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WHISTLEBLOWING IN SPORT – PART 1: MAINTAINING PUBLIC CONFIDENCE IN THE INTEGRITY OF SPORT

By [Sir Anthony Hooper \(/item/sir-anthony-hooper\)](/item/sir-anthony-hooper) [Andrew Smith \(/item/andrew-smith-2\)](/item/andrew-smith-2) published on 15 December 2014



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What is whistleblowing and how does it relate to sport? In part one of this two part series, Sir Anthony Hooper & Andrew Smith provide the answer to this question and go on to analyse whistleblowing provisions within sport.

In part two, the authors review the “*Substantial Assistance*” provisions in the 2015 WADA Code and explain how other industries approach investigations and disciplinary proceedings involving information provided by whistleblowers. To conclude the authors outline some pragmatic solutions that will assist governing bodies of sport to maintain public confidence in their sport.

Broadly speaking, whistleblowing may be defined as the raising of a concern, either within the workplace or externally, about a danger, risk, malpractice or wrongdoing which affects others.¹ Quite often, individuals who raise concerns do not perceive themselves to be ‘whistleblowers’, at least not in the first instance. In the sporting context, whistleblowing may potentially arise in relation to variety of concerns, such as:

- Match fixing / spot fixing;
- Bribery / corruption / financial impropriety;
- Doping;
- Tapping up;
- Conflicts of interest;
- Misuse of confidential / insider information;
- Discrimination;
- Abuse (including physical and sexual abuse).

WHY IS WHISTLEBLOWING IN SPORT IMPORTANT?

Concerns in relation to the above matters (which are far from an exhaustive list) may involve perceived criminal wrongdoing, breaches of applicable sporting rules and regulations and/or other legal obligations. It is vitally important that individuals who are employed and/or otherwise involved in the sports industry feel able and confident to come forward and raise any concerns which they have about potential dangers, risks, malpractices and/or wrongdoing which affects others. Information provided by whistleblowers can provide invaluable assistance to public prosecutors, sports governing bodies / authorities and individual clubs (amongst others), when seeking to identify and stamp out wrongdoing in sport. The Lance Armstrong case (<http://cyclinginvestigation.usada.org/>)² is a particularly high profile example of former staff and team members coming forward and providing information as to the nature and extent of doping abuse in professional cycling (admittedly, in some cases, rather belatedly).

The importance of maintaining public confidence in the integrity of sport cannot be underestimated. Article 165 (2) of the Treaty on the Functioning of the European Union stipulates that EU action shall be aimed at “*developing the European dimension in sport, by promoting fairness and openness in sporting competitions and cooperation between bodies responsible for sports, and by protecting the physical and moral integrity of sportsmen and sportswomen, especially the youngest sportsmen and sportswomen.*” In AEK Athens and SK Slavia Prague v UEFA (<http://www.arbitrationlaw.com/library/arbitration-cas-98200-aeek-athens-and-sk-slavia-prague-union-european-football>),³ the Court of Arbitration for Sport held (at para. 25):

“The Panel notes, quite obviously, that honesty and uprightness are fundamental moral qualities that are required in every field of life and of business, and football is no exception. More specifically, however, the Panel is of the opinion that the notion of integrity as applied to football requires something more than mere honesty and uprightness, both from a sporting and from a business point of view. The Panel considers that integrity, in football, is crucially related to the authenticity of results, and has a critical core which is that, in the public’s perception, both single matches and entire championships must be a true test of the best possible athletic, technical, coaching and management skills of the opposing sides. Due to the high social significance of football in Europe, it is not enough that competing athletes, coaches or managers are in fact honest; the public must perceive that they try their best to win and, in particular, that clubs make management or coaching decisions based on the single objective of their club winning against any other club. This particular requirement is inherent in the nature of sports and, with specific

regard to football, is enhanced by the notorious circumstance that European football clubs represent considerably more in emotional terms to fans – the ultimate consumers – than any other form of leisure or of business.”

Football is not unique in this regard. Any sport which fails to identify and punish wrongdoing when it occurs is likely to be severely diminished in the eyes of the viewing public.

