

## ROAD TO RIO

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### 2: Disciplinary Issues in Sport



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#### Introduction

At the heart of the sporting contest is the need for the participants to observe the rules and for the outcome to be both fair and uncertain. It is this authenticity that is the lifeblood of sport and a central component of its ever growing popularity throughout the world. As such, it can be seen that issues of discipline are not merely peripheral add-ons, but are crucial to the integrity of sport itself. Sporting competition requires that fair and lawful rules are established and followed and that appropriate sanctions are imposed if they are not.

#### Power to Intervene

Although historically the courts have been reluctant to intervene in the disciplinary decisions of sporting bodies that analysis is no longer valid. The importance of sport to everyday life in both cultural and commercial terms, along with developments in other forms of regulatory law, have dovetailed to produce a coherent body of rules which now prescribe the many and varied circumstances in which the law will not only permit but require intervention. Some of these issues are covered here.

It is also relevant to recognise that even if the law does not intervene in a particular issue or decision, it is often enough for the *potential* for it to intervene to be the decisive factor in ensuring that the original decision and the process followed to reach it are both legitimate and of an acceptable standard. Sporting bodies have developed and upgraded their disciplinary frameworks and rules often in response to the threat of legal intervention. These developments have also occurred in conjunction with the need to have disciplinary rules that are fit for purpose and capable of dealing with the modern sophisticated threats of doping and corruption, which have required sporting bodies to develop increasingly complex ways of protecting the integrity of their sport.

The first issue that arises in legal terms is that the body imposing the relevant sanction must have the legal jurisdiction to do so. In the sporting context this normally arises through the mechanism of an express or implied contract. The classic domestic case on the question remains *Modahl v British Athletic Federation [2002] 1 WLR 1192, CA* in which the Court of Appeal found that the disciplinary powers of the relevant body arose through the mechanism of an implied contract arising from the act of participation in the relevant sporting competition.

For sporting regulatory bodies, the imposition of contractual relationships is double edged. On the one hand it provides legal legitimacy and the power to impose enforceable sanctions. But a necessary incident to this is the supervision of the court both as to the process to be followed and the nature of any sanctions to be imposed.

Some of the prime examples in the 'catalogue for intervention' can be summarised as follows:

**Jurisdiction** – the disciplinary body must have the power under the relevant rules to bring the charge and impose the sanction. This is an area in which the disciplinary rules of the body concerned will be scrutinised by reference to the wider legal obligations of the parties and not just the underlying law of contract. As such, the rules of the body concerned may be subject to challenge under such diverse legal codes as competition law (Financial Fair Play, Third Party Ownership); restraint of trade (doping); and freedom of expression (comments which bring the game into disrepute). In short, the law will require that the disciplinary code itself is compliant with wider general legal obligations between the parties. This is of particular importance where the sporting body concerned is, in truth, not independent of the participants but is a body composed of competitors with their own interests at stake (a classic example being a League body made up of fellow participants). The law will ensure that disciplinary rules are not used as a proxy by rivals to stifle competition from other participants.

**Good faith** – the disciplinary body must act in good faith and for proper purposes. It cannot use a disciplinary code for an ulterior purpose.

**Procedural Fairness** – this is a core area for legal intervention. The law ensures that punishments and sanctions can only be imposed after the central obligations of procedural fairness have been observed. Although the courts generally approach this issue from the perspective that not all procedural failings necessarily require intervention, if the process as a whole cannot be shown to be fair, this is inevitably a difficult defence for the sporting body to maintain. This is because it is often impossible to show that the error concerned can have had no impact on the final result. Bias is an area of procedural fairness which is becoming of increasing importance in the sporting context. In keeping with the general requirements of fairness the law strives to ensure that the decision making body is free from bias. This is an area in which the law is increasingly willing to intervene. This is partly down to the developments in social media which mean that the opinions of individuals on questions and issues of the day are becoming increasingly well-known and capable of proof on any challenge based on the decision maker having pre-determined and fixed opinions on the disciplinary issues before them.

**Sanction** – the sanction imposed must not only be within the powers of the body concerned but also must be proportionate and fair in the general sense. An increasing development in this area is the extent to which it can be said that this aspect of fairness must be judged by the nature of punishments imposed for similar offences in the past. This is likely to be one of the areas for fresh legal development in the future. The requirement for fairness in sport and the integrity of sporting competition requires that similar offences are met with similar and proportionate sanctions.

It can therefore be seen that the traditional view that the courts are reluctant to interfere with disciplinary decisions of sporting bodies can no longer be sustained. It is an inevitable element of the increasingly important cultural and commercial place of sport in the modern world that the law will intervene to ensure that the general principles of regulatory fairness and natural justice are observed.

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### Further information

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