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All Bets Are Off: Match Fixing in Sport – Some Recent Developments

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ABSTRACT

This article analyses the approach of sporting governing bodies, courts and tribunals to recent incidents of alleged corruption in sport. These include the sanctions imposed by FIFA on a Ukrainian football referee and a Macedonian football club President, who were both handed lifetime bans as a result of their involvement with unlawful betting syndicates, decisions which were ultimately upheld by the Court of Arbitration for Sport. Other recent

examples of high profile sportsmen falling foul of applicable anti-corruption rules include the four-time snooker World Champion, John Higgins and the trio of Pakistan test match cricketers involved in the 'spot-fixing' scandal. This article considers the extent to which a 'zero tolerance' trend can be identified from these, and other, recent decisions and reflects on some of the wide-ranging proposals to combat corruption in sport.

KEYWORDS

Match fixing, spot-fixing, betting, Oriekhov, Pobeda, Higgins

INTRODUCTION

Participation in match fixing is often considered to be the cardinal sin of those involved in professional sport. It involves cheating to lose; rather than, as is the case with the use of banned performance enhancing drugs, cheating to win. Recent events have brought sharply into focus the problem of unlawful betting activity in professional sport and what can be done to deter behaviour which strikes fundamentally at the heart of fair, competitive and unpredictable sporting action.

REGULATING SPORT – THE ROLE OF GOVERNING BODIES AND CAS

Professional sport is undoubtedly big business. The increased commercialisation of sport has brought with it a vastly increased body of applicable rules, regulations, governing bodies and legal mechanisms for resolving disputes arising in a sporting context. It is not uncommon for professional sports to be regulated at domestic, European and international level. Perhaps the most obvious example is professional football where players, managers, clubs and officials participating in European competition may all be subject to the rules, regulations and determinations of their respective national Football Associations, the Union of European Football Associations (UEFA) and the *Fédération Internationale de Football Association (FIFA)*.

Built into the regulatory structures of many professional sports is the use of binding arbitration as a means of resolving disputes. As a consequence, specialist sports tribunals and appeals panels have become prevalent in the sporting sphere, each developing their own jurisprudence relating to their particular sporting rules and regulations. Many of these arbitration arrangements provide the parties with a right of appeal to the Court of Arbitration for Sport (CAS), which is independent from sporting governing bodies and has, over the years, begun to develop what some commentators have described as a *lex sportiva*; in essence a discrete body of law applicable to sporting disputes.

Set against that background, this paper considers a number of decisions which have been handed down by a broad range of sports regulatory and governing authorities arising out of serious allegations of corruption and other improper behaviour; this includes disputed decisions which ultimately required resolution by CAS. The paper begins with an analysis of CAS's express endorsement of a 'zero tolerance' approach to corruption in sport.

ZERO TOLERANCE IN THE CAS

Article 6 of UEFA's General Terms and Conditions for [Football] Referees includes a statement that, 'Any Referee who is the target or considered to be the target of attempted bribery shall notify UEFA immediately.' *Oriekhov v UEFA* (CAS 2010/A/2172) exemplifies the robust and no nonsense approach that has been adopted by CAS in relation to such matters. In this case, a lifetime ban against the Appellant, a Ukrainian football referee, was upheld in a decision of CAS dated 18 January 2011. What is particularly striking about this decision is the fact that, in upholding the decision of the UEFA Control and Disciplinary Panel, CAS proceeded on the factual assumption that the referee had *not* actually been guilty of manipulating the match in question, or receiving financial inducements to affect its outcome.

Nevertheless, the panel (Michael Beloff QC presiding) concluded that the referee's *failure to report* the fact that he had been the subject of unlawful approaches from individuals seeking to manipulate the outcome of a UEFA Europa League fixture on 5 November 2009, in which he had been appointed to officiate, was sufficiently serious to justify a lifetime ban from any football related activities, pursuant to Article 15 (1) (f) of the UEFA Disciplinary Regulations.

