

SPORTS JUSTICE IN ENGLAND

by *Richard Parrish* and *Adam Pendlebury**

SUMMARY: 1. Introduction – 2. Principles of sports justice – 3. Relationship between ordinary and sports justice – 4. National Olympic Committee regulations – 5. English football regulation – 6. Rights and obligations of clubs and players – 7. Domestic sports law: sports judicial bodies, dispute settlements and procedures – 8. Arbitration – 9. Conclusions

Abstract:

This contribution highlights the complex and multi-faceted nature of sports justice in the UK, specifically in England. The key findings to emerge from this work are: (1) the state does not directly regulate sport although it does exert statutory and non-statutory influences on sport, (2) sports bodies must comply with the standards expected by ordinary courts, (3) contractual relations lie at the heart of many sporting relationships in the UK, (4) public law remedies, such as judicial review, are not available to challenge decisions of sports governing bodies but (5) the courts operate a private law supervisory jurisdiction over decisions of sports governing bodies meaning that the standards expected of sports governing bodies are very similar to those expected under judicial review, (6) in the law of tort courts have accepted that in sport a duty of care is owed by participants, match officials, governing bodies and event organisers, (7) criminal law prosecutions in sport are rare, particularly those concerning injury sustained on the field of play, (8) sports bodies are keen to insulate 'domestic sports law' from the influence of 'national sports law' and, therefore, (9) sophisticated disciplinary commissions and arbitral bodies play an essential role in resolving English sports disputes.

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1. Introduction

The United Kingdom of Great Britain and Northern Ireland is a constitutional monarchy operating a bi-cameral parliamentary system. The UK comprises England, Scotland, Wales and Northern Ireland, although since 1998 the latter three countries have certain devolved decision making powers. Whilst this chapter has sports justice in England as its focus, UK law, UK sports policy and the rules of the British Olympic Association apply to all four countries. Only English football regulations - located in Football Association, Premier League and Football League handbooks - are examined in this chapter.

2. Principles of sports justice

The UK operates a non-interventionist and non-consolidated sports model.¹ This model implies an 'arms-length' role for the state in sport in which sports are organized by the sporting associations themselves rather than through state legislation and the National Olympic Committee and the National Sports Federation are not combined. This model reflects the prevailing view in UK politics that sport is essentially a private pursuit to be organised and promoted by private interests. Nevertheless, the state has recognised that as sport performs some public and quasi-public functions, it should retain an interest in the sector, although this interest is generally elaborated through arm's length / semi-governmental organisations such as the Sports Councils. Consequently, in theory at least, sports bodies in the UK retain autonomy to determine their own organisational and regulatory choices free from state interference. In practice, these choices are restricted by three considerations: (1) direct statutory influences (2) indirect statutory influences and (3) non-statutory influences.

2.1 Direct statutory influences on sport: illustrative examples

Sports clubs and governing bodies in the UK are not statutory bodies requiring state authorization and there is no statutory requirement that they take any particular legal form.² Traditionally, many sports bodies took the form of *unincorporated associations*, although this form is now rare in professional sport and confined largely to amateur sports bodies. These bodies have no legal personality and therefore cannot sue or be sued in its own right with legal action having to be brought against or defended by its members. The relationship between the members of the association is a contractual one based on the rules of the association. Unincorporated associations are still subject to wider legal control when their activities engage ordinary statutory provisions, such as licensing laws regulating the sale of alcohol, health and safety laws, general employment

¹ See CHAKER, A.N. (1999), *Study of National Sports Legislations in Europe*, Strasbourg: Council of Europe.

² For a full discussion see LEWIS, A. & TAYLOR, J. (2008), *Sport: Law and Practice*, Tottel Publishing, 1014-1027 and BELOFF, ET AL., (2012), *Sports Law*, Oxford: Hart, 23-28.

laws and tax laws. Most famously in Britain, the Marylebone Cricket Club (MCC) operated as an unincorporated association until it changed its status in 2013 to that of a body incorporated by *Royal Charter*. This procedure required petition to the Privy Council, a body that advises the Sovereign on the exercise of Royal Prerogative. Incorporation is usually granted for a body that works in the public interest. It enables the sports club to hold assets in its own name, rather than through a custodian trustee, and it removes any potential liability of individual members. Royal Charter sports bodies are rare, although the Jockey Club was established in this way. The MCC case is reflective of the trend, encouraged by the commercialization of sport, which has seen many unincorporated associations changing their status and assuming *corporate* structures of which there are several forms. This includes those *private companies limited by guarantee* (such as many governing bodies), those *private or public companies limited by shares* (such as the Football Association and some football clubs) and ‘co-operative’ style sports bodies established as *Industrial and Provident Societies* (such as the Rugby Football Union). Limited companies limit the liability of its members, has the ability to hold property in its own name and can sue and be sued in its own name. Sports bodies assuming the status of a limited company must fulfill the rules which apply to all companies, such as registration and the filing of accounts and reports. UK company law also imposes certain duties on the directors of the company.

A particularly pronounced direct statutory influence on sport stems from the requirement that sports bodies must be compliant with the statutory framework covering safety at sports grounds. This statutory framework has itself been influenced by a number of serious safety lapses at sports grounds and by the findings of the subsequent inquiries, such as the Taylor Inquiry into deaths of 96 spectators at the Hillsborough stadium in Sheffield in 1989. These inquiries have influenced the statutory standards regulating safety at sports grounds. In addition to actions brought under tort, organisers of sporting events have been statutorily liable for injuries caused to spectators or participants since the Occupiers’ Liability Act 1957 which imposes a duty of care on the organisers / clubs to ensure the safety of lawful visitors and the Occupiers’ Liability Act 1984, which provides limited protection for trespassers. In addition, the Health and Safety at Work etc Act 1974 imposes a duty on the event organiser for protecting the health, safety and welfare of everyone working at, or attending, the event. The Safety of Sports Grounds Act 1975 provides for licensing of sports grounds and the Fire Safety and Safety of Places of Sport Act 1987 provides for a system of safety certification by local authorities for certain covered stands at sports grounds. The Football Spectators Act 1989 (s8) established the Football Licensing Authority (now Sports Ground Safety Authority) which is required to operate a licensing scheme to regulate the spectator viewing accommodation at Premier and Football League Grounds plus Wembley and the Millennium Stadium in Cardiff. The Sports Ground Safety Authority is also required to keep under review how local authorities discharge their functions under the Safety of Sports Grounds Act 1975 at those grounds.

Although sometimes confused in the popular press, the issue of regulating

public order at sports events is somewhat distinct from the question of safety at sports events. Initially, the government responded to acts of public disorder through public inquiries and reports although by the 1980s the legislature took action following incidents of public disorder at football matches and enacted, *inter alia*: the 1985 Sporting Events (Control of Alcohol) Act (as amended 1992); the Football Spectators Act of 1989 which provides for a system of Football Banning Orders as a means of controlling spectator behaviour;³ and the Football Offences Act 1991 which established specific football related offences including: the throwing of any object at or towards the playing area or any other area where spectators or others are present; indecent or racist chanting;⁴ and going onto the playing area.⁵ General public order statutes have also been applied to sporting contexts, most notably following John Terry's prosecution, and subsequent acquittal, for a racially aggravated public order offence under the Public Order Act 1986 and the Crime and Disorder Act 1998.⁶

Occasionally the legislature responds to the staging of specific events. The London Olympic Games and Paralympic Games Act 2006 established the legislative framework concerning the staging of the 2012 London Games. In addition, Parliament has legislated to guarantee the public's access to such events on television. The Broadcasting Act 1996 (as amended by the Television Broadcasting Regulations 2000) establishes the legal framework ensuring that sporting events that are deemed to be of national interest are shown on television platforms that guarantee wide public viewing. This has entailed constructing lists of protected events that are to be shown on free-to-air television.⁷

2.2 *Indirect statutory influence: illustrative miscellaneous acts*

A range of other non-sports specific statutes have an impact on the operation of sport in the UK. It is beyond the scope of the chapter to list them, and explain the impact on sport, but some of the key Acts are briefly discussed. Based largely on the competition provisions of the EU's Treaty on the Functioning of the European Union (TFEU) and enforced by the Office of Fair Trading (OFT), the Competition Act 1998 subjects some business practices of sport to regulation.⁸ UK merger control is governed by a range of provisions including the Enterprise Act 2002

³ See *Gough v Chief Constable of Derbyshire* [2002] EWCA Civ 351.

⁴ See *DPP v Stoke on Trent Magistrates Court* [2003] EWHC 1593 (Admin).

⁵ See *R (on the application of White) v Blackfriars Crown Court* [2008] EWHC 510 (Admin).

⁶ *R v Terry*, Westminster Magistrates' Court, 13 July 2012. See also *Butcher (Terry Ian) v Jessop* 1989 JC 55.

⁷ Facilitated by EU Directive 2007/65 EC, the Audiovisual Media Services Directive.

⁸ See for example the football kit price fixing case: OFT Decision of 1 August 2003 (CA98/06/2003) in respect of Allsports Ltd, Blacks Leisure Group plc, JJB Sports plc, Manchester United plc, Sports Soccer Ltd, the John David Group plc and Umbro Holdings Ltd. Appealed to the Competition Appeal Tribunal [2005] CAT 232 and the Court of Appeal [2006] EWCA Civ 1318.

