

# lewissilkinnewsnotes

Recent developments in **sports law** Issue 16 Spring 2010



- **Portsmouth administration shocks football**
- Talking the talk in immigration law**
- You'll never \*?! alone**
- Location, location, location in drug testing**
- Tiger's many birdies**
- Lambs in Wolves' clothing**
- Bonded into debt at Old Trafford**
- Keep your ear to the ground at new stadia**

“Welcome to the latest edition of our Sports Law Newsnotes and the first since I took up the role of Chairman of the firm’s Sports Law Group.

It has been an action packed last quarter for sport, and football in particular. Away from events on the pitch, the current plight of football finance (including the first Premier League club to go into administration) has also dominated the headlines, and is the subject of two of our Newsnotes. At the recent Soccerex event in Manchester it was clear that all interested parties have the financial welfare of the game high on their agenda. The coming months should provide some further insight into how the sport intends to tackle its problems, not least with the publication of Uefa’s Financial Fair Play proposals.

Elsewhere, there have been some high profile disciplinary cases in rugby, further evidence of HMRC flexing its muscles in relation to image rights, and the world’s most famous golfer showing the increasing fragility of playing top level sport.

The sports industry and it is now more of an industry than ever before continues to throw up challenges for all its participants. We hope you enjoy reading our Newsnotes and do let us know if you would like any further information on the articles or would like us to write about a particular subject in the future – we would be delighted to hear from you.”



**Brian Barwick**

Chairman –  
Sports Law Group

## The last days of Pompey?

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On 26 February 2010, Portsmouth became the first Premiership club to enter administration. With debts at £80m, the Revenue was pressing for liquidation. £12m was due in taxes alone. To save the club from liquidation, there was no option but to seek shelter in an administration. The Revenue initially cried foul and the court was set to investigate the club's financial dealings. Even the validity of the administrators' appointment was in question. These issues appear to have subsided.

The administrators face a cost-slashing exercise to balance the books. A quarter of the staff has already been made redundant. In the meantime, the club benefits from a moratorium: no proceedings or enforcement may be brought by creditors. A nine point deduction is next and, most likely, relegation.

Ultimately, once on an even keel, the company will exit administration. If things play out well, the club's creditors will agree a Company Voluntary Arrangement (CVA) – a binding arrangement under which the creditors accept part payment of their debts in satisfaction of the whole.

Elsewhere, Crystal Palace entered administration in late February and were handed a 10 point deduction. League One beckons.

126 year old Chester City were unable to avoid liquidation when the taxman blew for full time in March over an unpaid bill of £26,000. Chester had already been expelled from the Conference, but now it's being wound up, its results have been expunged from the table and points of other clubs in the league adjusted accordingly.

In the wings are Cardiff City and Southend. Each secured adjournments at recent winding up hearings but both will have to face the music in the next few months. Profit or loss ? Watch this space.

IMMIGRATION

# Talking a good game?

Recent changes to the UK Government's Points Based System (PBS) for immigration require most individuals to prove their English is good enough for them to work or study in the UK. Despite debate as to its relevance, the requirement extends to sports professionals. The impact will be keenly felt by football clubs wishing to extend the contracts of their foreign players. A basic grasp of English is now mandatory for players seeking immigration permission under Tier 2 of the scheme. This will include players holding old-style work permits.

Fans might argue that the test should be extended to a number of English managers whose communication skills could benefit from a good translator. 'Soccerspeak' won't cut it. 'It's a game of two halves' may have an undeniable logic, but the new test of language ability requires a good level of English in reading, writing, speaking and listening.

Players failing the exam will not be granted the right to remain in the UK. This has potentially serious consequences. A player without the right to work in the UK cannot play for his club, but the club may still be bound to pay salary. To maintain the value of a contract, clubs will need to support foreign players in meeting the language requirements, for example by providing English language tuition. Taking and passing the exam may seem an unnecessary irritation, but failing to give it priority may lead to a costly own goal.

EMAIL ABUSE

# War of the words

Communicating by email is nothing new, but it appears former Liverpool FC director Tom Hicks Jr still needs to work on his email etiquette.

For those of you that don't know, Liverpool FC were taken over in 2007 in a deal led by Tom Hicks Jr's father (Tom Hicks Sr) and George Gillett. The takeover reportedly saddled the club with enormous debt. Some fans have been less than impressed by these events and a number decided to share their thoughts by email with the club's Board.

If reports are to be believed, Tom Hicks Jr did not take kindly to one such email. When Stephen Horner, a lifelong Reds fan, emailed Hicks Jr to criticise the handling of the club's finances, Mr Hicks' response was an expletive-strewn tirade. The more polite highlights included branding Horner an "idiot" who should "go to hell". Hicks Jr certainly "saw red".