In reaching this conclusion, the panel made some general observations about the prevalence of match fixing in professional sport. It stated that:

78. [The] Panel has to remind itself that match-fixing, money laundering, kickbacks, extortion, bribery and the like are a growing concern, indeed a cancer, in many major sports, football included, and must be eradicated. The very essence of sport is that competition is fair; its attraction to spectators is the unpredictability of its outcome.¹

80. It is therefore essential...for sporting regulators to demonstrate zero-tolerance against all kinds of corruption and to impose sanctions sufficient to serve as an effective deterrent to people who might otherwise be tempted through greed or fear to consider involvement in such criminal activities. Match officials are an obvious target for those who wish to make illicit profit through gambling on match results (or indeed on the occurrence of incidents within matches). They must be reinforced in their resistance to such criminal approaches.'

Although CAS expressly stated that its assessment of the correct sanction was predicated on an assumption that the Appellant had not been guilty of match fixing, it is plain from the decision that the panel was extremely sceptical of the Appellant's explanations for his conduct. The panel was satisfied 'beyond reasonable doubt' that there were 'repeated contacts between the Appellant and members of a criminal group involved in match fixing and betting fraud', both before and after the match in question, during which the referee was offered monies to manipulate the result of the game. The Appellant's suggestion that this contact was part of an organised conspiracy against him was described by the panel as 'absurd'. Furthermore, the panel observed that the result of the Europa League match on 5 November 2009 'was in fact consonant with the expectations of the gamblers'.

Interestingly, the panel also took into account the substantial adverse media coverage to which the Appellant's conduct had given rise. The panel emphasised that, 'the highest standards of behaviour must be demanded from all the people involved', particularly in light of the prestige of the Europa League and the 'sporting and financial interests at stake.' The Appellant, a senior and highly experienced referee, 'should have been particularly sensitive of his obligations and role in preserving and promoting such integrity.' It seems that all of these factors were deemed by CAS to constitute aggravating features, which justified a severe sanction for the Appellant.

In all the circumstances of the case, the panel concluded that the Appellant had 'lamentably failed not only to obey the relevant regulations in their letter and spirit, but indeed to display any common sense.' Accordingly, it found that the Appellant's purported mitigation was 'inadequate to displace the conclusions of three footballing bodies as to the appropriate penalty for his misconduct' and the lifetime ban was upheld.

It will be interesting to see whether this zero-tolerance approach is applied robustly by FIFA and/or CAS in future 'failure to report' cases; or whether, absent the aggravating features described above, such a draconian sanction would be deemed disproportionate. Would a lifetime ban be imposed, for example, in the case of a youthful, inexperienced referee who is

asked to manipulate the outcome of a lower league domestic match and fails to report the approach? The recent decision of the International Cricket Council (ICC) in the Pakistan 'spot-fixing' case (see below) is an example of a more lenient punishment being handed down to a young and inexperienced sportsman in comparison to his more senior and influential teammates.

Furthermore, as stated above, it is manifestly clear from CAS's judgment in *Oriekhov* that the panel did not accept the Appellant's exculpatory statements. If, in the hypothetical example of the youthful referee, the outcome of the fixture in question was *not* consonant with the expectations of the gamblers, it would perhaps be surprising if this did not afford the impugned official some measure of persuasive mitigation.

A lifetime ban against a non-player was also upheld by CAS in the case of *FK Pobeda, Zabrcanec and Zdraveski v UEFA* (CAS 2009/A/1920). Here, a UEFA Disciplinary Panel had concluded that Zabrcanec (the President of FK Pobeda, a Macedonian Football Club) and Zdraveski (the club captain) had both been guilty of manipulating the outcome of a Champions League qualifying match in order to obtain a financial benefit. Lifetime bans were imposed in respect of both individuals and FK Pobeda was banned from participating in any European competitions for a period of eight years.

On appeal to CAS, Zdraveski's ban was overturned. The panel (Mr Efraim Barak presiding) was not 'comfortably satisfied' (the required threshold pursuant to existing CAS jurisprudence on disciplinary doping cases) of the captain's guilt. The only evidence before CAS which supported the allegation against Zdraveski was 'hearsay testimony referred to [by] a person that refused to testify at the hearing.' Furthermore, the panel unsurprisingly found it 'convincing' when Zdraveski pointed out that he had only been on the pitch for a total of 45 minutes during the two matches in question. CAS stated, 'Contrary to the UEFA Appeal Body's arguments, the fact that he left in the middle of the first game and did not even travel to the second game, is rather evidence of the fact that he was not involved in the plot.'

