have grown in significance in particular because of the prevalence of arbitration clauses in the rules and regulations of sports governing bodies. Most mainstream sports federations now include such a clause in their constitutions and this has had the effect of diverting a significant number of cases that might have been litigated before the ordinary courts down the path of arbitration. Notably the decisions of an arbitral body are usually binding and an appeal to the courts against their determinations are limited to narrow procedural grounds rather than providing an opportunity to re-assess the facts. The result is that the CAS and similar organisations have to a degree displaced or substituted the function that would ordinarily be conducted by the court system and, having the say, their decisions have taken on a growing status.

The body of law established by the CAS, and its increasing significance, has spawned an emergent body of literature focused solely upon the organisation and its jurisprudence. With respect to academic journals, this has been taken on most vociferously by the Sweet & Maxwell International Sports Law Review. This should come as little surprise; the General Editor of the journal is The Honourable Michael Beloff QC, a prominent member of the group of arbitrators who determine cases before the CAS, as well as one of English law’s most respected sports law practitioners, being also the President of the British Association for Sport and Law.
The journal adopts a relatively traditional approach for the most part, being constituted of longer articles, shorter legal analysis pieces, as well as case notes and publication reviews. The focus of articles and analysis is well balanced, with a spread of sports law topics, principally orientated around English and European Union law issues, but also involving contributions pertaining to domestic law from other jurisdictions. What makes this particular journal distinctive though is its specific focus of its case notes – and to a lesser extent articles and analyses – on the internal regulatory processes within sports governing bodies and, more so, the reporting of cases determined by the CAS and by national sports arbitration bodies. This is of particular import for sports lawyers – whether they are students, academics or practitioners – because it highlights and explores the legal issues that are being encountered and resolved in a sub-litigation context. These can often provide valuable clues to the emergent trends, likely to make their way before the courts, or into sports arbitration in future. Similarly, exposure to important sports law issues from other jurisdictions is immensely helpful in identifying the character of future disputes in a domestic context. Generating a raised awareness of cases in the pipeline in other jurisdictions and through sports arbitration is important, not least because – given the globalised nature of sports law and regulation – those cases which have a significant impact domestically are rarely ‘home-grown’.

The journal is also very good in its identification and reporting of otherwise unreported English cases which, while they may be of limited import in the development of the general law, have much to offer when subjected to a sport-centric analysis. That said, many of the cases reported in the journal are of a type where sport is on the periphery and, perhaps, not material to the outcome of the case which might reasonably be described as being “sport and the law” rather than sports law proper.

The journal adopts a relatively traditional approach for the most part, being constituted of longer articles, shorter legal analysis pieces, as well as case notes and publication reviews. The focus of articles and analysis is well balanced, with a spread of sports law topics, principally orientated around English and European Union law issues, but also involving contributions pertaining to domestic law from other jurisdictions. What makes this particular journal distinctive though is its specific focus of its case notes – and to a lesser extent articles and analyses – on the internal regulatory processes within sports governing bodies and, more so, the reporting of cases determined by the CAS and by national sports arbitration bodies. This is of particular import for sports lawyers – whether they are students, academics or practitioners – because it highlights and explores the legal issues that are being encountered and resolved in a sub-litigation context. These can often provide valuable clues to the emergent trends, likely to make their way before the courts, or into sports arbitration in future. Similarly, exposure to important sports law issues from other jurisdictions is immensely helpful in identifying the character of future disputes in a domestic context. Generating a raised awareness of cases in the pipeline in other jurisdictions and through sports arbitration is important, not least because – given the globalised nature of sports law and regulation – those cases which have a significant impact domestically are rarely ‘home-grown’.

The journal is also very good in its identification and reporting of otherwise unreported English cases which, while they may be of limited import in the development of the general law, have much to offer when subjected to a sport-centric analysis. That said, many of the cases reported in the journal are of a type where sport is on the periphery and, perhaps, not material to the outcome of the case which might reasonably be described as being “sport and the law” rather than sports law proper.

The journal is also very good in its identification and reporting of otherwise unreported English cases which, while they may be of limited import in the development of the general law, have much to offer when subjected to a sport-centric analysis. That said, many of the cases reported in the journal are of a type where sport is on the periphery and, perhaps, not material to the outcome of the case which might reasonably be described as being “sport and the law” rather than sports law proper.

The Sweet & Maxwell International Sports Law Review should not be confused with the International Sports Law Review Pandectis, the journal of the International Association of Sports Law. This is very much focussed on an international and comparative approach to sports law, and includes academic papers, reviews and case notes and comment. As one might expect, the journal is eclectic and features contributions from a wide variety of jurisdictions, as well as focussing upon the jurisprudence and operation of the CAS.

Attention should also be drawn to the reporting of decisions of the CAS. One of the oft cited benefits of arbitration in general is that proceedings are confidential, thus the parties avoid the reputational damage and adverse publicity that might be associated with litigation. However, there is a presumption in favour of the publication of the decisions of the CAS, absent any pressing reason of privacy or confidentiality in any one case. The early decisions of the CAS were published in a three-volume compilation, edited by the CAS General Secretary, Mathieu Reeb. However, more recently the CAS website has been significantly enhanced to provide archival access to historic decisions as well as new determinations being published contemporaneously.

For all the reasons set out above, this is an increasingly important resource for sports lawyers, as the jurisdiction of the CAS has eclipsed the national courts in sports cases in respect of both volume and significance.

Other Jurisdictions
This also means that academic journals from other jurisdictions are useful to sports lawyers. In particular, as noted at the outset, the United States has a rich history in the discipline of sports law. As a part of this there is an impressive catalogue of academic journals in the area of sports law. They are too numerous to address individually, but a number of key journals stand out as being of particular relevance, having substantial content pertaining to the international aspects of sports law. Foremost amongst these is the Marquette Sports Law Review, developed out of the National Sports Law Institute at Marquette University Law School. Though principally oriented around sports law in the United States, the journal has a demonstrable and sustained track record of publishing high-quality submissions analysing aspects of international sports law, in particular the operation of the CAS and the principles effected by it. Two other comparable American journals are worthy of mention. The Texas Review of Entertainment and Sports Law and the Villanova Sports and Entertainment Law Journal both encompass strong international themes alongside their domestic sports law coverage.
This is not to say that issues of United States domestic sports law are without interest to those operating in other jurisdictions, indeed there are growing parallels between American sports law as international elements have increasingly penetrated a previously hermetically-sealed legal sphere of sports such as baseball, American football, basketball and ice hockey.

**Summary**

In summary it would be reasonable to conclude that the sports law literature has matured astonishingly quickly given its relative youth. This is due in no small part to the significant developments in the field that have occurred over the last three decades. The acceleration of legal intervention brought about by the shock of the *Bosman* judgment and the subsequent re-regulation of many aspects of sports rules with economic aspects – under the influence of the European Union – combined with the internalisation of legal processes brought about through increased utilisation of arbitration mechanisms has necessitated the development of a corresponding literature. The result is that, while previously starved of information, the sports lawyer now has a rich and varied array of resource from which to choose.


---

This article was first published in *Legal Information Management* and is kindly reproduced with permission.

16. CAS 2011/O/2422 United States Olympic Committee v International Olympic Committee
Michael Beloff QC was President of the Oxford Union (1962) and was called to the Bar in 1967, currently practising at Blackstone Chambers, Temple, London. He was the senior Ordinary Appeal Judge in Jersey and Guernsey 2008-2014 and is a member of the Singapore International Mediation Panel, an overseas consultant to the Law Counsel (Dacca), a member of the Court of Arbitration for Sport (on ad hoc panel for the summer Olympic Games, 1996, 2000, 2004, 2008), Chairman of the International Cricket Council Code of Conduct Commission and of the IAAF Ethics Commission, a member of the FIA international appeal tribunal and of the European Golf Tour Anti-Doping Appeal Panel.

He was the Ethics Commissioner for London 2012 and is a former President of Trinity College Oxford (1996-2006), and Treasurer of Gray’s Inn (2008). He has appeared in courts in ten Commonwealth jurisdictions, as well as in the European Court of Justice and European Court of Human Rights, and taken part in national and international arbitrations, both as advocate and arbitrator, under the auspices of various arbitral bodies. In 2009 he received a lifetime achievement award at the Chambers Directory annual ceremony.


On a general level, what in your view are the most pressing issues of sports law and sports politics at this time?
I don’t think there can be much doubt about this. It’s a sea-change that has been noted not only by the former IOC President, Jacques Rogge, but by many others, including myself – the emphasis has shifted very much from doping – which remains a major issue – to corruption, and, alas, the possibility of an interrelationship between the two...

...as can be seen from the cover-up machinations within the International Cycling Union that seem to have attended the Lance Armstrong doping affair...
Indeed! This is a subject in which I take a close interest, as the first Chairman of the first-ever ethics commission of the International Association of Athletic Federations (IAAF), which was a body set up by its president, Lamine Diack, this year. The remit of this commission shows how broad this field can be, including as it does match-fixing and betting, the selection of host cities for major international tournaments, elections to positions within the Council, and, more generally, conflicts of interest.
To turn now to your participation in the Court of Arbitration for Sport (CAS) – the history of international tribunals is not a particularly happy one, when one considers the mixed track record of such institutions as the International Court of Justice (ICJ), the International Criminal Court (ICC) and the various International War Crimes Tribunals. Yet the Court of Arbitration for Sport (CAS), for all its criticisms, has proved to be remarkably successful. To what do you attribute this fact?

First of all, yes, I would agree with the premise of your question. One major factor here has been that, in the course of the last decade, two major international sports have joined it, i.e. football in the shape of the governing bodies FIFA and UEFA – football being in terms of global participation undoubtedly the premier sport – and athletics with the IAAF. When they were subject to the Court’s jurisdiction at the Olympics, the IAAF felt that they were very well treated and developed great confidence in it.

I think the main reason for its success is that it has in its ranks of adjudicators a very distinguished group of persons. Its pool is now 300-strong. In order to be an arbitrator on a particular panel you have to be appointed either by one or other of the parties or be the Chairman appointed to that responsibility by the Governing body of CAS, that is ICAS. You thus have a body of anything between 100 and 300 people who very occasionally may be appointed by a particular party, and then you have what I would call the inner core of around 20 people, and those are the ones who are regularly appointed as Chairmen because their track record has commended itself to ICAS. And, of course, once one is appointed a certain number of times, appointments tend to multiply.

If you are a body or a person who has never previously used CAS you would tend to go through the records of reported cases, and make your choice accordingly. Thus in the course of the last three days, I have had three new appointments, and there are serious issues as to whether I should honour them all because of the requirement to devote sufficient time to the case.

Although our High Court judges are precluded from being arbitrators – in other counties, for example, South Africa, the same prohibition does not apply – former High Court judges such as Sir Oliver Popplewell can be. Circuit judges such as his Honour Judge Robert Reid QC can be, and elsewhere former judges, including one who has been a member of the International Court of Justice have been CAS adjudicators – so we are talking about that kind of senior legal level.

And although, as always, there are questions about the total impartiality of persons from certain areas of the globe, these tend to be weeded out. Obviously I cannot name names here, but I was once chairing a panel in which one particular arbitrator had been appointed from a certain country who clearly saw it as his duty to fight that country’s cause rather than be impartial! He behaved in an extraordinary way by challenging the panel’s decision – which was a majority one – as being flawed on the grounds that the panels decision-making process was “unfair”. The appeal by the unsuccessful party, who shared his nationality, was roundly dismissed by the Swiss federal tribunal and the gentleman in question was carefully removed the next time the pool of arbitrators was refreshed. So yes, there are from time personality issues of that kind, but overall it is an admirably qualified body.
One of the aspects of working with CAS that I most enjoy is coming into contact with so many interesting and distinguished overseas lawyers – and one of the things I have always said about the court is that, although our members come from different legal cultures and jurisdictions – common law, civil law as well as those that do not fit into these two major streams – we usually are in complete agreement as to what the final decision in any case should be. Not always, but usually.

Has the performance of the court, in your opinion, been even across the board of the various sports involved?
Yes, I would say so. The only instance before which our decisions can be challenged is the Swiss Federal Tribunal, and for a long time such challenges were unsuccessful. Recently there has been a marginal increase in successful challenges – but these have all been on procedural grounds. Nowadays, not only in sports arbitration, but in arbitration generally and even in court proceedings – there has developed a huge emphasis on the appearance of impartiality to an extent that some of us consider to have reached absurd lengths, but that development gives something of an impetus to those challenges – and obviously CAS learns from such rare instances where a challenge has succeeded...

To give you an example, one used to be allowed to be both an advocate and an arbitrator before the CAS – as long, of course as the cases in question were in no way connected! But now CAS has said no, that is prohibited and you can understand, I suppose, why. Another symptom of this stress on appearances can be illustrated by one particular case in which the question was raised whether I should be disqualified because one of the parties’ Counsels was a junior member of these Chambers. I emphatically pointed out, of course, that barrister are all independent practitioners, yet eventually ICAS decided that I should be withdrawn – not because they agreed that there was a conflict of interest but on the more limited ground that the solicitor for that party had not made full disclosure of the connection.

Also, every time you accept an appointment you have to disclose anything that you think could conceivably influence a reasonable person to consider the possibility of bias. That very probably is the correct approach. There are certain arbitrators who were continually being appointed by the same federation, and I can quite understand why concerns were raised about this. So now I do in fact disclose if I have had a couple or so of nominations by the same party, although I feel I would need to have been so nominated at least three or four times before that could give rise to any justifiable concern.

...so there was a danger of being “judged by your peers”?...
Yes, in the sense that the question could arise – why are they continually appointing Mr X? And the answer might reasonably be because the federation thinks that Mr X might favour them. Interestingly, I don’t recall as a matter of record any member of my Chambers had appeared before me and won his case!

Are there any changes you would wish to see implemented in the manner in which the Court operates?
Yes, there are. The first is the consequence of the CAS not being a court in permanent session. That does raise very serious questions of availability. First of all, every panel has to consist of three people, often from different jurisdictions and with different professional obligations, and then you have the parties themselves and their witnesses to bear in mind. I have been at least partly responsible for the practice of starting by establishing when the arbitrators are available, then saying to the parties – these are the dates on which the arbitrators are available to ensure that the proceedings are dealt within a reasonable time, and you – the party – must supply a really good reason why you can’t make those dates.

Sometimes, of course, the parties plead that the advocates instructed are not available but in this jurisdiction we would regard that as not relevant, since it happens the whole time. You have a case listed when you are unavailable and so you find a suitable member of your chambers to take the case in our place. It is true that in the civil jurisdictions there appears to me more emphasis
CAS has also opened up in some other centres – Shanghai, Kuala Lumpur, one of the Gulf States and Egypt. This was partly done on the basis that these jurisdictions actually offered to pay for the facilities, which is not necessarily the best or only criterion.

on the need to retain counsel for your choice. So there is a real issue there.

The second is the consequence of the international nature of so many disputes before CAS. I would say that it would be useful for the Court to devolve its proceedings a little more. I fully appreciate that under the lex fori it is in legal terms deemed to sit in Lausanne, wherever the Panel actually sits so that it has an integrated procedural substructure, but in practical terms I feel there could be more devolution. There are now specific outposts of the Court, one in Australia and one in New York. CAS has also opened up in some other centres – Shanghai, Kuala Lumpur, one of the Gulf States and Egypt. This was partly done on the basis that these jurisdictions actually offered to pay for the facilities, which is not necessarily the best or only criterion. Nevertheless I think it is entirely right that there should be at least one CAS centre in the East, but what CAS lacks at the moment is a presence in Latin America, and a lot of football cases come from that part of the world.

At present, any party is allowed to nominate an arbitrator as long as he or she is not disqualifiable, so you could have a case in Lausanne where the panel would consist of me, from London, another arbitrator from say Germany and a third member from say Colombia who is then flown across the Atlantic. He may not be very fluent in English or French, the two official languages (Spanish is only used if all the parties agree to it) and is probably jet-lagged and will therefore forgivably play a less active part – and yet CAS have to pay all his expenses. I don’t quite know how you resolve that and still allow for party choice, but maybe if there were more devolution, that might improve the position.

Thirdly, as a common lawyer I tend to think in terms of procedure to be guided by the sole question – is it fair. Under current CAS rules, if a party fails to include the list of witnesses who are to appear in the case in their brief, it is only in exceptional circumstances that additional witnesses or arguments will be allowed. This appears to me a little rigorous. I can understand the reason behind this rule, in the sense that everyone has a right to know where they stand, but it seems to me that as long as the other side has been given adequate time to answer, why should the panel be deprived of the best evidence and arguments available? I myself, especially when chairing a panel, tend to be a little more flexible about this concept of “exceptional circumstances”.

But these are relatively minor issues, on the whole the Court works very well. The CAS Council, young lawyers often seconded to CAS by their firms, and help organize hearings tend generally to be very good indeed, and the Court is administered very well. In short there is nothing fundamental that needs to be changed.

You mentioned the use of the Court’s official languages. There are some who believe that this eternal emphasis on English and French is a little outdated, and that more leading languages should be involved. I certainly think Spanish should be an official language, yes – although I have to admit that I wouldn’t be able to participate in such cases if this were to happen! At the moment its use is only allowed under certain conditions.
The new Defamation Act 2013 has entered into effect. Do you think this will have any marked influence on the defamation suits brought by celebrities?
I assume that by this you mean mainly sporting celebrities. The first point I would make is that defamation actions generally have been on the wane. In terms of media law, you will find that the switch in litigation has been very much away from defamation towards privacy. The second point is that the Defamation Act is more defendant-biased, coupled with the greater emphasis nowadays on free speech, a factor that tends to reduce the number of actions. The third point is more general and not time specific. When I was active in defamation cases, I used to say to my clients, where they were claimants – just sit back for a few weeks and then ask yourself, do you really want to go through with this ordeal? Very often the client would end up saying, oh to hell with it, I can probably live without going through this again. More interesting will be the impact of this new IPSO, the proposed press regulator, and what its role will be in relation to what people do and don’t do in terms of seeking redress from the courts. But I would say, to revert to your specific question, I think the effect of the new statute will be that this kind of action will decline rather than increase.

So do you think it will also discourage what is known as “libel tourism”?
I certainly hope so!

The last Sport and the Law Journal Interview featured Mr. Loophole, Nick Freeman. Do you agree with his methods, stratagem and approach?
Mr. Freeman reminds me very much of a young QC I used to work with as a novice junior many many years ago. There was still a convention at the Bar in those days that if you were a provincial practitioner, you needed, once you had taken silk, association with a London chambers, and we had in our chambers this new arrival from Liverpool who had started to specialise in defending clients against what was then the new drink-drive legislation. He was forever scoring points in court on the basis of the various errors committed by the police in prosecuting their case. So I am not at all surprised that others have followed suit in this area! My short answer to your question has to be this: if there are loopholes in the law, it is the fundamental duty of the lawyer, and as long as he behaves honestly, to exploit them on behalf of his client. Mr. Freeman has apparently made a good living from this, and good luck to him!

One of the issues stressed by Mr. Freeman was exactly how incompetent the prosecution authorities can be, and that it was rather a question of their ineptitude rather than his ability...
I think that’s probably right. Look, you have two possible loopholes: one is the legislation itself, which cannot provide for every eventuality, the other is the failure on the part of the prosecution to tick all the boxes. To a certain extent this is related to the inequality of arms that sometimes prevails in these situations, when you can have ranged against each other some hapless police officer or provincial solicitor on the one hand and a senior Silk on the other — here again, the two sides are not on equal terms. I would however, add an important footnote, and that is that I do get the firm impression that, where trial by jury is involved, as a sporting celebrity you start “one up”. Now I am not claiming that no sporting celebrity is ever convicted of anything, but there have been occasion when you tend to think, on examining the evidence, that “so-and-so” has been pretty lucky – not that I am about to name any names of course...
My short answer to your question has to be this: if there are loopholes in the law, it is the fundamental duty of the lawyer, and as long as he behaves honestly, to exploit them on behalf of his client. Mr. Freeman has apparently made a good living from this, and good luck to him!

Of course. Do you think that a change towards a more inquisitorial system such as exists in the Continental jurisdictions might bring about a change in this respect?

Do you mean the manner in which certain famous personalities who, thanks to their celebrity or the skill of their legal counsel succeed in beguiling a jury?

Exactly.

I will admit that I am unfamiliar with the exact detail as to how the inquisitorial system works. But I must also admit that I have never been a particular fan of the jury system. I can understand that there are essentially two virtues to the system – one being the involvement by the community in the legal system, so that it does not remain the exclusive prerogative of the professional judges; the other that, there can be circumstances in which the powers-that-be may, even in a democratic society, have acted in an oppressive way and therefore the jury can decide, the prosecution may be right according to the letter of the law, but we are not finding for you simply because we do not approve of the way you went about it. However, my experience of trial by jury has always been affected by the way I have observed the behaviour of advocates in Crown Courts. When I was a Recorder, it seemed to me that the function of the defence counsel was actually to distract the jury from the evidence rather than explaining to them what the evidence was. So I am not at all certain that this is the best way in which justice is done. I’m also unenthusiastic about any body that does not have to give reasons for its decisions.

We appear once again to be in the grip of yet another corruption scandal involving an international sporting federation, in the shape of the accusations of bribery which are accumulating in relation to FIFA and the award of the 2022 and 2018 World Cups to Qatar and Russia respectively. Yet it looks unlikely that FIFA will reverse these awards or even conduct a serious investigation into these allegations. Does this not make out a case for bringing international sporting bodies under tighter control by the law?

In principle, the answer to that question is: yes. The problem here, I think, is this. FIFA is based in Switzerland. Now the latter is a sophisticated and democratic country, but it does give a certain degree of latitude to private associations, who are allowed a measure of self-government and can be contrasted with our own intensive control by judicial review, recently collapsing the boundaries between what is a public authority and a private body and looking at the scope for intervention by reference to what is actually the power of this particular body, and more particularly that of a monopolistic sporting association. You may not be able to use the procedures of judicial review against, for example, the FA but you get the same kind of remedy declaration in terms of injunctions, etc., through the use of private law procedures. So the question becomes – who is going to take our proceedings against FIFA and where? I suppose Australia could take their complaint about their unsuccessful bid for 2022 to the Swiss courts, I certainly don’t know where else they could take proceedings – but I do not know under any relevant Swiss law on what basis they could successfully do so. So there is a real jurisdictional problem here.

But there is also the problem that these international sporting regulators are closed bodies. Take the FIFA Board for example. If an accusation is made against members X, Yor Z, it is not impossible that members A, B and C will be in some way involved and use their powers to protect the accused.
But let’s not forget that Bin Hammam was actually found guilty of corruption (although he did win an appeal to the CAS, at least in relation to his lifetime ban). Others have also been found guilty of corruption and incurred criminal penalties as well, so it’s not as if nothing is done, but it is usually a matter of internal policing when faced with extreme cases.

And in relation to those famous Sunday Times emails (relating to the accusations that votes were bought to secure the 2022 World Cup for Qatar) I certainly do not believe, as was suggested by the FIFA President, that the British media were racist. That charge was surely just a diversionary tactic. The world waits to see what Mr Garcia (US lawyer in charge of the Qatar 2022 investigation), whose job I in no way envy, comes up with.

It is also worth noting that the Ethics Commission, under whose direction the accusations are being investigated, was set up before there had been any such scandal, so it is not as though it was established by way of reaction to the allegations – the idea was to try and prevent this kind of incident. And of course, FIFA is not in any way the only international sporting body to be beset by such problems.

Others have also been found guilty of corruption and incurred criminal penalties as well, so it’s not as if nothing is done, but it is usually a matter of internal policing when faced with extreme cases.

One argument for tightening the grip by the law over the sporting organisation is the inconsistency that exists as between the various international bodies in such matters. Following the 2002 Salt Lake City scandal in relation to the Winter Olympics, the International Olympic Committee, for all its faults, did change, revised its procedures to ensure, inter alia, that there was a safe distance between the bidding cities and their authorities on the one hand, and the IOC members who make the decision on the other hand. Yet FIFA, and more particularly its President does not seem to have learned any lessons in this respect.

Ah yes, Mr. Blatter, the eternal President of world football. One has to say for him that he is remarkably successful at retaining power – that one must recognise. The IOC was a body that was eminently capable of reforming itself in the wake of what was in fact a considerable scandal, and now the rules are very tight. Indeed, one of my functions when acting as Ethics Commissioner for the London 2012 Games bid was to ensure that we didn’t in fact infringe these rules, which were very detailed and complex. The odd thing is that, when one looked at the criteria as to what could or could not be done regarding bids for the World Cup, it looked remarkably similar to the corresponding rules laid down by the IOC. The difficulty, of course, is to ascertain whether anyone took the slightest bit of notice of them – the law is one thing, its enforcement another!

You are known for having distinct views on the specificity of sport under the law. Is this latest scandal not the latest manifestation of this phenomenon? Sporting scandal not a dimension I have particularly emphasised in my writings, but, essentially, I think you’re right. Sport is essentially a private activity, and perhaps in the best of all possible worlds it should remain so. But what started as a mere leisure activity has now become a huge industry – the 20th largest in the world. As a result, whereas at one time you might have a player sent off and he would take the punishment, regard it as a week off and then return to play – currently, when a sporting figure is hit with a suspension of even a week or so, lawyers are engaged in order to get the suspension lifted whilst the player himself is still earning, apart from bonuses, his contracted fees. So huge sums are involved in every area of major professional sport and sport has become more and more a public activity.

