

# VIRTUAL ROUND TABLE

CORPORATE *LiveWire*

## SPORT LAW 2015



## MEET THE EXPERTS



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Carl is a barrister and has been a member of 4 New Square since in 2003. His practice encompasses professional liability, commercial and chancery litigation and insurance. Carl is recommended as a leading junior in the field of professional negligence in the Legal 500 and has been described as “exceptional” and “very thorough and accurate”. Carl is a formally accredited mediator and acts as an arbitrator. Carl also has a niche practice specialising in automotive litigation which includes legal issues relating to motorsport and supercars, both classic and contemporary. Carl has acted for the Royal Automobile Club Motor Sports Association in relation to matters before the Motor Sports Council National Court including enquiries and disciplinary hearings.



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Giulio Coraggio is engaged in gaming and gambling matters, while also focusing on Internet law issues, e-commerce, e-payment deals, information technology, privacy and data protection, telecommunications, unfair commercial practices and misleading advertising.

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Jeremy Drew is a Partner and Head of the Intellectual Property and Sports Law practices at RPC. Jeremy has extensive experience of both contentious and non-contentious sports matters. His particular expertise includes sponsorship, image rights and brand management, sports retail, complex licensing arrangements, football regulations and multi-jurisdictional dispute resolution. Clients include leading football clubs, national governing bodies, world renowned sports brands, publishers and gaming/betting companies.

Jeremy is a recommended individual by the leading independent legal directories. He was also individual winner of the Client Choice International award for UK Intellectual Property: Trade marks for 2013 and 2014.

RPC is winner of Law Firm of the Year at both The Lawyer Awards 2014 and the Halsbury Legal Awards 2014 and ranked first overall out of 106 law firms benchmarked in Legal Week's annual Client Satisfaction Report 2013.



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Nicole Jahanshahi is an associate in the Sports Law Team. She has advised on a range of sports matters with particular experience in football kit sponsorship and supply disputes, endorsement and licensing arrangements and brand management matters. She has advised leading sports retailers and will be working with a national governing body towards an international sporting event. She is a non-executive director of the equestrian qualifications awarding body, EQL, regulated by Ofqual and the Scottish Qualifications authority.

RPC's Sports Law practice is ranked and recommended by independent legal directories and we are a member of BASL.

## MEET THE EXPERTS



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Stephen has dealt with a number of sporting regulatory and disciplinary issues and has expertise involving situations in which the criminal law impinges upon a sports personality or sporting activity.

His particular expertise is anti-corruption, bribery and corporate governance. He has been involved in issues from both the individual and the club perspective.

Stephen has a particular interest in football, rugby, motor sport, horseracing, and greyhound racing. He has been described as, 'a meticulous and confident performer who is both charming and hard working' (Chambers & Partners) with a 'wealth of experience in the cross-examination of experts' (Legal 500).



# Sport Law 2015

In our Sports Law Roundtable we spoke with four experts from around the world to discuss recent regulatory changes and interesting developments across their field of work. Our chosen experts discuss key topics including: drug abuse in sport and the newly enacted World Anti-Doping Code, social media policy and its effect on player-club employment relationship, potential breaches to EU competition laws by the English Premier League and F1, as well as the rise of the whistle-blower in sport in 2014.

## 1. Can you outline the main health and safety concerns surrounding motor sports?

**Troman:** In motorsport protecting the health and safety of participants and spectators is paramount. Motorsports vary in terms of the extent to which they are dangerous but all present some level of danger and most a significant degree of danger. That danger is inherent and those involved in the sport must be taken to acknowledge that they often run serious risks to their health. However, the Motor Sports Council General Regulations focus to a considerable degree on matters of safety with the aim that participants do not run safety risks caused by carelessness. For example, and fundamentally, regulation C1.1.5 provides that driving in a manner incompatible with general safety exposes a person involved in motorsport to a penalty.

