

**INDEPENDENT REVIEW OF INTEGRITY IN TENNIS**

**CONSULTATION RESPONSE TO THE INTERIM REPORT**



**17 July 2018**

## **Introduction & Background**

1. Captivate Legal & Sports Solutions (**Captivate**) is a regulated legal consultancy providing bespoke legal and sports advice, representation and training to individuals and organisations who want optimum levels of expertise and certainty to match their resources.
2. Captivate's Principal Kevin Carpenter (**KC**) specialises in integrity, governance, disciplinary and regulatory matters in sport, having worked in these areas internationally for the past 8 years. During this time, he has worked for and with a range of stakeholders in sport including international federations (**IFs**), national governing bodies, clubs, players' unions, inter-governmental organisations and other interested public bodies.
3. KC has been privileged to have, and continue to, work with INTERPOL, the United Nations Office on Drugs and Crime (**UNODC**), the Council of Europe (**CoE**), the Keep Crime Out of Sport project (**KCOOS**), Fédération Internationale de Football Association (**FIFA**), the International Olympic Committee (**IOC**) and other international and national sports organisations on what we firmly believe is the greatest threat to sport today.
4. Working alongside this breadth and diversity of stakeholders who are implementing policies and strategies to combat the multifaceted threat of match-fixing, has provided KC with a unique insight as to the progress that has and is being made, and the significant challenges which still remain.
5. KC's most notable work in this field includes:
  - Working with FIFA's integrity department, first as an expert delivering training sessions as part of the FIFA/INTERPOL workshops around the world and then assisting with analysing evidence and drafting case reports for FIFA judicial bodies. These case reports led to three individuals being investigated and sanctioned for life for a variety of corruption offences related to match manipulation activities.
  - Engaged by a national governing body to advise their senior management, and work alongside their integrity officer, as regards allegations of match manipulation by individuals in relation to a fixture played in their highest league. KC led tripartite case management meetings between the governing body, the gambling regulator and law enforcement. 13 people have been arrested in connection with the allegations.
  - Acting as one member of a two-person emergency Ethics Panel for an international sports federation. This involved investigating allegations of corruption made against the IF's President, putting sensitive questions to him and making a formal report and recommendation to the IF's Executive Board.
  - Co-authoring the UNODC's 'Resource Guide on Good Practices in Investigation of Match-Fixing', which was published in the summer of 2016, and is still the only document of its kind in the world.

- Asked by the Badminton World Federation (**BWF**) to become a member of their new External Judicial Experts Group, which is a pool of external independent integrity experts (legal, medical, scientific, anti-doping) who are selected to be part of three-person Ethics Hearing Panels to hear and judge a particular case.
  - Being engaged by the IOC to deliver sports investigator training to international Olympic federations, alongside the global law enforcement agency INTERPOL, in Lausanne prior to the Rio 2016 Olympic Games.
6. The expertise and passion we have for keeping keep sport free from corruption, means we work closely with the CoE on sporting matters on a number of occasions:
- Developing strategic partnerships between all key stakeholders in the fight against corruption in sport as part of the KCOOS project.
  - Acting as Rapporteur for the CoE's 'International Conference on the fight against the manipulation of sports competitions' held at their headquarters in Strasbourg, France in September 2016, which involved government officials, law enforcement, senior officials from IFs and other strategic partners.
  - Continuing to advise the CoE on the promotion and implementation of their 'Convention against the Manipulation of Sports Competitions'.
7. Specifically in tennis, we have acted for and/or advised two professional tennis players:
- a) *Nick Lindahl* (2017/18) - Former professional tennis player who we successfully represented in resisting an application by the Professional Tennis Integrity Officers (**PTIOs**) / Tennis Integrity Unit (**TIU**) to the Court of Arbitration for Sport (**CAS**) to extend his period of ineligibility for match-fixing offences from seven-years to a life ban from the sport.<sup>1</sup>
  - b) *Nikita Kryvonos* (2016/17) – Professional tennis player charged with contriving the outcome of a match and failing to co-operate with a TIU investigation.<sup>2</sup> Upon being charged by the TIU, Mr. Kryvonos' lawyer asked us to provide both an initial legal opinion on the basis of the evidence provided so far by the TIU and overall strategic case advice.

### **Interview with the Secretariat to the Integrity Review Panel**

8. When the Independent Review was announced, Captivate offered its assistance to the Integrity Review Panel (**IRP; the Panel**) in February 2016. As a result, Kevin was invited by the Secretariat to the IRP to an interview as part of the consultation process (as set out and defined by the Terms of Reference). This interview took place on 06 January 2017.

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<sup>1</sup> 'Captivate successfully represents tennis player at the CAS in resisting match-fixing appeal', 12 February 2018 <http://captivatelegalsports.com/analysis-publications/captivate-successfully-represents-tennis-player-at-the-cas-in-resisting-match-fixing-appeal/>

<sup>2</sup> 'Nikita Kryvonos suspended for 10 years and fined \$20,000', Tennis Integrity Unit, 18 May 2017 <http://www.tennisintegrityunit.com/media-releases/nikita-kryvonos-suspended-10-years-and-fined-20000>

9. The main points and recommendations Kevin made to the Secretariat during that interview were:

*Tennis Integrity Unit*

- a) A more rigorous disclosure process under the Tennis Anti-Corruption Program (**TACP**);
- b) Flexibility to allow for a three-person first instance panel for the more serious/complicated cases;
- c) First instance decisions should be published;
- d) Tennis Integrity Unit (**TIU**) needed more investigators;
- e) TIU should de-centralize and have regional offices, with at least three officers per region;
- f) The TIU should not be staffed primarily by ex-law enforcement officers; and
- g) The TIU would benefit from having a betting expert in-house.

*Structure of professional tennis*

- h) Tennis should re-define what is meant by a “professional” player;
- i) Have a regional development pathway to limit the amount of travelling undertaken by players on low incomes; and
- j) Distribution of prize money needed to be addressed because it is clear from the limited amount of research that those participants paid the lowest money are the most susceptible to corrupt approaches.

*Relationships with other actors/stakeholders*

- k) The key to developing relationships with other agencies is to foster trust on a personal level – this should be the responsibility of the most senior person in the TIU, who should not be carrying out investigations, as is currently the case with the TIU Director;
- l) To improve relationships with law enforcement, the TIU should be more involved with INTERPOL, European Union Agency for Law Enforcement Cooperation (**Europol**) and ASEANAPOL;
- m) In favour of emboldening a group of national platforms so as to develop a protected information and intelligence sharing system; and
- n) Although gambling operators will often report suspicious betting to protect their own commercial interests, it is important to involve them in integrity discussions.

*Education*

- o) There is too much emphasis by sport integrity units of player education being the primary solution - players know that corrupt activity is wrong, and do not need to be subject to extensive education as a result.

