Introduction

Independent
Review
of Integrity
in Tennis

01

A INTERIM REPORT AND RECORD OF EVIDENCE AND ANALYSIS

1. This Record of Evidence and Analysis ("REA") accompanies the Interim Report of the Independent Review of Integrity in Tennis ("Interim Report"). It further describes the evidence and analysis on which the Interim Report is based. The two documents should be read together.

2. This REA sets out, based on the evidence gathered in relation to the areas of inquiry that fall within the scope of this Review, the provisional findings of fact and evaluative conclusions of the Independent Review Panel (the "Panel"). Based on the Panel's provisional findings of fact and evaluative conclusions, this REA also sets out the Panel's proposed recommendations for change.

3. As further explained in paragraphs 60 and 61, the Panel submits these findings of fact, evaluative conclusions, and proposed recommendations stated in the Interim Report and this REA for consultation. Interested parties are invited to provide written submissions by 25 July 2018.

4. This REA is broken down into the following chapters:

   4.1 Chapter 1 sets out the introduction, background and process of the Independent Review of Integrity in Tennis (the "Review").

   4.2 Chapter 2 sets out the relevant facts in relation to the sport.

   4.3 Chapter 3 sets out the relevant facts in relation to betting on the sport.

   4.4 Chapter 4 addresses the different types of consequent breaches of integrity that may arise in the sport.

   4.5 Chapter 5 addresses methods for protecting integrity in the sport by punishing breaches of integrity.

   4.6 Chapter 6 addresses methods for protecting integrity in the sport by preventing breaches from occurring in the first place.

   4.7 Chapter 7 assesses the historical approach of the International Governing Bodies of professional tennis (the "International Governing Bodies"[1]) to the protection of integrity in the sport between 2003 and 2008, before the current system was introduced.

   4.8 Chapter 8 addresses the investigation into a match played in August 2007 between Martin Vassallo Arguello and Nikolay Davydenko, the subsequent Environmental Review commissioned by the International Governing Bodies, and the development of the uniform Tennis Anti-Corruption Programme ("TACP") and creation of the Tennis Integrity Unit ("TIU").

   4.9 Chapter 9 assesses the handover of responsibility for integrity matters from the International Governing Bodies to the TIU.

   4.10 Chapter 10 assesses the system in place for the protection of integrity in tennis and the TIU's operation of that system from 2009.

   4.11 Chapter 11 describes the media coverage in 2016 that provided the catalyst for the establishment of the Review.

   4.12 Chapter 12 sets out the subsequent proposals made by the International Governing Bodies and developments following the announcement of the Review in 2016.

   4.13 Chapter 13 sets out the nature and extent of the problem now faced by tennis.

   4.14 Chapter 14 evaluates the adequacy of the current system operated by the sport for protecting integrity in tennis, and recommends improvements to that system.

1 The International Tennis Federation ("ITF"), the Association of Tennis Professionals ("ATP"), the Women's Tennis Association ("WTA") and at that time the Grand Slam Committee (later to become the Grand Slam Board) made up of the four Grand Slams.

B BACKGROUND

5. A decade ago, in 2008, the International Governing Bodies of tennis undertook a review of their approach to match-fixing and related breaches of integrity by participants in the sport. This was in response to a perception that the sport faced a growing problem in light of the rapid development of internet betting, and coincided with the investigation into suspicious betting on a match in August 2007 between Martin Vassallo Arguello and Nikolay Davydenko[2]. Independent experts appointed by the International Governing Bodies conducted an environmental review[3], which addressed the nature and extent of the problem faced, and the structures and mechanisms to be put in place to enforce and encourage compliance with new uniform rules to apply across the sport. At the same time, the International Governing Bodies and legal advisers addressed the development of those uniform rules. The International Governing Bodies implemented the principal recommendations of the Review, creating in 2008 the TIU and the first set of uniform anti-corruption rules that are now called the TACP[4]. These have been in operation since 1 January 2009. The 2008 review contemplated that as matters developed, so too must and would the rules, structures and mechanisms.

6. In early 2016, media reports criticised the sport's handling of the problem of match-fixing and other breaches of integrity[5]. The principal criticism fell into broadly four areas, although other specific points were made. First, there was criticism of the historical approach of the International Governing Bodies to breaches of integrity that took place before 2009: the suggestion was that, at that time, there should have been additional disciplinary action or investigation. Second, the choices made in implementing the recommendations of the 2008 review were criticised: in particular, the suggestion was that the International Governing Bodies should have opted for a larger and better resourced TIU rather than the smaller and less costly alternative that they chose. Third, there was criticism of the handling of the transition of responsibility for integrity matters from the International Governing Bodies to the TIU in January 2009: the media suggested that intelligence in relation to events before 2009 was not properly acted upon by either the International Governing Bodies or the TIU. Fourth, the performance of the TIU in respect of match-fixing and other breaches of integrity since the beginning of 2009 was criticised: the media suggested that the large number of unusual or suspicious betting patterns reported by betting operators to the TIU reflected a high incidence of match-fixing in the sport, and that the TIU, by failing to deal properly with unusual or suspicious betting patterns had failed adequately to detect and discipline cheats. It was also suggested that the TIU's relationships with national federations and governmental entities are not productive and that it (i) is insufficiently independent of the International Governing Bodies; (ii) is insufficiently resourced; and (iii) acts in an insufficiently transparent manner.

7. In their criticism the media invited the public to draw certain conclusions, including that: (a) the sport has inadvertently put in place and operated an inadequate system; (b) the sport has failed to take sufficient steps because it lacks a sufficient appetite to tackle the problem; and (c) the sport has deliberately sought to avoid exposing and addressing match-fixing and other breaches of integrity because it would be harmful to the sport to do so. Each conclusion suggests that there is a substantial incidence of match-fixing in tennis, which is being inadequately addressed.

8. In early 2016, the International Governing Bodies, who are principally responsible for governing professional tennis at the international level, appointed the Panel to address betting-related and other integrity issues facing the sport. Pursuant to its Terms of Reference, as described below, the Panel has conducted the Review, addressing, amongst other things, the nature and extent of the problem over time; the effectiveness and appropriateness of the sport's historical and present approach to addressing it; and proposed changes to improve how the sport addresses it in the future.

2 The match took place on 2 August 2007 at Sopot in Poland. The investigation commenced immediately afterwards, and resulted in the "Sopot Report" see Chapter 8, Section A. The Sopot Report concluded that there was no evidence of a breach of the then rules by either player.

3 Ben Gunn and Jeff Rees, 'Environmental Review of Integrity in Professional Tennis' (May 2008), Appendix: Key Documents; see Chapter 8, Section B. There was an earlier report to the ATP in 2005: Richard Ings, 'Report on Corruption Allegations in Men's Professional Tennis' (June 2005), Appendix: Key Documents; see Chapter 7, Section A(1).

4 Chapter 10, Section A(2).

5 Chapter 11 summarises the chief articles and transcripts.

C SCOPE AND FACTUAL AMBIT OF THE REVIEW

9. The Terms of Reference dated 12 February 2016 set out the aims and remit of the Review[6]:

   9.1 The Panel is established to consider the effectiveness and appropriateness of the TACP, TIU, and Tennis Integrity Protection Programme ("TIPP") and to recommend any suggested changes[7]. This is to be measured in light of the nature and extent of the problem now faced by tennis.

   9.2 In conducting the Review, the Panel will take into account, among other things, public commentary regarding the processes, procedures, performance and resources of the TIU and the actions of the International Governing Bodies[8].

   9.3 The issues to be addressed by the Panel shall be: (a) the rules governing and protecting the integrity of the actions of participants in tennis, including the rules of the TACP; (b) the mechanisms for investigation and the enforcement of those rules, including through the TIU; (c) whether investigation and the enforcement of the rules through those mechanisms has been carried out appropriately; (d) the relationships with law enforcement agencies, betting operators and other relevant bodies; (e) the level of independence of the TIU; (f) the level of resources allocated to the TIU; (g) the level of transparency in investigation and the enforcement of the rules; and (h) the approach to the education of participants in tennis, including through the TIPP[9].

   9.4 Finally, in conducting the Review, the Panel is entitled to review and report on relevant matters that occurred before the creation and adoption of the TACP and the creation of the TIU[10]; on the significance of the roles of the bodies outside of tennis, including international and state bodies and law enforcement agencies, betting operators and other relevant bodies[11]; and on any other matter that it considers to be relevant arising out of its review[12].

10. The International Governing Bodies have committed to implementing and funding the recommendations made by the Panel[13].

11. The factual ambit of this Review covers behaviour that throws into doubt the genuineness of the result in a match because a professional tennis player has not tried to win the match, or part of it. The circumstances where this happens, and the player's motivation, vary significantly:

   11.1 While some circumstances do involve a breach of integrity that falls (or should fall) to be dealt with by the TIU under the TACP, some do not.

   11.2 Those that do, involve breaches of integrity of varying seriousness.

   11.3 Those that do not, may still constitute breaches of the obligation to use *"best efforts"* contained in the sport's Codes of Conduct, or may equally involve legitimate tactical decisions within the context of a match that do not constitute such breaches.

   11.4 At one end of the spectrum of circumstances, a player may on his own or with the encouragement of others make a decision in advance to lose deliberately, in order to fix the match for betting purposes or for some other corrupt purpose such as an agreement to share prize money.

   11.5 At the other end of the spectrum, a player may legitimately decide to ease off in a set that is likely to be lost, in order to conserve their energy and increase the chances of ultimate success.

   11.6 Between each end of the spectrum, a player may, for a variety of reasons (such as tiredness, disillusion, form or injury) cease during the course of a match to try to win, which may or may not constitute a failure to use "*best efforts*" contrary to the sport's Codes of Conduct. Alternatively, a player may make and act on a decision in advance to lose a match deliberately, not for strictly corrupt purposes, but for other reasons such as the player's perception that to do so will, as a function of the player incentive structure of the sport, maximise the prize money and ranking

6 The Terms of Reference, Appendix: Key Documents.
7 Terms of Reference, paragraph 2.
8 Terms of Reference, paragraph 3.
9 Terms of Reference, paragraph 7.
10 Terms of Reference, paragraph 8.
11 Terms of Reference, paragraph 9.
12 Terms of Reference, paragraph 10.
13 Terms of Reference, paragraph 16.

points won over a period, as opposed to simply at the current event. In the further alternative, a player may take to the court in the knowledge that he or she is too injured to compete or even play. Again, the circumstances will vary significantly, from a player who is battling against injury and trying to win, to a player who has taken a prior decision to retire, again in part due to the player incentive structure, which is similar in quality to a prior decision to lose.

12. Also covered in the factual ambit of the behaviour to be examined are participants in tennis using or providing inside information as to the likely performance of a player; betting by participants; encouraging or facilitating betting by others; delay in entering or manipulation of the score by officials; sponsorship of players and others by betting operators; inappropriate provision of accreditation; sale of wildcards; failure to report third-party approaches to match-fix or to provide inside information; failure to report breaches of integrity by others; failure to cooperate and assist in investigations; and association with gamblers.

13. The factual ambit of this review does not, on the other hand, extend to players using prohibited substances to enhance performance and so increase the chances of winning, or to the content or operation of the Tennis Anti-Doping Programme (the "TADP"), which deals with such behaviour, although in the wider sense of the word doing so can be seen as an issue of 'integrity'. At present the TADP is administered by the ITF in accordance with the World Anti-Doping Code. The sport is however considering the possibility that integrity and anti-doping should both be dealt with by the same independent body, and this possibility is addressed.

14. Nor does the Review cover other player behaviour aimed at increasing the chances of winning that reveals a lack of 'integrity' in the wider sense, such as impermissible on-court coaching or breach of the rules on equipment or on player analysis technology. Such conduct is governed by the Rules of Tennis and the International Governing Bodies' Player Codes of Conduct and falls to be dealt with under them. The same applies to player conduct that brings the sport into disrepute and in that sense threatens its integrity, such as dress code violations, abusive behaviour on the court, or unsportsmanlike conduct including unjustified statements in the media. Withdrawal offences under the International Governing Bodies' Player Codes of Conduct are also not covered by this Review, but are touched on in so far as they have an impact on other player conduct that is covered.

15. Further, the scope of the Review does not extend to governance issues that relate to the integrity of the actions of those involved in the running of the sport or issues that are not focused on competition itself.

16. The Panel's task is to assess the integrity system in place and its operation. It is not, and could not be, the task of the Panel to evaluate whether there have been specific breaches of integrity by particular individuals. That can only be determined by a disciplinary process. Nothing in the Interim Report or in this REA is or should be taken as concluding or suggesting that there has been such a breach of integrity, in the absence of a disciplinary decision that has already reached this conclusion.

17. Nor is it the task of the Panel to determine whether any past decision or action of any person or organisation satisfied any public law or private law legality standard or test, or was tortious or in breach of contract. The Panel is not a court or arbitration charged with resolving a legal dispute as to such legality. The Panel is charged with assessing what happened in the past, based on the available information, and whether in the Panel's opinion it was appropriate and effective. The Panel bears in mind the environmental and factual circumstances at the time, that it necessarily has the benefit of hindsight, that matters may appear different now to how they did at the time, and that points of view as to what may be the right decision or action to take may vary. This does not mean however, that the Panel is assessing the legality of any decision or action by reference to any standard or test of contract, tort, irrationality or unreasonableness. Nothing in the Interim Report or in this REA is or should be taken as concluding or suggesting that any decision or action satisfied, or failed to satisfy, any such public law or private law legality standard or test, or was or was not tortious or in breach of contract.

18. The Panel further notes that faded, or hardened, witness recollection and the nature of the Review (which does not involve an adversarial process) means that on occasion it is not possible or appropriate to seek to resolve direct conflicts in the evidence.

D APPOINTMENT OF THE PANEL

19. The International Governing Bodies appointed Adam Lewis QC as Chair of the Panel[14].

20. In accordance with paragraph 6 of the Terms of Reference, Adam Lewis QC appointed Beth Wilkinson[15] and Marc Henzelin[16] as members of the Panel. The members of the Panel were selected both for their appropriateness and for their independence.

21. The Panel accepted and pursued its mandate from the International Governing Bodies without pre-determined conclusions. Its findings and recommendations are based entirely on the Panel's review of the evidence.

22. Jonathan Ellis of Northridge Law LLP was appointed by the International Governing Bodies as the Solicitor and Secretary to the Panel and he heads up the Panel's Secretariat[17]. The Secretariat is distinct from and independent of the Panel.

23. In accordance with paragraph 11 of the Terms of Reference Adam Lewis QC, as Chair of the Panel, has directed the work of the Panel.

24. Although the Panel has received substantial assistance from the Secretariat and from attorneys at Wilkinson Walsh + Eskovitz LLP, especially Sean Eskovitz, and Lalive SA, especially Giulio Palermo, in conducting the Review, the Panel is solely responsible for the findings and recommendations contained in the Interim Report and REA.

14 Adam Lewis QC is leading counsel specialising in Public Law, EU Law and Sports Law, appearing before the English and European courts and in arbitral tribunals including the Court of Arbitration for Sport in Lausanne. He also sits as an arbitrator in sports disputes. He has previously worked for a firm in Washington DC, for a firm in Brussels, and in the cabinet of a European Commissioner in Brussels. Blackstone Chambers, London: http://www.blackstonechambers.com/ [accessed 9 April 2018].

15 Beth Wilkinson is lead trial counsel in federal and state cases involving, among other things, white collar crime, antitrust, sports and entertainment, mass tort and product liability, and class action litigation. She also represents clients in front of the Department of Justice, Congress and other government agencies. She is a former Assistant US Attorney and Counsel to the Deputy Attorney General. Wilkinson, Walsh & Eskovitz, Washington DC: http://wilkinsonwalsh.com/ [accessed 9 April 2018].

16 Marc Henzelin is lead counsel in transnational and domestic litigation, involving amongst other things international and economic criminal law, commercial and banking litigation, asset recovery, mutual legal assistance in criminal matters and extradition, and public international law. He also leads private investigations. He was previously an acting Judge at the Cour de Cassation of Geneva and of the criminal and commercial sections of the Court of Appeal. Lalive, Geneva: http://www.lalive.ch/en/index.php [accessed 9 April 2018].

17 Jonathan Ellis is a partner at Northridge Law LLP. The Secretariat comprises a number of solicitors who are specialists in sports law. Northridge Law LLP, London: http://www.northridgelaw.com [accessed 9 April 2018]. Any questions in relation to the Review should be addressed to Jonathan Ellis at tennisirp@northridgelaw.com.

E PROCESS

25. The Panel has taken or will take the following steps in the process of undertaking this Review.

1. Evidence Gathering

26. The Panel, assisted by the Secretariat, has conducted an extensive evidence gathering exercise.

Interviews

27. The evidence gathering exercise involved approximately 250 interviews with players, other stakeholders in professional tennis, and others.

28. Representatives of the Panel interviewed approximately 115 current male and female tennis players at tournaments around the world, including Chile, China, Egypt, France, Italy, Spain, Turkey, the United States, the United Kingdom and Uruguay. Those representatives interviewed, and prepared attendance notes of their interviews with, players at tournaments ranging from the lowest level ITF men's $15k and $25k Pro Circuit events (known as "Futures") and women's $15k and $25k Pro Circuit events, to ATP and WTA World Tour events and the Grand Slams, and all levels in between.

29. Approximately 70 interviews with other tennis stakeholders were conducted, including:

    29.1 current and former representatives of the International Governing Bodies with responsibility for all the diverse elements of the regulation of tennis related to integrity;

    29.2 current representatives of national tennis federations, including the USTA, the Lawn Tennis Association, Tennis Australia, the French Tennis Federation, the Italian Tennis Federation, the Spanish Tennis Federation, and the Uruguayan Tennis Federation. In addition, the Panel gave national federations the opportunity to provide input at the ITF AGM in 2016 and invited comment from the national federations regarding integrity in tennis and their relationship with the TIU. In total, the Panel received responses or input from a diverse group of 25 national federations, including at least one federation from each of the six continents;

    29.3 tournament organisers and directors, including officials from Egypt, Germany, Turkey, Uruguay and the United States;

    29.4 professional referees and umpires, including officials at tournaments in Egypt, Italy, Spain, Turkey, the United States, and Uruguay;

    29.5 current and former TIU employees, including the past Director of Integrity, Jeff Rees; the current Director of Integrity, Nigel Willerton; the TIU's current investigators, Dee Bain, Jose De Freitas, Michael Mahon Daly, and Simon Cowell; the TIU's Information Manager, Phil Suddick; and the TIU's Education and Training Manager, Matthew Perry; and

    29.6 agents of current professional players.

30. Approximately 60 interviews were conducted with stakeholders from outside the sport, including:

    30.1 a number of betting companies. The Panel also invited comment from every betting operator with which the TIU has a Memorandum of Understanding requiring notification of suspicious or unusual betting on tennis;

    30.2 companies that collect and sell match data to betting companies, including Sportradar, IMG, and Perform Group;

    30.3 officials, experts and investigators involved in previous reviews of integrity in tennis or investigations, including Richard Ings, Albert Kirby, Ben Gunn, Paul Scotney, Paul Beeby, Mark Phillips and John Gardner;

    30.4 betting oversight and enforcement units for other sports including the Hong Kong Jockey Club and UEFA;

30.5 betting regulators in several countries, including the UK Gambling Commission, the Victoria Commission for Gambling and Liquor, and ARJEL;

30.6 the European Commission;

30.7 law enforcement in several countries, including the Victoria Police, the Office of the Racing Integrity Commissioner, the Australian National Integrity of Sports Unit, the Australian Crime Commission, the French Police, Italian prosecutors, and others;

30.8 journalists, including authors of "*The Tennis Racket*"; and

30.9 the social media platform, Facebook.

Interview Process

31. The interviews conducted by the Panel were designed to determine the factual basis on which the issues fall to be examined.

32. A number of core interviewees were subject to more than one interview. These further interviews allowed more targeted discussions relating to specific issues of interest.

33. Where possible, the Panel has endeavoured to corroborate witness accounts, through its questioning of other witnesses and its review of documents. As the Panel questioned more witnesses and reviewed additional documents, the Panel's understanding of the facts evolved.

34. The Panel's questioning of witnesses was often robust, particularly in the context of the Panel's examination of past conduct. Though some interviewees may have found the process difficult all have been treated fairly. In particular, following each interview, the interviewee was given the opportunity to amend their statement in any way that they saw fit.

35. The Panel is grateful to each of the interviewees who set aside time to provide evidence.

Statements

36. From the approximately 250 interviews conducted, the Panel was provided with over 90 written statements containing evidence that could be referred to by the Panel, including from the International Governing Bodies, the TIU, tournament organisers, national federations, governmental regulators and betting operators. The Panel has been able to use and to refer expressly to these written statements in carrying out its Review and in producing this REA and the Interim Report.

37. In addition, the Panel has been provided with a considerable amount of information in the interviews, to which the relevant interviewee does not wish reference to be made. The Panel has respected that wish, but it has had the benefit of this evidence in its evaluation.

Player Survey

38. With the assistance of Westat, Inc., a statistical survey research firm, the Panel administered an online survey to players in March 2017. Informed by its in-person player interviews, the Panel drafted the survey questions with the assistance of Dr Nancy Mathiowetz, an expert in survey design and methodology. The online, confidential, and anonymous survey included questions about, among other things, players' first-hand knowledge of betting, match-fixing, and sharing of "inside information" for betting purposes. Invitations to take the survey were sent by email to all active ITF, WTA, and ATP players, and a link to the survey was posted on those organisations' respective player portals. In early 2017, the survey was also administered in-person at the BNP Paribas Open in Indian Wells, California and at the Delray Beach Open in Florida; at these events, players were approached by Westat interviewers in the player lounge area or by tour officials in the locker rooms, handed an iPad, and asked to complete the survey. The survey permitted an analysis of 3,218 responses, from 1,981 players on the men's circuit and 1,237 players on the women's circuit.

Corporate evidentiary submissions and proposals

39. In light of and as a result of the questions put to the International Governing Bodies and the TIU by the Panel, the International Governing Bodies and the TIU provided corporate evidentiary submissions and advanced proposals for changes to the organisation of the sport and to the system for the protection of integrity. Whilst more limited than the Panel's provisional recommendations, the proposals have formed a useful indication of the sport's own evaluation of the extent of the difficulties faced and what might be done to tackle them.

Documentary evidence

40. In addition, pursuant to its authority under the Terms of Reference to require production of documents from the International Governing Bodies and the TIU, the Panel has requested and been provided with extensive collections of contemporaneous documents from each. In particular, the TIU has provided its entire database since its inception and relevant hard copy documents relating to the period before its inception. As set out further in Chapter 10, the TIU has provided the Panel with access throughout the duration of the review to all of the TIU's investigative documents.

41. The International Governing Bodies provided the Panel with approximately 115,000 documents, totalling an estimated 1.5 million pages. These documents predominantly covered the period from 2003 through the announcement of the Review in January 2016.

42. The Panel also reviewed approximately 66,000 documents from the TIU, totalling an estimated 1.2 million pages. Additional documents were provided to the Panel on an ad hoc basis or by the International Governing Bodies upon request, such as, for example, when a document was referenced during an interview and later disclosed or when a document was supplied to support a witness statement. Other documents were provided by other interviewees.

43. The Panel also engaged two former sports disciplinary officers, qualified criminal barristers specialising in such investigations and prosecutions, to examine the contents of, and to report to the Panel on, the approach taken in the TIU's case files from 2009 through 2016. During this period, the TIU generated over 1,300 new matters, either as 'packages' (for further investigation) or as 'intelligence'. All 1,300 new matters were reviewed.

Cooperation received

44. The Panel has been impressed with the level of assistance and cooperation provided to it throughout the Review. The TIU provided the Panel with full access to its documents. The Panel has been provided with all of the information it has requested from all the International Governing Bodies, in a form on which the Panel can rely, save for one instance, described in Chapter 7 Section A(2) where the ATP asserted confidentiality over material concerning the circumstances before 2005 in which a player who had been under investigation retired.

Confidentiality of Information

45. Pursuant to a Confidentiality Agreement with the Panel, the International Governing Bodies agreed to provide full co-operation in the disclosure of confidential information, but reserved the right to identify it as confidential. The Confidentiality Agreement permits the Panel to rely on and disclose, as the Panel considers appropriate in the conduct of this Review, any information that the International Governing Bodies designate as "*Confidential Information*," but provides greater protection for information that the International Governing Bodies designate as "*Restricted Confidential Information*." The Confidentiality Agreement precludes the Panel from disclosing such Restricted Confidential Information, but the Panel may refer to the fact that an International Governing Body has exercised its right to classify information as such. In the course of its Review, the Panel has collected written, oral, and electronic information that the International Governing Bodies have identified as confidential, as contemplated. In one instance, the ATP has asserted that information is Restricted Confidential Information.

46. The Panel has throughout borne in mind the need to protect the privacy and reputation of players and others who have not been the subject of completed disciplinary proceedings. As set out above, the task of the Panel is to examine the causes of the problem and the processes in place, rather than to determine individual culpability, and so the identity of players and others is rarely relevant. The Panel has consequently anonymised the cases described in the Interim Report and REA unless the case involved completed, successful disciplinary proceedings that have been reported, or the case has been extensively described in already published documents.

47. There are some individuals and entities, outside the International Governing Bodies and TIU, that have chosen either not to give formal evidence or have asked for some of their evidence not to be referred to. Where this request has been made, to facilitate the collection of relevant evidence and information, the Panel has respected the request and the evidence or information has not been referred to in this REA or in the Interim Report. The Panel has however had that evidence in mind in carrying out its Review, and in reaching its conclusions.

48. Similarly, there is some sensitive evidence to which the Panel does not refer, because, for example, it concerns ongoing investigations being carried out by the TIU or would reveal the TIU's tactics.

2. APPOINTMENT OF EXPERT CONSULTANTS

49. Pursuant to the Terms of Reference, the Panel consulted various experts to advise and assist in its consideration and evaluation of the evidence, including those set out below.

50. FTI Consulting (Betting Data Consultant). The Panel engaged FTI to review the data regarding all information reported to the TIU since 2009.[18] FTI analysed the data to identify trends in betting alerts over time and the frequency of betting alerts by tournament type, location, round, player ranking, age, gender, and nationality. The FTI team consisted of six individuals from the Data & Analytics practice, led by Nick Hourigan. FTI produced for the Panel a set of interactive graphs and tables that were searchable by reference to different criteria. These have informed the Panel's assessment.

51. Patrick Jay (Betting Expert). The Panel sought input from Patrick Jay, a former senior gaming executive for the Hong Kong Jockey Club, Ladbrokes, and IG Index, and a current consultant to the betting industry. Patrick Jay assisted in the Panel's appreciation of global betting markets, online betting on tennis, the various ways in which betting can present integrity issues for the sport, the nature of unusual and suspicious betting patterns, and the various indicia of match fixing.

52. Regulus Partners LLP (Betting Experts). The Panel sought input from Regulus Partners LLP, who are a strategic consultancy focused on international gambling and related industries. They assisted with the Panel's understanding of the size and value of global gambling markets and how they are regulated, with a particular focus on statutory regulation by national gambling regulators.

53. Nancy Mathiowetz (Survey Consultant). The Panel engaged Dr Nancy Mathiowetz for assistance in the design, implementation, and analysis of the player survey. Dr Mathiowetz is a former American Statistical Association/National Science Foundation Fellow at the Bureau of Labor Statistics and Special Assistant to the Associate Director, Statistical Design, Methodology, and Standards at the U.S. Census Bureau. She is currently a Professor Emerita at the University of Wisconsin-Milwaukee.

54. Westat, Inc. (Survey Data Administrator). The Panel engaged Westat, an independent survey research firm, to provide front-end data collection for the online and in-person player survey.

18 The Panel initially engaged a different expert to review the data but was required to replace that expert due to a conflict arising.

3. EVALUATION OF EVIDENCE AND DRAFT OF INTERIM REPORT AND REA

55. The Panel has evaluated the evidence with the assistance of its experts. It has discussed extensively, with the assistance of the Secretariat, what provisional factual findings, preliminary evaluative conclusions and proposed recommendations for change it should make. On the basis of its evaluation and discussions, the Panel produced the Interim Report and REA, for consultation.

4. REPRESENTATIONS PROCESS

56. Pursuant to paragraph 21 of the Terms of Reference, the Panel undertook a process to afford individuals and organisations potentially subject to criticism an opportunity to make representations before publication, providing them with details of the potential criticism and of its context. Those individuals and organisations were then provided the opportunity to respond to, and to make representations in respect of, the factual findings and evaluative conclusions that the Panel contemplated reaching, before it so reached them.

57. The representation process was extensive, resulting in a substantial delay in the publication of this Interim Report. The representation process began in July 2017. All responses, bar one, were received in August and September 2017. The final set of representations were received from Jeff Rees, the former Director of the TIU, in October 2017. Mr Rees then requested that he be provided with a revised notification setting out the Panel's analysis of matters relating to him, in light of the representations then received, and that he be given an opportunity to make further representations in response. The Panel agreed to Mr Rees' request and provided him with a further opportunity to make representations. As a consequence of the approach taken with Mr Rees, a number of other parties were offered the same opportunity to make further representations. These further representations were received in late February 2018.

58. In preparing this Interim Report and the REA, the Panel has fully considered all of the representations received. Due to the length of some of those representations, the Panel has endeavoured to summarise them in the REA, including often by quoting directly the key substantive points raised. Readers should refer to the REA for a more complete recitation of the representations provided to the Panel.

5. PUBLICATION OF INTERIM REPORT AND REA

59. The purpose behind the publication of the Interim Report and this REA is to give all those concerned an opportunity to make submissions as to why different final findings and conclusions should be reached, and as to the viability of the various proposed possible recommendations.

6. CONSULTATION ON FACTUAL FINDINGS, EVALUATIVE CONCLUSIONS AND RECOMMENDATIONS

60. Upon publication of this Interim Report with the REA, the Panel will engage in a consultation process on the factual findings, evaluative conclusions, and proposed recommendations contained in them. The consultation process provides an invaluable opportunity for all concerned to ensure that all relevant input is provided, including any evidence or reasoning that displaces the Panel's interim evaluative conclusions. In addition, there may be unanticipated consequences of the Panel's proposed recommendations for particular groups, and there may be alternative proposals for change that have not yet been drawn to the Panel's attention.

61. The Panel will receive input on consultation from any concerned individual or organisation. Interested parties are invited to provide written submissions by 25 June 2018. Submissions should be addressed to Jonathan Ellis, the Solicitor and Secretary to the Panel, at tennisirp@northridgelaw.com.

7. FINAL REPORT

62. Following its consideration of the submissions received on the consultation process, the Panel will produce a Final Report containing its final factual findings, evaluative conclusions and recommendations. The International Governing Bodies have committed to making the findings and conclusions of the Panel publicly available and to implement the final recommendations[19].

19 Terms of Reference paragraph 16.

Tennis

Independent Review of Integrity in Tennis

02

1. The Independent Review Panel sets out below its provisional conclusions in relation to the first area of factual investigation and evaluation: professional tennis. This covers the nature of the game, the various bodies involved in the organisation and regulation of professional tennis, the individuals involved, professional tennis tournaments and events, accreditation and security, the pathway for players, and the incentive structure for players including the intended and unintended consequences of that incentive structure. An understanding of these aspects is necessary to inform conclusions on integrity in tennis.

Q 2.1 Are there other matters of factual investigation or evaluation in relation to the aspects professional tennis examined below that are relevant to the Independent Review of Tennis and that should be addressed in the body of the Final Report, and if so which, and why?

Q 2.2 Are there any aspects of the Independent Review Panels' provisional conclusions in relation to those aspects of professional tennis that are incorrect, and if so which, and why?

A THE GAME ITSELF

2. Tennis is a sport played recreationally by millions, and professionally by an elite few, across the whole world[1]. At the highest level it is a very popular spectator sport.

3. Particularly at the professional level, tennis like many other sports, requires players to possess all of the following: (a) ability or skill; (b) fitness; (c) freedom from injury; (d) form; and (e) concentration, desire and self-confidence.

4. The sport has a singles form and a doubles form. Different players perform better at one form as opposed to the other. There are players who specialise in each form, though some play both. Most events have both a singles and a doubles competition.

5. There is men's professional tennis and there is women's professional tennis, each played in both the singles and the doubles form. In addition, at a few events there are mixed doubles competitions. Some events have both men's and women's competitions, but most are for one gender or the other.

6. With respect to the court on which a match is played, the surface may be grass, clay, or hard[2]. There are variations within each of those three classes, based on the materials used. Different players perform better on one surface as opposed to another.

7. In addition, there are junior events and events for older former leading players (sometimes described as "champions" or "legends" tournaments). Although such matches are, for example, played at the Grand Slams and money may be earned, they do not form part of the professional sport in the strict sense. Again, wheelchair tennis is played at the Grand Slams and players earn money, but it does not yet form part of the professional sport.

8. The margin between winning and losing a tennis match can be very narrow. Whether a point is won or lost depends not only on the capacity of each player to hit the ball so that in lands within the opposing player's side of the court, in such a way that it makes it difficult for the opposing player to return it, but also on whether either player makes a mistake, sometimes described as an "unforced error". The margin between winning and losing may be as slight as a ball pushed slightly too far and beyond a line, or a ball played into the net cord. The operation of the scoring system, made up of points, games and sets, can mean that the outcome of matches with evenly matched players may only depend on who wins or loses a very small number of key points.

9. Professional tennis possesses one of the essential characteristics of an exciting and vibrant sport: sufficient unpredictability of outcome, but outcome based on the sporting performance of the individuals on the day in free and open competition. There is a minimal amount of luck involved: the unpredictability comes from not knowing which of the players will (on the day) perform best in the light of their relative possession (on the day) of the attributes described above. While some of those attributes of a particular player may be known to or calculable by the opposing player or spectators, not least through the player's ranking, not all will be.

1 https://www.pledgesports.org/2017/06/top-10-most-popular-sports-in-the-world-by-participation/ [accessed 9 April 2018].

2 There is also beach tennis, though this is played with different rules (and on a far smaller scale). The rules of beach tennis can be found on the ITF website here: http://www.itftennis.com/beachtennis/about-beach-tennis/how-to-play.aspx [accessed 9 April 2018].

B BODIES INVOLVED IN THE ORGANISATION AND REGULATION OF PROFESSIONAL TENNIS

1. A DISTINCT ORGANISATIONAL AND REGULATORY STRUCTURE

10. The organisation and regulation of professional tennis differs markedly from many other professional sports because it is organised and regulated by a group of seven parallel organisations with different roles and responsibilities. It is not therefore organised and regulated by a pyramid with a single international governing body at the top, made up of national federation members, themselves made up of constituent member clubs or individuals, which both organise and regulate the sport, sometimes referred to as the "European model of sport". While the position is different from the paradigm of the European model of sport, it is also different from what is sometimes referred to as the "American model of sport", involving a league, which under the leadership of a commissioner, balances the interests of professional players and event organisers.

11. The position in tennis rather involves elements of each model. The International Tennis Federation ("ITF") is the international governing body, made up of national member associations or federations. While the ITF and its members organise and regulate the sport at the national, junior and/or pre-professional level, the ITF also organises and regulates tennis at a level that has international elements and that has come to be described as the lowest level of professional competition. The fully professional sport is however organised and regulated at the mid and higher levels by two international bodies, the Association of Tennis Professionals ("ATP"), and the Women's Tennis Association ("WTA"), the board of directors for each contains an equal number of player representatives and tournament representatives. The situation is further complicated by the fact that the four largest events (in terms of prize money, ranking points, and revenue from commercial exploitation) sit outside the ATP and the WTA, and themselves organise and regulate the sport at this highest level. The Grand Slams of the Australian Open, the French Open and the US Open are organised by their respective national federations (Tennis Australia ("TA"), the Fédération Française de Tennis ("FFT") and the United States Tennis Association ("USTA")), each a member of the ITF. The remaining Grand Slam, The Championships ("Wimbledon"), is organised by the All England Lawn Tennis Club ("AELTC"), rather than by the Lawn Tennis Association ("LTA"), which is the ITF member, and of which the AELTC is a registered venue. While TA, the FFT, the AELTC and the USTA organise their own events, they have created amongst other things for regulatory purposes, the Grand Slam Board (the "GSB", previously organised as the Grand Slam Committee or "GSC"), of which each Grand Slam is a member, along with the ITF.

12. This distinct organisational and regulatory position creates both difficulties and opportunities. On the one hand, it raises the spectre of unfocused and inconsistent regulation, and of bodies with one set of interests and imperatives pursuing those interests to the detriment of other bodies with a different set of interests and imperatives, rather than a single pyramid able to make balanced decisions taking into account the interests and imperatives of all in a proportionate manner. On the other hand, it creates a system of checks and balances, with no one organisation able to gain such a degree of control as to make it vulnerable (or as vulnerable) to institutional corruption, or to the unconstrained pursuit of misguided policies. It also creates a competitive dynamic, with event organisers led to innovate and develop an ever more compelling product: but with that too, may come disadvantages for others.

13. The sport has however sought in a number of contexts to agree common regulation of specific aspects of the professional sport. These include the Rules of the game itself, principally administered by the ITF; the Joint Certification Programme for Officials, principally administered by the ITF; the ranking system, which is administered respectively by the ATP and the WTA across not only their own competitions but also across the Grand Slams and the ITF's events; the Tennis Anti-Doping Programme, which is administered across all levels by the ITF; and the Tennis Anti-Corruption Programme, which is administered by the TIU and overseen by bodies on which each of the ITF, ATP, WTA and the GSB are represented.

2. THE INTERNATIONAL TENNIS FEDERATION

Role and responsibilities

14. The ITF, founded in 1913 as the International Lawn Tennis Federation, describes itself[3] as the world governing body of tennis, responsible for:

14.1 Administration and regulation of the sport, through over 200 member national associations or federations, and six regional associations, federations or confederations. The ITF is responsible for the Rules of Tennis[4], including the technical specifications of courts and equipment[5]. The ITF also has responsibility for the contents of, and the enforcement of the rules in, the Grand Slam Rulebook[6]. The ITF administers the international player identification number ("IPIN") system, the Joint Certification Programme for Officials, and the Tennis Anti-Doping Programme.

14.2 Organising international representative team competition:

14.2.1 together with the national associations or federations, the Davis Cup for men, the Fed Cup for women, and the mixed Hopman Cup;

14.2.2 together with the International Olympic Committee and national Olympic committees, the tennis event at the Olympic Games, and the equivalent wheelchair tennis event at the Paralympic Games.

14.3 Structuring international individual competition, by sanctioning events organised by others (including national associations and federations and other third parties), on:

14.3.1 the ITF Men's Pro Circuit7, referred to as "ITF Futures";

14.3.2 the ITF Women's Pro Circuit8;

14.3.3 the ITF Junior Circuit;

14.3.4 the ITF Seniors Circuit for players over the age of 35; and

14.3.5 the Wheelchair Tennis Circuit.

14.4 Marketing and promoting the sport through broadcasting, sponsorship, licensing and merchandising, live data, event management, public relations and its websites.

3 ITF website, http://www.itftennis.com/about/organisation/role.aspx. [accessed 9 April 2018].

4 The 2018 Rules of Tennis are at http://www.itftennis.com/officiating/rulebooks/rules-of-tennis.aspx. [accessed 9 April 2018].

5 The 2018 ITF Approved Tennis Balls, Classified Surfaces and Recognised Courts Guide to Products and Test Methods is at http://www.itftennis.com/media/278130/278130.pdf. [accessed 9 April 2018].

6 The 2018 Grand Slam Rule Book is at http://www.wimbledon.com/pdf/GrandSlamRulebook2018.pdf [accessed 9 April 2018].

7 The ITF 2018 Pro Circuit Regulations can be found at http://www.itftennis.com/media/280343/280343.pdf. [accessed 9 April 2018].

8 Paragraphs 233.2 and 249-263.

15. At the ITF's 2016 Annual General Meeting (or Council) of its member associations or federations, the ITF's President and Board of Directors announced their priorities under the ITF's new leadership, as being, in summary[9]:

15.1 Leadership

15.1.1 Integrity: uphold the highest levels of integrity, governance and transparency;

15.1.2 Investment: strengthen the financial position of the ITF and its member nations;

15.1.3 Development: increase ITF development funding and expertise to grow tennis around the world.

15.2 Management

15.2.1 Davis Cup and Fed Cup: create more revenue for investment in Tennis Development;

15.2.2 Olympics: elevate tennis in the Olympics;

15.2.3 Opportunity: provide opportunities to play tennis at all levels of the game.

15.3 Collaboration

15.3.1 Partnership: increase cooperation and collaboration with all partners;

15.3.2 Engage, listen to, understand and work more closely with National and Regional Associations.

Structure and governance

16. Under the ITF's Constitution[10] as implemented in 2016, the structure of the ITF is as follows:

16.1 The ITF is made up of national tennis association or federation members, each of which is entitled to vote. In 2018, there are 210 such members. There are also 63 non-voting associate members[11]. The voting entitlement is weighted to reflect the size of the sport in the various nations[12]. The range is from 12 votes (Australia, France, Germany, Great Britain, USA) to one vote, with significant groups holding either nine, seven, five or three votes. Together in a General Meeting (Annual or Extraordinary), the delegates of the members constitute the ITF Council. The Council has responsibility for deciding, in particular, membership issues, the affiliation of Regional Associations, changes to the Rules of Tennis, changes to the Constitution, and election of the President and Board.

16.2 The Board of Directors consists of the President[13], 13 elected members and one male and one female athlete representative member, appointed by the elected members. The 13 elected members must include three from the nations with the maximum number of votes, one from Asia, one from South America, one from Africa, two from Europe and two from North and Central America and the Caribbean. The Board is responsible for the management of the ITF.

16.3 The day to day duties of the ITF are carried out by the secretariat, led by the President and Chief Operating Officer ("COO"), who head the ITF's Executive. Reporting to the COO are two Senior Executive Directors[14], six Executive Directors[15] and five Heads of Departments[16].

9 ITF 2024 growth agenda - http://www.itftennis.com/news/231617.aspx. [accessed 9 April 2018].

10 The Memorandum, Articles of Association and Bye-Laws of ITF Limited, trading as the International Tennis Federation, and incorporated under the laws of the Commonwealth of the Bahamas http://www.itftennis.com/media/221225/221225.pdf. [accessed 9 April 2018].

11 http://www.itftennis.com/media/276275/276275.pdf [accessed 9 April 2018].

12 http://www.itftennis.com/media/278337/278337.pdf [accessed 9 April 2018].

13 The Board of Directors for the years 2015-19, elected at the 2015 AGM in Santiago, Chile, is as follows: President: David Haggerty (USA); Vice Presidents: Katrina Adams (USA), Anil Khanna (IND), Rene Stammbach (SUI); Board Members: Martin Corrie (GBR); Sergio Elias (CHI); Ismail El Shafei (EGY); Bernard Giudicelli (FRA); Jack Graham (CAN); Thomas Koenigsfeldt (DEN); Celia Patrick (NZL); Aleksei Selivanenko (RUS); Stefan Tzvetkov (BUL); Bulat Utemuratov (KAZ); Athlete Board Members: Mary Pierce (FRA), Mark Woodforde (AUS).

14 Kris Dent (Professional Tennis) and Dr Stuart Miller (Development and Integrity).

15 Justine Albert (Professional Tennis Events); Dominic Anghileri (Finance and Administration); Jackie Nesbitt (ITF Circuits); Luca Santilli (Tennis Development); Tim Stemp (Commercial); and Steve Wilson (Communications and International Relations).

16 Jamie Capel-Davies (Science and Technical); Soeren Friemel (Officiating); Mat Pemble (Information and Communications Technology); Jane O'Sullivan (Human Resources); and Alistair Williams (Wheelchair Tennis and Live Scoring).

Revenue and expenditure

17. In 2016, the ITF's revenue was US$55,562,000. The ITF generates funds from the following principal sources, as outlined in the ITF 2016 Annual Report and Accounts[17]:

    17.1 Broadcast rights, sponsorship, licensing and merchandising in respect of the Davis Cup, Fed Cup and Hopman Cup - in 2016, US$33,804,000.

    17.2 Sale of live data streaming rights - in 2016, US$6,158,000.

    17.3 Revenue from the Olympics - in 2016, US$5,808,000.

    17.4 Sanctioning fees from event organisers - in 2016, US$3,138,000.

    17.5 Contributions from the Grand Slam Development Fund - in 2016, US$2,225,000.

18. In 2016, the ITF's expenditure was US$55,966,000. The ITF expends on the following principal areas[18]:

    18.1 Costs of funding professional tennis - in 2016, US$31,209,000.

    18.2 Development of the sport of tennis and tennis players - in 2016, US$6,262,000.

    18.3 Presidential and communications costs, including the ITF AGM, World Champions Dinner, Board of Directors and marketing of the game - in 2016, US$5,953,000.

    18.4 Administrative costs, including administration of information technology services, insurance, legal and professional fees, and general administrative costs - in 2016, US$5,256,000.

    18.5 Science and technical costs (including Anti-Doping) - in 2016, US$4,194,000.

3. REGIONAL CONFEDERATIONS

19. There are six regional tennis associations: Asian Tennis Federation ("ATF") with 44 members; Confederation of African Tennis ("CAT") with 52 members; Confederación Sudaméricana de Tenis ("COSAT") with ten members; Confédération de Tenis de Centroamérica Caribe ("COTECC") with 33 members; Oceania Tennis Federation ("OTF") with 19 members, and Tennis Europe ("TE") with 50 members. Almost all ITF members are also members of a regional association; the exceptions are the USTA and the Tennis Canada, which fall outside any of the regions.

20. The role of the regional tennis associations includes: acting as a link between their member nations and the ITF and intervening on their behalf and representing them before the ITF if asked to do so; establishing and sanctioning calendars of events at all levels within their region; recommending events and calendars to the ITF for inclusion in the international calendars; promoting, establishing and coordinating development and educational programmes within their region; carrying out functions which the ITF delegates to them and administering ITF funds provided to them[19].

17 ITF 2016 Annual Report & Accounts (which, as of February 2018, are the latest accounts to have been published) - http://itf.uberflip.com/i/828261-itf-annual-report-accounts-2016. [accessed 9 April 2018].

18 ITF 2016 Annual Report & Accounts - http://itf.uberflip.com/i/828261-itf-annual-report-accounts-2016. [accessed 9 April 2018].

19 For example, see http://www.tenniseurope.org/page.aspx?id=12173. [accessed 9 April 2018].

4. NATIONAL FEDERATIONS

21. The role of the 210 full ITF member and 63 associate national tennis associations or federations is, essentially, to organise, regulate and promote tennis within their jurisdictions. The nature of and extent to which they do this varies greatly by reference to the strength of the sport in each nation and the resources at the national body's disposal. The role extends from grass roots development to the development of outstanding national players as individual professionals and for participation in international representative team competition. The national bodies select their Davis Cup and Fed Cup teams, and organise home ties in the competitions.

22. As part of this role, national bodies may also themselves organise competitions sanctioned by the ITF as Pro Circuit or Futures events, or by the ATP or WTA at the Challenger or 125K level respectively[20], or at the World Tour level.

23. The revenue of the national federations is generated from two main sources:

    23.1 All ITF member federations receive an annual income from the ITF as a percentage of the income the ITF receives from the sale of data on ITF matches[21]. In addition, the ITF and the GSB (via the Grand Slam Development Fund) invest over US$4 million per year on the global growth of tennis[22]; and

    23.2 National federations also receive income from the tournaments they organise. This revenue stream provides the genesis for the large disparity between the incomes of the ITF members. At the top end, those national federations who benefit from hosting a Grand Slam have extremely large revenues. Alongside this, other countries who host major ATP or WTA tournaments (for example a Masters 1000 or Premier Mandatory) will receive a strong revenue stream. In contrast, many federations receive little to no revenue from tennis tournaments.

24. Each national federation assumes full control of their budget and of any money they receive from the ITF. However, under the ITF Memorandum and Articles of Association, each member federation is obliged to pay a subscription fee to the ITF. This fee is dictated by both the number and class of shares they possess (which, in turn, determine voting power)[23]. In addition to this, the Constitution also provides for the ITF to receive a 1% payment of the gross prize money distributed at Grand Slams, and 0.5% of the gross prize money from several other "recognised" events[24].

5. THE ASSOCIATION OF TENNIS PROFESSIONALS

Role and responsibilities

25. The original Association of Tennis Professionals was formed as a player association in 1972 to protect the interests of male professional tennis players. It established the ATP computerised singles ranking system in 1973, in order to create an objective method of qualification for events. Between 1974 and 1989 it was represented, along with representatives from the ITF and tournament directors from around the world, on the Men's International Professional Tennis Council, which operated the men's professional circuit. In 1989 the player association, with the support of many tournaments, formed a new circuit, the ATP Tour, in which players and tournaments were equal partners, and which operated from 1990. The ATP Tour changed its name to the ATP in 2001, and created the Tennis Masters Series made up of its nine premier tournaments. In 2009, the ATP created the ATP World Tour, made up of an ATP World Tour Finals event, and ATP World Tour Masters 1000, ATP World Tour 500 and ATP World Tour 250 events[25].

20 Paragraph 149.

21 Statement of Stephen Farrow (LTA).

22 http://www.itftennis.com/about/organisation/role.aspx. [accessed 9 April 2018].

23 Appendix A to Memorandum, Articles of Association and Bye-laws of ITF Limited, available at http://www.itftennis.com/media/248417/248417.pdf. [accessed 9 April 2018].

24 Memorandum, Articles of Association and Bye-laws of ITF Limited, available - http://www.itftennis.com/media/248417/248417.pdf. [accessed 9 April 2018].

25 ATP website - http://www.atpworldtour.com/en/corporate/history. [accessed 9 April 2018].

26. The ATP describes itself as the governing body of the men's professional tennis circuits, the ATP World Tour, the ATP Challenger Tour and the ATP Champions Tour (for former players who are a former singles number 1, a Grand Slam finalist, or were singles players in a winning Davis Cup team)[26]. The ATP is responsible for, amongst other things, the following:

    26.1 Collaborating with tournament hosts to organise tours, which includes sanctioning events; setting the calendar; providing tour managers, tournament supervisors, some of the chair umpires, and physiotherapists; and operating the scoring system.

    26.2 Regulating the Tours, which includes applying the rules in the ATP Rulebook to players and to tournaments[27].

    26.3 Operating the ATP Ranking System.

    26.4 Marketing and promoting the tours commercially, through sale of broadcast rights, sponsorship, licensing and merchandising, and live data, and through public relations.

    26.5 Player welfare, including medical care, financial provision, and career progression.

Structure and governance

27. Under the ATP's Constitution[28] as implemented in 2017, the structure of the ATP is as follows:

    27.1 ATP Tour, Inc. is a private company limited by shares, listed as a non-profit organisation.

    27.2 The Board of Directors has responsibility for policy decisions of the ATP. It is made up of the Executive Chairman and President, three "player representatives" and three "tournament representatives"[29]. The Executive Chairman and President therefore has the determining vote, with players and tournaments having three each. The player representatives and the tournament representatives are elected by the Player Council and the Tournament Council respectively[30]. The two councils make recommendations to the ATP Board through their representatives, which the Board has the power to accept or reject.

Revenue and expenditure

28. The following information sets out the ATP's revenue and expenditure according to the most recent published accounts (for the tax year ending 31 December 2015)[31].

29. In 2015, the ATP's revenue was US$109.6 million; this reflected a 2.4% increase on the previous year's figures. The ATP generates funds from the following principal sources:

    29.1 Member services and benefits (including TV broadcasting rights) – in 2015, US$63.3 million, a 6.2% increase on the previous year's figures;

    29.2 Professional tournament revenues – in 2015, US$20.5 million, a 3.4% increase on the previous year's figures;

    29.3 Membership dues and fees – in 2015, US$14.8 million, a 20% decrease on the previous year's figures;

26 ATP website http://www.atpworldtour.com/en/corporate/about and ATP 2017 Media Guide http://www.atpworldtour.com/-/media/files/media-guide/2017/2017-atp-media-guide.pdf. [both accessed 9 April 2018].

27 ATP Rulebook 2018 is at http://www.atpworldtour.com/en/corporate/rulebook. [accessed 9 April 2018].

28 ATP Tour Inc is a private company incorporated under the laws of Delaware.

29 The Executive Chairman and President is Chris Kermode, in post from 1 January 2014. The three player representatives are: Giorgio Di Palermo (Europe), in post from 1 January 2010; Roger Rasheed (International), in post from 1 January 2018; and Justin Gimelstob (Americas), in post from 1 January 2009. The three tournament representatives are Gavin Forbes (Americas), in post from 1 January 2009; Mark Webster (Europe), in post from 1 January 2010; and Charles Smith (International), in post from 1 January 2011.

30 The Tournament Council has 13 members representing and elected by different constituencies. European tournaments have five representatives (Julien Boutter, Christer Hult, Sergio Palmieri, Herwig Straka and Mark Webster); International tournaments have four representatives (Allon Khakshouri, Cameron Pearson, Charles Smith, and Salah Tahlak); and Americas tournaments have four representatives (Gavin Forbes, Raul Zurutuza, Bill Oakes and Eugene Lapierre) - http://www.atpworldtour.com/en/corporate/structure. [accessed 9 April 2018].

31 The tax return can be found at this link: http://990.erieri.com/EINS/952833251/952833251_2015_0d85b687.PDF. [accessed 9 April 2018]. This is the most recent publicly available set of accounts.

29.4 Player benefit plans – in 2015, US$2.6 million, a 24% decrease on the previous year's figures; and

29.5 Challenger circuit fees – in 2015, US$1.7million, a 12.5% increase on the previous year's figures.

30. In 2015, the ATP's expenditure was US$92.6 million; this reflected a 1.1% increase on the previous year's figures. The ATP expends on the following principal areas:

30.1 Tournament member payments – in 2015, US$29.3 million, a 2.3% decrease on the previous year's figures;

30.2 Player member payments – in 2015, US$11.7 million, a 2.5% increase on the previous year's figures;

30.3 Professional tournament – in 2015, US$6.5 million, an 8.3% increase on the previous year's figures;

30.4 Advertising and promotion – in 2015, US$5.7 million, a 9.6% increase on the previous year's figures;

30.5 Compensation (i.e. payments made) to its officers, directors, and highest paid employees – in 2015, US$4.3 million, a 13.1% increase on the previous year's figures;

30.6 Other salaries and wages – in 2015, US$6.7 million, a 1.5% increase on the previous year's figures; and

30.7 Travel – in 2015, US$4.4 million, a 10% increase on the previous year's figures.

6. THE WOMEN'S TENNIS ASSOCIATION

Role and responsibilities

31. The original Women's Tennis Association was formed as a player association in 1973 to represent the interests of female professional tennis players, following the earlier establishment of the Virginia Slims Series of events. It established the WTA computerised singles ranking system in 1975. In 1995, it merged with the Women's International Professional Tennis Council to form the WTA Tour, in which players and tournaments are equal partners. In 2009 extensive "Roadmap" circuit reforms were introduced, and the WTA Tour now consists of a WTA Tour Championships event, and WTA Premier, WTA International and WTA 125k events[32].

32. The WTA[33] is the organiser and regulator of the professional tour for women, the WTA Tour. It is responsible for, amongst other things, the following:

32.1 Collaborating with tournament hosts to organise tours, which includes sanctioning events; setting the calendar; providing tour managers, tournament supervisors, some of the chair umpires, and physiotherapists; and operating the scoring system.

32.2 Regulating the WTA Tour, which includes managing the contents of, and applying the rules in, the WTA Rulebook[34].

32.3 Operating the WTA Ranking System.

32.4 Marketing and promoting the WTA Tour commercially, through sale of broadcast rights, sponsorship, licensing and merchandising, and live data, and through public relations.

32.5 Player welfare, including medical care, financial provision, and career progression.

32 WTA website - http://www.wtatennis.com/ABOUT-WTA. [accessed 9 April 2018].

33 WTA website - http://www.wtatennis.com/ABOUT-WTA and WTA 2018 Media Guide http://www.wtatennis.com/wta-media-guide. [both accessed 9 April 2018].

34 WTA Rulebook 2018 is at http://wtafiles.wtatennis.com/pdf/publications/2018WTARulebook.pdf [accessed 9 April 2018].

Structure and governance

33. Under the WTA's constitution[35] as implemented in 2017, the structure of the WTA is as follows:

33.1 WTA Tour, Inc. is a private company limited by shares, listed as a non-profit organisation.

33.2 The Board of Directors has responsibility for the policy decisions of the WTA is made up of the Chief Executive Officer, three "player class directors", three "tournament class directors", the President of the ITF and two "alternate" directors (one for each of the two classes)[36]. The alternate directors provide an alternate for the tournament class and player class directors if one of the board representatives is unavailable. In contrast to the ATP, therefore, the vote of the ITF's representative is added to the three votes for each of players and tournaments. The player class directors and the tournament class directors are elected by respectively the Players' Council[37] and the Tournament Council[38]. The two councils make recommendations to the ATP Board through their representatives on it. The Board has the power to accept or reject the councils' suggestions. The Board has responsibility for the policy decisions of the WTA.

Revenue and expenditure

34. The following information sets out the WTA's revenue and expenditure according to the most recent published accounts (for the tax year ending 31 December 2015)[39].

35. In 2015, the WTA's revenue was US$72.1 million; this reflected a 7.4% increase on the previous year's figures. The WTA generates funds from the following principal sources:

35.1 Tour operations fees – in 2015, US$26.7 million, a 5.9% increase on the previous year's figures;

35.2 TV broadcasting rights – in 2015, US$22.8 million, a 10.7% increase on the previous year's figures; and

35.3 Sponsorships – in 2015, US$16.2 million, a 4.3% decrease on the previous year's figures.

36. In 2015, the WTA's expenditure was US$67.8 million; this reflected a 4.4% increase on the previous year's figures. The WTA spends on the following principal areas:

36.1 TV rights – in 2015, US$13.6 million, equal to that of the previous year's figures;

36.2 Tournament expenses – in 2015, US$13.2 million, a 2.4% increase on the previous year's figures;

36.3 Sponsor expenses – in 2015, US$7.8 million, a 4.9% decrease on the previous year's figures;

36.4 Compensation (i.e. payments made) to its officers, directors, and highest paid employees – in 2015, US$3.3 million, a 26.9% increase on the previous year's figures; and

36.5 Other salaries and wages – US$6.7 million, a 23% decrease on the previous year's figures.

35 The WTA Tour, Inc is incorporated under the laws of the state of New York.

36 The Chief Executive Officer is Steve Simon, in post since 2015. The player class directors are Carlos Fleming, Lisa Grattan and Vanessa Webb. The tournament class directors are Adam Barrett, Peter-Michael Reichel and Jorge Salkeld. The ITF director is David Haggerty, President. The "alternate" directors are for the player class, Dianne Hayes, for the tournament class, Markus Guenthardt.

37 The Players' Council has eight members representing and elected by different constituencies. Players ranked 1-20 have four representatives (Lucie Šafářová, Samantha Stosur, Serena Williams and Venus Williams). Players ranked 21+ have a representative (Irina Falconi), but there are also distinct representatives for each of players ranked 21-50 (Anastasia Pavlyuchenkova); players ranked 51-100 (Alison Riske), and players ranked 100+ (Marina Erakovic).

38 The Tournament Council has 7 members representing and elected by different constituencies. European tournaments have three representatives (Markus Guenthardt, Peter-Michael Reichel, and Oliver Scadgell); and Asia-Pacific tournaments have four representatives (Karl Budge, Charles Hsiung, Jorge Salkeld, and Salah Tahlak); and Americas tournaments have four representatives (Gavin Forbes, Raul Zurutuza, Bill Oakes and Eugene Lapierre).

39 The tax return can be found at this link: http://990.erieri.com/EINS/133792400/133792400_2015_0d8fb7bf.PDF. [accessed 9 April 2018]. This is the most recent publicly available set of accounts.

7. THE GRAND SLAM ORGANISERS AND THE GRAND SLAM BOARD

Tennis Australia, as owner and organiser of the Australian Open

37. Tennis Australia, the Australian national federation is a not-for-profit company domiciled in Australia. The company operates with a board of directors, who take responsibility for corporate decisions relative to the company, and an executive management team responsible for the day-to-day operations of Tennis Australia and the Australian Open[40].

38. As the ITF affiliate, Tennis Australia carries all responsibilities of a national federation, which are listed above[41]. Beyond this role, Tennis Australia also owns and organises the Australian Open, the first Grand Slam of the season, and is responsible for organising the Australian Davis Cup team, as well as hosting any home Davis Cup fixtures. The body was founded in 1904, originally called the Australian Lawn Tennis Association.

39. In the financial year 2016/17, Tennis Australia generated revenue of A$313,254,243. Nearly the entirety of this revenue, some A$309,347,708, was generated from operations and events. As only A$199,496,349 was spent on hosting these events, Tennis Australia was able to reinvest A$36,946,217 in grassroots tennis during the 16/17 financial year. Beyond this, the company also spent A$10,810,134 on media and marketing[42].

The FFT, as owner and organiser of the French Open

40. The FFT is a not-for-profit company domiciled in France. The company operates with a board of five directors responsible for the company's corporate decisions, an executive committee of 18 members responsible for the day-to-day operations of the FFT, and a superior tennis committee responsible for overseeing and evaluating the actions of the executive committee[43].

41. As the ITF affiliate, the FFT carries all responsibilities of a national federation. Beyond this role, the FFT also owns and organises the French Open, the second Grand Slam of the season, and is responsible for organising the French Davis Cup and Fed Cup teams, as well as hosting any home Davis or Fed Cup fixtures. The body was established in 1920 as the Fédération Française de Lawn Tennis; it has been known by its present name since 1976.

The AELTC, as owner and organiser of The Championships ("Wimbledon")

42. The AELTC, is a wholly-owned subsidiary of the All England Lawn Tennis & Croquet Club Limited (a private company limited by guarantee). The AELTC functions with both a management board and a board of directors[44].

43. The AELTC manages the day-to-day operations of Wimbledon, and owns all assets and undertakings relating to the tournament.

44. According to their most recently published figures, in 2017 Wimbledon produced a surplus of £37,375,000[45]. It was agreed in December 2008, between the AELTC and the LTA, that the LTA would be entitled to 90 per cent of any distributable financial surplus produced by Wimbledon. This will remain the case until 2053, and is intended to assist the LTA in their operations to manage and grow British tennis.

40 For a full list of board members and members of the executive team, see https://www.tennis.com.au/about-tennis-australia/organisation-structure. [accessed 9 April 2018].

41 Paragraph 21

42 All figures taken from the Tennis Australia annual report, found at https://www.tennis.com.au/wp-content/uploads/2017/11/TA_2016-2017_AnnualReport-1.pdf [accessed 9 April 2018].

43 For a full list of board members and members of the executive team, see http://www.fft.fr/fft/comite-executif-et-conseil-superieur-du-tennis/comite-executif-du-tennis [accessed 9 April 2018].

44 See https://www.wimbledon.com/en_GB/atoz/about_aeltc.html [accessed 9 April 2018] for the full list of board members and board of directors. The Chief Executive of the board of directors is Richard Lewis, whilst Philip Brook chairs the management board.

45 See https://www.wimbledon.com/en_GB/aboutwimbledon/prize_money_and_finance.html.

The USTA, as owner and organiser of the US Open

45. The USTA, is a not-for-profit company domiciled in the USA. The company operates with a board of 14 directors responsible for the company's corporate decisions, and an executive staff responsible for the day-to-day operations of the USTA[46].

46. As the ITF affiliate, the USTA carries all responsibilities of a national federation. Beyond this role, the USTA also owns and organises the US Open, the final Grand Slam of the season, and is responsible for organising the USA Davis Cup and Fed Cup teams, as well as hosting any home Davis or Fed Cup fixtures. The body was established in 1881 as the United States National Lawn Tennis Association; it has been known by its present name since 1975.

47. According to the most recently published accounts (for the tax year ending 31 December 2015) the USTA generated revenue of US$359,928,000. Nearly the entirety of this revenue (US$321,202,000) was generated from the US Open and other Tour events. Conversely, as only US$167,424,000 was spent on hosting these events, the USTA was able to invest US$96,811,000 into programs at the National Tennis Centre, independent regional tennis associations, and other community tennis programs, as well as US$18,079,000 on player development. Beyond this, the USTA's major expenses were advertising, pro circuit events and officials, and membership fees.

The GSB (formerly the GSC)

48. The GSB was established in 1990 with a view both to aligning the interests of the four largest tennis tournaments in the world, as well as to maximise the positive effect these tournaments could have on developing tennis worldwide. In 2014, the GSC became the GSB. This change was brought about to modernise and refocus the body, as well as to underline its distinction from the ITF. However, the GSB and the ITF do remain linked; the offices of the GSB are housed at the ITF in London, England, and the ITF acts as a service provider to the GSB.

49. The GSB takes responsibility for the coordination and management of activities relating to the four Grand Slams. This includes both responsibility for the contents of, and administering the rules of, both the Grand Slam Rulebook and Code of Conduct. Additionally, responsibility for tournament calendars, officiating, and managing relationships with third parties and other governing bodies falls to the GSB. The GSB also owes a duty to the sport of tennis to try and serve and promote the game worldwide.

8. INTERRELATION BETWEEN, AND COMMON AREAS OF, REGULATION

50. Each of the ATP, the WTA, the ITF, and the GSB produce a rulebook which governs all competitions over which they have jurisdiction[47]. Although, theoretically, this means players frequently play under the jurisdiction of different rulebooks, the practical effect is minimal. All ATP, WTA, ITF, and Grand Slam tournaments adopt the uniform Rules of Tennis, and all are subject to the TACP. Hence, the nuances between the rulebooks relate more to tournament structure and process rather than the manner in which the games are played.

51. Regulatory areas where the ITF, ATP, WTA and Grand Slams overlap include:

    51.1 The Rules of Tennis, which are primarily administered by the ITF. A "Rules of Tennis Committee" meets twice yearly to consider whether any amendments should be made to the rules of the sport. Any proposed amendments will be recommended to the ITF's board, and subsequently raised at the ITF's Annual General Meeting; this is the ultimate authority for amending the rules. These amendments will then be incorporated either by amendment or in the following year's "Rules of Tennis"[48]. The ATP, WTA and Grand Slam Rules are silent on their adoption of these rules. The Rules of Tennis do, however, provide a list of ITF approved alternate rules. It is deemed that these can be adopted at a limited number of events for a limited amount of time at the discretion of the ITF.

46 For a full list of board members and members of the executive team, see https://www.usta.com/en/home/about-usta/usta-leadership.html [accessed 9 April 2018].

47 In the case of the ITF, separate Rulebooks are created for each level of tournament (for example Grand Slams, Davis Cup, Fed Cup, pro Circuit). See http://www.itftennis.com/officiating/rulebooks/rules-of-tennis.aspx. [accessed 9 April 2018].

48 ITF Rules of Tennis, 2018 - http://www.itftennis.com/about/organisation/rules.aspx. [accessed 9 April 2018].

51.2 The Joint Certification Programme for Officials, principally administered by the ITF;

51.3 The ranking system, which is administered respectively by the ATP and the WTA across not only their own competitions but also across the Grand Slams and the ITF's events;

51.4 The Tennis Anti-Doping Programme, which is administered across all levels by the ITF; and

51.5 The Tennis Anti-Corruption Programme, which is administered by the TIU and overseen by bodies on which the ITF, ATP, WTA and the Grand Slam Board are represented.

C INDIVIDUALS INVOLVED IN PROFESSIONAL TENNIS

52. It is not only the players that are involved in the sport, but also all those who assist the player, and those who ensure the smooth running of events.

1. PLAYERS

53. According to a player pathway review undertaken by the ITF over a three-year period between 2014 and 2017 (the "ITF Pro Circuit Review"), there were 13,736 professional tennis players, including 8,874 men and 4,862 women in 2013. There are currently around 14,000 players in total competing in professional tennis[49].

54. According to the data analysis undertaken as part of the ITF Pro Circuit Review, out of the 8,874 male professional players, 3,896 earned no prize money. Out of a total 4,862 female professional players, 2,212 earned no prize money.

55. As at 26 February 2018, of the almost 9,000 male professional players, 1,969[50] have an ATP singles ranking. Of the approximately 5,000 female professional tennis players, 1212[51] have a WTA singles ranking. In other words, out of the approximately 14,000 professional players in total, almost 11,000 do not hold either an ATP or WTA singles ranking.

2. COACHES

56. The USTA summarises the role of a coach as "where current and aspiring players turn to learn the basics of tennis, to refine their swings, fine-tune their serves and advance their skills. For many, coaches are their point of entry into the game. As such, a coach may serve many functions, from teacher and motivator to cheerleader and psychologist[52]."

57. There is no requirement on a coach to be registered or certified under any one of the ITF, WTA or ATP rules. The WTA in January 2017, however, introduced a new WTA coach program. The aim of the new WTA coach program is to professionalise and raise the standards associated with being a coach on the WTA. Coaches who wish to participate in the program must currently be working with a WTA Tour level player and meet defined criteria (including professional certification or licensure from a coaching governing body), uphold professional obligations and be recommended by a WTA Player.[53] It should be noted, however, that the implementation of the WTA coach program does not prohibit coaches who elect not to be WTA certified from coaching WTA players. In other words, the establishment of the WTA coach program does not mean there is an obligation on a player to have a WTA certified coach. The ATP does not currently have an equivalent program.

49 http://www.itftennis.com/news/278962.aspx [accessed 9 April 2018].

50 http://www.protennislive.com/posting/ramr/singles_entry_numerical.pdf [accessed 9 April 2018].

51 http://wtafiles.wtatennis.com/pdf/rankings/Singles_Numeric.pdf [accessed 9 April 2018].

52 https://www.usta.com/en/home/coach/coaching-resources/national/coaching-opportunities.html [accessed 9 April 2018].

53 http://www.wtatennis.com/sites/default/files/wta_coach_program_rules.pdf [accessed 9 April 2018].

58. A certification from a national association counts as a professional certification or licensure from a coaching governing body. Coaches' courses are run through the national tennis associations in each country with syllabi approved by the ITF; these courses enable coaches to gain coaching qualifications recognised by the national association and consequently recognised by the other governing bodies. The ITF only assists national federations to implement certification systems and coaching courses, it does not certify coaches.

59. In respect of governance, there is not an official structure in place that formalises a player's relationship with his/her coach. The terms of a contract, if one exists between a player and his/her coach, is at the discretion of those involved, including with respect to remuneration. Whilst the majority of professional coaching is player-financed, there are some exceptions through national federations. The LTA, USTA and FFT hire and appoint designated coaches who can be available to beginner players to oversee their progression.

60. A player usually has one main coach and may have several ancillary coaches depending on their needs, ranking and requirement. Players frequently change their coaches, with some players having several coaches over the course of one season.

3. AGENTS

61. The Panel understands that the role of an agent can be varied and wide ranging. At the higher levels of the game, an agent can cover all aspects of a player's career from commercial elements such as endorsement negotiations to coaching requirements, tournament schedule, including registering a player for tournaments and dealing with any withdrawals.

62. A player usually has one primary agent, although some players will choose to have other agents for example an agent that is based in a certain local market who might be better placed to source new revenue opportunities.

63. A player's agent does not need to have any professional qualifications; there is no formal licensing or registration process in place.

4. PLAYERS' SUPPORT TEAMS AND WIDER CIRCLE

64. A player's support team (more commonly known as an entourage) can range from family members and friends, to private physiotherapists and psychologists. The majority of players (at all levels) will travel with family members; however, there are some players who travel on the tennis circuit alone and are not supported by a wider circle.

5. TOURNAMENT DIRECTORS

65. Each tournament has a Tournament Director. Tournament Directors organise and oversee the event from start to finish. Tournament Directors engage in a number of activities to promote the smooth running of their event including ticket sales, securing a venue, acquiring staff and organising the playing schedule.

6. OFFICIALS AND THE STRUCTURE OF OFFICIATING

66. All officials are bound by the rules as stated in the "ITF Duties and Procedures for Officials" booklet. These rules are updated every year and have been integrated into the Code of Conduct for Officials, which covers the provisions of the Tennis Anti-Corruption Program. Some tournaments (for example, Wimbledon) require officials to be bound by a number of additional rules.

Hierarchy

67. The following hierarchy of officials is provided for in the ITF Duties and Procedures for Officials:

Supervisor / Referee

67.1 The Supervisor has overall responsibility for tournament logistics and acts as final on-site authority for the interpretation of the applicable Tournament Rules and Regulations, Code of Conduct, Rules of Tennis and the Duties and Procedures for Officials as to all matters arising that require immediate resolution at the tournament site. With respect to Code of Conduct violations, the Supervisor is responsible for investigating and issuing fines (where applicable).

67.2 The Supervisor's responsibilities with respect to tournament logistics include (amongst others): (a) appointing the Chief Umpire; (b) approving the appointment of all Chair Umpires and Line Umpires; (c) ensuring conformity of court, net, netposts and singles sticks to technical specifications; (d) ensuring each court is equipped with a Chair Umpire's chair, Line Umpires' chairs, Net Device or Net Umpire's chair, Players' chairs, On-Court Service (i.e. drinks and towels), Measuring device, PDA or Scorecard and Stopwatch; and, (e) approving the Order of Play.

67.3 Supervisors are required to be familiar with live-scoring hand-held devices.

Chief Umpire

67.4 The Chief Umpire recruits officials for the tournament and schedule on-court officiating assignments. The Chief Umpire is also responsible for evaluating officials' on-court performance and is required to be on-site at all times during play. A Chief Umpire is not permitted to act as a Chair Umpire or Line Umpire unless approved by the Supervisor.

67.5 Chief Umpires are required to be familiar with live-scoring hand-held devices.

Chair Umpires

67.6 The Chair Umpire determines all "Questions of Fact" arising during the match and ensures that the rules are observed by the players and all on-court officials. The Chair Umpire also makes the first determination on all "Questions of Law" arising during the match, subject to a right of appeal to the Supervisor/Referee.

Line Umpires

67.7 Line Umpires call all balls and foot faults on an assigned line. Line Umpires also report any misconduct not witnessed by the Chair Umpire and escort players who take a toilet or change of attire break to ensure that the player does not take the break for any other purpose.

Net Umpires

67.8 Net Umpires call all net violations (i.e. if a serve hits the top of or passes through the net).

Review Officials

67.9 Review Officials manage the process of reviewing decisions from the Electronic Review Booth.

Qualification

68. In 1999, the International Governing Bodies[54] established a Joint Certification Programme for officials. The Programme is administered by the ITF.

69. A badge system represents the level of certification of the official and the level of tournament at which they can officiate. Above national association level, there are three distinct levels of ITF certification[55].

National association certification

69.1 National level officials are certified by their national association. National officials are able to work at events in the country in which they are certified. Each national association provides training courses as an introduction to tennis officiating. The training includes lessons about the Rules of Tennis and the basic techniques and procedures of umpiring.

69.2 Standards of officiating below Level 1 are not standardised across different national associations.

ITF certification - Level 1 (Green Badge)

69.3 Level 1 (Green Badge) officials are taught and examined in French or Spanish and are certified by the ITF. Level 1 was introduced following demands from national associations in regions such as South and Central America and Africa.

ITF certification - Level 2 (White Badge)

69.4 Level 2 (White Badge) officials are taught and examined in English and are certified by the ITF. An official who passes Level 2 will be certified as a White Badge Chair Umpire, White Badge Chief Umpire and/or a White Badge Referee depending on the modules completed.

ITF certification - Level 3 (International)

69.5 Level 3 (International) Officials are taught by representatives of the ATP, ITF and WTA. There are three levels of International Chair Umpire: Bronze (entry level for all International Chair Umpires), Silver and Gold. The work rate and performance of all International Officials is assessed by each of the International Governing Bodies at the end of each year.

70. The ITF certification process requires officials to attend an ITF officiating school. There are different ITF officiating schools for each of the three levels of certification. Officials must attend and pass the ITF officiating school in order to obtain their international officiating badges and become ITF certified officials. There are around ten ITF officiating schools (Level 1, Level 2 and Level 3) per year in different regions.

Event specific minimum officiating requirements

71. The minimum certification level to officiate differs across the varying levels of the professional game. Each of the International Governing Bodies set the minimum officiating standards required for tournaments under their jurisdiction.

72. For every ITF tournament a national association prepares a schedule with a proposed Supervisor, Chief Umpire and officials. The ITF will review the proposal and confirm whether it meets the minimum officiating requirements. If it does not, the ITF will revert to the national association with recommendations.

73. At ATP and WTA Tour level, the Supervisor will always be a gold badge ATP or WTA employee. In addition, the tournament

54 Section B.

55 Statement of Soeren Friemel (ITF).

supervisor will be a gold badge or, for US$80k ITF tournaments and below, a silver badge. The referee acts as a link between the Supervisor and the tournament organiser.

74. To officiate at ATP or WTA level the minimum certification requirement is a white badge. At ITF Pro Circuit level national officials are allowed to work if they have been registered by the ITF. For example, at $15K Futures, the minimum requirement for Chair Umpires is two white badges or one white badge and one green badge. The national association proposes additional qualified and registered national officials to fill the remaining positions.

Selection

75. Selection for tournaments depends on the International Governing Body. Each International Governing Body has its own list of officials from which it selects. Officials are selected depending on the minimum officiating requirement for that event.

7. TOURNAMENT PHYSIOTHERAPISTS AND DOCTORS

76. Depending on the level of the tournament, and usually only at Tour or Grand Slam events, there can be primary care teams on site consisting of licensed physical therapists, certified athletic trainers and medical doctors – all of whom are available to provide treatment to players.

77. Whilst the licensed physical therapists and certified athletic trainers are primarily appointed by the relevant International Governing Body, the on-site doctor is usually a local doctor appointed by the tournament rather than the International Governing Body.

8. OTHER TOURNAMENT STAFF

78. Other tournament staff can include: tour appointed managers, security for the protection of players (including officially appointed individuals whose job it is to spot courtsiders[56]), groundsmen, service staff, stringers, ball persons, drivers and tour managers.

56 See Section E for more information.

D PROFESSIONAL TENNIS TOURNAMENTS AND EVENTS

79. There is an extensive network of tournaments organised by different bodies, at different levels, on dates throughout the year, at locations around the world, on different surfaces, with varying levels of participation and of reward in terms of ranking points and prize money, and varying additional rules. Set out below in some detail is the range of these elements, as an understanding of them is important to an understanding of the environment in which breaches of integrity arise. Reference can also be had to the ATP, WTA and ITF Calendars[57] and the relevant sections of their Rulebooks[58].

1. THE FOUR GRAND SLAM TOURNAMENTS

Common features

80. The four Grand Slam tournaments share a number of common features, set out below.

81. Each Grand Slam has a fixed two-week date in the calendar, with a Monday main draw start and Sunday conclusion, and is played at the same location each year, as described below. Each has a preceding qualification competition. Each Grand Slam has a different organiser and is played on a different surface[59].

82. Each Grand Slam is played at state of the art facilities, and is organised by a body with the resources and capability to ensure effective implementation of the accreditation system[60] at those facilities.

83. Each Grand Slam attracts the best players in the world, has a large and well-established spectator and broadcast audience, and attracts many sponsors and advertisers, generating very high revenue.

84. Each Grand Slam has men's singles, women's singles, men's doubles and women's doubles competitions, and a mixed doubles competition. Each also has boys' singles, girls' singles, boys' doubles and girls' doubles junior competitions, invitational competitions for former players, and men's singles, women's singles, men's doubles and women's doubles wheelchair competitions. Access to the main draws for the men's singles, women's singles, men's doubles and women's doubles, and mixed doubles competitions at each Grand Slam is by ranking predominantly, or by wildcards issued at the discretion of the organiser, in numbers that vary from Grand Slam to Grand Slam, or through a preceding qualification competition (access to which is also by ranking or discretionary wildcard in numbers that vary). Only those who win the required number of matches will progress through the qualifying competition into the main draw. However, in the event of withdrawals from the main draw once all players have been declared, it may be that a "lucky loser"[61], who came close to progressing from the qualifying competition, will be selected to take the place of the withdrawing player.

85. Each Grand Slam involves a very large number of participants. The men's singles, women's singles, men's doubles, women's doubles and mixed doubles competitions alone involve:

    85.1 Main draws: all the Grand Slams have the same main draw for men's and women's singles, 128 players; they also have the same main draw for men's and women's doubles, 64 teams; their mixed doubles main draws are 32 teams, except for Wimbledon which has 48 teams.

57 The ATP 2018 Calendar is at http://www.atpworldtour.com/-/media/files/2018-2019-atp-challenger-tour-calendar-4-april-2018.pdf, the WTA 2018 Calendar is http://wtafiles.wtatennis.com/pdf/calendar/calendar.pdf, the ITF 2018 Men's Calendar is at http://www.itftennis.com/procircuit/tournaments/men's-calendar.aspx and the ITF 2018 Women's Calendar is at http://www.itftennis.com/procircuit/tournaments/women's-calendar.aspx [all accessed 9 April 2018].

58 ATP Rulebook 2018 is at http://www.atpworldtour.com/en/corporate/rulebook , the WTA Rulebook 2018 is at http://wtafiles.wtatennis.com/pdf/publications/2018WTARulebook.pdf , and the ITF Pro Circuit Rulebook 2018 is http://www.itftennis.com/procircuit/about-pro-circuit/rules-regulations.aspx. [all accessed 9 April 2018].

59 Although both the Australian Open and the US Open are played on 'hard courts', the court surfaces are called Plexicushion and Pro DecoTurf respectively.

60 Section E.

61 For more information, see paragraph 346.

85.2 Qualification draws: all the Grand Slams have men's and women's singles qualification competitions. In 2017 all of them had a men's singles qualification draw of 128 players with 16 qualifying. The US Open had the same draw for women in 2017 of 128 players with 16 qualifying, whereas the remaining three Grand Slams had a women's singles qualification draw in 2016 of 96 players with 12 qualifying. Only Wimbledon has doubles qualification competitions: in 2017 the men's and women's doubles qualification draw was 16 teams, with four going through. None of the Grand Slams has a mixed doubles qualification competition.

86. Each Grand Slam offers players in the men's and women's singles and doubles the opportunity to win a large number of ATP[62] and WTA[63] ranking points. For example, winning just one match in the main draw will guarantee a minimum of 45 ATP points, or 70 WTA points for female players. The winner of a Grand Slam event receives 2000 ranking points. A full breakdown of the ranking points available is found at Appendix 1 to this chapter. There are no mixed doubles ranking points, as there is no mixed doubles ranking system in place.

87. Each Grand Slam involves a very large amount of prize money, which varies between them and is further described in Appendix 1 to this chapter. Prize money is paid in national currency as provided for by the Grand Slam Rulebook[64].

88. None of the Grand Slams offers appearance fees, but that is more than made up for by the ranking points and prize money on offer.

89. Whilst participating in Grand Slams is not strictly mandatory under the ATP or Grand Slam rules, the manner in which the year-end rankings are calculated means that each player's total points from the four Grand Slams must be counted. As such, missing a Grand Slam event would have severe implications on a player's ranking potential. In short, the ranking points and prize money on offer at Grand Slams make it unlikely that players would voluntarily miss them.

The Australian Open

90. The Australian Open is owned and organised by Tennis Australia, and takes place in Melbourne, Australia, for two weeks at the end of January each year (in 2017, 16 to 29 January). The qualification competition takes place in the preceding week (in 2017, 9 to 15 January). The event is played on hard courts (Plexicushion surface) and outdoors with retractable roofs over the three largest courts.

91. The total prize money at the Australian Open in 2017 was A$50 million. There was parity between men and women. The round-by-round prize money in respect of men's and women's singles and doubles and mixed doubles can be found in Appendix 1 to this chapter.

92. At the Australian Open 2017 there were the following qualifiers: men's singles, 16 and 1 lucky loser; women's singles, 12 and 1 lucky loser. There were no doubles qualifying competitions. There were the following main draw wildcards: men's singles, 8; women's singles, 8; men's doubles, 7 teams; women's doubles, 7 teams; mixed doubles, 8 teams.

The French Open

93. The French Open is owned and organised by the FFT, and takes place at Roland Garros, Paris, France, for two weeks at the end of May and beginning of June each year (in 2017 it was 28 May to 11 June). The qualification competition takes place in the preceding week (in 2017 it was 22 to 27 May). The event is played on clay and is outdoors.

94. The total prize money at the French Open in 2017 was €36 million. The round-by-round prize money in respect of men's and women's singles and doubles and mixed doubles can be found in Appendix 1 to this chapter.

62 The table of 2018 ATP ranking points is at http://www.atpworldtour.com/en/corporate/rulebook [accessed 9 April 2018].

63 The table of 2018 WTA ranking points is at page 200: http://wtafiles.wtatennis.com/pdf/publications/2018WTARulebook.pdf [accessed 9 April 2018].

64 http://www.wimbledon.com/pdf/GrandSlamRulebook2018.pdf [accessed 9 April 2018].

95. At the French Open 2017 there were the following qualifiers: men's singles, 16 spots and one lucky loser; women's singles, 12 spots and one lucky loser. There were no doubles qualifying competitions. There were the following main draw wildcards: men's singles, eight players; women's singles, eight players; men's doubles, seven teams; women's doubles, seven teams; mixed doubles, six teams.

The Championships ("Wimbledon")

96. Wimbledon is owned and organised by the AELTC and take place in Wimbledon, London, UK, for two weeks at the end of June and the beginning of July each year (in 2017, it was 3 July to 16 July). The qualification competition takes place in the preceding week at Bank of England Sports Club, Roehampton (in 2017, it was 26 June to 30 June). The event is played on grass and is outdoors with a retractable roof over the main court.

97. The total prize money at Wimbledon in 2017 was £36.1 million. There was parity between men and women. The round-by-round prize money in respect of men's and women's singles and doubles and mixed doubles can be found in Appendix 1 to this chapter.

98. At The Championships 2017, there were the following qualifiers: men's singles, 16 spots and one lucky loser; women's singles, 12 spots; men's doubles, four teams and four lucky loser teams; women's doubles, four teams and three lucky loser teams. There were the following main draw wildcards: men's singles, six players; women's singles, six players; men's doubles, five teams; women's doubles, five teams; mixed doubles, five teams.

The US Open

99. The US Open is owned and organised by the USTA, and takes place at Flushing Meadows, New York, USA, for two weeks at the beginning of September each year (in 2017 it was 28 August to 10 September). The qualification competition takes place in the preceding week (in 2017, 22 to 25 August). The event is played on hard courts (Pro DecoTurf surface) and is outdoors with a retractable roof over the main court.

100. The total prize money at the US Open in 2017 was US$50.4 million. There was parity between men and women. The round-by-round prize money in respect of men's and women's singles and doubles and mixed doubles can be found in Appendix 1 to this chapter.

101. At the US Open in 2017 there were the following qualifiers: men's singles, 16 spots and two lucky losers; women's singles, 16 spots. There were no doubles qualifying competitions. There were the following main draw wildcards: men's singles, eight players; women's singles, eight players; men's doubles, seven teams; women's doubles, seven teams; mixed doubles, eight teams.

2. ATP WORLD TOUR EVENTS

102. The ATP owns and organises the ATP World Tour, made up of: the ATP World Tour Finals; ATP World Tour Masters 1000s, ATP World Tour 500s, and ATP World Tour 250s, named for the number of ATP ranking points awarded to the winner[65]. The ATP also introduced and organised the Next Gen Finals for the first time in 2017, a showpiece event for younger players. These events are played between January and November each year. The ATP World Tour is separate from the ATP Challenger Tour, which is dealt with in a later section below[66]. The ATP also owns and organises the ATP Champions Tour for former leading[67] players. Money is earned on this tour but it is not part of professional tennis in the strict sense.

65 The breakdown of ranking points for these tournaments at Appendix 1 to this chapter.

66 Paragraph 308.

67 To be eligible a player must be a former singles number 1, a Grand Slam singles finalist, or a singles player in a Davis Cup winning team.

The ATP World Tour Commitment system and Bonus Pool system

103. The ATP operates a system[68] whereby the top 30 players from the year before are "commitment players" who are obliged to compete over the course of the following year (if eligible) in the ATP World Finals, all the mandatory ATP World Tour Masters 1000 events and four World Tour 500 events, one of which must come after the US Open in the calendar[69]. The commitment may reduce when they have played on the tour for a long time[70].

104. The ATP operates a system[71] whereby players in "good standing" ranked in the top 12 at the end of the year are entitled to share in a Bonus Pool if they have complied with their Commitment obligations[72]. Players in "good standing" are those who, amongst other things, have paid off any existing debts to the ATP and (if applicable) have completed their All Stars program responsibilities.

The ATP World Tour Finals

105. The ATP World Tour Finals is a single ATP World Tour event which takes place at the O2 Arena, London, UK at the end of each season (in 2017, it was 12 to 19 November). It is played on hard courts and is indoors.

106. The ATP World Finals are played at state of the art facilities, and the ATP has the resources and capability to ensure effective implementation of the accreditation system at those facilities.

107. The ATP World Finals attract the best players in the world and has an established spectator and broadcast audience, and attract sponsors and advertisers, generating substantial revenue.

108. There is a men's singles competition and a men's doubles competition. Access is by ranking at the end of the ATP World Tour season. Participation is limited to essentially the highest eight ranked singles players and the highest eight ranked doubles teams[73]. Together with the newly-formed Next Gen Finals, it is one of the only two ATP events which do not involve a straight knockout competition, but rather two round robin groups of four players or teams, with two from each group proceeding to the semi-finals, and two proceeding to the final[74].

109. A very large number of ATP ranking points[75] are to be won for the successful players. Furthermore, total prize money[76] is very high at US$8 million; participation fees are paid to the players who qualify, and those who attend as alternates.

110. The event is mandatory[77]. There are no qualifiers and no wildcards.

68 ATP Rulebook 2018, Sections 1.07(C) and (D), http://www.atpworldtour.com/en/corporate/rulebook [accessed 9 April 2018].

69 The non-mandatory Monte Carlo Masters 1000 counts to the minimum requirement in the World Tour 500s category (ibid).

70 ATP Rulebook 2018, Section 1.08, http://www.atpworldtour.com/en/corporate/rulebook [accessed 9 April 2018].

71 ATP Rulebook 2018, Section 1.07(G), http://www.atpworldtour.com/en/corporate/rulebook [accessed 9 April 2018].

72 The amounts available for the player ranked 1 range between $2,660,000 and $3,325,000; for the player ranked 12, the amounts range between $168,000 and $210,000, depending on the number of events played (ibid).

73 Specifically, places are allocated in the following order of preference: first, the top seven players in the ATP rankings on the Monday after the final tournament of the ATP World Tour, that is, after the 2018 Paris Masters; second, up to two 2018 Grand Slam tournament winners ranked anywhere 8th-20th, in ranking order; third, the 8th ranked player in the ATP rankings. If this adds up to more than eight players, those lower down in the down in the selection order become the alternates. If further alternates are needed, these players are selected by the ATP (per the ATP Rulebook at Section 4.01(B)(1)).

74 ATP Rulebook 2018, Section 4.01(A), http://www.atpworldtour.com/en/corporate/rulebook [accessed 9 April 2018].

75 See the breakdown of ranking points for this tournament at Appendix 1 to this chapter.

76 A breakdown of round-by-round prize money for this tournament can be found at Appendix 1 to this chapter.

77 The ATP Rulebook 2018 is at 4.01(B)(2).

The ATP Next Gen Finals

111. The ATP Next Gen Finals is a singles event organised by the ATP which takes place at the Fiera Milano, Milan, Italy, at the end of each season (in 2017, it was 7 to 11 November). It is played on hard courts, indoors.

112. The ATP Next Gen Finals were new to the calendar in 2017, and feature a series of rule changes and innovations aimed at creating a high-tempo, TV-friendly product which attracts new and younger fans into the sport. The rule changes include: shorter set format (best of five sets, first to four games in each set) and sudden-death deuce to increase the number of pivotal moments in a match; a shot clock to ensure regulation of the time between points; a 'no-let' rule to bring in additional unpredictability at the beginning of points; coaching of players is permitted at certain stages of the match; and line judges are replaced by the Hawk-Eye calling system.

113. The ATP Next Gen Finals are played at state of the art facilities, and the ATP has the resources and capability to ensure effective implementation of the accreditation system at those facilities.

114. The ATP Next Gen Finals were new for 2017, but are likely to attract the best young players in the world[78] as well as a wide spectator and broadcast audience made up of established tennis fans together with newer fans attracted to the event due to the innovative rule changes. The event attracts significant sponsors and advertisers, generating substantial revenue.

115. There is only a men's singles competition. Access is limited to those aged 21 and under, and is determined predominantly by ranking; the highest seven ranked eligible players are admitted, plus one wildcard determined by the tournament organisers. Together with the ATP World Tour Finals, it is one of the only two ATP events which do not involve a straight knockout competition. There are two round robin groups of four players, with two from each group proceeding to the semi-finals; from this stage, two proceed to the final and play for the title, while the two losing semi-finalists compete in a playoff for third place.

116. No ATP ranking points are available at this event; however, prize money is mid-range with a total prize fund of US$1.275 million[79]. For the majority of players who qualify, this will represent one of the largest awards of prize money that they will receive over the course of the season. Participation fees are paid to the players who qualify, and those who attend as alternates.

117. Attendance is not strictly mandatory. By way of example, in 2017, one player was eligible for both the World Tour Finals and the Next Gen Finals. Because of this, he was given the option not to attend the Next Gen Finals.

The nine ATP World Tour Masters 1000s

118. There are nine ATP World Tour Masters 1000s, with the following common features.

119. Each ATP World Tour Masters 1000 takes place at a regular point in the year, and generally runs for a week with a Monday main draw start and a Sunday conclusion, though there are exceptions in the shape of the events with singles draws of 96 players, which last a few days longer. Each has a preceding qualification competition.

120. Each ATP World Tour Masters 1000 is played at state of the art facilities, and is organised by a body with the resources to ensure with the assistance of the ATP effective implementation of the accreditation system at those facilities.

78 Players aged 21 and under.

79 A full breakdown of how this fund is distributed can be found at Appendix 1 of this chapter.

121. Each ATP World Tour Masters 1000 attracts the best players in the world and has an established spectator and broadcast audience, and attracts sponsors and advertisers, generating substantial revenue.

122. Each ATP World Tour Masters 1000 involves a singles and a doubles competition. Access to the singles event is by ranking predominantly, or by wildcards issued at the discretion of the organiser, or through a preceding qualification competition (access to which is also by ranking or discretionary wildcard). Access to the doubles event is by ranking, or discretionary wildcard.

123. Some run concurrently with high-level WTA events, such as Indian Wells, Miami, and Madrid which take place alongside WTA Premier Mandatory tournaments. Some are organised by national associations or federations (such as the Paris Masters, organised by the FFT of France), while others are organised by private commercial organisers (such as Miami Open, owned and organised by IMG).

124. The number of participants at each ATP World Tour Masters 1000 is high:

    124.1 Main draws[80] for singles range between 96 and 48 players; doubles between 32 and 24 teams.

    124.2 Qualification draws[81] for singles range between 48 players (with 12 going through) and 24 players (with six going through). There are no doubles qualification competitions.

125. A high number of ranking points[82] are to be won at each ATP World Tour Masters 1000; as the name suggests, 1000 points are available to the winner of these tournaments, the third-largest winning total possible in the men's game. The full breakdown in respect of men's singles and doubles can be found in Appendix 1 to this chapter.

126. The prize money available at each ATP World Tour Masters 1000 was high in 2017 with totals ranging from US$6,993,450 to €4,273,775 plus "hospitality", which means accommodation and food[83] and which must be provided free of charge; it is also mandatory to provide gym facilities. European events pay prize money in euros, while the remainder pay in US dollars. There are no defined amounts of prize money across the levels of the ATP World Tour that organisers must pay, and they compete with one another. The amount must however be approved by the ATP, and must be commensurate with the event's status to secure that approval. The prize money per round varies also[84], with the amount for the winner varying between €820,035 to US$1,175,505 (with most being around an average of these figures) and the amount for a first round loser varying between US$13,690 to €19,630 (with most being around an average of these figures).

127. Each ATP World Tour Masters 1000 is mandatory, except the Monte Carlo Masters. As a result, appearance fees are not permitted by the ATP.

128. The nine ATP World Tour Masters 1000 are[85] as follows:

    128.1 Indian Wells Masters, USA, in 2017 took place on Thursday 9 to Sunday 19 March, on hard courts outdoors. Participation is mandatory. There is a concurrent WTA Premier event which is also mandatory[86]. Main draw: singles 96 players, doubles 32 teams. Qualification draw: singles 48 players. Qualifiers: singles 12 players and one lucky loser. Main draw wildcards: singles five players; doubles two teams. Alternates: doubles one team. Total prize money US$6,993,450 distributed round-by-round as per the table in Appendix 1 to this chapter.

80 With commensurate byes for top seeds.

81 With commensurate byes for top seeds.

82 The tables of ATP singles and doubles ranking points can be found in Appendix 1 to this chapter.

83 The ATP World Tour rulebook 2018 sets out the requirements for when hotels and food should be provided at Sections 1.21 and 6.16.

84 The table of men's singles and men's doubles prize money can be found at Appendix 1 to this chapter.

85 The ATP 2017 Calendar for their position relative to other events at https://www.atpworldtour.com/-/media/files/2018-2019-atp-calendars-2-february.pdf

86 Paragraph 188 below.

128.2 Miami Masters ("Miami Open"), USA, in 2017 took place on Wednesday 22 March to Sunday 2 April, on hard courts outdoors. Participation is mandatory. There is a concurrent WTA Premier event which is also mandatory. Main draw: singles 96 players, doubles 32. Qualification draw: singles 48 players. Qualifiers: singles 12 players, three lucky losers. Main draw wildcards: singles five players; doubles two teams. Alternates: doubles one team. Total prize money US$6,993,450, distributed round-by-round as per the table in Appendix 1 to this chapter.

128.3 Monte-Carlo Masters, Roquebrune-Cap-Martin, France, in 2017 took place on Sunday 16 to Sunday 23 April, on clay outdoors. Participation is not mandatory. Main draw: singles 56 players, doubles 24. Qualification draw: singles 28 players. Qualifiers: singles seven players, two lucky losers. Main draw wildcards: singles four players; doubles two teams. Alternates: doubles one team. Total prize money €4,273,775, distributed round-by-round as per the table in Appendix 1 to this chapter.

128.4 Madrid Masters ("Madrid Open"), Spain, in 2017 took place on Sunday 7 to Sunday 14 May, on clay outdoors with each court having a retractable roof. Participation is mandatory. There is a concurrent WTA Premier event which is also mandatory. Main draw: singles 56 players, doubles 24. Qualification draw: singles 28 players. Qualifiers: singles seven players, two lucky losers. Main draw wildcards: singles four players; doubles two teams. Alternates: doubles two teams. Total prize money €5,439,350, distributed round-by-round as per the table in Appendix 1 to this chapter.

128.5 Rome Masters ("Italian Open"), Italy, in 2017 took place on Sunday 14 to Sunday 21 May, on clay outdoors. Participation is mandatory. There is a concurrent WTA Premier 5 event which is also mandatory. Main draw: singles 56 players, doubles 24. Qualification draw: singles 28 players. Qualifiers: singles seven, four lucky losers. Main draw wildcards: singles four; doubles two teams. Alternates: doubles one team. Total prize money €4,273,775, distributed round-by-round as per the table in Appendix 1 to this chapter.

128.6 Canadian Open ("Rogers Cup"), Montreal (alternates with Toronto), Canada, in 2017 took place on Monday 7 to Sunday 13 August, on hard courts outdoors. Participation is mandatory. There was a concurrent WTA Premier 5 event (in Toronto) which is also mandatory. Main draw: singles 56 players, doubles 24. Qualification draw: singles 28 players. Qualifiers: singles seven, two lucky losers. Main draw wildcards: singles four players; doubles two teams. Alternates: doubles one team. Total prize money US$4,662,300 distributed round-by-round as per the table in Appendix 1 to this chapter.

128.7 Cincinnati Masters ("Western and Southern Open"), Mason Ohio, USA, in 2017 took place on Sunday 13 to Sunday 20 August, on hard courts outdoors. Participation is mandatory. There is a concurrent WTA Premier 5 event which is also mandatory. Main draw: singles 56 players, doubles 24. Qualification draw: singles 28 players. Qualifiers: singles seven players, four lucky losers. Main draw wildcards: singles four players; doubles two teams. Total prize money US$4,973,120 distributed round-by-round as per the table in Appendix 1 to this chapter.

128.8 Shanghai Masters, China, in 2017 took place on Sunday 8 to Sunday 15 October, on hard courts outdoors. Participation is mandatory. Main draw: singles 56 players, doubles 24. Qualification draw: singles 28 players. Qualifiers: singles seven players. Main draw wildcards: singles four players; doubles two teams. Total prize money US$5,924,890, distributed round-by-round as per the table in Appendix 1 to this chapter.

128.9 Paris Masters, Bercy, France, in 2017 took place on Monday 30 October to Sunday 5 November, on hard courts indoors. Participation is mandatory. Main draw: singles 48, doubles 24. Qualification draw: singles 24 players. Qualifiers: singles six players. Main draw wildcards: singles three players; doubles two teams. Total prize money €4,273,755, distributed round-by-round as per the table in Appendix 1 to this chapter.

The 13 ATP World Tour 500s

129. There are 13 ATP World Tour 500s[87], with the following common features.

130. Each ATP World Tour 500 takes place at a regular point in the year, and generally runs for a week with a Monday main draw start and a Sunday conclusion. Each has a preceding qualification competition.

131. Each ATP World Tour 500 is played at good facilities, and is organised by a body with the resources to ensure, with the assistance of the ATP, effective implementation of the accreditation system at those facilities.

132. Each ATP World Tour 500 attracts some of the best players in the world and has a significant spectator and broadcast audience, and attracts significant sponsors and advertisers, generating significant revenue.

133. Each involves a singles and a doubles competition. Access to the singles event is by ranking predominantly, or by wildcards issued at the discretion of the organiser, or through a preceding qualification competition (access to which is also by ranking or discretionary wildcard). Access to the doubles event is by ranking, or discretionary wildcard.

134. The number of participants at each ATP World Tour 500 is mid-range:

134.1 Main draws for singles range between 48[88] and 32 players (generally 32); the main draw for doubles is 16 teams.

134.2 Qualification draws for singles range between 24 players[89] (with six going through) and 16 players (with four going through); doubles qualification is a draw of four teams.

135. A mid-range number of ranking points[90] are to be won at each ATP World Tour 500.

136. The prize money available at each ATP World Tour 500 is mid-range with totals ranging from US$3,028,080 (highest – China Open) to US$1,461,560 (lowest – Rio Open) plus "hospitality"[91]. European events pay in euros while, the remainder pay in US dollars, and there is no defined amount of prize money that organisers must pay. The range of distribution of prize money round-by-round is set out in the tables of Appendix 1 to this chapter.

137. Appearance fees at each ATP World Tour 500 are negotiated between the organiser and the players.

138. None of the ATP World Tour 500 events are mandatory.

The 39 ATP World Tour 250s

139. There are 39 ATP World Tour 250s[92], with the following common features.

140. Each ATP World Tour 250 takes place at a regular point in the year, and generally runs for a week with a Monday main draw start and a Sunday conclusion, although there are some exceptions at the beginning of the season. Each has a preceding qualification competition.

87 Rotterdam, Rio Open, Dubai, Mexico Open, Barcelona, Halle, Queen's, Hamburg, Washington, China Open, Japan Open, Vienna and the Swiss Indoors. See the ATP 2018 Calendar for their position relative to other events at http://www.atpworldtour.com/-/media/files/2018-2019-atp-challenger-tour-calendar-4-april-2018.pdf [accessed 9 April 2018].

88 With commensurate byes for top seeds.

89 With commensurate byes for top seeds.

90 The tables of ATP singles and doubles ranking points can be found in Appendix 1 to this chapter.

91 The ATP World Tour Rulebook 2018 sets out the requirements for when hotels and food should be provided at Sections 1.21 and 6.16.

92 See the ATP 2018 Calendar for a full list of the events and their positions relative to other events: http://www.atpworldtour.com/-/media/files/2018-2019-atp-challenger-tour-calendar-4-april-2018.pdf [accessed 9 April 2018].

141. Each ATP World Tour 250 is played at relatively good facilities, and is organised by a body with the resources to ensure with the assistance of the ATP effective implementation of the accreditation system at those facilities.

142. Each ATP World Tour 250 attracts good, generally top 100, players (with the majority of winners being top 20), has some spectator and broadcast audience and attracts some sponsors and advertisers, generating reasonable revenue.

143. Each involves a singles and a doubles competition. Access to the singles event is by ranking predominantly, or by wildcards issued at the discretion of the organiser, or through a preceding qualification competition (access to which is also by ranking or discretionary wildcard). Access to the doubles event is by ranking, or discretionary wildcard.

144. The number of participants at each ATP World Tour 250 is mid-range:

144.1 Main draws[93] for singles range between 28 and 48 (with most being 28); main draws for doubles are 16.

144.2 Qualification draws[94] for singles are 16 players (with 4 going through)[95].

145. A mid-range number of ranking points are to be won at each ATP World Tour 250[96].

146. The prize money available at each ATP World Tour 250 is mid-range with totals in 2017 ranging from US$1,237,190 (Doha) to US$437,380 (Brisbane), plus "hospitality"[97]. European events pay in euros while the remainder pay in US dollars, and there is no defined amount of prize money that organisers must pay. The range of distribution of prize money round-by-round is set out in the tables of Appendix 1 to this chapter.

147. Appearance fees at each ATP World Tour 250 are negotiated between the organiser and the players.

148. None of the ATP World Tour 250 events are mandatory.

3. ATP CHALLENGER EVENTS

Common features

149. The ATP Challenger Tour is subdivided into five levels: 125, 110, 100, 90 and 80; the name of each level indicates the number of ATP ranking points awarded to the winner of a tournament at that level. In total there are around 160 ATP Challenger events each year (a precise number is difficult to state as some events are cancelled over the course of the season), spread over many countries. They take place between January and November each season. All the ATP Challenger events have a number of common features.

150. Each ATP Challenger event takes place at a regular point in the year, and runs for a week with a Monday main draw start and a Sunday conclusion. Each has a preceding qualification competition.

151. Each ATP Challenger is played at generally adequate facilities. There are however often significant challenges, even with the assistance of the ATP, in ensuring effective implementation of the accreditation system at those facilities.

93 With commensurate byes for top seeds.

94 With commensurate byes for top seeds.

95 There is no requirement for a qualification draw for doubles

96 See the tables of ATP singles and doubles ranking points at Appendix 1 to this chapter for a full breakdown.

97 The ATP World Tour Rulebook 2018 sets out the requirements for when hotels and food should be provided at Sections 1.21 and 6.16.

152. Each ATP Challenger attracts emerging players and the lower-ranked of the more senior professionals. There are, however, often significant challenges in attracting spectators, sponsors and advertisers, and in generating revenue.

153. Each involves a singles and a doubles competition. Each is only open to players ranked outside the top 50[98]. Access to the singles event is by ranking predominantly, or by wildcards issued at the discretion of the organiser, or through a preceding qualification competition (access to which is also by ranking or discretionary wildcard). Access to the doubles event is by ranking, or discretionary wildcard in numbers that vary.

154. The number of participants at each ATP Challenger event is mid-range:

    154.1 Main draws for singles are 32 players; main draws for doubles are 16 teams.

    154.2 Qualification draws for singles are 32 players (with eight going through). Where there are insufficient numbers to fill the draw of 32, commensurate byes are awarded to the higher-ranked players in the first round. The ATP rulebook encourages doubles qualification competitions, and some Challenger events do stage qualification for doubles[99]; however, very few Challenger events attract enough entrants or have enough officials available to hold a doubles qualification event.

155. Within each level, the organisers of ATP Challenger events can essentially choose between providing a set amount of lower prize money plus "hospitality" [100], or a set amount of higher prize money without hospitality. If the organisers were to provide the higher prize money and hospitality, the event would jump up to the next Challenger level, and so extra ranking points would be available. Hospitality is optional for Challenger events offering at least US$75,000 in prize money. For those events offering prize money of US$50,000, however hospitality is obligatory.

156. Appearance fees at each ATP Challenger event are rare due to the low resources allocated to most Challenger events; however, should they be available, they are negotiated between the organiser and the players.

157. None of the ATP Challenger events are mandatory.

The 12 ATP Challenger 125 events

158. The 12 ATP Challenger 125 events are set out in the ATP calendar[101]. A small number of ranking points[102] are to be won at each ATP Challenger 125.

159. The prize money available at each ATP Challenger 125 is small, being a total of US$150,000 plus hospitality (or €127,000 plus hospitality)[103]. The prize money per round is detailed in Appendix 1 to this chapter

The 11 ATP Challenger 110 events

160. The 11 ATP Challenger 110 events are set out in the ATP calendar[104]. A small number of ranking points[105] are to be won at each ATP Challenger 110.

98 Unless special dispensation is granted for a higher ranked player to accept a wildcard: see paragraph 7.07(2) ATP 2018 Rulebook.

99 For example, ATP Challenger Dallas in January/February 2017.

100 The definitions of hospitality vary. The ATP Challenger Tour requires hotel accommodation and food to be provided to all competitors for the duration of the tournament.

101 See the ATP 2018 Calendar for a full list of the events and their positions relative to other events: http://www.atpworldtour.com/-/media/files/2018-2019-atp-challenger-tour-calendar-4-april-2018.pdf [accessed 9 April 2018].

102 See the tables of ATP singles and doubles ranking points at Appendix 1 to this chapter

103 Hospitality must always be provided at Challenger 125 events.

104 See the ATP 2018 Calendar for a full list of the events and their positions relative to other events: http://www.atpworldtour.com/-/media/files/2018-2019-atp-challenger-tour-calendar-4-april-2018.pdf [accessed 9 April 2018].

105 See the tables of ATP singles and doubles ranking points at Appendix 1 to this chapter.

161. The prize money available at each ATP Challenger 110 is small, being a total of either (a) US$150,000 (or €127,000) or (b) US$125,000 plus Hospitality (or €106,000 plus Hospitality). The prize money per round is detailed in Appendix 1 to this chapter.

The 12 ATP Challenger 100 events

162. The 12 ATP Challenger 100 events are set out in the ATP calendar[106]. A small number of ranking points[107] are to be won at each ATP Challenger 100.

163. The prize money available at each ATP Challenger 100 is small, being a total of either (a) US$125,000 (or €106,000) or (b) US$100,000 plus Hospitality (or €85,000 plus Hospitality). The prize money per round is detailed in Appendix 1 to this chapter.

The 29 ATP Challenger 90 events

164. The 29 ATP Challenger 90 events are set out in the ATP calendar[108]. A small number of ranking points[109] are to be won at each ATP Challenger 90.

165. The prize money available at each ATP Challenger 100 is small, being a total of either (a) US$100,000 (or €85,000) or (b) US$75,000 plus Hospitality (or €64,000 plus Hospitality). The prize money per round is detailed in Appendix 1 to this chapter.

The approximately 90 ATP Challenger 80 events

166. The ATP Challenger 80 events number roughly 90, and are set out in the ATP calendar[110]. A small number of ranking points[111] are to be won at each ATP Challenger 80.

167. The prize money available at each ATP Challenger 100 is low at a total of either (a) US$75,000 (or €64,000) or (b) US$50,000 plus Hospitality (or €43,000 plus Hospitality). The prize money per round is detailed in Appendix 1 to this chapter.

4. WTA TOUR EVENTS

168. The WTA owns and organises the WTA Tour, made up of: the WTA Finals, the WTA Elite Trophy, WTA Premier Mandatory events, WTA Premier 5 events, WTA Premier events (sometimes referred to as Premier 700 events), WTA Internationals, and WTA 125k Series events. The WTA 125k Series events is seen by some observers as the women's equivalent of the ATP Challenger Tour, but there are not enough of these events to consider the 125k Series a separate tour in itself.

The WTA Tour Commitment system and Bonus Pool system

169. The WTA operates a system[112] whereby the top 10 players from the previous season must commit to attend "commitment tournaments" consisting of all 4 WTA Tour Premier Mandatory events, four of the five WTA Tour Premier 5 events, and two WTA Tour Premier events[113]. The commitment system may not apply to top 10 players who have played on the tour for a long time[114], but they forfeit any entitlement to a share in the Bonus Pool if they do not participate.

106 See the ATP 2018 Calendar for a full list of the events and their positions relative to other events: http://www.atpworldtour.com/-/media/files/2018-2019-atp-challenger-tour-calendar-4-april-2018.pdf [accessed 9 April 2018].

107 The tables of ATP singles and doubles ranking points can be found at Appendix 1 to this chapter.

108 See the ATP 2018 Calendar for a full list of the events and their positions relative to other events: http://www.atpworldtour.com/-/media/files/2018-2019-atp-challenger-tour-calendar-4-april-2018.pdf [accessed 9 April 2018].

109 The tables of ATP singles and doubles ranking points can be found at Appendix 1 to this chapter.

110 See the ATP 2018 Calendar for a full list of the events and their positions relative to other events: http://www.atpworldtour.com/en/tournaments [accessed 9 April 2018].

111 The tables of ATP singles and doubles ranking points can be found at Appendix 1 to this chapter.

112 WTA Rulebook 2018, Sections 2(A) and (B), http://wtafiles.wtatennis.com/pdf/publications/2018WTARulebook.pdf [accessed 9 April 2018].

113 WTA Rulebook 2018, Section 2(B), http://wtafiles.wtatennis.com/pdf/publications/2018WTARulebook.pdf [accessed 9 April 2018].

114 WTA Rulebook 2018, Section 2(I), http://wtafiles.wtatennis.com/pdf/publications/2018WTARulebook.pdf [accessed 9 April 2018].

170. The top 10 players at the end of the year are entitled to share in a Bonus Pool if they attain their Commitment obligations [115].

The WTA Finals

171. The WTA Finals is a single WTA Tour event which takes place in Singapore at the end of each season (in 2017, it was played on 22 October to 29 October). It is played on hard courts and indoors.

172. The WTA Finals are played at state of the art facilities, and the WTA has the resources to ensure effective implementation of the accreditation system at those facilities.

173. The WTA Finals attract the best players in the world and have an established spectator and broadcast audience, and attract sponsors and advertisers, generating substantial revenue.

174. There is a women's singles competition and a women's doubles competition. Access is by ranking at the end of the WTA Tour season. Participation is limited to essentially the highest 8 ranked singles players and the highest 8 ranked doubles teams[116]. Together with the WTA Elite Trophy, it is one of the only two WTA Tour events which do not involve a straight knockout competition. At the WTA Finals there are two groups of four singles players with two proceeding from each group to the semi-finals. The doubles competition is a knock out competition.

175. A very large number of WTA ranking points[117] are to be won for the successful players. Furthermore, total prize money[118] is very high at $7 million; participation fees are paid to the players who qualify, and those who attend as alternates.

176. The event is mandatory[119]. There are no qualifiers and no wildcards.

The WTA Elite Trophy

177. The WTA Elite Trophy is also a single WTA Tour event at the end of each season, in this instance for the players who did not qualify for the WTA Finals. It is played in Zhuhai, China (in 2017, 31 October to 5 November). It is played on hard courts and indoors.

178. The WTA Elite Trophy is played at state of the art facilities, and the WTA has the resources to ensure effective implementation of the accreditation system at those facilities.

179. While the WTA Trophy is the second level WTA end of season event, it still involves top 20 players and has at least some spectator and broadcast audience, and attracts some sponsors and advertisers, generating significant revenue.

180. There is a women's singles competition and a women's doubles competition. Access is by ranking and invitation at the end of the WTA Tour season. Participation is limited to 12 singles players[120] and six doubles teams[121]. The 12 are split into four round robin groups of three, and the winner of each group proceeds to the semi-finals with two proceeding to the

115 WTA Rulebook 2018, Section 2(C), http://wtafiles.wtatennis.com/pdf/publications/2018WTARulebook.pdf. [accessed 9 April 2018]. The amounts available are greater the higher up the rankings the player is. The player ranked 1 receives $450,000 if she has played the Premier Mandatory events, and $450,000 is she has played four of the five Premier 5 events. If she has played all nine events, she receives a super bonus of $100,000. The equivalent figures for the player ranked ten are $100,000, $100,000 and $25,000. For a full breakdown, see Section 2(C) of the WTA Rulebook at http://wtafiles.wtatennis.com/pdf/publications/2018WTARulebook.pdf [accessed 9 April 2018].

116 The rules state that the top eight ranked singles players and doubles teams will qualify. However, there is leeway for one discretionary wildcard in each event to be exercised by the WTA, though this is rarely exercised.

117 The breakdown of ranking points for this tournament is at Appendix 1 to this chapter.

118 A breakdown of round-by-round prize money for this tournament can be found at Appendix 1 to this chapter.

119 WTA Rulebook 2018, Section 2(H)(2), http://wtafiles.wtatennis.com/pdf/publications/2018WTARulebook.pdf [accessed 9 April 2018].

120 Made up of the 11 singles players who ranked 9 to 19 in the race to the WTA Finals, and therefore did not play there, and one wildcard.

121 Selected with reference to the combined doubles rankings of the players who had not otherwise qualified for the WTA Finals or Elite Trophy, plus two wildcards. Sometimes, these criteria are applied liberally.

final. The six doubles teams play in two round robin groups of three, with the winner of each group contesting the final.

181. A large number of WTA ranking points[122] are to be won for the successful players. Furthermore, total prize money[123] is high at over US$2,280,935. Participation fees are paid to the players who qualify, and those who attend as alternates.

182. The event is mandatory[124]. There are no qualifiers, and a maximum of three wildcards.

The four WTA Premier Mandatory events

183. There are Four WTA Premier Mandatory events, with the following common features.

184. Each WTA Premier Mandatory takes place at a regular point in the year, and generally runs for a week with a Monday main draw start and a Sunday conclusion, though there are exceptions in the shape of the events with singles draws of 96 players, which last a few days longer. Each has a preceding qualification competition.

185. Each WTA Premier Mandatory is played at state of the art facilities, and is organised by a body with the resources to ensure with the assistance of the WTA effective implementation of the accreditation system at those facilities.

186. Each WTA Premier Mandatory attracts the best players in the world and has an established spectator and broadcast audience, and attracts sponsors and advertisers, generating substantial revenue.

187. Each involves a singles and a doubles competition. Access to the singles event is by ranking predominantly, or by wildcards issued at the discretion of the organiser, or through a preceding qualification competition (access to which is also by ranking or discretionary wildcard). Access to the doubles event is by ranking, or discretionary wildcard.

188. Some run concurrently with high-level ATP events, such as Indian Wells, Miami, and Madrid which take place alongside ATP Masters 1000 tournaments.

189. The number of participants at each WTA Premier Mandatory is high:

189.1 Main draws[125] for singles range between 96 and 60 players; main draws for doubles between range between 32 and 28 teams.

189.2 Qualification draws[126] for singles range between 48 players (with 12 going through) and 32 players (with eight going through).

190. A large number of ranking points are to be won at each Premier Mandatory tournament; they represent the third-largest possible rankings win in the women's game. The full breakdown in respect of women's singles and doubles can be found in Appendix 1 to this chapter.

122 See the breakdown of ranking points for this tournament at Appendix 1 to this chapter.

123 A breakdown of round-by-round prize money for this tournament can be found at Appendix 1 to this chapter.

124 WTA Rulebook 2018, Section 2(H)(2), http://wtafiles.wtatennis.com/pdf/publications/2018WTARulebook.pdf [accessed 9 April 2018].

125 With commensurate byes for top seeds.

126 With commensurate byes for top seeds.

191. The prize money available at each WTA Premier Mandatory was high in 2017 with total financial commitments[127] ranging from US$6,381,679[128] to US$6,993,450[129]. Further, the tournaments must make sure hotel accommodation and food is provided free-of-charge to players for the duration of the event. European events pay prize money in euros while the remainder in US dollars. The amount of prize money across the levels of the WTA Tour that organisers pay varies - and they compete with one another. The amount must however be approved by the WTA, and must be commensurate with the event's status to secure that approval. The total prize money per round varies[130], with the amount ranging between events from US$1,111,945 to €1,043,680 and the amount for a first round loser ranging from US$13,690 to €15,146[131].

192. The prize money for Premier Mandatory events must be equal to that of the total prize money paid to male tennis players participating in the concurrent ATP event (for Beijing, this shall be equal to the ATP Shanghai 1000 event)[132]. The prize money per round also varies slightly[133], with the amount for the winner ranging between US$894,585 and €1,043,680[134], and the amount for a first round loser ranging between US$13,690 and €19,360[135].

193. Each WTA Premier Mandatory is, as the name conveys, mandatory. As such, no appearance fees are paid.

The five WTA Premier 5 events

194. There are five WTA Premier 5 events, with the following common features.

195. Each WTA Premier 5 takes place at a regular point in the year, and generally runs for a week with a Monday main draw start and a Sunday conclusion. Each has a preceding qualification competition.

196. Each WTA Premier 5 is played at state of the art facilities, and is organised by a body with the resources to ensure with the assistance of the WTA effective implementation of the accreditation system at those facilities.

197. Each WTA Premier 5 attracts the best players in the world and has an established spectator and broadcast audience, and attracts sponsors and advertisers, generating substantial revenue.

198. Each involves a singles and a doubles competition. Access to the singles event is by ranking predominantly, or by wildcards issued at the discretion of the organiser, in numbers that vary, or through a preceding qualification competition (access to which is also by ranking or discretionary wildcard). Access to the doubles event is by ranking, or discretionary wildcard.

199. The number of participants at each WTA Premier 5 is high:

199.1 Main draws[136] for singles range between 56 and 48 players; doubles draws are 28 teams.

199.2 Qualification draws[137] for singles range between 48 players (with 12 going through) and 32 players (with eight going through). There are no doubles qualification competitions.

127 Defined as the tournament's investment in the event, including sanctions, marketing fees, onsite prize money and bonus pool contributions: http://www.atpworldtour.com/en/rankings/rankings-faq [accessed 9 April 2018].

128 2017 China Open: http://www.wtatennis.com/tournament/2017-BEIJING [accessed 9 April 2018].

129 2017 Miami Open and 2017 Indian Wells Open: http://www.wtatennis.com/tournament/2017-miami; http://www.wtatennis.com/tournament/2017-indian-wells [accessed 9 April 2018].

130 The table of women's singles prize money can be found at Appendix 1 to this chapter.

131 Approximately US$18,653

132 WTA Rulebook 2018, Section 11(A)(1), http://wtafiles.wtatennis.com/pdf/publications/2018WTARulebook.pdf [accessed 9 April 2018].

133 The table of men's singles prize money is at Appendix 1 to this chapter.

134 Approximately US$1,285,354

135 Approximately US$23,843

136 With commensurate byes for top seeds.

137 With commensurate byes for top seeds.

200. A large number of ranking points[138] are to be won at each WTA Premier 5 event; the full breakdown in respect of women's singles and doubles can be found in Appendix 1 to this chapter.

201. The prize money available at each WTA Premier 5 is high, with totals in 2017 ranging from US$2,365,250 (Dubai) to €2,441,925 (Rome); accommodation and food must also be provided free of charge. The prize money per round varies also[139], with the amount for the winner varying between €820,035 to US$1,175,505 (with most being around an average of these figures) and the amount for a first round loser varying between US$13,690 to €19,630 (with most being around an average of these figures). However, the Minimum Player Compensation of a Premier 5 tournament must be no lower than US$2,746,000[140].

202. As stated above, WTA "Commitment" players must play at least four of the five WTA Premier 5 events over the course of a season. As Premier 5 events are partly mandatory for the top players, appearance fees are not paid.

The 12 WTA Premier events

203. There are 12 WTA Premier events, with the following common features.

204. Each WTA Premier event takes place at a regular point in the year, and generally runs for a week with a Monday main draw start and a Sunday conclusion Each has a preceding qualification competition.

205. Each WTA Premier is played at very good facilities, and is organised by a body with the resources to ensure, with the assistance of the WTA, effective implementation of the accreditation system at those facilities.

206. Each WTA Premier attracts some of the best players in the world and has a significant spectator and broadcast audience, and attracts significant sponsors and advertisers, generating significant revenue.

207. Each WTA Premier involves a singles and a doubles competition. Access to the singles event is by ranking predominantly, or by wildcards issued at the discretion of the organiser, or through a preceding qualification competition (access to which is also by ranking or discretionary wildcard). Access to the doubles event is by ranking, or discretionary wildcard.

208. The number of participants at each WTA Premier is mid-range:

208.1 Main draws[141] for singles range between 56 and 28 players (generally 28 or 30, with one 32 draw, one 56 and one 48); the main draw for doubles is 16 teams.

208.2 Qualification draws[142] for singles range between 32 players (with eight going through) and 16 (with four going through) (generally 32); There is no doubles qualifying draw.

209. A mid-range number of ranking points[143] are to be won at each WTA Premier.

210. The prize money available at each WTA Premier was mid-range in 2017 with totals ranging from US$710,900 (Sydney) to US$1,000,000 (Tokyo); accommodation and food must also be provided free of charge. The prize money per round varies also[144], with the amount for the winner varying between €132,380 to US$193,850 and the amount for a first round loser varying between US$2,434 to US$7,662. However, the Minimum Player Compensation (total financial commitment including prize money plus extras) of a WTA Premier tournament must be no lower than US$776,000[145].

138 The tables of ATP singles and doubles ranking points can be found in Appendix 1 to this chapter.

139 The tables of singles and doubles prize money can be found at Appendix 1 to this chapter.

140 WTA Rulebook 2018, Section 11(A).2, http://wtafiles.wtatennis.com/pdf/publications/2018WTARulebook.pdf [accessed 9 April 2018].

141 With commensurate byes for top seeds.

142 With commensurate byes for top seeds.

143 See the tables of WTA singles and doubles ranking points in Appendix 1 to this chapter for a full breakdown.

144 The tables of singles and doubles prize money can be found at Appendix 1 to this chapter.

145 WTA Rulebook 2018, Section 11(A)(1), http://wtafiles.wtatennis.com/pdf/publications/2018WTARulebook.pdf [accessed 9 April 2018].

211. Appearance fees at each WTA Premier are negotiated between the organiser and the players.

212. None of the WTA Premier events are mandatory.

The 32 WTA Internationals

213. There are 32 WTA Internationals, with the following common features.

214. Each WTA International takes place at a regular point in the year, and generally runs for a week with a Monday main draw start and a Sunday conclusion. Each has a preceding qualification competition.

215. Each WTA International is played at relatively good facilities, and is organised by a body with the resources to ensure with the assistance of the WTA effective implementation of the accreditation system at those facilities.

216. Each WTA International attracts good players and has some spectator and broadcast audience, and attracts some sponsors and advertisers, generating reasonable revenue. However, due to the 'play down' restrictions in the WTA Rulebook[146], a Top 10 player may only play one International Tournament in each half of the Tour Year (and even this is only if they have complied with their Commitment obligations in the previous year); this means that it can sometimes be difficult for International Tournaments (including the WTA Internationals) to attract a particularly high calibre of player.

217. Each WTA International involves a singles and a doubles competition. Access to the singles event is by ranking predominantly, or by wildcards issued at the discretion of the organiser, in numbers that vary, or through a preceding qualification competition (access to which is also by ranking or discretionary wildcard). Access to the doubles event is by ranking, or discretionary wildcard.

218. The number of participants at each WTA International is mid-range:

218.1 Main draws for singles are 32 players; main draws for doubles are 16 teams.

218.2 Qualification draws[147] for singles range between 32 players (with eight going through) and 16 players (with four going through). There are no doubles qualification competitions

219. A mid-range number of ranking points[148] are to be won at each WTA International.

220. The prize money available at each WTA International was low to mid-range in 2017 with totals being either US$626,750, US$426,750 or US$226,750 (with all but two being US$226,750) plus "hospitality"[149]. The Minimum Player Compensation (total financial commitment including prize money plus extras) of a WTA International tournament must be no lower than $250,000[150]. The distribution of prize money round-by-round is set out in the tables of women's singles and women's doubles prize money in Appendix 1 to this chapter.

221. Appearance fees at each WTA International are negotiated between the organiser and the players.

222. None of the WTA International events are mandatory.

146 WTA Rulebook 2018, Section 2(D)(5), http://wtafiles.wtatennis.com/pdf/publications/2018WTARulebook.pdf [accessed 9 April 2018].

147 With commensurate byes for top seeds.

148 See the tables of WTA singles and doubles ranking points in Appendix 1 to this chapter for a full breakdown.

149 The WTA Rulebook requires that each competitor receives a double hotel room and complimentary food for the duration of the event.

150 WTA Rulebook 2018, Section 11(A)(1) http://wtafiles.wtatennis.com/pdf/publications/2018WTARulebook.pdf [accessed 9 April 2018].

The eight WTA 125k Series events

223. There are eight WTA 125k Series events, with the following common features.

224. Each WTA 125k Series event takes place at a regular point in the year, and generally runs for a week with a Monday main draw start and a Sunday conclusion. Each has a preceding qualification competition.

225. Each WTA 125k Series event is played at generally adequate facilities. There are sometimes, however, significant challenges, even with the assistance of the WTA, ensuring effective implementation of the accreditation system at those facilities.

226. Each WTA 125k Series attracts mostly emerging players and lower-ranked senior players. There are often significant challenges in attracting spectators, sponsors and advertisers, and in generating revenue.

227. Each WTA 125k Series involves a singles and a doubles competition. Access to the singles event is by ranking predominantly, or by wildcards issued at the discretion of the organiser, or through a preceding qualification competition (access to which is also by ranking or discretionary wildcard). Access to the doubles event is by ranking, or discretionary wildcard in numbers that vary.

228. The number of participants at each WTA 125k Series event is mid-range:

228.1 Main draws for singles are 32 players; main draws for doubles range between 16 and eight teams.

228.2 Qualification draws for singles range between 16 (with four going through) and eight players (in one case). There are no doubles qualification competitions.

229. A small to mid-range number of ranking points[151] are to be won at each WTA 125k Series event.

230. The prize money available at each WTA 125k Series event is low with a total of US$115,000[152] to be won, plus "hospitality"[153]. All the events pay in US dollars. A breakdown of prize money paid on a round-by-round basis is available at Appendix 1 to this chapter.

231. Appearance fees at each WTA International event are rare due to the low resources allocated to most 125k events; however, should they be available, they are negotiated between the organiser and the players.

232. None of the WTA 125k Series events are mandatory.

5. THE ITF'S PRO CIRCUIT EVENTS

Common features of Pro Circuit events for both men and women

233. The ITF operates a Pro Circuit for Men, sometimes referred to as Futures, and a Women's Pro Circuit for Women:

233.1 The Men's Pro Circuit (Futures) has over 600 events across dozens of countries and is subdivided into 2 levels: $25k and $15k events, named for the total amount of prize money at the event. ITF Men's Pro Circuit events are only open to singles players ranked outside the top 150[154].

151 The tables of WTA singles and doubles ranking points can be found at Appendix 1 to this chapter.

152 The "125k" refers to the total commitment of each tournament, of which US$115,000 is the prize money.

153 The WTA Rulebook requires that each competitor receives a double hotel room and complimentary food for the duration of the event.

154 No players ranked 1-100 in the preceding 21 days can enter an ITF Pro Circuit Men Futures tournament, though larger events may admit one player ranked 101-150 as a wildcard. This exception does not apply to $15k events, but $15k plus hospitality tournaments and above may offer one wildcard to a 101-150 ranked player (subject to the ITF's approval). See Section II(A)(3) of ITF Pro Circuit Regulations 2017 at http://www.itftennis.com/media/280343/280343.pdf [accessed 9 April 2018].

233.2 The ITF Women's Pro Circuit has over 450 events across dozens of countries and is subdivided into 5 levels: US$100,000, US$80,000, US$60,000, US$25,000, and US$15,000 events, also named for the total amount of prize money at the event. ITF Women's Pro Circuit events are open to any player ranked outside the top 10[155].

234. All the ITF Pro Circuit events have a number of common features, both for men and women.

235. Each ITF Pro Circuit event takes place at a regular point in the year, and generally runs for a week with a Monday main draw start and a Sunday conclusion. Each has a preceding qualification competition where numbers are sufficient to require it.

236. ITF Pro Circuit events are played at widely varying facilities, ranging from adequate facilities through private tennis clubs to venues with, frankly, very poor facilities. There are very significant challenges in ensuring effective or even any implementation of the accreditation system at those facilities. It is very difficult for organisers at these events to obtain enough staff or volunteers to oversee the actions of players and spectators alike.

237. ITF Pro Circuit events attract the lowest levels of professional players. While there may be exceptions in some countries, and at the higher level Pro Circuit events, there is effectively very little opportunity to attract spectators, sponsors or advertisers, or to generate any revenue from them. There has however been a significant growth in the number of events offered that are described as "stay and play". These are staged at hotel and sports complexes, and often organise many events each year: in one example 51 successive events in a year. Players spend money staying and eating at the hotel, generating revenue for the organisers, and in return have the opportunity to seek to win ranking points and prize money in the Pro Circuit events, without having to travel and without having to acclimatise to new conditions.

238. Pro Circuit events are sanctioned by the ITF, in return for a fee, which is 10% of the prize money for the tournament. Pro Circuit events must also have all necessary approvals from the relevant national association, which is responsible for submitting the application form(s) and paying the sanction fee.

239. Each Pro Circuit event involves a singles and a doubles competition. While access to the higher level Pro Circuit events may be by ranking or in the case of singles through a preceding qualification competition (access to which may also be by ranking) at the lower levels all that may be required is to have obtained an ITF IPIN. To secure an IPIN, players must watch a video including stern warnings regarding match-fixing, and electronically sign a statement confirming that they will abide by the TIU's anti-corruption measures. For many ITF Pro Circuit events, it is enough to have obtained an IPIN and to have entered the event by paying a relatively low fee of US$40. The sheer number of events around the world means that very many players have an opportunity to seek to put their foot on the bottom rung of the ladder. There may also be wildcards available issued at the discretion of the organiser. Some have competitions both for men and women.

240. The number of participants at each ITF Pro Circuit event is mid-range, but can be very high in the early stages:

240.1 Main draws for singles are 32 players; main draws for doubles are 16 teams.

240.2 Qualification draws for singles are varied in size[156]. Due to the huge number of players who can apply for, and enter, a Futures or Pro Circuit event, singles qualifying draws will be a minimum of 32 players and a maximum of 64 players for ITF Men's Pro Circuit events. At ITF Women's $15k events, the qualifying draw can be as large as 128 players (although it is capped at 32, with eight progressing, for the more lucrative tiers of Pro Circuit events). Where qualifying numbers are capped, organisers can hold a 'pre-qualifying' event to determine wildcards to be awarded to competitors for entrance into the qualifying event proper. In this way, the numbers of players present at an ITF event could be very large. There are doubles qualification competitions if necessitated by the number of entrants.

241. There are no appearance fees at ITF Pro Circuit events.

155 ITF Pro Circuit Regulations 2018, Section II(A)(4) http://www.itftennis.com/media/280343/280343.pdf [accessed 9 April 2018].

156 ITF Rulebook 2018, Section VIII, http://www.itftennis.com/media/280343/280343.pdf [accessed 9 April 2018].

242. None of the ITF Pro Circuit events are mandatory.

ITF Men's Pro Circuit (Futures) $25k events

243. A very small number of ATP ranking points are to be won at each ITF Men's Pro Circuit (Futures) $25k event. The points available differ[157] dependent on whether the organisers offer hospitality[158] as well prize money. A full breakdown of ranking points round-by-round is available at Appendix 1 to this chapter.

244. The prize money available at each ITF Men's Pro Circuit (Futures) $25k event is very low at a total of US$25,000. Hospitality can be offered, but this is very rare[159]. The prize money per round is set out at Appendix 1 to this chapter.

245. The ITF Men's Pro Circuit (Futures) $25k events are set out in the ITF calendar[160].

ITF Men's Pro Circuit (Futures) $15k events

246. A very small number of ATP ranking points are to be won at each ITF Men's Pro Circuit (Futures) $15k event. A full breakdown of ranking points round-by-round is available at Appendix 1 to this chapter.

247. The prize money available at each ITF Men's Pro Circuit (Futures) $15k event is very low at a total of US$15,000 (having been raised in 2017 from US$10,000). The prize money per round is set out at Appendix 1 to this chapter.

248. The ITF Men's Pro Circuit (Futures) $15k events are set out in the ITF calendar[161].

ITF Women's Pro Circuit US$100,000 events

249. A small number of WTA ranking points are to be won at each ITF Women's Pro Circuit US$100,000 event. The points available differ[162] dependent on whether the organisers offer hospitality as well prize money. A full breakdown of ranking points round-by-round is available at Appendix 1 to this chapter.

250. The prize money available at each ITF Women's Pro Circuit US$100,000 event is low at a total of US$100,000. Hospitality can be offered, but this is rare[163]. The prize money per round is set out at Appendix 1 to this chapter.

251. The ITF Women's Pro Circuit US$100,000 events are set out in the ITF calendar[164].

ITF Women's Pro Circuit US$80,000 events

252. A small number of WTA ranking points are to be won at each ITF Women's Pro Circuit US$80,000 event. The points available differ[165] dependent on whether the organisers offer hospitality as well prize money. A full breakdown of ranking points round-by-round is available at Appendix 1 to this chapter.

157 ITF Pro Circuit Regulations 2018, Sections X(A) and X(E), http://www.itftennis.com/media/280343/280343.pdf [accessed 9 April 2018].

158 The ITF defines reasonable minimum hospitality for the Pro Circuit as: one bed and breakfast to all main draw singles and doubles players beginning two days before the main draw commences and until the day following the player's elimination. See Section X(E) of the Pro Circuit Regulations 2018 (ibid).

159 The ITF 2018 calendar, which sets out the position of Men's ITF events relative to other events, can be found at http://www.itftennis.com/procircuit/tournaments/men's-calendar.aspx [accessed 9 April 2018]. Those events with hospitality are marked with "+H".

160 The ATP 2018 calendar, which sets out the position of Men's ITF events relative to other events, can be found at http://www.atpworldtour.com/-/media/files/2018-2019-atp-challenger-tour-calendar-4-april-2018.pdf [accessed 9 April 2018].

161 Ibid.

162 ITF Women's Pro Circuit Regulations 2018, Section XIII, http://www.itftennis.com/media/280343/280343.pdf [accessed 9 April 2018].

163 The ITF 2018 calendar, which sets out categories of Women's ITF events (those with hospitality are marked with "+H"), can be found at http://www.itftennis.com/procircuit/tournaments/women's-calendar.aspx [accessed 9 April 2018].

164 The ITF 2018 calendar, which sets out the position of Women's ITF events relative to other events, can be found at http://www.itftennis.com/procircuit/tournaments/women's-calendar.aspx [accessed 9 April 2018].

165 ITF Women's Pro Circuit Regulations 2018, Section XIII, http://www.itftennis.com/media/280343/280343.pdf [accessed 9 April 2018].

253. The prize money available at each ITF Women's Pro Circuit US$80,000 event is low at a total of US$80,000. Hospitality can be offered, but this is rare[166]. The prize money per round is set out at Appendix 1 to this chapter.

254. The ITF Women's Pro Circuit US$80,000 events are set out in the ITF calendar[167].

ITF Women's Pro Circuit US$60,000 events

255. A small number of WTA ranking points are to be won at each ITF Women's Pro Circuit US$60,000 event. The points available differ[168] dependent on whether the organisers offer hospitality as well prize money. A full breakdown of ranking points round-by-round is available at Appendix 1 to this chapter.

256. The prize money available at each ITF Women's Pro Circuit US$60,000 event is low at a total of US$60,000. Hospitality can be offered, but this is rare[169]. The prize money per round is set out at Appendix 1 to this chapter.

257. The ITF Women's Pro Circuit US$60,000 events are set out in the ITF calendar[170].

ITF Women's Pro Circuit $25k events

258. A very small number of WTA ranking points are to be won at each ITF Women's Pro Circuit $25k event. The points available differ[171] dependent on whether the organisers offer hospitality as well prize money. A full breakdown of ranking points round-by-round is available at Appendix 1 to this chapter.

259. The prize money available at each ITF Women's Pro Circuit $25k event is very low at a total of US$25,000. Hospitality can be offered, but this is rare[172]. The prize money per round is set out at Appendix 1 to this chapter.

260. The ITF Women's Pro Circuit $25k events are set out in the ITF calendar[173].

ITF Women's Pro Circuit $15k events

261. A very small number of WTA ranking points are to be won at each ITF Women's Pro Circuit $15k event. The points available differ[174] dependent on whether the organisers offer hospitality as well prize money. A full breakdown of ranking points round-by-round is available at Appendix 1 to this chapter.

262. The prize money available at each ITF Women's Pro Circuit $15k event is very low at a total of US$15,000. Hospitality can be offered, but this is rare[175]. The prize money per round is set out at Appendix 1 to this chapter.

263. The ITF Women's Pro Circuit $15k events are set out in the ITF calendar[176].

166 The ITF 2018 calendar sets out categories of Women's ITF events (those with hospitality are marked with "+H" - http://www.itftennis.com/media/189963/189963.pdf [accessed 9 April 2018].

167 The ITF 2018 calendar sets out the position of Women's ITF events relative to other events - http://www.itftennis.com/media/189963/189963.pdf [accessed 9 April 2018].

168 ITF Women's Pro Circuit Regulations 2018, Section XIII(B), http://www.itftennis.com/media/280343/280343.pdf [accessed 9 April 2018].

169 The ITF 2018 calendar sets out categories of Women's ITF events (those with hospitality are marked with "+H" - http://www.itftennis.com/media/189963/189963.pdf [accessed 9 April 2018].

170 The ITF 2018 calendar

171 ITF Women's Pro Circuit Regulations 2018, Section XIII(B), http://www.itftennis.com/media/253215/253215.pdf [accessed 9 April 2018].

172 The ITF 2018 calendar sets out categories of Women's ITF events (those with hospitality are marked with "+H", http://www.itftennis.com/media/189963/189963.pdf [accessed 9 April 2018].

173 The ITF 2018 calendar

174 ITF Women's Pro Circuit Regulations 2018, Section XIII, http://www.itftennis.com/media/280343/280343.pdf [accessed 9 April 2018].

175 The ITF 2018 calendar sets out categories of Women's ITF events (those with hospitality are marked with "+H", http://www.itftennis.com/media/189963/189963.pdf [accessed 9 April 2018].

176 The ITF 2017 calendar sets out the position of Women's ITF events relative to other events.

The ITF's December 2014 Pro Circuit Review

264. In December 2014, the ITF released the results of its investigation into the operation of the Pro Circuits for men and for women in the Pro Circuit Review[177]. Based on this review, the ITF has announced the introduction of an ITF Transition Tour which will create a new category of interim tournament at entry-level to better aid the transition from junior to professional tennis. The details of the Pro Circuit Review and the new Transition Tour are discussed below.

6. THE ITF'S DAVIS CUP, FED CUP AND HOPMAN CUP

The Davis Cup

265. The Davis Cup is owned and organised by the ITF. It is an annual international representative team event for men contested by the ITF member national associations or federations. It involves a "World Group" of the 16 best nations, and four graded groups (Groups I to IV) in each of three regional zones (Americas, Asia/Oceania and Europe/Africa). The ties take place in one of the nations competing in the tie. Each tie involves four singles matches (or rubbers) and one doubles match (or rubber). The World Group plays a four-round elimination or knock out tournament, with the first-round losers going into a play-off round where they compete with the winners of Group I from each of the zones (which also play an elimination competition) for a place in the following year's World Group. The losers of Group I in each zone are relegated to Group II. Group II plays an elimination competition, with the winners going up to Group I and the losers down to Group III. Groups III and IV play a round robin competition with promotion and relegation.

266. The ties take place over three days, and are scheduled in the Calendar[178]. Players do not have to play for their nation, absent any agreement that they have entered into to do so. From 2016, no ATP ranking points have been awarded for participation in the Davis Cup. There is no prize money for playing in the Davis Cup, but some players may be paid a fee by some nations.

The Fed Cup

267. The Fed Cup is broadly the ITF's equivalent competition to its Davis Cup, for women. The structure varies slightly in that there are two levels of world group, of eight nations each, and the three zones consist only of two graded groups. Again, the ties are scheduled in the Calendar[179], participation is not mandatory, there is no prize money, and there are no WTA ranking points.

The Hopman Cup

268. The Hopman Cup is an annual international, mixed-gender team event. It is held in Perth, Australia in early January (sometimes commencing in late December) each year and played on hard courts, indoors. Again, participation is not mandatory, there is no prize money, and no ranking points are awarded.

177 ITF Pro Circuit Review data analysis document - http://www.itftennis.com/media/194256/194256.pdf [accessed 9 April 2018].

178 The ATP 2018 calendar shows the dates of the Davis Cup weeks - http://www.atpworldtour.com/-/media/files/2018-2019-atp-challenger-tour-calendar-4-april-2018.pdf [accessed 9 April 2018].

179 See the WTA 2018 Calendar for their position relative to other events at http://www.wtatennis.com/calendar. [accessed 9 April 2018].

7. "MONEY MATCHES" AND EXHIBITION MATCHES

269. There are a number of other events in which tennis players can participate, which fall outside the official structure of professional tennis described above. These events do not fall within the scope of the Tennis Anti-Corruption Program, which appends an exhaustive list of events that fall within its jurisdiction[180].

270. Certain representative team exhibition events can be very high-profile, attracting global brands as sponsors, and large stadium and broadcast audiences. These may take place over the course of a season, with fixtures taking place at various intervals throughout the year (such as World TeamTennis). Alternatively, they may be scheduled for a shorter, week-long period either during the season or at either end of the season (such as the new Laver Cup, or the International Premier Tennis League). While prize money may be on offer for events such as these, the vast proportion of a player's earnings will relate to an appearance fee for taking part in the event. Due to the high-profile nature of such events, they usually feature only the world's top players.

271. Individual tennis exhibition events are sometimes organised either as marketing stunts, or to provide professional tennis players with a chance to tune up their game before a major competition. Such events might take place on a single day in the event of a one-off match or they may take place over the course of a week in the form of a tournament. Access is usually by invitation, and players most often receive money in the form of appearance fees; as such, the money they take home is not dependent on their performance in the event. Many exhibition events, as a result, are light-hearted affairs where an emphasis is placed on entertaining the crowd rather than securing a victory.

272. Certain team events take place every year over the course of most of the season, and provide an alternative to playing on the ITF or ATP/WTA tour. An example of this is the Bundesliga in Germany, sponsored by TennisPoint. Events like this have a number of match days throughout the year and are often well attended by thousands of spectators. They often give players who are not household names the chance to play in front of large crowds; furthermore, the prize money and appearance fees on offer can rival, or surpass, that on offer at ITF or Challenger events of an equivalent standard. As such, at the lower levels of the game, some players view this type of event as an alternative to entering an officially sanctioned ITF or ATP/WTA event.

273. There are certain events organised by national tennis federations which take place on a national level where players either play individually, or as part of a team. An example of such an event is the AEGON Team Tennis competition organised by the LTA, which is played throughout the summer months. Prize money at these events is low, but not inconsiderable; for example, £29,500 was awarded in prize money to successful teams competing in the National Open Tier of AEGON Team Tennis. Many current and former professional tennis players take part in events such as this.

180 TACP 2018, Appendix 1.

E ACCREDITATION AND SECURITY

274. Each of the International Governing Bodies takes their own approach to accreditation and security at tournaments. The process is not managed by one central organisation.

275. The purpose of accreditation is to ensure that only authorised individuals can access the correct area at tournaments.

1. ACCREDITATION SYSTEMS

ITF

276. Before 2017, the ITF did not have a formal accreditation system in place. From 2017 onwards, the ITF has introduced a mandatory accreditation system (that tournaments impose as part of the minimum integrity requirements to host Pro Circuit events).

ATP

277. The ATP has an accreditation process in place. There are different levels of accreditation available. Depending on the level of accreditation granted an individual will gain access to restricted areas (i.e. those areas that members of the general public are prohibited from entering). For example, accreditation for the player's family will not grant those family members access to the player's locker room.

WTA

278. The WTA's accreditation is managed on an online system; this enables a live database that is updated in real time with the list of individuals that have been granted a credential. Like with the ATP, there are different levels of accreditation available that grant different access to restricted areas.

Grand Slams

279. Each Grand Slam has its own accreditation process in place. As with the ATP and WTA, the Grand Slams grant different levels of accreditation that grant different access to restricted areas.

2. THE "NO CREDENTIALS LIST"

280. The "No Credentials List" is a list individually and independently maintained by each of the International Governing Bodies. The No Credentials List records the names of individuals that should not be granted a credential to the respective International Governing Bodies' events. Individuals may be added to the No Credentials List for various reasons, ranging from being involved with match-fixing to harassing a player. There are no specific guidelines setting out when an International Governing Body should not grant a credential; instead the process is determined on a case-by-case basis.

281. There is no system in place that requires an International Governing Body to share their independently maintained No Credentials Lists with each other. Whilst some of the International Governing Bodies do share their list with other organisations including the TIU, this is at their discretion. As a result, there is not a composite or central list containing the names of all individuals on the International Tennis Bodies and the TIU's respective lists.

282. The only instance where two International Governing Bodies' accreditation and No Credentials systems would be combined is at joint WTA/ATP tournaments. At these tournaments, the tournament's on-site credential team would be provided access to both the WTA's online system and the, ATP's credentials system and would also be provided with both the WTA and ATP's No Credentials List.

3. OBTAINING A CREDENTIAL

283. The process of obtaining a credential to tournaments is similar at each of the tournaments but varies depending on whether it is an ITF, WTA, ATP or Grand Slam tournament. Once a credential is granted the individual will either receive a physical pass that can be scanned or a physical pass that will be presented at the entrance of the restricted areas.

4. ACCREDITED AREAS

284. The accredited areas at each tournament vary from tournament to tournament. Generally, tournaments will only allow players into the locker room, but non-players may have access to the players' lounge and player dining areas. In addition, coaches will have access to a coaches-only locker room, and any on-site gyms, if the gyms are not located within the player locker room.

5. SECURITY OF PLAYERS

285. In some instances, measures are put in place to ensure the physical safety of professional tennis players. Whilst these measures are not ubiquitous across professional tennis, some actions are taken in this regard, as set out below:

285.1 The ATP and WTA employ a Director of Security[181]. The role of the Director of Security is to ensure that the safety and security at all ATP and WTA events is of a suitable standard. The requisite standard at the sanctioned events is achieved and maintained by a consistent dialogue and a rotated presence of the Director of Security at these events; the jurisdiction of the Director extends to, amongst other things, accreditation, physical security on site, and player transport and protection[182].

285.2 The Grand Slams employ on-site security, and fund education and training for their staff. For example, in 2016 the USTA required 600 of their staff to complete the TIU's anti-corruption course[183].

286. Despite the work that goes in to protecting the players at the higher profile events listed above, it should be noted that the work of the ATP and WTA Director of Security does not usually extend to the Challengers or the WTA 125k Series[184]. Security at these tournaments comes under the jurisdiction of the Tournament Director. Similarly, and predominantly due to the volume of ITF tournaments, the Tournament Director at ITF Pro Circuit events must take jurisdiction over security.

6. ONLINE SECURITY OF PLAYERS

287. As part of their education programmes, the International Governing Bodies offer training and guidance to players regarding online security. For example, instances where guidance is offered regarding online security include:

287.1 The WTA online modules (where the majority of their education is administered), the content of which includes modules on safety and security; and

287.2 ATP University, one of the ATP's key education tools, includes guidance for players on managing social media and online abuse.

288. In addition to the work of the International Governing Bodies, the TIU has developed a protocol for online security that is shared with players and coaches who report instances of online abuse.

289. The education programmes of the International Governing Bodies and the TIU are examined in greater detail in Chapter 10.

181 The ATP and WTA Director of Security is Bob Campbell.

182 Statement of Bob Campbell (ATP and WTA).

183 Statement of Gordon Smith (USTA) [paragraph 15].

184 Statement of Bob Campbell (ATP and WTA) [paragraph 16].

F PLAYER PATHWAY

290. The purpose of a pathway is to ensure that the most talented and deserving emerging players are able to progress through the system.

291. A player's pathway to the top of the professional game generally begins with the ITF Junior Circuit. From there, players can progress to the ITF Pro Circuit when they: (a) have accumulated enough ranking points from ITF Junior events to be able to enter ITF Pro Circuit tournaments; or (b) they have become too old to compete in the ITF Junior Circuit. The age eligibility for each step of the pathway is described in more detail below.

292. From the ITF Pro Circuit, the next step is to attempt to access either the WTA Tour (entry level being the 125k Series) or the ATP Challenger Tour. If a player is successful enough at this level, they will accumulate enough ranking points to be able to progress to the level of the game where the highest prize money and ranking points are found: the ATP World Tour; the WTA Tour International and Premier series events; and the Grand Slam tournaments[185].

293. There are many possible obstacles that stand in the way of a player's successful navigation of the pathway. In the words of the ITF, "for a player to progress to the highest levels of tennis, an enormous commitment and dedication must be sustained over many years."[186] The commitment and dedication required of players can be briefly categorised as follows:

293.1 Ability and attitude. Progress is made by winning matches. Skill and determination are thus necessary qualities for any player who tries to progress through the player pathway.

293.2 Financial. From the moment a tennis player picks up a racket they are likely to incur costs including, but not limited to: paying a coach; travelling to train and compete; and obtaining or maintaining appropriate equipment to train and compete at a high level[187]. These expenses are incurred from the very beginning of a tennis player's career; many players never see a financial return on this investment, while for others it may be some time before they begin to see a reward[188]. National federations may provide some help towards these expenses.

293.3 Competition. Even for those who possess the talent and ability eventually to progress through the ranks, it is possible to become 'stuck' at a lower level due to the vast number of fellow players competing for the same goal[189]. The longer it takes for a player to progress along the pathway, the more opportunities there will be for the player to become disillusioned[190].

1. PROGRESSION FROM JUNIOR CIRCUIT TO ITF PRO CIRCUIT

294. The ITF manages the entry-level of the professional game. This is comprised of:

294.1 The Junior Circuit, which is comprised of six levels of tournament: Grade A (Super Series) tournaments which include the four Grand Slam events and the Youth Olympic Games, followed by Grades 1, 2, 3, 4 and 5 (in descending order of perceived tournament strength). Players may also win points for tournaments organised by Regional Associations (known as Grade B tournaments) or for international team competitions (known as Grade C tournaments)[191].

294.2 The Pro Circuit, which is described above.

185 Appendix 1 to this chapter contains a detailed breakdown of the ranking points available at professional tournaments.

186 http://www.itftennis.com/procircuit/info-for-players/player-welfare.aspx [accessed 9 April 2018].

187 ITF data on flights, food, restringing, and laundry costs are produced at Appendix 3 to the ITF Pro Circuit Review data: http://www.itftennis.com/media/194256/194256.pdf [accessed 9 April 2018].

188 See paragraph 324.5 for discussion of when a player begins to 'break even'.

189 There are currently around 14,000 players competing in professional tennis events according to the data obtained by the ITF Pro Circuit Review: http://www.itftennis.com/media/194256/194256.pdf [accessed 9 April 2018].

190 The length of time to progress along the pathway is increasing: see paragraph 322 for more information.

191 ITF Rulebook 2018, Section III(31-32) contains a discussion of the grade system and the relevant ranking points - http://www.itftennis.com/media/282383/282383.pdf [accessed 9 April 2018].

Junior Circuit

295. A player must be aged 13 to 18 (inclusive) and under the jurisdiction of an ITF-affiliated national association to be eligible to play in any ITF Junior Circuit tournament[192]. For the purposes of the minimum age, the player's age is considered as at the first day of the tournament Main Draw. For example, for the calendar year 2017, those eligible to compete were boys and girls born between 1 January 1999 and 31 December 2014 (provided they had turned 13).

296. Juniors joining the ITF Junior Circuit almost always do so having had success playing in national tournaments organised by their nation's federation, and tournaments organised by regional associations (such as Tennis Europe). Many national federations have programs in place to identify and cultivate junior talent by funding or otherwise providing training, travel, and equipment for talented junior players[193]. However, the effectiveness of these initiatives depends largely on the level of funding available; therefore, players from countries with better-funded national federations might have more chance of sustaining themselves as they start out on the player pathway.

297. In order to enter any ITF Junior Circuit tournament, an eligible Junior player must first register for annual ITF Junior IPIN Membership and agree to accept the related terms and conditions[194]. The Junior IPIN system is a purely administrative tool whereby players can apply online to enter tournaments, and receive communications from the ITF; the playing standard of the Junior applicant is not taken into account[195].

298. The number of ITF Junior Circuit tournaments a Junior player may enter is subject to age eligibility restrictions[196]:

Age	Number of tournaments permitted
13	10 (unless player achieves a top 50 ITF Junior Ranking in which case an additional 4 tournaments is permitted)
14	14 (unless player achieves a top 20 ITF Junior Ranking in which case an additional 4 tournaments is permitted)
15	16 (unless player achieves a top 20 ITF Junior Ranking in which case an additional 4 tournaments is permitted)
16	25
17 / 18	Unrestricted

299. Whilst technically open to all ITF Junior Circuit players, the ITF advise that an ITF Junior World Ranking "will almost certainly be necessary to be accepted into Grade A, 1, 2, and 3 tournaments. Entry into Grade 4 and 5 tournaments is likely to be based on players ITF Junior World Rankings to an extent, but with more opportunity for unranked players to be accepted"[197].

300. Juniors who achieve, at the end of a season, an ITF Junior World Ranking in the Top 20 Junior boys or girls will be offered direct entry ("Junior Exempt Positions") into the Main Draw of Pro Circuit events the following season as set out below[198]:

192 ITF Rulebook 2018, Section I(5) sets out the player eligibility rules: http://www.itftennis.com/media/282383/282383.pdf [accessed 9 April 2018].

193 See, for example, the British LTA's Player Support Programme: https://www.lta.org.uk/globalassets/play/professional-development/documents/lta-support-programme-for-existing-and-aspiring-pro-tour-players.pdf

194 ITF Rulebook, Section I(7) sets out the requirement for an IPIN: http://www.itftennis.com/media/282383/282383.pdf [accessed 9 April 2018].

195 IPIN services are provided through this link: https://ipin.itftennis.com/login.asp?flags=Y&referrerid=&languagecode=ENG

196 ITF Rulebook 2018, Appendix H sets out the age eligibility restrictions: http://www.itftennis.com/media/282383/282383.pdf [accessed 9 April 2018].

197 http://www.itftennis.com/juniors/players/start-playing.aspx [accessed 9 April 2018] - strictly speaking this is simply guidance, but the Regulations have the effect that junior players invariably start at Grade 4 and 5 tournaments before progressing to higher-grade events.

198 These are also set out at Section I(8) of the ITF Rulebook 2018: http://www.itftennis.com/media/277686/277686.pdf [accessed 9 April 2018].

300.1 Boys

Ranking	Junior Exempt Positions offered
1-4	Three ITF Men's Pro Circuit tournaments up to and including $25k+Hospitality prize money level
5-10	Three ITF Men's Pro Circuit tournaments up to and including $25k prize money level
11-20	Three ITF Men's Pro Circuit tournaments up to and including $15k prize money level

300.2Girls

Ranking	Junior Exempt Positions offered
1	One ITF Women's Pro Circuit tournament up to and including $100k prize money level and two ITF Women's Pro Circuit tournament up to and including $80k prize money level
2	Two ITF Women's Pro Circuit tournament up to and including $80k prize money level and one ITF Women's Pro Circuit tournament up to and including $60k prize money level
3-5	Two ITF Women's Pro Circuit tournament up to and including $60k prize money level and one ITF Women's Pro Circuit tournament up to and including $25k prize money level
6-10	Three ITF Women's Pro Circuit tournaments up to and including $25k prize money level
11-20	Three ITF Women's Pro Circuit tournaments up to and including $15k prize money level

Progression to the Pro Circuit

301. A player must be age 14 or over to enter into either an ITF Men's Pro Circuit or Women's Pro Circuit tournament[199].

302. In order to enter any Men's Pro Circuit or Women's Pro Circuit tournament, the player must first register for an annual ITF Pro Circuit IPIN Membership and agree to accept the related terms and conditions[200]. The IPIN system is a purely administrative tool whereby players can apply online to enter tournaments, and receive communications from the ITF; the playing standard of the applicant is not taken into account[201]. The player must also complete the Tennis Integrity Protection Programme (TIPP)[202].

199 This requirement is found at Section II(A)(1) of the ITF Men's Pro Circuit Rules and Regulations and Section II(A)(1) of the ITF Women's Pro Circuit Rules and Regulations: http://www.itftennis.com/media/280343/280343.pdf

200 ITF Men's Rules, Section II(A)(2) and ITF Women's Rules, Section II(A)(4), http://www.itftennis.com/media/280343/280343.pdf. [accessed 9 April 2018].

201 IPIN services are provided through this link: https://ipin.itftennis.com/login.asp?flags=Y&referrerid=&languagecode=ENG [accessed 9 April 2018].

202 The TIPP educates players about corrupt grooming techniques and the process of reporting corrupt approaches.

303. The number of Women's ITF Pro Circuit tournaments a female player may enter, and the number of wildcards a female player may receive, is subject to age eligibility restrictions[203]:

Age	Number of tournaments permitted	Wildcards
14	8, no more than 3 of which may be at ITF Women's Pro Circuit $60,000 and above	3
15	10	3
16	12	4
17	16	Subject to regular WTA Wildcard rules
18	Unrestricted	Subject to regular WTA Wildcard rules

304. In addition to the age eligibility restrictions, female players are also subject to age ranking restrictions[204]:

304.1 A player may not be named a top 10 Player (for the purposes of player commitment obligations) until the year of her 17th birthday.

304.2 A player under the age of 14 cannot obtain a WTA ranking.

304.3 Players aged 14 through 17 will not be awarded ranking points from any tournament that exceeds the number permitted to be played under the WTA's age eligibility rule.

305. Other than the requirement that players are age 14 or over, there are no other age eligibility restrictions for the ITF Men's Pro Circuit.

306. An approximate gauge of ability for players making the transition from the Junior Circuit to the ITF Pro Circuit can be found in the ITF Rulebook, which sets out a 'Seeding Comparison Chart' explaining how players with ITF Junior Rankings roughly compare with professionally (senior) ranked players[205]. For example, the ITF number 1 male junior is considered the equal of an ATP player ranked 250, and is therefore considered well on the way to moving up the player pathway. An ITF junior ranked outside the top 35, however, is considered to be outside the level of the top 750 ATP players. On the women's side of the junior game, the number 1 junior is considered the equal of a WTA player ranked 150th, whereas anyone ranked outside the top 35 in juniors is considered to be outside the level of the WTA top 400. Given that there were 12,166 players at the junior level in 2015[206], this signifies a very large proportion who have little to no chance of winning enough ranking points at events to progress further along the pathway to the ATP or WTA Tours.

307. In order to assist players to move up the player pathway, the ITF Pro Circuit Rules and Regulations enforce 'play-down' rules for singles tournaments[207]. In the men's game, these rules prohibit any player ranked in the top 100 from entering or accepting a wildcard to a Futures event. Those ranked between 101-150 may accept a wildcard into a Futures event of $15k plus Hospitality level or above, but each tournament may only offer one wildcard to players of this ranking. In the women's game, players ranked in the top 10 may not enter or accept a wildcard into any tournament.

203 WTA Rulebook 2018, Section XV(A)(2), http://wtafiles.wtatennis.com/pdf/publications/2018WTARulebook.pdf [accessed 9 April 2018].

204 Ibid.

205 The full chart can be found at Appendix K to the ITF Junior Rulebook - http://www.itftennis.com/media/277686/277686.pdf [accessed 9 April 2018].

206 According to the ITF Junior Circuit Review data: http://www.itftennis.com/media/247600/247600.pdf [accessed 9 April 2018].

207 ITF Men's Rules, Section II(A)(3) and ITF Women's Rules, Section II(A)(5), http://www.itftennis.com/media/280343/280343.pdf [accessed 9 April 2018].

2. PROGRESSION FROM THE ITF PRO CIRCUIT TO THE TOURS

ATP Challenger

308. On the men's side of the game the ATP manages the mid-level of the professional game. This is comprised of ATP Challenger tournaments.

309. A player must be age 14 or over to enter an ATP Challenger (or ATP World Tour) tournament[208].

310. The number of ATP Challenger (or ATP World Tour) tournaments a player may enter is subject to age eligibility restrictions below the age of 16[209]:

Age	Number of tournaments permitted
14	8
15	12

311. In an ATP Challenger Main Draw, 22-24 players will be directly and automatically accepted by virtue of their professional ranking[210]. The cut-off point for direct acceptance into the singles main draw varies wildly tournament-to-tournament based on the tournament's location and scheduling; however, as a very rough guide[211]:

311.1 Challenger 125: world ranking must be 150 – 200.

311.2 Challenger 110: world ranking must be 175 – 250.

311.3 Challenger 100: world ranking must be 200 – 300.

311.4 Challenger 90: world ranking must be 225 – 350.

311.5 Challenger 80: world ranking must be 250 – 375.

312. Those below the 'last direct acceptance' ranking must enter the qualifying round, from which four players will progress to the Main Draw. In addition, four wildcards are awarded at the absolute discretion of the tournament organisers; it is common for tournament organisers to give these to players from the country in which the tournament is being played, to aid their development. The ATP Rulebook states that wildcards are awarded at the sole discretion of the awarding tournament; as such, there is no defined process for seeking, or awarding, a wildcard[212]. Players seeking a wildcard often contact the tournament organiser to register their name for consideration, and some organising bodies publish their criteria for selecting the players to receive a wildcard[213]. Tournaments may not receive compensation and players may not offer compensation in exchange for the awarding of a wildcard[214].

208 ATP Rulebook 2018, Section 7.02A - http://www.atpworldtour.com/en/corporate/rulebook [accessed 9 April 2018].

209 Ibid.

210 ATP Rulebook 2018, Section 7.08(B), http://www.atpworldtour.com/en/corporate/rulebook [accessed 9 April 2018].

211 The last direct acceptance for each individual tournament is specified on the draw sheet for that tournament.

212 ATP Rulebook, Section 7.12(A)(1)(a), http://www.atpworldtour.com/en/corporate/rulebook [accessed 9 April 2018].

213 See, for example, Tennis Australia's Wildcard Application and Selection Process for ATP Challengers available on their website: https://www.tennis.com.au/play/become-a-pro/wildcard-application-and-selection-process/atp-challengers-itf-womens-60ks [accessed 9 April 2018].

214 ATP Rulebook 2018, Section 7.12(A)(1)(a), http://www.atpworldtour.com/en/corporate/rulebook [accessed 9 April 2018].

313. In order to assist players to move up the player pathway, the ATP Rulebook enforces 'play-up' rules for Challenger tournaments[215]. These rules prohibit any top-10 professionally ranked player from entering or accepting a wildcard to a Challenger tournament. Those ranked between 11-50 may accept a wildcard into a Challenger event of US$75,000 plus Hospitality level or above, but each tournament is limited in the number of wildcards it can award to players of this level.

WTA 125k Series

314. On the women's side of the game the WTA manages the mid-level of the professional game, which is comprised of the WTA 125k Series.

315. A player must be age 14 or over to enter a WTA 125k Series tournament[216] .

316. In a typical WTA 125k Series Main Draw, 22-24 players will be directly and automatically accepted by virtue of their professional ranking[217]. The cut-off point for direct acceptance into the singles main draw varies from tournament-to-tournament based on the tournament's location and scheduling; however, as a very rough guide based on the figures from the previous two years' tournaments, the cut-off is usually between 250 and 325[218]. Those below the cut-off point for direct acceptance must enter the qualifying round, from which four players will progress to the main draw. In addition, four wildcards are awarded at the absolute discretion of the tournament organisers; as on the men's side, it is common for tournament organisers to give these to players from the country in which the tournament is being played, to aid their development.

317. In order to assist players to move up the player pathway, the WTA Rulebook enforces 'play down' rules for WTA 125k tournaments[219]. These rules prohibit any top-10 professionally ranked player from entering or accepting a wildcard to a 125k Series tournament. Those ranked between 11 and 50 may accept a wildcard to a 125k Series event, but each tournament is limited in the number of wildcards it can offer to players of this level[220].

ATP Tour

318. Consistent progress to the later rounds of tournaments on the Challenger Tour will invariably reward a player with enough ranking points to compete on the ATP Tour. For example, in 2017, of the 12 players who won three or more Challenger singles events[221], seven were sitting comfortably in the top 100. Such a ranking will enable players to gain direct acceptance to (a) ATP 250 events (where direct acceptance cut-offs are around the 100-120 ranking mark[222]), (b) some higher-level ATP Tour events (depending on the direct acceptance cut-off), and (c) Grand Slam events, where the 104 highest-ranked players to apply benefit from direct acceptance into the main draw[223].

319. However, due to the relative points awarded at each level of tournament, many players may choose to supplement the ranking points that they subsequently gain from ATP World Tour events by continuing to play Challenger events where they feel they have a greater prospect of success, and as a consequence ranking points. For example, a first round

215 ATP Rulebook 2018, Section 7.07(A) - http://www.atpworldtour.com/en/corporate/rulebook [accessed 9 April 2018].

216 WTA Rulebook 2018, Section XV(A)(2), http://wtafiles.wtatennis.com/pdf/publications/2018WTARulebook.pdf [accessed 9 April 2018].

217 WTA Rulebook 2018, Section III(C)(1)(a) deals with the composition of a WTA Tour Event. Numbers of direct acceptance are not specified as in the ATP Rulebook; however, 6 wildcards are allowed at 125k Series events and qualifying draws vary between eight players (with two progressing) and 16 players (with four progressing), which leaves 22 to 24 direct acceptances.

218 The last direct acceptance of each individual tournament is specified on the draw sheet for that tournament.

219 WTA Rulebook 2018, Section II(D)(5)(a) http://wtafiles.wtatennis.com/pdf/publications/2018WTARulebook.pdf [accessed 9 April 2018].

220 WTA Rulebook 2018, Section III(A)(5)(i) http://wtafiles.wtatennis.com/pdf/publications/2018WTARulebook.pdf [accessed 9 April 2018].

221 Filip Krajinovic, Janko Tipsarevic, Aljaz Bedene, Nicolas Jarry, Thomas Fabbiano, Egor Gerasimov, Lu Yen-Hsun, Pedro Sousa, Cedrik-Marcel Stebe, Maximilian Marterer, Cameron Norrie and Yuichi Sugita.

222 See each individual tournament's drawsheet for the last direct acceptance.

223 Grand Slam Rulebook 2018, Article I(Z)(2)(e), http://www.wimbledon.com/pdf/GrandSlamRulebook2018.pdf [accessed 9 April 2018].

loss at an ATP World Tour event scores no ranking points and winning two rounds in an ATP 250 event scores only 45 ranking points. In comparison, winning or reaching the final of a Challenger event can score at least 90 ranking points[224].

WTA Tour

320. Consistent progress to the later rounds of the highest tournaments on the Women's ITF Pro Circuit, and the WTA 125k Series, will reward a player with enough ranking points to compete in WTA International and Premier events, and even Grand Slam Events, where between 104 and 112 direct acceptances are made[225]. For example, at the end of 2017, the most successful two players in 100k Women's ITF Pro Circuit events (having won multiple events in the first half of the year[226]) had rankings of 46 and 20; one of them reached the semi-finals of a Grand Slam. Success in higher-level ITF Pro Circuit and WTA 125k events will propel a player into the top 100.

321. As on the men's side, due to the relative points awarded at each level of WTA Tour tournaments, many players supplement the ranking points that they subsequently gain from WTA Tour events by continuing to play ITF Pro Circuit and WTA 125k Events. For example, a first round loss at a WTA Tour event scores one ranking point and winning two rounds in a WTA International event scores only 60 ranking points. In comparison, winning or reaching the final of a high-level ITF Pro Circuit or WTA 125k event can score at least 120 ranking points.

3. PROPOSED REFORM OF THE PLAYER PATHWAY (ITF)

Pro Circuit Review

322. In 2014 the ITF conducted a review of the Pro Circuit focussed on the following three objectives[227]:

322.1 attracting emerging talent into professional tennis;

322.2 retaining the best players and delivering them to the top levels of the professional game (i.e. ATP, WTA and Grand Slam tournaments); and

322.3 providing opportunities in all member nations for professional players (i.e. development of the sport globally).

323. The Pro Circuit Review involved three stages:

323.1 Stage one: analysis of player and tournament data in the period 2001-2013. The work was conducted by Tennis Australia's Data Science team supported by the University of Victoria;

323.2 Stage two: stakeholder survey of players, national associations, coaches and tournaments organisers conducted by the University of Kingston; and

323.3 Stage three: review of the findings by two working groups comprised of representatives of the ITF, national associations, the ATP and WTA and the recommendation of structural changes to professional tennis below the ATP / WTA Tour level.

324. The results of the stage one analysis were reported in December 2014. The data analysis identified inequality in the distribution of prize money across professional tennis. The headline findings included (amongst others):

224 Appendix 1 to this chapter contains a full breakdown of ranking points available at each level of tournament.

225 See Grand Slam Rulebook 2018, Section I(Z)(2)(e) for Grand Slam draw composition: http://www.wimbledon.com/pdf/GrandSlamRulebook2018.pdf [accessed 9 April 2018].

226 Tatjana Maria and Magdalena Rybarikova.

227 Set out at Section 1 of the ITF Pro Circuit Review data analysis document - http://www.itftennis.com/media/194256/194256.pdf [accessed 9 April 2018].

324.1 The numbers of players that competed in a professional tournament were: (a) 8874 men; and (b) 4862 women. Of those players, 3896 (43%) men and 2212 (45%) women earned no prize money.

324.2 Total men's prize money was approximately US$162million. An even distribution would provide every male player that earned prize money with US$32,638, but in that year, the top 1% of male players (top 50) won 60% (US$97,448,106) of the total prize money. Subtracting those amounts has the effect of reducing the even distribution average down to $13,195.

324.3 Total women's prize money was approximately US$120million. An even distribution would provide every female player who earned prize money with US$45,205, but in that year the top 1% of female players (top 26) won 51% (US$60,585,592) of the total prize money. Subtracting those amounts has the effect of reducing the even distribution average down to US$22,564.

324.4 Average costs for playing professional tennis (not including coaching costs[228]) were US$38,800 for men and US$40,180 for women.

324.5 The 'breakeven point' (where cost equals prize money earnings[229]) was rank 336 for men (3.78% of all active male players), and rank 253 for women (5.2% of all active female players). This means that, out of the pool of 'professional' players, i.e. those that earned any prize money, 8.6% of male players broke even, and 11.4% of female players broke even.

325. The causes of this inequality were identified to include:

325.1 Overall increase in player numbers caused by: (a) players stepping up from Junior ranks; and (b) player longevity. Year-on-year more players are competing for fewer openings in the top ranks of the game.

325.2 Limited 'play down' rules. Top 150 players are prevented from playing in Futures tournaments (101-150 may receive wildcard entries). Below that level, there is no restriction on playing down. The result is that approximately 10-20% prize money from the lowest rung of Futures tournaments is taken by men's players ranked around 200.

325.3 Limited 'play up' rules. Junior players stepping up to Futures tournaments (whilst continuing to play at Junior level) further reduces opportunities for players at the lowest levels of the current 'professional' game.

326. The Pro Circuit Review provides demonstrable evidence that players ranked above 250 struggle to make a living as professional tennis players.

327. As well as the substantial prize money inequality across the levels of the professional game, it is now also taking longer for players to be 'delivered'[230] from achieving their first ATP/WTA ranking to becoming a top 100 player. In 2000, transition time to the top 100 was calculated to be 3.7 years in the men's game and 3.4 years in the women's game[231]. In 2013, the transition times were 4.8 years in the men's game and 4.1 years in the women's game – an increase of 1.1 years and 0.7 years respectively.

228 The ITF Pro Circuit Review deals with 'costs without support team' due to the difficulty of working out coaching costs.

229 ITF Pro Circuit Review data analysis document, page 57, http://www.itftennis.com/media/194256/194256.pdf [accessed 9 April 2018].

230 The time it takes to 'deliver' a player to a level of the game where they are earning enough money to support their costs and earn a living.

231 ITF Pro Circuit Review data analysis document, page 21, http://www.itftennis.com/media/194256/194256.pdf [accessed 9 April 2018].

Junior Circuit Review

328. In 2016 the ITF conducted a Junior Circuit Review focussed on the following terms of reference[232]:

328.1 How effectively does the Junior game attract players to the sport?

328.2 What opportunities exist for Junior players and how have they changed over time? And what barriers exist for Junior Players?

328.3 How well are players prepared to progress / have a career in the sport?

328.4 What are the other policy considerations and how do they influence the state of the Junior circuit?

328.5 Insight needed to frame an effective strategic plan for the junior game.

329. The Junior Circuit Review proceeded on the basis of the same three stages identified in respect of the Pro Circuit Review at paragraph 323 above. In respect of stage one, the data analysis involved junior and tournament data in the period 1 January 2000 to 31 December 2015.

330. The results of the Junior Circuit Review showed similar trends to the Pro Circuit Review including (amongst others):

330.1 The total number of competitors at the Junior level had more than doubled since 2000, to reach a level in 2015 of 12,166 (6,848 boys and 5,318 girls). Of those, 70% of boys and 60% of girls were unranked at Junior level (i.e., eligible to play at Junior level but have no Junior ranking. Those players may or may not also have a Pro Circuit ranking)[233].

330.2 The prospects of reaching the top of the professional game were small. 7% of boys and 19% of girls in the Junior top 100 had gone on to reach the top 100 of the professional game. Fewer than 1% from outside the Junior top 100 had done so[234]. Further, the transition period to move from Junior level to Top 100 has increased[235].

331. The Junior Circuit Review also showed worrying trends with respect to the demands being placed on juniors:

331.1 The average age of juniors has decreased, at a time where the professional game has been getting older. There is an increasing pool of players in 'transition', i.e., 16-23 years of age[236].

331.2 More than 10% of the top 100 ranked junior boys, and more than 5% of top-ranked junior girls played more than 25 junior and professional events per year; the percentage was even higher for those ranked 101-250[237]. This includes events that may extend into a second week, in essence meaning that a sizeable proportion of juniors play international competitive tennis for more than 50% of the calendar year[238]. The ITF Junior Circuit Review had expressed concerns that this is excessive play and a threat to player well-being, and suggested a maximum event limit across the Junior Circuit[239].

232 The terms of reference are at page 4 of the ITF Junior Circuit Review data analysis document - http://www.itftennis.com/media/194256/194256.pdf [accessed 9 April 2018].

233 'Key Findings' are on page 6 of the ITF Junior Circuit Review data analysis document: http://www.itftennis.com/media/194256/194256.pdf [accessed 9 April 2018].

234 See 'Key Findings' on page 98 of the ITF Junior Circuit Review data analysis document: http://www.itftennis.com/media/194256/194256.pdf [accessed 9 April 2018].

235 This is consistent with the evidence in the Pro Circuit review referred to above.

236 As discussed at page 7 of the ITF Junior Circuit Review data analysis document: http://www.itftennis.com/media/194256/194256.pdf [accessed 9 April 2018].

237 ITF Junior Circuit Review data analysis document, pages 122-123, http://www.itftennis.com/media/194256/194256.pdf [accessed 9 April 2018]

238 ITF Junior Circuit Review data analysis document, page 99, http://www.itftennis.com/media/194256/194256.pdf [accessed 9 April 2018].

239 ITF Junior Circuit Review data analysis document, page 100 http://www.itftennis.com/media/194256/194256.pdf [accessed 9 April 2018].

332. The Junior Circuit Review provides demonstrable evidence that the Junior level of the game has evolved in a non-strategic fashion – with the number of tournaments increasing but an inequality in the distribution of tournaments (and Junior ranking points available) across the globe.

ITF Recommendations and implementations following the Player Pathway Review

333. The ITF Player Pathway Review (i.e. the Pro Circuit Review and Junior Circuit Review combined) has led to a number of recommendations to reform the player pathway and improve the quality of tournaments. The ITF's website states that: "*The ITF will radically reduce the number of professional players…to a recommended professional player group of no more than 750 men and 750 women players. This will introduce a clearer and more effective professional pathway and ensure that prize money levels at ITF Pro Circuit events are better targeted to ensure that more players can make a living from the professional game. The Board has also proposed a new entry-level to the professional pathway [which] will allow players to take the first steps towards becoming a future champion within a more targeted and affordable circuit structure*"[240].

334. Specifically, the ITF Board has implemented and/or is considering implementing the following changes:

334.1 Increased tournament prize money (approved by the ITF Board in March 2015):

334.1.1 In the men's game, $15k events were reclassified as $25k events (with effect from 1 January 2016) and US$10k events were reclassified as $15k events (with effect from 1 January 2017).

334.1.2 In the women's game, US$10k events were reclassified as $15k events, $15k events were reclassified as $25k events, US$50k events were reclassified as US$60k events, and $75k events were reclassified as US$80k events (each with effect from 1 January 2017).

334.1.3 In the men's and women's game, hospitality (+H) can be offered at all levels; in many cases the provision of hospitality will raise the number of ranking points available at the tournament241.

334.2 Revised structure at the entry-level of the professional game to create a 'true professional group' consisting of approximately 750 men and 750 women. The intention is that this group will compete at Level II Pro Circuit events and above, offering ATP and WTA ranking points[242]. The revised structure will introduce a targeted number of 'job opportunities' at each level of the player pathway:

334.2.1 ATP / WTA Tours (Top 150).

334.2.2 Grand Slams (Top 250).

334.2.3 ATP Challengers / WTA 125k / Pro Circuit Level II243 (Top 350).

334.2.4 ITF Transition Tour. This is being modelled to cater for the Top 1000 and would therefore result in $15k events being downgraded from the Pro Circuit. Transition Tour events will offer ITF Entry Points rather than ATP or WTA points, with successful players on the Transition Tour using their Entry Points to gain acceptance into Pro Circuit tournaments244. The ITF is releasing videos gradually to provide more information about how the Transition Tour will work, only one of which has been released as of March 2018245. These tournaments will be held within a localised circuit structure that reduces costs and increases opportunity for players246.

334.3 Revised 'play down' rules. The proposed classification of the ITF Transition Tour as an 'interim' tour with entry

240 http://www.itftennis.com/news/256730.aspx [accessed 9 April 2018].

241 Appendix 1 to this chapter contains a full breakdown.

242 http://www.itftennis.com/procircuit/about-pro-circuit/player-pathway.aspx [accessed 9 April 2018].

243 Pro Circuit Level II tournaments are those which are above $15k level.

244 ITF press release on the proposed Transition Tour: http://www.itftennis.com/news/256730.aspx [accessed 9 April 2018].

245 The videos are available at http://www.itftennis.com/procircuit/about-pro-circuit/transition-tour-2019.aspx [accessed 9 April 2018].

246 See the ITF press release on the restructuring of entry level professional tennis: http://www.itftennis.com/media/256740/256740.pdf [accessed 9 April 2018].

points will help with this. It is envisaged that the first criterion for entry into a Transition Tour event will be a world ranking below 750[247]. This would guarantee that no player above this ranking can step down to play in lower level tournaments.

334.4 Revised 'play up' rules for the ITF Junior Circuit to the ITF Transition Tour[248], and from ITF Transition Tour to ITF Pro Circuit. This might include making access to the ITF Transition Tour contingent upon success at ITF Junior level. The proposed classification of the ITF Transition Tour will help to ensure that only those who have success at that level can move up the pathway, as a player will accumulate Entry Points in order to enter ITF Pro Circuit events.

334.5 Revised tournament structures. The ITF intends for the draws of its Transition Tour and Level II tournaments to be capped at 32 players for the main draw and 24 players for the qualifying competition[249]. The intention is to ensure that there is no overlap in events from week to week caused by qualifying draws of 128 players. As a consequence, there will be no requirement or pressure on players to depart a tournament early to sign-in at the following week's tournament[250]. In addition, a number of draw spots in ITF Transition Tour events will be available for the highest performing juniors on the ITF Junior Circuit[251], to encourage high level juniors to make the transition.

334.6 Minimum integrity standards for all tournaments (which hhave been effective from 1 January 2017), to include: compulsory accreditation, secure access points and player-only areas[252]. In addition, the ITF is also considering recording all $15k and $25k Pro Circuit event matches on video with a GoPro (or equivalent) facing the court and a scoreboard clearly visible[253].

335. In March 2017, the ITF Board approved:

335.1 The Transition Tour, with the recommendation that it is comprised of what are currently ITF Level I (i.e. $15k) tournaments;

335.2 Level II (i.e. $25k and above) tournaments will remain part of the professional tour subject to a reduction in number; and

335.3 A fixed number of professional players (with the recommendation of 750 men and 750 women)[254]. Further announcements and clarifications may be made in the future.

4. PROPOSED REFORM OF THE PLAYER PATHWAY (WTA)

336. The current WTA structure contains approximately 2,000 players, with some players only playing in ITF level tournaments and some players only playing on the Tour. The WTA is reviewing this structure with a view to implementing a fundamental change so that there is a clearer delineation between ITF tennis and WTA tennis. The objective is to create a more defined pathway into professional women's tennis. Subject to Board approval, the WTA is seeking to implement the new pathway by the end of 2018 or beginning of 2019.

247 Paragraphs 8 and 9 of the ITF's submission to the IRP are regarding the proposed player pathway structure, Appendix: Key Documents.

248 Paragraph 14 of the ITF's submission to the IRP are regarding the proposed player pathway structure, Appendix: Key Documents.

249 Paragraph 13 of the ITF's submission to the IRP is regarding the proposed player pathway structure, Appendix: Key Documents.

250 Ibid.

251 Paragraph 9 of the ITF's submission to the IRP is regarding the proposed player pathway structure, Appendix: Key Documents.

252 Statement of Kris Dent (ITF).

253 Statement of Kris Dent (ITF).

254 Paragraph 16 of the ITF's submission to the IRP is regarding the proposed player pathway structure, Appendix: Key Documents.

337. As part of the new circuit structure, the WTA envisages a major, minor and development league. The top 50 players will compete in the major league (i.e., the Premier level events); players ranked 50-100 will compete in the minor league (the Internationals) and players ranked outside the top 100 will play in the development league (the 125s and ITF events) – this development league will be considered the first step of the Tour. As part of the new structure, the WTA is seeking to integrate some of the top-level ITF level tournaments into the WTA Tour

338. With a new pathway the WTA hopes to create a clear understanding of how players can progress on to the Tour and to give itself more control over the tournaments that players are eligible to enter. Currently, the WTA has no control over the events players enter (apart from the mandatory events). In the new circuit structure ranking points will dictate the level of event a player can enter because there will be a minimum ranking entry level into each tournament. Further, players who have the ranking to gain to a certain level will not be able to play in tournaments at other levels – which will provide more clarity for the players and for the fans. There will also be a promotion and relegation system between the different levels - this will be healthy for the sport and the fans.

339. The WTA is also hoping to introduce a system where a player in the junior Grand Slam that makes the finals of a Junior Grand Slam receives an automatic wildcard and exemption into the WTA development league. Currently there is no direct link between the juniors playing in the Grand Slams and progression on to the Tour.

340. Another benefit to this proposed circuit structure is that education, integrity, sports science, medical and nutrition will all be introduced to the players at the very beginning of the pathway. The WTA plans to work with the players from the ITF level and education will begin from a young age and right at the start of their career. The WTA events also offer better standards for the players – in terms of food, hotels, physiotherapists and media exposure.

341. The new circuit structure will also help with TV rights as the media will know the level of events being broadcast and which players will be attending those events. The fans watching will also know when they were watching the best events.

G THE INCENTIVE STRUCTURE FOR PLAYERS[255]

342. Players' behaviour is inevitably driven by the incentive structure that the organisation of the professional sport provides for them. To understand their behaviour, one must understand that incentive structure. The critical elements are how many and which players can gain access to which events in the calendar (in the parlance of tennis, how many "jobs" there are at any given time, of what quality, and for whom), the ranking point and prize money rewards they receive for playing, appearance fees paid for entering one event rather than another, and the sport's corollary penalties for failure to play. While the intended consequences of the player incentive structure are beneficial, there are unintended consequences that are harmful – these are considered further in Chapter 4.

1. ACCESS TO EVENTS

343. Access to events, or as it is described, "jobs", is central to player behaviour. In order to advance in the sport and to earn a living, players will self-evidently seek to play at the events that best enable them to do so.

Main draw and qualification draw at events

344. Each event has a main draw that is fixed in size. A main draw of 32 players would for example involve a first round, a second round, quarterfinals, semi-finals and a final. A main draw of less than 32 players, for example 28 or 24 players, would require a number of players to receive byes into the second round. These would generally be the seeded players.

345. Where there is also a qualification draw, a set number of places in the main draw are reserved for players qualifying. The qualification draw is also fixed in size. A qualification draw of 32 players might involve a first round and a second round, leaving eight qualifiers. In that instance, eight places in the main draw would be taken up, leaving 24 places in the example above of a main draw of 32 players.

Lucky losers

346. Where a player entered in the main draw succumbs to injury before the event and has to withdraw, there will be an additional place in the main draw for a player in the qualification draw to fill. This player is called a "lucky loser". The eight players qualifying (in the example above) will take their places, but a player not qualifying (and having lost to one of the qualifiers), will take the lucky loser place.

347. Until recently, whether or not the qualifying rounds had been completed, the lucky loser would be the highest ranked player amongst the unsuccessful finalists. This enabled a situation where the highest ranked player going into the final round of a qualifier would be guaranteed a spot in the main draw if there had been a retirement.

348. From 2015 onwards, the ATP changed its rule; now, if there is a vacancy in the main draw before qualifying has completed then the order of the two highest ranked players is randomly drawn (if there are no vacancies when the qualifying event has been completed, and a position subsequently becomes available, then the highest ranked loser in the qualifying rounds is selected on the basis of their ranking used for determination of the qualifying seeding.[256] From 2016, the WTA introduced the same rule regarding lucky losers[257]. The Grand Slams introduced a similar rule in 2015, except that, instead of the two highest ranked players, the four highest ranked players are randomly drawn[258].

255 Based on the present understanding of the Panel and subject to consultation between the Interim and Final Report.

256 ATP Rulebook 2018, Section VII, 7.20 (A) (1).

257 WTA Rulebook 2018, Section III(C) (1)(a)(v).

258 Grand Slam Rulebook 2018, Article 1 Section Z(2)(h).

Wildcards

349. Further places in the main draw may be reserved for "wildcards". Wildcards are awarded to players at the discretion of the tournament organisers. Players awarded wildcards do not have to be sufficiently highly ranked, nor do they have to have played in the qualifying competition. Such players are generally local players who will be known to the tournament organiser. Wildcards are usually awarded for developmental reasons (especially when the tournament organisers choose local players) or because a player is of interest and therefore of commercial value to the tournament.

Access determined by ranking

350. Which players fill the remaining places in the main draw (22 in the example above – including two wildcards), and which players fill the places in the qualifying draw (32 in the example above, competing for eight places in the main draw) is determined by the players' rankings (at least until one reaches the very lowest levels of the ITF Pro Circuit). The highest ranked players entering go into the main draw, until the remaining places in it are filled. The next highest ranked group of players ranked not so high will go into the qualifying draw. Lower ranked players will not be accepted. In the example above, the 22 highest ranked players entering would go into the main draw, and the 32 next highest ranked players entering into the qualifying draw.

351. In the example above, the event would therefore provide "jobs" for the players ranked in the highest 54 of those entering, and for two players selected by the organisers.

Which level of players have access to which level of events?

352. Which players have access to which events, at which levels, therefore depends primarily on their ranking, how many places there are in the event's main draw and qualifying draw, and how many alternative events there are at the same (or a higher) level simultaneously in the calendar. It also depends on whether players are injured or choose not to play in a particular event.

353. Due to the fact that the main and qualifying draws are fixed in size, the highest ranked players entering will fill the available places in the draws for an event, excluding lower ranked players. It is likely that some higher ranked players will be injured and so cannot enter in the first place, or may choose not to enter, allowing an opportunity to lower ranked players. Subject to that, if there is no alternative simultaneous event at the same (or a higher) level, an event's draw and qualifying draw will be filled by the top ranked players: indeed, in the case of mandatory events, the higher ranked players are, subject to certain exceptions[259], obliged to enter.

354. At the highest level it is therefore possible to calculate a broadly accurate indication of the level of players who have access to each event, assuming all players eligible are fit and enter, and leaving aside wildcards[260]. Anecdotal evidence based on past experience is also relevant at the highest level, however, as it takes into account injury and other absence levels. Below the highest level, where there is more than one equivalent event at the same time, it becomes more difficult to calculate an indication of the level of players afforded access, and resort must be had to anecdotal evidence based on past experience of the likely reach of the various levels of tournaments, which again takes into account injury and other absence levels.

259 ATP Rulebook 2018, Section 1.08(A) / WTA Official Rulebook 2018, Section II(I).

260 See Section D above.

Grand Slam jobs, men and women

355. On the Grand Slam dates, there are no equivalent events and indeed no ATP World Tour or WTA Tour events at all:

355.1 The men's singles draw of 128 players and qualifying draw of 128 players with 16 qualifying and eight wildcards would mean, assuming all players eligible are fit and enter, those players ranked 1 to 104[261] would go into the main draw. For the qualifying draw, in a draw of 128 there are 119 direct acceptance places. Players ranked 105 to 224[262] would therefore automatically have the chance to qualify in one of 16 places. There are then nine wildcard places for the qualifying draw[263]. On those assumptions, players ranked below 224 (who do not get a wildcard) would be confined to ATP Challengers or ITF Pro Circuit events taking place at the same time.

Grand Slam	Main Draw	Direct Acceptance	Qualifying Places	Wildcards
Australian Open	128	108	12	8
French Open	128	108	12	8
Wimbledon	128	108	12	8
US Open	128	104	16	8

355.2 The total accepted into the main draw for women is also 128. However, the number of direct acceptances and qualifying places depends on the Grand Slam (see below). The main draw places are one of 104, 108 or 112 direct acceptances and 16, 12, or 8 qualifying places. The rules permit up to eight wildcard places irrespective of the number of direct acceptances of qualifying places.

355.3 In respect of the men's doubles and women's doubles, there is a smaller main draw of 64 teams and a maximum number of seven wildcards. A doubles qualifying competition is not mandatory, but may be held at the discretion of the Grand Slam in question (since 2010, only Wimbledon has held doubles qualifiers).

356. On the statistics given above, the Grand Slams are perceived as generally reaching down and providing jobs to players ranked about 125 in the singles main draw (taking into account those players who would, by virtue of their ranking, usually be directly accepted but may have to withdraw or not be able to enter the tournament due to other reasons) and about 250 in the singles qualifying draw.

261 128 -16 - 8 = 104.

262 104 + 119 = 224.

263 In 2017, all 36 Qualifying Draw Grand Slam wildcards were given to players from the host nation (i.e. nine Australians at the Australian Open, nine French at the French Open, nine Brits at Wimbledon, nine Americans at the US Open).

Men's jobs

357. As explained above, there are two categories of events governed by the ATP: (1) ATP World Tour tournaments and (2) ATP Challenger Tour tournaments.

358. Within ATP World Tour tournaments, there are four categories of tournaments:

358.1 ATP World Tour Finals.

358.2 ATP World Tour Masters 1000.

358.3 ATP World Tour 500.

358.4 ATP World Tour 250.

359. The Grand Slams, Davis Cup and ITF Pro Circuit tournaments are not governed by the ATP and players in these events are subject to different rules and regulations.

ATP World Tour Finals

Singles[264]

360. The ATP World Tour Finals has a draw of eight players. These players are selected in the following order: (1) players in the top 7 of the ATP rankings as of the Monday after the last ATP World Tour tournament of the calendar year; followed by (2) up to two Grand Slam winners of that year, in order of their positions within the rankings (between 8 and 20); and (3) players ranked 8 and below in the ATP rankings as of the same Monday.

361. The top eight players in the selection list qualify as direct acceptances and participation is mandatory. Any withdrawals are replaced by the next highest position player on the selection list.

Doubles[265]

362. The selection criteria are the same as for the singles draw and participation is mandatory. The top eight teams in the selection list qualify for the event as direct acceptances.

ATP World Tour Masters 1000

Singles

363. The ATP World Tour Masters 1000 events have varying singles main draws and qualifying draws, resulting in varying job opportunities. Again, assuming all players eligible are fit and enter:

363.1 Indian Wells and Miami provide access to the singles main draw to players ranked 1 to 79, and access to the singles qualifying draw of players ranked 80 to 127.

363.2 The next six[266] ATP World Masters 1000 outdoor events, provide access to the singles main draw to players ranked 1 to 45, and access to the singles qualifying draw of players ranked 46 to 73.

363.3 The smallest ATP World Tour Masters 1000 indoor event, Paris Bercy, provides access to the singles main draw to players ranked 1 to 39, and access to the singles qualifying draw of players ranked 40 to 63.

Doubles

264 ATP Official Rulebook 2018, Section IV. 4.01(B)(1) and (2).

265 Ibid.

266 Monte-Carlo; Madrid; Rome; Canadian Open; Cincinnati; Shanghai.

363.4 The ATP World Tour Masters 1000 events have varying doubles main draws and qualifying draws, resulting in varying job opportunities. The smallest draws provide access to 16 teams, whereas the largest draws provide access to 32 teams. All doubles events include two wildcards.

364. In terms of scheduling, on the ATP World Tour Masters 1000 event dates, there are no equivalent events and again no other ATP World Tour events.

ATP World Tour 500 and ATP World Tour 250

365. At ATP World Tour 500 level, eight of the 13 events take place at the same time as another ATP World Tour 500[267]. Consequently, while the draw sizes are smaller, the number of job opportunities on a given day is doubled. At the ATP World Tour 250 level, there are on occasion[268] up to three equivalent events on the same dates, tripling the opportunities. Some ATP World Tour 250 events are also on the same dates as a higher ATP World Tour 500 event. In that case the opportunities reach further down the ranking system, as the assumption is that higher ranked players will have chosen the event with the greater prize money and ranking points.

366. In summary, the ATP World Tour Masters 1000, 500 and 250 events taken together are perceived as generally reaching down and providing jobs to players ranked about 85-105 in the singles main draw; about 175-250 in the singles qualifying draw; and about 90-100 in the doubles main draw.

ATP Challenger Tour tournaments

367. At ATP Challenger level, a number of factors come into play. First, only players ranked below 50 are able to enter (unless those ranked 11-50 have accepted a wildcard). Second, higher ranked players will already be playing in an ATP World Tour event. Third, there is always a choice of at least another Challenger, albeit in a different part of the world, and often up to five others, generally at a time when a substantial number of players have the additional choice of playing an ATP World Tour event.

ITF Pro Circuit

368. At ITF Men's Pro Circuit level, however, the situation is different. ITF Men's Pro Circuit events are only open to singles players ranked outside the top 150. At the higher $25k level of the Pro Circuit, the same analysis may to some extent apply, as access is based on ranking there as it is in the ATP Challengers. At the lower $15k level, however, access is greater, and at the lowest level all that is required is an IPIN and payment of the entry fee to the event. At all levels of the ITF Men's Pro Circuit, there are a very large number of events to choose from at any given time, many of which may in fact be relatively close to the player's home.

369. Men's $25k Pro Circuit Events events are perceived as generally reaching down to players ranked about 800 in the singles main draw. The Men's Pro Circuit $15k events are perceived as generally reaching down to players holding any ranking (the ATP ranking extends down to about 2,500 with many having only a single or a handful of points), and to many others of the 8,000 or so men playing.

Women's jobs

370. The four WTA Tour Premier Mandatory events do not share their dates with any other WTA Tour events. Therefore, again assuming all players eligible are fit and enter:

370.1 Indian Wells and Miami provide access to the singles main draw to players ranked 1 to 76; qualifying draw access to players ranked 79 to 124.

267 Dubai and Acapulco; Halle and Queen's London; Beijing and Tokyo; Vienna and Basel.

268 http://www.atpworldtour.com/en/tournaments [accessed 9 April 2018].

370.2 Madrid and China Open provide access to the singles main draw to players ranked 1 to 51; qualifying draw access to players ranked 52 to 83.

370.3 So far as doubles are concerned Indian Wells and Miami provide for 32 teams made up of: 23 advance entry spots; two regular wildcards, one top 20 wildcard; three on site spots based on doubles combined ranking and three on site spots based on singles or doubles combined ranking. Madrid and the China Open provide for 28 teams made up of: 19 advance entry spots; two regular wildcards, one top 20 wildcard and three on site spots based on doubles combined ranking and three on site spots based on singles or doubles combined ranking[269].

371. WTA Premier 5 events, again assuming all players eligible are fit and enter:

371.1 Dubai, Rome and Wuhan provide access to the singles main draw to players ranked 1 to 43 and qualifying draw access to players ranked 44 to 75.

371.2 Toronto and Cincinnati provide access to the singles main draw to players ranked 1 to 37 and qualifying draw access to players ranked 38 to 86.

372. As is the case with the ATP, WTA Premier events and WTA International events often take place at the same time as another, increasing the opportunities.

373. In summary, the WTA Tour events taken together are perceived as generally reaching down to players ranked about 100 - 150 in the singles main draw; about 175 - 250 in the singles qualifying draw.

374. In the context of the women's game, the mid-level is occupied by the eight WTA 125k Series events, and the higher levels of the ITF Women's Pro Circuit (US$100,000 down to US$50,000). These WTA 125k Series events and higher level ITF Women's Pro Circuit events taken together are perceived as generally reaching down to players ranked about 300–350 in the singles main draw.

375. Again, at the remaining ITF Women's Pro Circuit levels ($25k and $15k), the situation is different.

2. TENNIS CALENDAR AND SCHEDULING

376. The ATP and WTA 2018 Calendars set out details of the events in the ATP World Tour[270] and the WTA Tour[271]. There are separate ATP Challenger[272] and WTA 125k Series[273] 2018 Calendars. The ITF 2018 Calendar sets out the ITF Men's Pro Circuit events[274] and the ITF Women's Pro Circuit events[275].

377. The common themes throughout the calendars are that each professional tennis event is allotted a week in the calendar, there are professional tennis events every week throughout the season, and that during each week there are a range of events across the various levels.

378. While the starting point for an event is that its main draw runs for a week from Monday to Sunday, there are a number of further factors to be taken into account in relation to scheduling.

269 WTA Rulebook 2018, Section III C3 (g).

270 http://www.atpworldtour.com/-/media/files/2018-2019-atp-challenger-tour-calendar-4-april-2018.pdf [accessed 9 April 2018].

271 http://wtafiles.wtatennis.com/pdf/calendar/calendar.pdf [accessed 9 April 2018].

272 http://www.atpworldtour.com/en/atp-challenger-tour/calendar [accessed 9 April 2018].

273 http://www.wtatennis.com/calendar [accessed 9 April 2018].

274 http://www.itftennis.com/procircuit/tournaments/men's-calendar.aspx [accessed 9 April 2018].

275 http://www.itftennis.com/procircuit/tournaments/women's-calendar.aspx [accessed 9 April 2018].

Clashes between qualification competitions and previous event

379. The Monday to Sunday week relates to the main draw alone. It is sometimes not possible to include within that week the playing of the qualification competition. Players cannot practically (and certainly cannot ideally) play two singles matches on one day (though this sometimes occurs at lower levels). So, if the final of an event is on Sunday, the tightest schedule for a draw of 32 players involves semi-finals on Saturday, quarterfinals on Friday, second round on Thursday and first round on Wednesday. That would leave only two days for the qualification competition, which would only allow for a qualification draw of 16 players with four progressing. However, many venues would not allow for a full round of 32 to be played on one day, when there are also doubles matches to be played, some qualification draws are larger, and the possibility of rain delay must be taken into account. The problem is obviously all the greater if the main draw is larger. Consequently, qualification competitions almost invariably begin on the Saturday before the event's allotted week. That means that they clash with the semi-finals and finals of the event that has been allotted the week before.

Special exempts

380. Consequently, a player who progresses to the semi-finals (Saturday) or final (Sunday) in week one plainly cannot also play in the qualification competition for an event in week two. To address this, the "Special Exempt" rule exists in some contexts to allow a player who reaches a semi-final in week one, automatic access to the main draw in week two.

381. Until 2017, the special exempt system did not generally cross levels, because otherwise success in a low-level event could potentially provide access to a higher-level event, defeating the ranking point entry system. Where the special exempt system applies, it only applied between events of the same level.

382. In 2017[276], the ATP introduced a change to the special exempt system allowing a player in an ATP World Tour 250 to be eligible to receive a special exempt into the singles main draw of an ATP World Tour 500 tournament[277]. This rule was introduced on a trial basis and is continuing on a trial basis throughout 2018. In respect of the ATP Challenger Tour the rules remained unchanged (i.e. there is no ability for a player to be granted a special exempt into a higher-level event). Further the special exempt for the ATP Challenger Tour only applies to ATP Challenger Tour tournaments in the same geographic region, unless there are no Challenger Tour tournaments within the same geographic region the following week (at this point any ATP Challenger Tour event would apply, regardless of geographic region).[278]

383. The WTA's special exempt only exists in respect of international tournaments[279]. Special exempt spots are held at each International Tournament. In order to be eligible for a spot, a player needs to be unable to compete in the qualifying round of the tournament in which she has been accepted because she is still competing in a singles event at an International, Premier or Grand Slam tournament the week before the special exempt tournament.

384. For men, the ITF's special exempt again only exists in respect of the same level (in terms of prize money) events.[280] For women, a player can be eligible for a special exempt to a $60,000, US$60,000+H, US$80,000, US$80,000+H, US$100,000 and US$100,000+H, if she is playing in a ITF Women's Pro Circuit tournament with prize money of US$60,000 or higher or any WTA tournament within the same continent in the preceding week[281].

276 ATP Rulebook 2018, Section VII, 7.10(A)(1)(b).

277 Note that it was already the case in 2016 that a player playing in an ATP World Tour 500 could receive a special exemption into the singles main draw of an ATP World Tour Masters 1000. See Section VII, 7.10(A)(1)(a) of the 2017 Official ATP Rulebook.

278 ATP Rulebook 2018, Section VII, 7.102(A)(1)(d).

279 WTA Rulebook, 2018, Section III(c)(vi).

280 ITF Men's Pro Circuit Rules & Regulations 2018, Section IV(f).

281 ITF Women's Pro Circuit Rules & Regulations 2018, Section IV(g).

Doubles scheduling

385. The scheduling issues are compounded by the fact that a doubles competition is played at the same time as a singles competition, and that many singles players also play doubles. This means that the problems described above are not confined to players who go far in week one of the singles competition, but extend to other players as well. A player may be out of the singles in week one, but still be in the doubles, and unable to move on to the next tournament.

Rain delays

386. Rain delays may also mean that the problems described above extend to other players beyond those who have gone far in the singles. If the playing of the singles main draw is delayed by rain, players still in the early rounds of the event in week one may still be there playing those rounds late in the week.

3. RANKING POINTS SYSTEMS

387. Ranking points systems attribute a defined number of points to a player based on his or her performance in a particular match. The further into the draw in the event the match is, the greater the number of points awarded: it is more significant to have reached the final of an event than the second round. The higher the level of the event, the greater the number of points available at each round there is.

388. The ranking systems award the points by reference to the round reached, not won: so, when a particular amount of points is awarded in relation to a round, the amount is the amount the loser receives. The winner of that round obviously reaches the next round, and if he or she loses there, he or she receives the amount attributed to that round, and only that amount.

389. The original ranking system (from the 1980s through to 1990) was based on the average of a player's results and therefore took into account performance at each event played in. The current systems do not do this, and instead essentially rank a player on his performance in his best 18 events (19, if he qualified for the ATP World Tour Finals) in the case of the ATP and her performance in her best 16 events in the case of the WTA, in each instance in a rolling 52-week period. Despite this "best of" system, the mandatory commitment events all still count towards a player's ranking.

Current ATP ranking points system

390. The ATP ranking system divides players in to two categories: (1) players ranked as a year-end top 30 player ("Commitment Players")[282] and (2) players ranked 31 or lower ("Non-Commitment Players"). The ranking system differs depending if a player is a Commitment Player or not.

391. For Commitment Players, their year-end ranking is based on calculating, for each player, his total points from the four Grand Slams, the eight mandatory ATP World Tour Masters 1000 tournaments[283] and the ATP World tour Finals (if applicable) plus the six best results from all ATP World Tour 500, ATP World Tour 250, ATP Challenger Tour and Futures tournaments. For every Grand Slam or mandatory ATP World Tour Masters 1000 in which a Commitment Player is not in the main draw and was not a main draw direct acceptance, the number of his results from all other eligible tournaments in the ranking period is increased by one.

392. For Non-Commitment Players, the same system applies. The main difference is that Non-Commitment Players are not committed to play in the singles competitions of all ATP World Masters 1000 events, the ATP World Tour Finals and four

282 ATP Rulebook 2018, Section IX, 9.03(A).

283 Once a Commitment Player is accepted in one of the 12 tournaments (Grand Slams and ATP World Tour Masters 1000 events) his result in these tournaments shall count for his ranking, whether or not he participates.

ATP World Tour 500 tournaments, one of which must be held following the US Open.

393. So far as doubles are concerned, each team is ranked according to its total points from its best 18 results from all eligible tournaments (Grand Slam and ATP World Tour events, including the ATP World Tour Finals). For entry purposes there are no mandatory events; however, once a team is accepted in the main draw in one of the 12 events, the team's result shall count for his ranking, whether or not he participates.

Current WTA ranking points system

394. The WTA's ranking system[284] considers a player's best 16 tournaments, but within those 16 tournaments the ranking points from the following tournaments must be included (if applicable):

394.1 The ranking points she earns from the four Grand Slams, the four Premier Mandatory Tournaments and the WTA Finals;

394.2 If she is a Top 10 player[285], the ranking points she earns from her two best Premier 5 tournament results;

394.3 If she is a Top 20 player, the ranking points she earns from her two best Premier 5 tournaments (if any); and

394.4 Any applicable zero points.

395. Therefore, a top 10 player calculates her ranking by taking the points she earns at the four Grand Slams, the four Premier Mandatory tournaments, two of her best Premier 5 tournaments plus "her best 6"[286] in remaining tournaments. If a player qualifies for the WTA Finals then the remainder of her tournaments will reduce by one and her ranking will only incorporate the points from five of her best remaining tournaments.

The ranking points available at each round of each level of event

396. The ranking points available at each round of each level of event are set out in the tables of ranking points[287]. The broad conclusion that can be drawn from those tables is that the most ranking points are earned at the leading events and not many from lower level events. For example, the losing quarter finalist of a Grand Slam will, in the case of men, earn 360 points and, in the case of women, earn 430 points. However, the winner of an ATP Challenger Tour 125 event will earn 125 points, and the winner of a WTA 125 Series will earn 160 ranking points.

Some points are harder to come by than others

397. Many players reported that there was a marked disparity in the ease with which points could be earned in events at the same level but in different locations, due to the quality of the field choosing to play there, or due to the luck of the draw. Thus, the same points are available whether a player has beaten a much higher ranked player, or a lesser player, or a player which entered on a wildcard.

284 WTA Rulebook 2018, Section XIV(A)(4)(a).

285 In addition to the Grand Slams, WTA Finals and WTA Elite Trophy, a top 10 WTA player must commit to 4 Premier Mandatory tournaments, 4 Premier 5 tournaments and must play 2 Premier 700 tournaments each tour year. See Section II(B) (1) and (2) of the 2018 WTA Official Rulebook.

286 Of which at least 2 have to be Premier 700 tournaments (see Section II(B)(2) of the 2018 WTA Official Rulebook). Top 10 players may play 1 International Tournament in each half of the Tour Year (July 1 designated as the beginning of the second half of the Tour Year) provided they play all of their Commitment Tournaments in the previous half of the Tour Year or are excused for any Commitment Tournaments not played – (see WTA Official Rulebook 2018, Section II(B)(5)).

287 http://www.itftennis.com/procircuit/players/ranking-points.aspx [accessed 9 April 2018].

4. PRIZE MONEY

398. Prize money is the amount paid to a player for his or her performance in a particular match. The amount of money awarded follows the same pattern as ranking points. The further into the draw in the event the match is, the greater the prize money, and the higher the level of the event, the greater the amount of prize money at each round is. Similarly to ranking points, the prize money is awarded by reference to the round reached, not won: so, when a particular amount of prize money is awarded in relation to a round, the amount is the amount the loser receives.

399. Prize money is distinct from appearance fees, which are negotiated between the tournament organiser and player. The prize money, or at least minimum levels of prize, is defined by the relevant International Governing Body as applicable to the particular level of event.

The prize money available at each round of each level of event

400. As with the ranking points, the broad conclusion is that there is a disparity in the level of prize money that can be earned at a leading event as against a lower level event. For example, the losing quarter finalist of the US Open will, in the case of both men and women earn US$470,000[288]. However, the winner of an ATP Challenger Tour 125 event will earn US$21,600, and the winner of a WTA 125 Series will win US$20,000.

Prize money versus costs

401. Players are self-employed. They have to pay their own costs of travel (for them and anyone accompanying them), equipment, coaching and at some events accommodation and food. They have to seek to supplement their prize money with sponsorships, but those are only readily available at any significant level to the more successful players. They can seek support from their national association or federation, but many of those are not wealthy. Failing that they must turn to support from their parents, or take coaching jobs when not playing.

402. As noted above, the ITF Pro Circuit Review reported that, in 2013, the break-even cost for male players was around US$38,800 and US$40,180 for female players. The breakeven point on the earnings list (i.e. the point where average costs met actual earning) was 336 for men and 253 for women. This meant that in 2013 there were 8,538 male players and 4,609 female players who were not breaking even. The ITF Pro Circuit Review also reported that out of the 8,538 males and 4,609 females, 3,896 males earned no money and 2,212 females earned no money.

288 https://www.usopen.org/en_US/event_guide/prize_money.html [accessed 9 April 2018].

5. APPEARANCE FEES

403. Appearance fees are paid at the discretion of the tournament organisers. There is no obligation on players or tournaments to disclose the sum paid and whilst other players, fans and stakeholder may speculate that a player has been paid an appearance fee to play in a tournament, appearance fees remain undisclosed.

404. Appearance fees are negotiated between the player (sometimes through his or her agent) and the tournament. There is no restriction on tournament organisers and/or players as to how they go about structuring the payment and how payment is structured is again at subject to negotiation between a player and the tournament. In some cases, the Panel understands that appearance fees are payable for a tournament even if the player retires in the first round. In other circumstances, the tournament may stagger the appearance fee so that it is payable on a player reaching certain rounds. Additionally, if a player does subsequently withdraw, he/she may be required to do some promotional activity during the tournament.

405. There are certain tournaments that do not offer appearance fees, such as the four Grand Slams.

6. WITHDRAWAL PENALTIES

406. A consequence of players receiving ranking points and prize money for playing is that there are certain circumstances when they are penalised for not doing so.

ATP Tour

407. The deadline for entries and withdrawals for the singles main draw of ATP World Tour events is 12 noon Eastern Time, 42 days prior to the Monday of the tournament week[289]. For ATP World Tour qualifying events, and ATP Challenger Tour tournaments, the deadline for singles entries and withdrawals is 12 noon Eastern Time, 21 days prior to the Monday of the tournament week[290]. Doubles pairs must enter or withdraw by 12 noon Eastern Time, 14 days prior to the Monday of the tournament week in the case of ATP World Tour tournaments; for Challenger Tour events the deadline is 12 noon local time on the day before the first day of the tournament[291].

408. Any player withdrawing from an ATP World Tour 250 event after the deadline will be subject to the sanctions provided in the ATP Player Code of Conduct[292], and fined on their third and subsequent withdrawals. The value of the fine is assessed in relation to the player's ATP ranking and the number of withdrawal offences they have committed in the season to date (all references to $ are to US$):

Most recent position in ATP Rankings	Third Offence	Fourth Offence	Fifth and subsequent Offences
1-10	$10,000	$20,000	$40,000
11-25	$5,000	$10,000	$20,000
26-50	$2,000	$4,000	$8,000
51-100	$1,000	$2,000	$4,000
101+	$500	$1,000	$2,000

289 ATP Rulebook 2018, Section 7.03(A).

290 Ibid.

291 Ibid.

292 ATP Rulebook 2018, Section 7.04(A) and the Player Code of Conduct found at ATP Rulebook 2018, Section 8.03.

409. Furthermore, any withdrawal from any ATP World Tour event occurring after 12 noon, Eastern Time, on the Friday before the tournament week is considered a late withdrawal, and will be subject to a heavier fine[293] (all references to $ are to US$):

Most recent position in ATP Rankings	First Offence	Second Offence	Third and subsequent Offences
1-10	$20,000	$40,000	$80,000
11-25	$10,000	$20,000	$40,000
26-50	$4,000	$8,000	$16,000
51-100	$2,000	$4,000	$8,000
101+	$1,000	$2,000	$4,000

410. As explained at paragraph 390, certain players on the ATP Tour are considered to be Commitment Players, and are eligible to receive a share of a bonus pool at the end of a season if they meet their commitment obligations. Any tournament withdrawals count against a commitment player's obligations and will therefore have an effect on his ability to receive a share of the bonus pool[294].

411. In addition, as explained at paragraph 389, ATP Rankings are calculated on the basis of a player's best 18 tournament results across the course of a season. The four Grand Slams and eight mandatory ATP World Tour Masters 1000 tournaments are automatically taken into account, meaning that any withdrawal from these tournaments will automatically register zero point which will count on the calculation of the player's ranking.

412. Withdrawal from an ATP World Tour Masters 1000 event will also incur a suspension from a subsequent Masters 1000 event[295]. This event shall be the event where the player earned the highest point total during the previous 12 months. As rankings are calculated on a 'rolling basis', this means that a player might lose a large number of points, and have no possibility of defending them that week, as they are suspended from the tournament.

413. Furthermore, there will be a ranking penalty for any player who withdraws from an ATP World Tour 500 event after the withdrawal deadline[296]; regardless of the timing of the withdrawal, it will result in a zero point penalty, meaning that one of the player's 18 tournament results will be counted as having scored zero points.

414. There are certain exceptions for both singles and doubles competitions at ATP World Tour events. If the player (or, for a doubles team, both players) were on-site at the time of the withdrawal and the withdrawal was due to a medical condition, then the player(s) is not subject to a fine. If the withdrawal was due to the player (or, for a doubles team, either player) being accepted into the main draw singles of another event, then the player(s) is subject to a fine.

WTA Tour

415. A player withdrawing from a WTA event may be subject to a Late Withdrawal Fine depending on the stage at which she withdraws from a tournament[297]. For top 10 players (considered as such for the purpose of commitment obligations) a

293 Ibid.

294 ATP Rulebook 2018, Section 1.07.

295 ATP Rulebook 2018, Section 8.03(D).

296 Ibid.

297 WTA Rulebook 2018, Sections 3(B) and 16(D)(2), http://wtafiles.wtatennis.com/pdf/publications/2018WTARulebook.pdf [accessed 9 April 2018].

fine will be incurred for any withdrawal after they have entered the tournament. For any other singles player, they will be subject to a Late Withdrawal Fine if they pull out after having been accepted into the main draw of the tournament. Doubles players are subject to the fine if they withdraw from the tournament any time after the doubles sign-in deadline. A withdrawal from a qualifying draw will be considered a late withdrawal if it occurs after acceptance into the qualifying draw[298].

416. The Late Withdrawal Fine for main draws is calculated with reference to the table below[299]. Doubles fines are 25% of the applicable singles fine (all references to $ are to US$).

Top 10 List or, if not on Top 10 List, Ranking at Time of Withdrawal	Premier Mandatory & Premier 5	Premier 700	International	WTA 125k Series
1-3	$75,000	$50,000	$10,000	-
4-6	$50,000	$25,000	$10,000	-
7-10	$25,000	$15,000	$10,000	-
11-20	$15,000	$10,000	$5,000	$500
21-50	$5,000	$5,000	$2,500	$500
51+	$2,500	$2,500	$1,250	$500

417. Fines double with each subsequent offence within a tournament category[300]. Fines for withdrawals after the qualifying sign-in deadline (4:00 p.m. local time, the day prior to the start of the qualifying event) shall be 50% greater than the applicable withdrawal fine set out above, including any doubling.

418. A player who is entered into a tournament and fails to show up without having communicated their withdrawal to the WTA will commit a 'No Show Offence[301]'. This is punishable with a fine equivalent to a withdrawal after the qualifying sign-in deadline (i.e., a 50% increase on the applicable value in the table above).

419. As explained at paragraph 169, top 10 players receive a share of a bonus pool at the end of a season if they meet their commitment obligations. Any tournament withdrawals count against a Top 10 player's commitment obligations and will therefore have an effect on her ability to receive her share of the bonus pool.

420. Furthermore, failure to play in the requisite number of mandatory tournaments will reduce the number of WTA International events[302] in which a top 10 player can participate; this is important because significant appearance fees can be paid to top 10 players who play in WTA International events.

421. As explained at paragraph 389, WTA Rankings are calculated on the basis of a player's best 16 tournament results across the course of a season (or in the case of doubles, a player's best 11 results). However, any player who is originally accepted

298 WTA Rulebook 2018, Section 3(B)(3), http://www.wtatennis.com/sites/default/files/rules2017.pdf [accessed 9 April 2018].

299 Produced using figures from WTA Rulebook, Section 3(B)(2)(C), http://www.wtatennis.com/sites/default/files/rules2017.pdf [accessed 9 April 2018].

300 WTA Rulebook 2018, Section 3(B)(2)(c)(iv), http://www.wtatennis.com/sites/default/files/rules2017.pdf [accessed 9 April 2018].

301 WTA Rulebook 2018, Section 3(B)(2)(b), http://www.wtatennis.com/sites/default/files/rules2017.pdf [accessed 9 April 2018].

302 Paragraphs 213 - 222.

into the main draw of a Grand Slam or WTA Premier Mandatory event and subsequently withdraws will automatically receive zero points for the tournament, and it will count on the player's ranking as one of her best 16 tournament results. Furthermore, any top 10 player (for commitment obligations purposes) who misses events which she must play under her commitment obligations will receive zero points for the tournament, and it will count on her ranking as one of her best 16 results. For example, if a top 10 player only plays one Premier 700 event over the course of the season, she will receive one 'zero point penalty' as her commitment obligations require her to play two Premier 700 events.

ITF Pro Circuit

422. The withdrawal deadline from ITF Pro Circuit tournaments is 2 p.m. GMT 13 days prior to the start of the tournament week[303]. Any withdrawal after the withdrawal deadline will be considered a late withdrawal and is subject to the late withdrawal provisions of the ITF Rules[304].

423. A player's first three late withdrawal offences within a calendar year are excused provided the withdrawal is received by the ITF prior to the qualifying sign in deadline. For fourth and subsequent late withdrawals and any late withdrawals after the qualifying sign-in deadline, a player will be subject to a fine up to US$500 for male players, and US$1,000 for female players.

Grand Slams

424. No player may withdraw their entry from the main draw of a Grand Slam Tournament for any reason after the withdrawal deadline, except that players on the alternate list for the main draw may withdraw at any time prior to such time as they are moved into the main draw as a Direct Acceptance. Breach of this rule will result in the following penalties[305]:

Ranking (Entry List)	Fine Amount
1-10	US$20,000
11-15	US$10,000
26-75	US$6,000
76-100	US$4,000
100-150	US$2,000
151+	US$1,000

7. PENALTIES FOR FAILURE TO PLAY IN A MANDATORY TOURNAMENT

425. As noted above, another key method of ensuring participation is to make a tournament mandatory for certain players and then give players a zero point ranking if they do not feature in the tournament. This aims to ensure maximum participation of the highest quality players in as many tournaments as possible. Given that: (1) entry to more prestigious and lucrative tournaments will be, to a certain degree, based on ranking; and (2) seeding, and therefore chances of

303 ITF Pro Circuit Men's Regulations 2018, Section 5(C) and ITF Pro Circuit Women's Regulations 2018, Section 5(C), http://www.itftennis.com/media/280343/280343.pdf [accessed 9 April 2018].

304 Ibid.

305 Grand Slam Code of Conduct 2018, Article II.A(1)

progressing through a tournament (and receiving greater rewards in terms of money and further ranking points), will be based on ranking, the zero point ranking penalty and its consequent effect on a player is a significant threat.

ATP

426. Tournaments which are mandatory for Commitment and Non-Commitment Players are set out at paragraphs 391 and 392 respectively[306].

427. Any player's withdrawal from an ATP World Tour 500 event shall result in a zero point ranking penalty. Further non-consecutive withdrawals shall result in a zero point ranking penalty assessed for each additional withdrawal[307].

428. Note that a Commitment Player who has received a zero point ranking penalty for withdrawing from an ATP World Tour 500 event may replace the zero point result by playing an additional ATP World Tour 500 event in that same calendar year for up to a total of four events[308].

WTA

429. All players who by actual ranking qualify for acceptance into the main draw of a Premier Mandatory Tournament will be entered automatically into such Premier Mandatory Tournament. Further, the top 200 singles players in the WTA Rankings at the Entry Deadline of any Grand Slam will be entered automatically into the main draw entry list of such Grand Slam[309].

430. All players who by ranking qualify for acceptance into the main draw of a Premier Mandatory Tournament or the main draw of a Grand Slam will be entered automatically into Premier Mandatory Tournaments. Accordingly, players who are subject to the Age Eligibility Rules ("AER") are responsible for planning their competition schedules to include these Premier Mandatory Tournaments within their allotment of tournaments. Players who have reached their maximum number of professional tennis tournaments under the AER prior to a mandatory Tournament, unless they meet the provision for it to count in addition, will not be allowed to exceed their tournament allotment to play[310].

431. The failure to play a Premier Mandatory Tournament or a Grand Slam, even if due to ineligibility under the AER, will result in a fine and/or zero ranking points for such player[311].

432. As explained above, in the WTA, the top 10 players must, exclusive of the Grand Slams, WTA Finals, and WTA Elite Trophy, commit to four Premier Mandatory tournaments and four Premier 5 tournaments.

306 Subject to the exceptions at paragraph 353.

307 ATP Rulebook 2018, Section 9.03(C).

308 The replacement tournament must be after the 500 withdrawal that has resulted in a ranking penalty. Only one additional ATP World Tour 500 event per year may be used to replace an ATP World Tour 500 ranking penalty.

309 WTA Official Rulebook 2018, Section III.A.13.

310 WTA Official Rulebook 2018, Section XV(A)(2)(c).

311 WTA Official Rulebook 2018, Section XV(A)(2)(c).

433. A top 10 Player who, for any reason, fails to compete at a Premier Mandatory or Premier 5 Tournament that is part of her commitment (a "Missed Tournament") will be required to perform one of two options set out below. This is unless (a) her failure to play is the result of an absence from play in any form of women's professional tennis, including WTA Tournaments, Grand Slams, Fed Cup, ITF Women's Pro Circuit events, and any exhibition or non-WTA Event due to injury or illness for at least eight consecutive weeks during the Tour Year, or (b) the Missed Tournament is part of a continuous absence from play in professional tennis and the player previously completed her ACES[312] activities at the first Missed Tournament which occurred during that absence[313]. A player who fails to perform her ACES in line with the below paragraph will receive a fine and a suspension from competing in all WTA tournaments during the following two Premier Tournament weeks[314].

433.1 Option 1: Attend the Missed Tournament and perform ACES activities on a date designated by the WTA, in its sole discretion (maximum time commitment at the Missed Tournament will be 24 hours).

