

**Output 2: Case Study Compendium**  
**Revised Summary Report of Case Study Material**  
**Sport Resolutions**  
**13 August 2018**

## Introduction

Sport Resolutions is the independent, not-for-profit, dispute resolution service for sport in the United Kingdom (UK). It was originally created in 1997 as the Sport Dispute Resolution Panel by the representative umbrella groups of sport in the United Kingdom to provide an expert, speedy, and cost-effective alternative to resolving conflict and disputes in sport. Sport Resolutions operates under the overarching principles of natural justice, fairness, transparency, independence and equality of arms.

Sport Resolutions provides sport specific arbitration and mediation services and operates the National Anti-Doping Panel (NADP) and National Safeguarding Panel (NSP). The organisation also provides Secretariat services to Independent Reviews. Sport Resolutions' expertise is in anti-doping, safeguarding, governance, regulation and integrity as it relates to sport. In this capacity Sport Resolutions has helped resolve numerous cases, some of which have been particularly significant. For example, in 2014 Sport Resolutions administered the first biological passport case, which involved a doping charge brought against a British cyclist.

Sport Resolutions' position as a world leading national sport dispute resolution service has resulted in the development of a unique bank of sport jurisprudence created over a 20-year period. We have drawn on this resource to produce the Case Study Compendium for the benefit of the Teaching Awareness of Ethical Governance (TAGS) in Sport Project.

## Case Study Compendium

### Overview

The case material was collated from Sport Resolutions' paper and electronic archives. The date range consulted was from 2001 to 2017. The cases were subsequently categorised thematically and as follows: Anti-Doping, Athlete Selection and Eligibility, Integrity and Discipline, and Regulation and Governance. The University of Gloucester assisted with the review of some of the cases that Sport Resolutions proposed to submit to the compendium.

Following the Partner Meeting in Olomouc in June 2018, the case material was re-categorised. The TAGS partners agreed that there needed to be a quick way to identify the cases in Project Output 2 to the Needs analysis survey results in Project Output 1 and to the issues contained in the teaching resource at Project Output 3. We have demonstrated this link in two ways. Firstly, through the inclusion of a needs analysis keyword in blue text at the top of each case summary and secondly, by adding a key to the integrity issues in the Case Study Compendium Index (Appendix 1).

The Case Study Compendium Index now includes a column called 'integrity issue reference'. The letter in this column corresponds to one of the themes identified at Output 3 (Appendix 2).

## Number of Cases

The Case Study Compendium is comprised of 40 cases administered by Sport Resolutions since 2011. 8 civil cases have also been included to demonstrate the link between civil law and sport. The civil cases were selected based on their general importance to Sport Law as well as their relevance to the TAGS project. A total of 50 cases currently make up the compendium.

The documentation that was submitted by the parties to the decisions, and which is referenced in some of the case decisions, such as witness statements, pleadings, selection policies, and the rules and regulations of national governing bodies has not been submitted to the case study compendium.

Further to the above, it should be kept in mind that the Anti-Doping Rules and Regulations referenced in the some of the Sport Resolutions decisions have been superseded by more recent regulations. For example, the 2009 UK Anti-Doping Rules have been superseded by the 2015 UK Anti-Doping Rules.

## Structure of the Case Decisions and Case Summaries

Each Sport Resolutions case includes a case decision as well as a case summary. Where possible we have included a decision for the civil cases together with a summary. Unfortunately, PDF versions of some of the civil law case decisions were not publicly available.

The case summaries are intended to provide a brief overview of their corresponding case decision. The case summaries are structured as follows:

- Summary
- Key Words
- Background Facts
- Reasoning and Decision of the Tribunal/Panel that determined the matter
- Learning Points

The summaries should be read alongside the decisions and should not be treated as a standalone document. The case decisions set out the details of the case and the reasoning of the tribunal/panel in full. The learning points are intended to facilitate discussion about the issues raised within a case decision.

The Sport Resolutions case material has been anonymised and redacted to protect the identities of the athletes and individuals concerned of the decision. It was

agreed between the TAGS partners that the sport would not be anonymised because of the jurisprudential value of disclosing the sport.

## Case Study Material

The case study material submitted to the case study compendium covers the following themes identified in Project Output 3:

- Legal Concepts and Principles
- Fair Sport – Justice and Fairness
- Doping – technical doping
- Health and Wellbeing
- Relationship between athletes and coaches
- Equal Opportunity – sex and gender, age, race, religion
- Fair selection of athletes
- Violence and aggression
- Corruption/commercialisation/match fixing/betting
- Other

Most of the case material relates to anti-doping. The anti-doping cases that have been selected cover a range of Anti-Doping Rule Violations (ADRV) such as, Presence of a Prohibited Substance or its Metabolites, Evading, Refusing or Failing to Submit to Sample Collection, Tampering or Attempted Tampering with any form of Doping Control, Trafficking or Attempted Trafficking in any Prohibited Substance or Method. The circumstances and issues arising in each of the decisions are wide ranging and cover matters such as athlete wellbeing (mental) health and relationships between coaches and athletes.

