



Hewitsons Sport

LEGAL UPDATE

Absolute Client Focus

Our Sports Group has a long-established record of advising sports-related organisations including lottery distributors, sports administrators, national governing bodies, sports clubs, charities and trusts.

We work with sports organisations across numerous disciplines including tennis, shooting, ice skating, taekwondo, golf and ice hockey and represent a number of disability and Paralympic organisations.

For information on the many services we provide, please visit our [website](#).

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Partner

20/20 for 2020 - Some Governance Checks for Governing Bodies Before Tokyo

Where has all the time gone? The Tokyo Olympics will soon be upon us. The main focus, of course, is on training and performance in the quest for medals. Governing Bodies would be prudent, however, to review their governance at this stage, so that this does not come back to haunt them at the crucial moment.

In London 2012, for instance, there was the high-profile selection appeal by Aaron Cook in Taekwondo, which must have put additional pressure on the selected athlete, Lutalo Muhammad. To his great credit, he went on to win bronze, but what might he have achieved without this controversy in the weeks before the Games?

Just prior to Rio 2016 an enquiry was instigated into British Cycling as a result of complaints made by Jess Varnish (supported by Paralympic gold-medalist Darren Kenny) following her non-selection for the Games. Although the subsequent enquiry did not report until well after the Games, the complaints led to the Technical Director (formerly Head Coach), Shane Sutton, stepping down almost immediately (even though he disputed the claims). Once again, it is a credit to the athletes in the Cycling Team that they performed so well notwithstanding all this, and the attendant publicity.

Two aspects should be borne in mind. Firstly, there is an obvious risk that performance can be affected by any controversy and/or adverse publicity, irrespective of the merits. Secondly, newspapers and other media are hungry for Olympic-related news in the weeks prior to the Games, and any controversy of this sort is likely to be played out in the full media spotlight. In short, performance and governance are inextricably linked, and both are of the utmost importance. This is

particularly so, of course, following the new Governance Code, where public funding is not only dependent on medals won, but also on compliance with the Code's governance requirements.

What should be done now? In addition to any requirements imposed by the British Olympic Association:

- **Athlete Welfare:** Do not wait until a disappointed, non-selected, athlete complains just prior to the Games. As the pressure rises on athletes to raise their performance, the behaviour of coaches and others must be supervised appropriately and, where necessary, questioned. "Good luck with that", you may be thinking, but the fact that something is difficult does not absolve the Governing Body of its safeguarding responsibilities, nor should any coach in the modern era question the need for this.
- **Selection Procedures:** All written selection procedures should be carefully reviewed to ensure that they remain appropriate and comply with best practice. Selectors must be provided with a copy beforehand and instructed on the correct procedures. Consideration should be given to having a non-voting procedural adviser (e.g. a solicitor or barrister experienced in this field) present at any Olympic selection meeting to ensure that the Procedure is followed to the letter. After all, Olympic selection is the most likely of all selections to be challenged, there can be a great deal of money riding on it for athletes (and their sponsors), and the cost and reputational damage of a contested selection appeal can be substantial.
- **Team Discipline:** The terms of written agreements with selected athletes should be reviewed, in particular to ensure that any social media requirements, and any restrictions on contacts with the Press and others, are up to date.

There is only one thing to add, with less than a year to go and counting, "Come on Team GB...!"

For more information on any of the points mentioned above, please get in touch with the our Sports Group by [clicking here](#).



Christine Bowyer-Jones
Partner

Confidentiality agreements in contracts

It is essential that sports organisations are aware of the importance of maintaining confidentiality, particularly as leaks can have a detrimental impact on the cohesion and performance of a team. Once confidential information (such as team selection, training methods, set moves or tactics) is disclosed, the damage will already have been done, and the ability for an organisation to discipline employees, athletes, volunteers and others can be limited.

The messy circumstances come to mind in which Kevin Pietersen's international career ended in 2014 in view of the contents of his texts to members of the South African Cricket team during their 2012 series with England (including, so it was claimed, advice on how to get one his team-mates out). The growth of other social media since that time, and its use by players and others (including opposition teams and journalists), only serves to increase this risk.