THE IMPORTANCE OF PROTECTING WHISTLEBLOWERS

In the UK, there have recently been a number of reported incidents of whistleblowers – particularly in the healthcare sector – claiming to have been punished by their employer and/or colleagues for raising concerns about perceived wrongdoing. The Commons Public Accounts Committee recently described as “shocking” (<http://www.bbc.co.uk/news/uk-28596233>) the treatment of employees in public services who have raised concerns about wrongdoing.⁴ The Michael Woodford v Olympus case is a high profile example of an employee claiming to have been dismissed by his employer in the private sector, as a consequence of having blown the whistle on suspected unlawful practices within the business.⁵ In the sporting context, it has recently been reported (<http://www.bbc.co.uk/sport/0/football/30122601>) that Phaedra Al-Majid, who made allegations of corruption regarding Qatar’s successful 2022 World Cup bid, claims to have been subjected to threats as a result of reporting her concerns.⁶ Plainly, in order to promote a culture in which individuals are prepared to step forward and expose wrongdoing (and/or report possible wrongdoing), it is important that proper protection is afforded to whistleblowers.

Workers in the UK do have specific statutory protection, contained in the Employment Rights Act 1996⁷, against being dismissed or subjected to detrimental treatment because they have blown the whistle. However, if as a matter of practical reality people who are aware of wrongdoing (or possible wrongdoing) do not feel confident to report their concerns and/or are fearful of the consequences of doing so, it is inevitable that such a culture will embolden those who are contemplating improper conduct. It is, therefore, critically important that prospective whistleblowers have confidence in whichever system / set of procedures is applicable to them and their work.

ENCOURAGING WHISTLEBLOWERS TO COME FORWARD – WHAT IS / WHAT MORE COULD BE DONE WITHIN A SPORTING CONTEXT?

In their capacity as employers, sporting bodies such as professional clubs, leagues, national governing bodies and international federations should – as a matter of good industrial practice – have in place easily accessible and detailed whistleblowing policies and procedures. The importance of implementing clear written procedures was emphasised by the Whistleblowing Commission in the Code of Practice (<http://www.pcaw.org.uk/whistleblowing-commission-public-consultation>) which was annexed to its November 2013 Report.⁸ These procedures will often be contained in an ‘Employee Handbook’, alongside other policies dealing with grievance and disciplinary matters. However, there is no statutory requirement for employers to implement and operate such policies (although a failure to do so may present an employer with difficulties in the event that an employee brings a claim in the Employment Tribunal concerning whistleblowing). The Whistleblowing Commission’s recommendation that its proposed Code of Practice be adopted by the Secretary of State and given statutory force has yet to be implemented.

WHISTLEBLOWING IN FOOTBALL

With regard to the governance of domestic football in the UK, it is possible to find a brief and isolated reference to whistleblowing in the Football Association Handbook 2014 / 15 (<http://www.thefa.com/football-rules-governance/more/rules-of-the-association>).⁹ In particular, on pages 189 – 190, buried in the section ‘The Football Association Programme for Excellence (Female) 2014-2015’, the following guidance appears:

“Any concern about the welfare of a young player will be managed in line with The FAs Safeguarding Children Policy and Procedures. It is essential that staff recognise it is not their responsibility to decide if abuse is happening but to refer any such concern on for other specialist professionals to manage. If any staff member is concerned about the way a concern is being managed they may make use of the FAs Whistle Blowing Policy which is stated below.

Whistle-Blowing

Whistle-Blowing is an early warning system. It is about revealing and raising concerns over misconduct or malpractice within an organisation or within an independent structure associated with it. Any adult or young person with concerns about a colleague can also use whistle-blowing by contacting The FA Case Management Team on 0844 980 8200 Ex.6400. Alternatively you can go direct to the Police or Children’s Social Care and report your concerns there.”

The Premier League Handbook 2014 / 15 does not refer to whistleblowing at all.

It is an obvious point, but having regard to the importance of whistleblowing in football, one might reasonably expect the practice to be afforded much greater prominence in the rules and regulations of the two principal footballing institutions.

Whilst the implementation of a comprehensive written whistleblowing policy is a good start, it is also incumbent on employers and regulatory / governing bodies to ensure that those policies are effectively operated on a day-to-day basis. To that effect, the Whistleblowing Commission – again in its Code of Practice – stressed the importance of ensuring proper training, review and oversight of whistleblowing policies and procedures. Put simply, a written policy is only as good as its practical utilisation and application.