I recently acted for Leeds United over a dispute, a long-running one, which concerned an interesting issue, i.e. who should bear the cost of increased policing on match days. The issue arose as to whether professional football
was a private or a public activity, and the Master of the Rolls said it was simply no longer realistic to describe football as a private activity. That was just one example of judicial realism in this regard, and indeed the courts are adapting to this reality. As I’ve already mentioned, although stopping short of allowing judicial review for a body that is still in legal terms a private body, they frequently grant exactly the same remedies through different routes to ensure that the body’s decisions are not only lawful but also rational and fair – in other words, that they meet all the typical public law criteria. So yes, the law has adapted, and where it hasn’t – perhaps in certain other jurisdictions – it should be encouraged to do so.

But what about the criminal law – give or take the odd Duncan Ferguson, the policing authorities have seemed remarkably loath to prosecute instances of on-field assault which, were they played out on the streets, would immediately attract the interest of the constabulary.

Look, there is a balance to be struck here. Football is a contact sport and a player “going in hard” is a natural ingredient of the sport. You simply have to – and this is where we get back to the specificity of sport – recognise the context. And in fact there are more cases now, certainly in terms of civil claims for damages arising out on field of play incidents. And, yes, if a footballer does something outrageous, criminal charges should be brought, as in the case of Mr Suarez’s infamous world cup bite, which had he inflicted it here might very well have landed him with a charge of actual bodily harm.

In terms of corruption, we have seen criminal charges laid, such as the case of the three Pakistani cricketers who were caught spot-fixing in the Lord’s Test four years ago. I chaired the ICC Tribunal which adjudicated in the case and handed down “sporting” sanctions, following which the matter went to the criminal court and, as you know, the same persons were all found guilty of criminal offences – indeed, the Lord Chief Justice presiding was kind enough to refer to my adjudication as part of his reasoning.

On the question of doping offences I have moved to the position that the only way of deterring people from doping offences is to involve the criminal law, not just in terms of supplying the substances, but also for their use – or certainly their deliberate use. However, I quite appreciate that in a sporting context intent is only relevant at a particular stage usually in relation to the sanctions, and its proof very often presents evidential difficulties. And I quite accept that merely to have taken a prohibited substance, unless one consciously did it with a view to enhancing sporting performance, ought not to be a criminal offence. But I do think that, subject always to recognising the evidential difficulties, this is the only deterrent that will work, because we have recently seen that the courts in all jurisdictions are assessing these available lifetime bans in terms of restraint of trade, and deciding that although suspension for a certain period of time is justified, you cannot take someone’s earning ability away for that length of time. On the other hand, perhaps a short sharp shock of three months’ imprisonment might be the only answer. I say this very reluctantly, but at the moment it seems to me that nothing else is actually working as well as it should.

But if you take, for example, the case of the footballer Roy Keane and his assault on Alf-Inge Håland, of which he confessed in his autobiography that it was motivated purely by revenge and not the heat of the battle – yet the criminal authorities did nothing...

Yes, but that confession came several years later didn’t it? I have no doubt that had he made it the day after the tackle, yes, he would have been prosecuted.

You have been appointed to the European Golf Tour Anti-Doping Appeal Panel. To what extent would you agree with the claim that the “war on doping in sport” is the pursuit of the uncatchable? Aren’t the dopers always one step ahead of the authorities?

I have to say first of all that I haven’t been on the panel for very long, and the panel itself has only been in existence for slightly longer than I have been on it. Golf does not strike me as a sport which is particularly vulnerable to doping – maybe a nervous twitch could be cured by some sedative, but that is about all! It’s like cricket in that regard, there is no drug that has ever been invented that will enable you to spin the ball like Shane Warne.
Basically, doping substances come in three categories – there are those that build strength, those that give the performer the necessary “kick”, and of course those that calm. But as to your assertion about the dopers being one step ahead – well, there are nowadays infinitely more sophisticated tools available, and of course the development of the biological passport has been an advance, so that you do not merely rely on whether a single test has proved positive on the basis of A and B samples – you are able now able to determine whether there has been a marked increase over a period of time in the intake of a substance that could also be naturally produced, such as testosterone.

So that is definitely an advance. And although it is true that the chemists are forever devising new methods and products, I do not think that this is a fight that one can simply abandon. I think that, if we’ve reached the stage where – to take the example of track and field sports – if the general public really think that all they are seeing is a person whose chemist, rather than his natural ability, is better than his opponent’s, they will probably stop watching. We simply cannot stand by and let sportspeople do as they like – quite apart from the fact that you don’t want to allow them gratuitously to risk their health in pursuit of gold or glory.

Could there be a case for excluding recreational drugs from prohibition?

I do not think it is the function of sporting authorities to police morals. What they are concerned with is the integrity of sport in the sense of fair competition, and the fact that sporting performers may be adulterers, drink too much or even take recreational drugs isn’t really their concern. The real issue here for sports disciplinary bodies, of course, is whether in fact recreational drugs do have a particular effect. I remember one particular case in which I acted as prosecutor for the IAAF and which involved Javier Sotomayor who to this day holds the world record for the high jump. The substance he used was cocaine. I presume that he was using it for recreational purposes, but the evidence was that it could have produced some kind of sedative effect, which can be important for events such as the high jump where you have to make a very accurate assessment – you put one foot wrong and off goes the bar – so sometimes the line between the two is hard to draw.

But in the case of drugs of which it could truly be said that they have no enhancing effect on sporting performance whatsoever, there I would say, no, that is not a matter for the sporting authorities.

But on the subject of the biological passport and other types of out of competition controls to which athletes are increasingly subject, where they constantly have to account for their movements, does that not risk creating a deterrent effect on the sporting activity itself?

By all accounts they seem to be living with it. Of course I realise that these controls are very intrusive and there is some resentment among members of team sports who are much less likely to take performance-enhancing drugs than their counterparts in the more individualistic sports such as athletics and swimming. You and I would not like to be obliged to account for our whereabouts if only because of the sheer hassle of having to do so. But ultimately, it is in everyone’s interest that they be tested so that they can be confident that others are not getting away with it.

What is your verdict on Dr Jacques Rogge’s term of office as President of the International Olympic Committee?

Dr Rogge is a distinguished and honourable man, and during his time there have been no major scandals. It has to be said, however, that his immediate predecessor, Mr. Samaranch, whose reputation was tarnished partly because of his early association with the Franco regime, has been somewhat undervalued comparatively – it was after all he who started her fight against doping, it was his idea to set up the Court of Arbitration for Sport, it was during his time that the investigation and solution to the Salt Lake City scandal of 2002, referred to earlier, was concluded, so in many ways I would probably say that he had more influence on sport than his successor. But that is not to say that the latter has not been a perfectly credible and creditable IOC president. I should perhaps add that, for the first time, I have a personal acquaintance with the new IOC President, Mr. Thomas Bach, and I regard him as an excellent appointment.
Which of the sporting cases in which you have acted as Counsel has given you the most satisfaction?

My usual reply to this question is representing Christine Ohurogou, because if it has not been for the success of the case that I mounted for her, in which she had missed three doping tests, she would not have gained her gold medal at the 2008 Olympics, and she has in fact been our greatest success as a female athlete of all time. But at least a tie with that case would be representing the Gibraltar football association who were trying to gain access to UEFA and were being constantly thwarted by Spain, a very important European footballing nation, who obviously did not want any kind of recognition to be given to Gibraltar as an independent entity. We spent some 12 years, and three visits to the CAS, each time pushing just a little further – finally, UEFA conceded defeat. Gibraltar is now a member and in the first few fixtures have done rather well (although obviously they are never going to win the next European championship!). I found this battle particularly satisfying because (a) it took so long, (b) the legal issues were very interesting, and (c) it has produced such a big impact on a relatively small community.

Thank you very much for this wide-ranging and informative interview.
Dangerous sports contribute noble attributes to society and promote social cohesion. Cricket is a sport in point. It is capable, too, of being a dangerous sport, with athletes hurling the hard cricket ball at speeds in excess of 180kph – or 100mph. So cricket can be hazardous: cricket can injure. Should the law regulate for every risky situation and underwrite every recreational injury? Or should society tolerate, perhaps encourage, dangerous sports, because their benefits outweigh the costs?

The world has two great ‘bat and ball’ games: baseball and cricket. Both are English folk games in origin. Both have spread throughout the world – cricket following English influence and baseball following American influence. Cricket has many more players and fans, mainly because it spread to the populous Indian subcontinent.

Both games can be dangerous. Those who faced Australian cricket fast bowler Jeff Thomson with only a slim wooden bat in hand say that he was the fastest of them all. He was more than menacing. Tongue in cheek, Thomson made world news when he said in a television interview before a cricket Test: ‘I enjoy hitting a batsman more than getting him out. I like to see blood on the pitch’.

Thomson’s wicketkeeper Rod Marsh who had to catch the ball should it pass the batsman claimed that ‘Thommo’ at his peak was bowling at 180 kph - 20 km faster than the next fastest bowler! This human catapult was at the end of his career before they were able to measure his speed electronically. Even then, by conventional radar, Thomson was recorded at 160.58 kph. That is just a shade under 100 mph. Controversial Pakistani paceman Shoaib Akhtar was timed at 161.3 kph in the 2003 Cricket World Cup.

Don Bradman, the greatest batsman of all time, faced a dynamic young Aboriginal Australian fast bowler, whose shoulder strength had been honed as a champion boomerang thrower. Off a short run, Eddie Gilbert hurled down five thunderbolts that Bradman described as the fastest deliveries he ever faced. One knocked the bat out of the great batsman’s hands. Gilbert then dismissed Bradman, for a duck. Gilbert’s biographer, Ken Edwards, recalls a favourite legend about the Aboriginal speed merchant:

“he bowled so quickly in one match that the ball went through the wicket keeper, through the coat held out by the long stop, through a picket fence on the boundary and killed the butcher’s dog on the other side of the fence.”

In baseball, the pitchers can make the ball go just as fast – by throwing rather than straight arm bowling. The fastest baseball pitch is believed to be 103 mph by Mark Wohlers in 1995 in a training camp. Nolan Ryan’s fastball was clocked for the Guinness Book of World Records at 100.9 miles per hour in a 1974 game.
Cricket is dangerous?

"Frederick, Prince of Wales, was killed by a cricket ball. This brought his son, George III, early to the throne. And it was George III’s clumsy handling which caused the American War of Independence and the secession of the United States from the British Empire a couple of centuries ago."

Cricket is a game of respect, rule books and elaborate fairness. The United States’ founding father John Adams was considering what title to call the US chief executive. Adams said that the most respected man in a New England village was the ‘president’ of the cricket club. So the US chose the term president. Cricket is famous for the number of fairness metaphors attached to the game. ‘It’s not cricket’ means universally that fair play is absent. If you ‘play with a straight bat’ or get ‘hit for six’ or are ‘bowled over’, you are talking cricket. So too if you are ‘on a sticky wicket’. But not all about the game is honourable or peaceful.

In 1751 Frederick Lewis Prince of Wales died allegedly of complications after a cricket ball strike. (Not so. Although he was hit in the head by a ball, the true cause of his death was a burst abscess in a lung.) Cricket can be lethal. A young cricketer died after being hit in the chest by a ball in Manchester in 2005. A cricket umpire died in 2009 in Wales after being hit on the head by a ball thrown by a fielder. Several top level cricketers have died in action from head wounds or from a hit about the heart, as have amateur players. In 2010 a thirteen-year-old South African died after a cricket ball strike to his chest. Some players have lost eyes, fingers, toes and teeth, to say nothing of testicles.

Only of late have cricketers worn protective headgear although leg pads and gloves have always been in the game. Usually the injuries are suffered while batting, although sometimes close in fielders can sustain serious blows. George Summers died at the London home of cricket at Lord’s in 1870 when hit on the head by a short pitched delivery. He appeared to recover and went home on the train, but succumbed four days later. The batsman who followed Summers to the crease that day had wrapped a towel around his head in protest at the short pitching bowler, who never bowled fast again after the incident.

The potential for injury on the cricket pitch has ignited political controversy. A cable from the Australian Cricket Board to the English Cricket Board in 1933 reads: Bodyline bowling has assumed such proportions as to menace the best interests of the game... This is causing intensely bitter feeling between the players, as well as injury. In our opinion it is un-sportsmanlike. Unless stopped at once it is likely to upset the friendly relations existing between Australia and England.

Sometimes cricket injuries have led to court actions. Mainly, the court actions concerned the damage caused by the hard ball to players, umpires, spectators and, occasionally, to the public.

Off the pitch; Into the court

Cricket related injuries have featured in three significant negligence cases in England and Australia. Based on the Biblical command to ‘love thy neighbour’, the central idea of the negligence tort is that people must exercise a reasonable level of care by taking steps to prevent harm they might foreseeably cause to others.

Bolton v Stone

In Bolton v Stone, a surprised Bessie Stone was standing on the pavement outside her garden gate when she was struck by a ball hit for six out of the Cheetham Cricket Club ground. The ball soared over the cricket ground’s fence, flew across the road, and hit Miss Stone. She brought an action in negligence against the Club for not taking steps to avoid the danger of a ball being hit out of the ground. But, said the Court, balls were hit outside of the cricket grounds on only rare occasions. Lord Porter noted, ‘I think six were proved in twenty-eight years—and it is true that a repetition might at some time be anticipated. But its happening would be a very exceptional circumstance, the road was obviously not greatly frequented and no previous accident had occurred’.

Lord Oaksey added: ‘the standard of care in the law of negligence is the standard of an ordinarily careful man, but in my opinion an ordinarily careful man does not take precautions against every foreseeable risk’. His Lordship recognised that ‘cricket has been played for about ninety years on the ground in question and no ball has been proved to have struck anyone on the highways near the
ground until the respondent was struck’. The Court held that the defendant was not liable. The probability of a ball causing injury was so slight that a reasonable person would not think taking further precautions other than the erection of the fence would be required. Miss Stone’s action in negligence failed. She received no compensation for her injuries.

**Miller v Jackson**

The famous Lord Denning displayed obvious liking for cricket in *Miller v Jackson*: ‘In summertime village cricket is the delight of everyone. Nearly every village has its own cricket field where the young men play and the old men watch’. In that case, the Court of Appeal considered a cricket ground situated in the village of Lintz in an area which was becoming increasingly urbanised. With lusty hitting during games, a number of cricket balls escaped the confines of the cricket ground into the gardens of neighbouring houses. The Court considered whether the defendant (the chairman of a local cricket club) was liable in nuisance or negligence when sixes were hit over the boundary and onto the property of the plaintiffs, Mr and Mrs Miller.

The Court ruled that the use of this ground for playing cricket was a reasonable use of the land. But the Court had to:

*strike a fair balance between the right of the plaintiffs to have quiet enjoyment of their house and garden without exposure to cricket balls occasionally falling like thunderbolts from the heavens, and the opportunity of the inhabitants of the village in which they live to continue to enjoy the manly sport which constitutes a summer recreation for adults and young persons.*

While the Court decided not to issue an injunction to stop the cricket, it ruled that every instance of a ball coming over the fence was negligence and the landing of balls in the neighbours’ land was actionable nuisance. The Millers were awarded damages.

**Woods v Multi Sport Holdings Pty Ltd**

Australia’s most senior sports law case reaffirmed the right to sport without undue risk of legal suit for injuries caused in the pursuit of sport. In *Woods v Multi Sport Holdings Pty Ltd* the game was indoor cricket. The ball used is similar in size and weight to an outdoor cricket ball. Not as hard, it is nonetheless an object that can cause damage. Gleeson CJ summarises:

*While he was batting, [Mr Woods] received a full toss, and attempted a pull shot. He failed to connect properly, and this caused the ball to ricochet off his bat and hit him in the right eye. As a result, he lost the sight of that eye.*

The existence of a duty of care was not disputed. Multi Sport, as organiser and controller of the games played at its facility, had a duty to take reasonable care of players of indoor cricket. But what was the content of this duty and had it been breached here?

The case centred on two issues. Should Multi Sport have provided helmets; and, should Multi Sport have warned the players of the dangers of the game? The High Court answered both questions in the negative. The Court stressed that some sports involve ‘obvious’ risks. And indoor cricket can be dangerous; players and spectators can be injured. Kirby J (although dissenting) recognised that ‘some risks are deemed “inherent” in particular activities. In some sports, for example, an element of risk is a feature of the game that may add to its essential enjoyment’.

Justice Callinan commented:

*Played as it was, with a semi flexible ball and a bat with which to hit it as hard as possible, [indoor cricket] gives rise to an obvious risk that a ball might strike an eye. ... As I said in *Agar v Hyde*, sports injuries and duties of care owed by those involved in sport simply cannot be approached in the same way as non recreational or involuntary activities. What I have said is sufficient to dispose of the appellant’s argument that the respondent should have warned the appellant of the risk, which was realised, of injury to his eyes. And, for the reasons that I have given, that of the ultimate objective of most sports, of the achievement of physical superiority or domination of one form or another by one person or team over another, promoters and organisers of sport will rarely, if ever, be obliged to warn prospective participants that they might be hurt if they choose to play the game.*
Tort Law Reform In Australia

In Australia, in the past, those who played contact sport rarely sought compensation for their injuries. It was generally believed that they had accepted the risk of injury by agreeing to compete. In recent times, a trend of litigiousness in sport has emerged. In the late 1990s and early 2000s there was a growing fear among the Australian community that personal injury lawsuits were unduly hampering sporting activity. There was a widespread belief that the tort law system was supporting a culture of ‘blame and claim’, and that it was becoming too easy for plaintiffs to succeed. These perceptions were motivated by large court awards of damages resulting from recreational accidents. This was particularly so where the claimant would have known of the risk, should have exercised common sense and should have taken individual responsibility for their actions. Further, culminating with the collapse of insurance group HIH in 2002, Australia was believed to be in an ‘insurance crisis’. This crisis was blamed to be in an ‘insurance crisis’. This crisis was blamed on substantial increases in damages awards and rising legal expenses. Insurance premiums were high, and in some cases, insurers refused high risk liability insurance contracts.

The increasing duties and expectations placed on those engaged in the sporting industry had made some recreational and sporting activities economically unfeasible. In 2002, Sports Industry Australia called for immediate reform, and drew attention to the plight of district cricket clubs in Victoria – they were informed that their public liability insurance premiums would rise by 93%. Australian legislatures thought that they needed to ‘swing the pendulum back’ and rein in the more litigious claimants. A National Expert Panel, chaired by Justice Ipp, was commissioned to recommend changes to the law of negligence. In response to the Ipp Report, legislation was enacted in all Australian jurisdictions. In Queensland it found its form in the Civil Liability Act 2003 (CLA) and the Personal Injuries Proceedings Act 2002.

Major changes introduced by the CLA included:

- a $250,000 cap on general damages;
- a cap on damages for past and future economic loss;
- no liability in cases where the injured person was engaged in criminal activity that contributed to the risk of injury;
- restricted claims where a person’s intoxication contributed to their personal injury;
- no liability for failure to warn of obvious risks; and
- no liability for injuries arising from obvious risks of ‘dangerous recreational activities’.

An ‘obvious risk’ is one that would have been patent or a matter of common knowledge, even if the likelihood of it occurring is low. An injured person is presumed to have been aware of this obvious risk, making it easier for the defence to succeed. However, the injured person can adduce evidence to show that he or she was not actually aware of the risk and thus rebut this presumption.

A ‘dangerous recreational activity’ is one that involves a significant risk of harm. Where the plaintiff was engaged in what can objectively be classified as a dangerous recreational activity, there is no need to establish that they were subjectively aware of the risk. This means that if a defendant can prove that there were inherent or obvious risks involved in the sport, they will not be liable, despite any negligence on their part causing the inherent or obvious risk to materialise.

These legislative reforms eliminated about 70% of Australian personal injury claims payments on business and household insurance policies. Some complained that this means a transfer of the financial burden of reckless conduct from the at fault party (and its insurer) to the victim. Some also argue that the exemption of dangerous recreational enterprises from having to pay for injuries amounts to a subsidy of those businesses. It has, though, restored confidence to the organisers of sporting and recreational events that they can go ahead with their events without excessive exposure to the crippling costs, both reputational and financial, of legal pursuit.
Is Cricket a dangerous recreational activity?

Cricket is clearly a ‘recreational activity’. It is an activity engaged in for enjoyment, relaxation and/or leisure.\(^3\) The question is, however, is it a dangerous recreational activity?\(^2\) The CLA defines a dangerous recreational activity as one which involves a ‘significant degree of risk of physical harm’.\(^4\) ‘Significant’ means more than trivial, but does not have to be ‘likely’.\(^5\) Risk of physical harm may not be significant if, despite the potentially catastrophic nature of the harm, the risk is very slight.\(^6\)

Particular activities, like cricket, can be segmented, for the purposes of assessing whether they are dangerous. In *Fallas v Mourlas*, Ipp JA applied this segmentation principle to ‘spotlighting’, where participants shoot kangaroos at night with the aid of a spotlight. His Honour found that holding the spotlight was a separate activity from shooting, as was entering and leaving the vehicle used for the hunt.\(^7\) As we have already seen, there are some activities in cricket that are more dangerous than others. Batsman, for instance, have been injured more regularly than bowlers, or out fielders. So it would seem that a number of activities involved in the game, if not the entire game, could certainly be considered dangerous activities for the purposes of the CLA.

‘Obvious risks’ and Cricket

Even if cricket, or particular activities engaged in by the players, is not regarded as a ‘dangerous recreational activity’, cricket still involves obvious risks. A 2002 Ministerial Media Statement addressed the proposed promulgation of the *Civil Liability Act*. In the Statement, former Queensland Premier Peter Beattie guaranteed that ‘organisations will not be liable for injuries from obvious risks – like a player being hit in the eye during a cricket match’.\(^8\) Common sense tells us that the risk of injury to batsmen and fielders, even umpires, during a cricket match is ‘obvious’. As we have seen, injuries to those involved in a match are not infrequent and are sometimes fatal.

However, the position regarding other so called ‘freak accidents’, where an errant cricket ball launched into the crowd or over a boundary fence causes injury, is less clear. Certainly, in modern cricket, the ball is hit into the crowd regularly. However, there have been no serious injuries reported from this practice. It could hardly be said that spectators, or innocent bystanders, would consider their proximity to a game of cricket to carry with it an ‘obvious risk’ of injury. However, we do recall unfortunate Bessie Stone in *Bolton v Stone*. A risk of injury may be so ‘unobvious’ and unlikely that it is not reasonably foreseeable, and thus will not found a claim in negligence in any event.

Dangerous recreational activities are thrilling

So, if we know them to be risky, why is it that we humans are so drawn to dangerous activities like cricket? It is the thrill of competition, competition being a natural drive in human beings.
Holdings, Callinan J observed that competition often involves risk:

*Almost all sport involves physical exertion, physical competition and a degree of physical domination, in one form or another, by one person or team over another: whether by running faster, jumping higher or further, scrummaging harder, throwing straighter and faster, or hitting a ball with better timing and more accuracy, or bowling faster. Even seemingly gentle sports will not be without risk: in table tennis, of being hit by the bat or ball, or in over-reaching for a shot.*

Dangerous sports attract both the participant and spectator. Sport’s allure includes the adrenalin rush and camaraderie that comes from facing danger and overcoming it. Dangerous sports such as ‘running with the bulls’ at Pamplona, bungee jumping and parachuting, rock climbing and mountain biking, and facing devastating fast bowling in cricket, produce pain and privation, but also pleasure and release; and honour. We search out and admire the brave risk takers in many areas of life. Dangerous sport provides a higher level of entertainment and excitement and follows the mantra that ‘life shouldn’t be too dull. Risk does give you a sense of excitement, of being alive’.

The law should stay well back from regulating every risky situation and underwriting every recreational injury, to avoid cutting too deeply into the benefits of societal cohesion, noble physical attributes and wellbeing that dangerous recreational sports provide. Society should tolerate, perhaps encourage the dangerous sports, for their benefits vastly outweigh their costs.

**Free will and liberty**

The common law has been inclined to preserve individualist rights. So did Canon Law and Roman Law, from whence came the doctrine of volenti non fit injuria – ‘to a willing person, no actionable injury is done’. This is a policy of social maturity. One should accept responsibility for one’s actions and preserve liberty of action.

The House of Lords in Tomlinson v Congleton Borough Council preferred free will to accept obvious risks over the making of policies requiring people to take steps to protect others against obvious risks.

We favour individual liberty of action, said Lord Hoffmann, in a case concerning a young person who broke his neck in a badly executed dive into a lake:

*I think that there is an important question of freedom at stake....*

*It is of course understandable that organisations like the Royal Society for the Prevention of Accidents should favour policies which require people to be prevented from taking risks. Their function is to prevent accidents and that is one way of doing so. But they do not have to consider the cost, not only in money but also in deprivation of liberty, which such restrictions entail... [T]he balance between risk on the one hand and individual autonomy on the other is not a matter of expert opinion. It is a judgment which the courts must make and which in England reflects the individualist values of the common law.*

*This article is reproduced with kind permission of Professor Jim Corkery and the Sports Law ejournal published by Bond University, Queensland.*
2 August 2010 held at the University of South Australia, Adelaide Hilton Hotel and Magill Estate, Adelaide.


5 Abdul Aziz, Karachi wicket keeper, died after being hit over the heart in the 1958 9 Guadi e Azam Trophy Final. Ian Holley was batting for Whitehaven in 1993 when he was hit underneath the eye and died shortly after; British Flight Sergeant John Willis died in 2002 from being hit on the head at a match between two air force bases.

6 For example, Indian cricketer Raman Lamba was killed at a club match in Dhaka in 1998 after being hit in the head while fielding without a helmet.

7 Cable from the Australian Cricket Board to the MCC (English Cricket Board, London) 1932 3 Ashes Series, reproduced in Anthony Bateman, Cricket, Literature and Culture: Symbolising the Nation, Destabilising Empire (Ashgate Publishing, 2009) 149.

8 [1951] AC 850.


