



## SPORTS LEGAL UPDATE

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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](#).

### In this issue:



Edward Wheen  
Partner

### Duty of care in sport

Larry Nassar, the USA Gymnastics team doctor, has been sentenced to a minimum of 40 years in prison for abusing young athletes over many years. No fewer than 156 women gave evidence of being abused by him. This case has identified fundamental and repeated failures by the governing bodies of various American sports over many years. It has also highlighted the vulnerability of young athletes, and their reluctance to speak out, partly as a result of justified concerns that they will not be believed. It is likely that this case will serve as a powerful force for change in American sport, something that UK Sport has also been seeking to address.

Dame Katherine Grainger, the new Chair of UK Sport, has taken up the challenge of improving athlete welfare, following the wide-ranging recommendations of Baroness Tanni Grey-Thompson's "Duty of Care" Review in April 2017. This extends well beyond sex abuse to all aspects of athlete welfare, including the prevention of bullying, the involvement of parents, giving bad news with appropriate tact, and the need to prepare for a life after top level sport. She firmly believes stronger support of athlete welfare will help performance rather than hinder it and, with five Olympic medals and a PhD in law, she is well qualified to give that view. In any event, it is something that must be done. How is it to be achieved?

In relation to publicly funded sport, of course, there is the threat of removal of funding if appropriate steps are not taken. In relation to all sport, there is also the very real risk of athletes, or ex-athletes, bringing claims. One of Nassar's victims made the point to him, whilst giving evidence, "*...little girls don't stay little forever. They grow into strong women to destroy your world*".

Effective though such messages may be, hearts and minds are rarely changed by the threat of sanctions. Publicising and learning from the mistakes of the past is a powerful impetus, but the

key is for all those involved in sport to be persuaded of the connection between athlete welfare and performance benefits. On the face of it, it is obvious, and it need not undermine the authority of the coaching staff.

It must be better to be proactive in this, than to react only after a complaint has been made. In the words of Otto von Bismark (after translation no doubt) "*Only a fool learns from his own mistakes. The wise man learns from the mistakes of others*".

For more information about Duty of Care or any other matters of sporting governance, please contact [Edward Wheen](#), [Ben Moorhead](#) or [Christine Bowyer-Jones](#) in our Sports team.



[Mark Elmslie](#)  
Partner

### **Protecting your good name**

Amongst the many intellectual property issues which can arise for businesses of all kinds, including sports organisations, is the protection of their name. This is something that is often taken for granted, but the choice of name for any business or entity is a key decision. This can also apply to brand names for goods and services marketed by a business. Brand and business names can be amongst the most valuable assets of any undertaking. They should be protected, and the best way to do so is by registering the name as a trade mark at the Intellectual Property Office.

It is just as important, when choosing the name or the names of a product or service offered by a business, to avoid inadvertent use of the names and rights of others. Clearance checking is relatively straightforward and cost effective but, like registration, it requires expert input.

There are good reasons to both clear names before use and to register them. Trade marks are badges of origin; they perform a vital function in telling the public who is offering the services or selling the goods in question. So they need to be protected by registration. Failure to clear a mark for use and subsequent advertent use of someone else's trade mark can lead to disputes and even litigation, as well as the need to start all over again in coming up with a new name.

Hewitsons IP team has many years of experience in handling IP matters. Whilst we can advise on and undertake trade mark filing, searching and clearance; it is more cost effective to use specialist trade mark or patent attorneys for this task. We have a close working relationship with a number of such firms and will be pleased to find the right one for particular client needs.



[Christine Bowyer-Jones](#)  
Partner

### **Sporting Future - Second Annual Report**

At the end of January, the Government published its second annual report following the launch of its *Sporting Future* strategy in 2015. The report covers, among a number of topics, progress made in the last year on sports governance, anti-doping and duty of care.

**Sports governance:** since the publication of the Code for Sports Governance (the Code) in October 2016, Sport England and UK Sport have been working with organisations in receipt of public investment to assess their compliance with the requirements of the Code and to support them in moving

towards full compliance if gaps exist. Having set a deadline of 31 October 2017 for NGBs of sport to comply, in December 2017 Sport England and UK Sport confirmed that 55 out of 58 sports to have been assessed had been judged to be compliant. Three bodies are taking action to be compliant by April 2018. The report issues a reminder that while sports will be given a period allowing for remedial action, continued non-compliance will be met with the removal of public funding.

**Anti-doping:** the report refers to the two reviews undertaken in 2017 to assess the UK's efforts in combating doping in sport and protect the integrity of sport. The first, the Review of Criminalisation of Doping in Sport which was published in 2017, concluded that there is no compelling case to criminalise doping. However, a number of recommendations were made including allowing UKAD doping control officers to gain access to all sporting events to enable random testing at competitions as required. The second, the Tailored Review of UK Anti-Doping, was published on 30 January 2018. Some of the key themes that emerged during the Tailored review were the strong support and recognition by government for the work of UKAD, while recognising the need to ensure there is clarity on UKAD's role and that of government, law enforcement and sport; the importance of education in instilling clean sport values in young people and highlighting the health risks involved in doping; and the need for UKAD to be at the forefront of scientific developments. Following the Review, the government has announced that UKAD will receive an additional £6 million in funding over two years from the Department for Digital, Culture, Media and Sport.

**Duty of care:** the publication of Baroness Grey-Thompson's independent review into the duty of care in sport in April 2017 fulfilled a key action in the *Sporting Future* strategy and the report confirms that the government is considering its recommendations, including the establishment of a sports ombudsman. All sports are urged to implement the recommendations whenever they can, to demonstrate their commitment to developing a culture which protects the welfare of all those participating in sport. At elite level, UK Sport is working with NGBs to ensure they have clear policies for dealing with unacceptable behaviour, grievances and for whistle-blowing, to protect athletes, staff and coaches, to comply with the requirement under the Code to have appropriate policies and procedures in place to meet their legal and regulatory obligations.

To access a copy of the report, [click here](#).

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

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