### Response to the Interim Report & the IRP's Recommendations

10. In addressing the Interim Report (**IR**) and providing our response, we first decided to analyse if and where the suggestions Kevin made had been reflected in the IR:

KC Interview	Mentioned in the IR?	IR Recommendation	IR Recommendation sub-heading	IR paragraphs
<i>Tennis Integrity Unit</i>				
More rigorous disclosure process under TACP	X	-	-	-
Flexibility for a three-person first instance panel	✓	<b>R10:</b> Disciplinary procedures under the TACP should be improved, to promote more effective integrity enforcement while safeguarding the rights of the accused	<b>(b)</b> Streamlined disciplinary procedures: the TACP's disciplinary procedures should allow for more timely and cost-effective adjudications, especially for more minor offences	303-314
First instance decisions should be published	✓	<b>R11:</b> The TIU's work should be subject to greater transparency, to promote public understanding and confidence	<b>(a)</b> Transparency of the TIU: the TIU should publicise the resolution of disciplinary proceedings, whatever the result	328-331
TIU needs more investigators	✓	<b>R4:</b> The TIU should be reorganised with more independence and greater capabilities	<b>(c)</b> The CEO should determine the TIU's organisation and staffing, to ensure adequate and diverse coverage of key competencies	147 151 241

KC Interview	Mentioned in the IR?	IR Recommendation	IR Recommendation sub-heading	IR paragraphs
TIU should decentralize and have regional offices	✓	<b>R4:</b> The TIU should be reorganised with more independence and greater Capabilities	<b>(c)</b> The CEO should determine the TIU's organisation and staffing, to ensure adequate and diverse coverage of key competencies	131 151 243
TIU should not be staffed primarily by ex-law enforcement officers	✓	<b>R4:</b> The TIU should be reorganised with more independence and greater Capabilities	<b>(c)</b> The CEO should determine the TIU's organisation and staffing, to ensure adequate and diverse coverage of key competencies	242
TIU should have an in-house betting expert	✓	<b>R4:</b> The TIU should be reorganised with more independence and greater Capabilities	<b>(c)</b> The CEO should determine the TIU's organisation and staffing, to ensure adequate and diverse coverage of key competencies	242
<i>Structure of professional tennis</i>				
Should re-define what is meant by a "professional" player	✓	<b>R2:</b> The organisation of professional tennis should be changed to better align player incentives	<b>(a)</b> The player pathway requires restructuring, to ensure sufficient financial incentives and prospects for progression	83-84 220-224
Have a regional development pathway	✗	-	-	85
Distribution of prize money so players lower down are paid better	✓	<b>R2:</b> The organisation of professional tennis should be changed to better align player incentives	<b>(a)</b> The player pathway requires restructuring, to ensure sufficient financial incentives and prospects for progression	83-84 117 220-224

<i>Relationships with other actors/stakeholders</i>				
Most senior person in the TIU should focus on developing relationships	✓	<b>R4:</b> The TIU should be reorganised with more independence and greater capabilities	<b>(b)</b> The TIU should be led by a CEO who is appointed by the SB	240
TIU should be more involved with regional and international law enforcement agencies	✓	<b>R12:</b> The TIU should broaden its cooperation with local tennis communities, national federations, law enforcement, and other third parties	<b>(b)</b> Coordination with law enforcement: the TIU should engage in cooperative relationships with law enforcement, pursuing provisional suspensions and, where possible, disciplinary proceedings in parallel with coordinated law enforcement efforts	336-338
Emboldening a group of national platforms so as to develop a protected information and intelligence sharing system	✓	<b>R12:</b> The TIU should broaden its cooperation with local tennis communities, national federations, law enforcement, and other third parties	<b>(a)</b> Regional TIU officers and agents: the TIU needs regional officers to establish closer relationships with local stakeholders, including national federations, law enforcement agencies, regulators, and officials	333
		-	<b>(b)</b> There should be ratification and implementation of the Macolin Convention and other international cooperative efforts to combat sports corruption	346-349

Important to involve gambling operators in integrity discussions	✓	<b>R1:</b> Limitations should be imposed on the sale of official live scoring data	<b>(d)</b> Impose contractual obligations on betting operators and data supply companies as a condition of the supply of official live scoring data	211 214
		<b>R9:</b> The TIU's investigative processes should be improved in several respects, to facilitate proactive investigations and to address the TIU's current backlog	<b>(a)</b> Betting alerts: with a betting expert on staff, the TIU should standardise the process for collecting betting data, collect all reasonably available betting data concerning the alert, and use betting alert data to inform investigations	295
<i>Education</i>				
Too much emphasis by sport integrity units of player education being the primary solution	✗	-	-	-



11. The remainder of this document will be our response to the issues highlighted in Sections VI (Nature and Extent of the Integrity Problem in Tennis), VII (Response of the International Governing Bodies and TIU to Integrity Issues) and VIII (Recommendations) of the IR.
12. We shall structure our response in line with a number of key themes/areas we have identified in the IR which we wish to comment upon.

### **Governance**

13. All of the areas and Recommendations in the IR of a governance nature, namely the processes by which decisions are taken, must be underpinned by the guiding principles of: transparency, accountability, neutrality, co-operation and proactivity.<sup>3</sup> The measures suggested by the IRP also put at the forefront of the TIU's reform the public law principle of the separation of powers.
14. The funding of measures has always been a contentious issue in the field of integrity in sport. In terms of the proper and secure funding of the TIU in **Recommendation 4 [IR para 245]**, in an ideal world the funding would come from sources independent to the sport to ensure the greatest degree of neutrality (independence). However, with no real appetite for a global sports anti-match-fixing body for all sport (i.e. similar to the World Anti-Doping Agency model), it is inevitable the funding will come from the International Governing Bodies of tennis, and therefore it is vital that the right checks be in place to ensure both the budget put forward, and the commitment to fund, are maintained.
15. We fully agree with the Panel that there must be an annual external audit of the TIU [**Recommendation 4, paras 246-248**]. As for how this should occur, we would consider having an audit committee which would include the recommended external auditor, but also contain a group of experts (individuals and/or organisations) covering such areas as sports governance, sports investigations, betting, communications etc. Given tennis is an Olympic sport, and the pyramid structure of Olympic sports, an organisation that could be part of the new audit committee is the IOC. We do believe the new SB should also be audited but not on as frequent a basis as the TIU. We would advocate the TIU being audited on an annual basis, while the SB be audited either every 3 years or in line with the term limits of those sitting on the SB board.

### **Transparency of the TIU**

16. A central principle of the rule of law, when applied in a sporting context, is that each participant within a sport must know their rights and any restrictions on those rights imposed by the regulations and the applicable law. In sport this means that the SGB must have all rules and policies online and available in print when requested. As regards publication on the SGBs website, these documents must be easy to locate. As a matter of

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<sup>3</sup> Carpenter, K. 'A blueprint for the future of sports governance', LawInSport, 16 July 2015  
<https://www.lawinsport.com/topics/sports/item/a-blueprint-for-the-future-of-sports-governance>

best practice and transparency, all rulings of the TIU's disciplinary body must also be published.