(which also has implications for insolvent clubs).⁹ The National Lottery Acts 1993, 1998 & 2006 establishes sport as one of a number of ‘good causes’ which receives funding through the National Lottery Distribution Fund. The 2012 Olympics has benefitted from lottery funding. The Gambling Act 2005 modernises, consolidates and liberalises the legislative framework on gambling and establishes the Gambling Commission as the new regulatory body for most gambling in the UK. The Tobacco Advertising and Promotion Act 2002 has affected those sports traditionally supported via tobacco advertising as s10 of the Act prohibits most forms of tobacco advertising. The Misuse of Drugs Act 1971 & the Drugs Act 2005 regulates the use of drugs within society although the Act prohibits the use of some drugs which also appear on the list of banned substances developed by governing bodies. The Trade Marks Act 1994 & the Copyright Designs and Patents Act 1988 establish specific offences relating to trademarks and copyright.¹⁰ General insolvency and tax laws also affect sport, particularly when a club enters administration¹¹ or when clubs pay employees through tax avoidance schemes.¹² Finally, although not exhaustively, the costs of policing football matches have been challenged under the Police Act 1996.¹³

2.3 *Non statutory influence: UK sports policy*

The government exerts an indirect, yet persuasive, influence on sport via its sports policy which often links funding opportunities to the fulfilment of government objectives in relation to, for instance, non-discrimination, anti-doping and child protection. For example, state funding of sport is conditional on national governing bodies signing anti-doping agreements with UK Sport which commits them to adopt policies in conformity with the World Anti-Doping Code. In other areas the government favours a policy of self-regulation for sports bodies but ‘in the shadow of the law’. In other words, as the state recognises that its sports policy objectives

⁹ On merger control see Monopolies and Mergers Commission (MMC) *Report into the Proposed Merger between BskyB Group plc and Manchester United plc* (Cm 4305, 1999).

¹⁰ It should be noted that the landmark judgment of the Court of Justice of the European Union in *Football Association Premier League Ltd and Others v QC Leisure and Others* (Case C 403/08) & *Karen Murphy v Media Protection Services Ltd* (Case C 429/08), joined cases judgment of 4 October 2011, stemmed from preliminary references by the High Court on a matter related to the Copyright, Designs and Patents Act 1988. The publican’s conviction under the Act for using a foreign satellite decoder code to receive football matches in a pub was subsequently quashed following the judgment of the CJEU. See *Murphy v Media Protection Services Ltd* [2012] EWHC 466 (Admin).

¹¹ *Revenue and Customs Commissioners v Portsmouth City Football Club Ltd (in Administration)* [2010] EWHC 2013 (Ch).

¹² HM Revenue and Customs (HMRC) is appealing against a Tax Tribunal decision (*Murray Group Holdings v Revenue and Customs Commissioners* [2012] UKFTT 692 (TC)) that found in favour of the use by Glasgow Rangers Football Club of a contested Employee Benefit Trust scheme to pay players. At issue is whether the payments were loans, not earnings, and so were not liable for income tax and National Insurance contributions. See also the image rights case of *Sports Club, Evelyn and Jocelyn v Inspector of Taxes* [2000] STC (SCD) 443.

¹³ *Leeds United Football Club Ltd v Chief Constable of West Yorkshire* [2013] EWCA Civ 115.

can be delivered by private sports bodies, such as governing bodies, so it conditions self-regulation on the acceptance by the sports bodies that they adhere to minimum standards of governance.¹⁴

UK sports policy has been significantly affected by the decision of the Labour government in 1997 to embark on a process of constitutional reform (devolution) in the UK which resulted in the establishment of a Parliament for Scotland and National Assemblies for Wales and Northern Ireland. Sports policy is a partially devolved competence meaning that the devolved National Executives and National Assemblies (Parliament in Scotland) play a role in developing sports policy within each country. As a consequence, UK sports policy is now more diffuse. The Labour administration also negotiated amendments to existing EU Treaties which resulted in the passage of the TFEU. With the introduction of Article 165 TFEU (the sports competence), and the devolved structures, the sources of sports policy in the UK are now essentially five-fold: *International/European, UK, national, regional and local*.

TABLE 1: SPORTS POLICY IN THE UK: THE MAIN PLAYERS¹⁵

	Government Structures	Intermediary Structures	Non-governmental Structures
International / European Level	EU Institutions and the Council of Europe	WADA	IOC, International Sports Federations.
UK Level	Department of Culture, Media and Sport (DCMS) - accountable to Westminster Parliament.	UK Sport (elite sport focus)	Sport and Recreation Alliance (SRA), British Olympic Association (BOA), UK National Sports Federations
National Level (England, Scotland, Wales & Northern Ireland).	National Executive sport departments in Scotland, Wales and Northern Ireland – accountable to devolved Parliament / Assembly sport committees. English sports council (Sport England) accountable to Westminster Parliament through DCMS.	Sports Councils: Sport England and National Sports Councils of Scotland, Wales & Northern Ireland.	National Sports Governing Bodies of England, Scotland, Wales & Northern Ireland.
Regional Level		County Sports Partnerships, Sport England Regional offices.	Regional and County Sports Bodies.
Local Level	Local Authority sport and leisure provision.		Sports Clubs

¹⁴ See for example DCMS (2011), *Football Governance: Response to the Culture, Media and Sport Committee of Inquiry*, HC 792-I, October, para. 75.

¹⁵ Adapted from HENRY, I. (2004), in Tokarski *et al*, *Two Players One Goal? Sport in the European Union*, Oxford: Meyer and Meyer, 270. See also BERGSGARD, N. ET AL, (2007), *Sport Policy: A Comparative Analysis of Stability and Change*, Butterworth Heinemann, pp.114-15. Thanks also for the advice provided by Dr Iain Lindsey and Dr Jimmy O’Gorman, both Edge Hill University.

3. Relationship between ordinary and sports justice

3.1 Sports law or sport and the law?

There is a debate in the UK, often exercising the minds more of academics than practitioners, on whether a discrete jurisprudential category of law exists identifiable as ‘sports law’. Until the 1980s, and to a large extent still today, sports governing bodies fiercely resisted the notion that sport was subject to the law at all. Former Football Association (FA) Chief Executive Ted Crocker remarked, “I don’t approve of the police and the law’s involvement with sport, and football in particular. We can look after our game ourselves, and it’s all the fault of Edward Grayson, who invented sport and the law”.¹⁶ Grayson, an eminent barrister who came to specialise in sports litigation, firmly rejected this view but was himself not convinced that *sports law* actually existed. He argued, “no subject exists which jurisprudentially can be called sports law. As a sound bite headline, shorthand description, it has no juridical foundation; for common law and equity create no concept of law exclusively relating to sport”.¹⁷ Grayson favoured the label ‘sport and the law’ reflecting his view that “[e]ach area of law applicable to sport does not differ from how it is found in any other social or jurisprudential category...”.¹⁸

Grayson’s view did not take hold within the academic press and the title *sports law* is now a common title within this literature. For example, in *Sports Law*, Beloff et al claim, “the law is now beginning to treat sporting activity, sporting bodies and the resolution of disputes in sport, differently from other activities or bodies. Discrete doctrines are gradually taking shape in the sporting field, which are not found elsewhere...”.¹⁹ Similarly, also in a text entitled *Sports Law*, James highlights two sources of sports law, one operating within a public legal sphere, the other in the private sphere. The public face of sports law refers not only to the sports specific statutory framework outlined above, but also to the work of the ordinary courts of law such as national courts and the Court of Justice of the European Union. The sports related jurisprudence of these courts generates “national sports law” and “European sports law”.²⁰ The private face of sports law refers to the internal laws of sport as codified in various constitutions and applied domestically by sports tribunals, and globally by the dispute resolution chambers of international federations and, where permitted by the respective sports, the Court of Arbitration for Sport (CAS). James labels the jurisprudence of nationally rooted sports tribunals as “domestic sports law” and the activity of international tribunals and the CAS as “global sports law”.²¹ It has become common to refer to the private face of sports

¹⁶ GRAYSON, E. (1994), *Sport and the Law* 2nd ed., London: Butterworth & Co.

¹⁷ GRAYSON, E., *Sport and the Law*, (1994), pxxxvii.

¹⁸ GRAYSON, E., *Sport and the Law*, (1994), pxxxvii.

¹⁹ BELOFF, M., KERR, T., DEMETRIOU, M., & BELOFF, R., (2012), *Sports Law*, Oxford: Hart, 4.

²⁰ JAMES, M., (2010) *Sports Law*, Basingstoke: Palgrave Macmillan, 4-5

²¹ For a discussion on the concept of ‘global sports law’ see FOSTER, K., (2003), *Is There a Global Sports Law?* 2(1) *Entertainment Law*, Spring, 1-18.

law as the *lex sportiva* – an essentially private contractual order established between sporting bodies and those subject to their sporting jurisdiction.

3.2 *The contract lies at the heart of sports law*

The specific causes of action to be found in ‘domestic sports law’ are discussed elsewhere in the chapter. The remainder of this section discusses the role of ‘national sports law’, in other words the relationship between sport and the ordinary Courts in the UK. This relationship, although still developing, has been traditionally founded on the belief that whilst sport possesses a public character, it is organised in the UK through private agreements, such as a contract. These contracts regulate the relationship between the key stakeholders including that between the governing body and clubs, athletes and commercial partners, that between an athlete and their employer and that between participants such as clubs competing against one another. Therefore, for a party aggrieved at the behaviour of another, one cause of action lies in the terms of the contract. This contract will either have been expressly entered into by the parties,²² or it will be inferred due to the conduct of the parties.²³ Establishing contractual relations is important for an aggrieved party because even though alternative causes of action might exist (such as the private law supervisory jurisdiction of the courts) establishing a breach of contract allows the injured party to seek damages. Traditionally, Courts in the UK have not been minded to invent fictitious contracts.²⁴ However, more recently, the Courts have been more willing to establish contractual relations in order to “confer effective rights on players and participants who have been supposedly badly treated at the hands of a sports governing body”.²⁵

Employment contracts lie at the heart of the relationship between a club and its employees (players and managers). Breach of contract claims often arise following the dismissal or resignation of these employees. In English law, dismissal can give rise to a common law claim (wrongful dismissal / breach of contract) or a claim for breach of statute (regulated by the Employment Rights Act (1996)). Breach of statute claims, such as unfair and constructive²⁶ dismissal, are heard by specialist Employment Tribunals whereas common law claims can be heard by Tribunals, County Courts or the High Court. Due to compensation limits being

²² See *Aberavon and Port Talbot Rugby Football Club v Welsh Rugby Union Ltd* [203] EWCA Civ 584.