The lifetime ban against Zabrcanec was, however, upheld by CAS. The panel found that he was 'personally involved in the manipulation of the matches' and that he 'actively participated in fixing the games.' As regards the question of proportionality, the panel could 'not find any mitigating circumstances which could lead to a reduction of the sanction.' Furthermore, the eight year club ban was also upheld. CAS stated:

The episode at half-time during the second game in Erevan shows that the President was not afraid to talk to the whole team about the plot and that nobody dared to oppose. Only reactions inside the clubs will set the necessary signal to the officials and the players that the direct or indirect support of match fixing activities are not tolerated but can lead to severe consequences for the entire club and not only for the leading actors of the plot. Such sanctions should not only prevent individuals from manipulating games, but also encourage the other members of the club to take action when they become aware of such manipulations.

In light of CAS's clear finding that the President's instructions to manipulate the outcome of the matches in question had been carried out by the players who were on the pitch at the material time, it is both surprising and unclear why the captain of FK Pobeda was the only member of the team to have been subjected to disciplinary proceedings by the UEFA Control and Disciplinary Body. Even if it could not be proved to the 'comfortable satisfaction' of a disciplinary panel which individual players had deliberately underperformed in those matches, it was nevertheless clear that the actions of the President, in demanding that the outcomes be manipulated, had not been reported by any of them.

BETTING TO LOSE: A LUCKY ESCAPE?

The severity of the sanctions imposed on Oriekhov and Zabrcanec can be contrasted with the decision of the Disciplinary Panel of the British Horseracing Authority (BHA) on 3 December 2009 to disqualify a racehorse owner, Leighton Brookes, from competition for three years. Brookes was found guilty of breaching Rule 247 of the Rules of Racing, in that he had laid bets on four separate occasions on his own horses to lose. He was also found guilty of breaching Rule 241(i) in respect of his failure to disclose copies of his telephone records following a specific request by the BHA.

The panel rejected Brookes' explanation, albeit he did not attend the hearing, that he shared a 18 betting account with a friend and it was this individual who had placed the bets without his knowledge. The BHA did not, however, make any factual finding as to whether Mr Brookes had instructed any of his jockeys to perform poorly in the races under consideration. Nevertheless, it is clear from the BHA's judgment that Mr Brookes' decision to place bets on his own horses to lose was not a one-off incident, he was not prepared to admit any wrongdoing and he had failed properly to cooperate with the disciplinary enquiry. In light of these aggravating factors, the imposition of a three year disqualification may seem somewhat lenient. The BHA did, however, state that:

The fact that the Panel decided on a specific period rather than to make Mr Brookes disqualified for an indefinite period, should not be taken as any indication by the Panel that it would be appropriate, all other things being equal, for Mr Brookes to be permitted on the expiry of the period to take up or to resume any registration with the Authority.

It will be interesting to see what approach the BHA adopts (in particular, what is meant by the 19 phrase 'all other things being equal'), in the event that Mr Brookes does wish to return to racing upon the expiry of his initial disqualification period in December 2012.

MATCH FIXING V MATCH MANIPULATION: A CRITICAL DISTINCTION?

In a judgment announced on 5 February 2011, the ICC's Anti-Corruption Tribunal (ACT) 20 imposed lengthy playing bans on three Pakistan international cricketers, Salman Butt, Mohammad Asif and Mohammad Amir, for their respective roles in the 'spot-fixing' scandal, which took place during the summer 2010 test match series against England. The ACT (Michael Beloff QC presiding) found that:

[The] charges that [respectively] Mr Asif agreed to bowl and did bowl a deliberate no ball in the [fourth] Lord's test, Mr Amir agreed to bowl and did bowl two deliberate no balls in the same test, and Mr Butt was party to the bowling of those deliberate no balls, were proved.