17. The publication and timing of any disciplinary action being taken by a sports governing bodies is always a contentious issue. There is a delicate balance to be found between transparency on one hand, and the need to provide those accused with their full rights, not to mention the adverse impact lots of investigations/charges can have on the public perception of corruption in the sport.
18. In the British Horseracing Authority's (**BHA**) recent Integrity Review<sup>4</sup>, the Review Team recommended that is publication of the disciplinary charge(s) be delayed until after the accused has had the opportunity to provide an initial response. This contrasts with the Panel's stated position that only final and binding decisions to acquit or sanction a Covered Person should be publicised. [**R11, paras 328-331**]

### ***Education***

19. When it comes to integrity / anti-match-fixing education, we would first like to clarify the statement KC made in his interview (see para 10.o) above). Education is undoubtedly an important part and tool of any comprehensive and holistic integrity program. However, in KC's experience, sports bodies have spent a disproportionate amount of their integrity budget on education measures, when compared to proactive disruption strategies. The latter are undervalued, governing bodies must appreciate that no matter how much you educate your participants, human nature sadly means there will always be people in their sport who will put integrity to one side and let greed get the better of them. In essence, sports organizations must bear in mind that education and awareness-raising should be seen as part of a comprehensive integrity strategy, not as an alternative to it.
20. In saying that, integrity / anti-match-fixing education can take various forms, from face-to-face and online training, to written materials (e.g. posters). The type of methods used should depend on the target audience and sports organisations should work with stakeholders, including player associations and trusted sports betting organisations, to make education relevant and to maximize its impact in a cost-efficient way.
21. Therefore, if there is to be an increase in in-person integrity education within tennis, we support **Recommendation 5** and stress the importance of any in-person training being delivered principally by regional officers in conjunction with national federations. [**paras 251-253**]
22. Participants should be made to complete an education programme before entering into a sport and to attend/complete regular refresher programmes. When it comes to the latter, for the same reasons as identified by the IRP of logistical and geographical obstacles, as well as costs, in a sport such as tennis, in-person training each year is not necessary in our opinion. Every three years should be sufficient, first to capture new participants to the

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<sup>4</sup> Integrity Review, British Horseracing Authority, March 2016 <https://www.britishhorseracing.com/wp-content/uploads/2014/03/REVIEW-Integrity-Review-22-03-16.pdf>

sport (who must complete online training prior to entering the sport at the professional level in any event) and to refresh those who have attended in-person training before, unless there have been significant changes to the TACP in which case in-person training should be delivered by regional officers / national federations outside the proposed three-year cycle.

23. The gap identified by the Panel in respect of the Tennis Integrity Protection Programme (**TIPP**), namely that it is currently only directed at players and not other participants such as officials, coaches, trainers, agents, or other Related Persons or Tournament Support Personnel [**R5, para 254**], really is a significant risk to the sport and should have been recognised and remedied long before this IR. Especially given there have been high-profile instances of umpires manipulating the sport.<sup>5</sup>
24. With the revamped and expanded TIPP, whether through in-person or online channels, in addition to formal refresher training, there should also be a rolling programme of repeated reminders, in particular offering practical advice and assistance to covered persons. To achieve this in an effective (i.e. engaging) manner, in addition to the channels suggested in **R5, para 255**, the TIU should utilise existing technology, in particular its own mobile application which is currently available for anyone to download.<sup>6</sup> This app also has a secure log-in area which could then, for example, send integrity notifications to the participants.
25. One group that I believe all stakeholders in the anti-match-fixing movement have failed to engage properly to care and take action regarding match-fixing are the general public, in particular the fans, especially when compared to other integrity threats such as doping. Therefore, I would urge the International Governing Bodies and the TIU to address this key question: how to “sell” integrity and clean sport to those people?<sup>7</sup>

### ***Controls of access to the sport***

26. We fully agree with the Panel’s recommendations for both robust registration [**R6, paras 256-258**] and accreditation systems [**R6, paras 259-260**] given that, as seen in horseracing in the United Kingdom, any kind of licensing process acts as a gateway where a sports organisation can screen individuals and protect and promote integrity in the sport. Furthermore, experience has shown (e.g. horseracing in the United Kingdom) that it is more effective to prevent a potentially corrupt person from entering a sport, than it is to detect and exclude someone once they have been licensed.
27. In implementing this **Recommendation 6**, we would like to see greater clarity from the IRP/TIU as to the difference in the two processes and which individuals involved in tennis will have to go through one or both processes.

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<sup>5</sup> Ingle, S. ‘Revealed: tennis umpires secretly banned over gambling scam’, The Guardian, 09 Feb 2016

<https://www.theguardian.com/sport/2016/feb/09/revealed-tennis-umpires-secretly-banned-gambling-scam>

<sup>6</sup> TIU News Tips and Rules, Google Play <https://play.google.com/store/apps/details?id=com.wearredrum.tiuapp>

<sup>7</sup> Carpenter, K. ‘The Floor To...’, INTERPOL Integrity in Sport Bi-Weekly Bulletin, 13-26 June 2016

<https://www.interpol.int/Media/Files/Crime-areas/Crimes-in-sport/13-26-June-2016/>

28. When the recommended de-centralisation of the revamped TIU is considered, in contrast, the need for a central registration and accreditation database [**R6, paras 263-264**] is vital for the effectiveness of the TIU's future operations. The TIU must seek to avoid the security issues that have recently blighted the World Anti-Doping Agency (**WADA**) and their database, as this would destroy the credibility of the revamped TIU in an instant. Consideration should also be given to allowing access to this key intelligence and information platform by relevant national integrity platforms and regional/international law enforcement agencies.
29. The use of an exclusion procedure is sadly lacking in the majority of sports and so we were very pleased to see this recommendation in the IR [**para 136; R6, paras 266-267**]. However, for such a procedure to be practically effective, not only must the list of "excluded persons" be made available to the relevant stakeholders, but there must also be close co-operation with law enforcement and it should be shared with other sports organisations, as it is very likely individuals seeking to corrupt sport will target one sport only.
30. Third-parties not covered by the TACP, who are summoned to disciplinary proceedings, must be informed of the potential consequences of engaging in the process and thereby submitting to the sport's jurisdiction.

### **Player welfare**

31. The Recommendation that the International Governing Bodies and the TIU should take proactive steps to safeguard players against online access and abuse [**R6, paras 261-262**] should be thought of first and foremost as a player (participant) welfare issue. It is a real and present risk to participants, as highlighted in the case involving Guillermo Olaso de la Rica.<sup>8</sup> The TIU Investigators revealed that on two occasions subsequent to the match in question Mr Olaso had sent an email to a confidential reporting address saying that he had been "*approached via Facebook*" to engage in corrupt activity.
32. As part of the TIPP there should be practical advice as to how participants should manage their online presence. Such simple steps would be: ensure any social media profiles are private, do not post specific locations where you are and do not allow people just to add or follow you (i.e. vet any requests).
33. The Integrity Review undertaken by the BHA found that there should be a strategic re-positioning away from prevention and deterrence (i.e. policing) to focus on the protection of the majority of participants who adhere to the Rules of Racing. This belief was driven principally by the experience from recent cases that corruption is often instigated by outsiders to the sport and the majority of participants are honestly complying with the rules.<sup>9</sup> Therefore, there will be a close relationship between the protection of clean and honest participants in tennis and the newly envisaged exclusion procedure.