433.2 Option 2: Perform ACES activities on one of three alternate dates outside of the Missed Tournament designated by the WTA in consultation with the Missed Tournament.

434. In addition to the mandatory zero ranking points for the Missed Tournament, a player will also receive mandatory zero ranking points for any Commitment Tournaments missed as a result of the suspension and such points shall count on the player's ranking as one of her best 16 tournament results[315].

312 A type of extra-curricular, largely media-focussed, activity – outlined in 2018 WTA Official Rulebook, Section IV(A).

313 WTA Official Rulebook 2018, Section II(F)(1).

314 WTA Official Rulebook 2018, Section II(F)(3)(a)(ii).

315 WTA Official Rulebook 2018, Section II(F)(5).

CHAPTER 2 – APPENDIX 1

PRIZE MONEY AND RANKING POINTS AVAILABLE FOR PROFESSIONAL TENNIS EVENTS IN 2017

1. This appendix contains a full breakdown of the ranking points and prize money available throughout the network of tennis tournaments organised by the International Governing Bodies. Values are given for those events which fall within the scope of the Independent Review, i.e. Men's Singles (M S), Men's Doubles (M D), Women's Singles (W S), Women's Doubles (W D) and Mixed Doubles (Mx D).

2. The level of ranking points and prize money received by players depends directly on their performance in each tournament. For example, a player who is knocked out or withdraws in the round of 64 will receive the ranking points and prize money allocated prior to the start of the tournament for somebody losing at that stage.

3. Sometimes, players will have to qualify to reach the main draw of a tournament; there are often ranking points and prize money set aside for those who compete in the qualifying rounds. Similarly to the main draw, a player who is knocked out or withdraws in the second qualifying round will receive the ranking points and prize money allocated prior to the start of the tournament for somebody losing at that stage. There is often a bonus awarded for players who qualify, to reflect the effort and skill required to progress through these rounds. This may result, for example, in a player who loses in the round of 32 stage of a tournament having successfully come through qualifying, receiving more ranking points for the tournament than a player who exits the tournament at the round of 32 stage but was not required to come through qualifying.

4. The points received by a competitor following a tournament are put towards the calculation of the player's ranking at the next rankings update, usually each Monday. They are 'countable' for 52 weeks until the same time the following year at which point they drop off the system; therefore, the rankings system gives an accurate reflection of a player's performance over the previous one-year period.

5. Ranking points are awarded to doubles players individually for the purposes of calculating the official ATP and WTA Doubles Rankings. For example, each member of a pair that wins an event will receive the full stated number of ranking points. The only occasion on which a doubles partnership will be seen to receive the allocation of points as a pair, rather than individually, is for the purposes of calculating their eligibility in the 'Race' to the end-of-year finals.

6. The stated prize money for doubles events is awarded per team.

1. Grand slam events (ATP and WTA)

1.1 Ranking Points

	W	RU	SF	QF	R16	R32	R64	R128	Q	Q3	Q2	Q1
M S (ATP)	2000	1200	720	360	180	90	45	10	25	16	8	–
W S (WTA)	2000	1300	780	430	240	130	70	10	40	30	20	2
M D (ATP)	2000	1200	720	360	180	90	0	–	25	–	–	–
W D (WTA)	2000	1300	780	430	240	130	10	–	40	–	–	–

1.2 Prize Money

Australian Open – A$ (total prize money A$50 million)

	W	RU	SF	QF	R16	R32	R64	R128	Q3	Q2	Q1
M S	3.7m	1.85m	820k	410k	220k	130k	80k	50k	25k	12.5k	6.25k
W S	3.7m	1.85m	820k	410k	220k	130k	80k	50k	25k	12.5k	6.25k
M D	660k	330k	165k	82.5k	45k	27k	17.25k	–	–	–	–
W D	660k	330k	165k	82.5k	45k	27k	17.25k	–	–	–	–
Mx D	150.5k	75.5k	37.5k	18.75k	9k	4.5k	–	–	–	–	–

French Open - € (total prize money €36 million)

	W	RU	SF	QF	R16	R32	R64	R128	Q3	Q2	Q1
M S	2.1m	1.06m	530k	340k	200k	118k	70k	35k	18k	9k	5k
W S	2.1m	1.06m	530k	340k	200k	118k	70k	35k	18k	9k	3k
M D	540k	270k	132k	72k	39k	21k	10.5k	–	–	–	–
W D	540k	270k	132k	72k	39k	21k	10.5k	–	–	-	–
Mx D	140k	70.5k	37.75k	17k	8.5k	4.5k	–	–	–	-	–

Wimbledon - £ (total prize money £36.1 million)

	W	RU	SF	QF	R16	R32	R64	R128	Q3	Q2	Q1
M S	2.2m	1.1 m	550k	275k	147k	90k	57k	35k	17.5k	8.75k	4,375
W S	2.2m	1.1 m	550k	275k	147k	90k	57k	35k	17.5k	8.75k	4,375
M D	400k	200k	100k	50k	26.5k	16.5k	10.75k	–	–	–	–
W D	400k	200k	100k	50k	26.5k	16.5k	10.75k	–	–	–	–
Mx D	100k	50k	25k	12k	6k	3k	1.5k	–	–	–	–

US Open – US$ (total prize money US$50.4 million)

	W	RU	SF	QF	R16	R32	R64	R128	Q3	Q2	Q1
M S	3.7m	1.825m	920k	470k	253,625	144k	86k	50k	27k	15.7k	8k
W S	3.7m	1.825m	920k	470k	253,625	144k	86k	50k	27k	15.7k	8k
M D	675k	340k	160k	82k	44k	26.5k	16.5k	–	–	–	–
W D	675k	340k	160k	82k	44k	26.5k	16.5k	–	–	–	–
Mx D	150k	70k	30k	15k	10k	5k	–	–	–	–	–

2. ATP World Tour Events

2.1 ATP World Tour Finals

2.1.1 Ranking Points

	W	RU	Round Robin win	Round Robin loss
M S	900+ RR	400+ RR	200	–
M D	900+ RR	400+ RR	200	–

Prize Money – US$ (total prize money $8 million)

	W	RU	Round Robin win	Round Robin loss	Participation Fee
M S	1.785m	585k	191k Added to W and RU prize money and participation fee	–	191k for round-robin entrant 105k for alternate
M D	284k	96k	36k Added to W and RU prize money and participation fee	–	94k for round-robin entrant 36k for alternate

2.2 Next Gen ATP Finals

2.2.1 Ranking Points

This event did not carry ranking points in 2017.

2.2.2 Prize Money – US$ (total prize money US$1.275 million)

	Undefeated Champion bonus	W	RU	3rd place	4th place	Round Robin win	Round Robin loss	Participation Fee
M S	25k Added to all other winnings if player wins tournament without suffering defeat	25k	25k	5k	–	30k. Added to W, RU, 3rd place, and 4th place prize money and participation fee	–	50k for round-robin entrant 15k for alternate

2.3 ATP World Tour Masters 1000s

2.3.1 Ranking Points

	W	RU	SF	QF	R16	R32	R64	R128	Q	Q3	Q2	Q1
M S 96 draw	1000	600	360	180	90	45	25[316]	10	16	–	8	0
M S 56/48 draw	1000	600	360	180	90	45[317]	10	–	25	–	16	0
M D 32/24 draw	1000	600	360	180	90	0	–	–	–	–	–	–

2.3.2 Prize Money

Indian Wells Masters – US$ (total prize money US$6,993,450 – 96S, 32D)

	W	RU	SF	QF	R16	R32	R64	R128	Q3	Q2	Q1
M S	1,175,505	573.68k	287,515	146,575	77,265	41.35k	22,325	13.69k	–	4,075	2,085
M D	385.17k	187.97k	94.22k	48.01k	25.32k	13.55k	–	–	–	–	–

Miami Open – US$ (total prize money US$6,993,450 – 96S, 32D)

	W	RU	SF	QF	R16	R32	R64	R128	Q3	Q2	Q1
M S	1,175,505	573.68k	287,515	146,575	77,265	41.35k	22,325	13.69k	–	4,075	2,085
M D	385.17k	187.97k	94.22k	48.01k	25.32k	13.55k	–	–	–	–	–

Monte Carlo Masters – € (total prize money €4,273,775 – 56S, 24D)

	W	RU	SF	QF	R16	R32	R64	R128	Q3	Q2	Q1
M S	820,035	402.08k	202,365	102.9k	53,435	28.17k	15.21k	–	–	3,505	1,785
M D	253.95k	124.33k	62.36k	32.01k	16.55k	8.73k	–	–	–	–	–

316 Players with byes receive first round points.

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Madrid Open – € (total prize money €5,439,350 – 56S, 24D)

	W	RU	SF	QF	R16	R32	R64	R128	Q3	Q2	Q1
M S	1,043,680	511.74k	257,555	130,965	68.01k	35,855	19.36k	–	–	4.46k	2.27k
M D	323.2k	158.24k	79.36k	40.74k	21.06k	11.11k	–	–	–	–	–

Rome Open – € (total prize money €4,273,775 – 56S, 24D)

	W	RU	SF	QF	R16	R32	R64	R128	Q3	Q2	Q1
M S	820,035	402.08k	202,365	102.9k	53,435	28.17k	15.21k	–	–	3,505	1,785
M D	253.95k	124.33k	62.36k	32.01k	16.55k	8.73k	–	–	–	–	–

Canadian Open – US$ (total prize money US$4,662,300 – 56S, 24D)

	W	RU	SF	QF	R16	R32	R64	R128	Q3	Q2	Q1
M S	894,585	438,635	220.76k	112,255	58,295	30.73k	16,595	–	–	3.82k	1.95k
M D	277.03k	135.63k	68.03k	34.92k	18.05k	9.52k	–	–	–	–	–

Cincinnati Masters – US$ (total prize money US$4,973,120 – 56S, 24D)

	W	RU	SF	QF	R16	R32	R64	R128	Q3	Q2	Q1
M S	954,225	467.88k	235.48k	119.74k	62.18k	32.78k	17.7k	–	–	4.08k	2,075
M D	295.5k	144.67k	72.57k	37.35k	19.25k	10.16k	–	–	–	–	–

Shanghai Masters – US$ (total prize money $5,924,890 – 56S, 24D)

	W	RU	SF	QF	R16	R32	R64	R128	Q3	Q2	Q1
M S	1,192,780	584,845	294,345	149,675	77.72k	40,975	22,125	–	–	5.1k	2,595
M D	369.38k	180.84k	90.71k	46.56k	24.07k	12.7k	–	–	–	–	–

Paris Masters - € (total prize money €4,273,775 – 48S, 24D)

	W	RU	SF	QF	R16	R32	R64	R128	Q3	Q2	Q1
M S	853.43k	418.45k	210.61k	107,095	55.61k	29.32k	15.83k	–	–	3,505	1,785
M D	253.95k	124.33k	62.36k	32.01k	16.55k	8.73k	–	–	–	–	–

2.4 ATP World Tour 500s

2.4.1 Ranking Points

	W	RU	SF	QF	R16	R32	R64	R128	Q	Q3	Q2	Q1
M S 48 draw	500	300	180	90	45	20[318]	0	–	10	–	4	0
M S 32 draw	500	300	180	90	45	0	–	–	20	–	10	0
M D 16 draw	500	300	180	90	0	–	–	–	45	–	25	0

2.4.2 Range of Prize Money

Values (US$) for 32 draw calculated on lowest total prize money (Rio de Janeiro) up to highest total prize money (Beijing). Where relevant, reference is made to the two ATP 500 tournaments which have 48 draws (Washington, "Wash"; and Barcelona, "Barca").

	W	RU	SF	QF	R16	R32	R64	R128	Q3	Q2	Q1
M S	314.88k to 652.37k	154.37k to 319,825	77.68k to 160.93k	39.5k to 81,845	20,515 to 42,505	10.82k to 22,415	6.6k (Wash) to €8,615 (Barca)	–	–	1,355 (Wash) to 4.96k (Beijing)	690 (Wash) to 2.53k (Beijing)
M D	94.8k to 196.42k	46.41k to 96.16k	23.28k to 48.23k	11.95k to 24,755	6.18k to 12.8k	–	–	–	–	–	–

318 Players who lose at this stage having benefitted from a bye will receive zero points.

2.5 ATP World Tour 250s

2.5.1 Ranking Points

	W	RU	SF	QF	R16	R32	R64	R128	Q	Q3	Q2	Q1
M S 48 draw	250	150	90	45	20	10[319]	–	–	5	–	3	–
M S 32/28 draw	250	150	90	45	20[320]	–	–	–	12	–	6	–
M D 16 draw	250	150	90	45	–	–	–	–	–	–	–	–

2.5.2 Range of Prize Money

Values (US$) for 48 draw are those of Winston-Salem (the only example of a 48 draw). Values for 32 draw have been calculated with reference to the lowest total prize money (Brisbane), up to the highest total prize money (Doha).

	W	RU	SF	QF	R16	R32	R64	R128	Q	Q3	Q2	Q1
M S 48 draw (Winston-Salem)	89.28k	50.83k	29.34k	17.27k	10,065	6.12k	3.72k	–	–	–	1,675	830
M S 32/28 draw	77.98k to 209,665k	41.07k to 110.42k	22,245 to 59.81k	12,675 to 34.08k	7.47k to 20.08k	4,425 to 11,895	–	–	–	–	1.99k to 5,355	995 to 2,675
M D 16 draw	23.69k to 67.14k	12.45k to 35.3k	6.75k to 19.13k	3.86k to 10.94k	2.26k to 6.41k	–	–	–	–	–	–	–

3. ATP Challenger Tour Events

3.1 Challenger Tour 125 Events

3.1.1 Ranking Points

	W	RU	SF	QF	R16	R32	R64	R128	Q	Q3	Q2	Q1
M S 32 draw	125	75	45	25	10	–	–	–	5	–	–	–
M D 16 draw	125	75	45	25	–	–	–	–	–	–	–	–

319 Players who lose at this stage having benefitted from a bye will receive zero points.

320 Players who lose at this stage having benefitted from a bye will receive zero points.

3.1.2 Prize Money

	W	RU	SF	QF	R16	R32	R64	R128	Q3	Q2	Q1
M S US$150k+H or €127k+H	US$21.6k **or** €18.29k	US$12.72k **or** €10.77k	US$7.53k **or** €6.37k	US$4.38k **or** €3.71k	US$2.58k **or** €2.18k	US$1.56k **or** €1.32k	–	–	–	–	–
M D US$150k+H or €127k+H	US$9.3k **or** €7.87k	US$5.4k **or** €4.57k	US$3.24k **or** €2.74k	US$1.92k **or** €1.63k	US$1.08k **or** €920	–	–	–	–	–	–

3.2 Challenger Tour 110 Events

3.2.1 Ranking Points

	W	RU	SF	QF	R16	R32	R64	R128	Q	Q3	Q2	Q1
M S 32 draw	110	65	40	20	9	–	–	–	5	0	0	0
M D 16 draw	110	65	40	20	–	–	–	–	–	–	–	–

3.2.2 Prize Money

	W	RU	SF	QF	R16	R32	R64	R128	Q3	Q2	Q1
M S US$150k or €127k	US$ 21.6k **or** €18.29k	US$ 12.72k **or** €10.77k	US$ 7.53k **or** €6.37k	US$ 4.38k **or** €3.71k	US$ 2.58k **or** €2.18k	US$ 1.56k **or** €1.32k	–	–	–	–	–
M S US$125k+H or €106k+H	US$ 18k **or** €15.27k	US$ 10.6k **or** €8.99k	US$ 6,275 **or** €5.32k	US$ 3.65k **or** €3.09k	US$ 2.15k **or** €1.82k	US$ 1.3k **or** €1.1k	–	–	–	–	–
M D US$150k or €127k	US$ 9.3k **or** €7.87k	US$ 5.4k **or** €4.57k	US$ 3.24k **or** €2.74k	US$ 1.92k **or** €1.63k	US$ 1.08k **or** €920	–	–	–	–	–	–
M D US$125k+H or €106k+H	US$ 7.75k **or** €6.58k	US$ 4.5k **or** €3.82k	US$ 2.7k **or** €2.29k	US$ 1.6k **or** €1.36k	US$ 900 **or** €770	–	–	–	–	–	–

3.3 Challenger Tour 100 Events

3.3.1 Ranking Points

	W	RU	SF	QF	R16	R32	R64	R128	Q	Q3	Q2	Q1
M S 32 draw	100	60	35	18	8	–	–	–	5	–	–	–
M D 16 draw	100	60	35	18	–	–	–	–	–	–	–	–

3.3.2 Prize Money

	W	RU	SF	QF	R16	R32	R64	R128	Q3	Q2	Q1
M S US$125k or €106k	US$18k **or** €15.27k	US$10.6k **or** €8.99k	US$6,275 **or** €5.32k	US$3.65k **or** €3.09k	US$2.15k **or** €1.82k	US$1.3k **or** €1.1k	–	–	–	–	–
M S US$100k+H or €85k+H	US$14.4k **or** €12.25k	US$8.48k **or** €7.2k	US$5.02k **or** €4.26k	US$2.92k **or** €2.48k	US$1.72k **or** €1.46k	US$1.04k **or** €885	–	–	–	–	–
M D US$125k or €106k	US$7.75k **or** €6.58k	US$4.5k **or** €3.82k	US$2.7k **or** €2.29k	US$1.6k **or** €1.36k	US$900 **or** €770	–	–	–	–	–	–
M D US$100k+H or €85k+H	US$6.2k **or** €5.25k	US$3.6k **or** €3.1k	US$2.16k **or** €1.84k	US$1.28k **or** €1.09k	US$720 **or** €610	–	–	–	–	–	–

3.4 Challenger Tour 90 Events

3.4.1 Ranking Points

	W	RU	SF	QF	R16	R32	R64	R128	Q	Q3	Q2	Q1
M S 32 draw	90	55	33	17	8	–	–	–	5	–	–	–
M D 16 draw	90	55	33	17	–	–	–	–	–	–	–	–

3.4.2 Prize Money

	W	RU	SF	QF	R16	R32	R64	R128	Q3	Q2	Q1
M S US$100k or €85k	US$14.4k **or** €12.25k	US$8.48k **or** €7.2k	US$5.02k **or** €4.26k	US$2.92k **or** €2.48k	US$1.72k **or** €1.46k	US$1.04k **or** €885	–	–	–	–	–
M S US$75k+H or €64k+H	US$10.8k **or** €9.2k	US$6.36k **or** €5.4k	US$3,765 **or** €3.25k	US$2.19k **or** €1.85k	US$1.29k **or** €1.1k	US$780 **or** €660	–	–	–	–	–
M D US$100k or €85k	US$6.2k **or** €5.25k	US$3.6k **or** €3.1k	US$2.16k **or** €1.84k	US$1.28k **or** €1.09k	US$720 **or** €610	–	–	–	–	–	–
M D US$75k+H or €64k+H	US$4.65k **or** €3.95k	US$2.7k **or** €2.35k	US$1.62k **or** €1.38k	US$960 **or** €850	US$540 **or** €460	–	–	–	–	–	–

3.5 Challenger Tour 80 Events

3.5.1 Ranking Points

	W	RU	SF	QF	R16	R32	R64	R128	Q	Q3	Q2	Q1
M S 32 draw	80	48	29	15	7/6[321]	–	–	–	3	–	–	–
M D 16 draw	80	48	29	15	–	–	–	–	–	–	–	–

321 Seven if event is US$75,000, six if event is US$50,000 plus hospitality. This is the only instance where there is a material difference in ranking points between the two prizemoney categories.

3.5.2 Prize Money

	W	RU	SF	QF	R16	R32	R64	R128	Q3	Q2	Q1
M S US$75k or €64k	US$10.8k **or** €9.2k	US$6.36k **or** €5.4k	US$3,765 **or** €3.25k	US$2.19k **or** €1.85k	US$1.29k **or** €1.1k	US$780 **or** €660	–	–	–	–	–
M S US$50k+H or €43k+H	US$7.2k **or** €6.19k	US$4.24k **or** €3.65k	US$2.51k **or** €2.16k	US$1.46k **or** €1.26k	US$860 **or** €730	US$520 **or** €450	–	–	–	–	–
M D US$75k or €64k	US$4.65k **or** €3.95k	US$2.7k **or** €2.35k	US$1.62k **or** €1.38k	US$960 **or** €850	US$540 **or** €460	–	–	–	–	–	–
M D US$50k+H or €43k+H	US$3.1k **or** €2.67k	US$1.8k **or** €1.55k	US$1.08k **or** €930	US$640 **or** €550	US$360 **or** €310	–	–	–	–	–	–

4. WTA Tour Events

4.1 WTA Finals

4.1.1 Ranking Points

	W	RU	SF	QF	Round Robin win	Round Robin loss
W S RR	750 + RR	330 + RR	0 + RR	–	250	123
W D 8 draw	1500	1080	750	375	–	–

4.1.2 Prize Money – US$

	W	RU	SF	QF	Round Robin win	Round Robin loss	Participation Fee
W S	1.66m	550k	40k	–	153k added to W, RU, and SF prize money and participation fee	–	151k for round robin entrant 68k for alternate
W D	500k	260k	157.5k	81.25k	–	–	–

4.2 WTA Elite Trophy

4.2.1 Ranking Points

	W	RU	SF	QF	Round Robin win	Round Robin loss
W S RR	460 + RR	200 + RR	0 + RR	–	120	40
W D RR	–	–	–	–	–	–

4.2.2 Prize Money – US$

	W	RU	SF	QF	Round Robin win	Round Robin loss	Participation Fee
W S	478.2k	177k	17k	–	76.3k added to W, RU, and SF prize money and participation fee	–	42.5k for round robin entrant 12k for alternate
W D	21k	10,635	–	–	5.25k added to W and RU prize money	–	16k for round robin entrant 12k for alternate

4.3 WTA Premier Mandatory

4.3.1 Ranking Points

	W	RU	SF	QF	R16	R32	R64	R128	Q	Q3	Q2	Q1
W S 96 draw	1000	650	390	215	120	65	35[322]	10	30	–	20	2
W S 64 draw	1000	650	390	215	120	65	10	–	30	–	20	2
W D 32/28 draw	1000	650	390	215	120	10	–	–	–	–	–	–

322 Players who lose at this stage having benefitted from a bye will receive 0 points.

4.3.2 Prize Money

Indian Wells – US$ (total prize money $6,993,450 – 96S, 32D)

	W	RU	SF	QF	R16	R32	R64	R128	Q3	Q2	Q1
W S	1,175,505	573.68k	287,515	146,575	77,265	41.35k	22,325	13.69k	–	4,075	2,085
W D	385.17k	187.97k	94.22k	48.01k	25.32k	13.55k	–	–	–	–	–

Miami Open – US$ (total prize money $6,993,450 – 96S, 32D)

	W	RU	SF	QF	R16	R32	R64	R128	Q3	Q2	Q1
W S	1,175,505	573.68k	287,515	146,575	77,265	41.35k	22,325	13.69k	–	4,075	2,085
W D	385.17k	187.97k	94.22k	48.01k	25.32k	13.55k	–	–	–	–	–

Madrid Open – € (total prize money €5,439,350 – 64S, 28D)

	W	RU	SF	QF	R16	R32	R64	R128	Q3	Q2	Q1
W S	1,043,680	511.74k	257,555	130,965	68.01k	32.26k	15,146	–	–	4,166	2,022
W D	323.2k	158.24k	79.36k	40.74k	20,606	10.61k	–	–	–	–	–

China Open – US$ (total prize money $6,381,679 – 64S, 28D)

	W	RU	SF	QF	R16	R32	R64	R128	Q3	Q2	Q1
W S	1,111,945	556.44k	271.49k	130.42k	62,768	30,386	17,453	–	–	4.65k	2,702
W D	376,191	188.77k	84.04k	38,789	18,104	8,407	–	–	–	–	–

4.4 WTA Premier 5

4.4.1 Ranking Points

	W	RU	SF	QF	R16	R32	R64	R128	Q	Q3	Q2	Q1
W S 56 8/32Q)	900	585	350	190	105	60[323]	1	–	30	–	20	1
W D 28 draw	900	585	350	190	105	1	–	–	–	–	–	–

4.4.2 Prize Money

Dubai Tennis Championships – US$ (total prize money $2,365,250 – 56S (32Q), 28D)

	W	RU	SF	QF	R16	R32	R64	R128	Q3	Q2	Q1
W S	457,245	243,621	121.69k	56,115	27.79k	14,265	7,335	–	–	4.08k	2,099
W D	139.3k	70.48k	34.88k	17.56k	8.9k	4,395	–	–	–	–	–

Rome Open – € (total prize money €2,441,925 – 56S (32Q), 28D)

	W	RU	SF	QF	R16	R32	R64	R128	Q3	Q2	Q1
W S	461,355	230,565	115.17k	53,055	26,302	13,501	6,939	–	–	3.86k	1,987
W D	132,074	66.71k	33.02k	16.62k	8,395	4.16k	–	–	–	–	–

Canadian Open – US$ (total prize money $2,434,389 – 56S (48Q), 28D)

	W	RU	SF	QF	R16	R32	R64	R128	Q3	Q2	Q1
W S	501,975	243.92k	122.19k	58,185	28.03k	14.36k	7,745	–	–	3.15k	1,905
W D	143.6k	72,534	35.91k	18,075	9.17k	4.53k	–	–	–	–	–

322 Players who lose at this stage having benefitted from a bye will receive 0 points

Cincinnati Open – US$ (total prize money US$2,536,154 – 56S (48Q), 28D)

	W	RU	SF	QF	R16	R32	R64	R128	Q3	Q2	Q1
W S	522.45k	260.97k	128.33k	60,105	29.1k	14,965	7.85k	–	–	3.15k	1,905
W D	149,635	75,575	37,278	18.83k	9,545	4,715	–	–	–	–	–

Wuhan Open – US$ (total prize money $2,365,250 – 56S (32Q), 28D)

	W	RU	SF	QF	R16	R32	R64	R128	Q3	Q2	Q1
W S	471.7k	235.52k	117.7k	54.23k	26.9k	13.79k	7.09k	–	–	3,955	2.04k
W D	135k	68.2k	33,635	16.99k	8.6k	4,255	–	–	–	–	–

4.5 WTA Premier

4.5.1 Ranking Points

	W	RU	SF	QF	R16	R32	R64	R128	Q	Q3	Q2	Q1
W S 56 draw	470	305	185	100	55	30	1	–	25	–	13	1
W S 32/28 draw	470	305	185	100	55	1	–	–	25	18	13	1
W D 16 draw	470	305	180	100	1	–	–	–	–	–	–	–

4.5.2 Range of Prize Money – US$

Values for 56 draw are those of Charleston (the only example of a 56 draw). Values for 48 draw are those of Eastbourne (the only example of a 48 draw). Values for 28/30/32 draw have been calculated with reference to the lowest total prize money (Sydney), up to the highest total prize money (Tokyo).

	W	RU	SF	QF	R16	R32	R64	R128	Q	Q3	Q2	Q1
W S 56 draw	132.38k	70.46k	34,723	17,858	9,254	4,738	2,434	–	–	–	1,106	661
W S 48 draw	140.4k	74,726	37.37k	18.94k	9.85k	5,155	3,395	–	–	–	1,876	1.13k
W S 32/30/28 draw	132.74k to 193.85k	70.87k to 103,504	37,825 to 55,287	20,315 to 22,518	10.9k to 12,077	5.97k to 7,662	–	–	–	3.11k to 3,442	1.65k to 1.83k	915 to 1,018
W D 16 draw	41.25k to 45.94k	22.18k to 24,548	12.12k to 13,414	6,165 to 6,822	3.34k to 3,705	–	–	–	–	–	–	–

4.6 WTA International

4.6.1 Ranking Points

	W	RU	SF	QF	R16	R32	R64	R128	Q	Q3	Q2	Q1
W S 32 (32Q)	280	180	110	60	30	1	–	–	18	14	10	1
W S 32 (24/16Q)	280	180	110	60	30	1	–	–	18	–	12	1
W D 16 draw	280	180	110	60	1	–	–	–	–	–	–	–

4.6.2 Prize Money

Shenzen Open – US$ (total prize money $626,750)

	W	RU	SF	QF	R16	R32	R64	R128	Q3	Q2	Q1
W S	163.26k	81,251	43,663	13,121	7,238	4,698	–	–	–	2.72k	1,588
W D	26,031	13,544	7,271	3,852	2,031	–	–	–	–	–	–

Tianjin Open – US$ (total prize money $426,750)

	W	RU	SF	QF	R16	R32	R64	R128	Q3	Q2	Q1
W S	111,164	55,324	29.73K	8,898	4,899	3,026	–	–	–	1.47K	865
W D	17,724	9,222	4,951	2,623	1,383	–	–	–	–	–	–

Remaining WTA Internationals – US$ (total prize money for each $226,750)

	W	RU	SF	QF	R16	R32	R64	R128	Q3	Q2	Q1
W S	43k	21.4k	11.5k	6.2k	3.42k	2.22k	–	–	–	1,285	750
W D	12.3kS$	6.4k	3,435	1.82k	960	–	–	–	–	–	–

4.7 WTA 125K Series

4.7.1 Ranking Points

	W	RU	SF	QF	R16	R32	R64	R128	Q	Q3	Q2	Q1
W S 32 draw	160	95	57	29	15	1	–	–	6	–	4	1
W D 16 draw	160	95	57	29	1	–	–	–	–	–	–	–
W D 8 draw	160	95	57	1	–	–	–	–	–	–	–	–

4.7.2 Prize Money

	W	RU	SF	QF	R16	R32	R64	R128	Q3	Q2	Q1
W S	20k	11k	6k	4k	2.25k	1.1k	–	–	–	800	400
W D	5.5k	2.7k	1.4k	75k	450	–	–	–	–	–	–

5. ITF Pro Circuit Events (men's)

5.1 ITF Men's Pro Circuit (Futures) $25,000 Events

5.1.1 Ranking Points

	W	RU	SF	QF	R16	R32	R64	R128	Q	Q3	Q2	Q1
M S $25k+H	35	20	10	4	1	–	–	–	–	–	–	–
M S $25k	27	15	8	3	1	–	–	–	–	–	–	–
M D 25k + H	35	20	10	4	1	–	–	–	–	–	–	–
M D $25k	27	15	8	3	1	–	–	–	–	–	–	–

5.1.2 Prize Money – US$

	W	RU	SF	QF	R16	R32	R64	R128	Q3	Q2	Q1
M S	3.6k	2.12k	1,255	730	430	260	–	–	–	–	–
M D	1.55k	900	540	320	180	–	–	–	–	–	–

5.2 ITF Men's Pro Circuit (Futures) $15,000 Events

5.2.1 Ranking Points

	W	RU	SF	QF	R16	R32	R64	R128	Q	Q3	Q2	Q1
M S	18	10	6	2	1	–	–	–	–	–	–	–
M D	18	10	6	2	1	–	–	–	–	–	–	–

5.2.2 Prize Money - US$

	W	RU	SF	QF	R16	R32	R64	R128	Q3	Q2	Q1
M S	2.16K	1,272	753	438	258	156	–	–	–	–	–
M D	930	540	324	192	108	–	–	–	–	–	–

6. ITF Pro Circuit Events (Women's)

6.1 ITF Women's Pro Circuit $100,000 Events

6.1.1 Ranking Points

	W	RU	SF	QF	R16	R32	R64	R128	Q	Q3	Q2	Q1
W S $100k+H	150	90	55	28	14	1	–	–	6	4	1	0
W S $100k	140	85	50	25	13	1	–	–	6	4	1	0
W D $100k+H	150	90	55	28	1	–	–	–	–	–	–	–
W D $100k	140	85	50	25	1	–	–	–	–	–	–	–

6.1.2 Prize Money – US$

	W	RU	SF	QF	R16	R32	R64	R128	Q3	Q2	Q1
W S	15.2k	8,107	4,433	2,533	1.52k	887	–	–	509	316	221
W D	5,573	2,787	1,393	760	507	–	–	–	–	–	–

6.2 ITF Women's Pro Circuit $80,000 Events

6.2.1 Ranking Points

	W	RU	SF	QF	R16	R32	R64	R128	Q	Q3	Q2	Q1
W S $80k+H	130	80	48	24	12	1	–	–	5	3	1	–
W S $80k	115	70	42	21	10	1	–	–	5	3	1	–
W D $80k+H	130	80	48	24	1	–	–	–	–	–	–	–
W D $80k	115	70	42	21	1	–	–	–	–	–	–	–

6.2.2 Prize Money – US$

	W	RU	SF	QF	R16	R32	R64	R128	Q3	Q2	Q1
W S	12,161	6,487	3,548	2,027	1,216	709	–	–	407	253	177
W D	4.46k	2.23k	1,115	608	405	–	–	–	–	–	–

6.3 ITF Women's Pro Circuit $60,000 Events

6.3.1 Ranking Points

	W	RU	SF	QF	R16	R32	R64	R128	Q	Q3	Q2	Q1
W S $60k+H	100	60	36	18	9	1	–	–	5	3	1	-
W S $60k	80	48	29	15	8	1	–	–	5	3	1	-
W D $60k+H	100	60	36	18	1	–	–	–	–	–	–	–
W D $60k	80	48	29	15	1	–	–	–	–	–	–	–

6.3.2 Prize Money – US$

	W	RU	SF	QF	R16	R32	R64	R128	Q3	Q2	Q1
W S	9,119	4,863	2,659	1.52k	911	533	–	–	305	189	133
W D	3,344	1,672	836	456	304	–	–	–	–	–	–

6.4 ITF Women's Pro Circuit $25,000 Events

6.4.1 Ranking Points

	W	RU	SF	QF	R16	R32	R64	R128	Q	Q3	Q2	Q1
W S $25k+H	60	36	22	11	6	1	–	–	2	–	–	–
W S $25k	50	30	18	9	5	1	–	–	1	–	–	–
W D $25k+H	60	36	22	11	1	–	–	–	–	–	–	–
W D $25k	50	30	18	9	1	–	–	–	–	–	–	–

6.4.2 Prize Money – US$

	W	RU	SF	QF	R16	R32	R64	R128	Q3	Q2	Q1
W S	3,919	2,091	1,144	654	392	228	–	–	126	68	-
W D	1,437	719	359	196	131	–	–	–	–	–	–

6.5 ITF Women's Pro Circuit $15,000 Events

6.5.1 Ranking Points

	W	RU	SF	QF	R16	R32	R64	R128	Q	Q3	Q2	Q1
W S $15k+H	25	15	9	5	1	–	–	–	–	–	–	–
W S $15k	12	7	4	2	1	–	–	–	–	–	–	–
W D $15k+H	25	15	9	1	0	–	–	–	–	–	–	–
W D $15k	12	7	4	1	–	–	–	–	–	–	–	–

6.5.2 Prize Money – US$

	W	RU	SF	QF	R16	R32	R64	R128	Q3	Q2	Q1
W S	2,352	1.47k	734	367	294	147	–	–	–	–	–
W D	955	515	294	147	74	–	–	–	–	–	–

Betting on Tennis

Independent Review of Integrity in Tennis

03

1. The Independent Review Panel (the "Panel") sets out below its provisional conclusions in relation to the nature and extent of betting on tennis. This chapter covers: the legality and state regulation of betting on sport[1]; the growth of interest in betting on sport[2]; betting on tennis in particular[3]; the sale of official live scoring data in respect of tennis events and its facilitation of in-play betting[4]; the practice of courtsiding[5]; the concept of unusual and suspicious betting patterns[6]; and the reporting obligations of betting operators[7].

2. While regarded as inappropriate in many societies and cultures, and made illegal in some jurisdictions, betting on sport is here to stay. An understanding of how it operates in tennis is central to understanding how it impacts the behaviour of players and others.

Q 3.1 Are there other matters of factual investigation or evaluation in relation to the aspects professional tennis examined below that are relevant to the Independent Review of Tennis and that should be addressed in the body of the Final Report, and if so which, and why?

Q 3.2 Are there any aspects of the Independent Review Panels' provisional conclusions in relation to those aspects of professional tennis that are incorrect, and if so which, and why?

1 Section A paragraphs 3 to 37 below.
2 Section B paragraphs 38 to 44 below.
3 Section C paragraphs 45 to 58 below.
4 Section D paragraphs 59 to 125 below.
5 Section E paragraphs 126 to 134 below.
6 Section F paragraphs 135 to 148 below.
7 Section G paragraphs 149 to 162 below.

A LEGALITY AND STATE REGULATION OF BETTING ON SPORT AND TENNIS IN PARTICULAR

(1) LEGAL AND ILLEGAL SPORTS BETTING

Defining 'legal' and 'illegal' sports betting

3. Before embarking upon an analysis of betting on sport and tennis, it is important to note that there is no settled definition of what constitutes an illegal bet.

4. The Council of Europe Convention on the Manipulation of Sports Competitions[8] (the "Macolin Convention") defines illegal sports betting as "any sports betting activity whose type or operator is not allowed under the applicable law of the jurisdiction where the consumer is located".

5. A review conducted by the Australian government into illegal betting[9] adopts a similar interpretation of legality: "[the illegal wagering market in Australia] consists of operators who are not licensed in Australia to provide wagering services. However, many of those offshore wagering operators are legal and regulated in other jurisdictions internationally. The rigor and nature of these regulations varies from country to country. These operators, whilst legal in their 'home' jurisdiction, may nevertheless offer wagering products that are not legal in Australia, such as online in-play betting"[10].

6. These definitions are not without their difficulties. There are jurisdictions, for example, where legislation is either silent about online gambling or predates online gambling, leading to a position where it is not always clear whether it is legal to place a bet online with a betting operator based outside of those jurisdictions. A detailed debate about what constitutes an illegal bet is outside the scope of this Independent Review of Integrity in Tennis (the "Review"). For these purposes, the Panel simply acknowledges this uncertainty and the Review, and any references to estimates of the size of the illegal sports betting market, should be read in that context.

(2) LEGISLATIVE APPROACHES TO SPORTS BETTING

7. The regulation of sports betting varies significantly from jurisdiction to jurisdiction. The Panel sets out below a brief overview of the different types of approach with some illustrative examples.

Prohibition

8. Some jurisdictions prohibit sports betting entirely (although this is becoming less common). This is typically done because gambling is not socially acceptable in the country in question. It is often suggested, however, that a prohibition of sports betting, or partial prohibition, may lead to consumers seeking out an illegal market. In these circumstances, the activity that the approach seeks to prohibit not only continues, but does so in circumstances where there is little regulatory control or oversight.

9. In the United States, for example, save for some limited exceptions in certain states, sports betting is prohibited by federal law under the Professional and Amateur Sports Protection Act 1992 ("PASPA"), a prohibition that is supported by legislation designed to curb attempts to engage in sports betting via the internet[11].

8 Council of Europe Convention on the Manipulation of Sports Competitions, Council of Europe Treaty Series – No. 215, Magglingen/Macolin, 18.IX.2014 (hereafter the "Macolin Convention").

9 Review of Illegal Offshore Wagering, Report to the Ministers for Social Services and the Minister for Communication and the Arts be Lead Reviewer, the Hon. Barry O'Farrell, Australian government, 18 December 2015 (hereafter the "Australian Review of Illegal Offshore Wagering"), available at: https://www.dss.gov.au/sites/default/files/documents/04_2016/review_of_illegal_offshore_wagering_18_december_2015.pdf [accessed 9 April 2018].

10 Australian Review of Illegal Offshore Wagering, page 18.

11 The Unlawful Internet Gambling Enforcement Act 2006 attempts to restrict online gambling by regulating the financial institutions and websites that facilitate such activity.

10. At 9 April 2018, PASPA is subject to a legal challenge brought by the state of New Jersey which is awaiting a decision by the U.S. Supreme Court[12]. This challenge is accompanied by growing sentiment in the United States that prohibition has been ineffective, with the American Gaming Association estimating that in 2016 Americans illegally wagered approximately $150bn on sports[13].

Monopoly

11. Some jurisdictions adopt a monopolistic approach to sports betting, where sports betting is permitted, but only with entities that are either directly state-run or indirectly controlled by the state.

12. This approach does allow those jurisdictions a significant amount of control and oversight. There are also financial advantages, including the ability to receive and redirect the profits. In Finland, for example, Veikkaus (a company wholly owned by the Finnish State)[14] has a monopoly on all gambling activities, including sports betting. Profits derived from the operations of Veikkaus are used to promote sports, physical education, science, the arts and youth work[15]. According to the Ministry of the Interior in Finland: "a state monopoly is the most effective way of reducing the negative social and health effects of [gambling]"[16].

13. In the People's Republic of China, the Sports Lottery has a monopoly on sports betting on the Chinese mainland. The Sports Lottery is one of two limited exceptions to the general prohibition on gambling in China and is administered by the China Sports Lottery Administration Centre, which has the power to appoint agents to sell its lottery products provided those agents meet certain criteria.

14. In Hong Kong, the Hong Kong Jockey Club ("HKJC") has a monopoly on the ability to offer sports betting services (currently limited to horse racing and football betting products). The HKJC, a non-profit organisation, is reportedly Hong Kong's largest taxpayer and largest source of charitable donations[17].

15. The success of a monopolistic approach is limited by the extent to which demand for sports betting can be channelled to the supply offered by those entities enjoying the monopoly. Despite China's monopolistic approach to sports betting, the illegal sports betting market in China has been reported as the largest in the world, with the International Centre for Sport Security ("ICSS") estimating that 85% of sports betting in China (worth a reported US$600bn a year) is illegal[18].

16. The HKJC also continues to battle the illegal betting market in Hong Kong, which is reported to be valued at over HK$500bn[19] (approx. US$63.7bn). In the Financial Report of its 2015/16 Annual Report, the HKJC noted "the globalisation of illegal and unauthorised betting" as one of "a number of other factors [that] continue to impact on the [HKJC's] long-term competitiveness and performance"[20].

12 David Purdum and Ryan Rodenberg, 'The odds of legalized sports betting: New Jersey vs. the leagues' (ESPN, 3 March 2018), available at: http://www.espn.com/chalk/story/_/id/22605881/new-jersey-vs-leagues [accessed 9 April 2018].

13 Julian Morris and Guy Bentley, 'A Bet Gone Bad: How the Professional and Amateur Sports Protection Act Harms Consumers, States and Sports' (August 2017), page 6, available at: https://reason.org/wp-content/uploads/2017/11/sports_gambling_legalization_papsa.pdf [accessed 9 April 2018].

14 Further information regarding Veikkaus can be found at: https://www.veikkaus.fi/fi/yritys?lang=en. [accessed 9 April 2018].

15 Further information on gambling in Finland (including information as to the distribution of profits by Veikkaus) can be found at: http://intermin.fi/en/police/gambling [accessed 9 April 2018].

16 Footnote 15 above.

17 Joyce Lim, 'Much at stake for HK govt in battle against illegal online gambling' (The Straits Times, 11 October 2016), available at: http://www.straitstimes.com/asia/east-asia/much-at-stake-for-hk-govt-in-battle-against-illegal-online-gambling [accessed 9 April 2018].

18 James Porteous, 'How China's massive illegal betting industry threatens efforts to make sport key part of economy' (South China Morning Post, 7 March 2016), available at: http://www.scmp.com/sport/china/article/1920959/china-tries-make-sport-central-part-its-economy-its-massive-illegal [accessed 9 April 2018].

19 Michael Cox, 'How outlaw betting exchange Citibet is helping spur a HK$560 billion illegal gambling market in China' (South China Morning Post, 29 April 2017), available at: http://www.scmp.com/sport/racing/article/2091738/how-outlaw-betting-exchange-citibet-helping-spur-hk560-billion-illegal [accessed 9 April 2018].

20 The Hong Kong Jockey Club, Financial Report - Annual Report for the Year Ended 30 June 2016, page 3, available at: http://corporate.hkjc.com/corporate/common/chinese/pdf/report-2015-16/HKJC_AR16_Full.pdf [accessed 9 April 2018].

Regulation

17. Most jurisdictions do permit sports betting, subject to a regulatory framework. There are a wide variety of approaches adopted by regulators in each jurisdiction. The Panel briefly explores a selection of these different approaches below.

18. Australia, for example, has a regulatory framework that is relatively strict. Whilst land-based and online sports betting is legal in Australia, it does not permit online in-play sports betting. There is detailed regulation at both state and federal levels. In the state of Victoria, home to the Australian Open, there is currently only one licensed betting operator called the Totalisator Agency Board ("TAB"), which holds a 12-year licence (granted in 2012) to offer betting services. The TAB is controlled by the Victoria Commission for Gambling and Liquor Regulation ("VCGLR") and operated by Tabcorp Wagering (Vic) Pty Ltd ("Tabcorp").

19. Victorian State Law requires betting operators to enter into agreements with the governing bodies of the sports on which they take bets. These agreements commonly take the form of Product Fee and Integrity Agreements[21], which allows a sport to control which markets are offered to bettors by betting operators in order to prevent markets being offered where the match or event in question is deemed open to manipulation.

20. The Victoria Police Sports Integrity Unit has been set up to monitor match-fixing in sport. In January 2018, this unit signed an agreement with the European Sports Security Association ("ESSA") for ESSA to provide real time alerts of unusual or suspicious betting on sporting events in Victoria[22].

21. France is another example of a relatively heavily regulated regime. La Française des Jeux ("FDJ"), a government entity and principally a lottery operator, has a monopoly on the ability to offer sports betting markets in land-based outlets[23]. The sports betting products offered by FDJ are limited and include a small number of forecast games.

22. In 2010, the French government first permitted online betting and set up a new regulator, the Autorité de Régulation des Jeux en Ligne ("ARJEL"), to regulate the activity[24]. Betting operators may offer sports betting products to French consumers only if they are licensed by ARJEL.

23. Moreover, France is one of the only jurisdictions that maintains a list of sporting events on which online betting is permitted (which includes tennis)[25]. The list is managed by ARJEL and published on its website[26]. The number of sports included on the list has increased from 15 sports in 2010 to 44 as of March 2018.

21 Statement of Ann West (Tennis Australia), Statement of Matt Sheens (formerly of the Victoria Commission for Gambling and Liquor Regulation).

22 Press Release, 'International ties strengthened in fight against match-fixing' (ESSA, 15 January 2018), available at: http://www.eu-ssa.org/wp-content/uploads/SIIU-ESSA-press-release-Jan-2018.pdf [accessed 9 April 2018].

23 Pari Mutuel Urbain (PMU) holds a separate monopoly for land-based horse racing betting.

24 Decree 2010-483 of 12 May 2010.

25 T.M.C Asser Instituut / ASSER International Sports Law Centre, 'The Odds of Match Fixing – Facts & Figures on the Integrity Risk of Certain Sports Bets' (January 2015), pages 9 to 12, available at: http://www.asser.nl/media/2422/the-odds-of-matchfixing-report2015.pdf [accessed 9 April 2018].

26 The published list can be found at: http://www.arjel.fr/-Supports-de-paris-.html.

24. ARJEL decides which sporting events to include on its list after consultation with the relevant sports governing body or the Ministry of Sports. The list of approved events is regularly revised, and before an event is added the following four criteria are considered[27]:

    24.1 The organiser of the sports event must be one that is recognised under French law;

    24.2 The rules governing the event must regulate how the event's results are published;

    24.3 The event cannot exclusively involve minors; and

    24.4 The event must be capable of attracting a sufficient volume of betting activity.

25. Once an event receives approval, ARJEL (again in consultation with the relevant sports governing body or the Ministry of Sports) then determines the types of bets that are permitted. Bets on the final result of a contest or on the result of phases during the contest are generally permitted. The following bets are not permitted: (a) bets that are separable from the final or interim results; and (b) bets on aspects unrelated to sporting performance[28]. In terms of tennis events, betting operators are not permitted to offer bets on certain rounds of Roland Garros, such as the junior tournament, the qualification rounds and first-round doubles matches[29].

26. French law also imposes a number of requirements on betting operators that are not commonly found in other jurisdictions, such as a requirement that they: (a) obtain the permission of the event organiser; and (b) enter into a contract with the organiser, before offering a market on the event. The contract allows the organiser to control what the betting operator can and cannot do thereby supporting the preservation of the integrity of its event[30]. In 2008, the Fédération Française de Tennis ("FFT") took action against a betting operator offering odds on Roland Garros without first seeking its permission. The Cour d'appel de Paris ruled in FFT's favour holding that the sports event organiser's proprietary rights include the right to decide which betting operators can offer markets on its events. This is referred to as the "betting right" and allows sports event organisers to generate income from entities seeking to commercially exploit its event(s)[31].

27. Other regulatory requirements related to the preservation of sports integrity include:

    27.1 A requirement that each sports governing body includes in its rules provisions preventing participants in that sport from directly or indirectly betting on the sport or communicating inside information to others[32]; and

    27.2 A prohibition on certain situations that may lead to a conflict of interest, including a ban on players: (a) predicting the outcome of matches in programs sponsored by a betting operator and (b) holding a stake in the share capital of an approved betting operator offering bets on an event in which they are participating[33].

28. As with a monopolistic approach to sports betting, the success of stringent regulation is determined by the extent to which demand for sports betting can be channelled to regulated supply.

27 T.M.C Asser Instituut / ASSER International Sports Law Centre, 'The Odds of Match Fixing – Facts & Figures on the Integrity Risk of Certain Sports Bets' (January 2015), page 10, available at: http://www.asser.nl/media/2422/the-odds-of-matchfixing-report2015.pdf [accessed 9 April 2018].

28 T.M.C Asser Instituut / ASSER International Sports Law Centre, 'The Odds of Match Fixing – Facts & Figures on the Integrity Risk of Certain Sports Bets' (January 2015), page 10, available at: http://www.asser.nl/media/2422/the-odds-of-matchfixing-report2015.pdf [accessed 9 April 2018].

29 Supplementary Memo to the Interview of Jean-Francois Vilotte (July 2016).

30 The contracts are reviewed by both ARJEL and the French Competition Authority to ensure that similar terms are offered to each betting operator.

31 Supplementary Memo to the Interview of Jean-Francois Vilotte (July 2016).

32 Supplementary Memo to the Interview of Jean-Francois Vilotte (July 2016).

33 Supplementary Memo to the Interview of Jean-Francois Vilotte (July 2016).

29. The stringency of Australia's regulatory approach is thought to have contributed to the growth of its illegal sports betting market, particularly due to its ban on online in-play sports betting. Figures cited in a review conducted by the Australian government into illegal betting estimated the value of the offshore wagering market in 2014 to be AUS$400m, which was predicted to rise to AUS$910m by 2020[34].

30. The position in France is similar. The combination of market restrictions together with rigorous regulatory oversight is thought to have contributed to a significant proportion of sports betting demand in France being channelled through non-domestically regulated supply. A report produced by the European Commission and the French Institute for International and Strategic Affairs ("IRIS") estimates that the illegal sports betting market in France accounts for approximately 30% of all sports betting in that country[35].

31. In its 2016-17 Annual Report, ARJEL acknowledges the ongoing fight against illegal supply and concedes that the ease with which French consumers can circumvent prohibitions coupled with the considerable resources required to police compliance and enforce the regulatory regime mean that "the conditions of this combat are particularly unfavourable"[36].

32. The United Kingdom has a slightly different approach. The gambling industry in the UK is regulated by the Gambling Commission (an independent non-departmental public body sponsored by the Department for Digital, Culture, Media and Sports – a ministerial department of the UK government). All betting operators transacting with or advertising to consumers in the UK are required to obtain a licence from the Gambling Commission. These licences impose restrictions on what betting operators can and cannot do. They are required, for example, to report to the appropriate body where they consider that a crime or breach of a sport's rules has taken place. However, the regime does not include many of the restrictions set out above. It has a more outcome-focused approach that relies on licence holders' self-regulation and does not define in detail what types of market can be offered.

33. The UK's approach has had the effect of channelling a large proportion of sports betting demand to domestic supply, with the illegal sports betting market estimated to constitute approximately 6% of the overall sports betting market in the UK[37].

34. In Gibraltar, land-based and online sports betting is permitted. Gibraltar is recognised as a popular licensing jurisdiction, being one of the first to provide licensing frameworks for remote betting (first telephone and then online).

35. The licensing criteria[38] include a consideration of: (a) whether the betting operator has proven experience in the gambling industry; (b) the betting operator's conduct under similar licences granted in other comparable jurisdictions; and (c) whether the betting operator is of good repute. The stringency of Gibraltar's licensing framework is reflected by the fact that it has only granted 30 remote gambling licences to betting operators as of March 2018[39]. Several of the largest betting operators base all or part of their operations in Gibraltar, including: Ladbrokes, Mansion, William Hill and BetVictor[40]. A similar approach is followed in Malta.

34 Australian Review of Illegal Offshore Wagering, page 49.

35 European Commission and the French Institute for International and Strategic Affairs (IRIS), 'Preventing criminal risks linked to the sports betting market' Final Report (June 2017), Annex 3 (page 137), available at: http://www.iris-france.org/wp-content/uploads/2017/06/PRECRIMBET_2017_FINAL.pdf [accessed 9 April 2018].

36 ARJEL, Annual Report 2016-2017, page 51, available at: http://www.arjel.fr/IMG/pdf/rapport-activite-2016en.pdf [accessed 9 April 2018].

37 European Commission and the French Institute for International and Strategic Affairs (IRIS), 'Preventing criminal risks linked to the sports betting market' Final Report (June 2017), Annex 3 (page 140), available at: http://www.iris-france.org/wp-content/uploads/2017/06/PRECRIMBET_2017_FINAL.pdf [accessed 9 April 2018].

38 Gambling Act 2005, Schedule 1, paragraph 3.(4). Applied to land-based and remote licence applications.

39 https://www.gibraltar.gov.gi/new/remote-gambling [accessed 9 April 2018].

40 https://www.gibraltar.gov.gi/new/remote-gambling [accessed 9 April 2018].

36. Other regulatory regimes have a lighter regulatory approach. Curaçao's licence conditions have, for example, a lighter focus on the preservation of sports integrity than France or Australia.

37. The Cagayan Special Economic Zone in the Philippines (Cagayan) is another such jurisdiction considered to have a lighter regulatory framework and is perceived as a hub for betting operators that wish to offer sports betting services in Asia. The two biggest betting operators in Asia, SBOBet and MaxBet, are reportedly licensed in Cagayan[41].

41 European Commission and the French Institute for International and Strategic Affairs (IRIS), 'Preventing criminal risks linked to the sports betting market' Final Report (June 2017), page 48, available at: http://www.iris-france.org/wp-content/uploads/2017/06/PRECRIMBET_2017_FINAL.pdf [accessed 9 April 2018].

B THE GROWTH OF INTEREST IN, AND VALUE OF, BETTING ON SPORT AND TENNIS IN PARTICULAR

(1) THE GROWTH OF INTEREST IN BETTING ON SPORT

38. Notwithstanding the limitations on accurately quantifying of the global sports betting market (described below), it is clear that in recent years there has been a significant growth of interest in sports betting. The following factors are credited with having contributed to that growth:

    38.1 Economic growth and an increase in disposable income, especially in developing countries;

    38.2 An increase in live sport broadcasts, on terrestrial television, satellite, cable and the internet;

    38.3 Proliferation of the use of smartphones;

    38.4 Proliferation of internet and mobile banking, which facilitates the mass-market adoption of online gambling;

    38.5 Significantly increased advertising of gambling, especially around sporting events; and

    38.6 An improvement in data feeds (which has in particular facilitated an increase in live betting demand). Betting operators suggest that the majority of bets for certain sports, including tennis, are now placed in-play.

39. The following estimates demonstrate the significant growth of interest in sports betting:

    39.1 A report by the Australian government estimated that expenditure on sports betting in Australia increased by 500% between 2001-2014, from below AUS$100m to a sum exceeding AUS$600m. The report also estimated that the number of active online sports betting accounts increased fourfold between 2004 and 2014, to over 800,000[42].

    39.2 A report published by the European Gaming & Betting Association noted that the gross gambling yield (GGY)[43] of the licensed and regulated global betting market was forecast to reach $70bn in 2016, representing an increase of approximately 30% from the 2007 figure of $48.7bn[44].

(2) DIFFICULTIES IN QUANTIFYING THE GLOBAL SPORTS BETTING MARKET

40. Accurately quantifying the value of the global sport betting market at any point in time is an inherently difficult exercise for the following reasons (amongst others):

    40.1 A significant proportion of the data required is not publicly available. Some betting operators operate in jurisdictions where they are subject to a lower degree of regulatory oversight and/or less prescriptive reporting obligations[45]. Moreover, there is no way of accurately quantifying the volume of bets being placed on the illegal betting markets.

    40.2 There are hundreds of different betting operators and jurisdictions to consider. Even if they were all subject to comprehensive reporting requirements, collating all the information would be challenging.

    40.3 The online sports betting market is growing at such a rapid rate that even the more reliable estimates become outdated very quickly.

42 Australian Review of Illegal Offshore Wagering, pages 41 and 47.

43 Sometimes referred to as gross gambling revenue ("GGR"). Both measures equate to stakes minus pay-outs.

44 European Gaming and Betting Association, 'sports betting: commercial and integrity issues' (2014), available at http://www.egba.eu/media/Sports-Betting-Report-FINAL.pdf [accessed 9 April 2018].

45 Australian Review of Illegal Offshore Wagering, page 32.

40.4 The statistics and figures that are available often attempt to quantify slightly different things. For example: (a) some statistics are limited to sports betting, but most include other forms of gambling, such as lotteries and casino games; (b) some only cover online gambling; and (c) some conflate important details such as profit, revenue and the sums staked. Furthermore, often the source does not make clear what its estimate relates to and how it has been calculated.

(3) QUANTIFYING THE GLOBAL SPORTS BETTING MARKET

41. Subject to the limitations set out above:

41.1 The value of the sports betting market worldwide is estimated to be US$96.6bn[46]; and

41.2 The value of the online sports betting market worldwide is estimated to be US$27.6bn[47].

42. As is noted above, certain regulatory approaches do not effectively channel sports betting demand to regulated supply. The ability to do so has become exponentially more difficult following the proliferation of online sports betting, which allows domestic consumers to circumvent national laws and regulation with, in most cases, relative ease.

43. The executive summary of a report by University Paris 1 Panthéon-Sorbonne and the ICSS[48] (the "Sorbonne-ICSS Integrity Report Executive Summary") noted the transformational impact the internet has had on the sports betting market, and in particular the illegal sports betting market. In discussing the proliferation of new betting operators on the internet, the Sorbonne-ICSS Integrity Report Executive Summary noted that "more than 8,000 operators offer sports bets in the world. Most of these operators – roughly 80% - are established in territories applying a low rate of tax and few inspections… most of these operators offer their bets all over the world, often without obtaining the national authorisations required in the countries of their clients making them illegal operators in these countries". The Sorbonne-ICSS Integrity Report Executive Summary estimated at the time of its publication that "80% of bets on the global sports betting market are illegal".

(4) QUANTIFYING THE GLOBAL TENNIS BETTING MARKET

44. Quantifying the value of the global tennis betting market is even more problematic. Where betting operators are subject to reporting obligations, they often do not distinguish between tennis and other sports. Notwithstanding these difficulties:

44.1 The value of the tennis betting market worldwide is estimated to be US$1.27bn[49]; and

44.2 The value of the online tennis betting market worldwide is estimated to be US$920m[50].

46 This is an estimate produced by Regulus Partners. Regulus Partners have, where possible, taken into account (i) reports and statistics published by national regulators and (ii) reports and accounts published by betting operators. Where this data is either not available, or only partially available, for a particular jurisdiction, Regulus Partners has relied on its own estimate. 'Value', in this context, refers to revenue which is defined by Regulus Partners as stakes less prizes and free bet promotions, but including any direct gambling duties. Using the same definition as the International Financial Reporting Standards, Regulus Partners has made adjustments to other forms of reporting and alternative definitions where necessary.

47 Footnote 46 above.

48 University Paris 1 Panthéon-Sorbonne and the International Centre for Sport Security ("ICSS"), 'Protecting the Integrity of Sport Competition – The Last Bet for Modern Sport. An executive summary of the Sorbonne-ICSS Integrity Report' (May 2014), available at: http://www.theicss.org/wp-content/themes/icss-corp/pdf/SIF14/Sorbonne-ICSS%20Report%20Executive%20Summary_WEB.pdf [accessed 9 April 2018].

49 Footnote 46 above.

50 Footnote 46 above.

C BETTING ON TENNIS

(1) TYPES OF BETTING OPERATORS

45. Betting operators can be categorised in various ways. The first distinction is the way in which they take bets; operators typically either do so (a) through a physical establishment, (b) online or (c) a combination of both. The majority of betting operators now only take bets online.

46. The second key distinction is the types of betting offered. Betting operators typically offer one or more of the following:

    46.1 Fixed odds betting: A fixed odds bet is a bet where the odds are fixed at the time the bet is placed. The majority of betting operators offer their customers the opportunity to bet on a particular contingency at fixed odds that are set by the betting operator in question. The betting operator itself assumes the other side of the bet and is at risk should the bet win. In other words, should the customer win the bet, the betting operator pays the customer the winnings itself.

    46.2 Betting exchange: A betting exchange does not set the odds, but rather provides a platform on which individuals can offer odds by backing or laying an outcome that other individuals can accept if they wish. It allows individuals to bet with odds set by another individual. The betting exchange has no interest in the outcome of the event; the losing individual pays the winning individual. The betting exchange makes a profit by taking a commission from the winner of each bet.

    46.3 Spread betting: A spread bet is a bet where the profit or loss is based on the accuracy of the bet, rather than by the binary outcome achieved by a fixed odds bet. For example, a betting operator may predict that there will be ten double faults served by a player competing in a match. The bettor can bet that the total number of double faults served by that player will be either above or below ten. For example, if the bettor bets £1 on there being more than ten double faults served by the player (referred to as buying the bet), he will win £1 for every double fault served above ten. However, his risk is that he will owe the betting operator £1 for every double fault served below ten. Should the number of double faults amount to ten, then the betting operator keeps the stake (i.e. £1).

    46.4 Tote betting (sometimes referred to as pari-mutuel or pool betting): A form of betting where all stakes are placed together in a pool. The profits are then calculated by sharing the pool amongst all the winning bets (less the betting operator's commission). Whilst the betting operator may offer odds as a guide, the profit is not known until after bets have been placed and the size of the total pool is known.

47. The third key distinction is the way in which the betting operator is regulated. This is addressed in Section A above.

(2) TYPES OF BETTORS

48. Just as the types of betting operators vary, so too do the types of bettors.

Recreational bettors

49. A high number of individual members of the public bet regularly in small amounts (often for entertainment rather than in any expectation of earning substantial sums of money). Recreational bettors are generally unsophisticated, with limited information as to the outcome of the event and are likely to accept the odds offered by betting operators (online or at physical betting outlets). Occasionally, the individuals will bet significant sums.

Professional gamblers and syndicates

50. On the other hand, there are professional gamblers, either operating alone or as part of a "syndicate":

    50.1 Professional gamblers have extensive knowledge of the betting markets and of the sports upon which they bet. Professional gamblers and syndicates may on occasion face difficulty in staking bets and may be restricted by betting operators as to the betting markets upon which they can bet.

    50.2 Syndicates operate much like businesses and make investments on betting markets to generate profit. Syndicates are sophisticated and sufficiently resourced to monitor sporting events and the betting markets and have good knowledge of the betting markets. Bets are placed where the best odds are offered, and the stakes are often substantial.

50.3 Many mainstream betting operators are keen to limit or avoid the stakes of professional gamblers (or even shrewd individuals), which creates an incentive for these groups to find alternative supply (often less heavily regulated) and/or to conceal their behaviour (such as by breaking up large positions into a number of small bets); these behaviours have obvious implications for monitoring suspicious betting activity.

(3) TYPES OF BETS IN TENNIS

51. A very wide range of bets can be placed on the various contingencies arising out of a tennis match.

52. The contingencies available vary significantly. At its most obvious, one contingency is which player wins: the final result of the match. The contingency may then be refined further. It is possible, for example, to bet on the total number of sets or games in a match. This might be a bet that a player will win in straight sets, or 2 sets to 1, or that a player might win 6-4, 6-4 for example. Beyond the final results of the match, each tennis match offers a wide range of contingencies, permitting betting on numerous interim results.

53. By way of example, the screen shot below was taken from Bet365's website during an ITF tennis match in Argentina between Gonzalo Villanueva and Facundo Juarez on 4 December 2017[51]. The following bets were available:

53.1 "To Win": The contingency is which player will win the match. Odds of 11/8 are being offered on Gonzalo Villanueva to win the match.

53.2 "Point Winner – Point 6, 22nd Game": The contingency is which player will win the 6th point in the 22nd game. Odds of 5/4 are being offered on Gonzalo Villanueva to win that point.

53.3 "22nd Game Winner": The contingency is which player will win the 22nd game. Odds of 2/7 are being offered on Gonzalo Villanueva to win the 22nd game.

53.4 "Set 3 Score": The contingency is what the score will be in the third set. For example, odds of 11/1 are being offered on Gonzalo Villanueva winning the third set by 7 games to 5.

51 There is no significance in the selection of this particular match or the particular betting operator. The example is purely illustrative of the contingencies on offer.

Gonzalo Villanueva v Facundo Juarez		Game 21 - Gonzalo Villan...
Match Alerts		
To Win		
	Match	
Gonzalo Villanueva	11/8	
Facundo Juarez	8/15	
Point Winner - Point 6, 22nd Game		
Facundo Juarez (Svr) 4/7	Gonzalo Villanueva 5/4	
22nd Game Winner		
Facundo Juarez (Svr) 5/2	Gonzalo Villanueva 2/7	
22nd Game to Deuce		
Yes 6/4	No 1/2	
22nd Game Score		
	Facundo Juarez	Gonzalo Villanueva
to 15		5/4
to 30		13/5
to 40	5/2	13/2
23rd Game Winner		
Gonzalo Villanueva (Svr) 4/11	Facundo Juarez 2/1	
1st Point Winner 23rd Game		
Gonzalo Villanueva (Svr) 8/13	Facundo Juarez 6/5	
23rd Game to Deuce		
Yes 9/4	No 1/3	
23rd Game Score		
Set 3 Race to		
	4	5
Gonzalo Villanueva	8/11	5/6
Facundo Juarez	1/1	5/6
Set 3 Score		
	Gonzalo Villanueva	Facundo Juarez
6-2		8/1
6-3	13/2	8/1
6-4	7/1	12/5
7-5	11/1	9/1
7-6	13/2	7/1

54. In most sports, including tennis, bets can be placed before a match begins (in some contexts referred to as ante-post bets), or they can be placed during the match ("in-play"). In-play betting may still be on the final result (informed by the current state of play), or it may be on individual contingencies that arise during the course of the match (such as the winner of the next game). It is estimated that approximately 80%[52] of betting on tennis consists of in-play bets.

55. The following additional terms are relevant to betting on tennis:

Accumulator Bets

55.1 An accumulator bet is a bet that combines multiple[53] selections into a single bet. The success of an accumulator bet is dependent on the success of each selection within a bettor's chosen combination.

55.2 Accumulator bets combine the odds of each of a bettor's selections to create a single bet with longer odds and the potential for greater profit, as compared to isolated single bets on each selection. By way of illustrative example, consider the following accumulator bet comprising four "To Win" selections:

55.2.1 Selection 1: Player A to beat Player B at 2/1;

55.2.2 Selection 2: Player C to beat Player D at 4/1;

55.2.3 Selection 3: Player E to beat Player F at 4/1; and

55.2.4 Selection 4: Player G to beat Player H at 7/1

55.3 The success of this accumulator bet depends on the success of each of the above four selections (i.e. Players A, C, E and G must win their respective matches).

55.4 On the assumption that each of the four selections above is correct, this accumulator would return £6,000 to a bettor based on a stake of £10, calculated as follows:

55.4.1 Selection 1: The £10 stake returns a total £30 (£20 profit plus the £10 stake).

55.4.2 Selection 2: The £30 total return from Selection 1 becomes the stake on Selection 2. Therefore, the new £30 stake returns a total of £150 (£120 profit plus the £30 stake).

55.4.3 Selection 3: The £150 total return from Selection 2 becomes the stake on Selection 3. Therefore, the new £150 stake returns a total of £750 (£600 profit plus the £150 stake).

55.4.4 Selection 4: The £750 total return from Selection 3 becomes the stake on Selection 4. Therefore, the new £750 stake returns a total of £6,000 (£5,250 profit plus the £750 stake).

55.5 Contrast this with an alternative scenario where the same bettor splits the initial £10 stake into isolated single bets of £2.50 on each of selections 1-4 above (at the same odds). On the basis of Players A, C, E and G all winning their respective matches, these isolated single bets would only return a total £47.50 to the bettor (i.e. £37.50 profit plus the four £2.50 stakes). The benefit to the bettor in this scenario, however, is that the success of each isolated bet is not dependent on the success of the other three.

52 Statement of David Lampitt (Sportradar).

53 Accumulator bets generally comprise bets that involve four or more selections. Single bets comprised of two selections are commonly known as 'doubles', and single bets comprised of three selections are commonly known as 'trebles'. Notwithstanding the different terminology, double, treble and accumulator bets operate in the same way.

Arbitrage Betting

55.6 Arbitrage betting involves a bettor placing bets on every outcome of a contingency, at odds that guarantee a profit regardless of the outcome. This is possible because either (a) there is a discrepancy between the odds being offered (for example, where two betting operators price a market differently) or (b) because the odds change over time. For example:

55.6.1 Bookmaker A is offering 1.4 on Player X to win and 3.8 on Player Y to win;

55.6.2 Bookmaker B is offering 1.53 on Player X and 2.8 on Player Y.

55.6.3 If £100 were successfully bet on Player X with Bookmaker B at 1.53, the return would be £153.

55.6.4 If £40.26 were successfully placed on Player Y with Bookmaker A at 3.8, the return would also be £153.

55.6.5 Accordingly, in this example the sum of £140.26 has been staked, with a guaranteed return of £12.74.

55.7 Arbitrage betting in tennis is very common because (a) there are only two outcomes to a match and (b) the prices fluctuate enormously during a match, presenting a large number of potential arbitrage opportunities.

D SALE OF LIVE SCORING DATA TO DATA SUPPLIERS AND BETTING OPERATORS

56. In-play betting depends on live scoring data, and the increased availability and dissemination of such data has proliferated in-play betting in tennis. As set out above, it is estimated that in-play betting accounts for approximately 80%[54] of all betting on tennis.

(1) LIVE SCORING DATA

57. In the context of tennis, live scoring data consist of real-time information relating to the score of a match (such as the game or set score). It may also include other granular items such as the occurrence of faults or aces, as such contingencies may be the subject of bets.

58. The provision of live scoring data allows in-play markets to range from main markets (such as the match and set betting markets) to derivative markets (such as those that revolve around particular points in a game). The number and type of markets on offer will vary among betting operators and are often impacted by the type or popularity of an event.

59. Outside of the context of in-play betting markets, live data encompass a wealth of other information. Pre-match live data can include adverse weather conditions and the winner of a coin toss. In-match live data can include ball changes, code violations, toilet breaks and changes of attire.

(2) MECHANISMS FOR THE PROVISION OF LIVE SCORING DATA

60. Live scoring data are collected and processed in real-time in order to facilitate onward supply that is as quick and accurate as possible.

Official Live Scoring Data Collection and Dissemination

61. The live scoring data collected by those engaged by an International Governing Body is referred to as 'official' live scoring data. Supply agreements concerning such data may be exclusive or non-exclusive in nature.

62. The International Governing Bodies have each sold official live scoring data rights to their respective tournaments or competitions on an exclusive basis.

63. Under the official live scoring data agreements currently in force, data are collected in-venue by chair umpires using mobile technology loaded with software designed specifically for this purpose[55]. This is currently considered the fastest and most accurate method of data collection. The mobile technology utilised is that of a Personal Digital Assistant ("PDA"), otherwise known as a tablet computer.

64. The costs associated with purchasing the requisite technology (and the costs of implementing the technological infrastructure generally) can be borne by either party to the official live scoring data supply agreement, and this will be reflected in the value of the agreement.

65. Chair umpires receive training on how to use the technology. In some cases, umpires' data input performance is measured against set criteria that relate predominantly to the speed and accuracy with which umpires collect the data.

54 Statement of David Lampitt (Sportradar).

55 By way of example, Sportradar utilises its "ITFScorer" technology to collect data pursuant to its agreement with the ITF.

66. Official live scoring data collection is said to provide *"a secure and reliable data feed that enables bookmakers to offer betting and manage their risk"*[56]. Further, it is said to have *"made betting on tennis more secure and reliable for bookmakers and bettors alike"*[57] as it helps disrupt the activities of unofficial live scoring data providers who *"have limited or no controls over quality or reliability of output (potentially leaving bookmakers open to risk or market abuse)"*[58] and *"made the practice of courtsiding more difficult thereby ensuring that bettors have fair pricing in the markets and are not open to market abuses via betting exchanges"*[59].

Unofficial Live Scoring Data Collection and Dissemination

67. Live scoring data are also collected on an 'unofficial' basis.

68. Unofficial live scoring data may be collected by scouts, namely individuals who are at the venue and collect live scoring data utilising their own data collection technology. Others collect the data via a live stream or broadcast feed. The latter is often subject to a delay, sometimes deliberately so as to increase the value of and to protect the official live scoring data.

69. Many sports data companies engage in both official and unofficial data collection[60].

70. Data 'scraping' is another common method which involves live scoring data being taken, or scraped, from a website or application.

71. Unofficial live scoring data collection and courtsiding are two concepts that are often conflated, leading to confusion about the distinction between the two. For the purposes of the Review, the term courtsiding is used to describe the practice by which individuals seek to establish a time advantage that provides an opportunity to capitalise on resulting odds discrepancies in a market that has yet to digest the new data, an advantage that is then used against betting operators and on betting exchanges[61]. References to unofficial live scoring data collection, on the other hand, relate primarily to those collecting live scoring data via the methods outlined above on behalf of data companies (that do not have an official live scoring data deal) or betting operators (that choose to collect live scoring data themselves rather than source their live scoring data from official providers of that data).

(3) MONETISATION OF LIVE SCORING DATA RIGHTS

72. The sale of official live scoring data is now common. It is typically purchased by companies specialising in the collection, analysis and onward sale of sports data. In tennis, examples of such companies include IMG and Sportradar.

73. Sports data companies generate revenue by supplying the official live scoring data they collect to betting operators and other gambling industry customers, enabling those entities to offer in-play betting markets on tennis matches. The live scoring data that is sold can be tournament specific or, alternatively, live scoring data can be provided as part of multi-tournament or even multi-sport bundles.

74. Betting operators and other gambling industry customers may prefer official live scoring data to unofficial live scoring data because it is provided quickly and accurately. The quality of unofficial live scoring data may vary and be unreliable.

56 Statement of David Lampitt (Sportradar).
57 Statement of David Lampitt (Sportradar).
58 Statement of David Lampitt (Sportradar).
59 Statement of David Lampitt (Sportradar).
60 Statement of David Lampitt (Sportradar).
61 See Section E below for further discussion on the practice of courtsiding.

There is also an increased risk that the data will be manipulated by those seeking to gain an improper advantage from slow or unreliable data[62].

(4) RELATIONSHIP BETWEEN LIVE SCORING DATA AND LIVE BROADCAST FEEDS

75. International Governing Bodies sell the live broadcast feeds to their events. This raises the profile of their events.

76. The broadcast often includes live statistical data about each player's performance, such as the number of aces, total unforced errors and first service points won. IBM works with each Grand Slam tournament organiser to collect this data for matches at their respective Grand Slams[63].

77. In addition to live broadcast feeds, the International Governing Bodies also sell live streaming rights. Live streaming rights are typically purchased by companies specialising in sports data or sports media, who then sell this feed on to betting operators. Betting operators may show the feed on the betting platforms on which they offer betting markets. Betting operators believe that bettors will generally place more bets if they are able to view the match live.

78. It is important for the live video feed and the live scoring data feed to be synchronised. Consequently, they are often sold to the same company so that it is able to package the two feeds together for onward sale to betting operators and other gambling industry customers.

(5) BETTING ON TENNIS PRIOR TO THE SALE OF OFFICIAL LIVE SCORING DATA

79. Prior to the sale of official live scoring data by the International Governing Bodies, betting operators could only offer in-play betting markets if: they entered into a live scoring data sale agreement with an individual tournament for the supply of its live scoring data; they purchased live scoring data from an unofficial source, they themselves sent scouts to collect live scoring data; the match was available on a live broadcast or the live scoring data were capable of being instantly 'scraped' from an online source[64]. None of these routes were considered as effective or attractive as the sale of official live scoring data, due to the potential for delay and/or inaccuracy, or their limited nature.

80. The Panel has seen evidence of betting at all levels of tennis prior to the sale of official live scoring data, although the extent of that betting varied significantly:

    80.1 The Grand Slams were widely covered by the betting markets.

    80.2 At the Tour level, the evidence suggests that there was significant coverage. A document prepared for the ATP in 2011 stated that Betfair had recently announced that it had matched bets worth more than $1.5m for 333 ATP and WTA matches. Further, as described in Chapter 7, in the period prior to the TIU being established the ATP had received a significant number of betting alerts.

62 The prevalence of this issue is likely to be limited. The business model of those supplying unofficial live scoring data largely relies on the quality of the unofficial live scoring data provided. Infiltration of their scouting network by individuals whose aim is to expose betting operators in the market via the time advantage gained by the practice of courtsiding will ultimately materially damage their business. As such, extensive efforts are made by unofficial live scoring data suppliers to create and maintain a reliable scouting network. Statement of David Lampitt (Sportradar).

63 Statement of Mark Crawley (IBM).

64 Statement of Murray Swartzberg (ATP).

80.3 The evidence received by the Panel suggests that, as early as 2003, betting operators set out to use ATP Challenger events to fill the time gaps in their offerings at times when there were no available Tour events on which to create betting markets[65]. By 2011 the ATP Live Scoring Centre included live scoring for 53% of ATP Challengers, enabling data companies to scrape the data so it could be repackaged and sold to the betting industry.

80.4 The Panel has also received evidence that betting operators offered in-play betting markets on ITF matches before the ITF official live scoring data deal in 2012. The ITF informed the Panel that a number of tournaments in Turkey, Italy, Germany, France, and Sweden had individual live scoring data deals[66]. Sportradar also told the Panel that it offered coverage on over 7,000 ITF Pro Circuit matches in 2011[67]. This coverage was, at least in part, due to the individual live scoring data deals that Sportradar had in place with tournaments. Notwithstanding, the Panel has seen little empirical evidence that betting was widespread on the lowest levels of ITF tournaments before the ITF official live scoring data deal in 2012. As addressed in Chapter 7, the ITF had no record of receiving betting alerts prior to 2009.

(6) HISTORICAL AND CURRENT OFFICIAL LIVE SCORING DATA AGREEMENTS

The ATP/WTA and Enetpulse/IMG (ATP/WTA Tours and ATP Challengers)

81. In 2010, the ATP began to consider collecting and distributing official live scoring data to betting operators[68]. Murray Swartzberg (Senior Vice President – Information Technology, Digital and Social Media & Data Distribution) of the ATP told the Panel that *"the ATP and WTA's intention behind selling the data was to clean up the existing betting market by providing official data to betting operators within one second of the umpire inputting the score into the system. This is known as the 'one second market'"*[69].

82. As part of this process, Mr Swartzberg consulted Jeff Rees (Director of the TIU at this time) about the provision of official live scoring data to the betting market. Mr Swartzberg stated that *"in 2010 I had a conversation with Jeff Rees (Director of the Tennis Integrity Unit (TIU) at the time) about the provision of official data to the betting market. Mr Rees expressed his concern about the poor standard of data available to the betting operators caused by delays in the transmission of data and inaccurate recording of the data. He believed that the betting market could be stabilised by ensuring that data was provided to all betting operators at the same time"*.[70]

83. Mr Rees stated that *"the TIU was on the fringes of this issue. Murray Swartzberg, a Senior Vice President at the WTA and ATP, did consult me on some aspects, and I attended one lawyer's meeting about the issue in London, but by and large I felt the sale or otherwise was a matter for the tennis governing bodies"*[71]. Mr Rees added *"I did repeatedly make the point, however, that the data should ultimately be available to anyone who wished to purchase it — media, tennis fans, pundits and so forth — and not be exclusive to the betting industry. I also made the point to Murray Swartzberg that the data should only be sold to betting operators who had entered into an MOU with the TIU"*[72].

65 Richard Ings, 'Report on Corruption Allegations in Men's Tennis' (June 2005), Section C, paragraphs 151 to 165.
66 Statement of Kris Dent (ITF).
67 Statement of David Lampitt (Sportradar).
68 Statement of Murray Swartzberg (ATP).
69 Statement of Murray Swartzberg (ATP).
70 Statement of Murray Swartzberg (ATP).
71 Statement of Jeff Rees (formerly of the TIU).
72 Statement of Jeff Rees (formerly of the TIU).

84. As to the sale of live scoring data generally, Mr Rees stated *"I was personally uneasy about the whole issue, as others were. However, I had thought, along with others, that the sale of electronically-produced data to customers who would receive it virtually instantly, would reduce the numbers of courtsiders. This would have positive implications for reports of allegedly suspicious betting patterns. However, at the time of my retirement the courtsider industry seemed to be thriving. Clearly some courtsiders' paymasters were not prepared to pay for official live data or, as I had always suspected, were gaining benefits from courtsiders other than just instant scoring data".*

85. The ATP engaged external solicitors to prepare a report on the commercial exploitation of ATP data, which was presented to the ATP Board in February 2011. This advice included an overview of relevant considerations. In addition to identifying commercial opportunities, the advice assessed integrity considerations. In relation to the ATP's engagement with Jeff Rees it stated *"from an integrity standpoint, the Tennis Integrity Unit see no positive benefit from the existence of an unofficial data market and have indicated that they would be supportive of an official data scheme that was underpinned by initiatives taken to remove unofficial data collectors and other entities connected to illegal gambling from the venues".*

86. In May 2011, the ATP and WTA circulated a Request for Proposal for exclusive worldwide distribution rights for ATP and WTA official live scoring data, which were ultimately sold to Enetpulse in a joint 5-year agreement, effective from January 2012 until 31 December 2016. The agreement granted Enetpulse the exclusive right to supply ATP and WTA official live scoring data to betting operators and other gambling industry customers.

87. In December 2014, the agreement with Enetpulse was extended until 31 December 2020. The extension will reportedly[73] generate more than $30million in revenue for the ATP/WTA.

88. Enetpulse was acquired by IMG in 2012. In January 2015, the contracting Enetpulse entity acquired by IMG was renamed IMG Gaming Data APS.

89. The agreement with Enetpulse incorporated a number of safeguards in order to *"convince the Board that they could sell the rights to the data whilst still safeguarding against corruption"*[74]. These included: (a) that Enetpulse could only sell data to betting operators that are licensed and regulated; (b) ensuring that betting operators purchasing the ATP's live scoring data comply with the terms of a TIU Memorandum of Understanding; and (c) that Enetpulse would provide software and tools to help validate the accuracy and integrity of the scoring by umpires[75].

THE ITF AND SPORTRADAR (PRO CIRCUIT, DAVIS CUP AND FED CUP)

90. In or around 2011, after the ATP had begun to consider the issue, Jan Menneken (former ITF Commercial Director) first raised with the ITF Board the possibility of selling live scoring data. The ITF informed the Panel that the Board was concerned at the time about the growth of courtsiding and other unauthorised live scoring data collectors and that, accordingly, the ITF Board wished to regulate and establish control over the ITF's data and to ensure that the ITF derived commercial benefit from its data[76].

73 Daniel Kaplan, 'ATP, WTA renew Enetpulse live-scoring deal' (22 September 2014), available at: http://www.sportsbusinessdaily.com/Journal/Issues/2014/09/22/Leagues-and-Governing-Bodies/ATP-WTA-data.aspx [accessed 9 April 2018].

74 Statement of Murray Swartzberg (ATP).

75 Statement of Murray Swartzberg (ATP).

76 Statement of Kris Dent (ITF).

91. The ITF informed the Panel that it already considered there to be significant betting at ITF events and that live scoring data was already being supplied to betting operators through individual agreements with national federations or by unauthorised data suppliers[77]. The Panel has seen little empirical evidence that unauthorised live scoring data gathering was widespread on the lowest levels of ITF tournaments before the ITF official live scoring data deal in 2012.

92. The ITF Board resolved to gauge market interest in the sale of the ITF's live scoring data, so in August 2011 Mr Menneken instructed external solicitors to prepare a report for the ITF on the exploitation of live scoring data[78]. The external solicitors instructed by the ITF had previously been instructed by the ATP to produce a report on the exploitation of the ATP's data.

93. The report prepared by the ITF's external solicitors covered a number of topics including: an overview of the sports data market and the opportunities for tennis in that market; collection and exploitation of ITF data; and operational risks, legal developments and ownership issues.

94. The report prepared by the external solicitors did not include a specific section dealing with integrity risks but addressed integrity measures briefly within a section titled "The Opportunities for Tennis".

95. Integrity issues were noted in the Executive Summary of the report. The report stated that *"there appears to be no overriding integrity reason to prohibit the ITF from supplying data to legal gambling operators"*. The report noted *"the Tennis Integrity Unit sees no positive benefit from the existence of an unofficial data market and would be keen to reduce the number of unofficial scouts at Tournaments, as their attendance can also lead to other integrity issues"*. This wording followed that which had been included in the report produced by the ATP and WTA, as quoted in paragraph 87 above. The report also stated that *"the refusal to supply official data to gambling operators would not actually prevent betting on tennis nor lessen the integrity risk"*[79].

96. From the evidence assessed by the Panel, it does not appear that the ITF consulted with the TIU as to the potential ramifications of the sale of official live scoring data. Mr Rees (Director of the TIU at this time) stated *"I do not recall anyone from the ITF speaking to me, certainly not formally, about the sale of their data"*[80].

97. The report prepared by the external solicitors and the proposition in general were discussed at several ITF Board meetings and the external solicitors were asked to prepare an invitation-to-tender document for dissemination to the market. Several companies expressed interest, and the live scoring data rights were ultimately sold to Sportradar[81]. The sale of the ITF's live scoring data rights to Sportradar was approved at the ITF Annual General Meeting in September 2011[82].

98. The ITF entered in to its first official live scoring data agreement with Sportradar in 2012 for a term expiring in December 2016. This agreement granted Sportradar the exclusive right to, amongst other things, supply official live scoring data to betting operators and other gambling industry customers in countries where gambling is lawful.

99. A second agreement between the parties was signed in December 2015. This extended the partnership for a further four-year period (from 1 January 2017 until 31 December 2021). The second agreement will reportedly[83] generate US$70m in revenue for the ITF.

77 Response of the ITF to Notification given under paragraph 21 ToR.

78 Statement of Kris Dent (ITF).

79 Response of the ITF to Notification given under paragraph 21 ToR.

80 Statement of Jeff Rees (formerly of the TIU).

81 Statement of Kris Dent (ITF).

82 Statement of Kris Dent (ITF).

83 Scott Soshnick, 'Tennis Gamblers' Demand for Real-Time Betting Nets $70 Million Deal for Second-Tier Circuit' (Bloomberg, 7 December 2015), available at: https://www.bloomberg.com/news/articles/2015-12-07/tennis-gamblers-demand-for-real-time-betting-nets-itf-data-deal [accessed 9 April 2018].

100. The Panel has not seen any evidence that the agreements between the ITF and Sportradar contain an equivalent safeguard as in the agreement between the ATP and Enetpulse/IMG ensuring that betting operators purchasing the ITF's live scoring data comply with the terms of a TIU Memorandum of Understanding.

101. The ITF informed the Panel that no betting operator to which ITF live scoring data has been supplied has ever failed to cooperate with the TIU on request[84]. No additional evidence was provided to the Panel on this matter.

Grand Slams

AELTC and IMG (The Championships, Wimbledon)

102. AELTC's agreement with IMG was entered in 2015 and runs until 2017. The agreement granted IMG the exclusive right to exploit live scoring data rights worldwide[85].

FFT and IMG (Roland-Garros)

103. FFT's agreement with IMG was entered in 2016 and runs until 2019. The agreement grants IMG both live scoring data and streaming rights for betting purposes.

Tennis Australia and Sportradar (Australian Open)

104. Tennis Australia's agreement with Sportradar was entered in 2016 and runs until 2019. The agreement granted Sportradar the exclusive right to distribute live scoring data rights worldwide.

USTA and IMG (US Open)

105. The USTA entered into an agreement with IMG in March 2011 in relation to broadcast rights to the 2013-2016 US Opens.

106. In June 2014, this agreement was amended to grant IMG the right to exclusively license live scoring data rights to any entity worldwide.

107. In March 2015, USTA entered in to a new agreement with IMG in relation to broadcast rights and live scoring data rights relating to the 2017-2025 US Opens.

(7) EVALUATION RELATING TO THE SALE OF OFFICIAL LIVE SCORING DATA

108. In the section below, the Panel evaluates the respective decisions taken by the International Governing Bodies to sell official live scoring data.

109. This section does not address the Panel's assessment as to how the International Governing Bodies should sell official live scoring data going forward. That assessment is set out in Chapter 14 and must be read in the context of the integrity problem presently faced by tennis (as addressed in Chapter 13).

ATP/WTA

110. The ATP and WTA were the first of the International Governing Bodies to decide to sell official live scoring data. In the present assessment of the Panel the steps taken by the ATP and WTA in relation to this decision were appropriate. In particular:

84 Response of the ITF to Notification given under paragraph 21 ToR.

85 Excluding the United States of America.

110.1 They engaged with the TIU in making their decision to sell their live scoring data.

110.2 The legal advice specifically addressed relevant integrity considerations.

110.3 As set out above, the situation faced appears to have involved a significant level of unofficial live scoring data gathering not only in relation to Tour events, but also at ATP Challengers and their WTA equivalents.

ITF

111. It presently appears to the Panel that the process through which the ITF decided to sell official live scoring data was deficient, particularly when compared with that of the ATP/WTA.

112. According to the evidence of Kris Dent, the ITF Board had concerns about the growth of scouting and the presence of other unauthorised data collectors, but it does not appear to the Panel that any assessment or analysis was undertaken as to the extent that scouting was actually impacting ITF events. As set out above, the Panel has seen little empirical evidence that betting, or unofficial live scoring data gathering, was widespread on the lowest levels of ITF tournaments before the ITF data deal in 2012.

113. The ITF acted appropriately in engaging external solicitors to assist in preparing a report. However, the report produced for the ITF did not sufficiently consider integrity and operational risks, including the likely result of greater betting on lower levels of tennis.

114. Whilst the report considered integrity measures in a general fashion (including existing anti-corruption measures and consideration of the benefits of direct engagement with the betting market via TIU MoUs), it did not in the Panel's view sufficiently address the potential impact that the sale of official live scoring data would have on the lowest level of professional tennis; namely, the proliferation of gambling on this level of tennis and what impact this could have on the workload of the TIU.

115. In light of the report's failure to consider these essential points, the Panel's view is that the report prepared for the ITF cannot be said to have addressed the benefits and risks of such data exploitation in a balanced and thorough manner.

116. ITF events account for tens of thousands of matches each calendar year. The standard of play and the quality of tournament facilities vary widely. It does not presently appear to the Panel that proper consideration was given as to whether it would be appropriate to sell official live scoring data to matches at all levels and for all matches, or whether, for example, official live scoring data should only be sold to particular events that met certain criteria. Instead it presently appears to the Panel that the decision was only ever binary; whether to sell ITF live scoring data or not, without the potential integrity consequences being given meaningful consideration.

117. Further, as set out above, from the evidence assessed by the Panel, it does not presently appear that the ITF consulted with the TIU as to the potential ramifications of the sale of its live scoring data, unlike the ATP. In the Panel's present assessment, the ITF should have done so. The ITF's approach precluded a meaningful discussion as to the integrity issues that could stem from selling live scoring data to the lowest level of professional tennis. It also precluded the formulation of appropriate protective measures designed to combat the integrity issues that should have been outlined in the report.

118. It was appropriate for the ITF Board to make the final decision on the sale of official live scoring data due to the significance of the decision. However, given the inadequacy of the report and the absence of consultation with the TIU, the ITF Board made its decision without a complete picture as to the impact the sale of official live scoring data may have on its events and the sport generally.

119. The ITF told the Panel that in providing a single regulated source of live scoring data, the ITF's agreement with Sportradar discouraged unauthorised live scoring data collectors and provided a mechanism by which the ITF could actively monitor and enforce integrity protection[86].

120. The ITF informed the Panel that the supply of official live scoring data serves a dual purpose:

120.1 That official live scoring data sales generate an increasingly valuable revenue stream[87]. The ITF stated that 80% of the revenue it derives from its data agreements has been, or will be, distributed to national federations for purposes of reinvestment to the sport[88]. In this regard, the ITF considers this revenue important to the long-term sustainability and development of the recreational and professional game[89].

120.2 That it protects the integrity of the sport. The ITF's position is that unofficial live scoring data collection leads to the creation of unregulated betting markets[90].

121. While the generation of revenue is desirable, it does not seem to the Panel that it can be at the expense of a significant increase in integrity issues, the possibility of which should have been properly and fully examined and weighed in the balance against the increase in revenue. And while official live scoring data sale may be desirable where there is already significant unofficial live scoring data gathering or a demonstrable prospect of it, it seem to the Panel that the extent and prospect of it at the ITF lowest levels should have been properly and fully examined.

122. The growth of betting alerts at the ITF lowest levels is addressed in Chapter 13. The ITF informed the Panel that any impact on the workload of the TIU as a result of the first official live scoring data agreement could not have been anticipated with any reasonable degree of accuracy, because of the lack of any pre-existing integrity monitoring and protection[91]. While the ITF contends that it could not have known that its sale of official live scoring data for thousands of matches would significantly increase the TIU's workload, in the Panel's present view, the ITF should have anticipated this impact or at least should have undertaken further assessment of the potential ramifications from its data sale agreements, including asking for the TIU's input which it did not do. Certainly by the time the ITF renewed its agreement with Sportradar in December 2015, there was already ample reason for concern about the impact of the ITF's data sales on tennis integrity[92].

GRAND SLAMS

123. Grand Slam matches attract considerable interest from the betting market. In the present view of the Panel, betting and in-play betting would exist on the Grand Slams irrespective of whether the Grand Slams elected to sell official live scoring data. It was therefore appropriate for the Grand Slams to enter into contracts to sell that data, so to regulate the market.

86 Response of the ITF to Notification given under paragraph 21 ToR.

87 ITF Corporate Submission, paragraph 6 - Appendix: Key Documents.

88 Statement of David Haggerty (ITF).

89 Statement of Dr Stuart Miller (ITF).

90 ITF Corporate Submission, paragraph 6 - Appendix: Key Documents.

91 Response of the ITF to Notification given under paragraph 21 ToR.

92 See Chapter 10 Part 2, Section E(1) for the Panel's evaluation of the impact of the sale of official live scoring data by the ITF on the TIU's resources. See Chapter 13, Section A(1) for analysis of the increase in betting alerts received by the TIU in relation to ITF matches.

E COURTSIDING

124. A courtsider is an individual viewing a match at the venue who uses mobile technology to transmit play-by-play scoring information to a third party as quickly as possible. For the purposes of the Review, the practice of courtsiding shall be distinguished from that of unofficial live scoring data collection[93].

125. Courtsiding is considered to be particularly straightforward and effective in tennis as the courtsider need only consider two contingencies for each point.

126. Before event organisers took steps to crack down on courtsiding, the individual usually sat in the crowd, entering the data into a laptop computer that transmitted the data to a third party. Once steps were taken to stop this practice the data were transmitted by more clandestine means, extending ultimately to concealed buttons in clothing and other concealed transmission devices.

127. The purpose of courtsiding is to collect and transmit play-by-play scoring information as quickly as possible, so that the recipients of the data can establish a time advantage that will allow them to exploit any resulting odds discrepancies in the betting markets. This time advantage can be so great that the bettor knows the outcome of a contingency before the betting operator has stopped taking bets on that contingency (such as a service game having been broken).

128. Data companies (and by association, the tennis governing bodies) make efforts to ensure that the official live scoring data stream is transmitted as quickly as possible to reduce courtsiding opportunities. Many betting operators now introduce a delay (usually of a few seconds) when a bet is placed on a live market to ensure that the bettor cannot exploit any advantage that may have been gained through courtsiding.

129. Courtsiding is not match-fixing. No steps are taken to alter the outcome of any point, set or match. The provision of information through courtsiding is not per se illegal, though the event's terms of admission to the venue may prohibit it contractually. If, however, a bet is placed on an event that has already taken place, local laws may render that illegal.

130. While efforts have been made to secure appropriate criminal legislation for sports integrity issues, current legislation does not yet criminalise the practice of courtsiding. However, extensive steps are taken, at least at the Grand Slam and Tour levels, to prevent courtsiding (and unofficial live scoring data collection). These steps include employing dedicated individuals tasked with spotting the perpetrators in the crowd and ejecting them from the venue[94]. Implementation of such measures is often a contractual obligation imposed upon the relevant International Governing Body as part of an official live scoring data agreement.

131. Such steps are taken principally to protect the value of the official live scoring data stream that the data company has paid to secure, and they focus primarily on unofficial live scoring data collection rather than courtsiding, though the measures will impact both practices in the same way.

132. Courtsiding is an integrity issue for betting markets, rather than a threat by itself to the integrity of tennis. Courtsiders typically have little interest in the outcome of a match.

93 Section D, paragraph 75 above.

94 Statement of Matthew Drew (Perform).

F UNUSUAL AND SUSPICIOUS BETTING PATTERNS

133. An unusual betting pattern is commonly accepted by the betting industry to be a movement in the market that cannot obviously be explained, or a bet that is out of the ordinary. An unusual betting pattern may become, and subsequently be referred to, as a suspicious betting pattern if, after investigation, there is either a reason to consider the circumstances suspicious, or if the unusual circumstances cannot be attributed to innocent causes.

134. ESSA defines the two concepts as follows[95]: "A betting pattern is deemed unusual or suspicious when it involves unexpected activity with atypical bet sizes or volumes that continue – even after significant price corrections have been made in order to deter such activity in the market. A betting pattern is only confirmed as suspicious after ESSA has made detailed enquiries with all of its members to eliminate any prospect that the unusual patterns could be for legitimate reasons, such as pricing the market incorrectly"[96].

(1) UNUSUAL BETTING PATTERNS

135. There is no common agreed exact definition of what constitutes an unusual betting pattern. Whilst there is a significant amount of common ground within the betting and integrity communities, the circumstances that lead to a particular betting pattern being identified as unusual will vary. Each betting operator will have a slightly different approach and different internal processes in place.

136. Common examples of why a betting pattern may be identified as unusual include one or more of the following:

136.1 The volume of bets or the amount staked being higher than similar events in the past.

136.2 Significant bets, or a significant number of bets, that are contrary to a players' rank or form (such as a number of large bets being placed on an outsider).

136.3 Repeated bets being placed despite the odds shortening significantly. In other words, bets being placed apparently without the bettor having due regard to the price being offered.

136.4 Circumstances where a number of betting accounts that are linked (often by IP address or geography) place the same bets at similar times or place bets on markets that are not common or popular (such as a player to win a particular point).

136.5 Markets in which there is a greater than usual preponderance of winning bets.

136.6 Circumstances where an individual places a bet that does not match his or her usual betting activity (such as a bet that is significantly larger).

136.7 Activity involving recently opened accounts (such as where a new account is opened and the first bet is large).

136.8 Repeatedly placing a bet with the maximum allowed stake (such as bets up to the cap set by the betting operator for a particular market).

95 ESSA, 'ESSA Q1 2016 Integrity Report', available at: http://www.eu-ssa.org/wp-content/uploads/ESSA-Q1-2016-Integrity-Report.pdf [accessed 9 April 2018].

96 In addition to the definitions outlined by ESSA, the Macolin Convention defines the two concepts as follows: (a) "irregular sports betting" shall mean any sports betting activity inconsistent with usual or anticipated patterns of the market in question or related to betting on sports competition whose course has unusual characteristics and; (b) "suspicious sports betting" shall mean any sports betting activity which, according to reliable and consistent evidence, appears to be linked to a manipulation of the sports competition on which it is offered.

137. Betting operators use a number of different resources to identify unusual betting patterns, including:

137.1 Data relating to a customer's betting history. This information is used to build a profile and to gain an understanding of what type and size of bet the individual in question is likely to place.

137.2 Historic data indicating how similar markets have been traded in the past.

137.3 Live monitoring tools and computer software that uses and analyses the data to identify unusual betting patterns. For betting operators who do not have this resource internally, there are companies that offer this service to betting operators.

137.4 The judgment and experience of traders or betting analysts.

137.5 Movements in the wider betting market (such as movements in the prices being offered by other betting operators or exchanges).

137.6 Live monitoring of the sports event in question to determine whether there is, for example, a player injury that has not been reflected in the current odds.

(2) SUSPICIOUS BETTING PATTERNS

138. Once an unusual betting pattern has been identified, it is reviewed to determine whether it is considered suspicious. The nature and extent of the unusual betting pattern is examined against any relevant information available to a betting operator in an attempt to evaluate whether its status should be elevated from "unusual" to "suspicious". The following are examples of considerations that may be taken into account:

138.1 Determining the level of bettor confidence in the outcome. This will include an evaluation of the amount risked and the price offered. For example, placing large sums on odds that have shortened significantly is a prime example of the bettor being confident in the outcome regardless of the return.

138.2 The timing of the bet and whether the timing of the bet is significant when compared to the events on the court. For example, very specific successful bets on specific events during the course of play may suggest a predetermined outcome.

138.3 If there has been previous unusual or suspicious betting on matches involving particular players or at particular tournaments.

138.4 If the unusual betting pattern relates to an account, location or pattern that has previously been identified as unusual or suspicious.

139. Again, the way in which a betting operator conducts this evaluation differs depending on the betting operator in question. The following are common steps or processes:

139.1 Typically, if the pattern has been identified by a computer it will first be reviewed by a human trader or analyst.

139.2 Often, the alert will then be reviewed by a more senior member of the trading team before a third party, such as the TIU or ESSA, is notified.

139.3 A betting operator may involve an integrity team (either in-house or external) in determining whether the alert is suspicious.

139.4 In making the decision, it may be relevant whether other betting operators have identified similar patterns. The sharing of information among betting operators is facilitated by platforms such as ESSA.

(3) EXPLAINING UNUSUAL BETTING PATTERNS

140. Unusual betting patterns may be caused by reasons unrelated to a breach of integrity that can be identified following the investigation referred to above. These causes may include:[97]

140.1 The betting market has not been priced correctly, leading to a higher volume of bets than expected as bettors take advantage of the price. This could be due, for example, to human error or a lack of knowledge of a trader, or due to a problem with the data feed on which the market odds are based.

140.2 An error by a bettor who mistakenly places a bet that does not match his typical betting profile.

140.3 A flurry of bets placed by a number of individuals following the lead of another individual they consider to be sophisticated or a tip in the media.

140.4 A number of individuals being better informed than the betting operators about such factors as the players' current form, surface preference or injury status. This may lead to a higher volume of bets than expected as bettors take advantage of this opportunity.

140.5 A player playing unexpectedly poorly due, for example, to injury or personal problems.

140.6 The inadvertent leak of inside information as to form or injury.

141. In addition to these possible innocent explanations, unusual betting patterns can arise from circumstances other than match-fixing, such as individuals having quicker access to information or scoring data, through courtsiding, and exploiting this advantage, thereby causing greater losses than expected on a particular market.

142. The examples given above are all causes that may come to light after an investigation of the circumstances. The mere fact of an unusual betting pattern does not, in isolation, establish that a match has been fixed or that a related integrity issue has arisen.

(4) ESCALATION FROM UNUSUAL TO SUSPICIOUS

143. If an innocent cause cannot be identified a betting pattern may then be characterised as suspicious. Even then, a suspicious betting pattern is not generally conclusive evidence of match-fixing or a related breach of integrity, and it does not establish the nature of the potential wrongdoing. The following are examples of behaviour that could have caused the suspicious betting pattern:

143.1 The deliberate communication of inside information as to form or injury, possibly for reward. This information may then be used by bettors and result in unusual betting patterns because they have bet with greater confidence than usual;

143.2 A prior decision by a player to lose or to retire for reasons other than financial reward. A player may, for example, decide to lose a match due to scheduling concerns, wanting to travel home from a tournament abroad or because he or she has lost in the singles and does not wish to continue competing in the doubles. This information may then be used by bettors who predict, or know of, such circumstances, again resulting in unusual betting patterns because they have bet with greater confidence than usual; and/or

143.3 Finally, and most seriously, circumstances where the player agreed to fix a match in return for financial reward.

97 Carl Bialik, 'Why Betting Data Alone Can't Identify Match Fixers In Tennis', (FiveThirtyEight, 21 January 2016) available at: http://fivethirtyeight.com/features/why-betting-data-alone-cant-identify-match-fixers-in-tennis/ [accessed 9 April 2018].

(5) BETTING OPERATOR RESPONSES TO SUSPICIOUS BETTING PATTERNS

144. Each betting operator deals with suspicious betting patterns in a different way, although there is substantial common ground. One or more of the following are common reactions where a betting pattern has been identified as suspicious or where there are integrity concerns:

144.1 The market may be suspended with no further bets accepted by the betting operator.

144.2 Existing bets may be voided and winnings not paid.

144.3 The betting accounts in question may be closed, suspended, or monitored by the betting operator.

144.4 Betting operator traders may be aware that there are concerns about particular players or tournaments and may either not offer a market at all or apply restrictions. For example, limits may be placed on how much can be bet on a given market; such restrictions can apply either to individual gamblers or to the whole market. This approach is commonly used by betting operators to manage their exposure and commercial risk.

144.5 The betting operator may choose to report the suspicious betting pattern to an interested party such as the TIU, ESSA, the relevant regulator and/or law enforcement agencies. In some cases this is done pursuant to a Memorandum of Understanding that the betting operator has in place with the third party in question. Equally, the betting operator may choose not to report.

145. The reporting of betting patterns can be affected by the betting operator's perceived interests and tolerance level. Thus:

145.1 There may be under-reporting. There are instances when suspicious betting patterns do not meet reporting thresholds that would trigger reporting by law or to the relevant regulator. In such circumstances, betting operators may report to ESSA instead[98]. However, not every betting operator is a member of ESSA.

145.2 There may be over-reporting. A betting operator with a low tolerance level might develop a predisposition against particular players or groups of players that it regards as questionable; once a player has been the subject of a report, another may be more likely to follow. Due to the varying processes of identifying unusual and suspicious betting activity, operators will have different thresholds as to the level of activity that is reportable.

145.3 There may be instances where some betting operators are prepared to tolerate some betting by suspect accounts, including because of the additional information such betting provides the operator.

145.4 There are of course, suspicious betting patterns that are simply not detected. Despite the great advances in technology and knowledge, it can be challenging to identify wrongdoing if fixers understand the risk management processes of their chosen betting operator (or indeed monitoring service) and are keen to avoid detection.

145.5 Finally, because suspicious betting activity on the illegal betting markets is often extremely difficult to detect due to the high liquidity of the markets, it will rarely be reported.

146. Betting operators have varying levels of commitment to tackling integrity issues.[99] That said, the majority of established betting operators recognise that it is in the betting industry's interest to report and monitor suspicious betting activity—because they ultimately suffer financial losses due to such activity and the impact such activity has on the liquidity of the betting markets—and to work with regulators and law enforcement to tackle integrity issues.

98 Statement of Bill South (William Hill).

99 Statement of Richard Watson (UK Gambling Commission).

G REPORTING OBLIGATIONS OF BETTING OPERATORS

147. An important part of the regulatory framework imposed on betting operators offering sports betting is the obligations placed upon them to report suspicious betting patterns to third parties, such as the TIU, gambling regulators and/or law enforcement agencies. Betting operators have access to information about betting and bettors that can play a valuable role in taking effective action against those guilty of match-fixing.

148. There are three key elements to consider under this heading:

148.1 The first is the regulatory framework where the betting operator is licensed.

148.2 The second is data protection. In many jurisdictions national law regulates how personal data are shared among and between parties.

148.3 The third is contractual obligations. It is common for betting operators to have agreements in place with sports governing bodies that include various reporting obligations.

149. The way in which these three elements interact often dictates what a betting operator is obliged to report. The examples of the United Kingdom and Gibraltar are outlined below to illustrate how these elements can interact.

United Kingdom

150. At 9 April 2018, the relevant statutory provisions are the Gambling Act 2005 and the Data Protection Act 1998. The Data Protection Act 1998 will be replaced in the UK by the General Data Protection Regulation.

151. The Gambling Act 2005 is subject to the Data Protection Act 1998[100]. The Data Protection Act 1998 permits betting operators to disclose personal data of bettors only in certain circumstances, including where the individual has "given his consent"[101], where it is necessary for the "administration of justice"[102] or where it is in pursuit of a "legitimate interest"[103].

152. By agreeing to the betting operator's Terms and Conditions (which a customer is obliged to do before placing a bet), the customer typically gives consent for the purposes of the Data Protection Act 1998[104]. In addition, the Memoranda of Understanding between betting operators and the TIU typically provide that data are provided by the betting operator in pursuit of a legitimate interest.

100 Gambling Act 2005 s352.

101 Data Protection Act 1998 sch 2 para 1. The Data Protection Act does not define consent. The European Data Protection Directive (which the Data Protection Act gives effect to) defines an individual's consent as: "any freely given specific and informed indication of his wishes by which the data subject signifies his agreement to personal data relating to him being processed". The Information Commissioners Office (ICO) website contains a "guide to data protection", which states that "this suggests that the individual's consent should be absolutely clear. It should cover the specific processing details; the type of information (or even the specific information); the purposes of the processing; and any special aspects that may affect the individual, such as any disclosures that may be made."

102 Data Protection Act 1998 sch 2 para 5(a).

103 Data Protection Act 1998 sch 2 para 6(1).

104 Ladbroke's Terms and Conditions permit it to process personal data in accordance with its Privacy Policy (paragraph 21.2) and to share personal information with "...sporting bodies and other bodies...in order to investigate...sports integrity issues" (paragraph 21.3). Its Privacy Policy states that Ladbrokes may share information for the purposes of "...protecting sports / games bodies, sporting bodies..." (paragraph 2.1). The policies are dated 28 February 2018 and 3 October 2011, respectively.

153. The next step is to consider what a betting operator is obliged to report. Where a betting operator is licensed pursuant to the terms of the Gambling Act, the Gambling Commission may specify conditions to be attached to the betting operator's licence[105]. One such condition is to require the reporting of suspicious offences, including an obligation:

153.1 to provide the Gambling Commission with any information from whatever source that (a) may relate to the commission of an offence under the Gambling Act 2005 or (b) may lead the Gambling Commission to order that a bet is void[106]; and

153.2 to provide the relevant sport's governing body with "sufficient information to conduct an effective investigation" if the licensee suspects that it has any information from whatever source that may relate to "a breach of a rule on betting applied by that sport governing body"[107]. It is worth noting that this obligation or variations of it have been in place since 2007.

154. In addition to this statutory obligation, most betting operators have a Memorandum of Understanding with the TIU that places an additional obligation on them to provide information[108]. These agreements typically take the same form and, in summary, oblige the betting operator to provide the TIU with betting related information to assist the TIU in conducting investigations into possible breaches of the rules governing tennis.

Gibraltar

155. In Gibraltar, the relevant statutory provisions are the Gambling Act 2005 and the Data Protection Act 2004.

156. The exceptions under the Data Protection Act 2004 are materially the same as those in the United Kingdom, although the exception relating to consent is worded slightly differently and provides that the individual must have "unambiguously given his consent"[109]. Typically, permission is addressed in the betting operator's terms and conditions[110]. However, the Gibraltar Gambling Division takes the position that requiring a bettor to agree to standard terms and conditions is not sufficient to meet the test for consent set out in either the Gambling Act 2005 or the Data Protection Act 2004[111]. In these circumstances, the betting operator must rely on one of the other two exceptions, namely that disclosure is either necessary for the "administration of justice" or is in pursuit of a "legitimate interest".

157. The position under the Gibraltar Gambling Act 2005 is materially different from British law; it states that information about bettors must be kept confidential unless the disclosure (a) is "approved in writing by the participant" or (b) is "required in order to comply with a provision made by or under this or any other Act or is related to an official investigation"[112]. Unlike in the United Kingdom, the regulatory framework does not place a positive obligation on a betting operator to disclose information in certain circumstances, but instead states that the information must be kept confidential, save for certain exceptions.

105 Gambling Act 2005 s75.

106 Gambling Commission, 'Licence conditions and codes of practice' (January 2018), License Condition 15.1.2 para 1.

107 Gambling Act 2005 s88. Gambling Commission, 'Licence conditions and codes of practice' (January 2018), License Condition 15.1.2 para 2. The relevant sport governing bodies listed in the Gambling Act 2005 (part 3, sch 6) includes the Lawn Tennis Association. A Gambling Commission consultation document dated 9 November 2016 proposed that the TIU be added to the list of governing bodies in the Gambling Act 2005. To date, the TIU has not been added.

108 In addition, the Memorandum of Understanding between the TIU and the betting operators generally deal with the Data Protection Act as well and state that the provision of data (i) is necessary for the legitimate interests pursued by one or more of the parties (which are not overridden by the interests or fundamental rights and freedoms of the individuals to whom the information relates); and (ii) in the case of the sharing of information relating to alleged criminal offences and/or special categories of data (as defined in the Data Protection Directive), is (a) in accordance with any explicit consent obtained from individuals to whom the information relates; and/or (b) is in the substantial public interest, is necessary for the prevention, detection or investigation of any unlawful act and must necessarily be carried out without the explicit consent of the individual to whom the information relates so as not to prejudice those purposes.

109 Data Protection Act 2004 s7(1)(a).

110 William Hill's Terms and Conditions permit it to process personal data for the purposes set out in its Privacy Policy (paragraph 23.4.1). Its Privacy Policy states that William Hill collects personal information in order to act "to protect the interests of sports governing bodies or other qualified bodies" (paragraph 3.2.9). This version is dated 20 October 2017.

111 Statement of Phill Brear (Gibraltar Gambling Division).

112 Gambling Act 2005 s30.

158. The Gambling Commissioner's Code of Practice suggests that an official investigation is limited to "where an external court or law enforcement agency seeks access to personal information about a customer on the basis it is required in connection with the investigation of a criminal offence"[113].

159. A betting operator licensed in Gibraltar is therefore permitted to share data with the TIU in the circumstances set out above, but is not obliged to as far as national law is concerned.

160. The Gambling Commissioner requires the TIU, and any other sports governing bodies to make any requests for personal information through the Gambling Commissioner and their team, rather than directly to the betting operator in question[114]. The Memorandum of Understanding in place between the Gibraltar Gambling Commissioner and the TIU provides that information can be shared between those parties where there are any reasonable suspicions of irregular betting activity in respect of events to which the Tennis Anti-Corruption Programme rules apply.

113 Gibraltar Gambling Commissioner, 'Code of Practice for the Gambling Industry – The Generic Code – v.1.0.2012', para 10.3. The full reference is as follows: "The Commissioner is mindful that advice on data protection rests with the data protection commissioner and it would be inappropriate to attempt to replicate his advice in this document. However, certain gambling specific matters have been raised that are worthy of general guidance. Where an external court or law enforcement agency seeks access to personal information about a customer on the basis it is required in connection with the investigation of a criminal offence, the licence holder should exercise considerable care before any such data is released. The requesting party is also likely to be bound by data protection or a duty of confidentiality and may not be able to disclose the full reasons for requesting the data." Whilst the reference is made in the context of data protection, it gives an indication of what is considered to be an official investigation.

114 Statement of Phill Brear (Gibraltar Gambling Division).

Integrity Issues in Tennis

Independent Review of Integrity in Tennis

04

1. The Independent Review Panel (the "Panel") addresses below integrity issues that arise in the context of tennis and that fall within the factual ambit of this Independent Review of Integrity in Tennis (the "Review")1. This covers match-fixing or spot-fixing for betting or other corrupt purposes, contriving the result of a match for other reasons, the use and provision of inside information2, betting by players and other participants, delay in entering or manipulation of the score by officials, actions of players and others that encourage or facilitate betting by others, sponsorship of players and others by betting operators, inappropriate provision of accreditation, sale of wildcards3, failure to report approaches and breaches of integrity by others, failure to cooperate and assist in investigations, association with those involved in gambling, and lastly the possibility of a residual category of actions that affect integrity but do not fall within the specific categories.

2. The Panel's analysis below includes the harm to tennis caused by, and the particular susceptibility of tennis to, such conduct.

Q 4.1 Are there other matters of factual investigation or evaluation in relation to the types of integrity issue addressed below that are relevant to the Review and that should be addressed in the body of the Final Report, and if so which, and why?

Q 4.2 Are there any aspects of the Panels' provisional conclusions in relation to those types of integrity issue that are incorrect, and if so which, and why?

1 See the introductory Chapter 1, Section C for the factual ambit of the Review.

2 The term "inside information" is variously defined in different rules, but broadly refers to information that a person has by virtue of his or her position in relation to the competition, which is not in the public domain.

3 Places in the main draw of an event may be reserved for "wildcards". Wildcards are awarded to players at the discretion of the tournament organisers. Players awarded wildcards do not have to be sufficiently highly ranked, nor do they have to have played in the qualifying competition.

A MATCH-FIXING FOR BETTING OR OTHER CORRUPT PURPOSES

3. The paradigm breach of integrity by a player is where the player deliberately loses a match, or part of it4, for betting or for other corrupt purposes. The player may deliberately 'fix' or engineer the result of the match, or part of it, in order to enable himself, or others, to make a profit by betting on an outcome that is certain, or as near to certain as possible. The corrupt motivation may however be other than betting, such as an agreement between players to facilitate one winning and securing ranking points in return for paying the additional prize money earned to the loser.

4. Such match-fixing is the most serious breach of integrity, though clearly there may be gradations, depending on the precise facts.

5. The Tennis Anti-Corruption Program ("TACP") addresses match-fixing by providing that "*No Covered Person*[5] *shall, directly or indirectly*" do any of the following: "*contrive or attempt to contrive the outcome or any other aspect of any Event*"[6]; "*solicit or facilitate any Player to not use his or her best efforts in any Event*"[7]; "*solicit or accept any money, benefit or Consideration with the intention of negatively influencing a Player's best efforts in any Event*"[8]; or "*offer or provide any money, benefit or Consideration to any other Covered Person with the intention of negatively influencing a Player's best efforts in any Event*"[9]. The first prohibition therefore covers a player acting so as, or attempting, to fix a match or part of it; the second covers others asking the player to do so or acting as an intermediary; and the third and fourth cover asking for or receiving and offering or paying a reward in return for a player do so, whether he or she does so or not.

(1) HARM CAUSED TO TENNIS BY MATCH-FIXING

6. Serious harm is caused to tennis by players making and acting on a decision deliberately to lose in order to fix a match, or part of it, for betting or other corrupt purposes[10]. Such conduct is deeply inimical to the nature of a professional tennis match as a genuine sporting contest between two individuals trying their best to win. It cheats other players, as it interferes with the proper functioning of the ranking system and artificially inflates the performance of the player who wins[11]. It cheats the public, tournament organisers, broadcasters, sponsors, and the sport as a whole, all of whom or which have invested in the match on the basis that it is a genuine contest. The public will not attend as spectators or watch broadcasts on television or on the internet, if they consider that what they are watching may not be a genuine contest. If the public loses interest, then with the public go broadcasters, sponsors and advertisers, and the commercial basis of the sport collapses. Such conduct also corrupts the players involved and places them, and other players, in an unsafe environment. It exposes players to approaches, it brings in criminal elements, and it exposes players, once they have succumbed to temptation, to blackmail. It distorts the betting market, depriving not only betting operators, but also some bettors, of their fair return. Such conduct discourages young athletes from taking up the sport, and causes the grass roots of the sport to wither.

4 Chapter 3, Section C(3) for discussion regarding the range of bets that can be made other than on the final outcome of the match.

5 TACP (2018), Section B.6: available at http://www.tennisintegrityunit.com/storage/app/media/TIU%20Documents/TACP.pdf [accessed 9 April 2018].

6 TACP (2018), Section D.1.d.

7 TACP (2018), Section D.1.e.

8 TACP (2018), Section D.1.f.

9 TACP (2018), Section D.1.g.

10 Council of Europe, Explanatory Report to the Council of Europe Convention on the Manipulation of Sports Competitions, Magglingen, CETS 215 (18 September 2014) page 2, paragraph 6, available at: https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016800d383f [accessed 9 April 2018]. See also Lewis and Taylor: Sport Law and Practice, 3rd Edition 2014 Bloomsbury, Chapter B2 Match-Fixing and Related Corruption in Sport, page 205, paragraph B2.1.

11 In the particular context of 'sale' of a main draw place by a lucky loser, it has the more direct effect of depriving the second most highly ranked loser of a place: see Chapter 2, Section G(1).

7. Some may take the view that a low level of such behaviour is, while to be condemned, inevitable, and should not lead to the imposition of measures that interfere in the privacy and other rights of (often innocent) players, or that deprive the sport of much needed funds for grass roots development. This view draws on the proposition that if a player chooses to lose it is only that player and those who have taken the risk of betting or taking bets who suffer directly[12]. It also draws on the proposition that spectators[13] very rarely if ever realise when a match or part of it is being fixed, and are equally entertained. Where a player fixes only part of a match, it may well not even affect the result: indeed it can even be said to make the spectacle more exciting where, for example, the fix is to lose a set but to go on to win. This view also draws on the proposition that the behaviour is limited to a very small group or a 'tiny minority' that will always exist of players whose moral compass is misaligned, but that players whose moral compass is true will never succumb to temptation.

8. While recognising that this view may be held by some, and agreeing that measures in response to match-fixing must be proportionate, the Panel does not share it. First, it must be recognised that such behaviour is, or ought to be, regarded as criminal, and no sport should tolerate the least level of criminality. Second, in the opinion of the Panel, any toleration of match-fixing will only see it grow and fatally undermine the sport in the ways set out above. It is the case that by its nature, the behaviour is driven by strong economic and personal factors, is difficult to detect, and readily adapts to a changing environment. It will always exist to some extent, therefore. But if active steps are not taken to minimise that extent so far as reasonably possible, and if instead the behaviour is to any extent tolerated, the problem rapidly extends beyond a very small group of determinedly corrupt players to an ever-larger group of players where the motivation and perceived need to engage in the behaviour is more marginal[14]. Toleration and insufficient action to prevent and to punish corrupt behaviour alter players' moral perceptions[15]. When that happens, the seriously adverse effects on the sport described above spiral out of control, and the behaviour does indeed constitute a "*cancer*" and a "*mortal danger*" to the sport and those involved in it, as it has been described[16]. This applies to spot-fixing as to match-fixing, as the public and those commercially involved in the sport should expect that both players contest the match fully and try their hardest.

9. In recognition of the extent of the harm to tennis caused by match-fixing, the sport itself expresses a "*zero tolerance*"[17] attitude to it. In the view of the Panel, this is the correct attitude to adopt.

12 Itself a misconceived proposition since other players are adversely affected by the distortion (sometimes deliberate) of the ranking system or by being deprived of a main draw place as the second best ranked loser. See Chapter 2, Section G(1).

13 The view extends to the proposition that at the very lowest levels, where this behaviour may be more likely, there are no spectators to be disappointed, and no real commercialisation of the event.

14 There is more plausibly a bell curve of susceptibility and moral preparedness to breach integrity rules, rather than a bright line.

15 And toleration at lower levels of the sport, through which tomorrow's stars pass, stores up for the future problems at all levels, because moral perceptions formed at those lower levels endure, as does the vulnerability of the once compromised to later corruption.

16 Lewis and Taylor: Sport Law and Practice, 3rd Edition 2014 Bloomsbury, Chapter B2 Match-Fixing and Related Corruption in Sport, page 206, paragraph B2.1, footnotes 5 and 6 and the 22 June 2012 decision of the ECB Disciplinary Panel in ECB v Kaneria & Westfield, page 1 expressly approved on appeal in Kaneria v Westfield, ECB Appeal Panel decision dated July 2013, page 5.

17 See the International Governing Bodies' announcement of the Review, available at: http://www.tennisintegrityunit.com/independent-reviews/statement-from-tennis-governing-bodies [accessed 9 April 2018]. The TIU describes itself as "responsible for enforcing the sport's zero-tolerance policy on betting-related corruption", available at: http://www.tennisintegrityunit.com/about-tiu/ [accessed 9 April 2018]. Compare the view of CAS in CAS 2010/A/2172 (Oriekhov v UEFA) dated 18 January 2011, paragraph 80, "It is… essential… for sporting regulators to demonstrate zero tolerance against all kinds of corruption and to impose sanctions sufficient to serve as an effective deterrent to people who might otherwise be tempted through greed or fear to consider involvement in such criminal activities".

(2) MATCH-FIXING FOR BETTING PURPOSES

Fixing to lose

10. At its simplest, a match-fix involves a player deliberately losing the match. This might be attractive for those involved in corrupt betting if the loser was in fact expected to win, and so there were good odds on the other player. Such a fix might however be too obvious to escape notice, and a more discrete fix might be, for example: (a) to fix a match where the players were more equal in quality; (b) where the ranking system is less reflective of the true difference in quality on the particular surface; or (c) where the loser was in fact expected to lose, but there was still a sufficient margin in the odds to make a significant profit betting on the favourite in the knowledge that he or she would definitely win because his or her opponent would throw the match.

11. Some fixes to lose the match seek to affect the in-play odds. For example, a player may, if better than his or her opponent (or with the opponent's involvement) fix to win the first set, and perhaps to go up a break in the second, but then to lose the match overall[18]. This drives up the in-play odds of the other player, allowing bets on him or her to deliver sizeable returns when he or she turns the match around.

Spot-fixing

12. The fix to lose need not be in relation to the final outcome: one player may fix to lose a particular set, and the betting would be on that alone (or on the outcome at improved in-play odds), leaving the player to seek to win the other two sets (and thus not even suffer the adverse consequences of losing). Alternatively, two players may be involved in a fix for one player to lose the first set, the other to lose the second set, and then for the two of them to contest the final set, in effect reducing the match to one set of genuinely contested tennis.

13. Better odds may also be obtained by fixing the margin in sets by which a match, or the margin in games by which a particular set, will be lost.

14. Fixing sets is a form of spot-fixing. There may also be spot-fixing on a wide range of contingencies other than the ultimate result in a set or the margin in sets. A player may spot-fix to lose a particular game, a break of serve (perhaps at a particular time), a tie breaker, or a particular set.

15. There may be spot-fixes on specific contingencies, such as number of deuce games or double faults, or the spread of games in individual sets.

16. Spot-fixes may be concealed through the use of combination bets, such as accumulator or arbitrage bets.[19] An accumulator bet is a bet that combines multiple selections in to a single bet. The success of an accumulator bet is dependent on the success of each selection within a bettor's chosen combination. Arbitrage betting involves a bettor placing bets on every outcome of a contingency, at odds that guarantee a profit regardless of the outcome.

17. There may be opportunities for more complex match and spot-fixes depending on the context and the state of the betting markets.

18 Sometimes known as a 'set and break' fix.

19 Chapter 3, Section C(3).

Fixing without affecting the ultimate result of the match

18. As is apparent from the above, it is possible to fix without affecting the ultimate result of who wins and who loses the match overall.

19. A fix to lose a set does not preclude the losing player going on to win the match. A popular fix is for a player, if better than his or her opponent (or with the opponent's involvement) to fix to lose the first set, and perhaps to go down a break in the second, but then to be able to go on to win the match. In this context, losing the first set makes it harder to win the match overall, but does not preclude it.

20. So too a spot-fix to lose a particular game or a particular break of serve, or to ensure a particular number of deuce games or double faults, may not affect the ultimate result.

21. The ultimate result of the match may equally be unaffected where a player who would in any event lose, does so by a particular margin agreed in advance with bettors. So, a player who has little prospect of winning a match could ensure that he or she does so, for example 6-1, 6-1, as opposed to by any other margin.

22. These fixes perhaps allow players to justify their actions to themselves on the basis that they either still sought to win the match overall or did not bring about a different ultimate outcome when they were bound to lose anyway.

The individuals involved

23. The one person always involved in a match-fix or spot-fix is the player carrying it out. He or she may have acted entirely alone, in order that he or she could himself or herself bet on the outcome that he or she then brings about (sometimes referred to as 'self-funded fixing').

24. More likely there will be another individual placing the bets, in order to do so in-play and so to react to moving odds. That person may range from a friend or relative of the player fixing the match, to professional gamblers with whom the player has had no contact and whom the player does not even know, but who have used an intermediary. In between those two ends of the spectrum, there may be groups of players who share with one another information about when they intend to lose, and so bet on one another or ask others to do so.

25. Unless the player is acting on his or her own initiative, someone will have induced him or her to fix[20]. That person might be the gambler himself who then goes on to bet on the basis of his knowledge that there will be a particular outcome. More likely the immediate inducer might be an intermediary[21], and may be another player, or a member of the player's own, or another player's, support team or wider circle.

(3) MATCH-FIXING FOR OTHER CORRUPT PURPOSES

Fixing to win, or buying a match

26. Match-fixing occurs for corrupt reasons other than betting. Because winning each professional match carries with it ranking points and prize money as a result of securing entry to the next round, a simple fix is for one player to agree to lose so that the other receives the ranking points from winning that round, perhaps in return for being paid the next round losing prize money or a further amount in addition. In this way, the 'buying' winning player secures the ranking points that he or she needs and the opportunity to secure more points in the next round, and the 'selling' losing player,

20 The player may have decided to lose, and then set out to find someone who would be prepared to pay him or her to do so.

21 Where the player has acted on his or her own initiative, and then sought out someone who would be prepared to pay, that intermediary is sometimes referred to as a 'go to' man.

who may not need the ranking points at that time[22], secures both the losing prize money in the original fixed round, but also the losing prize money in the next, if the buying player indeed goes on to lose. With the points so secured, the 'buying' player then secures access to better 'jobs' than might otherwise have been the case (at the expense of another player or players), and so can earn more than the initial outlay. If the 'selling' player does not need the ranking points, he or she is unaffected in terms of access to jobs, but earns more money than he or she otherwise would.

27. Agreement to lose in return for reward may also occur in the particular context of qualification where a main draw place is known to have come free due to a withdrawal, and a player participating in the last qualification round knows that he or she will secure that place even if he or she loses the last qualification match, as the highest ranked lucky loser[23]. In these circumstances, the lucky loser has in effect a place in the main draw to sell, while still being able to compete themselves. Lucky loser rules have been adapted as a consequence to remove the certainty of a particular player receiving a place[24].

28. The absence of any betting in contexts such as these means that the conduct is all the more difficult to detect. However, on occasion one or other of the players, or someone in their circle with knowledge of the agreement, may take the opportunity to bet as well, or to pass the information on for reward[25].

Withdrawal for financial reward

29. A variant is 'sale' of a place to a lucky loser by a player in the main draw, who agrees to withdraw in return for financial reward[26]. Again, this has been addressed by adaptation of the rules to remove certainty as to who receives a place. Where the place is under the control of individuals other than players, such as where a tournament organiser has discretion to issue wildcards, there may be other corruption in the form of sale of the place, dealt with below[27].

Fixing other than for financial reward

30. On occasion, an existing friendship between players or contemplated later reciprocity may be sufficient for a player to deliberately lose so that the other player can secure the ranking points. This is a particular phenomenon in the context of lucky losers drawn in the last qualification round against a friend deliberately losing that match, or a player in the main draw withdrawing to help a friend in the lucky loser place. It may also arise where two players are under the same coach, and one is persuaded to assist the other.

The individuals involved

31. It is not only players who may involve themselves in such activity, and a winning player may not even know that his or her opponent has deliberately lost in return for financial reward. There are others, such as relatives, coaches and agents, who are invested in the success of a player, and who on occasion choose to obtain that success by paying his or her opponent.

22 Either because he or she already has enough points to maintain the level of access to 'jobs' required, or because he or she can rely on other events to supply points under the 'best of' ranking system.

23 A "lucky loser" is a player who lost in the last round of qualification, but who nevertheless secures a place in the main draw when one becomes free due to a qualified player being unable to take it up for whatever reason. The first place to come free was until recently assigned to the highest ranked player to lose in the last round of qualification. Now the lucky loser will be randomly drawn from the highest-ranking players who did not qualify for the main draw. The number of highest ranking non-qualifiers from which the lucky loser is drawn will depend on the rules governing that event. See Chapter 2, Section G(1) for a description of the lucky loser system and Chapter 10, Part 1, Section A(7) and Richard Ings, 'Report on Corruption Allegations in Men's Professional Tennis' (June 2005), pages 22-23, paragraphs 115-125, Appendix: Key Documents.

24 Chapter 2, Section G(1) for a description of the adaptation in the various rules.

25 As happened in the Lindahl case, see Chapter 10, Part 3, Section C(5).

26 Chapter 7, Section A(2) and Chapter 10, Part 3, Section B(6).

27 Section I below, and Chapter 7, Section A(5).

(4) PLAYERS' MOTIVATION FOR MATCH-FIXING

32. As is apparent from the description above, the motivation for match-fixing is generally the preparedness and desire to make money, whether through the player himself or herself profiting from betting, or the player receiving money or some other benefit or reward to carry out the fix in order to allow others to profit from betting.

33. At that level, it might be easy to describe the motivation as greed, and those who act in this way as flawed and cynical individuals with a misaligned moral compass. While on many occasions that will be the case, it is important to bear in mind that aspects of the player incentive structure make some players more susceptible to the temptation of themselves betting on a certain outcome, or taking money to provide such an outcome so that others can profit.

34. A further issue is that the number of tournaments currently played in Europe grants players based in that region the opportunity to compete for ATP ranking points and develop, without incurring significant travelling expenses. Conversely, players in other regions have much more limited access to tournaments within their geographic region. For example, in 2017 around 58,000 matches were played in countries under the jurisdiction of Tennis Europe, whereas only around 5,000 matches were played in countries under the jurisdiction of Confederación Sudamericana de Tenis[28]. Players from these regions may be compelled to incur significant travel costs in order to access tournaments. This financial pressure can lead to players engaging in match-fixing in order to fund those costs.

35. Plainly this is not an excuse, but it is part of the explanation, as addressed further below in relation to the susceptibility of the sport to corruption[29].

36. Much the same applies to the situation where players 'buy' and 'sell' points, or a place in a tournament, in a way unconnected to betting. While it might again be easy to describe the motivation of the 'selling' player as greed, it is again a function of low prize money relative to cost. As for the 'buying' player, his or her motivation is the desire to progress up the rankings and so to increase access to better 'jobs' offering greater financial reward and even more ranking points, and is as such also driven by the nature of the player incentive structure.

37. It is also important to bear in mind that the methods of those inducing players to match-fix are on occasion subtle and complex, and involve the nurturing over time of a relationship and the building up of obligations. Young players may take 'sponsorship' at the very early stages of their career to help them through the initial lean periods, only to find themselves beholden later in their career and asked to undertake, at least initially, low level match-fixes. However, once they have done so they are trapped in a cycle of corruption, and unable to extricate themselves[30]. In some geographical areas, a culture of betting and lower level corruption may arise amongst groups of players and others, which it may be hard to avoid joining and from which it may be even harder to break away[31].

38. So too, it is also important to bear in mind that it is possible that a player may act out of fear for his own or his family's personal safety. While that circumstance might well arise once a player is trapped in the cycle of corruption, it may be less likely to occur when a player is first approached[32].

39. Lastly, as described above, the reward may take another form. While reciprocity of later action is a form of reward that is not so far removed from financial reward, actions taken as a result of friendship are perhaps less reprehensible. They nevertheless do have similar adverse effects on the sport, and in particular cheat other players.

28 Chapter 13, Section B(11), Table 34: Referral Ratios based on tournament location in the period 2009 to 2017.

29 Paragraphs 82-89 below.

30 Ben Gunn and Jeff Rees, 'Environmental Review of Integrity in Professional Tennis' (May 2008), page 12, paragraph 2.32, Appendix: Key Documents.

31 Chapter 13, Section B(6).

32 Ben Gunn and Jeff Rees, 'Environmental Review of Integrity in Professional Tennis' (May 2008), page 12, paragraphs 2.31 and 2.3.2, Appendix: Key Documents.

(5) ASPECTS THAT MAKE TENNIS SUSCEPTIBLE TO MATCH-FIXING

40. Tennis is particularly susceptible to match-fixing and related breaches of integrity. This arises out of a combination of aspects of the game itself, the player incentive structure, the sale of official live scoring data, and the facilities and organisation at the locations where matches are played. These factors vary in significance across the different levels of the sport[33], but are most marked at lower level tournaments where they combine[34] to present the highest risk of match-fixing and related breaches of integrity. The susceptibility of the sport to match-fixing and related breaches of integrity has greatly increased with the massive expansion in opportunities to bet on matches at the lower levels where, as set out above, these factors are most marked[35].

Susceptibility arising out of aspects of the game itself

41. There are a number of aspects of the game itself that make it particularly susceptible to match-fixing:

    41.1 Because tennis is an individual as opposed to a team sport, only one player need be involved to fix a match. The behaviour can therefore arise out of a single individual's own decision. Where corrupt individuals are involved, it is therefore easier, and cheaper, to bring about the necessary behaviour to fix. It is also easier to apply pressure to a single player, for example if he or she bets or has built up other obligations, than it would be to fix a team or sufficient members of a team. Much the same applies even in doubles, since one out of two players in a doubles team will generally be in a position to fix the result.

    41.2 In addition, because the sport is an individual as opposed to a team sport, underperformance does not result in substitution or in non-selection for the next match by a coach. A player will always be on the court and in a position to affect what happens.

    41.3 The individual nature of the sport also means that there is no countervailing incentive not to let one's teammates down.

    41.4 There are many players and many matches: the identity of the player and the location or date of the match matter much less than that a match or part of it is fixed.

    41.5 It is easy to affect the result. The scoring system means that there is often a small margin between winning and losing. A player can lose a game, service break, tie breaker or set, and then still win, but equally losing a break of serve twice in a match may be enough to lose it.

    41.6 It is not easy to detect. It may often be hard to identify a deliberate error or miss, due to the small margin between a ball going in or out. So too, it may often be hard to identify that a player has failed to reach a ball that he or she ought to have reached.

    41.7 There are a series of identifiable events in the course of each match: game, service break, and set to name only the principal ones. They, and the margin by which each may be won or lost, provide a large number of in-play

33 The "Lowest Level" events are made up of ITF men's $15k and $25k Pro Circuit events (known as "Futures") and women's $15k and $25k Pro Circuit events. "Mid-Level" events are made up of ATP Challenger and ITF women's Pro Circuit $60k-$100k and WTA $125k events; "Tour Level" is made up of the ATP and WTA Tours; and "Grand Slam" level is made up of the four Grand Slams.

34 In what has been graphically described by some as a "toxic mix", or as a "perfect storm". The problem is most marked at ITF Pro Circuit and ITF Futures events but is also significant at ATP Challenger events. See Chapter 13, Section B(1).

35 Both the 2005 Ings Report and the 2008 Environmental Review were produced before official live scoring data was sold to ATP Challenger, ITF Pro Circuit and ITF Futures events, and at a point when betting markets had only just started to be offered on the former, and not yet on the latter to any significant degree. But during this period, betting operators or data suppliers appear to have started to unofficially scour or scrape the data in respect of Challenger events in order to provide betting opportunities at points in the season when there were no Tour Level events to create markets on: see Richard Ings, 'Report on Corruption Allegations in Men's Professional Tennis' (June 2005), pages 27-29, paragraphs 151-165, Appendix: Key Documents and Chapter 3, Section D(2). It is possible that at a localised level, there may have been some creation of betting markets on ITF events, but it was on any basis minimal. On the issue of official live scoring data deals generally, see Statement of David Lampitt (Sportradar AG), Statement of Kris Dent (ITF) and Statement of Juan Margets (formerly ITF).

opportunities to bet, in addition to the ultimate result of the match and the margin of the win. Equally they provide a large number of opportunities to fix.

41.8 In the case of many of those opportunities to fix, it is not necessary to lose the match as a whole; the prime example being where a good player can agree to lose the first set in the knowledge that he or she is good enough to go on to win the second and third.

42. These aspects, intrinsic as they are to the game itself rather than to the structure within which it is played professionally, apply across all levels of the sport.

43. An exception to that breadth of application is the relative ability to detect deliberate losing actions. At the lower levels, in contrast to the higher levels, matches are not video recorded or broadcast, there is no secondary live scoring data stream, the officials are less well qualified, there are in some instances no line officials, and there are no spectators. The match is in effect played solely under the eyes of the other player and the chair umpire, and cannot be examined afterwards. The chances of detection are consequently even less at the lower levels than at the higher levels.

Susceptibility arising out of aspects of the player incentive structure

44. Aspects of the player incentive structure[36] give rise to an increased susceptibility not only to match-fixing, but also to other breaches of integrity. In addition to the intended consequences of that structure, there are unintended ones.

Intended consequences of the player incentive structure

45. The intended consequences of the player incentive structure are positive.

46. So far as players are concerned, first, success is broadly rewarded on an objective, graded and transparent scale. Players know in advance what is available from a particular performance at a particular event. The very best players earn very large amounts of money, providing a strong incentive to excel. Second, there is an objective and transparent route of progression for the very talented, based on their performance and not on the subjective evaluation of others. If a player wins at one level he or she secures points, and if enough points are secured, the player will be able to compete at higher level events offering more points, and so on. Third, for the very talented, that progression can be relatively rapid. Fourth, the opportunity to start on this route of progression is available at the lowest level all around the world, and there is no barrier to entry other than talent and a relatively low-level funding base, although of course matters are easier with more funds. The base of the pyramid is very broad, with a relatively large number of players securing a few ranking points, and effectively anyone who wants to do so has the initial opportunity to enter at the very lowest level.

47. So far as tournament organisers are concerned, there is an opportunity to stage an event at a cost level that is consistent with available funds, and to build that tournament up if it is successful. When the organiser is a national association or federation, there is the opportunity to create events that bring on the nation's young players. At the highest levels, the structure delivers the best players to tournaments, allowing them to generate substantial revenue, on occasion for reinvestment in the sport at grass roots level in a particular nation.

48. So far as the public is concerned, the structure delivers tennis events of the highest quality with what appears to be a sufficient frequency to satisfy demand. In other words, there does not appear to be a greater demand amongst the public to attend or to watch broadcasts of more tennis events than there are at present. Sponsorship and advertising demand follows public demand. If there were a greater public demand, then it appears certain that it would be met: the structure affords opportunity for growth. It however appears that the sector of the public that constitutes the relevant consumers,

36 Chapter 2, Section G in relation to the player incentive structure and Chapter 2, Section B in relation to the organisation of professional tennis.

while geographically and perhaps even demographically broad, is not deep and is interested only in tennis played at the higher levels. This then drives the revenue in the sport, which in turn drives the revenue available for distribution to players

Unintended consequences of the player incentive structure

49. However, there are unfortunately unintended consequences of the player incentive structure that are negative and that mean that some players[37] are more susceptible to corruption or related breaches of integrity in relation to some matches[38] than they otherwise would be, and more than in other sports.

50. The unintended consequences that the Panel perceives as being of particular importance are the following, each addressed below: (a) players' perception that they may be better served by losing a match; (b) players' failure to use best efforts; (c) players' perception that they must play even when too injured to do so; (d) difficulty for players in progressing from one level of competition to another; (e) the continued presence of players not talented enough to advance; and (f) nominally professional events that have inadequate facilities. After addressing those unintended consequences, the Panel examines the mechanisms by which they make the sport more susceptible to match-fixing and other breaches of integrity.

37 The 2008 Environmental Review at paragraph 2.33, and as described in Chapter 8, Section B(2), stated that: "Identifying the category of player who may be vulnerable in respect of possible corrupt approaches is also important. We assess from our enquiries and experience of other sports that the following are vulnerable:

- young players starting out on their tennis careers who are not earning substantial money and yet have to support the cost of coaching, air fares, hotel bills, etc;
- players who have received substantial loans/financial support from sponsors in their early career stages, particularly when there is a doubt about the probity/motives of the sponsors;
- players nearing the end of their careers who wish to bolster their dwindling earnings;
- players who become disillusioned because they realise they do not have sufficient skills/commitment to reach the top.

These categories do not presume that a top player can never be vulnerable to corruption. Experience in other sports has shown some leading players can be tempted by what they see as easy money; again, once tempted, they are in for life".

See Ben Gunn and Jeff Rees, 'Environmental Review of Integrity in Professional Tennis' (May 2008), page 12, paragraph 2.33, Appendix: Key Documents.

The 2005 Ings Report at paragraph 207, and as described in Chapter 7, Section A(4), stated that: "In the course of this inquiry, players and their support teams that were prepared to speak on the issue have outlined why they think that a culture of gambling and corruption has developed in men's professional tennis. Whilst the explanations and excuses have varied in emphasis they embrace some or all of the following:

- Lower ranked tennis players and their support personnel are unable to earn a living wage from the game. Gambling using inside information is used as a means to supplement low-income levels.
- Tennis players and their support personnel have relatively short and uncertain careers, often without contracts and some seek to supplement their official earnings with money from gambling or corruption.
- Tennis players compete in many matches each year where 'nothing is at stake' in terms of ranking or pride.
- Players and their support teams indicate that gambling on men's tennis is 'common practice' in the locker room. There is a culture of acceptance with even the player leadership turning a blind eye to such conduct.
- Whistle blowing and informing on malpractice would result in players being ostracized in the locker room. Remaining silent in the face of gambling or corruption by player peers was encouraged.
- There is no education on the issue of gambling and corruption for players. Players were just not aware of it being a serious threat issue to tennis. 'It is just a harmless bet'.
- There is no structure in place to receive confidential allegations about corruption.
- It was just too easy".

Richard Ings, 'Report on Corruption Allegations in Men's Professional Tennis' (June 2005), page 36, paragraph 207, Appendix: Key Documents.

38 The 2008 Environmental Review at paragraphs 2.51 to 2.54, and as described in Chapter 8, Section B(2), concluded that matches that did not affect a player's ranking "are vulnerable to corrupt practice and present a threat to the integrity of tennis", and recommended "that officials examine these matches that players take part in over and above those necessary for achieving ranking points. If that study confirms that such matches are vulnerable to the integrity of tennis, then we recommend that careful consideration should be given to changing the ranking rules to make each match count". See Ben Gunn and Jeff Rees, 'Environmental Review of Integrity in Professional Tennis' (May 2008), page 15, paragraphs 2.51-2.54, Appendix: Key Documents.

The 2005 Ings Report at paragraph 216, and as described in Chapter 7, Section A(4), stated that: "During the course of inquiries, by players and their support team members believed to be knowledgeable of such activities have suggested that corruptors are more likely to target some matches at some tournaments more than others.

- Matches where no ranking impact is at stake and where the player would receive a fine if he withdrew.
- 1st round matches. The investigation has noted that rarely if ever do non-1st round matches attract irregular betting patterns.
- Matches in ATP tournament week held the week of Special Events (i.e. Bundesliga tennis) where the player has a commitment to play in both events.
- Matches where mutual advantage can result from a pre-arranged outcome. For example, final round of qualifying when a lucky loser spot is already available in the main draw".

Richard Ings, 'Report on Corruption Allegations in Men's Professional Tennis' (June 2005), page 38, paragraph 216, Appendix: Key Documents.

Players' perception that they may be better served by losing a match

51. In the normal course in professional sport, players ought always to perceive that they are best served by winning the match in which they are at that moment playing. In most instances in tennis, this will be the case. It is however clear that in some instances, one or more of a combination of circumstances principally arising out of the structure of professional tennis and the incentive structure, lead some players to perceive that they would be better served by losing a particular match. The circumstances include but are not confined to the following.

52. The first is the scheduling of various levels of events in the professional tennis calendar, and players' own planned schedules based on it:

    52.1 Players' own schedules may involve playing in swift succession in a series of events, possibly located in different parts of the world. Those events vary significantly in the rewards that they offer, and in their accessibility. The pursuit of points and prize money leads many players to plan to play as often as they can, entering the best events that they are permitted to enter by the ranking system and draw sizes. Players have to gain as many ranking points as possible to advance in the sport, and the relatively low level of prize money relative to costs at the lower levels of the sport means that they cannot afford to have an idle week.

    52.2 Successive events may consequently be of significantly varying importance to a particular player, not only in terms of the varying ranking points, prize money, and possibly appearance fee on offer, but also in terms of the player's perception of his or her prospects of progress in either event, based on surface, location or draw in either.

    52.3 Progression in an event in week one, perceived to be of less importance, may prevent the particular player playing in an event in week two, perceived to be of more importance, due to the clash between the later stages of the week one event and the qualification competition of the week two event, and travelling time.

    52.4 Even if playing in both events might be possible, to do so in quick succession may preclude the player being able to play in the event in week two to the best of his or her ability. Taking into account travel time, and the required recuperation and preparation before playing in the event in week two, going far in the event in week one may effectively prevent, or be perceived as preventing, a player from playing to the best of his or her ability at the second event.

    52.5 Even where there might be sufficient time if a player were fit and fresh, progression in the event in week one may, or may be perceived to, risk injury or exacerbating injury, or deplete reserves of fitness and energy, harming the player's prospects of success in the event in week two. The player may need, or may perceive that he or she needs, more time for an injury to improve and to recuperate, to play to the best of his or her ability at the second event.

    52.6 The fact that many players plan to play many events, successively, without time to recuperate in between, and without returning home, exacerbates matters. Large numbers of players play with some level of chronic injury, which they seek to manage. Many players play so many events that they become physically and mentally exhausted, for example, towards the end of a long series of events.

    52.7 The surface, location or draw, or other conditions in the event in week one may be, or may be perceived to be, adverse to the player. The player may consider either that he or she cannot realistically beat the immediate opponent, or that even if he or she could do so, he or she would not in any event progress much further in the event in week one. Conversely, the player's prospects may be, or may be perceived to be, better in the event in week two.

53. Second, the likelihood of this perception arising is increased by a number of other elements in the internal scheduling of matches at professional tennis events:

    53.1 Tennis events are susceptible to the weather. If there is a significant rain delay and the tournament matches cannot be played when planned, the result is that many earlier round matches are concertinaed towards the end of the week, and it may even be necessary for players to play more than one singles match in a day, however undesirable this is. In these circumstances, continuing in the event in week one becomes even less attractive when weighed against proper preparation for the event in week two.

    53.2 Many singles players enter the doubles competition as well, in order not only to gain more competitive court time, but also to seek to earn more prize money, a function of the low level of prize money relative to costs at the lower end of the sport. If a player is out of the singles but still in the doubles competition, late in week one, competing for a very small amount of money, continuing in the event in week one becomes even less attractive when weighed against proper preparation for the event in week two.

54. Third, the ranking points systems do not offer a sufficient, or indeed on occasion any, brake on a player perceiving that he or she is better served by losing a particular match:

    54.1 Indeed, on the contrary, the fact that players play across levels means that they may well actively perceive that losing today's match in week one with a certain number of points available, will actually mean that they gain more ranking points in week one, and that the total over the two weeks will be more than if they had won the match in week one.

    54.2 But even where that is not the case, losing the match in week one may not actually impact a player's ranking, because the systems only count a player's 18 (ATP)[39] or 16 (WTA)[40] best performances[41] in a rolling 52-week period. It is therefore possible to lose a match without any adverse consequence: all that is lost is the opportunity to have recorded a good performance that would count in the top 18 or 16, instead of another. But where the perception is that a better performance will be secured in week two, that is not perceived as a lost opportunity of any significance at all.

    54.3 In other words, 'not every match counts', and this inevitably affects player behaviour.

39 Chapter 2, Section G(3).

40 Chapter 2, Section G(3).

41 Subject to any mandatory tournaments an eligible player is required to play.

55. Fourth, if a player perceives that he or she no longer wishes to be at the event in week one, he or she may also perceive that there is no viable alternative to losing a match in order to leave the competition:

    55.1 After a certain date, a player cannot withdraw without paying a withdrawal penalty for doing so. The player may perceive that as unattractive in the light of the low amount of prize money available at the lower end of the sport. Furthermore, up until 2017, if a player withdrew in advance, the prize money for losing the round would not be paid, making withdrawal doubly less financially attractive. For the 2018 season, players who withdraw from the main draw singles competition at an ATP World Tour event or ATP Challenger event prior to his or her first match will receive first round prize money (second round in the case of a bye) if certain conditions are met[42]. The same does not apply at other levels however.

    55.2 A player could feign injury. But if the player does that, he or she will have to satisfy the medical staff at the next event that he or she has recovered from the injury and is fit to play. Furthermore, again, apart from ATP players in the 2017 season, if the player withdraws through injury in advance, the prize money for losing the round will not be paid.

56. Fifth, the low level of prize money relative to the player's costs further compounds the situation. Not only does the pursuit of sufficient revenue through prize money dictate behaviour, but so too does the need to minimise the player's expenditure. If a player stays on in week one when the player perceives he or she is better off resting or moving on in the pursuit of greater prize money, then the player may also perceive that he or she is better off avoiding the additional costs of food, accommodation and possibly coaching assistance, involved in remaining at the event in week one.

57. Sixth, for those players for whom appearance fees are available, the perception may arise that once enough has been done to secure the appearance fee, or a substantial proportion of it, there is little point in remaining at the event in week one.

58. Seventh, leaving an event in week one early may even allow some players to earn money at a 'money match' or exhibition, and still play at the event in week two

59. Eighth, a variety of personal reasons may fuel the perception, ranging from a desire to go home through tiredness and disaffection, to a preparedness to see an opponent who is a friend win ranking points.

60. While most of the circumstances set out above turn on the need to maximise ranking points and prize money at the lower levels of the sport, and are confined to those levels, not all are. Even higher ranked players competing at the higher levels may perceive that they need, for example, to protect or avoid an injury and to secure rest time before an upcoming Tour Level event or Grand Slam, and that they would not be best served by going far in a less important event immediately before.

61. That the perception should arise cannot necessarily be laid at the door of the player who forms it. The perception is a function of the factors that create it, and a player cannot voluntarily reach a different perception than that which he or she is driven logically by those factors.

62. In contrast, how a player responds to the perception, if it arises, is a matter for the player. A player's response to the perception will vary with the character of the player, and the intensity of the circumstances described above:

42 The ATP Official Rulebook, 2018, Section III, Part 3.08 (A)(3), available at: http://www.atpworldtour.com/en/corporate/rulebook [accessed 9 April 2018]. The Grand Slam Board has also introduced very similar rules, see Official Grand Slam Rule Book, 2018, Article I, Section J(1), available at: http://www.itftennis.com/officiating/rulebooks/grand-slams.aspx [accessed 9 April 2018].

62.1 The natural sporting instinct and desire of most players ensures that they still go out and try to win. Most players try to win the prize money and ranking points before them, and leave the future to sort itself out.

62.2 Some players however succumb to the pressures brought about by the incentive structure, and fail to use their best efforts to win the match. A player may not play as hard or as well as he or she could if not using his or her best efforts. The player may not run as hard as he or she could to return marginal balls, or may take greater risks than sensible in going for shots.

62.3 Some players take in advance, and act on, an active decision deliberately to lose or to retire from the match. A player may deliberately lose particular points and so the match, so that he or she is knocked out of the event. The player may deliberately serve a double fault, or deliberately push a shot long or into the net, or deliberately not reach a shot to return it. A player may feign or exaggerate injury and retire from the match, and so from the event. Such decisions and their execution are regarded by some as a legitimate method of controlling their own schedule and maximising their earnings from the professional sport.

63. An expression in common usage in this context is 'tanking'. The difficulty with this expression is that it is used by different people to mean different things, and it on any basis covers a wide range of possible actions and contexts. The Panel therefore seeks to avoid using it in the Interim Report of the Independent Review of Integrity in Tennis and this Record of Evidence and Analysis.

Failure to use best efforts

64. The Codes of Conduct of the International Governing Bodies of professional tennis (the "International Governing Bodies[43]") require a player to use best efforts[44]. That rule exists because the creation of an exciting and vibrant sporting competition with the outcome based on the winner's sporting performance on the day, depends on both players trying their hardest to win. It covers a wide range of actions, and may not even be confined to a situation where a player does not use best efforts to win the match.

65. Taking in advance and acting on a deliberate decision to lose or to retire is at the least a failure to use best efforts, and, in the Panel's opinion, a distinct breach of integrity, addressed in Section B below.

66. As also addressed in Section B below, that decision must however be distinguished (though it may often be difficult to do so) from the circumstances where a player ceases during the course of a match due to tiredness, disillusion or injury, or perhaps the elements of the player incentive structure described above, to use best efforts to win contrary to the sport's Codes of Conduct.

67. And again as addressed in Section B below, both of the above must in turn be distinguished (though again it may often be difficult to do so) from the following, which often will not constitute even a failure to use best efforts:

67.1 The circumstances where a player prioritises certain events over others, plans his or her season so as to peak physically and mentally at a critical moment, conserves energy or avoids injury, and so is perhaps less concerned if he or she progresses only a short way in a particular event, than he or she would be if the same happened in another event.

67.2 The circumstances where a player picks up or exacerbates a genuine injury during the course of a match, but instead of retiring continues to play in a way that protects the injury and avoids making it worse. Such a player is continuing to use best efforts to win, but within the new parameters set by the genuine injury.

43 The ITF, the ATP, the WTA and at that time the Grand Slam Committee (later to become the Grand Slam Board) made up of the four Grand Slams.

44 The Official Grand Slam Rulebook, 2018, Article III, Section E; The ATP Official Rulebook, 2018, Section VIII, Part 8.03 (M)(4)(h); The WTA Official Rulebook, 2018, Section XVI, Part D (4)(a)(ix), available at: http://www.wtatennis.com/wta-rules [accessed 9 April 2018]. The ITF Pro Circuit Regulations, 2018, Code of Conduct, Article IV, Part M, available at: http://www.itftennis.com/procircuit/about-pro-circuit/rules-regulations.aspx [accessed 9 April 2018].

67.3 The circumstances where a player suffers a genuine collapse in concentration or self-confidence. Tennis is as set out above, a 'head game', and at the highest levels winning may often be largely attributable to one player playing so as to 'get inside the other's head'.

67.4 Tactical decisions during the course of a match not to, for example, chase a set that is effectively lost, but rather to conserve effort for the next set, in order to win the match. Such tactical decisions cannot obviously be categorised as a failure to use best efforts to win: on the contrary such decisions are aimed at winning the match through the best application and distribution of effort. This may of course raise particular issues for bettors in the context of spot betting on points or games or sets, or spread betting on margins, and a deliberate loss of a game or set for corrupt reasons connected with gambling would constitute spot-fixing just as much as a deliberate loss of a match for such reasons would constitute match-fixing.

Players' perception that they must play even when too injured to do so

68. A separate but related unintended consequence of the incentive structure is that players may perceive that they must play even when so injured that they are incapable of competing or even playing.

69. In most instances where a player is so injured as to be incapable of competing or even playing, he or she will not play for fear of further exacerbating the injury, and because there is no prospect of winning. However, it is clear that in some instances, one or more of a combination of circumstances arising principally out of the structure of professional tennis and the incentive structure, lead players to perceive that they would in fact be better served by playing despite their level of injury. The circumstances include but are not confined to the following.

70. The first is the fact that prize money is paid for losing a round, not winning it:

70.1 Accordingly, a player with a place in the first round of a main draw will earn the prize money for that round even if he or she takes the court and is either forced to retire swiftly, or cannot compete. So too will a player with a place in the first round of a qualification competition.

70.2 At some events, as is evident from the tables of prize money[45], very significant sums are paid for losing the main draw first round: for example, at Grand Slams, the amounts are A$50,000, €35,000, £35,000, and US$50,000; at ATP Masters 1000 events, the amounts are between US$13,690 and about US$22,125; and at WTA Premier Mandatory events, they are between US$13,690 and US$17,453. What is more, significant sums are even paid at some events for losing the first round of qualification: at Grand Slams, the amounts are A$6,250, €5,000/€3,500, £4,375, and US$8,000; at ATP Masters 1000 events, the amounts are between about US$1,500 and US$1,825; and at WTA Premier Mandatory events, the amounts are between US$2,085 and about US$2,650. Even at the upper ATP Challenger levels, over US$1,000 is paid on losing the main draw first round.[46]

70.3 In an environment where prize money is low relative to costs, losing out on first round prize money (main draw prize money in particular) may have a significant negative financial impact on the player.

71. Second, so too at least in singles, ATP and WTA ranking points are earned from losing in the first round at Grand Slams and the largest Tour Level events, as is evident from the tables of ranking points[47].

45 Chapter 2, Appendix 1.

46 As stated at paragraph 55.1 above, The ATP and The Grand Slam Board have however sought to address this issue by, as of 2018, adopting rules that give players who have withdrawn because of injury some portion of the prize money.

47 Chapter 2, Appendix 1.

72. Third, the player's entitlement to the place in the first round of the main draw or qualification draw arises from their ranking:

    72.1 A player who works hard all year to build up their ranking, reaps the reward in the form of their entitlement to compete in events that provide greater reward.

    72.2 Some players may perceive that those rewards, even limited to what is available in the first round, are their entitlement.

73. Fourth, for those players where appearance fees are available, the fee or part of it may be payable just on appearance.

74. As such, the circumstances in which a player perceives that he or she must play even when incapable of doing so, largely arise where the player is participating at one of the Tour Level events, where the first-round financial rewards are sufficiently great to encourage the behaviour.

75. The consequence is that a player may take the court and then either retire swiftly, or purport to play while actually incapable of doing so, or at least of competing. A player taking the court when he or she is unfit to play not only risks the player's health, but also precludes the match from constituting a genuine sporting contest, and consequently the rules of the sport prohibit this[48]. Further, a player acting in this way denies a place to a lucky loser.

76. Taking in advance and acting on a deliberate decision to take the court but then to retire due to an injury that renders the player incapable of playing or competing is, in the Panel's opinion, a distinct breach of integrity.

77. To be distinguished from this is a player carrying a minor injury but nevertheless seeking to play through it, but then succumbing and having to retire. At some level or another, many professional players are playing through some sort of injury that falls short of an injury that renders them incapable of playing.

Difficulty in progressing from one level of competition to another

78. While the very talented player will progress relatively quickly from the ITF level to Tour Level, there is a perception among some that there is 'bottle neck' at the top of the ITF level or ATP Challenger level, through which it is hard for many players to pass on to Tour Level. This is attributed to the relatively low number of points that can be secured for playing well lower down the ladder, and the relatively high number of points that can be secured even though a player is not winning many matches higher up the ladder. The perception among some is that once players attain a higher ranking and so can enter more Tour Level events, they have a degree of 'buoyancy' that means that it is hard for possibly better players lower down to replace them.

The continued presence of players not talented enough to advance

79. The intended consequences of reward for performance on an objective scale with a transparent route of progression based on performance, have some unwelcome corollaries:

    79.1 While the talented advance, the less talented do not. The incentive structure allows players to reach a certain level, still earning enough points to maintain their access to tournaments at that level, but never earning enough points to advance.

    79.2 The breadth and frequency of opportunities, intended to facilitate entry of emerging players, also allow players who will ultimately not advance, nevertheless to keep trying to do so.

    79.3 So too, the system allows for the gradual descent through it of formerly successful players.

48 Paragraph 110 below.

79.4 This creates a cohort of so called 'journeyman' players who earn just enough to get by, or to do so with outside financial assistance, and who like the lifestyle of a professional tennis player.

79.5 It creates a cohort of players who earn very little, but are funded by others to keep chasing a dream with little prospects of converting it into a reality.

79.6 It creates a cohort of players nearing the end of their careers, who see their income rapidly declining in relation to what it had been before.

80. These circumstances have the result that the same prize money and ranking points have to be shared by more players, slowing the progress of the rising stars through the lower levels of the sport. It also creates jaundiced and disillusioned players.

Inadequate facilities at nominally professional events

81. The intended consequence of a wide number of opportunities for players around the world to seek to start progressing up the ladder, has a further unwelcome corollary. The proliferation of small tournaments at the lowest levels, with low funding, inevitably means that many are played at venues with inadequate facilities, where in particular it is not possible effectively to implement an accreditation policy.

Mechanisms by which the unintended consequences of the player incentive structure make the sport more susceptible to match-fixing and other breaches of integrity

82. Part of the explanation (though not excuse) for some players succumbing to temptation to match-fix or to breach integrity in other related ways lies in the aspects of the player incentive structure described above, including the system of access to 'jobs', the tennis calendar and scheduling, the ranking points system, the level of prize money relative to cost, appearance fees and corollary penalties for withdrawal.

83. These elements operate on different players in varying ways and to varying extents, but individually or in combination they greatly increase the sport's susceptibility to match-fixing and related breaches of integrity.

84. Players who are not breaking even or who are making a loss from the sport[49], and who can lose a match or part of it without affecting their rankings, will be more likely to bet on themselves to do so in order to make enough money to continue playing[50], and are more vulnerable to the advances of corruptors, than are players who are making money at the sport. The motivation may not be greed, but rather dealing with impecuniosity. At the higher levels of the professional sport, the Grand Slams and Tour Level, the rewards are relatively high[51]. To throw a match at one of these events would generally be disadvantageous in terms of lost prize money and ranking points, absent a very considerable financial inducement, and players are less likely to find themselves in financial difficulties. At this level, while more money could be obtained, in particular, by agreeing to a fix that does not involve losing the match, the need to do so is less, as players can afford to continue playing. At the lower levels of the sport, the ATP Challenger and the ITF Pro Circuit, however, the rewards are low and costs are relatively high, and so the temptation and perceived need to bet or to agree to fix is higher. The only perceived alternative for some is to stop playing. Players may justify such actions to themselves on the basis that the sport is not providing them with a sufficient living despite their hard work, and so they are 'entitled' to supplement their earnings as they can.

49 And who are not funded by a national federation, a sponsor or family members.

50 At the lowest level, players may bet on themselves to lose simply to fund a flight home from a tournament abroad. Once that small step is taken, it is a smaller step to preparedness to undertake more comprehensive revenue generation, initially self-funded. And it is then a smaller step to a preparedness to generate revenue from fixing for others.

51 Chapter 2, Appendix 1 for details of the prize money and ranking points available at Grand Slams level and Tour Level.

85. The low level of prize money relative to cost has the further effect that young players may seek funding from their families, or from sponsors who may be wealthy individuals. Some of the latter, and even to an extent some of the former, may seek to offset the cost by earning money by betting. A few may move from betting on their players to win, to betting on them to lose a match on the basis of inside information or, on occasion, on the basis of an agreement to lose the match or part of it. The player's obligation or perceived indebtedness to the funder may make it difficult to resist requests to act in this way.

86. Players who perceive that they would be better served by losing a match, and have taken a decision deliberately to lose for their own reasons unrelated to betting, are then more susceptible to the possibility of earning a little extra money on the side, whether by betting themselves, or by taking payment to bring about an outcome that facilitates betting. Players may justify their actions to themselves on the basis that they are doing nothing wrong, because they would not have won the match anyway. Where a player's moral compass has already become skewed enough that he or she is prepared to decide in advance deliberately to lose for his or her own reasons, it is a much smaller step to take to a preparedness to bet or to fix.

87. Less talented players who become stuck at the lower levels, without any prospect of advancing, and former high ranked players who are descending through the rankings at the end of their career may become disillusioned as well as financially insecure, making them more susceptible to betting and to entertain approaches to fix. Such players may seek to make as much as possible while they can, before they are forced to give up. Again, such players may justify such actions to themselves on the basis that the sport has not provided them with a sufficient living despite their hard work, and so they are 'entitled' to supplement their earnings as they can.

88. The phenomenon of players playing when too injured to compete, in order to earn substantial losing prize money for example in the first round of a Grand Slam, again creates a situation where the outcome is known in advance, and the opportunity to fix arises, for example via the provision of inside information regarding the injury or by agreeing in advance the margin of loss or the set scores.

89. Lastly, in the particular context of fixing to win, the difficulty in earning sufficient points to progress up the rankings described above, means that some players are more likely to succumb to the temptation of seeking to persuade another player to agree to lose than they otherwise would be. Low prize money relative to cost, and the fact that 'not all matches count', and the other factors set out above, mean that the other player may be more susceptible to be so persuaded, and may even make the initial suggestion him or herself.

Susceptibility arising out of aspects of the provision of official live scoring data

90. As described in Chapter 3, the provision of official live scoring data[52] derived from chair umpires instantly entering the score, allows betting operators to offer in-play betting markets where previously they would have been confined to offering pre-match markets, unless they sent unofficial scouts[53] to the event to report the score to them, or the score was available on a live broadcast or otherwise capable of being instantly 'scraped' from the internet. In-play markets are of greater interest to betting operators, and bettors, because they can see the match progress and so the odds change, the outcome is more immediate, and a wider range of bets can be offered and taken[54]. The provision of official live scoring data where it would not otherwise be available has resulted in a massive increase in the number of matches on which betting markets are offered, in particular at the lower levels[55].

91. At its simplest, the more betting opportunities there are, the more opportunities to fix there are, and the more potentially corrupt or corruptible players there are.

52 "Official live scoring data" means that which is 'sold' by IGBs to data supply companies (and then on to betting operators) on an official basis (i.e. pursuant to a contractual relationship between the IGB and the data supply company). "Unofficial live scoring data" – means that which is obtained other than pursuant to an official live scoring data agreement. This includes data obtained by unofficial scouts at venues, from broadcast streams and 'scraped' from online sources.

53 A "scout" is an individual who collects scoring data on an 'unofficial' basis at the venue by utilising their own data collection technology.

54 Chapter 3, Section D(1).

55 Chapter 13, Section A(1).

92. This effect is however compounded where the matches in respect of which the official live scoring data is sold are matches involving players who are more susceptible to corruption than players involved in other matches. The sale of official live scoring data to all ATP Challenger events (some 10,000 matches[56]) and then to the ITF Pro Circuit and ITF Futures events (some 60,000 matches[57]) has not only meant that very many more matches can be made the subject of betting markets, but also that the pool of players on whose matches betting markets can be offered, has been expanded to include precisely those players that are most susceptible to corruption or other breach of integrity.

93. The mechanism for the provision of official live scoring data, coupled with the facility to make instant communications and the growth of in-play markets, also makes the sport more susceptible because it facilitates practices which could be considered corrupt.

94. First, as described in Chapter 3, the delay between a point ending on court and the umpire entering the score may be exploited by courtsiders[58] at the event either betting themselves over a hand held electronic device or communicating the result of the point to another to enable them to bet, in each instance with knowledge not yet shared by the betting operator or betting exchange counterparty. While betting on the next point or next game might not be particularly lucrative due to betting operator limits, the point may be of sufficient importance to affect the odds on the outcome of the set or match, for example if a significant break of serve is won, and fore-knowledge of that shift in odds may provide a sophisticated bettor the opportunity to make a significant reward. While this does not involve corruption by any player or official, it is arguably cheating. The absence of in-play betting markets prior to the provision of official live scoring data, meant that there was no opportunity to courtside other than at those higher-level matches that were scouted or broadcast live or otherwise capable of being instantly 'scraped'. At those high-level matches courtsiding did occur and was easier before official live scoring data of those matches became more readily available to betting operators.

95. Second, the mechanism makes chair umpires more susceptible to corruption[59]. At its simplest, they may be persuaded to agree to delay entering the score to increase the time available to be exploited by a courtsider. Or they may themselves bet on a hand held electronic device before entering the score. Or they may communicate the score to others so that they can bet, and ensure a sufficient delay for them to do so. Or they may enter fictitious elements into the scoring in accordance with a pre-agreed plan, which do not affect the actual result or even the margins in sets or games, for example by adding in or taking away deuces or misreporting the score of a game. None of this could be done before the provision of official live scoring data based on the score entered by the umpire.

96. Some of the same factors that make players more susceptible to corruption, equally make chair umpires more susceptible. Perhaps the most important of these factors are:

    96.1 The ease with which the umpire's conduct can be carried out without detection. This factor varies significantly from level to level. At the higher levels, a delay in entering the score will be noticed immediately because it will be reflected in a delay in the score coming up on the electronic scoreboard, there will be line officials and other officials there, the match will be video recorded and possibly broadcast, and there will be spectators there. At the highest levels, there are secondary or even tertiary live scoring data streams for broadcast and internet purposes,

56 In 2016, 10,213.

57 In 2016, 59,496.

58 A "courtsider" is an individual viewing a match at the venue who uses mobile technology to transmit play-by-play scoring information to a third party as quickly as possible. For the purposes of the Review, the practice of courtsiding shall be distinguished from that of unofficial data collection. Unofficial data collection and courtsiding are two concepts that are often conflated, leading to confusion about the distinction between the two. For the purposes of the Review, the term courtsiding is used to describe the practice by which individuals seek to establish a time advantage that provides an opportunity to capitalise on resulting odds discrepancies in a market that has yet to digest the new data, an advantage that is then used against betting operators and on betting exchanges. References to unofficial data collection, on the other hand, relate primarily to those collecting data via the methods outlined above on behalf of data companies (that do not have an official data deal) or betting operators (that choose to collect data themselves rather than source their data from official providers of that data). See Chapter 3(E) for further discussion on the practice of courtsiding.

59 Paragraph 134 below. See also Chapter 10, Part 5, Section A(10) and Chapter 13, Section D for decided disciplinary cases in relation to corrupt chair umpires.

which can be used to check the umpires' performance. At the lower levels in contrast, fewer or none of these characteristics are present, and just as a player may feel that he or she can take deliberate losing actions without fear of observation, so too a chair umpire may feel that he or she can delay or misrepresent the score without fear of observation.

96.2 The better remunerated, the more qualified, and the more invested in the officiating system the chair umpire is, the less likely he or she is to succumb to temptation to act corruptly in this way. This factor too varies significantly from level to level. Whereas chair umpires at the higher levels are well remunerated, well qualified and beneficiaries of the officiating system[60], chair umpires at the lower levels are paid much less, are not required to have the same level of qualification, and may feel that the officiating system is opaque and that it is difficult to rise up through it. This can all lead to disillusion and increased susceptibility to corruption.

Susceptibility arising out of aspects of facilities and organisation at events

97. There are a number of aspects of the facilities and organisation at the locations where events are held that make the sport more susceptible to corruption and that vary in significance from level to level.

98. As is apparent from the discussion above, the absence or diminished presence at the lower levels of officials beyond the chair umpire, of spectators, of video recording or broadcast, of secondary live scoring data streams and even of an electronic scoreboard at some levels, mean that players and chair umpires may feel that they can engage in corrupt conduct without fear of observation.

99. Further, the level of qualification and experience of the officials (and in particular the chair umpires) affect the likelihood of player corruption or a related breach of integrity on the court occurring in the first place, it being identified, and of any action being taken. The more experienced and better qualified the chair umpire, the less likely a player is to take a risk, and the more likely the official is to notice and act on improper conduct. Since chair umpires at the lower levels have correspondingly less experience and lower qualifications than at the higher levels[61], this is a further reason why such conduct occurs more at the lower levels than higher up. This issue extends beyond the chair umpire to the other officials, in particular the supervisor[62]. At the lower levels, the few officials available present at an event are already overstretched, and have little capacity to ensure that there are no breaches of integrity.

100. The physical environment in which matches are played at the lower levels also makes the sport more susceptible to corruption. At the higher levels, events are staged at venues that have control over entry, and that issue a ticket in return for payment. Spectators are effectively segregated from the players. In contrast at the lower levels, events take place at venues that may be public or have no method of controlling entry[63]. Other venues at the lower level include private clubs, where members have access, and many of which have no effective control over access by others. At the lower levels, most events have more limited (if any) security staff than at the higher levels[64]. There is also much less or no segregation of the players from others at the event, and there is nothing to prevent people from approaching players and even talking to them when they are on court, not only when practising but also when competing. Where there is no such control over entry and limited or no segregation, it is easy for would be fixers or those seeking inside information for betting purposes to secure access to players and such information and for bettors to attend events and to bet with impunity on hand held electronic devices while there. There may even be bettors at events who seek to intimidate or

60 Chapter 2, Section C(6) for a description of the remuneration and required qualification level of officials at specific events.

61 Chapter 2, Section C(6).

62 Chapter 2, Section C(6). While the supervisor even at the lowest of Tour Level events must be a gold badge holder, there is considerable variation in the level of experience of supervisors at the different levels of events.

63 For example, some ITF Pro Circuit and Futures events take place in public parks.

64 Chapter 13, Section B(1).

castigate players if they do not play well, or play too well, when measured against the bets the bettor has placed.

101. In addition, at the higher levels accreditation systems[65] are operated that aim to ensure that unsuitable individuals are not able to secure access to player areas, such as the player restaurant or player lounge, still less the locker room or rest areas. People applying for accreditation are only accredited for the areas appropriate to their role, and those deciding whether to issue accreditation consult the 'no credentials list'[66] and do not issue accreditation to individuals on it. Those individuals range from those who have been disciplined for corruption offences to courtsiders who have been identified. This goes some way to making the player environment a safer one both physically and mentally, and to limiting corrupt approaches and the leakage of inside information. In contrast at the lower levels, or some of them, accreditation systems are not operated at all[67], and there may not even be any segregated areas (still less, secure) areas at all for players: for example, at private clubs, the members are likely to have access to the same locker room as the players. There is little or no effective control in respect of access to players or inside information, making the sport at these levels more susceptible to corruption.

65 Chapter 2, Section E(1).
66 Chapter 2, Section E(2).
67 Chapter 13, Section B(1).

B CONTRIVING THE RESULT OF A MATCH FOR OTHER REASONS

102. As described above, it is an unintended consequence of the player incentive structure and the organisation of professional tennis that in some circumstances players perceive that they would be better served by losing a match that they are about to play, and some players consequently take in advance and act on a deliberate decision to lose or to retire that is unconnected with betting or any other corrupt purpose. A further unintended consequence of the player incentive structure is that some players feel constrained to play when unfit to compete or even to play, but decide in advance either simply to go through the motions and lose, or retire, again unconnected with betting or any other corrupt purpose. A number of the factors that make the sport particularly susceptible to match-fixing set out above also therefore make it susceptible to players contriving the result for other reasons. Preparedness to contrive the result for other reasons may lead on to preparedness to match-fix.

103. Acting on such prior decisions to lose a match or to retire for reasons other than betting or other corrupt purposes, is itself inconsistent with the nature of competitive sport and a distinct serious breach of integrity, albeit of a different quality than match-fixing in the sense described above, as well as a breach of the requirement to use best efforts in the International Governing Bodies' Codes of Conduct.

104. While the TACP provides that "*No Covered Person*[68] *shall, directly or indirectly contrive or attempt to contrive the outcome or any other aspect of any Event*"[69], that language has not been construed or applied by the TIU as prohibiting a player from contriving a match for reasons unrelated to betting or other corrupt purposes[70].

(1) HARM CAUSED TO TENNIS BY CONTRIVING THE RESULT FOR OTHER REASONS

105. Acting on a prior decision to lose a match or to retire for reasons other than betting or other corrupt purposes involves the same or similar actions on the court as does a prior decision to match-fix. In both instances, the player either misses shots or fails to reach his or her opponent's shots, and in both instances the result is contrived and not a genuine contest. This is the case not only where a player has decided deliberately to lose, or to retire when not genuinely injured, but also where a player who is so injured as to be incapable of competing or even playing has decided nevertheless to take the court but then to go through the motions and lose or retire. In the latter case, the player may not in fact be deliberately missing shots or failing to reach his or her opponents' shots because he or she is incapable of doing so. However, the result is equally contrived, and there is equally no genuine contest.

106. Significant harm is therefore caused to tennis by players making and acting on such decisions. Like match-fixing, such conduct undermines the defining characteristic of the sport as a genuine sporting contest between players doing their best to win, and so cheats other players, the public, tournament organisers, broadcasters, sponsors, and the sport as a whole. The perception that contests may not be genuine will erode public interest in, and therefore the commercial basis for, the professional sport. And again, such conduct discourages young athletes from taking up the sport, and causes the grass roots of the sport to wither.

68 TACP (2018), Section B.6.

69 TACP (2018), Section D.1.d.

70 Chapter 10, Part 2, Section C(1).

107. In addition, toleration of the behaviour not only makes the behaviour itself more likely to take place, but also makes other more serious breaches of integrity by the player or others more likely to take place, for amongst others the following reasons:

107.1 The preparedness of players to make and act on such decisions pollutes the atmosphere or culture of the sport, converting it from one where everyone always tries his or her best to win to one of cynicism and self-interest[71], creating a breeding ground for other breaches of integrity.

107.2 More narrowly, the behaviour makes it a shorter step for some players to take to embark on the commission of progressively more serious breaches of integrity.

107.3 If a player has already decided that it is in his or her best interests to lose a match for reasons unconnected with betting, he or she may be tempted to make small amounts of additional money to finance his or her continuing to play, by betting on him or herself to lose, or by asking a friend or relative to bet on his or her behalf[72]. A player for whom the player incentive structure has failed to provide enough money to cover costs, may feel that he or she is doing nothing (or not much) wrong in betting on a result because the player incentive structure has effectively created the preordained outcome – not the players involved in the match[73]. Such a player would (or might) not, initially at least, have considered deliberately losing in order to bet on him or herself to lose. However, once the line of betting on a preordained outcome is crossed, the true reason for deciding to lose on the next occasion becomes less clear. The next step of the player losing in order to bet on that outcome may be so small as to be imperceptible, and the player may easily deceive him or herself as to the true reason for his or her actions.

107.4 The player may also inform another player in his or her social group of his or her intention to lose a match for reasons other than betting, with the result, intended or unintended, that the second player bets on the first to lose, again in order to finance him or her continuing to play. Again, the second player may feel that he or she is doing nothing (or not much) wrong if the first player intended to lose anyway, and the second player is not betting on him or herself to lose but on the first player to do so. The foundations are laid for reciprocal arrangements between players to tell each other when they are going to lose for their own reasons, so that all can bet in order to finance their continuing to play.

107.5 Such decisions in advance create inside information that would not otherwise exist. Those connected with the player, or others who find out the information through the inadvertence or deliberate action of the player or those connected with him or her, may be tempted to act on it or to pass it on for betting purposes[74]. A player's family may be tempted to ease the burden of financing the player by betting on him or her to lose when they learn that he or she has decided to do so for reasons unconnected with betting. A player's 'sponsor' or agent may learn of the player's intention and bet in order to recover some of the initial outlay made. A coach may be tempted to make some additional money on the basis of the information. Each may pass the information on to others, inadvertently, or deliberately for reward or otherwise. The foundations are laid for the family or sponsor or agent or coach, or others, actively to seek out information as to when a player intends to lose for reasons unconnected with betting, so that they may bet. Beyond that, the foundations are also laid for those people actively to encourage the behaviour by the player, and beyond that for them actively to encourage the player to lose deliberately so they can bet on that outcome.

71 Ben Gunn and Jeff Rees, 'Environmental Review of Integrity in Professional Tennis' (May 2008), page 14, paragraph 2.44.

72 Richard Ings, 'Report on Corruption Allegations in Men's Professional Tennis' (June 2005), page 36, paragraph 203, Appendix: Key Documents.

73 Richard Ings, 'Report on Corruption Allegations in Men's Professional Tennis' (June 2005), page 36, paragraph 207, Appendix: Key Documents.

74 Ben Gunn and Jeff Rees, 'Environmental Review of Integrity in Professional Tennis' (May 2008), page 14, paragraph 2.46; Richard Ings, 'Report on Corruption Allegations in Men's Professional Tennis' (June 2005), page 38, paragraph 217, Appendix: Key Documents.

107.6 Others may independently but correctly conclude that such a decision will have been made by a particular player on a particular occasion, and bet on that basis. Those others may draw on their knowledge of the player, and the combination of circumstances faced, to reach the same conclusion as the player that he would be better served by losing the match, and to assess that the particular player will have decided deliberately to lose. Absent the player's past decisions to deliberately lose, there would be no basis for such an assessment.

107.7 However, the information is obtained, the match is deliberately lost and that outcome is bet upon in the knowledge that it will be lost, producing the same results on the betting market as if the match had been fixed for betting or other corrupt purposes.

107.8 In this environment, the further step of a player agreeing for reward deliberately to lose to allow others to bet on that outcome is again a smaller one than it would otherwise have been, if the player had never embarked on the course of deliberately losing matches for other reasons.

(2) THE DISTINCTION BETWEEN A PLAYER CONTRIVING THE RESULT AND OTHERWISE FAILING TO USE BEST EFFORTS

108. A player's failure to use best efforts on the court (and the use of the term 'tanking') covers a wide range of circumstances[75].

109. As set out in Chapter 1, the factual ambit of this Review is confined to the situation where a professional tennis player does not try to win a match, or part of it. Plainly however, the circumstances where this happens, and the player's motivation, vary significantly. While some circumstances do involve a breach of integrity that falls (or should fall) to be dealt with by the TIU under the TACP, some do not. Those that do involve breaches of integrity of varying seriousness. Those that do not may still constitute breaches of the obligation to use best efforts contained in the International Governing Bodies' Codes of Conduct.

110. The starting point, therefore, as identified in Section A above, is that there are some behaviours that, although they may not involve a particular player using the maximum effort he or she can reasonably be expected to exert at a particular moment in a match, nevertheless may not constitute even a failure to use best efforts contrary to the International Governing Bodies' Codes of Conduct, still less a breach of integrity at the level to be dealt with by the TIU under the TACP:

110.1 First, the maximum effort that can reasonably be expected of a player will not be the same at different points in the season, or at different points within a period of events on a particular surface. Players have to build up their strength and performance on a surface progressively to reach the peak of their match fitness, and cannot be expected to play continually at that level. As part of that build-up, players have to prioritise certain events over others and plan their seasons so as to peak physically and mentally at what they have assessed to be the critical event for them. That process may inevitably involve a player conserving energy or avoiding injury during the build-up, so as not to prejudice performance at the critical moment. But such players are not trying to lose. Nor are they not trying to win or not using best efforts, properly understood. They are trying to win, and using best efforts, within the confines of the level of performance they have reached, and without risking exhaustion or injury. It is true that a player playing in an event that he or she regards as preparatory for a more important event, may be less concerned if he or she progresses only a short way in the preparatory event. But that is different in intention and execution from setting out to lose, not trying to win, or not using best efforts.

75 Ben Gunn and Jeff Rees, 'Environmental Review of Integrity in Professional Tennis' (May 2008), page 13, paragraph 2.40, Appendix: Key Documents. The Panel agrees that there is a spectrum, but differs slightly in what behaviour falls where on that spectrum, on the appropriate classification of it, and on how it falls to be dealt with.

110.2 Second, a player may pick up or exacerbate an existing injury during a match, and many players often play with some level of chronic injury or with an injury that is gradually on the mend. In such circumstances, the maximum effort that can reasonably be expected of a player will not be the same as when the player is fully fit. The injury itself inhibits performance, and the player competes so as not to exacerbate it. But again, such players are not trying to lose; nor are they not trying to win or not using best efforts. They are trying to win, and using best efforts, within the confines of the performance they are capable of in the light of their injury.

110.3 Third, a player may lose concentration or self-confidence. Players are not robots, and may not in a particular instance be able to overcome such a psychological set-back. While such players might not be exerting maximum effort, they too might be seeking to win, and to use best efforts, within the confines of the performance they are capable of giving in the light of their mental state.

110.4 Fourth, there are legitimate tactical decisions within the context of a match. For example, if a player has gone a break up in a set, it may be a legitimate choice not to chase after a further break, and rather to conserve energy to ensure that service games are held. Equally, a player may legitimately decide to ease off in a set that is likely to be lost, in order to increase the chances of ultimate success. In each instance, the player is not trying to lose the match or even part of it and the player is still trying and using best efforts to win the match, although he or she might be characterised as not trying to win a particular part of it.

111. These behaviours are ones that may indeed be legitimately described as 'a part of the game', in the sense that they are inherent in the sport and the way that it is organised, and do not (absent anything else[76]) involve players not trying to win, or not using best efforts, properly understood.

112. The first level of problematic behaviour arises where a player ceases during the course of a match to try to win, or to use best efforts to do so, for example because the player incentive structure and the organisation of professional tennis have put great demands on the player physically and mentally. At the end of a long series of events, a player may become tired and disillusioned. He or she may well want to go home. If a match begins poorly, the player may succumb to that tiredness and disillusion, and cease to use best efforts to win. The player may go for marginal shots, and stop trying to reach his or her opponent's shots. It is not so much that the player is not trying to win, as that he or she has ceased to care. In addition, a player may due to poor form, or chronic injury, or lack of confidence, begin to perceive that a match is not winnable, and so cease during the course of a match to use best efforts to win. The player gives up. It is possible in such circumstances, that the player begins during the course of the match actively to try to lose to accelerate matters. In some instances, these behaviours may be extreme and visible to all.

113. In the view of the Panel these behaviours, while perhaps on occasion understandable, do constitute (absent anything else) a failure to use best efforts contrary to the International Governing Bodies' Codes of Conduct. Professional tennis players owe an obligation, under those rules and to the stakeholders in the sport, always to use their best efforts. They are paid to play tennis to the best of their ability and capacity, and they have a responsibility to do so within the rules. It is not open to them to treat their matches as if they were playing recreationally, whatever the underlying reasons. While these behaviours may be 'a part of the game' in the sense that they happen, they should not be part of the professional sport.

76 Each case will be different, and the assessment of whether there has been a failure to use best efforts will be fact driven.

114. The next level of behaviour is where a player contrives the result of the match for reasons other than betting or other corrupt purposes by making and acting on a decision in advance deliberately to lose or retire. As set out above:

114.1 The player may make and act on such a decision due to the player's perception that he or she will be better served by losing, or due to other personal reasons.

114.2 The player may take the court in the knowledge that he or she is too injured to compete or even play, having decided in advance either simply to go through the motions and lose, or retire.

115. The next two types of behaviour each involve a player making and acting on a decision to lose a match or part of it for corrupt purposes.

116. First, players may make in advance and act on such a decision for non-betting but still corrupt purposes, such as to allow their opponent to win ranking points in return for a share in the additional prize money earned. Again, this involves a failure to use best efforts that if identified can be dealt with at least in the first instance as on court offences and aggravated offences under the International Governing Bodies' Codes of Conduct, but which is already properly also capable of being dealt with by the TIU under the TACP. Depending on the facts, losing deliberately for reward and to advance another player's interests may in some instances be more serious than some instances of losing for betting related reasons. For example, being paid to lose a match to allow another player to gain ranking points, which will adversely affect a third player, may be regarded as more serious than a player losing a set for betting purposes but going on to win. In any event, it may well be that a player who is prepared to lose a match for reward and to advance another player's interests may also bet himself, and communicate the preordained result to others to enable them to bet[77].

117. Second, at the far end of the range of circumstances, a player may make and act on a decision in advance to deliberately lose a match or part of it for betting purposes. Again, this involves a failure to use best efforts that if identified can be dealt with at least in the first place as on court offences and aggravated offences under the International Governing Bodies' Codes of Conduct, but which is also capable of being dealt with by the TIU under the TACP.

77 As happened in the Lindahl case, see Chapter 10, Part 3, Section C(5).

C USE AND PROVISION OF INSIDE INFORMATION

118. Betting turns on the betting operator's setting of odds that reflect its calculation of the likelihood of a particular contingency arising, and the bettor's perception of those odds against his or her own calculation of that likelihood. If the odds are too long, the bettor will be less likely to risk his or her money. Integral then to the setting of the odds and to the bettor's preparedness to bet, is the information that each has as to the likely outcome. Information that is public is available to both of them, and can be factored into both their calculations. If on the other hand, either of them can obtain information that is not public, or inside information[78], from the player or his or her circle or someone else who has obtained it, that information is of great value to the holder in their calculations because it is unknown to the other.

119. The quality of that inside information varies between, as described above, high quality information as to a preordained result because a player has decided to lose a match for his or her own reasons, which leads to very high bettor confidence, to low quality inside information. For example, as to the general fitness or mental state of a player, which is merely additional information to be factored into the calculation of risk, and on which it would be unwise to place too much reliance. In between, there is inside information which, while not indicating that a result is preordained, indicates in context that a particular outcome is much more likely than it would otherwise be assessed to be: an example might be if one of two players otherwise regarded as comparable in ability on the surface and in form was known to have sustained an injury shortly before the match. Because using such inside information to bet or providing such inside information to others offers players or other participants an opportunity to make money, such behaviour is again one to which tennis is particularly susceptible for many of the same reasons why the sport is particularly susceptible to match-fixing, as set out above.

120. The use and provision to others of such information by players or others covered by the rules constitutes a serious breach of integrity, albeit again of a different quality to match-fixing in the sense described above.

121. The TACP currently provides that no Covered Person shall:

121.1 directly or indirectly, solicit or accept any money, benefit or Consideration, for the provision of any Inside Information; or

121.2 directly or indirectly, offer or provide any money, benefit or Consideration to any other Covered Person for the provision of any Inside Information[79].

122. For purposes of these rules, the TACP defines "*Inside Information*" as "*information about the likely participation or likely performance of a Player in an Event or concerning the weather, court conditions, status, outcome or any other aspect of an Event which is known by a Covered Person and is not information in the public domain*"[80].

123. The use and provision of inside information by players and others covered by the rules is harmful to tennis because it facilitates cheating at betting, harms the reputation of the sport by throwing in doubt the genuineness of the players' performance against the expectations of those not sharing the information, exposes players and others to pressures from those seeking inside information, and may lead to other breaches of integrity by players and others[81]. A Covered Person[82] who uses inside information breaches the prohibition on betting, and cheats at betting. In addition, a player

78 In 2014, the Council of Europe adopted the Convention on the Manipulation of Sports Competitions (CETS N° 215) which at Article 2.7 states that: "Inside information means information relating to any competition that a person possesses by virtue of his or her position in relation to a sport or competition, excluding any information already published or common knowledge, easily accessible to interested members of the public or disclosed in accordance with the rules and regulations governing the relevant competition." See Chapter 5, Section A(3).

79 TACP (2018), Section D.1.h-i.

80 TACP (2018), Section B.14.

81 The authors of the Environmental Review concluded that "the scourge of all sporting events in respect of integrity issues is the possible misuse of 'inside information' for cheating at betting". See Ben Gunn and Jeff Rees, 'Environmental Review of Integrity in Professional Tennis' (May 2008), page 19, paragraph 2.84 and Recommendation 10, Appendix: Key Documents and as described in Chapter 8, Section B(2). In Executive Summary paragraph 6, the authors identified "misuse of inside information for corrupt betting purposes" as one of the "5 principal threats to the integrity of professional tennis" identified by the Environmental Review. The Ings Report identified that "the most important factor driving the threat of corruption in men's professional tennis is the liquidity of the betting market and the opportunity to capitalize on that liquidity through inside information on player intentions to under perform". See Richard Ings, 'Report on Corruption Allegations in Men's Professional Tennis' (June 2005), page 38, paragraph 217, Appendix: Key Documents and as described in Chapter 7, Section A(4). See also the 2005 Ings Report at paragraphs 16, 19, 25, 139, 150, 207, 218, 244 and 250.

82 TACP (2018), Sections B.6, as addressed in Chapter 10, Part 1, Section B(2).

or other Covered Person who first provides inside information as to injury or form may be more readily persuaded to provide higher quality information if the player plans to lose for his or her own reasons, or the player may indeed be more readily persuaded to lose for betting purposes.

124. Some may take the view in this context that from a sport's standpoint the provision of inside information is a problem for the betting markets and not a problem for the sport, and does not form a legitimate basis for rules that inhibit players' and others' freedom to communicate what they want to whom they want. This view draws on the proposition that it is irrelevant to the integrity of the outcome of matches if some people have more information about what may or may not happen, and bet on the basis of that additional information. It also draws on the proposition that only betting operators and bettors who are incautious enough to presume that everyone has the same information suffer when it emerges that that is not the case. In addition, this view also draws on the proposition that information is readily available from numerous sources other than players and others covered by the rules and that it is not possible to identify, or legitimate to presume, that it has in fact originated from the player him or herself or those in his or her support team.

125. While again recognising that this view may be held by some, and agreeing that measures in response to the use and provision of inside information must be proportionate, and also agreeing that it is essential to protect players' and others' interests in being able to have normal conversations with one another and with others, the Panel does not share it.

    125.1 First, it must be recognised that betting with inside information is cheating at betting, and no sport should tolerate the facilitation of cheating. While those affected immediately are bettors and betting operators, that effect cannot be simply disregarded.

    125.2 Second, in the opinion of the Panel, the view disregards the knock-on effects on the sport of damage to reputation, the encouragement of further breaches of integrity, and the exposure of players and others to the attentions of those seeking information. The conclusion of the Panel is that such knock-on effects are significant because inside information is integral to corrupt betting activity.

    125.3 Third, the proposition that the information might come from another source is no basis for removing the prohibition on passing of information: again, there is benefit in setting the norm with which the rule-compliant will comply, and difficulty in enforcement is no justification for removal of the prohibition.

126. Inside information can also leak out to betting operators and bettors inadvertently without its being provided by any player, participant in tennis, or other person caught within the definition of Covered Person[83]. This may happen where someone is able illegitimately to observe a player's state of health or form, or to overhear a legitimate conversation, or otherwise to obtain inside information by subterfuge. One of the principal causes for such inadvertent leakage is inadequate facilities and organisation at events and, in particular, accreditation systems and arrangements for control of access to players, which should be tightened[84]. The unintended consequence of the player incentive structure that there are inadequate facilities and organisation at nominally professional tennis events is addressed above[85], and the inappropriate provision of accreditation is addressed below[86].

83 TACP (2018), Sections B.6, as addressed in Chapter 10, Part 1, Section B(2).

84 This was also identified in the 2008 Environmental Review and in the 2005 Ings Report. Ben Gunn and Jeff Rees, 'Environmental Review of Integrity in Professional Tennis' (May 2008), page 16, paragraph 2.58 and page 19, paragraph 2.83 and Recommendations 8 and 9, Appendix: Key Documents and as described in Chapter 8, Section B(2). The authors concluded that "access to players, officials and tournaments is a constant source of potential problems for the integrity of tennis, particularly in respect of inside information". In particular, "at lesser events, the risk of unauthorised persons gaining 'inside information' on a player's fitness/physical condition is increased because access provisions are less stringent". In Executive Summary paragraph 6, the authors identified "accreditation abuse and violation of credentials" as one of the "5 principal threats to the integrity of professional tennis" arising from the Environmental Review. The 2005 Ings Report identified that "it has been well established that gambling interests accessing player areas at tournaments is an invitation to corrupt conduct. The purpose of such gambling interests being at the tournament is to gain inside information from competing players to either assist in setting odds or to identify arbitrage-betting opportunities" and that "what is clear to this inquiry is that persons with an interest in gambling are attempting to gain inside knowledge of such player intentions with an aim to making windfall-betting profits": see Richard Ings, 'Report on Corruption Allegations in Men's Professional Tennis' (June 2005), page 26, paragraph 139 and page 38, paragraph 218, Appendix: Key Documents and as described in Chapter 7, Section A(4). See also the 2005 Ings report paragraphs 150 and 244, and Recommendation 7, as dealt with in paragraphs 248 to 250.

85 Paragraph 81 above.

86 Paragraph 146 below.

D BETTING BY PLAYERS AND OTHER PARTICIPANTS

127. Players and other participants in tennis, like any member of the public and even in jurisdictions where betting is restricted, have little difficulty in accessing betting operators' websites, or betting shops, in order to place a bet on tennis even if prohibited by the rules of the sport from doing so. The nature of the systems in place at betting operators is that there is little difficulty in establishing an account through which to bet in a way that does not lead to identification of the player: while some betting operators impose measures to identify their account holders, such as requirements to provide credit card details, contact details, and identification, an account can self-evidently be opened in the name of a friend or family member, through which the player bets. Bets can be broadly divided into four classes: bets other than on sports, such as poker and casino betting, bets on sports other than tennis, bets on other tennis players' matches, and bets on the tennis player's own matches. As set out above, because betting offers players or other participants an opportunity to make money, it makes tennis susceptible for many of the same reasons why the sport is particularly susceptible to match-fixing[87].

128. The TACP provides that "*No Covered Person*[88] *shall, directly or indirectly, wager or attempt to wager on the outcome or any other aspect of any Event or any other tennis competition*"[89].

129. Betting on tennis and, in particular, betting by a player on his own matches, is a serious breach of integrity, albeit of a different quality to match-fixing in the sense described above[90]. It is much less clear that betting on other sports, still less other types of bets, can be regarded as a breach of integrity.

130. A player betting on his or her own matches, and on the matches of others, is harmful to tennis because it: (a) facilitates cheating at betting, in that inside information may have been used; (b) harms the reputation of the sport by throwing in doubt the genuineness of the player's performance as he or she stands to profit from an outcome that is under his or her own control, or the control of someone he or she knows; (c) exposes players to pressures from those knowing the player is betting; and (d) may lead progressively to other breaches of integrity by the player and others. In particular, if players can bet on themselves, the temptation to ensure that the outcome matches the bet may be too great to resist, which may lead on to more systematic match fixing or spot fixing.

131. Some may however take the view that so long as a player does not bet on him or herself to lose, he or she should be able to bet on his or her own matches, and should certainly be able to bet on the tennis matches of others, or at least of others at different events or different levels. This view draws on the proposition that a player betting on him or herself to win will only enhance the genuineness of the contest. It also draws on the proposition that betting on the tennis matches of others plays no role in the outcome of those matches, and that a low ranked player will have no inside information in relation to a top ranked player, and rather is just bringing his or her expertise to bear in a manner open to any other bettor. Indeed, some may regard the ability to bet on tennis and so earn money to finance continued involvement in the sport as permissible and an inevitable consequence of the difficulty at the lower level in making enough money to continue playing. The view also draws on the proposition that such bets are 'harmless' and that to prevent players from enjoying a freedom open to others in this context is disproportionate.

132. While again recognising that this view may be held by some, and agreeing that measures in response to betting must be proportionate, the Panel does not share it. First, the view ignores the significance of the perception created by a player betting whether on his or her own matches or those of another tennis player, that something irregular may well

87 Paragraph 32 above.

88 TACP (2018), Section B.6, as addressed in Chapter 10, Part 1, Section B(2).

89 TACP (2018), Section D.1.a, as addressed in Chapter 10, Part 1, Section B(2).

90 Paragraph 26 above.

be occurring. Second, it also ignores the significance of players who bet on their own sport being exposed to corrupting forces. The only way to address that perception sufficiently so as to protect the reputation of the sport, and to prevent cheating at betting through the use of inside information, exposure to pressure from others, and the progressive move to future breaches, is to prohibit any betting by players on tennis. It is impossible to tell whether players have inside information in relation to any particular match, and the perception will likely be that they have such information if they are choosing to bet. Third, a limited prohibition only on betting on oneself to lose in no way addresses either spot-fixes, or the use of inside information. Fourth, similarly, a limited prohibition only on betting on oneself to lose in no way deals with the phenomenon of groups of players sharing with each other their intentions and other inside information in relation to particular matches. Fifth, it is more practicable (though still difficult) to police and enforce a complete prohibition on any betting on tennis, than on particular types of bet (which would be in practice unworkable). Sixth, a complete prohibition removes temptation from taking the apparently only small step to making a bet to lose, for example when a player is facing a much more highly ranked opponent and sees nothing wrong in making a bet that reflects the imbalance.

133. Betting on tennis by other participants in tennis causes similar harm to tennis:

133.1 In relation to those caught by the definition[91] of a Related Person[92], the perception will again be that they have benefitted from inside information, or if for example a coach bets on his or her own player, that the genuineness of the outcome is in doubt. Furthermore, the reality, or the perception, may be that such a person is betting on behalf of the player.

133.2 In relation to Tournament Support Personnel[93], the perception will again be that they have benefitted from inside information. Furthermore, at least some Tournament Support Personnel may in theory at least have been in a position to affect the likely outcome of a match, through the draw or schedule of matches.

133.3 In relation to officials, the 2018 TACP now specifically names them as falling within the definition of Covered Persons. Further, the Code of Conduct for Officials[94] not only prohibits officials from betting on tennis, but also requires them to comply with the TACP. If officials were allowed to bet on tennis, there would again be a perception that they have benefitted from inside information, and also a perception though perhaps not the reality that they can through their decisions on court affect the outcome of a match[95]. More particularly, due to the chair umpire's role in entering the scoring data that is provided live to betting operators, the chair umpire is in a position to delay or falsify the entering of the score facilitating cheating at betting as described below[96].

91 Chapter 15, Section A(3).

92 TACP (2018), Section B.22, as addressed Chapter 10, Part 1, Section B(2).

93 TACP (2018), Section B.27: "any tournament director, Officials, owner, operator, employee, agent, contractor or any similarly situated person and ATP, ITF and WTA staff providing services at any Event and any other person who receives accreditation at an Event at the request of Tournament Support Personnel."

94 ITF, Duties and Procedures for Officials, 2017, Part II, Section U, Article A(11). This code applies to all officials working at ATP, Grand Slam, ITF and WTA events http://www.itftennis.com/officiating/officials/on-court-officials.aspx [accessed 9 April 2018].

95 For these reasons, the Environmental Review concluded that "although there were mixed views expressed on such persons wagering/betting on tennis and about the extent of any such ban during our consultation process, we feel that the risk posed by a wide range of 'insiders' who may misuse 'inside information' for corrupt betting purposes is such that a ban is necessary to demonstrate and reinforce the preventative strategy necessary to deal with this threat": see Ben Gunn and Jeff Rees, 'Environmental Review of Integrity in Professional Tennis' (May 2008), page 11, paragraph 2.24 and Recommendation 6, Appendix: Key Documents and as described in Chapter 8, Section B(2).

96 Paragraph 134 below.

E DELAY IN ENTERING OR MANIPULATION OF THE SCORE BY OFFICIALS

134. As already mentioned above in relation to the susceptibility of tennis to breaches of integrity, a novel form of corruption that has emerged more recently[97] is chair umpires delaying entering or manipulating the score[98]. As a result of their delaying entering the score, a courtsider[99] may be afforded a longer period during which to bet before the betting operator knows what has happened. Alternatively, the chair umpire can him or herself use the delay to bet or to communicate the position to others before entering the score. A chair umpire may also manipulate the score by entering fictitious elements into the scoring in accordance with a pre-agreed plan, which do not affect the actual result or even the margins in sets or games, for example by adding in or taking away deuces or misreporting the points score in a game[100].

135. The novel nature of this behaviour, and the former lack of clarity as to whether the TACP itself extended to officials, means that there is not a clear and express prohibition of it in the TACP. That said, it was arguable that the definition of Tournament Support Personnel was wide enough to encompass officials for the reasons set out above, and officials now have expressly to undertake to comply with the TACP[101]. It is equally arguable (though perhaps more tenuously) that the prohibition on "*facilitating*" a person to bet addressed below[102], or the prohibition on "*contriving… any aspect*" of an event addressed above[103], cover the behaviour. Furthermore, in that the score is arguably not public until entered, its earlier provision to another may breach the prohibitions in relation to inside information[104]. In addition, it may also be a "*benefit*" obtained from Tournament Support Personnel for reward.

136. While these actions do not affect the outcome of tennis matches, they harm tennis because they facilitate cheating at betting, they damage the reputation of the sport, and they expose officials to pressure.

137. Just as in the context of the use and provision of inside information, some may take the view in this context that from a sport's standpoint such delays and manipulation of the score without affecting the actual result is a problem for the betting markets and those who operate on them and not a problem for the sport.

138. The difficulty with this view when translated to the situation of officials is that there can be no sensible objection to a prohibition on officials deliberately delaying entering or manipulating the score: there is no countervailing right of an official that is infringed. And again, it must be recognised that such actions involve cheating at betting, and no sport should tolerate the facilitation of cheating. Equally, again, while those affected immediately are bettors and betting operators, that effect cannot be simply disregarded. So too, to tolerate such actions would be very damaging to the reputation of the sport.

97 And since the Environmental Review. The behaviour is a function of the live scoring system and sale of official live scoring data introduced in the last five years.

98 Chapter 10, Part 5, Section A(10) and Chapter 13, Section D for decided disciplinary cases in relation to corrupt chair umpires.

99 Chapter 3, Section E.

100 Chapter 13, Section D.

101 Paragraph 133.3 above.

102 Paragraph 161 below.

103 Paragraph 104 above.

104 Paragraphs 118-126 above.

F ACTIONS OF PLAYERS AND OTHERS THAT ENCOURAGE OR FACILITATE BETTING BY OTHERS

139. A particular phenomenon that has arisen in the light of the increase in betting on tennis and the widespread operation of websites and other social media by players and other participants, is that betting operators have been willing to pay players and other participants to take steps that encourage or facilitate betting by others.

140. As a consequence, the TACP provides that "*No Covered Person*[105] *shall, directly or indirectly, solicit or facilitate any other person to wager on the outcome or any other aspect of any Event or any other tennis competition. For the avoidance of doubt, to solicit or facilitate to wager shall include, but not be limited to: display of live tennis betting odds on a Covered Person website; writing articles for a tennis betting publication or website; conducting personal appearances for a tennis betting company; and appearing in commercials encouraging others to bet on tennis*"[106].

141. Harm arises to tennis in three ways. First, it is inappropriate that players and some other participants should be closely involved with betting operators, because while many such betting operators are reputable and would not utilise the arrangement to bring pressure to bear on players or participants, some are not, and might. At best, there remains a perception that pressure might be brought to bear. Second, in some instances, such as tipping columns, the implication is that advantageous information is being provided. If the column is not generally published but is only available to a few (such as account holders), the information could be regarded as inside information. Third, it is generally undesirable and harmful to the reputation of tennis that players and some other participants should be encouraging or facilitating others to do what they themselves are specifically prohibited from doing.

142. Some may take the view that such a prohibition goes too far, because the behaviour does not affect the outcome of events, and because of a perception that the same restriction does not apply to event organisers or the International Governing Bodies, which is inconsistent. Again, the Panel can see why the view might be held, but does not share it. The risk of pressure, even if in many circumstances slight, must be avoided.

105 TACP (2018), Section B.6, as addressed in Chapter 10, Part 1, Section B(2).

106 TACP (2018), Section D.1.b, as addressed in Chapter 10, Part 1, Section B(2). See also TACP (2018) Section D.1.k, which provides that "no Covered Person may be employed or otherwise engaged by a company which accepts wagers on Events".

G SPONSORSHIP OF PLAYERS AND OTHERS BY BETTING OPERATORS

143. A behaviour similar and possibly overlapping with the encouragement or facilitation of betting is the acceptance of sponsorship by players and others from betting operators.

144. Consequently, the TACP provides that "*No Covered Person*[107] *may be employed or otherwise engaged by a company which accepts wagers on Events*"[108].

145. Harm arises to tennis in two ways, again similar to some of those that arise in relation to facilitation and encouragement of betting. First, the possibility or appearance of pressure arises. Second, it is generally undesirable and harmful to the reputation of tennis that players and some other participants should be closely involved with an industry the existence of which raises the possibility of match-fixing.

107 TACP (2018), Section B.6, as addressed in as addressed in Chapter 10, Part 1, Section B(2).

108 TACP (2018), Section D.1.k, as addressed in Chapter 10, Part 1, Section B(2). See also TACP (2018), Section D.1.b which prohibits some of the actions that might form part of a sponsorship arrangement.

H INAPPROPRIATE PROVISION OF ACCREDITATION

146. The importance of accreditation to those wishing to bring pressure to bear on players or to obtain inside information means that they may seek to obtain it from players or others in return for reward, or otherwise[109], as already referred to above in the context of the use and provision of inside information.

147. As a consequence, the TACP provides that "*No Covered Person*[110] *shall, directly or indirectly, solicit or accept any money, benefit or Consideration for the provision of an accreditation to an Event (i) for the purpose of facilitating a commission of a Corruption Offense; or (ii) which leads, directly or indirectly, to the commission of a Corruption Offense*"[111].

148. The harm to tennis from such sale of accreditation to those who wish, or go on, to commit a breach of integrity is self-evident.

109 Ben Gunn and Jeff Rees, 'Environmental Review of Integrity in Professional Tennis' (May 2008), pages 16-19, paragraphs 2.58 to 2.83 and Recommendations 8 and 9, Appendix: Key Documents and as described in Chapter 8, Section B(2). In Executive Summary paragraph 6, the authors identified "accreditation abuse and violation of credentials" as one of the "5 principal threats to the integrity of professional tennis" arising from the Environmental Review. See also Richard Ings, 'Report on Corruption Allegations in Men's Professional Tennis' (June 2005), pages 26-27, paragraphs 136-150 and Recommendations 6 and 7 Appendix: Key Documents and as described in Chapter 7, Section A(4).

110 TACP (2018), Section B.6, as addressed in Chapter 10, Part 1, Section B(2).

111 TACP (2018), Section D.1.c, as addressed in Chapter 10, Part 1, Section B(2).

I SALE OF WILDCARDS

149. A separate form of corrupt activity that has arisen, which relates not to the outcome or course of matches but to participation in them in the first place, is the sale of main draw places reserved for wildcards.

150. Consequently, the prohibition in the TACP that "*No Covered Person*[112] *shall, directly or indirectly, offer or provide any money, benefit or Consideration to any Tournament Support Personnel in exchange for any information or benefit relating to a tournament*"[113], extends beyond Covered Persons offering or providing reward for information, to their doing so for "*benefit relating to a tournament*" which includes the provision of a wildcard.

151. The harm to tennis is evident: to the detriment of another player, perhaps better qualified, a place in the main draw of an event at which the player will secure ranking points and prize money, has been sold. This undermines the ranking point system and favours 'better off' players or those with extraneous funding at the expense of others. Furthermore, the practice affords access to matches to players potentially intending to match-fix or to bet, and affords access to the locker room to potential corruptors of other players.

112 TACP (2018), Section B.6, as addressed in Chapter 10, Part 1, Section B(2).

113 TACP (2018), Section D.1.j, as addressed in Chapter 10, Part 1, Section B(2).

J FAILURE TO REPORT APPROACHES AND BREACHES OF INTEGRITY BY OTHERS

152. Fundamental to any system for the prevention of match-fixing and other breaches of integrity is the willingness of those with knowledge of approaches to fix, or of actual fixes, or of other breaches of integrity, to report them[114]. The detection and disciplinary prosecution of such behaviour, as described in Chapter 5[115], is inherently difficult absent such witness evidence. Only with such reports can the authorities gather sufficient intelligence about those seeking to corrupt others, and take effective action against those who have been corrupted or engaged in other breaches of integrity. If the proper culture and atmosphere is present in a sport, it could be taken as a given that such reports will be made. Where it is not present, or is disregarded, it however becomes a breach of integrity in itself to fail to report approaches to fix, or actual fixes, or of other breaches of integrity.

153. Unfortunately, there is[116], and has long been[117], a wide spectrum of circumstances in which players and others subject to the rules do not report approaches and breaches of integrity by others. Some do not know of the rule requiring reporting, or at least of the potential for sanction for breach of it. Some regard the process as too complex or too much trouble. Some perceive that by reporting they may put themselves in difficulties or at least inconvenience with the authorities, and be subjected to questioning and treated as suspects. Some are scared of the perceived consequences for their safety from those involved in corrupt activity. Some are concerned that their report would not be treated in confidence. Some do not wish to 'betray' fellow players which might lead to damage to their reputation amongst players, and some perceive that there is no point in reporting because it will make no difference.

114 As it was put in paragraph 1.13 of the Environmental Review and as described in Chapter 8, Section B(2), "as with other sports, monitoring and enhancing the integrity of professional tennis is not just an issue for the Regulators. It is the responsibility of everyone who takes part in it and is a stakeholder in the sport, as well as the commercial and betting industries linked with it". See Ben Gunn and Jeff Rees, 'Environmental Review of Integrity in Professional Tennis' (May 2008), page 5, paragraph 1.13, Appendix: Key Documents.

115 Chapter 5, Sections B-E.

116 Chapter 10, Part 2, Section C(2).

117 The Ings Report concluded in 2005 that, at least in relation to betting by players and the reporting of approaches, there were "a climate of silence and apathy" and a "culture of acceptance" and "a blind eye turned" in this context amongst players, and even some player representatives, and that "informing on malpractice would result in players being ostracized in the locker room… remaining silent in the face of gambling or corruption by player peers was encouraged". The Ings Report therefore recommended that "the rules should contain a positive requirement on players and tournaments to report suspicions of corruption". See also Richard Ings, 'Report on Corruption Allegations in Men's Professional Tennis' (June 2005), pages 8-10, paragraph 42-55 and page 36, paragraph 207 and page 45, paragraphs 267-269, Recommendation 20 Appendix: Key Documents and as described in Chapter 7, Section A(4). See also Ings Report paragraphs 212, 227 to 229 and 232. The Environmental Review reported that "although some players said they would inform the appropriate authorities about any approach to themselves, there was almost a unanimous view that they would not do so if they knew/suspected another player had been approached. We understand the proposed uniform [Tennis Anti-Corruption Program] will impose an obligation on players to inform the tennis authorities whenever they are aware of suspected corrupt practices… The reasons given for adopting that attitude were concern about their personal safety from would be corrupters… concern about the confidentiality of any approach made by them to the tennis authorities… and a general feeling that informing on other players was breach of the trust/bond that exists between players": see Ben Gunn and Jeff Rees, 'Environmental Review of Integrity in Professional Tennis' (May 2008), pages 11-12, paragraphs 2.28 to 2.29, Appendix: Key Documents and as described in Chapter 8, Section B(2).

154. The TACP imposes a separate and extensive "*reporting obligation*" on players[118], who are also made responsible for any offence committed with their knowledge[119]. Related Persons and Tournament Support Personnel are also subject to a reporting obligation[120]. Breach of the reporting obligation is in itself defined as an offence under the TACP[121].

155. The harm to tennis is evident: the maintenance of a culture of acceptance as described above is not only detrimental to the effectiveness of the system to tackle the breaches of integrity, but also fosters those very breaches.

118 TACP (2018), Section D.2.a.:

"i. In the event any Player is approached by any person who offers or provides any type of money, benefit or Consideration to a Player to (i) influence the outcome or any other aspect of any Event, or (ii) provide Inside Information, it shall be the Player's obligation to report such incident to the TIU as soon as possible.

ii. In the event any Player knows or suspects that any other Covered Person or other individual has committed a Corruption Offense, it shall be the Player's obligation to report such knowledge or suspicion to the TIU as soon as possible.

iii. If any Player knows or suspects that any Covered Person has been involved in an incident described in Section D.2.b. below, a Player shall be obligated to report such knowledge or suspicion to the TIU as soon as possible.

iv. A Player shall have a continuing obligation to report any new knowledge or suspicion regarding any Corruption Offense, even if the Player's prior knowledge or suspicion has already been reported."

119 TACP (2018), Section E.1: "Each Player shall be responsible for any Corruption Offense committed by any Covered Person if such Player either (i) had knowledge of a Corruption Offense and failed to report such knowledge pursuant to the reporting obligations set forth in Section D.2. above or (ii) assisted the commission of a Corruption Offense. In such event, the AHO shall have the right to impose sanctions on the Player to the same extent as if the Player had committed the Corruption Offense."

120 TACP (2018), Section D.2.b:

"i. In the event any Related Person or Tournament Support Person is approached by any person who offers or provides any type of money, benefit or Consideration to a Related Person or Tournament Support Person to (i) influence or attempt to influence the outcome of any aspect of any Event, or (ii) provide Inside Information, it shall be the Related Person's or Tournament Support Person's obligation to report such incident to the TIU as soon as possible.

ii. In the event any Related Person or Tournament Support Person knows or suspects that any Covered Person or other individual has committed a Corruption Offense, it shall be the Related Person's or Tournament Support Person's obligation to report such knowledge or suspicion to the TIU as soon as possible."

121 TACP (2018), Section D.2.c.: "For the avoidance of doubt, a failure by any Covered Person to comply with (i) the reporting obligations set out in Section D.2; and/or (ii) the duty to cooperate under Section F.2 shall constitute a Corruption Offense for all purposes of the Program".

K FAILURE TO COOPERATE AND TO ASSIST IN INVESTIGATION

156. Equally fundamental to any system for the prevention of match-fixing and other breaches of integrity, and for similar reasons, is an obligation on players and others to cooperate and assist in any investigations, including by the giving of evidence and by not withholding information, and by not destroying or tampering with such evidence or information. Again, the detection and disciplinary prosecution of such behaviour, as described in Chapters 5[122] and 10[123], is inherently difficult absent such cooperation. Failure to cooperate and provide assistance it is a breach of integrity in itself[124].

157. Consequently, the TACP contains a provision requiring such cooperation[125] and a provision by which the right to object to the provision of information is waived[126]. Breach of the obligation to cooperate is in itself defined as an offence under the TACP[127].

158. The harm to tennis is evident: the refusal of cooperation is again not only detrimental to the effectiveness of the system to tackle the breaches of integrity, but also fosters those very breaches.

122 Chapter 5, Section C(1).

123 Chapter 10, Part 1, Section B(2).

124 2008 Environmental Review concluded that "the experience of other sports has revealed the importance of a player, or other person bound by a sporting regulation, being obliged to assist with a disciplinary enquiry. We acknowledge the legal principle of not being forced to incriminate oneself but we see a distinction between that principle in respect of criminal offences and a sportsman/woman's obligation reasonably to assist in a disciplinary enquiry. We strongly support the proposal on this issue in the uniform [Tennis Anti-Corruption Program]": Ben Gunn and Jeff Rees, 'Environmental Review of Integrity in Professional Tennis' (May 2008), page 34, paragraph 3.95, Appendix: Key Documents and described in Chapter 8, Section B(2).

125 TACP (2018), Section F.2.b: "All Covered Persons must cooperate fully with investigations conducted by the TIU including giving evidence at hearings, if requested. No Covered Person shall (i)tamper with, damage, disable, destroy or otherwise alter any evidence or other information related to any Corruption Offense or (ii) solicit or facilitate any other person to tamper with, damage, disable, destroy or otherwise alter any evidence or other information related to any Corruption Offense."

126 TACP (2018), Section F.2.d: "By participating in any Event, or accepting accreditation at any Event, or by completing IPIN registration and/or player agreement forms a Covered Person contractually agrees to waive and forfeit any rights, defenses, and privileges provided by any law in any jurisdiction to withhold information or delay provision of information requested by the TIU or the AHO."

127 TACP (2018), Section D.2.c: "For the avoidance of doubt, a failure by any Covered Person to comply with (i) the reporting obligations set out in Section D.2; and/or (ii) the duty to cooperate under Section F.2 shall constitute a Corruption Offense for all purposes of the Program".

L ASSOCIATION WITH THOSE INVOLVED IN GAMBLING OR EXCLUDED PERSONS

159. As addressed in Chapter 7[128], prior to the adoption of the uniform TACP, the WTA rules included a general prohibition on association with those involved in gambling.

160. Other sports have the power in their rules to classify[129] persons, even though they are not covered by the rules, as excluded persons, and then to prohibit those covered by the rules from associating with them. The association becomes a breach of integrity in itself.

161. The TACP contains no such provision, rather it only prohibits actions encouraging or facilitating betting and sponsorship by betting operators, dealt with above. It is to be noted, as addressed in Chapter 7[130], that the International Governing Bodies' Codes of Conduct also include general prohibitions on conduct contrary to the integrity of tennis, but these have not been regarded as extending to this situation.

162. The harm to tennis from such associations is that experience has revealed that they are often the first step on the way to other more serious breaches of integrity. A prohibition on association, as a breach of integrity in itself, allows a potentially more serious problem to be nipped in the bud. An ability to classify persons outside the each of the rules as excluded, and then not only to prevent them receiving accreditation or becoming involved in tennis, but also to prevent those caught by the rules from associating with them, effectively extends the ambit of the rules to tackle adverse conduct by them through measures applicable to those that are covered. Associations of this type are also harmful to tennis in that they harm the reputation of the sport.

128 Chapter 7, Section C(1).

129 Sometimes referred to as 'warning off'.

130 Chapter 7, Section C(2).

M OTHER BREACHES OF INTEGRITY

163. As addressed in Chapter 7[131], and referred to above, the International Governing Bodies' Codes of Conduct also include, or have in the past included, general prohibitions on conduct contrary to the integrity of tennis. It is possible that a breach of integrity in relation to gambling or other corruption, or losing for other reasons, might arise that did not fall happily under any of the breaches defined in the rules. The harm to tennis from a breach falling between two stools in the rules is evident. Some sports operate a catch all provision to cater for this eventuality. It in effect makes all conduct that can be shown to affect integrity of the sport, a breach of integrity.

164. A further specific area impacting on integrity is the sheer level of abuse[132] received by players from disappointed gamblers, in particular over the internet, but also at events. This is obviously to be condemned, and addressed by the International Governing Bodies, as they are doing through their security measures and internet protection programmes.

165. Lastly, as set out in the Introduction[133], there are other actions that fall within the broad concept of a breach of integrity, but which fall outside the ambit of this Independent Review of Integrity in Tennis, which is confined to the situation where a professional tennis player does not try to win a match, or part of it.

131 Chapter 7, Section C(2).

132 An additional area that was dealt with in the Environmental Review, and identified by its authors as one of the 5 principal threats to integrity was abuse of players by trainers and parents: see Ben Gunn and Jeff Rees, 'Environmental Review of Integrity in Professional Tennis' (May 2008), page 1, paragraph 6 and pages 20-21, paragraphs 2.99-2.109, Appendix: Key Documents. This falls outside the parameters of the Review.

133 Chapter 1, Section C.

Protection of Integrity by Punishment of Breaches

Independent Review of Integrity in Tennis

05

1. The Independent Review Panel (the "Panel") sets out below its provisional conclusions in relation to the protection of integrity by punishment of breaches. This covers the basis for, methods of and practical effectiveness of protecting integrity by adopting rules prohibiting behaviour and then detecting, investigating, proving and sanctioning breach of the rules. It encompasses action both by a sports body itself, and by law enforcement agencies and regulators.

2. This chapter describes the punishment of wrongdoing after it has occurred, as opposed to its prevention in the first place, which is dealt with in the next chapter. The Panel deals with them in this order because it is important to understand the limitations on the effectiveness of punishment after the fact, in order to understand how important it is that all possible steps be taken in pursuit of prevention.

3. That being so, this chapter describes the complexity and interconnection of legal environments and actors that play a role in the detection, investigation, prosecution and punishment of breaches.

Q 5.1 Are there other matters of factual investigation or evaluation in relation to the types of integrity issue addressed below that are relevant to the Review and that should be addressed in the body of the Final Report, and if so which, and why?

Q 5.2 Are there any aspects of the Panels' provisional conclusions in relation to those types of integrity issue that are incorrect, and if so which, and why?

A THE STATUTORY AND CONTRACTUAL BASIS FOR PUNISHMENT

4. Responding to breaches by way of punishment may be founded on two different legal bases: a statutory basis or a contractual basis. The former is rooted in national criminal law and international public law, through legislation and treaties, while the latter is rooted in a contractual relationship between sports governing bodies and players, through sports rules.

(1) OBLIGATION TO COMPLY WITH NATIONAL CRIMINAL LAW

5. The pivotal role of national criminal law in punishing conduct aimed at manipulating sports competitions is of paramount importance, since law enforcement agencies have more far-reaching investigatory powers, and the sanctions available are more significant and carry greater deterrent effect. Moreover, sports investigatory bodies and sports justice can only sanction players and others bound by the relevant rules. They cannot punish external actors such as betting operators, bettors and criminals involved in the manipulation of sports competitions.