## 2. What opportunities, if any, will the de-regulation of football agents by FIFA create for sport lawyers?

**Coraggio:** On 1 April 2015 the Ital-

ian Football Game Federation (FIGC) adopted a new regulation governing the activities of football agents, implementing the 2014 FIFA guidelines on working with intermediaries (the "Regulation"). Such Regulation has already been met with discontent by the Italian Association of Football Agents (IAFA) and other football agents' associations, as well as by players and football clubs. In particular, the major criticism to the Regulation consists in the fact that, by way of the abolition of the licensing system for agents and its substitution with a self-referential system based on the mere enrolment into FIGC registry without further formalities, it would enable anyone (legal entities included according to the new regulation), regardless of his professional qualification, to conduct complex and often very lucrative transfer activities. Therefore, rather than ensuring a higher transparency in the football transfer market, it would open the market to unlicensed individuals and/or inexperienced and unqualified intermediaries.

Apparently the new Regulation does not provide any opportunity for sports lawyers. While the former FIGC regula-

tion on football players' agents stated that players and clubs could appoint solely agents who were enrolled in the Agents' Register, with an exception for lawyers, the new Regulation does not include an analogous provision. However, should it mean that lawyers could enter into the Register, the result would not be positive in any way to sports lawyers. In fact, where practicing as intermediaries, they would be bound to the limitations related to the intermediaries' fees introduced by the Regulation itself. According to Section 6 of the Regulation, intermediaries shall be remunerated at 3% of the total gross remuneration paid to the player (please consider that the current industry standard ranges between 4%-10%). This will surely have a negative impact since such fees would be deemed to be too low for sports lawyers. On the other hand, should a lawyer not enrol in the Intermediaries Register, it would not be convenient for the player/club to pay the higher fee of a lawyer to obtain a service that could be performed at a lower price by an intermediary.

## 3. With reference to the newly enacted World Anti-Doping Code can

## you outline the legal, scientific and sporting challenges of keeping pace with drug abuse in sport?

**Coraggio:** Doping in sport is a major challenge, as it threatens both athletes' health and the integrity of sport. Despite national and sports law providing severe sanctions for the athletes who use such drugs, as well as for those who provide, administer or facilitate the consumption of doping drugs, such phenomenon is still widely spread in sports such as cycling and athletics.

Despite the fact that the list of banned drugs provided by the World Anti-Doping Agency ("WADA") and applying also in Italy by virtue of the implementation by the Italian Anti-Doping Authority ("CONI") of the World Anti-Doping Code ("WADC") includes a wide range of drugs, including masking agents, the innovation in the pharmaceutical sector is always a step ahead.

However, the implementation of the WADC has brought more certainties within the legal framework of sports in Italy. To this end, it is worth mentioning the Kostner case. Carolina Kostner,

an Italian figure skater, was punished by the Italian Anti-Doping Court with a 16-month suspension from competition for her role in the doping case of her boyfriend, the race walking champion Alex Schwazer. In fact, pursuant to Section 2.9 of CONI anti-doping regulation, those who assist another person in covering up his doping shall be treated before the Court as dopers.

The stiffer rules introduced by WADA for dopers, which came into force from 1 January 2015, will surely have a positive impact on the reduction of doping drugs abuse. However, history tells us that often the consumption of doping drugs is fostered by the silent collusion of the relevant supervisory bodies. Therefore, further and more severe controls would need to be performed not only on athletes, but also on clubs and those who are supposed to ensure the integrity of sport.

**4. 2014 was a big year for whistle-blowers in sports with high profile cases including the Garcia Report on the bidding process for the 2018 and 2022 FIFA World Cups, former Russian anti-doping official Vitaliy Stepanov into the extent and nature of doping in Russian sport, and New Zealand cricketer Lou Vincent co-operating with anti-corruption officials from both the**

**International Cricket Council (ICC) and the England and Wales Cricket Board relating to spot-fixing of matches. What is the cultural, institutional and legal perceptions of whistle-blowers in sport and is the legal framework sufficiently incentivised for whistle-blowers coming forward?**

**Drew:** Whistle-blowing can be the expression of concerns regarding malpractice, the breach of sporting body rules or criminal wrongdoing. It is not (and should not be considered to be) limited to formal concerns made through official channels, but include informal reporting, however that may arise.