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<sup>8</sup> CAS 2014/A/3467 *Guillermo Olaso de la Rica v Tennis Integrity Unit*, 30 September 2014

[http://www.centrostudisport.it/PDF/TAS\\_CAS\\_ULTIMO/156.pdf](http://www.centrostudisport.it/PDF/TAS_CAS_ULTIMO/156.pdf)

<sup>9</sup> See footnote 4

### ***Disruption***

34. Disruption is undoubtedly a vital tool in the TIU's toolbox, which should be exercised more frequently where it is appropriate, as recommended by the Panel. [R7, para 268] In this regard, we would like to draw the Panel to a little-known case from cricket.<sup>1011</sup>
35. Allegations of match-fixing arose in relation to the 2013 edition of the Bangladesh Premier League Twenty20 cricket tournament, with charges being brought against team owners, players, coaches and others.
36. Prior to the tournament, the national governing body and tournament organizer, the Bangladesh Cricket Board (**BCB**), had engaged the Anti-Corruption and Security Unit (**ACSU**) of the international governing body, the International Cricket Council (**ICC**), to take responsibility for all matters relating to betting integrity and match-fixing.
37. One of the main allegations after the tournament had taken place was that a team owner had told the coach of the franchise to deliberately lose a match so that they could make money on betting markets. The coach felt uncomfortable about this and reported the statement to the ICC's integrity officer at the tournament, saying he wanted to leave the country. However, the integrity officer asked the coach to stay in Bangladesh and secretly record any future conversations with the franchise owner to provide direct evidence that could be used to prove his involvement in fixing matches. As a result, the fixed match went ahead.
38. At the sports tribunal hearing, it was clear from the transcript and the testimony of witnesses that well before the fixed match was played, details of how the team in question would lose the match and who would or might be involved were known to the ICC ACSU. The tribunal disagreed with this course of action by the ICC and had this to say:
- This was a significant matter that should have been brought to the attention of the BCB and the law enforcement agencies in Bangladesh because corruption of this nature breaches domestic penal laws.
  - The emphasis of ACSU on gathering evidence and prosecution of offenders rather than on prevention of corruption could not be accepted by the tribunal as the correct approach to fight corruption in the sport.
  - The tribunal felt that the ICC as the sports regulator must take a more proactive approach towards prevention of corruption and that fixed matches should never be allowed to take place.
39. Overall, the tribunal found that there were no systems in place to deal with specific situations as they arose, there were no discussions with the BCB, no liaison with the local law enforcement authorities or consideration for the domestic laws of Bangladesh. It was also found there was also no consideration for the Bangladeshi citizens, in that a fixed

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<sup>10</sup> *Bangladesh Cricket Board v M. Ashraful and others*, Case No.1/2013 before the Anti-Corruption Tribunal of the Bangladesh Cricket Board, 8 June 2014 <https://www.thedailystar.net/sites/default/files/upload-2014/gallery/pdf/bpl-full-verdict-file-.pdf>

<sup>11</sup> 'Resource Guide on Good Practices in the Investigation of Match-Fixing', UNODC-ICSS, 2016 [https://www.unodc.org/documents/corruption/Publications/2016/V1602591-RESOURCE\\_GUIDE\\_ON\\_GOOD\\_PRACTICES\\_IN\\_THE\\_INVESTIGATION\\_OF\\_MATCH-FIXING.pdf](https://www.unodc.org/documents/corruption/Publications/2016/V1602591-RESOURCE_GUIDE_ON_GOOD_PRACTICES_IN_THE_INVESTIGATION_OF_MATCH-FIXING.pdf)

match was played before them, and that the fee-paying public was deceived by the regulators who are entrusted to prevent such deception.

### **Regulations**

40. It appears to me that the changes proposed by the Panel to the TACP are underpinned by two related notions: integrity and perception.<sup>12</sup> Both of which need to be preserved, and so, we agree with the Panel that the rules in tennis (and indeed in other sports) make it too hard to prove integrity offences and too hard to secure the cooperation required. [**R8, para 271**]
41. Therefore, we are fully in favour of the Panel's recommendation to remove the need for "benefit" or a "corrupt purpose" to prove an offence under the TACP, rather having it as an aggravated offence for sanctioning purposes, for all of the reasons set out in **Recommendation 8 [paras 157; 273-275]** This position is supported by the recent Arbitral Award of the CAS in *Joseph Lamptey v. FIFA*, where a referee was successfully banned from the sport without any benefit having been discovered or proven.<sup>13</sup>
42. We also support the introduction of a specific offence of playing while incapable [**R8, para 276**] given the unique threat of this conduct to tennis in contrast to other sports. However, the International Governing Bodies of tennis must assist players to avoid breaching this new rule by implementing the structural changes to the professional tours as also recommended by the Panel in the IR.

### **Standard of proof**

43. The standard of proof found in sport regulations is either the balance of probabilities (or preponderance of the evidence test) or the eponymous comfortable satisfaction test. This latter standard is a more exacting standard than the former but lower than the criminal standard of proof, given that the proceedings are disciplinary matters internal to the sport and therefore do not have the safeguards of a criminal procedure or stigma of a criminal conviction.
44. The CAS has said on a number of occasions that comfortable satisfaction should be used for all cases of sporting fraud/corruption due to the serious nature of the conduct, and the potential consequences (i.e. sanctions) if the charges brought against the accused are found to be proven.<sup>14</sup> Although the CAS recommends the use of the comfortable satisfaction standard of proof for match-fixing matters, it will uphold the lower standard of the balance of probabilities if a particular sport decides it is more appropriate, and the rights of the accused participant are properly safeguarded. Indeed, article 3.3 of the IOC's

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<sup>12</sup> Carpenter, K. 'No gambling permitted: how sports governing bodies regulate betting by athletes and "Connected Persons"', LawInSport, 22 April 2016 <https://www.lawinsport.com/blog/kevin-carpenter/item/no-gambling-permitted-how-sports-governing-bodies-regulate-betting-by-athletes-and-connection-persons>

<sup>13</sup> CAS 2017/A/5173 *Joseph Odartei Lamptey v. FIFA*, 04 December 2017 [https://resources.fifa.com/mm/document/affederation/footballgovernance/02/92/63/65/cas2017-a-5173josephodarteilampteyv.fifa\\_neutral.pdf](https://resources.fifa.com/mm/document/affederation/footballgovernance/02/92/63/65/cas2017-a-5173josephodarteilampteyv.fifa_neutral.pdf)

<sup>14</sup> CAS 2011/A/2625 *Mohamed Bin Hammam v. FIFA*, 19 July 2012 [http://www.tas-cas.org/fileadmin/user\\_upload/Award20262520\\_FINAL\\_internet.pdf](http://www.tas-cas.org/fileadmin/user_upload/Award20262520_FINAL_internet.pdf)

Olympic Movement Code on the Prevention of the Manipulation of Competitions states, "The standard of proof in all matters under this Code shall be the balance of probabilities, a standard that implied that on the preponderance of the evidence it is more likely than not that a breach of this Code has occurred."<sup>15</sup>

45. Having considered the preceding paragraphs, we would advocate a change to the standard of proof in the TACP to comfortable satisfaction. In our opinion this would strike the appropriate balance between the sport securing sufficient convictions on the evidence, whilst giving the accused the proper chance to present their defence given the cataclysmic effect a proven verdict and subsequent sanction will often have on their career.

#### *Reporting obligations*

46. In **paragraph 287**, the Panel states, "the TIU needs an effective mechanism of last resort for obtaining information about suspected integrity offences, even if no report is made. This should take the form of an easily accessible and secure method of reporting information anonymously to the TIU."
47. The TIU already has its own mobile application (as mentioned previously), but it does not appear to allow anonymous reporting. Therefore, in our view it would be most appropriate to firstly explore the possibility of the functionality of this app allowing such reporting. In addition, there are already a number of different integrity reporting systems/methods used in sport, so the TIU should also speak to those other sports to determine which other potential mechanisms are effective.

#### *Vicarious & joint and several liability*

48. The recommended expansion of both of these principles/rules in the TACP [**R8, paras 293-294**] is to be welcomed due to first the undoubted deterrent effect it will have, but secondly as an indirect way to target those corruptors outside the TIU's jurisdiction.