These cases also highlight the onerous obligation on athletes to undertake reasonable checks before consuming supplements. Ignorance of the presence of a Prohibited Substance in a supplement or product may not be enough to discharge all anti-doping obligations. Moreover, in presence cases, the evidential burden is on the athlete to provide an explanation as to how the substances entered their system (strict liability principle).

## Civil Cases

The civil cases selected for the Case Study Compendium include a mixture of UK and EU cases and were selected to demonstrate the link between civil law and sport. The cases are listed below together with a brief description of the issues raised and their significance.

- *Porter v Magill* [2001] UKHK 67

This case established the modern UK law definition of apparent bias. The issue considered by the court in this case was whether the findings of an audit into the accounts of Westminster City Council could be quashed because comments made by the auditor appeared to be biased. This case established the two-stage test for apparent bias, which is whether the fair minded and informed observer would conclude that there was a real possibility of bias considering all relevant circumstances.

- *The FA v David Moyes* [2017]

David Moyes was charged with misconduct following comments he made towards a female journalist which were alleged to be improper and/or threatening and/or brought the game into disrepute. This case also discussed the issue of bias as a principle of natural justice.

- *Modahl v BAF* [2001] 1 WLR 1192

The case of Diane Modahl v British Athletics Federation led to the establishment of the Sports Dispute Resolution Panel (now Sport Resolutions). Ms Modahl and the BAF were both in significant financial difficulty after the case, and it was recognised that an organisation was required to provide an expert, speedy and cost-effective alternative to resolving conflict and dispute in sport.

Modahl brought a claim in breach of contract and negligence against the BAF. The issues before the court concerned the apparent bias of the Disciplinary Committee convened to determine her doping charge and whether a contractual relationship existed between Modahl and the BAF.

- *Bradley v Jockey Club* [2004] EWHC 2164

The circumstances in this case involve allegations of match-fixing. Bradley argued that the penalties imposed on him by the Disciplinary Committee that determined his case were disproportionate and unlawful and significantly affected Bradley's livelihood as a bloodstock agent.

- *Meca-Medina* [2006] ECR I-6991

This is an important EU case which established primacy of EU law over sport federations. The claimants in this case, two swimmers, argued that the anti-doping rules of the International Olympic Committee and FINA were incompatible with EU competition rules and the freedom to provide services.

Prior to this case, a sporting rule, which had an economic effect, was immune from application of EU law because it was a sporting rule.

- *Donà* [1976] Case 13/76

*Donà v Mantero* is the oldest case included in the compendium. The matter was referred to the Court of Justice of the European Union for interpretation by an Italian Court in Rovigo. At issue was whether certain rules of the Italian Football Federation were compatible with Articles 7, 48 and 59 of the EEC Treaty<sup>1</sup>. *Donà* held that not every rule concerning sporting activity is affected by the EEC Treaty.

- *Union Royal Belge des Sociétés de Football Association v Jean-Marc Bosman* [1995] C-415/93

This case established what is known as the 'Bosman rule', which permits out-of-contract players to transfer to a new club without the need for a transfer fee to be paid. Bosman was a Belgian national who wished to transfer from his Belgian Football Club to a French Club. The two clubs agreed a contract. However, the Belgian club doubted the ability of the French club to pay the transfer fee. As such, the Belgian club never requested the transfer certificate from the Belgian national football association. The certificate was required to complete the transfer. Bosman was subsequently suspended from the Belgian Football Club and unable to play the entire season.

- *R (on the application of Darsho Kaur) v (1) Institute of Legal Executives Appeal Tribunal (2) Institute of Legal Executives* [2011] EWCA CIV 1168

The *Kaur* case raised the issue of due process and apparent bias in disciplinary proceedings. Kaur was subject to allegations of cheating in exams and the Disciplinary Tribunal and ILEX Appeal Tribunal convened to determine her case, comprised ILEX council members and the vice-president. Kaur contended that this was in breach of the doctrine that no one may be a judge in his/her own case and/or of apparent bias.

## Conclusion

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<sup>1</sup> Now known as the Treaty of the Functioning of the European Union (TFEU).

The Case Study Compendium is comprised of a selection of cases that Sport Resolutions has helped resolve since 2011. The civil cases that have been selected are limited to the UK and EU and are intended to show a link between civil law and sport. The Sport Resolutions' cases were categorised thematically and then chosen based on their relevance to the TAGS project. The final collection of cases is a unique source of material that has been made available for the benefit of the TAGS project.