6. In light of this, the punishment of betting-related corruption must be understood and considered not only in the context of the sport's rules and the actors covered by them, but also in the context of the more general framework of national criminal law. Whilst the Panel does not purport to set out a comprehensive description of the relevant system in any given country or at any given time, it makes general observations below as to some of the different ways that national laws treat match-fixing.

7. The situations that may come within the concept of "*match-fixing*" for the purposes of various national criminal laws are diverse, and they may not fall easily under the various relevant criminal law provisions, most of which were not originally designed to prevent and repress this phenomenon. For this reason, some countries have felt that there is a need for tailor-made criminal provisions and have accordingly established match-fixing as a specific criminal offence. However, even if this is the case, definitions and conditions vary from one country to another.

8. As observed below, match-fixing may be considered, alternatively or cumulatively, as involving the constituents of the following broad offences: (a) corruption, whether active or passive, public or private; (b) fraud; and/or (c) specific offences aimed at protecting sports integrity.

9. The Panel describes in broad terms herein the different ways that national laws may approach conduct amounting to match-fixing. Where appropriate, the Panel has included examples that help to illustrate how certain countries punish such conduct. These descriptions of national law are not intended to be comprehensive and, of course, will not reflect any legislative or judicial developments that occur after the publication of this Independent Review of Integrity in Tennis Review (the "Review").

Corruption

10. The Panel observes that many jurisdictions distinguish between active and passive corruption, on the one hand, and public and private corruption, on the other hand.

11. "*Active corruption*" occurs when someone promises, offers or gives, directly or indirectly, an undue advantage to any person who directs, or works in any capacity for, a public or private sector entity, whether the advantage is for the person himself or herself or for another, in order that that person, in breach of duty, acts or refrains from acting in a particular way.

12. "*Passive corruption*" occurs when a person who directs, or works in any capacity for, a public or private sector entity solicits or accepts, directly or indirectly, an undue advantage from someone, whether the advantage is for the person himself or herself or for another, in order that that person, in breach of duty, acts or refrains from acting in a particular way.

13. Theoretically, a player taking a bribe or accepting an advantage in order to act in breach of his or her disciplinary obligations or by failing to act appropriately could therefore be considered guilty of passive, private, corruption, while the person bribing him could be considered guilty of active, private, corruption. Moreover, a player who receives a bribe in order to lose a match and then also fixes the match with his opponent would be considered guilty of both passive and active, private, corruption.

14. For "*public corruption*" to be involved, the match-fixing offences would have to involve persons exercising public authority or performing public duties. In most of the jurisdictions examined, players and referees/umpires are not considered to be public officials.

15. The Panel understands that France is one of the few countries that may apply public corruption provisions to sports events, where, even if players are not considered to be persons performing public duties, both sport associations organising competitions and umpires or referees may be categorised as such under certain conditions. The Panel also observes that French criminal law classifies umpires as persons rendering a public service in situations where they are the victims of criminal offences on the playing field; thus, bribing an umpire in order to alter the outcome of a sports competition may constitute public corruption.

16. Other than this particular instance of public corruption, match-fixing is generally likely to be addressed as private corruption. The Panel observes that private corruption is a criminal offence in most of the jurisdictions that it examined, with some variations. Some countries only protect commercial activities from private corruption, and do not extend the application of private corruption to all occupational and social activities, such as non-profit activities – i.e. the sports sector – whereas others do. For example, the Panel understands that:

    16.1 In France, match-fixing by a professional player falls within private-sector corruption and French prosecutors typically bring corruption charges together with charges for other criminal offences;

    16.2 In England and Wales, match-fixing is not criminalised in itself but may be charged as one or more of a number of criminal offences that target private corruption, for example, a person bribing or being bribed;

    16.3 In the United States, match-fixing and other integrity breaches are punishable under various laws addressing private corruption, such as those prohibiting mail and wire fraud;

    16.4 Certain countries, such as Egypt, do not prosecute private corruption at all;

    16.5 In other countries, such as Switzerland, passive and active private bribery were criminalised in 2016, but these offences have not yet been tested before the Swiss courts in cases of match-fixing; and

    16.6 By contrast, in other countries such as Germany, match-fixing does not fall within private corruption offences.

Fraud

17. In certain jurisdictions, match-fixing may currently be regarded as falling under the offence of fraud. In general terms, this offence entails dishonestly obtaining money or something valuable through misrepresentation or other deception. There are, however, several variations or limitations on the possible application of the offence to match-fixing. For example, the Panel understands that:

    17.1 In Germany, if the offender places his or her bet via the internet, he or she may be found guilty of computer fraud. The players, managers, or referees involved in fixing a match do not commit an independent criminal offence, but are still criminally liable for aiding and abetting the bettor;

    17.2 In England, if match-fixing is committed by two or more persons in agreement with each other, the individuals may either be charged with conspiracy, irrespective of whether money has changed hands or the fix has taken place;

    17.3 In the United States, match-fixing may constitute fraud under several different statutes;

17.4 In Switzerland, match-fixing may be prosecuted under fraud, but only in relation to fixed-odds-style betting and not exchange-style betting, where the operator does not incur any loss when a match is fixed, but the other bettors who have bet against the corrupt bettor do. Further, only human beings may be deceived, not computers. The standard of proof for this offence is onerous, making match-fixing difficult to prosecute in Switzerland. The Panel understands that the focus of the offences is to protect property rights, not the credibility and integrity of the sport. Consequently, in spring 2017, the Swiss Parliament debated the introduction of a new specific criminal provision for match-fixing; and

17.5 In Egypt, betting and gambling are illegal acts; therefore, betting-related fraud cannot be prosecuted because fraud cannot be committed in relation to something that is prohibited by the law. This prevents parties potentially aggrieved by match-fixing from claiming direct damages in Egypt on the basis of an illegal practice.

18. Finally, the described offences often require that the perpetrator brings about a direct transfer of a financial asset from the deceived party to the perpetrator or a third person. For that reason, those crimes are unlikely to apply to the manipulation of matches without a betting element.

Specific match-fixing offences

19. The Panel observes that several of the jurisdictions examined have recently adopted, or plan to adopt, provisions specifically dealing with match-fixing in their national criminal laws. However, differences from one state to the other remain. For example, the Panel understands that:

19.1 In Australia, there are separate specific offences for facilitating or concealing betting-related corruption. The Panel understands that the standard of proof for match-fixing is quite low in Australia. Players' behaviour is assessed against the objective level of integrity that the public expects of them and not by reference to their subjective knowledge, or otherwise, of the dishonesty of the conduct. Similarly, agreements to engage in match-fixing are criminalised, potentially rendering guilty players who enter into such arrangements but get cold feet and do not go through with it. Another Australian innovation is the prohibition, in some states and territories, of the transmission of inside information, as opposed to the transmission of information only about corrupt conduct;

19.2 In Brazil, the specific offence of match-fixing is committed from the moment the person becomes aware of the acceptance, solicitation, offer, or promise to give an advantage. The advantage, or promise of advantage, can be of any nature: monetary, sexual, sentimental, and so on. Actual enrichment is not necessary;

19.3 In France, the offence of match-fixing excludes competitions that do not give rise to sports bets. Furthermore, it requires proof that a modification of the outcome of the bets (as opposed to the fair and normal course of the competition) was intended, and do not apply where players bet on themselves to lose a match or part of it (in which case, the player may be charged with fraud);

19.4 In Russia, the specific offence of match-fixing is limited to "*official*" sports competitions;

19.5 In Italy, the specific offence of match-fixing is limited to the manipulation, or purported manipulation, of professional competitions organised by any association recognised by the Italian National Olympic Committee, the Italian Horse Breeding Union or any state-recognised sports body and its member associations. The crime is deemed to have been committed even if the result of the match is not altered, or undue advantage has not been obtained. It is unclear whether these offences extend beyond players, referees and officials to also encompass trainers, managers, doctors, physiotherapists, and so on; in any case, it seems that managers or trainers could be punished under the more general offences relating to "*fraud*";

19.6 In Spain, the specific offence takes place even if the attempt to alter the result is not successful, or the fixer does not obtain a benefit or advantage;

19.7 In Turkey, the specific offence targets not only match-fixing, but rather, a number of irregularities in the sports community, including hooliganism and violence. Offering a benefit for a fixed result will also constitute the offence, irrespective of whether the attempt was successful. Anyone who provides information to the relevant authorities regarding a match-fixing arrangement, before the match, shall not be punished under this offence; and

19.8 In the United States, there is a specific offence that targets match-fixing at the federal level, but it has been seldom used. The criminal laws of several U.S. states, such as New York, California and Florida, also specifically address match-fixing.

20. In conclusion, even though most of the jurisdictions examined allow the prosecution of match-fixing of professional sports events in one way or another, the offence varies considerably from one country to another. The differences are sometimes extreme. For instance, in some countries, match-fixing is expressly designated as a criminal offence and it is clear that such conduct can be prosecuted; while in other countries, like Egypt, match-fixing does not seem to be prosecutable at all, or only with difficulty.

21. The fact that different countries deal with the offence of match-fixing under different types of criminal laws may lead to some difficulties when prosecutors have to ask for mutual legal assistance from other countries, especially when such assistance is provided on the basis of bilateral treaties and these treaties establish a list of offences that would not cover sports offences.

(2) JURISDICTION OF STATES TO APPLY NATIONAL CRIMINAL LAWS

22. Match-fixing may implicate one or more criminal offences within the same legal system. In these cases, each system provides for its own rules to reconcile apparent internal conflicts.

23. Internationally, states usually recognise their jurisdiction over an offence under the principle of territoriality, according to which the courts of the place where the crime is committed may exercise jurisdiction. In the case of match-fixing, it is noteworthy that on occasion the place where the offence takes place may be difficult to determine, as match-fixing not only involves several actions (the agreement to play against the rules, the betting, the actual play against the rules, etc.), which may occur in various different countries, but it may also include online betting across borders. The use of electronic means of communication (such as emails or Skype) may also extend the territorial scope of the offence.

24. Generally, the country where the match takes place should have jurisdiction, as well as the country where the participants are or were at the time of their agreement to fix the match. Other states may also accept jurisdiction over a match-fixing offence, because:

24.1 States usually consider that the conduct of their nationals is always subject to their criminal law (under the active nationality principle). The active nationality principle is, in particular, provided for by legal systems in the civil law tradition, which usually also ban extradition of nationals. In Nordic countries, the active personality principle is usually approached according to residence rather than nationality.

24.2 Many states can also accept jurisdiction over acts committed abroad by foreigners against a national of the state claiming jurisdiction (under the passive personality principle). For example, in the case of match-fixing, this would possibly give jurisdiction to the state of incorporation of a betting operator.

24.3 States have also adopted other principles of jurisdiction by treaty or by law (for example, the transfer of proceedings from one state to another[1]), which may apply in certain circumstances.

25. The above criteria of jurisdiction may lead to situations whether there are either positive conflicts of jurisdiction (i.e., situations in which two or more states have jurisdiction to prosecute) irrespective of whether the different national authorities are in actual disagreement, or of negative conflicts of jurisdiction (i.e., situations in which member states have jurisdiction, but choose not to exercise it).

1 For example the European Convention on the Transfer of Proceedings in Criminal Matters, ETS No.073, 1972, of which 35 countries are parties.

26. In most cases, match-fixing will concern multiple jurisdictions and actors. In such situations, it is not clear if, and how, law enforcement agencies decide to proceed when informed that match-fixing allegedly took place. This is even more the case when the offence of match-fixing is not a priority in the countries which have jurisdiction, and when the player has left the country after the match in question. In the latter situation (which is very common), an investigation needs immediate and decisive coordination between states. However, states are usually slow to cooperate and (even where they do) face obstacles, such as the prerequisite of an applicable treaty, and lack of resource and communication issues (particularly language barriers). Therefore, it is not a surprise that many of the recent examples of successful match-fixing investigations and prosecutions, such as those in Spain and Australia[2], involved local players acting locally, as opposed to international players playing internationally.

27. Due to these issues, the application of national criminal laws in certain situations may lead to complications in investigating and prosecuting suspects, and in certain cases may even lead to their being able to act with impunity.

(3) INTERNATIONAL CRIMINAL LAW

28. As regards investigating and prosecuting players involved in international competitions under national criminal laws, specific or generic instruments of international law may help to overcome the complications set out above.

Specific international instruments in relation to sports integrity: the Macolin Convention

29. In 2014, the Council of Europe adopted the Convention on the Manipulation of Sports Competitions (CETS No. 215, "Macolin" or "CMSC" Convention) and opened it for signature by the Council of Europe member states, the other state parties to the European Cultural Convention, the European Union and the non-member states that participated in its development or that enjoy observer status with the Council of Europe, as well as by other non-member states.

30. Member states of the Council of Europe that signed the Macolin Convention are Albania, Armenia, Austria, Azerbaijan, Belgium, Bulgaria, Cyprus, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Italy, Latvia, Lithuania, Luxemburg, Montenegro, the Netherlands, Norway, Poland, Portugal, Moldova, Russia, Serbia, Slovenia, Spain, Switzerland, Ukraine. Member states that still have not signed are Andorra, Bosnia and Herzegovina, Croatia, the Czech Republic, Ireland, Latvia, Malta, Monaco, Romania, San Marino, Slovakia, Sweden, Macedonia, Turkey and the United Kingdom. The non-European countries that have also participated in the development of the Macolin Convention and for which the Convention is open for signature and ratification are Australia, Belarus, Canada, the Holy See, Israel, Japan, Kazakhstan, Mexico, Morocco, New Zealand, and the United States. None of these states, nor the European Union itself, have yet signed the Macolin Convention.

31. The Macolin Convention will enter into force upon ratification by five states, including three member states of the Council of Europe. To date, the Macolin Convention has been signed by 32 states and ratified by three states (Portugal, Norway and Ukraine). The Commission of the European Union still seems reluctant to authorise the EU member states to ratify the Macolin Convention, as it may impact on the free movement of services. In particular, Malta appears to oppose ratification by EU member states, as it perceives that the Macolin Convention may limit the (otherwise relatively lightly regulated) betting operators located in Malta in their ability to deliver betting services throughout Europe[3].

2 Simon Briggs, 'Police arrest 34 people in large scale operation against tennis match fixers' (The Telegraph, 1 December 2016), available at http://www.telegraph.co.uk/tennis/2016/12/01/police-arrest-34-people-large-scale-operation-against-tennis/ [accessed 9 April 2018] (Spain); and 'Australian Boys champion Anderson charged with match fixing' (Reuters, 5 January 2017), available at http://www.reuters.com/article/us-tennis-corruption-australia/australian-boys-champion-anderson-charged-with-match-fixing-local-media-idUSKBN14P2KR [accessed 9 April 2018] (Australia).

3 It appears that what Malta takes issue with in particular is the following definition of the term "illegal sports betting" as contained in the Convention: "any sports betting activity whose type or operator is not allowed under the applicable law of the jurisdiction where the consumer is located." Several EU member states strictly regulate the industry, while Malta's regulation has been lighter, with the result that various betting companies operate in Malta in accordance with Maltese regulations, but in a way that runs counter to the approach in other EU member states where consumers may be located, in accordance with the proposition that EU suppliers should be governed by the law of their place of establishment or "Point of Supply". The difficulty from the Maltese point of view appears to be that the definition above contemplates a test measured at the "Point of Consumption" instead, potentially rendering betting with certain companies operating out of Malta "illegal", delivering a big blow to the island's economy. In this regard see also, 'Online gaming: Malta stands its ground against the rest of the European Union' (Malta Independent, 18 September 2016), available at http://www.independent.com.mt/articles/2016-09-18/local-news/Online-gaming-Malta-stands-its-ground-against-the-rest-of-the-European-Union-6736163926 [accessed 9 April 2018].

32. The Macolin Convention contains definitions of amongst other things, "*sports competition*", "*sports organisation*", "*competitions organiser*", "*manipulation of sports competitions*", "*sports betting*", "*illegal sports betting*", "*irregular sports betting*", "*suspicious sports betting*", "*competition stakeholder*", "*athlete*", "*athlete support personnel*", "*official*", "*inside information*"[4].

33. For example, the Macolin Convention provides that "*Manipulation of sports competitions*" means "*an intentional arrangement, act or omission aimed at an improper alteration of the result or the course of a sports competition in order to remove all or part of the unpredictable nature of the aforementioned sports competition with a view to obtaining an undue advantage for oneself or for others.*"[5]

34. It also provides that "*Inside information*" means "*information relating to any competition that a person possesses by virtue of his or her position in relation to a sport or competition, excluding any information already published or common knowledge, easily accessible to interested members of the public or disclosed in accordance with the rules and regulations governing the relevant competition.*"[6]

35. The Macolin Convention provides that each party shall ensure that its domestic laws criminally sanction manipulation of sports competitions when such manipulation involves either coercive, corrupt or fraudulent practices, as defined by domestic law. Similarly, parties to the Macolin Convention must adopt legal or other measures criminalising the laundering of the proceeds of criminal offences relating to the manipulation of sports competitions[7].

36. The Macolin Convention also sets out certain principles designed to overcome limitations inherent in national criminal laws, as addressed in Section A(2) above. The state parties must establish their territorial and national jurisdiction over match-fixing offences. Additionally, each state must take the necessary legislative or other measures to establish jurisdiction over match-fixing offences in cases where the alleged offender is present on its territory and cannot be extradited to another state party on the basis of nationality[8]. Should more than one party claim jurisdiction over an alleged offence referred to in Articles 15 to 17 of the Macolin Convention, the parties involved shall, where appropriate, consult each other with a view to determining the most appropriate jurisdiction for the purposes of prosecution.

37. The Macolin Convention also aims to improve the process of preventing, detecting, punishing and disciplining the manipulation of sports competitions. As part of this goal, the Macolin Convention aims to enhance the exchange of information and national and international cooperation[9] between the public authorities concerned, sports governing bodies and sports betting operators. The Macolin Convention calls on governments to adopt measures, including legislation, aimed at:

    37.1 preventing conflicts of interest between sports betting operators and sports governing bodies;

    37.2 encouraging sports betting regulatory authorities to fight against fraud, if necessary by limiting the supply of sports bets or suspending the taking of bets; and

    37.3 fighting against illegal sports betting by allowing governments to close or restrict access to the betting operators concerned and block financial flows between them and consumers.

38. Sports governing bodies and competition organisers are also required to adopt and implement: (a) stricter rules to combat corruption; (b) effective sanctions; (c) proportionate disciplinary and dissuasive measures in the event of offences; and (d) good governance principles. Lastly, the Macolin Convention provides safeguards for informants and witnesses.

4 Council of Europe Convention on the Manipulation of Sports Competition, 18 September 2014, Chapter I, Article 3, available at https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016801cdd7e [accessed 9 April 2018].

5 ibid., Chapter I, Article 3.4.

6 ibid., Chapter I, Article 3.7.

7 ibid., Chapter IV, Article 15.

8 ibid., Chapter V, Article 19.

9 See below at paragraph 165.

39. The ratification of the Macolin Convention – or at least the incorporation of its principles into national laws – would undoubtedly be of great assistance in the fight against corruption and match-fixing in sports. Ratification would introduce an understanding amongst all law enforcement agencies, which is generally lacking, that they must play an active and significant role in addressing the problem. It would pave the way for greater cooperation between states. Its geographical scope, while not global, would be wide enough to have a significant impact, since it would comprise all Western European and Eurasian members of the Council of Europe (including Armenia, Azerbaijan, Georgia, Russia, Turkey and Ukraine) and be open for signature to countries of great importance for tennis (Australia, the United States) and others of significant importance (including Belarus, Israel, Japan, Kazakhstan, Mexico and Morocco, among others).

40. The Macolin Convention promises, if fully implemented, to be a unique tool since "*it promotes a risk- and evidence-based approach and allows commonly agreed standards and principles to be set in order to prevent, detect and sanction the manipulation of sports competitions [by] involv*[ing] *all stakeholders in the fight against manipulation of sports competitions, namely public authorities, sports governing bodies and sports betting operators. To ensure that the problem is addressed in a global context, it allows states which are not members of the Council of Europe to be become parties by the convention* [sic]"[10].

41. If the Macolin Convention is fully implemented, it might well prove to be a milestone in the fight against the manipulation of sports competitions at the international level.

42. In January 2016, the Council of Europe and the European Union launched a joint project called Keep Crime out of Sport (KCOOS)[11]. The project aims at promoting the Macolin Convention, as well as providing countries with technical assistance in implementing measures to combat match-fixing and to regulate sports betting. Further, the project aims to raise awareness as to the issues of match-fixing and sports betting, and to support countries in their transposition of the Convention into national legislation, if applicable.

43. It should also be noted that the cooperative arrangements under the European Convention on Spectator Violence and Misbehaviour at Sports Events and in particular at Football Matches (1985), which has been ratified or adhered to by 42 states, may be of some use pending the ratification and implementation of the Macolin Convention. While the treaty does not cover match-fixing directly, several of its provisions may apply to some related activities, such as the obligation to exclude particular individuals from venues.

General international instruments in relation to corruption: Council or Europe, OECD and UNCAC conventions

44. There are several conventions dealing with the issue of corruption that are not of a global nature, but are confined to a particular region, such as the Council of Europe Criminal Law Convention on Corruption and the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions[12].

45. The United Nations Convention against Corruption ("UNCAC"), can on the other hand be considered as providing a potentially global legal framework[13], and therefore the analysis below focuses on it.

10 Explanatory Report to the Council of Europe Convention on the Manipulation of Sports Competitions (2014), 18 September 2014 (the "Explanatory Report to the Macolin Convention"), paragraph 17, available at https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016800d383f [accessed 9 April 2018].

11 For more see http://pjp-eu.coe.int/en/web/crime-out-sport/about-kcoos [accessed 9 April 2018].

12 The OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (1997) deals with active bribery of foreign public officials in international business transactions only.

13 Study by the International Olympic Committee and the United Nations Office on Drugs and Crime, 'Criminalization approaches to combat match-fixing and illegal/irregular betting: a global perspective', July 2013, pages 277-278, available at https://www.unodc.org/documents/corruption/Publications/2013/Criminalization_approaches_to_combat_match-fixing.pdf [accessed 9 April 2018].

46. The UNCAC imposes a mandatory requirement on state parties to criminalise bribery of national public officials[14]. Article 16 further establishes that state parties must criminalise the active bribery of foreign public officials and officials of public international organisations, while the passive bribery of those two groups is an optional criminal offence[15].

47. As regards the bribery of officials of public international organisations, that offence necessarily presupposes not only that the person is an international civil servant or a person authorised by the organisation to act on its behalf, but also that the international organisation is a public one. However, international sports governing bodies are not usually classified as public organisations[16].

48. As athletes do not hold legislative, judicial, administrative or executive office, they can only be considered as public officials if their sports activity in a specific country can be understood as a "*public function*", "*public service*" or if they are explicitly defined as public officials. Such cases do not appear frequently[17]. Therefore, these provisions are likely to have only limited applicability in cases of match-fixing.

49. Finally, under the UNCAC, the criminalisation of active and passive bribery in the private sector is not mandatory. Moreover, the private sector is described as "*economic, financial or commercial activities*", which suggests that, in some countries, sports may not fall within this definition[18]. That being said, in many cases, match-fixing may fit into the definitions of active and passive bribery in the private sector.

50. The UNCAC also establishes certain principles designed to overcome the limitations created by national criminal laws addressed in Section A(2) above. For example, state parties are required to exercise their own jurisdiction if they refuse to extradite a suspect on grounds of nationality[19].

51. By contrast, if a state party exercising its jurisdiction has been notified, or has otherwise learned, that any other state parties are conducting an investigation, prosecution or judicial proceeding in respect of the same conduct, the competent authorities of those state parties shall, as appropriate, consult one another with a view to coordinating their actions.

General international instruments in relation to organised crime: UNTOC

52. Match-fixing may also involve organised crime. In this respect, it has been observed by states themselves that "*the manipulation of sports competitions may be linked to transnational organised crime and poses a direct threat to public order and the rule of law*"[20].

53. The United Nations Convention against Transnational Organized Crime ("UNTOC") requires state parties to prevent, investigate and prosecute a number of different offences under international criminal law involving organised criminal groups[21].

54. The UNTOC requires state parties, in particular, to criminalise participation in an organised criminal group (Article 5(1)). Such participation is defined as follows:

> *"(a) (i) Agreeing with one or more other persons to commit a serious crime for a purpose relating directly or indirectly to the obtaining of a financial or other material benefit and, where required by domestic law, involving an act undertaken by one of the participants in furtherance of the agreement or involving an organized criminal group;*

14 United Nations Convention against Corruption ("UNCAC"), 2004, available at https://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf, Article 15 [accessed 9 April 2018].

15 'Criminalization approaches to combat match-fixing and illegal/irregular betting: a global perspective', pages 280-281.

16 ibid.

17 ibid., page 282. This study refers to one case from an Eastern European country which considered a soccer referee as performing a public function.

18 ibid., page 284.

19 UNCAC, Article 42.

20 Explanatory Report to the Macolin Convention, paragraph 17.

21 'Criminalization approaches to combat match-fixing and illegal/irregular betting: a global perspective', page 289.

(ii) Conduct by a person who, with knowledge of either the aim and general criminal activity of an organized criminal group or its intention to commit the crimes in question, takes an active part in:
a. Criminal activities of the organized criminal group;
b. Other activities of the organized criminal group in the knowledge that his or her participation will contribute to the achievement of the above-described criminal aim;

(b) Organizing, directing, aiding, abetting, facilitating or counselling the commission of serious crime involving an organized criminal group."

55. Article 2 of the UNTOC defines "*serious crime*" as "*conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty*." According to this definition, match-fixing can be seen as fulfilling the requirements of one or more offences. However, in order for Article 5 of the UNTOC to apply, criminal offences related to match-fixing would have to include at least one criminal offence that is punishable by at least four years' imprisonment[22].

56. An "*organized criminal group*" is defined under Article 2 of the UNTOC as a "*structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with* [the] *Convention, in order to obtain, directly or indirectly, a financial or other material benefit*." The same provision states that a "*structured group*" is a "*group that is not randomly formed for the immediate commission of an offence and that does not need to have formally defined roles for its members, continuity of its membership or a developed structure*."

57. The understanding of the Panel is that, outside the situation where only two players are acting, certain patterns of match-fixing may fall under the definition of "*organized criminal group*" and therefore allow the prosecution and cooperation by states within the framework of the UNTOC. In particular, three or more persons, acting for the first time or already for a longer period of time for the purpose of match-fixing may, theoretically at least, be considered as an organised criminal group[23].

58. Finally, it should be mentioned that the UNTOC requires state parties to establish corruption as a criminal offence, but it refers only to public corruption. Once again, the state parties have the freedom to establish other forms of corruption as criminal offences, but this is not mandatory[24].

(4) CONTRACTUAL OBLIGATION TO COMPLY WITH THE RULES OF THE SPORT AND RIGHT TO A FAIR TRIAL

59. In contrast to criminal law, which is state-imposed law, sports anti-corruption obligations at the disciplinary level are the result of contractual agreements between or submissions by (a) players and other participants (such as coaches, referees, and so on) and (b) the sports governing bodies, to comply with rules operated by those bodies. Players, and especially "*professional*" players, and others are effectively required to adhere to the rules if they wish to participate in the sport, and individually they have virtually no bargaining power. They will generally have expressly contractually accepted the obligation to comply with the rules, in return for access, and a contract may often be implied even if not express.

60. This "*take it or leave it*" obligation to adhere to the rules sometimes leads to criticism that insufficient regard is paid to the preservation of players' fundamental rights. In particular, the "*monopolistic self-governing*"[25] aspect of sports governing bodies and the legal status of sports enforcement bodies being "*between private and public*"[26] are identified as reasons why those organisations and bodies should pay more attention to the interests of those on whom the rules are imposed. In light of this, and in order to mitigate this perception, sports governing bodies need to create conditions in which the

22 ibid., page 290.

23 ibid., page 293.

24 Report by KEA European Affairs, 'Match-fixing in sport, A mapping of criminal law provision in EU 27', March 2012, page 17, available at http://ec.europa.eu/assets/eac/sport/library/studies/study-sports-fraud-final-version_en.pdf [accessed 9 April 2018].

25 K. Pijetlovic, Fundamental rights of athletes in the EU Post-Lisbon, in T. Kerikmäe (ed.), Protecting Human Rights in the EU: Controversies and Challenges of the Charter of Fundamental Rights, Berlin/Heidelberg 2014, pages 161-186, page 161.

26 ibid.

interests of their players and participants, as partners in the creation of the sporting product, are properly represented[27]. In particular, special care needs to be given to both (a) substantive and (b) procedural rules that may be the target of objections as to their incompatibility with public policy (including fundamental rights).

Substantive contractual obligations

61. Substantive contractual obligations are those that establish the sport's rules of conduct, disciplinary offences, and sanctions. This covers all the offences under the disciplinary rules of a sports governing body, including, for example, a breach of the secondary obligations to report match-fixing by others and to cooperate fully with investigations, as well as a breach of the primary obligation not to fix a match.

62. To be binding, substantive contractual obligations must comply with certain principles of law. Not all rules included in sports regulations are necessarily enforceable simply by virtue of their inclusion in the rules. The Explanatory Report to the Macolin Convention states that "*...adoption and implementation of disciplinary sanctions applied by sports governing bodies, such as the suspension from other sports activities, must be done in accordance with the national law. This includes, in particular, respecting human rights and the principle of proportionality*.[28]"

63. Along those lines, the Swiss Federal Supreme Court decided in the *Matuzalem* case that the economic development and privacy of a football player was violated by a disproportionate FIFA rule that precluded him from playing, pending payment of a sanction that was too large to be paid without his being able to play, and therefore annulled a CAS award which had applied the rule, as being against public policy. Consequently, CAS must be careful not to enforce similar rules or to impose disproportionate fines, as discussed further below in Section E(2).

Procedural contractual obligations

64. Procedural contractual obligations are those that bind players and others to non-judicial dispute resolution, or disciplinary, mechanisms under the relevant sport's rules. As those obligations are usually included in the rules of the sports governing body (which determines who may compete in that sport) the player has little choice but to accept them.

65. However, since states have sole responsibility for the determination of civil and criminal rights and obligations, a sports governing body's power to punish players, or deny them access to a sport, or to fine them, is in effect only exercised on the state's (express or implied) delegation or toleration. Last instance disciplinary decisions (such as CAS decisions) are therefore all subject to a possible supervisory appeal before national courts (such as the Swiss Federal Supreme Court for CAS decisions), which are themselves subject to the scrutiny of the European Court of Human Rights, as public authorities. Accordingly, the requirements (or some of the requirements) of instruments such as the European Convention on Human Rights also apply to sports governing bodies. The courts will ensure that that sports governing bodies operate a dispute resolution system in which civil rights and obligations are determined independently, fairly and impartially.

66. In order to be binding, procedural contractual obligations must therefore observe certain formalities. However, these vary from jurisdiction to jurisdiction. For example:

    66.1 In England and Wales, it has been held that a requirement that a player enter into a procedural contractual obligation, such as compulsory arbitration, is enforceable because the requirement "*is not a constraint in any relevant sense*"[29].

27 ibid., page 174.

28 Explanatory Report to the Macolin Convention, paragraph 86.

29 Stretford v The Football Association Ltd & Another, Chancery Division [2006] EWHC 479 (Ch), published in I.S.L.R. SLR39-48, 46-47 paragraphs 42, 45, 48.

66.2 In Switzerland, adopting a practical approach, the Swiss Federal Supreme Court found that procedural contractual obligations, such as compulsory arbitration, are enforceable because (a) on the one hand, such obligations favour "*the prompt settlement of disputes, particularly in sports-related matters, by specialised arbitral tribunals presenting sufficient guarantees of independence and impartiality*..." and, (b) "*on the other hand,* [they ensure] *that the parties, and specifically professional players, do not lightly waive their right to challenge final arbitral awards before the highest court of the country in which the arbitration has its place*"[30].

66.3 In France, the courts have taken a different approach based on the assumption that players' right to have access to state justice cannot be unilaterally denied by a sports governing body. Indeed, the Tribunal de Grande Instance de Paris stated that *"since the right of any person to proceed before the state courts is an issue of public policy, the athlete shall not be deprived of this right through regulations issued by sports governing bodies*"[31]. Thus, such contractual procedural obligations are void under French law since "*the dispute resolution systems provided for in sports regulations cannot exclude the members' (in other words players' and clubs') right to have access to a judge*"[32].

66.4 In the United States, players can generally be bound to non-judicial settlement mechanisms, as long as the players have consented in advance[33]. As described in Chapter 7, a U.S. court applied this general rule in upholding the suspensions of five professional tennis players issued by an Anti-Corruption Hearing Officer ("AHO"), certain of which were affirmed in whole or in part by CAS, pursuant to the then procedures of the ATP Tennis Anti-Corruption Programme in the ATP's Rulebook[34]. The U.S. court concluded that the arbitration provision in the ATP's Rulebook was enforceable against several players "*because* [the players] *accepted the benefits of the bargain of playing ATP events (including accepting prize money) after signing an agreement to be bound by the Rulebook*"[35]. Also, U.S. courts have enforced arbitration provisions contained in collective bargaining agreements in cases involving several professional sports, including American football[36], hockey[37], and baseball[38].

67. Procedural contractual obligations have been challenged often. The long-running *Pechstein* case is a paradigm example in this respect, since it cast doubt over the validity of an arbitration agreement contained in the rules of the International Skating Union ("ISU"). Pechstein sought to challenge a CAS decision[39] upholding a suspension against Pechstein. In doing so she argued that the arbitration agreement which gave CAS its jurisdiction violated competition law and her fundamental rights and, as such, her consent to the arbitration agreement was vitiated. These arguments were however dismissed by the Swiss Federal Supreme Court[40], and, although a subsequent decision by the Regional Court of Münich[41] revived the debate[42], the most recent decision by the German Supreme Court[43] also rejected Pechstein's claims. Proceedings before the European Court of Human Rights remain pending[44].

30 Decision by the Swiss Federal Supreme Court of 22 March 2007 published in BGE 133 III 235, paragraph 4.3.2.3, 25 ASA Bulletin 2007, pages 592 et seq., pages 603-604, translated in 1 Swiss Int'l Arb. I. Repage 65, 88-89 (2007).

31 Decision by the Tribunal de Grande Instance de Paris of 26 January 1983, published in Recueil Dalloz, 1986, page 366, translated in A. Rigozzi, F. R. Tissot, "Consent" in Sports Arbitration: Its Multiple Aspects, E. Geisinger, E. Trabaldo de Mestral (eds), Sports Arbitration: A Coach for Other Players?, ASA Special Series No. 41, New York 2015, pages 59-94, page 65.

32 A. Rigozzi, F. R. Tissot, '"Consent" in Sports Arbitration: Its Multiple Aspects', E. Geisinger, E. Trabaldo de Mestral (eds), Sports Arbitration: A Coach for Other Players?, ASA Special Series No. 41, New York 2015, pages 59-94, page 65.

33 This is true both under applicable federal law, see Federal Arbitration Act, 9 U.S.C. Section 2, and under applicable state law, see Uniform Arbitration Act, Del. Code tit. 10, Section 5701.

34 Luzzi v. ATP Tour, Inc., 2011 WL 2448918 (M.D. Fla. Mar. 1, 2011).

35 ibid., page 6.

36 For example, Nat'l Football League Mgmt. Council v. Nat'l Football League Players Ass'n, 820 F.3d 527 (2d Cir. 2016).

37 For example, E. Coast Hockey League, Inc. v. Prof'l Hockey Players Ass'n, 322 F.3d 311 (4th Cir. 2003).

38 For example, Major League Baseball Players Ass'n v. Garvey, 532 U.S. 504 (2001) (per curiam).

39 CAS 2009/A/1912 & 1913 (Claudia Pechstein & Deutsche Eisschnelllauf Gemeinschaft e.V. (DESG) v. International Skating Union).

40 Claudia Pechstein v International Skating Union und Deutsche Eisschnelllauf Gemeinschaft eV, Swiss Federal Supreme Court, Decision, 4A_612/2009, 10 February 2010,ASA Bull 3/2010, 612; Swiss Federal Supreme Court, Decision 4A_144/2010, 28 September 2010, ASA Bull 1/2011, 147.

41 LG München I, judgment dated 26 February 2014 – 37 O 28331/12.

42 H. Kahlert, '(In)voluntary submission to arbitration in Germany, Switzerland and beyond, in European International Arbitration Review 2014', pages 175-190.

43 English translation of the German Supreme Court decision of 7 June 2016 available at https://www.isu.org/claudia-pechstein-case/2082-german-supreme-court-decision/file [accessed 9 April 2018].

44 As at 9 April 2018.

68. It is therefore important that limitations on the ambit of the substantive and procedural contractual obligations that can be imposed by a sport be considered in setting the substantive and procedural legal framework to combat match-fixing and other integrity breaches.

69. The discussion above focuses on the forum for resolving a dispute, and the need to obtain players' consent to adjudicate disciplinary disputes outside national court. However, sports governing bodies' rules must also take into serious consideration the wider aspects of players' right to due process and a fair trial. There are, in particular, limitations imposed by Article 6 of the European Convention on Human Rights ("ECHR"), which provides for the following basic rights: the right of access to the courts; the right to an independent and impartial tribunal; the right to a public hearing; the right to a public judgment; the right to a judgment within a reasonable time; and the right to a fair trial. [45]

70. Some of these rights are deemed alienable or waivable by the very act of executing an arbitration agreement: these include waiver of direct access to courts, the right to a public hearing, and the right to a public judgment. Apart from these, however, the rights under Article 6 are also widely recognised to form part of international public policy, especially the right to a fair trial, which has been described in the Explanatory Report to the Macolin Convention as follows: "*... disciplinary procedures must respect the general principles of law recognised at international level and guarantee the fundamental rights of the suspected athletes. According to these principles, ...the investigating body must be separate from the disciplinary body, those suspected have the right to a fair trial and the right to be assisted or represented and there must be clear and enforceable provisions allowing for a right of appeal before a court or an arbitration body.*"[46]

71. Sports governing bodies have therefore usually guaranteed these fundamental rights, or provided for them to be waived validly in their rules:

    71.1 The right of direct access to court is generally waived validly and replaced with, in the first instance, a disciplinary process and right of appeal before an arbitration body. Most sports governing bodies' rules provide for a player's right to appeal the disciplinary decision of sports governing bodies before CAS (or an equivalent) since "*an appeal to the CAS against a decision adopted by a sports organization entails a de novo review on the merits of the case*", which means that the CAS panel will make "*its independent determination of whether the Appellant's and Respondent's contentions are correct on the merits, not limiting itself to assessing the correctness of the previous procedure and decision*"[47].

    71.2 In addition, players are also afforded the right to challenge an appeal decision before a national court for breaches of fundamental principles and essential procedural guarantees. CAS, or any other appellate arbitral body, is subject to supervisory review by the courts of its seat. For instance, in the *Cañas* case the Swiss Federal Supreme Court held that a purported waiver of the ability to seek to set aside proceedings before national courts was void on the basis that, in the context of sports, the consent to such waiver "*will obviously not rest on a free will, as a general rule*"[48]. In other words, since players and others are forced to accept a defined dispute settlement mechanism in order to participate, they cannot also be prevented from challenging such proceedings on the basis that procedural guarantees under that dispute resolution mechanism have been violated.

45 For a detailed analysis of the fundamental rights under Article 6(1) of the ECHR see the "Guide on Article 6 of the European Convention on Human Rights" available at http://www.echr.coe.int/Documents/Guide_Art_6_ENG.pdf [accessed 9 April 2018].

46 Explanatory Report to the Macolin Convention, paragraph 87.

47 M. Coccia, 'International and Comparative Sports Justice, in European Sports Law and Policy Bulletin 1/2013', page 39, where the author makes reference to the Final Award CAS 2009/A/1880-1881 (FC Sion & El-Hadary v. FIFA & Al-Ahly SC), paragraph 146.

48 Decision of the Swiss Federal Supreme Court, 22 March 2007, published in BGE 133 III 235. The Court further concluded that "by accepting in advance to abide by any future awards, an athlete deprives himself forthwith of the right to complain in due course of subsequent breaches of fundamental principles and essential procedural guarantees which may be committed by arbitrators called upon to decide in this case... Therefore, having regard to its consequences, a waiver of the right to bring setting aside proceedings should not, in principle, be raised against an athlete to dispute the admissibility of an application to have an award set aside even if the formal requirements set out in article 192(1) FPILA are met."

Separation of investigating body from the disciplinary body, and independence and impartiality

72. The choice of CAS as an appellate body also resolves the issue that the investigatory arms of sports governing bodies may not be sufficiently independent from their disciplinary arms, since "*the CAS appeal arbitration procedure cures any infringement of the right to be heard or to be fairly treated committed by a sanctioning sports organization during its internal disciplinary proceedings*"[49]. In assessing independence and impartiality, the entire disciplinary process must be addressed. The nature of the CAS hearing (involving a full merits review by the appellate body) does, on the current state of the *Pechstein* litigation, satisfy the requirements of independence and impartiality, and so overrides any element of lack of independence below[50]. Other independent and impartial arbitral bodies can fulfil a similar appeal role to CAS. In addition there are alternative methods of ensuring an Article 6 compliant process, including the use of independent and impartial arbitral bodies as the first instance disciplinary decision maker[51]. That ensures the appropriate separation between the disciplinary decision-maker and the sport's investigatory arm, because the independent and impartial body resolves sports disciplinary actions brought before it by the sport's investigatory arm.

73. The right to a public hearing and a public judgment may be validly waived. The issue of the publication of decisions is however often approached differently in that it is usually the player (rather than the governing body) who wishes to prevent publication.

74. The right to a fair opportunity to be heard is protected by most sports rules. The player or other participant is generally to be fully informed of the case against it and is generally afforded an oral hearing at which to address it.

75. It has been suggested that "*unless there is an effective system of legal aid, an athlete who cannot afford the arbitration because of her or his indigence can therefore validly terminate the arbitration agreement and bring her or his claim before state courts (where legal aid is available)*"[52]. Because of this risk of unenforceability of players' procedural obligations, arbitral institutions such as CAS provide, under certain conditions[53], legal aid for players to have *pro bono* counsel and be released from the obligation to pay any costs of the arbitration[54]. More recently, some sports governing bodies have committed to guaranteeing the rights of individuals who lack the financial means to defend themselves in a similar manner for internal disciplinary proceedings as well[55].

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49 M. Coccia, International and Comparative Sports Justice, in European Sports Law and Policy Bulletin 1/2013, page 38, where the author makes reference to the following Final Awards CAS 2009/A/1545 (Anderson et al. v. IOC), paragraph 78; CAS 2003/O/486 (Fulham FC v. Olympique Lyonnais), paragraph 50; CAS 2008/A/1594 (Sheykhov v. FILA), paragraph 109.

50 Very recently, in its decision 4A_260/2017 dated 8 March 2018, the Swiss Federal Supreme Court confirmed, again, CAS' independence. In this respect, it has been observed that "whereas the previous leading cases on CAS' independence (Gundel, Lazutina, Pechstein) were primarily focused on the closed list of arbitrators and the (then) predominant position of the international federations and the role of international institutions in promoting arbitrators to such a closed list, the present case focuses primarily on the alleged financial dependence of CAS on FIFA (and the IOC)"; Hansjörg Stutzer, Michael Bösch and Simon M. Hohler, 'Switzerland: The Independence Of CAS Confirmed' (Mondaq, 6 April 2018), available at: http://www.mondaq.com/x/689702/Sport/The+Independence+Of+CAS+Confirmed, [accessed 9 April 2018].

51 For example. this function could be carried out by Sport Resolutions, an independent, not-for-profit, dispute resolution service for sport based in the United Kingdom

52 '"Consent" in Sports Arbitration: Its Multiple Aspects' page 74, making reference also to the decision by the Hamburg Hanseatisches Oberlandsgericht of 15 November 1995, paragraph 9, published in Yearbook Commercial Arbitration 2013 – Vol. XXI -1996, pages 845-848 and the references: "... termination of an arbitration agreement is possible where circumstances arise under which no effective legal protection can be guaranteed in the arbitral proceedings ...".

53 Guidelines on Legal Aid before the Court of Arbitration for Sport (2013, as amended in 2016), Article 5, available at http://www.tas-cas.org/fileadmin/user_upload/Legal_Aid_Rules_2016_English.pdf [accessed 9 April 2018]: "Legal aid is granted, based on a reasoned request and accompanied by supporting documents, to any natural person provided that her/his income and assets are not sufficient to allow her/him to cover the costs of proceedings, without drawing on that part of her/his assets necessary to support her/him and her/his family. Legal aid will be refused if it is obvious that the applicant's claim or grounds of defence have no legal basis. Furthermore, legal aid will be refused if it is obvious that the claim or grounds of defence are frivolous or vexatious".

54 Guidelines on Legal Aid before the Court of Arbitration for Sport (2013, as amended in 2016) are available at http://www.tas-cas.org/fileadmin/user_upload/Legal_Aid_Rules_2016_English.pdf [accessed 9 April 2018].

55 UEFA for instance offers Legal aid and pro bono counsel. See https://www.uefa.com/insideuefa/disciplinary/news/newsid=2522381.html#/, Wednesday 1 November [accessed 9 April 2018].

The range of contractual obligations in sports rules designed to protect integrity

76. The integrity issues described in Chapter 4 arise in varying forms in different sports, and different sports adopt varying approaches to the content of the rules designed to tackle them, both in terms of the substantive obligations, and in terms of the appropriate procedures. Those approaches and rules will of course be adapted to the particular needs and circumstances of the relevant sport, including the nature and extent of the problem faced by that sport[56], and the extent to which the issue has yet been addressed[57]. The Panel has considered and taken into account the approaches and rules of many sports on a comparative basis in its assessment of the appropriate way forward for tennis[58]. The Review does not however attempt comprehensively to set out the rules or approaches in those other sports, the circumstances of each of which are different to those of tennis.

The "Olympic Movement Code on the Prevention of the Manipulation of Competitions"

77. To the extent that there is commonality, it is perhaps to be found in the recent attempt by the International Olympic Committee ("IOC") to identify a set of minimum non-exclusive rules as a template for sports. On 17 December 2015[59], the IOC published the *"Olympic Movement Code on the Prevention of the Manipulation of Competitions"*[60]("the Code"). The Preamble specifically states[61] that sports cannot act alone and will have to cooperate with public authorities; that the rules contained in the Code comply with the Macolin Convention[62]; that *"this does not prevent Sports Organisations from having more stringent regulations in place"*; and that those covered by the Code such as international sports federations must implement, and must require their national members to implement, regulations consistent with or more stringent than the Code.

78. Again, without purporting to set out an exhaustive description of the Code, a number of points are to be noted. The Code extends to a wide range of participants, grouped under athletes, athlete support personnel and officials[63]. In relation to the minimum substantive behavioural obligations to be imposed on a sport's participants, the Code prohibits[64]:

    78.1 Betting not only on the competition (including multisport competitions) in which the person is participating, but also on the participant's sport more widely. The rule does not extend to sports betting generally.

    78.2 Manipulating a competition, meaning *"an intentional arrangement, act or omission aimed at an improper alteration of the result or the course of a sports competition in order to remove all or part of the unpredictable nature of the sports competition, with a view to obtaining an undue benefit for oneself or for others"*. A *"benefit"* may be[65] money, but may also be *"gifts and other advantages"*. The focus is therefore, on its face, on deliberate action for monetary reward rather than the contrivance of an event for other reasons[66], unless those reasons could be described as an advantage.

56 For the nature and extent of the problem faced by tennis, see Chapter 13. It is clear that for many sports, the problem faced is not of the same degree.

57 For the process by which tennis came to address the problem from 2003 onwards, see Chapters 7, 8 and 9. For the current system see Chapter 10.

58 The Panel's conclusions are set out in Chapter 14.

59 Press release at https://www.olympic.org/news/ioc-publishes-unprecedented-olympic-movement-code-for-preventing-competition-manipulation [accessed 9 April 2018].

60 Olympic Movement Code on the Prevention of the Manipulation of Competitions, 2016, available at https://stillmed.olympic.org/media/Document%20Library/OlympicOrg/IOC/Who-We-Are/Commissions/Ethics/Good-Governance/olympic_movement_code_on_the_prevention_of_the_manipulation_of_competitions-2015-en.pdf#_ga=2.185190957.562736708.1519384504-1419240358.1519384504 [accessed 9 April 2018].

61 "(a) Acknowledging the danger to sports integrity from the manipulation of sports competitions, all sports organisations, in particular the International Olympic Committee, all International Federations, National Olympic Committees and their respective members at the Continental, Regional and National level and IOC recognised organisations (hereinafter, 'Sports Organisations'), restate their commitment to safeguarding the integrity of sport, including the protection of clean athletes and competitions as stated in Olympic Agenda 2020; (b) Due to the complex nature of this threat, Sports Organisations recognise that they cannot tackle this threat alone, and hence cooperation with public authorities, in particular law enforcement and sports betting entities, is crucial; (c) The purpose of this Code is to provide all Sports Organisations and their members with harmonised regulations to protect all competitions from the risk of manipulation. This Code establishes regulations that are in compliance with the Council of Europe Convention on the Manipulation of Sports Competitions in particular Article 7. This does not prevent Sports Organisations from having more stringent regulations in place; (d) In the framework of its jurisdiction as determined by Rule 2.8 of the Olympic Charter, the IOC establishes the present Olympic Movement Code on the Prevention of the Manipulation of Competitions, hereinafter the Code; (e) Sports Organisations bound by the Olympic Charter and the IOC Code of Ethics declare their commitment to support the integrity of sport and fight against the manipulation of competitions by adhering to the standards set out in this Code and by requiring their members to do likewise. Sports Organisations are committed to take all appropriate steps within their powers to incorporate this Code by reference, or to implement regulations consistent with or more stringent than this Code."

62 Paragraphs 29 to 43 above.

63 Olympic Movement Code on the Prevention of the Manipulation of Competitions, Article 1.4.

64 ibid., Article 2.

65 ibid., Article 1.1.

66 Chapter 4, Section B.

78.3 Providing, requesting, receiving, seeking, or accepting a benefit related to the manipulation of a competition or any other form of corruption.

78.4 The misuse of *"inside information"*, which is defined[67] as *"information relating to any competition that a person possesses by virtue of his or her position in relation to a sport or competition, excluding any information already published or common knowledge, easily accessible to interested members of the public or disclosed in accordance with the rules and regulations governing the relevant competition"*. Participants are prohibited from: (a) using inside information for the purposes of betting, any form of manipulation or any other corrupt purpose; (b) disclosing inside information "*with or without benefit*" in circumstances where the participant knew or should have known might lead to it being used for those purposes; or (c) giving or receiving a benefit for the provision of inside information. This imposes an important obligation on the participant to be careful not to disclose information, even where no benefit is provided, and sets a broad ambit for what is inside information.

78.5 Failing to report approaches or knowledge of *"conduct that could amount to a violation of this Code"* by others. This imposes an important obligation on participants not only not to breach the core rules themselves, but to also report what they know about breaches by others.

78.6 Failing to cooperate, including by providing information, documents, access and assistance, and obstructing an investigation, including by tampering with evidence.

78.7 Attempting or aiding and abetting breaches of any of the above obligations. The Code also specifically rejects a number of arguments that might be made by a participant as to limitations on the ambit of those obligations.

79. The Code sets out *"minimum standards"* for any disciplinary procedure[68]:

79.1 In relation to an investigation: (a) the participant should be informed of the provision alleged to have been breached, by what acts, and with what consequences; (b) the participant must provide requested information including hard drives and electronic information storage devices; and (c) the participant must provide a statement.

79.2 The participant has the rights: (a) to be informed of the charges; (b) to a fair timely and impartial hearing either in person and/or in writing; and (c) to be represented.

79.3 The burden of proving a violation is on the sports governing body and the standard of proof *"shall be the balance of probabilities, a standard that implies that on the preponderance of the evidence it is more likely than not that a breach of this Code has occurred"*.

79.4 *"The principle of confidentiality must be strictly respected by the Sports Organisation during all the procedure; information should only be exchanged with entities on a need to know basis. Confidentiality must also be strictly respected by any person concerned by the procedure until there is public disclosure of the case"*.

79.5 *"Anonymous reporting must be facilitated"*.

79.6 Each sport's governing body *"shall have an appropriate appeal framework within its organisation or recourse to an external arbitration mechanism (such as a court of arbitration)"*.

80. The Code specifically contemplates that *"provisional measures, including a provisional suspension"* may be imposed "*where there is a particular risk to the reputation of the sport*"[69].

67 Olympic Movement Code on the Prevention of the Manipulation of Competitions, Article 1.3.

68 ibid., Article 3.

69 ibid., Article 4.

81. The Code specifically contemplates: (a) that *"the range of permissible sanctions... may range from a minimum of a warning to a maximum of life ban"*; (b) that aggravating and mitigating circumstances must be taken into account in setting the sanction; (c) that there be a written decision; (d) that *"substantial assistance"* provided by the participant may reduce any sanction[70].

82. The Code also requires mutual recognition of decisions taken by sports governing bodies bound by the Code[71]. It also requires sports governing bodies to recognise the decision of other bodies or courts of competent jurisdiction[72].

83. Several sports have followed quite closely the IOC's approach, although adding to varying degrees their own additional provisions. A recent example is the International Amateur Athletics Association ("IAAF"), which in 2017 introduced its *"Integrity Code of Conduct"*[73] requiring a widely defined group of participants[74] in athletics to comply with *"Integrity Standards"*[75], one of which is to "*to ensure the integrity of, and not to improperly benefit from, Athletics competitions"*[76] by complying with *the "IAAF Manipulation of Sports Competitions Rules"*[77], which take as their starting point and follow closely the IOC Code. The IAAF also set up in 2017 an *"Athletics Integrity Unit"*, (a) the composition and operation of which is governed by *"IAAF Athletics Integrity Unit Rules"*; and (b) the investigatory process of which is governed by the *"IAAF Athletics Integrity Unit Reporting, Investigation and Prosecution Rules"*[78]. Lastly the IAAF in 2017 established the *"IAAF Disciplinary Tribunal Rules"*[79], which define the procedure that should apply to breach of integrity cases.

The approach taken in other sports

84. Other major international sports have however long had their own approach to addressing breaches of integrity. While there is self-evidently a good deal of overlap in approach and, in particular, in relation to the nature of the behaviours prohibited and the rights to be protected, those sports have moulded their rules to suit their own circumstances.

85. For example, in the context of international football, UEFA's rules extend not only to prohibitions of the kind covered in the IOC Code, but also to rather more onerous *"eligibility"* criteria:

    85.1 UEFA's 2017 Disciplinary Regulations[80] include an obligation[81] *"to refrain from any behaviour that damages or could damage the integrity of matches and competitions"*, which includes: (a) acting in a manner likely to exert an unlawful or undue influence on the course or result of a match with a view to gaining an advantage; (b) participation directly or indirectly in betting; (c) using or providing others with inside information which could damage the integrity of a match or competition; and (d) failing to report approaches or possible breaches by others.

70 ibid., Article 5.

71 ibid., Article 6.

72 ibid., Article 4.

73 The IAAF Integrity Code of Conduct ("ICC"), 22 April 2017, available at https://www.iaaf.org/about-iaaf/documents/rules-regulations [accessed 9 April 2018]. The IAAF ICC replaces the IAAF Code of Ethics formerly in operation.

74 ibid., paragraph 3.

75 ibid., paragraph 6.

76 ibid., paragraph 6.3(d).

77 Still, it appears, Appendix 2 of the IAAF Code of Ethics "Rules against Betting, Manipulation of Results and Corruption"., available at https://www.iaaf.org/about-iaaf/documents/rules-regulations

78 These rules are available at https://www.iaaf.org/about-iaaf/documents/rules-regulations.

79 These rules are available at https://www.iaaf.org/about-iaaf/documents/rules-regulations.

80 UEFA Disciplinary Regulations, 2017, available at http://www.uefa.com/MultimediaFiles/Download/Regulations/uefaorg/UEFACompDisCases/02/48/23/06/2482306_DOWNLOAD.pdf [accessed 9 April 2018].

81 UEFA Disciplinary Regulations, Article 12.

85.2 In addition, UEFA's 2017/18 Season Champions League Regulations[82] include a requirement[83] that *"to be eligible to participate in the competition, clubs must: ...g. not have been directly and/or indirectly involved, since the entry into force of Article 50(3) of the UEFA Statutes, i.e. 27 April 2007, in any activity aimed at arranging or influencing the outcome of a match at national or international level and confirm this to the UEFA administration in writing"*. If *"on the basis of all the factual circumstances and information available to UEFA, UEFA concludes to its comfortable satisfaction that a club has been directly or indirectly"* so involved, it will declare the club suspended for one season[84]. UEFA *"can rely on, but is not bound by, a decision of a national or international sporting body, arbitral tribunal or state court"*.

85.3 The application of the ineligibility rule does not preclude disciplinary action[85] .

85.4 This casts the net wide, as a club may have become "*indirectly*" involved in such activity without actually being directly culpable for it.

86. Football also employs a different investigatory and disciplinary structure than, for example, the IAAF. Within the UEFA framework, its organs for the administration of justice are the Control, Ethics and Disciplinary Body ("CEDB"), the Appeals Body ("AB"), the Ethics and Disciplinary Inspectors and the Club Financial Control Body[86]. Members of these bodies are independent and cannot sit on any other UEFA body or participate in matters where there is a conflict of interest[87]. The CEDB is competent to address all disciplinary matters within its jurisdiction according to the UEFA Statutes and other UEFA Rules.

87. A distinctive feature within the UEFA disciplinary system is the role of the Ethics and Disciplinary Inspectors who represent UEFA in legal proceedings before the CEDB and the AB. They may initiate disciplinary proceedings, investigate, lodge appeals and offer other support in the process[88].

88. Beyond football, several other sports also adopt different approaches to addressing breaches of integrity:

88.1 In horseracing, it is noticeable that the relevant rules prohibit contrivance of a result irrespective of any proof that it is done for betting or other corrupt purposes. For example, it is a breach of the British Horseracing Board's Rules of Racing simply to *"intentionally* [fail] *to ensure that* [the horse] *is run on its merits"*[89]. This is in addition to and separate from the obligation not to bet[90]; the obligation not to accept any reward in relation to a race other than for riding[91]; and the obligation not to communicate inside information for reward[92].

88.2 In cricket, access to the players' and match officials' area ("PMOA") will be restricted only to those individuals whose presence in that area is absolutely essential for operational purposes[93]. This helps to combat the fact that nine players from one of the teams are not on the field of play at any one time and may therefore be susceptible to approaches from members of the public seeking to engage in corrupt behaviour. Further, subject to certain exceptions, landline telephones, mobile phones and laptops (with or without internet access) are forbidden from being brought into the PMOA.

82 Regulations of the UEFA Champions League 2015-2018 Cycle, 2017/18 Season, available at http://www.uefa.com/MultimediaFiles/Download/Regulations/uefaorg/Regulations/02/46/71/38/2467138_DOWNLOAD.pdf [accessed 9 April 2018].

83 Regulations of the UEFA Champions League, Article 4.01 (g).

84 ibid., Article 4.02.

85 ibid., Article 4.03.

86 UEFA Statutes (US, 2018 ed.), Article 32.

87 US, Article 32. UDR, Article 32.

88 UDR, Article 31.

89 BHA Rules of Racing Race Manual (B) Part 4 – the Race – (B)58 and (B)59, available at: http://rules.britishhorseracing.com/Orders-and-rules&staticID=126359&depth=3 and http://rules.britishhorseracing.com/Orders-and-rules&staticID=126360&depth=3 [accessed 9 April 2018].

90 BHA Rules of Racing Rider Manual (D) Part 5 – general Duties of Riders – (D)53, available at: http://rules.britishhorseracing.com/Orders-and-rules&staticID=126110&depth=3 [accessed 9 April 2018].

91 BHA Rules of Racing Rider Manual (D) Part 5 – General Duties of Riders – (D)55, available at: http://rules.britishhorseracing.com/Orders-and-rules&staticID=126112&depth=3 [accessed 9 April 2018].

92 BHA Rules of Racing General Manual (A) Part 4 – General Requirements as to Conduct – (A)36, available at:http://rules.britishhorseracing.com/Orders-and-rules&staticID=126201&depth=3 [accessed 9 April 2018].

93 PMOA Standards, Article 3.1.1.

88.3 There is an increasing focus in a number of sports on education as a means to prevent match-fixing. For example, in golf, the PGA Tour has worked with Genius Sports to develop an educational program that will "*help players, caddies and officials to identify, resist and report incidents of potential betting corruption*." The PGA Tour has also announced that it plans to introduce "*educational workshops* [that] *will reinforce the PGA TOUR's regulations and highlight the potential consequences related to betting corruption*" and "*custom-made e-learning modules* [that] *will be available on a worldwide basis to all PGA TOUR players in multiple languages*."[94] The only aspect of the educational program that has been rolled out thus far is a 15-minute video about gambling. All PGA Tour players were required to view the video and to complete an accompanying questionnaire by 31 December 2017[95].

94 Press Release, 'PGA Tour, PGA Tour implementing new Integrity Program in 2018',Sept. 18, 2017, available at: https://www.pgatour.com/company/2017/09/18/pga-tour-implementing-new-integrity-program-in-2018.html [accessed 9 April 2018].

95 Dave Sheloski, 'Players begin to familiarize themselves with the PGA Tour's new 'Integrity Program'' (Golfworld, 10 January 2018), available at https://www.golfdigest.com/story/players-begin-to-familiarize-themselves-with-the-pga-tours-new-integrity-program [accessed 9 April 2018].

B DETECTION OF BREACHES OF INTEGRITY

89. A breach of integrity can only be punished if it is first detected. Such detection may take place in a number of different ways, each of which usually involves the action and cooperation of a number of different actors.

(1) REPORTING OF, AND INTELLIGENCE AS TO, BREACHES OF INTEGRITY

90. The primary basis for detection is reports made about, and the intelligence amassed as to, breaches of integrity. All information reported over the years becomes part of the intelligence of the various bodies involved in dealing with breaches of integrity, including international and national governing bodies, event organisers, betting operators, and state authorities. The intelligence is composed of information amassed by means of these organisations' regular operations and investigations, as well as through reporting to them.

Building and exploiting intelligence, in particular through focused investigation

91. A number of sports governing bodies (in addition to the tennis governing bodies) have created dedicated anti-corruption or integrity units[96] and have devised strategies to achieve a better flow of information to assist in the detection of breaches. When information related to breaches of integrity is insufficient or cannot be used as evidence on which to mount successful legal proceedings, it may nevertheless become part of the intelligence of the sports governing body, and be put to use in order to focus or facilitate future investigations.

92. Care must however be taken. Over-reliance on some types of internal intelligence as a trigger for focusing disciplinary investigations may lead to selective investigation based on preconceptions and may also raise potential issues regarding data protection.

93. Whilst such issues must be guarded against, a report produced by external advisors to the International Cricket Council on the anti-corruption arrangements in cricket in 2012 went so far as to suggest that an investigation should only ever be commenced on the basis of an external allegation being made, and should not be commenced on the basis of internal intelligence[97]. It was suggested that this was appropriate in order to avoid the appearance of selective investigation and so to maintain the trust of those under the jurisdiction of the rules.

94. While much will turn on the facts, it seems to the Panel that the reality, at least in tennis, is that intelligence is very rarely solely "*internal*", and generally has numerous "*external*" elements, including allegations of breach. It may however be that the precise allegation or allegations in the past could not be made the subject of disciplinary proceedings. It seems to the Panel that for an investigation to be focused on particular players who have, for example, been the subject of a number of allegations in the past, none of which have been capable of being proved, is legitimate, and is a far cry from what cricket's external advisors appear to have had in mind as inappropriate, which appears to have been investigation prompted without any external impetus. Furthermore, if a breach of integrity has been committed, and is uncovered by an investigation, the possibility that the investigation was commenced in part as a result of an investigator's experience built up over years, arguably does not affect the desirability, and validity, of the disciplinary conviction. It seems to the Panel that while a sports governing body must be astute to make decisions objectively, the accumulation of information and intelligence, whether involving "*internal*" or "*external*" elements, can generally form a basis for focusing an investigation, and ultimately even disciplinary prosecution.

96 Examples include the Athletics Integrity Unit or AIU and the Anti-Corruption Unit ("ACU") in cricket. The AIU is governed by "IAAF Athletics Integrity Unit Rules" and "IAAF Athletics Integrity Unit Reporting, Investigation and Prosecution Rules", each of which are available at https://www.iaaf.org/about-iaaf/documents/rules-regulations. The ACU is the department within the International Cricket Council that is mandated, amongst other things, to monitor compliance with and investigate potential breaches of cricket's Anti-Corruption Code for Participants.

97 Report by B. de Speville, A review of the anti-corruption arrangements of the International Cricket Council, 2012, page 14: "a policy of investigating allegations should mean that the ACSU does not initiate investigations from its own intelligence resources. As its intelligence database develops, the unit will be able to initiate an investigation from the intelligence it has accumulated about an individual. It must resist the temptation to do so. It must stick to its policy of investigating an individual only when an allegation against him has been received, and it must make that policy as widely known as possible. It must be seen to be responsive. Otherwise the unit will be accused of picking on an individual for the wrong reasons. If that perception spreads, trust in the ACSU's impartiality and independence will be lost. Without that trust, the support of constituents cannot be developed or retained. The ICC cannot overcome the problem of corruption without the support of its constituents". Available at http://icc-live.s3.amazonaws.com/cms/media/about_docs/518b7096b002c-Bertrand%20de%20Speville%20Report%20-%20A%20Review%20of%20the%20Anti-Corruption%20Arrangements%20of%20the%20ICC.pdf [accessed 9 April 2018].

Various types of reporting of breaches as a basis for detection

95. Usually, breaches are detected with the aid of sources inside and outside the sport, who report a breach either pursuant to an obligation to do so, or voluntarily.

96. One of the main bases for detection is a report made by a person who has witnessed a breach of integrity by another, and who can demonstrate the presence of the relevant constituents of the offence. Detection on this basis ought to afford good evidence in legal proceedings, with the reporter as a live witness, or ought at least to amount to good intelligence which as described above can be used in order to focus and facilitate further investigations.

97. Another source of information for detecting breaches of integrity is reporting by betting operators through suspicious betting pattern alerts. While the report of the suspicious betting pattern may not reveal a breach of integrity[98], still less by whom, it sometimes can do so, and it on any basis warrants the starting of an investigation unless obviously explainable from the start[99].

98. A further source of information about potential breaches is reporting by participants who are approached, but refuse, to breach integrity. Direct reporting by referees or by players who are solicited to fix a match or otherwise to breach integrity is compulsory under many disciplinary rules such as Section D(2) of the TACP. In addition to this duty, in some sports, such as football, other tools have been developed to permit the reporting by players and the public at large[100]. In sports such as rugby[101], golf[102] and cricket[103], the failure to report corrupt activity is itself an offence.

99. Compliance with the duty to cooperate under many disciplinary rules, such as Section F(2)(b) of the TACP, can also lead to the effective detection of breaches of integrity, since it allows investigators to demand, and eventually to obtain, access to direct evidence regarding the alleged corruption offence, including, without limitation, itemised telephone billing statements, text of SMS messages received and sent, banking statements, internet service records, computers, hard drives and other electronic information storage devices.

100. The use of anonymous reporting as a basis for detection has been considered, and implemented by the International Olympic Committee[104]. This approach:

    100.1 Has the advantage of encouraging people to come forward who might not otherwise do so due to peer pressure or fear of organised crime[105]. In this respect, the Macolin Convention observes that anonymous reporting "*may include, for example, a telephone helpline, a mobile application, an independent place, an independent and trustful ombudsperson with the obligation of secrecy or the possibility of remaining anonymous when reporting an activity or during proceedings*"[106].

98 Chapter 3, Section F and Section B(2) below.

99 An example of this can be seen in rugby union, where the South African Rugby Union ("SARU") cooperate with Sportradar, who are the non-exclusive collector, processor and distributor of data from almost 300 matches played in South Africa. The SARU release the full potential of their data to Sportradar to protect their teams from the threat of match-fixing.

100 Statement of Emilio García and Graham Peaker (UEFA). UEFA has developed a mobile app that permits online reporting directly to the integrity division. According to Mr. García and Mr. Peaker, the app has been downloaded 12,000 times in the past two years and the information received is sometimes useful. See also Article 4.5 of the Rules for the application in the Rio Olympic Games (2016), Articles 7, 9 and 10 of the International Olympic Committee's Code of Ethics (2016) and the Olympic Movement Code on the Prevention of the Manipulation of Competitions (2016). The latter provision establishes a duty to report to the IOC Integrity and Compliance Hotline approaches or invitations to engage in conduct in violation of the Code, failure to do so amounting itself to a violation of the Code.

101 World Rugby Regulation 6.3.5(b).

102 PGA Tour Integrity Manual, Article 12.

103 The Anti-Corruption Code for Participants, Article 2.4.5.

104 "Olympic Movement Code on the Prevention of the Manipulation of Competitions", Article 3.

105 UNODC Resource Guide on Good Practices in the Investigation of Match-Fixing, 2016, (the "UNODC Resource Guide"), page 60, available at: https://www.unodc.org/documents/corruption/Publications/2016/V1602591-RESOURCE_GUIDE_ON_GOOD_PRACTICES_IN_THE_INVESTIGATION_OF_MATCH-FIXING.pdf [accessed 9 April 2018].

106 Explanatory Report to the Macolin Convention, paragraph 82.

100.2 Has the disadvantage, however, that an anonymous report may not be able to be used in disciplinary proceedings and, even if it can, is not as persuasive as first-hand witness evidence. Furthermore, anonymous evidence may sometimes be of poor quality and dubious reliability, and may generate significant workload in checking the information received (which may ultimately be fruitless). Moreover, if there is provision for anonymous reporting, it may create difficulties in terms of monitoring players' compliance with their duty to report. In order to preserve the advantage of reporting without the disadvantages flowing from affording full anonymity, it is possible that confidentiality and partial anonymity can be secured up to and including the disciplinary hearing, via the admission of protected witnesses.

101. A further basis for detection of breaches of integrity is the action of whistle-blowers, also listed as a possible source of information under the Macolin Convention[107]. Although incentives to report could be considered, such as establishing monetary benefits for whistle-blowers, sports governing bodies have yet to develop this basis for detection within a more solid strategy of gathering information (similar to what has happened in the fields of foreign corruption and public corruption in many countries)[108]. In particular, it should be kept in mind that the handling of whistle-blowers is expensive and time-consuming for the sports governing body or other authority, in particular due to the regular contact that needs to be kept with whistle-blowers who need to be protected and may expect to be rewarded. In international sport, whistle-blowers are also likely to travel extensively, which further adds to the issues. In addition, the relationship between a sports governing body handling a whistle-blower and national law enforcement agencies might be sensitive, especially in countries where there is a duty to report crimes to those national authorities.

102. Lastly, another useful and common tool of intelligence and information, and indeed a basis for detection, is the media – particularly the sports media, including journalists who are in contact with players or even undertake their own investigations[109]. Sports governing bodies may even learn through the media that criminal investigations are taking place.

Integrity tests as a basis for detection

103. A sensitive issue is the extent to which sports governing bodies' anti-corruption or integrity units may or should usefully conduct "*integrity tests*" on players. Integrity tests generally involve someone in the unit, or commissioned by it, asking a player or other participant to fix a match, or to provide inside information, or to bet on a match, or to commit some other breach of integrity. If the player or other participant declines then their integrity is intact, but if they agree, then they have committed an integrity offence, which can on the face of it be charged. When players and others have a duty to report if and when they are approached to fix a match or breach integrity in some other way, they may be caught by an integrity test even if they have in fact declined an offer but failed to report it. Further, an integrity test on a player arguably does not lead to the incontrovertible conclusion that the player is corrupt, as the test may well be the first and only time that the player has agreed to fix a match.

104. The potential benefits of integrity testing include:

104.1 First, there may be sufficient evidence to bring and succeed on a disciplinary charge. If for example there have been allegations in relation to a player in the past, but there has been insufficient evidence, a failed integrity test may form a sufficient basis for a disciplinary conviction.

107 ibid.

108 Notwithstanding certain sports governing bodies that have implemented progressive systems for gathering information (such as UEFA), the Panel is not aware of any concrete steps taken to include monetary incentives for whistle-blowers (statement of Emilio García and Graham Peaker (UEFA). In Italy, the idea of creating incentives for tennis actors to step forward and blow the whistle is under consideration, particularly the introduction of a premium to be granted to those who cooperate. However, the debate is controversial, as, "when it comes to sports ethics, it is difficult to accept that players and coaches in violation of rules of integrity (such as by aiding the perpetrators of a sports fraud) could be benefitted" (statement of Guido Cipriani (Italian Tennis Federation) and Enrico Cataldi (National Olympic Committee).

109 The UNODC Resource Guide, page 60.

104.2 Second, even if it is decided not to charge on the basis of a failed integrity test, it adds to the intelligence available to the relevant unit.

104.3 Third, the prospect that an approach may be an integrity test may deter players and others from accepting genuine corrupt approaches they would otherwise have accepted, and may encourage them to report such corrupt approaches that they would otherwise have stayed quiet about.

105. However, integrity tests may be difficult to provide for, to undertake, and to rely upon:

105.1 Due to the contractual nature of the integrity rules of a sport, players should be clearly informed in the rules, and should clearly accept by their agreement to be bound by the rules, that such procedures are in use.

105.2 In order to carry evidential value, integrity tests have to be proportionate so that they do not constitute an overwhelming incitement for the player to breach the rules. The test must not offer so much in return that players who would never otherwise succumb, nevertheless do so. It must be aimed at the level of return that is likely offered by the real corruptors, so that the test is what the player would do if he or she were approached by such a real corruptor, rather than if he or she were offered an overwhelming amount of money that such a real corruptor would not offer.

105.3 Perhaps most difficult of all is the fact that because match-fixing is a criminal offence in many, if not most, countries, it must be carefully assessed country by country: (a) whether integrity tests amount to prohibited "*entrapment*"; and (b) whether integrity tests would require those carrying them out to themselves commit the criminal offence of incitement.

The need to operate in compliance with data protection law

106. The issue of data protection in respect of the handling of information, intelligence and evidence as to breaches of integrity, both by sports governing bodies and law enforcement agencies is complex. In particular, there is a risk that the data gathered and shared includes data that goes beyond the intended purpose, or that is kept longer than necessary. This is before specific national legislative limitations on exporting data to third countries or on the right of individuals to access data are even taken into account. Another risk is that Covered Persons ask for access to their file in order to control the content. Lastly, the exchange of data from one country to another is often problematic; for example, it is often difficult for the USA to cooperate in this context with EU countries. This risk can be alleviated or diminished by carefully framing the Covered Persons' rights and duties in the sport's contractual documents, but the end result will depend on relevant national legislation and judicial decisions.

107. The Explanatory Report to the Macolin Convention, observes that *"given that the organization of sports competitions and the activities of sports betting operators generate a large volume of personal data, there is a risk that the data shared includes data that goes beyond the purposes pursued or of the data being kept longer than necessary.* [The states] *must pass legislation so that the stakeholders* [including, for instance, sports governing bodies] *ensure that data are exchanged solely for the purposes of the convention and that the data sharing does not go beyond the strict minimum needed for the pursuit of the stated objectives of the sharing.* [The states] *might wish to consider the setting up of consultation committees involving the various stakeholders at national level and personal data protection experts to agree to the type of data to be shared and the time they should be preserved, as one of the means of addressing these requirements for security and integrity and, more broadly, improving the effectiveness of co-operation between stakeholders and ensuring greater protection in terms of how personal data are used*"[110].

110 Explanatory Report to the Macolin Convention, paragraph 127.

108. In establishing the structures and rules needed to combat match-fixing and other breaches of integrity, sports governing bodies, as well as betting operators and public authorities, must therefore take into account their obligations to comply with the relevant national and international personal data protection laws and standards. As to the exchange of personal data between them, the framework put in place by the Macolin Convention[111] provides appropriate guidance on how to address these issues and to create a coordinated approach.

(2) SUSPICIOUS BETTING PATTERNS AS INDICIA OF BREACHES OF INTEGRITY

Suspicious betting patterns as a trigger for investigation

109. Since match-fixing generally has as its aim as the securing of advantages in the betting markets, unusual and suspicious betting patterns are likely to be especially effective in identifying at least potential breaches of integrity. They should therefore be investigated when reported to a sports governing body or its integrity unit. The value and weight of unusual and suspicious betting patterns for the purposes of proving a breach of integrity will however vary from case to case.

110. As explained in Chapter 3[112], unusual betting patterns may be caused by a variety of factors including, but not limited to, a bettor's error, "*piling in*", unexpected poor performance by a player, faster receipt of information or score data due to courtsiding, inadvertent or deliberate provision or leakage of inside information as to form or injury of a player, or an agreement to fix the match for betting purposes. Many unusual betting patterns may not therefore be related to match-fixing at all.

111. While suspicious betting patterns are those where, upon investigation, there is no legitimate explanation that justifies why the unusual betting occurred, they still do not generally establish in themselves that a particular person fixed a match, or committed a related breach of integrity. Indeed, other factors may have intervened to trigger such a suspicious betting pattern, such as – and especially – inside information. The absence of a clear justification for an abnormality does not generally create a presumption of match-fixing. Therefore, in most cases of suspicious betting patterns additional circumstantial or direct evidence should be collected through investigation. That is not to say that the suspicious betting pattern is not evidence: it is evidence, and useful evidence, but it generally will not be sufficient on its own.

112. However, in some instances, on the particular facts, suspicious betting patterns may carry substantially more evidential weight:

    112.1 Some fixes, such as spot-fixes, are so specific that the betting evidence combined with events on the court or pitch may clearly demonstrate bettor knowledge of what would happen in advance. In these circumstances, the inevitable inference is that it was contrived by the player, because it could not otherwise be explained.

    112.2 On occasion, there is a repeated pattern of the same behaviour giving rise to similar suspicious betting patterns, or similar betting activity by similar accounts. The cumulative effect of the evidence may be sufficient to establish a breach of integrity.

113. In any case, the existence of a suspicious betting pattern is certainly an element that should be considered as triggering the need for a thorough investigation, especially if the same player has been involved in several successive matches raising suspicious betting patterns or if certain tournaments give rise to an above-average number of such patterns.

111 The Macolin Convention, Article 14.

112 Chapter 3, Section F.

Assistance of betting professionals and memoranda of understanding

114. Effective interpretation of and reliance on suspicious betting patterns and betting data requires the assistance of an expert betting analyst with experience in assessing sports betting markets and the related statistics. Such an analyst can identify: (a) what the betting could be expected to have been; (b) what it in fact was, and why; and (c) the accounts that bet differently to how they might be expected to have done in the normal course, absent some sort of knowledge of the result in advance, or of inside information indicating a probable result different to expectation. Such expert betting analysts usually work at a betting operator, or a private betting syndicate or company, or for a betting monitoring company, although some sports governing bodies have such expertise within their organisation, such as the British Horseracing Authority and UEFA. UEFA, for instance, has 15 independent disciplinary inspectors (2 to 3 specialized in match-fixing, including a betting expert[113]) and has developed its own detection system: the Betting Fraud Detection System ("BFDS")[114], which is referred to as UEFA's main source of information[115]. At the least, a sports governing body must have in place someone with sufficient experience and expertise to engage with the expert betting analyst elsewhere to understand what the betting data demonstrates.

115. The data must be available to the sports governing body in the first place, before it can be analysed and used. It is important that sports governing bodies and integrity units should develop good relationships, and execute memoranda of understanding, with betting operators and monitoring companies. This is useful in two chief ways: (a) first, under such agreements sports governing bodies secure a viable source of information on unusual and suspicious betting patterns, which are provided automatically every time an unusual or suspicious event is identified; and (b) second, sports governing bodies can seek access, upon request, to information regarding account holders (including covered players who hold betting accounts) to facilitate investigation of potential match-fixing or other integrity breaches[116], unless the applicable data protection law provides otherwise.

(3) PLAYING PERFORMANCES AS INDICIA OF BREACH OF INTEGRITY

116. Significantly divergent or atypical performance (in other words, performance significantly different from that to be anticipated from the player, or other participants, taking into account his or her ranking, level, experience, track record, temperament) may be another indicator of a potential breach of integrity. The detection of such significantly divergent or atypical performance, and the potential confirmation of suspicions, generally depends on video footage (which, at times, can constitute direct evidence of match-fixing) coupled with statistical analysis.

117. Video footage has proved to be helpful in investigations targeting unusual behaviour in both players[117] and referees[118]. However, in many cases, the footage does not permit solid conclusions, due to the permissible margins of error even for skilled participants in high-level sport. Moreover, video footage taken in isolation may be misleading and lead the public at large to believe that many players are involved in match-fixing[119].

113 Statement of Emilio García and Graham Peaker (UEFA).

114 BFDS runs in close cooperation with Swiss-based company Sportradar. If an irregularity is found with regards to a specific match, a report is generated by the system, including detailed information on betting activities as well as the match itself (such as on-field action, players, match officials, etc).

115 Statement of Emilio García and Graham Peaker (UEFA).

116 A good example of such a mechanism is the Integrity Betting Intelligence System ("IBIS") of the International Olympic Committee. The system operates as a platform for collection and distribution of information and intelligence related to sports betting for use by all stakeholders of the Olympic Movement. See the IBIS factsheet, available at https://stillmed.olympic.org/Documents/Reference_documents_Factsheets/Integrity_Betting_Intelligence_System_IBIS.pdf [accessed 9 April 2018].

117 E.g. in the investigations of allegations made against former Motherwell player Steve Jennings in 2010 as reported in the UNODC Resource Guide, page 37.

118 E.g. in a Nigeria v. Argentina international football friendly in 2011 as reported in the UNODC Resource Guide, page 37.

119 Statement of Emilio García and Graham Peaker (UEFA).

118. Moreover, a player's poor performance may be connected to personal reasons entirely unrelated to match-fixing, such as hidden injuries, illness, jet lag or down morale. In addition, as addressed in Chapter 4[120], tennis players may decide to throw, or "*tank*" a match due to a variety of reasons arising out of the player incentive structure, such as amongst others: (a) conflicting schedules with club "*money*" matches (which may pay more and are often preferred by lower-level players as a greater source of income); (b) the need to play a match while ill or injured in order to avoid withdrawal fines; and (c) a desire to cut financial losses, especially in doubles matches after the player has lost in the singles, in order to avoid hospitality and boarding expenses.

119. The combined analysis of video footage of a player's performance at a particular minute of the match and the variation of betting patterns in the market can however provide strong circumstantial evidence of match-fixing in some circumstances. Such combination is common in football cases, as explained by Mr. García and Mr. Peaker of UEFA. Significantly, the combined analysis of betting data and video footage of a player's performance was considered a sufficient legal basis to conclude that match-fixing took place in the CAS case *Vsl Pakruojo FK et al. v. LFF*[121].

120 Chapter 4, Section A(5).

121 CAS 2015/A/4351 (Vsl Pakruojo FK et al. v. LFF), paragraph 92.

C INVESTIGATION

120. Once potential match-fixing or other breach of integrity has been detected, the question then arises as to how it can best be investigated, whether by a law enforcement agency or a sports governing body in order to ascertain whether or not a breach did indeed occur and to collect evidence for a criminal or disciplinary prosecution, if appropriate.

121. The dividing line between the amassing of information and intelligence on the one hand, and the gathering of evidence on the other hand is of course often not a clear one, as information and intelligence can become evidence in the light of other material, and evidence in relation to one matter may also be intelligence in relation to others. Generally, the difference is in the use to which the material can be put. Evidence is a collection of different usable and provable facts of various evidential values that, if sufficient to satisfy the applicable evidential standard, will prove an offence. While some information and intelligence may be usable and provable, it may also include material that cannot be used, and material the accuracy of which is unknown.

122. Investigations may involve parallel action by different sports governing bodies, for example at the national and international level. Since match-fixing may be connected with wider criminal activities, or may of itself be dealt with as a crime under local law, investigations may also be conducted in parallel by sports governing bodies and law enforcement agencies[122]. Further, it is possible that multiple law enforcement agencies may each be running their own investigation, with or without the knowledge of one another, or of the relevant sports governing bodies, at the national or international level.

123. Below, the Panel addresses the characteristics of investigations conducted by sports governing bodies and by law enforcement agencies and then turns to how and when investigations may be conducted together or independently by sports governing bodies and law enforcement agencies.

124. A successful match-fix likely involves four stages: planning, placing of bets, execution and collection of profit[123]. As a result, the investigation of a match-fixing offence will focus on these stages, whether conducted by a sports governing body or a law enforcement agency. However, due to the different investigatory powers enjoyed and the different standard of proof in disciplinary and criminal proceedings, investigations by sports governing bodies are different from those conducted by law enforcement agencies.

(1) INVESTIGATION BY SPORTS GOVERNING BODIES

125. A sports governing body's powers to investigate a potential breach of integrity, like the substantive obligations not to breach integrity, are contractual and arise out of the agreement of those under investigation to abide by the rules of the sport. Those rules will include provisions in relation to the investigative steps that can be taken. They will likely also contain an obligation on those bound to cooperate and assist in an investigation, breach of which will be an offence in itself.

126. A sports governing body's investigation of a breach of integrity involves then using its contractual powers to examine each of the four stages set out above, or such of them as apply in the case of a breach of integrity other than match-fixing. It will seek to identify documentary or witness evidence of the contact between player and fixer and what was said during that contact, of the betting that occurred on a particular outcome and how it differed from what might have been expected, of what happened on the pitch or court and how it differed from what might have been expected, and of the passing of reward. As part of this process, the sports governing body may interview the actors involved (e.g., the player, bettor, or betting operator) and any other witnesses of their actions, including opponent, coach and the officials at the event. It may also seek to obtain access to documentary records and electronic devices, in case they contain any evidence as to any of the four stages.

122 According to the United Nations Office on Drugs and Crime, "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" (UNODC Resource Guide, page 26).

123 UNODC Resource Guide, page 26.

127. Sports governing bodies seeking to investigate breaches of integrity in this way may face significant difficulties in certain jurisdictions, where, for example, individuals or entities are not allowed to conduct, or are restricted in conducting, private investigations. In such jurisdictions individuals or entities may, for instance, be forced to act in cooperation with local police or through a licensed detective. As a consequence, in order to conduct a legal and fruitful investigation, it is sometimes preferable, or even essential, to obtain external help from local betting regulatory authorities, local law enforcement agencies or local sports governing bodies, not least in order to understand the local legal framework.

128. For most sports governing bodies, an important part of their investigation strategy will involve the use of betting intelligence. In this respect, relationships with betting operators and monitoring companies are particularly relevant in investigations. In some jurisdictions, betting operators are under a legal obligation to cooperate with match-fixing investigations[124]. This cooperation may include "*sharing the personal details (e.g. name, address and date of birth) of the person(s) placing bets and any other evidence connecting them to the bets, such as voice recordings or computer intelligence, as well as their past betting history*"[125]. Cooperation will have to be agreed with betting operators through memoranda of understanding in jurisdictions where no statutory duty to cooperate exists. In addition to the betting operators, assistance may be obtained from specialist betting monitoring companies, which are capable of providing technological and human resources to identify suspicious betting. Further, cooperation is not confined to after a suspect match has occurred: early warning systems have been set up in a number of instances[126]. Where there is neither a statutory requirement nor agreement to cooperate, judicial assistance is likely to be required to obtain information. The advantages and disadvantages of such assistance are discussed in Section C(4) below.

(2) COOPERATION AMONG A SPORT'S VARIOUS GOVERNING BODIES

129. Cooperation among a sport's different governing bodies or even among governing bodies of different sports can be productive. In most sports, there are different levels of governing bodies, such as national federations, regional confederations, and the international federation – or even an inter-sports governing body, such as the IOC. There may also be a number of league organisations in a country as well as the national federation, or even cross border leagues. Each of these organisations may have or perceive itself to have a role in investigating breaches of and enforcing its rules in this context. This raises issues of competing jurisdictions between governing bodies, which must be resolved. Furthermore, the methods and quality of investigation will vary across the sport (and across different sports) between the international and the national level. And the means and resources to investigate and enforce integrity breaches, not to speak of the appetite and political influence, at the national level may differ greatly from one country to another. Lastly, certain national federations are either run or controlled to a greater or lesser extent by the state or are at least organised by the state within a statutory framework (such as in France or in Italy). In some instances, the State may limit, or dictate, the way federations should run investigations and enforcement procedures (such as in Italy)[127]. This wide variety of situations makes it impossible to set down any firm account of how cooperation can occur. However, the ideal is obviously to have a system within a sport that is well integrated and does not involve duplication – or even worse conflict – between the investigation and enforcement actions at each level.

124 For example, the relationship between SARU and Sportradar, outlined at footnote 97 above

125 ibid., at page 36.

126 For instance: (a) Sportradar Integrity Services (SIS) supplies monitoring, prevention and educational solutions to sports governing bodies and state authorities. It monitors odds movements and patterns worldwide to identify suspicious activities through its Fraud Detection System; (b) the Global Lottery Monitory System (GLMS), developed by the World Lottery Association and the European Lotteries (and powered by Sportradar), monitors betting markets offered by government-authorised lotteries and for-profit only betting operators; (c) the European Sports Security Association ("ESSA") provides an early warning system with the specific aim of detecting and deterring the corruption of ESSA members' betting markets through the manipulation of sporting events. The system works in a two-tier fashion: (i) the Internal Control System (designed for ESSA members who detect an unusual betting pattern to report to the ESSA Security Team and Head Bookmaker for a first checking); and (ii) the ESSA Early Warning System (which is activated if the first tier control is deemed substantiated, in which case the alert is issued in the ESSA's Advanced Security Platform requesting members to confirm similar patterns in other markets); (d) the FIFA Early Warning System GmbH ("EWS"), FIFA's own warning system company. Launched in 2007, the EWS aims at protecting football matches in all FIFA tournaments by monitoring and analysing the international sports betting market and through comprehensive reporting to FIFA, although it also carries out match monitoring on behalf of third parties both within and outside of football; (e) the Integrity Betting Intelligence System ("IBIS") has operated since the 2014 Olympic Winter Games in Sochi under the initiative of the International Olympic Committee and collates alerts and information on manipulation through betting on sport by means of a network of memoranda of understanding signed with betting operators and national regulators, as well as a cooperation agreement with Interpol. The system remains operational between editions of the Olympic Games for the benefit of international federations to use at their major international events and other multisport events. In the event that an international federation suspects one of its events has been jeopardised, the international federation may ask IBIS for information on the betting market.

127 Statement of Guido Cipriani (Italian Tennis Federation) and Enrico Cataldi (National Olympic Committee).

130. One instance of apparently fruitful cooperation among different governing bodies of the same sport has been that of UEFA and national associations. UEFA has invested heavily in the creation of a cooperative network to combat match-fixing[128]. The network has been developed through the use of local integrity officers in national associations who are in charge of supervising national competitions. The local integrity officers, although financed by UEFA, are selected and employed by the national associations or together by UEFA and the national associations. If a case arises under UEFA regulations, the local integrity officers assist UEFA's integrity officers in local aspects of the investigation[129]. Although the Panel's interviewees reported some difficulties with almost one-fifth of the local integrity officers of some national associations[130], the system seems to broadly be producing good results. One further tool to encourage cooperation among sports governing bodies is to invest in the spread of information. In that regard, UEFA holds periodical regional meetings of local integrity officers and heavily invested in building relationships with, and lobbying, strategic stakeholders[131].

(3) INVESTIGATION BY LAW ENFORCEMENT AGENCIES AND REGULATORS

131. Unlike sports governing bodies, law enforcement agencies possess statutory coercive powers such as arrest, search and seizure, phone tapping, witnesses compulsion and the ability to call on mutual assistance from foreign states[132]. However, law enforcement agencies may lack the legal conditions or the appetite to investigate and prosecute match-fixing or other integrity offences, especially since they usually occur in complex international environments and can be expected to require substantial time and resources to pursue – but are punishable with only a relatively light sanction. Furthermore, national law enforcement agencies are unlikely to have a full understanding of either the rules and nuances of the sport in question or the betting markets, and will require the assistance of specialist experts in both areas[133].

132. In light of the above, it is difficult to see how investigations into match-fixing by law enforcement agencies can be effective without the assistance of the sports governing bodies and betting companies that have been the subject of the potential match-fixing, as addressed further below[134]. Also, as addressed below[135], it is important to avoid duplication and potential conflict between parallel investigations. In an ideal world agreement would be reached as to how an investigation is most effectively pursued and by which organisation.

133. Although the investigation and prosecution of match-fixing are separate functions, they both seek to establish or to disprove an individual's involvement in a match-fixing incident. To facilitate this, it is essential to have regular cooperation and communication between investigators and prosecutors, and indeed regulators, on the general nature and scope of an investigation and on particular avenues of investigation[136]. This exchange can obviously be facilitated in the frame of task forces or platforms as advocated in the Macolin Convention (though the police may prefer working within smaller organisations) or even at the bilateral or interpersonal level.

128 According to Emilio García and Graham Peaker (UEFA), UEFA invests between 5 and 7 million euros a year in its networks (in the past the investment reached 10 million euros a year). Statement of Emilio García and Graham Peaker.

129 Statement of Emilio García and Graham Peaker (UEFA).

130 ibid.

131 ibid.

132 UNODC Resource Guide, page 26.

133 ibid.

134 Section C5.

135 ibid.

136 UNODC Resource Guide, page 56.

(4) COOPERATION BETWEEN LAW ENFORCEMENT AGENCIES AND REGULATORS

134. Furthermore, in the light of the cross-border nature of the problem, it is appropriate that criminal law investigative and enforcement bodies from different states should also cooperate.

International organisations facilitating cooperation among different states' investigative and enforcement bodies

135. The first basis for such cooperation is through the international organisations specifically established to provide a framework for it.

136. The International Criminal Police Organization, ICPO or INTERPOL, is an intergovernmental organisation facilitating international police cooperation. The role of INTERPOL is to ensure and promote the widest possible mutual assistance between all police authorities and law enforcement agencies within the legal systems of different countries, as well as to establish and develop all institutions likely to contribute effectively to the prevention and suppression of crime. INTERPOL is not itself an international law enforcement agency and has no agents who are able to make arrests. Instead, it is an international organisation that functions as the focus for a network of criminal law enforcement agencies from different countries around the world.

137. INTERPOL has created the Match-Fixing Task Force ("IMFTF"), which brings together law enforcement agencies from around the world to cooperate in tackling match-fixing and corruption in sports[137]. The IMFTF supports member countries in their investigations and law enforcement operations across all sports, and provides a forum for a global network of investigators to share information, intelligence and best practices.

138. An example of INTERPOL's activities in integrity matters is Operation SOGA (short for Soccer Gambling), through which INTERPOL's members aim to identify and dismantle international criminal networks behind illegal soccer gambling, especially during major football tournaments such as the FIFA World Cup or UEFA European Cup[138]. In five operational waves carried out between 2007 and 2014, Operation SOGA resulted in more than 8,400 arrests, the seizure of almost US$40 million in cash, and the closure of some 3,400 illegal gambling dens which handled bets worth almost US$5.7 billion. The operations have successfully removed a major source of proceeds for organised crime syndicates[139].

139. At the regional level of the European Union, EUROJUST is in place to set up centres for the coordination of simultaneous operations between judicial, police and, if need be, customs authorities. EUROJUST helps facilitate coordination meetings at which national authorities can reach agreement on the conduct of joint actions and on the setting up of a EUROJUST coordination centre for a particular purpose. Coordination centres provide a structure for real-time exchange of information and centralised coordination of the simultaneous execution of, amongst other things, arrest warrants and searches and seizures in different states. Coordination centres expedite the timely transmission of additional information that is urgently needed to execute such measures and newly issued Mutual Legal Assistance ("MLA") requests[140].

137 http://www.interpol.int/Crime-areas/Crimes-in-sport/Match-fixing-and-illegal-gambling [accessed 9 April 2018].

138 ibid.

139 ibid.

140 http://www.eurojust.europa.eu/Practitioners/operational/Pages/eurojust-coordination-center.aspx [accessed 9 April 2018].

140. In addition, Europol[141] is able to set up joint investigation teams ("JIT"), which are made up of judges, prosecutors and law enforcement agencies from different states, established for a fixed period and for a specific purpose pursuant to a written agreement between the states involved, to carry out criminal investigations in one or more of the involved states. Through grants from the European Commission under the programme for the Prevention of and Fight against Crime (ISEC[142]), EUROJUST is also able to support the operational activities of JITs both financially and logistically[143].

141. The Network of National Experts on Joint Investigation Teams (JITs Network) was established in July 2005 with the aim of "encouraging the use of JITs and exchanging experience on best practice"[144]. Since 2011, the JITs Network has had a Secretariat – hosted by the institutional body, EUROJUST – that promotes the activities of the JITs Network and supports the National Experts in their work. The aim of the JITs Network, consisting of at least one National Expert per member state, is to facilitate the work of practitioners in the member states. The JITs Network primarily does this by encouraging the establishment and use of JITs to deal with specific problems. In addition, the JITs Network facilitates the establishment of teams, helps in the sharing of experience and best practice and assists practitioners in its member states with legislative, administrative and operational aspects relating to the establishment of JITs. The National Experts are mainly representatives from law enforcement, prosecutorial and judicial authorities. Institutional bodies such as EUROJUST, Europol, OLAF[145], the European Commission and the European Council have also appointed contact points to the JITs Network. Since 2005, the JITs Network has met at an annual meeting organised jointly by EUROJUST and Europol. This meeting is a forum where both the Member states and Institutions share questions and problems and propose solutions from a practitioner's point of view. Each year, the meeting is built around a "*central topic*"[146].

142. Sports corruption and match-fixing has been identified by Europol as a specific crime area of interest[147]. This has led to the taking of a wide range of concerted steps pursuant to the powers described above, in order to address the problem:

142.1 Experts at Europol work with law enforcement agencies across the EU to identify links between suspicious matches and suspects, and to uncover the organised crime groups orchestrating multi-million euro frauds in sports. In addition, since 2011, Europol has assisted EU law enforcement agencies with analysing data from investigations into sports corruption, primarily in relation to football matches.

142.2 Europol supports the EU's and the Council of Europe's KCOOS project, referred to above, giving effect to the Macolin Convention. The project publishes a practical how-to guide on how to fight sports manipulations. Overall, Europol's key contributions to ending these manipulations lie in: (a) analysing criminal intelligence; (b) producing analytical reports; (c) hosting operational meetings; and (d) deploying mobile offices and experts to provide on-the-spot assistance during law-enforcement operations.

142.3 In relation to match-fixing, Europol set up a JIT (codenamed Operation VETO) involving Europol and police teams from 13 European countries in order to uncover a criminal network involved in widespread football match-fixing. A total of 425 match officials, club officials, players, and serious criminals, from more than 15 countries, were suspected of being involved in attempts to fix more than 380 professional football matches. The activities formed part of a sophisticated organised crime operation, which generated over €8 million in betting profits and involved over €2 million in corrupt payments to those involved in the matches. The JIT ran between July 2011 and January 2013. Led by Europol, Germany, Finland, Hungary, Austria and Slovenia, it was also supported by EUROJUST,

141 Europol is the European Union's law enforcement agency, https://www.europol.europa.eu/ [accessed 9 April 2018].

142 https://ec.europa.eu/home-affairs/financing/fundings/security-and-safeguarding-liberties/prevention-of-and-fight-against-crime [accessed 9 April 2018].

143 http://www.eurojust.europa.eu/about/background/Pages/history.aspx [accessed 9 April 2018].

144 http://www.eurojust.europa.eu/Practitioners/operational/Pages/eurojust-coordination-center.aspx [accessed 9 April 2018].

145 European Anti-Fraud Office; https://ec.europa.eu/anti-fraud/home_en [accessed 9 April 2018].

146 http://www.eurojust.europa.eu/Practitioners/JITs/jitsnetwork/Pages/JITs-network.aspx [accessed 9 April 2018].

147 https://www.europol.europa.eu/crime-areas-and-trends/crime-areas/corruption/sports-corruption [accessed 9 April 2018].

INTERPOL and investigators from eight other European countries. The investigation coordinated multiple police enquiries across Europe and was facilitated by intelligence reports from Europol, based on the analysis of 13,000 emails and other material, which identified links between matches and suspects and uncovered the nature of the organised crime network behind the illegal activities. The investigation has since led to several prosecutions in the countries involved, including Germany where 14 people have already been convicted and sentenced to a total of 39 years in prison[148].

142.4 Europol also teamed up with UEFA in 2014, when the two organisations signed a memorandum of understanding aimed at bolstering the fight against match-fixing in European football. At Euro 2016, Europol and UEFA formed a working group with the French police and the French Ministry of Justice, France's online gambling regulatory authority ARJEL, UEFA's monitoring partner Sportradar and the French state lottery. The result was reportedly positive, with no concerns about integrity arising in relation to any matches[149].

Cooperation between different states' investigative and enforcement bodies pursuant to international treaty or national law

143. Outside the cooperation framework of the international bodies INTERPOL and EUROJUST / Europol discussed above, states have the duty and ability to cooperate with other states under multilateral or bilateral international treaties, or national legislation.

144. Most multilateral treaties on specific offences contain an obligation on state parties to cooperate at the level of their judicial authorities. For example, the Macolin Convention provides that state parties should cooperate with each other in criminal matters "to the widest extent possible"[150]. The UNCAC also provides for "cooperation between national investigating and prosecuting authorities and entities of the private sector"[151]. There are similar provisions in the OECD anti-bribery Convention[152] and in the Council of Europe Criminal Law Convention on Corruption[153]. The same applies to conventions on organised crime, such as the UNTOC[154].

145. Besides the "*offence-oriented*" conventions, multilateral regional conventions also provide for specific mechanisms for mutual cooperation in criminal matters, such as the Council of Europe Convention on Mutual Assistance in Criminal Matters, to which 50 countries are parties, including non-European states such as Chile, Israel and Korea. The Schengen Agreement[155] also provides for assistance in criminal matters between state parties (including EU states as well as Iceland, Norway, and Switzerland). In addition, the EU's European Council Act of 29 May 2000[156] provides the basis for broad and in-depth mutual assistance between EU states.

146. Certain states are also bound by bilateral agreements on mutual legal assistance[157]. There are also bilateral agreements such as the EU-USA MLA Agreement[158] and the EU-Japan MLA Agreement[159]. Although, since they bind all EU countries

148 https://www.europol.europa.eu/newsroom/news/update-results-largest-football-match-fixing-investigation-in-europe [accessed 9 April 2018].

149 https://www.europol.europa.eu/crime-areas-and-trends/crime-areas/corruption/sports-corruption [accessed 9 April 2018].

150 Macolin Convention, Article 26.

151 ibid., Article 39.

152 ibid., Article 9.

153 ibid., Articles 25-26.

154 ibid., Article 13, 14 and 18.

155 OJ L 239 of 22.09.2000.

156 Council Act of 29 May 2000 establishing in accordance with Article 34 of the Treaty on European Union the Convention on Mutual Assistance in Criminal Matters between the Member states of the European Union, OJ L 176, 10.7.1999, page 36.

157 Mutual Legal Assistance Treaties in force between states can be found on https://mlat.info/ [accessed 9 April 2018].

158 OJ L 181 of 18.7.2003.

159 OJ L 39 of 12.2.2010.

with the USA and Japan, they could be considered to be multilateral conventions.

147. Lastly, states may also assist other states with no international treaty in place binding them to do so, on the basis of national laws contemplating mutual legal assistance. Some states restrict their assistance to countries that would provide the same assistance to them, on the basis of the principle of reciprocity, but others would assist even on a unilateral basis[160].

148. Direct assistance at the police level, without the involvement of judicial authorities, is not common in civil law countries, but is quite widely practised in common law countries or between countries with close connections, such as the states parties to the Schengen Agreement[161]. The practice in many countries is that police can exchange information but cannot exchange evidence, as evidence can only be transmitted through the procedure of judicial mutual legal assistance, which usually provides aggrieved parties with some right of appeal to the courts.

(5) COOPERATION BETWEEN SPORTS GOVERNING BODIES AND LAW ENFORCEMENT AGENCIES AND REGULATORS

The goal of cooperation

149. Cooperation among sports governing bodies and national law enforcement agencies and regulators in the pursuit of their respective investigations is particularly useful as the bodies possess different and complementary investigative tools and expertise[162]. At the same time, however, parallel investigations should not ideally duplicate work or give rise to conflict.

150. While law enforcement agencies have a broader range of investigative tools than the contractual tools available to sport governing bodies, some of those contractual tools may allow for additional steps to be taken that are not open to the law enforcement agencies. In addition, law enforcement agencies are not specialised in sports or betting and require the insights and evidence that can be gathered by sports governing bodies' disciplinary and investigative arms.

151. For instance, where players are subject to a duty to cooperate with investigations and there are evidence gathering tools agreed in the sport's rules (such as the surrender of electronic information devices and mobile phones and access to records), material may often be obtained more rapidly by the sports governing body, than it might be by a law enforcement agency, which might well need to make a prior request for a search warrant from a judicial body in order to comply with privacy rights, or to ask for mutual legal assistance from another country.

152. From the sports governing bodies' point of view, support from local law enforcement agencies may provide information and evidence that they could not otherwise obtain, or ease the path to their gathering information and evidence that they would have difficulty in obtaining. For example, the provision of a mobile phone by a player under the sport's rules might reveal messages and list the phone numbers of addressees or senders of messages, but it would not reveal who held a number, or the content of telephone calls. The assistance of local law enforcement agencies might in appropriate circumstances allow the use of intercepts of telephone communications. It might allow the disclosure of the holders of the numbers from or to which calls or messages were received or made. Local law enforcement agencies may also assist in the geolocation of mobile phones at a certain time, or the remote access of computers or other electronic devices. Additionally, the assistance of local law enforcement agencies provides an extra layer of legitimacy to the investigation, which is of special relevance in countries where investigations by private actors are prohibited or restricted.

Significant limits in practice on cooperation

160 For example, for Australia, https://www.legislation.gov.au/Details/C2016C00952 [accessed on 9 April 2018].

161 Article 30.

162 In golf, for example, if there is a parallel criminal investigation of a code violation, the PGA Tour may coordinate with the relevant law enforcement and other authorities in the PGA TOUR discretion. Similarly, the PGA TOUR may continue to conduct, or suspend, the Investigation hereunder during the course of a criminal investigation or similar proceeding in its discretion, subject to applicable law. See PGA Tour Integrity Manual, Article 6.

153. Nonetheless, it appears that there are significant limits to the cooperation that actually takes place between sports governing bodies and law enforcement agencies. There are a variety of possible reasons for this.

154. First, it appears that law enforcement agencies often decide not to start or follow through with investigations. This may be because there is no legal basis for a prosecution, for example in the absence of a specific or applicable provision on match-fixing. It may be due to a lack of jurisdiction, or due to a decision by the law enforcement agency that another country has superior jurisdiction (usually territorial jurisdiction). Alternatively, it may be due to the law enforcement agency's operational priorities, or management of limited human, material or financial resources.

155. Secondly, sports governing bodies generally wish to expedite investigations and resolution of disciplinary proceedings, often because they wish to avoid the continued presence in the sport of potentially corrupt participants[163]. It is therefore possible that some sports governing body investigations and disciplinary proceedings are regarded by law enforcement agencies as hampering parallel state law enforcement agency investigation and prosecution because (a) they remove any element of surprise and (b) an acquittal at disciplinary proceedings, for example on the basis of insufficient evidence, may prejudice the prospects of success in subsequent criminal proceedings.

156. Third, law enforcement agencies may perceive investigations carried out by certain sports governing bodies as being biased or at least subject to conflicts of interest, since the sport governing bodies may be perceived as concerned with the wider reputational repercussions on the sport of successfully disciplining a player for match-fixing.

157. Fourth, law enforcement agencies may perceive certain sports governing bodies as being unlikely to be able to keep information confidential, potentially prejudicing investigation.

158. Lastly, while law enforcement agencies may be interested in investigating integrity offences, they may put the emphasis on other priorities than sports integrity when it comes to deciding when and whom to prosecute, such as when an organised criminal group is acting behind the scenes or when money laundering is involved.

159. As a result, even though cooperation between sports governing bodies and local law enforcement agencies is a goal to be pursued in addressing match-fixing and other related breaches of integrity, it may not be always feasible or appropriate. And even when it is possible, such cooperation generally requires high levels of communication, coordination and confidence between the law enforcement agency and the sports disciplinary body, especially considering the impact a possible leak of information or publicity of disciplinary decisions may have on the success of the criminal investigation.

An increasing appetite to cooperate

160. Historically, for the various reasons referred to above, law enforcement agencies have had little appetite for, and have refrained from, investigating match-fixing matters. Such matters have been regarded primarily as a sporting issue and have not been strictly considered to be a "legal" one[164].

161. This is now changing, with states increasingly adapting their legislation to allow for prosecution of match-fixing, as addressed above in paragraphs 19 to 21. Law enforcement agencies are also now appearing to realise that they should be more active in prosecuting match-fixing as a method of addressing organised crime or money laundering, since match-fixing is considered by such criminal organisations to be a more attractive and lower-risk investment when compared to other criminal enterprises that are more severely sanctioned.

163 As stated by the arbitral tribunal in Besiktas Jimnastik Kubülü v. UEFA: "an effective fight to protect the integrity of sport depends on prompt action. In this context, CAS, or UEFA, cannot wait until states proceedings are over, i.e. after all internal remedies have been exhausted, to take its decision". (CAS 2013/A/3258 (Besiktas Jimnastik Kubülü v. UEFA), paragraph 148).

164 UNODC Resource Guide, page 27.

162. Local law enforcement agencies' appetite to commence criminal investigations of potential match-fixing varies considerably from country to country. For example, it is understood that in certain jurisdictions prosecutors are overloaded with criminal matters that take priority over match-fixing, while in other jurisdictions, such as France and Australia the state expresses higher interest in this issue and supports local enforcement agencies in their investigations and prosecutions of match-fixing allegations.

163. It unfortunately remains a general trend that national law enforcement agencies dedicate very limited resources to combating match-fixing. Some countries, like Australia, Belgium, France, and Italy, have created special units to fight corruption in sport. Sometimes, these units focus more on the betting market or other areas – but the fact is that more units are now able to understand and deal with sports issues in relation to match-fixing.

Is increased cooperation between sports and national law enforcement agencies possible?

164. At one level, the police and the criminal prosecution authorities of a state, which are both bound to enforce their own national criminal law, may in many circumstances have little choice but to proceed with an investigation and a prosecution if they consider that an offence, especially a serious offence, has been committed. They will in those circumstances disregard any concurrent or contemplated sports disciplinary proceedings.

165. However, the pre-eminence and autonomy of criminal law proceedings do not mean that no collaboration can exist between sports governing bodies and state law enforcement agencies. On the contrary, the Macolin Convention, for example, expressly provides that its state parties cooperate with sports governing bodies. Article 12 provides that the states must offer, "*in compliance with the law, … the maximum assistance to the other* [states] *and the* [sports] *organizations concerned, by allowing the spontaneous exchange of information where there are reasonable grounds to believe that offences or infringements of the laws referred to in this convention have been committed, and providing, upon request, all necessary information to the national, foreign or international authority requesting it*"[165].

Status as an aggrieved party in criminal proceedings

166. It is understood that in most European and South American states, as well as in Russia and in Australia, specific match-fixing offences (either as a specific sports-related offence or a general offence of fraud and corruption) are usually prosecuted without requiring a complaint by an individual or a legal entity to trigger the proceedings. On the other hand, certain minor offences may only be prosecuted, in certain jurisdictions, if a criminal complaint is filed.

167. Individuals or legal entities may trigger the proceedings by filing a report and / or file a criminal complaint. Whether those individuals or legal entities have a right to participate in the criminal proceedings which follow will depend on the legal system of the country involved. Under some countries' procedures, such individual or legal entities can claim the status of "*aggrieved party*", and join in the proceedings. Usually, continental European countries may be more open to allowing sports governing bodies to be considered as aggrieved parties, and therefore to have access to the file and to participate in the proceedings. Countries of the Anglo-American common law tradition on the other hand do not allow for this right. There is however the slightly different institution of a private prosecution, for example in England and in Australia[166], under which an individual or legal entity can under some circumstances bring a criminal prosecution if the state authorities decide not to do so.

168. In France, the status of "*aggrieved party*" can be granted to a sports governing body. In particular, the Panel understands

165 Explanatory Report to the Macolin Convention, paragraph 112.

166 So-called "private prosecutions" are permitted for the vast majority of offences, including the match-fixing offences recently introduced into the crimes legislation of the vast majority of Australian jurisdictions (see, e.g., Criminal procedure Act 1986 (NSW), sections 47-49 with Crimes Act 1900 (NSW), Part 4ACA). Private prosecutions permit any individual to act as the "informant" in lieu of the police and therefore to initiate and run criminal proceedings against a person suspected of a crime in the relevant jurisdiction.

that this was recognised in the *VA-OM* case, where the French Supreme Court overturned the Appeal Court's decision to reject the claims of Fédération Française de Football and the Ligue Nationale de Football to such status, holding: "*Corruption of professional sports players potentially causes direct damage to sports federations to which they are affiliated and to its controlling authorities, as it is their mission to ensure the regularity of the sport competitions they organize and the compliance with technical and ethical rules of the sport they are concerned with*"[167].

169. It is understood that in Germany, conversely, sports governing bodies cannot participate in proceedings for fraud in relation to the placing of bets on fixed matches. Indeed, under the German Code of Criminal Procedure, only the direct "*victim*" of a crime can become a party to the proceedings, and then only in limited circumstances. It appears that sports governing bodies would not be considered direct victims of a match-fixing offence, which is considered to have been committed against the betting operator taking the relevant bet. In any event, the circumstances in which a victim can be involved in criminal proceedings as a party are further confined to certain offences involving a personal element, and fraud is not considered one of the offences with a personal element that would justify even the involvement of the direct victim as a party[168].

170. In South American states, such as Brazil and Argentina, it appears that sports governing bodies are similarly unlikely to be allowed to participate, either on the basis that they would not be considered to be a direct victim and so would lack a direct legal interest to participate in the proceedings, or on the basis that the offence had an insufficient personal element.

171. In many countries, such as Switzerland, the position appears to be unclear:

171.1 Sports governing bodies would usually be precluded from filing an official and binding criminal complaint (in contrast to a denunciation or a report, which they could file) and precluded from participating in proceedings for fraud. This is because it is unlikely that they would be considered to have suffered a financial loss consequent upon the fraud (in contrast to the betting operator who takes the relevant bet).

171.2 If on the other hand, an incident of match-fixing qualifies as private corruption, which is plausible, it could be argued that a sports governing body is an "*aggrieved party*" because under the rules, players and other participants owe a duty to the sports governing body not to match-fix or breach integrity.

172. Where sports governing bodies are not recognised as "*aggrieved parties*" or where the country does not recognise the status of "*aggrieved party*", they may still report the offence but have no right to request its prosecution or partake in the ensuing proceedings, if any (as for example in Brazil, Germany, or Argentina). In other countries such as Turkey, it appears that a sports governing body that is impacted by the outcome of a case concerning match-fixing could apply to join the proceedings as an aggrieved party (at the discretion of the relevant criminal prosecution authorities).

173. If a sports governing body is recognised as an "*aggrieved party*", it may have the right to participate in the proceedings, including the right to access the file of the proceedings. Or it may have this right, but only after a certain delay. For example, in Switzerland, the parties may inspect and even copy the file following the first interview with the suspect and the gathering of the most important evidence by the public prosecutor[169]. The parties to the procedure who have access to the file may even use the documents that it contains for another procedure, such as a parallel civil procedure or disciplinary procedure. Under Russian law, it appears that access to the file is granted only at the end of the criminal investigation.

167 Decision by the Cour d'Appel de Douai of 28 November 1995; Decision by the Cour de Cassation, Chambre criminelle of 4 February 1997.

168 Sections 374 and 395 of the German Code of Criminal Procedure.

169 Article 101 of the Swiss Code of Criminal Procedure.

174. The Panel understands that under certain national laws (for example French law[170]), investigations are covered by secrecy requirements and the information obtained during them cannot be used for any other purpose. Domestic legislation may also impose other restrictions. For instance, it appears that a prosecutor investigating a criminal case, even based on information communicated by private organisations, would not be able to pass on other information about the case to those organisations, because of investigation or prosecution confidentiality[171].

175. Finally, even if a sports governing body is not recognised as an "*aggrieved party*", in some jurisdictions it may still request access to the file if certain requirements are met (as is the case in Germany[172]). The sports governing body may however only use such information for the purpose for which the access to the file was granted.

Why and how to cooperate: the creation of Platforms

176. Against the background described above, the need for increased cooperation among law enforcement agencies and other competent public authorities, sports governing bodies and sports betting operators is becoming more and more apparent. In the light of some of the difficulties under some existing national criminal procedures, it is also apparent that a separate structure for facilitating such cooperation may be desirable. This has been recognised by the state parties of the Macolin Convention[173]. The Macolin Convention specifically recommends the use of national "*Platforms*" (which already existed in some countries in form if not in name) where law enforcement agencies, sports governing bodies, regulators and betting operators can meet, exchange information and coordinate their efforts to fight the manipulation of sports competitions[174].

177. While the contemplation is that all state parties should have such national Platforms, no standard way by which to organise the functioning of the Platforms has been established. Each country is free to set up its national Platform as it deems appropriate under local conditions, so long as all relevant stakeholders (public and private) are able to contribute appropriately. Public stakeholders include law enforcement agencies, prosecutors, betting regulatory authorities, and all relevant ministries (sport, finance, interior, customs, and so on). Private stakeholders include various sports bodies federations, associations, player unions and so on, and the betting operators themselves. The precise structures of Platforms will vary. For instance:

170 Under French law (articles 114(6) and 114-1 of the French Code of Criminal Procedure), during the investigation phase the only documents that may be transmitted to third parties are expert reports, and their use must be restricted to the defense of a party in the concerned proceedings. Transmitting any document in violation of these provisions may result in a fine of €10,000.

171 Explanatory Report to the Macolin Convention, paragraph 114.

172 A sports governing body can access the case file if it can show a legitimate interest to do so, the suspect or accused does not have an overriding interest in keeping the information contained in the file confidential (Section 475(1) of the German Code of Criminal Procedure), and there is no interference with ongoing investigations (Section 477(2) of the German Code of Criminal Procedure).

173 The Macolin Convention, Article 12.1 "... 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. In particular, each Party shall undertake to set up mechanisms for sharing relevant information when such information might assist in the carrying out of the risk assessment referred to in Article 5 and namely the advanced provision of information about the types and object of the betting products to the competition organisers, and in initiating or carrying out investigations or proceedings concerning the manipulation of sports competitions.

[12.2] 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.

[12.3] Each Party shall explore possible ways of developing or enhancing co-operation and exchange of information in the context of the fight against illegal sports betting as set out in Article 11 of this Convention."

174 The Macolin Convention, Article 13.1 "...identify a national platform addressing manipulation of sports competitions. The national platform shall, in accordance with domestic law, inter alia: serve as an information hub, collecting and disseminating information that is relevant to the fight against manipulation of sports competitions to the relevant organisations and authorities; co-ordinate the fight against the manipulation of sports competitions; receive, centralise and analyse information on irregular and suspicious bets placed on sports competitions taking place on the territory of the Party and, where appropriate, issue alerts; transmit information on possible infringements of laws or sports regulations referred to in this Convention to public authorities or to sports organisations and/or sports betting operators; co-operate with all organisations and relevant authorities at national and international levels, including national platforms of other states".

177.1 In Norway, one of the few places where the Macolin Convention has already been ratified, a national Platform has been formally constituted in accordance with the Convention and, as a consequence, the Norwegian Government has put in place two full-time employees to run and coordinate the Platform out of the Ministry for Sport. The national data protection agency has authorised the Platform to treat and use personal data as a public authority;

177.2 In Finland and Denmark, the national Platforms deal not only with the manipulation of sport competitions, but also with doping;

177.3 In France and the UK, betting regulators (ARJEL and the Gambling Commission) have taken the lead in running the national Platforms so far in place; and

177.4 In Belgium, law enforcement agencies lead the national Platform[175].

178. The success of a national Platform depends on clarity about the role of each stakeholder's representative. It is also extremely important to establish who hosts these meetings, as this may give rise to advantages or to disadvantages, depending on what is established under the national legislation. The next challenge is to have the national Platforms cooperating with each other at the international level[176]. Lastly, the size and constitution of some Platforms may lead law enforcement agents to restrain from sharing their own intelligence and evidence too broadly within the Platforms, hence the necessity to scale down the Platforms into smaller units in order to allow the sharing of intelligence at a confidential level.

175 Statement of Cassandra Matilde Fernandes (KCOOS), Stanislas Frossard (Executive Secretary, Enlarged Partial Agreement on Sport) and Mikhael de Thyse (Secretary, the Macolin Convention).

176 ibid.

D EVIDENCE AND PROOF

179. After a potential match-fixing incident or other breach of integrity has been detected and investigated, the next question, addressed in this section, is how it can be proved in criminal or disciplinary proceedings. Criminal proceedings are under the jurisdiction of national courts, whereas disciplinary proceedings are dealt with by the relevant sports governing body. While criminal proceedings are subject to the statutory evidentiary rules provided in the criminal procedural code of the jurisdiction where the criminal proceedings take place, disciplinary proceedings are subject in principle to the evidentiary rules (or absence of them) contractually agreed by and between the players and the sports governing bodies. As criminal and disciplinary proceedings are different in nature, the evidentiary rules of those legal proceedings are different and fall to be addressed separately.

180. In light of the limited extent to which match-fixing and other breaches of integrity are dealt with through criminal proceedings, in comparison to disciplinary proceedings, the focus below is on the rules governing disciplinary proceedings. Such disciplinary proceedings are in the context of tennis, and many other sports, currently subject to appeal before CAS, seated in Switzerland, and subject to the supervisory review of the Swiss Federal Supreme Court. If the result from the first instance proceeding (before an AHO) is appealed, it is currently CAS that finally decides whether the disciplinary offence has been proven. As a consequence, in order to address the disciplinary evidentiary rules, arbitral awards of CAS must be taken into account. Moreover, since CAS arbitral tribunals are seated in Switzerland pursuant to the CAS rules, it is essential to also take into account the jurisprudence of the Swiss Federal Supreme Court in order to assess whether the CAS case law stands up to the scrutiny of a national court.

(1) ADMISSIBILITY, RELEVANCE AND MATERIALITY OF EVIDENCE IN DISCIPLINARY PROCEEDINGS

181. The admissibility of evidence in arbitral proceedings is not governed by domestic rules of evidence unless the parties to the dispute expressly provide so. Pursuant to Article G(3)(c) of the TACP, the decision-maker in tennis disciplinary proceedings is not bound by any jurisdiction's judicial rules governing the admissibility of evidence. Along the same lines, under Article 184(1) of the Swiss Private International Law Act, international arbitral tribunals sitting in Switzerland have the power to rule on the admissibility of evidence and to decide on their relevance. As such, and provided that evidence production does not fall under one of the narrow supervisory grounds for annulment of arbitral awards under Article 190(2) of the Swiss Private International Law Act (in particular the violation of equal treatment or the right to be heard, or incompatibility with public policy), the decision of the CAS arbitral tribunal on the admissibility and relevance of the evidence shall be final.

When to start proceedings, and late evidence

182. Investigating bodies often face the question of at which point in time they should start disciplinary proceedings against a player suspected of match-fixing. They may want to start disciplinary proceedings as soon as possible since the continued participation of a player suspected of match-fixing may be inimical to the integrity of the sport, as he or she may continue to commit corrupt acts which might distort the outcome of further matches. Investigators may, however, want to gather as much evidence as possible, and start disciplinary proceedings only when they are confident that there is a solid basis on which to convict the suspected player.

183. Article R57(3) of the CAS Rules provides that the "*Panel has discretion to exclude evidence presented by the parties if it was available to them or could reasonably have been discovered by them before the challenged decision was rendered*." In accordance with CAS case law, the exclusion of evidence should be confined to exceptional circumstances

in order to ensure that parties do not engage in abusive procedural conduct[177]. As a result, there would not appear to be any need to postpone the commencement of disciplinary proceedings until all possible relevant evidence is collected. Under CAS jurisprudence[178], if new and relevant evidence comes up during the course of the disciplinary proceedings, it will generally be considered admissible; only in exceptional cases, such as those involving negligence or bad faith, would the evidence be excluded. That said, it is apparent that there may be some uncertainty as to this question in the context of tennis, at least insofar as first-instance proceedings before AHOs are concerned. Specifically, the TIU gave evidence to the Panel that *"once the Notice has been issued, no fresh evidence can be collected and relied upon"*[179]. However, this appears to be based on a statement of AHO Richard McLaren regarding a narrow set of facts, whilst the Panel notes the flexibility afforded to the AHO regarding procedure under the TACP (and as such the scope for adduction of new evidence). This is addressed in full in Chapter 10, Part 3.

Admissibility of evidence

184. Under section G(3)(c) of the TACP, "*facts relating to a Corruption Offense may be established by any reliable means, as determined in the sole discretion of the AHO*." This wording suggests that the investigative bodies may take account of any reliable means to prove that a disciplinary offence took place. However, certain evidence (such as evidence which has been illegally or otherwise illegitimately obtained) might be precluded before national courts. As such, investigative bodies often face the question of how they should gather evidence in order for it to be admissible in disciplinary proceedings, as the validity of a disciplinary decision can ultimately be challenged before national courts. Moreover, the evidence gathered during a disciplinary investigation might also be used in criminal proceedings if the player's alleged disciplinary violation is also prosecuted as a criminal offence.

185. In criminal court proceedings, illegally obtained evidence presents an extra risk to investigations, because such evidence can contaminate the entire investigation process and render other pieces of evidence obtained, as a consequence of the originally inadmissible evidence, also inadmissible. This is sometimes known as the "*fruit of the poisonous tree*" doctrine. However not all legal systems preclude the use of such evidence under all circumstances; rather, some prefer to assess the reliability of the potentially tainted evidence in the light of the circumstances in which it was obtained. Moreover, even where the "*fruit of the poisonous tree*" doctrine is recognized, there are often significant exceptions that may still permit the evidence in question to be used.

186. The approaches that different jurisdictions take to the admissibility of evidence do not necessarily apply in the non-criminal context of sports disciplinary proceedings. CAS arbitral tribunals have consistently decided that national rules on the admissibility of evidence are not applicable in arbitration, as "*the discretion of the arbitrator to decide on the admissibility of evidence is exclusively limited by procedural public policy*"[180].

187. However, neither the CAS Code nor the Swiss Private International Law Act provide for rules on the admissibility of evidence in sports arbitration. As such, CAS arbitral tribunals will look for guidance in the specific provisions of the sport regulations in question, and, where none is provided, may decide on the admissibility of evidence according to their discretion. In any case, CAS tribunals have stressed that *"the Panel will endeavour to comply with all facets of Swiss procedural public policy"*[181].

177 CAS 2014/A/3486 (MFK Dubnica v. FC Parma), paragraph 53: "the Panel is of the opinion that Article R57.3 of the Code should be construed in accordance with the fundamental principle of the de novo power of review. As such the Panel also considers that the discretion to exclude evidence should be exercised with caution, for example, in situations where a party may have engaged in abusive procedural behavior, or in any other circumstances where the Panel might, in its discretion, consider it either unfair or inappropriate to admit new evidence." See also E. de La Rochefoucauld, 'The Taking of Evidence before the CAS' in CAS Bulletin 2015, pages 37-38.

178 CAS 2014/A/3486 (MFK Dubnica v. FC Parma), paragraph 53.

179 Statement of Nigel Willerton (TIU).

180 CAS 2011/A/2425 (Ahongalu Fusimalohi v. FIFA), paragraph 80.

181 CAS 2011/A/2426 (Amos Adamu v. FIFA), paragraph 68.

188. In 2014, the issue was addressed by the Swiss Federal Supreme Court in two actions to set aside CAS awards relating to a match-fixing incident involving Football Club Metalist and the Karpaty Football Club. It was argued that the CAS awards violated public policy in many respects, particularly on the basis that the arbitral tribunal relied on a conversation recorded on video without the player's consent. The Swiss Federal Supreme Court held that illegally obtained evidence is not always inadmissible under Swiss procedural public policy: "*the interests at hand must instead be balanced; they are, on the one hand, the interest in finding the truth and, on the other hand, the interest in protecting the legal protection infringed upon by the gathering of the evidence*"[182]. As the arbitral tribunal had thoroughly examined the video and other evidence in the file and had determined that the balance of interests weighed in favour of admitting that evidence, the Swiss Federal Supreme Court held that the Claimants had failed to establish that there had been a violation of public policy.

189. CAS has also held that polygraph tests, which are often not admissible in criminal proceedings, can be admitted in disciplinary proceedings. In *UCI* and *WADA v. Alberto Contador Velasco & RFEC*, the CAS arbitral tribunal found, contrary to previous CAS awards involving prior proceedings, that polygraph evidence is admissible, provided that it is "*reliable*". In that case, the arbitral tribunal found that the polygraph evidence under review was reliable because the test was: (a) conducted by a "*highly experienced polygraph examiner*" (in other words professionally conducted); (b) in accordance with professional associations and organisational standards; (c) in a manner supported by empirical research; and (d) reviewed by an "*experienced polygraph credibility consultant*"[183]. The arbitral tribunal stressed, however, that the weight to be attached to the evidence "*must be verified in light of all the other elements of proof adduced*"[184].

Waiver of legal defences

190. As sports governing bodies have no statutory coercive powers, players and other participants are often required (under the rules to which they are asked to agree) to cooperate with sports investigative bodies and to waive any ability under national law to withhold any information on the basis of legal defences[185].

191. For example, Section F(2)(d) of the TACP states that: "*By participating in any event, or accepting accreditation at any event, a Covered Person contractually agrees to waive and forfeit any rights, defence, and privileges provided by any law in any jurisdiction to withhold information requested by the TIU or the AHO. If a Covered Person fails to produce such information, the AHO may rule a Player ineligible to compete, and deny a Covered Person credentials and access to events, pending compliance with the Demand.*"

192. In the CAS case *Guillermo Olaso de la Rica v. TIU*[186], a tennis player argued that he was not advised of his right to remain silent during his interviews with the TIU, and, as a consequence, the TIU had violated his constitutional rights. The arbitral tribunal disagreed with the player for three reasons: (a) a player who agrees to be bound by the TACP has a duty to cooperate with investigations led by the TIU under Section F(2)(b) of the TACP; (b) the player was advised at the beginning of each interview that he had a right to legal counsel (representation that the player did not request); and (c) under Florida law, private parties may contract in a way that waives constitutional protections.

193. As a result, the arbitral tribunal held that the player validly waived any right to remain silent and admitted the evidence[187].

182 Decision by the Swiss Federal Supreme Court No. 4A_362/2013 of 27 March 2014; Decision by the Swiss Federal Supreme Court No. 4A_448/2013 of 27 March 2014.

183 CAS 2011/A/2384 (UCI v. Alberto Contador Velasco & RFEC) and CAS 2011/A/2386 (WADA v. Alberto Contador Velasco & RFEC), paragraphs 393-395.

184 ibid at paragraph 394.

185 In cricket, for example, each Participant is deemed to have waived and forfeited any rights, defences and privileges provided by any law in any jurisdiction to withhold, or reject the provision of, information formally requested by the ACU General Manager. See the ICC Anti Corruption Code, 9 February 2018, Article 1.5.8, available at https://www.icc-cricket.com/about/integrity/anti-corruption/the-code-pmoa [accessed 9 April 2018].

186 CAS 2014/A/3467 (Guillermo Olaso de la Rica v. TIU).

187 ibid., paragraphs 80-82.

Protected witnesses

194. Sports governing bodies may have difficulty in convincing a potential witness to testify, since they cannot guarantee protection in the same way that the state may be able to do. As such, even if a person has direct knowledge of a disciplinary offence, and reports it, such information might only be capable of being used as intelligence rather than as evidence. Although refusing to testify means the participant is failing to cooperate, and therefore in breach of the integrity rules, such breaches are not always prosecuted. In any event, it is more likely that someone with information who is not prepared to testify will either report it anonymously, or will not report it at all.

195. In order to avoid this problem, some sports have considered whether to allow witnesses to testify anonymously. In that way the evidence is heard, but the fear of reprisals is reduced. Such an option, however, raises significant questions with respect to the right to be heard and the right to a fair trial because "*the personal data and records of a witness are important elements of information to have in hand when testing his/her credibility*"[188].

196. CAS has considered this issue in the context of decisions addressing Article 6 of the ECHR, as interpreted by the European Court of Human Rights, and Article 29(2) of the Swiss Constitution, as interpreted by the Swiss Federal Supreme Court[189]. While acknowledging that CAS arbitral tribunals are not directly bound by the provisions of the ECHR[190], CAS has shown deference to the decisions of the European Court of Human Rights. The Swiss Federal Supreme Court has also relied upon the ECHR in a decision recognising a party's right to rely on anonymous witness statements and to prevent the other party from cross-examining the witness if the personal safety of the witness is at stake[191].

197. The encroachment on the right to be heard and the right to a fair trial is, however, subject to strict conditions. In order for a witness to testify anonymously, *"the witness shall motivate his/her request to remain anonymous in a convincing manner, and the court must have the possibility to see the witness. In such cases, the right to a fair trial must be ensured through other means, namely a cross-examination through 'audiovisual protection' and an in-depth verification of the identity and the reputation of the anonymous witness by the Court. Finally, the Swiss Federal Tribunal stressed that the ECHR and its own jurisprudence impose that the decision is not 'solely or to a decisive extent' based on an anonymous witness statement."*[192]

198. The arbitral tribunal's decision to admit the evidence is both a balancing act and a creative endeavour. The risk to the witness must be a concrete one, or there must at least be a likely danger in relation to the protected interests of the person concerned[193]. In addition, the "*measure ordered by the tribunal must be adequate and proportionate in relation to all interests concerned*"; *"the more detrimental the measure is to the procedural rights of a party the more concrete the threat to the protected interests of the witness must be"*[194].

188 CAS 2011/A/2384 and CAS 2011/A/2386 (UCI v. Alberto Contador & RFEC), paragraph 24.

189 Decision by the Swiss Federal Supreme Court of 2 November 2006 published in BGE 133 I 33.

190 CAS 2011/A/2384 and CAS 2011/A/2386 (UCI v. Alberto Contador & RFEC), paragraph 22.

191 In a decision dated 2 November 2006 (ATF 133 I 33), the Swiss Federal Supreme Court decided (in the context of criminal proceedings) that the admission of anonymous witness statements does not necessarily violate the right to a fair trial as provided under Article 6 ECHR. According to the Court, if the applicable procedural code provides for the possibility to prove facts by witness statements, it would infringe the principle of the court's power to assess the witness statements if a party was prevented from the outset from relying on anonymous witness statements. The Court stressed that the ECHR case law recognises the right of a party to use anonymous witness statements and to prevent the other party from cross-examining such witness if "la sauvergarde d'intérêts dignes de protection", notably the personal safety of the witness, requires it. See CAS 2009/A/1920 (FK Pobeda, Aleksandar Zabrcanec, Nikolce Zdraveski v. UEFA), paragraph 72; CAS 2011/A/2384 and CAS 2011/A/2386 (UCI v. Alberto Contador & RFEC), paragraphs 26 and 27.

192 CAS 2011/A/2384 and CAS 2011/A/2386 (UCI v. Alberto Contador & RFEC, paragraph 30.

193 Note that, although the CAS jurisprudence on protected witnesses is relatively recent, certain scholars and practitioners have stressed that "the suggestion by a witness that his or her career might be adversely affected by testifying against another party … does not, in general bear this same risk"; "to prefer anonymity of a voluntary witness on the basis of his or her career prospects over the interests of an athlete to have a fair hearing in circumstances where he or she has no right but to participate in such hearing would quite simply be an inappropriate balance of the competing interests of these parties" (A. Rigozzi, B. Quinn, Evidentiary issues before CAS, in M. Bernasconi (ed), International Sports Law and Jurisprudence of the CAS, Bern 2014, page 51).

194 CAS 2011/A/2384 and CAS 2011/A/2386 (UCI v. Alberto Contador & RFEC), paragraph 29.

Burden and standard of proof

199. In the sports context, the burden of proof usually falls on the party seeking to establish a disciplinary violation. If the burden is not discharged, the case must be dismissed. As a consequence, bearing in mind that an allegation of match-fixing or other breach of integrity is usually brought by sports governing bodies, the latter will generally bear the burden of proving the constituent elements of the offence. In certain disciplinary proceedings, such as doping cases, the burden might shift and there may even be some form of strict liability[195]. However, as one CAS arbitral tribunal has held[196] and a sports governing body has acknowledged in another CAS case[197], this principle does not generally apply in match-fixing cases.

200. The standard of proof refers to the level of certainty and the degree of evidence necessary to establish and prove a case. Disciplinary and criminal proceedings are subject to different standards of proof. According to the jurisprudence of the Swiss Federal Supreme Court: "*the duty of proof and assessment of evidence … cannot be regulated, in private law cases, on the basis of concepts specific to criminal law such as presumption of innocence and the principle of 'in dubio pro reo' and the corresponding safeguards contained in the European Convention on Human Rights*."[198] Accordingly, "*in CAS jurisprudence the application of the standard of proof of beyond any reasonable doubt has so far been dismissed on the basis of the different nature of disciplinary proceedings as opposed to criminal proceedings and the fact that disciplinary proceedings in general do not qualify as a "criminal charge" under the criteria set by the European Convention on Human Rights*"[199].

201. Sports governing bodies are therefore free to set the standard of proof that should be applied to their disciplinary proceedings[200], subject to public policy considerations (such as the right to due process). As a result, CAS awards can be divided into: (a) cases in which the applicable sports regulation sets forth a standard of proof[201]; and (b) cases in which the applicable sports regulation is silent.

202. CAS case law confirms that tribunals are unlikely to deviate from a standard of proof provided in the regulations of sports-governing bodies unless: (a) there is mandatory law suggesting otherwise, or (b) if the application of the standard is incompatible with public policy[202].

195 World Anti-Doping Code (2015), Article 3.1, available at https://www.wada-ama.org/sites/default/files/resources/files/wada_anti-doping_code_2018_english_final.pdf [accessed 9 April 2018]

196 CAS 2010/A/2226 (N. & V. v. UEFA), paragraph 17: "in other words, it is the Panel duty to verify if UEFA has discharged this burden proving that the Appellants committed infringements of the applicable regulations".

197 CAS 2009/A/1920 (FK Pobeda, Aleksandar Zabrcanec, Nikolce Zdraveski v. UEFA), paragraph 84, where UEFA expressly agreed that it must demonstrate that match-fixing took place.

198 Decision by the Swiss Federal Supreme Court No. 5PAGE83/1999 of 31 March 1999, paragraph 3.d-3.d.d.

199 E. Barak, D. Koolaard, Match-fixing. The aftermath of Pobeda – what have the past four years brought us?, in CAS Bulletin 2014, pages 5-24, page 17 quoting CAS 2010/A/2266 (Mészáros & Poleksic v. UEFA), paragraph 68; CAS 2010/A/2267-2281 (Football Club "Metalist" et al v. FFU), paragraph 730, with further references to CAS 2008/A/1583 (Sport Lisboa c Beniica Fatebol SAD v. UEFA and FC Porto Putebol SAD) and CAS 2008/A/1584 (Vitoria Sport Clube v. UEFA and FC Porto Putebol SAD), paragraph 41 and a decision by the Swiss Federal Supreme Court No. 5PAGE83/1999 of 31 March 1999, paragraph 3.d.

200 According to the CAS tribunal in Köllerer v. ATP, WTF, ITF & GSC, "while the Panel acknowledges that consistency across different associations may be desirable, in the absence of any overarching regulation (such as the WADA Code for doping cases), each association can decide for itself which standard of proof to apply, subject to national and/or international rules of public policy. The CAS has neither the function nor the authority to harmonize regulations by imposing a uniform standard of proof, where, as in the present case, an association decides to apply a different, specific standard in its regulations" (CAS Bulletin 2014 quoting CAS 2011/A/2490 (Daniel Köllerer v. Association of Tennis Professionals, Women's Tennis Association, International Tennis Federation & Grand Slam Committee), paragraph 86.

201 For instance, certain sports governing bodies have set forth the standard of proof for match-fixing cases:

International Cricket Council's Anti-Corruption Code for Participants (2016): Article 3.1 provides that "the standard of proof in all cases brought under the Anti-Corruption Code shall be whether the Anti-Corruption Tribunal is comfortably satisfied, bearing in mind the seriousness of the allegation that is being made, that the alleged offence has been committed. This standard of proof in all cases shall be determined on a sliding scale from, at a minimum, a mere balance of probability (for the least serious offences) up to proof beyond a reasonable doubt (for the most serious offences)";

FIFA Code of Ethics (2012): Article 51 provides that "The members of the Ethics Committee shall judge and decide on the basis of their personal convictions";

UEFA Disciplinary Regulations (2016): Article 18(2) provides that "the standard of proof to be applied in UEFA disciplinary proceedings is the comfortable satisfaction of the competent disciplinary body"; and

Olympic Movement Code on the Prevention of the Manipulation of Competitions (2016): Article 3.3 provides that "the standard of proof on all matters under this Code shall be the balance of probabilities".

202 CAS 2011/A/2490 (Daniel Köllerer v. ATP, WTF, ITF & Grand Slam Committee); CAS 2011/A/2621 (David Savic v. Professional Tennis Integrity Officers); CAS 2014/A/3467 (Guillermo Olaso

203. The TACP provides "*the standard of proof shall be whether the Professional Tennis Anti-Corruption Officer has established the commission of the alleged Corruption Offense by a preponderance of evidence*"[203]. In a case interpreting an older version of this provision, the CAS arbitral tribunal equated the "*preponderance of evidence*" standard to a "*balance of probabilities*" test. The tribunal observed that the standard of "preponderance of evidence" is met "*if the proposition that the Player engaged in attempted match fixing is more likely to be true than not true*"[204]. This analysis is reiterated in the IOC's *"Olympic Movement Code on the Prevention of the Manipulation of Competitions"*[205].

204. The applicable standard of proof in cases where the relevant sports regulation is silent is less clear. For such cases, tribunals have established certain general principles on the standard of proof to be applied in match-fixing cases, although the CAS jurisprudence is not entirely consistent. In the words of Barak and Koolaard, "*whereas there appears to be a general consensus towards accepting the application of the standard of comfortable satisfaction, this is not always the case and even though some CAS panels came to the conclusion to apply the standard of comfortable satisfaction, the reasons relied on by these panels in applying this standard vary and may lead to different conclusions in the future*"[206].

205. Other examples of the standard of proof in a sporting context are: (a) cricket, where the governing body's Anti-Corruption Tribunal must be "*comfortably satisfied*" that the alleged offence has been committed[207]; and (b) rugby, where the standard of proof in all matters under its anti-corruption regulations is the balance of probabilities[208].

The adequacy of the standard of proof and its compatibility with public policy

206. It has been suggested that the seriousness of the potential sanctions arising from match-fixing (such as the lifetime ban of a player) calls into question whether the standard of proof should – as a matter of public policy – involve a higher threshold than the balance of probabilities.

207. This issue was raised in *Köllerer v. ATP, WTF, ITF & GSC*. Daniel Köllerer, who had been given a lifetime ban by the AHO, argued that, as a matter of public policy and according to CAS jurisprudence, a higher threshold than "*preponderance of evidence*" should be applied when a player is charged with serious offences (the proposed standard being one of "*comfortable satisfaction*"). The arbitral tribunal rejected the player's argument, observing, amongst other points, that *"by signing a consent form, the Player agreed to both the standard of proof and the contractual sanctions in case of breach*"[209]. Nonetheless, the arbitral tribunal stressed that *"in assessing the evidence the Panel has borne in mind that the Player has been charged with serious offences. While this does not require that a higher standard of proof should be applied than the one applicable according to the UTACP, the Panel nevertheless considers that it needs to have a high degree of confidence in the quality of the evidence*"[210].

208. Bearing in mind the above, although sports governing bodies are entitled to set the standard of proof for disciplinary proceedings, such standard must not violate the minimum evidentiary requirements established by public policy (which CAS determined was not the case for an older version of the TACP in *Köllerer*).

209. Moreover, the recognition and enforcement of an award can be denied if it is contrary to public policy.

de la Rica v. TIU); CAS 2011/A/2362 (Mohammad Asif v. ICC); CAS 2011/A/2426 (Amos Adamu v. FIFA); CAS 2013/A/3256 (Fenerbahçe Spor Kulübü v. UEFA); CAS 2013/A/3258 (Besiktas Jimnastik Kulübü v. UEFA).

203 TACP Section G(3)(a).

204 Daniel Köllerer v. ATP, WTF, ITF & Grand Slam Committee, paragraph 25.

205 'Olympic Movement Code on the Prevention of the Manipulatrion of Competitions, Article 3.

206 E. Barak, D. Koolaard, 'Match-fixing. The aftermath of Pobeda – what have the past four years brought us?', in CAS Bulletin 2014, pages 5-24, page 12.

207 Cricket Anti-Corruption Code for Participants, Article 3.1.

208 Rugby Anti-Corruption Regulation 6.6.1.

209 CAS 2011/A/2490 (Daniel Köllerer v. ATP, WTF, ITF & Grand Slam Committee), paragraph 28.

210 ibid., paragraph 40.

Materiality of evidence

210. As discussed in paragraph 184 above in relation to admissibility of evidence, sports governing bodies generally have discretion to establish integrity offences using sources of evidence that might not be admissible in criminal proceedings – as long as the relevant evidence is sufficiently reliable. In this respect, there is currently a debate as to whether, and as to the extent to which, suspicious betting patterns may constitute a reliable means of establishing match-fixing.

211. CAS jurisprudence has recently established important precedents as to whether and the extent to which suspicious betting patterns may suffice to prove match-fixing. In *Oleg Oriekhov v. UEFA*, the arbitral tribunal observed that "*when assessing the evidence, the Panel has well in mind that corruption is, by nature, concealed as the parties involved will seek to use evasive means to ensure that they leave no trail of their wrongdoing*"[211]. This, coupled with the limited investigative powers granted to sports governing bodies, creates a situation in which it is difficult for a sports governing body to amass sufficient evidence to prosecute successfully a match-fixing case. This is notwithstanding that there is often clear betting data evidence that something out of the ordinary occurred.

212. Against this background, CAS arbitral tribunals have recently relied, at least in part, on suspicious betting patterns to conclude that parties were involved in match-fixing:

212.1 In *Vsl Pakruojo FK et al. v. LFF*, the arbitral tribunal decided that a football team was liable for "*presumed*" match-fixing[212] since "*the anomalies in the betting patterns were abundant and inexplicable – if not by the reason that the punters knew in advance the result of the Matches*" and *"the behavior of the Players during the Matches … allows the presumption that the Players could be responsible of match fixing*"[213]. In other words, the tribunal concluded that "*abundant and inexplicable*" (namely, at the very least suspicious) betting patterns coupled with the players' performance during the match was sufficient evidence to prove a presumption of (as opposed to actual) match-fixing.

212.2 On 1 June 2016, in *Skenderbeu v. UEFA*, a CAS arbitral tribunal reached the conclusion that a football club was "*at the very least indirectly involved in match fixing activities*"[214] based on: (a) suspicious betting patterns[215], (b) the fact that "*an important Asian betting operator removed live market bets on a game involving the accused team*"[216]; and (c) the debatable performance of some players on the team[217]. In particular, as to the materiality of the betting patterns, the arbitral tribunal observed that "*they are an important element to take into account in concluding the Club was at least indirectly involved in match fixing activities*"[218], although it observed that those patterns are "*quantitative information*" that "*is not definitive in the assessment of whether a specific match has been fixed*"[219], since a "*qualitative assessment*" of the betting patterns "*is … also needed*"[220].

212.3 More recently, in *Joseph Odartei Lamptey v. FIFA*[221] CAS found that the referee was involved in match-fixing on the basis that he had made several incorrect on field decisions and that the undisputed "*deviation from the expected, ordinary movements in the odds on 'overs' in the Match*" demonstrated that bettors had foreknowledge of the result.

213. In each of these cases, the CAS arbitral tribunal found that a team was involved in match-fixing on the basis of suspicious betting patterns combined with other evidence. In addition, neither tribunal found that the team was directly involved in actual match-fixing – which presumably would require a greater degree of certainty than a finding that a team is culpable of presumed, or indirect, match-fixing.

211 CAS 2010/A/2172 (Oleg Oriekhov v. UEFA), paragraph 54.
212 The Lithuanian Football Federation Disciplinary Code (year) provision on "presumed" match-fixing applies where it is impossible to prove "actual" match-fixing.
213 CAS 2015/A/4351 (Vsl Pakruojo FK et al. V. LFF), paragraph 92.
214 CAS 2016/A/4650 (Klubi Sportiv Skenderbeu v. UEFA), paragaph 104.
215 ibid., paragaph 98.
216 ibid., paragaph 99.
217 ibid., paragaph 100.
218 ibid., paragaph 98.
219 ibid., paragaph 92.
220 ibid., paragaph 93.
221 CAS 2017/A/5173.

214. In sports disciplinary cases, therefore, suspicious betting patterns may be evidence of match-fixing, but will rarely be sufficient to support a disciplinary violation unless combined with some other evidence. It is however possible that there may be some contexts, such as spot fixes, where the betting evidence is so strong as to indicate bettor certainty in the outcome based on circumstances that must have involved the player's agreement in advance to ensure that outcome.

(2) STANDARD OF PROOF AND SUFFICIENCY OF EVIDENCE IN CRIMINAL PROCEEDINGS BROUGHT BY LAW ENFORCEMENT AGENCIES AND REGULATORS

215. While criminal procedure laws vary from one country to another, there are certain fundamental principles that apply across states, such as in particular the principles enshrined in human rights treaties. The ECHR serves as a good example of an international instrument that contains principles of criminal law and criminal procedure. Foremost among these principles are: (a) the requirement of reasonable suspicion before arresting or detaining an individual[222]; (b) prompt information of the reasons for an arrest and any charges[223]; and (c) the presumption of innocence, which has fundamental implications for evidentiary rules in criminal cases[224].

216. Drawing on such international standards of criminal law, several observations can be made in relation to the prosecution of match-fixing by law enforcement agencies and regulators, as set out below.

Preparedness to prosecute criminal cases

217. State criminal prosecutors should not bring charges unless there is sufficient evidence of guilt. When prosecutors exercise their discretion as to whether to prosecute a case and what charges to bring against a suspect, they should consider the seriousness of the offence and the extent of the offender's culpability. In any event, they should make sure that at the very least "*reasonable suspicion*" can be established as to the occurrence of the offence, which can be defined as the "*existence of facts or information which would satisfy an objective observer that the person concerned may have committed the offence*"[225].

Burden and standard of proof in criminal proceedings

218. Under most national legal frameworks, the burden of proof in criminal law rests with the prosecution, and the suspect is presumed innocent until proved guilty[226]. The European Court of Human Rights has indeed held that "*the burden of proof is on the prosecution and any doubt should benefit the accused. It also follows that it is for the prosecution … to adduce sufficient evidence to convict him*"[227]. The proof must normally be made for both the *actus reus* (the conduct or actions that are a constituent element of the crime) and the *mens rea* (the person's guilty state of mind).

219. However, in some common law jurisdictions, certain "*strict liability*" offences do not require proof of *mens rea* with regard to at least one element of the *actus reus*. This may even extend to absolute liability, meaning crimes for which there is no *mens rea* that needs to be proved at all. Moreover, in some common law jurisdictions, once the *actus reus* has been proved, an onus sometimes falls on the defendant either to introduce evidence or to prove that he or she had reasonable grounds for the failure to be aware of, or to foresee, relevant facts.

222 Article 5(1) ECHR.

223 Article 5(2) ECHR.

224 Article 6(2) ECHR. See also E. Cape, Z. Namoradze, R. Smith, T. Spronken, Effective Criminal Defence in Europe, Antwerp/Oxford/Portland 2010, pages 23 and 27.

225 Fox, Campbell and Hartley v. the United Kingdom, ECHR, 30 August 1990, Section 32, Series A no.182.

226 Indicatively, Article 6, Section 2 ECHR.

227 Barberà, Messegué and Jabardo v. Spain, ECHR, 6 December 1988, Section 77, Series A no. 146.

220. In common law countries, crimes of strict liability are almost invariably found in statutes. They do not only arise in the context of minor "regulatory" offences, but may also arise in the context of more serious ones . The argument that is most frequently advanced for the imposition of strict liability is that it is necessary to do so in the "interest of the public". Where an offence is to be interpreted as entailing strict liability, the fact that the defendant could not have avoided the prescribed harm, even if he had tried to do so, does not absolve him of liability. As a result, it is unnecessary for the prosecution to tender evidence of mens rea – such evidence is irrelevant.

221. It has been suggested that strict liability conflicts with the presumption of innocence (Article 6(2) of the ECHR). The European Court of Human Rights has however held, at least in some cases, that strict liability offences are compatible with the ECHR: "*in principle the contracting States may, under certain conditions, penalize a simple or objective fact as such irrespective of whether it results from criminal intent or from negligence*." However the trend within European institutions such as the European Union or the Council of Europe is arguably now to limit the application of strict liability in the light of the principle *nulla poena sine culpa*, or no punishment without guilt.

222. As to the standard of proof, or the degree of certainty required before any criminal conviction is imposed, judgments must be based on evidence adduced as opposed to mere allegations or assumptions[228]. Apart from this general principle, however, there are significant differences between common and civil law jurisdictions:

222.1 Common law: the criminal law standard is "*beyond reasonable doubt*", meaning that a criminal conviction is not possible if there remains an "*honest doubt of the defendant's guilt for which a reason exists based upon the nature and quality of the evidence*"[229].

222.2 Civil law: the standard of proof is virtually the same for criminal and civil cases – being the full conviction of the judge. In this respect, the Swiss Federal Supreme Court described the latter standard as follows: "*conviction of the truth of a factual allegation based on objective grounds. Absolute certainty is not required. It is sufficient if the court has no serious doubt or any remaining doubt appears insubstantial*"[230].

Adducing the evidence

223. As noted above, in order to prove a case, the criminal prosecution must adduce sufficient evidence to dispel all reasonable doubt, or to leave no more than an unsubstantial doubt in the tribunal's mind. Though it might not be done in this order, and the evidence will necessarily vary in each case based on the particular circumstances, the prosecution will generally have to adduce evidence in a match-fixing case, of:

223.1 The planning between the player and the fixer. This will likely take the form of witness evidence of their acquaintance and of their meeting and electronic evidence or records of the contacts between them. This therefore involves the presentation of witness testimony, and cooperation with the relevant communications or internet companies. It may also involve the collection and presentation of evidence based on intercepts, video and audio recordings, and other surveillance techniques.

228 Telfner v. Austria, no. 33501/96, ECHR, 20 March 2001, Section 19.

229 For example, Decision by the Court of Appeals of New York, People v. Antommarchi, 80 N.Y.2d 247 (N.Y. 1992), page 252.

230 Decision by the Swiss Federal Supreme Court of 29 January 2004 published in BGE 130 III 321, paragraph 3.2.

223.2 The placing of the bets. The prosecution will generally seek to identify not only what contingency was bet upon, and by whom, but also likely that it gave rise to a suspicious betting pattern, through the use of betting data. The proof of this stage of the offence will therefore involve the cooperation, and possibly testimony, of betting operators, regulators, or experts to explain the relevant betting evidence.

223.3 The execution of the fix. While the suspicious betting pattern and the record of events on the court or on the pitch will help to establish this stage of the offence, the prosecution will also generally seek to adduce video or audio footage of the relevant incident, together with other witness evidence, which will involve the cooperation of officials and other players and coaches.

223.4 The provision of reward. The prosecution will generally seek to establish how the player was rewarded, again through witness evidence, electronic evidence of communications or financial records.

224. While human rights concerns might conceivably be voiced particularly in relation to obtaining intercepts and video and audio recordings, the ECHR has held that insofar as this is aimed at the prevention of crime, it is in conformity with the right to privacy. However, when such calls or images have been intercepted illegally, in other words by third parties and not with an order by the competent judge, they maybe be considered illegal and hence inadmissible.

E DISCIPLINARY SANCTIONS AND INTERIM MEASURES

Sanctions

225. Possible disciplinary sanctions for violating sports integrity rules include, amongst others, (a) a warning or reprimand; (b) a fine or other financial sanction which might include the restitution of improper gains; (c) a limited or unlimited period of ineligibility, which might range from a limited number of weeks, months or even years to a lifetime ban; and (d) the annulment of the result of a match or the withdrawal of a title or award.

226. Certain sports governing bodies, such as UEFA, consider that monetary sanctions are an insufficient basis for fighting match-fixing, and that only a period of, or permanent, suspension from participation by both contemplated clubs and players is a proper response[231].

Administrative measures

227. In addition to disciplinary sanctions, some sports governing bodies have the option of imposing an administrative suspension - akin to an ineligibility rule - for offences that fall short of actual, direct match-fixing. For instance, UEFA established a two-stage process. In the first, it can impose an administrative suspension of one year from UEFA competitions if it is comfortably satisfied that a club was "*directly and/or indirectly involved… in any activity aimed at arranging or influencing the outcome of a match*"[232]; while "*the second stage involves disciplinary measures, which may be imposed subsequent to the administrative measure and do not have a maximum duration*"[233].

228. Thus this administrative measure is independent from, and can be combined with, sanctions in disciplinary proceedings for "*a concrete and specific breach of the regulations*"[234]. In other words, UEFA can impose an administrative suspension if a team had any involvement whatsoever with match-fixing, while it can only impose a disciplinary sanction if the team's involvement was direct and with a view to gaining an undue advantage.

Interim measures

229. In addition to sanctions and administrative measures, most sports governing bodies also have the option of issuing interim or provisional measures, usually suspensions[235]. The main goal of interim measures is not to punish for past actions or omissions, but rather to provide immediate protection to the sport's integrity while full disciplinary investigations and proceedings are resolved. They are therefore imposed before a final adjudication as to liability.

230. Unless revoked earlier, interim measures therefore stand only until a final decision is rendered on the merits of the alleged disciplinary violation. Interim measures may be revoked either because the harm to be avoided can no longer occur or because the measure has become disproportionate to the goal to be achieved. Since interim measures are part of, and dependent on, the disciplinary proceedings, they should be taken into account when the final sanction is determined (for example, a reduction in the length of a ban).

231 Statement of Emilio García and Graham Peaker (UEFA).

232 UEFA Champions League Regulations, Article 4.02.

233 Emilio Garcia in Marc Cavaliero and Michele Colucci (eds.), 'Disciplinary Procedures in Football. An International and Comparative Analysis', International Sports Law and Policy Bulletin 1/2017 (October 2017), page 178, making reference to CAS 2013/A/3256 (Fenerbahçe SK v. UEFA), paragraph 160 onwards.

234 CAS 2016/A/4650 (Klubi Sportiv Skenderbeu v. UEFA), paragaph 50.

235 Provisional suspensions are, for example, available in both golf and cricket.

(2) PROPORTIONALITY OF SANCTIONS AND INTERIM MEASURES

231. In order to avoid arbitrariness, any sports disciplinary system must specify defined criteria that are to be considered when imposing sanctions. Defining these criteria can be complex. A criterion that is defined too narrowly could be viewed as arbitrary if it consequently does not cover all similar situations. Conversely, if a criterion is defined too broadly, it may not reflect the diversity of situations that it covers and may also result in arbitrary sanctioning decisions.

232. As sanctions and interim measures do not have the same purpose, different criteria should be applied to each. The main consideration for interim measures should be the preservation of the sport's integrity from an immediate irreparable harm, balanced against the consequences for the player or other participant. By contrast, the main considerations for disciplinary sanctions should be: the vindication of the interests of the sport by punishing the offender; the protection of the sport by preventing the offender from committing additional offences in the future; and the need to deter others from integrity offences – subject to the overriding requirement that the sanction must be proportionate, and so go no further than reasonably necessary to pursue those legitimate aims of sanctioning.

233. It is also established that *"the adoption and implementation of disciplinary sanctions applied by sports organisations, such as suspension from other sports activities, must be done in accordance with the national law. This includes, in particular, respecting human rights and the principle of proportionality"*[236]. This principle should also apply to interim measures.

234. Outside these basic requirements, sports governing bodies have relatively wide discretion to decide on the sanctions or interim measures that are appropriate. Indeed, CAS tribunals will not overturn sanctions imposed by a disciplinary body in the exercise of the discretion allowed under the relevant rules unless the sanction is "*evidently and grossly disproportionate to the offense*"[237]. As one case put it, a CAS arbitral tribunal "*would not easily 'tinker' with a well-reasoned sanction of 17 or 19 months' suspension for one of 18*"[238].

235. Even with respect to permanent or lifetime suspensions from participation, CAS has concluded that these sanctions are proportionate on the basis that "*the sport of tennis is extremely vulnerable to corruption as a match-fixer only needs to corrupt one player (rather than a full team)*" and therefore it is "*imperative that, once a Player is caught, the Governing Bodies send out a clear signal to the entire tennis community that such actions are not tolerated*".[239]

236. However, cumulative sanctions have on occasion been considered disproportionate. For instance:

    236.1 In *Köllerer v. ATP, WTF, ITF & Grand Slam Committee*, the CAS arbitral tribunal concluded that: "*it would be inappropriate to impose a financial penalty in addition to the lifetime ban, as the sanction of permanent ineligibility provides for the deterrence that corruption offences call for*". The tribunal reasoned that imposing both penalties was disproportionate because *"the lifetime ban also has a considerable financial effect on the Player because it significantly impacts the Player's future earnings by eliminating tennis as a source of revenue…"*;[240]

236 Explanatory Report to the Macolin Convention, paragraph 86.

237 CAS 2004/A/547, paragraphs 66 and 124; CAS 2004/A/690 (D. Hipperdinger v. ATP), paragraph 86; CAS 2005/A/830 (S. v. FINA), paragraph10.26; CAS 2005/C/976 and 986 (FIFA and WADA), paragraph 143; CAS 2006/A/1175 (D. v. International DanceSport Federation), paragraph 90; CAS 2007/A/1217 (Feyernoord Rotterdam v. UEFA), paragraph 12.4; CAS 2010/A/2209, paragraph 68.

238 CAS 2010/A/2283 (Piergorgio Bucci v. Federation Equestre Internationale (FEI)), paragraph 14.36.

239 CAS 2011/A/2490 (Daniel Köllerer v. ATP, WTF, ITF & Grand Slam Committee), paragraph 66.

240 ibid., at paragraphs 70-73.

236.2 The same reasoning was followed by the CAS arbitral tribunal in *Savic v. PTIOs*, which considered that "*the life ban in itself is sufficiently severe to reflect the gravity of the corruption offences*",[241] and it therefore set aside the financial sanction imposed by the AHO.

237. The need for financial sanctions to be proportionate was also apparent in the 2012 *Matuzalem* decision of the Swiss Federal Supreme Court which, for the first time in over 20 years, annulled an international arbitral award for a breach of substantive public policy because the monetary sanction decided by the arbitral tribunal was disproportionate and violated the athlete's right to "*economic freedom*". As the court explained, the player could not be simultaneously found liable for a very large amount in damages, and restrained from playing until he paid that amount, as if he could not play, he could not earn enough money to pay the damages[242].

(3) PARALLEL PROCEEDINGS AND MULTIPLE SANCTIONS

238. The principle of *ne bis in idem* or double jeopardy is often relied upon in an attempt to prevent different sanctions being imposed in different parallel proceedings in respect of the same underlying action. This situation may arise when a player is criminally prosecuted and disciplined by the sport in respect of the same facts.

Interaction between criminal and disciplinary proceedings

239. In principle, sanctions imposed by a national court in criminal proceedings and sanctions adopted in sports disciplinary proceedings are very different in their nature and in their goals. The former is directed against statutory criminal offences, while the latter is directed against contractual sporting breaches of integrity, as explained in paragraph 4 above. Indeed, most of the sanctions imposed by a sports governing body are sporting in nature and aimed at protecting the sport (for example, ineligibility, annulment of the result of a match, or withdrawal of a title or award), and are therefore not available in criminal law systems. This situation should, in particular, be distinguished from the circumstances contemplated by Article 4 Protocol 7 of the ECHR[243], which prohibits an individual from being punished under both the criminal law and administrative law on the basis of the same facts. The ECHR therefore prohibits a scenario where both types of sanction are state imposed.

240. The Explanatory Report to the Macolin Convention also expressly recognises the difference between sanctions determined by a state court in criminal proceedings and sanctions imposed in sports disciplinary proceedings[244].

241. The question is more difficult, however, when the sanctions imposed by both systems are financial. In these circumstances, it is harder to argue that the sanctions are not of the same nature. The existence of concurrent disciplinary and criminal sanctions would not, of itself, imply that a player has been prosecuted and sanctioned more than once for the same offence. Nonetheless, where financial sanctions are concerned, disciplinary tribunals may take into consideration the possibility that criminal courts might also fine players at the end of the criminal proceedings.

241 CAS 2011/A/2621 (David Savic v. Professional Tennis Integrity Officers), paragraph 8.38.

242 Decision by the Swiss Federal Supreme Court No. 4A_558/2011 of 27 March 2012, paragraphs 4.3.1-4.3.5.

243 Also Article 4 Protocol 7 of ECHR: "Right not to be tried or punished twice 1. No one shall be liable to be tried or punished again in criminal proceedings under the jurisdiction of the same state for an offence for which he has already been finally acquitted or convicted in accordance with the law and penal procedure of that state. 2. The provisions of the preceding paragraph shall not prevent the reopening of the case in accordance with the law and penal procedure of the state concerned, if there is evidence of new or newly discovered facts, or if there has been a fundamental defect in the previous proceedings, which could affect the outcome of the case. 3. No derogation from this Article shall be made under Article15 of the Convention."

244 Also the Explanatory Report to the Macolin Convention at paragraph 88: "...disciplinary liability shall in no way exclude any criminal, civil or administrative liability within the framework of state court sanctions. The sports disciplinary sanctions are within a different jurisdiction of criminal law and are driven into separate standards applied according to the procedures and other types of evidence. Also, disciplinary sanctions should not be classified as criminal sanctions. Therefore, the "non bis in idem" principle does not exclude that an act is punishable in both disciplinary and criminal courts. The same act may be punished by disciplinary procedure without coming under criminal law, or criminally without incurring disciplinary sanctions". See also E. Barak, D. Koolaard, 'Match-fixing. The aftermath of Pobeda – what have the past four years brought us?', in CAS Bulletin 2014, pages 5-24, page 19.

242. Criminal proceedings and sports disciplinary proceedings may also intersect in several other ways. For example:

242.1 In certain criminal law systems, prosecutors and judges can take into consideration the fact that the person charged was directly and personally prejudiced by her or his own acts when deciding whether she or he should be prosecuted, judged or sentenced at all.[245] This may be the case, for example, where players are banned for life from tennis competitions by sports governing bodies.

242.2 Under CAS jurisprudence, *"while it is clear that not all disciplinary violations in sports are criminally punishable, findings of fact by the law enforcement authorities confirmed by a court of law should be treated as having maximum persuasive, if not binding, authority."*[246]

243. In these circumstances, parallel disciplinary and criminal proceedings and sanctions are in principle compatible from a legal standpoint.

244. It is then also necessary to assess whether simultaneous parallel proceedings are beneficial or detrimental in the fight against the manipulation of sports competitions.

245. As criminal proceedings will not be stopped or suspended if sports disciplinary proceedings are also being pursued, the question is effectively whether those sports disciplinary proceedings should be suspended or should be allowed to continue once criminal proceedings are open. There are two ways to look at this.

246. On the one hand, it can be argued that sports disciplinary investigations and proceedings should not be suspended during the course of criminal proceedings, because it is important that those investigations, and subsequent disciplinary proceedings are initiated as quickly as possible. If they are not, then either:

246.1 a player who has potentially corrupted the sport is allowed to continue playing, and potentially to continue corrupting the sport while a criminal investigation or proceedings are pending – which could take considerable time to resolve or could result in no action being taken. That delay could result in irreparable harm to the sport not only because of possible further offences, but also at a reputational level; or

246.2 if the player were instead subjected to an interim suspension pending the criminal investigation or proceedings, irreparable harm could be caused to the player's career. Again, the criminal investigation or proceedings might take a long time. During that time, the player would be unable to earn money, notwithstanding the possibility that the criminal investigation or proceedings might not result in a conviction.

247. In this vein, in a leading CAS decision on match-fixing the arbitral tribunal observed that: "*...an effective fight to protect the integrity of sport depends on prompt action. In this context, CAS, or UEFA, cannot wait until states proceedings are over, i.e. after all internal remedies have been exhausted, to take its decision*"[247]. A conviction in disciplinary proceedings, on the lower standard, does not therefore prejudge guilt on the higher criminal standard.

248. On the other hand, it can be argued that disciplinary investigations and proceedings should be suspended during the course of criminal proceedings, because:

248.1 Sports governing bodies' investigators do not have the same wide-ranging powers as law enforcement agencies, and by staying disciplinary investigations and proceedings during the course of criminal investigations and proceedings, it is possible that a more robust case against the player could be built.

245 At the national level, see Article 54 Swiss Criminal Code.

246 CAS 2010/A/2267-2281 (Football Club "Metalist" et al. v. FFU), paragraph 735.

247 CAS 2013/A/3258 (Besiktas Jimnastik Kulübü v. UEFA), paragraph 148.

248.2 If a criminal case is successful on the higher standard of proof, then it would follow that the sports disciplinary case on the lower standard could be quickly dealt with, in a more cost-effective manner. The criminal conviction may be sufficient to establish guilt.

248.3 Criminal prosecutors might be reluctant to cooperate with investigators from sports governing bodies if they knew that evidence gathered in the criminal investigation could be disclosed in prior disciplinary proceedings.

248.4 In certain cases, interim measures or disciplinary sanctions that are imposed before the outcome of criminal proceedings might be undermined by an acquittal, especially if the criminal proceedings were decided on the basis of evidence that was not available to, or taken into consideration by, sports governing bodies.

249. It is impossible to express a preference for either option in the abstract. Rather, each situation will be different, and fact specific. Any decision as to the appropriate course will therefore have to be decided on a case-by-case basis.

250. That said, a sports governing body should not shy away where appropriate from continuing with its own disciplinary proceedings notwithstanding the prospect of a separate criminal investigation or proceedings, bearing in mind that its main priority should always be to preserve the integrity of the sport.

Interaction between sports disciplinary proceedings

251. The interaction between two sets of sports disciplinary proceedings is more difficult, as in those circumstances, the two sets of proceedings have a similar nature and similar goals. The Swiss Federal Supreme Court has however held that the principle *of ne bis in idem* or double jeopardy pertains, in principle, to public policy.[248] As such, when two sports governing bodies prosecute, and then sanction, a player in distinct disciplinary proceedings for the same conduct, the principle of *ne bis in idem* or double jeopardy may dictate that only one of the punishments can stand (most likely the earliest in time).

252. It might however be argued that parallel disciplinary sanctions issued by two different bodies within the same sport do not lead to a violation of the principle of *ne bis in idem* or double jeopardy if domestic sanctions are only effective at the domestic level, while international sanctions are effective in the rest of the world.

253. But that may not always be true. For example, in a recent sports case decided by the Swiss Federal Supreme Court, the appellant invoked this principle and argued that his international sanctions should be nullified because the domestic disciplinary proceedings had been commenced and concluded before the international disciplinary proceedings. The argument was dismissed because the domestic proceedings led only to an interim measure. However, the Swiss Federal Supreme Court held that the principle *ne bis in idem* or double jeopardy could have applied if:

253.1 in the first proceedings, the court had the opportunity to assess the facts in all respects (and not only for purposes of issuing an interim measure); and

253.2 the legal values protected in both proceedings were identical[249].

254. In light of the above, if two sports governing bodies prosecute a player on the basis of the same facts under provisions aimed at protecting identical legal values, there would be a significant risk, at least in certain jurisdictions, that the later proceedings might be considered to be in violation of the principle of *ne bis in idem*, even if the sanctions were of different territorial scope (i.e. international versus national). In the end, whether or not two or more parallel domestic and/or international disciplinary proceedings could violate the principle of *ne bis in idem* or double jeopardy should be considered with caution, on a case-by-case basis.

248 Swiss Federal Court Judgment of October 16, 2014, 4A_324/2014, Fenerbahçe Spor Kulübü v. Union des Associations Européennes de Football (UEFA), paragraph 6.2.1.

249 ibid., paragraph 6.2.3.

255. Besides the risk that sanctions are eventually overturned by CAS or the Swiss Federal Supreme Court, parallel proceedings are damaging for both players and the sport itself. Indeed, it is undesirable that players should have to undergo parallel procedures for the same underlying facts, and bear more costs for their legal defence. Parallel procedures may also follow different rules of procedure or even different burdens or standards of proof, raising the spectre of inconsistent decisions, which could harm the sport's reputation.

256. In view of the above, it is important that the sanctions decided by sports governing bodies be mutually recognised or at least taken into consideration across the sport. As the Explanatory Report to the Macolin Convention puts it, *"any disciplinary sanctions imposed by sports governing bodies should form the subject of mutual recognition procedures by foreign sports federations and by international federations*."[250] In tennis, this principle is followed by Section 5.2.2 of the ITF Bylaws, which provides that each national association must ensure "*that anyone who has been ruled ineligible under the TACP to participate in events organised or sanctioned by the governing bodies of professional tennis is also automatically ineligible, for the same period, to participate in any capacity in events organised, sanctioned or recognised by the national association*".

257. However, in practice, it is possible that different sports governing bodies, within the same sport, may apply different rules, or that national legal or political requirements may force national sports governing bodies to act in a way that is not acceptable at an international level, or vice versa. For instance, in jurisdictions such as France, national legislation obliges French sports federations to exercise their full powers and prevents them from simply endorsing international sanctions issued by the international disciplinary body without "*checking the materiality and the seriousness of the* [underlying] *facts in order to determine the sanction to be imposed according to* [their] *own regulations*".[251]

258. This situation is problematic, as the existence of contradictory or incompatible sanctions within the same sport allows players sanctioned for match-fixing in one or more jurisdictions to compete in and pollute the sport in other jurisdictions. In addition, the imposition of competing sanctions may give rise to the perception that the need to fight the manipulation of sports competitions is not a common goal, or at least is not perceived in the same way, by the national and international governing bodies of the same sport.

250 Explanatory Report to the Macolin Convention, paragraph 88,

251 J. M. Marmayou, 'Sports Justice at National Level: France', in M. Colucci and K. L. Jones (eds), International and Comparative Sports Justice, European Sports Law and Policy Bulletin 1/2013, page 405.

Protection of Integrity by Prevention of Breaches

Independent Review of Integrity in Tennis

06

1. The Independent Review Panel (the "Panel") sets out below its conclusions in relation to the need to protect integrity not only by detecting and punishing breaches after they occur, but also by preventing breaches from occurring in the first place. Means of prevention include deterrence, education, alteration of aspects of the organisation of the sport, disruption, intervention of participants in betting, limitation of the sale of live data, and state intervention.

2. The need for prevention always applies, no matter how practicable it is to detect and punish breaches, since it is plainly preferable that breaches not occur at all. Moreover, where detection and punishment entail considerable challenges, it is all the more important to take comprehensive steps toward prevention.

Q 6.1 Are there other matters of factual investigation or evaluation in relation to the protection of integrity by prevention of breaches as addressed below that are relevant to the Independent Review of Tennis and that should be addressed in the body of the Final Report, and if so which, and why?

Q 6.2 Are there any aspects of the Independent Review Panels' provisional conclusions in relation to the protection of integrity by prevention of breaches that are incorrect, and if so which, and why?

A PREVENTION THROUGH DETERRENCE

3. There is a degree of overlap between protection of integrity through punishment and through prevention. It is well established that the use of clear prohibitions, coupled with robust detection and punishment, is among the most effective means of deterrence, which is an important element in prevention. Deterrence however depends upon there being a sufficient possibility of being caught and significantly punished.

(1) DETERRENT EFFECT OF APPARENT ENFORCEMENT OF CLEAR PROHIBITIONS

4. In order for individuals to act in accordance with the rules, they must possess a sufficiently clear understanding of what the rules require. Accordingly, both the prohibited behaviour and the consequences of non-compliance should be clearly and comprehensively set out.

5. Players' perception that a sports governing body is pursuing a zero-tolerance policy of enforcing such clear prohibitions on betting-related corruption and other breaches of integrity is an important element in deterrence. The prohibitions must be clear, so that players know exactly what they must not do, and what will happen to them if they do. It must also, however, be expected that the prohibitions will be enforced, otherwise any deterrent effect is diluted. The perception that a sports governing body has a strong appetite for eradicating corruption can be effective in limiting corruption.

6. The perception of strict enforcement is best created not only through a clear understanding of the prohibitions, the consequences of breaching those prohibitions and knowledge of the sports governing body's policy, but also through the presence of an integrity officer, or someone with responsibility for integrity, during competitions. Such a person is a visible reminder of the sports governing body's policy of active enforcement.

(2) DETERRENT EFFECT OF ACTUAL DETECTION AND SANCTION

7. Effective deterrence also requires that offenders are actually detected and that the declared consequences of an offence are actually implemented by the authorities. Thorough investigation and punishment of offenders generates a greater fear of being caught, which acts as a deterrent to would-be offenders[1].

8. To operate effectively as a deterrent, both the detection and sanction of offenders must be publicised so that potential offenders are aware of it. Publication also serves as an added deterrent because, in addition to the fear of being caught and punished, a potential offender might be dissuaded by the fear of being publicly shamed. This is particularly so given that technology can now facilitate the public exposure of convictions, which might also lead to loss of sponsorship opportunities.

9. To be effective as a deterrent, the consequences of offending must also significantly outweigh the advantages. Hence, sanctions for match-fixing and other breaches of integrity must be heavy enough[2], and the prospects of detection and punishment high enough, that the risk is considered not worth taking.

1 United Nations Office on Drugs and Crime (UNODC) and International Centre for Sport Security (ICSS), 'Resource Guide on Good Practices in the Investigation of Match-Fixing' (August 2016), page 12, available at: http://www.unodc.org/documents/corruption/Publications/2016/V1602591-RESOURCE_GUIDE_ON_GOOD_PRACTICES_IN_THE_INVESTIGATION_OF_MATCH-FIXING.pdf [accessed 9 April 2018].

2 Institut de Relations Internationales et Stratégiques (IRIS), University of Salford, Manchester, Praxes Avocats and the China Center for Lottery Studies, 'Sports betting and corruption – How to preserve the integrity of sport' (2012), page 82, available at: www.spordiinfo.ee/est/g22s355 [accessed 9 April 2018].

10. Among the various possible sanctions available to a sports governing body, temporary or permanent exclusion from the sport creates the most significant deterrence, because the individual is unable to continue engaging in an activity to which they have devoted their life and from which they may earn a living. This is particularly true where a life ban on any involvement in the sport can be imposed. While lesser sanctions may involve some damage to a player's reputation, and may consequently lead to loss of sponsorship opportunities, if a player can come back to the sport it can lessen significantly the deterrent effect.

11. Exclusion from the sport also prevents the excluded player or participant from engaging in the same prohibited behaviour during the suspension period and may limit the offender's ability to corrupt others.

12. Sanctions must of course be proportionate to the offence. Deterrence as an aim in itself cannot lead to permanent or even lengthy exclusions for minor offences. That said, in the Panel's present[3] view, the need to deter effectively carries some considerable weight in the balancing of, on the one hand the interests of the public, of the sport, and of rule compliant players, and on the other, the interests of the offender.

3 Pending the consultation process between Interim and Final Reports.

B PREVENTION THROUGH EDUCATION

13. A fundamental element of any strategy to address match-fixing and related breaches of integrity is education. Education and deterrence are connected, as the better a person understands the rules and consequences, and the underlying reasons for them, the less likely that person is to engage in prohibited conduct. Indeed, research has shown that "*ethics can be taught*"[4].

14. Education extends far beyond mere knowledge of rules and regulations. Players – and any other participants in a sport – must be thoroughly informed about the ways in which they may be approached by corruptors, the appropriate responses, reporting mechanisms, and so on. The more prepared participants are, the better they can recognise the tactics of match fixers and resist them[5].

15. The educative process must keep up with the changing problem, particularly as offenders become ever more creative. To that end, integrity training should form a key part of the agenda of sports governing bodies. Such training needs to be constantly updated as offenders may also alter their strategies as players become savvier about recognising existing match-fixing methods.

16. The Panel sets out below its present views on the role of education as a valuable tool to combat match-fixing and other breaches of integrity. Ultimately, however, a sports governing body must have in place expert and experienced educators to develop and deliver an effective programme tailored to its particular context.

(1) CONTENT OF EDUCATION

17. As a starting point, it is necessary to identify the content and scope of education in the context of integrity in tennis. As suggested above, all participants (including players, referees and umpires, tournament officials and coaches) should receive training as they can all influence outcomes in the sport.

18. As to the substantive scope of education, there are several key points:

    18.1 First, it is imperative that participants possess an understanding of why they may be approached by match fixers, in other words what the latter's precise motives might be. To that end, participants must have a basic knowledge of how individual criminals and criminal organisations operate in their contact with sportsmen and women, and the significant risks of having any kind of interaction with them. This will enable participants to detect certain patterns in the behaviour of potential corruptors, and will therefore make it easier for participants to identify criminal conduct and distance themselves before offers are communicated.

    18.2 Second, education must aim at familiarising participants with more specific, rather than general, behavioural patterns shown by offenders. To do so, participants must know what the prohibited conduct is and must therefore have a clear understanding of the relevant disciplinary rules. They must also be able to recognise the particular forms that match-fixing offers might take in practice. They should also be quick to identify other types of suspicious behaviour, and be alert to approaches by particular individuals who have been 'flagged' by fellow participants.

    18.3 Third, participants must be educated on the appropriate responses to match-fixing propositions. They must receive training on the use of reporting mechanisms, including electronic reporting platforms, and must be aware of the available safeguards of anonymity, in order to ease concerns about reporting.

    18.4 Fourth, participants must understand why it matters that they should not breach the rules - not only so that they

4 Lydia Segal, 'The Role of the Academe in Sports Integrity: The Objectives and Shape of a Sports Integrity Training Course', in Match-Fixing in International Sports, M.R. Haberfeld and Dale Sheehan eds. (2013), p. 291 (citing D. Jones, "A Novel Approach to Business Ethics Training: Improving Moral Reasoning in Just a Few Weeks", Journal of Business Ethics 88(2):367-379 (2009); S. Dellaportas, "Making a difference with a discrete course on accounting ethics", Journal of Business Ethics, 65(4):391-404 (2006)).

5 UNODC and ICSS, 'Resource Guide on Good Practices in the Investigation of Match-Fixing' (August 2016), pages 68-69.

understand the adverse consequences for them if they are caught, but also so that they understand how deeply harmful integrity breaches are to the sport. Education must lead participants to be invested in the integrity of their sport, and to actively want to protect it. It must also aim to break down cultural constraints in places where match-fixing may be endemic and widely tolerated.

19. Integral to each of these elements is that the education should give practical and graphic examples that can be easily understood.

(2) DELIVERY OF EDUCATION

20. For education to achieve these goals, it must be delivered effectively. Currently, sports and anti-corruption bodies responsible for enforcing a sport's zero-tolerance policy on betting-related corruption often also assume the role of educators. This is not necessarily the wrong approach to take, but a good investigator does not always make a good educator, as educators need interpersonal skills – particularly in the context of delicate topics such as match-fixing. Individuals in charge of designing and delivering educational modules must not only be familiar with crime-combatting issues; to have greater credibility they must also be familiar with a given sport, and must appreciate and understand the participant's position within that sport. Thus, it is important to involve individuals with expertise, who will be particularly valuable in the lead-up to and during any major event[6]. Integrity officers and officers from law enforcement agencies can also provide valuable insight, thanks to their experience in the criminal investigative aspect of match-fixing.

21. Sports governing bodies, player associations and trusted sports betting organisations are all well equipped to design and offer educational programmes, or at least some elements of them. Working together on such programmes may maximise its educational impact[7].

22. Delivering that education can take various forms and should generally depend on the target audience. This is because there are different actors in tennis with different levels of understanding of the system. Face-to-face training, for example, can be interactive and allow recipients to gain a more thorough understanding of match-fixing. Simulations and role play, as well as case-based discussions, are some of the proven training methods for sports integrity[8]. Other training methods, such as lectures, e-learning programmes[9], and the promulgation of integrity guidelines are also methods which have been used.

23. In recent years, many significant sports-integrity training initiatives have been launched. Outside of the initiatives that have been implemented in tennis, which are discussed in Chapter 10 Part Four, some of the following programmes are of particular interest:

    23.1 Protect Integrity Project: The project began in 2010, when the European Elite Athletes Association, a federation of players' unions and associations, partnered with the European Gaming and Betting Association (EGBA) to fund anti-match-fixing training for players[10]. A common code of conduct followed in 2011[11]. Since 2012, the European Commission has provided additional funding, and the Project's training programmes now take place in 13 European countries, for 12 different sports[12]. The latest initiative, the two-year "2016 PROtect Integrity" Erasmus+ project, is expected to provide in-person training to some 15,000 elite and youth athletes across Europe, in a broad range of sports[13].

6 UNODC and ICSS, 'Resource Guide on Good Practices in the Investigation of Match-Fixing' (August 2016), page 64.

7 UNODC and ICSS, 'Resource Guide on Good Practices in the Investigation of Match-Fixing' (August 2016), page 68.

8 Lydia Segal, "The Role of the Academe in Sports Integrity: the Objectives and Shape of a Sports Integrity Training Course", page 295 in "Corruption in Sport: Match Fixing – Definitional and Operational Issues".

9 See, for example, http://www.tennisintegrityunit.com/player-resources.

10 See http://protect-integrity.com/about-the-campaign/ [accessed 9 April 2018].

11 EU Athletes, EGBA, and the European Sports Security Association (ESSA), 'Code of Conduct on Sports Betting for Athletes', available at http://www.eesc.europa.eu/resources/docs/144-private-act.pdf [accessed 9 April 2018].

12 For further information on the campaign, see: http://protect-integrity.com/about-the-campaign/ [accessed 9 April 2018].

13 Ibid.

23.2 FIFA-INTERPOL initiative: in May 2011 FIFA and INTERPOL agreed on "*a ten-year joint initiative to enhance global efforts to tackle match manipulation and corruption in* [football]"[14]. This initiative has included numerous "*Integrity in Sport*" workshops held around the world, information sessions ahead of all FIFA tournaments, and the creation of a hotline for anonymous tips[15]. Perhaps most notably, in 2013 FIFA and INTERPOL introduced a set of interactive e-learning programmes on match manipulation, "*designed to help key actors understand how and why they might be targeted, the consequences of becoming involved in match-fixing, and what to do if approached*"[16]. The modules are tailored to the specific needs of four different categories of actor *("Young players"*, *"Players"*, *"Referees"*, and *"Managers and coaches"*) and are available in five languages, making them accessible to a broad range of participants across the globe[17].

23.3 UEFA: UEFA runs both onsite and online training programmes for players, referees, and officials all year round, on the basis that *"where there is comprehensive knowledge and understanding of the relevant risks, incidents of match-fixing can better be prevented*"[18]. UEFA also involves national integrity officers in the educational process, placing them in charge of arranging and overseeing educational seminars and courses[19].

23.4 National Integrity in Sport Unit ("NISU"): The Australian government established the NISU in 2012 in order to oversee, monitor and coordinate efforts to fight doping, match-fixing and other sports-related corruption[20]. As part of its mission, the NISU has developed an e-learning portal called "*Keep Australian sport honest*", aimed at helping players and officials to "*understand what match-fixing is, its consequences, how to recognise it and report it*"[21]. Each of the e-learning modules ends with a quiz, which requires a perfect score for successful completion[22].

24. With regard to online delivery, the World Bank Group's Open Learning Campus offers an extensive e-learning platform for various development issues, providing recorded lectures (WBx Talks), online courses (WBa Academy), and forums for online discussions (WBc Connect)[23]. This existing platform could be used to provide anti-corruption training, being either broad-based or sports-specific.

(3) EDUCATION AS A CONDITION OF ALL FORMS OF PARTICIPATION

25. It is possible to make satisfactory completion of an education programme a condition of entitlement to participate in the sport. The satisfactory completion of the programme should require more than mere attendance or mere viewing of a presentation. It should involve it being demonstrable that the individual involved has actually understood the key messages.

26. Mechanisms seeking to do this are often introduced, but too easily satisfied. Online completion of modules offers little guarantee that it was actually the player that completed the module. Satisfactory answers to questions that are obvious do not demonstrate comprehension.

27. So too, the integrity training must extend beyond the players to other participants including notably officials, and those closest to players such as coaches and trainers, and medical staff.

14 Press Release, 'FIFA and INTERPOL unveil e-learning tools to protect football from match manipulation' (FIFA, 26 September 2013), available at: http://www.fifa.com/governance/news/y=2013/m=9/news=fifa-and-interpol-unveil-learning-tools-protect-football-from-match-mani-2181391.html [accessed 9 April 2018].

15 Ibid.

16 For further information on the FIFA/INTERPOL e-learning programmes, see: https://www.interpol.int/Crime-areas/Crimes-in-sport/E-learning [accessed 9 April 2018].

17 Ibid.

18 For further information on UEFA's education programmes, see: http://www.uefa.org/protecting-the-game/integrity/education/index.html [accessed 9 April 2018].

19 Ibid.

20 For further information on the NISU, see: http://www.ausport.gov.au/supporting/integrity_in_sport/integrity_partners_and_community_programs/nisu [accessed 9 April 2018].

21 To access the NISU e-learning portal, visit: https://elearning.sport.gov.au/ [accessed 9 April 2018].

22 Ibid.

23 For further information on the World Bank Group's Open Learning Campus, see: https://olc.worldbank.org/ [accessed 9 April 2018].

(4) THE NEED FOR ORGANISATIONS TO PROVIDE ANTI-CORRUPTION TRAINING IS WELL ESTABLISHED INTERNATIONALLY AND NATIONALLY

28. The need for organisations – including sports governing bodies – to put in place appropriate anti-corruption training is a well-established component of international and national best practice. The approaches adopted in those contexts are of relevance to the approach to be adopted in sport.

29. First, the importance of education in compliance is recognised in major international anti-corruption standards, such as:

29.1 The "Anti-Corruption Ethics and Compliance Handbook for Business" published jointly in 2013 by the OECD, the United Nations Office on Drugs and Crime ("UNODC") and the World Bank, on compliance as a practical guide for companies "*looking for concrete ways to prevent corruption in their business dealings*"[24]. The handbook confirms that training is an integral part of corporate compliance[25]. The handbook contains a case study of a successful in-person corporate training programme, describing the challenges of effectively communicating anti-corruption messages and how they can be addressed[26]. Specific training techniques include specific examples to convey the risks of non-compliance; ensuring that the participants can answer questions in their own language, in addition to English; and using tests and hypothetical questions to encourage interaction[27].

29.2 UNODC's own "An Anti-Corruption Ethics and Compliance Programme for Business: A Practical Guide", based on the United Nations Convention against Corruption[28]. This publication, too, highlights the need for appropriate communication and training[29]. The guide notes that personnel should "*receive communications and participate in a mandatory standardized training at least once a year, so that the key messages of the programme remain high on everyone's agenda*"[30]. As it may not be practical to provide the same level and type of training to all employees and agents, it is legitimate to allocate resources based on a risk assessment[31]. The guide provides a checklist of criteria for ensuring comprehensive compliance training, such as scope, recipients, and means of delivery and documentation[32].

29.3 The guidelines produced by the International Organization for Standardization ("ISO") – the independent, non-governmental international organisation comprising 162 national standards bodies – for both compliance programmes in general[33] and anti-bribery programmes in particular[34], each of which provide for training programmes[35]. These guidelines make clear that such training should be tailored to the participants' obligations and risks (depending on their roles), should be practical and easy to understand and should be ongoing[36]. If the consequences of non-compliance are grave, interactive training may be preferable to more passive modes of delivery[37].

24 OECD, UNODC, World Bank, 'Anti-Corruption Ethics and Compliance Handbook for Business' (2013), page 3, available at: http://www.oecd.org/corruption/anti-corruption-ethics-and-compliance-handbook-for-business.htm [accessed 9 April 2018].

25 Anti-Corruption Ethics and Compliance Handbook, pages 14 and 54 to 57.

26 Ibid., page 56.

27 Ibid.

28 UNODC, 'An Anti-Corruption Ethics and Compliance Programme for Business: A Practical Guide' (2013).

29 Ibid., pages 69 to 73.

30 Ibid., page 69.

31 Ibid., page 14.

32 Ibid., page 120.

33 ISO, Compliance management systems – Guidelines, ISO 19600:2014.

34 ISO, Anti-bribery management systems – Requirements with guidance for use, ISO 37001:2016.

35 ISO 19600:2014, § 7.2.2, page 15; ISO 37001:2016, § 7.3, page 13.

36 ISO 19600:2014, page 15; ISO 37001:2016, page 13.

37 ISO 19600:2014, page 15.

30. Secondly, the introduction of training programmes may be required by national criminal authorities in arrangements with organisations to settle or avoid prosecutions. For example under the US Foreign Corrupt Practices Act ("FCPA") and the UK Bribery Act 2010 a prosecutor may agree not to pursue criminal charges provided that the subject organisation fulfils certain conditions, including the institution or maintenance of a robust compliance programme which extends to training. Indeed, the US Department of Justice ("DOJ") guidance to the FCPA specifically cites the adequacy of training as a factor to be considered by investigators,[38] and the DOJ has emphasised the significance of "*repeated training, which should include direction regarding what to do or with whom to consult when issues arise*"[39]. The UK Ministry of Justice similarly emphasises the importance of training in its guidance to the UK Bribery Act 2010[40].

38 Criminal Division of the U.S. Department of Justice and the Enforcement Division of the U.S. Securities and Exchange Commission, 'A Resource Guide to the U.S. Foreign Corrupt Practices Act' (2012), page 59, available at https://www.justice.gov/sites/default/files/criminal-fraud/legacy/2015/01/16/guide.pdf [accessed 9 April 2018].

39 Leslie R. Caldwell, Assistant Attorney Gen., Remarks at SIFMA Compliance and Legal Society New York Regional Seminar (2 November 2015), available at https://www.justice.gov/opa/speech/assistant-attorney-general-leslie-r-caldwell-speaks-sifma-compliance-and-legal-society [accessed 9 April 2018]. See also Gibson Dunn, 2015 Year-End Update on Corporate Non-Prosecution Agreements (NPAs) and Deferred Prosecution Agreements (DPAs) (5 January 2016), page 7, available at http://www.gibsondunn.com/publications/Pages/2015-Year-End-Update-Corporate-Non-Prosecution-Agreements-and-Deferred-Prosecution-Agreements.aspx#_ftn31 [accessed 9 April 2018].

40 UK Ministry of Justice, The Bribery Act 2010 – Guidance about procedures which relevant commercial organisations can put into place to prevent persons associated with them from bribing (section 9 of the Bribery Act 2010), page 30, available at: https://www.justice.gov.uk/downloads/legislation/bribery-act-2010-guidance.pdf [accessed 9 April 2018].

C PREVENTION THROUGH ALTERATION OF THE ENVIRONMENT

31. While deterrence and education can produce significant preventative effects, it is only by altering the circumstances that give rise to match-fixing and other breaches of integrity in the first place, and removing the opportunities for breach, that one can address the problem at its core. The incentives for participants to engage in match-fixing or other breaches of integrity must be eradicated, or at least significantly reduced, as addressed in this section. Naturally, this requires a deep understanding of what drives individuals to manipulate matches. The removal of opportunities for breach is dealt with in Sections D to F below.

32. As described in Chapter 4 Section A(4), a participant's decision to engage in corrupt practices is likely in most cases to be principally driven by financial motives. In particular, the low prize money relative to the cost of competing renders it unsustainable for almost all players to make a living from the sport. This increases the temptation to make what may be perceived as easy, and victimless, money in order to continue competing. That often involves self-financed betting by the player on a known result, rather than bribery by a third party to fix the match.

33. The financial position is, however, not the only relevant environmental consideration. The financial issues faced by many players is compounded by the difficulties in progressing in the sport. Younger players who are in the beginning of their career and struggling to climb the player rankings may become disillusioned as a result. The longer it takes to progress, the greater the impact of the imbalance between earnings and costs. Similarly, older players who are approaching the end of their careers may become jaded and vulnerable to the temptation to make money through betting or passing on inside information.

34. Aside from the direct financial motive for fixing a match, it is also an unintended consequence of the player incentive structure that, for a variety of reasons unrelated to betting, players on occasion perceive that they are better served by losing a match than by winning it. Some players act on that perception and "tank" the match, which is a short step away from betting on a known outcome, or informing someone else of a known outcome in advance. Other players perceive, as a result of the player incentive structure, that they must play, even when they are too injured to compete. This too creates a known outcome, which may be bet on or communicated to others.

35. Moreover, players tend to live and train within a closed circle in which particular cultural patterns may arise which may cloud their ethical judgments[41]. Bettors are aware of those situations and often approach players by offering financial support in exchange for inside information or manipulated performances.

36. Even where players might not themselves be prepared to breach integrity, and think that it is wrong to do so, many might not be prepared to report others who they were aware did so, because they would not want to be, or to be regarded to be, an informant. The lower the level of the relevant breach, or the perceived level of it, the greater the inhibition to report. Thus while most players might report match-fixing, or betting by a player on him or herself, many might perceive a player betting on tennis in general as insufficiently serious to be reported.

41 Institut de Relations Internationales et Stratégiques (IRIS), University of Salford, Manchester, Praxes Avocats and the China Center for Lottery Studies, 'Sports betting and corruption – How to preserve the integrity of sport' (2012), page 19, available at: www.spordiinfo.ee/est/g22s355 [accessed 9 April 2018].

37. Such scenarios are deeply entrenched in sports, including tennis, across the globe. Financial problems that players may face, and which may lie at the core of the problem, are inextricably linked to a country's overall economic performance, as reflected in wages, contributions and health benefits for players. The correlation between control of corruption and GDP per capita is high[42]. Altering the environment by wiping out or significantly reducing the incentives for players to engage in match-fixing, while evidently beneficial, is not an easy task.

38. For example, it would be a pious hope that a sport could address such a problem by increasing the prize money paid so that all players earned a living, if that money is simply not available. If limited commercial interest in the sport reduces the income which that sport can generate, then the only course is to increase interest. The reality, however, is that there is very little commercial interest (at least in terms of ticket sales, broadcasting, sponsorship and advertising) in the levels of the sport where the prize money is low. Commercial interest in the live data for these lower levels, while creating income, carries with it other difficulties in terms of the prevention of breaches of integrity, as discussed below, because it in fact provides the mechanism for breaches.

39. While it is not possible to conjure money from nowhere, it is of course possible to redistribute it. Regardless of budgetary constraints, there are measures to be taken that do not require an increase in the total money available. States and sports governing bodies can seek to allocate existing resources better. In tennis, the current system, which rewards a few top-ranked players with very substantial prize money and benefits, in addition to sponsorships and media exposure, is often perceived as unfair by lower-ranked players, who call for a more sustainable system that will take account of their financial needs. However, that too may be a pious hope, when the economic realities include that: (a) the principal reason that the few top-ranked command substantial earnings is that there is a commensurate demand for their services; (b) different international governing bodies are responsible for different events and players; and (c) if one were to redistribute the very high earnings of the few, it would have little impact on the imbalance between the earnings and costs of the many players among whom it would have to be spread, and so little impact on the incentive to match fix or otherwise breach integrity.

40. In these circumstances, prevention of match-fixing by alteration of the environment in which players compete would appear to, at least, require a reduction in the number of those players among whom the available money is distributed.

41. However, as set out above, the financial position is simply one of the problematic elements in that environment. Steps must also be taken to address progression in the sport and the occasional perception by players that they are better served by losing a match rather than winning it.

42. Further, players and other participants must be brought to understand that the sport is their sport, and that a failure by a few to abide by the integrity rules, and a failure by rather more to report their doing so, will remove public confidence in the genuineness of the contests that they pay to watch, and ultimately lead the public to give up on the sport. Players and other participants must be brought to understand that they all have a vital role to play in preventing this happening.

42 OECD, 'Issues on Corruption and Economic Growth' (2 September 2013), page 10, available at: http://www.oecd.org/g20/topics/anti-corruption/Issue-Paper-Corruption-and-Economic-Growth.pdf [accessed 9 April 2018].

D PREVENTION BY DISRUPTION

43. Prevention by deterrence, by education and by alteration of the environment operate at a macro level. There are however other, more direct, actions that must be pursued at the same time. The first such action is detecting and punishing an individual. This operates not only as a deterrent, but also prevents the individual from successfully breaching integrity on the relevant occasion, and (if the individual is suspended from the sport) in the future. In other instances, however, there may be an insufficient basis to bring disciplinary proceedings against and punish an individual, despite intelligence that a breach may be about to take place. In these circumstances, an additional important measure open to the authorities is to take steps to prevent, or to neutralise the effects of, acts of corruption by disrupting those acts in a timely manner.

44. Because sports governing bodies have direct access to, and an element of control over, ongoing matches and the participants in those matches, they can contact the would-be offenders before or during a match and inform them that they are aware that an imminent match-fixing incident is planned. The participant may then avoid behaving as originally intended, for fear of being caught. The relevant organisation is also able to replace the match officials, restrict suspects from accessing sporting areas, or, as a more drastic measure, decide to suspend the event.

45. Suspending a competition may indeed prevent a fix from occurring and help protect the integrity and reputation of the relevant organisation. Allowing the event to take place may, however, result in the collection of better evidence of match-fixing[43]. Similarly, whilst notifying a player or a match official of suspicions is desirable, as it may prevent the fix from occurring, it may also make it more difficult for the authorities to gather the relevant evidence since the investigated player will realise that he or she is on the investigators' radar. The organisation must, therefore, perform a careful weighing and balancing test before deciding on a course of action. Ultimately, the appropriate decision in any case will be fact-specific.

46. Betting operators can also play an important role in disrupting match-fixing. Upon detecting suspicious betting patterns, they may decide to suspend or restrict betting on a particular result, as explained in more detail below. Further, they may inform the relevant sports governing body so that the latter may take action to prevent the participant from committing misconduct. Additionally, while cooperation between the betting operators and sports governing bodies is important, it may at times be desirable to pre-emptively place a limitation on the live data supplied to betting operators, especially in small events, so as to remove the mechanism by which corrupt players and corruptors are able to bet. As addressed below, that could take the form of withdrawal of the data in respect of a particular match, or it could take the form of withdrawal of data from problem events or levels of competition.

47. Disruption through the intervention of state law enforcement agencies and regulatory authorities, for example through criminal investigation and prosecution, can also be effective. This is explained in more detail below.

43 UNODC and ICSS, 'Resource Guide on Good Practices in the Investigation of Match-Fixing' (August 2016), pages 28 to 29.

E PREVENTION BY PARTICIPANTS IN BETTING

48. Since the ultimate goal of almost all corruptors operating in the world of sport is to derive financial gain from betting on known outcomes, whether with betting operators or on exchanges, participants in betting are also able to play a role in prevention.

49. Betting operators, in particular, can play an important role in the disruption of match-fixing by: (a) declining to take certain bets in the first place; (b) suspending betting early if an issue begins to emerge; (c) reporting suspicious betting patterns to sports governing bodies and regulators and others tasked with combatting corruption in sport; and (d) refusing to pay out on certain bets. Counterparty bettors can equally decline to take bets.

50. Live data companies can also play an important preventative role, both at the stage before betting operators would be able to act by withholding data in relation to certain matches, and also thereafter in the identification and reporting of suspicious betting patterns. Preventative measures capable of implementation by live data companies would likely need to be provided for by the sports governing bodies. The sports governing bodies also could place a limitation on the live data that is supplied to betting operators and set criteria that betting operators would have to meet before being eligible to purchase the data. These measures could have an impact on the creation of in-play betting markets for certain events, particularly those that may have been identified as high-risk.

51. The Panel addresses in further detail below how preventative steps by participants in betting can assist in combatting corruption and other breaches of integrity[44].

(1) PREVENTION BY BETTING OPERATORS, AND BETTORS

52. Betting operators are able to preclude the creation of certain markets:

    52.1 Betting operators can prevent customers from placing bets in circumstances that the operator considers to be high-risk. For example, an operator may not wish to take a bet from a particular bettor, or on a particular contingency, or may prevent the creation of markets on lower-level matches altogether, or on specific types of matches such as doubles matches, or perhaps on certain players.

    52.2 Some betting operators operate blacklists of events, teams or players upon whom they have decided not to offer markets[45].

53. Betting operators are able to take steps to control markets that have been created:

    53.1 A decision may be taken internally by betting operators to cap bets for certain bettors or markets in proportion to the relative risk[46] and thereby to cap the liquidity of particular markets[47].

    53.2 Betting operators can also choose to suspend betting on a particular event at an early stage. Suspension of betting may occur if the operator observes unusual or suspicious betting patterns related to the match, either on its own markets or the wider market for the match, which call into question the authenticity of the match.

    53.3 Betting operators can also void bets entirely, meaning that a customer's bet is cancelled and their stake returned to them.

44 See Chapter 3 Section F(5) for further discussion on preventative measures taken by betting operators in response to suspicious betting patterns.

45 Statement of Jonathan Russell (Betway).

46 Statement of John Coates (Bet365).

47 Statement of Eric Konings (Kindred/Unibet).

54. Betting operators are able to take actions against customers, including:

54.1 Placing limits and restrictions on the amount a customer can bet on specific markets or events[48]. These decisions may be based on internal risk analysis and focus on customers betting from particular geographical locations[49].

54.2 Where suspicious activity is confirmed, suspending customer accounts pending an investigation in to the matter[50], and voiding bets.

55. Betting operators are able to report suspicious betting patterns, and to provide further information and assistance, to sports governing bodies and to law enforcement:

55.1 Since betting operators are making the relevant market they will likely notice any unusual betting on it, and be able to assess the likelihood of there being an innocent explanation for it. Some betting operators employ staff to monitor other markets being offered and identify any unusual betting activity. As a result, betting operators are in a position to, of their own volition, alert a sports governing body, law enforcement agency, betting industry regulator or other interested party (such as the umbrella betting operator organisation the European Sports Security Association) to such activity.

55.2 For some betting operators, reporting lines are formalised by their entry in to memoranda of understanding with sports governing bodies or betting industry regulators.

56. Under such memoranda of understanding, it is possible to define the additional assistance that falls to be provided, if a suspicious betting patter is identified and reported. That further assistance can include the betting details, in the sense of how the betting progressed, and the bettor details, in the sense of which accounts bet on what when, and who the account holder is.

(2) PREVENTION BY LIVE DATA COMPANIES

57. Live data companies operate as an intermediary between the organisers of sporting events that generate live scoring data, such as sports governing bodies, and betting operators wishing to purchase that data in order to create in-play betting markets. In essence, the live data company buys the data from the sports governing body, repackages it in a commercially attractive way, and supplies it on to betting operators at a profit. Consequently:

57.1 First, live data companies have good oversight over a large number of matches and betting operators, and markets and are able to identify issues that arise. They may even have staff specifically tasked with doing this, and with providing an integrity monitoring service.

57.2 Second, they have control over what goes out to betting operators, and so they can, if appropriate, impose limits on that.

57.3 Third, they can be made subject to contractual restrictions by the sports governing body selling the data to them. Limits may be imposed on the nature of the data made available to them, to which betting operators they can sell the data, and the conditions upon which it can be sold. Further, they can be required to pass contractual obligations imposed on them by event organisers on to gambling end users via their subsequent contractual relationship.

58. Care must of course be taken to balance the imposition of restrictive contractual measures with the realities of the live

48 Statement of John Coates (Bet365).

49 Statement of Jonathan Russell (Betway).

50 Statement of John Coates (Bet365).

data market. End user betting operators value the reliability and accuracy of official live data sources and will therefore likely be prepared to pay a premium for such a service, despite having to accept certain contractual restrictions on the use of that data. Depending on the risk appetite of the particular end user betting operator, it may however turn to unofficial data sources if the restrictions on the use of the data imposed are perceived as being too onerous.

59. Contractual restrictions are only effective to the extent that compliance with them is monitored properly. A sports governing body does not have direct control over the way in which the restrictions it has imposed are implemented, as it must rely on the live data company to implement them through its contracts with betting operators. Compliance and monitoring will also usually fall to be carried out by the live data company.

60. As these measures are contractual in nature, they could in theory be defined in any way so long as agreement is capable of being reached.

61. Possible restrictions or measures in this context could include:

    61.1 Prohibiting a live data company or a betting operator that purchases the rights to official live data in respect of a sport's events from engaging in unofficial live data collection in relation to other of the sport's events. A sport may decide that data is only to be sold in respect of some events; the *quid pro quo* for access to the official data to those events could be that the buyer does not take steps to obtain unofficial data in respect of the events that the sport has chosen to exclude.

    61.2 Prohibiting the sale of live data to betting operators or other end users, such as betting syndicates, known to purchase live data in respect of the sport from unofficial sources.

    61.3 Restricting the sale of live data only to betting operators that have entered into a memorandum of understanding with the relevant sports governing body.

    61.4 Requiring that live data companies provide the relevant sports governing body with their integrity monitoring service (if they offer one).

F PREVENTION BY LIMITATION OF THE SALE OF LIVE DATA

62. The discussion above focusses on the conditions that can be imposed on the onward supply of live data to betting operators by live data companies, in order to assist in preventing breaches of integrity. There is however an earlier stage at which preventative steps can be taken, and that is by the sports governing body not selling the live data to certain types of matches in the first place. If there is no market in respect of a particular match on which to bet, then the players themselves cannot bet, and others cannot set out to corrupt them in order to bet themselves, and officials cannot corrupt results for betting purposes. In other words, the aim would be to remove the mechanism by which most match-fixing is achieved.

63. The betting industry has developed in such a way that official live data is widely used by most betting operators to create in-play betting markets in the relevant matches. The question therefore arises whether limiting the sale of that live data by the organisers of a sports event would prevent those betting markets being created in the first place, and thereby prevent breaches of integrity that depend on the existence of such markets. The answer is likely to depend on the level of the sport.

(1) WOULD A MARKET ARISE ANYWAY?

64. In some contexts, betting markets would arise even absent the sale of official live data:

    64.1 An ante-post or pre-match market does not require live data. Bets can be placed on the match result or on specific events within the match without live data, but the outcome is only known after the match when the relevant statistics are subsequently made available.

    64.2 It appears however that such betting is much less attractive than betting in-play against the background of the match as it unfolds. Bettors prefer to bet on final outcomes based on how the match is progressing. Betting on specific events within a match is even more likely to be in-play, but betting operators are unlikely to take bets in-play unless they have live data.

    64.3 Where a match is televised or otherwise video streamed live, there is live data available, and in-play markets can be created. The betting operators or data companies simply obtain the data from the live video stream, and then use it to create the market. Similarly, betting operators can “scrape” the data from other internet sources.

    64.4 Absent television, live video streaming or other internet data, betting operators or sports data companies may use unofficial scouts to send back live data to them, again facilitating the creation of in-play markets.

    64.5 While data collected unofficially cannot boast the combination of speed, reliability and accuracy as the official live data (in the case of tennis, that which is derived from the officials’ inputting of the score), it can be obtained and it is sufficient to create an in-play market if the betting operator or data company perceives that there would be the requisite level of interest in that market.

65. In these contexts, limiting the sale of official live data would not prevent the betting market arising. The betting operators or data companies would simply obtain the data elsewhere in order to create the market. In effect, the same betting would take place, but the organiser of the sports event would derive no benefit, the data being used would be of a poorer quality, and the sports governing body would have no relationships with the betting operators or data companies that would assist it in the policing of its sport.

66. In other contexts, however, where there is no video streaming and the cost of sending unofficial scouts would outweigh the likely return on the market created, limiting the sale of official live data would effectively prevent the market arising. Or, to the extent that any attempt was made to create a market by sending unofficial scouts to such matches, it would become obvious as soon as the market was offered on a betting operator’s website, and steps could be taken at the venue to disrupt it. Where there is a small crowd, an unofficial scout could be rapidly identified and removed, or steps could be taken to prevent his or her transmission of data.

(2) DIFFERENT TYPES OF LIMITATION

67. Because the organisers of sports events control and supply the live data generated by their events, they are in a position either to choose not to supply it at all, or to supply data for only certain types of matches, or to make supply subject to contractual limitations on the use to which certain types of data can be put. Thus:

67.1 The organisers could choose not to sell the data to an entire level of competition. For example, in tennis the decision could be made not to supply data from matches at particular levels of competition where the incidence of breaches of integrity is observed to be greater.

67.2 The organisers could exclude from the data supplied, or restrict the use of, the data in respect of certain types of higher risk matches or matches which require a higher degree of protection. Sports event organisers could also decide that data derived from matches involving players or teams below a certain level of ranking should not be sold.

67.3 The organisers could exclude from the data supplied, or restrict the use of, the data in respect of matches that take place in locations or countries regarded as higher-risk. Historical instances of unusual betting pattern reports may also indicate that a particular event each year, or events in particular countries, raise a higher risk. Organisers could also choose not to sell data derived from events in certain countries which do not reach a certain legal standard (for example, those whose laws either do not criminalise or make it difficult to prosecute match-fixing) or level of enforcement (where authorities are considered corrupt or do not display an appetite for prosecuting match-fixing).

67.4 The organisers could exclude from the data supplied, or restrict the use of, the data in respect of matches involving specific individuals or teams regarded as high-risk.

G PREVENTION BY STATE INTERVENTION

68. As noted in Chapter 3, a number of states have introduced a regulatory framework designed to facilitate the prevention of breaches of integrity in relation to sports.

69. By way of example, the State of Victoria, Australia:

69.1 Victoria has introduced the Gambling Regulation Act 2003, which prohibits sports betting providers from offering betting on a sports event unless an agreement is in effect between the sports controlling body and the sports betting provider[51]. Under that agreement, the sports betting provider must share information for the purposes of supporting integrity in sports and sports betting[52]. However, these provisions only apply to sports events held wholly within the State of Victoria[53] (such as the Australian Open).

69.2 The agreements are commonly referred to as Product Fee and Integrity Agreements[54] and enable a sport to prevent certain betting markets from being offered, such as those perceived to present a higher integrity risk.

70. A second example is France:

70.1 Betting operators can only accept bets online in France if they have obtained a sports betting licence from the French online gambling regulator, the Autorité de régulation des jeux en ligne ("ARJEL").

70.2 ARJEL maintains a prescriptive list of sports events on which betting is permitted. Sports events are only selected for inclusion following consultation with the relevant sport's governing body or the French Ministry of Sports. These parties also consult to determine the type of bets that are permitted on those events.

70.3 In the context of tennis, betting on the French Open is permitted but the offering of certain markets is prohibited, such as any relating to the junior tournament, the qualification stages of the tournament, and the first round of the doubles tournament[55]. The FFT determined in conjunction with ARJEL that these particular stages of the tournament posed greater risks than the others and consequently should not be subject to sports betting[56].

51 Gambling Regulation Act 2003 s4.5.22.

52 Gambling Regulation Act 2003 s4.5.23.

53 Gambling Regulation Act 2003 s4.5.22.

54 Statement of Ann West (Tennis Australia). Statement of Matt Sheens (formerly of the Victorian Commission for Gambling and Liquor Regulation).

55 Supplementary Memo to the Interview of Jean-Francois Vilotte (July 2016).

56 Supplementary Memo to the Interview of Jean-Francois Vilotte (July 2016).

Approach of International Governing Bodies to the Protection of Integrity Between 2003 - 2008

Independent
Review
of Integrity
in Tennis

07

1. The Independent Review Panel (the "Panel") addresses below the historical approach of the International Governing Bodies of tennis (the "International Governing Bodies"[1]) to match-fixing and related breaches of integrity before the creation of the TIU and the adoption of the TACP on 1 January 2009. The ATP investigation leading to the 2008 Sopot Report, and the 2008 Environmental Review commissioned by all the International Governing Bodies, are separately addressed in Chapter 8.

2. Pursuant to the Terms of Reference, the Panel addresses whether investigations and enforcement actions were carried out effectively and appropriately by the international governing bodies between 2003 and 2008. As set out in Chapter 1[2] it is not the Panel's role in this Independent Review of Integrity in Tennis (the "Review") to determine whether past actions did or did not satisfy any legality standard, and it should not be taken as doing so. Rather the Panel identifies below the relevant evidence it has received, including witness statements and contemporaneous documents, and sets out its present[3] opinion as to the effectiveness and appropriateness of relevant actions at the time, based on its appreciation of the available evidence of the contemporaneous facts and circumstances. Also, as set out in Chapter 1[4], on occasion it is not possible or appropriate to seek to resolve apparent factual conflicts in the witness evidence.

3. In addition to the general historical approach of the ATP[5], WTA[6], Grand Slams[7] and ITF[8] to match-fixing and related breaches of integrity in the period, the Panel addresses separately below[9] the ATP's response in 2007 to the discovery of betting accounts in the names of players and coaches, which was the subject of media criticism in early 2016[10] and with which the Panel has been asked specifically to deal.

4. In relation to the principal criticism in the media, the Panel has seen no evidence that the ATP acted selectively to investigate some players and not others, or not to investigate a very highly ranked player because that would be damaging to the ATP's reputation or revenue. The Panel has identified, however, some instances in which the ATP's investigations and decision making, in the Panel's view, were inappropriate.

Q 7.1 Are there other matters of factual investigation or evaluation in relation to the approach of the international governing bodies to match-fixing and related breaches of integrity between 2003 and 2008 that are relevant to the Independent Review of Tennis and that should be addressed in the body of the Final Report, and if so, which, and why?

Q 7.2 Are there any aspects of the Independent Review Panel's provisional conclusions in relation to the approach of the international governing bodies to match-fixing and related breaches of integrity between 2003 and 2008 that are incorrect; and if so, which, and why?of integrity by prevention of breaches that are incorrect, and if so which, and why?

1 The ITF, the ATP, the WTA and at that time the Grand Slam Committee (later to become the Grand Slam Board) made up of the four Grand Slams.

2 Chapter 1, Section C.

3 Pending the consultation process between Interim and Final Reports.

4 Chapter 1, Section C.

5 Section A below.

6 Section C(1) below.

7 Section C(2) below.

8 Section C(3) below.

9 Section B below.

10 Chapter 11, Section A. Heidi Blake & John Templon, 'Tennis covered up for 95 gamblers, says family of suspended player' (BuzzFeed News, 15 March 2016) available at: https://www.buzzfeed.com/heidiblake/tennis-accused-of-covering-up-for-95-gamblers [accessed 9 April 2018]; 'Tennis match-fixing: More players should be investigated' (BBC Sport, 15 March 2016), available at: http://www.bbc.co.uk/sport/tennis/35808571 [accessed 9 April 2018]. The principal criticism made in this context was that the ATP had only pursued disciplinary cases against low ranked Italian players, when it ought also to have pursued such cases against 95 other players, some of whom were high ranked players, but it made a discriminatory decision not to do so, in order to protect its revenue and reputation, and then covered up its actions.

A GENERAL HISTORICAL APPROACH OF THE ATP TO MATCH-FIXING AND RELATED BREACHES OF INTEGRITY

5. During the period 2003 to 2008, the ATP was the most active of the International Governing Bodies in addressing the problem of breaches of integrity. It was the first to identify the problem from 2003, the first to enter into memoranda of understanding with betting operators[11], and the first to adopt specific rules from 2005[12]. This was in part because the problem was more apparent on the ATP Tour than it was elsewhere. The ATP is to be given credit for seeking to address the issue from the outset.

(1) THE ATP RULES IN 2003

6. In 2003, the ATP had only relatively limited rules in place to deal with match-fixing and related breaches of integrity.

7. The Code of Conduct in the 2003 ATP Rules contained a prohibition on a player taking a bribe to influence his efforts in a match[13]; a general prohibition on conduct contrary to the integrity of tennis[14], which however appeared to be and seems to have been regarded as aimed principally at media comment[15]; and a prohibition on wagers by players, their coaches and immediate family members[16]. There was a hearing and appeal process, and the sanctions provided for in each instance were a fine up to US$100,000 plus the value of the bribe or wager winnings and up to a three-year suspension.

8. In addition, the Code of Conduct contained an obligation to use best efforts[17], punishable summarily by the chair umpire or event supervisor by a point penalty and a fine up to US$10,000.

9. If breaches were repeated or individually very serious, they could amount to a *"player major offense"* of aggravated behaviour[18], subject after a hearing and appeal process to sanctions of a fine up to the greater of US$25,000 or the value of any prize money, and up to a one-year suspension.

10. The Code of Conduct in 2003 did not include a prohibition on deliberately losing for some other reason (which could only be dealt with under the obligation to use best efforts). Further, there was no prohibition on the passing of inside information[19]. There were also no investigatory mechanisms requiring players to provide information, phones, or electronic devices to the ATP.

11 Paragraph 12 below.

12 Paragraphs 49-52 below.

13 The ATP Official Rulebook, 2003, Player Code of Conduct, "Player Major Offenses/Procedures", pages 82 and 83, provided that "No player shall offer, give, solicit or accept, or agree to offer give, solicit or accept, anything of value to or form any person with the intent to influence a player's efforts or participation in any ATP or Challenger Series Tournaments...".

14 ibid., page 83, provided that "it is an obligation for ATP players, their coaches and family members to refrain from engaging in conduct contrary to the integrity of the game of tennis".

15 ibid., page 83, provided that "Conduct contrary to the integrity of the game of tennis shall include, but not be limited to comments to the news media...".

16 ibid., page 84, provided that "No player, player's coach or immediate family member of a player shall wager anything of value in connection any ATP or Challenger Series Tournament...".

17 The ATP Official Rulebook, 2003, Player Code of Conduct, "On-Site Offenses/Procedures", page 71, provides that "A player shall use his best efforts during the match when competing in a Tournament".

18 ibid., "Player Major Offenses/Procedures", page 82, provided that "No player at any ATP or Challenger Series Tournament shall engage in Aggravated Behaviour which is defined as follows (a) one or more incidents of behaviour designated in this Code as constituting Aggravated Behaviour; (b) one incident of behaviour that is flagrant and particularly injurious to the success of a Tournament, or is singularly egregious; (c) a series of two or more violations of this Code within a twelve month period which singularly do not constitute Aggravate Behaviour, but when viewed together establish a pattern of conduct that is collectively egregious and is detrimental or injurious to ATP or Challenger Series Tournaments ...". The ATP Official Rulebook, 2003, Player Code of Conduct, "On-Site Offenses/Procedures", page 71, provided that "[i]n circumstances that are flagrant and particularly injurious to the success of a tournament, or are singularly egregious, a single violation of this section shall also constitute the Player Major Offense of Aggravated Behaviour".

19 The term "inside information" is variously defined in different rules, but broadly refers to information that a person has by virtue of his or her position in relation to the competition, which is not in the public domain.

11. In 2003 the ATP's Executive Vice-President ("EVP") for Rules and Competition[20], Richard Ings, began an assessment of the ATP's rules and procedures to address match-fixing and related breaches of integrity, following publication of details of corruption in international cricket[21]. That assessment and the ATP's experience during 2003 and 2004 set out in sub-section (2) below, led to the ultimate adoption of new ATP rules from 1 January 2005, addressed in sub-section (3) below. On 21 June 2005, Richard Ings produced his Report on Corruption Allegations in Men's Professional Tennis (the "2005 Ings Report"). The conclusions of the 2005 Ings Report as to the position in 2005 are dealt with in paragraphs 53 to 59 below. The 2005 Ings Report also contained a description of the events from 2002 to 2005[22]. His assessment was that tennis as an individual sport was vulnerable to match-fixing; *"no security apparatus was in place"*; the rules were out of date; there was no player education; there was *"no understanding of how gambling on tennis occurs, who conducts it, what the volumes are or what information is available from gambling operators"*; and that *"ranking and prize money rules... offered the unscrupulous little disincentive to under-perform"*[23].

(2) THE ATP'S EXPERIENCE IN 2003 AND 2004

Entry into memoranda of understanding with betting operators

12. In the light of the potential problem faced by the sport[24], the ATP entered in 2003 into a memorandum of understanding with the leading betting exchange Betfair in order to ensure that suspicious or unusual betting patterns would be reliably reported, and relevant information would be provided, to the ATP. The ATP subsequently entered into a further memorandum of understanding with ESSA.

13. The ATP also appointed a professional investigator, Iain Malone, to assist in undertaking betting-related investigations. During this time Richard Ings also met with, amongst others, Jeff Rees, then the General Manager of the Cricket Anti-Corruption and Security Unit[25], in order to gain an understanding of the approach taken to tackling match-fixing in cricket.

Specific cases investigated by the ATP in 2003 and 2004

14. In 2003 and 2004, the ATP investigated a number of cases that illustrated how unusual or suspicious betting patterns might arise both as a result of breaches of integrity and for other reasons, and that brought home to the ATP how difficult it would be to take disciplinary action under the ATP rules in place. As no disciplinary action was brought, and no offenses may have been involved, the cases are anonymised below.

Lack of best efforts possibly known to bettors

15. Before the ATP had memoranda of understanding in place, it was alerted in advance to a suspicious betting pattern in relation to a first round ATP match[26]. The ultimate loser Player A moved from strong favourite to outsider, with at least one bettor displaying apparent confidence that Player A would lose.

16. The ATP Supervisor was asked to watch for any sign of underperformance and to report any indication of injury. In the first set, the supervisor warned Player A to use best efforts. There was no indication of any injury reported by the supervisor. Player A lost easily, and the supervisor fined him for lack of best efforts under the ATP Code of Conduct.

20 Who also had the role of "Administrator of Rules and Competition" for the purposes of the enforcement of the then ATP Rules against players.

21 Richard Ings, 'Report on Corruption Allegations in Men's Professional Tennis' (June 2005), ("2005 Ings Report"), page 10, paragraph 57, Appendix: Key Documents.

22 In order to protect the confidentiality of individual players not charged with disciplinary offences, none mentioned in the 2005 Ings Report are named in this Chapter, and the 2005 Ings Report as published has been suitably redacted.

23 2005 Ings Report, page 10, paragraphs 59-61.

24 Statement of Richard Ings (formerly ATP).

25 2005 Ings Report, page 11, paragraphs 62-69.

26 ibid., page 12, paragraphs 72-76.

17. As there were no memoranda of understanding in place between the ATP and betting operators there were no practical investigatory steps open to the ATP. There was no evidence that Player A had been bribed to lose deliberately for betting purposes contrary to the then ATP rules, but he was adjudged not to have tried sufficiently to win, raising the possibility that a prior decision to lose for other reasons had become known to bettors. No further disciplinary action was taken in this case.

Inside information that was possibly known to the bettors

18. Pursuant to the new memorandum of understanding with Betfair, the ATP received several notifications of suspicious betting patterns in relation to an ATP match between Player B, the higher ranked player, and Player C. On the day of the match, bets were placed backing Player C to beat Player B. This was the ultimate outcome of the match. A number of betting operators suspended betting before the match started.

19. The ATP Supervisor, present on site, was asked to watch for any sign of underperformance and to report any indication of injury. There was no indication of any injury reported by the supervisor, although Player B subsequently stated that he was injured. The ATP Supervisor described Player's B performance as a *"professional tank"*. No disciplinary action for failure to use best efforts was taken.