#### *Practical guidance*

49. The recommendation for an easily understood practical guidance document [**R8, para 272**] comes back to the rule of law point we made earlier in this consultation response. Such an approach is sadly lacking in the majority of sports and so the TIU has the opportunity to lead the way.
50. In formulating such a document, the TIU needs to consider the different ways in which people learn and take in information, namely: visual, auditory, reading/writing preference,

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<sup>15</sup> Olympic Movement Code on the Prevention of the Manipulation of Competitions, International Olympic Committee, 2018 [https://stillmed.olympic.org/media/Document%20Library/OlympicOrg/IOC/What-We-Do/Protecting-Clean-Athletes/Competition-manipulation/Code-Prevention-Manipulation-Competitions.pdf#\\_ga=2.4166259.233452579.1531830037-1209087184.1529940056](https://stillmed.olympic.org/media/Document%20Library/OlympicOrg/IOC/What-We-Do/Protecting-Clean-Athletes/Competition-manipulation/Code-Prevention-Manipulation-Competitions.pdf#_ga=2.4166259.233452579.1531830037-1209087184.1529940056)

and kinesthetic.<sup>16</sup> Producing a document and other materials which cover these four areas will have the greatest impact and effectiveness.

51. In addition to the actual content, consideration must also be given to the channels through which the practical guidance would be delivered to participants. Plainly just a written document would be insufficient. It would seem to us that using the aforementioned app would be a perfect vehicle to deliver the guidance, in particular because audio and video could be used to enhance the engagement and impact.

### **Investigations**

#### *Betting alerts*

52. Although we support the Panel's view that, along with employing a betting expert, the TIU must develop standard protocols governing what information betting operators are expected to provide upon a request being made [**para 106; R9, para 295**], through our experience in conducting and knowledge of investigations, here are other possible ways how to obtain betting information/intelligence:

- Check with any monitoring companies that have a contract with the TIU – in that regard, it is increasingly being seen as good practice for major sports to receive intelligence and reports from more than one betting monitoring company, with one such prominent example being in the *Lamprey* case, where FIFA "spontaneously, independently and simultaneously" received reports from five globally recognised bet monitoring companies and operators, which taken together provided the primary evidence to prove the referee's corrupt conduct to the CAS panel's comfortable satisfaction;
- Approach national betting regulators in the potentially relevant jurisdictions;
- Request assistance from betting trade associations, such as the European Sports and Security Association;
- Check with the International Olympic Committee's Integrity Betting Intelligence System (**IBIS**); and
- Consider making contact with niche betting operators, such as betting exchanges and spread betting operators.<sup>17</sup>

#### *Investigative protocols*

53. Perhaps the most surprising part of the IR for us was to learn that the TIU currently does not have standard processes for conducting its investigations. [**para 153**] This goes in part to explain the shortcomings in the TIU's approach we identified when representing Mr. Lindahl. That appeal was a stark reminder for governing bodies, and their integrity units, that the charges brought against a participant must be properly drafted and updated

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<sup>16</sup> 'All Students Are Created Equally (and Differently)', Teach.com <https://teach.com/what/teachers-know/learning-styles/>

<sup>17</sup> See footnote 11.



where new information comes to light (from whatever source) during the investigation. Such matters would be set out in standard operating practices for an investigative unit.<sup>18</sup>

54. In addition to the comments made by the Panel in **Recommendation 9, para 296**, when it comes to the collection, classification, storage, and access of information. the TIU must have at the forefront of its mind the many data protection requirements now in law, and what legitimate purposes they can lawfully rely on to fight corruption in tennis to the fullest extent.

Match footage

55. As regards the increasing use of match footage by the TIU, we thought it would be useful to expand upon the recommendation by the Panel. [**R9, para 297**]
56. Video footage of an allegedly fixed match or incident within a sporting contest can indicate that a fix has taken place. On rare occasions, such footage can constitute direct evidence of such. There are examples of cases where video footage is powerful evidence, including football matches in which the referee has seemingly made perverse decisions (e.g. an international football friendly between Nigeria v. Argentina played in Antalya, Turkey in 2011<sup>19</sup>) or in which a footballer has deliberately committed an act with the intention of being sent off (e.g. allegations made against former Motherwell player Steve Jennings in 2010<sup>20</sup>).<sup>21</sup>
57. In tennis, in the *Guillermo Olaso de la Rica* case<sup>22</sup>, the final piece of the evidential jigsaw came when another investigator employed by the TIU confirmed he had attended the matches alleged to have been thrown by Mr. Olaso, having watched him play on many previous occasions, with the investigator confirming Mr. Olaso's performance was inconsistent both with the relative standard of his opponent and his usual behaviour.<sup>23</sup>
58. However, it must be borne in mind that in most cases the footage is likely to be inconclusive because of the small margins of error for skilled participants in high-level sport. Therefore, it is essential that expert evidence is obtained in relation to any footage that exists of an alleged fix. When selecting an expert to view a match-fixing incident, the

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<sup>18</sup> Carpenter, K. 'Proportionality of athlete sanctions - A review of the Nick Lindahl match-fixing case', LawInSport, 09 March 2018 <https://www.lawinsport.com/blog/kevin-carpenter/item/proportionality-of-athlete-sanctions-a-review-of-the-nick-lindahl-match-fixing-case>

<sup>19</sup> 'Football match-fixing history: referees guilty of fixing final scores in high-stakes games', *The Telegraph* online, 23 June 2014 <https://www.telegraph.co.uk/sport/football/world-cup/10918404/Football-match-fixing-Referees-guilty-of-fixing-final-scores-in-high-stakes-games.html>

<sup>20</sup> Edwards, L. 'Motherwell match-fixing investigation: the facts', *The Telegraph* online, 06 October 2011 <https://www.telegraph.co.uk/sport/football/players/wayne-rooney/8811565/Motherwell-match-fixing-investigation-the-facts.html>

<sup>21</sup> See footnote 11

<sup>22</sup> See footnote 8

<sup>23</sup> Carpenter, K. 'Match-fixing case law update: important lessons from Olaso, Blake and Vanakorn', LawInSport, 08 September 2015 <https://www.lawinsport.com/blog/kevin-carpenter/item/match-fixing-case-law-update-important-lessons-from-olaso-blake-and-vanakorn>

first requirement will be an in-depth knowledge of the rules of the sport. It is then imperative that any possible conflicts of interest are taken into account to ensure the individual proposed for the role are, as far as is possible, independent and that they have no previous connection with the team or players involved. Once the expert has reviewed the event, a written statement should be taken from the expert.<sup>24</sup>

### *Use of intelligence*

59. Being proactive is the best way in which to protect the integrity of any sport, and central to that is the use of information and intelligence, as it is the lifeblood of any anti-corruption programme. The experience of some sports, notably horseracing and cricket, has demonstrated that the Panel's recommendation in **R9, para 300** as to the gathering, analysis and dissemination of intelligence, means patterns of activity can be identified to target suspected corruptors.
60. We would specifically like to highlight this statement from the Panel, "A robust system for collecting and exploiting its available intelligence should greatly facilitate the TIU's efficient use and allocation of its resources." Implementing the Recommendation will undoubtedly incur a significant capital outlay in the beginning, making the TIU's work more effective (most importantly), but will also lead to cost efficiencies in the medium-to-long term.
61. One final point from us regarding the gathering and use of intelligence, which also leads into the Panel's recommendations on disciplinary procedures, is that all of the evidence produced for sport's disciplinary proceedings must be above all reliable and credible.