*Culture and institutional perceptions:*

Whistle-blowing is firmly in the lime-light for businesses, along with freedom of information, anti-bribery legislation and ethical accountability. In the aftermath of recent scandals (in relation to the global financial crisis and the uncovering of large scale corporate (e.g. LIBOR rigging) and sporting cover-ups (such as the Lance Armstrong case)), there seems to be greater Governmental and public appetite for increased transparency and holding people and businesses to account.

But there is, as you would expect, huge variation between sports. It is still too often the case that whistle-blowing (particularly of an informal nature) is not acted upon until the concerns gain enough momentum, perhaps by a formal step being taken, others coming forward or social media weighing in with public pressure to act. Sometimes there can be rumours and open secrets known to many within an organisation but no action is taken until a tipping point is reached.

The power of social media and pressure from national federations to force a governing body to take action is highlighted in February's equine endurance welfare scandal regarding the UAE. It is reported in the media that the International Equestrian Federation (FEI) investigation into UAE endurance and allegations of malpractice and equine welfare concerns only came about after heavy public criticism on social media and unavoidable pressure (including threats of boycotts of the endurance World Cup in Dubai) by national federations. Following this (on 12 March), the FEI announced that it had suspended the UAE National Federation for an "indeterminate period". The delay in the FEI taking action was reportedly because no formal complaint was made (although videos and com-

mentary were posted on social media). Rules which restrict action being taken in response to information (however this comes to light) risk sending the wrong message: i) whistle-blowing is not welcome; and ii) it will not make any difference. The channels of communication and whistle-blowing policies must be as flexible as its audience and rules which hinder this must be changed.

Whilst Phaedra Al-Majid (who whistle-blew over alleged corruption relating to Qatar's 2022 FIFA World Cup bid), received widespread support, she also received threats. This is an example that not only organisational but public perceptions must change and these may vary not only within sports but also between different cultures too.

*Legal framework:*

There are several forms of legal protection in place under UK employment law (such as protection from dismissal for whistle-blowers).

However, unless the institutions accept and expect whistle-blowing from its members (and the public) as their duty and obligation, it may not matter how robust the legal framework. Anything short of this may amount (in the

eyes of the athletes) to institutional acceptance (to some degree or other) of wrongdoing. Incentives to whistle-blow (discussed further below) may also have this same effect.

There is currently no legal requirement for organisations to have a whistle-blowing policy in place to support the legal protections. Yet a policy will help demonstrate strong organisational governance and accountability of all, reinforcing that whistle-blowing will have a direct audience with the appropriate person. These should most certainly appear in the employee handbook alongside all other policies and be included in employee training.

*Does the current legal framework incentivise whistle-blowing?*

There is great debate as to the merits of the “carrot or stick” approach.

There are whistle-blowing provisions in some sports which incentivise whistle-blowing by offering reduced sanctions to the “prime moving” whistle-blower should they be a party who is also engaged in the wrongdoing.

Other sports adopt a “zero tolerance” approach. Although this fear of punishment may silence some, it is argu-

ably fundamental to the long term success of any integrity programme that whistle-blowing is not an option (with a pat on the back for doing the right thing) – but a moral (and professional) obligation.

In the case of potential money laundering detected by professional advisers such as lawyers, if you turn a blind eye or even should have suspected it in the circumstances, but don’t report it, you can be guilty of an offence. One may ask why this should be different.

