



Sport Update

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Is corruption the new doping?

There is a view that match fixing is worse than doping because it is cheating to lose rather than cheating to win. The issue arose recently before CAS which partially upheld the appeal filed by tennis player Mathieu Montcourt against the decision of the Anti-Corruption Hearing Officer of the ATP suspending him for eight weeks from 11th August 2008 for wagering on several tennis events during the summer of 2005. He was also ordered to pay a fine of \$12,000. While upholding the fine, CAS reduced the suspension to slightly less than six weeks and acknowledged that Montcourt had clearly breached ATP anti-corruption rules. CAS took into account a number of factors, including the small amounts gambled (a total of \$192), the absence of influence of the bets on the matches in question and the fact that Montcourt did not bet on his own matches or on matches in tournaments in which he was participating. This was not a case of match-fixing or asserting undue influence. CAS also considered that the sanction was imposed by the ATP more than three and a half years after the infraction and prevented Montcourt from participating in a Grand Slam tournament. Elsewhere, six football players are due to answer Football Association charges that they breached FA regulations against betting on the player's own team or on matches in which the player is participating.

The heads of several European sports bodies (the Sports Rights Owners Coalition) have joined forces and are seeking to compel the EU to combat the problem of sports betting corruption. One recommendation is the creation of an agency which would work globally to stop corruption through the sports betting industry. A number of measures were suggested including the forced licensing of bookmakers in all countries and the ability to exclude nations from major sporting events if they did not act within the parameters of the anti-corruption agency. The Sports Minister in the UK is planning to establish an expert panel of eight to ten people which would consist of betting personnel, sportspeople and members of the police, and which would work alongside, as well as advise and support, the Gambling Commission which regulates gambling in the UK. The Minister also acknowledged the difficulty in obtaining evidence when investigating claims of suspicious betting. To date the Gambling Commission has investigated approximately fifty cases of suspicious betting activity and had difficulty obtaining evidence of corruption in each of these resulting in no successful prosecutions.

There's no 'i' in team, but there is a 'me'

UK Sport has agreed to enter a side letter arrangement with British athletes after some British athletes expressed disquiet at the Team 2012 sponsorship arrangements. Team 2012 is an initiative designed to get funding for British athletes for the 2012 Olympics Games. It is a joint initiative between UK Sport, the 2012 Organising Committee, the British Olympic Association and British Paralympic Association. The disquiet arises in the context of what the athletes say is a potential conflict between athletes' individual sponsors and the Team 2012 sponsors. Athletes in receipt of National Lottery grants were in danger of losing the grant if they did not sign up to the deal. Lawyers for the athletes had questioned whether the Team 2012 contract endangers athletes' individual endorsement deals, but UK Sport has now clarified any confusion – sponsors will not be offered exclusive rights to individual athletes, but will get association with groups of athletes from different sports.

There is a £50 million shortfall in funding for the UK team for the 2012 Games and so it is easy to see why big name athletes who refuse to sign up for the 2012 deal in the hope of securing lucrative individual deals will have their public funding withdrawn. Team 2012 will require athletes to promote companies such as Adidas, EDF Energy and Samsung. Nike and Siemens are examples of the sponsors to which some of the athletes have obligations. Concerns were also expressed that the deal would limit the athletes' potential to enter future endorsement deals.

A distinction needs to be drawn between individual endorsement and team sponsorship and endorsement. Athletics is generally an individual sport, but national teams and squads are selected for all major games. In team sports, it is obviously commonplace that individual players may sometimes have sponsorships which conflict with team sponsorships. National teams, clubs and individual players may all have different sponsors and so sponsorship contracts and the rules of the national governing bodies need to be carefully crafted to carve out various obligations and to delineate the various sponsorships clearly. It all comes down to good drafting. In other words get good lawyers.



Agent Provocateur

A recent case before the UK Court of Appeals has looked at the role of sports agents and found that they must be very careful as to how they conduct themselves. The case is *Imageview Management Limited v Kelvin Jack* [2009] EWCA Civ 63. Jack is a Trinidadian footballer who has played for Dundee United and Gillingham, but is currently without a club. When Jack joined Dundee his agent made a secret deal with the club and the Court of Appeals found that the agent has breached his fiduciary duty to Jack and he forfeited his agency fee and was held to account for the secret profit.

Agents owe a fiduciary duty to their principal (client) to act in his or her best interests. As Lord Justice Jacobs said in the case *"an agent's own personal interests come entirely second to the interest of his client... You must act for him as if you were him."* This case is one that all agents in all sports should heed. Dual representation by agents of players and clubs is something that clearly flies in the face of this judgement. Any agent who takes an undisclosed sum from the club as part of his dealings on behalf of a player could lose the right to any fees received from the player and could be held liable to pay his player the 'secret' amount he received from the club.

There is evidence that some football clubs and agents had become accustomed to these 'secret' payments. Agents like to receive their payment from clubs so as not to be seen to be taking commissions off their clients, but obvious conflicts and the potential for shady dealings arise in this context. In the case of *Newcastle United PLC and the Commissioners for Her Majesty's Revenue and Customs (Decision 19718)*, Newcastle revealed that it often approached a player's agent and asked him to persuade the player to join the club on terms favourable to the club. The agent would of course receive payment for this and all the while the player would be unaware what was going on behind the scenes.