Following a series of high-profile reports regarding alleged malpractice in football (on a global level), in February 2013 FIFA launched a [website \(https://www.bkms-system.net/bkwebanon/report/clientInfo?cin=6fifa61&language=eng\)](https://www.bkms-system.net/bkwebanon/report/clientInfo?cin=6fifa61&language=eng) which is dedicated to the reporting of perceived breaches of the FIFA Code of Conduct and/or Code of Ethics.¹⁰ However, the website makes it clear that this is *not* an appropriate reporting mechanism for ‘local’ concerns (at least in the first instance), stating as follows:

“...this reporting system is intended solely for potential violations that fall under the jurisdiction of FIFA, as opposed to the jurisdiction of a local entity, such as a confederation or association. FIFA’s jurisdiction encompasses misconduct that (1) relates to match manipulation; (2) occurs in or affects more than one confederation, so that it cannot adequately be addressed by a single confederation; or (3) would ordinarily be addressed by a confederation or association, but, under the particular facts at issue, has not been or is unlikely to be dealt with appropriately at that level...”

At the same time as setting up this website, FIFA also introduced an ‘Integrity Hotline’, which allows concerns to be reported orally to a dedicated team.

On a similar theme, UEFA has very recently announced new measures designed to prevent match-fixing in football; in particular, it has developed an ‘Integrity App (<https://itunes.apple.com/en/app/uefa-integrity/id918431353?mt=8>)’¹¹, a new and improved [Integrity Reporting Platform \(https://integrity.uefa.org/\)](https://integrity.uefa.org/)¹² and an [e-Learning portal \(https://fps.sportradar.com/uefa\)](https://fps.sportradar.com/uefa)¹³ (all of which are available in multiple languages). The reporting of concerns may be done anonymously and will be treated as completely confidential. Even if the whistleblower chooses to remain anonymous, a dialogue with that person may be established through the mechanism of a personal incident number and password. The system is easily accessible, user-friendly and should hopefully serve to bolster the fight against match-fixing in football. This is all very positive. However, as outlined in the introduction, match-fixing is one of only a number of issues in respect of which whistleblowers have a valuable role to play; and it is important that people do not feel constrained in terms of the ‘categories’ of concerns which they feel able to report via the available reporting mechanisms.

Furthermore, whilst these developments at FIFA and UEFA level are clearly to be welcomed, they ought to act as a motivating factor for domestic bodies and other international federations to set up similar systems for the reporting of concerns (not only in relation to match-fixing). Otherwise, there is a significant risk that potential whistleblowers may feel that their concerns are not sufficiently serious or important to report via (for example) the dedicated FIFA and/or UEFA mechanisms, with the consequence that wrongdoing (which may in fact be extremely serious and/or pervasive) goes unreported, uninvestigated and unpunished.

In December 2013, it was [reported \(http://www.theguardian.com/football/2013/dec/10/culture-secretary-maria-miller-match-fixing-sport\)](http://www.theguardian.com/football/2013/dec/10/culture-secretary-maria-miller-match-fixing-sport) that consideration was being given to setting up a UK 'pan-sport' whistleblowing hotline, following discussions between the government and representatives from the governing bodies of football, cricket, tennis, rugby union, rugby league and the British Horseracing Authority.¹⁴ To date, however, nothing has been implemented in that regard (at least to the best of the authors' knowledge). If such a website and/or hotline could be set up, with close links and clear lines of communication to the numerous sports governing bodies and enforcement agencies, there is a good prospect that it would serve to improve both: (a) the frequency and quality of reporting; and (b) the identification of trends across different sports – for example in relation to doping contraventions or betting irregularities.

Whilst it is vitally important that proper mechanisms are put in place for prospective whistleblowers to report their concerns, it is also crucial that individuals working in the sports field are made aware of the difficult issues and wrongdoing which they may encounter, the existence of available reporting mechanisms, and how to utilise them. The provision of a proper programme of education and information is vital to the success of any whistleblowing regime, however impressive the relevant policies and procedures may be on paper. The [UEFA e-Learning Portal \(https://fps.sportradar.com/uefa\)](https://fps.sportradar.com/uefa) is a good example of this. It is an interactive tool (focussed on the education of youth players) which uses the declaration of a player convicted of match-fixing offences in his domestic league, followed by a series of questions which the student is required to complete. UEFA is able to monitor the answers provided by each participant, and to provide them with further education if necessary.

In part two of this article, the authors review the “*Substantial Assistance*” provisions in the 2015 WADA Code and explain how other industries approach investigations and disciplinary proceedings involving information provided by whistleblowers. To conclude the authors outline some pragmatic solutions that will assist governing bodies of sport to maintain public confidence in their sport.

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