With regard to other allegations against Butt, the former Pakistan captain, the ACT dismissed 21 a charge that he had agreed to bat out a maiden over in the (fifth) Oval Test match, but found proved the charge that he had failed to disclose to the ICC's Anti-Corruption and Security Unit an approach by a businessman named Mazhar Majeed, requesting that he do so.

The sanctions handed down by the ACT were as follows: 22

- i. Butt: a ten year playing ban (five years of which are suspended on condition that he commits no further breach of the [ICC] code and participates in a programme of anti-corruption education);
- ii. Asif: a seven year playing ban (two years of which are suspended on the same conditions as Mr Butt); and
- iii. Amir: a five year playing ban.

Provided, therefore, that Butt and Asif properly comply with the anti-corruption education 23 programme and commit no further breaches of the anti-corruption code, the net effect of the ACT's sanctions is that all three players will be ineligible for selection for a period of five years.

Under the ICC's anti-corruption code, a playing ban of five years was the minimum possible 24 sanction for the players' offences. In the statement released by Beloff QC on 5 February 2011, it was disclosed that the ACT had recommended to the ICC 'certain changes to the Code with a view to providing flexibility in relation to minimum sentences in exceptional circumstances.' This comment has provoked speculation in some quarters that the ACT may have, if it had had the power to do so, imposed a lesser sanction on Mr Amir, an 18 year-old fast bowler.

It is not, however, possible at present to comment on the validity of this speculation, or to 25 analyse in detail the ACT's reasons for selecting the sanctions which it did. This is because on 4 February 2011, the UK's Crown Prosecution Service announced that it had decided to

formally charge the cricketers with conspiracy to obtain and accept corrupt payments and conspiracy to cheat. Accordingly, the full judgment of the ACT is not presently accessible to residents of the UK. Furthermore, international news agencies are prohibited from publishing any details of the decision which could potentially prejudice the ongoing criminal proceedings in this jurisdiction.

Notwithstanding the above, a number of comments can be made in respect of the sanctions 26 handed down by the ACT. First, it seems clear that the ACT (the President of which, Beloff QC, also presided over the referee's appeal in *Oriekhov*) considered 'spot-fixing', which involves the manipulation of isolated, discrete elements of a sporting fixture, to be less serious than match fixing as it is commonly understood (i.e. improperly seeking to influence the final result or outcome of a fixture).

For some, perhaps many, sporting fans it is difficult (conceptually) to recognise any significant 27 distinction between these modes of improper conduct; indeed, it would be an uphill task to sustain an argument that only the latter type of prohibited conduct strikes fundamentally at the heart of 'sporting integrity.' Nevertheless, it seems clear that the relatively minor practical effect of bowling three no-balls (in the context of a five-day test match) was a factor which, in the ACT's view, militated against any of the cricketers receiving a lifetime ban. Viewed from a strictly legal perspective, this is understandable; the practical consequences of one's actions will generally be a relevant and important consideration in a court's assessment of what is an appropriate penalty for that conduct.

What is not clear, however, is whether and to what extent the (fortuitous) consequences of 28 'spot-fixing' in any given case will affect the severity of the sanction(s) imposed. In the context of a five-day test match, it is relatively unlikely that the bowling of three no-balls will have a dramatic impact on the eventual outcome of the match. What, however, would the position have been in the event that Pakistan had taken a wicket with one or more of the no-balls, or indeed lost to England by a margin of two runs? Would the sanctions have been harsher by virtue of the *effect* that the unlawful conduct had on the eventual outcome?

Furthermore, the shorter the duration of a match, the greater the likelihood that relatively few 29 incidents of 'spot-fixing' will have on the final outcome. Perhaps the most obvious example of this is 20 over cricket, now an extremely popular and lucrative form of the game, in which games are routinely decided by a very narrow margin. These examples serve to illustrate the fact that what may, at first glance, be perceived as 'trivial' incidents of match manipulation do have the (very real) capacity to alter the final outcome, whether to a minor, significant or decisive extent.

