

Reshaping Sports Disciplinary Processes: Lessons for all sports governing bodies from the Quinlan Report ten years on.

Richard Davison

richard@davisonequestrian.com

Nottingham Trent University

Jonathan Glen Merritt

De Montfort University

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Abstract

All Sports Governing Bodies (SGB) should conduct their disciplinary procedures in accordance with the law. The principles of natural justice, and in particular procedural fairness, should be the bedrock of all SGB disciplinary procedures. When these principles are compromised it is not only the rule-violator who suffers. The integrity and reputation of the SGB itself can also be harmed. Negative media reports can shape public perception and impact on funding and other commercial partnerships.

In 2016 a British Horseracing Authority (BHA) Disciplinary Panel was found to have demonstrated apparent bias and other improper conduct. This triggered a growing media scandal and caused the BHA to expedite the Quinlan Review for the purpose of recommending reforms to its disciplinary procedures and ensure they were legally robust.

This paper is not simply a review of a review. It is a deep dive into how the law was found to apply to the BHA's disciplinary procedures with a view to establishing the extent to which the Quinlan Review can serve as a blueprint for any Sports Governing Body, whether they regulate human or non-human participants.

1. Introduction

This year is both the 10th anniversary of the Quinlan Report¹ on horse racing integrity matters and an auspicious time to write about the fitness for purpose of sports disciplinary processes generally. If they are not sufficiently robust, irrespective of the strength of the substantive case, the procedure may need to be run again or the case dismissed altogether. This article considers whether a legal analysis of the British Horse Racing Authority's (BHA) reformed disciplinary procedures has implications for any and all sport regulation.

With the above in mind, there have been developments relatively recently which will be of interest to sports administrators in any discipline. In March 2025 a UK County Court granted an injunction against a golf club terminating the membership of a deeply unpopular golfer² against whom there were also specific allegations of cheating. The case went badly for the golf club because of the way they conducted the disciplinary process, not the substantive allegations. That process was found not to have 'complied with the principles of natural justice and good faith'³. This is unlawful because it amounted to a breach of contract between the member and the club and that is a central reason why these types of proceedings must be conducted properly.

Secondly, in August 2025, the International Federation for Equestrian Sports (FEI) Tribunal suspended former Olympic rider Cesar Parra⁴ for 'abusive [horse] training techniques. Again, what is significant here is procedure. The case should have been dealt with by the United States Equestrian Federation (USEF). However, at the time the USEF did not have a rule enabling it to take action regarding welfare issues that arose *away from* its competitions. This highlights that no matter how egregious behaviour is, without a

rule that covers the incident or incidents, no action can be taken. Only the terms of the rules form the terms of the contract mentioned above.

The introduction of the Sports Governance Code aside, the administration of some sports remains 'fragmented' and 'unprofessional'⁵. Conducting legally robust sports disciplinary processes is very important to the credibility of sport but need not entail the deployment of significant capital and time. For instance, it would be resource-efficient for any SGB to have regard to the experiences of relatively well resourced and long standing SGBs. For example, the BHA, its most recent comprehensive review of integrity processes - 'The Quinlan Report' of 2016 and its implementation.

There has been very little statutory intervention in UK sports governance, with the exception of the Football Governance Act 2025.⁶ However, this is unlikely to have much effect in regulating the way that disciplinary functions are carried out. This Act chiefly concerns the appointment of an independent regulator for Association Football. The main source of law in terms of sports governance therefore, remains case law. This will be the main focus of the forthcoming discussion.

2. Arbitral or not, the relevance of Quinlan to all Sports Governing Bodies

The BHA is a national governing body (NGB) which chooses to resolve disciplinary matters by way of non-arbitral procedures. The Football Association (FA) uses its 'Rule K' arbitration procedures for sports disciplinaries, a process which is more common, as do many SGBs. However, there are significant parallels between the two types of processes, not least because 'anyone who decides anything' is obligated to apply the principles of natural justice.⁷ In the UK, arbitration is governed by the Arbitration Act 2025 (AA) which amends the Arbitration Act 1996. Providing there is a valid arbitration agreement in place disputes can be determined accordingly. These agreements are usually found in the rules that each new participant is made aware of. This ousts the jurisdiction of the courts except on certain procedural matters, for instance, if there is an allegation of bias on the panel.

One important amendment in the 2025 Act, following *Halliburton v Chubb*⁸ is that arbitrators are mandated to disclose '... circumstances that might reasonably give rise to justifiable doubts as to an individual's impartiality...'⁹. Put another way, arbitrators are now required to declare actual conflicts of interest and facts which could lead to a *perception* of possible bias.

The Court of Arbitration for Sport (CAS) is a dominant force in sports disputes, uses arbitration procedures and all Olympic sports federations (OSF) must agree to its jurisdiction.¹⁰ Further, the World Antidoping Code (WADC)¹¹ stipulates that appeals must be resolved before CAS. The court has a model clause on the issue of ousting the ordinary courts,¹² now mandated in the Olympic Charter.¹³ CAS is an appeal court but has first instance procedures as well,¹⁴ it is seated in Switzerland and thus governed by the Swiss Private International Law Act (PILA),¹⁵ therefore a challenge to a CAS arbitral award must be

made under Swiss law.¹⁶ However the grounds are all procedural and very narrow, including for instance withholding the right to be heard in adversarial proceedings.¹⁷ Athletes and participants are deemed to have consented to CAS' arbitration procedures by way of consenting to the rules of the relevant SGB, NOC or IOC, again a matter of contract, which always must be freely consented to. In *Pechstein*, due to the monopoly held by the skater's SGB,¹⁸ the European Court of Human Rights (ECtHR) found that Pechstein's agreement was not '...freely and unequivocally...' ¹⁹ achieved. Therefore CAS' refusal to grant Pechstein a public hearing violated her rights under Article 6(1) ECHR. It is apparent then that even the most sophisticated sports tribunal must safeguard the fundamental rights of the parties or face censure. The need for *all* sports to have legally robust policies and mechanisms proceeds from this.