20. Betfair provided the ATP with intelligence surrounding three accounts that had been used to place bets on matches at the same tournament[27]. Through its investigation, the ATP established links among the three betting accounts:

    20.1 An account in the name of a third party backed by the credit card of another player (Player D) had been used to back Player C to beat Player B, and to bet only a small amount on three other matches[28]. The third party was a close associate and assistant of Player B. The third party also operated a sports management firm and both Player B and Player D were listed as clients. This individual is referred to interchangeably by the ATP as the "third party" or the "manager".

    20.2 An account in the name of an employee of that same sports management firm had also been used to back Player C to beat Player B, and to bet on one other match[29].

    20.3 An account in the name of Player B himself and backed by his credit card had not been used to place bets on Player B's own match, but had been used to place bets on other matches at the event[30]. One of those bets was to back Player C, to whom Player B had lost, to lose his next match at the same tournament. In 2000, Player B had been warned by the ATP not to gamble after reports brought to the ATP's attention. Player B had advised the ATP that those reports were false.

21. The ATP conducted an investigation, involving ATP regulatory, investigative and legal expertise. The investigation was carried out by Richard Ings the EVP of Rules; Iain Malone, the ATP's investigator and Mark Young, the ATP Vice President of Legal. Mr Ings told the Panel that *"*[t]*he investigation included detailed interviews with Players B, C, D and the third party as well as analysis of betting accounts, review of identification documents used to establish accounts, IP addresses of computers used to place bets, and review of audio recordings of phone bets"* [31]. The Panel understands that there is no written record of these interviews within the documents that now exist.

22. Mr Ings told the Panel that "[g]*iven the seriousness of the matter, I sent a memorandum to the ATP CEO outlining the broad scope of the investigation. I considered it necessary that the ATP CEO be made aware of these matters as they progressed"*[32]. The Panel notes from the contemporaneous documents that, the day following the interview with Player B, Richard Ings prepared a memorandum headed "*betting update*", addressed to Mark Miles, Chief Executive Officer of the ATP. In that memorandum Richard Ings described the betting that had occurred on the matches detailed above and stated:

27 2005 Ings Report, page 16, paragraphs 81-85.

28 The bet on Player C to beat Player B was €1,477, whereas the other bets ranged between €10 and €20.

29 The bet on Player C to beat Player B was €985 whereas the other bet was for €21.

30 The account had won on two matches and lost on a third. The bet sizes placed included three of €3,000 or more and one of close to €7,000.

31 Response of Richard Ings to Notification given under Paragraph 21 ToR.

32 Response of Richard Ings to Notification given under Paragraph 21 ToR.

22.1 The ATP had "*hard evidence*" of betting accounts in the names of Player B and Player D.

22.2 The ATP also had another, second-hand, allegation in respect of Player B concerning possible betting-related corruption.

22.3 The ATP had reports and allegations in relation to five other players concerning possible betting related corruption. These included unusual or suspicious betting patterns and allegations from other participants. Four of the five players were the players referred to in this section as Players A, E, F and G.

22.4 While the ATP's investigation *"at this stage was focusing on Player B, Player D and* [the sports management firm that represented them]*"* it separately appeared *"that circumstantial evidence is pointing to more parties being involved in match fixing in addition to betting. There appears to be much overlap in the names that we are getting info on from various non-connected sources"*.

22.5 "*In order to further determine how large our problem is, a consideration should be given to allowing Iain Malone to interview the following people*". (The memorandum then set out a list of nine names). "*Such interviews may uncover further evidence of gambling and/or match fixing including material that may be relevant to pursuing the Player B and Player D matters. I welcome your guidance on how far you want us to dig into these now numerous matters.*"

23. Richard Ings told the Panel that "*I stand by the details of the memo sent to the ATP CEO. The intelligence received from Betfair is a matter of fact. That raised serious questions about possible breaches of the ATP rules by multiple individuals*" and in his view "[it] *was diligent and necessary to brief the ATP CEO of an ongoing Major Offence investigation*" [33], as he did in the memorandum.

24. Mark Miles was also provided a copy of the "*betting update*" memorandum together with an amended copy of that memorandum (referred to in paragraph 28 below), when he was interviewed as part of this Review. His assessment of the allegations and reports described in the documents was that it would be inappropriate to accept those sections of the memoranda as fact. If one were to have drilled down into each example, then the accuracy of Richard Ings' comments might not have withstood scrutiny[34]. Mr Miles' evidence was also that Richard Ings "*often reached conclusions before* [Mark Miles] *would have, due to* [Richard Ings'] *propensity to jump to conclusions*", although he "*carried out his role with good intentions and integrity*".[35] In response, Mr Ings told the Panel that "*Mr Miles fails to recall that under the 2003 ATP rules, the EVP of Rules and Competition had absolute jurisdiction to make decisions on Player Major Offences. My memo to him was a courtesy"* [36]. Mr Ings explained that "*it would have been entirely inappropriate and poor governance for the EVP Rules and Competition to reach a first instance decision on a Major Offence in collaboration with the ATP CEO when it was the ATP CEO who must hear any appeal by the player of the EVP Rules and Competitions major offence decision*". Mr Ings further stated that "*Mr Miles had no role under the 2003 ATP Rules in these first instance decisions. His input was not sought and any input Mr Miles may have been tempted to offer would have been rejected by me as improper governance".*

25. Following the memorandum, a letter was sent to Player B stating that the ATP was conducting a "*Major Offense Investigation*" concerning evidence collected by the ATP that he had bet on matches contrary to the ATP Rule in effect at the time prohibiting wagering by players[37]. Player B was asked to provide a detailed response of the betting activity. Player D was written to on the same basis. Both players were given four days to respond with a written explanation of the betting activities in their names.

33 Response of Richard Ings to Notification given under Paragraph 21 ToR.

34 Statement of Mark Miles (formerly ATP).

35 Statement of Mark Miles (formerly ATP).

36 Response of Richard Ings to Notification given under Paragraph 21 ToR.

37 The investigation into Player B was not into the result of the match between him and Player C, or into whether Player B had accepted a bribe deliberately to lose that match contrary to the then ATP Rules, or had failed to use best efforts contrary to the then ATP Rules.

26. From the contemporaneous documents seen by the Panel Player B did not respond to the ATP's letter of investigation or provide a written explanation of the betting activity referred to in the ATP's letter. Nor is there a record of a written response from Player D. Richard Ings informed the Panel that both players were "*extensively interviewed as part of the investigation*" [38]

27. The Panel has seen a document that appears to set out an assessment by Richard Ings of the merits of charging Player D. This document is dated two days after the letter of investigation was sent to Player D. It sets out grounds for proceeding with a case against Player D and grounds against doing so:

    27.1 The core arguments for not proceeding with a case were that it had been claimed that an employee at Player D's sports management firm had set up the betting account without Player D's knowledge, had forged his signature in order to do so and, when interviewed, Player D appeared to have little or no knowledge of the betting process.

    27.2 The core arguments in favour of proceeding with a case were the possibility that Player D had knowledge of the Betfair account and that Player D had been unable to explain why the employee at the sports management firm had needed to go through the elaborate process of using his details to set up that account.

28. Following the passing of the deadline for Player B and Player D to respond to the letter of investigation, Richard Ings amended his *"betting update"* memorandum. In respect of the possible case against Player B and Player D the changes to note were that:

    28.1 In addition to Mark Miles, the amended *"betting update"* memorandum was also addressed to the Executive Committee.

    28.2 The reference to there being *"hard evidence"* against Player D was removed. Richard Ings' evidence to the Panel was that *"he was happy at this stage that Player D was not aware of the betting account being opened in the name of the Third Party but backed by Player D's credit card"*[39].

    28.3 Some additional intelligence was added and the list of people potentially worth interviewing was expanded to 13.

29. Richard Ings told the Panel that *"I was satisfied at this stage that Player D was not aware of the betting account being opened in the name of the third party but backed by Player D's credit card"*[40].

30. A draft decision letter in respect of Player B was also produced by Richard Ings. This document was created shortly after the deadline expired for Player B to respond to the letter of investigation. The draft decision letter recorded that:

    30.1 The ATP had provided Player B with 3 opportunities to offer an explanation of these betting activities. On those three separate occasions, including during his interview, Player B had declined to provide an explanation for the betting activities or deny his involvement in betting on tennis.

    30.2 On the preponderance of evidence the ATP had concluded that Player B, in conjunction with others, placed bets on at least three tennis matches.

    30.3 Player B was to be fined US$100,000 and suspended from playing in ATP tournaments for three years.

    30.4 Player B had a right of appeal.

31. Richard Ings told the Panel that *"*[i]*n regard to Player B, I laid out in detail the evidence collected to date. I consulted*

38 Response of Richard Ings to Notification given under paragraph 21 ToR.

39 Response of Richard Ings to Notification given under paragraph 21 ToR.

40 Response of Richard Ings to Notification given under paragraph 21 ToR.

ATP Legal Counsel (Mark Young) and the ATP investigator. Following that consultation, I took an informed view that insufficient evidence existed to find that Player B had breached the 2003 ATP Major Offense rules. Specifically, I was not satisfied that Player B had placed bets himself or directed others to place bets on his behalf at ATP matches"[41].

32. When interviewed as part of this Review, Richard Ings was provided a copy of the draft decision letter referred to in paragraph 28 above. To place the draft decision letter into context he explained that he recalled having real concerns that Player B had breached corruption rules. He stated that as part of deciding whether to take disciplinary action, he wanted to see what a decision to sanction Player B would look like in writing, and so he drafted the draft decision letter[42]. The draft letter was never finalised and did not reflect his final assessment of the case against Player B. He took the decision that there was not enough available evidence to proceed against Player B.[43]

33. Mr Ings stated that his reasons for reaching his decision were accurately recorded in the 2005 Ings Report.[44] In particular:

    33.1 based on a review of the recordings of the initial bets placed on each of the three accounts, including Player B's account, it was believed that the voice placing the bets belonged to the manager;

    33.2 the manager admitted to placing the bets and claimed that Player B (as with Player D) had not been aware of the bets;

    33.3 Player B denied any knowledge of the bets being placed.[45]

34. As a result, the conclusion reached by Richard Ings was that all the bets on all three accounts had been placed by the manager and that there was insufficient evidence that the players were aware of the bets. Consequently, the 2005 Ings Report stated that the ATP concluded that there was no evidence of any breach of the ATP Rules as they then stood, and there was no disciplinary action against Player B, or indeed Player D[46].

35. Other than the 2005 Ings Report, there is no record of any further communication relating to this matter with Player B, nor any internal document recording the decision taken by the ATP.

36. The Panel has seen a document created by Jeff Rees in 2008 in which he suggested that before the TIU was established, *"some suspect players had been persuaded to end their playing career"*[47].

37. Richard Ings told the Panel *"from 2001 to 2005 I held the position of ATP EVP of Rules and Competition. In that role for those 5 years, I was responsible for all player major offence investigations and decisions. At no stage during my 5 years at the ATP did I observe or suspect that any player subject to a major offence investigation 'was persuaded to end their playing careers' to cease a major offence investigation I was conducting"*[48].

38. The Panel has not seen any evidence of any player retiring at a time when he or she was suspected of committing an offence, other than Player B. Player B's last match took place two days before the deadline for him to respond to the ATP's investigation letter and one week prior to the draft decision referred to above. He made no formal retirement announcement.

39. Some material received by the Panel related to this retirement has been classified by the ATP as Restricted Confidential

41 Response of Richard Ings to Notification given under paragraph 21 ToR.

42 Statement of Richard Ings (formerly ATP).

43 Statement of Richard Ings (formerly ATP).

44 Statement of Richard Ings (formerly ATP).

45 2005 Ings Report, page 17, paragraphs 87-93.

46 ibid., page 18, paragraphs 95-97.

47 Note of Jeff Rees in respect of Meeting on 20 October 2008, with the CCPR and Paul Scotney (BHA).

48 Response of Richard Ings to Notification given under paragraph 21 ToR.

Information, preventing the Panel using it to address further the circumstances of Player B's retirement.

40. Finally, with regard to the third party who had been involved in placing the bets, the 2005 Ings Report records that the ATP ceased to accredit him for access to non-public areas at tournaments[49]. The ATP had no jurisdiction to take disciplinary action against the third-party manager under the Rules as they stood in 2003.

Possible abuse of the lucky loser system

41. In the same year, Player E was reported by the press as stating that there were rumours of players betting on tennis[50]. Amongst other things, Player E was reported to have alleged that Player F had offered to lose a qualifying match to allow Player E to qualify at a Grand Slam, in return for payment, in circumstances where Player F would in any event qualify as a lucky loser[51]. Player E was further reported to have stated that on another occasion when he was *"more or less injured"*, he had contacted and made an arrangement with a lucky loser, Player G, that Player E would not attend the tournament, allowing the lucky loser Player G to qualify, in return for the first-round prize money. When interviewed by the ATP, Player E stated that he had only been speaking hypothetically and was not reporting actual events.

42. Player E informed the ATP that it was not the case that Player F had offered him a bribe. Player F also denied doing so when interviewed. With the ATP not able to obtain the transcripts of the interview with Player F, and in the light of the fact that the allegation against Player F did not concern an ATP event, the ATP determined that there was no basis for it to proceed against any players for breach of the then ATP Rules prohibiting a player offering another player a bribe to lose a match or not to participate in a tournament[52]. Player E was however sanctioned for his media comments[53].

43. The allegations caused the ATP's Richard Ings to further investigate the lucky loser system[54], and he concluded that the then system was susceptible to corruption.

Intelligence in relation to other matches in 2003 and 2004

44. Intelligence came to the attention of the ATP, of varying quality, in relation to matches and in respect of various players and other participants in 2003 and 2004[55]. It became apparent that betting markets were increasingly being offered on Challenger level matches. The 2005 Ings Report recorded that at that time the ATP was receiving information about irregular betting practices on a near weekly basis. Richard Ings recorded that all such reports were subject to investigation using the means then available to the ATP[56].

45. An example of such an investigation is set out in paragraphs 151 to 165 of the 2005 Ings Report. A substantial sum of money (£20,000) had been placed by a heavy tennis gambler on the underdog to beat the favourite in a second round Challenger match. An analysis of the betting was conducted by the ATP. At the time of the 2005 Ings Report, Richard Ings' view was that there was no evidence that the ATP Rules then in place had been breached, but the match remained of interest and inquiries were continuing[57].

49 2005 Ings Report, page 18, paragraph 97.

50 ibid., page 19, paragraphs 104-114.

51 A "lucky loser" is a player who lost in the last round of qualification, but who nevertheless secures a place in the main draw when one becomes free due to a qualified player being unable to take it up for whatever reason. The first place to come free was until recently assigned to the highest ranked player to lose in the last round of qualification. Now the lucky loser will be randomly drawn from the highest-ranking players who did not qualify for the main draw. The number of highest ranking non-qualifiers from which the lucky loser is drawn will depend on the rules governing that event.

52 ibid., page 22, paragraph 111.

53 Under the ATP Rule prohibiting "conduct contrary to the integrity of the game".

54 2005 Ings Report, page 22, paragraphs 115-125.

55 That intelligence is described, suitably redacted, in the 2005 Ings Report, page 27, Section C, paragraphs 151 to 180. It is also in Appendix 2 to the 2005 Ings Report. Appendix 2 is not published because it cannot be suitably redacted. See also Ben Gunn and Jeff Rees, 'Environmental Review of Integrity in Professional Tennis' (May 2008), pages 39-40, paragraphs 3.140-3.147 and Executive Summary paragraphs 3.140-3.147, Appendix: Key Documents.

56 2005 Ings Report, page 34, paragraphs 181.

57 2005 Ings Report, page 27, paragraph 154.

46. Media reports during this time raised concerns as to match-fixing in tennis. One of those reports, which was recorded in the 2005 Ings Report[58], revealed amongst other things that some players might bet on their own defeat where they did not think that they would *"be able to play 100 per cent."* or they had *"an appointment during the next few days somewhere else"*; that some players who were injured and knew that they could not complete a match might make an arrangement with their opponent and bet on the outcome agreed; that it was considered easy to lose deliberately; that problems would be more likely to arise in small events with little prize money or ranking points available, away from the media spotlights and that professional gamblers follow betting trends.

No disciplinary action was taken by the ATP in respect of events in 2003 and 2004

47. In 2003 and 2004, Mr Ings told the Panel that "*I instigated Major Offence investigations under the then Wagering Rules*[59] *during the 2003 and 2004 periods*. Mr Ings told the Panel that "[i]*n each case, I found insufficient evidence that a Major Offense violation for the 2003 or 2004 ATP rules had occurred*"[60].

48. During the same period, the ATP issued on-site fines to two players for failure to use best efforts. It should be noted however that not all Code Violations result in a fine being issued [61]. The ATP did not take any disciplinary action against any players for the major offense of failure to use best efforts in an aggravated manner.

(3) THE INTRODUCTION OF THE ATP TACP IN 2005

49. Against the background described above, and in particular the ATP's experience that the previous rules had been insufficient to address issues that had arisen, the ATP introduced the ATP "Tennis Anti-Corruption Program" ("ATP TACP")[62], which came into operation on 1 January 2005.

50. The ATP TACP contained much more detailed provisions than before, and subsequently formed the starting point for the new tennis-wide uniform TACP introduced from 1 January 2009. As set out above, the ATP is to be given credit for seeking proactively to address the emerging issue.

51. In particular, the ATP TACP:

    51.1 Expanded the persons covered from players[63], coaches and family members to also cover other participants including managers, agents, guests and associates[64]. Since there might not be a contractual undertaking by such people to abide the rules, each player was obliged to instruct them to comply[65], but only had actual responsibility in the event that they did not, if the player knew of or assisted in the breach[66].

58 ibid., page 29, paragraphs 166 to 169.

59 The ATP Official Rulebook, 2003, Code of Conduct, Article IV.A.

60 Response of Richard Ings to Notification given under paragraph 21 ToR.

61 Statement of Gayle Bradshaw (ATP).

62 The ATP TACP was set out in the ATP Official Rulebook, 2005, Rule 7.05, "Tennis Anti-Corruption Program 2005", pages 135 to 142 ("ATP TACP 2005"). Rule 7.05.A (1) provided that "The purpose of the Tennis Anti-Corruption Program (the "Program") is to maintain the integrity of tennis and to protect against any efforts to impact improperly the results of any match".

63 ATP TACP 2005 Rule 7.05.B(1) provided that "Any player who enters or participates in any competition, event or activity organized, sanctioned or recognized by the ATP or who is an ATP member or who has an ATP ranking (a "Player") shall be bound by and shall comply with all of the provisions of this Program". Rule 7.05.B.(2) provided that "For purposes of this Program the term "Events" means all tennis matches and other tennis competitions, whether men's or women's, amateur or professional, including, without limitation, all ATP tournaments, Challenger Series tournaments, and Futures and Satellite Series Circuit tournaments".

64 ATP TACP 2005, Rule 7.05.B(3) provided that "Any coach, trainer, manager, agent, family member, tournament guest or other affiliate or associate of any players ("Player Support Personnel") shall also be bound by and shall comply with all the provisions of this Program".

65 ibid., Rule 7.05.B(4) provided that "It is the sole responsibility of each Player and each Player Support Personnel to acquaint himself or herself with all of the provisions of this Program. Further, each Player shall inform his Player Support Personnel of all of the provisions of this Program and shall instruct his Player Support Personnel to comply therewith".

66 ibid., Rule 7.05.D(1) provided that "Each Player shall be held responsible for any Prohibited Conduct by any of his Player Support Personnel if such Player had knowledge of, or otherwise assisted, encouraged, aided, abetted, covered up or was otherwise complicit in, such Prohibited Conduct. In such event, the ATP shall have the right to impose sanctions on the Player to the same extent as if the Player himself had engaged in the Prohibited Conduct".

51.2 Maintained the obligation not to wager as the first of what were now described as *"Corruption Offenses"*[67], but now extended the obligation to the wider group of participants[68].

51.3 Expanded the previous obligation not to accept a bribe made with the intent of influencing a player's efforts or participation in an event, into a series of obligations[69] on the now wider group of participants. In summary the obligations were not *"to contrive the outcome or any other aspect of"* an event (which therefore included a match, or part of it); not to persuade a player *"to not use his best efforts"*; not to accept a reward with the intention of influencing best efforts; not to offer a reward with the intention of influencing best efforts; not to accept a reward for the provision of inside information; and not to offer a reward for the provision of inside information. An obligation not to buy a wildcard[70] was added soon afterwards in 2006[71].

51.4 Did not include, at least as it was subsequently construed and possibly originally intended, an express obligation simply not to lose deliberately at all (rather than to do so for reward for betting or other corrupt purposes). Although the obligation not to *"contrive the outcome"* of a match could clearly have been construed as extending to this, it does not appear to have been so construed by the ATP[72], and it does not appear to have been so intended at the outset when the expression was included. Rather, deliberately losing for other reasons remained to be dealt with under the obligation to use best efforts, which was located as before elsewhere in the Code of Conduct.

51.5 Did not contain an obligation not to pass on inside information at all (rather than not to do so for reward, which was covered)[73].

51.6 Did not contain an obligation to report corrupt approaches[74].

67 ibid., Rule 7.05.C provided that "Commission of any offense set forth in Article C or D of this Program or any other violation of the provisions of this Program shall constitute a "Corruption Offense" for all purposes of this Program".

68 ibid., Rule 7.05.C(1) provided that "a) No Player nor any of his Player Support Personnel shall, directly or indirectly, wager or attempt to wager money or anything else of value or enter into any form of financial speculation (collectively, "Wager") on the outcome or any other aspect of any Event;

b) No Player nor any of his Player Support Personnel shall, directly or indirectly, solicit, induce, entice, persuade, encourage or facilitate any other person to Wager on the outcome or any other aspect of any Event".

69 ibid., Rule 7.05.C(2) Provided that

"a) No Player nor any of his Player Support Personnel shall, directly or indirectly, contrive or attempt to contrive, or be a party to any effort to contrive or attempt to contrive, the outcome or any other aspect of any Event;

b) Without limiting the requirements set forth above under "Best Efforts", no Player nor any of his Player Support Personnel shall, directly or indirectly, solicit, induce, entice, persuade, encourage or facilitate any Player to not use his best efforts in any Event;

c) No Player nor any of his Player Support Personnel shall, directly or indirectly, solicit, request, receive, accept or agree to receive or accept any Consideration, either (i) with the intention of influencing the Player's efforts in any Event, or (ii) that could otherwise bring the Player or the game of tennis into disrepute;

d) No Player nor any of his Player Support Personnel shall, directly or indirectly, offer, promise, provide or agree to provide any Consideration to any Other Player, whether the Other Player is an opponent of such Player or otherwise, either (i) with the intention of influencing the Other Player's efforts in any Event, or (ii) that could otherwise bring the Player, the Other Player or the game of tennis into disrepute;

e) No Player nor any of his Player Support Personnel shall, directly or indirectly, solicit, request, receive, accept or agree to receive or accept any money, benefit or other consideration (whether financial or otherwise) (collectively, "Consideration"), for the provision of any information concerning the weather, players, court conditions, status, outcome or any other aspect of any Event (other than the provision of information to a reputable media organization not affiliated with Wagering for disclosure to the general public);

f) No Player nor any of his Player Support Personnel shall, directly or indirectly, offer, promise, provide or agree to provide any Consideration to any other Player (an "Other Player"), whether the Other Player is an opponent of such Player or otherwise, for the provision of any information concerning the weather, players, court conditions, status, outcome or any other aspect of any Event..."

70 Places in the main draw of an event may be reserved for "wildcards". Wildcards are awarded to players at the discretion of the tournament organisers. Players awarded wildcards do not have to be sufficiently highly ranked, nor do they have to have played in the qualifying competition.

71 The ATP Official Rulebook, 2006, Rule 7.05, "Tennis Anti-Corruption Program" ("ATP TACP 2006") Rule 7.05 C(2)(g) provided that "No Player nor any of his Player Support Personnel shall, directly or indirectly, offer compensation to the Tournament in exchange for a Wild Card".

72 In just the same way as the equivalent provision in the uniform TACP was not so construed later by the TIU: Chapter 10, Part 1, Section B(2).

73 Again, in just the same way that there was no such provision in the later tennis-wide uniform TACP: Chapter 10, Part 1, Section B(2).

74 Which was, in contrast introduced in the later tennis-wide uniform TACP: Chapter 10, Part 1, Section B(2).

51.7 Contained a number of provisions heading off potential arguments as to why conduct might not be a breach, and afforded a specific defence where a participant was subject to a threat[75]. In particular, attempts and preparatory acts were covered.

51.8 Established the role of an independent Anti-Corruption Hearing Officer or "AHO"[76], and contained provisions on the powers of the ATP to investigate[77], including in particular an obligation on participants to assist an investigation and an obligation to provide information and records following a formal *"demand"*. Participants were entitled to an immediate appeal to an AHO against any demand for information or records, which later proved to lead to a delay in obtaining records[78]. The rules specified that there would be no interim suspension[79].

75 ATP TACP 2005 Rule 7.05 D(2) to (5) provided that "(2) It is not necessary that the Player charged with a Corruption Offense under Article C.1 or C.2 (or the Player affiliated with the Player Support Personnel charged with such a Corruption Offense) have been a participant in the Event in question;

(3) Neither the nature or outcome of any Wager, nor the outcome of the match upon which such Wager was made, is relevant to the determination of a Corruption Offense under Article C.1;

(4) With respect to any offer, promise, solicitation, request or agreement to provide or accept Consideration, the actual provision or acceptance of such Consideration is not relevant to the determination of an offense under Article C.2. For such a Corruption Offense to be committed, it is sufficient that the offer, promise, solicitation, request or agreement was made. Furthermore, whether or not a Player's efforts or performance were (or could be expected to be) affected by such Consideration is not relevant to the determination of a Corruption Offense under Article C.2;

(5) A valid defense may be made to a charge in respect of any Prohibited Conduct if the person alleged to have committed the Prohibited Conduct (a) promptly reports such Prohibited Conduct to the ARC and (b) demonstrates that such Prohibited Conduct was the result of any honest and reasonable belief that there was a significant threat to the life or safety of such person or any member of such person's family".

76 ATP TACP 2005 Rule 7.05.E(1) provided that:

"a) the ATP shall appoint a Hearing Officer ("AHO"), who shall be responsible for (i) reviewing matters submitted to him or her by the ARC, (ii) determining whether Corruption Offenses have been committed, (iii) fixing the sanctions for any Corruption Offense found to have been committed, and (iv) the overall operation and administration of this Program. The AHO shall carry out the functions assigned to him or her under this Program.

b) The AHO shall (i) be appointed by the CEO, (ii) serve a term of two (2) years, which may thereafter be renewed in the discretion of the CEO, and (iv) be otherwise independent from the ATP. If the AHO becomes unable to serve the remainder of his or her term, a new AHO may be appointed for a full term pursuant to his Article E.1.b.

c) All references in this Program to the AHO shall be deemed to encompass any designee of the AHO".

77 ATP TACP 2005 Rule 7.05.E(2) provided that:

"a) The ARC shall have the power to conduct an investigation of any alleged Corruption Offense. Such investigations may be conducted in conjunction with, and/or information obtained in such investigations may be shared with, other relevant authorities. The ARC shall have discretion, where he deems appropriate, to stay his own investigation pending the outcome of investigations being conducted by other relevant authorities;

b) Subject to Article E.2.d below, all Players and Player Support Personnel must cooperate fully with investigations conducted by the ARC. No Player nor any of his Player Support Personnel shall assist, encourage, aid, abet, cover up or otherwise be complicit in any Prohibited Conduct by any other person or entity, or tamper with or destroy any evidence or other information related to any Prohibited Conduct or allegation or investigation thereof. Any violation of this Article E.2.b without acceptable justification shall constitute "Conduct Contrary to the Integrity of the Game" and/or "Aggravated Behaviour," and shall render the Player or Player Support Personnel liable to the sanctions applicable under the ATP rules and regulations for such Player Major Offenses;

c) If the ARC reasonably believes that a Player or any of his Player Support Personnel may have committed a Corruption Offense, the ARC may make a written demand to such Player or Player Support Personnel (a "Demand") to furnish to the ARC any information that is reasonably related to the alleged Corruption Offense and that is permitted to be obtained under applicable law, including, without limitation, (i) copies of, or access to, all records relating to the alleged Corruption Offense (including, without limitation, telephone records, Internet service records, computers, hard drives and other information storage equipment), and (ii) a written statement setting forth the facts and circumstances with respect to the alleged Corruption Offense from such Player or Player Support Personnel and any other person alleged to have participated or otherwise been involved with the alleged Corruption Offense. Subject to the right to object to the scope of such Demand pursuant to Article E.2.d below, the Player or Player Support Personnel shall furnish such information within seven (7) business days of the making of such Demand (or other timetable as may be set by the ARC);

d) If such Player or Player Support Personnel objects to the Demand, the Player or Player Support Personnel shall have the right to appeal the Demand to the AHO. In such event, the ARC shall send the entire dossier of evidence to the AHO and the AHO shall promptly review such evidence and any other facts or circumstances that may be presented to the AHO. The AHO may (but shall not be obligated to) conduct a hearing or other proceeding as the AHO deems appropriate with respect to the Demand, which hearing or proceeding may be in person or by telephone conference (as determined by the AHO in its sole discretion. In addition, the AHO may (but shall not be obligated to) give the ARC or the Player or Player Support Personnel (or his or her legal representative) an opportunity, subject to a strict timetable set by the AHO, to make any written submissions that such parties may wish to make. If, following the AHO's review of the evidence and any such hearing, proceeding or written submissions, the AHO determines that the Demand is (i) fair and reasonably tailored to obtain evidence relevant to the alleged Corruption Offense and (ii) consistent with applicable law, then the AHO shall direct the Player or Player Support Personnel to produce the information specified in such Demand to both the ARC and the AHO. In the event a Player or Player Support Personnel fails to produce such information, the AHO may rule a Player Ineligible, or deny Player Support Personnel credentials and access to ATP Events, pending compliance with the Demand;

e) Where, as the result of his investigation, the ARC reasonably believes that a Corruption Offense has been committed, the ARC shall refer the matter and send the entire dossier of evidence to the AHO, and the matter shall proceed to a hearing before the AHO (a "Hearing") in accordance with Article F".

78 Chapter 8 in relation to the Sopot Investigation into the match between Vassallo Arguello and Davydenko.

79 ATP TACP 2005, Rule 7.05 E(3) provided that "No Provisional Suspension. For the avoidance of doubt, unless and until (a) a Player has admitted or the AHO has issued a Decision (as defined below) that such Player has committed a Corruption Offense or (b) a Player has failed to furnish information as and when directed by the AHO pursuant to Article E.2.d, such Player shall not be deemed to have committed such an offense and shall not be deemed Ineligible".

51.9 Established a procedure for disciplinary proceedings[80], which involved a first instance hearing before an AHO, followed by an appeal to the Court of Arbitration for Sport, which under CAS rules would be *de novo*. The burden of proof was on the ATP and the standard was the preponderance of evidence[81]. The limitation period was eight years[82], and the governing law was the law of Delaware[83].

51.10 Increased the possible sanction for players from up to three years' ineligibility to up to permanent ineligibility in some instances[84] and provided for the fine to be up to US$100,000 plus prize money or money otherwise received. The sanction for player support personnel was confined to withdrawal of credentials, which could be permanent.

52. The prohibition in the ATP Code of Conduct 2005 on failure to use best efforts[85] remained the same: It was punishable summarily by the chair umpire or event supervisor by a point penalty and a fine up to US$10,000, but if repeated or individually very serious, it was capable of amounting to a player major offense of aggravated behaviour[86], subject, after a hearing and appeal process, to sanctions of a fine up to US$25,000 plus the value of prize money and up to a one-year suspension.

(4) THE 2005 INGS REPORT

The contents of the 2005 Ings Report

53. On 21 June 2005, Richard Ings finalised his 'Report on Corruption Allegations in Men's Professional Tennis' setting out the history and causes of alleged corruption and making recommendations as to further changes, beyond those already introduced in the ATP TACP, that would improve matters. The 2005 Ings Report constitutes the first detailed appraisal of the position, and in the view of the Panel raised many of the issues that continue to confront tennis today.

80 ibid., Rule 7.05.F.

81 ibid., Rule 7.05.F(3).

82 ibid., Rule 7.05.I(1).

83 ibid., Rule 7.05.I(3).

84 ATP TACP 2005, Rule 7.05.G provided that:

"1) The penalty for any Corruption Offense shall be determined by the AHO in accordance with Article F, and may include:

a) With respect to any Player, (i) a fine of up to $100,000 plus an amount equal to the value of any winnings or other amounts received by such Player or his Player Support Personnel in connection with any Wager or receipt of Consideration, (ii) ineligibility ("Ineligibility") for participation in any competition or match at any ATP tournament, competition or other event or activity authorized or organized by the ATP ("ATP Events") for a period of up to three (3) years, and (iii) with respect to any violation of clauses (a)-(d) of Article C.2, permanent Ineligibility;

b) With respect to any Player Support Personnel, (i) suspension of credentials and access to any ATP Event for a period of not less than one (1) year, and (ii) with respect to any violation of clauses (a)-(d) of Article C.2, permanent revocation of such credentials and access;

c) No Player who has been declared Ineligible may, during the period of Ineligibility, participate in any capacity in any tournament, competition, event or other activity (other than authorized anti-gambling or anti-corruption education or rehabilitation programs) authorized or organized by the ATP. Without limiting the generality of the foregoing, such Player shall not be given accreditation for, or otherwise granted access to, any competition or event to which access is controlled by the ATP, nor shall the Player be credited with any ATP Entry System Points or ATP Race Points for any competition played during the period of Ineligibility;

2) In addition, Corruption Offenses that also violate nonsporting laws and regulations may be reported to the competent administrative, professional or judicial authorities;

3) If any Player or Player Support Personnel commits an offense under this program during a period of Ineligibility, it shall be treated as a separate Corruption Offense under this Program;

4) The ATP may, in its discretion, recognize any decision by any other sporting authority with respect to the subject matter of this Program, and may impose sanctions of the type described in Article F.1.a or F.1.b on any Player or Player Support Personnel, as applicable, for Prohibited Conduct identified by any such authority".

85 The ATP Official Rulebook, 2005, Player Code of Conduct. Rule 7.03.J(4)(h)(i) provided that "A Player shall use his best efforts during the match when competing in a tournament".

86 The ATP Official Rulebook, 2005, Code of Conduct. Rule 7.04.A(1)(a) provided that "No player at any ATP or Challenger Series Tournament shall engage in Aggravated Behaviour which is defined as follows (i) one or more incidents of behaviour designated in this Code as constituting Aggravated Behaviour; (ii) one incident of behaviour that is flagrant and particularly injurious to the success of a Tournament, or is singularly egregious; (iii) a series of two or more violations of this Code within a twelve month period which singularly do not constitute Aggravate Behaviour, but when viewed together establish a pattern of conduct that is collectively egregious and is detrimental or injurious to ATP or Challenger Series Tournaments …". The best efforts provision, Rule 7.03.B(1)(d), specifies that "In circumstances that are flagrant and particularly injurious to the success of a tournament, or are singularly egregious, a single violation of this section shall also constitute the Player Major Offense of Aggravated Behaviour".

54. Section A of the 2005 Ings Report addressed in particular the following matters:

54.1 Under the heading "*What is corruption and how does it threaten tennis?*"[87], the 2005 Ings Report approached corruption in tennis on the footing that it included not only when "*a player or their support team seeks to derive a personal benefit through either deliberate underperformance or the use or distribution of inside information"*, but also when *"a player decides to deliberately underperform*" and "*enters a match with an intention to lose"*[88]. *The 2005 Ings Report also described the "corruption cycle*" that could flow from players gambling on tennis and having relationships with those involved in gambling.

54.2 Under the heading "*How much money is gambled on men's professional tennis*?"[89] the 2005 Ings Report estimated the 2004 level at US$50 billion, and predicted that level would increase in subsequent years.

54.3 Under the heading "*Encountering a climate of silence and apathy*"[90], the 2005 Ings Report expressed concern that "*while the inquiry received the total support of the CEO and open assistance from ATP tournaments, by contrast some players, their support teams and their elected representatives were not so forthcoming*". The 2005 Ings Report also observed that players did not want to inform on their fellow players, and commented on the need to protect the confidentiality of players who were under suspicion for violating rules.

54.4 Under the heading *"Corporate governance"*[91], the 2005 Ings Report stated that "*protecting the game from alleged corruption requires resolute commitment and zero tolerance from players and their elected leadership. Some player members are not displaying these qualities, in the opinion of this inquiry, at this time*".

55. Section B of the 2005 Ings Report[92] described the background to anti-corruption inquiries, and in particular the initiation in late 2002 of an assessment of the ATP's rules and procedures to address match-fixing and related breaches of integrity.[93]

56. Section C of the 2005 Ings Report[94] set out the course of anti-corruption investigations through 2003 and 2004, also described above[95]. Section C concluded[96] that the ATP was *"currently examining unusual betting patterns surrounding approximately 30 first round men's professional tennis matches"*, and attached as its Appendix 2 a "*full list of matches with unusual betting patterns*", which referred to 37 matches[97]. The Report stated that "*to date this inquiry has not determined that any individual competing or associated with any of these matches has violated any ATP Rules*" [98].

87 2005 Ings Report, page 5, paragraphs 13-33.

88 ibid., page 5, paragraphs 16-19:

"16. From a tennis context, at a minimum, corruption is any action by a player or their support team that seeks to derive a personal benefit through either deliberate underperformance or the use or distribution of inside information.

17. Deliberate underperformance by players is a form of corruption. Tournaments that put up prize money and the public that purchases tickets believe that all players will compete in every match to the best of their physical ability. When players enter matches with an intention to lose, a deception is committed on the tournaments and public.

18. When gambling on sport enters the equation, such deliberate underperformance can have more serious consequences.

19. When a player decides to deliberately underperform, a market for that inside information is generated amongst gamblers. Gamblers aware of an intention by a player to deliberately underperform have access to an arbitrage betting opportunity in a manner similar to insider trading on the stock market. The result is a betting coup and windfall profits for the individuals in possession of that inside information".

89 ibid., page 7, paragraphs 34-41.

90 ibid., page 8, paragraphs 42-46.

91 2005 Ings Report, page 9, paragraphs 47-55.

92 Ibid., page 10, paragraphs 56-69.

93 Paragraph 6 above.

94 2005 Ings Report, page 12, paragraphs 70-183.

95 Paragraphs 15 to 48 above.

96 2005 Ings Report, page 34, paragraphs 181-183.

97 The 37 matches in Appendix 2 comprised of one match from 2002, 18 from 2003, 13 matches from 2004 and five matches from 2005. Appendix 2 is not published because it cannot be suitably redacted.

98 2005 Ings Report, page 34, paragraph 183.

57. Section D of the 2005 Ings Report addressed in particular the following matters:

57.1 Under the heading "*The seeds of corruption: deliberate under-performance*"[99], the 2005 Ings Report concluded that the origins of tennis' integrity problems lie in deliberate under-performance for reasons unconnected with gambling, which is not sufficiently addressed by the sport's best efforts rule, and which has in part been caused by the change in the approach to ranking from a system where performance in every match counts, to one where only performance in a defined number of events a year counts[100].

57.2 Under the heading "*The potential emergence of match fixing*"[101], the 2005 Ings Report went on to examine how and why a player may "*enter the match with an intention to lose*", and what consequences may flow from that intention, including for the "*unscrupulous*" player, the opportunity to bet on himself to lose, or to solicit a bribe to lose[102].

57.3 Under the heading "*Why corruption allegations have developed in tennis*"[103], the Report identified a number of reasons that had been advanced as contributing to the problem: inadequacy of prize money at lower levels; the shortness of careers; participation in matches where "*nothing is at stake*"; a culture of acceptance of players gambling; a culture of silence and non-reporting; a lack of education as to the seriousness of the threat posed to

99 ibid., paragraphs 186-196:

"186. Deliberate underperformance by male professional tennis players has been present in tennis for over 20 years. It is so common in fact that players have a euphemism for it in the well-known term "tanking".

187. Through the 80s and 90s, tanking took the form of players deliberately underperforming in order to conclude their obligations to a tournament. Perhaps the player was tired and wanted to take a week off. Perhaps the player had an exhibition to attend which offered superior rewards than the tournament. Or perhaps the player sought only to collect a guarantee for competing and had no interest in serious competition.

188. Whatever the individual's reason, tanking was and is relatively common in men's professional tennis. This inquiry has heard from players that have admitted to losing in scheduled pre-planned rounds of singles and doubles for personal reasons.

189. Actual observed cases exist of players turning up to compete with their bags packed and cars waiting to speed them to the airport at the matches conclusion.

190. While the sport of tennis has rules about 'Best Efforts', such is the subtlety of tennis that detecting deliberate underperformance is difficult...

194. It is believed that the incidence of underperformance increased with rule changes to the ranking system in the early 1990's. The ranking system at one time was based on performance in every match. Any early round failure to perform resulted in a negative impact on a players ranking. Such a ranking system was a positive inducement on players to perform.

195. In the early 1990's the ATP changed the ranking system to be based on an average of a Best Of system. Basically only the best X tournament performances counted towards the ranking. Performance or underperformance in other tournaments had no impact on a players ranking.

196. An inadvertent and unplanned consequence of the move to a Best Of system was to remove ranking penalties for players that under perform in early rounds. While it is true that players that lose in early rounds earn less prize money than players that win, we will see that in certain circumstances at certain tournaments, even this difference in prize money is insufficient to dissuade players from deliberately underperforming".

100 ibid.

101 2005 Ings Report, page 35, paragraphs 197-206.

102 Ibid., paragraphs 199-206:

"199. A player is entered into a tournament in which he has little motivation to compete. Perhaps he is tired after playing several tournaments. Perhaps he has a well-paid exhibition scheduled for later in the week that he wishes to rest for. Perhaps the player is carrying a small injury that he would prefer to rest. The reasons are many but the result is the same. The player enters the match with an intention to lose.

200. Why wouldn't the player not desiring to compete simply withdraw? In an effort to mandate commitment from players to tournaments, the ATP rules provide for significant financial penalties to withdraw. The closer to the tournament start date that the player withdraws, the larger the fine. Rather than incur a financial penalty, the player avoids the fine by simply taking to the court all be it with an intention to lose.

201. To avoid being fined for Best Efforts, the player must compete to a degree but lose a few key points at necessary moments to engineer the desired outcome.

202. The player can financially profit in any number of ways. Firstly he obtains prize money that he would not have obtained if he had pulled out. He obtains a free hotel room for the remainder of the week as a main draw competitor. He also avoids a fine for a withdrawal.

203. If unscrupulous the player can also lodge a bet on himself to lose profiting from the known outcome or solicit a bribe from his opponent in exchange for deliberately losing.

204. Finally the player can seek a "release" from the ATP following his loss to compete in a possibly lucrative Special Event that same week. During the 2004 7-week Bundesliga season, a total of 177 such releases were granted to players that had competed and lost at an ATP or ATP Challenger event. It is estimated that over 250 releases are granted each year.

205. In conclusion the player can profit significantly for a single day's "work" versus incurring the alternative financial loss that would result from a withdrawal.

206. The opportunities for the unscrupulous to manipulate the tennis system to their own financial benefit are significant".

103 ibid., page 36, paragraphs 207-215.

tennis by gambling; the absence of confidential whistleblowing arrangements; and the ease with which a match can be deliberately lost[104]. The 2005 Ings Report stated that while none of these reasons justified the "*betrayal of the game of tennis*", they needed to be examined as part of the process of finding solutions[105]. The 2005 Ings Report also highlighted as important causes: greed and opportunity; lack of security and unrestricted access to players; a greater preparedness to gamble or act corruptly in respect of lower level tournaments; and the fact that the absence of a ranking penalty coupled with a penalty for withdrawal makes matches susceptible to under-performance[106].

57.4 Under the heading "*Tournaments and Matches of Greater Vulnerability*"[107], the 2005 Ings Report identified matches that are more likely to give rise to problems as being those where no ranking point is at stake and there would be a withdrawal penalty; first round matches; ATP matches in a week when the player also wishes to attend a money event; matches where a pre-arranged outcome suits both players, such as where a player who will be a lucky loser is playing a qualification match.

57.5 Under the heading *"The scale of the problem"*[108], the 2005 Ings Report concluded that gambling by players and support teams was "*common place*", that it was *"clear... that players do engage in deliberate underperformance"*, and that it was *"clear... that persons with an interest in gambling are attempting to gain inside knowledge of such player intentions"*. The Report went on to state that the *"scale of the corruption problem is harder to quantify at this time"*, but the "*repercussions of the suspicions and innuendo about corruption are unmistakable*", and there was sufficient understanding *"of how, when and where corruption could take place" to justify "recommendations for reform*".

57.6 Under the heading *"How has the ATP responded to corruption allegations?"*[109], the Report concluded that *"the ATP*

104 ibid., page 36, paragraph 207:

"207. In the course of this inquiry, players and their support teams that were prepared to speak on the issue have outlined why they think that a culture of gambling and corruption has developed in men's professional tennis. Whilst the explanations and excuses have varied in emphasis they embrace some or all of the following:

• Lower ranked tennis players and their support personnel are unable to earn a living wage from the game. Gambling using inside information is used as a means to supplement low-income levels.

• Tennis players and their support personnel have relatively short and uncertain careers, often without contracts and some seek to supplement their official earnings with money from gambling or corruption.

• Tennis players compete in many matches each year where "nothing is at stake" in terms of ranking or pride.

• Players and their support teams indicate that gambling on men's tennis is "common practice" in the locker room. There is a culture of acceptance with even the player leadership turning a blind eye to such conduct.

• Whistle blowing and informing on malpractice would result in players being ostracized in the locker room. Remaining silent in the face of gambling or corruption by player peers was encouraged.

• There is no education on the issue of gambling and corruption for players. Players were just not aware of it being a serious threat issue to tennis. "It is just a harmless bet".

• There is no structure in place to receive confidential allegations about corruption.

• It was just too easy".

105 ibid., page 37, paragraph 208.

106 2005 Ings Report, page 37, paragraphs 210-215:

"210. Greed and opportunity are the main factors that are common in all the cases of corruption.

211. The environment in which gambling and alleged corruption has developed in men's professional tennis must also be considered in developing barriers to such misconduct.

212. The report has already described the prevailing climate of silence, and apathy that exists amongst some player members, their support personnel, some of their elected representatives on this issue. Such a climate creates a player culture that is not conducive to dealing with the problem. Players did not want to inform on each other and there was no system to receive or process reports of improper approaches or behaviour. This environment was aggravated in many cases by an absence of security or control.

213. Until recently, security in the broadest sense was not on the agenda. Consequently, access to players for corrupt purposes at hotels, tournaments, and even locker rooms was near effortless. The unrestricted mixing of players, support personnel, journalists and others at many of these venues, whilst understandable, provided an ideal opportunity for corrupt approaches and meetings.

214. The nature of the match or tournament appears to be an important factor in determining the willingness or reluctance of some players and their support personnel to engage in deliberate underperformance, gambling and/or corruption.

215. If no ranking penalty exists and there were financial penalties for withdrawing then such matches would appear more susceptible to deliberate underperformance".

107 ibid., page 38, paragraphs 216-217.

108 ibid., page 38, paragraphs 218-224.

109 ibid., page 39, paragraphs 225-230.

under the leadership of its CEO has demonstrated… unmitigated support of anti-corruption measures", resulting in *"support* [being] *given to the design of a comprehensive Anti-Corruption Program… enacted as rule from January 2005* [which] *provide*[d] *best practice measures to detect, investigate and punish acts of corruption by members of the tennis family"*.

57.7 Under the heading *"The role of the ATP Board"*[110], the 2005 Ings Report concluded that while in general the ATP Board had played a supporting role in the fight against corruption in tennis, player Board representatives might benefit from clarification of the interrelationship between their roles in protecting the interests of players and protecting the integrity of the sport.

58. Section E of the 2005 Ings Report set out 20 Recommendations, broken down under six headings:

58.1 Under the heading *"Education and awareness"*[111], the 2005 Ings Report recommended *"ongoing mandatory education of members of the tennis family of the risks and reality of gambling and corruption"*, which emphasises the resolve of the ATP to punish those in breach, is *"professionally produced, interactive, and presented in multiple languages"*, includes video content to be shown in mandatory sessions, addresses the need to report improper approaches, and covers players from juniors up to professional, officials and other members of the tennis family[112] .

110 ibid., page 40, paragraphs 231-236.

111 ibid., page 41, paragraphs 238-243.

112 2005 Ings Report, page 41, paragraphs 238-251:

"Education and awareness

238. Ignorance of the risk and reality of gambling and corruption in men's professional tennis has contributed to the problem. The inquiry has spoken to seemingly educated individuals who had no idea that gambling could result in corruption in tennis. Ongoing mandatory education of members of the tennis family of the risks and reality of gambling and corruption is an urgent requirement.

Recommendation no 1

239. The ATP should develop and implement a detailed training and awareness program focused on increasing the understanding of the risks of gambling and corruption to tennis and detailing the methods used by corruptors to ply their trade. It should also emphasise an apolitical resolve on the part of the ATP and its members to confront the threat of corruption and punish those that breach corruption rules.

Recommendation no 2

240. An educational program will only be effective if it is professionally produced, interactive and presented in multiple languages. Material should be produced that can be used in many member countries.

Recommendation no 3

241. The core of the training material should be professionally made videotape aimed at deterring gambling and corruption. The ATP in conjunction with the ITF should commission a professionally made video to be shown to mandatory player training sessions. Such a video would be strengthened by the inclusion of disgraced athletes in other sports that can relay their experiences to deter others.

Recommendation no 4

242. As well as raising awareness of the problem, the program should encourage the reporting of improper approaches and demonstrate without ambiguity the resolve of the ATP to confront the problem. The video should be reinforced and supported by posters and other supporting material.

Recommendation no 5

243. The training and awareness program should target all international players, player support team members, umpires and other relevant members of the tennis family. It should include all ranked players from juniors to seasoned professionals".

58.2 Under the heading *"Security and control"*[113], the 2005 Ings Report recommended appointment of a *"security manager"* to prevent and investigate corruption, who would be independent within the ATP and accountable to the CEO; adoption of a standardised accreditation system to limit access to player areas, including the exclusion of all but players and ATP staff from the locker room; and prohibition of gambling interests from owning ATP tournaments[114].

113 2005 Ings Report, page 41, paragraphs 244-251:

"Security and control

244. Potential corruptors have gained access to players and others with ease. The absence of even the most basic background checks at many tournaments has allowed undesirable people to mix freely with players and has provided a breeding ground for improper approaches and possible corruption and an avenue for player support teams to profit from their knowledge of inside injury information. The report sets out below a package of measures designed to incorporate best practice and promote a common sense approach to security and control.

Recommendation no 6

245. The ATP should appoint a full time Security Manager with the following job description:

• Providing advice and action in relation to the security of players, officials and venues.

• Preventing and detecting improper approaches to players on tour.

• Collating intelligence about improper approaches and conducting investigations into allegations of corruption.

246. The Security Manager should have experience in the field of police investigations, security and anti-corruption. A background in police, military or security services would be a minimum requirement.

247. The Security Manager should enjoy independence within the ATP and should be accountable to the CEO only and not to individuals that act on behalf of the same persons that may be subject to investigation.

Recommendation no 7

248. The ATP should implement standards of access formalized through a common accreditation platform. The ease by which persons with an interest in gambling gain accreditations to tournaments must be stopped. If this practice is allowed to continue the efforts to prevent corruption will undoubtedly fail.

249. While consultation is required with tournament members on finding a common sense workable solution, the recommendation is that credentialed access to ATP tournaments be by use of a common accreditation platform (system). Only those with a genuine business reason for credentials would be authorized to have credentials including players, agents, trainers, coaches, staff and media. The system would maintain full photographic record of those with credentials and those that authorized their credential and would cross reference a watch list of undesirable persons before any credential is approved. Player guests would be provided with tickets in place of accreditations. Persons with known links to gambling should be refused accreditations at all times.

250. Player support personnel, with their open access to locker rooms, present an integrity threat to tennis by their knowledge of inside injury information on other players. The player locker room should have access restricted to competing players and ATP trainers only. Private trainers, private coaches and other support team members should be barred from accessing the locker room, to minimize the opportunity for inside injury information to be traded by unscrupulous interests. It is noted by the inquiry the long standing WTA Tour practice that player coaches, and player trainers do not have access to the ladies competitor locker room and that such a practice is well accepted by all parties.

Recommendation no 8

251. Entities with significant interests in gambling should be barred from ownership of ATP sanctioned tournaments. It is a conflict of interest and a threat to the integrity of tennis to have gambling interests owning and operating ATP tournaments".

114 2005 Ings Report, page 41, paragraphs 244-251.

58.3 Under the heading *"Make every match count"*[115], the 2005 Ings Report recommended that because *"a root cause of corruption is deliberate underperformance…the ATP must urgently overhaul its rules to return to a system of reward for performance"*, which would include first round losses having a negative impact on ranking; redistribution of prize money; updating the Challenger circuit calendar and rules; improving coach remuneration and employing ATP coaches; selecting lucky losers by random draw instead of by reference to ranking; abolishing the grant of special exempts to play in a money event if a player has lost in an ATP event in the same week; and replacement of withdrawal penalty fines with a ranking penalty[116].

58.4 Under the heading *"ATP staff (umpires, trainers and tour managers)"*[117], the 2005 Ings Report recommended improving the remuneration and incentives of officials[118].

58.5 Under the heading *"Role of the ATP Board"*[119], the 2005 Ings Report recommended a *"Code for Directors"*.

115 2005 Ings Report, page 43, paragraphs 252-259:

"Make every match count

252. A root cause of corruption is deliberate underperformance. The ATP must urgently overhaul its rules to return to a system of reward for performance.

Recommendation no 9

253. The ATP should overhaul its ranking system to ensure that a loss in any first round match results in a negative ranking impact for the losing players. Loss of ranking is seen as the major deterrent to deliberate underperformance by players.

Recommendation no 10

254. Prize money at ATP tournaments and Challengers should be redistributed or boosted to reduce the threat of corruption. The ATP should consider distributing the current total prize money pool among fewer players and in so doing ensure that those players can earn a living wage that need not be supplemented by gambling or corruption.

Recommendation no 11

255. The Challenger circuit calendar and rules need updating. With large scale betting now taking place on these small events, boosting prize money levels and scheduling them in the weeks of ATP events will reduce the risk of corruption. "Off-season" challenger events should be upgraded to ATP events, with the existing limitations on top 50 participation kept in place, with a boost in prize money and security acting to deter would be corruptors.

Recommendation no 12

256. The ATP should seek to improve the levels of remuneration received by player coaches in an effort to reduce the seduction of gambling to this core component of the tennis family. The ATP could consider employing a team of traveling coaches on the ATP payroll to assist players with the development of their game at tournaments.

Recommendation no 13

257. The Lucky Loser system is a major target of corruption and requires overhauling. It is recommended that the Lucky Loser selection be based on a random draw versus the current method of highest ranked. A random draw will remove the opportunity to manipulate the result of final round qualifying matches for mutual advantage.

Recommendation no 14

258. The granting of releases to players that lose to compete in Special Events in the same week as an ATP event should be abolished. Having multiple opportunities to compete in a week is a root cause of underperformance and corruption. Players should commit to their choice of a single event per week and not be released to play in other events in the event of a loss.

Recommendation no 15

259. The imposition of monetary fines for late withdrawals should be replaced by a non-monetary ranking penalty. A system is required that creates an incentive for players to complete their commitments but not a loophole that allows players to recover a financial penalty through unscrupulous means. A ranking penalty for a late withdrawal is just such a non-recoverable penalty".

116 ibid.

117 2005 Ings Report, page 44, paragraphs 260-261:

"Atp staff (umpires, trainers and tour managers)

260. As demonstrated by the Hoyzer example in German football, umpires have a direct ability to influence the outcomes of matches. Trainers and Tour Managers possess intimate knowledge of player injuries which is priceless inside information for would be gamblers. Both groups can be the targets of corruptors.

Recommendation no 16

261. Umpires, trainer and Tour Managers working on the ATP Tour average annual incomes between 30,000 and 50,000 Euro. This low level of remuneration makes such staff possible targets for corruption. It is recommended that the ATP address the issue of umpire, trainer and Tour Manager incentives through structured rewards and job satisfaction initiatives to reduce the risk of corruption".

118 ibid.

119 ibid., page 44, paragraphs 262-266.

58.6 Under the heading *"Reporting of Corruption"*[120], the 2005 Ings Report recommended the introduction of a rule requiring players and tournaments to report suspicions of corruption, and a whistleblowing facility[121].

59. Lastly, the 2005 Ings Report concluded that *"Men's professional tennis is at a crossroads of credibility that can only be resolved with a resolute commitment from the players, their support teams and their elected leadership to eradicate underperformance, corruption and corrupt individuals from the game. The report encourages the ATP to build on recent developments and implement the program of change set out in the recommendations in this report"*[122].

Provision of the 2005 Ings Report to the ATP CEO

60. The 2005 Ings Report was provided by Richard Ings to Mark Miles at the end of June 2005, shortly before Richard Ings left the ATP to take up a position at Anti-Doping Australia, and shortly before Mark Miles himself also left the ATP.

61. Whilst the 2005 Ings Report states that it is submitted to the CEO of the ATP, Richard Ings has confirmed that he did not tell anyone about it while he was working on it[123]. Mark Miles' evidence is that he does not recall reading it or providing feedback on it[124]. Further, he notes that before the 2005 Ings Report was finalised (in June 2005) he had already decided that he would be leaving the ATP and that, shortly after the 2005 Ings Report was finalised, it was apparent that he was to be replaced as CEO by Etienne de Villiers[125]. Mark Miles had therefore already begun to step back from his role as CEO (although his role did not officially end until the end of the calendar year)[126].

62. No action was taken by the ATP specifically in reaction to the contents of the 2005 Ings Report.

63. Etienne de Villiers' evidence was that on assuming the role of CEO, he was made aware of the 2005 Ings Report but that he entrusted integrity issues to Gayle Bradshaw, in whom he had confidence. His view is that the ATP was well advanced in its efforts to address corruption issues in men's professional tennis. He was also impressed that the ATP had or was entering into memoranda of understanding with leading online betting operators, that the ATP had implemented the ATP TACP at the beginning of the year and that the ATP was the first governing body in professional tennis, and one of the first professional sports governing bodies, to establish a standalone anti-corruption program. Further, the ATP's main integrity concern at that time was anti-doping. As such, whilst match-fixing was recognised as an issue, it was not considered to be as threatening or prevalent as doping[127]. Mr de Villiers stated that the recommendations made in the 2005 Ings Report were therefore not the main focus at the time that he joined the ATP.

120 ibid., page 45, paragraphs 267-269:

"267. A culture exists amongst players and their support personnel that act to protect the corrupt behaviour of others. If any serious progress is to be made in fighting corruption in tennis this culture needs to be addressed.

Recommendation no 20

268. The ATP rules should contain a positive requirement on players and tournaments to report suspicions of corruption to the Security Manager. A system should be developed that provides players, their support teams and other members of the tennis family with a means to anonymously submit their suspicions about gambling and corruption to the Security Officer.

269. The ATP must introduce an online system where individuals can report their suspicions about corruption in an anonymous manner if so desired. The system needs to be promoted to players and support team members".

121 2005 Ings Report, page 45, paragraphs 267-269.

122 2005 Ings Report, page 45, paragraph 270.

123 Statement of Richard Ings (formerly ATP).

124 Statement of Mark Miles (formerly ATP).

125 Etienne de Villiers became CEO and President of the ATP in October 2005, Statement of Etienne de Villiers (formerly ATP).

126 Statement of Mark Miles (formerly ATP).

127 Statement of Etienne de Villiers (formerly ATP).

64. Gayle Bradshaw's evidence was that he was emailed a draft copy of the 2005 Ings Report at a time when he was not principally responsible for anti-corruption work[128], and he was not aware that he would be taking over the role from Richard Ings. When Richard Ings left, Mr Bradshaw *"assumed responsibility for the ATP's day-to-day work on anti-corruption matters"*[129]. *Gayle Bradshaw confirmed that, whilst he was eager to hit the ground running, he was occupied in dealing with a number of anti-doping and officiating cases. Anti-corruption issues did not hit home to him until he started to receive alerts from betting companies under the ATP's memoranda of understanding*[130].

65. Gayle Bradshaw's evidence was that when he looked at the 2005 Ings Report recommendations in early 2016, he felt that the majority of the recommendations seemed to be common sense, and that the ATP had, over time, in effect implemented 18 out of the 20 recommendations contained in the 2005 Ings Report, in whole or in part. That had not been in direct response to the 2005 Ings Report itself, but had occurred as the ATP developed its rules and procedures, although the recommendations may have been in the back of Gayle Bradshaw's mind and thus may have played a part in the implementation of the following developments[131]:

    65.1 An education programme in relation to integrity had been developed (this is delivered through the ATP Player University), which included video footage from a person formerly involved in corruption and encouraged reporting (Recommendations 1 to 5)[132].

    65.2 While a Security Manager (Recommendations 6 and 19) had not been appointed, Iain Malone continued to be retained on an *ad hoc* basis to for investigations and independent investigators were retained as necessary. Further, Gayle Bradshaw's evidence is that, prior to Sopot, he had been in discussion with Iain Malone about the possibility of creating an ATP integrity department; they were in early discussions when the Sopot incident occurred and thereafter all the governing bodies came together to form a unified integrity unit[133].

    65.3 Steps had been taken to improve accreditation (Recommendation 7). For example, Gayle Bradshaw's evidence is that restrictions were implemented in respect of player areas. All player entourage / guests were also required to sign a form acknowledging the ATP anti-corruption programme prior to receiving credentials[134].

    65.4 While steps had not been taken to bar entities with gambling interests from ownership of ATP sanctioned tournaments (Recommendation 8), tournaments were subject to strict requirements. Further, all transfer of tournament ownership must receive ATP Board approval[135].

    65.5 The ATP took the view that the knock on effects of changes to the ranking point system, to revert to all events counting towards a player's ranking, precluded implementation of Richard Ings' suggestion that all matches should be made to count in this way (Recommendation 9). In particular it was felt that it would make players play too often in the pursuit of ranking points, it would lead to specialists on one surface not playing on another for fear of harming their ranking, it would lead to players ceasing to play once they had achieved a desired ranking, and it would lead players to ignore the ATP 250s. The ATP did however have eight mandatory events for players above a particular ranking, and a player who failed to play in these mandatory events would be given zero ranking points for that event if he failed to play in it. Also, the ATP increased the minimum number of events that would count for ranking purposes from 14 in 1990 to 18 by 2016[136].

128 Statement of Gayle Bradshaw (ATP).
129 Statement of Gayle Bradshaw (ATP).
130 Statement of Gayle Bradshaw (ATP).
131 Statement of Gayle Bradshaw (ATP).
132 Statement of Gayle Bradshaw (ATP).
133 Statement of Gayle Bradshaw (ATP).
134 Statement of Gayle Bradshaw (ATP).
135 Statement of Gayle Bradshaw (ATP).
136 Statement of Gayle Bradshaw (ATP).

65.6 Prize money had been increased to some extent (Recommendation 10)[137].

65.7 The Challenger circuit calendar is constructed so that it places jobs in weeks/regions where jobs are needed (Recommendation 11)[138].

65.8 Coach remuneration was outside the ambit of the ATP's control (Recommendation 12) and has therefore not been changed[139].

65.9 The lucky loser system had been altered (Recommendation 13)[140]. The Panel notes that the lucky loser rules were altered in 2015 so that the certainty of a particular player receiving a place was removed[141].

65.10 The special exempt system has not been changed or adapted (Recommendation 14)[142].

65.11 The financial penalty for withdrawal had been partially implemented (Recommendation 15). Gayle Bradshaw's evidence is that the ATP now has automatic ranking penalties for withdrawals from the 1000 and 500 events[143].

65.12 Officials' remuneration had increased (Recommendation 16), although Gayle Bradshaw's evidence is that perhaps not to the extent suggested in the 2005 Ings Report[144].

65.13 The ATP did accept that anti-corruption and security measures were a necessary and long term requirement to be funded by the ATP and (Recommendation 17)[145].

65.14 ATP board members have a fiduciary duty to the ATP (Recommendation 18)[146] .

65.15 Reporting obligations had been introduced, and a 'hot line' had been set up (Recommendation 20)[147].

66. These changes were implemented by the ATP as it developed its rules and procedures, rather than as a reaction to or consequence of the 2005 Ings Report[148].

137 Statement of Gayle Bradshaw (ATP).
138 Statement of Gayle Bradshaw (ATP).
139 Statement of Gayle Bradshaw (ATP).
140 Statement of Gayle Bradshaw (ATP).
141 ATP Official Rulebook, 2018, Section VII, Part 7.20(1), available at: http://www.atpworldtour.com/en/corporate/rulebook [accessed 9 April 2018].
142 Statement of Gayle Bradshaw (ATP).
143 Statement of Gayle Bradshaw (ATP).
144 Statement of Gayle Bradshaw (ATP).
145 Statement of Gayle Bradshaw (ATP).
146 Statement of Gayle Bradshaw (ATP).
147 Statement of Gayle Bradshaw (ATP).
148 Statement of Gayle Bradshaw (ATP).

(5) DISCIPLINARY PROCEEDINGS UNDER THE ATP TACP BETWEEN 2005 AND 2008

ATP TACP proceedings brought between 2005 and 2008

67. Between 2005 and 2008 the ATP brought eight disciplinary proceedings under the new ATP TACP, each for breach of the prohibition on wagering. These are addressed in Section B below[149].

68. Apart from those specific instances, the ATP did not bring any other disciplinary proceedings under the new ATP TACP.

69. Between 2005 and 2008, the ATP issued on-site fines to seven players for failure to use best efforts. It should be noted however that not all Code Violations resulted in a fine being issued[150].

70. In respect of failure to use best efforts, Gayle Bradshaw's evidence was that during Richard Ings' tenure, they discussed whether there should be any changes to the best efforts rule. Gayle Bradshaw's view, at the time, was that it was difficult to spot best efforts issues consistently and that it was therefore not realistic to use the best efforts rule regularly[151]. Nevertheless, his view was also that the Code of Conduct provided for sufficiently strong sanctions to be handed down for a failure to use best efforts. Gayle Bradshaw informed the Independent Review Panel that umpires have the option of giving a *"soft warning"* first and if the player continued not to use best efforts then the umpire could issue a formal warning. If the failure was *"blatant"* then the official could/should issue a code violation without any soft or formal warning[152].

71. So far as the Panel is aware, the ATP did not bring any disciplinary proceedings for the player major offence of failure to use best efforts in an aggravated manner.

ATP TACP investigations that did not lead to proceedings

72. Between 2005 and 2008, the ATP commenced a number of investigations that did not lead to disciplinary proceedings. In particular, in August 2007 the ATP's independent experts undertook an extensive investigation into the match between Vassallo Arguello and Davydenko in Sopot that month. This is dealt with in Chapter 8[153].

73. Between 2005 and 2008, the ATP continued to receive reports of suspicious or unusual betting patterns at ATP matches under the memorandum of understanding that the ATP had with Betfair (in place since 2003) and, through its memorandum of understanding with ESSA, other betting operators[154].

74. The Panel has seen a spreadsheet entitled *"ATP Match List Historical"*[155] which contains a list of matches as being the subject of suspicious or unusual betting patterns during the period 2003 to 2008. From the contemporaneous records, the Panel has been able to identify that all of the matches on this list had been flagged to the ATP.

75. Separately, after the investigation into the Sopot match commenced in August 2007, an individual who worked for a betting operator sent the ATP a list[156] of 137 past matches that he had identified as being the subject of suspicious or unusual betting patterns, of which 111 related to ATP matches, 17 related to matches at Grand Slams and nine related to WTA matches. While that list included 62 ATP matches that had been identified to or by the ATP at the time they took place[157], they also included 49 ATP matches that do not appear to have been identified to or by the ATP at the relevant

149 Paragraph 146 below in relation to the ATP's eight successful 2007 disciplinary cases involving players betting on tennis.

150 Statement of Gayle Bradshaw (ATP).

151 Statement of Gayle Bradshaw (ATP).

152 Statement of Gayle Bradshaw (ATP).

153 Chapter 8, Section A(2).

154 Statement of Gayle Bradshaw (ATP).

155 The "ATP Match List Historical" is not published because it cannot be suitably redacted.

156 List entitled "Suspect Tennis Matches". This list is not published because it cannot be suitably redacted.

157 The Panel has approached prior knowledge on the part of the ATP as where either (a) details of the same match appearing in the "ATP Match List Historical" or in the "Suspect Tennis Matches" list or (b) other documents disclosed to the Panel have revealed contemporaneous knowledge of those matches on the part of the ATP.

time.

76. In 2008, after the publication of the Environmental Review[158], the ATP's independent investigators looking into the Sopot match also brought a number of matches and other matters to the attention of the ATP[159]. Again, while those matches included some matches previously reported to the ATP at the time they took place, they also included other matches and the independent investigators provided much more detail. The ATP's response to the subsequent notification of past matches (as opposed to the contemporaneous reporting of matches) is dealt with in Chapter 9[160].

77. Cumulatively, the Panel has found references to suspicious or unusual betting patterns at 167 ATP matches up until the end of 2008, of which 126 come from the period, from 2005 to 2008 when the new ATP TACP was in place. This data has been collated by the Panel from the contemporaneous documents provided to it, into a composite list of alerts[161]

78. As addressed in Chapter 3, it should be noted that suspicious and unusual betting patterns may arise for a variety of reasons and are not necessarily in themselves sufficient evidence of any breach of integrity. So too the statistics derived from suspicious or unusual betting patterns must be treated with caution.

79. The ATP did not further investigate any of the unusual betting pattern matches in Appendix 2 of the 2005 Ings Report. Richard Ings' evidence is that he had looked into each of the matches listed in Appendix 2 and whilst some could be explained, others could not[162]. In any event, Richard Ings concluded that he had not found sufficient available evidence of any of the relevant applicable rules having been breached to allow the ATP to be confident enough to take disciplinary action[163]. That said, however, the 2005 Ings Report had left open the possibility of action being taken in respect of these matches in the future, and stated that inquiries were ongoing[164]. However, in the circumstances explained in paragraphs 62 to 66 above, no action was taken by the ATP as a consequence of the 2005 Ings Report.

80. Gayle Bradshaw has provided the Panel with evidence of the ATP's approach between 2005 and 2008 approach when it received a report of an unusual betting pattern[165]. In particular:

    80.1 When a suspicious or unusual betting pattern was reported to it, the ATP would initiate an investigation, either through Gayle Bradshaw or where necessary Iain Malone. The ATP did not open a formal file, but stored the relevant emails and documents in a computer folder within the ATP computer files. These materials have been provided to the Panel.

    80.2 The ATP's first step was to contact the supervisor at the relevant match. If the match was yet to be completed, the supervisor would be asked to watch it. If the match had been completed, the supervisor was asked to speak to the chair umpire and the physio to identify any relevant factors. The player's record would be examined. Inquiries would be made of the betting operator, and an attempt made to find out if the accounts looked like they might be connected to the player or member of support personnel. In a limited number of cases, where suspicion remained, Iain Malone would interview the player or member of support personnel[166].

158 Chapter 8, Section B.

159 Chapter 8: the Sopot Investigators' document entitled "Tennis Investigations – General Logistical Issues", and a Mark Phillips PowerPoint entitled "Summary of Betting and Telecoms Analysis". These are published in suitably redacted form. A number of matches in these documents are also identified in the lists referred to above (though many are unique to the list they appear on).

160 Chapter 9, Section A(3) in relation to the ATP decision at the end of 2008 that it could not proceed against Martin Vassallo Arguello or any other player based on texts and contact information found on his phone during the Sopot investigation; and Chapter 9, Section E in relation to the ATP decision to hand over responsibility for past cases and intelligence in relation to other players and matches derived from the Sopot investigation, to the new tennis wide TIU which the May 2008 Environmental Report had concluded should be formed and which came into operation at the beginning of 2009.

161 The Panel's composite list of alerts is not published because it cannot be suitably redacted.

162 Statement of Richard Ings (formerly ATP).

163 Statement of Richard Ings (formerly ATP).

164 2005 Ings Report, page 34, paragraphs 181-183.

165 Statement of Gayle Bradshaw (ATP).

166 Following the commencement of the Sopot investigation Gayle Bradshaw also shared a number of the alerts received with the Sopot investigators.

80.3 The ATP considered[167] that it could only make a written demand for information from players or support personnel if the responsible official had concluded that he *"reasonably believed"*[168] that the player or member of support personnel *"may"* have committed a Corruption Offense or that the unusual betting pattern *"may"* have stemmed from a player or member of support personnel. Mr Bradshaw's evidence is that *"this test was construed quite strictly"*[169]. However, the ATP told the Panel that the *"ATP's rules for investigation of corruption offenses are not subject to being 'construed'... The procedural protections afforded to players under the TACP were the direct result of the player participation in the creation of the TACP through Player Representatives on ATP's Board of Directors. These procedures were protective of players' rights, including (i) no affirmative duty for players or other personnel to report knowledge of corruption offenses to ATP officials, (ii) no provisional suspension for players being investigated, (iii) a player could produce documents and respond in writing – rather than by interview – to any Demand made by the ATP, (iv) an ATP Demand was limited in scope to information that was 'permitted to be obtained under applicable law', (v) a player could object and appeal to the AHO regarding any Demand received from ATP and (vi) a player could further object and appeal to the CAS any AHO decision regarding any Demand. As demonstrated during ATP's investigation of Mr Davydenko's wife and brother, the procedural protections in the 2005 TACP ultimately proved unworkable and led to the substantial overhaul of corruption investigations through the adoption of the uniform TACP and the creation of the Tennis Integrity Unit"*[170].

80.4 The ATP did not construe the prohibition in the ATP TACP on *"contriving the outcome"* of a match as extending to the situation where a player deliberately lost for reasons other than betting or other corrupt purposes. The ATP considered that it could only bring disciplinary proceedings under the ATP TACP in respect of a suspicious or unusual betting pattern if the responsible official had concluded that he *"reasonably believed"*[171] that the betting pattern in fact stemmed from a player or a member of support personnel (a) wagering[172] or inducing others to wager[173]; (b) contriving the outcome[174] in the sense of deliberately losing a match or part of it for betting or other corrupt purposes; (c) inducing another player not to use his best efforts[175], or paying or taking a bribe not to use best efforts[176] or (d) paying or taking a bribe in return for inside information[177]. The ATP told the Panel that the second sentence of this paragraph *"suggests that a suspicious of unusual betting pattern alone could justify a disciplinary proceeding. That was not the case under the TACP (nor is that the case under the current corruption rules)"*[178].

80.5 The ATP did not consider that the report of a suspicious or unusual betting pattern alone was sufficient[179], absent more, for a reasonable belief to be reached that it was due to a player or member of support personnel doing one of those things. The ATP felt that the betting pattern could be due to players' actions that were not caught under the ATP TACP, such as a player deliberately losing for other reasons. Or it could be due to still other circumstances, such as inside information (for example as to injury) becoming discovered in other ways, or odds being inappropriately set.

80.6 The ATP would close an investigation without commencing disciplinary proceedings unless the responsible official

167 Statement of Gayle Bradshaw (ATP).
168 ATP TACP 2005, Rule 7.05 E(2)(c).
169 Statement of Gayle Bradshaw (ATP).
170 Response of the ATP to Notification given under paragraph 21 ToR.
171 ATP TACP 2005, Rule 7.05 E(2)(e).
172 ATP TACP 2005, Rule 7.05 C(1)(a).
173 ATP TACP 2005, Rule 7.05 C(1)(b).
174 ATP TACP 2005, Rule 7.05 C(2)(a).
175 ATP TACP 2005, Rule 7.05 E(2)(b).
176 ATP TACP 2005, Rule 7.05 C(2)(c).
177 ATP TACP 2005, Rule 7.05 C(2)(e).
178 Response of the ATP to Notification given under Paragraph 21 ToR.
179 Statement of Gayle Bradshaw (ATP).

concluded that he *"reasonably believed"*[180] that a corruption offense *"has been committed"*. The ATP considered that this was a high standard, and it was never regarded as having been met. The ATP looked for *"hard evidence"* and, other than the 8 cases referred to in section B below, the ATP never had sufficient evidence to go forward with any disciplinary proceedings for match-fixing or an attempt to match-fix[181].

81. Between 2005 and 2008, the ATP commenced a number of investigations that did not lead to disciplinary proceedings[182]. The ATP reported that this was because either[183]:

81.1 The ATP concluded that there was a plausible explanation for a player's poor performance, such as injury or illness, or that the surface was not his preferred surface.

81.2 The ATP concluded that there was no evidence, and in the light of the limitations in investigatory powers and capabilities no evidence could be obtained, of a player deliberately losing for betting or other corrupt purposes.

82. In addition to unusual or suspicious betting pattern cases, the ATP also initiated the following investigations between 2005 and 2008 into potential breaches of the ATP TACP, and it reported that it reached the following decisions in relation to them:

82.1 In May 2006 the ATP investigated four cases[184] where it was alleged that wildcards had been sold to players. The ATP dealt with the matters by way of formal warnings rather than disciplinary proceedings.

82.2 In July 2007, following Wimbledon, the ATP investigated the fact that a player was writing articles for a betting operator, in which the player was giving tips for specific matches. The ATP considered that this on the face of it constituted a breach of the ATP TACP prohibition on encouraging any person to wager on matches[185]. On investigation, it emerged that the player had in 2005 been given approval by the ATP to write for the betting operator, with the proceeds going to his charity. In the circumstances, the ATP in October 2007 made it clear that it did not now approve the relationship, and the player agreed to bring it to an end immediately.

(6) RULE CHANGES MADE BY THE ATP BETWEEN 2005 AND 2008

83. The ATP made the following changes to the ATP TACP between 2005 and 2008:

83.1 In the 2006 ATP Rulebook, the ATP added a provision prohibiting the sale of wild-cards[186].

83.2 In the 2008 ATP Rulebook, the ATP added a reporting obligation on both Players and Player Support Personnel. The obligation was to report both approaches to the individual[187], and awareness of breach by any other individual[188]. In addition, the ATP required them to report prior incidents.

84. In 2007 the ATP introduced a reporting *"hot line"*[189].

180 ATP TACP 2005, 7.05.E(2)(e).

181 Statement of Gayle Bradshaw (ATP).

182 In particular, in August 2007 the ATP's independent experts undertook an extensive investigation into the match between Vassallo Arguello and Davydenko in Sopot that month, although the approach for that investigation did not conform to the general approach of the ATP summarised above.

183 Statement of Gayle Bradshaw (ATP).

184 An ATP event was investigated for selling wildcards to two players in 2006. The ATP dealt with the matter by requiring the tournament to pay the amounts received for the wildcards to a charity, and formally warning the two players. Two ATP Challenger events were investigated for selling wildcards to players, also in 2006. A player was formally warned for attempting to buy a wildcard at an ATP Challenger event in 2005.

185 The ATP Official Rulebook, 2007, 'The Tennis Anti-Corruption Program' ("ATP TACP 2007"). Rule 7.05.C(1) provided that "...b) No Player nor any of his Player Support Personnel shall, directly or indirectly, solicit, induce, entice, persuade, encourage or facilitate any other person to Wager on the outcome or any other aspect of any Event".

186 ATP TACP 2006, Rule 7.05.C(2)(g).

187 The ATP Official Rulebook, 2008, 'The Tennis Anti-Corruption Program' ("ATP TACP 2008"). Rules 7.05.C(3)(a)(I) and 7.05 C(3)(b)(I).

188 ATP TACP 2008, Rules 7.05.C(3)(a)(II) and 7.05 C(3)(b)(II).

189 Statement of Gayle Bradshaw (ATP).

(7) EVALUATION OF THE GENERAL APPROACH OF THE ATP TO MATCH-FIXING AND OTHER BREACHES OF INTEGRITY BEFORE 2008

85. The Panel has considered against the facts above whether the general approach of the ATP to match-fixing and other breaches of integrity before 2008 was appropriate. The Panel considers the ATP's approach in 2007 to the discovery of betting accounts in the names of players and coaches in Section B below[190], and the ATP's approach following the Sopot investigation and Environmental Review in Chapter 8[191].

The approach of the ATP in 2003 to 2004

The ATP was at the forefront of the effort to address the problem

86. In 2003 and 2004, the ATP was at the forefront of tackling match-fixing and related breaches of integrity in tennis:

86.1 The ATP was the first tennis body to address the problem arising out of increased betting on the sport, and it was the first to enter into memoranda of understanding with betting operators to address it. Moreover, it is clear that the ATP meaningfully engaged with those operators in response to betting alerts that were raised with it, and sought to investigate with a view to disciplinary action being taken within the constraints imposed by the then rules.

86.2 Richard Ings was proactive in developing the ATP's approach to combatting match-fixing. He met with other sports to establish best practices. With the support of CEO Mark Miles, he set about developing revised ATP rules in order to address the difficulties that the ATP was experiencing under the then rules. He also subsequently produced a report addressing the issue.

86.3 The ATP was also the first tennis body to engage specialist investigative support, with Iain Malone employed to provide *ad hoc* assistance to Richard Ings.

While there were significant problems in taking disciplinary action under the rules at the time, some matters warranted further investigation

87. The ATP faced significant problems in taking disciplinary action during 2003 and 2004 under the rules then in force because, amongst other things, under those rules:

87.1 the wagering offence was confined to players and coaches and could therefore be easily circumvented; and

87.2 the ATP did not enjoy effective investigatory powers.

88. The Panel presently[192] takes the view that at least some of the matches identified by Richard Ings in his 2003 *"betting update"* memoranda, particularly those where the same players were repeatedly involved, warranted further investigation than they appear to have received. The memoranda suggested that possibly corrupt players were actively participating in professional tennis. The Panel has seen no contemporaneous documents showing the ATP's consideration of, or responses to, the 2003 memoranda. The reasons given for the ATP's reaction to the 2003 memoranda were that (1) officials at the ATP, specifically the ATP's CEO Mark Miles, believed that Richard Ings had a tendency to jump to conclusions, and (2) that what Richard Ings had identified was insufficient to warrant going forward under the then rules. It is unfortunate that the reaction to Richard Ings' enthusiasm was not to encourage further investigation. While some of the intelligence he identified might well have proven to be without substance, and it might well have been difficult

190 Section B, paragraphs 118-167 below.

191 Chapter 8, Section C.

192 Pending the consultation process between Interim and Final Reports.

to advance a successful disciplinary case in the circumstances of the rules and facts, it presently seems to the Panel that further investigatory steps might have resulted in useful evidence being established. In respect of the Panel's view, Mr Ings reiterated to the Panel that *"[t]he purpose of my memorandum to the ATP CEO in 2003 and 2004 was to alert senior ATP management of threats to the integrity of the sport. I stand by each memorandum. My actions were based on decades plus experience in applying the player code of conduct rules in professional tennis. Mr Miles is the one inexperienced in these types of matters."* Mr Ings further stated that *"[t]he Ings Report was drafted in 2005 to outline in forensic detail the threats to the integrity of men's tennis gambling and match fixing. The Ings Report was the detailed extension of memo's drafted in earlier years on the topic of integrity risk to men's professional tennis. History has shown that the preceding memorandum and the detailed Ings Report correctly foretold the risk to professional tennis of inaction in the area of gambling and match fixing"*[193].

Based on the facts available to the Panel, it is not clear why no further action was taken in respect of Player B and Player D

89. In relation to the ATP investigation conducted into Players B and D, it is not possible for the Panel to reach a factual conclusion on the evidence available to it as to the manner in which the investigation concluded, or as to how Player B came to retire.

90. The conclusion set out in the 2005 Ings Report was that there had been insufficient evidence to take disciplinary action under the then rules. Mr Ings told the Panel that *"[t]he 2005 Ings Report provides a detailed contemporaneous account of all aspects of the investigation into Player B, Player D, and the third party. I reached an informed conclusion following a thorough investigation that insufficient evidence existed to find either Player B or Player D breached the 2003 ATP Rules. In reaching that conclusion I considered the input of ATP Legal Counsel [Mark Young] and the ATP investigator"*. Mr Ings reiterated that "*I stand by the decisions I reached"*[194].

91. Based on the contemporaneous documents that the Panel has seen, when Player B did not provide a detailed response to the letter sent by the ATP[195], it would have been open to, and on the face of it appropriate for, the ATP to have at least taken further investigatory steps. The reasons for this include:

    91.1 The evidence was clear that Player B's betting account and credit card had been used to bet.

    91.2 Whilst the third party may have claimed responsibility, and the audio recordings indicated that he had made the initial telephone bet, it was open to the ATP to consider whether Player B had in any event authorised or known of the betting. The third party had nothing to lose by seeking to protect the player, given that the manager was in any event liable to having his accreditation access removed by virtue of the fact that he had himself bet.

    91.3 An explanation could have been demanded from the third party as to why he had gone to the lengths of setting up a betting account in Player B's name when he had an account of his own. An explanation could have also been sought as to the financial motivation of the third party given that the bet had been placed using funds from Player B's credit card. Any winnings would ordinarily have been credited to that same card and not to the third party.

    91.4 The third party, together with Player D, had bet on Player B to lose against Player A.

    91.5 The ATP Supervisor described Player B as having *"professionally tanked"* the match. It was open to the ATP to investigate this further to ascertain whether Player B had deliberately lost the match and as to whether those connected with him placed their bets based on that inside information.

    91.6 The ATP had intelligence that Player B might have been involved in another incident of possible betting related corruption. That matter could have been investigated further.

193 Response of Richard Ings to Notification given under paragraph 21 ToR.

194 Response of Richard Ings to Notification given under paragraph 21 ToR.

195 As described in paragraph 21 above.

91.7 Player B would have had the right to appeal any finding against him. On an appeal the ATP would have had the opportunity to cross-examine[196] any oral evidence given by Player B and the third party.

92. Richard Ings advised the Panel[197] that each of the questions set out by the Panel above formed part of the investigation. Player B, Player D and the third party were asked the questions above and other relevant questions.

93. Mr Ings told the Panel that[198]:

93.1 *"The third party opened an account in the [Player D's name] backed by the credit card of Player D. The third party used deception to open an account in* [Player D's name]*. This included forging the signature of Player D to fraudulently use Player D's credit card to back the account"*.

93.2 *"The third party also opened the account in the name of Player B and fraudulently placed bets on that account"*.

93.3 *The third party placed bets on both* [Player B's and Player D's] *accounts using an IP address established as the offices of the third party. It was the third party who placed the telephone bets as established by identifying the actual audio of the bets being placed"*.

93.4 Mr Ings "*could not establish that Player B or Player D placed bets on ATP tennis matches. All bets were placed by the third party, and Mr Ings could not establish that Player B or Player D directed the third party to place bets on their behalf"*.

93.5 As a result, Mr Ings *"reached an informed conclusion that insufficient evidence existed to make a finding of a Major Offense under the 2003 ATP rules"*.

93.6 Mr Ings told the Panel that *"*[t]*he key learning from these matters was that the 2003/2004 ATP rules did not allow the sourcing of financial and telephone records from players. This information is today considered vital to sports integrity investigations. It was not available in 2003 and 2004"*.

94. So far as Player D is concerned, the reference to the ATP having "*hard evidence*" against Player D had been removed from Mr Ings' amended *"betting update"* memorandum following his written assessment of the pros and cons of pursing a case against Player D, supporting the explanation given by Richard Ings in 2005 as to why no disciplinary action was taken against Player D.

95. The Panel's view is that the ATP would be unlikely, even with further investigation, to have reached the conclusion that it had enough evidence to take disciplinary action against Player D. In particular:

95.1 The betting account in the name of Player D had been opened using a forged signature. The link to Player D was limited to the fact that his credit card had been used.

95.2 There had been no betting on a relevant match concerning Player D or any suggestion of Player D tanking.

95.3 There was no intelligence of Player D having been involved in other betting related corruption.

196 The ATP Official Rulebook, 2003, Player Code of Conduct, "Player Major Offenses/Procedures", page 84.

197 Response of Richard Ings to Notification given under paragraph 21 ToR.

198 Response of Richard Ings to Notification given under paragraph 21 ToR.

96. The Panel's present assessment is that it would, however, also have been open to the ATP to test the account given by the third party in relation to Player D. In this regard, the ATP's own internal document identified grounds for challenging the explanation given by Player D and the third party. For example, the internal document stated that Player D was still unable to explain why the third party (whom he thought had money) needed to go through the elaborate process of using his details to set up an account with Betfair.

97. Richard Ings told the Panel[199] that *"[t]he third party was not covered by the 2003 ATP Rules. The ATP had no jurisdiction over the third party and certainly no ability to compel the third party to participate in the investigation*." Richard Ings stated that "*once again this highlighted the shortcomings of the 2003 and 2004 ATP Rules. The ATP took the only action available to it under the 2003 ATP rules which was to 'warn off' the third party from access to ATP tournaments"*. Mr Ings stated that "*this incident prompted a total rewrite of the ATP Rules in 2005 to include the sports first detailed Anti-Corruption Program"*[200].

98. As described in paragraph 37 above, Richard Ings told the Panel[201] that at no stage during his five years at the ATP did he observe or suspect that any player subject to a Major Offense investigation was persuaded to end his or her career to cease a major offense investigation that he was conducting and that the retirement of Player B had no impact on the final decision he reached in regard to this matter.

99. In the light of the facts, first, that Player B retired from professional tennis at a time when he had been informed that he was being investigated for betting-related breaches of integrity, and second, that Jeff Rees suggested in 2008 that *"some suspect players had been persuaded to end their playing career"*, the Panel is concerned that it is unable to use information provided to it, in respect of which confidentiality has been asserted, to address the circumstances of Player B's retirement.

The adoption of the ATP TACP

100. The ATP is to be given credit for the adoption of the ATP TACP, which it did ahead of the other tennis bodies and ahead of most of other sports. In doing so, the ATP went a long way towards putting in place a viable system based on what was known at the time, which constituted a significant improvement over the prior rules. With the benefit of hindsight, the Panel sees improvements that could have been made to those rules, some of which were indeed addressed by the ATP or in the uniform TACP subsequently adopted. However, at the time, the ATP TACP was close to what Richard Ings described as best practice.

The ATP's reaction to the 2005 Ings Report

101. Richard Ings, the person at the ATP responsible for integrity, produced the 2005 Ings Report explaining in some detail the position as he perceived it, and some possible recommendations. This reflected a level of awareness that was not present outside the ATP. The Independent Review Panel, however, considers that greater attention should have been given by the ATP to the 2005 Ings Report.

102. The available evidence presently suggests a number of reasons why the ATP ended up affording too little attention to the 2005 Ings Report. First, the 2005 Ings Report was provided by Richard Ings effectively on his departure, and so he was not present at the ATP to push forward the agenda contained in it. Second, it was provided to Mark Miles, who was in the process of leaving the ATP and had already started to take a lesser role. Third, when Etienne de Villiers replaced Mark Miles, the 2005 Ings Report had not been addressed to him, and he started with a focus on tackling doping issues then arising in the sport. Fourth, Richard Ings' departure resulted in Gayle Bradshaw having to take on a role with which he was not especially familiar, and when he too was focused on doping issues.

199 Response of Richard Ings to Notification given under paragraph 21 ToR.

200 Response of Richard Ings to Notification given under paragraph 21 ToR.

201 Response of Richard Ings to Notification given under paragraph 21 ToR.

103. The available evidence presently suggests that a further reason why the ATP reacted in the way it did to the 2005 Ings Report may have been that there was a degree of scepticism about the circumstances of and motivation behind Richard Ings' production of the Report. First, as set out above, there was a view that while Richard Ings carried out his role with good intentions and integrity, he had a propensity on occasion to jump to conclusions[202], and it may be that it was thought that the 2005 Ings Report was more of the same. Second, Richard Ings had produced the 2005 Ings Report on his own initiative, rather than having been instructed to do it. The Panel does not understand the 2005 Ings Report to have been commissioned by the CEO of the ATP (despite it being addressed to the CEO), and its production had not been consulted upon. Third, these two factors were compounded by the fact that Richard Ings delivered his 2005 Ings Report very shortly before he left. There may have been a feeling that the 2005 Ings Report had been delivered, out of the blue, just as its author departed, leaving work for everyone else.

104. However, in the Panel's view, these reasons do not reasonably justify the ATP's failure to respond to the 2005 Ings Report. While the changes in staff at the ATP and the importance of tackling doping in the sport are relevant in understanding the workload that the ATP faced, the matters set out by Richard Ings were of real importance and warranted meaningful consideration. The warning signs as to the scale of the task faced by tennis were clearly set out. Betting was taking place increasingly at lower levels of the sport and betting alerts were said to be almost a weekly occurrence. It presently seems to the Panel that those at the ATP with responsibility for the protection of the integrity of the sport ought to have set aside their adverse reaction to the circumstances or motivation behind the production of the 2005 Ings Report, and addressed its contents.

105. So far as the recommendations were concerned, it may be that some of them might at the time have been difficult to achieve, but the extent to which those suggestions presaged the conclusions in the Environmental Review and of this Panel is striking. They ought at the least to have been specifically considered. As Gayle Bradshaw reports[203], however, the ATP did implement at least in part most of the changes that were dealt with in Richard Ings' recommendations.

106. However, the available evidence is that the ATP did not make these changes in response to the 2005 Ings Report, but rather as a result of the ATP's ongoing assessment of the issues that the sport faced and as *"the ATP developed its rules and procedures"*[204]. As a consequence, a number of changes came later than they should have. As explained above, the Panel credits the ATP for taking certain steps to address integrity issues before 2008, including revising its rules and entering into memoranda of understanding with betting operators to facilitate receipt of betting alerts. Nonetheless, it is the Panel's view that the ATP missed an early opportunity to improve its approach to combatting breaches of integrity.

The general approach of the ATP in 2005 to 2008

107. In respect of the ATP's general approach to cases in the period 2005 to 2008 (referred to above, and excluding the specific matters addressed in Section B and in Chapter 8), the present[205] view of the Panel is as follows.

108. Even under the new ATP TACP, the ATP continued to face considerable constraints in terms of its investigatory powers and capabilities, particularly in respect of the standards to be met for any demand for information or for the commencement of disciplinary proceedings.

109. The Panel has not seen any evidence demonstrating that of the approximately 126 matches that were the subject of a suspicious or unusual betting pattern reported to the ATP in the period 2005-2008, any could have been proved to have involved a player contriving the result of a match or part of it for corrupt reasons, or a player passing inside information for reward.

202 Paragraph 24 above and Statement of Mark Miles (formerly ATP).

203 Paragraph 65 above.

204 Statement of Gayle Bradshaw (ATP).

205 Pending the consultation process between Interim and Final Reports.

110. The Panel however takes the present view that the ATP's approach was inappropriate in the following respects:

110.1 First, the ATP adopted, in the view of the Panel, an unnecessarily restrictive interpretation of the new ATP TACP's prohibition on contriving the result of a match or part of it[206]. The ATP interpreted this prohibition as covering only contriving a match for betting or other corrupt purposes. The words did not in the view of the Panel require that the ATP set such a high burden of proof. The 2005 Ings Report had made clear the significance of deliberate under-performance for other reasons, and the interpretation placed on the rule, coupled with inadequate application of the best efforts rule, precluded effective action to combat that behaviour.

110.2 Second, the ATP had insufficient resources and capabilities to deal properly with the task before it. The resourcing pressures were recognised by the ATP, but the apparent solution appears to have been confined to bolting-on additional support on a case by case basis. In particular, Iain Malone continued to provide investigatory support and when the Sopot match occurred in 2008 an external team of experts were appointed to investigate that match. Whilst this approach is understandable, it would have been prudent for the ATP to have put greater resources in place at an earlier stage (as it was indeed considering doing as set out at paragraph 65.1 above).

110.3 Third, at least some of the matches warranted further investigation than they appear to have received.

111. The ATP ought at least to have investigated further matches where specific players were repeatedly involved. The list of alerts collated by the Panel indicates that there were a significant number of players involved in such matches. For example; one player was involved in seven matches, two players were involved in six matches each, one player was involved in five matches, four players were involved in four matches each, eight players were involved in three matches each and 16 players were involved in two matches each. In total, there were 97 matches involving one of a group of 32 players who had been involved in other matches that were the subject of unusual or suspicious betting patterns in the period 2005 to 2008.

112. The Panel can see that on many occasions the ATP may have had insufficient evidence to show that a breach of integrity was the cause for the unusual or suspicious betting pattern, and the Panel can also see that it is possible that players might be the subject of repeat alerts without themselves committing a breach of integrity. However, it seems to the Panel that one would have expected to have seen instances where a more intensive investigation was made of players whose matches generated repeated unusual or suspicious betting patterns.

113. In the view of the Panel the ATP ought also in particular to have done more to investigate matches where the betting involved linked accounts. Whilst some of the betting patterns may have had a readily identifiable innocent explanation, there were others that prima facie indicated that, at the least, the bettors had prior knowledge of the outcome upon which they were betting.

114. It is suggested in the BuzzFeed News/BBC 17 January 2016 story entitled *"The Tennis Racket"*[207] that over *"the past decade"* (in other words 2006 to 2016), the International Governing Bodies had been *"repeatedly warned about a core group of 16 players – all of whom have ranked in the top 50*[208] *– but none have faced any sanctions"*. That group of 16 was said to include *"winners of singles and doubles titles at Grand Slam tournaments"*. So far as the ATP is concerned, during the period 2005 to 2008, the composite list of alerts collated by the Panel[209] (which includes matches not reported to the ATP at the time) indicates:

206 The ATP TACP prohibition, Rule VII(C)(2)(a), was in the following terms: "No Player nor any of his Player Support Personnel shall, directly or indirectly, contrive or attempt to contrive, or be a party to any effort to contrive or attempt to contrive, the outcome or any other aspect of any Event".

207 Chapter 11, Section A.

208 The Panel has interpreted the phrase "have ranked in the top 50" as referring to players that have been ranked in the top 50 of the ATP Rankings (Singles) at any point in their career, rather than having ranked in the top 50 of the ATP Rankings (Singles) at the time at which the match/matches in which they were involved was/were flagged as being the subject of an unusual or suspicious betting pattern.

209 The Panel's composite list of alerts is not published because it cannot be suitably redacted.

114.1 There were three winners of singles or doubles titles at Grand Slams who were the losers[210] in ATP matches on the Panel's composite list of alerts during 2005 to 2008.

114.2 There were 33 players who were ranked in the top 50 who were losers in ATP matches on the Panel's composite list of alerts during 2005 to 2008.

114.3 Of those 33 players, there were 20 players who were losers in more than one ATP match on the Panel's composite list of alerts during 2005 to 2008. Of those 20 players, one was listed seven times, one was listed six times, two were listed four times, six were listed three times and ten were listed twice.

114.4 No player was sanctioned by the ATP during this period.

115. This must be seen in the light of the fact that, as explained in Chapter 3[211], an alert in respect of a player does not necessarily mean that there was a provable breach of integrity by the player. The same is true of repeated alerts.

116. In summary, and as noted above, the ATP deserves credit for taking significant steps to address integrity issues before 2008, including revising its rules and entering into memoranda of understanding with betting operators to facilitate receipt of betting alerts. The Panel also bears in mind the views of present and former ATP representatives and in particular Etienne de Villiers' evidence[212] that *"he believes that ATP was truly committed to protecting the players, the tournaments, the fans and the sport by eradicating corruption and doping, both of which could destroy the game. At no time was there complacency or compromise. With these two matters there was a firmly established value of 'zero tolerance'"*.

117. In the Panel's view, however, the ATP did not, at times, respond effectively and appropriately to the alerts it received about suspected betting and corrupt activities, in particular in relation to repeated alerts in respect of individual players. While the Panel has seen no evidence demonstrating that the ATP sought to cover up integrity issues in tennis, some of the examples detailed above suggest to the Panel that at times before 2008 the ATP lacked, sufficient resource and aptitude, to address the integrity issues facing tennis. The ATP informed the Panel that *"it lacked the aptitude to address the issues facing tennis and stated that this was why the ATP sought assistance from investigators for the British Horseracing Authority (one of the few other governing bodies of sport with experience addressing similar issues)"*[213].

210 The alerts during the period 2005 to 2008 are limited in their detail. The Panel has therefore chosen to focus its analysis on the losing player in each relevant match. This proceeds on the assumption that the unusual or suspicious betting pattern has arisen in the context of the losing player having 'thrown' the relevant match. It is important to note that this methodology therefore does not identify the winning players in those matches who may have been the subject of unusual or suspicious betting patterns – for example those winning players engaging in 'set and break' or spot fixes. This assumption also rules out the identification of the winning player in instances where both players may have been involved in a fix (for example in a scenario where the players have agreed that they will each win one of the first two (of three) sets each and then play out the third set competitively).

211 Chapter 3, Section F.

212 Response of Etienne De Villers' to Notification given under paragraph 21 ToR.

213 Response of the ATP to Notification given under paragraph 21 ToR.

B THE ATP'S RESPONSE IN 2007 TO THE DISCOVERY OF BETTING ACCOUNTS IN THE NAMES OF THE PLAYERS AND COACHES

118. The Panel has specifically examined the ATP's response in 2007 to its discovery that betting accounts were held in the names of a number of tennis players and coaches, the handling of which was criticised in the media in early 2016[214] and with which the Panel has been asked specifically to deal.

(1) THE PROVISION TO THE ATP OF NAMES OF BETTING ACCOUNTS

119. After the signing of the memorandum of understanding between ATP and ESSA, in 2007, Gayle Bradshaw provided ESSA with the entire list of ranked men's professional tennis players and asked ESSA to compare ATP's entire ranked player list against ESSA's available information. The ATP told the Panel that *"due to the complicated and time-consuming nature of this request, ESSA never provided a response to ATP's entire ranked player list, and thereafter, ATP began to provide specific requests to ESSA based on specific intelligence obtained by ATP about certain players"*[215]. This specific intelligence[216] led Gayle Bradshaw to initiating investigations into players, who were ultimately disciplinarily charged under the ATP TACP[217], for gambling on tennis.

120. As part of those investigations Gayle Bradshaw asked ESSA to check with its members whether there were betting accounts in the names of those players, and whether any such account had been used to bet on tennis.

121. The first of these requests, made in April 2007, concerned Alessio Di Mauro. As described above, the ATP's request regarding Alessio Di Mauro was based on intelligence the ATP had received concerning the player's involvement with betting. A response was received from ESSA confirming that he had a betting account and had placed bets on tennis. He was subsequently the subject of successful disciplinary proceedings[218].

122. Following this, the ATP received intelligence that another Italian player, Federico Luzzi[219], was involved in betting. Based on the intelligence regarding Federico Luzzi, Gayle Bradshaw made enquiries of ESSA. ESSA's response to ATP regarding Federico Luzzi also contained the names of additional men's professional tennis players: Potito Starace, Daniele Bracciali and Giorgio Galimberti, all of whom were subsequently the subject of successful disciplinary proceedings[220].

123. Following this, as a result of a leak to a newspaper of one of his specific requests for information from betting operators, Gayle Bradshaw decided to make a more general request in respect of a large number of names of players and coaches, within which names of particular interest would not be evident, should there be another leak. Subsequently spreadsheets containing 213 player names and 190 coach names for examination were produced[221]. The list of 213 player names included the names of highly ranked players (including players who at the relevant time were ranked in

214 Chapter 11, Section A. Heidi Blake & John Templon, 'Tennis covered up for 95 gamblers, says family of suspended player' (BuzzFeed News, 15 March 2016) available at: https://www.buzzfeed.com/heidiblake/tennis-accused-of-covering-up-for-95-gamblers [accessed 9 April 2018]; 'Tennis match-fixing: 'More players should be investigated'' (BBC Sport, 15 March 2016), available at: http://www.bbc.co.uk/sport/tennis/35808571 [accessed 9 April 2018]. The principal criticism made in this context was that the ATP had only pursued disciplinary cases against low ranked Italian players, when it ought also to have pursued such cases against 95 other players, some of whom were high ranked players, but it made a discriminatory decision not to do so, in order to protect its revenue and reputation, and then covered up its actions.

215 Response of the ATP to Notification given under paragraph 21 ToR.

216 As described further in paragraph 153 below.

217 Paragraph 146 below.

218 As to which, see paragraph 146 below. Because successful disciplinary proceedings were brought, and his name is in the public domain, his name is publishable now. Section B(3) below.

219 Federico Luzzi died shortly after the disciplinary proceedings.

220 As to which, paragraph 146 below. Because successful disciplinary proceedings were brought, and these names are in the public domain, these players' names are publishable now.

221 The Panel does not regard it as appropriate to publish those names. The lists contained names the vast majority of which the ATP had no suspicions about. They were in any event purely interrogatory, and the vast majority of those names did not match any accounts. Furthermore the lists are contained in documents which were lodged with the United States District Court (Middle District of Florida) in the federal court proceedings Luzzi et al v ATP, Case 3:09-cv-1155-J-32MCR (as to which see paragraph 147 below) and the federal court placed them under seal so as to preserve confidentiality.

the top 20). Those names were not included on the list because there were any suspicions in relation to them, but rather as part of Gayle Bradshaw's approach of identifying a sufficiently large number of players to avoid specific suspected players being identified.

124. The request was directed to ESSA, which in turn circulated the request to its members. In response individual betting operators informed the ATP of accounts they had located that bore the names of players or coaches inquired about. A total of 44 names of players (of the 213 listed by the ATP) and 19 names of coaches (of the 190 listed) were identified. As a result of these further requests and subsequent investigations, the ATP prosecuted three additional players: Mathieu Montcourt, Frantisek Cermak and Michael Mertinak.

(2) THE ATP'S APPROACH TO THE INVESTIGATION

Approach taken in respect of players

125. Gayle Bradshaw gave evidence to the Panel that the ATP applied two threshold criteria in its examination of the information it had received in respect of players[222]:

125.1 First, the ATP asked the betting operator whether the account had actually been used to bet on professional tennis, as that was what was prohibited by the ATP TACP at the time[223], as opposed to on other sports.

125.2 Second, the ATP took steps to ascertain whether the account was actually held by a tennis player, as opposed to simply bearing the same or a similar name to that of a tennis player or having been opened by a member of the public using the name of a player.

126. The two criteria were perceived as appropriate in terms of what would have to be established in such proceedings: if an account had not been used to bet on tennis, then there was no basis for a charge under the rules. If an account had bet on tennis, a charge could only be brought if the account actually belonged to a player or coach.

First threshold criterion: ascertaining whether account was used to bet on tennis

127. In each instance the ATP asked the betting operator that had identified an account as bearing the name of a player or coach whether the account had been used to place bets on tennis, and if it had, to provide full account details with an itemised list of betting activity.

128. In response, one of the betting operators, which had identified 14 accounts bearing the names of players, confirmed that none of the accounts that it identified had been used to place bets on tennis. Others responded that some of the accounts had, and some had not, been used to bet on tennis.

129. Where the ATP was informed that the account had not been used to place bets on tennis no further action was taken by the ATP.

130. Where the ATP was informed that the account had been used to place bets on tennis, the ATP went on to the second threshold criterion.

Second threshold criterion: ascertaining whether account belonged to player

131. For those accounts that had been used to place bets on tennis, the ATP sought clarification in respect of comments that had been made by the betting operators in respect of the accounts. For example, where an operator had commented

222 Statement of Gayle Bradshaw (ATP).

223 Paragraph 51.2 above. ATP TACP 2005, Rule 7.05.C.(1)(b) provided that "No Player nor any of his Player Support Personnel shall, directly or indirectly, solicit, induce, entice, persuade, encourage or facilitate any other person to Wager on the outcome or any other aspect of any Event". Rule 7.05.B.(2) provided that "For purposes of this Program the term "Events" means all tennis matches and other tennis competitions, whether men's or women's, amateur or professional, including, without limitation, all ATP tournaments, Challenger Series tournaments, and Futures tournaments".

that an account had been closed due to fraud, Gayle Bradshaw asked for an explanation as to what the operator meant by this comment, because it did not make clear whether the fraud was in the use of the name, or something else.

132. The ATP asked the betting operators questions aimed at establishing whether the account in fact belonged to a player. Gayle Bradshaw wrote to ESSA in November 2007 in respect of 13 particular accounts apparently in the names of players, that appeared to have been used to bet on tennis.

133. The information requested by the ATP included the address, phone number, date of birth and banking details that were registered with the betting operator. ESSA provided the addresses and the dates of birth of the user registered to each account. ESSA did not provide the banking details, stating that financial data could only be provided to the police. ESSA did confirm whether such bank details existed in respect of each account. Whilst a number of the accounts had received funds deposited from a bank account or credit card, others had no such details. For example, some accounts had been established with a free bet promotion, with no further funds having been deposited.

134. The information provided to the betting operators by those opening accounts could then be cross-checked against the information about players already held by the ATP. The result of this process was that:

134.1 In six cases the dates of birth and address details provided by ESSA matched those held on record by the ATP.

134.2 In one case the date of birth and address details held by the ATP were different from those provided by ESSA.

134.3 In four cases the address details were different, although the dates of birth matched.

134.4 In two cases the ATP was not able to carry out a cross-check due to the fact that ESSA did not hold date of birth or address details.

135. In January 2008 Gayle Bradshaw followed up with ESSA in respect of eleven of the 13 accounts that had been identified in his November request. No further steps were taken in relation to the two other accounts due to the fact that:

135.1 ESSA had confirmed that one of the accounts had been closed due to fraud. The explanation given by ESSA was that the account was linked to multiple accounts, suggesting that the same person had opened several accounts using different names, including a player's name. ESSA further confirmed that they had not received identification documents for this account.

135.2 ESSA also confirmed that the other account had no in fact been used to bet on tennis. It therefore ought to have fallen away under the first criterion.

136. The eleven accounts were broken down into eight groups, with comments made by Gayle Bradshaw in respect of each group. ESSA responded to Gayle Bradshaw's request the next day. The table below sets out the comments raised by Gayle Bradshaw and the response from ESSA.

Gayle Bradshaw comments	Response from ESSA
Account 1, Account 2, Account 3 It seems like there is no way to verify that these players are the actual account holders. Can we confirm that or is there is a way that they can confirm, that would be helpful.	These users are very likely not the tennis players in question.
Account 4 Address does not match our address for him. Info said he pays via Visa, can I have that information and maybe I can verify through that. Any other info they have that could help identify account holder.	This is definitely the tennis player. Same face in his ATP profile and ID card.
Account 5 Address matches ours. Can I get Visa info. / anything else?	email address: [redacted]
Account 6 Address does not match. Need Visa info. / anything else	email address: [redacted]
Account 7 Address matches Can I get Visa info and banking details.	email address: [redacted]
Account 8 Address does not match Need Visa info. / anything else	email address: [redacted]
Account 9 and Account 10 Address is same for both and is very suspect. Both say they pay through Firstgate, can I get as much info on this as possible. I have serious concerns that these accounts are not the players'.	email address: [redacted], email address: [redacted] Player 9, Player 10, and Player 11 all paid in with the same Firstgate account. Same as [redacted] and [redacted]. I am certain that none of these accounts belong to the players.
Account 11 Any info on how pay-in / pay-out was done? Any information that could help verify identity of account holder.	email address: [redacted] See my comment above please.

137. It appears that Accounts 1, 2 and 3 had been grouped together because ESSA had previously stated in respect of these accounts that there were no banking details, the user had opened the account using only a free bet code for €3.63, and there were no ID documents to verify the user's identity. It also appears however that the address details provided by ESSA in respect of Accounts 1 and 3 matched those held by the ATP. It is unclear whether ESSA knew that when it reached its conclusion that the accounts were very likely not held by the players in question.

138. Based on the information provided by ESSA, Gayle Bradshaw took the following steps:

138.1 He concluded the investigation in respect of Accounts 1, 2, 3, 9, 10 and 11 following ESSA's assessment that these accounts likely did not belong to the players whose names the accounts bore.

138.2 He commenced preparation of disciplinary proceedings against the player associated with Account 4 following ESSA's confirmation that the account definitely belonged to the player. The identity of this player was Michael Mertinak[224].

138.3 He made further inquiries in respect of Accounts 5, 6, 7 and 8.

139. Gayle Bradshaw sought to verify the email addresses held by the ATP against the email addresses provided by ESSA:

139.1 The email addresses for Accounts 5, 7 and 8 matched.

139.2 Preparation of disciplinary proceedings was commenced against the players associated with Accounts 5 and 8. The identities of these players were Mathieu Montcourt[225] and Frantisek Cermak[226].

139.3 Disciplinary proceedings were not pursued against the player associated with Account 7 as that player was no longer playing tennis.

139.4 The email address for Account 6 did not match. Gayle Bradshaw made a further request for information from ESSA in respect of this account but the only information it was able to provide was the date on which the account had been opened. Gayle Bradshaw then sent an email to the email address for Account 6 to see if he would receive a response. No response was received.

140. Gayle Bradshaw therefore commenced proceedings against each player in respect of whom he concluded he had a reasonable belief that a corruption offence had been committed[227]. Where he was not so satisfied, no further steps were taken. He did not contact players whose names were on accounts that had not been ascertained to be theirs, to ask them whether the accounts were in fact theirs. Nor did the ATP embark on any further investigations of whether the accounts were in fact theirs.

Approach taken in respect of highly ranked players

141. As stated in paragraph 123 above, the ATP had included the names of some highly ranked players in the list of 213 player names provided to betting operators, not because there were any suspicions in relation to them, but rather as part of the approach of identifying a sufficiently large number of players to avoid specific suspected players being identified. When in response to the receipt of the list, betting operators identified a number of accounts that were in the names of players on the list, some of the names were those of highly ranked players.

224 Successful disciplinary proceedings were brought against the player, and his name is in the public domain. His name is therefore publishable now.

225 Mathieu Montcourt died shortly after the CAS arbitration proceedings on appeal from the disciplinary proceedings.

226 Successful disciplinary proceedings were brought against these players, and their names are in the public domain. The names are therefore publishable now.

227 ATP TACP 2008, Rule 7.05.E.(2)(c) provided that "If the EVP-Rules & Competition reasonably believes that a Player or any of his Support Personnel may have committed a Corruption Offense, the EVP-Rules and Competition may make a written demand to such Player or Support Personnel (a "Demand") to furnish to the EVP-Rules and Competition any information that is reasonably related to the Corruption Offense and that is permitted to be obtained under applicable law…".

142. The ATP applied the same two threshold criteria described above to these accounts in the name of highly ranked players as it applied to all other accounts:

142.1 In relation to the first threshold criterion, the betting operators confirmed that a number of the accounts that were in the names of highly ranked players had not been used to bet on tennis. Consistent with the ATP's overall approach, no further action was taken in relation to these accounts.

142.2 Applying the second threshold criterion to the remaining accounts that were in the names of highly ranked players the ATP concluded, based on the information provided by the betting operators, that it was unlikely that they did in fact belong to players.

Approach taken in respect of coaches

143. So far as coach names were concerned, there were eight names that were reported by the betting operators as being names on betting accounts.

144. Of those, one account did not satisfy the criterion of having been used to bet on tennis as it was reported that it had not been used at all.

145. As to each of the remaining seven accounts, ESSA's response did not identify one way or another whether the accounts had been used for betting on tennis. The steps then taken in respect of the coaches were more limited than those taken in respect of the players. Questions were raised with ESSA but the issue was not pursued further.

(3) DISCIPLINARY PROCEEDINGS BROUGHT AGAINST EIGHT PLAYERS

146. The eight disciplinary proceedings brought by the ATP were all successful before the AHO[228]. Appeals were lodged with the Court of Arbitration for Sport in three instances, and two of those proceeded. The ATP broadly won both appeals, although there were some alterations to sanctions:

146.1 Alessio Di Mauro was sanctioned with a nine-month suspension and a fine of US$60,000 for placing 134 bets on tennis (a further 192 bets on a different account were not the subject of detailed evidence at the original hearing), all after the introduction of the ATP TACP[229]. He appealed to CAS, which reduced his sanction to seven months and a US$25,000 fine[230]. The CAS Decision records that the AHO had criticised the steps taken by the ATP to bring the rule against betting on tennis to the attention of players, and that the ATP took issue with that criticism citing the numerous publications (Player News, PlayerZone, Players' Weekly and the ATP's website) in which information regarding the rules had been published. CAS confined itself to commenting that the ATP might consider publishing the rules in other languages in addition to English. CAS also noted the *"slight inconsistency"* in prohibiting players from betting at tennis, while tolerating sponsorship of and advertising at events by online betting companies, but stressed that it was no excuse not to know and abide by the rules. CAS was concerned that the sanctions in the cases described below had not been set out in the ATP's pleadings, and that they were significantly lower than those in Di Mauro's case. CAS was also concerned that the length of the sanction would have a disproportionate effect on the player's ability to build back up his ranking.

228 Derrick Whyte, 'Doubles specialists banned for betting on matches' (The Independent, 21 July 2008', available at: http://www.independent.co.uk/sport/tennis/doubles-specialists-banned-for-betting-on-matches-873787.html [accessed 9 April 2018]; 'ATP's betting warning' (Sky Sports, 27 December 2007), available at: http://www.skysports.com/tennis/news/12110/3007767/atps-betting-warning [accessed 9 April 2018]; 'Italian player banned for betting' (BBC Sport, 10 November 2007), http://news.bbc.co.uk/sport1/hi/tennis/7088488.stm [accessed 9 April 2018]; Charlie Caroe, 'ATP bans Starace and Bracciali over betting' (The Telegraph, 22 December 2007), available at: http://www.telegraph.co.uk/sport/tennis/atptour/2329216/ATP-bans-Starace-and-Bracciali-over-betting.html [accessed 9 April 2018] [accessed 9 April 2018].

229 Clive White, 'Alessio di Mauro banned by ATP' (The Telegraph, 11 November 2007), available at: http://www.telegraph.co.uk/sport/tennis/atptour/2325479/Alessio-di-Mauro-banned-by-ATP.html [accessed 9 April 2018].

230 CAS 2007/A/1427 (M v ATP Tour Inc).

146.2 Daniele Bracciali was sanctioned with a three-month suspension, and a fine of US$20,000 for placing 63 bets on tennis, mostly before the introduction of the ATP TACP. He did not appeal.

146.3 Frantisak Cermak was sanctioned with a 10-week suspension and a fine of US$15,000 for placing 51 bets on tennis, all after the introduction of the ATP TACP. He did not appeal.

146.4 Giorgio Galimberti was sanctioned with a 100-day suspension and a fine of US$35,000 for placing 395 bets on tennis, before and after the introduction of the ATP TACP. He did not appeal.

146.5 Federico Luzzi was sanctioned with a 200-day suspension and a fine of US$50,000 for placing 260 bets on tennis, some before but mostly after the introduction of the ATP TACP. An appeal to CAS was commenced, but did not proceed[231].

146.6 Michal Mertinak was sanctioned with a two-week suspension and a fine of US$3,000 for placing two bets on tennis, after the introduction of the ATP TACP[232]. He did not appeal.

146.7 Mathieu Montcourt[233] was sanctioned with an eight-week suspension and a fine of US$12,000 for placing 48 bets on tennis, all after the introduction of the ATP TACP. He appealed to CAS, which reduced his sanction to five weeks, leaving the fine of US$12,000 unaltered[234].

146.8 Potito Starace was sanctioned with a six-week suspension and a fine of US$30,000 for placing five bets on tennis after the introduction of the ATP TACP. He did not appeal.

(4) THE UNSUCCESSFUL ACTION BROUGHT AGAINST THE ATP IN THE UNITED STATES DISTRICT COURT

147. In July 2009, an action[235] was commenced in the federal courts of the United States against the ATP by the estate of Federico Luzzi, Daniele Bracciali, Alessio DiMauro, Giorgio Galimberti and Potito Starace.

148. In the action, the plaintiffs challenged the disciplinary proceedings and sanctions against them, alleging that they were not bound by the prohibition on wagering in the ATP Rules, that the arbitration proceedings by which they had been sanctioned were not binding, and that the ATP's choice to bring disciplinary proceedings against the players, and not others, had been selective and therefore a breach of the ATP's fiduciary duty.

149. The action was dismissed without any determination of the selective enforcement allegations. On 1 March 2011, the federal court ordered summary judgment[236] in favour of the ATP, on the basis that because the disciplinary arbitration process met all the requirements of the governing Delaware law, the players were obliged to assert any claim of the sort now made in the action, during or at the time of the arbitration proceedings. On 2 March, pursuant to that order, judgment was entered in favour of the ATP.

150. During the course of the federal court proceedings, the parties entered into a confidentiality agreement and stipulated order under which documents could be designated as confidential. The federal court adopted the terms of the agreement, and permitted the parties to file documents under seal. Those documents included the documents relied upon by the

231 When the player sadly died.

232 Reuters Staff, 'Two more players sanctioned for gambling' (Reuters, 21 July 2008), available at: https://www.reuters.com/article/idINIndia-34611820080721 [accessed 9 April 2018].

233 Mathieu Montcourt sadly died shortly after the CAS arbitration proceedings.

234 CAS 2008/A/1630 (Mathieu Montcourt v ATP).

235 Federico Luzzi (by and through Francesca Luzzi, in her capacity as the Personal Representative of the Estate of Federico Luzzi) Giorgio Galimberti, Alessio DiMauro, Potito Starace and Daniele Bracciali v ATP Tour Inc., United States District Court (Middle District of Florida, Jacksonville Division), Case 3:09-cv-1155-J-32MCR.

236 Order on Summary Judgment, Luzzi v. ATP Tour, Inc., No. 3:09-cv-1155-J-32MCR, ECF No. 137 (M.D. Fla Mar. 1, 2011).

players in support of their case that they had been the victims of selective enforcement of the ATP's anti-wagering rules. The documents related to whether other players might have been involved in wagering. Subsequently, ESPN, supported by the players, asked the federal court to unseal the documents. On 12 July 2011 the federal court denied the motion[237], not least because the sealed documents had not formed the basis for its grant of summary judgment, and the privacy interests of players named in the documents outweighed any other interest in unsealing the documents.

(5) EVALUTATION OF THE ATP'S RESPONSE TO THE INFORMATION ON BETTING ACCOUNTS

151. The Panel has considered against the facts above whether the ATP's response to the information on betting accounts was appropriate.

The way in which the information was initially gathered

152. In the present[238] view of the Panel, in relation to the initial gathering of the information:

152.1 The ATP took proactive steps, utilising the terms of the memoranda of understanding with betting operators, to ascertain whether specific players had betting accounts. These steps were based on intelligence and were appropriate.

152.2 The extension of the request to cover further specific Italian players was appropriate given that ESSA had by that stage identified several Italian players as having betting accounts, and intelligence suggested there might be link.

152.3 The extension of the request to cover a wider group of 213 players was understandable in the light of the desire to counteract any potential leak and was appropriate. It was similarly appropriate to extend the search to the list of coaches.

152.4 The broadening of the request of course meant that the ATP had to investigate adequately any information received in relation to other names.

The way in which the information was investigated

153. In the present[239] view of the Panel, in relation to the ATP's approach to the investigation of the information:

153.1 The two-threshold criteria set were appropriate. Without evidence of bets on tennis and the account actually being held by the player or coach, a breach could not be proved under the ATP TACP.

153.2 Where both criteria were met the ATP brought a case against the player in question. Charges were accordingly brought against the five players in respect of whom the ATP had made specific requests, based on intelligence, and three further players who satisfied the criteria although they were not included in the original names of interest. The ATP acted consistently in so doing.

237 Order on Motion to Unseal, Luzzi v. ATP Tour, Inc., No. 3:09-cv-1155-J-32MCR, ECF No. 168 (M.D. Fla. July 12, 2011).

238 Pending the consultation process between Interim and Final Reports.

239 Pending the consultation process between Interim and Final Reports.

153.3 The only instance in which both criteria were met and the ATP did not take action was in respect of a player who had already retired by the time the relevant information came to the ATP's attention. This was not a highly ranked player. In the circumstances, the decision not to pursue this player could be seen as appropriate in that the continuing applicability of the ATP TACP to an already retired player would be open to challenge, and arguably little would be achieved by pursuing a player who had already left the sport. Nonetheless, it would appear that there should have been some more consideration given to whether proceedings could or should have been brought in those circumstances.

153.4 The ATP's decision not to proceed when an account had been reported not to have been used to place bets on tennis was appropriate. The information from the betting operator as to the use to which the account had been put was likely to be dispositive. There was nothing inconsistent in not proceeding in respect of such accounts. Some of these accounts were in the name of highly ranked players.

153.5 In some instances where an account had been identified in the name of a player but had been reported as not having been used to bet on tennis, the ATP asked the relevant betting operator to monitor the account to see if it was used to place bets on tennis in the future. This approach was appropriate.

153.6 As to the ATP's decision not to proceed when it could not be shown that an account was actually held by the player or coach, that decision was appropriate in instances where the available evidence clearly pointed to the account not being so held. In particular, it was appropriate for the ATP to rely upon the assessment of ESSA that Accounts 4, 9, 10 and 11 did not belong to the players in question. Some of those players were highly ranked.

154. In the present view of the Panel, the ATP should have pursued further inquiries into those instances where there remained some doubt as to whether the account was in fact held by the player, as addressed below. None of the accounts in question was in the name of a highly ranked player.

155. The Panel's present view is that further steps should have been taken in respect of Accounts 1 and 3. Whilst ESSA had expressed a view that it was not likely that these accounts belonged to the relevant players, the fact that the addresses for those accounts matched the addresses held by the ATP raised the possibility that ESSA had been mistaken in its assessment. Consistent with the approach taken to other players, the ATP should have asked ESSA to confirm the email addresses that it held on file for each of those accounts.

156. Further steps should have been taken in relation to Account 6. Whilst the address provided by the betting operator did not match the address held by the ATP[240], funds had been placed into this account by credit card. As such the deposit would presumably have had to pass the betting operator's usual fraud checks, which ought to point to identity. It appears that Gayle Bradshaw continued to have some doubt in respect of this account, in that he sent an email to the email address that had been provided by ESSA. It should also be noted that the betting data provided by ESSA indicated that this was an account that had been used to bet on more than 1,800 matches, more than all of the other accounts combined. Furthermore, this account had placed four bets on the player name associated with Account 6 himself. While it is entirely possible that the account was in fact held by someone other than the player name, it presently seems to the Panel that this should have been pursued further.

157. In particular, it presently seems to the Panel that where there was reasonable doubt as to whether an account was actually the player's, the ATP ought at the least to have written to, or spoken with, the player in question, asking if the account belonged to him. The ATP told the Panel that *"the Panel suggests action which ATP was not authorised to take. At that time, the exclusive method for ATP to obtain information from a player was the written demand process in Section E.2.c of the ATP TACP*[241]*"*.

240 The fact that an address did not match was not determinative. In the case of Michal Mertinak the physical address had not matched but the betting account had still been shown to belong to the player.

241 Response of the ATP to Notification given under paragraph 21 ToR.

158. It appears to the Panel that:

158.1 The ATP was reluctant to ask for more information from players because under the ATP TACP a formal request for information by way of a demand could only be issued if the relevant official (Gayle Bradshaw) had formed a reasonable belief that a corruption offence may have been committed, and he could not form that view on the basis of so little information.

158.2 To the extent that this was the case, the Panel accepts that this was an understandable view. It does however presently seem to the Panel to have been overcautious. It seems to the Panel that a reasonable view that an offence may have been committed could be formed based on the existence of an account in the name of a player that has been used to bet on tennis.

158.3 Further, the Panel's present view is that the existence of the test for a formal demand did not preclude the ATP from informally requesting information.

159. While the ATP properly proceeded against all player names demonstrated to satisfy both criteria, including some not originally of interest, the ATP, in the view of the Panel, set too low a standard for stopping further investigation in the instances described above.

160. The Panel does not however consider that the ATP acted as it did in order selectively to investigate some players and not others, or not to investigate a highly ranked player because that would be damaging to the ATP's reputation or revenue.

Did the ATP discriminate unfairly in its decision as to whom to prosecute arising out of the information on betting accounts obtained by the ATP in 2007?

161. Whilst further investigatory steps might have been taken in respect of certain players whose names featured in the information on betting accounts obtained by the ATP in 2007 to the extent described above, none of whom were highly ranked players, the Panel has seen nothing to indicate that any other players should have been the subject of disciplinary proceedings on the basis of the information obtained:

161.1 It was not the case, as suggested[242] in the media, that the information on betting accounts obtained by the ATP in 2007 revealed that 100 players had been caught gambling on tennis, including *"high-ranked players"* and *"one global star"*.

161.2 The same threshold criteria were applied by the ATP in relation to all accounts identified by betting operators, irrespective of how highly ranked any of the players were.

161.3 Save for the player associated with Account 7, who had retired, there were no players whom the ATP found to have satisfied both criteria, but against whom it nevertheless chose not to bring disciplinary proceedings based on the information on betting accounts obtained by it in 2007. That player was not a highly ranked player.

161.4 The ATP did not discriminate unfairly in its selection of which players to prosecute arising out of the information on betting accounts obtained by the ATP in 2007, or in its approach to seeking further information.

161.5 The ATP did not fail to bring proceedings based on the information on betting accounts obtained by it in 2007, against highly or relatively highly ranked players (in whose names there were betting accounts) in order to protect its revenue or reputation.

242 "Tennis match-fixing: 'More players should be investigated'" (BBC Sport, 15 March 2016), available at: http://www.bbc.co.uk/sport/tennis/35808571 [accessed 9 April 2018].

162. The Panel has not seen anything to indicate that the ATP *"alerted"* all other players instead of prosecuting them, as suggested[243].

Was the ATP's approach to investigating coaches appropriate?

163. The steps taken in respect of coaches were far more limited than those taken in respect of players. In the present[244] view of the Panel, while the ATP's focus on players was understandable, once it had received information from ESSA concerning coaches, more should have been done to investigate.

164. In particular, it seems to the Panel that the two threshold criteria that the ATP had applied to players should have been applied to the coaches.

165. The ATP should have also taken steps to identify any matches that had been bet upon by the accounts identified by ESSA, not least to see whether the coach had bet on matches involving his own player.

166. From the contemporaneous documents seen by the Panel and the evidence given by Gayle Bradshaw, the fact that more was not done is largely explained by the fact that the ATP was fully engaged in dealing with the Sopot investigation and the betting accounts belonging to players. It appears that anything else was regarded as something that could, if appropriate, be dealt with by the new TIU, which was soon to be established[245].

167. Gayle Bradshaw's recollection is that the ATP did hand over information in relation to the coaches to the new TIU[246]. Jeff Rees does not recall seeing it and suggests it may not have been received. The Panel addresses the circumstances of the handover and what the TIU did with material it received in Chapter 9[247].

243 Heidi Blake & John Templon, 'Tennis covered up for 95 gamblers, says family of suspended player' (BuzzFeed News, 15 March 2016), available at: https://www.buzzfeed.com/heidiblake/tennis-accused-of-covering-up-for-95-gamblers [accessed 9 April 2018].

244 Pending the consultation process between Interim and Final Reports.

245 Statement of Gayle Bradshaw (ATP).

246 Statement of Gayle Bradshaw (ATP).

247 Chapter 9, Section A.

C GENERAL HISTORICAL APPROACH OF OTHER GOVERNING BODIES TO MATCH-FIXING AND RELATED BREACHES OF INTEGRITY

168. The first two sections above of this chapter addressed the actions of the ATP because, as set out above, it was the most active of the International Governing Bodies in addressing the problem of breaches of integrity. The Panel addresses below the historical approach of the other international governing bodies, starting with the WTA[248], which also introduced new rules to address the problem; and then the Grand Slams[249], which saw some problem matches; and lastly the ITF[250], which was at this point (before the later advent and rapid expansion of online gambling on ITF matches) largely removed from the problem.

(1) RULES AND ACTIONS OF THE WTA BETWEEN 2003 AND 2008

The WTA Rules in 2003

169. The Code of Conduct in the WTA Rules in 2003 prohibited taking or giving a bribe to influence efforts[251], dishonourable or unprofessional conduct reflecting unfavourably on tennis[252], wagers on tennis by players[253] and association with those involved in gambling[254]. There was a defined process and sanctions were a fine up to US$100,000 plus the value of the bribe or other payment, but any suspension would have to be brought in through a dishonourable conduct or flagrant abuse charge. There was an obligation to report known or suspected violations[255].

170. There was also an obligation to use best efforts[256], punishable for a first offence by a warning alone; for a second offence by a point penalty and a fine up to US$1,000; and for a third or subsequent offence a game penalty and a fine up to US$5,000.

171. Flagrant abuse[257] of the prohibition on dishonourable or unprofessional conduct provision could carry a fine up to US$25,000 and a suspension in the discretion of the WTA Board.

172. Again, the WTA Rules lacked the same wider provisions as the ATP Rules lacked[258].

173. As described in paragraph below, from 2007 the WTA changed its rules in a similar way to the way that the ATP had done in 2005.

248 Section C(1)below.
249 Section C(2)below.
250 Section C(3)below.
251 The WTA Official Rulebook, 2003, Section IV, paragraph 4.5.1(c)
252 The WTA Official Rulebook, 2003, Section IV, paragraph 4.4.1.
253 The WTA Official Rulebook, 2003, Section IV, paragraph 4.5.(a).
254 The WTA Official Rulebook, 2003, Section IV, paragraph 4.5.(b).
255 The WTA Official Rulebook, 2003, Section IV, paragraph 4.5.(d).
256 The WTA Official Rulebook, 2003, Section IV, paragraph 4.3.2.
257 The WTA Official Rulebook, 2003, Section IV, paragraph 4.4.2.
258 Section A(7) above.

Investigatory approach of the WTA between 2003 and 2008

174. From the contemporaneous documents reviewed by the Panel in relation to the period between 2003 and 2008, investigation and disciplinary action in respect of breaches of the WTA rules, including as to integrity, fell to be carried out by the WTA's CEO at the time, Larry Scott[259]. Investigations were in practice dealt with by David Shoemaker (the WTA's General Counsel at the time) and Angie Cunningham (the WTA's Vice President of Player Relations and On-Site Operations at the time)[260]. Under the WTA's rules (as amended from time to time) WTA Players were obligated to cooperate with any investigation carried out[261].

175. From the contemporaneous documents, between 2003 and 2008 the WTA took steps to enter into memoranda of understanding to ensure that suspicious or unusual betting patters were reported to it. The WTA entered into a memorandum of understanding with Betfair on 25 October 2005 and in or around March/April 2007, the WTA also entered into a memorandum of understanding with ESSA.

176. In respect of investigating suspicious or unusual betting patterns reported to the WTA, it presently appears to the Panel[262] from the contemporaneous documents, that the WTA would generally take the following steps:

176.1 Contact the relevant tournament supervisor and obtain the match scorecard.

176.2 On occasion, obtain the report of the chair umpire in relation to the competitiveness of the match.

176.3 If there was a suspicion in relation to an injury, obtain the medical assessment from the tournament doctor.

176.4 Contact Betfair for anonymous betting account information in respect of the user IDs betting on the match.

176.5 Instruct external counsel, Proskauer LLP, formally to request from Betfair details of the betting activity, including name and contact information, of the individuals associated with specific user IDs (identified through the anonymous information sent from Betfair in the first instance).

176.6 If necessary, formally notify the players by letter that an investigation was being conducted by the WTA into potential violations of the relevant WTA Rules in respect of the match.

176.7 Conduct interviews with the players.

176.8 Request itemised mobile phone statements.

Investigations undertaken by the WTA that did not lead to disciplinary action

177. Cumulatively, over the period 2003 to 2008, the Panel has found references to suspicious or unusual betting patterns at approximately 10 WTA matches[263], although not all these may have been reported at the time.

178. From the contemporaneous documents, the Panel has been able to review two of the investigations carried out by the WTA, set out in further detail below.

259 Statement of David Shoemaker (formerly WTA).

260 Statement of David Shoemaker (formerly WTA).

261 The WTA Official Rulebook, 2004, Section XV, paragraph 4.6. The WTA Official Rulebook, 2005, Section XV, paragraph 4.6. The WTA Official Rulebook, 2006, Section XVII, paragraph D.17(b). The WTA Official Rulebook, 2007, Section XVI, paragraph E(2). The WTA Official Rulebook, 2008, Section XVI, paragraph E(2).

262 Pending the consultation process between Interim and Final Reports.

263 As appears from the evidence seen by the Panel and reflected in its composite list of alerts. The Panel's composite list of alerts is not published because it cannot be suitably redacted.

Unusual betting on lower ranked player before the start of the match and higher ranked player retires during the final set

179. One of ESSA's members reported to it that there was unusual betting on a lower ranked player to win before the match started. Other betting operators removed the match from their markets. ESSA reported the unusual betting pattern to the WTA after completion of the match.

180. The result of the match saw the higher ranked player win the first set, lose the second set and then retire during the final set whilst ahead. The higher ranked player was also treated by a physio during the match.

181. The WTA initiated its investigation by taking the following steps:

181.1 The tournament supervisor was contacted and a copy of the scorecard was obtained.

181.2 Although there was no memorandum of understanding in place with ESSA at the time, the WTA asked ESSA to make further enquiries of its members in respect of other matches involving the same player. The responses from ESSA members indicated that there were no suspicious betting patterns on the player's other matches and the only information of relevant was that the player in question *"retires frequently"*.

181.3 Betting data from Betfair was requested and provided in an anonymous format[264].

181.4 Proskauer LLP was instructed to write to Betfair, pursuant to the terms of the memorandum of understanding, to obtain specific information in relation to the betting activity, including name and contact information, of the individuals associated with certain user IDs. Betfair however responded to Proskauer's request stating that it had investigated the accounts and there was no justification to share the requested information.

182. Approximately 3 months after the match took place the players were sent a formal notification from the WTA that an investigation was being conducted into potential violations of the Wagering and Corruption Rules and other provisions of the WTA Rulebook. The players were put on notice that they might be asked to attend an interview and the WTA might seek documents or information from them.

183. Both players were interviewed. While the Independent Review Panel has not seen the interview transcripts, it appears from emails sent by the players being questioned that the retiring player had been suffering from an illness on the day of the match. The report of the respective WTA tournament doctor confirmed this.

184. Between the initial alert and the interviews being conducted the WTA entered into a memorandum of understanding with ESSA. Pursuant to that memorandum of understanding, the WTA asked ESSA to request from its members betting information in relation to the match in question. This request was made after the players had been interviewed. ESSA provided the WTA with some details in relation to the bettors and confirmed that other ESSA members had nothing to report in relation to the match.

185. It appears from the contemporaneous documents that after carrying out the investigative steps described above, the WTA concluded that there was a plausible explanation for the higher ranked player's poor performance. Four months after the player interviews were conducted, the players were notified by the WTA that the investigation has been closed. No further action was taken in respect of either player.

264 In other words the betting accounts were identified by user ID only.

The same accounts that had bet unusually on the Sopot match also bet unusually on a WTA match leading Betfair to suspend paying out, although it eventually did pay out

186. Shortly after the Sopot match[265], Betfair reported to the WTA that an unusual betting pattern had arisen in respect of a WTA singles match that was currently being played. As a result, Betfair suspended paying out on the match.

187. The WTA contacted the tournament supervisor immediately upon notification, and the tournament supervisor spoke to the chair umpire. The report from the chair umpire was that both players played the match competitively and tried their best. The losing higher-ranked player was identified as suffering from an illness that had been reported to the tournament doctor. The scorecard and medical report on both players were also obtained. The medical report confirmed that the player in question was suffering from an illness and had seen the tournament doctor minutes before the match started. A member of the WTA's Sports Science and Medicine team also confirmed that many of the players and staff at this tournament had suffered from gastrointestinal illnesses.

188. The WTA also contacted Betfair in order to obtain further betting information.

189. As a result of the WTA communicating to Betfair that the losing, higher-ranked player was suffering from an illness, Betfair paid out on all bets.

190. The WTA asked the BHA to assist it with its investigation into this match. The BHA advanced two investigators to carry out the investigation on behalf of the WTA, one of whom also assisted with the Sopot investigation. The investigators produced an initial report confirming that the betting was suspicious and that *"five Betfair accounts based in Russia placed bets on the match winning a total of £33,429 from £206,934 staked. All five of the accounts traded on the recent Vassallo Arguello versus Davydenko match in Sopot, Poland"*.

191. In order to assist the investigators, the WTA carried out the following steps:

191.1 The WTA formally notified the players involved in the match that an investigation was being conducted into potential violations of the Wagering and Corruption Rules and other provisions of the WTA Rulebook. The Players were put on notice that they might be asked to attend an interview and the WTA might seek documents or information from them.

191.2 Both the players under investigation also played each other in a doubles match shortly following their singles match. The higher-ranked player was also part of the losing doubles pair. The WTA's initial investigations suggested that the doubles partner of the higher-ranked player in question and with whom she was sharing a room, checked out of the hotel whilst the higher-ranked player's singles game was still in progress and before the doubles match started. The timing of this player's check-out suggested that the outcome of the doubles match might have been decided in advance. Given that the doubles partner of the losing, higher-ranked player also appeared to be implicated, the WTA formally notified that player that an investigation was being conducted and put her on notice that she might be asked to attend an interview and that the WTA might seek documents from her.

191.3 The WTA formally notified the chair umpire and tournament supervisor of the investigation and that they may be required to attend an interview.

191.4 The WTA arranged the interviews with the players, the higher ranked player's doubles partner, the chair umpire and the tournament supervisor. These interviews were then conducted by the investigators.

191.5 The WTA instructed Ernst & Young to download and examine mobile phone data. The players cooperated in

265 As described in Chapter 8, Section A.

handing over their mobile telephone(s) for examination.

191.6 The WTA obtained legal advice as to the privacy law of the jurisdiction where the interviews were to be held in relation to the downloading of mobile phone data.

191.7 The WTA requested the itemised mobile phone statements for the month in which the match took place for all three players interviewed.

192. As part of the investigation, some of the betting account holders were also interviewed by the investigators.

193. It appears to the Panel from the documents that the WTA received the investigators' final report some 5 months after the interviews with the players took place. The report was sent to the WTA by one of the investigators rather than by the BHA itself.

194. The BHA investigators reported to the WTA:

194.1 The final concluding paragraph of the report stated that *"as a result of the research and interviews carried out in the course of the enquiry the investigators have not been able to uncover anything that suggests any of the three players were involved in any form of corruption or tanking of their matches. Quite the opposite as both the singles and the doubles matches were hard fought. It is felt the only conclusion to be drawn from this investigation is that* [the] *WTA match was not corrupt"*.

194.2 In respect of the timing of check-out at the hotel, initial enquiries *"proved to be incorrect"*. The doubles partner was able to produce a hotel bill that corroborated that the losing pair checked out of the hotel after they had lost the respective singles and doubles matches. The flights bookings of the losing pair were also made post both matches.

194.3 In relation to the fact that the betting accounts were the same accounts involved in the Sopot match, the final report found that "*each of the five* [accounts] *involved with the WTA match shares computers with up to 7 other Russian Account holders. Of the 12 Russian account holders whose computer usage is linked, there were only five who bet on* [the] *WTA Match. If there was inside information, why was this? Why did all the connected accounts not get in on the act?*"

194.4 The report also concluded that there was a distinct diversity in the betting and that the betting liabilities in this match were much lower than the betting liabilities in Sopot.

195. A year after the initial betting alert was reported, and four months after the BHA report was sent to the WTA, the players were notified that the investigation had been closed.

"Five or six" cases under investigation in early 2008

196. The WTA informed the press in early 2008 that it was investigating *"five or six"* arising out of suspicious or unusual betting patterns[266]. The Panel requested disclosure from the WTA of all documents relating to these investigations. In response, the WTA produced records to the Panel for two pre-2009 investigations into suspected betting or match-fixing. In the Panel's view, the WTA took appropriate investigative steps in these two cases[267], neither of which resulted in disciplinary sanctions. In the absence of documents, the Panel is unable to evaluate the WTA's handling of any other pre-2009 investigations.

266 ESPN Outside the Lines 10 February 2008 reported that Larry Scott of the WTA had informed ESPN that the WTA was investigating "five or six" unusual betting patterns in relation to WTA matches as at that date. This is not dissimilar to the ten WTA matches identified by the Panel in its composite list of alerts. The Panel's composite list of alerts is not published because it cannot be suitably redacted.

267 Note that the WTA case in which investigators had been appointed was still under investigation at the time of the press announcement.

Approaches

197. In addition to reports of suspicious betting patterns, the WTA was also faced with reports of approaches to its players during the period 2003 to 2008. The Panel has seen a WTA internal email quoting a match-fixing approach made to a player in June 2007: *"Hi. Sorry you don't know me yet but I have a proposition for you. If you want to get $20,000 you must lose the first round. I will give the money to your parents* [redacted] *before the match. It is good for everyone."* It is unclear from the contemporaneous documents provided to the Panel what investigatory steps were taken. No disciplinary action followed.

Rule changes made by the WTA between 2005 and 2008

198. Although the extent of the WTA's experience of breaches of integrity during the period between 2003 to 2008 involved far fewer instances than the ATP faced, the WTA followed the ATP's lead and from 2006 introduced changes to its rules on integrity, in part based on the ATP TACP:

198.1 Prohibitions were introduced on associating with persons whose activities reflect adversely on tennis[268], on wagering[269], on inducing a player to not use best efforts[270], on receiving or providing consideration with the intention of influencing efforts or that could bring tennis into disrepute[271] and on receiving or providing consideration for the provision of information[272].

198.2 There were also *"additional provisions"* making players responsible for breaches by their Player Support Team of which they were aware[273], and requiring the reporting of known or suspected breaches[274].

198.3 The new rules involved sanctions for players of a fine up to US$100,000 plus prize money received, up to three years ineligibility, and permanent ineligibility in some instances[275]. The sanction for player support personnel was confined to withdrawal of credentials, which could be permanent[276].

198.4 The procedure involved investigation by the WTA CEO, and a decision by the WTA Board[277].

(2) RULES AND ACTIONS OF THE GRAND SLAMS BETWEEN 2003 AND 2008

The rules applicable to Grand Slams in 2003

199. The Code of Conduct in the Grand Slam Rules in 2003 mirrored that in the ITF Rules, except that the financial sanctions provided for were higher. The provisions contained a prohibition on taking or giving a bribe to influence efforts[278], a general prohibition on conduct contrary to the integrity of tennis[279] and a prohibition on wagers on tennis by players[280]. There was a defined process and sanctions were a fine up to US$100,000 or the amount of the prize money won at the tournament (whichever was greater) and a suspension of up to three years.

268 The WTA Official Rulebook, 2006, Section XVII, Code of Conduct, paragraph I6.b.i.
269 The WTA Official Rulebook, 2006, Section XVII, Code of Conduct, paragraph I6.b.vi.
270 The WTA Official Rulebook, 2006, Section XVII, Code of Conduct paragraph 16.i.i.
271 The WTA Official Rulebook, 2006, Section XVII, Code of Conduct paragraph 16.b.iv-v.
272 The WTA Official Rulebook, 2006, Section XVII, Code of Conduct paragraph 16.b.vi-vii.
273 The WTA Official Rulebook, 2006, Section XVII, Code of Conduct paragraph 16.c.i-iv.
274 The WTA Official Rulebook, 2006, Section XVII, Code of Conduct paragraph 16.c.i-iv.
275 The WTA Official Rulebook, 2006, Section XVII, Code of Conduct paragraph 16.d.i.
276 The WTA Official Rulebook, 2006, Section XVII, Code of Conduct paragraph 16.d.ii.
277 The WTA Official Rulebook, 2006, Section XVII, Code of Conduct paragraph 16.e.i.
278 The Official Grand Slam Rulebook, 2003, Code of Conduct paragraph IV B.
279 The Official Grand Slam Rulebook, 2003, Code of Conduct paragraph IV D.
280 The Official Grand Slam Rulebook, 2003, Code of Conduct paragraph IV A.

200. There was also an obligation to use best efforts[281], punishable by a point penalty and a fine up to US$10,000 for each violation.

201. There was a provision by which a repeated or flagrant breach could be more severely punished as aggravated behaviour[282]. Sanctions were a fine up to US$100,000 or the amount of the prize money won at the tournament (whichever was greater) and a suspension from one or more Grand Slams.

202. Consistent with the ITF Rules, the Grand Slam Rules also lacked the same broader provisions as the ATP and WTA Rules[283].

Investigatory approach of the Grand Slam Committee between 2003 and 2008

203. Between 2003 and 2008, investigation and disciplinary action in respect of breaches of the rules applicable at Grand Slams fell to be carried out by Bill Babcock, irrespective of the Grand Slam at which the match took place. At that stage Mr Babcock was employed both by the ITF as an Executive Director and, independently, as Administrator of the Grand Slam Committee. He then became director of the Grand Slam Board when the Grand Slam Committee became the Grand Slam Board.

204. The Grand Slam Committee had a memorandum of understanding with Betfair that was entered into in September 2005[284], and others (including international governing bodies, officials or members of the public) might also make *ad hoc* reports to the Grand Slam Committee.

205. Bill Babcock gave evidence to the Panel that the approach of the Grand Slam Committee when a report of a suspicious or unusual betting pattern was received, was to do the following[285]:

205.1 The Grand Slam Committee would initiate an investigation, through Bill Babcock. The Grand Slam Committee did not open a formal file, other than retaining emails related to each investigation, but from January 2007 kept an ongoing list of Grand Slam matches investigated, as further described below[286].

205.2 Bill Babcock's first step was to contact the Supervisor at the relevant Grand Slam. If the match was yet to be completed, the Supervisor would be asked to watch it and check for player injuries and retirements, and to also check player accreditations[287]. If the match had been completed, the supervisor was asked to speak to the chair umpire to identify any relevant factors. This first step generally led to the end of the investigation on the basis that there was insufficient evidence to warrant going forward in the light of the definition of the offences.

205.3 On occasion the Grand Slam Committee interviewed the player or made further inquiries of the betting operator. Specifically, there was a close investigative relationship with Betfair as part of the information sharing memorandum of understanding.

205.4 The question for the Grand Slam Committee was whether there was clear evidence of a player taking a bribe to influence his or her efforts in a match, passing on information for reward or wagering, such as to be sufficient to secure a disciplinary conviction of a Player Major Offense. The Grand Slam Committee took the view that it needed a preponderance of evidence connecting the player to the betting[288].

281 The Official Grand Slam Rulebook, Grand Slam 2003, Code of Conduct paragraph III E.

282 The Official Grand Slam Rulebook, Grand Slam 2003, Code of Conduct paragraphs III E, in relation to best efforts and set out above, and IV C more generally.

283 Section C(1) above.

284 Statement of Bill Babcock (GSB; formerly ITF).

285 Statement of Bill Babcock (GSB; formerly ITF).

286 Paragraph 206 below.

287 Statement of Stefan Fransson (ITF).

288 Statement of Bill Babcock (GSB; formerly ITF).

205.5 The Grand Slam Committee did not consider that the report of a suspicious or unusual betting pattern alone was sufficient, absent more, to conclude that there was such evidence. The Grand Slam Committee felt that the pattern could be due to players' actions that were not caught under the then applicable rules, such as a player deliberately losing for other reasons or passing inside information other than for reward, or to other circumstances.

205.6 Following the steps taken above, in the absence of further evidence, the Grand Slam Committee would close the investigation without commencing disciplinary proceedings under the Grand Slam code of conduct.

Grand Slam Committee list of matches investigated that did not lead to disciplinary action

206. As set out above[289], the Grand Slam Committee kept a list of Grand Slam matches investigated that did not lead to disciplinary proceedings. That list was entitled *"Betting Activity at Grand Slams"* and was a document updated by Bill Babcock as cases occurred[290].

207. The Panel has reviewed various iterations of the Grand Slam Committee list. The last iteration covered the period from the US Open 2005 to Wimbledon 2007 and listed:

207.1 12 entries related to reports of suspicious or unusual betting patterns concerning specific Grand Slam matches; and

207.2 three entries related to potential player betting accounts.

208. The Grand Slam Committee list was not said to be exhaustive. It does however appear to reflect the key matters reported to the Grand Slam Committee during the period it covered.

209. The Grand Slam Committee investigated each of the 12 specific matches referred to in the list, but in each case decided that there was no basis to take disciplinary action. The reasons for those decisions generally fell into the following classes:

209.1 The Grand Slam Committee considered that there was a plausible explanation for a player's poor performance, such as injury or illness or that the surface was not his or her preferred surface.

209.2 The Grand Slam Committee considered that there was no evidence, and in the light of the limitations in the ITF's and Grand Slam Committee's investigatory powers and capabilities no evidence could be obtained, of a player deliberately losing for betting or other corrupt purposes. The betting pattern could have arisen due to other reasons not disclosing a breach, such as bettors manipulating the market, a player deliberately losing for other reasons and this becoming known or inside information simply leaking out other than for reward.

Betting operator's suggestion that player retired to void a losing bet

210. An example of a type of case that arose in relation to Grand Slams was an unusual betting pattern reported in 2005 to the ATP and subsequently to the Grand Slam Committee. The betting operator's report was to the effect that the betting suggested that a syndicate had arranged to enjoy a 'free bet' whereby the syndicate backed one player in the hope that he might win, but safe in the knowledge that if such a win was looking unlikely, the player would retire in the first set, leading the betting operator to void all bets in accordance with its policy that this would happen whenever a match did not enter a second set.

289 Paragraph 206 below.

290 Dated 6 August 2007. The Grand Slam Committee's "Betting Activity at Grand Slams" list of alerts is not published because it cannot be suitably redacted.

211. The Grand Slam Committee had an official watch the match and, following the player's retirement in the first set, had a doctor check the player. The player was interviewed after the match and denied any wrongdoing. At that time the ITF and the Grand Slam Committee did not have an express authority to request phone records, although the ATP did and expressed an internal view that its rules might have permitted it to request that the phone records be disclosed.

212. The Grand Slam Committee concluded that there was no evidence of a breach of its then rules. It concluded that, at most, the retiring player had played, and retired, injured because the Grand Slam prize money was so high, even for losing, that a player could not afford not to play.

Heavy betting on wildcard against higher ranked opponent

213. A second example of a type of case that arose in relation to Grand Slams was an unusual betting pattern reported in 2006 by Betfair taking the form of heavy backing of a wildcard player against a much higher ranked player.

214. The Grand Slam Committee interviewed the agent of the losing player, who denied any wrongdoing; interviewed the winning player, who saw nothing untoward; and discussed the match with Betfair, which considered that the betting pattern might have stemmed from information on tennis forums that the player was injured. It does not appear that the losing player was interviewed.

215. The Grand Slam Committee decided that there was no evidence of a breach of its then rules. It was concluded that the upset may have been due to the winning wildcard player being a specialist on the surface in question, whereas the losing higher ranked player was a specialist on a different surface.

Inside information possibly being passed on to others to bet on player's behalf

216. A third example is that in 2006 an informant told the Grand Slam Committee that he or she had seen text messages from a player stating that a straight sets outcome was *"a done deal"*. The informant suggested that the player had made money on the match by getting a friend to bet for the player and had also passed on information about player injuries by text.

217. The Grand Slam Committee interviewed the player identified by the informant. The player denied the accusations. The informant was not prepared to go on the record, or to assist further with any investigation. The ITF and Grand Slam Committee had no express power under its then rules to demand the player's phone or phone records. The Grand Slam Committee decided that there was insufficient evidence of breach of its then rules in the absence of the informant's cooperation.

Betting accounts

218. The Grand Slam Committee's investigation of the three potential player betting accounts referred to in the above-referenced list titled *"Betting Activity at Grand Slams"* also provided no useful information. Betfair was asked whether accounts were held in three names, but no useful information emerged. The ITF and Grand Slam Committee had no memoranda of understanding with any other betting operators, and undertook no further investigation.

Grand Slam matches not on the Grand Slam Committee list

219. Cumulatively, over the period 2003 to 2008, the Panel has found reference to suspicious or unusual betting patterns at approximately 27 Grand Slam matches, including the 12 matches on the Grand Slam Committee list[291].

291 Dated 6 August 2007. The Grand Slam Committee's "Betting Activity at Grand Slams" list of alerts is not published because it cannot be suitably redacted.

220. The Panel is aware that the Grand Slam Committee commenced at least three major offence investigations in respect of matches that did not feature in the Grand Slam Committee list:

220.1 In 2003, the Grand Slam Committee investigated a player following newspaper allegations that the player had offered to lose a qualifying match at the French Open in exchange for cash. The player, the player's representative and relevant ATP personnel were interviewed. The Grand Slam Committee determined then that *"in the absence of testimony and/or physical evidence to the contrary, the player was not guilty of any of the Major Offense provisions of the 2003 Grand Slam Code of Conduct"*.

220.2 The Grand Slam Committee also investigated two of the players who had been subject to investigation and sanction by the ATP for wagering on tennis. The ATP's investigation uncovered evidence that the players had bet on Grand Slam matches. While proceedings were initiated by the Grand Slam Committee, an agreement was reached between each of the players and the Grand Slam Committee that the players would not play Grand Slam tournaments during the period of ineligibility imposed by the ATP, and in return the Grand Slam Committee would not impose any additional sanction.

221. With the exception of the matches referred to in the Grand Slam Committee list, and the major offence investigations referred to above, the Panel has insufficient information to determine whether any steps were taken, and if so which steps, in respect of any other of the 27 Grand Slam matches identified by the Panel.

222. The Panel understand that during the period 2003 to 2008, the ITF and Grand Slam Committee, through its officials, also summarily sanctioned six players for failure to use best efforts at Grand Slam matches. The ITF and Grand Slam Committee did not take any disciplinary action for failure to use best efforts in an aggravated manner at Grand Slam matches.

Rule changes made by the ITF or Grand Slam Committee between 2003 and 2008

223. The Grand Slam Rules incorporated the same amendments described below in respect of the ITF Rules, albeit financial sanctions remained significantly higher. From 2007 the financial sanctions for Player Major Offenses (wagers, bribes or other payments, aggravated behaviour and conduct contrary to the integrity of the game) were increased to a fine of up to US$250,000 or the amount of the prize money won at the tournament (whichever was greater).

(3) RULES AND ACTIONS OF THE ITF BETWEEN 2003 AND 2008

The ITF Rules in 2003

224. The Code of Conduct in the ITF Rules in 2003 contained a prohibition on taking or giving a bribe to influence efforts[292], a general prohibition on conduct contrary to the integrity of tennis[293], and a prohibition on wagers on tennis by players[294]. There was a defined process and sanctions were a fine up to US$250 or the amount of the prize money won at the tournament (whichever was greater) and a suspension of up to 3 years.

225. There was also an obligation to use best efforts[295], punishable by a point penalty and a fine up to US$250.

226. There was a provision by which a repeated or flagrant breach could be more severely punished as aggravated

292 ITF Code of Conduct for 2003 ITF Futures Tournaments and Satellite Circuits: article IV B (Men's Circuit) and section VIII, paragraph 5b) (Women's Circuit).

293 ITF Code of Conduct for 2003 ITF Futures Tournaments and Satellite Circuits: article IV D (Men's Circuit), section VIII, paragraph 5d) (Women's Circuit).

294 ITF Code of Conduct for 2003 ITF Futures Tournaments and Satellite Circuits: article IV A (Men's Circuit) and section VIII, paragraph 5a) (Women's Circuit).

295 ITF Code of Conduct for 2003 ITF Futures Tournaments and Satellite Circuits article III E (Men's Circuit) and section VIII, paragraph 4m) (Women's Circuit).

behaviour[296].

227. Again, the ITF Rules lacked the same wider provisions as the ATP and WTA Rules lacked[297].

Actions of the ITF in relation to ITF matches 2003 to 2008

228. Between 2003 and 2008, the ITF did not take any disciplinary action in respect of ITF matches under its rules in place against players taking or giving a bribe to influence efforts or for gambling on tennis.

229. During the same period, the Panel understand that the ITF through its officials summarily sanctioned six players for failure to use best efforts at ITF matches. The ITF did not take any disciplinary action for failure to use best efforts in an aggravated manner.

230. Over the period 2003 to 2008, the Panel has found no references to reports of suspicious or unusual betting patterns at ITF matches. The ITF conducted no investigations. The ITF did not have any memoranda of understanding in place with betting operators.

Rule changes made by the ITF between 2003 and 2008

231. From 2007 the financial sanctions for Player Major Offenses (wagers, bribes or other payments, aggravated behaviour and conduct contrary to the integrity of the game) were increased to a fine of up to US$5,000 or the amount of the prize money won at the tournament (whichever was greater). In addition, the prohibition on taking or giving a bribe to influence efforts was expanded to include attempts to influence player participation.

232. From 2008 the Player Major Offenses were amended to apply to *"Related Persons"* (defined by the ITF to include: coaches, therapists, trainers, management representatives and family and business associates[298]). Sanctions against Related Persons were a maximum of permanent revocation of accreditation and denial of access to all ITF Pro Circuit Tournaments. In addition, the non-financial sanctions against players were increased to a suspension of up to a lifetime.

(4) EVALUATION OF GENERAL APPROACH OF OTHER GOVERNING BODIES TO MATCH-FIXING AND OTHER BREACHES OF INTEGRITY BEFORE 2008?

233. The Panel has considered against the facts above whether the general approach of the other governing bodies to match-fixing and other breaches of integrity before 2008 was appropriate.

The approach of the WTA

234. The documents provided by the WTA have been limited to the two cases described above. From the evidence available to the Panel, the Panel presently considers that the WTA took reasonable steps to investigate the alerts reported to it in relation to these two cases.

235. The Panel is unable to form an assessment on the other alerts that were raised with the WTA during this period due to the absence of contemporaneous documents. As set out above[299] the Panel understands that there were no responsive documents to the Panel's requests in the WTA's records.

296 ITF Code of Conduct for 2003 ITF Futures Tournaments and Satellite Circuits article III E (Men's Circuit) and section VIII, paragraph 4m) (Women's Circuit), in relation to best efforts and set out above, and article IV C (Men's Circuit) and section VIII, paragraph 5c) (Women's Circuit) more generally.

297 Section A(7) above.

298 ITF Pro Circuit Code of Conduct 2008, Article V.A.

299 Paragraph 196.

236. As to the BuzzFeed News / BBC suggestion in the *"The Tennis Racket"*[300] that in *"the past decade"* (in other words 2006 to 2016) the international governing bodies had been *"repeatedly warned about a core group of 16 players - all of whom have ranked in the top 50*[301] *- but none have faced any sanctions"*, so far as the WTA is concerned, the Panel's composite list of alerts[302] (which includes matches not reported to the WTA at the time) indicates:

236.1 There was one winner of a singles or doubles title at a Grand Slam event who was the loser[303] in a WTA match on the Panel's list of alerts during 2003 to 2008.

236.2 There were six players who were ranked in the top 50 who were losers in WTA matches on the Panel's list of alerts during 2003 to 2008.

236.3 There were no players who were losers in more than one WTA match on the Panel's list of alerts during 2003 to 2008.

236.4 No player was sanctioned by the WTA during the period.

237. This must be seen in the light of the fact that, as explained in Chapter 3[304], an alert in respect of a player does not necessarily mean that there was a provable breach of integrity by the player[305]. The same is true of repeated alerts.

The approach of the Grand Slam Committee to Grand Slam matches

238. So far as the Grand Slam Committee is concerned, the Panel presently[306] considers that:

238.1 In each of the cases dealt with by the Grand Slam Committee, the investigation conducted was limited in scope and in each case was concluded swiftly. In some of the cases it might have been preferable to have pursued further inquiries with the betting operator (for example, requesting betting data and analysing that data) and to have carried out more detailed interviews. If it was felt that the powers or resources available to the ITF and Grand Slam Committee were limited, the rules could have been changed and additional memoranda of understanding could have been entered into, or resources sought.

238.2 While it is not possible to know what might have been possible with further investigation and greater investigatory tools, the Panel has not seen evidence demonstrating that any of the suspicious or unusual betting pattern cases actually reported to the Grand Slam Committee could ultimately have been proved to have involved a player contriving the result of a match for corrupt reasons or passing information for reward.

300 Chapter 11, Section A.

301 As above, the Panel has interpreted the phrase "have ranked in the top 50" in this context as referring to players that have been ranked in the top 50 of the WTA Rankings (Singles) at any point in their career, rather than having ranked in the top 50 of the WTA Rankings (Singles) at the time at which the match/matches in which they were involved was/were flagged as being the subject of an unusual or suspicious betting pattern.

302 The Panel's composite list of alerts is not published because it cannot be suitably redacted.

303 The alerts during the period 2005 to 2008 are limited in their detail. The Panel has therefore chosen to focus its analysis on the losing player in each relevant match. This proceeds on the assumption that the unusual or suspicious betting pattern has arisen in the context of the losing player having 'thrown' the relevant match. It is important to note that this methodology therefore does not identify the winning players in those matches who may have been the subject of unusual or suspicious betting patterns – for example those winning players engaging in "set and break" or spot fixes. This assumption also rules out the identification of the winning player in instances where both players may have been involved in a fix (e.g. in a scenario where the players have agreed that they will each win one of the first two (of three) sets each and then play out the third set competitively).

304 Chapter 3, Section F.

305 Chapter 3, Section F.

306 Pending the consultation process between Interim and Final Reports.

239. As to the BuzzFeed News / BBC suggestion in the *"The Tennis Racket"*[307] that in *"the past decade"* (in other words 2006 to 2016), the International Governing Bodies had been *"repeatedly warned about a core group of 16 players – all of whom have ranked in the top 50*[308] *– but none have faced any sanctions"*, so far as the Grand Slam Committee is concerned, the Panel's composite list of alerts[309] (which includes matches not reported to the Grand Slam Committee at the time) indicates:

239.1 There were three winners of singles or doubles titles at Grand Slams who were the losers[310] in Grand Slam matches on the Panel's list of alerts during 2003 to 2008.

239.2 There were eleven players who were ranked in the top 50 who were losers in Grand Slam matches on the Panel's list of alerts during 2003 to 2008.

239.3 There were two players who were losers in more than one Grand Slam match on the Panel's list of alerts during 2003 to 2008. Of those, one player was listed four times and one player was listed twice.

239.4 No player was sanctioned by the ITF / Grand Slam Committee during the period.

240. This must be seen in the light of the fact that, as explained in Chapter 3[311], an alert in respect of a player does not necessarily mean that there was a provable breach of integrity by the player[312]. The same is true of repeated alerts.

The approach of the ITF

241. So far as the ITF's action in relation to ITF matches is concerned, because the available evidence does not suggest significant numbers of bettable matches at the ITF level, still less serious concerns about match-fixing or corruption, it seems reasonable that the ITF did not investigate such matters at the time.

307 Chapter 11, Section A.

308 As above, the Panel has interpreted the phrase "have ranked in the top 50" in this context as referring to players that have been ranked in the top 50 of the ATP Rankings (Singles) or the WTA Rankings (Singles) at any point in their career, rather than having ranked in the top 50 of the ATP Ranking (Singles) or the WTA Rankings (Singles) at the time at which the match/matches in which they were involved was/were flagged as being the subject of an unusual or suspicious betting pattern.

309 The Panel's composite list of alerts is not published because it cannot be suitably redacted.

310 The alerts during the period 2005 to 2008 are limited in their detail. The Panel has therefore chosen to focus its analysis on the losing player in each relevant match. This proceeds on the assumption that the unusual or suspicious betting pattern has arisen in the context of the losing player having 'thrown' the relevant match. It is important to note that this methodology therefore does not identify the winning players in those matches who may have been the subject of unusual or suspicious betting patterns – for example those winning players engaging in "set and break" or spot fixes. This assumption also rules out the identification of the winning player in instances where both players may have been involved in a fix (e.g. in a scenario where the players have agreed that they will each win one of the first two (of three) sets each and then play out the third set competitively).

311 Chapter 3, Section F.

312 Chapter 3, Section F.

Sopot Investigation, the Environmental Review and the Decision to Introduce a New System

Independent
Review
of Integrity
in Tennis

08

1. This Chapter deals with the Sopot Investigation, which took place between 2007 and 2008; the 2008 Environmental Review; and the later decision in 2008 to introduce a new system for the protection of integrity in the sport from the beginning of 2009. The Panel examines below the ATP's response to the August 2007 Sopot Match between Martin Vassallo Arguello and Nikolay Davydenko, and to the Sopot Report in relation to it[1]; the International Governing Bodies' commissioning of the Environmental Review and the development of uniform integrity rules[2]; the ATP's response in 2008 to intelligence arising out of the Sopot Report and the Environmental Review[3]; and the International Governing Bodies' decision to introduce the new system with effect from 1 January 2009[4].

2. Pursuant to the Terms of Reference, the Panel addresses whether investigations and enforcement actions related to the Sopot Investigation, the Environmental Review, and the decision to introduce a new system for the protection of integrity were effective and appropriate. As set out in Chapter 1[5] it is not the Panel's role in this Independent Review to determine whether past actions did or did not satisfy any legality standard, and it should not be taken as doing so. Rather the Panel identifies below the relevant evidence it has received, including witness statements and contemporaneous documents, and sets out its present[6] opinion as to the effectiveness and appropriateness of relevant actions at the time, based on its appreciation of the available evidence of the contemporaneous facts and circumstances. Also as set out in Chapter 1[7], on occasion it is not possible or appropriate to seek to resolve apparent factual conflicts in the witness evidence.

3. In relation to the principal criticism in the media, the Panel has not seen evidence demonstrating that any decisions taken by the International Governing Bodies in relation to the Sopot Investigation, the Environmental Review and the introduction of a new system were taken in order to cover up past breaches of integrity or to protect players under suspicion. Indeed, the ATP's and the other International Governing Bodies' responses to the Sopot Investigation and Environmental Review, which led to the creation of the TIU and TACP, were effective and appropriate efforts at the time to improve the sport's ability to combat breaches of integrity. Nonetheless, in the Panel's view, following the Environmental Review, the International Governing Bodies should have coupled the creation of the TIU and TACP with an evaluation of what could be done to address aspects of the organisation of tennis and the player incentive structure that contribute to breaches of integrity.

Q 8.1 Are there other matters of factual investigation or evaluation in relation to the approach of the ATP to the Sopot Investigation, or the approach of the International Governing Bodies to the Environmental Review, or the ATP's response to intelligence arising out of them, or the International Governing Bodies' decision to introduce a new system, that are relevant to the Independent Review of Tennis and that should be addressed in the body of the Final Report, and if so which, and why?

Q 8.2 Are there any aspects of the Independent Review Panel's provisional conclusions in relation to these matters incorrect, and if so which, and why?

1 Section A below.
2 Section B below.
3 Section C below.
4 Section D below.
5 Chapter 1, Section C.
6 Pending the consultation process between Interim and Final Reports.
7 Chapter 1, Section C.

A THE ATP'S RESPONSE TO THE 2007 VASSALLO ARGUELLO V DAVYDENKO SOPOT MATCH AND TO THE 2008 SOPOT REPORT ON IT

4. In 2007 the ATP appointed independent investigators (the "Sopot Investigators"[8]) to conduct an investigation on its behalf into the second round match between Martin Vassallo Arguello and Nikolay Davydenko on 2 August 2007 in Sopot, Poland (the "Sopot Match")[9]. In 2008 the investigation (the "Sopot Investigation") concluded and a report was produced by the Sopot Investigators (the "Sopot Report")[10]. The Sopot Report concluded that it had "*been unable to find any evidence supporting the possibility of*" either player "*being involved in any corrupt practices surrounding*" the Sopot Match, and the ATP accordingly decided that there was no basis for disciplinary proceedings to be commenced against either player. The ATP rules and procedures that fell to be applied in the Sopot Investigation were criticised in the media in early 2016, but it was not suggested by the media in the light of the conclusions in the Sopot Report that disciplinary proceedings under the ATP rules ought to have been commenced against either player in respect of the Sopot Match[11].

5. The Independent Review Panel is not asked to reopen, nor can or does it reopen, the facts established by, or the conclusions of, the Sopot Investigators or the ATP in relation to the Sopot Match set out above. The questions for the Panel are rather whether the process adopted was effective, whether the rules were adequate, and whether appropriate decisions were made on receipt of the Sopot Report.

(1) THE 2007 VASSALLO ARGUELLO V DAVYDENKO MATCH IN SOPOT

The Sopot event

6. The Orange Prokom Open Tournament in Sopot, Poland was in 2007 an ATP International (now known as a World Tour 250) tournament[12]. The event was played outdoors on clay, the main singles draw was 32 players and the total prize money was $500,000. The main draw commenced on Monday 30 July 2007, with the singles final taking place on Sunday 5 August 2007.

Position of the Sopot event in the calendar

7. The Sopot event's position in the calendar in 2007 was immediately before the last three tournaments of the ATP's North American hard-court swing leading into the US Open:

   7.1 The Sopot event was immediately before the 6-12 August Rogers Cup in Montreal, Canada[13]. In 2007 Davydenko played in Montreal after Sopot, reaching the quarter-finals.

   7.2 That was followed by the 13-19 August Cincinnati Masters[14]. In 2007 Davydenko played in Cincinnati, reaching the semi-finals.

8 The individuals comprising the Sopot Investigators are described more fully at paragraph 36.

9 Martin Vassallo Arguello (ARG, 87) v Nikolay Davydenko (RUS, 4), ATP International (now known as an ATP World Tour 250), second round, Sopot Poland, 02/08/07, 2-6, 6-3, 2-1 ret. There is a description of the match and initial stages of the Sopot Investigation in the ESPN broadcast Outside the Lines 10 February 2008 available at (http://www.espn.co.uk/sports/tennis/news/story?id=3235411) [accessed 9 April 2018]. The players' names are not redacted in the light of the extent of the prior publication of them.

10 ATP, '*Investigation into suspicious betting - the Orange Prokom Open Tournament, Sopot, Poland, 2 August 2007, Nikolay Davydenko v Martin Vassallo Arguello*' (as redacted), Appendix: Key Documents.

11 On 17-18 January 2016, BuzzFeed News and the BBC published 'The Tennis Racket', the product of a joint investigation. The principal criticism made so far as the ATP's response to the Sopot Match itself is concerned (as opposed to the ATP's response to intelligence arising out of the Sopot Investigation and the Environmental Review, dealt with in Section C below) was that the ATP rules and procedures that fell to be applied during the Sopot Investigation, were inadequate. It was not however suggested that the conclusions in the Sopot Report were wrong, or that notwithstanding the conclusions in the Report, disciplinary proceedings under the ATP rules ought to have been commenced against either player in respect of the match.

12 Chapter 2, Section D describes the different levels of ATP events.

13 An ATP Masters Series event played on hard courts with a main singles draw of 56 and total prize money of $2.45 million.

14 An ATP Masters Series event played on hard courts with a main singles draw of 56 and total prize money of $2.45 million.

7.3 That was followed by the 20-26 August Pilot Pen Tennis event in New Haven, USA[15]. In 2007 Davydenko played in New Haven, reaching the third round.

7.4 The US Open started on 27 August[16]. In 2007 Davydenko played in the US Open, reaching the semi-finals, in which he lost to the eventual winner Roger Federer.

8. At the same time as the Sopot event, players also could have chosen to play instead on hard courts in North America. In the same week, 30 July to 5 August, the Legg Mason Tennis Classic took place in Washington DC[17].

9. In the weeks before the Sopot event, players also had the choice of playing on clay in Europe, or on hard courts in North America. Davydenko had chosen the former:

9.1 The week immediately before Sopot, 23-29 July, was the Croatia Open in Umag[18]. Davydenko was the second seed, but he lost in the first round 6-2, 2-6, 6-3 to an unseeded player.

9.2 Two weeks before Sopot, 16-22 July, was the Priority Telecom Open in Amersfoort Netherlands[19]. Davydenko was the first seed, but he lost 4-6, 6-1, 6-1 in the first round to a wildcard player.

9.3 Three weeks before Sopot, 9-15 July, was the Suisse Open in Gstaad[20]. Davydenko was the first seed, but he lost 3-6, 6-4, 7-5 in the first round to an unseeded player.

9.4 Before that, at Wimbledon on 25 June to 8 July, Davydenko had been seeded sixth and had reached the fourth round, losing to the tenth seed after losing tie breakers in each of the first two sets.

Davydenko's commitment to play at the 2007 Sopot event

10. The year before, in 2006, Davydenko had won the Sopot event. As the 2006 winner, he was under a contractual obligation to defend his win in 2007[21].

11. Consistent with the practice amongst all or most other leading players, Davydenko had agreed to an appearance fee to play in the Sopot event[22]. That fee is confidential as between the tournament and the player, and it is unknown what its amount or its terms were. The contemporaneous documents suggest that the fee was payable incrementally on progress through the tournament[23].

Davydenko's injury position coming into the Sopot event

12. Some six months before the Sopot Match, in the week commencing 8 January 2007, Davydenko had played in, but had retired injured from, the Medibank International in Sydney, Australia[24]. That was the last event in the ATP swing leading into the Australian Open, which took place over 15 to 28 January22. Davydenko was the second seed in Sydney, but in the second round he lost the first set 4-6 and then retired injured. He was subsequently diagnosed with *"a possible right fibular stress fracture"*[25]. Following his retirement from the Sydney tournament, Davydenko commented to the press that

15 An ATP International (now known as an ATP World Tour 250) tournament played on hard courts with a main singles draw of 48 and total prize money of $675,000.

16 A Grand Slam tournament played on hard courts with a main singles draw of 128 and total prize money of $8.84 million.

17 An ATP International (now known as an ATP World Tour 250).

18 An ATP International (now known as an ATP World Tour 250) tournament played on clay with a main singles draw of 32 and total prize money $416,000. Davydenko chose the Umag event over the higher level ATP International Gold (now known as an ATP World Tour 500), Austrian Open in Kitzbuhel, which was the same week.

19 An ATP International (now known as an ATP World Tour 250) tournament played on clay with a main singles draw of 32 and total prize money $416,000. Davydenko chose the Amersfoort event over the higher level ATP International Gold (now known as an ATP World Tour 500) Mercedes Cup in Stuttgart, Germany, which was the same week.

20 An ATP International (now known as an ATP World Tour 250) tournament played on clay with a main singles draw of 32 and total prize money $416,000.

21 Sopot Report, page 8, paragraph 34.

22 Sopot Report, page 8, paragraphs 34 and 36.

23 Sopot Report, page 8, paragraph 34.

24 An ATP International (now known as an ATP World Tour 250) tournament played on hard courts with a main singles draw of 24 and total prize money of $436,000.

25 Sopot Report, page 10, paragraph 52.

nobody cared about small events, for which he was subsequently fined $10,000 by the ATP[26]. Davydenko went on to play the next week in the Australian Open, at which he was the third seed. He reached the quarter-finals, losing in five sets.

13. Davydenko then played in 11 ATP events[27] (including five Masters) and the French Open (in which he reached the semi-finals, losing to Roger Federer) without any report of injury[28]. At the Gerry Weber Open in Halle (11 June to 17 June)[29], he consulted with the tournament doctor for an injury to his knee and Achilles tendon[30] and then went out in the second round. He reached the quarter-finals at Wimbledon, at which he had some minor treatment and saw the physiotherapist on court[31], and then played Gstaad, Amersfoort and Umag before Sopot. There was no report of an injury, although he had a stomach complaint in Amersfoort[32].

The first round of the 2007 Sopot event

14. As defending winner at the Sopot event and ranked 4 in the world, Davydenko was the first seed for the 2007 event, and the clear favourite to win it[33].

15. In the first round of the event Vassallo Arguello won his match in three sets, having lost the first set[34]. Davydenko won his match in straight sets[35]. 20 minutes before his first round match, Davydenko asked the ATP physiotherapist, Christian Swier, to tape his left big toe[36], as he reported having had trouble with it. The tournament doctor later recorded that the onset of the injury was during practice on 30 July[37]. The physiotherapist could see no visible signs of an injury, but when he pressed the underside of the toe, the player said it was sore. According to Davydenko, the injury became a little worse during the first round match[38]. Davydenko stated that he had told "*other players he had a slight injury but did not know how much it would affect his second round match*"[39] and had also told his wife Irina and his brother Eduard[40].

The match

16. At the time of their second round match, Vassallo Arguello was ranked 87 in the world, and Davydenko 4[41]. As defending winner of the event, the first seed, and a top 10 player ranked 83 places above Vassallo Arguello, Davydenko was the clear favourite to progress.

17. The Sopot Match took place on Thursday 2 August 2007[42]. That meant that the winner would play a quarter-final match

26 Sopot Report, page 25, paragraph 163.

27 Sopot Report, page 10, paragraph 53. The events were: the Open 13 in Marseille, France (ATP International, now an ATP World Tour 250); the ABN AMRO in Rotterdam, Netherlands (ATP International Series Gold, now known as an ATP World Tour 500); the Barclays Dubai (ATP International Series Gold, now known as an ATP World Tour 500); Pacific Life Open in Indian Wells, USA (ATP Masters, now known as an ATP World Tour Masters 1000); the Sony Ericsson Open in Miami, USA (ATP Masters, now known as an ATP World Tour Masters 1000); Monte Carlo (ATP Masters, now known as an ATP World Tour Masters 1000); the Barcelona Open, Spain (ATP International Series Gold, now known as an ATP World Tour 500); the Estoril Open, Portugal (ATP International, now known as an ATP World Tour 250); The Internazionali BNL d'Italia in Rome (ATP Masters, now known as an ATP World Tour Masters 1000); Hamburg, Germany (ATP Masters, since reclassified as an ATP World Tour 500); Hypo Group in Poertschach, Austria (ATP International – the final edition of this tournament was held in 2008); the French Open (Grand Slam).

28 Sopot Report, pages 10 to 11, paragraphs 53 to 54.

29 An ATP International (now an ATP World Tour 250).

30 Sopot Report, page 11, paragraph 55.

31 Sopot Report, page 11, paragraph 56.

32 Sopot Report, page 11, paragraph 58.

33 Sopot Report, page 3, paragraph 3.

34 Vassallo Arguello beat qualifier Maximo Gonzalez (ARG) on Tuesday 31 July 2007 2-6, 6-3, 6-2.

35 Davydenko beat Andrei Pavel (ROM) 6-3, 6-4.

36 Sopot Report, page 8, paragraph 39.

37 Sopot Report, pages 9, 10 and 13, paragraphs 46 and 68.

38 Sopot Report, page 13, paragraph 68.

39 Sopot Report, page 13, paragraph 69.

40 Sopot Report, page 14, paragraph 72.

41 Sopot Report, page 3, paragraph 2.

42 Sopot Report, pages 3 to 4, paragraph 7.

on Friday 3 August; and, if he progressed, a semi-final on Saturday 4 August; and, if he progressed further, the final on Sunday 5 August. As described above, the Montreal event began on Monday 6 August, although Davydenko in 2007 received a bye into the second round in Montreal, in common with the other top 8 seeds, and first played on the following Wednesday.

18. As reported by the Sopot Report, which was prepared by the Sopot Investigators hired by the ATP after the match, shortly before the second round match at the Sopot event was due to start, Davydenko saw the ATP physiotherapist, Christian Swier, in the treatment room and asked for the same protection for his left toe as he had had before his first round match, and also for treatment to his left ankle. The physiotherapist was disappointed that the player had only come in immediately before the match was to start. He taped the toe and ankle[43]. According to the player, "*many people saw his injury being taped before the second round match*"[44].

19. The match commenced at 14.03. At 14.09, six minutes into the match, the Betfair integrity team notified Gayle Bradshaw of their concern about the betting pattern that they had seen in relation to the match[45]. As described below, the betting pattern had actually started to become evident some time before the match started. Gayle Bradshaw contacted the ATP player services manager, Giorgio Di Palermo, who contacted the ATP tournament supervisor, Carlos Sanches. They went to watch the match, arriving at the beginning of the second set[46].

20. Davydenko won the first set 6-2. According to the chair umpire, Mohamed Lahyani, Davydenko was playing well in the first set, not making errors and hitting some good winners, and looked likely to win easily[47].

21. At 0-1 down in the second set, Davydenko asked to see the physiotherapist at the next changeover. The umpire reported that he had seen no sign of injury up to that point, and he asked why. The player said he had an ankle problem[48]. At 1-2 down, Davydenko had a three-minute medical time out, and the physiotherapist came on. Davydenko told him that the back of his left ankle and the toe on his left foot were painful[49]. The physiotherapist noted the toe looked more *"irritated"* than it had before the match, and treated his ankle[50]. At 2-3 down, Davydenko received a 1-minute changeover treatment from the physiotherapist on his ankle, at which time he said the toe was still causing him pain. According to Davydenko, he indicated to an acquaintance Wojek Fitbak in the crowd that he was injured[51]. At 2-5 down, Davydenko received a second 1-minute changeover treatment from the physiotherapist, and on this occasion Davydenko told the physiotherapist that he was *"considering to retire"* and said *"what's the point of staying on, the hard court season is coming up"*[52]. According to Davydenko, *"at 3-5 down... he could not move well and it was obvious to see... he also indicated to his wife in the crowd that he intended to retire"* [53]. Davydenko lost the second set 3-6. According to the umpire, Davydenko was not moving as freely in the second set, and he was making some good shots but missing some easy ones[54].

22. Between the second and the third set, just before the umpire was going to call time, Davydenko asked for the physiotherapist again. The umpire told him he had already had the permissible time out and two changeover treatments for his ankle. Davydenko told the umpire the problem was now with his toe. The umpire told the player he would have to wait for the next changeover[55]. The umpire told the tournament supervisor by radio that the player wanted further treatment. The umpire also stated it was up to the physiotherapist whether there could be a second medical time out,

43 Sopot Report, pages 8 and 9, paragraph 40.

44 Sopot Report, page 13, paragraph 69.

45 Sopot Report, page 3, paragraph 5.

46 Sopot Report, pages 3, 4, 6 and 7, paragraphs 7, 20, 21 and 26.

47 Sopot Report, page 4, paragraph 13.

48 Sopot Report, page 5, paragraph 14.

49 Sopot Report, page 9, paragraph 41.

50 Sopot Report, pages 5, 6, 9, 13 and 14, paragraphs 14, 21, 41 and 70.

51 Sopot Report, page 14, paragraph 71.

52 Sopot Report, pages 5, 6 and 9, paragraphs 14, 21 and 42.

53 Sopot Report, page 14, paragraph 71.

54 Sopot Report, page 5, paragraph 14.

55 Sopot Report, pages 5 and 6, paragraphs 15 and 22.

as the umpire had not seen an incident that could have led to an injury[56]. With Davydenko down 0-1 in the third set the physiotherapist decided to give a medical time out for the player's toe[57]. The player told the physiotherapist he was *"really considering retiring"*. The physiotherapist attempted to persuade the player to continue to play as he was the defending champion and to play on *"would not cause him long-term problems"*. The physiotherapist is reported as stating that the player then asked something that the physiotherapist considered strange: *"Is this a medical reason to retire?"*, to which the physiotherapist responded that he thought it was a medical reason[58]. At 1-2 down, the physiotherapist came on again for one minute[59]. When he left, the player remained in his chair. The player told the umpire he could not continue[60].

23. The player received treatment from the physiotherapist after the match. He declined the x-ray suggested by the tournament doctor, Wojciech Makarewicz, and *"appeared to just want to leave the tournament area"*[61]. The doctor recorded the player's account of the injury being that *"the date of the onset... was 30 July 2007 and had started during practice, was ok to play, aggravated during match play"*. The doctor's diagnosis was tendinitis of the flexor hallucis, and he recommended ultrasound, medication and manual therapy. The physiotherapist and the doctor signed the ATP medical certificate.

24. The Sopot Investigators asked those who saw the match whether there was anything in the way that Davydenko had played to suggest that he had sought deliberately to lose. The umpire is reported as stating *"that in his opinion Davydenko did not show any sign of tanking during the match... if he did tank the match he did it in a professional way and with style"*[62]. The supervisor is recorded as stating that Davydenko *"played some good points but there were others where he did not force himself 100% and in normal circumstances he could have played better"*[63]. The player services manager is reported as stating that *"it was strange to see Davydenko playing all return games in a very relaxed way and never getting close to break point. Davydenko's effort in the Vassallo Arguello service games were not his best tennis. The shots were not as powerful or deep as he would expect... It was not possible to see the nature or extent of Davydenko's injury... sometimes it seemed like Davydenko had no major issue...Davydenko was not concentrating on the match... Davydenko never has good results after Wimbledon"*[64].

25. The tournament director is reported as stating that Davydenko played well in the first set, but *"as the second set progressed, Davydenko became slower and slower and was not finishing his shots. He appeared to have trouble running and was not forcing points"*. The tournament director thought the player retired due to the injury in his foot that he had seen treated. He did not believe that the player would either be involved in corrupt practices, or *"have deliberately foregone the bonuses due to him for reaching the later rounds of the competition"*[65]. The match was subsequently watched by Todd Martin, a former tennis professional, who saw nothing untoward, concluding that *"when Davydenko injured himself... the match turned and he appeared not to be able to put up too much of a fight"*.

56 Sopot Report, pages 5 and 6, paragraphs 15 and 22.
57 Sopot Report, pages 5 and 6, paragraphs 15 and 22.
58 Sopot Report, pages 5 and 9, paragraphs 15 and 43.
59 Sopot Report, pages 5 and 6, paragraphs 15 and 22.
60 Sopot Report, page 5, paragraph 15.
61 Sopot Report, page 9, paragraph 44.
62 Sopot Report, page 5, paragraph 18.
63 Sopot Report, page 6, paragraph 23.
64 Sopot Report, pages 6 to 7, paragraphs 26 to 27.
65 Sopot Report, pages 7 to 8, paragraphs 33 to 34.

The suspicious betting pattern

26. The suspicious betting pattern in relation to the Sopot Match was regarded by the Sopot Investigators as extreme in a number of ways, as explained by Mark Phillips, one of the Sopot Investigators. First, as to amount: Bets totalling £3.6 million were placed by connected Russian accounts on Betfair[66], and the total betting on the match was ten times the amount that would be normal for a match of that level[67].

27. Second, as to when and at what odds bets were placed:

    27.1 Before the match started, approximately £1 million had been bet backing Vassallo Arguello to such an extent that at the start, the number 4 ranked player in the world and defending champion had gone out from favourite at odds of 1.20[68] (which the Sopot Investigators considered to be the true odds) to underdog at odds of 2.44[69], and the number 87 ranked player in the world had become the favourite.

    27.2 During the match, money continued to be placed on Vassallo Arguello to win and Davydenko to lose, even after Davydenko won the first set. At that point, true odds on Davydenko would in the view of the Sopot Investigators have been 1.08: instead they were 2.28. When Vassallo Arguello broke serve in the second set, one might according to the Sopot Investigators have expected the true odds on Davydenko to lengthen slightly to 1.12: instead they leapt to 3.75. By the time Davydenko lost the second set, the odds on him had gone out to 6.00[70].

28. Third, as to the extent of the connections between the bettors placing the surprising bets: There were nine Russian accounts, which were established to be linked through computer sharing[71], and eight of those accounts were based in a specific area of Moscow[72].

29. The patterns led Mark Phillips to conclude that the betting was carried out at odds *"completely disproportionate to each player's actual chance of winning"*[73], and all else being equal, that the *"Russian accounts knew that Davydenko was going to lose the match"*[74].

30. Davydenko subsequently denied that any approach had been made to him, his family or support team; that he knew the bettors; or that he *"tanked"* at the Sopot event[75].

Betfair's decision to void bets

31. Immediately after the Sopot Match finished, at 15.57, Betfair made a unilateral decision without consulting the ATP to suspend settlement of all bets on the match, pending an internal investigation. The following morning Betfair voided all bets. This was the first time that the exchange had ever done so. The explanation given to the Sopot Investigators for that decision was that *"the betting movements (especially that in play) were perverse compared with what was actually happening in the match and those moving the market (the large Russian accounts) were heavily connected, mainly through computer sharing"*[76].

66 Sopot Report, page 12, paragraph 62.

67 Sopot Report, page 3, paragraph 3.

68 Decimal odds allow a bettor to calculate how much money will be returned if their bet is successful, as opposed to fractional odds which allow a bettor to calculate how much money will be won. For example, a £1.00 bet on a contingency with odds of 1.20 would return £1.20 (i.e. the £1.00 staked plus profit on the bet of £0.20) whereas a £1.00 bet on odds of 2/1 would return £3.00 (i.e. the £1.00 staked plus profit on the bet of £2.00).

69 Sopot Report, page 12, paragraph 62.

70 Sopot Report, page 12, paragraph 62.

71 Computer sharing in this context means the ability to link different betting accounts to the same computer or IP address.

72 Sopot Report, pages 20 to 21, paragraphs 124 to 131.

73 Sopot Report, page 12, paragraph 63.

74 Sopot Report, page 12, paragraph 64.

75 Sopot Report, page 14, paragraphs 75 to 77.

76 Sopot Report, page 4, paragraphs 9 to 11.

Events between Davydenko's 2 August Sopot retirement and 8 August match at Montreal

32. Davydenko saw his own doctor, Boris Buttner, in Koln on 3 August 2016. Dr Buttner diagnosed inflammation of the left foot flexor tendon and prescribed an injection of local anaesthetic Procain and Dexamethason[77], which Davydenko later erroneously described as a cortisone injection[78]. Davydenko flew to Montreal on Saturday 4 August, enabling him to have more time for treatment on his foot and to get a shoe inlay fitted[79].

33. To play in the Montreal tournament in the week after he had retired through injury at Sopot, the ATP Rules required Davydenko to satisfy the Montreal tournament doctor Jacques Toueg that he was no longer suffering from the same injury. Davydenko was passed fit by the doctor on 8 August, and he played a second round match on Wednesday 8 August, a third round match on Thursday 9 August, and a quarter-final on Friday 10 August. Davydenko received treatment from the ATP physiotherapist on 7, 9 and 10 August. The physiotherapist taped his left foot and knee[80].

(2) THE INVESTIGATION INTO THE SOPOT MATCH

The decision to commission an investigation and report

34. Gayle Bradshaw gave evidence to the Independent Review Panel that it was clear from the outset that the ATP needed to bring in people with a great deal of expertise to work on the Sopot Investigation[81]. Mark Young similarly stated that "as *soon as Betfair suspended its market it was clear that the match required investigating*" but that *"the ATP did not have the necessary experience to conduct the investigation on its own"*[82].

35. The ATP consulted the British Horseracing Association ("BHA"), as an organisation that had expertise and experience in investigating sports betting corruption. The ATP spoke with Paul Scotney of the BHA's integrity unit, who in Mark Young's words made *"a positive impression"*[83]. The ATP felt confident in his recommendations of particular investigators to carry out the Sopot Investigation on behalf of the ATP.

36. The Sopot Investigation was conducted under the supervision of Mr Scotney, by Paul Beeby, John Gardner and Robert King of the BHA, with former detectives Albert Kirby and Dave Nutten. Mr Kirby was working at a specialist telecommunications firm, Forensic Technology Services ("FTS"). He told the Panel that his "*role at FTS was to liaise with senior investigating officers responsible for major crime investigations in the north of England, to explain the specialist services that FTS provided and how those services could enhance an investigation*.[84]" Mark Phillips of the BHA supported the Sopot Investigation by undertaking the specific role of analysing the betting on the match. Mr Phillips was described in the Sopot Report as having spent 20 years working in the betting industry, and the last three years working as a BHA betting investigator[85]. The Panel refers to this group of individuals as the Sopot Investigators. The Sopot Investigators conducted their investigation on behalf of the ATP, and neither the BHA employees nor Mr Kirby or Mr Nutten were acting on behalf of the BHA, which had only recommended them to the ATP and did not itself play any role as an organisation in the investigation. On occasion, however, those interviewed by the Panel used the shorthand *"the BHA"* to describe the Sopot Investigators recommended by it. That should not be taken as meaning that the BHA played any role as an organisation.

77 Sopot Report, page 10, paragraph 47.
78 Sopot Report, page 14, paragraph 73.
79 Sopot Report, page 14. paragraphs 73 to 74.
80 Sopot Report, page 10, paragraph 50.
81 Statement of Gayle Bradshaw (ATP).
82 Statement of Mark Young (ATP).
83 Statement of Mark Young (ATP).
84 Statement of Albert Kirby (formerly FTS).
85 Sopot Report, pages 11 to 12, paragraph 61.

37. Throughout the Sopot Investigation the ATP were in regular contact with the Sopot Investigators[86]. Mr Bradshaw was the primary contact between the ATP and the Sopot Investigators, and was involved in the key aspects of the investigation.

38. From the contemporaneous documents the Panel has seen, at the outset of the Sopot Investigation the Sopot Investigators put forward a strategy for conducting the investigation and this plan of action was sent to the ATP.

39. On 15 August 2007, Robert King of the BHA sent an email to Mr Bradshaw in which he asked, amongst other things, the ATP to make written requests of the players for telephone records and examination of information storage equipment as soon as possible:

"2. It will be our likely intention to interview both players and their Player Support Personnel. Can you provide as much info as possible on these people? Names, address, role / relation and any other info you may consider necessary.

3. When we have an interview list, it would be imperative in terms of time for the ATP to make written requests of players and PSP [player support personnel] for telephone records and examination of "information storage equipment" The sooner we do this the quicker the investigation. From our experience it can take up to 40 days for phone companies to produce records from the requests of subscribers.

4. It is our intention to forensically examine mobile telephones at the time of interview. This will be crucial to the investigation and seen as an essential task. There is a cost implication as an expert from the Forensic Telecommunications Services (FTC) will have to be present at the interview. Phones will not need to be retained or in any way damaged to complete this process and can be done in the presence of the interviewee".

40. In addition, Mr Scotney and Mr King met with Mr Bradshaw and Mr Young on 16 August 2007 to discuss the strategy proposed. From a contemporaneous document it is noted that a number of decisions and action points were reached[87], to include:

40.1 Obtaining telephone records from the players. In particular, the following actions were noted as being agreed in a document authored by the Sopot Investigators:

"• Action: ATP to draft letters of request for Players forthwith and forward to IO's [Investigating Officers] for agreement.
• Periods to be covered: One month before the tournament and one month afterwards
• On production of the telephone records, persons concerned to identify all numbers called on the day and day before the match."

40.2 Conducting interviews with the players. It was agreed that the players should not be interviewed whilst actively engaged in a tournament, but that there was no reason why they could not be interviewed in the host country were they to arrive several days beforehand. Amongst the agreed actions was the following:

"• Actions: ATP to provide personnel details and all available background information on Players and PSP. This information would include earnings, rumour gossip, concerns, media articles or any other information deemed relevant.

• IO's to prepare a list and profile of persons to be interviewed. This will be forwarded to the ATP to prepare letters requesting interview [...] Although notes would be taken during the interviews, full recordings would also be made. Recording equipment would be presented at the interview and persons concerned informed that recordings were to be made in the interests of accuracy and fairness.

• Action: IO's to provide appropriate recording equipment".

86 Statement of Gayle Bradshaw (ATP).

87 Document entitled 'Progress of Enquiry, Investigation No: 26, Updated: 16/08/07'.

The possibility of using a company specialising in forensic analysis to examine the information storage devices belonging to the players. The discussion and actions were recorded as follows: *"There was discussion concerning the use of the Forensic Telecommunication Services (FTC). The ATP supported the idea in principle although there had to be some clarification as to whether or not the FTC would or could carry out non law enforcement work and if they could, what would the likely cost be. (Serving an additional written request at the end of the interview on players or psp for examination of information storage devices ought to be considered.)*

- *Action: Albert Kirby to liaise with FTC*

- *ATP to examine Rules to ascertain whether this course of action is feasible".*

40.3 Mr Kirby told the Panel that based on his role at FTS he "*had a good understanding about the evidence that could be obtained from telephones*." He further stated that he "*suggested to the BHA that FTS should be retained to provide specialist telecoms services and retrieve data from Davydenko's and Arguello's telephones. The BHA then explained the requirements of this process to the ATP.*"[88]

41. Under the ATP Rules 2007 Mr Bradshaw[89] (as acting ARC) had the power to conduct an investigation of any alleged Corruption Offense (as defined in the ATP Rules 2007). Such investigation could be conducted in conjunction with other relevant authorities. Further if Mr Bradshaw *"reasonably believed"* that a Player or any of his Player Support Personnel (as defined in the ATP Rules 2007) may have committed a Corruption Offense, he could make a written demand to such Player or Player Support Personnel to furnish any information that is reasonably related to the alleged Corruption Offense including, without limitation, copies of, or access to, all records relating to the alleged Corruption Offense (including, without limitation, telephone records, Internet service records, computers, hard drives and other information storage equipment).[90]

42. On 23 August 2007, Mr Bradshaw sent Mr King a draft copy of the written demands he intended to send to both players, which he acknowledged receipt of on 24 August 2007. This draft only contained a demand for mobile phone records for the period in question. The final copy of that written demand was sent on 29 August 2007 to both players on the same terms (i.e. the demand was limited to mobile phone records). In addition, in the covering email to Vassallo Arguello, Mr Bradshaw stated that he would call Vassallo Arguello *"concerning the plans for [his] interview."*

43. The contemporaneous documents suggest that the ATP supported in principle the idea of using a forensic expert to examine information storage equipment, but wanted to confirm that it was possible under the ATP Rules 2007. As explained above, under the rules the ATP had the authority to make a written demand to furnish any information including copies of, or access to, records – this included access to *"information storage equipment"*. *"Information storage equipment"* is not defined in the ATP Rules 2007. It is not clear from the contemporaneous documents whether the ATP, with or with legal counsel, did examine the ATP Rules 2007 regarding this matter. It is also not clear whether the ATP took *"information storage"* to mean mobile phones. In any event, no such written demand was made in respect of access to mobile phone devices to download data, notwithstanding the provisions set out in the ATP Rules 2007.

Interviews of and statements from officials

44. The Sopot Investigators conducted interviews and/or obtained statements from the various officials in positions of responsibility at the Sopot event[91]; staff at Montreal[92]; a former tennis professional[93]; and the betting exchange Betfair[94]. The Sopot Investigators undertook analysis of the betting on the Sopot Match[95], obtaining further information where

88 Statement of Albert Kirby (formerly FTS).

89 Rule 7.05 (E) (2) (a) under the heading Investigations and Procedures > Investigations.

90 Rule 7.05 (E) (2) (c) under the heading Investigations and Procedures > Investigations.

91 Sopot Report. The Sopot Investigators obtained evidence from Gayle Bradshaw, the ATP Executive Vice-President Rule and Competition; Giorgio Di Palermo, the ATP Player Services Manager; Carlos Sanches, the ATP Tournament Supervisor; Mohamed Lahyani, the Chair Umpire; Christian Swier, the ATP physiotherapist; Carmello Di Rio, the ATP Match Referee; Martin Degahs, the ATP Communications Manager; Ryszard Fijalkowski, the tournament director; and Wojciech Makarewicz, the tournament doctor.

92 Sopot Report, page 10, paragraphs 49 to 50. Jacques Toueg was the Montreal tournament doctor, and Bill Morris was the ATP trainer/physiotherapist in Montreal.

93 Todd Martin. Sopot Report, page 11, paragraphs 59 to 60.

94 Mark Davies. Sopot Report, page 4, paragraphs 10 to 11.

95 Sopot Report, pages 11 to 12, paragraphs 61 to 64.

necessary from Betfair.

Attempts to interview the betting account holders

45. The Sopot Investigators sought to interview the Russian holders of the betting accounts, identified by Betfair[96], with varying degrees of success. It was necessarily difficult to do this, as the account holders were located in Russia. According to the Sopot Report, some of the account holders were not prepared to speak. The account holders were upset that Betfair would not allow settlement of the bets, denied forming part of any betting syndicate, and variously described their success as attributable to research and preparation, *"watching the line"* and betting accordingly, and risk taking, rather than access to any inside information from the player or those around him. The Sopot Investigators were unable to pursue these interviews further in light of the account holders' unwillingness to speak, their location, and the absence of any power to require them to give evidence.

Interview of Vassallo Arguello

46. The Sopot Investigators interviewed Martin Vassallo Arguello[97]. He denied knowing anyone in Italy or Russia involved in betting on tennis or knowing of any approaches to him, his support personnel or his family. He denied speaking to Davydenko before the match or having any knowledge that Davydenko might be injured. He said that he had spoken with other Argentine players and coaches the night before the match, and there had been speculation that with the hard court season coming up with more ranking points at stake, and with Davydenko "*only at the tournament for the appearance money*", Davydenko might not want to tire himself out at Sopot. Vassallo Arguello was also recorded as admitting "*tanking on one or two occasions in doubles matches when he did not really want to be at the tournament... in those cases he would not be bothered if he lost those games*"[98].

Vassallo Arguello's telephone records

47. The ATP served a written demand on Vassallo Arguello in respect of the player's telephone records[99]. Pursuant to the demand, the Sopot Investigators duly obtained some of Vassallo Arguello's telephone records, although some other records remained to be obtained[100].

Data was downloaded from Vassallo Arguello's mobile telephone

48. Data was downloaded from Vassallo Arguello's mobile telephone[101], which was obtained from the player at the time he was interviewed. The contemporaneous documents and the evidence provided to the Panel from the individuals involved at the time of the interview indicate that:

    48.1 The ATP approved in advance the Sopot Investigators' proposal that a forensic expert be available at the time of the Vassallo Arguello interview in order to "*conduct on site work with mobile phones*[102]."

    48.2 The interview took place on 17 September 2007[103] in Szczecin, Poland[104]. The interview itself was carried out by Mr Kirby and Mr Nutten, with the assistance of a translator[105]. The player attended alone[106].

96 Sopot Report, pages 20 to 23, paragraphs 124 to 151.
97 Sopot Report, pages 15 to 16, paragraphs 80 to 90.
98 Sopot Report, page 16, paragraph 90.
99 The ATP's written request to Vassallo Arguello dated 29 August 2007.
100 Sopot Report, page 20, paragraphs 121 to 123.
101 Sopot Report, page 20, paragraphs 121 to 123.
102 Email from Paul Beeby to Gayle Bradshaw (copying Paul Scotney, Phil Walker, and Laura Warwin) dated 7 September 2007.
103 Statement of Gayle Bradshaw (ATP).
104 Statement of Paul Beeby (formerly BHA).
105 Statement of Paul Beeby (formerly BHA).
106 Statement of Gayle Bradshaw (ATP).

48.3 Before the interview Mr Beeby and Mr Bradshaw were also present and met the player. Mr Bradshaw attended the interview[107]. Mr Beeby did not attend the interview[108]. The forensic analysis expert had also travelled to Poland with the Sopot Investigators [109].

48.4 No written demand was given to the player at that meeting. The only written demand that had been sent by the ATP to Vassallo Arguello in advance of the interview was the one referred to in paragraph 47 above, but this solely referred to the ATP wishing to obtain the player's telephone records. It did not refer to the examination of information storage devices such as his mobile telephone.

48.5 The oral request made to Vassallo Arguello was not recorded on the transcript of the interview.

48.6 The summary of the interview states that Vassallo Arguello "*willingly handed over his two mobile phones for examination*"[110].

48.7 In an email from Gayle Bradshaw to Mark Young, Mr Bradshaw sent an update to the ATP's external lawyers during the course of the interview: *"Interview underway. Very cooperative. Both he and his coach have turned over their phones and the forensic expert is downloading data now"*.

48.8 The player's mobile telephone was taken from the room so that the forensic analysis expert could downloaded data from it. The forensic analysis expert used specialist software and hardware to download the data from the telephone. The data downloaded included deleted texts (or at least partial texts)[111] and contacts.

49. The evidence relating to the explanation given to Vassallo Arguello as to why his phone was required is set out in detail in Chapter 9.

50. Some of the texts that were downloaded from Vassallo Arguello's mobile telephone included exchanges that warranted further investigation, in particular potentially significant exchanges related to two matches in which Vassallo Arguello had played. Some of the contacts also warranted further investigation. However, to the extent that those text exchanges and contacts related to conduct in respect of any match, the Sopot Investigators concluded that they did not relate to the Sopot Match against Davydenko, and so did not address them further in the Sopot Report[112]. The Sopot Report stated that "*the outcome of forensic examinations disclosed both intelligence and evidence that will now form the basis of future investigations concerning" Vassallo Arguello*[113].

51. Paul Scotney stated to the Panel that "*during the interview of Arguello we were able obtain a great deal of information from his mobile telephone handset which he handed over to a forensic expert we had present. The data we retrieved from the phone included text messages and the names of people in his contacts list. Whilst this information did not relate to the Davydenko v Arguello match, there was useful information about other potentially corrupt tennis matches including the identity of people placing suspicious bets on other Arguello matches. These did not relate exclusively to ATP matches. The evidence found on Arguello telephone was damning and definitely worthy of further investigation.*"[114]

107 Statement of Gayle Bradshaw (ATP).

108 Statement of Gayle Bradshaw (ATP); Statement of Paul Beeby (formerly BHA).

109 Statement of Gayle Bradshaw (ATP); Statement of Paul Beeby (formerly BHA).

110 Summary of Interview of Martin Vassallo Arguello (appended to the Sopot Report).

111 Statement of Gayle Bradshaw (ATP); Statement of Paul Beeby (formerly BHA).

112 Sopot Report, page 20, paragraphs 121 to 123. The Sopot Investigators found a number for Davydenko in the contacts, but could not identify when it was added to the list, or whether any calls to it had been made or whether any calls from it had been received, and so based no conclusions on it.

113 Sopot Report, page 20, paragraph 122.

114 Statement of Paul Scotney (formerly BHA).

52. Mark Phillips stated that the phone material provided corroborative evidence in relation to some of the 45 matches[115] that the Environmental Review stated "*warrant*[ed] *further review*"[116]. As explained in paragraphs 189 to 194 below, he stated that he had already identified those 45 matches through his analysis of betting data before he saw the relevant Vassallo Arguello phone material. The resultant intelligence that was reported to the ATP and the ATP's approach to that intelligence are addressed in Section C below. The presentation of the information to Jeff Rees and others following the inception of the TIU is addressed in Chapter 9.

Interview of Vassallo Arguello's coach Leonardo Olguin

53. The Sopot Investigators interviewed Vassallo Arguello's coach Leonardo Olguin[117]. He stated that when he saw Davydenko receive treatment he thought that gave Vassallo Arguello a chance, as *"Davydenko would look after his foot and keep himself for the Master Series that was his next match and was far better for him to win"* (the Montreal event). He stated that *"everybody could see that he was not alert. He was late and was not responding"*. Olguin stated that he had never bet on tennis, that he did not know anyone in Russia involved in betting on tennis and that no one had approached him for information.

Interview of Davydenko

54. The Sopot Investigators interviewed Davydenko[118] in the presence of his lawyer Dr Frank Immenga.

55. The player denied that anyone had made any approaches to him, his support personnel or his family[119]. He denied knowing the Russian account holders or anyone else involved in betting in Russia, and stated that he did not recognise their names[120]. He denied being involved in any type of betting[121]. He also said that he did not know Vassallo Arguello well[122].

56. Davydenko was asked about the term *"tanking"* and was reported as responding *"that it was normal during a small tournament that players might not try so hard if they had an injury, or if there was a big tournament coming up (such as a Grand Slam) players would prefer to have more time to prepare"*[123]. He also said this had nothing to do with the Sopot event. When it was put to him that others might seek to exploit knowledge about tanking, he said that players did not have time to become involved with anyone other than the physiotherapists, their family and their coaches[124].

Davydenko's telephone records

57. When the Sopot Investigators sought to obtain Davydenko's telephone records, the player's lawyers exercised the player's right to object and raised an appeal to the Anti-Corruption Hearing Officer or AHO[125]. The ATP's lawyers, Smith Hulsey & Busey, acted for the ATP on the appeal. In November 2007, the AHO decided that the telephone records should be provided. The player then provided telephone records, which the player's lawyer stated related to the player's telephones although they were not registered in his name, and none of which showed contact with the Russian account

115 As appears in Mark Phillips' PowerPoint presentation described in paragraphs 201 to 214 below, one of the 45 matches was mentioned in the deleted texts and involved betting via a Betfair account registered with a telephone number that also appeared in Vassallo Arguello's contacts list in the mobile phone's address book and two of the 45 matches involved betting via accounts registered with telephone numbers that also appeared in Vassallo Arguello's contacts list in the mobile phone's address book.

116 Statement of Mark Phillips (formerly BHA).

117 Sopot Report, paragraphs 91 to 98.

118 Sopot Report, paragraphs 67 to 79.

119 Sopot Report, paragraph 75.

120 Sopot Report, paragraphs 75 and 76.

121 Sopot Report, paragraph 75.

122 Sopot Report, paragraph 79.

123 Sopot Report, paragraph 77.

124 Sopot Report, paragraph 78.

125 Under ATP TACP 7.05 E(2)(c) and (d).

holders[126]. The Sopot Investigators reported that no records were provided for the number the ATP had recorded as the player's landline or mobile, the player's lawyer stating that the latter was no longer his mobile number[127]. The Sopot Investigators reported that the landline number had no subscriber details, and that the mobile number appeared to belong to a company in Germany with which the player had no apparent connection[128]. A third number that the ATP had was registered to the player's agent Eckard Oehms.

Interview of Davydenko's agent Ronnie Leitgeb

58. The Sopot Investigators interviewed Ronnie Leitgeb[129], described as an agent for Davydenko since July 2007, but who was also a coach. He stated that the player lost in the first round in the three tournaments after Wimbledon (Gstaad, Amersfoort and Umag) because he had found it difficult to adjust back from grass to clay, and because he had lost confidence on the surface. Leitgeb had given him two hard training sessions, and the player had mentioned pain in one of his feet. Leitgeb had then left Sopot.

59. Leitgeb was reported as saying that tanking may happen where, for example, a player seeks to protect an injury or to save himself for a major tournament, and that such information was readily available at tournament hotels. He was also reported as saying that *"there may be a tendency for some to play the first round, pick up first round prize money then move on"*[130].

Interviews of Irina Davydenko and Eduard Davydenko

60. When the Sopot Investigators sought to interview the player's wife Irina and brother Eduard, Frank Immenga reserved an objection to the ATP's jurisdiction over them, on the basis that they were not covered by the ATP TACP.

61. The player's wife stated that she was aware of his injury, but had not passed the information to anyone else[131]. She denied knowing Vassallo Arguello, that any threats had been made to her or her husband, or knowing any of the Russian account holders[132]. At that stage, she made no objection to providing her telephone records[133].

62. The player's brother was reported as also serving as his coach[134]. He was not at Sopot because he had been away from his own family for several months, and was about to be away again for two more. He stated that his brother regularly had injury problems, that journalists regularly called him enquiring about his brother's form, and that the player *"does not keep his injuries quiet when speaking with Russian supporters"*. He stated that his brother always tried *"to give of his best at tournaments"*.

The telephone records of Irina Davydenko and Eduard Davydenko

63. When the Sopot Investigators sought to obtain Irina Davydenko's and Eduard Davydenko's telephone records in January 2008, Dr Immenga invoked the objection that had previously been reserved, that the ATP had no jurisdiction over the player's wife and brother because they were not subject to the ATP TACP. Smith Hulsey & Busey acted for the ATP on the challenge to the jurisdiction. In July 2008, the AHO decided that the telephone records should be provided. However, the Sopot Investigators were then informed that it was the relevant telephone company's policy to destroy records after a certain time, and that the relevant records had been destroyed.

126 Sopot Report, paragraph 117.
127 Sopot Report, paragraph 116.
128 Sopot Report, paragraph 118.
129 Sopot Report, paragraphs 110 to 115.
130 Sopot Report, paragraph 113.
131 Sopot Report, paragraph 101.
132 Sopot Report, paragraphs 101 and 102.
133 Sopot Report, paragraph 102.
134 Sopot Report, paragraph 104.

(3) THE SOPOT REPORT

64. The Sopot Report was provided to the ATP in May 2008. The report recited the background, interviews, statements and other evidence summarised above.

65. The Sopot Report concluded that *"there is no doubt that, based on the betting evidence, the individuals controlling the suspect accounts knew the outcome of the match before its conclusion. It was this knowledge that allowed them to bet with such confidence prior to and during the match"*[135]. This drew on Mark Phillips' view, on the basis of the betting pattern, that *"the suspect Russian accounts knew that Davydenko was going to lose the match"*[136]. The Sopot Report concluded that the bettors had that knowledge before the match started: *"the betting suggests that the suspect Russian accounts knew prior to the match that Davydenko would not win"*[137]. In reaching this conclusion, the Sopot Report dismissed the alternatives:

    65.1 The Sopot Report concluded that it was unlikely that the Russian accounts had bet as they had based on knowledge of such injury as the player had going into the match, as that injury did not mean that he would necessarily have to retire, justifying the high level of betting before the match started. In short, knowledge of a slight injury, like Davydenko's, would not have led to such a betting pattern involving such amounts bet at such odds[138].

    65.2 The Sopot Report concluded that it was unlikely that the Russian accounts had bet as they had based on knowledge of the player's poor form, losing in the first round of each of the previous three tournaments (Gstaad, Amersfoort and Umag). The accounts had not bet against Davydenko when he played his first round match at Sopot, which they could be expected to have done if they had been betting on this basis. But in any case, in short, knowledge of the player's prior defeats would not have led to such a betting pattern involving such amounts bet at such odds[139].

    65.3 The Sopot Report concluded that it was *"inconceivable"* that such a betting pattern had been based on *"account holder opinion"*, and that rather it involved *"betting on a known result"* and *"betting with inside information"*[140].

66. The Sopot Report concluded that it was, however, unknown *"how the suspect account holders knew that Davydenko would lose and Vassallo Arguello would win"*[141].

67. The Sopot Report concluded that *"there is no evidence to show who passed information to the account holders that Davydenko would lose and Vassallo Arguello would win. It could have been communicated by the players themselves, their family members, player support or anyone else who had that information. That information might have been passed to the Russian account holders without the players' knowledge"*[142].

68. The Sopot Report then suggested, without concluding, that the nature of the information that was passed in advance of the match might have been that Davydenko would retire during the match, not for betting or other corrupt purposes, but for other reasons; here, in order better to rest and prepare for the more important and valuable Montreal Masters and the remainder of the ATP North American hard-court swing leading into the US Open[143].

69. The Sopot Report concluded that *"there is no evidence to connect"* either of the *"players and their support staff"* with

135 Sopot Report, paragraph 152.

136 Sopot Report, paragraph 64.

137 Sopot Report, paragraph 158.

138 Sopot Report, paragraphs 154 and 155.

139 Sopot Report, paragraph 156.

140 Sopot Report, paragraph 156 and 158.

141 Sopot Report, paragraph 153.

142 Sopot Report, paragraph 160.

143 Sopot Report, paragraph 161 to 163. The Sopot Investigators referred to the relative values of the Sopot tournament, where the winner would earn 175 ranking points and €59,200, and the Montreal tournament, where the winner would earn 500 ranking points and $400,000. The Sopot Investigators also referred to Davydenko's retirement from the Sydney event and his ensuing comments to the press, as "of some interest".

"the account holders"[144]. The Sopot Investigators pointed to the facts that they could not secure more information from the accounts holders and that there had been an incomplete collection of telephone records, but made clear that *"of course we will never know if this would have revealed links to the Russian Betfair account holders"*[145].

70. The Sopot Report also concluded that the Sopot Investigation had been hindered, amongst other things, by the fact that *"the anti-corruption code rules were in places unclear and restrictive and difficult to work with; clarity and further definition is required. This will be the subject of additional recommendations"*[146].

71. Finally, the Sopot Report set out its principal conclusion that *"the investigation has been unable to find any evidence supporting the possibility of Nikolay Davydenko or Martin Vassallo Arguello being involved in any corrupt practices surrounding their second round match in Sopot on 2nd August 2007"*[147]. The Sopot Investigators went on to state *"it is felt that had we have had the full support of Betfair account holders and all requested itemised telephone billings then this investigation may well have had a different conclusion"*, but that possibility did not alter the conclusion made.

(4) THE ATP'S ACTION UPON RECEIPT OF THE SOPOT REPORT

72. The ATP took that principal conclusion of the Sopot Report as meaning that there was no basis for bringing disciplinary proceedings under the ATP TACP in respect of the 2 August 2007 Sopot Match against either player, or indeed anyone else covered by the ATP TACP[148].

73. Gayle Bradshaw gave evidence to the Independent Review Panel that the ATP agreed with the conclusions in the Sopot Report[149]. Reliance was placed by the ATP on the assessment made by the Sopot Investigators. Whilst Mr Bradshaw agreed that the bettors must have obtained information from somewhere, there was no evidence in his assessment that this information had come from Davydenko. It might have been that the bettors had picked up information from elsewhere. Davydenko's injury problems were well known. Gayle Bradshaw did not believe, on the basis of the evidence obtained and the conclusion of the Sopot Investigators, that it could be proved that Davydenko walked on to court having decided in advance that he was going to lose or retire.

74. Consequently, Gayle Bradshaw's position is that he, as the responsible official at the ATP, could not conclude that he *"reasonably believed"*[150] for the purposes of the ATP TACP that a corruption offence had been committed. According to Mr Bradshaw:

    74.1 No one could be charged with *"contriving the outcome"* of a match on the basis that he had deliberately lost or retired for reasons other than betting or other corrupt purposes[151], because first the provision had not been construed, and the ATP did not consider that it fell to be construed, as extending to such a situation. As a result, no consideration was given to a charge on this basis. Second, and in any event, even if consideration had been given to such a charge in Gayle Bradshaw's view there was insufficient evidence revealed by the Sopot Report to allow him to conclude that he *"reasonably believed"*[152] that the unusual betting pattern in fact stemmed from Davydenko having made a prior decision to lose.

144 Sopot Report, paragraph 166.

145 Sopot Report, paragraphs 164 to 166.

146 Sopot Report, paragraph 167.

147 Sopot Report, paragraphs 168.

148 Statement of Mark Young (ATP); Statement of Gayle Bradshaw (ATP).

149 Statement of Gayle Bradshaw (ATP).

150 2007 ATP TACP 7.05 E(2)(e).

151 2007 ATP TACP 7.05 C(2)(a).

152 2007 ATP TACP 7.05 E(2)(e).

74.2 No one could be charged with themselves wagering[153] or inducing others to wager[154], because the specific conclusion of the Sopot Investigators had been that there was no evidence linked the bettors to any player, support personnel, or family. Again, Gayle Bradshaw could not conclude that he *"reasonably believed"*[155] a corruption offence had been committed.

74.3 No one could be charged with paying or taking a bribe not to use best efforts[156], because again the specific conclusion of the Sopot Investigators had been that there was no evidence of any link between any player or support personnel, or family, with the bettors, and again Gayle Bradshaw could not conclude that he *"reasonably believed"*[157] a corruption offence had been committed.

74.4 No one could be charged with paying or taking a bribe in return for inside information[158], because again the specific conclusion of the Sopot Investigators had been that there was no evidence of any link between any player or support personnel, or family, with the bettors, and again Gayle Bradshaw could not conclude that he *"reasonably believed"*[159] a corruption offence had been committed.

(5) EVALUATION OF THE ATP'S RESPONSE TO THE 2007 SOPOT MATCH AND TO THE 2008 SOPOT REPORT

75. The Independent Review Panel has considered against the facts above whether the ATP's response to the 2007 Sopot Match and subsequently to the 2008 Sopot Report on it, was effective and appropriate.

The ATP's decision to appoint independent investigators

76. The ATP did not have the resources or capabilities to investigate an incident such as this. The ATP went to the BHA, a body with extensive expertise and experience in this context. The BHA recommended the appointment of two of its staff, together with two experienced detectives from outside. In the present[160] view of the Independent Review Panel, it was effective and appropriate for the ATP to bring in experienced external investigators and to select the Sopot Investigators.

The investigation carried out under the ATP TACP

77. Subject to paragraphs 78 and 79 below, the Independent Review Panel has seen nothing to indicate that the Sopot Investigation was not carried out effectively within the constraints that existed. The Panel presently considers that the Sopot Investigation was competent and thorough and involved considerable time and resources being invested by the ATP. In the present view of the Panel, it was appropriate for the ATP to conclude its investigation with respect to the Sopot Match after receiving the Sopot Report.

78. The Sopot Investigators' inability to secure the telephone records to all relevant numbers and to obtain and search all relevant telephones was in the present view of the Panel primarily a function of limitations in the ATP TACP, jurisdictional difficulties, and the right of the player to appeal to the AHO. It also underlined the limitations that the Sopot Investigators faced as a result of not having a close working relationship with law enforcement agencies. A benefit of such relationships is that local authorities may be able to secure the provision of evidence, such as telephone records, in circumstances where that evidence cannot be otherwise obtained.

153 2007 ATP TACP 7.05 C(1)(a).
154 2007 ATP TACP 7.05 C(1)(b).
155 2007 ATP TACP 7.05 E(2)(e).
156 2007 ATP TACP 7.05 E(2)(c) and (d).
157 2007 ATP TACP 7.05 E(2)(e).
158 2007 ATP TACP 7.05 C(2)(e) and (f).
159 2007 ATP TACP 7.05 E(2)(e).
160 Pending the consultation process between Interim and Final Reports.

79. The evidence as to the manner in which the Vassallo Arguello phone material was obtained under the ATP TACP is dealt with in Chapter 9.[161]

Could and should a disciplinary case have been brought by the ATP against either player or any other person under the ATP TACP in relation to the Sopot Match?

80. The focus of the Sopot Investigators was to establish whether there were links between the players and bettors.

81. The Sopot Report concluded that "*there is no doubt that, based on the betting evidence, the individuals controlling the suspect accounts knew the outcome of the match before its conclusion*" but that "*the investigation has been unable to find any evidence supporting the possibility of Nikolay Davydenko or Martin Vassallo Arguello being involved in any corrupt practices . . .*"

82. With the Report having found insufficient evidence to establish a corrupt motivation and link to bettors, it was appropriate for the Sopot Report to conclude that charges could not be brought against anyone for *"contriving the outcome"* in the sense of deliberately losing for betting or other corrupt purposes[162], or with inducing another player not to use his best efforts[163], or with paying or taking a bribe not to use best efforts[164].

83. In the present[165] view of the Independent Review Panel, it was appropriate that the ATP placed significant reliance upon the assessment that the Sopot Investigators reached in the 2008 Sopot Report. The Sopot Investigators had much greater experience in obtaining evidence to bring prosecutions, and their conclusion was clear: The Sopot Investigators were unable to find any evidence of either player's involvement in corrupt practices related to the Sopot Match.

A broader construction of* "contrivance" *under rule 7.05 C of the ATP TACP

84. Whilst the focus of the Sopot Investigators was on establishing whether there was a link between the players and bettors, the Panel has considered whether Davydenko, Vassallo Arguello, or anyone else could or should have been disciplinarily charged by the ATP in respect of the Sopot Match on the basis of a broader construction of *"contrivance"* under rule 7.05 C of the ATP TACP.

85. In the Panel's assessment, it would have been preferable for consideration also to have been given to whether Davydenko could have been charged with *"contriving the outcome"* of a match in the sense of deciding in advance deliberately to lose or retire for reasons other than betting or other corrupt purposes[166]:

    85.1 It does not seem to the Panel that the words of the provision fell, or at least necessarily fell, to be construed as being limited to where a player had acted for betting or other corrupt purposes. It seems to the Panel that the proper construction of the provision is that a player might contrive the result if he or she decides in advance to lose or retire, irrespective of motivation, because the text of the rule does not limit its application to situations where a player acted for betting or corrupt purposes.

    85.2 The Sopot Report was clear in its conclusion that the betting was so marked that the bettors must have known in advance that the player would retire or lose. It seems to the Panel that it would have been preferable for the ATP to have considered whether that warranted a charge.