The Kelvin Jack case involved a different and less obvious conflict. The agent procured an employment contract for Jack, for which he received 10% of the player's wage as his fee. At the same time, the agent was hired by the club to obtain Jack's work permit to play in Scotland. While the agent claimed he informed Jack of the fact that the club hired him to obtain the work permit, the Judge in the case did not believe him. Critics have argued that there is no obvious conflict. While that may be the case, the case law in this area is very clear and stretches back over 140 years. The agent and principal relationship is one that must be protected. An agent owes a fiduciary duty to his or her client and must not make secret deals behind his or her client's back. The punishment for doing so is severe – for public policy reasons the case law establishes that not only will the agent be liable to the player for the monies made in the secret deal, he or she will also forfeit the commission or fees to which he or she would have been entitled from the player.

FIFA now has Player Agent Regulations and the FA now licences agents. In rugby, IRB Regulation 5 allows each Union to have its own regulations regarding agents, but there are certain principles set down which must be incorporated into Union rules. This is an area in which governing bodies need to be careful, and continuous updating of the regulations and supervision of the licensing regime is required to protect players, to stop abuse of the system by clubs and even to protect agents from themselves.

Manchester United 0 – Fans 1

Manchester United's fans have won in an off the pitch contest played out at the UK's Office of Fair Trading ("OFT"). Arising out of a complaint by the Manchester United Supporters Trust, the OFT identified a number of potentially unfair terms in the terms and conditions for the team's season tickets under the Unfair Terms in Consumer Contract Regulations legislation. While disagreeing with the finding of the OFT, the club has since agreed to make amendments to its ticket terms and conditions to ensure the following: that every season ticket holder is guaranteed a seat at every home league and cup game; that clearer information is given in relation to when a ticket holder is likely to be moved to a different seat for a cup match; that if a fan's ticket is terminated for failure of a credit card payment the fan will be given a pro rata refund of the money already paid to the club; that if original tickets are lost or stolen duplicates are issued; and a clearer appeal process is implemented to deal with disputes over cancellation of season tickets due to non payment for cup matches. The club also promised to give more and clearer information to allow fans to calculate, prior to purchasing their ticket, the maximum total cost over a season based on the club reaching the final stages of the various campaigns as well as an indication of the number of home cup games in the previous campaign. While this case is based in the UK it serves as a reminder that governing bodies and clubs need to ensure that their ticket terms and conditions are clear, unambiguous and fair to the consumer.



Female ski jumpers Olympic bid

The British Columbian Supreme Court has reserved judgment in the case of fifteen international female ski jumpers who appeared before the Canadian court in April seeking a ruling that there should be a women's event at the 2010 Vancouver Winter Olympics. There are three men's ski jumping events planned for next year's Games, but nothing for the girls. The women say that their exclusion is a violation of Canadian human rights law and in particular the Canadian Charter of Rights and Freedoms, but the IOC and the organising committee, VANOC, say women's ski jumping simply doesn't have enough international competitions and competitors to merit inclusion. The IOC deny that there is any discrimination at play and says that the decision was taken on technical grounds and not the basis of gender. IOC Chief, Jacques Rogge said that an Olympic sport must be widely practiced around the world and have universal appeal. Sure. Like women's beach volleyball which has a huge following...among teenage boys. The lawsuit is against VANOC and not the IOC. Although the IOC owns the intellectual property rights in relation to the Games, they are licensed to the relevant organising committee for each Games. Accordingly, it is the organising committee which plans, organizes and stages the Games, subject to certain requirements from the IOC. The case lasted five days and consisted solely of legal argument. The case is an interesting example of the conflict between private organisations like the IOC and VANOC, and public law issues such as equality and human rights. VANOC argued that the decision was made by the IOC which is outside the jurisdiction of the Canadian Charter, and that as the local organiser it is bound by the IOC's rules. There is a delicate balance to be struck between interfering in a private organisation's affairs and ensuring equality, particularly where the private organisation is in receipt of public funds. We will update this story upon publication of the judgment.

Ole

Spain has a new professional rugby union league with the Liga Superiberica starting at the end of April. The league was due to have four Portuguese clubs, but launched with just six Spanish clubs. Interestingly, the president of Superiberica Rugby is ex-Irish soccer international Michael Robinson who played for Osasuna in Spain, before carving out a career as a soccer pundit on Spanish television, along with also working for Setanta Sports.

The league is modeled on the US franchise system. There is a salary cap in place and no promotion or relegation in the league. Most of the commercial rights are sold centrally. The six clubs have handed over their television and marketing rights to Steelman Sport which has already secured the broadcasting deal for the 2009 season. There is one match aired live each week on pay-per-view channel Canal Plus. The new league is separate from the División de Honor which is the top league of the Spanish Rugby Federation. Future plans include the incorporation of teams from Portugal and Gibraltar as well as more from Spain.

We are the 'interim' champions of the world

Yuriorkis Gamboa is the "Interim World Boxing Association Ordinary World Featherweight Champion of the World". The Cuban was a gold medalist at the 2004 Olympic Games and won his absurdly named title after beating Jose Rojas in April. The story does not end there. Chris John is the "World Boxing Association Ordinary World Featherweight Champion of the World". He has successfully defended his title 12 times since winning his own "interim" title back in 2003. John last defended his title at the end of February and his fight ended in a draw. A re-match is scheduled at the end of June. Despite this, Gamboa competed for and won the "interim" crown on the 17th April. This rather absurd state of affairs arises out of the rules of the World Boxing Association which, quite rightly, allow interim championships where a world champion is unable to defend his title within a prescribed time period for medical reasons, legal reasons or other justifiable reasons. However, it does not appear that any such reasons have been put forward in this case. How about shortening the name of the title for a start?

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