2.1 Rule Enforcement by Arbitration

Arbitral tribunal panel members generally have a greater knowledge and interest in sport and availability than courts or judges and in some circumstances, proceedings are expedited, sometimes within hours under CAS' Ad Hoc Division. This is very useful given the unique nature of sport, the timing of specific events and the short playing life of many athletes. Another advantage of CAS is the ever-expanding jurisprudence of sporting matters. Since CAS is seated in Switzerland the finality, and thereby certainty, of arbitral awards from it are granted by Swiss law.

However, as regard ousting the national courts, recent findings indicate the possibility that a wind change could be on the way when it comes to the availability and type of review afforded to the European courts for CAS awards. The Court of Justice of the European Union (CJEU) 2025 *Seraing* case²⁰ establishes that EU national courts can review arbitral awards to ensure they accord with the EU's public policy and fundamental legal rights as enshrined in the EU Treaties. This would include CAS decisions.

Quinlan's legal reasoning was applied to non-arbitral disciplinary procedures used by the BHA so it needs to be established whether that would apply to sports arbitration procedures. It is very hard to argue that the principles of natural justice do not apply to any sports disciplinary process and Quinlan compared the procedures of other UK based SGBs to those in the BHA. For example, the Rugby Football Union and League, British Swimming, and the Football Association (FA). Even though the BHA choose to describe their dispute resolution procedures as non-arbitral, since they are based in contract, the proceedings are of an arbitral *nature*. Notwithstanding that Sports Resolutions UK facilitate many sports arbitrations, the BHA only reached out to it in regard to the provision of *pro bono* advice for those subject to their disciplinary proceedings. This was undoubtedly an opportunity missed but sports governing bodies rarely voluntarily acquiesce to sharing or dissolution of power.²¹

There is little legislation which governs SGB disciplinary procedures. Instead, there is the equivalent of industry guidelines, such as UK Sport's Code of Sports Governance and others.²² Codes can have a 'soft law' effect on adherence to standards. For example, for those SGBs seeking lottery funding they are required to comply with the Code. Other non-sporting professions have similar non-statutory codes such

the Solicitors Regulatory Authority.²³ Research indicates that the resolution of SGB disciplinary disputes in the UK is fragmented and not all SGB are sufficiently resourced to guarantee the level of independence necessary for a fair hearing.²⁴ On that basis, commentators such as O’Leary propose that sports dispute resolution should be underpinned by a statutory framework requiring all SGBs to use an independent entity such as Sports Resolution UK to resolve their disciplinary disputes²⁵. This would provide independence, impartiality, certainty and would satisfy the requirement under Article 6 European convention on Human Rights (ECHR) that the tribunal is established by law.

3. The Quinlan Report

The BHA’s disciplinary functions have had some very high-profile subjects. The late Queen Elizabeth²⁶ and Aga Kahn²⁷ were both impacted when their horses breached anti-doping regulations. Sheik Mohammed, the ruler of Dubai’s racing and equestrian interests also had a close shave with the BHA when banned veterinary substances were discovered on his royal flight when it touched down at Stansted Airport,²⁸ although no personal liability was alleged to have been borne by His Highness.

In a Parliamentary debate Nick Timothy MP said ‘...Racing is, after football, the second most watched sport in the country. About 6 million people attend the races every year...’.²⁹ In 2022 members of the Betting and Gaming Council contributed £384 million in levy, media rights and sponsorship deals.³⁰ Therefore, horseracing in the UK is an important and high-profile sport which the public expect to be properly governed. The Jockey Club was founded around 1750³¹ and was the original regulatory body for horseracing in the UK. Unlike many other popular sports horseracing does not have a single international governing body, merely an international federation for which membership is not mandatory. In 2006 the Jockey Club handed regulatory control to the Horseracing Regulatory Authority which merged a year later with the British Horseracing Board to form the BHA.³² In this article, reference will be made to whatever form the BHA previously took at the time.

The Jockey Club has benefitted from having at least six British Prime Ministers and numerous members of parliament at its top table including Winston Churchill.³³ There are few other SGB’s that can boast this level of representation of the English legislature to assist with its governance. The Jockey Club’s regulations have been updated and subjected to a number of formal reviews. These include the 2008 Neville Review,³⁴ the 2016 Integrity Review³⁵ and the 2016 Quinlan Review.³⁶ The latter report is the focus of this article and was expedited due to the BHA’s disciplinary case against trainer Jim Best.³⁷ Here, after having chaired a week-long hearing it emerged that Matthew Lohn, a specialist lawyer in regulatory matters and senior partner in the law firm Fieldfishers,³⁸ had failed to disclose a serious financial conflict of interest.³⁹ Jim Best appealed the BHA’s Disciplinary Panel’s decision on a number of grounds including apparent bias.⁴⁰ Initially the BHA’s response was to submit that, instead of their panel members having a duty to disclose any potential conflicts of interests, it fell to Jim Best to ascertain this information. However, the BHA Appeal Board Chairman described the BHA’s approach in this regard as

'... somewhat alarming...'.⁴¹ The Appeal Board found that the Disciplinary Panel had conducted the proceedings improperly and Lohn's lack of disclosure did give rise to the appearance of bias. It also found that inadequate reasons behind the decision were provided. Consequently, the matter was remitted back for a rehearing before a newly composed Disciplinary Panel.⁴² It also transpired that the BHA had made a plea-arrangement with a key witness in the case.⁴³ The proceedings were described in the media as a 'shambles' and a 'debacle',⁴⁴ and the BHA had to instruct another lawyer to investigate all of the other cases Lohn had heard which created further costs for the BHA. Such consequences could be utterly catastrophic for a less well-resourced SGB in another sport.