By being transparent and upfront about an employee's duty not to disclose sensitive information outside the organisation, organisations can help reduce the risk of such issues arising, and simplify the disciplinary process if they do. Organisations and employers should regularly remind their employees of their duty



Thomas Leach
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of confidentiality and the need for it. Having a properly drafted contract with robust confidentiality clauses will help reduce the risk of confidential information leaving an organisation. When situations arise where it is necessary for information to be disclosed outside the organisation, clubs should consider standalone, bespoke agreements, specific to the circumstances. Whilst those being asked to sign such agreements may have the right to refuse, the consequences of doing so may, in practice, make refusal unlikely. Refusal by an athlete, for instance, to sign an Athlete Agreement for a particular event will usually result in the athlete's selection for that event being overturned.

Organisations should also try to implement and train employees in standard, clear procedures when it comes to entering into commercial relationships, for example exercising caution with the information disclosed in the early stages of negotiations, restricting early pre-disclosure meetings to essential attendees only and/ or requiring those involved to sign a non-disclosure agreement. These can further protect the dissemination of sensitive information.

For further information on this topic, or assistance with drafting confidentially agreements and reviewing employment or other contracts in the sporting field, please contact a member of our Sports Group by [clicking here](#).



Kasia Reda
Solicitor

The rise of E-Sports – is governance keeping pace?

The last decade has seen the swift (and some would say surprising) rise of the E-Sports industry with global revenue increasing to 1 billion dollars in 2019. Media rights, ticket sales and merchandise make up a large chunk of this income, while almost half of it is brought in by sponsorship deals. Many organisations have jumped onto the ever-growing E-Sports bandwagon, with US colleges now offering E-Sport scholarships and establishing E-Sport teams (which can make their universities millions from participating in gaming tournaments). In addition, the IMG Academy, a prominent school for traditional sport athletes, has established an E-Sport training program. Clearly, the world of E-Sports is not disappearing any time soon.

Being an increasingly popular spectator sport, with a huge amount of fans attending gaming events or watching online, E-Sport organisations will be keen to ensure their star players are not tempted to jump ship. Just as in traditional sports, contracts with players will need to take account of a number of key points including whether a player will be tied to a team or competition. Equally, how a player is paid is important and, for example, whether this should be tied to streaming revenue, or prize money won. If playing in a team, how will the prize money be allocated between players? One will also need to address what rights players will have when it comes to entering into sponsorship deals with other brands. However, as crucial as these discussions are, the welfare of players must equally always be a priority, and codes of conducts (just as in traditional sports) may need to be drawn up by organisations to ensure this. Such codes will also

assist with policing what players can and cannot post online - with online player presence already huge in the industry, players' social media usage will likely be a key concern for gaming organisations.

Of course, with such fast-paced growth comes the issue of how the industry should (or can) be governed, and how its integrity can be preserved. Where an integrity issue presents itself in most traditional sports, there is an established structure to manage it, and cases can, should the need arise, be taken all the way up to the Court of Arbitration for Sport. Although there is work being done to resolve this, currently no such uniform structure exists in the world of E-sports, which leaves it open to the risk of corruption. This is a particular concern in regard to the betting market and match fixing, with the amount being gambled in E-sports competitions in many cases seriously outweighing the prize money at stake. Although these concerns are being addressed, the industry still has a long way to go before its governance and administration catches up with that of traditional sports.

For more information on any of the points mentioned above, please get in touch with the our Sports Group by [clicking here](#).



Charities in a world of risk seminar - 26th September

Charities face so many challenges and potential risks that sometimes it can be hard to remain effective and focused on their cause. Join us as we hear from experts in managing these risks, and share your experiences with other senior charity professionals.

The seminar, hosted in London, will provide an opportunity for guests to hear from and ask questions to our specialist speakers, including Chris Knight of Hewitsons, Amanda Francis of Buzzacotts and Danny Steed of ReSolve Cyber. Together they will be discussing:

- The reason for success or failure: Governance
- Finance and operational risk: the heart of the matter
- Cyber threats: a very modern problem

The seminar is free to attend and will start promptly at 5pm (registration and refreshments from 4.30pm). To reserve a place at this seminar, please contact Hewitsons' events team on 01223 447400 or email events@hewitsons.com

For more information on the information shared in this update please contact a member of our [sports team](#).



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