With regard to the issue of consistency, in light of the decision of the ACT not to impose a 30 permanent ban on any of the Pakistan cricketers, the lifetime ban imposed on Oriekhov by FIFA and upheld by CAS is perhaps even more striking in its severity. There is undoubtedly some force in an argument that the conduct of Butt in particular (as found by the ACT) was more egregious than Oriekhov's. The referee's offence was *failing to report* an unlawful approach of match fixing, contrary to clearly established rules. Butt, on the other hand, was found guilty of failing to report an unlawful approach by a betting syndicate *and*, in addition, *actively participating* in the manipulation of the Lord's test match. Butt is a highly experienced international cricketer and, more importantly, was the captain of the team; he plainly occupied a position of considerable responsibility and influence. Although the sentence imposed on Butt was technically more severe than those imposed on Asif and Amir, it remains the case that all three will potentially be eligible for selection in five years' time.

On 1 March 2011, it was confirmed that all three players have filed appeals to CAS against 31 their playing bans. Although the grounds of appeal have not been published, it is likely that the ACT's comments regarding the inflexibility of the ICC's anti-corruption code will form an important part of the appellants' legal submissions.

BLACKBALLED: TROUBLE IN KIEV

Another case which has attracted considerable media attention is the decision of the WPBSA 32 Disciplinary Hearing Board ('DHB') in *Higgins and Mooney v WPBSA* (decision handed down on 8 September 2010) <<http://www.sportingintelligence.com/2010/09/08/in-full-the-john-higgins-match-fix-ruling-by-ian-mill-qc-080902/>>. This was another 'failure to report' case; in

this instance involving the multiple snooker World Champion, John Higgins and his manager, Mr Mooney.

The facts, briefly stated, were as follows. Mooney had been in contact with an individual 33 purporting to be a businessman (who was in fact an undercover journalist), who had canvassed with him the prospect of manipulating the outcomes of individual snooker frames. Mooney and Higgins subsequently attended a meeting in Kiev on Saturday 30 April 2010, which Mooney had originally indicated to Higgins was for the purpose of business discussions, where the possibility of fixing frames was raised and discussed by the parties. The conversation was video recorded and the matter was reported in a national newspaper two days later on 2 May 2010. Higgins was suspended as a result of the publication and Mooney resigned from the WPBSA board.

Both individuals admitted that they had acted contrary to Rules 3.1.5.1 and 3.1.4.4 of the 34 Associations' Rules Relating to Betting; namely:

3.1.5.1 – Intentionally giving the impression to others that they were agreeing to act in breach of the Betting Rules; and

3.1.4.4 – Failing to disclose promptly to the Association full details of an approach or invitation to act in breach of the Betting Rules.

The more serious charges of agreeing to act fraudulently were not pursued by the WPBSA. As 35 regards Higgins, the Association's decision not to pursue these charges was based on its acceptance, following an investigation described by the DHB as 'thorough and fair', of Higgins' account that he would never throw, and had no intention of throwing, any frame of snooker for reward.

As regards Mooney, the WPBSA elected to withdraw the more serious charges following a legal 36 submission from his representative, who had contended that the events in question fell outwith the definitions of the words 'Tour', 'Tournament' and 'Match', which appeared in the relevant rules. In its decision, the DHB made no comment as to whether the Association had in fact been correct to accept this submission. In light of the above, the sole question for the DHB to determine was the appropriate sanction for Higgins and Mooney.

In the two days that elapsed between the meeting in Kiev and the publication of the 37 newspaper article, Higgins had failed to report the incident to the Association. In evidence, Higgins said that he was unclear whether he would have reported the incident had the publicity not occurred. The DHB stated that, 'it was obviously of the greatest importance to the integrity of the sport of snooker that those intentions were immediately reported' and described Higgins' conduct as 'foolish.'

In considering mitigation, the DHB took into account Higgins' 'exemplary record both in terms 38 of achievement and conduct, and of his role as an ambassador for the sport.' It is questionable whether an individual's level of attainment in their chosen sport should properly be a ground of mitigation when determining the appropriate level of sanction for breach of applicable betting rules and regulations. Indeed, in *Oriekhov* the seniority and experience of the referee was deemed to be a factor which *aggravated* the seriousness of his offence. On this point the DHB did, however, go on to state that:

With such a status comes particular responsibilities to other players in the game, to the Association, to its sponsors and to the viewing public to ensure that the Association's Rules bearing on the peculiarly sensitive subject of gambling and corruption are strictly adhered to.