To stay in scope, this article will analyse specific sections of the terms of reference in the review.⁴⁵ These were '...to ensure their disciplinary, licensing and appeal functions remain legally robust and would withstand legal challenges...' and to ensure that these bodies complied '...with the highest standards of procedural fairness...'.

3.1 Common law challenges to disciplinary procedures, the BHA's experience.

Disciplinary procedures are a private contractual dispute between members and their sport's governing body but the courts do have a role when there are allegations of impropriety. Given the long history of horseracing in the UK it is unsurprising that its regulatory bodies have been subject to numerous legal challenges over the years.

In the notable cases cited here, two fundamental questions exercised the court. The first was whether the BHA was held to be a public authority in order that its disciplinary decisions could be amenable to judicial review under Civil Procedure Rules (CPR) Part 54.⁴⁶ On this point the courts have determined that, in-line with other SGBs, the BHA is not a public authority and therefore not amenable to judicial review.⁴⁷ The second question for the courts is whether a contract has been created between the parties in which case it should be brought under the private law of contract. However, even where a contractual relationship has not been explicit the BHA or its forerunners have created contracts with jockeys, trainers and even third parties by way of the Rules of Racing⁴⁸.

In order to be legally robust all SGBs proceedings must accord with the principles of natural justice.⁴⁹ Core concepts in these principles include; the opportunity to be heard,⁵⁰ the burden and standard of proof to be reasonable and not unduly onerous⁵¹, the justification for commencing disciplinary proceedings to be fair⁵² and the tribunal to act in good faith, to be independent and impartial,⁵³ to not have the appearance of bias or demonstrate actual bias⁵⁴ and to not act irrationally, arbitrarily, capriciously or disproportionately.⁵⁵ *Associated Picture Houses Ltd v Wednesbury Corporation*⁵⁶ led to the modern test for reasonableness in decision making and that applies in principle to any decision making body. *Russell v Duke of Norfolk*⁵⁷ is an example of a challenge at common law and it turned on a claimant's right to be heard, the existence of a contract and the degree of discretion available to the

Jockey Club stewards. Russell was a racehorse trainer who alleged that, since he had not been granted a right to be heard he had been denied a fair hearing when the stewards decided to revoke his training licence.⁵⁸ By a majority the Court of Appeal determined that a contract did exist between the parties and that the stewards had been granted a sufficient degree of discretion to permit them to impose such a sanction. However, Denning LJ opined that, before imposing a sanction which impacts on a person's livelihood, common justice required the right to be heard, also, given that the Jockey Club held '...a monopoly in an important field of human activity...' he doubted whether implying an express term which was contrary to natural justice would be permitted under public policy. Russell lost his case⁵⁹ but it is Denning's judgement that was most influential. It is also worth noting that *Russell* was heard prior to the European Convention on Human Rights (ECHR)⁶⁰ coming into force which now impacts on the decisions made by all SGBs, albeit mostly indirectly as shall be discussed later.

Denning LJ was also a member of the Court of Appeal which heard *Nagel v Fielden*.⁶¹ The case concerned the Jockey Club's refusal to grant a training licence to Florence Nagel because she was a woman and that this resulted in a restraint of her trade. *Nagel* demonstrates that where a decision has been arrived at in an arbitrary, capricious or unfair manner then the decision-maker's procedures can be subject to the courts' supervisory review.⁶² Denning LJ stated 'When ...authorities exercise a predominant power over the exercise of a trade or profession, the Courts may have jurisdiction to see that it is not abused.'⁶³

There may have been common law developments but the courts resistance to grant judicial review of the BHA's disciplinary decisions, or those of any SGB, remains. Even the granting of a Royal Charter to the Jockey Club in 1970⁶⁴ did not bring about a change in position when this was cited in *R v Disciplinary Committee of the Jockey Club (ex parte Aga Kahn)*.⁶⁵ Here it was argued that the Jockey Club's monopolistic control over the sport, combined with its effect on the public, was such that if it did not exercise its regulatory powers, then the government would have to establish a body to do so in its place.⁶⁶ In rejecting these arguments, the court concluded that since the Jockey Club functioned as a private body then it was not amenable to judicial review. However, it did find the Jockey Club's decisions were reviewable either under the law of contract or under the court's supervisory jurisdiction.⁶⁷

The non-availability of judicial review is only disadvantageous if no contract can be determined, however. Whilst judicial review offers expediency and finality,⁶⁸ notice for judicial review⁶⁹ must be served within a three-month period⁷⁰ whereas challenges for breach of contract usually have a limitation period of up to six years.⁷¹ Further, judicial review has a reduced '...likelihood of interim relief, no automatic disclosure, no automatic cross examination [and] non-availability of damages...'. This could make it more favourable for the SGB and disadvantage the sports participant.⁷² Nevertheless, commentators continue to lament the lack of amenability of judicial review established in such cases as *Law v National Greyhound Racing Club*,⁷³ *R v Disciplinary Committee of the Jockey Club, ex parte Massingberd-Mundy*⁷⁴ and *R v Jockey Club, ex parte RAM Racecourses*.⁷⁵ In *Law* a contract was found to have existed between a greyhound trainer

and the National Greyhound Racing Club which granted the club powers to withhold the trainer's licence. The fact is though, there are a number of judges who would have permitted judicial review of SGB disciplinary decisions had it not been for the judgement in *Law*.⁷⁶ Citing *Datafin*⁷⁷ Beloff argues that a court's determination of whether an SGB disciplinary decision is amenable to judicial review should not be determined on the function of the decision-making body itself, nor on the decision under challenge but instead on the rights alleged to have been violated by the decision.⁷⁸ Nevertheless, until a contrary finding is made in the Supreme Court, *Aga Kahn* has created a 'roadblock' for the judicial review of SGB disciplinary decisions⁷⁹, for now.