## Appendix 1

### Case Study Compendium Index

<b>Case No.</b>	<b>Case Name</b>	<b>Description of Integrity Issue</b>	<b>Key to Integrity Issue</b>
Case 1	UK Anti-Doping v Athlete J	Refusal to Submit Horse to Sample Collection	D, F
Case 2	UK Anti-Doping v Athlete N	Presence Prohibited Substance	D, F
Case 3	Athlete N v UK Anti-Doping (Appeal)	Presence Prohibited Substance, Appeal of First Instance Decision	D
Case 4	UK Anti-Doping v Player A	Refusal or Failure to Submit to Drug Testing	D, E,
Case 5	Pilot A & Others v British Parachute Association	Procedural Unfairness and Discrimination	G
Case 6	UK Anti-Doping v Player C	Presence of Prohibited Substance	D
Case 7	Player C v UK Anti-Doping (Appeal)	Presence of Prohibited Substance. Appeal of Case 7 Decision	D
Case 8	UK Anti-Doping v Player A	Possession and Trafficking of Multiple Prohibited Substances	D
Case 9	UK Anti-Doping v Athlete S	Presence of Prohibited Substance	D
Case 10	UK Anti-Doping v Player A and Player B	Presence of Prohibited Substance and Tampering	D, C
Case 11	UK Anti-Doping v Player J	Presence of Prohibited Substance	D
Case 12	UK Anti-Doping v Athlete L	Presence Specified Substance	D
Case 13	UK Anti-Doping v Athlete O	Presence of 3 Prohibited Substances	D
Case 14	UK Anti-Doping v Athlete I	Presence Specified Substance	D
Case 15	Athlete I v UK Anti-Doping	Presence Specified Substance. Appeal of Case 15 Decision	D
Case 16	ITF v Player B	Refusal to Submit to Blood Sample Collection	D, E
Case 17	UK Anti-Doping v U	Anti-Doping Rule Violation committed by Athlete Support Personnel	D
Case 18	UK Anti-Doping v Coach F	Lifetime Ban	D, F
Case 19	UK Anti-Doping v Athlete R	Athlete Biological Passport Programme	D
Case 20	UK Anti-Doping v L and Athlete Q	Possession and Trafficking of Prohibited Substance	D
Case 21	Athlete Q v UK Anti-Doping	Possession and Trafficking of Prohibited Substance. Appeal of Case 21 Decision	D
Case 22	UK Anti-Doping v Athlete H and Athlete T	Presence of Prohibited Substance	D



Case 23	ITF v Player G	Eligibility Decision Appeal – 2015 Davis Cup	I, B
Case 24	Athlete Y v British Canoe	Selection Appeal – 2012 London Olympic Games	I
Case 25	Athlete E v British Shooting	Selection Appeal – 2012 London Olympic Games	I
Case 26	Athlete D v British Swimming	Selection Appeal – 2012 London Olympic Games	I
Case 27	British Team v British Amateur Gymnastics Association	Qualification Appeal – 2012 London Olympic Games	I
Case 28	Athlete K v British Bobsleigh	Selection Appeal – 2014 Sochi Winter Olympic Games	I
Case 29	Athlete T v British Swimming	Selection Appeal – 2012 London Olympic Games	I
Case 30	Athlete C v British Swimming	Selection Appeal – 2012 London Olympic Games	I, F
Case 31	Athlete W v National Ice Skating Association (1)	Selection Appeal – 2014 Sochi Winter Olympic Games	I
Case 32	Athlete W v National Ice Skating Association (2)	Selection Appeal – 2014 Sochi Winter Olympic Games	I
Case 33	ITF v Player P	Aggravated Behaviour	J
Case 34	WPBSA v Player B and Agent N	Match Fixing	L
Case 35	WPBSA v Player K	Betting Misconduct	L
Case 36	Player M v WPBSA (1)	Match Fixing (1)	L
Case 37	Player M v WPBSA (2)	Match Fixing (2)	L
Case 38	Royal Yachting Association v Member E and Member F	Gross Misconduct	C
Case 39	Coach B v ITF	Breaches of Welfare Policy	J
Case 40	BUCS v University A and University B	Misconduct: submission of false scores	C

## Appendix 2

### **Output 3: Themes**

Teaching Week	Output 3 'integrity issue' Themes	Reference
1	General Overview of Ethics and Axiology	A
2	Legal Concepts and Principles	B
3	Fair Sport – Justice and Fairness	C
4	Doping – technical doping	D
5	Health and Wellbeing a. Post-career support/athlete transition b. Mental Health c. Concussion and brain injury	E
6	Relationship between athletes and coaches	F
7	Equal Opportunity – sex and gender, age, race, religion	G
8	Harassment	H
9	Fair selection of athletes: a. Talent identification and early specialisation	I
10	Violence and aggression	J
11	Cultural Differences in sport ethics – betting	K
12	Corruption/commercialisation/match fixing/betting	L
13	Other	M