



is also important that any such written agreement is reviewed for currency from time to time. Having such an agreement in place would have made the positions much more certain for both parties and possibly avoided the litigation. The informal position adopted by McGill left room for the 'switching' of intermediaries to take place and the costly and lengthy legal battle that followed.

The judgment of the Court of Appeal should also serve as a warning to those who are willing to take advantage of less formal agreements between players and agents as the lower standards of evidence for causation required make it easier for damages to be recovered (albeit at a percentage of the full claim value). It must be noted that when the loss of chance is contingent on the hypothetical acts of a third party, causation can be made out if a real or substantial chance can be proven. There is no need to prove on the basis of the balance of probabilities so the contingent activity does not have to be deemed more likely than not for this type of claim to succeed. The benefits to claimants stemming from this ruling are clear - they can be awarded damages when on a balance of probabilities assessment they might otherwise be awarded.

Finally, it can be argued that this case has again damaged the credibility of football in a year where that credibility has arguably taken a severe kicking: the fact that a Premier League club and high profile coaches were dragged into this litigation, and have had the High Court and the Court of Appeal question the veracity of their evidence, is clearly disappointing for all concerned.

NEWS IN BRIEF

Resolution on sport criticised

A resolution on 'An integrated approach to Sports Policy: good governance, accessibility and integrity' adopted on 2 February 2017 by the European Parliament ('EP') is being seen as a missed opportunity, with a number of sports lawyers criticising the resolution for not going far enough. The resolution, which was adopted by the EP by 522 votes to 76, with 37 abstentions, follows an evaluation of the EU's existing sports policy based on a hearing hosted by the Alliance of Liberals and Democrats for Europe ('ALDE') in October 2016 and a draft report evaluating European sports policies from 2009 to 2016 issued by Member of the EP, Hannu Takkula.

Although the resolution has been deemed an absolute necessity by many, Alessandro Oliverio, Attorney at Law at OLF, believes that the EP may have missed an opportunity to formalise the relationship between the EU and international sports organisations. "The EP reiterates the validity of the sports model where federations play a central role. However international and national federations belong to a model with an alleged pyramidal structure, where at the top sits the IOC. The resolution does not make any reference to the IOC, which suggests to me that the EP, on the one hand, accepts the sports model as designed by the IOC, but on the other hand, does not abide by the hierarchical governance provided by the IOC," explains Oliverio. "Now, given the EP does not want to make reference to the IOC, the calls on sports organisations are too broad and generally addressed. In my opinion, the real question is: for the implementation of the EU Sports Policy with whom shall the EP interface? Is it the IOC, the European Olympic Committees, or the European Federations?"

The resolution calls on sports organisations to, amongst others, put forward 'concrete proposals' to enhance good governance standards by 2018. MEPs are calling on international, EU and national sports organisations to commit to good governance practices, which includes developing a culture of transparency and sustainable financing. In this regard, MEPs have also called on the Commission to explore the possibility of creating a code of conduct in the areas of good governance and integrity in sport.

"Cooperation with international sports stakeholders is a key element of the resolution but, with the sole exception of paragraph 40, my question remains unanswered, so I have the feeling that there is the missed opportunity to formalise, or at least to try to formalise, a relationship between the EU and international sports organisations," adds Oliverio. "The EU will continue to follow a case by case approach. The resolution focuses on integrity and good governance, with the Parliament noting that improving these areas will require a change in the mindset of all stakeholders. Given the recent corruption scandals across sport, the Parliament stresses the need for a zero-tolerance policy to corruption and other types of crime in sports, whilst encouraging Member States to establish match fixing as a specific criminal offence and to consider introducing dedicated prosecution services for investigating sports fraud cases.

"The resolution is little more than a collection of bland observations that may have little or no practical impact," comments Clifford J. Hendel, Partner at Araoz & Rueda. "Essentially, the resolution 'calls on' sports organisations, the Commission and Member States to take certain generic actions, but there can be no real teeth to these guidelines and signals."