The position as to whether a court can intervene in a sports disciplinary procedure moved on considerably in 2005, however. In *Bradley v Jockey Club*⁸⁰ the scope and applicable standard of its supervisory review was clarified irrespective of the non-availability of judicial review. The recently deceased Graham Bradley⁸¹ was then a former jockey, then bloodstock agent who had acted as a witness at a criminal trial concerning drug smuggling. During his evidence he attested that he had received gifts and money in return for information on races. As a consequence, the Jockey Club charged Bradley with violation of the Rules of Racing,⁸² essentially a breach of contract.⁸³ At first instance the Jockey Club's Disciplinary Panel imposed an eight-year suspension.⁸⁴ Subsequently, before the Appeal Board, Bradley complained that three members of the Disciplinary Committee were also members of the Jockey Club and therefore the panel lacked independence and impartiality. The Board dismissed this part of Bradley's claim but did reduce the period of suspension from eight to five years.⁸⁵ Bradley then commenced proceedings in the High Court claiming that by way of the implied contractual term, or even on a non-contractual basis, the Jockey Club *inter alia* should have imposed a proportionate sanction.⁸⁶ The Jockey Club accepted that the Board's decision was reviewable by the court⁸⁷ and agreed to act as the defendant in the proceedings in place of the Board.⁸⁸

The case determined that the supervisory role is not equivalent to the 'primary decision-maker',⁸⁹ but to determine whether '...the decision reached falls within the decision-maker's discretionary area of judgement'.⁹⁰ Ultimately, from *Bradley* the grounds under which the court can intervene on an SGB's decision are as follows:

1. in a non-contractual claim both the SGB and the members of a separate disciplinary panel can be respondents; and that the claimant is entitled to a declaration, and possibly an injunction, on the same grounds as the Administrative Court reviews decisions of a public authority.
2. where a contract is created between the SGB and the participant, no term may be implied that gives effect to a higher standard of review; and in order to avoid a claim in contract the SGB must only enforce the decision reached by the independent disciplinary body.⁹¹

Graham Bradley lost the case as the court found that, as regards justification and proportionality, the Jockey Club had acted within the range of reasonable limits afforded to disciplinary bodies and thus had acted proportionately.⁹²

However, more generally the importance of the case is profound as it clarified the grounds upon which SGB decisions can be challenged. Having copied elements from judicial review, the significance of *Bradley* is that it transformed the standard of the court's supervisory review. *Bradley* has been later applied in sports cases in different sporting sectors. In *Stretford v Football Association Ltd*⁹³ the case concerned the legality of the Football Association's (FA) disciplinary procedures. The court ruled in favour of the FA based on the contract under the arbitration agreement and ordered court proceedings be stayed.⁹⁴ In *Fallon v Horseracing Regulatory Authority*,⁹⁵ *Bradley* was cited when dismissing jockey Kieron Fallon's challenge to his interim suspension⁹⁶ pending his ultimately abortive criminal race-fixing case.

3.2 Apparent bias and the 'fair minded and informed observer test'.

If elements of judicial review can now be applied in challenging any SGB's decisions, then challenging bias and apparent bias is an important aspect. The test for apparent bias was clarified in *Gough v Chief Constable of Derbyshire*⁹⁷ and later refined in *Re Medicaments and Related Classes of Goods (No 2)*⁹⁸ and *Porter and McGill*.⁹⁹ In *Medicaments* the test was harmonised with ECtHR jurisprudence and differentiated between actual bias and apparent bias. The former being where a judge has demonstrated prejudice towards a party and the latter where circumstances create '...a reasonable apprehension that the judge may have been, or may be, biased.'¹⁰⁰ The current test directs the court to;

1. identify all the circumstances which could determine that the tribunal or judge is biased, and
2. ask whether any of the circumstances would cause '... a fair minded and informed observer to conclude there was a real possibility or real danger that the tribunal was biased.'¹⁰¹

This test was applied in *R (Kaur) v (1) Institute of Legal Executives Appeal Tribunal and (2) The Institute of Legal Executives*.¹⁰² The Institute of Legal Executives (ILEX) disciplinary tribunal included a council member who was also a director. Further, the ILEX Appeal Tribunal panel included the ILEX vice-president.¹⁰³ The court concluded that the vice president's membership would fail the test because of their interest in the ILEX policy concerning the regulation of disciplinary matters.¹⁰⁴

By way of contrast, in *Taylor and another v Lawrence and another*¹⁰⁵ which concerned a boundary dispute, the appeal court were asked to reopen an appeal when it emerged that the first instance trial judge had used the claimant's solicitors to amend his and his wife's wills the evening before he handed down his judgement. At the outset of the case the judge had disclosed he had used the solicitors some years previously. At appeal the court dismissed the Lawrence's assertion that the recent use of their opponent's solicitors gave rise to the judge being biased. Later, by means of deception,¹⁰⁶ the Lawrences discovered that there had been no charge to the judge by the solicitors and they held that this demonstrated bias and should have been disclosed at appeal. On these grounds the Lawrences sought leave to re-open the appeal. While the court conceded to re-opening the appeal, they concluded that the

lack of a bill for the legal services was irrelevant¹⁰⁷ and concluded that a fair-minded observer would not find the judge biased.¹⁰⁸ The court held that the Lawrences had used a disproportionate degree of suspicion¹⁰⁹ and dismissed the re-appeal.