86. Such a charge was not considered by the ATP because:

    86.1 The ATP had not construed the provision, and has stated that it did not believe it should be construed in light of the designation in the ATP TACP of the contrivance offence as an act of *"corruption"*, as extending to such a situation. On that premise, there was no reason so far as the ATP was concerned to go beyond the conclusion of the Sopot Investigators that there was no evidence of corrupt practices.

161 Chapter 9, Section C and Section E.

162 2007 ATP TACP 7.05.C.(2).(a).

163 2007 ATP TACP 7.05.C.(2).(b).

164 2007 ATP TACP 7.05.C.(2).(c) and (d).

165 Pending the consultation process between Interim and Final Reports.

166 2007 ATP TACP 7.05.C.(2).(a).

86.2 The Sopot Investigators themselves did not give consideration to such a charge being brought. The conclusion in the Report for these purposes was simply that there was no evidence of corrupt practices.

87. As addressed in Chapter 14 Section A in relation to the equivalent provision in the current uniform TACP[167], the Panel considers that it needs to be made expressly clear in the amended rules that the prohibition on contriving the result applies irrespective of motivation, though the seriousness of the offence may depend, at least in part, on motivation.

88. However in relation to the Sopot Investigation, even if consideration had been given to this by the ATP, and a different construction had been adopted, it appears from Gayle Bradshaw's evidence that he would not have regarded there to be sufficient evidence to charge Davydenko with *"contriving the outcome"* of a match[168] in the sense of deciding in advance deliberately to lose or retire even for reasons other than betting or other corrupt purposes, on the disciplinary prosecutorial standard that applied at that time under the ATP TACP. Gayle Bradshaw's evidence is that he could not have concluded that he *"reasonably believed"* that Davydenko had decided in advance deliberately to retire for any reason.[169]

89. The conclusion of the Sopot Report that there was no evidence of any link between anyone and the bettors also effectively precluded anyone covered by the ATP TACP being charged with wagering or inducing others to wager[170].

90. The conclusion of the Sopot Report that there was no evidence of any link between anyone and the bettors also effectively precluded anyone covered by the ATP TACP from being charged with paying or taking a bribe in return for inside information[171].

Failure to co-operate under rule 7.05 E of the ATP TACP

91. The Panel has considered whether Davydenko, Vassallo Arguello, or anyone else could or should have been disciplinarily charged with a failure to co-operate[172]:

91.1 It does not appear to the Panel that Davydenko or anyone else in his camp could or should have been charged with failing to co-operate in relation to phone records. Their actions in appealing the requests made were permissible under the ATP TACP[173]. Although it is noted that the Sopot Investigators observed that *"the situation with obtaining Davydenko's complete telephone billings and/or an explanation for other phones he was suspected of using has not been resolved satisfactorily"*[174] and that the Sopot Investigators *"received no itemised telephone billings"* for Davydenko's coach and his wife[175], the Panel has not seen evidence demonstrating that these circumstances afforded any basis for a disciplinary charge.

91.2 Nor does it appear that once that appeal process was complete, and the order was made, anyone in fact failed to comply with an AHO direction. If evidence no longer existed, and no obligation existed to preserve it, it is not a failure to co-operate to fail to provide it.

Were there deficiencies in the ATP TACP that hindered investigation?

92. As the Sopot Report concluded, there were deficiencies in the ATP TACP that hindered investigation. In particular, the ability of investigators to obtain records and telephones rapidly was circumscribed, and there were doubts as to the extent to which some individuals were covered by the rules. These issues were to some extent addressed in the uniform

167 Chapter 14, Section A.
168 2007 ATP TACP 7.05.C.(2).(a).
169 2007 ATP TACP 7.05 E.(2)(e).
170 2007 ATP TACP 7.05.C.(1).(a) and (b).
171 2007 ATP TACP 7.05.C.(1).(e) and (f).
172 2007 ATP TACP 7.05.E.(2)(b).
173 2007 ATP TACP 7.05 E.(2)(d).
174 Sopot Report, paragraph 166.
175 Sopot Report, paragraph 166.

TACP subsequently introduced[176], and are the subject of further recommendations by the Independent Review Panel[177].

93. It also appears from the Sopot Report that the definition of prohibited conduct in the ATP TACP, as construed by the ATP, made the prospect of obtaining sufficient evidence unlikely. In particular:

93.1 The Sopot Report highlighted the difficulty in proving corrupt motivation and a link with bettors, when arguably it is or ought to be a breach of integrity simply to contrive the result of a match even absent proof of such matters.

93.2 The Sopot Report highlighted the difficulty in proving reward for the passing of inside information, when arguably it is or ought to be a breach of integrity to pass such information even absent proof of such reward.

94. The Sopot Report highlighted the difficulty in proceeding in respect of the actions of individuals not covered by the rules.

176 TACP (2009), Section F.2.c

177 Chapter 14, Section D.

B THE 2008 ENVIRONMENTAL REVIEW AND DEVELOPMENT OF UNIFORM RULES

95. In the light of the events described in Chapter 7 and above, and in particular the ATP's experience in relation to the number of suspicious or unusual betting patterns[178], the investigation of betting accounts in the names of players and coaches[179] and the commencement of the Sopot Investigation into the Vassallo Arguello v Davydenko Sopot Match[180], in autumn 2007 the International Governing Bodies of tennis jointly initiated a review of their approach to match-fixing and related breaches of integrity by participants in the sport, with a view to the development of new uniform rules to be applied across the sport.

96. Independent experts were appointed by the International Governing Bodies to conduct an environmental review to examine the nature and extent of the problem faced by tennis and to recommend the steps that should be taken to address it[181]. At the same time, the International Governing Bodies and legal advisers addressed the development of uniform rules[182].

(1) THE COMMISSIONING AND UNDERTAKING OF THE ENVIRONMENTAL REVIEW AND THE DEVELOPMENT OF UNIFORM RULES

Establishment of the Professional Tennis Integrity Review Committee

97. In October 2007, following discussions between them, the International Governing Bodies established a Professional Tennis Integrity Review Committee made up of Mark Young of the ATP, David Shoemaker of the WTA and Ian Ritchie of the AELTC on behalf of the GSB to decide how to implement an investigation and development of new rules.

Appointment of Ben Gunn and Jeff Rees to undertake the Environmental Review

98. In November 2007, having undertaken research, attended meetings with potential authors, and considered proposals, the committee appointed Ben Gunn and Jeff Rees to undertake the Environmental Review.

99. Each had great experience in policing and in sports integrity:

    99.1 Mr Gunn had spent 40 years in law enforcement, principally in the Metropolitan Police in London where he specialised in countering espionage, subversion and terrorism[183], and then as Chief Constable of the Cambridgeshire Constabulary. Following retirement from the police in 2002, he had been a member of the Integrity Committee of The Jockey Club[184] and in 2007 became Independent Regulatory Director at the BHA. During his time at The Jockey Club, he was appointed Independent Chairman of the joint Jockey Club and British Horseracing Board's Security Review Group, tasked with examining integrity issues in the horseracing industry[185].

    99.2 Mr Rees had spent 35 years working for the Metropolitan Police in London. Mr Rees stated "*I led major investigations not only in London but in several different countries around the world, so gaining experience of operating in the international arena and in very different legal jurisdictions. This experience stood me in good stead when I entered the field of investigating betting-related corruption in international sports*"[186]. Mr Rees stated that in 2000

178 Chapter 7, Section A.

179 Chapter 7, Section B.

180 Section A above.

181 Ben Gunn and Jeff Rees, '*Environmental Review of Integrity in Professional Tennis*' (May 2008) (hereafter the "Environmental Review") - Appendix: Key Documents.

182 The product of the International Governing Bodies' and legal advisers' work (which work was described as "the Regulatory Review" in the Environmental Review) was the uniform Tennis Anti-Corruption Programme ("the TACP") in its original form, in force from 1 January 2009.

183 Statement of Ben Gunn (formerly BHA).

184 The regulatory and governing body of horseracing in Great Britain at that time, since superseded by the Horseracing Regulatory Authority and the British Horseracing Board and, latterly, the BHA.

185 Statement of Ben Gunn (formerly BHA).

186 Statement of Jeff Rees (formerly TIU).

he "*retired in the rank of Detective Chief Superintendent, having held leading roles in a number of New Scotland Yard's most successful operational units*"[187]. Mr Rees stated that he retired from policing having been invited by Lord Condon to assist with establishing the International Cricket Council's (ICC) anti-corruption unit and was then appointed its Chief Investigator and General Manager[188].

100. Mr Rees gave evidence that, in his view, each of the two authors brought differing perspectives. He stated that "*Ben Gunn had come from the BHA. The BHA had a developed integrity programme, but it was a one-country regulator*". Mr Rees added that "*as far as I am aware Ben Gunn's experience was limited to holding an executive position rather than managing, directing and carrying out investigations himself*"[189]. Mr Rees stated "*I had experience both in executive and operational roles*"[190]. Mr Rees also suggested that their experiences differed in that he "*brought experience from a sport that existed to provide a sporting spectacle and where betting was, in the wider scheme of things, largely incidental*.". Whereas in horseracing, Mr Gunn had worked for "*a sport which existed primarily as a vehicle for betting*"[191].

The terms of reference of the Environmental Review

101. The terms of reference of the Environmental Review were "*(i) To identify the nature of the threats to the integrity of professional tennis worldwide (ii) To consider what regulatory strategies, structures, policies and resources are necessary to combat current and foreseeable threats to integrity worldwide (iii) To report the recommendations to the commissioning tennis authorities*"[192].

The task of the team asked to develop uniform rules

102. The task of the team asked to develop new uniform rules was to produce rules that could apply across the professional sport, and which took into account lessons learned from past experience[193]. A team was set up to draft this set of unified rules, made up of Mr Young, Mr Shoemaker, Bill Babcock, Stephen Busey of Smith Hulsey Busey and Jamie Singer of Onside Law. Each had legal or sports regulatory experience.

103. It is to be noted that at least two of the Grand Slams simultaneously undertook their own exercises to examine how integrity issues arose in their specific contexts.

The undertaking of the Environmental Review and development of uniform rules

104. Mr Gunn and Mr Rees were appointed at the end of 2007 and undertook the Environmental Review in the beginning of 2008.

105. Their "*Methodology and Consultation*"[194] included consideration of materials provided to them by the International Governing Bodies and "*ninety five interviews… with people representing a wide range of stakeholders and interests within tennis and the betting industries, as well as senior representatives of the various international tennis bodies".*

106. The Environmental Review was finalised in May 2008. Mr Gunn and Mr Rees had a very limited period in which to conduct the Environmental Review[195], and yet were able in that time to gather together and effectively process a great deal of information as to the environment within tennis. The Panel appreciates greatly their work, which has been of substantial assistance in the Panel's understanding and consideration of the issues, historical, current, and future.

107. The proposed new uniform rules were produced at the same time. They took as their starting point the ATP TACP, and adapted it. The ultimate product of their work was the TACP itself, in its original form.

187 Statement of Jeff Rees (formerly TIU).

188 Statement of Jeff Rees (formerly TIU).

189 Statement of Jeff Rees (formerly TIU).

190 Statement of Jeff Rees (formerly TIU).

191 Statement of Jeff Rees (formerly TIU).

192 Environmental Review Appendix A, page A-1.

193 The exercise undertaken by the team is described in the Environmental Review, paragraph 1 as a *"Regulatory Review which seeks to harmonise the various Rules and Codes of Conduct for international tennis into one uniform Anti-Corruption Programme".* The Environmental Review further described "the Regulatory Review" in paragraphs 1.27 to 1.31, stating that Ben Gunn and Jeff Rees had liaised with Jamie Singer, and strongly supported and recommended the adoption of the harmonised Tennis Anti-Corruption Programme.

194 Environmental Review Appendix B, pages B21 to B-2.

195 Jeff Rees gave evidence to the Panel that *"the only constraint or limitation [placed upon the authors of the Environmental Review] was in relation to the time available for us to carry out our research and submit our report. Ben Gunn and I were each paid for 40 days' work."* (Statement of Jeff Rees (formerly TIU).

(2) THE CONTENTS OF THE ENVIRONMENTAL REVIEW

108. The Environmental Review contained an Executive Summary[196] and an introductory Section 1[197]. It then contained a section dealing with each of the three heads of the terms of reference set out above[198], divided into a number of sub-sections:

108.1 Section 2 addressed the first head of the terms of reference and contained sub-sections entitled "*the nature of the threats to the integrity of professional tennis worldwide*";[199] "*corrupt practice by players/officials and others in respect of betting on tennis*"; "*breaches of the rules and regulations of professional tennis which affect the integrity of the sport*"; "*accreditation / credential violations*"; "*misuse of inside information for corrupt betting purposes*" and "*illegal or abusive behaviour towards players*".

108.2 Section 3 addressed the second head of the terms of reference and contained sub-sections entitled "*regulatory action to address the threats to professional tennis*";[200] "*a uniform anti-corruption programme*"; "*a regulatory strategy*", "a *regulatory structure – an integrity unit*"; "*regulatory processes/procedures*"; "*interface with betting and betting organisations*" and "*interface with police and other law enforcement agencies*".

108.3 Section 4 addressed the third head of the terms of reference and contained recommendations to the commissioning tennis authorities.[201]

108.4 Section 5 contained conclusions.[202]

109. The Environmental Review warrants reading in its entirety. It constitutes a second detailed appraisal of the integrity-related issues facing professional tennis, and like the first appraisal, the 2005 Ings Report[203], raised many of the issues that continue to confront tennis today. The Panel summarises below a number of particularly important points for the purposes of this further Independent Review of Integrity in Tennis, by reference to the headings described above.

"The nature of the threats to the integrity of professional tennis worldwide"

110. The Environmental Review concluded that "*the integrity of professional tennis is under threat*" because "*a few players are vulnerable to corrupt approaches*"[204]. There had however been very little disciplinary action[205]. The authors stated that they had examined 73 matches raising unusual betting patterns in the five years up to the Sopot Match. Of those, 45 had been more closely examined in the light of intelligence arising out of the Sopot Investigation and "*warranted further review*", and the information had been passed to the professional tennis authorities. Other matches since the Sopot Match also merited further review. There would likely have been other suspect betting elsewhere. There could be no room for complacency[206].

196 Environmental Review, pages 1 to 3, paragraphs 1 to 15.

197 Environmental Review, pages 4 to 7, paragraphs 1.1 to 1.31.

198 Paragraph 102 above.

199 Environmental Review, pages 8 to 21, paragraphs 2.1 to 2.109.

200 Environmental Review, pages 21 to 42, paragraphs 3.1 to 3.166.

201 Environmental Review, pages 43 to 44, paragraphs 4.1 to 4.2.

202 Environmental Review, pages 44 to 45, paragraphs 5.1 to 5.6.

203 Chapter 7; The Ings Report has been published as redacted at Appendix: Key Documents.

204 Environmental Review, page 8, paragraphs 2.2 to 2.5. Environmental Review, paragraphs 2.2 to 2.5. The authors concluded that there was "a broad consensus that the integrity of professional tennis was under threat" because although "tennis is not institutionally or systemically corrupt... a few players are vulnerable to corrupt approaches" on the evidence not from "Russian or Italian Mafia" but from "criminal elements... that may even involve organised criminal gangs". Also Executive Summary, page 1, paragraphs 3 and 5.

205 Environmental Review, page 8, paragraph 2.6. "...worldwide disciplinary cases for corrupt action brought under the Codes of Conduct over the past five years are limited" and "criminal charges internationally for such activity are nil over the same period". The authors also stated at paragraph 2.9 that they had liaised with those conducting current investigations and that the Environmental Review was to be taken as without prejudice to those investigations. This was a reference, principally, to the authors' liaison with the Sopot Investigators appointed to look into the Sopot Match.

206 Environmental Review, page 9, paragraphs 2.10 to 2.12. The authors stated that they had "examined some 73 matches which have been identified as having suspect betting patterns over the past five years and leading up to the Sopot Match on 02/08/07", that they had "examined more closely 45 of those matches as a result of specific enquiries arising out of the Sopot Match and have identified specific concerns from a betting perspective which would warrant further review" and that they had "examined further matches... identified as having suspect betting patterns since the Sopot Match" which also merited review. The authors stated that "the betting patterns give a strong indication that... account holders are in receipt of inside information" and that the authors had "shared... information on them with the professional tennis authorities". They considered that "there is merit in reviewing those matches in an effort to identify whether the initial suspicions raised did indeed affect the integrity of professional tennis, whether there may have been other tennis reasons for the outcome of such matches and, importantly, to identify any intelligence leads for future reference. The scale of the allegedly suspicious matches indicates there is no room for complacency". Also Executive Summary paragraphs 4 and 7. As described in Chapter 7, the Panel has identified 202 matches from the beginning of 2003 to the end of 2008 that raised suspicious or unusual betting patterns, within which are 45 referred to by the Environmental Review. Not all of the matches in that list, and not all of the 45 matches referred to by the Environmental Review were reported at the time the match took place, as opposed to subsequently.

111. The authors found that the investigatory process necessary to prove corrupt activity was lengthy and complex, and involved the collection of betting evidence, evidence of what happened at the match, telecommunications data, interview evidence, and expert analytical evidence linking them together[207].

112. The authors summarised the five principal threats to integrity that they had found to exist[208]: first, corrupt practice for betting purposes; second, breaches of the rules such as 'tanking'; third, accreditation abuse; fourth, misuse of inside information; and fifth, illegal or abusive behaviour towards players. They concluded that there was a "*lack of clarity in understanding the nature of the principal threats*", which needed to be clearly set out in a regulatory strategy so that they could be addressed.

The 45 matches referred to in the Environmental Review

113. The Panel addresses the identification of the above-referenced 45 matches in Section C below. As there described, Mark Phillips reported that the 45 matches referred to in the Environmental Review had been identified through his analysis of betting data provided by Betfair in the course of the Sopot Investigation. As Jeff Rees and Ben Gunn report, however, neither Mr Rees nor Mr Gunn were aware of the details set out in Section C or that Mr Phillips had subsequently concluded that the downloaded Vassallo Arguello texts and contact details provided corroboration in relation to some of the 45 matches that he had already identified based on his analysis of the betting data provided by Betfair.

114. Mr Rees' evidence as to his understanding in relation to the 45 matches identified in the Environmental Review as warranting further review is as follows:

114.1 Mr Rees relied on the assessment of Mr Gunn and his analysts in relation to those matches[209]. Mr Rees informed the Panel that "*they did explain their reasoning in general terms and cited individual matches as examples of matches worthy of causing concerns for the tennis authorities*"[210].

114.2 Mr Rees understood the source of the 73 matches, and the 45 matches, to be either that they had been identified by Betfair or other gambling operators, or that they had been identified from the ATP's or other tennis records[211]. He understood this from what Mr Gunn had told him and because of regular references by Mr Gunn and others to Betfair records. That Betfair was the original source was reflected in paragraphs 2.11 and 2.12 of the Environmental Review. In the Panel's view, that understanding was broadly correct, although the matches had actually been identified by Mr Phillips' analysis of the Betfair data.

114.3 When individual matches were discussed during the course of the Environmental Review, the Vassallo Arguello telephone material was never mentioned[212]. Mr Rees told the Panel that he had no reason to, and did not, link the 73 matches or the 45 matches to the Vassallo Arguello material[213], and it was not suggested to him by anyone at any time that there was a link.

115. Mr Gunn's evidence to the Panel was that:

115.1 Neither he nor Mr Rees had the time to carry out a detailed analysis of these matches themselves.

115.2 Instead, they proceeded on the basis that the work had been undertaken by betting analysts who had worked on the Sopot Investigation, who were members of Mr Gunn's integrity team at the BHA, including Mr Phillips.

207 Environmental Review, page 9, paragraphs 2.13 and 2.14, as further developed in Appendix D, page D-1.

208 Environmental Review, pages 9 to 10, paragraphs 2.15 and 2.16. Also Executive Summary, page 1, paragraph 6.

209 Statement of Jeff Rees (formerly TIU).

210 Response of Jeff Rees (formerly TIU) to Notification given under paragraph 21 ToR. (Oct. 2017).

211 Statement of Jeff Rees (formerly TIU).

212 Statement of Jeff Rees (formerly TIU).

213 Statement of Jeff Rees (formerly TIU).

Mr Gunn believed that both he and Jeff Rees were sent notes on the matches that had been identified by the betting analysts[214]. Mr Gunn and Mr Rees agreed that these matters were in the hands of skilled and experienced intelligence and betting analysts in whom Mr Gunn had the utmost confidence, and both he and Mr Rees were prepared to accept their judgements on those matches.

115.3 Mr Gunn's view at the time, with which he understood Mr Rees to agree, was that to "*drill down*" themselves into the matches and become involved in "*an investigation*" of them was not the best use of their time. Mr Gunn also considered that an investigation into those matches "*may well have been beyond the terms of reference*".

115.4 Upon reflection and with the benefit of hindsight, Mr Gunn's view is that the use of the word "*examined*" (in respect of the 73 matches set out at paragraph 2.10 of the Environmental Review) was perhaps put too strongly as it arguably implied that he and Mr Rees had looked into the matches in some detail. In fact, as explained above, Mr Gunn and Mr Rees entrusted that task to skilled and experienced analysts.

116. Mr Gunn also told the Panel that to the best of his knowledge a list of 73 matches had been given to Paul Beeby, Tom Chignell and Mr Phillips by a journalist, although Mr Gunn was not aware of the journalist's identity[215]. Mr Gunn believed the 45 matches had originated from that longer list of 73 matches. The original text of the Environmental Review referred to the 73 matches as having been identified by Betfair[216].

"Corrupt practice by players/officials and others in respect of betting on tennis"

117. The authors concluded that tennis was particularly vulnerable to corrupt betting practices[217], and that there was a general consensus that such practices were the principal concern for the sport[218]. The authors found that not only players, but also other participants, should continue to be prohibited from betting on tennis, and that care would be needed in the drafting of the definition of the people covered by the new uniform rules[219].

118. The authors also found that most players with whom they had spoken had some degree of knowledge of approaches to other players to throw matches. While players would report an approach made to themselves, they would not report an approach they understood to have been made to another player, as result of concern for their own safety, concern that any such report would not be kept confidential, and a reluctance to inform on fellow players. The authors concluded that it would be appropriate for the new uniform rules to impose an obligation to report even suspected corrupt practices by others, and that the education programme should clearly address players' concerns and reluctance[220].

119. The authors concluded that there was "*no evidence*" of a threat to safety of players who reported an approach. That threat rather arose when a player who had previously succumbed to corruption later refused to cooperate and this needed to be made clear through education[221].

214 Statement of Ben Gunn (formerly BHA).

215 Statement of Ben Gunn (formerly BHA).

216 Paragraph 167.2 below.

217 Environmental Review, page 10, paragraphs 2.18 to 2.20. The authors cited the University of Salford Report "Risks to the Integrity of Sport from betting Corruption", Professor Forrest, February 2008.

218 Environmental Review, page 10, paragraph 2.20; Environmental Review, pages 1 and 2, paragraph 7.

219 Environmental Review, pages 10 and 11, paragraphs 2.21 to 2.27.

220 Environmental Review, pages 11 to 12, paragraphs 2.28 to 2.30. The authors stated "*A large majority of current and former players we interviewed claimed to 'know of' approaches to players being invited to 'throw matches' presumably for corrupt betting purposes. Only one player admitted being directly approached several years ago. Interestingly, although some players said they would inform the appropriate tennis authorities about any such approach to themselves, there was almost a unanimous view that they would not do so if they knew/suspected another player had been approached... the reasons given for adopting that attitude were: concern about their personal safety from would-be corruptors; concern about the confidentiality of any approach made by them to the tennis authorities; a general feeling that informing on other players was a breach of the trust/bond that exists between players".*

221 Environmental Review, page 12, paragraphs 2.30 to 2.31. The authors stated *"One particular concern about personal safety needs specific comment. There is a common view that players are afraid of reprisals/threats of violence to themselves or their families if they report any nefarious approach... The experience of other sports is that there is no evidence that such a fear is justified. Certainly, we found no evidence of any tennis player or family being threatened following any alleged approach from a would-be corruptor. Indeed, the strong indication from other sports is that corruptors are seeking compliant sportsmen and women to pursue their corrupt activity. If a player says 'no' to any approach, the would-be corruptor will move on until he finds a willing participant. Experience has shown that the real danger lies in a player initially complying with a corruptor's demands and subsequently refusing to co-operate. At that stage, the player may well be vulnerable to threats, blackmail or other forms of coercion. As Lord Condon stated 'once in, you're in for life'".*

120. The Environmental Review concluded that the players most vulnerable to corrupt approaches were young players who were not earning enough to cover costs, players who had received financial support earlier from sponsors with dubious motives, players nearing the end of their careers who wished to bolster dwindling earnings, and players who had become disillusioned when they realised they had insufficient skills or commitment to advance. These categories of vulnerability needed to be addressed through education[222]. The authors also stated that these "*categories do not presume that a top player can never be vulnerable to corruption*"; it was possible that some might be tempted by "*easy money*", or some might have succumbed early and then be "*in for life*".

121. In his evidence to the Panel, Mr Rees highlighted this as an area in relation to which he believes, with the benefit of hindsight, he should have expanded by emphasising the danger posed by those players who seek to corrupt other players[223].

"Breaches of the rules and regulations of professional tennis which affect the integrity of the sport" or "tanking"

122. The Environmental Review identified *"tanking"* as a threat to the integrity of the sport. The authors pointed out that the word was used by different people to mean different things, and that it covered a range of behaviour from actions that were regarded by many as "*part of the game*" to actions that were "*a definite threat to integrity*". A player failing to give "*best efforts*" could be motivated by anything from tactically ceding a game or set, to losing deliberately to facilitate corrupt activity. In between were such behaviour as a player protecting an injury, a player starting with good intentions but losing heart, a player being tired and so wanting out, a player reserving his best efforts for a more lucrative tournament, and players agreeing to an outcome for reasons other than betting[224].

123. The authors found that there was a "*consensus among players and officials*" that a player tactically ceding a game or set, a player protecting an injury, a player starting with good intentions but losing heart or a player being tired and so wanting out, were all "*part of the game*", though at least some of them might constitute a failure to use best efforts. The authors however concluded that the public and others involved in tennis were entitled to see players performing in each match, and that though such actions posed a lesser threat to integrity, there were dangers in allowing a culture of such lower level tanking to take hold in the sport. They were troubled by the view expressed to them that if a player is going to tank "*he should at least make it look good*". They considered that it was on the contrary necessary to create a culture of honest endeavour and best efforts. It was no answer that it might be difficult to detect if a player failed to use best efforts, as the rule existed and could be enforced. While no formal recommendation in relation to integrity was made in respect of such lower level tanking the authors urged officials to be alert to it and to deal with it as a breach of the Codes of Conduct[225].

124. The authors then pointed out that the danger was that, if a decision to *"tank"* was made in advance, those around the player who knew of his decision in advance could seek to profit it from it through betting or the provision of information: perhaps with the player's knowledge, perhaps without[226].

125. The authors disagreed with the view that players who *"tanked"* in order to play or to play better at a more lucrative tournament elsewhere at the time or soon after constituted only a low-level threat to integrity if unconnected with corrupt activity, because such behaviour short-changed the public and others involved in tennis. Again, no formal recommendation in relation to integrity was made in respect of such behaviour, but the authors concluded that the tennis authorities must closely monitor the situation to prevent abuse[227].

222 Environmental Review, page 12, paragraphs 2.33 to 2.34.

223 Statement of Jeff Rees (formerly TIU).

224 Environmental Review, page 13, paragraphs 2.35 to 2.40. *"One activity identified as a threat to the integrity of the sport is 'tanking' This term covers a range of behaviour which, at the lower end, is regarded almost as 'part of the game' and at the higher level is a definite threat to the integrity of tennis".* The authors set out a table showing where they considered different types of behaviour fell on a range from a "lesser threat" to integrity, to "corrupt" action.

225 Environmental Review, page 13 to 14, paragraphs 2.41 to 2.46. Also Executive Summary, page 2, paragraph 8.

226 Environmental Review, page 14, paragraphs 2.46: *"With a proliferation of betting on tennis, support staff close to a player who may be aware that the player is not going to give a match 'best efforts', may seek to profit from that knowledge possibly without the player knowing".*

227 Environmental Review, page 14, paragraphs 2.47 and 2.48. The authors also stated: *"We consider that players who agree to take part in a professionally sanctioned tournament and are contractually bound to that event, should not be allowed to sign up for an unsanctioned tennis event which takes place at the same time. In connection with this and other acts of 'tanking', we were also told by medical staff and some players that more attention needed to be paid to players who retired from matches on medical grounds".*

126. The Environmental Review then identified further threats to integrity in players agreeing to lose so that the other player secures ranking points, and in a lucky loser system where the lucky loser is known in advance as opposed to randomly selected[228].

127. The authors found that there was a "*consensus among players and officials*" that a player tactically ceding a game or set, a player protecting an injury, a player starting with good intentions but losing heart or a player being tired and so wanting out, were all "*part of the game*", though at least some of them might constitute a failure to use best efforts. The authors however concluded that the public and others involved in tennis were entitled to see players performing in each match, and that though such actions posed a lesser threat to integrity, there were dangers in allowing a culture of such lower level tanking to take hold in the sport. They were troubled by a view expressed to them that if a player is going to tank "*he should at least make it look good*". They considered that it was on the contrary necessary to create a culture of honest endeavour and best efforts. They noted the difficulty in identifying if a player was not giving best efforts and that on court it was the umpire's responsibility to enforce the rule. While no formal recommendation in relation to integrity was made in respect of such lower level tanking the authors urged officials to be alert to it and to deal with it as a breach of the Codes of Conduct[229].

128. The authors also found that a player being able to earn an appearance fee without advancing at an event, which did not count towards his ranking, meant there was a greater risk that the player would tank[230].

129. The authors stated that the fact that changes to the ranking system or to appearance fees would be unpopular amongst some should not stand in the way of their being made in the interests of preserving the integrity of the sport, which was a responsibility for all[231].

130. Lastly the authors reiterated that *"tanking"* for betting purposes is a corrupt practice[232].

"Accreditation / credential violations"

131. The Environmental Review concluded that the accreditation system was insufficiently robust to prevent third parties securing enough access to players and tournaments in order to obtain inside information for betting. Whereas the systems at Grand Slams such as the Australian Open (which the authors attended) might be more robust, even they were not immune, and the systems at lower level tournaments were less robust, not least in the light of lack of financial and other resources. A particular problem was the number and range of people in player entourages who have access to player facilities and the access of others such as club members to those facilities[233].

132. The authors also identified elsewhere that the lack of an accreditation procedure for coaches meant that "*bogus coaches*" might gain access to player areas, giving rise to a threat to integrity[234].

133. The authors recommended a review of accreditation procedures at all levels, with a view to achieving the "*radical reduction of those people entitled to full accreditation*" necessary to "*enhance the security environment around all events and improve both the reality and perception of anti-corruption measures*". The authors contemplated, first, that only the players and their essential support team such as coach and physiotherapist should have access to player areas, and that the rest of the entourage (managers, agents, family and friends) and former players and the media should be catered for through complimentary ticketing. Second, the authors suggested that the ATP should operate the same policy as the WTA, confining the locker room itself to players[235].

228 Environmental Review, page 14, paragraphs 2.49 and 2.50.

229 Environmental Review, pages 13 to 14, paragraphs 2.41 to 2.46. Also Executive Summary, page 2, paragraph 8.

230 Environmental Review, page 15, paragraphs 2.51 and 2.52: "guaranteed payments for players participating in tournaments which do not count for ranking purposes and where such payments are not dependent on a player's progress in the competition, may make the matches less meaningful and create the risk that players are less inclined to give their 'best efforts'... there is a good case for staging payments to players as they progress through a tournament, rather than paying them a guaranteed sum just to compete".

231 Environmental Review, page 15, paragraphs 2.55 to 2.56: The authors stated *"We recognise that if such a move to make each match count is adopted, it will not be universally popular with some players feeling that their ability to compete is being restricted and with tournament directors being concerned that they may miss out on attracting top players to their tournaments...However, as mentioned in Section 1, if the threat is substantiated, it is the responsibility of all stakeholders in tennis to ensure the integrity of the sport, even though necessary action to address a threat may disadvantage some people".*

232 Environmental Review, page 15, paragraph 2.57.

233 Environmental Review, pages 16 to 18, paragraphs 2.58 to 2.75.

234 Environmental Review, page 21, paragraph 2.109.

235 Environmental Review, pages 18 to 19, paragraphs 2.76 to 2.83. Also Executive Summary, page 2, paragraph 9.

"Misuse of inside information for corrupt betting purposes"

134. The Environmental Review found that access to inside information in tennis was "*wide and various*". Too many people had access to player areas, and they could gain information both as to matters of fact, such as injury, and what the authors termed as matters of opinion, such as the mental state of the player. The authors made recommendations as to what information should constitute inside information (which included both what they termed fact and opinion) and as to the necessary breadth of the definition of the people prohibited from passing on inside information[236].

135. The authors confined the prohibition that they considered should apply to where a person "*knowingly uses the information personally for cheating at betting, or passes it to another knowing or reasonably believing it will be sued for the purpose of cheating at betting*"[237].

136. The authors stated that again this had also to be addressed through education and operational procedures[238].

"Illegal or abusive behaviour towards players"

137. The Environmental Review identified as a potential threat to integrity the welfare issue of how some young players, particularly female, might be subject to abuse by coaches, parents, or others, and recommended a distinct education module to address this[239].

"Regulatory action to address the threats to professional tennis"

138. The Environmental Review then dealt at length with the need for, and the form that should be taken by, an integrity unit to implement the three mechanisms described above. The authors explained that intelligence was critical to any anti-corruption programme. The authors stated that they "*recognise the efforts that have been made by the Tennis Authorities to date but trying to develop and progress single pieces of information/intelligence in an uncoordinated, case by case basis is less likely to result in successful disciplinary (or criminal) charges than a co-ordinated evidence gathering process which an integrity unit can provide*"[240].

"A uniform anti-corruption programme"

139. The Environmental Review recommended the agreement by the International Governing Bodies to the uniform Tennis Anti-Corruption Programme then under development by a team of tennis officials and legal advisers[241].

"A regulatory strategy"

140. The Environmental Review concluded that the principal mechanisms by which integrity could be maintained and enhanced were first "'*prevention' (deterrence)*" and second "'*detection' (enforcement)*", the latter through the investigation and prosecution of breaches of the rules, both by the sport in disciplinary proceedings and where possible by the police in criminal proceedings. A third supportive mechanism was "*an improved education and awareness programme*". The authors recommended adoption of a "*Regulatory Strategy*" setting out these mechanisms, which they appended[242].

"A regulatory structure – an integrity unit"

141. The Environmental Review then dealt at length with the need for, and the form that should be taken by, an integrity unit to implement the three mechanisms described above. The authors explained that intelligence was critical to any anti-corruption programme. The authors stated that they "*recognise the efforts that have been made to date but trying to develop and progress single pieces of information/intelligence on an uncoordinated, case by case basis is less likely to result in successful disciplinary (or criminal) charges than a co-ordinated evidence gathering process which an integrity unit can provide*"[243].

236 Environmental Review, pages 19 to 20, paragraphs 2.84 to 2.94. Also Executive Summary, page 2, paragraph 9.

237 Environmental Review, page 20, paragraph 2.95.

238 Environmental Review, page 20, paragraphs 2.96 to 2.98.

239 Environmental Review, page 20, paragraphs 2.99 to 2.109. Also Executive Summary, page 2, paragraph 10.

240 Environmental Review, page 23, paragraphs 3.13 to 3.19.

241 Environmental Review, page 22, paragraphs 3.9 and 3.10.

242 Environmental Review, page 22, paragraphs 3.11 and 3.12, and Appendix C, page C-1.

243 Environmental Review, page 23, paragraphs 3.13 to 3.19.

142. The authors recognised that the form of the integrity unit was a matter for the international tennis governing bodies, and so offered a number of options for consideration by them[244].

143. The integrity unit could be a single "*stand-alone*" unit located in one place, or could involve "*satellite units, located, say, in Europe, USA, Australia*", or could be a joint unit with another sport. The authors' assessment "*considering the comments made by consultees*" was that a single stand-alone unit located in London was the "*favoured option*"[245].

144. The integrity unit would need to have both an intelligence section and an investigation section linked with a common IT system[246]. It was however unclear what size of unit was necessary. The authors stated[247]:

144.1 *"We are unsure on the evidence currently available, precisely what size of unit may be necessary, proportionately, to address the perceived threats. We are, however, very conscious of the suspect betting activity on the matches described [above], as well as the potential for betting related corruption on professional tennis to increase".*

144.2 *While "the global nature of international tennis" meant that "information/betting data [was] being generated over a 24-hour period", the approach anticipated was intelligence gathering leading to focussed action, and so the authors did not envisage the integrity unit being staffed on a 24 hour basis.*

144.3 *"In respect of historical data, we are also cognisant of the problems that the professional tennis authorities have faced to date to gather and collate, in any coordinated sense, suspected betting patterns concerning matches or players. However, again taking cognisance of the potential range and volume of the suspect activities identified [above] and the significant investigative work that will be necessary to address such issues, we feel that an Integrity Unit must be 'fit for purpose' and staffed accordingly".*

144.4 *"We are conscious that our recommendation for the structure and resourcing of the Integrity Unit should be proportionate to the perceived threats to professional tennis now and in the future".*

145. The two authors then each described a different *"Option"* that they favoured for the form of the integrity unit, for consideration by the international tennis governing bodies[248]. The full description of each in the Environmental Review merits reading, as one of the principal criticisms levelled at the international tennis governing bodies by the media in early January 2016 was that they chose the wrong option.

146. Option 1, favoured by Mr Gunn, was as follows[249]:

146.1 Option 1 proceeded on the basis that "*whilst tennis is not institutionally or systemically corrupt, it is potentially at a crossroads*". While the evidence to establish the exact level of corrupt activity was limited, the intelligence on the 45 matches and various account holders in the five years up to the Sopot Match and the matches thereafter, described above, indicated a "*sufficient cause for concern about the integrity of some players and those outside tennis who seek to corrupt them*". Option 1 recognised "*the broad range of intelligence assessment, analysis, targeting and investigation that will be required to deal with even a few of those suspect matches in order to gain some evidential insight into the precise level of corruption in professional tennis*". Option 1 also took into account "*the need for ongoing monitoring of suspicious betting activity*" and the preparation of "*targeted plans to investigate future threats to integrity*".

244 Environmental Review, page 23, paragraph 3.20.

245 Environmental Review, page 24, paragraphs 3.21 to 3.25.

246 Environmental Review, page 24, paragraphs 3.26 and 3.27.

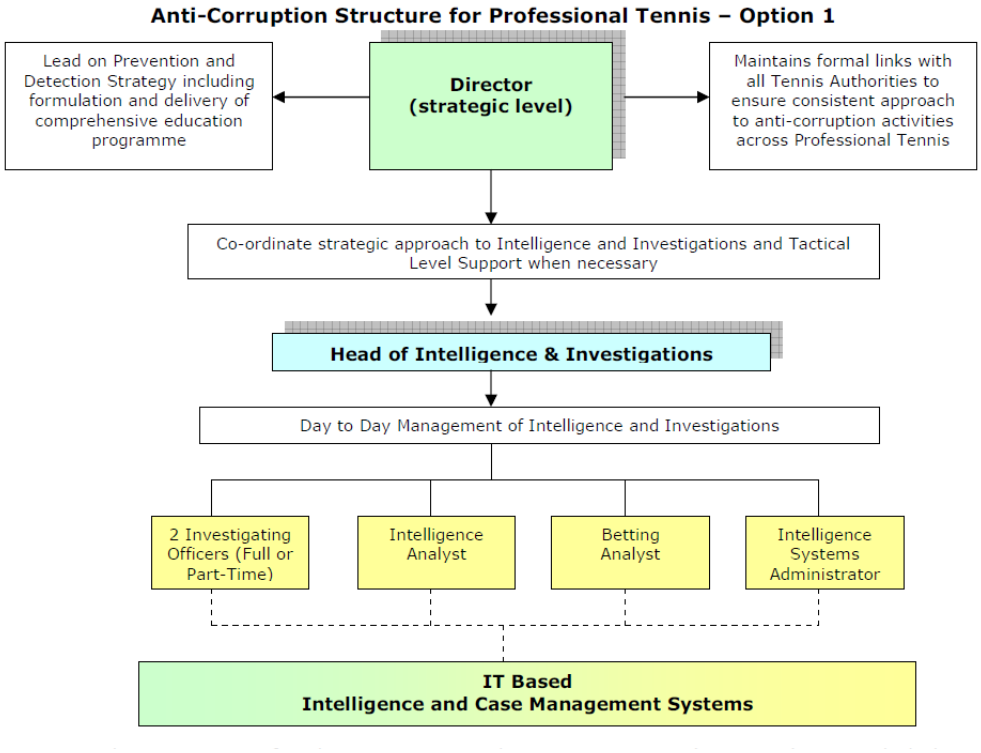
247 Environmental Review, page 25, paragraphs 3.30 to 3.33.

248 Environmental Review, page 25, paragraph 3.34.

249 Environmental Review, pages 25 to 26, paragraphs 3.35 to 3.40.

146.2 Option 1 proposed that the "*integrity unit should be resourced adequately now to cater for both the current and emerging strategic and tactical issues affecting the integrity of tennis as it becomes an increasingly attractive sport for betting*". Experience suggested the problem might be greater than so far discovered, and only a properly resourced unit would be able to cope if that proved to be the case. Option 1 would "*send a clear message to all in professional tennis and the wider sporting, betting and commercial sectors, that professional tennis is serious about tackling integrity related issues in the sport*".

146.3 Option 1 envisaged that it was crucial that there be a separate "*Director*", who would operate at the strategic level, above a "*Head of Intelligence and Investigations*", who would operate at the tactical level. Option 1 was set out in the figure below detailing the staff and their responsibilities. Under the Head of Intelligence would be two full or part-time "*Investigating Officers*", an "*Intelligence Analyst*", a "*Betting Analyst*" and an "*Intelligence Systems Administrator*". All their functions would be linked through "*IT based Intelligence and Case Management Systems*". Each would have a role in training participants in tennis on integrity issues. Job Descriptions were appended[250].



146.4 Estimated costs were separately provided to the tennis authorities[251].

250 Environmental Review, Appendix E(i), pages E1 to E-6.

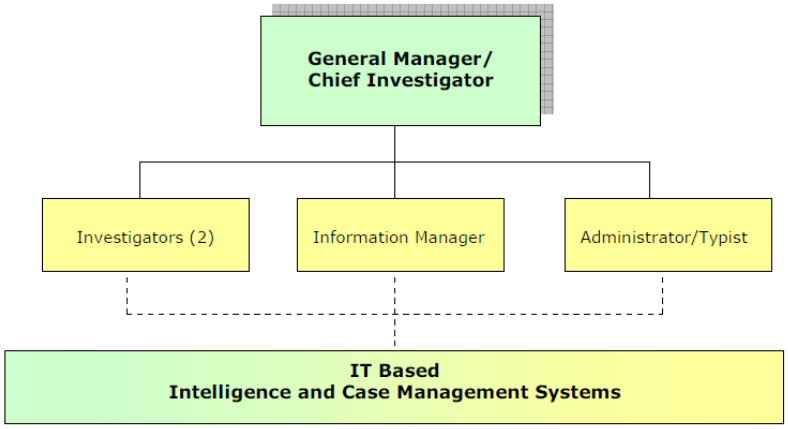
251 Environmental Review, pages 26 to 27, paragraph 3.40.

147. Option 2, favoured by Jeff Rees, was as follows[252]:

147.1 Option 2 proceeded on the basis that "*professional tennis is not yet in crisis because of corruption threats. The majority of interviewees, including tennis media representatives believed that only a very small number of players were corrupt and that the overall threat to the sport from betting related corruption was minimal*". Option 2 accepted that "*details of possibly suspect matches over five years provided by Betfair, coupled with concerns voiced by informed senior figures within the sport*" indicated the time had come for an integrity unit "*capable of investigating matches, managing corruption-related intelligence with all that implies, targeting corrupt players and delivering an anti-corruption and education and awareness programme*".

147.2 Option 2 suggested that "*the needs of professional tennis would be served in the first instance by an integrity unit"* made up of a "*General Manager/Chief Investigator*" leading a team of two "*Investigators*", an "*Information Manager*" and an "*Administrator/Typist*". Option 2 was set out in the figure below, detailing the staff. All their functions would again be linked through "*IT based Intelligence and Case Management Systems*". Job Descriptions were appended[253].

Anti-Corruption Structure for Professional Tennis – Option 2



147.3 The Information Manager would be the focal point for information coming into the unit. He "*would have the aptitude necessary to learn to interpret internet betting patterns,*" but was different from the betting analyst under Option 1 (which is "*a specialist post requiring in-depth knowledge of betting systems, operations, and odds compilation*").

147.4 "*An important duty of the General Manager/Chief Investigator in Option 2 would be that of using mature judgement to ensure all personnel in the unit focused primarily on the current and the relevant, rather than delving into events of years before to little purpose. A second responsibility would be making sure that quick and decisive action was taken once there was clear evidence that a player or relevant person was corrupt*".

147.5 While the staff should be capable of delivering education and awareness packages, they might in practice be

252 Environmental Review, pages 27 to 28, paragraphs 3.41 to 3.52.

253 Environmental Review, Appendix E(ii), pages E-7 to E-9.

delivered through "*internet learning programmes*".

147.6 It was envisaged that a well-managed unit staffed by high quality and suitably experienced staff "*should then be able to act effectively to counter corruption in professional tennis whilst, simultaneously, it would be proportionate to the threat professional tennis currently faces under the view taken by Option 2*". Option 2 recognised that it was possible that the unit might "*unearth a previously unsuspected level of corruption or become overwhelmed by information*". In that event "*the unit could be strengthened by staff possessing whatever skills it required beyond those of the core postholders identified in*" the Option 2 figure.

147.7 *"Option 2 is also premised upon the view that a danger of comprehensive resourcing represented by Option 1 would be to suggest to the media, sponsors, other stakeholders and spectators, that the problems facing international tennis are more than they really are, thus risking harm to the sport commercially and reputationally. In contrast, Option 2 suggests small incremental increases to staff numbers, if and when required, would be unlikely to exercise comment"*.

147.8 Estimated costs were separately provided to the tennis authorities[254].

148. In his evidence to the Panel, Mr Rees stated "*I perhaps should have stated more explicitly that the intention behind my 'option 2' was for the unit to grow with the challenges it faced; the creation of the TIU should have been seen as the commencement of an organic process, which was anticipated to create a unit that would evolve and adapt to the size and nature of challenges and the needs for specialist skills*"[255]. He said he intended the Environmental Review to have shown "*option 2 as a way forward, rather than a final blueprint*"[256]. He stated that his experience led him to the view that "*throwing people and other resources at a problem when it arises or is recognised is not the best way to proceed in the first instance*" or "*to set foundations for the long-term*", rather that it was "*much better to start with a lean, focused and organised team, where everyone is fully occupied from the outset and knows what is required of them*"[257]. He further stated that "*I never ruled out the possibility of employing a betting analyst, although I doubted whether tennis betting analysts employed within the unit would provide a better service in terms of identifying suspicious betting patterns and suspect gamblers than that which would be provided by analysts within the betting industry – a service which we were being offered by Betfair and others*"[258].

149. In his evidence to the Panel, Mr Rees also explained why he did not agree with Mr Gunn's Option 1 proposal[259]. He stated that he considered the key area of divergence to relate to the fact that Mr Gunn's model envisaged a betting analyst as central to the unit, with a focus on desk-based investigations, as opposed to a unit that utilised full-time investigators pursuing long-established methods of investigation (such as persuading players to give evidence against fellow players, proactively seeking information and 'turning' guilty players). Mr Rees's view was that Mr Gunn's model risked "*burdening tennis with a one-trick pony*"[260].

150. The Environmental Review made no recommendation as to the body to which the integrity unit should be responsible[261]. The choice was between a "*steering group made up of representatives from each authority*", or the choice of one of the authorities to fulfil the role. Regardless, the Environmental Review did recommend that there be one nominated person with whom the head of the unit could liaise in relation to political issues on the international level.

254 Environmental Review, page 28, paragraphs 3.51 to 3.52.
255 Statement of Jeff Rees (formerly TIU).
256 Statement of Jeff Rees (formerly TIU).
257 Statement of Jeff Rees (formerly TIU).
258 Statement of Jeff Rees (formerly TIU).
259 Statement of Jeff Rees (formerly TIU).
260 Statement of Jeff Rees (formerly TIU).
261 Environmental Review, pages 28 to 29, paragraphs 3.53 to 3.54.

"Regulatory processes/procedures"

151. The Environmental Review contained an explanation of the importance of,[262] and methods for, the integrity unit properly handling intelligence from a wide range of sources, identified in a figure. The authors considered that there should be a dedicated "*fit for purpose computerised system*" based on a "*user requirement*" to be drawn up by the head of the new unit. The authors also recognized that local data protection legislation would have to be complied with. Subject to that legislation, the authors considered that "*nominal records should be created on all players/coaches/physios and related persons, and anyone else who reasonably could be a threat to tennis*", in which any intelligence received could be placed. In addition to such an intelligence database, the authors recommended an IT based system for the management of specific investigations. It was recommended that the head of the new unit draw up an "*Intelligence Strategy*".

152. The Environmental Review contained an explanation[263] of the importance of, and methods for, the integrity unit properly carrying out the "*investigations function*", which would draw on the intelligence gathered to carry out "*prevention*" and "*detection*". As to prevention, the authors considered that the most effective route would be the effective disciplinary prosecution of breaches of the new uniform rules, as "*there is no greater deterrence than the example of those who do wrong being caught and punished*". As to detection, the integrity unit would need an "*investigative ability*" provided by two investigators with the "*option of buying in other investigators on an ad hoc basis*", and an "*Investigation Strategy*" should be drawn up by the head of the new integrity unit. That strategy would need to take into account the extent to which an investigation might uncover activity that was criminal as well as a breach of the anti-corruption rules, and what should happen in that event. The authors further suggested that the use of "*informants/confidential sources*", "*covert surveillance techniques*", access to "*telephone data/financial records*" and a "*confidential hot line*" should be considered where possible in various national jurisdictions. The Environmental Review recommended that the new "*integrity unit should form the cutting edge of the compliance and enforcement strategy for professional tennis*".

153. The Environmental Review contained an explanation[264] of the importance of, and methods for, the implementation of that compliance and enforcement strategy. The authors were sceptical about the disciplinary process contained in a first draft of the new uniform rules, which contemplated that each of the International Governing Bodies would have their own Anti-Corruption Officer ("ACO") responsible for bringing disciplinary proceedings based on evidence gathered by the unit, with an appeal to an Anti-Corruption Hearing Officer ("AHO") appointed by each body. In a second figure, the authors recommended that instead there should be regional ACOs who had responsibility across the matches of all of the International Governing Bodies. In relation to the powers of investigation, the authors stressed the need for those covered by the new rules to be expressly "*obliged to assist in a disciplinary enquiry*". In relation to penalties, the authors considered that financial penalties had only limited deterrent effect, and it was necessary to include power to impose a "*lengthy suspension for any player caught cheating for betting purposes*", even in cases of first proven offences.

154. The Environmental Review contained an explanation[265] of the importance of, and methods for, the delivery of an effective education and awareness programme. In particular, participants needed to understand the nature of the threats, and the regulatory consequences, including penalties, of breach of the rules. The authors considered that the current education and awareness programmes of the International Governing Bodies were based on sound intentions, but did not go far enough. Younger players in particular needed to be brought to a full understanding of the issues. According to the Environmental Review, elements of the ATP University and the WTA's PRO-U IT based education programme needed to be combined and expanded and applied across the sport.

262 Environmental Review, pages 29 to 30, paragraphs 3.55 to 3.65.

263 Environmental Review, pages 31 to 32, paragraphs 3.66 to 3.85.

264 Environmental Review, pages 33 to 35, paragraphs 3.86 to 3.97.

265 Environmental Review, page 35. paragraphs 3.98 to 3.107.

155. The Environmental Review contained an explanation[266] of the importance of, and methods for, the delivery of an effective media strategy on integrity: it should be channelled through one source and should have discrete themes on the threats to integrity; the action to address the threats; education and awareness for all concerned; and compliance and enforcement.

"Interface with betting and betting organisations"

156. The authors addressed the form that relationships between the new integrity unit and betting operators should take[267]. They considered it difficult to assess the size of the market for betting on tennis, but clear that the amount bet on different matches within different levels of tournament varied widely. The authors analysed two examples of matches to demonstrate that headline figures of how much was traded on a match do not tell the whole story, in particular as to the scale of winnings and the scale of individual bettor's wins. In the specific context of an exchange such as Betfair headline figures reflected the amounts matched, and therefore came in at double what the figures would be for a bet placed with and taken by a traditional betting operator.

157. The authors recommended that the memoranda of understanding with the betting operators should be maintained so as to ensure that alerts of suspicious betting patterns were provided to the single point of contact of the new integrity unit. Then "*any previous suspicious activity/data on the players/associates involved will have been logged and can form part of a pattern to build up an 'intelligence package' worth further investigation, either from a disciplinary aspect, or if appropriate, for referral to police…*"[268].

158. The authors also noted the difference of views "*on whether betting should be allowed on tennis at all*", and on whether gambling-related sponsorship, either for individual players or tournaments, should be allowed[269]. The authors considered that there should be "*a total ban on players' personal sponsorship arrangements because they are able to influence the result of a match and, therefore, the perception of some irregularities/corrupt activity could arise*". The authors offered their thoughts to assist discussions, and in particular pointed out that it would be unworkable to ban betting on tennis all the way around the world, and that the more fruitful course would be to work with the betting industry to address integrity issues, and also to seek to secure a financial contribution from the betting industry towards the cost of addressing those issues[270]. They then went on to look at the ways in which such a financial contribution might be secured[271], addressing in particular the mechanism in Australia, under which betting operators must pay a fee to be able to offer betting on each sport.

"Interface with police and other law enforcement agencies"

159. The authors outlined the form that relationships between the new integrity unit and police and other law enforcement agencies should take. They pointed out that corrupt betting activity was a criminal offence in some jurisdictions as well as a disciplinary breach of the anti-corruption rules, but that the preparedness of the police to take an interest varied, and recourse would often be necessary in the first place to gambling regulators. Where, however, criminal activity was involved, the authors suggested that investigation should in the first place be referred to the police, rather than pursued as a disciplinary matter, and the head of the new integrity unit should consider drawing up protocols to deal with this situation.

266 Environmental Review, page 36, paragraphs 3.108 to 3.116.

267 Environmental Review, page 37 to 41, paragraphs 3.117 to 3.156.

268 Environmental Review, page 39, paragraphs 3.134 and 3.135.

269 Environmental Review, pages 39 to 40, paragraphs 3.140 to 3.147. Also Executive Summary, pages 2 to 3, paragraph 14.

270 Environmental Review, page 40, paragraph 3.148.

271 Environmental Review, page 40 to 41, paragraphs 3.148 to 3.156.

Recommendations of the Environmental Review

160. The Environmental Review then drew together the formal Recommendations that had been made through the body of the document, and summarised above[272]. In the Executive Summary at the outset of the Environmental Review, the authors stated that "*in assessing the threats to the integrity of professional tennis and recommending action to address them, we have been conscious that any recommendations should be proportionate to the threats. We have not sought to cast a straight-jacket over the sport*"[273].

161. It is noted that no formal recommendations were made by the authors in relation to tanking. In his evidence to the Panel, Mr Rees said that his view (and he believed Mr Gunn's view too) was that the integrity unit should concern itself with "*crooked behaviour*", with "*best effort*" issues continuing to fall within the remit of the tennis governing bodies[274].

272 Environmental Review, page 43, paragraphs 4.1 and 4.2, and also Executive Summary, page 2, paragraphs 11 to 13. The recommendations were as follows: "Having identified and assessed the threats to the integrity of professional tennis worldwide, we consider there are four crucial recommendations to address those threats.

Recommendation 1: We fully support the harmonisation of the various Regulations and Codes of Conduct for Professional Tennis and we strongly recommend that the new Uniform Anti-Corruption Programme is agreed by the various Tennis Authorities.

Recommendation 2: We strongly recommend that the new Anti-Corruption Programme forms the basis for a new Regulatory Strategy which focuses principally in the twin aims of 'prevention' and 'detection' and is supported by an improved education and awareness programme which identifies the principal threats to professional tennis and the action to address them.

Recommendation 3: We strongly recommend the creation of an Integrity Unit to the degree represented by Option 1 or 2.

Recommendation 4: We strongly recommend the Director/General Manager of the Integrity Unit should prepare: (i) an intelligence strategy; (ii) an investigation strategy; and (iii) a user requirement for a computer database incorporating the administrative and operational procedures detailed in Section 3(v)(a)&(b).

In addition, we make the following 11 other recommendations which we consider are important to encourage a more focused Anti-Corruption culture for professional tennis and create an environment in which threats to integrity issues can more readily be identified and addressed:

Recommendation 5: The current ban on players betting to be reiterated in the Uniform Anti-Corruption Programme is maintained.

Recommendation 6: The current ban on betting on tennis by tournament representatives and other relevant persons to be reiterated in the Uniform Anti-Corruption Programme is maintained.

Recommendation 7: That officials examine those matches that players take part in over and above those necessary for achieving ranking points. If that study confirms our suspicions that such matches are vulnerable to the integrity of tennis, then

careful consideration should be given to the Ranking Rules being changed to make each match count.

Recommendation 8: There should be a review of current accreditation procedures for all Grand Slam, ITP, ATP and WTA Tournaments.

Recommendation 9: Only the player and essential tournament personnel should have access to the players' locker room (in both men and women's tennis) and this should be specified in the regulations.

Recommendation 10: 'Inside Information' is defined as 'information about the likely participation or likely performance of a player in a professional tennis match which is known by the player, coach, physio, tournament official, other relevant person, or betting or media representative, and is not in the public domain.

nb: 'relevant person' is whoever is defined in or covered by the re-drafted harmonised regulations.

nb: 'information in the public domain' is information which has been published or is a matter of public record or can be readily acquired by an interested member of the public and/or information which has been disclosed according to the rules or regulations governing a particular event.

nb: inside information includes 'matters of fact' and 'matters of opinion'.

Recommendation 11: A separate 'integrity module' is created to include the assessed threats and recommendations of this report and used for the education and awareness of both male and female players.

Recommendation 12: A streamlined common investigation process and a single hearings tribunal for all disciplinary cases involving integrity issues.

Recommendation 13: Any player caught cheating should be punished by a lengthy suspension for a first offence and, if the circumstances merit it, a life ban.

Recommendation 14: An agreed co-ordinated media strategy for integrity issues which is:

• planned;

• clear;

• consistent;

• targeted;

• proactive and reactive.

Recommendation 15: The Professional Tennis Authorities consider seeking the support of other sporting bodies for legislation creating income streams from selling sporting rights and/or the creation of a 'Right to Bet'."

273 Environmental Review, pages 41 to 42, paragraphs 3.157 to 3.166.

274 Statement of Jeff Rees (formerly TIU).

Conclusions of the Environmental Review

162. The Environmental Review then set out its conclusions[275]:

162.1 *"Professional tennis, like other sports, is experiencing threats to integrity from a range of issues".*

162.2 *"The threat from the more serious level of cheating for corrupt betting purposes is difficult to assess in evidential terms. We have detailed, however, a number of suspected tennis matches over the past five years, and currently, which are being, or need to be, investigated further. There are strong indications that some players are vulnerable to corrupt approaches and others outside of tennis are using them to make corrupt games on betting from professional tennis. For these reasons, we believe that action is necessary now to address the problems".*

162.3 *"The separate regulatory processes and procedures for investigating such offences have blunted the effectiveness of investigations in the past because they have principally focused on single issues/cases rather than building up evidence from an intelligence-based platform following co-ordination of information and analysis of different events which have identified suspected targets. The structure and procedures we recommend in this report will enhance both the efficiency and effectiveness of disciplinary investigations, as well as acting as a sound decision basis on when such matters should be referred to police".*

162.4 *"The middle to lower level of threats to integrity described in Section 2 also need to be addressed. A culture of players breaching the rules at the lower end of the threat spectrum without rigorous investigation and sanction can lead to complacency at least and a lack of compliance/complete disregard of the Rules at most".*

162.5 *"A recognition of these issues, together with an agreement by the Professional Tennis Authorities and determination to address them will help to maintain and enhance the integrity of a professional sport which is played by so many and enjoyed by millions around the world".*

162.6 *"The recommendations of this report, supported by an agreed Anti-Corruption Programme, are designed to achieve that goal. An estimate of the costs of introducing the new integrity measures recommended in this report have been passed to the Professional Tennis Authorities and reflect two options. Proper regulation is not cheap but the cost of not taking action now could be immeasurably higher to both the sporting and commercial interests of professional tennis".*

275 Environmental Review, pages 44 to 45, paragraphs 5.1 to 5.6. Also Executive Summary, pages 1 and 3, paragraphs 2 and 15.

(3) THE INTERNATIONAL GOVERNING BODIES' CONSIDERATION OF THE ENVIRONMENTAL REVIEW

Consideration in draft

163. In March 2008, the Environmental Review was provided to the International Governing Bodies in draft before its finalisation. The International Governing Bodies were able to, and some of them did, make comments. However, the authors Ben Gunn and Jeff Rees were not prepared to make anything other than factual corrections. In the words of Mr Gunn, "*we were not prepared to alter the opinions distilled in the [Environmental Review]*" but *"we were prepared to have the document fact checked"*[276].

164. In the present[277] assessment of the Panel, two proposed changes are particularly material to the Panel's assessment.

164.1 The ATP stressed the importance of a player's confidentiality being protected until he had been found guilty of a charge. The ATP asked that information that could reveal the names of players under suspicion be removed.

164.2 The ATP raised the point that the draft executive summary referred to 45 matches that warranted further *"investigation*", involving 12 players who similarly should be investigated. The ATP stressed that every suspicious match that was raised with the ATP had been looked into and that there were a number of reasons why the results in many of those matches were in fact not suspicious. The ATP went on to state that including the number of matches, 45, and the number of players needing further investigation, 12, did not seem necessary in describing how it had been determined that a threat exists.

165. A conversation also took place at this time between Bill Babcock and Mr Gunn[278]. Mr Babcock appears to have been responsible for providing feedback on behalf of the International Governing Bodies, save that the ATP gave its feedback directly.

166. In response to the comments received, Mr Gunn and Mr Rees made a number of amendments. In respect of the two proposed changes referred to above:

166.1 Mr Gunn confirmed that he and Mr Rees appreciated the confidentiality issues raised. The changes proposed by the ATP in this regard were made, so as to prevent the identification of any player against whom there had not been any disciplinary proceedings.

166.2 Amendments were also made to passages of the Environmental Review dealing with the 45 matches. Whereas the original draft stated that 45 matches had been identified as warranting further "*investigation*", the final version stated that these matches warranted further "*review*". Further amendments were made reducing the detail given in relation to the betting activity underlying the 45 matches and the players involved, and raising the possibility that what had happened in those matches might have an innocent explanation. From a comparison performed by the Panel, the changes made were as follows:

276 Statement of Ben Gunn (formerly BHA).

277 Pending the consultation process between Interim and Final Reports.

278 Statement of Ben Gunn (formerly BHA).

Environmental Review section	Amendments made (text deleted is shown ~~struck through in red~~ and text added underlined in blue)
Executive summary Paragraph 2	We have examined some 73 matches over the past 5 years involving suspected betting patterns. We have further examined 45 of those matches and there are specific concerns about each match from a betting perspective which would warrant further ~~investigation~~ review. Patterns of suspected betting activity have been noted ~~involving 11 account holders in Russia, 6 accounts located in Northern Italy and 10 accounts in Sicily. There are also patterns emerging involving at least 10~~ on twenty-seven accounts in two different countries and there are emerging concerns about some players which would warrant further ~~investigation~~ attention. Bearing in mind these matches only relate to Betfair account holders, it is reasonable to assume that other suspect betting is taking place using other international legal and illegal betting markets. So there is no room for complacency. All the indications are that a co-ordinated and focused Anti-Corruption Programme with an adequately resourced Integrity Unit is needed to address the integrity concerns.
Executive summary Paragraph 4	We deal with each of those threats in detail. We judge that cheating at tennis for corrupt betting purposes is the most serious threat and goes to the core of the integrity of the sport. However, although the evidence currently available to prove the precise extent of that threat is limited, as mentioned above, we have examined, more closely, intelligence reports on 45 suspect matches over the past 5 years ~~and there is sufficient suspicion to arouse concern that the integrity of tennis has been threatened. There is justification for a further investigation into those matches so~~. The initial assessment of those matches, supported by other intelligence, indicates that a number of account holders are successfully laying higher ranked players to lose/backing lesser ranked players to win. The betting patterns give a strong indication that those account holders are in receipt of 'inside information', which has facilitated successful betting coups both on 'in-play' as well as 'match' betting. Because of the sensitive nature of these issues, the Report does not go into detail on those matches but we have shared further confidential information on them with the Professional Tennis Authorities. In view of the circumstances, we consider there is merit in reviewing those matches in an effort to identify whether the initial suspicions raised did indeed affect the integrity of Professional Tennis, whether there may have been other tennis reasons for the outcome of such matches and, importantly, to identify any intelligence leads for future reference. The scale of the allegedly suspicious matches indicates there is no room for complacency.

Paragraph 2.10	We have examined some 73 matches which ~~Betfair~~ have been identified as having suspect betting patterns over the past five years and leading up to the ~~Davydenko versus Arguello match~~ 'Sopot Match' on 2.8.07. We have examined more closely 45 of those matches and as a result of specific enquiries arising out of the 'Sopot Match' and have identified specific concerns from a betting perspective which would warrant further ~~investigation. Patterns of suspected and sometimes linked betting have been noted, involving 11 account holders in Russia, 6 accounts in Northern Italy and 10 accounts in Sicily. The suspect matches also indicate that some 12 players, variously from Russia, Spain, Argentina and Italy, would be worthy of further targeting and investigation.~~ review. The initial assessment of those matches, supported by other intelligence, indicates that a number of account holders are successfully laying higher ranked players to lose/backing lesser ranked players to win. The betting patterns give a strong indication that those account holders are in receipt of 'inside information', which has facilitated successful betting coups both on 'in-play' as well as 'match' betting. Because of the sensitive nature of these issues, the Report does not go into detail on those matches but we have shared further confidential information on them with the Professional Tennis Authorities. In view of the circumstances, we consider there is merit in reviewing those matches in an effort to identify whether the initial suspicions raised did indeed affect the integrity of Professional Tennis, whether there may have been other tennis reasons for the outcome of such matches and, importantly, to identify any intelligence leads for future reference. The scale of the allegedly suspicious matches indicates there is no room for complacency.

167. The amendments made by Mr Gunn and Mr Rees were sent to Mr Babcock, who in turn circulated them to the International Governing Bodies. In respect of the 45 matches Mr Babcock explained that the redline amendments were a positive response designed "*to place the number of matches reviewed in a better context (i.e. need to review - not investigate - to make sure there are tennis reasons to explain results while having to recognize that these now-unnamed matches do suggest patterns)*".

168. It was stressed by the International Governing Bodies that the comments were not designed to influence or change the authors' findings, conclusions or recommendations.

Consideration of the final Environmental Review

169. The Environmental Review was provided to the International Governing Bodies in final form in May 2008.

170. The choices made by the International Governing Bodies in implementing the recommendations in the Environmental Review resulted in the system put in place from 1 January 2009, made up of the TIU, the uniform TACP and later the education programme the TIPP. The Panel describes those choices in Section D below.

Publication of the Environmental Review

171. The Environmental Review was published on 19 May 2008 by the ITF on behalf of the International Governing Bodies, which issued a press release[279]. The International Governing Bodies stated in the press release that they would "*now start the process of implementing the 15 key recommendations*" and that "*a Steering Committee will oversee this process*".

(4) EVALUATION OF THE APPROACH TO THE ENVIRONMENTAL REVIEW AND THE DEVELOPMENT OF UNIFORM RULES

172. The Panel has considered against the facts above the effectiveness and appropriateness of the International Governing Bodies' approach in commissioning the Environmental Review and in developing uniform rules; the authors' approach in undertaking the Environmental Review; the legal team's approach in developing uniform rules; and the International Governing Bodies' immediate consideration of the Environmental Review. The question of whether the subsequent choices made in implementing the recommendations of the Environmental Review were effective and appropriate is dealt with separately in Section D below.

The commissioning of the Environmental Review and the development of uniform rules

173. The Panel presently[280] considers that it was effective and appropriate under the circumstances of the time to commission the Environmental Review, and Ben Gunn and Jeff Rees were well qualified to undertake it. The Terms of Reference were appropriate, and the Panel has seen nothing to suggest that any inappropriate constraints were placed on the authors.

174. Equally it was appropriate to develop uniform rules, and the team put in place were well qualified to undertake that task. It was however the case that everyone on the team came from or represented the International Governing Bodies. While some independent input came from the independent authors, it might have been sensible to include one or more independent members on the team.

175. The Panel presently considers that the process of developing the new rules was effectively and appropriately carried out by the legal team at the time:

175.1 The uniform TACP made significant improvements on the ATP TACP, addressing a number of the difficulties that had been highlighted through the Sopot Investigation and other ATP disciplinary cases. The approach of starting with the ATP TACP, and adapting it, seems to the Panel to have been an appropriate one at the time.

175.2 With the benefit of hindsight, the Panel might have approached the development of the rules in different ways. And the Panel now goes further in some respects, placing different emphases on various elements and aspects of the rules, and has identified, in Chapter 14, further possible recommendations for changes to the rules. That is, however, against the background of the subsequent experience of the operation of the TIU and uniform TACP, as well as the change in circumstances following the substantial increase in the number of matches on which bets could be placed.

279 It was published at the time on the ITF website, and the International Governing Bodies issued a press release hosted on the WTA's website.

280 Pending the consultation process between Interim and Final Reports.

The undertaking of the Environmental Review

176. The Independent Review Panel presently[281] considers that the Environmental Review was effectively and appropriately carried out:

176.1 Interviews were conducted and relevant documents were considered. A detailed Review document was produced, the majority of the conclusions of which, at least as to the extent and the origin of the problem, broadly coincide with the conclusions reached by the Panel in relation to common issues, as at 2008.

176.2 In the Panel's assessment, whilst a different approach could have been taken on some aspects (for example, in relation to tanking), the conclusions, and the recommendations that followed, were broadly effective and appropriate.

176.3 Given the short time available, it was appropriate for the drafting to be divided between the two authors. Further, it was appropriate for each author to put forward his proposed *"option"* as to the model for the TIU; the authors had divergent views on the best approach, and each put forward the model that he suggested would be most appropriate for consideration by the International Governing Bodies.

Reliance on the Sopot Investigation betting analysts to identify the 45 matches warranting further review

177. In the present assessment of the Panel, it was understandable that Mr Gunn and Mr Rees placed reliance on others to assist in reviewing and providing conclusions on the 45 matches. Those on whom they placed reliance were specialist analysts. It was not practicable for Mr Gunn and Mr Rees to have conducted specialised examinations of individual factual cases when their task was to look at the environment as a whole, and within a short time frame.

178. However, given the Environmental Review's conclusion that the 45 matches warranted further review and the Review's reliance on the 45 matches as evidence of the extent of the threat of "*cheating for corrupt betting purposes*", Mr Gunn and Mr Rees should have obtained, in the Panel's view, a better understanding of the factual basis for their conclusion before making it. During the representation process, both Mr Gunn and Mr Rees addressed this.

178.1 Mr Gunn stated (as set out in paragraph 115 above) that he and Mr Rees "*did not 'drill down' into the background and specific veracity of the 45 suspect matches because Rees and I had taken an agreed policy decision not to become embroiled in the specific details of those matters without further clarification from the tennis authorities that such action was within the ER's Terms of Reference*" and they "*agreed that the provenance of those matters was in the hands of skilled and experienced intelligence and betting analysts in whom I had the utmost confidence and we were prepared to accept their judgements on those matches*". Mr Gunn also stated that with the benefit of hindsight the use of the word "*examined*" in the Environmental Review "*was perhaps too strong as it arguably implies that Rees and I looked into the 45 matches in some detail - which for the reason shown we did not*".

178.2 Mr Rees stated that it was perfectly reasonable for him to rely on what he was told by Mr Gunn and his staff. He explained further "*I also need to make clear that whilst carrying out the Environmental Review I had not formed any intention of applying for a post in the TIU, should our recommendation that there should be such a unit be approved. I therefore looked at the 45 matches only from the point of view of whether or not these helped indicate that creation of such a unit was justified – not from the perspective of one who would subsequently have responsibility for their investigation*".

179. The background is relevant because the 45 matches were not in the event subject to further review after the Environmental Review, as addressed by the Panel in Chapter 9.

281 Pending the consultation process between Interim and Final Reports.

The consideration of the Environmental Review

180. It is understandable that the international tennis bodies were given the opportunity to comment on the Environmental Review in draft, particularly with a view to correcting factual mistakes.

181. It is also understandable that the ATP would seek, as it informed the Panel that it did, to protect the confidentiality rights of players in seeking to remove references in the Environmental Review (a document that was intended to be made public) that may have resulted in the identification of certain individuals.

182. The Panel can see how and why the amendments came to be proposed, and to be made. The International Governing Bodies said that they wanted to identify more precisely the nature of the concern that the matches raised, and to put forward the possibility that the matches did not necessarily reflect breaches of integrity. That was appropriate. The amendments in themselves did not change the thrust of the conclusions.

183. The Panel has seen no evidence that the authors of the Environmental Review made any changes that they were not comfortable making or that they were inappropriately asked or persuaded to make those changes.

C THE ATP'S RESPONSE IN 2008 TO INTELLIGENCE ARISING OUT OF THE SOPOT REPORT AND THE ENVIRONMENTAL REVIEW

184. This Section deals with the ATP's response in 2008 to the intelligence it received about matches other than the Sopot Match, involving other players and betting syndicates, as a result of the Sopot Investigation and the Environmental Review. The handling of this intelligence was criticised in the media in early 2016.

(1) THE INTELLIGENCE ARISING OUT OF THE SOPOT REPORT AND ENVIRONMENTAL REVIEW

185. As the Sopot Investigation proceeded, the Sopot Investigators discovered information in relation to other matches, other players, and betting syndicates, in addition to information about the Sopot Match itself.

186. In particular, the Sopot Investigators obtained from Betfair the account history of the betting accounts that had made major profits from the Sopot Match[282]. Through betting analysis described in paragraph 188 below, Mark Phillips reported that he discovered that a number of apparent betting syndicates had been regularly betting on matches that produced suspicious or unusual betting patterns and that involved a number of players[283]. The Panel presently considers that the matches, players and syndicates that Mr Phillips stated he had identified through this analysis were, as described in paragraph 190 below, the 45 matches, players and betting syndicates referred to in the original draft of the Environmental Review, before the wording was amended as described above[284].

187. The Sopot Investigators also obtained material downloaded from Vassallo Arguello's mobile telephone, described in paragraph 48 above. Mr Phillips informed the Panel that he first saw the material downloaded from Vassallo Arguello's mobile telephone after he had already identified the 45 matches from his analysis of the Betfair data. He stated that when he saw the data from Vassallo Arguello's phone, he "*noticed and remarked to colleagues that particular matches identified in the texts had already been identified through my betting analysis*" of the Betfair data[285]. He stated that he concluded that the Vassallo Arguello phone material therefore provided "*powerful corroborative evidence*" in relation to some of the 45 matches he had already identified through his betting analysis[286]. Mr Phillips' PowerPoint presentation described in paragraphs 200 to 213 below referenced deleted text messages in the Vassallo Arguello phone material related to two of the 45 matches as well as telephone numbers that appeared in Vassallo Arguello's mobile phone's address book and matched the phone numbers associated with Betfair accounts that had bet on two more of the 45 matches (and one of the matches also related to the text messages).

Mark Phillips' identification of 45 matches through analysis of Betfair data

188. Mr Phillips stated that, using the account history obtained from Betfair, he examined the accounts that had made major profits on the Sopot Match, which were Russian accounts[287]. He then reviewed other matches that had been bet on by this group of Russian accounts. Mr Phillips stated that "*it became obvious that other matches that* [the same Russian accounts] *had bet upon required investigation due to the nature of the betting and the level of profits being made*"[288]. Mr Phillips stated that this analysis, combined with analysis of betting data obtained from Betfair, led him to identify "*a number of matches where the betting had been suspicious, involving particular players and three distinct bettor groups (Russian, Northern Italian and Sicilian) that had bet on those matches*"[289].

282 Statement of Mark Phillips (formely BHA).

283 Mark Phillips and John Gardner, 'Tennis Investigations – Summary of Betting and Telecoms Analysis' PowerPoint Presentation – the document has been suitably redacted as published. Appendix: Key Documents.

284 Paragraphs 167 to 169 above.

285 Statement of Mark Phillips (formely BHA).

286 Statement of Mark Phillips (formely BHA).

287 Statement of Mark Phillips (formely BHA).

288 Statement of Mark Phillips (formely BHA).

289 Statement of Mark Phillips (formely BHA).

189. Mr Phillips produced or contributed to a document, which the Panel has seen only in draft, and the date of which is not clear, entitled 'Tennis Investigations – General Logistical Issues'[290]. Mr Phillips also subsequently put together a PowerPoint presentation entitled 'Tennis Investigations – Summary of Betting and Telecoms Analysis'[291].

190. The document titled 'Tennis Investigations – General Logistical Issues' listed 45 matches. The 45 matches were broken down into the following groups:

190.1 12 matches in respect of the Sicilian group of accounts. The document stated that "*there are 12 matches involving*" the Sicilian group "*that warrant further investigation*" and then listed 12 matches (of which four were not mentioned in the subsequent PowerPoint presentation entitled 'Tennis Investigations – Summary of Betting and Telecoms Analysis').

190.2 29 matches in respect of the Northern Italian group of accounts. The document identified "*the most profitable match*" for the Northern Italian group and stated that "*there are at least 28 other matches that... warrant further investigation. Most of the 29 were first round matches in non high profile ATP tournaments.*" The document then listed 28 men's matches (including the most profitable one) and, immediately at the end of that list, stated "*there is only one suspect WTA match to add to the list*" and identified it. There were therefore 29 matches identified (of which 16 were not mentioned in the subsequent PowerPoint presentation).

190.3 Four matches in respect of the Russian group of accounts. The document stated that separately from the Sopot Match itself "*there are 4 other matches (all ATP)... that appear... to be suspicious. All the matches listed below were deemed by the Betfair integrity team to be suspicious*". The document then listed four matches (of which one was not mentioned in the subsequent PowerPoint presentation). There was in fact one additional WTA match that was also mentioned in relation to this group, but was not included in the list of four matches (and was also not in the subsequent PowerPoint presentation). The Panel has excluded the WTA match from the total here because the introductory text referred to four, not five, matches and because the WTA match was not specifically stated to be included in the list. It is however correct that if this match were included in the total, that total would be 46, and not 45, matches.

191. The 'Tennis Investigations – General Logistical Issues' document also stated that "*there are also smaller groups of account holders whose accounts have yet to be analysed, and these are Argentinean; French; and Austrian*".

192. The 'Tennis Investigations – General Logistical Issues' document recommended the investigation of ten players "*who stood out*":

192.1 There were six such players arising out of the betting by the Sicilian Group, one of whom was Vassallo Arguello.

192.2 There were four additional players arising out of the betting by the Northern Italian Group (in addition to Vassallo Arguello).

193. The 'Tennis Investigations – General Logistical Issues' document appears to have recorded the status of Mr Phillips' work at the time that it was produced, which included the list of 45 matches. While it is not clear exactly when it was produced, the latest-in-time match referred to in the document was played in August 2007, and the document appears to have been produced as part of the drafting of the Environmental Review, a draft of which, dated March 2008, appears to have been provided to the International Governing Bodies. Mr Phillips' PowerPoint presentation subsequently described a number (24) of those 45 matches, but not all of them, and it also described six other matches: two in respect of an Argentinean group, which in fact only involved betting from one account, three in respect of the French group, and one match from March 2008 unconnected to the others.

290 The "Tennis Investigations – 'General Logistical Issues' document has also been suitably redacted as published - Appendix: Key Documents.

291 Mark Phillips and John Gardner, 'Tennis Investigations – Summary of Betting and Telecoms Analysis' PowerPoint Presentation - Appendix: Key Documents.

The 45 matches mentioned in the Environmental Review

194. In the present[292] view of the Panel, it is likely that the 45 matches referred to in the Environmental Review are the 45 matches set out in the *'Tennis Investigations – General Logistical Issues'* document[293]:

194.1 The number of the matches, the number of the players, and the description of the syndicates identified in the document all coincide with the numbers and descriptions set out in the original text in the draft Environmental Review referring to the 45 matches[294].

194.2 The Environmental Review stated that it was "as *a result of specific enquiries arising out of the 'Sopot Match'*" that "*specific concerns from a betting perspective which would warrant further review*" were identified in relation to 45 matches[295].

194.3 The matches in the document were derived from analysis of Betfair data, consistent with the belief of relevant individuals as described in paragraphs 113 to 116 above. That Betfair was the original source was reflected in paragraphs 2.11 and 2.12 of the Environmental Review.

194.4 The authors of the Environmental Review stated that they relied on analysts from Mr Gunn's team at the BHA; Mr Phillips was such an analyst.

194.5 Mr Phillips told the Panel that he believed the 45 matches set out in the *'Tennis Investigations – General Logistical Issues'* document were probably the 45 matches referred to in the Environmental Review.

194.6 There is no other identified source for the 45 matches.

195. Accordingly, absent other evidence, it seems that the 45 matches identified in the Environmental Review that generated "*specific concerns*" from "*specific enquiries arising out of the Sopot Match*" correspond to the list of 45 matches raising suspicious or unusual betting patterns in the Sopot Investigators' *'Tennis Investigations – General Logistical Issues'* document.

196. It is less clear to the Panel where the "*73 matches*" referred to in the Environmental Review comes from:

196.1 As set out in paragraph 116 above, Ben Gunn believed a list of 73 matches had been given to Paul Beeby, Tom Chignell and Mr Phillips by a journalist[296]. This may well be correct, since such lists were provided, but the Panel has not identified the list in question.

196.2 Also as set out in paragraph 166.2 above, the original text of the Environmental Review referred to the 73 matches as having been identified by Betfair. This could also be correct.

197. As to Mr Gunn's belief[297] that the 45 matches originated from that longer list of 73 matches, the Panel presently considers that:

197.1 It may be the case that the 45 matches were featured on such a longer list of 73 matches involving suspicious or unusual betting, whether it came from a journalist or from Betfair.

292 Pending the consultation process between Interim and Final Reports.

293 The "Tennis Investigations – General Logistical Issues" document has also been suitably redacted as published. Appendix: Key Documents.

294 Paragraph 167.2 above.

295 Paragraph 167.2 above; Environmental Review, page 9, paragraph 2.10.

296 Statement of Ben Gunn (formerly BHA).

297 Statement of Ben Gunn (formerly BHA).

197.2 The evidence presented to the Panel indicates that the 45 matches were identified through Mr Phillips' betting analysis described above.

197.3 It is likely that if the 45 matches were also featured on another list, it was because both lists were the products of exercises aimed at identifying matches where there had been suspicious or unusual betting patterns.

The corroboration in relation to some of the 45 matches revealed in deleted texts and contact details downloaded from Vassallo Arguello's mobile telephone

198. As described above[298], the mobile telephone of Vassallo Arguello was obtained by the Sopot Investigators at his interview in Poland on 17 September 2007, and data from it was downloaded by a forensic expert, who had travelled to Poland along with the Sopot Investigators and Gayle Bradshaw of the ATP, using a forensic examination of the telephone. As described in the contemporaneous summary of the interview and in statements from witnesses discussed above, the player reportedly handed over his telephone voluntarily and in the knowledge it was to be examined, but he had not been served with a written demand. This issue addressed further in Chapter 9.

199. According to Mr Phillips, "*particular matches identified in the texts had already been identified through*" his analysis of the Betfair data[299]. Mr Phillips stated that the data from Vassallo Arguello's mobile telephone "*provided powerful corroborative evidence*" for the matches he had already identified [300].

The description of the intelligence in the subsequent PowerPoint presentation

200. Mr Phillips subsequently put together the PowerPoint presentation entitled *'Tennis Investigations – Summary of Betting and Telecoms Analysis'*[301]. The Panel presently[302] understands that the PowerPoint presentation:

200.1 Was given to Mr Bradshaw and Mark Young of the ATP in or around April 2008 as part of the conclusion of the Sopot Investigation, as described in paragraph 227 below.

200.2 Was given to Jeff Rees and Bruce Ewan of the TIU in the presence of Mr Bradshaw on 9 January 2009 as part of the handover to the TIU, as described in Chapter 9[303].

200.3Was published by the media[304] in early 2016, in redacted form[305].

201. Mr Phillips stated that the data from Vassallo Arguello's mobile telephone was described in the PowerPoint presentation because he believed these materials provided "*powerful corroborative evidence*"[306]. His PowerPoint presentation started with two of the 45 matches for which he believed that deleted texts in the Vassallo Arguello phone material provided corroborative evidence. The second of those was also, Mr Phillips believed, corroborated by the phone material as it involved betting by Betfair account holders with telephone numbers that were included in the saved contacts on Vassallo Arguello's mobile telephone. The presentation then evaluated two more of the 45 matches that were, Mr Phillips believed, corroborated by contacts found in Vassallo Arguello's mobile telephone. Mr Phillips stated, however, that all the matches addressed in the PowerPoint presentation had been separately and previously identified through his analysis of the Betfair data.

298 Paragraph 48 above.

299 Statement of Mark Phillips (formely BHA).

300 Statement of Mark Phillips (formely BHA).

301 Mark Phillips and John Gardner, 'Tennis Investigations – Summary of Betting and Telecoms Analysis' PowerPoint Presentation – the document has been suitably redacted as published. Appendix: Key Documents.

302 Pending the consultation process between Interim and Final Reports.

303 Chapter 9, Section A.

304 By BuzzFeed News at https://www.documentcloud.org/documents/2685408-Betting-and-Telecoms.html#document/p26/a271720 (accessed 9 April 2018). The document was redacted by BuzzFeed News.

305 The version published by BuzzFeed contains the same slides but in a different order.

306 Statement of Mark Phillips (formely BHA).

202. In the first of the two matches that Mr Phillips found to have been corroborated by the texts collected from Vassallo Arguello's mobile telephone[307], Mr Phillips reported that Vassallo Arguello lost the first set and went down a break in the second set before going on to win the remaining two sets. The data downloaded from Vassallo Arguello's mobile telephone included the text exchange described below between Vassallo Arguello and Fabrizio Guttadauro[308]. (According to Mr Phillips' analysis, Guttadauro held at least one of a number of Sicilian accounts that Mr Phillips found to be linked by computer sharing based on his analysis of betting accounts from the Betfair data).

    202.1 The day before the match, Vassallo Arguello received a text from Guttadauro that began, "*This is my number, please if...*".

    202.2 On the day of the match, Vassallo Arguello received three texts from Guttadauro that included the words: "*Are you awake? Can I call you? Room 1*"; "*Don't call from the mobile but from the room*"; and "*I would like to talk to you because of the match*".

    202.3 At 1.15pm Vassallo Arguello sent a text to Guttadauro that started: "*He doesn't want to do it. He intends to win and force...*".

    202.4 At 1.26pm Vassallo Arguello sent a text to Guttadauro stating: "*I'll come*".

    202.5 At 3.44pm Vassallo Arguello sent a text stating: "*All okay*". The match started at 3.55pm.

203. According to Mr Phillips' betting analysis, four of the linked Sicilian accounts that Mr Phillips identified based on his analysis of the Betfair data then bet on Vassallo Arguello to win the match, which Vassallo Arguello did after losing the first set and going down a break. His opponent had been favoured to win, because an Argentine account had bet substantial amounts on him to win and Vassallo Arguello to lose. That betting was suspicious or unusual, in that the lower-ranked player was backed down to relatively poor odds. The Argentine account lost more than £100,000 on Betfair. The four Sicilian accounts won more than £300,000, benefitting from good odds as a result of substantial betting by the Argentine account on Vassallo Arguello's opponent and as a result of Vassallo Arguello going a set and a break down. The Sicilian accounts stopped betting on Vassallo Arguello before he started to win in the second set. For each Sicilian account it was a win that was much greater than the next highest win on the account.

204. In the second of the two matches that Mr Phillips concluded were corroborated by the texts collected from Vassallo Arguello's mobile telephone[309], Vassallo Arguello lost the first set and went down a break in the second set before going on to win the last two sets. The data downloaded from Vassallo Arguello's mobile telephone included the following text exchanges between Vassallo Arguello and his opponent and between Vassallo Arguello and Guttadauro.

    204.1 At 6.38pm two days before the match, Vassallo Arguello's opponent texted him: "*Where are you?*".

    204.2 At 6.59 pm Vassallo Arguello texted Guttadauro: "*He's replying to me this evening*".

    204.3 At 8.21pm Vassallo Arguello's opponent texted him: "*Martin, I'm in 109 - can we talk?*".

    204.4 The day before the match, Vassallo Arguello sent a text to Guttadauro that started: "*I've spoken with* [the opponent]*. He has asked me for a ...*".

    204.5 At 2.34pm, on the day of (but after) the match, Vassallo Arguello's opponent texted him: "*Martin, we have to talk. These guys are ...*".

    204.6 At 6.12pm, Vassallo Arguello texted Guttadauro: "*Unfortunately he can't be trusted*".

307 Mark Phillips and John Gardner, "Tennis Investigations – Summary of Betting and Telecoms Analysis" PowerPoint Presentation, as redacted, pages 2 to 4.

308 The 'Tennis Investigations - Summary of Betting and Telecoms Analysis' PowerPoint presentation stated that *"the downloaded data from the deleted part of Vassallo's mobile phone shows that he exchanged at least 82 texts"* with the mobile number. Appendix: Key Documents.

309 Mark Phillips and John Gardner, 'Tennis Investigations – Summary of Betting and Telecoms Analysis' PowerPoint Presentation, as redacted, pages 5 to 8.

205. According to Mr Phillips' betting analysis, two of the linked Sicilian accounts, two of the linked Northern Italian accounts, and the same Argentine account that had previously lost betting on the first match all bet on Vassallo Arguello to win the match, which he did after losing the first set and going a break down. The betting was particularly suspicious or unusual because the bettors continued to back Vassallo Arguello at the point at which he went a set and a break down. The accounts stopped betting on Vassallo Arguello before he started to win in the second. The two linked Sicilian accounts won in excess of £5,000, the two linked Northern Italian accounts won in excess of £24,000, and the Argentine account won in excess of £33,000.

206. This match was also corroborated by the fact that one of the two Northern Italian accounts was registered with a telephone number that appeared in Vassallo Arguello's mobile telephone address book, which was discovered when the Sopot Investigators downloaded the data from it.

207. Mr Phillips' presentation then addressed two further matches[310] involving Vassallo Arguello that Mr Phillips concluded raised suspicious or unusual betting patterns. The betting on both of these matches involved a Betfair account registered with a telephone number that was found in the contacts list obtained from Vassallo Arguello's mobile telephone. Both matches had been identified originally through his analysis of the Betfair data and were included in the 45 matches.

208. In the first of those matches[311], Vassallo Arguello lost the first set and went down a break in the second set before going on to win the remaining two sets. According to Mr Phillips, four Northern Italian accounts linked by computer sharing bet on Vassallo Arguello to win the match. Of those accounts, one had a telephone number registered with Betfair that was also appeared in Vassallo Arguello's contacts list. Mr Phillips' presentation concluded that the betting was suspicious or unusual because the bettors continued to back Vassallo Arguello at the point at which he went a set and a break down. According to Mr Phillips' presentation, the accounts stopped betting on Vassallo Arguello before he started to win in the second set, and the four linked Northern Italian accounts won more than £75,000. Based on Mr Phillips' analysis in the presentation, in each case, the win was near the top of the list of highest wins on the account.

209. In the second of those matches[312], Vassallo Arguello's opponent lost the first set and went down a break in the second set before going on to win the remaining two sets. According to Mark Phillips' analysis in the presentation, nine Sicilian accounts linked by computer sharing were involved in betting on this match. Mr Phillips' presentation concluded that the betting was suspicious or unusual because the bettors continued to back Vassallo Arguello's opponent at the point at which he went down a set and a break. According to Mr Phillips' presentation, the accounts stopped betting on Vassallo Arguello's opponent before he started to win in the second set. Mr Phillips concluded in the presentation that collectively the suspect accounts won more than £139,000[313]. Mr Phillips' presentation concluded that, in each case, the win was near the top of the list of highest wins on the account.

210. In the PowerPoint presentation, Mr Phillips addressed other matches in addition to those discussed above that, according to his evidence, Mr Phillips had separately and previously identified through his analysis of the Betfair data[314]. Mr Phillips' presentation addressed other matches on which the Sicilian group of computer-linked accounts and the Northern Italian group of computer-linked accounts (identified as above) had bet, evaluating whether the betting patterns in respect of those other matches were also suspicious or unusual. Mr Phillips' presentation also looked at other matches that had been bet on by the Russian group of computer-linked accounts that bet on the Vassallo Arguello v Davydenko Sopot Match. The presentation also reviewed matches bet on by an Argentine account and matches bet on by a French group of accounts.

310 For the avoidance of doubt, different to the two matches to which the deleted partial texts had related. These two other matches formed part of the 45 matches.

311 Mark Phillips and John Gardner, "Tennis Investigations – Summary of Betting and Telecoms Analysis" PowerPoint Presentation, as redacted, pages 8 to 10.

312 Mark Phillips and John Gardner, "Tennis Investigations – Summary of Betting and Telecoms Analysis" PowerPoint Presentation, as redacted, pages 11 to 14.

313 Mark Phillips and John Gardner, "Tennis Investigations – Summary of Betting and Telecoms Analysis" PowerPoint Presentation, as redacted, page 13.

314 Statement of Mark Phillips (formely BHA).

211. Under the heading "*matches worthy of further investigation*" in Mr Phillips' PowerPoint entitled '*Tennis Investigations – Summary of Betting and Telecoms Analysis*'[315], Mr Phillips set out in brief summary:

211.1 Six other matches that his analysis suggested had raised suspicious or unusual betting patterns and on which the Sicilian group of accounts linked by computer sharing had bet[316]. Each of these matches was included in the 45 matches.

211.2 11 other matches that his analysis suggested had raised suspicious or unusual betting patterns and on which the Northern Italian group of accounts linked by computer sharing had bet[317]. Each of these matches was included in the 45 matches.

211.3 Three other matches that his analysis suggested had raised suspicious or unusual betting patterns and on which the Russian group of accounts linked by computer sharing had bet[318]. Each of these matches was included in the 45 matches.

211.4 Two other matches that his analysis suggested had raised suspicious or unusual betting patterns and on which an Argentine account had bet[319]. These were not included in the 45 matches.

211.5 Three other matches that his analysis suggested had raised suspicious or unusual betting patterns and on which a French group of accounts linked by computer sharing had bet[320]. These were not included in the 45 matches

212. One other match was mentioned in Mr Phillips' PowerPoint entitled *"Tennis Investigations – Summary of Betting and Telecoms Analysis"*, but the presentation was unclear as to the extent to which the betting information was suspicious[321]. It was not one of the 45 matches, having not been played until March 2008. The betting accounts involved were different. It appears that it was mentioned because it was a recent ATP match that had been reported and would have been of interest to Mr Bradshaw and Mr Young when they received the presentation.

213. Accordingly, Mr Phillips' PowerPoint entitled *"Tennis Investigations – Summary of Betting and Telecoms Analysis"*:

213.1 Identified four matches, all involving Vassallo Arguello, that he considered raised concerns, in part because the evidence of suspicious betting for two of the matches was corroborated by the contents of the texts and for two more of the matches by the presence in Vassallo Arguello's contacts list of telephone numbers for the holders of the accounts involved in the betting.

213.2 Identified 24 matches that were "*worthy of further investigation*", and one where the position appeared to be that the betting was not suspicious, from Mr. Phillips' analysis of the Betfair data.

315 Mark Phillips and John Gardner, "Tennis Investigations – Summary of Betting and Telecoms Analysis" PowerPoint Presentation, as redacted, pages 15 to 17.
316 Mark Phillips and John Gardner, "Tennis Investigations – Summary of Betting and Telecoms Analysis" PowerPoint Presentation, as redacted, page 16.
317 Mark Phillips and John Gardner, "Tennis Investigations – Summary of Betting and Telecoms Analysis" PowerPoint Presentation, as redacted, pages 16 to 17.
318 Mark Phillips and John Gardner, "Tennis Investigations – Summary of Betting and Telecoms Analysis" PowerPoint Presentation, as redacted, page 15.
319 Mark Phillips and John Gardner, "Tennis Investigations – Summary of Betting and Telecoms Analysis" PowerPoint Presentation, as redacted, page 17.
320 Mark Phillips and John Gardner, "Tennis Investigations – Summary of Betting and Telecoms Analysis" PowerPoint Presentation, as redacted, page 17.
321 Mark Phillips and John Gardner, "Tennis Investigations – Summary of Betting and Telecoms Analysis" PowerPoint Presentation, as redacted, page 14.

(2) PROVISION TO THE ATP OF THE INTELLIGENCE ARISING OUT OF THE SOPOT REPORT AND ENVIRONMENTAL REVIEW

214. The ATP received Mark Phillips' intelligence based on his analysis of the Betfair data in April 2008, when it was given Mr Phillips' PowerPoint presentation[322]. The ATP was informed of the existence of the Vassallo Arguello mobile telephone material some considerable time before then[323].

The ATP's prior approval of the downloading of data from players' mobile telephones

215. As described above[324] throughout the Sopot Investigation the Sopot Investigators liaised with the ATP, and in particular Gayle Bradshaw, who was present at the interview of Vassallo Arguello. As set out above[325], the strategy for conducting the Sopot Investigation had been discussed between the Sopot Investigators and the ATP at the outset, and this included the strategy of using a forensic expert to download data from telephones belonging to the players.

216. As described above[326] and from the contemporaneous documents, the Panel is satisfied that (a) the Sopot Investigators were clear from the outset of the Sopot Investigation that it was their intention to use a forensic expert to download data and that they viewed the data download as important to their investigation; (b) one of the action points for the ATP following the meeting on 16 August 2007 (referred to in paragraph 40 above) was to examine the rules and ascertain whether this course of action was possible; (c) the ATP (through Mr Bradshaw) authorised the Sopot Investigators to bring to Vassallo Arguello's interview an expert from a forensic telecommunications company. It is not clear (either from the contemporaneous documents or the evidence given to the Panel) whether the ATP, with or without legal counsel, did examine the rules and whether a decision was reached on whether a written demand should have been made ahead of downloading data from Vassallo Arguello's mobile telephone.

217. As referred to above, one of the Sopot Investigators Robert King was sent a copy of the written notice before it was sent to the players and, from the contemporaneous documents seen, there is no evidence to suggest that he was dissatisfied with the contents.

218. As described above[327], Vassallo Arguello's mobile telephone was downloaded without prior notice by way of a written demand.

Provision to the ATP of the downloaded data, and the perceived constraints on its use

219. The ATP was informed of the existence of the Vassallo Arguello texts and contact details.

220. On 2 October 2007, Paul Beeby sent an email to Mr Bradshaw, in which:

220.1 He stated "*I have made a list of what we have available which ultimately may form part of any case. Many of these items are working documents. They are being used for research…*".

220.2 He then stated "*So what can we give you if you need it?*" and addressed five heads of documents under numbered paragraphs.

220.3 After dealing with the transcripts of various interviews, Mr Beeby stated, under paragraph 3 "*The telephone download material is sensitive. It shows our tactics and if placed in the public arena will not only jeopardise what we want to get from this case but potentially other cases in the future. I am happy to forward to you although they are paper only at this time. The rest of the phone download will be on disc and is not in our possession yet*".

322 Statement of John Gardner (BHA); Statement of Mark Young (ATP).

323 Paragraph 221 below.

324 Paragraph 37 above.

325 Paragraphs 38 and 40 above.

326 Paragraphs 39 to 41 above.

327 Paragraphs 48 to 48.3 above.

221. Mr Young gave evidence that following the download of Vassallo Arguello's mobile telephone, the ATP had a concern regarding the possible use of the downloaded text messages. Mr Young's evidence is that the concern arose from the fact that the process set out in the ATP TACP for obtaining information had not been followed. In particular, a written demand had not been given to the player. He was therefore concerned that the ATP had not followed its own rules and the text messages would be inadmissible. He also thinks that it is likely he would have consulted lawyers in respect of this issue[328]. Further he told that Panel "*I recall that Paul Scotney made a comment to me that the collection of the texts may have violated European privacy laws*"[329]; however, he does not recall anyone researching this issue[330].

222. Mr Bradshaw gave evidence that following the download of Vassallo Arguello's mobile telephone Mr Beeby sent him an email stating that he did not want it to be known that the messages had been downloaded and that the information should be used for investigatory purposes only. From this email Mr Bradshaw assumed that the Sopot Investigators did not want to reveal their investigatory methods and that the messages could not be used as evidence[331].

223. Mr Beeby gave evidence that the Sopot Investigators' preference was to use the texts as intelligence rather than evidence. He stated that "*if the data was used against players, there was a danger that they would not hand over their phones in the future or ensure they employed tactics to disrupt – such as having secondary phones. We were looking beyond this investigation and wanted to preserve the tactic*"[332]. Mr Beeby considers that what the material revealed warranted further investigation.

224. On 29 December 2007, Mr Bradshaw provided an update to Etienne de Villiers. In this update he stated that "*we have learned some things about Arguello that will warrant another interview but we still have some data analysis to complete before we are ready for that*."

225. Mr Young gave evidence to the Panel that Paul Scotney had informed him that the text messages and contact list should not be relied upon as evidence, but used as intelligence[333].

226. Further, Mr Young stated that he had a concern about the possible use of the text messages in that the process set out in the ATP TACP was not adhered to and that, as such, the resulting text messages may have been inadmissible[334].

Presentation to the ATP of intelligence derived from Mark Phillips' analysis of the Betfair data

227. As set out above[335], in April 2008 at a meeting between the Sopot Investigators and Mr Young and Mr Bradshaw of the ATP[336], Mr Phillips gave his PowerPoint presentation entitled *"Tennis Investigations – Summary of Betting and Telecoms Analysis"*. That contained Mr Phillips' identification from his analysis of Betfair data of matches raising suspicious or unusual betting patterns that were bet on by groups of bettors connected by computer sharing, involving particular players, and detailed the corroboration provided by the Vassallo Arguello texts in relation to two, and by the contacts list in relation to a further two, of those matches already identified through Mr Phillips' betting analysis.

228. As set out above[337] and addressed further in Chapter 9, there was subsequently a second meeting at which the PowerPoint Presentation was again given, this time attended by Mr Bradshaw from the ATP and Jeff Rees and Bruce Ewan of the TIU. This was not until January 2009[338], following the TIU and uniform TACP coming into operation on 1 January 2009.

328 Statement of Mark Young (ATP).
329 Statement of Mark Young (ATP).
330 Statement of Mark Young (ATP).
331 Statement of Gayle Bradshaw (ATP).
332 Statement of Paul Beeby (formerly BHA).
333 Statement of Mark Young (ATP).
334 Statement of Mark Young (ATP).
335 Paragraphs 201 and 215 above.
336 Statement of Mark Young (ATP).
337 Paragraph 201 above.
338 Statement of Gayle Bradshaw (ATP); Statement of Jeff Rees (formerly TIU).

The ATP's decision that investigatory responsibility would be handed over to the new TIU, rather than dealt with by the ATP

229. On 29 April 2008, Albert Kirby stated in an email to Mr Bradshaw: "*I appreciate that you may have had some concern regarding my decision to examine the Arguello phones. The process we used is not commonly known and as I highlighted in my report should be kept within limited knowledge. However, as you will be aware, this examination has brought about valuable evidence. I was disappointed to hear from Paul Scotney that you had asked for this aspect of the investigation to be placed on 'hold' as the work had been almost completed (and by now may have been fully done as I had requested). I highlighted in my report that we should pursue the Arguello investigations without further delay as the ATP are now in the position of knowing they have a potentially corrupt player on the circuit and could further damage the reputation of professional tennis*".

230. Mr Bradshaw responded by email on 29 April 2008: "*I certainly agree with you that Arguello seems to be a player we have strong evidence against, although not from the match that started this investigation. Our decision on Arguello is to be made soon as tennis is in the process of forming its own integrity team and the thought is that this should go to them – there is still debate on this*".

231. Mr Young's evidence is that "*all of the information that emerged as a result of the Sopot investigation, including the text messages, was provided to the TIU once it was established*"[339]. Mr Young stated "*the ATP expected the newly established TIU to carry out such investigations as they considered appropriate, including in relation to any ATP matches that took place prior to the TIU being established. I probably told Jeff Rees in 2009 that, if they were to investigate matters that occurred prior to 2009, the TIU would need to investigate those matters under the pre-2009 applicable procedural rules governing the matter being investigated. It is my understanding that the pre-2009 ATP Tennis Anti-Corruption Programme gave players greater protection from investigative efforts because players under investigation could appeal requests for information and thereby delay compliance with those requests*"[340].

232. The ATP took no disciplinary action based on, and did not further investigate, the information about other players and betting syndicates arising out of the Sopot Report and Environmental Review.

233. The circumstances surrounding the handover of responsibility from the ATP to the TIU for investigating pre-TIU matches and materials are further discussed in Chapter 9.

(3) EVALUATION OF THE APPROACH OF THE ATP IN RESPONSE TO THE INTELLIGENCE ARISING OUT OF THE SOPOT REPORT AND ENVIRONMENTAL REVIEW

234. The Independent Review Panel has considered against the facts above whether the approach of the ATP in response to the information it received about other players and betting syndicates arising out of the Sopot Report and Environmental Review was effective and appropriate.

339 Statement of Mark Young (ATP).

340 Statement of Mark Young (ATP).

Should Vassallo Arguello or any player or the betting syndicates have been further investigated by the ATP?

235. For the reasons given below, having decided to hand over responsibility for investigating breaches of integrity to the new integrity unit, it was appropriate for the ATP to decide to pass the responsibility for further investigation to that unit once created. However, in the present assessment of the Panel, the ATP should have made greater use of the intelligence relating to Vassallo Arguello once it had been obtained and before the TIU was established.

236. On 29 December 2007 Gayle Bradshaw informed Etienne de Villiers that the ATP had learned some things about Vassallo Arguello that would warrant another interview but that the ATP still had some data analysis to complete. On 29 April Albert Kirby wrote to Gayle Bradshaw that the Arguello investigation should be pursued without further delay as the ATP was *"in the position of knowing they have a potentially corrupt player on the circuit and could further damage the reputation of professional tennis"*. Mr Bradshaw responded by email on 29 April 2008: "*I certainly agree with you that Arguello seems to be a player we have strong evidence against, although not from the match that started this investigation. Our decision on Arguello is to be made soon as tennis is in the process of forming its own integrity team and the thought is that this should go to them – there is still debate on this*".

237. With Jeff Rees not appointed until September 2008, there was a nine-month period during which no investigatory steps were carried out in relation to Vassallo Arguello. In the present view of the Panel this was a missed opportunity. The delay in waiting for the new integrity unit to be established permitted a player to continue competing despite serious concerns about his integrity and risked that certain lines of inquiry may have closed by that the time the TIU was established.

238. The ATP told the Panel that, with the Panel having noted that responsibility for the prosecution of Arguello was delegated to the TIU, "*the ATP should not be criticised for failing to take an action that [had been] delegated*"[341].

The ATP's decision to pass the information about other matches, players and betting syndicates to the TIU once created

239. The Independent Review Panel presently[342] considers that the ATP made an appropriate decision to pass the information about other matches, players and betting syndicates on to the TIU once created, to allow it to decide the appropriate course to take:

239.1 Certainly, notwithstanding the TIU's creation, the ATP could have decided itself to pursue investigation and disciplinary prosecution of breaches of its own rules in force before the coming into operation of the uniform TACP. Any disciplinary proceedings in respect of those breaches would have had to have been brought under the former rules, as the uniform TACP could not be applied retrospectively, at least insofar as the substantive prohibitions in it were concerned. At one level, the ATP would only be continuing to do what it had done before.

239.2 But it appears, first, that the ATP had come to realise that it did not have the capacity or capability to undertake such investigations effectively. It welcomed the advent of a new dedicated expert unit to take over that role, and it did not wish to continue activities in the area.

239.3 Second, if further investigation was to happen in the future, albeit of past breaches, it made sense that the dedicated expert unit should undertake it rather than have different investigations by different bodies of potentially linked behaviour. As it was put in the International Governing Bodies' collective submission to the Panel: "*Authority to decide how to use the intelligence was delegated to the TIU. There was no obligation or restriction as to how the TIU should use that information. The TIU had been formed to provide tennis with expertise and experience in the investigation of integrity breaches, and the International Governing Bodies took the view that it was not their role to challenge that expertise*".

239.4 Third, there was no reason in principle why the new unit should not assist in the disciplinary prosecution of past

341 Response of ATP to notification given under paragraph 21 of the Terms of Reference.

342 Pending the consultation process between Interim and Final Reports.

cases if the evidence was there, albeit against the standards in the old rules.

239.5 Fourth, equally, if what was to happen was that information was to be used for intelligence purposes, to inform future investigation of other future breaches, then it clearly was the new unit that should undertake it.

240. Further, having decided to hand over responsibility to the TIU, it was appropriate for the ATP to have relied on the TIU's judgment regarding whether investigations should be conducted into certain matches and how to use the materials received. It was appropriate to have expected that the new integrity unit, with greater expertise and specialisation in the areas of sports investigations and discipline, would be able to make appropriate decisions on these matters.

241. Finally, having decided to hand over responsibility, it was appropriate for the ATP not to have substantively investigated or brought disciplinary cases against Vassallo Arguello or any other player based on the information obtained during the Sopot Investigation that was unrelated to the Sopot Match. Having decided to hand over responsibility to the TIU, it was appropriate for the ATP to leave these decisions to the new integrity unit, which the ATP anticipated would have greater expertise and specialisation to make the determinations regarding such investigations and disciplinary cases.

242. The effectiveness of these decisions ultimately depends on what happened thereafter, which is dealt with in Chapter 9.

D THE INTRODUCTION BY THE INTERNATIONAL GOVERNING BODIES OF THE NEW SYSTEM WITH EFFECT FROM 1 JANUARY 2009

243. This Section covers the International Governing Bodies' creation of the TIU, adoption of the uniform TACP, and establishment of the education programme TIPP, in the light of the recommendations made in the Environmental Review.

(1) THE DECISION AS TO THE FORM OF THE TIU AND THE CONTENTS OF THE TACP AND EDUCATION PROGRAMME

The choice between Option 1 and Option 2

244. Following the production of the Environmental Review, the International Governing Bodies quickly decided to accept its recommendation of the creation of a dedicated expert unit to administer new uniform rules and released a statement to the press on 19 May 2008 stating that its intention was to have the TIU in place that season[343].

245. In implementing that decision, the International Governing Bodies had further to consider the form of the TIU to be adopted, since the two options described above[344] had been advanced.

246. At Wimbledon 2008, an interview panel made up of Ian Ritchie, Gayle Bradshaw and Bill Babcock interviewed the two candidates for the job of heading the unit, Paul Scotney and Jeff Rees[345]. In his interview, amongst other things, Mr Scotney advocated Ben Gunn's Option 1. Mr Rees told the Panel that one of his reasons for applying for the post were that "*the decision had been taken to go with the option 2 model for the TIU. In the event that the option 1 model had been chosen, I would not have applied for the job as to have done so would have been hypocritical on my part. I did not believe that it met the needs of tennis.*"[346] The candidates were asked about their approach to the media. Mr Scotney was in favour of interaction with the media, including the passing to them of information at the right time. Mr Rees on the other hand favoured a more conservative approach, keeping more information confidential. They were asked about their experience and their management approach.

247. Mr Ritchie[347], Mr Bradshaw[348] and Mr Babcock[349] each gave evidence to the Panel that the interview panel preferred Mr Rees as a candidate. They decided on which candidate to recommend first, and with that decision came a preparedness to accept, and so to recommend, what the favoured candidate regarded as the appropriate model. As stated above, Mr Rees informed the Panel that the Option 2 model had already been chosen at the time he was interviewed. According to the evidence, the interview panel asked Mr Rees what he needed and was prepared to recommend that it be given to him.

248. The interview panel was attracted by the proposition that the unit should start smaller and grow as and when the need to do so became apparent, rather than starting larger by including staff who might prove unnecessary. According to Mr Bradshaw and Mr Ritchie, the decision to recommend Mr Rees' Option 2 this was not driven by cost[350], nor was it designed to signal that the problem was a small one[351].

343 Manfred Wenas, Tennis Governing Bodies to Implement All Recommendations of Independent Tennis Integrity Review (Tennis Grandstand, 19 May 2008), available at: http://www.tennisgrandstand.com/tag/independent-environmental-review-of-integrity-in-professional-tennis/ [accessed 9 April 2018]

344 Paragraphs 146 to 148 above.

345 Statement of Gayle Bradshaw (ATP).

346 Statement of Jeff Rees (formerly TIU).

347 Statement of Ian Ritchie (formerly AELTC).

348 Statement of Gayle Bradshaw (ATP).

349 Statement of Bill Babcock (Grand Slam Board; formerly ITF).

350 Statement of Gayle Bradshaw (ATP).

351 Statement of Ian Ritchie (formerly AELTC).

Were the recommendations of the Environmental Review as to the TIU, TACP, and education programme implemented by the International Governing Bodies?

249. Having decided to create a new TIU[352], and to appoint Mr Rees to head it, the International Governing Bodies left it to him to set up the unit as he thought appropriate. The International Governing Bodies had accepted the recommendations in the Environmental Review in relation to the new TIU, and expected that Mr Rees as one of the authors of the Environmental Review would follow them, including the establishment of a regulatory strategy (aimed at prevention, detection and education)[353] and preparation of an intelligence strategy, investigative strategy, and computer database[354]. So too they expected him to follow his recommendations as to the content of the education to be delivered[355], a common investigation process[356], and a co-ordinated media strategy[357]. The International Governing Bodies did not give thought to what, as part of the implementation of those recommendations, would be appropriate interfaces with betting operators, or with police forces and other law enforcement agencies.

250. As to the uniform TACP, the International Governing Bodies established and adopted the uniform TACP that had been developed at the same time as and with the approval of the Environmental Review authors[358], which included bans on players betting[359] and on other relevant persons betting[360], took into account the suggestions on the definition of inside information made in the Environmental Review[361], created a single hearing tribunal[362], and provided for the possibility of a lengthy suspension for a first offence and, if the circumstances merited, a life suspension[363].

(2) MEASURES TO ADDRESS ASPECTS OF THE ORGANISATION OF TENNIS AFFECTING INTEGRITY

No simultaneous action on aspects of the organisation of tennis

251. The International Governing Bodies did not however at this stage act to make changes to the wider aspects of the organisation of tennis that affected integrity.

Were the other steps recommended by the Environmental Review to address aspects of the organisation of tennis affecting integrity implemented?

252. The International Governing Bodies did not therefore address the specific recommendations in the Environmental Review that:

252.1 "*Officials examine matches that players take part in over and above those necessary for achieving ranking points, or give consideration to changing the ranking points systems to make every match count*"[364]. *There was an email from the ATP to tournament organisers immediately following the acceptance of the recommendations which stated in relation to this recommendation that: "As each of you could possibly be affected by any change to the ranking system you should know that this was not a mandate to change, it was a recommendation to monitor, study, evaluate and then determine if a change to the ranking system is necessary. We will not overreact to this*

352 Environmental Review page 43, paragraph 4.1, Recommendation 3.
353 Environmental Review page 43, paragraph 4.1, Recommendation 2.
354 Environmental Review page 43, paragraph 4.1, Recommendation 4.
355 Environmental Review page 44, paragraph 4.2, Recommendation 11.
356 Environmental Review page 43, paragraph 4.2, Recommendation 12.
357 Environmental Review page 43, paragraph 4.2, Recommendation 14.
358 Environmental Review page 43, paragraph 4.1, Recommendation 1.
359 Environmental Review page 43, paragraph 4.2, Recommendation 5.
360 Environmental Review page 43, paragraph 4.2, Recommendation 6.
361 Environmental Review page 43, paragraph 4.2, Recommendation 10.
362 Environmental Review page 43, paragraph 4.2, Recommendation 12.
363 Environmental Review page 43, paragraph 4.2, Recommendation 13.
364 Environmental Review page 43, paragraph 4.2, Recommendation 7.

recommendation and any study results and/or future recommendations will be shared with the players and would be required to go through the normal process of the Player Council and the Board before any recommended changes could be implemented. If you have any thoughts on this issue, please let us hear from you."

252.2 *"There should be a review of current accreditation procedures"*[365]*. The ATP stated in the same email in relation to this recommendation that: "This has already begun at the ATP level with our Tour Identification Card (TIC) initiative. However, the recommendation above goes beyond what the TIC initiative covers. The soon to be formed Tennis Integrity Unit will be conducting their own review of credentialing processes and will have recommendations of their own to submit; prior to that, we have asked each tournament to conduct an internal self-evaluation of their entire accreditation system and make changes where appropriate. Some of the things we have told the tournaments that they should look at implementing beyond what is mandated through the TIC are: (i) Requiring proof of identity for all credentialed persons; (ii) All credentialed persons complete a form giving their contact details; (iii) Re-assessing tournament credentials that give access to any player areas beyond those specified in the TIC initiative".*

252.3 *"Only the player and essential tournament personnel should have access to the players' locker room (in both men's and women's tennis)"*[366]*. The ATP stated in the email in relation to this recommendation that: "This begins following Wimbledon with our TIC initiative. For the moment we are restricting locker room and physio room access to the player, coach and private physio provided that all have completed and submitted a TIC application form in advance or at the tournament site. Tournaments are to make sure that they have the proper security at all limited access player areas and that proper credentialing access is adhered to without exception. Based upon the further recommendation that would prohibit coaches and private physios from the locker room – we will consult with the Player Council and try to assess the best way to proceed. We have told the Tournaments that they should start looking at their facilities and how acceptable alternate areas for the coaches/physios can be managed in the future. The coaches will need a place to change and the private physios will need an area where they can provide treatment to the players --- we will insure that proper facilities are provided so that the services to the players will not be negatively affected prior to implementing the full recommendation".*

252.4 *"The professional tennis authorities consider seeking the support of other sporting bodies for legislation creating income streams from selling sporting rights and/or the creation of a 'right to bet'"*[367]*. The ATP email did not address this recommendation.*

(3) NEW SYSTEM IMPLEMENTED BY RULE CHANGE

253. The new system was implemented by simply changing the rules. From 1 January 2009, the Rulebooks of each governing body simply contained the obligation to comply with the new uniform TACP, in place of the prior relevant rules. In advance of the change to the rules, the TIU sent notification letters to all players, along with a copy of the rules.

254. There were no other formal arrangements for transition of responsibility from the International Governing Bodies to the TIU. Rather, as dealt with in Chapter 9, each of the International Governing Bodies provided to the TIU the intelligence and files that they had in relation to integrity. Arrangements were made for a meeting for the Sopot Investigators to provide information to the TIU[368].

365 Environmental Review page 43, paragraph 4.2, Recommendation 8.
366 Environmental Review page 43, paragraph 4.2, Recommendation 9.
367 Environmental Review page 43, paragraph 4.2, Recommendation 15.
368 Statement of Gayle Bradshaw (ATP); Statement of Mark Young (ATP).

(4) EVALUATION OF THE APPROACH OF THE INTERNATIONAL GOVERNING BODIES TO THE INTRODUCTION OF THE NEW SYSTEM

255. The Independent Review Panel has considered against the facts above whether the approach of the International Governing Bodies to the introduction of the new system was appropriate. The effectiveness of their approach ultimately depends on what happened thereafter, which is dealt with in Chapters 9 and 10.

The approach of the International Governing Bodies as to the form of the TIU and the contents of the uniform TACP and education programme

256. The International Governing Bodies were entitled to choose Jeff Rees as the person whom they considered best for the job, and it was appropriate for the International Governing Bodies to adopt his model and to leave to him, as one of the authors of the Environmental Review and an expert in the field, how best to implement the recommendations in it as to the form of the TIU and the establishment of the various strategies.

257. Whilst Option 2 might have been regarded as on the small side in the light of the level of intelligence arising from the Sopot Investigation and the Environmental Review, it allowed for the TIU to grow as necessary. In this regard, the Panel has no reason to doubt that in the event that Mr Rees had requested additional resources such resources would have been approved by the International Governing Bodies. The decisions taken by Mr Rees as to the resource levels of the TIU are addressed in Chapter 10 below.

258. The International Governing Bodies appropriately adopted the recommendations in the Environmental Review as to the contents of the TACP. At the time that the uniform TACP was adopted it made appropriate improvements on the rules previously in place, and while with hindsight weaknesses can be identified and are the subject of recommendations by the Panel, the form of the uniform TACP was appropriate.

259. As to the education programme, it was equally appropriate for the International Governing Bodies to leave to the new TIU the development of the education programme, as recommended in the Environmental Review.

The International Governing Bodies' approach to assessing the player incentive structure and aspects of the organisation of tennis affecting integrity

260. The International Governing Bodies focused in their response to the Environmental Review on the creation of the new TIU and the new TACP.

261. The International Governing Bodies could at the same time have done more to assess what could be done to address aspects of the player incentive structure and organisation of tennis that the Environmental Review (and the 2005 Ings Report before it) concluded fostered integrity concerns.

262. The Environmental Review made specific recommendations related to the structural and organisational aspects of tennis, and suggested that the International Governing Bodies take steps to assess the effect that these had on integrity. Measures aimed at detecting and punishing breaches, and preventing them by deterrence and education, were only part of what could be done to address the problem faced. Another part of what could be done was to take steps to address the underlying environment, including the organisation of professional tennis, and so the incentives to the behaviour from which corruption grew. While prevention in the wider sense fell within the role of the new TIU, and while changes to the organisation of tennis such as the ranking system might be complex (leading the authors of the Environmental Review to stop short of recommending such changes) and even unachievable, the International Governing Bodies themselves ought to have coupled with their creation of the TIU and uniform TACP an active programme of assessing what could be done to address the player incentive structure and the aspects of the organisation of tennis affecting integrity that had been identified to them.

Handover of Responsibility from the International Governing Bodies to the TIU

Independent
Review
of Integrity
in Tennis

09

1. In this chapter, the Independent Review Panel (the "Panel") addresses the handover of responsibility for the protection of integrity from the International Governing Bodies[1] to the TIU at the end of 2008. The Panel describes the ambit of the responsibility handed over, in particular in relation to possible breaches of integrity that occurred before the TIU's creation; the material in relation to such possible breaches that the International Governing Bodies gave to the TIU; and the TIU's decision to prioritise investigations of breaches of integrity that occurred after the TIU's creation over investigations of possible breaches of integrity that occurred before the TIU's creation[2]. The Panel then examines the subsequent approach adopted by the TIU to (a) material in relation to the 45 matches mentioned in the Environmental Review[3]; (b) material obtained from Vassallo Arguello's mobile telephone during the Sopot Investigation[4]; and (c) other material that the TIU received from the International Governing Bodies in relation to possible breaches of integrity that occurred before the creation of the TIU[5].

2. As stated in Chapter 8, Section A, the Sopot Investigation was conducted under the supervision of Mr Scotney, by Paul Beeby, John Gardner and Robert King of the BHA, with former detectives Albert Kirby and Dave Nutten. Mark Phillips of the BHA supported the Sopot Investigation by undertaking the specific role of analysing the betting on the match. The Panel refers to this group of individuals as the "Sopot Investigators". The Sopot Investigators conducted their investigation on behalf of the ATP[6], and neither the BHA employees nor Mr Kirby or Mr Nutten were acting on behalf of the BHA, which had only recommended them to the ATP and did not itself play any role as an organisation in the investigation. On occasion, however, individuals interviewed by the Panel used the shorthand "the BHA" to describe the Sopot Investigators recommended by it. That should not be taken as meaning that the BHA played any role as an organisation.

3. Pursuant to the Terms of Reference, the Panel addresses whether the handover of responsibility from the International Governing Bodies was effective and appropriate. As set out in Chapter 1[7], it is not the Panel's role in the Review to determine whether past actions did or did not satisfy any legality standard, and it should not be taken as doing so. Rather the Panel identifies below the relevant evidence it has received, including witness statements and contemporaneous documents, and sets out its present opinion as to the effectiveness and appropriateness of relevant actions at the time[8], based on its appreciation of the available evidence of the contemporaneous facts and circumstances. Also, as set out in Chapter 1[9], on occasion it is not possible or appropriate to seek to resolve apparent factual conflicts in the witness evidence.

4. Media criticism was made in early 2016 in respect of the handover[10]. The Panel has seen no evidence demonstrating that any of the TIU's or the International Governing Bodies' decisions or actions relating to the handover were taken to cover up past breaches of integrity or to protect players under suspicion. The Panel has identified a number of instances involving the processing of material in relation to possible breaches that occurred before the TIU's creation where, in the Panel's present opinion[11], the TIU's actions were inadequate.

Q 9.1 Are there other matters of factual investigation or evaluation in relation to the handover of responsibility from the International Governing Bodies to the TIU, that are relevant to the Review and that should be addressed in the body of the Final Report, and if so which, and why?

Q 9.2 Are there any aspects of the Panel's provisional conclusions in relation to these matters incorrect, and if so which, and why?

1 The ITF, the ATP, the WTA and at that time the Grand Slam Committee (later to become the Grand Slam Board) made up of the four Grand Slams.

2 Section A.

3 Benn Gunn and Jeff Rees, 'Environmental Review of Integrity in Professional Tennis' (May 2008), Appendix: Key Documents; Section B.

4 Section C.

5 Section D.

6 The Sopot Investigation concluded and the Sopot Investigators produced a report (the "Sopot Report") available, as redacted, at Appendix: Key Documents.

7 Chapter 1, Section C.

8 Pending the consultation process between Interim and Final Reports.

9 Chapter 1, Section C.

10 Heidi Blake & John Templon, 'The Tennis Racket' BuzzFeed News, 17 January 2016, available at: https://www.buzzfeed.com/heidiblake/the-tennis-racket [accessed 9 April 2018]; Chapter 11.

11 Pending the consultation process between Interim and Final Reports.

A THE RESPONSIBILITY AND MATERIALS HANDED OVER TO THE TIU AND THE TIU'S PRIORITISATION DECISION

(1) THE AMBIT OF THE RESPONSIBILITY HANDED OVER

5. The Uniform Tennis Anti-Corruption Program ("TACP"), came into effect on 1 January 2009. The rules in it, and the powers afforded to the TIU under it, ran from that date. Aside from the TACP, there is no charter or other document that formally establishes the TIU and its structure or clearly defines the ambit of its responsibility. The Panel has seen no such document that states that the TIU, at its inception, was given the responsibility for investigating possible breaches of integrity that occurred before the TACP came into effect.

6. In the absence of a written document recording the precise ambit of the responsibility handed over to the TIU, the Panel has had to rely on the recollections and evidence of the individuals involved together with the contemporaneous documents.

Evidence of the International Governing Bodies and their officers related to the ambit of the responsibility handed over

7. The International Governing Bodies' evidence to the Panel was that they handed material in relation to past possible breaches of integrity to the TIU and left decisions about what to do with it, including whether to commence any investigation, to the TIU's discretion[12].

8. As set out in Chapter 8, the ATP decided to hand over the intelligence arising out of the Sopot Investigation to the TIU. Mark Young's evidence to the Panel is that *"[t]he ATP expected the newly established TIU to carry out such investigations as they considered appropriate, including in relation to any ATP matches that took place prior to the TIU being established. I probably told Jeff Rees in 2009 that, if they were to investigate matters that occurred prior to 2009, the TIU would need to investigate those matters under the pre-2009 applicable procedural rules governing the matter being investigated. It is my understanding that the pre-2009 ATP Tennis Anti-Corruption Programme gave players greater protection from investigative efforts because players under investigation could appeal requests for information and thereby delay compliance with those requests"*[13].

9. In their representations to the Panel, the International Governing Bodies all stated that *"[a]uthority to decide how to use the intelligence was delegated to the TIU. There was no obligation or restriction as to how the TIU should use that information. The TIU had been formed to provide tennis with expertise and experience in the investigation of integrity breaches, and the Governing Bodies took the view that it was not their role to challenge that expertise. As such, the final decision to not conduct investigations of pre-2009 breaches of integrity rules, and instead to use the intelligence handed over by the Governing Bodies to inform future breaches, was made by the TIU"*[14].

10. The Grand Slam Board told the Panel that the delegation of responsibility to the TIU for issues arising from pre-TIU matches was *"perfectly logical since Mr Rees was the recognised global integrity expert which Tennis was fortunate to have recruited. His expertise was exceptional and naturally, responsibility for prioritisation and other organisational decisions were his to make as he built the TIU from scratch"*[15].

12 Responses of the International Governing Bodies to Notifications given under paragraph 21 ToR.

13 Statement of Mark Young (ATP).

14 Responses of the International Governing Bodies to Notifications given under paragraph 21 ToR.

15 Response of the Grand Slam Board in response to Notifications given under paragraph 21 ToR.

Evidence of Jeff Rees concerning the ambit of the responsibility handed over

11. In answer to the question of *"whether the TIU had responsibility for matches that pre-dated its establishment and in relation to which allegations and suspicions had been raised"*, Mr Rees stated that in paragraph 143 of his statement: *"[t]he responsibility was delegated to the TIU for issues arising from pre-TIU matches. This was not a formal responsibility, but seemed a sensible way forward"*[16].

12. In his representations to the Panel, Mr Rees stated:

    12.1 *"It does seem that the Panel members have misinterpreted, and as a result placed inappropriate reliance on, para 143 of my main statement*[17] *...The clear intention was that if something new came into the TIU in relation to old matches the TIU would deal with it as opposed to the tennis authorities who would previously have done so. In context, I believe the meaning of para 143 was very clear. It most certainly did NOT mean that we assumed or were given responsibility for examining, assessing, investigating or re- investigating everything that had been reported before January 1st, 2009"*[18].

    12.2 *"This is corroborated in extracts from statements of Messrs Bill Babcock and Gayle Bradshaw, provided to me in response to my request for further disclosure"*[19].

13. Mr Rees informed the Panel that:

    13.1 *"[T]here was never an expectation voiced in the Environmental Review that the TIU would delve into old matters (save in respect of the 45+ matches – a wholly different issue)"*, rather *"the clear expectation in the Environmental Review was that the TIU should look to the future"*[20]. Mr Rees referred the Panel to paragraphs of the Environmental Review that stated that the recommended Option 2 for the structure of the new Integrity Unit recognised that *"[a]n important duty of the General Manager/Chief Investigator in Option 2 would be that of using mature judgment to ensure all personnel in the unit focused primarily on the current and the relevant, rather than delving into events of years before to little purpose"*[21].

    13.2 *"The [*Environmental Review*] and its recommendations were accepted in full by the tennis authorities"*[22] and that *"Option 2 was adopted by the tennis authorities"*[23]. Further, Mr Rees said he *"would not have agreed to a report committing the TIU to investigating all old matches"*[24].

14. Mr Rees stated to the Panel that an exception to this general expectation was the 45 matches mentioned in the Environmental Review. As explained in Chapter 8, the Environmental Review stated that the authors had *"examined 45 of those matches and there* [were] *specific concerns about each match from a betting perspective which would warrant further review"*[25]. Mr Rees stated that "[i]*t is clear from the Environmental Review, and the First Steps document I prepared when I first took over the Unit*[26] *that I had every intention of reviewing those 45+ matches and staffing the TIU accordingly*"[27]. He stated that he however *"needed to have details of the 45+ matches in order to set the investigative priorities and to decide what resources I should ask for in order to further review them"*[28]. However, as addressed in paragraphs 85 - 93 below, Jeff Rees informed the Panel that *"[a]t no time whilst I was at the TIU did I believe that we were in possession of the information relating to the 45+ matches mentioned in the Environmental Review, despite many efforts to secure it"*[29].

16 Statement of Jeff Rees (formerly TIU).

17 In other words, the main Statement given by Mr Rees to the Panel.

18 Emphasis in original. Response of Jeff Rees to Notification given under paragraph 21 ToR.

19 Response of Jeff Rees to Notification given under paragraph 21 ToR.

20 Response of Jeff Rees to Notification given under paragraph 21 ToR.

21 Response of Jeff Rees to Notification given under paragraph 21 ToR.

22 Response of Jeff Rees to Notification given under paragraph 21 ToR.

23 Response of Jeff Rees to Notification given under paragraph 21 ToR.

24 Response of Jeff Rees to Notification given under paragraph 21 ToR.

25 'Environmental Review', page 1, paragraph - Appendix: Key Documents

26 The First Steps document is described in paragraph 16 below.

27 Response of Jeff Rees to Notification given under paragraph 21 ToR.

28 Response of Jeff Rees to Notification given under paragraph 21 ToR.

29 Emphasis in original. Response of Jeff Rees to Notification given under paragraph 21 ToR.

15. Mr Rees further stated that:

15.1 *"Had the tennis authorities been of the view that the mass of old material and numerous matches in the files provided to us by the ATP and others should be investigated/reinvestigated/revisited (again, not the 45+ matches – a different issue), I would have proposed the setting up of a 'cold case review team' as a practical way of achieving this"*[30].

15.2 *"That would probably have entailed employment of four investigators…in addition to the two investigators proposed under Option 2" and "*[a] *second information analyst/inputter to supplement the personnel proposed under Option 2 would also have been essential"*[31]*. Mr Rees stated "*[h]*owever, such a view was never expressed"*[32].

(2) THE INTERNATIONAL GOVERNING BODIES' HANDOVER OF MATERIALS IN RELATION TO PAST POSSIBLE BREACHES OF INTEGRITY TO THE TIU

16. Mr Rees produced a document titled 'First Steps In Setting Up An Integrity Unit In Tennis' and emailed that document to Bill Babcock on 6 August 2008. It was headed *"draft"* and described as being a draft in the email. In the document, under the heading *"Operational"*, Mr Rees set out the following three steps:

"7) Obtain from all relevant parties – ATP, ITF, WTA, Grand Slams, previous investigators and others – all material they hold in respect of corruption in tennis. This to include evidence, allegations received, suspicions, rumours and so forth. (In practice this may involve personal interviews of key members of staff, since experience shows they may not appreciate the possible significance of information they hold or be reluctant to put concerns or suspicions into writing or even voice them.)

8) Examine material held in respect of the 45 matches mentioned in the Gunn/Rees report as having suspicious betting patterns, and any further matches identified since completion of that report as having similar patterns.

9) From the materials obtained in Step 7) and 8), set out the investigative priorities."

17. Mr Rees informed the Panel that *"*[a]*s soon as I took up the appointment of Director of the TIU in September 2008, I carried out a risk assessment and operational review to determine the unit's priorities for the short and mid-term, and ultimately the long-term"*[33]. Mr Rees stated that *"*[w]*orking my way through old material was one of the first things I did and was part of my risk assessment and operational review"*[34]. In respect of his review of pre-TIU materials, Mr Rees stated that his *"early assessment in general was that, potentially, it contained good intelligence which, had it been fresh, would have been actionable,"* but in Mr Rees' assessment, *"the reality was that it was not fresh"*[35] and *"a number of those named in the material had already been questioned or contacted…* [a]*ny opportunity for surprise was therefore long gone in respect of many of those named"* [36].

30 Response of Jeff Rees to Notification given under paragraph 21 ToR.

31 Response of Jeff Rees to Notification given under paragraph 21 ToR.

32 Response of Jeff Rees to Notification given under paragraph 21 ToR.

33 Statement of Jeff Rees (formerly TIU).

34 Response of Jeff Rees to Notification given under paragraph 21 ToR.

35 Response of Jeff Rees to Notification given under paragraph 21 ToR.

36 Response of Jeff Rees to Notification given under paragraph 21 ToR.

18. Mr Rees stated that *"[i]n the circumstances I concluded that focusing the new Unit's investigations on pre-TIU material, and in particular on any backlog of apparently suspicious but stale betting patterns, would risk bogging down the Unit, would be unlikely to be significantly productive, and doing so would certainly be to the detriment of new investigations"*[37]. In Mr Rees' assessment therefore, he stated that it was *"[f]ar better to focus immediate TIU efforts on actively corrupt players and active corruptors i.e. active threats to the sport, using whatever investigative methods were appropriate to individual situations, and treat that pre-TIU material, as intelligence which would inform and help us assess and evaluate new allegations, suspicious betting patterns and so forth"*[38]. Mr Rees stated that *"[t]hese were already coming into the TIU"*[39].

19. The materials and documents provided to Mr Rees by each of the International Governing Bodies, and by the Sopot Investigators on behalf of the ATP, and the discussions that he had with each of them, are described below.

The material provided by the ATP and the Sopot Investigators on behalf of the ATP

20. By September 2008, the materials that either the ATP or the Sopot Investigators had concerning past possible breaches at ATP matches included the following:

    20.1 Reports, including from Betfair, of suspicious or unusual betting patterns at ATP matches.

    20.2 Details of betting accounts held in coaches' names by various betting operators.

    20.3 Material related to the 45 matches mentioned in the Environmental Review, which had been identified through Mark Phillips' analysis of data provided by Betfair in the context of the Sopot Investigation.

    20.4 Material downloaded from Vassallo Arguello's mobile telephone during the Sopot Investigation, including previously deleted text messages and contact details.

21. Today, it is unclear what the exact extent of the material was, and who had what when. While it is clear that the ATP had reports of suspicious or unusual betting patterns at ATP matches and the material related to the betting accounts held in coaches' names, it is unclear how much, if any, the ATP had in relation to the 45 matches (including the original Betfair source material) or of the material downloaded from Vassallo Arguello's phone. As set out in Chapter 8, by April 2008, the ATP had received Mark Phillips' PowerPoint presentation that contained information in respect of 24 of the 45 matches.

22. It is clear, however, that the ATP had not investigated the material related to the betting accounts held in coaches' names, the material in relation to the 45 matches, or the material downloaded from Vassallo Arguello's phone. Nor had the ATP investigated to completion a number of match alerts received before the TIU's inception, including during 2008, as described in paragraphs 29 - 37 below.

Provision of materials by the ATP

23. On 12 September 2008, Gayle Bradshaw of the ATP sent an email to Mr Rees stating that he had sent to him: *"1) All information concerning suspect matches from years 2003 – 2008. 2) All intelligence received going back to 2003. 3) One large binder that was prepared by the BHA on the Sopot investigation and what they discovered along the way concerning other matches, bettors etc..."*[40] The Panel has not seen the material that Mr Bradshaw sent to Mr Rees in the form it was sent, and so has been unable to confirm exactly what this material included.

37 Response of Jeff Rees to Notification given under paragraph 21 ToR. [(Oct. 2017), page 10.]

38 Response of Jeff Rees to Notification given under paragraph 21 ToR. [(Oct. 2017), page 10.]

39 Response of Jeff Rees to Notification given under paragraph 21 ToR. [(Oct. 2017), page 10.]

40 Email from Gayle Bradshaw to Jeff Rees (copying Bill Babcock) dated 12 September 2008.

24. On 22 and 23 September 2008, Mr Bradshaw and Mark Young of the ATP had a two-day handover meeting with Mr Rees. In the email following the meeting to the future PTIOs and copied to Mr Rees dated 25 September 2008, Mr Bradshaw stated:

    24.1 That the purpose of the meeting had been *"to turn over and answer questions on files that I prepared of all questionable matches (due to information from Betfair) that have been alerted to me going back to 2003. Also included were intelligence files that I have accumulated during this same period"*[41].

    24.2 *"Mark and I also met with Paul Scotney (BHA) and he has agreed to give Jeff a presentation on what his team has learned stemming from their assistance on the Sopot investigation. The BHA has spent considerable time working with us and the intelligence that they have put together should be quite beneficial to our TIU Team. This meeting should take place in the near future and hopefully after Jeff has his intelligence officer in place. If any of this intelligence leads to official investigations by the TIU, then this information will be shared with the members of our PTIO team at the appropriate time. Hopefully, the information we have provided to Jeff will prove beneficial and I am sure that the meeting with Paul and his team will prove invaluable as we move forward"*.

25. In a file note prepared by Mr Rees concerning the two-day handover meeting with the ATP on 22 and 23 September 2008, Mr Rees reported that *"prior to the meeting"* Mr Bradshaw *"had couriered to me a box of ATP files"*[42]. Mr Rees also stated, in that file note, *"my prime concern was to examine the evidence and papers in respect of the 40+ matches identified in the Gunn/Rees report as having suspicious betting patterns. [Gayle Bradshaw] was surprised that the relevant papers hadn't been included amongst the files sent to me, but [Mark Young] did state that he thought the chart linking various betting accounts and key figures was in his office. As regards the way forward in respect of those matches, both* [Mark Young] *and* [Gayle Bradshaw] *were keen that the TIU should receive the same presentation for the BHA that they received. This would involve Paul Scotney, Paul Beeby and 3 or 4 other BHA personnel, and we should set at least one day aside for it"*[43]. This presentation was the presentation entitled 'Tennis Investigations – Summary of Betting and Telecoms Analysis', given to Mr Young and Mr Bradshaw of the ATP in April 2008 by the two analysts who had worked on the Sopot Investigation, Mark Phillips and John Gardner, described in Chapter 8 (and referred to in paragraph 41 below)[44].

26. Also, in that file note, Mr Rees wrote:

    26.1 *"Until the TIU has established systems, any allegations in respect of ATP matches/players should be reported to GB"*. As addressed further in paragraph 35 below, the Panel notes from the contemporaneous documents that from around October 2008 onwards, Betfair began to copy Mr Rees into emails addressed to Gayle Bradshaw.

    26.2 *"In response to a general question on what information is held by the ATP, GB stated that there were 'no ticking time bombs'. However, the [player names redacted] matter is not complete and GB is not sure where to go. TIU should speak to Peter Probert and Paul Scotney"*.

27. As set out above, on 25 September 2008, two days after the meeting referred to in paragraph 24, Mr Bradshaw sent an email to the future PTIOs, with Mr Rees copied. In that email Mr Bradshaw referred to the intelligence that the analysts had put together and said it *"should be quite beneficial to our TIU Team"*. He further stated that *"if any of this intelligence leads to official investigations by the TIU, then this information will be shared with the members of our PTIO team at the appropriate time"*. In a separate earlier email dated 12 September 2008, Mr Bradshaw wrote to Bill Babcock that the information he gave to Mr Rees *"should keep the intelligence officer busy for a while...."*.

41 Email from Gayle Bradshaw to Bill Babcock, Ian Ritchie, David Shoemaker, and Jeff Rees dated 25 September 2008.

42 Note of Jeff Rees in respect of Meeting on 22nd and 23rd September 2008, with Gayle Bradshaw and Mark Young.

43 Note of Jeff Rees in respect of Meeting on 22nd and 23rd September 2008, with Gayle Bradshaw and Mark Young.

44 Available, redacted as published, at Appendix: Key Documents.

28. Mr Bradshaw stated that the material related to suspected betting by coaches was included in the materials given by the ATP to the TIU, *"[t]o the best of [his] recollection"*[45]. Mr Rees stated, however, that he did not *"recall receiving information relating specifically to coaches"*[46]. He pointed out that such material was not included either in the material *"[a]waiting input onto iBase"* or in the index of uploaded material[47]. The Panel has, during its review, been unable to identify any documentary evidence showing that the material on coaches' betting accounts was given to the TIU by the ATP.

Match alerts provided to the ATP in 2008 and the Player A v Player B match[48]

29. The Panel has identified 16 match alerts that the ATP received in 2008.

30. One of those match alerts was in relation to the matter that, as described in paragraph 26.2 above, was specifically identified at the handover meeting on 22 and 23 September 2008 as not being complete. The Panel addresses below first the background to this matter, described as the Player A v Player B match, and then summarises a number of other match alerts that were received in relation to ATP matches between October and December 2008.

31. In March 2008, the ATP received an alert from Betfair on a match between Player A and Player B. Betfair described their concerns around the betting as *"highly significant"* and *"serious"*. Player A was a national of Country X. The following steps were undertaken by the ATP:

    31.1 Immediate enquiries were made with medical staff and the chair umpire.

    31.2 Betfair was requested to provide the relevant accounts details. Betfair provided investigation sheets for a number of accounts that had bet on the match. All the bettors were based in Country X and connected to tennis:

        31.2.1 Bettor 1 had formerly coached Player A.

        31.2.2 Bettor 2 was Bettor 1's brother.

        31.2.3 Bettor 3 was a professional gambler and ex-tennis player. He was the biggest winner on the match, wining £75,902.

        31.2.4 Bettors 4 and 5 were former players, who had previously played a small number of matches at the ITF level.

    31.3 Gayle Bradshaw requested that Betfair copy Mark Philips (a betting analyst who has been working on the Sopot Investigation) into all correspondence relating to the match alert.

    31.4 On 2 April 2008, the ATP requested that Player A provide his telephone records. A copy of that request was provided to Dr Bratschi in his capacity as an AHO. The summary provided to Dr Bratschi stated that it was likely that the bettors were known to Player A.

    31.5 Player A provided his telephone records, which were shared by the ATP with the betting analysts.

    31.6 On 3 April 2008, Gayle Bradshaw emailed Paul Scotney stating: *"I think (but will defer to you) that we would probably need to do a follow-up interview and try to get his phone for a forensic download of deleted sms messages"*. Mr Scotney responded suggesting *"an interview sooner rather than later will be appropriate so we can examine his phone and ask some initial questions!"*

45 Statement of Gayle Bradshaw (ATP).

46 Response of Jeff Rees to Notification given under paragraph 21 ToR.

47 Paragraphs 133 and 134 below.

48 Unless otherwise stated, anonymised references differ on a chapter-by-chapter basis.

31.7 Mark Philips undertook an analysis of the betting, which he provided to Gayle Bradshaw.

31.8 On 15 April 2008 Gayle Bradshaw wrote to Player A in the following terms: *"it may be necessary to complete the inquiry by speaking with you and if that is the case, I will work it out with you so we can do it at your convenience and so as not to interfere with your tournament schedule"*. It does not appear that an interview took place.

31.9 On 25 April 2008 the analysts gave the presentation entitled 'Tennis Investigations – Summary of Betting and Telecoms Analysis' to Gayle Bradshaw and Mark Young of the ATP. The above match was referred to in the presentation, together with two other suspect matches involving Player A (one of which occurred in 2008 and the other in late 2007). Bettors 1 and 3 had also placed bets on these matches.

32. As is set out in paragraph 26.2 above, the file note made by Mr Rees following the handover meeting on 22 and 23 September 2008 recorded "In response to a general question on what information is held by the ATP, GB stated that there were 'no ticking time bombs'. However, the [Player A v Player B] matter is not complete and GB is not sure where to go. TIU should speak to Peter Probert and Paul Scotney".

33. Mr Rees met with Mr Probert (Betfair) on 26 September 2008, three days after the meeting at which Gayle Bradshaw suggested the TIU speak with Mr Probert about the player in question. The file note created by Mr Rees of this meeting does not record that Mr Rees made any enquiries regarding the player in question. Nor is there any record of Mr Rees speaking to Mr Scotney in respect of this player.

34. Five further match alerts were received by the ATP in October or November 2008, at which point Jeff Rees had been appointed as the Director of the TIU:

34.1 Two of the matches were alerted to the ATP through their Memorandum of Understanding with Betfair;

34.2 One match was alerted through the Memorandum of Understanding with ESSA (with the alert originating from Digibet);

34.3 Two further matches were alerted to the ATP by ESSA. With regard to these two matches, Gayle Bradshaw sought corroboration of suspicious betting from Betfair, which subsequently raised concerns and provided information to the ATP.

35. In each of these instances, Mr Rees (using his TIU email address) was either copied on the original alert sent to the ATP, or was copied on Gayle Bradshaw's first response. In both situations, Mr Rees remained in copy in all subsequent correspondence.

36. One of the alerts received from Betfair in October 2008 concerned Player A. This alert was provided to Gayle Bradshaw, with Jeff Rees in copy. The alert stated that the betting had been *"very suspicious"*. Betfair also identified links between two of the accounts that had placed suspect bets. These two accounts were linked to Bettor 3 referred to in paragraph 31.2.3 above. In addition to the Betfair alert, ESSA also alerted in respect of the same match involving Player A. ESSA's alert was provided to Jeff Rees, with Gayle Bradshaw in copy. The alert stated that there had been *"heavy betting"* and that the *"game looks very fishy"*.

37. There is no record of any steps being taken by the ATP or the TIU in relation to this alert, or in relation to any of the other alerts received in late 2008.

Provision of material by the Sopot Investigators on behalf of the ATP

38. The meeting with the Sopot Investigators had originally been arranged for 11 December 2008. On 29 November 2008 Paul Scotney informed Gayle Bradshaw, Mark Young and Jeff Rees that the meeting would need to be rescheduled as Mark Phillips would be in Australia on 11 December 2008. The meeting was then fixed for 9 January 2009.

39. Mr Rees' evidence is that *"[t]he presentation did not occur earlier partly because Gayle Bradshaw... wished to be present"*[49].

40. The meeting took place on that date between Mr Rees, the TIU's Information and Intelligence Manager Bruce Ewan, the BHA's Paul Beeby and Mark Phillips (who had worked on the Sopot Investigation), and the ATP's Gayle Bradshaw[50]. Paul Scotney was also present, but only at the beginning of the meeting[51]. Mr Rees informed the Panel that he considered that this meeting was for him and Mr Ewan to hear about the 45 matches mentioned in the Environmental Review.

41. At the meeting, Mark Phillips gave the same 'Tennis Investigations – Summary of Betting and Telecoms Analysis' presentation, which had previously been given to the ATP's Mr Young and Mr Bradshaw in April 2008. As described in Chapter 8, Mr Phillips' presentation contained information in respect of 24 of the 45 matches mentioned in the Environmental Review, which he had identified through his analysis of the Betfair data, before he had seen, and independently of, the material obtained from Vassallo Arguello's mobile phone. The slides presented did not expressly state that the information set out therein related to the 45 matches mentioned in the Environmental Review. The structure of Mr Phillips' presentation started with analysis of one of the 45 matches that he considered to have been corroborated by information seen in Vassallo Arguello's deleted texts, one of the 45 matches that he considered to have been corroborated by information seen in the deleted texts and Vassallo Arguello's contacts list and two of the 45 matches that he considered to have been corroborated by the contacts list. Mr Phillips considered that the evidence concerning these matches looked particularly compelling.

42. For the reasons described in paragraphs 104 -114 below in relation to Mr Rees' understanding about the process by which the Vassallo Arguello phone material was obtained, Mr Rees told the Panel that he did not ask any questions at the 9 January 2009 presentation, either about the 45 matches mentioned in the Environmental Review that he had expected to hear about, or about the Vassallo Arguello material. Mr Rees also stated that he told Mr Ewan not to ask any questions[52].

43. Following the 9 January 2009 presentation, on 12 March 2009 one of the Sopot Investigators, John Gardner, delivered materials related to the investigation into the Sopot Match to the TIU[53]. Mr Gardner stated that during the meeting on 12 March 2009, he handed to Bruce Ewan: (i) all the hard copy documents, and (ii) CDs containing the phone and betting analysis. He then spent the day with Mr Ewan going through the data. Mr Gardner stated that he met with Jeff Rees and Mr Rees was aware of why Mr Gardner was there, but he spent most of the day with Mr Ewan[54].

44. According to a contemporaneous file note titled 'Disc of Analytical Materials. John Gardner 12 March 2009', the documents disclosed by Mr Gardner in the *"CDs containing the phone and betting analysis"* were:

- *"-Five analytical reports (Word documents) regarding telephones and computer sharing*
- *Betfair investigation excel files on account holders (this may duplicate information provided by Mark Phillips)*
- *Betfair excel files on seven matches (again, may duplicate information provided by Mark Phillips)*
- *BHA presentations (PowerPoint)*

49 Statement of Jeff Rees (formerly TIU).
50 Statement of Jeff Rees (formerly TIU).
51 Statement of Jeff Rees (formerly TIU).
52 Statement of Jeff Rees (formerly TIU).
53 Statement of John Gardner (BHA).
54 Statement of John Gardner (BHA).

- *An additional FTS mobile download (they missed this data in their original report)*
- *I2 files – the files marked 'summary' are extracted from the Tennis Masterchart, so the Masterchart, and Player A v Player B [55], are the two key files*
- *PDFs of phone billings*
- *Data relating to the WTA investigation".*

45. In addition to the file note, the Panel has confirmed that these documents are all stored on the TIU's S-Drive (but not the TIU's iBase).

46. In respect of the hard copy documents referred to by Mr Gardner, the TIU provided the Panel with a box that appears to contain the files received by the TIU from the Sopot Investigators. It also appears that this box of materials may include some of the materials provided by the ATP to the TIU on 12 September 2008. The Panel has not seen a contemporaneous file note that classifies or indexes the hard copy documents provided in the box. From the Panel's review, the box included the following documents, among others:

46.1 The Final Report from the Sopot Investigators titled 'Investigation into suspicious betting – the Orange Prokom Open Tournament, Sopot Poland 2 August 2007: Nikolay Davydenko v Martin Vassallo Arguello' with appendices.

46.2 The Sopot Investigators' PowerPoint presentations including the 'Tennis Investigations – Summary of Betting and Telecoms Analysis' presentation.

46.3 A draft document titled 'Tennis Investigations – General Logistical Issues'[56]. As is addressed in Chapter 8, the present assessment of the Panel is that the 45 matches referred to in the Environmental Review are the 45 matches mentioned in the Sopot Investigators' 'Tennis Investigations – General Logistical Issues' draft document.

46.4 Documents showing the analysis undertaken by the Sopot Investigators in relation to the 45 matches. These documents predominantly consist of betting analysis of bets placed on suspicious matches, as well as analysis of the suspect accounts. The majority of this material was provided more extensively in soft copy.

46.5 The Vassallo Arguello phone material.

46.6 Interview transcripts, interview plans and interview summaries for Nikolay Davydenko; Vassallo Arguello; Vassallo Arguello's coach, Leonardo Olguin; Davydenko's wife, Irina Davydenko; and Davydenko's brother, Eduard Davydenko.

46.7 A copy of a spreadsheet titled 'Suspect Tennis Matches with Comments'.

46.8 Investigative and analytical documents regarding the Sopot Investigation.

46.9 Final and draft copies of Albert Kirby's Sopot Report.

46.10 Original tapes of all interviews conducted by the Sopot Investigators.

46.11 Documents in relation to suspected betting accounts from the Sopot Match.

46.12 Documents on other matches played by Vassallo Arguello.

55 Available, as redacted, at Appendix: Key Documents.

56 Statement of Jeff Rees (formerly TIU).

The material provided by the Grand Slam Board

47. On 4 February 2009, the Grand Slam Board sent an email to Jeff Rees and Bruce Ewan with an attachment containing a confidential document entitled 'Betting Activity at Grand Slams' (the "GSB List"). That document was first prepared in or around January 2007 by Bill Babcock[57]. The email notes that the information was being provided to the TIU *"as requested"*.

48. Bill Babcock stated that the GSB List *"included fifteen line item entries that related to reported betting activity at Grand Slams in the period 2005 to 2007. In the majority of instances, the activity had been reported to me and/or Stefan Fransson by Betfair (the only betting operator with a reporting obligation to the GSB at that time). Twelve of the reports related to betting on specific matches and three related to potential betting accounts held by players. The GSB List was prepared for the purpose of providing a summary to the GSB of those reports, together with the specific follow up actions taken (in accordance with my ordinary reporting obligations). None of the reports (and specific follow up actions) resulted in sufficient evidence that might have permitted me to commence a Major Offense investigation under the Grand Slam Code of Conducts in force at the relevant time"*[58].

49. Bill Babcock gave evidence that he did not know how the GSB List would be used by the TIU (the conduct had occurred before the TACP was introduced) but considered it important to share the information and he understood that the other International Governing Bodies were sharing similar information. Bill Babcock did not recall making further enquiries as to the status of the GSB List after it had been delivered to the TIU[59].

The material provided by the WTA

50. There is no record of an official handover of intelligence files from the WTA to the TIU. On 2 October 2008, a meeting took place between Jeff Rees and Angie Cunningham (WTA Vice President, On-Site Operation and Player Relations[60]). From Mr Rees' contemporaneous record of this meeting he reported that *"Ms Cunningham does not think there is yet a serious problem of corruption in women's tennis. However, education on this subject is vital"*. The Panel has not seen any evidence of a handover of intelligence files at that meeting. In respect of material received from the International Governing Bodies, Mr Rees' evidence is that he received *"some material from the WTA"*[61]. He further informed the Panel that he received some information from David Shoemaker in relation to WTA matters.

51. In addition, and as described above, Mr Gardner provided to the TIU data relating to the WTA investigation carried out by the BHA in 2007 and 2008 (at the instruction of the WTA).

The ITF apparently had no material to provide

52. The Panel has seen no evidence that the ITF gave material to the TIU. Consistent with an absence of suspected breaches of integrity at the ITF levels, it does not appear that there was any pre-TIU material that the ITF had at the time to hand over to the TIU.

Jeff Rees' other meetings and discussions with the International Governing Bodies

53. In addition to the provision of documents by the International Governing Bodies to the TIU, Mr Rees' stated that *"in the early days, sometimes because of what they had sent me but often in relation to issues I had identified or which had arisen, I had numerous conversations with representatives of the four governing bodies"*[62].

57 Statement of Bill Babcock (Grand Slam Board; formerly ITF).

58 Statement of Bill Babcock (Grand Slam Board; formerly ITF).

59 Statement of Bill Babcock (Grand Slam Board; formerly ITF).

60 Ms. Cunningham retired from this position on 3 October 2008.

61 Statement of Jeff Rees (formerly TIU).

62 Statement of Jeff Rees (formerly TIU).

(3) THE TIU'S DECISION TO PRIORITISE INVESTIGATIONS OF FUTURE POSSIBLE BREACHES OF INTEGRITY OVER PAST POSSIBLE BREACHES OF INTEGRITY

54. The Panel understands that in or about November or December 2008, before the formal handover of responsibility to the TIU [63], a decision was reached to prioritise investigation of future possible breaches of integrity over investigation of past possible breaches of integrity. This prioritisation decision was not contemporaneously documented.

55. In the absence of a written record documenting the decision, or the reasons for it, the Panel has had to rely on the recollections of the individuals involved. The evidence on the process for the prioritisation decision and the reasons for that decision are described below.

Evidence from Jeff Rees concerning the prioritisation decision

56. Mr Rees stated that *"as Director of the TIU I made the decision to prioritise investigation of new material in respect of active corrupt players and active corruptors over assessment, investigation or re-investigation of old, dated material"*, which was *"entirely in line with the recommendations in the Environmental Review, as accepted by the tennis authorities, and was the basis on which I was appointed"* [64].

57. Mr Rees stated that an exception to this general expectation was the 45 matches mentioned in the Environmental Review. Mr Rees informed the Panel that this decision to prioritise *"did not apply to the 45+ matches referred to in the Environmental Review, as I did not have the information in respect of them despite trying to get it"*[65]. Mr Rees stated, *"I therefore did not make, and could not have made, any decisions in respect of those matches"*[66].

58. Jeff Rees gave evidence that[67]:

58.1 As soon as he took up the appointment of Director of the TIU in September 2008, he *"carried out a risk assessment and operational review to determine the unit's priorities for the short and mid-term, and ultimately the long-term"*[68].

58.2 In deciding which possible breaches to investigate, it would be necessary to prioritise, Mr Rees stated *"I must make clear that prioritising is essential in the world of investigations. Sometimes a decision to stop, suspend or not even start an investigation into particular individuals, or to stop pursuing particular lines of enquiry, is not an easy one, particularly if the individual investigators concerned have put a lot of time and effort into gathering usable evidence. However, such decisions are ones that managers of investigative units have to make all the time. This is especially the case when imposing structure and order on material gathered arbitrarily over time and deciding on the most appropriate ways forward – the situation I was faced with in late 2008. Resources and time have to be used where they are most likely to be effective. Prioritising, no matter how tough, is essential"*[69].

58.3 *"As far as the early days of the TIU were concerned, I saw my duty as being to put the biggest effort into where it was most likely to be productive and best protect the sport in the future i.e. to play the long game"*[70].

58.4 *"The importance of prioritising, and of concentrating on the present and future, was recognised in the Environmental Review on a number of occasions e.g. 3.33, 3.35, 3.36, 3.45, 3.47. Paragraph 3.45 was particularly apposite: '3.45 An important duty of the General Manager/Chief Investigator in Option 2 would be that of using mature judgement to ensure all personnel in the unit focused primarily on the current and the relevant, rather than delving into events of years before to little purpose'"*[71].

63 Pending the consultation process between Interim and Final Reports.

64 Response of Jeff Rees to Notification given under paragraph 21 ToR.

65 Emphasis in original. Response of Jeff Rees to Notification given under paragraph 21 ToR.

66 Emphasis in original. Response of Jeff Rees to Notification given under paragraph 21 ToR.

67 Statement of Jeff Rees (formerly TIU).

68 Statement of Jeff Rees (formerly TIU).

69 Statement of Jeff Rees (formerly TIU).

70 Statement of Jeff Rees (formerly TIU).

71 Statement of Jeff Rees (formerly TIU).

59. As referred to in paragraph 17 above, Mr Rees stated that he reviewed the pre-TIU materials once the TIU was established, but his "*early assessment*" was that these materials *"contained good intelligence which, had it been fresh, would have been actionable"*. However, Mr Rees stated that *"the reality was that it was not fresh"*. Mr Rees informed the Panel that "*supporting evidence would have been difficult to secure*" because[72]:

    59.1 *"A number of those named in the material had already been questioned or contacted by the ATP or WTA. Any opportunity for surprise was therefore long gone in respect of many of those named"*.

    59.2 *"Some technical evidence such as telephone records would have existed only for limited periods and was therefore lost, as had already happened during the Davydenko investigation, and the subjects had had ample opportunity to dispose of anything incriminating. In this context it is relevant that the Davydenko/Arguello investigation had attracted an enormous amount of publicity"*.

    59.3 *"Further, the memories of potential witnesses, including match officials and the players themselves, would have faded"*.

60. Mr Rees stated that consequently he *"was far from convinced that throwing resources into investigating dated suspicious betting patterns would produce worthwhile results in terms of sufficient evidence to prosecute guilty players"*[73].

61. Mr Rees also explained that investigations of past breaches by the TIU would have been difficult, because *"I was told by lawyers that, by sorting out various arrangements with the four Governing Bodies, it would have been possible for the TIU to carry out investigations under the four separate sets of anti-corruption rules which applied before the UTACP. However, sorting out the procedures would have been time-consuming and not easy since the rules and procedures were all different. Legal opinion confirmed that the UTACP could not be used retrospectively. Hybrid investigations involving pre-2009 rules x4 and post 1st January, 2009, rules would have been even more complex, but nevertheless possible"*[74].

62. As explained above, Mr Rees' position was that, *"in the circumstances I concluded that focusing the new Unit's investigations on pre-TIU material, and in particular on any backlog of apparently suspicious but stale betting patterns, would risk bogging down the Unit, would be unlikely to be significantly productive, and doing so would certainly be to the detriment of new investigations. Bruce Ewan agreed with my assessments. Far better to focus immediate TIU efforts on actively corrupt players and active corruptors, i.e. active threats to the sport, using whatever investigative methods were appropriate to individual situations, and treat that pre-TIU material, as intelligence which would inform and help us assess and evaluate new allegations, suspicious betting patterns and so forth. These were already coming into the TIU. Our powers from the 1st January, 2009, under the UTACP would equip us to investigate these properly and with more realistic prospects of success. This was a necessarily pragmatic strategy and the one that in my view would best serve the interests of tennis overall"*[75].

63. Mr Rees stated that *"there was never a decision as such that old material would not or never would be investigated. Indeed, I can and could envisage some circumstances where such investigation would have been operationally justifiable. Nothing was ruled out. In the event that we did investigate historical cases, this would have had to be done under the old rules i.e. those in force at the time of the alleged offences in the ATP, WTA, ITF or GSB as appropriate. These investigative powers were not as strong as those under the Uniform Tennis Anti-Corruption Programme"*[76]. Further, Mr Rees stated that *"prioritisation of new material did not mean exclusion of past breaches from our considerations. The decision was simply one of prioritisation in circumstances which were difficult to predict. Much would depend, for example on the volume and quality of incoming, actionable information"* and *"this was an operational decision that was far from being clear-cut or rigid in character was liable to be changed or amended"*[77].

72 Response of Jeff Rees to Notification given under paragraph 21 ToR.

73 Response of Jeff Rees to Notification given under paragraph 21 ToR.

74 Statement of Jeff Rees (formerly TIU).

75 Emphasis in original. Response of Jeff Rees to Notification given under paragraph 21 ToR.

76 Response of Jeff Rees to Notification given under paragraph 21 ToR.

77 Emphasis in original. Response of Jeff Rees to Notification given under paragraph 21 ToR.

64. Mr Rees stated: *"I would have made the PTIOs aware of my strategy, probably in the many conversations I was having with them on a variety of subjects in the early days of the TIU,"* and that he did *"not recall any opposition from them"*[78]. Mr Rees did *"not know if [the PTIOs] discussed the strategy between themselves"*[79].

Evidence from the International Governing Bodies and their officers related to the prioritisation decision

65. The International Governing Bodies all stated in their representations that *"any decision relating to prioritisation of investigations of potential pre-2009 breaches or future breaches (whether on the basis of intelligence provided by the Governing Bodies or otherwise) was also delegated by the Governing Bodies to the TIU"*[80].

66. The International Governing Bodies also stated that *"the TIU was informed that investigation of pre-2009 breaches of integrity would have to be conducted under the rules in force at the relevant time (but no obligation to prioritise future breaches was imposed). As an example, the constraints imposed by the pre-2009 ATP integrity rules (under which the majority of such investigations would have been conducted) would make such investigations extremely challenging, and render it unlikely that additional evidence required could have been gathered. To the best of the Governing Bodies' knowledge, this was a commonly-held view among TIB members and PTIOs. It is therefore reasonable that the TIU decided that prioritisation should be given to using the intelligence to inform future investigations"*[81].

67. While the above reflects the considered recollection of all of the International Governing Bodies following the representation process, there were initially differing recollections among some of the PTIOs, reflected in their earlier witness statements[82], some of which appeared to suggest that the PTIOs might have played some role in the decision to prioritise investigation of future possible breaches over investigation of past possible breaches.

68. Gayle Bradshaw's recollection was that *"it was decided by the PTIOs that had been appointed (Ian Ritchie (Grand Slams), Bill Babcock (ITF), David Shoemaker (WTA), and me) that the TIU should add all intelligence of historical allegations to a database, such that they could be used to inform future cases. However, the decision was taken to look forward and not to pursue past cases. We discussed at length whether to chase old suspect matches with new intelligence. We understood that we would have to pursue past cases under the pre-2009 ATP rules. Considering our experience with the Sopot case, our inability to demand records under the pre-2009 ATP rules, the privacy laws in Europe and the retention policies of the phone carrier companies, we believed it was unlikely that we would come up with evidence that could lead to any convictions for past cases. Therefore, rather than chase what would likely be a dead end, it was felt the better approach would be to focus on future cases. That said, I do not believe that taking action against pre-2009 cases was ruled out entirely. I do not think that the ATP would have opposed any decision to go after old cases if there was a likelihood of success"* [83].

69. Ian Ritchie's recollection was that[84]:

    69.1 He saw a list of matches, although he was unable to recall the contents of the list, and believes *"that there would have been a briefing given by Jeff Rees"*.

    69.2 *"There were discussions about these cases, in particular concerning regulatory issues as to how to deal with those matches. Whilst the purpose of the TIU was to move tennis forward, there was never a suggestion that tennis' response to pre-TIU issues should not be investigated. However we had to be realistic about garnering evidence; the older the matches, the harder they would be to prove. If the evidence would have warranted an investigation, that would have been absolutely fine; so far as I was concerned, there was an open book to follow the evidence"*.

78 Response of Jeff Rees to Notification given under paragraph 21 ToR.

79 Response of Jeff Rees to Notification given under paragraph 21 ToR.

80 Response of the International Governing Bodies to Notifications given under paragraph 21 ToR.

81 Response of the International Governing Bodies to Notifications given under paragraph 21 ToR.

82 Statement of Ian Ritchie (formerly AELTC); Statement of Bill Babcock (Grand Slam Board; formerly ITF); Statement of Gayle Bradshaw (ATP); David Shoemaker has no recollection of any decision or consensus being reached on the approach to past breaches.

83 Statement of Gayle Bradshaw (ATP).

84 Statement of Ian Ritchie (formerly AELTC) and Response of Ian Ritchie to Notification given under paragraph 21 ToR.

69.3 *"As regards the list of the 45 matches, my recollection is that there was a conversation as to what we were going to do with those matches, based on the evidence available and the likelihood of conviction. Jeff Rees' view was that there was nothing on the list of sufficient substance to warrant further investigation and, that would lead to a conviction. On that basis, a consensus was reached to not pursue investigations in relation to them. This feedback would have come at a formal meeting, and so I would expect it to be minuted"*.

70. Subsequently, Mr Ritchie explained to the Panel that:

70.1 The prioritisation decision was made by the TIU and not by the PTIOs, who were *"not part of the decision-making process"* and were not responsible for the decision[85]. The decision was made by Mr Rees and then communicated to them, and that *"while consensus was reached on Mr Rees' recommendation, this was a decision reached by him on the basis of his experience and expertise derived from previous criminal and sports-related work"*.

70.2 *"Mr Rees' independent conclusion was that, to the best of my recollection, there were evidential and regulatory reasons why the investigation of future breaches should be prioritised"* and that *"Mr Rees' conclusion, which was supported by me and the other PTIOs, ...was one that was reached on the facts as they appeared at the time"*.

70.3 *"To whether or not material was used as intelligence to monitor and investigate the players allegedly involved, this was left to Mr Rees"*. Mr Ritchie's recollection, however, *"is that there were credibility issues in relation to much of the evidence"*[86].

71. Bill Babcock's recollection was that[87]:

71.1 *"From my perspective, once the TIU had been established I would have handed over any relevant information that I had,"* and *"*[a]*t that stage it would have been the exclusive responsibility of the TIU to determine whether and what further investigation was required"*[88].

71.2 Mr Babcock noted *"that the 45 matches would have had to be prosecuted under the Governing Bodies' previous Codes of Conduct and not the TACP or through the PTIOs"*[89].

71.3 Mr Babcock stated that he had *"been asked if* [he recalled] *attending a PTIO meeting in November 2008 at the Tennis Masters Cup in Shanghai, at which it may have been decided that those 45 matches should not be reviewed"*[90]. Mr Babcock stated that he *"d*[id] *recall this meeting (which was not an official PTIO Meeting) and my notes of it do not reflect any decision that the 45 matches, or any other matches, should not be reviewed, but note that the topic is listed as an agenda item"*[91].

72. Subsequently, the Grand Slam Board suggested that it was appropriate to describe what happened *"as a prioritisation consensus that was arrived at by everyone which also conformed with the expert opinion of Mr Rees"*[92].

73. David Shoemaker had no recollection of any decision or consensus being reached on the approach to past possible breaches.

74. Mr Rees stated that *"Mr Ritchie's recollection must be mistaken that there was discussion of the 45 matches mentioned in the Environmental Review at the end of 2008"* because *"as far as* [Mr Rees] *was concerned* [he] *had never seen the material relating to the 45 matches"*[93].

85 Response of Ian Ritchie to Notification given under paragraph 21 ToR.

86 Response of Ian Ritchie to Notification given under paragraph 21 ToR.

87 Statement of Bill Babcock (Grand Slam Board; formerly ITF).

88 Statement of Bill Babcock (Grand Slam Board; formerly ITF).

89 Statement of Bill Babcock (Grand Slam Board; formerly ITF).

90 Statement of Bill Babcock (Grand Slam Board; formerly ITF).

91 Statement of Bill Babcock (Grand Slam Board; formerly ITF).

92 Response of the Grand Slam Board to Notification given under paragraph 21 ToR.

93 Response of Jeff Rees to Notification given under paragraph 21 ToR.

75. Further, Mr Rees also stated: *"to be clear, I was not party to any formal discussions on how best to deal with other pre-TIU material. Had I been I would almost certainly have made a file note of in respect to them"*[94].

76. Mr Babcock stated that *"the GSB List* [of past possible breaches] *was later used to share intelligence with Jeff Rees in February 2009. I was not sure what Mr Rees would do with the information (as the matches occurred before the introduction of the TACP and therefore would have required prosecution under the separate Codes with all their weaker powers) but thought it important to share the GSB list with Mr Rees and understood that the other Governing Bodies were sharing similar information too. Once I had handed over the GSB List it was in the hands of a professional investigator and any decision about investigating those matches further would have been the independent responsibility of the TIU"*[95].

94 Response of Jeff Rees to Notification given under paragraph 21 ToR.

95 Statement of Bill Babcock (Grand Slam Board; formerly ITF).

B THE TIU'S APPROACH TO THE MATERIAL IN RELATION TO THE 45 MATCHES MENTIONED IN THE ENVIRONMENTAL REVIEW

77. As described in Chapter 8, the Environmental Review had mentioned that there were 45 matches that raised concerns that *"warrant*[ed] *further review"*. Mr Rees stated that, upon assuming his position at the TIU, he *"had every intention of reviewing those 45+ matches and staffing the TIU accordingly, but* [he] *needed to have details of the 45+ matches in order to set investigative priorities"*[96]. As described in paragraph 57 above, Mr Rees gave evidence that the decision at the end of 2008 to prioritise investigation of future possible breaches did not apply to the 45 matches mentioned in the Environmental Review, as he had not received the material in relation to those matches.

78. In the event, the TIU did not conduct any further review of the 45 matches, or use the material in relation to them to investigate any of them or as intelligence to focus other investigations.

79. As is the case with the prioritisation decision, there is no written record of the reasons why the TIU did not conduct any further review of the 45 matches or use the material in relation to them for investigation or as intelligence. The evidence concerning those reasons comes primarily from the evidence given by Mr Rees to the Panel.

80. Mr Rees told the Panel that the TIU did not conduct any further review of the 45 matches or use the material in relation to them to investigate any of them or as intelligence because, during the period that he was Director of the TIU, Mr Rees stated that he believed that the TIU had never received the material, despite his attempts to obtain it[97].

81. This Section summarises the evidence as to Mr Rees' understanding about the 45 matches and as to the TIU's attempts to obtain the material in relation to them, and how it came about that there was no further review of the 45 matches and no use of the material in relation to them for investigation or as intelligence.

(1) MR REES' UNDERSTANDING ABOUT THE 45 MATCHES AT THE TIME OF THE ENVIRONMENTAL REVIEW

82. As is set out in Chapter 8, the Environmental Review stated that 73 matches, arising in the five-year period up to the Sopot Match, had been identified as involving suspicious betting patterns and had been subject to examination. Of those 73 matches, 45 were identified in the Environmental Review as raising concerns warranting further review[98].

83. Also, as explained in Chapter 8, Mark Phillips told the Panel that he identified the 45 matches referenced in the Environmental Review based on his analysis of data from Betfair, before he saw and independently of the Vassallo Arguello phone material.

84. The evidence indicates that Mr Gunn and Mr Rees relied on the analysis of the Sopot Investigators, (including Mark Phillips):

    84.1 Mr Gunn stated that he relied on them for the conclusion that the 45 matches warranted further review. Mr Gunn said that Mr Rees and he did not *"drill down"* into *"the background and specific veracity of the 45 suspect matches because Rees and I had taken an agreed policy decision not to become embroiled in the specific details of those matches without further clarification from the tennis authorities that such action was within the [Environmental Review's] Terms of Reference"*[99]. Mr Gunn recognised that *"with the benefit of hindsight"* the Environmental Review's assertion that the authors had *"examined"* the 45 matches *"was perhaps too strong as it arguably implies that Rees and I looked into the 45 matches in some detail,"* which they had not[100].

96 Response of Jeff Rees to Notification given under paragraph 21 ToR.

97 Response of Jeff Rees to Notification given under paragraph 21 ToR.

98 Environmental Review, page 8, paragraph 2.10.

99 Response of Ben Gunn to Notification given under paragraph 21 ToR.

100 Response of Ben Gunn to Notification given under paragraph 21 ToR.

84.2 Mr Rees reported that he assumed, while *"carrying out the Environmental Review"*, *"that those 45 matches had been drawn to the BHA's attention by Betfair and/or other gambling operators, and others might also have come from ATP or other tennis records, and I accepted Ben Gunn and his analyst's judgment that there were grounds for suspicion in relation to them"*[101].

(2) THE TIU'S ATTEMPTS TO OBTAIN MATERIAL IN RELATION TO THE 45 MATCHES

85. Mr Rees told the Panel that *"it is clear from the Environmental Review, and the First Steps document [referred to in paragraph 16 above] I prepared when I first took over the Unit that I had every intention of reviewing those 45+ matches and staffing the TIU accordingly,"* but that *"at no time whilst I was at the TIU did I believe that we were in possession of the information relating to the 45+ matches mentioned in the Environmental Review, despite many efforts to secure it"*[102]. Mr Rees stated that *"when I took up my employment at the TIU I asked the BHA for all material they had in relation to tennis corruption"*[103] but, in his view, *"they seemed reluctant to give him anything"*[104].

86. As described in paragraph 23 above, Mr Rees received some materials from the ATP on or about 12 September 2008. Mr Rees' file note from September 2008 described in paragraph 25 above indicates that following the two-day meeting on 22 and 23 September 2008, Mr Rees believed he had not yet received material in relation to the 45 matches from the ATP. Mr Rees wrote in the file note that his "*prime concern was to examine the evidence and papers in respect of the 40+ matches identified in the Gunn/Rees report as having suspicious betting patterns"*, but, as explained above, that he had not received the *"relevant papers"* on the 45 matches from the ATP at that time[105].

87. Mr Rees attended the presentation on 9 January 2009 by Mr Phillips described in paragraph 40 above. As described in Chapter 8, while the 9 January 2009 presentation contained information in respect of 24 of the 45 matches mentioned in the Environmental Review, which had been identified before Mr Phillips saw, and independently of, the Vassallo Arguello phone material. The presentation was structured by starting with one match that Mr Phillips considered to have been corroborated by information seen in Vassallo Arguello's deleted texts, one match that he considered to have been corroborated by information seen in the deleted texts and Vassallo Arguello's contacts list and two matches that he considered to have been corroborated by the contacts list. Mr Rees gave evidence that *"the presentation was not what I expected. I expected it to concern the 45 suspicious matches I had been told about during the Environmental Review process. Instead, the presentation was wholly focused on material that had come directly and indirectly from the Arguello phone material"*[106]. As described in Section C below, Mr Rees gave evidence that he believed that the Vassallo Arguello phone material had been obtained illegally, unethically, and in violation of the ATP TACP, and so was unusable.

88. As noted in paragraph 42, Mr Rees stated that he did not ask questions at the 9 January 2009 meeting, and instructed Mr Ewan not to ask any questions. Mr Rees stated that *"I did not ask them on that occasion for details of the 45+ matches because, having attended the meeting in anticipation of receiving those details, I was instead provided with information which I believed to have its roots in illegally obtained material in relation to different matches. Frankly, I was bemused by the presenters' lack of professionalism and was keen to leave before being drawn into discussions on what they had done"*[107].

89. Mr Rees stated that *"neither Bruce Ewan nor I made the link, or had any reasonable reason to make the link, between the Arguello phone material and the 45+ matches mentioned in the Environmental Review"*[108]. Further, Mr Rees' position is that *"it is misleading and disingenuous for the IRP to imply that we did so or should have done so"*[109].

101 Statement of Jeff Rees (formerly TIU).

102 Emphasis in original. Response of Jeff Rees to Notification given under paragraph 21 ToR.

103 Statement of Jeff Rees (formerly TIU).

104 Statement of Jeff Rees (formerly TIU).

105 Response of Jeff Rees to Notification given under paragraph 21 ToR.

106 Statement of Jeff Rees (formerly TIU).

107 Response of Jeff Rees to Notification given under paragraph 21 ToR.

108 Response of Jeff Rees to Notification given under paragraph 21 ToR.

109 Emphasis in original.

90. Following the 9 January 2009 meeting, the Sopot Investigators provided materials to the TIU on 12 March 2009. Mr Rees reported that upon receiving the materials on 12 March 2009, so far as he could tell, there was no material that related to the 45 matches referred to in the Environmental Review. Mr Rees told the Panel that *"there was general tennis material amongst that relating to the presentation on 9th January, 2009, but nothing as far as I could tell which related to the 45+ matches in the Environmental Review. I looked in particular for one or more of the lists of matches I had been shown whilst carrying out the review"*[110]. Mr Rees also stated that the box received *"mainly comprised...the Arguello material"*[111]. Mr Rees stated that *"*[t]*he material was handed over by the BHA some 7 months after I had first taken steps to take possession of it"* and *"*[t]*here was clear reluctance on the part of the BHA to pass it to the TIU"*[112].

91. As noted in paragraph 46.2 above, the materials given by the Sopot Investigators to the TIU contained a document titled 'Tennis Investigations – General Logistical Issues', which the Panel considers for the reasons given in Chapter 8 contained information on the 45 matches. Mr Rees "*recognise*[s] *now that* [he] *must have seen*" the document titled 'Tennis Investigations – General Logistical Issues'[113].

92. Mr Rees informed the Panel that it would be *"wholly unreasonable"* to suggest that he *"should somehow have deduced that the matches referred to in the document were the 45 matches mentioned during the Environmental Review"* because *"that document, which clearly was a working draft, is primarily a description of how the BHA went about the Arguello investigation, and sections of it appear in Appendix D of the Environmental Review"*[114]. Further, Mr Rees stated that *"the [45] matches are hardly 'set out'* [in that document]*"*. Mr Rees stated *"*[t]*o all intent and purposes they relate to matches which had come from the Arguello material"*[115]. Mr Rees also stated that *"they don't add up to 45"* and noted that *"the name and telephone number of the Daily Mail's tennis correspondent... are handwritten on the front page"*[116]. Mr Rees also pointed to the absence of *"evidence from anyone in the BHA that they told either myself or Bruce Ewan that the 45+ matches in the Environmental Review and the material in the presentation on 9th January, 2009, later provided in hard copy on March 12th, 2009, were one and the same"*[117].

93. Mr Rees gave evidence to the Panel that he was *"becoming frustrated at the lack of co-operation from the BHA"*[118] and that he *"became frustrated with repeatedly asking but not receiving the material so* [he] *stopped asking"*[119]. Mr Rees further stated that he *"strongly suspected that the BHA were retaining some tennis-related material, but by then I was losing patience with them and stopped asking for it"*[120]. Mr Rees further stated that *"in any case, by then we were busy with active threats and working on them was producing positive results. Our powers under the* [UTACP], *which had come into force on 1st January, 2009, had equipped us to investigate these properly and with realistic chances of success"*[121]. Mr Rees told the Panel that he did not mean, however, that the TIU was too busy to review the material provided[122]. Rather, the TIU *"had taken the principled decision not to make any use whatever of the Arguello material which is what the box mainly comprised. The tennis related material I believed they were hanging onto was that relating to the 45+ plus matches"*[123].

110 Response of Jeff Rees to Notification given under paragraph 21 ToR.
111 Response of Jeff Rees to Notification given under paragraph 21 ToR.
112 Response of Jeff Rees to Notification given under paragraph 21 ToR.
113 Response of Jeff Rees to Notification given under paragraph 21 ToR.
114 Response of Jeff Rees to Notification given under paragraph 21 ToR.
115 Response of Jeff Rees to Notification given under paragraph 21 ToR.
116 Response of Jeff Rees to Notification given under paragraph 21 ToR.
117 Response of Jeff Rees to Notification given under paragraph 21 ToR.
118 Response of Jeff Rees to Notification given under paragraph 21 ToR.
119 Response of Jeff Rees to Notification given under paragraph 21 ToR.
120 Statement of Jeff Rees (formerly TIU).
121 Statement of Jeff Rees (formerly TIU).
122 Response of Jeff Rees to Notification given under paragraph 21 ToR.
123 Response of Jeff Rees to Notification given under paragraph 21 ToR.

(3) OTHER EVIDENCE CONCERNING THE TIU'S APPROACH TO THE 45 MATCHES

94. Mr Gunn reported that he recalls asking Mr Rees what he believed the tennis authorities would do with the Environmental Review and the issues it raised[124]. Mr Gunn stated that he asked Mr Rees this question before Mr Rees took up his position as Director of Integrity at the TIU. According to Mr Gunn, Mr Rees questioned whether there was sufficient evidence to do anything. Mr Gunn reported that his view was that, while he agreed that there was not sufficient evidence to pursue a disciplinary investigation against anybody, there was certainly some suspicion of wrongdoing that, in summary, warranted some active investigation[125].

95. Mr Rees told the Panel that he does not recall such a conversation with Mr Gunn, but stated that *"given I had not reviewed the material it would be a surprising thing for me to say"*[126].

96. Mr Beeby told the Panel that:

96.1 *"Mr Rees has missed the point or has not understood the potential links to* [Vassallo Arguello]*, corrupters and the 45 matches requiring further review, some of those matches* [Vassallo Arguello] *played in. Quite simply* [Vassallo Arguello] *had data on his phone which required further analysis and investigation. We could link some data to Betfair account holders and matches that required further investigation. I really didn't think it was difficult and wished the BHA could have continued. I am totally convinced with the investigators and analysts we had in place at the BHA we could have identified a number of corrupt players and bettors. My preference would have been to use the* [Vassallo Arguello] *telephone data as intelligence and look for evidence to corroborate thus bringing a case without reliance upon the phone download"*[127].

96.2 *"All of the* [BHA] *material was handed to the TIU, we had no reason to keep anything. I wanted the TIU to succeed and felt we had presented them with a dream ticket for a perfect start – there were some excellent investigative leads and the potential for, as Mr Rees says some 'quick successes' not for the BHA but for the TIU"*[128].

97. Mr Scotney stated that:

97.1 *"All of the evidence from the Sopot Investigation was shared with the ATP including the evidence that we had obtained in relation to other suspicious matches. We presented our findings via PowerPoint presentation to Mark Young and Gayle Bradshaw of the ATP. Once the TIU was up and running there was a further presentation of all of the material to Jeff Rees and his team"*[129].

97.2 *"No intelligence or evidence was ever withheld from* [Mr Rees]*; and even if he did not agree with how some of the evidence was obtained (which in my view was all obtained legally and ethically) there were many usable evidential/intelligence leads that could have been legitimately followed that would have exposed both corruptors and corrupt players. For example through named betting account holders on Betfair (and other betting operators) who were clearly connected to suspected corrupt players"*[130].

97.3 *"Post the setting up of the TIU the betting experts at the BHA continued to provide the TIU with live intelligence on suspect matches but it became clear that Jeff Rees did not appreciate or want our input unless we could show why a match was fixed. In our view that should have been his job. As a result we eventually stopped sharing intelligence with the TIU until Rees left"*[131].

124 Statement of Ben Gunn (formerly BHA).
125 Statement of Ben Gunn (formerly BHA).
126 Response of Jeff Rees to Notification given under paragraph 21 ToR.
127 Response of Paul Beeby to Notification given under paragraph 21 ToR.
128 Response of Paul Beeby to Notification given under paragraph 21 ToR.
129 Statement of Paul Scotney (formerly BHA).
130 Response of Paul Scotney to Notification given under paragraph 21 ToR.
131 Statement of Paul Scotney (formerly BHA).

98. In relation to paragraph 97.3, Mr Rees told the Panel that *"as far as I recall the BHA provided us with information just twice, but indirectly, during my tenure. It was not 'love intelligence' as Mr Scotney describes it, but information in relation to apparently suspicious betting on two WTA matches. On both occasions we had already been made aware of suspicions concerning the matches in question"*[132]. On 18 April 2010, Mr Rees wrote to Mr Scotney on the following terms:

98.1 *"Whilst we are grateful for information which may help us combat corruption, had your betting expert had access to reports from senior tennis officials present during the match, as I did, and been aware of circumstances surrounding it, I suspect he would not have been so quick to describe the match as "fixed" or to send you an e-mail titled "fixed tennis match". Equally, I doubt you would have passed that message to the ATP – an organisation which had nothing to do with that match, that tournament or those players – under the same heading.*

98.2 *I have hesitated before writing to you, but I think I need to make you aware that in my view it is only a matter of time before a tennis player brings an action for libel against organisations, individuals, newspapers, those who make wild and irresponsible allegations on the Betfair Forum, and others who wrongly accuse them of deliberately and dishonestly engineering the result of a tennis match or any part of it for betting purposes, i.e. fixing. If and when such legal action is taken, I know from recent personal experience that under United States discovery rules, and those of a number of other countries, e-mails such as the one you sent to the ATP would without doubt be disclosable to the plaintiff. Such disclosure would put the British Horseracing Authority, and the individuals concerned, at risk of being joined in the libel action as co-defendants.*

98.3 *As the Tennis Integrity Unit is charged with combating corruption in tennis we do, as I have already said, of course welcome any information about apparently suspicious betting patterns which helps us meet our responsibilities. However, as this and many other cases show, it is unwise to rely simply on betting patterns unequivocally to describe a tennis match as "fixed".*

98.4 *I hope you will accept this letter in the spirit in which it is meant. I really do not wish to see colleagues in the BHA, or those charged with combating corruption in any sport, having to defend their hard-earned reputations during court proceedings brought because of loosely-worded e-mails or unjustified assumptions by betting analysts."*

132 Response of Jeff Rees to Further Notification given under paragraph 21 ToR.

C THE TIU'S APPROACH TO THE VASSALLO ARGUELLO PHONE MATERIAL

99. As set out in Chapter 8, in 2007 the Sopot Investigators downloaded material from Vassallo Arguello's phone in the course of their investigation. This material included both text message exchanges and contact details linked to Betfair accounts which had been flagged for suspicious betting patterns, that raised concerns as to matches involving Vassallo Arguello other than the Sopot Match and as to other players in addition to Vassallo Arguello. The Sopot Report concluded that *"the outcome of forensic examinations disclosed both intelligence and evidence that will now form the basis of future investigations concerning"* Vassallo Arguello[133].

100. In the event, the TIU did not investigate matches or players implicated by the Vassallo Arguello phone material, and did not use the material as intelligence to focus other investigations.

101. As is the case with the material in relation to the 45 matches, there is no written record of the reasons why the TIU did not conduct any investigations based on the Vassallo Arguello phone material or use the material as intelligence. Instead, the evidence concerning those reasons comes from the evidence primarily given by Mr Rees, but also others, to the Panel.

102. As set out in paragraphs 104 - 114 below, Mr Rees informed the Panel that the TIU did not conduct investigations based on the Vassallo Arguello phone material or use the material as intelligence for other investigations because of his concerns about the process by which the Sopot Investigators obtained the material and the consequences of that process. Mr Rees stated that he believed the material had been obtained illegally, unethically, and in violation of the ATP's pre-2009 rules (the "ATP TACP"). As a result, and for the reasons described below, Mr Rees stated that he considered that the material was unusable.

(1) MR REES' UNDERSTANDING ABOUT THE PROCESS BY WHICH THE VASSALLO ARGUELLO PHONE MATERIAL WAS OBTAINED

103. This Section summarises the evidence from Mr Rees as to what he believed before and during his tenure as Director of the TIU about the method by which the Sopot Investigators had obtained the Vassallo Arguello phone material. It also summarises evidence from other individuals in relation to relevant events.

Mr Rees' evidence as to a meeting in late 2007 with Mr Gunn and Mr Beeby

104. Mr Rees did not work on the Sopot Investigation and was not involved in the obtaining of phone material from Vassallo Arguello. At the time of the handover to the TIU and the 9 January 2009 meeting, Mr Rees' understanding of the process by which the Vassallo Arguello phone material had been obtained was based on his recollection of what he had been told in 2007.

105. Specifically, Mr Rees stated that he met with Ben Gunn and Paul Beeby, a member of the Sopot Investigation team, in late 2007[134]. Mr Rees stated that:

105.1 The meeting took place before the Environmental Review had formally begun, and served as an *"initial chat"*[135].

105.2 During this meeting Mr Gunn and Mr Beeby told him that when the Sopot Investigators interviewed Vassallo Arguello in a hotel in Eastern Europe, *"the investigators had 'conned' (their word) Arguello into handing over this phone to them"* and *"that the investigators had handed Arguello's phone over to UK experts in mobile phone technology ('the experts') who were hiding (their word) in another room at the hotel and that the experts downloaded all the contents of the phone without Arguello knowing that this was being done"*[136].

133 Sopot Report, page 20, paragraph 122.

134 Statement of Jeff Rees (formerly TIU).

135 Statement of Jeff Rees (formerly TIU).

136 Statement of Jeff Rees (formerly TIU).

105.3 It *"was not just the words themselves that showed that those involved in the obtaining of the Arguello phone material had acted improperly,"* but *"so too did the conspiratorial way in which Gunn and Beeby talked about what had been done"* give Mr Rees the impression that the material had been obtained improperly[137]. Mr Rees also stated: *"The fact that they had experts 'hiding' (their word) in another room confirmed to me that those involved had planned to act unlawfully. That really concerned me. It smacked of a conspiracy"*[138]. Mr Rees stated that Mr Gunn and Mr Beeby *"were both talking during this conversation"* and he *"cannot remember who said what"*[139]. Further, Mr Rees stated that *"both Gunn AND Beeby told me about the Arguello con"*[140].

106. Mr Rees stated that, at this meeting, Mr Gunn and Mr Beeby showed him *"records of the first words of a number of the text messages"*. Mr Rees stated that he could not *"remember at this stage what those words were. The words were only the first few words of each text message. On the face of it some of the words looked suspicious and incriminating. There were also a number of more mundane messages"*[141]. Further, Mr Rees' evidence is that Mr Gunn and Mr Beeby told him *"that the experts had explained that Arguello had attempted to delete the texts"* and *"that* [Arguello] *did not appear to have realised that the first few words of the messages had remained deep in the phone memory"*[142]. Mr Rees stated that the fact that the messages were deep in the phone's memory meant *"that it required experts with sophisticated equipment to find the words Arguello believed he had deleted"*[143].

107. Mr Rees gave evidence that *"the names of the BHA investigators who were involved may have been mentioned in this initial meeting but I do not recall their names... I gained the impression that Paul Beeby was at the hotel in Eastern Europe but that might not have been the case"*[144]. He continued, *"I believe that Albert Kirby, who led the investigation into the 2007 Davydenko v Arguello match on behalf of the BHA albeit he was not a BHA employee, and an assistant who was also a former police officer but more junior in rank, may also have been involved but am not certain of that. I cannot remember the assistant's name, and I have never met him. He was not a BHA employee either"*[145].

108. Mr Rees further stated: *"I do not know how the investigators 'conned' (their word) Arguello into handing his phone over to them. However, they clearly had not conformed with the relevant... ATP rules. I got the impression from Beeby and Gunn that they were proud that the material had been obtained in the manner that it had and that they were trying to impress me"*[146].

109. Mr Rees told the Panel that Mr Gunn's and Mr Beeby's statements *"rang immediate alarm bells for me"*[147]. Mr Rees stated that *"I believed, on the basis of what Gunn and Beeby had told me, that what the investigators had done in respect of the Arguello phone material was not only unethical but breached criminal laws, probably not only in the United Kingdom but also in the country where the material had been downloaded"*[148]. He also stated that he believed that the investigators had *"deliberately broken ATP rules"*[149].

137 Jeff Rees, 'Further material provided in response to questions from Adam Lewis QC', provided to the Panel on 9 May 2017. [page 2.]

138 Jeff Rees, 'Further material provided in response to questions from Adam Lewis QC', provided to the Panel on 9 May 2017. [page 2.]

139 Statement of Jeff Rees (formerly TIU).

140 Emphasis in original. Response of Jeff Rees to Notification given under paragraph 21 ToR.

141 Statement of Jeff Rees (formerly TIU).

142 Statement of Jeff Rees (formerly TIU).

143 Response of Jeff Rees to Notification given under paragraph 21 ToR.

144 Statement of Jeff Rees (formerly TIU).

145 Statement of Jeff Rees (formerly TIU).

146 Statement of Jeff Rees (formerly TIU).

147 Statement of Jeff Rees (formerly TIU).

148 Statement of Jeff Rees (formerly TIU).

149 Statement of Jeff Rees (formerly TIU).

110. Mr Rees did not ask Mr Gunn or Mr Beeby to explain further the process by which the telephone had been obtained from Vassallo Arguello at the meeting. Mr Rees stated that "I did not ask any questions at the meeting about the Arguello phone material because I did not want to be associated with any wrong doing or give any impression that I was condoning what had been done"[150]. Mr Rees gave evidence, as set out in paragraph 127.4 below, that at this time he was "particularly conscious of the need for absolute propriety in dealing with personal data"[151]. He further stated that the Panel "appear to be ignoring the fact that in 2007 telephone hacking by private investigators, reporters and others was a major issue in the media and for law enforcement agencies"[152].

111. Mr Rees informed the Panel that when he was working with Mr Gunn on the Environmental Review, there were times when Mr Gunn mentioned the Vassallo Arguello telephone material, but Mr Rees' evidence was that he *"deliberately said nothing about it"*[153] because Mr Rees *"did not want to be seen to be endorsing what the BHA investigators had done"*[154]. Mr Rees gave evidence that during the course of the work on the Environmental Review, neither Mr Gunn nor any of the Sopot Investigators gave Mr Rees any indication that they were working on the Vassallo Arguello material[155], and that *"Ben Gunn never changed his account of how the BHA investigators obtained the Arguello phone material despite ample opportunity to do so. He also did not voice any concerns to me about how it was obtained"*[156].

112. As described above in paragraphs 38 to 42, on 9 January 2009 Mr Rees attended a presentation by the analysts who had worked on the Sopot Investigation. Mr Rees reported that he expected the presentation to concern the 45 matches referred to in the Environmental Review, but instead his understanding was that the presentation was "wholly focused on the material that had come directly and indirectly from the Arguello phone material"[157].

113. As described in paragraphs 42 and 88 above, Mr Rees did not ask any questions at the 9 January 2009 presentation. Mr Rees stated that "on the issue of why I did not take that opportunity to seek clarification of the precise way in which the Arguello phone material had been obtained, I knew what Gunn and Beeby had told me in late 2007 and I did not feel then or on 9th January 2009, that I needed clarification"[158]. Mr Rees also stated that "*early on in the presentation, when I realised that references were to be made to the Arguello phone material, I told Bruce [Ewan] not to ask any questions.*"[159]. Mr Rees further stated that *"well before"* the 9 January 2009 presentation, he had made Mr Ewan aware *"that the BHA had acted illegally in respect of Arguello phone material"*[160].

114. Mr Rees informed the Panel in relation to the 9 January 2009 meeting that *"the presenters did not say how they had obtained the Arguello material, but I of course knew"*[161].

Mr Gunn's and Mr Beeby's evidence as to a meeting in late 2007 with Mr Rees

115. The Panel put Mr Rees' recollection of the meeting in late 2007 to Mr Gunn and Mr Beeby. In particular, they were asked to comment on Mr Rees' recollection that there had been a meeting at which Mr Gunn and Mr Beeby told Mr Rees that Vassallo Arguello had been *"conned"* into handing over his phone and that the phone was then provided to experts in mobile telephone technology who were *"hiding"* in another room.

150 Statement of Jeff Rees (formerly TIU).
151 Statement of Jeff Rees (formerly TIU).
152 Response of Jeff Rees to Notification given under paragraph 21 ToR.
153 Statement of Jeff Rees (formerly TIU).
154 Statement of Jeff Rees (formerly TIU).
155 Statement of Jeff Rees (formerly TIU).
156 Response of Jeff Rees to Notification given under paragraph 21 ToR.
157 Statement of Jeff Rees (formerly TIU).
158 Jeff Rees, 'Further material provided in response to questions from Adam Lewis QC', provided to the Panel on 9 May 2017.
159 Statement of Jeff Rees (formerly TIU).
160 Statement of Jeff Rees (formerly TIU).
161 Statement of Jeff Rees (formerly TIU).

116. Mr Gunn stated that he *"refuted entirely Mr Rees' allegations"*[162]. He stated, *"I do not recall specifically a meeting between Paul Beeby, Rees and myself prior to starting the* [Environmental Review] *but accept that it is possible one took place, as Rees says, in late 2007 for an informal briefing prior to starting the* [Environmental Review]*"*[163]. However, Mr Gunn stated that *"Rees' allegation that words such as 'conned' and 'conspiracy' were used at any such meeting is crass and defamatory"*[164]. Mr Gunn also stated that *"*[w]*hatever Rees' motive now for* [his] *comments must lie with him but he raised no concerns with me about these matters throughout the six months we were engaged in the* [Environmental Review]*"*[165].

117. Mr Gunn further stated that he was *"unaware of the circumstances… of how the Sopot investigators obtained the data from the phone until I received notification of Rees' allegation"*[166]. However, Mr Gunn reported that he was *"made aware previously from Paul Scotney that data had been downloaded from Arguello's phone and analysed"*[167]. Mr Gunn stated that he made a *"policy decision"* not to become involved in the Sopot Investigation[168]. Mr Gunn stated, however, that *"[w]hen I did become aware of the circumstances from Paul Scotney"* surrounding the obtaining of data from Vassallo Arguello's phone, *"I recall expressing my concern about the probity of the action… if the data was to be used in any subsequent disciplinary/criminal proceeding"*[169].

118. Paul Beeby stated that he did *"not recall having any interaction with Mr Rees"*[170]. In response to Mr Rees' statement that there had been a meeting at which Mr Gunn and Mr Beeby told Mr Rees that Vassallo Arguello had been *"conned"* into handing over his phone and that it was provided to experts in mobile telephone technology who were *"hiding"* in another room, Mr Beeby responded[171]:

    118.1 *"No such meeting took place. I am quite clear on that. That said I would like to make the following observations.* [Vassallo Arguello] *was not conned into handing over his phone and I certainly did not believe he had been. I would not have felt comfortable with such action and felt sufficient explanation was given in the presence of Gayle Bradshaw so that* [Vassallo Arguello] *was comfortable himself with what was happening. The forensic analysts were not and never hiding or hidden away. That is the most ridiculous assertion and makes no sense whatsoever. They were in a private room so that the work could be conducted sensitively, securely and out of public view. I was happy and totally believed that everything I/we were doing was within the guidelines and rules of the tennis anti-corruption code"*.

    118.2 *"Had a conversation like this taken place anywhere with 2 very senior ex Police Officers* [Mr Rees and Mr Gunn] *present then I would expect to have been challenged. If any of my investigators said such things I would challenge and deal with them appropriately"*.

162 Response of Ben Gunn to Notification given under paragraph 21 ToR.
163 Response of Ben Gunn to Notification given under paragraph 21 ToR.
164 Response of Ben Gunn to Notification given under paragraph 21 ToR.
165 Response of Ben Gunn to Notification given under paragraph 21 ToR.
166 Response of Ben Gunn to Notification given under paragraph 21 ToR.
167 Response of Ben Gunn to Notification given under paragraph 21 ToR.
168 Response of Ben Gunn to Notification given under paragraph 21 ToR.
169 Response of Ben Gunn to Notification given under paragraph 21 ToR.
170 Statement of Paul Beeby (BHA).
171 Response of Paul Beeby to Notification given under paragraph 21 ToR.

Evidence as to the manner in which the Vassallo Arguello phone material was obtained

119. The interview of Vassallo Arguello is described in Chapter 8. The evidence of those involved in obtaining the phone material from Vassallo Arguello is as follows:

119.1 A written demand for the examination of information storage equipment was not sent to Vassallo Arguello. The possible need for such a demand had been discussed by the Sopot Investigators and the ATP at the outset, but the demand that was sent only requested that Vassallo Arguello disclose his telephone records.

119.2 The oral request made to Vassallo Arguello was not recorded on the transcript of the interview. The summary of the interview states that Vassallo Arguello *"willingly handed over his two mobile phones for examination"*[172].

119.3 In an email from Gayle Bradshaw to Mark Young, Mr Bradshaw sent an update to the ATP's external lawyers during the course of the interview: *"Interview underway. Very cooperative. Both he and his coach have turned over their phones and the forensic expert is downloading data now"*.

119.4 No individual who gave evidence to the Panel can recall the precise words used in requesting the telephone from Vassallo Arguello.

119.5 Mr Beeby's recollection is that before Albert Kirby and David Nutten started the interview of Vassallo Arguello, and before the tape recording began, Mr Beeby *"requested Arguello's telephone"* and *"explained the request to him"*, and *"Arguello was passive and voluntarily handed over his telephone for analysis"*[173]. In response to being asked whether Mr Beeby thought the data from Vassallo Arguello's phone was legitimately obtained, Mr Beeby stated that *"under the tennis rules the ATP was entitled to request and interrogate the player's telephone records and data. I believe that Arguello was told enough about the process to make an informed decision"*; Mr Beeby *"did not think it was necessary to tell him that deleted data could be recovered"*[174]. Mr Beeby stated that *"*[i]*t was made clear that his telephone was being taken for analysis. What else could he possibly think was happening to his phone? A translator was present at the interview and, in any event, Arguello had a sufficient grasp of English to enable him to understand the request"*[175]. Mr Beeby stated that *"the data was not obtained illegally"*[176].

119.6 In addition, Mr Beeby stated that *"there was no conspiracy to obtain anything from* [Vassallo Arguello] *illegally or in any way to con him into doing anything he didn't want to do."* Further, Mr Beeby stated *"I have reflected upon... the incidents in Szczecin. I now believe* [Vassallo Arguello] *either knew, believed or suspected that his phone was going to be taken for analysis. Upon reflection I think the download showed that he had deleted hundreds of texts from his phone that morning and probably believed analysis would not recover them. This in my view is why he was so very comfortable with handing his phone over"*[177].

119.7 Albert Kirby stated that *"*[w]*hen we were setting up the interview, Arguello was asked if he would be willing to hand over his telephone for forensic analysis and the reasons for us making that request. Arguello willingly handed over his telephone and consented to FTS examining it. As the interview progressed FTS took Arguello's phone away and conducted a forensic download of its contents"*[178]. Albert Kirby also stated *"I recall fully explaining to Arguello the purpose for which his telephone was being requested and the reasons it was being examined. I would not have demanded his telephone in a hostile way. I believe I asked for the telephone at the beginning of the interview so that we could return it to Arguello as soon as the interview was completed. Arguello was affable and friendly during the interview. I recall that I was pleasantly surprised that Arguello handed over his*

172 Summary of Interview of Martin Vassallo Arguello (appended to the Sopot Report).

173 Statement of Paul Beeby (BHA).

174 Statement of Paul Beeby (BHA).

175 Statement of Paul Beeby (BHA).

176 Statement of Paul Beeby (BHA).

177 Response of Paul Beeby to Notification given under paragraph 21 ToR.

178 Statement of Albert Kirby (formerly FTS).

telephone so willingly as he appeared to be confident that no incriminating evidence would be found"[179]. Mr Kirby denied that the phone was obtained or downloaded in an illegal or improper manner, or contrary to the ATP rules. Mr Kirby stated: *"I am in no doubt that the procedure was correctly followed and that the process was legal, particularly because Arguello gave his express consent to us examining his telephone. I strongly disagree with any suggestion that Arguello's telephone data was downloaded illegally. There was nothing illegal about the way in which Arguello's telephone was obtained and the data downloaded"*[180].

119.8 Mr Kirby stated that he explained to Mr Bradshaw that if players agreed to having their phones examined, it was perfectly legitimate for the specialists to carry out the forensic examination, and that it was not suggested by Mr Bradshaw or anyone else that to do so would be contrary to the ATP rules[181]. Mr Kirby stated that he had no doubt that the process by which the Vassallo Arguello phone was obtained was legal, because the player gave his express consent to his phone being examined[182].

119.9 Mr Bradshaw recalled that *"before the investigators turned on the audio recording for the interview, they requested that Arguello turn over his phone so that they could examine it"*[183]. Mr Bradshaw stated that he could not *"recall exactly how the request was phrased, but from memory I think Arguello would have understood that his phone was going to be looked through but not that anything was going to be downloaded from it"*[184]. Mr Bradshaw further stated that he *"later received an email from Paul Beeby in which he outlined that he did not want it to be known that the messages had been downloaded, and that the information obtained should be used for investigatory purposes only. From this I assumed that the investigators did not want to reveal their investigatory methods and that the messages could not be used as evidence"*[185].

119.10 Mr Young gave evidence that *"following the interview, I became aware of text messages that had been downloaded from the player's phone. Gayle told me that the investigators had taken the phone from the player and downloaded its contents."* Further, Mr Young stated that *"I recall speaking with Paul Scotney. He told me that the text messages and contact list obtained should not be relied upon as evidence but used as intelligence. His reason for this was that he wanted to keep the technology that the investigators had used to access the text messages secret."*[186] Mr Young also stated that *"the ATP had a further concern regarding the possible use of the text messages. This was due to the fact that the process set out in the ATP TACP for obtaining information had not been followed. In particular, a written demand had not been given to the player. I was therefore concerned that the ATP had not followed its own rules and the text messages would be inadmissible."*[187] Mr Young also thinks that it is likely he would have consulted lawyers in respect of this issue. Further, Mr Young said *"I was also concerned that the collection of the texts from Arguello may have violated applicable European privacy laws. I recall that Paul Scotney made a comment to me that the collection of the texts may have violated European privacy laws. Although I recall this concern, I do not recall anyone researching this issue"*[188].

119.11 John Gardner's evidence is that *"regarding the suggestion that Paul Beeby... was acting unlawfully or unethically, I recall conversations in the BHA's office about the ATP's rules, and there was a general belief that the wording was wide enough to include downloads"*[189].

179 Statement of Albert Kirby (formerly FTS).
180 Statement of Albert Kirby (formerly FTS).
181 Statement of Albert Kirby (formerly FTS).
182 Statement of Albert Kirby (formerly FTS).
183 Statement of Gayle Bradshaw (ATP).
184 Statement of Gayle Bradshaw (ATP).
185 Statement of Gayle Bradshaw (ATP).
186 Statement of Mark Young (ATP).
187 Statement of Mark Young (ATP).
188 Statement of Mark Young (ATP).
189 Response of John Gardner to Notification given under paragraph 21 ToR.

Other evidence concerning the process by which the Vassallo Arguello phone material was obtained

120. Albert Kirby stated that *"John Gardner, BHA, also made links between Arguello and Italian Betfair account holders. I asked John to carry out more extensive telephone analysis so that we could conclusively show a link between the player and the suspected corruptors. John advised me that he had been instructed by Paul Scotney not to do anymore work in this regard. I understand these instructions came from the ATP to put this part of the investigation on hold. I do not know why that decision was taken. My disappointment with regard to this and the decision of the ATP is outlined in an email I sent to Gayle Bradshaw dated 29 April 2008"*[190].

121. In that email of 29 April 2008, Mr Kirby wrote to Mr Bradshaw and stated (inter alia):

"I appreciate that you may have had some concern regarding my decision to examine the Arguello phones. The process we used it not commonly known and as I highlighted in my report should be kept within limited knowledge. However, as you will be aware, this examination has brought about valuable evidence. I was disappointed to hear from Paul Scotney that you had asked for this aspect of the investigation to be placed on 'hold' as the work had been almost completed (and by now may have been fully done as I had requested). I highlighted in my report that we should pursue the Arguello investigations without further delay as the ATP are now in the position of knowing they have a potentially corrupt player on the circuit and could further damage the reputation of professional tennis."

122. Mr Bradshaw responded to Mr Kirby by email on the same day:

"I certainly agree with you that Arguello seems to be a player we have strong evidence against, although not from the match that started this investigation. Our decision on Arguello is to be made soon as tennis is in the process of forming its own integrity team and the thought is that this should go to them --- there is still debate on this."

123. Albert Kirby told the Panel: *"In late September 2008, and after his appointment as the Head of the TIU, I met Jeff Rees at his office in Roehampton. I spent some considerable time discussing both the outcome of my Review and my recommendations as to how the investigation should be continued. During my meeting with Jeff, I explained my view of the Sopot Investigation and gave him my recommendations as to how I thought the investigations should continue. I addressed all aspects of the investigation, including the data obtained from Arguello that is included in the conclusion sections of my Report at paragraph 154 to 163. Jeff never questioned the way in which Arguello's telephone and data was obtained. I have never been questioned by the ATP or the TIU on this point. Following this, I assumed that the additional evidence would have been passed to the TIU and the TIU would have continued with the investigation. I do not know why no further action was taken. I find this frustrating. I had no further interaction with the ATP or TIU regarding the Sopot Investigation following this and was certainly never spoken to regarding any possible illegality in the examination of Arguello's phone"*[191].

124. In relation to the above meeting Mr Rees told the Panel *"I believe Albert Kirby also mentioned the phone material when he came to the Tennis Integrity Unit office at my request in September 2008 I cannot remember exactly what he said, however, as the phone evidence was a side issue at that point"*[192].

190 Statement of Albert Kirby (formerly FTS).

191 Statement of Albert Kirby (formerly FTS).

192 Statement of Jeff Rees (formerly TIU).

(2) THE REASONS WHY THE TIU DID NOT INVESTIGATE PAST POSSIBLE BREACHES BASED ON THE VASSALLO ARGUELLO PHONE MATERIAL, OR MAKE ANY USE OF THE MATERIALS AS INTELLIGENCE

125. The evidence indicates that Mr Rees received some material related to the Vassallo Arguello text messages, at least, at the 9 January 2009 presentation from Mr Phillips and on 12 March 2009 in the box of materials given by the Sopot Investigators to the TIU. This Section summarises the evidence from Mr Rees as to why the TIU did not investigate past possible breaches based on the Vassallo Arguello phone material or use the material as intelligence to inform future investigations.

126. Mr Rees' evidence was that, in the light of his understanding in 2007 as to how the Vassallo Arguello material had been obtained as described in paragraphs 104 to 114 above, he considered in 2009 that the TIU should not use the Vassallo Arguello phone material for any purpose because (a) he believed that the use of that material would risk undermining the TIU's credibility and reputation; (b) he believed that the use of that material would expose the TIU and its employees to the threat of criminal prosecution or allegations that the TIU and its employees had participated in criminal violations, and (c) he believed that that material would be unusable in any disciplinary proceedings. Mr Rees' evidence includes the following.

127. First, in relation to the credibility and reputation of the TIU:

127.1 Mr Rees stated that he believed that the TIU, as with any integrity unit, had to be and be *"seen to be, unimpeachable and beyond reproach if it is to have credibility"*[193] and he was *"quite simply not prepared to countenance using the material in circumstances where it had been obtained unethically and in breach of the ATP rules… I was not prepared to associate the TIU with unethical conduct or to risk harm to the TIU by so doing"*[194]. Mr Rees informed the Panel that *"it was inevitable that, in any prosecution of those players under the UTACP, what the BHA had done would be disclosed under disclosure and discovery procedures, and therefore put the credibility and reputation of the new TIU at grave risk"*[195].

127.2 Mr Rees stated: *"I am seriously concerned that the IRP is giving insufficient weight to the importance of the credibility of the TIU, particularly in the eyes of players and officials, in combatting betting related corruption"*[196]. Mr Rees asked the Panel rhetorically: *"If it came out that TIU members were in any way party to the circumventing of their own regulators' rules in place to protect players and officials, or condoning unethical practices, how could those individuals whose evidence and information was vital to the success of the TIU possibly have trust in us? The TIU's credibility would be damaged for years if not fatally"*[197]. Mr Rees stated that *"in this context, it is worth mentioning that many players feel exceedingly vulnerable in situations where there is any hint of criminal involvement and/or corruption"*[198]. Mr Rees stated that *"those from Eastern Europe in particular immediately think 'Russian mafia'"*, *"many are young"*, *"though well-travelled many are naïve in the ways of the world"*, *"they are constantly traveling, often in difficult places"*, and *"as they are constantly travelling they are away from their families for long periods, and aren't sure who they can trust and share concerns with"*[199]. Mr Rees stated that *"in practice, particularly in the early days of the TIU, many players who had received corrupt approaches spoke first to the ATP or WTA's Players Services personnel or to senior tournament officials"* and that *"*[w]*e had deliberately made ourselves known to those key individuals in order that they could see and pass on to apprehensive players the messages that we were both approachable and trustworthy"*, but *"they could not have done so with any*

193 Statement of Jeff Rees (formerly TIU).

194 Response of Jeff Rees to Notification given under paragraph 21 ToR.

195 Statement of Jeff Rees (formerly TIU).

196 Response of Jeff Rees to Notification given under paragraph 21 ToR.

197 Response of Jeff Rees to Notification given under paragraph 21 ToR.

198 Response of Jeff Rees to Notification given under paragraph 21 ToR.

199 Response of Jeff Rees to Notification given under paragraph 21 ToR.

confidence if the reputation of the TIU was tarnished"[200]. Mr Rees *"believed that the conduct of TIU personnel had to be unimpeachable and beyond reproach at all times"*, and he made clear to members of staff when they joined the TIU *"that the reputation of the unit depended on its members acting ethically and with integrity at all times"*[201].

127.3 Mr Rees *"consider[ed] it would have been wholly irresponsible of* [him] *to risk the reputation of the fledgling TIU – a unit charged with exposing corruption and enforcing corruption-related rules – by acting on unlawfully obtained material and associating the TIU with the BHA investigators' unethical behaviour"*[202]. Mr Rees stated: *"I had taken the principled decision not to make any use whatever of the Arguello material which is what the box* [given to the TIU on 12 March 2009] *mainly comprised"*[203].

127.4 Mr Rees told the Panel that at this time *"I was particularly conscious of the need for absolute propriety in dealing with personal data because of a major investigation I had headed as a senior detective. A significant issue during the investigation, and subsequently during a two week hearing at the High Court, was attempts which had been made by lawyers for the potential defendants to discredit two witnesses through use of data obtained without lawful authority from the witnesses' bank accounts. I reported the facts in that case to the Information Commissioner"*[204]. Mr Rees also stated that it was of significance *"in 2007 telephone hacking by private investigators, reporters and others was a major issue in the media and for law enforcement agencies. In January of that year the News of the World royal editor Clive Goodman and private investigator Glenn Mulcaire had both been jailed after admitting conspiracy to hack phones. Their convictions generated enormous media coverage. Their conviction led to a host of other high-profile investigations and in the following years several individuals were arrested in connection with hacking and using material obtained through hacking. Nobody involved in the world of investigation could possibly have failed to be aware of the possible consequences of unauthorised acquisition and use of the contents of phones"*[205]. Mr Rees stated that, *"given the publicity which phone hacking and invasions of privacy have generated for a long time, and headline-making prosecutions of journalists and investigators, every responsible investigator must surely be aware of the laws governing misuse of the contents of phones"*[206].

128. Second, in relation to his duty of care to protect staff from criminal prosecution:

128.1 Mr Rees stated that as head of the TIU *"I had a 'duty of care' to my staff to prevent them from becoming unwittingly embroiled in matters which could compromise them and the TIU"*[207].

128.2 Mr Rees stated that *"I was confident in my belief"* that anyone using the material *"with knowledge of how it had been obtained would also have been at risk of criminal prosecution"*[208]. More specifically, TIU investigators would themselves potentially be open to allegations of breaking the law if they made use of the material[209].

129. Third, in relation to the usability of the material:

129.1 Mr Rees stated that *"in any disciplinary hearings resulting from direct action in respect of the Arguello phone material, including using it as intelligence to focus on other players, how that material had been acquired by the BHA investigators would almost certainly have to be disclosed and conceded to be 'the fruit of a poisoned tree'"*[210].

200 Response of Jeff Rees to Notification given under paragraph 21 ToR.

201 Response of Jeff Rees to Notification given under paragraph 21 ToR.

202 Jeff Rees, 'Further material provided in response to questions from Adam Lewis QC' provided to the Panel on 9 May 2017.

203 Response of Jeff Rees to Notification given under paragraph 21 ToR.

204 Statement of Jeff Rees (formerly TIU).

205 Response of Jeff Rees to Notification given under paragraph 21 ToR.

206 Statement of Jeff Rees (formerly TIU).

207 Response of Jeff Rees to Notification given under paragraph 21 ToR.

208 Statement of Jeff Rees (formerly TIU).

209 Jeff Rees, 'Further material provided in response to questions from Adam Lewis QC', provided to the Panel on 9 May 2017.

210 Jeff Rees, 'Further material provided in response to questions from Adam Lewis QC', provided to the Panel on 9 May 2017

129.2 Bill Babcock stated: *"I do recall that that Mr Rees and I were frustrated by the way in which the Arguello Texts had been obtained by BHA and were concerned that they were unusable and threatened to taint the TIU in any prosecution under the ATP Code or the TACP"*[211].

129.3 As set in paragraph 185 below, Mr Rees told the Panel that if the phone material had been obtained legitimately as it could have been, he would have been happy to investigate it.

130. Mr Rees informed the Panel that he did not seek legal advice on the legality of the obtaining of the Vassallo Arguello phone material. Mr Rees stated that *"I did not consider that I needed a lawyer to confirm that"* the Vassallo Arguello phone material *"had been obtained in breach of English criminal and civil law, in breach of the sport's rules, and unethically…or to tell me that TIU investigators would themselves potentially be open to allegations of breaking the law if they made use of it"*[212]. Mr Rees also stated that he did not seek legal advice as to whether the Vassallo Arguello phone material or any evidence stemming from that material would be excluded in disciplinary proceedings[213].

211 Statement of Bill Babcock (Grand Slam Board; formerly ITF).

212 Jeff Rees, 'Further material provided in response to questions from Adam Lewis QC', provided to the Panel on 9 May 2017.

213 Statement of Jeff Rees (formerly TIU).

D THE TIU'S APPROACH TO THE OTHER EXISTING MATERIALS

131. The Panel has not seen evidence that, after its inception on 1 January 2009 (and following Mr Rees' above-described review of certain pre-TIU material), the TIU investigated any past possible breaches disclosed in any of the materials provided by the International Governing Bodies to the TIU. For example, there is no evidence of an investigation of potential past breaches arising out of the ATP material related to suspicious betting patterns reported to the ATP or related to the suspected betting accounts of coaches, though that material may not have been provided to the TIU by the ATP as addressed in Chapter 8[214].

132. Both the International Governing Bodies, as set out in paragraph 9 above, and the TIU, as set out in paragraphs 17 to 18 above, anticipated that the material in relation to those past breaches would be used as intelligence to inform future investigations.

133. Based on the Panel's review of the TIU's database, however, it appears that the TIU's ability to use intelligence to inform future investigations was limited for the simple reason that some of the intelligence was not loaded onto the TIU's database. Mr Rees gave evidence that he requested and obtained information on *"many occasions"*[215] from the TIU's Information Manager, Bruce Ewan, soon after the handover and that *"equally, he volunteered information in respect of matters I or others were dealing with"*. The TIU's records indicate that most of the materials received from the International Governing Bodies were not incorporated into the TIU's intelligence database.

134. A review of the iBase index (the intelligence platform used by the TIU at the time), shows that only the following pre-TIU intelligence was uploaded at the time of the TIU's inception:

    134.1 Ten match alerts that had been received by the ATP from betting operators between 2007 and 2008[216];

    134.2 A query raised by the ATP in relation to the retirement of a player in a match that took place in 2007;

    134.3 Two reports prepared on behalf of the WTA in relation to March Alerts received in 2007;

    134.4 An ATP list of gamblers or persons working for betting companies; and

    134.5 A public document regarding the sanction imposed on Federico Luzzi for betting on tennis.

135. In addition to the above, in the TIU's Shared Drive, there is a folder titled 'Awaiting Input onto iBase', which contains a collection of intelligence that was not uploaded onto iBase. This folder includes the following documents:

    135.1 A document titled *"Suspect list of matches with comments"*, which had been produced by a tennis trader;

    135.2 A spreadsheet titled *"Summary of suspicious games"*; and

    135.3 The Sopot Report.

214 Section C.

215 Emphasis in original.

216 The match alert received by the ATP in relation to Player A v Player B, described in paragraph 30 above, was not one of the ten matches uploaded onto iBase at the TIU's inception. Documents relating to this match were contained in the folders titled 'Pre- TIU Case Files from ATP'. and 'Case Files from BHA 12-Mar-09' described in paragraphs 133 and 135. Documents relating to this match were then uploaded onto iBase by the TIU on or around June 2009.

136. The TIU's Shared Drive also contains a folder titled 'Case Files from BHA 12-Mar-09'. This folder is contained within an archived database filed under 'Courtsiders'. The material within this file was not uploaded onto iBase, nor has the Panel seen any evidence of its use during TIU investigations. This folder includes the following documents:

136.1 The material downloaded from Vassallo Arguello's mobile telephone.

136.2 The electronic material received from John Gardner, as described at paragraph 44 above.

136.3 Betting analysis conducted by Mark Phillips in connection with the 45 matches. This material includes analysis of multiple matches in which Vassallo Arguello was involved. Additionally, this material includes analysis regarding a match played by the player identified to Mr Rees by the ATP in the meeting of 22/23 September 2008.

136.4 Material downloaded from the phones of various parties during the investigation of a WTA match that the BHA was commissioned to conduct.

137. The Panel has also identified a number of other documents that were handed to the TIU but were not uploaded onto iBase. These include:

137.1 Various ATP case files, and some 2007 and 2008 match alerts from Betfair[217];

137.2 The hard copy materials provided by the Sopot Investigators to the TIU in early 2009[218] as described in paragraph 46 above.

138. Mr Rees informed the Panel that he *"gave responsibility for creating and managing the information database to Bruce Ewan[219] with the clear expectation that that it would inform and support investigations as had been the case with the equivalent data base Bruce Ewan created and managed in cricket"*[220].

139. Mr Rees stated that[221]:

139.1 He did not *"have the specialist training necessary to access the data base myself. Thus the job of populating the new TIU database and record system with intelligence/information, past and present, fell to* [Mr Ewan]*"* and *"to the extent that data was not entered or, once entered, was not retrieved for use in particular cases, this would have been Bruce Ewan's responsibility as it had been when he worked for me in international cricket"*.

139.2 He *"did not supervise Mr Ewan on these basic aspects of his job. Having worked with and for me for several years, and after long conversations with me when he first took up his position in the TIU, he knew full well his responsibilities and my expectations of him"*.

139.3 His *"experience of Bruce Ewan during his seven or so years in cricket's anti-corruption unit was that he was a conscientious and highly-organised individual, with high ethical standards, who maintained the information database fastidiously. Nothing went into that database if he was not satisfied that he could account for its origins"*.

139.4 He *"instructed Bruce Ewan to put together, as he had in cricket on my instructions, a simple guide to the system for use by others in case he should ever be suddenly incapacitated"*.

217 These documents were stored in a folder titled 'Pre- TIU Case Files from ATP' located within an archived database filed under 'Courtsiders'.