**Coraggio:** Until recently “whistle-blowers” have been viewed with some suspicion in Europe. Despite the recent Recommendation CM/Rec(2014)7 of the Council of Europe (dated 30 April 2014), which recommends that EU Member States have in place a normative, institutional and judicial framework to protect individuals who, in the context of their work-based relationship, report or disclose information on threats or harm to the public interest by setting out a series of common principles to guide the EU Member States’ legislative activity, a number of EU Member States, including Italy, has not introduced relevant legislation yet. Just as a way of example in 2009 the Italian Data Protection Authority solicited the Parliament to adopt specific

provisions in relation to companies’ whistleblowing activities and systems of report, with particular regard to personal data processing. In particular, the Parliament was invited by the Italian Data Protection Authority to specify (i) which individuals could be qualified as “whistle-blowers” within a company, (ii) the scope of the personal data related to the informant that the reported individual could access to and (iii) the admissibility of anonymous reports.

The attempt had no result, but on 26 February 2015 the Italian Revenue Agency implemented an internal procedure in order to stimulate and safeguard whistleblowing. According to the procedure drafted by the Agency, informants will be enabled to report misconducts anonymously, through the use of relevant encrypted email boxes. In this way, the informant is protected when denouncing irregularities in their work environment, without the risk of retaliation by colleagues or superiors.

This attempt to regulate whistleblowing procedures shows that without an established regulatory framework, these procedures are unlikely to become more common also because of the potential liability exposure. This is a valid point also in relation to the sports

sector whose regulations are exponentially becoming similar to those of civil law. We expect that regulators will introduce specific rules on the matter also with reference to the sports sector.

**Harvey:** The age of the whistle-blower has been upon us for some time in relation to areas outside of the world of sport. For example, the Serious Fraud Office has an entirely confidential hotline for those wishing to expose fraud, bribery and corruption. Of course, those persons cannot be used as witnesses in any subsequent prosecution so their information is treated as ‘intelligence’ and it must lead to other evidence, or other witnesses, who are prepared to give evidence in a court. However, even this scheme has its limitations. The SFO cannot provide a 100% assurance to the whistle-blower as there may well be instances when a Judge, for sound legal reasons, will order the disclosure of the whistle-blowers identity.

The sporting world has nothing like the systems in place that afford the assurances whistle-blowers require and, therefore, much less is revealed. The instances mentioned are good examples of the problem.

The Garcia Report fiasco has still to be satisfactorily resolved; the multiple whistle-blowers involved in the controversy involving the Russian Athletic Federation and the Russian Anti-Doping Agency can only be described as the bravest of the brave, facing as they undoubtedly do the most serious of possible consequences. Some have even gone into hiding in fear of their lives.

On a less dramatic scale, Lou Vincent received a life ban for his troubles. So, even in his case, there isn't much of an incentive that would encourage anyone to compromise his or her own position for the greater good. Very much more needs to be done to formalise a process, which positively encourages disclosures whilst meting out punishments that reflect the degree of cooperation actually given and takes into account the individual consequences to the informant.

The government announced its Anti-Corruption Plan in December 2014 which, it states, is designed to fight corruption, '...in all its forms' which, along with already existing legalisation dealing with specific areas of the sporting world (e.g. gambling), will go some way to promoting the UK as a world leader in the fight against corruption in every

area of our lives.

**5. Following the contentious efforts of Ched Evans, a convicted rapist, to return to football after his release from prison, can you talk us through the various complexities relating to the social responsibility of potential employers and whether there are any employment and discrimination laws surrounding the treatment of a serious offender in comparison to the treatment of other employees?**

**Jahanshahi:** The legal issues surrounding the Ched Evans case are difficult to disentangle from the moral and social aspects. There are employment and discrimination laws surrounding the treatment of a serious offender which clubs will have to grapple with while also balancing the interests of the rest of its workforce and its stakeholders.