10 Ibid 863 (Lord Oaksey).

11 Ibid.


16 Woods v Multi Sport Holdings Pty Ltd (2002) 208 CLR 460, 467 (Gleeson CJ).

17 Ibid 494.

18 (2000) 201 CLR 552.


27 This perception was disputed. A report commissioned by the Law Council of Australia and released 26 March 2006, National Trends in Personal Injury Litigation: Before and After ‘Ipp’ by Professor EW Wright, contended that ‘contrary to widespread belief, litigation rates had not, generally, been increasing in the period leading to the Ipp Review’. (p 3)

28 Civil Liability Act 2003 (Qld) s 13.

29 Ibid s 19(1).

30 Ibid s 19(2).


32 Civil Liability Act 2003 (Qld) s 18.

33 See generally David Thorpe and Pam Stewart, ‘Not to be too pedantic... But what exactly is a dangerous recreational activity?’ (2006) 1 Australian and New Zealand Sports Law Journal 121, 127.

34 Ibid.


40 (1967) 116 CLR 383, 387.


43 Volenti is where a plaintiff accepts a risk. It can be distinguished from ‘consent’ – which can prevent some torts arising at all. For example, consent to a medical operation prevents an invasive operation from being a trespass to the person.

44 [2003] UKHL 47. The plaintiff dived into a lake in an old sand quarry to cool off. He struck his head on the sandy bottom, broke his neck and became a tetraplegic.

45 Ibid [46] [47].
The evolving legal issues on Rugby Neuro-trauma?

BY TIM MEAKIN BARRISTER, 7 BEDFORD ROW, W.C.1

Introduction and Background
Brain trauma related concussive injuries have recently attracted keen interest in sports law. The controversy has focused on the NFL, which is used as the conventional model for highlighting the alleged long-term consequence of high impact physical sports. This includes the risks of neurodegenerative disorder (Parkinson’s) and other neuropathological processes. USA litigation has led to a £462m proposed settlement of NFL concussion related sports claims for 4,500 former players. The question is whether that type of litigation could spread to the UK in future and if so, what are the core legal principles on bringing and defending such claims. The legal focus is now on rugby union/league, but this is emblematic of a potential wider problem- including football, cycling, ice hockey, in addition to military personnel exposed to blasts and other repetitive brain trauma (RBT).

To place the rugby football case in context a study of head injuries in recreational activities in the USA in 2009 found as follows:
- Cycling: 85,389
- US Football: 46,948
- Baseball: 34,692
- Ice skating: 4,608

As to rugby, concussion is the most common injury. For example, this means 5.1 instances for every 1000 hours of rugby. This may be explained in that players are now on average 7.2 kgs. Heavier than 20 years ago, but nevertheless, opinion on the causes are deeply divided. “Head Games” – the film and book makes the case for the long-term dangers of concussion injuries, whilst critics assert; “…annual deaths from neuron-injury are highlighted as being less frequent than lightning strikes”.

This article analyses the outline legal issues as to trauma related brain injury. Given the unsettled state of medical knowledge, definitive guidance on this evolving issue cannot be given. Nevertheless, a reasoned assessment will cover the following themes:

1. What is a trauma induced neuro-injury in this context?
2. What type of negligence case can be formulated in principle?
   a. Historic failures to advise and maintain players’ welfare that have now crystallised (i.e. NFL claims) on the long-term effects.
   b. Brain injury caused by foul play on a single occasion.
   c. Brain injury caused by the failure of management of the game: referee/coaches permitting players to be exposed to avoidable risk of injury.
   d. Clinical negligence of medical advisors permitting a player to play when unfit.
3. What is the duty of care and the issues informing breach of duty of care?
4. What are the problems on proving causation of injury in fact and law?
5. The relevant Medical Guidelines and the IRB/RFU/RL management of the risks and the reduction of the same.
6. Conclusions to be drawn and the future course of any notional litigation.
The medical problem – What is a concussion related brain injury?
A central issue is a lack of specificity on the definition of concussion-related brain injury. Recent scientific attention has succeeded only in defining a constellation of clinical symptoms and signs, with no clear identification of the causal relationships in question. Nevertheless a beneficial point of entry is therefore to identify some key definitions:

1. Sports-Related Concussion: neurobehavioral changes consequent on head trauma. It includes concussive and sub-concussive injuries.

2. Concussion: a disturbance in brain function caused by direct or indirect force to the head. It results in a variety of non-specific symptoms and/or signs.5

3. Traumatic Brain Injury (TBI): a jolt or blow to the head that disrupts the normal function of the brain. Symptoms include: somatic (headaches), cognitive (lack of awareness, liability), physical signs (loss of consciousness), Behavioural changes and sleep disturbance.6

4. Chronic Traumatic Encephalopathy (CTE)7: a neurodegenerative disease marked by widespread accumulation of hyper phosphorylated tau (p-tau).8 Symptoms and clinical signs including impairment of cognition, behaviour, mood, headaches, motor and cerebellar dysfunction. It is associated with dementia.

5. Dementia Pugilistica (Punch Drunk Syndrome).


7. APOE: E4 –genotype associated with increased susceptibility for CTE.

8. Chronic Neurocognitive Impairment (CNI): a neurological condition, which can present acutely, or after a long period after trauma, but there is no known relationship between CNI and CTE. The association between the non-specific symptoms and traumatic events are not established.

9. Repetitive Brain Trauma (RBT): all CTE sufferers exhibited a history of RBT but not all RBT sufferers exhibit CTE.9

The problem of factual medical causation
Any claim has to overcome the hurdle of proving medical causation in fact. That is a major problem as medical experts remain divided as to the long-term risks.10 It is unclear why some individuals with CTE develop motor features and others do not. One possibility is the differences in the biomechanics of the injury in a particular sport. For example, in boxing angular acceleration and torsional injury involving the brainstem and cerebellum is thought to be a pathogenic mechanism of TBI, after a hook, or jab to the jaw, whereas transverse and linear acceleration and deceleration injury are more characteristic of football dynamics.11 Some conclusions from the 4th Zurich Consensus on Concussion in Sport in 2012, highlight the uncertainty:

“Att present there is no perfect diagnostic test or marker that clinicians can rely upon for an immediate diagnosis of concussion in the sporting environment...”12

“It was agreed that chronic traumatic encephalopathy (CTE) represents a distinct tauopathy with an unknown incidence in athletic populations. It was further agreed that CTE was not related to concussions alone or simply to contact sports … it is not possible to determine the causality or risk factors with any certainty.”13,14

Problems in the medico-legal context in proving a causal nexus are therefore admitted. A study to examine the clinical presentation of CTE in confirmed cases suggests two major clinical presentations of CTE one a behavioural/mood variant and the other a cognitive variant.15 Points to consider include:

• What is the number of concussions needed to cause...
long-term neurodegenerative disorders or just one major event?

- The widely drawn parameters of repeat high impact forces to the head are known in boxing, but what of the positional forces in rugby?

- Is “second impact syndrome” relevant, particularly with competent “return to play policies”? 

- Does “brain rest” after a concussion actually assist the athlete? This is controversial and is doing no activity until a player is asymptomatic actually providing benefits?

- Is it the intentional contacts or the unintentional contacts that cause the injury? Research has shown that more injuries in Ice Hockey are caused to boys from unintentional contact than intentional contact (400%).

- College American Footballers are recorded to be exposed to between several hundred and 2000 head impacts per season in practice and games.

What do the medical experts say?

- **The Zurich guidelines**

In terms of the medical reaction to the sports related brain injury the primary point of reference is the 2012 ‘Zurich Guidelines’. This provides the guidelines for the diagnosis and management of concussion syndrome in sport. The main findings of the consensus are summarised as follows:

1. A summary of the diagnosis and management of concussive injuries, its clinical signs and symptoms, including cognitive impairment and other neurobehavioral features.

2. The need for evaluation when any player shows any features of concussion:
   a. On field evaluation – the player should be medically evaluated and removed from play.
   b. Once first aid has been administered then assessment of the concussive injury by ‘SCAT3’ or other suitable assessment.
   c. The player should not be left alone and should not be permitted to return to play.

3. Evaluation in the Emergency Room:
   a. Medical assessment, including neurological assessment.
   b. Determination of the clinical status of patient, including need for imaging. Follow up concussion investigations and management. Resolution of acute symptoms is mandatory.

4. Return to Play Policies: The emphasis is on a stepwise progression, but only if the player is asymptomatic. Return to play on the same day of concussive injury should not occur. If there are persistent symptoms of more than 10 days (reported at 10-15% of cases) then consider other pathologies. Pharmacological therapy can be applied and need to understand that athletes may not recognise past concussive injuries.

5. Children will report concussion differently to adults and require age-appropriate symptom checklists - there may need to be patient parent input on evaluation-A “Child Scat 3” has been developed [5-12 years]. No return to play until child can manage school effectively and symptom free.

**How can the risks of injury be reduced?**

There is no good clinical evidence that protective equipment will prevent concussion. Headgear will reduce the impact forces on the brain, but they do not reduce concussion. Changes to the rules to reduce head injury, should be considered although no specific suggestions are made. For example, one study suggested that in football/soccer, upper limb to head contact in heading contests caused 50% of concussions. In addition, prohibiting foul play whilst at the same time ensuring that medical assessment during a game does not disadvantage a team. New technologies to assess concussion are advocated including phone apps, sensory motor assessment, eye-tracking technology, functional imaging and neuron-imaging. However none has been validated as being diagnostic. The same concession applies to the effect of ‘rest’ and treatment following a sport related concussion is sparse.

**Criticism of the Zurich guidelines**

The Guidelines have attracted criticism, based on their lack of diagnostic specificity and lack of focused management strategies. For example, what should be done if a clinician considers that another condition better describes the symptoms, e.g. non-brain based injury conditions? Moreover, does the syndrome have to involve only the brain, and/or shaking of the patient’s head? What is the precise pathology? The entry portal to diagnosis is too wide (for example, inner ear pathology,
whiplash—these also satisfy the Guidelines criteria but would be treated in the same manner under the Guidelines). Finally, there are the psychological consequences of misattribution, which can result in the promulgation of disability (e.g. like fibromyalgia).

Complicating factors: A lack of reporting

Sport-related concussion is often under-reported for a variety of reasons. In a study of 486 Patients, 148 (30.5%) answered the following question, “Have you ever sustained a blow to the head which was not diagnosed as a concussion but which was followed by one of the following signs and symptoms listed in the Post Concussion Syndrome Scale”, in the affirmative. In professional sports, not playing can have significant economic consequences, and there is an inherent reluctance to reduce the risks of injury if it jeopardises the chances of major sporting opportunities. Conversely, the more stringent the guidelines, paradoxically, the less these injuries will be reported. This factor tends to distort and therefore undermine the accuracy of any research.

Legal principles: Who are the potential defendants?

The class of potential defendants is not closed, but includes sports governing bodies, teachers, referees, medical staff and coaching staff. Consequently it is essential to frame the case properly. Taking the example of the ‘concussed player, or the player at risk of concussion’ then the following are identified as potential defendants:

1. Those coaches, referees, doctors (including match day doctor, MDD) who negligently allow a concussed player to continue to play, or return to play.
2. Coaches negligently instructing a player to return to the field knowing he is concussed or when he knows he is at risk of injury (for example from training).
3. The ‘NFL type’ cases where there is a failure to educate and/or misleading players with regard to long-term risks of head injuries.
4. Those sporting governing bodies that fail to ensure the rules on concussion management are in line with current medical recommendations to protect. 5. Those responsible for enforcing of guidelines for children who play together, or who risk injury by undertaking certain sports.

Legal principles: a Duty of Care?

That a wide-ranging duty of care is owed was established in Vowles v Evans, the claimant (“C”) sustained serious personal injury during an amateur rugby match. C was playing as ‘stand in’ front row for his club when, during the game he took up his position in the front row, the scrum collapsed and he suffered tetraplegia. Critically, non-contested scrums were rejected by the teams and were not imposed by the referee. C’s claim was against the referee of the match for whom the WFU accepted vicarious liability. Liability was found on the basis of C’s lack of experience in playing this position. Secondly, as a matter of policy it was just and reasonable that the law should impose upon an amateur referee of an amateur rugby match a duty of care towards the safety of the players. A referee had to take reasonable care for the safety of the players. Points relevant to the wider issues of liability in neuro-trauma cases include the following:

- Each participant in a game of rugby owes a duty of care to take reasonable care not to cause injury to another player. The laws of Rugby are neither definitive of the existence of a duty of care, or of its extent. Breach of the law does not necessarily mean a breach of duty but it can be taken into account. Breach of duty has a ‘high threshold’. A duty of care existed where a club officer takes upon himself some task which he is to perform for other members of the club during which he acquires actual knowledge of circumstances which he knows gives risk to a risk of injury to the club members if they are not told of the danger. The failure to give a warning based on the knowledge of the danger is negligent. Clubs and sports governing bodies that do not advise and educate on the risks of brain injury in the long term arguably therefore come within this principle.

- An individual member of a club may assume a duty of care to another member and the fact they are both members of a club will not confer immunity upon the member sued. This would cover all staff at a club with
a duty to care for a ‘concussed’ player, including coaches and doctors.

- There was no difference as to the duty of care between amateur and professional rugby players. The risk of a serious spinal injury to front row forwards is more likely to occur in the amateur game than the professional one. This demonstrates a wide-ranging application of the duty of care beyond simply the professional game.

- The referee abdicated his responsibility by leaving it to C’s team to decide whether to play non-contested scrums. A fortiori if she/he does not remove a concussed player from the pitch then arguably the breach of duty is established.

The cases of Lucas Neville and Ben Robinson: Two recent cases can be used to illustrate this test. In 2009, Lucas Neville suffered a serious head injury in a rugby game in early November 2009 in Ireland and he was treated at hospital in Dublin. He sought additional assistance on 15th November at the same hospital, as he complained of headaches and visual problems. No scan was performed at this time, but if it had been it would have identified an intracranial haemorrhage. He was however reassured. He sustained further injury on 28th November playing for his school and suffered severe brain injury. The school admitted that it should not have permitted him to return to play. He was awarded £2.29m in damages. Additionally in 2013, Ben Robinson, a 14 year old schoolboy died following a heavy tackle in a rugby game. He was knocked out at the start of the game but continued playing and undertook a series of additional tackles and then collapsed. He subsequently died and the criticism was that he should have been removed from the field of play when his concussive injury was evident.

The following types of case that can be advanced by a claimant who suffers a neuro-trauma? Firstly, brain injury on the field due to violent/negligent play—the duty of care is established. This becomes an issue of medical and legal causation, namely that the act in question caused the injury. Breach of duty is established based on a vicarious liability of the club for the actions of the player. Thirdly, brain injury on the field due to negligence of officials with resulting injury. This would apply to the failure to remove a player with a concussion injury, or negligently permitting him to return. The referee, MDD or team doctor have a duty of care in this instance. Lastly, brain injury on the field due to failure to warn and educate. This may be due to historic failures, but the actions/negligence will be judged by the standards of the day and what should have occurred. If historically brain injury was poorly understood and a competent sporting organisation or club would not reasonably have been expected to warn against such risks then liability will not be established. The more recent the complaint the stronger the case becomes from the prospects of prevailing knowledge. The essential issue here is ‘who knew what about TBI and when?’

The issue of causation of injury in Law
A claimant has to prove causation in fact and law. Causation of injury has specifically been considered in some rugby injury related cases and provides some guidance. In Mountford v Newlands School, the claimant fractured his elbow during a rugby match when he was tackled by a physically much bigger boy, who had been permitted to play above his age group. Liability was based on the respondent boy being too old to play in that particular age group, especially due to his physical size. There was a significant increase in risk of injury presented by the boy’s size, weight and maturity, which were also in breach of the relevant Junior Rugby Guidelines, which were in place to prevent the increased risk of injury. Causation of injury was held to be established. In finding causation of injury made out reference was made to Chester v Afshar and to the “material increase in risk” as a justification for finding causation of injury:

“...Before the defendant will be held responsible for the plaintiff’s injury, the plaintiff must prove that the defendant’s conduct materially contributed to the plaintiff suffering that injury. In the absence of a statute or undertaking to the contrary, therefore, it would seem logical to hold a person causally liable for a wrongful act or omission only when it increases the risk of injury to another person. If a wrongful act or omission results in an increased risk of injury to the plaintiff and that risk eventuates, the defendant’s
conduct has materially contributed to the injury that the plaintiff suffers whether or not other factors also contributed to that injury occurring. If, however, the defendant's conduct does not increase the risk of injury to the plaintiff, the defendant cannot be said to have materially contributed to the injury suffered by the plaintiff. That being so, whether the claim is in contract or tort, the fact that the risk eventuated at a particular time or place by reason of the conduct of the defendant does not itself materially contribute to the plaintiff's injury unless the fact of that particular time or place increased the risk of the injury occurring” (emphasis added in bold).

This line of reasoning is questionable as the mere “increase in the level of risk of injury” is not proof of its cause, see McGhee v National Coal Board [36] [which was expressly disapproved in Gregg v Scott [37] and distinguished in Fairchild v Glenhaven Funeral Services Ltd. [38] ]

Causation, as traditionally formulated has to be proved on a ‘but for’ basis, on the balance of probabilities. The burden rests on the claimant [39]. The reference to Chester v Afshar was actually a ‘special case’ decided on a policy basis to prevent “injustice” to the claimant. Hence, the relevance of the size of the boy in Mountford was questionable in terms of risk injury/causation. The ratio was that the rule was intended to prevent this increase in risk and that risk eventuated and the boy’s increased physicality contributed to the injury. So the finding was based on the tackle itself and there had to be a link to the physicality of the bigger boy for causation to succeed. Was this actually correct in principle?

In broader terms the proof of causation in a “concussion” case will be problematic on the current state of medical knowledge. Whether the brain injury was caused by a particular episode, or was it cumulative, or whether it caused the brain injury at all. This is a fundamental difficulty in presenting any such claim. [40]

Legal issues: Is Volenti a defence?
This issue of willingly running a known risk is important to two respects. Firstly, brain injuries resulting from trauma on the pitch due to dangerous-negligent-unlawful play. A sportsperson, in law, agrees to run the risks inherent in a sport, if the game is safely and properly organised. In rugby, for example, if a tackle is lawful, but causes injury there is no negligence to which volenti can link. In contrast, if the relevant action is outside the rules of the game, then a player cannot be taken to have agreed to run the risk of injury.

Secondly, the failure to advise on the long-term risks of brain injury, such that the claimant could make an informed decision on whether to run the risk of injury is one head of claim. However, if no competent and full advice has been given then the claimant cannot be “volens”. Where players are not aware of a particular risk, for example the risk of head injury, and in addition are coerced into playing then those players cannot be taken to have voluntarily assumed the risk of injury. Note that the issue of volenti on children in sport would have little relevance in this type of sporting situation. Children will be taken to be too young to consent to run the risk of significant injury.

RISK MANAGEMENT: REDUCING THE RISKS IN PRACTICE?
Sporting organisations have taken action to reduce the risks of injury, thereby arguably complying with a reasonable duty of care as assessed by a reasonable body of sports governing bodies, based in turn on the most informed and specialist medical knowledge. There are mixed results but measures include the following:

- Training: Concussion awareness education.
- The rigorous application of return to play guidelines.
- Targeting particular risk areas: e.g. Little League Baseball: age specific pitching was introduced to reduce ‘pitch-related arm injuries’. Exposure was assessed by number of pitches-a maximum number prescribed and then a rest period is applied. The same could be applied for head impact exposure.
- Technology for monitoring head injury, with American footballers wearing headgear to assess impact exposure. [41] Thresholds for alerting for potential head injury can be applied. A head impact count, impact magnitude, impact location, and experience level can be monitored on the higher risk players.
Sideline checks on the pitch can be rendered more effective. Rehabilitation increased in intensity.

Pre-season testing: prior to competition with questionnaires in order to assess risk, but the accuracy is dependent on the baseline assessment.

Previous concussion is associated with 2-5.8 times higher risk of sustaining concussion, with greater severity and duration. These athletes may also report more symptoms at the baseline. What seems settled is that the greater the number of symptoms the longer the recovery period and Second Impact Syndrome has to be carefully considered.

Some sports, positions and style of play induce higher risk of concussion and age is a relevant factor. Younger athletes have a longer recovery period and are more susceptible to concussion injury.

Limiting contact in practice and reduce the number of games per season.

A useful research study examined the risk factors for injury in rugby union in amateur players in New Zealand. This took a random sample of 3,159 players and an investigation into rugby experience, background training, physical condition, injuries and lifestyle. Outcome measure was injury during play. Injury sites: Lower limb 35%, Face/head/neck 30%, Torso 23%, Injuries included 48 concussions (8%), 38 Fractures (30%). The factors associated with head injury identified included players undertaking more than 40 hours per week of strenuous activity, increasing age of players, playing on hard ground and increasing injury risk with foul play. The research concluded:

“Some injuries in amateur male rugby football in New Zealand might be avoided by stricter adherence to the rehabilitation of primary injury (including the enforcement of limits on return to play after injury) reducing foul play during games and improvements to playing ground quality. Other injury risk factors were a high weekly volume of strenuous activity and increasing age.”

In England, the RFU Professional Rugby Injury Surveillance Project undertaken in 2011-12 showed that concussion was the most common Premiership injury.

The RFU has instigated a concussion audit across the Premiership Clubs. Included in the findings are that tackles are the most common match event resulting in injury; five players retired in 2012-13 with unresolved injury and one from concussion, tackler concussion is a prominent feature of concussion; concussion is the most prevalent injury in Premiership Rugby 2012-13 with 54 reported match concussions and 5 training sessions; 90% of players did not report any concussive injury in a season; mean occurrence of head injury was 4.6/1000 hours.

The subsequent RFU Risk Reducing Policies include

- Concussion Guidelines that apply to both adults and children.

- SCAT 3 Children-SCAT.3: (Sport Concussion Assessment Tool) a standardised tool for evaluating concussion injuries in children, based on medical advice. This is applied if a child is demonstrating potential concussion symptoms (i.e. GCS less than 15). Any child suspected of concussion should be removed from play and medically assessed. Return to play criteria is then applied following medical assessment.

- RFU Concussion Management: Adult players are removed from play and medically assessed. Return to play-and if diagnosed with concussion then no play for 21 days-a graduated return after 14 days being symptom free-SCAT 3.

- Practical Modifications made in other aspects of the game: In 2012 the South African Rugby Union instituted a new set of scrum laws for amateur rugby for 2013 season. Scrum-related catastrophic injuries were highlighted and the rules were changed to prevent impact injuries and injuries from scrum collapse. In addition in UK the RFU imposes a new “Crouch-Bind-Set” protocol by referees and this has removed the physical hit from the engagement. This has reduced scrum collapses and thereby the risk of serious injury.

- Pitch-side Concussion Assessment (PCSA) brought in by the IRB in 2013 that gave teams and doctors time to assess players with suspected concussion. This was an assessment in a 5-minute interval. This has now been increased to 10 minutes under the new 2014 policy, which is set out below. A team doctor, referee or
Match Day Doctor (MDD) applied this and triggered if the player seemed dazed, confused, or there was suspected concussion. The assessment was made away from the pitch. This was a “side-line support tool”. Team Doctor of MDD decided whether the player can return to play.

- Graduated Return to Play Policy: This is a new policy adopted by the RFU, Premiership Rugby and Rugby Players’ Association in 2014 to ensure that players are safe to return to play after a head injury. The policy is based on the following factors:
  1. Recognise – Identifying the signs and symptoms of a concussion for a suspected concussion.
  2. Remove - If concussion is present or even a suspected concussion, the player is removed from play immediately. There are stronger assessments of concussion.
  3. Refer - Once removed from play, the player is assessed by a doctor with appropriate training. Doctors have 10 minutes to assess players in a game context.
  4. Rest - Players are required to rest until symptom-free and then start the Graduated Return to Play.
  5. Recover - Full recovery from the concussion is required before return to play is authorized.
  6. Return - In order to be safe to return the player must be symptom-free and be cleared in writing by a trained doctor. The player will complete Graduated Return to Play protocol.

Note that also:
- Substitutes can come on for five minutes.
- A player who does not co-operate will be deemed to have concussion and removed from the field.
- Maddocks Questions are asked (where are we etc) and a balance test can be undertaken. Any suspicion of concussion in the PSCA/Graduated Return to Play then the player should not return to play.
- Post Game SCAT3 and then assessment after 36-48hrs.
- IRB Regulation 10 provides for removal of the player, assessment and no return to play that day and thereafter on a guided basis.

This approach has been criticised by Dr O’Driscoll as “trivialising concussion”. In response the IRB has stated: “The IRB would like to re-iterate that the PSCA process has developed in line with industry best practice to support the Team Doctors in assessing head injuries. It has not been developed to allow time for medics to look for reasons to clear a concussed player.”

However there continues to be a gap between theory and practice as illustrated with the criticism concerning the decision to permit the return of George Smith in the Australia v British and Irish Lions 3rd Test in 2013. He was clearly knocked unconscious he returned to the game after 5 minutes. How would such a decision stand if compared to a reasonably competent employer returning his employee to work after such an injury? Also note the similar incident involving Hugo Lloris, the Tottenham Hotspur goalkeeper, who was permitted to play on when knocked unconscious in a match versus Everton in 2013.