### *Disciplinary procedures*

62. There is little doubt that the decision whether or not to commence disciplinary proceedings for alleged match manipulation offences is often the most important, and at the same time most difficult, stage of the entire process.
63. Such a decision, and who has responsibility for that decision, will depend on the rules and policies of the sports organization. Whoever is responsible must decide whether there is sufficient evidence to discharge the applicable burden of proof (i.e. currently in tennis on the preponderance of the evidence or balance of probabilities). In that regard, we support the recommendation of the Panel that the standard the TIU should apply is, "whether there exists a realistic prospect of proving that a breach of the TACP has been committed by a Covered Person." **[R10, para 301]**
64. The second key element when it comes to whether, following an investigation, a charge should be brought is the person(s) with the responsibility for that decision. Such a person(s) should put themselves in the position of a sport's disciplinary officer who would hear the case and adjudicate on it. Good practice is for such a decision to be made either by in-house lawyers or external legal counsel/advisers who can assess the evidence independently from the investigator.

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<sup>24</sup> See footnote 11

65. In light of this, **Recommendation 10, para 302** proposed by the Panel is welcome in terms of eliminating the conflict of interest in the charging decision, however letting the TIU make the decision does not remove it entirely from the investigators, even if left to the newly recommended in-house legal counsel. To ensure the bulletproof legitimacy of the work of the TIU going forward, we would urge the Panel to rethink this recommendation.

*Reform and streamlining*

66. In his submission to the Secretariat, KC said there should be flexibility to allow for a three-person first instance panel for the more serious/complicated cases brought by the TIU. Therefore, we are pleased that this has been addressed in some detail by the Panel [**R10, paras 303-315**]

67. Before passing comment on the Panel's analysis in this regard, we believe it is worth mentioning what the BHA said in their Integrity Review. First, the BHA made it clear they wanted to ensure that those participants accused put their position forward fairly, frankly and in a timely manner, with a failure to do so will seeing the BHA deal more robustly with non-cooperation. With that background in mind, the BHA said an expedited/summary procedure should be introduced to speed up the disciplinary process for minor and/or admitted offences, which as well as improving overall efficiency, would also release valuable resources for more serious matters.

68. Of the two options put forward to reform of the TIU's disciplinary procedures, in principle we support the first option: a single stage procedure before an independent and impartial arbitral tribunal, with no appeal. However, we would modify the IRP's proposals by making the CAS the tribunal of first instance. The reason for this, despite the shortcomings of the CAS, is that given the truly global nature of the sport of tennis, we do not currently know of a suitable arbitral institution which has the desirable global reach and expertise other than the CAS. Importantly, the right to appeal, in very limited circumstances, would be retained due to the supervisory jurisdiction of the Swiss Federal Tribunal (**SFT**) over the CAS. In an article KC wrote for LawInSport back in November 2013<sup>25</sup>, he suggests how the jurisprudence of the SFT could be used by participants subject to proven match-fixing charges.

69. Alternative dispositions in the form of plea and cooperation agreements are always controversial when suggested in any context. [**R10, paras 316-317**] However, there are examples in sport where these have been used to good effect, such as by the Esports Integrity Coalition (**ESIC**) in esports<sup>26,27</sup>, of which KC is the Chair of the Disciplinary Panel.

70. The current approach of the TIU to issue warnings in an unofficial manner is not acceptable. However, we fully agree with the Panel that as such admonishments can be

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<sup>25</sup> Carpenter, K. 'Match-fixing and the potential 'Matuzalem effect'', LawInSport, 22 November 2013

<https://www.lawinsport.com/blog/kevin-carpenter/item/match-fixing-and-the-potential-matuzalem-effect>

<sup>26</sup> 'ESIC Bans Cheating Player for Two Years', Esports Integrity Coalition, 16 May 2017

<http://esportsintegrity.com/2017/05/esic-bans-cheating-player-for-two-years/>

<sup>27</sup> 'ESIC Bans Cheating Player for Two Years', Esports Integrity Coalition, 13 September 2017

<http://esportsintegrity.com/2017/09/esic-bans-cheating-player-for-two-years-2/>

useful for the quick correction of inadvertent or minor misconduct without undue expense, this approach should still be available to the TIU, but must only be used in accordance with those principles set out in **IR para 317**.

*Removal of evidentiary limits for the full procedure*

71. Sports organizations are not bound to the same strict rules on the admissibility of evidence as in criminal law proceedings. This allows them greater flexibility in what can be put forward as evidence to a sporting tribunal, with such tribunals generally willing to consider any relevant piece of evidence when making their assessment and coming to a decision as to whether or not a particular charge has been proven. Therefore, it was with some surprise we read that the AHO's have in some instances taken a restrictive in allowing evidence to be admitted after proceedings have been initiated. [**R10, para 323**]
72. There has been no better example of this flexibility than in the series of match-fixing cases from Turkish football before the CAS in recent years. The principal forms of evidence presented in these cases by UEFA were covert police wiretapped conversations and intercepted text messages obtained in the Turkish criminal investigations, the transcripts of which were revealed in the judgments of the Turkish criminal courts. Unusually, during the criminal investigations and hearings, there was an amendment made to Turkish law meaning wiretaps were no longer admissible. One of the clubs, Eskişehirspor<sup>28</sup>, therefore argued that UEFA could no longer rely on them in the sporting hearing. The Panel rejected this as stating that CAS jurisprudence was consistent said that, even if evidence would not be admissible before a civil or criminal state court, this did not automatically preclude a sporting federation or arbitral tribunal from taking such evidence into account.<sup>29</sup>
73. Whilst acknowledging and applying this flexibility to the TIU's disciplinary proceedings, AHO's must not allow such evidence to be put forward uncontested (i.e. it has not been provided to the other side ahead of the hearing for their response) or allow facts which subsequently come out during the investigation to be applied to the wrong charge.
74. The former happened in the Turkish cases, where in the Fenerbahçe<sup>30</sup> case, the CAS admonished UEFA for trying to introduce evidence of further matches that had been fixed between the first instance hearing and the appeal stage before the UEFA Appeals Body. Therefore, the CAS Panel limited itself to assessing the culpability of the club on the basis of the five matches put forward by UEFA at the first instance hearing.
75. As for the latter, this arose in the *Nick Lindahl* case, where the CAS Panel ruled, "The Panel agrees that while additional facts may be considered for sanctioning purposes, in the circumstances such as in the present case in which completely separate legal charges could have been brought against the Player, and for substantial matters at that, it would

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<sup>28</sup> CAS 2014/A/3628 *Eskişehirspor Kulübü v. UEFA*, 02 September 2014

[https://www.uefa.com/MultimediaFiles/Download/OfficialDocument/uefaorg/CASdecisions/02/44/19/35/2441935\\_DOWNLOAD.pdf](https://www.uefa.com/MultimediaFiles/Download/OfficialDocument/uefaorg/CASdecisions/02/44/19/35/2441935_DOWNLOAD.pdf)

<sup>29</sup> Carpenter, K & Mehrzad, J. 'Match-Fixing, Betting & Corruption', Sport Arbitration Handbook 2015-16, Sport Resolutions (UK)