When details of this heated exchange hit the press, Tom Hicks Jr was heavily criticised for his conduct, and was left with little option but to resign from the club's Board.

Sending abusive or inappropriate messages from a work email account could warrant disciplinary action, potentially including dismissal. Whether an employer can take such action will depend, at least in part, on whether it has a clear and robust policy dealing with email and internet (mis)use.

In the Liverpool case, given the circumstances, it is easy to see why Hicks Jr thought that giving himself the red card was the best option for all concerned.

DOPING

# Whither the whereabouts rule?

Imagine a rule forcing you to look into your crystal ball and notify officials where you're going to be, every hour, for the next three months. On pain of being stripped of your livelihood if you get it wrong more than twice...

Many sportspeople are subject to such a regime. The 'whereabouts' rule, under the World Anti-Doping Association code, requires athletes from over 40 sports to provide information on their location during out of competition periods. The justification, of course, is that drug inspectors need to know where to find the athletes for testing purposes.

In December 2009, UK Anti-Doping ('UKAD') took over responsibility from UK Sport for national strategy in this area. UKAD's responsible for ensuring that UK sports bodies comply with the Wada code – including the whereabouts rule.

UKAD says the rule is a major breakthrough in the fight against doping, but it's been criticised by several sports stars. Andy Murray and Rafael Nadal have drawn attention to the fact that the tennis circuit requires them to be constantly on the move, making compliance a logistical headache.

Changes to schedules also have to be notified and there's a 'three strikes and out' policy. Three infringements in an 18 month period can result in suspension from the relevant sport for up to two years. This includes failures to give accurate whereabouts information as well as missed tests. It's still relatively early days for the whereabouts rule, but we won't have heard the last of it.

PRIVACY

## If you go down to the Woods today

The big surprise is that Tiger's in rehab, not practicing his putting on the front lawn or repairing the car. Following the revelations that Woods had too many irons in the fire, and a sponsored grovel, or rather a grovel to the sponsors, the public are left wondering: did we need to know?

Tiger thought not, and sought an injunction to stop his privacy from being displayed on the fairway that is life, preferring to keep his activities in the deep rough, as it were, but to no avail. When you're rich, famous and cover yourself with brands like tattoos – even having them on your balls (ok, then, golf balls) – you are corporate and public property. Privacy rights are balanced against freedom of expression. The court decided that icons should set an example and refused it – a bunker too far for Mr Golf.

The lesson for celebrities is play the game, but only the one you are expected to play by your public and, more importantly, judging from the remorse, Mom and your sponsors. Otherwise the green fees for your game will be very expensive indeed. There may be a very rich golf widow on the nineteenth hole.

The Tiger's tale is one of a costly shank for the nice guy who went for too many birdies and ended up with an albatross round his neck.

FOOTBALL

## Taking the Mick?

“In every League Match each participating Club shall field a full strength team.” That is Rule E20 of the FA Premier League (“FAPL”) rules. Seems simple enough, but it caused problems before Christmas 2009 after the Manchester United v Wolves midweek fixture. Mick McCarthy’s Wolves showed 10 changes from the side fielded the weekend before (when Wolves had won impressively at Tottenham). Wolves had a match against fellow strugglers Burnley coming up the following weekend, for which McCarthy recalled 9 of the players who had beaten Spurs.

Among those to criticise were Wolves’ fans at Old Trafford, who saw a 3-0 defeat, while singing “40 quid to watch the reserves”. You could see their point. In their defence, Wolves cited fixtures such as Hull v Manchester United on the last day of the 2008-09 season, when United, before the Champions League final, fielded a weakened side against their opponents who were battling relegation.

The FAPL imposed a £25,000 suspended fine on Wolves for breach of rule E20. The FAPL said it “had sympathy” for Wolves’ defence, which relied on other clubs going unpunished for fielding weakened teams. But clearly not enough sympathy. The FAPL has not told us why it considered Wolves’ case to be more serious. But real competition is essential in any proper league. The most likely explanation is that when big clubs rest players, they can argue that those brought in are still high quality players, who are often in demand from other FAPL clubs. The same is less likely to be true if you’re a club at the wrong end of the table.

But McCarthy may have the last laugh. A full-strength Wolves beat Burnley 2-0 the weekend after the controversial Old Trafford match.

FOOTBALL FINANCE 2

## A debt too far?

Football club finances are big news, particularly following the £500m Manchester United bond and Portsmouth's administration. The figures are startling: in 2008, 18 Premier League clubs owed just under €4bn (four times Spain's La Liga, the next most indebted league), representing 56% of European football's commercial debt.

