



CASE 37 – Decision

Introduction

1. The Appellant Player M is a ■ year old professional snooker player. On 16 September 2013 Mr Adam Lewis QC, sitting as an Independent Disciplinary Hearing Board of the World Professional Billiards & Snooker Association (“WPBSA”), found Player M guilty of seven breaches of the WPBSA Members’ Rules & Regulations (“the Members’ Rules”). On 24 September 2013 Mr Lewis imposed a suspension of 12 years on Player M, starting from 12 October 2012. He also ordered Player M to pay a contribution of £40,000 to the WPBSA’s costs of the case.
2. By a notice of appeal submitted on 8 October 2013 Player M appeals against: (1) the findings of guilt by breach of the WPBSA rules; (2) the 12 year suspension; and (3) the £40,000 costs order.
3. The WPBSA opposes all of Player M’s appeal. The WPBSA also cross-appeals, by a Respondent’s Notice dated 18 October 2013, seeking: (1) a life Suspension instead of the 12 years (without the possibility of reinstatement, alternatively with a possibility of reinstatement after 15 years); and (2) an increase of the £40,000 costs order (though no amount is specified in the WPBSA’s Respondent’s Notice or was proposed at the hearing on 12 May 2014).
4. The charges on which Player M has been found guilty concern Player M’s involvement in betting on seven matches played by him in 2008 and 2009. It was alleged that Player M had given inside information to various associates, who then bet with the use of that information and passed it to others who also bet. Player M is not alleged to have deliberately lost any match which he could and should have won. He was alleged to have identified a match he thought he was going to lose and then agreed to lose and did lose it; or that he agreed to and did lose a first frame when he was confident that could nevertheless win the whole match; or that he identified a match that he thought he was going to lose and then agreed to lose and did lose it by a particular score.
5. Mr Lewis held the charges of breach of rule 2.9 to have been proven in relation to those seven matches. There is no dispute that Player M is a “Member” bound by the applicable Members’ Rules, which include rule 2.9:

“2.9 A Member shall not directly or indirectly:

- 2.9.1 solicit or attempt to solicit any person (whether a Member or not) to enter into any arrangement (whether or not in return for payment or any other form or remuneration or benefit);

- 2.9.2 agree or attempt to agree any arrangement (whether or not in return for payment or any other form or remuneration or benefit); or
- 2.9.3 accept or receive or offer to receive or give or offer to give, payment or any other form or remuneration or benefit in connection with influencing the outcome or conduct of a game or frame (or any part thereof) of snooker."

6. Mr Lewis found on the evidence before him that in relation to each of the seven matches, Player M had agreed with one or more bettors either that the match would be lost, or that a first frame would be lost, or that the match would be lost by a specified margin, and that Player M would seek to achieve that result and would in some form be rewarded for so doing. It was not established that Player M deliberately lost a match when he could and should have won it. Mr Lewis found that Player M had acted improperly in relation to matches that he either believed he would lose, or that he believed he would win sufficiently comfortably that he could drop the first frame.
7. Mr Lewis held that all of those matters amounted to breaches of Rule 2.9. If his factual findings of those matters were correct on the evidence, they clearly were in breach.
8. I do not repeat the detailed analysis set out in Mr Lewis's written Decision dated 16 September 2013. My task is not to do the analysis all over again but it does require me to see if it was flawed.
9. Player M's first ground of appeal was that he had not received a fair hearing by an independent and impartial tribunal because of a real danger of bias on the part of Mr Lewis, or a real apprehension of bias. An Appeals Committee has already considered and rejected that ground by a decision dated 24 February 2014. By a decision dated 12 March 2014 the two members of that Appeals Committee recused themselves from further hearing of Player M's appeal. In accordance with Section 11 of the WPBSA Disciplinary Rules ("the Disciplinary Rules"), on 24 March 2014 Sport Resolutions (UK) appointed me as the Appeals Committee to deal with the remaining grounds of Player M's appeal and with the WPBSA cross-appeal.
10. The parties asked me to hold an oral hearing, which I did on Monday 12 March 2014. Player M, although at various times in this case he has had lawyers, was by then acting in person. He attended the hearing. The WPBSA were represented by solicitors TLT and by counsel Mr Louis Weston. They also attended.
11. In response to written directions for skeleton arguments, which I had issued on 24 April 2014, Player M had submitted a short statement in the form of two emails and Mr Weston