*Flaherty v National Greyhound Racing Club Ltd*¹¹⁰ is another example of a failed allegation of apparent bias. Here, a greyhound trainer claimed that the disciplinary proceedings conducted by the National Greyhound Racing Club lacked fairness as its chief executive had demonstrated apparent bias when he retired with the tribunal while they were deliberating their findings.¹¹¹ The Court of Appeal found that the High Court judge had wrongly applied the test in *Bradley*¹¹² and further dismissed the assertion of apparent bias by finding that the chief executive's attendance during the tribunals deliberations was justified on administrative grounds. The court also re-affirmed the principle that SGBs are entitled to hold a broad margin of discretion based upon their expert knowledge.¹¹³

3.3 The courts deferment to expert knowledge.

The court's practice to defer to a disciplinary panel's expert knowledge is somewhat at odds with research that indicates the unprofessional and fragmented nature of sports governance, even after the introduction of the Sports Governance Code, as discussed earlier. Nevertheless, this desire to defer is evident in such cases as *McKeown v British Horseracing Authority*.¹¹⁴ The BHA Disciplinary Panel found that, in contravention of the Rules of Racing, McKeown had not ridden his horse on its merits and also that he had conspired with a trainer with the intention of providing inside information to punters. The jockey claimed *inter alia* that no reasonable panel could have reached the same conclusions, the decision was irrational and the panel was tainted by the appearance of bias.¹¹⁵ The court decided that both *Bradley* and *Flaherty* were applicable,¹¹⁶ the reasoning being based on the greater degree of expertise which the BHA panel held compared to the expertise of the court,¹¹⁷ However, in the interest of balance the caveat was added that, especially where a person's livelihood is concerned, the court should not have '...unthinkingly servile obeisance to the decision of an expert sporting tribunal...'.¹¹⁸ It was further acknowledged that there could be a difference between challenges concerning the finding of facts compared to those challenging the use of discretion. However, it was affirmed that it is not the supervisory role of the court to establish the facts; instead, the applicable test is whether '...no reasonable tribunal could have made a finding of fact...on the evidence before it...'.¹¹⁹

3.4 Human rights.

The framework for the protection of human rights in the UK is unlike that in almost every other country in the world. There is no overarching constitutional law but the elements that make up the UK constitution are spread throughout statutes, case law and even some mere conventions. It is not therefore true to say that the UK does not have a written constitution, it is just not in one codified written document. The Human Rights Act 1998 (HRA)¹²⁰ is the statute under which actions for breaches of human rights must start in the UK courts. Once that avenue is exhausted however, there remains recourse to the ECHR. The UK courts cannot overturn primary legislation but can declare it incompatible with the Human Rights Act

1998 (HRA) and Parliament would need to at least appear to revisit it, again more by convention than anything else. The ECHR is a treaty and as such, the UK government can ignore its findings and sometimes does.

The ECHR protects fundamental human rights and freedoms of both citizens and corporations. The ECtHR acts as a supranational court and safeguards the rights in the Convention, including the right to a fair trial which is established by way of Article 6(1)¹²¹ giving the right to ‘...a fair and public hearing...by an independent and impartial tribunal established by law...’ for both civil and criminal cases. It also explicitly defines ‘...a court or tribunal...’ as a public authority.¹²²

The right to a fair trial in Article 6 is not absolute and examples of limitations are that a claim must be brought within a certain time period, or that press attendance can be limited on grounds of national security. The test used to determine the proportionality of the limitation is established in *R ex parte Daly v Sec of Home Dept*¹²³ where the necessity of the derogation must be balanced against the legitimate aims which are being pursued by the state.

If a signatory state is considered to have failed to protect the rights set out in the ECHR or breached its provisions, an individual will be considered to have standing to take the case to the ECtHR but only once they have exhausted the required procedures before all the UK courts.¹²⁴ When deciding its cases, the ECtHR adopts a purposive approach and uses a wide margin of discretion in its interpretation.¹²⁵

The HRA has the effect of ‘...bringing home...’ the provisions of the ECHR and entering them into domestic law. The UK courts are not bound by the findings of the ECtHR but s.2 (1) HRA¹²⁶ states that the courts must take account of the ECtHR jurisprudence in the form of a persuasive, not binding precedent. The term ‘established by law’ refers to public courts and thereby subjects them to the ECHR, and also to tribunals established in accordance with domestic law. *Mutu and Pechstein v Switzerland*¹²⁷ provides further clarification when the ECtHR opined that a tribunal which ‘...has not been established in accordance with the will of the legislature...’ would not have a legitimate basis to hear cases.¹²⁸ However *obiter*, the dissenting judges concluded that the majority ‘...should have given more indications

about the conditions in which private entities may be regarded as “tribunals established by law”’.¹²⁹ So far then, purely private tribunals, such as those established to hear sports arbitrations, would not be able to hear ‘pure’ human rights cases. That said, in *Pechstein* the ECtHR considered that the Swiss Federal Court had never found CAS not to be established by law.¹³⁰ In any event, even if the courts have determined that SGBs are not public bodies, and thus human rights legislation does not have a direct effect on cases against them, a public court is deemed to be a public authority and is therefore subject to the legislation and thus, where a case involving disciplinary procedures is brought before an English court, a horizontal effect of the HRA is imposed on it.¹³¹

Referring to *Bradley Quinlan* states ‘...The Jockey Club accepted that Article 6(1) of the Convention applied to the disciplinary process.’¹³² This might seem odd given that in the UK seemingly only public

authorities are caught by the ECHR and HRA but this may be because this acceptance came about when the Human Rights Bill was being debated at the Committee Stage in Parliament.¹³³ During the debate the Home Secretary referred to the Jockey Club as performing a public function and an example of a body which could fall under the HRA and in order to comply with its provisions, the Jockey Club established the Appeal Board.¹³⁴ The right to a fair trial pre dates the ECHR and is a long-established 'cornerstone of UK law'¹³⁵ with the ECHR merely supplementing this principle.¹³⁶ Furthermore, there was clearly a need to take into account the public's expectation that the BHA should uphold such standards.

Where a UK-seated SGB opts to use arbitration to resolve their disciplinary disputes these procedures fall within the scope of the Arbitration Act (AA) 1996. Where a valid and unequivocal waiver agreement is incorporated within an arbitration agreement ECHR jurisprudence provides that Article 6(1) rights can be waived.¹³⁷ The issue of an Article 6(1) waiver arose in *Stretford* and concerned the Football Association's Rule K arbitration proceedings. Footballer Paul Stretford claimed that he had not freely waived these rights. The court held that the FA's arbitration procedures provided for the removal of an arbitrator on grounds of partiality and that the FA had conducted its disciplinary procedures in compliance with Article 6 with the waiver agreement also complying with ECtHR jurisprudence.¹³⁸ Notwithstanding the courts finding in *Stretford*, this should now be considered in combination with *Pechstein*¹³⁹ where a person waives their Article 6 rights there must be sufficient safeguards in place such as the availability of a public hearing.