<sup>30</sup> CAS 2013/A/3256 *Fenerbahçe Spor Kulübü v. UEFA*, 11 April 2014 [http://www.tas-cas.org/fileadmin/user\\_upload/Award\\_3256\\_FINAL\\_internet.pdf](http://www.tas-cas.org/fileadmin/user_upload/Award_3256_FINAL_internet.pdf)

be wrong to avoid litigation of these separate actions, not providing the Player with an opportunity to present his case and introduce evidence and to let the same matters enter through the "back door" solely for the purposes of sanctioning."<sup>31</sup>

#### Legal aid

76. To ensure the credibility of a sport's own disciplinary proceedings, and enhance the autonomy of sport in practice, no accused participant should be in the situation where he/she has to defend themselves due to a lack of financial means. It is made all the more acute in situations where governing bodies that have the resources instruct a barrister (sometimes a Queen's Counsel) on more complex cases who are by their very nature more experienced in advocacy and cross-examination of witnesses (for instance), and their views can carry more weight with a tribunal. Therefore, it was very welcome to see a new legal aid framework for tennis being recommended by the TIU. [**R10, para 325**]
77. We would however like the Panel to make a clear distinction between legal aid and pro bono legal advice. If the legal aid is only to cover the administrative costs of the tribunal and the lawyer's expenses, then in reality there is still an "inequality of arms" because, for example, a QC will very rarely act on a pro bono basis. This is unfortunately currently the case with the majority of schemes put in place by sport at the current time to make provision for those accused and not of means to have adequate legal representation.<sup>32</sup>
78. We would instead advocate for a system whereby the lawyers on a legal aid panel for tennis are paid both a fee (potentially fixed per case) and their expenses out of a cross-stakeholder fund paid into by each of the International Governing Bodies of the sport.

#### Sanctioning guidelines

79. We wholeheartedly support the recommendation for the introduction of sanctioning guidelines to the TACP so as to provide those accused, and their lawyers, with greater clarity as to the potential sanctions should a particular case be proven. [**R10, para 326**] Not only that but it will make it easier for AHOs to pitch their sanctions more consistently in relation to the type of charge and offence, as well as providing a reference point when providing reasons as to why a certain sanction has been set down. A good example of anti-corruption regulations which contain clear sanctioning guidelines are the International Cricket Council's (**ICC**) Anti-Corruption Code for Participants.<sup>33</sup>

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<sup>31</sup> CAS 2017/A/4956 *Professional Tennis Integrity Officers (PTIOs) v. Nick Lindahl*, 20 December 2017 <https://captivatelegalsports.com/wp-content/uploads/2018/02/PTIOs-v-Nick-Lindahl-CAS-20-Dec-2017.pdf>

<sup>32</sup> Carpenter, K. 'How the British Horseracing Authority's "Integrity Review" aims to modernise its Integrity Unit', LawInSport, 18 August 2016 <https://www.lawinsport.com/blog/kevin-carpenter/item/how-the-british-horseracing-authority-s-integrity-review-aims-to-modernise-its-integrity-unit>

<sup>33</sup> The International Cricket Council Anti-Corruption Code for Participants, Effective as from 9 February 2018 <https://pulse-static-files.s3.amazonaws.com/ICC/document/2018/02/15/1a189c05-072b-4273-8f21-aa3d5a71e06f/2018-ICC-Anti-Corruption-Code-Effective-9-February-2018.pdf>

80. At the heart of such guidelines must be the principle of proportionality. Since the case involving Maltese football player *Kevin Sammut*<sup>34</sup>, in which a life ban was reduced by the CAS to 'only' 10 years, up to and including the *Nick Lindahl* case, the CAS have taken a far more analytical and balanced approach to the need to deter corrupt conduct whilst also not being unduly restrictive about a participant's right to potentially reform and return to the sport in question in another capacity (i.e. properly applying the principle of proportionality). Indeed, the *Lindahl* award also importantly confirms that, no matter how deliberate the offending is, the participant should only receive a sanction that is proportionate.<sup>35</sup>
81. We also wanted to make the Panel aware that the IOC are currently in the process of producing 'Guidelines for the Sanctioning of Competition Manipulation by Sports Organisations' which we believe will be made available to all IOC member organisations, tennis being one, and hopefully also made public. KC has provided his comments on the first draft of this document and so we hope the final version will be published later this year.

*Other consequences of breach*

82. When it comes to the consequences for breaching the TACP other than sanction [**R10, para 327**], having looked at all published manipulation cases in tennis, both at first instance and at the CAS, we question the purpose of fines in such cases as these, given first the arbitrariness and inconsistency as to whether the PTIOs seek a fine in the first place, and secondly the consistent line of CAS awards setting aside fines for corruption offenses.<sup>36</sup>

**Cooperation & coordination**

83. Match-fixing more often than not, especially in tennis, involves an international dimension, which adds to the complexity of preventing and investigating it. The challenge therefore is to develop an approach which has the potential to bring together relevant stakeholders applying internationally recognized standards and frameworks to promote good governance and prevent corruption in the sport.
84. Key to this is the efficient, effective and secure exchange of information globally between public entities (governments, law enforcement, prosecutors, judges and betting regulators) and private bodies (sports organisations and betting operators). Solutions to this can only be achieved by the interested stakeholders in tennis cooperating and thinking globally.<sup>37</sup> [**R12, para 336**]
85. To this end, it is important for IFs and sports organisations to have a sound understanding of betting and a good working relationship with betting operators and regulators.

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<sup>34</sup> CAS 2013/A/3062 *Kevin Sammut v. UEFA*, 28 May 2014 [http://www.tas-cas.org/fileadmin/user\\_upload/Award\\_3062\\_FINAL\\_2014.05.28\\_.pdf](http://www.tas-cas.org/fileadmin/user_upload/Award_3062_FINAL_2014.05.28_.pdf)

<sup>35</sup> See footnote 18

<sup>36</sup> See footnote 18

<sup>37</sup> See footnote 7

*Co-ordination with law enforcement*

86. It has been shown in numerous match-fixing investigations that despite banning participants, or even jailing outside corruptors, the corruption still continues. The reason for that in our opinion is that money is the oxygen of match-fixing.
87. Almost all allegations of match-fixing, particularly in tennis, will involve activity that constitutes a criminal act according to the laws of the country in which the main element of the fix has taken place (although the specific criminal offence may not be immediately clear). This is because almost all match-fixing cases involve the manipulation of a sporting event for the purposes of illegitimate financial gain from betting markets. Indeed, a crucial step in executing successful betting-related match-fixing is for the outside corruptors to launder the proceeds of the successfully placed bets.
88. However, sports organizations are limited in the extent to which they can investigate allegations of match-fixing because they only have jurisdiction over people participating in the sport, and investigators from sports organisations and their integrity units, such as the TIU, do not have the same wide-ranging powers as officers from law enforcement agencies. Law enforcement officers have tools and powers to restrain, recover, seize and confiscate the proceeds of crime and make the most effective use of international cooperation agreements such as the United Nations Convention against Corruption and the United Nations Convention against Transnational Organized Crime.
89. Recently an international investigation led by the Belgian Police and the Belgian Federal Public Prosecutor's Office, supported by Europol, led to an organised crime group actively involved in manipulating professional tennis competitions being disrupted and 13 suspects arrested in 21 house searches across 12 different locations in Belgium. In doing so, material of evidentiary value, including many mobile phones, computers and cash, were seized. This is a great real-life case study of the vital role law enforcement has in catching the real corruptors of the sport.<sup>38</sup>
90. In light of the preceding four paragraphs, to follow the money trail and try and cut off the real source of corruption in the sport, the TIU has to work more closely with law enforcement agencies as suggested by the Panel in **Recommendation 12. [paras 336-338]** It is not clear what role the TIU had in the aforementioned Europol investigation, but one would hope it was at the centre of the operation providing their expertise and exchanging information with the various law enforcement agencies.
91. One example of where cooperation with law enforcement would be of great benefit to the TIU is the protection of witnesses who would otherwise be afraid to speak out for fear of reprisal from organised criminals.