An employer has a duty of care to all of its employees. Where an existing employee is accused of a serious offence, the employer has to strike a delicate balance between upholding the rights of the accused individual as against its duties to the rest of the workforce. Also at play here are the interests of other stakeholders such as shareholders, sponsors and, ultimately, the ticket paying fans. The club will also have a

weather eye on its organisational brand and where it sits within wider society.

It can be a difficult line to tread, and ultimately, the right answer is highly fact sensitive and will vary from case to case.

Often the practical approach will be to suspend the accused employee initially and then to take any ultimate employment decision later and at an appropriate point in the criminal process. But, again, it all depends on the facts. Dismissing an employee at the first sign of a potential criminal investigation might well be unfair and unlawful. Bringing employment to an end post-conviction and imprisonment is likely much easier to defend. Everything in between will fall somewhere on a scale of shades of grey.

When, as most recently with Ched Evans, the question is not whether to continue an *existing* employment relationship but instead whether to begin a new one, the same issues are at play but the club usually has more leeway in its decision. Or, put another way, perhaps fewer legal risks. Anti-discrimination legislation only helps would-be recruits if they suffer unfavourable treatment in some way related to a "protected characteristic". Protected

characteristics include sex, race, sexual orientation, religious belief, disability and age. Provided no protected characteristic is at play in a decision not to recruit an offender, a discrimination risk shouldn't arise.

The club will of course need to think about its duties to all of its stakeholders as well as the legislative requirements (depending on the crime) relating to rehabilitation of offenders.

**Coraggio:** The matter shall be reviewed under the specific employment and discrimination laws of each jurisdiction. Indeed, such laws usually refer to discriminations due to sex, race or origin, while in this case the discrimination would be due to the previous conduct of the athlete.

A serious offender can be excluded from a type of work if the offence that he performed might have an impact on the trustworthiness of the same e.g. in case of jobs requiring the handling of relevant amount of money. In the case of Ched Evans, his crime might not have affected his trustworthiness as a footballer and therefore the usual legal arguments applicable in a case of people that had been previously convicted would not apply.

But the issue is whether his subscription might have hampered the reputation of the club and such reason could be used as a justification to refuse it. Given the reaction from the public opinion to his potential subscription, the potential reputational damages might have been used as an argument in a potential dispute for discrimination.

**Harvey:** An employer's reputation, standing and integrity, to the outside world, are vital to its continued success in business. Employers of leading sports men and women are acutely aware that the degree of public scrutiny of their actions is intense. Their activities, both as a sporting figure and in their own 'private' lives (an elusive concept for so many) are under 24/7 media scrutiny. A controversial piece of behaviour outside of the sport will divide society into quite separate and often opposing camps and it is these cases, involving 'high-profile' celebrities that bring into sharp focus the tensions that are inevitably created.

In the Ched Evans case, presently being looked at by the Criminal Cases Review Commission, after Sheffield United's retreat from its offer of re-engagement, no fewer than three further clubs embarked upon and then walked

away from contract negotiations. This was undoubtedly due to them responding to pressures from the public. In the most extreme example, the retreat came after threats of violence were made to the club fans, its sponsors and its members of staff.

However, it is reassuring to know that, as was demonstrated in one recent instance, there was evident respect for both the criminal justice system and in a socially responsible employer. Grimsby Town's decision to employ the talented defender Clayton McDonald in the 2013-14 season, has attracted not a word of criticism. He, it will be remembered, stood in the dock alongside Evans and was acquitted. This case is an enormous testament to both the club and to society that his position was rightly respected, giving encouragement that whatever the public might think, there is still a respect for the rule of law.

The law does not discriminate between an employer's treatment of a 'serious offender', any other types of 'offender' or other employees. Whilst a conviction for a particular type of offence may disqualify a person from obtaining a particular position, for example, being disqualified under the Violent and Sex Offenders Register from working

with children, or being unable to obtain a driving job as a result of being disqualified from driving, the simple fact of a conviction does not affect a person's employment rights.