SUMMARY AND FURTHER OBSERVATIONS
- This is an evolving area of the law and no accurate trends can be identified. The US litigation experience indicates that litigation in some form in the future is a possibility.
- The medico-legal issues are dogged by a lack of specificity on the diagnostic criteria of a traumatic brain injury. This is a strong pointer against successful cases.
- The imposition of the duty of care and the issues of the nature of a breach of duty have to be carefully defined and will range from “one on pitch incident” to historic negligence in failing to advise players of the risks of TBI.
- The range of potential defendants is relatively widely drawn and particular focus has to made on the precise nature of any case on breach of duty and frame it accordingly.
- Causation of a TBI and the nexus to the index negligence remains problematic. The advancement and defence of such claims have to focus on the issue of causation, primarily through neuro-radiological and other specialist evidence.
- There are significant steps that have been taken to address and reduce the risk of TBI. Whether they prove sufficient to defend future claims remains to be determined.
THE EVOLVING LEGAL ISSUES ON RUGBY NEURO-TRAUMA?

1 These guidelines are mirrored by other rugby authorities e.g. in Australia: ARU Concussion Guidance (Rugby Public) 2014
2 Note the latest film on this issue “Head Games” released in 2014.
3 What are the risks of sports-related concussion and are they modifiable? J Int Neuropsychol Soc 2009-15.112
6 See Child SCAT-3: Sport Concussion Assessment Tool (FIFA) and the 2012 Zurich Consensus Statement: the latest technology indicates that blood vessels in the brain that are hit through a rotational force can burst and haemorrhage, or there is microscopic tearing of the tissue around the vessel.
7 See also Smoolen v Whitworth and Nolan (1997) PIQR 133: Caldwell v McGuire and Fitzgerald (2002) PIQR 45. Roots v Sheldon (1968) ALR 33
8 This used be known as dementia pugilistica or “punch drunk”.
9 Stern et al Clinical presentation of chronic traumatic encephalopathy—American Academy of Neurology—(2013)-1222: note however this was a small cohort of 36 adults. This study specifically conceded that it is not understood why some individuals with CTE develop motor features and others do not (at 1126)
11 Stern et al—Clinical Presentation of Chronic Traumatic Encephalopathy—American Academy of Neurology—2013-1222
12 4th Zurich Consensus on Concussion in Sport 2012
13 Ibid.
15 Stern et al—Clinical presentation of chronic traumatic encephalopathy—American Academy of Neurology—(2013) -1222
20 Based on the 4th International Conference on Concussion in Sport, Zurich 2012.
25 American Football-50% of all injuries are unreported: Unreported Concussion in High School Football Players-Implications for Prevention—MacRea, Hammekse, Olsen: Clin J Sport Med 2004 14.13-17
30 Watson v British Boxing Board of Control (2001) I WLR 1256 shows that sporting bodies do have a duty of care to participants—not sufficient ringside medical support.
31 ‘Student rugby player Lucas Neville gets £2.25m damages’http://www.bbc.co.uk/news/world-europe-2672196124
32 ‘Ben Robinson’s rugby death is first of its kind in Northern Ireland’ http://www.bbc.co.uk/news/uk-northern-ireland-259436423
33 Gravil v Redruth RFC [2008]IRLR 829
34 Mountford v Newlands School (2007) EWCA Civ 21
35 Chester Aflitar [2005] 1 AC 134
36 McGhee v National Coal Board [1973] I WLR 1
37 Gregg v Scott [2005] UKHL 2
38 Fairchild v Glenhaven Funeral Services Ltd [2002] I WLR 1052.
39 Wilsher v Essex AHA [1988] AC 1074
40 Veterans’ case: However the point on causation was not taken on the US litigation.
41 Beckwith J. Greenwald: Measuring Head Kinematics in Football—Ann Biomed Eng 21012 40:237
42 Hamon, Kimberly et al Clinical Journal of Sports Medicine 2013-Vol 23.1
43 Note the “Child-Maddocks Score” based on a series of questions to assess concussion: “where are we now...” etc.
44 “Rugby Ready Practice 2013-14 Course Manual”
45 See also the Concussion Recognition Tool (CRT)
46 IRB PSCA Procedures and Definitions
47 Bernard Lapasset - IRN Chairman.
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 17 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

**Tim Finn**

Irish racing trainer Tim Finn died as the old year merged into the new. Little known outside his narrow circle he was the right-hand man to the Irish trainer Edward O’Grady, and although he was much respected in the world of National Hunt racing, it is only through his involvement with the Gay Future affair that he became known to a wider audience. On the August Bank Holiday weekend of 1974, a group of daring Irish racing men organised a betting coup so audacious and so successful that bookmakers are reported to have cried and refused to pay. The coup was masterminded by Cork businessman Tony Murphy and involved a horse named Gay Future, featured in the Ulverton Novice Hurdle at Cartmel.

To ensure that a good price was obtained on the day, the scheming team sent the pedestrian Arctic Chevalier to a small-time Ayrshire trainer, Anthony Carroll, informing him that the horse was Gay Future. They then persuaded Mr. Carroll to enter him in the Cartmel race. The horses were not dissimilar in appearance. However, Arctic Chevalier, known to everyone in Ayrshire as Gay Future, was not at Cartmel that day. The real Gay Future was sent from Ireland, ready to trounce all rivals. Small bets were placed on the horse in bookmakers’ establishments throughout London. The punters in question had selected Cartmel because it has one telephone, which they occupied, and thus the bookmakers were unable to ring through to the course in order to have the horse’s price reduced. Gay Future romped home at 10-1. In today’s money the coup should have landed £7 million. However, the bookmakers complained, and the matter ended in a Preston courtroom.

The judge almost ordered the jurors to acquit the conspirators but, as these were not people familiar with racing, they returned a guilty verdict. Minimum fines were imposed for a “very minor offence”. Tim Finn was the man with the bucket of suds which he splashed round Gay Future’s neck in order to make the horse look fully race-ready. In so doing, he wore a wig and sunglasses. Many years later, Mr. Finn recalled his father emerging from Mass one day. Someone said to him “What do you think of your criminal son”? The poor man, was thunderstruck – he knew nothing about the affair whatsoever (*The Sunday Times* of 5/1/2014, p. 18).
FOOTBALL

FIFA under pressure as allegations of bribery regarding Qatar World Cup award accumulate

Ever since Qatar successfully bid for the 2022 World Cup, suspicions as to the probity of the award have been rife, particularly as it is difficult to imagine a venue for international football’s quadrennial showpiece than the Gulf state. These suspicions were also reinforced by evidence of corruption in the ranks of the sport’s world governing body and which, as was reported extensively in this organ at the tim e, saw the banning of the most senior Qatari official at FIFA, Mohamed Bin Hammam, banned from any involvement in football for life follow ing evidence that he had bribed senior officials at the Caribbean Football Union at the height of his bitter campaign for the FIFA presidency w ith incum bent Sepp Blatter. Indeed, it was Mr. Bin Hammam himself at whom the accusations of corruption were to be thrown as more and more questions were asked about the probity of the bid.

Apart from Qatar’s suitability for staging the World Cup from a pure climactic point of view – and at the height of its summer! – other, more ethical concerns were growing on the wisdom of FIFA’s decision, in the wake of various accounts of the ill-treatment and injustice meted out to the workers at the building sites which were to accommodate the tournament stadiums. The nation’s so-called “kefala” system, which ties migrant workers to their “sponsors” and prevents them from leaving the country, has come in for fierce criticism, with reports of scores of deaths caused by brutal employment and living conditions. This has now prompted the Qatari authorities, and more particularly Hassan Al-Thawadi, who heads the 2022 organising committee, to pledge major changes – in fact he claimed that the kefala system was gradually being eroded and that steps were being taken in that direction, offering the explanation that “some systems were developed at a different time in Qatar’s life” and required change (The Mail on Sunday of 17/11/2013, p. S10). However, Qatari officials refused to recognise the plight of footballer Zahir Belounis, who ended as a “destroyed man” over claim s of unpaid earnings. Mr. Belounis’s story has caused outrage among various human rights organisations. The French-Algerian player claimed not to have been paid since May 2012 and that he had to sell all his possessions to support his family (Ibid).

A major development in the Qatar saga occurred in mid-March 2014, when a senior FIFA official and his family were allegedly paid $2 million from a Qatari firm linked to the country’s successful bid. Jack Warner – no stranger to these columns by any means – who is a former Vice-President of FIFA, alleged that he had been paid $1.2 million from a company controlled by a former Qatari football official shortly after the decision to award the tournament was made. Payments totalling $750,000 were made to Mr. Warner’s sons, according to documents shown to a leading British daily newspaper (The Daily Telegraph of 18/3/3014). It was also disclosed that the US Federal Bureau of Investigation (FBI) was making inquiries into the Trinidad-based Mr. Warner and his alleged links to the Qatar bid, and that the FIFA official’s eldest son, who lives in Miami, had been assisting the inquiry as a co-operating witness. It also emerged that a note from one of Mr. Warner’s companies, Jamad, to Mr. Bin Hammam’s firm, Kemco, requested payment of $1.2 million for work performed between 2005 and 2010. This document was dated 15 December 2010 – i.e. two weeks after Qatar won the World Cup bid. It states that the cash involved was “payable to Jack Warner”. The latter’s two sons, as well as an employee, were paid a further $1 million by the same Qatari company. Another document states that payments are intended to “offset legal and other expenses” whereas a separate letter claims that more than $1 million covered “professional services provided over the period 2005-2010”.

At least one bank in the Cayman islands initially refused to process the
payment amidst fears over the legality of the cash transfer. The money was eventually processed through a New York bank – a transaction which is understood to have come to the attention of the FBI. According to a well-placed source:

“These payments need to be properly investigated. The World Cup is the most important event in football and we need to be confident that decisions have been made for the right reasons. There are lots of questions that still need to be answered” (Ibid).

It should be recalled at this point that Mr. Warner was one of the most experienced members of the Executive Committee until he resigned in 2011 and served as Vice-President of the organisation for 14 years. He was one of the 22 members who decided to award the 2018 World Cup to Russia and the 2022 event to Qatar (Ibid). It is also appropriate to point out some of Mr. Warner’s previous escapades, which resulted in his career in football administration coming to a controversial end three years ago when he resigned as FIFA Vice-President, thus ending an involvement that stretched back over three decades. The beginning of the end arrived in the shape of a brown envelope – yet his resignation was accompanied by a FIFA statement to the effect that, since he had resigned before any inquiry into claims of bribery against him could be completed, he could leave with the “presumption of innocence maintained”. He is also believed to receive an annual pension from FIFA of approximately £20,000 for the time he served with them. In fact, Mr. Warner left the sport in June 2011, just days after he had been suspended pending the outcome of an investigation that he and Mr. Bin Hammam had tried to bribe members of the Caribbean Football Union to support the Qatar’s bid to displace Sepp Blatter as President. There is more than a suggestion that the payments revealed in the latest scandal may be linked to that campaign rather than to the Qatar bid. One of the recipients collected an envelope containing $40,000 in cash, took a photograph thereof and leaked it to the media (The Independent of 19/3/2014, p. 58).

Not unexpectedly, the Qatar 2022 Supreme Committee for Delivery and Legacy lost no time in distancing itself from these allegations of corruption, stating that it had adhered strictly to FIFA’s bidding regulations in compliance with its code of ethics, and that they were unaware of any allegations surrounding business dealings between private individuals. The Qatar 2022 Organising Committee also denied any involvement in corruption and sought to distance itself from Mr. Bin Hammam (The Guardian of 18/3/2014, p. 58). As for FIFA itself – it did not even request that any evidence of wrongdoing be presented to its ongoing investigation into the 2022 award or suggest that it would actively seek its inclusion (The Independent of 19/3/2014, p. 58). Damien Collins MP, an influential member of the House of Commons Select Committee for Culture, Media and Sport and a long-time campaigner for reform of the world governing body, attacked this response, calling it a “disgrace” and that it showed why there was no public confidence in the body’s desire or ability to take seriously these allegations of corruption (Ibid).

As for the unshakeable Mr. Blatter, his reaction came in the now-familiar refrain that all this is now “ancient history”. Half of the 22 members of the FIFA Executive Committee who, in December 2010, voted for Qatar and Russia have since left the stage – some under the cloud of corruption allegations. This is held up as evidence that Mr. Blatter has cleaned out the Augean stables. Others would argue that this renders their decision as invalid and discredited (The Guardian of 19/3/2014, p. 55).

Indeed, it could be argued that it is the timing of the allegation made against Bin Hammam concerning the Warner payments that should particularly concern Mr. Blatter and the Qatar 2022 Bid Committee. The request is said to have been communicated just two weeks following the vote to award the tournaments to Qatar and Russia. However, the payments were reportedly not transferred until July 2011. By that time, the FIFA presidential candidate Bin Hammam had been suspended over the aforementioned cash bribes to the Caribbean Union, paid for by Qataris, and overseen by Mr. Warner. In short, the $2.2 million payment could have been for any number of services rendered. Nor, surprisingly, is that amount even considered anywhere near sufficient to buy a vote.

It also emerged that, if the allegations of bribery against Bin Hammam are true, the award of the tournament to
Qatar might also have had consequences which exceeded the context of the sport and spilled over into the sinister world of terrorism. Concern has been rising about the open support given by Qatar to various armed groups with terrorist intentions. One such group is the al-Nusra Front in Syria, that pledges loyalty to al-Qaeda. In addition, Qatari World Cup officials have been said to be making friendly overtures to, and even financing, Hamas, a powerful force on the West Bank of the Jordan which has shown itself to be profoundly anti-Semitic – and a former President of the Qatar Football Association has been named as a significant financier of the said Al-Qaeda terror group. So serious has been the concern at these developments that, in early March 2014, several countries withdrew their ambassadors from Qatar – and these were not Western nations but Saudi Arabia, Bahrain and the United Arab Emirates (UAE). It should be of some concern to the international football authorities that corruption could have advanced the cause of terrorism through the additional prestige and attendant resources that successful World Cup bids inevitably bring.

All these issues were, of course, highly likely to complicate the life of Michael Garcia, the US lawyer charged with investigating the processes involved in the 2018 and 2022 bids. To make matters worse, there were signs that the 13 members of the FIFA Executive Committee which made the relevant awards had begun to undermine the investigation before it had even started by briefing against Mr. Garcia’s integrity and experience – indeed against the very need to conduct any investigation at all. Allegations were apparently whispered in corridors about the investigator’s period spent as the chief supervisor of Wall Street and concerning his knowledge of “soccer”. They thus appeared rather keen that the process which had enabled their former colleague Warner to enrich himself and his family, as detailed earlier, was not abruptly brought to an end. Even the International Olympic Committee, which in the course of time has not exactly revealed itself as a paragon of probity, had not only exacted due retribution from those involved in the 2002 Salt Lake City Winter Games scandal – again extensively reported in this organ at the time – but also changed the entire bidding system. They did this by putting a distance between the candidate cities and the voting members to the point where the possibilities of corrupt personal enrichment was almost entirely eliminated. FIFA does not appear to be fired with a similar zeal for integrity. It should be recalled that the removal of Messrs. Warner and Bin Hammam seems to have had more to do with supporting the wrong side in elections for the body’s presidency than with outrage for the duo’s underhand dealings. Also, the expulsions in question did not result in any change in the organisation’s voting procedures.

Mr. Garcia’s problems increased in late March 2014, when he learned that Australia’s bid team for the 2022 tournament was accused by a whistleblower of paying Mr. Warner around £275,000 in the belief that he would vote for them. The person making the allegation attended meetings at which the Antipodean bid team discussed the Warner transaction, as well as others of a similar nature, and claimed that, while the cash was paid for the modernisation of the Marvin Lee stadium in Macoya, Trinidad, it had always been intended to influence Warner’s vote. The latter was at the time President of CACAF, the governing body of the sport in North and Central America as well as the Caribbean. The stadium is part of the Joao Havelange Centre of Excellence, a football academy built on land alleged to have been owned by Mr. Warner. He denied ownership, insisting that it belonged to the Caribbean Football Union, of which he was President. A cheque for $A 462,000 had been deposited into an account controlled by Warner in September 2010 and an official report following a corruption investigation in Caribbean football in 2013 concluded that he, Warner, had “misappropriated” these funds. It should be borne in mind here that the 2018 and 2022 votes by the FIFA Executive took place in December 2010. Australia received only one vote in the initial ballot, despite spending £25 million on their bid. Mr. Warner, who is believed to have voted for the US in that ballot, resigned from all his international football positions in June 2011, which, as is mentioned above, effectively placed him beyond sanction by the world governing body.

The significance of the whistleblower’s testimony to Mr. Garcia was that it has been made to a formal FIFA investigation,
specifically linking cash paid by a bidding nation for bidding support. Not only were bribes explicitly outlawed in FIFA’s “Rules of Conduct” for the bid procedures relating to the 2018 and 2022 World Cup, but the “ethical behaviour” clauses therein also provided that bidding nations should “refrain from attempting to influence members of the FIFA Executive Committee (ExCo) or any other FIFA officials, in particular by offering benefits for specific behaviour”.

Granting money for a stadium upgrade, if it was intended as a “sweetener” to influence the World Cup vote, would have infringed the rules unless Football Federation Australia (FFA), under whose leadership the bid was mounted, could demonstrate that the money was going to be given to that project anyway. An FFA spokesman informed a leading British newspaper that Australia, like all nations bidding for the 2018 and 2022 FIFA World Cups, was required by FIFA “to establish football development programmes in other nations where football facilities and funding were lacking”. However, the newspaper concerned revealed it had seen a copy of FIFA’s official bid guidelines and rules for the 2018 and 2022 events, and no such requirement was mentioned there. The FFA spokesman added:

"Under FFA’s International Football Development programme, a grant was made to fund preliminary design and feasibility work on a CONCACAF Centre of Excellence in Trinidad. The funds were paid to a CONCACAF bank account in 2010 and the programme was documented in FFA’s World Cup Bid reports, which were in turn subject to Australian Government oversight” (The Mail on Sunday of 30/3/2014, p. S10).

The newspaper also claimed to have seen the official FFA World Cup report, submitted at the end of the process, and the money paid to the account controlled by Warner was not apparently mentioned. The FFA spokesman also claimed that, subsequently, FFA was informed in early 2013 by CONCACAF of allegations that the funds had been misappropriated. FFA assisted CONCACAF in its inquiry into the matter, calling it “regrettable” that the funds provided to CONCACAF were not used in the way in which they were intended.

As was reported at the time, there is a strong suspicion that Qatar and Spain colluded to exchange votes among their backers for 2022 and 2018 respectively, despite that being against bidding rules. A FIFA investigation before the 2010 vote found there were insufficient grounds to conclude there was collusion but in February 2011 FIFA president Sepp Blatter admitted that there had been such manoeuvres. The Garcia investigation is likely to provide extensive evidence of such collusion, as well as “voting incentives” of cash paid, by various bidders, to projects linked to Executive Committee (ExCo) voters. Another whistleblower, from Qatar, is understood to have informed Mr. Garcia that funding was promised to African ExCo members in exchange for supporting the Qatari bid.

Mr. Garcia did in fact travel to Zurich seeking information from ExCo voters and one source said his forthright questioning left at least one ExCo member, from South America, "fuming" at suggestions of impropriety, which would suggest that the US lawyer was seriously “ruffling feathers” (Ibid). It is understood that more than one disgruntled ExCo member tried to gain support for a plan to have Garcia’s anti-corruption investigation axed. However, reform-minded colleagues frustrated this plan and Garcia’s work proceeded. The Australian whistleblower has also informed Mr. Garcia that another FIFA vice-president and ExCo member, Reynald Temarii of Tahiti, requested and was granted money for “sports development” in Oceania, “in itself, that is not a bad cause”, said the whistleblower. However, he (Temarii) also apparently sought a further four million dollars (£2.2m) over three years, in return for which it was always understood that if the Australia bid team did that Australia would have his vote. And that was absolutely a core element of (Australia’s) strategy. Australia’s bid team also had extensive dealing with Nigeria’s ExCo member, Amos Adamu, and Paraguay’s Nicolas Leoz, and Jamaican football was “allocated” £1.4m. “No-one from Jamaica even had a vote, but we were there giving them 2.5m dollars with a clear understanding that it would affect Jack Warner’s vote” added the whistleblower. It will be recalled from a previous issue that Messrs. Adamu and Temarii were both suspended from FIFA and then ousted for corruption before the vote even took place, while both Warner and Leoz
have subsequently left under a cloud of corruption allegations.

The issue dropped from the media headlines for two months. However, in early June 2014 the Qatar award came under fresh scrutiny following a string of allegations about payments made by the country’s senior football official. The allegations followed the discovery of a cache of millions of files by The Sunday Times. The leading British paper alleged that Mohamed bin Hammam, used secret slush funds to make dozens of payments totalling more than $5 million (£3 million) to senior football officials. More particularly it is alleged that he used 10 slush funds controlled by his private company and cash donations to make dozens of payments of up to $200,000 (£120,000) into accounts controlled by the presidents of 30 African football associations. The African football officials held sway over how the continent’s four executive members would vote. It was also alleged he funnelled more than $1.6 million (£950,000) directly into bank accounts controlled by Jack Warner, including $450,000 (£270,000) before the vote (The Sunday Telegraph of 1/6/2014, p. 4). Further claims were that he entertained the president of the Confederation of African Football in Doha, that lavish junkets were organised across Africa, where Bin Hamman handed out almost $400,000 in cash with the promise of more pay-outs, and that he funnelled $800,000 to the Ivory Coast FA with funds from FIFA’s goal programme.

Among the alleged payments made by Mohammed bin Hammam were:

- £30,000 for ‘school fees’ for Liberian-born former Man City striker George Weah – FIFA’s world player of the year in 1995.
- £48,000 to Zambian FA president Kalusha Bwalya for “FA and personal expenditure”.
- £31,500 to Fadoul Houssein, of the Djibouti FA, for an “expensive course of medical treatment for his general secretary” and an all-expenses luxury trip to Saudi Arabia.
- £36,000 for a “car to travel to football projects” for ex-Gambian FA boss Seedy Kinteh..............
- £480,000 to the Ivory Coast FA as part of a Fifa development scheme. £120,000 in cash to 25 delegates flown to Kuala Lumpur to discuss the bid in 2008.
- £30,000 to Sao Tome FA president Manuel Dende, who asked for £138,000 for ‘football pitches’ to be paid into his personal account.

This news emerged a few days before Mr. Garcia was due to meet Qatari officials in Oman as part of his investigation (The Independent of 2/6/2014, p. 50). This dashed any hopes the footballing authorities might have had of completing the inquiry before the 2014 World Cup kicked off in Brazil. Soon, calls for a re-vote came from within FIFA’s own organisation, with vice-president Jim Boyce saying he would support such a move should corruption allegations be proven. FA chairman Greg Dyke described some of this evidence, as “quite compelling” on the face of it, and that if the evidence was there, the process had been corrupt, and obviously it had to be considered afresh. Mr. Dyke reiterated this stance in a Monday morning interview on BBC Radio Five Live, saying:

“I think my instinct is that it’s very serious, the evidence is pretty comprehensive and there will need to be a full investigation and decisions taken. It is pretty clear there was a serious attempt made to interfere with the process of awarding the 2022 World Cup. FIFA has to sort this out, to do their investigation. If there was corruption involved, the process [of awarding the World Cup] has to be re-run.” (Daily Mail of 2/6/2014, p. 76).

Predictably, FIFA’s communications department directed all media enquiries to Garcia and “the office of the chairman of the Independent Ethics Committee”, and Qatar’s World Cup bid committee issued a statement vehemently denying all allegations of wrong-doing, adding that it would take “whatever steps are necessary to defend the bid’s integrity.” It claimed that the right to host the tournament was won because it was the best bid and because it is time for the Middle East to host its first FIFA World Cup. However, the Sunday Times report in question claimed Bin Hammam was lobbying on Qatar’s behalf at least a year before the decision to award the country hosting rights (Ibid). It was later confirmed that Mr. Garcia would take into account the evidence revealed in the Sunday Times before submitting his report. In fact, senior FIFA sources had reported that
Garcia had already been in possession of the documents before the story was published in the newspaper (Daily Mail of 3/6/2014, p. 68).

At the same time when these allegations were swirling round the media, it was also claimed that Nigeria was implicated in another match-fixing scandal after an agent was filmed claiming he could fix matches in Brazil. Football agent Henry Chukwuma Okoraji was apparently caught on camera insisting he could organise games and certain outcomes during the World Cup. It appeared that Okoraji suggested he could arrange a yellow card for 250,000 (£40,660) and a penalty for 2100,000 (£81,370). This news came just days after the National Crime Agency (NCA) investigated allegations that June’s friendly match between Nigeria and Scotland had been targeted. Speaking to a reporter from a hotel room in Milan, Okoraji and an associate, referred to as Joe, outlined their prices. In order to enhance their credibility, the pair also invited Lazio and Nigeria footballer Ogenyi Onazi to the meeting; however, there is no suggestion he was involved in the match-fixing plot. Okoraji said he had already recruited two Nigerian players for this summer and was planning to fly to Brazil to oversee his scams. The agent is heard saying: “Hundred per cent, two players. It’s left up to you people what you want to do. You will pay for a yellow or a red card or a penalty”. After making the offer, Okoraji is said to have telephoned a top Nigerian player and claimed he had agreed to take part in the fix, but reported that the player could not come “because of his career” and his calls were being monitored (Daily Mail 2/6/2014, p. 76).

Meanwhile, some of the top names in football were coming under scrutiny for their role in the affair. This included the former Germany midfielder and captain Franz Beckenbauer, one of the most revered figures in the sport. However, in early June, FIFA came under pressure to ban him from football after the German admitted refusing to cooperate with the investigation into the Qatar bid. Mr. Beckenbauer had confirmed the previous week that he had snubbed an approach to be interviewed by FIFA’s chief investigator over the controversial 2010 vote. The former Bayern idol, who was on the executive committee which awarded the 2022 finals, claimed that Mr Garcia had “no power whatsoever” to make him comply with the probe because he was “no longer actively involved in football”.