had submitted a 14 page skeleton argument. Player M made relatively short oral submissions at the hearing, as did Mr Weston, and the hearing was concluded in less than three hours.

12. My papers included the entire hearing bundle of documents which had been before Mr Lewis.

Player M's grounds of appeal

13. With Player M's first ground of appeal having been rejected in February 2014, his remaining grounds can be summarised as:

- (1) Further elements of unfairness of the procedure: Grounds 1 ii, iii, iv, v
- (2) On the evidence, Mr Lewis had been wrong to find any breaches of rule 2.9.
- (3) If Player M was guilty as found by Mr Lewis, the 12 year suspension was disproportionate to his misconduct.
- (4) The costs order of £40,000 was excessive, unreasonable and punitive.

Appeal Committee's task

14. My task as the Appeals Committee is to consider and review all of the documents and evidence which was submitted to Mr Lewis and decide whether to uphold, set aside or change his decisions on the findings of breach, the 12 year suspension or his costs order.

15. That does not mean that I start from scratch. Mr Lewis, as the Independent Disciplinary Hearing Board, received oral evidence and nearly 2,000 pages of documentary evidence. Unless I can see that he has clearly gone wrong, I must accept his view of the credibility of witnesses and his judgments on the evidential weight and value of the material before him. Moreover, where he made a discretionary decision, such as on the appropriate penalty or an order for costs, I cannot interfere with his decision unless I consider it was unreasonable or can see that he did not take proper account of all the relevant matters (or that he wrongly took into account something irrelevant).

16. At the hearing on 12 May 2014 I reminded the parties that I had the discretionary power to admit new evidence. Player M made no application for new evidence and neither, although it had been raised by Mr Weston as a possibility, did the WPBSA. The evidence on this appeal is therefore the same as before Mr Lewis.

Player M's grounds of unfair procedure

17. **Ground 1.ii** of Player M's notice of appeal is: "Both the Respondent and tribunal [i.e. Mr Lewis] failed to ensure that full and proper disclosure had been made".
18. Player M's complaint was that there had been material in the hands of both the Gambling Commission and the Police which would have helped his case (in fact, he believed would have shown his innocence on the WPBSA charges) but which he had been unable to see.
19. The WPBSA says that it had disclosed all relevant material in its possession or control, whether or not it undermined its case or assisted Player M. There is nothing to indicate that it had not, and Player M did not assert any such failure by the WPBSA.
20. That would have complied with the normal disclosure obligations of a party in civil proceedings. The WPBSA says it is under no greater disclosure obligation. I do not have to decide whether or not the principle is quite as simple as that in disciplinary proceedings which may lead (as these did) to heavy sanctions affecting a person's livelihood. The actual disclosure made by the WPBSA (as in paragraph 19 above) was clearly enough to comply with any obligation of disclosure it could have been under in relation to documents in its possession or control.
21. It appears to be acknowledged by Mr Weston for the WPBSA that beyond the question of disclosure of those documents, its overriding duty of fairness might have required the WPBSA also to identify material in others' hands and assist in arrangements for inspection by Player M. I think that is right but I can see also no failure by WPBSA in that regard.
22. This was the particular area on which Player M concentrated his oral submissions at the hearing on 12 May 2014. It is clear that by June 2013, well before the 9-11 September 2013 hearing before Mr Lewis, Player M was trying to obtain material from the Gambling Commission and the West Midlands Police. There was an exchange of an email 27 June 2013 from Player M to the WPBSA and a 28 June 2013 letter in reply from the WPBSA to Player M (at pages 103-4 of a bundle of Disclosure Correspondence prepared for this appeal hearing). It is clear that the difficulty was that the Gambling Commission and the West Midlands Police between them were refusing to make material available to Player M. It was not the WPBSA which was preventing his access to any material.