Worryingly for Manchester United and Liverpool fans, more than a quarter of the Premier League's debt has been loaded on to the balance sheets of those clubs courtesy of their American owners' leveraged buyouts. This type of deal effectively leaves a club to pay off its owner's debt. Following the successful take-up of the Manchester United bond, the club will have to meet an annual interest bill of £45m – money coming out of club income to pay off the Glazers' debt.

Uefa has moved to counter the debt problem through its Financial Fair Play proposals, which are based on the principle of 'break even' – clubs should not spend more than the income they generate from football related activities (TV, sponsorship, gates and merchandise). The proposals are yet to be finalised but the intention is to bar clubs which fail to balance their books from European competitions.

The days of mega-rich owners buying collections of star players may be over before too long. Even the Government, not hitherto known for its interventionist approach to sport, has met the FA, Premier League and Football League to discuss financial governance. With over half of Europe's top 650 clubs losing money each year, and Portsmouth becoming the first Premier League club to enter administration, has the penny finally dropped?

PROPERTY

## **Do your homework**

When a club acquires a new stadium, or develops existing facilities, full due diligence should be undertaken to check if there is anything which restricts the way in which the land can be used or developed. Failure to do so can result in costly litigation and delays in the project.

Restrictive covenants are agreements entered into by owners of land, which bind successive owners and dictate how the land concerned may be used. A restrictive covenant may prevent or restrict the use of land for a particular purpose which would otherwise disturb neighbouring landowners. For example, if a club develops a football ground to include a bar and restaurant, and there is a restrictive covenant on the title against the sale on alcohol on the premises, the development will be in breach of the covenant.

If there is a restrictive covenant in place, the club will need to find out the identity of the person with the benefit of that restriction, as that person's permission may be required to undertake the development. It is sensible to approach any such person to obtain consent as early as possible in the course of the project, to find out sooner rather than later if there are likely to be problems.

If restrictive covenants are ignored, developers and owners run the risk of Lands Tribunal proceedings being brought by the beneficiary of the covenant. The Tribunal could order that development works must cease, and there may also be liability for damages for breach of covenant. It pays to take property covenants seriously, so discuss these issues with your legal advisers before you commit to a new property project.

## Introducing Lewis Silkin's Sports Law Group ...

Lewis Silkin's Sports Law Group includes experts in all of the firm's areas of legal expertise. In this edition of Newsnotes, we introduce you to Brian Barwick and Andrew Osborne. To find out more about the group, please visit [www.lewissilkin.com/ourservices](http://www.lewissilkin.com/ourservices) and click on the 'Sports law' section.



After graduating with an economics degree from the University of Liverpool in 1975, I joined the BBC's Sports Department where my roles included Editor of the FIFA World Cups, Olympic Games and Match of the Day. I left the BBC as Head of Sport, to become Controller of Sport at ITV and was also responsible for launching the ITV2 channel in 1998 – highlights there included the channel's award winning coverage of the Rugby World Cup 2003 and the recruitment of on-screen talent in the forms of Desmond Lynam and Gabby Logan.

I was appointed Chief Executive of the Football Association in 2005 and during my four year term of office oversaw the opening of the new Wembley Stadium and a significant upturn in broadcast and commercial deals. I launched the Respect campaign, was involved in the early stages of the Football Association's 2018 World Cup Bid, and led on the appointment of Fabio Capello as Coach of the England team in December 2007.

After I stepped down as CEO of The FA, I have set up Barwick Media and Sport which is a network and knowledge consultancy offering unique introductions, opportunities and solutions across the broadcasting spectrum and sporting world. I became Chairman of Lewis Silkin's Sports Law Group in October 2009.

I am a partner and specialise in sports law and immigration law and I am head of the firm's immigration practice. I have worked in the sports arena for 10 years. My work involves negotiating all areas of player transfer work with an emphasis on football. My specialisms are work permit appeals, regulatory issues and international transfers and disputes before FIFA and CAS. I also have over 12 years experience of advising corporates and high net worth individuals on their immigration needs.



I advise 6 Premiership clubs as well as leading international player and management agencies. I have recently been involved in a number of high profile international transfers to the UK, litigation before CAS concerning the termination of a leading international footballer's contract, as well as advising on feeder club structures in South America.

I have two Bachelor degrees, one in Law and the other in Politics and American Studies. I am a member of the British Association for Sport and Law and the Immigration Law Practitioners Association. I enjoy football, despite being an Ipswich Town supporter, but don't have time for other hobbies as I have five children!

### **Lewis Silkin Newsnotes**

Newsnotes are produced regularly by Lewis Silkin's Sports Law Group.

The Group brings together lawyers within our firm who practise in intellectual property, commercial, employment, litigation and dispute resolution, immigration, property, tax and corporate law.

They represent a wide range of professional sports bodies and individuals in the UK and around the world.

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### **Don't forget**

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Professional advice should be obtained before applying the information in these Newsnotes to particular circumstances.

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