In all the circumstances, the DHB considered that Higgins' conduct in failing immediately to 39 report the incident in Kiev warranted a six month suspension, a £75,000 fine and an adverse costs order in the sum of £10,000.

Mooney, on the other hand, was issued with a lifetime ban from membership of the 40 Association and ordered to pay costs in the sum of £25,000. The DHB found 'much of his account highly implausible' and concluded that his conduct was 'of a completely different

order of seriousness' to that of Higgins. Mooney had, in the DHB's view:

Committed the most egregious betrayals of trust – both in relation to the Association, to which he owed fiduciary obligations as a Director and by reason of his great influence in the world of snooker, and to Mr Higgins whose entire career and professional future he inexplicably put at serious and wholly unjustified risk.

Although on the receiving end of an undoubtedly serious sanction, it is clear that the DHB 41 considered there to be significant and persuasive mitigating factors in Higgins' favour. It is not clear, however, whether and/or to what extent the severity of his sanction would have been increased in circumstances where the newspaper had chosen not to publish the article and the Association had only become aware of the incident some considerable time later and from a source other than Mr Higgins.

BEWARE CYBER APPROACHES

Another recent failure to report case, albeit the incident attracted considerably less media 42 publicity than those discussed above, is that of the Russian tennis player Ekaterina Bychkova. Rules established by the Tennis Integrity Unit in 2007 expressly stipulate that any player who is approached to fix a match must report the incident within 48 hours. An anonymous gambler had approached Ms Bychkova via her internet blog site and asked in a private message whether she would be interested in making some extra money by match fixing.

Both Ms Bychkova and the gambler, when questioned by the Tennis Integrity Unit, stated that 43 Ms Bychkova had declined the proposal. An independent hearing officer concluded that there was 'no evidence that Ms Bychkova contrived or accepted any compensation to contrive the outcome or any other aspect of a tennis match.' Nevertheless, her failure to report the approach within the strict 48 hour deadline, or indeed at all, constituted a breach of the applicable rules. As a result, she was suspended from competition for 30 days, causing her to miss the Australian Open, and fined \$5,000.

The reaction from some of Ms Bychkova's fellow players indicated a widespread lack of 44 knowledge about the strict reporting obligations imposed by the rules. Educating players about the significance of the applicable reporting requirements, and the seriousness with which any failure to comply will be viewed by the anti-corruption authorities, is plainly a critical element in stamping out corruption from professional sport, whilst at the same time increasing public confidence that competition is fair and the outcome not determined in advance.

'CRASHGATE'

The controversy surrounding the Renault Formula One motor racing team is another recent 45 example of a partially successful plea in mitigation. At an extraordinary meeting of the World Motor Sport Council (WMSC) on 21 September 2009, Renault F1 accepted that during the 2008 Singapore Grand Prix, team members Flavio Briatore and Pat Symonds had conspired with one of its drivers, Nelson Piquet Jr, to cause a deliberate crash. The timing of the crash had benefited Piquet Jr's teammate, Fernando Alonso, who had gone on to win the race. Although the incident did not entail any allegation of unlawful or irregular betting activity, it was nevertheless a clear and serious illustration of an improper attempt to manipulate the outcome of a high profile sporting event.

Renault put forward five main points in mitigation:

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- i. it had accepted, at the earliest practicable opportunity, that it committed the offences with which it was charged and cooperated fully with the FIA's investigation;
- ii. it had confirmed that Briatore and Symonds were involved in the conspiracy and ensured that they left the team;
- iii. it apologised unreservedly to the FIA and to the sport for the harm caused by its actions;
- iv. it committed to paying the costs incurred by the FIA in its investigation; and

- v. Renault (the parent company, as opposed to Renault F1) committed to making a significant contribution to FIA safety-related projects.