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<sup>38</sup> 'Match point law enforcement: Organised crime group involved in manipulating professional tennis competitions arrested', Europol, 05 June 2018 <https://www.europol.europa.eu/newsroom/news/match-point-law-enforcement-organised-crime-group-involved-in-manipulating-professional-tennis-competitions-arrested>

92. We would like to exercise a slight word of caution similar to that outlined by the Panel at **para 338**. When engaging with law enforcement in relation to a particular allegation of corruption in the sport, the TIU should resist any attempt by law enforcement to entirely take over the investigation. The TIU's investigation has to continue to move forward. To achieve this, the new CEO of the TIU [**R4, para 240**], along with the regional officers, must build relationships with the relevant operational personnel / decision-makers within law enforcement agencies in the parts of the globe which pose the greatest threat to the integrity of tennis. It is unlikely that a law enforcement agency would consider carrying out a truly joint investigation (despite the TIU having trained investigators from a law enforcement background), but at the very least someone from the TIU question should be assigned to provide information and expertise to the investigation. Ideally, cooperation and dialogue should be encouraged by both investigative bodies, and, if at all possible, formalised by way of a written agreement, such as a memorandum of understanding.<sup>39</sup>

*Cooperation with national federations*

93. Until reading the Report, we were not aware of the seeming lack of cooperation between the TIU and national tennis federations, but we fully support the IRP's recommendations in this regard. [**R12, paras 339-341**]

94. The TIU's recognition of integrity disciplinary decisions taken by national federations will certainly help build trust and understanding between the different levels of governance with the sport globally. [**R12, para 341**] In this regard, we would recommend the TIU adopt a similar procedure to that currently used by FIFA in Articles 136-141 of their Disciplinary Code<sup>40</sup> for 'Extending sanctions to have worldwide effect'. The procedure effectively ensures a fair procedure has been followed by the competent governing/disciplinary body, rather than looking at the substance of the decision taken and sanction applied.

95. Importantly for the TIU from this part of the FIFA Disciplinary Code, for instances of match manipulation, the governing bodies in the football pyramid below FIFA shall [emphasis added] request FIFA to extend the sanctions they have imposed so as to have worldwide effect. The conditions that must be met for the extension to be approved are:

- ✓ the person sanctioned has been cited properly;
- ✓ he/she has had the opportunity to state his case (with the exception of provisional measures);
- ✓ the decision has been communicated properly;
- ✓ the decision complies with the regulations of FIFA; and
- ✓ extending the sanction does not conflict with public order and accepted standards of behaviour.

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<sup>39</sup> See footnote 11

<sup>40</sup> FIFA Disciplinary Code, 2017 edition <https://resources.fifa.com/image/upload/fifa-disciplinary-code-500276.pdf?cloudid=koyeb3cvhxnwy9yz4aa6>



Coordination with other sports

96. We could not agree more with the Panel that the TIU has to engage with other sports federations on combatting match-fixing. It has long surprised us that this does not happen more often, given that no one sport has found a solution to stopping corruption in their sport, and so undoubtedly experiences can be shared and tactics improved by, “sharing information about potential corruptors, [exchanging] knowledge about effective strategies and tactics...to identify best practices.” [R12, para 343]
97. In addition, the TIU must be actively involved in any cross-sport initiatives co-ordinated/organised by bodies such as the IOC with, for instance, their International Forum for Sports Integrity (**IFSI**).<sup>41</sup>

Macolin Convention

98. We have been engaged by the Council of Europe (**CoE**) as regards various initiatives to encourage the adoption, implementation and use of the Convention on the Manipulation of Sports Competitions (**Macolin Convention**) ever since it became open for signature in September 2014. We were therefore delighted the IRP referred to it positively at the end of their report and wants the TIU and the international and national governing bodies of tennis to be active in encouraging states to sign and ratify the only international legal instrument in this field.
99. While the Convention has not yet entered into force (at the time of writing, although the CoE is hopeful it will during 2019), the TIU can nevertheless adopt many of the principles as good practice to better protect tennis from match-fixing.
100. Given our experience in working with the Macolin Convention, these are the parts we believe are most relevant to the IRP’s Recommendations in the Report:

Article	Paragraph	Action
7 Sports organisations and competition organisers	2a	Enhanced and effective monitoring of the course of sports competitions exposed to the risks of manipulation.
	2c	Effective mechanisms to facilitate the disclosure of any information concerning potential or actual cases of manipulation of sports competitions, including adequate protection for whistle blowers.
	2e	The appointment of relevant officials for a sports competition, in particular judges and referees, at the latest possible stage.
	3	Each Party shall encourage its sports organisations, and through them the international sports organisations to apply specific, effective,

<sup>41</sup> ‘International Forum for Sports Integrity steps up action to prevent competition manipulation and corruption in sport’, International Olympic Committee, 15 February 2017 <https://www.olympic.org/news/international-forum-for-sports-integrity-steps-up-action-to-prevent-competition-manipulation-and-corruption-in-sport>

		proportionate and dissuasive disciplinary sanctions and measures to infringements of their internal rules against the manipulation of sports competitions, in particular those referred to in paragraph 1 of this article, as well as to ensure mutual recognition and enforcement of sanctions imposed by other sports organisations, notably in other countries.
12 Exchange of information between competent public authorities, sports organisations and sports betting operators	1	...each Party shall facilitate, at national and international levels and in accordance with its domestic law, exchanges of information between the relevant public authorities, sports organisations, competition organisers, sports betting operators and national platforms.
	2	Upon request, the recipient of such information shall, in accordance with domestic law and without delay, inform the organisation or the authority sharing the information of the follow-up given to this communication.
14 Personal data protection	2	...guarantee that the public authorities and organisations covered by this Convention take the requisite measures in order to ensure that, when personal data are collected, processed and exchanged, irrespective of the nature of those exchanges, due regard is given to the principles of lawfulness, adequacy, relevance and accuracy, and also to data security and the rights of data subjects.
	3	...ensure that the exchange of data for the purpose of this Convention does not go beyond the necessary minimum for the pursuit of the stated purposes of the exchange.
	4	...provide the requisite technical means to ensure the security of the data exchanged and to guarantee their reliability and integrity, as well as the availability and integrity of the data exchange systems and the identification of their users.
21 Protection measures	1a	...provide effective protection for persons who provide, in good faith and on reasonable grounds, information concerning offences...or otherwise co-operate with the investigating or prosecuting authorities.
	1b	...provide effective protection for witnesses who give testimony concerning these offences.

28  International co-operation with international sports organisations	1	...shall co-operate with international sports organisations in the fight against the manipulation of sports competitions.
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**KEVIN CARPENTER**  
*Principal*

17 July 2018