23. I asked Player M specifically if he was saying that the WPBSA had obstructed his access to material in the hands of the Police and he expressly confirmed he was not. Although he did not offer the same acknowledgment in relation to material held by the Gambling Commission, he also did not give any explanation (let alone evidence) of how the WPBSA had hindered, or sought to hinder, his access to that material either.
24. In those circumstances, I do not need to consider the question whether or how far any material which Player M was unable to obtain from the Gambling Commission or the Police might have helped his case. I am extremely doubtful that it could have made any material difference to the outcome.
25. This ground of appeal also alleges that Mr Lewis failed to ensure that full and proper disclosure had been made. I see not a shred of substance in that allegation, which was not explained or elaborated in Player M's written or oral submissions.
26. My conclusion on this ground of appeal is that Player M has shown no unfairness whatever in relation to the disclosure or obtaining of documents.
27. **Ground 1.iii** in Player M's notice of appeal is: Hearsay evidence was admitted without application or argument and no account or assessment was made of the appropriate weight to be attached to such evidence.
28. Section 8.4 of the Disciplinary Regulations states: "The Disciplinary Committee shall not be obliged to follow the strict rules of evidence. It may admit such evidence as it thinks fit and accord such evidence such weight as it thinks appropriate in all the circumstances". While strictly speaking under those rules, Mr Lewis was not a "Disciplinary Committee", it is obvious that the same approach must be intended to apply to an Independent Disciplinary Hearing Board.
29. Unless the applicable rules say otherwise, hearsay evidence is generally admissible anyway before disciplinary tribunals and the procedural requirements for its admission into evidence in court do not apply: see Beloff, Kerr, Demetriou & Beloff: *Sports Law*, 2nd edn, para 7.77 at p.211.
30. The question of whether Mr Lewis gave undue weight to any hearsay evidence is part of the larger question under ground 2 of the notice of appeal and I deal with it there (paragraphs 38 to 45 below).

31. On the issue of admission of hearsay evidence, this ground fails.

32. **Ground 1.iv** in Player M's notice of appeal is: A reverse burden of proof was applied.

33. This ground fails. Mr Lewis plainly proceeded on the correct footing that it was for the WPBSA to prove its case to the applicable civil standard of balance of probabilities. He did not impose any burden of proof on Player M.

34. What happened was that aspects of the evidence put forward by the WPBSA in support of its case then called for an explanation by Player M. That is not a reversal of the burden of proof, which remained on the WPBSA throughout.

35. This is all clear from Mr Lewis's decision, particularly paragraphs 10 to 18.

36. **Ground 1.v** in Player M's notice of appeal is: No transcript or record of the hearing was made.

37. There was no transcript or recording. That was not a requirement, either under the Disciplinary Rules or the law applicable to such hearings. It makes no difference whether or not Player M was legally represented. The absence of a transcript or recording did not make the hearing unfair.

Player M's ground that there was no breach of rule 2.9

38. **Ground 2** in Player M's notice of appeal is: "The Tribunal was wrong to find that there was a breach of rule 2.9 as alleged, in that . . ." - and there then follow 11 points, a to k, the first ten going to specific issues and the last being the general contention that "The Tribunal wrongly rejected the evidence advanced by the Appellant."

39. Just one of those points was developed in Player M's written and oral submissions for the appeal hearing on 12 May 2014: Point a, that there was no evidence to suggest that the Appellant had played either improperly or deliberately poorly. Of course, he can still rely on the other points b – k and I have considered each of those as well.