The WMSC considered Renault's breaches of the applicable rules to be of 'unparallel severity'; 47 they 'not only compromised the integrity of the sport but also endangered the lives of spectators, officials, other competitors and Nelson Piquet Jr. himself.' The WMSC took the view that 'offences of this severity merit permanent disqualification from the FIA Formula One World Championship.' That was not, however, the sanction applied to Renault. Having taken into account the mitigating factors set out above, 'in particular the steps taken by Renault F1 to identify and address the failings within its team and condemn the actions of the individuals involved', the WMSC instead decided to suspend Renault's disqualification until the end of the 2011 season, stating that the disqualification will only be activated in the event that Renault F1 is 'found guilty of a comparable breach during that time.'

As regards the individual actors involved in the conspiracy, Briatore was banned for an 48 'unlimited period' from participating in, or attending, all FIA events. The WMSC clearly considered that his unwillingness to admit his participation in the conspiracy was a significant aggravating factor in its assessment of the appropriate sanction. Conversely, Symonds did admit his guilt and expressed 'eternal regret and shame' at his conduct. In light of this mitigation, Symonds received a five year ban from participating in, or attending, all FIA events. Interestingly, Piquet Jr had been granted immunity from sanction by the FIA, under the International Sporting Code, in exchange for him volunteering his evidence in relation to the incident.

The matter did not, however, end there. On appeal to the French High Court (*Tribunal de 49 Grand Instance*), the bans imposed by the WMSC on Briatore and Symonds were overturned and the individuals were awarded compensation of €15,000 and €5,000 respectively.

The French Court ruled that the FIA and WMSC did not have the authority to impose the 50 penalties on team members Briatore and Symonds, because they do not hold a licence to compete. It held:

The FIA...can sanction licence holders, leaders, members of an ASN [national motorsport authorities], but it cannot with respect to third parties, take measures equivalent to a sanction - in contravention of article 28 of its statutes.

The judgment further stated:

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The decision of the World Council was presided over by the FIA president, who was well known to be in conflict with Briatore, with Mr Mosley having played a leading role in launching the enquiry and its investigation in violation of the principle of separation of the power of the bodies. The decision [of the FIA World Motor Sport Council] is not annulled but declared irregular, and rendered without effect in its provisions against Mr Briatore and Mr Symonds.

The FIA, unsurprisingly dissatisfied with this outcome, launched an appeal against the 52 decision. However, prior to the appeal being heard, in April 2010 the parties reached an out-of-court settlement. Both Briatore and Symonds agreed to abstain from having any operational role in Formula One until 31 December 2012, as well as in all other competitions registered on the FIA calendars until the end of the 2011 sporting season. The agreed settlement was subject to the qualification that it did not in any way reflect an acceptance on the part of the FIA of the 'validity of the criticisms levelled against the WMSC's decision of 21 September 2009.'

PROPOSALS TO COMBAT CORRUPTION IN SPORT

The heads of several European sports bodies, through an organisation known as the Sports 53 Rights Owners Coalition (SROC), have been seeking to compel the EU to create a specific agency which is tasked with the job of eliminating corruption in the sports betting industry. Measures which have been proposed include the forced licensing of bookmakers and the exclusion from international sporting events of countries which fail properly to comply with the requirements laid down by the anti-corruption agency.

On 18 January 2011, the European Commission published its 'Communication on Sport' 54

<http://ec.europa.eu/sport/news/doc/communication/communication_en.pdf> which, amongst other things, emphasises the Commission's belief that although individual member states must be supported to tackle sporting corruption on home soil, action at EU level:

[can] help address transnational challenges encountered by sport in Europe such as a coordinated approach to the challenge of doping, fraud and match-fixing or the activities of sports agents (para.1.2).

The Commission further stated that it will:

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[cooperate] with the Council of Europe in analysing the factors that could contribute to more effectively addressing the issue of match-fixing at national, European and international level. Integrity in sport is also one of the issues that will be addressed in the forthcoming Commission consultation on the provision of online gambling services in the EU (para.4.5).

At domestic level, the UK Gambling Commission has recently set up the Sports Betting Intelligence Unit ('SBIU'). Its Terms of Reference, dated June 2010 <<http://www.gamblingcommission.gov.uk/pdf/Sports%20Betting%20Intelligence%20Unit%20terms%20of%20reference%20-%20June%202010.pdf>>, state (*inter alia*) that:

The SBIU will produce intelligence products to inform investigative decision making on the prosecution or disruption of criminal offences (eg cheating) or regulatory action under the Gambling Act. Where relevant and appropriate, these intelligence products may be made available to third parties to assist disciplinary action. The intelligence products will also inform strategic analysis on Sports Betting Integrity issues (para.2.1).