²³ See *Korda v ITF Ltd* (unreported) High Court (Ch), 29 January 1999 and *Korda v ITF Ltd* (unreported) Court of Appeal (Civ), 25 March 1999.

²⁴ See *Nagle and Feilden* [1966] 2 QB 633.

²⁵ LEWIS, A. & TAYLOR, J. (2008), *Sport: Law and Practice*, Tottel Publishing, p228. On the grounds for establishing contractual relations see *Modhal v British Athletic Federation Ltd* [2001] EWCA Civ 1447.

²⁶ Constructive dismissal is a resignation by an employee in response to a serious breach or repudiation of the contract by the employer. This will entitle the employee to argue that he has been dismissed for the purposes of bringing a claim both for breach of contract and for unfair dismissal.

applicable to Tribunal awards, and given that many footballers and managers are well remunerated, few football cases are heard by Employment Tribunals. One such case involved the dismissal of Leicester City player Dennis Wise following an altercation with a team mate in a hotel room during a pre-season tour. The case, heard by the Employment Appeals Tribunal, reminds employers that the dismissal of an employee must be made for not only good substantive reasons but must also be done in a procedurally correct manner.²⁷ In *Macari v Celtic Football and Athletic Co Ltd*, a breach of contract claim heard in an ordinary court, the club manager was dismissed for failing to live within a contractually stated distance of Glasgow.²⁸ This, the Scottish Court of Session determined, amounted to a breach of contract – a failure to comply with a lawful employer instruction. In *McCormack v Hamilton Academical Football Club Ltd*, an assistant football manager was successful in his wrongful dismissal claim against the club.²⁹ McCormack was dismissed for gross misconduct, after allegations of aggressive and intimidating behaviour towards players, swearing, and inappropriate behaviour towards female staff. The Court of Session found that the claimant had a reputation as a hard man before he was appointed and that had the football club wanted him to adopt a different style of coaching, he should have been given appropriate instructions at the outset and he should have been given appropriate warnings about his behaviour.

Disputes can also arise following contract termination where compensation sums are disputed. In *Manchester City Football Club Plc v Royle* the parties disputed the amount of compensation owed to ex-manager Royle following his dismissal from the club as a result of the clubs' relegation from the Premier League.³⁰ The contract provided for a higher rate of compensation in the event the club prematurely terminated his contract if the club was in the Premier League as opposed to the league below. Royle argued that at the time of his dismissal following the clubs' final match of the season, the club was still a Premier League shareholder and that consequently he was owed the higher sum. The Court of Appeal held that the correct test to be applied was whether a reasonable person with knowledge of the game would understand that relegation from a division is effective following the final game of the season and not when the club transferred its shareholding. Royle was to be compensated at the lower amount.

English law, along with many internal regulations of sports bodies, also recognises that where a contract has been lawfully entered into, it is unlawful for a party to induce a breach of it. The tort of procuring a breach of contract can result in damages being sought by the injured party. Commonly in sport inducement to breach a contract is connected to approaches to players or managers already under contract. Litigation in the ordinary courts is relatively rare³¹ although more developed

²⁷ *Dennis Wise v Filbert Realisations* UKEAT/0660/03/RN.

²⁸ *Macari v Celtic Football and Athletic Co Ltd* [1999] IRLR 787 CS.

²⁹ *McCormack v Hamilton Academical Football Club Ltd* [2010] CSOH 124 CS.

³⁰ *Manchester City Football Club Plc v Royle* [2005] EWCA Civ 195.

³¹ See *Middlesbrough Football and Athletic Co (1986) Ltd v Liverpool Football and Athletic Grounds Plc* [2002] EWCA Civ 1929. See also *Greig v Insole* [1978] 1 WLR 302.

under the rules of sports bodies themselves. The related tort of unlawful interference with the performance of a contract was unsuccessfully raised in a case involving serious injury sustained to a professional football player following a tackle by an opponent.³²

3.3 *Restraint of trade*

Where a contract exists, and even in the absence of one, the common law doctrine of restraint of trade provides another avenue through which the decisions of a sports governing body can be challenged. This doctrine asserts that rules or actions restraining trade (meaning denying or restricting the opportunity to earn a living) are void unless they can be justified.³³ Traditionally, governing bodies have argued that restraints are justified *inter alia* with reference to the need to: promote competitive balance; incentivise youth development, encourage solidarity between participants; maintain the integrity, stability and proper functioning of competitions; protect national teams; and maintain the commercial viability of sport. The doctrine requires that restraints are reasonable not only in the interests of the parties imposing the rule, but also in the wider public interest. Restraint of trade has been raised by both clubs and players. In *Stevenage Borough Football Club v Football League Ltd*, the club, having won their respective league, challenged the Football League's refusal to grant the non-league club promotion to the Football League.³⁴ In *Eastham v Newcastle United FC & others* [1964] the Chancery Division of the High Court ruled that the 'retain' element of the English retain and transfer system substantially interfered with the player's right to seek employment and therefore operated in restraint of trade.³⁵

3.4 *Public law remedies*

The existence of contractual relationships generally means that public law remedies are denied to those who wish to challenge the decision of a governing body. Thus far judicial review, a tool for allowing for the review of the decisions of public authorities, has been denied to sport despite the jurisprudential widening of the judicial review criteria to include non-statutory bodies.³⁶ Nevertheless, the courts operate a private law supervisory jurisdiction over decisions of sports governing bodies and in this regard, the standards expected of sports governing bodies are very similar to those expected under judicial review. As Lewis and Taylor point out, governing bodies must abide by certain standards established at common law,

³² *Watson and Bradford City Association Football Club (1983) v Gray and Huddersfield Town Association Football Club Ltd* [1998] *The Times*, 26 November.

³³ *Nordenfelt v Maxim Nordenfelt Guns* [1894] AC 535.

³⁴ *Stevenage Borough Football Club Ltd v Football League Ltd* (1997) 9 Admin LR 109.

³⁵ *Eastham v Newcastle United Football Club Ltd and others* [1964] Ch. 413, 430.

³⁶ On the denial of judicial review see *R (Mullins) v Appeal Board of the Jockey Club* [2005] EWHC 2197 (Admin).

in particular, they must: arrange and administer internal proceedings in compliance with the governing body's own rules and the general law; act with procedural fairness and in accordance with the principles of natural justice; take into account only relevant considerations; act only following the establishment of a sufficient factual basis; not act contrary to a legitimate expectation and; not act unreasonably. In addition, parties to a proceeding should not generally rely on arguments before a court that were not raised before the governing body's internal proceedings and should not generally bring an action before a court unless internal remedies had been exhausted.³⁷

3.5 *The law of tort*

Specific causes of action in English law also bring sport to the attention of the courts. The use of the law of tort to secure compensation for injuries is the most commonly occurring example of national sports law in action.³⁸ If catastrophic injury is caused then there is the potential for an aggrieved party to bring a legal action against the alleged wrongdoer. By far the most frequently utilised tortious action is brought in the law of negligence. Since the seminal case of *Condon v Basi*,³⁹ which involved a participant successfully suing an opponent for a late, high and dangerous tackle in an amateur football match, the growth in litigation has been rapid. In addition to participant / participant litigation, negligence actions for injuries caused on the field of play have been brought against match officials,⁴⁰ governing bodies⁴¹ and organisers of the event.⁴² It is, however, important to note that the courts have understood that in fast moving sports it is inevitable that there will be injury causing contacts that occur outside of the rules of the game and that not all of them should result in tortious liability.⁴³ This applies not only to a claim by a participant but also to other areas of sporting liability.⁴⁴ In applying this approach

³⁷ Lewis, A. & Taylor, J. (2008), *Sport: Law and Practice*, Tottel Publishing, 57.

³⁸ For a thorough account of the development of the law of negligence in this area see James, M. (2010) *Sports Law*, Palgrave Macmillan, 67-107.

³⁹ [1985] 1 WLR 866.

⁴⁰ *Vowles v Evans and the Welsh Rugby Union Ltd* [2003] EWCA Civ 318.

⁴¹ *Watson v British Boxing Board of Control* [2001] QB 1134.

⁴² *Wattleworth v Goodwood Road Racing Company Ltd & Ors*, [2004] EWHC 140.

⁴³ *Caldwell v. Maguire and Fitzgerald* [2001] EWCA 1054 at paragraph 11 where the Court of Appeal stated: "Given the nature of sport ... the threshold for liability would be high and that proof of a mere error of judgement or a lapse of skill or care would not be sufficient to establish a breach of the duty ... Finally, that in practice, it may be difficult to prove a breach of duty unless there is proof of conduct amounting to reckless disregard for a co-participant's safety."

⁴⁴ See in particular the match official liability case of *Smoldon v Whitworth & Nolan* [1997] P.I.Q.R. P133, in which the Court of Appeal stated at page 139: "The level of care required is that which is appropriate in all the circumstances, and the circumstances are of crucial importance. Full account must be taken of the factual context in which a referee exercises his functions, and he could not be properly held liable for errors of judgment, oversights or lapses of which any referee might be guilty in the context of a fast-moving and vigorous contest. The threshold of liability is a high one. It will not easily be crossed."

to participants in sport, only where a tackle is late, high and significantly misjudged will it amount to negligent conduct.⁴⁵ If the action of the defendant player does amount to negligence then the employing club will be vicariously liable for the acts of their employee player.⁴⁶

3.6 *The criminal law*

Whereas the law of tort seeks to establish the liability of sports participants, the criminal law establishes a defendant's guilt.⁴⁷ It is only in the most serious cases that criminal prosecutions will be warranted. This is most apparent in professional football where there have only been a handful of prosecutions.⁴⁸ These have included attacks on supporters,⁴⁹ fighting with one's own teammate⁵⁰ and gratuitous "off-the-ball" violence against an opponent.⁵¹ Even in amateur football the criminal law is reserved for the most severe of incidents. On-the-ball incidents with close proximity to the play are unlikely to result in criminality.⁵² The Court of Appeal in the leading case of *R v Barnes*⁵³ summarises this non-interventionist approach:

"In determining what the approach of the courts should be, the starting point is the fact that most organised sports have their own disciplinary procedures for enforcing their particular rules and standards of conduct. As a result, in the majority of situations there is not only no need for criminal proceedings, it is undesirable that there should be any criminal proceedings ... A criminal prosecution should be reserved for those situations where the conduct is sufficiently grave to be properly categorised as criminal".⁵⁴

The *Barnes* case expressly accepts the concept of playing culture which is a principle specific to sport. It allows for acts of injury-causing foul play to be included within the boundaries of legal consent to criminal assault.⁵⁵ The approach of the England and Wales Court of Appeal clearly allows for sport to be afforded special treatment and is an example of a sporting exception to the general law of the land. English law will not in general allow for legal consent to apply to contacts

⁴⁵ See *McCord v Swansea City Football Club* [1997] *The Times*, February 11, *Watson v Gray and Huddersfield Football Club* [1998] *The Times*, November 26 and *Gaynor v Blackpool Football Club* [2002] CLY 3280.