40. On that point a, Player M's short written submission was in an email 7 May 2014, sent to me via Ms Parry of Sport Resolutions, by way of addendum to an email he had sent 15 minutes earlier. As written, the addendum was:

"Plus to be added to that is the statement made by all 7 world class players with 10 plus world championships between them and WS 2 best referee's in the game have made statements to clearly say that they have seen no wrong shots or seen me playing to lose frames or matches that's fact Hard evidence in my favour . . ."

41. Player M pressed the same point vehemently at the hearing on 12 May 2014.

42. It is stretching it much further than it will go to say that it amounts to hard evidence in Player M's favour, if that means it comes anywhere near outweighing the evidence against him. Mr Lewis considered this point at paragraphs 45 to 50.6 and 85 of his decision. It is clear to me that he did not find it a telling point for Player M in the face of the other evidence. He explains why not and I see no reason to reject either Mr Lewis's explanation or his conclusion on this point, which strike me as common sense.

43. Point b concerns a factual issue where Mr Lewis did not find against Player M. As the notice of appeal states, Mr Lewis did not conclude that the Appellant had deliberately lost a match he could and should have won. That was his express finding at paragraph 82 of his decision. On this appeal, Player M is saying that in reaching his overall findings, Mr Lewis did not give sufficient weight to that point in Player M's favour.

44. My conclusion on point b and on the other points c to k is the same in each case: I can see nothing in any of them which leads me to reject any of Mr Lewis's findings or conclusions, either on specific points or on his overall findings of breaches of Members' Rule 2.9. I shall not set those other points out one by one. Player M did not develop those points by showing me where and how Mr Lewis had gone wrong. I cannot see, either from Mr Lewis's written decision or all the other material before me on this appeal, any basis for rejecting Mr Lewis's conclusions about what had happened and what Player M had done.

45. The result is that I dismiss Player M's appeal against the findings of breaches of rule 2.9 of the WPBSA Members' Rules & Regulations.

Was the 12 year suspension too long (Player M's appeal) or too short (WPBSA cross-appeal)?

46. As at the hearing on 12 May 2014, I deal with the appeal and cross-appeal together.

47. Mr Lewis said in his 16 September 2013 decision (at paragraph 82): “[Player M] did not strike me as a cynical cheat, but rather as a weak man who under financial pressure, succumbed to the temptation to take improper steps that he may well have justified to himself as not really wrong, because the ultimate result of the match, win or lose, was the same.”

48. Then in his 24 September 2013 decision on Sanction and Costs (at paragraph 9) Mr Lewis said: “The fixing has not been established to have altered the end results of matches, and it seems likely that this is how [Player M] justified his actions to himself.”

49. Mr Lewis saw and heard Player M give evidence and those assessments of Player M and his conduct are consistent with the overall evidence in the case as now before me. I therefore must and do accept that view of Player M and his conduct.

50. That assessment does not nullify the powerful point made on this appeal by Mr Weston for the WPBSA, that no one watching snooker matches in which Player M were ever to play again would expect or could be expected to have confidence in the integrity of his play.

51. In paragraph 6 of his Sanction and Costs decision Mr Lewis expressly mentioned the damage to the sporting integrity of a contest and the effect on participants, spectators and television audiences. He clearly therefore had the point in mind. The WPBSA contends that he gave it insufficient weight.

52. The WPBSA position is not one of half-measures and follows from the powerful point I have just noted. In effect, it is saying that where a player is found to have been corrupt in his actual playing of the game of snooker, which certainly includes any deliberate attempt to lose a game or a frame, the protection of the sport by maintaining confidence in the integrity of competition can *only* be achieved by a lifetime ban.

