
Handover of Responsibility from the International Governing Bodies to the TIU

Published with the Interim Report on 25 April 2018

This Record of Evidence and Analysis has not been updated for the purposes of preparing the Final Report. In the event of any conflict, the Final Report reflects the most contemporaneous record and therefore prevails over this chapter.

**Independent
Review
of Integrity
in Tennis**

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Chapter 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 Bodies¹ 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 creation². The Panel then examines the subsequent approach adopted by the TIU to (a) material in relation to the 45 matches mentioned in the Environmental Review³; (b) material obtained from Vassallo Arguello’s mobile telephone during the Sopot Investigation⁴; 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 TIU⁵.
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 ATP⁶, 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 1⁷, 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 time⁸, based on its appreciation of the available evidence of the contemporaneous facts and circumstances. Also, as set out in Chapter 1⁹, 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 handover¹⁰. 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 opinion¹¹, 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.

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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 discretion¹².
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.

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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 statement¹⁷ ...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 Unit²⁶ 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.

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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.

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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.

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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.

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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 material⁴⁷. 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 match⁴⁸

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, winning £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.

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- 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.

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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 Bradshaw⁵⁰. Paul Scotney was also present, but only at the beginning of the meeting⁵¹. 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 questions⁵².
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 TIU⁵³. 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 Ewan⁵⁴.
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).

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- *An additional FTS mobile download (they missed this data in their original report)*
- *12 files – the files marked ‘summary’ are extracted from the Tennis Masterchart, so the Masterchart, and Player A v Player B⁵⁵, 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).

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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 Babcock⁵⁷. 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 TIU⁵⁹.

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 Relations⁶⁰). 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).

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(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 TIU⁶³, 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 that⁶⁷:
- 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).

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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” because⁷²:
- 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.

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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 statements⁸², 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 that⁸⁴:
- 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.

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- 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 decision⁸⁵. 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 that⁸⁷:
- 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.

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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).

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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 it⁹⁷.
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 review⁹⁸.
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 not¹⁰⁰.

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.

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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 time¹⁰⁵.
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.

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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 provided¹²². 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.

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(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 raised¹²⁴. 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 investigation¹²⁵.
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], corruptors 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).

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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.

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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 Arguello¹³³.
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 2007¹³⁴. 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).

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- 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 improperly¹³⁷. 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).

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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 material¹⁵⁵, 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).

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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 Investigation¹⁶⁸. 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 responded¹⁷¹:
- 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.

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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).

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telephone so willingly as he appeared to be confident that no incriminating evidence would be found¹⁷⁹. 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 rules¹⁸¹. 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 examined¹⁸².

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.

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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).

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(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.

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confidence if the reputation of the TIU was tarnished²⁰⁰. 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 material²⁰⁹.

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

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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 proceedings²¹³.

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).

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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 8²¹⁴.
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 2008²¹⁶;
 - 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.

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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 Betfair²¹⁷;
- 137.2 The hard copy materials provided by the Sopot Investigators to the TIU in early 2009²¹⁸ 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 Ewan²¹⁹ 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 that²²¹:
- 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.

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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 Analyst²²², 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).

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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 understands²²⁹ 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.

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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 view²³⁰, 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.

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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 time²³⁵.
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.

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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 Persons²³⁸ 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.

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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 view²⁴⁰, 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 work²⁴², 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 Investigators²⁴⁴, 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 it²⁴⁶. 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 TIU²⁴⁷. 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.

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Investigators analysts²⁴⁸, before becoming frustrated and losing patience and ceasing to do so²⁴⁹. 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.

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(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 view²⁵⁰, 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 2007²⁵¹. 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 TIU²⁵². 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 downloaded²⁵³. 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 2007²⁵⁷.
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).

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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.

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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 time²⁵⁹. 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.

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- 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 was²⁶⁹.
- 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 interview²⁷³.
- 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 Beeby²⁷⁵. 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.

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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 events²⁸¹. 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.

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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.