⁴⁶ *Ibid.*

⁴⁷ For a thorough analysis of what role the criminal law has in regulating sports field violence see, ANDERSON, J. (2010), *Modern Sports Law*, Hart Publishing, 173-199.

⁴⁸ One example being: *R v Blissett* [1992] *Independent*, 4 December.

⁴⁹ *R v Cantona* (1995) *The Times*, 25 March.

⁵⁰ *R v Bowyer* (Unreported) Magistrates' Court (Newcastle), 5 July 2005.

⁵¹ *R v Kamara* (1988) *The Times*, 15 April.

⁵² For an analysis of the regulation of on-the-ball incidents in sport, see Pendlebury, A., (2012), 'The Regulation of on-the-ball Offences: Challenges in Court', *Entertainment and Sports Law Journal* 10(1).

⁵³ [2004] EWCA Crim.

⁵⁴ *Ibid* at para.5 per Lord Woolf.

⁵⁵ *Ibid* at para. 15.

that result in actual bodily harm or greater.⁵⁶

Despite the express acceptance of the playing culture of sport in *Barnes*, it is important to note that there is no sporting exemption from the criminal law. Acts of gratuitous violence with no correlation to the sport should, in theory, lead to a finding of criminality. The state prosecution body the Crown Prosecution Service (CPS) made this clear in 2005 when it produced draft guidelines dealing with how and when the CPS and police should act in relation to sporting misconduct. “We don’t want a situation where sportsmen are getting away with something on the pitch that they would be prosecuted for if it happened in the high street”⁵⁷ In conclusion, the criminal law does have a role to play in the regulation of sporting violence but its role is very much limited to incidents of gratuitous violence, that are sufficiently grave, to go beyond the mere imposition of an internal disciplinary sanction.

3.7 *EU and human rights law*

Sports bodies must also be mindful of their obligations arising out of the UK’s membership of international bodies. For example, EU law, specifically that relating to freedom of movement and competition law, applies to the actions of sports bodies⁵⁸ and can be relied upon before the courts. In addition, the UK’s accession to the European Convention on Human Rights has implications for sport. Although it was one of the first states to sign the Convention, the UK only incorporated it into domestic law by way of the enactment of the Human Rights Act (1998). The practical effect of this incorporation is that a complainant can rely upon Convention rights before a national court. The Act imposes an obligation on public authorities not to contravene the rights contained within the Convention. In other words the Act carries vertical effect in that it can only be invoked by individuals against the actions of the state. The Act would therefore appear to be of limited use for those wishing to challenge the actions of private sports bodies. Thus far, no sports governing body has been found by the courts to be acting as a public authority for the purposes of the Act.⁵⁹ Nevertheless, primary and subordinate legislation must be read and given effect in a way which is compatible with the Convention rights and this, as with all other legislation, applies to statutes effecting sport. Furthermore, and perhaps more importantly, the Act states that a ‘public authority’ includes the court and tribunal system in the UK meaning that these judicial bodies must consider the human rights of the parties regardless of whether the dispute arose in the public or private domain. Whilst the Human Rights Act does not establish a cause of action for cases involving purely private parties, a complainant may bring a case in, for

⁵⁶ *R v Brown* [1993] 2 WLR 556.

⁵⁷ HARRIS, N., (2005), ‘CPS Plans Crackdown on Player Violence’ *The Independent*, June 4 2005, 67.

⁵⁸ Case 36/74 *Walrave and Koch* [1974] ECR 1405.

⁵⁹ See for example *R (Mullins) v Appeal Board of the Jockey Club* [2005] EWHC 2197 (Admin).

instance, restraint of trade and ask the court, as a public authority, to consider the human rights of the complainant.⁶⁰

4. *National Olympic Committee regulations*

The British Olympic Association (BOA) is the National Olympic Committee (NOC) for Great Britain and Northern Ireland.⁶¹ It was formed in 1905 in the House of Commons, and at that time consisted of seven National Governing Body members from the following sports: fencing, life-saving, cycling, skating, rowing, athletics, rugby, football and archery. The BOA now includes as its members the thirty-four National Governing Bodies of each Olympic sport, both summer and winter. The BOA is independent and privately funded. It receives no funding from the lottery or government and has no political interests. The success of the BOA's mission is entirely dependent upon the income received from fundraising and events. It is the independent voice for British Olympic Sport and is responsible for promoting the Olympic Movement throughout the United Kingdom.

The BOA's mission is to transform British lives through the power of the Olympic values and the success of Team Great Britain (GB).⁶² Its principal role is to prepare and lead Great Britain's finest athletes at the summer, winter and youth Olympic Games. Working with the National Governing Bodies, the BOA selects Team GB from the best sportsmen and women who will go on to compete in the 27 summer and 7 winter Olympic sports at the respective Games. The BOA is one of 204 NOCs currently recognised by the International Olympic Committee (IOC). The IOC's role is to lead the promotion of Olympism in accordance with the Olympic Charter, which details the philosophy, aims and traditions of the Olympic Movement. The IOC co-opts and elects its members from among such persons as it considers qualified. A member of each of the Olympic sports makes up the BOA's decision and policy-ratifying body. The BOA elects four officers: a President, Chairman and two Vice-chairman, each for a four year term. Six sports representatives are also elected to the Board. As a member of the IOC the BOA must adhere to the Olympic Charter⁶³ and incorporate the World Anti-Doping Code (WAD Code)⁶⁴ into its constitution.

The BOA is a private company limited by guarantee, subject to the law of England and Wales. Its objects include, acting in accordance with the Olympic Charter and promoting the WAD code. It is important to note that voting members of the BOA have the power to make bylaws which provide them with regulations specific to Great Britain. One of the key regulations provided by bylaw is that referring to eligibility. This is a key role in the fact the BOA invite athletes to

⁶⁰ For more on Convention rights applicable to sport see LEWIS, A. & TAYLOR, J. (2008), *Sport: Law and Practice*, Tottel Publishing, 509-536.

⁶¹ For further information see: www.teamgb.com/ (Last accessed 18/03/2013).

⁶² Rule 27 Olympic Charter.

⁶³ Rules 25 and 27(2.1) Olympic Charter.

⁶⁴ Rules 25 and 27(2.6) Olympic Charter.

compete on behalf of Team GB at the Olympic Games. On the 25th March 1992 members of the BOA Executive Committee enacted BOA Bylaw 25. The Bylaw states that any athlete found guilty of a doping offence by any authority recognised by the World Anti-Doping Agency (WADA) shall not thereafter be eligible for consideration as a member of Team GB at *any* future Olympic Games. The Bylaw sets up an Appeals Panel and allows athletes with minor doping offences to appeal their ineligibility to this panel. The BOA's rule differed from rule 45 of the Olympic Charter, which was only applied following a six month doping suspension. Further, the ineligibility period solely applied to the next Olympic Games. Despite the BOA having legal authority to enact bylaws that differ in effect from the Olympic Charter, the consequences of them have to conform to the WAD code. It was for this reason that Bylaw 25 was declared invalid and unenforceable following the infamous CAS opinion in *British Olympic Association v. World Anti-Doping Agency*.⁶⁵

5. *English football regulations*

The Football Association (FA) is the governing body of football in England. The period following its creation in 1863 witnessed a rather haphazard system in which teams competed in the FA Cup and played friendly matches. In 1888 the newly formed Football League offered clubs guaranteed fixtures, regular revenues and the stability of a set of rules and regulations. The clubs, keen to exploit the commercial potential of the game, embraced this new structure and established rules designed to ensure that a balanced competition brought with it financial stability. Hence, in 1891 the so-called retain-and-transfer system was established and in 1900 the League introduced the maximum wage. From the outset of English football a tension therefore existed between the FA, a body imbued with the spirit of amateurism, and the Football League, the organiser of the commercial leagues and the Football League Cup.

This tension is still evident today albeit with a new structure for the FA to contend with. In 1992 the first division of the Football League resigned its membership and, with FA approval, formed the Premier League. The formation of the Premier League represented a significant break from the old model of football governance in England insofar as the new league established new rules and negotiated its own broadcasting and sponsorship contracts independently of the clubs remaining in the Football League. It also complicated the governance structure of English football which is currently based on the following structure:

The FA: is England's national governing body and is affiliated to the European (UEFA) and global (FIFA) football regulators. It is a member association of clubs and County Football Associations (counties being a regional entity in the UK) who are its shareholders. The FA is guardian of the Laws of the Game in England and it is responsible for conducting or supervising disciplinary proceedings at all levels of

⁶⁵ CAS 2011/A/2658. The Olympic Charter's rule 45 had earlier been considered as invalid by the CAS opinion in CAS 2011/Ot2422 *USOC v. IOC*.

the game from the Premier League to the grassroots. In addition, the FA organises the FA Cup and manages the England national team and its related infrastructure such as Wembley Stadium and the national training facility. The FA operates a dual-board organisational structure: The FA Board and the FA Council.⁶⁶ In practice, the FA Board is the main decision maker although many powers are delegated to committees and boards such as the National Game Board, the Professional Game Board and the Football Regulatory Authority, the latter being the FA's regulatory, disciplinary and rule making authority. The Premier League and Football League jointly hold a share in The FA which grants these bodies an influence in FA affairs. The rules of the FA are extensive and located in its 'Rules and Regulations of the Association Season 2012/13' handbook.⁶⁷ In addition to its comprehensive list of disciplinary matters, the FA also have *inter alia* regulations on: the sanctioning and control of competitions; referees; kit and advertising; equality; child protection; anti-doping; football agents; third party ownership; owners' and directors' test for clubs competing below the Football League level; and youth development.