Every prospective employee has, in the workplace, those protected characteristics that are set out in The Equality Act 2010, which forbids discrimination on the grounds of age, disability, gender reassignment, marriage, civil partnerships, pregnancy and maternity, race, religion and belief, sex and sexual orientation.

**6. Sports disputes of one kind or another, particularly commercial ones, frequently arise. Can you outline the available methods of alternative dispute resolution and discuss their benefits to negotiators?**

**Troman:** Disputes in motorsports are resolved by what one might regard as ADR because complaints by one competitor or team against another generally go to the clerk of the course with appeals to the stewards and (ultimately) the Motor Sports Council National Court. Even in cases where that type of adversarial dispute does not arise the Motor Sports Association still has the power to refer issues to the National Court for investigatory or disciplinary

hearings. Those procedures are, in effect, tailored arbitration given the particular skill and experience in motorsport possessed by decision makers at all levels and the legal expertise of the National Court. Decisions are made quickly and at a miniscule fraction of the cost of civil litigation. In that context there is little scope or need for mediation, the other main form of ADR.

**7. Ofcom has recently opened an investigation into the English Premier League over the way in which it sells its UK audio-visual media rights. It is also believed that the EU Commission has been informally monitoring F1 and building up a file relating to competition concerns by the motorsport since around the time the Seventh Concorde Agreement was signed. How do competition laws apply to sports and what are the potential repercussions from these investigations?**

**Drew:** Competition law (both national and EU) is equally relevant to sport as to any other sector of the economy, and sanctions are applied in the same way across the board.

In recent years, the competition authorities in the UK and Brussels have



been faced with a growing number of cases and investigations linked to the exploitation of sporting events, not least in the area of the joint selling of media rights. For example, the UEFA Champions League, the FA Premier League and the German Bundesliga have all been the subject of European Commission investigations and decisions.

Ofcom's latest investigation in the UK (stemming from a complaint by Virgin Media) is effectively a variation on the same theme (albeit Virgin Media have also expressed concern about the low overall number of matches for which the live broadcasting rights are made available).

The European Commission has previously accepted that joint selling of media rights is acceptable provided (i) a transparent tender process is followed, (ii) the duration of the rights auctioned is limited (usually a maximum of three years) and (iii) the rights themselves are broken down into different packages to allow several competitors the opportunity to acquire some rights.

When it comes to restrictive sporting rules (such as salary caps), these can also potentially fall foul of competition law. What will matter (as with any re-

strictive agreement) is individual assessment. Potential restrictions can fall outside the main prohibition altogether where they are shown to have a legitimate objective and the restrictions are both inherent and proportionate to that objective. Legitimate objectives can include factors such as ensuring fair sporting competitions with equal chances for all the competitors, ensuring uncertainty of results and financial stability of participants. This contrasts with the position in the USA where sporting rules commonly enjoy exemptions from the application of the antitrust rules.

As regards the Formula 1 case, the European Commission is reported to be investigating a potential conflict of interest arising from the acquisition by the FIA (*Fédération Internationale de l'Automobile*) of a 1.06% stake in Delta Topco, F1's parent company. This investigation stems from a complaint by a British politician, Anneliese Dodds, who has suggested that the FIA has acquired a direct commercial interest in the F1 world championship. This interest would be contrary to the terms of an antitrust settlement made in 2001, in which the FIA committed to the European Commission that its role would be "limited to that of a sports regulator, with no commercial conflicts of in-

terest".

Those involved in sport are ultimately susceptible to the same competition law sanctions as any other sector. Subsequently, the potential repercussions from these sports investigations include sanctions such as substantial fines and the offending agreements being found to be void.

**Coraggio:** There is a current uncertainty in the sector and we should wait for the courts to take a position on the matter. Competition laws have not been tested so far in this kind of sector and therefore it is hard to foresee the position that will be taken. At the same time, this seems to add a further element of assessment when media rights are put on sale. The issue is whether competition laws are applicable also when private companies select their counter parties and to which limit they are free to do that.