218 Paragraphs 44-46.

219 TIU Information and Intelligence Manager (October 2008 to November 2010, deceased February 2014).

220 Response of Jeff Rees to Notification given under paragraph 21 ToR.

221 Response of Jeff Rees to Notification given under paragraph 21 ToR.

139.5 *"It may be that, because of the sheer volume of material in the hard copy files we were provided with, Bruce Ewan simply catalogued the contents for ease of reference. However, I cannot be absolutely certain of that. He may have adopted some more sophisticated electronic shortcuts in respect of the contents"*.

140. Regarding the state of the information database at the end of February 2011, when she took over as Information Manager and Analyst[222], Elli Weeks stated that:

140.1 *"There was a huge amount of duplication in Bruce Ewan's filing. I believe that Bruce was more comfortable with using paper files than computer files. Bruce had created many hard copy files, which had hard copy indexes. These paper files were stored in locked cabinets. I am not 100% certain that everything the TIU had in hard copy file was also stored on the computer system. However, very many files which were in hard copy were also on the computer system. Information about older investigations were in paper files. I would not be surprised if these were not on the computer system"*[223].

140.2 *"On the computer system there were various drives. Electronic files were stored on a shared drive to which the investigators and I had access. We would search the system using key words. This was very time consuming. However, anything that was stored electronically would appear in the results, albeit not all of it relevant"*[224].

140.3 *"On the computer system there was also a program called iBase. iBase is an intelligence tool used to make analysis more efficient. However, iBase can only search information that has been put into it. Bruce had responsibility for building the iBase database prior to my joining the TIU. I call this database 'Bruce Ewan's iBase'. It was clear to me that an analyst had not set up Bruce Ewan's iBase. I did not consider it to have been built well. Bruce Ewan's iBase did not play an effective role within the TIU because it was not set up well. I did not use Bruce Ewan's iBase"*[225].

140.4 *"While I was at the TIU, we got a new version of iBase. It was not an update on the previous version. It was a new, separate version of iBase which was blank and needed to be populated. I archived Bruce Ewan's iBase as no-one was using it. I had had training on iBase when I had been at Surrey Police. I had additional training on iBase at the TIU. After I had had that training, I started to build a new iBase. I reorganised the electronic files that were stored on the systems drives so that they would in time be easy to export into the new iBase database... However, the TIU got very busy and I was not able to finish the new database before I left the TIU"*[226].

222 Statement of Elli Weeks (formerly TIU).
223 Statement of Elli Weeks (formerly TIU).
224 Statement of Elli Weeks (formerly TIU).
225 Statement of Elli Weeks (formerly TIU).
226 Statement of Elli Weeks (formerly TIU).

E EVALUATION OF THE HANDOVER OF RESPONSIBILITY FROM THE INTERNATIONAL GOVERNING BODIES TO THE TIU

141. In this Section, the Panel addresses first the effectiveness and appropriateness of the International Governing Bodies' decision to delegate to the TIU responsibility for deciding what to do with the pre-TIU materials provided to it, including investigating past possible breaches of integrity and using the materials for intelligence. Second, the Panel addresses the effectiveness and appropriateness of the decision to prioritise the investigation of future possible breaches over the investigation of past possible breaches. Third, the Panel assesses whether the TIU's approach was effective and appropriate in respect of each of the specific sets of materials described above in this Chapter: namely the material in relation to the 45 matches, the Vassallo Arguello phone material, and the other material received from the International Governing Bodies. Such other material ranged from information in relation to historic allegations, which might already have been investigated by the relevant International Governing Body without disciplinary proceedings being brought, through to information in relation to matters where the investigation had not been completed, some of which had arisen during 2008.

(1) THE INTERNATIONAL GOVERNING BODIES' DELEGATION TO THE TIU OF RESPONSIBILITY FOR DECIDING WHAT TO DO WITH MATERIAL IN RELATION TO PAST POSSIBLE BREACHES OF INTEGRITY

142. As described above, in his evidence to the Panel, Mr Rees stated that: *"I have been asked whether the TIU had responsibility for matches that pre-dated its establishment and in relation to which allegations had suspicions had been raised. The responsibility was delegated to the TIU for issues arising from pre-TIU matches. This was not a formal responsibility, but seemed a sensible way forward"*[227]. Mr Rees subsequently told the Panel that *"the clear intention was that if something new came into the TIU in relation to old matches the TIU would deal with it as opposed to the tennis authorities who would previously have done so. It most certainly did NOT mean that we assumed or were given responsibility for examining, assessing, investigating or re- investigating everything that had been reported before January 1st, 2009"* [228].

143. The Panel understands[229] that the International Governing Bodies proceeded on the basis that they had delegated to the TIU responsibility for deciding what to do with the pre-TIU materials, including whether to investigate past possible breaches of integrity under the former rules or to use the materials for intelligence to focus or inform future investigations basis. Among other things:

143.1 This is the evidence that the International Governing Bodies have collectively given to the Panel.

143.2 The First Steps document provided in draft to the International Governing Bodies by Jeff Rees stated (in summary) that, in setting out the TIU's investigative priorities, the TIU would need to obtain from all relevant parties all material that they hold in respect of corruption in tennis (in addition to the materials relating to the 45 matches referred to in the Environmental Review).

143.3 When the ATP provided its briefing to Mr Rees, Gayle Bradshaw identified a matter concerning a specific player as not being complete. Gayle Bradshaw suggested that Mr Rees should speak with Paul Scotney and Peter Probert about that player. Mr Rees was then included in correspondence relating to match alerts that arose prior to 1 January 2009, with one of those alerts concerning that player referred to in paragraph 26.2 above.

143.4 The International Governing Bodies took no further action in relation to breaches of integrity from 1 January 2009, including in respect of matters that they had been dealing with in the months prior to then.

227 Emphasis in original.

228 Response of Jeff Rees to Notification given under paragraph 21 ToR.

229 Pending the consultation process between Interim and Final Reports.

144. In the Panel's present view, it was appropriate for the International Governing Bodies, having decided to hand over responsibility in relation to possible future breaches of integrity under the uniform TACP to the TIU with effect from 1 January 2009, to decide also:

144.1 To pass the existing materials in their possession at that time in relation to possible past breaches of integrity, to the TIU.

144.2 To delegate to the TIU responsibility for deciding what to do with the pre-TIU materials provided to it, in order to best safeguard the integrity of tennis.

145. Further it was appropriate, in the present view of the Panel, for the International Governing Bodies to decide to defer to the TIU's assessment, based on its delegated responsibility and expertise, as to whether any of the material that pre-dated the TIU's inception warranted further investigation or should be used as intelligence. As they set out in their representations described in paragraphs 9 and 10 above, the International Governing Bodies established the TIU precisely to make this type of assessment, and it was reasonable for them to consider that they should not then second-guess the TIU's decision-making.

146. In the present view of the Panel, it was appropriate for the International Governing Bodies to expect that the new TIU would (a) analyse the pre-TIU material to assess whether it contained usable evidence of past possible breaches of integrity or useful intelligence; (b) if warranted, use such evidence in an investigation of that possible breach; (c) store useful intelligence in an accessible form; and (d) if warranted, use intelligence to inform and focus the TIU's future work.

147. In the present view of the Panel, a clear statement to this effect would have been advisable, in a formal document setting out the TIU's mandate and responsibility. This would have helped ensure that there was no confusion over the terms upon which the tennis bodies had delegated responsibility to the TIU. This would have been particularly helpful in relation to the delegation of responsibility from the ATP to the TIU, given that the ATP had the largest volume of material to handover.

(2) THE DECISION TO PRIORITISE INVESTIGATION OF FUTURE POSSIBLE BREACHES OVER THE INVESTIGATION OF PAST POSSIBLE BREACHES BASED ON THE PRE-2009 MATERIALS RECEIVED BY THE TIU

148. The Panel addresses the approach taken to the material in relation to the 45 matches identified in the Environmental Review and the approach taken to the Arguello phone below. This Section deals with the other intelligence and material that existed and was provided to the TIU or Mr Rees prior to 1 January 2009.

149. In the Panel's present view[230], as a general matter, it is appropriate for a regulator to determine investigative priorities and it is reasonable to decide, based on a consideration of the specific circumstances presented, that it is more important to deal with what is presently happening than to devote resources to pursuing past breaches. When making this determination, it is also appropriate to consider whether information is stale, whether it has already been investigated, and the burden of pursuing matters under the applicable rules.

150. As described in paragraphs 17 and 59 above, Mr Rees informed the Panel that he conducted a risk assessment based on his review of the pre-TIU materials to determine the TIU's priorities. Mr Rees stated that, in his assessment, the pre-TIU materials were not *"fresh"* and *"supporting evidence would have been difficult to secure". Mr Rees further stated that "many of the old cases in the files supplied had already been investigated by ATP or WTA or Grand Slam Board"*[231].

151. As described in Section A above, both Mr Rees and the International Governing Bodies informed the Panel that the investigation of pre-2009 breaches of integrity would have had to have been conducted under the rules in force at the relevant time.

230 Pending the consultation process between Interim and Final Reports.

231 Response of Jeff Rees to Notification given under paragraph 21 ToR.

152. Mr Rees stated that he *"was told by lawyers that, by sorting out various arrangements with the four Governing Bodies, it would have been possible for the TIU to carry out investigations under the four separate sets of anti-corruption rules which applied before the UTACP. However, sorting out the procedures would have been time-consuming and not easy since the rules and procedures were all different. Legal opinion confirmed that the UTACP could not be used retrospectively"*. The Panel has not identified any written or recorded legal opinion but notes that Article K6 of the Uniform TACP expressly states that the Uniform TACP *"is applicable prospectively to Corruption Offenses occurring on or after the date that this Program becomes effective. Corruption Offenses occurring before the effective date of this Program are governed by the former rules of the Governing Bodies which were applicable on the date that such Corruption Offense occurred"*. Mr Rees further stated that *"the investigative powers under the old rules were not as strong as those under the Uniform Tennis Anti-Corruption Programme"*[232] and that *"Hybrid investigations involving pre-2009 rules x 4 and post 1st January, 2009, rules, would have been even more complex, but nevertheless possible"*[233].

153. The International Governing Bodies also stated that it would be difficult to investigate under the previous rules: *"as an example, the constraints imposed by the pre-2009 ATP integrity rules (under which the majority of such investigations would have been conducted) would make such investigations extremely challenging, and render it unlikely that additional evidence required could have been gathered"*[234]. The Panel understands that the primary constraint referred to by the International Governing Bodies was the fact that Covered Persons had the right under the ATP integrity rules to appeal a demand for information (such as telephone records and other information storage equipment). As is set out in Chapter 8, this right of appeal had been exercised by Davydenko in the Sopot Investigation. The ATP ultimately succeeded in that appeal but, by the time of the decision, the records sought by the ATP were said to no longer exist.

154. Mr Rees stated that, based on his assessment of the materials that the TIU had received by that point, he decided that the TIU's resources were best directed toward investigating breaches based on incoming intelligence rather than investigating past breaches based on these pre-TIU materials. Mr Rees informed the Panel, however, that this prioritisation did not preclude the TIU from investigating old matches in the light of any materials that the TIU was not in possession of at the time[235].

155. Whilst the Panel notes that Mr Rees had stated in the Environmental Review *"that an important duty of the General Manager/Chief Investigator in Option 2 would be that of using mature judgement to ensure all personnel in the unit focused primarily on the current and the relevant, rather than delving into events of years before to little purpose"*[236]. However, the Panel is concerned that there is no contemporaneous written record of Mr Rees' prioritisation decision following his appointment as Director of the TIU – which could have provided clarity as to, amongst other things, how the decision was made, precisely who was involved, what intelligence was considered, whether the prioritisation was regarded as broad guidance or a firm rule, and exactly when the TIU would investigate past breaches. Mr Rees did not document his *"risk assessment"* of materials that were provided to him for review, nor is there any contemporaneous record of how Mr Rees arrived at the decisions he made.

156. The Panel understands that cases that were not *"fresh"*, or cases that *"had already been investigated"* by the relevant governing body might well have been a low priority. The Panel has however seen no evidence that the TIU separated the cases that had been investigated, on the one hand, from those that had not been investigated or in respect of which the investigation was not complete, on the other hand. So far as the Panel has presently been able to identify, there were, as a matter of fact, no investigations of past breaches. The Panel has seen no evidence of any steps being taken by the TIU in respect of the matters that arose before or during 2008 that had not been investigated to completion by the relevant governing body, including the Player A v Player B matter.

232 Paragraph 63 above.

233 Paragraph 61 above.

234 Representations from the International Governing Bodies in response to their Paragraph 21 notification.

235 Response of Jeff Rees to Notification given under paragraph 21 ToR.

236 Environmental Review, paragraph 3.45.

157. As described above, Mr Rees stressed to the Panel that his recommendation in the Environmental Review, accepted by the International Governing Bodies, had been for the TIU to *"focus primarily"* on the *"current and the relevant, rather than delving into events of years before to little purpose"*. Accordingly, under the model proposed by Mr Rees, it was not envisaged that the TIU would reinvestigate matters from previous years or indeed reopen investigations that had been concluded. The Panel does not read the approach described in Option 2 of *"focusing primarily"* on *"the current and relevant"* as meaning that the TIU would not address matters where the investigation had not been completed as at the handover date of 1 January 2009, or matters that arose before or in 2008 that had not been investigated. The Panel presently considers that such matters appear current and relevant, and in any event the use of the word *"focus primarily"* does not exclude looking at other matters where appropriate.

158. In the Panel's present view, the need to conduct investigations under previous rules did not mean that such investigations were not possible where appropriate. Mr Rees stated that while it might have been *"time-consuming and not easy"*, *"it would have been possible for the TIU to carry out investigations under the four separate sets of anti-corruption rules which applied before the UTACP"*[237]. The Panel has seen no evidence of the TIU undertaking an analysis of the rules that existed prior to 1 January 2009 for the purpose of determining whether particular investigatory steps could have been undertaken. With regard to the fact that Covered Persons[238] would have had the right to appeal against a demand for information, the Panel notes that this does not necessarily mean that the TIU would have been unable to obtain information relating to pre-2009 breaches of integrity. It is possible that Covered Persons would have cooperated with a demand made by the TIU (as had, apparently, Vassallo Arguello in the context of the Sopot Investigation and the player referred to in paragraph 31.4 in response to a demand made by the ATP in early 2008). If a Covered Person had exercised his or her right of appeal, the TIU would have had to follow the appeal process that was set out in the ATP integrity rules. In this respect, and so to avoid a repeat of what happened in the Sopot Investigation, the TIU could have sought a preservation order.

159. Mr Rees informed the Panel that there was in fact *"no line drawn, in effect or by design, between the past and the future"*[239]. The Panel is presently concerned in the circumstances described above, however, that the TIU's prioritisation of the investigation of future over past breaches, in effect, led to insufficient analysis being done to evaluate whether it would be appropriate to investigate matters that had not previously been investigated to completion by the relevant International Governing Body, the material in relation to which had been provided to the TIU prior to 1 January 2009. While it cannot now be ascertained whether or not it would have proved possible to pursue much further the matters from 2008 that had not been investigated to completion by the relevant International Governing Body, it seems to the Panel that more should have been done to ascertain whether that was the case.

160. In particular, in the present view of the Panel, more should have been done by the TIU to assess whether investigatory steps should have been taken in relation to Player A. The ATP had specifically identified this matter as not being complete, and had suggested that the TIU speak with Peter Probert and Paul Scotney. There is no record of Mr Rees having had those discussions, nor is there a record of the TIU undertaking any analysis of the materials that it received from the Sopot Investigators in relation to this matter. In this regard, it is noted that John Gardner had identified the files relating to this matter as being key documents in the material provided to the TIU in March 2009. Also, there is no record of any steps being taken by the TIU following a further betting alert having been received in relation to the same player in October 2008. In the present view of the Panel, more should have been done to assess the information arising out of this alert given that: (a) the March alert relating to Player remained open; and (b) there was a link between those who had bet on the March match and the October match.

161. Mr Rees has informed the Panel that the reason why no steps were taken in relation to prior matches concerning Player A after 9 January 2009 was that the Player A v Player B match, and those prior other matches involving Player A, were

237 Statement of Jeff Rees (formerly TIU).

238 Defined in TACP 2018 as *"any Player, Related Person, or Tournament Support Personnel."*

239 Response of Jeff Rees to Notification given under paragraph 21 ToR.

included in the analysts' presentation entitled 'Tennis Investigations – Summary of Betting and Telecoms Analysis', as described in paragraph 42 above. As dealt with in paragraphs 104 - 114 above, Mr Rees stated that he believed that all the matches described in that presentation had been identified from the Vassallo Arguello phone material, and that that material was unusable. The Panel addresses this below. The TIU did further investigate Player A in relation to matches after 1 January 2009, as described in Chapter 10.

(3) THE APPROACH TO THE MATERIAL IN RELATION TO THE 45 MATCHES

162. In the Panel's present view[240], the TIU missed an opportunity, when it did not to its knowledge obtain the material in relation to the 45 matches that the Environmental Review stated raised *"concerns... that warrant[ed] further review"*[241] and when, as a result, it did not review the material in relation to those matches.

163. The material in relation to the 45 matches could possibly have been used, after further investigation, to commence disciplinary proceedings against suspected corrupt players and others in professional tennis. In any event, it constituted a body of intelligence in respect of a significant number of players who were suspected of having engaged in match fixing, which would have been useful in focusing future investigations. Based on evidence seen by the Panel, some of the players identified in the material in relation to the 45 matches were also involved in suspicious activities after the TIU was established in 2009. It may well have been that there was insufficient admissible material to investigate and bring disciplinary proceedings against those players in relation to suspected past offences, but at least the material could have been used as intelligence to monitor and investigate those players in a targeted and proactive way.

164. In the present view of the Panel, since Mr Rees as Director of the TIU understood that the 45 matches raised concerns that warranted further review and had the intention to conduct that further review once the TIU commenced its work[242], it was not appropriate for Mr Rees as Director of the TIU to abandon his efforts to acquire the material in relation to the 45 matches, and thereby abandon any review of or investigation based on the 45 matches. As Mr Rees stated, *"it is clear from the Environmental Review, and the First Steps document that... [he] had every intention of reviewing those 45+ matches and staffing the TIU accordingly"*[243]. In the present view of the Panel, even if Mr Rees became frustrated or lost patience or believed that the material was being intentionally kept from the TIU by the Sopot Investigators[244], that did not justify Mr Rees' abandonment of efforts to acquire the material in relation to the 45 matches and he ought as Director of the TIU to have done more to have sought to obtain them. As noted in paragraph 84.2 above, Mr Rees assumed "that those 45 matches had been drawn to the BHA's attention by Betfair and/or other gambling operators, and others might also have come from ATP or other tennis records". Therefore, in the Panel's present view, if the Sopot Investigators were not forthcoming with the material as Mr Rees has suggested, Mr Rees should have done more to obtain details from what he believed to be the original source(s). Mr Rees stated that the TIU was by that point *"busy with active threats and working on them was producing positive results"*[245], but that that did not mean that the TIU was too busy to deal with material in relation to the 45 matches, if the TIU had it [246]. In the Panel's present view, the TIU should have pursued further the material in relation to the 45 matches at that time and thereafter until a clear answer had been obtained.

165. Mr Rees told the Panel that the failure to review or use the material in relation to the 45 matches was based on an understanding that the Sopot Investigators had not provided the material to the TIU[247]. Mr Rees told the Panel that he made a number of efforts as Director of the TIU to obtain the material in relation to the 45 matches from the Sopot

240 Pending the consultation process between Interim and Final Reports.

241 Paragraph 14 above.

242 Response of Jeff Rees to Notification given under paragraph 21 ToR.

243 Response of Jeff Rees to Notification given under paragraph 21 ToR.

244 Statement of Jeff Rees (formerly TIU); Response of Jeff Rees to Notification given under paragraph 21 ToR.

245 Statement of Jeff Rees (formerly TIU).

246 Response of Jeff Rees to Notification given under paragraph 21 ToR.

247 Response of Jeff Rees to Notification given under paragraph 21 ToR.

Investigators analysts[248], before becoming frustrated and losing patience and ceasing to do so[249]. The Panel has seen no contemporaneous record of these requests. The Panel has seen no contemporaneous record of Mr Rees' frustration with having not received the material in relation to the 45 matches or of his reasons for discontinuing efforts to obtain that material from the Sopot Investigators or other sources.

166. In fact, material in relation to the 45 matches had been provided to the TIU on two occasions:

166.1 First, as noted in paragraph 40, Mr Rees as Director of the TIU received a presentation on 9 January 2009 from Mr Phillips which contained information in respect of 24 of the 45 matches. Mr Rees' evidence is that he believed that this presentation related to the Vassallo Arguello phone material, not the 45 matches. In the Panel's present view, that mistaken belief was understandable, at least initially, as the presentation did indeed start with references to the Vassallo Arguello phone material. However, Mr Rees had come to the meeting expecting to be told about the 45 matches. The Panel would have expected Mr Rees at that point to have asked Mr Phillips why he was being told about the Vassallo Arguello phone material, and not about the 45 matches. If Mr Rees had asked that question, Mr Phillips could have explained that Mr Rees was being told about 24 of the 45 matches, which Mr Phillips had identified from Betfair data independently of, and before seeing, the Vassallo Arguello phone material. Mr Phillips could have also explained that, when he later saw the phone material, two of the matches he had identified were corroborated by the deleted texts (with one of those two matches also corroborated by the contacts list on the phone) and that a further two matches were corroborated by the contacts list. Mr Phillips could have explained that he structured his presentation to begin with those matches and that the other 20 of the 24 matches were not corroborated by the Vassallo Arguello phone material and were based only on his betting analysis.

166.2 Second, as noted in paragraph 46, the TIU received material in relation to the 45 matches in a box given to the TIU in March 2009. Specifically, it is the Panel's present understanding that the 45 matches were identified in the document titled 'Tennis Investigations – General Logistical Issues', which was contained in the box the Sopot Investigators provided to the TIU. While the Panel accepts that that document was a draft and did not expressly state that it referred to the 45 matches mentioned in the Environmental Review, the Panel would have expected Mr Rees at that point to have sought clarification from the Sopot Investigators as to what it was that had been provided, and which of it related to the 45 matches.

167. The Panel also notes that Mr Rees appears, as set out above, to have disregarded the information relating to Player A that was set out in the presentation given by Mark Phillips and John Gardner. In response to the fact that two further matches relating to Player A were identified in the presentation, Mr Rees stated: *"the IRP are very aware of my position in relation to the matches and players referred to in that presentation."* Again, therefore, if Mr Rees had asked Mr Phillips about the matches in which Player A had been involved, Mr Phillips could have explained that those matches had been identified independently from the Vassallo Arguello materials. It appears to the Panel that potentially useful information was therefore disregarded as a consequence of Mr Rees' stated belief that all of the material presented to him at the meeting on 9 January 2009 was linked to the Vassallo Arguello phone material.

248 Response of Jeff Rees to Notification given under paragraph 21 ToR.

249 Statement of Jeff Rees (formerly TIU); Response of Jeff Rees to Notification given under paragraph 21 ToR.

(4) THE APPROACH TO THE VASSALLO ARGUELLO PHONE MATERIAL

168. The decision by the TIU not to use the Vassallo Arguello phone material for investigative or intelligence purposes was, in the Panel's present view[250], not appropriately developed because it was made without the steps that the Panel would have expected to have been taken to ascertain (a) the full facts as to how the material was obtained and (b) the legal position on use of the material.

169. Mr Rees' explanation as to the TIU's approach to the Vassallo Arguello phone material is set out in paragraphs 126 to 130 above. Mr Rees' beliefs about why the Vassallo Arguello phone material should not be used were, according to Mr Rees, based entirely on a single meeting that he states he attended with Mr Gunn and Mr Beeby at the end of 2007[251]. This was when Mr Rees had been appointed to undertake the Environmental Review, and over a year before the inception of the TIU, and at a point when Mr Rees said it was not in his contemplation that he would subsequently become Director of the TIU[252]. Mr Rees stated that both Mr Gunn and Mr Beeby told him at that meeting that, when the Sopot Investigators interviewed Vassallo Arguello in a hotel in Eastern Europe, Vassallo Arguello had been *"conned"* into handing over his telephone to them, that his telephone was provided to experts in mobile telephone technology who were *"hiding"* in another room in the hotel, and that Vassallo Arguello did not know the contents of his phone would be downloaded [253]. Mr Rees stated that, in addition to the words used, the *"conspiratorial way"* in which Mr Gunn and Mr Beeby talked about what had been done gave Mr Rees *"the impression that they were proud that the material had been obtained in the manner that it had and that they were trying to impress me"*[254].

170. Mr Rees stated he did not ask any questions about the manner in which the Vassallo Arguello phone material had been obtained. Specifically:

170.1 Mr Rees stated he did not ask any questions at the meeting in late 2007 with Mr Gunn and Mr Beeby as to how the material was obtained. Mr Rees stated that he did not do so because he *"did not want to be associated with any wrong doing or give any impression that [he] was condoning what had been done"*[255].

170.2 Mr Rees stated he did not as Director of the TIU seek any additional information at the 9 January 2009 presentation, when he thought that he was hearing only about Vassallo Arguello phone material, regarding the manner in which the phone material had been obtained. Mr Rees reported that *"the presenters did not say how they had obtained the Arguello material, but [he] of course knew"*[256]. Mr Rees further stated that he did not ask questions then because he did not feel that he needed any clarification on the method for the obtaining of the Vassallo Arguello phone material, as it had been told to him in 2007[257].

171. The Panel would have expected Mr Rees, as Director of the TIU confronted with the presentation on 9 January, not only to have asked why he was not hearing about the 45 matches, but also to have raised his concern as to how the Vassallo Arguello phone material had been obtained, and to have sought full factual details at this point.

172. Mr Rees told the Panel that, *"well before"* the 9 January 2009 presentation, he had made Mr Ewan aware *"that the BHA had acted illegally in respect of Arguello phone material"*[258]. Accordingly, by at least 9 January 2009, when he was presented with material that he believed related to the Vassallo Arguello phone material, Mr Rees had, according to his

250 Pending the consultation process between Interim and Final Reports.

251 Statement of Jeff Rees (formerly TIU).

252 Response of Jeff Rees to Notification given under paragraph 21 ToR.

253 Statement of Jeff Rees (formerly TIU).

254 Response of Jeff Rees to Notification given under paragraph 21 ToR.

255 Statement of Jeff Rees (formerly TIU).

256 Statement of Jeff Rees (formerly TIU).

257 Jeff Rees, 'Further material provided in response to questions from Adam Lewis QC', provided to the Panel on 9 May 2017.

258 Statement of Jeff Rees (formerly TIU).

evidence, made the decision that the material had been illegally obtained.

173. Before making his determination that the Vassallo Arguello phone material should not be used, the evidence indicates that Mr Rees as Director of the TIU did not take any of the following steps that the Panel would expect to have been taken by the TIU:

173.1 Confer with the Sopot Investigators, who were at the interview of Vassallo Arguello to learn more about the manner in which the material had been obtained or to determine if his understanding of how the material had been obtained was accurate.

173.2 Confer with Mr Bradshaw, who was also there at the interview of Vassallo Arguello to learn more about the manner in which the material had been obtained or to determine if his understanding of how the material had been obtained was accurate.

173.3 Follow up with Mr Gunn or Mr Beeby after the meeting at the end of 2007 to learn more about the manner in which the material had been obtained or to determine if his understanding of how the material had been obtained was accurate.

173.4 Ask questions at the 9 January 2009 presentation that Mr Rees believed to concern the Vassallo Arguello phone material regarding the manner in which the material had been obtained.

173.5 Ask questions after having received materials from the Sopot Investigators in March 2009 about the manner in which the Vassallo Arguello phone material had been obtained.

173.6 Confer with the ATP or legal counsel to obtain advice regarding whether the Vassallo Arguello phone material had been obtained in violation of the ATP rules.

173.7 Confer with legal counsel to determine whether the Vassallo Arguello phone material had been obtained in violation of the law of any applicable jurisdiction.

173.8 Confer with legal counsel to determine whether the use of the Vassallo Arguello phone material would expose the TIU or its employees to the threat of legal consequences.

173.9 Confer with legal counsel to determine whether the Vassallo Arguello phone material would be admissible in any disciplinary proceeding or could be appropriately used for intelligence purposes.

173.10 Document the analysis or decision on the Vassallo Arguello phone material.

174. In the Panel's present view, it would not have expected a decision to be made by the TIU as to the Vassallo Arguello phone material without further investigation into the factual circumstances of the obtaining of the material. While the Panel understands that Mr Rees as Director of the TIU felt that the reputation and credibility of the TIU were vital and would be damaged by the use of material obtained from a player's phone unethically and in breach of the rules, the Panel considers that Mr Rees ought first to have established the facts before concluding that the material had been so obtained and so would damage the TIU's reputation and credibility. It also seems to the Panel that the full factual circumstances would have been necessary to undertake a proper weighing of the extent to which such damage would really occur.

175. On the record before it, the Panel does not believe that it can, or that it is necessary to, resolve exactly what (if anything) was or was not said by Mr Gunn or Mr Beeby to Mr Rees in late 2007. The Panel does not therefore resolve that factual dispute, and nothing that it says should be taken as doing so. It presently seems to the Panel that, even if Mr Rees had been told what he said he was told by Mr Gunn and Mr Beeby, Mr Rees should not, given the potential importance of the Vassallo Arguello phone material, have relied solely on that without further investigating the manner in which the material was obtained before making his determination that the material could not be used in any way.

176. It presently seems to the Panel that Mr Rees should have endeavoured to gather additional facts as to how the material had been obtained. If, for example, it were the case that the player provided his phone to be taken away in the expectation that it would be examined, or examined by experts, then he may have provided consent for what then transpired, even if he did not know the precise form that the examination would take, or that it was possible to find deleted data, or that data could be downloaded. So too, it would have been useful to know whether the player was told that he was required under the rules to provide his phone and did so unwillingly, or was asked to do so and did so willingly.

177. Likewise, in the Panel's present view, it would not have expected a decision to be made by the TIU as to the Vassallo Arguello phone material without consultation with the ATP or legal counsel to determine whether the Sopot Investigators had violated the ATP TACP in the way that they had obtained the material. While the ATP rules allowed for a written process under which a player can be required to provide a phone, and while that process was not followed, that does not necessarily mean that a player cannot simply consent to provide a phone, without any breach of the ATP rules.

178. In the Panel's present view, it would also have expected further investigation of the view that the Sopot Investigators' obtaining of the Vassallo Arguello phone material violated criminal law and that the TIU could be subjected to criminal prosecution or allegations of criminal wrongdoing by using the material. The Panel would not have expected that view to be taken without appropriate legal advice on the legality of the obtaining of the material. Such legal advice could have included cross-jurisdictional issues on the legality of the obtaining of the material obtained in Poland; in circumstances covered by the ATP TACP, which was governed by Delaware law; by investigators based in England but acting on behalf of the ATP pursuant to the ATP TACP, which was governed by Florida law; and where the ultimate tribunal was the Court of Arbitration for Sport in Switzerland. The Panel would also have expected appropriate legal advice to have been taken on whether the material could be used in disciplinary proceedings or whether use of the material as intelligence to obtain other evidence would have precluded any use of the later-obtained material under any 'fruit of the poisoned tree' doctrine.

179. The Panel recognises that Mr Rees disagrees. As set out above, Mr Rees has stated that he concluded that the Vassallo Arguello phone material had been obtained unethically, unlawfully, and in violation of the ATP rules. As also set out above, this allegation is denied by Messrs Gunn, Beeby, Kirby and Scotney.

180. Mr Rees has also stated that if he had undertaken further investigation, at the time, into precisely how the Vassallo Arguello phone material was obtained, he would have come to the same conclusion that the use of the material could affect the TIU's credibility and reputation or that the material was obtained in violation of law and in violation of the ATP rules. Mr Rees stated that the materials provided to him by the Panel in the course of this Review reinforced the beliefs he held at the time[259]. In particular, Mr Rees noted:

180.1 *"No written demand for examination of information storage material was sent to Arguello, although the need for such a demand had been raised by the Sopot investigators"*[260].

180.2 *"No individual can recall the precise words used in requesting the telephone... save that it was allegedly (my word and underline) clear to the player that the telephone was to be examined"*[261]. Mr Rees suggested that it was not in fact *"clear to the player that the telephone was to be examined"* because Gayle Bradshaw's recollection was that *"...I think Arguello would have understood that his phone was going to be looked through but not that anything was going to be downloaded from it"*[262].

180.3 *"The interview transcript records that Arguello was told that the investigators could ask, and Arguello should hand over his phone"*[263].

180.4 *"The oral request allegedly made to Arguello was not recorded on the transcript of the interview and not recorded electronically, unlike the other things apparently said to him"*[264].

259 Response of Jeff Rees to Notification given under paragraph 21 ToR.

260 Response of Jeff Rees to Notification given under paragraph 21 ToR.

261 Response of Jeff Rees to Notification given under paragraph 21 ToR.

262 Response of Jeff Rees to Notification given under paragraph 21 ToR.

263 Response of Jeff Rees to Notification given under paragraph 21 ToR.

264 Response of Jeff Rees to Notification given under paragraph 21 ToR.

180.5 *"The inaccuracy in the summary of the interview of Arguello"*[265]. Mr Rees stated that *"*[t]*he 'summary of the interview' is blatantly misleading and inaccurate. It states that the interview was tape recorded, and that Arguello 'willingly handed over his two mobile phones for examination'"*[266]. However, *"the handing over* [of the phone] *was not part of the tape-recorded interview"*[267]. *"Further, what is on the interview suggests that Mr Arguello handed over his phone because he was told that he had to"*[268]. Also, the summary does not identify Mr Bradshaw as present, when he was[269].

180.6 *"Ben Gunn himself has informed the IRP that he had a specific concern that the forensic examination of Arguello's phone had taken place without the player's knowledge"*[270].

180.7 *"A different process was adopted when Davydenko was seen by the BHA investigators. Davydenko, unlike Arguello, was represented by lawyers who would not have allowed breaches of the law or tennis's rules by the BHA investigators"*[271].

181. In addition, Mr Rees has relied on the following as further support for his contention that he would have come to the same conclusion had he undertaken further investigation, at the time, into precisely how the Vassallo Arguello material was obtained:

181.1 Mr Rees stated that *"the absence of records, even handwritten records, of what was actually said, reinforces what Gunn and Beeby told me in December, 2007 viz. that Arguello was 'conned' into handing over his phone and that he did not know the contents had been downloaded. The whole thing smacks of a conspiracy to hack Arguello's phone"*[272].

181.2 Mr Rees noted that the summary of the interview of Vassallo Arguello's coach, Leonardo Olguin, stated that Mr Olguin *"also willingly handed over his mobile phone for examination"*, when in fact Mr Olguin had given the investigators his phone the previous day, not during the interview[273].

181.3 Mr Rees noted that Bill Babcock, *"a US lawyer, was equally frustrated at the way BHA had behaved and seriously concerned about the potential damage to the TIU's reputation if the Arguello texts were used in any prosecution"*[274].

182. Mr Rees has also asserted that reliance should not be placed on the summary of interview of Vassallo Arguello to support the evidence given by Mr Bradshaw, Mr Kirby and Mr Beeby[275]. According to Mr Rees, *"For the record, had I enquired further as to the facts of the Arguello phone being handed over voluntarily and the BHA had been able to produce only the summary of interview, I would not have accepted that as sufficient. I would have wanted sight of the transcript of interview in order to establish the precise words used by the BHA and by Arguello. That the words were NOT in the transcript and the words that were in the transcript implied that he had been told he was under an obligation to hand the phone over, would have confirmed to me that Arguello had been 'conned' into handing over his phone, and that the summary was a part of a cover up"*[276].

183. Mr Rees has further stated that *"given the above, what I was told at the time, namely that Arguello had been conned into handing over his phone, has been amply confirmed. The material strongly suggests he was falsely told he had to hand it over and was given the impression that it would only be subjected to a physical examination on the spot. Critically, he was never told that the investigators would, and his consent was not sought to, download the contents"*[277].

265 Response of Jeff Rees to Notification given under paragraph 21 ToR.
266 Response of Jeff Rees to Notification given under paragraph 21 ToR.
267 Emphasis in original. Response of Jeff Rees to Notification given under paragraph 21 ToR.
268 Response of Jeff Rees to Notification given under paragraph 21 ToR.
269 Response of Jeff Rees to Notification given under paragraph 21 ToR.
270 Response of Jeff Rees to Notification given under paragraph 21 ToR.
271 Response of Jeff Rees to Notification given under paragraph 21 ToR.
272 Emphasis in original. Response of Jeff Rees to Notification given under paragraph 21 ToR.
273 Response of Jeff Rees to Notification given under paragraph 21 ToR.
274 Response of Jeff Rees to Notification given under paragraph 21 ToR.
275 Response of Jeff Rees to Notification given under paragraph 21 ToR.
276 Response of Jeff Rees to Notification given under paragraph 21 ToR.
277 Response of Jeff Rees to Notification given under paragraph 21 ToR.

184. Mr Rees has contended that *"the fact is that I did not seek the information because there was nothing unclear or ambiguous in what I was told by Ben Gunn and Paul Beeby. It is astonishing that the IRP are criticising me for not seeking and uncovering evidence that what I was told by Ben Gunn and Paul Beeby was true"*[278].

185. Mr Rees also stated that *"if only the BHA investigators had followed ATP procedures I believe they could have obtained the Arguello material legitimately and I would have been happy to investigate it to the nth degree"*[279]. Mr Rees stated that it *"was frustrating for me that the BHA's actions made it difficult to investigate Arguello's activities, and those of others implicated in the Arguello material, fully"*[280].

186. In the Panel's present view, even if Mr Rees would have come to the same position had he reviewed relevant material at the time, he should have reviewed that material at the time to reach a conclusion that was based on an understanding of the facts, rules and law.

187. This is not to say that Mr Rees's ultimate decision regarding the use of the Vassallo Arguello phone material, had he obtained an understanding of the facts, rules, and law, might not have been that the materials should not be used. Nor is it to say that, had that been his ultimate determination based on the facts, rules and law, that would necessarily have been inappropriate. It might well have been that the material should not have been used and it might well be that deciding not to use the materials would have been appropriate, such as to maintain the credibility and reputation of the TIU. But, particularly in light of the potential significance of that material in pursuing the work that the TIU was established to perform, the Panel presently considers that Mr Rees did not adequately pursue the factual and legal understanding needed to reach a sufficiently informed determination that the Vassallo Arguello phone material should not be used.

(5) THE TIU'S TREATMENT OF THE PRE-2009 MATERIALS FOR INTELLIGENCE PURPOSES

188. The International Governing Bodies and Mr Rees both stated that they intended for all intelligence of historical allegations to be added to a database so that it could be used to focus, or at least to inform, future investigations. The Panel agrees that this was the correct approach. At the least, the pre-TIU materials should have been used as intelligence to inform and focus future investigations.

189. It appears that only a small portion of the intelligence predating 2009, however, was loaded onto iBase (the TIU's intelligence database). It presently appears to the Panel that Mr Ewan's approach in the early years of the TIU may have been to resort to paper records rather than to computer records in relation to pre-TIU events[281]. This system would not have permitted the use of intelligence to focus and inform future investigations.

190. Mr Rees explained that he *"expected Mr Ewan to populate the database in accordance with the intelligence function"*[282], that the *"job of populating the new TIU database and record system with intelligence/information, past and present, fell* [to Mr Ewan]*"*[283], and that *"*[t]*o the extent that data was not entered or, once entered, was not retrieved for use in particular cases, this would have been Bruce Ewan's responsibility"*[284]. Unfortunately, the Panel is not able to collect Mr Ewan's evidence on these matters.

278 Response of Jeff Rees to Notification given under paragraph 21 ToR.
279 Response of Jeff Rees to Notification given under paragraph 21 ToR.
280 Statement of Jeff Rees (formerly TIU).
281 Pending the consultation process between Interim and Final Reports.
282 Response of Jeff Rees to Notification given under paragraph 21 ToR.
283 Response of Jeff Rees to Notification given under paragraph 21 ToR.
284 Response of Jeff Rees to Notification given under paragraph 21 ToR.

191. It is unfortunate that most of the pre-TIU materials were not added to a database, so that, even if the TIU did not investigate past breaches, the materials related to the past would have been easily accessible on the database and able to be used as intelligence for future investigations. The Panel would have expected Mr Rees, as Director of the TIU, and aware as he was of the contemplation of all parties that the materials should be used as intelligence, to have sought confirmation that this had been done, rather than merely delegating the task to Mr Ewan.

192. In the assessment of the Panel, this was a missed opportunity that compromised the effectiveness of the TIU. A body of intelligence existed in respect of a reasonably large number of players who were suspected of having engaged in match fixing. Based on evidence seen by the Panel, a number of those players were also involved in suspicious activities after the TIU was established in 2009. It may well have been that there was insufficient admissible material to investigate and bring disciplinary proceedings against those players in relation to suspected past offences but, at the least, the material should have been fully used as intelligence to monitor and investigate those players on a proactive basis, in the future.

The System in place for the Protection of Integrity in Tennis and the TIU's operation of the Tennis Integrity Environment (2009 - 2016)

Independent
Review
of Integrity
in Tennis

10

PART ONE: THE TIB AND THE TACP

1. In this Chapter 10, the Independent Review Panel (the "Panel") describes and analyses the current system for the protection of integrity in tennis and its development and operation since 2009.

2. In the first of the five parts in this chapter, the Panel addresses the governance structure and the rules themselves, examining (a) the role and functioning of the Tennis Integrity Board ("TIB"); and (b) the TACP, including the process by which it has developed to its current state. The remaining four parts address the investigatory process carried out by the TIU; the disciplinary process carried out by the Professional Tennis Integrity Officers ("PTIOs"), Administrative Hearing Officers ("AHOs") and the Court of Arbitration for Sport ("CAS"); the TIPP; and lastly the Code of Conduct for Officials.

3. Pursuant to the Terms of Reference, the Panel addresses whether these matters were dealt with effectively and appropriately. As set out in Chapter 1[1] it is not the Panel's role in the Review to assess the legality of any decision or action by reference to any standard or test of contract, tort, irrationality or unreasonableness, and it should not be taken as doing so. Rather, the Panel identifies below the relevant evidence it has received, including witness statements and contemporaneous documents, and sets out its present[2] opinion as to the effectiveness and appropriateness of relevant actions at the time, based on its appreciation of the available evidence of the contemporaneous facts and circumstances. Also, as set out in Chapter 1[3], on occasion is not possible or appropriate to seek to resolve direct conflicts in the evidence.

Q 10.1 Are there other matters of evaluation in relation to the role and functioning of the Tennis Integrity Board and Tennis Anti-Corruption Programme, that are relevant to the Independent Review of Integrity in Tennis, and that should be addressed in the body of the Final Report, and if so which, and why?

Q 10.2 Are there any aspects of the Panel's provisional conclusions in relation to role and functioning of the Tennis Integrity Board and Tennis Anti-Corruption Programme are incorrect, and if so which, and why?

1 Chapter 1, Section C.

2 Pending the consultation process between Interim and Final Reports.

3 Chapter 1, Section C.

A THE TENNIS INTEGRITY BOARD (TIB)

4. The TIB sits at the head of the current system for the protection of integrity in tennis. Its role is described below.

(1) FORMATION OF THE TIB

5. The Environmental Review made no recommendation as to which body should oversee the TIU and the system for the protection of integrity. Instead, the Environmental Review proposed two options to the International Governing Bodies: a "*steering group made up of representatives from each* [International Governing Body]" or the choice of one of the International Governing Bodies to fulfil the role[4].

6. In or around September 2008, the decision was made to follow the first course, and the TIB was formed.

7. As part of this process, the ATP, ITF, WTA and Grand Slam Committee (which became the Grand Slam Board) drafted an agreement creating and defining the role of the TIB (the "TIB Charter"). Whilst the TIB Charter was drafted as an agreement, it was never executed by the International Governing Bodies[5]. However, from the contemporaneous documents, the TIB has operated on the basis that a TIB Charter exists.

(2) MANDATE OF THE TIB

The TIB Charter

8. The TIB Charter grants the following powers and duties to the TIB:

"The TIB shall have the authority to investigate and prosecute Corruption Offenses and responsibility for the appointment, oversight, strategic direction and financial management of a Tennis Integrity Unit ("TIU") operating across all Governing Bodies. The TIB shall be responsible for:

8.0.1 The appointment and removal of the Director of the TIU;

8.0.2 The appointment and removal of one or more AHOs;

8.0.3 The approval of an annual budget for the TIU and the annual audit of its financial affairs;

8.0.4 The making of recommendations to the Governing Bodies regarding changes to the [TACP]; and

8.0.5 Such other matters relating to the integrity of professional tennis as the TIB deems fit"[6].

9. The TIB Charter[7] stipulates that *"the TIB and the TIU will be funded in equal quarter shares by each governing body, unless otherwise agreed"*[8]. The "Governing Bodies" are defined in the TIB Charter as the ATP, the ITF, the WTA and the Grand Slam Committee[9].

4 Ben Gunn and Jeff Rees, 'Environmental Review of Integrity in Professional Tennis' (May 2008), page 28, paragraphs 3.53-3.54.

5 This was confirmed by the International Governing Bodies during the representation process.

6 TIB Charter, paragraph 2.

7 An executed version of the TIB Charter has not been disclosed to the Panel.

8 TIB Charter, paragraph 3c.

9 TIB Charter, paragraph 1.

10. In 2012, the ITF, ATP, WTA, TA, FFT, AELTC and USTA entered into a service agreement in relation to the TIU (the "ITF-TIU Service Agreement"), which altered the funding arrangements for the TIU. Rather than equal quarter shares for each governing body, TIU funding is now shared as follows: the ATP (25%), WTA (25%), ITF (10%), AELTC (10%), FFT (10%), TA (10%) and USTA (10%).

References to the TIB in the TACP

11. The TACP provides that the TIB is responsible for appointing *"one or more independent AHOs"*[10]. The TACP further states that the TIB has discretion to extend an AHO's term beyond the default term of two years[11]. Since the TACP's inception, the TIB has appointed four AHOs to hear integrity-related charges, as discussed further in Chapter 10, Part 3.

12. The TIB has the additional authority under the TACP to report corruption offenses that violate non-sporting laws and regulations to the competent administrative, professional, or judicial authorities[12].

(3) MEMBERS OF THE TIB

13. The TIB Charter states that the TIB *"shall be comprised of four Members acting in their capacity as representatives of the Governing Bodies"*[13]. The four representatives are the President of the ITF, the Executive Chair of the ATP, the Chair and CEO of the WTA and one of the GSC (now GSB) Chairs[14].

14. As of the date of publication, the TIB consists of Philip Brook (Chairman of the AELTC); David Haggerty, (President of the ITF); Chris Kermode (Executive Chairman and President of the ATP); and Steve Simon (Chief Executive Officer of the WTA).

15. The historic members of the TIB have been as follows:

    15.1 For the ITF: Francesco Ricci Bitti and Juan Margets (acting).

    15.2 For the ATP: Adam Helfant, Flip Galloway and Brad Drewett.

    15.3 For the WTA: David Shoemaker (acting – also PTIO at the same time) and Stacey Allaster.

    15.4 For the GSB: Tim Phillips.

16. One member of the TIB is appointed to act as TIB Chair. The Chair position is held on a rotating basis (as agreed at a TIB meeting on 1 July 2011). It appears that the Chair holds the role for the entire calendar year and acts as Chair at any TIB meetings. The following members of the TIB have been appointed as Chair since the TIB's inception: Stacey Allaster (WTA, 2011 and 2014); Philip Brook (AELTC/GSB, 2012 and 2016); Francesco Ricci Bitti (ITF, 2013); and Chris Kermode (2015). The current Chair of the TIB is David Haggerty of the ITF[15].

10 TACP (2018), F.1.a.

11 TACP (2018), Section F.1.b.

12 TACP (2018), Section H.3.

13 TIB Charter, paragraph 3.a.

14 TIB Charter, paragraph 3.a.

15 TIB, Meeting Decision and Action Sheet, 18 November 2016.

(4) TIB MEETINGS

Frequency

17. The TIB Charter states that at least four regular meetings of the TIB are to be held in each calendar year. In July 2011, the TIB resolved that meetings should *"take place at three monthly intervals"*[16]. The location and timing of TIB meetings is at the TIB's discretion[17]. The TIB Charter further states that a special meeting of the TIB can be held upon written demand of at least two members[18].

18. The Panel has seen records of TIB meetings, between its inception and the end of 2016, on the following occasions:

    2009 (1) – July
    2010 (1) – July
    2011 (2) – July and October (though note paragraph 19 below)
    2012 (3) – April (conference call), July and October
    2013 (2) – July and October
    2014 (3) – April, July and October
    2015 (3) – April, June and October (conference call)
    2016 (4) – February, May, September and November

19. In respect of 2011, the International Governing Bodies have informed the Panel that there were in fact four meetings of the TIB (either in person or via teleconference)[19].

Voting

20. The TIB Charter dictates that acts of the TIB require a unanimous vote of its members[20]. Voting may take place without a meeting if all TIB members consent in writing to the adoption of a resolution authorising the action[21].

Attendees

21. TIB meetings are typically attended in person or by conference call by the four TIB members, the TIU Directors and representatives of the PTIOs.

22. In the period from 2009 to 2012, TIB meetings were typically attended by one or two PTIOs. From 2013 onwards, it appears to have become standard practice for TIB meetings to be attended by a majority or all of the four PTIOs.

23. In 2016, PTIO and TIB meetings were combined into one single meeting. In previous years, PTIOs had attended TIB Meetings, but TIB members were not privy to PTIO meetings.

Agenda

24. TIB meetings typically cover the following topics: matters arising from the previous meeting, TIU staffing/resources, TIU budget, TIU operational update, TIU activity indicators, matters relating to the TACP and/or TIPP and any other business.

16 TIB, Meeting Decision and Action Sheet, 1 July 2011.
17 TIB Charter, paragraph 4a.
18 TIB Charter, paragraph 4b.
19 Response of GSB to Notification given under paragraph 21 ToR.
20 TIB Charter, paragraph 4e.
21 TIB Charter, paragraph 4f.

25. Verbatim notes of TIB meetings are not kept. However, after each TIB meeting it is typical for the Director of the TIU to prepare a summary of the meeting or for a copy of the agenda to be amended to reflect the decisions that were taken and individual responsibilities for any action points that arose. The "decision sheet" is then circulated as part of the meeting pack for the next TIB meeting.

TIU Resourcing & Budget

26. The TIU's resourcing and budgetary requirements (including any consideration of the same by the PTIOs or TIB) are considered at TIB meetings. The manner in which the TIB has responded to resource requests is addressed further in Chapter 10, Part 2. Relevant here, the TIB has approved all staffing/resource and budgetary requests proposed by the Director of the TIU.

TIU Operational Update

27. This agenda item typically consists of a report by the Director of the TIU as to the TIU's workload. The current position of particular investigations is also discussed, and details of such are sometimes shared with the TIB.

TIU Activity Indicators

28. This agenda item typically consists of a report by the Director of the TIU as to the *"performance measures which could assist Board members in assessing TIU activities"*. In 2011, Jeff Rees proposed to the TIB six key indicators of TIU performance[22]:

    28.1 suspicious betting patterns reported;

    28.2 concerns by players/Covered Persons;

    28.3 interviews conducted;

    28.4 additions to no credentials register;

    28.5 tournaments attended by the TIU; and

    28.6 information reports created.

29. The TIB agreed to these six performance measures and requested that the TIU provide it with reports on them every three months[23]. Whilst the Panel has seen some performance measure reports disclosed to the TIB (and the PTIOs), the Panel has not seen all the reports and is only aware of these reports by reference to them in the TIB decision sheets.

TIU Strategic Review

30. TIB minutes from 2012 to 2014 include reference to a TIU Strategic Review performed initially by Jeff Rees and subsequently by Nigel Willerton.

31. The first iteration of a "Strategic Review and Development Plan" was prepared by Jeff Rees in or around July 2012. The document was then revised and recirculated in or around December 2012, July 2013, October 2013, and July 2014.

22 TIB, Meeting Decision and Action Sheet, 1 July 2011.

23 TIB, Meeting Decision and Action Sheet, 1 July 2011.

32. The Strategic Review and Development Plan identified 17 objectives for the TIU's operations, broken down into the following categories: investigations (ten objectives), prevention (three objectives), education (two objectives), and ancillary (two objectives). For example, the plan identified *"increase TIU ability to have an immediate 'on the ground' response worldwide"* as an objective in the investigation category and *"raise awareness of officials of the threat of gambling related corruption"* as an objective in the education category.[24] Each objective was assigned to a TIU member with responsibility for progressing the objective, together with key dates for achieving the objective and the current status as at the date of circulation.

TACP

33. Proposed and actual amendments to the TACP (including any consideration of the same by the PTIOs or TIB) are considered and approved at TIB meetings. The material changes and proposals are addressed in paragraphs 123 to 124 below.

TIPP

34. This agenda item typically consists of an update on the number of Covered Persons who have completed the TIPP, with a breakdown for each International Governing Body.

24 TIU Strategic Development Plan, July 2014.

AOB

35. Other topics addressed at TIB meetings have included, among other things:

35.1 media strategy in respect of reporting the TIU's work[25];

35.2 TIU guidance provided to officials in respect of courtsiders[26];

35.3 individuals included on the TIU's "no-credentials list"[27];

35.4 TIU guidance provided to Covered Persons in respect of approaches via social media;

35.5 model rules for International Federations in respect of betting and anti-corruption (as drafted by the Association of Summer Olympic International Federations)[28];

35.6 Jeff Rees' retirement and Nigel Willerton's appointment;

35.7 appointment of AHOs;

35.8 Data Protection Act analysis[29]; and

35.9 a proposal of Sports Integrity Monitoring[30].

36. The Panel notes that in June 2015 consideration was given to the possibility of the TIU being subject to an audit. The view expressed by Nigel Willerton was that through the regular PTIO and TIB meetings, together with the reports submitted and subsequent notices issued and hearings held, the TIU was accountable and monitored. Following discussions among the TIB, PTIOs and Nigel Willerton, it was unanimously agreed that no review of the TIU was required at that time.

(5) WAS THE CREATION OF AND THE APPROACH TAKEN BY THE TIB APPROPRIATE?

37. In the Panel's present[31] assessment, the decision to establish the TIB as an entity with oversight of the operation of the TACP and TIU was appropriate following the Environmental Review. That said, in the Panel's opinion it would have been preferable for the TIU to have been supervised by a body that was independent from the International Governing Bodies.

38. With regard to the functioning of the TIB, whilst the records of TIB meetings are not recorded verbatim:

38.1 On the evidence reviewed it is the Panel's assessment that the TIB has acted within the confines of its authority.

38.2 The Panel has seen no evidence to suggest that the TIB or any International Governing Body tried unduly or inappropriately to influence the TIU's decision making. The International Governing Bodies told the Panel[32] that the TIB had sought to strike an appropriate balance between exercising its strategic oversight function whilst simultaneously providing the TIU with the operational independence merited by that expertise and experience.

25 TIB, Meeting Decision and Action Sheet, 3 July 2009.
26 TIB, Meeting Decision and Action Sheet, 2 July 2010.
27 TIB, Meeting Decision and Action Sheet, 3 July 2009.
28 TIB, Meeting Decision and Action Sheet, 9 May 2012.
29 TIB, Meeting Decision and Action Sheet, 9 July 2013.
30 TIB, Meeting Decision and Action Sheet, 28 February 2016.
31 Pending the consultation process between Interim and Final Reports.
32 During the representation process.

38.3 The Panel has seen no evidence to suggest that any International Governing Body sought to exert undue or inappropriate influence over any other International Governing Body.

38.4 The TIB has acted appropriately in considering and ultimately approving budgetary requests made by the TIU. Further, from the evidence provided to the Panel, the International Governing Bodies have consistently asked the Director of the TIU to actively confirm whether the TIU had sufficient resources.

39. Further, and as addressed in Chapter 10, Part 2, it is the Panel's assessment that there have been some elements of the way in which the TIU has operated since 2009 that have been ineffective. On the face of the TIB Charter, the performance of the TIU could be regarded as ultimately falling within the responsibility of the TIB. As stated above, the TIB Charter provides that *"the TIB shall have the authority to investigate and prosecute Corruption Offenses and responsibility for the appointment, oversight, strategic direction and financial management of a Tennis Integrity Unit ("TIU") operating across all Governing Bodies"*.

40. The International Governing Bodies have informed the Panel that the TIB Charter document was never executed, and that in any event the TIB did broadly discharge the responsibilities set out in paragraph 2 of the Charter by, for example, approving the TIU budget, recommending changes to the TACP, and appointing AHOs.

41. The Panel's present assessment is that as a matter of practice the approach taken by the TIB has been to afford the TIU extensive practical independence. The International Governing Bodies told the Panel that they believe the most appropriate approach is for the TIB to delegate full authority and operational independence to the TIU for investigating breaches of integrity. The International Governing Bodies also told the Panel that they have relied on the experience and judgment of the TIU.[33] In the Panel's opinion, however, the unfortunate consequence has been that the TIU has not been subject to the degree of "oversight and strategic direction" that could have been exercised by a body independent from the International Governing Bodies. The lack of such independence did not therefore lead to undue or inappropriate interference with the TIU, but it did lead to a loss of opportunity for more active and effective supervision.

42. If the TIB had been independent of the International Governing Bodies, it would, in the Panel's opinion, have been less constrained. While it cannot of course be predicted whether an independent TIB might have taken steps that would have addressed any of the issues later discussed in Chapter 10, Part 3, the TIB's "hands off" approach, however much properly driven by the circumstances, did not address them.

43. By way of example, in the Panel's present opinion, and as addressed in Chapter 10, Part 2, the TIU should have commenced its work with at least the level of resources identified in Mr Rees' Option 2 of the Environmental Review, which was a lower level of resources than had been suggested in Option 1. The TIB's approach relied on the judgment of Mr Rees as the TIU's Director of Integrity, and it did not seek to question his decision to start with even fewer resources than had been identified in Option 2. The International Governing Bodies have told the Panel that, following the unanimous decision to employ Mr Rees, it would have been inappropriate to seek to implement a structure that was inconsistent with his recommendation. They have also told the Panel that, given the conclusion in Mr Rees and Mr Gunn's Environmental Review that tennis was *"not institutionally or systematically corrupt"*, the smaller of the two options did not seem unreasonable at the time. In addition, the International Governing Bodies have noted that the resources assigned to the nascent TIU were in any case greater than those previously assigned to integrity protection.[34] But in the view of the Panel, an independent TIB might have raised with the TIU why the resources at the outset fell below what had been identified in Option 2.

33 Response of GSB to Notification given under paragraph 21 ToR.

34 Response of GSB to Notification given under paragraph 21 ToR.

44. As set out above, the TIB has not interfered with the TIU, and on each occasion that the TIU has requested resources, the TIB granted the request; indeed, the TIB has routinely asked the TIU's Director of Integrity to confirm that the TIU had sufficient resources. As such, the issue is not one of the TIB interfering with the TIU, nor one of the TIB failing to provide adequate support to the TIU. Rather, the issue is that the TIB's approach, arising out of its lack of independence, has meant that it may have been less willing to challenge the assessments presented to it by the TIU, and to provide input on strategic direction, than an independent TIB would have been.

45. With regard to the audit discussed in 2015, in the Panel's assessment, it would have been a positive step for such an audit to take place.

B THE TENNIS ANTI-CORRUPTION PROGRAMME (TACP)

46. At the centre of the current system for the protection of integrity in tennis are the rules applied in the operation of the system, contained in the TACP. Those rules comprise the substantive prohibitions against the commission of Corruption Offenses in tennis (as defined in the TACP), the obligations to report knowledge of Corruption Offenses and to cooperate with investigations into Corruption Offenses, and the procedures used to investigate and disciplinarily prosecute Corruption Offenses.

47. The Governing Bodies implemented the TACP in 2009 to "(i) maintain the integrity of tennis, (ii) protect against any efforts to impact improperly the results of any match and (iii) establish a uniform rule and consistent scheme of enforcement and sanctions applicable to all professional tennis Events and to all Governing Bodies"[35].

48. The Panel's proposed recommendations for change to the TACP are addressed in Chapter 14. In the section below, the Panel addresses: (a) the process by which the original TACP was drafted; (b) the key provisions of the current TACP; (c) the process by which the TACP has been amended; (d) the amendments that have been made to the TACP in the years 2009 to 2017; and (e) the proposed amendments to the TACP in the years 2009 to 2017 that were not adopted.

49. The IRP notes that the uniform corruption rules as first drafted were titled the Uniform Tennis Anti-Corruption Program (UTACP). In 2014, the "Uniform" element was dropped from the title. For consistency, the uniform rules have been referred to as the TACP throughout this chapter.

(1) DRAFTING OF THE 2009 TACP[36]

50. Concurrent with the commission of the Environmental Review, a Regulatory Review of Governing Body Regulations and Codes of Conduct was commissioned by tennis stakeholders[37]. As discussed in Chapter 8[38], at a meeting of the International Governing Bodies in Shanghai on 15 November 2007, it was unanimously agreed that a full regulatory review, to include assessment of all rule provisions (Regulatory Review), should proceed. The group responsible for the Regulatory Review was to consist of David Shoemaker (WTA), Mark Young (ATP), and Bill Babcock (ITF), as well as Stephen Busey of Smith Hulsey and Busey and Jamie Singer of Onside Law. This group included representatives of the WTA, the ATP, and the ITF who were qualified lawyers, and additionally included both US and European (UK) legal advisers.

51. In addition to the legal advisers involved in the drafting process, the Regulatory Review team also consulted Ben Gunn and Jeff Rees to obtain their comments on the proposed rules. And the first Recommendation that they made in the Environmental Review was for all of the International Governing Bodies to approve the uniform rules, as and when they were finalised[39].

52. The Regulatory Review team was tasked with ultimately producing the first set of uniform rules to apply across the whole sport. The process of producing the uniform rules was started in late 2007, as stated above, and extended through 2008, culminating in the UTACP coming into force on 1 January 2009.

53. The process was two-fold: (i) to review the existing rules by which tennis was governed; and (ii) to reform and redraft these rules into a consistent and uniform programme.

54. With this in mind, the Regulatory Review team attempted to address any rule inconsistencies between the International Governing Bodies' various Codes of Conduct, with a view to standardising these in line with either the most appropriate of the existing rules, or by drafting new provisions.

55. Whilst consideration was given to harmonising the various governing body Codes of Conduct, the Regulatory Review team modelled the uniform TACP on the ATP's Anti-Corruption Program that had been adopted in 2005. In doing this, consideration was given to the difficulties the ATP had experienced in investigating allegations related to the 2008 Davydenko-Arguello match under the ATP TACP. In particular, the 2009 TACP – unlike the ATP's Anti-Corruption

35 TACP (2018), Section A.

36 The Panel has reviewed the contemporaneous documents in respect of the drafting of the TACP.

37 Ben Gunn and Jeff Rees, 'Environmental Review of Integrity in Professional Tennis' (May 2008), page 7, paragraphs 1.27 to 1.28.

38 Chapter 8, Section B(1).

39 Ben Gunn and Jeff Rees, 'Environmental Review of Integrity in Professional Tennis' (May 2008), page 7, paragraph 1.31.

Program – included provisions requiring players to comply with information requests from the TIU and did not permit players to refuse a proper evidence request from the TIU. The TACP also expanded the scope of "Covered Person[s]" and broadened the information that investigators could request from individuals suspected of committing, or having knowledge of, corruption offenses.

56. The drafting and consultation process continued from May 2008 through to December 2008. It should also be noted that during this period, the Regulatory Review team also took responsibility for drafting the TIB Charter. Ian Ritchie of the AELTC was included in the discussions of the Regulatory Review team and was also invited to provide comments on the final draft of the TACP. The TIB Charter is addressed further at paragraphs 8-9 above.

(2) THE CURRENT POSITION UNDER THE TACP

Covered Persons under the TACP

57. The TACP states that all "Players", *"Related Persons"*, and *"Tournament Support Personnel"* are bound by, and must comply with, the provisions of the TACP[40]. Collectively, Players, Related Persons, and Tournament Support Personnel are defined as *"Covered Persons"*[41]. These individuals are defined by their relation to an *"Event"*, which includes the following competitions: Grand Slams (excluding junior competitions), ATP World Tour Finals, ATP World Tour Masters 1000, ATP World Tour 500, ATP World Tour 250, ATP Challenger Tour Tournaments, WTA Finals, WTA Elite Trophy, WTA Premier and International Tournaments, WTA 125K Series, ITF Pro Circuit Tournaments, Davis Cup, Fed Cup, Hopman Cup, and Olympic Tennis[42]. The TIB must authorise any new tournament introduced by any one of the International Governing Bodies[43].

57.1 A "Player" is defined as *"any player who enters or participates in any Event"*[44].

57.2 A "Related Person" is defined broadly to include *"any coach, trainer, therapist, physician, management representative, agent, family member, tournament guest, business associate or other affiliate or associate of any Player, or any other person who receives accreditation at an Event at the request of the Player or any other Related Person"*[45].

57.3 "Tournament Support Personnel" include *"any tournament director, Officials, owner, operator, employee, agent, contractor or any similarly situated person and ATP, ITF and WTA staff providing services at any Event and any other person who received accreditation at an Event at the request of Tournament Support Personnel"*[46].

58. Officials are, as of 1 January 2017, expressly included in "Tournament Support Personnel". As discussed in Chapter 10, Part 5, the Panel has been informed that the TIU, based on their understanding of the previous iteration of the TACP, may not have considered officials to be been Covered Persons.

40 TACP (2018), Section C.1.
41 TACP (2018), Section B.6.
42 TACP (2018), Section B.9.
43 TACP (2018), Appendix 1.
44 TACP (2018), Section B.18.
45 TACP (2018), Section B.22.
46 TACP (2018), Section B.27.

59. The legal enforcement of the TACP against Covered Persons is a matter of contract law. At the beginning of each season, and when they sign up for entry in an Event, Players agree in writing to be bound by the TACP. Likewise, when Tournament Support Personnel sign up for engagements at an event, they agree to be bound by the TACP. And when Related Persons receive accreditation to an Event, they must sign a written agreement stating their agreement to be bound by the TACP[47].

60. As TIU Investigators have noted, there is a gap in the coverage for Related Persons because many people who qualify as Related Persons never sign a written agreement agreeing to be bound by the TACP. Accordingly, there may be many people who qualify as Related Persons (including coaches, trainers, and others who support a Player) but do not fall under the TACP unless they have signed an agreement to be bound.

61. An additional complication is ensuring that the TACP can be enforced against a Related Person or member of Tournament Support Personnel who agrees to be bound by the TACP for purposes of receiving accreditation for, or working at, one Event, when the suspected Covered Offense relates to a different Event. The wording of the agreement must be sufficient and effective to cover other Events, so that, for example, if a Related Person received accreditation for a Grand Slam event and then assisted in the commission of a Corruption Offense at an ATP Challenger event, the TACP would permit enforcement against the Related Person for the offence at the Challenger event.

62. The TACP requires Players to inform certain Related Persons, even those who never agree in writing to be bound by the TACP, that they must comply with the TACP. Specifically, the TACP states that Players are required to inform Related Persons *"with whom they are connected"* of the provisions of the TACP *"and shall instruct Related Persons to comply with the Program"*[48].

63. The TACP also makes each Player responsible for any Corruption Offense committed by a Related Person connected to the Player, but only if the Player (i) had knowledge of the Corruption Offense and failed to report such knowledge pursuant to his or her reporting obligations under the TACP or (ii) assisted in the commission of the Corruption Offense[49]. Given that a *"Related Person",* by definition, need not have signed an agreement to be bound by the TACP and need not even have been made aware of the TACP, Players can thus be held liable for Corruption Offenses committed by a Related Person even where there is limited ability under the TACP to pursue charges for the same offenses against the Related Person.

Offenses under the TACP

64. The TACP sets out 11 *"Corruption Offenses"*. It states that a Corruption Offense has been committed by a Covered Person even if the money, benefit, or consideration was never actually paid or received; rather, the solicitation or offering of the money, benefit, or consideration is sufficient to constitute a Corruption Offense[50]. *"Consideration"* is defined as *"anything of value except for money"*[51].

47 The ATP Official Rulebook, 2018, Section 6.10.D;

48 TACP (2018), Section C.2.

49 TACP (2018), Section E.1.

50 TACP (2018), Section E.2.

51 TACP (2018), Section B.4.

65. The 11 *"Corruption Offenses"* may overlap, but can be categorised as follows:

Prohibitions against wagering and promoting wagering on tennis

66. The TACP prohibits all Covered Persons from *"directly or indirectly, wager[ing] or attempt[ing] to wager on the outcome or any other aspect of any Event or any other tennis competition"*[52]. It also states that Covered Persons shall not *"solicit or facilitate"* other persons' wagering on the outcome of any tennis match. The TACP defines *"soliciting"* and *"facilitating"* broadly, to include *"display of live tennis betting odds on a Covered Person website; writing articles for a tennis betting publication or website; conducting personal appearances for a tennis betting company; and appearing in commercials encouraging others to bet on tennis"*[53]. Accordingly, the TACP prohibits Players, Related Persons, and Tournament Support Personnel not only from betting on tennis, but also from promoting or encouraging betting on tennis in any forum. It also apparently places a strict prohibition on Covered Persons against engaging with betting companies for any purpose that promotes or encourages betting on tennis.

Prohibitions against sale of accreditations for purpose of promoting Corruption Offenses

67. The TACP prohibits all Covered Persons from accepting money or other benefits for the provision of an accreditation to an Event if the accreditation was provided "*for the purpose of facilitating a commission of a "Corruption Offense" or "leads, directly or indirectly, to the commission of a Corruption Offense"*[54]. Accordingly, the mere sale of an accreditation does not violate the TACP. Instead, the sale of an accreditation becomes a violation of the TACP only when the purpose of the sale was to facilitate a Corruption Offense or when the sale results "directly or indirectly" in the commission of a Corruption Offense.

Prohibitions against contriving events or influencing a Player's best efforts

68. The TACP includes prohibitions against match fixing or spot fixing for betting or other related purposes and against contriving the results of a match. In four separate prohibitions, the TACP forbids Covered Persons from "directly or indirectly": (a) *"contriv[ing] or attempt[ing] to contrive the outcome or any other aspect of any Event"*[55]; (b) *"solicit[ing] or facilitat[ing] any Player to not use his or her best efforts in any Event"*[56]; (c) *"solicit[ing] or accept[ing] any money, benefit or Consideration with the intention of negatively influencing a Player's best efforts in any Event"*[57]; or (d) *"offer[ing] or provid[ing] any money, benefit or Consideration to any other Covered Person with the intention of negatively influencing a Player's best efforts in any Event"*[58]. The TIU and the International Governing Bodies have interpreted these provisions as not applying to instances where a Player deliberately loses a match for his or her own reasons unconnected with betting or other corrupt purposes. Nor have the provisions been interpreted as applying to a failure to provide best efforts absent the Player receiving some benefit in exchange for failing to give best efforts or contriving some aspect of the Event. Nevertheless, a Player's failure to use best efforts is, in and of itself, prohibited by the International Governing Bodies' respective Codes of Conduct.

52 TACP (2018), Section D.1.a.
53 TACP (2018), Section D.1.b.
54 TACP (2018), Section D.1.c.
55 TACP (2018), Section D.1.d.
56 TACP (2018), Section D.1.e.
57 TACP (2018), Section D.1.f.
58 TACP (2018), Section D.1.g.

Prohibitions against providing Inside Information

69. The TACP prohibits Covered Persons from, *"directly or indirectly", "solicit[ing] or accept[ing] any money, benefit or Consideration, for the provision of any Inside Information"*[59] or *"offer[ing] or provid[ing] any money, benefit or Consideration to any other Covered Person for the provision of any Inside Information"*[60]. *"Inside Information"* is defined as *"information about the likely participation or likely performance of a Player in an Event or concerning the weather, court conditions, status, outcome or any other aspect of an Event which is known by a Covered Person and is not information in the public domain"*[61]. According to the TACP, information is in the public domain if it *"has been published or is a matter of public record or can be readily acquired by an interested member of the public and/or...has been disclosed according to the rules or regulations governing a particular event"*[62]. The TACP does not, by its terms, prohibit the provision of Inside Information by a Covered Person absent the promise or acceptance of money or other benefits. Disclosure of Inside Information becomes a Corruption Offense only when the tipper of the Inside Information is intended to receive some benefit for the tip or when the tippee promises some benefit for the Inside Information to a Covered Person.

Prohibition against obtaining information or benefits from Tournament Support Personnel

70. The TACP prohibits Covered Persons from *"offer[ing] or provid[ing] any money, benefit or Consideration to any Tournament Support Personnel in exchange for any information or benefit relating to a tournament"*[63]. This prohibition is not limited to benefits or information obtained for betting purposes; it applies to prohibit any Player or Related Person from compensating Tournament Support Personnel in exchange for any benefit, no matter how small or inconsequential, or any information, whether Inside Information or not. Indeed, the prohibition appears to apply without regard for the Covered Person's purpose in acquiring the benefit or information.

Prohibitions against betting company sponsorships

71. The TACP expressly prohibits Covered Persons from being *"employed or otherwise engaged by a company which accepts wagers on Events"*[64]. This prohibition extends to prohibit Covered Persons from obtaining sponsorship from a betting company. As noted above, the TACP also prohibits Players from otherwise promoting betting, including by posting betting odds on their websites or by making personal appearances for a betting company[65].

Prohibitions against misconduct by Officials

72. The TACP clearly prohibits Players from match fixing or spot fixing. It is less clear, however, whether these prohibitions would reach any efforts by Officials to delay in entering, or to manipulate, scores for corrupt purposes.

59 TACP (2018), Section D.1.h.
60 TACP (2018), Section D.1.i.
61 TACP (2018), Section B.14.
62 TACP (2018), Section B.13.
63 TACP (2018), Section D.1.j.
64 TACP (2018), Section D.1.k.
65 TACP (2018), Section D.1.b.

Reporting obligations under the TACP

73. As described above, the TACP generally requires Players, Related Persons, and Tournament Support Personnel to report their knowledge or suspicions regarding the commission of Corruption Offenses. All Covered Persons must report approaches by persons who seek to influence the outcome of any Event or who seek Inside Information, as well as suspected Corruption Offenses. In addition, Players are required to report suspected failures by other Players, Related Persons, and Tournament Support Personnel to report their own knowledge or suspicion of Corruption Offenses. A violation of these reporting obligations is a *"Corruption Offense"* under the TACP and may result in charges and penalties.

Obligation to report corrupt approaches

74. The TACP requires that all Covered Persons report to the TIU when they have been *"approached by any person who offers or provides any type of money, benefit or consideration"* to the Covered Person, when that compensation is offered or provided to *"(i) influence the outcome or any other aspect of any Event, or (ii) provide Inside Information"*[66]. Covered Persons must report any such incident to the TIU *"as soon as possible"*.

Obligation to report Corruption Offenses

75. All Covered Persons must also report to the TIU when they "[know] *or* [suspect]" that any other Covered Person has committed a Corruption Offense[67]. Covered Persons again must report any *"knowledge or suspicion"* to the TIU *"as soon as possible"*[68].

Players' continuing obligations to report

76. Under the TACP, Players have a continuing obligation to report new knowledge or suspicions regarding Corruption Offenses to the TIU, even if the Player has already reported his or her *"prior knowledge or suspicion"*[69]. The TACP does not impose a similar continuing obligation to report on Related Persons and Tournament Support Personnel.

Amnesty

77. The TACP provides amnesty to Covered Persons who commit Corruption Offenses in limited circumstances. Specifically, the TACP states that reporting is a defence against a Corruption Offense charge, but only if (a) the Covered Person *"promptly reports"* the Corruption Offense to the TIU and (b) the Covered Person *"demonstrates that such conduct was the result of an honest and reasonable belief that there was a significant threat to the life or safety of such person or any member of such person's family"*[70]. The mere reporting of a Corruption Offense and/or compliance with a TIU investigation does not shield a Covered Person from liability for a Corruption Offense.

Substantial assistance

78. Nevertheless, the TACP provides that an AHO may reduce a Covered Person's period of ineligibility *"if the Covered Person has provided substantial assistance to the PTIO or the TIU that results in the discovery or establishing of a corruption offense by another Covered Person"*[71]. In other words, while a Covered Person cannot receive amnesty from self-reporting absent proof that his or her conduct resulted from duress, the Covered Person may receive a reduced penalty from assisting in the investigation or prosecution of a Corruption Offense against another Covered Person.

66 TACP (2018), Section D.2.a.i, 2.b.i.
67 TACP (2018), Section D.2.a.ii, 2.b.ii.
68 TACP (2018), Section D.2.a.ii, 2.b.ii.
69 TACP (2018), Section D.2.a.iv.
70 TACP (2018), Section E.4.
71 TACP (2018), Section H.6.

Investigative Powers of the TIU

79. The TACP confers a number of investigatory powers on the TIU that it can use to investigate potential Corruption Offenses.

Interviews

80. The TACP provides that the TIU shall have the power to conduct initial and follow-up interviews with Covered Persons at its discretion[72].

81. The TACP provides that the interview(s) *"shall be recorded"* and *"shall be used for transcription and evidentiary purposes"* (and *"retained by the TIU for a minimum of 3 years"*)[73].

Provision of evidence at hearings

82. The TACP provides that "[a]ll Covered Persons must cooperate fully with investigations conducted by the TIU including giving evidence at hearings"[74]. This provision effectively confers on the TIU the power to compel Covered Persons to attend (and give evidence at) hearings

Demands

83. The TACP defines a *"Demand"* as *"a written demand for information issued by the TIU to any Covered Person"*[75].

84. The TACP provides that *"*[i]*f the TIU believes that a Covered Person may have committed a Corruption Offense, the TIU may make a Demand to any Covered Person to furnish to the TIU any information regarding the alleged Corruption Offense"*[76]. This information includes but it not limited to:

84.1 "records relating to the alleged Corruption Offense (including, without limitation, itemized telephone billing statements, text of SMS messages received and sent, banking statements, Internet service records, computers, hard drives and other electronic information storage devices)"[77]; and

84.2 "a written statement setting forth the facts and circumstances with respect to the alleged Corruption Offense"[78].

85. The TACP states that *"*[t]*he Covered Person shall furnish such information immediately, where practical to do so, or within such other time as may be set by the TIU. Any information furnished to the TIU shall be (i) kept confidential except when it becomes necessary to disclose such information in furtherance of the prosecution of a Corruption Offense, or when such information is reported to administrative, professional, or judicial authorities pursuant to an investigation or prosecution of non-sporting laws or regulations and (ii) used solely for the purposes of the investigation and prosecution of a Corruption Offense"*[79].

72 TACP (2018), Section F.2.a.
73 TACP (2018), Section F.2.a.iii.
74 TACP (2018), Section F.2.b.
75 TACP (2018), Section B.8.
76 TACP (2018), Section F.2.c.
77 TACP (2018), Section F.2.c.
78 TACP (2018), Section F.2.c.
79 TACP (2018), Section F.2.c.

Appointment of Anti-Corruption Hearing Officers

86. The TACP provides that *"[t]he TIB shall appoint one or more independent AHOs, who shall be responsible for (i) determining whether Corruption Offenses have been committed, and (ii) fixing the sanctions for any Corruption Offense found to have been committed"*[80].

87. The TACP further provides that *"AHOs shall serve a term of two years, which may thereafter be renewed in the discretion of the TIB"*[81].

Commencement of Proceedings under the TACP

88. Once the TIU's investigation is complete, the PTIOs must decide whether to commence disciplinary proceedings. Under the TACP, *"if a PTIO concludes that a Corruption Offense may have been committed, the PTIO shall refer the matter and send the evidence to the AHO"*[82].

89. If the PTIOs refer a matter to the AHO, the TACP provides that they shall send a Notice[83] to each Covered Person alleged to have committed a Corruption Offense setting out the following[84]:

    89.1 the Corruption Offense(s) alleged to have been committed and the specific sections of the TACP alleged to have been infringed;

    89.2 the factual background upon which the allegations are based;

    89.3 the potential sanctions provided for by the TACP;

    89.4 the Covered Person's entitlement to have the matter determined by the AHO at a hearing; and

    89.5 that if the Covered Person wishes to dispute the PTIO allegations, the Covered Person must submit a written request to the AHO for a hearing as soon as possible, but in any event within 14 business days of the date of receipt of the Notice[85]. If the Covered Person fails to file a written request for a hearing within the requisite timeframe, he or she shall be deemed[86]:

        89.5.1 to have waived his or her entitlement to a hearing;

        89.5.2 to have admitted that he or she has committed the Corruption Offense(s) specified in the Notice;

        89.5.3 to have acceded to the potential sanctions specified in the Notice; and

        89.5.4 the AHO shall promptly issue a Decision confirming the commission of the Corruption Offense(s) alleged in the Notice and ordering the imposition of sanctions (after requesting and giving due consideration to a written submission from the PTIO on the recommended sanction).

80 TACP (2018), Section F.1.a.

81 TACP (2018), Section F.1.b.

82 TACP (2018), Section F.4. The details of the referral process are discussed further in Chapter 10, Part 3.

83 Defined as a "Written notice sent by the PTIO to a Covered Person alleged to have committed a Corruption Offense". TACP (2018), Section B.16.

84 TACP (2018), Section G.1.a.i-iv.

85 TACP (2018), Section G.1.b.

86 TACP (2018), Section G.d.i-iv.

90. Upon receiving a Notice, a Covered Person must direct any response to the AHO with a copy to the PTIO. A Covered Person can respond in one of three ways[87]:

90.1 Admit the Corruption Offense and accede to the imposition of sanctions, in which case no hearing is conducted. As noted above, the TACP provides that an AHO should then promptly issue a Decision confirming the Corruption Offense(s) in the Notice and ordering the imposition of sanctions which shall be determined by the AHO after requesting and giving due consideration to a written submission from the PTIO on the recommendation of sanction.

90.2 Deny the Corruption Offense and have the AHO determine the charge, and if the charge is upheld, the sanctions, at a hearing[88] (conducted in the manner set out at paragraphs 93-102 below).

90.3 Admit the Corruption Offense(s) specified in the Notice, but dispute and/or seek to mitigate the sanctions specified in the Notice. Either a request for a hearing or a written submission solely on the issue of the sanction must be submitted simultaneously with the Covered Person's response to the Notice. If no hearing is requested, the AHO shall promptly issue a Decision confirming the commission of the Corruption Offense(s) specified in the Notice and order the imposition of sanctions, after giving due consideration to the Covered Person's written submission (if any) and any response submitted by the PTIO.

Provisional Suspension of a Covered Person

91. The TACP provides[89] that a PTIO may make an application to the AHO for a provisional suspension of the Covered Person if the PTIO determines that one of the two following conditions are met: (i) the Covered Person has failed to comply with a Demand or delayed or obstructed, without reasonable justification, compliance with a Demand or purported to comply with a Demand through the provision of any object or information that has been tampered with, damaged, disabled or otherwise altered from its original state, (ii)(a) there is a likelihood that the Covered Person has committed a Corruption Offense punishable by permanent ineligibility; (b) in the absence of a provisional suspension, the integrity of tennis would be undermined; and (c) the harm resulting from the absence of a provisional suspension outweighs the hardship of the provisional suspension on the Covered Person. In addition, if a provisional suspension is imposed and a Covered Person requests a hearing, if that hearing is not commenced within 60 days from the date on which the Covered Person requests a hearing, the Covered Person may apply to the AHO for the provisional suspension to be lifted[90].

Additional Investigation requested by the AHO

92. The TACP provides[91] that "the AHO may, at any time prior to issuing a Decision, request that an additional investigation be conducted into any matter reasonably related to the alleged Corruption Offense. If the AHO requests such an additional investigation, the TIU shall conduct the investigation in accordance with the AHO's directions and shall report the findings of that investigation to the AHO and the Covered Person implicated in the alleged Corruption Offense at least ten days prior to the Hearing. If the Covered Person wishes to object to, or raise any issues in connection with, such additional investigation, he or she may do so by written submission to the AHO".

87 TACP (2018), Section G.1.c.i-iii.

88 Conducted in accordance with TACP Section G.2.

89 TACP (2018), Section F.3.a.

90 TACP (2018), Section F.3.

91 TACP (2018), Section G.1.h.

Conduct of AHO Hearings

Confidentiality

93. The TACP provides that AHO *"[h]earings shall be conducted on a confidential basis"*[92].

Location

94. The TACP provides that *"[u]nless the AHO orders otherwise for good cause shown by a party, each Hearing shall take place in either Miami, Florida, USA or London, England, as determined by the AHO"*[93].

Attendance at an AHO Hearing

95. The TACP provides that *"[t]he Covered Person shall have the right (i) to be present and to be heard at the Hearing and (ii) to be represented at the Hearing, at his or her expense, by legal counsel"*[94].

96. Instead of appearing at the AHO hearing, Covered Persons may choose to provide written submissions for consideration by the AHO[95].

97. The TACP further provides that *"[i]f requested by the Covered Person, the PTIO shall arrange for an interpreter to attend the Hearing, at the PTIO expense"*[96].

98. The TACP states that *"[t]he TIB as well as PTIO members shall be permitted to attend all hearings, in person or by audio or video conference"*[97].

Procedures followed

99. The TACP provides that *"[t]he procedures followed at the Hearing shall be at the discretion of the AHO, provided that the Hearing shall be conducted in a fair manner with a reasonable opportunity for each party to present evidence (including the right to call and to question witnesses), address the AHO and present his, her or its case"*[98].

Recording/Transcription

100. The TACP provides that *"[t]he PTIO shall make arrangements to have the Hearing recorded or transcribed at the PTIO expense"*[99].

Provision of witness testimony

101. The TACP provides that *"[w]itness testimony presented in person or by video conference is acceptable"*[100].

Admissibility of evidence

102. The TACP states that *"[t]he AHO shall not be bound by any jurisdiction's judicial rules governing the admissibility of evidence. Instead, facts relating to a Corruption Offense may be established by any reliable means, as determined in the sole discretion of the AHO"*[101].

Burden and Standard of Proof

103. The TACP places the burden of proof on the PTIOs to establish whether a Corruption Offense has been committed[102].

92 TACP (2018), Section G.2.a.
93 TACP (2018), Section G.2.a.
94 TACP (2018), Section G.2.b.
95 TACP (2018), Section G.2.b.
96 TACP (2018), Section G.2.d.
97 TACP (2018), Section G.2.f.
98 TACP (2018), Section G.2.c.
99 TACP (2018), Section G.2.d.
100 TACP (2018), Section G.2.e.
101 TACP (2018), Section G.3.c.
102 TACP (2018), Section G.3.a.

104. The TACP states that the standard of proof "shall be whether the PTIO has established the commission of the alleged Corruption Offense by a preponderance of the evidence"[103].

AHO Decisions

105. The TACP provides that *"[o]nce the parties have made their submissions, the AHO shall determine whether a Corruption Offense has been committed"*[104]. The AHO shall, after considering any submissions made by the parties on the subject, also fix the sanction if Section H of the TACP specifies a range of possible sanctions for the Corruption Offense found to have been committed[105].

Format and Issuing of a Decision

106. The TACP provides that *"[t]he AHO shall issue a Decision in writing as soon as possible after the conclusion of the Hearing"*[106]. The Decision shall be sent to the parties and shall set out and explain the AHO's findings, any applicable sanction and any applicable right of appeal[107].

Finality of Decision

107. The TACP states that *"[s]ubject only to (i) section F.3.d and (ii) the rights of appeal under Section I of this Program, the AHO's Decision shall be the full, final and complete disposition of the matter and will be binding on all parties"*[108].

Publication of Decision

108. The TACP provides that *"[i]f the AHO determines that a Corruption Offense has been committed, the TIB will publicly report the Decision, unless otherwise directed by an AHO"*[109].

Sanctions under the TACP

109. The TACP grants an AHO discretion to impose sanctions on all Covered Persons. However, different provisions (and therefore sanctions) are applicable for Players and other types of Covered Persons.

110. With respect to a Player, an AHO may impose the following sanctions under the TACP[110]:

110.1 a fine of up to $250,000, plus an amount equal to the value of any winnings or other amounts received by the Player in connection with a Corruption Offense;

110.2 ineligibility from participation in any event sanctioned by any Governing Body for up to three years; and

110.3 with regard to certain offenses under the TACP, an ineligibility period up to a maximum of permanent ineligibility.

103 TACP (2018), Section G.3.a.
104 TACP (2018), Section G.4.a.
105 TACP (2018), Section G.4.a.
106 TACP (2018), Section G.4.b.
107 TACP (2018), Section G.4.b.i-iii.
108 TACP (2018), Section G.4.d.
109 TACP (2018), Section G.4.d.
110 TACP (2018), Section H.1.a.

111. With respect to a Related Person or Tournament Support Person, an AHO may determine the following sanctions under the TACP[111]:

111.1 a fine of up to $250,000, plus an amount equal to the value of any winnings or other amounts received by the Covered Person in connection with a Corruption Offense;

111.2 ineligibility from participation in any Sanctioned Events for a period of not less than one year; and

111.3 with regard to certain offenses under the TACP, ineligibility from participation in any Sanctioned Events for a maximum period of permanent revocation of such credentials and access.

Appeals under the TACP

112. Any Decision under the TACP, whether appealed on liability, sanction, or jurisdiction, must be appealed exclusively to CAS. Both the Covered Person who is the subject of the Decision and the TIB have the option to appeal[112].

113. The deadline for filing an appeal of a Decision made under the TACP is twenty business days from the date of receipt of the Decision. The Decision of CAS is considered to be final and non-appealable. The TACP also explicitly limits the right of either party to either challenge the appeal or initiate related proceedings in any other court or tribunal[113].

114. Unless otherwise stated by CAS, any Decision will be deemed to be in force during the appeal process[114].

Conditions of Reinstatement

115. Under the TACP, once a Covered Person has paid any fines and/or prize money forfeitures in full, plus their period of ineligibility has expired, they will automatically become eligible to play and receive accreditations. The Covered Person does not need to apply for reinstatement[115].

116. Whilst any payments due (including those following a CAS appeal) are due within 30 days, both the AHO and the PTIOs have the discretion to implement an instalment plan (including a plan that extends beyond the period of ineligibility)[116].

General Provisions of the TACP

117. The limitation period under the TACP is the later of: (a) eight years from the date a Corruption Offense was committed; or (b) two years from the date a Corruption Offense was discovered[117].

118. The TACP is governed by the laws of the State of Florida[118].

119. All proceedings, unless otherwise agreed, shall be conducted in English[119].

111 TACP (2018), Section H.1.b.
112 TACP (2018), Section I.1.
113 TACP (2018), Section I.3-4.
114 TACP (2018), Section I.2.
115 TACP (2018), Section J.1.
116 TACP (2018), Section J.2.
117 TACP (2018), Section K.1.
118 TACP (2018), Section K.3.
119 TACP (2018), Section K.7.

(3) THE PROCESS BY WHICH THE TACP HAS BEEN AMENDED

120. The process by which the TACP has been amended does not follow a written protocol. The Panel has noted the following methods by which proposals to amend the TACP have originated:

120.1 recommendation by the TIU Director;

120.2 recommendation by one or more of the PTIOs;

120.3 recommendation by one or more of the TIB members;

120.4 recommendation by the legal advisers of any of the governing bodies or of the TIU; and

120.5 recommendation by an AHO.

121. In the early years of the TACP, the majority of changes to the TACP were suggested either by external sources or by the PTIOs themselves. In more recent years, since Nigel Willerton became Director of Integrity, the TIU Director has prompted many of the changes to the uniform rules. The changes made and the origin of these changes are explored in more detail below.

122. Based on documents received, the Panel has identified the following general approach:

122.1 Changes are proposed to the PTIOs either in person (at PTIO meetings) or via email or teleconference. Once the proposal has been discussed by the PTIOs, the amendment is either considered suitable for further discussion, or alternatively is agreed to be unnecessary or inappropriate by the PTIOs.

122.2 If an amendment is to be advanced, the usual process is for the proposer of the change to circulate a mark-up of the current version of the TACP incorporating new drafting for further consideration.

122.3 After circulation of draft amendments, the matter will then be escalated to the TIB for approval. This most commonly occurs at a TIB Meeting. (It appears that the preference is for the matter to be considered by the TIB at the meeting that occurs at the US Open, as this allows time for drafting to be agreed and incorporation before the TACP is finalised for the following season.)

122.4 Following approval by the PTIOs and the TIB, any changes will be deemed approved and the revised draft will come into force at the beginning of the following calendar year. In some instances, this amendment process has occurred multiple times during one calendar year.

122.5 The revised TACP will then be distributed, printed and included in governing bodies' Codes of Conduct, as appropriate.

(4) AMENDMENTS IN THE YEARS 2009-2017[120]

123. A number of changes have been implemented since the first TACP was published in 2009. Those changes the Panel considers material are set out below:

Year	Material changes	Origin of change
2009	TACP implemented.	N/A
2010	No changes made.	N/A
2011	Introduction of a Corruption Offense for "solicit[ing] or accept[ing] any money, benefit or Consideration for the provision of an accreditation for an Event", either for the "purpose of facilitating...a Corruption Offence" or if the sale leads to a Corruption Offence[121].	This amendment occurred following discussions at the PTIO meeting of 26 March 2010.
	Clarification that a failure to comply with the reporting obligations under the TACP, Sections 2.a and 2.b, constitutes a Corruption Offense[122].	This change originated from a document sent to Diana Myers (and subsequently circulated to all PTIOs) by Richard McLaren on 13 January 2010. Following his Decision in the Bychkova case (the first disciplinary action brought under the TACP), Mr McLaren sent a list of recommended amendments to the PTIOs for consideration. This particular change was subsequently discussed by the PTIOs in their meeting of 26 March 2010.
	Insertion of a clause stating that Notice is deemed served when it is delivered to the address registered with any Governing Body. This new provision also allows for other communication methods, including "hand delivery, facsimile or e-mail"[123].	This amendment also originated from Richard McLaren's list of recommended changes, as referenced above. Again, this change was discussed at the meeting of 26 March 2010.

120 The material changes to the TACP made in 2018 are discussed in Chapter 12, Section B(6).

TACP (2011), Section D.2.c.

TACP (2011), Section F.3.

TACP (2010), Section F.3.

TACP (2011), Section G.1.c.

TACP (2011), Section J.1-2.

TACP (2011), Section B.24.

PTIOs, Meeting Decision and Action Sheet, 13 October 2010.

PTIOs, Meeting Decision and Action Sheet, 17 June 2011.

PTIOs, Meeting Decision and Action Sheet, 17 June 2011.

PTIOs, Meeting Decision and Action Sheet, 7 September 2011.

TIB, Meeting Decision and Action Sheet, 18 October 2011.

121 TACP (2011), Section D.1.c.

122 TACP (2011), Section D.2.c.

123 TACP (2011), Section F.3.

Year	Material changes	Origin of change
	Removal of the "No Provisional Suspension" Section, which had previously prohibited any suspension until either (a) a Covered Person admitted or confessed to commission of a Corruption Offense, (b) an AHO determined a Covered Person's guilt, or (c) the AHO determined that a Covered Person had failed to furnish information pursuant to a Demand from the TIU or the AHO[124].	Following discussion at the PTIO meeting of 9 September 2010 and subsequent email exchanges among the PTIOs in November of that year, this clause was removed due to concerns that it may have limited the ability of the International Governing Bodies to suspend players under their rules concurrently (that is, to suspend them before an AHO had determined their guilt). Given the timing of these discussions and the imminent finalisation of the 2011 TACP, this clause was removed with the plan to readdress the issue in the 2012 TACP.
	Insertion of provision that requires the AHO to promptly issue a Decision if a Covered Person waives his or her right to a hearing[125].	This amendment originated from Richard McLaren's list of recommended changes, referenced above.
	The conditions of reinstatement for a Covered Person were set out in full – reinstatement being contingent upon expiration of a suspension and full payment of fine (to be paid within 30 days of a Decision, unless a different payment structure is agreed by the PTIOs or the AHO)[126].	This addition was discussed at the PTIO meeting of 24 March 2010.
	Expansion of the definition of Tournament Support Personnel to include anyone who receives	This change was discussed at the PTIO meeting of 24 March 2010.

124 TACP (2010), Section F.3.

125 TACP (2011), Section G.1.c.

126 TACP (2011), Section J.1-2.

Year	Material changes	Origin of change
	accreditation at the request of Tournament Support Personnel[127].	
2012	Insertion of non-exhaustive list of actions that amount to soliciting or facilitating another person to wager on a tennis match under the TACP[128].	The need for this clarification was first discussed at the PTIO meeting of 13 October 2010[129] and then again at the 17 June 2011 meeting[130]. Following this meeting, Gayle Bradshaw circulated a document setting out a facilitation "matrix"
	Introduction of a Corruption Offense that prohibits employment by any company accepting wagers on tennis[130].	This change was raised during discussions at the PTIO meeting of 17 June 2011[132].
	The TACP's provision regarding the cooperation of Covered Persons with the TIU was expanded to include giving evidence at hearings if requested[133]. Additionally, it was clarified that failing to cooperate constitutes a Corruption Offense under the TACP[134].	The origin of this amendment was an email sent by Jamie Singer (Onside Law) to Diana Myers and Jeff Rees setting out his suggested amendments to the TACP. Having been asked about wording concerning video conferencing, Mr Singer replied with a list of further proposed amendments to the TACP. These were subsequently discussed at the PTIO meeting of 7 September 2011[135], and, after Diana Myers had circulated the proposed wording of the amendment, it was approved by the TIB in October 2011[136].
	Provision for witnesses to be allowed to provide evidence at hearings via video conferencing facilities[137].	This provision was suggested by the PTIOs in June 2011.
	Provision allowing the TIB and all PTIOs to attend any AHO or CAS hearings[138].	The origin of this change could not be identified from the contemporaneous documents reviewed by the Panel.
	Introduction of fines for Related Persons (a maximum possible fine of up to $250,000, plus an amount equal to the value of any winnings of the Covered Person in question)[139].	This addition was discussed by the PTIOs during the later stages of 2010. However, as they were unable to agree on wording in time for approval of the 2011 TACP, discussions were deferred until 2011. Following discussion at the September 2011 PTIO meeting, the amendment was

127 TACP (2011), Section B.24.
128 TACP (2012), Section D.1.b.
129 PTIOs, Meeting Decision and Action Sheet, 13 October 2010.
130 PTIOs, Meeting Decision and Action Sheet, 17 June 2011.
131 TACP (2012), Section D.k.
132 PTIOs, Meeting Decision and Action Sheet, 17 June 2011.
133 TACP (2012), Section F.2.b.
134 TACP (2012), Section D.2.c.
135 PTIOs, Meeting Decision and Action Sheet, 7 September 2011.
136 TIB, Meeting Decision and Action Sheet, 18 October 2011.
137 TACP (2012), Section G.2.e.
138 TACP (2012), Section G2f.
139 TACP (2012), Section H.1.b.

Year	Material changes	Origin of change
		approved by the TIB.
2013	No changes were made to the TACP in 2013.	N/A
2014	The uniform rules were renamed as the TACP (previously the UTACP).	This change was suggested by Francesco Ricci Bitti at the TIB meeting of 6 July 2013, and was agreed by all[140].
	Insertion of a provision giving PTIOs the power to apply for a provisional suspension, in an instance where the case had been referred to an AHO. The test for when a provisional suspension could be applied was set out in the text of the TACP[141].	This amendment was suggested by Nigel Willerton at the PTIO and TIB meetings of June and July 2013[142].
	Insertion of a provision giving the AHO complete discretion to reduce a Covered Person's applicable penalty based on the Covered Person's substantial assistance[143].	This provision was suggested and approved alongside the above provisional suspension amendment and the below Privacy Policy amendment.
	Insertion of a clause stating that all Players shall be deemed to accept the Privacy Policy of the TIU (with reference made to the TIU's website where the Policy is hosted)[144].	This provision was suggested and approved alongside the above provisional suspension and substantial assistance provisions.
2015	The defined term "Event" was modified to specifically identify events covered, by way of reference to an Appendix to the TACP[145].	This change was first proposed at the PTIO meeting of 23 June 2014 after discussions regarding the applicability of the TACP to the Hopman Cup, the IPTL, and to junior events[146]. Following further discussion of the PTIOs, it was agreed at the PTIO meeting of 3 September 2014 that Covered Events should be explicitly identified, pending decision on the Hopman Cup[147].
2016	The Olympic Games was added to the list of covered events.	The origin of this change could not be identified from the contemporaneous documents reviewed by the Panel.
2017	The defined term "Tournament Support Personnel" was expanded to expressly include "Officials" and Governing Body staff providing services at an Event[148].	This amendment was proposed by the PTIOs in September 2015 following a high-profile case regarding chair umpires[149].

140 TIB, Meeting Decision and Action Sheet, 6 July 2013.

141 TACP (2014), Section G.1.e.

142 PTIOs, Meeting Decision and Action Sheet 21 June 2013. and TIB, Meeting Decision and Action Sheet, 6 July 2013.

143 TACP (2014), Section H.5.

144 TACP (2014), Section C.1.

145 TACP (2015), Section B.10.

146 PTIOs, Meeting Decision and Action Sheet, 23 June 2014.

147 PTIOs Meeting Decision and Action Sheet, 3 September 2014.

148 TACP (2018), Section B.27.

149 TIB/PTIOs, Meeting Decision and Action Sheet, 7 September 2015.

Year	Material changes	Origin of change
	The provisional suspension rule was modified so that PTIOs can apply for an interim suspension before a matter is referred to an AHO[150].	This amendment was proposed by Nigel Willerton at the combined TIB/PTIO meeting of 7 September 2016[151]. Mr. Willerton suggested that the TACP needed a widened scope to allow for provisional suspension before a Notice has been issued to players.
	An amendment to require the TIB to report all decisions *unless* an AHO directs them otherwise[152].	This change was proposed by Nigel Willerton.

(5) AMENDMENTS CONSIDERED BUT NOT IMPLEMENTED IN THE YEARS 2009-2017

124. Throughout the operation of the TIU, a number of changes have been suggested by parties that ultimately were not implemented. The Panel has been made aware of the following changes that were suggested but not ultimately implemented:

Year	Material Change Suggested	Origin of Proposed Change
2011	Suggestion for an expedited process for written reprimands whereby PTIOs could issue such reprimands themselves if it appeared that an AHO would do so.	This change was proposed by Jeff Rees in August 2010. The issue was discussed at the PTIO meeting on 9 September 2010.
2012	Introduction of an explicit provision requiring national federations to honour penalties imposed under the TACP.	This change was suggested by Stuart Miller and was discussed by the PTIOs at the PTIO meeting on 17 June 2011. But instead of introducing such a provision, it was decided that duties under the TACP should be made clear to national federations. The ITF constitution was revised in light of this decision[153].
	Removal of AHOs from the disciplinary process, with PTIOs to make decisions and impose penalties.	This change was suggested by Gayle Bradshaw at the PTIO meeting on 7 September 2011. It was decided that this change would not be included in the 2012 rules, but would be discussed at the next PTIO meeting. The matter was discussed at the TIB meeting on 4 September 2013, and it was agreed that the change should not be made.
2013	Modifying the standard of proof under the TACP.	This matter was raised in the TIB meeting of 26 April 2012. It was later discussed in the PTIO meeting on 21 June 2012, where Stuart Miller raised the possibility of a "comfortable satisfaction" test. Jeff Rees

150 TACP (2018), Section F.3.a.

151 TIB/PTIOs, Meeting Decision and Action Sheet 7, September 2015.

152 TACP (2018), Section G.4.d.

153 PTIOs, Meeting Decision and Action Sheet, 21 June 2012.

(6) WAS THE PROCESS BY WHICH THE TACP HAS BEEN DEVELOPED APPROPRIATE?

125. The adoption of the TACP represented an advancement in the International Governing Bodies' efforts to tackle betting-related corruption, and the International Governing Bodies have appropriately continued, since 2009, to amend the TACP in order to fill gaps or otherwise facilitate its enforcement. The approach taken in reviewing the TACP has therefore been appropriate. Changes to the TACP were considered between 2009 and 2017, with a number of material changes having been made.

126. The questions of whether the contents of the rules of the TACP are now, and previously have been, appropriate is addressed in Chapter 14 in the context of the Panel's recommendations.

PART TWO: THE OPERATION OF THE TIU

1. In this second part of Chapter 10, the Independent Review Panel (the "Panel") describes and analyses the operation of the TIU since 2009. The Panel addresses below the following matters: (a) the structure and resources of the TIU[1]; (b) the types of information received by the TIU, the sources of that information and its storage[2]; (c) the investigatory steps taken by the TIU[3]; and (d) the transparency of the TIU's operation[4].

2. In assessing the TIU's approach to investigating match specific and non-match specific information, the Panel has undertaken an extensive review of the TIU's actions in response to the information that it received in the period 2009 to 2016[5]. For the purposes of that exercise, the TIU gave the Panel unfettered access to its records. In addition, the TIU made itself available to attend meetings and responded promptly to the Panel's queries and communications (despite the TIU's heavy workload) at every stage of the Independent Review of Integrity in Tennis (the "Review").

3. As set out in Chapter 1[6], both Jeff Rees (as the former Director of the TIU) and the TIU were given the opportunity to provide representations in relation to the Panel's contemplated conclusions. All of those representations have been considered in detail and taken into account by the Panel. Where the Panel accepted a point raised, the Panel's assessment was amended accordingly. Where the Panel's assessment remained the same despite the representation, the assessment has remained unchanged, but the Panel has recorded, within the body of the chapter, the representations made in relation to that assessment.

4. Pursuant to the Terms of Reference, the Panel addresses whether the matters addressed in this part were dealt with effectively and appropriately. As set out in Chapter 1[7] it is not the Panel's role in this Independent Review to assess the Panel is assessing the legality of any decision or action by reference to any standard or test of contract, tort, irrationality or unreasonableness, and it should not be taken as doing so. Rather, the Panel identifies below the relevant evidence it has received, including witness statements and contemporaneous documents, and sets out its present[8] opinion as to the effectiveness and appropriateness of relevant actions at the time, based on its appreciation of the available evidence of the contemporaneous facts and circumstances. Also as set out in Chapter 1[9], on occasion it is not possible or appropriate to seek to resolve direct conflicts in the evidence.

5. The TIU was the subject of significant media criticism[10] in early 2016. But in relation to the principal criticism in the media – that the TIU's decisions or actions were taken to cover up breaches of integrity or to protect players under suspicion from investigation – the Panel has seen no evidence to support this.

1 Section A below.

2 Section B below.

3 Section C below.

4 Section D below.

5 The Panel's present intention is that, in producing its Final Report, it will review a sample set of cases arising in 2017 and 2018 to identify any material changes to the approach taken by the TIU.

6 Chapter 1 Section C.

7 Chapter 1 Section C.

8 Pending the consultation process between Interim and Final Reports.

9 Chapter 1, Section C.

10 Heidi Blake & John Templon, 'The Tennis Racket' (BuzzFeed News, 17 January 2016), available at: https://www.buzzfeed.com/heidiblake/the-tennis-racket?utm_term=.epvJ47bVp#.vxblaAGoj [accessed 9 April 2018].

6. The Panel notes that the TIU has developed its practices throughout its operation to address the ever growing problem faced by the sport and, in doing so, has been successful in prosecuting some 35 disciplinary cases in often difficult circumstances – and with a very high success rate in the disciplinary proceedings that it has brought. For some players, particularly at the higher levels of the sport, the TIU's presence has no doubt operated as a deterrent. The TIU has also developed, and is continuing to develop, the content and delivery of its education programme. Since 2016, the resources of the TIU and in particular its staffing levels, have been increased significantly.

7. The Panel has, however, identified some aspects in which, in the Panel's opinion, the facilities in place or the approach adopted or actions taken by the TIU to address the growing problem have been ineffective or inappropriate, and could be improved. These are described in this part. The Panel's proposed recommendations for change are addressed in Chapter 14[11].

Q 10.3 Are there other matters of factual investigation or evaluation in relation to the operation of the TIU since 2009 and the process by which it has developed to its current state as addressed below that are relevant to the Independent Review of Tennis and that should be addressed in the body of the Final Report, and if so which, and why?

Q 10.4 Are there any aspects of the Independent Review Panel's provisional conclusions in relation to the operation of the TIU since 2009 and the process by which it has developed to its current state that are incorrect; and if so, which, and why?

11 It is in the nature of a Review designed to identify the improvements that can and should be made, that the analysis focuses on where current facilities or actions are not as good as they could be, and less attention is paid to those aspects that do not require change. This should be borne in mind when this part is read.

A TIU STRUCTURE AND RESOURCES

(1) INITIAL SET UP

8. All TIU employees are formally employed by the ITF[12]. The TIU is not incorporated as a separate legal entity.

9. As set out in Chapter 8[13], the Environmental Review of proposed two alternative structures for the TIU:

   9.1 The first (given the title 'Option 1' in the Environmental Review of Integrity in Professional Tennis (the "Environmental Review"), favoured by Ben Gunn, comprised a unit of seven people, including a Director, who would operate at a strategic level and run the unit; a Head of Intelligence and Investigations, who would manage the operations of the unit; two Investigators (either full- or part-time); an Intelligence Analyst; a Betting Analyst; and an Intelligence Systems Administrator[14]. The position of Betting Analyst was "*a specialist post requiring in-depth knowledge of betting systems, operations, and odds compilation*"[15].

   9.2 The second proposed TIU structure (given the title 'Option 2' in the Environmental Review), favoured by Jeff Rees, comprised a unit of five people, with a General Manager/Chief Investigator to lead a team of two Investigators, an Information Manager, and an Administrator[16].

10. Both structures involved an IT-based intelligence and case management system.

11. Paragraph 3.47 of the Environmental Review stated, "*in order for Option 2 to operate effectively, it would need to be staffed by high quality and suitably experienced staff, able and willing to adapt to different investigative demands and to step into each other's roles as necessary. A well-managed unit, staffed as above, should then be able to act effectively to counter corruption in professional tennis whilst, simultaneously, it would be proportionate to the threat professional tennis currently faces under the view taken in Option 2*".

12. Paragraph 3.49 of the Environmental Review further stated, "*Option 2 is also premised upon the view that a danger of comprehensive resourcing represented by Option 1 would be to suggest to the media, sponsors, other stakeholders and spectators, that the problems facing international tennis are more than they really are, thus risking harm to the sport commercially and reputationally. In contrast, Option 2 suggests small incremental increases to staff numbers, if and when required, would be unlikely to exercise comment*".

13. Mr Rees' evidence to the Panel was that the intention behind Option 2 "*was for the unit to grow with the challenges it faced*" and that he intended that the Environmental Review "*would show option 2 as a way forward, rather than a final blueprint*"[17]. Mr Rees stated "*I believe I was right to prefer a unit that started small, with the intention of allowing it to grow, adapt and evolve in response to demand volume and need for specific skills*"[18]. He also stated "*from the outset, I kept open an option to bring in investigative support*" [19] and "*also had available the option of buying in expertise if it was required*"[20]. In that regard, the Panel notes that, during Mr Rees' tenure at the TIU, the TIU had the ability to utilise the services of Iain Malone[21], a former detective with experience investigating betting-related corruption in tennis for the ATP.

12 ITF-TIU Service Agreement, Schedule 1, paragraph 1.2.

13 See Chapter 8, Section B(2).

14 Ben Gunn and Jeff Rees, 'Environmental Review of Integrity in Professional Tennis' (May 2008), pages 25 to 27, paras 3.35 to 3.40 and Appendix E(i), pages E-1 to E-6. Available at Appendix: Key Documents.

15 Ben Gunn and Jeff Rees, 'Environmental Review of Integrity in Professional Tennis' (May 2008), page 27, para 3.44.

16 Ben Gunn and Jeff Rees, 'Environmental Review of Integrity in Professional Tennis' (May 2008), pages 27 to 28, paras. 3.41 to 3.52 and Appendix E(ii), pages E-7 to E-9.

17 Statement of Jeff Rees (formerly TIU).

18 Statement of Jeff Rees (formerly TIU).

19 Statement of Jeff Rees (formerly TIU).

20 Statement of Jeff Rees (formerly TIU).

21 Statement of Jeff Rees (formerly TIU).

14. Mr Rees told the Panel "*I could have brought in investigative support from many quarters, and in particular could have utilised, with the ICC's permission, the services of the International Cricket Council's several anti-corruption personnel who were located around the world*" [22]. The Panel has not seen evidence that the TIU did in the event use investigative support from ICC personnel.

15. As stated in Chapter 8[23], Jeff Rees was appointed as Director of Integrity of the TIU in September 2008.

16. Before his appointment as Director of Integrity, Mr Rees prepared a draft document setting out what he considered to be the first steps in setting up an integrity unit. The appointment of a full-time Information Manager was the first step outlined in this document. Mr Rees referred to the Information Manager as a key individual who would "*assist greatly in the smooth setting up of the integrity unit*"[24], including the implementation of the administrative, communications and operational aspects of the unit[25].

17. Bruce Ewan was hired as Information and Intelligence Manager in October 2008. Mr Ewan was a former detective of the Metropolitan Police's Anti-Terrorism Branch and had worked for eight years as Information and Intelligence Manager for the International Cricket Council's Anti-Corruption and Security Unit (ACSU). Mr Rees told the Panel that Mr Ewan, as a former detective, "*was also qualified to help out in investigations as and when needed*"[26].

18. Mr Rees also told the Panel that Mr Ewan's "*availability to take up the post without delay was a key factor in his appointment*"[27]. Mr Rees said that he recommended Mr Ewan to the PTIOs based on Mr Ewan's experience, his "*well-established contacts in the betting industry*" and on their previous working relationship at the ACSU[28]. The PTIOs supported Mr Rees' recommendation. Mr Ewan's position was not advertised externally. Mr Rees stated to the Panel that Mr Ewan's prompt availability "*was one of the reasons why the post was not advertised externally*"[29].

19. When the TIU became operational in January 2009, it comprised of two employees; Mr Rees and Mr Ewan. The Panel addresses the changes to resource levels since 2009 in paragraphs 28 to 67 below.

22 Response of Jeff Rees to Notification given under paragraph 21 ToR.

23 See Chapter 9, Section A(2).

24 Jeff Rees, 'First Steps In Setting Up An Integrity Unit In Tennis', Draft Document.

25 Email from Jeff Rees to Bill Babcock dated 8 August 2008; Jeff Rees, 'First Steps In Setting Up An Integrity Unit In Tennis', Draft Document.

26 Statement of Jeff Rees (formerly TIU).

27 Response of Jeff Rees to Notification given under paragraph 21 ToR.

28 Email from Jeff Rees to Bill Babcock dated 24 September 2008.

29 Response of Jeff Rees to Notification given under paragraph 21 ToR.

(2) ROLES AND RESPONSIBILITIES WITHIN THE TIU

20. The following describes the various employment positions at the TIU and the key responsibilities of each position.

Director of Integrity

21. The Director of Integrity is responsible for managing the TIU, including strategy-setting, final decision-making authority with respect to the referral of investigations to the PTIOs, reporting to the TIB and PTIOs and resource management (in other words, staffing and budgeting).

Investigator

22. Investigators are responsible for carrying out investigations, including collecting evidence to form an investigation case file and preparing final investigation reports for the Director. Before June 2017, when the TIU hired an Education Manager, Investigators were also responsible for delivering educational presentations with respect to the protection of integrity in tennis.

Information and Intelligence Manager

23. The Information and Intelligence Manager is responsible for intelligence management, including triaging information and assisting in determining whether a full investigation should proceed.

Intelligence Executive

24. The Intelligence Executive is responsible for "*supporting the work of the unit's intelligence gathering and data analysis cell*"[30]. This role was created in July 2017.

Information/Research Analyst

25. Information/Research Analysts are responsible for researching and analysing information received by the TIU. The role was created in April 2016.

Head of Communications

26. The Head of Communications is responsible for implementing the TIU's communications strategy, including preparing press releases on the TIU's activities. The role was created in March 2016.

Education Manager

27. The Education Manager is "*responsible for managing and extending the scope and reach of anti-corruption training and education across the sport*"[31]. This role was created in June 2017.

30 TIU, 'Tennis Integrity Unit Briefing Note – July 2017' (TIU, 19 July 2017), available at http://www.tennisintegrityunit.com/media-releases/tennis-integrity-unit-briefing-note-july-2017 [accessed 9 April 2018].

31 TIU, 'Tennis Integrity Unit Briefing Note – July 2017' (TIU, 19 July 2017), available at http://www.tennisintegrityunit.com/media-releases/tennis-integrity-unit-briefing-note-july-2017 [accessed 9 April 2018].

(3) CHANGES TO TIU RESOURCE LEVELS SINCE 2009

Recruitment of Nigel Willerton (first investigator)

28. At the inaugural meeting of the TIB in July 2009, Mr Rees informed the TIB that, since the TIU had become operational, its *"volume of work had increased steadily"* and it was "*in possession of good intelligence, and had identified good targets which could not be acted upon because of more pressing demands*"[32]. In his evidence to the Panel, Mr Rees stated that the "*good targets*" that he referred to in July 2009 had been identified "*through intelligence* [the TIU] *had developed by means other than through suspicious betting patterns*" [33].

29. The TIB Decision and Action Sheet dated 3 July 2009 records Mr Rees having stated in the meeting that "*when* [the TIU] *had been operating for 12 months he would review the demands on it and, if the situation warranted, submit a formal proposal to the Board for an increase in staff*"[34]. Mr Rees forewarned the TIB at this meeting that he "*could well be asking for another investigator"*[35]. Mr Rees told the Panel "*I of course had to make out a case for additional personnel in order to show why I needed them and what they would be used for. However, given the unit was still finding its feet to some extent and also that I wanted to be sure of appointing an investigator with the right skills base*, a *year-end staffing review seemed appropriate*" [36].

30. Following the TIU's 2009 Year End Staffing Review, authority was granted by the TIB to hire a full-time Investigator. The role was advertised in early 2010.

31. Mr Rees told the Panel that this role was advertised "*through a national UK police magazine*"[37]. Mr Rees stated that "*he knew that the job adverts in that magazine attracted the attention not only of serving and retired police officers but also others involved in, or seeking involvement in, the world of investigating*"[38]. Mr Rees stated that "*crucially, the magazine was also scrutinised by recruitment agencies specialising in supplying personnel to the broader law enforcement industry beyond policing. From memory the advertisement attracted some 200 formal applications from a wide variety of backgrounds, including police, armed services, legal profession and university students*"[39].

32. At a meeting of the PTIOs in March 2010, the attendees discussed the recruitment process and decided that Mr Rees would prepare a shortlist of candidates. It was agreed that interviews would be carried out by Mr Rees, Mr Ewan and the ITF's Head of Human Resources. It was further agreed that the best two candidates would be interviewed by two PTIOs and Mr Rees[40].

33. Nigel Willerton was the successful candidate and commenced his role as full-time Investigator on 14 June 2010[41]. Mr Willerton joined the TIU following 32 years with the British police, where he rose to the rank of Acting Detective Chief Inspector.

32 TIB, Meeting Decision and Action Sheet, 3 July 2009.
33 Response of Jeff Rees to Notification given under paragraph 21 ToR.
34 TIB, Meeting Decision and Action Sheet, 3 July 2009.
35 TIB, Meeting Decision and Action Sheet, 3 July 2009.
36 Response of Jeff Rees to Notification given under paragraph 21 ToR.
37 Response of Jeff Rees to Notification given under paragraph 21 ToR.
38 Response of Jeff Rees to Notification given under paragraph 21 ToR.
39 Response of Jeff Rees to Notification given under paragraph 21 ToR.
40 PTIO, Meeting Decision and Action Sheet, 26 March 2010.
41 TIU, 'Year End Staffing Review', September 2010.

Recruitment of Dee Bain (second investigator)

34. At a TIB meeting in July 2010, Mr Rees informed the TIB that he anticipated asking for authority to hire an additional Investigator. The TIB requested an estimate of the associated costs, which was circulated following the meeting[42].

35. In the TIU 2010 Year End Staffing Review document, Mr Rees further outlined his recommendation for employing a second full-time Investigator. Mr Rees noted "*since its inception the TIU's workload has increased steadily*"[43]. Mr Rees further noted that whilst "*the employment of Nigel Willerton as a full-time Investigator in June 2010 did ease the pressure on existing members of the TIU significantly*" the "*volume of work likely to be facing the TIU in the coming months and in the mid-term*" meant "*that the recent employment of one full-time investigator will not be enough to cope effectively with all of* [the TIU's] *investigative demands*"[44]. Mr Rees' belief was that the hiring of a second full-time Investigator would "*allow for a unit which will be capable of meeting investigative demands for the foreseeable future*"[45].

36. In the TIU 2010 Year End Staffing Review document, Mr Rees expressed his view that the creation of an effective anti-corruption unit leads to an initial surge of work but that "*a plateau will eventually be reached*" as allegations became less frequent and education programmes and other anti-corruption measures "*really bite*"[46]. Mr Rees stated his view that "*older, cynical athletes are replaced by newcomers schooled in the dangers of having anything whatsoever to do with tennis betting*"[47]. Mr Rees further stated that the "*further TIU investigative workload will start to decrease. This will allow greater emphasis on prevention, education and proactive targeting of would-be corruptors*"[48].

37. Mr Rees noted that it would be operationally beneficial for the new Investigator to be female. The operational benefits, according to Mr Rees, were that a female Investigator would be able to enter female-only areas at events (for example locker rooms and physiotherapy rooms) should the need arise and that female interviewees might feel more comfortable discussing certain matters with another female[49]. He further recommended that the Investigator be hired "*by January 2011, or even before*"[50].

38. At a meeting of the PTIOs in September 2010, the PTIOs indicated support for the recommendation and agreed to procure written approval from members of the TIB[51]. Approval was communicated to Mr Rees during a video conference of the PTIOs in October 2010[52].

39. Mr Rees told the Panel that this post was advertised "*in the national police magazine*" and "*also through the British Association of Women Police Journal*" [53]. Mr Rees added that he "*knew that the Association's membership extended to the International Association of Women Police and to women in policing roles in the armed services*"[54].

40. Dee Bain joined the TIU as its second full-time Investigator on 1 February 2011. Ms Bain joined the TIU following her retirement from the British police, having completed 30 years' service. Ms Bain had "*specialised in complex global fraud investigations, financial crime and money laundering*"[55].

42 TIB, Meeting Decision and Action Sheet, 2 July 2010.
43 TIU, 'Year End Staffing Review', September 2010.
44 TIU, 'Year End Staffing Review', September 2010.
45 TIU, 'Year End Staffing Review', September 2010.
46 TIU, 'Year End Staffing Review', September 2010.
47 TIU, 'Year End Staffing Review', September 2010.
48 TIU, 'Year End Staffing Review', September 2010.
49 TIU, 'Year End Staffing Review', September 2010.
50 TIU, 'Year End Staffing Review', September 2010.
51 PTIO, Meeting Decision and Action Sheet, 14 September 2010.
52 PTIO, Video Conference Decision Sheet, 13 October 2010.
53 Response of Jeff Rees to Notification given under paragraph 21 ToR.
54 Response of Jeff Rees to Notification given under paragraph 21 ToR.
55 Statement of Dee Bain (TIU).

Retirement of Bruce Ewan and replacement by Elli Weeks

41. Bruce Ewan announced his intention to retire from the TIU in September 2010 and retired in late November 2010.

42. Mr Rees stated that the post for Mr Ewan's replacement was advertised through the ITF's Human Resources department and guidance was sought "*from a hugely experienced analyst from the Police Service*" as to the "*technical requirements for the post*"[56].

43. Mr Rees further stated[57] "*I cannot be certain where the Information and Intelligence Manager's post was advertised, but think it may have been through a specialist* [journal] *for analysts and possibly in the national police magazine as well*". Mr Rees also stated that he recalls "*making a very senior individual involved in the world of analysis aware of the post and asked her to make colleagues in and out of the police service aware of the position* [the TIU] *wanted to fill*". Mr Rees stated, "*I believe close to 30 qualified analysts applied for the post*".

44. Elli Weeks, Mr Ewan's replacement in at least part of his role, commenced work in February 2011. Her title was Information Manager and Analyst. The evidence given by Ms Weeks regarding her role and the handover provided to her is addressed in paragraphs 136 to 138 below.

Retirement of Jeff Rees and promotion of Nigel Willerton to Director

45. At a meeting in June 2012, Mr Rees formally notified the PTIOs of his intention to retire from the TIU at the end of 2012. At a TIB meeting in July 2012, the TIB agreed that the PTIOs should arrange a process to appoint Mr Rees' replacement[58]. At a meeting of the PTIOs in September 2012, the PTIOs agreed that they would request approval from the TIB to promote Mr Willerton to the position of Director of Integrity.

46. At a TIB meeting in October 2012, the appointment of Mr Willerton was approved[59]. Mr Willerton commenced the role of Director on 1 January 2013.

Recruitment of Jose De Freitas to replace Nigel Willerton as investigator

47. Jose De Freitas was hired as a full-time investigator to replace Mr Willerton in that role following his promotion to Director. Mr De Freitas was hired following a formal recruitment and interview process led by Mr Willerton and the ITF's Head of Human Resources. Mr De Freitas joined the TIU following a long career in the British police. He is fluent in English and Portuguese and can also speak Spanish. Mr De Freitas worked for the Abu Dhabi police for the two years after he left the British police and before his employment by the TIU. Mr De Freitas knew Mr Willerton from his previous career with the British police[60]. Mr De Freitas joined the TIU on 15 April 2013.

48. Between April 2013 and May 2015, the TIU did not hire any further investigators.

56 Statement of Jeff Rees (formerly TIU).

57 Response of Jeff Rees to Notification given under paragraph 21 ToR.

58 TIB, Meeting Decision and Action Sheet, 3 July 2012.

59 TIB, Meeting Decision and Action Sheet, 31 October 2012.

60 Statement of Jose De Freitas (TIU).

Recruitment of Phil Suddick to replace Elli Weeks

49. The TIU's Information Manager and Analyst, Elli Weeks, left in June 2015 and was replaced by Phil Suddick. Before joining the TIU, Mr Suddick spent 30 years working for the British police "*specialising in high profile, high risk covert intelligence gathering operations and complex corruption investigations*"[61]. Mr Suddick had retired from the British police in March 2015[62]. The TIU told the Panel[63] that "*a formal recruitment process was held through the ITF HR department*".

Recruitment of a third investigator

50. A third[64] investigator, Michael Mahon Daly, was hired in 2015 and commenced his role on 18 May 2015. Mr Mahon Daly, who had also worked for the British police, was initially hired on a twelve month contract, which was made permanent on 1 January 2016. The TIU's Staffing Review in March 2016 reported that Mr Mahon Daly had been hired in response to a recognised increase in the TIU's workload in 2014 and 2015[65].

Recruitment of an additional analyst/researcher

51. At a TIB meeting in February 2016, Mr Willerton sought and obtained approval to hire an additional analyst/researcher to assist Mr Suddick[66]. This position was filled by Nadia Tuominen, who commenced her role on 6 April 2016. She also had a background in the British police[67]. The TIU stated[68] that the recruitment process for the analyst/researcher was held through the ITF Human Resources department.

Recruitment of a fourth investigator

52. At a joint PTIO and TIB meeting in February 2016, Mr Willerton outlined the reasons for his request to hire a fourth investigator. The notes of that meeting state that this request had previously been mentioned at a meeting in November 2015[69]. Mr Willerton highlighted the increase in the TIU's workload in 2014 and 2015 and noted that the workload had increased to such an extent that a further investigator was required in order to maintain a high standard of investigations. Mr Willerton also stated that a further investigator would provide the unit with two teams of two and deliver a greater operational capacity.

53. The TIB approved Mr Willerton's request for a fourth investigator during the February 2016 meeting, and Mr Willerton was instructed to conduct the recruitment process[70]. The recruitment process for the fourth investigator involved an advertisement being placed on Police Oracle, a website that describes itself as "*the leading independent policing website in the UK*". Six individuals were shortlisted for interview. All six individuals had an employment background with the British police.

54. Following this process, Simon Cowell was hired as the fourth investigator and commenced his role on 3 May 2016, joining the TIU following a 28-year career in the British police[71].

61 Statement of Phil Suddick (TIU).

62 Statement of Phil Suddick (TIU).

63 Responses of the TIU to Notification given under paragraph 21 ToR.

64 The other two already in place being Dee Bain and Jose De Freitas.

65 TIU, 'Staffing Review', March 2016.

66 TIB, Meeting Decision and Action Sheet, 28 February 2016.

67 TIB, Meeting Decision and Action Sheet, 2 June 2016.

68 Responses of the TIU to Notification given under paragraph 21 ToR.

69 The Panel has not seen contemporaneous notes of the November 2015 meeting. Mr Willerton's evidence is that in September or October 2015 he had approached the international governing bodies and asked them for more resources; Statement of Nigel Willerton (TIU).

70 TIB, Meeting Decision and Action Sheet, 28 February 2016.

71 TIB, Meeting Decision and Action Sheet, 2 June 2016.

Recruitment of fifth, sixth, and seventh investigators

55. At a TIB meeting in September 2016, Mr Willerton sought approval to hire a fifth and a sixth investigator. Mr Willerton proposed initially hiring the two further investigators on twelve month contracts to be made permanent if necessary. The TIU told[72] the Panel that twelve month contracts *"gave flexibility and time to monitor both them and the current trends"* and that "[d]*ue to the current workload it is intended to obtain approval for their positions to be made permanent*".

56. Mr Willerton received approval to employ two further investigators as soon as possible. The TIB also authorised the employment of a seventh investigator if and when necessary[73].

57. Sarah Hamlet and Lacksley Harris joined the TIU as its fifth and sixth investigators on 3 October 2016 and 24 October 2016, respectively. Both investigators have a background in the British police[74].

58. On 6 April 2018 the TIU announced the appointment of Karen Risby as an investigator, with a background in the British Police and having worked for US-based Supreme Group as the Ethics and Compliance Manager.

The TIU's current view as to the ideal number of investigators and analysts

59. When Mr Willerton provided his witness statement to the Panel in March 2017, he stated that he believed that up to that date the TIU had been adequately resourced[75]. In April 2017, Mr Willerton provided the Panel with an assessment in the form of a chart *"providing details of staffing for the TIU to deal with the current and anticipated work load looking forward*". That chart is set out in Chapter 12[76], where the proposals of the TIU and the International Governing Bodies since the establishment of the Independent Review are described. The chart proposes a new structure for the TIU, including twelve investigatory staff in addition to the Director, as opposed to the current six investigators, and the three in place at the beginning of 2016. The chart proposes having two Senior Investigating Officers with managerial responsibility for five investigators each. The chart also proposes having a Head of Intelligence with three analytical staff, one of whom would have a background in the betting industry, making four as opposed to the current two analysts, and the two in place at the beginning of 2016. And the chart proposes a head of education with one staff member, a media consultant, and an administrative staff member. Including the Director, therefore, the chart proposes a staff of 21 individuals to address integrity (excluding anti-doping) matters, as opposed to the fourteen at the start of 2017, and the six in place at the beginning of 2016.

60. The TIU told the Panel[77] that the chart provided to the Panel was "*supplied together with many other considerations at the request of the Panel for a 'Wish List' in an ideal situation*". The TIU further stated that if it investigated each betting alert then "*even more staff than this chart shows would be required*". The TIU added that "*it is necessary to take a proportionate and responsible approach to resources*".

72 Responses of the TIU to Notification given under paragraph 21 ToR.

73 TIB Meeting, Decision and Action Sheet, 21 September 2016.

74 TIB Meeting, Decision and Action Sheet, 18 November 2016.

75 Statement of Nigel Willerton (TIU).

76 Chapter 12, Section C(1).

77 Responses of the TIU to Notification given under paragraph 21 ToR.

Education Manager and assistant

61. At a TIB Meeting in September 2016, Mr Willerton sought[78] and subsequently obtained approval[79] to recruit a dedicated educator, the first employed by the TIU since its inception. Mr Willerton stated that this recruitment would give the investigators and information manager greater time to focus on their core activities.

62. At a TIB Meeting in November 2016, it was confirmed that the role of Education Manager had been advertised and that the recruitment process had begun[80]. As discussed in Chapter 10, Part Four, Matthew Perry was hired as the TIU's first Education Manager and commenced his role in June 2017. Subsequently, the TIU has also hired both an Education Project Manager and an Education Co-ordinator.

Relationship Manager

63. In the TIU Staffing Review August 2016 document, Mr Willerton proposed creating the role of TIU Relationship Manager "*to liaise and develop stronger, productive links with a range of partners including the betting industry, regulators, law enforcement agencies, tennis federations, government officials and departments and other organisations*"[81].

64. Mr Willerton noted that the intended aspects of this role were being shared between current TIU staff members, particularly Mr Suddick.

65. Mr Willerton noted his perceived benefits of the role, which included "*better and quicker access to betting data to support investigations and prosecutions*" and "*scope to improve existing and establish new working relationships among ITF National Federation members, particularly in regions of the world where implementation and understanding of anti-corruption protocols is limited and/or inconsistent*"[82]. It would appear that this role might be fulfilled by the proposed fourth analyst in the April 2017 chart: if not, it would be a further person.

66. The role was discussed at the September 2016 TIB meeting, but no decision was taken. The decision was left pending a discussion among the international governing bodies on the amalgamation of anti-corruption and anti-doping into a single unit.

Administrative Staff

67. The TIU has, from time to time, employed either part or full-time staff to assist with administrative tasks. The TIU utilises the ITF for certain back office requirements, such as HR and IT.

(4) EXTERNAL SUPPORT

68. In addition to the staff employed by the TIU, the TIU makes use of external support. The main examples of that support are described below.

Iain Malone

69. During his tenure as Director, Jeff Rees utilised the services of Iain Malone, who offered investigative support on a consultancy basis[83]. Mr Malone had previously provided support to Gayle Bradshaw in the context of investigations carried out by the ATP, and to Richard Ings before him.

78 TIU, 'Staffing Review', August 2016.

79 TIB, Meeting Decision and Action Sheet, 21 September 2016.

80 TIB, Meeting Decision and Action Sheet, 28 November 2016.

81 TIU, 'Staffing Review', August 2016.

82 TIU, 'Staffing Review', August 2016.

83 Statement of Jeff Rees (formerly TIU).

70. Mr Rees informed the Panel that because he was too busy to deal with the matter himself he engaged Mr Malone to assist on a "*tricky and sensitive situation which demanded mature detective judgement*"[84], and that Mr Malone also assisted with the management of witnesses for the Anti-Corruption Hearing in a case concerning Daniel Koellerer[85].

71. The Panel made efforts to speak with Mr Malone but was unable to do so. From the documents seen by the Panel, it appears that Mr Malone had limited involvement in TIU investigations.

Media Consultant/Head of Communications

72. At an early stage, Mr Rees sought authority from the International Governing Bodies for the TIU to engage its own media consultant. Mr Rees believed it inappropriate for the International Governing Bodies' media personnel to deal with TIU matters[86].

73. At a meeting of the PTIOs in March 2010, Mr Rees sought approval for the appointment of Mark Harrison as a media consultant[87]. Mr Harrison had previously worked with Mr Rees during the latter's time at the ACSU and was also known to Mr Ewan. The PTIOs approved Mr Harrison's appointment subject to final approval of costs by the TIB[88].

74. At a meeting of the PTIOs in February 2016, Mr Willerton recommended enhancing Mr Harrison's role. Mr Willerton asked Mr Harrison to produce a document recommending changes to the communications structure for the TIU. This document was submitted to the Steering Committee and approved by the TIB.

75. The document stated that by design the TIU's communications function had been structured to service the requirements of the TACP, which made it largely reactive and based around the protocols of reporting outcomes of disciplinary hearings. The document acknowledged that, as a result, the TIU's relationship with the media had focused on responding to enquiries rather than generating opportunities for wider influence and exposure.

76. The document's recommendations included moving to a proactive, visible and engaging communications strategy; proactive review of the TIPP; ensuring a wider understanding of the TIU's role; and taking the lead in recommending an appropriate crisis management resource to protect the sport in the future.

77. Mr Harrison became the TIU's Head of Communications in March 2016.

Legal

78. The Panel understands that the TIU, when it has perceived a need for it, usually obtains legal advice, including advice on transnational and comparative criminal procedure, from external law firms in London and in Florida. None of the TIU's employees has a legal background.

84 Statement of Jeff Rees (formerly TIU).

85 Statement of Jeff Rees (formerly TIU).

86 Statement of Jeff Rees (formerly TIU).

87 PTIOs, Meeting Decision and Action Sheet, 28 March 2010.

88 PTIOs, Meeting Decision and Action Sheet, 28 March 2010.

Betting Analyst

79. At the date of publication, the TIU has neither employed nor instructed an in-house betting analyst.

80. Mr Rees opted against hiring a betting analyst at the outset of the TIU's operation and maintained this position during his tenure. This initial decision reflected the model for the TIU that Mr Rees had proposed in the Environmental Review[89]. That model contrasted with the model recommended by Ben Gunn, which had proposed employing a betting analyst[90]. Mr Rees told[91] the Panel: "*I must stress that throughout my time in the TIU I actually never ruled out the possibility of employing a betting analyst*".

81. Mr Rees told the Panel that he "*did not see a need to employ an in-house betting analyst*" and that he *"doubted whether betting analysts employed within the TIU would provide a better service in terms of identifying suspicious betting patterns than that which would be provided by analysts within the betting industry – a service which we were being offered by Betfair and others*"[92]. Mr Rees also expressed doubt as to whether "*anything more than very limited in-house betting analysis, and certainly anything approaching in-house real-time analysis, was actually achievable*"[93]. Mr Rees further stated that "*the reality was that a veritable army of analysts would be necessary to achieve anything close to real-time analysis*"[94] due to the 24/7 nature of the sport of tennis. Mr Rees also stated that he "*doubted the analysts could have obtained regular information from local betting operations in many of those countries where tennis betting is very popular – those in South America. Eastern Europe, parts of Asia and so on*"[95].

82. Mr Rees stated that he feels "*somewhat vindicated*" by his decision to opt against the employment of a betting analyst "*on the basis no cases during my time were prosecuted based solely or largely through data derived from betting analysis despite our putting considerable effort into investigating alerts*"[96].

83. At a meeting with the head of Betfair's Intelligence Unit in September 2008, Mr Rees was advised by the Betfair representative that the TIU would need the services of a professional betting analyst and that it would otherwise be short of a skill-set. The Betfair representative put forward a tennis analyst at Betfair who he understood would be interested and gave details as to his suitability for the role[97].

84. The Betfair representative indicated to Mr Rees that he believed Mr Ewan would be overloaded should he have to deal with betting analysis as well as information management. He also advised Mr Rees that there is a particular skill in understanding betting patterns that took him a year to fully understand.

85. The Betfair representative made clear that the Betfair integrity system was geared towards "*triggering*" attention with regards to suspicious betting. He stated that Betfair would alert the TIU in relation to any such suspicions but that it would not be prepared to carry out further work in relation to betting patterns as that would be a task for the TIU.

86. Mr Rees recorded in his file note of the meeting in question, "*it is apparent that* [the Betfair representative] *envisages a unit of a size which might not be proportionate to the magnitude of the threat to the sport. His background in military intelligence, running high level sources and so forth, might be influencing his view. It is also clear that he believes his own future may lie in running the TIU*"[98].

89 Ben Gunn and Jeff Rees, 'Environmental Review of Integrity in Professional Tennis' (May 2008), pages 27 to 28, paras. 3.41 to 3.50 and Appendix E(ii), pages E-7 to E-9.

90 Ben Gunn and Jeff Rees, 'Environmental Review of Integrity in Professional Tennis' (May 2008), pages 25 to 26, paras 3.35 to 3.39 and Appendix E(i), pages E-1 to E-6.

91 Statement of Jeff Rees (formerly TIU).

92 ibid.

93 ibid.

94 ibid.

95 ibid.

96 ibid.

97 Note of Jeff Rees in respect of Meeting in September 2008 with Peter Probert, the Betfair representative.

98 Note of Jeff Rees in respect of Meeting in September 2008 with Peter Probert, the Betfair representative.

87. Mr Rees told the Panel that he did not accept what the Betfair representative said about Betfair not being prepared to carry out further work in relation to betting patterns and that this was "*at variance with assurances I had been given during at least one meeting I had with senior Betfair personnel whilst I was employed by international cricket*" [99].

87.1 Mr Rees stated that the view of the Betfair representative in this instance "*was not the view of other Betfair personnel or of that individual's successor*". Mr Rees stated that in the context of cricket "*without exception,* [Betfair] *had offered unrestricted Betfair assistance*" but that "*their assurances*" were not actually "*put to the test as I don't recall any betting alerts from Betfair whilst I was employed in cricket*" [100].

87.2 Mr Rees further told the Panel that "*Betfair's Integrity Unit personnel readily provided* [the TIU] *with, and volunteered, information and prompt expert assessments in relation to betting patterns which went way beyond merely sending* [the TIU] *alerts*". Mr Rees stated that "*they offered and organised Bruce Ewan's access to the Betfair BetMon and access to the Betfair information portal*". Mr Rees stated, "*my understanding was that this would allow Bruce Ewan himself to delve into information relating to suspect matches and suspect gamblers and to identify what further information he might require from Betfair*" [101].

87.3 Mr Rees stated that *"from when the TIU first became operational Betfair would be helpful to us and would, for example, as a matter of course provide: the reasons why they were concerned about a particular match, details of suspect bets and details of suspect gamblers and links between suspect gamblers*". According to Mr Rees, Betfair "*would also readily volunteer information and opinions which, in their expert views, would help* [the TIU]" [102].

87.4 Mr Rees told the Panel that he was *"not surprised that Betfair ended up being so co-operative*" as "*most of the suspicious betting in the industry was activity generated by their account holders*" and "*it was just as much in their interest as that of the tennis authorities to investigate and identify the wrongdoers*" [103].

88. The evidence of Elli Weeks was that the TIU "*could only get the betting data if the companies who generated it gave it to us. Most of the companies were not very helpful. Most betting companies did not want to share information owing to concerns about client confidentiality and data protection. They would provide the TIU with a match alert but not a great deal more. Betfair, on the other hand, was brilliant and gave the TIU a lot of information. It would do an analysis, which was much more comprehensive than anything anyone else provided. Even if I did not understand something fully it would be thorough in setting out why something was suspicious. It would identify people who might be connected with the players. I would then include that material in my reports*"[104].

89. The approach taken by the TIU following Nigel WIllerton's promotion to Director of the TIU appears to have followed that taken by Jeff Rees up until 2012. It does not appear to the Panel from the documents seen by it, that the TIU has given any significant evidence based consideration to the possibility of employing a betting analyst or member of staff with a background in the betting industry. At no point did the TIU seek permission to employ such a person. Nor has the TIU instructed a betting expert in respect of any of its investigations. The TIU has relied upon betting operators to provide alerts to it.

99 Response of Jeff Rees to Notification given under paragraph 21 ToR.

100 Response of Jeff Rees to Notification given under paragraph 21 ToR.

101 ibid.

102 ibid. (emphasis in original).

103 Response of Jeff Rees to Notification given under paragraph 21 ToR.

104 Statement of Elli Weeks (formerly TIU).

90. The TIU told the Panel[105] that, in its view, a betting analyst would have very little meaningful data to work with under current disclosure restrictions among betting regulators and betting operators. Despite remaining unconvinced by the benefits of a betting analyst, the TIU stated that it would see merit in a betting industry liaison officer to develop and build on its relationships with betting regulators and betting operators. The TIU stated "*this will be more important still in the post General Data Protection Regulation (GDPR) landscape*". This appears to be the *"Relationship Manager"* mentioned in the TIU Staffing Review August 2016 document, or the proposed fourth analyst in the April 2017 chart.

Tennis Expert

91. From the documents seen by the Panel, the TIU did not give any significant evidence-based consideration to the possibility of employing a tennis expert. At no point did the TIU seek permission to employ such a person. Nor has the TIU instructed a tennis expert in respect of any of the investigations it conducted. The TIU has relied on officials at the relevant events in this context. Mr Rees' reasons for not instructing or employing a tennis expert are set out at paragraphs 167 to 170. The TIU's reasons for not instructing a tennis expert are set out at paragraph 217.

Integrity Monitoring Services

92. In February 2010, Sportradar delivered a presentation to Mr Rees and Mr Ewan regarding its 'integrity monitoring service'. Sportradar provided a quote for its service but confirmed that it would provide the service for free should the TIU permit Sportradar to send unofficial scouts to all non-televised tennis matches[106].

93. In April 2010, Mr Rees sent a letter to Sportradar indicating his decision that it would not be appropriate for the TIU to enter into a business relationship with Sportradar[107].

94. In November 2010, Mr Rees and Mr Ewan attended a meeting at the offices of Sportradar. At the meeting, Sportradar indicated that it would like to have a commercial partnership with the TIU. Mr Rees and Mr Ewan did not dismiss the idea[108]. No partnership was ultimately entered into.

95. In December 2011, Mr Rees and Mr Willerton attended a meeting at the offices of Sportradar. Sportradar gave a demonstration of the technology it uses when analysing data in relation to football matches. Mr Rees noted in an internal file note "[Sportradar] *gave us a demonstration of the technology they use when analysing data in relation to football matches. It is very impressive*"[109].

96. In July 2013, Mr Willerton, Ms Weeks and Mr De Freitas attended a meeting at the offices of Sportradar. The purpose of the meeting was to introduce Mr De Freitas and Ms Weeks, the TIU's then Information Manager and Analyst, to Sportradar's Fraud Detection Service ("FDS"). At the meeting, the TIU received a commercial offer under which Sportradar would be paid a fee to monitor 69,000 tennis matches per year. Mr Willerton explained at the meeting that he was content with the systems the TIU had in place, as the TIU was alerted to any suspicious betting patterns via Memoranda of Understanding ("MoUs") with betting operators. Mr Willerton noted internally that he did not deem the FDS necessary because it did not, in his view, offer anything in addition to the information the TIU already obtained[110].

97. At a meeting of the PTIOs in September 2013, Nigel Willerton reported Sportradar's offer and the proposed cost. Mr Willerton said that he considered the cost to be too high and that the MoUs in place with betting operators would ensure the TIU received alerts in any event. Mr Willerton expressed his view that the reports submitted by Sportradar would not assist in the evidential trail as far as TIU investigations were concerned[111].

98. In a formal response to Sportradar's offer, Mr Willerton stated that he was content with the procedures and systems that the TIU had in place.

105 Response of the TIU to Notification given under paragraph 21 ToR.

106 Note of Jeff Rees in respect of Meeting on February 2010 with Sportradar.

107 Letter from Jeff Rees to Carsten Koerl (Sportradar) dated 8 April 2010.

108 Note of Jeff Rees in respect of Meeting on November 2010 with Sportradar.

109 Note of Jeff Rees in respect of Meeting on December 2011 with Sportradar.

110 TIU, Internal File Note, 10 July 2013.

111 PTIO, Meeting Decision and Action Sheet, 4 September 2013.

99. In late 2014, Sports Integrity Monitoring ("SIM") approached the TIU to offer its services. A trial period of SIM's services was held for three months, concluding in early 2015. During the trial period, the TIU did not receive any alerts through the SIM service that it did not receive as a result of the MoUs already in place with betting operators. SIM provided a quote to use its services on ongoing basis. The TIU declined this offer[112].

100. In the summer of 2015, SIM offered the same services for free accompanied by a request to use the TIU's logo and to be able to promote the work undertaken for the TIU. The TIU discussed this offer with the TIB, and it was agreed that only the second condition was acceptable. An MoU was drafted[113].

101. Mr Willerton met with SIM in February 2016 to finalise the MoU. Following this meeting, SIM contacted the TIU to say that it would need to put in place certain measures to ensure that adequate and professional service could be provided. SIM proposed a fee to cover this service. The TIU declined this offer[114].

102. Following the announcement of this Review, Sportradar offered the TIU a free trial period of its FDS service. At a meeting of the TIB in June 2016, it was decided that each governing body would consider Sportradar's proposal[115].

103. At a meeting of the TIB in September 2016, Mr Willerton reported that ESSA had announced a joint initiative with Sportradar to utilise the FDS for tennis purposes. ESSA confirmed to Mr Willerton that all alerts would be reported to the TIU. It was thus decided that it was unnecessary for the TIU to trial Sportradar's FDS service[116].

104. On 2 March 2018 the ITF announced that it had entered into an arranged with Sportradar to use its Fraud Detection System to monitor betting patterns across more than 50,000 ITF Pro Circuit tennis matches. Whilst the Panel has not been provided with any documents in relation to this arrangement, the ITF informed the Panel that the output of the work undertaken by Sportradar will be provided to the TIU, which will be responsible for its investigation as it sees fit.

112 TIB, Meeting Decision and Action Sheet, 22 February 2016.

113 TIB, Meeting Decision and Action Sheet, 22 February 2016.

114 TIB, Meeting Decision and Action Sheet, 22 February 2016.

115 TIB, Meeting Decision and Action Sheet, 2 June 2016.

116 TIB, Meeting Decision and Action Sheet, 21 September 2016.

B TIU INFORMATION

105. In this section the Panel sets out the information received by the TIU, specifically addressing: (a) the types of information received by the TIU; (b) the sources of that information; and (c) its storage by the TIU.

(1) TYPES OF INFORMATION RECEIVED BY THE TIU

106. Since its inception, the TIU has received the following principal types of information[117]:

106.1 Match specific information (or "Match Specific Alerts"), which includes:

106.1.1 Match Alert (or "Betting Match Alert"): a report of suspicious betting on a tennis match, originating from betting operators, betting regulators and/or data distributors. Match Alerts can be received both pre-match, during a match and post-match.

106.1.2 Suspicious Match (or "Other Match Alert"): a report of a suspicious tennis match from any other source (including, for example, officials, journalists and members of the public).

106.1.3 Match-Fixing Allegations[118] (or "Other Match Alert"): a report of a suspicious tennis match from any other source (including, for example, officials, journalists and members of the public).

106.2 Non-match specific information, which includes:

106.2.1 Integrity Concerns – Player: a report of integrity concerns regarding a player, though not related to a specific match.

106.2.2 Match-Fixing Allegations: a report of integrity concerns regarding a player, though not related to a specific match.

106.2.3 Integrity Concerns – Official: a report of integrity concerns regarding an official, though not related to a specific match.

106.2.4 Corrupt Approach: an approach to a player with the intent of facilitating match-fixing, either in person or by phone (including messaging applications).

106.2.5 Corrupt Approach by Social Media: an approach to a player with the intent of facilitating match-fixing, using any form of social media.

106.2.6 Betting on Tennis: a report of betting on tennis by any person who is a 'Covered Person' under the Tennis Anti-Corruption Program.

106.2.7 Miscellaneous – Non-Player: any other alert or referral or report.

117 For ease of reference, the Panel adopts the TIU's terminology throughout this section (unless utilising the defined terms in paragraphs 106.1.1 to 106.1.3.

118 The term 'Match-Fixing Allegations' is used in the latter years of the TIU to describe both match-specific and non-match specific alerts.

(2) SOURCES OF INFORMATION

107. The TIU receives the information listed above from a number of sources. This section details those sources and provides an overview of the information they provide.

Betting industry

Memoranda of Understanding

108. Members of the betting industry (including betting operators, betting regulators and industry associations) typically provide information to the TIU pursuant to a MoU.

109. The purpose of a MoU is to share betting-related information to assist the TIU in its investigations. The MoU sets out the circumstances in which the TIU may request, and the signatory may provide and volunteer, betting-related information.

110. In general terms, under a MoU, the TIU may request that a signatory send details of unusual betting patterns (i.e. Betting Match Alerts) to the TIU. The TIU can request details about the bettors who generated the unusual betting patterns, including any personal identification information of bettors, if either the bettor is bound by the applicable tennis rules or the TIU has reasonable grounds to suspect that the bettor poses a threat to the integrity of tennis.

111. The TIU entered into its first MoUs (separately) with ESSA, the Association of British Bookmakers, and Betfair in December 2008. Since then, the TIU has entered into an estimated 60 other MoUs. The TIU has a standard form for its MoUs, although certain terms are negotiated on a case-by-case basis if requested by the counter-party. The majority of MoUs, however, are subject to the same standard terms.

112. The number of MoUs entered into by the TIU has increased significantly since 2014. A significant factor in this increase was the introduction by the ATP and the WTA of requirements, through express contractual terms in their data sales agreements, that its official data could only be sold to betting operators that had a MoU with the TIU. The ITF does not expressly impose that requirement in contractual term in its data sales agreement. Mr Rees told the Panel that he had informed Murray Swartzberg, of the ATP, that data should only be sold to betting operators who had entered into an MOU with the TIU.

113. The TIU views the increase in MoUs as being beneficial to its work. Phil Suddick has advised the Panel that the increase in MoUs has led to "*more productive relationships with the betting operators, creating a willingness to report more suspicious activity than perhaps previously*".

Compliance with the terms of a MoU

114. There is no standard definition of an unusual betting pattern. Betting operators take into consideration a number of factors, individually determined by each betting operator, to determine whether betting appears unusual, including account characteristics, bet characteristics, and market characteristics.

115. Nor is there an agreed threshold for when an unusual betting pattern is sufficiently serious that it amounts to a suspicious betting pattern, or for when it must be reported.

116. Individual betting operators and regulators apply different tests and standards to determine whether a reporting obligation has arisen. Some betting operators take a conservative approach and notify of a match alert in circumstances where the trigger for the alert might be explained by non-suspicious reasons. By contrast, other betting operators conduct internal evaluative checks to determine whether the trigger for a match alert is suspicious or not. If the trigger is deemed not suspicious then the betting operator will not send a match alert.

117. The substance and quality of information provided by the different betting industry entities varies. Betting operators and regulators are subject to various regulatory requirements, as well as privacy and data protection laws, which impacts the type and amount of information the betting operator or regulator is permitted to disclose, particularly where the TIU's request relates to personal identification information.

Communication and interaction with the TIU

118. The level of communication and interaction among different betting operators and regulators and the TIU varies. The majority of betting operators and regulators share information with the TIU via email, either by proactively sending a match alert to the TIU or by responding to a request from the TIU. Betfair have also provided the TIU with access to its BetMon portal. Depending on the urgency of the match alert, some are communicated via telephone. The frequency of this communication depends on (a) the relationship between the betting operator and the TIU; and (b) the frequency of match alerts. Some betting operators have regular, often daily, contact with the TIU, whereas others have limited or no contact with the TIU.

Informal / other sources of information

119. The TIU also receives information from the betting industry on an informal basis, from entities that have no MoU with the TIU. Examples include the Gibraltar Gambling Division and Croatian Lottery, who do not have MoUs with the TIU but still share information with the TIU.

Data distributors and other integrity monitors

Sportradar

120. As part of Sportradar's Integrity Services it monitors a number of matches across different sports. This includes the monitoring of pre-match and live odds. Sportradar informed the Panel that it has "*previously provided integrity services to the* [FFT]*, currently provides them to Tennis Australia and has monitored tennis on an unofficial basis for a number of years*"[119].

121. Sportradar informed the Panel that since 2010 it has provided 119 suspicious match reports to the TIU and also reported on umpires who were the subject of integrity concerns[120]. Sportradar also reports match alerts to other integrity related bodies, such as ESSA, which in turn reports match alerts to the TIU.

Officials and tournament supervisors

122. The TIU receives a small number of Other Match Alerts from officials and tournament supervisors. For example:

122.1 In 2013, a tournament supervisor reported (on behalf of the chair umpire) that a higher-ranked (and seeded) player had been making too many easy mistakes during a singles match at an ITF Futures tournament. This player complained of injury and lost numerous consecutive games in a straight sets loss to a lower-ranked (and unseeded) player[121]. In a separate, but related incident, an official had overheard two players accuse the higher-ranked player of tanking but those players refused to elaborate when asked to do so by the official.

122.2 In 2014, a tournament supervisor raised concerns with respect to three separate matches at an ITF Futures tournament[122]. In those matches, three players had reportedly been acting *"strangely"* (e.g., missing easy shots, calling the physio). In one of the matches, the opponent of the suspected player alleged that he had been approached on WhatsApp and offered €1000 for every service game that he lost.

122.3 In 2015, a tournament supervisor reported concerns with respect to a singles match during an ITF Futures tournament. A significantly higher ranked player had lost the opening set before going on to win the match[123].

119 Statement of David Lampitt (Sportradar).
120 ibid.
121 TIU-13-009.
122 TIU-14-106.
123 TIU-15-110.

123. Officials and tournament supervisors have also been responsible for reporting non match specific information, including threatening approaches via social media and attempts to sell wildcards.

Public

124. The TIU typically receives information from the public via the info@tennisintegrityunit.com email address, or via the "Contact Us" section of the TIU website.

125. Information received from the public can range from accusations of integrity violations reported by disgruntled, unsuccessful bettors to detailed and reasoned suspicions of impropriety accompanied by thorough betting market analysis.

126. With the exception of certain *"credible"* traders or punters, the TIU places little weight on information received from the public. But the TIU still typically classifies information received from the public as intelligence.

(3) STORAGE OF INFORMATION

127. The Panel has had access to the TIU's investigative documents. The TIU provided the Panel with all hard copy files stored onsite at the TIU's offices, as well as three laptops that allowed the Panel to access both the TIU's shared drive and Clue database system.

128. Since the TIU began operating in 2009, investigative material and intelligence has been stored using four key methods (as examined in more detail below):

128.1 Hard copy documents;

128.2 iBase;

128.3 Shared drive (S-Drive);

128.4 Clue.

Hard copy documents

129. The Panel has reviewed several hundred paper files containing information provided to the TIU since its inception. The files were not indexed and were collated in a non-standardised manner. The Panel could discern no obvious methodology that might enable the TIU easily to review that material and/or refer to it at a later date (for example, to find earlier information that might be relevant and/or cross-referential to a new piece of information). It seems to the Panel that to access material in it would require prior personal knowledge of what was there, and where.

130. During the years 2009-2012 concurrent case files (paper and electronic) were opened for many investigations. In the majority of files reviewed by the Panel, the information stored in hard copy was not mirrored by the information stored in soft copy. The Panel was unable to discern a system whereby these concurrent hard and soft files could be cross-referenced or a policy as to whether the hard or soft files file took precedence. The variation appears to be attributable to the preference of the individual Investigator responsible for the investigation.

Soft copy documents

131. Soft copy documents at the TIU have been stored in three locations: iBase (2009 to 2012); a local shared drive (2009 to present); and Clue (2016 to present).

iBase

132. iBase is an intelligence data management application that the TIU used between 2009 and 2012 as a repository for intelligence. If information was received that was considered for intelligence purposes only, it would be committed to the iBase system. Similarly, if the TIU received information warranting further investigation, this intelligence would be committed to iBase, whilst information relating to the subsequent investigation would be stored on the S-Drive.

133. The iBase platform was administered by Bruce Ewan (now deceased) and then by Elli Weeks. The TIU ceased uploading intelligence to iBase in or around January 2012 (though the frequency of uploads had decreased greatly in the preceding six months). The Panel has been unable to review the iBase database in its native format, but hard and soft copy records of the iBase material have been reviewed.

134. As set out in Chapter 9[124], Mr Rees told[125] the Panel that he gave Bruce Ewan responsibility for creating and managing the TIU's information database, and for populating the TIU database and record system with intelligence and information (past and present), "*with the clear expectation that it would inform and support investigations as had been the case with the equivalent data base he created and managed in cricket*". In this regard, Mr Rees stated[126] that, having worked with Mr Ewan for some years and having had long conversations with him when he first took up his position at the TIU, Mr Ewan "*knew full well his responsibilities and* [Mr Rees'] *expectations of him*". Mr Rees stated[127] that he "*did not supervise Mr Ewan on these basic aspects of his job*". Mr Rees further stated that his experience of Mr Ewan was that "*he was a conscientious and highly-organised individual, with high ethical standards, who maintained the information database fastidiously*"; and "*nothing went in to the database if Mr Ewan was not satisfied that he could account for its origins*". In relation to the computerised database, Mr Rees stated[128] that he instructed Mr Ewan to compile "*a simple guide to the system for use by others in case Mr Ewan should ever be suddenly incapacitated*". The Panel has not identified such a guide within the papers it has reviewed.

135. In respect of hard copy materials provided to the TIU on its inception, Mr Rees stated "*it may be that, because of the sheer volume of material in the hard copy files we were provided with, Bruce Ewan may have simply catalogued the contents for ease of reference. However, I cannot be absolutely certain of that. He may have adopted some more sophisticated electronic shortcuts in respect of the contents*"[129].

136. The Panel was provided a statement from Elli Weeks, who took over at least part of the position of Information and Intelligence Manager after Mr Ewan. Ms Weeks' title was Information Manager and Analyst. Ms Weeks, who joined the TIU a few months after Mr Ewan's retirement, stated in her evidence that her role was not a like-for-like replacement for Mr Ewan's role; they had different backgrounds, with Mr Ewan a trained operational investigator and Ms Weeks coming to the TIU as a former intelligence analyst[130]. Whilst Mr Ewan had retired before Ms Weeks took up her role, he returned to provide basic training to Ms Weeks, including concerning the drives on the computer and the iBase database, and offered that he could be contacted should any further questions arise in the future[131]. Ms Weeks in her evidence stated that Mr Rees did not provide her with any direct training[132]. She further stated that "*Mr Rees explained to me as soon as I began working at the TIU that he expected me, as the information manager, to compile everything I could about a suspicious match"*[133].

137. As set out in Chapter 9[134], in relation to hard copy files, Ms Weeks' told the Panel[135] that there was a huge amount of duplication in Mr Ewan's filing; she believes Mr Ewan was more comfortable using paper files than computer files (there were many hard copy files, with hard copy indexes); she could not be 100% certain that everything the TIU had in hard copy was also stored on the computer system, although very many files that were in hard copy were also on the computer system; information about older investigations were in paper files; and she *"would not be surprised if these were not on the computer system*".

124 See Chapter 9, Section D.

125 Response of Jeff Rees to Notification given under paragraph 21 ToR.

126 Response of Jeff Rees to Notification given under paragraph 21 ToR.

127 ibid.

128 ibid.

129 ibid.

130 Statement of Elli Weeks (formerly TIU), paragraph 7.

131 ibid.

132 ibid.

133 ibid.

134 See Chapter 9, Section D.

135 Statement of Elli Weeks, paragraphs 25 to 28.

138. In relation to iBase, Ms Weeks told[136] the Panel that:

138.1 Mr Ewan had responsibility for building the iBase database before she joined the TIU. She did not consider it to have been built well.

138.2 The iBase database did not play an effective role within the TIU because it was not set up well. She archived the iBase database because no one was using it.

138.3 Mr Rees did not have any access to iBase.

138.4 Whilst she was at the TIU, it obtained a new version of iBase. It was a new, distinct version of the database that needed populating from scratch. She reorganised the electronic files that were on the stored on the S-Drive (and other drives) so that, in time, they could be easily exported to the new iBase database. The TIU became very busy, and she was not able to finish this job before she left in 2015.

Shared Drive (S-Drive)

139. The S-Drive is a repository of electronic files received and/or created by the TIU that is organised in a manual folder/sub-folder structure. Every TIU employee has access to it.

140. From 2009 to 2012, the TIU created sub-folders on the S-Drive for purposes of saving and storing information relevant to specific investigations. However, sub-folders appear to have been created on an *ad hoc* basis, and the Panel observed instances where information seemingly relevant to a specific investigation had been saved in a folder/sub-folder other than the one specifically assigned.

141. In 2013 the TIU began to allocate 'TIU Package' numbers to information that the Information and Intelligence Manager determined worthy of investigation. The use of a unique identifier for each investigation has made it possible for the Panel to verify (using the S-Drive) the number of investigations commenced by the TIU in the period 2013 to 2015.

142. In July 2015, the TIU began to allocate 'INT File' numbers to information found worthy of retention as intelligence (but not worthy of full investigation at the time). The process of allocating either a TIU Package or INT File represents the TIU's formal triage of information received. This process is described further below.

143. Since the introduction of Clue, the TIU uses the S-Drive to store non-investigative information, recordings and transcripts of interviews, and material relevant to current investigations that is awaiting upload to Clue by the TIU Investigators.

Clue

144. In January 2016, the TIU introduced a custom, web-based investigative database to act as a single repository for information received. The purchase of this software, and the incurring of the ongoing licensing costs, were approved in late 2015[137]. The motivation behind the introduction of the Clue system was the ease with which documents and information could be input, as well as the extra search functionality that it would provide[138]. The TIU decided to upload to Clue all TIU Packages stored on the S-Drive from 2013 onwards.

After the introduction of the new database, the responsibility for uploading information and documents remains with the investigators to whom each package is allocated. As such, the consistency with which such materials are updated continues to vary.

136 ibid.

137 PTIOs, Meeting Decision and Action Sheet, 8 September 2015.

138 PTIOs, Meeting Decision and Action Sheet, 8 September 2015.

C INVESTIGATORY STEPS TAKEN BY THE TIU

(1) MATCH SPECIFIC INFORMATION: BETTING MATCH ALERTS AND BETTING DATA

145. In this Section, the Panel firstly examines investigations initiated by Betting Match Alerts between 2009 and 2012, when Jeff Rees was the TIU's Director. Secondly, the Panel examines investigations initiated by Betting Match Alerts received between 2013 and 2016 when Nigel Willerton was the TIU's Director.

146. The Panel's understanding of the TIU's approach is based on the Panel's review of the documents that were provided to it by the TIU (on the TIU's S-drive, iBase, Clue and in hard copy files), together with relevant evidentiary statements.

147. The Panel addresses TIU investigations based on sources of intelligence and evidence arising from non match specific information (with the meaning given in paragraph 106.2 above) at paragraphs 248 to 262 below.

The period between 2009 and 2012

148. In this section, the Panel examines investigations initiated by Betting Match Alerts between 2009 and 2012, when Jeff Rees was the TIU's Director.

149. The Panel sets out below its present understanding of the evidence as to the investigatory steps taken by the TIU from 2009 to 2012 in relation to Betting Match Alerts and betting data. From that period, the Panel has identified 173 Betting Match Alerts received by the TIU.

150. In his evidence to the Panel, Mr Rees emphasised that, during his tenure, TIU investigations were largely not dependent on Betting Match Alerts. Mr Rees stated, *"my responsibility was to direct efforts where they were most likely to be effective"* and that "*the reality… is that much of* [the TIU's] *most productive work came from investigations initiated by* [the TIU] *and based on concerns other than those arising from suspicious betting patterns*" [139].

Initial steps taken by the TIU on receipt of a Betting Match Alert

151. Mr Rees also advised the Panel[140] that: *"a protocol was created in late 2008 after consultation with the governing bodies, betting companies and others, and also after addressing with the PTIOs the specific question of whether a chair umpire should be alerted to suspicious betting on a match he/she was about to officiate in. The priority was to put in place thought-through procedures, protocols and systems to allow the Unit to respond rapidly to new allegations and suspicions, to gather and preserve evidence, and prevent destruction of anything incriminating. In investigative terms we should make best use of the 'golden hour' to give the Unit its best chance to allow an investigation to proceed successfully. This included arrangements where, in the event of suspicious betting on a live or imminent match being reported, we would require the senior official at the tournament to watch and critically assess the match on our behalf, and subsequently forward to us the scorecard for timings, details of any relevant injury or medical evidence, details of any unusual incidents and any observations he or she might have. They should also note the presence of any courtsiders. We would also require a post-match report and assessment from the chair umpire. Other actions we would initiate immediately would be influenced by intelligence we held about the parties involved, their associates, or the tournament itself. We could do this 24 hours a day from anywhere in the world, and had a preformatted prompt list ready to send electronically to senior tournament officials. For ease of reference at any time I personally stored it in my Blackberry. Everybody in the Unit had it, and it was still in use when I retired. Whist I no longer have the preformatted list I am sure that the IRP will have little difficulty in locating that and the protocol*".

139 Response of Jeff Rees to Notification given under paragraph 21 ToR.

140 Response of Jeff Rees to Notification given under paragraph 21 ToR (emphasis in original).

152. The Panel has identified examples of the pre-formatted list referred to by Mr Rees. The Panel has not however identified a formal written protocol that recorded the overall investigatory steps to be taken by the TIU upon receipt of a Betting Match Alert. Based on the contemporaneous documents it appears that the TIU's general practice between 2009 and 2012 was to gather initial information through the following steps:

152.1 Contacting the Tournament Supervisor to request a factual match report and to obtain relevant documents.

152.2 Contacting betting operators (particularly Betfair).

152.3 Carrying out open source intelligence searches for connections between the player and bettor.

THE TIU'S APPROACH TO BETTING DATA AND THE PROVISION OF BETTING DATA BY BETTING OPERATORS IN RESPONSE TO TIU REQUESTS

153. From the contemporaneous documents, a typical Betting Match Alert would set out the issue of concern for the betting operator, including, for example, an unexpected shortening of odds on a player or a very substantial winning account.

154. The TIU's principal focus during this period was to request bettor details and to look specifically for connections that could be established between the suspect player(s) and bettor(s). The TIU would take steps to obtain, from the betting operators, details of the betting, such as the timing of bets, in an attempt to assess the suspiciousness of bets. The Panel has reviewed a number of *"Match Analysis"* documents, dated between 2010 and 2012, which reflect the fact that the TIU did in certain cases carry out some level of betting analysis.

155. There were occasions however where, from the evidence reviewed by the Panel, the TIU did not appear to make sufficient follow-up enquiries regarding the betting on the match in circumstances where further enquiries were on the face of it warranted. In 2010, for example, the Tournament Supervisor in an ATP Challenger match reported to the TIU that he thought there was a *"question mark"* over the match. At the time, one of the players was already the subject of two other investigations. The Tournament Supervisor asked the TIU to check if there was any suspicious betting on the match, but there is no evidence that any enquiry was made of the betting operators to establish if there had been any unusual bets on the match. Mr Rees stated[141] to the Panel that "*I cannot recall this happening. . . . I can say that if I had received such information I would have first wanted to know WHY the Tournament Supervisor was concerned about the match. If satisfied that further enquiries were warranted I would have checked with Betfair, if they were offering markets on the match, and almost certainly ESSA. It should be noted that I had a personal interest in the player in question because of his known connections with the corruptors* [name redacted] *and* [name redacted] *... and had interviewed him on* [date redacted]. *I would therefore have been very interested in pursuing anything a supervisor had to say about the player in question*".

156. The Panel reviewed a number of cases relating to the approach taken by the TIU in obtaining and analysing betting data relating to spot fixes. Mr Rees stated in response: *"The reality, and as Michael O'Kane explained to me at length when he was still at Ladbrokes, is that 'spot fixing' in tennis is largely a myth. What sensible bookmaker or sensible Betfair customer would ever accept a large wager on one tiny aspect of a match? In this case the complainants, William Hill, did not themselves do so and suspended betting on the match. It is also relevant that William Hill is a conventional bookmaker who could supply only limited data to the TIU, and there was no data to analyse. Important additional point: I do not believe that Betfair were offering markets on Challenger-level matches at that time*".

141 Response of Jeff Rees to Notification given under paragraph 21 ToR (emphasis in original).

157. The following matter is an example of the TIU's approach to utilising betting data:

157.1 In 2010 ESSA raised a betting alert in respect of four matches. One bettor had correctly bet on the result of three of those matches (with the lower ranked player beating the higher ranked player in each match). ESSA stated that all of the bets had come good for the bettor and that *"he got a pretty big profit for such low profile events"*. That accumulator bet had been combined with a correct score bet (2 sets to 0) in respect of a fifth match ("Match Five"). ESSA supplied the personal identifying details of the bettor. Bruce Ewan replied to ESSA that the bettor had not previously come to the TIU's attention. There was no further investigation into this alert or into the four matches.

157.2 Match Five had also been the subject of a pre-match betting alert. Betfair informed the TIU that a previously alerted account was the largest backer of the player who won the match. That player's odds had shortened considerably before the match. Sportradar FDS also provided a report of the match to the TIU. The report stated that both players in Match Five had previously been involved in matches featuring irregular betting patterns. The report noted that Match Five had seen an extremely high turnover on Betfair of more than £1m, up to twenty times the amount bet on other matches played in the same round of that tournament. The report further stated that given the relatively low-key nature of the tournament and of the players involved, there was no normal justification for such a large level of interest from bettors. The Sportradar FDS report concluded that the large odds changes were hard to justify and that the *"strong support"* seen with bookmakers and on the exchanges *"strongly points to this match being manipulated, specifically for betting purposes"*. Bruce Ewan made enquiries with the Tournament Supervisor. In response the Tournament Supervisor stated that the losing player had an injury for which he had been treated before the match, but which did not appear to have hindered him during the match. The TIU identified that the betting account flagged by Betfair in connection with Match Five had bet on 15 other matches of interest from August 2007 onwards, although this fact was not recorded in a summary document prepared by the TIU. There was no further investigation into this alert for Match Five.

158. With respect to this above example, Mr Rees stated[142]:

158.1 *"ESSA received a single alert from just ONE bookmaker about 4 low-level matches plus one higher-level match between* [player name redacted] *v* [player name redacted]*. In respect of those matches just ONE gambler profited from ONE accumulator bet on three of the low-level matches (the bookmaker didn't offer a market on the fourth) plus* [player name redacted] *to beat* [player name redacted] *by 2 sets to love. As that single bet was placed with a conventional bookmaker there was no data to be analysed or looked at in respect of that one bet other than the identity of the one gambler. The matter was brought to the TIU's notice in an Email to Bruce Ewan on* [date redacted]*, 2010, 22 days after the event, and having provided such details as he could Mike O'Kane of ESSA simply asked, 'Let me know what you think'. In response, Bruce Ewan confirmed that the one named gambler involved had not come to the TIU's notice before, albeit there had been media speculation about the* [player name redacted] *vs* [player name redacted] *match. Mike O'Kane responded that unless Bruce confirmed any suspicions or an investigation into the customer the ESSA member would pay out the following week. Bruce did not. The 4 low-level matches were at ATP Challenger events, and I believe Betfair did not offer markets on Challengers at that time. There is certainly no mention in the papers provided of Betfair concerns in respect of those 4 matches"*.

158.2 *"Betfair did draw the TIU's attention to betting on the higher-level* [player name redacted] *vs* [player name redacted] *match before it was underway and the usual immediate steps were taken by the Tournament Supervisor at the TIU's request. In a follow-up Email Betfair reported that the* [odds] *on* [player name redacted] *had shortened, but they did not raise further concerns"*.

158.3 *"It is possible that the* [player name redacted] *vs* [player name redacted] *match, viewed in isolation of the other matches and on the basis of early concerns from Betfair, might have justified closer examination of bets placed with Betfair. However, that is not relevant to the IRP claim… A report by FDS on that match, supplied with the papers provided by the IRP, confirm that that match had generated some apparently suspicious betting although I do not know when that was written or who commissioned it*".

142 Response of Jeff Rees to Notification given under paragraph 21 ToR (emphasis in original).

159. In the assessment of the Panel, more information could have been sought in respect of the first four matches. In particular, the TIU could have sought to ascertain the amount risked and won, and it could have sought to obtain the account history of the bettor to see whether this bet stood out as atypical for the account, and if there were other bets of concern on it. Such inquiries could have potentially helped the TIU to determine how concerning this multiple bet was. As set out in paragraphs 412 - 415 below, the Panel does not share Mr Rees' view that there was no data to be analysed by virtue of the fact that the bet had been placed with a *"conventional bookmaker"*. Nor does the Panel consider that the fact that the alert related to a bet placed by a single gambler provided adequate reason for the TIU's decision not to conduct an analysis of the available betting data. It should also be noted that the bettor in question was responsible for the biggest bet and winnings on a further suspicious match alerted in March 2011. The 2010 accumulator case does not appear to have been revisited at that stage.

160. In respect of Match Five, on the basis of the connections that the TIU identified between the suspect bettor and other matches of concern, it would have been open for the TIU to have investigated the matter further[143].

161. The Panel has not seen evidence that, between 2009 and 2012, the TIU instructed a betting expert, at any stage of an investigation, to analyse betting data with a view to the analysis being used to build a case.

162. Additionally, no investigations arising out of a Betting Match Alert led to the TIU's submission of a report to the PTIOs between 2009 and 2012. In response Mr Rees stated[144] "*the TIU did of course initiate a number of prosecutions which did not have their origins in betting data*".

Obtaining and processing personal records and electronic data

163. During this period 2009 to 2012, the TIU focused on obtaining written documentation from Covered Persons, such as itemised telephone and bank/credit card statements. On occasion, the TIU also requested that players disclose text message transcripts, hotel bill or details of betting accounts held.

164. From the contemporaneous documents, when the TIU did receive personal records, it focused, in particular, on analysing phone records for connections between the players and the betting account holders.

165. During the period 2009 to 2012, the TIU did not seek to make use of its power under Article F(2)(c) of the TACP to access information storage devices to download the data from a player's mobile phone. As described in Chapter 8[145], before the adoption of the TACP in 2009, when the prior ATP TACP applied, the Sopot investigators asked for and were provided with Martin Vassallo Arguello's phone.

166. Mr Rees stated in his evidence to the Panel[146] that it was *"correct"* that the TIU did not seek to make use of its power. He stated *"the fact of the matter was that from the outset we had information coming in from a variety of sources and were able to put together the evidence for a number of successful and significant prosecutions as a result. I did not at any stage rule out employment of electronic experts to access information storage devices (which included downloading data from players' mobile phones) as the BHA had done during their one-off Sopot investigation albeit without the necessary authority, and also their* [redacted] *investigation, but no one case arose in the early days when such downloading was imperative. As I explain below there were a number of real question marks over the usefulness of the power and I was especially concerned in the early days of the TIU that we should be able to justify our uses of powers under the UTACP and not be seen to abuse them. Abuse would have invited weakening of those powers.... We were successful in resisting all challenges to use of our powers... As things settled down during the course of my tenure at the TIU I became aware that equipment was available which would allow TIU personnel to themselves access information storage devices and download from them, rather than having to employ experts to do so. I therefore instigated a process to identify the most suitable equipment for our purposes, and when I retired a decision as to what equipment should be purchased was close. I believe the equipment was purchased shortly after my retirement, although I have not confirmed that"*.

143 The TIU did interview the losing player in late 2010 in relation to a separate alert that the TIU had received in relation to that player (the match in question having been played earlier in 2010). No questions were raised with the player regarding Match Five during the course of the interview,

144 Response of Jeff Rees to Notification given under paragraph 21 ToR.

145 See Chapter 8, Section A(2).

146 Response of Jeff Rees to Notification given under paragraph 21 ToR.

Obtaining and reviewing match footage

167. On the occasions when match footage was provided to the TIU, there is no evidence that the footage was critically reviewed by the TIU. Nor is there any evidence that a tennis expert was instructed to analyse any specific match footage or advise on any particular player's performance.

168. Mr Rees' stated in his evidence[147] *"I have found that viewing of suspicious events by 'experts' in a sport, such as former players, is of limited value as dishonest players are sufficiently skilled to disguise deliberate under-performing. In any case, and again in my experience, such experts frequently disagree or are equivocal in their opinions. I would be reluctant to give too much weight to a sporting expert's opinion in an investigation or hearing, let alone use it as the sole basis for proceedings against an athlete"*. Further, Mr Rees told the Panel[148] that *"the difficulty in identifying, let alone proving, that a skilled and experienced player is not giving best effort is mentioned in para 2.45 of the Environmental Review. In fact, during the course of that Review and also subsequently, many players commented to me that they were sufficiently skilled to disguise intentional losing shots"*.

169. Further, Mr Rees stated[149] that *"I believe I am correct in saying that during the whole of my time on the TIU not one senior official requested to view and assess a live match at the TIU's request reported seeing anything suspicious, even though they knew suspicious betting had been reported. Those officials were all hugely experienced. I fear that on this subject the IRP is relying inappropriately on the horse-racing experience of viewing recordings of races. I am informed that in that sport fixing-related malpractice by jockeys, such as air-whipping, or deliberately 'stopping' a potential winner, is pretty obvious to an expert. Equally, in soccer footage of a player suspected of engineering a red card, so moving the betting odds to the favour of the opposing team, is clearly worth viewing by experts. I did not come across a situation where a tennis match would afford such opportunities for experts, although viewing of footage by experts remained in our armoury"*.

170. Further, Mr Rees stated[150] that "*whilst I was at the TIU former players were employed by the French Tennis Federation (the FFT) to view some matches during at least two of the French Opens, but they reported nothing suspicious. I should remind the IRP that the Sopot report, paras 59 and 60, and [redacted]'s report, paras 26 and 27, refer to examination of the Davydenko vs Arguello match by the former player Todd Martin, examination of television footage being 'proven practice' of British Horseracing. Todd Martin was obviously aware of the suspicious betting on that match, given the worldwide publicity it had received and he made the following general observation: 'This was a match like most others where a player is injured. There were two moments that led the viewer to believe there was any possibility of something untoward. Both players put forth high levels of effort and they seemed committed to winning. When Davydenko injured himself (appearance was that he RE-injured his foot) the match turned and he appeared not to be able to put up too much of a fight'. This could hardly be viewed sufficient to challenge a player's account in an interview, let alone to be used as circumstantial evidence of corruption*".

Interviews

171. The TIU exercised its right to conduct interviews with players pursuant to Article F(2)(a) of the TACP on approximately 78 occasions between 2009 and 2012. In respect of the timing of the interviews, players were in most cases given written notice to attend an interview.

147 Statement of Jeff Rees (formerly TIU).

148 Response of Jeff Rees to Notification given under paragraph 21 ToR.

149 Response of Jeff Rees to Notification given under paragraph 21 ToR (emphasis in original).

150 Response of Jeff Rees to Notification given under paragraph 21 ToR.

172. During the interview, players would typically be asked about: (a) how they perceived the match to have gone and any apparent injury issues; (b) their knowledge of any betting on the match or whether they had connections to any of the bettors; and (c) whether they had been approached by anybody to fix the match or to provide inside information[151].

173. Mr Rees stated[152] to the Panel: *"Interviews would be conducted in relation to whatever information or suspicions that* [the TIU] *had. These might well have had nothing to do with betting patterns"*.

The TIU's use of intelligence in relation to Betting Match Alerts in order to inform investigations or undertake targeted investigations

174. Whilst the TIU had an intelligence database from its inception, the Panel has not seen evidence that the TIU used intelligence in relation to Betting Match Alerts to inform investigations or as a basis for targeting investigations.

175. In early 2009, for example, the TIU was alerted to a match in which "Player A"[153], the higher ranked player, won the first set against lower ranked opposition, "Player B", but subsequently retired injured.

176. As set out in Chapter 9[154]:

176.1 in 2008 Betfair had alerted the ATP to two matches involving Player A. The first occurred in March 2008 and the second in October 2008. The ATP took investigatory steps in respect of the first of these alerts. The betting data was analysed by the BHA at the ATP's request and the Player was required to provide his telephone records. The possibility of interviewing Player A at that stage was identified by Gayle Bradshaw of the ATP, although no interview ultimately took place. At the time of the handover, Mr Bradshaw informed Mr Rees that the matter was not complete and suggested that the TIU speak with Peter Probert, of Betfair, and Paul Scotney, of the BHA. There is no record of the TIU doing so.

176.2 In October 2008, a further alert was received in relation to Player A. This alert was provided to Mr Bradshaw, with Mr Rees in copy. There is no record of any steps being taken by the ATP or the TIU in relation to this alert.

176.3 The BHA's presentation to Mr Rees on 9 January 2009 had identified the first of those 2008 matches, and two further matches involving Player A.

177. There is no record of the TIU having considered the case history of Player A following the alert received in early 2009. Nor is there any record of the TIU undertaking any analysis of the betting data. Player A was not requested to provide any information to the TIU, nor was he interviewed. Betfair reported that eight accounts had bet that Player A would lose and/or bet that Player B would win, suggesting that information about Player A's injury (or intention to retire) was known to at least some of the account holders. There was also relevant intelligence arising from the ATP investigations in 2008, specifically links between the bettors who had been identified as placing suspicious bets on the 2009 match and the bettors who had bet on the second 2008 match.

178. Mr Rees told[155] the Panel that these links "*were provided to the TIU*" by Betfair's integrity team in their alert to the TIU. Mr Rees stated, "*they were taken into account when the decision was made that a full investigation was not justified at that time*"[156].

151 The term "inside information" is variously defined in different rules, but broadly refers to information that a person has by virtue of his or her position in relation to the competition, which is not in the public domain.

152 Response of Jeff Rees to Notification given under paragraph 21 ToR.

153 "Player A" and "Player B" as referred to in this Chapter are the same as those referred to in Chapter 9 Section A.

154 See Chapter 9, Section A(2).

155 Response of Jeff Rees to Notification given under paragraph 21 ToR (emphasis in original).

156 ibid.

179. Player A was alerted to the TIU six more times during the TIU's first two years of operation (2009-2010). From contemporaneous documents, the Panel has seen no evidence of in-depth analysis of any of these matches or of any interview with the player during this period.

180. At this point, according to Mr Rees, because Player A could *"reasonably be regarded as a serial fixer"*[157], Mr Rees gave Dee Bain "*specific responsibility for everything which had come up, or would come up, in relation to* [Player A]"[158]. Mr Rees stated that Ms Bain, on reviewing the documents, *"recommended that if any further suspicious betting patterns were identified in respect of* [Player A] *consideration should be given to not only taking the usual steps in respect of a match alert and obtaining the fullest information from Betfair but also to* [Player A] *being requested to supply his phone and bank records as soon as possible after the incident. Consideration should also be given to an early interview"*[159]. Mr Rees told the Panel that, on seeing Ms Bain's conclusion and assessing and talking through her reasons for reaching it, he thought it was appropriate[160].

181. Upon receiving a further Betting Match Alert in respect of Player A in March 2011, the TIU launched an investigation that included both an interview and a request for bank records and phone billing records. Player A was interviewed in June 2011, in respect of both the Betting Match Alert received in March 2011 and previous alerts received by the TIU. The following points were ascertained in the interview:

    181.1 One of the bettors was known to Player A. The bettor was best friends with one of Player A's former friends. The bettors' two largest winning bets were on Player A.

    181.2 Player A said he could provide MRI scans to the TIU showing inflammation in his elbow.

182. With regard to the TIU's general approach Mr Rees stated[161]: *"In the case of players who were 'thorns in our sides' that is, whose names came up regularly in association with suspicious betting, then responsibility for their cases, past, present and future was assigned to one particular investigator. … When appropriate, and when we had good reasons to do so, we did interview such players armed with whatever information and suspicions we had, including linking charts prepared by the Information Manager. However, the reality was that we needed* <u>evidence</u> *to put a case against a player before the PTIO's. Repeated suspicions, including repeated suspicious betting patterns in matches they were involved in just were not enough"*.

183. Mr Rees further stated[162]:

    183.1 *"On the wider subject of the value of betting data and betting analysis, I think the IRP are placing too great reliance on them and they need to understand the true position. Whilst it would be great to establish a link between a player and a winning gambler in a suspect match, and we did look for those links, on the TIU we quickly came to suspect that in major 'dodgy' matches, where large sums were made as a result of an unexpected outcome, there was an intermediary between the player and the gamblers. That might be a non-player or a locker-room 'go to' guy. The significance in investigation terms was that betting patterns and names of suspect gamblers would mean very little to the player involved, and examination of his/her communications records would reveal no contact between that player and the gamblers. That is why we saw the successful prosecutions* [of] *Koellerer and Savic, who were both 'go to' guys and corruptors, as the ultimate prizes, and the TIU were working on others when I retired"*.

    183.2 *"Experience showed that ex-players, known on the playing circuit, were sometimes used to corrupt players and then be the links between them and corrupt gamblers. The actions that the TIU could take in respect of such individuals was limited unless they were covered persons. However, we always put them on the 'No Credentials' list that was circulated to all tournament organisers, and were notified if they were put forward for credentials by*

157 ibid.
158 ibid.
159 ibid.
160 ibid.
161 ibid (emphasis in original).
162 ibid (emphasis in original).

a player. Further, during interviews we would sometimes show a player photograph[s] of individuals we believed to be intermediaries".

183.3 *"Whilst I was at the TIU 'target monitoring' and 'proactive monitoring' of individual tennis players as a matter of course were not realistic propositions in respect of individual tennis players (unless that player was suspected of being a 'go to guy' intent on arranging fixes by and for others - an entirely different proposition). ... ranking points are crucially important to players, and there will only be a very limited number of times in a year a player can fix without losing access to tournaments and loss of confidence from sponsors. Our intelligence was used to build up intelligence pictures and support investigations, and we did use it to focus on individuals we suspected to be the 'go to' guys in the locker room, such as Koellerer. The reality, however, was that we needed evidence. In practical terms a TIU investigator could hardly proactively 'target' a player and gather evidence in the way that police can target an active criminal".*

183.4 *"With hindsight and as a result of experience on the TIU, I think that the use of the words 'targeted operational action against a player or other person' at paragraph 3.31 of the Environmental Review was misleading when applied to tennis. Such action would clearly be possible in British horseracing, when suspect jockeys and corruptors are all in the UK much of the time, jockeys can take part in a large number of races events at relatively few locations, the BHA have powers under RIPA, suspects will have UK mobile phones, and there are far fewer jockeys than there are tennis players. In contrast, meaningful targeting of suspect tennis players is so much more difficult and a realistic proposition only occasionally. 'Focusing' on an individual suspect player would more accurately reflect what was possible in tennis and it was what we did in the TIU".*

The TIU's narrow interpretation of contrivance and the search for a corrupt link

184. The TACP at the time, as now, made it an offence to contrive or attempt to contrive the outcome or any other aspect of a match. It appears to the Panel that throughout the period 2009 to 2012 the TIU interpreted this provision of the TACP as requiring that it be shown that the player acted as he or she did on the court for betting purposes or for some other corrupt purpose, and as not applying to instances where the evidence showed that the match, or part of it, had been deliberately lost, but not why. It appears to the Panel that consequently the TIU concentrated on establishing a corrupt link between the player and the bettor or other person. It appears to the Panel that the TIU did not investigate on the basis that a disciplinary charge could be based simply on evidence that a match had been contrived in that the player deliberately lost the match or a part of it.

The period between 2013 and 2016

185. For the period 2013 to 2016, the Panel has identified 844[163] TIU case packages[164]. From a review of those TIU case packages, the Panel sets out below its present understanding of the evidence as to the investigatory steps taken by the TIU with respect to these cases from 2013 to 2016. When the Panel refers to the status of TIU investigations (including steps that hadn't been, or ought to be, taken by the TIU), these references are as at the time of the representations process.

186. In addition, the Panel also sets out its understanding of certain steps that were taken in 2017 with respect to a limited number of cases. Although the Panel confined its initial review of the TIU's case packages to the period prior to 2017, the TIU provided updates on several cases as part of its response to the Panel's notifications. When appropriate, the TIU's representations regarding these updates are set out below.

187. The principal focus of this section is on investigatory steps taken by the TIU in relation to match alerts received from betting operators. However, it should be noted that the TIU received alerts of suspicious matches from other sources, including tournament supervisors, officials and the public. In respect of alerts of suspicious matches from other sources, the Panel has sought to determine the extent to which the TIU took steps to verify whether any betting operator had observed evidence of suspicious betting on those matches. The TIU did this on occasion. For example, in 16-104, the TIU contacted both ESSA and Betfair for information on the market following receipt of a hoax alert from the hacked email account of a journalist. In other cases, however, the TIU has not sought to verify the information with betting operators. For example:

187.1 In 15-175, the Tournament Supervisor sent an email to the TIU requesting that it check for suspicious betting on a match as he considered that it was not a *"real match"*. The TIU noted that no alerts had been received in respect of this match, but made no enquiry of any betting operator to follow this up.

187.2 In 16-119, the TIU received an alert of suspicious play from the Chair Umpire, but the TIU did not contact any betting operator for information regarding suspicious betting.

188. In respect of both of the examples above, the TIU told the Panel that *"The TIU had many MOUs in place including Betfair and ESSA. If any unusual betting had been noticed by the operators then it would be expected* [sic.] *to have received an alert on the match"*. Further, the TIU stated that, in respect of both examples cited, at the time of the matches none of the players involved had been the subject of an alert. In the absence of the receipt of a betting alert, and the fact that the players did not have any previous alerts, the TIU did not think "*it was necessary to contact operators*" [165].

163 This marks a seven-fold increase in the number of packages opened during the period 2009 to 2012.

164 In that same period, the Panel also identified: (a) 388 packages of information-only files that have been marked as not requiring further investigation (given the prefix *"INT"* in the TIU's databases); and (b) twelve development files, which have been compiled from existing TIU and INT packages in respect of individuals whom the TIU has identified as a possible risk (given the prefix *"DEV"* in the TIU's databases).

165 Responses of the TIU to Notification given under paragraph 21 ToR.

Steps taken by the TIU on receipt of a Betting Match Alert

189. As was the case for the period 2009 to 2012, between 2013 and 2016, the investigatory steps taken by the TIU to gather initial information after receiving a match alert were not set out in a formal written protocol. But the TIU told the Panel that there is a clear TIU policy and methodology in place to receive, assess, and progress betting data[166]. The TIU stated that this policy includes the following:

189.1 Every match alert is recorded and an initial assessment made by the intelligence team. This includes an evaluation of the content and a search of the TIU indices for any previous alerts on the individuals involved (both players and if supplied, bettors).

189.2 The tournament supervisor is contacted to obtain a factual report.

189.3 Any appropriate requests are made to the betting regulator and/or betting operator.

189.4 All data, including match scorecards and recordings where available, are entered onto the Clue system. Depending on the outcome of these checks a decision is made as to whether the alert warrants further investigation. In most cases, a first alert or a second alert does not routinely trigger a player investigation. However, a player who is subject to a third or subsequent match alert triggers the next stage in the policy.

189.5 The next stage in the policy involves TIU officers arranging to interview the individual concerned to explore possible reasons for the match being flagged as suspicious. The interview is carried out under caution, recorded and may involve a request to access and forensically download the player's phone or other electronic devices. Access may also be requested to iCloud accounts and financial records.

189.6 Pending the outcome of the interview and review of data, a formal investigation may then be undertaken. The TIU's position, however, is that in the majority of cases plausible explanations are provided that satisfy TIU officers at that point. Further, while every attempt is made to interview players in a timely fashion once they have reached the three alert threshold, in practice it may take longer because of the global nature and scheduling of the sport, especially at the ITF Futures level. In addition, the TIU does not want to provide advance notice of the interview, which could give individuals an opportunity to delete material from their phones.

190. In the absence of a formal document, but taking into account the representations of the TIU set out above, the Panel has sought to determine the general steps that the TIU took on receipt of a match alert based on the contemporaneous documents. These steps are described below.

166 Responses of the TIU to Notification given under paragraph 21 ToR.

The TIU's interaction with Tournament Supervisors

191. Upon receiving a Betting Match Alert of a potentially suspicious match, the TIU has consistently sought information about the match from the relevant Tournament Supervisor (and, through the Tournament Supervisor, the Chair Umpire). The evidence demonstrates that in the majority of cases Tournament Supervisors have responded to the TIU in a timely manner. The Panel notes however that in a number of cases the TIU did not receive a response from the Tournament Supervisor and did not follow up to obtain a response.

192. While the TIU typically requested that the Tournament Supervisor comment on the players' general performance in the match in question, the Panel has found no instances in which the TIU asked the Tournament Supervisor to comment on specific parts of the match. In cases where the TIU received a betting alert that suggested a spot fix on a particular game or passage of play, the Tournament Supervisor was asked to comment on the overall match, rather than on the particular game or passage of play[167].

193. In most cases, the Tournament Supervisor did not report anything unusual in the performance of the players. In the limited number of cases when Tournament Supervisors reported peculiarities or integrity concerns, the steps then taken by the TIU have varied.

194. For example, in 15-210 there were 61 bets placed in a one-hour period on various set two[168] and match handicap[169] markets[170], and on the match going to three sets. The player under suspicion won the first set, lost the second and won the third. A match alert was received that raised concerns over a possible spot fix of set two. The TIU made the standard request of the Tournament Supervisor regarding the general performance of the player in both a singles and a doubles match played at the same tournament. In respect of the singles match, the Chair Umpire reported that the player had played well in the first set but in the second set the player almost didn't move and looked as if he was feeling sick. By the third set, the player had regained his form. In respect of the doubles match, a different Chair Umpire reported the same concerns over the player's performance and as a result the Chair Umpire had questioned the player during the match. The player had explained to the Chair Umpire that he was playing with an injury. From the contemporaneous records, no further steps were taken by the TIU in response to the Chair Umpires' reports.

195. The TIU told the Panel[171] that the player in question was interviewed in May 2017 as a result of the player receiving two further match alerts and triggering the threshold for an interview. The TIU further noted that, following the interview, it was satisfied that no further steps needed to be taken against the player and closed the investigation.

167 For example, the Panel notes the cases 15-171, 15-172, 15-173, 15-197, 15-198, 15-199, 15-204, 15-210, 15-230, 16-077, 16-103, 16-218.

168 "Set two markets" refer to markets offered on the match which relate only to the outcome of, or propositions within, the second set (as opposed to traditional betting on match outcome/ propositions).

169 "Match handicap markets" refers to bets placed on the overall match outcome where a handicap is applied against one player, hence increasing the odds on them to win. The handicap can be applied against sets or games. For example: Player A v Player B. A punter places a bet on Player A with an 11.5 game handicap (often quoted as -11.5). For this bet to be successful, Player A must win by at least 11.5 games (thus overcoming his/her handicap). In the practical application of this, Player A would have to win by 12 games and therefore must win 6-0, 6-0.

170 See Chapter 3, Section C(2) for further information on the markets available on tennis.

171 Responses of the TIU to Notification given under paragraph 21 ToR.

The TIU's approach towards betting data and the provision of betting data from betting operators in response to TIU requests

196. The nature and quality of the information provided to the TIU from betting operators varies between betting operators. As in previous years, a typical match alert set out the issue of concern for the betting operator – for example, an unexpected shortening of odds on a player or a very substantial winning account.

197. In response to betting alerts, the TIU's typical approach has been to seek further information from the betting operator that raised the alert, although it should be noted that information was not requested in a significant number of cases (many of which arose in 2014). For example:

197.1 In 14-097, a betting operator reported suspicious betting from a number of geographically-linked accounts that had placed pre-match bets on the first set score being 6-0. The TIU did not request any further details from the betting operator but instead closed the case on the basis that the favourite won. The TIU did not dispute that it did not request any betting data in respect of this case, however it commented[172] that: (a) only one operator provided an alert; (b) the winner of the first set was over a thousand places higher in the rankings than the opponent; (c) the Supervisor/Umpire report stated that nothing unusual was observed; and (d) neither player had been the subject of an alert, either before or since.

197.2 In 14-098, a betting operator reported suspicious betting from a number of geographically-linked accounts on the higher ranked player losing the second set, in circumstances where the higher ranked player won the first and third sets easily and broke his opponent's serve in the first game of the second set. The bet was successful (after breaking serve in the first game of the second set the higher ranked player only won three more points in that set). The TIU did not request particulars of the betting and closed the case on the basis that the favourite won and had a back injury (which, from the contemporaneous records, appears not to have affected his play other than in the second set). The TIU did not dispute that it did not request any betting data in respect of this case, however it commented[173] that: (a) only one operator provided an alert; (b) the Supervisor/Umpire report stated that nothing unusual was observed; (c) neither player had been the subject of an alert, either before or since; and (d) the higher ranked player retired from their next singles match with a back problem.

197.3 In 14-100, there was suspicious betting on four matches. The case was closed after three weeks, with one of the reasons cited being the lack of detail provided by the betting operator. However, there is no record of any further details being requested by the TIU. The TIU did not dispute that it did not request any betting data in respect of this case, however, the TIU told[174] the Panel that this was one of many alerts received from ESSA (in the same period) and was reported approximately three weeks after the match was played. Further, the TIU told the Panel that ESSA did not provide betting operator details, which made it impossible to progress the investigation. The TIU did note, however, that one of the players involved in this alert is now the subject of an ongoing investigation.

197.4 In 14-130, a qualifier won the match. The favourite, who lost the match, had been leading in the first set and then lost a run of game, serving a number of double faults. The Chair Umpire reported that he had thought that the favourite would win the match easily, but it then seemed like he did not want to win and lost points very easily. The TIU recorded that the case was closed because no betting details had been supplied, although there is no record of such details being sought. The TIU told the Panel[175] that this case was similar to 14-100 (dealt with above) in that it involved late reporting by ESSA with very little detail and no betting operator detail supplied. The Panel has reviewed the records and notes that ESSA reported the alert two days after the suspected match took place.

172 ibid.

173 ibid.

174 ibid.

175 Response of the TIU to Notification given under paragraph 21 ToR.

198. The TIU noted[176] that, at the time of the two alerts dealt with above (14-100 and 14-130), ESSA's usual practice was only to provide limited information; the TIU stated that it identified that this was an issue and sought to remedy the situation through discussion with the then Chairman of ESSA, Mike O'Kane. The TIU stated that, as a result of these discussions, the quality of alerts and information provided by ESSA improved, and that the TIU now has an excellent relationship with ESSA.

199. Where the TIU did seek further information from betting operators, its principal focus was to request the details of the bettors and to look specifically for connections that could be established between the suspect players and bettors or between bettors. The TIU did not as a matter of practice request that betting operators provide betting details[177]. The Panel has identified some exceptions where betting details were requested; however, for the period from mid-2015 through 2016, the Panel has seen limited examples of cases in which betting details were sought. It should be noted, however, that certain betting operators provided betting details, such as the betting history of a bettor, to the TIU as part of their standard approach. Further, when the TIU was provided with betting details, it did not as a matter of practice analyse those details.

200. In particular, in respect of cases of apparently suspicious spot betting, the documents reviewed by the Panel did not evidence an assessment of the betting or related play. For example:

200.1 In 15-057, the pattern of play (the pre-match favourite going a set and break down before recovering to win), together with the increased volume of bets trading, was suspicious. The TIU did not seek further details of the betting patterns in order to analyse them, although it did check Facebook for links. In March 2016, after nine months of inactivity, the TIU classified the case as requiring no further action. The TIU stated[178] that *"this alert occurred shortly before Elli Weeks left the TIU and during the initial intelligence gathering phase it is correct she did not request betting data"*. The TIU further noted that: (a) one of the players was carrying an injury from a previous tournament and was treated immediately before and during the match; (b) two officials watched the match, and reported no concerns; (c) neither player had been the subject of an alert prior to the match in question; and (d) this package was updated in 2016 with bettor data (which enabled it to be linked with other investigations).

200.2 In 16-103, there had been suspicious bets on a player to lose a specific service game. He did so, serving four double faults. He had won his previous two service games to love. There is no record of any analysis of the betting being undertaken at the time the alert was reported. The TIU told[179] the Panel that this assessment is incorrect, as the investigation of this case was linked to a wider investigation that was initiated at the beginning of 2017, in which a huge amount of research and analysis had taken place. The Panel notes however, that this research and analysis did not take place until ten months after the relevant alert was reported.

200.3 In 16-111, bets had been placed on the strong favourite to have her serve broken in the sixth game of set one. She lost the game to love (the player had won her previous two service games, losing only one point). There is no record of any analysis of the betting being undertaken. The TIU did not dispute that it did not request any betting data in respect of this case, but it commented[180] that: (a) the Supervisor did not note any concerns; (b) neither player had been the subject of any other alert; (c) no links could be established between the players and bettors; and (d) the bettors are not linked to any other alert (although the TIU notes that two of the bettors are linked to each other). As a result, the TIU classified the case as requiring no further action, with the caveat that it would be revisited if

176 Response of the TIU to Notification given under paragraph 21 ToR.

177 Betting details is a broad term that covers information which is relevant to the betting in question (rather than the bettor him or herself). This may include, but is not limited to, the betting history of the bettor (so as to assess the betting activity against their typical behaviour), the timing of the bets to be compared against the time of play and events within the game, the details of the bet itself (for example the value, the market bet on, corresponding bets), the liquidity of the markets offered on the game and of the particular market bet on (so as to assess whether the bet is extraordinary against the market), and the odds movements on the match as a whole and on the relevant markets.

178 Response of the TIU to Notification given under paragraph 21 ToR.

179 Response of the TIU to Notification given under paragraph 21 ToR.

180 ibid.

any further information comes to light.

200.4 In 16-122, bets had been placed on a service break in set one game six when the serving pair had held their opening two service games. They were broken, after three double faults. There is no record of any analysis of the betting being undertaken. The TIU accepted[181] that *"the operators should have been contacted for more detail and any other bets placed by the bettors obtained. The timings of the bet placements in conjunction with the events of the match should also have been checked although the point by point data at this time may not have been available to the TIU"*. But the TIU represented that this was *"an oversight by a newly appointed staff member"*. The TIU also noted that, at the time of their representations, this was and still is the only alert received against either player and that the investigation should now be closed.

200.5 In 16-134, bets had been placed on a service break in the fourth game of the first set. The player under suspicion had won her one previous service game. Two betting accounts were involved: a new account in Italy, and an account in London with IP links to the Ukraine. Both accounts were linked to other suspect accounts. The operator provided the bettor details and also the timing of the bets. There is no record of any analysis of the betting being undertaken. The case was classified as requiring no further action on the basis that no other alerts had been received in relation to the player and there were no connections between players and bettors. No reference was made to the fact that the London-based account holder had bet on another alerted match (16-126), played the day before. That bet was also on a break in set one game four. The TIU told the Panel that: *"from the analysis and assessment by the information manager of the material obtained* [no further action] *at the time was felt appropriate"*. The TIU gave the following reasons: (a) the player who lost on their serve in the fourth game of the first set had received a medical time out (which, whilst not marked on the scorecard, was referenced by the Tournament Supervisor); (b) the player had not been the subject of any other alert, either before or since; (c) the bettors could not be linked to the players; and (d) the points pattern suggested that the player concerned was serving poorly.

200.6 In 16-218, an alert was received in August 2016. The match involved connected players playing against each other. A number of bets were placed on specific outcomes in the first set. Every bet won. The betting operator was not asked to provide the betting data until March 2017. There is no record of any analysis of that data being undertaken. The TIU acknowledged[182] to the Panel *"that limited analysis of the betting data had been conducted to date"*. Further, the TIU stated that their initial assessment confirmed that neither player had come to their attention previously, whether by way of alert or through intelligence. The TIU confirmed, that the intention was to interview the players, but acknowledged that interviews were yet to take place.

200.7 In a further case (15-038) reviewed by the Panel, the favourite easily won the match against the outsider, but there was suspicious betting in relation to one game. This occurred in the second set when the favourite was serving for the match; the outsider was backed heavily to win this game, in which the favourite served three double faults and was broken for the only time in the match. An alert was issued by ESSA in relation to a possible spot fix. The on court play in relation to the game in question was also suspicious. Six months after the match, in October 2015, the TIU requested the bettor information from the betting operator and then checked open source information, which yielded potential evidence. There is no record of any analysis of the betting being undertaken. The TIU told[183] the Panel that two and a half months after the TIU was alerted, the Information Manager in place at the time (Elli Weeks) evaluated and analysed the betting information. Shortly thereafter Ms Weeks left the TIU and further analysis was carried out by Phil Suddick. The TIU also told the Panel that in this period the TIU had to commit significant resources on other investigations, and this investigation was therefore put on hold. The TIU said that

181 ibid.
182 ibid.
183 ibid.

the investigation into the player was still ongoing.

Open Source Intelligence

201. The TIU uses social media and open source platforms to run searches in order to establish links between bettors and players (referred to by the TIU as OSINT, *"Open Source Intelligence"*). The information obtained by this method is then uploaded to Clue so that it was accessible for searching in future.

The decision to take no further action or investigate further

202. The standard approach following the completion of the steps set out above has been to decide either to pursue the case through further investigative steps or to classify the case as requiring no further action. That said, the Panel has identified a number of cases being left in abeyance following, or part way through, the initial information gathering stage without any written or otherwise apparent decision on whether the matter should be further investigated or marked as requiring no further action. For example:

202.1 In 14-140, at the time of representations no steps had been taken since January 2015, but the case had not been marked as requiring further investigation or no further action. The TIU told the Panel that as with 14-100 above[184], this alert came in when ESSA were only giving a minimal amount of information. The TIU stated that this case was therefore not progressed because of the very little detail and lack of betting operator details supplied by ESSA. The TIU further stated that the alert was reported late by ESSA. The Panel's review of the records received from ESSA show that: (a) the TIU was alerted eight days after the match was played; and (b) ESSA provided the name of the operator that had alerted.

202.2 In 14-141, at the time of representations, no steps had been taken since January 2015, but the case had not been marked as requiring further investigation or no further action. The TIU told[185] the Panel that: the alert was similar to that in 14-130 and 14-140 in that the case was not progressed because of the lack of information supplied by ESSA at the time; the alert was reported late; and no betting operator details were supplied. The Panel's review of the records received from ESSA show that: (a) the alert was reported to the TIU seven days after the match was played; and (b) ESSA provided the name of the betting operator that had alerted.

202.3 At the time of representations, 15-172 was marked as being in the research and analysis phase, but no steps had been taken since 13 November 2015. The TIU acknowledged[186] that *"a closing report in respect of this case is absent. This was an oversight from the relevant staff member who was extremely busy at the time"*. The TIU further stated that this case would not warrant further action as: (a) the player concerned had not been the subject of an alert, whether before or since; (b) details of the bettor were requested from two betting operators, but were not provided; (c) no links between the players and bettors were identified (from the bettor data supplied at the same time as the alert); and (d) analysis of the scorecard dampened suspicion.

202.4 At the time of representations, 15-186 was marked as being in the research and analysis phase, but no steps had been taken since 24 November 2015. The TIU acknowledged[187] that *"a closing report is absent"*, and stated that this *"was an oversight from the Information Manager during a very busy period"*. The TIU further stated that this was the suspected player's only alert and an initial assessment uncovered nothing unusually suspicious.

202.5 15-213, was marked as being in the research and analysis phase, but no steps had been taken since 5 January 2016. The TIU told the Panel that this incident was part of the wider investigation that commenced at the beginning

184 Paragraph 197.3 above.
185 ibid.
186 ibid.
187 ibid.

of 2017 and that the records on Clue had not yet been updated to this effect[188]. Following the TIU's representations, the Panel's review of the records shows that: (a) case 15-213 is not recorded as being part of the wider investigation referenced in the representations; and (b) the TIU has now closed the investigation into 15-213.

203. In respect of some cases identified as requiring further investigation, the Panel notes that in the period between 2013 and 2015, once the information gathering stage was considered to be complete, the incumbent Information and Intelligence Manager sometimes produced a document called a *"Match Analysis"*[189]. A Match Analysis document was a compilation of the evidence gathered during the information gathering stage and concluded with a recommendation as to whether the investigation should go further. The Panel has noted 38 such documents were produced during this period.

204. From June 2015, the practice of preparing a Match Analysis document ceased. Except in some of the more significant cases, no formal document has been produced since then that records a match alert as having been passed to the further investigation stage or the reasons for doing so. The TIU told[190] the Panel that the Match Analysis documents were produced by the previous Information Manager, who left the unit on short notice in June 2015 and thereby left it without a dedicated Information Manager for a period.

205. In several cases, the reasons recorded in the Match Analysis document for the TIU not pursuing an investigation and categorising a case as requiring *"no further action"* were one of, or a combination of, the following:

205.1 neither player had been subject to an alert before;

205.2 there were no connections between the bettors and players;

205.3 an alert was only received from one betting operator; or

205.4 no concerns were raised by tournament staff and the higher seed won.

188 ibid.

189 This practice began in 2010, as referred to in paragraph 154 above.

190 Response of the TIU to Notification given under paragraph 21 ToR.

206. The grounds cited by the TIU appear potentially unsatisfactory in a number of cases. For example:

206.1 In 14-130, the TIU received an alert from ESSA and made a request of the Tournament Supervisor. The Tournament Supervisor provided the Chair Umpire's report, which noted concerns with one player's performance, suggesting that the suspect player had deliberately let his opponent win. The opponent had also raised concerns with the Chair Umpire during the match. However, the TIU does not appear to have sought any further information from ESSA or from the relevant betting operator. The case was closed by the TIU on the basis that no operator or betting details were supplied[191]. The TIU told the Panel[192] that it was not possible to progress the investigation into this case because it concerned reports from ESSA that both were received some time after the matches had been played and contained little detail, with no detail as to the betting operator that provided the alert. The Panel's review of the records received from ESSA show that: (a) the alert from ESSA was reported to the TIU two days after match was played; and (b) no betting operator details were provided with the alert.

206.2 In 15-077, the favourite went a break up in the first set and then lost six straight games, double faulting regularly, and ultimately lost in straight sets. Following its receipt of a betting alert from a betting operator, the TIU did not request further betting detail from that betting operator. The TIU marked the case for *"no further action"* on the basis that neither the player nor bettors featured in other alerts, the alert came from one operator, no concerns were raised by the Tournament Supervisor (although the Tournament Supervisor did not apparently respond to the enquiry email), and there was no link between the bettors and player (although there is no evidence of research on this point). The TIU accepted that no betting details were requested during the initial gathering stage, although the bettor details were requested seven months after the TIU received the alert.

206.3 In 15-215, maximum bets from a number of new, geographically-linked accounts were placed on the player in question to lose a specific service game. In that game, the higher ranked player, having been 4-1 up, lost her service game, serving three double faults. ESSA reported an alert to the TIU. The alert raised concerns communicated by three separate betting operators to ESSA over a possible spot fix on the outcome of the service game, with one betting operator withdrawing the match from the market as a result of the suspicious betting. The TIU obtained the account holder details, which were checked for links with the player's Facebook account. While there were no direct links, the bettors had featured in other alerts involving other players. The case was closed, citing the absence of connections, the fact that the players had not been the subject of a prior betting alert and that the favourite won. There is no record of any meaningful analysis being undertaken in relation to the betting data. Further, one of the other reasons cited by the TIU for closing the case was that there were no additional alerts received, even though ESSA's alert was as a result of three separate betting operators reporting alerts to it. The TIU, while acknowledging[193] the facts set out above, stated that *"it* [is] *important to note the meaning of 'Maximum Bets' as these can in fact be very small amounts depending on a number of different criteria applied by the betting operator. An operator will set the amount an individual can stake when the account is open. This will be based on geographic and demographic information"*. The Panel's review of contemporaneous documents does not record the TIU ascertaining the value of the *"maximum bets"* placed in this particular case.

206.4 In 16-197, suspicious betting by new accounts correctly backed the weaker player to break serve at the point when the weaker player was 6-0, 4-1 down. The TIU obtained the account holder details. There was no activity on the file between July 2016 and January 2017, when the case was closed on the basis that, as a result of the suspected player not having a social media presence, it was difficult to examine links between the players and bettors. There is no record of any meaningful analysis being undertaken in relation to the betting data. The TIU stated[194] that *"no*

191 It is noted that the TIU did not interview the Chair Umpire or the opponent notwithstanding the comments attributed to them in the Tournament Supervisor's report.

192 Response of the TIU to Notification given under paragraph 21 ToR.

193 ibid.

194 ibid.

betting analysis had been undertaken and this was an oversight on a newly appointed member of staff (who is now aware of the relevant checks required to be carried out)".

206.5 In 16-214, there was suspicious betting on the favourite (odds of 1/100) to be broken on his serve in circumstances where the player was leading 6-0, 2-0. He served three double faults. The case was classified as requiring no further action in March 2017. One of the reasons cited for this decision was that the betting operator had not provided the TIU with details of the bettors or betting. But the records show: first, that the betting operator had provided the bettor details (albeit they had not confirmed the email addresses for the bettors as requested); and second, that betting details were never sought by the TIU. A further reason cited by the TIU for the decision was that both players had served double faults throughout the match. The scorecard, however, shows that the player in question served six double faults throughout the match, three of which were served in the game in question. The TIU repeated[195] its reasons for closing this case during the representation process: (a) this was the first time that one of the players had been alerted to the TIU and the player under suspicion has not been alerted on since; (b) the operator disclosed minimal details and disclosed no betting data as to the actual bets placed; (c) no other betting operator alerted; (d) nothing suspicious was reported from the tournament and there was no live streaming; and (e) the event was open to the public.

Obtaining and processing personal records and electronic data

207. As explained above[196], in the period 2009 to 2012, the TIU focused primarily on obtaining written documentation from Covered Persons[197], such as itemised telephone and bank or credit card statements. In the period 2013 onwards the TIU's approach focused increasingly on requesting that players produce their mobile phones or other electronic devices (e.g. tablets and laptops) for download using forensic technology – typically during the course of an in-person interview[198].

208. From the contemporaneous documents, the Panel notes that in a number of cases the TIU's requests for production of devices in person were circumvented by players claiming that their device had recently been changed or lost, damaged, or stolen. The requests were also on occasion met by players simply refusing to hand over their devices.

209. In the first set of cases, the TIU did not routinely investigate whether the device had been genuinely changed, or whether the player was genuinely unable to produce it to the TIU, in order to validate or challenge the player's account[199]. An example is 14-099, where two of the three players interviewed claimed to have damaged or lost their phones in the week leading up to the interview in unconvincing circumstances. The TIU does not appear to have taken any steps to validate or challenge the accounts given or to secure the evidence by alternative means, for example by asking the player to authorise the TIU to contact the player's phone service provider to obtain phone call records on the basis that, if the authorisation is not given, the player would be open to sanction for refusing to cooperate with the TIU's investigation.

195 ibid.

196 See above at Paragraph 164.

197 As defined in the TACP.

198 The TIU did not ordinarily make the request in writing, but by way of an oral demand which is recorded at the time of the interview.

199 For example, by checking a player's IPIN access or telephone records.

210. Further, the TIU had no consistent approach to enforcing its powers of seizure. In the following cases, the TIU did take immediate steps to make the player ineligible to play following a refusal to cooperate:

210.1 In 13-047, Isaac Frost declined to provide his phone at the time he was interviewed (29 September 2013) and instead during the interview began to operate his phone in a manner suggesting that he was deleting data. Shortly thereafter (on 3 October 2013), the TIU obtained an order from an AHO making the player ineligible to play until he complied with the demand for his phone. The player made numerous appeals to have his interim period of ineligibility lifted. The player was ultimately reinstated to play a year later (on 4 October 2014), despite the fact that he had not cooperated, on the grounds that the AHO was satisfied that the player no longer had control of his phone. The TIU submitted its report to the PTIOs (on 27 July 2016), and the player was charged (on 2 September 2016). In the final AHO decision (dated 9 January 2017), the substantive charge was dismissed but the charge of failure to cooperate was found proven. The AHO ordered that the sanction would be the period of time already served for the interim ineligibility (12 months).

210.2 Another player, Nick Lindahl, was also investigated under case 13-047. He similarly declined to provide his phone for a forensic download when interviewed (on 3 October 2013). The TIU then obtained an order from an AHO (on 7 October 2013) making the player ineligible to play until he complied with the demand. This order remained in force until the date of the final AHO decision. The player never provided his phone for a forensic download. The TIU submitted its report to the PTIOs (on 27 July 2016). The player was charged (on 2 September 2016) and in the final AHO decision (dated 9 January 2017), he admitted both the substantive charge and the failure to cooperate. The AHO ordered that the player serve a period of ineligibility of seven years from the date of the decision.

211. By contrast, in the following cases, no action was taken by the TIU as a result of the players refusing to cooperate:

211.1 In 13-019, the TIU received a match alert regarding suspicious betting on one player (who was considerably lower ranked) to win the second set (when the higher ranked player had comfortably won the first set) and to win games three, five and six in that set. In one of those games the higher ranked player served three double faults. The TIU interviewed the higher ranked player. In the interview, she admitted knowing a former player who was known to the TIU as an individual who was potentially involved in match fixing. Further, she indicated that she had been in contact with the former player on Facebook prior to the match regarding a back injury, which she claimed accounted for her ultimate loss to the lower ranked player. The TIU asked for her to show her communications with the former player. She refused, citing privacy. The interview concluded with the TIU interviewer giving the player a general warning about sharing information that can be used by others to bet on tennis. No further action was taken by the TIU. In the period between the match regarding which the player was interviewed and 31 December 2016, the player played in 240 matches. The TIU told the Panel[200] *"that the TIU's approach in 2013 was without the benefit of the equipment that gives the TIU ability to download electronic devices there and then. The investigators assessment with the nature of the information and all circumstances at the time was that no further action was necessary"*.

211.2 In 13-025, the TIU received an alert from a betting operator due to suspicious bets on a variety of markets backing one player (a) to win the match in two straight sets, (b) to win the second[201] set, (c) to win the first set 7-5 and (d) to win the second set 6-0. All bets were placed in a five to ten minute period when the player's opponent was leading between 4-1 and 5-3 in the first set. But after the score reached 5-3, the opponent did not win another game. All bets were therefore successful. Another operator also reported successful suspicious bets on the set score result and on other specific game outcomes. The TIU interviewed the losing player and requested that he hand over his phone for download, which he did. The TIU's analysis revealed that the phone handed to the TIU was not the

200 Responses of the TIU to Notification given under paragraph 21 ToR.

201 The operator's emails are inconsistent as to whether it was the first or second set.

phone the player used at the time of the incident, but it does not appear from the records that the TIU investigated this further. The Panel notes the investigator's approach to making the request for the phone: the interviewer suggested that the player did not have to hand over the phone and any refusal would simply *"reflect badly"* on him. The Panel notes that it was open to the TIU to bring a charge for non-cooperation under the TACP (for failing to provide the original mobile phone). The TIU told the Panel[202] that the investigator carrying out the interview was only two months into being at the TIU and in the circumstances did not consider a failure to cooperate charge. In respect of using the phrase *"reflect badly"* during the interview, the TIU told the Panel that because the player did cooperate, there was no need to go beyond using the words *"reflect badly"*. If the player had failed to cooperate, then the TIU represents that the full *"non-cooperation"* charge would have been read out to the player.

211.3 In 13-042, one operator alerted the TIU in respect of a singles and a doubles match at the same tournament, as a result of suspicious betting from a new account with geographic links to the suspected players. The TIU interviewed the doubles players in question who both admitted that they had not tried to win as they (or at least one of them) had to leave the tournament to play in a singles qualifier elsewhere. It was also revealed that the doubles players had told their opponents pre-match that they did not intend to win. Both players agreed to hand over their phones to the TIU for download. One player informed the TIU that he had a laptop but made it clear that he was not willing for the TIU to have access to it. The refusal to provide the laptop was not pursued by the TIU as a failure to cooperate. The player also stated that he had another mobile phone at the time of the relevant match but had thrown it away. There is no record of any investigation into the veracity of the player's account regarding his disposal of the phone. The TIU told the Panel[203] that *"when the alerted player was interviewed his phone was forensically downloaded and no useful evidence obtained"*.

212. The Panel notes that where the TIU did obtain personal records or data, there were on occasion either no record of the TIU processing, translating (where appropriate) or analysing the resulting information, or there was a long delay before that data was analysed. For example:

212.1 In 14-063, the TIU received two alerts, one from a freelance tennis betting analyst/journalist and one from a betting operator, regarding significant shortening of a player's odds pre-match and throughout the first set, even though he was losing that set. Early in the second set, his opponent, with whom he had entered into an informal coaching arrangement, retired from the match. The TIU had evidence of a link between the winning player and two known corruptors. The interview with the player in question took place in August 2014, at which time his phone was seized. It was not, however, the phone he had at the time of the match, which he claimed to have broken a few weeks previously. A week after the interview, the player contacted the TIU to state that it might find an incriminating text message asking him to contrive the outcome of a match; the player claimed this was *"a joke"*. From the contemporaneous documents, the record shows an entry from December 2015 that states the TIU is *"working through the phone download"*. However, at the time of the representation process, there was no record that the data has been translated or analysed. The TIU told the Panel[204] that the phone download was examined twice, once using old software and once using new software utilised by the TIU. The TIU explained that the examination did not yield any incriminating material. The Panel is unable to verify the TIU's explanation as the contemporaneous records on Clue have not been updated.

202 Response of the TIU to Notification given under paragraph 21 ToR.
203 ibid.
204 ibid.

212.2 In 15-006, the TIU received information indirectly from a betting operator in January 2015 regarding a player being involved in match fixing. The operator suspended ten accounts that had placed suspicious bets on the player in question. The holder of one account informed the operator that they were receiving information from the coach of the player. The player concerned was the subject of two further match alerts within the following six months (15-066 and 15-073). The TIU interviewed the player in 2016 and downloaded his phone. As of the time of the representation process , there was no record that the data has been analysed. The TIU told the Panel[205] that the analysis of the data was a work in progress; in the meantime, the player continues to be monitored.

212.3 In 16-177, the TIU reacted swiftly to an alert. Interviews took place shortly after the match, at which time the phones were downloaded. That swift progress was followed by a five-month period of inactivity. The downloaded phone data was then subjected to a preliminary analysis, with identification of evidence that the two players under suspicion had made a prior decision to lose the match. The TIU was notified by the Panel that there was no record that the data has been fully translated or analysed. The TIU told the Panel[206] that the phone data was analysed. One attempt was made using software that was inadequate to deal with all the data; as a consequence, the TIU bought new software and reanalysed the data. The TIU told the Panel that the data retrieved from the phone was considerable and in a foreign language; however, it was analysed and useful material obtained.

213. One of the reasons given by Mr Willerton as explaining the TIU's reluctance to obtain and process personal records and electronic data is that the cost and time needed to analyse the material are prohibitively high. The TIU told the Panel[207] that it is "*not reluctant to obtain personal and electronic data where it is anticipated that evidence will be obtained and the costs involved would not prohibit the TIU doing so, however, the TIU states that this is a timely process*".

214. The Panel understands that an important part of the cost and time factor is the necessity of translating the material obtained. This difficulty partly arises as a result of the TIU not having resources at its disposal that allow it to make use of non-English materials, engage with non-English speakers, and work within legal frameworks and cultures that are unfamiliar to it. The TIU told the Panel[208] that TACP hearings are conducted in English and therefore the material obtained has to be translated into English for that purpose regardless. Further, the TIU added that non-English speakers are communicated with through interpreters and it is not practical or feasible to have multi lingual investigators employed by the TIU for such occurrences.

Obtaining and reviewing match footage

215. The TIU's approach to obtaining match footage has changed over the years. Previously, the TIU did not routinely request video footage; now, where video footage is available it is obtained and reviewed as a matter of course. The Panel notes that there are few contemporaneous records evidencing that video footage has been reviewed by the TIU. The Panel understands that where video footage was watched there is probably not a written record of it.

216. The TIU does not instruct a tennis expert to analyse specific match footage or advise on a player's performance. The TIU relies on officials at the event to make such comments.

217. The TIU told[209] the Panel that *"use of a tennis expert to review match footage…is something that has been considered and trialled by the TIU, notably in conjunction with Roland Garros where an ex-tennis professional has observed nominated matches on a daily basis throughout the French Open for past five years"*. The TIU adds that *"to date he has not reported any suspicions of wrongdoing"*.

205 ibid.
206 ibid.
207 ibid.
208 ibid.
209 ibid.

218. The TIU further told[210] the Panel that *"in a pre-match alert situation the TIU routinely request* [sic] *that live matches are watched and a report submitted by onsite tournament personnel"*. The TIU adds that *"one of the PTIOs played tennis professionally and is therefore also available to consider whether footage would be worth sending to an independent expert if necessary"*.

219. The TIU also informed[211] the Panel that it *"does have access to tennis expertise, through tournament personnel around the world and through the PTIOs and others in the sport who regularly provide the unit with the benefits of their experience"*.

Interviews

220. The contemporaneous documents demonstrate that the TIU exercised its right to conduct interviews with players pursuant to Article F(2)(a) of the TACP on approximately 250[212] occasions in the period from 2013 to 2016. In 2016, the TIU conducted approximately 80 interviews.