The Premier League: is a private company wholly owned by its 20 member clubs. This membership changes each season as the Premier League and the Football League retained promotion and relegation between the two leagues. The clubs within the league identify themselves as 'Premier League clubs' and the league acts not only as their trade association but it also organises their competition, exploits their rights, and passes and enforces rules specific to Premier League competition. The FA plays a very limited role in the running of the Premier League, but it exerts influence by way of a special (21st) share it holds in the company which entitles it to a veto over changes to various Premier League corporate and operational matters. The rules of the Premier League are laid out in the 'Premier League Handbook Season 2012/13'.⁶⁸ The handbook contains regulations pertaining to: finance and governance; insolvency; owners' and directors' test, disclosure of ownership, managers and their conduct; player contracts; player registrations; and player transfers (including a prohibition on third party ownership); disciplinary matters and dispute resolution. In February 2013 the Premier League agreed to a new set of Financial Fair Play regulations. A home grown player rule took effect from season 2010/11.

The Football League: is a private company representing the interests of the 72 professional football clubs outside of the Premier League who compete within the Football League's competitions - the Championship, Football League One and Football League Two. The Football League has an extensive rule book covering *inter alia*: financial issues and Financial Fair Play; home grown player

⁶⁶ This structure has attracted criticism and calls for reform. See House of Commons (2011), Culture, Media and Sport Committee, '*Football Governance*', Seventh Report of Session 2010-12, HC 792-I, London: The Stationary Office Limited. See also the response of the FA, Premier League and Football League to this inquiry: www.premierleague.com/content/dam/premierleague/site-content/News/publications/other/response-to-dcms-report-on-football.pdf.

⁶⁷ Available *on line* at: www.thefa.com/football-rules-governance/more/rules-of-the-association.

⁶⁸ Available *on line* at: www.premierleague.com/content/dam/premierleague/site-content/News/publications/handbooks/premier-league-handbook-2012-2013.pdf.

requirements; player registration; player transfers; prohibition on third party investment; player agents; player contracts; player approaches and inducements; media requirements and disciplinary issues.⁶⁹

6. *Rights and obligations of clubs and players*

The relationship between a football player and his club is a contractual one. In English law employees have a different status to those who work on their own account (the self-employed) or those dependent entrepreneurs who are self-employed but who are largely dependent on a single employer (workers). Employees receive the full suite of employment rights, including the right not to be unfairly dismissed, whereas workers benefit from limited rights and the self-employed fewer still. The English courts have developed a series of tests to distinguish an employee from other forms of employment status and the courts have not been willing to allow contractual statements defining employment status to conflict with the reality of the employment relationship.⁷⁰ Footballers in England have been defined as employees for over a century.⁷¹ A player must have the capacity to enter into a contract with a club. In this regard, two considerations are relevant. First, whilst those under the age of 18 do not normally possess this capacity, in football a contract of employment is enforceable if it is in the minor's benefit, for example if it provides for his training and development as opposed to one which solely seeks to protect the clubs financial interest in the player.⁷² Second, players from outside the EU might require a work permit issued by the UK Borders Agency in order to be considered legally employed in the UK.

In the English Premier League and Football League, all contracts between clubs and players must be concluded on the prescribed form (the 'Standard Contract').⁷³ This standard contract, which is governed and construed in accordance with English law, outlines the obligations of clubs and players. The terms and conditions of the standard contract form part of a number of collective agreements between the club (through the League) and the player (through the Professional Footballers' Association) and the contract reflects the obligations both parties have in relation to FA, UEFA and FIFA rules. In addition to the standard express terms, the parties will agree personal terms detailing issues such as salary and bonuses. Some players might also negotiate an image rights clause and many players also enter into a representation agreement with an agent.

⁶⁹ Available *on line* at: www.football-league.co.uk/page/RegulationsIndex/0,,10794,00.html.

⁷⁰ *Autoclenz Ltd v Belcher and others* [2011] IRLR 820 SC.

⁷¹ *Walker v Crystal Palace Football Club* [1910] 1 KB 87.

⁷² *Aylesbury Football Club (1997) Ltd v Watford Association Football Club Ltd* (12 June 2002, unreported).

⁷³ The Premier League Standard Contract (Form 26) is located in the Premier League Handbook 2012/12.

6.1 *Obligations of players*

In the standard contract the player agrees to a series of obligations including to attend and participate in club matches and to participate in training and match preparation at any reasonable place. He also agrees to play to the best of his skill and ability at all times; maintain a high standard of physical fitness except where prevented from doing so through illness or injury; not to indulge in any activity sport or practice which might endanger his fitness or inhibit his mental or physical ability to play practise or train; and to undertake such other duties and to participate in such other activities as are consistent with the performance of his duties. Additionally, the player must allow the release to the club of his medical records; comply with all lawful instructions of the club; play football solely for the club or as authorised by the club or as required by the rules of the governing bodies; observe the Laws of the Game when playing football; observe the relevant rules of the governing bodies; submit to medical and dental examinations as the club may reasonably require; and to undergo at no expense to himself such treatment as may be prescribed by the medical or dental advisers of the club or the club's insurers. On the termination of his contract the player must also agree to return to the club any property, including any car, which has been provided to him.

Elsewhere in the standard contract the player agrees to refrain from acting in such a way that might invoke any exclusion of the player's insurance cover; refrain from wearing anything whilst training or playing which could be dangerous to him or any other person; accept that the club might deem his place of residence as unsuitable for the performance of his duties; accept restrictions on his ability to be engaged in any other employment or business without the prior written consent of the club (although the player can make investments in any business so long as it does not conflict or interfere with his contractual obligations). The player must also not act in a way that brings the club into disrepute. A player must give the club reasonable notice of his intention to make any contributions to the public media. The player, except in the case of an emergency, must secure the consent of the club before arranging or undergoing any medical treatment; player's must be available for up to six hours a week for the promotional community and public relations activities of the club, league and sponsors. In exercising these functions the player also accepts rules relating to marketing activities. The contract also allows the club to deduct from the player, by way of forfeiture, wages due to breaches of discipline. Whilst the above obligations are expressly provided for in the contract, in English law certain duties are also implied at common law into contracts of employment. These include *inter alia* the duties of obedience and loyalty.

6.2 *Obligations of clubs*

The standard contract also establishes the obligations of the club. The club agrees to pay the player the stated remuneration and benefits and to reimburse any expenses incurred by the player when undertaking authorised club business. The club is

committed to observe the statutes and regulations of FIFA, UEFA, the FA, the League Rules, the Code of Practice and the Club Rules. These are made available to the player. The club must promptly arrange appropriate medical and dental examinations and treatment for the player at the club's expense in respect of any injury to or illness (including mental illness or disorder) of the player except for injury or illness which is caused by an activity or practice on the part of the player which breaches his contract. It must comply with all relevant statutory provisions relating to industrial injury and maintain and observe a proper health and safety policy. In any case where the club would be liable as employer for any acts or omissions of the player in the lawful and proper performance of his playing practising or training duties under his contract, the club also agrees to defend the player against any proceedings threatened or brought against him and indemnify him from any damages awarded. The club also agrees to support a player wishing to follow any course of further education or vocational training which he wishes to undertake. The club must release the player to the national association for representative matches as required by the statutes and regulations of FIFA. The club shall not without the consent in writing of the player take, use or permit to be used photographs of the player, except in those circumstances provided for in the contract; or use or reveal the contents of any medical reports or other medical information regarding the player obtained by the club except for the purpose of assessing the player's health and fitness, obtaining medical and insurance cover and complying with the club's obligations under the rules of the football governing bodies.

As with the obligations of players, common law implies certain employer duties into contracts of employment. Of particular interest is the duty to provide work, the duty of care and the duty of trust and confidence. The duty to provide work is not commonly found in employment contracts unless expressly provided for. As long as the employee is being paid, there is no requirement to provide work. However, the courts have recognised that in certain professions where publicity is important, such as acting, there may be a need to provide work.⁷⁴ Following *William Hill Organisation Ltd v Tucker*⁷⁵ an implied duty to provide work arguably exists for workers who need to exercise their skills. An employer should not unreasonably withhold work such as in instances where a club refuses to play a player who has refused an offer to sign a contract extension. As Lewis and Taylor point out, this does not necessarily mean that footballers must be allowed to play in the first team but it might be unreasonable for a club to deny a player the opportunity to hone skills in, for example, reserve team football.⁷⁶ According to the FIFA regulations, an established player who has, in the course of the season, appeared in fewer than ten per cent of the official matches in which his club has been involved may terminate his contract prematurely on the ground of sporting just cause.⁷⁷

⁷⁴ *Herbert Clayton and Jack Waller Ltd v Oliver* [1930] AC 209, HL.

⁷⁵ *William Hill Organisation Ltd v Tucker* [1998] IRLR 313, CA.

⁷⁶ LEWIS, A. & TAYLOR, J. (2008), *Sport: Law and Practice*, Tottel Publishing, 548.

⁷⁷ Article 15 FIFA Regulations on the Status and Transfer of Players, 2010 edition.