However, the man who was known as Der Kaiser and famously lifted the World Cup as both player and manager, remains on FIFA’s Football Committee, is honorary president of Bayern Munich and is also chairman of the German giants’ advisory board. Mr. Garcia, who was about to conclude his inquiry to report his findings towards the end of July, could therefore recommend that Beckenbauer be sanctioned for his refusal to co-operate with the investigation. This had not yet happened at the time of writing.

Jim Boyce, the FIFA vice-president and Britain’s most senior football official, commented:

“I have been told that Michael Garcia has wanted to interview some people and these people have not been willing to co-operate with him. If anyone has refused to cooperate with his investigation, I would support them being named and sanctioned.” (The Daily Telegraph of 9/6/2014, p. S9).

Another executive committee member branded Beckenbauer’s refusal “pathetic”, calling for him to be “named and shamed”. As well as refusing to co-operate with Garcia, Beckenbauer claimed that the former US Attorney for the Southern District of New York “tried the limits of my patience” in two letters the American wrote to him. The German was named by the Sunday Times feature mentioned above as one of the subjects of leaked emails detailing the activities of senior football figures prior to the 2010 vote. The files indicate that Beckenbauer travelled to Doha as a guest of Mohamed Bin Hammam a year earlier and met the country’s Emir. Documents also show that Bin Hammam invited Beckenbauer again five months after the vote – and after he had stepped down from the executive committee – along with bosses from an oil and gas shipping firm which was employing the German as a consultant. They also indicate that he held two more meetings with Bin Hammam in May and June 2011. The shipping firm, ER Capital Holding, said that no deal came from the talks in Doha, while Beckenbauer declined to comment. However, the German is not the only figure to snub Garcia, who has no power to compel those outside of football to comply with his investigation. That includes Bin Hammam himself.
The pressure on Fifa over the decisions it took in 2010 intensified days later after some of its biggest sponsors expressed alarm over the corruption claims. Four of the governing body’s six “partners”, which funded it to the tune of more than £100 million last year, made their concerns over the allegations. Discontent among sponsors is likely to be of more concern to Fifa than other criticism over the bidding process, which was being investigated by its ethics committee. Adidas, Sony, Visa and Coca-Cola indicated they wanted the matter dealt with as a matter priority (even though Hyundai and Emirates declined to join them). These were some of the comments made by the sponsors:

"The negative tenor of the public debate around Fifa at the moment is neither good for football nor for Fifa and its partners." (Adidas) "As a Fifa partner, we expect these allegations to be investigated appropriately. We continue to expect Fifa to adhere to its principles of integrity, ethics and fair play across all aspects of its operations." (Sony). Visa said it expected Fifa to “maintain strong ethical standards and operate with transparency”. Coca-Cola said: "Anything that detracts from the mission and ideals of the Fifa World Cup is a concern to us, but we are confident that Fifa is taking these allegations very seriously and is investigating them thoroughly."

Later, oil company BP and the maker of Budweiser beer joined the ranks of World Cup sponsors pressing Fifa to tackle the corruption allegations over the Qatar bid.

The entire furor took on a surrealistic turn when Mr. Blatter turned on his critics by not only accusing them of attempting to destroy the world governing body, but – in particular the British newspaper that made the all-important allegations referred to above – as being “racist”. Blatter was making his first public comment in the wake of these claims. He was also speaking 24 hours before Mr. Garcia was due to complete his inquiries into the contentious bidding processes. He was also addressing African and Asian confederations’ extraordinary congress – which declared its “continued support” for Blatter, who intends to run for a fifth term as president next year – ahead of Fifa’s annual congress in Sao Paulo the next day, at which Blatter also spoke (The Independent of 10/6/2014, p. 59).

Naturally, fierce comment and criticism were bound to follow these observations. Two of the most powerful men in British football – Greg Dyke and David Gill – went so far as to tell Fifa’s president that he should quit next year and should abandon any plans to stand for a fifth term as president next year – ahead of Fifa’s annual congress in Sao Paulo the next day, at which Blatter also spoke (The Independent of 10/6/2014, p. 59).

Mr. Dyke added that Blatter must go if the allegations of bribery over the Qatar 2022 World Cup are proved to have foundation by Mr. Garcia. Mr. Gill went even further and offered an unqualified assessment that Blatter must stand aside for a better president next year. He was clearly even more indignant than Dyke about the way the Swiss is damaging the integrity of the governing body and football in general. He said that the issue was not about racism, it was “about issues being raised quite rightly in the British media” and therefore they had to be addressed by the governing body of world football. To attempt to portray it as a racial or discriminatory attack was totally unacceptable.” Asked if Blatter should go, he said: “Personally, yes. I think we need to move on.

Gill added that it was “irrelevant” that Blatter had not voted for the Qatar 2022 bid, saying “He should, as a chief executive effectively of the organisation, [be in control.] The World Cup is their biggest product; this is the media in which you described them as racist as totally unacceptable. The allegations being made have nothing to do with racism, they are allegations about corruption within Fifa. These allegations need to be properly investigated and properly answered. Mr Blatter, many of us are deeply troubled by your reaction to these allegations, it’s time for Fifa to stop attacking the messenger and instead consider and understand the message.” (The Independent of 11/6/2014, p. 62).
one that generates all the income for FIFA every four years. It is the most important competition in world football so if I was the chief executive of it then I should be very concerned. If I was the chief executive and I had these allegations and these concerns I wouldn't look at them negatively and blame people for bringing them forward – I would say, is there something there, how do I investigate them properly how do I get myself comfortable on the process? That would be my concern.” (Ibid)

The head of the Dutch FA, Michael van Praag, later added his criticism of Blatter.

Mr. Garcia has submitted his Report but it has been suggested that it will not be published until 2015. However, just before going to press there occurred a development which gave some grounds for hope that some lessons may have been learned from this entire affair. Countries like Qatar would be banned from hosting the World Cup under new rules being considered by FIFA. The growing scandal around the decision to award the 2022 tournament to the Gulf state has led football’s world governing body to discuss changing the demands it makes of bidding countries. Senior figures at FIFA are understood to be pushing for a human rights element to be added to future bid documents in response to the death and abuse of hundreds of migrant workers building the infrastructure in Qatar. Any changes would apply to countries vying to stage the 2026 World Cup and beyond, but they would nevertheless increase the pressure on the Gulf state to continue reforming its own labour laws (The Daily Telegraph, op. cit.).

The bidding process for future tournaments is also expected to include tighter rules on campaigning in response to the corruption allegations that have dogged the awarding of the 2018 and 2022 events.

**Spot-fixing scandal engulfs English football leagues**

As the furore over the Qatar and........ Russia World Cup awards gathered pace, football corruption came uncomfortably home when it was announced, in late November 2013, that six people had been arrested as part of a continuous investigation, reported in earlier editions of this Journal, into an international match-fixing ring targeting English lower league football matches. The suspects included certain current players and the former professional footballer turned agent Delroy Facey. The arrests, made by the new National Crime Agency, marked the first occasion on which police in the UK had amassed enough evidence to arrest those involved in seeking systematically to fix matches to make money in the vast illegal Asian betting markets. The arrests related to non-league football and followed an undercover investigation by a leading British newspaper that suggested match-fixers from Asia were targeting matches in Britain. In a series of covert conversations recorded by the newspaper over the previous two weeks one of the arrested individuals claimed that lower league matches could be fixed and correctly forecast the outcome of three games played by the same team. It quoted him as saying the price for fixing a match in England was £50,000 (The Guardian of 28/11/2014, p. 56).

It is a fact, documented in this organ and elsewhere, that over recent years an epidemic of match fixing has been uncovered in European football. Largely fuelled by unregulated betting markets in Asia, the ease and speed with which bets can be placed over the internet and mobile phones and the globalisation of crime, sport and betting, arrests have been made across the continent. In February 2013 Europol said it was probing 380 suspicious matches in cooperation with police forces across five countries. Recently attention has turned to Asian gangs thought to be targeting lower league matches in England, with millions of pounds wagered on a single non-league tie. According to international betting monitors, some modest non-league matches were attracting as much money as a Barcelona game. The fixers are thought to focus on the goals scored market, betting on a minimum number of goals and bribing teams or players to concede. Earlier this year UK bookmakers stopped taking bets on matches featuring AFC Hornchurch, Billericay Town and Chelmsford City due to integrity concerns. In March 2013 the FA had informed all the Conference South clubs “to remind their players and officials of their responsibilities under the betting and integrity rules of the FA”. However, the FA was criticised for not doing more to investigate the issue. In Australia, four British players who spent part of last season with clubs in
the Conference South have been arrested and charged for alleged fixing in the Victoria Premier League this year (Ibid). It later emerged that among those arrested were Chann Sankaran, a 33-year-old Singapore national, and Krishna Sanjay Ganeshan, a 43-year-old with dual British and Singapore nationality.

One of the aspects which makes the lower leagues a tempting target for match-fixers is that the average salary of a Conference player is small by modern professional football standards. While 21 of the 24 clubs are now full-time professional outfits, most players earn around £500 a week and in the majority of cases that is their only income. For this reason, syndicates believe key players can be bought for as little as £70,000 to throw a game. Chris Eaton, who has worked in sport integrity at FIFA and Interpol and is now a director at the International Centre for Sport Security in Doha, has accused English football authorities of complacency in reacting to what he says is a global problem. He added: “It was only a matter of time before the English game was caught up in this global wave of match-fixing in football. The arrests in Australia of English journeymen footballers several months ago was a wake-up call. But this disclosure must be put in a global context. Governments and football administrations must not react emotionally, but coolly and rationally. Everyone really knew that match-fixing is endemic in football. And, in this case, there is nothing new in terms of the corrupting method, its internationality or in the core betting-fraud purpose. What is new is that it shocks a complacent England, the home of the game. That shock should be used to galvanise international efforts to regulate and supervise sport betting globally.” (Daily Mail of 29/11/2013, p. 102).

Mr. Eaton has repeatedly called for a more global approach to tackling match-fixing in sport, particularly with regard to unregulated and illegal betting markets. To support his claims, news emerged of a similar operation in Austria. It was also learned that between 2009 and 2012 Facey played for Conference sides Lincoln and Hereford and Lincoln City manager Gary Simpson has said he had reported a game to the FA because he suspected match-fixing. Simpson said the match he reported was not during either of his two spells at his current club. He declared himself not surprised to learn of the new allegations. “We lost the game and we ended up having a player sent off. This was not while I was at Lincoln City”.

Europol’s Soren Pedersen said: “It is not just Asian gangs, it is also Russian-speaking criminals and criminals working out of the Balkans. It’s big business for organised crime”. The FA’s integrity unit have been working closely with the authorities on this case and former FA chief executive Mark Palios said he thought this was something that has been coming for quite some time. The suggestion that this could even extend to World Cup qualification matches is sure to concern the authorities, even though the NCA investigation is not understood to concern such claims. The alleged fixer, who was arrested earlier that week, claimed he fixed World Cup games and matches in Europe and Australia. During a secretly recorded meeting he was heard to say: “I do Australia, Scotland, Ireland, Europe, World Cup. World Cup qualifier.” He claimed to control the entire team for one African country, which also cannot be named for legal reasons. The alleged fixer is also understood to have told a former FIFA investigator involved in the filming of the videos that he could pay referees as well as players to manipulate the results of games (Ibid).

One of the alleged fixers also claimed in that covertly recorded conversation that he had manipulated World Cup qualifiers and named Scotland and the Republic of Ireland among the countries he said he could “do” if required. FIFA vice-president Jim Boyce admitted he was “very, very concerned” about any suggestion World Cup matches might have been corrupted. The Scottish Football Association and Football Association of Ireland both insisted there was no indication any of their national team matches had been compromised (The Daily Telegraph of 29/11/2013, p. S2).

Ministers were urged to plough public money into the fight against match-fixing in the same way as the Government does with the battle against drugs in sport, in addition to regulating the gambling industry more tightly. Those calls were led both by former Premier League and Liverpool chief executive Rick Parry, who chaired the Sports Betting Integrity Panel in 2010 which made similar recommendations, and
representatives of the country’s biggest sporting governing bodies. The Sports Betting Group includes figures from the FA, Premier League, Rugby Football Union, England and Wales Cricket Board and British Horseracing Authority. It emerged during the same week that its chairman, Sport and Recreation Alliance chief executive Tim Lamb, had repeatedly lobbied the Government for both funding and legislation to no avail (Ibid).

A few days later, it was learned that two players from Whitehawk FC, a Conference South team in Brighton, had been charged over match-fixing allegations. Michael Boateng and Hakeem Adelakun, both 22 and from the Croydon area of south London, were charged with conspiracy to defraud contrary to common law (Daily Mail of 30/11/2013, p. 112). And in a sign that ‘the cancer’ may also have affected the higher leagues, it was learned that those arrested included none other than DJ Campbell, the Blackburn Rovers striker who has played in the Premier League with Birmingham, Blackpool and QPR, was one of six men arrested. Part of the investigation is focusing on Campbell’s booking for a tackle on Ipswich’s Aaron Cresswell in a Championship match between the teams. The player was shown a yellow card for the tackle by referee Fred Graham in the match that Ipswich won 3-1 at Portman Road (The Sun of 8/12/2014, p.4). Then it emerged that those arrested included Cristiano Montano, who plays for Oldham Athletic, and that he had not only taken part in a spot-fixing operation but also offered to take part in another fixing incident. The next big name to be featured among those arrested was Sam Sodje, playing for Portsmouth, committed a foul that earned him a red card as part of a spot-fixing move (The Daily Telegraph of 9/12/2013, p. S6). It also emerged that Sodje allegedly informed an undercover reporter that he could arrange for footballers in the Sky Bet Championship to get themselves a yellow card in return for tens of thousands of pounds.

In the report the 34-year-old is alleged to have claimed he could fix Barclays Premier League games and even said he was preparing to fix matches at next year’s World Cup in Brazil. Sodje’s astonishing claims naturally caused alarm across football and led to a second probe by the National Crime Agency (NCA) into allegations of match fixing. Sodje’s brother Akpo, who plays for Tranmere Rovers, was also named by the newspaper whose reporter carried out the undercover operation. Sodje, born in London and a former Nigeria international, was at one stage a Premier League player with Reading. He claimed to be part of a spot-fixing operation that enables overseas gambling syndicates to bet illegally on red and yellow cards in matches. As well as Sodje’s younger brother, Akpo, the revelations pointed to the involvement of another Sodje brother, Stephen, and Oldham’s Montano. It is reported that other players linked to the alleged operation have not been named for legal reasons. Perhaps most extraordinary was the claim, made by Sam Sodje, that, as is mentioned above, he deliberately got himself sent off earlier that year while playing for Portsmouth in exchange for £70,000. It amounted to a bizarre incident and one that will shock Portsmouth fans, given the fact he was suspended for six matches as a result of an unprovoked attack on Oldham’s Jose Baxter on 23/2/2013. For no apparent reason Sodje suddenly punched him twice in the groin area in the 50th minute (Daily Mail op. cit.).

In the meantime, Messrs Boateng and Adelakun, the two Whitehawk players, appeared in court charged with plotting to defraud bookmakers through spot-fixing. They spoke only to confirm their names and addresses during a short hearing at Birmingham Magistrates’ Court. They arrived at court with their faces covered and were not required to enter a plea. Both were handed provisional bans from football pending their trial (The Daily Telegraph of 30/1/2014, p. S7). Their trial had not yet been completed by the time of present writing.

In January 2014, it was also claimed that the world’s most notorious match-fixer has been attempting to rig games in England for almost two decades, according to a new biography about him. In the wake of the biggest fixing scandals to hit English football for years outlined above, it emerged that one of the men allegedly behind them, Wilson Raj Perumal, claims to have infiltrated the UK as long ago as 1995 – 15 years earlier than previously thought. Kelong Kings, compiled from months of interviews with the Singaporean by Italian investigative journalists Alessandro Righi and Emanuele Piano, says
Perumal tried unsuccessfully to corrupt Birmingham City goalkeeper Ian Bennett and Chelsea counterpart Dmitri Kharine during a trip to the UK 19 years ago. The planned book also details his yet to be proven boasts about masterminding the spate of floodlight failures that hit the Premier League in the late 1990s, as well as his assertion that he fixed matches of one national team to such an extent that he secured their qualification for the 2010 World Cup. Extracts from the biography, for which a publisher is being sought, were obtained by The Daily Telegraph. Part of it focuses on Perumal’s claims that he tried to fix games in England after he and an associate were sent there from Singapore by one of their bosses in the mid-1990s. Perumal, who it had been thought did not arrive in the UK until 2010, says they “randomly” selected an FA Cup replay between Birmingham and Liverpool in January 1995 for their first attempt. Perumal states in the book:

“Our target was their goalkeeper, Ian Bennett,” Perumal says in the book. “We went to Birmingham’s training ground and B [Perumal’s associate] approached Bennett pretending to be a journalist from Singapore. He did all the talking while I sat waiting inside a taxi some distance away. ‘If you are interested’, he told Bennett, ‘I will give you 20 to 30 thousand pounds to lose the match against Liverpool. You’re going to lose to Liverpool anyway’. ‘No’, replied Bennett, ‘I am not interested. Go’(…) We were hanging out at Chelsea’s training ground, trying to approach Kharine, when Chelsea’s coach Glenn Hoddle came up to us. ‘You’re not supposed to speak to anybody’, he said, and he chased us out.” (The Daily Telegraph of 8/1/2014, p. S5).

Perumal claims he and his associate waited for Kharine to leave the training camp before asking for a picture and for a lift in his “Mini”. The offer of $60,000 for losing the match was made, but was rejected.

Mr. Bennett last year confirmed he had been approached by two “Asian lads” offering him £10,000 to lose the match 2-0, adding that he informed a security guard, who ejected the pair. The alleged approach to Kharine came soon after. Ex-Russia star Kharine could not be reached for comment, while Hoddle denied any knowledge of having confronted two intruders as described, insisting that he would have remembered had the incident taken place.

If Perumal’s early alleged fixing attempts in England were failures, he claims in the book to have been behind the successful abandonment of Premier League matches due to floodlight failures in 1997. He also boasts about fixing World Cup qualifiers and helping a team qualify for the last tournament in South Africa. He says: “Taking a team to the World Cup was a personal achievement for me, but I knew that I could not walk around and blow my trumpet. ‘F——, I got a team to qualify for the World Cup, but I can’t tell anyone.’” He also claims that two referees were approached to fix matches during the 2010 finals, both of whom refused (Ibid).

Despite being linked with almost every match-fixing scandal to emerge in recent years, Perumal categorically denies involvement in the recent cases in England and Australia. The Singaporean’s name was mentioned by those arrested following a Daily Telegraph sting operation and a separate newspaper investigation at the end of last year. There were also suspicions that he had been pulling the strings when British players were caught fixing matches in Australia. Currently detained in witness protection in Hungary, he admits knowledge of those fixes and those involved but insists that he had no active role in them (Ibid).

In the meantime, it was learned that yet more footballers were being investigated under allegations of match-fixing. In early April 2014, six players from Preston North End and Barnsley Town were interviewed by police as part of an investigation into alleged bribery and money-laundering (Daily Mail of 4/4/2014, p. 85). No further details were available at the time of writing.

Naturally, various ways of halting the spread of these practices, which threaten the very fundamentals of the game, have been put forward from various quarters. One of the more important contributions in the media emanated from Henry Winter, the Daily Telegraph’s highly readable football critic. He starts by pointing out that to a certain extent the gambling industry has brought this on itself in that it created a monster by encouraging markets in first scorer, first yellow card, first corner,
penalties and red cards, markets that can be manipulated by the unscrupulous. On the other hand the footballing authorities, chasing criminals who operate in the shadows of the internet, are ill equipped to play Sherlock Holmes. The Football Association needs help rather than censure. The governing body of the English game, and other concerned parties like the Premier League, Football League and Professional Footballers’ Association, can educate young players – as they do – and also warn players of the career-destroying perils of heeding the siren call of an illegal bookmaker offering £5,000 to concede a throw-in. However, as has been pointed out above, these activities are in the lower leagues, where monitoring is less easy and the wages so low that temptation rises among the weak-willed. Not many, it needs emphasising, but enough to taint the game. The footballing authorities cannot see the targets. The FA is not busting through the door of a room of shady spread-betters in Gibraltar or pursuing some moped-riding wide-boy bookmaker around expat communities in Spain. These syndicates are ghosts. Any regular match-going football reporter is aware of the interest before kick-off on any sensitive team news from anonymous Twitter followers in the Far East, searching details on who is starting, information that affects betting. (The Daily Telegraph of 23/11/2013, p. S3).

As well-intentioned as the FA’s Integrity Unit may, says Mr. Winter, it is like taking a peashooter into a gunfight. It needs bigger weapons. It needs Interpol to confront a problem that crosses borders, geographical and digital. This is a global problem requiring an international response. Football also needs the judiciary to play its part in imposing significant punishment on those found guilty. The footballing authorities also need Government to toughen up and speed up the Gambling (Licensing and Advertising) Bill currently in the committee stage and considered three years away from becoming law. On the morning of England’s November 2013 friendly with Germany, the Committee of MPs debated the integrity of football and particularly the need for a new Clause 4 to be inserted in the Bill transferring the regulation of all spread betting, domestically and overseas, from the slow-moving Financial Conduct Authority to the Gambling Commission so as to track “suspicious activities” better.

Winter points out that representatives of the leading British sports have been lobbying Government for a Sport Betting Right, effectively a levy which would generate money from the legitimate bookmakers to be channelled into more efficient early-warning systems into illegal betting activities. Football also wants the right to license which type of bets are allowable, and particularly to get rid of first throw-in and first yellow card, offences which can be manipulated by the corrupt. Again, they are hunting silhouettes in a forest at dusk. As Clive Efford MP said in illustrating his point about the importance of the Bill: “I am not suggesting that in tonight’s match an England player will kick the ball out for a corner 10 minutes into the game, but that could happen in a less high-profile match.”

Gerry Sutcliffe MP – an interviewee in a previous issue of this Journal – noted:

“Unfortunately, younger players or those not at the top level – in the second and third divisions of football or the lower leagues of other sports – are getting involved in match fixing and cheating.”

For her part, Helen Grant, the Parliamentary Under-Secretary of State for Culture, Media and Sport, believes that the new legislation will mean that “for the first time, overseas operators will have to inform the Gambling Commission about suspicious betting patterns to help fight illegal betting activity and corruption in sport. That will also ensure that overseas operators contribute fairly to regulatory cost.” (Ibid).
investigations are ongoing. There is a more legitimate case for a Government debate on the ramifications of gambling generally. Mr. Efford makes the following important qualification:

"I confess that I get concerned about the aggressive nature of some of the in-play betting advertisements when I watch football on TV. Should children as young as primary-school age be exposed to such adverts when they watch the FA Cup final or an England game with their parents?" (Ibid)

According to the Committee, the Advertising Standards Authority received 154 complaints about gambling adverts in 2011 and 873 in 2013. The Committee has also been hearing evidence from the Salvation Army detailing the impact of gambling on many in society (Ibid).

At the level of those actually responsible for policing matters sporting, it has emerged that the Football Association is considering setting up a cross-sport anti-corruption body that would provide a rapid response to allegations of match- and spot-fixing. As allegations of fixing reach ever higher up the football pyramid, as detailed above, FA sources say the governing body recognises that, given the global nature of fixing, there is a need for resources and intelligence to be pooled by sporting bodies, police and governments around the world. Such a body has been suggested by Rick Parry, the former Premier League chief executive, who told the Guardian that it is required owing to the complex nature of illegal gambling. In 2009 Parry chaired a government inquiry into sports betting integrity, on which the FA sat. Parry told an influential British daily newspaper:

"The problem comes when you add the international dimension. A lot of the problems, particularly in football, will emanate from Asia. But not all of them [the problems] – horse racing, for example, that has a fantastic integrity unit, is ahead of the field but they still find they have a lot of issues in the regulated English markets. In terms of a pan-sports unit [it would] support and help really pool together the co-ordination of the activities of the sports, the betting operators and the police. There is a big opportunity now with the gambling bill going through parliament. One of the objectives of that is to get tax revenues from major operators, Ladbrokes, William Hill, the others that have gone offshore – what better opportunity to take a modest percentage from the extra tax take and create an absolutely complex integrity unit." (The Guardian of 10/12/1014, p. S2)

Mr. Parry added that there are three reasons why there should be a cross-sport body. “One, I think it’s a waste of resources for every individual sport to have a unit”, he said. “Secondly there aren’t necessarily that many capable people with the right level of expertise to go around. And thirdly, the advantage of a pan-sports unit is it allows intelligence to be shared across the board”. In a sign that such a move may win government approval, sports minister Maria Miller will soon hold talks about match-fixing with senior officials from five leading sports – football, tennis, cricket, and both rugby codes. It is known that the FA is working closely with the National Crime Agency regarding the six arrests discussed earlier and the separate investigation involving an alleged international illegal betting syndicate which the non-league footballers Michael Boateng and Hakeem Adelakun, who are both 22, were charged with conspiracy to defraud contrary to common law the previous week. Both had played for Conference South club Whitehawk in Brighton, before being dismissed before their court appearance on Wednesday (Ibid).

Mr. Parry’s stance was echoed by FIFA’s former head of security, Chris Eaton. “What we need to do in sport here is to prevent fixing in the first place and take the money out of the criminals’ hands, that will stop them fixing. “I think all sports need to seriously consider anti-match fixing or integrity units of some kind.”

Mr. Eaton, who is currently sports integrity director at the International Centre for Sports Security, told Sky Sports:

“When you are commercially roaming around the world, selling sport, you are targeted by criminals. This happens in any commercial enterprise. There’s been a global trend here. It’s not just the authorities in England. Quite frankly I think the FA and the new National Crime Agency organisation have done a great job on very little information. But we know this needs a close and serious
global examination. You cannot rely on national agencies only in these instances. This is global crime. The source of most of these investigations seem to be coming from outside England, so you need to look at this in the international context. They need to work together more, the whole purpose here is about preventing match-fixing and to try to disrupt these criminal organisations rather than going for prosecutions alone.” (Ibid).