The BHA's Judicial Panels Code¹⁴⁰ explicitly states that panels '...are disciplinary, rather than arbitral, bodies.'¹⁴¹ Section 6(1) of the AA 1996 refers to an '...agreement to submit to arbitration present or future disputes' and Section 6(2) states that '...a document containing an arbitration clause constitutes an arbitration agreement...' as long as it is incorporated into the overall agreement between the parties. The BHA clearly desires that their proceedings are not perceived as arbitral, however, a test for whether a disciplinary is in fact an arbitration, whatever label it is given, was set out in *England and Wales Cricket Board v Kaneria*.¹⁴² The court developed the test in *Walkinshaw v Diniz*.¹⁴³ *Inter alia* proceedings under the AA 1996 give effect to a binding decision¹⁴⁴ and the aim of the five-stage test developed in *Kaneria* was to establish whether '...the tribunal expected to make a binding decision...' in order to determine the arbitral status of the proceedings.¹⁴⁵ In *Kaneria*, the proceedings were ruled to be arbitral. Consequently, the BHA does not have the final word on this and this adds weight to the argument that Quinlan's findings have wider application than in just horse racing.

The objective of Article 6(1) is to provide a fair hearing in accordance with the settled principles of natural justice such as the publishing of judgements and a right to a public hearing. Public transparency increases the perception of independence and impartiality of the appointment stage and how the panel conducts itself.

3.4.1 The impact of human rights in sports cases.

Using *Bradley* as a starting point, while the court determined that the Jockey Club was not subject to the HRA 1998, this case brought strands from that Act together with the procedures used for judicial review and incorporated them into the concept of 'supervisory review'. Bradley pleaded that his right to a fair trial under Article 6(1) had been infringed because three of the members of the Disciplinary Board were also members of the Jockey Club and therefore potentially biased. The Jockey Club rejected this and, Bradley chose not to pursue this limb of his claim.¹⁴⁶

*Mullins*¹⁴⁷ involved the disqualification of a winning horse which tested positive to the prohibited substance morphine. The Disciplinary Board of the Jockey Club accepted that the drug had entered the horse's system via contamination and that the trainer had no fault or negligence. Nevertheless, under strict liability the horse was disqualified and the claimant sought a declaration from the court that its win should stand.¹⁴⁸ Mullins first sought judicial review from the Administrative Court who re-affirmed that the matter does not fall under s.6 of the HRA as the Jockey Club was not a public authority.¹⁴⁹ The court did find that S.6 HRA 1998 and CPR Part 54.1 use similar language and the test for amenability for judicial review is the same as that applied in human rights cases. In applying *Aston Cantlow Parochial Church Council v Wallbank*¹⁵⁰ the court applied *Aga Kahn*¹⁵¹ and determined that the function of the Jockey Club was not that of a public authority. Mullins took the matter before the Queen's Bench Division seeking the same declaration on the basis that the threshold of the banned substance was so low that it had no performance enhancing capability. The court held that its supervisory jurisdiction was not limited to matters concerning the right to work and that it did have the power to grant declaratory relief.¹⁵² However, the claim was dismissed as the court found that the Jockey Club's rules were based on the presence of a banned substance rather than the issue of its threshold. The applicability of *Aga Kahn* as regards public authorities was also upheld.

*Pechstein*¹⁵³ was a case which post-dates the Quinlan Review. Appellants German speedskater Claudia Pechstein and Romanian footballer Adrian Mutu came before the ECtHR against the Swiss government. It is the dissenting judgments which, if developed, could have relevance as regards the appointment of any sports disciplinary panel members. The appellants claimed that their Article 6(1) right to a fair trial had been violated on grounds that the Court of Arbitration for Sport's (CAS) method of appointing the appeal panels lacked independence and impartiality.¹⁵⁴ Pechstein also claimed a further breach in that her right to a public hearing had been denied. The ECtHR found that Article 6(1) did apply to SGB disciplinary procedures where a participant's '...civil rights...' are infringed,¹⁵⁵ including where the right to carry on an occupation is restrained.¹⁵⁶ The CAS proceedings against Pechstein and Mutu were therefore subject to Article 6(1).¹⁵⁷

As regards the test which the court used to determine whether a tribunal is held to be independent, in addition to citing *Findlay v United Kingdom*¹⁵⁸ and other case law, the court stated that consideration must be given '...*inter alia*, to the manner of appointment of its members, their term of office, the existence of guarantees against outside pressure and the question whether the body represents an appearance of independence..'¹⁵⁹ The court further held that impartiality '...normally denotes the absence

of prejudice or bias...'¹⁶⁰ and found a combination of both a subjective and an objective test should be applied. The subjective test should be based on '...the personal conviction and conduct of a particular judge...' and whether they have previously demonstrated personal prejudice and partiality.¹⁶¹ The objective test is based on whether the court offered safeguards by way of a guarantee '...to exclude any legitimate doubt...' about a panel member's impartiality. The opinions of the two dissenting judges¹⁶² are also noteworthy. They held that in its previous jurisprudence the ECtHR had found that the manner in which tribunal members were appointed, the duration of the terms of office and other factors including '...whether the body presents the appearance of independence...', to be significant factors. They opined that the tribunal member pool should be composed of not only members selected by the SGB but also those who represented other parties such as participants.¹⁶³ Referring to the imbalance of representation of the CAS panel member lists, they compared this with those used for employment, lease or rent tribunals and held that the court '...would not accept an employment tribunal made up of (almost) exclusively employer's representatives...'.¹⁶⁴

It is fair to say therefore, that because the courts do not consider SGBs to be public authorities, neither the HRA 1998 nor the ECHR are applicable directly to sports disciplinary procedures, *Pechstein* came before the ECHR because CAS is effectively part of the Swiss court system. Nevertheless, the likely explanation behind the BHA's apparent acceptance of the application of Article 6 ECHR was that its procedures should be conducted in accordance with such provisions in order to satisfy the public's expectation in this regard. Such expectations would be true of any SGBs disciplinary mechanisms.