The implied duty of care owed by the club to its players has a relevance in the context of the provision of a safe working environment, the provision of adequate materials and to circumstances in which a third party acts on behalf of the club. Whilst a breach of this duty might give rise to an action in tort, a player could cite breach of his employment contract should the duty be broken by his employer. Finally, the duty of trust and confidence requires the employer not to act in such a way that fundamentally undermines the relationship with the employee. This has implications for, amongst other things, the way in which a club speaks publically about a player. Article 14 of the FIFA Regulations on the Status and Transfer of Players provide that a contract may be terminated by either party without consequences of any kind (either payment of compensation or imposition of sporting sanctions) where there is just cause.⁷⁸ This duty also has a relevance for a club's relationship with other employees such as coaches. In *McBride v Falkirk Football & Athletic Association*, the Employment Appeal Tribunal found that an employer cannot rely on an industry norm, such as the autocratic style of management in the world of football, to justify what would otherwise amount to a breach of the implied term of trust and confidence.⁷⁹ McBride, a football coach, was told by the club that he would be in charge of the under 19 side without interference. The club acted in a manner inconsistent with this assurance and McBride resigned citing constructive dismissal.

In English law, contracts of employment must also include an equality clause, either expressly provided for or implied according to the terms of the Equality Act 2010. The equality clause prohibits discriminatory practices connected to: age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex; and sexual orientation. The Equality Act also regulates equal pay between men and women. A 'sporting exception' is provided for in section 195 of the Act which places limits on the ability of a complainant to rely on its provisions in relation to sporting competitions – such as sex discrimination designed to ensure fair competition or the safety of competitors.

The standard contract also contains the following relevant provisions:

Injury/illness and permanent or prolonged incapacity: The provisions establish the remuneration a player is to receive if injured or ill and the circumstances in which the club can terminate a contract for permanent or prolonged incapacity.

Disciplinary provisions: Disciplinary procedures are annexed to the contract. The club will first undertake an investigation into the alleged incident, convene a hearing and allow for an appeal. Disciplinary penalties are also set out. A grievance procedure is also provided for in the contract. In any disciplinary or grievance procedure the player is entitled to be accompanied by or represented by his club captain or a Professional Footballers' Association delegate and/or any officer of the PFA.

⁷⁸ Article 14 FIFA Regulations on the Status and Transfer of Players, 2010 edition.

⁷⁹ *McBride v Falkirk Football & Athletic Club* EATS/0058/10.

Contract termination by the club: At common law serious breaches of a contract are taken to mean that the innocent party can be released from their obligations given that the party in breach has repudiated their side of the bargain. The standard contract makes this orthodoxy express. By giving fourteen days' notice the club can terminate the employment of the player for reasons of gross misconduct by the player;⁸⁰ if he has failed to heed any final written warning given under the disciplinary provisions; or if he is convicted of any criminal offence where the punishment consists of a sentence of imprisonment of three months or more (which is not suspended).⁸¹ If a player appeals against his dismissal, the club, pending the hearing, may suspend the player for up to a maximum of six weeks from the date of notice of termination without pay. Upon termination of his contract, the club is required to release the player's registration. Non-renewal of a fixed term contract is considered, in English law, a dismissal and the dismissed party can, assuming they have two years continuous service, make a statutory claim for unfair dismissal.⁸² The standard player contract contains provision that if on the expiry of his contract the club has not made to the player an offer of re-engagement on terms at least as favourable to the player as those applicable over the last twelve months of this contract, then the player will continue to receive from his club a payment equal to his weekly basic wage for a period of one month from the expiry of this contract or until the player signs for another club, whichever period is the shorter. The maximum amount payable to the player under this provision is double the maximum sum which an Employment Tribunal can award as a compensatory award for unfair dismissal.

Contract termination by the player: The player can terminate his contract with fourteen days' notice in writing to the club if the club: is guilty of serious or persistent breach of the terms and conditions of the contract; or fails to pay any remuneration or other payments or bonuses due to the player. The club can lodge an appeal with the league. Upon termination of his contract, the club is required to release the player's registration. The English courts have thus far refused to grant injunctive relief in order to enforce a contract for personal services. This leaves damages the remedy for breach of contract.⁴ English law dictates that, so far as is possible, the injured party is restored to the position they would have enjoyed had the contract been performed. Damages clauses in employment contracts are unenforceable if they are designed to penalise the party breaking the contract rather than reflecting the actual loss incurred by the party suffering the breach.

⁸⁰ See for example the dismissal of Adrian Mutu by Chelsea FC for substance abuse. Note that the Professional Footballers' Association has proposed that racial abuse should amount to gross misconduct in the standard players' contract.

⁸¹ See for example the dismissal of Marlon King by Wigan Athletic FC following a criminal conviction for assault and the dismissal of Lee Hughes by West Bromwich FC for a conviction of causing death by dangerous driving.

⁸² Ss.95(1)(b) and 136(1)(b) of the Employment Rights Act 1996.

⁸³ Remedies for breach of statute (unfair dismissal) include compensation, reinstatement and re-engagement.

Arbitration: Any dispute between the club and the player not provided for by those provisions relating to grievance, discipline and dismissal shall be referred to arbitration in accordance with the League Rules or (but only if mutually agreed by the club and the player) in accordance with the FA Rules. In this regard, the standard contract also contains a *specificity of football* clause requiring the parties to confirm and acknowledge the special relationship and characteristics involved in the employment of football players. The parties agree that all matters of dispute in relation to the contract are subject to the jurisdiction and decisions of tribunal panels or other bodies established under the relevant football rules. The specificity of sport clause brings the standard contract into line with clauses located elsewhere in the wider football rulebook, particularly in the FIFA Regulations on the Status and Transfer of Players.⁸⁴ However, the reference in the standard contract to the application of English law and to obligations arising out of UK employment law means that the specificity of sport clause cannot be read as implying immunity from ordinary law.

Supplemental provisions: In order to comply with the Employment Rights Act 1996, the standard contract requires the parties to state when the player's employment with the club commenced, the date of termination of the contract (30 June), the date of continuous employment (employment with a previous employer does not count as part of the player's continuous period of employment); the player's hours of work (are such as the club may from time to time reasonably require of him to carry out his duties and the player shall not be entitled to any additional remuneration for work done outside normal working hours); the place of employment (being the club's ground and training ground but the club is entitled to require the player to play and to undertake his duties at any other place throughout the world); pension provisions and remuneration and benefits. The normal retirement age of players is given as 35.

The Professional Football Negotiating and Consultative Committee (PFNCC) considers questions concerning players' remuneration and other terms and conditions of employment, including contractual obligations, minimum pay, bonuses governed by League rules, pensions, fringe benefits, holidays, standard working conditions and insurance, as well as procedural matters involving the negotiating machinery, and the contract appeals machinery. No major changes in the regulations of the Leagues affecting a players' terms and conditions of employment can take place without full discussion and agreement in the PFNCC. For the sake of completeness it should be pointed out that the EU wide professional football social dialogue committee has concluded an autonomous agreement on minimum requirements for standard player contracts.⁸⁵

⁸⁴ The FIFA Regulations refer to the 'specificity of sport'. For a discussion see *European Sports Law and Policy Bulletin* (2011), Contractual Stability in Football, Issue I-2011.

⁸⁵ Signed in Brussels on April 19, 2012.

7. *Domestic sports law: sports judicial bodies, dispute settlements and procedures*

Most disputes in sport are not settled before ordinary courts ('national sports law') but within the internal legal system of sport ('domestic sports law'). The remainder of this chapter focuses on the actual disputes which may occur in English sports justice, specifically disciplinary, economic and technical disputes within football and the Olympic movement.

Disciplinary disputes: Common offences include: acts of violence against participants, match officials or supporters; the use of indecent or insulting words against participants, match officials or supporters; bringing the sport into disrepute; using performance enhancing substances; corruption; financial rule infringements including inter alia financial fair play rules and entering into administration; and failing to fulfill a fixture. Typically the sanctions for such offences include: disqualification; suspension; points deductions; warnings; fines; and permanent exclusion.

Technical disputes: Common disputes include those relating to: licenses; eligibility; selection; promotion and relegation; and club relocation.

Economic disputes: Common disputes include: financial disputes between clubs; compensation assessments following a unilateral breach of contract;⁸⁶ and contractual disputes.

7.1 *Disputes relating to the BOA*

Sport Resolutions UK (SRUK)⁸⁷ provides a one-stop shop service for all UK sports disputes. It facilitates the resolution of disputes which place the integrity of sport at most risk such as doping, match-fixing, safeguarding the welfare of children, athlete selection and eligibility and other regulatory and commercial disputes. Its key aim is to provide an affordable, accessible and expert alternative to internal appeals processes and court based litigation. Its services include arbitration, mediation, panel appointments, investigations and reviews and advisory opinions. The resolution mechanism that is of most pertinence to the BOA is the eligibility⁸⁸ and selection⁸⁹

⁸⁶ Signed in Brussels on April 19, 2012.

⁸⁷ See www.sportresolutions.co.uk/page.asp?section=43§ionTitle=About+Us.

⁸⁸ For an eligibility dispute see: *Christine Ohuruogu v BOA*, *International Sports Law Review*, 2008, 2/3. Ohuruogu successfully appealed against her ineligibility to compete at the Summer Olympic Games as a result of WAD code infringement. At the time the BOA's bylaw 25 would have made her ineligible to represent Team GB. Her appeal before SRUK was on the grounds of significant mitigating circumstances. The Panel accepted the UK Athletics Disciplinary Committee's finding that Ohuruogu had no intent to take any prohibited substance and that she had never attempted or had the intent of avoiding the rules.