But is the problem that bad? One man (who should know) sees it differently... By way of postscript, it may come as a measure of comfort to learn that one man who has been at the sharp end of some of the worst corrupt practices, in the game, is confident that the English game is “99 per cent clean” of corruption. That man is none other than Arsenal manager Arsène Wenger, - and if anyone knows all about match-fixing it is the former Strasbourg midfielder-turned-successful coach. As manager of Monaco in the early Nineties, he can be counted among this type of deceit’s most prominent victims. Twice at the start of the decade, his team finished second in the French league behind Marseille, whose owner Bernard Tapie was subsequently discovered to have bought off opponents to ensure success. Tapie’s institutionalised deception denied the Arsenal manager the French title. Mr. Wenger describes this as the most difficult period in his life. The tale of Marseille is one of subterfuge and deceit at the highest level of football. In the attempt to make his club French and then European champions, Tapie was not only buying the best talent available, but also regularly buying off opponents. He was handing out so much money to players and managers of rival clubs that one of the those on his unofficial payroll was later found to have buried a horde of cash in his back garden. As the plot was in full swing, Mr. Wenger recalled he was more than aware all was not well in the French game. Results looked fishy, crucial fixtures lacked competitiveness, he sensed that the natural rhythm of the game was being disturbed. He added:

“There were little incidents added one to the other, in the end there is no coincidence. [But] it’s very difficult to prove. You hear rumours, but after that you cannot come out in the press and say this game was not regular. You must prove what you say and to come out is different from knowing something. Feeling that it is true and then afterwards coming out publicly and saying, ‘Look, I can prove it’ can be very difficult.” (The Daily Telegraph of 30/11/2013, p. S7)

After buying his way to five successive titles, Bernard Tapie was finally brought down when he attempted to bribe the players of Valenciennes in the last match of the 1993 season. Some of these alerted their manager, Boro Primorac, who informed the French authorities, at which point Tapie’s web of intrigue began to unravel. However, far from being thanked for his exposure of criminality in the game, the whistle-blower was ostracised by French football. Mr. Wenger was one of the few to stand by him, offering him work first at Grampus Eight in Japan, then bringing him to Arsenal as first-team coach. “He did very well,” Wenger said of the man who still sits in the Arsenal dugout.

“Because it’s not always the fact that you stand up against it, it’s the consequences of it.” (Ibid)

Wenger has never spoken at length about his battle with match-fixing. It remains a sore point, a grievance that still rankles. “It’s difficult, it was a long, complicated case,” he said. “I can tell you that story one day and you will be surprised by it. But I always felt in the end it would come clean again. At least I can look back and think I behaved properly.” One reason he came to work in England was that he believed football in this country was less susceptible to corruption. In the 17 years since, his faith has been rewarded. Not once since has he been remotely aware of anything to compare with his experience in France. He remains convinced that his level of the game is clean. He has been as surprised as anybody about the revelations in The Daily Telegraph about match-fixing in non-League football. “We only hear about this after it happened,” he said. “Nobody ever talked about it [before this week’s exposures].”

An unrepentant Anglophile, he is still optimistic about the integrity of the wider game in this country. “I don’t believe people in England fix matches,” he said. “I’m convinced 99 per cent of the English game is still clean. I just hope that this is an isolated incident.” (Ibid)
Footballers’ betting problem

Ever since a survey, published by the footballers’ union, the PFA, showed that more than one-third of players placed bets on football fixtures, the Football Association have been faced with the question as to how they should respond to this problem. Rather than instituting a total ban on any betting on matches by all footballers, which would have required considerable resources in order to identify and prosecute thousands of gambling players, the FA responded by allowing the players to place bets, but not on matches played in competitions in which they were involved. The FA maintained at the time that these rules would be sufficient to protect the integrity of the game. However, the intervening years have witnessed a dramatic transformation in the easy availability of gambling options, especially online. Also, with the rapid expansion of gambling markets world-wide, not least the unregulated markets in Asia, match-fixing cases – as can be seen from the previous sections – have plagued the global game and are currently tarnishing the sport on these shores with alarming regularity.

There is sufficient evidence to suggest that problem gambling among footballers is on the rise. This is an issue which has been featured before in these columns. It will be recalled from a previous issue that Michael Chopra, of Ipswich Town, had already confessed to a gambling habit which left him deep in debt. The full extent of his troubles were revealed when he gave evidence during a trial at Newcastle Crown Court of four men charged with drugs offences. As part of the case, the prosecution claimed a sum of £50,000 found in a car was drug money, whereas one of the accused instead claimed it was a sum aimed at paying off a loan shark from Liverpool on behalf of Mr. Chopra. He confessed to starting to gamble when he was 17 when he was with Newcastle United. Players apparently would gamble on the team bus – he claims that could take as much as £30,000 per journey. He also said that he then joined Sunderland because the sizeable signing-on fee helped with paying off the cash he owed. Furthermore, during his time with Ipswich, the club and the players’ union, the Professional Footballers Association (PFA) organised a £250,000 loan for the same purpose, while his father, also in court, revealed that he had sold his house in order to pay for his son’s debts (The Independent of 29/11/2014, p. 70).

There is no suggestion whatsoever that Mr. Chopra has in any way been involved in match-fixing, but obviously the amassing of huge debts from gambling greatly increases the risk that some players might succumb to the temptation. There are also those who actually breach betting regulations laid down by the sporting bodies, as was reported in the previous issue of this journal in relation to player Andros Townsend, who was suspended for so doing. More seriously still is the rise of the illegal betting markets that have led to the increase in match-fixing in Europe over the past decade (In the case of Townsend also, there is no suggestion that he was involved in any match-fixing). Earlier this year, Mr. Chopra had stated that he had voluntarily excluded himself from all betting institutions in order to help him fight his addiction. In January 2014 he was banned from all racecourses for 10 years after an investigation by the British Horseracing Authority (BHA) into a “corrupt network” that bet on horses to lose (Ibid).

In mid-November 2013, instructions were issued to employees of the PFA banning them from betting on all football games. That decision followed the allegations about Chief Executive Gordon Taylor’s gambling debts, which have been reported in earlier issues of this Journal. He had been accused of placing more than £4 million on 2,000 bets and owing a bookmaker over £100,000 (Daily Mail of 13/11/2013, p. 80).

The problem seems to have assumed such proportions that FIFPRO, the world players’ union, at a certain point proposed that all players, coaches, administrators and officials involved in the professional game should undergo compulsory and regular match-fixing education programmes as part of a concerted campaign to protect the integrity of the sport from a “major, major threat”. Tony Higgins, who heads the Scottish Professional Footballers’ Association and is the Union’s lead on match-fixing, believes comprehensive education has to be applied across the game as the problem extends far beyond simply corrupting players alone. Mr. Higgins, who is currently operating an 18-month FIFPRO pilot programme exploring how to combat match-fixing, also believes governing bodies have to be prepared...
to spend more on an issue that has mushroomed from being a Far Eastern problem into an Eastern European one and, over the last few years, reached Western Europe, too. He says:

“It is a major, major threat. I have been astonished by the level. I have seen many problems that the game has thrown up but this is as dangerous as any because it goes to the fundamentals of sport. In Malaysia it has ruined their whole structure in football, basically, nobody trusts the results. Football is a global sport so you cannot have pockets where integrity is paramount and other leagues or associations where it’s not. You have to work to eradicate it across the board.” (The Independent of 29/11/2013, p. 67).

Mr. Higgins believes match-fixing can only be solved by cross-border cooperation by numerous agencies but there remains plenty more the sport itself can do to try to address it, such as following the example of cricket. Since last year players and staff at English counties go through an education programme and have to sign an anti-corruption code before the start of each season. Higgins, a former Hibernian player, is overseeing Don’t Fix It, a programme funded by FIFPRO, the European governing body UEFA and the European Commission. UEFA has promised to act on the recommendations, which was published in July 2014. He added:

“It has to stem from the top – FIFA and UEFA have to promote this issue among the governing bodies and the governing bodies have to take far more action.

There has to be cross support from all federations and national and international police forces. Nowhere in Western Europe should we be complacent – I understand there are potential risks in Spain as well in the lower leagues. We have to understand the money in this market is phenomenal and we have to do as much as we can in raising awareness and educating people, not only players but also referees and club officials. The reality is that if we can’t get to the head of the serpent there will be another one along to offer money to players or referees or clubs.” (Ibid)

A perfect example of the need to attend to the problem as a matter of some urgency came within but a few weeks of Mr. Higgins’s recommendations, when it was learned that, following an Independent Regulatory Commission hearing, suspensions from all football activity totalling three years and four months had been issued to three AFC Hayes players after they admitted multiple breaches of The FA’s Betting Rules. Lawrence Shennan was suspended for two years and fined £580.20, which includes the £45.65 net profit made from the bets. Ben Goode was suspended for one year and fined £606.42, which includes the £45.62 net profit made from the bets. Finally, Chevy Hart, who is no longer with the club, was suspended for four months and fined £145.65, which includes the £45.65 net profit made from the bets (The Independent of 14/12/2013, p. 58). However, the sanctions for Shennan and Goode have been set aside following a request for them to receive the written reasons before deciding whether to appeal. Later, Striker Lawrence Shennan was suspended for two years and fined £580.20, while goalkeeper Ben Goode was banned for one year and fined £606.42.

Virtually on the same day, Tranmere Rovers manager Ronnie Moore came under investigation by the FA over allegations concerning betting on football matches. Moore, a prolific goalscorer with Rotherham and Tranmere before managing both clubs, has been questioned by the FA’s football integrity unit about his alleged gambling activity. No charges were laid against Moore but he is understood to have told his players to close any betting accounts they might run. In a separate matter, Moore has said he has no concerns about selecting Tranmere pair Ian Goodison and Akpo Sodje, who were arrested but not charged last November as part of the National Crime Agency’s ongoing investigation into football match-fixing (see above) (Daily Mail 14/12/2013, p. 81).

The very next day, the Football Association were said to be considering bringing back a blanket ban on players betting on football in an attempt to drive out corruption. With match-fix cases already starting to tarnish the birthplace of the global game and a widening perception that English football is riddled with players with bad gambling habits, senior figures within the corridors of power had started a debate as to whether a bets ban is now the way forward. Further talks are expected with the Professional Footballers’ Association (PFA) to decide on steps
necessary to uphold the integrity of the game as a range of British players face criminal charges in three separate cases, at home and in Australia. Officially there is no ban timetable in place, but the very fact that it is being considered shows how concerns have risen in recent months. “This is something that we could be looking into but there are no immediate discussions planned”, said an FA spokesman (Ibid).

The FA face a number of concerns over how a blanket ban could be reintroduced to the game. Players were banned from all betting on football for more than 100 years until the present regulations came into force just 12 years ago. That experience showed one thing to the game: blanket bans are almost impossible to police and enforce. A survey of professional footballers by the the PFA, published in April 2000, showed that more than a third of players bet on games, and a sizeable minority were betting on their own teams across all divisions. As was mentioned earlier, rather than begin a clampdown which would have meant using huge resources to identify and prosecute thousands of gambling footballers, the FA responded by lifting the blanket ban, allowing players to bet, but not on competitions in which they are involved.

It was an imperfect solution, but the FA always argued that the new rules, allowing some bets and barring others, would still protect the game. Yet, as we have also stated earlier, the intervening years have seen a dramatic transformation in the easy availability of multiple gambling options, especially online. And with the rapid expansion of gambling markets, not least the unregulated markets of Asia, match-fixing cases have plagued the global game, and are now tarnishing the sport on these shores with alarming regularity. Problem gambling among players, as documented above, also continues to rise and if the English game is not yet immersed in a wholesale fixing crisis then there is no room for complacency. Hence the blanket ban, with its need for huge resources to police it, is back on the agenda.

It should be recalled at this stage that English football is increasingly financially dependent on the gambling industry, with most clubs having official gambling partners and many having gambling sponsors. The FA and Premier League both have gambling firm tie-ups. Such a cosy relationship would be anathema in the United States, for example, where no gambling is allowed in any sport and where the 1919 “Chicago Black Sox” scandal is still held up as one of American sport’s darkest periods. Eight White Sox players were banned for life after being implicated in throwing matches, even though they were acquitted in court.

The alarm bells continued to ring in March 2014 when it was learned that Newcastle midfielder Dan Gosling admitted a Football Association misconduct charge in relation to betting rules. He was later fined £30,000 for breaching FA betting rules. The 24-year-old former Everton and Plymouth Argyle player admitted the charges and requested a personal hearing before an FA Independent Regulatory Commission. A statement on the FA website said: “Gosling, who requested a personal hearing, admitted multiple breaches of FA Rule E8(b) for misconduct in relation to betting.”

The previous week, Mr. Gosling’s mother said he became involved in betting during a lengthy absence due to injury. She also insisted her son had not placed bets on games involving Newcastle or Blackpool, where he spent a spell on loan earlier in the season (Daily Mail 20/3/2014, p. 83).

The proverbial coin appears then to have dropped with the FA, who a few weeks later announced that a total ban on betting had received unanimous recommendation by the FA Council and could be implemented next season. It emerged that research by the players’ union, the PFA, 14 years ago revealed that just over a third of footballers gamble on football and just under one in 10 bet on games involving their own teams. If one in three players still gamble on football of some kind, that would mean 3,000 or more players potentially facing punishments. Another hurdle for the FA to clear is seeking co-operation from gambling companies to provide information on players, with betting accounts, who break the rules. A spokesman added that the industry “will have to inform sporting bodies of any information they have on bets that break those bodies’ own rules”. (The Mail on Sunday of 13//4/2014, p. S5).

Barely a few days later, Nottingham Forest striker Dexter Blackstock was charged with misconduct in relation to breaches of the Football Association’s rules on betting. The
player was given six days to respond. The FA did not give details, but the Nottingham Post website said the charges did not relate to bets placed on matches involving Forest and nor were there any allegations that the player had been involved in match-fixing (The Independent of 23/4/2014, p. 63). Mr. Blackstock was later fined £60,000 and suspended for three months. His ban was held over after a ruling by the Independent Regulatory Commission (The Independent of 7/5/2014, p. 59).

Other issues (all dates relate to 2014 unless stated otherwise)

Gattuso investigated. In mid-December 2013, it emerged that the former Italy and AC Milan midfielder, Gennaro Gattuso, was being investigated on suspicion of involvement in match-fixing, according to his agent. He had been named by Italian media in an inquiry being conducted by the prosecutor’s office in Cremona. According to reports, the Lazio Roma midfielder Cristian Brocchi was also included in the investigation. More particularly, both players were facing claims that they were involved in a betting ring that fixed games in the Italian Premier League (Serie A) and other matches during the 2010-2011 season, with a leading Italian sporting newspaper reporting that Milan matches against Lazio, Chievo and Bari played in February and March 2011 were under investigation, as well as matches involving Juventus and Internazionale Milan. It was alleged that both Gattuso and Brocchi had engaged in telephone conversations with people who had been arrested a few days earlier by police. The four taken into custody were charged with sporting fraud as part of the “Last Bet” operation, which began four years ago and has already led to 54 arrests. It has resulted in lengthy bans for the former Lazio captains Giuseppe Signori and Stefano Mauri, as well as for the ex-Atalanta captain Cristiano Doni. Prosecutors have detailed an extensive match-fixing ring which was allegedly in operation for more than a decade (The Independent of 18/12/2-14, p. 48). No further details are available at the time of writing.

Malaysian fixer jailed in Australia. In late April, Segaran “Gerry” Subramanian, the Malaysian ringleader of an Australian match-fixing ring, was jailed shortly after lower-league club Southern Stars had been fined and points docked for the failure to stop him from so doing. It will be recalled from a previous issue that two English players, Reiss Noel and Joe Woolley, had already been convicted and fined for their involvement in this affair, and been issued with world-wide bans by FIFA. Two others, David Obaze and Nicholas McCoy, will appear in court later this year (The Daily Telegraph of 25/4/2014, p. S9).

CRICKET

New match-fixing scandal engulfs the English county game
Hope springs eternal in cricketing circles that the corruption scandals which have stained the game for nearly two decades are, if not a thing of the past, certainly under control with the various safeguards, including the International Cricket Council’s Anti-Corruption and Security Unit (ACSU) and a raft of rules and penalties in relation to those who transgress. These hopes appear to have been dashed once again with the latest revelations about match-fixing in English county cricket, which has seen two players, one a former New Zealand test batsman, charged and facing a possible life ban from the game (in fact one of them has already been banned for life, as is detailed below). It started in early December 2013, when the ACSU reported that it was investigating claims that up to three former New Zealand internationals had engaged in match-fixing (The Daily Telegraph of 5/12/2013, p. S12). It soon emerged that one of those being investigated was batsman Lou Vincent, who represented his country in 23 Tests and 102 one-day internationals. He was playing for Sussex in their defeat by Kent in a CB40 game played at Hove in August 2011 – a fixture that was broadcast in India and is believed to have attracted high interest on online betting sites, with one reporting a turnover of £14 million. An initial ICC investigation had produced no action, but apparently some of the Sussex players had reported that they had been
approached to fix the game (The Daily Telegraph of 6/12/2014, p. S10). Vincent thereupon admitted that he was in fact being investigated (The Guardian of 6/12/2014, p. S9). During the game in question, Vincent was run out cheaply. It also emerged that former New Zealand Test player Daryl Tuffey was also under investigation by the ACSU (although not in relation to that fixture) (The Mail on Sunday of 15/12/2014, p. S13).

As the investigation proceeded, new and extremely concerning facts came to light. In an exclusive feature published in a leading British newspaper, that Lou Vincent has provided ACSU officials with a treasure trove of information about matches which were targeted for spot-fixing and the names of players who were involved. Domestic matches played by English counties are among those about which Vincent has provided detailed evidence from the period when he was playing for Lancashire and Sussex, along with details of fixing in at least four other countries. He has also informed them of the details of an approach by another corrupt player to a current international captain, who turned down the offer and reported it to anti-corruption officials. Investigators from the ICC’s anti-corruption unit were at the time working with detectives employed by cricket boards around the world to piece together a complex case which they believe will emerge as the biggest fixing scandal since the Hansie Cronje affair 14 years ago (extensively covered in this Journal), and possibly even more significant than that.

It also was learned that Vincent had agreed a plea bargain in the hope of avoiding a criminal prosecution for his involvement in and knowledge of spot-fixing in five or more countries over a four-year period between 2008-2012. He revealed in December he would co-operate with detectives and confessed to an ICC tribunal investigating fixing in Bangladesh earlier this year that he had been approached by an illegal bookmaker. It is understood the ICC’s anti-corruption police are close to charging a former Pakistan international cricketer based on evidence provided by Vincent. The investigation crosses several international jurisdictions and is expected to take another 12-18 months to complete with anti-corruption officers determined to use the information and land convictions to the ICC’s anti-corruption police of attempted fixing in the Twenty20 Cup in England when he played for Lancashire and Sussex. He has admitted trying to persuade one Lancashire team-mate to participate in a fix (see below), but the player reported the approach to the authorities. Another county player is believed to have agreed to a fix before later backing out. A 40-over match between Sussex and Kent in 2011 in which Vincent played is being subjected to special scrutiny by the ICC for evidence of corruption. He has also told investigators of fixing when he played for the Auckland Aces in the Twenty20 Champions League tournament in South Africa in October 2012. He has also detailed incidents in the Hong Kong Sixes competition. The evidence from Vincent is seen as a valuable method of piecing together patterns of behaviour by fixers and how they target players with gifts and money, and then follow them around the world when they play in different tournaments.

Vincent had already revealed earlier that he would co-operate with detectives. He said:

“I wish to let everyone know that I am co-operating with an ongoing ICC Anti-Corruption investigation that has been made public. This investigation is bound by a number of rules and regulations that mean I am unable to make any further public comment.” (Ibid)

This news came as fears had emerged in New Zealand that the Vincent investigation was in danger of
grinding to a halt over political infighting at the ICC. Those concerns increased when the ICC announced a review of its anti-corruption unit with a view to streamlining its processes. This could have been prompted by doubts over whether the Vincent case would be investigated properly. There are also suggestions his evidence could be put in cold storage due to the political animosity between senior Indian officials and Lalit Modi. It will be recalled from a previous issue that, in 2012 Modi was successfully sued for libel in the High Court by Vincent’s former team-mate Chris Cairns for accusations of fixing in the Indian Cricket League. Since then Cairns’ barrister, Andrew Fitch-Holland, has been arrested by the Metropolitan Police and bailed on suspicion of perverting the course of justice in relation to the Modi libel trial. Cairns has also been interviewed by London detectives in New Zealand.

If the Vincent case proves fixing in the ICL then Modi will undoubtedly kick up a political storm. At least one senior investigator at the ACSU is believed to have offered his resignation over perceived political interference in this case, fearing it could fall victim to a power struggle within the board over the future direction of policing cricket. A reorganisation of the anti-corruption unit was confirmed by the ICC after pressure from the three influential countries, England, Australia and India. Dave Richardson, the former South African wicketkeeper/batsman, currently the chief executive of the ICC, and representatives from the big three nations who now control the board will conduct the review.

Suspensions it will then be watered down and report to the chairman of the board, N Srinivasan, who is the subject of a fixing scandal in India, have prompted widespread alarm within the game. This has been angrily denied behind the scenes by those involved in the review who insist the plan is to streamline the organisation and improve its communication with individual anti-corruption units set up by national boards. The Vincent case is a test of whether the communication between those different agencies is workable or not (Ibid). As part of the same investigation, it emerged that ACSU detectives have identified 12 cricketers from around the world whom they suspect of match-fixing. As a result, it appeared that one English county player faced a charge of failing to report an approach, as does a former Pakistani international. Vincent’s evidence has also given the authorities insight into how transactions are paid to corrupt cricketers through banks, some based in England and how contact is maintained with criminal ringleaders overseas. It is understood they have photographic evidence of bank records and transactions which is helping to identify the Asian mafia barons who are said to control multi-billion dollar illegal-betting industries in India. The emerging scandal is also revealing to the authorities how the fixers exert pressure on players once they have accepted money to under-perform, as well as the value placed on any form of insider knowledge about fitness and team tactics.

It then appeared that a match between Lancashire and Durham in June 2008, in which Vincent played, was also under suspicion. The Twenty20 Cup North Division game was televised live on Sky and Star Sports in India and is understood to be one of several matches involving Vincent which are being probed. The match at Old Trafford came soon after Vincent joined Lancashire on a short-term deal following his participation in the now-defunct breakaway competition, the Indian Cricket League, where fixing is thought to have been widespread. There is no suggestion any other players from Lancashire or Durham were involved in any alleged fix. Vincent scored one off five balls in the match, which Durham won by six wickets with six balls to spare.

Vincent has told the ICC that he would use colourful bat handles to signal to his bookmaker that the fix was on. He has identified 12 games around the world, three of them in England that involved fixing. The Lancashire match against Durham is being studied along with the Sussex versus Kent match on 23/8/2011 – a game that has been under suspicion for a long time, and an earlier Twenty20 quarter-final between Sussex and Lancashire. He has also identified a Champions League match against for Auckland Aces against Hampshire in 2012. He has detailed offers of women, bottles of perfume and says he was paid £40,000 for one of the Sussex fixes. A study released by the International Centre for Sport Security said criminal gangs laundered £83 billion a year from illegal betting on sport. It said cricket and football were the most vulnerable and lucrative targets (The Daily Telegraph of 16/5/2014, p. S2).
Still on the subject of the 2008 Twenty20 fixture between Lancashire and Durham, Vincent’s fellow-Lancashire opening batsman, Mal Loye, revealed that he had been approached with a match-fixing offer. He ignored this request, but only revealed this information when approached by ACSU detectives piecing together the case against Mr. Vincent. Mr. Loye admitted that he did not deal with this matter appropriately, adding that if it happened now, with all the education available to players, he would have been a good deal more informed about how to report such approaches. It should be recalled that in 2008 anti-corruption education for county players was minimal, and there was no proper structure in place for cricketers to report approaches, even though failure to do so had already become an offence. It was learned that he would not face retrospective disciplinary action over the affair in view of this absence of education at the time. It is similar to the manner in which Essex players laughed off the attempts by Danish Kaneria, the Pakistan leg spinner, to fix matches, as described in court during the Mervyn Westfield trial, extensively covered in previous issues of this Journal (The Daily Telegraph of 16/5/2014, p. S3).

A few days later, it was revealed that New Zealand captain Brendon McCullum revealed that he too had been approached to fix matches, having informed ACSU officials that one player offered him £107,000 to underperform. It is thought to be the same player for whom Vincent had admitted fixing matches in both county cricket and the Indian Cricket league (Daily Mail of 19/5/2014, p. 79). Suspicion as to the identity of this player brought into focus the aforementioned Chris Cairns, who was named as such by the respected New Zealand Herald. As was mentioned earlier, Mr. Cairns had already been accused of involvement in match-fixing by former IPL chief Lalit Modi, whom he successfully sued for defamation over this claim. Cairns vehemently denied being the player in question, saying that he would have “no hesitation” in turning to the law courts again if such allegations were renewed. He blamed dark forces with “long arms, deep pockets and great influence” for these accusations (Daily Mail of 20/5/2014, p. 76).