Several sports governing bodies have also signed 'memorandums of understanding' with betting organisations, under which the organisations agree to provide betting-related information to the governing body in order to assist the identification and investigation of suspicious betting activity. Although a positive step, it is inevitable that such voluntary arrangements will vary as regards the 'trigger threshold' (i.e. what criteria must be satisfied before a reporting obligation arises) and also the volume and detail of information which the betting organisations are willing to disclose.

Following the Pakistan spot-fixing scandal, former Australian captain Steve Waugh has proposed the introduction of lie detector tests for players and officials accused of corruption. Notwithstanding the well-known scepticism over the accuracy and reliability of such tests (see, for example, (Iacono: 2001)), the proposal is due to be given further consideration at a meeting of the MCC in February 2011, before firm proposals are submitted to the International Cricket Council on the issue of tackling corruption in cricket.

Finally, at the more extreme end of the spectrum, in December 2010 the Turkish government submitted to parliament a set of draft proposals which would introduce substantial prison terms for individuals found guilty of match-fixing. The draft bill provides that individuals involved in match fixing would face a prison sentence of between five and 12 years, whilst the maximum sentence for club officials involved in such activities would be 18 years.

CONCLUSION

With the ever-increasing commercialisation of professional sport and the financial stakes involved, it is plain that tackling corruption is an objective which requires a concerted and coordinated plan of attack. Important steps are being taken in this regard at domestic, European and international level.

By its decisions in *Oriekhov* and *FK Pobeda*, CAS has sent out a very clear message that individuals who actively participate in match-fixing, or fail to comply with their reporting obligations, run the significant risk of permanent exclusion from any involvement in their chosen sport. In the context of the 'growing concern' at the 'cancer' of match fixing, the zero tolerance approach adopted by CAS in those cases is to be welcomed. This zero tolerance approach has not, however, been quite so prevalent in the recent decisions of sports governing bodies and there are legitimate concerns regarding the extent to which a consistent approach to incidents of unlawful match manipulation may be identified in the decisions of

courts, tribunals and sporting associations.

That is not to say that the imposition of an automatic life ban for *any* individual found guilty of 62 acting in a manner contrary to applicable anti-corruption regulations would be a sensible solution. In the author's view, such an approach would be akin to cracking a nut with a sledgehammer, and inappropriate. The mitigating factors in the case of *Higgins & Mooney v WPBSA* were, for example, powerful and persuasive (certainly in relation to Higgins) and the statement of the ACT highlighting the need for firm but not unduly rigid disciplinary codes (i.e. such that exceptional circumstances may be taken into account, if and when they arise) is entirely rational.

Furthermore, it is plainly of critical importance that players and officials alike are made fully 63 aware of their obligations under the anti-corruption rules, including their duty to report improper approaches, however trivial they may seem. This is vital not only to ensure that incidents of attempted match fixing are properly investigated and dealt with by the relevant authorities, but also to ensure that the public perception of the 'integrity of sport' is maintained so far as possible. With regard to the process of effective education, sporting governing bodies, anti-corruption units and players' and officials' associations all have a key role to play. Put simply, where there is a comprehensive knowledge and understanding of the relevant rules, there can be little or no excuse for failing to comply.

Finally, the judgments of the French High Court in the Renault F1 dispute, and the decision of 64 the WPBSA not to proceed with the more serious charges against Mooney on account of a perceived deficiency in the wording of the relevant anti-corruption rules, highlight very clearly the importance of carefully drafted and enforceable rules and regulations. Permitting team officials, managers or agents to evade sanction for their involvement in match-fixing, by virtue of poorly constructed rules of association, is plainly not a situation which would serve to promote the integrity of sport.

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1 See also comments to similar effect in *AEK Athens & SK Slavia Prague v UEFA* (CAS 98/2000).