**Harvey:** The UK competition laws are aligned to those that operate elsewhere in the EU and they apply to a sporting organisation in the same way that they do to any other commercial concern operating in the marketplace. As well as having to enforce the domestic competition laws, the UK is obliged to enforce the rules created by

the Treaty on the Functioning of the European Union. The principle rules thereunder are that an organisation must not engage in cartel practices (Article 101), and that a dominant market player must not abuse its position (Article 102).

An organisation that falls foul of the law can face huge sanctions which, in the case of a breach of the Treaty's regime, can result in fines equivalent of up to 10% of its total turnover. The consequences can also extend to damages being ordered, disqualification from being a director of a company, undertakings as to future behaviour and even imprisonment.

Virgin Media complained to the regulator under Section 25 of the Competition Act 1998, alleging that significantly fewer football matches were broadcast in England than elsewhere in the EU, and that the UK consumer paid too much. As the time for the auction for the 2016/17 season was fast approaching with no resolution in sight, Virgin Media made an unsuccessful application under Section 35 of the Act for Ofcom to issue an 'interim measures direction', requiring a delay in the auction process. Ofcom said that there was no urgency, there was sufficient time between now and the start of that season

and that the contracts issued pursuant to the auction process could contain appropriate clauses. However, it did say that it would publish a document on the matter in March.

The consequences of a successful claim by Virgin Media will, if there is any increase in the number of matches presently on offer, doubtless have an effect upon attendances at lower-league club matches if the 60 year old Saturday 'blackout' is lifted, or even shortened, to allow for more televised games.

In the world of F1, an investigation by the EU, if formalised, is unlikely to be as quick as the cars. It will have to go to the very roots of the roles occupied by the various players in the sport and will need to examine critically their differing corporate governing structures. This process, and the eventual outcome, is likely to be heavily influenced by last year's adoption of the sport by the International Olympic Committee (giving it full membership of the movement) with the resultant regulatory culture being more in line with that of the IOC.

**8. Given the implications relating to brand value and the reputation of the sport in general how can clubs and governing bodies appropriately regu-**

**late the use of social media, and ultimately how can it affect the player-club employment relationship?**

**Troman:** In motorsports the use of social media is often crucial in relation to publicising and organising events and the collation of feedback from events. Motorsport clubs do not generally employ competitors; instead their relationship is normally governed by club rules which may well amount to a contract. Ordinarily such rules do not make specific provision regarding social media so a club's control over engagement by members with social media is often limited to any overall conduct rules of the club. Clubs might be able to rely upon the Motor Sports Council General Regulations which, broadly speaking, govern all events involving four wheeled motorsport in the UK. Regulations H6 and C1.1.4 provide that acts bringing motorsport into disrepute or prejudicial to the interest of motorsport may result in disciplinary action.

**Jahanshahi:** Whether its football, rugby, or cricket, players are celebrities and, like it or not, they like to express themselves. Rio Ferdinand has over 6 million Twitter followers and is one of sports' most prolific tweeters (not all without error!). But while some play-

ers with a strong social media profile can be fantastic brand ambassadors, the reality is that others' social media activity (the majority?) is more likely to be a liability than an asset to a club or governing body. After all, one inappropriate text message sent to millions is more likely to hit the front pages than a 'branding' message, however well crafted. And given the difficulties of drawing a line between 'personal' and 'club' life, it's not surprising that there are abundant examples of mobile messaging gone horribly wrong for everyone involved (everyone except the press that is!).