53. Mr Weston referred me to the case of *Kaneria v The English & Wales Cricket Board Limited*¹ [2014] EWHC 1348. That was a case in which an Essex and Pakistan cricketer Danish Kaneria had been suspended for life by an ECB Disciplinary Panel for spot-fixing in

¹ Unusually, the title of the report is wrong as the defendant was “The England & Wales Cricket Board Limited”

connection with a one day match between Essex and Durham. That life ban was upheld on his appeal to an ECB Arbitral Panel. He then applied to the court under sections 68 and 69 of the Arbitration Act 1996. Under section 69 his application was for leave to appeal on a point of law, on the footing that the lifetime ban was “wholly disproportionate”. For leave to be given, section 69(3) (c) required (among other things) that on the basis of the findings of fact in the Arbitral Tribunal’s award, its decision was either: (i) obviously wrong; or (ii) at least open to serious doubt.

54. Hamblen J held that the decision of the Arbitral Panel to impose a lifetime ban was neither “obviously wrong” nor “open to serious doubt”. However, that only meant that it was a decision which was clearly within the range of reasonable judgments. The judge was not saying that only a lifetime ban would have been appropriate. In relation to the further requirement in section 69(3) (d) before leave could be given, he expressly held that it would not be “just and proper in all the circumstances” for the court to determine the question. That clearly indicated that he was expressing no view of his own as between a lifetime ban and any lesser ban. He was only saying that a lifetime ban was a reasonable, legitimate exercise of the discretion vested in a specialist cricketing Panel.
55. It may also be noted that another cricketer involved in the spot-fixing, who had bowled deliberately badly having agreed to concede 12 runs in his first over in return for financial reward, received a partly suspended 5 year ban. That has no direct bearing on Player M’s case but it does undermine the force of the *Kaneria* case so far as the WPBSA suggest that the case shows that *only* a lifetime ban can adequately deal with the “cancer that eats at the health and very existence of the game”, which is how the ECB Disciplinary Panel had characterised spot-fixing in cricket.
56. The WPBSA Members’ Rules now provide that corruption of this type should be met with a lifetime ban. However, that cannot affect Player M’s case, where suspension was one of the sanctions available under Rule 12 of the Disciplinary Rules but the period of suspension was entirely within the discretion of the tribunal in question.
57. Mr Lewis considered that a suspension for 12 years was sufficient as a deterrent. So far as deterrents are effective at all, it obviously is. A period of 12 years would have a devastating impact on any professional snooker player’s career. He also must have taken the view that it was sufficient as a punishment for Player M, particularly in the light of his view of Player M as noted in paragraph 82 of his 16 September 2013 decision. As a punishment its effect on Player M is severe and can certainly not be seen as unduly light.

58. While WPBSA's point about maintaining confidence in the integrity of the game is a powerful one, in the absence of any then applicable WPBSA rule removing or restricting Mr Lewis's discretion over the length of any Suspension, it would be going too far to say that a lifetime Suspension was the *only* appropriate way of sanctioning Player M's offences and that it was unreasonable to impose anything less.

59. I therefore hold that a Suspension for less than life was available to Mr Lewis as a matter of discretion, leaving the player some prospect of an eventual full return to the game. On that footing, the heavy Suspension for 12 years could not be seen as unreasonably low. If there was not to be a lifetime ban, it is hard to see what would have been achieved by a longer suspension than 12 years.

60. Just as I conclude that it was a proper exercise of Mr Lewis's discretion not to impose a life Suspension or any longer Suspension than 12 years, nor was it unduly harsh. Player M was an experienced and successful player, his offences were corrupt, as he must have known full well, and they were sustained over a period of more than a year. Player M also clearly could get no credit from Mr Lewis for acceptance of his wrongdoing, as he had maintained throughout (as he still does) that he had done nothing wrong at all.

61. I dismiss both Player M's appeal and the WPBSA's cross-appeal on the length of the suspension. The 12 year suspension therefore stands as ordered by Mr Lewis.