⁸⁹ For a selection dispute see: *Great Britain Rhythmic Gymnastics Group v British Amateur Gymnastics Association*, 29 February 2012. In this case the applicants had failed to attain the qualification standard for the Olympic Games and therefore, they were not selected for Team GB. In the appeal to SRUK the applicants claimed that the selection criteria were not clear. Arbitrator Graeme Mew agreed and allowed the appeal. Therefore the applicants were able to compete at the

panel. The BOA invites athletes to compete on behalf of Team GB at the Olympic Games. In essence the relevant governing body e.g., UK Athletics puts forward an athlete and the BOA must ratify the selection. Any disputes relating to this process of selection will be referred to SRUK. It is important at this juncture to note that not all selection / eligibility decisions will be open to challenge. In the case of *Belcher v British Canoe Union and SRUK*,⁹⁰ the Panel Chairman, William Norris QC, set out the test to determine whether a selection decision of an NGB would be open to challenge. The Panel in the *Belcher* appeal stated that a decision may be open to challenge if, but only if:

“(i) It is not in accordance with selection policy as published; and / or (ii) The policy has been misapplied or applied on no good evidence and / or in circumstances where the application of the policy was unfair (for example, because someone with selectoral authority had given a categorical assurance to an athlete that the policy would not be applied); and / or (iii) The decision maker has shown bias or the appearance of bias or the selection process has otherwise been demonstrably unfair; and / or (iv) Where the conclusion is one that no reasonable decision maker could have reached.”⁹¹

If the selection dispute is within the remit of SRUK, any decisions handed down by the panel are final and binding on the parties.⁹²

7.2 *Disputes relating to football*

Professional football in England has developed dispute resolution mechanisms to deal with the multi-faceted nature of the potential disputes that may arise. The type of dispute will govern which regulations apply and impact upon the judicial body that hears the case. However, taken as a whole, the dispute resolution mechanism forms a complete code by which all disputes are resolved within football.

The *Football Association Judicial Panel* is established by the FA Council as the group of individuals from which Regulatory Commissions and Appeal Boards will be drawn by the Judicial Panel Chairman or in his absence, his nominee, to hear cases or appeals in connection with disciplinary and other regulatory processes of the FA.⁹³ The *Football Association Regulatory Commission and the Appeal Boards* are drawn from members of the Judicial Panel. Their main role falls within a disciplinary context. Issues pertaining to misconduct, contrary to rule E1(a) of the FA regulations will fall exclusively within the FA's remit.⁹⁴ Rule E1(a) concerns

London 2012 Games.

⁹⁰ *Belcher v British Canoe Union and SRUK* - Arbitration Judgment of William Norris QC, 5 July 2012.

⁹¹ *Ibid* at para. 49.

⁹² It was made clear in the Aaron Cook appeal against his omission from Team GB 2012 that there would be no appeal to the Court of Arbitration for Sport. See Mclaran, R., (2012), ‘Arbitration: Olympic selection: Aaron Cook case & CAS jurisdiction’ World Sports Law Reports, Volume: 10 Issue: 8.

⁹³ Rules of the Association 2012-13, Judicial Panel, paragraph 3.1.

⁹⁴ Rule G(1) FA regulations.

incidents that infringe the actual Laws of the Game. FIFA law 12 states that it will be an infringement of the Laws of the Game if a player intentionally:

- a) kicks or attempts to kick an opponent;
- b) trips an opponent, i.e., throwing or attempting to throw him by the use of the legs or by stooping in front of or behind him;
- c) jumps at an opponent;
- d) charges an opponent in a violent or dangerous manner;
- e) charges an opponent from behind unless the latter is obstructing;
- f) strikes or attempts to strike an opponent or spits at him;
- g) holds an opponent;
- h) pushes an opponent;
- i) handles the ball, i.e., carries, strikes or propels the ball with his hand or arm; (this does not apply to the goalkeeper within his own penalty-area).

In relation to any of the aforementioned issues the Premier League (PL) will not involve itself in the disciplinary process. Other types of misconduct include *inter alia*:

- a) Violent conduct.⁹⁵
- b) Bringing the game into disrepute.⁹⁶
- c) Threatening, abusive, indecent or insulting words or behaviour.⁹⁷
- d) Discrimination.⁹⁸
- e) Taking bribes.⁹⁹
- f) Illegal betting.¹⁰⁰

In these cases the FA shall have the power to take disciplinary action but it may not be an elite power.¹⁰¹

Having ascertained that the case falls within the FA's jurisdiction the next issue to explore is the actual role of the regulatory commissions.¹⁰² Law 12 violations which result in a sending off are subject to a range of sanctions.¹⁰³ A player and his club may seek to limit the disciplinary consequences of the dismissal of a player from the field of play by demonstrating to the FA that the dismissal was wrongful.¹⁰⁴ A claim of wrongful dismissal may be lodged only for on-field offences which result in a sending off.¹⁰⁵ The role of the Regulatory Commission in considering a claim of wrongful dismissal is concerned with only the question of whether any sanction of a suspension from play is one which should be imposed in view of the facts of the case. This role is not to usurp the role of the referee and the dismissal

⁹⁵ Rule E(3) FA regulations.

⁹⁶ Ibid.

⁹⁷ Ibid.

⁹⁸ Rule E(4) FA regulations.

⁹⁹ Rule E(5) FA regulations.

¹⁰⁰ Rule E(8) FA regulations.

¹⁰¹ Rule G(2) FA regulations.

¹⁰² In this context we are exploring the regulatory commission in its role as a disciplinary commission.

¹⁰³ FA disciplinary procedures paragraph A(8).

¹⁰⁴ FA disciplinary procedures paragraph A(5a).

¹⁰⁵ FA disciplinary procedures paragraph A(5b).

from the field of play will remain on the record of the club and the player.¹⁰⁶ A Regulatory Commission can in exceptional circumstances hear claims that the standard punishment was clearly excessive.¹⁰⁷ Conversely they can increase the suspension if the circumstances of the dismissal under review are truly exceptional, such that the standard punishment should not be applied and the standard punishment would be clearly insufficient.¹⁰⁸ *FA v Thatcher*¹⁰⁹ provides an example of truly exceptional circumstances. On 23 August 2006, during a Premier League football match at the City of Manchester Stadium, and as two players chased the ball going out of play, Manchester City player Ben Thatcher hit opponent Pedro Mendes in the face with his elbow; Mendes was hospitalised as a result of the challenge, which had rendered him unconscious. Thatcher was only cautioned by the match official and in ordinary circumstances this would bring an end to the matter. However, this incident was held to be sufficiently grave to warrant an additional sanction being imposed. The Regulatory Commission decided to impose an eight match suspension onto Thatcher.

The preceding paragraph explored the role the Regulatory Commission plays when infringements are sanctioned on the field of play. This next section discusses the Commission's responsibilities in relation to incidents on the field of play which fall within Law 12, that were not seen by match officials, but were caught on video. In these circumstances, the FA has the power to charge a player with misconduct.¹¹⁰ The charge may be accompanied by an offer of the standard punishment that would apply to the offence had it been seen and reported by the match official(s) during the match. Where a charge is denied by the player the Regulatory Commission will decide whether the charge is proved or not proved. In the event that the charge is not proved, the charge will be dismissed. In the event that a charge is proved or admitted, the Regulatory Commission will decide on the penalty to be served by the player. The standard punishment may be decreased or increased by the Regulatory Commission only in exceptional circumstances. The player will have a right of appeal only in the event that a penalty is ordered in excess of a three-match suspension. The player may only appeal against the level of penalty imposed and only in respect of that part of the suspension in excess of three matches. No other appeal (for instance, against the decision that the charge was pursued) is allowed.¹¹¹

¹⁰⁶ FA disciplinary procedures paragraph A(5c). See *Steven Nzonzi v FA* [2013] www.thefa.com/News/governance/2013/jan/steven-nzonzi-wronful-dismissal-claim-southampton.

¹⁰⁷ FA disciplinary procedures, para. A(6).

¹⁰⁸ FA disciplinary procedures, para. A(7g).

¹⁰⁹ Independent Disciplinary Commission, 12 September 2006.

¹¹⁰ FA disciplinary procedures, schedule A (a). See: *FA v John Terry* Independent Disciplinary Commission, 24-27 September 2012. In this case the FA charged Terry with Misconduct pursuant to Rule E.3(1) of its Rules and Regulations, which included a reference to the ethnic origin and/or colour and/or race within the meaning of Rule E.3(2). The independent panel found Terry guilty of the misconduct. He was suspended for four matches and fined £220,000.

¹¹¹ FA disciplinary procedures, schedule A(e).

The most commonly occurring disciplinary issues away from the field of play concern comments made to the media which bring the game into disrepute. Cases involving media comments or comments made on social networking sites¹¹² are charged under FA Rule E3(1). Should the comments include a reference to any one or more of a person or person's ethnic origin, colour, race, nationality, faith, gender, sexual orientation¹¹³ or disability, these are considered 'aggravating factors' and FA Rule E3(2) may apply. This allows for a Regulatory Commission to consider the imposition of a doubled sanction.

Having considered the procedural and jurisdictional issues it is worth making brief mention of rules relating to the actual disciplinary proceedings. The Regulatory Commission will consider its decision in private, and first consider whether or not the charge of misconduct is proved. If it is so proved, then the Regulatory Commission shall inform the person or club subject to the charge of this decision and invite them to raise matters in mitigation. However, if the charge is admitted the Regulatory Commission shall deem it proved and move straight to considering submissions as to mitigation. Having heard such submissions as to mitigation, the Regulatory Commission shall retire to consider the appropriate sanction.¹¹⁴ A decision of the Regulatory Commission will be determined by a majority. Each member of the Regulatory Commission shall have one vote, save that the chairman of the Regulatory Commission shall have a second and casting vote in the event of a deadlock.¹¹⁵ The applicable standard of proof shall be the civil standard of the balance of probability.¹¹⁶

Disciplinary issues which fall within the jurisdiction of the Premier League will be heard before the FA Premier League Disciplinary Commission. As a general rule facts or matters giving rise to alleged misconduct under Rule E1(b) to (f) inclusive of the FA rules, which also give rise to an alleged breach of the rules and/or regulations of the PL shall be dealt with under the PL disciplinary rules.¹¹⁷ There will of course be certain disciplinary issues that are solely violations of PL rules. Quite evidently these will be dealt with by the PL. For example PL rules exist to regulate matters specific to Premier League Clubs which are not covered by FA rules. These include issues such as making illegal approaches to players registered at another club,¹¹⁸ the prohibition on third party influence over clubs¹¹⁹ and sanctions for a club or its parent undertaking suffering an event of insolvency.¹²⁰ Under

¹¹² For examples see: *FA v Ryan Babel* [2011] and *FA v Ashley Cole* [2012].