Yet another development which added fuel to the fire came to pass when Lou Vincent’s former wife informed ACSU detectives that she confronted Chris Cairns over match-fixing in county cricket at a Manchester hotel in 2008. Elly Riley, who was married to Vincent during the period in which he has admitted being involved in match-fixing, made a witness statement to the International Cricket Council (ICC) in which she supports her ex-husband’s claim that Cairns was heavily involved in fixing. The latter responded by saying he was aware he may be the accused player but again rejected any suggestion of wrongdoing. Ms. Riley became one of at least three people who have made statements to the ICC backing up Vincent and McCullum’s evidence. Another is a current county player in England; a third is an agent in New Zealand. Ms. Riley’s evidence, as reported by ONE News in New Zealand, says that Vincent started fixing in India and continued in England, where she alleges that Cairns persuaded Vincent to approach other players when he was playing for Lancashire. Mal Loye, who opened the batting for Lancashire with Vincent, had already revealed the previous week he was approached by Vincent (see above).

Ms. Riley says Vincent was first confronted by a stranger with a briefcase full of money in India but claims two weeks later that she received a phone call from her then husband and that he was “crying, saying he’d just lost Chris Cairns US$250,000 (£148,000) or something like that because he got things wrong.” (The Daily Telegraph of 21/5/2014, p. S11) Her evidence to ICC investigators adds: “Lou and I kind of fell out about the whole ICL fixing thing as I didn’t want him to be involved, but Lou kept saying, ‘Don’t worry we’re all doing it’. Lou said the more players involved, the more that Chris Cairns would get. So if he had the whole team then that’s where he would get the most money and this is why Lou was approaching other cricketers.” (Ibid).

Cairns responded by referring to Vincent, he appears to have confessed to match-fixing in respect of games played in numerous countries around the world, most of which he had no connection with. He described Vincent as a man in a desperate position, facing potential prosecution and “in trying to negotiate a plea bargain he appears to be willing to falsely accuse me of wrongdoing.” (Ibid)
Following the conclusion of the investigation, the England and Wales Cricket Board (ECB) made history on 22/5/2014 when it charged Lou Vincent and his former Sussex teammate Naved Arif with fixing the outcome of a county cricket match. The pair were issued with a combined total of 20 charges of misconduct. Vincent, the former New Zealand batsman who has already confessed to fixing, and Arif, a Pakistani living in Manchester, were immediately suspended from any involvement in cricket, either playing or coaching. (The Daily Telegraph of 23/5/2014, p. S2).

Paul Downton, the managing director of England cricket, added that the ECB was investigating several other matches which have been linked to corruption. It remains unclear whether the ICC, to whom Vincent has admitted fixing in five countries, will issue charges against Vincent for offences committed in other parts of the world (Ibid).

However, the ICC caused confusion when it stated that it did not clear the match between Sussex and Kent of the suspicion being fixed. This contradicted a statement issued by Sussex in 2012 which said “in conjunction with the ICC, a full investigation was undertaken with nothing untoward coming to light”. But senior sources insisted that they had worked “hand and glove” with the England and Wales Cricket Board’s detectives on a case where the English authorities have jurisdiction. As is mentioned above, the match was originally investigated by the ICC in 2011 and sources have said the trail went cold until Lou Vincent’s confession last year. Extensive and intricate detective work by the ACSU officers examining irregular patterns on spread-betting markets during the match have helped build the case against Arif and Vincent (The Daily Telegraph of 24/5/2014, p. S5).

These charges brought by the ECB have outflanked the ICC which, despite investigating this issue for many months, is believed still not to be close to taking any formal action. The news of the charges comes at a time when the aforementioned Dave Richardson, the chief executive of the International Cricket Council, is facing scrutiny over the handling of match-fixing. Senior ICC figures are understood to be furious about his decision to threaten British newspapers, including The Daily Telegraph, with legal action over the leaked witness statements by Lou Vincent, Brendon McCullum, the New Zealand captain, and Vincent’s ex-wife, set out above. As chief executive, Richardson has the power to engage lawyers and instigate action against media outlets, but senior board members at the ICC are believed to be dismayed over the fact they were not consulted. The ICC has also been criticised for the fact its first public pronouncement on the issue was to criticise the leaking of documents rather than explain how the ICC intended to deal with the issue. It comes at a time when the ICC is undergoing the most radical overhaul in its history and the anti-corruption unit is facing a major review. Earlier, the ICC was described as “incompetent” by McCullum’s lawyer for its handling of the Vincent case.

In fact, this has not been the only occasion on which the competence of the ACSU has been questioned. A report into alleged corruption in the Bangladesh Premier League (BPL) labelled its investigations as “flawed and incomplete”, questioned why they had allowed a fixed game to go ahead contravening Bangladesh law in the process, and raised deep concerns about methods of recording witness statements. In February 2014, one owner of a BPL team was found guilty of attempting to fix a match, but six others were cleared, including Kent all-rounder Darren Stevens, who had been accused of failing to report a corrupt approach whilst playing for Dhaka Gladiators. In the course of its investigation, the ACSU also discovered attempts by those involved in match-fixing in Bangladesh to corrupt matches in England. The report reveals that a fixer based in Bangladesh was allegedly offering $50,000 - $75,000 per fixture to players in England who had appeared in the BPL. These charges went unproven, and the ECB is currently considering whether to open its own inquiry into these claims (The Daily Telegraph of 12/6/2014, p. S17).

The report concentrates on the BPL which saw a match between Dhaka and Chittagong Kings fixed. The team coach, former Essex bowler Ian Pont, was offered $6,000 to assist with the fix. The report states he wanted to fly home and have nothing to do with the fix, but was persuaded to stay by the ACSU and help gather evidence, secretly recording meetings. He was allowed by the ACSU to keep the $6,000, something which the tribunal found “disturbing” as well as
undermining the reliability of his evidence. He was not charged with any offence and did nothing wrong. The report criticises the fact that the ACSU allowed the Dhaka/Chittagong fixture to proceed even though they knew it had been fixed. The fixture should have been “reported to the Bangladesh Cricket Board and law enforcement officers involved” (Ibid).

Ed Hawkins, an expert on betting and corruption in cricket, was the first to reveal in his book, Bookie, Gambler, Fixer, Spy, in 2012 that the match was under investigation. Subsequent examination of betting data revealed a total of £14 million was gambled on one website alone, the highest for three years. Figures for unregulated markets in India, where gambling is illegal, are likely to be much higher. Vincent’s subsequent confession, contained in a 42-page document seen by The Daily Telegraph, detailed how the fix was planned and implemented (Ibid).

All these revelations and accusations of match-fixing naturally raised concerns about future fixtures, which is why the ACSU was on high alert in early June as the Indian Premier League ended, making the NatWest T20 Blast series the focal point for criminal gangs attempting to rig cricket matches. The IPL remains the major attraction for gamblers given its profile and Friday’s match between Delhi and Mumbai saw more than £30 million gambled on one legal betting exchange alone. But when the tournament finished on June 3rd, county cricket’s Twenty20 tournament will be the only domestic cricket shown live on satellite television across the world which puts it at greater risk of corruption.

The ECB’s investigators have identified the methods used by criminal gangs which include the use of ‘mules’, often young men with clean criminal records sent to England to live in cheap hotels and set up with laptops and legal gambling accounts. They act as the middle men coordinating a string of runners who attend county matches to “courtside”, which involves telephoning contacts in India with information live from play to beat the time delay on satellite images. Anti-corruption officers removed 15 individuals from county matches last summer suspected of courtsiding. One source described it as picking off the “low hanging fruit” but important in the disruption of illegal activity (Ibid).

In the meantime, it was learned that the ECB was taking legal advice on the question whether it can charge Chris Cairns with match-fixing offences. The complex case against Cairns could end with the ECB having jurisdiction rather than the International Cricket Council or any other national board. It is particularly the claim, referred to earlier, by Mal Loye, that Vincent offered him £20,000 for the spot-fix that the ECB are taking seriously and is likely to form the basis for any case against Mr. Cairns. The ECB will argue it has jurisdiction because in 2008 Cairns was playing for Nottinghamshire and agreeing to abide by the ECB’s anti-corruption code would have been a clause in his county contract. He was in London when this news broke to meet Metropolitan Police officers investigating suspicions of perverting the course of justice relating to his libel trial against Lalit Modi, which has already resulted in the arrest of Cairns’s barrister and friend Andrew Fitch-Holland. The police investigation is taking precedence and neither the ECB nor the ICC will take action until that has concluded. Heath Mills, head of the New Zealand Players’ Association, has said he knows of three other international cricketers who have testified against Cairns and that he hopes their information will not be leaked (Ibid).

Chris Cairns, for his part, revealed the names of three former New Zealand players who have given evidence against him as he arrived home from London where he met ICC and ECB anti-corruption investigators for the first time. Cairns read out a lengthy prepared statement at Auckland airport denying allegations against him and accused Lou Vincent of betraying his friendship. More particularly, he named Stephen Fleming, Kyle Mills and Daniel Vettori, all former teammates who have spoken to anti-corruption officers. He described the allegations against him as “absurd, bizarre and scary” and stated there are “no allegations that I ever received any monies for my alleged activities, nor paid any monies to any person.” Cairns had met with the ECB’s anti-corruption investigators a few days earlier, and it is now looking increasingly likely the English authorities will be the ones to lay any charges. In defending his reputation, Cairns also cannily shifted the focus on to the ICC, accusing them of sitting on the McCullum statement.
He said:

“He alleges I approached him during the ICL tournament in March, 2008. It is misleading at the least for a host of people to claim he reported my alleged corrupt approach within a timely fashion or that there had been a small delay. Mr McCullum first made his allegations to the ICC’s ACSU on 17 February, 2011. Not only was this nearly three years after the alleged approach, but importantly it is 13 months before the trial, in March, 2012, of my case in the London High Court against Lalit Modi about match-fixing. At that trial, every allegation that I was match-fixing, was shown to be false. It is extraordinary that Mr McCullum told the ACSU in February, 2011 that three years previously I approached him to match fix, yet neither he or the ACSU anti-corruption officer that took his statement, Mr John Rhodes, took that information to the ICC or informed Mr Modi or anyone else of this startling revelation. Based on the information I was provided in London, I now understand that there were two past players and one current New Zealand player, who Mr McCullum said he spoke to about the alleged approach. These three ex or current New Zealand players have made no direct accusation against me. These players are Stephen Fleming, Daniel Vettori and Kyle Mills, the brother of New Zealand Cricket Players’ Association head Heath Mills. Two of these men made statements supporting Mr McCullum’s claim that he spoke to them. The third man told investigators his memory was foggy and he could not make a statement in support of Mr McCullum. It is also significant that none of those players seem to have spoken to anyone at the ICC or any other organisation about my alleged conversation with Mr McCullum until this year, 2014. As a result of my trip to London, I now also understand that no person has many any statements to support the allegations Mr Vincent and his ex-wife have sought to level against me. There are also no allegations that I ever received any monies for my alleged activities, nor paid any monies to any person. I find the manner in which this whole matter has progressed, and the limited information that has been provided to me until very recently, to be very disturbing. Knowing what I now know of these allegations against me, I find the situation truly absurd, bizarre and scary (Daily Mail of 31/5/2014, p. S19).

Came the day of the ECB hearing, and the outcome was to claim a number of notable scalps, with the former Sussex and Pakistan A bowler Naved Arif banned for life after pleading guilty to fixing in county cricket in 2011, and his former Sussex team-mate Lou Vincent one of four men punished for corrupt activity in last year’s Bangladesh Premier League – along with Mohammad Ashraful, the former Bangladesh captain. But there will almost certainly be more to follow in the coming weeks and months. At this stage, Vincent has been banned for only three years, by a tribunal of the Bangladesh Cricket Board, which found him guilty of not reporting approaches to fix matches in the BPL Twenty20 competition in early 2013. But he remains under a provisional suspension by the ECB and under investigation by the International Cricket Council’s Anti-Corruption and Security Unit. In Asia Ashraful is the highest-profile miscreant of the five, even if the confirmation of his punishment – an eight-year ban from all forms of cricket, at the end of which he will be 37 – comes as no surprise after he made a tearful confession in May 2013. He was once the boy wonder of Bangladesh, having become Test cricket’s youngest centurion when he made 114 on his debut against Sri Lanka in 2001 (The Guardian of 19/6/2014, p. S13).

In addition to the ECB’s charges against Vincent, there are further unresolved issues surrounding his former New Zealand team-mates Chris Cairns and Daryl Tuffey, in addition to as well as the Supreme Court investigation in India into allegations of corruption in the Indian Premier League. Justice Mukul Mudgal lead that investigation, with his report due in August – when India playing a Test series in England.

The present author will continue to report, as ever, on any further developments on this issue in future issues of this organ.
Westfield cleared to play again
The sad case of Mervyn Westfield, extensively covered in earlier issues, took on a happier turn in March 2014 when it was learned that the ECB cleared the former Essex bowler to play cricket for the first time in four years. It will be recalled that Westfield was jailed for four months for having agreed to concede a number of runs in a 40-over fixture with Durham in 2009. The ECB had banned him from first-class cricket for five years and from club cricket for three, but reduced the suspension from club cricket to two years on condition that the player help the Professional Cricketers Association anti-corruption programme.

Westfield has addressed first-year professionals at the PCA’s annual “rookie camp” in Birmingham, and has accompanied officials of the players’ union on their pre-season visits to the 18 first-class counties (The Daily Telegraph of 22/3/2014, p. S20).

CYCLING

Lance Armstrong affair refuses to go away
As has been mentioned in previous issues, the case of Lance Armstrong, erstwhile Tour de France winner but banned from the sport for life following the discovery of extensive doping practices, remains relevant to this column because of the overtones of corruption which have also marked this entire episode. More particularly, serious questions have been raised over Armstrong’s relations with the world governing body in the sport, the UCI, and allegations that the latter conspired in covering up the US cyclist’s illegal activities. It was in this connection that, in mid-November 2013, Armstrong was urged by the new International Cycling Union president, Brian Cookson, to contribute to an independent inquiry into past doping within the sport, particularly on this question. However, he was warned by Cookson, that his life ban was unlikely to be reduced. The new UCI chief added:

“What I am really interested in, I have to say, is the allegations he has apparently made ... about the way in which he was given special treatment by the UCI. If that was true, I’d like to know about it.”
(The Guardian of 14/11/2013, p. S1)

In fact, Armstrong made donations to the UCI totalling $125,000 (£78,000) between 2002 and 2005. The allegations — strongly denied by the UCI – that Armstrong claimed he had influence within the governing body, were made by his former team-mates Floyd Landis and Tyler Hamilton. The head of the US Anti-Doping Agency, Travis Tygart, said last spring that “Armstrong led us to believe – during the course of our interaction with him – that he had evidence of [the UCI’s] complicity in this situation”. Armstrong stated, though, when interviewed by Oprah Winfrey this January that his donations were “not in exchange for help”. He has claimed that he was unfairly singled out for investigation and that his sanction is a “death sentence” whereas others were more leniently treated, but Cookson joined the chorus of international sports figures who have played down the chances of that ban being reduced.

After the World Anti-Doping Agency head, John Fahey, added that it would take “a miracle” for Armstrong to get his ban reduced, the International Olympic Committee president, Thomas Bach, expressed similar views. Mr. Cookson’s comments came after a private meeting with Fahey at the World Conference on Doping in Sport in South Africa, at which the pair began to work out the details of the commission of inquiry. Lance Armstrong had previously suggested he might cooperate with any inquiry in return for a reduction in his life ban from all organised sport. Although any reduction in Armstrong’s ban would have to come through the US Anti-Doping Agency rather than the UCI, Mr. Cookson conceded that there would have to be some trade-off for those who contribute to the inquiry. The new UCI chief wants the investigation to be completed within a year but he said he was “not putting that down as a firm deadline”. Details to be worked out include the appointment of commission members and deciding the exact remit (Ibid).

In the meantime, pressure was growing on Armstrong and former world cycling chief Hein Verbruggen to reveal the full details behind Armstrong’s serial doping. The dramatic development came after Armstrong’s allegation that Verbruggen, a former president of cycling’s UCI governing body, had encouraged the American to cover up his cheating. Craig Reedie, the new
president of the World Anti-Doping Agency, said that in light of Armstrong’s interview with a leading British daily newspaper paper it is essential he should take part in the drive to clean up the sport through a truth and reconciliation process. At the same time, the UCI indicated that Verbruggen could be called before a separate independent commission being set up to investigate Armstrong. In an interview with Armstrong and Emma O’Reilly – the former US Postal team soigneur who blew the whistle on his cheating – the disgraced cyclist claimed he escaped punishment for a positive steroid test in 1999 with the support of Verbruggen. Reedie responded, saying:

“I read the interview with interest. It rather illustrated that the sport had a serious problem all those years ago and it has brought it to a serious head. In defence of the current UCI regime, they have been very active in trying to tackle the problems of the past. Lance Armstrong is certainly seen in the public eye as the biggest sinner of that generation but if he chose to take part in a properly organised independent commission it would give them the best chance of achieving a proper result. The question I am asking, though, is one of amnesty,” added the former chairman of the British Olympic Association. ‘Imagine Armstrong would want that protection before he could talk. The commission will invite individuals to provide evidence and we would urge all those involved to come forward and help the commission in its work in the best interests of cycling. This investigation is essential to the wellbeing of cycling in understanding the doping culture of the past, the role of the UCI at that time and helping us all move forward to a clean future.” (Daily Mail of 19/11/2013, p. 74).

During his reunion with O’Reilly in Florida, Armstrong gave the clearest indication yet that he will tell all if he is given protection from legal action. He claimed he and Verbruggen had a conversation during the 1999 Tour de France that led to US Postal backdating a prescription to get him off the hook. A plan was made to claim traces of a banned steroid in Armstrong’s sample were the result of him taking a cream for saddle sores. Verbruggen, who has consistently denied the UCI protected Armstrong during his term in office, hit back at the Texan. He told a Dutch TV station:

“Since when does one believe Lance Armstrong? His story is illogical because it was not a positive anti-doping offence, in the opinion of the competent authority. That authority was not the UCI, but the French ministry. After allegations a year back of a large-scale complicity at the UCI over doping by Lance Armstrong and his team, we are now back to a cortisone case from 1999 that wasn’t even from the UCI.” (Ibid)

The International Olympic Committee (IOC), of which Verbruggen remains an honorary member, responded in a similar manner, dismissing Armstrong as a liar. It pronounced itself hard to give any credibility to the claims of a cyclist who appears to have misled the world for decades. Those in favour of truth and reconciliation – including new UCI president Brian Cookson and Travis Tygart, the head of the United States Anti-Doping Agency (USADA) – are likely to be alarmed by the IOC’s stance. The IOC’s emotive language echoes that of another former UCI president, Pat McQuaid, who described two dopers, Floyd Landis and Tyler Hamilton, as “scumbags” when their testimonies proved crucial in exposing Armstrong. Also, the IOC line seems to be at odds with the more conciliatory noises being made by WADA and the UCI as they set up a commission to investigate what went on in the Armstrong era, and the extent to which the authorities had knowledge of, or actively colluded in, the doping of Armstrong and others.

In a further twist, it was learned in late April 2014 that Armstrong’s erstwhile team manager, Johan Bruyneel, had been banned from the sport for 10 years. The US Anti-Doping Agency announced the verdicts of an American Arbitration Association panel against Bruyneel and two staff of the now defunct team, completing its investigation which saw Armstrong banished from cycling for life in 2012. The team doctor Pedro Celaya and trainer Jose Marti will serve eight-year bans. The trio worked for Armstrong’s US Postal Service team, which later changed its name to the Discovery Channel team. Bruyneel “was at the apex of a conspiracy to commit widespread doping on the [US Postal Service] and Discovery Channel teams spanning many years and many riders,” USADA said in a statement (Daily Mail of 23/4/2014, p. 61).
Bruyneel claimed he, Armstrong and the others had been made scapegoats for an era when doping was “a fact of life” in cycling. “I do not dispute that there are certain elements of my career that I wish had been different,” Mr. Bruyneel said. “However, a very small minority of us has been used as scapegoats for an entire generation.” As a Belgian national, Bruyneel questioned USADA’s right to prosecute him and said he would consider appealing to the Court of Arbitration for Sport (CAS).

Bruyneel, Celaya and Marti faced charges including trafficking and administering doping products and methods, including EPO, blood transfusions, testosterone and cortisone. The panel ruled that Bruyneel encouraged his USPS and Discovery Channel riders to cheat. Bruyneel was most recently general manager of Radioshack-Nissan, but stepped down in 2012 (Ibid).

**TENNIS**

**Betting firm denies “courtsiding” at Australian Open**  
The employers of a British man arrested at the 2014 Australian Open for “courtsiding” are adamant that he or they had not broken the law in Melbourne. In a bizarre case, Sporting Data Limited, a Surrey-based private sports betting company, accused Victoria Police of misusing new legislation brought in to help the fight against corruption in sport, when they arrested 22-year-old Daniel Dobson at the first Grand Slam of the year. Dobson appeared in court on to face a charge that he engaged in conduct that corrupts or would corrupt the betting outcome of an event. It is alleged he used an electronic device stitched into his shorts to transmit scores secretly from courtside to help gambling associates beat delays in television coverage. Dobson’s lawyer said he was just sending data to an international betting company to help set odds as matches progressed. The case was adjourned and Dobson was warned to stay away from the Australian Open. There is no evidence linking Dobson, who could face 10 years in jail, or his employers to the more serious charge of match fixing (The Daily Telegraph of 17/11/2014, p. S9). No further details were available at the time of writing.

**Spanish player banned**  
In late December 2013, it was learned that Guillermo Olaso, a Spanish player ranked 236 in the world, had been fined $25,000 for match-fixing offences. The charges related to games played in 2010. Mr. Olaso was also found guilty of two counts of failing to report approaches made to him to provide inside information to the Tennis Integrity Unit, the force set up to investigate cases of match-fixing (The Times of 24/12/2014, p. 50).

**OTHER SPORTS**

**Stephen Lee.** The snooker star, who, as extensively reported in the previous issue of this Journal, was banned for 12 years following an investigation into spot-fixing, was facing up to a career in ruins in mid-May 2014 after failing to overturn his ban. His case was dismissed by Nicholas Stewart QC, who also increased Lee’s original cost order from £40,000 to £75,000. This decision means that Lee will not be eligible to return to the sport until October 2024. (The Daily Telegraph of 16/5/2014, p. S12)

**Rugby League.** In mid-February 2014 it was learned that two Batley players were banned after being found guilty of breaching the game’s betting rules. Winger Johnny Campbell was suspended for 12 months by a RL Operational Rules Tribunal for placing bets on a number of games, including the 2013 Kingstone Press Championship Grand Final, in which he played. Team-mate Ayden Faal, who did not play in that fixture, was suspended for six months (The Independent of 15/2/2014, p. 53).
Facts
The claimant football club (L) applied for permission to seek judicial review of a decision of the defendant corporation (C) rejecting its bid for use of the London 2012 Olympic Stadium. C had invited tenders to deliver a viable long-term multi-use stadium that was value for money. The invitation to tender set out three stages: an evaluation of each bid in order to rank them according to criteria; an assessment of the compatibility of event-calendars between the highest ranked bidder and the other bidders to determine whether bids could be “teamed”; the selection of the preferred bidder or bidders. C’s decision letter stated that L’s bid had been ranked third out of four and that it had decided not to team L’s bid with that of the highest-ranked bidder (W), West Ham Football Club, as that was not financially viable. C concluded, among other things, that a teamed bid between L and W would result in a lower projected surplus than if W acted alone. L argued, among other things, that C’s decision had been unlawful as it had considered financial viability at the “teaming” stage rather than at the third stage.

Held (Application refused)
L’s submission was not arguable. Read as a whole, read in context and read against the background of the invitation to tender documents, what C’s decision letter was clearly saying was that L’s bid was compatible with the bid of the first-ranked bidder, namely W, but that L was not to be included as a preferred bidder in a team because ultimately its financial position was not viable. Contrary to L’s assertion, it was at the final and third stage of the process that C had decided not to select it as a preferred bidder (see paras 16, 21-22 of judgment).

Commentary
Mr Justice Lewis said the LLDC was entitled to make the decision which was not “irrational”. This looks as though it is the end of road for Leyton Orient’s challenge to the LLDC decision to give West Ham residency at the Olympic stadium. The history is that in October 2011, an agreement with West Ham to take up the lease collapses because of legal challenges from Leyton Orient and Tottenham Hotspur; in May 2012, West Ham dismiss a suggestion from Leyton Orient that they are interested in a ground share; in December 2012, West Ham United named as preferred bidders; in March 2013, West Ham become anchor tenants; in April 2013, the High Court rejects Leyton Orient’s written application for a judicial review into the tenancy; and finally in September 2013, Leyton Orient lose bid to win a judicial review into tenancy decision.

The aim of Leyton Orient was to be allowed back into the procurement competition and to be able to use the stadium jointly with West Ham. One practical concern is that with Leyton Orient’s Brisbane Road ground only being two-miles away from the Olympic Stadium, attendances at Orient games will be adversely affected. West Ham are expected to move into their new home from August 2016.

Reporter: (SG)
Facts
The claimant, Bruce Baker (B) sought interim injunctions pending his appeal against the defendant board's decision to withdraw his boxing manager's licence. B had managed boxers for many years and was the Chairman and Managing Director of the Professional Boxers Promoters Association. He was found guilty of misconduct following his involvement in two promotions which had not been sanctioned by the board and were said to have been “regulated” by the German Boxing Association. B's licence was withdrawn. Pending his appeal to the Stewards, he sought interim injunctions to the effect that the board was

(i) restrained from withholding his licence;

(ii) required to reinstate his licence;

(iii) restrained from withdrawing its recognition of the Professional Boxers Promoters Association bond.