Appeal and cross-appeal on costs

62. The WPBSA claimed costs of £91,436.30 of the proceedings before Mr Lewis. He ordered Player M to contribute £40,000. Mr Lewis noted his discretion under Section 14.1 of the Disciplinary Rules to order Player M to pay some or all of the costs of those proceedings. He also expressly noted 14.3, which states that in exercising the discretion to award costs under 14.1 he "should have regard to the regulatory function of the Company Secretary and the Association and their duty to bring proceedings in accordance with these Disciplinary Rules keeping in mind the duties to safeguard and promote the interests and reputation of the Association, its members, the sport of snooker and billiards and the individual Member concerned".

63. Mr Lewis's decision on Sanction and Costs gives no reasons for his deciding to limit Player M's contribution to £40,000.
64. In appealing against even that £40,000, Player M's notice of appeal says that Mr Lewis wrongly failed to take account of the Appellant's means or ability to pay such an award or indeed the consequences.
65. I do not know if Player M's means were a consideration in Mr Lewis's mind when he ordered Player M to pay only £40,000 of the WPBSA's costs. Whether he did or not, the general approach is that the means of a party are not a relevant consideration in making the order for costs, however significant they may be for its practical enforceability. I can see no reason for any exception to that general approach in the present case.
66. There was no good reason for relieving Player M of more than half the WPBSA's costs. These were proceedings entirely caused by his own corrupt actions in flagrant breach of the WPBSA rules, as he knew. The WPBSA acted entirely responsibly in bringing the charges. It would have been irresponsible not to have done.
67. I do therefore regard the costs order of £40,000 as unreasonably low and not a proper exercise of Mr Lewis's discretion. It follows that I set it aside and substitute my own discretion. That course is open to an Appeals Committee under Section 12 of the Disciplinary Rules (and see Section 14.1, which makes it clear that "sanction(s)" in 12.1(j) includes costs orders).
68. My starting point is that it is Player M who brought about the proceedings and it is Player M who should bear the costs.
69. The costs of WPBSA for the proceedings before Mr Lewis have since been reduced from that figure of £91,436.30, as a result of negotiation between the WPBSA and its lawyers. At the hearing on 12 May 2014 the WPBSA submitted an updated Statement of Costs, showing a reduced figure of £86,072.78 (exclusive of VAT). Player M did not challenge the detail, though that is not easy for a party representing himself. While the breakdown of items in the Statement of Costs is not very detailed, neither the individual items nor the overall figure appear higher than would be expected for what was a heavy case involving the compilation and detailed analysis of material to show betting patterns, telephone communications, use of computers and money payments.

70. I do make a broad adjustment in line with common practice in assessment of costs as between parties. The result is that I order Player M to pay £75,000 in substitution for the £40,000 ordered by Mr Lewis.

Result of this appeal and cross-appeal

71. The result of my decision is:

- (1) Player M's appeal is dismissed completely.
- (2) The WPBSA's cross-appeal for a life suspension is also dismissed.
- (3) The contribution which Mr Adam Lewis QC ordered to be paid by Player M towards the costs of the proceedings before Mr Lewis as the Independent Disciplinary Hearing Board is increased from £40,000 to £75,000.

Costs of this appeal and cross-appeal

72. The parties should each send submissions in writing on the question of the costs of the appeal. Those submissions should be sent by email to Ms Joanna Parry at Sport Resolutions by 12 noon on Friday 30 May 2014. I shall then consider how to proceed in the light of those submissions, for example whether to hold a telephone hearing.

The effect of Player M's Suspension

73. By the express definition of "Suspension"/"Suspended" in Section 1 of the WPBSA Disciplinary Rules, the effect of Player M's suspension is that until 12 October 2024 he is not permitted to participate in any way in WPBSA activities or events recognised or organised by the Association, including but not limited by way of playing, officiating, management, organisation, administration or promotion.