221. There have been considerable delays between the point at which players were identified for interview and the interviews taking place. For example:

221.1 In 13-015, the interview took place eleven months after the relevant match. The TIU told the Panel[213] that *"this was an investigation which required two players to be spoken with at the same time in an effort to obtain credible evidence. The investigator waited for a suitable opportunity to occur"*.

221.2 In 13-032, the match in question took place in May 2013. The contemporaneous record dated 26 February 2016 stated that there was an intention to interview both players in relation to the match. One player was interviewed in February 2017, 45 months post-match. At the time of the representation process, the remaining player had not yet been interviewed. The TIU told the Panel[214] that *"the player in question did not register to play at tournaments but just turned up and signed in. It was therefore difficult to locate him. He was eventually interviewed, following which it was felt unnecessary to interview the opponent"*.

221.3 In 13-035, the interview took place nine months after the relevant match. The TIU told the Panel[215] that the Match Analysis for this case was not completed until several months after the material was supplied by the betting operator. The interview took place within a few months of the Match Analysis being completed. The TIU further stated that this case was not considered a high priority.

221.4 In 14-045, the match was played in April 2014. The Player was interviewed in May 2017.

221.5 In 15-054, a player had been the subject of five alerts between April and October 2015. He was interviewed in February 2016, some ten months after the first alert and three months after the third alert. The TIU told[216] the Panel *"that the action plan to interview was as a result of a culmination of alerts the last being only three months before the player was interviewed"*.

221.6 In 16-188, the player was interviewed ten months after initially being identified for interview. The TIU told the Panel[217] that this case was considered a low priority investigation. The Panel notes that 16-188 was the third alert that the player in question had received (therefore meeting the threshold for automatic interview set by the TIU).

210 ibid.

211 ibid.

212 This is an estimate based on a review of the files of audio recordings and transcripts that the Panel has been able to find on the S-Drive.

213 Response of the TIU to Notification given under paragraph 21 ToR.

214 ibid.

215 ibid.

216 ibid.

217 ibid.

222. During interviews, players have been typically asked about: (a) how they perceived the match to have gone and any apparent injury issues; (b) their knowledge of any betting on the match or whether they had connections to any of the bettors; and (c) whether they had been approached by anybody to fix the match or provide inside information.

223. Following an interview taking place, the TIU did not routinely make follow up enquiries to verify the information the player provided during the interview. For example, in 13-041 there is no evidence that the TIU sought corroborative medical evidence of the player's asthma, which was put forward as being at least partly responsible for his suspicious play.

224. A number of cases remained open following the interview taking place, with no further steps recorded as having been undertaken for considerable periods. For example, in 13-015 the match took place in March 2013, with interviews conducted eleven months later in February 2014. At the time of the Panel's initial review in November 2016, the latest entry in the contemporaneous record dated November 2015 stated that the investigation was ongoing in respect of certain lines of enquiry. The record was updated on 17 February 2017 stating that the package was *"completed with no further action"*, although the record contains no information regarding the outcome of the further enquiries made. The TIU told the Panel[218] that *"this investigation is complete, but the investigator still needed to make a record of the details on Clue"*.

225. In addition to the players who were interviewed, there are a number of players whom the TIU identified[219] as warranting interview but who were apparently not interviewed. In some instances an interview plan was prepared as far back as 2013 or 2014, but no interview was carried out. For example:

225.1 In 16-092, the player was identified for interview in April 2016; no interview had taken place at the time of the representation process. The TIU confirmed[220] that the player had not been interviewed and that this was considered a low priority investigation.

225.2 In 16-160, the player in question was the subject of four previous alerts. An interview plan was prepared in June 2016. No interview had taken place as of the date of the TIU's representations. The TIU confirmed[221] that the player had not been interviewed, but continued to be monitored. The TIU also stated that it considered the investigation low priority.

226. A document entitled *"Point Database"* identified by the Panel on 28 March 2017 suggests that, at that time, the TIU had identified 85 players it planned to interview[222].

218 ibid.

219 Evidenced by way of the investigator preparing an interview plan.

220 Responses of the TIU to Notification given under paragraph 21 ToR.

221 ibid.

222 Note that this document was found on Clue and printed on 28 March 2017, although it was compiled before that date. It was also sent to the TIU on 28 March 2017. Further the Panel understands that this list is not exhaustive.

The TIU's use of intelligence received in order to inform investigations or undertake targeted investigations

227. The Panel notes that the TIU has tried to record intelligence from its inception, though this has been across a variety of databases. However, from 2016 the TIU began to populate the Clue database, with intelligence, to include data from betting alerts such as the identity of the bettors and the players concerned (adding in information from all packages from 2013 onwards). Clue allows for searches to be conducted of this data.

228. The Panel notes the following examples in which intelligence has been used to good effect:

228.1 In 2015, the TIU conducted a targeted and proactive investigation into umpires who were suspected of manipulating live score data. The issue was identified and a detailed strategy was put in place. As a result, the investigation yielded significant evidence that enabled disciplinary action to be taken in relation to a number of officials.

228.2 In a number of cases, the TIU has sought to build an overall strategy to target specific players of interest. From 2016 onwards, the TIU initiated the use of development (*"DEV"*) packages to record information from multiple existing packages in respect of specific players.

229. Notwithstanding these examples, the Panel has not seen evidence of a wider analysis of the information and intelligence available to the TIU, so as to frame and assess the broader picture across the sport. In this regard, the Panel notes the work carried out by the Sopot investigators in producing maps and charts that served to assess the global intelligence picture in the cases within their remit.

230. The Panel further notes that a number of players have been alerted to the TIU on multiple occasions. In the current assessment of the Panel, limited proactive investigatory steps have been taken in respect of these individuals. This can be contrasted with the TIU's investigation of suspected score manipulation by umpires.

231. During the representation process, the TIU stated that its Investigations Analyst, who was recruited in April 2016, *"is aware of the lack of analytical work historically from a Strategic Intelligence perspective and is addressing this. Appropriate software is currently being sourced in order to perform effective strategic analysis"*. The TIU also told the Panel[223] that the Investigations Analyst routinely and regularly completes association and mapping charts during the course of her work which have proved to be extremely useful when presenting cases to law enforcement and lawyers.

Decision to Submit a Report to the PTIOs

232. If, after the investigation stage, the TIU considered that a player should be prosecuted, the investigator would prepare a report to submit to the PTIOs. From the documents reviewed, there is no guideline timescale within which a report is to be submitted to the PTIOs. The Panel notes certain cases of significant delay in this regard. For example:

232.1 In 13-038, the TIU received intelligence regarding a player betting on tennis in July 2013. The case was reviewed in December 2013 and December 2014 with seemingly no progress made until October 2015 – when another player made disclosures about the suspect player's betting (15-174). The same intelligence then arose in 16-208, and a report was submitted to the PTIOs in August 2016. It therefore took the TIU three years from when the original intelligence was received regarding a player betting on tennis, for a report to be prepared for the PTIOs. In the period between the suspect match and the submission of the report to the PTIOs, the player played in 87 matches; he also played in a further ten matches between the submission of the report and service of the Notice of Charge on 22 September 2016. The player has not played since that date. The TIU told the Panel[224] that at the time of the first report in July 2013, this was only a single strand of uncorroborated information and enquiries with betting operators were made to try and confirm if the player held a betting account, but no useful information was forthcoming. The TIU stated that new information came to light in 2016, with the evidence showing that the player

223 Responses of the TIU to Notification given under paragraph 21 ToR.
224 ibid.

had placed bets totalling €43 through an account last used in February 2013.

232.2 In a further case reviewed by the Panel, the TIU undertook the normal investigatory steps in the months following the match alert arising, with material evidence gathered as a result. Over the course of the following two years there were delays at each stage of the investigation carried out by the TIU. In particular, there was an eight month delay between the TIU carrying its final interview in relation to the investigation and the TIU providing its report to the PTIOs. During the period from the suspect match to the report being made to the PTIOs, the player played more than 100 matches. The TIU told the Panel[225] *"that the player was given ample time and opportunity to produce records to the TIU. This did happen and forms part of the evidence to be adduced"*. Further the TIU told the Panel that *"an important part of the case was the acquisition of betting data evidence from the operators, which was not available at the time of the submission of the report to the PTIOs and that the betting operator has only recently promised to deliver the evidence"*. The TIU told the Panel that *"the delays are not always down to the TIU and that educating its partners has been a long and arduous process that requires patience. It is an issue that the TIU are addressing through the regulators and the betting operators concerned"*.

233. The documents reviewed disclose a number of cases where it appears to the Panel that there was sufficient evidence to bring a charge for a breach of the TACP, but the TIU did not submit a report to the PTIOs. For example[226]:

233.1 In 15-078, the TIU received a match alert regarding numerous new (or previously dormant) geographically-linked accounts placing suspicious bets on a player's serve to be broken in two specific games. The player lost both games. The player was interviewed in 2015 regarding this alert and others, and admitted to betting on tennis. The last contemporaneous record dated October 2015 stated that a PTIO report was to be prepared. However, at the time of the representation process, no report had been submitted. In the period between this match and 31 December 2016, the player played in 154 matches. The TIU told the Panel[227] that the suspected player is linked to other cases being investigated by the TIU and will be dealt with in the same report that is being prepared for the two other players.

233.2 In a further case identified by the Panel (13-027), the TIU received intelligence which led to it quickly obtaining material evidence in relation to a number of players. Several years after the intelligence was received, no action had been taken against any of the players as at the time of the representations process. The TIU informed[228] the Panel that the factors that have contributed to the delay include the fact that the TACP does not address the issue of dealing with players together (and therefore players are dealt with in isolation) and the fact that one of the players had become the subject of a further alert in which there was substantive betting data and links to bettors. The TIU also stated that the investigator in this matter acknowledged that there has been a delay because of that investigator's workload, personal circumstances, and the need to prioritise other investigations.

225 ibid.

226 Other examples include: In 13-035, the TIU received information from David Savic in 2012 that a player had been subject to a corrupt approach in 2010, but did not interview him about this until 2014, when the player admitted it. The TIU informed him that he would not be charged with failure to report.

In 13-042, it appears no action was taken (including referring the case to the ITF) even though two doubles players effectively admitted to tanking a match. One of the players also refused the TIU access to his laptop and was not sanctioned.

In 15-228, a corrupt approach by a coach has not been pursued.

In 15-221, there is prima facie evidence of players receiving instructions to tank from the crowd. It may be that the TIU is not pursuing this due to the lack of betting evidence (which they did look for but did not receive), in which case action by the ITF would seem appropriate. See also: 15-155 (prima facie evidence of corrupt approaches by a player to other players has not been actioned); 15-222 and 15-227 (corrupt approaches by a player via Facebook have not been actioned).

227 Responses of the TIU to Notification given under paragraph 21 ToR.

228 ibid.

233.3 In a further case identified by the Panel (15-107), material evidence was obtained in 2016 in relation a player who has been the subject of many alerts and is strongly suspected of corrupt activity. By the time of this match alert, the player had already been subject to three other alerts in a short space of time. No action had been taken against the player at the time of the representation process. The TIU informed[229] the Panel that the player concerned is the subject of a report being compiled for submission to the PTIOs.

233.4 In a further case identified by the Panel (14-027), a player admitted to breaching the TACP during an interview but had still not been charged as at the time of the representations process. The TIU informed the Panel[230] that the matter is subject to a concurrent criminal investigation.

234. In addition, the Panel has noted numerous cases of suspicious spot bets in relation to which the TIU did not seek to build a circumstantial case (see, for example, the cases referred to in paragraphs 200.1 to 200.7 above).

Betting Patterns as Circumstantial Evidence

235. The Panel notes that the only case in which the TIU has prosecuted a case based, in part, on an analysis of the betting data is the case against Kryvonos. In that case, Kryvonos lost his service in four games, and had 16 double faults (of which eleven were in games that were lost on service). Three of his service games involved suspicious betting activity. For example, the betting activity revealed that Kryvonos' opponent had been backed to win Game 12 despite being 40-0 down, with Kryvonos then serving four double faults in that game.

236. In the Kryvonos award dated 18 May 2017, AHO Richard McLaren stated that: *"The unusual level of activity caused the TIU to determine that the Match warranted further investigation"*. Mr McLaren's view as to the evidential value of the betting analysis was unequivocal: *"the betting pattern found in the alerts, when juxtaposed with both the betting operators' information and with the playing activity on the court, leads to the inference that corruption of the Match may have occurred. Then, when both the Match activity, as recorded in the ATP Toolbox point-by-point score, and the descriptions from match officials is juxtaposed to the betting operators' information, the inference is reinforced. I find as a fact that the Match was corrupted"*.

237. The approach taken in the *Kryvonos* case is in line with the case of *Skenderbeu v. UEFA*, where a CAS arbitral tribunal reached the conclusion that a football club was "*at the very least indirectly involved in match fixing activities*"[231] based on: (a) suspicious betting patterns[232]; (b) the fact that *"a prominent Asian bookmaker removed live markets before the end of the game*" involving the accused team[233]; and (c) the debatable performance of some players on the team[234]. In particular, as to the materiality of the betting patterns, the arbitral tribunal observed that *"they are an important element to take into account in concluding the Club was at least indirectly involved in match-fixing activities"*[235].

238. In addition, the approach in the *Kryvonos* case is consistent with the approach taken in *Lamptey v. FIFA*, where a CAS tribunal found that the decisions of a football referee *"had conspired to influence the result of the Match in a manner contrary to sporting ethics"*[236]. With regard to the betting patterns supplied to the CAS arbitral tribunal, the tribunal found that: *"it is extremely meaningful that a number of entities active on the betting market immediately (i.e., soon after the Match) and spontaneously detected the irregular betting patterns and raised concerns as to the integrity of the*

229 ibid.

230 ibid.

231 CAS 2016/A/4650 Klubi Sportiv Skenderbeu v. UEFA, paragraph 104.

232 ibid., paragraph 98.

233 ibid., paragraph 99.

234 ibid., paragraph 100.

235 ibid., paragraph 98.

236 ibid., paragraph 69.

Match"[237]; *"the deviation from the expected, ordinary movement in the odds on 'overs' in the Match, contradicting the mathematical model, is a decisive sign that bettors had some information that the mathematical model did not have and expected that at least two goals be irrespective of the time lapse"*[238]; and *"a link exists between (i) the deviation in the betting patterns and (ii) the Field Decisions, as each of them, inexplicable if taken alone, appears to find an 'explanation' only in the other"*[239].

239. The Panel understands that the TIU's approach to using evidence flowing from betting alerts is driven by its perception that betting patterns are fragile evidence before the AHO.

240. The TIU told the Panel[240] that *"while recognising the value of match alerts as an early indication of suspicious activity, the TIU position has always been that unless alerts can directly link suspicious betting to a player, or they are supported by other forms of strong evidence, there is little or no prospect of a successful case being brought under the TACP"*. With regard to the *Kryvonos* case, the TIU told the Panel *"that it continues to believe that betting evidence alone would not have led to a successful prosecution in this case and that the observation by the match official of the player covertly using his phone during a toilet break helped provide the level of corroboration"*. The TIU further stated that *"where opportunities exist to obtain corroborative or good circumstantial evidence the TIU will always look to do so"*.

241. In addition, the TIU stated[241] that the *Kryvonos* case *"reinforces the TIU's position concerning the difficulty in obtaining full betting data. Two leading betting operators involved in this case, both of which the TIU had MoUs in place with and a good working relationship with, would not provide full betting data for evidential purposes on the grounds of client confidentiality and commercial sensitivity. The TIU was therefore compelled to rely on very basic data to support this prosecution"*. Further, the TIU stated that Richard McLaren, the AHO, made the following comments in his ruling: *"a redacted version of the alert was filed with the AHO. It is redacted to protect personal data of the betting companies and their commercially sensitive information. This redaction caused problems in this case as neither party could perform their own expert analysis on the raw data"*. Mr McLaren also said in his ruling that he *"would suggest that the TIU negotiate in its MoU revisions, where it can, to its agreement to permit more unredacted information to be provided under special confidentiality arrangements for the purposes of pursuing cases such as Kryvonos"*.

242. In respect of the *Skenderbeu* case, the TIU told the Panel[242] that the TIU sought legal advice from both a UK and a US law firm to clarify if its approach should be reviewed. Further, the TIU referenced CAS' judgment that *"the reporting of an escalated match deriving from UEFA's Betting Fraud Detection System is by no means conclusive evidence that such match was indeed fixed. In fact, in order to come to the conclusion that a match is fixed the Panel finds that the analytical information needs to be supported by other, different and external elements pointing in the same direction"*.

Admissibility of New Evidence after the Issuance of Notice of Charge

243. The Panel notes the evidence of Nigel Willerton that the issuance of a Notice of Charge is influenced by an understanding that *"once the Notice* [of Charge] *has been issued, no fresh evidence can be collected and relied upon"*. This understanding was used as a basis upon which to explain the TIU's general approach that *"a Notice will not be issued until all the evidence has been obtained"*[243].

237 ibid., paragraph 80.
238 ibid., paragraph 83.
239 ibid., paragraph 84.
240 Responses of the TIU to Notification given under paragraph 21 ToR.
241 ibid.
242 ibid.
243 Statement of Nigel Willerton (TIU).

244. The Panel has seen evidence that supports the TIU's understanding. In a disciplinary case, AHO Richard McLaren handed down an interlocutory order (dated 21 March 2013) that compelled the player to provide his consent to the handover of a laptop and mobile phone from British police to the TIU. In the order, Mr McLaren addressed the procedural effect of having issued a Notice of Charge, namely that such issuance signals the end of the Covered Person's duty to cooperate and the ability of the TIU to seek further documents from them:

> *"In accordance with F.2.e., it is not until the PTIO concludes that a Corruption Offense may have been committed that the matter along with the evidence is sent to the AHO for a Hearing... On the sending out of the Notice, this matter had moved from the TIU investigation phase to the prosecution by the PTIOs phase. The responsibility for conducting the hearing and possibly sanctioning a Covered Person became that of the AHO. It was on that basis that I made the telephone ruling excluding certain requested information by the PTIOs...*
>
> *The Covered Person's duty to cooperate, including making documents available to the TIUs [sic] is at the stage of the investigation. The TIUs [sic] had the right at the time of the investigation to request the productions now sought. They did not act to seek approval for the release of the personal possessions of the Covered Person at the time of the interview at the police station. The PTIOs now seek to remedy this deficiency by requesting the AHO make a ruling forcing the Covered Person to instruct the police to provide the personal possessions. Taking into account only those facts, I would deny the request at this stage of the proceedings. There is however, one additional factor that I must take into account and that is the failure of the Covered Person to co-operate and meet with Mr. Willerton..."*

245. The Panel notes from Mr Willerton's evidence that the TIU has, following this order, approached matters on the basis of Mr McLaren's formulation in the above case and has not sought to obtain legal advice on this point or to make amendments to the TACP.

246. The TIU told the Panel[244] that the McLaren order had *"in effect meant that subsequent to that ruling all evidence has to be collated prior to a charge being issued, which does have an impact on timescales, particularly in cases where criminal proceedings are involved against players. This ruling is currently adhered to in all cases, on the advice of Onside Law and Smith Hulsey & Busey"*.

247. The TIU stated that it would welcome a recommendation from the Panel to amend the TACP in order to clarify the guidelines around admissibility of evidence[245].

244 Responses of the TIU to Notification given under paragraph 21 ToR.

245 ibid.

(2) NON-MATCH SPECIFIC INFORMATION

248. This section addresses investigations carried out by the TIU arising out of non-match specific information, over the whole of the period 2009 to 2016.

249. From the contemporaneous records, the two principal types of non-match specific information the TIU has addressed are information in relation to: (a) corrupt approaches and (b) betting on tennis.

250. The investigatory approach taken by the TIU to non-match specific information is similar to the investigatory approach taken to match specific information, save that the TIU does not make enquiries of the Tournament Supervisor. There is no formal written protocol; however, from the contemporaneous documents together with the approach described by the TIU[246], the Panel has sought to determine the general steps taken by the TIU:

250.1 Information is recorded and an initial assessment made by the intelligence team. This will include an evaluation of the content and a search of the TIU indices for the individuals involved.

250.2 All data (for example email correspondence and social media searches) are entered onto the Clue system.

250.3 Depending on the outcome of the initial assessment by the intelligence team, a decision is made whether the non- match specific information warrants further investigation. This decision will depend on the type of information; credibility of the information (including the credibility of the source); the individuals involved (for example if the information involves a known corrupter or not); and the seriousness of the TACP breach.

250.4 For cases warranting investigation, the next stage will typically involve the TIU arranging to interview the individual concerned to explore reasons for receipt of the information. The interview is carried out under caution, recorded and, since 2013, can involve a request to access and forensically download the player's phone or other electronic devices. Access can also be requested to iCloud accounts and financial records.

Corrupt approaches

251. As described in Chapter 10 Part 1[247], Covered Persons are prohibited under the TACP from making corrupt approaches. Covered Persons are also obliged under the TACP to report corrupt approaches made to them, with a failure to do so constituting an offence under the TACP.

252. Mr Rees told the Panel that *"experience during my time in the TIU showed that encouragement of players who received potentially-corrupt approaches, or had suspicions about fellow players, to come forward, careful management of those concerned players accompanied by careful gathering of corroborating evidence (electronic, documentary and live witnesses), and proper procedures in place to safeguard the rights of suspects and the probity of the investigation, was the most likely route to successful prosecutions in really serious cases. The computerised intelligence-recording system provided valuable support in those cases. The ultimate aim was to persuade a guilty player to name other corrupt parties, and their corrupters. Ideally, as with criminal investigations, one case should lead to other cases"*[248].

246 ibid.

247 See Chapter 10 Part 1, Section B(2).

248 Statement of Jeff Rees (TIU).

253. Phil Suddick, the TIU's present Information Manager, told the Panel that *"players are obliged under the* [TACP] *to report corrupt approaches to the TIU. To date the number of reports in respect of corrupt approaches (normally by social media) have been relatively small, when compared to the number of active players on the circuit. I can only assume, therefore, that the number of players approached to match-fix by this method is also small. However, it is possible that corrupt approaches, especially by social media, are being inadequately reported. As the true number of corrupt approaches cannot be ascertained as it is very difficult to ascertain how many of these approaches are successful"*[249].

254. The Panel's player survey showed that out of the 3,281 players who responded, 10.1% of men and 7.5% of women said that players never report information they have about gambling or match-fixing in tennis, and 15% of men and 13.4% of women said they rarely do. Across both men and women, 2.1% of players said they always reported, 3.1% of players said they reported most of the time and 9.5% of players said they sometimes do. The majority of players (57.4%) said they did not know.

255. The Panel notes that in the period since 2013 there have been delays in the TIU's investigation of corrupt approaches. For example, in 14-099 the TIU received an allegation from a player and a Tournament Supervisor regarding a group of players being involved in match fixing. In 2015, a number of players were interviewed, and two phones were downloaded. The Panel's review of the TIU's records shows that the data was not analysed until more than a year after the download took place.

256. In 13-046, the TIU received evidence (from a player) in the form of screenshots of various messages suggesting a corrupt approach by one player to another to lose a match in return for money. The suspect player had not yet been interviewed as at the time of the representations process and the investigation had not progressed since December 2013, despite the fact that the TIU appeared to be in possession of sufficient evidence to submit a report to the PTIOs. The matter is recorded as ongoing. In the period between receipt of information regarding the player's suspected involvement in corruption and 31 December 2016, the player played in over 375 matches.

257. Regarding 13-046, the TIU told the Panel[250] that *"the victim of the corrupt approach was not the original complainant and that the victim was spoken to at length and reluctant* [sic.] *to have his allegation put to the alleged corruptor, despite the requirement to do so under the UTACP"*. Further *"the suspect has been difficult to pin down and numerous attempts to ambush him at various tournaments has failed. He has either withdrawn last minute or failed to show, even at a recent tournament. He is being actively pursued by the original investigator and colleagues"*.

Betting on tennis

258. As described in Chapter 10 Part 1[251], Covered Persons are prohibited from wagering on tennis competitions and prohibited from facilitating wagering on tennis.

259. Notwithstanding the prohibitions in the TACP, the Panel's player survey showed that of the 3,281 players who responded, 17.4% of men and 14.7% of women reported first-hand knowledge of gambling by players on professional tennis.

260. From the contemporaneous documents, the Panel notes that the TIU, in the majority of cases, takes a robust approach to players betting on tennis. However, as with match specific information, the Panel has identified ways in which the TIU could have taken faster action.

249 Statement of Phil Suddick (TIU).

250 Responses of the TIU to Notification given under paragraph 21 ToR.

251 See Chapter 10 Part 1, Section B(2).

261. For example, in 14-102, the TIU took no immediate steps to make a player ineligible to play while pursuing charges for failure to cooperate. In that case, Jatuporn Nalamphun was interviewed by the TIU on 26 January 2015 and admitted to betting on tennis. Following his interview, the TIU requested that he provide his banking records, but he never did so. The TIU submitted a report to the PTIOs on 18 August 2015. Nalamphun was charged on 16 September 2015 with substantive breaches for betting on tennis and with failure to cooperate. The subsequent AHO decision, which was issued on 16 February 2016, records that the failure to cooperate charge was found proven and the player was suspended for 18 months for that breach (to run concurrently with the six-month suspension for betting on tennis). The player was not suspended on an interim basis for failing to cooperate and played in one match between the date he was charged and the date he was sanctioned. The TIU told the Panel[252] that *"it is accepted that an interim suspension could have been applied for"*. But the TIU stated that the interim suspension provision was, at the time, used sparingly. The TIU stated that the landscape has since changed *"with a much more robust approach being taken"*. Further, *"the player concerned closed his betting account immediately and the TIU were assured he was not going to play any tennis. He played in one tournament"*.

262. In 14-096, three players were interviewed in October 2015 and admitted breaches of the TACP: one admitted to approaching another to fix a match in September 2014, betting on tennis and being involved in a conspiracy to match fix with other Covered Persons; one to betting on tennis in September 2015 (paragraph 233 above); and another to failing to report an approach. The contemporaneous record entry dated 1 February 2016 memorialises an intention to submit a report to the PTIOs, but as of the date of this document, no report has been submitted. In the period between the receipt of information regarding the players' involvement in corruption and 31 December 2016, the three players played in 40, 154, and eight matches, respectively[253]. The TIU told the Panel[254] that *"there are a number of outstanding requests to betting operators, which were still being processed, once these have been secured a report will be submitted"*. The TIU also acknowledged that *"the report could have been submitted sooner and will be once all requested data is secured"*.

252 Responses of the TIU to Notification given under paragraph 21 ToR.

253 The player who played in only eight matches did not play in any matches after [date redacted], which may indicate that he retired at that point.

254 Responses of the TIU to Notification given under paragraph 21 ToR.

D THE TRANSPARENCY OF THE TIU'S OPERATIONS

(1) TRANSPARENCY IN THE PERIOD BETWEEN 2009 AND 2012

TIU policies regarding sharing information with other bodies and third parties

263. Mr Rees stated in his evidence that *"I think that media interest in TIU transparency has its origins in the fact that the TIU has long had a reputation for not making casual statements to the media, and in particular for not discussing investigations or leaking stories - unlike certain other sports. For a long time it was simply stated by the media, and accepted as thoroughly reasonable by many journalists, that we did not discuss investigations. However, it then became common for some journalists to describe the TIU as 'secretive', and in relation to investigations we certainly were, but as time went by the more pejorative words 'lacking transparency' gained currency. However, just because its members do not leak material to the media or boast about their achievements does not mean that the TIU operates in the secretive, non-accountable way implied by some ill-informed parties - far from it"*[255].

264. Mr Rees stated that during his tenure the TIU's policy with regards to sharing information differed according to the particular body or third party with which the TIU was liaising. The contemporaneous documentation seen by the Panel is to the same effect.

PTIOs

265. Mr Rees stated in his evidence "*I did not think there was any need for PTIOs to know the detail of any investigation until they received a report from the TIU*". Mr Rees stated that exceptions could be made, for example in situations where a player's disciplinary record was to be introduced as evidence. In such a case the TIU would need to liaise with the relevant International Governing Body in order to obtain such records. Mr Rees stated that in practice, during the course of its investigations, the TIU would obtain details of players' schedules and similar information through the PTIOs. The TIU would not disclose why it needed such information[256].

International Governing Bodies

266. Mr Rees stated "*as a rule, only very general information was shared with the tennis governing bodies, at least until a case was referred to the PTIOs*"[257].

Law enforcement agencies

267. In the view of Mr Rees, failure to provide law enforcement agencies with information *"would risk falling foul of discovery and disclosure procedures"*. Mr Rees stated that "*with regard to law enforcement agencies, if they are to carry out an investigation they need to know everything – particularly if there is to be a criminal prosecution*"[258].

255 Statement of Jeff Rees (formerly TIU).
256 ibid.
257 ibid.
258 ibid.

Betting operators

268. Mr Rees stated that, in relation to sharing information with betting operators, there are "*many issues involved*"[259]. According to Mr Rees, these issues *"include referral to the TIU possibly being used to delay or avoid paying out successful gamblers and the TIU being drawn into subsequent legal proceedings, the risk of uninformed press statements, reputations of innocent players being tarnished, protection of the identities of witnesses, the understandable frustrations of bookmakers keen to know if there has been any progress in individual cases, and so forth*"[260]. Mr Rees stated that "*data protection issues must also be taken into account*"[261].

Public and the Media

269. The policy of the TIU and TIB in relation to the media was that the tennis authorities should make no comment on any investigations that might or might not be underway and that a *"holding statement"* on the work of the TIU should be provided as a standard response to queries from the media[262].

270. Mr Rees stated *"the TIU's media policy was on the website for all to see. It was based on a policy that had served me well for years in cricket. It had stood the test of time"*[263].

271. Mr Rees said that he *"was happy to give background briefings about the unit to bona fide journalists",* and that he "*did so on several occasions"*, but that he "*insisted arrangements were made through* [the TIU's] *media consultant Mark Harrison"*[264]. Mr Rees told the Panel that he *"gave such briefings on many occasions"*[265].

272. Mr Rees stated that the TIU website contained *"a great deal of information, including media releases when players or others had been sanctioned"*[266]. Mr Rees told the Panel "*when a player was sanctioned Mark Harrison published a release to the media in addition to putting the details on the TIU website*"[267].

THE TIU'S RELATIONSHIP WITH BETTING OPERATORS

273. Mr Rees stated that "*during a sub-group meeting of an* [International Centre for Sport Security] *conference in Paris in 2012, the ESSA representative, Mike O'Kane, commented that ESSA's relationship with tennis was probably its best with any sport"*[268].

274. Some betting operators noted their longstanding and positive relationships with the TIU. Integrity Manager at Paddy Power Betfair, Russell Wallace, stated "*my team have worked to build relationships with the TIU since its inception*"[269].

275. A former Betfair employee, David O'Reilly, stated that *"I believe there was an increased level of engagement as a result of the formation of the Tennis Integrity Unit ('TIU'). The formation of the TIU meant that there was at least a dedicated body tasked with protecting the integrity of the sport. With regards to the formation of the TIU, I felt that it was window dressing to a certain extent. I did not sense a real resolve from the TIU to get to grips with the impact of betting on the sport and I am not convinced that the TIU can be said to have formed meaningful relationships with betting operators more generally*" [270].

259 ibid.
260 ibid.
261 Ibid.
262 TIB, Meeting Decision and Action Sheet, 3 July 2009.
263 Statement of Jeff Rees (formerly TIU).
264 Statement of Jeff Rees (formerly TIU).
265 Response of Jeff Rees to Notification given under paragraph 21 ToR.
266 Statement of Jeff Rees (formerly TIU).
267 Response of Jeff Rees to Notification given under paragraph 21 ToR.
268 Statement of Jeff Rees (formerly TIU).
269 Statement of Russell Wallace (Paddy Power Betfair).
270 Statement of David O'Reilly (formerly Betfair).

276. Programme Director for Enforcement and Intelligence at the UK Gambling Commission, Richard Watson stated "*the* [Gambling Commission's] *relationship with the TIU has been influenced by the heads of the TIU. I did not work for the* [Gambling Commission] *when Jeff Rees was head of the TIU. However, I understand that the TIU and the* [Gambling Commission] *did not share much information at this time*". Mr Watson added "*I joined the* [Gambling Commission] *around the time Nigel Willerton took up his role. The relationship changed under Nigel. There is now a meaningful dialogue and engagement between the TIU and the* [Gambling Commission] *and the bodies share more information*"[271].

Publication of betting alert figures

277. During the period 2009 to 2012, the TIU did not publish details of the betting alerts that they received.

278. Mr Rees stated *"because of their unreliability, I always felt that releasing of figures in relation to suspicious betting patterns risked misinterpretation and invited unnecessary or mischievous speculation. It also risked harming the reputation of innocent players should their names be linked to suspicious betting*"[272].

279. Mr Rees told[273] the Panel that his concerns regarding misinterpretation and unnecessary speculation were justified. Mr Rees stated that in his experience, particularly when the TIU first became operational, *"many journalists did not understand what suspicious betting figures meant and were quick to jump to inappropriate conclusions"*. Mr Rees added that *"over the years, in part because of explanations and background briefings I and others have given on behalf of the TIU,* [the journalists] *have become better informed"*.

280. Mr Rees said that the recent TIU Briefing Notes[274] have been well worded[275] and minimised the risks attached to publication of betting alerts. Mr Rees added that in his view some risks still exist.

Publication of full written reasons from an AHO hearing

281. The TIU did not publish the written reasons of AHO hearings during the period 2009 to 2012.

282. Mr Rees stated he *"believed strongly that excessive transparency could be harmful to investigations and make the sport more vulnerable to fixing"*. Mr Rees added that excessive transparency *"could lead, for example to potential witnesses being too afraid to come forward for fear their names would be published"* [276].

283. Mr Rees added that *"uninformed comments, and speculation, on the subject of betting-related corruption, risk unnecessary commercial damage to a sport"* [277].

284. Mr Rees stated that he would be open to a carefully-worded release, approved by the Director of the TIU, setting out limited facts behind a prosecution that secured a conviction[278]. Mr Rees told the Panel, however, that this *"would not have been the case whilst I was in post. Things have moved on, in part due to my and Mark Harrison's efforts"* [279].

271 Statement of Richard Watson (UK Gambling Commission).

272 Statement of Jeff Rees (formerly TIU).

273 Response of Jeff Rees to Notification given under paragraph 21 ToR.

274 In April 2016, the TIU reviewed its approach and began producing quarterly TIU Briefing Notes that include a breakdown of alerts received in each quarter. Those alerts are broken down into those received from the various levels of the sport, namely: (a) Grand Slam; (b) ATP Tour; (c) WTA Tour; (d) ATP Men's Challenger; (e) ITF Men's Futures; (f) ITF Women's Pro Circuit and (g) Hopman, Davis and Fed Cups.

275 Statement of Jeff Rees (formerly TIU).

276 ibid.

277 ibid.

278 Ibid.

279 ibid., emphasis in original.

285. In March 2010, Mr Rees circulated as part of the papers for the March 2010 PTIO Meeting a document entitled 'TIU Dealings with the Media'[280]. In this document, Mr Rees stated:

285.1 *"in the 18 months since the Tennis Integrity Unit (TIU) came into being, management of its dealings* and *relationship with the media has never been entirely satisfactory*".

285.2"*...more needs to be done to ensure clarity and understanding amongst the international media about the purpose and responsibilities of the TIU*".

286. In the section of the document entitled "*a way forward*" Mr Rees noted[281]:

286.1 "*In January 2010, recognising that* [the TIU was] *reaching a point where* [it] *required more-effective communication support, I consulted a communications expert Mark Harrison, managing partner of the UK-based consultancy Harrisons PR*".

286.2"*Mark Harrison has prepared a written report on the services he could provide to the Tennis Integrity Unit...*[w]*hat he proposes would meet my concerns and, in my view, would help show the wider tennis world and the public that tennis is dealing with integrity issues in an effective and professional way*".

287. Mr Rees had worked with Mr Harrison during his time working for the International Cricket Council's Anti-Corruption and Security Unit[282].

(2) TRANSPARENCY IN THE PERIOD BETWEEN 2013 AND 2016

Interaction with the public and the media

The TIU's policy in relation to the progress of investigations and disciplinary proceedings

288. Between 2013 and 2016, the TIU's approach to the communication of the progress of investigations and disciplinary proceedings was:

288.1 Investigation: not to communicate whether or not it was investigating a particular matter, save for certain occasions where the matter was the subject of media coverage.

288.2 Provisional suspensions: not generally to communicate the imposition of a provisional suspension, save for certain occasions in which criminal proceedings had been commenced.

288.3 Charge: not generally to communicate its decision whether or not to charge and so commence disciplinary proceedings, save for certain occasions where it had found no evidence of wrongdoing in relation to matters that were the subject of media coverage.

288.4 First instance outcomes of disciplinary proceedings: generally to communicate the first instance outcome of disciplinary proceedings (AHO hearings) if they had resulted in the imposition of a sanction, but not if the player or other person had been acquitted.

288.5 AHO decisions: not to communicate full written reasons relating to AHO decisions.

288.6 CAS appeals and decisions: to communicate the outcome of CAS appeals, whether successful or unsuccessful, and the CAS arbitral tribunal's reasons for the outcome of the appeal, suitably redacted.

280 Jeff Rees, 'TIU Dealings with the Media', 8 March 2010.
281 Jeff Rees, 'TIU Dealings with the Media', 8 March 2010.
282 Statement of Jeff Rees (formerly TIU).

Publication of betting alert figures

289. Prior to April 2016, the TIU did not produce statistics or reports on the alerts it received from the betting industry. The TIU's rationale for this approach was that in doing so they might hamper efforts to investigate those alerts[283].

290. In April 2016, the TIU reviewed its approach. The TIU began producing quarterly TIU Briefing Notes that include a breakdown of alerts received in each quarter. Those alerts are broken down into those received from the various levels of the sport, namely: (a) Grand Slam; (b) ATP Tour; (c) WTA Tour; (d) ATP Men's Challenger; (e) ITF Men's Futures; (f) ITF Women's Pro Circuit and (g) Hopman, Davis and Fed Cups[284].

Interaction with betting operators and regulators

291. Mr Willerton told the Panel that he considers that the TIU enjoys a good relationship with betting operators and regulators[285]. For example, Integrity Manager at Paddy Power Betfair, Russell Wallace, stated "*I have a good relationship with the investigators at the TIU*"[286]. Group Director of Security and Community Affairs at William Hill, Bill South stated "*William Hill and ESSA both have good relationships with the TIU*"[287].

292. As stated at paragraph 276 above, the Gambling Commission noted that there is now a *"meaningful dialogue and engagement between the TIU and the* [Gambling Commission] *and the bodies share more information*"[288].

293. While some betting operators and regulators agree with this, others have expressed the view that the TIU lacks sufficient transparency in its operations.

294. A representative of ESSA stated that several of its members have complained that there is no feedback from the TIU as to how the information provided by ESSA members is being used. Former Business Director at Ladbrokes and former Chairman of ESSA, Mike O'Kane stated in relation to members of ESSA that "*a common feedback point is that there is no feedback on how the information* [ESSA members] *provide to the TIU is being used*". In relation to his work with Ladbrokes, Mike O'Kane stated "*I would like a better relationship with the TIU. I do not have any knowledge on whether the TIU makes full use of the intelligence it receives from betting operators. The TIU could also do more to identify potential future problems so that betting operators can assist with these problems*"[289].

295. Joint Chief Executive Officer of bet365, John Coates said "*I have been informed that the TIU has improved its communication channels with betting operators over the last 12 months and I would like to see that continue. I understand that there have previously been occasions when bet365 raises a betting alert but the outcome of the investigation or indeed whether the alert is being investigated is not communicated*"[290].

296. Other betting operators are not so concerned about a lack of dialogue with the TIU. Sports Betting Integrity Officer at Kindred Group, Eric Konings stated "*we rarely hear back from the TIU once I have provided information, but we do not take issue with this. I am confident that the TIU deals with the information appropriately, and I would rather have the TIU focus on protecting integrity than on keeping everybody informed all the time*"[291].

283 Statement of Nigel Willerton (TIU).
284 Statement of Nigel Willerton (TIU).
285 Statement of Nigel Willerton (TIU).
286 Statement of Russell Wallace (Paddy Power Betfair).
287 Statement of Bill South (William Hill).
288 Statement of Richard Watson (UK Gambling Commission).
289 Statement of Mike O'Kane (Ladbrokes, ESSA).
290 Statement of John Coates (bet365).
291 Statement of Eric Konings (Kindred).

Interaction with national federations

297. While the TACP charges the TIU with a mandate to investigate and prosecute match fixing and other integrity issues in tennis, national federations have their own, at times potentially conflicting, responsibilities in this area. Certain national federations, such as the Australian, French and Italian federations, have their own integrity units and investigate and prosecute integrity offences at the national level. Moreover, in certain countries, such as in Italy, legislation may limit, or dictate, the way federations should run investigations and enforcement procedures.

298. National federations have different procedures and legal requirements governing how they investigate and prosecute match-fixing and other integrity offenses. In the case of Australia, for example, the federation's investigation will not proceed to national disciplinary proceedings until after any related investigation and disciplinary proceedings by the TIU have concluded. However, in the case of, for example, Italy, local rules or legislation require national disciplinary proceedings to proceed despite any ongoing related investigations or disciplinary proceedings by the TIU.

299. The TIU stated that it adheres strictly to the following two propositions:

299.1 The proposition that the TIU should not share information, as set out in paragraph F.2.c of the TACP, which states that *"Any information furnished to the TIU shall be (i) kept confidential except when it becomes necessary to disclose such information in furtherance of the prosecution of a Corruption Offense, or when such information is reported to administrative, professional, or judicial authorities pursuant to an investigation or prosecution of non sporting laws or regulations and (ii) used solely for the purposes of the investigation and prosecution of a Corruption Offense"*.

299.2 The proposition that the TIU's investigations should take primacy over national federation action.

300. As a consequence, notwithstanding that some national federations were or are legally obliged to pursue their own investigations and proceedings, the TIU has, at times, demonstrated little desire to obtain an understanding of the legal and procedural systems in which the national federations operate and paid little attention to the expectations and the needs of national federations.

Interaction with law enforcement agencies

301. The TIU views itself as having formed good relationships with certain law enforcement agencies. These relationships have led to the exchange of information between those agencies and the TIU which has led to criminal prosecutions and to the TIU obtaining useful evidence in its pursuit of disciplinary charges before an AHO[292]. These relationships have been formed both through official channels, such as INTERPOL, and as a result of specific investigations arising in certain jurisdictions[293].

302. For example, in one noteworthy case, the TIU received assistance from the UK police and the UK Gambling Commission. Specifically, the police seized money, passports and other items which were of relevance to the TIU's investigations[294].

303. However, the TIU has identified difficulties, owing to legal restrictions, in obtaining relevant information from other organisations, including law enforcement agencies[295].

304. On the basis of the information provided to the Panel, the perceived quality of the TIU's relationships with law enforcement agencies differs among those agencies. The Panel has been provided evidence by some law enforcement agencies (principally those in Australia and Italy) and is also aware that the TIU has shared evidence with law enforcement agencies in certain countries (such as France and Spain).

292 Statement of Nigel Willerton (TIU).
293 Statement of Jose De Freitas (TIU).
294 Statement of Nigel Willerton (TIU).
295 Statement of Nigel Willerton (TIU).

Relationship with Victoria Police, Australia

305. The Assistant Commissioner for Intelligence and Covert Support Command at Victoria Police, Neil Paterson, gave evidence to the Panel.

306. Mr Paterson put forward the view, outside of the context of the specific relationship his unit has with the TIU, that he believed there is a reluctance on the part of sporting bodies generally to provide certain information to the police. He suggested that the possible reasons for this could be that: (a) they do not want to trouble the police; (b) they do not want the publicity that might come with the involvement of the police; or (c) they fear that they might lose control of an investigation if they involve the police[296].

307. As regards information sharing between the Victoria Police and the TIU specifically, Mr Paterson told the Panel that decisions on information sharing are taken on a case by case basis, and stated that there are legislative provisions that may limit Victoria Police's ability to share information in certain circumstances[297]. As to the primacy of criminal over disciplinary matters, Mr Paterson stated that, whilst Victoria Police may be happy for there to be parallel proceedings, as a general proposition they would normally wish for their criminal proceedings to take primacy[298].

308. Mr Paterson provided an example of an Australian tennis player, Nick Lindahl, in respect of whom the Victoria Police liaised and worked with the TIU[299]. Following the TIU commencing an investigation into potential corruption offences relating to an ITF Futures tournament in Toowoomba, Queensland in September 2013, they brought the matter to the attention of Victoria Police. Criminal proceedings were brought by the New South Wales Police against Mr Lindahl, who was ultimately convicted of corruption offences[300]. The TIU's disciplinary action against the player, and other parties flowing from the same incident, followed the conclusion of the criminal case, the details of which are considered in Chapter 10 Part 3[301].

309. The Victoria Police also brought criminal proceedings against another Australian player, Oliver Anderson, in respect of a match fixing offence relating to a match at an ATP Challenger tournament in Latrobe City Traralgon in October 2016 (Mr Anderson later admitted a pre-determined decision to lose the first set). From documents provided to the Panel, it is understood that there was cooperation between the TIU and Victoria Police in relation to this case. Mr Anderson was criminally charged in January 2017[302]. Following a change to the TACP, which allowed for an interim suspension before a Notice had been issued[303], Mr Anderson was provisionally suspended by the TIU on 9 February 2017[304].

310. On 23 May 2017, Mr Anderson was fined AUS$500 and given a two-year good behaviour bond after admitting a match fixing charge in Latrobe Valley Magistrates Court, Victoria[305]. The TIU press release dated the same day[306] makes clear that the TIU disciplinary proceedings were put on hold pending the conclusion of the criminal case, and confirmed that those proceedings would at that stage be pursued.

296 Statement of AC Neil Paterson (Victoria Police).

297 ibid.

298 ibid.

299 ibid.

300 Lisa Vasentin and Emma Partridge, 'Ex-professional tennis player Nick Lindahl convicted of match fixing' (The Sunday Morning Herlad, 18 April 2016), available at: http://www.smh.com.au/sport/tennis/exprofessional-tennis-player-nick-lindahl-convicted-of-match-fixing-20160418-go93jr.html [accessed 9 April 2016].

301 Chapter 10 Part 3, Section C(4).

302 Reuters, 'Australian Boys champion Anderson charged with match fixing: local media' (Reuters,5 January 2017), available at: http://www.reuters.com/article/us-tennis-corruption-australia-idUSKBN14P2KR [accessed 9 April 2018].

303 Chapter 10 Part 1, Section B(4).

304 Press release, 'Oliver Anderson provisionally suspended from playing professional tennis' (TIU, 9 February 2017), available at: http://tennisintegrityunit.com/media-releases/oliver-anderson-provisionally-suspended-playing-professional-tennis [accessed 9 April 2018].

305 Press release, 'Oliver Anderson to face tennis disciplinary charges' (TIU, 9 February 2017), available at: http://tennisintegrityunit.com/media-releases/oliver-anderson-face-tennis-disciplinary-charges [accessed 9 April 2018].

306 ibid.

311. Whilst the above examples demonstrate a positive relationship between the Victoria Police and the TIU, Mr Paterson did also discuss with the Panel an issue that arose at the Australian Open in 2016. A betting alert was received in relation to a first round mixed doubles match in that tournament. A journalist, Ben Rothenberg, was informed by market observers ahead of the match that Pinnacle and other betting operators had suspended betting on the match[307]. Mr Rothenberg went to watch the match and subsequently interviewed the losing players. During the interview, he put to the losing players that a large amount of money had been placed on the match[308]. Mr Rothenberg did not alert the TIU or Victoria Police about the information he had received[309]. Rather, he said that he had assumed that the TIU had someone monitoring the markets and was aware of the issue[310]. This match was the subject of a news story that ran in the New York Times soon after[311].

312. The Panel understands that the players left the country later that evening before the TIU had interviewed them. Mr Paterson expressed the concern to the Panel that the TIU representatives in attendance at the tournament did not have the necessary equipment with them to deal with the matter[312]. The implication was that, had the TIU had the equipment, they would have been in a position to act swiftly in interviewing the relevant players. The Panel understands, in any event, that the players had already left the country before an alert regarding suspicious betting was raised.

The Bracciali – Starace Procedure

313. The Panel has gathered information concerning the interaction between the TIU and Italian law enforcement agencies. This interaction has principally focused on two Italian tennis players, Potito Starace and Daniele Bracciali, who have been the subject of criminal proceedings in Italy.

314. The Panel understands the facts concerning Starace and Bracciali to be, in summary, as follows:

314.1 Criminal investigations were commenced against, amongst others, Bracciali and Starace in October 2014 by the Prosecutor of Cremona. The prosecutor maintained that intercepted phone and internet conversations showed that the players fixed tennis matches.

314.2 The Panel understands that the TIU initially obtained partial access to the criminal file in February 2015 and full access in August 2015.

314.3 On 29 January 2016, Bracciali and Starace were officially charged with conspiracy to commit sports fraud. On the same day, the ITF68 was admitted as an *"offended party"* in the criminal proceedings. The Panel understands that, the criminal proceedings against the players concluded in January 2018. Both players were acquitted.

315. In parallel to the criminal proceedings, disciplinary proceedings were also brought by the Italian Tennis Federation (Federazione Italiana Tennis (FIT)) in August 2016 against the two players. Those proceedings were concluded in April 2016 with the clearance of Starace and a one-year ban for Bracciali.

316. The Panel understands that, the TIU was awaiting the conclusion of the criminal proceedings before it decided whether to take action against the Italian players pursuant to the TACP.

307 Statement of Ben Rothenberg (Freelance Journalist).

308 ibid.

309 ibid.

310 ibid.

311 Ben Rothernberg and James Glanz, 'Match-Fixing Suspicions Raised at Australian Open After Site Stops Bets on Match' (NY Times, 24 January 2016), available at: https://www.nytimes.com/2016/01/25/sports/tennis/match-fixing-australian-open-mixed-doubles-betting.html [accessed 9 April 2018]

312 Statement of AC Neil Paterson (Victoria Police).

317. The TIU told the Panel that "*the FIT did instigate proceedings against both players without informing the TIU who only became aware through a newspaper article. It was at this stage the TIU attempted to contact the FIT and discuss primacy of a prosecution. One of the main reasons for doing so is that any sanction imposed under the TACP is globally enforceable whereas any sanction imposed by a National Federation is limited to that particular Country. Despite numerous emails to the President of FIT from the TIU, and at the TIU request from two ITF Presidents the FIT failed to acknowledge contact. The result of the process taken by FIT after various appeals by the players and then FIT themselves amounted to the following result: (i) Danielle* [sic.] *Bracciali was given a 12-month suspension and fined 20,000 Euros; and (ii) Piotr* [sic.] *Starace was cleared of all charges"*[313].

318. Further, the TIU stated that "*both players are currently criminally charged with match fixing and being processed through the criminal courts in Italy. Eventually after the FIT had completed their process they contacted the TIU and provided some of the information and material they had used to prosecute the players. Also by now the TIU had approached the Prosecutor of Cremona to obtain any material possible involved in the Criminal proceedings. It became necessary to instruct Italian based Lawyers to assist in obtaining material from both FIT and the Prosecutor of Cremona who the TIU visited for face to face meetings. After a considerable period of time the material was provided. It was in Italian and needed to be translated which came at a considerable cost. In respect of the FIT prosecution this would not have been necessary had the TIU been allowed primacy to conduct the investigation from the outset*"[314].

319. The TIU stated that "*the TIU have now conducted their own investigation and interviewed the players. A report is currently being compiled for advice as to whether proceedings under the TACP can be instigated before the conclusion of the Criminal process*". In addition, *"both players are provisionally suspended by the ATP under their rules because they are criminally charged. However, the ITF do not recognize the suspension and so Bracciali having served his 12 month FIT suspension can play in ITF Tournaments as can of course Starace"*.

320. The TIU stated that *"the FIT failed to engage with the TIU until they had completed the process. By doing so they caused duplication of the investigation and the necessity to have a large amount of documentation translated. They failed to secure a conviction against Starace and the sanction imposed on Bracciali was only effective in Italy. The TIU accept that National Federations and some Jurisdictions have different legal processes but by FIT failing to engage at the earliest opportunity, despite numerous attempts by the TIU to do so, has caused a considerable amount of extra work, delay and cost. No criticism should be levelled at the TIU"*.

321. The acquittal of the players under Italian law does not preclude the TIU from pursuing charges against the players under the TACP.

322. Shortly after this Review was announced, the media reported that the Prosecutor of Cremona had issued public comments that were critical of the TIU[315]. In response, the TIU posted a media release on their website refuting the claims made by the Prosecutor[316].

313 Responses of the TIU to Notification given under paragraph 21 ToR.

314 ibid.

315 Sean Ingle, 'Tennis authorities deny Italian claims over match-fixing evidence' (The Guardian, 15 March 2016), available at: https://www.theguardian.com/sport/2016/mar/15/tennis-integrity-unit-match-fixing-allegations [accessed on 9 April 2018], and Heidi Blake & John Templon, 'The Tennis Racket' (BuzzFeed News, 17 January 2016), available at: https://www.buzzfeed.com/heidiblake/the-tennis-racket?utm_term=.epvJ47bVp#.vxblaAGoj [accessed 9 April 2018].

316 Press release, 'Tennis Integrity Unit refute claims by Italian prosecutor over match fixing information' (TIU, 15 March 2016), available at: http://www.tennisintegrityunit.com/media-releases/tennis-integrity-unit-refutes-claims-italian-prosecutor-over-match-fixing-information [accessed 9 April 2016].

323. With regard to their relationship with the TIU, and the TIU's actions in this specific case, the FIT told the Panel that *"Our cooperation with the TIU is ineffective. For instance,* [we] *sent all the documentation we had on the* [player name redacted] *case to the TIU in early August, in which I asked Mr. Freitas for the documentation in his possession about* [player name redacted]. *Three months later I am still waiting for such documentation ... We have already passed to the second instance of the proceedings in the* [player name redacted] *case in Italy, but it seems there was no progress from the TIU's end"*[317].

324. The FIT stated *"We are not sure whether the Memorandum of Understanding that we wanted to negotiate with Jose de Freitas was conditioned to providing information to the TIU that we could not disclose pursuant to Article 166 of the Italian Code of Criminal Procedure. The problem we face with regard to cooperation can be divided into: (i) an issue of timing; and (ii) whether we can share the information. With respect to the second, we are not allowed to agree on sharing the information in an MOU or otherwise"*[318].

325. Further, the FIT stated *"All relevant information we receive from Monopoli di Stato*[319] *is shared with the TIU. However, after we report to the TIU they do not follow up. In our experience, they do not even follow up with local enforcement agencies. For instance, the prosecutor in Cremona has been directly contacted by and has exchanged information with the TIU (although the correct avenue would be to establish such coordination with the federal prosecution office and CONI). Thereafter, the TIU did not contact anymore the prosecutor in Cremona who is still waiting to receive more information from the TIU as the documents provided to the TIU make also reference to alleged offences committed by top ranked (non-Italian) tennis players"*[320].

326. With regard to primacy of investigation, the FIT stated that *"We do not believe parallel proceedings are an actual issue. Italian sports justice only has jurisdiction over FIT national competitions. They do not have jurisdiction over ATP or ITF tournaments. Players may face different proceedings, but they are the result of violating provisions in different regulations. Such proceedings are in different levels"*[321].

317 Statement of Guido Cirpriani (FIT) and Enrico Cataldi (CONI).

318 ibid.

319 The Monopoli di Stato is the Italian state gambling organisation.

320 Statement of Guido Cirpriani (FIT) and Enrico Cataldi (CONI).

321 Ibid.

E EVALUATION OF THE GENERAL APPROACH OF THE TIU SINCE 2009

327. The Panel has considered, against the facts described above, whether the general approach of the TIU to match fixing and other breaches of integrity since 2009 has been effective and appropriate.

328. The Panel has not seen any evidence demonstrating that steps were taken by the TIU to cover up breaches of integrity, or to protect players under suspicion from investigation, for fear of damage to the reputation of tennis or otherwise.

329. The staff of the TIU are dedicated and work hard to tackle the threats to integrity faced. The TIU has significantly developed and improved its investigative practices from its inception in 2009 to date to address the ever growing problem faced by the sport. For example:

329.1 It has gradually, and in particular since 2016 significantly, increased its resources, albeit that, in the assessment of the Panel, and it would appear the TIU itself, more resources are still required.

329.2 Following the introduction of the Clue database, the TIU's storage of information is considerably improved compared to the early years of its operations.

329.3 It implemented the tactic of downloading phones and other devices.

329.4 It has been increasingly robust in enforcing its powers in respect of Covered Persons who have failed to co-operate.

329.5 It has made increasing use of its powers to seek interim suspensions.

329.6 The TIU has recognised that insufficient use was being made of betting data to focus the TIU's strategy and has started to take steps to address this. With the *Kryvonos* case it has made its first use of betting data in bringing a prosecution.

330. Also, as noted in Chapter 10 Part 3, 35 of the 37 cases referred to AHOs have resulted in a successful disciplinary prosecution, and only one of the seven cases referred to CAS was successfully appealed by the Covered Person. The TIU therefore has a very high success rate in the disciplinary proceedings that it has brought, although those proceedings have often been in difficult circumstances. For some players, particularly at the higher levels of the sport, the TIU's presence has no doubt operated as a deterrent. The TIU has also developed, and is continuing to develop, the content and delivery of its education programme.

331. The Panel has, however, identified some aspects in which, in the Panel's opinion, the facilities in place or the approach adopted or actions taken by the TIU to address the growing problem have been ineffective or inappropriate, and could be significantly improved. These are described below[322]. The Panel's proposed recommendations for change are addressed in Chapter 14.

332. In the present assessment of the Panel[323], the resourcing of the TIU in the period 2009 to 2012 was insufficient, as described in Section E(1) below. Furthermore, in the Panel's present view as described in paragraphs 409 to 425 below, the TIU was too conservative and insufficiently proactive in discharging its investigatory mandate during that period, and failed to adopt a number of methods that the Panel considers it ought to have adopted. That said, the TIU commenced a number of investigations that led to important convictions of match fixers, and there was a reduction in the number of Match Specific Alerts between 2009 and 2012.

322 It is in the nature of a Review designed to identify the improvements that can and should be made, that the analysis focuses on where current facilities or actions are not as good as they could be, and less attention is paid to those aspects that do not require change. This should be borne in mind here.

323 Pending the consultation process between Interim and Final Reports.

333. Likewise, in the present assessment of the Panel, during the period 2013 to 2016 the TIU's resources (as described in Section E(1) below) and approach to detection, investigation and prevention of breaches of integrity (as described in paragraphs below) have been insufficient to address the nature and extent of the problem faced by tennis, which rapidly increased in scale during this period. The TIU appears to the Panel to have been overwhelmed by the increasing workload and to have reacted behind the curve in seeking to increase its resources. While some of the insufficiencies in the TIU's approach are attributable in part to its inadequate resources, others are attributable to what has been, in the Panel's assessment, an overly conservative and insufficiently proactive attitude on the part of the TIU as to how best to detect, investigate and prevent breaches of integrity of tennis arising around the world, using a full range of methods and in cooperation with others within the sport and law enforcement. The TIU appears to the Panel to have lacked the diverse workforce and protocols necessary for a truly international investigative unit. That said, again, the TIU secured a significant number of disciplinary convictions during the period, and as set out in paragraph 328 above, has actively set out to develop and improve its investigatory practices, and to increase its resources.

(1) EVALUATION OF THE TIU'S RESOURCES

Initial resource levels

334. Having been appointed as Director of the TIU, it was for Mr Rees to decide the resource levels that the TIU required at its inception.

335. When the TIU became operational in January 2009, it had just two employees; Mr Rees as Director of Integrity and Bruce Ewan as Information and Intelligence Manager.

336. The role of the Information and Intelligence Manager was rightly seen by Mr Rees as a priority. The role was particularly important in the context of the TIU ingesting information and intelligence from the International Governing Bodies.

337. The Panel does not question the choice of Mr Ewan. He had undertaken an information management role in cricket. Further, their previous experience of working together meant that Mr Rees knew that he could work with Mr Ewan. The Panel does, however, have concerns as to whether Mr Ewan had sufficient experience analysing betting data, particularly as Mr Rees has indicated that betting alerts were not commonly received by the ACSU. As is set out below[324], the Panel's view is that the TIU should have either employed an in-house betting analyst or instructed one externally to assist on matters.

338. In the present view of the Panel, the TIU should have employed greater resources as soon as reasonably practicable following the TIU's inception. The view of the Panel is that Mr Rees should have taken steps to ensure the TIU had at least the resources anticipated in his Option 2 (as outlined in the Environmental Review), which required a team of five people. In this regard, it is important to note that, in undertaking the Environmental Review Mr Rees had assessed the needs of tennis and concluded that a unit staffed in the manner set out in Option 2 *"would be proportionate to the threat professional tennis currently faces"*[325].

324 See below at Paragraphs 433 to 436.

325 Ben Gunn and Jeff Rees, 'Environmental Review of Integrity in Professional Tennis' (May 2008), page 28, paras. 3.47, (emphasis added).

339. In relation to the TIU's initial resource level:

339.1 Mr Rees told[326] the Panel that the question to be asked *"is whether the resources I put in place were sufficient given the decision that had been taken not to investigate historical cases and my belief that* [the TIU] *did not have the material relating to the 45+ cases"*.

339.2 Mr Rees stated[327] *"looking back on the programme of work identified and having seen how effectively it served* [the TIU] *I am absolutely clear that it was appropriate and effective"*. Mr Rees further added *"I am also clear that the resources I put in place were entirely adequate to carry that programme into effect"*.

339.3 In relation to staffing at time of the TIU's inception in September 2008, Mr Rees told the Panel that *"newly-recruited individuals, even if they were hugely-experienced investigators, would not have become fully-functional or effective for several weeks because: the rules were about to change, and prosecution processes had not been finalised, they wouldn't know how tennis worked, unlikely to have had experience of sports discipline, no budget, no equipment, procedures needed to be established, particularly in relation to evidence-gathering, investigation and case progression on to prosecution, no database/intelligence analysis systems in place"*[328].

339.4 Mr Rees stated that *"*[the TIU] *could not at that point be certain of particular skills which would be advantageous beyond those I wrote in the Job Description at Appendix* [E9] *of the Environmental Review"*. Mr Rees added that *"Bruce Ewan and I were both on steep learning curves despite having the advantage of experience in other sports"*. Mr Rees stated that *"the mass of information* [the TIU] *had was not organised, and in order to move forward I had to impose order on it"* and that *"not doing so would have led to disorganised and unsystematic investigations"*[329].

339.5 Mr Rees told the Panel that *"the reality is that it takes time to get any unit up and running, particularly when starting largely from scratch"* and that *"my experience in cricket had confirmed this"*[330].

339.6 Mr Rees added that *"there would also be a significant increase in the expense of running* [the TIU] *from the outset, not just in terms of salaries but travel, accommodation and so forth"*. Mr Rees considered that this increase in expense would have been "*unjustifiable until systems were in place and a clear direction had been identified*". Mr Rees stated *"cost was not the issue, but for me responsible management was"*[331].

339.7 Mr Rees stated *"in my experience in both police and sports other than tennis, throwing people and other resources at a problem when it arises or is recognised is not the best way to proceed in the first instance, let alone set the foundations for the mid and long terms"*[332].

340. In the view of the Panel, there was a considerable amount of work to be undertaken in establishing the TIU and therefore a team of two was unnecessarily small and left the TIU significantly under-resourced. Mr Rees' handling of the historical cases, including the *"45+ matches"* is addressed in Chapter 9[333].

326 Response of Jeff Rees to Notification given under paragraph 21 ToR.
327 Response of Jeff Rees to Notification given under paragraph 21 ToR.
328 Response of Jeff Rees to Notification given under paragraph 21 ToR.
329 ibid.
330 ibid.
331 ibid.
332 ibid.
333 Chapter 9, Sections A – E.

Time taken to hire first full-time Investigator

341. The hiring of Nigel Willerton as the first full-time Investigator, in addition to Mr Rees as Director, occurred in June 2010, 18 months after the TIU became operational.

342. In the view of the Panel, the TIU should have immediately sought permission to recruit members of staff in addition to Mr Rees and Mr Ewan, including hiring its first full-time Investigator. Indeed, with Mr Rees appointed as Director of the TIU in September 2008, in the view of the Panel, steps should have been taken to have recruited the full-time Investigator in time for 1 January 2009.

343. By July 2009, Mr Rees had an understanding of the demands on the TIU at that time. At the TIB meeting in July 2009 Mr Rees noted that the TIU was "*in possession of good intelligence, and had identified good targets which could not be acted upon because of more pressing demands*"[334]. Mr Rees did not however seek approval at that stage to appoint a further Investigator but instead indicated that it was likely he would do so. Mr Rees noted "*when* [the TIU] *had been operating for 12 months he would review the demands on it and, if the situation warranted, submit a formal proposal to the Board for an increase in staff*"[335]. Mr Rees told the Panel *"the whole situation was fluid in the early days of the TIU, and further I believed I did not have details of the 45 matches"* [336].

344. In the view of the Panel, Mr Rees reacted appropriately in identifying by July 2009 that more resources were required, but that should have accelerated the hiring of additional resources, particularly in light of Mr Rees' recognition at the time that the TIU had identified good targets that could not be acted upon because of more pressing demands.

345. Whilst it is understandable that Mr Rees wanted to act prudently in making requests for resources, in the Panel's view there was no reason for delaying the request. The recruitment of a full-time Investigator would still have meant that the TIU had only three full-time staff members, whereas Mr Rees had indicated in the Environmental Review, in the Option 2 approach that had been approved by the International Governing Bodies, that a team of five was required.

346. Mr Rees told the Panel that *"with hindsight, I should have set the wheels in motion to fill the first full-time investigator post sooner than I did"* and that "*the process from seeking authority to recruit to the first full-time investigator taking up the post took significantly longer than I had anticipated*" [337].

Time taken to hire second full-time Investigator

347. The hiring of Dee Bain as the second full-time Investigator occurred in January 2011, two years after the TIU had become operational.

348. In the view of the Panel, the recruitment of a second full-time Investigator should have happened more swiftly.

349. At a TIB meeting in July 2010, Mr Rees identified the likely need for an additional Investigator. Ultimately, the Investigator joined the TIU in January 2011, six months after Mr Rees had identified the likely need.

350. In the Panel's view, there was no reason for the delay in hiring a second full-time Investigator. Mr Rees told the Panel that *"the tennis governing bodies quite rightly expected me to make out a reasoned business case for employment of additional members of staff"*. Mr Rees added *"I would not wish the IRP to assume I was given a blank cheque in terms of recruitment or any other form of expenditure"* [338].

334 TIB, Meeting Decision and Action Sheet, 3 July 2009.
335 TIB, Meeting Decision and Action Sheet, 3 July 2009.
336 Response of Jeff Rees to Notification given under paragraph 21 ToR.
337 Response of Jeff Rees to Notification given under paragraph 21 ToR.
338 Response of Jeff Rees to Notification given under paragraph 21 ToR.

351. The recruitment of the second full-time Investigator would have brought the number of full-time TIU staff members to four. Again, Mr Rees had indicated in the Environmental Review that a team of five was required, in an approach that had been approved by the International Governing Bodies. The Panel's view therefore is that there was no reason to doubt that the International Governing Bodies would have authorised recruitment to at least bolster the TIU to that particular level of staffing.

352. Mr Rees told the Panel, as above[339], that the process from seeking authority to recruit to the second full-time Investigator taking up the post took significantly longer than he had anticipated. Mr Rees has told the Panel again that, with hindsight, he should have set the wheels in motion to fill that post sooner than he did.

The decision to appoint Nigel Willerton as Director after Jeff Rees' retirement and the recruitment of an Investigator to replace him

353. When Mr Rees indicated in June 2012 that he was planning to retire, Mr Willerton had worked for the TIU as an Investigator for two years. He was well qualified and well known to the PTIOs and the TIB. In the circumstances, the decision to appoint Mr Willerton as the Director of the TIU was appropriate.

No recruitment of Investigators between April 2013 and May 2015

354. In the Panel's view, the TIU's recruitment of investigators between 2013 and 2016 lagged significantly behind the increasing workload and was insufficient to deal with it. As a consequence of this lack of resources, the TIU was overwhelmed by the workload during this period and unable in many instances to carry out the investigatory steps that would have been appropriate, as further addressed in paragraphs 428 to 464 below. Greater resources should have been added to the TIU between Mr De Freitas joining in April 2013 and the next Investigator being recruited in May 2015. This is particularly the case given that in 2012, a year after the ATP/WTA data deal with Enetpulse, the ITF entered into a contract with Sportradar to sell data to ITF Pro Circuit matches, which had the effect of very significantly increasing the number of matches that could be bet upon – including, for the first time, the matches of very low ranked or unranked players that take place at insecure facilities around the world.

355. The TIU stated "*Recruitment of operational staff has always been made against a judgement of current and anticipated workload and the expertise required to successfully carry out the TIU's remit. While the TIB has always been supportive of requests for additional staffing, there has to be a justifiable reason behind requests*"[340].

356. It is noted by the Panel that the TIU was not consulted by the ITF with regard to the sale of its data. Notwithstanding this lack of consultation, the Panel's view is that it would have been appropriate for the TIU to have assessed its resource levels upon becoming aware of the ITF's data deal. That analysis should have led to the conclusion that, with tens of thousands of ITF matches being made available to the betting market, the pressures on the TIU would increase and more recruitment was required.

357. In the Panel's assessment, the increase in the number of betting alerts should in any event have been apparent in 2014:

357.1 The number of alerts had risen from 23 in 2012 to 54 in 2013, more than doubling. The number of alerts in respect of ITF matches had increased from 2 to 15 in the same period.

357.2 In 2014, the number of alerts had risen to 104, almost doubling again, with the number of alerts in respect of ITF matches increasing from 15 to 56.

339 Paragraph 344 above.

340 Responses of the Tennis Integrity Unit to Notifications given under paragraph 21 ToR.

358. It is noted that in a succession of updates provided to the TIB between July 2013 and November 2014, Mr Willerton stated that the TIU was *"conducting more investigations than ever"*[341] and *"very busy"*[342] – with the result that *"a considerable amount of information* [was] being *generated"*[343].

359. In the Panel's view, the decision to hire a single further investigator in May 2015 was late and insufficient in the light of the extent of the increase in workload.

Recruitment of Investigators in 2016

360. The Panel is of the same view with regard to the number of additional investigators hired in 2016. By this time, the TIU should have recognised the surge in betting alerts since 2013, indicating that additional staffing was needed. Further, an expected consequence of insufficient resources was delay in the investigation process, which appears to have affected the TIU's operations during this time. As set out above[344] and as evaluated below[345], the Panel has identified substantial delays in the TIU's investigation process.

361. In the Panel's view, the TIU was too conservative in seeking to add resources between 2013 and 2016. The TIB has approved each resource request that the TIU has made, and the Panel has seen nothing to suggest that the TIB would not have approved any additional requests, particularly in circumstances where the number of alerts clearly demonstrated a surge in the TIU's workload.

RECRUITMENT PROCESS AND PHILOSOPHY

362. Each of the Investigators and the Information Managers hired by the TIU during Mr Rees' and Mr Willerton's tenure had a background in the British police. In the Panel's view, it would have been appropriate for the TIU to have recruited from a wider pool.

363. It appears to the Panel that the TIU's narrow approach to recruitment may have contributed to the TIU's limited perspective on conducting investigations and on when to recommend disciplinary proceedings. That approach has focused on building cases based on player interviews and on establishing corrupt links between bettors and players. The TIU has rarely entertained the possibility of building cases based on betting data and other circumstantial evidence.

364. In the Panel's view, it would have been appropriate to consider recruiting individuals from a wider variety of professional backgrounds and nationalities. Given that the TIU operates in the field of sports discipline, in the Panel's view it would have also been sensible to consider recruiting an individual with a background in sports discipline. Also, given that the TIU is responsible for overseeing integrity internationally, the Panel considers that the TIU should have done more to recruit a more diverse team of Investigators with wider language skills. The Panel notes that before 2017, in addition to English, the TIU's team of Investigators only possessed Portuguese and Spanish language skills.

365. In relation to the TIU's recruitment process during his tenure, Mr Rees told[346] the Panel that:

365.1 "*an individual from the ITF's Human Resources department, and who was therefore independent of the TIU, participated in every interview and oversaw the recruitment processes for investigators and support personnel*".

365.2 "[the TIU] *selected those who best matched the criteria* [the TIU] *had set*".

365.3 "*an ability to speak a second language would of course be welcome in an investigator*".

341 TIB, Meeting Decision and Action sheet, 6 July 2013.

342 TIB, Meeting Decision and Action sheet, 14 October 2013

343 TIB, Meeting Decision and Action sheet, 24 November 2014.

344 For example, at Paragraphs 221 and 232.

345 For example, at Paragraphs 448 and 453.

346 Response of Jeff Rees to Notification given under paragraph 21 ToR.

366. Mr Rees told the Panel that he could not recall any applications from individuals with a background in sports discipline for the first Investigator's post and that the TIU did not receive any applications from individuals specialising in sports discipline for the "*female investigator's role*" [347].

367. Further, the TIU stated that *"recruitment has been carried out alongside the ITF's HR function and positions have been advertised in media and agencies reaching military and legal candidates, as well as law enforcement"*. The TIU additionally stated that *"the Panel is critical that the focus of recruitment has been on former law enforcement officers. The TIU respectfully contends that in order to successfully investigate and prosecute corruptors the unit has to have the core, proven skills and experience of individuals who have worked in parallel real life situations. For example, TIU investigative staff de Freitas, Suddick, Cowell and Hamlet have all worked in anti-corruption units in English police forces. Collectively, the TIU team bring over 200 years of high level expertise in serious crime covering all areas of direct relevance to corruption in tennis. As noted above, the roles are advertised more widely, however it is difficult to find the investigative skills in people with other backgrounds"*[348].

Employment or instruction of a betting analyst

368. Throughout the period, the TIU did not deem it necessary or desirable to employ a dedicated in-house betting analyst. In the Panel's view, the TIU should have either employed an in-house betting analyst or instructed one externally to assist on matters, when appropriate.

369. In referring to a betting analyst, the Panel refers to an individual with the skills and expertise properly to analyse and interpret betting alerts and data provided to the TIU by betting operators and other gambling industry entities. It is not the Panel's view that the role of a betting analyst would have extended to providing the TIU with real-time betting market monitoring and analysis. Rather the analyst's role would be to build relationships with the betting operators, to receive and interpret intelligence received from them, to request the further betting information and bettor information necessary, and to develop an analysis, in cooperation with the betting operator, of what likely happened and why. This individual would also assist in disciplinary prosecutorial decision making and give evidence in disciplinary proceedings as to the significance of betting data.

The TIU's attitude to the employment of a betting analyst between 2009 and 2012

370. Mr Rees stated that when undertaking the Environmental Review he did not consider that it was necessary for the TIU to hire a dedicated betting analyst. In contrast to Ben Gunn's model, the model proposed by Mr Rees did not include a dedicated betting analyst but rather, as Mr Rees told the Panel, an Information Manager whose main job duties/ responsibilities included interacting with the gambling industry to develop betting-related intelligence and sources of information within the sport and the betting industry[349]. An *"ability to interpret internet betting patterns"* was listed in the section that detailed the requisite skills, qualification and experience of the role[350].

371. Upon Mr Rees being appointed as the Director of the TIU he did not hire anyone who was qualified to analyse betting information. In the view of the Panel, it seems that greater consideration should have been given to whether the TIU should have hired such an individual.

372. Whilst Mr Rees had significant experience of dealing with match fixing issues in cricket, this experience had largely concerned betting on the illegal market. As such, Mr Rees had limited experience of dealing with cases arising out of betting on the regulated market.

347 Response of Jeff Rees to Notification given under paragraph 21 ToR.

348 Responses of the TIU to Notifications given under paragraph 21 ToR.

349 Ben Gunn and Jeff Rees, 'Environmental Review of Integrity in Professional Tennis' (May 2008), Appendix E(ii), page E-8.

350 Ben Gunn and Jeff Rees, 'Environmental Review of Integrity in Professional Tennis' (May 2008), Appendix E(ii), page E-8.

373. Whilst Mr Rees may have disagreed with the approach proposed by Mr Gunn, in the Panel's view he should have placed greater weight on the view expressed by the head of Betfair's Intelligence Unit who had significant experience in this area. The betting analyst proposed to Mr Rees at a meeting in September 2008 had strong credentials, and the indicative salary for recruiting that person was relatively modest. It would have been appropriate to at least have met with that individual in order to properly assess his capabilities.

374. Mr Rees stated that he *"always kept open the option of employing a betting analyst, but in practice was pretty content with the service I was receiving from the industry in that respect. In reality Betfair were always the most helpful to the TIU, not only in relation to their willingness to assist and provide expert guidance but because of the information they were able to provide* [the TIU]. *Some bookmakers, of course, would not provide* [the TIU] *with the information* [it] *required in order to assess their suspicions and carry out the necessary enquiries. In such circumstances, there would be nothing for a betting analyst to work on"* [351]. Mr Rees further stated *"as the TIU developed I became aware that Darren Small, a very knowledgeable former bookmaker I had met during meetings with Sportradar, had been appointed a court-recognised independent 'expert' on betting"* [352]. Mr Rees stated, *"I would have considered employing his services in any TIU prosecution where betting patterns would be a key issue"*. Mr Rees also told the Panel that he remains *"unconvinced that an in-house betting analyst...would have added significant value to TIU operations between 2008 and 2012"* [353].

375. No documentary evidence indicates that Mr Rees gave sufficient consideration to employing a betting analyst. In the Panel's assessment, this partly appears to have been a result of Mr Rees being sceptical as to the value of betting data. As a consequence, in the assessment of the Panel, the TIU lacked the required expertise to make maximum use of the data available to it from betting operators.

The TIU's attitude to the employment of a betting analyst between 2013 and 2016

376. An equivalent approach to that taken by Jeff Rees described above has been taken by Nigel Willerton since he took over from Mr Rees.

377. The TIU told the Panel that *"under the current disclosure restrictions among betting regulators and operators the TIU view is that such an individual would have very little meaningful data to work with"*. The TIU added that *"this contrasts for example with the role of the TIU's Intelligence Analyst, who makes a valuable contribution to the operational work and effectiveness of* [the TIU] *through working with the many other sources of information obtained by [the TIU]"* [354].

378. The TIU stated *"while remaining unconvinced by recruitment of a betting analyst, the TIU does see merit in having a dedicated betting industry liaison officer, to develop and build on the relationships established with regulators and operators. This will be more important still in the post General Data Protection Regulation (GDPR) landscape"* [355].

Employment or instruction of a tennis expert

379. Throughout the period, the TIU did not deem it necessary or desirable to either employ an in-house tennis expert or to instruct one externally to assist on particular matters when appropriate. In the Panel's view, the TIU should have done so.

380. In referring to a tennis expert, the Panel refers to an individual with the skills and expertise properly to analyse on-court behaviour and tennis data, and to do so from the point of view of an expert with that specific role within the TIU. This individual would also liaise with event officials and obtain the necessary tennis data, assist in disciplinary prosecutorial decision making and give evidence in disciplinary proceedings as to the significance of tennis data. It seems to the Panel that there is a very significant difference between someone whose job is to analyse on-court behaviour in the context

351 Response of Jeff Rees to Notification given under paragraph 21 ToR.
352 Response of Jeff Rees to Notification given under paragraph 21 ToR.
353 Response of Jeff Rees to Notification given under paragraph 21 ToR.
354 Responses of the TIU to Notification given under paragraph 21 ToR.
355 Responses of the TIU to Notification given under paragraph 21 ToR.

of integrity, and a former player or official who is asked to do this occasionally, and with little experience of doing so. It seems to the Panel that an expert focusing on how matches are tanked and lost deliberately would develop significantly different skills to an occasional observer, albeit one from the tennis world. So too such an expert would, it seems to the Panel, develop significantly different skills in assessing whether on court behaviour reflects spot-fixing.

381. The TIU has largely relied on the reactions of event officials, or on occasion former players, as to what they saw in assessing whether there has been a breach of integrity. Whilst the TIU's interaction with officials is a logical step, those individuals will often not have had the opportunity of watching a replay of the match. Moreover, as a result of the TIU requesting comments on the match overall, the officials in question have not been on notice regarding whether specific passages of play have been identified as being suspicious.

382. The Panel's present view is that the TIU has been overly sceptical of the extent to which proper tennis analysis could provide supporting evidence of at least some breaches of integrity. The Panel's view is that while such data may rarely be dispositive, it could, on occasion, be useful supporting evidence (particularly in cases where specific parts of a match have been identified as being suspicious, such as multiple double faults in quick succession during a single game).

383. The approach taken at Roland Garros (as described at paragraph 217 above) is welcome. However, in the Panel's present view, it is no substitute to the TIU using a tennis expert to review match footage in appropriate cases where an integrity concern has been identified. In this regard, and as is set out in Chapter 13, whilst the Grand Slams are not immune from betting-related and other breaches of integrity, the problem is particularly acute and pervasive at the lower levels.

384. The Panel's present view is that the TIU should not use PTIOs in this capacity. The PTIOs are responsible for deciding whether cases should proceed to be heard by an AHO and should not be involved in the investigations carried out by the TIU.

Employment of an in-house lawyer

385. The TIU has not chosen to employ an in-house lawyer. In the Panel's view, following the growth in the TIU's workload throughout this period, the TIU should have done so. An in-house lawyer would have been focused directly and solely on the issues faced by the TIU, gaining a deeper understanding of them, and would have been in a position to identify legal issues promptly as they arose at the TIU and to provide, or to facilitate the obtaining of effective advice on such issues.

386. In the assessment of the Panel, the TIU has, also in part as a result of the absence of an in-house lawyer, lacked sophistication when investigating in foreign jurisdictions. In particular the TIU has not systematically checked whether it acts in accordance with national criminal law or data protection laws when conducting investigations. Similarly, the TIU has taken insufficient advantage of cooperation potentially available to it from law enforcement agencies in those jurisdictions. Further, in the view of the Panel, the lack of internal legal resources combined with the lack of knowledge of languages other than English and a handful of others, has made it difficult for the TIU to coordinate and cooperate with foreign enforcement or sports authorities, especially where the TIU's investigations are also subject to national criminal procedures, and to take appropriate decisions against the background of foreign national procedures.

387. In the assessment of the Panel, a further consequence of the TIU's lack of in-house legal resources is that the TIU is disconnected from the latest case law of the relevant authorities, such as CAS, the Swiss Federal Supreme Court (to which go appeals from CAS decisions) and other arbitral tribunals. The case law in this area is rapidly evolving, for example in relation to the use of betting data as evidence. In the assessment of the Panel, the TIU should be at the forefront of these legal developments and should constantly develop the focus of investigations to reflect the latest legal developments.

388. The Panel also presently considers that the lack of an in-house lawyer has meant that the TIU has not had someone in place actively seeking to examine the TACP and ways to improve it. For example, while it is the case that some significant improvements and changes have been made over the period, it is noticeable that no analysis was ever undertaken of whether the offence of contriving the result required any establishment of a corrupt link between bettor and player. That was the case notwithstanding that the express words of the offence itself make no mention of such a link, and the difficulty in proving such a link was one of the major obstacles in the way of the TIU mounting successful disciplinary prosecutions.

Engagement with integrity monitoring services

389. The TIU has met with companies offering integrity monitoring services on a number of occasions since 2009. The TIU acted appropriately in conducting a free trial with SIM. This trial enabled the TIU to analyse the potential benefits of the service SIM was offering and to make an informed decision as to whether to engage SIM on an ongoing basis.

390. On each occasion that an integrity monitoring service has been offered to the TIU, it has undertaken some evaluation of the potential benefits against the costs that would be incurred in contracting with the company in question. In this respect, the TIU has acted appropriately.

391. The Panel is not presently in a position to comment on the arrangement announced on 2 March 2018 through which Sportradar's Fraud Detection System is being used to monitor betting patterns at the ITF Pro Circuit level as it has not been provided with any documents relating to this arrangement.

(2) EVALUATION OF THE TIU'S SOURCES AND PROCESSING OF INFORMATION

The TIU's approach to dealing with information received from the betting industry and companies such as Sportradar

392. The TIU has acted appropriately in expanding the number of MoUs that it has in place with betting operators. The Panel notes that the significant rise in MoUs has coincided with the fact that the ATP and WTA require that betting operators purchasing their data enter into MoUs with the TIU.

393. The Panel further notes that Sportradar has provided a significant number of reports to the TIU over a number of years. As a general rule, the TIU has treated these reports seriously and has largely equated them with the alerts that the TIU receives from betting operators.

394. Sportradar stated that it has received limited feedback on the reports that it provides to the TIU. In the view of the Panel, this is an area that should be capable of being improved with better communication.

The TIU's approach to information provided to it by officials

395. From the evidence seen by the Panel, the TIU has taken steps to seek further information whenever an official has raised an integrity concern with the TIU. The TIU has acted appropriately in seeking further information from the official in question.

396. In certain of these cases the TIU has contacted betting operators to see whether they had noticed any unusual betting on the particular match. These steps have not been carried out in all cases. In the assessment of the Panel, the default position should be for the TIU to make such enquiries whenever a concern has been flagged by an official.

The TIU's approach to dealing with issues raised by the public

397. The TIU receives a wide range of unsolicited information from the general public. The TIU acts appropriately in generally giving greater weight to members of the public who are known to the TIU. The TIU also acts appropriately in recording all information provided by the public on its database. This ensures that the information can be used as intelligence.

The TIU's approach to recording and storing information

398. When the TIU was first established it only had two employees, Jeff Rees and Bruce Ewan, who had worked closely together at the Anti-Corruption and Security Unit in cricket.

399. The Panel notes the evidence of Elli Weeks that there were a number of issues regarding the manner in which the TIU had stored information before February 2011 (i.e. during the first two years of the TIU's operation), including: (a) a reliance on hard copy files; (b) a lack of clarity over the extent to which the hard copy material was also electronically stored; and (c) issues regarding the effectiveness of the iBase database that had been used, including the fact that nobody was using it.

400. Whilst the evidence given by Ms Weeks accords with the Panel's own assessment of the TIU's records, it should be noted that the Panel was not able to discuss these issues with Mr Ewan as he passed away in 2014.

401. Mr Rees stated to the Panel *"I gave responsibility for creating and managing the information database to Bruce Ewan, with the clear expectation that that it would inform and support investigations as had been the case with the equivalent data base he created and managed in cricket. I did not have the specialist training necessary to access the data base* [sic.] *myself. Thus the job of populating the new TIU database and record system with intelligence/information, past and*

present, fell [to Mr Ewan]. *To the extent that data was not entered or, once entered, was not retrieved for use in particular cases, this would have been Bruce Ewan's responsibility as it had been when he worked for me in international cricket. I did not supervise Mr Ewan on these basic aspects of his job. Having worked with and for me for several years, and after long conversations with me when* [Mr Ewan] *first took up his position in the TIU,* [Mr Ewan] *knew full well his responsibilities and my expectations of him"* [356].

402. In the Panel's view it was appropriate for Mr Rees to rely upon Mr Ewan in relation to the creation and management of the TIU's information storage system, particularly as they had a history of working together. It is also the Panel's view, however, that more should have been done by Mr Rees to understand the manner in which data was being stored, so as to identify potential improvements. As explained in Chapter 9[357], some materials that had been obtained by the TIU from the International Governing Bodies related to suspected misconduct predating the creation of the TIU were not incorporated into the TIU's information database.

403. The TIU recognised the fact that improvements needed to be made and introduced Clue in 2015. This decision was appropriate, as was the selection of Clue. It was a programme with which Phil Suddick had considerable experience and which was tailored towards the needs of the TIU.

404. Whilst in the present assessment of the Panel, improvements can be made to the TIU's document management going forward (which are dealt with in Chapter 14[358]), Clue represented a significant step in the right direction compared to the systems adopted prior to that.

405. The TIU acted appropriately in not limiting Clue to new cases, but instead using it for all cases since 2013. In the view of the Panel, it would have been sensible for cases pre-dating 2013 to have also been stored on Clue. Whilst the Panel appreciates that there is a time and cost investment in transferring all matters across, in the present assessment of the Panel, such investment would have been worthwhile in order that Clue could serve as a single source of information. As things stand, it is necessary to use the S-Drive for cases prior to 2013, which the organisation of the S-Drive makes difficult.

406. The TIU informed the Panel that the decision to upload material from 2013 onwards (rather than from the TIU's inception) was seen as a sensible decision at the time[359]. It was based on the following considerations: it coincided with Mr Willerton commencing his role as Director of the TIU and with the TIU's use of the TIU Package system of recording matters; the remaining data were in any event accessible on the S Drive; and the TIU had obtained legal advice concerning its compliance with the UK Data Protection Act 1998 that counselled against uploading the pre-2013 material.

407. The Panel recognises the necessity of the TIU complying with the UK Data Protection Act 1998. It is appropriate that the TIU has obtained expert advice on such compliance. As the Panel understands it, however, the advice given to the TIU concerned the length of time that the TIU should store data, rather than a question as to the form in which that data is to be stored. In the event that the TIU is to retain data relating to years before 2013, in the view of the Panel, this data should be uploaded onto the Clue database so that it can be used most effectively.

408. In the view of the Panel, the iBase material should also have been reviewed to ascertain whether it should be made available to current TIU investigators. As things stand, the information from iBase is solely accessible through hard copy documents, which are not searchable.

409. Additionally, the Panel notes that the manner in which the Clue database has been updated has been inconsistent, with certain relevant documents being saved to the shared drive and not loaded onto Clue.

356 Response of Jeff Rees to Notification given under paragraph 21 ToR.

357 Chapter 9, Section D.

358 Chapter 14, Sections D and E.

359 Responses of the TIU to Notification given under paragraph 21 ToR.

410. The TIU told the Panel that *"all material from 2013 onwards was loaded onto the Clue database"* and *"since 2016 all investigations and intelligence has been recorded on the Clue database"* [360]. The TIU added that *"Investigators may also have working notes in temporary folders on the S-Drive, but all relevant information will be subsequently transferred onto the relevant Clue record"*.

(3) EVALUATION OF THE INVESTIGATORY STEPS TAKEN BY THE TIU

Investigatory steps taken by the TIU between 2009 and 2012

411. It presently appears to the Panel that the TIU's approach to betting data during the period between 2009 and 2012 was variable. The Panel is concerned about the generally restrictive approach that the TIU took towards match specific information and the use of betting data evidence. From the evidence seen by the Panel it does not appear that Betting Match Alerts or the underlying betting data played an important part in the TIU's reasoning in deciding whether or not, or how, to progress its cases.

412. Part of the explanation for the approach taken by the TIU during this time may be Mr Rees' view as to the limited value of information relating to possible spot fixes. As set out in paragraph 156 above, Mr Rees stated to the Panel that, based on a conversation that he had with Michael O'Kane, *"spot fixing"* in tennis is *"largely a myth"*[361].

413. The Panel does not share that view:

413.1 Through the analysis of the TIU's records (between 2009 and 2016), the Panel has noted a substantial number of cases in which suspicious betting patterns relate to circumstances suggesting a spot fix.

413.2 The Panel has seen evidence within the TIU's records of corrupt approaches, in person or via social media, soliciting players to contrive the outcome of a part of a match (as opposed to fixing a match in its entirety).

413.3 There have been several prosecutions brought by the TIU under the TACP for contriving a part of a match or attempting to solicit a player to contrive a part of a match. One successfully prosecuted case related to an offer to a player in exchange for fixing *"a match, a set, or a service game"*.

413.4 The Panel has heard evidence regarding the potential for spot fixes in tennis. Richard Watson of the UK Gambling Commission told the Panel that the particular vulnerability of tennis, when compared to many other sports, comes from the possibility for players to influence a part of the competition without altering the overall outcome of the contest.

413.5 The Environmental Review had stated *"individual actions can be manipulated by the corrupt without necessarily affecting the eventual outcome of the set or match. For example, a corrupt participant playing against a weaker opponent can deliberately lose a set or a number of games within a set or even generate a minimum number of double faults without seriously jeopardising the outcome of the match. Any of those eventualities can provide an opportunity for a corrupt player or other individual with 'inside information' to cheat at betting"*[362].

360 Responses of the TIU to Notification given under paragraph 21 ToR.

361 Response of Jeff Rees to Notification given under paragraph 21 ToR.

362 Environmental Review, page 10, para. 2.19.

414. Part of the explanation may also lie in the fact that Mr Rees distinguished between the information available from Betfair and from *"conventional bookmakers"*, such as William Hill. Mr Rees stated that *"it is also relevant that William Hill is a conventional bookmaker who could supply only limited data to the TIU, and there was no data to analyse"*[363]. In his Further Response to Notification, Mr Rees stated that when he referred to conventional bookmakers he meant those that, at that time, were not engaged in online betting but were taking bets over the counter. The Panel, however, notes that William Hill (the bookmaker referred to by Mr Rees) were active in online betting at the time.

415. Mr Rees further stated, *"In practice, during my time at the TIU (when, unlike now, there was little or no betting at the lower levels of the sport) most suspicious betting took place on the betting exchanges and at Betfair in particular. This was because the Betfair betting model created the financial liquidity to manage the very large bets and subsequent very large profits which would justify the expense of organising a fix. In contrast an unknown customer, or even a regular customer betting way above his normal amount, wanting to place a £1000 bet over the counter at a betting shop would generate immediate suspicion and the bet might well be refused. A regular bookmaker would, unlike the proprietors of Betfair, be the loser in the event of a fix, and no 'High Street bookmaker' in the world likes losing money"* [364].

416. The Panel shares Mr Rees' view that Betfair has been a valuable source of information to the TIU, but the Panel does not share the view that *"conventional bookmakers"* cannot also provide a wealth of information for the TIU's analysis. For example, all online bookmakers are able to confirm: (a) the betting history of a particular bettor (so to assess a suspicious bet against his or her typical behaviour); (b) the timing of the bet (so that it can be compared against what occurred on the court); (c) the value of the bet (so that it can be compared against the rest of the market); (d) links between the bettor in question and others betting on the same outcome; and (e) any links between the bettor and the player or players in question.

417. The Panel notes that valuable data had been provided by *"conventional bookmakers"* to the international governing bodies before the TIU's establishment, including through ESSA, and that such information has been provided to the TIU throughout its operation.

418. Mr Rees further stated that his view of betting alerts is that *"unusual betting patterns are useful indications that there may be something amiss"* [365]. According to Mr Rees, an *"unusual betting alert might, but would not necessarily, lead to an investigation taking place"* [366]. Mr Rees stated, *"there can be perfectly legitimate tennis reasons for apparently unusual betting patterns and there were a number of reasons why an investigation might not be necessary"* [367]. Mr Rees stated that "*a decision not to take a matter further was never on a whim"* [368]. Further, Mr Rees stated: *"*[it] *is wrong to imply that we did not give sufficient importance to suspicious betting patterns and the underlying data in our investigations. … In fact, I am concerned that the Panel members are giving too much weight to them whilst simultaneously undervaluing other methods and less-quantifiable avenues of investigation"* [369].

419. Whilst in a number of cases the TIU took steps to obtain betting information from the betting operator that had reported the match, and carried out some analysis of that data, those steps were not undertaken as a matter of routine. The TIU's primary focus appears instead to have been directed at seeking to identify direct corrupt links between players and bettors. Whilst the Panel understands that identifying a link between a bettor and a player might provide strong inferential evidence of corruption, the Panel considers that the TIU failed to recognise the potential value of betting data, along with other evidence, in constructing circumstantial cases. It is not the view of the Panel that use of such material

363 Response of Jeff Rees to Notification given under paragraph 21 ToR (emphasis in original).

364 ibid.

365 Statement of Jeff Rees (formerly TIU), emphasis in original.

366 ibid.

367 Response of Jeff Rees to Notification given under paragraph 21 ToR.

368 ibid.

369 Ibid, emphasis in original.

should be *in place of* other methods or avenues of investigation, which have their own value. Rather, it is the Panel's view that it should be *in addition to* such other methods and avenues. Faced as the TIU was with significant obstacles in the way of detecting and proving breaches, the Panel would have expected it to have utilised every route open to it, ranging from those with more value, to those with less.

420. In his representations to the Panel, Mr Rees stated: *"We certainly did seek to establish links between insiders and account holders responsible for placing suspicious bets. That was an entirely reasonable course to take given (1) the numerous possible innocent explanations for suspicious betting patterns and (2) the myriad different insiders apart from the players who could be responsible for corrupt behaviour."* According to Mr Rees, "*I do not share view* [sic.] *of the Panel... I think they are relying far too much on the BHA experience. I consider that we gave appropriate weight to betting patterns in tennis – a very different sport with different betting practices. Given the two factors identified* [above]*, it would only be in wholly exceptional cases that we could have built a case on circumstantial evidence alone*" [370].

421. The Panel would have expected the TIU's standard approach to have involved a collection and analysis of all the reasonably available betting data, in order to enable the TIU to make an informed evaluation of the suspiciousness of the betting. Without a betting analyst on its staff, the Panel's view is that the TIU should have instructed a betting expert to assist with analysing complicated cases; this was not done.

422. In his representations to the Panel, Mr Rees stated that *"we did seek standardly to collect and analyse all reasonably available betting data ... Most of the suspicious betting data came from Betfair and our MoU was such that they provided us with all the information they had which was already subject to detailed analysis. So far as other betting operators were concerned, we always sought as much information as possible but were entirely dependent on what they were prepared to give. Insofar as there were occasions in relation to particular cases when it can properly be said particularly with the benefit of hindsight that more should have been done, then these were operational failings, which can arise in any organisation for a variety of reasons that do not raise concerns about the overall system"* [371].

423. In the view of the Panel, as a consequence of the TIU's approach, it did not give sufficient regard to the use of betting information to inform its investigations, target players suspected of corruption and construct circumstantial cases against Covered Persons. During the period 2009 to 2012 there were a number of players who were repeatedly the subject of Betting Match Alerts. In the Panel's assessment, targeted investigations should have been undertaken in relation to such information.

424. The case of Player A, referred to at paragraphs 175 - 183 above, is an instructive example. The TIU was in possession of intelligence going back to 2008 regarding that player. Mr Rees informed the Panel that *"because* [Player A] *could reasonably be regarded as a serial fixer, I gave Dee Bain specific responsibility for everything which had come up, or would come up, in relation* to [Player A]". This was an appropriate step but in the view of the Panel the intelligence relating to Player A warranted detailed analysis earlier than this, particularly as the player was the subject of nine Betting Match Alerts in the period from 2009 to 2011, and the match alerts that the ATP received in 2008 (as described at paragraphs 25 to 33 of Chapter 9[372]).

370 Response of Jeff Rees to Notification given under paragraph 21 ToR.

371 Response of Jeff Rees to Notification given under paragraph 21 ToR.

372 See Chapter 9, Section A(2).

425. Mr Rees stated he did not accept the Panel's assessment. He reviewed the betting information provided to him by the Panel and stated that, *"given the number of alerts generated in respect of* [Player A's] *matches between 2007 and 2011, there was every reason to suspect that he was either a fixer or was providing information. However, the patterns of betting across the ten matches of concern show no one pattern sufficient to build a case against him*". According to Mr Rees, *"there just was not enough to put a case before the PTIOs, let alone an AHO"*[373].

426. Further, in the present view of the Panel, the interpretation applied by the TIU to the offence of contriving or attempting to contrive the outcome or any other aspect of a match[374], as described in paragraph 184 above, was unduly narrow and made the task of addressing significant breaches of integrity more difficult than necessary. The TIU's interpretation that it must be shown that a player acted as he or she did on the court for betting purposes or for some other corrupt purpose (in other words, that there was a corrupt link), meant that players in breach would escape any disciplinary action both (a) in instances where there was such a purpose but it could not be shown and (b) in instances where the match, or a part of it, was deliberately lost because the player decided in advance to tank for his or her own reasons, and this inside information was misused by another. It appears to the Panel that the TIU's interpretation of the provision may have been linked to its approach to the evidential value of the different types of betting data. Whereas bettor information could help to establish a corrupt link, if a successful bettor could be shown to have known or had contact with the player, betting information in the sense of a betting pattern demonstrating bettors' advance knowledge of the result could not, because it might arise from misuse of inside information alone. In the Panel's present view, however, betting patterns can in some instances prove that bettors knew (as opposed to evaluated) in advance what the outcome of a match, or part of it, would be, and in those instances that demonstrates (at least) that those bettors had learned of a prior decision to contrive the result of a match, or part of it, by a player. It seems to the Panel that in such circumstances, the TIU could have pursued the relevant player for breach of the prohibition on contrivance, even without proof of a corrupt link with the bettors.

427. The Panel understands the narrow interpretation to have been the interpretation that the ATP had previously placed on the equivalent and predecessor provision in the ATP TACP. The Panel also understands that it may have been based amongst other things on the title of the TACP itself, on the group description of offences under the TACP as *"Corruption Offenses"*, and on the proposition that the concept of contriving a match involves a degree of concert and cannot be undertaken by an individual alone. Specifically, Mr Rees said *"the interpretation we applied was the one the ATP had previously placed on the equivalent and predecessor provision in the ATP TACP",* that no lawyers had advanced a wider interpretation to the TIU at the time, that *"the offence fell within a group collected under the title 'corruption offences'", and that there was separate provision for "failing to give best effort"*[375]. However, in the Panel's view, the preferable interpretation, following the ordinary meaning of the words themselves, is that a player contrives the outcome of a match, or part of it, by making and acting on a decision to lose, or to retire, for any reason. So too, in the Panel's view a decision to play when too unfit to compete amounts to contriving the outcome. The Panel does not regard the word contrive as requiring concert, and considers that an individual can contrive a result alone. As addressed in Chapter 14[376], the Panel makes recommendations that the TACP should be made clearer in this respect.

373 Response of Jeff Rees to Notification given under paragraph 21 ToR.

374 TACP (2018), Section D(1)(d).

375 Response of Jeff Rees to Notification given under paragraph 21 ToR.

376 See Chapter 14, Section D(1).

Investigatory steps taken by the TIU between 2013 and 2016

In the period 2013 to 2016, the TIU did not have, but should have had, a formal protocol on, and timetable for, the gathering of information; and the TIU should have had a formalised approach to interacting with Tournament Supervisors and betting operators

428. Throughout the period from 2013 to 2016, there was no formal written protocol in place at the TIU setting out a standard set of steps to be taken upon receipt of a match alert, nor a case management plan or any guidelines for the timescale in which each step should have been achieved. While the steps in each case would not necessarily have been identical, in the assessment of the Panel, a standard protocol, case management plan and timetable should have been put in place. Without such a protocol, there was nothing to ensure that consideration was always given to whether a particular step might be appropriate in a particular case.

429. Similarly, the TIU did not have a standard approach regarding contacting betting operators following receipt of an alert. In the assessment of the Panel, the TIU would have benefited from a formalised approach to interrogating betting operators so as to obtain and aggregate as much betting data as possible.

430. In the assessment of the Panel, the TIU has a productive relationship with Tournament Supervisors. Despite this, however, the requests made to Tournament Supervisors have frequently been too narrow. In all cases that the Panel reviewed, the Tournament Supervisor was asked to comment on the overall match, rather than on a particular game or passage of play. In the view of the Panel, at least in cases concerning potential spot fixes, the TIU should ordinarily identify the suspicious passage of play to the Tournament Supervisor and seek his or her input on that specific passage of play.

431. The Panel is also concerned that there are a number of cases where Tournament Supervisors have not responded and the TIU has not followed up with the Tournament Supervisor to require a response.

In the period 2013 to 2016, the TIU did not give sufficient regard to the extent that betting data could be used to inform its investigations, to target those suspected of breaches of integrity, or to construct a circumstantial case against a Covered Person

432. In the view of the Panel, the TIU's approach to betting data in the period 2013 to 2016 continued to be variable and on most occasions overly conservative – even though the number of Betting Match Alerts was increasing rapidly.

433. The Panel is concerned about the generally restrictive approach that the TIU continued to take towards betting alerts and the use of betting data. From the evidence seen by the Panel, the nature of the betting alert or the underlying data itself did not play an important part in the TIU's reasoning in deciding whether or not, or how, to progress its cases. Further, the TIU did not employ an individual with the requisite skills and expertise to understand or appropriately filter the betting alerts that were being provided. This absence of an individual with knowledge of the industry and the necessary skills negatively impacted the TIU's ability to engage in effective exchanges with the betting industry. Indeed, one betting operator told the Panel that it sees little or no point in continuing to feed the TIU with alerts and data when the TIU does not, in the betting operator's view, take advantage of the information that is sent.

434. The TIU's primary focus appears to have continued to be directed at seeking to identify direct links between players and bettors. Whilst the Panel understands that identifying a link between a bettor and a player might provide strong inferential evidence of corruption, the Panel considers that the TIU failed to recognise the potential value of betting data in constructing circumstantial cases. Further, the Panel also notes that there are cases where, notwithstanding the emphasis placed by the TIU on establishing links between a bettor and a player, the TIU, having identified such links, ceased investigating the matter.

435. Whilst in a limited number of cases, the TIU has taken steps to obtain betting information from the betting operator that reported the match, there is little evidence of any analysis of that betting information beyond that volunteered by the betting operator. In the view of the Panel, the TIU would have benefitted from a betting analyst to provide greater understanding of what the betting patterns demonstrate.

436. As noted above, the Panel would have expected the TIU's standard approach to have involved collection and analysis of all the reasonably available betting data, to enable the TIU to make a fully informed evaluation of the suspiciousness of the betting. Without a betting analyst on its staff, the TIU was not best placed to do this, and in the Panel's view the TIU should have instructed a betting expert to assist with analysing complicated cases.

437. In the assessment of the Panel, it is clear from the *Skenderbeu*[377], *Lamptey*[378],and *Kryvonos* cases that full consideration should be given to analysing betting patterns and where possible using that analysis as evidence in building cases for prosecution. At the least, that analysis provides valuable supporting evidence, and on occasion it may itself be sufficient.

438. In the view of the Panel, as a consequence of the TIU's approach, it did not give sufficient regard to the potential use of betting information to inform its investigations, target players suspected of corruption, and construct circumstantial cases against Covered Persons.

439. The TIU told the Panel that it does recognise betting data as a valuable source of information in building cases against potentially corrupt Covered Persons[379]. The TIU stated that it is for this reason that the TIU has proactively extended its network of MoU partners considerably over the period in review, to obtain the widest market coverage and access to betting information and data. The TIU, however, stated that its position, which is supported by legal advice, is that betting data needs to be supported by other forms of evidence. Further, the TIU told the Panel that it is not the case that betting operators freely provide all betting data, including details of both bettors and wagers under the MOUs in existence with the TIU[380]. Betting operators will generally supply bettors' details on an intelligence-only basis. On the occasion where the TIU has requested this for evidential purposes, betting operators have restricted the evidence to include only generic, anonymised, non-specific detail, which naturally diminishes the probative value of the information.

440. The TIU told the Panel that the unwillingness or inability of betting operators to co-operate with TIU requests – and provide the needed betting data – makes it difficult to link the player (or covered person) to the bettor, either directly or indirectly through a third party[381]. Therefore, in the majority of such cases, little evidential use can be made of the initial betting alert information.

In the period 2013 to 2016, there is no consistent record of the TIU's decision making during the initial information gathering stage in respect of the status of packages; where there is a record, it provides inconsistent reasoning

441. The Panel considers that the TIU's implementation of an initial information gathering stage, if operated consistently, is appropriate in order to allocate resources effectively and to prioritise its caseload. In the present assessment of the Panel, however, the manner in which this initial stage has been operated by the TIU, particularly from 2015 onwards, has been variable, and the decisions reached at this stage have been inconsistent.

442. Whilst some cases have been identified as requiring no further action, many more cases have been left in a state of abeyance with no further investigatory steps carried out. Where the TIU has determined that cases required no further action, the reasons given have often been unsatisfactory.

443. Insofar as this may be a consequence of the significant surge in match alerts experienced in the period from 2014 onwards and a lack of appropriate resources, the Panel considers that the TIU ought to have responded by employing further resources.

In the period 2013 to 2016, the TIU did not make sufficient use of its powers to obtain evidence from personal records and data, and there was significant delay in processing the data it obtained

444. It was appropriate for Nigel Willerton to begin making greater use of the TIU's powers to obtain personal records and data by requesting such information at interviews without notice. While this approach has been more robust, the Panel considers that the TIU did not regularly and sufficiently enforce its powers of seizure of electronic devices.

377 CAS 2016/A/4650 (Klubi Sportiv Skenderbeu v. UEFA).

378 CAS 2017/A/5173 (Joseph Odartei Lamptey v. FIFA).

379 Responses of the TIU to Notification given under paragraph 21 ToR.

380 ibid.

381 ibid.

445. In the period 2013 to 2016, in the view of the Panel, the length of time the TIU took to obtain data via forensic download was too long. The Panel notes that as a result of the TIU making the request for seizure at the time that the player is interviewed, the download ordinarily takes place many months after the match in question. This can have a significant impact on the content of the data that the TIU is able to obtain (because, for example, players may have changed their phone or deleted their data in the intervening period) or the inferences that might be drawn from a failure to produce a relevant device.

446. Also, the Panel has seen only limited documents recording any TIU analysis of data downloaded from electronic devices. Where records exist, the Panel notes that there have been lengthy delays in processing and analysing such data. Delay in these stages has adverse consequences in securing the best evidence to inform an investigation or prosecution for the reasons stated above[382], and runs counter to the goal of ensuring that corrupt players are removed from the game in a timely fashion.

In the period 2013 to 2016, the TIU did not make sufficient use of match footage

447. The TIU has developed its practice in relation to obtaining match footage. Contrary to its past practice, the TIU now consistently seeks to obtain such footage whenever it exists. This approach is appropriate.

448. The TIU has informed the Panel that such footage is then viewed by the TIU as part of the investigation. It is noted, however, that the TIU's records rarely record any analysis of the match footage. In the view of the Panel, the TIU should record such analysis.

449. Additionally, for the reasons set out above[383] , the Panel also considers that the TIU would have benefitted from employing or instructing a tennis expert to analyse specific match footage and advise on player performance.

In the period 2013 to 2016, there have been significant delays between identifying persons for interview and the interviews occurring; there also has been insufficient follow up

450. The Panel notes that the TIU has, in this period, conducted a large number of interviews. On some occasions, players are spoken to very shortly after the incident of concern. All too often, however, the Panel has noted significant delay between an incident and the TIU securing the player for interview. Of particular concern is the significant backlog of persons the TIU has identified as being appropriate to be interviewed, but whom have not yet been interviewed.

451. When did interviews occur, the TIU also routinely failed to make follow up enquiries to verify the information that players provided during these interviews.

In the period 2013 to 2016, the TIU did not make sufficient use of intelligence received in order to inform investigations or to undertake targeted investigations

452. In the view of the Panel, the TIU has made insufficient use of intelligence or data to understand the wider, global picture; such work should have been undertaken by the TIU in order to identify broad patterns, trends and links and to allow for targeted investigations.

453. The Panel notes, however, that the TIU has recognised its use of intelligence is an issue and it has taken steps to improve the way in which it uses intelligence and data. For example, the Panel notes the positive development that there are examples of the TIU using intelligence (through DEV files) to build cases against individuals.

382 See above at paragraph 446.

383 See above at paragraphs 379 to 384.

454. In the view of the Panel, the TIU also could have taken greater steps to implement proactive targeted investigations against players. In the period 2013 to 2016 there were a number of players who were repeatedly the subject of match alerts. In the Panel's assessment, targeted investigations should have been undertaken in relation to those players and consideration given to seeking to construct circumstantial cases in reliance upon the multiple alerts received.

455. The Panel is aware that one of the reasons that the TIU has not brought cases against certain players is because it wants to build a wider corruption case before initiating proceedings. In the assessment of the Panel, such an approach is reasonable provided that it is part of a clear strategy. The Panel is however concerned that such a strategy is not always present. In the assessment of the Panel, the risk of the TIU delaying action is that players who are strongly suspected of engaging in corruption have been able to continue playing in the sport.

In the period 2013 to 2016, there was slow progress of the TIU's investigations

456. The Panel notes that many of the TIU's investigations progress too slowly.

457. There are a significant number of apparently live cases where serious corruption has been alleged and no real progress has been made over a period of many months. Some cases are two or three years old and remain at least nominally *"live"*.

458. The Panel notes that there were periods during the TIU's operation in which it appears that it was overwhelmed by the number of match alerts because of its insufficient staffing. During these periods, the TIU in some instances did not perform any, or any effective, investigation of the information that was provided by way of initial match alert.

459. The TIU told[384] the Panel that there are reasons why some investigations may take considerable periods of time to conclude. The TIU further stated that, as a working practice, it always prioritises investigations that are most urgent and most likely to result in strong cases being built. The TIU accepted that this approach can at times divert resources away from more routine matters.

460. The TIU stated[385] that it is unfair to suggest that the TIU is happy to let players under suspicion of serious breaches of the TACP continue playing without any regard to the damage this could cause (notwithstanding the principle of innocence until proven guilty). The TIU also noted that the TACP was amended in 2017 to permit the imposition of interim suspensions prior to the submission of a Notice of Charge specifically to address this situation.

Decision to Submit a Report to the PTIOs in the period 2013 to 2016

461. The Panel notes that there are examples of considerable delay (over two years) in the TIU submitting a report to the PTIOs following the conclusion of its investigation.

462. One of the reasons cited by the TIU for the delay is the need to ensure that it has gathered all of the evidence at the time of the charge. In this regard, the TIU has pointed to the order of Richard McLaren in the *Krotiouk* case (addressed at paragraph 244 above). The Panel is presently of the view that, notwithstanding the clarity of Mr McLaren's comments, the TIU should have given more detailed consideration as to the scope of the ruling and its applicability to future cases. If necessary, the TIU should have advocated making changes to the TACP. This would have been a reasonable approach to take in light of the delay to the prosecution and sanctioning of Covered Persons that reliance on the order was likely to cause.

384 Responses of the TIU to Notification given under paragraph 21 ToR.

385 ibid.

In the period 2013 to 2016, there was a reluctance to build circumstantial cases

463. The Panel considers that the TIU did not generally attempt to build circumstantial cases or to put a case before the PTIOs unless it had extremely compelling evidence. The Panel considers that there are many examples of cases which the TIU might have progressed by utilising betting data together with corroborative evidence to construct a circumstantial case against a Covered Person.

464. The Panel welcomes the approach taken by the TIU in the *Kryvonos* case, but notes that there have been many other cases since the TIU's inception with patterns not dissimilar to that seen in *Kryvonos* where no consideration was given to proving an integrity offence based, at least in part, on the betting data.

(4) EVALUATION OF THE TRANSPARENCY OF THE TIU'S OPERATIONS

The TIU's approach to transparency

465. In the view of the Panel, the requirement to maintain confidentiality with regards to ongoing investigations was appropriate.

466. However, in the view of the Panel, this requirement of confidentiality has not been sufficiently balanced against the need for transparency and accountability in the operation of the TIU.

467. The Panel considers transparency in this context to mean the accessibility of sufficient information to enable those involved in the sport, and the public, to understand why and how the TIU reaches its decisions and to evaluate what it has and has not done in the pursuit of its remit. Transparency allows those involved in the sport to understand how they must act and how they will be treated, while enabling the quality of the work of the TIU in addressing the problem faced by tennis to be judged. Where processes are transparent, they inspire confidence in those subject to them that they will be fairly treated and encourage compliance and cooperation with those processes. Where processes are transparent, the evaluation of performance is based on evidence, rather than on speculation and surmise.

468. In the Panel's view, this concept of transparency does not require that the identity of individuals or information about their cases be revealed where there are good grounds for keeping it confidential. Nor does the concept require the revelation of TIU techniques or actions where to do so would adversely affect the TIU's ability to address the problem faced.

469. Mr Rees told[386] the Panel that the Panel's definition of transparency in this context *"sets out a theoretical position which could have been lifted from a business textbook or journal"*. Mr Rees added that *"it is unsuited to an investigative unit such as the TIU"* and that the view takes *"insufficient account of the nature of the investigative work, particularly in the murky world of combating corruption"*. Mr Rees stated, *"in my experience many people, including some within the tennis world, had dubious or ulterior reasons for wanting to know what the TIU was up to"*.

Public Transparency

470. The Panel considers the TIU's change of approach with regards to publication of betting alert figures (as outlined in paragraphs 277 - 280 above) as positive. Quarterly TIU Briefing Notes that contain statistics on betting alerts received by the TIU and other information as to the TIU's regular operations are a positive step toward maintaining public transparency. In the view of the Panel, the public benefits from high-level data on betting alerts, including analysis of the change in the number of betting alerts over time and greater detail about the categories of matches that most often produced betting alerts. Public transparency for the future is addressed in Chapter 14[387].

386 Response of Jeff Rees to Notification given under paragraph 21 ToR. (Oct. 2017),

387 See Chapter 14, Section D(4).

471. In the Panel's view, the TIU did not previously do enough to inform the public of its work. Providing information and issuing media releases on the TIU website whenever a player was sanctioned, without more, was not, in the Panel's view, sufficient.

472. Mr Rees stated[388] that the recent TIU Briefing Notes have been well-worded, but he told the Panel that his reservations about the risks of this course of action persist, specifically the *"risks of misinterpretation, unnecessary or mischievous speculation, and harming the reputations of innocent players should their names be linked to suspicious betting"*. Mr Rees told[389] the Panel that he and Mark Harrison *"worked hard to promote the work of the TIU in a non-sensationalist, positive and informed way"*.

Publication of AHO hearing decisions

473. In the Panel's view, AHO hearing decisions should have been published in full with redactions made to the documents where appropriate. The Panel considers that publication would have afforded the process a sufficient degree of public transparency and provided a body of jurisprudence for players to assist them in understanding the process. Again, the position as to the future is addressed in Chapter 14[390].

474. Mr Rees told[391] the Panel that this course of action *"would not have been appropriate during the early days of the TIU when so many people, including many in the media, were largely uninformed about the nature of betting-related corruption in tennis"*. Mr Rees added[392] that *"there are still very real risks involved in giving out too much detail"* and that *"the history of media releases shows that even careful scrutiny may not prevent information seeping out which may later prove to be harmful"*. Mr Rees further stated[393] that *"the reality is that the British news media, and similarly those of other countries, show little or no interest when details of prosecutions and bans of players are announced by the TIU unless those players are their own nationals"*.

Transparency with betting operators

475. In the view of the Panel, more should have been done with regard to the sharing of information between the TIU and betting operators. Given Mr Rees' view[394] that his vision of how tennis should deal with matters arising from suspicious betting data was that *"it should be by way of a collaborative exercise between the TIU and the betting industry"*, more detailed feedback from the TIU to betting operators as to how alerts are used and the usefulness of the information provided would have assisted the betting operators in understanding what information to share with the TIU and the matter in which information could be most effectively provided. Greater feedback would have also given betting operators assurances that the information it provided was being put to effective use.

The TIU's interaction with national federations

476. The Panel has focused on the TIU's interaction with national federations since 2013.

477. In the view of the Panel, the TIU should have established procedures that allowed it and national federations to understand in advance:

477.1 How they should cooperate with one another, and in particular, how and when information should be shared and what should happen to the information once shared.

388 Response of Jeff Rees to Notification given under paragraph 21 ToR. (Oct. 2017).

389 Response of Jeff Rees to Notification given under paragraph 21 ToR. (Oct. 2017).

390 See Chapter 14, Section D(3).

391 Response of Jeff Rees to Notification given under paragraph 21 ToR, (emphasis in original).

392 Response of Jeff Rees to Notification given under paragraph 21 ToR.

393 Response of Jeff Rees to Notification given under paragraph 21 ToR.

394 Response of Jeff Rees to Notification given under paragraph 21 ToR, (emphasis in original).

477.2 How jurisdiction should be allocated in instances involving simultaneous investigations or proceedings.

478. In the view of the Panel, during the period 2013 to 2016, there was insufficient discourse between the TIU and some national governing bodies, with the result that misunderstandings and disappointed expectations arose. In the Panel's view, a contributory factor in the lack of prompt cooperation in some instances may have been the absence of officials at the national federations with the role, willingness and capacity to liaise effectively with the TIU.

479. The Panel understands the need to protect ongoing investigations and players' data rights and confidentiality. However, a balance must be struck between those concerns and the countervailing benefits of cooperation and the sharing of information. The Panel considers that such cooperation with national federations is appropriate, especially where local rules or legislation require national federation disciplinary proceedings. The TIU should have sought to become aware of those local rules when an issue arose and should have taken them into consideration in its interaction with national federations.

480. As to the allocation of jurisdiction, the Panel accepts that the position is problematic where local rules or legislation require national federation disciplinary proceedings. However, the TIU should have considered that domestic disciplinary proceedings are compatible with the spirit of the ITF bye-laws. Bye-law 5.2 provides that national federations must automatically recognise sanctions issued under the TACP, but it does not prevent national federations from taking actions against their players, especially if those players have not been subject to disciplinary proceedings under the TACP (as was and is the case in relation to Bracciali and Starace).

481. The Panel is concerned that amongst a number of national federations, the TIU is not regarded as a good communicator and is perceived as providing insufficient consideration to the legal framework in which those federations operate. This impression amongst national federations appears to be reinforced by the perceived homogeneity of the TIU's staff, which is made up almost entirely of individuals who previously served in the British police or other law enforcement and which lacks the diverse language and cultural skills necessary to operate effectively within foreign cultures and systems. In addition, the Panel is concerned that this lack of diversity has created a climate where some national federations see the TIU as a distant and disconnected foreign entity that does not understand the federations' legal systems and obligations.

482. The perception of national federations that the TIU's approach can be unilateral and inconsiderate has led, and could continue to lead in the future, to the following problems:

482.1 lack of timely communication of suspicions or evidence to the TIU;

482.2 loss of opportunity to embrace the potential benefit of national platforms for exchange of information set up informally by national authorities within the framework of the Macolin Convention; and

482.3 lack of coordination between the TIU and national federations in their investigations and the pursuit of disciplinary proceedings under the TACP and domestic integrity rules, which could result in actual or perceived impunity (such as in the case of Bracciali and Starace as discussed in paragraphs 494 to 496 below).

483. The TIU told[395] the Panel that *"in an ideal world there would be greater interaction with these organisations but in practice, and with circa 200 nations affiliated to the ITF, this is challenging. Positive working relationships have been established with a number of federations as a result of cases involving their nationals. Building more and better links with federations has been identified as a target for the unit's enhanced Education and Training function"*.

395 Responses of the TIU to Notification given under paragraph 21 ToR.

484. The TIU further stated[396] to the Panel that *"it is not a remote, distant or poorly connected organisation. While the primary focus is always on operational matters, the unit is regularly involved in sporting integrity forums and is consulted by other sports seeking to take advantage of its knowledge and expertise. By way of example, the TIU has worked closely with the IOC ethics and integrity team since 2010 and was instrumental in providing expert advice on how to conduct a sports integrity investigation to all IOC members, by giving personal presentations and providing documents. Similarly the TIU have been part of the expert group with the UNODC/OECD providing information and literature which was used in the development of the Council of Europe handbook in relation to sports integrity. This included personal appearances and presentations at the OECD conferences in Paris in February 2016. The TIU is an active member of the SBIF and has met with staff from the Council of Europe Keep Crime Out Of Sport (KCOOS) Project National Platform. The TIU has regular interaction with the UK National Platform (UKGC) and are a Schedule 6 recipient of information. We have worked jointly on UK National Events including the London Olympics and Wimbledon. In January 2016 the TIU was a participant in the Betmonitalert Workshop in Paris with members of Europol, a number of National Platforms, betting operators, Fifa and ESSA"*.

The TIU's interaction with law enforcement agencies

485. The Panel has focused on the TIU's interaction with law enforcement agencies since 2013.

486. The Panel recognises that interaction with law enforcement is a complicated matter for the TIU:

486.1 In many instances jurisdiction may not be clear. Players from two different countries may have taken part in a match in a third country, with those betting on the match being based in yet other countries.

486.2 Law enforcement bodies need to prioritise how their resources are used. For some, allegations of match fixing in tennis will not be seen as a priority.

486.3 Interaction will often require the TIU being able to have some understanding of the criminal laws and procedures of a foreign jurisdiction, and the ability to communicate in a language other than English.

487. In the context of these difficulties, it is perhaps unsurprising that the nature of the TIU's interaction with law enforcement agencies has varied.

488. In addition, the TIU's capacity to become a party (in other words, offended party) to court proceedings is not recognised in some jurisdictions, such as Italy.

489. Notwithstanding the above, in the view of the Panel, the TIU should have established set procedures that allowed it and law enforcement agencies to understand in advance:

489.1 How they should cooperate with one another, and in particular, how and when information should be shared and what should happen to it once shared.

489.2 What should happen with respect to TIU disciplinary proceedings if there was a possibility of criminal proceedings.

396 ibid.

490. In relation to the TIU's engagement with law enforcement to share evidence and information:

490.1 It is recognised that the TIU has engaged with law enforcement in order to obtain, or provide, evidence of match fixing. The nature of that engagement has varied. In particular, whilst the TIU has had positive relationships with the police in Spain and Australia, the relationship has been more difficult, or less effective, with other law enforcement agencies, such as the French police and the Prosecutor of Cremona. In the assessment of the Panel this is partly as a result of the limited capacity of the TIU to deal with legal systems and cultures that are unfamiliar to it. This is an area where improvements can be made through the TIU broadening its recruitment (see paragraph 150 above). Indeed, in the Panel's view, the result of the good relationship with the Spanish police is probably attributable, at least in part, to the presence in the TIU of a Spanish speaker.

490.2 Other than instances of episodic cooperation, the TIU does not appear to have embraced national platforms for information exchanges set up, so far informally, by law enforcement authorities within the framework of the Macolin Convention.

491. As to the TIU's engagement in disciplinary investigations and proceedings simultaneous with law enforcement investigations and proceedings, it appears to the Panel that on occasion the TIU has shown excessive deference to the activity of law enforcement. In the Panel's assessment, such a rigid approach is not in the best interests of the sport. This is because:

491.1 legal action by law enforcement authorities may be barred or prejudiced by legal obstacles, such as lack of jurisdiction or similar procedural constraints;

491.2 law enforcement authorities have other objectives and imperatives when compared to tennis authorities; in particular, fighting match fixing in tennis may not be a priority in countries coping with more serious crime. This may lead law enforcement authorities to file cases because they lack resources to further investigate or because they are to prioritise their resources on more serious crimes. This is particularly the case in countries led by the discretionary prosecution principle (as opposed to the mandatory prosecution principle);

491.3 investigations by law enforcement authorities may be hampered by a lack of assistance from other countries (or otherwise slow or deficient assistance), whereas the TIU has a broader and more international capacity;

491.4 action taken by law enforcement agencies can take a period of time not compatible with the effective fight to protect the integrity of tennis, and time bar limitations may also be an obstacle in certain countries; and

491.5 criminal and disciplinary proceedings are subject to different standards of proof, so there is not always the need to wait until the end of the criminal investigations or proceedings to take an effective disciplinary action.

492. The TIU told the Panel[397] that whilst *"The Panel is critical of the TIU's relationships with a number of entities including national federations, law enforcement agencies and betting operators, the TIU believes that it works co-operatively and successfully with many of these organisations and others within the sport"*. The TIU further commented[398] that *"the Panel suggests that the TIU has been overly deferential to law enforcement bodies, principally in following a policy that gives priority to police investigations over TIU cases. The unit does not accept this criticism"*.

397 Responses of the TIU to Notification given under paragraph 21 ToR.

398 Responses of the TIU to Notification given under paragraph 21 ToR.

493. The TIU also told the Panel[399] that *"police forces have far greater powers than the TIU, so where they decide to investigate cases of tennis corruption they will be in a position to gather evidence that could not be obtained with more limited TIU powers. Criminal convictions achieved will also add weight to a TIU case. In some cases, if the TIU were to pursue parallel investigations it could have a negative effect on relationships with law enforcement bodies, potentially limiting access to important evidence and also creating issues of 'blue on blue' compromises. It is accepted that this approach is to some extent reliant on the speed and priority of law enforcement agencies, but despite this is regarded as appropriate in some cases to build the strongest case to achieve successful prosecutions"*.

494. In the specific context of Bracciali and Starace, the TIU's decision not to take any action against those players (without explaining why such action was not needed) between the end of 2015 and the beginning of 2016 was inappropriate. Taking into account that the jurisdiction of the FIT is limited to Italy and the jurisdiction of the ATP is limited to ATP Tour events, the TIU's decision not to take action would have left it open for these players to have played in ITF tournaments outside of Italy or to have participated as coaches.

495. Further, it does not appear to the Panel that there was any requirement for the TIU to delay disciplinary proceedings until after the conclusion of the Italian criminal proceedings. The Panel presently considers that, whilst there can be in theory instances where it is appropriate for the TIU's disciplinary process to await the conclusion of the criminal investigations or proceedings, greater consideration should have been given in the Bracciali and Starace cases, and should always be given in other cases, by the TIU as to whether the interests of the sport require the TIU to take more prompt action.

496. The acquittal of both players in the Italian courts demonstrates an example of why the TIU should not always defer to criminal proceedings (as this has caused a substantial delay to the TIU proceedings and no charges were upheld criminally). The Panel notes however that the TIU can still pursue charges against these players under the TACP following their criminal acquittal.

399 Responses of the TIU to Notification given under paragraph 21 ToR.

PART THREE: PTIOS, AHOS AND CAS

1. In this third part of Chapter 10, the Independent Review Panel (the "Panel") describes and analyses the disciplinary process within the current system for the protection of integrity in tennis, and its development and operation since 2009. The Panel examines here the role and actions of those involved in delivering the disciplinary process under the TACP: (a) the Professional Tennis Integrity Officers ("PTIOs")[1]; (b) the Anti-Corruption Hearing Officers ("AHOs")[2]; and (c) the Court of Arbitration for Sport ("CAS")[3]. The prior role of the TIU in investigating possible breaches and reporting to the PTIOs is dealt with in Chapter 10, Part 2.

2. In assessing these matters the Panel has examined the cases that have been the subject of the disciplinary process since 2009. All involved have responded promptly to the Panel's queries and communications and assisted the Panel.

3. Pursuant to the Terms of Reference, the Panel addresses whether the disciplinary process has been effective and appropriate. As set out in Chapter 1[4], it is not the Panel's role to assess the legality of any decision or action by reference to any standard or test of contract, tort, irrationality or unreasonableness, and it should not be taken as doing so. Rather, the Panel identifies below the relevant evidence it has received, including witness statements and contemporaneous documents, and sets out its present opinion as to the effectiveness and appropriateness of relevant actions at the time[5], based on its appreciation of the available evidence of the contemporaneous facts and circumstances. Also, as set out in Chapter 1[6], on occasion it is not possible or appropriate to seek to resolve direct conflicts in the evidence.

4. The Panel has seen no evidence that any decisions or actions in this context were taken to cover up breaches of integrity or to protect players under suspicion from disciplinary prosecution, for fear of damage to the reputation of tennis or otherwise. The disciplinary process has generally been effectively and appropriately implemented and operated. The Panel has identified, however, a small number of instances of what it presently considers to be the mistaken and inappropriate use of discretion by the PTIOs in deciding not to initiate disciplinary proceedings for a TACP offence.

Q 10.5 Are there other matters of factual investigation or evaluation in relation to the disciplinary process and its development and operation since 2009 through the PTIOs, AHOs and CAS that are relevant to the Independent Review of Integrity in Tennis and that should be addressed in the body of the Final Report, and if so, which, and why?

Q 10.6 Are there any aspects of the Panel's provisional conclusions in relation to the disciplinary process and its development and operation since 2009 through the PTIOs, AHOs and CAS that are incorrect; and if so, which, and why?

1 Section A below.

2 Section B below.

3 Section C below.

4 Chapter 1, Section C.

5 Pending the consultation process between Interim and Final Reports.

6 Chapter 1, Section C.

A PROFESSIONAL TENNIS INTEGRITY OFFICERS (PTIOS)

(1) THE PURPOSE OF THE PTIOS

5. Although the TACP specifies the PTIOs' formal responsibilities (as set out at paragraph 9 below), it does not state the purpose behind the introduction of PTIOs, or the rationale for there being four of them, one from each International Governing Body.

6. The Panel has been informed that the PTIOs were introduced to provide the TIU with "*tennis knowledge*" that might assist the TIU[7]. Specifically, the PTIOs would use their knowledge of the sport to help determine whether incidents that appeared prima facie indicative of a Corruption Offense could be explained or understood as innocent by individuals who help to administer the sport. It appears that the PTIOs were to act as initial arbiters of whether there may have been a Corruption Offense, and therefore to determine whether a TIU case should or should not be pursued.

7. The evidence suggests that, at least initially, there was some possibility that the PTIO role might be performed by a single individual. That individual would be legally trained and capable of determining whether to prosecute Corruption Offenses. The TIU Director would report to the PTIO, and the PTIO would report to the TIB. A view expressed at the time was that it would be necessary for the PTIO to be a *"tennis person"* with understanding of the operation and politics of the sport. However, this approach was not ultimately adopted.

8. In June 2008, those involved in the drafting of the TACP suggested an alternative approach; the "PTIO" would be a team of individuals with legal experience, drawn from a "*cross-section*" of the International Governing Bodies. This model was ultimately adopted, and the TACP definition of PTIO refers to *"the Professional Tennis Integrity Officer appointed by each Governing Body"*[8]. However, the Panel notes that the substantive provisions of the TACP still refer to *"PTIO"* (in the singular) and not *"PTIOs"* (in the plural).

(2) THE ROLE OF THE PTIOS

9. The TACP specifies the PTIOs' responsibilities. They are to:

   9.1 receive information from the TIU in respect of investigations[9]. This role is further defined in the ITFL-TIU Service Agreement;

   9.2 determine whether a Corruption Offense *"may have been committed"*[10]. The International Governing Bodies have described the PTIOs to the Panel as having "*authority to determine whether a Covered Person has a case to answer"* and have told the Panel that the PTIOs *"form an independent judgment as to whether the evidence in a* [TIU] *report meets the prevailing test for referring the matter to the AHO"*[11];

   9.3 commence the prosecution of an alleged Corruption Offense by (a) formally issuing a Notice of Charge ("Notice") to the Covered Person and[12] (b) referring the case, and the evidence relied upon, to an AHO[13];

   9.4 act as claimants in AHO proceedings, which includes responsibility for preparing and submitting written submissions and presenting the disciplinary prosecution case at an AHO hearing[14]. In practice, this task is performed by external lawyers on the instructions of the PTIOs;

7 Statement of Bill Babcock (Grand Slam Board; formerly ITF).

8 TACP (2018), Section B.21.

9 TACP (2018), Section H.2.

10 TACP (2018), Section F.1.4.

11 Responses of International Governing Bodies to Notification given under paragraph 21 ToR.

12 TACP (2018), Section G.1.a.

13 TACP (2018), Section F.4.

14 TACP (2018), Section G.3.a.

9.5 arrange the practicalities of the AHO hearing, including the recording and transcription of the proceedings (at the PTIOs' expense)[15];

9.6 attend the AHO hearing (at the PTIOs' discretion)[16];

9.7 determine whether to make an application to the AHO for "*provisional suspension*" of the defendant Covered Person[17];

9.8 act as respondents in respect of any application by a Covered Person for a reduction of sanction based on *"substantial assistance"*[18];

9.9 establish an instalment plan for the payment of fines or prize money forfeitures following the sanctioning of a Covered Person (at the AHO's or PTIOs' discretion)[19];

10. In addition to the above, the ITF-TIU Service Agreement provides for the following additional formal roles to be performed by the PTIOs[20]:

10.1 "*in the event the ITFL does not agree with an alternate policy which is to be implemented by the TIU, the PTIOs shall be consulted on the matter*" [21]; and

10.2 consider any disciplinary action or charge concerning a TIU employee (except for the Director) that the ITFL does not agree with[22].

(3) APPOINTMENT OF PTIOS

11. The TACP (2018) provides for four PTIOs to be appointed – one for each of the ATP, WTA, ITF and Grand Slam Board ("GSB")[23].

12. Eight individuals have served as PTIOs since the inception of the TIU and TACP:

12.1 ATP: Gayle Bradshaw (current);

12.2 GSB: Ian Ritchie and Bill Babcock (current);

12.3 ITF: Bill Babcock and Stuart Miller (current); and,

12.4 WTA: David Shoemaker, Diana Myers, Leah Rinfret and Courtney McBride (current).

13. The TACP does not specify what appointment procedure must be followed, or what qualification criteria must be met, for an individual to become a PTIO. Based on the documents reviewed by the Panel, it appears that each International Governing Body appoints a PTIO at its sole discretion.

15 TACP (2018), Section G.2.d.
16 TACP (2018), Section G.2.f.
17 TACP (2018), Section F.3.a.
18 TACP (2018), Section H.6.
19 TACP (2018), Section J.2.
20 As defined in Chapter 10, Part 1.
21 ITF-TIU Service Agreement, paragraph 1.5.
22 ITF-TIU Service Agreement, paragraph 6.3.
23 TACP (2018), Section B.21.

14. Six of the eight PTIOs appointed under the TACP have had a background in the legal profession. The exceptions are Gayle Bradshaw and Stuart Miller.

(4) THE RECEIPT OF INFORMATION BY THE PTIOS FROM THE TIU

15. The TACP provides that the *"TIU may report information regarding an investigation to the TIB and the PTIO at any time"*[24].

16. There is no written protocol for the manner in, or extent to, which reporting by the TIU to the PTIOs should be conducted. However, documentary evidence suggests that the manner and extent to which information should be reported was considered both before and after the introduction of the TACP.

17. As described in Chapter 9, in August 2008 the International Governing Bodies agreed that Jeff Rees would be hired on a one-year fixed term contract as an ITF employee. An alternative approach of setting up the TIU as an independent legal entity was considered but not followed. At the same time, it was further agreed that Jeff Rees would report primarily to the PTIOs on the following basis:

> "*- there is a PTIO point person… who would manage and communicate officially with Jeff Rees on behalf of the PTIOs. During this one-year term, this point person would be the ATP PTIO during the 1st 6 months, and the Grand Slam PTIO during the 2nd 6 months.*
> *- it is the intention of all parties that as soon as practicable, we will form an independent tennis integrity company that will employ Jeff Rees and others, and it's equally our intention that at this time the PTIO point person rotation will be extended to include all 4 of the governing bodies' PTIOs. In the case we determine not to form an independent company, but the parties nonetheless agree to continue forward with the Tennis Integrity project, the PTIO point person rotation will continue with a WTA PTIO during the 3rd 6 months and an ITF PTIO during the 4th 6 months*"[25].

18. From the contemporaneous documents, the first acting PTIO *"point person"* was Gayle Bradshaw of the ATP, and the second was Bill Babcock of the GSB. The contemporaneous documents reviewed by the Panel do not disclose whether a subsequent PTIO *"point person"* was appointed.

19. In January 2009, the TIU and the PTIOs considered the extent to which information should be reported to the International Governing Bodies and/or the PTIOs by the TIU. The agreed approach was summarised in an email sent by Gayle Bradshaw to the other PTIOs on 9 January 2009:

> *"After our meeting with the BHA today, Jeff [Rees], Bruce [Ewan] and I discussed this issue and believe that the best course of action is as Ian [Ritchie] stated below, non-disclosure. Even for the acting PTIO he should be on a 'need to know' basis. There will be times when Jeff/Bruce will need support or information pertinent to an investigation that only someone in one of our group would be able to supply, in that case it would be appropriate and necessary for that person only to be approached.*
> *Once the investigation got to the stage where a decision to go to the AHO is imminent, then the acting PTIO would be informed and thus would inform the other members of the PTIO rotation. There may be other times when it is appropriate to bring one of the PTIO team in for consultation or advice but this would be rare and at the discretion of the TIU Director"26.*

20. The Panel notes, since 1 January 2009, the TACP has expressly provided that: *"the TIU may report information regarding an investigation to the TIB and the PTIOs at any time"*[27]. The practice that has developed since 2009 is that the TIU reports to the PTIOs on both a formal and informal basis, as addressed in the following paragraphs 21-34 below.

24 TACP (2018), Section H.2.

25 Email from David Shoemaker to Bill Babcock, Gayle Bradshaw and Ian Ritchie (copying Flip Galloway) dated 11 August 2008.

26 Email from Gayle Bradshaw to David Shoemaker, Bill Babcock and Ian Ritchie (copying Jeff Rees) dated 9 January 2009.

27 TACP (2009), Section H.2.

Formal meetings between the PTIOs and the TIU

21. Official meetings between the PTIOs and TIU occur on average two to three times per year. An agenda, together with any other supporting documentation, is circulated to the PTIOs by the Director of the TIU in advance of each meeting.

22. The Panel has been provided with records of PTIO meetings that took place in or around the following months in the following years:

2009	(none)	
2010	(three)	March, September, and October (video conference)
2011	(four)	June, September, and October (two – the second via conference call)
2012	(two)	June and September
2013	(two)	June and September
2014	(three)	March, June, and September
2015	(two)	June and September
2016	(four)	February, May, September, and November

23. After each PTIO meeting a copy of the agenda is amended to record the decisions taken and the individual responsible for specific action points. The *"decision sheet"* is typically circulated as part of the meeting pack for the next PTIO meeting.

24. A typical PTIO meeting will include the following agenda items.

Outstanding actions from previous PTIO meetings

25. An update will be provided as to the status of matters addressed in the previous meeting.

Operational Update

26. The TIU Director typically provides an operational update that summarises the work undertaken by the TIU since the previous PTIO meeting. This includes discussion of TIU performance indicators; progress updates on cases that have been referred to an AHO for prosecution; and, progress updates on AHO decisions that have been appealed to CAS.

27. During Nigel Willerton's tenure as Director, it also appears to have become typical for the operational update to include discussion of certain ongoing investigations. The decision as to which ongoing cases are reported to the PTIOs at this stage appears to be at the discretion of the Director.

28. In a small number of instances, the Director has described cases that *"will also be submitted to the PTIOs"* but that have seemingly not been submitted for a considerable period of time. For example, a PTIO meeting decision sheet from 25 June 2015 suggests that the TIU was due to submit reports in respect of at least four Covered Persons[28]. As at the date of publication of the REA, those cases had not been formally submitted to the PTIOs.

TIPP / Education

29. An update is provided regarding educational steps taken by the TIU.

TACP

30. Proposed and actual amendments to the TACP are identified from time to time.

28 PTIO Meeting, Decision and Action Sheet, 25 June 2015.

Resourcing & Budget

31. Updates are provided from time to time regarding the TIU's resourcing and budgetary requirements.

Informal contact between TIU and PTIOs

32. Instances of informal contact between the TIU and PTIOs (in other words outside of PTIO meetings or not in respect of cases that have been formally handed over to the PTIOs) have been reported by witnesses and also observed in the contemporaneous documents reviewed by the Panel.

33. The PTIOs for the GSB and ITF (whose offices are based in the same building as the TIU) have told the Panel the following:

    33.1 Bill Babcock stated that he, and to a lesser extent Stuart Miller, "*have the opportunity to interact with the TIU on an almost daily basis*"[29].

    33.2 Dr Miller stated that his interactions with the TIU are ad hoc and do not involve discussions of specific investigations before they have been formally handed over[30].

34. The contemporaneous documents indicate a practice of regular liaison between the TIU and PTIOs by email in respect of integrity matters.

Submission of a TIU investigation report

35. The formal handover of a TIU investigation to the PTIOs involves the submission of a written investigation report by the Director. As described by Nigel Willerton:

> "*Once an investigation is complete, the investigator submits a full factual report (with supporting evidence) to me. I review these reports, before sending them on to the PTIOs. It is not for me to decide if there is a case to answer but confirm credible evidence exists to submit to the PTIOs that a corruption offence may have been committed... Where I believe there is credible evidence to pursue a charge, a report is provided to the PTIOs. Based on the evidence gathered, a recommendation would form part of the report to the PTIOs. The PTIOs must decide whether a Corruption Offense (as defined in the TACP) 'may have been committed' and, if so, they shall refer the matter on to an Anti-Corruption Hearing Officer in order that the matter proceeds to a hearing*"[31].

(5) THE PTIOS' PROCESS FOR DETERMINING WHETHER A CORRUPTION OFFENSE *"MAY HAVE BEEN COMMITTED"*

36. When the TIU submits an investigation report to the PTIOs, the PTIOs will review it and vote as to whether a disciplinary proceeding should be initiated for a Corruption Offense. Under the current version of the TACP, *"if the PTIO concludes that a Corruption Offense may have been committed, then the PTIO shall refer the matter to the AHO, and the matter shall proceed to a Hearing before the AHO"*[32].

Voting Formalities

37. In the period 2009 to July 2011, a matter would only be referred to an AHO if the PTIOs voted unanimously (in other words 4-0) that a Corruption Offense *"may have occurred"*.

38. This policy, and its potential drawbacks, were identified by Bill Babcock in a note prepared for Philip Brook (GSB member of the TIB) in June 2011:

29 Statement of Bill Babcock (Grand Slam Board; formerly ITF).
30 Statement of Stuart Miller (ITF).
31 Statement of Nigel Willerton (TIU).
32 TACP (2018), Section F.4.

> "*... the requirement of unanimity does leave open the opportunity for any governing body to 'veto' referring a case even if the other three PTIOs are ready to refer. One simple amendment already discussed with the TIB is to only require a majority (3-1) to refer a case to the AHO. While this is an improvement, and certainly prevents a minority 'veto', it still makes a split decision possible (2-2) if two constituencies align (not unheard of). When that happens in the current structure, a case is not referred even though there is not a majority against deferral.*
> *To avoid that stalemate, while still ensuring protection against an over-zealous or flawed TIU recommendation, it is proposed that PTIOs retain the power not to refer if all four PTIOs agree. If there is not unanimous opposition, then the case is referred.*
> *This alteration properly increases the likelihood that the professional investigative work of the TIU will be brought to the independent AHO who is ultimately responsible for deciding whether the allegations are valid or not. At the same time, there remains a 'tennis' check-up in case the 'non-tennis' TIU has clearly missed the boat.*
> *Even the requirement of 3-1 majority to not refer is tolerable as a fall-back position if other governing bodies find unanimity too strict a standard.*
> *In either case, the ability for any one or two constituencies to prevent an independent review by the AHO has been eliminated*"[33].

39. The TIB considered the issues raised in Mr Babcock's note at a TIB meeting on 1 July 2011 (although it is not clear how the issue was raised or whether Mr Babcock's memo was provided to the other TIB members). The TIB decided that: "*In the event of a tie amongst PTIOs on a decision on whether or not a case should* [go forward], *the case should NOT go forward. Otherwise, the majority to prevail*"[34].

40. From this point therefore, a case would only go forward if there was a majority in favour (in other words, 3:1 or more in favour).

41. In 2015, the PTIO voting rule was reviewed again. The TIB decided to remove the majority rule and to replace it with a single-vote rule, whereby a case would go forward if any PTIO was in favour. This rule is now reflected in the drafting of the TACP, which provides that a matter shall be referred to an AHO if *"the PTIO concludes that a Corruption Offense may have been committed"* (emphasis added)[35].

(6) ISSUANCE OF NOTICE BY THE PTIOS

42. The PTIOs are required to send a formal Notice to any Covered Person(s) that the PTIOs determine may have committed a Corruption Offense, with a copy of the Notice to the AHO. The TACP (2018), Section G.1.a provides that a Notice should be sent to the Covered Person *"*[w]*hen the PTIO refers a matter to the AHO"*.

33 Bill Babcock, 'The Role of the PTIOs in the Anti-Corruption Programme' (28 June 2011).

34 TIB Meeting Decision & Action Sheet, 1 July 2011, Agenda Item 7.

35 TACP (2018), Section F.4.

Formal requirements for Notice

43. The TACP requires the Notice to set out the following information: (a) any Corruption Offense(s) alleged to have been committed, including the specific section(s) of the TACP alleged to have been violated; (b) the facts upon which the allegations are based; (c) the potential sanctions prescribed under the TACP for the Corruption Offense(s); and, (d) the Covered Person's entitlement to have the matter determined by the AHO at a hearing[36].

44. The Notice also informs the Covered Person that if they wish to dispute the PTIOs' allegations, the Covered Person must submit a written request to the AHO for a hearing within 14 business days of receiving the Notice[37].

45. The Notice is typically no more than several pages in length, with the length dependent upon the number of alleged offences and the complexity of the facts relied upon for each offence. The relevant facts are reported in summary fashion and, in some cases, copies of supporting written evidence are provided in the form of annexures. The Panel understands, based on its review of the contemporaneous documents, that supporting written evidence of the facts alleged is appended to the Notice only insofar as it is determined by the TIU, the PTIOs and/or their external legal advisers that such evidence is necessary for the Covered Person to understand the charges brought. The Panel notes that TACP (2018) Section G.1.f.ii. anticipates that the AHO will consider wider disclosure and make such order in relation to the production of *"any relevant documents or other materials upon which* [the parties] *intend to* rely" at the initial meeting or telephone conference with the parties.

46. In response to the Notice, a Covered Person may admit or deny the alleged Corruption Offense(s), and dispute and/or seek to mitigate the sanctions specified in the Notice[38]. A Covered Person who fails to respond is deemed to have admitted the allegations in the Notice.

47. The Covered Person's response to the Notice will impact the procedural steps to be taken by the AHO.

Timing of Notice and admissibility of new evidence after service

48. The TIU has proceeded on the basis that the Notice must include a summary of all the facts and evidence upon which the charges are based. If facts are omitted from the Notice, then those facts are excluded and cannot be relied upon against the Covered Person at the hearing before the AHO. Nigel Willerton's evidence is that:

> "[a]s *regards the timing for issuing a Notice to the person charged it is important to note once the Notice has been issued, no fresh evidence can be collected and relied upon. Therefore a Notice will not be issued until all the evidence has been obtained*"[39].

49. It appears from the contemporaneous documents that the TIU's approach is informed by an AHO ruling in one of the earlier cases under the TACP. In that case, the AHO ordered the Covered Person to authorise a police force that had seized material from the Covered Person to disclose that material to the TIU. The material had been seized, and existence of the seized material, had been known to the TIU prior to the Notice being served on the Covered Person. Considering those facts alone, the AHO considered the TIU's request should have been dismissed (on the basis that the TIU's investigative phase had closed and prosecutorial phase commenced). However, the AHO granted the TIU's request on the basis that the Covered Person's conduct had affected the TIU's investigation prior to the Notice being issued.

50. The Panel has seen no evidence to suggest that the TIU sought specific legal advice as to whether the approach it had adopted was: (a) correct; and/or, (b) could be tested by way of a formal application to an AHO to adduce new evidence.

36 TACP (2018), Section G.1.a.
37 TACP (2018), Section G1.b.
38 TACP (2018), Section G.1.c.
39 Statement of Nigel Willerton (TIU).

51. In this regard, the Panel note that TACP (2018), Section G.2.c provides the AHO with flexibility to determine the prosecutorial procedure to be followed. It is the Panel's view that such flexibility would permit the AHO to consider and decide whether further evidence can be adduced.

Limitation Period

52. Proceedings against a Covered Person in respect of an alleged Corruption Offense must be commenced within either (a) eight years from the date of the alleged Corruption Offense or (b) two years after the discovery of the alleged Corruption Offense, whichever is later[40].

53. In practice, the above provision means that, from 1 January 2017, it became possible that an alleged Corruption Offense might be time-barred for having not been prosecuted within eight years (if the Corruption Offense was committed on 1 January 2009 – the day the TACP became effective – and the Corruption Offense had been *"discovered"* at least two years earlier).

54. To date no cases have been dismissed by an AHO on the basis that they are time-barred.

(7) REFERRAL OF ALLEGED CORRUPTION OFFENSES BY THE PTIOS TO AN AHO

Matters not referred to an AHO despite recommendation in TIU investigation report

55. It presently appears to the Panel that in three cases the PTIOs received a TIU investigation report that recommended the relevant Covered Person be disciplinarily prosecuted, but the PTIOs decided not to follow that recommendation. The first case arose prior to 2013. The second and third cases arose after 2013.

56. As set out at paragraph 36 above, the evidential standard for referral of a case from the PTIOs to an AHO is whether, on the PTIOs' assessment, a Corruption Offense *"may have been committed"*. Accordingly, the decision not to refer each of the three cases amounts to a joint decision by the PTIOs (notwithstanding any dissenting opinion of individual PTIOs) that a Corruption Offense had not occurred.

PTIO non-referral "Case 1"

57. Case 1 involved a female player ("Player A")[41] who had included links to the corporate site of an online sports betting operator on her personal website. The TIU prepared an investigation report recommending that the matter be referred to an AHO on the basis that Player A was in contravention of TACP, Section D.1.b (facilitation).

58. The matter was brought to the TIU's attention by a third party[42]. Two days later, Mr Rees emailed the WTA to raise, and seek information on, the matter[43].

59. The WTA replied that "*WTA players and their representatives are under the impression (correctly so) that WTA rules do not prevent this sponsorship*". The WTA added that "*Notwithstanding the 'no solicitation language' in the* [TACP]*, players understand that betting sponsorships are allowed"*. The WTA proposed that Mr Rees respond to the third party that: "*...it has been the goal of the TIU since it was formed to create a uniform set of policies, procedures, and rules among all governing bodies in tennis. Much of that has been done with the adoption of the Code, and the goal hasn't changed. We'll look into* [Player A's betting sponsorship] *under the rules that apply*"[44]. The WTA characterised its proposed response as "*at least a thought starter...*".

60. Mr Rees responded to the third party as follows:

40 TACP (2018), Section K.1.

41 Unless otherwise stated, anonymised references differ on a Chapter-by-Chapter basis.

42 Email from [Third Party Name Redacted] to Jeff Rees (copying Gayle Bradshaw) [date redacted].

43 Email from Jeff Rees to David Shoemaker (copying Bill Babcock and Gayle Bradshaw) [date redacted].

44 Email from David Shoemaker to Jeff Rees (copying Bill Babcock and Gayle Bradshaw) [date redacted].

"*I am now in a position to respond to the second question in your Email… That response will also clarify the situation in respect of variations amongst tennis's governing bodies in their regulations relating to players being sponsored by gaming companies.*

Tennis expects to create a uniform set of policies, procedures and rules in relation to gaming company sponsorship… Much has already been achieved by adoption by all of the sport's governing bodies of the Uniform Tennis Anti-Corruption Programme, which came into force on 1st January, 2009. That Programme, in Article D 1) b), specifically states that "No covered Person shall, directly or indirectly, solicit or facilitate any other person to wager on the outcome or any other aspect of any event or any other tennis competition." Players are "Covered Persons" for the purpose of the Programme.

Probably the most sensible practice to adopt until creation of a uniform approach… would [be] *for each individual case to be assessed on its merits. I would suggest that potential sponsorship agreements in respect of gaming companies be referred to me, and I in turn will pass them on to the appropriate governing body or bodies.*

I do, however, also suggest that no long-term sponsorship agreements be entered into until creation of the uniform approach…"[45].

61. The Panel notes that there was no amendment to TACP, Section D.1.b (solicitation/facilitation) following the above exchange and that Player A had played in professional tournaments before the matter was brought to the TIU's attention.

62. Seven months later, WTA General Counsel Diana Myers sent an email to Jeff Rees on the subject of *"Player Betting Sponsorships"*, stating that: "*I am starting discussions with our BOD next week on this subject. In our meeting in Miami, I think someone mentioned that* [Player A] *had a betting sponsor. Is this correct and do you know if she wears a betting company patch?*"[46]. Mr Rees responded to clarify that Player A had links to a betting website on her personal website and that "*on the face of it, now that* [Player A] *is entering professional tournaments she is contravening Section D.1.b of the* [TACP] *by soliciting others to bet on tennis*" [47].

63. The contemporaneous documents record that a telephone call took place between Mr Rees and Ms Myers. Mr Rees' electronic file note stated: "*I discussed* [Player A] *sponsorship from a betting company with Diana Myers from the WTA. She informed me that the WTA have not told players specifically that they cannot accept sponsorship from betting companies, albeit they are actively discouraging players from doing so. We discussed differences between her case and that of Daniel Koellerer, who was actively facilitating betting on tennis through his website*".

64. Mr Rees has informed the Panel that he does "*not now recall the circumstances in which the tennis authorities came to the view that the paragraph D.1.b did prohibit online advertising of betting companies, but that plainly happened at some point and once the position had been clarified* [he] *initiated an investigation*"[48].

65. The TIU wrote to Player A to advise her of the fact that the TIU was investigating the matter, and to request further information. Shortly thereafter, the links were removed from the player's website. Interviews were then conducted by the TIU.

66. Two months after writing, the TIU investigation report was submitted to the PTIOs. The TIU considered that a Corruption Offense may have been committed and recommended that the PTIOs refer the matter to an AHO.

67. At a subsequent PTIO meeting, the PTIOs voted 2:2 as to whether to refer the matter to an AHO. The GSB and ITF PTIOs voted in favour, and the ATP and WTA PTIOs voted against. As explained at paragraph 37 above, at that time, a tie meant that the matter was not referred to the AHO. The PTIOs resolved to seek legal advice in respect of the matter and to prepare a list of examples of *"facilitating"* under the TACP, Section D.1.b for review at the following PTIO meeting.

45 Email from Jeff Rees to [Third Party Name Redacted] (copying David Shoemaker and Gayle Bradshaw) [date redacted].

46 Email from Jeff Rees to Diana Myers (copying Bruce Ewan) [date redacted].

47 Email from Diana Myers to Jeff Rees [date redacted].

48 Response of Jeff Rees to Notification given under paragraph 21 ToR.

68. The PTIOs took external legal advice as to whether the alleged infringement amounted to *"facilitation"* under the TACP. The advice concluded that, while it was unclear whether the rules against *"facilitation"* would encompass such conduct, the outside counsel's "*feeling*" was that "*the PTIOs should refer the matter to the AHO*". However, the PTIOs did not reach unanimity to refer the matter to an AHO. An update from Bill Babcock to the same outside counsel reflected that the PTIOs were "*at an impasse because not all PTIOs accept... that we are obliged to refer this matter to the AHO*".

69. The matter was subsequently referred by the PTIOs to the TIB for further consideration at a TIB meeting to take place six months thereafter. The day before the TIB meeting was due to take place, the PTIOs circulated a summary of *"pros and cons"* in respect of referral of the matter to an AHO:

"*Pro*

1. TIB must be final authority if PTIOs cannot agree.

2. Continued inconsistency with unanimous Koellerer referral earlier for same alleged offense (both players have websites which allow visitor to bet on live tennis matches) exposes Anti-Corruption Programme to challenge.

3. AHO is proper party to determine innocence or guilt and mitigation or aggravating circumstances - not the PTIOs.

4. Director of TIU recommends referral in both cases.

5. Both counsel agree an offense "may have been committed".

Con

1. TIB has no authority to intervene.

2. Without PTIO unanimity, cannot be referred.

3. Not the same offense because it is more difficult to access live betting on [Player A's] *website.*

4. Not fair to refer [Player A] *while tournaments still allowed to have betting company sponsorships.*

5. More clarification of 'solicits/facilitates' offense needed before referral."

70. There are no records of the TIB's deliberations but the decision not to refer the matter to an AHO was recorded in an email from Bill Babcock to the PTIOs' outside counsel shortly thereafter. The matter was never referred to an AHO. Player A received a confidential written warning from the PTIOs as to her future conduct.

71. As described in paragraph 41 above, it was not until 2015 that the PTIO's voting procedure was changed so that a case would go forward if only one (or two) of the PTIOs was in favour. The International Governing Bodies have informed the Panel that following Case 1 players and tournaments were given education as to what was and was not permissible with respect to commercial relationships with betting operators.

PTIO non-referral "Case 2"

72. Case 2 involved a male player ("Player B") who had provided witness evidence that the TIU intended to rely upon in support of a charge against another suspect player. Player B provided evidence that he had been approached by the suspect player and offered money to lose a doubles match. Player B also provided a statement to the TIU – but then subsequently refused to provide oral testimony at the hearing. As a result, Player B's witness statement was withdrawn at the hearing. Notwithstanding this, the charges against the suspect player were made out.

73. The contemporaneous documents reviewed by the Panel include an investigation report prepared by Dee Bain. Ms Bain's report concluded that Player B had failed to cooperate with the TIU's investigations (in breach of TACP, Section F.2.b) and "*...recommends the matter be referred to the PTIOs*". Ms Bain's report stated that it had been "*submitted to the Director of Integrity for consideration*" and appeared to have been drafted in anticipation of subsequent provision to the PTIOs[49]. However, there is no evidence in the contemporaneous documents of Ms Bain's report being subsequently provided to the PTIOs and the International Governing Bodies have informed the Panel that according to their records *"no formal investigation report was provided to the PTIOs*".

74. Notwithstanding paragraph 73, the matter was considered by the PTIOs at a meeting[50]. The record of that meeting confirms that the PTIOs decided unanimously that the PTIOs should send Player B a formal letter reminding him of his obligations under the TACP. The matter was not referred to an AHO.

PTIO non-referral "Case 3"

75. During the qualifying round of an ATP tournament, a male player ("Player C") was informed by a tournament supervisor that, as the highest ranked player in that round, he would qualify for the main draw as a "lucky loser" even if he lost in the qualifying round, as a higher ranked player had withdrawn from the main draw.

76. Player C won the first set of his qualifying match before requesting physio treatment and retiring injured at the beginning of the second set. The player's retirement allowed his opponent to qualify for the main draw.

77. An ATP supervisor received an anonymous phone call from an individual who claimed that Player C had sent them a text message in which Player C boasted about a plan to "*roll it*" (i.e. tank the match). The way the match was played led the ATP supervisor to conclude that Player C had tanked, and the supervisor reported the matter to the TIU.

78. Player C received a medical examination after his qualifying round match, in accordance with ATP rules when a player retires injured. He also received a medical examination before his next match, in the first round of the main draw first round, again in accordance with ATP rules when a player who has previously retired injured seeks to return to play. Player C was prohibited from playing in the main draw on the basis that there had been no apparent change in his injury status between the two medical examinations.

79. The TIU referred the matter to the PTIOs on the basis that the player may have committed a contrivance offence (in breach of TACP, Section D.1.d).

80. There was no evidence that an agreement was reached between Player C and his opponent in this respect. Further, there was no suggestion from the betting industry of anything untoward. There was, however, evidence of a pre-meditated plan on the part of Player C not to finish the match – Player C sent a WhatsApp message to his coach before the game to advise him that he was already through to the main draw, and to ask whether he should let his opponent win. Player C also admitted during a TIU interview that he had only ever intended to play the first set and then to retire (principally to save himself for the first round in the main draw).

49 Page 2 of Ms Bain's report was addressed "To: Professional Tennis Integrity Officers (PTIOs)".

50 PTIO Meeting Decision & Action Sheet, [date redacted].

81. The PTIOs considered whether this was a case that should be dealt with under either the TACP or the ATP's *"best efforts"* rules. Through email correspondence the ATP PTIO suggested the PTIOs vote against an AHO referral. The ATP PTIO's position was that, given that there was no agreement between the two players, the TACP rule did not apply, as it was not intended to cover a player *"contriving"* without accomplices, or in other words *"contriving"* with himself. The WTA PTIO supported this view. As addressed in Chapter 10, Part 2, Section E, this is not a construction of the TACP with which the Panel agrees, but it appears to have been the construction generally followed by the TIU and the International Governing Bodies at the time. Consideration was also given to the fact that the player had not been permitted to play in the main draw, for the reasons given above.

82. The PTIO vote in respect of Player C was split 2:2. The GSB and ITF PTIOs voted in favour of a referral to an AHO and the ATP and WTA PTIOs voted against. Player C's case did not go forward to an AHO given the PTIOs' majority-voting rule in place at that time, as described at paragraph 40. Player C was informed that no further action would be taken.

83. It appears that some consideration was given to receiving external legal advice on this case, but it is not clear whether this in fact occurred.

84. The International Governing Bodies have told the Panel that, as a direct result of this case, the ATP's lucky loser rules were amended so that no player could be certain of being selected as a lucky loser until after the completion of his final qualifying match.

Other matters not referred to an AHO

85. In addition to the three cases referred to above, the Panel is aware of three instances where the PTIOs were requested to consider matters on an informal basis (before the submission of a TIU investigation report) and the matters were not subsequently made the subject of disciplinary proceedings. Each case involved Covered Persons having commercial relationships with betting companies that offered tennis markets.

86. In two of the three instances, it came to the attention of the TIU that an individual, who was a Covered Person because he had obtained credentials and was engaged in coaching, had a contractual relationship with a betting company that offered markets on tennis matches. The TIU and the PTIOs agreed that the TIU would write to each of the two individuals and remind them of the relevant TACP provisions. Thereafter, the TIU conducted further enquiries and provided reports to the PTIOs on each individual.

86.1 The report on the first of these individuals concluded that, while the individual disputed whether he was a Related Person at the time of his contract with the betting company, the individual was, in fact, a Covered Person by virtue of having obtained credentials during the period of his contract. The TIU concluded that this was a minor breach and recommended that the PTIOs give him a reprimand (whilst noting that a reprimand was not a provided option under the TACP).

86.2 The report on the second of these individuals concluded that he was a Related Person during the period of his contract with the betting company. The TIU concluded that this was a minor breach of the TACP, but because the individual stated that he would dispute that the relationship that he had with the betting company qualified as *"facilitating"* under the TACP, Section D.1.b, and because the individual refused to cease his relationship in response to the letter from the TIU, the minor breach was aggravated. The TIU recommended that the PTIOs write to the individual to advise him that he should end the relationship with the betting operator, and that the individual be given a reprimand. The TIU recommended that only if the individual did not end his relationship with the betting operator, should the case then be referred to an AHO.

86.3 The PTIOs considered these reports and debated how to proceed considering the options provided for in the TACP.

86.4 The first individual was sent a letter by the PTIOs noting the fact that he had acted to terminate his contractual relationship with the betting company and that the investigation was considered closed.

86.5 The second individual was sent a letter by the PTIOs, requesting that he sever either his relationship as a coach or his relationship with the betting company within ten days, otherwise a Notice would be issued and the issue would be referred to an AHO. The individual duly confirmed that he would terminate his relationship with the betting company.

87. A third individual had agreed to a connection with a betting company at a time when it did not offer markets on tennis. Upon the betting company starting to offer markets on tennis, it was agreed in consultation between the TIU and PTIOs (with the TIB having been informed of the facts of the matter[51]) that it would be sufficient if steps were taken by the individual to minimise their association with sports betting because the contract between the individual and company was already close to expiring. Again, it appears that some consideration was given to receiving external legal advice on this case, but it is not clear from the contemporaneous documents whether this in fact occurred.

(8) DISCIPLINARY PROSECUTION OF CASES BY THE PTIOS

Conduct of the disciplinary prosecution proceedings

88. In practice, disciplinary prosecution of an alleged Corruption Offense is conducted on behalf of the PTIOs by external legal counsel.

89. The PTIOs have been represented by three law firms (separately) in the 37 disciplinary cases finally determined by an AHO since 2009[52].

90. In contrast, Covered Persons have been legally represented in 21 cases and self-represented in 16 cases (including three cases in which the Covered Persons did not engage at all in the disciplinary process and were deemed to have admitted liability and acceded to the sanctions imposed). Except for Daniel Koellerer's lawyer (who acted for Koellerer in both AHO proceedings, and also acted for Koellerer's manager Manfred Nareyka), none of the legal representatives instructed by the Covered Persons: (a) had any prior experience of; and/or, (b) have subsequently been instructed by other Covered Persons to conduct AHO proceedings under the TACP on their behalf.

Burden of proof and standard of proof

91. The TACP places the burden of proving that an alleged Corruption Offense has been committed on the PTIOs.

92. In order to successfully prosecute an alleged Corruption Offense, the PTIOs must prove the *"commission of the alleged Corruption Offense by a preponderance of the evidence"* to the satisfaction of the AHO[53]. This standard is considered equivalent to the 'balance of probabilities' evidential standard.

93. The PTIOs' success rate is discussed further at paragraph 188 below.

51 TIB Meeting, Decision and Action Sheet, [date redacted].

52 The Panel is aware that a further four cases have been heard by an AHO in 2018 but a written decision has not yet been handed down. Those cases are therefore not included in the analysis of disciplinary cases heard and decided by an AHO.

53 TACP (2018), Section G.3.a.

(9) APPLICATION BY THE PTIOS TO THE AHO FOR A PROVISIONAL SUSPENSION

94. For the purposes of the TACP a *"provisional suspension"* is a period of ineligibility imposed by an AHO before a full hearing of the merits of the case has taken place[54]. The development of the provisional suspension rule is described in Chapter 10, Part 1.

95. The position under the TACP, since 2017, is that PTIOs are permitted to submit an application to the AHO for a provisional suspension before they have formally referred charges brought against a Covered Person. When the PTIOs apply for a provisional suspension of a Covered Person, they are required to notify the Covered Person that an application for provisional suspension has been filed, and the Covered Person will be given an opportunity to file written submissions in response to the application[55].

96. The appointed AHO will determine the procedure for the provisional suspension application. The AHO can determine whether to grant the application for a provisional suspension on the papers or whether to convene an oral hearing to hear the application. The TACP provides that the Covered Person *"shall be afforded a reasonable opportunity to present his/her case and supporting evidence"*[56].

97. The effects of a provisional suspension are the same as for a Covered Person serving a period of ineligibility ordered by an AHO following a full hearing of the merits[57].

98. If a full hearing of the merits has not been heard within 60 days from the date on which a Covered Person requested a hearing, the Covered Person may apply to the AHO for the provisional suspension to be lifted[58].

99. As at the date of publication of the REA, eight Covered Persons have been subject to a provisional suspension under the mechanism provided in the TACP (2018). These include Oliver Anderson[59] and Isaac Frost[60], and also three Players and three Officials whose provisional suspensions have not been publicly disclosed.

100. In addition, at least seven Covered Persons have been subject to a form of provisional suspension for failure to cooperate, a separate procedure described in Chapter 10, Part 1, Section B. Those Covered Persons include: Nick Lindahl, Isaac Frost[61], Nikita Kryvonos[62], and also two Players and two Officials whose provisional suspensions for failure to cooperate have not been publicly disclosed. In respect of the two Officials, both were subsequently subject to disciplinary sanctions under the CCO.

101. The Panel also notes one instance where a player ("Player D") was compelled to cooperate by an AHO. Player D had received a TIU demand for information and had not produced the requested materials within three months of receipt. On 26 June 2011 the TIU submitted an investigation report to the PTIOs. The report concluded that: "*In failing to furnish the TIU with the information required of him* [Player D] *appears to be in breach of Sections F 2 b of the Uniform Tennis Anti-Corruption Programme. I now ask that the papers be referred, through [external counsel], to an AHO for consideration*

54 TACP (2018), Section B.20.

55 TACP (2018), Section F.3.b.

56 TACP (2018), Section F.3.b.

57 TACP (2018), Section F.3.c.

58 TACP (2018), Section F.3.d.

59 TIU Press Release, 'Oliver Anderson provisionally suspended from playing professional tennis' (9 February 2017), available at: http://www.tennisintegrityunit.com/media-releases/oliver-anderson-provisionally-suspended-playing-professional-tennis [accessed 9 April 2018].

60 TIU Press Release, 'Isaac Frost provisionally suspended from playing profession tennis' (2 July 2017), available at: http://www.tennisintegrityunit.com/media-releases/isaac-frost-provisionally-suspended-playing-tennis [accessed 9 April 2018].

61 TIU Press Release, 'Nick Lindahl, Brandon Walkin and Isaac Frost sanctions for Tennis Corruption Offences' (9 January 2017), available at: http://www.tennisintegrityunit.com/media-releases/nick-lindahl-brandon-walkin-and-isaac-frost-sanctioned-tennis-corruption-offences [accessed 9 April 2018].

62 TIU Press Release, 'Nikita Kryvonos suspended for 10 years and fined $20,000' (18 May 2017), available at: http://www.tennisintegrityunit.com/media-releases/nikita-kryvonos-suspended-10-years-and-fined-20000 [accessed 9 April 2018].

of [Player D] *being ruled ineligible to compete in any Events pending compliance with the TIU demands set out in the above paragraphs*". The matter was referred to an AHO and the player was ordered to produce the requested information within three days, failing which a provisional suspension would come into effect. The player complied with the AHO's order and therefore the threatened provisional suspension did not come into effect.

102. However, almost every player who has ultimately been the subject of successful disciplinary prosecution has been permitted to play whilst under investigation, and some have played after a Notice had been issued. The table below identifies the number of matches played by each player in the period between the start of the TIU's investigation and the AHO's final decision (up to 31 December 2017). The table also identifies the number of matches played in the period between the Notice being issued and the AHO's final decision.

TABLE: TIMELINE OF 35 SUCCESSFUL DISCIPLINARY PROSECUTIONS UNDER THE TACP, INCLUDING THE NUMBER OF DAYS / MATCHES PLAYED BETWEEN DURING THE INVESTIGATIVE AND PROSECUTORIAL PROCESS.

		Relevant step				Investigation		PTIO Review		Prosecution		Overall	
	Player	Start of TIU investigation (A)	Date of referral to PTIOs (B)	Date of Notice (C)	Date of AHO Decision (D)	Days between A and C	Matches played between A and C	Days between B and C	Matches played between B and C	Days between C and D	Matches played between C and D	Days between A and D	Matches played between A and D
1	Ekaterina Bychkova	14 May 2009	28 Aug 2009	14 Dec 2009	08 Jan 2010	214	53	108	27	25	0	239	53
2	Daniel Koellerer (#1)	14 Oct 2009	03 Mar 2010	11 May 2010	16 Aug 2010	209	31	69	13	97	15	306	46
3	Manfred Nareyka[63]	14 Oct 2009	03 Mar 2010	11 May 2010	16 Aug 2010	209	N/A	69	N/A	97	N/A	306	N/A
4	Daniel Koellerer (#2)	28 Oct 2009	14 Dec 2010	24 Jan 2011	31 May 2011	453	46	41	0	127	27	580	73
5	David Savic	05 Oct 2010	11 Apr 2011	24 May 2011	30 Sep 2011	231	70	43	12	129	15	360	85
6	Lucas Renard	26 Jul 2011	21 Oct 2011	04 Nov 2011	22 Dec 2011	101	28	14	3	48	7	149	35
7	Sergei Krotiouk	13 Nov 2012	06 Feb 2013	08 Feb 2013	05 Jun 2013	87	20	2	0	117	0	204	20
8	Yannick Ebbinghaus	13 Feb 2013	14 May 2013	17 May 2013	07 Jun 2013	93	0	3	0	21	0	114	0
9	Claudia Coppola	10 Apr 2013	18 Jul 2013	30 Jul 2013	18 Sep 2013	111	27	12	5	50	13	161	40
10	Guillermo Olaso	01 Nov 2010	20 Jul 2013	29 Aug 2013	23 Dec 2013	1032	303	40	10	116	18	1,148	321
11	Andrey Kumantsov	01 Dec 2012	02 Jan 2014	14 Feb 2014	09 Jun 2014	440	21	43	0	115	0	555	21
12	Morgan Lamri	21 Mar 2013	25 Jul 2013	11 Sep 2014	24 Nov 2014	539	0	413	0	74	0	613	0
13	Elie Rousset	17 Jun 2014	06 Jan 2015	03 Feb 2015	24 Mar 2015	231	82	28	15	49	8	280	90
14	Walter Trusendi	17 Jun 2014	06 Jan 2015	03 Feb 2015	24 Mar 2015	231	99	28	19	49	20	280	119
15	Ivo Klec	02 Jul 2013	21 Apr 2015	18 May 2015	21 Aug 2015	685	248	27	9	95	28	780	275
16	Arkadiusz Kocyla	05 Jun 2014	10 Apr 2015	22 May 2015	10 Sep 2015	351	73	42	0	111	0	462	73
17	Piotr Gadomski (#1)	05 Jun 2014	24 Feb 2015	22 May 2015	10 Sep 2015	351	56	87	0	111	15	462	71
18	Alexandros Jakupovic	13 Mar 2014	21 May 2015	06 Jul 2015	09 Nov 2015	480	115	46	7	126	1	606	115
19	[Player name redacted]	-	-	-	01 Dec 2015	221	-	58	-	39	-	260	-
20	Jatuporn Nalamphun	12 May 2015	18 Aug 2015	16 Sep 2015	16 Feb 2016	127	9	29	0	153	6	280	15
21	Danail Tarpov	01 Jul 2014	17 Feb 2016	26 Apr 2016	02 Jul 2016	665	101	69	0	67	19	732	120
22	Constant Lestienne	02 Nov 2015	02 Nov 2015	21 Jul 2016	20 Sep 2016	262	63	262	63	61	18	323	81
23	Joshua Chetty	03 Nov 2015	18 Jul 2016	28 Jul 2016	28 Sep 2016	268	4	10	0	62	0	330	4
24	Alexandru-Daniel Carpen	15 Jul 2014	21 May 2015	06 Jul 2015	09 Jan 2017	356	108	46	23	553	25	909	127
25	Brandon Walkin	12 Sep 2013	27 Jul 2016	02 Sep 2016	09 Jan 2017	1086	83	37	0	129	31	1,215	114
26	Isaac Frost	12 Sep 2013	27 Jul 2016	02 Sep 2016	09 Jan 2017	1086	59	37	0	129	9	1,215	68
27	Nick Lindahl	12 Sep 2013	27 Jul 2016	02 Sep 2016	09 Jan 2017	1086	0	37	0	129	0	1,215	0
28	Calum Puttergill	12 Sep 2013	27 Jul 2016	02 Sep 2016	11 Jan 2017	1086	182	37	8	131	36	1,217	218
29	Mihaita Daniel Damian	10 Jul 2013	16 Aug 2016	22 Sep 2016	11 Jan 2017	1170	97	37	10	111	0	1,281	97
30	Konstantinos Mikos	15 Jul 2014	20 Dec 2016	10 Jan 2017	04 May 2017	910	74	21	0	114	0	1,024	74
31	Junn Mitsuhashi	04 Dec 2015	21 Dec 2016	27 Feb 2017	15 May 2017	451	0	68	0	77	0	528	0
32	Nikita Kryvonos	16 Nov 2015	15 Jul 2016	15 Aug 2016	18 May 2017	273	1	31	0	276	0	549	1
33	Marius Frosa	18 Apr 2016	25 May 2017	03 Jul 2017	28 Aug 2017	441	47	39	7	56	3	497	47
34	Samuel Ribeiro Navarette	12 Jul 2016	08 Jun 2017	28 Jun 2017	03 Oct 2017	351	13	20	1	97	8	448	21
35	Piotr Gadomski (#2)	23 Jun 2016	22 May 2017	28 Jul 2017	18 Dec 2017	400	0	20	0	143	0	543	0

Shortest / fewest						87	0	2	0	21	0	114	0
Longest / most						1170	413	413	63	553	36	1281	321
Median						351	50	37	0	111	6.5	497	60.5

63 The cases of Daniel Koellerer (#1) and Manfred Nareyka (Mr Koellerer's manager) were heard together.

(10) APPLICATION FOR REDUCTION OF SANCTION BASED ON SUBSTANTIAL ASSISTANCE

103. For the purposes of the TACP, *"substantial assistance"* refers to assistance given by a Covered Person to the PTIOs or to the TIU that results in the discovery or proof of a Corruption Offense by another Covered Person[64].

104. Since 2014, Covered Persons have been permitted to apply to an AHO for a reduction in a period of ineligibility if they give substantial assistance. An AHO may also take substantial assistance into consideration at the time of the original decision as to what sanction to impose[65]. In the event that a Covered Person makes such an application, the AHO is required to establish an appropriate procedure for consideration of the application (including the opportunity for the PTIOs to make submissions regarding the application).

105. Since 2009, only one Covered Person (Savic) has successfully applied for a reduction of sanction based on substantial assistance. In September 2011, Savic was declared permanently ineligible from competing or participating in any event organised or sanctioned by the International Governing Bodies[66]. In November 2015, after he submitted an application for reduction of sanction, Savic's sanction was amended. Savic remained permanently ineligible from playing tennis but he was permitted to coach tennis from March 2016. AHO Richard McLaren considered the substantial assistance that Savic had given to the TIU since October 2011, including having appeared in a TIU educational video to warn Covered Persons against involvement in betting-related corruption[67].

(11) EVALUATION OF THE OPERATION OF THE PTIO SYSTEM SINCE 2009

106. The Panel addresses in Chapter 14 its recommendations for the future, which include recommendations considered desirable to improve the effectiveness and appropriateness of the PTIO system. The evaluation set out below is limited to the manner in which the PTIO system has developed and operated since 2009.

The PTIOs' approach to TIU recommendations to refer to the AHO

107. The PTIO system has been operated and implemented broadly effectively and appropriately since 2009.

108. From the documents seen by the Panel, there is no evidence to suggest that the PTIOs have acted in a way to restrict the TIU's ability to investigate or recommend disciplinary prosecution of a case where there was evidence of match-fixing. The Panel has seen no evidence that any PTIO decisions or actions in this context were taken to cover up breaches of integrity or to protect players under suspicion from disciplinary prosecution, for fear of damage to the reputation of tennis or otherwise.

109. All cases of suspected match-fixing have been referred by the PTIOs to an AHO for prosecution.

110. The Panel is presently concerned however, about the way in which the PTIOs dealt with more minor offences in a small number of instances. The threshold under the TACP for the PTIOs to refer a case to an AHO is set at a low level, with the PTIOs required to do so in the event that they conclude that a Corruption Offense *"may have been committed"*. The test does not provide for any disciplinary prosecutorial discretion.

111. In each of the three cases referred to in paragraphs 57-84 above, the TIU had prepared reports recommending to the PTIOs that the cases be referred to an AHO, but in each of them, the PTIOs determined that the case should not be submitted to an AHO. The Panel presently considers these three cases to have involved the mistaken and inappropriate use of discretion by the PTIOs in deciding not to initiate disciplinary proceedings for a TACP offence.

64 TACP (2018), Section B.24.

65 TACP (2018), Section H.6.

66 TACP (2018), Section H.1.a.

67 TIU Press Release, 'Outcome of David Savic Appeal: Lifetime playing ban remains but will be allowed to coach from March 2016' (18 November 2015), available at: http://www.tennisintegrityunit.com/media-releases/outcome-david-savic-appeal-lifetime-playing-ban-remains-will-be-allowed-coach-march-2016 [accessed 9 April 2018].

PTIO non-referral Case 1

112. In respect of Case 1 (described in paragraphs 57-71 above), the TIU had prepared a report recommending to the PTIOs that the case be referred to an AHO, but the PTIOs determined that the case should not be submitted to an AHO.

113. The TIU acted appropriately in deciding to conduct an investigation and, upon the investigation being commenced, completed the investigation swiftly. The Panel notes, however, that it would have been open to the TIU to commence the investigation upon the matter being brought to its attention nine months earlier. In this regard, the facts that eventually prompted the investigation were broadly the same as those that had initially existed at the outset. At both points, Player A was a professional tennis player, her website contained links to betting sponsors, and the provisions of TACP, Section D.1.b in respect of facilitation were identical. Mr Rees told the Panel that he considered that it was entirely reasonable for the TIU not to have commenced the investigation earlier in light of what he had been told by David Shoemaker of the WTA. But in the view of the Panel, and in light of the TIU's independence, it was still open for the TIU to carry out an investigation notwithstanding the view expressed to it by the WTA.

114. With regard to the decision reached by the PTIOs, it presently seems to the Panel that, given the absence of any provision in the TACP for disciplinary prosecutorial discretion, it was not appropriate for the PTIOs to purport to exercise such discretion. Whether in the future there should be such discretion is addressed in Chapter 14[68], and the Panel concludes that there should be. But at the relevant time here, there was no such discretion, and it is therefore irrelevant what the position would have been had there been discretion.

115. The Panel notes that the PTIOs had previously approved the TIU's recommendation to disciplinarily prosecute another player in relation to a similar offence, though involving different facts. In his submissions to the Panel, Mr Rees stated that: "*For the record, the facts of the cases in relation to the two players were very different. The player who was prosecuted, Daniel Koellerer, was actively encouraging people to bet on tennis. Mr Koellerer's personal website carried details of betting odds on tennis matches and provided links to allow users to place bets (see TIU website entry dated 19th August, 2011). In contrast, my recollection is that Player A's website simply carried a hyperlink to a betting company website*" [69].

116. However, even if the Koellerer case was more severe, the only issue the PTIOs were authorised to determine was whether a Corruption Offense "*may have been committed*" (which afforded no room for disciplinary prosecutorial discretion and meant that the alleged severity of Player A's conduct was not a valid consideration). Two of the four PTIOs considered that Case 1 should go forward. The legal advice was that the standard appeared to have been met. In this instance, the two PTIOs' principal reason for concluding the standard had not been met was not so much a factual evaluation, but rather doubt as to whether the known facts satisfied a legal test of facilitation. In the assessment of the Panel there was sufficient evidence, and legal argument, for the PTIOs to conclude that a Corruption Offense *"may have been committed"*.

117. The International Governing Bodies informed the Panel that:

"Player A had a link on her website to the corporate site of an online sports betting operator (not directly to betting). The sponsorship predated the formation of the TIU and Player A was not informed that the sponsorship constituted a potential violation until she competed in her first WTA event two years later. When contacted by the TIU, Player A immediately terminated the sponsorship out of an abundance of caution. Player A … [was] *interviewed by the TIU and there was no evidence of any relationship other than the website. At the time, the regulation and policy making on betting company sponsorships was a commercial issue for each governing body, and not a mandate of the TIU. …The primary reason being that the TIU had not yet defined what 'facilitating betting' meant other than directly assisting someone to bet (i.e. betting odds with one click to bet on personal website). Without objective criteria for determining whether a*

68 Chapter 14, Section D.

69 Response of Jeff Rees to Further Notification given under paragraph 21 ToR.

covered person's actions constituted 'facilitating betting,' the PTIOs had to make subjective determinations based on each individual set of circumstances. Those determinations eventually lead to the formulation of the comprehensive objective criteria that is used today to determine whether there is evidence of a Corruption Offense. As 'facilitating betting' was not clearly defined and there was no indication in the marketplace that sponsorships with betting operators were prohibited, the crux of the PTIOs' debate on whether to charge Player A was whether it was reasonable to expect a covered person to know what was and was not a Corruption Offense. More specifically, whether it would be unfair to enforce a rule that no covered person knew about. In its deliberation on the matter, the PTIOs noted that the possible perception of impropriety does not equal impropriety. To assist in their determination, the PTIOs sought the advice of external counsel. That advice was not definitive on the issue, but did advise referral to the AHO on the basis that it was not certain that a Corruption Offense had not been committed. The use of external advice demonstrates the extent to which PTIOs were attempting to apply the rules in a proper manner. As a result of Player A's case, the PTIOs' voting procedure was amended such that in the case of a split vote, the matter would be referred to an AHO. Further, education was developed for both players and tournaments detailing what is and is not permissible in terms of their commercial relationships with betting operators"[70].

118. In the present view of the Panel, the decision in Case 1 was inappropriate because the TACP did not provide the PTIOs with authority to use disciplinary prosecutorial discretion. The Panel is also concerned that the PTIOs acted contrary to the legal advice that had been obtained. Considering the circumstances in which the PTIOs decided not to refer this matter, however, in the present view of the Panel, it was not an attempt to cover up a breach of integrity or to protect a player.

119. Further, in the present view of the Panel the matter should have been concluded more swiftly than it was once it came under consideration by the PTIOs. It should not have taken nine months for the PTIOs to decide whether to refer the case to an AHO.

PTIO non-referral Case 2

120. In respect of Case 2 (described in paragraphs 72-74 above), it again presently seems to the Panel that, given the absence of any provision in the TACP for disciplinary prosecutorial discretion, it was not appropriate for the PTIOs to purport to exercise such discretion. Again, whether or not there should be such discretion in the future or what the position would be if there were [71], is irrelevant as there was no such discretion at the relevant time. The Panel notes that the player had refused to give evidence, apparently without good reason. In the assessment of the Panel there was sufficient evidence for the PTIOs to conclude that a Corruption Offense *"may have been committed"*. On the test, a referral should have been made.

121. Again, the PTIOs had their reasons for not referring the case.

122. The International Governing Bodies have informed the Panel that *"in deciding not to refer the case to the AHO, the PTIOs considered the need to balance enforcement of the TACP against players who fail to cooperate with TIU investigations with the importance of not discouraging players from assisting the TIU by coming forward with information and the fact that* [the other player charged by the TIU] *had been successfully convicted"*.

123. The International Governing Bodies also added that "*on balance, the PTIOs determined that the appropriate decision was to take no further action, but to warn* [player name redacted] *that any further failure from him would be treated as a breach of the TACP*" and that "*accordingly,* [player name redacted] *was sent a letter to that effect*".

70 Responses of International Governing Bodies to Notification given under paragraph 21 ToR.

71 Chapter 14, Section D.

124. In the present view of the Panel, whatever the relevance of such considerations to discretionary decisions generally, the decision on Case 2 was inappropriate precisely because the TACP did not give the PTIOs authority to use any such disciplinary prosecutorial discretion in reaching it. Nonetheless, because the purported application of disciplinary prosecutorial discretion might, had it existed, have warranted not bringing proceedings, in the present view of the Panel, the PTIOs' decision was not an attempt to cover up a breach of integrity or to protect a player.

PTIO non-referral Case 3

125. In respect of Case 3 (paragraphs 75-84 above), it again presently seems to the Panel that, given the absence of any provision in the TACP for disciplinary prosecutorial discretion, it was not appropriate for the PTIOs to purport to exercise such discretion. Again, the future position[72] or what would be appropriate if there were discretion are irrelevant. The Panel notes that in Case 3, there was clear evidence that the player had made a prior decision to feign an injury and retire from the match. Two of the four PTIOs considered that the case should go forward. Whilst this could also have been dealt with as a best efforts violation, in the assessment of the Panel there was sufficient evidence for the PTIOs to conclude that a Corruption Offense *"may have been committed"*. On the test, a referral should have been made.

126. Again, the PTIOs had their reasons for not referring the case.

127. The International Governing Bodies have informed the Panel that "*no betting was involved on the match in question and therefore* [player name redacted] *would have had to conspire with himself in order to contrive the outcome of the match*". The International Governing Bodies add that "*the ATP had already dealt with this matter under its Code of Conduct and* [player name redacted] *had been withdrawn from the event*". The Panel does not take the view that the concept of a player contriving a match requires there to have been betting involved. Nor does the Panel consider that the concept of a player contriving a match requires him or her to "*conspire*" with anyone else. In the view of the Panel, a player contrives the result of a match by losing it deliberately, irrespective of motive, and irrespective of whether anyone else knows that he or she will do so.

128. In the present view of the Panel, the decision on Case 3 was inappropriate again simply because the TACP did not give the PTIOs authority to use prosecutorial discretion. Nonetheless, because the purported application of disciplinary prosecutorial discretion might, had it existed, have warranted not bringing proceedings, in the present view of the Panel, the PTIOs' decision was not an attempt to cover up a breach of integrity or to protect a player.

The proper course under the test as it then was, in the absence of a disciplinary prosecutorial discretion, in the three non-referral cases

129. The Panel recognises that each of these cases was viewed by the PTIOs as a minor offence, with countervailing considerations and with mitigating factors arising in Case 1 in particular. If the PTIOs had been afforded broad prosecutorial discretion under the TACP, then it might have been open to them to exercise that discretion by deciding that none of the cases should be disciplinarily prosecuted. However, that prosecutorial discretion did not exist under the TACP.

130. Nor was the TACP amended to provide for that discretion. Part of the reason for that, it presently seems to the Panel, may lie in the fact that the PTIOs, like the TIB, are not independent of the International Governing Bodies. Consequently, any test that includes such discretion might be regarded as inappropriate, as it might allow for disciplinary decisions that are, or appear to be, affected by that lack of independence. As a result, the PTIOs have used a low threshold for referrals, without discretion, and the adaptations that have been made moved towards making the threshold lower and lower, at least in the number of PTIOs that needed to consider it met for a case to be referred.

131. The consequence is that decisions taken (that might have been appropriate had the PTIOs been independent of the International Governing Bodies, and so been able to operate with discretion) were inappropriate, in the Panel's opinion, when made by non-independent PTIOs that did not enjoy that discretion.

72 Chapter 14, Section D.

132. In the present assessment of the Panel, the appropriate course under the test as it then was, without any provision for disciplinary prosecutorial discretion, would in each case have been to refer the matter to an AHO. In doing so it would have been open to the PTIOs to submit to the AHO that it accepted that (a) the breach in question was minor and (b) any sanction imposed should be lenient.

133. The International Governing Bodies informed the Panel that:

> *"As a general point, authority to determine whether a Covered Person has a case to answer lies with the PTIOs and not the TIU. As such, reports submitted to the PTIOs by the TIU do not oblige the PTIOs to follow any conclusion or recommendation contained therein. Instead, the PTIOs form an independent judgement as to whether the evidence in a report meets the prevailing test for referring the matter to the AHO. For each of the estimated 50 reports submitted to the PTIOs, the PTIOs carefully considered the evidence before them before reaching a determination. The Governing Bodies are comforted that the Panel has concluded that '...there was no attempt by the PTIOs to cover up or conceal the above cases....' Nonetheless, the Governing Bodies and PTIOs recognise that the Panel takes a different view of whether the evidence for the three cases described above should have been referred to the AHO."*

134. The need to alter the present system (under which there is no disciplinary prosecutorial discretion, there is no independence of the PTIOs from the International Governing Bodies, and there was in the past the possibility for deadlock with the PTIOs) is addressed in Chapter 14.

The PTIOs' approach to other cases not referred to an AHO

135. In the present assessment of the Panel, the outcome reached in respect of the matters referred to in paragraphs 85-87, in which the TIU sought informal consultation with the PTIOs and the matters were then addressed by informal letters, was appropriate. In both instances, the course of action taken by the PTIOs was the one recommended by the TIU. Given the circumstances, the course recommended by the TIU was appropriate.

136. The first two individuals had pre-existing relationships with betting companies. Upon their becoming coaches they were informed that they needed to end those contracts, which they duly did.

137. The third individual had a contract with a company that was not involved in betting on tennis. Upon the company becoming involved in tennis the individual self-reported the matter to the TIU, took steps to mitigate the issue and did not renew the contract.

B ANTI-CORRUPTION HEARING OFFICERS (AHOS)

(1) PURPOSE OF AHOS

138. The PTIOs are required to refer a matter, and send the evidence, to an AHO after reaching a decision that a Corruption Offence may have been committed. The matter will then generally be required to proceed to a Hearing before the AHO[73]. The purpose of AHOs is therefore to act as the first instance decision maker in the TACP disciplinary process.

(2) ROLE OF AHOS

139. AHOs are responsible for:

139.1 determining whether Corruption Offenses have been committed, and

139.2 fixing the sanctions for any Corruption Offense found to have been committed[74].

140. Since 1 January 2017 (following amendments to the TACP), AHOs have also been responsible for determining whether a provisional suspension should be imposed prior to a player being charged with an offence. However, that role is only engaged once an application for provisional suspension has been filed by the PTIOs.

(3) APPOINTMENT AND SELECTION OF AHOS

Appointment to the list of AHOs

141. Authority for the appointment of AHOs is vested with the TIB[75].

142. Under the TACP, the TIB is required to appoint *"one or more independent AHOs"* for a fixed term of two years (renewable at the TIB's discretion)[76]. The TACP does not specify, and there does not appear to be any written protocol that specifies, how the appointment procedure should be conducted, including how an actual or potential AHO's independence should be assessed. Based on the contemporaneous documents, the task of identifying potential AHOs is performed by the PTIOs. Once a potential candidate has been identified, a proposal to appoint that candidate as an AHO is submitted by the PTIOs to the TIB for formal approval.

143. If an AHO *"becomes unable to serve"*, a new AHO may be appointed for a full two-year term. The TACP does not specify, and there does not appear to be any written protocol that specifies, the circumstances in which an AHO would become unable to serve.

144. In the context of a specific case, AHOs are entitled to request that they be recused and that a substitute or successor be appointed *"*[i]*f, for any reason, the AHO is or becomes unwilling or unable to hear the case"*[77].

145. A total of four AHOs have been appointed since the TACP's inception:

145.1 Richard McLaren – current – 20 final awards;

145.2 Jane Mulcahy QC – current – ten final awards;

145.3 Ian Mill QC – current – four final awards; and

145.4 Tim Kerr QC (as he then was) – former – two final awards.

73 TACP (2018), Section F.4.
74 TACP (2018), Section F.1.a.
75 TIB Charter, paragraph 2(b).
76 TACP (2018), Section F.1.a - b.
77 TACP (2018), Section G.1.e.

146. Nigel Willerton has informed the Panel that once the PTIOs have determined that a matter should proceed to an AHO, it is the TIU that instructs external lawyers to prepare the necessary documentation for the AHO hearing (notwithstanding that the PTIOs are nominally the claimant in the AHO proceedings)[78].

Selection of an AHO for a specific case

147. There is no formal process for the allocation of cases to a specific AHO. Based on the contemporaneous documents, the allocation of cases to a specific AHO appears to be based on an initial recommendation by the TIU to the PTIOs, following which the TIU/PTIOs' external lawyers will send the relevant material to the AHO to commence the proceedings.

(4) PROCEDURAL STEPS FOLLOWING THE COMMENCEMENT OF PROCEEDINGS

148. The procedural steps to be taken by an AHO following the formal commencement of proceedings (in other words after the issuance of a Notice) will depend upon the Covered Person's response to that Notice.

Non-contested charges and sanctions

149. The AHO is required to issue a decision confirming the commission of the Corruption Offense(s) alleged in the Notice, and order the imposition of sanctions, without an oral hearing if in his or her Response a Covered Person: (a) admits the Corruption Offense; and (b) accedes to the proposed sanctions contained in the Notice[79].

150. The AHO is required to perform the same steps if the Covered Person fails to respond within 14 business days after receipt of the Notice. In such circumstances, the Covered Person will be deemed to have: (a) waived entitlement to a hearing; (b) admitted the Corruption Offense charged; and, (c) acceded to the imposition of sanctions[80].

151. In either case, the PTIOs are permitted to file, and the AHO is required to consider, written submissions as to the appropriate sanctions to be imposed against the Covered Person[81].

152. There have been five cases in which a Covered Person both admitted the charge and acceded to the imposition of sanctions. There have been three cases in which the Covered Person did not enter a pleading and was deemed to have admitted a Corruption Offense and acceded to the imposition of sanctions.

Contested sanctions alone

153. If a Covered Person admits the charged Corruption Offense but disputes or seeks to mitigate the sanctions specified in the Notice, the Covered Person must (at the same time as filing the Response to the Notice) either: (a) request an oral hearing; or (b) file a written submission on the issue of sanction[82].

154. There have been 12 cases in which a Covered Person admitted the charge and contested the sanction. There has also has been one case in which a Covered Person admitted one charge, pleaded no contest on other charges and contested the sanction.

Hearing on sanctions

155. If a Covered Person requests a hearing on sanctions alone, then the usual hearing procedure (as set out at paragraph 161-165 below) will be followed.

156. However, there have been only two cases in which a Covered Person admitted a Corruption Offence and requested a hearing on sanctions.

78 Statement of Nigel Willerton (TIU).
79 TACP (2018), Section G.1.c.i.
80 TACP (2018), Section G.1.d.
81 TACP (2018), Section G.1.c.i. and Section G.1.d.
82 TACP (2018), Section G.1.c.iii.

Determination of sanctions "on the papers"

157. If a Covered Person does not request a hearing on sanctions, the AHO is required to issue a Decision, and order the imposition of sanction(s), after considering the Covered Person's written submissions (if any), together with any response submitted by the PTIOs.

158. There have been 11 cases in which a Covered Person admitted a Corruption Offence and requested that the issue of sanction be dealt with on the papers.

Contested charges and sanctions

159. If a Covered Person requests a hearing on the merits of the charges and on sanctions in his or her Response to the Notice, the TACP requires the procedure set out below to be followed by the appointed AHO[83]. As noted at paragraph 155 above, the same procedure also applies if a hearing is requested on sanctions only.

160. There have been 13 cases in which a Covered Person contested the charges (in full or in part) and contested the imposition of sanctions.

Pre-hearing procedure

161. Within 20 business days of the Covered Person's request for a hearing, the AHO is responsible for convening a meeting or telephone conference with the PTIOs and the Covered Person (and/or their respective legal representatives) to assert formal jurisdiction over the matter and to *"address any pre-hearing issues"*[84].

162. Non-attendance by the Covered Person at the pre-hearing meeting does not prevent the meeting from going ahead, providing *"proper notice of the meeting has been provided"*. The TACP does not expressly define what *"proper notice"* means in this context.

163. An AHO is required to take the following steps at the pre-hearing meeting[85]:

163.1 Determine a hearing date, not to be held within 20 business days of the pre-hearing meeting but to be *"commenced as soon as practicable after the Notice is sent, and ordinarily within ninety days of the date that the Covered Person requests a Hearing"*. The timetable is shortened to 60 days if the Covered Person is subject to a Provisional Suspension.

163.2 Establish a timetable to file and serve the following written submissions in advance of the hearing: Covered Person's Brief; PTIOs' Answer Brief; Covered Person's Reply Brief; and witness lists and copies of exhibits intended to be introduced at the Hearing (both parties).

163.3 Make any order the AHO deems appropriate in relation to the production of relevant documents or other materials between the parties.

83 TACP (2018), Section G.1.f.
84 ibid.
85 ibid.

Hearing procedure

164. For the purposes of the TACP, a *"Hearing"* means *"a hearing before an AHO in accordance with Section G* [TACP]*"*[86].

165. TACP (2018), Section G specifies that:

165.1 Hearings are conducted on a confidential basis[87] and may only be attended by the Covered Person[88] and the PTIOs, their legal representatives, and the TIB[89]. However, the TIB will publicly report the decision if the AHO finds that a Corruption Offence has been committed[90].

165.2 Hearings are held in either Miami, Florida (USA) or London (England), unless the AHO orders the hearing take place elsewhere for *"good cause"*. The TACP does not define *"good cause"* for this purpose[91].

165.3 The costs of obtaining legal representation are at the Covered Person's own expense[92].

165.4 The Covered Person may opt not to attend the hearing and to instead file a written submission. However, non-attendance after *"proper notice"* shall not prevent the hearing from being conducted in the Covered Person's absence (whether written submissions have been made on the Covered Person's behalf or not). Again, as stated in paragraph 162 above, the TACP does not define "*proper notice"* for this purpose[93].

165.5 The procedures followed at the Hearing are *"at the discretion of the AHO, provided that the Hearing shall be conducted in a fair manner with a reasonable opportunity for each party to present evidence (including the right to call and question witnesses), address the AHO and present his, her or its case"*[94].

165.6 The PTIOs are required to arrange for the hearing to be recorded or transcribed, and arrange for an interpreter if necessary, at the PTIOs' expense[95].

165.7 Witness testimony may be presented in person or by video conference[96].

Admissibility of evidence

166. The AHO is not bound by *"any jurisdiction's judicial rules governing the admissibility of evidence"* and is free to determine the admissibility of, and weight to be afforded to, evidence of an alleged Corruption Offence at the AHO's *"sole discretion"*[97].

Requests for further evidence/investigation

167. The AHO is permitted to request *"additional investigation be conducted into any matter reasonably related to the alleged Corruption Offence"* before the issuance of a Decision[98].

86 TACP (2018), Section B.12.
87 TACP (2018), Section G.2.a.
88 TACP (2018), Section G.2.b.
89 TACP (2018), Section G.2.f.
90 TACP (2018), Section G.4.d.
91 TACP (2018), Section G.2.a.
92 TACP (2018), Section G.2.b.
93 TACP (2018), Section G.2.b.
94 TACP (2018), Section G.2.c.
95 TACP (2018), Section G.2.d.
96 TACP (2018), Section G.2.e.
97 TACP (2018), Section G.3.c.
98 TACP (2018), Section G.1.i.

168. With respect to the procedure for additional investigation TACP (2018), Section G.1.i states that:

> *"If the AHO requests such an additional investigation, the TIU shall conduct the investigation in accordance with the AHO's directions and shall report the findings of that investigation to the AHO and the Covered Person implicated in the alleged Corruption Offense at least ten days prior to the Hearing. If the Covered Person wishes to object to, or raise any issues in connection with, such additional investigation, he or she may do so by written submission to the AHO."*

169. The TACP does not specify the procedure to be followed if additional investigation is requested after a hearing has taken place.

Burden of proof and standard of proof

170. The AHO is required to consider whether the evidence presented to him or her in respect of each alleged Corruption Offence detailed in the Notice has been proved by the PTIOs by a *"preponderance of the evidence"* (discussed further in paragraph 92 above).

Governing law

171. The TACP is governed by the laws of the State of Florida, USA[99].

(5) DECISION

172. After the parties' submissions have been made, the AHO is required to: (a) decide whether a Corruption Offence has been committed; and (b) determine the applicable sanction (having considered Section TACP (2018), Section H)[100].

Content of the Decision

173. The AHO's decision must be in writing and must include:

173.1 the AHO's finding in respect of each alleged Corruption Offense;

173.2 the sanctions applicable (if any); and

173.3 the Covered Person's rights of appeal pursuant to TACP (2018), Section I[101].

99 TACP (2018), Section K.3.
100 TACP (2018), Section G.4.a.
101 TACP (2018), Section G.4.b.

Timing and publication of the Decision

174. The AHO is not subject to an express deadline to issue a Decision. The TACP states only that Decisions shall be issued and sent to the parties *"as soon as possible after the conclusion of the Hearing"*[102].

175. If the AHO determines that a Corruption Offense has been committed, the TIB is required to "*publicly report the Decision, unless otherwise directed by any AHO*"[103]. Prior to October 2017:

175.1 33 prosecutions that reached an AHO had been described summarily in a press release on the TIU's website but in each instance the Decision document itself (redacted or otherwise) has not been published[104].

175.2 One successful prosecution (as described in paragraph 123 above) has not been reported publicly. The AHO considered that publication of the Covered Person's name would constitute excessive punishment for the admitted Corruption Offence. The TIB was thus directed by the AHO "*not to publish the name of the Covered Person if any media release is prepared*". Prior to the AHO's decision, the PTIOs and TIU debated whether details of a written reprimand should be published if the Covered Person's name was ordered to be kept confidential. There was disagreement and no resolution of the issue before the Decision was handed down. It is not apparent, from the contemporaneous documents, how the final decision not to publish any press release was reached.

176. In October 2017, the TIU stated an intention to publish, for the first time, "*the full AHO decision…in due course on the TIU Website*" in the case of Samuel Ribeiro Navarette. The TIU's press release noted that the "*Content may be redacted to maintain the confidentiality of witnesses or events that may be related to ongoing and associated cases*"[105]. The press release was subsequently updated to include the AHO decision (subject to minor redaction). The Panel also welcomes the TIU's publication of the redacted AHO decisions in the cases of *Navarette*[106] and *Gadomski (#2)*[107].

177. The outcome of any Decision to acquit is not required to be, and is not published. As noted at paragraph 175 above, the TIB's obligation to publish the Decision, under the TACP (2018), Section G.4.d, is limited to those cases in which "*the AHO determines that a Corruption Offense has been committed… unless otherwise directed by an AHO*". This is consistent with the broader approach of the TIU and the International Governing Bodies approved at the inaugural meeting of the TIB to "*make no comment on any investigations which might or might not be underway*" and instead to provide a *pro forma* holding statement "*as a standard response to queries from the media*" [108]. This approach has been justified on the basis that it preserves the confidentiality of AHO proceedings and the reputation of the Covered Person.

102 ibid.

103 TACP (2018), Section G.4.d.

104 This includes 32 successful prosecutions and one case (Garza) which succeeded before the AHO but was subsequently overturned on appeal to CAS.

105 TIU Press Release, 'Samuel Ribeiro Navarrete suspended for betting on tennis' (3 October 2017), available at: http://www.tennisintegrityunit.com/media-releases/samuel-ribeiro-navarrete-suspended-betting-tennis [accessed 9 April 2018].

106 Press Release, 'Samuel Ribeiro Navarrete suspended for betting on tennis' (TIU, 3 October 2017), available at: http://www.tennisintegrityunit.com/media-releases/samuel-ribeiro-navarrete-suspended-betting-tennis [accessed 9 April 2018].

107 TIU Press Release, 'Piotr Gadomski Anti-Corruption Hearing Officer Decision' (22 December 2017), available at: http://www.tennisintegrityunit.com/media-releases/piotr-gadomski-anti-corruption-hearing-officer-decision [accessed 9 April 2018].

108 TIB Meeting, Decision and Action Sheet, 3 July 2009, page 2.

(5) SANCTIONS FOR CORRUPTION OFFENCES

178. The TACP lists the range of sanctions available to an AHO upon a finding that a Corruption Offense has been committed. The range of sanctions potentially applicable is dependent upon: (a) the type of Corruption Offence committed; and (b) the type of Covered Person.

Players

179. The penalty for a Corruption Offence is determined by the AHO, and "*may include*" the following sanctions against a Player who has committed a Corruption Offense:

179.1 a fine of up to $250,000, plus an amount equal to the value of any winnings or other amounts received by such Covered Person in connection with any Corruption Offense;

179.2 ineligibility for participation in any event organised or sanctioned by any Governing Body for a period of up to three years; and

179.3 with respect to any violation of TACP (2018), Section D.1, clauses (d)-(j) and Section D.2. and Section F ineligibility from participation in any event organized or sanctioned by any Governing Body for a maximum period of permanent ineligibility[109].

180. In addition, any Player ruled ineligible is prohibited from *"participating in any Event... organised or sanction by any Governing Body"*. This also includes, among other things, a prohibition on: (a) receiving accreditation (or other form of access to controlled areas) to any competition or event organised by the International Governing Bodies; and (b) receiving ranking points for any competition played during the period of ineligibility[110].

181. As noted at paragraph 175.2 above, the Panel is aware of one case where, instead of any of the above sanctions, a Player received a written reprimand for an admitted Corruption Offense.

Related Persons or Tournament Support Persons

182. The Penalty for a Corruption Offence is determined by the AHO, and "*may include*" the following sanctions against a Related Person or a Tournament Support Person who has committed a Corruption Offence:

182.1 a fine of up to $250,000, plus an amount equal to the value of any winnings or other amounts received by such Covered Person in connection with any Corruption Offense;

182.2 suspension of credentials and access to any Event organized, sanctioned or recognised by any Governing Body for a period of not less than one year; and

182.3 with respect to any violation of TACP (2018), Section D.1.c-i, suspension of credentials and access to any Event organized, sanctioned or recognized by any Governing Body for a maximum period of permanent revocation of such credentials and access[111].

109 TACP (2018), Section H.1.a.
110 TACP (2018), Section H.1.d.
111 TACP (2018), Section H.1.b.

Substantial Assistance

183. As discussed in paragraphs 103-105 above, an AHO may reduce a period of ineligibility if a Covered Person has provided substantial assistance to the TIU or PTIOs.

No publication of reasons and consequent absence of AHO jurisprudence

184. Except for the cases of *Navarette* and *Gadomski (#2),* the reasons for each AHO Decision, and the outcomes of unpublished Decisions, have been kept confidential.

185. Whilst all previous AHO Decisions and the reasons contained in them will be known to the TIU and to the PTIOs, those reasons and the unpublished Decisions will not be known to a Covered Person who is charged under the TACP.

186. Each AHO will of course be aware of his or her own previous decisions but will not have access to the decisions reached by other AHOs that have not been published.

187. Accordingly, there is very little AHO jurisprudence that Covered Persons can rely on in argument or which AHOs can take into account to ensure consistency of decision making.

(6) DISCIPLINARY PROSECUTIONS UNDER THE TACP

188. Since 2009 there have been 37 disciplinary cases fully and finally determined by an AHO pursuant to the TACP[112], of which:

188.1 35 resulted in 'successful' prosecution[113];

188.2 one resulted in an acquittal by the AHO; and

188.3 one was overturned on appeal to CAS[114].

189. The Panel has obtained the full Decision in each case. However, the Panel notes that AHO proceedings are conducted on a confidential basis and that, until late 2017, none of the AHO decisions had been published. The Panel has therefore limited itself to describing the facts and circumstances of those cases that are a matter of public record and/or are not reasonably open to dispute (for example, players' gender, age, nationality and ranking).

190. The below table summarises the offences found proven in respect of each of the 35 successful disciplinary prosecutions, together with the name of the relevant AHO and the sanctions imposed.

112 See footnote 51 above.

113 A 'successful' prosecution means a case heard by an AHO that: (a) resulted in a conviction of the Covered Person; and (b) was not overturned on appeal to CAS. The cases of Daniel Koellerer (#1) and Manfred Nareyka are counted as separate successful prosecutions, notwithstanding that both cases were prosecuted and heard together.

114 AHO Decision in respect of Daniel Garza.

TABLE: SUMMARY OF 35 SUCCESSFUL DISCIPLINARY PROSECUTIONS UNDER THE TACP

	Covered Person	Nationality	AHO	TACP Breaches	Suspension	Fine
1	Ekaterina Bychkova	Russia	Richard McLaren	D.2. and E (2009)	30 days	$5,000
2	Daniel Koellerer #1	Austria	Tim Kerr QC	D.1.b. (2010)	3 months (suspended for 2 years)	€15,000
3	Manfred Nareyka	Austria	Tim Kerr QC	D.1.b. (2010)	12 month removal of accreditation and access to Events (suspended for 2 years)	-
4	Daniel Koellerer #2	Austria	Tim Kerr QC	D.1 (2009 and 2010)	Lifetime	$100,000
5	David Savic	Serbia	Richard McLaren	D.1.c., d., and f. (2010)	Lifetime	$100,000
6	Lucas Renard	Sweden	Richard McLaren	D.1.d. (2011)	6 months (4 months suspended)	$5,000
7	Sergei Krotiouk	Russia	Richard McLaren	D.1.d., e., and g. (2012 and 2013)	Lifetime	$60,000
8	Yannick Ebbinghaus	Netherlands	Richard McLaren	D.1.a. (2013)	6 months (3 months suspended)	$10,000
9	Claudia Coppola	Italy	Richard McLaren	D.1.d. and D.1.e. (2013)	180 Days	$4,000
10	Guillermo Olaso	Spain	Richard McLaren	D.1.c., and D.2.a.i. (2010)	5 years	$25,000
11	Andrey Kumantsov	Russia	Richard McLaren	D.1.d., e., and g. (2010, 2011 and 2013)	Lifetime	-
12	Morgan Lamri	France	Jane Mulcahy QC	D.1.a. (2012) and D.1.a., d., e. (2013)	Lifetime	-
13	Walter Trusendi	Italy	Jane Mulcahy QC	D.1.d. (2014)	6 Months	$5,000
14	Elie Rousset	France	Jane Mulcahy QC	D.1.d. (2014)	6 months (3 months suspended)	$5,000
15	Ivo Klec	Slovakia	Richard McLaren	F.2.c. (and by interpretation D.2.c.) (2015)	2 years	$10,000
16	Piotr Gadomski (#1)	Poland	Richard McLaren	D.1.d., e., f. and D.2.a.ii (2012)	7 years	$15,000
17	Arkadiusz Kocyla	Poland	Richard McLaren	D.1.d., 2.a.ii (2012) and D.2.a.ii (2013)	5 years	$15,000
18	Alexandros Jakupovic	Greece	Jane Mulcahy QC	D.1.d., e., g. (2014) and D.2.a.i (2013)	Lifetime	-
19	[Player name redacted]	Netherlands	Richard McLaren	D.1.a. (2015)	None – written reprimand	-
20	Jatuporn Nalamphun	Thailand	Ian Mill QC	D.1.a. and F.2.b. (2014 and 2015)	18 months	$5,000
21	Danail Tarpov	Bulgaria	Jane Mulcahy QC	D.1.b. (2013)	3 months (suspended for 2 years)	€5,000
22	Constant Lestienne	France	Jane Mulcahy QC	D.1.a. (2012, 2013 and 2015)	7 months	$10,000
23	Joshua Chetty	South Africa	Ian Mill QC	D.1.e., g. (2015)	Lifetime	-
24	Isaac Frost	Australia	Richard McLaren	F.2.c. (2013)	11 months	-
25	Brandon Walkin	Australia	Richard McLaren	D.1.d (2013)	6 months (suspended for 6 months)	-
26	Nick Lindahl	Australia	Richard McLaren	D.1.d., F.2.c. (2013)	7 years	$35,000
27	Alexandru-Daniel Carpen	Romania	Jane Mulcahy QC	D.1.d. (2013)	Lifetime	-
28	Mihaita Daniel Damian	Romania	Jane Mulcahy QC	D.1.a. (2012 and 2013)	12 months	€5,000
29	Calum Puttergill	Australia	Richard McLaren	D.1.a. (2012, 2013 and 2014)	6 months	$10,000
30	Konstantinos Mikos	Greece	Jane Mulcahy QC	D.1.a (2012 and 2013), D.1.d, D.1.e, D.1.g (2013)	Lifetime	-
31	Junn Mitsuhashi	Japan	Ian Mill QC	D.1.a, D.1.d, D.1.e, D.1.g, F.2.b (2015)	Lifetime	$50,000
32	Nikita Kryvonos	USA	Richard McLaren	D.1.d, D.2.c (2015)	10 years	$20,000
33	Marius Frosa	Romania	Ian Mill QC	D.1.a (2014, 2015)	8 months	$1,000
34	Samuel Ribeiro Navarette	Spain	Jane Mulcahy QC	D.1.a (2013)	8 months	$1,000
35	Piotr Gadomski (#2)	Poland	Richard McLaren	Breach of AHO Decision	18 months (suspended)	-

Charges dismissed

191. As noted at paragraph 188.2, since 2009 one disciplinary case has resulted in the acquittal of a Covered Person. The case involved a player ("Player E") allegedly offering to withdraw from a tournament so that another player ("Player F") could take Player E's place in the main draw (as a lucky loser) in return for a share of Player F's first round prize money.

192. It was alleged that Player E communicated the proposal to another player ("Player G") for the purposes of relaying the alleged offer to Player F (who ultimately refused the offer). Player G did not update Player E on the outcome of their conversation with Player F but did report their separate exchanges with Players E and F to a tournament supervisor. Nevertheless, Player G was accused of acting as a "*go-between*" and charged with breaching TACP (2016), Section D.1.d ("*No Covered Person shall, directly or indirectly, contrive or attempt to contrive the outcome or any other aspect of any Event*").

193. The case against Player G was dismissed. The AHO was satisfied that, on the specific facts, Player G was not part of a scheme or plot to attempt to contrive an aspect of an event; rather, the AHO concluded that Player G had "*unwittingly put him* [sic] *solely in the position of appearing to be a liaison person without thinking of the consequences*". The fact that Player G gave no update to Player E on Player F's response and that the exchanges were reported to a tournament supervisor were relevant considerations.

194. Disciplinary proceedings were brought against Player E in respect of this matter. However, Player E is not identified by the Panel in order to preserve Player G's confidentiality (to which he is entitled having been acquitted of the charges brought against him). Disciplinary proceedings were not brought against Player F.

Charges overturned on appeal

195. As noted at paragraph 188.3, since 2009 only one disciplinary case (Garza) has resulted in an AHO decision being overturned on appeal to CAS. The appeal proceedings in respect of this case are addressed further at 242.4 below.

(7) EVALUATION OF THE OPERATION OF THE AHO SYSTEM

196. The Panel addresses in Chapter 14 its recommendations for the future, including as to the AHO system. The evaluation set out below is limited to the way the AHO system has operated to date.

197. In the Panel's present view, the AHO system has broadly operated effectively and appropriately since 2009, but has scope for improvement.

Appointment of individuals as AHOs and selection of one of them to sit in a specific case

198. All four of the individuals appointed to serve as AHOs have considerable relevant experience. The choice of these individuals was appropriate, both in terms of appointment to serve on the AHO list, and as far as the Panel can see, in terms of which one of them was selected on any given occasion to sit in a specific case. There can be no doubt as to their actual independence and impartiality or as to their ability to deal with the cases brought before them.

199. That does not mean to say, however, that the method of AHOs' appointment, and reappointment, to the list, or the method of their selection for a specific case, is necessarily appropriate or cannot be improved. In the Panel's present view, neither method is ideal, and as dealt with in Chapter 14, both should be changed for the future out of an abundance of caution. This is because the PTIOs as disciplinary prosecutor have some influence over the appointment and reappointment of the AHOs to the list by the TIB, which risks the appearance that a candidate perceived as favourable to the tennis authorities might be appointed, or that one perceived as unfavourable might not be reappointed. Similarly, it appears to the Panel that the TIU and the PTIOs have a role in the selection of the particular AHO for a specific case, which also risks an appearance that the selection might be based on a perception that one was more favourable than another to the tennis authorities. These risks as to the potential appearance of impropriety should be precluded for the future.

200. The Panel would also observe that a group of three active AHOs is quite limited. As a consequence, each of the AHOs has heard multiple cases. This risks the appearance that they might begin to favour the tennis authorities. The Panel's assessment of this issue is also addressed in Chapter 14[115].

The PTIOs' and TIU's conduct of proceedings before AHOs

201. The PTIOs and the TIU have fully pursued each case that has been referred to an AHO. Considerable time and resources have been spent in preparing the cases to be submitted to AHOs. The PTIOs and the TIU have plainly had a very good rate of success on the cases that they have brought.

Legal representation

202. As set out at paragraphs 90 above, there is high incidence of self-representation by Covered Persons in AHO proceedings. The Panel is concerned that Covered Persons regularly opt to self-represent or appear not to have access to quality legal representation with familiarity of AHO proceedings (including the jurisprudence of previous AHO decisions). This places Covered Persons at a disadvantage to the PTIOs, who benefit from access to all AHO decisions and consistency of legal representation.

203. The Panel is also concerned that the lack of quality legal representation for Covered Persons places undue burden on AHOs and risks compromising their independence (at least as a matter of perception, if not in fact). Specifically, self-represented Covered Persons require greater guidance and assistance from the AHO with respect to interpretation of the TACP and to the procedural steps involved. The Panel note, however, that it has seen no evidence to suggest that AHOs have acted improperly when providing such guidance.

204. The Panel's recommendations with respect to Covered Persons' access to independent and cost-appropriate legal advice is set out in Chapter 14.

Transparency

205. The need for greater transparency in the AHO system is dealt with in Chapter 14[116].

Procedural and evidential aspects

206. The need for procedural and evidential changes, including as to the need to be able to add evidence after proceedings have commenced, is dealt with in Chapter 14[117].

115 See Chapter 14, Section D.

116 See Chapter 14, Section D.

117 See Chapter 14, Section D.

C COURT OF ARBITRATION FOR SPORT (CAS)

(1) MANDATE OF CAS

207. The Court of Arbitration for Sport (also known as the Tribunal Arbitral du Sport) is an independent arbitral body seated in Lausanne, Switzerland.

208. International Federations[118] and National Olympic Committees (which include national federations affiliated with International Federations[119]) are required to conform to the Olympic Charter and the World Anti-Doping Code – which require the submission of certain disputes to CAS. Accordingly, the ITF (in its capacity as the International Federation for tennis) and its national federations (as members of National Olympic Committees) are required to refer disputes in connection with the following to CAS: (a) decisions of the IOC; (b) the Olympic Games[120]; and (c) doping.

209. In respect of integrity matters, the International Governing Bodies have decided that there should be an appeal to CAS from the decision of the AHO.

(2) CAS JURISDICTION UNDER THE TACP

210. The TACP grants CAS exclusive jurisdiction to determine certain appeals:

> *"Any Decision (i) that a Corruption Offense has been committed, (ii) that no Corruption Offense has been committed, (iii) imposing sanctions for a Corruption Offense, or (iv) that the AHO lacks jurisdiction to rule on an alleged Corruption Offense or its sanctions, may be appealed exclusively to CAS in accordance with CAS' Code of Sports-Related Arbitration and the special provisions applicable to the Appeal Arbitration Proceedings, by either the Covered Person who is the subject of the Decision being appealed, or the TIB"*[121].

211. Accordingly, an appeal against an AHO's Decision falls to be remitted to CAS (the Appeals Division) with the proceedings to be conducted in accordance with the rules of the Code of Sports-Related Arbitration[122].

212. The TACP deadline for remitting an appeal to CAS is 20 days from the date of receipt by the appellant of the challenged AHO Decision[123]. The AHO Decision will remain in full force and effect while under appeal, unless CAS orders otherwise[124].

(3) LEGAL STATUS OF CAS AWARDS

213. The TACP provides that no further appeal is permissible after CAS appeal proceedings have been concluded:

> *"The decision of CAS shall be final, non-reviewable, non-appealable and enforceable. No claim, arbitration, lawsuit or litigation concerning the dispute shall be brought in any other court or tribunal"*[125].

214. The *"final and binding"* nature of any CAS award does not preclude the supervisory review of the Swiss Federal Tribunal ("SFT") provided for by Swiss Law, which applies because CAS' seat is in Switzerland[126]. The potential grounds of review of a CAS award are exhaustively listed in the Swiss Public International Law Act ("PILA") and are construed narrowly by the SFT. The grounds relate primarily to procedure and public policy, and not to the substance of the dispute.

215. No CAS award in respect of the TACP has been successfully appealed to the SFT.

118 IOC Olympic Charter, Section 25.
119 IOC Olympic Charter, Section 25.
120 IOC Olympic Charter, Section 61.
121 TACP (2018), Section I.1.
122 Code of Sports-Related Arbitration (in force from 1 January 2017), R59.
123 TACP (2018), Section I.3.
124 TACP (2018), Section I.2.
125 TACP (2018), Section I.4.
126 TACP (2018), Section I.2.

(4) NATURE OF APPEALS BEFORE CAS

216. Under the Code of Sports-Related Arbitration, appeals are heard as a *de novo* reconsideration of the charge, in other words from the start again with the sports governing body retaining the burden of proof[127], as opposed to being a supervisory examination of the safety of the first instance decision. This approach is taken by CAS for two reasons: first, because of the variable nature of the processes by which the first instance decisions that come before it are reached; and second, in order to preclude the necessity for detailed examination of procedural complaints about the process below. By reaching a fresh decision, CAS renders such complaints largely moot and irrelevant.

217. Concerns have been expressed to the Panel regarding the impact of CAS's *de novo* approach in the context of the TACP, which as described above[128], already provides for a very full first instance process before independent AHOs:

217.1 First, because the charge must be proved again from the start, the same witnesses as appeared before the AHO must be persuaded to attend and to give their evidence all over again.

217.2 Second, the *de novo* nature of the appeal means that a full case need not be run by Covered Persons at the outset, in the knowledge that there will be a second opportunity to do so. In 2013, a provision was added to the CAS Code with the intention of heading off such tactics, but the success of that provision is far from clear[129].

217.3 Third, the need to run the entire case twice greatly increases the time and cost of disciplinary actions[130].

(5) APPEALS HEARD BY CAS

218. In respect of the confidentiality of cases heard by CAS, the Code of Sports-Related Arbitration provides that:

"*The award, a summary and/or a press release setting forth the results of the proceedings shall be made public by CAS, unless both parties agree that they should remain confidential. In any event, the other elements of the case record shall remain confidential*"[131].