It was B’s case that Regulations 4.12(b) and 5.15 of the board’s rules and regulations breached the TFEU art.101 and/or the Competition Act 1998 Chapter I since they gave rise to an anti-competitive agreement. He also claimed that the decision to withdraw his licence was in breach of art.102 of the TFEU and of Chapter II of the 1998 Act, as it amounted to an abuse of a dominant position in a relevant market, namely the market to supply licences for regulated professional boxing shows. The board sought a stay of the proceedings under the Arbitration Act 1996 s.9 on the basis that the disputed issues were the subject of arbitration. Alternatively, the board contended that the Stewards appeal route represented a contractually binding appeal process which B should be required to exhaust before seeking relief from the court. In any event, the board argued that there was no serious issue to be tried as to either procedural unfairness or the validity of the Regulations and that damages would provide an adequate remedy.

Held
(1) The broadly based challenge to the Regulations did not give rise to a serious question to be tried. Regulations 4.12(b) and 5.15 were inherent in the organisation of the sport. Their objectives were to “ensure that the sport is conducted fairly, including the need to safeguard equal chances for the boxers, boxers' health, the integrity and objectivity of the sport and the ethical values in the sport”. The board’s policy had been to grant permission under reg.5.15 and to recognise a regulatory body under reg.4.12(b) unless there were good reasons not to do so (see paras 20-22 of judgment).

(2) Decisions concerning the withdrawal of licences were dependent on knowledge and experience and the court should be slow to substitute its own opinion for that of expert decision makers, whether in relation to findings of fact or matters of judgment and proportionality. The court could not be satisfied that the board’s decisions fell outside the range of possible decisions open to it, or indeed even that there was a serious issue to be tried to that effect. B was unable to fulfil the first requirement for obtaining an interim injunction in accordance with American Cyanamid, whether in relation to his challenge to the validity of the relevant Regulations or to the decision-making process. A temporary restoration of his licence would not stem the damage flowing to his professional reputation and any financial damage suffered by B as a result of the withdrawal could be adequately compensated, if proved necessary, by an award of damages. B remained unrepentant and the board had been entitled to take the view that the sanction should be of immediate effect (paras 28-35).
(3) The instant proceedings were premature, on one basis or another. Before any legal challenge was mounted to the disciplinary procedure under the Regulations, that procedure should be allowed to come to its natural conclusion, so that any such attack could be made on the procedure taken as a whole, Modahl v British Athletic Federation Ltd (No.2) [2001] EWCA Civ 1447, [2002] 1 W.L.R. 1192 and Calvin v Carr [1980] A.C. 574 considered. However, it was right to consider the application for the interim injunctions on its merits. Until the pending appeal was resolved, the application for a stay under the 1996 Act could be adjourned and no further steps needed to be taken in those proceedings (paras 37-40).

Commentary

In this recent bout in the High Court, the specificity of sporting disputes once again came to the fore. Sir David Eady was faced with the old chestnut of a request for a court to interfere with a national sporting body’s decision to sanction one of its participants. One interim application later, and the BBBC was still standing.

Mr Baker challenged the withdrawal before an internal appeal body – the “Stewards” – but also applied to the High Court for interim relief requiring the BBBC to restore his licence. The manager alleged that the BBBC had disciplined him because he participated in an event sanctioned by a German boxing body that it did not recognise, contrary to free movement and competition law and procedural unfairness. The BBBC sought a stay of the action under section 9 of the Arbitration Act 1996.

The Court rejected Mr Baker’s application. The appeal failed, first, because it was premature. An appeal was pending before the independent Stewards of Appeal, due to be heard in July. Without it being necessary to decide whether the Stewards constituted an arbitral or a domestic body under the principles set out in England and Wales Cricket Board Limited v Kaneria [2013] EWHC 1074 (Comm) (see 2013 SLJR4), the Court decided that the complaint ought to have been brought before them, “so that any such attack can be made on the procedure taken as a whole”, on Calvin v Carr [1980] A.C. 574 and Modahl v British Athletic Federation [2002] 1 WLR 1192 principles (at [38]).

Second, as to the competition law challenge, the Judge placed an emphasis on the European model of sport, i.e. “[t]here is no legal prohibition on the organisation of any sports under the umbrella of a national governing body” (at [15]), and such a body is “free to stipulate that its members should comply with its rules” (at [18]). He pointed to the “detailed methodology available as to how the [European] Commission will apply competition rules in the sporting context” – i.e. the test in C-519/04 P Meca-Medina and Majcen v European Commission [2006] ECR I-6991 at paras. [42]-[45]. The Court considered it entirely lawful for a sport governing body to have a rule that allowed a party to be disciplined for actions assessed to be inimical to the sport, indeed such a rule was “inherent in the organisation of the sport” (at [20]). This broad approach is interesting given that Meca-Medina was initially identified as a watershed for the CJEU’s so-called dilution of the ‘sporting exception’ from EU law: “the mere fact that a rule is purely sporting in nature does not have the effect of removing from the scope of the [Treaty] the person engaging in the activity governed by that rule or the body which has laid it down” (at [27]).

Finally, the judge considered that there was no triable issue. The decision in relation to Mr Baker was plainly based on an assessment of the facts in the case, which a Court “should be slow indeed to substitute its own opinion for” (at [28]). He also concluded that any damage to Mr Baker in the absence of interim relief would not be removed by the temporary restoration of his licence. Damage flowed from his being found guilty and the concern that if he failed in his appeal in July, he would not have a licence at that point (at [31]). Moreover, if there were any damage to Mr Baker it was compensable in damages, in contrast to the potential damage to the BBBC’s interests as a sport’s governing body. The Court also noted that Mr Baker had delayed in seeking this remedy and “remains unrepentant” – the balance of convenience therefore lay against the granting of the relief (at [33]-[34]).

The Court’s approach is a classical illustration of the respect given to sporting rules, and internal processes within a sport to enable national authorities to pursue objectives such as “ensur[ing] that the sport is conducted fairly, including the need to safeguard equal chances for the boxers, boxers’ health, the integrity and objectivity of the sport
and the ethical values in the sport" (at [20]). It also reflects the EU position that something more than the inherent organisation of sport in the European model is needed for breaches of EU law to be found.


(2013) SLJR9

CONROY V SCOTTISH FOOTBALL ASSOCIATION

Employment Appeal Tribunal (Scotland): Lady Stacey, 12 December 2013 UK EATS 0024/13/JW

Facts
The facts of this case and its appeal raise the question of the employment status of the Claimant, registered as a category 1 referee with the Respondent, the Scottish Football Association (the Scottish FA). To referee a match under Scottish FA jurisdiction a referee must be registered with the Scottish FA and be a member of a Referees’ Association. The Claimant fulfilled both of these requirements and was therefore eligible to referee Scottish Premier League and Scottish Football League matches.

The Claimant had submitted to the Employment Tribunal claims of unfair dismissal, age discrimination and a claim for holiday pay. The Respondent challenged the employment status of the Claimant and his eligibility in respect of each of these claims. The issues before the Tribunal had therefore been whether:

1. the Claimant was an employee for the purposes of s.230 Employment Rights Act 1996. If not, the Employment Tribunal as the first instance court would not have jurisdiction to hear the claim of unfair dismissal;

2. in relation to the age discrimination claim, the Claimant was an employee within the meaning of s83(2) of the Equality Act 2010;

3. the Claimant fell within the definition of ‘worker’ within the meaning of regulation 2(1) of the Working Time Regulations 1998.

The Employment Judge found that the Claimant was an employee for the purpose of section 83(2) of the Equality Act 2010 and that he was a worker under the Working Time Regulations. This meant that his claims for age discrimination and holiday pay could be pursued. However, the Employment Judge decided that the Claimant was not an employee under section 230 of the Employment Rights Act 1996 and so not eligible to pursue his claim for unfair dismissal. The Claimant appealed to the Scottish Employment Appeals Tribunal (EATS) against this final element of the decision.

The Claimant was a doctor with the National Health Service (NHS) and carried out his refereeing during his spare time, as and when he could take leave. His contract, provided by way of a letter of appointment, included a clause that stated:

Your relationship to the SFA [Scottish FA] will be that of independent contractor and nothing in this letter shall render you an employment, worker, agent or partner of the SFA and you shall not hold yourself out as such. This letter constitutes a contract for the provision of services and not a contract of employment. You hereby agree that you shall be responsible for all Income Tax or National Insurance or similar contributions eligible in respect of any match fees and/or expenses you receive in the course of and as a result of the classification.

The Employment Judge made a number of findings of fact. She found that the letter expressly stated the Claimant was an independent contractor; she accepted that the label given was not of itself the determinant of status but was to be taken into account. It was further found that referees were not entitled to choose the matches at which they referee, but were asked to confirm their availability once the schedule of matches had been set and a list of officials compiled, and that they were not permitted to send a substitute but were asked to keep in touch with the Respondent about their availability and to provide details of the same at the start of the year when appointed.
The Claimant was paid gross and reported to HMRC (Her Majesty's Revenue and Customs) as self-employed. No sickness pay was offered in the event of illness or injury, although it was noted that the Claimant had the benefit of private healthcare courtesy of the Respondent. Although as a referee the Claimant was expected to maintain a level of fitness and high standards of off-field behaviour he was not subject to the Respondent's disciplinary process but he could be referred to an independent judicial panel by a compliance officer of the Respondent (that panel having powers to fine, expel, suspend and censure). If a match was called off in advance the Claimant would not be paid, but no particular significance was attached to this fact, nor did the fact of the Claimant having a full time job with the NHS be considered a cause for concern. It was noted that the Claimant was provided by the Respondent with kit to wear but that it was his responsibility to provide his own stopwatch, flags, red and yellow cards, whistles and notebooks and that he spent approximately £1,000 per year in this respect.

Firstly, the Employment Judge found that whilst there was an expectation that matches would be offered to the Claimant and accepted, there was in fact no obligation on the part of the Respondent to offer work, nor was there any obligation on the part of the Claimant to accept it. In addition, although the Claimant was required to attend training and monthly meetings, this was not found to be indicative of a contract of employment and no payment was made for such attendance. There was a finding of a lack of mutuality of obligations and a finding of insufficient control of the Claimant by the Respondent, his governing of the game being controlled by the 'Laws of the Game' and disciplinary matters being left to the Judicial Panel. There had been discussion of the role of the 'fourth official', a role that the claimant fulfilled for UEFA, and the lack of control of the Respondent over referees, it being the fourth official, if there was one, to confer with the referee during a match, although at lower level games the Respondent would have its own 'observer'.

On appeal, the Appellant (the Claimant) argued that it had been accepted that for the duration of a football match a contract of employment was in existence, and as such the successive refereeing assignments created an umbrella contract. The Respondent on the other hand countered this stating that the Claimant’s unpaid attendance at training and meetings in between refereeing assignments negated the creation of an umbrella contract. The Appellant further submitted that the focus on control was misguided; that control should not relate to day-to-day, minute-to-minute matters and that many employees are autonomous in the carrying out of their duties (the example cited being that of a surgeon).

Held
On appeal the Judge noted that such cases are very much fact specific and found that there were no grounds upon which to challenge the findings of fact that had been made. The view was that the Employment Judge had made no error of law in reaching the decision that she had, having weighed up all of the facts as required.

The Claimant’s appeal was dismissed. The Tribunal therefore did not have the jurisdiction to hear the Claimant’s claim for unfair dismissal.

Commentary
The employment status of individuals has received significant press coverage of late, but more so in relation to the matter of zero hours contracts (See the government consultation on employment status and zero hours launched 6 October 2014, https://www.gov.uk/government/news/employment-review-launched-to-improve-clarity-and-status-of-british-workforce accessed 07.10.14). Nonetheless, this consultation highlights the uncertainty that faces individuals and organisations alike. The case law on this subject is vast and often does little to assist in clarifying the application of general principles. This is primarily because the status of an individual ultimately falls down to the finding of fact made by the Tribunal and the application of the law to those facts. Provided the Tribunal has not made a perverse finding of fact it is likely that a decision made on the basis of those facts will stand.
This case therefore serves as a reminder of some of the key principles and tests and their continued importance, particularly when determining employment status in relation to claims of unfair dismissal.

The guidance from the Employment Rights Act 1996 in respect of determining employment status is vague. Section 230 provides that an employee is ‘an individual who has entered into or works under (or, where the employment has ceased, worked under) a contract of employment.’ This gives rise to the question, what is meant by a ‘contract of employment’; section 230 proceeds to explain it is ‘a contract of service or apprenticeship, whether express or implied, and (if it is express) whether oral or in writing’. There is little, if no, practical statutory guidance for employees.

Unsurprisingly, employment tribunals and courts have therefore sought to devise their own means by which to determine the employment status of an individual. In doing so, the courts have created ‘tests’ including assessing the degree of control over the individual, the mutuality of obligations of each to the other (is there an obligation to offer work, and if offered work, is there an obligation to accept it), and personal service (the work is to be carried out by the individual concerned, not a substitute of the individual’s own choosing). This case demonstrates the practical application of these tests and the possible legal outcome. It is well accepted by the courts that the determination of status is less a science and more an art, with the whole picture having to be taken into account, as discussed in the case of Hall (Inspector of Taxes) v Lorimer [1994] 1 All ER 250, [1994] STC 23, [1994] 1 WLR 209, to which the Employment Judge in the current case referred for guidance.

Furthermore, a Tribunal will always take into account the content of a written agreement, if there is one, between the parties. Granted, such written agreement is not necessarily decisive of the true nature of the relationship particularly if it contains ‘sham’ clauses designed to mask the reality of the relationship between the parties (Protectacoat Firthglow Ltd v Szilagyi [2009] EWCA Civ 98). If the latter is the case, the ‘label’ given to the relationship will not determine the true nature of the individual's status.

Whilst this case does offer some comfort to referees, the Tribunal having found as it did that the Claimant was eligible to pursue his claim of age discrimination and holiday pay (which was not challenged by the Respondent on appeal), referees nonetheless would be well advised to take heed of the outcome of the appeal in the event of pursuing future claims of unfair dismissal. [EW]

Reporter: Louisa Riches, Senior Lecturer, Leeds Beckett University (formerly Leeds Metropolitan University) (UK)
Adam Lewis and Jonathan Taylor (editors) (2014)
Sport: Law and Practice

With the law’s ever growing influence in the sports sector, the leading practitioner text ‘Sport: Law and Practice’ makes a welcome return with its 3rd Edition. This weighty sports law tome comes six years after the previous edition and includes a number of new chapters such as match-fixing, financial regulation and selection disputes.

The text is a collection of chapters written by leaders in sports law, particularly in the United Kingdom, on the full range of sports law issues that can arise. As with previous editions, it is edited by Adam Lewis QC and Jonathan Taylor, leading barristers and solicitors respectively. The text is split into nine parts. What is pleasing to state from the outset is that each part is not only an academic approach to sports law, but as the phrase practitioner text would suggest, it involves the practical steps that need to be taken by legal advisers in the unique sporting arena.

The book begins by taking a look at the ‘Constitutional Structure of the Sports Sector’. In doing so, the UK’s approach to sports governance is discussed. It provides a useful background as to how sports law has developed in the UK, including the influence of Europe. Historically, UK sports have had a non-interventionist approach to sports policy and this largely continues to be the case. However, as pointed out in this Part A, there is a continuing tension between the regulation of sport by governing bodies and the commercial exploitation of sport, indeed it would be perhaps welcome to see more governmental intervention in this area. Chapter A4 is extremely helpful in setting out the different legal structures that can be used for sporting organisations and the advantages and disadvantages of each. Part A is rounded off by a clear, concise and sports specific chapter on the taxation of sports organisations.

Part B concerns one of the hot topics in world sports law, ‘Regulating Integrity’. It is split into 3 chapters: doping, match-fixing and financial regulation. The doping chapter’s focus is very much on a high level and sets the scene for later in the book; however, there is an excellent analysis of the strict liability principle and how it applies in anti-doping law. The chapter also helpfully sets out each provision of the WADA Code, with commentary and analysis of the international standards documents which accompany the Code. Chapter B2 on match-fixing is somewhat hindered by its structure in that there are too many footnotes, making it a difficult read. However, it does cover all the main global professional sports and provides good coverage of what offences need to be covered by governing bodies. The financial regulation chapter sets out the positives and negatives of third party ownership, an issue both FIFA and UEFA are yet be fully satisfied with their policy. Neither does the chapter just look at football, but also financial regulation in both rugby codes. There is a clear explanation of the cost control measures, especially regarding the internal and external legal issues.

Part C, ‘Enforcing the Rules’ ranges, from disciplinary proceedings and bringing and defending anti-doping cases to on-field offences and child safeguarding. The potential issues that arise in relation to jurisdiction are broadly covered and well explained in Chapter C1. The authors of this chapter are to be praised for covering advising defendants, which is not often seen in sports law texts but, in particular, the checklists and specimen documents provided at the end of the chapter. Chapter C2 ‘Bringing and defending doping cases’ is enormously comprehensive and yet is written in a style which uses numerous questions, making the chapter particularly engaging. There has been no stone left unturned in this chapter,
The financial regulation chapter sets out the positives and negatives of third party ownership, an issue both FIFA and UEFA are yet to fully satisfy with their policy. Neither does the chapter just look at football, but also financial regulation in both rugby codes.

Part D of the book focuses on ‘Challenges to the Actions of Sports Governing Bodies’. The first chapter in this section covers the decision to challenge the actions of a governing body, unfortunately like one of the earlier chapters it is hampered by the structure of the chapter in that there are too many footnotes containing what is undeniably an impressive list of case law, but I would like to see the key ones in the main body of the text. However, the way different actions against governing bodies are classified is well done. In contrast, the second chapter ‘Causes of action that form a basis for a change to the actions of a sport’s governing body’ is more helpfully structured. There is an excellent detailed analysis of the Bradley v Jockey Club case regarding the scope of public review of sports governing bodies, which continues to be extremely limited in the United Kingdom. When bringing a claim against a governing body, there is a helpful explanation in the chapter of the difference between a supervisory jurisdiction of the appellate court and what can be termed a full scope review. The ability to bring actions in tort, contract and competition law are also covered.

Part E goes one step further in looking at ‘Forum, Procedure and Remedies’ and begins by taking a look at if you do bring a successful claim against a governing body, what the remedies and procedures are likely to be. There is a good discussion of the full ambit of injunctions that are available, some of which are more suitable in a sporting context than others, however, it is a remedy which more clients are seeking to enforce in the sports world. In setting out some of the procedural issues in bringing such a claim, the different types of stays, be it for arbitration or pending criminal proceedings or other regulatory proceedings, are of particular use and often occur in sport given the various legal routes available to those who feel aggrieved. Chapter E2 ‘Arbitration in sport’ is perhaps the most clear and concise chapter in the text with an excellent explanation on the application of the UK Arbitration Act 1996 and covers all aspects of the arbitration process. This is then taken one step further in the final chapter of Part E where all aspects of the Court of Arbitration for Sport (‘CAS’) and how to bring a case there are set out. The section of this chapter about how to proceed before the CAS is first-rate, as are the ways in which Swiss law operates as a supervisory mechanism in relation to the CAS.
Part F is all about the impact European Union (‘EU’) law has on the sports sector with the first chapter providing a useful background to the section by analysing the EU’s policy on sport and how it has developed to date. This is developed further in Chapter F2 where the EU and UK competition regimes applicability to the sports sector is explained. Much of this chapter is structured around the European Commission’s Staff Working Document which accompanied its White Paper on Sport published in July 2007. This is one of the most comprehensive chapters in the book covering issues ranging from the free movement of participants to the use of particular sports equipment. There is some overlap in Chapter F3 on the free movement rules regarding case law, but overall there is a good analysis in this chapter of the substantive application of those rules to sporting issues.

Part G focuses on the issues of ‘Human Rights and Discrimination in Sport’. On the former there is a general overview of the human rights regime in the UK and the principles relevant to sport. These are most frequently Article 6; the right to a fair trial, Article 8; the right to respect the private and family life and Article 10; the freedom of expression. When it comes the contentious issues surrounding discrimination, be that by direct or indirect means or means of victimisation, there is a very good use of cases from other jurisdictions, which is somewhat unique to this chapter and welcome. The importance of this chapter will grow given the increasing efforts towards equality and inclusion in sport, with there likely to be more claims made on the basis of discrimination, be it by age, gender reassignment, pregnancy, race, religion or belief, sex, or sexual orientation.

Part H moves on to explore the issue of ‘Player Contracts and Player Liability’. Given the vast sums of money now involved at the upper echelons of the top sports, then such issues are of paramount importance. The first chapter is, not surprisingly, rooted in employment law principles and the legal provisions related thereto with some interesting case examples provided. Chapter H2 covers another area of some controversy in sports law, image rights. Such a topic is a fundamentally difficult topic to write about and structure due to the uncertain status of sporting image rights in the UK and EU. However, the authors of this chapter are to be commended for the way in which they have approached this task. The explanation of the contractual issues, particularly on morality clauses which are being triggered more often, are extremely helpful. Not to mention the user-friendly sample contractual clauses that are included. Finally, and the principal reason for image rights contracts, is an explanation of the tax issues. The author of this section of Chapter H2 has succeeded in being particularly clear in his approach to this complicated area by breaking it down into four related but separated issues. Not only that, but there are clear explanations of image rights structures and the principles of the leading Sports Club case are set out in an easy to understand fashion.

Next in Part H we move onto another area of some controversy, player agents. It was interesting to read the analysis of the English common law’s approach to player agents as this is often overlooked in sports law texts. It was also pleasing to read a comparative view with arrangements in countries such as the United States when delving into the policy and legal attitude towards sports agents. Chapter H4 considers ‘Player Transfers’ and as a cricket fan, it was illuminating to finally learn the background to the influx in recent years regarding so-called Kolpak players and that, in fact, they are named after a Slovakian handball case. There is also an important discussion of a series of cases, including the infamous Webster case, at the CAS which discusses the option for a football player to terminate his contract without just cause.
after a certain period under the FIFA Regulations for the Status and Transfer of Players. The end of the Chapter includes a useful number of checklists to be used in relation to either: transfers, player contracts or agent contracts.

Chapter H5 concerns ‘Tax and financial planning for individuals’ and is matter of fact and practical. The new chapter on ‘Selection disputes’ not only goes through all the issues that arise in this expanding area of sports law, but helpfully for governing bodies includes the bare minimum which should be included in selection policies to avoid being dragged into potentially costly litigation with participants. The final 2 chapters of Part H consider both civil and criminal liability arising out of participation in sport. This is a wide ambit and contains a great deal of legislation. However, it is covered generally well and in the criminal law chapter it is interesting to see the importance given to combat sports, given the increasing popularity of mixed martial arts sports.

The final part of the text Part I is all about where the majority of money is to be made in sport by ‘Commercialising Sports’ Properties’. When it comes to the first chapter of this part on ‘Proprietary rights in sports events’, the section on IP rights in sports is particularly well written, including the analysis of the recent cases on database rights in fixtures and how they are dealt with by IP law. The section in the next chapter ‘Venues and event management’ on the venue as a revenue generator is of most interest to practitioners, as is the risk management section. Chapter 13 on ‘Broadcasting and new media’ contains several elements that I have not come across in any other sports law text. For instance the production and broadcast of sports events and the key provisions in sports broadcast contracts.

When sponsorship is considered in the next chapter, there is an excellent case study that considers a football player who plays for a Premier League football club and England and how different deals are then structured so as not to infringe the rights of the other. In addition, it was the first time I had come across the notion of a ‘rights inventory audit’, but is a sensible way in which to set in context the opportunities sponsorship can bring. ‘Merchandising and licensing’ is considered in the next chapter and goes through all the principal elements of such an agreement from the angle of it being done by a separate company, i.e. a producer and not a licensor. Last, and by no means least to round off the text, is a look at all types of agreements relating to hospitality at an event, which can be not only the commercial opportunities, but also the criminal liability threats.

Sport: Law and Practice remains the most comprehensive text for UK sports law. It lives up to its title in that it is perhaps the practical aspects of the book that are of most use to both solicitors and barristers working in the area. However this is not to say it won’t also appeal to people studying sports law as it contains a significant amount of theory, policy and case law. It would have been welcome to have perhaps more of a comparative nature to the book. However, saying that, it is already extremely comprehensive and lengthy and, therefore, this is perhaps the reason such an approach was thought not be appropriate in this instance.

I expect to see this excellent book on sports law practitioner shelves up and down the country.

Kevin Carpenter, Solicitor,
Sport, Media and Entertainment, Hill Dickinson LLP
Membership Enquiries
Please direct membership enquiries to Catherine Forshaw.
Email: catherineforshaw87@hotmail.com
Email: basl@britishsportslaw.org
Telephone: 07714 647774

Benefits of Membership
- Tri-annual BASL Journal;
- Free annual summer drinks event;
- Free annual Edward Grayson memorial lecture;
- Access to BASL discussion groups;
- Access to BASL members’ directory;
- Regularly updated website content and features; and
- Reduced rates for annual BASL conference.

Annual UK Membership

<table>
<thead>
<tr>
<th>Category</th>
<th>Corporate</th>
<th>Academic</th>
<th>Student</th>
</tr>
</thead>
<tbody>
<tr>
<td>Individual</td>
<td>£882.00</td>
<td>£75.60</td>
<td>£37.80</td>
</tr>
<tr>
<td>Institution</td>
<td>£100.00</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Annual International Membership

<table>
<thead>
<tr>
<th>Category</th>
<th>Corporate</th>
<th>Academic</th>
<th>Student</th>
</tr>
</thead>
<tbody>
<tr>
<td>Individual</td>
<td>£825.00</td>
<td>£88.00</td>
<td>£56.50</td>
</tr>
<tr>
<td>Institution</td>
<td>£100.00</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

All UK subscriptions include VAT.
A £25 overseas supplement is payable on each of these categories for members outside of the UK in 2014.

For more information and to become a member please visit our website at: www.britishsportslaw.org/join