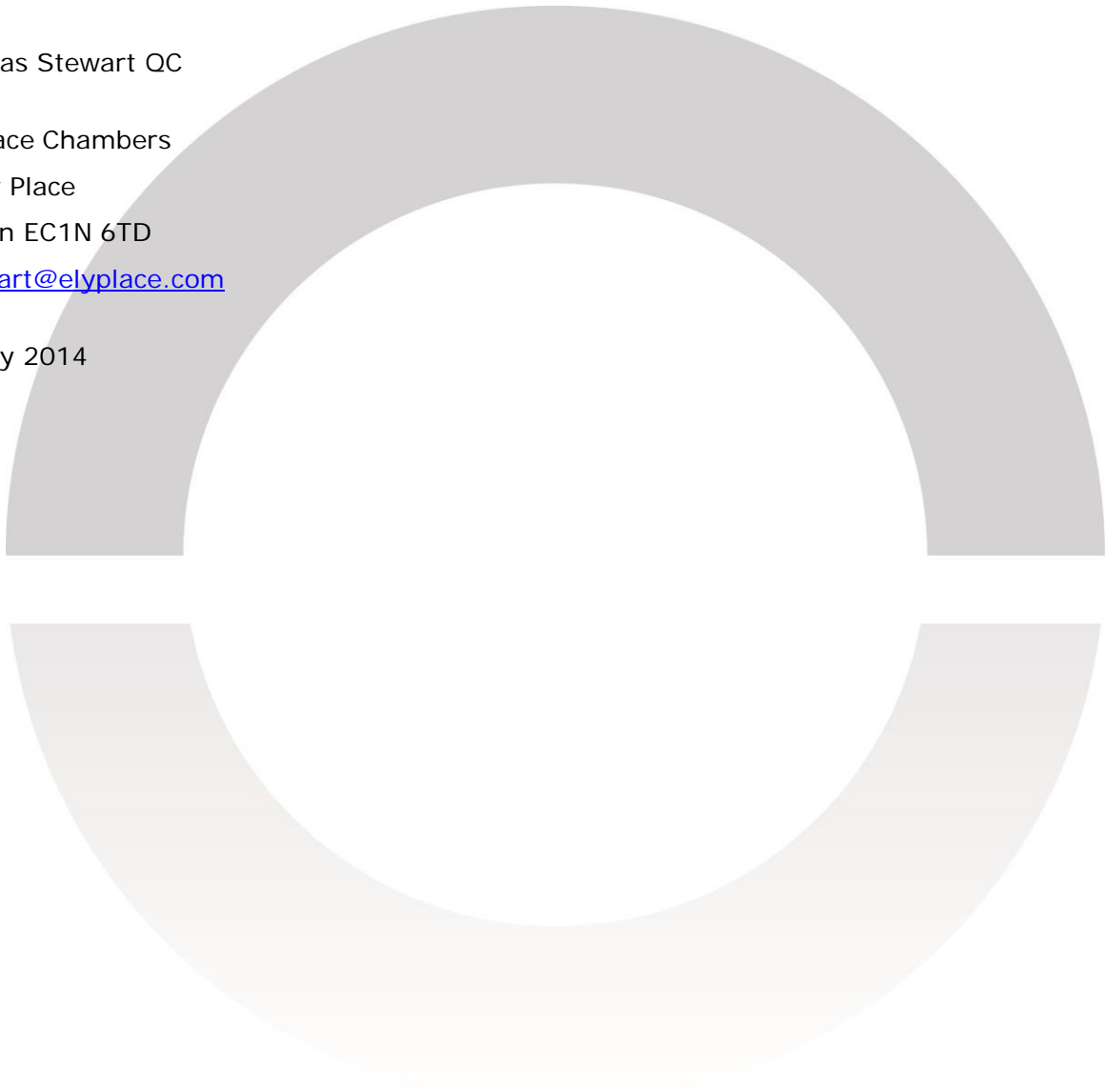


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15 May 2014





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