Published CAS awards

219. CAS has published its final award in respect of four appeals based on breaches of the TACP. In each case certain sensitive information (for example, personal information with respect to witnesses) was redacted by CAS.

CAS 2011/A/2490 – Daniel Koellerer v ATP, WTA, ITF & GSC[132]

220. On 24 January 2011 Koellerer was charged with having "*allegedly made invitations to other tennis players to fix matches five times*" in the period 2009 to 2010[133]. Koellerer was charged with breaching TACP (2010), Sections D.1.c, d and f.

221. The AHO, Tim Kerr QC, found three of the five counts had been proved and imposed a sanction of lifetime ineligibility and a fine of $100,000.

222. Koellerer appealed against: (a) the AHO's factual findings (in other words that the three charges had been proven); and, in the alternative, (b) the severity of the sanctions imposed.

127 Code of Sports-Related Arbitration, R57: "The Panel has full power to review the facts and the law. It may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance. The President of the Panel may request communication of the file of the federation, association or sports-related body, whose decision is the subject of the appeal. Upon transfer of the CAS file to the Panel, the President of the Panel shall issue directions in connection with the hearing for the examination of the parties, the witnesses and the experts, as well as for the oral arguments".

128 Section B, paragraphs 138-206.

129 Code of Sports-Related Arbitration 2013, Article R75: "...The Panel has discretion to exclude evidence presented by the parties if it was available to them or could reasonably have been discovered by them before the challenged decision was rendered", available at: http://www.tas-cas.org/fileadmin/user_upload/CAS_Code_2013_en.pdf [accessed 9 April 2018].

130 Statement of Stuart Miller (ITF).

131 Code of Sports-Related Arbitration (in force from 1 January 2017), R59.

132 Full award available at: http://www.tas-cas.org/fileadmin/user_upload/20120426161618925.pdf [accessed 9 April 2018].

133 CAS 2011/A/2490 (Daniel Koellerer v ATP, WTA, ITF & GSC), paragraph 4.

223. In its final award dated 23 March 2012, CAS determined (among other things):

223.1 The applicable standard of proof is *"a preponderance of the evidence"*.

223.2 The standard of proof clause was not void for unconscionability.

223.3 Applying the standard of the preponderance of the evidence, CAS was satisfied that Koellerer had violated the TACP and committed the corruption offences of attempted match-fixing. CAS affirmed the AHO decision and upheld the findings on all three counts.

223.4 CAS, however, concluded that the imposition of a lifetime ban together with a financial penalty was disproportionate:

> *"[127] ...taking into account the particular circumstances of the current case, the Panel considers that it would be inappropriate to impose a financial penalty in addition to the lifetime ban, as the sanction of permanent ineligibility provides for the deterrence that corruption offences call for...*
> *[129] The lifetime ban also has a considerable financial effect on the Player because it significantly impacts the Players future earnings by eliminating tennis as a source of revenue."*

224. CAS therefore upheld Koellerer's lifetime ban but set aside the $100,000 fine. The parties were required to bear their own costs of the proceedings.

CAS 2011/A/2621 – David Savic v PTIOs[134]

225. On 24 May 2011, Savic was charged with breaching TACP (2010), Sections D.1.c, d and f. Savic offered $30,000 to another player to lose the first set of his upcoming match during a telephone call and made a similar request to the same player via text message two weeks later. Savic's offers were rebuked by the player.

226. The AHO, Richard McLaren, found the charges had been proved and imposed a lifetime ban and a fine of $100,000.

227. Savic appealed against: (a) the AHO's factual findings, claiming, among other things, that he had not placed the relevant calls or sent the relevant message; and, in the alternative, (b) the severity of the sanctions imposed.

228. In its final award dated 5 September 2012, CAS determined (among other things):

228.1 The facts had been proved not only by a preponderance of the evidence, but also to CAS' comfortable satisfaction (perceived by CAS to be a higher standard of proof than required under TACP, Section G.3).

228.2 The sanction of a lifetime ban did not violate public policy and was not disproportionate to the offences committed.

228.3 The position adopted by CAS in the *Koellerer* case with respect to the additional financial penalty was persuasive.

229. CAS therefore upheld Savic's lifetime ban, but set aside the $100,000 fine. Savic was ordered to pay a contribution of CHF 3,000 to the legal costs of the PTIOs.

230. As set out in paragraph 105 above, the terms of the sanctions imposed against Savic were subsequently varied by AHO Richard McLaren following Savic's provision of substantial assistance to the TIU.

134 Full award available at: http://www.centrostudisport.it/PDF/TAS_CAS_ULTIMO/121.pdf [last accessed 23 March 2018].

CAS 2014/A/3467 – Guillermo Olaso de la Rica v TIU[135]

231. On 29 August 2013 Olaso was charged with breaching TACP (2010), Sections D.1.c. and D.2.a.i. The TIU received a Match Alert with respect to betting on three matches as a triple combination (in other words betting that heavily favoured the lesser ranked player to win in all three matches). Olaso's match, which he lost, was the final leg of the triple combination.

232. The AHO, Richard McLaren, found the charges had been proved and imposed a five-year ban and a fine of $25,000.

233. Olaso appealed the decision:

233.1 on procedural grounds, alleging (a) lack of jurisdiction and/or impartiality at the first-instance hearing; (b) inadmissibility of evidence on grounds that due process had not been followed (Olaso had not been notified of a right to remain silent); (c) inadmissibility of evidence on grounds that a chain of custody was deficient; (d) statutory time-bar; and (e) lack of knowledge as to the relevant rules;

233.2 on substantive grounds, alleging that the TIU had not proved that he deliberately lost his match;

233.3 on grounds that he had a legitimate defence pursuant to TACP (2010) Section E.4, based on his claim that his actions had been compelled by threats from a criminal organisation; and

233.4 in the alternative, on the grounds that the sanctions were disproportionate.

234. In its final award dated 30 September 2014, CAS determined:

234.1 Olaso had not been prejudiced by the conduct of the first-instance hearing (particularly in light of Olaso's agreement to be bound by the terms of the TACP) and, in any event, the *de novo* nature of CAS proceedings cured any procedural defect from first-instance hearing. There was thus no need to examine further the jurisdiction or impartiality of the AHO.

234.2 Olaso had validly waived any right to remain silent by accepting the terms of the TACP (which included an absolute requirement to cooperate with any TIU investigation).

234.3 The chain of custody in respect of a laptop containing relevant Skype messages, and the transcripts of those messages, had been established. Further, at no stage did Olaso deny the accuracy of the messages read to him during a TIU interview. The evidence was admissible and had probative value to the proceedings.

234.4 The charges were not time-barred pursuant to TACP (2010), Section J.1 because had been brought within eight years of the alleged offence.

234.5 Reporting obligations under the TACP were well-known to Olaso (in other words he was well educated about the contents of the TACP by 2010) and his failure to report could not be excused.

234.6 The evidence established the existence of an agreement for Olaso to lose his match, which he did willingly.

234.7 No valid defence was established under TACP (2010), Section E.4. Olaso did not promptly report the alleged threatening behaviour or demonstrate that his actions had been the result of an honest or reasonable belief of a significant threat to the life or safety of himself or his family. Notably, the agreement had been reached before the alleged threat was made.

135 Full award available at: http://www.tas-cas.org/fileadmin/user_upload/Award_3467__FINAL__internet.pdf [accessed 9 April 2018].

234.8 Sanctions imposed by a disciplinary body such as the AHO in the exercise of discretion should be reviewed only when the sanction is *"evidently and grossly disproportionate to the offense"*. This standard was not met for Olaso's appeal but, in any event, the first-instance sanctions were proportionate to the level of Olaso's guilt and the gravity of his wrongdoing. Olaso deliberately engaged in what he knew to be a violation of the TACP (2010).

235. CAS upheld Olaso's five-year ban and $25,000 fine. CAS's award in respect of costs was not made public.

CAS 2016/A/4956 – PTIOs v Nick Lindahl[136]

236. On 2 September 2016, Lindahl was charged with breaching TACP (2013), Sections D.1.d and F.2.c. Lindahl admitted to the TIU that he had told another player that he would deliberately lose his match against Andrew Corbitt at the Australian Futures F6 Tournament at Toowoomba, Australia (Corbitt won the match 6-3, 6-2). Lindahl also refused to provide his phone to the TIU and was subject to a period of ineligibility ordered by the AHO, Richard McLaren, until he complied with the TIU's request for information.

237. Lindahl admitted the charges and the AHO invited submissions on sanctions. The PTIOs sought a sanction of permanent ineligibility and a fine of $100,000 or more. Lindahl did not file submissions on sanction.

238. The AHO ordered a sanction of seven years' ineligibility and a fine of $35,000.

239. The PTIOs appealed the decision on grounds that the sanction was insufficiently severe, considering: (a) the factual circumstances; and, (b) the range of possible sanctions for the offences admitted (which were up to a period of permanent ineligibility and fine of $250,000). The PTIOs submitted that the AHO decision: "*is inconsistent with CAS decisions on point, is not proportionate and undermines the Governing Bodies', the PTIOs' and the TIU's efforts to eradicate corruption from professional tennis*"[137]. In his response submissions, Lindahl sought to have the fine set aside on grounds that it served as no additional punishment or deterrent and was not proportionate considering his financial position[138].

240. In its final decision dated 20 December 2017, CAS determined (amongst others):

240.1 Permanent ineligibility was not the only available sanction or even the starting point for a period of ineligibility under the TACP (2013). The AHO had discretion to fix the sanction deemed appropriate, subject to the principles of proportionality, punishment and deterrence.

240.2 The CAS Panel agreed with the decisions in *Koellerer*, *Savic* and *Jakupovic* that a severe sanction is required to punish and deter match-fixing but did not find that those cases were authoritative that a period of permanent ineligibility must be imposed (citing *Olaso* as an example of a case where permanent ineligibility was not imposed). Rather, the appropriate length of sanction should be determined on a case-by-case basis.

240.3 The AHO was "*best placed to give appropriate weight to all the evidence presented… CAS panels should ensure that the AHO considered all the relevant elements of each given case including factors presented to* [the AHO] *in connection with sanctioning. Other than that, the Panel should not replace its direction with that of the AHO unless the sanction is evidently grossly disproportionate to the offense*"[139].

240.4 The AHO had considered all the relevant facts and circumstances in deciding the sanctions to be imposed.

240.5 The length of suspension was within the realm of the AHO's discretion and was not disproportionate.

240.6 The level of financial penalty was within the realm of the AHO's discretion and was not disproportionate.

136 Full award available at: http://captivatelegalsports.com/wp-content/uploads/2018/02/PTIOs-v-Nick-Lindahl-CAS-20-Dec-2017.pdf [accessed 9 April 2018].

137 CAS 2017/A/4956 (PTIOs v Nick Lindahl), paragraph 56.

138 ibid, paragraph 58.

139 ibid, paragraph 78.

An earlier decision of an Australian Criminal Court to convict Lindahl of criminal charges (related to the same factual circumstances) was relevant but "*should not serve as guidance to the decision of the AHO or* [CAS]. *Criminal proceedings serve a completely different purpose and their focus and scale of penalties differ. Indeed, many if not most violations of sporting rules do not even constitute criminal offences. This is not a limitation on the ability of sporting tribunals to impose fines and penalties on sports people and others*"[140].

241. CAS denied the PTIOs' appeal and upheld Lindahl's seven-year period of ineligibility and $35,000 fine. The PTIOs were ordered to contribute CHF 2,000 to Lindahl's costs.

Unpublished CAS awards

242. CAS has heard and finally determined a further four appeals under the TACP which, as of the date of writing, have not been published.

242.1 CAS 2015/A/4231 – *Piotr Gadomski v Professional Tennis Integrity Officers*. In January 2017, the TIU announced that Gadomski's appeal (in respect of the first successful disciplinary case brought against him) had been unsuccessful[141].

242.2 CAS 2016/A/4338 – *Alexandros Jakupovic v Professional Tennis Integrity Officers*. In January 2017, the TIU announced that Jakupovic's appeal had been unsuccessful and that CAS imposed a costs order of CHF 5,000[142].

242.3 CAS 2016/A/4644 – *Guillermo Olaso v Professional Tennis Integrity Officers*. The matter, which was different to the appeal proceedings noted at paragraphs 231-235 above, was not reported by the TIU.

242.4 CAS 2016/A/4860 – *Daniel Garza v Professional Tennis Integrity Officers*. In April 2017, the TIU announced that Garza's appeal had been upheld and that he was eligible to resume playing professional tennis with immediate effect[143].

Discontinued CAS appeals

243. One CAS appeal was commenced but subsequently withdrawn before a hearing, following a confidential settlement between the parties.

140 ibid, paragraph 105.

141 Tennis Integrity Unit Annual Review 2016, 11 January 2017, available at: http://www.tennisintegrityunit.com/annual-review/2016/ [accessed 9 April 2018].

142 Tennis Integrity Unit Annual Review 2016, 11 January 2017, available at: http://www.tennisintegrityunit.com/annual-review/2016/ [accessed 9 April 2018].

143 TIU Press Release, 'CAS upholds Daniel Garza Appeal' (7 April 2017), available at: http://www.tennisintegrityunit.com/media-releases/cas-upholds-daniel-garza-appeal [accessed 9 April 2018].

(5) EVALUATION OF THE CONDUCT OF APPEALS TO CAS

244. The Panel addresses in Chapter 14 its recommendations for the future, including as to whether the current CAS appeal route under the TACP should continue under all circumstances. The evaluation set out below is limited to the way the appeals heard by CAS have been conducted.

245. Generally, in the present view of the Panel, the PTIOs and TIU have acted effectively and appropriately in responding to the appeals brought before CAS. Considerable time and resources have been spent in preparing the cases submitted to CAS, and there has been a good success rate on the appeals.

246. In addition, in the present view of the Panel, the PTIOs and TIU acted appropriately in reaching an agreement with the player that brought the appeal referred to in paragraph 243 above.

PART FOUR: INTEGRITY EDUCATION

1. In this fourth part of Chapter 10, the Independent Review Panel (the "Panel") addresses the TIU's educational programmes in the current system for the protection of integrity in tennis, and their development and operation since 2009[1]. The Panel also addresses the actions of the International Governing Bodies and selected national federations to provide integrity education to their respective players[2].

2. The Panel examines in relation to the TIU: (a) the TIPP, (b) other educational programmes administered by the TIU, (c) player feedback on the TIU's educational program and (d) the role of the TIU's new education manager.

3. Pursuant to the Terms of Reference, the Panel addresses whether these matters were dealt with effectively and appropriately. The Panel identifies below the relevant evidence it has received, including witness statements and contemporaneous documents, and sets out its present[3] opinion as to the effectiveness and appropriateness of the TIU's integrity education, based on the evidence of the contemporaneous facts and circumstances.

Q 10.7 Are there other matters of factual investigation or evaluation in relation to the operation of integrity education since 2009 and the process by which it has developed to its current state as addressed below that are relevant to the Independent Review of Integrity in Tennis and that should be addressed in the body of the Final Report, and if so which, and why?

Q 10.8 Are there any aspects of the Panel's provisional conclusions in relation to the operation of integrity education since 2009 and the process by which it has developed to its current state that are incorrect; and if so, which, and why?

1 Section A below.

2 Section B below.

3 Pending the consultation process between Interim and Final Reports.

A INTEGRITY EDUCATION BY THE TIU

(1) TENNIS INTEGRITY PROTECTION PROGRAMME (TIPP)

4. The Tennis Integrity Protection Programme, or TIPP, is the TIU's primary integrity educational programme. Launched in 2011, the TIPP is an online educational programme that all professional players who compete at ITF, ATP, WTA, or Grand Slam events must complete. When it was originally launched, the TIPP was not compulsory. In 2014, however, the TIU made the completion of the TIPP a condition of registering for tournaments, although each player had to complete the TIPP just once in his or her career. Beginning in 2017, players must complete the TIPP every two years[4]. Players are prompted to complete the TIPP when they log into the PlayerZone (ATP, WTA) or IPIN (ITF) intranet portals. A player cannot register for tournaments until the programme has been completed[5]. The TIPP is offered in six languages: English, Spanish, French, Italian, Russian and Chinese.

5. Since the TIPP became mandatory for players in 2014, over 25,000 players have completed the programme.

6. Before 2017, the TIPP consisted of five short video "chapters". The five video chapters told a narrative story of four main characters and covered match-fixing, release of inside information, blackmail and gambling on tennis. Players watched each video chapter and then were required to answer a question about that chapter before advancing to the next one. Each video was under three minutes. The programme concluded with a short statement from David Savic, who discussed the toll of the lifetime ban he received for match-fixing in tennis. The first version of the TIPP was developed in conjunction with the international governing bodies which, according to TIU Director of Integrity Nigel Willerton, provided sport-specific input and helped to ensure the messaging was appropriate for players[6].

7. The TIU updated the TIPP in 2017. The current version of the TIPP is now organised into three subject-matter modules: match-fixing, social media and betting. In each module, the player is provided information about integrity-related requirements, quizzed about the information, and then presented with a first-person account of an anonymous player who was punished for violating those requirements. Among other key points, the TIPP modules advise players that (a) a player who fails to report corrupt activity can be penalised under the TACP as if the player had committed the Corruption Offense; (b) any agreement to alter the score or outcome of a match for benefit is a Corruption Offense under the TACP; (c) the TACP prohibits players and members of a player's family and entourage from betting on any professional tennis match; (d) passing non-public information to gamblers – such as confidential information about a player's fitness – is punishable by a fine or suspension under the TACP; and (e) the failure to report a corrupt approach, which are often made through social media, is itself an offence under the TACP[7].

8. Mr Willerton informed the Panel that the TIU updated the TIPP to ensure that it remained relevant and addressed the most pressing issues in the contemporary integrity environment. In particular, the TIU was concerned that the past TIPP did not address betting or social media[8]. The TIU also adjusted the TIPP technology so that it would be accessible on current mobile devices[9].

9. According to Mr Willerton, in preparing the current TIPP, the TIU consulted a working group of senior managers from the International Governing Bodies who have been involved with player education and welfare issues. In addition to a team of digital consultants, this working group included seven individuals: Ross Hutchins, Mario Vergara, and Joshua Weber from the ATP; Tom Livengood and Danny Champagne from the WTA; Jackie Nesbitt and Matt Pemble from the

4 Response of Nigel Willerton (TIU) to the Panel's Questions About Integrity Education.

5 Tennis Integrity Unit, http://www.integrityprotectionprogramme.com [accessed 9 April 2018].

6 Response of Nigel Willerton (TIU) to the Panel's Questions About Integrity Education.

7 Tennis Integrity Unit, http://www.integrityprotectionprogramme.com/login/html [accessed 9 April 2018].

8 Response of Nigel Willerton (TIU) to the Panel's Questions About Integrity Education.

9 ibid.

ITF; and Katie Wright from the Grand Slam Board. As part of the updating process, the working group met four times. The working group also viewed several different integrity education models from other sports, including football and cricket. Based on these models – and input from the team of digital consultants – the working group decided that an animated programme structured with easily replaceable modules was the best option for the new TIPP.[10]

(2) OTHER EDUCATIONAL PROGRAMMES ADMINISTERED BY THE TIU

10. In addition to the TIPP, the TIU administered several other educational programmes during the period 2013 to present.

Mobile App

11. In August 2016, the TIU introduced a mobile phone and tablet app for players, although anyone can download the app from the Apple or Android app store for free.

12. This mobile app includes a complete version of the TACP and ten "pro tips" – which remind players of important TACP prohibitions and obligations. The app also has a tennis newsfeed, which provides integrity-related and general news about tennis, and a form through which individuals can directly report information to the TIU.

13. Mr Willerton gave evidence that the TIU decided to develop a mobile app because smart phones are the most commonly used form of communication among players. Accordingly, the app provides a direct link to players who seek educational information or wish to report confidential information about corruption[11].

14. In total, between August 2016 and February 2017, there have been over 1,400 downloads of the app on mobile devices[12]. Mr Willerton informed the Panel that the TIU is pleased with the number of downloads and views the mobile app as an essential educational tool[13].

15. The TIU has no immediate plans to update the mobile app. But, according to Mr Willerton, the mobile app, like the TIPP, will be reviewed on a regular basis and updated as appropriate[14].

Integrity Presentations by the TIU

16. The TIU gives presentations on integrity issues to players and officials at select events. Largely similar in content, these presentations introduce players and officials to the role of the TIU, the scope of betting on tennis at even the lowest levels of the sport, the prohibitions and obligations under the TACP, the potential sanctions for violations of the TACP and real-world tactics employed by would-be corruptors. For example, the TIU's latest presentation at ATP University in March 2017, cautioned players on "what to expect" from potential corruptors, including that they regularly approach players through social media and occasionally pose as one of the International Governing Bodies collecting information, and it included examples of both players who were sanctioned for failing to assist the TIU in an investigation and players who received lifetime bans for match-fixing[15].

10 ibid.

11 ibid.

12 Compiled Download Statistics, August 2016 to February 2017.

13 Response of Nigel Willerton (TIU) to the Panel's Questions About Integrity Education.

14 ibid.

15 TIU Presentation, "Don't Get in a Fix," March 2017 ATP University, Presented by Dee Bain.

17. As it stands:

17.1 The TIU gives regular presentations to ATP and WTA players who enter the top 200. This includes a regular presentation at ATP University in Miami and London[16], at which attendance is mandatory for all new entrants into the top 200[17]. Approximately 15 to 20 players attend each ATP University presentation. In the WTA, the player orientation system also includes one-on-one sessions for individual players on anti-corruption. These sessions include a brief overview of the TACP, advice on social media and a warning about corrupt approaches. Approximately 20 to 30 players receive this in-person training through the WTA every year.

17.2 The TIU gives presentations to the junior forums held at Grand Slams, including, in the past, at the Australian Open, Wimbledon, and the US Open[18]. The TIU has also given presentations at the WTA's Rising Stars Invitational in Singapore[19].

17.3 The TIU also presents to officials at Grand Slams[20]. For example, in 2016, the TIU gave presentations to all the officials, including line judges and umpires, at Wimbledon and the US Open, which amounted to approximately 350 people at each location[21].

17.4 Finally, the TIU makes similar presentations to the tournament directors who attend certain events, such as at the 2015 Monte Carlo Europe Tournament Directors meeting[22] and the 2016 Tennis Security Forums[23].

Educational Videos

18. Recently, the TIU has helped produce two integrity education videos, one for ITF officials and another for players.

19. The player video is approximately five minutes and is broken into five segments. In the first and longest segment, David Savic, as in the TIPP, discusses the toll of the lifetime ban he received for match fixing in tennis. Mr Willerton then gives a brief overview of the TIU and a warning about corrupt approaches. The video closes with separate messages from Andy Murray, Andrea Petkovic and Roger Federer about the importance of knowing the rules and reporting corrupt approaches to the TIU[24].

20. In 2017, the TIU also produced a video for officials that covers their responsibilities in preventing corruption. The officials video is approximately seven minutes long. It begins by explaining the TIU and the TACP. The video is then broken into four segments that highlight important rules and obligations: *"know the rules"*, *"be observant"*, *"report suspicions"*, and "*seek advice*". The video reminds officials that the code of conduct for officials governs their behaviour related to gambling and tennis. It also tells officials that reporting is confidential and anonymous and it directs officials to contact the TIU through its website with any information they may have. The video tells officials that the TIU offers a confidential advice service for officials and directs them to the TIU's website.

16 The ATP University is a three-day seminar that helps prepare young players for life on the tour.

17 Under the ATP Rules, all players must complete ATP University within one year of reaching the top 200. The ATP Official Rulebook, 2018, Section 1.11.

18 Response of Nigel Willerton (TIU) to the Panel's Questions About Integrity Education.

19 TIU Presentation, "Don't Get in a Fix," Nov. 19, 2014, WTA Finals Singapore, Presented by Dee Bain.

20 Response of Nigel Willerton (TIU) to the Panel's Questions About Integrity Education. The TIU also participates in sports industry forums, conferences, and seminars, where it also presents on corruption and gambling in tennis.

21 See TIU Presentation, "Don't Get in a Fix," US Open 2016, Presented by Jose De Freitas.

22 See TIU Presentation, Tournament Directors Europe 2015 Monte Carlo, Presented by Jose De Freitas.

23 Response of Nigel Willerton (TIU) to the Panel's Questions About Integrity Education.

24 ibid.

Wallet Cards

21. During the period 2013 to 2016, the TIU produced and distributed approximately 15,000 "wallet cards" per year to the national federations for further distribution to professional players.

22. These information sheets, which could be folded to fit in a wallet, contained questions and answers related to the prohibitions and obligations under the TACP, the text of the TACP, and information on how to report knowledge of violations of the TACP or corrupt approaches[25].

23. According to Mr Willerton, the wallet card programme has been discontinued because the mobile app provides a more flexible and direct route of reaching players[26].

(3) PLAYER FEEDBACK ON THE TIU'S EDUCATIONAL PROGRAMMES

24. The Panel solicited player feedback about the TIPP in two different ways: (1) as part of its player survey; and (2) during its interviews with players.

25. The player survey asked respondents to indicate if they agreed or disagreed with the following statement: "*The TIU does a good job educating players about integrity issues in tennis*". The responses to this question were positive: 16.7% of players strongly agreed and 43.4% agreed, while only 5.3% disagreed and 1.3% strongly disagreed. These percentages were relatively consistent across gender and tour level.

26. During its interviews with players, the Panel also asked probing questions about the TIPP and integrity education. Again, the players' views of integrity education were generally positive. Most players recalled viewing the TIPP when they registered for IPIN or ATP PlayerZone or attending a presentation by the TIU, if they had an opportunity to attend one. Many players also reported that this training provided sufficient education, particularly in light of the limited time and attention that players are likely to give it.

27. While players generally expressed satisfaction with the TIU's educational efforts, in the Panel's present view their comments during the interviews demonstrated that players too often lack a sufficient understanding of the TACP's most basic obligations and prohibitions and of the TIU's anti-corruption efforts. Indeed, players at some lower-level professional tournaments said that they would not report an approach by would-be corruptors to the TIU because they felt the information would not be useful to the TIU, they feared reporting information about corruptors who could retaliate against them, or they did not believe they had any obligation to report such information. For example:

    27.1 One player at an ATP Masters 1000 event stated that, while he had watched the mandatory education videos, he did not know what the TIU is.

    27.2 Another player at an ATP Masters 1000 event stated that he was not aware that a failure to report knowledge of a Corruption Offense could result in the imposition of sanctions on him for violating the TACP, and he believed that most other players were likewise unaware of this fact.

    27.3 A player at a WTA Tour event said that she "*did not really know much about* [integrity issues] *or what to do about integrity issues when she was at the ITF level*", and that her education came once she began playing at WTA Tournaments.

    27.4 Another player at a WTA Tour event said that if a corruptor approached her with an offer to contrive the results of a match, she did not know what she was obligated to do under the TACP. She speculated that, if she were approached, she would report that information to her physio or would keep the information to herself. She said she would be careful speaking to anyone she did not trust. The player also expressed that she believed there

25 ibid.
26 ibid.

were differing degrees of Corruption Offenses, with an effort to contrive the results of a Grand Slam match being more significant than an effort to contrive the first round of an ITF $25k tournament. In response to this comment, the TIU told the Panel[27] that "*the fact players might worry about retaliation highlights the difficulties faced by the TIU. Further, the fact the TIU receives reports from players despite these concerns should be taken as a positive example of the work the TIU is doing*". In addition, "*the TIU has also hired a person dedicated to education to build on the work it has already been doing within this area*".

27.5 A player at an ITF Futures event, in response to a question, said that he did not know whether he was prohibited from betting on another player's matches, and suggested that it would be beneficial to have greater instruction on his rights and duties as a professional player.

27.6 Another player at an ITF Futures event said that he believed he could bet on another player's tennis matches so long as the players were not "*ATP players with ranking*".

28. Players also identified methods to improve integrity and corruption education as part of the player survey and interviews. When asked about ways to improve education during the player interviews, players proposed more in-person training, with the use of real-life examples that are relatable to the players. Other players recommended greater in-person training for younger players at the lower levels of professional competition.

29. Likewise, in response to an open-ended question for comments in the player survey, several players suggested improvements that could be made to integrity education. A few respondents commented on the importance of educating younger players and their coaches and parents at the lowest levels of professional tennis. One respondent commented that the TIU should "[e]*ducate the whole tennis community from a young age – that includes teaching parents who … have young tennis players about match-fixing so that they can educate their children from a young age what is right and wrong*". Others commented that the TIU should make integrity education more engaging, for example by "*select*[ing] *a number of tournaments, particularly* [where] *there* [are] *more young players, to provide in locum training*". Another respondent suggested that "[c]*ounselling and guidance on career planning of professional tennis players should be organised*".

30. It is recognised by the Panel that the TIU states that these suggestions are ones that have "*already been identified*". Further, the TIU states[28] that the implementation of its education strategy "*was already in progress before the IRP* [this Review] *and will be implemented as a result of the recruitment process* [of the new Education Manager] *and subsequent sign off from TIB*".

(4) NEW ROLE OF THE TIU'S EDUCATION MANAGER

31. Prior to 2017, the TIU did not have any specialised educational staff. Rather, the Director of Integrity and the investigators were responsible for giving in-person presentations and administering the TIU's other educational programmes. The TIU told[29] the Panel that "*all the TIU staff are well versed in giving presentations and educating others. Two of the TIU staff are in fact qualified trainers*".

32. In June 2017, Matthew Perry assumed the new role of Education Manager at the TIU. According to Mr Willerton, the TIU decided to appoint a specialist because of its increasing investigative caseload and the introduction of the new TIPP[30].

27 Response of the TIU to Notification given under paragraph 21 ToR.

28 ibid.

29 ibid.

30 Response of Nigel Willerton (TIU) to the Panel's Questions About Integrity Education.

33. The selection process took several months. In October 2016, the TIU posted a job listing that it had developed with support from the ITF[31]. After conducting initial interviews with four candidates, two finalists were asked to present to a panel of senior tennis officials. Mathew Perry was ultimately selected for the position[32].

34. Mr Perry has a background in sports education. Before joining the TIU, he spent nearly six years with UK Anti-Doping, where he served as an Education Project Officer, the Head of Education and Athlete Support, and a Next Generation Education Officer. In these roles, Mr Perry was responsible for creating and implementing educational programmes for athletes ranging from schoolchildren to Olympians. He has also taught physical education at a secondary school and managed a youth sports club.

35. Mr Perry is now responsible for the TIU's entire educational mission, including administering the TIPP, reviewing and updating the TIPP and the mobile app on a regular basis, and delivering presentations to players and other Covered Persons. Mr Perry is also responsible for developing any new educational programmes and materials for the TIU[33].

36. Although the TIU expects that Mr Perry will continue to modify the TIU's educational programmes, Mr Willerton reports that the TIU has not identified any specific priorities because it wants to afford Mr Perry a degree of flexibility[34]. In an interview with the Panel shortly after Mr Perry started as the TIU's Education Manager on 19 June 2017, Mr Perry discussed his desire to expand the TIU's educational programmes in order to reach more players with in-person programmes.

37. According to Mr Willerton, the TIU anticipates hiring at least one additional staff member to support Mr Perry[35], although this will require the TIU to request additional resources from the International Governing Bodies.

38. The TIU does not have any immediate further plans to update the TIPP. According to Mr Willerton, however, the new TIPP has been designed and engineered so that it can be easily updated. Mr Willerton also reported that the TIPP will be subject to regular review by the TIU's new Education Manager, and Matthew Perry confirmed that this will be one of his priorities[36].

(5) HAS THE TIU'S GENERAL APPROACH TO INTEGRITY EDUCATION SINCE 2009 BEEN EFFECTIVE AND APPROPRIATE?

39. The Panel has considered against the facts above whether the general approach of the TIU to education since 2009 has been effective and appropriate.

40. In the Panel's opinion, the TIU has appropriately identified the importance of education both as a preventative measure and in order to ensure that those subject to the TACP are aware of their obligations. The Panel also credits its employment of a specialist educator in 2017. In the Panel's opinion, however, this specialist educator could have been employed earlier in the period.

41. The Panel also recognises that the TIU has actively sought to improve the content and delivery of integrity education over the period. The task is not an easy one. In addition, the TIU has had a fair degree of success in educating many players. This is reflected in the positive reaction to the education process of players who undertook the player survey. In the present opinion of the Panel, however, there are a number of matters that might have been approached better, as set out below.

31 Tennis Integrity Unit, Job Description of Education & Training Manager, October 2016.

32 Response of Nigel Willerton (TIU) to the Panel's Questions About Integrity Education.

33 Tennis Integrity Unit, Job Description of Education & Training Manager, October 2016.

34 Response of Nigel Willerton (TIU) to the Panel's Questions About Integrity Education.

35 ibid.

36 ibid.

42. In response to these points, the TIU informed the Panel that it "*readily accepts that education and training of the wider tennis community is an important priority, which has been recognised by the recent appointment of Matthew Perry as the TIU's education and training manager. In addition, and to allow faster and wider progress to be achieved, the TIB is currently considering a request to recruit an additional member of staff to join Mr Perry's team. Further a comprehensive Education and Training strategy is currently in development that will address many of the points of the Panel*"[37].

In-person integrity education

43. In the present view of the Panel, the TIU's in-person integrity education efforts have not been directed sufficiently broadly to players and other members of the tennis community.

44. Currently, only players in the top 200 receive in-person education on integrity issues. The TIU also provides in-person presentations for juniors on integrity issues at the Junior Grand Slams. However, there is no in-person training for players at the lower levels of the sport, even though evidence suggests that these players are the most susceptible to corrupt approaches.

45. Similarly, although the TIU provides in-person education presentations for officials at higher-level events, it does not provide in-person educational programmes to all officials. It also does not provide in-person education to other relevant populations, including Tournament Support Personnel and Related Persons, such as coaches and agents.

Education of other individuals other than players

46. Although the TIU's online-based integrity education programme for players, the TIPP, has reached thousands of players, the TIU fails to reach other relevant populations through similar online-based education. There are many other groups in the tennis community, including officials, Tournament Support Personnel, and Related Persons, who should be educated about their duties under the TACP and the dangers of corruption.

Communication

47. In the present view of the Panel, the TIU has seemingly been ineffective in communicating with some players on a formal and informal basis about their obligations and the prohibitions under the TACP.

48. The TIU has no regular, systematic communications with players regarding integrity education, despite having readily accessible lines of communication available to it, including, among other things, email, the online player portals, and Twitter.

49. The TIU also does not have branded educational materials that can be distributed to players at events. Such materials could raise the visibility of the TIU, which, in turn, could make its investigators and staff more approachable in the eyes of players.

50. The TIU told the Panel that *"given 60% of players agreed that the TIU does a good job educating players about integrity issues in tennis, with only 6% disagreeing"*, the TIU *"viewed this as an excellent result"*. The TIU is therefore *"against that encouraging background, disappointed to note the Panel's critical comments, which include that the TIU is "seemingly ineffective in communicating with players"*. The TIU also told the Panel that *"there are many factors which may have influenced a player's ability to recall knowledge* [of the educational programmes] *or be able to apply this, for instance their level of engagement with the programme, the time and effort they devoted to completing the TIPP and even their age or the stage of their career. Without this context and a wider picture of the evidence it is hard to argue that these instances substantiate a criticism of the overall education programme*"[38].

37 Response of the TIU to Notification given under paragraph 21 ToR.

38 Response of the TIU to Notification given under paragraph 21 ToR.

B INTEGRITY EDUCATION BY THE INTERNATIONAL GOVERNING BODIES

51. The Panel summarise below the other educational steps adopted by bodies other than the TIU. In the Panel's opinion, the more education there is, the better but the Panel does not seek to examine the appropriateness or effectiveness of this additional education.

(1) INTEGRITY EDUCATION BY THE ATP, WTA AND ITF

ATP

52. In 1990, the ATP Player Council established the "ATP University" to help prepare young players for life on the tour. ATP University is a three-day seminar that covers a wide range of topics, including integrity issues, social media, financial management, doping and the media. Players must complete an ATP IQ test about these topics at the end of the seminar[39].

53. ATP University does not focus exclusively on integrity education. As noted above, however, a representative from the TIU typically gives a presentation about the dangers of gambling and corruption as part of the integrity module.

WTA

54. The WTA does not have the equivalent of the ATP University, but it does provide young players with education on a number of topics. Much of this education takes the form of online modules. Specifically, as a condition of competing in WTA tournaments, players must complete modules on safety and security (which covers integrity), the professional circuit and player scheduling[40].

55. The WTA also shares a welfare officer with the ITF who players can contact if they have questions about integrity issues. Further, as noted above, the WTA arranges for the TIU to give a one-on-one presentation about safety, security and gambling to every player who reaches the top 200[41].

56. In addition, the WTA requires all trainers to attend an educational programme on gambling and match-fixing[42].

ITF

57. For over a decade, the ITF has hosted educational forums and interactive workshops at major junior tournaments. Like ATP University, these events seek to prepare high-ranked players for the stresses of the junior circuit. Although the precise curriculum varies, these forums typically cover a wide range of topics, including nutrition, the media, and integrity issues.

58. As noted above, the ITF also recently produced an educational video for officials in conjunction with the TIU.

39 Statement of Mario Vergara (ATP).

40 Statement of Ashley Kerber (WTA).

41 Response of Nigel Willerton (TIU) to the Panel's Questions About Integrity Education.

42 Statement of Kathleen Stroia (WTA).

(2) INTEGRITY EDUCATION BY NATIONAL FEDERATIONS

59. The national federations also offer various educational initiatives to inform their staff, officials, players and related individuals about integrity-related issues. The section below summarises recent educational efforts by four national federations, selected because they are the federations of the four Grand Slams.

Tennis Australia

60. Tennis Australia has its own national Tennis Integrity Unit headed up by Ann West (Head of Integrity and Compliance). Ms West is responsible for developing Tennis Australia's education programme[43].

61. As part of its educational integrity programme, Tennis Australia organises an annual talk for its members that includes a presentation from Victoria Police Sports Integrity Unit, which covers anti-corruption, anti-doping and the use of social media[44].

62. In addition, Tennis Australia also has a programme in place for its juniors[45] and officials[46]. Both programmes incorporate integrity education.

Fédération Française de Tennis ("FFT")

63. The FFT has an education programme that is followed by most players and incorporates the TIPP[47]. It is mandatory for players in the FFT's education programme to spend three days in Monaco or Florida (at the ATP University), where they are educated on the integrity risks and consequences of sanctions[48].

64. Additionally, the FFT has produced a presentation that is designed to educate players and raise their awareness about integrity issues. The intention is to roll out a programme targeted at younger players to educate them about certain behaviours and the boundaries of the rules[49].

Lawn Tennis Association ("LTA")

65. In addition to making its members complete the TIPP, the LTA employs a "Performance Lifestyle Advisor" who delivers additional education. The Performance Lifestyle Advisor primarily provides education to players in respect of anti-corruption and anti-doping issues[50].

66. Further, because the LTA finds it difficult to get players together at the same time to deliver in-person education, the LTA has also produced an online education programme. This online education programme must be completed by players in receipt of support from the LTA[51].

43 Statement of Ann West (WTA).
44 ibid.
45 ibid.
46 Statement of Asitha Attygala (Tennis Australia).
47 Statement of Christophe Faginez (FFT).
48 Statement of Guy Forget (FFT).
49 Statement of Christophe Faginez (FFT).
50 Statement of Stephen Farrow (LTA).
51 ibid.

United States Tennis Association ("USTA")

67. In 2016, the USTA's major educational efforts concerning integrity-related issues centred on the US Open[52].

67.1 The USTA required that the approximately 600 staff members involved in operations and player services, including, among others, officials, operations staff, player amenity staff, and medical staff, complete the TIPP programme prior to the US Open.[53]

67.2 The USTA designed and implemented a version of the TIPP for seasonal hires who worked at the US Open. Most of these approximately 430 seasonal hires, who are typically employed by third parties, work in access control or as player drivers[54].

67.3 The USTA also facilitated a TIPP training for ATP staff housed at the US Open during the tournament[55].

67.4 As part of its mandatory orientation, the TIU gave an anti-corruption presentation to junior players at the US Open. Parents, coaches, and chaperones were also required to attend[56].

67.5 The TIU also gave an anti-corruption presentation to US Open officials during two separate meetings[57]. US Open officials were required to complete the TIPP as well[58].

68. In August 2016, the USTA also hosted a webinar for its staff, including the USTA's national coaches, to review the ITF and TIU anti-corruption rules. The webinar addressed what constitutes an infraction, Covered Persons, reporting obligations and how coaches should talk about these issues with their players. Because it was a staff presentation, the webinar was not presented to private coaches or parents[59].

69. Also in 2016, the USTA held a mandatory training about social media for junior players. Topics included how to minimise the impact of online "trolls" and keeping information about health and physical status off the internet[60].

52 Statement of Martin Blackman (USTA).
53 ibid.
54 ibid.
55 ibid.
56 ibid.
57 Statement of David Brewer (USTA).
58 Statement of Stacey Allaster (USTA).
59 Statement of Martin Blackman (USTA).
60 ibid.

PART FIVE: OFFICIALS

1. In this fifth part of Chapter 10, the Panel describes and analyses the current system for the protection of integrity in tennis in respect of Officials, and its development and operation since 2009.

2. The Panel does so through an examination of (a) the application of the Code of Conduct for Officials ("CCO") to Officials suspected to have committed breaches of integrity and (b) the recent replacement of that approach with the direct application of the TACP to Officials.

3. Pursuant to the Terms of Reference, the Panel addresses whether the approach to suspected breaches of integrity by Officials has been and is now effective and appropriate. As set out in Chapter 1[1], it is not the Panel's role in this Review to assess the legality of any decision or action by reference to any standard or test of contract, tort, irrationality or unreasonableness, and it should not be taken as doing so. Rather the Panel identifies below the relevant evidence it has received, including witness statements and contemporaneous documents, and sets out its present[2] opinion as to the effectiveness and appropriateness of relevant actions at the time, based on its appreciation of the available evidence of the contemporaneous facts and circumstances. Also, as set out in Chapter 1[3], on occasion it is not possible or appropriate to seek to resolve direct conflicts in the available evidence.

4. Media criticism was made in early 2016 in respect of the way that Officials suspected of breaches of integrity had been dealt with. The Panel has seen no evidence that the International Governing Bodies[4] or TIU sought deliberately to conceal that Officials had committed breaches of integrity by sanctioning them under the CCO as opposed to the TACP. Officials were dealt with under the CCO, as opposed to the TACP, at a time when there was doubt as to whether they could be dealt with directly under the TACP, and it was thought more efficient to proceed under the CCO. At the time, the CCO did not provide for publication of sanctions, but the restriction on publication under the CCO was removed in the rules applicable from 1 January 2016. Subsequently with effect from 1 January 2017, matters were put on a clearer basis by amendment of the TACP making clear that Officials could be dealt with directly under it.

5. This chapter does not address the recommendations of the Panel. These matters are addressed in Chapter 14.

Q 10.9 Are here other matters of factual investigation or evaluation in relation to the system for the protection of integrity in tennis in respect of Officials, that are relevant to the Independent Review of Tennis and that should be addressed in the body of the Final Report, and if so which, and why?

Q 10.10 Are there any aspects of the Independent Review Panel's provisional conclusions in relation to the system for the protection of integrity in tennis in respect of Officials that are incorrect, and if so which, and why?

1 Chapter 1, Section C.

2 Pending the consultation process between Interim and Final Reports.

3 Chapter 1, Section C.

4 The ITF, the ATP, the WTA and at that time the Grand Slam Committee (later to become the Grand Slam Board) made up of the four Grand Slams.

A THE APPLICATION OF THE CODE OF CONDUCT FOR OFFICIALS TO INTEGRITY ISSUES

6. For a period, Officials suspected of breaches of integrity were dealt with through the ITF provisions applicable to Officials' conduct, and not through the TACP. This section addresses how that came about, and how the approach was carried out.

(1) INTRODUCTION OF THE CODE OF CONDUCT FOR OFFICIALS

7. The CCO contains the obligations on and standards required of Officials. As addressed in subsection (3) below, these included general obligations that could relate to breaches of integrity, in addition to the express obligations to comply with all of the provisions of the TACP; express obligations to report any potentially corrupt approaches to the TIU; and express obligations to disclose actual, suspected, or alleged violations of the CCO.

8. The CCO was implemented as part of the Joint Certification Program for Officials administered by the ITF on behalf of the International Governing Bodies (the "JCP"). The JCP was established in 1999 with the objective of providing a consistent standard of professionalism amongst certified international Officials. The Panel understands that when the CCO was first introduced it was intended to be a code governing the behaviour of Officials and it was not contemplated as addressing integrity issues[5]. However, the CCO was revised following the implementation of the TACP to include an obligation on Officials to comply with its provisions.

(2) APPLICABILITY OF THE CCO AND THE TACP

The Officials covered by the CCO

9. The CCO applies to all Certified Officials (defined as National, Green, White, Bronze, Silver and Gold Badge Officials, i.e. certified international Officials) and all other Officials working at ATP, Grand Slam, ITF and WTA events. The CCO states that all Officials are *"automatically bound by, and must comply with, this CCO"*[6].

10. The different types of Official and their respective responsibilities are set out in the ITF Duties and Procedures for Officials and include: Supervisor / Referee; Chief Umpire; Chair Umpire, Line Umpire; Net Umpire; and Review Official.

11. The ITF, ATP, Grand Slam Board and WTA have jurisdiction over retired Officials under the CCO *"in respect of matters taking place prior to his/her retirement"*[7].

The relationship between the CCO and the TACP

12. The relationship between the CCO and the TACP has evolved in recent years.

The obligation in the CCO to comply with the TACP

13. From 1 January 2009 after the coming into force of the TACP, the CCO included an obligation on Officials to comply with the TACP. Under the CCO (2009):

> *"Officials must not bet anything in any manner in connection with any tennis event. Officials must not induce or encourage any other person to gamble or enter into any other form of financial speculation on any match or occurence* [sic] *at any tennis event. Officials must not receive any money, benefit or other reward (whether financial or otherwise) for the provision of any information concerning the weather, the players, the courts, the status of, or the outcome of, any match or occurrence at any tennis event. For the avoidance of doubt, officials are subject at all times to the relevant provisions and penalties set forth in the unified Professional Tennis Integrity Programme"*[8].

5 Statement of Soeren Friemel (ITF).

6 CCO (2018), preamble, available at: http://www.itftennis.com/officiating/officials/code-of-conduct.aspx [accessed 9 April 2018].

7 CCO (2018), preamble.

8 CCO (2009), Article 9. The "unified Professional Tennis Integrity Programme" was not defined but it is implicit that this intended to refer to the TACP.

14. From 1 January 2011, the CCO was amended to state that:

"Officials are bound by and must comply with all of the provisions of the Uniform Tennis Anti-Corruption Program, and it is their responsibility to acquaint themselves with all the program rules, including the requirement to report any potentially corrupt approaches to the Tennis Integrity Unit (confidential@tennisintegrityunit.com)"[9].

15. From 1 January 2016, the words "*Officials may be subject to separate prosecution under the TACP*" were added to the text quoted in paragraph 14 above[10].

16. From 1 January 2017, the CCO was re-amended to state that:

"Officials are bound by and must comply with all of the provisions of the Tennis Anti-Corruption Program, and it is their responsibility to acquaint themselves with all the program rules (available at http://www.tennisintegrity.com/) and to participate in the on-line Tennis Integrity Protection Programme, including the requirement to report any potentially corrupt approaches to the Tennis Integrity Unit"[11].

17. Accordingly, an Official could be disciplinarily charged under the CCO with breach of one of the provisions of the TACP. The CCO in effect incorporated the obligations in the TACP by reference, but the proceedings for a potential breach of the TACP would be governed by the CCO. Further, from 1 January 2017 Officials were specifically required to participate in the TIPP.

The position in relation to Officials in the TACP

18. In the period 2009 to 2016, it was unclear whether Officials were directly subject to separate disciplinary prosecution under the TACP because the definition of "Tournament Support Personnel" did not expressly include reference to umpires or other Officials:

18.1 Under the 2009 version of the TACP: "*Tournament Support Personnel*" referred to any tournament director, owner, operator, employee, agent, contractor or any similarly situated person at any event.

18.2 Under the 2010-2016 versions of the TACP: "*Tournament Support Personnel*" referred to any tournament director, owner, operator, employee, agent, contractor or any similarly situated person at any Event and any other person who receives accreditation at an Event at the request of Tournament Support Personnel.

19. Beginning with the 2017 version of the TACP, however, Officials were expressly included in the definition of Tournament Support Personnel. The current version of this definition, which has been in effect since 1 January 2017, defines "*Tournament Support Personnel*" as follows:

"Tournament Support Personnel" refers to any tournament director, Officials [emphasis added]*, owner, operator, employee, agent, contractor or any similarly situated person and ATP, ITF and WTA staff providing services at any Event and any other person who receives accreditation at an Event at the request of Tournament Support Personnel"*[12].

20. Prior to this change, Officials were arguably not Covered Persons under the TACP, and only Covered Persons could be the direct subject of the disciplinary procedures in the TACP. In July 2015, the TIU received legal advice that while the definition Tournament Support Personnel was broad enough to impliedly include Officials, there was doubt that Officials had satisfied the formal requirements of Floridian law with respect to arbitration agreements to have been bound by the TACP.

9 CCO (2011), Article 9.

10 CCO (2016), Article A.11.

11 CCO (2017), Article A.11. This provision has been retained in the CCO (2018).

12 TACP (2017), Section B.25. See also Chapter 10 Part 1, Section B(4).

21. On 23 May 2016, the TIB, PTIOs and TIU considered whether Officials should be expressly referred to in the definition of Tournament Support Personnel. Notes of that meeting reflect that:

> *"General discussion took place as to amending the TACP to specifically name officials in the description of Tournament Support Personnel. It was agreed that any amendment should be postponed until 1st January 2017. It was further agreed that any investigations connected to the current umpire investigation should also be dealt with by way of the Code for Officials. Once the code is amended in 2017 then officials can be dealt with by way of the TACP"*[13].

22. The amendment to the TACP expressly including Officials made the position clear, and so disciplinary proceedings could therefore be directly brought against Officials under the TACP from that date without raising the possibility of an argument that the TACP procedures did not apply to them.

The position under the CCO

23. The wording of the CCO in original form meant that it was a disciplinary offence under the CCO to breach the TACP. As noted at paragraph 15 above, with effect from 1 January 2016 the CCO stated that *"Officials may be subject to separate prosecution under the TACP"*.

24. That statement appeared to contemplate that there could be disciplinary prosecution under the CCO, as before, but that there might also be separate disciplinary prosecution under the TACP. This CCO amendment, however, could only amount to a statement that the TACP might be so construed – it could not actually affect what the TACP itself stated or meant. The wording of the TACP itself was not in fact changed until the rules coming into effect on 1 January 2017. Thereafter there was no doubt that the disciplinary procedures in the TACP could be applied directly to Officials. Prior to that, notwithstanding the change to the CCO, the doubt remained.

25. With effect from 1 January 2017, the TACP was amended and the CCO was also amended again. The express provision that Officials may be subject to separate prosecution under the TACP (added in the CCO (2016)) was removed, and the relevant provision was left as set out at paragraph 16 above.

26. Accordingly, the position on the face of the provisions after 1 January 2017 appeared to be that disciplinary proceedings could theoretically be brought under either set of rules. However, as addressed in Section B below, the Panel understands the position now to be that there is a common understanding between the ITF and the TIU that all disciplinary prosecutions of Officials for integrity offences will be dealt with under the TACP.

(3) OFFENCES UNDER THE CCO

27. The offences under the CCO are broadly framed. The CCO sets out a list of duties with which Officials must comply. It is an offence or violation of the CCO to breach these duties and may result in sanctions. The obligations that may be relevant to breaches of integrity are set out below.

Duty to maintain complete impartiality

28. Officials must maintain complete impartiality and avoid real or perceived conflicts of interest. This includes not officiating in a match where the Official has a real or perceived conflict of interest. It is a violation of the CCO to breach this duty. Any conflict of interest must be declared to ITF Officiating on behalf of the JCP members[14].

13 TIB Meeting, Decision and Action Sheet, 23 May 2016.

14 CCO (2018), Article A.8.

Duty to comply with applicable criminal laws

29. Officials are required to comply with the applicable criminal laws in all jurisdictions. It is a violation of the CCO to breach this duty, including in the event an Official is convicted of, enters a guilty plea, or does not offer a defence to a criminal charge for any offences in any jurisdiction[15].

Duty not to engage in unfair, unprofessional, criminal or ethical behaviour

30. Officials shall not engage in "*unfair, unprofessional, criminal or unethical conduct*". This includes attempts to intentionally interfere with "*Officials, players, tournament personnel and public*"[16].

Duty not to abuse position of authority

31. Officials should not abuse their position of authority or control and shall not compromise the wellbeing of other Officials, players or tournament personnel[17].

"Corruption Offences" under the TACP

32. As Officials are bound by and must comply with the TACP, Officials are therefore prohibited from engaging in the 11 *"Corruption Offences"* set out in the TACP.

(4) REPORTING OBLIGATIONS UNDER THE CCO

33. The CCO includes obligations for Officials to report breaches of the CCO and the TACP. Failure to report a violation of the CCO is a violation of the CCO and may result in sanctions.

Duty to report potentially corrupt approaches

34. Officials are required to report any potentially corrupt approaches to the TIU, as required by the TACP[18].

Duty to disclose violations of the Code

35. All Officials are under a continuing duty to disclose to the JCP (in other words the international governing bodies) any *"actual, suspected, or alleged violations of the Code of which they are aware* [concerning themselves or another Official]*"*. Failure to report violations, of which the Official is aware, is itself a violation of the Code[19].

Duty to report promptly

36. Alleged violations of the CCO which take place on site at a tournament *"must be reported promptly to the Officiating Representative of the ATP, Grand Slam, ITF or WTA, as appropriate"*. Alleged violations that take place at any other time must be reported in writing to ITF Officiating[20].

15 CCO (2018), Article A.10.
16 CCO (2018), Article A.14.
17 CCO (2018), Article A.15.
18 CCO (2018), Article A.11.
19 CCO (2018), Article A.19.
20 CCO (2018), Article B.1.

Duty to assist with investigations

37. Officials have the duty to cooperate with investigations in relation to a breach of the Code of Conduct for Officials. The CCO provides that all Officials have the duty to provide documents and information during an investigation as requested by the Officiating Representative and have a duty to appear as a witness upon request by a Disciplinary Panel or Appeal Panel[21].

(5) INVESTIGATION OF ALLEGED BREACHES OF THE CCO

38. Upon an Officiating Representative becoming aware of a possible CCO violation, they are required to *"promptly review the matter and determine whether further investigation of the alleged violation is required"*[22].

39. The relevant Officiating Representative is:

    39.1 The ITF Head of Officiating in respect of cases involving National, Green and White Badge Officials.

    39.2 The *"nominated Officiating Representative of the ATP, Grand Slam Tournaments, ITF or WTA depending on the event at which the alleged violation occurred or if outside an event such Officiating Representative as is agreed by a majority of the nominated Officiating Representatives"* in respect of cases involving Bronze, Silver and Gold Badge Officials[23].

40. If the relevant Officiating Representative determines that an investigation is warranted, it appears that the conduct of that investigation will largely be at the Officiating Representative's discretion. The CCO requires a written notice of investigation to be sent to the Official concerned (to which the Official must be given at least 10 days to respond) but does not prescribe any other mandatory investigative steps[24].

41. Officiating Representatives are permitted to share information concerning an investigation with the TIU, other tennis organisations and law enforcement agencies. Further, an investigation by an Officiating Representative may be "*stayed pending completion of an investigation*" by any of these same organisations[25].

42. In practice, it appears that the investigation of alleged violations of the CCO is delegated to the TIU where those alleged violations concern issues related to integrity. This is described further in Section A(10) below in the context of specific cases that involved Officials being sanctioned under the CCO.

Provisional suspension

43. If an alleged violation of the CCO has been reported *"on-site"* at a tournament, it is the responsibility of the on-site Supervisor / Referee to determine whether to suspend or dismiss the Official from the event[26].

44. The relevant Officiating Representative may provisionally suspend an Official at any stage following receipt of information that suggests a possible CCO violation, up to the closure of the case. Provisional suspension may be imposed where the Officiating Representative *"considers that the seriousness of the allegation and/or the evidence gathered in relation to that allegation merits such suspension"*[27]. The CCO does not provide any guidance as to what types of alleged conduct would satisfy this threshold.

21 CCO (2018), Article B.4.
22 CCO (2018), Article B.2.
23 CCO (2018), Article E.2(b).
24 CCO (2018), Article B.2.
25 CCO (2018), Article B.3.
26 CCO (2018), Article B.1.
27 CCO (2018), Article B.8.

45. The Officiating Representative must notify the Official, together with the Disciplinary Panel (discussed further at Section A(7) below), of the provisional suspension being imposed.

46. The Official may make a written application to the Disciplinary Panel for the provisional suspension to be vacated (stating the reasons for the application) within ten days of receipt of the provisional suspension notice. It appears, although it is not stated expressly, that the Disciplinary Panel will consider any such application on the papers only.

47. The decision of the Disciplinary Panel is considered final and binding, and neither the Official nor the Officiating Representative shall be granted a right of appeal.

48. The Officiating Representative is permitted to notify member National Associations and other tennis organisations *"as are deemed necessary for the purposes of enforcement"* of the provisional suspension.

(6) DISCIPLINARY PROSECUTION OF ALLEGED BREACHES OF THE CCO

49. Upon completion of the investigation, the relevant Officiating Representative is required to determine whether the Official has a case to answer. However, the CCO does not state an express evidential standard that must be considered in making that determination.

50. In respect of matters where the Officiating Representative determines there is no case to answer, the Official must be notified that no further action will be taken[28].

51. In respect of matters where the Officiating Representative determines that there is a case to answer, the Official must be sent a written notice of charge that sets out:

    51.1 the alleged CCO violation and a summary of the facts on which the charge is based;

    51.2 the evidence upon which the Officiating Representative would seek to reply upon at a hearing before the CCO Disciplinary Panel;

    51.3 the potential sanction;

    51.4 matters related to provisional suspension; and

    51.5 the Official's entitlement to respond to the notice of charge within ten days of receipt of the notice.

52. The range of permitted responses to a notice of charge is as follows:

    52.1 to admit the charge(s), and accede to the sanctions specified in the notice;

    52.2 to admit the charge(s), but to dispute and/or seek to mitigate the sanctions specified in the notice, and to have the Disciplinary Panel determine the sanctions at a hearing; or

    52.3 to deny the charge(s), and to have the Disciplinary Panel determine the charge and (if the charge is upheld) any sanctions, at a hearing. If the Official exercises their right to a hearing, the Official must also provide a substantive response to the notice (in summary form), including the basis for that response[29].

53. If no response is received within the permitted deadline, the Official will be deemed to have admitted the charges and to have acceded to the sanctions specified in the notice[30].

28 CCO (2018), Article B.5.
29 CCO (2018), Article B.7.
30 CCO (2018), Article B.6.

(7) FIRST INSTANCE DISCIPLINARY PANEL HEARING UNDER THE CCO

54. If the Official requests a hearing, the relevant Disciplinary Panel is:

54.1 The ITF Internal Adjudication Panel in respect of cases involving National, Green and White Badge Officials.

54.2 The "*nominated Officiating Representatives of the ATP, Grand Slam Tournaments, ITF and WTA or such party's nominee in the event of a conflict of interest or other impediment to such party's independence or impartiality*" in respect of cases involving Bronze, Silver and Gold Badge Officials[31].

Powers of Disciplinary Panel

55. The Disciplinary Panel is afforded "*all such powers as are necessary to carry out its function efficiently and effectively*", including specific powers to:

55.1 issue such further directions as are necessary for the efficient conduct of the proceedings;

55.2 take such legal and/or other professional advice it considers necessary;

55.3 nominate such person as it considers appropriate to act as its secretary in the proceedings;

55.4 not be bound by any formal rules as to admissibility of evidence; and

55.5 ensure that the Official has a fair hearing[32].

56. The Officiating Representative is required to provide the Disciplinary Panel with copies of the evidence and submissions on which the parties intend to rely[33]. The Disciplinary Panel is permitted to hear the matter on the papers, save where the Official has requested an in-person hearing[34].

Standard of proof

57. The Disciplinary Panel is required to determine whether the alleged CCO violations have occurred "*on the balance of probabilities*"[35]. While those on the Disciplinary Panel may not be lawyers, they can take legal advice on the application of the standard if appropriate.

Sanctions

58. If a violation is found, the sanctions that may be imposed are *"at the sole discretion of the Officiating Representative and Disciplinary Panel*". Those sanctions may include "but are not limited to*"*:

58.1 reprimand and warning as to future conduct;

58.2 suspension of certification for a limited period;

58.3 permanent suspension of certification; or

58.4 withdrawal of access to and accreditation for any tennis event organised by the Governing Bodies or any National

31 CCO (2018), Article E.2(b).
32 CCO (2018), Article C.1(e).
33 CCO (2018), Article C.2.
34 CCO (2018), Article C.3.
35 CCO (2018), Article C.3.

Association[36].

Decision of the Disciplinary Panel

59. The Disciplinary Panel is required to *"promptly"* issue its decision, including reasons, to the Official, Officiating Representative, the Official's National Association, the TIU and any other tennis bodies considered appropriate[37]. The CCO does not contain any further guidance as to the form that the decision should take.

(8) APPEALS UNDER THE CCO

60. A Disciplinary Panel decision may be appealed within 21 days from the date of the decision. However, a decision imposed based on a *"conviction of, or a plea of guilty or no contest to, a criminal charge or indictment for any offence in any jurisdiction"* is not capable of appeal[38]. Further, the potential grounds of appeal are limited as follows:

60.1 failure to afford a fair hearing;

60.2 misinterpretation or failure to properly apply the CCO; or

60.3 no reasonable body properly informed could have reached the decision[39].

61. The appellant Official is required to file a notice of appeal and send a copy to both the Disciplinary Panel and the Officiating Representative (to include the grounds of, and basis for, the appeal)[40]. The Disciplinary Panel is required to provide the case file to the Appeal Panel, and the Officiating Representative is afforded 14 days from the date the notice of appeal is received to file a response submission[41].

62. If an Official chooses to appeal, the relevant Appeal Panel is:

62.1 the ITF Independent Tribunal in respect of cases involving National, Green and White Badge Officials.

62.2 *"... four (4) individuals, nominated by each of the ATP, Grand Slam Tournaments, ITF and WTA at the start of each year who will take no part in the investigation or proceedings before the Disciplinary Panel"* in respect of cases involving Bronze, Silver and Gold Badge Officials[42].

Powers of Appeal Panel

63. The Appeal Panel is afforded *"all such powers as are necessary to carry out is function efficiently and effectively"*, including specific powers to:

63.1 issue such further directions as are necessary for the efficient conduct of the proceedings;

63.2 take such legal and/or other professional advice it considers necessary;

63.3 nominate such person as it considers appropriate to act as its secretary in the proceedings;

63.4 not be bound by any formal rules as to admissibility of evidence; and

36 CCO (2018), Article C.5.
37 CCO (2018), Article C.6.
38 CCO (2018), Article C.7.
39 CCO (2018), Article D.2.
40 CCO (2018), Article D.3.
41 CCO (2018), Article D.4.
42 CCO (2018), Article E.2(b).

63.5 ensure that a fair hearing takes place[43].

64. The Appeal Panel is permitted to hear the proceedings on the papers, save where the Official has requested an oral hearing. An oral hearing may proceed by telephone or video conference at the Appeal Panel's discretion[44].

Sanctions imposed by Appeal Panel

65. The Appeal Panel may *"affirm, reverse or modify"* the Disciplinary Panel decision. Modification would include both strengthening and weakening the sanction imposed[45].

Decision of the Appeal Panel

66. The Appeal Panel is required to announce its decision *"as soon as practicable following the hearing"*[46]. The CCO also states that a written notice of the Appeal Panel's finding and any sanction shall be delivered *"promptly"* to the parties[47].

67. Appeal Panel decisions are final and binding and the parties are deemed to have waived their right to any further appeal[48].

(9) PUBLICATION OF DECISIONS IN RELATION TO BREACH OF THE CCO

68. Prior to 2016, the CCO did not contain an express provision for the publication of decisions made in relation to a breach of the CCO. The CCO was amended with effect from 1 January 2016 to allow for such publication. The new provision provided: *"In the event of a finding that this Code of Conduct has been violated, the relevant organisation may publish a summary of the decision of the Disciplinary Panel and/or the Appeal Panel, the findings and evidence"*[49].

69. The drafting *"may publish a summary of the decision"* anticipated that there would be discretion as to whether to publish or not. The Panel note that the ITF exercised its discretion to publish in respect of the sanctions imposed against Hasanov and Molotyagin on 14 September 2016[50] and Ulker and Aslan on 30 September 2016[51]. The TIU published its own press release naming all four Officials on 29 September 2016[52].

70. With effect from 1 January 2017, that provision relating to publication was removed, and apparently dealt with in a new provision on appeals, under which *"...For the avoidance of doubt, nothing in this clause prevents the ATP, Grand Slam Board, ITF or WTA (as appropriate) from publishing the decision as it sees fit"*[53]. It appears but it is not clear, that this provision refers exclusively to the Appeal Panel Decision. There is no equivalent provision that provides for publication of the Disciplinary Panel Decision.

43 CCO (2018), Article D.5.

44 CCO (2018), Article D.6.

45 CCO (2018), Article D.7.

46 CCO (2018), Article D.6.

47 CCO (2018), Article D.7.

48 CCO (2018), Article D.8.

49 CCO (2016), Article B.11.

50 Press Release, 'Hasanov and Molotyagin found guilty of Code of Conduct offences (ITF, 14 September 2016), available at: http://www.itftennis.com/news/241319.aspx [accessed 9 April 2018].

51 Press Release, 'Aslan and Ulker found guilty of Code of Conduct offences' (ITF, 30 September 2016), available at: http://www.itftennis.com/news/243538.aspx [accessed 9 April 2018].

52 Press Release, 'TIU Investigations Lead to Life Bans for Two Turkish Tennis Officials' (TIU, 29 September 2016), available at: http://www.tennisintegrityunit.com/media-releases/tiu-investigations-lead-life-bans-two-turkish-tennis-officials [accessed 9 April 2018].

53 CCO (2018), Article D.7.

(10) THE SPECIFIC INTEGRITY CASES BROUGHT AGAINST OFFICIALS UNDER THE CCO

71. The section below addresses the approach of commencing disciplinary proceedings against Officials in respect of integrity breaches under the CCO rather than the TACP, and the successful proceedings under the CCO that occurred between 2014 and 2016. The Panel is not aware of any disciplinary proceedings in relation to significant breaches of integrity by Officials prior to 2014 (under either the TACP or the CCO)[54]. Successful disciplinary proceedings that do not relate to breaches of integrity were also brought against Officials under the CCO.

72. With only one exception, all disciplinary proceedings against Officials for breaches of integrity between 2014 and 2016 were brought under the CCO.

Proceedings against Morgan Lamri under the TACP

73. The one exception is the case brought against Morgan Lamri in 2014. The TIU proposed and the PTIOs brought proceedings under the TACP against the French Official and Player Morgan Lamri for breach of the TACP prohibitions against betting, contriving the outcome of a match, soliciting a player not to use best efforts and failing to cooperate.

Proceedings against Kirill Parfenov under the CCO

74. On 11 February 2015, Kazakhstan White Badge Official Parfenov was sanctioned under the CCO. Following an ITF Disciplinary Panel decision, he was decertified for life.

75. Parfenov's breach related to an incident in December 2014 in which he was found by an ITF Disciplinary Panel to have *"contacted another Official on Facebook to manipulate the scoring of matches"*[55].

76. The TIU investigated and reported its evidence in respect of Parfenov to Seoren Friemel of the ITF in January 2015. Mr Friemel has told the Panel that the TIU submitted a report that recommended Parfenov be decertified[56]. Based on the contemporaneous documents, the TIU's recommendation that Parfenov be sanctioned under the CCO was based on a keenness to both prevent Parfenov from committing further offences (to include corrupting other Officials) and prevent the TIU's investigation into other Officials that may also have been corrupted from being prejudiced. Parefnov had not worked as an Official in 2014 and the TIU considered it would be difficult to use the provisions of the TACP to compel him to be interviewed or investigated whilst he remained based in Kazhakstan. Ms Bain in consultation with Mr Friemel considered that proceeding under the CCO, whereby Parfenov would be decertified and added to a No Credentials List, was the best course of action. On 13 February 2015 (the day after Parfenov had been sanctioned by the ITF), Gayle Bradshaw was informed of the approach taken and the rationale behind it and stated that it *"makes sense"*.

77. Neither the full decision against Parfenov, nor a summary of it, was published contemporaneously.

2015 proceedings against Denis Pitner under the CCO

78. On 17 August 2015, Croatian White Badge Official Pitner received a 12-month suspension of his certification for breaches of the CCO in 2014, back-dated to 1 August 2015. Pitner was placed on the ITF No Credentials list soon after 17 August 2015 and his White Badge certification was suspended.

79. The case was referred to the ITF by the TIU, following a TIU investigation. The ITF was made aware of the TIU investigation in December 2014.

54 Statement of Soeren Friemel (ITF).

55 The suspension was not announced at the time but was announced in February 2016, as set out further in footnote 57 below.

56 Statement of Soeren Friemel (ITF).

80. Pitner was found by an ITF Disciplinary Panel to have sent *"information on the physical well-being of a player to a coach during a tournament"* and to have *"regularly logg*[ed] *on to a betting account from which bets were placed on tennis matches"*[57].

81. Neither the full decision in respect of the 2015 proceedings against Pitner nor a summary of it was published.

The Guardian article contrasting the approach taken to Morgan Lamri with the approach taken to Kirill Parfenov and Denis Pitner

82. In February 2016, it was alleged that Officials Kirill Parfenov and Dennis Pitner had been *"secretly banned over gambling scam"* during 2015[58]. The Guardian newspaper contrasted the approach of the ITF confidentially sanctioning Pitner and Parfenov under the CCO on the one hand, with the prior approach of the PTIOs publicly sanctioning Morgan Lamri under the TACP. The paper suggested that the approach had been motivated by a desire on the part of the ITF to avoid criticism of its sale of live data to the low-level tournaments, at which the Officials had officiated and breached integrity. The Panel examines below the proceedings in relation to these two Officials, and then the underlying reasons behind the approach taken, first in proceeding against them under the CCO and not the TACP, and second in not publishing the sanctions that they received.

The reasons behind the approach of the TIU, PTIOs, TIB and ITF of proceeding against Parfenov and Pitner, and subsequently others, under the CCO as opposed to the TACP

83. As set out above, at the time proceedings were brought against Parfenov and Pitner in 2015, Officials were not expressly included in the definition of "*Tournament Support Personnel*", one of the subsets of "*Covered Person*". The Panel understands that in the eyes of the TIU (based on its understanding of the TACP at the time), the fact that Officials were not expressly mentioned meant that they might not be considered Covered Persons.

84. It was therefore possible that an attempt in 2015 to deal with Officials under the TACP might have been met with a defence that the TACP procedures under it did not apply.

85. Morgan Lamri, however, was in a different position: he was also a Player as well as an Official and therefore he was a "Covered Person" under the TACP.

86. While there might have been some uncertainty as to whether an Official was a Covered Person, it was in contrast clear that an Official was covered by the CCO, and was bound under the CCO not to breach the obligations in the TACP. In addition, proceedings under the CCO were arguably faster, simpler and less expensive than proceedings under the TACP, since the former involved only the convening of, and the rapid process before, an ITF Disciplinary Panel rather than the more detailed and protracted process before an AHO. The CCO also, in effect, afforded the same exclusionary sanctions as the TACP. And it provided for a rapid appeal, in contrast to the TACP, which involved an appeal to CAS.

57 The suspension was not announced at the time, but was announced in February 2016. The full ITF statement is no longer reported on the ITF's website but is reported verbatim by Sky Sports News: "The International Tennis Federation (ITF) confirmed on Tuesday that Kazakhstan's Kirill Parfenov and Denis Pitner from Croatia were banned last year, with a recent change in their code of conduct allowing for them to be named in public. Parfenov and Pitner had earlier been named as the banned umpires by The Guardian in a report criticising the sport's governing body for failing to report the bans, although the ITF revealed their code of conduct change had only been instituted in December". The Sky Sports story then set out the ITF statement in full: "The ITF has sanctioned two officials under the ITF Code of Conduct for Officials. Previously the ITF Code of Conduct for Officials did not allow public dissemination of officials sanctioned. However the ITF amended the Code in December 2015 to ensure public reporting of officiating sanctions from 2016 onwards. Kirill Parfenov of Kazakhstan was decertified for life in February 2015 for contacting another official on Facebook in an attempt to manipulate the scoring of matches. Separately, Denis Pitner of Croatia had his certification suspended on 1 August 2015 for 12 months for sending information on the physical well-being of a player to a coach during a tournament and regularly logging on to a betting account from which bets were placed on tennis matches. The decision to sanction both officials under the ITF Code of Conduct was taken following Tennis Integrity Unit (TIU) investigations. This approach is being reviewed as part of the recently announced Independent Review of Integrity in Tennis that will be chaired by Adam Lewis QC. To ensure accuracy of reporting, four officials are currently suspended pending the completion of ongoing investigations by the TIU. In order to ensure no prejudice of any future hearing we cannot publicly disclose the nature or detail of those investigations. Should any official be found guilty of an offence, it will be announced publicly". (Sky Sports, 'Tennis umpires Kirill Parfenov and Denis Pitner banned, for more being investigated' (9 February 2016), available at: http://www.skysports.com/tennis/news/12110/10161379/tennis-umpires-kirill-parfenov-and-denis-pitner-banned-four-more-being-investigated [accessed 9 April 2018].

58 Sean Ingle, 'Revealed; tennis umpired secretly banned over gambling scam' (The Guardian, 9 February 2016), available at: https://www.theguardian.com/sport/2016/feb/09/revealed-tennis-umpires-secretly-banned-gambling-scam [accessed 9 April 2018].

87. Which of these factors played a role and to which extent in the approach felt to be appropriate by each of the TIU, PTIOs, TIB and the ITF with respect to Parfenov and Pitner is not entirely clear.

88. So far as Parfenov is concerned, it appears that an informal agreement was reached by the ITF and the TIU at an operative level that the ITF would proceed against the Official under the CCO and the TIU would not. Consequently, the TIU did not advance the matter to the PTIOs or TIB before the decision to sanction Parfenov had been made by the ITF. The Panel has seen nothing to suggest that the reasons for doing so were other than the uncertainty over whether an Official was caught by the TACP, and the faster, simpler and less expensive nature of CCO proceedings. The Panel has also seen nothing to suggest that the fact that there would be no publication played a significant role in favour of the decision to adopt that approach. In addition, it seems to the Panel that the decision was in effect the TIU's decision, not to proceed under the TACP, leaving it to the ITF to proceed under the rules for which it was responsible.

89. So far as Pitner is concerned, there appears to have been rather more debate:

89.1 It appears that while the Official was under investigation by the TIU, it became apparent that he was going to officiate at Wimbledon 2015. It was felt that, if possible, steps should be taken to prevent that from occurring. The TIU prepared a Preliminary Report on 22 June 2015.

89.2 On 25 June 2015, Nigel Willerton informed the PTIOs *"that under the current TACP it was not possible to try and obtain an interim suspension but options to do so through official rules may be possible"*. Initially the PTIOs felt that *"in the circumstances, the procedure should remain solely under the TACP and no interim suspension or decertification was necessary. On balance it was felt the authorities would be acting as judge and jury before the investigation had concluded and should not do so"*[59].

89.3 On 30 June 2015, the TIU received legal advice that Nigel Willerton was correct that a provisional suspension was not available under the TACP at that time because the matter had not yet been referred to an AHO, and because permanent ineligibility was not a possible punishment. The TIU was also advised that it could share the product of its investigation with the ITF.

89.4 At a TIB meeting also on 30 June 2015, Nigel Willerton reported to the TIB that Pitner was *"officiating as a line judge during the Wimbledon and is due to continue through Wimbledon main draw and also at US Open"*. Nigel Willerton again *"outlined that under the current TACP it is not possible to obtain an interim suspension but options to do so under the 'Officials' rules was possible. The evidence obtained during the investigation can be shared with the head of officiating at the ITF with a view to discipline proceedings being conducted. This may result in Pitner being decertified. If that was to happen it is unlikely he could continue to operate as an official and could be placed on the No Credentials register to prevent him officiating"*. The legal advice received in relation to sharing information with the ITF was also discussed. The TIB concluded *"it was agreed this was a suitable course of action"*.

89.5 On 30 June 2015, Gayle Bradshaw sent an email to the PTIOs reporting that he had updated the PTIOs' lawyers *"on the discussion this morning regarding Pitner"* and had told them that "*we would go through the officiating process and he could be de-certified plus Nigel will add him to the 'No Credential' list, thus he will be out of the game altogether without the risk of a hearing"*. Gayle Bradshaw concluded *"Only down side is that we don't get a public announcement"*. That, as set out above, was because the CCO did not provide for publication.

89.6 On 1 July 2015, the TIU received legal advice that reiterated prosecution under the CCO was a good result, as it would be cheaper and quicker than prosecution under the TACP. As noted at paragraph 20 above, the advice also suggested that there was some doubt as to whether the formalities of a binding arbitration agreement (as a matter

59 PTIO Meeting Decision and Action Sheet, 25 June 2015.

of Floridian law) had potentially been met with respect to enforcement of the TACP against Officials.

90. This course was then followed. It therefore appears ultimately to have been decided by the PTIOs that that it would be more certain, more rapid and more efficient for the cases against Pitner to be dealt with by the ITF under the CCO. It does not appear to the Panel that the fact that there would be no publication played a significant role in favour of the decision to adopt that approach: indeed, to the extent that non-publication was taken into account in deciding what to do, it appears to have been regarded as a disadvantage rather than an advantage. It also appears to the Panel that the decision was effectively taken by the PTIOs, and not the ITF.

91. After Pitner was sanctioned under the CCO, PTIO minutes noted[60] that that *"the TIU had been conducting an investigation concerning a White Badge Official from Croatia – Denis Pitner. Although he could have been dealt with under the TACP it was agreed he could also be dealt with under the ITF officiating rules. The evidence obtained was shared with the ITF and as a result Pitner was decertified on 1st August 2015 for 12 months. NW had reported to Jackie Nesbitt of the ITF that the sentence was lenient. JN will investigate and report back"*. Nigel Willerton's concern was reflected in an email exchange with Kris Dent (to which Jackie Nesbitt was copied). Mr Dent's response was that, as the matter had been concluded, the sanction could not be extended unless there was significant further evidence to consider.

92. Thereafter, the perception grew that this approach was the right one to take in future. The TIU received legal advice that prosecution of Officials under the CCO, rather than the TACP, appeared to be the most efficient and cost-effective method for sanctioning Officials accused of corruption offences. Four reasons were given, albeit no mention was made of the absence of publication:

92.1 First, given the absence express agreement to the arbitral procedures in the TACP under the arrangements at the time, it might be more difficult to prove that Officials were caught by the procedures in the TACP, than to prove that they were caught by the CCO.

92.2 Second, prosecution under the TACP, including de novo review before CAS, was more time consuming and expensive than proceeding under the CCO.

92.3 Third, the sanctions of suspension and withdrawal of certification were available under the CCO, though not some of the more comprehensive sanctions in the TACP.

92.4 Fourth, a decision now to prosecute Officials under the TACP would be hard to reverse, in the light of the greater procedural protections under the TACP.

The reasons behind the ITF's 2015 approach of not publishing the sanctions imposed on Parfenov and Pitner under the CCO

93. The sanctions imposed on Parfenov and Pitner by the ITF were not published until February 2016, following The Guardian coverage. At the time of publication, the ITF stated that *"*[t]*he ITF has sanctioned two officials under the ITF Code of Conduct for Officials. Previously the ITF Code of Conduct for Officials did not allow public dissemination of officials sanctioned. However the ITF amended the Code in December 2015 to ensure public reporting of officiating sanctions from 2016 onwards"*[61].

60 PTIO Meeting Decision and Action Sheet, 8 September 2015.

61 Footnote 57 above.

94. The Panel understands[62] that the ITF's approach of not publishing the decisions against Parfenov and Pitner was based on legal advice that it received (which if in writing, has not been located), which provided that: first, the CCO at the time did not allow for decisions to be published; and second, an amendment to the CCO permitting publication could not be applied retrospectively.

Pitner's participation in 2015 US Open despite being on the No Credentials List

95. The 17 August 2015 suspension (backdated to 1 August 2015) of Pitner's White Badge certification meant that Pitner could not work as a chair umpire but could work in other officiating roles that required only a national level certification. It was the responsibility of individual tournaments to decide whether to hire him as an Official.

96. During the period of his suspension, Pitner was a line umpire at the 2015 US Open, which began in early September. The Panel was informed that national Officials can work as line judges at Grand Slam events[63]. The USTA assigned Officials for the US Open before Pitner had been added to the No Credentials List soon after 17 August 2015, and Pitner failed to inform the USTA of his White Badge certification suspension once it was imposed. The USTA had referred to the No Credentials List when it assigned Officials, but did not subsequently refer to it again, at least after 17 August 2015, to check that none of the chosen Officials had since been added to it immediately before the event started. The ITF did not specifically draw to the attention of the USTA that it had added Pitner to the List, and the sanction was not published.

2016 proceedings against Denis Pitner under the CCO

97. On 19 April 2016, Pitner was sanctioned under the CCO for further breaches of the CCO[64] and was suspended for ten years until 2026. A summary of the case, but not a full copy of the decision, was published by the ITF[65].

98. An ITF Disciplinary Panel found that Pitner was in breach by failing to notify the USTA of the suspension of his White Badge certification, which resulted in the USTA allowing Pitner to officiate at the US Open in September 2015 even though he had been suspended for a year on 1 August 2015. He was also found to have breached the CCO by misrepresenting to the Qatar Tennis Federation that he held a current White Badge certification in his application to officiate at the Qatar Open (January 2016), by receipt of payment for officiating at the Qatar Open at the rate applicable for a White Badge Official, by misrepresenting to the LTA that he held a current White Badge certification in his application to officiate at Wimbledon 2016, and by failing to report those violations.

99. On 10 June 2016, an ITF Appeal Panel overturned some of the findings of breach by Pitner, and reduced his sanction to six years from 1 August 2016 until 31 July 2022. The Appeal Panel determined that Pitner did not breach the CCO by failing to notify the USTA of the suspension of his White Badge certification. Pitner's case was that the ITF and the Croatian Tennis Federation had assured him that he remained eligible to act as a line judge at the 2015 US Open and that he was not under any obligation to disclose the suspension of his White Badge certification to the USTA. He was also cleared of failure to report his own violations.

100. The Appeal Panel however affirmed the decision of the Disciplinary Panel that Pitner had misrepresented his status as a White Badge Official to the Qatar Tennis Federation and the LTA, and received payment at the rate applicable for a White Badge Official while his certification was suspended.

101. A summary of the case, and a copy of the Appeal Panel decision, was published by the ITF on 15 June 2016[66].

62 Statement of Soeren Friemel (ITF).

63 Statement of Soeren Friemel (ITF).

64 CCO (2015), Articles A13 and B1. CCO (2016), Articles A14 and B1.

65 Press Release, 'Denis Pitner found guilty of offences under Code of Conduct for Officials' (ITF, 19 April 2016), available at: http://www.itftennis.com/news/228322.aspx [accessed 9 April 2018].

66 Press Release, 'Appeal Panel decision in the case of Denis Pitner' (ITF, 15 June 2016), available at: http://www.itftennis.com/news/231333.aspx. The ITF Appeal Panel Decision is available at: http://www.itftennis.com/media/231335/231335.pdf [accessed 9 April 2018].

Proceedings against Sherzod Hasanov and Arkip Molotyagin under the CCO

102. On 12 September 2016, Uzbek White Badge Officials Hasanov and Molotyagin were banned for life by the ITF and had their ITF officiating certifications permanently revoked.

103. Again, although the Officials were dealt with by the ITF under the CCO, the TIU had conducted an investigation to provide the evidence put before the ITF Disciplinary Panel[67]. The TIU investigation commenced in 2015. At a TIB meeting of 22 February 2016 *"it was confirmed the Code for Officials would be used to process the cases"*.

104. Notices of Charge were sent by the ITF to the Officials in July 2016. The Officials were alleged to have breached Articles A.10, A.13 and B.1 of the 2015 CCO.

105. The Officials were found by the ITF Disciplinary Panel to have used a mobile phone to communicate to a third party the scores in ITF Futures matches in Israel while they were umpiring them, and to have delayed entering the scores into their PDA devices to allow third parties to place bets. They were also found to have manipulated scores by entering fictitious deuce games into their PDA devices while officiating at other ITF Futures events over a period of seven months, and to have failed to report unlawful conduct by other Officials.

106. Hasanov was also found to have procured other Officials to participate in the manipulation of the live scoring system including, but not limited to, Molotyagin.

107. As noted at paragraph 69 above, a summary of the decisions of the ITF Disciplinary Panel was published by the ITF on 14 September 2016.

2016 proceedings against Serkan Aslan and Mehmit Ulker under the CCO

108. On 28 September 2016, Turkish White Badge Officials Aslan and Ulker were banned for life by the ITF and had their ITF officiating certifications permanently revoked for breaches[68] of the CCO[69].

109. The evidence put before the ITF Disciplinary Panel was again provided by the TIU after it conducted an investigation[70]. The TIU investigation commenced in 2015. The investigatory steps taken by the TIU included interviewing the Officials and witnesses.

110. Ulker was found by the ITF Disciplinary Panel to have used a mobile phone to communicate to a third party the scores in ITF Futures matches in Turkey while he was umpiring them, and to have delayed entering the scores into his PDA device in order to allow third parties to place bets.

111. Aslan and Ulker were also found to have delayed entering the scores into their PDA devices to allow third parties to place bets at other ITF Futures events between January and September 2015, to have failed to surrender their mobile telephones, and to have failed to report unlawful conduct by other Officials.

112. Ulker was also found to have procured other Officials to participate in the manipulation of the live scoring system including, but not limited to, Aslan. The status of the TIU's investigation into those other Officials is not known to the Panel.

113. As noted at paragraph 69 above, a summary of the decisions of the ITF Disciplinary Panel was published by the ITF on 30 September 2016.

67 Press Release, 'TIU Investigations Lead to Life Bans for Tennis Officials' (TIU, 15 September 2016), available at: http://www.tennisintegrityunit.com/media/49/tiu-investigations-lead-to-life-bans-for-tennis-Officials/ [accessed 9 April 2018].

68 The breaches were in respect of CCO (2015), Articles A10, A13 and B1.

69 Press Release, 'Aslan and Ulker found guilty of Code of Conduct offences' (ITF, 30 September 2016), available at: http://www.itftennis.com/news/243538.aspx [accessed 9 April 2018].

70 Press Release, 'TIU Investigations Lead to Life Bans for Two Turkish Tennis Officials' (TIU, 29 September 2016), available at: http://www.tennisintegrityunit.com/media-releases/tiu-investigations-lead-life-bans-two-turkish-tennis-officials [accessed 9 April 2018].

114. The TIU received intelligence in respect of five additional officials at the same time as it received intelligence in respect of Ulker, Aslan, Hasanov and Molotyagin. The TIU have been unable to proceed against the three of those officials due to a lack of evidence. Two of those officials are subject to investigation in respect of separate incidents.

Other cases prosecuted under the CCO, not involving breaches of integrity

115. The Panel notes that a number of other cases involving CCO violations have been brought, and the names of the Officials involved published, since 1 January 2016. Those cases do not relate to breaches of integrity, and so are simply listed to make this clear, and for completeness:

115.1 Guy van Laer (6 August 2016) – decision to suspend until 17 August 2017;

115.2 Jakub Gornia (1 November 2016) – decision to suspend for three months until 1 February 2017;

115.3 Emanuel Messina (10 November 2016) – decision to decertify and suspend until 31 January 2018;

115.4 Magdi Somat (11 May 2016) – initially suspended until 30 June 2017, but the ITF's website reflects that a further decision was made on 1 January 2017 to permanent decertify Somat;

115.5 Bo Yan (29 June 2017) – decision to suspend until 31 December 2017; and

115.6 Dharaka Ellawala (3 October 2017) – decision to suspend until 31 December 2017[71].

(11) WAS THE APPROACH TO BREACHES OF INTEGRITY BY OFFICIALS EFFECTIVE AND APPROPRIATE?

116. As set out in Section B below, Officials will in the future be dealt with under the TACP. The Panel addresses in Chapter 14 its recommendations for the future. In these circumstances the evaluation set out below is limited to the way the CCO has been applied to breaches of integrity by Officials during the short period where that occurred.

The use of the CCO instead of the TACP to bring disciplinary proceedings against Officials for breaches of integrity, and the question of non-publication.

117. The Panel has seen no evidence that the International Governing Bodies or TIU sought deliberately to conceal that Officials had committed breaches of integrity by sanctioning them under the CCO (under which there was no publication) as opposed to under the TACP (under which there was publication).

118. In the Panel's view the approach of proceeding under the CCO in the cases of Parfenov and Pitner originated from a pragmatic need to obtain protection of the sport as quickly as possible. It then solidified into an approach based principally on:

118.1 the CCO route being more certain, given that at the time there was a doubt as to whether Officials could be dealt with directly under the TACP, both because they were not expressly included in the list of those caught and because under the arrangements at the time there was a question mark over whether there was a sufficient agreement to the arbitral procedures; and

118.2 the CCO route being faster, simpler and less expensive than the TACP route.

71 A list of officials currently sanctioned under the CCO (last updated 8 January 2018) is available on the ITF's website at: http://www.itftennis.com/media/237401/237401.pdf [accessed 9 April 2018].

119. In the Panel's present view, the impetus for the approach came not so much from the ITF, but rather from the PTIOs, TIB and the TIU. It is not the position, so far as the Panel can see, that the ITF drove forward an argument that Officials should be dealt with under the CCO. In addition, the fact that there would not be publication under the CCO does not appear to the Panel to have been raised as a factor in favour of the approach. On the contrary, to the extent that it was raised, non-publication seems to have been regarded as a disadvantage. Furthermore, it is to be noted that the change to the CCO to allow publication was introduced before there was media criticism of the relevant events. If the ITF's use of the CCO had been motivated by the opportunity that it afforded to keep sanctions secret, it is counter intuitive that the ITF would set out to change the very rule that afforded that opportunity. As for the distinction in the approach to Morgan Lamri, it presently seems to the Panel that the fact that he was registered as both an Official and a Player and was therefore unequivocally a Covered Person under the TACP means that the same doubts did not arise as to the applicability of the TACP procedures.

120. In the Panel's present view, it was understandable that the approach was adopted of proceeding under the CCO instead of the TACP for the reasons that the international governing bodies and the TIU identified, as described above. In particular it seems to the Panel that the lack of certainty of the applicability of the TACP was an important, and justifiable, element. The Panel is less convinced by the reasons based on convenience, because as explained in Section B below, it seems to the Panel that all individuals constrained to comply with the substantive obligations in the TACP should enjoy the same procedural protections under it, and that the answer to procedural difficulties in the TACP is to amend the TACP, not to seek to apply different rules. The Panel is also concerned by the apparent view of the TIU (in respect of Pitner at paragraph 91 above) that the CCO route had led to a sanction that was lenient in comparison, presumably, to what the TIU considered would have been imposed under the TACP. The Panel therefore welcomes the amendment of the TACP, with effect from 1 January 2017, to make clear that Officials are caught and the change in policy to proceed under the TACP in the future. The Panel also notes that the inability to obtain a provisional suspension under the TACP, which triggered the approach in the Pitner case, has also been addressed and that three officials have been provisionally suspended since 1 January 2017 under the mechanism provided for in the TACP.

121. The Panel presently considers it to be understandable that under the rules at the time, the ITF did not consider itself able to publish. Equally however, the Panel again welcomes the removal of the restriction on publication under the CCO in the rules applicable from 1 January 2016, the effect of which is now in any event overtaken by the change to the TACP and in the policy for the future. The panel considers it preferable that decisions should be published, as explained in Chapter 14.

The officiation of Pitner in the 2015 US Open

122. In the present view of the Panel, no criticism falls to be made of the International Governing Bodies in relation to the circumstances where Pitner despite being put on the No Credentials List on 17 August 2015 was able to officiate at the US Open in early September 2015. While the failure of Pitner to report to the USTA the suspension of his White Badge certification was held not to be a breach of the CCO, and the Panel does not question that, it does seem to the Panel to have been an important element in how it came about that he officiated at the US Open. It is true that the LTA might have specifically told the USTA that Pitner had been put on the list, or the PTIOs might have done so, or the TIB might have done so. And so too, the USTA might have checked the No Credentials List at the last moment. But in the circumstances the Panel does not consider that these were significant failings. What they do however indicate is the need for publication of sanctions.

B THE APPROACH FROM 2017 OF DEALING WITH OFFICIALS UNDER THE CCO

123. As set out in paragraph 19 above, Officials were, as of 1 January 2017, expressly included in the definition of "*Tournament Support Personnel*" in the TACP. They are therefore Covered Persons and disciplinary proceedings can be brought against them under the TACP.

124. Also, as set out above, however, that change in definition would not on the face of the rules prevent proceedings still being brought under the CCO. It remains the case that a breach of the TACP is a breach of the CCO.

125. However, the Panel understands the ITF that the expected policy going forward is that all breaches of the TACP by Officials after 1 January 2017 will be dealt with under the TACP[72]. The Panel also understands that Officials will, as of 1 January 2017, have to expressly agree in writing to be bound by the TACP.

126. This course is to be welcomed. It presently seems to the Panel that where a set of rules contains substantive obligations, and sanctions, and then a set of procedures designed to allow enforcement of those substantive obligations, a balance has been struck between these different elements to ensure an overall fair system. Put at its simplest, the procedural safeguards in the system are reflective of and commensurate with the seriousness of the offences identified and the sanctions that can be imposed. In these circumstances, it seems to the Panel that all individuals constrained to comply with the substantive obligations in the TACP should enjoy the same procedural protections under it.

72 Statement of Stuart Miller (ITF).

Media Coverage in 2016

Independent Review of Integrity in Tennis

11

1. The Independent Review Panel (the "Panel") describes below the 2016 media investigations and the principal assertions made by the media. This chapter is purely factual. The media's assertions so far as they relate to the period before the adoption of the TACP and the creation of the TIU are dealt with in Chapters 7, 8, and 9, and so far as they relate to the period thereafter in Chapter 10.

2. In January 2016, during the Australian Open, there were a number of stories in the media addressing the adequacy of the response of the International Governing Bodies to match-fixing by players. There were further stories in the weeks that followed. While some of those stories addressed new matters, many of them added little new to the content of the original stories.

3. The account below distils the principal assertions made, by reference to the principal original stories and the principal later stories raising new matters. The media's assertions fall into broadly two classes: assertions of fact, and assertions (express or implicit) of the conclusions to be drawn from the assertions of fact.

4. In the account below, references are given to where in this Record of Evidence and Analysis each of the media's assertions is dealt with.

Q 11.1 Are there other media investigations or stories that should be addressed in the body of the Final Report, and if so which, and why?

Q 11.2 Are there other assertions by the media of fact, or of the conclusions to be drawn, that should be addressed in the Final Report, and if so what are they and where are they to be found?

Q 11.3 Are any of the assertions by the media of fact, or of the conclusions to be drawn, inaccurately described below, and if so which, and why?

A 17-18 JANUARY 2016, BUZZFEED NEWS/BBC, "THE TENNIS RACKET" AND RELATED STORIES

5. The first story was published on 17 January 2016, by BuzzFeed News and the BBC, and was entitled *"The Tennis Racket"*[1]. It was a lengthy story following a joint investigation over some time, *"based on a cache of leaked documents from inside the sport"*, on *"an algorithm"* that had been used *"to analyse gambling on professional tennis matches over the past seven years"*, and on various interviews. In addition to *"The Tennis Racket"* itself, BuzzFeed News and the BBC published a number of other accompanying related stories at the same time or shortly afterwards.

(1) "THE TENNIS RACKET"

Principal matters addressed

6. The principal matters addressed in *"The Tennis Racket"* [2] were as follows:

   6.1 Richard Ings' concern in the period up to 2005 about tanking and the growth of match-fixing.

   6.2 The Vassallo Arguello v Davydenko match on 2 August 2007 in Sopot. There was an account of the match, the betting on it by a number of Russian bettors, and of the ATP's reaction at the time. There was an account of the yearlong investigation into the match undertaken on behalf of the ATP by Paul Scotney, Paul Beeby, Albert Kirby, Dave Nutten, John Gardner and Mark Phillips and of the contents of the 2008 Sopot Report, including its conclusion that they had been unable to find any evidence of corrupt action by either player in relation to the match. The story did not suggest that disciplinary action against Nikolay Davydenko or Martin Vassallo Arguello in respect of the Sopot match should have been taken against either player at the time, or subsequently by the TIU, but did suggest that the rules and the process were inadequate.

   6.3 The Vassallo Arguello texts and contact details obtained from his mobile telephone during the course of that investigation. Two or more of the Sopot investigators were said to have told the journalists that the Vassallo Arguello texts and contacts and the betting on another match involving the player by a number of Sicilian gamblers, constituted *"a smoking gun"*. The story suggested that either the ATP or the TIU ought to have taken disciplinary action against the player on the basis of the material found, or at least to have undertaken further investigations of him, but instead each did neither[3].

   6.4 The existence of *"three suspected gambling syndicates"* in Russia, Sicily, and Northern Italy, and their betting on 72 matches of particular players, reported by Mark Philips in 2008. Mark Phillips was reported as informing the journalists that *"there were 28 players whom [he] suspected of rigging the outcome of those matches, with a core of 10 against whom he felt the case was overwhelming"*. The story suggested that either the ATP or the TIU ought to have taken disciplinary action against those ten players on the basis of the material found, and to have undertaken further investigations of the others, but instead *"all of them have been allowed to continue playing"*[4].

1 Statement of Heidi Blake (BuzzFeed News) & Simon Cox (BBC).

2 Heidi Blake & John Templon, 'The Tennis Racket' (BuzzFeed News, 17 January 2016), available at: https://www.buzzfeed.com/heidiblake/the-tennis-racket?utm_term=.epvJ47bVp#.vxblaAGoj [accessed 9 April 2018].

3 Chapter 8, Section C addresses the suggestion that the ATP ought to have so acted. Chapter 9, Section C addresses the suggestion that the TIU ought to have so acted.

4 Ibid.

6.5 The 2008 Environmental Review undertaken by Ben Gunn and Jeff Rees. The story suggested that the TIU, once established, ought to have acted on the Environmental Review's conclusion that 45 of Mark Phillips' 72 matches *"warranted further investigation"*, but did not[5]. The story also suggested that the International Governing Bodies wrongly chose an inadequate form of investigatory unit recommended in the Review by Jeff Rees, instead of a better one recommended in the Review by Ben Gunn[6].

6.6 The failure of the TIU to act on betting alerts or on *"Nine lists of suspected fixers handed to the world tennis authorities over the past decade, comprising more than 70 names"*. The story asserted that *"the sport's governing bodies have been repeatedly warned about a core group of 16 players – all of whom have ranked in the top 50 – but none have faced any sanctions and more than half of them will begin playing at the Australian Open"*. That group of 16 was said to include *"winners of singles and doubles titles at Grand Slam tournaments"*. The names of the players were not however revealed by BuzzFeed News *"because without access to phone, bank or computer records it is not possible to prove a link between the players and the gamblers"*. The story suggested that disciplinary action ought to have been taken by the tennis authorities or the TIU against at least the core group of 16 players[7].

6.7 The story asserted that the application of an algorithm devised by BuzzFeed News to 26,000 matches had separately *"identified 15 players who regularly lost matches"* with suspicious odds that constituted *"a red flag for possible match-fixing"*, of which *"four players showed particularly unusual patterns, losing almost all of these red-flag matches"*[8].

6.8 The absence of any action by the TIU against the Italian players Potito Starace and Daniele Bracciali, despite Italian national federation disciplinary proceedings and Italian criminal investigation[9].

6.9 The approach of the TIU to the provision of information, and to liaison with police forces. The story suggested that that approach was insufficiently transparent and that the TIU was inappropriately unwilling to discuss matters with police forces, investigators, betting regulators and bookmakers[10].

Conclusions invited to be drawn

7. The conclusions that *"The Tennis Racket"* expressly or implicitly asserted should be drawn from the assertions of fact are that:

7.1 Insufficient has been done in the past and is being done now, and the TIU and its approach are inadequate, to deal with the serious issue faced: *"World tennis is failing to confront a serious problem with match fixing"*.

7.2 Tennis has in the past turned, and is now turning, a blind eye to match-fixing: *"Tennis hasn't got a problem because they don't want to have a problem"*.

7.3 Tennis has in the past deliberately suppressed, and is now deliberately suppressing, the extent of the problem: *"leaked files expose match-fixing evidence that tennis authorities have kept secret for years"*.

5 Chapter 9, Section B addresses the TIU's approach to the material in relation to the 45 matches mentioned in the Environmental Review. Chapter 8, Section B(2) addresses the content of the Environmental Review, including the fact that 73, rather than 72, matches had been identified.

6 Chapter 8, Section D addresses the decision as to the form of the TIU. Chapter 14, Section B addresses the appropriate structure for dealing with integrity issues going forward.

7 Chapter 7, Section A addressed the general approach of the International Governing Bodies to reports of unusual or suspicious betting patterns up to 2008, including whether proceedings ought or to have been brought. Chapter 10, Part 2 addresses the operation of the TACP by the TIU from 2009.

8 Paragraphs 13-16 below: This was explained in more detail in the BuzzFeed methodology stories published at the same time.

9 Paragraphs 31-34 below: This was revisited in the second BuzzFeed / BBC story on 15 March 2016, entitled "The Italian Job".

10 Chapter 10, Part 2, Section D addresses respectively the questions of the TIU's relationships with other bodies and transparency.

8. In their evidence to the Panel, Heidi Blake and Simon Cox stated that *"on the basis of our [i]nvestigation, it is clear that the tennis authorities and the TIU have supressed evidence suggesting that widespread match fixing ought to be investigated and made misleading statements to the public as to the size of the integrity problem facing the sport. We do not make accusations against individual players but consider the issue to be a failure to investigate matters which lie with the tennis authorities and the TIU"*[11].

9. On 18 January 2016, the International Governing Bodies issued a media release[12] *"reject[ing the] suggestion that evidence of match fixing [had been] suppressed"*. The media release stated that the TIU could only proceed on the basis of sufficient available evidence as opposed to *"information, suspicion or hearsay"*. It asserted that the sport had *"a zero tolerance approach to all aspects of corruption"*. It stated that *"a year-long investigation into the Sopot match found insufficient evidence"* of wrongdoing. It described the background that had led to the creation of the TIU, and what the TIU does, and set out that the TIU had at that point achieved 18 successful disciplinary convictions, and that none of the appeals to CAS that had occurred had led to a reduction in the suspension originally imposed. It also asserted the need for the TIU to *"work… on a confidential basis and [to] make… no public comment on its work"* and that the TIU *"is operationally independent from the governing bodies of tennis"*.

10. The validity of the conclusions that *"The Tennis Racket"* expressly or implicitly asserted should be drawn is addressed in Chapters 7, 8, 9, and 10.

(2) *"THE TENNIS FILES: HAVE TOP PLAYERS BEEN PAID TO LOSE?"* AND *"TENNIS MATCH-FIXING ALLEGATIONS EXPLAINED"*

11. On 18 January 2016 the BBC published a story entitled *"The Tennis Files: Have top players been paid to lose?"*[13]. There was also a news story entitled *"Tennis match-fixing allegations explained"*[14]. The stories were published online and included video footage. There was also a BBC radio broadcast on File on 4 at 20.00 on 19 January 2016[15].

12. The main BBC story was a condensed version of *"The Tennis Racket"* and the principal matters addressed were broadly the same, as were the conclusions that the story expressly or implicitly asserted should be drawn from the assertions of fact, and so too therefore the extent of the validity of those conclusions. The BBC, like BuzzFeed, decided not to reveal player names *"as it is not possible to determine if they have personally been taking part in match fixing"*. The BBC supported the assertion that the conclusion to be drawn is that tennis has in the past deliberately suppressed, and is now deliberately suppressing, the extent of the problem, by setting out quotations:

    12.1 From a *"senior betting source"* that *"you would share information (with the Tennis Integrity Unit) and the same players were in the frame on a regular basis… They sat on it and from up on high, they don't want it out there"*.

    12.2 From a *"senior police source in the Australian state of Victoria"* that *"They are just big-brand protectors. They try to bury stuff as much as they can"*.

11 Statement of Heidi Blake (BuzzFeed News) and Simon Cox (BBC).

12 Press Release, 'Tennis rejects suggestion evidence of match fixing suppressed' (Tennis Integrity Unit, 18 January 2016), available at: http://www.tennisintegrityunit.com/media-releases/tennis-rejects-suggestion-evidence-match-fixing-suppressed [accessed on 9 April 2018].

13 Simon Cox, 'The Tennis Files: Have top players been paid to lose?' (BBC News, 18 January 2016), available at: http://www.bbc.co.uk/news/magazine-35325473 [accessed 9 April 2018].

14 'Tennis match-fixing allegations explained', (BBC News, 18 January 2018), available at: http://www.bbc.co.uk/news/uk-35343063 [accessed 9 April 2018].

15 Simon Cox, 'File on 4: Tennis: Game, Set and Fix?' (BBC Radio 4, 19 January 2016), available at: http://www.bbc.co.uk/programmes/b06wd7f0 [accessed 9 April 2018].

(3) BUZZFEED'S STORIES EXPLAINING ITS METHODOLOGY IN ANALYSING 26,000 MATCHES

13. Also on 17/18 January 2016, BuzzFeed News published two related stories setting out its methodology in analysing 26,000 matches: one entitled *"How BuzzFeed News used betting data to investigate match-fixing in tennis"*[16] and another entitled *"Methodology and code: detecting match-fixing patterns in tennis"*[17].

Principal matter addressed

14. The principal matter addressed by the two stories was the methodology used by John Templon, including the application of algorithms, to arrive at some of the assertions in *"The Tennis Racket"*. In summary, values for the *"opening and closing odds"* offered by seven betting operators for 26,000 professional tennis matches between 2009 and 2015 were obtained from public sources. The *"implied chances that each player would win"* were calculated by algorithm from the opening and closing odds. Then about 11% of those matches were identified as ones where the *"player's chance of winning… implied by the opening and final odds"*, or *"the odds movement"*, reported by at least one betting operator was more than ten percentage points. Then 39 players were identified as having *"lost more than 10 such 'high movement' matches"*. A simulation based on the opening odds on each relevant player going on to lose each relevant match was then run a million times to arrive at *"the estimated chance that the player would have lost as many (or more) high movement matches as the player did, if the chances implied by the opening odds were correct"*. The results in relation to the 39 players were then subjected to a Bonferroni statistical significance correction. Of the 39, four players' results achieved significance at the 95% Bonferroni confidence level, and 11 more while *"not significant at the Bonferroni level… would still have been expected to occur less than 5% of the time"*. The four and the 11 players constitute together the 15 players referred to in *"The Tennis Racket"*.

Conclusions invited to be drawn

15. The conclusions that the story asserted (expressly or implicitly) should be drawn from the assertions of fact are that:

    15.1 While a player losing a single ten percentage point movement match could be attributable to *"all sorts of reasons – injury, fatigue, bad luck"* and could coincide with betting against him or her, it is *"extremely unlikely for a player to underperform repeatedly in matches on which people just happen to be betting massive sums against him"*.

    15.2 It is very likely that at least four players were deliberately losing matches and likely that at least 15 players were doing so.

16. While BuzzFeed News deliberately anonymised the 15 players, and indeed all others not previously identified in the media, again because *"it is impossible to know with a sufficient degree of certainty whether these suspicious patterns are indeed the result of match fixing"*, others chose to *"de-anonymise"* them online by purporting to deconstruct and repeat BuzzFeed's methodology, while still asserting that a player's presence on the list did not mean that he had match-fixed[18]. That de-anonymisation prompted media and online criticism of the methodology; particularly of the inclusion of certain names (especially regarding high-profile players) in the results based on it. The criticism focused first on the sheer number of matches as being likely to reveal a number of false positives, secondly on the starting point being pre match odds rather than the more important in play odds, thirdly on the inclusion in the calculation of matches where only one betting operator had reported a ten percentage point movement in odds, as opposed to taking a median of betting operators, and fourthly on the robustness of the inclusion in the calculation of a match whenever there had been a tenpercentage point movement in odds, which was often attributable to the specific circumstances of those matches[19].

16 John Templon, 'How BuzzFeed News Used Betting Data To Investigate Match-Fixing In Tennis' (BuzzFeed News, 17 January 2016), available at: https://www.buzzfeed.com/johntemplon/how-we-used-data-to-investigate-match-fixing-in-tennis?utm_term=.qu1PPwjz70#.vnbyyB18k7 [accessed 9 April 2018].

17 John Templon, 'Methodology and Code: Detecting Match-Fixing Patterns in Tennis' (GitHub, 17 January 2016)), available at: https://github.com/BuzzFeedNews/2016-01-tennis-betting-analysis [accessed 9 April 2018].

18 Links to the original online sources have since become broken. For a summary: Carl Bialik, 'Why Betting Data Alone Can't Identify Match Fixers in Tennis' (FiveThirtyEight, 21 January 2016), available at: http://fivethirtyeight.com/features/why-betting-data-alone-cant-identify-match-fixers-in-tennis/ [accessed 9 April 2018].

19 Ibid.

B 1 FEBRUARY 2016, ABC FOUR CORNERS BROADCAST

17. On 1 February 2016, the Australian Broadcasting Company's Four Corners broadcast a television programme with the strap *"On day one of the Australian Open, claims emerged that match fixing is rife in the tennis world. Tennis authorities have denied there was a systemic problem but then ordered a review of the claims"* [20].

Principal matters addressed

18. The principal matters addressed by the television programme were as follows:

18.1 The propositions that the low level of facilities and prize money at ITF men's pro-circuit events creates an opportunity for corruption to flourish, and that tennis is ideally suited for match-fixing and in particular spot fixing because it involves only two players and the line between winning and losing is small[21].

18.2 The existence of a *"blacklist obtained by Four Corners from a European bookmaker [naming] more than 350 professional players"*, which identified *"some of the players [as] too risky for the bookmaker to take bets on at all, while others are marked to be closely watched"*. Mark Phillips was reported as stating that most betting operators have a list of players on whom they have decided not to offer odds, *"because they don't trust the integrity of the game"* [22]. Four Corners had commissioned Mark Phillips to monitor and report on the betting patterns at an ITF men's pro-circuit event at the Happy Valley Tennis Centre in Adelaide, Australia. Four Corners, while confirming that there was no available evidence that he had manipulated any match, alleged that a player *"...appears on [the] secret blacklist maintained by bookmakers"* with the result that most betting operators were not offering odds on his match at the event. The presence *"on the secret blacklist obtained by Four Corners"*, of another player David Marrero who played in a mixed doubles match at the 2016 Australian Open, the betting in respect of which was suspended by a betting operator, and who denied any wrongdoing[23], was also referred to.

18.3 A betting operator's experience that they *"tend to see more activity around match-fixing... in some of the lower levels of tennis, where [players] may not be playing for much prize money"* [24].

18.4 Nick Lindahl's criminal conviction for fixing a match at an ITF men's pro circuit event in Toowoomba, Australia[25], and the opinion of Jay Salter that *"match fixing is a major part of tennis"* and *"a big problem"*.

18.5 Richard Ings' statement that he *"would not be surprised at all if there were many, many, many, dozens of matches across all levels of tennis which have suspicious betting patterns every year"* and that *"there is a suspect fixture in tennis"*, *"multiple times every week"*[26]. Four Corners also reported Richard Ings' evaluation of the problem in his 2005 Report, including his identification of 37 suspicious matches prior to that point, and asserted that *"tennis buried his report"* [27].

18.6 The identification in the 2008 Environmental Review of 45 suspect matches that warranted further investigation, and the provision of the details and *"files to tennis's world governing bodies"*. Four Corners reported Mark Phillips as asserting that they *"believed the evidence to be very strong"*, but that Ben Gunn did not *"think there was any action taken"*[28].

20 Compered by Sarah Ferguson, 'Four Corners: Bad Sport' (ABC, 1 February 2016), available at: http://www.abc.net.au/4corners/bad-sport-promo/7120372 [accessed 9 April 2018]. The programme interviewed amongst others Richard Ings, formerly of the ATP; Ben Gunn, one of the authors of the Environmental Review; and Mark Phillips, an analyst involved in the investigation of the betting patterns arising out of the Sopot investigation.

21 Chapter 4, Section A(5) addresses the player incentive structure at different levels and its unintended consequences and the vulnerability of the sport to match-fixing and other breaches of integrity due to its format and the number of players involved. Chapter 13 addresses the nature and extent of the problem faced by tennis.

22 Chapter 13, Section 10 addresses betting operators' maintenance of lists of players in respect of whose matches caution should be exercised in setting or offering odds.

23 Chapter 10 Part 2, Section D(2) addresses the mixed doubles match at the 2016 Australian Open. The match was the subject of further media stories later in February 2016, dealt with in paragraphs 25-29 below.

24 Chapter 4, Section A(5) addresses the player incentive structure at different levels and its unintended consequences. Chapter 13 addresses the nature and extent of the problem faced by tennis.

25 Chapter 10, Part 3, Section C(5) addresses the Lindahl match.

26 Chapter 3, Section F(2) addresses the concept of suspicious betting patterns. Chapter 13 addresses the nature and extent of the problem faced by tennis.

27 Chapter 7, Section A(4) addresses Richard Ings' 2005 Report and the reaction to it.

28 Chapter 8, Section C addresses the identification of 45 matches in the Environmental Review. Chapter 9, Section B addresses the ATP's and TIU's reaction to it.

18.7 The disagreement between Ben Gunn and Jeff Rees, co-authors of the Environmental Review, as to the appropriate structure for the new tennis integrity unit proposed[29]. Ben Gunn is reported as stating that he recommended *"8 or 9 people"* but *"tennis authorities ended up with one or two"*.

18.8 The proposition that the TIU is not sufficiently transparent[30].

Conclusions invited to be drawn

19. The conclusions that the television programme expressly or implicitly asserted should be drawn from the assertions of fact are that:

19.1 For over ten years tennis has ignored widespread systemic match-fixing: *"claims emerged that match fixing is rife"*; *"our investigations confirm the problem in tennis has been systemic for over a decade, and until last week largely ignored by tennis authorities"*.

19.2 The ATP had deliberately suppressed the extent of the problem in 2005: *"[Richard] Ings found that [match-fixing] was already rife… Ings recommended a top-flight integrity unit, but instead tennis buried his report"*.

19.3 Tennis had turned a blind eye to match-fixing by adopting too small an integrity unit and by failing to investigate the 45 matches raised in the Environmental Review: *"We believed the evidence to be very strong… I don't think there was any action taken"*.

20. The validity of the conclusions that the television programme expressly or implicitly asserted should be drawn is addressed in Chapters 7, 8, 9, 10 and 13.

29 Chapter 8, Section B(2) addresses the question of the disagreement as to the appropriate structure for the TIU.

30 Chapter 10 Part 2, Section D addresses the question of the transparency of the TIU.

C 9-12 FEBRUARY 2016, GUARDIAN, *"TENNIS UMPIRES SECRETLY BANNED"* AND RELATED STORIES

21. In a series of stories over 9 to 12 February 2016[31], entitled *"Revealed: tennis umpires secretly banned over gambling scam"*; *"Tennis betting scandal: how a culture of secrecy aids corruption"*; *"Tennis is asking for trouble if you allow betting on Futures matches"* and *"Tennis umpire, suspended for corruption worked at US Open: do not credential"*, the Guardian addressed the ITF's approach to disciplinary actions in relation to a number of umpires, the fact that a suspended umpire had nevertheless been able to officiate at the US Open, and the alleged inadvertent creation by the ITF of the conditions for corruption to thrive by its sale of official live scoring data to its low level pro-circuit tournaments.

Principal matters addressed

22. The principal matters addressed by the stories were as follows:

22.1 The assertion that the ITF had itself *"secretly banned"* two umpires (Denis Pitner for 12 months for betting on tennis and Kirill Parfenov for life for contacting another official to persuade him to manipulate live scores) and had charged four more for manipulating live scores at low level pro-circuit ITF tournaments[32], under the Code of Conduct for Officials. The story drew the contrast with the previous ban for life of the umpire Morgan Lamri, which had been dealt with by the TIU under the TACP, and which had been published[33].

22.2 The fact that Denis Pitner had officiated at the US Open in September 2015 notwithstanding that he had been suspended for a year in August 2015, because the USTA had not realised that he had been placed on the no credentials list[34].

22.3 The assertion that the ITF had itself *"inadvertently created the conditions for corruption to thrive"* by signing *"a lucrative five-year deal worth $70 million with the data company Sportradar to distribute live scores from very small tournaments around the globe"*[35], at which *"there was little or no television coverage or security, and the poorly paid or volunteer umpires were more susceptible to taking bribes"*, and which involved *"small prize pools, a lesser degree of oversight, and negligible media attention"*. One of the 9 February 2016 stories asserted that *"it is far lower down the ladder, on the Futures and Challenger tours that slog their way through the more remote fringes of eastern Europe, that the problem festers and grows like a cancer"*. The 10 February 2016 story also described the views of a player James Cluskey that when the prize money is low, players will be tempted to bet.

22.4 The proposition that *"partly due to the explosion in the number of events that can be gambled on during play, the number of suspicious incidents flagged up by bookmakers has risen sharply in the last three years"*[36].

22.5 The assertion that while the TIU had *"helped stem the flow of new cases at the very top of the game"*, the TIU *"does not have the resources or power to tackle widespread abuse at the lower rungs of the tennis ladder"*[37].

22.6 The assertion that the live scoring system allowed corrupt umpires to delay entering the score, while either themselves informing, or allowing others to inform, bettors of the score, on which the bettors could bet before the score was known to betting operators.

31 Owen Gibson, 'Tennis betting scandal: how a culture of secrecy aids corruption' (The Guardian, 9 February 2016), available at: https://www.theguardian.com/sport/2016/feb/09/tennis-betting-scandal-transparency-corruption [accessed 9 April 2018]; Sean Ingle, 'Revealed: tennis umpires secretly banned over gambling scam' (The Guardian, 9 February 2016), available at: https://www.theguardian.com/sport/2016/feb/09/revealed-tennis-umpires-secretly-banned-gambling-scam [accessed 9 April 2018]; James Cluskey, 'Tennis is asking for trouble if you allow betting on Futures matches' (The Guardian, 10 February 2016), available at: https://www.theguardian.com/sport/2016/feb/10/james-cluskey-tennis-futures-betting [accessed 9 April 2018]; Christopher Clarey, 'Tennis Umpire Suspended for Corruption Worked at U.S. Open' (The Guardian, 12 February 2018), available at: https://www.nytimes.com/2016/02/13/sports/tennis/tennis-umpire-suspended-for-corruption-worked-at-us-open.html [accessed 9 April 2018].

32 Chapter 10 Part 5, Sections A(10) and A(1) address the actions of umpires and the ITF's reaction to them.

33 Chapter 10 Part 5, Sections A(10) and A(11) address the TIU's disciplinary action against Morgan Lamri.

34 Chapter 10 Part 5, Sections A(10) and A(11) address the USTA's actions in allowing Denis Pitner to officiate at the US Open although he was on the no credentials list.

35 Chapter 3 Section D(6) addresses the sale of official live scoring data from ITF pro-circuit events. Chapter 13 Part 2, Section K addresses the consequences of that sale.

36 Chapter 13, Section B(1) addresses the effect of the sale of official live scoring data in relation to low-level ITF events on the incidence of reports by betting operators.

37 Chapter 10 Part 2, Sections C and E address the question of the TIU's performance in relation to higher and lower levels of events. Chapter 10 Part 2, Sections A and E address the questions of the TIU's ability and resources to deal with the position at lower levels of events.

Conclusions invited to be drawn

23. The conclusions that the stories expressly or implicitly asserted should be drawn from the assertions of fact are that:

23.1 The ITF had acted inadequately or recklessly by selling the official live scoring data to its low level pro-circuit tournaments notwithstanding that to do so created the conditions for competition to thrive: *"it calls into question whether the ITF's $14m-per-annum contract with Sportradar has acted as an inadvertent facilitator of corruption"*; *"Once the ITF had signed a multi-million dollar deal with a data company... that allows scores from the most minor matches and tournaments to be syndicated worldwide to betting sites, it was incumbent on it to also make sure its integrity unit was fit for purpose. If it could not ensure those tournaments were not at risk, and spend a small proportion of the $14m a year it brings in from the Sportradar deal on doing so, then it should not have made that data available"*.

23.2 The ITF had improperly dealt with umpires itself and under its own rules which did not require publication of sanctions, instead of allowing them to be dealt with by the TIU under the TACP which did require publication, and had deliberately suppressed information about the manipulation by umpires of live scores at its low level pro-circuit tournaments, in order to prevent criticism of its lucrative deal to sell official live scoring data to those tournaments, and to protect the reputation of the sport: *"umpires have been secretly banned"*; *"the tennis authorities never publicly released details"*; *"the revelations raise the question as to whether the ITF decided not to release the fact Parfenov and Pitner had been suspended because it feared the embarrassment"*; *"the idea that investigations should be conducted in the dark, shrouded in secrecy and accompanied by an air of paranoia and unease, can only add to the impression that the ITF is more concerned about the image of the sport than being seen to root out corruption without fear or favour"*; *"our sources strongly hinted at an atmosphere of fear and intimidation that suggested a culture of cover-up"*.

23.3 The ITF had acted with inadequate transparency in not publishing the names of officials banned for betting offences, resulting amongst other things in a banned official still being able to officiate at the US Open: *"the... investigation will raise fresh concerns about the extent of corruption in tennis and the lack of transparency at the ITF"*.

23.4 The USTA had acted inadequately in failing to check whether officials allowed to officiate at the US Open had been placed on the no credentials list.

24. The validity of the conclusions that the stories expressly or implicitly asserted should be drawn is addressed in Chapters 3, 10 Part 2, 10 Part 5 and 13.

D 24 JANUARY 2016, NEW YORK TIMES / 24 FEBRUARY 2016, THE AGE, AUSTRALIAN OPEN MIXED DOUBLES MATCH

25. On 24 January 2016, the New York Times published a story headed *"Match fixing suspicions raised at Australian Open after site stops bets on match"* [38]. A month later on 24 February 2016 The Age published a follow up story in relation to the handling of the investigation into the Australian Open mixed doubles alert, entitled *"Australian Open 2016 match fixing probe 'bungled' by tennis authorities"* [39].

Principal matters addressed

26. The principal matters addressed by the two stories are as follows:

    26.1 The suspension of betting by Pinnacle Sports on the 24 January 2016 Australian Open first round mixed doubles match, David Marrero (ESP)/Lara Arruabarrena (ESP) v Lukasz Kubot (CZE)/Andrea Hlavackova (POL), 0-6, 3-6. The New York Times story set out that Pinnacle had suspended betting on the match in response to unusual betting in the form of a small number of people placing much larger amounts of money than usual for mixed doubles, and doing so solely on Kubot/Hlavackova despite an odds shift to make their opponents a more attractive bet. On the face of the story, Pinnacle was asserted to have notified the Victoria Police when it suspended the market: *"about 13 hours before the match was set to begin, Pinnacle's traders suspended betting on it, Blume said. He then notified the police in Victoria, the Australian state where the tournament takes place, of possible irregularities"*. It was asserted that similar patterns had been observed in betting on the match on other websites, including Betfair. The New York Times story then described how the match progressed in a manner that was alleged to be suspicious. It was asserted that a betting expert called Stefano Berlincioni had identified four men's doubles matches involving Marrero in 2015 that had *"included suspicious betting movements"*, and that Marrero had lost his last ten men's doubles matches. The New York Times story stated that Marrero and Arruabarrena denied fixing, and set out Marrero's explanation that he could not play his hardest against a woman and that he had played cautiously in order to protect an inflamed knee. The players denied that they had told anyone of the injury apart from *"their coaches, tournament doctors and another pair of Spanish players"*, but that *"it was possible that a spectator could have noticed that Marrero was affected by the injury in practice Saturday"*.

    26.2 The failure of the TIU to interview David Marrero or Lara Arruabarrena or to seize their mobile telephones before they left Australia[40]. The Age story asserted that the TIU *"allowed Marrero to leave Melbourne – after he met the coach of another player at the coach's hotel – for his native Spain, and then sent him an email several days later requesting a meeting"* and telling him *"not to delete any information from his phone as it could be seized"*. The story recorded criticism by the Victoria Police that the TIU's approach was *"almost comical"*, and *"could mean that it is impossible to gather evidence that may substantiate suspicions about betting on the match"*. The story stated that *"Pinnacle was accused of a publicity stunt after... Marco Blume told the New York Times he had suspended betting. Mr Blume declined to comment further on why the markets were suspended... or when tennis authorities were informed of the decision"*.

38 Ben Rothenberg and James Glanz, 'Match-Fixing Suspicions Raised at Australian Open After Site Stops Bets on Match' (New York Times, 24 January 2018), available at: https://www.nytimes.com/2016/01/25/sports/tennis/match-fixing-australian-open-mixed-doubles-betting.html [accessed 9 April 2018].

39 Nino Bucci, 'Australian Open 2016 match-fixing probe 'bungled' by tennis authorities' (The Age, 24 February 2016), available at: https://www.theage.com.au/national/victoria/australian-open-2016-match-fixing-probe-bungled-by-tennis-authorities-20160224-gn24jc.html [accessed 9 April 2018].

40 Chapter 10 Part 2, Section D(2) addresses the actions taken by the TIU in relation to the match.

Conclusion invited to be drawn

27. The conclusion that The Age's story expressly or implicitly asserted should be drawn from the assertions of fact is that the TIU's approach in relation to the mixed doubles match was incompetent: *"bungled"*; *"allowed Marrero to leave"*; *"almost comical"*; and *"could mean that it is impossible to gather evidence that may substantiate suspicions about betting on the match"*.

28. The TIU has subsequently publicly stated that its investigation into the match has ended and that it is satisfied that there was no wrongdoing by either David Marrero or Lara Arruabarrena. The TIU's position is that the players had already left Australia by the time that the TIU was informed of Pinnacle's suspension of the betting market, because neither Pinnacle nor the Victoria Police informed it in advance[41].

29. The validity of the conclusion that the story expressly or implicitly asserted should be drawn is addressed in Chapter 10 Part 2[42].

41 Chapter 10 Part 2, Section D(2).

42 Chapter 10 Part 2, Section D(2).

E 15 MARCH 2016, BUZZFEED NEWS / BBC, *"THE ITALIAN JOB"* AND RELATED STORIES

30. On 15 March 2016 BuzzFeed News and the BBC published further stories, addressing in more detail the current criminal investigation and prosecution in Cremona, Italy (also referred to in *"The Tennis Racket"*), the ATP's response in 2007 to information received in relation to players holding betting accounts, and approaches made to female players before 2013.

(1) *"THE ITALIAN JOB"*

Principal matters addressed

31. The principal matters addressed in BuzzFeed's and the BBC's story entitled *"The Italian Job"* [43] are as follows:

31.1 Evidence of match-fixing by Starace and Bracciali first discovered by chance and as a part of an investigation into football match-fixing rather than by the TIU.

31.2 The absence of any action by the TIU against Potito Starace or Daniele Bracciali, notwithstanding that they had been disciplined by the ATP in 2007 for themselves placing bets on tennis, that they had been among the 28 players named to the TIU in 2008 as being involved in suspicious matches as a result of the Sopot investigation, that the Italian Tennis Federation had taken disciplinary action against them resulting in life bans[44], and that they have been the subject of an Italian criminal police prosecution in Cremona since 2015, the documents in relation to which had been provided to the TIU[45]. The story described the prosecutor's case against Starace and Bracciali, the validity of which the players deny.

31.3 The absence of any action by the TIU against any other of the 28 players identified to the TIU in 2008 as being involved in suspicious matches as a result of the Sopot investigation[46].

31.4 The absence of any action by the TIU following the provision to it by the Italian prosecutor in Cremona of documents said by him to amount to *"evidence of 'worldwide' fixing"* of tennis matches and referring *"to at least 37 players, only 8 of whom are Italian and 29 of whom have ranked in the top 50"* and including *"two top-20 players"*. The Italian prosecutor asserted that the TIU was uninterested in and has ignored the information, notwithstanding that the prosecutor had limited powers to investigate non-Italians, and that the TIU could be expected on the basis of the documents to *"identify, possibly hit, many foreign players who are definitely part of this system… and these are not so-called second-tier tennis players, but also players of some importance"*[47].

31.5 The proposition that the Italian prosecutors' documents *"cast doubt on the tennis authorities' claim that match-fixing is not systemic and that evidence is 'historical'"* and rather suggest that *"fixing is a 'worldwide problem' that happens 'very frequently' at 'all tournaments'"*[48].

43 Heidi Blake & John Templon, 'The Italian Job' (BuzzFeed News, 15 March 2016), available at: http://www.buzzfeed.com/heidiblake/heres-the-evidence-of-worldwide-match-fixing-prosecutors-say#.yyW6QDB8D [accessed on 9 April 2018]; Sean Ingle, 'Tennis authorities deny Italian claims over match-fixing evidence' (The Guardian, 15 March 2016), available at: https://www.theguardian.com/sport/2016/mar/15/tennis-integrity-unit-match-fixing-allegations [accessed on 9 April 2018].

44 The story reported that the players had first been banned for life, then on appeal Starace had been cleared and Bracciali's ban had been reduced to a year, but then the life bans had been reinstated.

45 Chapter 10 Part 2, Section D(2) includes a factual account and assessment of the TIU's approach to the Italian prosecution of Starace and Bracciali.

46 This was raised in "The Tennis Racket" and it is dealt with above in relation to that story.

47 Chapter 10 Part 2, Section D(2) addresses the TIU's approach to the information provided by the Italian prosecutor in relation to other players.

48 Chapter 13 addresses the nature and extent of the threat faced by Tennis is evaluated in Chapter 13.

31.6 The failure of the TIU *"to act on hundreds of alerts… about suspicious betting on tennis matches – including those that are now at the centre of [the Italian] investigation"* or to undertake any *"real initiative… to establish if there was something dirty behind this"*[49].

31.7 The suggestion that when the ATP disciplined players in 2007 for betting, including five Italians, it *"cover*[ed] *up evidence about 95 players who were allegedly caught gambling on tennis matches"* and instead *"decided to scapegoat the Italians and ignored the rest of the evidence"*[50].

Conclusions invited to be drawn

32. The conclusions that the *"The Italian Job"* expressly or implicitly asserted should be drawn from the assertions of fact are that:

32.1 The TIU had acted inadequately in failing to investigate Bracciali and Starace or any other of the 28 players when they were identified to it following the Sopot investigation in 2008 and in failing to pursue any investigation into other players the subject of evidence in the Italian prosecutors' files: *"tennis authorities were urged to launch a full disciplinary investigation into the two Italian players… in 2008… but… the [TIU]… closed the file and allowed them both to carry on playing"*.

32.2 There is *"worldwide"* and *"frequent"* match-fixing at *"all"* levels of tournament, not only by second tier players but also by *"players of some importance"*.

32.3 The TIU has insufficient appetite to deal with and turns a blind eye to match-fixing: *"prosecutors… say they handed [the TIU] evidence of 'worldwide' fixing… but claim it has been ignored"*.

33. On 15 March 2016, the TIU issued a media release[51] refuting the claims of the Italian prosecutor. The media release stated that the TIU had been seeking to obtain evidence in relation to Bracciali and Starace from the Italian prosecutor since October 2014 and had been joined as an injured party to the criminal prosecution, but was unable to make further comment as the matter was sub judice. It also stated that *"all information received from the [Italian] prosecutor is being fully and thoroughly assessed, verified, and where appropriate, investigated under the powers of the [TACP]"*.

34. The validity of the conclusions that *"The Italian Job"* expressly or implicitly asserted should be drawn is addressed in Chapters 8, 9, 10 Part 2 and 13.

49 This was raised in "the Tennis Racket" and it is dealt with above in relation to that story.

50 This was dealt with in more detail in other BuzzFeed News and BBC stories on 15 March 2016, and it is dealt with below in relation to those stories.

51 Press Release, Tennis Integrity Unit Refuses Claims By Italian Prosecutor Over Match-Fixing Information' (Tennis Integrity Unit, 15 March 2016), available at: http://www.tennisintegrityunit.com/media/42/tennis-integrity-unit-refutes-claims-by-italian-prosecutor-over-match-fixing-information/ [accessed 9 April 2018].

(2) *"THE GAMBLER AND THE TOP-50 PLAYERS"* AND *"TENNIS MATCH-FIXING: MORE PLAYERS SHOULD BE INVESTIGATED"*

35. On 15 March 2016, the BBC published a story entitled *"The Gambler and the top-50 tennis players"*[52] and a story entitled *"Tennis match-fixing: more players should be investigated"*[53]. The stories were published online and included video footage. There was also a BBC radio broadcast on File on 4 at 20.00 on 15 March 2016[54].

36. The stories were condensed versions of *"The Italian Job"* and the principal matters addressed were broadly the same, as were the conclusions that the stories expressly or implicitly asserted should be drawn from the assertions of fact, and so too therefore the extent of the validity of those conclusions. The second BBC story appeared to go further and to suggest that Tennis has in the past deliberately suppressed, and is now deliberately suppressing, the extent of the problem. Cross-referring to the BBC stories on 17/18 January 2106, the BBC stated that *"Tennis has been accused of covering up evidence about widespread gambling on matches by players"*.

(3) *"TENNIS COVERED UP FOR 95 GAMBLERS, SAYS FAMILY OF SUSPENDED PLAYER"*

37. On 15 March 2016, BuzzFeed News published a story entitled *"Tennis covered up for 95 gamblers, says family of suspended player"*[55], and the BBC published a story called *"Paola Cesaroni: 'They had to protect some names we think because they were high-ranked players'"* [56].

Principal matters addressed

38. The principal matters addressed in the two stories were as follows:

    38.1 The ATP's receipt in 2007 from a betting operator of a list of accounts in the name of tennis players. The stories asserted that it was *"a list of 100 players caught gambling on tennis"* that included *"high-ranked players"* and *"includ[ed] one global star"* [57].

    38.2 The ATP's commencement of disciplinary proceedings against, and suspension of, some players, and sending of letters to others. The stories asserted that the ATP had brought disciplinary proceedings against five lower ranked Italian Players, but *"instead of taking action against the others… took steps to protect them, warning them to shut down their accounts"* in letters. It was asserted that a legal action had been brought against the ATP in Florida by the five Italian players claiming breach of *"its 'fiduciary duty' to them by… 'discriminately targeting them as low-ranked, less prominent professional tennis players'"*, and alleging *"that the ATP had ignored 'more serious violations' committed 'by high-ranked, more prominent professional tennis players in order to avoid negatively impacting its revenue and reputation'"*. The stories asserted that the ATP's evidence and depositions were placed under seal by the court in Florida, which *"ultimately upheld the players' suspensions in a sealed judgment that prevented any details of the case becoming public"*. The stories recorded the mother of one of the five Italian players as accusing *"world tennis authorities of covering up evidence against 95 other… players"*, accusing the ATP of *"alerting"* all those players because among them there were *"one or two big names to protect"* and accusing the ATP of deciding to punish only *"the 5 Italian players… because they were the lowest ranked players"* and because *"maybe at the ATP they decided it was not good publicity to show all the names"*[58].

52 Simon Cox, 'The gambler and the top-50 tennis players (BBC News, 15 March 2016), available at: http://www.bbc.co.uk/news/magazine-35802893 [accessed 9 April 2018].

53 'Tennis match-fixing: More players should be investigated' (BBC Sport, 15 March 2016), available at: http://www.bbc.co.uk/sport/tennis/35808571 [accessed 9 April 2018].

54 File on 4, 'Tennis: The Italian Files' (BBC Radio 4, March 2016), available at: http://www.bbc.co.uk/programmes/b07378dc [accessed 9 April 2018].

55 Heidi Blake & John Templon, 'Tennis covered up for 95 gamblers, says family of suspended player' (BuzzFeed News, 15 March 2016), available at: https://www.buzzfeed.com/heidiblake/tennis-accused-of-covering-up-for-95-gamblers?utm_term=.yrlXXEYDqZ#.olWxx9vEX7 [accessed on 9 April 2018].

56 Simon Cox, 'The gambler and the top-50 tennis players' (BBC News, 15 March 2016).

57 Chapter 7, Section B addresses the ATP's receipt in 2007 of a list of betting accounts in the name of tennis players and its reaction to it.

58 Ibid.

Conclusions invited to be drawn

39. The conclusions that the stories expressly or implicitly asserted should be drawn from the assertions of fact are that:

    39.1 The ATP discriminated between players guilty of the same breach of the ATP's then rules, bringing disciplinary proceedings against, and scapegoating, only guilty low ranked players and protecting guilty high ranked players, in order to protect its revenue and reputation.

    39.2 The ATP was guilty of a cover up of its discriminatory actions by burying the list of 100 players.

40. The validity of those conclusions is addressed in Chapter 7.

(4) *"MATCH FIXERS TARGETED HALF MY PLAYERS SAYS TENNIS MANAGER"*

41. On 15 March 2016, BuzzFeed News published a story entitled *"Match fixers targeted half my players says tennis manager"*[59].

Principal matters addressed

42. The principal matters addressed are as follows:

    42.1 The statements of a retired tennis manager named Alan Moore that half of his 40 Russian female tennis player clients had been approached to fix tennis matches, that *"players were often afraid to blow the whistle because of an 'omerta' across the sport"*, that *"match fixing is [not] only a 'historical problem' [but] …is happening regularly and consistently"* and that *"tennis itself, the ITF, is overloaded at the moment and it's impossible to police it efficiently or correctly""*[60].

    42.2 A specific example was given of approaches made to one of his players to spot fix in return for a *"four-figure sum"* at a tournament in Barnstaple, Devon, England, first by someone who approached her in her hotel, and secondly by a coach at the tournament. The *"approaches were reported to tournament officials, and the coach was asked to leave the venue"*. Alan Moore is reported as stating that *"no action was taken to discipline or stop this fixer"*, no sanctions were imposed *"on the coach, who is still working in the sport"*, and that the tennis authorities similarly appeared not to have taken any action when other approaches had been reported by his players.

Conclusions invited to be drawn

43. The conclusions that the story expressly or implicitly asserted should be drawn from the assertions of fact are that:

    43.1 The TIU and its approach are inadequate to deal with the serious issue faced: *"World tennis authorities did not respond to rampant corruption"* and *"tennis is overloaded"*.

    43.2 Tennis is turning a blind eye to match-fixing, ignoring reports of approaches to match-fix even when the fixer is an identified coach.

44. The validity of the conclusions that the story expressly or implicitly asserted should be drawn is addressed in Chapters 10 and 13.

59 Heidi Blake & John Templon, 'Match-fixers targeted half my players, says tennis manager' (BuzzFeed News, 15 March 2016), available at: https://www.buzzfeed.com/heidiblake/match-fixers-targeted-half-my-players-says-tennis-manager?utm_term=.oxWAA0xB3v#.bfmBBZWybE [accessed 9 April 2018].

60 Aside from one example, the story does not identify who the Russian female players were or at what level they played, where or when the approaches were made or whether they were all reported and to whom. Chapter 13 addresses the nature and extent of the problem faced by tennis, including the incidence of approaches to players at different levels and in different countries and reluctance to report.

Developments Following the Announcement of the Independent Review in 2016

Independent
Review
of Integrity
in Tennis

12

1. The Independent Review Panel (the "Panel") describes below the announcement of this Independent Review of Integrity in Tennis (the "Review"), the United Kingdom Digital, Culture, Media and Sport Select Committee hearing, and the steps subsequently taken or proposed by the International Governing Bodies of tennis. This Chapter is purely factual. In making its recommendations for the future in Chapter 14, the Panel takes into account and addresses the sufficiency of those International Governing Body steps already taken or proposed.

Q 12.1 Are any aspects of the announcement of this Independent Review of Tennis innacurately described below, and if so which, and why?

Q 12.2 Are any aspects of the Digital, Culture, Media and Sport Select Committee hearing innacurately described below, and if so which, and why?

Q 12.3 Are any aspects of the steps subsequently taken or proposed by International Governing Bodies, innacurately described below, and if so which, and why?

A THE CULTURE, MEDIA AND SPORT SELECT COMMITTEE

2. On 24 February 2016, following the media coverage up to that point and the announcement of the review of integrity in tennis, the UK House of Commons, Media and Sport Select Committee heard witnesses give oral evidence on *"Match Fixing in Tennis"* at the Houses of Parliament in London[1].

3. The members of the Committee present were Jesse Norman (Chair), Andrew Bingham, Damian Collins, Julie Elliott, Nigel Huddleston, Ian C Lucas and John Nicolson.

4. The witnesses heard were:

   4.1 Nigel Willerton, Director of Integrity, Tennis Integrity Unit, who answered questions 1 to 117.

   4.2 Chris Kermode, Executive Chairman and President of the Association of Tennis Professionals, and Mark Young, Vice President and Chief Legal and Media Officer of the Association of Tennis Professionals, who answered questions 118 to 188.

5. The below is a summary of the evidence given to the Committee:

(1) NIGEL WILLERTON'S EVIDENCE TO THE COMMITTEE

6. Nigel Willerton gave evidence in relation to the high proportion of suspicious betting patterns reported by ESSA that related to tennis[2]. He explained that a suspicious betting pattern alert was evidence of suspicious betting, but was not necessarily evidence that the match had been fixed by one of the players involved in it. It was rather an indicator that something might be amiss, which upon examination might in fact have been caused by injury or other circumstance at the event. He explained that different betting operators reported different levels of activity. He accepted that the number of ESSA suspicious betting patterns relating to tennis was vastly disproportionate. He also accepted that there was more suspicious betting in relation to tennis than in relation to other sports. He stated that in his view the number of alerts had increased because online betting operators had relatively recently started to make markets on lower level Futures events.

7. He gave evidence in relation to the BuzzFeed / BBC assertion that in 2008, at the time when the TIU was being set up, the sport had been warned about 16 players, half of whom had played at the recent Australian Open[3]. He stated that he did not know the 16 names, and had not been at the TIU at the outset. He explained that the head of the TIU at the outset, Jeff Rees, would have reviewed the material provided to the TIU, and if there had been a possibility of using it to conduct an investigation, he would have done so. He stated that the material had been kept for intelligence, but no new investigations had taken place, and he did not know of any warnings. He stated that he had not gone back to look at the material. Nigel Willerton subsequently provided a written submission to the Committee[4], in which he stated that he had not been able to find any evidence of a *"list"* of 16 players at the TIU. He also invited Buzzfeed and the BBC to provide any evidence they had regarding the purported list.

8. In relation to the TIU's approach on receiving an alert[5], he stated that all such alerts were investigated, and that the TIU relied on tournament officials to identify whether a player had used best efforts.

1 House of Commons Culture Media and Sport Committee, Oral Evidence: Match Fixing in Tennis, HC 862, Wednesday 24 February 2016. The full record of the evidence is on the IRIT website at http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/culture-media-and-sport-committee/match-fixing-in-tennis/oral/29768.html [accessed 9 April 2018]. The hearing was reported in the press: see for example http://www.telegraph.co.uk/sport/tennis/12172242/Tennis-Integrity-Unit-decried-as-a-fig-leaf-at-DCMS-hearing.html [accessed 9 April 2018].

2 Questions 1 to 12.

3 Questions 13 to 25.

4 Written evidence submitted by the Tennis Integrity Unit in relation to the "Culture, Media and Sport Committee – Tennis match fixing investigation". The written submission is on the IRIT website at http://www.parliament.uk/business/committees/committees-a-z/commons-select/culture-media-and-sport-committee/inquiries/parliament-2015/inquiry/publications/ [accessed 9 April 2018].

5 Questions 26 to 28.

9. As to the Vassallo Arguello v Davydenko match[6], Nigel Willerton explained that the match was a *"great"* example of where there was a suspicious betting pattern that demonstrated that the bettors knew something, but where there was no available evidence of improper conduct by either player. There was no available evidence of any link between the players and the bettors, and it was not therefore possible to convict a player of match-fixing. He explained that the texts found on Vassallo Arguello's phone did not relate to the match against Davydenko. He rejected the possibility of a *"Scottish verdict"* of *"not proven"* between guilt and innocence, and stated that people are innocent until proven guilty and they cannot be proven guilty on the basis of a betting alert alone.

10. As to the level of corruption in tennis[7], he stated that the 246 alerts in 2015 had arisen from about 120,000 matches, which was a very small percentage. He explained that in 2012 there were 14 alerts, in 2013, 46, and in 2014, 91[8]. He explained that the problems were mainly at the Lowest Level[9], which were the hardest to monitor and which contributed about 96,000 matches, and at the Challengers level, which combined with the ATP Tour, contributed about 14,000 matches[10]. He stated that there had been suspicious activity at qualifiers as well as at main draw matches. He explained that the TIU could not monitor all these matches and had to rely on tennis officials.

11. He gave evidence in relation to approaches to players[11]. He stated that he was awaiting the details of the approach to a member of Novak Djokovic's entourage in 2007 reported in the media, and explained the obligation to report approaches, and that if a player was scared they should go to the local police force. He accepted that in some parts of the world players might find it harder to secure police protection than in others. He stated that the TIU had however had no notifications of threats of violence in the last twelve months[12]. In the TIU's subsequent written submission, Nigel Willerton stated that the TIU had since spoken with Novak Djokovic's team, and that it had been confirmed that the approach was at a tournament in London in 2006 to a coach of Mr Djokovic. The approach was not reported at the time as the coach had not understood he was required to do so[13].

12. In relation to whether there were some venues that were more vulnerable than others[14], he stated that there were some countries that gave rise to more alerts than others. He stated that there had been very few alerts at Grand Slams, (2013: one; 2014: one; 2015: possibly three), none of which had been at Wimbledon. He stated that it was at the Challenger and the Futures level where they were seeing a lot of alerts, which was more worrying for tennis and which he hoped the Review would address. He identified the countries in which there were events giving rise to a lot of alerts as including Argentina, Chile and Russia, and ascribed the difference as due to cultural differences.

6 Questions 29 to 34.

7 Question 35.

8 Question 92.

9 The "Lowest Level" is made up of ITF men's $15k and $25k Pro Circuit events (Futures) and women's $15k and $25k Pro Circuit events.

10 Questions 63 to 70.

11 Questions 36 to 47.

12 Questions 56 and 57.

13 Written evidence submitted by the Tennis Integrity Unit Re: Culture, Media and Sport Committee – Tennis match fixing investigation, at http://www.parliament.uk/business/committees/committees-a-z/commons-select/culture-media-and-sport-committee/inquiries/parliament-2015/inquiry/publications/ [accessed 9 April 2018].

14 Questions 48 to 55.

13. As to the TIU's investigatory methods other than based on the receipt of alerts[15], Nigel Willerton stated that the most productive work was done on the basis of information received from within the tennis family, particularly players, and that was why the TIU had a strict confidentiality policy. He stated that players were however obliged to assist investigations. He explained that the TIU worked together with law enforcement agencies, and with betting operators with which the TIU had memoranda of understanding, the number of which he suggested contributed to the high number of alerts reported.

14. He gave evidence in relation to cooperation with betting operators[16]. He stated that there were large betting operators that did not fully cooperate with the TIU, and identified Pinnacle as a betting operator that did not at that time share data with the TIU. In the TIU's subsequent written submission, Nigel Willerton clarified that Pinnacle's position is based on considerations relating to its Privacy Policy[17], and that Pinnacle's position is that it is open to working with the TIU subject to those considerations.

15. In relation to the TIU's resources[18], he stated that its budget was presently $2 million, but set to rise, and that at that point its staff was six, made up of himself, three investigators (all ex police officers with anti-corruption rather than tennis experience[19]), an information manager and administrative support. He stated that he had secured funding for an additional investigator and an additional analyst/researcher. The latter would be able to undertake data evaluation and statistical analysis, but the TIU primarily relied on the betting operators to provide that[20]. He considered that the TIU had adequate resources at the present time, shared between the International Governing Bodies. In answer to the question what the TIU's budget would be in the next three or four years' time if the rate of expansion in alerts continued, he said that he thought it would be doubled[21]. In answer to the question whether it was disproportionate that the ITF should earn $14 million a year from Sportradar, but the TIU should only receive $2 million, only $200,000 of which came from the ITF, he stated that he had no input on the structure for the funding of the TIU and that the question was best addressed to the International Governing Bodies. He latterly clarified in the TIU's written submission to the Committee that the ITF was only to receive $5.6 million in 2016 from the Sportradar contract and that 80% of this was to be distributed to national federations[22].

16. He gave evidence in relation to the fact that the action against Chair umpires Parfenov and Pitner had not been published[23]. He stated that there had been no attempt to hide anything. Following the TIU's investigation he had received advice that he could pass the information to the ITF[24], and the umpires had been dealt with under the Code of Conduct for Officials because it was more efficient, but that under that Code at the time such action did not fall to be published, whereas from 1 January 2016, equivalent action would be.

15 Questions 58 to 62.

16 Questions 71 to 76.

17 Written evidence submitted by the Tennis Integrity Unit Re: Culture, Media and Sport Committee – Tennis match fixing investigation, at http://www.parliament.uk/business/committees/committees-a-z/commons-select/culture-media-and-sport-committee/inquiries/parliament-2015/inquiry/publications/ [accessed 9 April 2018].

18 Questions 77 to 83.

19 Questions 90 to 91.

20 Questions 113 to 114.

21 Questions 93 and 115.

22 Written evidence submitted by the Tennis Integrity Unit Re: Culture, Media and Sport Committee – Tennis match fixing investigation, at http://www.parliament.uk/business/committees/committees-a-z/commons-select/culture-media-and-sport-committee/inquiries/parliament-2015/inquiry/publications/ [accessed 9 April 2018].

23 Questions 84 to 89.

24 Questions 94 to 95.

17. In answer to questions in relation to transparency[25], Nigel Willerton gave evidence that he considered that nothing could be published until a person had been found guilty and disciplined, because it would be disproportionate to do otherwise. It would affect players' sponsors and players' livelihood to publish earlier, which would be inappropriate if there was nothing found at the end of the process. He stated that for his part it was important to maintain confidentiality, but that he would engage with the Panel to see if there were steps that could be taken to be more transparent within the confines of doing that, and that he was committed to greater transparency[26]. When players were disciplined, that fact had to be published.

18. In relation to independence[27], Nigel Willerton gave evidence that he considered that he had total independence of action in conducting investigations. He stated that the final step in deciding whether to commence disciplinary proceedings lay with the PTIOs. He stated that in his view, there should be more independence. He stated that his job was to catch cheats, and that he had free rein to do that and the sport could and would not prevent him from doing so for the sake of protecting its reputation[28].

(2) CHRIS KERMODE'S AND MARK YOUNG'S EVIDENCE TO THE COMMITTEE

19. Chris Kermode gave evidence that he came into office at the ATP in 2014, that integrity was hugely important to the sport, that the ATP was committed to transparency, and that the ATP would act positively on the recommendations of the Panel even if unpalatable[29].

20. In relation to resources[30], he explained that the ATP contributed 20% of the TIU's funding, which was about $400,000. He accepted that this was a small amount of the ATP's turnover. Both Mark Young and Chris Kermode confirmed the TIU was currently provided with any funding that it requested[31]. Chris Kermode confirmed that the sport would spend whatever the Panel recommended on resources for the TIU[32]. Chris Kermode stated that the question of how much of the money coming from Sportradar to the ITF should be reinvested into integrity was a question that the Panel would examine[33].

21. Chris Kermode gave evidence that the ATP was committed to treating the publication of disciplinary action against players and officials in the same way[34].

25 Questions 96 to 106.
26 Question 112.
27 Questions 107 to 111.
28 Questions 116 to 118.
29 Questions 119 to 122 and 128.
30 Questions 123 to 131.
31 Questions 138 and 141.
32 Questions 145 and 146.
33 Questions 148 to 146.
34 Questions 132 to 133.

22. Mark Young gave evidence in relation to the BuzzFeed / BBC assertion that in 2008, at the time when the TIU was being set up, the sport had been warned about 16 players, half of whom had played at the recent Australian Open[35]. He stated that he did not know the 16 names, and that the ATP had no role in monitoring such things, which was in the hands of the independent TIU. Both Mark Young and Chris Kermode confirmed that the ATP would not be told whom the TIU was looking at, and would not tell the TIU whom to look at. In answer to the question whether previous cases should be re-opened, Chris Kermode stated that the ATP was willing to do that, and to fund the TIU to do that, if there was evidence to support doing so, irrespective of the seniority of the players involved[36]. He also stated that he did not believe that what had happened in the past would affect whistleblowers coming forward[37], or that there was a culture of people not coming forward because they thought nothing would be done[38].

23. In relation to independence[39], Chris Kermode gave evidence that the TIU was set up to be independent and was kept as independent as possible, although the International Governing Bodies did fund it. Mark Young gave evidence that there was a spectrum of independence, and whether the current level was appropriate would be examined by the Panel. Chris Kermode gave evidence that the TIU acted independently and that tennis had not suppressed information.

24. As to the level of the problem, Chris Kermode gave evidence that the level of match alerts suggested a problem at 0.2% of matches[40]. Those alerts were only alerts and not evidence of cheating, and the increase in betting would result in an increased number of alerts[41]. As to the reaction to it, it was for the Panel to assess whether the TIU was doing a good enough job[42]. Mark Young gave evidence[43] that alerts only reflect suspicious betting, and not necessarily corruption. He explained that the fact that ESSA reported more suspicious betting patterns from tennis than from other sports meant only that more had been reported to ESSA members, and the suspicious betting on other sports might take place with different betting operators. He reiterated that the alerts reflected a low percentage of the total matches, but that tennis had zero tolerance. Chris Kermode stated that he did not believe that the problem was rife[44].

25. On sponsorship by betting operators, Chris Kermode gave evidence that the ATP did not have a betting sponsor, but that currently the ITF and Tennis Australia did[45]. He confirmed that tennis events and bodies could be sponsored while players could not be, because that would be a step too far[46]. As to the fear that other sponsors might withdraw, International Governing Bodies were not complacent, there had not been wrongdoing by them, and they were seeking to do things better[47].

35 Questions 134 to 141.
36 Questions 153 to 154 and 158 to 161.
37 Question 155.
38 Question 157.
39 Questions 140 and 142 to 144.
40 Question 144.
41 Question 147.
42 Question 144.
43 Questions 179 to 182.
44 Question 183.
45 Questions 148 to 152.
46 Questions 162 to 164.
47 Question 165.

26. Chris Kermode gave evidence that it was necessary to maintain confidentiality in individual cases, but that a better job needed to be done in explaining how the process worked[48].

27. Both Chris Kermode and Mark Young gave evidence of the commitment of the sport to addressing corruption by players[49]. The International Governing Bodies had not supressed evidence, was on the front foot by establishing the Review, and had been at the forefront of fighting corruption since the early 2000s, being the third sport to establish an anti-corruption unit. The sport had done everything it could, and now had to deal with the advent of increased online betting. The Review had been established to find how the sport could better deal with that.

28. On education, Chris Kermode gave evidence of the steps taken by the ATP to provide players with the necessary information[50]. In relation to the protection of players, particularly in countries where they might be more vulnerable, he gave evidence of the pastoral care provided by the ATP, and Mark Young gave evidence that the TIU would act when it could and that there had never been an occasion when a player had suffered physical harm as a result of corruption[51].

48 Question 156.

49 Questions 166 to 169.

50 Questions 170 to 171.

51 Questions 172 to 178.

B SUBSEQUENT STEPS TAKEN BY TENNIS BODIES

29. A number of steps directly or indirectly relevant to the protection of integrity have been taken by tennis bodies since the announcement of the Review. Some of these were already in contemplation before the announcement of the Independent Review, and some have arisen since and in the light of the course of interviews with witnesses conducted by the Panel.

(1) AMENDMENT OF THE CODE OF CONDUCT FOR OFFICIALS TO ALLOW PUBLICATION OF NAMES FROM 1 JANUARY 2016

30. The position regarding the publication of sanctions under the Officials Code of Conduct is set out in full detail in Chapter 10 Part 5. In 2015, the ITF decided to change the rules to allow for the publication of the names of officials dealt with under the Code of Conduct for Officials[52] from 1 January 2016, whereas previously that had not been possible. From 1 January 2016, decisions taken by the Disciplinary or Appeal Panel under the Code of Conduct for Officials could be communicated to such tennis organisations as are deemed necessary, and those organisations could publish a summary of the decision[53].

31. Since the beginning of 2016, the ITF has published a list of officials sanctioned under the Code of Conduct for Officials[54]. To the extent that the names of officials sanctioned under the Code of Conduct for Officials prior to 1 January 2016 have been published, it is only where their names have already been published in the media[55].

32. In 2015 the ITF dealt with two umpires in respect of breaches of integrity under the Code of Conduct for Officials as opposed to under the TACP, but their names were not published at the time because that was not possible under the then Code of Conduct for Officials[56]. The change in the rules meant that from 1 January 2016 the names of any other officials so dealt with could be published, and that occurred during 2016[57]. The names of the two umpires dealt with under the Code of Conduct for Officials in 2015 were not published at the beginning of 2016, but only after the media named them in February 2016[58].

(2) ITF DECISION TO DEAL WITH ALL BREACHES OF INTEGRITY BY OFFICIALS UNDER THE TACP AND NOT THE CODE OF CONDUCT FROM 1 JANUARY 2017

33. The position regarding the prosecution of officials under the TACP is set out in full detail in Chapter 10 Part 5. The ITF decided that from 1 January 2017, all breaches of integrity by officials should only be dealt with under the TACP and not under the Code of Conduct for Officials.

34. The current position therefore is that all breaches of integrity by officials will be dealt with under the TACP, and successful

52 The ITF Code of Conduct for Officials is at http://www.itftennis.com/officiating/officials/code-of-conduct.aspx [accessed 9 April 2018].

53 Under the Code of Conduct for Officials 2016, clause B11, "any decision of the Disciplinary Panel and/or the Appeal Panel pursuant to this Code of Conduct for Officials may be communicated to those member National Associations and/or other tennis organisations as is deemed necessary by the Disciplinary Panel and/or the Appeal Panel, acting reasonably. In the event of a finding that this Code of Conduct has been violated, the relevant organisation may publish a summary of the decision of the Disciplinary Panel and/or the Appeal Panel, the findings and evidence".

54 The list of sanctioned officials (which is updated regularly) is at http://www.itftennis.com/media/237401/237401.pdf [accessed 9 April 2018].

55 Chapter 10 Part 5.

56 Chapter 10 Part 5. The ITF chose earlier in 2015 to proceed against two umpires in respect of breaches of integrity under the Code of Conduct (under which publication was then not possible) as opposed to under the TACP (under which publication was required). That choice was criticised in the Guardian (9-12 February 2016, "Tennis umpires secretly banned" and related stories) as being designed to keep secret the actions of the umpires so as to prevent criticism of the ITF's sale of live data. The validity of the criticism in those articles is dealt with in Chapter 10 Part 5. As there set out, the ITF's evidence is that the choice was made because proceeding under the Code of Conduct was faster, simpler and less expensive than proceeding under the TACP, and was not motivated by keeping secret the umpire's actions. As also there set out, the fact that the ITF chose in 2015 before the 2016 media coverage to change the rules so as to make publication possible means that the rule change was not a reaction to the media coverage. The rule change also makes it less likely that the ITF's choice in 2015 to proceed against the two umpires under the Code of Conduct as opposed to under the TACP was based on a desire to keep secret their actions, because if that had been the case, it is unlikely that the rule allowing such secrecy would subsequently have been changed.

57 Chapter 10 Part 5.

58 Chapter 10 Part 5. As there set out, the ITF's evidence is that it did not on 1 January 2016 publish the names of the two umpires dealt with prior to that date under the Code of Conduct as opposed to the TACP, because the ITF considered that the rule change only allowed publication of subsequent disciplinary convictions, and could not be applied retrospectively; this decision was based on legal advice provided to the ITF. See Statement of Soeren Friemel (ITF) [paragraph 70]. As also there set out after the Guardian in 2016 named the two umpires, the ITF itself published their names and was characterised in the media as doing so in reliance on the rule change. It however appears to the Panel to be correct that the rule could not be retrospectively applied, and so the ITF was justified in not publishing before the umpires were named by the Guardian, and that the ITF's press release did not actually state that it was publishing the already identified names in reliance on the rule change.

disciplinary convictions will be published. This replaces the approach in 2015 where two officials were dealt with under the Code of Conduct for Officials without publication, and the approach in 2016 where four officials were dealt with under the Code of Conduct for Officials with publication[59].

(3) ITF EMPLOYING SPORTRADAR INTEGRITY SERVICES

35. On 2 March 2018 the ITF announced that it had entered into an arranged with Sportradar to use its Fraud Detection System to monitor betting patterns across more than 50,000 ITF Pro Circuit tennis matches. Whilst the Panel has not been provided with any documents in relation to this arrangement, the ITF informed the Panel that the output of the work undertaken by Sportradar will be provided to the TIU, which will be responsible for its investigation as it sees fit.

(4) PUBLICATION OF QUARTERLY STATEMENTS AND ANNUAL REVIEWS BY THE TIU

36. Following the announcement of the Review, the TIU decided to publish quarterly statements in relation to its work[60]. The first quarterly statement was published on 22 April 2016, relating to the period January to March 2016. They have been published quarterly thereafter.

37. The quarterly statements set out developments over the period (for example, staff hires), information on ongoing cases, and the alerts received by the TIU broken down by level of professional tennis.

38. In addition to the quarterly statements, the TIU has also begun to publish annual reviews. The first of these was published on 11 January 2017 (in relation to 2016). The 2017 review was published on 5 January 2018. The annual reviews cover similar topics to the quarterly statements, but provide a more comprehensive summary of the structure, work, prosecutions, and workload of the TIU through the year[61].

(4) AMENDMENT OF THE TACP WITH EFFECT FROM 1 JANUARY 2017

39. The full position regarding all amendments that have been made to the TACP since the first year it was effective (2009) are set out in Chapter 10. This includes changes made after the announcement of the Review.

59 Chapter 10 Part 5, Section A.

60 Each of the quarterly statements published by the TIU to date is available at http://www.tennisintegrityunit.com/media-releases [accessed 9 April 2018].

61 TIU annual reviews are available to download at http://www.tennisintegrityunit.com/media-releases [accessed 9 April 2018].

Amendment in relation to interim suspensions

40. The TACP was amended with effect from 1 January 2017 in order to make it easier to apply for interim suspensions. Whereas up until the end of 2016, an interim suspension could only be applied once the substantive matter had been referred to an Anti-Corruption Hearing Officer (*"AHO"*), that requirement was removed with effect from January 2017, so that a PTIO could apply to an AHO for an interim suspension as soon as the test for so applying was met[62].

Amendment in relation to publication of AHO decisions

41. The TACP was amended so as to give the AHO power to order that there should not be publication of a disciplinary conviction. This was in order to ensure that if there were a minor case, where for example only a warning would be appropriate and publication would have a disproportionately adverse effect on the respondent, the AHO could on his or her application, tailor the full consequences of the conviction to fit the circumstances[63].

Clarificatory amendments

42. The TACP was amended so as to make clear that the definition of *"Player"* covered anyone who played in any *"Event"*[64]. The TACP was also amended so as to make clear that ATP, WTA and ITF staff are included in the definition of Tournament Support Personnel[65].

(5) AMENDMENT OF THE TACP WITH EFFECT FROM 1 JANUARY 2018

Corruption Offenses

43. Prior to 2018, it was an offence for a Covered Person to conduct a personal appearance for a tennis betting company. The TACP was amended with effect from 1 January 2018, widening this offence so that a Covered Person may not conduct a personal appearance for a tennis betting company or any other company or entity directly affiliated with a tennis betting company[66].

44. A further offence has been added to the TACP 2018 so that no Covered Person[67] shall, directly or indirectly, solicit or facilitate any other person to contrive or attempt to contrive the outcome or any other aspect of any Event[68].

Investigations

45. The 2018 TACP has modernised the list of material to which the TIU has an explicit right to access if it believes that a Covered Person may have committed an offence. This now includes things like laptops/tablets, social media access and WhatsApp messages[69].

46. Under the 2017 TACP, information requested by the TIU in an investigation had to be provided within seven business days of the request. The Covered Person must now provide the information immediately when it is practical to do so.

62 TACP G (1)(e) provides from 2017, "The PTIO may make an application to the AHO for a provisional suspension of the Covered Person if the PTIO determines that: (i) there is a substantial likelihood that the Covered Person has committed a Corruption Offense punishable by permanent ineligibility; (ii) in the absence of a provisional suspension, the integrity of tennis would be seriously undermined; and (iii) the harm resulting from the absence of a provisional suspension outweighs the hardship of the provisional suspension on the Covered Person". Previously the words "When a matter has been referred to the AHO pursuant to Section F.2.e..." preceded the words above.

63 TACP G (4)(d) provides from 2017 "Subject only to the rights of appeal under Section I of this Program, the AHO's Decision shall be the full, final and complete disposition of the matter and will be binding on all parties. If the AHO determines that a Corruption Offense has been committed, the TIB will publicly report the Decision, unless otherwise directed by an AHO". Previously the very last phrase was not in the rules.

64 TACP 2017, Section B 17 and 10.

65 TACP 2017, Section B 25.

66 TACP 2018, Section D 1(b).

67 Any Player, Related Person, or Tournament Support Personnel.

68 TACP 2018, Section D 1(k).

69 TACP 2018, Section F 2(c).

Provisional Suspension

47. In addition to the circumstances in which a provisional suspension may be imposed, the PTIO may make an application to the AHO for a provisional suspension if a Covered Person has[70]:

47.1 failed to comply with a Demand; or

47.2 delayed or obstructed, without reasonable justification, compliance with a Demand or purported to comply with a Demand through the provision of any object or information that has been tampered with, damaged, disabled or otherwise altered from its original state.

Breach of sanctions

48. If a Covered Person breaches the terms of any sanction applied by an AHO under this Program or a sanction applied or upheld by CAS, the case shall be referred back to the AHO who imposed the original sanction, who may, at their discretion, impose an additional sanction.

70 TACP 2018, Section F 3(a)(i).

C SUBSEQUENT STEPS PROPOSED BY TENNIS BODIES

49. A number of steps directly or indirectly relevant to the protection of integrity are now proposed by the International Governing Bodies but are yet to be implemented as at the date of the Interim Report. Again, some of these were already in contemplation before the announcement of the Review, and some have arisen since and in the light of the course of interviews with witnesses conducted by the Panel.

(1) PROPOSALS FOR A REVISED TIU ALSO COVERING ANTI-DOPING AND WIDER INTEGRITY ISSUES

50. Following the announcement of the Review, and in the light of the course of interviews with witnesses conducted by the Panel, the International Governing Bodies have themselves considered what changes should be made. They have together proposed a revised structure and role for the TIU, which would extend the remit of the revised body to cover anti-doping and wider integrity issues, as well as the issues already covered by the TACP. The proposals are contained in a document entitled *"Tennis Integrity Review – Principles of Proposals"*, which the International Governing Bodies have submitted to the Panel. In addition, some of the individual International Governing Bodies have themselves made suggestions in this context[71], as has the TIU itself[72]. Some of the proposals made by the International Governing Bodies bear a resemblance to aspects of the new Athletics Integrity Unit (*"AIU"*) (discussed in Chapter 5, Section A) established by the IAAF in 2017[73], which the Panel has also examined and taken into account.

Ambit of integrity for the purposes of the proposals

51. The International Governing Bodies have approached their consideration of the structure and role of a revised TIU on the basis of a wide definition of integrity that includes, in addition to the matters currently dealt with in the TACP, anti-doping, and *"other integrity-related regulations that are operated by all the Governing Bodies"*[74]. They are therefore proposing a body that covers wider integrity issues than the issues that fall within the immediate ambit of this Review[75].

71 Each of the International Governing Bodies has provided official submissions; the ATP's "Submission of ATP Tour Inc"; the WTA's "Submission to Independent Review"; the ITF's "Submission to Independent Review Panel on behalf of ITF" and "Submission to Independent Review Panel on behalf of ITF – Player Pathway Reviews"; Tennis Australia's "Submission to the Independent Review Panel"; the FFT's "Inquiry by the Independent Review Panel – Official Position of the FFT"; the AELTC's "Independent Review Panel Submission"; and the USTA's "USTA Position Statement". Some of these address this issue.

72 In addition to suggestions made in interviews, the TIU has provided a chart of a proposed structure for the TIU: see paragraph 62 below. - Appendix: Key Documents

73 The AIU is governed by "IAAF Athletics Integrity Unit Rules" and "IAAF Athletics Integrity Unit Reporting, Investigation and Prosecution Rules", each of which are available at https://www.iaaf.org/about-iaaf/documents/rules-regulations [accessed 9 April 2018].

74 Principles of Proposals document, paragraph 2: "The Governing Bodies' aim is to protect fully the integrity of tennis. The TIU, as administrator and enforcer of the Tennis Anti-Corruption Program ("TACP"), plays an important role in this. However, the Governing Bodies have taken a broader view of sporting integrity than simply match-fixing and betting-related corruption. That view (whereby integrity means 'playing by the rules', good sportsmanship, and providing a safe, fair and inclusive environment for all involved) incorporates the Tennis Anti-Doping Programme and other integrity-related regulations that are operated by all the Governing Bodies (whether jointly or separately), with common (or similar) rules that apply across the sport, regardless of level of competition or event".

75 The AIU similarly has responsibility not only for integrity in the sense of the integrity of the competition dealt with in this Independent Review, but also for anti-doping and the various other matters covered by the "Integrity Standards" contained in the "IAAF Integrity Code of Conduct", available at https://www.iaaf.org/about-iaaf/documents/rules-regulations [accessed 9 April 2018]. Those standards are: "a. honesty... b. fulfil duties... c. clean athletics...", which includes the obligation to abide by the IAAF's anti-doping rules "d. maintain integrity of competition ...", which includes the obligation to abide by the IAAF's manipulation of sports competition rules "e. disclose interests... f. minimal gifts and benefits... g. protect assets... h. proper conduct... i. equality... j. dignity... k. maintain confidentiality... l. fair elections... m. fair bidding... n. neutrality... o. reporting... p. complying with rules...q. protect reputation...".

Proposals for the internal structure and responsibilities of a revised TIU

52. The International Governing Bodies consider that the effectiveness of the sport's protection of this wider definition of integrity would be maximised by amalgamating responsibility for *"[1] match-fixing and betting-related corruption, [2] anti-doping and [3] certain major offences under the Code of Conduct"* in one body, which would have four *"integrity services"*[76]: one in respect of each of those three areas, and one providing *"common services (including investigation)"*[77]. The International Governing Bodies chose not to adopt the alternative of *"maintain[ing] integrity strands as separate organisations"*[78].

52.1 The role of the *"match-fixing and betting-related corruption"* service would mirror the role of the current TIU, as adapted following the recommendations of this Independent Review.

52.2 The role of the *"anti-doping service"* is already well developed within the ITF and is broadly defined by the WADA Code.

52.3 The role of the third substantive service would involve responsibility for *"major offences under the Code of Conduct"* and *"other integrity-related regulations"*, again in the light of the recommendations of this Independent Review[79]. The International Governing Bodies do not identify which major offenses and other integrity-related regulations, although plainly the application of the best efforts rule would fall into this category. The International Governing Bodies support such wider integrity related matters being brought under the control of the revised TIU as the Panel considers appropriate.

52.4 The role of the fourth, administrative, service would be to carry out functions common to all three substantive integrity strands.

76 The AIU has staff divided into five departments: (a) Education; (b) Anti-Doping Testing and TUEs; (c) Investigations; (d) Case Management; and (e) Compliance. See "IAAF Athletics Integrity Unit Rules" paragraph 15, available at https://www.iaaf.org/about-iaaf/documents/rules-regulations [accessed 9 April 2018].

77 Principles of Proposals document, paragraph 3: "Effective protection of tennis against current and future threats to integrity requires people with appropriate skills and adequate resources. It is the preference of the Governing Bodies to maximise that effectiveness by amalgamating key integrity strands (and in particular, those that are believed to be inter-related) into a single organisation, such that each strand benefits from the knowledge and resources of the other(s). The key strands that the Governing Bodies believe should be amalgamated into a new integrity organisation are match-fixing and betting-related corruption, anti-doping and certain major offences under the Code of Conduct... An amalgamated integrity organisation would also benefit from sharing common services, and so avoiding the duplication of those resources that would occur if the integrity strands were to remain separated, in addition to the benefit arising from the harmonisation of those common services. For example, the existing TIU investigative capability could be utilised across other integrity functions". See further the Conclusions of the Proposals document in paragraph 5: "This paper sets out the principles by which the Governing Bodies could restructure tennis integrity services in order to adequately address the current and future threats to integrity in tennis. The Governing Bodies have identified an opportunity to enhance the effectiveness of integrity protection by amalgamating inter-related elements of integrity, and by adopting the principles of good governance to ensure its credibility with stakeholders". The AELTC for its part contemplates a number of further departments, all of which may in fact fall within the concept of "common services": in its Independent Review Panel Submission, at paragraph 4.2, contemplates "The organisation should comprise of several departments including; investigation, prosecution, education, communication and central services. In addition, it may benefit from extending its expertise, to include within the organisation an individual with a tennis background and an individual with betting industry experience (in particular, someone who can dedicate time to developing relationships with betting operators at the highest level). We also believe that the new organisation should include anti-doping as well as anti-corruption". The FFT for its part stressed the benefits of such amalgamation, while emphasising the need for it to be transparent and independent: see its "Inquiry by the Independent Review Panel – Official Position of the FFT", section III (b) (iii).

78 Principles of Proposals document, appendix, page 5.

79 Principles of Proposals document, paragraph 1: "These principles, which have been recommended to, and agreed by, the Governing Bodies are being provided to the IRP for consideration as part of its review".

Proposals for the governance of a revised TIU

53. The International Governing Bodies propose a governance structure for the revised TIU designed *"to provide stakeholders with confidence that it is protected from improper influence by the sport-political leadership of tennis"*, and to ensure that it is *"independent of the leadership of the Governing Bodies"*[80]. In order to achieve this, four structural elements are proposed: oversight and leadership, external audit, prosecution of and determination of disciplinary proceedings, and the employment and location of the staff of the revised TIU. The proposals include the following figure summarising these elements:

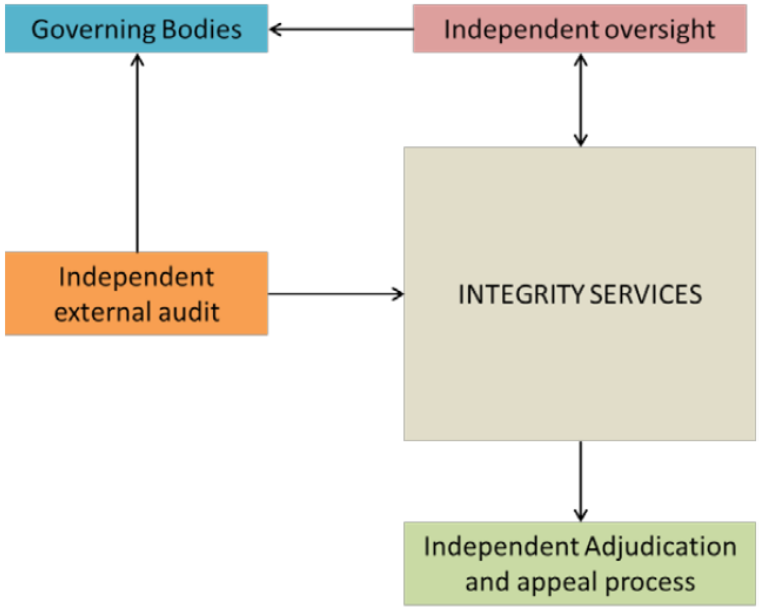


Figure 2. Governance structure of a tennis integrity organisation.

Oversight and leadership body to replace the TIB

54. First, placed above the four integrity services would be an *"independent oversight [and leadership] body"* [81]. The International Governing Bodies consider that the effective operation and the independence of this oversight and leadership body would be achieved by a structure that involved[82]:

    54.1 The body having *"supervisory responsibility for the integrity services"* [83]. This means it would have ultimate control over the revised TIU, making final decisions on the way in which it was run. As the proposals put it *"this body would have the authority to set organisational policy and oversee operations"*.

80 Principles of Proposals document, paragraphs 4. and 4.1: "An integrity organisation must provide stakeholders with confidence that it is protected from improper influence by the sport-political leadership of tennis. The Governing Bodies believe that adherence to the principles of good governance is necessary to demonstrate that the organisation is not acting to protect their own self-interest (whether commercial or reputational) ... An integrity organisation that is demonstrably free of undue influence from the political arm of the sport necessarily requires the internal staffing and the appropriate governance structure to be independent of the leadership of the Governing Bodies".

81 Principles of Proposals document, paragraphs 4.1 and 4.2.

82 The AIU similarly has a Board, appointed by the IAAF Congress. The AIU Board is made up of three "independent" members, a non-voting IAAF Council member, and the non-voting AIU Head. The Board going forward will be appointed by Congress on the recommendation of an Integrity Unit Board Appointments Panel made up of the current chair of the AIU Board, a person appointed by the IAAF Council who is "independent", and a Council Member. Each member of the Board is an "IAAF Official" subject to an IAAF Integrity Check by the IAAF Vetting Panel. The AIU Board has delegated authority from the IAAF to administer IAAF rules on the IAAF's behalf. It approves and reviews strategy, and supervises and monitors the actions of the AIU and of its Head, whom it appoints, in the same way as a corporate board. See "IAAF Athletics Integrity Unit Rules" paragraphs 7, 8 and 10.

83 Principles of Proposals document, paragraph 4.2.

54.2 The body *"maintaining independence from the political leadership of tennis"*[84], through the nature of its membership. The International Governing Bodies recognised that current *"TIB members may be perceived as not being independent because they all come from one of the governing bodies"*[85].

54.3 The body including the *"leader"* of the revised TIU[86]. In other words, the chief executive of the revised TIU would be on the body[87]. It is to be inferred the leader would be drawn from the independent members.

54.4 The body including representatives from *"key stakeholders"*[88], *"who can provide tennis knowledge"*[89]. These would include one or more *"current serving or former board member, committee member or employee of any Governing Body"*[90]. It is to be inferred that the concept of key stakeholders extends beyond such representatives of the International Governing Bodies.

54.5 *"A majority of the members of [the body being] fully independent"*[91].

54.6 Full independence meaning *"persons who have no role or interest in the Governing Bodies and/or the result of an investigation or hearing or any perception of such interest"*. The proposals further specify that *"such persons should not be a current serving board or committee member or employee of any Governing Body, unless a period of at least three years has elapsed since they last held that position"*[92].

54.7 A reporting function from the body to the International Governing Bodies (as set out in the figure). While the precise nature of that function remains to be defined, it is to be inferred that it does not involve the International Governing Bodies having any control over the body. That said, the proposals accept that the revised TIU would inevitably be funded by the International Governing Bodies[93].

84 Principles of Proposals document, paragraph 4.2.

85 Principles of Proposals document, appendix, page 5.

86 Principles of Proposals document, paragraph 4.2: "Within an independent integrity structure, an individual who can act as its 'leader', speak on its behalf, and take on the role of its high-level external representative is required. The Governing Bodies strongly believe that this leadership role should be assumed by a member of the independent oversight body, on the grounds that this body would have the authority to set organisational policy and oversee operations, have an 'outward-facing' component to its role, and would be independent of the executive".

87 In this context, the AELTC for its part considers that there should be both an independent chair and an independent chief executive: in its Independent Review Panel Submission, at paragraph 4.1, it contemplates "...an independent organisation (presently called the TIU), housed separately from the ITF with a Board of Directors led by an independent Chair and with a Chief Executive or Managing Director".

88 Principles of Proposals document, paragraph 4.2: "For the purposes of enhancing democracy, the Governing Bodies also believe that key stakeholders should be included among the membership of the independent oversight body".

89 Principles of Proposals document, paragraph 4.1.

90 Principles of Proposals document, paragraph 4.1.

91 Principles of Proposals document, paragraph 4.1.

92 Principles of Proposals document, paragraph 4.1.

93 Principles of Proposals document, appendix, page 6.

55. The structure above therefore contemplates significant membership, albeit minority membership, of individuals who it is accepted are not fully independent of the International Governing Bodies or other stakeholders in the sport. In recognition of this, the proposals offer an alternative: *"A more stringent (but nonetheless acceptable) alternative would be one in which all voting members of [the body] are fully independent, with observers who have tennis knowledge, but are not permitted to vote or otherwise influence any decisions"* [94]. In other words, the non-independent members would still be on the body but would not be able to vote. Although they could not under the proposal *"otherwise influence any decisions"*, they would still be able to *"provide tennis knowledge"*. The International Governing Bodies chose not to adopt a third option of *"all members of the group [being] fully independent"*[95].

A new external audit function

56. Second, in parallel with the four integrity services and the oversight and leadership body there would be *"independent external audit function"* that would review the actions of the revised TIU to ensure that it followed its own rules[96]. The details of how and when that function would be exercised remain to be set[97].

Adaptation of the disciplinary process

57. Third, there would be *"an independent adjudication and appeal process"*[98]. The International Governing Bodies consider that the effective operation and the independence of this function would be achieved by a structure that involved:

    57.1 A *"robust process for determining whether an athlete or other covered person should be charged with a breach of the relevant rules"* [99]. The International Governing Bodies recognised that current *"PTIOs may be perceived as not being independent because they all come from one of the governing bodies"*[100]. It is proposed that the function of *"determining whether a covered person has a case to answer"* (in other words, deciding whether to bring disciplinary proceedings) would be exercised either by the oversight and leadership body, or by a separate body with similar characteristics (in other words, a body with significant membership, albeit minority membership, of individuals who it is accepted are not fully independent of the International Governing Bodies or other stakeholders in the sport, who can *"provide tennis knowledge"*[101], but with a majority of independent members) [102]. Again, the alternative is offered of non-independent members of the body making the decision whether to bring proceedings not being able to vote, but still providing such knowledge. The International Governing Bodies chose not to adopt a third option of *"all members of the group [being] fully independent"*[103].

94 Principles of Proposals document, paragraph 4.1.

95 Principles of Proposals document, appendix, page 5. The AELTC may for its part consider that the revised TIU should be fully independent: in its Independent Review Panel Submission, at paragraph 4.1, it contemplates "...an independent organisation (presently called the TIU), housed separately from the ITF with a Board of Directors led by an independent Chair and with a Chief Executive or Managing Director". The FFT stressed the need for care to be taken "not to create a super-centralized and bloated structure" and "to maintain a high level of independence for the new body, while ensuring that it has sufficient expertise in the area of tennis to ensure that it will not take any decisions that may be considered incoherent or anachronistic": "Inquiry by the Independent Review Panel – Official Position of the FFT", section III(b)(iii).

96 Principles of Proposals document, paragraph 4.3: "Aspiration to independent oversight demonstrates the Governing Bodies' commitment to delegating that authority to an external body. This commitment brings risks, such as a loss of control in the event that the integrity organisation fails to follow its own rules. To mitigate that risk, the Governing Bodies believe that the work of the integrity organisation should be subject to independent audit, which would provide the accountability necessary for the integrity organisation, while maintaining its independence".

97 The actions of the AIU and of its Head are subject to external audit by an auditor appointed by and reporting to the IAAF Congress. See "IAAF Athletics Integrity Unit Rules" paragraph 16.

98 Principles of Proposals document, paragraphs 4.1 and 4.4.

99 Principles of Proposals document, paragraph 4.4.

100 Principles of Proposals document, appendix, page 5.

101 Principles of Proposals document, paragraph 4.1.

102 Under the AIU system, there is an "Integrity Review Panel" appointed by the AIU Board. The Integrity Review Panel consists of up to six members with experience of integrity in sport, and decides whether the IAAF should prosecute or appeal an alleged breach of non-doping integrity rules in addition to giving the AIU Head guidance. See "IAAF Athletics Integrity Unit Rules" paragraph 14.

103 Principles of Proposals document, appendix, page 5.

57.2 The disciplinary prosecutorial function being carried out by the relevant integrity services within the revised TIU, with external lawyers if appropriate. This would involve both the relevant substantive service, and the administrative service responsible for *"common services"*, in that the necessary skills are common to disciplinary prosecution of each type of breach of the rules. It is left to be determined whether there would be any internal lawyer within the revised TIU.

57.3 The first instance tribunal being a single hearing officer[104]. The International Governing Bodies consider that for cases brought under the TACP, the current system of one of three AHOs chosen by the TIB (made up of the International Governing Bodies) being appointed satisfies the requirements of independence[105]. That would envisage therefore the same process being carried over into the new structure, with the added detail that *"AHOs to be selected on a rotational basis from a pool"*[106]. The proposals offer two alternatives: first *"a three-member panel (whether mandatory or with the agreement of the parties)"*[107]. This therefore raises the possibility of either a three-member panel, the members of which are defined by the oversight and leadership body of the revised TIU, or a three-member panel where one is appointed by each of the respondent and the revised TIU, and the third is agreed between them. It also leaves open whether the members (or some of them such as the chair) would come from a closed list set by the oversight and leadership body, or from an open list[108]. The second alternative is that there would be a *"default position of one person, but can be three with the agreement of the parties"*[109]. Of the three alternatives, the proposals favour the first option of a single AHO, and if not that, then the third option[110]. It is worth noting here that the current approach in doping cases under the TADP is a three-member tribunal panel at first instance, with the independent appointed Chairman picking three people from the ITF's *"Independent Panel"* to form the three-person tribunal. The Chairman of the tribunal is always legally qualified, and is supported by two other suitably qualified members[111].

57.4 An appeal to the Court of Arbitration for Sport[112], as at present under both the TACP and the TADP[113].

104 Principles of Proposals document, paragraph 4.4.

105 Principles of Proposals document, paragraph 4.4: "With regard to hearing cases brought under the TACP, the current process (whereby an independent Anti-Corruption Hearing Officer sits alone) is regarded as sufficient to meet independence requirements…".

106 Principles of Proposals document, appendix, page 6.

107 Principles of Proposals document, paragraph 4.4 and appendix page 6.

108 Under the IAAF "Disciplinary Tribunal Rules" there is a list of potential Disciplinary Tribunal Members appointed by the Congress, which also appoints a Chair. The Chair appoints either one or three members of the list onto a particular panel.

109 Principles of Proposals document, appendix, page 6.

110 Principles of Proposals document, appendix, page 6.

111 Tennis Anti-Doping Program, Section 8.1.2.

112 Under the IAAF "Disciplinary Tribunal Rules" there is an appeal to CAS against every substantive disciplinary decision.

113 Principles of Proposals document, paragraph 4.4: "The Governing Bodies advocate maintaining an independent adjudication process, which preserves the right of appeal…", and appendix page 6, which recommends retaining the existing CAS appeal process, stating that "here is no issue as to independence, as CAS is an organisation that is not funded or administered by any Governing Body".

Employment of staff and location of the revised TIU

58. Fourth, the staff of the revised TIU could be employed by, and physically located within the premises of, any of the International Governing Bodies, because *"the implementation of appropriate governance measures to prevent a tennis integrity organisation from being subject to undue influence by the political arm of the sport is believed to be sufficient to render the decision as to the location and employer of integrity services moot"*[114]. The proposals made clear that if the revised TIU were so located, it would be *"subject to the implementation of appropriate security measures, such as dedicated areas in buildings with their own access codes and separate document storage locations)"*. While the International Governing Bodies chose not to adopt the second option[115] of the revised TIU being *"established as a separate legal entity... [and] accommodated separately"*[116], the proposals did however state *"Locating an integrity organisation remotely from any of the Governing Bodies and/or establishing it as a legal entity is recognised as a valid, albeit not essential, alternative"*[117].

59. While the *"Tennis Integrity Review – Principles of Proposals"* document did not address the possibility of regional TIU offices, the FFT stated that it was *"in favour of making any structural changes - including in particular the creation of regional TIU offices - that would facilitate the transmission of information and enhance the effectiveness of integrity-related initiatives taken at an international level by strengthening the links between training / education, monitoring and investigation at a national level"* [118]. The AELTC regarded regional offices, at least of some type, as *"an interesting idea worthy of further exploration"*[119].

Transparency, interests of the sport, prevention of concentration of power

60. In addition to those four structural elements, it is proposed[120] that procedures be put in place to ensure that the revised TIU:

    60.1 *"Is sufficiently transparent to disclose its inner workings and the accountability of decisions, such that any basis on which tennis could be accused of failing in its duty to act on information in its possession is removed"*[121];

    60.2 *"Makes decisions that are for the good of the sport as a whole"*;

    60.3 *"Implements checks and balances that prevent power being concentrated in a single person or small number of people"*.

114 Principles of Proposals document, paragraph 4.5 and appendix page 6.

115 The AIU is in premises separate from the IAAF, but it does not have separate legal personality and its staff are IAAF employees. See "IAAF Athletics Integrity Unit Rules" paragraph 15.

116 Principles of Proposals document, appendix page 6.

117 Principles of Proposals document, paragraph 4.5. In this context, the AELTC for its part considers that the revised TIU should be separately located: Independent Review Panel Submission, at paragraph 4.1, contemplates "...an independent organisation (presently called the TIU), housed separately from the ITF with a Board of Directors led by an independent Chair and with a Chief Executive or Managing Director".

118 FFT's "Inquiry by the Independent Review Panel – Official Position of the FFT", section III(b)(ii).

119 AELTC's Independent Review Panel Submission, paragraph 4.5: "It has been suggested that it would be beneficial to regionalise a degree of the responsibility in this field for example by having an integrity officer/office within each Regional Association or even National Federation. We believe this is an interesting idea worthy of further exploration".

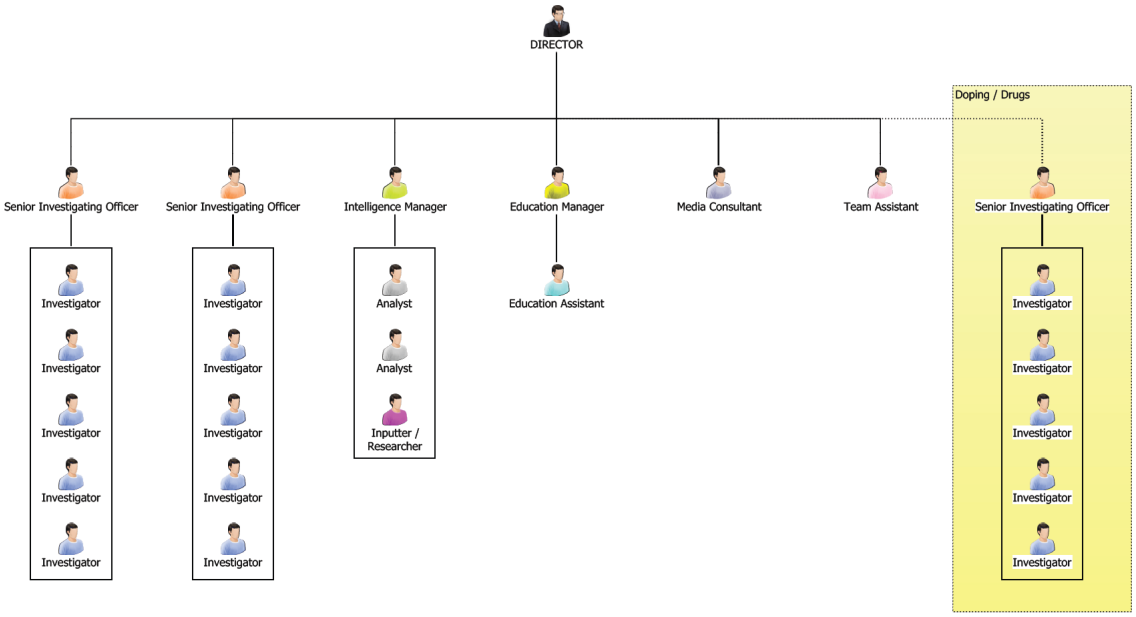
120 Principles of Proposals document, paragraph 4.1.

121 The FFT stressed the need for care to be taken "to strike a balance, with communication that is both transparent and respectful of individuals": see its "Inquiry by the Independent Review Panel – Official Position of the FFT", section III(b)(iii).

61. The FFT also identified the need for the involvement of national federations in the new structure[122]. It contemplated that it would be desirable for national federations to have a representative or representatives with responsibility for integrity at national level, who would both engage with the revised TIU and also in particular with players, providing training and advice and encouraging reporting (including through technological means)[123]. The AELTC also regarded national federation integrity officers as worthy of further exploration[124]. Beyond that, the FFT identified the need for the sharing of information with national federations including in order to ensure applicability of sanctions at national level[125], and for steps to be taken at national level to monitor coaches and others accompanying players[126].

Proposals by the TIU itself as to appropriate structure and staffing

62. Following the Panel's interviews of the TIU, the TIU in April 2017 identified structural and staffing changes that that it considered would help to address the problem faced. The TIU produced the chart below *"providing details of staffing for the TIU to deal with the current and anticipated work load looking forward"* and including *"an extra branch to deal with doping in the event those investigations come under the same umbrella"*. The chart anticipated there being two Senior Investigating Officers, responsible for five Investigators each, taking the investigatory staff in relation to integrity excluding anti-doping matters up to twelve in addition to the Director. There would be a head of intelligence with three analytical staff, one of whom the TIU also suggested should have a background in the betting industry. The chart also anticipated a head of education with one staff member, a media consultant, and a team assistant. Including the Director, therefore, there would be 21 staff members dealing with integrity excluding anti-doping matters. On the anti-doping side, the chart proposed a separate Senior Investigating Officer for anti-doping matters, with five investigators. It may however be that the TIU contemplated that at least some of the non-investigatory staff would also have a role in relation to anti-doping.



122 The FFT stressed the need for care to be taken in the structure adopted for the revised TIU "to respect the national federations, which must retain a role in order to feel involved in this movement": "Inquiry by the Independent Review Panel – Official Position of the FFT", section III(b)(iii).

123 FFT's "Inquiry by the Independent Review Panel – Official Position of the FFT", section III(a)(iii) and section III(b)(ii).

124 AELTC's Independent Review Panel Submission, paragraph 4.5: "It has been suggested that it would be beneficial to regionalise a degree of the responsibility in this field for example by having an integrity officer/office within each Regional Association or even National Federation. We believe this is an interesting idea worthy of further exploration".

125 FFT's "Inquiry by the Independent Review Panel – Official Position of the FFT", section III (a)(i) and section III(b)(i).

126 FFT's "Inquiry by the Independent Review Panel – Official Position of the FFT", section III (a)(ii).

Significance of the revised TIU proposals for the Independent Review

63. These proposals in relation to a revised TIU, and the progress of agreement in relation to the details in relation to them, are obviously of great significance for the Independent Review of Integrity in Tennis.

64. First, they reveal recognition of the need and support for change to the structure of the TIU and the current system for initiating, prosecuting and deciding disciplinary proceedings.

65. Second, they contemplate and form a basis for recommendations as to the combination of functions in the interests of tennis, including functions that otherwise fall outside the ambit of this Review.

66. Third, they form a starting point for the recommendations of the Panel in this context.

(2) PROPOSALS FOR A REVISED PLAYER PATHWAY

67. The ITF has for some time, and since in particular its publication of the Pro-Circuit Review[127] in December 2014[128], been considering extensive changes to the Player Pathway[129]. Those changes address how best to attract emerging talent to the sport, how to develop that talent, and how to retain the best players and to deliver them effectively through the Pro-Circuit to Tour Level, in a manner that provides opportunities fairly in all member nations, that *"grows the game"* and that is financially achievable[130]. In so doing, the ITF has to deal with the substantial increases in the number of Pro Circuit events and in the number of players taking part in them, at least in some parts of the world, and how those increases have, in the form that they have taken, diminished the effectiveness of the Player Pathway[131]. It also has to address how the prize money available at individual events had not before 2016[132] grown for some considerable time, although player costs have[133].

68. The ITF has submitted two documents to the Panel: in December 2016 a *"Submission to Independent Review Panel on behalf of ITF"* and in March 2017 a *"Submission to Independent Review Panel on behalf of ITF – Player Pathway Reviews"*.

69. The other International Governing Bodies share the view that extensive changes to the Player Pathway are necessary[134]. There has been consultation between the ITF and the ATP and the WTA on the question[135]. The ATP[136] however differs from the ITF on the way forward, as do at least some of the Grand Slams[137]. The WTA is still reviewing the position[138].

127 The key findings of the ITF Pro-Circuit Review can be found at http://www.itftennis.com/procircuit/about-pro-circuit/player-pathway.aspx [accessed 9 April 2018], as described in Chapter 2.

128 Now followed up by its Player Pathway Review, as described in Chapter 2 (also see here: http://www.itftennis.com/juniors/organisation/player-pathway.aspx [accessed 9 April 2018].)

129 The existing Player Pathway is described in Chapter 2.

130 See the ITF's March 2017 "Player Pathway Reviews" submission, paragraph 4.

131 ITF's December 2016 "Submission to Independent Review Panel on behalf of ITF" document, paragraph 4: "There are too many 'professional' players… and events. It is important that any change to the number of players and events does not compromise the long-term sustainability of tennis and its global reach…"; and the ITF's March 2017 "Player Pathway Reviews" submission, paragraph 2: "The Reviews… identified several issues… [including] increasing numbers of professional players (13,736) in 2013" and paragraph 3: "The Reviews, which included working groups with representatives from 24 ITF nations and both the ATP and WTA Tours, set out a number of recommendations to address these issues. These include: the reduction of the number of players competing at the highest level through the introduction of a 'truly professional player group'".

132 ITF's December 2016 "Submission to Independent Review Panel on behalf of ITF" document, paragraph 3: "In 2016, prize money at each $15k Pro Circuit event increased by $10,000 and, in 2017, prize money at every $10k event will increase by $5,000";

133 ITF's March 2017 "Player Pathway Reviews" submission, paragraph 2: "The Reviews… identified several issues… [including]… the cost of participation for professional players with break-even points on the annual earnings list of 336 (men) and 253 (women before coaching costs were accounted for".

134 Each of the International Governing Bodies has provided official submissions; the ATP's "Submission of ATP Tour Inc"; the WTA's "Submission to Independent Review"; the ITF's "Submission to Independent Review Panel on behalf of ITF" and "Submission to Independent Review Panel on behalf of ITF – Player Pathway Reviews"; Tennis Australia's "Submission to the Independent Review Panel"; the FFT's "Inquiry by the Independent Review Panel – Official Position of the FFT"; the AELTC's "Independent Review Panel Submission"; and the USTA's "USTA Position Statement". Some of these address this issue.

135 ITF's March 2017 "Player Pathway Reviews" submission, paragraph 2.

136 ATP's "Submission of ATP Tour Inc", analysed below.

137 See for example the AELTC's "Independent Review Panel Submission", analysed below.

138 WTA "Submission to Independent Review", paragraph 11 "Currently, the WTA is in the midst of another circuit structure review and embarking upon a complete re-draft of its rules. The circuit structure concepts being explored would result in higher player earnings, greater ranking mobility for players, and better alignment with the ITF Pro Circuit to create a clear path for rising players, and would further optimize player fitness and health for competition. In the discussions to date, the WTA stakeholders agree that the WTA must continue to evolve in order to remain the global leader in women's professional sport".

Identifying the part of the sport to be regarded as professional

70. There is consensus that the starting point is the identification in broad terms of the part of the sport to be regarded as professional, and the part to be regarded as developmental.

71. There are a number of factors relevant to the identification of the dividing line:

71.1 One factor is the identification of the approximate ranking, above which a player should be regarded as a professional player, and below which a player should be regarded as a developmental. This itself may involve taking into account the identification of the ranking level at which players are at least coming close to breaking even, the ranking level at which players are playing competitive tennis full time and not also engaging in other work, the ranking level at which it is desirable from the point of view of player development to regard players as professional, and the ranking levels down to which the various levels of events offer sufficient consistent *"jobs"*.

71.2 A second factor is to identify which levels of events have or could have the characteristics of professional tennis, in terms of prize money, hospitality, officiating, facilities and organisation.

71.3 A third factor is to identify the broad number of players by broad reference to ranking who should be regarded as professional in the interests of development of the sport, and then to ensure that there are enough events of an adequate standard to provide sufficient consistent jobs to that broad number of players, which events will then be classified as professional[139].

72. There is consensus that from any point of view, the appropriate level for characterisation as professional is neither:

72.1 The 14,000 or so *"professional players"*[140] with iPin numbers currently playing at some level in the totality of all International Governing Body events (including in particular the Lowest Level events) less than half of whom have ever won a single dollar in prize money; nor

72.2 The few thousand men and women who have secured at least one ranking point from either the ATP or the WTA[141] (mostly again at the Lowest Level events).

139 ITF's March 2017 "Player Pathway Reviews" submission, paragraph 3, which identifies the recommendations of the Reviews of the Professional and Junior Circuits that there be "'a truly professional player group'", a transitional group of those "transitioning into and out of the new 'truly professional player group'" and "the introduction of a set, and appropriate number of, job opportunities for players at all levels of the game".

140 As defined by the ITF Pro Circuit Review – see Chapter 2

141 As at March 2018, 1,967 men's singles have an ATP ranking and 1,663 men's doubles players have an ATP ranking; 1,213 women's singles have a WTA ranking and 1,311 women's doubles players have a WTA ranking.

73. There is also consensus, for that matter, that the appropriate level for characterisation as professional is neither:

73.1 The approximately 150 or so players consistently catered for by the main draws of events on the ATP and WTA tours at their various levels[142]; nor

73.2 The approximately 250 or so players catered for by the main and qualification draws of the Grand Slams[143].

74. Although there is consensus that the identification of the dividing line between professional and developmental tennis is the starting point, and that the levels set out above are not appropriate places to draw the line, there are different views amongst those in tennis as to exactly where and how that line should be drawn, and therefore as to which events should be categorised as professional and which as developmental.

75. At one end of the spectrum, there is a view held by the ATP[144] and the AELTC[145] that the appropriate approach is to focus on categorising events, and that the lowest level events that should be categorised as professional are ATP Challenger events[146] and the equivalent WTA events[147] and events on the ITF Women's Pro-Circuit[148]:

75.1 This has been arrived at in part by an assessment that only players playing at least at these events are breaking even, taking into account that players play across the line between such events and the lower ITF events[149]. For example, it is suggested by the AELTC[150] that even men ranked at around 250 may be playing more ITF events than Challengers and only just earning a significant amount of money (and perhaps coming close to breaking even), and those ranked at around 500 may be playing only a handful of Challengers and are not earning a significant amount of money (and probably not enough to cover costs). The suggestion, therefore, is that events below the ATP Challengers, and the WTA and ITF Women's equivalents should not be described as professional, because a player needs to be playing at least a substantial number of Challengers or WTA and ITF Women's equivalents to be breaking even.

75.2 It has also been arrived at in part by an assessment that only the ATP Challengers and the WTA and ITF Women's equivalents have or could have the characteristics of professional tennis, in terms of prize money, hospitality, officiating, facilities and organisation[151].

142 See Chapter 2.

143 See Chapter 2.

144 The ATP states in its "Submission of ATP Tour Inc", section III "Most corruption in tennis emanates from ITF Pro Circuit events. The notion that men's professional tennis includes those ITF events (and the related corruption) has tainted the reputational integrity of the true professional levels of men's tennis competition, which are organized and operated by ATP and the Grand Slam Committee. ATP therefore believes it should take measures (including those described in section IV below) to redefine men's professional tennis as including only ATP Challenger, ATP World Tour Circuit and Grand Slam events". The ATP goes on in section IV to state that "ATP is considering whether the ranking system for men's professional tennis should be revised so that (i) a professional player's career begins with the ATP Challenger circuit and then moves up to the ATP World Tour circuit based on ability, (ii) the ITF circuit would be a developmental circuit, and would only be used to qualify players for their first appearance on the professional stage at an ATP Challenger event and (iii) few, if any rankings points would be awarded to players competing at the ITF level of events. In order for ATP to implement these changes, complementary rule changes would need to be adopted and implemented by the other Governing Bodies".

145 The AELTC states in its "Independent Review Panel Submission", at paragraph 3.1: "We believe that an updated definition of a professional tennis player is necessary, one which means the player has reached a high standard and earned sums of money in keeping with being called professional. In Wimbledon's view this cut-off point is the ATP Challenger (and WTA equivalent) level of tennis. Tournaments currently awarding prize money of $50k or more should be considered professional tennis with anything below this considered non-professional".

146 The entry level of which are the Challenger 80s offering $50k or $40k+H in 2016. See Chapter 2.

147 The WTA only offers a handful of 125k events at this level. See Chapter 2.

148 The entry level of which are $50k events in 2016. See Chapter 2.

149 The two lower ITF levels offered to both men and women are $25k events and $15k (before 2017, $10k) events. See Chapter 2.

150 See the AELTC's "Independent Review Panel Submission", paragraph 2.1, where it is stated that in 2016, men ranked 240 to 250 were playing more ITF events than Challengers and earning on average 214 ranking points and $60k in prize money, and men ranked 490 to 500 were playing many more ITF events than Challengers and winning on average 75 ranking points and $18,000 in prize money.

151 The ATP states in its "Submission of ATP Tour Inc", section III "The greatest potential for corruption in tennis exists at the lowest levels of organized tennis, principally in the ITF Pro Circuit. Among the reasons lower level tennis events are more susceptible to corruption are: (i) events are operated and managed by small promoters or local tennis federations, (ii) umpires at events are trained by the promoters, tennis federations or clubs, (iii) there is little visibility of scoring data during matches (e.g., little or no use of scoreboards), (iv) chair umpires use unsophisticated Betradar cell phone scoring technology (or none at all) during matches, (v) the relatively low cost of each event has prompted some promoters to hold events at the same location for several consecutive weeks, increasing the likelihood of lower ranked players being approached and becoming involved in corruption and (vi) amateur competitors with little chance of becoming professional tennis players are willing to risk lifetime bans and other severe sanctions in exchange for payouts which exceed the relatively low prize money awarded at Pro Circuit level events. There also are differences in tournament management between ATP events and ITF events. An ATP Supervisor attends each of its events as the Rules Official, who manages the event and monitors the performance of the Chair Umpires. The Supervisor has full access to ATP computer systems with advanced algorithms that analyze tennis competition data real time and monitor the performance of each chair umpire on a global basis. In contrast, ITF uses local supervisors sourced through the individual federations with no known monitoring tools. ATP events also utilize chair umpires trained and certified as International Officials by the ITF/ATP/WTA training programs. In contrast, ITF events use local 'white' badge chair umpires, who are certified by ITF and trained by the local tennis federations using materials provided by ITF".

76. At the other end of the spectrum, the dividing line drawn by the ITF[152] is based on the premise that from the point of view of tennis development it would be appropriate to regard *"no more than 750"* players of each gender as professional:

76.1 This is clearly substantially more players than currently come close to breaking even, as all the additional players currently have costs that exceed earnings, and is based rather on creating a sufficiently broad pyramid base of the professional sport to provide an adequate opportunity for players from around the world to move up into[153].

76.2 Having identified the appropriate number of players that it is desirable to characterise as professional as 750, and the number of players already provided with a sufficient number of consistent jobs by the ATP and WTA tours, the Challengers and their WTA and ITF Women's Pro Circuit equivalents, the further number of events necessary to offer the remaining players a sufficient number of consistent jobs has then to be identified, and those events classified as professional.

76.3 The ITF considers that sufficient jobs can be provided in the men's game by classifying all current ITF Pro Circuit $15k (before 2017, $10k) men's events as *"transitional"* and therefore non-professional, and all current ITF Pro Circuit $25k men's events as professional[154]. The ranking of 750 is said to be the broad ranking down to which the ITF Pro Circuit $25k men's events are consistently offering jobs, although of course again, players are playing across the line between $25k and $15k events, and again what amounts to consistently is open to interpretation. The ITF identifies that although such a split would provide an excess of jobs for those actually in the top 750, that excess would be taken up by those seeking to move up from the transitional tour by playing in those events[155]: indeed, it appears that some further events may need to be added to the professional level to cater for this.

76.4 The ITF considers that a matching approach should be applied to the women's game. Thus, ITF Pro Circuit $15k women's events will be classified as *"transitional"* and therefore non-professional, and all current ITF Pro Circuit $25k, $60k (before 2017 $50k), $80k (before 2017, $75k) and $100k women's events as professional[156]. That would produce too few jobs for those actually in the top 750, and too few for those seeking to move up from the transitional tour by playing in those events, but this would similarly be addressed by adding further events to the professional level[157]:

152 See the ITF's March 2017 "Player Pathway Reviews" submission, paragraph 6: "The ITF's modelling work indicates that a truly professional group of players, numbering no more than 750 men and 750 women will ensure a structure that is fit for purpose". See also the ITF's December 2016 "Submission to Independent Review Panel", paragraph 4: "A reformed structure, which caters for around 1,000 men and 1,000 women, and creates a set and appropriate number of job opportunities for those players, is required. Below this, an interim tour that provides opportunities for players from all backgrounds to transition to the professional tour is required. Work to model the size of a future professional player community will be completed by the ITF in March 2017."

153 ITF's March 2017 "Player Pathway Reviews" submission, paragraph 6: "Any fewer will risk compromising the long term sustainability of tennis as a global sport by reducing the number of nations hosting professional events and penalising players from large numbers of tennis playing nations".

154 ITF's March 2017 "Player Pathway Reviews" submission, paragraph 7: "In the men's game, the number of 750 players can be achieved by repositioning all existing Level I events ($15k) as Transition Tour events".

155 ITF's March 2017 "Player Pathway Reviews" submission, paragraph 7: "This leaves an excess supply, equivalent to 31 events, of playing opportunities for players ranked 1-750. However, an additional supply of up to 71 events is required to provide playing opportunities for players (circa 150) feeding up from the Transition Tour. This is achievable through retaining existing Level I events in regions where a shortfall is identified".

156 ITF's March 2017 "Player Pathway Reviews" submission, paragraph 10: "A similar approach would be adopted in the women's game, as the ITF believes strongly that the same structure should be in place for both men and women".

157 ITF's March 2017 "Player Pathway Reviews" submission, paragraph 10: "A Transition Tour comprised of Level I events only provides a deficit supply of playing opportunities for female professional players ranked 1-750, equivalent to 13 events, and while 57 additional events are required to provide for players feeding up from the Transition Tour, this can be achieved in the same way as described in [7] above".

77. The ITF Board in March 2017 approved these proposals[158].

78. Between the two ends of the spectrum, there is room for a variety of possibilities, such as that the appropriate line (broadly drawing a balance between where players break even and the need for a broader pyramid base) is perhaps nearer 500 players, and that if necessary only some of the $25k events should be classified as professional, to provide a sufficient number of consistent jobs to that number of players.

Responsibility for levels and movement between them

79. There is also consensus that there must be identification of which bodies take responsibility for the different levels, and agreement between them of a system for movement between those levels. Again, however, there are different views amongst those in tennis as to this.

80. At one end of the spectrum, the system for movement between the professional level (Challengers and their WTA equivalents and above) and the developmental level (below Challengers and their WTA equivalents) could remain based on the current ATP and WTA ranking points systems:

80.1 So while the ATP Challenger events and the equivalent events on the ITF Women's Pro-Circuit would be the lowest levels of professional tennis, essentially developmental players usually playing at the developmental ITF Pro Circuit $25k and $15k events would be able to secure sufficient ATP or WTA points at those events to on occasion play professional tennis and so gain the opportunity of ultimately securing enough points to remain at the professional level[159].

80.2 This view, however, is not necessarily averse to the possibility that the delivery of developmental players to the professional level might by some other ITF system, such as an ITF ranking system described below[160].

80.3 It is, however, envisaged that the number of ITF events providing either type of such ranking points should be significantly reduced[161], and those events should perhaps be split into different levels. It is also possible that the WTA might itself provide more tournaments[162] at the level equivalent to the ATP Challengers, in place of or in addition to the ITF[163].

81. At the other end of the spectrum, the ITF's proposal is that there would, in addition to the ATP and WTA ranking points systems, be a separate and new ITF ranking system based on points earned on its new developmental *"Transition Tour"*, which would work in conjunction with the ATP and WTA ranking points systems[164]:

158 ITF's March 2017 "Player Pathway Reviews" submission, paragraph 16: "The following key principles in relation to the player pathway were approved by the ITF Board in March 2017: Creation of a Transition Tour (with the recommendation that it is comprised of ITF Level I tournaments); Level II tournaments to remain as part of the professional tour, subject to a reduction in number (the precise number to be determined); A fixed number of professional players (with the recommendation of 750 men and 750 women)".

159 This view is (broadly) taken by for example the AELTC: see its "Independent Review Panel Submission" paragraph 3.2.

160 In its "Independent Review Panel Submission" paragraph 3.2 the AELTC says only that "a pathway between the lower and higher levels of tennis needs to be created, with a player winning a reasonable number of matches before being able to climb into the higher level".

161 This view is (broadly) taken by for example the AELTC: see its "Independent Review Panel Submission" paragraph 3.2: "We do not believe the sport needs more than 100,000 matches at ITF Pro-Circuit level with ATP/WTA ranking points to provide this pathway".

162 The WTA currently provides only a small number of 125k events: see Chapter 2.

163 The WTA, in its "Submission to Independent Review Panel" paragraph 11, states that it is in the midst of a circuit review to produce events better aligned with the ITF Pro Circuit.

164 ITF's March 2017 "Player Pathway Reviews" submission, paragraphs 8 and 9.

81.1 So far as men are concerned, it is suggested by the ITF that the top 750 players now to be classified as *"professional"*, would no longer be permitted to play on the Transition Tour once they achieved that ranking on the ATP ranking points system[165].

81.2 Their access to the reclassified professional ITF Pro Circuit $25k events, and to ATP Challengers, would be based in descending order upon ATP ranking, *"ITF Entry Points on the Transition Tour (new)"*, national ranking, and random draw[166].

81.3 There would, furthermore, be up to five qualifying or main draw places at the reclassified professional ITF Pro Circuit $25k events, which would be solely reserved for players on the basis of their ITF Entry Points on the Transition Tour, in order to allow talented players to transition rapidly[167].

81.4 Men ranked below 750 on the ATP ranking points system could play not only on the Transition Tour, but also at the new professional level if they qualified to do so under the system of descending qualification bases set out above[168].

81.5 Access to the events on the new Transition Tour would be on the same descending qualification bases set out above. Thus, the ATP ranking would still be the first basis for qualification, but once that basis had been exhausted, access would be based on ITF Entry Points on the Transition Tour, then national ranking, then random draw[169].

81.6 Again, there would be a number of qualifying or main draw places at the new Transition Tour level, this time reserved for the top 50 Juniors, in order to allow talented players to transition rapidly[170].

81.7 The same approach would again apply to women[171]. The top 750 by WTA ranking would not be able to play on the Transition Tour. Their access to the new professional level made up of the ITF Pro Circuit $25k women's events and the ITF Pro Circuit $60k, $80k and $100k women's events equivalent to the ATP Challengers, would be on the descending qualificatory bases set out above, starting with their WTA ranking. There would be the same number of reserved places at ITF Pro Circuit $25k women's events, and this might be extended to $60k women's events. The same descending qualificatory bases would apply to women's access to Transition Tour Events, and the same number of places reserved for juniors.

82. Between the two ends of the spectrum, there is room for a variety of views, such as that the delivery of developmental players might be based on something other than a ranking system, such as winning a particular number of events at the developmental level, with the same applying to movement between the ITF lower professional level to the ATP Challengers and the equivalent ITF Women's Pro Circuit events.

83. On any basis, whatever system is set for the delivery of players from one level to another, it must equally provide for sufficient players to be move down to free up space for those coming up.

165 ITF's March 2017 "Player Pathway Reviews" submission, paragraph 8.
166 ITF's March 2017 "Player Pathway Reviews" submission, paragraph 8.
167 ITF's March 2017 "Player Pathway Reviews" submission, paragraph 8.
168 ITF's March 2017 "Player Pathway Reviews" submission, paragraphs 8 and 9.
169 ITF's March 2017 "Player Pathway Reviews" submission, paragraph 9.
170 ITF's March 2017 "Player Pathway Reviews" submission, paragraph 9.
171 ITF's March 2017 "Player Pathway Reviews" submission, paragraphs 11 and 12.

Play up and play down rules and restrictions on juniors

84. It is envisaged by the ITF[172] that *"play up"* and *"play down"* [173] rules would be put in place to limit the number of players with Tour rankings playing down into the Transition Tour and to limit the number of Juniors playing up into the Transition Tour, or players below a specified ranking playing in the level above that designed for them, in order to ensure that there is sufficient space at each level for those for whom it is designed.

Scheduling and size of draws

85. It is envisaged by the ITF[174] that all events organised by it, whether at the professional level $25k level or on the Transition Tour, would take place entirely within the week[175], Monday to Sunday, so that there would be no overlap between the later stages of a tournament in week one and the qualifiers of a tournament in week two.

86. In part because of that, and in part to control the number of players playing at each level, main draws at such ITF organised events would each be limited to 32 and qualification draws limited to 24[176].

Prize money, hospitality, officiating, facilities and organisation

87. It is envisaged by the ITF[177] that a standard would be set for an event that was to be classified as professional. Broadly this would be designed to bring the current Lowest Level up to the same standard as the current Mid-Level[178] events, though it may well be that some of the latter group of events would also need to improve. Although not set out in the March 2017 *"Player Pathway Reviews"* submission, the ITF is currently discussing:

    87.1 Raising the prize money at ITF lower professional level events from $25,000 to a greater sum.

    87.2 Requiring all events to provide hospitality.

    87.3 Raising the level of qualification of the officials at all events to require a gold badge supervisor, and a specified minimum number of gold, silver or bronze badge chair umpires.

    87.4 Requiring all events to have an official whose role would be to spot courtsiders, check on the actions of chair umpires, and any others engaging in inappropriate behaviour.

    87.5 Requiring all events to have a secure perimeter and control over who came into the event.

172 ITF's March 2017 "Player Pathway Reviews" submission, paragraph 14.

173 See Chapter 2 for further discussion of the current access to tournaments as determined by player ranking.

174 ITF's March 2017 "Player Pathway Reviews" submission, paragraph 13: "This will ensure no overlap in events from week to week and ensure there is no requirement or pressure on players to depart a tournament early in order to sign-in at the following week's tournament".

175 Sometimes described colloquially as "a week is a week is a week".

176 ITF's March 2017 "Player Pathway Reviews" submission, paragraph 13.

177 ITF's "Submission to Independent Review Panel", paragraph 5: "Appropriate integrity measures must be introduced at all tennis events (and for all players) that are at risk of corruption. In January 2017, the ITF will begin to introduce integrity protection measures at Pro Circuit events. The increased integrity protection measures will be funded from the ITF data rights agreement with Sportradar. Without access to the necessary funding to support such measures, lower-level tennis events are at risk of becoming too expensive to organise, putting at risk the sustainability of the sport". See also ITF's "Player Pathway Reviews" submission, paragraph 15 "With or without a data rights agreement, additional integrity measures would need to be put in place to mitigate" the threat of "unauthorised data collection (and unregulated betting markets)" increasing.

178 The "Mid-Level" is made up of ATP Challenger and ITF women's Pro Circuit $60k-$100k and WTA 125k events.

87.6 Requiring all events to operate an accreditation system implementing the no credentials list.

87.7 Requiring all events to have separate player areas to which access would be strictly limited.

87.8 Requiring all matches to be video recorded with a time line, and to have an electronic scoreboard in shot[179].

Significance of the Player Pathway proposals for the Review

88. These proposals in relation to the Player Pathway, and the progress of agreement in relation to the details in relation to them, are obviously of great significance for the Independent Review of Integrity in Tennis.

89. First, the proposals would change the environment against which the problem of breaches of integrity falls to be assessed. In particular they would alter the player incentive structure[180], which presently has the unintended consequences, described in Chapter 4[181], that contribute significantly to the present particular susceptibility of tennis to match fixing and other breaches of integrity. Furthermore, the fact that significant such changes are proposed provides a clear mechanism by which additional measures considered by the Panel to be likely to assist in the prior prevention of breaches of integrity, may be implemented.

90. Second, the proposals would raise the standard of facilities and organisation at events, the current inadequacy of which also contributes significantly to the susceptibility of tennis to match fixing and other breaches of integrity. Again, this provides a mechanism for the implementation of any further recommendations in the context.

91. Third, the proposed delineation between professional tennis and developmental or transitional tennis provides a potential basis for the delineation between on the one hand tennis events, the live data to which should remain to be sold and tennis events, the live data to which should not be sold. Also, as described in Chapter 4, the particular susceptibility of tennis to match fixing and other breaches of integrity in part arises out of the sale of live data to the very many matches at the lower levels, where due to the unintended consequences of the player incentive structure, players are the most susceptible to such breaches, and the structures for preventing and detecting such breaches are the least effective. A reduction in the number of matches to which live data can be sold, in particular at the Lowest Level would significantly reduce the opportunities to bet in play and therefore the opportunities to fix.

92. In the view[182] of some of those that consider that the lowest levels of events that should be categorised as professional are ATP Challenger events and the equivalent events on the ITF Women's Pro-Circuit, the sale of live data should stop where the professional sport stops, and should not extend at all to live data from the Lowest Level events. They point[183] to the sale of live data at those events as being the primary cause of the large increase in the number of suspicious betting patterns reported since 2012, and of a significant expansion in low level corruption at such events, in the form of players betting small amounts which may not even give rise to such reports. They also point to the sheer size of the task facing the TIU in dealing with threats to integrity at such a large number of events all around the world[184], and suggest that the TIU should have no responsibility outside the professional sport[185].

179 See, for example, statement of Kris Dent (IRP)

180 An outline of the incentive structure of tennis can be found in Chapter 2. Additionally, an analysis of the player pathway and the effect this has on tennis integrity can be found in Chapter 4.

181 Chapter 4, Section A.

182 This view is (broadly) taken by for example the AELTC: see its "Independent Review Panel Submission" paragraphs 3.4 to 3.6: "the level below professional tennis should not facilitate any form of gambling. No official data feed or official stream should be available to discourage mainstream bookmakers from making a market. We accept there will need to be action taken to prevent widespread courtsiding although given crowds would be small this should not be at all difficult... If the only area of focus or consideration were suspicious betting alerts there would be an argument to draw the line between professional and non-professional tennis higher i.e. above Challenger (and WTA equivalent) level. However, looking at this from a tennis perspective, those competing at Challenger level are playing at a good standard for reasonable prize money and should be considered professional... Failure to have a sensible and realistic definition of professional tennis would, in our view, mean an almost impossible sport to police. Even with increased levels of investment into anti-corruption there will still be enormous temptation for individual players most of whom will have little prospect of becoming professional players. This will result in the reputation of tennis being further damaged by more betting and potentially more players being corrupted".

183 AELTC "Independent Review Panel Submission", paragraphs 2.3 to 2.4: "In 2012 the ITF took the decision to licence data rights at ITF Pro-Circuit events and permit betting at this level. Whilst financially advantageous for the ITF, this decision is causing significant problems to the integrity of the sport... There is clear evidence showing that the increase in the number of suspicious betting alerts is directly linked to the availability of online betting at ITF Pro-Circuit events. This problem has been exacerbated by the recent renewal and expansion of the agreement between the ITF and Sportradar".

184 AELTC's "Independent Review Panel Submission", paragraph 2.6: "The structure of tennis in its current form, coupled with the facilitation of betting on ITF Pro-Circuit tournaments presents the TIU with the enormous task of policing the integrity of over 100,000 matches at ITF Pro-Circuit events alone, plus Challenger, Tour and Grand Slam matches".

185 AELTC's "Independent Review Panel Submission", paragraph 3.3: "We would also expect that in this revised structure, the TIU's work would apply to professional tennis only and that for the non-professional pathway events a different regime would apply".

93. Those that take this view however recognise that, presumably in the light of the loss of revenue from data sales and the developmental role played, the professional sport may need to provide some funding for the developmental sport[186].

94. The ITF for its part, envisages continuing to sell live data for both its proposed lower professional level, and the developmental or transitional level[187]. That is not least because that sale provides the funding for those levels (including security measures at them)[188] and because the ITF has contractual obligations to Sportradar through until 2021, but also because it takes the view that absent sale of the live data, betting markets would be created (through courtsiders or scraping of data) on both the IRF lower professional level, and on the developmental level[189]. The ITF is firmly of the view that the TIU must continue to have a role at all levels, including the ITF lower professional level and developmental level, and even the junior level[190].

95. It is possible that if the funding gap and those contractual obligations could be satisfied or otherwise discharged, the ITF might be persuaded of the desirability of ceasing to sell live data to events outside the professional sport, at least if the dividing line between that and the developmental sport falls as the ITF envisages at the 750 ranking level, and so broadly encompasses the ITF $25k events but not $15k events.

96. An alternative midway in the spectrum might be that live data should not be sold to events outside the professional sport, wherever the dividing line between that and the developmental sport falls. That would not necessarily mean, however, that the TIU should have no role outside the professional sport.

97. The Panel addresses this in Chapter 14.

186 AELTC's "Independent Review Panel Submission", paragraph 3.3: "We accept that the professional game may need to provide some financial support to the non-professional". See also paragraph 5.3 "As stated earlier in this document, we believe that the ITF's licensing of data rights at Pro-Circuit events and the permitting of betting at this level is causing significant problems with the integrity of the sport. It has been suggested that the money that is made by the ITF from this licence agreement could be replaced with solidarity payments from other governing bodies within the sport. This is something that should be explored further".

187 ITF's "Player Pathway Reviews" submission, paragraph 15 which repeats paragraph 6 of the ITF's December 2016 "Submission to Independent Review Panel": "In addition to being an important revenue stream, a centralised data rights agreement contributes to the protection of integrity by mitigating the threat of courtsiders, and deterring the collection of unauthorised data and the creation of any unregulated betting market (both of which we are reliably informed pre-existed any ITF data rights agreement). Even with a data rights agreement in place, courtsiders continue to attempt to gain access to Pro Circuit events, and so without that agreement there is a significant risk that unauthorised data collection (and unregulated betting markets) will increase significantly. With or without a data rights agreement, additional integrity protection measures would need to be put in place to mitigate this threat. Therefore, data rights agreements should be permissible for all tennis events, including an ITF Transition Tour, subject to appropriate measures of integrity control being in place at those events".

188 ITF's "Submission to Independent Review Panel", paragraphs 3, 5 and 6, set out above.

189 ITF's "Submission to Independent Review Panel", paragraph 6, set out above.

190 ITF's "Submission to Independent Review Panel", paragraph 7, "The protection of integrity of all players, events and stakeholders that are susceptible to corruption must be the responsibility of an independent integrity organisation with an appropriate governance structure. For players, starting such protection only once they reach professional status is too late, and would leave them more accessible to corruptors at an earlier stage in their careers, making tennis an impossible sport to police. A coherent tennis-wide protection strategy is required, which must reach down to junior players and events".