These days, every club should have a social media policy. And this needs to be properly cooked into the player/club employment relationship. Without it, a club has a weaker hand in keeping their vocal young talent in check. This does not mean that it needs to be strict to the hundredth degree, but it should set out the basics of what is and what is not acceptable behaviour when it comes to online engagement. More sophisticated policies are often split into two – to help the player understand what is permitted when in 'personal' and in 'club' mode. Both should lay down ground rules for what can and cannot be said about the club. And if a policy begins to gather dust,

it can quickly be made redundant so regular updating and refreshing is a must. The relative cost of the latter to the thousands spent on negotiating the latest PR debacle is hardly a high price to pay. Above all, however, clubs should consider engaging in meaningful training for its players, highlighting the pitfalls and consequences of errors as well as discussions around the boundaries of what is acceptable and what most definitely is not. Training should be refreshed regularly to keep abreast of new social media trends.

With a workable policy in place, and with social media training forming part of a wider training programme, a club at least has a chance of dealing with a social media disaster. In other words, it can show that it has done what it reasonably can to educate the player and, if necessary, use this to help distance itself from whatever unfortunate comment has hit the airwaves. It also gives the club the chance to join the dots on disciplinary action should this be needed.

Social media policies should be organic and move with the times/the evolving risks. Above all, they must be implemented and implemented in the right way, such that they are seen to work with, rather than police, the players.

After all, social media is an inherent part of modern celebrity life. If a club can actively engage its players with a healthy understanding of the benefits and risks (through both policies and education programmes), then the greater the chance that everyone can concentrate on what's really important – namely, what's happening on the pitch, not off it.

**Coraggio:** The main issue is that since athletes are usually seen as celebrities there is a feeling that no general rules applicable to employees should apply to them. On the contrary, as employees are normally subject to the stringent terms of their employer's social media policy, the same should apply to athletes.

A complication however is given by the fact that the usage of social media by sports personalities is in some cases imposed by the sponsorship agreements entered. As recently occurred, athletes endorse their sponsors on social media without disclosing that this is part of an advertising initiative. This

contravenes with the specific guidelines on the usage of endorsements and testimonials in advertising by the US Federal Trade Commission which has put into place specific measures to make sponsored endorsements recognisable on social media. However, such practice is not widespread at the moment and both athletes and sponsors are taking advantage of the ongoing uncertainty.

**Harvey:** With an unparalleled opportunity to connect with fans on a global scale, social media brings with it risks and opportunities in equal measures. Clubs and individuals can now both connect and interact with their fans. Cristiano Ronaldo, for example, has a Facebook following in excess of 100 million and Real Madrid has 18.6 million. The power of social media to all sports is obvious. The footballing world is so aware of the implications that the international football arena held a conference last October in Berlin on the issues involved.

Any form of social media requires

the most careful of regulation and all sporting clubs must impose upon their members, and all associated with them, clear social media guidelines. No club can control what outsiders do, but they can and must seek to influence people in the responsible use of the medium for the protection of the individual, the club and the particular sport's reputation. It has to be done by the imposition of written guidelines making abundantly clear what is acceptable and what is not. The indelible nature of social media must be remembered at all times and the club should develop and be seen to have a 'living culture' from within demonstrating what is acceptable and what isn't.

Specific guidance on how football clubs should deal with misuse of social media was recently given by the Employment Appeal tribunal in the case of *Game Retail Ltd. v Laws (UKEAT/0188/14)*. In a dispute between a sportsman and their employing club concerning the 'inappropriate' use of social media, the club will consider the terms of its own social media policy, the seriousness of

the post, whether it is clearly labelled and posted as the individual's own view, the speed with which it was taken down, the damage (actual and potential) caused by the post and whether the individual has posted other items in the past offending against the policy.

#### 9. In an ideal world what would you like to see implemented or changed?

**Troman:** From a legal perspective in relation to motorsport it may be time for a general overhaul of the General Regulations. They have evolved piecemeal and sometimes gaps are identified which need to be filled. On occasion the Motor Sports Council National Court has to grapple with difficult cases which are not as obviously covered by the regulations. For the sake of certainty, to avoid inconsistencies and to keep up with the latest developments it might assist all concerned for there to be a full review of the structure and detail of the rules governing the sport.