¹¹³ *FA v Suso* [2012].

¹¹⁴ FA disciplinary procedures, para. 7.1.

¹¹⁵ FA disciplinary procedures, para. 7.2.

¹¹⁶ FA disciplinary procedures, para. 7.3.

¹¹⁷ Rule G(4) FA regulations.

¹¹⁸ Premier League Rules 2012-13 section T.3. See *Football Association Premier League LTD v Ashley Cole, Chelsea Football Club and Jose Mourinho*, 1st June 2005.

¹¹⁹ Premier League Rules 2012-13 sections U.36. – U.37. See *Football Association Premier League LTD v West Ham United*, 27th April 2007.

¹²⁰ Premier League Rules 2012-13 section E.5. See *Football Association Premier League LTD v Portsmouth FC*, 17th March 2010.

section W of the PL Rules, the PL has power to enquire into an alleged breach of the rules and subject any Club, Club official or player responsible for such a breach to the PL's disciplinary procedures.

8. *Arbitration*

8.1 *Football Association arbitration*

The relevant regulations concerning FA arbitration are contained in Rule K of the FA regulations....

K. ARBITRATION

AGREEMENT TO ARBITRATION

1 (a) Subject to Rule K1(b), K1(c) and K1(d) below, any dispute or difference between any two or more participants (which shall include, for the purposes of this section of the Rules, The Association) including but not limited to a dispute arising out of nor in connection with (including any question regarding the existence or validity of):

(i) the Rules and regulations of The Association which are in force from time to time;

(ii) the rules and regulations of an Affiliated Association or competition which are in force from time to time;

(iii) the statutes and regulations of FIFA and UEFA which are in force from time to time; or

(iv) the Laws of the Game, shall be referred to and finally resolved by arbitration under these rules.

(b) No arbitration shall be commenced under these rules unless and until the party or parties wishing to commence an arbitration under these Rules (the "Claimant(s)") has exhausted all applicable rights of appeal pursuant to the Rules and regulations of the Association.

c) Rule K1(a) shall not apply to any dispute or difference which falls to be resolved pursuant to any rules from time to time in force of any affiliated Association or competition.

(d) Rule K1(a) shall not operate to provide an appeal against the decision of a Regulatory Commission or an Appeal Board under the Rules and shall operate only as the forum and procedure for a challenge to the validity of such decision under English law on the grounds of ultra vires (including error of law), irrationality or procedural unfairness, with the Tribunal exercising a supervisory jurisdiction.

(e) The parties agree that the powers of the court under Sections 44, 45 and 69 of the Arbitration Act 1996 are excluded and shall not apply to any arbitration commenced under these Rules.

It is important to note that the role of FA arbitration is supervisory. The role very much equates to the position of the courts' inherent supervisory jurisdiction as

articulated above.¹²¹ An example of this approach was seen in the case of *Wimbledon FC LTD v The Football League*.¹²² In this case Wimbledon FC won the right to have their case for moving to Milton Keynes re-examined by the Football League. A three-man Football Association arbitration panel ruled that the league needed to look at Wimbledon's proposals in greater detail before reaching a decision. It was decided by the panel that the specific Football League rule, requiring clubs not to move outside of their area of origin without the permission of the league, would amount to an unreasonable restraint of trade. The club successfully argued that it had a pressing need to relocate its ground in order to be able to trade effectively.

8.2 Premier League arbitration

The PL has a similar arbitration clause to that of the FA's Rule K. Membership of the PL shall constitute an agreement in writing between the league and clubs and between each of the respective clubs to submit all disputes which arise between them, whether arising out of the rules of the PL or otherwise, to final and binding arbitration.¹²³ This can include a challenge to a disciplinary decision by a member club, but like the FA's arbitration remit, this process is purely supervisory.¹²⁴ Financial disputes between member clubs are also referred to arbitration.¹²⁵ It is important to note that under the arbitration rules of the PL there is no appeal available to the CAS as the clubs by becoming members of the PL have entered into a final and binding arbitration agreement.¹²⁶

Any dispute arising between the parties to a Manager's contract of employment shall be determined by the Premier League Managers' Arbitration Tribunal.¹²⁷ In English football managerial dismissals are common. The purpose of the mandatory arbitration clause is to avoid lengthy and expensive employment disputes being pursued through the courts.¹²⁸ The arbitration panel has in recent

¹²¹ See *Bradley v Jockey Club* [2005] EWCA Civ 1056.

¹²² *Wimbledon FC LTD v The Football League*, 29th January 2002.

¹²³ Premier League Rules 2012-13, Section X2.1.

¹²⁴ *Sheffield United FC LTD v FA Premier League LTD* [2007] ISLR, SLR 77. In this case Sheffield United challenged the decision of the Premier League disciplinary commission in the case of *Football Association Premier League LTD v West Ham United*, 27th April 2007. The disciplinary commission decided to not deduct points from West Ham United after a premier league rule infringement. This resulted in Sheffield United's relegation from the Premier League. The arbitration tribunal upheld the findings of the disciplinary commission and declared that its final decision to fine West Ham was within the range of appropriate responses which it could have reached.

¹²⁵ *Sheffield United FC LTD v West Ham United FC PLC* [2009] ISLR, SLR 25. In this case Sheffield United sued West Ham United for breach of contract to recover earnings as a result of it being relegated. The action was successful and Sheffield United was awarded somewhere in the region of £20 million.

¹²⁶ See *Sheffield United Football Club Ltd v West Ham United Football Club PLC* [2008] EWHC 2855 (Comm) in which Sheffield United successfully applied for an injunction to prevent West Ham United appealing to the CAS.

¹²⁷ Premier League Rules 2012-13, Section Y.1.

¹²⁸ *Joe Royle v Manchester City Football Club* (Court of Appeal, March 2005). This case highlights

years been able to resolve such issues relating to constructive dismissal¹²⁹ and wrongful dismissal.¹³⁰

9. Conclusions

This contribution highlights the complex and multi-faceted nature of sports justice in the UK, specifically in England. The key findings to emerge from this work are: (1) the state does not directly regulate sport although it does exert statutory and non-statutory influences on sport, (2) sports bodies must comply with the standards expected by ordinary courts, (3) contractual relations lie at the heart of many sporting relationships in the UK, (4) public law remedies, such as judicial review, are not available to challenge decisions of sports governing bodies but (5) the courts operate a private law supervisory jurisdiction over decisions of sports governing bodies meaning that the standards expected of sports governing bodies are very similar to those expected under judicial review, (6) in the law of tort courts have accepted that in sport a duty of care is owed by participants, match officials, governing bodies and event organisers, (7) criminal law prosecutions in sport are rare, particularly those concerning injury sustained on the field of play, (8) sports bodies are keen to insulate ‘domestic sports law’ from the influence of ‘national sports law’ and, therefore, (9) sophisticated disciplinary commissions and arbitral bodies play an essential role in resolving English sports disputes.

the problems with litigation prior to the enactment of the arbitration clause. Royle was actually dismissed from his managerial position at Manchester City in the May of 2001.

¹²⁹ *Keegan v Newcastle United Football Club LTD* [2010] ISLR, SLR 1.

¹³⁰ *Alan Curbishley v West Ham United Football Club* 17th June 2010.

TABLE 2: DOMESTIC SPORTS LAW EXAMPLES

	Case	Type of Dispute	Nature of the Dispute	Dispute Resolution Mechanism
1	<i>Wimbledon FC LTD v The Football League</i> 29th January 2002	Technical	Club Relocation	Football Association Arbitration
2	<i>Keegan v Newcastle United Football Club LTD</i> [2010] ISLR, SLR 1,	Economic	Claim for Constructive Dismissal	Premier League Managers Arbitration Panel
3	<i>Alan Curbishley v West Ham United Football Club</i> 17th June 2010	Economic	Claim for Wrongful Dismissal	Premier League Managers Arbitration Panel
4	<i>Football Association Premier League LTD v West Ham United</i> [2007]	Disciplinary	Breach of FA Premier League Rules	FA Premier League Disciplinary Commission
5	<i>Sheffield United FC LTD v FA Premier League LTD</i> [2007] ISLR, SLR 77	Technical	Challenging the decision in case number 4.	FA Premier League Arbitration Panel
6	<i>Sheffield United FC LTD v West Ham United FC PLC</i> [2009] ISLR, SLR 25.	Economic	Breach of Contract Claim	FA Premier League Arbitration Panel
7	<i>FA v John Terry</i> [2012] 24-27 September	Disciplinary	Misconduct – on-the-field	FA Independent Disciplinary Commission
8	<i>FA v Ashley Cole</i> [2012]	Disciplinary	Misconduct – off-the-field	FA Independent Disciplinary Commission
9	<i>Steven Nzonzi v FA</i> [2013]	Disciplinary	Wrongful Dismissal	FA Independent Disciplinary Commission
10	<i>FA v Ben Thatcher</i> 12 September 2006.	Disciplinary	Misconduct – on-the-field Retrospective Punishment.	FA Independent Disciplinary Commission
11	<i>FA v Suso</i> [2012]	Disciplinary	Misconduct – off-the-field	FA Independent Disciplinary Commission
12	<i>FA v Ryan Babel</i> [2011]	Disciplinary	Misconduct – off-the-field	FA Independent Disciplinary Commission
13	<i>Ohuruogo v British Olympic Association</i> [2008] ISLR, SLR 113	Technical	Eligibility to compete at the Olympic Games after a doping infringement.	Sports Resolutions UK
14	<i>Great Britain Rhythmic Gymnastics Group v British Amateur Gymnastics Association</i> , 29 February 2012	Technical	Olympic Selection Dispute	Sports Resolutions UK
15	<i>Belcher v British Canoe Union and Sports Resolutions UK</i> , 5 July 2012	Technical	Olympic Selection dispute: Justifiability	Sports Resolutions UK
16	<i>Football Association Premier League LTD v Portsmouth FC</i> , 17 th March 2010	Disciplinary	Sporting Sanction imposed as a result of the Club entering into administration	FA Premier League Disciplinary Commission