4 To what extent can the Quinlan principles be applied to other SGBs disciplinary procedures?

Quinlan did address the courts' approach to disputes arising from arbitration as well as those under the BHA's non-arbitral system. This included challenges concerning human and fundamental rights as if they were applicable to arbitration.¹⁶⁵ In particular, Quinlan considered *Bradley*¹⁶⁶, *Mullins (1)*,¹⁶⁷ *Mullins (2)*,¹⁶⁸ *Fallon*¹⁶⁹ and *McKeown*.¹⁷⁰ Quinlan's analysis of these cases commenced with *Bradley* in which he described the Chairman¹⁷¹ of the Jockey Club Appeal Board written reasons as being of the '...highest standard...'. He noted that the Appeal Board took into consideration the authority of the domestic courts and the ECtHR on Article 6. In *Bradley* Quinlan limited his analysis to the reasons and decision on the preliminary points.¹⁷² These were those which concerned the legality of the disciplinary proceedings and allegations of real bias, lack of independence and impartiality and non-compliance with Article 6(1) ECHR.

On *Bradley*, in summary, Quinlan concluded;

1. the sole concern of the Appeal Board was the issue of the legality of the Jockey Club's proceedings.¹⁷³
2. as regards the compliance of its procedures with Article 6(1), the Jockey Club conceded that the Disciplinary Committee's lack of independence would fail the observer test.¹⁷⁴ Notwithstanding the Jockey Club's concession, the Appeal Board concluded that the procedures were, in general, compliant with Article 6(1) and fair.¹⁷⁵ It also concluded that the Disciplinary Committee had sufficient impartiality and that, if the independent observer test were applied to its own proceedings, it would satisfy the requirements of the observer test for both its independence and impartiality.¹⁷⁶
3. applying the common law test of bias¹⁷⁷ the Appeal Board also dismissed Bradley's claims of the appearance of, or actual, bias.¹⁷⁸
4. before the High Court Bradley did not pursue his arguments concerning the illegality of the Jockey Club's proceedings. Instead, he challenged the lawfulness of the sanction on grounds that it was disproportionate.

Quinlan pointed out that whilst the BHA's disciplinary decisions have been subjected to legal scrutiny he had not been made aware of any other High Court cases where the legality of the BHA's disciplinary proceedings has been challenged. To distinguish and reinforce this point Quinlan cited *Fallon* and *Mullins* as cases where the issue of legality of the procedures was not challenged¹⁷⁹.

Quinlan recognised that whilst the BHA is not a public authority, and therefore not amenable to judicial review, its decisions are subject to the supervisory review by the High Court.¹⁸⁰ As to whether the BHA was subject to the ECHR, Quinlan acknowledged that it was following the coming into force of the HRA that the Jockey Club established the Appeal Board. Referring to the finding in *Mullins*, that the Jockey Club was not a public authority, Quinlan stated '...that does not matter for the purposes of this review...' and justified this on the basis of the Jockey Club's acceptance that Article 6(1) applied to its procedures. Citing *Stretford* to demonstrate the courts mandatory compliance with ECHR he concluded that the protections provided in Article 6(1) '...will be the standard against which the BHA's procedures and decisions are judged.' In so doing Quinlan drew a line between strict legal obligations and the need to address the public's perception of the BHA's procedures.¹⁸¹

As regards the BHA's duty, and that of its disciplinary organs, to act lawfully, Quinlan submitted it should adhere to the following principles. These are summarised that the BHA must act; in accordance with their own rules, fairly, in accordance with the principles of natural justice and that it must not act arbitrarily, unreasonably, irrationally or perversely.¹⁸² It would be extremely difficult for any SGB to cogently argue that these principles do not apply to them.

Quinlan cited *Bradley* and *Modahl* as cases which centred upon procedural fairness and the rules of natural justice¹⁸³ and asked, 'What do these laudable propositions mean?'¹⁸⁴ With regard to the question of the appearance of bias, Quinlan cited *Porter and McGill*¹⁸⁵ and the 'fair minded and informed observer test'. For apparent bias Quinlan cites the two-stage test mentioned earlier,¹⁸⁶ however, as regards the

application of the test Quinlan cited four circumstances which he considered relevant to the specificity of sport.¹⁸⁷ These circumstances included that SGB have a contractually based jurisdiction in contrast to a court of law, all participants are owed obligations by the SGB, its processes are of an inquisitorial nature and that the decision-makers are experts in the sport.¹⁸⁸ To distinguish between independence and impartiality Quinlan cited *Gillies v Secretary of State for Work and Pensions*¹⁸⁹ where the court found that;

...impartiality is the tribunals approach to deciding the cases before it. Independence is the structural or institutional framework which secures this impartiality, not only in the minds of the tribunal members but also, in the perception of the public.¹⁹⁰

On that basis Quinlan concluded that it was the 'structure' of the BHA's procedures was particularly relevant to his review.¹⁹¹ Again, that basic distinction should apply to all SGB disciplinary mechanism worthy of the name.

In applying the principles of independence and impartiality to the structure and function of the BHA Appeal Board, Quinlan considered the following safeguards which would also be useful guidance for other SGBs; the fixed period of tenure of its members, that the Chairman cannot be outvoted by its members, it is not permitted for a member of the Disciplinary Panel to sit on the Appeal Panel, it is separate from other BHA operative and regularity bodies.

Further guidance for SGBs of all shapes and sizes can be gleaned from Quinlan. In Particular, Quinlan was concerned that the BHA granted themselves the right to dismiss a Disciplinary Panel member from their list provided the member was given a three-month notice period.¹⁹² This dismissal could be prompted by an unpopular decision in a case so to ensure legal independence, Quinlan recommended clearer terms upon which such removals could take place such as a breach or non-observance of the Rules, bringing the BHA into disrepute or committing a criminal offence.¹⁹³

As regards perceived or actual conflicts of interests, Quinlan applied a three-stage test¹⁹⁴ which commenced by asking if the law prevented them from sitting on a panel. To this end Quinlan considered *Kaur*, *Stretford* and *Flaherty* and concluded the following two conditions should be upheld;

1. a separation of powers should be maintained between the function of tribunal members and others with executive or policy-making roles, and
2. the principle established in *Kaur* [discussed earlier in this article] is upheld.¹⁹⁵

Quinlan addressed the importance of effective appeal procedures by citing *Modahl v British Athletic Federation Ltd* (No. 2)¹⁹⁶ where the court found that defects which occurred at first instance could be cured by appeal proceedings. He provided an excerpt from the judgment where Latham LJ cited *Calvin v Carr*¹⁹⁷ and '...the test which is appropriate is to ask whether, having regard to the course of the proceedings, there has been a fair result...' ¹⁹⁸ This test was also used by the court in *Flaherty*.¹⁹⁹ Quinlan

concurred with the finding in *Calvin* that there is no explicit rule that states that appeal proceedings will cure a defect in natural justice but that the structures should be in place for it ‘...to conduct a fair and full inquiry.’²⁰⁰ This caused Quinlan to question whether the Appeal Board should have the power to re-hear those cases referred before it. Whilst the appeal in *Calvin* was by way of a rehearing, in *Bradley* it was not. Having analysed the provisions granting a *de novo* hearing in regulations of the Rugby Football Union (RFU), the Football Association (FA) and World Rugby, Quinlan concluded that the BHA Appeal Board should have the ability to rehear cases in exceptional circumstances.²⁰¹ Thus it would be reasonable for all sports SGBs to follow this guidance in formulating their rules on rehearings and appeals.

In summary, SGB’s disciplinary procedures are not directly governed by the HRA, but, like the BHA did, it would be beneficial to acknowledge that procedures should be conducted in accordance with it. This is not only because the courts themselves are subject to the HRA but also because there is a public expectation that sports will respect the principles of natural justice and the fundamental rights of those whom they govern. Quinlan identified that an appropriate framework was needed to achieve an effective separation of powers between the executive and judicial branches of the BHA, a natural justice pre-requisite. There should also be an appropriate mechanism for the appointment of panel members and procedures to identify and manage perceived or actual bias and conflicts of interest of their panel members.

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5 Conclusion.

Quinlan found that due to a lack of structural independence the BHA's Disciplinary Panel was not in a strict legal sense '... technically independent at common law or for the purposes of Article 6.'²⁰² He qualified this by stating that this did not mean their procedures were unfair as, similar to other SGBs, the process must be '...viewed in totality'.²⁰³ Quinlan was referring to the court's position that internal appeal procedures act as a safety-net and cure defects which have occurred at first instance procedures. However, relying solely on appeal procedures for this purpose can come at a heavy cost. From the perspective of any SGB, the costs incurred in correcting first instance disciplinary procedures are not only reflected in financial terms but can damage the reputation of the SGB.

As regards the BHA, Quinlan identified a number of structural and procedural aspects where modifications were needed to make them legally robust. In summary, Quinlan recommended that the BHA should;

1. provide an '...arm's length disciplinary hierarchy...','²⁰⁴ for example by separating the powers and influence of the BHA executive over its judiciary;
2. make changes to its disciplinary structure, for example by amalgamating the Disciplinary Panel with the Licensing Committee;
3. amend the terms of reference and appointment of panel members to avoid actual or perceived conflicts of interest, especially where internal and external roles are concerned;
4. enhance some of its procedural rules, for example by introducing formal disclosure procedures for its panel members.²⁰⁵

Unfortunately, despite the existence of the Code for Sports Governance in the United Kingdom²⁰⁶, there is little to enforce formal standardisation regarding disciplinaries across all SGBs, large and small. There is only a general requirement that SGBs should '...comply with the law and best practice...'.²⁰⁷

Quinlan was silent on why he did not recommend the BHA to outsource its disciplinary procedures to a third-party dispute resolution institution such as Sports Resolution UK Ltd (SR). He did acknowledge SR in the section titled “Inequality of Arms”²⁰⁸ and with regard to its provision of *pro bono* legal advice to those subject to the BHA’s disciplinary procedures.²⁰⁹ The latter point had previously been recommended in the 2016 Integrity Review.²¹⁰ Quinlan based his recommendations on i. the judgments at common law, especially *Bradley*, ii. the principles of natural justice and iii. being compliant with Article 6(1) ECHR.

It is concluded here that the impact of Quinlan’s recommendations was that the BHA’s disciplinary procedures became legally robust and could withstand a future legal challenge. This view is reflected by lawyer and former football official Kevin Carpenter who opined that the implementation of Quinlan’s reforms would make the BHA ‘...one of the most advanced, transparent, collaborative and well-equipped governing bodies...’²¹¹ While the *Best* debacle serves as a cautionary tale to all SGBs, and the Quinlan Review provides a blueprint for any SGB disciplinary procedures, procedural checks can only go so far. Much will always be down to the integrity, commitment and competence of each individual disciplinary panel chair, and those holding a judicial oversight role, to follow established procedures. In other words, how SGB panels conduct themselves in practice ‘...after Quinlan has left the building...’²¹²

Declarations

Author Contribution

Richard Davison wrote the original manuscript. Jonathan Merritt added material, updated the work and edited the overall manuscript to around half its original length. All authors reviewed the manuscript.

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